

**Companies and Intellectual Property Commission
Republic of South Africa**

Memorandum of Incorporation

of

FANCOURT MASTER HOMEOWNERS ASSOCIATION NPC

Registration No. 1991/005224/08

which is referred to in this Memorandum of Incorporation as “the Company”

The Company is a non-profit company with Members, having the following objects:

Adoption of MOI

This MOI was adopted by the Members of the Company by special resolution of the Company dated **12 January 2024** in accordance with section 16(1) (c) of the Companies Act, 2008 ("the Act").

1. INTERPRETATION

In this MOI:

- 1.1 a reference to a section by number refers to the corresponding section of the Act;
- 1.2 words that are defined in the Act bear the same meaning in this MOI;
- 1.3 words appearing to the right of an optional check line are void unless that line contains a mark to indicate that it has been chosen as the applicable option;
- 1.4 the schedules attached to this MOI form part thereof;
- 1.5 the headings to the respective Articles are for reference purposes only, and shall not be taken into account in the interpretation of this MOI;
- 1.6 where any consent or approval is required to be furnished by the Company for a Member, such consent or approval shall:
 - 1.6.1 be in writing and signed by the Company or its authorised agent;
 - 1.6.2 not be unreasonably withheld; and
 - 1.6.3 be given prior to the Member taking such action.
- 1.7 the onus of proof with regard to the receipt of any notice given or payment made by a Member, shall be on the giver of the notice or the maker of the payment;
- 1.8 in the event of a Member consisting of more than one person, they shall be jointly and severally liable *in solidum* for all their obligations in terms of this MOI;
- 1.9 in the event of any provision of this MOI being unenforceable for any reason whatsoever, then such provision shall be deemed to be separate and severable, without in any way affecting the validity of the remaining provisions; and
- 1.10 this MOI shall, in all respects, and in regard to all the matters arising there from, be governed by the laws of the Republic of South Africa.

2. DEFINITIONS

In this MOI, the following words and expressions shall, unless the context otherwise indicates, have the meanings hereinafter assigned to them:

- 2.1 “Act” means the Companies Act 71 of 2008;
- 2.2 “Alienate” means in relation to any Erf, Unit, or in the instances listed in Article 7.1.5 below, the transfer of any rights in respect thereof, either voluntarily or involuntarily and, without derogating from the generality of the foregoing, includes to alienate by way of sale, exchange, donation, deed, intestacy, will, cession, assignment, Court order or insolvency, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and “Alienation” shall have a corresponding meaning;
- 2.3 “Auditors” means the auditors of the Company;
- 2.4 “Board” means the board of Directors of the Company;
- 2.5 “Body Corporate” means a body corporate of any Sectional Title Scheme falling within the Township;
- 2.6 “Business Unit” means any Erf or Unit zoned in terms of the Town Planning Scheme for commercial or business purposes or which is used for business purposes with the consent of the Local Authority;
- 2.7 “Chairman” means the chairman of the Board;
- 2.8 “Common Property” means:
 - 2.8.1 in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a Member in terms of that Sectional Title Scheme;
 - 2.8.2 the land registered in the name of the Company, including, but not limited to, Open Spaces; and
 - 2.8.3 any portion of the Land within the Township which is not subject to an exclusive right in favour of a Member;
- 2.9 “Company” means the Fancourt Master Homeowners’ Association NPC, Registration No.: 1991/005224/08;
- 2.10 “Deeds Registries Act” means the Deeds Registries Act 47 of 1937, as amended;

