

# EYE OF AFRICA HOMEOWNERS' ASSOCIATION NPC

(Registration Number: 2007/030516/08)  
(hereinafter referred to as "the Association")

## SPECIAL RESOLUTIONS

Proposed Amendments to the Memorandum of Incorporation

### 1. INTRODUCTION

In accordance with section 16(1)(c) of the Companies Act, Act 71 of 2008 (hereinafter referred to as "the Act") and the provisions of the Association's existing Memorandum of Incorporation (hereinafter referred to as "Mol"), notice is hereby given that the Members will be requested to consider and, if deemed fit, adopt the Special Resolutions set out below.

The purpose of these amendments is to:

- 1.1 Modernise the governance framework of the Association;
- 1.2 Align the Mol with current best practice in residential estate governance;
- 1.3 Ensure that voting control resides with registered property owners;
- 1.4 Clarify and limit rights reserved by the Developer; and
- 1.5 Promote transparent and democratic participation by Members.

### 2. SPECIAL RESOLUTION 1: AMENDMENT OF DEFINITION OF "ESTATE" (CLAUSES 2.1.8 AND 19.7 – 19.11)

#### Current wording—clause 2.1.8 and 19.7 – 19.11:

The definition of "Estate" in clause 2.1.18 is fixed to General Plan SG No. 5452/2007, but Developer claims power to add phases / unilaterally. Clauses 19.7 to 19.11 grant the Developer unilateral authority, automatic rights of extension, and an irrevocable power of attorney to add land to the Estate.

#### Proposed amendment to clause 2.1.8:

"Estate" means the land depicted on the General Plan SG No. 5452/2007 only, as may be amended from time to time through the formal municipal planning processes applicable under SPLUMA and the Midvaal Local Municipality's by-laws.

No land, phase or portion may be added to the Estate without:

- (i) The necessary municipal approvals; and

- (ii) Approval by the Members by Special Resolution.”

**Proposed amendment to clauses 19.7 to 19.11:**

The provisions in the current Mol granting the Developer unilateral authority, automatic rights of extension, or any irrevocable power of attorney to add land to the Estate found in these clauses is deleted in its entirety.

**3. SPECIAL RESOLUTION 2: AMENDMENT OF “DEVELOPMENT PERIOD”  
(CLAUSE 2.1.15)**

**Current wording—clause 2.1.15:**

Sets the Development Period as ending only when the Developer notifies the Association in writing that development has ceased.

**Proposed amendment to clause 2.1.15**

“**Development Period**’ means the period commencing on the date of incorporation of the Association and terminating on the earliest of:

- (i) The date on date which not less 80% (eighty percent) of the Erven within the Estate have been transferred to purchasers other than the Developer;  
or
- (ii) The date falling 20 (twenty) years after the date of incorporation of the Association; or
- (iii) The date upon which the Developer notifies the Association in writing that the development has ceases;

whichever occurs first.”

**4. SPECIAL RESOLUTION 3: AMENDMENT TO VOTING RIGHTS (CLAUSE 25.1)**

**Current wording—clause 25.1:**

Allocates one vote per Erf or Unit, with significant additional voting rights for the Developer during the Development Period.

**Proposed amendment to clause 25.1:**

“Each Member shall be entitled to 1 (one) vote per Erf registered in the Member’s name as reflected in the records of the Deeds Office. Only a registered owner may exercise the vote attached to an Erf. The Developer shall not be entitled to any votes

in respect of Erven not yet transferred to third-party purchasers, nor in respect of Erven that have already been transferred to other Members.

## **5. SPECIAL RESOLUTION 4: VOTING RIGHTS RELATING TO SPECIAL RESOLUTIONS (NEW CLAUSE AFTER 25.1)**

### **Current position:**

The Developer's extra votes give it permanent blocking minority.

### **Proposed New Clause 25.1A:**

"For purposes of any Special Resolution tabled in terms of the Act or the Mol, the Developer shall only be entitled to exercise votes attached to Erven actually registered in its name. No additional, deemed, notional, shadow, or non-transfer-based votes shall accrue to the Developer when voting on Special Resolutions."

## **6. SPECIAL RESOLUTION 5: AMENDMENTS OF BOARD COMPOSITION (CLAUSES 14.1 AND 18.2)**

### **Current wording—Clause 14.1.2:**

The Developer may appoint and remove three directors during the Development Period. Quorum requires Developer Director. No Resolution can pass unless supported by Developer Director.

