MEMORANDUM OF INCORPORATION

of

BOUGAINVILLA AFTREE OORD

HOME OWNERS ASSOCIATION (NPC)

As a Non-Profit Company

(NPC)

REGISTRATION NUMBER: 2013/189477/08

Which is referred to in the rest of this Memorandum of Incorporation as “the Company”
## INDEX:

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>DESCRIPTION</th>
<th>PAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Adoption of Memorandum of Incorporation</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Definitions and Interpretation</td>
<td>3 – 13</td>
</tr>
<tr>
<td>3</td>
<td>Incorporation and Nature of the Company</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Objects and Powers of the Company</td>
<td>14 – 19</td>
</tr>
<tr>
<td>5</td>
<td>Memorandum of Incorporation and Company Rules</td>
<td>19 – 24</td>
</tr>
<tr>
<td>6</td>
<td>Membership</td>
<td>24 – 32</td>
</tr>
<tr>
<td>7</td>
<td>Levies</td>
<td>32 – 35</td>
</tr>
<tr>
<td>8</td>
<td>Rights of Members</td>
<td>35 – 36</td>
</tr>
<tr>
<td>9</td>
<td>Members Meetings</td>
<td>37 – 47</td>
</tr>
<tr>
<td>10</td>
<td>Directors and Officers</td>
<td>47 – 57</td>
</tr>
<tr>
<td>11</td>
<td>Service of Notices</td>
<td>57 – 59</td>
</tr>
<tr>
<td>12</td>
<td>General Provisions</td>
<td>59 – 62</td>
</tr>
<tr>
<td>13</td>
<td>Costs</td>
<td>62</td>
</tr>
<tr>
<td>14</td>
<td>Kitchen Levy</td>
<td>63</td>
</tr>
<tr>
<td>15</td>
<td>Frail Care</td>
<td>63</td>
</tr>
<tr>
<td>16</td>
<td>Qualifying Occupants and Occupation of Units</td>
<td>63 – 64</td>
</tr>
<tr>
<td>17</td>
<td>Re-sale Levy and Re-sale Fund Contribution on Transfer of Units</td>
<td>64 – 66</td>
</tr>
<tr>
<td>18</td>
<td>Company Rules</td>
<td>66</td>
</tr>
<tr>
<td>19</td>
<td>Deposit and Investment of Funds</td>
<td>67</td>
</tr>
<tr>
<td>20</td>
<td>No Refunds or Distribution of Profits or Assets</td>
<td>67</td>
</tr>
<tr>
<td>21</td>
<td>Appointment, Powers and Duties of a Managing Agent</td>
<td>68 – 69</td>
</tr>
<tr>
<td>22</td>
<td>Accounting Records</td>
<td>69 - 70</td>
</tr>
<tr>
<td>23</td>
<td>Annual Financial Statements</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>Annexure “A”: Proxy Form</td>
<td>71</td>
</tr>
<tr>
<td></td>
<td>Schedule 1: Company Rules</td>
<td>72 – 94</td>
</tr>
</tbody>
</table>
1. **ADOPTION OF MEMORANDUM OF INCORPORATION:**

   This **MOI** shall be formally adopted by Special Resolution of the **Members** in General Meeting.

2. **DEFINITIONS AND INTERPRETATION:**

   2.1 Reference to the **MOI** means this Memorandum of Incorporation, including all schedules and annexures attached hereto.

   2.2 In this **MOI** –

   2.2.1 a reference to a Section by a number refers to the corresponding Section of **The Act**;

   2.2.2 any word or expression which is defined in **The Act**, the STA and/or the STSM Act and which is not otherwise defined in the **MOI**, shall have the meaning assigned thereto in such Act in force at the date of incorporation of the **Company** or any subsequent amendment thereof.

   2.2.3 a reference to any Act shall include any amendment thereto or any Act in substitution thereof;

   2.2.4 unless the context otherwise requires, any words importing: -

   2.2.4.1 the singular number or word, shall include the plural number or word and vice versa;

   2.2.4.2 the one gender shall include the other gender and the neuter gender; and

   2.2.4.3 **Persons** shall include partnerships, trusts, and corporate bodies and vice versa.

   2.3 This **MOI** shall be deemed to authorize the **Company** to do anything which **The Act** empowers the **Company** to do if so authorized by its **MOI**, unless that authority is expressly excluded.
2.4 The following words, expressions and abbreviations shall have the meanings hereinafter assigned to them:

2.4.1 “The Act”: Means the Companies Act, 71 of 2008 as amended from time to time;

2.4.2 “Administrative Fund”: Means the fund established and sustained from contributions by Members in order to fund the operating expenses of the Company for a particular financial year;

2.4.3 “Annual Financial Statements” / “AFS”: Means the Annual Financial Statements of the Company to be prepared in accordance with Article 23;

2.4.4 “Annual General Meeting” / “AGM”: Means the Annual General Meeting of the Company referred to in Article 9.1.1;

2.4.5 “Auditors”: Means the Company’s appointed Auditors from time to time;

2.4.6 “Authorized Representative”: Means a Person duly authorized in terms of The Act by the Company or other body corporate to act as its representative at any General Meeting of the Company;

2.4.7 “Board”: Means the Board of Directors of the Company and comprise all the Directors of the Company duly appointed in terms of The Act;

2.4.8 “Business day”: A Business day is calculated by:
(a) excluding the day on which the first such event occurs;
(b) including the day on or by which the second event occurs;
(c) and excluding any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively;

2.4.9 "Chairperson": Means the Chairperson of the Board of Directors, elected in accordance with this MOI or if that expression is used with reference to a General Meeting or meeting of the Directors, at which that Person is not present or does not act as Chairperson, the Person acting as Chairperson in accordance with the provisions of this MOI;

2.4.10 "Clearance Certificate/s": Means the certificate of clearance to be issued by the Company or the Managing Agent which certifies that no moneys are due in respect of a Unit;

2.4.11 "Common Property": (i) in relation to a Scheme or the Village, means-
(a) the land included in the Scheme;
(b) such parts of the building or buildings as are not included in a Section; and
(c) land referred to in section 5(1)(d) of the STSM Act;
(d) improvements and/or amenities as are not included in a Section;

2.4.12 “Company” / “HOA”: Means the Bougainvilla Aftree Oord Home Owners Association (NPC), Registration Number: 2013/189477/08, and any reference to the Company or Village will likewise be a reference to the Bougainvilla Aftree Oord Home Owners Association (NPC);

2.4.13 “CSOS Act”: Means the Community Schemes Ombud Service Act, Act No. 9 of 2011;

2.4.14 “Directors”: Means a Person or Persons appointed or elected to the Board in accordance with the provisions of this MOI;

2.4.15 “CIPC”: Means the Companies and Intellectual Property Commission;

2.4.16 “Effective Date”: Means the date upon which CIPC issues a Registration Certificate, or accepts this MOI or the date as recorded on the Notice of Incorporation, whichever event first occurs;

2.4.17 “Financial Year”: Means, subject to amendment from time to time, the financial year of the Company which shall run from the first day of March in any year until the last day of February of the following year;

2.4.18 “General Manager”: Means a person appointed and employed by the
Managing Agent to manage the day to day affairs of the Company. The Board may, in the event of no Managing Agent being contracted or functioning as such, appoint a suitable person as General Manager and staff to assist him to manage the day to day affairs of the Company on a temporary basis until a Managing Agent has been appointed and is functioning;

2.4.19 “Gross Selling Price”: Means the price at which a Unit is sold, as reflected in the Deed of Sale, prior to deduction of any commissions, costs or other transfer related expenditure. Where VAT applies to the transaction, the Gross Selling Price will be Net of VAT;

2.4.20 “Kitchen Levy”: Means the Kitchen Levy referred to in Article 14;

2.4.21 “Levies”: Means all contributions levied from time to time by the Directors upon Members for the purpose of meeting all the expenses which the Company has incurred or which the Directors reasonably anticipate the Company will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Article 7 of this MOI;

2.4.22 “Local Authority”: Means the City of Tshwane Metropolitan Municipality, Gauteng or its successors in title having jurisdiction over the Scheme;

2.4.23 “Managing Agent”: Means any Person or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed
by the **Company** as an independent contractor from time to time, to manage and administer the affairs of the **Company** conferred upon such **Agent** by the **Board of Directors** of the **Company**, provided that, if at any time there is no formally appointed **Managing Agent** then any reference to the **Managing Agent** shall be a reference to the **Board of Directors**;

2.4.24 **“Managing Committee”**: Means the committee appointed by the **Board** from their ranks in order to attend to the day-to-day management of the **Company**;

2.4.25 **“Member(s)”**: Means any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered **owner** of a **Unit** in the **Scheme** and any **Person** who has successfully applied for Membership of the **Company** and as more fully stipulated in Article 6 of this **MOI**;

2.4.26 **“MOI”**: Means the Memorandum of Incorporation of the **Company** in force for the time being;

2.4.27 **“Older Persons Act”**: Refers to the Older Persons Act, Act No. 13 of 2006;

2.4.28 **“Ordinary Resolution”**: Means a Resolution adopted with the support of 50% plus 1 of the voting rights exercised on the Resolution;

2.4.29 **“Owner”**: Refers to a **Member** of the **Company**;
2.4.30 “Person”: Includes any person, corporate body or Company incorporated or registered under any law and anybody of Person(s), corporate or incorporate;

2.4.31 “Property”: Refers to Erf 1630 Montana Tuine Extension 49, Registration Division J.R., Gauteng Province, Erf 1761 Montana Tuine Extension 40, Registration Division J.R., Gauteng Province; Erf 1756 Montana Tuine Extension 64, Registration Division J.R., Gauteng Province, Erf 1759 Montana Tuine Extension 65, Registration Division J.R., Gauteng Province, on which the Schemes were developed;

2.4.32 “Re-sale Levy”: Means the contribution payable by a Member to the Company upon the sale/transfer/alienation of a Unit in terms of the provisions of Article 17;

2.4.33 “Reserve Fund”: Means an amount set aside by the Company to meet the unexpected costs that may arise in future, including future costs of maintenance of buildings and Common Property;

2.4.34 “Resident(s)”: Means a Person in occupation of a Unit in the Scheme on a temporary or permanent basis by agreement or with consent from the Member of the relevant Unit or through his affiliation or association with such Member;

2.4.35 “Retirement Act”: Refers to the Housing Development Schemes for
Retired Persons Act, Act No. 65 of 1988;

2.4.36 “Rules”: Means the Rules by virtue of which Members are to participate in and comply with in order to achieve the objects of the Company as are prescribed and adopted by the Board of Directors of the Company and which Rules shall include, but not limited thereto, conduct rules and rules for enforcement of rules;

2.4.37 “Scheme” / “Village”: Means the Sectional Title Schemes established on the Property;

2.4.38 “Section”: Means a Section shown as such on the Sectional Plan;

2.4.39 “Sign”: Includes the reproduction of a Signature by lithography, printing, or any kind of stamp or any other mechanical process and “Signature” has the corresponding meaning;

2.4.40 “Special Resolution”: Means a Resolution adopted by members of the Company with the support of at least 75% (seventy five percent) of the voting rights exercised on the Resolution;

2.4.41 “STA”: Means the Sectional Titles Act, Act 95 of 1986 and/or any amendment or substitution thereof;

2.4.42 “STSM Act”: Refers to the Sectional Title Schemes Management Act, Act 8 of 2011 and/or amendment or substitution
thereof;

2.4.43  “STA-Special Resolution”: Means, a resolution (if required in terms of the STA) – passed by at least 75% (seventy five percent) calculated both in value and in number, of the votes of Members of a Body Corporate who are present or represented by proxy or by a representative recognized by law at a General Meeting of which at least 30 (thirty) days’ written notice, specifying the proposed resolution, has been given, or a resolution agreed to in Writing by at least 75% (seventy five percent) of all the Members of an HOA (reckoned in number) and at least 75% (seventy five percent) of all such Members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the Rules, a meeting of the Body Corporate may be convened for a date 30 (thirty) days or less after notice of the proposed resolution has been given to all the Members of the Body Corporate;

2.4.44  “STA-Unanimous Resolution”: Means a resolution (if required in terms of the STA)-

(a) passed unanimously by all the Members of the Body Corporate who are present or represented by proxy or by a representative recognized by law at a General Meeting of the Body Corporate of which at least 30 (thirty) days’ written notice, specifying the proposed unanimous resolution, has been given, and at
which meeting at least 80% (eighty percent) of all the Members of a Body Corporate (reckoned in number) and at least 80% (eighty percent) of all the Members (reckoned in value) are present or so represented: Provided that in circumstances determined in the Rules, a meeting of the Body Corporate may be convened for a date 30 (thirty) days or less after notice of the proposed resolution has been given to all the Members of the Body Corporate; or

(b) agreed to in Writing by all the Members of the Body Corporate personally or by proxy or by a representative of any such member recognized by law;

2.4.45 “Tenant”: Means the lessee or sub lessee of any Unit situated within the Scheme. The term Tenant includes the lessee as well as all residents of the Unit as a result of their relationship with the lessee;

2.4.46 “Unit”: Means any primary or utility Section developed or to be developed on the Property in terms of the STA, together with its undivided share in the Common Property apportioned to that Section, in accordance with the quota of the Section;

2.4.47 “Village”: Refers to the Schemes;

2.4.48 “Vice-Chairperson”: Means the Vice-Chairperson of the Board of Directors;
2.4.49  “Writing”: Means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form.

3.  INCORPORATION AND NATURE OF THE COMPANY

3.1  The Company is a pre-existing Non-Profit Company with members, as defined in The Act.

3.2  The Company is incorporated in accordance with, and governed by-

3.2.1  the unalterable provisions of The Act, which are applicable to Non-Profit companies;

3.2.2  the alterable provisions of The Act, which are applicable to Non-Profit companies, subject to any limitation, extension, variation or substitution set out in this MOI; and

3.2.3  the provisions of this MOI.

3.3  The Powers of the Company are set out in Article 4 of this MOI and, except to the extent necessary implied by the stated Objects, the purposes and powers of the Company are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii) of The Act.

3.4  The Company is not subject to any provision contemplated in Section 15(2)(b) or (c) of The Act.

3.5  Upon the winding-up, deregistration or dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of The Act, which holds that the net value of the Company must be distributed to one or more non-profit Companies, registered external non-profit companies carrying on activities within the Republic, voluntary associations or non-profit trusts having objects similar to the Company’s main object and as determined by majority resolution of the
Members, immediately before the time of dissolution or, failing such determination by the Court.

