

THE COMPANIES ACT, NO. 71 OF 2008
(AS AMENDED)

MEMORANDUM OF INCORPORATION

of

BIRDWOOD HOMEOWNERS ASSOCIATION

A NON PROFIT COMPANY

REGISTRATION NUMBER: 2002/010913/08

REGISTRATION DATE:

1 INTERPRETATION

In this MOI, unless the context clearly indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

"Act"	the Companies Act, No. 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all Schedules to such Act and the Regulations
"Board"	the Board of Directors from time to time of the Company
"Business"	to carry on the promotion, advancement and protection of the communal interests of the owners and occupiers of the residential properties comprised in the residential property development, know as Birdwood Estate, on IFAFI Extension 6 Registration Division J.Q. North West Province, is established and in particular, in so promoting the communal interests, to maintain and regulate the use of the common roadway, clubhouse and other property designated for communal use and to install, operate and maintain security procedures and systems
"Chairman"	Means the Chairman of the Board of Directors
"Commission"	the Companies and Intellectual Property Commission established by section 185 of the Act

"Company"	the company named on the first page of this document, duly incorporated under the registration number endorsed thereon
"Director"	a member of the Board as contemplated in section 66 of the Act, or an alternate Director, and includes any person occupying the position of a Director or alternate Director, by whatever name designated
"Effective Date"	The Signature Date
"Electronic Communication"	has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002
"Encumbrance"	any right of first refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest
"IFRS"	the International Financial Reporting Standards, as adopted from time to time by the Board of the International Accounting Standards Committee, or its successor body, and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203
"Levy"	means a penalty levy (late building) and/or a normal monthly levy levied

	against a member's account
"Local Authority"	means the Madibeng Local Municipality
"Managing Agent"	means any person or body appointed by the Company as an independent contractor to undertake any of the functions of the Company
"Regulations"	the regulations published in terms of the Act from time to time
"Republic"	the Republic of South Africa
"Rules"	means any rules made in respect of the Company from time to time as contemplated in section 15(3) to (5) of the Act and clause 26 hereof

In this MOI, unless the context clearly indicates otherwise:

- 1.1 words and expressions defined in the Act and which are not defined herein shall have the meanings given to them in the Act;
- 1.2 a reference to a section by number refers to the corresponding section of the Act notwithstanding the renumbering of such section after the date on which the Company is incorporated;
- 1.3 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MOI and;
 - 1.3.1.1 a provision of any other agreement entered into by the Company the provisions of this MOI shall prevail to the extent of the conflict;
 - 1.3.1.2 an alterable or elective provision of the Act, the provision of this MOI shall prevail to the extent of the conflict; and
 - 1.3.1.3 an unalterable or non-elective provision of the Act, the unalterable or non-elective provision of the Act shall prevail to the extent of the

conflict;

1.4 clause headings are for convenience only and are not to be used in its interpretation;

1.5 an expression which denotes:

1.5.1 any gender includes the other genders;

1.5.2 a natural person includes a juristic person and vice versa; and

1.5.3 the singular includes the plural and vice versa.

1.6 if the due date for performance of any obligation in terms of this MOI is a day which is not a business day then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the immediately succeeding business day;

1.7 any words or expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout the whole of this MOI;

1.8 any reference to a notice shall be construed as a reference to a written notice, and shall include a notice which is transmitted electronically in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

1.9 Any reference in this MOI to:

1.9.1 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic from time to time;

1.9.2 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including

local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;

1.9.3 "writing" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any electronic communication in a manner and a form such that it can conveniently be printed by the recipient within a reasonable time and at a reasonable cost.

1.10 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

1.11 Unless otherwise provided in this MOI or the Act, defined terms appearing herein in title case shall be given their meaning as defined, while the same terms appearing in lower case shall (except where defined in the Act) be interpreted in accordance with their plain English meaning.

1.12 Where a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by excluding the day on which the first event occurs and including the day on which or by which the second event is to occur.

1.13 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

1.14 Any reference herein to "this MOI" shall be construed as a reference to this MOI as amended from time to time.

1.15 Whenever any person is required to act "as an expert and not as an arbitrator" in terms of this MOI, then:

1.15.1 the determination of the expert shall (in the absence of manifest error) be final and binding;

- 1.15.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.15.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.15.4 the expert shall consult with the relevant parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination; and
- 1.15.5 having regard to the sensitivity of any confidential information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question.

2 JURISTIC PERSONALITY AND INCORPORATION

- 2.1 The Company is pre-existing and is incorporated as a Non Profit Company, as defined in the Act.
- 2.2 The Company is incorporated in accordance with, and governed by:-
 - 2.2.1 the unalterable provisions of the Act, that are applicable to Non Profit Companies;
 - 2.2.2 the alterable provisions of the Act, that are applicable to Non Profit Companies, subject to any limitation, extension, variation or substitution set out in this MOI; and
 - 2.2.3 the provisions of this MOI.

3 MEMBERSHIP

- 3.1 When a person becomes the registered owner of any land in the scheme, he shall *ipso facto* become a member of the Company and when he ceases to be an owner of any such land, he shall *ipso facto* cease to be a member of the Company.
- 3.2 Where any land in the scheme is owned by more than one person, all the registered owners of the land shall together be deemed to be one member of the Company and shall have the rights and obligations of one member of the Company, provided however that all co-owners of any land shall be jointly and severally liable for the due performance of any obligation to the Company.

4 RIGHTS AND OBLIGATIONS OF MEMBERS

- 4.1 No member shall let or otherwise part with occupation of any land in the scheme, whether temporarily or otherwise, unless he has agreed in writing with the proposed occupier of such premises as a *stipulatio alteri* in favour of the Company that such occupier shall be bound by all the terms and conditions of the MOI and Rules of the Company and such written agreement is lodged with the Company prior to the proposed occupier taking occupation of the premises in question.
- 4.2 A registered owner of any land in the scheme may not resign as a member of the Company.
- 4.3 The rights and obligations of a member shall not be transferable.
- 4.4 A member shall not sell or otherwise agree to alienate any land unless it is a condition of such agreement that:
- 4.4.1 The persons to whom the land is to be sold or otherwise to be alienated ("the transferee") has bound himself, to the satisfaction of the Company, as a contract for the benefit of the Company, to become a member of the Company upon transfer of the land to him;
- 4.4.2 The registration of transfer of the land to the transferee shall *ipso facto*

constitute transferee as a member of the Company.