- 2.11 “Developer” means Plattner Golf Proprietary Limited, Registration No. 1994/002617/07, its successors-in-title or assigns;
- 2.12 “Development” means the residential Township development situated on the Land and excludes the Hotel Operation and the Fancourt Country Club;
- 2.13 “Development Period” means that period from the establishment of the Company until the Developer notifies the Company that it has ceased development of the Township, provided that if thereafter the Developer, without notifying the Company, actually ceases all or any form of development in the Township for a continuous uninterrupted period of 10 (ten) years, then upon the expiry of such 10-year period, the Development Period shall be deemed to have ceased;
- 2.14 “Directors” means the Directors appointed as such to the Company;
- 2.15 “Dwellings” means such residential dwellings as are erected on any Erf, and being residential dwelling houses, lodges or villas, and such other dwellings as the Developer in its discretion shall designate, and being differentiated according to the respective design, Facilities, rights and obligations attaching to each, and as dealt with more fully in the House Rules applicable to each;
- 2.16 “Erf/Erven” means any erf or erven within the Township, arising from subdivision of the Land, and on which is established or may be established, inter alia but not limited to, residential Dwellings, Sectional Title Schemes and Business Units;
- 2.17 “Estate Manager(s)” means any person(s) or body(ies) appointed by the Board, either as an employee or as an independent contractor, to undertake the management of the Township and the affairs of the Company and as more fully set out in Article 7.16 below. Should an Estate Manager be a corporate body, any reference to the Estate Manager as a Member of any committee shall be deemed to be a reference to a duly authorised representative of the Estate Manager approved by the Board;
- 2.18 “Facilities” means all and any facilities, services or amenities of whatsoever nature, including but not limited to, such facilities relating to entertainment, recreation or otherwise, the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, fire fighting, libraries and transport, which may be or have already been provided by or on behalf of the Company for the Members within the Township;

- 2.19 “Fancourt Country Club” means the recreational, sporting and golf club facilities with associated amenities, separately owned and operated by the Developer within the Township, for its profit and loss, and of which the Members shall be obliged to become Members, as more fully set out in Article 7.6 below;
- 2.20 “Finance Committee” means the finance committee established under Article 5 of Part D of Schedule 4 below, as more fully described in Article 7.4 below;
- 2.21 “Financial Year” means the financial year of the Company which shall run from the 1st day of October in any year to the 30th day of September in the subsequent year, unless otherwise required by law;
- 2.22 “Group Development” means any Erven developed as a group housing scheme in terms of the conditions of subdivision imposed by the Local Authority;
- 2.23 “Hotel Operation” means the hotel operation conducted and owned by the Developer in the Township;
- 2.24 “House Rules” means such house rules as are made and amended from time to time by the Company and/or the Board in terms of the provisions of this MOI;
- 2.25 “Land” means the land on which the Development is established as appears in the Township Development Plan from time to time and including any additional land the Developer may incorporate into the Development in terms of the Township Development Plan, provided that such additional land is adjacent, contiguous and in the immediate vicinity of the Township;
- 2.26 “Levy/Levies” means the levy/levies referred to in Article 7.4 below;
- 2.27 “Local Authority” means the local authority having jurisdiction over the Township, meaning a Municipality or any other statutory local authority;
- 2.28 “Member/s” means Member/s of the Company;
- 2.29 “MOI” means this Memorandum of Incorporation;
- 2.30 “Open Space” means such Erven in the Township as the Company may from time to time acquire which are zoned private open space in a Town Planning Scheme;
- 2.31 “Registered Owner” means the registered owner of an Erf or a share thereof who is, in terms of the Deeds Registries Act, reflected in the records of the Deeds Registry concerned as a registered owner of the Erf;

- 2.32 “Resident” means any person lawfully occupying an Erf or Unit by virtue of his relationship to or with a Member;
- 2.33 “Roads” means such roads including driveways as may be constructed in the Township, inclusive of right of way servitudes;
- 2.34 “Sectional Titles Act” means the Sectional Titles Act 95 of 1986, as amended;
- 2.35 “Sectional Title Scheme” means any scheme established in terms of the provisions of the Sectional Titles Act;
- 2.36 “Town Planning Committee” means the town planning committee established under Article 5 of Part D of Schedule 4 below comprising:
- 2.36.1 1 the Estate Manager (who shall also be the chairperson);
- 2.36.2 1 (one) Developer representative;
- 2.36.3 1 (one) representative from each of the Lodges cantons, the Oaklands canton, the Links Ridge/Links Avenue canton, the Montague Ridge canton and the Noem Noem canton;
- 2.36.4 up to 4 (four) representatives from the Cape Dutch canton;
- 2.36.5 1 (one) professional architect (advisory role, non-voting Member); and
- 2.36.6 For the purposes of this Article 2.36, "Cantons" means the separate and discrete administrative areas within the Development from time to time, which comprise:
- 2.36.12.1 the "Cape Dutch" canton;
- 2.36.12.2 the "Links Ridge/Links Avenue" canton;
- 2.36.12.3 the "Montagu Ridge" canton;
- 2.36.12.4 The "Oaklands" canton
- 2.36.12.5 the "Colonial Lodges" canton; and
- 2.36.12.6 the "Noem Noem" canton, and
- 2.37 *"Canton" means any one of them as the context may indicate, and as depicted in the Township Development Plan. Any reference in this MOI to any of the "Cape Dutch" Canton, "Links Ridge" Canton, "Montagu Ridge" Canton, "Oaklands" Canton, the "Colonial Lodges" Canton and/or the "Noem Noem" canton, shall mean that Canton as described, delineated and named as such on the Township Development Plan.* “Town Planning Scheme” means an operative town planning scheme applicable to the Land from time to time;