3.6 The Company is not permitted to distribute its funds to any Person or entity other than a Non-profit Company, Voluntary Association or Non-profit Trust, having objects similar to the Company’s main object.

3.7 The income and property of the Company whatsoever derived shall be applied solely towards the promotion of its main object and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonds or otherwise howsoever to the Members of the Company or to its holding Company or subsidiary.

4. OBJECTS AND POWERS OF THE COMPANY

4.1 The main object of the Company is to promote, protect and advance the communal interest of all the Members, occupants and other users of any of the Units comprising the Scheme, as are more fully defined in this MOI.

4.2 It is the main business of the Company, ancillary to the main object, to:

4.2.1 exercise all functions, powers, rights and duties of the Bodies Corporate comprising the Scheme, as envisaged in terms of the STA;

4.2.2 exercise all functions, powers, rights and duties of the Home Owners Association (“HOA”) in accordance with this MOI;

4.2.3 manage, control, maintain and administer, on behalf of its Members, the Common Property which may include, and where required and necessary, all electric, water, reticulation services, sewerage systems, storm water systems, roads, telecommunication and intercom systems and security within the Scheme;

4.2.4 ensure that Members comply with the Township Establishment Conditions, building restrictions and requirements and, where necessary, to ensure that the Board of Directors and/or Local Authority enforces such conditions, restrictions or requirements;
4.2.5 consent to consolidation or sub-division of any Unit(s);

4.2.6 control access to and from the Village;

4.2.7 collect Levies and other contributions raised for funding of the Company for the attainment of the objects of the Company;

4.2.8 create rules and regulations concerning the conduct, rights and obligations of Members and Residents and the use of Common Property and Units within the Schemes and rules for enforcement of any rules created and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation, are enforced equally upon all Members and are adhered to for the benefit of the Members as a whole and subject to such restrictions and/or conditions, restrictions and/or powers as may be imposed by the Members upon the Directors, in General Meetings, on the basis that all Members shall have equal rights and obligations;

4.2.9 in general, to do all things necessary for the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of Members and/or Residents in the Village;

4.2.10 to enforce any Rules made.

4.3 The Company may exercise the powers conferred upon it by or under the Act or this MOI for the fulfilment of its objects and such powers shall include the following ancillary powers:

4.3.1 to establish and maintain an Administrative Fund which is reasonably sufficient to cover the estimated annual operating costs-

   (i) for the repair, maintenance, management and administration of the Common Property (including reasonable provision for future maintenance and repairs);

   (ii) for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;
(iii) for the payment of any insurance premiums relating to the building or land or Common Property; and

(iv) for the discharge of any duty or fulfilment of any other obligation of the Company.

4.3.2 to establish and maintain a Reserve Fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of Common Property but not less than such amounts as may be prescribed by the Minister;

4.3.3 to require the Members, whenever necessary, to make contributions to such fund;

4.3.4 to require that Members of Sections entitled to the right to the exclusive use of a part or parts of Common Property, however created, to make such additional contribution to the fund as is estimated necessary to defray the costs pertaining to insurance, maintenance and upkeep of any such part or parts, including the provision of electricity and water, unless in terms of the Rules the Members concerned are responsible for such costs;

4.3.5 to determine from time to time the amounts to be raised for the purposes aforesaid;

4.3.6 to open and operate an account with any registered bank or any other financial institution;

4.3.7 to insure the building or buildings and Common Property and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;

4.3.8 to insure against such other risks as the Members may by special resolution determine;

4.3.9 subject to the provisions of section 17 of the STSM Act and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money received by it in
respect of damage to the building, in rebuilding and reinstating the building or buildings in so far as this may be affected;

4.3.10 to pay the premiums on any policy of insurance effected by it;

4.3.11 to properly maintain the **Common Property** and to keep it in a state of good and serviceable repair;

4.3.12 to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building;

4.3.13 to comply with any reasonable request for the names and addresses of the persons who are the **Directors** of the **HOA** in terms of the **Rules** referred to in section 26(2) of the **Act**, or who are **Members** of the **HOA**;

4.3.14 to ensure compliance with any **law** relating to the **Common Property** or to any improvement of land comprised in the **Common Property**;

4.3.15 to maintain the plant, machinery, fixtures and fittings used in connection with the **Common Property** and **Sections** and to keep them in a state of good and serviceable repair;

4.3.16 subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one **Section** or of the **Common Property** or in favour of one **Section** over the **Common Property**;

4.3.17 on the written request of any **Member** or **Registered Mortgagee** of a **Section**, to produce to such **Member** or mortgagee, or any person authorized in **Writing** by such **Member** or mortgagee, the policy or policies of insurance effected by the **HOA** and the receipt or receipts for the last premium or premiums in respect thereof;
4.3.18 to establish and manage a kitchen facility for the Scheme, and to require from Members to pay an additional levy for a number of meals per month at a levy to be determined by the Directors from time to time and/or to appoint a third party for the provision and management of such services;

4.3.19 to establish and manage a frail care facility for the Scheme and/or to appoint a third party for the operation and management of such facility; and

4.3.20 in general, to control, manage and administer the Village for the benefit of all Members.

4.3.21 to appoint such agents, contractors, service providers and employees as it may deem fit for the management and operation and/or execution of any of the powers which the Company may itself exercise;

4.3.22 when essential for the proper fulfilment of its duties, to purchase or otherwise acquire, take transfer of mortgage, sell, give transfer of, or hire or let Units;

4.3.23 to purchase, hire or otherwise acquire movable assets for the use of Members for their enjoyment or protection, or in connection with the enjoyment or protection of the Common Property;

4.3.24 where practicable, to establish and maintain on the Common Property suitable lawns and gardens and recreation facilities;

4.3.25 to borrow moneys required by it in the performance of its functions or the exercise of its powers;

4.3.26 to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any Estate vested in it;
4.3.27 to invest any money of the funds referred to in Article 4.3.1 and 4.3.2 above;

4.3.28 to enter into an agreement with the local authority or any other person or body for the supply to the building or buildings and the land of electric current, gas, water, fuel and sanitary and other services;

4.3.29 to enter into an agreement with any Member or occupier of a Section for the provision of amenities or services by the HOA to such Section or to the Member or Resident thereof, including the right to let a portion of the Common Property to any such Member or Resident or third party by means of a lease other than a lease exceeding 10 (ten) years, as contemplated in section 5(1)(a) of the STSM Act;

4.3.30 to manage and operate facilities within the Scheme for the benefit of the Members of the Company, or to enter into an agreement with a third party for the operation and management of such facilities, including the establishment of a frail care centre and to establish and manage a kitchen facility and to require from Members to pay an additional levy and/or for specific services rendered to a Member;

4.3.31 to do all things reasonably necessary for obtaining the object of the Company and the enforcement of the Memorandum of Incorporation and any Rules made by the Directors in terms of the Memorandum of Incorporation and for the control, management and administration of the Common Property.

5. MEMORANDUM OF INCORPORATION AND COMPANY RULES

5.1 This MOI of the Company may be altered or amended only in the manner set out in Section 16 and 17 of The Act subject to the requirement that any alteration of the MOI or the Rules, made in terms of Section 17(1) of The Act, shall be published to the Members of the Company, by delivering a copy of the altered MOI or the Rules, to each Member.
by registered mail and/or telefax and/or e-mail within 30 days after the applicable resolution to put into effect the said alteration.

5.2 Subject to any restriction imposed or direction given at a General Meeting of the Company, the Company’s Board of Directors may make Rules for the Company, as contemplated in Section 15(3) – (5) of The Act, which Rules shall include, but not be limited, to the following matters:

5.2.1 the design, development and aesthetic controls relating to improvements on the Common Property of the Scheme as well as landscaping, control, use, safety and cleanliness of the Scheme;

5.2.2 the preservation of the environment including the right to control vegetation and the right to prohibit and/or control the erection of satellite- and amateur radio antennae/dishes/ receivers, air-conditioning units, any power saving devices, generators, pumps, filters, lighting, whether upon or within the boundaries of any Unit;

5.2.3 the security, vegetation, continuity, parking, signage and advertising, exterior finishes, and maintenance of any Section or building in the Scheme;

5.2.4 the right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other Residents in the Scheme;

5.2.5 the placing or affixing of ornamentation or embellishments to the outside of a Unit or on Common Property within the Scheme, including the power to remove, or order the removal, or to procure an order for removal of any such objects;

5.2.6 the conduct of any person or persons within the Scheme for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any Member/Resident, or to prevent any harm to the environment;
5.2.7 the furtherance and promotion of any of the objects of the **Company** and/or for the better management of the affairs of the **Company** and/or for the advancement of the interests of **Members** of the **Company**;

5.2.8 the control of reasonable access to the **Village** and to any **Unit** to protect the security of the **Village**, the **Members** and **Residents** and all users thereof;

5.2.9 the entry into the **Scheme**, control and identification of any visitors, employees, contractors and labourers and restriction of their access to and activities within the **Scheme**;

5.2.10 the enforcement of any of the **Rules**;

5.2.11 the operations and activities of all businesses whatsoever conducted on or from a **Unit** within the **Scheme**, including the methods of sale and advertising within the **Scheme**;

5.2.12 rules regulating the conduct of estate agents within the **Scheme**, show-houses, accreditation, Estate transactions, the control and movement of the estate agents and their clients (prospective purchasers of **Units** in the **Scheme**);

5.2.13 the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable flora;

5.2.14 the control of vehicular traffic of whatsoever nature, including parking;

5.2.15 the use of any facilities or amenities within the **Scheme**;

5.2.16 the safety- and other regulations applicable to the playing of any sport or engagement in any other recreational activity, including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc.;

5.2.17 the control and recycling of refuse, littering and other safety and anti-pollution related measures;

5.2.18 the maintenance of all roads, pavements, buildings, outbuildings, structures, electricity, water and sewerage, reticulation, irrigation of **Common Property**,
improvements of any nature and landscaping within the **Scheme** of any **Common Property** and **Units**;

5.2.19 the right of reasonable access to any **Unit** in order to affect the maintenance of any matters referred to in this **Memorandum of Incorporation** or the **Rules**;

5.2.20 the conditions for the use of all or certain parts of the **Common Property**, such as streets and other open spaces, etc.;

5.2.21 the control of employees of **Members** and their movement on the **Common Property**;

5.2.22 directives concerning processes to be followed regarding internal dispute resolution between **Members** and/or between **Members** and the **Company** concerning conduct issues and/or the use of **Common Property**;

5.2.23 rules that may become applicable or necessary from time to time to effectively discharge all the obligations of the **Company** as a juristic person and “responsible party” under the Protection of Personal Information Act No. 4 of 2013 and also the prescriptions of the Promotion of Access to Information Act No. 2 of 2000 for the proper protection, processing, control of and access to the personal information of its **Members** and any other data subjects that may come under its control;

5.2.24 in general, rules in order to maintain tranquillity and a peaceful living environment in the **Scheme**.

5.2.25 For the enforcement of any **Rules** made by the **Directors** or the **Company**, the **Directors** shall be entitled to implement a system of fines and penalties from time to time in order to deter any contravention of these **Rules** and to ensure the due enforcement of these **Rules**.

5.2.26 Any penalties imposed by the **Directors** are subject to adjustment and/or ratification by **Members** in General Meeting.

5.2.27 In the event of contravention of any of these **Rules**, the following procedure will be followed and implemented:
(i) A letter of demand which may incorporate a penalty will be sent to the Member, specifying the nature of the breach demanding him to remedy the breach where applicable, within a period of 10 (ten) days from date of demand or such other period as may be determined by the Board;

(ii) Should the Member fail to adhere to the demand letter and to remedy the breach then, unless written objection is received concerning the alleged contravention, the prescribed penalty shall be implemented and levied against the Member’s Levy account and shall be enforceable, as if such penalty or fine constitutes a normal Levy;

(iii) If the transgression is disputed and upon receipt of any written objection (“the objection notice”) by the Member, a Committee of 2 (two) Directors appointed by the Chairperson for this purpose, together with the General Manager, shall convene a meeting with the Member within a period of 10 (ten) days, or as soon as reasonably possible after receipt of the objection notice, to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure, as the Chairperson of the Committee shall direct; Provided that the Rules of natural justice shall be observed and at which meeting the Member shall be entitled to address his objection and to call witnesses.

(iv) The decision of the Committee shall be final;

(v) Should the Member refuse to accept the decision of the Committee on any matter, such dispute shall then be referred to mediation and/or arbitration in terms of the Rules;

(vi) Any fine imposed upon any Member will be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process subject thereto that the latter shall not occur while the consideration of an objection is still in process or while mediation or arbitration proceedings are still pending.
5.3 Optional provisions of Companies Act, 2008 do not apply

The Company elects to, in terms of Section 34(2) of The Act, voluntarily appoint an Auditor, but will not appoint an Audit Committee or a Company Secretary as contemplated in this Section.

6. MEMBERSHIP

6.1 As contemplated in Item 4(1) of Schedule 1 of The Act, the Company has Members, who are all in a single class, being voting Members, each of whom has, subject to the provisions of the MOI, an equal vote in any matter to be decided by the Members of the Company.

6.2 Any other Person (natural person or juristic entity) who, at incorporation or thereafter, is reflected as a registered Owner of a Unit, in terms of the Deeds Registries Act.

6.3 The trustee in an insolvent estate, a liquidator or the trustee elected in terms of the Agricultural Credit Act, 28 of 1966, the liquidator of a Company or Close Corporation which is a Member, the executor of the estate of a Member who has died, or an Authorized Representative of a Member, recognized by law of a Member who is a minor or of unsound mind or is under disability of such trustee, liquidator, executor or Authorized Representative is acting within the scope of his authority.

6.4 Where any Unit in the Village is owned by more than one Person, all the registered Owners of that Unit shall together be deemed to be one Member of the Company and shall together have the rights and obligations of one Member of the Company; Provided however that all co-owners of a Unit shall be jointly and severally liable for the due performance of any obligations towards the Company.

6.5 All Members who are Members of the Company at the time this MOI is adopted, shall remain Members of the Company by virtue of them being the registered owners of Units in the Scheme.
6.6 Subject to the provisions of The Act, certificates of Membership may be issued under the authority of the Directors in such manner and form as the Directors may determine from time to time.

6.7 Application for Membership of the Company

6.7.1 Application for Membership of the Company shall be made to the Managing Agent (if appointed) or to the Company, in writing.