4.5 Subject to the obligations of membership prescribed in this MOI, every member shall:

4.5.1 Further, to the best of his ability, the objects and interests of the Company;

4.5.2 Observe all rules made by the Company in general meeting or by the Directors;

4.5.3 Subject to the provisions of clause below, pay all levies due by the member to the Company;

4.5.4 Sign all documents and do all things necessary to enable whatever servitudes may be required for services to be registered whether over or in favour of the access portion or any other portion in the scheme, including the provision of security facilities.

4.6 Subject to the rights of membership prescribed by the Act and by this MOI, membership shall confer upon each member the following individual rights:

4.6.1 Subject to the provisions of clause below, the right to nominate and elect the Directors of the Company;

4.6.2 The right to receive copies of the annual financial statements of the Company;

4.6.3 Subject to the provisions of clause below, the right to receive notice of, attend, speak and vote a general meetings of the Company.

4.7 Nothing contained in this MOI shall prevent a member of ceding his rights in terms of this MOI as security to the mortgagee of that member's land in the scheme.

5 **LIMITATION OF LIABILITY**

No person shall, solely by reason of being an incorporator, member or Director of the Company, be liable for any liabilities or obligations of the Company.

6 POWERS OF THE COMPANY

6.1 The Company has all of the legal powers and capacity contemplated in the Act, and no provision contained in this MOI should be interpreted or construed as negating, limiting, or restricting those powers in any way whatsoever.

6.2 The legal powers and capacity of the Company are not subject to any restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii) of the Act.

6.3 The Company is not subject to any provision contemplated in section 15 (2)(b) or (c). The Company is subject to the provision contemplated in section 15 (2)(b) or (c), as set out in Part B of Schedule 1.

6.4 Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with :

(a) Item 1(4)(b) of Schedule 2 of the Companies Act, 2008; and

(b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

6.5 The specific powers or part of of any specific powers of the Company set out in Schedule 2 of the Act, are to be modified as follows:

“To manage, insure, lease, mortgage, grant a servitude over, dispose of, work, develop, build on or improve its undertaking or all or any part of its property and assets.”

and

“To remunerate any person or persons in cash for services rendered in the pursuance of the Company's activities.”

7 LEVIES

7.1 The Directors may from time to time determine the levies payable by the

members for the purpose of meeting all the expenses which the Company has incurred or to which the Directors reasonably anticipate the Company will incur in attainment of its objects or pursuit of its business.

- 7.2 The members, save for the owners of the property who shall have no liability in this regard, shall be laible in respect of any levy made in terms of 7.1 in equal shares, provided that any member who is the registered owner of more than one piece of land shall be laible to make payment of such share of the levy in respect of each piece of land pwned by him.
- 7.3 These expenses shall include, but not be limited to, the cost of maintaining the internal and external gardens on the common property, water features, pavements, external boundary walls, security systems, costs of manning the guardhouse, the general maintenance of the clubhouse, swimming pool, squash court, gym, tennis courts, and other communal amenities, insurance costs and all and any other administration costs of the Company or its nominated managing agent, in its stead.
- 7.4 The Directors shall, thirty days after the annual general meeting, or so soon thereafter as is reasonably possible, prepare and serve upon every member at the address chosen by him, an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses for the next financial year and shall specify seperately, such estimated deficiency, if any, as shall result from the preceding year. The Directors may include in such estimate an amount to be held in reserve to meet anticipated expenditure not of an annual nature.
- 7.5 Each notice to each member shall specify the contribution payable to such expenses of the Company and reserve fund. Unless otherwise determined, by way of special resolution, each member shall pay an equal amount in levies.
- 7.6 Every levy shall be payable in equal monthly instalments, payable in advance on the first day of each month of each financial year.
- 7.7 In the event of the Directors for any reason whatsoever failing to prepare and timeously serve the estimate referred to in clause 7.3 above , every member shall, until served with such estimate continue to pay the levy

previously imposed and shall after such service pay such levy as may be specified in the notice, in the manner specified in the notice.

- 7.8 The Directors may from time to time impose special levies upon the members in respect of all expenses, which are not included in any estimate amount made in terms of clause 7.3 above and may, in imposing such levies, further determine the terms of payment thereof.
- 7.9 The Directors shall be empowered, in addition to such other rights as the Company may have in law against its members, to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed the rate prescribed by the National Credit Act, 34 of 2005, as amended from time to time.
- 7.10 Any amount due by a member by way of levy and interest shall be a debt due by him to the Company. The obligation of the member to pay levy and interest shall cease upon his ceasing to be a member, without prejudice to the Company's right to recover arrear levies and interest. No interest and levies paid by a member shall under any circumstances be repayable by the Company upon his ceasing to be a member.
- 7.11 In circumstances where a member has sold or otherwise disposed of land in the scheme, he shall be obligated to inform the Directors, in writing of the impending transfer and shall furthermore similarly confirm the date on which such transfer is registered in the name of the member's successor in title in order to enable the Board (and Management) to determine the date of responsibility for payment of levies and any other amounts comprising of a debt.
- 7.12 No member shall be entitled to transfer land, without first obtaining a clearance certificate from the Company, confirming that this MOI and all Rules have been complied with, and all levies and any other amounts comprising a debt have been paid up to and including the end of the month during which such contemplated registration of transfer of such land will take place, save where such transfer is as a result of an order of court or a judicial sale, as the case may be.
- 7.13 The Company shall be entitled to levy an administration fee (to be

determined by the Directors from time to time) when issuing any clearance certificate and/or consent to allow registration of a mortgage bond over the purchaser/owner's property and similarly, when issuing any extended clearance certificate.

8 ACCESS SERVITUDE / CLUBHOUSE

- 8.1 In terms of the conditions of establishment of the township imposed by the Local Authority, access to and from the erven in the development shall be over the designated access erf (Erf 222) (hereinafter referred to as "the access erf"), which is so indicated on the approved General Plan.
- 8.2 The access erf and the erf designated for the clubhouse, swimming pool, squash court, gym and tennis courts (Erf 224) (hereinafter referred to as "the clubhouse") are registered in the name of the Company and shall not be sold or in any way disposed of without prior written consent of the Local Authority.
- 8.3 The Local Authority shall not be liable for the malfunction of the surfacing of the access erf and or the stormwater drainage system and or any essential services within the access erf and clubhouse portions, with the exception of services taken over by the Local Authority.
- 8.4 Access to and from all erven in the development shall be over the access erf to afford them access to the public road.
- 8.5 The Local Authority shall have unrestricted access to the access erf and clubhouse portions at all times.
- 8.6 The Company shall be responsible for the maintenance of all of the essential services not taken over by the Local Authority. The Company shall have full legal power to levy from each and every member the costs incurred in fulfilling its function and shall have legal resources to recover such fees in the event of default in payment by any member.
- 8.7 The Company guarantees the Local Authority's engineering services departments and its emergency services departments 24 hour access to

the access erf and clubhouse portions in order to maintain the Local Authority's installations and provide services to the residents of the scheme.

