

Proposed Memorandum of Incorporation (MOI)

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INDEX

SECTION	HEADING
1.	Preliminary & Objects
2.	Definitions
3.	Incorporation of the Association
4.	Objects and Powers of the Association
5.	Membership
6.	Financial and Levies
7.	Members Meetings
8.	Directors
9.	Rules
10.	Indemnities
11.	Accounts / Inspection of Documents
12.	Delivery of Notices
13.	Dispute Resolution
14.	Transitional Arrangements

REPUBLIC OF SOUTH AFRICA COMPANIES ACT 71 OF 2008

A NON PROFIT COMPANY WITH MEMBERS

MEMORANDUM OF INCORPORATION OF SILVER LAKES HOMEOWNERS ASSOCIATION NPC  
Registration Number 1992/004661/08

**1. The Association is a Non Profit Company with Members, with the following objects:**

To promote and protect the communal interests of the Members of the Association and to maintain high security, aesthetic and environmental standards in the Township (as defined in this Memorandum of Incorporation), and all ancillary objects which are necessary to achieve these objects, including the carrying on of operations of the Golf Course, Clubhouse and Game Reserve situated in the Township.

**2. Definitions**

2.1. The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

2.1.1. words signifying the singular number shall include the plural and vice versa;

2.1.2. words signifying the masculine shall include the feminine;

2.1.3. any words defined in the Companies Act No 71 of 2008 not defined hereunder shall bear the same meaning in this Memorandum of Incorporation in relation to matters referred to herein;

2.1.4. a reference to any Act shall include any amendment thereto or Act in substitution therefore;

2.1.5. the headings to the Sections in this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of the provisions in this Memorandum of Incorporation;

2.2. The following words, expressions and abbreviations shall have the meaning hereinafter assigned to them:

2.2.1. "Act" means The Companies Act, No 71 of 2008;

2.2.2. "Association" means the Company, Silver Lakes Homeowners Association NPC, or HOA and shall have a cognate meaning;

2.2.3. "Auditor" means the auditors of the Association, being a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No.26 of 2005);

2.2.4. "Chairperson" means the Chairperson of the Board of Directors;

2.2.5. "Clubhouse" means the Clubhouse complex situated in the Township;

2.2.6. "Communal Property" Property and assets of the Association as the registered owner in which each Member has indirect rights and obligations that are associated with membership of the Association.

2.2.7. "Debt" means any amount howsoever arising, owed by a Member to the Association, including but not limited to amounts owed in respect of levies, special levies, statutory levies, interest, penalties, clubhouse services, golf club services and legal fees;

2.2.8. "Deliver" means delivery of any notice, letter and/or other document to the service address as designated by the Member in writing from time to time to the Association and recorded in the Association's register of Members;

2.2.9. "Directors" means the Directors of the Association (including any ex-officio and co-

opted Directors), who shall for the purpose of the Act be the Directors of the Association, and a reference to the "Board" or "Board of Directors" shall be to the Directors in meeting;

- 2.2.10. "Golf Course" means the Golf Course situated in the Township;
- 2.2.11. "Member" means a Member of the Association, as referred to more fully in Section 5;
- 2.2.12. "Management" means any person or body appointed by the Association to undertake the administrative and management functions of the Association;
- 2.2.13. "MOI" means the Memorandum of Incorporation of the Association;
- 2.2.14. "Resolution" means an ordinary resolution adopted at a General Meeting of Members with the support of more than 50% of the voting rights exercised on the resolution;
- 2.2.15. "Rules" means any rules made pursuant to Section 9;
- 2.2.16. "Community Scheme Ombud Service" means the service established in terms of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011);
- 2.2.17. "Sectional Title Unit" means a section shown as such on an approved sectional plan together with an undivided share in the common property as determined in accordance with the participation quota applicable to such section (and, if relevant, together with any exclusive use of a defined area of the common property), and as defined more fully in the Sectional Titles Schemes Management Act in terms of primary sections and utility sections;
- 2.2.18. "Special Resolution" means a resolution dealing with any amendment of the MOI, subdividing, sale, purchase or amending the zoning of any immovable property owned by the Association, director remuneration and as otherwise referred to in the Act and this MOI, and being a resolution adopted at a General Meeting of Members with the support of at least 75% of the voting rights exercised on the resolution;
- 2.2.19. "Township" means the Township of Silver Lakes comprising of phases as referred to in the diagrams registered with the Surveyor General as follows:
- 2.2.19.1. Phase 1 (Silver Lakes): SG No A5867/1992;
- 2.2.19.2. Phase 2 (Silver Lakes Ext 1): SG No 9521/2000;
- 2.2.19.3. Phase 2 (Silver Lakes Ext 2): SG No 9522/2000;
- 2.2.19.4. Phase 2 (Silver Lakes Ext 3): SG No 6337/2001;
- 2.2.19.5. Phase 2 (Silver Lakes Ext 4): SG No 6338/2001;
- 2.2.19.6. Phase 3 (Willow Acres Ext 3): SG No 2458/2002;
- 2.2.19.7. Phase 3 (Willow Acres Ext 4): SG No 2459/2002.
- (2.2.19.6 and 2.2.19.7 collectively known as the 'Game Reserve' or 'Nature Reserve') and Township and Estate shall have a cognate meaning;
- 2.2.20. "Unit" means an erf, whether consolidated or comprising a subdivision, as improved or unimproved and including any outbuildings; or a Sectional Title Unit (excluding any Sectional Title Unit in the Sectional Title Scheme commonly known as Anni-Pad, Scheme No. 75/2006); and whether used for residential or business purposes, or both, and further as may be defined in terms of the applicable Town Planning Scheme with respect to the Township;
- 2.2.21. "Writing" or "Written" means written, printed, typewritten, lithographed, telefaxed, electronically or any other process producing words in a visible form.

### **3. Incorporation of the Association**

- 3.1. The Association is a pre-existing Non Profit company as defined in the Act.
- 3.2. The Association exists in accordance with, and is governed by-
  - 3.2.1. the unalterable provisions of the Act that are applicable to Non Profit companies;
  - 3.2.2. the alterable provisions of the Act that 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.

### **4. Objects and Powers of the Association**

- 4.1. The Objects of the Association are as set out in Section 1 and, except to the extent necessarily implied by the stated objects, the purposes and powers of the Association are not subject to any restriction, limitation or qualification, as contemplated in Section 19(1)(b)(ii) of the Act.
- 4.2. The Association is not subject to any provision contemplated in Section 15(2)(b) or (c) of the Act.
- 4.3. The Association-
  - 4.3.1. must apply all its assets and income, however derived, to advance its stated objects, as set out in its MOI; and
  - 4.3.2. subject to Section 4.3.1, may-
    - 4.3.2.1. acquire and hold securities issued by a profit company; or
    - 4.3.2.2. directly or indirectly, alone or with any other person, carry on any business, trade or undertaking consistent with or ancillary to its stated objects.
- 4.4. The Association must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an incorporator of the Association, or who is a Member or Director, or person appointing a Director, of the Association, except-
  - 4.4.1. as reasonable-
    - 4.4.1.1. remuneration for goods delivered or services rendered to, or at the direction of, the Association; or
    - 4.4.1.2. payment of, or reimbursement for, expenses incurred to advance a stated object of the Association.
  - 4.4.2. as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
  - 4.4.3. as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association; or
  - 4.4.4. in respect of any legal obligation binding on the Association.
- 4.5. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Association-
  - 4.5.1. no past or present Member or Director of the Association or person appointing a Director of the Association, is entitled to any part of the net value of the Association after its obligations and liabilities have been satisfied; and
  - 4.5.2. the entire net value of the Association must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts-
    - 4.5.2.1. having objects similar to its main object; and
    - 4.5.2.2. as determined-

