

REPUBLIC OF SOUTH AFRICA

MEMORANDUM OF INCORPORATION

GOLF VIEW NELSPRUIT HOMEOWNERS ASSOCIATION NPC

REG NO: 2005/042658/07

The MEMORANDUM OF INCORPORATION (MOI) of the Company are as follows.

1. DEFINITIONS

In this MOI and unless the context indicates otherwise the following words and expressions shall have the following meanings:

- 1.1. "authorised representative" means a person authorised to act as the representative of any natural person, body corporate, company or an association of persons as the case may be;
- 1.2. "Association" or "Company" means GOLF VIEW NELSPRUIT HOMEOWNERS ASSOCIATION NPC (a non-profit organization in terms of Act 71/2008), acting as **Golf View Estate Homeowners Association**.
- 1.3. "Auditors" means **BVK Chartered Accountants and auditors**, or any other auditor appointed from time to time by the Association;
- 1.4. "Companies Act" means the Companies Act No 71/2008 and any amendment or modification thereof or substitution therefore from time to time;
- 1.5. "in writing" means written or reproduced by any substitute for writing or partly written and partly reproduced and including printing, typewriting or lithography or any other mechanical process, partly one and partly another;
- 1.6. "MOI" means this Memorandum of Incorporation (with all annexures thereto) as framed or as from time to time amended by special resolution;
- 1.7. "chairman" means the chairman or the deputy chairman for the time being of the board of directors;
- 1.8. "conduct rules" means the conduct rules made by the directors as they apply from time to time and include the following –
 - 1.8.1 The Architectural Guidelines as "**Annexure A**"
 - 1.8.2 The Builders Conduct Rules as "**Annexure B**"
 - 1.8.3 The Conduct Rules attached as "**Annexure C**"
- 1.9. "Council" means the Mbombela Local Municipality and its successor/s in title;
- 1.10. "directors" means the directors of the Association;
- 1.11. "erf" means any erf, portion or subdivision of the development area and includes all improvements thereon;

- 1.12. "estate common property" means the whole of the development area or township and all improvements thereon, any access road and/or servitudinal right of access.
- 1.13. "estate manager" means the estate manager appointed by the directors from time to time;
- 1.14. "facilities" means all and any facilities or amenities of whatsoever nature which may be provided within the development area and forming part of the common property;
- 1.15. "financial year" means the financial year of the Association which shall run from the first day of March in each year until the last day of February in the subsequent year;
- 1.16. "general meeting" means an annual general meeting or a general meeting of the Association or any adjournment thereof, as the case may be;
- 1.17. "levy" means the levy or levies referred to in clause 6.1 below;
- 1.18. "member director" means a director appointed by the members;
- 1.19. "member" means a member of the Association which is a registered owner of an erf in the development area;
- 1.20. "memorandum" means the Memorandum of Incorporation for the time being of the Company;
- 1.21. "minutes" means the minutes of a general meeting or a directors' meeting, as the case may be;
- 1.22. "notice" means written or electronic notice of a meeting delivered to the last known address or electronic address of the member or director. The day of sending of the electronic message shall be deemed the day it was received by the member or director.
- 1.23. "office" means the registered office of the Association;
- 1.24. "person" means a natural person, juristic person and includes a close corporation, company, trust or an association of persons, as the case may be;
- 1.25. "registered owner" means a registered owner of an erf or a sectional title unit as registered in the relevant Deeds Office;

- 1.26. "secretary" means the secretary of the Association for the time being;
- 1.27. "services" means such utilities and amenities as may be provided by or on behalf of the Association for the registered owners and residents within the township and/or the development area;
- 1.28. "special resolution" means a special resolution passed in terms of Section 65 (10) of the Companies Act;
- 1.29. "township" means the township known as Nelspruit Extention 37 or any subsequent division thereof comprising the development area;
- 1.30. "unit" means a unit (as defined in the Sectional Titles Act) in a sectional title scheme within the township or any subsequent division of the township - the totality of 104 units in Fairview Body Corporate.

2. INTERPRETATION

In this MOI:

- 2.1. the clause headings are for convenience and shall be disregarded in construing this MOI;
- 2.2. unless the context clearly indicates a contrary intention
 - 2.2.1. the singular shall include the plural and *vice versa*;
 - 2.2.2. a reference to any one gender shall include the other genders;
 - 2.2.3. a reference to natural persons includes legal persons and *vice versa*;
 - 2.2.4. the words "power(s)" and "authority(ies)" shall be interpreted as extensively as possible;
 - 2.2.5. reference to any provision of the Companies Act shall include such provision as it may be modified or re-enacted from time to time;
- 2.3. subject to the preceding clause, any words or expressions defined in the Deeds Registries Act No 47 of 1937 or the Sectional Titles Act shall, unless the context otherwise requires, bear the same meaning in this MOI;
- 2.4. notwithstanding any provision of this MOI and notwithstanding the omission of any provision of this MOI, the Company may do anything which the Companies Act empowers the Company to do as if authorised by this MOI;

- 2.5. words and expressions defined in any clause herein shall, for the purpose of that clause and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in the clause in question;
- 2.6. when any number of days is prescribed in this MOI, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.7. where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
- 2.8. if any provision of this MOI is in conflict or inconsistent with any law of the Republic of South Africa, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this MOI;
- 2.9. if any provision in a definition in this MOI is a substantive provision conferring rights or imposing obligations on any of the members then, notwithstanding that it is only in the definition clause of this MOI, effect shall be given to it as if it were a substantive provision in the body of this MOI;
- 2.10. **the annexures to this MOI are deemed to be incorporated in and form part of this MOI;**
- 2.11. all references to the provisions of the Companies Act is in respect of procedural and accounting matters of the Association only and should be read with any changes required by the context.

3. INCORPORATION

- 3.1. The Company is incorporated as a non-profit company as defined in the Companies Act, 2008.
- 3.2. **The company is incorporated in accordance with and governed by the provisions of this Memorandum of Incorporation.**

4. OBJECTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 4.1. It is recorded that the development of the whole township is of a homogenous nature and that notwithstanding the fact that registered owners hold title to their erven and/or units individually, the Association, through its directors, shall have

all the powers that are necessary to accomplish the fulfilment of all objectives of the Association, including, but not limited to the powers specifically contained in this MOI.