- 8.8 The Company shall be obliged to maintain the the access erf and the clubhouse portions in good order and repair at its sole cost and expense.
- 8.9 If required by the Council a Notarial Deed of Servitude for municipal purposes shall be registered over the access erf in favour of the Local Authority.

9 SPECIAL CONDITIONS

- 9.1 The income and property of the Company howsoever derived shall be applied solely toward the promotion of its main object and no portion of the income or property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to the members of the Company, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any member thereof in return for any services actually rendered to the Company.
- 9.2 Upon its winding up, deregistarion or dissolution, the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or association or institution having objects similar to those of the Company to be determined by the members of the Company at or before the time of the dissolution of the Company or, failing such determination, by the Court.

10 COMPOSITION AND POWERS OF THE BOARD OF DIRECTORS

- 10.1 In addition to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee, or a social and ethics committee, the Board must at all times comprise of at least 3 (three) Directors and a maximum of 7 (seven) Directors.
- 10.2 The Directors shall be elected in terms of section 68(1) by the persons

entitled to exercise voting rights in such an election, being the home-owners.

- 10.3 In any election of Directors:
 - 10.3.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled; and
 - 10.3.2 in each vote to fill a vacancy:
 - 10.3.2.1 each vote entitled to be exercised may be exercised once; and
 - 10.3.2.2 the vacancy is filled only if a majority of the votes exercised support the candidate.
- 10.4 The Company shall only have elected Directors and there shall be no appointed or *ex officio* Directors as contemplated in section 66(4).
- 10.5 In addition to satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.
- 10.6 Each Director must himself be a member of the Company.
- 10.7 Each elected Director of the Company shall serve for a period of two years from the date of his appointment until the date of the second Annual General Meeting and a vacancy in the number of Directors shall only arise in the event of:
 - 10.7.1 any elected Director ceasing to hold office or becoming disqualified from holding office as such for any reason; and/or
 - 10.7.2 any of the other circumstances contemplated in section 70(1) arising.
- 10.8 The Board has the power to exercise all of the powers and perform any of the functions of the Company, as set out in section 66(1) and the

powers of the Board in this regard are not limited or restricted by this MOI.

- 10.9 The Directors may at any time and from time to time appoint any person or persons to be the attorney or attorneys and agent(s) of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors in terms of this MOI) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such appointment may, if the Directors think fit, be made in favour of any company, the members, Directors, nominees or managers of any company or firm, or otherwise in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Directors. Any attorney may contain such provisions for the protection or convenience of persons dealing with such attorneys and agents as the Directors think fit. Any such attorneys or agents as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.
- 10.10 All acts performed by the Directors or by a committee of Directors or by any person acting as a Director or a member of a committee shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of the Directors or persons acting as aforesaid, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director or member of such committee.
- 10.11 The Directors in office may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the minimum number fixed in accordance with this MOI, they may act only for the purpose of filling vacancies in their body in terms of section 68(3) or of summoning general meetings of the Company, but not for any other purpose.
- 10.12 A Director may hold any other office or place of profit under the Company (except that of auditor) or any subsidiary of the Company in conjunction with the office of Director, for such period and on such

terms as to remuneration (in addition to the remuneration to which he may be entitled as a Director) and otherwise as a disinterested quorum of the Directors may determine.

10.13 A Director of the Company may be or become a Director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise and (except insofar as otherwise decided by the Directors) he shall not be accountable for any remuneration or other benefits received by him as a Director or officer of or from his interest in such other company.

11 CHAIRMAN AND VICE-CHAIRMAN

11.1 The Company shall be entitled, from time to time, to nominate a Director to act as the chairman of the Board and to request that such person be removed from his post as chairman, with or without nominating a replacement. The Board shall elect, or procure the removal of, the person nominated or removed by the members in terms of this clause 11.1 as chairman of the Board.

11.2 Within 30 (thirty) days of the holding of any annual general meeting, the Board shall meet and elect from its own number the vice-chairman, who shall hold his respective office until the annual general meeting held next after his said appointment, provided that the office of vice-chairman shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board shall immediately meet to appoint one of their number as a replacement for such office.

11.3 The chairman of the Board or, failing him, the vice- chairman of the Board (or, if more than one of them is present and willing to act, the most senior of them) shall preside as the chairman of each meeting of the Board, provided that, if no chairman or deputy chairman is present and willing to act, the Board present shall elect one of the Directors to be the chairman of that meeting of the Board.

- 11.4 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the Board.
- 11.5 Save as otherwise provided in this MOI, the chairman shall preside at all meetings of the Board, and all general meetings of members, and shall perform all duties incidental to the office of chairman and such other duties as may be prescribed by the Board or of members, and to allow or effuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 11.6 The vice-chairman shall assume the powers and duties of the chairman in the absence of the chairman, or his inability or refusal to act as chairman, and shall perform such other duties as may from time to time be assigned to him by the chairman or the Board.
- 11.7 The chairman shall, subject to the Act and this MOI and any decision of the Board, determine the procedure to be followed at all meetings of the Board and of the Members.

12 **POWERS OF DIRECTORS**

- 12.1 Subject to the express provisions of this Memorandum, the Directors shall manage and control the business and affairs of the Company, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of managing agents , may exercise all such powers of the Company and do all such acts on behalf of the Company as may be exercised and done by the Company and as are not by the Act or by this MOI required to be exercised or done by the Company in general meeting, subject however to such rules as may have been made by the Company in general meeting or as may be made by the Directors from time to time.
- 12.2 Save as specifically provided in this MOI, the Directors shall at all times have the right to engage on behalf of the Company the services of accountants, auditors, attorneys, architects, engineers, town planners, managing agents

or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Directors on such terms as the Directors shall decide.