- (a) by its Members, at or immediately before the time of its dissolution; or
  - (b) by the court, if the Members fail to make such a determination.
- 4.6 The Commissioner of Companies and Intellectual Properties Commission may apply to the court, on behalf of the Association, for a determination contemplated in Section 4.5.2.2 if the Association has-
- 4.6.1 no remaining Members or Directors; and
  - 4.6.2 failed to-
    - (a) make a determination contemplated in Section 4.5.2.2; or
    - (b) apply to the court for such a determination.
- 4.7 The Association may not-
- 4.7.1 amalgamate or merge with, or convert to, a profit company; or
  - 4.7.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Association.
- 4.8 Any proposal to dispose of all or the greater part of the assets or undertaking of the Association or to amalgamate or merge with another non-profit company, must be approved by Members in a manner comparable to that required of profit companies in accordance with Section 112 and 113 of the Act, respectively.
- 4.9 In terms of the conditions of establishment of the Township, the Association has the right to operate an access control system to verify the identity of all persons entering and exiting the Township in accordance with its main object to enhance the security of all residents. All Members and residents will have free access to the Township on presentation of valid identification.

## 5. Membership

- 5.1. Definition of Membership and Related Matters
- 5.1.1. Membership of the Association shall be limited to any party who is in terms of the Deeds Registries Act (and if applicable the Sectional Titles Act), reflected in the records of the Deeds Registry concerned as the registered owner of a Unit, which shall include primary and/or utility sections of a Sectional Title Scheme.
  - 5.1.2. A person shall become a Member of the Association upon transfer of a Unit into his name and such membership shall *ipso facto* terminate when a Member ceases to be the owner of a Unit, unless such Member owns any other Unit.
  - 5.1.3. In the event of any sale of a Unit, the Member shall procure that the following conditions of title are inserted into the deed of sale and title deed in terms of which any purchaser takes title to the relevant Unit:

*“Every owner of the Unit, or any subdivision thereof, or any interest therein, or any Unit thereon, as defined in the Sectional Titles Act, shall automatically become and shall remain a Member of the Association and be subject to its Memorandum of Incorporation and Rules, until he ceases to be an owner as aforesaid.*

*Neither the Unit nor any subdivision thereof, or any interest therein, nor any Unit thereon, shall be transferred to any person who has not bound himself to the satisfaction of such Association to become a Member of the Association.*

*The owner of the Unit, or any subdivision thereof, or any interest therein, or any Unit thereon as*

defined in the Sectional Titles Act, shall not be entitled to transfer the Unit or any subdivision thereof, or any interest therein, or any Unit thereon, without a clearance certificate from the Association which certifies that the provisions of the Memorandum of Incorporation of the Association have been complied with.

The term "Association" in the aforesaid conditions of title shall mean the Silver Lakes Homeowners Association NPC (1992/004661/08), and the definitions in the Memorandum of Incorporation shall apply to the said conditions."

In the event where the Registrar of Deeds require the amendment of such conditions, in any manner in order to effect registration of a Unit, the purchaser hereby agrees to such amendment".

- 5.1.4. The fact that a person ceases to be a Member of the Association as a result of the transfer of a Unit to another person, shall not release such Member from any liability to the Association in respect of any Debt, the cause of which arose prior to the transfer of such Unit nor otherwise relieve such erstwhile Member from any other obligations owed to the Association during the period of his membership.
- 5.1.5. Where a Unit is owned by more than 1 (one) person all the registered owners of that Unit shall together be deemed to be collectively one Member of the Association and have the rights and obligations of one Member of the Association; provided however that all co-owners of any Unit shall be jointly and severally liable for the due performance of any obligation to the Association.
- 5.1.6. Where a Unit is owned by more than one person, such co-registered owners shall designate one of them to represent the others as Member. A power of attorney shall be provided to the Association evidencing such authority, without derogating from the rights of such Member to provide a separate authority (proxy) for purposes of any General Meeting as referred to in Section 7.9.
- 5.1.7. Where a Member is a legal entity (company, close corporation, trust or other entity, whether incorporated or unincorporated) such Member shall designate a person to represent it with respect to the Association. A power of attorney shall be provided by the legal entity to the Association evidencing the authority of the person, without derogating from the rights of such Member to provide a separate authority (proxy) for purposes of any General Meeting as referred to in Section 7.9.
- 5.1.8. Where a Member is a legal entity (company, close corporation, trust or other entity, whether incorporated or unincorporated), the shareholders, Directors, Trustees and/or members of such legal entity shall be personally liable, jointly and severally with such Member, for the due performance by the Member of all its obligations in terms of the MOI and/or Rules.
- 5.1.9. A registered owner of the Unit may not resign as a Member of the Association.
- 5.1.10. The Association shall maintain at its registered office, alternatively at the office of Management, a register of Members of the Association as provided in item 1(9) of Schedule 1 to the Act.
- 5.1.11. The register of Members shall be open to inspection on reasonable notice during normal business hours of the Association.
- 5.1.12. Each Member shall be required to provide the Association with Written details of his service address, it being competent for any Member to alter any such service address by Written notice to the Association at its registered office or care of Management, provided however that any physical address and/or postal address for Delivery purposes shall be in the Republic of South Africa.
- 5.1.13. For purposes of legal action, the physical address of the Unit of a Member shall be the *domicilium citandi et executandi* of the Member. If he wishes to change such *domicilium* address he must give Written notice to that effect to the Association. If the said *domicilium* of the Member is changed to an

address which is not in Pretoria, the Member agrees to the jurisdiction of the Magistrates Court of Pretoria.

5.1.14. The *domicilium citandi et executandi* of the Association for purposes of legal action is 27 Muirfield Boulevard, Silver Lakes, 0054.

5.1.15. The *domicilium citandi et executandi* for any tenant / occupier of a Unit for purposes of legal action is the address of the Unit.

## 5.2 Rights and Obligations of Members

5.2.1 Subject to Section 8, Members shall elect Directors annually at the Annual General Meeting of the Association.

5.2.2 Members shall use their best endeavours to further the interests of the Association in pursuance of its objects and shall refrain from bringing the Association in disrepute and refrain from unauthorised use of the trademarks of the Association.

5.2.3 Members shall diligently and promptly comply with the obligations imposed in terms of this MOI and observe all Rules referred to in Section 9 and shall take all reasonable steps to ensure compliance therewith by their families, employees, agents, contractors, tenants, visitors, trusted individuals, guests and in the case of any Member who conducts any form of business or profession on or from a Unit, his customers, clients and patients.

5.2.4 No Member shall let or otherwise part with occupation of his Unit, whether temporarily or otherwise, unless such proposed tenant or occupier of the Unit has agreed in Writing to be bound by and observe the terms and conditions of this MOI including the Rules referred to in Section 9, such obligations to comprise a *stipulatio alteri* (benefit in favour of third party) in favour of the Association, without derogating from the liability and responsibility of the Member for the acts and omissions of such proposed tenant or occupier as referred to in Section 5.2.3 above.