6.7.2 When application is made for Membership of the Company by a Person, such Person shall declare himself bound by the terms and conditions of this MOI and any Rules made thereunder and such Person shall be deemed to have acquainted himself with the terms and conditions thereof.

6.8 Initial and Periodic cost for Membership

All Members shall be liable to payment of a monthly contribution, as may be determined by the Board of Directors, in terms of this MOI from time to time, as may be required for the fulfilment of the objectives of the Company.

6.9 Rights and obligations of Membership

6.9.1 A Member of the Company shall remain a Member thereof until he ceases to be the registered owner, as reflected in the relevant Deeds Office as an owner of a Unit in the Scheme and a Member shall therefore not be entitled to resign as a Member of the Company unless he ceases to be an owner of a Unit in the Scheme and no person shall be entitled to cease to be a Member of the Company while remaining the registered owner of a Unit in the Scheme.

6.9.2 The rights and obligations of a Member shall not be transferable and every Member shall be obliged:

6.9.2.1 to further, to the best of his ability, the objects and interest of the Company;
6.9.2.2 to observe and comply with all Rules made by the Company or the Directors;

6.9.2.3 to pay all Levies due by the Member, to the Company;

6.9.2.4 to comply with the Conditions of Establishment of the Scheme;

6.9.2.5 to comply with the provisions of the STA, STSM Act and Regulations thereunder, including the Company Rules, concerning any alterations, additions or structural alterations to the Unit;

6.9.2.6 not to use his Unit or any part thereof, or any part of the Common Property or common service, or permit it to be used, in such a manner and/or for such purposes as shall be injurious to the reputation of the Company;

6.9.2.7 not to contravene or permit the contravention of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of his Unit or of the Common Property or the carrying on of business, or so contravene or permit the contravention of the conditions of title applicable to his Unit or of any other Unit or the Common Property;

6.9.2.8 to maintain his Unit in a clean and tidy condition;

6.9.2.9 adhere to the provisions and guidelines established by the Directors to the satisfaction of the Directors. Should the Directors be of the opinion that a Member is not complying with this Memorandum of Incorporation, the Directors shall give such Member reasonable notice, depending on the nature of the breach, within which to remedy the breach, failing which, where possible, the Directors shall be entitled to perform the work or services which is required to be done or provided (or to have it done) at the expense of the Member, and shall be entitled to recover all expenditure in connection thereof from the Member, together with interest calculated thereon at prime bank rate of a bank of the Directors’ choice, plus 2% (two percent), for the period date of expenditure to date of repayment. The aforementioned amount shall be added to the Member’s levy account.
6.9.2.10 to allow a **Member** of the **Board/Managing Agent**, by prior arrangement and at a reasonable time and by revealing the purpose of the inspection, to inspect the **Unit** concerned. If the inspection is the result of a complaint from any person, the name, address and full details of such complainant must be revealed to the occupier of the said **Unit**;

Provided that nothing contained in this **MOI** of the **Company** shall prevent a **Member** from ceding his rights in terms of this **MOI** as security to the mortgagee of the **Member**’s **Unit**;

6.9.3 No **Member** shall let or otherwise part with occupation of his **Unit**, whether temporarily or otherwise, unless he has agreed in **Writing** with the proposed occupier of such **Unit**, as a *stipulation alteri* (benefit in favour of a third party) in favour of the **Company** that such occupier shall be bound by all the terms and conditions of this **MOI** and any **Rules** made thereunder, and such written agreement together with all documentation required by the **Company** for purposes of **Tenant** control is lodged with the **Company** and approval for such occupation is granted by the **Board** and/or **Managing Agent**, all prior to the proposed occupier taking occupation of the **Unit** in question.

6.9.4 Every **Member** shall, when he agrees to transfer **ownership** of his **Unit** in the **Scheme**, set it as a condition of the agreement of sale and transfer, that the new **owner** shall apply for **Membership** of the **Company** and be accepted as **Member** of the **Company** and therefore become a **Member** of this **Company**, accepting his/her/its obligations towards the **Company** as **Member**.

6.9.5 No **Member** of a **Unit** in the **Scheme** shall be entitled to pass transfer thereof to any other **Person** until the **Company**, under the hand of the **Board** and/or **Managing Agent** (if appointed), has certified by way of a clearance certificate that:

(i) such **Member** as at date of transfer has complied with all of his/her/its financial obligations towards the **Company**, which includes payment of contributions of whatsoever nature, fines or interest or other payments due to the **Company** in terms of the **MOI** or **Rules**, or otherwise;
(ii) such Member is not in breach of any of the provisions of this MOI and/or the Company Rules;

(iii) the prospective transferee has applied to the Company, in Writing, to become a Member of the Company and as such have agreed to comply with the provisions of this MOI and/or Company Rules, as may be amended from time to time.

(iv) the Re-Sale Levy has been paid or payment thereof has been secured.

6.9.6 The provisions of Article 6.9.5 shall apply *mutatis mutandis* to any alienation of an undivided Share in a Unit in the Scheme.

6.9.7 The Directors of the Company may impose an additional, reasonable fee upon the Members of the Company for the issuing of the Clearance Certificate as referred to in Article 6.9.5. The said fee will be determined by the Board and/or Managing Agent from time to time and will be subject to ratification/amendment/repeal by the Members in General Meeting.

6.9.8 Members shall have the rights prescribed by The Act, the MOI and any Rules made hereunder, which shall *inter alia* include the following rights:

6.9.8.1 the right to nominate and elect the Directors of the Company;

6.9.8.2 the right to receive access to the Company records in accordance with the provisions of Section 26 of The Act;

6.9.8.3 the right to receive notice of, attend, speak and vote at General Meetings of the Company;

6.9.8.4 the right to receive access to the Financial Statements or related information of the Company.

6.9.9 A Member/(s) shall not have the right to attend, to vote or to speak at any General Meeting, or to participate on a Resolution in writing, as contemplated in terms of the provisions of Section 60 of The Act (a Round-Robin Resolution), if:
(i) such Member as at date of transfer has not complied with all of his/her/its financial obligations towards the Company, which includes payment of contributions of whatsoever nature, fines or interest or other payments due to the Company in terms of the MOI or Rules, or otherwise;

(ii) such Member is in breach (other than payment of Levies) with any of his obligations towards the Company in terms of this MOI or the Rules and has failed to remedy such breach after having been called upon by the Company, in Writing, to remedy such breach and he remains in breach, unless such breach is disputed in Writing by the Member and forms the subject matter of an objection, mediation, adjudication or arbitration proceedings.

6.9.10 Every Member, if so required by the Company, shall Sign all documents required to create a condition in the Title Deed of his Unit, which will ensure that the Unit may not be sold or transferred without the buyer or transferee binding himself to become a Member of the Company without a certificate as contemplated in Article 6.9.5. The condition referred to shall be worded as near as possible to the following format:

“Home Owners Association:

This Property is subject to the following conditions imposed by the transferor in favour of Bougainvilla Aftree Oord Home Owners Association (NPC), a Non-Profit Company as referred to in The Act, 2008 with Registration Number: 2013/189477/08:

1. The transferee, his successors in title or assigns (his heirs, executors, administrators or assigns) is compelled to be a Member of the abovementioned Home Owners’ Association from the date of registration of the Property into his/her/their name.

2. The transferor, his successors in title or assigns (his heirs, executors, administrators or assigns) shall not be entitled to transfer the Property in any manner, without obtaining the prior written permission of the Bougainvilla Aftree
Oord Home Owners Association (NPC) and then only subject to the condition that the purchaser will become a Member of the said Bougainvilla Aftree Oord Home Owners Association (NPC) on the date of registration of the Property into his name.

3. The transferee undertakes to apply in Writing, for Membership of the Bougainvilla Aftree Oord Home Owners Association (NPC), (hereinafter referred to as “the Company”) and confirms and accepts that, irrespective of such written application, his ownership of the Unit shall be subject to the MOI of the Company and any Rules made by the Company. A copy of the MOI of the Company and Rules made thereunder are available for inspection at the offices of the Managing Agent (if appointed) or can be obtained from the Company.

4. The transferee will remain a Member of the Company and be bound to its provisions for as long as he remains the registered owner of the Unit.

5. As from date of transfer, the transferee shall be liable for payment to the Company of Levies and contributions as are required in terms of the MOI and Company Rules, and which Levies and contributions shall be utilized inter alia towards maintenance of the Common Property.”

6.10 If a Member ceases to be a Member of the Company as a result of the transfer of a Unit to another Person, such Member shall not be released from any liability to the Company in respect of any debt or other obligation, the cause of which arose prior to the transfer of such Unit.

6.11 The rights and obligations of a Member shall not be capable of being ceded and/or assigned, in whole or in part, nor otherwise be transferable.

6.12 Members and Residents shall not interfere with, nor give instructions to any officers, employees, agents or contractors of the Company, and any complaints or requests shall
be addressed **in Writing** to the **Managing Agent**. The **Directors** may request that any complaint be dealt with at the next Annual General Meeting of the **Company**.

6.13 **Cessation of Membership**

Apart from the cessation of **membership** provided for in Article 6.9.1 above a **Member** shall cease to be a **Member** immediately—

6.13.1 in the case of a natural **Person**—

(i) on such **Member**'s death;

(ii) if such **Member** becomes a lunatic or of unsound mind;

(iii) if such **Member**'s estate is surrendered or sequestrated whether voluntarily or compulsorily;

(iv) if such **Member** commits an act of insolvency;

6.13.2 in the case of a **Member** which is not a natural **Person**—

(i) if such **Member** is liquidated, wound up, or placed under business rescue, whether provisionally or finally and whether compulsory or voluntarily;

(ii) if such **Member** commits any act of insolvency.

6.14 **Binding Nature**

6.14.1 The provisions of this **MOI** and **Rules**, and the duties of a **Member** in relation to the use and condition of his **Unit** shall be binding on the **Member** of any **Unit** and any lessee or any other **Resident** of any **Unit** and it shall be duty of the **Member** to ensure compliance with this **MOI** and **Rules** upon such lessee or Resident, including visitors, employees, contractors, guests, any **Member** of his family or that of his lessee or his **Residents**;
6.14.2 It shall be the duty of any Member to furnish a copy of this MOI and Rules to any lessee or other Resident of his Unit and to refer in any Lease Agreement to the binding nature of this MOI and Rules upon such lessee or Resident.

7. LEVIES

7.1 The Directors may, from time to time, impose Levies upon the Members for the purpose of meeting all the expenses which the Company has incurred, or which the Directors reasonably anticipate the Company will be put in the attainment of its objects or the pursuit of its business.

7.2 The Directors shall not less than 30 (thirty) days prior to the end of each financial year or as soon thereafter as is reasonably possible, publish a notice indicating an estimate including reasonable provision for contingencies, in reasonable detail, of the amount which shall be required by the Company to meet the expenses during the following financial year (“the general Levy”), and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual or recurring nature. The “estimate” of levies may include provision for the Community Schemes Ombud Service levy for which a Member becomes liable from time to time in terms of the CSOS Regulations. If not so included, it may be reflected separate on a Member’s levy statement and will be recovered from the Member in terms of Chapter 2 of the Community Schemes Ombud Service Regulations: Levies and Fees.

7.3 Each notice served upon each Member at the address chosen by him shall specify the contribution (Levy) payable by the Member to such expenses and Reserve Fund.

7.4 Levies to be raised by the Directors shall comprise of: -

7.4.1 the general Levy required by the Company to meet its financial obligations;

7.4.2 a special Levy imposed for extraordinary items in terms of this MOI and the Rules;

7.4.3 a Reserve Fund Levy, as contemplated in terms of Section 3(1)(b) and (c) of the STSM Act;
7.4.4 the Re-Sale Levy referred to in Article 17.

7.5 The **general Levy** or any special- or **Reserve Fund** Levy to be implemented, shall become due and payable on the passing of a **Board** Resolution to that effect and the publication thereof, and shall be payable in the form that the **Directors** may direct from time to time and failing direction, in equal monthly instalments, due in advance on the first day of each and every month of each financial year.

7.6 When imposing levies, the **Directors** must, as far as possible, assign the costs relating to the **Company** generally (the **General levy**, Special Levies and **Reserve Fund** Levies), to all **Units** in accordance with the applicable participation quota.

7.7 The **Directors** may from time to time impose special **Levies** upon the **Members** in respect of any expenses which are not included, or sufficiently provided for, in the **general Levy** in terms of Article 7.2, and may in imposing such **Levies** further determine the terms and payment thereof.

7.8 In calculating **Levies**, the **Directors** shall take into account other income, if any, owned by the **Company**.

7.9 In the event of the **Directors** for any reason whatsoever failing to prepare and timeously serve the notice referred to in Article 7.3 above, every **Member** shall until served with such notice, continue to pay the Levy previously imposed and shall after service of such notice pay the Levy specified therein. A **Member** shall pay any deficit (comprising the difference between the **Levies** payable during the previous year and the new Levy imposed, if any) within 30 (thirty) days of receipt of the notice specifying the new contribution payable by the **Member** or within such period as may be determined by the **Board**.

7.10 Upon the change of **ownership** of a **Unit**, the successor in title becomes liable for the pro-rata payment of contributions from the date of change of such **ownership**.

7.11 The **Board** shall be empowered in addition to such other rights as the **Company** may have in law against its **Members** to also charge interest on any arrear contributions due at a rate determined by the **Board** from time to time and failing such determination,
interest shall accrue to any arrear contributions at the prescribed rate from time to time in
terms of the Prescribed Rate of Interest Act, Act No. 55 of 1975. Interest imposed by the
Directors shall be subject to review by the Members in General Meeting and shall not
exceed any limitations set by legislation.

7.12 The obligation of a Member to pay a Levy and interest shall cease upon his ceasing to be
a Member without prejudice to the Company’s right to recover arrear Levies and interest
and penalties, fines and other amounts due to the Company.

7.13 A Member’s successor in title to a Unit shall be the Person which becomes the
registered owner of the Unit, as reflected in the Deeds Registry.

7.14 No Unit or Units registered in a Member’s name shall be capable of being transferred
without a Clearance Certificate as referred to in Article 6.9.5 first being obtained from the
Company, confirming that all Levies (including payment of 3 (three) months’ Levies in
advance), penalties, fines and other amounts due and interest have been paid up to and
including date of registration of transfer thereof.

7.15 If Levies are not paid within 90 (ninety) days of due date, or should a Member be in
arrear for 3 (three) months (if the contributions are paid monthly), then such Member
shall become delinquent.