- 12.3 The Directors shall further have the power:-
 - 12.3.1 The Board of Directors shall have the right to vary, cancel or modify its decisions and resolutions from time to time.
 - 12.3.2 The Directors shall be entitled to appoint committees consisting of such number of their members, employees or such outsiders, including a managing agent, as they deem fit and to delegate to such committees and/or employees or outsiders such of their functions, powers and duties as they deem fit, with further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.
- 12.4 The Directors shall appoint a aesthetic committee to exercise the powers set out above in clause 12.3 which shall consist of:-
 - 12.4.1 a practicing professional architect or town planner duly qualified to practice as such for his own account in the Republic of South Africa;
 - 12.4.2 at least one Director;
 - 12.4.3 such other members or employees as the Directors may determine.
 - 12.4.4 Members of the aesthetic committee shall not necessarily be required to be members of the Company.
 - 12.4.5 All plans for buildings, outbuildings, structures, signage, stormwater outlets, additions and alterations shall be approved by the Directors who shall first submit such plans to the aesthetic committee. The Directors shall not approve any such plan unless such plan shall first have been reviewed by the aesthetic committee. The Directors, or their agents may if they deem fit, delegate to the aesthetic committee, their functions and powers.

13 REMOVAL AND ROTATION OF DIRECTORS

13.1 Save as set out in clause 13.2 below, each Director shall continue to hold office from the date of his appointment until the second annual general meeting following his appointment, at which meeting each Director shall be deemed to have retired from office but will be eligible for re-election.

13.1.1 A Director shall be deemed to have vacated his office in the event of:-

13.1.1.1 his becoming disqualified to act as a Director in terms of the provisions of the Act;

13.1.1.2 his being removed from office as provided in Section 71 of the Act;

13.1.1.3 his being a member of the Company, and being disentitled to exercise a vote in terms hereof;

13.1.1.4 his estate being sequestrated, whether provisionally or finally;

13.1.1.5 the commission by him of any action of insolvency;

13.1.1.6 his conviction for any offence involving dishonesty;

13.1.1.7 his becoming of unsound mind ;

13.1.1.8 his resigning from such office in writing;

13.1.1.9 if he is in arrears for more than 60 (sixty) days with any levies and contributions payable by him in respect of his unit or exclusive use area (if any) and if he fails to bring such arrears up to date within 7 (seven) days of being notified in writing to do so;

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

13.2 Upon any vacancy occurring in the Board of Directors prior to the next annual general meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Board of Directors.

14 DIRECTORS' MEETINGS

14.1 The following provisions will apply to meetings of Directors:

- 14.1.1 a quorum at meetings of Directors will consist of at least 4 (four) Directors provided that due proper notice of the meeting (which notice shall include the agenda and, if possible, any resolution to be proposed at the meeting) shall have been given to all the Directors;
- 14.1.2 if within half an hour (or such longer period as those present may agree) after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day of the next week at the same time and place. Written notice of such adjourned meeting (incorporating an agenda) shall be given to all Directors not less than 48 (forty eight) hours before such adjourned meeting is to be held;
- 14.1.3 if at such adjourned meeting a quorum is not present within half an hour (or such longer period as those present may agree) after the time appointed for the meeting, the Directors present will constitute a quorum. No business may be conducted at the adjourned meeting save for business specified on the agenda or unless all the Directors are present at such adjourned meeting and unanimously agree that such business may be conducted;
- 14.1.4 not less than 7 (seven) days' written notice of Directors meetings will be given to all Directors, provided that shorter notice, being not less than 48 (forty eight) hours before such meeting is to be held, may be given if in the reasonable opinion of any Director an urgent decision of the Board is required. Any 4 (four) Directors will by written notice to the Company at its registered office from time to time have the right to convene meetings of the Board;
- 14.1.5 a resolution in writing (whether recorded in one or more

documents) signed and dated by all the Directors or their alternates indicating their approval of the resolution, shall be valid and effective as if passed at a duly convened meeting of the Board;

14.1.6 the Directors may, if they think fit, confer by radio, telephone, closed circuit television, video conferencing or other electronic means of audio or audio/visual communication ("**Conference**"). Notwithstanding that the Directors are not present together in one place at the time of the Conference, a resolution passed by Directors constituting a quorum at such a Conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the Conference was held. The provisions of this MOI relating to proceedings of Directors apply insofar as they are capable of application *mutatis mutandis* to such Conferences; and

14.1.7 meetings of the Board will be held regularly but not less frequently than 4 (Four) times per annum. The venue of the meetings of the Board will be at the estate clubhouse or such other venue as the Board may determine from time to time.

14.2 The following provisions shall apply to voting by Directors:

14.2.1 each Director shall have one vote;

14.2.2 save as otherwise provided in this MOI, all resolutions of the Board will be validly passed by a simple majority; and

14.2.3 should the Board be unable to pass or reach a decision on any proposed resolution then that resolution will be deemed to constitute a deadlock. Such a deadlock between the Directors will be decided by the chair.

14.3 Resolutions adopted by the Board:

14.3.1 must be dated and sequentially numbered; and

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

14.4 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board, is evidence of the proceedings of that meeting, or the adoption of that resolution, as the case may be.

15 **GENERAL MEETINGS**

15.1 In addition to any other matters required by the Act or this MOI to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting:

15.1.1 the consideration of the chairman's report to the Board;

15.1.2 the election of the Board;

15.1.3 The quorum requirements for Members Meetings shall, subject to clause 15.6, be that –

15.1.3.1 such a Meeting shall not begin until sufficient members are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Act), as together for the time being represents not less than 25 (twenty five) members holding Voting Rights in number of all the other members of the Company entitled to vote, for the time being; and

15.1.3.2 the consideration of a matter to be decided at the Meeting shall not begin unless until sufficient members are present at such meeting (as contemplated in the definition of "Present at a Meeting" in the Act), as together for the time being represents not less than 25 members holding Voting Rights in number of all the other members of the Company entitled to vote, for the time being.

