MEMORANDUM OF INCORPORATION

of

HABITAT FOR HUMANITY SOUTH AFRICA NPC

Registration number : 1987/004242/08

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1. NAME OF THE COMPANY

1.1 The name of the Company is :

HABITAT FOR HUMANITY SOUTH AFRICA NPC

1.2 The shortened form of the name of the company is :

HFHSA

2. NON-PROFIT COMPANY

2.1 The Company was originally incorporated as an association not for gain in terms of section 21 of the now-repealed Companies Act of 1973.

2.2 By virtue of items 2 and 4 of Schedule 5 to the Companies Act of 2008 ("the 2008 Act"), the Company is now deemed to be a non-profit company as contemplated in section 1 of the 2008 Act.

2.3 The Company is governed by :

2.3.1 The unalterable provisions of the 2008 Act which apply to non-profit companies.

2.3.2 The provisions of this Memorandum of Incorporation.

2.4 The alterable provisions of the 2008 Act which apply to non-profit companies, **do not** govern this Company, except to the extent that those alterable provisions are included in any provision of this Memorandum of Incorporation, whether expressly or by necessary implication.

3. COMPANY NOT TO HAVE MEMBERS

As contemplated in item 4(1) of Schedule 1 to the 2008 Act, the Company has no members.

4. OBJECTS OF THE COMPANY

4.1 The Principal Object

The Principal Object of the Company is to collaborate with poor and marginalised communities and other stakeholders to build homes and sustainable communities for the benefit of the poor and needy in South Africa.

4.2 The Secondary Object

4.2.1 The Secondary Object of the Company is to carry on or participate in (either alone or with any other person) any business, trade or undertaking ("Commercial Activity") which is consistent with or ancillary to its Principal Object.

4.2.2 The Secondary Object of the Company must not supersede or take precedence over its Principal Object.

4.2.3 All the net profits from the Company's Commercial Activities must be used only to fund the costs associated with the carrying on of the Company's Principal Object.

4.3 Restriction on Distribution

The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or was a director or officer or incorporator of the Company, or to any persons related to any such director, officer or incorporator, or to any person who appointed any such director or officer, except :

4.3.1 As reasonable remuneration for goods delivered or services rendered to, or at the direction of, the Company;

4.3.2 As reasonable payment of, or reimbursement for, expenses incurred to advance an Object of the Company;

4.3.3 As payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another person;

4.3.4 As a payment in respect of any rights of that person, to the extent that such rights are administered by the Company in order to advance an Object of the Company; or

4.3.5 In respect of any legal obligation binding on the Company.

5. POWERS OF THE COMPANY

The Company has all of the legal powers and capacity of an individual, except to the extent that :

5.1 A juristic person is incapable of exercising any such power, or having any such capacity; or

5.2 Any such power or capacity is restricted, limited or qualified by :

5.2.1 Any unalterable provision of the 2008 Act which applies to non-profit companies; or

5.2.2 Any express provision of this Memorandum of Incorporation.

6. COMPLIANCE PROVISIONS

For as long as the Company is approved by the Commissioner for the South African Revenue Service ("the Commissioner") as a public benefit organisation ("PBO") :

6.1 The Company must comply with all the provisions of the Income Tax Act which apply to PBOs from time to time, whether set out in section 30 or elsewhere in that Act.

6.1.1 Those provisions will be referred to in this Memorandum of Incorporation as the "Compliance Provisions".

6.1.2 The Compliance Provisions which apply as at the date of adoption of this Memorandum of Incorporation are set out in Schedule Two.

6.1.3 If the Income Tax Act is amended so as to change the Compliance Provisions, Schedule Two must be amended accordingly.

6.2 All the powers of the Company, and the powers and discretions of the board of Directors of the Company ("the Board") will be limited to the extent set out in the Compliance Provisions.

6.3 The Compliance Provisions will override any contradictory or conflicting provision of this Memorandum of Incorporation.