7.16 A Member who’s is delinquent for the current year shall not be entitled to:

7.16.1 nominate candidates for election as Director;

7.16.2 serve as a Director; or

7.16.3 attend, speak or vote at a General Meeting.

7.17 The Directors may from time to time determine a charge to be levied against Members
in arrears, as an administration charge payable to the Company. Any administration
charges so levied shall from time to time be subject to review by the Members in General
Meeting.
7.18 All payments made by a Member and received by the Company, shall be allocated firstly towards interest, then legal costs, then to any other Levies (special- or dedicated) in arrear and thereafter towards capital due on the general Levy. The Board reserves the right to allocate payments to the debt oldest in time.

7.19 Should a Member fail to effect payment of contributions levied in terms of the MOI on due date, the full outstanding balance remaining unpaid for the financial year shall become due and payable without notice and/or demand but the Board, at their sole election and discretion, may agree to a repayment arrangement with the Member concerned and subject to such conditions as the Board may impose.

8. RIGHTS OF MEMBERS

8.1 Members’ authority to act

If, at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that Section is not limited or restricted by this MOI.

8.2 Members’ right to information

A Member has the right to access to information as set out in Section 26(1) of The Act.

8.3 Representation by concurrent proxies

The right of a Member of the Company to appoint 2 (two) or more Persons concurrently as proxies, as set out in Section 58(3)(a) is not limited, restricted or varied by this MOI.
8.4 **Authority of proxy to delegate**

The authority of a Member’s proxy to delegate the proxy’s power to another Person, as set out in Section 58(3)(b) is not limited or restricted by this MOI.

8.5 **Requirements to deliver proxy instrument to the Company**

A Member must deliver to the Company a copy of the instrument appointing a proxy that the proxy may exercise the Member’s right at a Members meeting, as set out in Section 58(3)(c) of The Act to the extent that a copy of the instrument appointing a proxy must be delivered to the Company, including the Managing Agent or a person appointed by the Company, in accordance with the provisions of Article 9.10 of this MOI at any time before the proxy exercises any right by the Member.

8.6 **Deliberative authority of proxy**

The authority of a Member’s proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in Section 58(7) of The Act, is not limited or restricted by this MOI.

8.7 **Record date for exercise of Member rights**

If, at any time, the Company’s Board of Directors fails to determine a record date, as contemplated in Section 59 of The Act, the record date for the relevant matter shall be 15 (fifteen) Business days prior to the action, meeting or event as contemplated in accordance with Section 59(3) of The Act.

8.8 No Member in his personal capacity shall have any right, title or interest in the property of the Company, its funds or assets.
9. MEMBERS MEETINGS

9.1 Requirement to hold meetings

9.1.1 The **Company** shall, within 4 (four) months after the end of each financial year, hold a General Meeting as its Annual General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices, in terms of Article 9.4 below, calling such meeting.

9.1.2 The Annual General Meeting shall deal with and dispose of all matters prescribed by **The Act**, this **MOI** and including the matters referred to in Article 9.12.

9.1.3 All General Meetings other than Annual General Meetings shall be called special General Meetings.

9.1.4 The **Directors** may, whenever they think fit, convene General Meetings.

9.1.5 A General Meeting may also be convened by the **Members** on a requisition made in terms of Section 61 of **The Act** [10% of the voting rights], or should the **Directors** not do so may be convened by the requisitionists as provided for by and subject to the provisions of that Section of **The Act**.

9.1.6 All business other than the business referred to in Article 9.12 and laid before any other General Meeting shall be considered special business.

9.1.7 A General Meeting may also be convened by the **Directors** on a requisition made in terms of Section 61(3) (Previous: “Section 181) of **The Act**, or should the **Directors** not do so it may be convened by the requisitionists as provided for and subject to the provisions of the said Section of **The Act**.

9.2 Members’ rights to requisition of a meeting

The right of a **Member** to requisition of a meeting, as set out in Section 61(3) of **The Act**, may be exercised by at least 10% (ten percent) of the voting rights entitled to be
exercised in relation to the matter to be considered at the meeting despite the provisions of that Section.

9.3 Location of Members meetings

The authority of the Company's Board of Directors to determine the location of any Members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in Section 61(9) of The Act is limited or restricted to the extent that all Members' meetings shall be convened to take place at the Village.

9.4 Notice of Members meetings

9.4.1 The minimum number of days for the Company to deliver a written notice of a Members meeting to all the Members of the Company, as required by Section 62 of The Act is as provided for in Section 62(1) of The Act and shall be at least 15 (Fifteen) Business days.

9.4.2 The notice conveying the intended meeting shall contain adequate motivation and information of any business to be dealt with and especially concerning special business to be conducted at the meeting, to enable the Members to prepare and make an informed decision.

9.4.3 The notice convening each meeting of the Company shall specify the place, the date and the hour of the meeting and shall otherwise contain detail of the business, including where relevant, special business, to be conducted at the meeting.

9.4.4 Notice shall be given to such Persons as are, under this MOI entitled to receive such notices from the Company.

9.4.5 A meeting of Members shall notwithstanding the fact that it is called by shorter notice than that specified above in this Article, be deemed to have been duly called if it is so
agreed by not less than 95 (ninety-five per centum) of the Members having a right to attend and vote at the meeting.

9.5 Electronic participation in Members meetings

The authority of the Company to conduct a meeting by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in Section 63 of The Act is not limited or restricted by this MOI; Provided that the electronic communication employed ordinarily shall enable all Persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively at the meeting.

9.6 Quorum for Members meetings

9.6.1 No business shall be transacted at a General Meeting unless a quorum is present both when the meeting proceeds to business.

9.6.2 Subject to at least 3 (three) Members being present in Person, the quorum requirement for a Members meeting to begin, or for a matter to be considered is 10% (ten percent) of the votes entitled to be exercised by the Members present in Person or by proxy.

9.6.3 The time periods allowed in Section 64(4) and (5) of The Act apply to the Company, subject to the following variations:

(i) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of Article 9.6.2, if applicable, for that meeting to begin have not been satisfied, the meeting is postponed without motion, vote or further notice, for 1 (one) week, at the same place and time on the same day (or if that day is not a Business day, the first Business day following that non-Business day) and a quorum at the resumption of the General Meeting shall be the Members present in person or by proxy at that meeting; provided that at least 3 (three) Members being present [Section 64(3)(a)].
(ii) If, within 15 (fifteen) minutes after the determined time for a meeting to begin, the requirements of Article 9.6.2 for consideration of a particular matter to begin have not been satisfied.

(iii) If there is other business on the Agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote.

(iv) If there is no other business on the Agenda of the meeting, the meeting is adjourned for 1 (one) week, at the same place and time on the same day (or if that day is not a Business day, the first Business day following the non-Business day) without motion or vote or further notice.

(v) The Chairperson of the Board or, in his absence, the Vice Chairperson at a meeting that cannot begin due to the operation of Article 9.6.2, where a quorum is not present may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in Section 64(5).

9.6.4 The Chairperson or, failing him, the Vice Chairperson of the Directors (or if more than one of them is present and willing to act, the most senior of them) shall be the Chairperson of each meeting, provided that if no Chairperson or Vice Chairperson is present and willing to act the Members present and willing to act from the Members present shall elect one of the Directors or, if no Director is present and willing to act, a Member, to be Chairperson of that meeting.

9.6.5 The authority of a meeting to continue to consider a matter after a quorum has been met, so long as at least 3 (three) Members remain present (in person), is not limited or restricted by this MOI.

9.6.6 A General Meeting at which a special resolution is required to be adopted and at which a quorum is not present, shall be adjourned in accordance with the provisions of Section 64 of The Act.
9.7 **Adjournment of the Members meetings**

9.7.1 If a quorum has not been reached within 15 (fifteen) minutes after the determined time for the meeting to begin or such extended period as the **Chairperson** directed, the **Chairperson** appointed for the meeting will be authorized to adjourn the meeting of the **Members** for 1 (one) week. Adjournment will take place in accordance with the provisions of Section 64(4) – (13) of **The Act**.

9.7.2 The maximum period allowable for an adjournment of a **Members** meeting is 15 (fifteen) **Business days** after the date upon which the adjournment occurred.

9.7.3 No notice needs to be given of an adjourned meeting, unless the location of the postponed or adjourned meeting is different or if a different time for the adjourned meeting is indicated.

9.7.4 No business shall be transacted at the resumption of any adjourned meeting, other than the business left unfinished at the meeting from which the adjournment took place.

9.8 **Members’ resolution**

9.8.1 For any ordinary resolution to be adopted at a **Members** meeting, such resolution must be supported by at least 50% plus 1 of the **Members** who voted on the resolution, as stipulated in the provisions of Section 65(7) of **The Act**.

9.8.2 For a special resolution to be adopted at a **Members** meeting, it must be supported by at least 75% of the **Members** who voted on the resolution, as provided in Section 65(9) of **The Act**.

9.8.3 A special resolution adopted at a **Members** meeting is not required for a matter to be determined by the **Company**, except those matters set out in Section 65(11) of **The Act** and the following matters:

9.8.3.1 to amend the **Company’s MOI** to the extend required by Section 16(1)(c) of **The Act**;
9.8.3.2 to approve the voluntary winding-up of the Company in the circumstances contemplated in Section 80(1) of The Act;

9.8.3.3 to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of The Act, subject to Schedule 1 of The Act;

9.8.3.4 to ratify actions by the Company or Directors in excess of their authority, as contemplated in Section 20(2) of The Act;

9.8.3.5 to authorize the Board to grant financial assistance in the circumstances contemplated in Section 44(3)(a)(ii) or 45(3)(a)(ii) of The Act;

9.8.3.6 to authorize the basis for compensation to Directors of the Company, as required by Section 66(9) of The Act.

9.9 Votes of Members

9.9.1 Members who are suspended, delinquent, owe money to or are otherwise not in good standing with the Association may, notwithstanding the provisions of Articles 6.9.9 and 7.16.3, attend General Meetings at the discretion of the Chairperson, but may not speak or vote at meetings of the Association. They are also not allowed to appoint a proxy to attend or to vote at the meeting. If they do vote, it will not be counted.

9.9.2 Each Member has 1 (one vote) for each Unit registered in his name, whether in person or represented by proxy.

9.9.3 If a Unit is registered in the name of more than one Person, then all such co-owners shall jointly have 1 (one) vote.

9.9.4 Save as expressly provided for in this MOI, no Person other than a Member, duly registered and who shall have paid every Levy and other sum due and payable to the Company in respect of or arising out of his Membership, and who is not delinquent or under suspension, shall be entitled to be present or to speak or to vote on any question, either personally or by proxy, at any General Meeting.
9.9.5 At any General Meeting, a Resolution put to the vote of the meeting, shall be decided on a show of hands, unless a poll is demanded (on or before the declaration of the result of a show of hands) by the Chairperson or Members referred to in Section 63(7) of The Act and unless poll is so demanded, a declaration by the Chairperson that a Resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of such fact, without proof of the number or the proportion of the votes recorded in favour or against such Resolution.

9.9.6 The demand for a poll may be withdrawn at any time.

9.9.7 If a poll is duly demanded, it shall be taken in such manner as The Chairperson of the meeting may direct either at once or after an interval or adjournment, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded. Two (2) Persons shall be elected to determine the result of the poll.

9.9.8 In the case of an equality of votes, for and against any Resolution, whether on a show of hands or on a poll, the Resolution shall be deemed to have been defeated.

9.9.9 An amendment proposed to a tabled Resolution which does not materially affect the intent of the tabled Resolution, is required to be seconded, and if approved by the meeting, will replace the initial proposal, and such amended proposal must then be put to the vote.

9.9.10 Unless any Member present in person or by proxy at a General Meeting shall, before closure of the meeting as a result of any voting at the meeting, whether by a show of hands or otherwise, record his formal objection to the validity of the procedure at such meeting, a declaration by the Chairperson shall be deemed to be a true and correct statement of the voting, and shall be final and binding and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
9.9.11 In the event of a formal objection to the validity of a procedural aspect or regarding the admission or rejection of a vote or regarding any other formality, such difficulty or dispute is to be determined by the Chairperson, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive. The Chairperson shall have the right to call a re-count and/or to again table the disputed Resolution for a re-vote.

9.9.12 The Chairperson shall not have a casting vote.

9.9.13 A vote cast under a proxy, power of attorney, or other authority which has been revoked shall nevertheless be valid unless:

9.9.13.1 written notice of the revocation is received by the Company prior to the meeting concerned; or

9.9.13.2 the Chairperson of the meeting agrees to accept written or oral notice of such revocation at the meeting.

9.9.14 Any resolution in Writing signed by Members entitled to receive notice of and to attend and vote at a General Meeting shall be as valid and effective as if it had been passed at a General Meeting properly called and held. Any such resolution may consist of several documents, each of which may be signed by one or more Members and shall be deemed to have been passed on the date on which it was signed by the last Member who signed it, unless a statement to the contrary is made in that resolution.

9.10 Proxies

9.10.1 Members may be represented at a General Meeting by a proxy, who need not be a Member.

9.10.2 The instrument appointing a proxy shall be in Writing, duly signed by the Member concerned (or his appointed agent, duly authorized in Writing) and shall be substantially in the form as set out in Annexure” A” of this MOI.
9.10.3 In accordance with the provisions of Article 8.5, a copy of the instrument appointing a proxy must be delivered to the *Company* or to any other person acting on behalf of the *Company* before the proxy exercises any rights of the *Member* at a Members Meeting. Notwithstanding this provision, the *Directors* may call upon a *Member* to lodge the original instrument appointing a proxy to the *Company* within 7 (seven) days from the meeting or proceedings.

9.10.4 A vote cast or act done in accordance with the terms of a proxy shall be deemed to be valid notwithstanding the death, insanity, insolvency of the principal prior to the time at which the meeting was due to start, or any other legal disability of the *Person* appointing the proxy, or the subsequent revocation of the proxy, unless notice as to any of the abovementioned matters have been received by the *Company* at its registered office or the office of the *Managing Agent*, or by the *Chairperson* of the meeting.

9.10.5 A proxy form shall be valid at every resumption of an adjourned meeting to which it related unless the contrary is stated thereon.

9.10.6 A proxy shall be valid for an indefinite period unless it is stated on the proxy that it is only valid for a shorter period or for a specific meeting or any adjournment thereof.