- 2.38 “Township” means the Township generally known as Fancourt, and in which is also situate the Hotel Operation and the Fancourt Country Club;
- 2.39 “Township Development Plan” means the township development plan depicting the Township and all Erven thereon, and as is amended by the Developer from time to time in its discretion, provided such amendment does not have a material adverse effect on the Members;
- 2.40 “Unit” means a unit as that term is defined in the Sectional Titles Act;
- 2.41 “Vice-Chairman” means the vice-chairman of the Board; and
- 2.42 “Year” means any calendar year.

3. INCORPORATION AND NATURE OF THE COMPANY

3.1 Incorporation

- 3.1.1 The Company is incorporated as a non-profit Company, as defined in the Act.
- 3.1.2 The Company is incorporated in accordance with and governed by:
- (a) the unalterable provisions of the Act that are applicable to non-profit companies; and
 - (b) the alterable provisions of the Act that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions set out in this MOI; and
 - (c) the provisions of this MOI.

3.2 Objects and Powers of the Company

- 3.2.1 The objects of the Company are as set out above.
- 3.2.2 The powers of the Company are set out in Annexure A below and, except to the extent necessarily implied by the stated objects, the Company’s powers:
- _____ are not subject to any restriction, limitation or qualification, as contemplated in section 19 (1) (b) (ii) of the Act.
- ___X___ are subject to any restriction, limitation or qualification, contemplated in section 19 (1) (b) (ii), as set out in Annexure A of the Act.
- 3.2.3 The Company:

_____ is not subject to any provisions contemplated in section 15(2) (b) or (c).

___X___ is subject to provisions contemplated in section 15(2) (b) or (c), as set out in Annexure A.

3.2.4 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 1 of the Act; and
- (b) the provisions, if any, set out in Part C of Schedule 1 of this Memorandum.

3.3 **MOI and Company Rules**

3.3.1 This MOI of the Company:

___X___ may be altered or amended only in the manner set out in sections 16, 17 or 152(6) (b).

_____ may be altered or amended in the manner set out in sections 16, 17 or 152(6)(b), subject to the provisions contemplated in section 16(1)(c), as set out in Part D of Schedule 1.

3.3.2 The authority of the Board to make rules for the Company, as contemplated in section 15(3) to (5):

___X___ is not limited or restricted in any manner by this MOI.

_____ is limited or restricted to the extent set out in Part D of Schedule 1.

3.3.3 The Board must publish any rules made in terms of section 15(3) to (5):

_____ by delivering a copy of those rules to each Director by ordinary mail.

___X___ in accordance with the requirements set out in Part D of Schedule 1.

3.3.4 The Company must publish a notice of any alteration of the MOI in terms of section 17(1):

_____ by delivering a copy of the alteration of the MOI to each Director by ordinary mail.

X in accordance with the requirements set out in Part D of Schedule 1.

3.4 **Application of Optional Provisions of the Act**

3.4.1 The Company:

 X does not elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act.

 does elect, in terms of section 34(2), to comply voluntarily with the provisions of Chapter 3 of the Act, to the extent set out in Part C of Schedule 1.

3.5 **Members of the Company**

3.5.1 As contemplated in Item 4 (1) of Schedule 1 of the Act, the Company has Members, who:

 X are all voting Members, the classes of which are set out in Part E of Schedule 1 to this MOI.

 are in either of two classes, being voting and non-voting Members, respectively.

3.5.2 The terms and conditions of Membership in the Company are as set out in Part E of Schedule 1 to this Memorandum.

4. **RIGHTS OF MEMBERS**

4.1 **Members' Authority to Act**

4.1.1 If, at any time, every Member of the Company is also a Director of the Company, as contemplated in section 57(4), the authority of the Members to act without notice or compliance with any other internal formalities, as set out in that section:

 X is not limited or restricted by this MOI

 is limited or restricted to the extent set out in Part A of Schedule 2.