5.2.5 The owner of a Unit may not subdivide an erf, erect a second dwelling on the same erf, rezone an erf or in any way change the use for which an erf has been zoned, whether by way of rezoning or a consent use or otherwise, without the explicit prior approval of the Association.

5.2.6 No business or any part thereof shall be conducted from a Unit without the prior written consent of the Association and provided further that all conditions of the relevant town planning scheme and/or title deed have been complied with.

5.2.7 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.

5.2.8 Members shall not interfere with nor give instructions to any officers, employees, agents or contractors of the Association and Management, and any complaints shall be addressed in Writing in terms of the published Complaints Procedure to Management. Management may request that any unresolved complaint be dealt with by the Members at a forthcoming General Meeting of the Members.

5.2.9 Should a vacant stand situated in the Estate be sold, the purchaser shall complete the construction of a dwelling thereon within 24 (twenty four) months from the date of registration of such stand into the name of the purchaser.

5.2.10 A Member or any other occupier of a Unit must not:

5.2.10.1 Contravene the provisions of any law or by-law relating to the use of a Unit;

- 5.2.10.2 Contravene the conditions of title applicable to the Unit
- 5.2.10.3 Construct or place any structure or building improvement on a common area.
- 5.2.11 A Member is liable for and must pay to the Association all reasonable legal costs and disbursements, as taxed on an attorney and own client scale or agreed with the Member, incurred by the Association in enforcing compliance with this MOI, the Rules or the Act.

## **6 Financial and Levies**

- 6.1 The Association may, on the authority of a written Board resolution:
  - 6.1.1 Increase the contributions due by Members by a maximum of the Consumer Price Index (CPI) at the end of a financial year to take account of anticipated increased liabilities of the Association pending the approval of budgets at a General Meeting, which increase will remain effective until Members receive notice of the contributions due by them for the next financial year as approved by a General Meeting; provided that the Directors must give notice of such increased contributions similar to Section 6.14. Any difference between the CPI increase and levies approved at a General Meeting will be adjusted accordingly on Member statements within 30 days.
  - 6.1.2 Recover from Members in the form of a specified additional levy any amounts imposed upon the Association by any relevant authority in terms of any legislation, where such liabilities were not provided for at the time of the approval of the prevailing budget. At least 30 days' notice of the effective date of such additional levy will be given.
- 6.2 The Association shall prepare separate budgets for the administrative and capital maintenance funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the Annual General Meeting.
- 6.3 The budgets shall be sufficient to meet the Association's necessary and other reasonably foreseeable administrative and capital maintenance expenses during the next financial year catering for annual and otherwise non-recurring costs, including a separate provision in respect of reserve funds, which budgets shall further specify separately the estimated surplus or deficit, if any, carried forward from the preceding financial year.
- 6.4 The administrative fund must be used to fund the day-to-day operating expenses of the Association for a particular financial year.
- 6.5 The capital maintenance fund must be used for the cost of maintenance, repair, improvement, addition and replacement of capital items of the communal property and for any unexpected essential operational or capital costs not budgeted for in the prevailing year. The Directors must report in detail the extent to which the approved capital maintenance fund had been applied to each Annual General Meeting.
- 6.6 The administrative and capital maintenance funds must be accounted for and reported on separately. The Board shall furnish Members with interim accounts of both funds at the end of each quarter. Expenditure of reserve funds must be communicated and duly motivated to Members with at least 30 days' notice prior to incurring the expenditure.
- 6.7 The Association must prepare a written Capital Maintenance Plan for the maintenance, repair, addition and replacement of communal property, for approval by Members at a General Meeting, setting out:
  - 6.7.1 The capital items expected to require maintenance, repair, additions and replacement within the next 3 years;



- 6.7.2 The estimated cost of the maintenance, repair, additions and replacement;
- 6.8 The insurance policies of the Association must follow a proper risk assessment and provide adequate cover against replacement value, standard risks, and CSOS Act prescribed amounts of public liability and fidelity insurance. The Association must obtain a replacement valuation at least every 5 years of all buildings and improvements to the communal property it must insure and adjust the insurance values accordingly.
- 6.9 The budget shall be Delivered to Members and copies shall be available for collection at the offices of Management not later than 14 (fourteen) days prior to the date of the Annual General Meeting.
- 6.10 The budget shall be tabled at the Annual General Meeting for approval by the Members, in the form as tabled or with such amendments or modifications and restrictions as the Members may resolve.
- 6.11 Subject to the hereinafter stated provisions, the levies payable by the Members will be determined by dividing the net budgeted expenditure (including any surplus or deficit carried forward from the previous financial year) by the number of levy paying Units, excluding the Units registered in the name of the Association.
- 6.12 Notwithstanding the general principles applicable to the apportionment of the levies as mentioned in Section 6.11, the Directors shall be entitled to determine, in accordance with the criteria hereinafter referred to, a differentiated and/or weighted levy with respect to any Units.
- 6.13 The Association shall advise each Member, in Writing, within 14 days after the Annual General Meeting, of the amount of the levies payable by such Member for the affected financial year, which notice must:
- 6.13.1 State that the Member has an obligation to pay the specified contribution and charges; and
- 6.13.2 Specify the due date for each payment; and
- 6.13.3 State that interest at a rate specified in the notice will be payable on any overdue contributions and charges; and
- 6.13.4 Include details of the dispute resolution process that applies in respect of disputed contributions and charges.
- 6.14 The Directors shall, in their normal administration and management of the Association, not exceed the budgets as approved, nor increase the levies or impose any additional levies or raise any special levies, other than as provided for in 6.1, with respect to any non-essential expenditure, unless a due motivation has been made available to Members and such additional levies and/or special levies, as the case may be, have been approved by the Members at a General Meeting.
- 6.15 Members shall be obliged to pay any newly imposed levies with effect from the date stipulated in the Written notice as Delivered to the Member, consequent upon the approval of the budget.
- 6.16 The annual levies shall be payable either upfront or in equal monthly installments, due in advance on the first day of each and every month of each financial year.
- 6.17 Additional levies and special levies shall similarly be payable over the period indicated by the Association in its Written notice Delivered to Members.
- 6.18 Members shall be liable for, and shall pay interest on any Debt due to the Association, at a rate as published in the notice referred to in Section 6.15, such interest to be compounded from the due date to the date of actual payment, both days inclusive.
- 6.19 Where payment of any Debt due by a Member is not received in full on or by the due date, including dishonoured cheques or debit orders, the Association shall, in addition to the levying of interest as

stipulated in 6.18, be entitled to charge a 10% (ten percent) late-payment administration fee in respect of the total debt due on each such occurrence, such fee to be added to the levy account. The default shall in addition be listed with a recognized credit bureau until full settlement.