7. DISTRIBUTION OF NET ASSETS ON DISSOLUTION

Despite any provision in any law or agreement to the contrary, if the Company is wound up or dissolved :

7.1 No past or present Director of the Company, or person who appointed a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

7.2 The entire net value of the Company must be distributed to one or more non-profit companies, voluntary associations or non-profit trusts :

7.2.1 Having objects similar to the Objects of the Company; and

7.2.2 Which are themselves approved as PBOs (if the Company, at the time of its dissolution or winding-up, is also approved as a PBO); and

7.2.3 As determined :

7.2.3.1 By the Directors of the Company, at or immediately before the time of its winding-up or dissolution; or

7.2.3.2 By the High Court, if the Directors fail to make such a determination.

8. FINANCIAL YEAR OF THE COMPANY

Unless and until the Board decides otherwise, the financial year of the Company ends on 30 June.

9. OPTIONAL PROVISIONS OF CHAPTER 3 OF THE 2008 ACT

The Company will not be required to comply with the provisions of Chapter 3 of the 2008 Act (which relate to transparency, accountability and integrity) except to the extent that :

9.1 This Memorandum of Incorporation requires otherwise; or

9.2 The Company is required, in terms of article 19, to have its annual financial statements audited by a registered auditor.

10. AMENDMENT OF THIS MEMORANDUM OF INCORPORATION

As is contemplated in sections 16(2)and 16(3) of the 2008 Act, the Board may, in its absolute discretion, adopt a resolution to amend any or all of the provisions of this Memorandum of Incorporation, on condition that any such resolution must be :

10.1 Supported by seventy-five (75) percent of the Directors present at a duly convened and quorate Board meeting; or

10.2 Signed or assented to by at least seventy-five (75) percent of the Directors in the manner contemplated in article 15.4.

11. THE BOARD OF DIRECTORS : APPOINTMENT, VACANCIES AND TENURE

11.1 There must at all times be a minimum of three (3) Directors on the Board of the Company.

11.2 To become or remain a director of the Company, a person need satisfy no qualification or eligibility requirements other than those stipulated in section 69 of the 2008 Act.

11.3 Every Board must appoint the following office-bearers :

11.3.1 The chairperson, who must be a Director, who will be responsible for :

- Chairing meetings of the Board.
- Representing the Company both internally and externally.
- Ensuring that the Company and its activities and assets are managed and administered effectively and efficiently, and in compliance with the provisions of this Memorandum of Incorporation.

11.3.2 A secretary, who need not be a Director, who will be responsible for ensuring that the Company complies with all the relevant provisions of the 2008 Act, and any other applicable legislation.

11.4 The Board will be entitled to appoint any other office-bearers it chooses.

11.5 The Board will be entitled, in its absolute discretion, to remove or substitute any office-bearer at any time.

11.6 The Directors of the Company are appointed and removed by the Board.

11.7 Unless a Director's term of office ends earlier for any reason contemplated in this Memorandum of Incorporation, each Director will serve for a continuous period of three (3) consecutive years.

11.7.1 On the third anniversary of his/her appointment, a Director will be deemed to have retired.

11.7.2 A retiring Director may be re-appointed, but no Director may serve for a continuous period of more than nine (9) consecutive years.

11.8 The Board is entitled, in its absolute discretion, at any time, and from time to time to :

11.8.1 Appoint any person of its choice as a Director of the Company.

11.8.2 Remove any person from office as a Director.

11.9 Subject to article 11.10, a resolution by the Board for the appointment or removal of a Director must be adopted :

11.9.1 By way of a resolution supported by seventy-five (75) percent of the Directors present at a duly convened and quorate Board meeting; or

11.9.2 By way of a resolution signed or assented to by seventy-five (75) percent of the Directors, in terms of article 15.4.

11.10 If the number of Directors in office, for whatever reason, falls below the minimum stipulated in article 11.1, the remaining Directors must themselves, by way of a resolution supported by a simple majority, appoint sufficient replacements.