9.10.7 A proxy form shall not be used at the resumption of an adjourned General Meeting if it could not have been used at the General Meeting from which it was adjourned.

9.10.8 Subject to the provisions of *The Act*, a proxy form shall be in such form as is approved or accepted by the *Directors*.

9.10.9 In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in accordance with the following format as annexed hereto as *Annexure” A”* and that the instructions to the proxy holder are indicated in an unambiguous manner.
9.11 **Conduct of Meetings**

9.11.1 The **Members** may, from time to time, at the Annual General Meeting by way of an Ordinary Resolution, determine the meeting procedures which shall be properly documented as such and which shall be strictly complied with at all General Meetings.

9.11.2 The **Chairperson** and **Directors** shall acquaint themselves with the meeting procedures and the **Chairperson** of the relevant meeting shall be entitled to rule on any technical irregularity regarding the conduct of any General Meeting, which ruling shall be final and binding upon the **Directors** and **Members**.

9.12 **Agenda of General Meetings**

In addition to any other matters required by **The Act** or in terms of this **MOI**, to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

9.12.1 Acceptance of the Minutes of the previous General Meeting;

9.12.2 The consideration of the **Chairperson**'s Report;

9.12.3 The election of **Directors**;

9.12.4 The appointment of the **Auditors** of the **Company** for the ensuing financial year;

9.12.5 The consideration of the report of the **Auditors**;

9.12.6 The approval of the Financial Statements of the **Company** for the preceding financial year;

9.12.7 The ratification/amendment/repeal of any **Rules** made by the **Board**;

9.12.8 Confirmation of the budgeted **general Levy**;

9.12.9 The confirmation of any special Levy or dedicated Levy determined by the **Directors**;

9.12.10 Any other business laid before it;
9.12.11 Consideration and approval, with or without amendment, of the schedules of insurance and replacement values of the Units and Common Property;

9.12.12 To give directions or impose restrictions with regard to the powers and authority of the Board.

10. DIRECTORS AND OFFICERS

10.1 Composition of the Board of Directors

10.1.1 There shall be a Board of Directors of the Company which shall consist of not less than 3 (three) and not more than 5 (five) elected Directors.

10.1.2 In addition to the elected Directors, the Board may appoint up to a maximum of 4 (four) additional Directors to serve until the next Annual General Meeting or until the appointment of such appointed Director is revoked.

10.1.3 An elected Director shall serve for a period of 3 (three) years, after which period each elected Director shall be deemed to have retired from office. Such Director shall be eligible for re-election to the Board at the applicable Annual General Meeting. The Board will introduce and maintain a control system to ensure that at least one-third of the Directors are elected each year in compliance with Schedule 1, Item 5(1)(b) of the Act, irrespective of whether any Director has completed 3 (three) years of service.

10.1.4 In compliance with Schedule 1, Item 5 of the Act (Item 5(1)(b) of the Act), at least one third of the Directors are to be elected each year.

10.1.5 Nominations for election of Directors must be delivered to the Company in writing or to any person acting on behalf of the Company (including a Board Member or duly appointed Managing Agent) accompanied by the written consent of the person nominated, so as to be received at the domicilium of the Company not later than 5 (five) working days before the meeting: Provided that Directors shall also be capable of being elected by way of nominations with the consent of the nominee given at the meeting itself, should insufficient written nominations be received to comply with this Article.”
In the event of such later nomination the result of the election will be withheld until such time as the official verification process related to persons nominated as Directors, have been completed. Should a person nominated to serve as Director not be classified as a successful candidate, the successful nominated person with the next highest number of votes, will be considered to be duly elected.

10.1.6 Upon any vacancy occurring in the Board of Directors prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated and appointed by the Chairperson of the Board of Directors for the time being and, in his absence or inability, the Vice-Chairperson.

10.1.7 The majority of Directors should be resident owners or their spouses, unless insufficient nominations have been received.

10.1.8 Within 7 (seven) days of the holding of each Annual General Meeting, the Board of Directors shall meet and shall elect from their own numbers, the Chairperson and the Vice-Chairperson, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the Chairperson or Vice-Chairperson shall ipso facto be vacated by the Director holding such office upon his ceasing to be a Director for any reason.

10.1.9 In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the Company, a person must satisfy the following additional eligibility requirements and qualifications and he must therefore:

(i) be a paid-up Member, or a representative of a paid-up Member where the Member is a legal entity, and/or the spouse of a paid-up Member, of the Company at the time of appointment as Director;

(ii) not be in breach of any of his/her obligations as a Member of the Company, as stipulated in the MOI or the Rules;

(ii) not be disqualified from acting as Director of the Company in terms of the Companies Act, 2008;
(iv) not be a nominee or representative of a **Member**, where the **Member** is a legal entity and such legal entity is in breach of any of its obligations in terms of the **MOI** or the **Rules**;

(v) not be an employee of the **Company** and/or the **Managing Agent** (if appointed) or a **Member/Director** of the **Managing Agent** or any of its employees, unless he is also a **Member** of the **Company**.

10.1.10 Each **appointed** (not elected) **Director** of the **Company** serves until substituted by the **Board** or person that made his appointment or until the next Annual General Meeting following his appointment, but shall be eligible for election or re-appointment as a **Director**.

10.1.11 A **Director** shall be deemed to have vacated his office as such when:

(i) he resigns his office by notice in writing to the **Company**;

(ii) he has been disqualified to act as a **Director** in terms of the provisions of Sections 69 of the **Act**;

(iii) he has been discharged from office under circumstances in terms of Section 71 of the **Act**;

(iv) he becomes of unsound mind;

(v) he is absent from more than 2 (two) consecutive meetings of the **Directors** without leave having been granted to him and if the **Board** so resolve;

(vi) his removal has been approved by ordinary resolution of the **Members** in General Meeting;

(v) he is suspended by the **Board** due to disciplinary procedures pending or to be initiated, notwithstanding the fact that the cause of such disciplinary action is disputed by the Director concerned.
10.1.12 A Director shall not be entitled to appoint an alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfil his functions and duties, save as provided in terms of the provisions of the MOI.

10.1.13 A Director may not otherwise delegate or sub-delegate any of his obligations, save as approved by the Board.

10.1.14 Provided that anything done in the capacity of a Director in good faith by a Person who ceases to be a Director, shall be valid until the fact that he is no longer a Director has been recorded in the minute book of the Company.

10.2 Authority of the Board of Directors

The authority of the Company’s Board of Directors to manage and direct the business and affairs of the Company, is not limited or restricted by this MOI but subject only to any restriction and direction given at a General Meeting of the Company.

10.3 Board of Directors meetings

10.3.1 The authority of the Company’s Board of Directors to consider a matter other than at a meeting, as set out in Section 74 of The Act is not limited or restricted by this MOI and may instead be adopted by written consent of a majority of the Directors given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided.

10.3.2 The right of the Company’s Directors to requisition a meeting of the Board, as set out in Section 73(1) of The Act, may be exercised by at least 25% of the Directors, despite the provisions of that Section.

10.3.3 The authority of the Company’s Board of Directors to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic
communication, as set out in Section 73(3) of **The Act** is not limited or restricted by this **MOI**.

10.3.4 The authority of the **Company’s Board of Directors** to determine the manner and form of providing notice of its meetings, as set out in Section 73(5) of **The Act** is not limited or restricted by this **MOI**.

10.3.5 The authority of the **Company’s Board of Directors** to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in Section 73(5) of **The Act** is not limited or restricted by this **MOI**.

10.3.6 The quorum requirement for a **Directors** meeting to begin, is a majority of the **Directors** [Section 73(5)(b)] and the requirements for approval of a Resolution is a majority of the votes cast on a Resolution [Section 73(5)(d)].

10.3.7 Each **Director** has 1 (one) vote on a matter before the **Board** and the **Chairperson** will not have a casting vote.

10.3.8 A simple majority of the votes cast on a Resolution is sufficient to approve a Resolution of the **Board of Directors**.

10.3.9 The **Directors** may meet to attend their business, adjourn and otherwise regulate their meetings, as they think fit, subject to the provisions of the **MOI**.

10.3.10 Where a **Director** has a personal interest or a conflict of interest in respect of any matter before the **Board**, the said **Director** shall be entitled to attend any meeting of the **Board** at which such matter is discussed or decided, however, such **Director** shall not be entitled to vote in respect of the matter in which he has a personal interest or conflict of interest, and shall recuse himself from any deliberations on the issue.

10.3.11 Any **Director** who has such a personal interest or conflict of interest regarding any matter as mentioned in Article 10.3.10, shall be obliged to disclose such personal interest or conflict of interest to the **Board** forthwith.

10.3.12 Should there be an equality of votes for or against any Resolution of the **Board**, the Resolution shall be deemed to have been defeated.
10.3.13 The **Managing Agent** (if appointed) or a person appointed by the **Board** shall cause the Minutes of each **Board**- and General Meeting to be kept in accordance with Section 73(6) and (7) of **The Act**, which Minutes shall be reduced to **writing**:

10.3.13.1 within 60 (sixty) days in respect of an Annual General Meeting;

10.3.13.2 within 30 (thirty) days in respect of any other General Meeting;

10.3.13.3 within 21 (twenty-one) days from a **Board** Meeting;

unless circumstances require urgent drafting thereof.

10.3.14 A copy of each Minute shall be certified as correct by the **Chairperson** and shall be delivered to each **Director** within 14 (fourteen) days from such certification.

10.3.15 All Minutes shall be submitted to the next General Meeting or **Board** Meeting, as the case may be, for approval with or without amendment thereto.

10.3.16 All Minutes of the **Board** Meetings or General Meetings shall, after approval, be placed in the relevant Minute Book for such purpose and shall be kept in accordance with the provisions of **The Act** relating to the keeping of Minutes of Meetings of **Directors** of Companies.

10.3.17 The **Directors’** Minutes Book shall be open for perusal at all reasonable times by any **Director** and/or the **Auditors**.

10.3.18 Subject to the provisions of this **MOI**, the proceedings of any **Directors’** Meeting shall be conducted in reasonable manner and form as the **Chairperson** shall direct.

10.3.19 A Resolution signed ("**in Writing**") by all the **Directors** shall be valid in all respects as if it had been duly passed at a meeting of the **Board** of **Directors**.

10.3.19 **Chairperson and Vice-Chairperson:**

10.3.19.1 The **Directors** will, at the first meeting after being appointed as such in terms of Article 10.1.8 elect a **Chairperson** and/or a Vice-Chairperson from their number to hold office as such for 1 (one) year or until the next Annual General Meeting,
where after the newly elected Directors will elect a new Chairperson at their first meeting after the Annual General Meeting.

10.3.19.2 The Chairperson elected shall hold his office until the Annual General Meeting next after his appointment: Provided that the office of the Chairperson shall ipso facto be vacated by a Director holding such office upon him ceasing to be a Director for any reason. In the event of any vacancy of the aforesaid office occurring during the term for which the Chairperson is elected, the Vice-Chairperson, if any shall act as such and the Board of Directors shall immediately appoint one of their number as a replacement to the office of Chairperson or Vice-Chairperson.

10.3.20 Chairperson to preside at meeting:

Except as otherwise provided, the Chairperson shall preside at all meetings of the Board of Directors and at all General Meetings of Members and in the event of him not being present within 5 (five) minutes of the scheduled time for the commencement of the meeting or in the event of his inability or unwillingness to act as Chairperson, the Vice-Chairperson, if appointed shall preside at such meeting and failing him, a Chairperson shall be elected from the ranks of the Members present, by the Members present.

10.4 Indemnification of Directors

10.4.1 The authority of the Company’s Board of Directors: -

10.4.1.1 to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in Section 78(3) of The Act is not limited or restricted by this MOI;

10.4.1.2 to indemnify a Director in respect of liability, as set out in Section 78(5) of The Act is not limited or restricted by this MOI;
10.4.1.3 to purchase insurance to protect the **Company**, or a **Director**, as set out in Section 78(6) of **The Act** is not limited or restricted by this **MOI**.

10.4.2 Subject to the provisions of Section 78(3) of the Act and/or any other legislation: -

10.4.2.1 every **Director**, alternate **Director**, members of the Managing Committee and any **Person** employed by the **Company** shall be indemnified out of the **Company**'s fund against all liability *bona fide* incurred by him in his representative capacity in defending any proceedings (whether civil or criminal) arising out of any actual or alleged negligence, default, breach of duty or breach of trust on his part in relation to the **Company** in which judgment is given in his favour or in which he is acquitted or in connection with any matter in which relief is granted to him by the Court in terms of **The Act**; and

10.4.2.2 every **Director**, alternative **Director**, members of the Managing Committee and any **Person** employed by the **Company**, shall be indemnified by the **Company** against (and it shall be the duty of the **Directors** to pay out of the funds of the **Company**) all costs, losses and expenses (including travelling expenses) which such **Person** or **Persons** may incur or become liable for by reason of any contract entered into, or any act or deed done, by such **Person** or **Persons** in the discharge of any of his/their respective duties.

10.4.3 The **Board** shall, on behalf of the **Company**, purchase insurance to protect:

10.4.3.1 a person against any liability or expense for which the **Company** is permitted to indemnify the person in accordance with these articles and/or;

10.4.3.2 the **Company** against any contingency, including:

   (i) any expense;

   (a) that the **Company** is permitted to advance in accordance with the provisions of these articles; and/or
(b) for which the Company is permitted to indemnify a person in accordance with the provisions of these articles;

(ii) any liability for which the Company is permitted to indemnify a person in accordance with the provisions of these articles.

10.8 Directors remuneration and expenses

10.8.1 Unless authorized by special resolution of Members, Directors shall not be entitled to any remuneration, but shall be entitled to recover all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors.

10.8.2 The Directors may be paid any travelling, subsistence and other expenses actually and reasonably incurred by them in the execution of their duties in or about the business of the Company and which are authorized or ratified by the Directors.

10.8.3 The Board of Directors does not have the authority as set out in Section 45 of the Act, to authorize the Company to provide financial assistance to a Director or prescribed officer or other person referred to in Section 45(2) or to a Member.

10.9 Powers and functions of Directors

10.9.1 The Directors may exercise all such powers which are required and/or ancillary to attaining the objects of the Company.