- 6.20 Payments will be allocated as follows: first to outstanding interest, then to legal and collection costs, then to penalties and finally to levies.
- 6.21 Any Member whose Debt is in arrears for a period in excess of thirty (30) days will not be permitted to proceed with any building construction until the arrear Debts have been settled in full, and no building plans in anticipation of any construction shall be approved by the Association until the aforesaid full settlement of Debt.
- 6.22 The Debt shall be payable to the Association free of exchange, deduction or commission at Pretoria.
- 6.23 The obligation of a Member to pay levies shall terminate upon his ceasing to be a Member without prejudice to the Association's rights to recover any Debt.
- 6.24 A Member's successor in title (to a Unit) shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that Unit to him, to pay the levies, including any special levies attributable to that Unit with effect from the date of transfer. The Association furthermore reserves the right to equitably adjust and accrue levies and special levies to consolidated or subdivided properties.
- 6.25 In circumstances where a Member has sold or otherwise disposed of a Unit, he shall be obligated to inform the Management in Writing of the impending transfer, and shall furthermore similarly confirm the date on which such transfer is registered in the name of the Member's successor in title in order to enable the Association to determine the date of responsibility for payment of levies and any other amounts comprising of a Debt.
- 6.26 No Member shall be entitled to transfer a Unit without first obtaining a clearance certificate from the Association, confirming that (i) full particulars of the Member's successor in title has been furnished, (ii) this MOI and all Rules have been complied with, (iii) all levies (including payment of 3 (three) months levies in advance) have been paid and (iv) any other amounts comprising of a Debt have been paid up to the end of the month during which such contemplated registration of transfer of such Unit will take place, save where such transfer is as a result of an order of court or a judicial sale, as the case may be.
- 6.27 Management shall be entitled to levy an administration fee (to be determined by the Association from time to time) when issuing any clearance certificate and/or consent to allow registration of a mortgage bond over the purchaser/owner's property and similarly, when issuing any extended clearance certificate.
- 6.28 The further principles applicable in terms of the Sectional Titles Act with regard to the issuance of a clearance certificate shall apply *mutatis mutandis* to any clearance certificate required to be obtained in respect of the transfer of any Unit in the Estate.
- 6.29 The amount of any Debt due to the Association shall enjoy the preference accorded any similar debt due to the body corporate in terms of the Sectional Titles Act in conformity with the provisions of the Insolvency Act, No 24 of 1936, as amended, and as otherwise apply in law.
- 6.30 Where a Member is in arrears with payment of any Debt the Association shall, in addition to the provisions of 6.18 and 6.19 supra, be entitled to enforce such recovery proceedings and exercise such other legal remedies as are available to the Association in terms of the MOI and/or Rules, or at law, and in the event of the Directors seeking legal advice and/or implementing any legal proceeding, the Association shall be entitled to recover from the offending Member all legal costs incurred on an attorney and own client scale, together with all relevant disbursements.

- 6.31 In the event that a Member is in default of a judgement in respect of any Debt, the Association may approach a relevant court of law to declare the Unit owned by the Member executionable and saleable in order to recover all arrear Debt.
- 6.32 Differentiated and Weighted Levies
- 6.32.1 Having regard to the nature, extent of occupation, type of Unit, use of the Unit (residential and/or business), the size/composition of the erf and further taking into account such other relevant criteria as the Directors shall in their sole discretion determine, the Directors are entitled to differentiate with regard to the levy responsibility attaching to any Unit and/or to weight the levies payable in respect of any Unit (these rights extending to any additional levies and special levies).
- 6.32.2 In effecting a determination, the Directors shall take into account and apply, to the extent deemed relevant, the following principles and prescriptions:
- 6.32.2.1 the allocation of costs directly attributable to a Unit, to the Member (as owner of such Unit) and which directly attributable costs shall include, but not be limited to any municipal and/or other local authority service charges and other expenses, and which such directly attributable expenditure shall be payable by the affected Member in addition to the levies;
- 6.32.2.2 assign a proportion of the costs relating to the Estate generally to all Units (including undeveloped erven) equitably;
- 6.32.2.3 take into account and effect a weighting and/or differentiation where any business is conducted on or from the Unit (and if necessary, to impose additional levies in respect thereto);
- 6.32.2.4 take into account and effect a weighting and/or differentiation whether a Sectional Title Unit is a primary section (designed to be used for human occupation) or a utility section (designed not to be used for human occupation, such as a storeroom, workshop, parking garage or other utility area, not being a primary section);
- 6.32.2.5 take into account and effect a weighting and/or differentiation, as the case may be, where prepayments, cash payments, card payments, and/or payments by debit order are made in respect of levies;
- 6.32.2.6 disclose such differentiated or weighted levies in the annual budget.
- 6.32.3 The Directors shall exercise their discretion reasonably, taking into account the provisions as herein above set out, and such other relevant criteria as the Directors consider necessary.
- 6.32.4 A Member shall be entitled to Deliver an objection in Writing to the Association within not more than 30 (thirty) days after delivery of the Written notification of differentiated/weighted levies payable by such Member (as the owner of the affected Unit) and the following further provisions shall apply in respect thereof:
- 6.32.4.1 the Directors shall not entertain any objection which is not received within the aforementioned prescribed period;
- 6.32.4.2 the Directors shall review the determination with respect to the affected levy and take into account the objection received;
- 6.32.4.3 the complainant Member shall be entitled to be provided with the calculation and determination as effected by the Directors;
- 6.32.4.4 the Directors shall convene, as soon as reasonably possible, a meeting with the complainant Member (and should there be more than one complainant, those complainants collectively) and hear such further representations as the complainant Member may wish to make;

- 6.32.4.5 the Directors shall, in consequence of such processes, either reject the complaint (and confirm the determination of the effected levies) or review the determination and Deliver their Written determination to the complainants within a reasonable period;
- 6.32.4.6 in all events the Directors' determination (whether confirming the determination or revising same), shall be final and binding upon the Association and the affected complainant Member;
- 6.32.4.7 The aforementioned shall not preclude any Member from approaching a competent court for the review of the Directors' final decision.

## **7 Members Meetings**

General Meetings of Members will be held in accordance with the provisions of the Act, this MOI and the Rules as published from time to time.

### **7.1 Annual General Meeting (AGM)**

7.1.1 The Association shall convene and hold an AGM once in every calendar year, but not more than 15 (fifteen) months after the date of the previous AGM.

7.1.2 The notice convening the AGM shall be Delivered to the Members and shall contain an agenda of the business to be conducted as follows:

7.1.2.1 presentation of the Chairperson's report;

7.1.2.2 presentation of Directors' Report, Auditor's Report and audited Annual Financial Statements for the previous financial year;

7.1.2.3 presentation of the administrative and capital budgets for the next financial year and the determination of levies and the approval thereof;

7.1.2.4 the appointment of the Association's Auditors and the approval of the remuneration payable to the Auditors;

7.1.2.5 the election and remuneration of the Directors as more fully dealt with in Section 8; and

7.1.2.6 any other relevant business.

### **7.2 Extraordinary General Meeting (EGM)**

The Association may convene an EGM for dealing with extraordinary business not dealt with at an AGM.

### **7.3 Constitutional General Meeting (CGM)**

The Association shall convene a CGM for purposes of effecting or, where applicable, confirming any amendment, addition or deletion to:

7.3.1 the MOI; and/or

7.3.2 any Rules made pursuant to the provisions of Section 9; and/or

7.3.3 any previously passed Resolution or Special Resolution required to be dealt with at a CGM; and/or

7.3.4 subdividing, sale, purchase, granting of servitudes or amending the zoning of any immovable property owned by the Association; and/or

7.3.5 any other business that falls to be dealt with at an AGM.

7.4 All such aforementioned General Meetings shall be held at a date, time and place as the Directors shall determine, subject to the provisions of the Act read together with this MOI.

