



MEMORANDUM OF INCORPORATION

of



Community Schemes
Ombud Service

Affordable Reliable Justice

1st Floor Building A, 63 Wierda Road East,
Wierda Valley, Sandton, Gauteng

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BOUGAINVILLE 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**"

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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.



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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":** **Business day** is calculated by:



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- (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**;



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(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



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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 any body 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;



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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



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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**;



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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



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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;



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(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



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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;



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- 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 tranquility and the prevention of nuisance of any nature to any **Member/Resident**, or to prevent any harm to the environment;



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- 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**,



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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 tranquility 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 **SOS** procedure will be followed and implemented:



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- (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~~



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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**.



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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



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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**;



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(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;

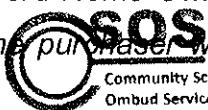
- (ii) such **Member** is in breach (other than payment of **Levies**) with any of his obligations towards the **Company** in terms of this **MOI** or the **Rules** and has failed to remedy such breach after having been called upon by the **Company, in Writing**, to remedy such breach and he remains 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*



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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 Bougainvillea 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 presented at the next Annual General Meeting of the **Company**.



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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 compulsory;
- (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.



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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)].



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- (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



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- 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 a 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**;



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- 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.



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- 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.



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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**.



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- 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



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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;



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- 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**.



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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 domicile of the **Company** by no 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.

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**.



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- 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  Sixty) days in respect of an Annual General Meeting;



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- 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.



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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.



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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.



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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 affected **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 domicilium but that any new domicilium 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.



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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 complaint 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.



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- 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



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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.



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- 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 the consent of a mortgagee in order to be relieved of his responsibilities under the bond (a



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30-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 **Reserve 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 expenditure in the sole discretion of the **Board** or as may be directed by the **Members** in 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.

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



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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**.



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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.



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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 neighborliness.

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 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;
- (viii) **"Chairperson":** Means the **Chairperson** of the **Board** of



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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**;

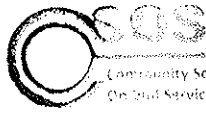
(ix) **"Clearance Certificate/s"**: Means the certificate of clearance to be issued by the **Company** or the **Managing Agent** which certifies that no moneys are due in respect of a **Unit**;

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



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reference to the **Bougainvilla Affree 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**;

(xxi) **"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 any body 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;



(xxxii) "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;

(xxxiii) "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**;

- (xxxiii) **"Retirement Act"**: Refers to the Housing Development Schemes for Retired Persons Act, Act No. 65 of 1988;
- (xxxiv) **"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;



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(xi) **"STSM Act"**: Refers to the Sectional Title Schemes Management Act, Act 8 of 2011 and/or amendment or substitution thereof;

(xii) **"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**;



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(xiii) **"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**;



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(xlili) **"Tenant":**

Means the **lessee** or sub **lessee** of any **Unit** situated within the **Scheme**. The term **Tenant**



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includes the lessee as well as all residents of the **Unit** as a result of their relationship with the lessee;

- (xlv) **"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**;
- (xlv) **"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**.
- (li) 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.




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(A)

CONDUCT RULES



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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



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PREAMBLE:

It is recorded that **EUA's** are, with adoption of these **Rules**, created in terms of these **Company Rules**, in terms of Section 10(7) of the STSMA 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/court yard 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**.



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(2) Statutory and General Obligations of an Owner:

In addition to his obligations in terms of Section 13 of the **STSMA**, 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**;



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- (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**.



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(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



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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**.



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