11.11 The people holding office as Directors as at the date of adoption of this Memorandum of Incorporation, and all people subsequently listed as Directors in the record of Directors of the Company, will hold office until the occurrence of an event contemplated in article 12.

12. DISQUALIFICATION AND REMOVAL OF DIRECTORS

A Director will immediately lose his/her position if he/she :

12.1 Becomes prohibited, or disqualified, by virtue of any provision of any law, from holding office as a trustee or a director.

12.2 Dies, or resigns by notice in writing to the Company.

12.3 Has or acquires a direct or indirect personal financial interest in any contract or proposed contract with the Company, and fails to declare his/her interest and its nature in the manner required by the 2008 Act.

12.4 Is removed from office in terms of article 11.8.2.

12.5 Is provisionally or finally sequestrated, or placed under an administration order.

13. DIRECTORS' REMUNERATION AND REIMBURSEMENT

13.1 The Directors will be entitled to reimbursement of all reasonable travelling, subsistence, and other expenses properly incurred by them in the execution of their duties on behalf of the Company and which are authorised or approved from time to time by the Board.

13.2 The Directors may, by way of Board resolutions adopted from time to time, determine what remuneration (if any) they will receive for performing their duties. Any such remuneration must be reasonable, taking into account the nature of the work done, the time spent in doing it, and the sector in which the Company operates.

13.3 A Director will be entitled to contract directly or indirectly with the Company, or benefit from any contract which the Company may conclude, on condition that :

13.3.1 The Director declares his/her interest in the relevant contract in the manner stipulated in the 2008 Act; and

13.3.2 The Director does not participate in any proceedings of the Board during which the relevant contract is discussed or voted on; and

13.3.3 The conclusion of that contract is subject to the same procedures and criteria as any other similar contract concluded by the Company.

14. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

14.1 **Powers**

The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Company. Without in any way limiting the general nature of this article 14.1, the Board will be entitled to exercise the following powers :

14.1.1 Co-option of Assistance

The Board will be entitled to co-opt any person of its choice to assist the Board or any committee of the Board in relation to any matter concerning the management or administration of the Company, or the conduct of any aspect of its activities.

14.1.2 Divisions

The Board will be entitled to establish separate divisions of the Company, to perform any discrete or specialised functions of the Company. The Board must, from time to time, determine rules and procedures for the management and administration of any division, and must take all reasonable steps to ensure that such rules and procedures are complied with. The Board may, if deemed appropriate for administrative, fiscal or other reasons, keep separate books and account separately for each division.

14.1.3 Committees and Delegation

The Board may delegate any of its powers or assign any of its duties to individual Directors, committees comprising Directors and others, or to any agent or employee of the Company, as the Board chooses; on condition that :

- The Board must take reasonable steps to ensure that any such person or committee, in exercising the relevant powers or carrying out the relevant duties, conforms to any rules, restrictions or procedures which may be imposed by the Board from time to time; and

- The Board will not be divested of any power or duty by virtue of its delegation or assignment to any person; and

- The Board will be entitled, in its absolute discretion, to vary or set aside any decision made under any delegation or in terms of any assignment, or to revoke or amend the terms of any delegation or assignment.

14.1.4 Borrowing Powers

The Board's borrowing powers will be unlimited, and the Board will be entitled to mortgage or otherwise encumber any or all of the assets of the Company as security for any debt, liability or obligation of the Company.

14.2 **Duties**

The Board must carry out all duties required of it by this Memorandum of Incorporation, or by the 2008 Act, or any other provision of law. Certain of those duties are set out below.

14.3 **Finances**

In managing the finances of the Company, the Board must ensure that the provisions of articles 16 to 19 are complied with.

14.4 **Expertise**

The Board will be entitled to employ independent contractors, or other appropriate people, to provide the Company with such skills and expertise as it may require in order to achieve its Objects.

14.5 **Company Records**

The Board must ensure that the Company maintains the following records [and retains them for a period of at least seven (7) years] :

14.5.1 A copy of this Memorandum of Incorporation, and any amendments or alterations to it.

14.5.2 A record of the Directors of the Company, including :

- All the information required in terms of section 24(5) of the 2008 Act in respect of each current Director at any particular time; and

- That same information with respect to each past Director.