- 4.2. The Association shall have the following objectives:
 - 4.2.1. to act as a non-profit Estate Management Association in terms of Act 71/2008 for the township developed on the development area;
 - 4.2.2. to take transfer of those portions of such portions of the common property that are to be owned by the Association for the benefit of its members;
 - 4.2.3. to enter into agreements of servitude for the benefit of its members or any adjacent property development;
 - 4.2.4. to manage, oversee and control all security aspects of the township;
 - 4.2.5. **to enter into agreements for the provision of any services with any competent authority or any other third party, *inter alia* including the provision of access to the township, water, electricity and sewerage services to the Association and where required to supply such services to the various members of the Association;**
 - 4.2.6. to administer and enforce the development guidelines, and the conduct rules;
 - 4.2.7. to ensure compliance within the township with all conditions imposed by the Local Authority when approving the rezoning and / or subdivision of the property/ies comprising the development area and the establishment of the township thereon.
- 4.3. The Association shall be responsible to ensure compliance, implementation, and enforcement, in respect of the township, of any condition imposed by any authority in terms of the Town-Planning and Townships Ordinance (Tvl) No 15 of 1986, Environment Conservation Act No 73 of 1989, the National Environmental Management Act No 107 of 1998 or any other planning - or environmental law, including any Environmental Management Plan approved in respect of the township.
- 4.4. Without limiting the generality of the clause above, the Association shall have the following powers and functions: -

- 4.4.1. The responsibility to maintain, repair, improve and keep in good order and condition the common property and the responsibility for the payment of all rates and taxes, all services charges and other taxes and/or levies charged and payable to the Council or any authority in respect of the common property and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, and the Association's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Association or the pursuit of its business.
- 4.4.2. The right to impose levies upon the members of the Association for the purpose of meeting all the expenses that the Association has incurred **or to which the directors reasonably anticipate the Association will incur in the attainment of the objects of the Association or the pursuit of its business.**
- 4.4.3. To ensure that all provisions of this MOI are complied with by all members/parties bound thereby.
- 4.4.4. It is recorded that any and all STBC's (Sectional Title Body Corporates) shall be liable as members of the Association to pay the levies imposed on them in terms of this MOI.
- 4.4.5. To promote, advance and protect the township and the interests of the Association and all members.

5. MEMBERSHIP OF THE ASSOCIATION

- 5.1. Membership of the Association shall be compulsory for every registered owner of an erf in the development area on any such erf.
- 5.2. Membership shall commence simultaneously with registration of transfer of an erf into the name of the transferee.
- 5.3. Membership of the Association shall be limited to the registered owners of erven.
- 5.4. The rights and obligations of the members shall rank in accordance with the provisions of this MOI.

- 5.5. The Association shall maintain at their office a register of members, which members can confirm his/her membership details on request.
- 5.6. Every member is obliged to comply with:
- 5.6.1. the provisions of this MOI and any rules or regulations passed by the Association in terms hereof;
 - 5.6.2. the provisions of the conduct rules;
 - 5.6.3. any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a unit owner;
 - 5.6.4. any directive given by the directors in enforcing the provisions of this MOI.
- 5.7. The rights and obligations of a member are not transferable, and every member shall to the best of his ability further the objects and interests of the Association.
- 5.8. The members shall be jointly liable for expenditure incurred in connection with the Association. If a member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations of a member in terms of this MOI.
- 5.9. **A member shall not authorise the sale, alienation or transfer by an erf unless the proposed transferee has irrevocably bound himself to observe the provisions of the MOI for the duration of his ownership;**
- 5.9.1. the managing agent has issued a prior clearance in writing that all outstanding levies and all amounts of whatever nature owing to the Association have been paid and that the member is not in breach of any of the provisions of this MOI including any management or conduct rule.
- 5.10. A member is required to ensure that the occupant of any erf, whether such occupation arises from an agreement of lease or otherwise, complies with all applicable provisions of this MOI and the regulations. Without detracting from the foregoing shall remain bound by this MOI notwithstanding such occupation and be jointly and severally liable for the acts and omissions of the occupant and for fulfilling his obligations under this.
- 5.11. To ensure compliance with clause 5.11 each member shall, if it leases out any erf:

- 5.11.1. **enter into a written lease with the tenant in which the tenant is required to accept compliance with the conduct rules, and to give an undertaking that he will abide by the conduct rules, and in which the tenant is required to report to the Association and register his full details for security reasons prior to the taking of occupation;**
- 5.11.2. be responsible to ensure that the tenant does thus register himself with the Association prior to taking occupation.

6. LEVIES

- 6.1. The Association shall establish and maintain a levy fund for the purposes of meeting all expenses of the Association in respect of:
 - 6.1.1. the control, management and administration of the township;
 - 6.1.2. in general, the attainment of its main objects as described in its MOI;
 - 6.1.3. the maintenance of common property, and the costs of services such as electricity, water and sewerage consumed or used on the common property;
 - 6.1.4. the supply of any services rendered by the Association;
 - 6.1.5. payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
 - 6.1.6. the costs of the provision of security to the township; and
 - 6.1.7. in general, the cost of fulfilling any of the obligations of the Association.
- 6.2. The directors shall estimate the amount which will be required by the Association to meet the expenses above during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 6.3. The Association shall be entitled to require members in accordance with the procedures set out below, to make contributions to such levy fund (in the form of levies), for the purposes of satisfying the expenses.

- 6.4. The procedure for raising and collecting levies shall be as follows:
- 6.4.1. The directors shall submit the estimated expenditure referred to in clause 6.2 to a general meeting of the Association for consideration. It is recorded that:
- 6.4.1.1 the meeting shall be obliged to approve the following items of expenditure that are charged to the Association by outside third parties:
- 6.4.1.2 the costs of the nominated provider of security services, including security guards, monitoring and surveillance;
- 6.4.1.3 the fee payable to any estate manager with whom the Association has entered into an agreement.
- 6.4.1.4 The Association shall have a discretion in regard to approval of the level of services, and the cost thereof that the Association requires in respect of e.g. cleaning, gardening, general maintenance, etc.
- 6.5. **The Association shall have such annual general meeting at least 6 months after the financial year-end of the Association and decide on proposed increases of the levies and the amounts to be charged to members in respect thereof.**
- 6.6. **The Association shall notify its members within at least 21 (twenty-one) clear days' of the special general meeting contemplated in 6.4.1 of the levies it has resolved to charge for the following year.**
- 6.7. **The Association may, from time to time by a resolution adopted by the directors, make special levies upon members effective from the date of passing of the applicable resolution in respect of such expenses which have not been included in the levies approved by the annual general meeting, and such levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the directors may determine in its resolution. The decision of the directors in calculating such special levies shall be final and binding on all members.**
- 6.8. **The Association may, from time to time by a resolution adopted by the directors, institute building period penalty levies of R 1,500.00 per month upon members who fail to comply to the building periods prescribed in the Architectural Guidelines of the Association. The Directors may adjust**

penalty levies at their own discretion as might be required from time to time.

