

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT 71 OF 2008

**MEMORANDUM OF INCORPORATION**

OF

**PINNACLE POINT HOMEOWNERS ASSOCIATION NPC**  
**(“THE ASSOCIATION”)**

**(A non-profit company provided for in Schedule 1 of the Companies Act, 71 of 2008)**

**ADOPTION OF MOI**

The former Memorandum of Association is hereby repealed in its entirety and simultaneously replaced by this Memorandum of Incorporation, adopted by Special Resolution of Members of the Association on \_\_\_\_\_ 2020.

The Memorandum of Incorporation is signed by each Director of the Board of Directors of the Association as designated by the Special Resolution of Members to confirm the adoption of this MOI in accordance therewith.

<b>NAME OF DIRECTOR</b>	<b>ID NUMBER</b>	<b>SIGNATURE</b>	<b>DATE</b>

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## 1. DEFINITIONS

In the MOI and in the annexures and/or schedules to the MOI, the following expressions bear the meanings given to them below and equivalent expressions will have similar meanings:

- 1.1 **“Accounting Records”** means information in written or electronic form concerning the financial affairs of the Association as required in terms of the Act, including but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of Financial Statements;
- 1.2 **“Accounting Standards”** means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the board of the International Accounting Standards Committee, or its successor body, and approved for use in the Republic of South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Act (the “FRC”) or such other international accounting standards as may be determined by the FRC;
- 1.3 **“Act”** means the Companies Act, Act 71 of 2008;
- 1.4 **“Association”** means PINNACLE POINT HOMEOWNERS ASSOCIATION NPC, Registration Number 2004 / 021284 / 08;
- 1.5 **“Audit”** has the meaning set out in the Auditing Profession Act, Act 26 of 2005, but does not include an “independent review” of annual Financial Statements, as contemplated in section 30 (2) (b) (ii) (bb) of the Act;
- 1.6 **“Auditor”** has the meaning set out in the Auditing Profession Act, Act 26 of 2005;
- 1.7 **“Authorised Representative”** means an Individual:
  - 1.7.1 appointed and authorised by a Member in writing to represent such Member in all dealings with the Association; and
  - 1.7.2 to on behalf of the Member exercise all rights and obligations of such Member in terms of this MOI, including the exercising of Voting Rights, and to appoint a proxy for voting in his stead; and
  - 1.7.3 which Individual the Association will be entitled to deem, until the Individual’s authorisation is formally and in writing withdrawn, to be fully mandated to act as if the Member himself; and

- 1.7.4 the Board may by way of Association Rules prescribe any formalities or documentation in this regard to regulate the appointment and/or authorisation.
- 1.8 **“Board”** means the board of Directors of the Association;
- 1.9 **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.10 **“Club”** means the club type organisation established by the association for the Golf Course;
- 1.11 **“Common Property”** means the part of the Pinnacle Point Development belonging to the Association which is not subject to any exclusive right of use by a Member including the Golf Course Land and the club house and other facilities thereon, such as the swimming pool and tennis courts;
- 1.12 **“Commission”** means the Companies and Intellectual Property Commission established by section 185 of the Act;
- 1.13 **“Companies Tribunal”** means the Companies Tribunal established in terms of section 193 of the Act;
- 1.14 **“Director”** means a member of the Board of the Association, as contemplated in section 66 of the Act, or an Alternate Director of the Association and includes any Individual occupying the position of a Director or Alternate Director, by whatever name designated. For the purposes of this MOI, "Director", and when the context so requires, includes a former Director, an Alternate Director, a Prescribed Officer, a Person who is a member of a committee of the Board, irrespective of whether or not the Person is also a member of the Board.
- 1.15 **“Electronic Communication”** has the meaning set out in section 1 of the Electronic Communications and Transactions Act, Act 25 of 2000;
- 1.16 **‘Erf’ or ‘Erven’** means an erf (or erven) in the Pinnacle Point Development, including an erf in the Pinnacle Point Development and/or the Sectional Title Scheme Pinnacle Point Development, villas and golf lodges;
- 1.17 **“Ex Officio Director”** means an Individual who holds office as a director of a particular Association solely as a consequence of that Individual holding some other office, title,

- designation or similar status specified in that Association's Memorandum of Incorporation;
- 1.18 **"File"** when used as a verb, means to deliver a document to the Commission in the manner and form, if any, prescribed for that document;
- 1.19 **"Financial Statement"** includes:
- 1.19.1 annual financial statements and provisional annual financial statements;
  - 1.19.2 interim or preliminary reports.
- 1.20 **"Financial Year"** means the financial year of the Association which shall run from the first day of July in each year until 30 June of the next year;
- 1.21 **"Golf Course"** means the golf course(s) constructed on the Golf Course Land and includes the club house and all sporting, recreational and other facilities;
- 1.22 **"Golf Course Land"** means the land within the Pinnacle Point Development on which the Golf Course has been constructed (and includes the land on which the club house and all other club house facilities are located);
- 1.23 **"Estate Rules"** means the rules as defined in article 43 below;
- 1.24 **"Individual"** means a natural person;
- 1.25 **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Companies Act, which shall apply not only to Directors and Alternate Directors but also to members of Board committees and Prescribed Officers;
- 1.26 **"Juristic Person"** means an entity (such as a firm) other than an Individual created by law and recognized as a legal entity having distinct identity, legal personality, and duties and rights, and includes a Foreign Association and a trust;
- 1.27 **"Knowing", "Knowingly" or "Knows"** when used with respect to a Person, and in relation to a particular matter, means that the Person either:
- 1.27.1 had actual knowledge of the matter; or
  - 1.27.2 was in a position in which the Person reasonably ought to have:
  - 1.27.3 had actual knowledge;

- 1.27.4 investigated the matter to an extent that would have provided the Person with actual knowledge; or
- 1.27.5 taken other measures which, if taken, would reasonably be expected to have provided the Person with actual knowledge of the matter;
- 1.28 **“Levy”** or **“Levies”** means the levy or levies referred to in article 45 below;
- 1.29 **“Local Authority”** means the local authority having jurisdiction in respect of the Pinnacle Point Development Area or any relevant portion thereof;
- 1.30 **“Material”** when used as an adjective, means significant in the circumstances of a particular matter, to a degree that is:
  - 1.30.1 of consequence in determining the matter; or
  - 1.30.2 might reasonably affect a Person’s judgement or decision-making in the matter;
- 1.31 **“MOI”** means the Memorandum of Incorporation of the Association, as constituted by this document and any subsequent amendments thereof, together with its annexures and/or schedules, and unless the context clearly provides otherwise, should be read and applied by including any relevant provisions in the Association Rules;
- 1.32 **“Minister”** means the member of the Cabinet responsible for companies;
- 1.33 **“Ordinary Resolution”** means a resolution adopted with the support of more than 50% (fifty percent) of the Voting Rights exercised on the resolution:
  - 1.33.1 at a General Meeting; or
  - 1.33.2 by Members acting other than at a General Meeting, with regard to the matter voted on;
- 1.34 **“Person”** includes a Juristic Person;
- 1.35 **“Pinnacle Point Development”** means the Pinnacle Point, Golf Course Land and other amenities situated on the Pinnacle Point Development Area;
- 1.36 **“Pinnacle Point Development Area”** means the land comprising Erven 15391 and 16579 Mossel Bay, on which the Pinnacle Point Development is established;



- 1.37 **“Prescribed Officer”** means an Individual who, within the Association (or any other Association, as the case may be), performs any function that has been designated by the Minister in terms of section 66 (10) of the Act;
- 1.38 **“Record Date”** means the date established under section 59 of the Act on which the Association determines the identity of its Members and their shareholdings for the purposes of the Act;
- 1.39 **“Registered Office”** means the office of the Association that is registered as required by section 23 of the Act;
- 1.40 **“Registered Owner”** means a registered owner of an Erf or Unit as registered in the relevant Deeds Office;
- 1.41 **“Services”** mean such utilities, amenities and services as may be provided by or on behalf of the Association for the Registered Owners and residence within the Pinnacle Point Development and/or the Pinnacle Point Development Area;
- 1.42 **“Special Resolution”** means a resolution adopted with the support of at least 75% (seventy five percent) of the Voting Rights exercised on the resolution:
- 1.42.1 at a General Meeting; or
  - 1.42.2 by Members acting other than at a General Meeting, with regard to the matter voted on;
- 1.43 **“Unit”** or **“Units”** means a unit (or units) (as defined in the Sectional Titles Act No. 95 of 1986 and any amendment or substitution thereof) in a sectional title scheme within the Pinnacle Point Development;
- 1.44 **“Voting Rights”** with respect to any matter to be decided by the Association, means the rights of any Member to vote in connection with that matter;

## 2. INTERPRETATION

In this MOI and in the annexures and/or schedules to this MOI, unless the context clearly indicates a contrary intention:

- 2.1 words, expressions and/or terms defined in the Act and used in this MOI will bear the same meaning in the MOI as in the Act (irrespective of whether same starts with a capital letter or not), unless such word, expression and/or term is assigned another definition in this MOI;
- 2.2 article headings have been inserted for convenience only and shall not be taken into account in its interpretation;
- 2.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Person, effect shall be given to it as if it were a substantive article in the body of the MOI, annexure and/or schedule, notwithstanding that it is only contained in the definition;
- 2.4 words, expressions and/or terms defined in any article shall, unless the application of any such word, expression and/or term is specifically limited to that article, bear the meaning assigned to such word and/or term throughout the MOI, annexure and/or schedule;
- 2.5 if any period is referred to by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the first Business Day thereafter;
- 2.6 where the day on or by which anything is to be done, is not a Business Day, it shall be done on or by the first Business Day thereafter;
- 2.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.8 any reference to a document is a reference to that document as amended, novated, ceded or supplemented;
- 2.9 an expression which denotes:
  - 2.9.1 any gender includes the other genders,

- 2.9.2 the singular includes the plural and vice versa; and
- 2.10 a Juristic Person includes an Individual and vice versa, unless the provisions of the Act precludes same (for example section 69 (7)(a) of the Act which determines that a Juristic Person may not be a Director);
- 2.11 the use of the word “including” followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and general words that follow specific words in a list, shall not be construed as referring only to the types of things identified by the specific words;
- 2.12 a reference to a section by number refers to the corresponding section of the Act;
- 2.13 a reference to an article by number refers to the corresponding article of the MOI;
- 2.14 Annexures and/or schedules to this MOI shall be deemed to be incorporated in and form part of this MOI;
- 2.15 Expressions defined in this MOI shall bear the same meanings in annexures and/or schedules to this MOI;
- 2.16 This MOI shall be governed by, construed and interpreted in accordance with the law of the Republic of South Africa.
- 2.17 any words signifying the singular shall include the plural and vice versa and any word signifying the masculine shall include the feminine and vice versa;
- 2.18 any word or expression which is defined in the Companies Act and which is not otherwise defined in this MOI shall have the meaning assigned thereto in the Companies Act (and which, for ease of reading, have been capitalised in this MOI);
- 2.19 the head notes to the articles of this MOI are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;
- 2.20 if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the provisions of the Companies Act shall prevail, and this MOI shall be read in all respects subject to the Companies Act;
- 2.21 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI;

- 2.22 any reference to an enactment is to that enactment as at the date on which this MOI is adopted and as amended or re enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the date on which this MOI is adopted. If as a result of an amendment or re enactment that section number changes the relevant provision of this MOI shall be read as if it referred to the correct section, without the necessity for an actual amendment;
- 2.23 to the extent that any provisions of this MOI are based on any unalterable provisions of the Companies Act or the Regulations and any of those provisions are amended, the Board is authorised to amend this MOI to reflect such amendments (which amendments will apply to the Association by operation of law), in addition to any other rights to amend the MOI and in so doing eliminate the risk that if there is a conflict between any provision of this MOI and the unalterable provisions of the Companies Act or the Regulations as amended, the relevant provision of this MOI will be void to the extent that it contravenes, or is inconsistent with the amended unalterable provisions of the Companies Act or the Regulations, as the case may be.
- 2.24 Subject to any provisions in this MOI to the contrary and notwithstanding any omission of any provision from this MOI, the Association may do anything which the Companies Act authorises a Non-Profit Association to do if so authorised by its MOI.

## CHAPTER 1: INCORPORATION OF ASSOCIATION

### 3. INCORPORATION AND FORM OF MOI

3.1 This MOI is in a form unique to the Association, as contemplated in section 13 (1)(a)(ii) of the Act and the standard MOI form, as contemplated in section 13 (1)(a)(i) of the Act and Regulation 15 (1)(a) of the Regulations, will not apply to the Association.