14.5.3 Copies of all :

- Annual financial statements of the Company.
- Accounting records of the Company.

14.5.4 Minutes of all meetings and resolutions of the Board, or committees of the Board.

14.5.5 A record of its Company secretaries and registered auditors (if any), including, in respect of each person appointed as secretary or registered auditor of the Company :

- The name of each such individual (or, if a firm or juristic person is appointed, the name, registration number and registered office address of that firm or juristic person); and
- The date of every such appointment; and
- Any change in the above information, as and when it occurs, with the date and nature of the change.

14.6 **Location of Company Records**

The records of the Company referred to in article 14.5 must be accessible at or from the Office.

14.7 **Access to Company Records**

A Director will be entitled, at any reasonable time, and from time to time, to inspect and make copies of any of the Company records referred to in article 14.5.

14.8 **Standard of Conduct of Directors**

14.8.1 A director of the Company must not use his/her position as such, or any information obtained whilst acting in the capacity of Director :

14.8.1.1 To gain an advantage for himself/herself, or for another person other than the Company; or

14.8.1.2 To knowingly cause harm to the Company.

14.8.2 A Director must communicate to the Board, at the earliest practical opportunity, any information which comes to the Director's attention, unless the Director :

14.8.2.1 Reasonably believes that the information is immaterial to the Company, or is generally available to the public, or is known to the other Directors; or

14.8.2.2 Is bound not to disclose that information by a legal or ethical obligation of confidentiality.

14.8.3 A Director must, when acting in that capacity, exercise the powers and perform the functions of Director :

14.8.3.1 In good faith and for a proper purpose; or

14.8.3.2 In the best interests of the Company; and

14.8.3.3 With the degree of care, skill and diligence that may reasonably be expected of a person :

- Carrying out the same functions in relation to the Company as those carried out by that Director; and

- Having the general knowledge, skill and experience of that Director.

14.8.4 Every Director must familiarise himself or herself with the provisions of section 76 of the 2008 Act, and must ensure that he/she is not guilty of any act or omission prohibited by that section.

15. DECISIONS OF THE BOARD OF DIRECTORS

15.1 The Directors may take decisions :

15.1.1 At a duly convened and quorate Board meeting; or

15.1.2 By way of a signed resolution.

15.2 **Board Meetings**

15.2.1 Meetings of the Board are convened by the chairperson of the Board.

15.2.2 The chairperson may convene a Board meeting at any time, on at least seven (7) days' notice to all the Directors.

15.2.3 The chairperson must convene a Board meeting if requested to do so in writing by :

15.2.3.1 Twenty-five (25) percent of the Directors, if the Company has twelve (12) or more Directors; or

15.2.3.2 Any two (2) Directors, if there are less than twelve (12) Directors on the Board.

15.2.4 If the chairperson fails to act on a written request to convene a Board meeting within seven (7) days after receiving that request, the Directors requesting that meeting may themselves convene it.

15.2.5 The quorum necessary for the transaction of any business at a Board meeting is the greater of :

15.2.5.1 Half the Directors; or

15.2.5.2 Two (2) Directors.

15.2.6 Subject to article 15.2.10, each Director present at a Board meeting will be entitled to exercise one (1) vote on any matter put to the vote. A Director will be deemed to be present at a Board meeting if he/she, or his/her proxy :

15.2.6.1 Is present in person; or

15.2.6.2 Attends the meeting by electronic communication.

15.2.7 A Director may appoint any other Director as his/her proxy at a Board meeting, subject to compliance with any procedures and formalities which may be stipulated by the Board from time to time.

15.2.8 The Directors must make every reasonable effort to reach consensus on all matters arising at any Board meeting. If consensus cannot be reached on any matter, a resolution will be deemed to have been passed if supported by a simple majority of the Directors (except in those cases where this Memorandum of Incorporation requires a greater majority).