- 6.9. **The Association may, from time to time by a resolution adopted by the directors, institute fines as prescribed in the Conduct Rules of the Association. The Directors may adjust penalty levies at their own discretion as might be required from time to time.**
- 6.10. Any amount due by a member by way of a levy shall be a debt due by him to the Association payable on such time or times as determined by the directors. The directors may determine that a levy is payable annually in advance in respect of the year for which it is calculated or in such monthly instalments as it may determine.
- 6.11. Until such time as a new levy pertaining to a forthcoming year has been determined, every member of the Association shall continue to pay the existing levy currently in force, on account of the new levy yet to be determined.
- 6.12. **A member shall be obliged to pay interest on any levy not paid on the due date at 15 percentage points** per annum calculated on the levies due from time to time from the due date until the date that the arrear levies have been paid in full to the Association. **The Directors may adjust the interest rate at their own discretion as might be required from time to time.**
- 6.13. **The Association shall be entitled to require a member to sign a debit order authority to allow the Association or its authorised agent to collect levies directly from an operating bank account.**
- 6.14. If any member fails to make payment on due date of levies and/or other amounts payable by such member including interest, the Association may give notice to such member requiring him to remedy such failure within such period as the Association may determine and should he fail timeously to make such payments, the Association may discontinue any services to the property or common property of such member and furthermore **may institute legal proceedings against such member without further notice and such member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission** and any other expenses and charges incurred by the Association in recovering such amounts.
- 6.15. No member shall (unless otherwise determined by the directors) be entitled to any of the privileges of membership including his right of access to and use of

any of the facilities on the common property until he shall have paid every levy and interest thereon and any other amount which may be due and payable.

- 6.16. **The Association shall not be entitled to undertake on behalf of its members any permanent works of major capital nature without the sanction of a resolution of the members adopted during a general meeting of members. In this sub-clause "works of a major capital nature" means works that will cost more than R50,000.00 (Fifty Thousand Rand) (excluding Value Added Tax). It is recorded that directors may, in their sole and absolute discretion adjust the limit of R50,000.00 (Fifty Thousand Rand) from time to time to make provision for the effect of inflation.**
- 6.17. In calculation of the levy payable by any member, the directors shall as far as reasonably practical apportion those costs relating to the common property to the members equally, provided however that the directors may in any case where it considers it equitable to do so, apportion to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 6.18. **Should any dispute** arise at any time between the members and the directors in regard to the determination or calculation of the levies, **the decision of the auditors** for the time being of the Association (acting as experts and not as arbitrators) in regard to such dispute **shall be final** and binding on the members and the directors.
- 6.19. **In the event of any dispute arising in regard to the determination or calculation of any levy, every member shall until the determination of such dispute continue to pay the levies determined by the directors.**
- 6.20. Notwithstanding anything to the contrary in this MOI of Association, it is recorded that the levies will be payable by members **and that members may not withhold payment of levies for whatever reason – including during a dispute.**

7. ENTRENCHED PROVISIONS

The Association has a continuing and permanent interest to ensure that certain basic provisions are entrenched to ensure the success of the development of the township. **Accordingly, none of the following provisions (both inclusive) may be deleted or varied in any way in terms of this MOI, the Association:**

- 7.1. may register, in their entire and sole discretion and where necessary, services servitudes, in favour of the Local Authority, the Association, and/or any adjacent property development over any separate erf in the township, the common

property (as defined herein), building or common property in any sectional title scheme or any other part of the township;

- 7.2. **all building contractors and architects must be approved by the Association before construction of any building commences;**
- 7.3. **all estate agents marketing and/or selling property or units in Golf View Estate must be approved by the Association before such estate agent commences any marketing or sales initiatives at the Golf View Estate. The Association may restrict access of an estate agent should the agent be found not abiding by the Rules of the Estate.**

8. RESPONSIBILITY FOR PAYMENT OF RATES, TAXES AND SERVICES

8.1. RATES AND TAXES:

- 8.1.1. The Association shall be responsible to pay all rates and taxes in respect of the common property to the Council.
- 8.1.2. All other members as owners of erven shall be responsible to pay rates and taxes in respect of their property to the Council.

8.2. SERVICES:

- 8.2.1. The responsibility for payment of services and the method of service supplies shall be as regulated in clause 8 below.
- 8.2.2. The supply of services to the township shall be subject to all such terms and conditions as imposed by the Association.

9. SERVICES

- 9.1. Every member shall allow gas mains, electricity, telephone and television cables and/or wires, and main and/or other waterpipes and the sewerage and drainage, including stormwater, of any other land unit to be conveyed across the relevant land unit, and surface installations such as mini-substations, metre kiosks and service pillars to be installed thereon, if considered necessary by the Association and in such a manner and position as may from time to time be reasonably required. This shall include the right of access to the land unit at any reasonable

time for the purposes of constructing, altering, removing or inspecting any works connected with the above.

- 9.2. Without limiting the generality of the provisions of this MOI, the Association shall have the right to register servitudes of right of way and/or servitudes for the conveyance of electricity, water, sewerage, telephone lines, information technology, security systems and any other type of services and/or servitudes of encroachment or servitudes in respect of any common walls or structural support or any other servitudes in respect of any other type of use. The members accept and shall be bound by and consent to the registration of the servitudes.
- 9.3. The Association will be responsible for the maintenance of the internal water reticulation serving the township. The maintenance costs of the internal water reticulation, as well as water services costs will be recovered by means of levies imposed by the Association.
- 9.4. The Association will be responsible for the maintenance of the internal sewer reticulation serving the township. The maintenance costs of the internal sewer reticulation, as well as sewerage services costs will be recovered by means of levies imposed by the Association.
- 9.5. The Association will be responsible for the maintenance of the internal storm water system serving the township. The maintenance costs will be recovered by means of levies imposed by the Association.

10. ARCHITECTURAL AND DEVELOPMENT GUIDELINES

- 10.1. The architectural and development guidelines constitute an integral part of this MOI. It is recorded that the architectural and development guidelines contain the procedures, requirements and guidelines to be adhered to by every member or owner of an erf in the township, other than utility erven, who wishes to effect construction, improvements or alterations to or undertake any renovation of any erf. **The architectural and development guidelines that will be in force and effect are those contained in Annexure "A" hereto.**
- 10.2. All improvements shall be of sound construction and shall comply with the provisions of the architectural and development guidelines contained in this MOI **and must be approved by the HOA before any work commences.**
- 10.3. No construction or erection of any improvements or alterations to and no renovation of any erf that is undertaken by any party or any landscaping on any property may commence prior to the due and proper approval of plans for such

construction, improvements, alterations or renovation by both the design review committee and, where required, the Local Authority, in accordance with the following provisions:

- 10.3.1. the owner of the erf shall submit to the design review committee for approval a full set of the proposed building plans or alteration plans which indicate both construction and design details;
 - 10.3.2. the owner of the erf shall be liable for payment of the reasonable cost of professional scrutinising and examination of such plans by the design review committee;
 - 10.3.3. after the approval of such plans by the design review committee the plans shall be submitted to the Local Authority for approval. No plan shall be submitted to the Local Authority unless it bears the endorsement of approval of the design review committee, clearly dated, certifying that the plan complies with both the architectural and development guidelines.
- 10.4. When effecting the **construction, improvements or alterations or renovations** the owner of the erf shall at all times comply strictly with the architectural and development guidelines, **Contractors Code of Conduct contained in Annexure "B" hereto, the Conduct Rules contained in Annexure "C" hereto** as well as all conditions and standards imposed by the Local Authority insofar as these may be additional to the provisions of the architectural and development guidelines. No owner of an erf shall be entitled to deviate in any manner whatsoever from any plan approved by the design review committee and the Local Authority unless the prior written approval of both the design review committee and the Local Authority for such proposed deviation has been obtained.
- 10.5. **No owner of an erf shall be entitled to challenge or contest any of the provisions of the architectural and development guidelines. No application for the amendment of the Architectural and Development Guidelines shall be made to the Local Authority unless prior written consent of the design review committee has been obtained thereto.**
- 10.6. The design review committee may amend the architectural and development guidelines from time to time.