3.2 The Association is incorporated as a non-profit company:

3.2.1 subject to the restrictions in section 10 and Schedule 1 of the Act; and

3.2.2 for an object relating to a communal or group interest, as required by item 1(1)(a)(ii) of Schedule 1 to the Act; and

3.2.3 with voting members as contemplated in item 4(1) of Schedule 1 to the Act, read with item 4(2)(d) thereof; and

3.2.4 to apply all of its assets and income, however derived, to advance its stated objects, as set out in this MOI; and

3.2.5 with a MOI consistent with the principles set out in items 1(2) to 1(9) of Schedule 1 to the Act.

3.3 The Association is incorporated in accordance with and governed by:

3.3.1 the Unalterable Provisions of the Act, subject to any higher standard, greater restriction, longer period of time or any similarly more onerous requirement imposed on the Association, in terms of this MOI, than would otherwise apply to the Association in terms of an Unalterable Provision of the Act; and

3.3.2 the Alterable Provisions of the Act, subject to the limitations, extensions, variations or substitutions set out in this MOI.

#### **4. BINDING NATURE OF MOI**

This MOI (and any Association Rules) are binding:

- 4.1 between the Association and each Member and, insofar as they may be applicable to all Persons occupying any Erf or Unit by, through or under any Member, whatever the nature of such occupation;
- 4.2 between or among the Members of the Association;
- 4.3 between the Association and each Director or Prescribed Officer of the Association;  
and
- 4.4 between the Association and any other Individual serving the Association as a member of a committee of the Board,

in the exercise of their respective rights, obligations or functions within the Association.

#### **5. OBJECT OF THE ASSOCIATION**

The object of the Association is to manage, for the benefit of all Members, the Pinnacle Point residential development, golf course and other amenities situated on Erven 15391 and 16579 Mossel Bay, including the management, development and maintenance of the facilities thereon, and related or ancillary activities.

#### **4. LIABILITY**

Subject to section 77 of the Act, a Person is not, solely by reason of being an Incorporator, Member, Director, Alternate Director or Prescribed Officer of the Association (or a member of a Board committee), liable for any liabilities or obligations of the Association.

#### **5. POWERS OF THE ASSOCIATION**

- 5.1 This MOI contains no restrictive conditions applicable to the Association, as contemplated in section 15 (2)(b) of the Act.
- 5.2 Subject to the terms of this MOI, the purposes and powers of the Association:

- 5.1.1 the Association has all of the legal powers and capacity of an Individual, except to the extent that a Juristic Person is incapable of exercising any such power, or having such capacity;
  - 5.1.2 are not subject to any restrictions, limitations or qualifications can engage in any business activities.
- 5.3 In accordance with section 218 of the Act, any:
- 5.1.3 agreement entered into by the Association, or any term thereof;
  - 5.1.4 any resolution passed by the Association; or
  - 5.1.5 any provisions of this MOI or any of the Association Rules;
- and which is voidable, or that may be declared unlawful in terms of this Act, or which is generally (not specifically) prohibited by the Act, will not be void until declared so by a court.

## 6. AMENDMENTS AND ALTERATIONS

- 6.1 Nothing contained in this MOI prohibits the amendment of any particular provision of this MOI, as contemplated in section 15 (2)(c) of the Act.
- 6.2 This MOI may be altered or amended in the manner set out in sections 16, 17 and/or 152 (6)(b) of the Act. As such:
- 6.2.1 This MOI may be amended:
    - 6.2.1.1 in compliance with a court order, subject thereto that such an amendment must be by way of a resolution of the Board, and with a Special Resolution as contemplated in section 16 (1)(c)(ii) of the Act not being required;
    - 6.2.1.2 At any time if a Special Resolution to amend it is proposed by:
      - 6.2.1.2.1 The Board; or
      - 6.2.1.2.2 Members entitled to exercise at least 30% (thirty percent) of the Voting Rights that may be exercised on such a Special Resolution;
- and which Special Resolution is adopted at a General Meeting.

6.2.2 The Board, or an Individual authorised by the Board, may alter the Association Rules or this MOI, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the relevant document, by:

6.2.2.1 first publishing with Members a notice of the alteration, in any manner required or permitted by this MOI or the Association Rules); and

6.2.2.2 secondly Filing a notice of the alteration.

6.3 The Commission, or a Director or Member of the Association, may apply to the Companies Tribunal for an administrative order setting aside the notice of an alteration published in terms of article 6.2.2 above, only on the grounds that the alteration exceeds the authority to correct a patent error or defect, as contemplated in article 6.2.2 above.

## **7. CONFLICTS**

7.1 Whenever there is a conflict/inconsistency between a provision of this MOI and:

7.1.1 an Alterable Provision of the Act, the provision of this MOI shall prevail to the extent of any such conflict/inconsistency; and

7.1.2 an Unalterable Provision of the Act, the Unalterable Provision of the Act shall prevail to the extent of any such conflict/inconsistency, unless this MOI imposes a higher standard, greater restriction, longer period of time or any similar more onerous requirement than would otherwise apply to the Association in terms of such Unalterable Provision of the Act.

7.2 A Member or the Board may apply to the Companies Tribunal for an administrative order exempting a provision of this MOI or the Association Rules from any prohibition or requirement established by or in terms of an Unalterable Provision.

## **8. ASSOCIATION RULES**

8.1 The authority of the Board to make, implement, follow, amend or repeal rules for the Association, as contemplated in sections 15 (3) to 15 (5) of the Act ("Association Rules"), is not limited or restricted by this MOI. As such the Board may make, implement, follow, amend or repeal any necessary or incidental Association Rules



relating to the governance of the Association in respect of matters that are not addressed in the Act or this MOI, or for instances specifically provided for in the MOI.

- 8.2 Association Rules must support any one or all of the principles of proper governance, such as but not limited to, accountability, fairness and transparency.
- 8.3 Association Rules must be consistent with the Act and this MOI, and any such rule that is inconsistent with the Act or this MOI is void only to the extent of the inconsistency.
- 8.4 The Board may make, implement, follow, amend or repeal any necessary or incidental Association Rules in respect of, but strictly not limited to, the following matters:
  - 8.4.1 Association Rules which relate to the authority levels for:
    - 8.4.1.1 the Board and individual members of the Board;
    - 8.4.1.2 the Management of the Association, or any particular individual member of the Management.
  - 8.4.2 Association Rules which relate to the financial strategy and policies and any other policies and strategies of the Association;
  - 8.4.3 Association Rules which relate to the convening and execution of General Meetings or Board meetings and the matter to be considered by it, such as but limited to notifications, attendance at meetings, election procedures (e.g. nomination and voting processes), conflict of interest declarations, proxies, quorums and the role and authority of chairpersons;
  - 8.4.4 Association Rules which relate to the methods and style of communication with and between Members, the Board and Management and the publication methods of official documentation;
  - 8.4.5 Association Rules which relate to the preservation of harmony, orderly and respectful conduct and discipline in the Association and the processes to be followed in cases of misconduct by Members, the Board, individual Board members, Management or any individual members of Management or Prescribed Officers;
- 8.5 Association Rules are made, amended or repealed by:
  - 8.5.1 first publishing to Members a copy of those Association Rules in any manner required or permitted by this MOI, or the Association Rules; and

- 8.5.2 secondly Filing a copy of those Association Rules in the prescribed manner and form within 10 (ten) Business Days from the date of publication as foreseen in article 8.5.1 above.
- 8.5.3 An Association Rule contemplated in article 8.1 above takes effect on a date that is the later of:
  - 8.5.3.1 10 (ten) Business Days after the Rule is Filed in terms of article 8.5.2; or
  - 8.5.3.2 the date, if any, specified in the Rule; and
- 8.5.4 is binding:
  - 8.5.4.1 on an interim basis from the time it takes effect until the next General Meeting where it has to be put to a vote for ratification; and
  - 8.5.4.2 on a permanent basis only if it has been ratified by an Ordinary Resolution at the meeting contemplated in article 8.5.4.1 above.
- 8.5.5 If a Rule that has been Filed in terms of article 8.5.2 is subsequently:
  - 8.5.5.1 ratified as contemplated in article 8.5.4.2, the Association must File a notice of ratification within 5 (five) Business Days in the prescribed manner and form; or
  - 8.5.5.2 not ratified when put to a vote:
    - 8.5.5.2.1 the Association must File a notice of non-ratification within 5 (five) Business Days after the vote, in the prescribed manner and form; and
    - 8.5.5.2.2 the Board may then not make a substantially similar rule within the ensuing 12 (twelve) months, unless it has been approved in advance by Ordinary Resolution of the Members.
- 8.6 The fact that reference is made in any specific article of this MOI, to the formulation or possible formation of Association Rules, does not negate the ability of the Board to formulate Association Rules with regard to any other provisions in the MOI, unless clearly barred from doing so.

**9. MEMBERSHIP OF THE ASSOCIATION**

9.1 Membership of the Association is compulsory for every Registered Owner of an Erf or a Unit.

9.2 Membership of the Association shall be limited to those Persons who are Registered Owners.

9.3 Membership shall commence simultaneously with the registration of transfer of an Erf or Unit into the name of the transferee, i.e. the Registered Owner to be, subject to any other conditions stipulated in this MOI.

9.4 Where any Registered Owner of an Erf or Unit:

9.4.1 consists of more than one Person, all the Registered Owners of the Erf or Unit shall be deemed jointly and severally to be one Member of the Association and shall be obliged to nominate an Authorised Representative in a manner as prescribed by the Association;

9.4.2 is a Juristic Person, it shall be obliged to nominate an Authorised Representative in a manner as prescribed by the Association.

9.5 When a Member ceases to be a Registered Owner, he shall cease to be a Member of the Association with effect from the day on which his status as Registered Owner ceases.

9.6 While a Person is a Registered Owner, that Person shall not be entitled to resign as a Member of the Association and shall be bound by the terms of this MOI.

9.7 No Member shall be entitled to sell or transfer an Erf or a Unit unless:

9.7.1 the transferee becomes a Member of the Association;

9.7.2 such Member obtains the written consent of the Association for the sale or transfer, which consent shall be given provided that:

9.7.2.1 such Member has paid to the Association all Levies and any other amounts of whatsoever nature or howsoever arising, owing by such Member to the Association; and

9.7.2.2 the transferee agrees in writing to be bound by the MOI and the Association Rules of the Association; and

- 9.7.2.3 such Member is not in default of any of its obligations in terms of this MOI and, in the interest of the Association, requires compliance before transfer of ownership can take place.
- 9.8 The Association shall maintain a register of Members to the extent required by item 1(9) of Schedule 1 to the Act.
- 9.9 No Member ceasing to be a Member of the Association for any reason shall (nor shall such Member's executors, curators, Directors or liquidators) have any claim upon or interest in or right to the funds or any property or assets of the Association.

## CHAPTER 2: GOVERNANCE BY MEMBERS

### 10. CONVENING OF GENERAL MEETINGS OF THE ASSOCIATION

- 10.1 General Meetings are primarily held in order for Members to exercise their rights in terms of this MOI by way of their Voting Rights, as more fully described in article 17 below.
- 10.2 General Meetings consist of Annual General Meetings and Special General Meetings. Annual General Meetings means a General Meeting as constituted for the purposes contemplated in article 10.5 below, and all other General Meetings will be called Special General Meetings.
- 10.3 The Association is not required to hold any General Meetings other than those specifically required by the Act and/or this MOI.
- 10.4 The Association shall convene by notice an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, and by clearly specifying it as an Annual General Meeting in the notice.
- 10.5 The Annual General Meeting shall deal with the presentation of the annual financial statements, the annual election of Directors, the noting of the Levy for the next financial year, the appointment of an auditor, and may furthermore deal with any other business laid before it.
- 10.6 The Board may call a Special General Meeting at any time.
- 10.7 The Association must hold a Special General Meeting:
- 10.7.1 if at any time the Board is required by the Act or the MOI to refer a matter to Members for decision, other than for decisions to be dealt with by an Annual General Meeting;
  - 10.7.2 whenever required to fill a vacancy on the Board, as contemplated in terms of article 24 below; and
  - 10.7.3 if one or more written and signed demands for such a meeting is/are delivered to the Association, and
    - 10.7.3.1 each such demand clearly describes the specific purpose for which the Special General Meeting is proposed; and

- 10.7.3.2 in aggregate, demands for substantially the same purpose are made and signed by the Members at the earliest time specified in any of those demands, of at least 10% (ten percent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Special General Meeting.
- 10.8 The Association, or any Member, may apply to a court for an order setting aside a demand made in terms of article 10.7.3 above on the grounds that:
- 10.8.1 the demand is frivolous;
- 10.8.2 calls for a meeting is for no other purpose than to reconsider a matter that has already been decided by the Members; or
- 10.8.3 is otherwise vexatious.
- 10.9 At any time before the start of a Special General Meeting contemplated in article 10.7.3 above:
- 10.9.1 a Member who submitted a demand for that meeting may withdraw that demand; and
- 10.9.2 the Association must cancel the meeting if, as a result of one or more demands being withdrawn, the Voting Rights of any remaining Members continuing to demand the meeting, in aggregate, fall below the minimum percentage of Voting Rights required to call a meeting.
- 10.10 General Meetings will be presided over by the chairperson of the Board, and in his absence the deputy chairperson of the Board (if any). If neither is present to preside over a General Meeting, the Directors present shall elect a chairperson to preside over the meeting from any of the Directors present.
- 10.11 Subject to any provision in this MOI and/or Association Rules to the contrary, the Chairperson presiding over a General Meeting will have full discretion on dealing with any matters at a General Meeting that were not contained in the notice of such meeting, except that no such matters may be submitted for voting by Members.