15.2.9 The chairperson will be entitled to preside over all Board meetings. If the chairperson is not present or willing to act within fifteen (15) minutes after the time set for the start of any Board meeting, the Directors present must choose one of their number to chair the meeting.

15.2.10 The chairperson will **NOT** be entitled to vote on any matter to be decided by the Board, **UNLESS** the resolution concerning that matter results in a tied vote.

15.2.10.1 In the case of a tied vote, the chairperson **WILL** have a casting or deciding vote.

15.2.10.2 The chairperson will not be obliged to cast that deciding vote. If the chairperson elects, in his/her absolute discretion, not to cast the deciding vote, the matter being voted on will fail.

15.2.11 A resolution put to a vote at a Board meeting may be voted on by a show of hands or by secret ballot, as decided by the chairperson in his/her absolute discretion.

15.3 **Electronic Participation at Board Meetings**

15.3.1 A Director will be entitled to participate in a Board meeting by electronic communication.

15.3.2 The electronic communication facility employed for electronic participation in Board meetings must enable all Directors using that facility :

- To communicate concurrently with each other without an intermediary; and

- To participate effectively in the meeting.

15.4 **Signed Resolutions**

15.4.1 A resolution signed or assented to by seventy-five (75) percent of the Directors in the manner referred to below will be as valid and effectual as if it had been passed at a duly convened and quorate Board meeting.

15.4.2 The resolution must be :

15.4.2.1 In writing;

15.4.2.2 Circulated to all the Directors, either in printed or electronic form; and

15.4.2.3 Signed or assented to by the requisite number of the Directors in any of the following ways :

- By signing in hand on the original printed resolution; or

- By signing in hand on a copy of the original printed resolution;

- By signing in hand on a copy of the original printed resolution which is then transmitted by electronic communication;

- By affixing an electronic signature; or

- By sending the Director's assent to the resolution by electronic communication.

15.5 **Directors Disqualified**

Despite anything to the contrary contained in this Memorandum of Incorporation, all acts done by the Board or a committee of Directors, or by any person acting as a Director, will, even if it is discovered afterwards that there was some defect in their appointment, or that they were disqualified, be as valid as if they were duly appointed and qualified.

15.6 **Inadvertent Failure to Give Notice**

If a mistake is made, and a Director is inadvertently not given notice of a Board meeting, or if a signed resolution is not circulated to a Director in the prescribed way, this will not affect the validity of any decision taken by the Board at any such meeting or by way of any such resolution.

16. FINANCES

16.1 **Reserves**

The Board may set aside and carry to a reserve fund all or any of the surplus funds of the Company, which may at its discretion be applied for any purpose for which such funds may properly be applied, in any manner the Board chooses.

16.2 **Banking and Investment of Funds**

16.2.1 The Board must ensure that all money received by the Company is deposited in one or more bank accounts in the name of the Company with a bank established under the Banks Act, No. 94 of 1990.

16.2.2 The Board must, from time to time, determine, by way of resolution :

- Who will have authority to operate the bank accounts of the Company, sign cheques and other financial instruments and contracts on behalf of the Company, and otherwise disburse Company funds and incur commitments on behalf of the Company; and

- The procedures to be followed in this regard.

17. ACCOUNTING RECORDS

17.1 The Company must keep accurate and complete accounting records, in one of the official languages of the Republic, as necessary to enable the Company to satisfy its obligations in terms of the 2008 Act, or any other law, with respect to the preparation of financial statements.

17.2 The Company must prepare and keep any further accounting records which may be prescribed by or in terms of the 2008 Act.

18. FINANCIAL STATEMENTS

Any financial statements prepared by the Company (including any annual financial statements) must :

18.1 Satisfy any reporting standards as to form and content which are prescribed from time to time in terms of the 2008 Act.

18.2 Present fairly the state of affairs and business of the Company, and explain the transactions and financial position of the business of the Company.