15.2 Notwithstanding the provisions of section 64(4) of the Act and clause 15.1 if, within thirty minutes after the appointed time for a Members Meeting, -

- 15.2.1 the quorum requirements for a Meeting to begin have not been satisfied, the Meeting shall automatically be postponed without motion or vote to the same day (or if that day is not a Business Day, the next Business Day) in the next week;
- 15.2.2 the quorum requirements for consideration of a particular matter to begin have not been satisfied, then, -
 - 15.2.2.1 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
- 15.3 if there is no other business on the agenda of the Meeting, the meeting is adjourned, without motion or vote, to the same day (or if that day is not a Business Day, the next Business Day) in the next week.
- 15.4 The adjourned Members Meeting may only deal with the matters that were on the agenda of the Meeting that was adjourned or postponed.
- 15.5 The chairperson of the Members Meeting shall be entitled to extend the thirty minute limit referred to in clause 15.2 in the circumstances contemplated in section 64(5) of the Act.
- 15.6 If, at the time appointed in terms of this clause 15 for an adjourned Members Meeting to resume, the quorum requirements have not been satisfied, the Members present in person or by proxy will be deemed to constitute a quorum.
- 15.7 After a quorum has been established for a Members Meeting, or for a matter to be considered at a Members Meeting, the Meeting may continue.
- 15.8 A Members Meeting, or the consideration of any matter being debated at a Members Meeting, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Act, it being recorded that the periods of adjournment set out in section 64(12) shall apply without variation.
- 15.9 The Board may, at any time after notice of a Members Meeting has been given, but prior to the commencement of that Meeting, postpone that

Meeting to such later date as may be determined by the Board at the time of determining to postpone the Meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage, provided that the Board may not so postpone the date of any such Meeting beyond that date (if any) by which that Meeting is required by the Act or this MOI to be held.

15.10 If a Members Meeting is postponed or adjourned, whether in terms of clause 15.3 or otherwise, the Company is not required to give further notice of a meeting that is postponed, unless the location for the meeting is different from the location of the postponed meeting, or the location announced at the time of the adjournment, as per section 64(7).

15.11 At any Members Meeting, any Person who is present at the Meeting, whether as a Member or as a proxy for a Member, shall be entitled to exercise the Voting Rights, which Voting Rights shall be determined in accordance with clause 17 below. In order for –

15.11.1 notice of the Meeting of the postponement or adjournment, and that notice must contain the time and date of, and the location for, the continuation or resumption of the Meeting and any other information which the Board may decide to include therein.

15.12 The chairman of the Board or should he not be present within 15 minutes after the time appointed for the holding thereof, the deputy chairperson of the Board (or if more than one of them is present and willing to act, the most senior of them) shall preside as the chairperson of each Members Meeting, provided that, if no chairperson or deputy chairperson is present within 5 minutes after the time appointed for the holding thereof and willing to act, the Members present shall elect one of the Directors or, if no Director is present and willing to act, a Member, to be the chairperson of that Members Meeting who shall thereupon exercise all the powers and duties of the chairman in relation to such meeting.

16 **MEMBER RESOLUTIONS**

16.1.1 An Ordinary Resolution to be approved, it must be supported by a

majority of the Voting Rights exercised on the Ordinary Resolution, as contemplated in section 65(7); or

- 16.1.2 A Special Resolution to be approved, it must be supported by at least 25 members holding Voting Rights exercised on the Special Resolution, as provided in section 65(9), at a quorate Members Meeting, which is quorate in relation to that resolution, provided that this clause 16 shall not detract from the Members' ability to adopt resolutions by written vote as contemplated in section 60.
- 16.1.3 If any Member abstains from voting in respect of any resolution, that Member will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.
- 16.1.4 Except for those matters that require the approval or authority of a Special Resolution in terms of section 65(11) of the Act, any other section of the Act or any provision of the Regulations or this MOI, no other matters that the Company may undertake will require the approval or authority of a Special Resolution of the Members.

17 **VOTING**

- 17.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on declaration by the chairman of the result of a show of hands, a poll is demanded by the chairman or by any person entitled to vote at the meeting.
- 17.2 Unless a poll be so demanded, a declaration by the chairman that a resolution has on a show of hands been carried shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against such resolution. A demand for a poll may be withdrawn.
- 17.3 A poll, if demanded, shall be taken in such manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

- 17.3.1 On a show of hands;
- 17.3.2 each member shall have 1 vote;
- 17.3.3 the owner or Co-Owners of an Erf or a Unit shall have 1 vote in respect of each Erf or Unit or share therein registered in his/her/their name/s provided that if any Unit is a garage, servant's room or parking bay, then such Unit shall confer no vote.
- 17.4 For the purpose of voting on a Special Resolution (with or without a poll) or on a poll:
 - 17.4.1 each member shall have 1 vote;
 - 17.4.2 the owner or Co-Owners of an Erf or a Unit shall have 1 vote in respect of each Erf or Unit or share therein registered in his/her/their name/s provided that if any Unit is a garage, servant's room or parking bay, then such Unit shall confer no vote.
- 17.5 Except in cases where a Special Resolution or a unanimous resolution is required under the Act or this MOI, no member shall be entitled to vote at any general meeting if:
 - 17.5.1 any levies or other amounts owing by him to the Company or in respect of his Erf or Unit or share therein have not been duly paid; or
 - 17.5.2 he is in breach of any of his duties under the Act, this MOI or any of the House Rules, which shall be evidenced by a written notice by the Directors, such notice not having been withdrawn.
- 17.6 A member not entitled to vote in terms of clause 17.5 shall nonetheless be bound by any decisions taken at any general meeting.
- 17.7 Where an owner of an Erf or Unit or share therein is as such an executor or trustee for a beneficiary, he shall exercise the voting rights in respect of such Erf or Unit or share therein to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.
- 17.8 When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by one of them jointly appointed by them as

their proxy provided that any one of them may demand a poll.

- 17.9 In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the general meeting shall not be entitled to a casting vote in addition to his deliberative vote.
- 17.10 Any objection as to the admissibility of a vote on show of hands or a poll, shall be raised at the general meeting at which the show of hands or the poll is to take place or takes place. That objection shall be determined by the chairman of that general meeting and his decision thereon shall be final and binding. Accordingly any vote not disallowed at that meeting shall be valid for all purposes.
- 17.11 A resolution shall not be invalid because a vote which should not have been included has been taken into account unless if in the opinion of the chairman of that general meeting, the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because of a vote which should have been included which has not been taken into account unless in the opinion of the chairman of that general meeting, the inclusion of that vote would have altered the result of the voting on that resolution.