### **7.5 Requisition by Members for the holding of an EGM and/or CGM**

7.5.1 The Directors shall on receipt of a Written requisition signed by Members holding not less than 10% (ten percent) of the voting rights in the Association, convene either an EGM or CGM, as the case may

be, within not less than 15 (fifteen) and not more than 60 (sixty) business days from the date of receipt of such notice in conformity with the requirements set out in Sections 61(3)(b) and 62(1)(a) of the Act.

7.5.2 The provisions as set out in Sections 61(3)(a), 61(5) and 61(6) of the Act shall otherwise apply to the Written requisition referred to in Section 7.5.1.

7.5.3 The Written notice of the requisitionists shall set out in detail a draft of the resolution accompanied by a comprehensive motivation to be tabled at such EGM or CGM, as the case may be.

## 7.6 Notice of Meetings and Further Provisions

7.6.1 Subject to the other provisions of this MOI, each AGM, EGM and CGM shall be called by Written notice of at least 15 (fifteen) business days before the date set for the meeting.

7.6.2 The notice convening each such meeting shall specify the place, the day and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.

7.6.3 In the event that special business is to be conducted at a meeting, the notice convening the meeting shall contain adequate motivation and information to enable the Members to make an informed decision.

7.6.4 Before any person may attend or participate in a meeting of Members, that person must present reasonably satisfactory identification and the meeting Chairperson must be reasonably satisfied that the right of that person to participate and vote, either as a Member, or as a proxy of a Member, has been reasonably verified.

7.6.5 The record date for General Meetings will be the last day upon which notice of the meeting may be given.

## 7.7 Quorum

7.7.1 No business shall be transacted at any General Meeting unless a quorum is present within 60 (sixty) minutes of the time specified for the commencement of the meeting. The Chairperson of the meeting shall have the right to extend the 60 (sixty) minute period by a reasonable amount of time to allow for exceptional circumstances as described in the Act.

7.7.2 Subject to at least 3 (three) Members being present in person, the quorum necessary for the holding of the following meetings shall comprise the hereinafter set out number of Members entitled to vote, present in person or by proxy:

7.7.2.1 AGM and EGM: 100 (one hundred) Members entitled to vote thereat in terms of this MOI; and

7.7.2.2 CGM: 200 (two hundred) Members entitled to vote thereat in terms of this MOI.

7.7.3 Subject to the provisions of Section 7.7.1, if within 60 (sixty) minutes, or such extended time as allowed by the meeting Chairperson, from the time specified for the holding of a General Meeting a quorum is not present, the meeting shall be postponed without motion, vote or further notice for 1 (one) week, at the same place and time. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

7.7.4 For the purposes of establishing a quorum, Units registered in the name of the Association shall not be taken into account and the Association shall not be considered to be a Member.

- 7.8 Adjournment of Meetings and Further Provisions
- 7.8.1 Subject to the provisions of Section 64(10) of the Act, the meeting Chairperson shall, with the approval of a majority of the Members entitled to vote at any General Meeting at which a quorum is present, adjourn the meeting to a fixed time and place, or until further notice, as agreed at the meeting.
- 7.8.2 No business shall be transacted at any adjourned meeting other than the business which failed to be transacted at the meeting from which the adjournment took place.
- 7.9 Proxies
- 7.9.1 A Member may be represented at a General Meeting by a proxy, who need not be a Member. A Member may not appoint more than 1 (one) proxy per Unit he owns. A proxy may not delegate his vote to another proxy.
- 7.9.2 The Association shall provide each member with a proxy invitation for a specific General Meeting in the format prescribed in Section 7.9.12 of the Memorandum of Incorporation which shall remain valid until the end of the Meeting, or any postponement thereof.
- 7.9.3 In the event of a Trust, Company or Close Corporation resolving to authorise a natural person, who is not a related or interrelated person (as defined in the Companies Act, 2008) to attend, speak and vote in person or by proxy at a General Meeting, the resolution form is to be accompanied by a duly completed proxy instrument.
- 7.9.4 The instrument used by Members to appoint a proxy shall be in Writing, dated and duly signed by the Member concerned (or his appointed agent duly authorised in Writing).
- 7.9.5 The instrument appointing a proxy (and the power of attorney or any other required authority under which it is signed) shall be delivered to the Association or its designated representative, and preferably at least 48 (forty eight) hours (excluding Saturdays, Sundays and Public Holidays) prior to the commencement of the Meeting at which the person named in the proxy instrument proposes to vote. Proxies will be accepted via a designated Association e-mail address in accordance with the Electronic Communications and Transactions Act, as amended.
- 7.9.6 In addition to 7.9.4 and 7.9.5 above, the Association may provide a platform to Members to submit proxies in the prescribed format via a secure electronic portal.
- 7.9.7 No proxy instrument will be accepted by the Association after the commencement of the Meeting.
- 7.9.8 A proxy instrument, other than the proxy invitation instrument issued by the Association, issued by a Member remains valid for:
- (i) 1 (one) year after the date on which it was signed; or
  - (ii) any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in the Companies Act, or expires earlier as contemplated in Section 7.9.2 of the MOI for proxies issued by the Association.
- 7.9.9 A proxy invitation issued by the Association remains valid only until the end of the meeting for which it was intended.
- 7.9.10 The Independent Electoral Committee of the Association's ruling on the validity and/or acceptability of any proxy instrument shall be final and binding unless reviewed by a competent authority.
- 7.9.11 A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no intimation of the death or insolvency, or

revocation shall have been received by the Association and the proxy at any time prior to the vote being taken in respect of which the proxy exercises such vote.

7.9.12 In order to accurately determine the authority and rights of the proxy holder, the proxy shall preferably be in the following format, contain a list of all the proposed resolutions and indicate the voting instructions to the proxy holder in an unambiguous manner. Where no indication of voting has been made, the proxy holder may vote as he deems fit.

PROXY FORM

I/We:	the undersigned
<small>(Name/s in BLOCK LETTERS)</small>	
the registered owner(s)/or duly authorised representative of the registered owner(s) of:	
<small>Stand Number</small>	
being a Member of the Association do hereby appoint:	
1.	or failing him/her,
2.	or failing him/her,
3. The Chairperson of the Board	
as my proxy to attend, speak and vote on my behalf, as indicated below at the ..... of the Association to be held on the ..... day of ..... and at any adjournment thereof.	
THE FOLLOWING ARE PROPOSED TO BE PASSED, WITH OR WITHOUT MODIFICATION:	
<u>ORDINARY RESOLUTION NUMBER 1</u>	
<input type="checkbox"/> In Favour	<input type="checkbox"/> Against
<input type="checkbox"/> Abstain	
<u>ORDINARY RESOLUTION NUMBER 2</u>	
<input type="checkbox"/> In Favour	<input type="checkbox"/> Against
<input type="checkbox"/> Abstain	
<u>SPECIAL RESOLUTION NUMBER 1</u>	
<input type="checkbox"/> In Favour	<input type="checkbox"/> Against
<input type="checkbox"/> Abstain	
<u>ELECTION OF DIRECTORS TO THE FOLLOWING PORTFOLIOS</u>	
<input type="checkbox"/> In Favour	<input type="checkbox"/> Against
<input type="checkbox"/> Abstain	
The proxy is authorised to vote on motions to amend and on motions so amended.	<input type="checkbox"/> Yes or <input type="checkbox"/> No
The proxy is authorised to vote on additional motions proposed at the meeting.	<input type="checkbox"/> Yes or <input type="checkbox"/> No
Notes:	
<ul style="list-style-type: none"> <li>• A Member entitled to attend and vote at General Meetings may appoint a proxy to attend, speak and vote at the meeting in his stead. A proxy need not be a Member of the Association. A Member may not appoint more than 1 (one) proxy per Unit he owns. A proxy may not delegate his vote to another proxy.</li> <li>• Indicate instruction to proxy by way of a cross in the spaces provided above.</li> <li>• If no instruction has been made as to how the proxy may vote, the proxy may vote as he thinks fit.</li> <li>• Any alterations or corrections to this proxy form must be initialled by the signatory.</li> <li>• Proxy forms must be delivered, care of the Directors, to the Association's Management Offices (27 Muirfield Boulevard, Silver Lakes) preferably at least 48 (forty eight) hours (excluding Saturdays, Sunday and Public Holidays) prior to commencement of the meeting.</li> <li>• <b>Proxies will be accepted via a designated Association email address.</b> No proxy instrument will be accepted after the commencement of the meeting.</li> <li>• Documentary evidence establishing the authority of a person signing this form of proxy in a representative or other legal capacity must be attached to this form of proxy without which the proxy will be invalid (i.e. resolution or consent form if applicable).</li> </ul>	
Signed at	on this day of
SIGNATURE OF PROXY ISSUER:	