**11. ATTENDANCE, PRESIDING OVER AND LOCATION OF GENERAL MEETINGS**

- 11.1 Unless otherwise determined in terms of this MOI, the Association Rules or the Act, every Member shall be entitled to be present at a General Meeting and participate therein.
- 11.2 The manner of exercising the right of a Member to speak at a General Meeting will be subject to rulings by the Chairperson in the interest of a constructive, effective and efficient meeting;
- 11.3 The Association may by way of the Association Rules restrict attendance to General Meetings of Persons other than Members and subject to any such Association Rules, the Chairperson may restrict or refuse attendance or participation by anybody in a General Meeting who is not a Member.
- 11.4 The Chairperson of the Board shall preside over General Meetings. If, however, there is no chairperson or if he has notified his inability to attend a meeting or if at any meeting he is not present within 15 (fifteen) minutes of the time appointed for the meeting, the deputy chairperson of the Board (if any) will take his place, or in the absence of a deputy chairperson, the Members present who are entitled to exercise Voting Rights at the meeting will by a show of hands elect anyone of the Directors to chair the meeting.
- 11.5 The Chairperson of a General Meeting shall continue to preside over the meeting until its adjournment, and if applicable, notwithstanding him not having been re-elected as a Director at the meeting.
- 11.6 The Chairperson of a General Meeting shall not have a casting/deciding vote in addition to his deliberative vote as a Member (if any).
- 11.7 The Chairperson of a General Meeting shall procure that a record is kept of all decisions taken at the meeting and shall ensure that such record is inserted into a minute book kept for that purpose.
- 11.8 General Meetings shall be held at such time and any such place as the Board may decide from time to time.
- 11.9 The authority of the Association to conduct General Meetings entirely by Electronic Communication, or to provide for participation in a General Meeting by Electronic Communication is not limited or restricted, subject to the provisions of article 18 below.

11.10 In accordance with section 63 (1) of the Act, before any Person (Members and Proxies included), may attend or participate in a General Meeting:

11.10.1 that Person must present reasonably satisfactory identification; and

11.10.2 the Chairperson must be reasonably satisfied that the right of that Person to participate and vote, either as a Member or as a proxy, has been reasonably verified.

## **12. NOTICES OF GENERAL MEETINGS**

12.1 A General Meeting shall be called on at least 15 (fifteen) Business Days' notice delivered by the Association to each of the Members.

12.2 A notice of General Meeting shall specify:

12.2.1 the place, the day and the hour and the Record Date for the meeting;

12.2.2 the general purpose of the meeting, and/or any specific purpose contemplated, if applicable;

12.2.3 a copy of any proposed resolution to be considered at the meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

12.3 A notice of General Meeting shall specify in a reasonably prominent statement that:

12.3.1 a Member entitled to attend and vote at the meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the meeting in the place of the Member;

12.3.2 a proxy need not be a Member;

12.3.3 a Member may appoint a proxy for each Erf or Unit of which the Member is a Registered Owner to exercise his Voting Rights at the meeting;

12.3.4 any Person attending a General Meeting must be able to provide satisfactory identification in terms of section 63(1) of the Act; and

12.3.5 if applicable, that the meeting is to be conducted partly or completely by Electronic Communication, together with information on the availability of the Electronic Communication for participation in the meeting and any necessary information to



enable Members entitled to vote or their Proxies to access the available medium or means of Electronic Communication, as well as a statement that access to the medium or means of Electronic Communication is at the expense of the Member entitled to vote or of the proxy, except to the extent that the Association determines otherwise.

- 12.4 A notice of an Annual General Meeting shall include:
- 12.4.1 the Financial Statements to be presented in a complete or summarised form; and
  - 12.4.2 should the Financial Statements be included in a summarised form, directions for obtaining a copy of the complete form thereof;
  - 12.4.3 the minutes of the preceding Annual General Meeting and any Special General Meetings held since the preceding Annual General Meeting;
- 12.5 The Association may call a General Meeting with less notice than required, but such a meeting may proceed only if every Member who is entitled to exercise Voting Rights in respect of any item on the meeting agenda:
- 12.5.1 is present at the meeting; and
  - 12.5.2 votes to waive the required minimum notice of the Members meeting.
- 12.6 A notice of a Special General Meeting shall include the minutes of an immediately preceding Special General Meeting, unless such minutes have served at an Annual General Meeting.
- 12.7 An immaterial defect in the form or manner of giving notice of a General Meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed, does not invalidate any action taken at the meeting.
- 12.8 A Member who is present at a meeting, either in person or by proxy, is regarded as having received or waived notice of the meeting, if the minimum notice for the meeting was given, and is regarded to have waived any right based on an actual or alleged Material defect in the notice of the meeting, unless he:
- 12.8.1 alleges a Material defect in the form of notice for a particular item on the agenda; and

- 12.8.2 participates in the determination whether to waive the requirements for notice if less than the required minimum notice was given, or to ratify a defective notice;
- 12.9 A General Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to article 12.10 below, only if every Member who is entitled to exercise Voting Rights in respect of each item on the agenda of the meeting is present and votes to approve the ratification of the defective notice.
- 12.10 If a Material defect in the form or manner of giving notice of a General Meeting relates only to one or more particular matters on the agenda for the meeting:
  - 12.10.1 any such matter may be severed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; or
  - 12.10.2 the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified in terms of article 12.9 above.
- 12.11 An immaterial defect in the form or manner of Delivering notice of a Members meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Member to whom it was addressed, does not, unless the Board elects to do so, invalidate any action taken at the General Meeting.

### **13. RECORD DATE FOR GENERAL MEETINGS**

- 13.1 The Board may set a Record Date for the purpose of determining which Members are entitled to:
  - 13.1.1 Receive notice of a General Meeting;
  - 13.1.2 Participate in and vote at such a meeting;
  - 13.1.3 Decide any matter by written consent or Electronic Communication; or
- 13.2 A Record Date so determined by the Board:
  - 13.2.1 may not be:
    - 13.2.1.1 earlier than the date on which the Record Date is determined; or

- 13.2.1.2 more than 10 (ten) Business Days before the date on which the event or the action for which the Record Date is being set, is scheduled to occur; and
  - 13.2.1.3 must be published to the Members.
- 13.3 If, at any time, the Board fails to determine the Record Date, as envisaged in articles 13.1 and 13.2 above and section 59 of the Act, the Record Date will be the latest date by which the Association is required to give notice to Members of that meeting.

## 14. PROXIES

- 14.1 A Member may be represented at a General Meeting by an Individual as a proxy to on behalf of the Member participate in, speak and vote at a General Meeting.
- 14.2 A proxy need not be a Member.
- 14.3 A Member may not appoint more than one proxy for the same General Meeting.
- 14.4 The Member appointing a proxy shall ensure that prior to the General Meeting, a duly executed, dated and signed proxy instrument, in a form and manner that complies with the Act, be delivered to the Association in a manner prescribed by the Association Rules. In the absence of Association Rules thereon, the proxy instrument shall be delivered to the Person identified in the notice of the meeting for receipt of proxy instruments, and if there is no such Person, then to the Association's Registered Office.
- 14.5 Failure to comply with article 14.4 above, will disqualify the proxy from acting on behalf of the Member at the relevant General Meeting.
- 14.6 A proxy shall not have authority to delegate its powers to another Person.
- 14.7 A proxy instrument appointing a proxy shall be valid for 1 (one) year from the date when it was signed, unless the proxy instrument provides for a longer or shorter duration, and unless made irrevocable, may be revoked at any time.
- 14.8 A vote cast by a revoked proxy instrument shall nevertheless be valid unless:
- 14.8.1 written notice of the revocation is received by the Association from the Member concerned prior to the meeting voted in; or
  - 14.8.2 the Chairperson of the meeting agrees to at the meeting accept written or oral notice by the Member concerned of such revocation.

- 14.9 The Association shall provide a template proxy instrument to be used for General Meetings.
- 14.10 If a duly executed proxy instrument does not indicate how the proxy should vote on any issue on the agenda of the General Meeting, or any motion tabled at the meeting, the proxy may vote or abstain from voting as he sees fit. For avoidance of doubt, a proxy is entitled to exercise, or abstain from exercising, any Voting Right of the Member in own discretion, except to the extent that the proxy instrument appointing the proxy provides otherwise.
- 14.11 A proxy is entitled to vote on the postponement of an agenda item or of the General Meeting, except to the extent that the proxy instrument appointing the proxy provides otherwise.
- 14.12 The Board may formulate Association Rules regarding the delivery of proxy instruments and proof of validity or identification of the proxy.

## **15. QUORUM**

- 15.1 A General Meeting may not begin until sufficient Persons entitled to vote are present at the meeting to exercise, in aggregate, at least (ten percent) of all of the Voting Rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting.
- 15.2 A matter to be decided at a General Meeting may not begin to be considered unless sufficient Persons entitled to vote are present at the meeting to exercise, in aggregate, at least 10% (ten percent) of all of the Voting Rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- 15.3 Notwithstanding the quorum percentages stipulated in articles 15.1 and 15.2 above, if the Association has more than 2 (two) voting Members, neither quorum requirements will met if there are less than 3 (three) Persons present who are entitled to vote.
- 15.4 After a quorum has been established for a General Meeting, or for a matter to be considered at such meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Person with Voting Rights entitled to be Exercised at the meeting, or on that matter, is present at the meeting.

- 15.5 If within 30 (thirty) minutes after the time appointed for the commencement of a General Meeting, the required quorum is not present for the meeting to begin, the meeting shall be postponed, without motion, vote or further notice, to the same place at the same time on the same day of the next week (or if that day is not a Business Day, the first Business Day following that non-business day).
- 15.6 If the required quorum is not present when consideration of a particular matter is to begin, then:
- 15.6.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
- 15.6.2 if there is no other business on the agenda of the meeting, the meeting is adjourned for one week, without motion or vote or further notice, to the same place at the same time on the same day of the next week (or if that day is not a Business Day, the first Business Day following that non-business day).
- 15.7 Notwithstanding the time limit set in article 15.5 above, if a meeting cannot begin due to a deficient quorum, the Chairperson of the meeting may extend the 30 (thirty) minutes time limit for a reasonable period on the grounds that:
- 15.7.1 exceptional circumstances effecting weather, transportation, Electronic Communication, etcetera, have generally impeded or are generally impeding the ability of Persons who can vote at the meeting to be present; or
- 15.7.2 one or more particular Persons who can vote at the meeting, having been delayed, have communicated an intention to attend the meeting, and those Persons, together with others in attendance, would satisfy the quorum requirements.
- 15.8 The Association is not required to give further notice of a meeting that is postponed or adjourned as a result of there not being a quorum, unless the location for the meeting is different from:
- 15.8.1 the location of the postponed or adjourned meeting; or
- 15.8.2 a location announced at the time of adjournment.
- 15.9 If a quorum is not present at an adjourned or postponed meeting within 30 (thirty) minutes from the time appointed for the meeting, then the Persons present who are entitled to vote at the meeting on a matter shall constitute a quorum for the meeting to begin and the matter to be considered.

**16. ADJOURNMENT OF GENERAL MEETING**

16.1 A General Meeting, or the consideration of any matter being debated at such a meeting, may be adjourned from time to time on a motion supported by Persons entitled to exercise, in aggregate, a majority of the Voting Rights:

16.1.1 held by all of the Persons who are present at the meeting; and

16.1.2 that are entitled to be exercised on at least one matter remaining on the agenda of the meeting, or on the matter under debate, as the case may be.