10.9.2 Subject to any limitations imposed by the MOI the management of the business, the control of the Company and making of Rules shall be vested in the Directors who, in addition to and without limitation of the powers expressly conferred upon them by The Act or this MOI, may exercise or delegate to any one or more Persons the doing of all such acts (including the right to sub-delegate) as may be expressly directed or required to be exercised or done by a General Meeting, subject nevertheless, to such management and control: -
10.9.2.1 not being inconsistent with; or
10.9.2.2 being in compliance with;
10.9.2.3 any resolution passed by a General Meeting: Provided that no such resolution passed by a General Meeting shall invalidate any prior act of the Directors or any delegate.

10.10 Officers and committees

10.10.1 The Board of Directors may appoint any officers it considers necessary to better achieve the objects of the Company.

10.10.2 The authority of the Company’s Board of Directors to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board as set out in Section 72(1) of The Act, or to include in any such committee Persons who are not Directors, set out in Section 72(2)(a) of The Act is not limited or restricted by this MOI.

10.10.3 The authority of a committee appointed by the Company’s Board, as set out in Section 72(2)(b) and (c) of The Act may be restricted or limited by the Board when the committee is so established.

10.10.4 The Directors shall ensure that each committee is under the Chairpersonship of a Director.

10.10.5 The appointment of a committee shall be effected in Writing with duly defined rights, powers and duties.

10.10.6 The Directors reserve the right to terminate the existence of any committee, or to withdraw or suspend any of the rights, powers and duties so delegated.

10.10.7 The Minutes of Meetings of each committee shall be promptly provided to the Directors.
10.10.8  The **Directors** furthermore reserve the right to remove any **Member** of a committee, without reasons being advanced therefor, and similarly, to appoint and/or co-opt further **Members** to such committee.

10.10.9  Each committee shall meet as frequently as deemed necessary (or as otherwise directed by the **Directors**).

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11. **SERVICE OF NOTICES**

11.1  Notice of every General Meeting shall be given in **writing**: -

11.1.1 to every **Member** of the **Company**;

11.1.2 to the **Auditor** of the **Company** for the time being;

11.1.3 to the **Managing Agent**, if appointed.

No other **Person** shall be entitled to receive a notice of General Meetings.

11.2  The omission to give notice of a General Meeting or of a meeting of **Directors** to or the non-receipt of, or delay in transmission through the post of, any such notice by or to any **Member** or **Director**, as the case may be, shall not invalidate any resolution passed at any such meeting.

11.3  The address of the **Company** constituting its **domicilium citandi et executandi**, shall be as is registered in terms of the Notice of Incorporation registered with the Companies and Intellectual Property Commission ("**CIPC**").

11.4  The **domicilium citandi et executandi** of each **Member** shall be the address of the **Unit** registered in his name, provided that such **Member** shall be entitled to change the said domicile but that any new domicile selected shall be situated in the Republic of South Africa, and that the change shall only be effective upon receipt of written notice thereof by the **Company**.
11.5 For all purposes arising out of this MOI including the giving of notices and the serving of legal processes, each member chooses as his domicilium citandi et executandi the sectional title unit, registered in his name. Each member shall upon becoming a Member be obliged to furnish the Company with his electronic mail address, i.e. a telefax or email address which shall for purposes of notification be deemed to constitute his domicilium address.

11.6 For any notice or document to be delivered or published for any purpose contemplated in the Act, the Regulations, this MOI or the Rules of the Company, the provisions of Table CR3 in terms of Regulation 7, as amended in terms of this MOI, shall apply and for which purpose such notice may be delivered:

11.6.1 by fax, if the addressee has a fax number; or

11.6.2 by electronic mail, if the addressee has an address for receiving electronic mail; or

11.6.3 by hand to the addressee or to any representative authorized in writing by the addressee to accept service; or

11.6.4 by leaving the notice at the addressee’s place of residence or business with a person who is apparently at least 16 years old and in charge of the premises at the time; or

11.6.5 by leaving the notice at the addressee’s place of employment with a person who is apparently at least 16 years old and apparently in authority.

11.7 A notice will be deemed to have been delivered if:

11.7.1 by fax – on the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or a different time;

11.7.2 by electronic mail – on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time;

11.7.3 by hand – on the date and at the time recorded on a receipt for the delivery;
11.7.4 by leaving the notice at the place of residence or business of the addressee – on the date and at the time recorded on a receipt for the delivery;

11.7.5 by leaving the notice at the addressee’s place of employment – on the date and at the time recorded on a receipt for the delivery.

11.8 Any notice to be given by a Member to the Company shall be delivered to the Company by delivery of such notice to the registered address of the Company, as recorded in the records of CIPC from time to time and as will be recorded and reflected in the Minutes of the Annual General Meeting from year to year.

12. GENERAL PROVISIONS

12.1 Dispute Resolution:

12.1.1 In the event of a dispute of whatsoever nature arising out of or in connection with or related to the provisions of this MOI (including any or all of its Annexures) and concerning any of the rights/obligations of the parties including any dispute as to the validity or cancellation of the MOI, save where an interdict or any form of urgent relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these provisions; provided that when a dispute arises and before the appointment of a mediator, the Company or Member to the dispute may elect to have the dispute referred to the Ombud Service for adjudication in terms of the CSOS Act.

12.1.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this MOI.
12.2 Mediation:

12.2.1 The aggrieved party shall notify the other affected party(ies) in Writing that he/she/it demands mediation and copies of such notification shall be served on the Managing Agent.

12.2.2 The parties will agree to the appointment of an independent Person to act as mediator to the dispute.

12.2.3 If the parties are unable to agree to the appointment of a mediator, application will be made to the Association of Arbitrators, Southern Africa (AOA) for a suitably qualified mediator to be appointed.

12.2.4 The mediator shall endeavour to assist the parties to settle the dispute by agreement. The mediator shall not adjudicate the dispute, make any recommendations to the parties or advise any party on the merits of the dispute.

12.2.5 The mediator shall have the discretion to conduct the mediation in such a manner as he/she determines.

12.2.6 The mediator shall be responsible for the administration of the mediation including the process and conduct of the mediation, which shall be done in an expeditious and cost-effective manner.

12.2.7 Should the mediator be unable to mediate the matter successfully within 10 (ten) days of being appointed, the matter will be deemed to have failed mediation.

12.3 Arbitration:

12.3.1 In the event of the mediation failing, the dispute will automatically be referred to arbitration.

12.3.2 Notwithstanding the provisions of this Article any dispute concerning the payment of monies due to the Company; shall be excluded from arbitration and mediation.
12.3.3 If such a dispute or compliant arises, the aggrieved party shall notify the other affected party or parties in Writing and copies of such notification shall be served on the Managing Agent who shall inform the Board and should the dispute or complaint not be resolved within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.

12.3.4 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified Person as may be agreed upon between the parties to the dispute.

12.3.5 If the parties cannot agree as to the Person of the arbitrator to be appointed within 5 (five) days after the arbitration has been demanded, the Auditors of the Company shall, upon written application, in Writing, appoint an arbitrator within 7 (seven) days after they have been required to make the appointment.

12.3.6 The arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after demand for security or payment was made, the other party shall be entitled to abandon arbitration proceedings.

12.3.7 The intention being that the arbitration shall be concluded within 45 (forty-five) days after an arbitrator has been appointed or security for costs has been furnished.

12.3.8 The arbitrator shall make his/her award within 7 (seven) days from the date of the completion of the arbitration and shall, in making his/her award, have regard to the principles laid down in terms of the MOI and the Rules thereunder. The arbitrator may determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such Shares as he/she may determine and as he/she in his/her discretion may deem appropriate, having regard to the outcome of the arbitration.
12.3.9 In making an award of costs, it shall be competent for the arbitrator to award costs against the Company on the basis that the Member in whose favour the award was made shall be excluded from contributing to such costs through his general levy and / or any special levy contributions.

12.3.10 The decision of the arbitrator shall be final and binding and may be made an Order of the High Court upon application of any party to, or affected by, the arbitration.

12.3.11 The provisions of the Arbitration Act, No. 42 of 1965, shall be applicable.

12.3.12 Notwithstanding that the Arbitration Act, No. 42 of 1965, makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the Company and more than one Member or between a number of Members arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be joined in the arbitration by notice thereof to such other parties as soon as possible after commencement of the arbitration proceedings, but in any event not later than 10 (ten) days prior to the arbitration hearing.

13. COSTS

13.1 A Member shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the Company in obtaining the recovery of arrear Levies, penalties, fines, interest or any other arrear amounts due and owing by such owner to the Company and which amounts shall become due and payable upon written demand thereto, subject only to any taxation and/or dispute.

13.2 The above includes enforcing compliance with The Act, the provisions of this MOI, any Rules and or Regulations issued by the Company from time to time.
14. KITCHEN LEVY

14.1 It is recorded that a kitchen facility was established and is managed on behalf of the Members.

14.2 The Board may levy upon Members, a number of compulsory meals per month at a levy to be determined by the Directors from time to time in order to render a sustainable service.

14.3 The Company may itself employ personnel to manage and operate the kitchen facility or the Board may appoint external service providers to provide such management- and operational services.

15. FRAIL CARE

15.1 It is recorded that a frail care centre was established in the Scheme for the benefit of and the use of the Members.

15.2 The frail care centre is managed by external service providers appointed by the Board from time to time.

15.3 Members are liable for payment of any services required from the frail care centre. It is recorded that a Member concludes a separate agreement with the frail care centre for any services.

16. QUALIFYING OCCUPANTS AND OCCUPATION OF UNITS

16.1 All persons, in the sole discretion of the Directors, intending to occupy a Unit in the Scheme, will be subject to an assessment as determined from time to time by the Directors, which assessment procedure will be completed in accordance with the provisions of the Older Person Act, 13 of 2006.
16.2 It was imposed as a condition by the Developer of the Scheme that only persons 50 (fifty) years and older shall occupy the Units relating to the Scheme. If the occupier is married or deemed to be in a permanent life partnership at the date of occupation and any one of the spouses or partners qualifies in terms of this Article, both parties shall qualify.

16.3 All Units (100%) in the Scheme shall be made available for occupation for retired persons only, as defined in the Housing Development Schemes for Retired Persons Act, 65 of 1988. This means that should a Unit be sold to a person or persons younger than 50 (fifty) years or to a company, close corporation or trust, the Unit may only be occupied by retired persons as stipulated in Article 16.2.

16.4 The Unit may not be used or occupied by more than 2 (two) persons at any time, unless the prior written consent has been obtained from the Company.

16.5 The frail care centre service provider may, with the approval of the Directors, for its own account, provide medical care to occupants in Units which are leased by the said frail care centre service provider and may sublet to such occupants who require medical care; provided that such approval is granted in the sole discretion of the Directors.

17. RE-SALE LEVY AND RE-SALE FUND CONTRIBUTION ON TRANSFER OF UNITS

17.1 Should a Unit be transferred, the Company shall upon transfer be entitled to receive an amount equal to 3,5% (three comma five percent) of the Gross Selling Price payable by the selling Member thereof and which amount is referred to as “the Re-sale Levy”.

17.2 If the Unit is bequeathed, donated, exchanged or otherwise alienated, the said 3,5% (three comma five percent) of the then Fair Market Value of a Unit shall be paid to the Company upon transfer.

17.3 In the event of a dispute regarding the Fair Market Value, the said value of the Unit shall be determined by an expert who is a registered valuer agreed to between the Company and the Owner of the Unit. Failing such agreement within (5) Business Days after any
party has requested the other in writing to agree on the appointment, the principal of the South African Institute of Valuers will appoint a professional valuer from amongst its registered members. The said valuer will act as an expert and not as an arbitrator and his decision will be final and binding upon the parties and not be subjected to an appeal. The expert will be entitled to order one of the parties to pay his costs or each party to pay a specified proportion of his costs.

17.5 The Unit may not be transferred unless a Clearance Certificate has been produced by the Company to the effect that the said amount has been paid to it or that payment thereof has been guaranteed to the satisfaction of the Company.

17.6 Articles 17.1 & 17.2 above shall not be applicable when the Unit is bequeathed, donated, exchanged or otherwise alienated to the spouse of the Owner or to the other spouse in the event of joint ownership of the Unit.

17.7 Should the Owner of a Unit be a Company, Close Corporation or Trust and the shareholding, members' interest or beneficial interest in the Company, Close Corporation or Trust, as the case may be, is transferred, sold or otherwise disposed of, the Company is entitled to payment of an amount equal to 3,5% (three comma five per cent) of the then Fair Market Value of the Unit owned by the Company, Close Corporation or Trust upon such sale or transfer of shareholding, members' interest or beneficial interest.

17.8 The Fair Market Value, if not agreed upon between the Company and the Owner, will be determined in accordance with the provisions of Article 17.3.

17.9 The shareholding, members' interest or beneficial interest may not be transferred or ceded unless a Certificate has been produced by the Company to the effect that the said amount has been paid or that payment thereof has been guaranteed to the satisfaction of the Company.

17.10 The provisions of Articles 17.7, 17.8 and 17.9 above shall not be applicable when the shareholding, members' interest or beneficial interest is bequeathed, donated, exchanged or otherwise alienated to the spouse of any Shareholder, the spouse of a Member or the spouse of a Trust beneficiary. For purposes of clarity, in the event of a beneficial interest
in a Trust, the exclusion is only applicable where transfer is to a spouse of a trust beneficiary and not to any other trust beneficiaries (i.e. children).

17.11 The **Company** shall be entitled to the 3.5% (three comma five percent) of the **Gross Selling Price** payable by the purchaser of the **Unit** in the case of a sale in execution where the **Unit** is sold by a mortgagee at a sale in execution or is sold by the **Owner** with consent of a mortgagee in order to be relieved of his responsibilities under the bond (a so-called distressed sale), provided that there are surplus funds available after deduction of the costs or realisation of the **Unit** and claims of any preferent creditors.

17.12 The issuing of a **Clearance Certificate** in the event of a sale in execution shall be made subject to the provision that the conveyancer attending to the transfer, will first effect payment of the re-sale levy to the **Re-Sale Fund** in the event that there is any surplus from the proceeds of the sale, refundable to the owner.

17.13 The **Re-sale Levy** may be applied towards maintenance and repair expenditure or directed by Special Resolution by the **Members** in a General Meeting.

### 18. COMPANY RULES

18.1 In accordance with the provisions of Section 15 of the **Act**, the Rules as set out in Schedule 1 hereto, are effective as at the **Effective Date**, which Rules may from time to time be ratified, amended, supplemented or repealed in accordance with the provisions of the Memorandum of Incorporation and the **Act**. Any Rules made, amended or repealed by the **Board** of the **Company** from time to time shall be published in accordance with the provisions of this **MOI**.