- 7.10 Resolutions
- 7.10.1 Every motion and every amended motion proposed for adoption as a resolution by a General Meeting shall be seconded at the meeting and if not so seconded, shall be deemed not to have been proposed.
- 7.10.2 An amendment proposed shall also require 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.
- 7.10.3 An ordinary motion or the amendment of any ordinary motion shall be carried by a simple majority of all votes cast.

7.10.4 A Special Resolution (including any amendments) shall be adopted by not less than 75% (seventy five percent) of the votes cast of Members entitled to vote at the meeting.

#### 7.11 Voting - Rights

At every General Meeting:

7.11.1 Every Member shall be entitled to vote in person or by proxy (as determined in Section 7.9) and shall have 1 (one) vote or 1 (one) proxy for each Unit registered in his name.

7.11.2 If a Unit is registered in the name of more than one person, then as provided in Section 5.1.4, all such co-owners shall jointly have 1 (one) vote or 1 (one) proxy.

7.11.3 For the purposes of any vote, the votes of any Units registered in the name of the Association are considered abstentions.

#### Voting - Determination

7.11.4 At any General Meeting a motion put to the vote of the meeting shall be decided on a show of hands unless a poll is proposed by the Chairperson of the meeting or demanded by 5 or more Members having a right to vote either in person or by proxy in terms of Section 63(7) of the Act. A poll shall be taken in the form of a ballot.

7.11.5 Unless a poll is demanded before or on the declaration of the result of a show of hands, a declaration by the meeting Chairperson that a motion has, on a show of hands, been carried or defeated, an entry to that effect in the minute book of the Association shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such motion.

7.11.6 A demand for a poll may be withdrawn.

7.11.7 Should a poll be demanded, it shall be taken in such a manner as the meeting Chairperson directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

7.11.8 Scrutineers shall be appointed by a show of hands at the meeting to determine the result of the poll.

7.11.9 A poll demanded with respect to any adjournment shall be taken forthwith.

7.11.10 A poll demanded on any other question shall be taken at such time as the meeting Chairperson directs.

7.11.11 The demand for a poll shall not prevent the continuation of the meeting for the transaction of any business other than the question upon which the poll has been demanded.



7.11.12 Unless any Member present in person or by proxy at a General Meeting, prior to closure of the meeting, objects to the correctness or validity of the procedure at such meeting, the meeting shall in all respects be deemed to have been properly and validly constituted and conducted.

7.11.13 The declaration of the voting results by the AGM meeting Chairperson of the elections of Directors shall be provisional pending the declaration of the Independent Electoral Committee (IEC) on the integrity of the election process as provided for in the Rules.

## 7.12 Conduct of Meetings

7.12.1 The Chairperson of the Board shall preside as chairperson at all General Meetings of the Members and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead, or failing the Vice-Chairperson, a chairperson shall be elected by the meeting to act in his stead, for such meeting.

7.12.2 The Members at a General Meeting may remove the meeting Chairperson from office if notice of the meeting contains a clear statement of the proposed removal; provided that such removal does not automatically remove the Chairperson from the office of Director.

7.12.3 The Chairperson must:

7.12.3.1 Maintain order, regulate the orderly expression of views and guide Members and other participants through the business of the meeting in accordance with the common law of meetings;

7.12.3.2 Ensure that all motions and amendments proposed are within the scope of the notice and powers of the meeting;

7.12.3.3 Ensure that the Association's Rules, the minute books and any other documents relevant to the items of business on the agenda are available at the meeting;

7.12.3.4 Act fairly, impartially and courteously to all members and others entitled to attend the meeting;

7.12.3.5 Ensure that all Members and others entitled to speak are able to express their views without unnecessary disturbance or interruption;

7.12.3.6 Adjourn the meeting at his discretion, when it is not able to complete or continue with its business;

7.12.3.7 Make decisions on points of procedure;

7.12.3.8 Settle disputes by giving rulings on points of order;

7.12.3.9 Surrender the chair to a temporary chairperson for the elections part of the meeting where the Chairperson stands for re-election.

## 8 Directors

### 8.1 Office of the Directors

8.1.1 There shall be a Board of Directors of the Association consisting of 5 (five) Directors of which shall be nominated to the portfolios of Chairperson, Vice-Chairperson, Finances, Security, and Environment elected by the Members at an AGM; and

8.1.2 an ex officio Director, who need not be a Member, who will be the Chief Executive Officer (CEO) who shall be appointed to the Board by the Directors mentioned in 8.1.1.

8.1.3 The nomination of a Director must be in writing, in the prescribed format, accompanied by the written consent of the person nominated and delivered to the Association service address by no later than the date as announced by the Association prior to the General Meeting.

8.1.4 If an insufficient number of nominations to fill the vacancies are received by the closing date for nominations in terms of Section 8.1.3, further nominations may be called by the Independent Electoral Committee.