4.2 **Members' Right to Information**

4.2.1 This MOI does not establish any information rights of any person in addition to the rights set out in sections 26(1) and (2) of the Act.

4.3 **Representation by Concurrent Proxies**

- 4.3.1 The right of a Member of the Company to appoint persons concurrently as proxies, as set out in section 58(3)(a):

_____ is not limited, restricted or varied by this MOI.

☒X___ is limited, restricted or varied to the extent set out in Part C of Schedule 2.

4.4 **Authority of Proxy to Delegate**

- 4.4.1 The authority of a Member's proxy to delegate the proxy's powers to another person, as set out in section 58(3)(b):

_____ is not limited or restricted by this MOI.

☒X___ is limited or restricted to the extent set out in Part C of Schedule 2.

4.5 **Requirement to Deliver Proxy Instrument to the Company**

- 4.5.1 The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members' meeting, as set out in section 58(3)(c):

_____ is not varied by this MOI.

☒X___ is varied to the extent set out in Part C of Schedule 2.

4.6 **Deliberative Authority of Proxy**

- 4.6.1 The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in section 58(7):

_____ is not limited or restricted by this MOI.

☒X___ is limited or restricted to the extent set out in Part C of Schedule 2.

4.7 **Record Date for Exercise of Members' Rights**

- 4.7.1 If, at any time, the Board fails to determine a record date, as contemplated in section 59, the record date for the relevant matter is:

☒X___ as determined in accordance with section 59(3).

_____ as determined in the manner set out in Part D of Schedule 2.

5. MEMBERS MEETINGS

5.1 Requirement to Hold Meetings

The Company:

_____ is not required to hold any Members meetings other than those specifically required by the Act.

 X is required to hold Members meetings, in addition to those specifically required by the Act, as set out in Part A of Schedule 3.

5.2 Members' Right to Requisition a Meeting

The right of Members to requisition a meeting, as set out in section 61(3), may be exercised:

 X by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, as provided for in that section.

_____ by the holders of at least _____% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting, despite the provisions of that section.

5.3 Location of Members' Meetings

The authority of the Board to determine the location of any Members meeting, and the authority of the Company to hold any such meeting in the Republic or in any foreign country, as set out in section 61(9):

_____ is not limited or restricted by this MOI.

 X is limited or restricted to the extent set out in Part B of Schedule 3.

5.4 Notice of Members' Meetings

The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by section 62:

_____ is as provided for in section 62(1).

 X is 15 business days before the annual general meeting or General Meeting called for the passing of a Special Resolution;

 10 business days before any other general meeting is to begin.

5.5 Electronic Participation in Members' Meetings

The authority of the Company to conduct a meeting entirely by electronic communication or to provide for participation in a meeting by electronic communication, as set out in section 63:

☒ X is not limited or restricted by this MOI.

☐ is limited or restricted to the extent set out in Part C of Schedule 3.

5.6 **Quorum for Members' Meetings**

5.6.1 The quorum requirement for a Members meeting to begin, or for a matter to be considered are:

☐ as set out in section 64(1) without variation.

☒ X as set out in Part D of Schedule 3.

5.6.2 The time periods allowed in section 64(4) and (5):

☐ apply to the Company without variation.

☒ X apply to the Company, subject to the variations set out in Part D of Schedule 3

5.6.3 The authority of a meeting to continue to consider a matter, as set out in section 64(9):

☒ X is not limited or restricted by this MOI.

☐ is limited or restricted to the extent set out in Part D of Schedule 3.

5.7 **Adjournment of Members' Meetings**

The maximum period allowable for an adjournment of a Members meeting is:

☒ X as set out in section 64(13), without variation.

☐ as set out in section 64(13), subject to the variations set out in Part E of Schedule 3.

5.8 **Members' Resolutions**

5.8.1 For an ordinary resolution to be adopted at a Members meeting, it must be supported by the holders:

☒ X of more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).

_____ % of the voting rights exercised on the resolution, despite section 65(7).

_____ the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 3.

5.8.2

A special resolution adopted at a Members meeting is:

 X 75% of the voting rights exercised on the resolution, as provided in section 65(9).