16.2 Such adjournment may be either to a fixed time and place or until further notice (in which latter case a further notice shall be delivered to Members), as determined at the meeting. A further notice shall be delivered to Members if the location or time announced at the time of adjournment is changed.

16.3 A meeting may not be adjourned beyond a date which is the earlier of:

16.3.1 120 (one hundred and twenty) Business Days after the Record Date determined for the adjourned meeting; or

16.3.2 60 (sixty) Business Days after the date on which the adjournment occurred.

**17. VOTING RIGHTS OF MEMBERS**

17.1 Unless otherwise determined in terms of this MOI or the Act:

17.1.1 the Voting Rights of each Member is 1 (one) vote for each Erf or Unit registered in his name. If a Unit or Erf is registered in the name of more than one Person, then all such co-Registered Owners shall jointly have 1 (one) vote for such Erf or Unit;

17.1.2 every Member shall be entitled to exercise his Voting Rights at a General Meeting;

17.1.3 a Member is entitled to vote in person or by proxy at any General Meeting.

17.2 At a General Meeting, voting may be either by show of hands, or by polling.

- 17.3 If voting is by show of hands, any Person with Voting Rights who is present at the meeting, has only 1 (one) vote, irrespective of the number of Voting Rights that Person would otherwise be entitled to exercise.
- 17.4 If voting on a particular matter is by polling (ballot paper), any Person with Voting Rights who is present at the meeting, has the number of votes determined by his Voting Rights.
- 17.5 Subject to the provisions of article 17.6 below, voting at General Meetings will be by a show of hands.
- 17.6 A polled vote must however be held on any particular matter to be voted on if:
- 17.6.1 The Board as part of the notice of the meeting so directed;
  - 17.6.2 the Chairperson of that General Meeting so requires;
  - 17.6.3 it is a vote for the election of Directors;
  - 17.6.4 a demand for such a vote is made by a Person or Persons who are present and entitled to vote at the meeting, and who singularly or jointly hold at least 10% (ten percent) of the Voting Rights held by the Persons present at the meeting and entitled to be voted on that matter.
- 17.7 If voting is by show of hands on a matter to be considered, and subject to the provisions of article 17.9 below, a declaration at the meeting by the Chairperson of that meeting that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect is made 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 resolution. For the sake of clarity, it is not a requirement in this instance to record the number of votes recorded in favour of against such motion.
- 17.8 If voting is by polling:
- 17.8.1 it shall be taken in such manner and place on the agenda as was directed by the Board in the notice of the meeting, or for any other instance, in such manner and place on the agenda (with or without any adjournment) as the Chairperson of the meeting may direct;

- 17.8.2 subject to the provisions of article 17.9 below, the outcome of the poll shall be deemed to be the resolution of the General Meeting at which the poll was taken; and
- 17.8.3 subject to article 17.8.4 below, the Chairperson of the meeting shall announce the result of the poll at the meeting and be recorded in the Minutes of the meeting, stipulating the number of votes recorded in favour of and/or against such motion;
- 17.8.4 subject to any Association Rule to the contrary, in the event of an election of Directors, the Chairperson of the meeting will only announce the names of the candidates elected as Directors, and the number of votes cast in total. For the sake of clarity, the Chairperson will not announce the votes per elected Director and/or the unsuccessful candidates;
- 17.8.5 at any time before the start of a vote, a demand for a poll may be withdrawn and the Chairperson of the meeting may cancel the vote by polling if, as a result of one or more demands being withdrawn, the Voting Rights of any remaining Person or Persons who are present and entitled to vote at the meeting and who continue to demand the poll, in aggregate, fall below the minimum percentage of Voting Rights required to call for such poll.
- 17.9 Any objection with regard to the admissibility of any vote, whether by show of hands or polling, any declaration made by the Chairperson with regard to the result of any voting, or with regard to the correctness or validity of the voting procedure followed, must be made prior to closure of the General Meeting at which such vote took place, or any postponement or adjournment thereof. Only a Person present and entitled to vote on the matter in question, may lodge such an objection, which shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive. Every vote not disallowed at a General Meeting shall be valid for all purposes.
- 17.10 The Minutes of a General Meeting, signed by the chairperson of that meeting or by the chairperson of the next succeeding General Meeting, is evidence of the proceedings of that meeting or the adoption of any resolution thereat. Any extract from such Minutes or extract from any resolution taken at such meeting, if signed by the chairperson of that meeting or by the chairperson of the next succeeding General Meeting, or by the Chairperson of the Board, shall be deemed as evidence of the matters stated in such Minutes or resolution.



- 17.11 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the General Meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.
- 17.12 The Board may regulate, in the interest of good governance, whether by way of Association Rules or otherwise, any voting or election procedures, such as, but not limited to, the documentation used, counting and verification processes and record keeping.
- 17.13 Every resolution of the Members shall either be an Ordinary Resolution or a Special Resolution, approved as follow:
- 17.13.1 For an Ordinary Resolution to be adopted at a General Meeting, it must be supported by more than 50% (fifty percent) of the Voting Rights exercised on the resolution; and
- 17.13.2 For a Special Resolution to be adopted at a General Meeting, it must be supported by at least 75% (seventy five percent) of the Voting Rights exercised on the resolution.
- 17.14 To the extent not provided for in this MOI, Association Rules may stipulate instances which will disqualify a Member from voting should the Member be in default with regard to any of his obligations towards the Association, such as, but not limited to being in arrears on Levies or any other amounts due by the Member to the Association.

## **18. ELECTRONIC PARTICIPATION IN MEMBERS MEETINGS**

- 18.1 The authority of the Association 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 of the Act, is not limited or restricted by this MOI.
- 18.2 If the Association provides for participation in a meeting by Electronic Communication, as contemplated in article 18.1 above:
- 18.2.1 the notice of that meeting must inform Members of the availability of that form of participation, and provide any necessary information to enable Members or their Proxies to access the available medium or means of Electronic Communication; and

18.2.2 access to the medium or means of Electronic Communication is at the expense of the Member, except to the extent that the Association determines otherwise.

**19. MEMBERS ACTING OTHER THAN AT MEETING (“Round Robin Resolutions”)**

19.1 Subject to article 19.5 below, a resolution that could be voted on at a General Meeting may instead be:

19.1.1 submitted for consideration to the Members entitled to exercise Voting Rights in relation to the resolution; and

19.1.2 voted on in writing by Members entitled to exercise Voting Rights in relation to the resolution within such period as the Board may decide, which period will not be less than 20 (twenty) Business Days after the resolution was submitted to the Members.

19.2 A resolution contemplated in article 19.1 above:

19.2.1 will have been adopted if it is supported by Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at a properly constituted General Meeting; and

19.2.2 if adopted, has the same effect as if it had been approved by voting at a meeting.

19.2.3 be deemed to have been passed on the last day on which that resolution is signed by the Members holding the requisite percentage of Voting Rights as is required to pass the resolution in question.

19.3 An election of a Director that could be conducted at a General Meeting may instead be conducted by written polling as foreseen in this article 19 by all of the Members entitled to exercise Voting Rights in relation to the election of that Director.

19.4 Within 10 (ten) Business Days after adopting a resolution, or conducting an election of Directors in terms of this article 19, the Association must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote in the election of the Director, as the case may be.

- 19.5 Any business of the Association that is required by the Act or this MOI to be conducted at an Annual General Meeting (except for the election of Directors), may not be conducted in the manner contemplated in this article 19.

### CHAPTER 3: GOVERNANCE BY THE BOARD OF DIRECTORS

#### 20. POWERS AND FUNCTIONING OF THE BOARD

20.1 The authority of the Board to manage and direct the business and affairs of the Association, as set out in section 66 (1) of the Act, is not limited or restricted otherwise than as provided for in this MOI. As such:

20.1.1 the management and control of the affairs of the Association shall vest in the Board, which shall have full power and authority to do or perform any act, function, matter or thing which could or might be done by the Association, except where such matters are in this MOI specifically reserved to be dealt with by the Members; and

20.1.2 hence, unless a matter is in this MOI specifically reserved to be dealt with by the Members, all actions of the Association will be performed by the Board, acting for and on behalf of the Association.

20.2 In line with the relevant provisions of the MOI and the Act, the Board shall be entitled to appoint an executive management team to carry out the day to day management and operation of the Association on its behalf and to remunerate such management team accordingly.

#### 21. COMPOSITION OF THE BOARD OF DIRECTORS

21.1 The Board will comprise a minimum of 3 (three) and a maximum of 5 (five) Directors.

21.2 Members may from time to time by Ordinary Resolution resolve to extend the Board to more than 5 (five) Directors.

21.3 A Director shall be a natural person and need not be a Member or an Authorised Representative of a Juristic Person Member.

21.4 The Association shall not have any alternate directors.

21.5 A Director, by accepting his appointment to office, shall be deemed to have agreed to be bound by all the provisions of this MOI.

21.6 There are no general qualifications prescribed by the Association for a Person to serve as a Director in addition to the requirements in section 69 of the Act. No person shall

be elected as a Director if he is Ineligible or Disqualified and any such election shall be a null and void. A person who is Ineligible or Disqualified must not consent to be elected as a Director.

- 21.7 All of the Directors will be elected (as opposed to be appointed) by Members and there will be no *ex officio* Director positions as contemplated in section 66 (4) of the Act.
- 21.8 Directors will be elected for an indefinite term, subject to articles 21.9 and 21.10 below.
- 21.9 In accordance with article 5(1)(b) of Schedule 1 to the Act, an election will be held each year for at least 1/3 (one third) of the number of Directors.
- 21.10 For purposes of the election described in article 21.9 above, the Board will each year, prior to the calling for nominations as per article 22 below:
- 21.10.1 by unanimous resolution decide on the Directors to vacate their directorships in order to create vacancies for at least 1/3 (one third) of the number of Directors; and
- 21.10.2 in the event of the Board not being able to come to an unanimous resolution in this regard, the required vacancies will be effected by the longest serving Director (measured in consecutive years) first vacating of his directorship, thereafter the second longest serving Director, continuing with this process until the required number of vacancies are created; and
- 21.10.3 in the event that for the last required vacancy one or more Directors have served equal terms (measured in consecutive years), then the Board will cause a draw of names between such Directors, with the drawn name being the Director to vacate his directorship; and
- 21.11 Each vacating Director in terms of article 21.10 will be eligible for re-election.
- 21.12 The Association must maintain records of its Directors, including the details specified in the Act, in a "Register of Directors".
- 21.13 In accordance with section 66(11) of the Act, any failure by the Association at any time to have the minimum number of Directors required by the act or this MOI, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Association.

**22. NOMINATION FOR ELECTION TO THE BOARD OF DIRECTORS**

- 22.1 The annual election of 1/3<sup>rd</sup> (one third) of Directors as contemplated in terms of article 21.9 above, will as a standard be conducted at Annual General Meetings, but that does not prevent such elections from taking place at a Special General Meeting, subject to the time limits of such election imposed by the Act or this MOI.
- 22.2 Subject to any different periods or processes specified in the Association Rules:
- 22.2.1 in the event of an election of Directors being required in terms of this MOI, then the Notice to Members of the General Meeting at which such election is to take place will invite Members to each provide the Association with nominations of candidates that can be elected as Directors, up to a number not exceeding the vacancies for election. In the event of a Member providing more nominations than the number of vacancies, all of such Member's nominations will be disregarded and void;
  - 22.2.2 the nominations foreseen in article 22.2.1 above, must reach the Association by not later than 10 (ten) Business Days prior to the General Meeting at which the election is to take place, subject to such other date as may be specified in the Association Rules.
  - 22.2.3 the Association shall request from each nominee nominated in terms of article 22.2.1 above, a signed acceptance of their nomination for election as Director and consent to serve as a Director with effect from the date of their election (if so elected), to be delivered to the Association 7 (seven) Business Days prior to the date of the General Meeting at which the election is to take place.
- 22.3 Provided the Association has timeously received a Director's acceptance of their nomination for election as Director and consent to serve as a Director with effect from the date of their election (if so elected)(the "Nominated Director"), and the Association has no reason to believe that the Nominated Director is Ineligible or Disqualified, the Association shall include such Nominated Director on a list for election at the General Meeting and provide all Members with a copy of such list at least 5 (five) Business Days prior to the date of the General Meeting;

**23. ELECTION OF DIRECTORS**

- 23.1 At the General Meeting at which Directors are to be elected, each Member will have as many votes as there are vacancies on the Board to be filled by way of the relevant election.
- 23.2 In the event of the Nominated Directors (see article 22.3 above) being less or equalling the number of vacancies to be filled, then the Chairperson of the General Meeting will, at the time the election is called on the agenda, pronounce the Nominated Directors as duly elected.
- 23.3 In the event of there being more Nominated Directors as the vacancies to be filled, Members will each be issued with a single ballot paper, containing the names of each Nominated Director, and from which Members can, in a single round of voting, elect a Director or Directors in such numbers only as is required to fill the vacant Director positions. (For the sake of clarity, the election process is not done in a series of votes as the contemplated standard/default process contemplated in section 68 (2)(a) of the Act.)
- 23.4 The Nominated Directors will fill the vacancies in the order of most votes received, until all the vacancies are filled.
- 23.5 If there is an equality of votes on the only or last vacancy, the vacancy shall be filled by the drawing of names by the Chairperson of the meeting, and if the chairperson of the meeting is one of the names, then by any other Director not in the draw.
- 23.6 In the event of a Member exercising more votes than he is entitled to in terms of article 23.1 above, then such Member's ballot paper will be regarded as spoilt and be of no consequence whatsoever.
- 23.7 Should a Nominated Director prior to the meeting at which the election is to take place, up to the start of the election process decline his nomination, then his name will either be struck from the list for election as contemplated in article 22.3 above and/or the ballot paper, as the Chairperson of the meeting may direct to ensure that he is not voted for.
- 23.8 Should an elected Director after the election process, but prior to the meeting's adjournment at which the election took place, decline the election, then such Director will automatically be deemed not to have been elected and the Nominated Director with the next highest votes will be elected in his place. For all other instances of an elected

Director declining the election, it will result in a vacancy to be dealt with in terms of article 24 below.