- 8.1.5 Notwithstanding the provisions of Section 8.1.1, the Directors shall be entitled to co-opt 1 (one) further Director to assist the Board of Directors with respect to any functions in terms of the aforementioned designated portfolios (or such other portfolios as the Directors shall determine), such co-opted Director, to enjoy the same powers and functions as the duly elected Directors, subject however to any such co-opted Director's appointment terminating on the date of the next AGM.
- 8.2 A Director shall be a natural person, hold suitable expertise as required for his designated portfolio, and except for the ex officio Director, shall be a Member of the Association or a duly authorised spouse of such Member or the duly authorised representative of a Member of the Association where such Member is not a natural person, as referred to more fully in Section 5.1 above.
- 8.3 A Director, by acceptance of his appointment to the office as such, shall be deemed to have agreed to be bound by all the provisions of the MOI.
- 8.4 Save as set out in Section 8.1.2 and Section 8.8, each Director, except the CEO and a co-opted Director, shall continue to hold office as such from the date of his election until the end of the second AGM following such election, at which meeting and subject to the hereinafter set out provisions, each Director shall be deemed to have retired from office as such but will be eligible for re-election to the Board of Directors. In the case of the co-opted Director, such Director shall continue to hold office as such from the date of his co-option until the first AGM following such co-option, at which meeting, and subject to the hereinafter set out provisions, such Director shall be deemed to have retired from office as such but will be eligible for election to the Board of Directors. The CEO shall hold office for the duration of his appointment agreement, and subject to Section 8.6.
- 8.5 The principle as enunciated in Section 8.4 whereby elected Directors shall hold office as such for the period as stated in Section 8.4, has the effect that there shall be no obligation on any Director to stand down until his term of office as stated in Section 8.4 has expired. This does not derogate from the right of any Director to resign, at any time, or to stand down at the AGM following upon the AGM at which he was elected.
- 8.6 A Director(s) shall be deemed to have vacated his office upon:
- 8.6.1 his having become disqualified to act as a director in terms of the Act;
- 8.6.2 his being removed from office as provided for in Section 71 of the Act;
- 8.6.3 his being disentitled to exercise a vote in terms of the MOI;
- 8.6.4 the remaining Directors take a vote of no confidence against said Director which vote is unanimous;
- 8.6.5 his having submitted his resignation in Writing to the Association.
- 8.7 Upon any vacancy occurring in the Board of Directors prior to the next AGM, the vacancy in question shall be filled by a person nominated and co-opted by the remaining Directors for the time being.
- 8.8 Should a vacancy occur in the office of Chairperson, the Vice-Chairperson shall assume that office for the remainder of its term, and the Board of Directors will elect a new Vice-Chairperson and co-opt an additional Director to the vacancy, provided that no Director shall hold dual portfolios.
- 8.9 The Chairperson shall preside at all meetings of the Board of Directors and in the event of his not being present within 10 (ten) minutes of the scheduled time for the start of the meeting or in the event of his inability or unwillingness to act, the Vice-Chairperson shall act in his stead, failing which, a chairperson shall be appointed by the meeting for such meeting.
- 8.10 Directors shall be entitled to reasonable remuneration for services rendered in their capacities as such as determined by the Members at a General Meeting and Directors shall be further entitled to be reimbursed in respect of all reasonable and vouched expenses necessarily incurred by them respectively in or about the performance of their duties as Directors.

8.11 Powers and Functions of Directors

Unless otherwise resolved by way of a Special Resolution at any General Meeting, Directors are authorised and empowered to:

- 8.11.1 appoint and dismiss the CEO;
- 8.11.2 delegate powers to the CEO (including the power to appoint and dismiss employees other than senior employees, the latter which will require prior Board approval);
- 8.11.3 institute legal proceedings to protect the objects and rights of the Association, enforce the MOI and/or Rules and defend any legal proceedings brought against the Association where deemed appropriate;
- 8.11.4 open and conduct banking accounts for purposes of the Association's business;
- 8.11.5 disburse, from the bank accounts such operational and capital expenditure as approved in the budget and as otherwise may be authorised by an EGM;
- 8.11.6 enforce compliance with the provisions of this MOI and the Rules and, in the event of non-compliance, to impose sanctions and penalties in terms of the Rules;
- 8.11.7 enter into contracts necessary for the purposes of the objects of the Association and giving effect to the powers of the Association in its MOI and implementation of this MOI;
- 8.11.8 appoint committees with respect to the following functions:
  - 8.11.8.1 Security;
  - 8.11.8.2 Environment, Aesthetics & Architecture;
  - 8.11.8.3 Country Club;
  - 8.11.8.4 Social, Ethics & Governance;
  - 8.11.8.5 Audit & Risk;
  - 8.11.8.6 Health & Safety;
  - 8.11.8.7 Elections of Directors; and such other committees as deemed necessary;
- 8.11.9 delegate to such committee such powers and authorities as may be considered necessary by the Directors for purposes of fulfilling any functions and exercising the rights and/or discharging the duties imposed upon the Directors;
- 8.11.10 The appointment of a committee shall be effected in Writing with duly defined rights, powers and duties in the form of Terms of Reference to be approved and revised periodically by the Board of Directors.
- 8.11.11 Such a committee shall only function subject to any limitation as to its duration and membership by the Board.
- 8.11.12 The Directors may, on furnishing reasonable grounds therefor, withdraw or suspend any of the rights, powers, duties and membership so delegated.
- 8.11.13 The minutes of meetings of each committee shall be promptly provided to the Directors.
- 8.11.14 Each committee shall meet as frequently as deemed necessary or as otherwise directed by the Directors.
- 8.11.15 The Directors shall ensure that at least 1 (one) Director serves on each committee except the committee overseeing elections of Directors.

- 8.12 The Directors shall use their discretion in terms of the interpretation and enforcing of the MOI and Rules, which discretion shall always be applied in the best interests of the Association.
- 8.13 The Directors shall meet to attend to their business, adjourn, and otherwise regulate their meetings, as they deem in the best interest of the Association, subject to the provisions of the MOI.
- 8.14 The quorum for any meeting of the Directors shall be 4 (four) Directors present in person.
- 8.15 Subject to Sections 8.11.2, 8.11.9 and 8.16, a Director shall not be entitled to appoint any alternate to function in his stead for any purpose nor by proxy or otherwise appoint any other person to fulfill his functions and duties.
- 8.16 A Director may not otherwise delegate or sub-delegate any of his obligations, save as approved by a majority of the (other) Directors.
- 8.17 Each Director is entitled to 1 (one) vote. Any motion passed by the Board of Directors shall be carried by a simple majority.
- 8.18 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 proposed to be discussed or decided, however, such Director shall recuse himself from any deliberations on the issue and not be entitled to vote in respect of the matter in which he has a personal interest or conflict of interest.
- 8.19 Any Director who has such a personal interest or conflict of interest regarding any matter as mentioned in Section 8.18, shall be obliged to disclose such personal interest or conflict of interest to the Board forthwith.
- 8.20 The Directors shall cause the minutes of each Board and General Meeting to be kept in accordance with Sections 73(6) and 73(7) of the Act, which minutes of Board Meetings shall be reduced to Writing within 7 (seven) days, and which minutes of General Meetings shall be reduced to Writing within 60 (sixty) days, and certified as correct by the Chairperson at the next meeting.
- 8.21 A copy of each minute shall be Delivered by the Chairperson to each Director within 14 (fourteen) days of the meeting to which such minutes relate.
- 8.22 All minutes of Directors meetings shall, after certification, be placed in the Directors minute book which shall be kept by Management in accordance with the provisions of the Act relating to the keeping of minutes of meetings of directors of companies.
- 8.23 The Directors' minute book shall be open for perusal at all reasonable times by any Director, the Auditors and Members.
- 8.24 Subject to the provisions of this MOI, the proceedings of any Director meeting shall be conducted in such reasonable manner and form as the Chairperson shall direct.
- 8.25 A resolution signed by all the Directors shall be valid in all aspects as if it had been duly passed at a meeting of the Board of Directors.

## **9 Rules**

- 9.1 In order to promote and implement the objects and powers of the Association and to ensure the beneficial management and conduct of the business of the Association and to further advance the interests of Members, the Directors shall formulate Rules as contemplated in this MOI and Sections 15(3) to 15(5) of the Companies Act.