18.2 Save to the extent that the Rules as set out in Schedule 1 hereto were amended, the Rules issued by the **Directors** or the **Company** with regards to conduct of **Members** or any other matter, in force on the date before this **MOI** is accepted by the **Members**, will remain of force and effect as if they were issued in terms of Article 5.1 and 5.2 of this **MOI**.
19. **DEPOSIT AND INVESTMENT OF FUNDS**

19.1 The **Directors** shall cause all moneys received by the **Company** to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the **Company** and, subject to any direction given or restriction imposed at a General Meeting of the **Company**, such moneys shall only be withdrawn for the purpose of payment of the expenses of the **Company** or investment in terms of Article 19.3.

19.2 The **Directors** may authorize the **Managing Agent** to administer and operate the accounts referred to in Article 19.1 and 19.3, provided that where the **Managing Agent** is an estate agent as defined in the Estate Agents’ Act (Act 112 of 1976), the **Directors** may authorize such **Managing Agent** to deposit moneys contemplated in Article 19.1 in a trust account as contemplated in section 32 (3) of the Estate Agents’ Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in Article 19.1.

19.3 Any funds not immediately required for disbursement, may be invested in a savings or similar account with any bank approved by the **Directors**.

19.4 Interest on moneys invested shall be used by the **Company** for any purpose consistent with its objectives.

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20. **NO REFUNDS OR DISTRIBUTION OF PROFITS OR ASSETS**

20.1 The **Members** shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them, unless such contribution was paid in advance and lies to the **Member’s** credit.

20.2 No portion of the profits or gains of the **Company** shall be distributed to any **Member** or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.
21. APPOINTMENT, POWERS AND DUTIES OF A MANAGING AGENT

21.1 The Directors may from time to time and shall, if required by the Members of the Company in a General Meeting, appoint in terms of a written contract, a Managing Agent to control, manage and administer the Property and the obligations to any public or local authority by the Company on behalf of the Members, and to exercise such power to collect Levies and to appoint a supervisor or caretaker.

21.2 The appointment of a Managing Agent shall be in writing.

21.3 The Directors shall ensure that there is included in the contract of appointment of any Managing Agent, a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Directors may, without notice, cancel such contract of appointment, and that the Managing Agent shall have no claim whatsoever against the Company or any of the Members as a result of such cancellation.

21.4 The contract with the Managing Agent shall further provide for the appointment to be revoked, and such Managing Agent shall cease to hold office, if:

21.4.1 where the Managing Agent is a juristic person, an order is made for its provisional or final liquidation or, where the Managing Agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the Managing Agent is a company, it is placed under business rescue; or

21.4.2 the Managing Agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the Managing Agent is a company or a close
corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or

21.4.3 a **Board** resolution of the **Company** is passed to that effect; provided that in such event the **Managing Agent** so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

21.5 The **Managing Agent** shall keep full records of his/her/its administration and shall report to the **Company** and all holders of registered sectional mortgage bonds who have notified the **Company** of their interest of all matters which in his/her/its opinion detrimentally affect the value or amenity of the **Property** and any of the **Sections**.

21.6 The **Directors** shall give reasonable prior notice to the **Managing Agent** of all meetings of the **Directors** and he may with the consent of the **Directors** be present thereat.

21.7 The **Directors** shall from time to time furnish the **Managing Agent** with copies of all minutes of the **Directors** and of the **Members**, unless the **Managing Agent** has prepared such Minutes.

22. **ACCOUNTING RECORDS**

22.1 The **Directors** shall cause such accounting records as are prescribed by Section 28 of **The Act** to be kept. Proper accounting records shall be deemed to be kept if such accounting records as are necessarily fairly present the state of affairs and business of the **Company** and to explain and support the transactions and financial position of the trade or business of the **Company**.

22.2 The accounting records shall be kept or be accessible from the registered office of the **Company** or at such other place as the **Directors** think fit, and shall always be open to inspection by the **Directors** during normal business hours of the **Company**.
22.3 The Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Company or any of them shall be open to inspection by Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any accounting records or documents of the Company except as conferred by The Act or authorized by the Directors.

23. ANNUAL FINANCIAL STATEMENTS

23.1 The Directors shall from time to time, in accordance with Section 29 and 30 of The Act, cause to be prepared and laid before the Company in General Meeting, such Annual Financial Statements as are referred to in those sections of The Act.

23.2 The Board of the Company may voluntarily elect to appoint an Auditor in accordance with Section 90 of The Act.

23.3 The Company does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Act.

23.4 The Company does not elect, in terms of section 118(1)(c)(ii), to submit voluntarily to the provisions of Parts B and C of Chapter 5 of the Act nor to the Takeover Regulations provided for in the Act and will be bound by these provisions only to the extent contemplated in section 118(1)(c)(i).

23.5 The Company nevertheless elects a voluntary audit, in accordance with standards to be determined by the Directors from time to time by resolution, and minuted, but which may be no less than those imposed by IFRS Small Business Compliant auditing.

23.6 A copy of any Annual Financial Statement which are to be laid before the Company in Annual General Meeting, in terms of Section 30(3)(d) of The Act, shall be included in the notice of the Annual General Meeting, at which it is to be considered: Provided that this MOI shall not require a copy of those documents to be sent to any Person of whose address the Company is not aware.
ANNEXURE “A”

PROXY FORM

I, _______________________________________, the undersigned, shareholder/member of the Company, do hereby appoint:

_________________________________________ of ______________________________

Or failing him/her: ________________________ of ______________________________

Or failing him/her: ________________________ of ______________________________

as my proxy to vote for me on my behalf at the General Meeting/Special General Meeting of the Company to be held on the _____ day of ______________________ 20____ and at any adjournment thereof as follows:

1. Motion to ____________________________________________________
   (See attached draft resolution, if relevant)
   In favour    Against   Abstain

2. Motion to ____________________________________________________
   (See attached draft resolution, if relevant)
   In favour    Against   Abstain

3. Motion to ____________________________________________________
   (See attached draft resolution, if relevant)
   In favour    Against   Abstain

Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification    Without modification

If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.

Signed on this ______ day of ______________________________ 20___

SIGNATURE:  ___________________________________

Notes:
1. A member/shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a member of the Company.
2. The instrument appointing a proxy shall include a copy of the Identification Document of the member/shareholder concerned (or of his appointed agent, duly authorized in writing) and where the member/shareholder is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company. The member/shareholder or his proxy shall furnish positive identification to the satisfaction of the Chairperson.
**Schedule 1**

**Company Rules**

**Introduction:**

These Rules are intended to preserve the prime objectives of the Company, namely to protect and advance the communal interest of owners, occupants, visitors and users of any of the properties comprising the Village, to set uniform standards for development of the properties within the Village, to regulate the use by owners, members and occupiers of common areas within the Village and to set Rules and standards which will protect the rights of all interested parties and will promote good neighbourliness.

These Rules may be amended from time to time by the Directors of the Company in accordance with the provisions of Section 15 of the Act.

These Rules comprise of:

(A) **Conduct Rules**
(B) **Exclusive Use Areas (EUA’s)**

**Definitions:**

In these Rules the following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

(i) **“The Act”:** Means the Companies Act, 71 of 2008 as amended from time to time;

(ii) **“Annual Financial Statements” / “AFS”:** Means the Annual Financial Statements of the Company to be prepared in accordance with Article 23;
(iii) "Annual General Meeting" / "AGM": Means the Annual General Meeting of the Company referred to in Article 9.1.1;

(iv) "Auditors": Means the Company's appointed Auditors from time to time;

(v) "Authorized Representative": Means a Person duly authorized in terms of The Act by the Company or other body corporate to act as its representative at any General Meeting of the Company;

(vi) "Board": Means the Board of Directors of the Company and comprise all the Directors of the Company duly appointed in terms of The Act;

(vii) "Business day": A Business day is calculated by:

(a) excluding the day on which the first such event occurs;

(b) including the day on which the second event occurs;

(c) and excluding any Public Holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively;

(viii) "Chairperson": Means the Chairperson of the Board of
Directors, elected in accordance with this MOI or if that expression is used with reference to a General Meeting or meeting of the Directors, at which that Person is not present or does not act as Chairperson, the Person acting as Chairperson in accordance with the provisions of this MOI;

(ix) “Clearance Certificate/s”:

Means the certificate of clearance to be issued by the Company or the Managing Agent which certifies that no moneys are due in respect of a Unit;

(x) “Common Property”:

(i) in relation to a Scheme or the Village, means-

(a) the land included in the Scheme;

(b) such parts of the building or buildings as are not included in a Section; and

(c) land referred to in section 5(1)(d) of the STSM Act;

(d) improvements and/or amenities as are not included in a Section;

(xi) “Company”:

Means the Bougainvilla Attree Oord Home Owners Association (NPC), Registration Number: 2013/189477/08, and any reference to the Company or Village will likewise be a
reference to the Bougainvilla Aftree Oord Home Owners Association (NPC):

(xii) “CSOS Act”:
Means the Community Schemes Ombud Service Act, Act No. 9 of 2011;

(xiii) “Directors”:
Means a Person or Persons appointed or elected to the Board in accordance with the provisions of this MOI;

(xiv) “CIPC”:
Means the Companies and Intellectual Property Commission;

(xv) “Effective Date”:
Means the date upon which CIPC issues a Registration Certificate, or accepts this MOI or the date as recorded on the Notice of Incorporation, whichever event first occurs;

(xvi) “Financial Year”:
Means, subject to amendment from time to time, the financial year of the Company which shall run from the first day of March in any year until the last day of February of the following year;

(xvii) “General Manager”:
Means a person appointed and employed by the Managing Agent to manage the day to day affairs of the Company. The Board may, in the event of no Managing Agent being contracted or functioning as such, appoint a
suitable person as **General Manager** and staff to assist him to manage the day to day affairs of the **Company** on a temporary basis until a **Managing Agent** has been appointed and is functioning;

(xviii) “**Gross Selling Price**”:

Means the price at which a **Unit** is sold, as reflected in the Deed of Sale, prior to deduction of any commissions, costs or other transfer related expenditure. Where VAT applies to the transaction, the Gross Selling Price will be Net of VAT;

(xix) “**Kitchen Levy**”:

Means the Kitchen Levy referred to in Article 14;

(xx) “**Levies**”:

Means all contributions levied from time to time by the **Directors** upon **Members** for the purpose of meeting all the expenses which the **Company** has incurred or which the **Directors** reasonably anticipate the **Company** will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Article 7 of this **MOI**;

(xx) “**Local Authority**”:

Means the City of Tshwane Metropolitan Municipality, Gauteng or its successors in title having jurisdiction over the **Scheme**;

(xxii) “**Managing Agent**”:

Means any **Person** or an estate agent as
defined in the Estate Agents Act, Act 112 of 1976, appointed by the Company as an independent contractor from time to time, to manage and administer the affairs of the Company conferred upon such Agent by the Board of Directors of the Company, provided that, if at any time there is no formally appointed Managing Agent then any reference to the Managing Agent shall be a reference to the Board of Directors;

(xxiii) "Managing Committee": Means the committee appointed by the Board from their ranks in order to attend to the day-to-day management of the Company;

(xxiv) "Member(s)": Means any person who is reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of a Unit in the Scheme and any Person who has successfully applied for Membership of the Company and as more fully stipulated in Article 6 of this MOI;

(xxv) "MOI": Means the Memorandum of Incorporation of the Company in force for the time being;

(xxvi) "Older Persons Act": Refers to the Older Persons Act, Act No. 13 of 2006;

(xxvii) "Ordinary Resolution": Means a Resolution adopted with the support of 50% plus 1 of the voting rights exercised on
the Resolution;

(xxviii) **“Owner”**: Refers to a **Member** of the **Company**;

(xxix) **“Person”**: Includes any **person**, corporate body or **Company** incorporated or registered under any law and anybody of **Person(s)**, corporate or incorporate;

(XXX) **“Property”**: Refers to Erf 1630 Montana Tuine Extension 49, Registration Division J.R., Gauteng Province, Erf 1761 Montana Tuine Extension 40, Registration Division J.R., Gauteng Province; Erf 1756 Montana Tuine Extension 64, Registration Division J.R., Gauteng Province, Erf 1759 Montana Tuine Extension 65, Registration Division J.R., Gauteng Province, on which the **Schemes** were developed;

(XXXI) **“Re-sale Levy”**: Means the contribution payable by a **Member** to the **Company** upon the sale/transfer/alienation of a **Unit** in terms of the provisions of Article 17;

(XXXII) **“Resident(s)”**: Means a **Person** in occupation of a **Unit** in the **Scheme** on a temporary or permanent basis by agreement or with consent from the **Member** of the relevant **Unit** or through his affiliation or association with such **Member**;
(xiii) "Retirement Act": Refers to the Housing Development Schemes for Retired Persons Act, Act No. 65 of 1988;

(xxiv) "Rules": Means the Rules by virtue of which Members are to participate in and comply with in order to achieve the objects of the Company as are prescribed and adopted by the Board of Directors of the Company and which Rules shall include, but not limited thereto, conduct rules and rules for enforcement of rules;

(xxxv) "Scheme" / "Village": Means the Sectional Title Schemes established on the Property;

(xxxvi) "Section": Means a Section shown as such on the Sectional Plan;

(xxxvii) "Sign": Includes the reproduction of a Signature by lithography, printing, or any kind of stamp or any other mechanical process and "Signature" has the corresponding meaning;

(xxxviii) "Special Resolution": Means a Resolution adopted by members of the Company with the support of at least 75% (seventy five percent) of the voting rights exercised on the Resolution;

(xxxix) "STA": Means the Sectional Titles Act, Act 95 of 1986 and/or any amendment or substitution thereof;
(xl)  **“STSM Act”**:  Refers to the Sectional Title Schemes Management Act, Act 8 of 2011 and/or amendment or substitution thereof;

(xli) **“STA-Special Resolution”**:  Means a resolution (if required in terms of the STA) – passed by at least 75% (seventy five percent) calculated both in value and in number, of the votes of Members of a Body Corporate who are present or represented by proxy or by a representative recognized by law at a General Meeting of which at least 30 (thirty) days' written notice, specifying the proposed resolution, has been given, or a resolution agreed to in Writing by at least 75% (seventy five percent) of all the Members of an HOA (reckoned in number) and at least 75% (seventy five percent) of all such Members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the Rules, a meeting of the Body Corporate may be convened for a date 30 (thirty) days or less after notice of the proposed resolution has been given to all the Members of the Body Corporate;

(xlii) **“STA-Unanimous Resolution”**:  Means a resolution (if required in terms of the
STA)

(a) passed unanimously by all the Members of the Body Corporate who are present or represented by proxy or by a representative recognized by law at a General Meeting of the Body Corporate of which at least 30 (thirty) days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80% (eighty percent) of all the Members of a Body Corporate (reckoned in number) and at least 80% (eighty percent) of all the Members (reckoned in value) are present or so represented: Provided that in circumstances determined in the Rules, a meeting of the Body Corporate may be convened for a date 30 (thirty) days or less after notice of the proposed resolution has been given to all the Members of the Body Corporate; or

(b) agreed to in Writing by all the Members of the Body Corporate personally or by proxy or by a representative of any such member recognized by law;

(xliii) “Tenant”: Means the lessee or sub lessee of any Unit situated within the Scheme. The term Tenant
includes the lessee as well as all residents of the **Unit** as a result of their relationship with the lessee;

(xliv) **“Unit”:** Means any primary or utility Section developed or to be developed on the **Property** in terms of the **STA**, together with its undivided share in the **Common Property** apportioned to that **Section**, in accordance with the quota of the **Section**;

(xlv) **“Village”:** Refers to the **Schemes**;

(xlvi) **“Vice-Chairperson”:** Means the **Vice-Chairperson** of the **Board of Directors**;

(xlvii) **“Writing”:** Means written, printed, typewritten, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form;

(xlviii) Words importing -

(a) the singular shall include the plural and vice versa;

(b) the masculine gender shall include females; and

(c) persons shall include partnerships, trusts and corporate bodies, and vice versa.