18 **MINUTES AND INSPECTION**

- 18.1 The Company shall keep minutes of the meetings of the Board, and any of its committees, and include in those minutes –
- 18.1.1 any declaration given by notice or made by a Director, as required by section 75 of the Act; and
- 18.1.2 every resolution adopted by the Board. Resolutions adopted by the Board –
- 18.1.2.1 must be dated and sequentially numbered; and
- 18.1.2.2 are effective as of the date of the resolution, unless the resolution states otherwise.

- 18.2 A Director or any person appointed by the Board for this purpose shall take minutes of every Directors' meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the chairman of the meeting.
- 18.3 All minutes of Directors' meetings shall be placed in a minute book which shall be open for inspection at all reasonable times by the Directors, the Auditors and the members. Any minutes of a meeting, or a resolution, signed by the chairperson of the meeting, or by the chairperson of the next meeting of the Board, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

19 **MANAGING AGENT**

- 19.1 The Directors may from time to time appoint a managing agent for such term and at such remuneration as they may think fit (subject only to the requirements of section 66(8) and (9)), and may revoke such appointment subject to the terms of any agreement entered into in any particular case, provided that the period of office of a managing agent appointed in terms of an agreement shall be for a period of 1 (one) year at any one time, after which time the managing agent will be eligible for re-election.
- 19.2 The Directors may from time to time entrust to and confer upon a managing agent for the time being such of the powers exercisable in terms of this MOI by the Directors as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes, and upon such terms and conditions, and with such restrictions, as they think expedient; and they may confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 19.3 The Director's shall ensure that there is included in the contract of appointment of the managing agent a provision to the effect that if

he/it is commits a breach of any of the provisions of the contract, and fails to remedy such breach within 14 (fourteen) days of written notification to do so, the Director's may, without notice, cancel such contract of appointment and the managing agent shall have no claim whatsoever against the Company or any of the members as a result of this cancellation.

19.4 The contract with the managing agent shall further provide for the appointment to be terminated if:

19.4.1 Where the managing agent is a company, an order is made for its provisional or final liquidation, or where the managing agent is a natural person, he is declared insolvent, whether provisionally or finally; or

19.4.2 The managing agent is convicted of an offence involving fraud or dishonesty, or, where the managing agent is a company, any of its directors is convicted of an offence involving fraud or dishonesty; or

19.5 The managing agent shall keep full records of his/its administration and shall report to the Company on all matters which detrimentally affects the value or amenity of the Company.

19.6 The Directors shall from time to time furnish to the managing agent copies of minutes of all meetings of the directors and of the Company.

19.7 Should there be no managing agent in office at any time, then all references in this MOI to managing agent shall be deemed to be a reference to the Directors of the Company.

20 **RULES / REGULATIONS**

20.1 Subject to any restriction imposed or direction given at a general meeting of the Company and subject to the conditions imposed by the local authority in approving the rezoning and subdivision of the land, the Directors may from time to time make house rules/regulations in regard to:

- 20.1.1 the standards and guidelines for the architectural design of all buildings and out-buildings, structures of any nature, swimming pools, tennis courts and all additions, signage and alterations to any such buildings, out-buildings or structures, including fencing erected or to be erected on the land, and in particular to control the design of the exterior of such buildings, out-buildings or structures and the materials used on such exteriors to ensure an attractive, aesthetically pleasing and coordinated character to all buildings on the property;
- 20.1.2 the siting of all buildings, out-buildings, structures of any nature, swimming pools, tennis courts, signage and all additions and alterations to any thereof;
- 20.1.3 the preservation of the built and general environment;
- 20.1.4 the right to prohibit, restrict or control the keeping of any animal;
- 20.1.5 the conduct of any persons, including the public (which may be allowed access, on such conditions as the Company shall regulate, to all amenities on the land) , on the land for the prevention of nuisance of any nature to any member;
- 20.1.6 the preservation of the natural environment on the land; the use of services and recreation areas, amenities and facilities, including the right to charge a reasonable fee for the use thereof, as determined by the directors from time to time;
- 20.1.7 for the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and or for the advancement of the interests of the members and/or the residents on the land;
- 20.1.8 for the maintenance of all buildings, out buildings, structures, improvements of any nature, signage and landscaping on the land;
- 20.1.9 the controlling of the number of occupiers permitted on any one Erf;
- 20.1.10 control of traffic and parking on the land.
- 20.1.11 the rate of interest applicable to amounts owing by members to the

Company in terms of clause 7 above.

- 20.1.12 For the enforcement of any of the rules made by the Directors in terms of this clause, or of any of the provisions of this MOI generally, and further subject to the provisions of clause 7, the Directors may:-
- 20.1.12.1 give notice to the member concerned requiring him to remedy such breach within such period as the Directors may determine;
 - 20.1.12.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the rule or provision of which the member may be guilty, and debit the cost of so doing to the member concerned, which amount shall be deemed to be the debt owing by the member concerned to the Company; and/or
 - 20.1.12.3 take such action including proceedings in court, as they may deem fit;
 - 20.1.12.4 impose, in their sole discretion, spot fines, other charge or impost on the member concerned, which the Directors may deem appropriate.
- 20.2 In the event of the Directors instituting any legal proceedings against any member or resident on the land for the enforcement of any of the rights of the Company in terms hereof, the Company shall be entitled to recover all legal costs so incurred from the member or resident concerned, calculated as between attorney and own client, including tracing fees and collection commission.
- 20.3 In the event of any breach of the rules or provisions by the members of any member's household or his guests or lessees, such breach shall be deemed to have been committed by the member himself, but without prejudice to the foregoing, the Directors may take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit.
- 20.4 In the event of any member disputing the fact that he has committed a breach of any of the rules, a committee of three Directors appointed by The Chairman for the purpose 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 Chairman may direct.

20.5 Notwithstanding anything to the contrary herein contained, the Directors may in the name of the Company enforce the provisions of any rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint attorneys and counsel as they may deem fit.

20.6 The Company may in general meeting itself make any rules which the Directors may make and may in general meeting vary or modify any rule made by it or by the Directors from time to time.

21 **ANNUAL FINANCIAL STATEMENTS**

21.1 Notwithstanding the provisions of clause:

21.1.1 the Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of:

21.1.1.1 the Act;

21.1.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

21.1.1.3 the Regulations; and

21.1.1.4 this MOI; and

21.1.2 the Company shall each year prepare annual financial statements within 6 (Six) months after the end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61(7).