- 23.9 The Chairperson of the meeting will announce and proclaim the election of Directors as provided for in article 17.8.4 above.

## **24. VACANCY ON THE BOARD OF DIRECTORS**

- 24.1 The authority of the Board to fill any vacancy on the Board on a temporary basis, as set out in section 68 (3) of the Act, is not limited or restricted by this MOI.

- 24.2 Should a vacancy arise on the Board, the Board will within 15 (fifteen) Business Days appoint any eligible Individual as a Director to fill such vacancy and serve as a Director on a temporary basis, until the vacancy has been filled by an election in terms of this article 24, and during that period any person so appointed has all of the powers, functions and duties, and is subject to all of the liabilities, of any other Director.

- 24.3 Should a vacancy arise on the Board for whatever reason, an election for a Director will be held at the earliest of:

24.3.1 a Special General Meeting held for this purpose within 12 (twelve) months of the vacancy arising; or

24.3.2 the next Annual General Meeting if the notice of the election at such meeting can be timeously done.

- 24.4 Without limiting or negating the principle contained in article 21.13 above, the continuing Directors may act notwithstanding any vacancy in their body, but, if and for so long as their number is reduced below 3 (three), the continuing Directors or Director may act only for the purpose of filling the vacancy as contemplated in article 24.2 above.

- 24.5 If there is no Director able and willing to act, then any Member entitled to exercise Voting Rights in the election of a Director may convene a Members meeting for the purpose of electing Directors.



**25. BOARD MEETINGS**

- 25.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to any provisions of this MOI.
- 25.2 A Chairperson of the Board (and a Deputy Chairperson of the Board if so decided on by the Board) shall be elected by way of a closed ballot:
- 25.2.1 at the first Board meeting following every Annual General Meeting; and
  - 25.2.2 at the first Board meeting following the vacating of the office of chairperson or deputy chairperson (if applicable).
- 25.3 The Chairperson (and in his absence the deputy chairperson) of the Board, will preside over Board meetings. If neither the Chairperson and the Deputy Chairperson (if applicable) are present at a Board meeting, the Directors present shall elect a chairperson of the meeting from any of the Directors present.
- 25.4 One Director may attend a meeting of the Board on behalf of another Director, representing him/her by written proxy.
- 25.5 Meetings of the Board shall be held as often as may be determined by the Board, but at least once every 6 (six) calendar months.
- 25.6 The authority of the Board to proceed with a meeting despite a failure or defect in giving notice of the meeting, as set out in section 73 (5) of the Act, is not limited or restricted by this MOI. As such, if all of the Directors of the Association i) acknowledge actual receipt of the notice, ii) are present at the meeting, or iii) waive notice of the meeting, the meeting may proceed even if the Association failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 25.7 The minimum number of days for the delivery of a notice of a Board meeting to the Directors, is 10 (ten) Business Days before the meeting is to begin.
- 25.8 A copy of the Board meeting agenda and all supporting documents (including the minutes of the previous meeting and all resolutions passed by the Directors since the previous Board meeting):
- 25.8.1 will be tabled and will form part of any Board agenda pack circulated prior to the next meeting; and

- 25.8.2 shall be forwarded to each of the Directors at least 5 (five) Business Days prior to a meeting of the Board.
- 25.9 The Chairperson:
- 25.9.1 may call a meeting of the Board at any time; and
- 25.9.2 must call such a meeting if required to do so by at least two Directors.
- 25.10 The authority of the Board to conduct a meeting entirely by Electronic Communication, or to provide for participation in a meeting by Electronic Communication, as set out in section 73 (3) of the Act, is not limited or restricted by this MOI, so long as the Electronic Communication facility employed ordinarily enables all Individuals participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- 25.11 The quorum requirement for a Board meeting to begin, the voting rights at such a meeting and the requirements for approval of a resolution at such a meeting, as set out in section 73 (5) of the Act, is varied to provide that the Directors holding more than 50 (fifty) percent of the vote, must be present before a vote may be called at a meeting of the Directors;
- 25.12 If within 30 (thirty) minutes after the appointed time for a meeting to begin the requirements for a quorum as stipulated in article 25.11 above are not met for the purposes of holding a meeting, the meeting is postponed without motion, vote or further notice, to a date to be determined by the Directors present, which date shall not be earlier than 2 (two) Business Days and not later than 10 (ten) Business Days after the date of the meeting at the same time and place, or if such place is not available, at such other place as the Directors may elect.
- 25.13 If at the meeting postponed under article 25.12 above a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting to begin, the Directors present in person or proxy at that postponed meeting shall constitute a quorum.
- 25.14 The Association must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:
- 25.14.1 any declaration given by notice or made by a Director as required by section 75 of the Act (Declaration of Interests); and
- 25.14.2 every resolution adopted by the Board.

25.15 Resolutions adopted by the Board:

25.15.1 must be dated and sequentially numbered; and

25.15.2 are effective as of the date of the resolution, unless the resolution states otherwise.

25.16 Any minutes of a meeting, or a resolution, signed by the Chair of the Board meeting, or by the Chairperson of the next Board meeting is, in the absence of manifest error, evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

25.17 The Association shall cause a copy of the minutes of any proceedings of the Board to be disseminated to all Directors within 30(thirty) days of the meeting.

## **26. DIRECTOR DECISIONS**

26.1 Each Director has one vote on a matter before the Board;

26.2 Any resolution of the Board shall be carried by a simple majority of all votes cast.

26.3 In the case of a tied vote:

26.3.1 the Chairperson of the Board will not have a casting/deciding vote over and above his deliberative vote as Director; and

26.3.2 the matter being voted on fails. The failed matter must, however, be put to the next General Meeting for decision by Ordinary Resolution if the Chairperson so decides, or if at least 2 (two) Directors so requires.

26.4 The Board shall have the right to vary, cancel or modify their decisions and resolutions from time to time.

26.5 A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority vote of the Directors, given in person, or by Electronic Communication ("Round Robin Resolution"), provided that each Director has received notice of the matter to be decided. A decision made in the manner contemplated in this article 26.5 is of the same effect as if it had been approved by voting at a meeting.

**27. DIRECTORS' EXPENSES, REMUNERATION AND FINANCIAL ASSISTANCE**

- 27.1 Subject to article 27.2 below, Directors shall be entitled to remuneration as determined by the Association in a General Meeting, provided that the remuneration payable to Directors shall be reasonable and for services rendered to or at the direction of the Association.
- 27.2 The authority of the Association to pay remuneration to the Directors, in accordance with a Special Resolution approved by the Association's Members within the previous 2 (two) years, and as set out in section 66 (8) and (9) of the Act, is not further limited or restricted in any way by this MOI.
- 27.3 Directors shall be entitled to be refunded all reasonable and *bona fide* expenses incurred by them respectively in or about the performances of their duties as Directors, as may be approved by the Board.
- 27.4 The Association may not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to a Director, Prescribed Officer, or to a person related to any such Director or Prescribed Officer, unless it constitutes an accountable advance to meet:
- 27.4.1 legal expenses in relation to a matter concerning the Association; or
  - 27.4.2 anticipated expenses to be incurred by such person on behalf of the Association; or
  - 27.4.3 is to defray the person's expenses incurred at the Association's request; or
  - 27.4.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

**28. INDEMNIFICATION OF DIRECTORS**

- 28.1 The Association may advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Association, and may further directly or indirectly indemnify a Director for such expenses if the proceedings are abandoned or exculpate the Director, or if they arise in respect of any liability for which the Association is authorised to indemnify a Director in terms of article 28.2 below.
- 28.2 The Association may indemnify a Director in respect of a liability arising out of performance of his duties and actions taken as Director, except to the extent that such

liability arises from wilful misconduct or wilful breach of trust, or in the case of the Director having:

- 28.2.1 acted in the name of the Association, or performed any action on behalf of the Association, despite Knowing that the he or she lacked any and all authority to do so;
  - 28.2.2 acted with gross negligence in such a manner that the Association is viewed to have conducted its business recklessly, with intent to defraud any Person or for any fraudulent purpose; or
  - 28.2.3 been party to any act or omission by the Association despite Knowing that the act or omission was calculated to defraud a creditor, employee or member of the Association, or had another fraudulent purpose.
- 28.3 The Association is authorised to purchase insurance to protect:
- 28.3.1 a Director against any liability or expenses for which the Association is permitted to indemnify a Director in accordance with article 28.2 above; or
  - 28.3.2 the Association against any contingency including, but not limited to, any expenses or liability indemnification the Association is authorised to award to the Directors.

## **29. COMMITTEES OF THE BOARD**

- 29.1 The Association does not elect, in terms of section 34(2) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act, and hence is not obligated by the Act to appoint an audit committee. Any such appointment, or obligation to appoint in terms of this MOI, is done out of own accord and should not be deemed as having voluntarily subjected itself to the provisions of Chapter 3 of the Act.
- 29.2 The Board is authorised to appoint sub-committees of the Board, and to delegate to any such committee any of the authority of the Board, as set out in section 72 (1) of the Act. The creation of a sub-committee, delegation of any power to a sub-committee, or action taken by a sub-committee, does not alone satisfy or constitute compliance by a Director with the required duty of a Director to the Association, as set out in section 76 of the Act.

- 29.3 Except to the extent that a resolution establishing a sub-committee provides otherwise, the committee:
- 29.3.1 may include Individuals who are not Directors of the Association, but:
  - 29.3.2 any such Individual must not be Ineligible or Disqualified to be a Director in terms of this MOI; and
  - 29.3.3 no such Individual has a vote on a matter to be decided by the sub-committee;
  - 29.3.4 may consult with or receive advice from any Person; and
  - 29.3.5 has the full authority of the Board in respect of a matter referred to it.
- 29.4 Save as otherwise provided elsewhere in this Act, any particular Director may be appointed to more than one committee of the Association.

## CHAPTER 4: FINANCIAL GOVERNANCE

### 30. ANNUAL FINANCIAL STATEMENTS

- 30.1 The Association is required to have its annual Financial Statements Audited.
- 30.2 The Association shall each year prepare annual Financial Statements within 6 (six) months after the end of its financial year.
- 30.3 The Annual Financial Statements of the Association shall:
  - 30.3.1 satisfy, as to form and content, the Accounting Standards;
  - 30.3.2 be prepared subject to and in accordance with the Accounting Standards;
  - 30.3.3 present fairly the state of affairs and business of the Association and explain the transactions and financial position of the business of the Association;
  - 30.3.4 show the Association's assets, liabilities and equity, as well as its income and expenses;
  - 30.3.5 set out the date on which the annual Financial Statements were produced and the accounting period to which they apply; and
  - 30.3.6 bear on the first page thereof a prominent notice indicating whether the annual Financial Statements have been Audited or independently reviewed (if any of these are applicable) and the name and professional designation of the Person who prepared them.

### 31. FINANCIAL YEAR

The financial year-end of the Association is the last day of June each year.

### 32. ADDITIONAL ACCOUNTABILITY REQUIREMENTS

- 32.1 Except to the extent that the Association is obliged by this MOI, the Act or the Regulations, to have its annual Financial Statements Audited, the Association does not

elect, in terms of sections 34 (2) and 84 (1)(c)(ii) of the Act, to comply voluntarily with the provisions of Chapter 3 of the Act.