- 9.2 The Directors may make, amend or repeal any Rules, including on an interim basis, by publishing the Rules, amendment or repeal thereof as provided for in Section 9.6.
- 9.3 Any Rule, amendment or repeal thereof as contemplated in Section 9.2 takes effect on the later of 20 days after publishing as provided for in Section 9.6 or the date specified in the Rule, amendment or repeal thereof.
- 9.4 Interim Rules, amendments or repeals thereof, will be binding and have validity on an interim basis from the time it takes effect until it is put to a vote at the next CGM of the Association, and on a permanent basis only if it has been ratified at the CGM. Any failure to ratify the interim Rules, amendments or repeals thereof does not affect the validity of anything done in terms of those interim Rules, amendments or repeals during the period that they had an interim effect as provided in the Act.
- 9.5 Subject to 9.2, 9.3 and 9.4 above, all Rules, whether interim or otherwise, shall be submitted for final approval and consequent permanent validity by Members at an ensuing CGM by way of an ordinary resolution.
- 9.6 The Directors shall ensure that Management Delivers or otherwise publishes the Rules and Schedule of Transgressions and Penalties in a manner which brings same to the attention of the Members, each Member nevertheless being responsible for ensuring that he is in possession of a current set of Rules obtainable from Management's offices.
- 9.7 The Directors shall be entitled to implement such penalties, in addition to those penalties stipulated in the Schedule of Transgressions and Penalties, in respect of non-compliance with or other breach of the Rules and/or with respect to a breach of the obligations imposed upon Members, visitors and all other classes of entrants to the Estate in terms of this MOI, as shall be lawfully determined by the Directors from time to time.
- 9.7.1 Transgressions: Any act or omission deemed a transgression by the Association whether indicated as a transgression and/or carrying a penalty or not will be subject to the imposition of a penalty or other sanction in the discretion of the Association.
- 9.7.2 Persistent Transgressions: Persistent transgressions may result in higher penalties and/or legal action at the discretion of the Association.
- 9.8 The Directors shall be responsible for the enforcement of all Rules and Schedule of Transgressions and Penalties.
- 9.9 Any penalties levied against Members in terms of the Rules shall be added to the levy account and shall be payable together with the levies due at the commencement of the month following upon the month during which such penalty was imposed.
- 10 Indemnities**
- 10.1 Every Director and member of Management, shall be indemnified by the Association against all costs, losses and expenses (inclusive of travelling expenses), which such person or persons may reasonably and necessarily incur or become liable for by reason of any contract entered into or by any act or deed done by such person or persons in good faith in the discharge of their respective duties and obligations to the Association.
- 10.2 The provisions as set out in Section 10.1 shall similarly apply insofar as every co-opted Director and member of any committee appointed by the Directors are concerned and the Association indemnifies all such persons accordingly.

- 10.3 Without prejudice to the generality of the foregoing, the Association subject to Section 78 of the Act indemnifies every Director, servant, agent and employee of the Association against all losses of whatsoever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties.
- 10.4 Members conversely indemnify the Association (including Management) and their respective officers, employees and agents in respect of any claims, damages or losses (including costs and interest) suffered or sustained as a result of any unlawful act, negligence (including any act or omission) and/or as a result of any breach of the provisions of this MOI and/or the Rules, by the Member, his family, employees, agents, contractors, subcontractors, tenants (and other occupiers of the Unit), guests and visitors (including any customer, client or patient) and which act, omission and/or breach occurs, if relevant, in and about the Estate.
- 10.5 Every person as a precondition to entry to the Estate, indemnifies and hold harmless the Association (and Management) and their respective officers, employees and agents in respect of any claims, damages or losses including any personal injury or other harm occurring or arising in or about the Estate.
- 10.6 The Directors shall be entitled to, subject to the provisions of Section 78 of the Act, effect insurances pertaining to any liability or risk which they as Directors may have in performing their duties in respect of the Association.

## **11 Accounts / Inspection of Documents**

- 11.1 The Association's audited annual financial statements, register of Members, MOI and Rules, and minutes of Board Meetings shall be open for inspection by Members at the office of Management at all reasonable times during normal business hours of the Association, subject to the following provisions:
- 11.1.1 should a Member require copies of documentation which are not prohibited from being reproduced by any relevant legislation or confidentiality provisions, such request for copies shall be submitted to the Directors in Writing, and the Directors shall be entitled to levy a reasonable fee in respect of the administration for such request, including the cost of any copies; and
- 11.1.2 the Directors shall be entitled to refer any Written request to the next AGM to be decided upon by the Members.
- 11.2 The Directors shall procure that the Association's books of account are written up and maintained in accordance with all legal requirements as prescribed in terms of the Act, and shall otherwise in and about the conduct of the Association's business, ensure compliance with all applicable legislation, whether fiscal or otherwise.
- 11.3 The Directors shall procure that audited annual financial statements of the Association are tabled at each AGM.
- 11.4 The Auditors shall be required to effect the annual audit of the Association within 3 (three) months of the financial year-end of the Association and shall otherwise be entitled to effect such interim audits and/or examine the accounts of the Association as directed by the Directors.
- 11.5 The appointment and duties of the Auditors shall be in conformity with the Act, and the appointment and remuneration of the Auditors are to be made and confirmed at each AGM.

## **12 Delivery of Notices**

- 12.1 Any notice or other communication in Writing shall be Delivered by the Association to the Member at the address of the Unit unless the Member has, as provided in Sections 5.1.11 and 5.1.12, notified

the Association in Writing of any other address for delivery.

- 12.2 Except in the case of any notice of any general meeting, the period of which is prescribed by this MOI, any notice served by registered post shall be deemed to have been Delivered on the 7<sup>th</sup> (seventh) day following despatch.
- 12.3 Notwithstanding any provisions to the contrary contained in this MOI, any notice or other written communication served by any other means (by hand, facsimile or e-mail transmission) shall be considered Delivered where receipt has been acknowledged by the addressee or can be proven by the addressor.
- 12.4 Where a Member has expressly in Writing addressed to the Association requested or consented to all notices and communications being addressed to him either per e-mail and/or per facsimile transmission, a notice or other communication despatched in this manner shall be considered good notice for all purposes, provided, however, that any legal processes shall, nevertheless, require to be served at the Member's address as referred to in Section 12.1.

### **13 Dispute resolution**

- 13.1 A Member who disputes that he has committed a breach of any obligation in terms of this MOI and/or the Rules, shall be obliged to Deliver a submission as set out in the Rules under Dispute Resolution, in Writing, to the Directors.
- 13.2 Only after the remedies available to a Member in terms of clause 13. 1 have been exhausted, a Member may lodge such a dispute as provided for in the Community Schemes Ombud Services Act, 2011, (CSOSA) and the dispute resolution provisions of CSOSA will then apply.
- 13.3 Neither the Association nor the affected Member shall be prevented from seeking any urgent or interim relief from a competent Court.

### **14 Transitional Arrangements**

- 14.1 Subject to the provisions of the MOI and the Rules on and after the commencement date, anything which was done under a provision of the Articles of Association and the Rules in effect on the day immediately preceding the day on which the MOI comes into effect and which could be done under a corresponding provision of the MOI and the Rules, is deemed to have been done under that corresponding provision.
- 14.2 The coming into effect of the MOI does not affect any rights, Debts, obligations and/or any liabilities which existed on the day immediately preceding the day on which the MOI comes into effect and such rights, Debts, obligations and liabilities shall continue under the MOI and Rules on and after the commencement date and shall be deemed to have existed under, in terms of or by virtue of a corresponding provision of the MOI and the Rules.