### **Proposed amendment of clause 14.1:**

- "14.1.1        Until otherwise determined by the Members by way of an ordinary resolution, the Board, shall consist of 7 (seven) Directors.
  
- 14.1.2        During the Development Period the Developer is entitled to appoint and remove 2 (two) persons as Directors by giving written notice to that effect. The remaining Directors shall be elected by the Members in General Meeting by way of ordinary resolution and may be removed by the Members by way of ordinary resolution at any time, the Developer being entitled in voting on the election of such Directors, to exercise the voting rights conferred upon it in terms of the provisions of 25.1.
  
- 14.1.3        The Members will elect 5 (five) Directors by way of ordinary resolution save that the Company in a General Meeting."

**Proposed amendment to clause 18.2 and 18.4:**

“18.2 The *quorum* for Board meetings shall be 4 (four) Directors.”; and

“18.4 No Directors shall hold a veto or casting vote, and the presence or support of a Developer-appointed Director shall not be a requirement for any Board decision or *quorum*.”

**7. SPECIAL RESOLUTION 6: AMENDMENT OF RULE-MAKING AUTHORITY (CLAUSE 13.16 – 13.18)**

**Current wording (summary)—clause 13.18:**

Estate Rules, Architectural Guidelines and Landscaping Guidelines may not be amended without Developer consent.

**Proposed amendment to clause 13.16 – 13.18:**

“13.16 All committees established in terms of the Mol, including the Architectural Review Committee and Landscaping Committee, shall include at least 2 (two) Directors elected by the Members.

13.17 Upon transfer of 50% of the Erven (excluding Erven owned by the Developer), the Developer shall not be entitled to appoint a majority of the members of any committee,

13.18 Estate Rules, Architectural Guidelines and Landscaping Guidelines may only be made, amended, or repealed by the Members in General Meeting, acting by Special Resolution.” (this is a new clause)

Current clause 13.18 granting the Developer exclusive or overriding authority in respect of rule-making or committee composition is deleted.

**8. SPECIAL RESOLUTION 7: AMENDMENT OF LEVY AND FINANCIAL OBLIGATION PROVISIONS (CLAUSES 12.7 AND 41.3)**

**Current wording—clauses 12.7 and 41.3:**

Developer exempt from levies on unsold Erven. Members are bound by Developer contracts.

**Proposed amendment to clauses 12.7 and 41.3:**

“12.7 The Developer shall be liable for full levies in respect of all Erven registered in its name, including unsold Erven.”; and

“41.3 The Board may not conclude any long-term or high-value contract (including service agreements of a duration exceeding 3 years, or of a value exceeding an amount determined by the Members from time to time) without approval by the Members by ordinary resolution.”

**9. SPECIAL RESOLUTION 8: APPOINTMENT OF MANAGING AGENT (CLAUSE 36)**

**Current wording—clause 36:**

The Managing Agent is appointed solely by the Board.

**Proposed amendment to clause 36:**

“The Managing Agent shall be appointed by the Board, subject to ratification by the Members at the next Annual General Meeting. The Developer shall have no unilateral right to appoint or dismiss the Managing Agent.”

**10. SPECIAL RESOLUTION 9: PHASED DEVELOPMENT (CLAUSE 8)**

**Current wording—clause 8:**

The Developer may subdivide Erven and is granted an irrevocable power of attorney for such purposes.

**Proposed amendment to clause 8:**

“8.1 During the Development Period, the Developer may subdivide Erven forming part of the Estate, subject to all applicable legislation.

8.2 Where Member consent is required, the Developer shall take reasonable steps to consult with Members and obtain such consent through a transparent and participatory process.

8.3 Each Member acknowledges the intention of phased development and undertakes to consider subdivision proposals in good faith and with due regard to the best interests of the Estate.”

**11. SPECIAL RESOLUTION 10: STATUS AND POWERS OF THE DEVELOPER  
(CLAUSES 19.7 – 19.11)**

**Current wording—clause 19.7 – 19.11:**

The Developer may rezone, subdivide, and add phases at its own discretion with irrevocable Member consent. The Developer may add phases / Erven and holds an irrevocable power of attorney.

**Proposed amendment to clauses 19.7 – 19.11:**

“19.7 No rezoning, subdivision, consolidation, extension, or addition of land to the Estate may be undertaken without:

- (i) Compliance with all applicable municipal planning laws; and
- (ii) Approval by the Members by Special Resolution.