- 32.2 Should the Association from time to time elect to appoint a company secretary and/or an audit committee, such appointments will be done out of own accord and not be deemed as having voluntarily subjected itself to the provisions of Chapter 3 of the Act.

### **33. ACCOUNTING RECORDS**

The Association shall maintain accurate and complete Accounting Records, in English, as are necessary to enable the Association to satisfy its obligations in terms of the Act, this MOI and any other law with respect to the preparation of Financial Statements to which the Association may be subject.



## CHAPTER 5: GENERAL

### 34. SERVICE OF NOTICES

- 34.1 If a notice is required or permitted in terms of the Act, this MOI or the Association Rules, such notices may be given by the Association to any Member (including a proxy), or Director, either personally, or by Electronic Communication, or by sending it by post in a prepaid letter addressed to such Person at his last known address (including such Person's last known email address as provided). The Association must give notice of availability of a document, record or statement to the Member either to his/her/its last known delivery address or last known any email address.
- 34.2 Any Member or Director or Prescribed Officer who has furnished an Electronic Address to the Association, by doing so:
- 34.2.1 authorises the Association to use such Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to him/her/it; and
  - 34.2.2 confirms that same can conveniently be printed by the Member or Director or Prescribed Officer within a reasonable time and at a reasonable cost.
- 34.3 Any notice required to be given by the Association to a Member, or Director or Prescribed Officer and in respect of which the Companies Act does not expressly prohibit the provisions of this article 34.3 from applying, shall be sufficiently given by posting it on the Association's web site until at least the date when the event to which the notice refers occurs, provided that the Association gives a notice thereof similar to a notice of availability in the manner contemplated in article 34.1 above.
- 34.4 If an Erf or Unit has more than 1 (one) Registered Owner, all notices shall be given to the Authorised Representative of such Registered Owners, and failing such appointment for whatever reason, then the Person named first in any register of Members which the Association may keep from time to time, and notice so delivered shall be sufficient notice to all the Registered Owners.
- 34.5 The Association shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for deemed delivery.

**35. MEMBERS' RIGHT TO INFORMATION**

35.1 As contemplated in terms of section 26 of the Act, a Member may examine the following documents at the Registered Office during ordinary office hours on Business Days:

35.1.1 this MOI and Association Rules, as may have been amended;

35.1.2 the details in respect of the Directors, as per section 24 (3)(b) of the Act;

35.1.3 the reports to Annual General Meetings, and annual Financial Statements, as mentioned in sections 24 (3)(c)(i) and 24 (3)(c)(ii) of the Act;

35.1.4 the notices and minutes of Annual General Meetings, submissions and general communications to members relating to such meetings.

35.2 Members do not have an automatic entitlement to examine any other documents of the Association, in particular, but not limited to information which is personal to a Member, ballots, the content of proxy instruments and documents relating to the proceedings of the Board, such as its minutes.

35.3 For access to documents and information of the Association other than those foreseen in article 35.1 above, Members will follow the processes therefore as may be described in this MOI, the Association Rules and/or legislation (such as in terms of The Promotion of Access to Information Act, No.2 of 2000) and subject to any legal constraints placed on the Association on the disclosure of information (such as in terms of The Protection of Personal Information Act, No. 4 of 2013).

**36. LOSS OF DOCUMENTS**

The Association shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation) other document sent through the post either to the registered address of any Member or to any other address requested by the Member.

**37. REPRESENTATION ON THE BOARDS OF DIRECTORS: SUBSIDIARY OR AFFILIATE COMPANIES**

In the event of the Association being entitled to representation on the boards of directors of subsidiary or affiliate companies, the Board will nominate or appoint the Individuals for such representation.

**38. FUNDAMENTAL TRANSACTIONS**

38.1 The Association may not amalgamate or merge with, or convert to, a profit company.

38.2 The Association may not 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 Association's activities.

38.3 In the event of the Association considering the disposal of all or the greater part of its assets or undertaking, or the amalgamation or merger with another non-profit company, such action will require a Special Resolution in the form and manner stipulated by sections 112, 113, 115 and 116 respectively, as the context may require.

38.4 For purposes of this article 38, "all or the greater part of the assets or undertaking" – means:

38.4.1 in the case of the Association's assets, more than 50% (fifty percent) of its gross assets fairly valued, irrespective of its liabilities; or

38.4.2 in the case of the Association's undertaking, more than 50% (fifty percent) of the value of its entire undertaking, fairly valued;

**39. INDEMNITY**

39.1 The Association (which for purposes of this article 39.1 includes its management, officers, employees and agents) is indemnified with regard to any and all loss or damage suffered by the Association, or against any claims instituted against it for loss or damage caused by a Member (or his family, employees, agents, contractors, sub-contractors, tenants, guests or occupiers of his Erf or Unit) by way 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 Association Rules and/or the Estate Rules.

39.2 Each Member indemnifies the Association (which for purposes of this article 39.2 includes its management, officers, employees and agents) against any loss or damage suffered by such Member (including his family, employees, agents, contractors, sub-contractors, tenants, guests or occupiers of his Erf or Unit) caused by the Association 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 Association Rules and/or the Estate Rules, unless such act or omission or breach was the result of wilful misconduct on the part of the Association.

#### **40. DISPUTE RESOLUTION: MEDIATION**

40.1 To the extent permissible in law, any dispute between any of the parties who are subject to this MOI as foreseen in article 4 above with regard to the matters recorded in article 40.2 below, must first be dealt with by way of mediation before any tribunal, court, third party or regulatory body is approached for an intervention.

40.2 In the event of a dispute between any of the parties who are subject to this MOI as foreseen in article 4 above with regard to:

40.2.1 the interpretation of;

40.2.2 the effect of;

40.2.3 the parties' respective rights or obligations under;

40.2.4 the application of;

40.2.5 a breach of;

40.2.6 and/or the correctness of;

this MOI or the Association Rules, that dispute, once declared in writing by any disputing party to the other disputing party(ies), shall be submitted for mediation as provided for in this article 35.

- 40.3 Once a dispute has been declared, the disputing parties shall within 10 (ten) Business Days agree on a mediator which will be, if the dispute is primarily:
- 40.3.1 an accounting matter, a practising chartered accountant;
  - 40.3.2 a legal matter, a practising attorney or advocate;
  - 40.3.3 a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising quantity surveyor;
  - 40.3.4 a matter relating to any defect in any building construction, a practising engineer;
  - 40.3.5 any other matter, such other independent and suitably qualified person.
- 40.4 If the disputing parties fail to agree on a mediator, then the Chairperson for the time being of the Cape Town Bar Council shall within 10 (ten) Business Days from being requested to do so by anyone of the disputing parties, appoint from the George Bar Council an advocate with at least 10 (ten) years' experience as a practicing advocate.
- 40.5 The mediator may follow whatever procedure he may deem fit to conduct the mediation, including calling for the submission of oral or written statements by all or anyone of the disputing parties, consulting with the disputing parties jointly or individually, or any other process whatsoever.
- 40.6 The disputing parties will not be obliged to present any information deemed confidential or privileged or which may compromise any subsequent legal proceedings.
- 40.7 All mediation pursuant to this article 35 shall be confidential and be treated as compromise and settlement negotiations, and no oral or documentary representations made by any of the disputing parties during such mediation shall be admissible for any purpose in any subsequent legal proceedings.
- 40.8 The mediator shall attempt to resolve the dispute between the disputing parties within 30 (thirty) Business Days of his appointment and in the event of a resolution, shall record such in writing for written acceptance by the disputing parties.
- 40.9 If the disputing parties are not able to agree on a solution within 30 (thirty) Business Days of his appointment, as foreseen in article 40.8 above, the mediator shall issue a written assessment and conclusion of the process, which conclusion will be admissible in any subsequent legal proceedings as evidence only of the outcome of the mediation process.

- 40.10 The cost of the mediator will initially be shared equally between the disputing parties, and for this purpose the disputing parties will, if so required by the mediator in his sole discretion, upfront provide a deposit to the mediator to cover his estimated cost. The cost of the mediator will notwithstanding remain, at the choice of any of the disputing parties, the subject of any final award thereon in any subsequent legal proceedings, or if there are no such subsequent legal proceedings with regard to the declared dispute, a disagreement between the disputing parties on the liability and payment of the cost may be referred directly to arbitration in terms of clause 41 below.
- 40.11 Each of the disputing parties will carry its own costs in the mediation process, including the costs of any of its experts. Such cost will notwithstanding remain, at the choice of any of the disputing parties, the subject of any final award thereon in any subsequent legal proceedings, or if there are no such subsequent legal proceedings with regard to the declared dispute, a disagreement between the disputing parties on the liability and payment of such costs may be referred directly to arbitration in terms of clause 41 below.

## **41. ARBITRATION**

41.1 Save as otherwise expressly provided in this MOI, should any dispute arise between any of the parties who are subject to this MOI as foreseen in article 4 above with regard to:

- 41.1.1 the interpretation of;
- 41.1.2 the effect of;
- 41.1.3 the Parties' respective rights or obligations under;
- 41.1.4 the application of;
- 41.1.5 a breach of;
- 41.1.6 and/or the correctness of;

this MOI or the Association Rules, that dispute, once declared in writing by any disputing party to the other disputing party(ies), shall be decided by arbitration in the manner set out in this article 41 by a single arbitrator without the right of appeal.

41.2 The arbitrator shall be appointed by the disputing parties by way of unanimous agreement within 10 (ten) Business Days from a declaration of the dispute, and failing

agreement, shall be nominated by the Arbitration Foundation of Southern Africa (“AFSA”) within 10 (ten) Business Days from being requested to do so by any of the disputing parties. Should AFSA not be in existence at the time, the nomination shall be by the Chairman for the time being of the Cape Town Bar Council.

- 41.3 The arbitration shall be held in Mossel Bay, Western Cape.
- 41.4 The arbitration shall be held in accordance with the rules of AFSA, or if AFSA is not in existence at the time, in accordance with the formalities and procedures settled by the arbitrator, which shall be in an informal and summary manner, that is, it shall not be necessary to observe or carry out either the usual formalities or procedure or the strict rules of evidence.
- 41.5 The arbitrator shall be entitled to:
  - 41.5.1 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision; and
  - 41.5.2 make such award, including an award for specific performance, an interdict, damages, a penalty, the costs of arbitration or otherwise, as he in his discretion may deem fit and appropriate.
- 41.6 The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 41.7 The arbitration shall be held in camera and the disputing parties shall maintain the utmost confidentiality with regard to all matters in issue in the arbitration.
- 41.8 A declaration of a dispute in terms of this article 41 by any of the disputing parties will constitute the service of a process for the purposes of interruption of prescription in terms of Section 15 of the Prescription Act No 68 of 1969.
- 41.9 The provisions of this article 41 shall not preclude any of the parties from due access to the courts of law for an interdict or any urgent relief, even where a dispute exists.

## CHAPTER 6: HOME-OWNERS REGULATIONS

### 42. AUTHORITY AND RESPONSIBILITIES OF THE ASSOCIATION

- 42.1 The Pinnacle Point Development is of a homogenous nature, notwithstanding the fact that Members hold title to their Erven and/or Units individually, and the Association 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, executed on its behalf by the Board.
- 42.2 The Association shall have the rights and responsibilities contained in this article 42 in addition to and not in limitation of its rights and obligations addressed throughout the MOI
- 42.3 In exercising its powers and authority in terms of this Chapter 6, the Association shall act reasonable. In the event of any dispute on whether the Association acted unreasonable, the Member shall bear the onus of proving such unreasonableness.
- 42.4 The Association has acquired the authority over and the responsibility in respect of the various facilities and open spaces, the Common Property, roads and buildings forming part of the Pinnacle Point Development.
- 42.5 The responsibility for the management and maintenance of all facilities and open spaces, the Common Property, roads and buildings forming part of the Pinnacle Point Development vests in the Association. These include but are not necessarily limited to:
- 42.5.1 the management, development and maintenance of the complete internal water supply system and all supplies of water;
  - 42.5.2 the management, development and maintenance of the complete internal electrical supply and electrical infrastructure;
  - 42.5.3 the development and maintenance of the internal storm water system serving the Pinnacle Point Development as well as for the maintenance of the storm water catchment areas;
  - 42.5.4 the development and maintenance and servicing of pipelines, irrigation, pumps, meters, equipment and materials in respect of the internal potable water supply



system up to the boundary of each Erf and the upgrading/replacement of any device necessary for this purpose;

- 42.5.5 the management, development and provision of services related to the Common Property;
  - 42.5.6 the promotion of environmental awareness and responsibility within the Pinnacle Point Development and amongst its Members;
  - 42.5.7 the development and maintenance of assets, security infrastructure, electrical reticulation and substations, wooden walkways, gardens, sidewalks, pathways and parks, etcetera.
- 42.6 Unless otherwise provided in this MOI, the Association shall manage, develop, maintain and administer the facilities and open spaces, the Common Property, roads and buildings forming part of the Pinnacle Point Development at the entire discretion of the Association.
- 42.7 The Association is entitled to impose levies (“Levies”) upon Members for the purposes of meeting all the expenses incurred by the Association in relation to the management, servicing, development, installation and maintenance of all facilities and open spaces, the Common Property, roads and buildings forming part of the Pinnacle Point Development.
- 42.8 The Association is entitled, subject to a Special Resolution, to alienate, transfer, or assign to a third party any part or all of the Common Property, or any of its duties and responsibilities in connection therewith;
- 42.9 The Association is entitled to conduct, with regard to any Erf or Unit, and Members and the body corporate of any sectional title scheme forming part of the Pinnacle Point Development shall allow, the installation or construction of any facilities relating to telephone information technology, telecommunication, optic fibre service, cabling, security communication, gas mains, electricity supply, main and/or other water pipes and the sewerage and drainage, including storm water, irrigation networks, surface installations such as mini-substations, meter 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 at any reasonable time for the purposes of constructing, altering, removing or inspecting any works connected with the above.