18.3 Show the Company's assets and liabilities, as well as its income and expenses, and any other information prescribed in terms of the 2008 Act.

18.4 Set out the date on which the statements were published, and the accounting period to which the statements apply.

18.5 Bear, on the first page of the statements, a prominent notice indicating :

18.5.1 Whether the statements :

18.5.1.1 Have been audited in compliance with any applicable requirement of the 2008 Act;

18.5.1.2 If not audited, have been independently reviewed in compliance with any applicable requirement of the 2008 Act; or

18.5.1.3 Have not been audited or independently reviewed.

18.5.2 The name, and professional designation, if any, of the individual or firm who prepared, or supervised the preparation of, the statements.

18.6 Not be false or misleading in any material respect.

18.7 Not be incomplete in any material particular, except if they constitute a summary contemplated in section 29(3) of the 2008 Act.

19. ANNUAL FINANCIAL STATEMENTS : PREPARATION, AUDIT AND REVIEW

19.1 The Company must prepare annual financial statements within six (6) months after the end of its financial year.

19.2 The Company's annual financial statements must be audited by a registered auditor (selected and appointed by the Board in its absolute discretion) if this is required by any regulations made in terms of section 30(7) of the 2008 Act.

19.3 Even if the annual financial statements are not required to be audited by a registered auditor in terms of article 19.2, the Board may, in its absolute discretion, resolve from time to time that any annual financial statements of the Company be so audited.

19.4 If any annual financial statements of the Company are not audited by a registered auditor, they must be independently reviewed :

19.4.1 In the manner required by any regulations promulgated from time to time in terms of section 30(7) of the 2008 Act, if such regulations are promulgated, and if they require such an independent review.

19.4.2 By a member (selected by the Board in its absolute discretion) of a profession stipulated in any such regulation.

19.5 The annual financial statements of the Company must :

19.5.1 Include an auditor's report, if the statements are audited by a registered auditor.

19.5.2 Include a report by the Directors with respect to the state of affairs, the business and profit or loss of the Company.

19.5.3 Be approved by the Board and signed by an authorised Director on behalf of the Board.

19.6 If any annual financial statements of the Company are required to be audited by a registered auditor in terms of article 19.2, those annual financial statements must include particulars showing :

19.6.1 The remuneration and benefits received by each Director.

19.6.2 The amount of :

- Any pensions paid by the Company to, or receivable by, current or past Directors or office-bearers.

- Any payment made or owing by the Company to a pension scheme with respect to current or past Directors or office-bearers of the Company.

19.6.3 The amount of any compensation paid in respect of loss of office to any current or past Directors or office-bearers of the Company.

19.6.4 Details of the service contracts of any current Directors or office-bearers of the Company.

20. NOTICES

20.1 A notice may be given by the Company to any Director :

20.1.1 By giving it to the Director personally;

20.1.2 By sending it by prepaid registered post to the Director at his/her postal address as recorded in the Company's records;

20.1.3 By sending it by electronic communication to any electronic address or fax number supplied by the Director for this purpose.

20.2 Any notice :

20.2.1 Sent by prepaid registered post will be deemed to have been received five (5) days after the proven date of posting.

20.2.2 Sent by electronic communication will be deemed to have been received on the next business day after the proven date of despatch.

21. INDEMNITIES

21.1 Subject to any contrary provision in the 2008 Act, every Director and other officer of the Company will be indemnified out of the funds of the Company against :

21.1.1 All costs, expenses and liabilities properly incurred by her/him with the authority of the Company, and in the course of the Company's business; and

21.1.2 Any and all liability contemplated in article 21.2, but subject to the provisions of article 21.3.

21.2 No Director, officer or employee of the Company will be liable for the acts, receipts, omissions or defaults of any other Director, officer or employee; or for joining in any receipt or other act for conformity; or for

21.2.1 Any loss or expense incurred by the Company as a result of the insufficiency or deficiency of any security on which any of the funds of the Company are invested;

21.2.2 Any loss or damage arising from the liquidation, sequestration, insolvency or delictual act of any person with whom any funds or securities are deposited;