21.2 The Company shall appoint an accounting officer and or auditor, or as soon as reasonably possible after its annual general meeting. If the Company appoints a firm as its auditor and or accounting officer, any

change in the composition of the members of that firm shall not by itself create a vacancy in the office of the accounting officer and or auditor.

- 21.3 For purposes of the affairs of the Company, with regard to and/or relating to the accounting officer and or auditor of the Company, the provisions of sections 90(1), 90(2)(a), 90(5), 90(6)(a)(i), 90(6)(a)(ii), 90(6)(c), 91(1), 91(2), and 93(1) are incorporated, *mutatis mutandis*, into this MOI.
- 21.4 In the event that the annual financial statements of the Company –
 - 21.4.1 are required to be audited pursuant to regulations made in terms of section 30(7), as contemplated in section 30(2)(b)(i), or as otherwise contemplated in the Act, the annual financial statements shall be so audited in accordance with the relevant provisions of the Act; and
 - 21.4.2 are required to be audited, independently reviewed, or otherwise assessed in terms of any statute other than the Act, or a regulatory order, the Company shall comply with its relevant obligations in that regard.
- 21.5 Subject to clause 21.4 and notwithstanding any contrary provision in the Act, the annual financial statements shall be prepared and or audited as set out in herein.
- 21.6 In the event that the annual financial statements are to be audited pursuant to the provisions of clause 21.4 the annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Act and shall –
 - 21.6.1 satisfy, as to form and content, the financial reporting standards of IFRS; and
 - 21.6.2 subject to and in accordance with IFRS, as the case may be –
 - 21.6.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;
 - 21.6.2.2 show the Company's assets, liabilities and equity, as

well as its income and expenses;

21.6.2.3 set out the date on which the statements were produced and the accounting period to which they apply; and

21.6.2.4 bear on the first page thereof a prominent notice indicating that the annual financial statements have been audited and the name and professional designation of the person who prepared them.

22 **ANNUAL BUDGET**

22.1 the executive Directors shall every year prior to the Annual General Meeting of the company, submit to the Board for approval a proposed annual budget for the conduct of the business during the next financial year, in the form and level of detail determined by the Board from time to time.

22.2 the annual budget shall include but not be limited to –

22.2.1 a projected income statement, balance sheet and cash flow statement for the ensuing financial year; and

22.2.2 a capital expenditure programme specifying amounts outstanding on approved capital expenditure brought forward from the prior year as well as proposed future capital expenditure commitments of the company.

22.2.3 until such time as the new annual budget has been approved in accordance herewith, the previous annual budget (indexed), will be applied by the Board and will be binding on the parties as if it had been approved in accordance with this clause 22.

23 **DIRECTORS EXPENSES AND REMUNERATION**

- 23.1 Directors shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Directors, if resolved by all Directors.
- 23.2 The Directors may pay any Director who serves on any committee or who devotes special attention to the business of the Company, or otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a director, such extra remuneration as they may determine.

24 **NOTICES**

- 24.1 All notices intended or required to be given by the Company to any member of the Company shall be given in writing either:
- 24.1.1 personally; or
 - 24.1.2 by sending the same through the post in a prepaid letter, envelope or wrapper addressed to such member at his registered address; or
 - 24.1.3 by Electronic Communication.
- 24.2 Any notice sent by post shall be deemed to have been given on the day on which the letter, envelope or wrapper containing the same is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put in the post.
- 24.3 Any notice or other document, if sent by the Company by means of Electronic Communication, shall be deemed to have been served at the time at which the Company releases the Electronic Communication.

25 **AMENDMENT OF MOI**

25.1 This MOI may only be altered or amended in the manner set out in sections 16 (other than 16(1)(b)), 17 or 152(6)(b).

25.2 The Board, or any individual authorised by the Board, may alter this MOI in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by:

25.2.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail; and

25.2.2 Filing a notice of the alteration.

25.3 An amendment of this MOI will take effect from the later of:

25.3.1 the date on, and time at, which the Commission accepts the Filing of the notice of amendment contemplated in section 16(7); and

25.3.2 the date, if any, set out in the said notice of amendment,

save in the case of an amendment that changes the name of the Company, which will take effect from the date set out in the amended registration certificate issued by the Commission.

26 **COMPANY RULES**

26.1 The Board is authorised to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or in this MOI by:

26.1.1 publishing a copy of any Rules or amendments to such Rules made in terms of section 15(3) to 15(5) by delivering a copy of such Rules or amendments to each member by ordinary mail; and

26.1.2 Filing a copy of those Rules.

26.2 Any Rules so made shall take effect and become binding in the manner contemplated in section 15(4).

26.3 The Board, or any individual authorised by the Board, may alter the Rules, in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by –

26.3.1 publishing a notice of any alteration made by delivering a copy of such amendments to each Shareholder by ordinary mail; and

26.3.2 Filing a notice of the alteration.

27 **RESTRICTIONS IMPOSED IN FAVOUR OF THE LOCAL AUTHORITY**

27.1 The Company shall not be deregistered without the prior written consent of the Local Authority;

27.2 The access erf and clubhouse shall not be alienated or transferred or rezoned without the consent of the Local Authority having first been obtained.

28 **GENERAL**

28.1 Whenever the Directors consider that the appearance of any land or building vested in a member is such as to be unsightly or injurious to the amenities of the surrounding area or the property generally, the Directors may serve notice on such member to take such steps as may be specified in the notice to eliminate such unsightly or injurious condition. In the event of the member failing within a reasonable time, to be specified in such notice, to comply therewith, the Directors may enter upon the land or buildings concerned and take such steps as may be necessary, and recover the costs thereof from the member concerned, which costs shall be deemed to

be a debt owing to the Company.

- 28.2 The Company may require any member to maintain a sidewalk adjacent to his land in the scheme and in the event of such member failing to do so to the satisfaction of the Company, the Company shall be entitled to take such action as may be necessary for the maintenance of such sidewalk and to charge such member concerned.
- 28.3 Should the Company provide security services and or other services to the members in the scheme, all members shall be obliged to:
- 28.3.1 Permit the installation of any such equipment for the purposes of such services as may be determined by the Company from time to time;
- 28.3.2 Make payment of the charges raised by the Company in respect of such services;
- 28.3.3 Abide by such terms and conditions of the provisions of such services as may be laid down by the Company from time to time.
- 28.4 Where a boundary of a member's land also constitutes a boundary of the scheme, such member shall be obliged to permit the Company to erect upon such land immediately adjacent to such boundary, such walling, fencing, barbed wire, or other equipment as the Company may determine. Such member shall not be entitled to interfere in any manner whatsoever with such walling, fencing, barbed wire, or other equipment to effect repairs as may be necessary from time to time. Should any member wishing to erect his own walling, fencing, barbed wire, or other equipment, he shall be obliged to erect same within the walling or fencing referred to above and subject to such conditions as the Company may lay down and to permit the Company access to such walling, fencing, barbed wire, or other equipment concerned.
- 28.5 The Directors shall be obliged in giving such notice to act reasonably. In the event of any dispute, the member shall bear the onus of establishing that the Directors acted unreasonably.
- 28.6 The Company may enter into agreements with members for the provision of amenities and service to the members and to levy a reasonable charge in

respect of the provision thereof.