- 42.10 The Association may register, in favour of the Local Authority and/or the Association, and across the Pinnacle Point Development, whether in respect of any separate Erf, Unit or the Common Property, and where deemed necessary, servitudes of right of way and/or servitudes for the installation or construction of any facilities relating to telephone information technology, telecommunication, optic fibre service, cabling, security communication, gas mains, electricity supply, irrigation networks, main and/or other water pipes and the sewerage and drainage, including storm water, surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, 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. Members accept and shall be bound by and consent to the registration of the servitudes referred to in this article.
- 42.11 The Association may enter into agreements with any third party for the provision of facilities or services to or for the Members and may levy the charges in respect thereof on Members, or pass such costs directly onto them.
- 42.12 The Association shall be entitled to call for deposits in respect of any connection to be undertaken by it, the interest on which deposits shall be for the credit of the Association.
- 42.13 Members or residents may not interfere, damage, tamper with or remove any of the assets and/or equipment or installations related to all assets and/or equipment, including but not limited to the matter addressed in article 42.9 above, or any other installations of the Association, whether or not on private property.
- 42.14 The Association is entitled, and a Member may not object, to implement a subdivision or development of any part of the Pinnacle Point Development and/or the Pinnacle Point Development Area, and to connect any parts of the development to the Services in the Pinnacle Point Development, provided that such subdivision and/or development is not inconsistent with any Pinnacle Point Development plan approved by the relevant authorities for that part of the Pinnacle Point Development Area.
- 42.15 No Erf or Unit shall be sub-divided or rezoned without the prior written consent of the Association.
- 42.16 The Association, or any person designated by the Board for this purpose, must approve all building plans, including building plans for outbuildings, structures, additions and alterations to be constructed on or with regard to an Erf or Unit, which approval shall

only be granted after a review thereof by the architectural review committee referred to in article 42.17 below.

42.17 The Association shall appoint an architectural review committee to assist it in the approval of all plans for buildings, outbuildings, structures, additions and alterations to be constructed on Pinnacle Point Development and in the Pinnacle Point Development Area undertaken by the Association or a Member or a body corporate. The committee shall consist of:

42.17.1 a practising professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;

42.17.2 one or more members of the Management;

42.17.3 such other persons as the Board may determine; and

42.17.4 none of whom need to be Members (of the Association).

42.18 Whenever the Association considers in its absolute discretion the appearance of any Erf or Unit of a Member, or any signage or structure thereon, is unsightly or injurious to the amenities of the surrounding area or the Pinnacle Point Development Area generally, the Association 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 Board may enter upon the land or buildings concerned and take such steps as may be necessary to correct the problem, and recover the costs thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Association.

42.19 The Association is obliged to enforce compliance, and Members shall comply, with the Record of Decision issued by the Department of Environmental Affairs and Pinnacle Point Development Planning ("DEADP") dated 29 October 2003 (as amended), the Operational Environmental Management Programme for Pinnacle Point Beach and Golf Resort dated 22 August 2014 (as approved by the DEADP) and the agreement between Pinnacle Point Resorts (Pty) Ltd and WESSA dated 23 August 2004.

42.20 No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association, which consent shall only be withheld if the Member has not complied with this MOI.

42.21 The Registered Owner of an Erf zoned for residential purposes, or of a cluster development, shall:

42.21.1 within a period of eighteen (18) months of registration of the Erf in his name, or such other period as may be stipulated in the Association Rules, submit to the architectural review committee complete and professionally drafted building plans, also in accordance with the architectural guidelines referred to in this MOI, for the construction of a dwelling house thereon and; and

42.21.2 commence with the construction of the dwelling house within 6 (six) months from approval by the Association of building plans, or such other period as may be stipulated in the Association Rules, and

42.21.3 complete such construction of the dwelling house within 18 (eighteen) months, or such other period as may be stipulated in the Association Rules, from the date on which construction was started.

42.22 In the event of a dispute as to when construction started and/or when, and if completion was achieved, such shall be determined by the architectural review committee, acting on the basis of a certificate being issued by a duly qualified architect whose decision in this regard is final and binding.

42.23 Failing to complete the building:

42.23.1 within the period stipulated in article 42.21.3 above, will result in an automatic fine of twice the Levies payable on the Erf being imposed for each month of the delay, payable in addition to the Levies; and

42.23.2 the Association may, in addition to the fine in article 42.23.1 above, impose a monthly levy equivalent to quadruple of the monthly Levies on the Erf if such building (whether construction has commenced or not) is not completed within 48 (forty eight) months of registration of transfer.

42.24 Should the Registered Owner contemplated in article 42.21 above fail to comply with the provisions contained therein, then the Association shall be entitled (but not obliged) to in its sole discretion purchase such Erf or cluster development at a price equal to the following:

42.24.1 the purchase price at which the Registered Owner purchased the property; plus

- 42.24.2 in the case of an uncompleted dwelling house, the value of the works constructed on the Erf as determined by an independent quantity surveyor appointed by the Association and whose valuation shall be final and binding on the Association and the Registered Owner; and
- 42.25 No Member or other person shall be entitled to sink or use any boreholes within the Pinnacle Point Development Area without the prior written consent of the Association.
- 42.26 Any Person using any of the services, land or facilities of the Association does so entirely at his own risk.
- 42.27 No Member shall be allowed to erect or display or allow any "For Sale or To Let" signs and/or any sign boards on his/her Erf or Unit.
- 42.28 The Association shall at all times be entitled to draw electricity from Erven adjacent to sprinkler heads in road reserves for the purposes of powering the irrigation system for the verges of such road reserve. The cost thereof shall be borne by the Association but recovered as part of the Levies.
- 42.29 Ownership of an Erf or Unit does not confer any right, including that of access, in respect of property owned by the Association, including any right of way or access across such property.
- 42.30 The Association may by way of Ordinary Resolutions institute sanctions for the contravention by a Member of this MOI or the Association Rules and which sanctions:
- 42.30.1 could entail, but are not limited to, monetary penalties or the suspension of any or all of the rights or privileges attached to a Member's membership of the Association, including Voting Rights;
  - 42.30.2 must relate and be imposed to specific contraventions, or a category of contraventions;
  - 42.30.3 must be accompanied by a written notification to the Member of the sanction and the detail of contravention to which it applies;
  - 42.30.4 may be imposed summarily if the sanction expressly so provides for a specifically described contravention or category of contraventions (including repeat contraventions);

- 42.30.5 if not imposed summarily, may be imposed only if the Member continues with a contravention despite been given an opportunity to correct the offending conduct or situation;
- 42.30.6 when imposed, does not affect the liability of a Member to strictly comply with all of his obligations in terms of this MOI or the Association Rules and a Member will continue to comply therewith.
- 42.31 The Association may, but is not obliged to, provide the Board or another body with a discretion in some or all instances to impose the sanctions contemplated in article 42.4 above and/or to adjudicate any disputes that may arise therefrom.
- 42.32 The Association shall be empowered to charge interest on any arrear amounts owed by Members to the Association, which shall be in addition to such other rights as the Association may have in law against the Members. Unless specified differently in this MOI, or until resolved otherwise by the Association by way of an Ordinary Resolution, the Board may charge interest on any such arrear amounts at a rate not exceeding the Prime Rate charged by the Association's current account bankers, plus 10 (ten) percentage points, calculated and capitalised monthly in arrears from the date on which the relevant amount became due payable, until and for so long as that amount or part thereof remains overdue.
- 42.33 In the event of any breach of the MOI, the Association Rules or the Estate Rules by the Member being caused by such Member's household, guests, occupiers of the Erf or Unit, agents, contractors or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing, the Association may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 42.34 Should the Association institute any legal proceedings against any Member or resident within the Pinnacle Point Development for the enforcement of any rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or resident concerned, calculated as between attorney and client, including tracing fees and collection commission.
- 42.35 Notwithstanding anything to the contrary herein contained, the Association may in the name of the Association enforce the provisions of this MOI, the Association Rules, or any Estate Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as it may deem fit.

42.36 A Member (or its Authorised Representative), is not entitled to and may not in any way disturb, unduly interfere with or disrupt the proper functioning and operation of the Association or the Board, by for instance, but not limited to, instructing or engaging with employees, agents or contractors of the Association, unless with the express consent of the Board, or by vexatious, trivial, or combative engagements with the Association or the Board. The Association may by way of Association Rules or Estate Rules incorporate principles and/or sanctions to ensure compliance with the requirements of this article 42.36.

### 43. ESTATE RULES

43.1 These rules are practical internal rules directed at the proper administration and/or better management of the affairs of the Pinnacle Point Development and ensuring conduct in the furtherance and promotion of any of the objects of the Association and/or for the advancement of the interests of the Members and/or the residents within the Pinnacle Point Development (“Estate Rules”).

43.2 Estate Rules are not Association Rules, but some Estate Rules may be of such a nature that it can be converted to Association Rules.

43.3 The Association is authorised to enact and enforce Estate Rules, and vary or modify these rules from time to time.

43.4 The Association may enact separate Estate Rules for golf lodges, section title units (subject to the Sectional Titles Act) and residential properties.

43.5 Members may by Ordinary Resolution instruct the Board to cancel or vary an Estate Rule previously enacted by the Board, or place restrictions on the type and extent of Estate Rules which may be enacted, or instruct the Board to enact certain new Estate Rules.

43.6 Subject to any resolution by Members thereon, Estate Rules will take effect on the date of it being passed by the Board, or such later date as the Board may resolve.

43.7 The Association will publish with Members the Estate Rules and any variation thereof.

43.8 Subject to any contrary restrictions in this MOI, the Association Rules, a General Meeting resolution or local authority or national legislation, the Association may impose and enforce Estate Rules in regard to:

- 43.8.1 the right to prohibit, restrict or control the keeping of any animals which they regard as dangerous or a nuisance;
  - 43.8.2 the conduct of any persons within the Pinnacle Point Development for the prevention of nuisance of any nature to any Member;
  - 43.8.3 the use of Services and recreational areas, amenities and facilities (including the Common Property), including the right to charge a reasonable fee for the use thereof;
  - 43.8.4 the maintenance standards of all buildings, outbuildings, structures, improvements of any nature and landscaping within the Pinnacle Point Development;
  - 43.8.5 the control of the number of occupiers or residents permitted on any one Erf or Unit;
  - 43.8.6 the admission of any Person (other than Members) within the Pinnacle Point Development, and the eviction of any Person not entitled to be thereon.
- 43.9 For the enforcement of any of the Estate Rules, the Association may:
- 43.9.1 give notice to the Member concerned requiring him to remedy such breach within such period as the Association may determine; and/or
  - 43.9.2 take or cause to be taken such steps as it may consider necessary to remedy the breach and claim the cost of so doing from the Member concerned, which claim shall be deemed to be a debt owing by the Member concerned to the Association; and/or
  - 43.9.3 take such action, including the imposition of a fine, or proceedings in court, as the Association may deem fit.
- 43.10 If any Member disputes the fact that he has committed a breach of any of the provisions of the Estate Rules, a committee of 3 (three) Directors appointed by the Chairperson of the Board shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairperson may direct, and for the sake of clarity, need not entail a formal meeting of the committee.