11. BUILDERS CONDUCT RULES

- 11.1 The Builders Conduct Rules of the Association constitute an integral part of this MOI.**
- 11.2 The Builders Conduct rules in force on incorporation of the Association shall be those annexed hereto as Annexure "B".**
- 12.3 The Directors may amend the Builders Conduct Rules from time to time for approval by the Association.**

12. BUILDING PERIODS AND PENALTIES

- 12.1 The building period for unbuilt stands will be as stipulated in the Architectural Guidelines.**
- 12.2 The building committee will accept the completion of the building when the occupation certificate from the local authority is received.**
- 12.3 Penalties for late completion will be 3 times the monthly levy.**
- 12.4 The Directors may amend the Building Periods and Penalties at their own discretion from time to time.**

13. CONDUCT RULES

- 13.1. The conduct rules of the Association constitute an integral part of this MOI.**
- 13.2. The conduct rules in force on incorporation of the Association shall be those annexed hereto as Annexure "C".**
- 13.3. The aforesaid rules shall constitute framework rules for the Conduct Rules to be developed as provided herein and after the Association has commenced.**
- 13.4. Subject to this MOI and to any restriction imposed or direction given at a general meeting of the Association and subject to any condition imposed by the Local Authority, the directors may from time to time make conduct rules, and vary or modify these rules, in regard to:**
 - 13.4.1. the code of conduct applicable to all builders, contractors (including sub-contractors) and suppliers within the development or**

any building, construction or any other work carried on within the township;

13.4.2. the preservation of the natural environment, vegetation and fauna within the township including the right to control, and if necessary, order the removal of vegetation, and the right to prohibit and/or control the erection of fences, and walls whether upon or within the boundaries of any erven;

13.4.3. **the right to prohibit, restrict or control the keeping of animals / pets which they regard as dangerous or a nuisance;**

13.4.4. the conduct of any persons within the township and the use of his property for the prevention of nuisance of any nature to any member or unit owner;

13.4.5. the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof;

13.4.6. the maintenance of all buildings, outbuildings, structures, improvements of any nature and landscaping within the township;

13.4.7. the admission of any person within the township, and the eviction of any person not entitled to be thereon;

13.4.8. the furtherance and promotion of any of the objects of the Association and/or for the better management of the affairs of the Association and/or for the advancement of the interests of the members and/or the residents within the township.

13.5. For the enforcement of any of the rules made by the directors, or of any of the provisions of this MOI generally, the directors may:

13.5.1. take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision being contravened, and debit the cost of so doing to the member or unit owner concerned, which amount shall be deemed to be a debt owing by the member or unit owner concerned to the Association; and/or

13.5.2. take such action including the imposition of a fine, or proceedings in court, as they may deem fit.

13.6. **Should the directors institute any legal proceedings against any member or unit owner or resident within the township for the enforcement of any of**

the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the member, unit owner or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.

- 13.7. In the event of any breach of the rules by the members or any unit owner's household or his guests or lessees, such breach shall be deemed to have been committed by the unit owner himself, but without prejudice to the foregoing, the directors may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 13.8. Notwithstanding anything to the contrary herein contained, the directors may in the name of the Association enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.
- 13.9. **The Association may in a general meeting itself make any rules in regard to any matter and may also vary or modify any rule made by it or by the directors from time to time.**
- 13.10. All rules shall be reasonable and shall apply equally to all members.

14. ESTATE MANAGER

- 14.1. The directors **will** be entitled to appoint an Estate Manager to control, manage and administer the development and the common property and to exercise such powers and duties as may be entrusted to the estate manager.
- 14.2. The terms and conditions of the appointment of the Estate Manager shall be in the discretion of the directors as the case may be.

15. GENERAL MEETINGS

- 15.1. The Association shall from time to time hold annual general meetings as provided in the Companies Act which annual general meetings shall be held at least **6 months after** the financial year-end of the Association.
- 15.2. Save as may be provided in the Companies Act, members may not convene a general meeting of the Association, except where all the directors have become incapacitated or have ceased to be directors, in which event at least **35 % (thirty five percent)** or more of the members entitled to vote may convene a general

meeting on due notice to all members entitled thereto, and may recover the cost of so doing from the Company.

15.3. The directors:

15.3.1. may whenever they deem fit, convene a general meeting of the Association;

15.3.2. shall convene a general meeting if requisitioned in terms of the Companies Act.

15.4. Subject to the provisions of the Companies Act:

15.4.1. all general meetings whether annual or otherwise;

15.4.2. all adjourned general meetings, shall be held at such time and place as the directors shall appoint.

16. NOTICE OF GENERAL MEETINGS

16.1. **Not less than 21 (twenty-one) clear days' notice shall be given of all annual general meetings or meetings called for the passing of a special resolution and not less than 14 (fourteen) clear days' notice shall be given of any other general meeting:**

16.1.1. in the manner hereinafter determined;

16.1.2. to such persons as are, in accordance with the provisions of the MOI, entitled to receive notice of all meetings of the Company.

16.2. The notice shall specify the place, day and time of the meeting and the nature of the business to be transacted thereat.

16.3. The accidental omission to give notice of a meeting or, where applicable, to send an instrument of proxy therewith, or the failure to receive a notice or proxy by any person entitled thereto, **or the late receipt thereof, shall not invalidate the proceedings at that meeting.**

17. ELECTRONIC PARTICIPATION IN MEMBERS MEETINGS

17.1 The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 (2), is not limited or restricted by this MOI.

17.2 Electronic voting is not limited or restricted by this MOI as long as it is done in writing.

18. PROCEEDINGS AT GENERAL MEETINGS

18.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Companies Act, including the consideration of the annual financial statements, the election of directors and the appointment and remuneration of the auditor.

18.2 The annual general meeting shall also consider the levy imposed by the directors and may deal with any other business laid before it.

18.3 **Save as herein otherwise provided, 15% (fifteen percent) of the members present in person or by proxy shall constitute a quorum, provided that at least 15 (fifteen) members are present in person** at such meeting.

18.4 No business shall be transacted at any general meeting unless a quorum is present.

18.5 A corporate body, being a member of the Association, and which is represented by a duly appointed representative, shall be deemed to be a member personally present for the purpose of this MOI.

18.6 If:

18.6.1 within **30 (thirty)** minutes from the time appointed for the meeting; or

18.6.2 at any time during the course of the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved.