21.2.3 Any loss or damage caused by any error of judgment or oversight on his/her part; or

21.2.4 Any other loss, damage or misfortune which happens in the exercise of his/her functions as Director.

21.3 Nothing contained in this article 21 serves to indemnify a Director in respect of :

21.3.1 Any liability arising in terms of sections 77(3)(a), (b) or (c) of the 2008 Act.

21.3.2 Any liability arising from wilful misconduct or wilful breach of trust on the part of the Director.

21.3.3 Any fine imposed on a Director as a consequence of the Director having been convicted of an offence, unless the conviction was based on strict liability.

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SCHEDULE ONE
TO THE
MEMORANDUM OF INCORPORATION
OF
HABITAT FOR HUMANITY SOUTH AFRICA NPC
DEFINITIONS OF WORDS AND PHRASES

In this Memorandum of Incorporation, unless the context clearly indicates otherwise :

1. "audit" means the examination, in accordance with prescribed or applicable auditing standard, of :

   - Financial statements, with the object of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or

   - Financial or other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on that information.

2. "the Board" means the board of Directors of the Company.

3.	"business day"	means any day except a Saturday, Sunday or South African public holiday.
4.	"Commercial Activity"	means an activity contemplated in article 4.2.1.
5.	"the Commissioner"	means the Commissioner for the South African Revenue Service.
6.	"the Company"	means the non-profit company referred to in article 1.
7.	"Compliance Provisions"	means the provisions referred to in article 6, and recorded in Schedule Two.
8.	"Director"	means a director of the Company who has been appointed as such in terms of this Memorandum of Incorporation.
9.	"electronic communication"	bears the same meaning as defined in section 1 of the Electronic Communications and Transactions Act, no. 25 of 2002.
10.	"the Income Tax Act"	means the Income Tax Act, no. 58 of 1962.
11.	"month"	means a calendar month.

12.	"net profit"	means all income and capital which accrues to the company pursuant to its Commercial Activities, less all tax and tax-deductible expenses paid in relation to or in the generation of such income and capital accruals.
13.	"the Ninth Schedule"	means the Ninth Schedule to the Income Tax Act.
14.	"Objects"	means the Principal and Secondary Objects of the Company.
15.	"the Office"	means the registered office of the Company.
16.	"PBO"	means a public benefit organisation approved by the Commissioner in terms of section 30 of the Income Tax Act.
17.	"Principal Object"	means the Object of the Company referred to in article 4.1.

18.	"Public Benefit Activities"	means the following activities : • public benefit activities as defined in section 30(1) of the Income Tax Act, which activities include those listed in Part I of the Ninth Schedule. • 18A Activities.
19.	"registered auditor"	means an individual or firm who/which has been registered as an auditor in terms of section 37 or 38 of the Auditing Profession Act, no. 26 of 2005.
20.	"the Republic"	means the Republic of South Africa.
21.	"Secondary Object"	means the Object of the Company referred to in article 4.2.
22.	"secretary"	means any person appointed from time to time by the Board to perform the duties of secretary of the Company.
23.	"18A Activities"	means those Public Benefit Activities which are listed from time to time in Part II of the Ninth Schedule.

24. "the 2008 Act" means the Companies Act, 2008.

25. References to people include references to corporate bodies, and *vice versa*.

26. The singular includes the plural, and *vice versa*, and reference to any gender includes a reference to the other genders.

27. Any reference to a statutory provision includes a reference to that provision as modified, amended, replaced or re-enacted from time to time.

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SCHEDULE TWO
TO THE
MEMORANDUM OF INCORPORATION
OF
HABITAT FOR HUMANITY SOUTH AFRICA NPC
COMPLIANCE PROVISIONS

1. PROVISIONS IMPOSED BY SECTION 30 OF THE INCOME TAX ACT

For as long as the Company is approved as a PBO, the Company must comply with the following requirements, conditions and restrictions, which will override any inconsistent or contradictory provision of this Memorandum of Incorporation :

1.1 The sole or principal object of the Company must be and remain to carry on one or more Public Benefit Activities, on condition that :

1.1.1 All such activities must be carried on in a non-profit manner and with an altruistic or philanthropic intent.

1.1.2 No such activity may be intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of the Company, otherwise than by way of reasonable remuneration payable to that fiduciary or employee.