- 28.7 No member ceasing to be a member of the Company for any reasons 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 land of the Company.
- 28.8 The Company may claim from any member or his estate any levy arrears, and interest or other sums due from him to the Company at the time of his ceasing to be a member.
- 28.9 Any person using any of the services, land or facilities of the Company does so entirely at his own risk.

29 **DISPUTES**

- 29.1 Any dispute arising out of or in connection with this MOI, including the cancellation thereof, must be determined in terms of this MOI, except when an interdict is sought for urgent relief which may be obtained from a court of competent jurisdiction.
- 29.2 If a dispute arises, the party who wishes to have the dispute determined must notify the other party thereof. Unless the dispute is resolved amongst the parties to that dispute within 14 (fourteen) days of such notice, either of the parties may refer the dispute to determination in terms of this article.
- 29.3 If a party exercises his right in terms of clause 29.2 to refer the dispute for determination, such dispute shall be referred to the following who shall in each case have a minimum of 5 (five) years experience in their field:-
- 29.3.1 if the dispute is primarily an accounting matter, a practising chartered accountant;
- 29.3.2 if the dispute is primarily a legal matter, a practising attorney or advocate;
- 29.3.3 if the dispute is primarily a matter relating to the measurement in any way of any building construction or any aspect thereof, a practising

quantity surveyor;

- 29.3.4 if the dispute is primarily a matter relating to any defect in any building construction, a practising engineer;
- 29.3.5 if the dispute is primarily one relating to the aesthetics of a building, on an Erf, a practising architect;
- 29.3.6 If the parties are unable to agree either on the person referred to in clause 29.3 or on the classification of the dispute within a period of 3 (three) days of either party having given notice to the other, proposing an appointee or alternative appointees, then the person shall be nominated by the President for the time being of the Law Society of the Northern Provinces.
- 29.3.7 Any person agreed upon and nominated as aforesaid ("the expert"), shall in all respects act as an expert and not as an arbitrator.
- 29.3.8 The proceedings shall be on an informal basis, it being the intention that a decision should be reached as expeditiously as possible, subject only to the due observance of the principles of justice.
- 29.3.9 The parties shall use their best endeavours to procure that the decision of the expert shall be given within 21 (twenty-one) days or so soon thereafter as possible, after it has been demanded.
- 29.3.10 The decision of the expert shall be final and binding upon all parties and capable of being made an order of court on application by any of them.
- 29.3.11 The costs of and incidental to any such proceedings, including the fees of the expert, shall be in the discretion of the expert who shall be entitled to direct the allocation of the costs, and whether they shall be taxed as between "party and party" or as between "attorney and client".
- 29.3.12 The provisions of this clause constitute the irrevocable consent of the parties to any proceedings in terms thereof and none of the parties shall be entitled to withdraw therefrom or claim in any such proceedings that it is not bound by such provisions.

30 **INDEMNITY**

- 30.1 All Directors shall be indemnified against any liabilities bona fide incurred by them in their respective capacities, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any person/s by a Court.
- 30.2 Every Director, servant, agent and employee of the Company, and the auditors, shall be indemnified by the Company against (and it shall be the duty of the Directors out of the funds of the Company to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties.

31 **PROXIES**

- 31.1 A member may be represented at a general meeting by a proxy, who need not be a member of the company;
- 31.2 To be effective at a meeting or adjourned meeting, a proxy together with the original or a notarially certified copy of any power of attorney or other authority under which it is signed must be lodged with the company at least forty eight hours before the commencement of the meeting or adjourned meeting concerned but the Board may from time to time determine that such documents:-
- 31.2.1 are to be lodged via email, fax or hand delivery;
- 31.2.2 are to be lodged a certain number of hours before, not exceeding forty-eight in all; or
- 31.2.3 before the meeting; or
- 31.2.4 must be delivered at any time before the meeting, and may not be delivered during the meeting;

31.2.5 The instrument appointing a proxy shall be in the form as per annexure "B" hereto or as near thereto as circumstances permit.

ADOPTION

This MOI was adopted by the Directors of the Company in accordance with section 13(1) as evidenced by the following signatures made by each of them or on their behalf –

Signature of DIRECTOR	
Name	
Registration/Identity Number	
Date	

Signature of DIRECTOR	
Name of DIRECTOR	
Registration/Identity Number	
Date	

Signature of DIRECTOR	
Name of DIRECTOR	
Registration/Identity Number	
Date	

Name of DIRECTOR	
Registration/Identity Number	
Date	

Signature of DIRECTOR	
Name of DIRECTOR	
Registration/Identity Number	
Date	

Signature of DIRECTOR	
Name of DIRECTOR	
Registration/Identity Number	
Date	

Signature of DIRECTOR	
Name of DIRECTOR	
Registration/Identity Number	
Date	

**PROXY BIRDWOOD HOMEOWNERS ASSOCIATION
(Non Profit Company)**

.....of

being a member of the Company hereby appoint

of..... or failing him,

.....of.....or failing

him....., ofas my proxy to vote

for me on my behalf at the annual general meeting (as the case may be) of the

Company to be held on the day ofand at any

adjournment thereof as follows:-

**RESOLUTION BIRDWOOD HOMEOWNERS
ASSOCIATION (Non Profit Company)**

IN FAVOUR OF / AGAINST / ABSTAIN

.....
.....

(Indicate instructions to proxy by way of a cross in space provided above). Unless otherwise instructed, my proxy may vote as he thinks fit.

SIGNED this day of 20.....

..... SIGNATURE

(NOTE : A member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a member of the Company).

A proxy shall be valid for any adjournment of the general meeting to which it relates unless otherwise indicated on the proxy.