18.7 In any other case it shall stand adjourned to a date not earlier than 7 (seven) days and not later than 21 (twenty-one) days after the date of the meeting as the chairman may determine, and at the same time and place or, if not possible, at such other time and/or place as the chairman of the meeting shall appoint.

- 18.8 If at such adjourned meeting a quorum is not present within **30 (thirty)** minutes from the time appointed for holding the meeting, **the members who are present in person or by proxy and are entitled to vote shall be a quorum** and may transact the business for which the meeting was called.
- 18.9 **The chairman, or, in his absence, the deputy chairman (if any), shall preside as chairman at every general meeting of the Association.**
- 18.10 If:
- 18.10.1 there is no such chairman or deputy chairman; or
 - 18.10.2 at any meeting neither the chairman nor the deputy chairman is present within 10 (ten) minutes after the time appointed for the meeting, or if neither of them is willing to act as chairman,
 - 18.10.3 the directors present shall choose one of their number to act as such but if 1 (one) director only is present, he shall preside as chairman if he is willing so to act.
- 18.11 In the absence of a chairman, the members present shall elect one of their number to act as chairman.
- 18.12 The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting, except such business as may lawfully have been transacted at the meeting which was adjourned.
- 18.13 Where a meeting has been adjourned, the Association shall, upon a date not later than 3 (three) days after the adjournment, notify owners of the adjourned meeting with a notice stating:
- 18.13.1 the date, time and place to which the meeting has been adjourned;
 - 18.13.2 the matter before the meeting when it was adjourned; and
 - 18.13.3 the ground for the adjournment.
- 18.14 **At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded before or immediately after the declaration of the result of the show of hands:**
- 18.14.1 **by the chairman of the meeting; or**

- 18.14.2 **by not less than 7 (seven) members having the right to vote at the meeting; or**
- 18.14.3 **by a member or members representing not less than 1/10 (one tenth) of the total voting rights of all the members having the right to vote at the meeting.**
- 18.15 Resolutions shall be passed by simple majority vote, save with respect to amendments to this MOI.
- 18.16 Unless a poll is demanded, and the demand is not withdrawn a declaration by the chairman of the meeting that:
- 18.16.1 a resolution has been passed unanimously on a show of hands or by a particular majority; or
- 18.16.2 a resolution has not been passed by a particular majority, or rejected, (and an entry to that effect in the minute book) shall be conclusive evidence of that fact.
- 18.17 The result of a poll shall be deemed to be the resolution of the meeting at which the poll was held.
- 18.18 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall have a second or casting vote.
- 18.19 No poll may be demanded on the election of the chairman of the meeting or on any question of adjournment.
- 18.20 A poll demanded in respect of any other matter shall be taken at such time and place and in such manner as the chairman of the meeting directs (but not later than 30 (thirty) days after the poll has been demanded).
- 18.21 Until such time as the poll is held, the meeting may proceed with any business, other than that upon which a poll has been demanded.
- 18.22 The chairman of a meeting may:
- 18.22.1 appoint any firm or persons to act as scrutineers for the purpose of checking the powers of attorney received and for counting the votes at the meeting;
- 18.22.2 act on a certificate given by any such scrutineers without requiring production at the meeting of the forms of proxy or himself counting the votes.

18.23 If any votes were counted which ought not to have been counted or if any votes were not counted which ought to have been counted, the error shall not vitiate the resolution unless:

18.23.1 it is brought to the attention of the chairman at the meeting; and

18.23.2 in the opinion of the chairman of the meeting, it is of sufficient magnitude to vitiate the resolution.

18.24 Any objection to the admissibility of any vote (whether on a show of hands or on a poll) shall be raised:

18.24.1 at the meeting or adjourned meeting at which the vote objected to was recorded; or

18.24.2 at the meeting or adjourned meeting at which the result of the poll was announced

and every vote not then disallowed shall be valid for all purposes. Any objection made timeously shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

18.25 **Even if he is not a member:**

18.25.1 **The Company's attorney (or where the Company's attorneys are a firm/company, any partner/director thereof), may attend and speak at any general meeting, but may not vote unless he is a member or the proxy or representative of a member.**

18.26 **Any resolution which could be passed at a general meeting (other than a special resolution or a resolution to remove a director or auditor) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the members entitled to vote.**

19 VOTES OF MEMBERS

19.1 At every general meeting:

19.1.1 each member, present in person or by proxy and entitled to vote, shall have one vote for each erf registered in his name;

19.1.2 if an erf is registered in the name of more than 1 (one) person, then all such co-owners shall jointly have only one vote;

- 19.2 Save as expressly provided for in this MOI, **no person other than a member and who shall have paid every levy and other sum (if any) which shall be due and payable to the Association in respect of or arising out of his membership and who is not suspended, shall be entitled to be present or to vote on a question, either personally or by proxy, at any general meeting.**
- 19.3 **Any corporate body which is a member may, by resolution of its Trustees or other governing body, appoint a person to act as its representative at any general meeting of the Association.**
- 19.4 Such representative shall be entitled to exercise the same rights on behalf of the corporate body, which he represents, that **the** corporate body could exercise if it were an individual who was a member of the Association.
- 19.5 The directors may but shall not be obliged to require proof to their satisfaction of the appointment or authority of such representative.

20 PROXIES

- 20.1 The appointment of a proxy shall be in writing under the hand of the person making such appointment or his agent, duly authorised in writing **or sent by electronic medium.**
- 20.2 **No person attending the meeting, may hold more than two (2) proxies for other owners.**
- 20.3 If the appointee is a corporate body, the power of attorney **or trustee's resolution** shall be signed in the manner which and by the person who binds that corporate body.
- 20.4 The agent under a power of attorney **or trustee's resolution** of a member is entitled, if so authorised by the power of attorney, to vote on behalf of and represent such member at any meeting of the Association.
- 20.5 A proxy need not be a member of the Association.
- 20.6 A member may **NOT** appoint more than 1 (one) proxy to act on his behalf on the same occasion.
- 20.7 The directors may, if they think fit, send out with the notice of any meeting, forms of proxy for use at the meeting.

20.8 Every instrument of proxy, whether for a specified meeting or otherwise, shall be in the form as the directors may approve, in either case under the heading of or referring to the Association's name.

20.9 Any power of attorney and any instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of such power of attorney shall be deposited at the office or at such other place within South Africa as is specified for that purpose in the notice convening the meeting, **not less than 48 (forty eight) hours (excluding Saturdays, Sundays and public holidays) before the time appointed for holding:**

20.9.1 the meeting or adjourned meeting at which the person named in such instrument proposes to vote;

20.9.2 a poll, where a poll is to be held after a meeting or adjourned meeting.

20.10 If the power of attorney or other instrument of proxy is not deposited timeously, it shall not be treated as valid.