1.1.3 Each such activity carried on by the Company must be for the benefit of, or widely accessible to, the general public at large, including any sector thereof (other than small and exclusive groups).

1.2 The Company must have at least three (3) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility for the Company, and no single person may directly or indirectly control the decision-making powers relating to the Company.

1.3 The Company may not distribute any of its funds directly or indirectly to any person (otherwise than in the course of undertaking any Public Benefit Activity) and must utilise its funds solely for the Objects for which the Company has been established.

1.4 If and when the Company is wound-up or dissolved in any manner provided for in this Memorandum of Incorporation, or as required by law, the net remaining assets of the Company, after all the obligations and commitments of the Company have been met, must be transferred to :

1.4.1 Any PBO; or

1.4.2 Any institution, board or body which is exempt from tax under the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any Public Benefit Activity; or

1.4.3 The government of the Republic in the national, provincial or local sphere, contemplated in section 10(1)(a) of the Income Tax Act,

which is required to use those assets solely for purposes of carrying on one or more Public Benefit Activities.

1.5 The Directors will be prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor [other than a donor which is an approved PBO or an institution, board or body which is exempt from tax in terms of section 10(1)(cA)(i) of the Income Tax Act, and which has as its sole or principal object the carrying on of any Public Benefit Activity] may not impose conditions which could enable that donor or

any connected person in relation to that donor to derive some direct or indirect benefit from the application of the donation.

1.6 The Directors must submit to the Commissioner a copy of any amendment to this Memorandum of Incorporation, and must ensure that the Company submits the required income tax returns together with the relevant supporting documents.

1.7 The Directors must comply with such conditions as the Minister of Finance may prescribe by way of regulation to ensure that the activities and resources of the Company are directed in the furtherance of its Objects.

1.8 The Directors must make sure that the Company does not knowingly become a party to, or does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Income Tax Act or any other Act administered by the Commissioner.

1.9 The Company must not pay any remuneration, as defined in the Fourth Schedule to the Income Tax Act, to any employee, office bearer, Director or other person which is excessive, having regard to what is generally considered reasonable in the sector in which the Company operates, and in relation to the service rendered, and must not economically benefit any person in a manner which is not consistent with its Objects.

1.10 The Directors must comply with such reporting requirements as may be determined by the Commissioner.

1.11 The Directors must ensure that any books of account, records or other documents relating to the Company :

1.11.1 Where kept in book form, are retained and carefully preserved for a period of four (4) years after the date of the last entry in any such book; or

1.11.2 Where not kept in book form, are retained and carefully preserved for a period of four (4) years after completion of the transactions, acts or operations to which they relate.

1.12 The Company must not use its resources directly or indirectly to support, advance or oppose any political party.

2. PROVISIONS IMPOSED BY SECTION 18A OF THE INCOME TAX ACT

2.1 When the Company issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must ensure that the donations from those donors are used solely to carry on the Company's own 18A Activities, namely those activities of the Company which are contemplated in Part II of the Ninth Schedule.

2.2 Where the Company, in any year of assessment, issues receipts to donors in terms of section 18A(2) of the Income Tax Act, the Company must obtain and retain an audit certificate confirming that all the donations received or accrued in that year in respect of those receipts, were used by the Company in the manner contemplated in paragraph 2.1 above.

2.3 The Company must not issue a receipt in terms of section 18A(2) of the Income Tax Act in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar rights, or which constitutes an intangible asset or financial instrument, unless that financial instrument is :

2.3.1 A share in a listed company; or

2.3.2 Issued by a financial institution as defined in section 1 of the Financial Services Board Act, No. 97 of 1990.

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