19.8 The Developer may propose the addition of new phases or Erven to the Estate, subject to all planning approvals and Member consultation. Any such proposal shall require approval by the Members in a manner determined by the Association. No irrevocable power of attorney is granted to the Developer for this purpose. Any documentation required to implement an extension of the Estate shall be executed pursuant to a Special Resolution of the Members.

19.9 The Developer may not unilaterally or indirectly extend the Development Period through the addition of land or phases.”

This section is shortened according to the above amendments.

**12. SPECIAL RESOLUTION 11: AMENITIES AND FACILITIES (CLAUSES 19.4 – 19.6)**

**Current wording—clauses 19.4 – 19.6:**

The Developer may establish and operate amenities for its own benefit. The Homeowners' Association is excluded.

**Proposed amendment of clauses 19.4 – 19.6:**

“19.4 The Association shall be consulted in respect of any amenities, facilities or infrastructure proposed or established by the Developer within the Estate.

19.5 Members shall not incur any liability or cost relating to Developer-owned or Developer-operated amenities unless approved by the Members at a General Meeting.”

These clauses will be consolidated to effect the above amendment.

**13. SPECIAL RESOLUTION 12: AMENDMENT OF TRANSFER LEVY (CLAUSE 12.16)**

**Current wording—clause 12.16:**

0.25% exit levy payable by Members (but not the Developer) upon sale and transfer.

**Proposed amendment to clause 12.16:**

“Each Member, including the Developer, shall pay to the Home Owner’s Association an administrative levy of 0.25% of the selling price of the Member’s Erf or Sectional Title Unit when such Erf or Sectional Title Unit is sold which amount shall be paid on date of transfer of the Unit or Erf and shall be secured by an attorney’s letter of undertaking or guarantee prior to the Homeowner’s Certificate being issued.”

Any exemption previously benefiting the Developer is withdrawn.

**31.1. SPECIAL RESOLUTION 8: CLUB LEVY (CLAUSE 12.16)**

**Current wording—clause 12.1.6:**

Payment of a monthly social membership levy to the Club which levy shall be an amount equal to 20% of the monthly Levy payable per Member.

**Proposed amendment to clause 12.1.6:**

The levy is capped at the average cost of 3 quotes as provided by turf companies specialising in Sports Turf and Golf Courses. The monthly levy should be reduced from the 20% to a percentage comparable to the running costs as determined above.

- Reviewed Annually using independent benchmarking to ensure ongoing equity.
- Increases above CPI require special member approval.

**14. SPECIAL RESOLUTION 13: INTRODUCTION OF “RESERVED MATTERS” SECTION**

**Current position:**

Not clearly regulated. Board (Developer-controlled) can decide major issues.

**Proposed new section:**

A new section titled “Reserved Matters” is inserted into the MoI, providing that the following matters shall require approval by the Members by Special Resolution:

- (i) The annual budget and levies;
- (ii) Any long-term or high-value contract;
- (iii) Any amendment of Estate Rules or Guidelines;
- (iv) Any expansion, rezoning or subdivision of the Estate;
- (v) Acquisition or disposal of immovable property;
- (vi) Amenities or facilities with financial implications for Members; and
- (vii) Any matter affecting the rights or obligations of Members.

**15. SPECIAL RESOLUTION 14: DIRECTOR TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT (NEW CLAUSE 14A)**

**Current position:**

No requirements for training or professional development.

**Proposed new clause 14A:**

**14A. DIRECTOR TRAINING AND CONTINUING PROFESSIONAL DEVELOPMENT**

14A.1 Each Director shall register as a member of the Institute of Directors in South Africa (hereinafter referred to as “IoDSA”) within 12 (twelve) months of election of appointment.

14A.2 Each Director shall complete IoDSA-accredited governance training within the same 12 (twelve) month period mentioned above.

14A.3 Directors shall maintain a minimum of 15 (fifteen) Continuing Professional Development (hereinafter referred to as “CPD”) points per annum.

14A.4 The Board shall include in its annual report a statement on Directors’ compliance with these requirements.

14A.5 A Director who fails to comply with this clause shall be disqualified from re-election.”

**16. EXPLANATORY NOTE (does not form part of the Special Resolutions)**

The proposed amendments to the Mol are intended, in summary, to:

- 16.1 Align the governance of the Association with the Act and current best practice for residential estates.
- 16.2 Clarify and limit the special rights previously afforded to the Developer, including its voting rights and appointment powers.
- 16.3 Confirm that voting rights attach to Erven through their registered owners only, thereby removing so-called “phantom voting” rights.
- 16.4 Enhance Member participation and control in relation to the making of rules, the appointment of the Managing Agent and future development or extension of the Estate.
- 16.5 Phase out Developer’s exceptional powers within a defined, time-bound framework and strengthen the collective rights of Homeowners over the common property and the governance of the Estate.