20.11 Unless specifically otherwise stated in the proxy, no instrument appointing a proxy shall be valid after the expiration of 6 (six) months from the date thereof except at a poll demanded at a meeting originally held within the 6 (six) months after the date of such instrument, or at an adjourned meeting of a meeting held within such period.

20.12 A vote by virtue of a power of attorney or an instrument of proxy shall be valid notwithstanding the previous legal incapacity of the principal or revocation of the power of attorney or instrument of proxy, unless an intimation in writing of such legal incapacity is received by the Association at the office not less than 24 (twenty four) hours before commencement of the meeting or the taking of the poll at which the instrument of proxy is used.

21. DIRECTORS

21.1 There shall be not less than 3 (three) and not be more than 7 (seven) directors of the Association

21.2 A director shall be a natural person and shall be a member of the Association. A proxy or power of attorney cannot be elected as a director.

- 21.3 **A director in contravention of the following may be removed temporarily or permanently by a majority vote of directors as referred to in clause 23.8 –**
- i. **If in arrears with levies or any other amounts due to the Association.**
 - ii. **If in contravention of any rule of the Association.**
 - iii. **If privileged information is shared to someone other than the board of directors with out prior approval of the directors**
 - iv. **If the director causes conflict and animosity within the Association.**
 - v. **If a director does not act within the rules and guidelines of the Association.**
 - vi. **If the director puts his/her personal interests / benefits before that of the Association to further his / her own agendas.**
- 21.4 The directors shall appoint one of their number to act as chairman for such term as they think fit, but not for longer than such person's tenure as a director.

22. REMUNERATION

- 22.1 The directors shall not be entitled to remuneration.
- 22.2 Allowances may be paid to Directors in cases of above normal expenses incurred to fulfil their duties as approved at a general meeting.
- 22.3 **Without prejudice to any contrary provisions in the MOI, the office of a director shall be vacated in any of the following events and be replaced with a co-opted director for the remainder of the replaced director's term:**
- 22.3.1 if his estate is sequestrated or he assigns his estate or enters into a general compromise with his creditors;
 - 22.3.2 if he is found to be or becomes of unsound mind;
 - 22.3.3 if a majority of his co-directors sign and deposit at the office a written notice wherein he is requested to vacate his office (which shall become operative on deposit at the office);
 - 22.3.4 if he be removed by a resolution of the Association of which proper notice has been given in terms of the Companies Act;
 - 22.3.5 if he shall, pursuant to the provisions of the Companies Act or any order made thereunder, be prohibited from acting as a director; 20.3.6 if he resigns his office by notice in writing to the Association;

22.3.6 if he resigns his office by notice in writing to the Association.

20.3.7 if:

22.3.7.1 he is absent from meetings of the directors for 3 (three) consecutive months (or meetings) without leave of the directors otherwise than on the business of the Association and

22.3.7.2 the directors resolve that his office was (without explanation of reason of such absence) vacated, provided that the directors shall have power to grant to the director leave of absence for a definite or indefinite period.

22.4 Association (except that of the auditor) or any subsidiary of the Association in conjunction with his office of director, for such period and on such terms as to remuneration (in addition to the remuneration to which he may be entitled to as a director) and otherwise as a disinterested quorum of the directors may determine.

22.5 A director of the Association may be or become a director or other officer of, or otherwise interested in, any company promoted by the Association or in which the Association may be interested as shareholder or otherwise and (except in so far as otherwise decided by the directors) he shall not be accountable for any remuneration or other benefits received by him as a director or officer of or from his interest in such other company.

22.6 Any director may act by himself or through his firm in a professional capacity for the Association (otherwise than as the auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director.

22.7 A director, who is in any way, whether directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Association shall declare the nature of his interest in accordance with the Companies Act.

22.8 **No director or intended director shall be disqualified by his office from contracting with the Association with regard to:**

22.8.1 professional services rendered or to be rendered by such director;

22.8.2 any sale or other transaction.

22.9 No such contract or arrangement entered into by or on behalf of the Association in which any director is in any way interested is voidable.

- 22.10 No director so contracting or being so interested shall be liable to account to the Association for any profit realised by any such appointment, contract or arrangement by reason of such director holding office or of the fiduciary relationship thereby established.
- 22.11 **A director may not vote nor be counted in the quorum** and if he shall do so his vote shall not be counted on any resolution for his own appointment to any other office or place of profit under the Association **or in respect of any contract or arrangement in which he is interested**, but this prohibition shall not apply to:
- 22.11.1 any arrangement for giving to any director any security or indemnity in respect of money lent by him to or obligations undertaken by him for the benefit of the Association; or
- 22.11.2 any arrangement for the giving by the Association of any security to a third party in respect of a debt or obligation of the Association which the director has himself guaranteed or secured; or
- 22.11.3 any contract or arrangement with a corporation in which he is interested by reason only of being a director, officer, creditor or member of such corporation,
- and this prohibition may be waived in respect of any particular contract or arrangement, by the Association in general meeting.
- 22.12 A contract which violates the terms of clause 20.11 above can be ratified by the Association in general meeting.
- 22.13 The terms of clause 18.13 shall not prevent a director from voting as a member at a general meeting at which a resolution in which he has a personal interest is tabled.
- 22.14 The directors may exercise the voting powers conferred by the shares held or owned by the Association in any other company in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing themselves or any of them to be directors or officers of such other company or for determining any payment of or remuneration to the directors or officers of such other company.
- 22.15 A director may vote in favour of a resolution referred to in clause 18.16 notwithstanding that he may be, or is about to become, a director or other officer of such other company and for that or any other reason may be interested in the exercise of such voting rights in the manner aforesaid.

23 **RETIREMENT OF DIRECTORS IN ROTATION**

- 23.1 **At every annual general meeting, all of the directors for the time being shall retire from office.**
- 23.2 A director retiring at a meeting shall retain office until the election of directors at that meeting has been completed.
- 23.3 **Retiring directors shall be eligible for re-election.**
- 23.4 No person, other than a director retiring at the meeting shall, unless recommended by the directors, be eligible for election to the office of a director at any general meeting, unless:
- 23.4.1 **not more than 14 (fourteen), but at least 7 (seven) clear days before** the day appointed for the meeting, there shall have been delivered at the office a notice in writing by a member (who may also be the proposed director) duly qualified to be present and vote at the meeting for which such notice is given;
- 23.4.2 such notice sets out the member's intention to propose a specific person for election as director, and
- 23.4.3 notice in writing by the proposed person of his willingness to be elected is attached thereto (except where the proposer is the same person as the proposed).
- 23.5 Subject to clause 19.5 above, the Association may at the meeting at which a director retires, fill the vacated office by electing a person thereto and in default their tiring director, if willing to continue to act, shall be deemed to have been re-elected, unless:
- 23.5.1 It is expressly resolved at such meeting not to fill such vacated office;
or
- 23.5.2 A resolution for the re-election of such director shall have been put to the meeting and rejected.
- 23.6 The Association in general meeting or the directors may appoint any person as director to fill a casual vacancy.