- 43.11 All Estate Rules shall be reasonable and shall apply equally to all Registered Owners of Erven and Units put to substantially the same use.

#### **44. TRANSFERS OF OWNERSHIP**

- 44.1 Before the registration of transfer of an Erf or Unit into the name of the transferee (i.e. the Registered Owner to be) can take place:

4.1.1 the Association shall, upon receipt of a written and complete offer to purchase from the transferee in respect of an Erf or Unit, provide the transferee with a written application form for the transferee to become a Member;

4.1.2 the transferee shall, by no later than the date upon which the necessary filing is made with the Deeds Office for the transfer of the Erf or Unit to the transferee, provide the Association with a duly completed and signed application form (in accordance with any instructions reflected on such application form);

4.1.3 and should the Association not receive the completed and signed application form timeously, the Association will be entitled to withhold its consent for the transfer.

- 44.2 Before any Erf or Unit is transferred to a new Member, the transferring Member shall pay to the Association an amount equal to 1% (one percent) plus VAT of the total consideration payable to him in respect of the transfer of his Erf or Unit, in order to cover administration expenses of the Association in respect of the transfer. For purposes of this article 44:

- 44.2.1 a Unit or Erf is deemed transferred if:

44.2.1.1 ownership therein is fully or partially transferred to another Person; or

44.2.1.2 where the Member is a Juristic Person (including a business trust but excluding a family trust), another Person obtains shareholding, membership or interests in such Juristic Person Member.

- 44.2.2 Irrespective of an actual payment of cash or otherwise for the transfer, the consideration payable in terms of the transfer will be the higher of the transfer (selling) price, or the market value of the transferred interest in the Unit, Erf or Juristic Person Member.

**45. LEVIES**

- 45.1 The Board may from time to time, impose levies (“Levies”) upon Members for the purposes of meeting all the expenses in relation to the Common Property, roads, buildings, Facilities and Services (including the Golf Course Land and the Golf Course, the club house and all facilities and services thereon, including any swimming pools and tennis courts), and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association and its affairs.
- 45.2 The Board must at all relevant times ensure that there are sufficient reserve funds available as it may be required for expenses or contingencies relating to the acquiring, repairing, improving and maintaining of any assets, buildings, plant, machinery, clubhouse, golf course and all other facilities connected with the Club, Common Property, the Development, even, golf course and facilities and to set aside sufficient monies available to cover the loss in wear and tear or other depreciation in the value of any of the assets of the Club and/or extraordinary expenditure and/or for any other purpose for which these monies may be properly applied.
- 45.3 The Board may divide the reserve fund into such special funds as it thinks fit with full power to employ the assets constituting such fund or funds in the business of the club and may make such investments without being liable for any loss in consequence of such investments, provided that the funds may only be invested in prevailing money market funds which are available from time to time and that such investments are sound and prudent.
- 45.4 Municipal rates and taxes will be payable to the Local Authority in accordance with applicable legislation by a Member as Registered Owner.
- 45.5 The Board shall estimate the amount which shall be required by the Association to meet the expenses contemplated during each financial year, together with such estimated deficiency (if any) as shall result from the preceding financial year, and shall impose a Levy upon the Members, as from a specified date, equal to or as near as reasonably practical to such estimated amount. The Board may include in such Levies an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

- 45.6 In calculating the Levy payable by each Member, the Board shall as far as reasonably practical:
- 45.6.1 assign those expenses attributable to a particular Erf or Unit itself, to the Registered Owner thereof;
  - 45.6.2 assign those expenses attributable to a particular sectional title development to the sectional title development;
  - 45.6.3 assign those expenses attributable to a particular cluster development or group housing development to the Registered Owners of all Erven in such development equally;
  - 45.6.4 assign those expenses attributable to any other development node (including a single residential development node) to the Registered Owners of all Erven in such development node equally;
  - 45.6.5 assign those expenses relating to the Development generally and/or any other expenses not assigned, to the Registered Owners of all Erven and Units equally, provided, however, that the Board may in any case where the Board consider equitable to do so, assign to any Member any greater or lesser share of such expenses as may be reasonable in the circumstances.
- 45.7 In conformance with the principles in article 45.6 above, and until resolved differently by the Board or a General Meeting, certain expenses related to the Golf Villas sectional title scheme or any other body corporate scheme forming part of the Pinnacle Point Development will be dealt with as follows:
- 45.7.1 Potable water will be supplied and metered in bulk at the boundary of the sectional title or any other type of body corporate scheme.
  - 45.7.2 The body corporate shall be liable for and shall pay to the Association on demand all charges arising from water supplied to or consumed in or on the scheme and on its common property, plus the Value Added Tax thereon.
  - 45.7.3 The Association shall calculate the charges for water consumed on an equitable basis with regard to the rest of the potable water users in the Pinnacle Point Development, with reference, but strictly not limited to, the impact of the scheme's consumption on the total cost of potable water payable by the Association to the Local Authority and any other factors required to ensure that the scheme does not

obtain an unfair advantage or disadvantage in the cost charged for its potable water consumption. For the sake of clarity, if required to ensure equitable treatment, the Association may charge a different potable water tariff to the scheme than that charged to other users.

- 45.8 Where potable water supply to a sectional title scheme or any other body corporate forming part of the Pinnacle Point Development is measured in bulk, the Association may at any time require the installation of separate metering devices for units and common property of the scheme, the cost of which to be for the account of the scheme.
- 45.9 Levies shall be payable by Members by way of equal monthly instalments due in advance and without deduction or set-off whatsoever on the first day of each and every succeeding month.
- 45.10 The liability of Members for service charges shall be in accordance with separate sub-meters serving the Erfen of Members and any Sectional Title Scheme, which the Association shall be entitled to install at the cost of such Member, as the case may be.
- 45.11 The Board may from time to time impose special Levies upon the Members in respect of all such expenses as are mentioned herein (which are not included in any estimate made in terms of article 45.5 above) and such Levies may be imposed in such sum or by such installments and at such times as the Board shall decide.
- 45.12 Any amount due by any Member by way of a Levy shall be a debt due by that Member to the Association. The obligation of a Member to pay a Levy shall cease upon that Member ceasing to be a Member of the Association, without prejudice to the Association's right to recover arrear Levies. No Levies paid by a Member shall under any circumstances be repayable by the Association upon that Member ceasing to be a Member.
- 45.13 A Member's successor in title to an Erf or a Unit shall be liable as from the date upon which he becomes a Member pursuant to article 9 above, to pay the Levy attributable to that Erf or Unit.
- 45.14 The Association is authorised to summarily suspend any of the rights or privileges of a Member's membership of the Association (including Voting Rights if done in terms of article 17.14 above or 45.15 below), in the event of the Member being (and for as long as he remains) in default with any Levies, subscriptions or other sums which are due and payable to the Association in respect of his membership. During such a suspension, all obligations imposed on the Member by this MOI shall continue to apply.

- 45.15 Subject to any Association Rule to the contrary, the Voting Rights of a Member shall be suspended automatically, and without any action being required on the part of the Association, in the event of a Member being in arrears with the payment of Levies and remains in arrears for more than 120 (one hundred and twenty) days. Such suspension shall remain effective until the Member is no longer in arrears with Levies, subject however that if a Member is in arrears on the Record Date for a General Meeting, the Member's Voting Rights will remain suspended for that General Meeting, despite the Member settling the arrear Levies prior thereto.
- 45.16 Should any dispute arise at any time between any one or more Members and the Board in regard to the determination or calculation of the Levies, the decision of the accountants 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 Board.
- 45.17 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, pay the Levies determined by the Board.
- 45.18 Subject to any limitations imposed by legislation, and until resolved differently by way of an Ordinary Resolution, all amounts owed by a Member to the Association and which he fails to pay when due and payable, shall be subject to interest at the Prime Rate charged by the Association's current account bankers, plus 10 (ten) percentage points, calculated and capitalised monthly in arrears from the date on which the amount became due payable, until and for so long as that amount or part thereof remains overdue. Any interest accruing under this article 45.18 shall:
- 45.18.1 be immediately payable by the Member on first demand therefore by the Association;
  - 45.18.2 be in addition to, and not in substitution or limitation of, any and all other rights the Association may have (albeit in terms of the provisions of this MOI or otherwise in law) in the event of a breach of this MOI by the Member.

## **46. COMMON PROPERTY**

- 46.1 In addition to the rights and obligations of the Association with regard to the Common Property, all of which is registered in its name, the Association has the following rights

and obligations to that part of the Common Property which consist of the Golf Course Land (which by definition includes the Golf Course, which in turn includes the club house and other and all sporting, recreational and other facilities, such as the spa and gymnasium, swimming pools and tennis courts), namely to:

- 46.1.1 Maintain the Golf Course (which in turn includes the club house and other and all sporting, recreational and other facilities) in good order and condition and in accordance with the standards of the South African Golf Association (or its successor/s from time to time) for a first-class championship golf course;
  - 46.1.2 Establish and maintain a club type organisation ("the Club") for the Golf Course, a club house, and club facilities in accordance with the club constitution as drafted by the Association, and which constitution shall not derogate in any way from the provisions contained in this article 46 and the MOI;
  - 46.1.3 Manage and control the Golf Course (which in turn includes the club house and other and all sporting, recreational and other facilities) to a high standard;
  - 46.1.4 Be responsible for the security of the Golf Course (which in turn includes the club house and other and all sporting, recreational and other facilities);
  - 46.1.5 Insure and keep insured the Golf Course (which in turn includes the club house and other and all sporting, recreational and other facilities) at its full replacement cost against the risk of loss, destruction, or damage by fire, storm, flood or any other cause whatsoever.
- 46.2 Members (Registered Owners) are not obliged to become members of the Club and Members (Registered Owners) who are members of the Club are not obliged to remain members and may relinquish their membership, including family membership.
- 46.3 The Association shall, in its sole discretion, determine the membership entry fees of future Members (Registered Owners).
- 46.4 The membership of Members (Registered Owners) of the Club shall not be transferable except to the Persons to whom the Erven or Units owned by such Members are transferred in accordance with the policy and recommendations made by the Association as determined from time to time.
- 46.5 The Association shall determine the annual membership fee of each class of member of the Club from time to time in its sole discretion.

- 46.6 The Association shall at its cost comply with all laws, title deed conditions and other conditions pertaining to the Common Property (which includes the Golf Course, the Club and the club facilities), including town planning conditions, conditions of rezoning, subdivisions, environmental laws, liquor licensing laws, and fire regulations and ensure that there is adequate and comprehensive insurance cover in respect thereof in the event of damage or destruction arising from any cause whatsoever.
- 46.7 In the event of the Association in any way transferring or assigning its rights to the Golf Course, or anyone of its components, i.e. the golf course, the club house and all sporting, recreational and other facilities, whether in total or partly, the obligations of the Association as described in this article 46 will be entrenched in the transfer agreement or assignment, for complete adherence by the transferee or assignee.
- 46.8 Should the the Golf Course, the club house and/or the club facilities be destroyed or damaged by any cause whatsoever, a transferee or assignee will, at its cost, reinstate the same substantially to its previous state as soon as possible in the circumstances or to reinstate the same in an amended form with the written approval of the Association, which approval shall not be unreasonably withheld;
- 46.9 If a transferee or assignee:
- 46.9.1 commit any breach of any of their duties and responsibilities and fail to remedy such breach within a reasonable time after receipt of written notice from the Association to remedy such breach; or
  - 46.9.2 repeatedly breach any of their duties and responsibilities; or
  - 46.9.3 commit an act of insolvency or be placed under sequestration, liquidation (whether provisional or final) or business rescue,
- then and in any one of such events, the Association shall forthwith be entitled (but not obliged) without prejudice to any of its other rights or remedies, including the right to claim damages:
- 46.9.4 in the case of article 46.9.1 above, the Association shall be entitled to remedy such breach and immediately recover the total costs thereof from a transferee or assignee;
  - 46.9.5 to purchase the Golf Course Land and take control of the Golf Course, club facilities and management, together with the Club, the club house and the club

facilities at their fair market value as agreed between the transferee or assignee and the Association, and failing such agreement, as determined by an independent valuer appointed by the South African Institute of Valuers or their successor/s who shall take into consideration any additions or improvements to the facilities.

- 46.10 If at any time the Golf Course Land, the club house, and/or the club facilities cease to be used for the purposes of a golf club, subsequent to an alienation as contemplated above, then and in that event, ownership of the Golf Course and the Golf Course Land, shall vest in the Association and shall be transferred to the Association at its cost, free of any consideration.