## **17. PROCESS FOR AMENDMENTS TO THE MOI**

The following process will be followed in order to give effect to the amendments to the Mol, in compliance with section 16 of the Act:

- 17.1 The proposed amendments to the Mol are prepared, indicating the clauses to be amended, replaced or deleted.
- 17.2 Written notice of the Special General Meeting, together with the text of the proposed amendments and the intention to pass Special Resolutions, is delivered to all Members in accordance with the Mol and the Act.
- 17.3 A Special General Meeting is convened at which the proposed amendments are presented, discussed and put to a vote.
- 17.4 The Special Resolutions are adopted if approved by at least 75% (seventy five percent) of the votes exercised on each resolution (or such other higher percentage as may be described in the Mol).
- 17.5 The adopted Special Resolutions are recorded in the minutes and the amended Mol is finalised accordingly.
- 17.6 The prescribed form CoR 15.2 (Notice of Amendment of Memorandum of Incorporation) is completed and lodged with the Companies and Intellectual Property Commission (hereinafter referred to as “CIPC”), together with a copy of the adopted Special Resolutions and the amended Mol, and the prescribed filing fee is paid.
- 17.7 The amendments to the Mol take effect 10 (ten) business days after CIPC has accepted and filed the Notice of Amendment, or on such later effective date as

may be specified in the CoR 15.2, unless rejected or otherwise dealt with by CIPC.

- 17.8 Once effective, the amended Mol is retained with the Association's statutory records and made available to Members on request, and Members are notified that the amendments have come into force.

## **18. AVAILABILITY OF MARKED-UP MOI**

- 18.1 A marked-up version of the current Mol, reflecting all proposed amendments, is available for inspection by Members at the Association's offices during normal business hours.
- 18.2 Copies of the marked-up Mol may also be requested from the Association in electronic form.

### **HOA 10% Written Demand – Integrated with EOA NPC MOI Clauses**

This petition incorporates specific rights granted to Members under the Companies Act 71 of 2008 of the Eye of Africa Homeowners' Association NPC, as extracted. It confirms Members' statutory and governance-based right to issue a 10% written demand to amend the Memorandum of Incorporation.

### **Legal Basis**

In terms of Section 61(3) b of the Companies Act 71 of 2008, Members holding at least 10% of the voting rights may require the Eye of Africa Homeowners Association 2007/030516/08 NPC Board to convene a Members' meeting. This aligns with the governance principles reflected in the Companies Act., including provisions that reinforce Member authority over Special Resolutions, amendments, rule-making, and governance control (see MOI Proposed Amendments attached hereto, including Special Resolutions 1–14).

### **Written Demand to the Board**

Please find attached a 10% Written Demand submitted by Members of the Eye of Africa Homeowners' Association NPC "the Association", issued in terms of Section 61(3) of the Companies Act 71 of 2008.

This demand has been lawfully signed by Members in good standing who collectively hold not less than ten percent (10%) of the voting rights as required by the Act.

The purpose of this Written Demand is to formally require the Board to convene a Special General Meeting (SGM) in order for Members to deliberate and vote on the proposed amendments to the Association's Memorandum of Incorporation (MOI), as well as any other matters requiring Member decision-making or Special Resolution.

#### **1. Statutory Obligations of the Board**

Upon receipt of this Written Demand, the Board is required to comply with:

- Section 61(3) – Obligation to Call a Members' Meeting.
- Section 63 – Member Rights at Meetings.
- Section 76 – Fiduciary Duties of Directors.
- Section 163 – Member Remedies for Oppressive or Prejudicial Conduct.

Failure to call an SGM after multiple Member requests may constitute a breach of these statutory obligations.

## 2. Background for Record Purposes

Members have previously issued multiple written requests for an SGM. These requests have not been actioned. The attached Written Demand is therefore issued formally to ensure compliance with the Companies Act and to protect Member rights.

## 3. Required Action

Members hereby request that the Board:

- Convene a Special General Meeting within 30 days from receipt of this Written Demand.

Formal notice of the SGM must be circulated to Members together with all proposed resolutions.

## 4. Acknowledgement of Receipt

Members respectfully request written confirmation of receipt of this demand, together with confirmation of the proposed SGM date, within seven (7) days.

Thank you for your attention to this statutory matter.

## **Signatories**

By signing below, Members confirm they are in good standing and support this 10% written demand.