POWERS OF DIRECTORS

- 24.1 The management and control of the business of the Association shall be vested in the directors who, in addition to the powers and authorities expressly conferred upon them by the MOI, may exercise all powers and authorities and perform all acts which may be exercised or done by the Association, and are not hereby or by the Companies Act expressly reserved to the Association in general meeting.
- 24.2 Such management and control may not be inconsistent with the MOI nor with the provisions of the Companies Act.
- 24.3 The general powers given by this clause shall not be limited or restricted by any special authority or power given to the directors by any other clause.
- 24.4 Save as specifically provided in this MOI, the directors shall at all times have the right to engage on behalf of the Association the services of accountants, auditors, attorneys, architects, engineers, town planners, estate manager (managing agents) or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the directors on such terms as the directors shall decide.
- 24.5 The directors shall, further have the power:
- 24.5.1 to require that any construction of any nature within the township shall be supervised to ensure that the provisions of this MOI and the conduct rules are complied with and that all such construction is performed in a proper and workmanlike manner;
 - 24.5.2 to issue architectural and development guidelines from time to time and to ensure that such manual is always complied with .
- 24.6 The directors shall have the right to vary, cancel or modify their decisions and resolutions from time to time.
- 24.7 The directors shall be entitled to appoint committees consisting of such number of their members and such outsiders, including an estate manager, as they deem fit and to delegate to such committees such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the directors may from time to time deem necessary.

- 24.8 **The directors shall be entitled to discipline and / or to remove directors temporarily or permanently from office on an overwhelming proof of the contravention of any of the stipulations in clause 19.3**
- 24.9 The directors shall appoint an architectural design review committee to exercise the powers set out above which may, but shall not necessarily, consist of the following persons:
- 24.9.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa and/or;
- 24.9.2 one or more directors and/or;
- 24.9.3 such other members as the directors may determine.
- 24.10 Members of the architectural design review committee shall not be required to be members of the Association.

25 **BORROWING POWERS**

- 25.1 The directors may from time to time borrow for the purpose of the Association such sums as they think fit.
- 25.2 The directors may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the directors, to be the attorney or agent of the Association for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors in terms of the MOI) and for such period and subject to such terms and conditions as they may think fit.
- 25.3 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such agent as the directors may think fit.
- 25.4 The directors may also authorise any such agent to sub-delegate any of his powers, authorities and discretions.
- 25.5 The directors may delegate any of their powers to an executive or other committee, whether consisting of a member or members of their body or not as they think fit.

- 25.6 Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations authorising the appointment of sub-committees that may from time to time be prescribed by the directors.

26 DUTIES OF DIRECTORS TO KEEP MINUTES

- 26.1 The directors shall cause minutes to be made of:
- 26.1.1 all appointments of officers made by the directors;
 - 26.1.2 the names of the directors present at each meeting of the directors;
 - 26.1.3 all resolutions and proceedings at each meeting of the Association;
 - 26.1.4 all resolutions passed by the directors under clause 23.12, and of all meetings of the directors.
- 26.2 Minutes of any resolutions and proceedings mentioned in clause 23.12 appearing in one of the minute books of the Association, shall be proof of the facts therein stated if signed by:
- 26.2.1 any person purporting to be the chairman of the meeting to which it relates; or
 - 26.2.2 any person present at the meeting and appointed by the directors to sign in the chairman's place; or
 - 26.2.3 the chairman of a subsequent meeting of the directors.
- 26.3 Any extracts from or copy of those minutes purporting to be signed by:
- 26.3.1 the chairman of that meeting; or
 - 26.3.2 any director; or 24.3.3 the secretary, shall be *prima facie* proof of the facts therein stated.

27 PROCEEDINGS OF DIRECTORS AND COMMITTEES

- 27.1 The directors may meet for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit.

- 27.2 **The quorum necessary for the holding of all meetings of the directors shall be 50 % (fifty percent) directors present personally OR by proxy OR by an electronic medium – scipe, phone, etc. At least 3 directors must be present in person.**
- 27.3 At any meeting of the directors, each member director shall have 1 (one) vote.
- 27.4 The chairman may at any time, and the secretary, upon the request of a director shall at any time, convene a meeting of the directors.
- 27.5 The directors shall determine the number of days' notice to be given for directors meetings, and the form of that notice.
- 27.6 A director who is not in South Africa shall not be entitled to notice of any meeting.
- 27.7 The directors may:
- 27.7.1 elect a chairman and a deputy chairman (to act in the absence of the chairman) for their meetings;
- 27.7.2 determine the period for which they are to hold office, which shall not exceed 1 (one) year.
- 27.8 If no chairman or deputy chairman is elected, or if at any meeting the chairman or deputy chairman is not present within 10 (ten) minutes after the time appointed for holding the meeting, the directors present shall choose one of their number to be chairman at such meeting.
- 27.9 All questions arising at any meeting shall be decided by a majority of votes.
- 27.10 In case of any equality of votes, the chairman shall have a second or casting vote, provided that should only 2 (two) directors be present at a meeting (including the chairman), the chairman shall not have a casting vote.
- 27.11 A meeting of the directors at which a quorum is present shall be entitled to exercise all or any of the powers, authorities and discretions conferred by or in terms of the MOI, which are vested in or are exercisable by the directors generally.
- 27.12 A resolution in writing signed by:
- 27.12.1 all the directors; or

27.12.2 all the directors who may at the time be present in the town where the office is situate and who form a quorum,

shall be as valid and effectual as a resolution passed at a meeting of the directors duly called and constituted

27.13 Such resolutions:

27.13.1 May consist of one or more documents so signed;

27.13.2 shall be delivered to the secretary without delay and shall be recorded by him in the Association's minute book.

27.14 Such resolution shall be deemed to have been passed on the day it was signed by the last director or alternate director who is entitled to sign it.

27.15 **Should not all the directors be available to sign the resolution, such resolution shall be deemed to have been passed if the majority of directors have signed the resolution.**

27.16 A resolution referred to in clause 25.13 which is not signed by all the directors shall be inoperative if it shall purport to authorise any act which a meeting of the directors has decided shall not be authorised, until confirmed by a meeting of directors.

27.17 The meetings and proceedings of any committee consisting of 2 (two) or more directors shall be governed by the provisions hereof in regard to meetings and proceedings of the directors so far as the same are applicable thereto and are not superseded by any regulations made by the directors.

27.18 All acts performed by the directors or by a committee of directors or by any person acting as a director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director or member of such committee.

28 **SECRETARY**

If the directors so decide, they shall appoint a secretary:

- 28.1 for such term;
- 28.2 at such remuneration; and
- 28.3 upon such conditions,
- 28.4 as they may think fit, and the directors may dismiss such secretary.

29 **AUTHENTICATION OF DOCUMENTS**

29.1 Any director or the secretary or any person appointed by the directors for the purpose shall have the power to authenticate:

- 29.1.1 the MOI;
- 29.1.2 any resolutions passed by the Association or the directors;
- 29.1.3 any books, records, documents and accounts relating to the business of the Association, and to certify copies thereof or extracts there from as true copies or extracts.