(xlix) Head notes to paragraphs in this **MOI** are inserted for purposes of reference only and shall not affect the interpretation of provisions to which they relate.
(i) Reference to the MOI means this Memorandum of Incorporation, including all schedules and annexures hereto.

(ii) Any word or expression which is defined in the Act and which is not otherwise defined in these Rules shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the Company.

(iii) These Rules shall be deemed to authorize the Company to do anything which the Act empowers a Company to do if so authorized by its MOI unless that authority is expressly excluded.
(A)

CONDUCT RULES
1. **GARDENING**

1.1 Owners or Residents are free to do their gardening around their house which is considered to be Private Gardens. Notwithstanding, any and all landscaping must at all times conform to the guidelines and requirements as laid down by the Directors and garden committee from time to time and may only be undertaken once the necessary prior written permission has been granted.

1.2 No trees or large shrubs may be planted near the structure of the Units or near the underground services where leaves tend to block the gutters or lift the foundations, or near the perimeter fences where they may interfere with the electric security fence, or near lamp posts where they might impede on the lighting, or the Common Property, without permission of the Directors.

1.3 Owners or Residents will be requested by the Directors to remove any plants which result in the deterioration of the surrounding lawns or which creates unsightly growth, or impede on public access. Failure to comply with such a request will result in the plants being removed by the Directors at the cost of the Owner or Resident.

1.4 The services of Common Property gardeners may not be utilised for private use unless by prior arrangement with the administration office. Such additional services will be charged for by the Gardening Contractor.

1.5 The provision of topsoil, fertiliser, ant-kill, etc. for Private Gardens, is the responsibility of the Owner or Resident.

1.6 The contractor is responsible for mowing of lawns and trimming of the edges and sweeping/vacuum cleaning of the Common Property as well as Private Gardens. Access must be granted to these gardeners by Owners and Residents, failing which the Owners or Residents themselves have to maintain the Private Gardens.

1.7 Private garden tools, hoses and other equipment must be stored where they will not interfere with, spoil the view of, other Owners or Residents.

1.8 Private braai equipment may only be used in Private Gardens or specific designated areas within the Common Property. All braai equipment so used must
be removed from the **Common Property** within a reasonable time. Any damages to grass or fittings from burning coals will be for the **Owner’s** cost.

1.9 Private lawnmowers and other tools, etc. are permitted to be used between 08:00 – 16:00 on Mondays to Saturdays.

1.10 **Owners** or **Residents** are requested to use water sparingly and most effectively with regard to time of day and season and subject to any general water restrictions imposed by the Local Authority or the **Board**.

1.11 If a discrepancy arises regarding the boundary of a garden, reference will be made to the fenced area as the **Private Garden**. If no such reference is available, it will be at the sole discretion of the **Directors** to determine the boundary.

1.12 A landscaping application form needs to be submitted to the **Board** or garden committee for approval for any plants that will grow higher than 1 metre or for any arches, water-features or other large ornamental items to be placed in the **Private Garden**. The **Directors** and garden committee will consider and decide on any such application.

1.13 Garden refuse must be bagged and put out before 08h00 on Mondays and Thursdays of a **Business Day**, for collection by the garden contractor. Garden refuse may under no circumstances be put out over weekends and on public holidays.

1.14 If at any time **Exclusive Use Areas** are created in respect of **Private Gardens**, any **Rules** applicable to **Exclusive Use Areas** in terms of the **STA** or in terms of these **Rules** shall take precedence over the provisions of this rule.
(B)

EXCLUSIVE USE AREAS (EUA’s)

Duties of Owners and Residents of Sections
PREAMBLE:

It is recorded that EUA’s are, with adoption of these Rules, created in terms of these Company Rules, in terms of Section 27A of the STA and garden areas previously referred to as “Private Gardens” have now been allocated for the exclusive use thereof by certain Owners.

(1) Creation of Exclusive Use Areas (“EUA’s”):

(i) Notwithstanding the fact that EUA’s as are more fully described hereunder, form part of the Common Property of the Village in terms of the Sectional Plan as filed with the Registrar of Deeds, Owners of each Section shall be entitled to the exclusive use, occupation and enjoyment to the exclusion of the rights of all other Owners or Residents and any other persons, of the area numbered to coincide with the number of the Unit, to be used as a garden/patio/courtyard and for recreational purposes, and which areas shall be known as Exclusive Use Areas.

(ii) The Company must take all reasonable steps within its ability to ensure that the EUA’s remain reserved for the exclusive use of the Members entitled thereto in accordance with (1)(i).

(iii) A Member must maintain the EUA of which he has the sole use as if it forms part of his Section and he must take all reasonable steps to keep such area in a clean, hygiene, neat and attractive condition.

(iv) An Owner or Resident may not use his EUA or allow it to be used in such a manner and for such purposes as may prejudice the safety, appearance or enjoyment of other Units or other portions of the Common Property.

(v) Notwithstanding the provisions of sub-rule (1)(i) above, an Owner or Resident must give access to the Company and/or to other Owners or Residents to his EUA for any purpose reasonably required for the maintenance of the EUA’s of other Owners or Residents. Each Owner or Resident must give access to the Company to and over his EUA for any reasonable purpose as may be required for the maintenance of the Common Property.
(2) Statutory and General Obligations of an Owner:

In addition to his obligations in terms of Section 44 of the STA, an Owner-

(i) shall not use his Section, EUA or any part of the Common Property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the building, Property or the Company;

(ii) shall not contravene, or permit the contravention, of any Law, By-law, Ordinance, Proclamation or Statutory Regulation, or the conditions of any license, relating to or affecting the occupation of the building or the Common Property, or the carrying on of business in the building, or so contravene or permit the contravention of the conditions of title applicable to his Section or any other Section or to his EUA or any other EUA;

(iii) shall not make alterations which are likely to impair the stability of the building or the use and enjoyment of other Sections, the Common Property or any EUA;

(iv) shall not do anything to his Section or EUA which is likely to prejudice the harmonious appearance of the building;

(v) shall, when the purpose for which a Section and EUA is intended to be used-

(a) is shown expressly or by implication on a registered sectional plan;

(b) is shown expressly or by implication on the original approved building plan thereof;

(c) can be inferred from the provisions of the Rules; or

(d) is obvious from its construction, layout and available amenities,

not use, nor permit such Section or EUA to be used, for any other purpose:

Provided that with the written consent of all Owners such Section or EUA may be used for another purpose;

(vi) shall not construct or place any structure or building improvement on his or her EUA, without the prior written consent of the Board, which shall not be
unreasonably withheld and will ensure that the provisions of Section 24 and Section 25 or other relevant provisions of the STA or the Company Rules, will not be contravened;

(vii) shall maintain the hot water installation which serves his Section, or, where such installation serves more than one Section, the Owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the Common Property and is insured in terms of the policy taken out by the Company;

(viii) shall be liable for the maintenance and upkeep of his EUA, as if it were part of his/her/its Section, inclusive of all alterations and all improvements thereon;

(ix) (a) shall be liable to reimburse the Company for all reasonable expenses incurred by the Company to remedy any failure of the Owner to maintain or repair his EUA or to ensure compliance and enforcement of the provisions of these Company Rules.

(b) Where an Owner fails to attend to the upkeep and maintenance of his Section and any area allocated for his exclusive use in accordance with the standards prevailing in the Village and fails to remedy any defect and/or to maintain such area after receipt of a written demand at his chosen domicilium citandi et executandi from the Board, the General Manager and/or the Managing Agent calling upon him to comply within 30 days, then and in that event the Company shall be entitled to remedy any such failure by the Owner and to claim such reasonable costs and expenses from the Owner; and

(c) any reasonable costs and/or expenses so incurred by the Company shall be debited to the Owner's Levy account and shall be deemed to be outstanding Levies and recoverable in a similar manner and in terms of the same procedures as are applicable with regard to collection of outstanding Levies. If the reasonableness of such costs is disputed by the Unit Owner then the onus of discharging the proof of reasonableness of such expenses shall lie with the Owner;
(x) shall ensure that a copy of these **Company Rules** and any future amendments thereto, form part of any Lease Agreement and/or Sale and Purchase Agreement pertaining to his **Section** and shall deliver a copy thereof to the tenant, **Resident** or purchaser of his **Section**;

(xi) shall not proceed with any alterations, fixtures, installations or additions to any part of the **Common Property** within an **EUA** without the written consent of the **Board** and subject to such conditions as the **Board** may impose thereon. Application must be made **in writing** and full specifications of the intended alteration must be supplied, including a plan indicating the design, measurements and materials to be used;

(xii) shall be liable for any increase in the insurance premium caused as a result of any alteration/installation made by the **Owner** within, on or to any area allocated for the **Owner's** exclusive use.

(xiii) Notwithstanding the obligation of an **Owner** to maintain his **EUA**, the **Company** shall still be liable for the maintenance of the below-mentioned **Common Property** areas and which maintenance expenses shall be paid from the Levy Fund, in accordance with **Participation Quotas** applicable. These items are the following:

a) All boundary walls, perimeter walls and/or dividing walls;

b) The maintenance, replacement and upkeep of all infrastructure serving all **Units** in the **Scheme**. (Water supply, electric reticulation, sewers and original paving).

c) A garden service will still be rendered as far as the mowing of lawns and trimming of edges are concerned.

(xiv) **Owners** may pursue gardening activities and may lay out gardens within their **EUA's** and at their own costs and subject to the provisions of **EUA** Rule (3), provided that no structural additions may be erected without the prior written consent of the **Board**.
(3) **Plants, shrubs, trees and lawns:**

(i) may be planted on EUA’s provided that such plants, shrubs and lawn may not fall under any category which is prohibited from time to time in terms of any Law, By-law or Regulation;

(ii) shall be planted in such a manner so as not to cause a hindrance or damage to any Common Property, including but not limited thereto, foundations, walls, pipes, drains, any sewerage system, electrified security fencing or other electrical installations, roofs and gutters;

(iii) shall be removed by the Owner and any damages caused thereby repaired at the Owner’s expense where, at the sole discretion of the Directors, such hindrance or damages are caused or is likely to be caused by such plants, shrubs and lawns. If an Owner fails to give effect to these provisions then the Company shall be entitled to remedy any defect, failure or damages caused and to claim such expenses from the Owner, subject to notice as envisaged in terms of EUA Rule (2)(ix)(b);

(iv) All trees and shrubs which will grow over 1 (one) metre in height may only be planted with the prior written approval of the Board, subject to such reasonable conditions as the Board may impose.

(4) **Aesthetic guidelines:**

In considering any application in terms of EUA Rule (2)(vi) with regard to an alteration to Common Property or any construction or addition to Common Property, which falls within an EUA, the Directors shall apply the following guidelines:

(i) All improvements should be in accordance with these guidelines, in order to create uniformity in the Scheme.

(ii) Any additions or alterations may not deviate from the existing design, appearance and colour schemes generally applied or used in the Scheme and only materials similar to the majority of materials used in the Scheme, may be used for any additions or alterations.
(iii) All television aerials, antennae, satellite dishes, solar heating equipment and/or air-conditioning or any renewable energy installation, should be concealed as far as possible and the Directors or General Manager, if authorized by the Directors, must approve of its positioning in writing.

(iv) Roofing materials for patios or balconies must be approved by the Directors or General Manager, if authorized by the Directors, in writing. Only ventilation-deck (louvre-deck) may be approved. Shade netting will not be allowed.

(v) All additions or alterations must blend with the existing colour scheme generally used in the Scheme.

(vi) All installations, alterations or improvements must be approved by the Directors or General Manager, if authorized by the Directors, in writing and subject to such reasonable conditions as the Directors may in their sole discretion impose. In considering any request/application from an Owner, the Directors must observe these provisions and consider the rights of other Owners and Residents and must ensure that any approvals do not create a nuisance or disturbance to other co-Owners and/or Residents.

(vii) If the construction holds an insurance risk or may result in an increase of the insurance premium payable by the Company, appropriate conditions shall be imposed. Any additional costs shall be for the Owner’s account.

(viii) Where any statutory approval or requirements apply in terms of any Statute, By-law, Regulation or otherwise, the Owner shall as a deemed condition for approval by the Directors, comply with such approvals and requirements.

(5) Existing alterations to Common Property:

(i) It is recorded that any existing alterations to Common Property, construction or additions thereto which fall within an EUA as at date of approval of these Rules shall, from approval of these Rules, be deemed to have been properly approved, provided that if any such alteration, construction or addition does not comply with any provision of the Act or Rules or any requirement that may be applicable in terms of another statutory requirement, By-law, Regulation or otherwise, the Owner concerned shall
be liable to comply therewith, when required by the relevant Authority or by the **Company**.

(ii) It is recorded that, where any alteration comprises an extension of a **Section**, such alterations are not condoned and the **Owners** will have to comply with the provisions of Section 24 of the **Act**, which deals with extension of **Sections**.