29.2 Where any books, records, documents or accounts are elsewhere than at the office, the local manager or other officer of the Company or other person having the custody thereof shall be deemed to be a person duly appointed by the directors for the abovementioned purpose.

29.3 Subject to the provisions of the Companies Act, **a member shall not be entitled to demand that:**

- 29.3.1 any book, document or record be shown to him;
- 29.3.2 any information concerning the Association's affairs be disclosed to him,

if the directors in their sole and absolute discretion (which may not be disputed) consider that it is not in the Association's interest to show that book, document or record to the member, or to disclose that information to him.

30 **ACCOUNTING RECORDS**

- 30.1 The directors shall cause to be kept such accounting records as are prescribed by the Companies Act.
- 30.2 The accounting records shall be kept at the office or (subject to the provisions of the Companies Act) at such other place as the directors think fit and shall at all times be open to inspection by the directors.
- 30.3 A copy of all financial statements (including every document required by law to be annexed thereto) which are to be laid before the Association in annual general meeting, together with copies of the directors' and the auditors' reports, shall be delivered or sent by post to the registered address of each member and to every person entitled to a notice of the general meeting.
- 30.4 The documents referred to in clause 28.3 shall be sent at least 21 (twenty-one) days before such annual general meeting.
- 30.5 The documents referred to in clause 28.3 need not be sent to any person who is not entitled to receive notice of a general meeting of the Association or whose address is not known to the Association.

31 **AUDITORS**

The auditors shall be appointed, and their duties regulated in accordance with the provisions of the Companies Act.

32 **NOTICES**

- 32.1 Any notice or other document may be served by the Association upon any member by:
- 32.1.1 **delivering it to him personally; or**
- 32.1.2 **post to his postal address by normal post; or**
- 32.1.3 **sending it by email to the email address of the member as advised from time to time by the member.**
- 32.1.4 **Each member shall be obliged to advise the Association in writing of its postal address and email address or any subsequent amendment thereof.**

- 32.1.5 **The Association shall be entitled to give notice as aforesaid by electronic mail (email) to the last email address of the member as advised to the Association and any such notice shall be deemed to be sufficient notice of any meeting.**
- 32.1.6 **Notice forwarded by email shall be deemed to have been received by the recipient thereof on the day of dispatch thereof.**
- 32.2 Any member described in the register of **members by an address not within South Africa, who shall from time to time furnish the Association with an address within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.**
- 32.3 Save as determined in the MOI or in the Companies Act, **no member other than a registered member whose address appears in the register of members in South Africa shall be entitled to receive any notice from the Association.**
- 32.4 Any notice or other document, if served by post, shall be deemed to have been served at the time when the same was posted or E-mailed and in proving such service, it shall be sufficient to prove that the notice or document was properly addressed, stamped and posted.
- 32.5 Any notice by fax or email shall be deemed to have been received on date of transmission thereof.
- 32.6 Save as otherwise expressly provided, where a given number of days' notice, or notice extending over any period is required to be given, the day of service shall not be counted in the number of days or other period.

33 **INDEMNITY**

- 33.1 **Every director, manager, secretary, auditor and officer of the Association shall be indemnified out of the funds of the Association against:**

33.1.1 all liabilities incurred by him in that capacity;

33.1.2 expenditure in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted; or

33.1.3 costs in connection with any application under Section 77(9) of the Companies Act in which relief is granted to him by the Court.

33.2 **Every such person shall be indemnified by the Association and it shall be the duty of the directors out of the funds of the Association to pay all costs, losses and expenses for which any such person may become liable by reason of:**

33.2.1 any contract entered into; or

33.2.2 any act done by him,

in his capacity as director, secretary, manager, auditor or officer of the Association or in any way in the discharge of his duties.

33.3 Subject to the provisions of the Companies Act, no director, manager, secretary, auditor, officer or servant of the Association shall be liable for:

33.3.1 any act, receipt, neglect or fault of any other such officer or servant of the Association; or

33.3.2 joining in any receipt or other act; or

33.3.3 any loss or expense suffered by the Association through the insufficiency or deficiency of title to any property acquired by order of the directors for and on behalf of the Association; or

33.3.4 the insufficiency or deficiency of any security in or upon which any of the monies of the Association have been invested; or

33.3.5 any loss or damage arising from the insolvency or delict of any person with whom any monies, securities or effects have been deposited; or

33.3.6 any loss or damage occasioned by any error of judgment or oversight on his part; or

33.3.7 any other loss, damage or misfortune whatever which shall happen in the execution of his duties of office or in relation thereto, unless the same occurs through his own dishonesty.

34 **WINDING UP**

Upon the winding up, deregistration or dissolution of the Association, the whole of the capital and accrued income remaining after satisfaction of all its liabilities, shall be given or transferred to some other association or institution or associations or institutions having objects similar to the Association's main object, to be determined by the directors at or before the time of its dissolution or, failing such determinations, by the court.

35 **ALTERATION OF MEMORANDUM**

35.1 The Association may, subject to the provisions of Section 17 of the Companies Act alter its Memorandum with respect to the objects and powers of the Association and alter or add to its MOI; and any alteration or addition so made shall be as valid as if originally contained therein and be subject in like manner to alteration by special resolution.

36 **GENERAL**

36.1 **Whenever the directors consider that the appearance of any erf or unit or building in the township vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the township generally, they may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. Should the member fail within a reasonable time, to be specified in such notice, to comply therewith, the directors may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to be a debt owing to the Association.**

36.2 The directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the directors acted unreasonably.

37 **DISPUTES**

37.1 Any dispute arising out of or in connection with this MOI must be determined in terms of this clause, except when an interdict is sought for urgent relief, which may be obtained from a court of competent jurisdiction.

- 37.2 On a dispute arising, 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 clause.
- 37.3 If a party exercises his right in terms of this clause to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 10 (ten) years' experience in their field:
- 37.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
 - 37.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
 - 37.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
 - 37.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
 - 37.3.5 if the dispute relates to any other matter, such other independent and suitably qualified person.
- 37.4 If the parties are unable to agree either on the person referred to in this clause or on the classification of the dispute within a period of 7 (seven) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person in question shall be nominated by the President for the time being of the Law Society of the Gauteng Provinces or its successor/s.
- 37.5 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 37.6 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 37.7 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty-one) days or so soon thereafter as possible, after it has been demanded.

- 37.8 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them. The parties consent to the Jurisdiction of the Magistrate's Court in terms of Article 45 of the Magistrate Court Act, not limiting their right to approach the High Court of South Africa should either party wish to make the decision an order of court.
- 37.9 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between party and party or as between attorney and client.
- 37.10 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.
- 37.11 The provisions of this clause shall be deemed to be severable from the rest of this Article and shall remain binding and effective as between the parties notwithstanding that this MOI may otherwise be cancelled or declared of no force and effect for any reason.