_____ % of the voting rights exercised on the resolution, despite section 65(9).

_____ the minimum percentage of the voting rights exercised on the resolution, as set out in Part F of Schedule 3.

_____ not required for a matter to be determined by the Company, except those matters set out in section 65(11), or elsewhere in the Act.

 X required, in addition to the matters set out in section 65(11), for the matters set out in Part G of Schedule 3.

6. DIRECTORS AND OFFICERS

6.1 Composition of the Board of Directors

6.1.1 The Board of Directors of the Company comprises of at least 5 but not more than 9 Directors, and no alternate Directors each of whom:

(a) is to be elected or appointed in the manner set out in Part A of Schedule 4; and

(b) serves for a period as set out in Part A of Schedule 4.

6.1.2 In addition to the elected Directors:

 X there are no appointed or ex officio Directors of the Company, as contemplated in section 66(4).

 there are up to appointed, and ex officio Directors of the Company, as contemplated in section 66(4), to be designated in the manner set out in Part B of Schedule 4.

6.1.3 In addition to satisfying the qualification and eligibility requirements set out in section 69, to become or remain a Director or a prescribed officer of the Company, a person:

☒ need not satisfy any further eligibility requirements or qualifications.

☐ must satisfy the additional eligibility requirements and qualifications set out in Part C of Schedule 4.

6.1.4 Each elected Director of the Company serves for a period as set out in Part A of Schedule 4.

6.2 **Authority of the Board**

6.2.1 The authority of the Board to manage and direct the business and affairs of the Company, as set out in section 66(1):

☒ is not limited or restricted by this MOI, but is specified to the extent set out in Part D of Schedule 4.

☐ is limited or restricted to the extent set out in Part D of Schedule 4.

6.3 **Board of Directors' Meetings**

6.3.1 The authority of the Board to consider a matter other than at a meeting, as set out in section 74:

☒ is not limited or restricted by this MOI.

☐ is limited or restricted to the extent set out in Part E of Schedule 4.

6.3.2 The right of the Company's Directors to requisition a meeting of the Board, as set out in section 73(1), may be exercised:

☐ by at least 25% of the Directors, as provided in that section.

☒ by at least 2 of the Directors, as per section 73(1)(b)(ii).

6.3.3 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):

☒ is not limited or restricted by this MOI.

☐ is limited or restricted to the extent set out in Part F of Schedule 4.

6.3.4 The authority of the Board to determine the manner and form of providing notice of its meetings, as set out in section 73(4):

☒ is not limited or restricted by this MOI.

_____ is limited or restricted to the extent set out in Part F of Schedule 4.

- 6.3.5 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):

☒ X _____ is not limited or restricted by this MOI.

_____ is limited or restricted to the extent set out in Part F of Schedule 4.

- 6.3.6 The quorum requirement for a Directors' meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting, are:

_____ as set out in section 73(5), without variation.

☒ X _____ as set out in section 73(5) subject to the variations set out in Part F of Schedule 4.

6.4 **Indemnification of Directors**

- 6.4.1 The authority of the Company to advance expenses to a Director, or indemnify a Director, in respect of the defence of legal proceedings, as set out in section 78(4):

_____ is not limited, restricted or extended by this MOI.

☒ X _____ is limited, restricted or extended to the extent set out in Part G of Schedule 4.

- 6.4.2 The authority of the Company to indemnify a Director in respect of liability, as set out in section 78(5):

_____ is not limited or restricted by this MOI.

☒ X _____ is limited or restricted to the extent set out in Part G of Schedule 4.

- 6.4.3 The authority of the Company to purchase insurance to protect the Company, or a Director, as set out in section 78(7):

_____ is not limited, restricted or extended by this MOI.

☒ X _____ is limited, restricted or extended to the extent set out in Part G of Schedule 4.

6.5 **Officers and Committees**

- 6.5.1 The Board may appoint any officers it considers necessary to better achieve the objects of the Company.
- 6.5.2 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board, as set out in section 72(1), and to include in any such committee persons who are not Directors, as set out in section 72(2)(a):
- ☒ X is not limited or restricted by this MOI.
- _____ is limited or restricted to the extent set out in Part H of Schedule 4.
- 6.5.3 The authority of a committee appointed by the Board, as set out in section 72(2)(b) and (c):
- _____ is not limited or restricted by this MOI.
- ☒ X is limited or restricted to the extent set out in Part I of Schedule 4.

7. GENERAL PROVISIONS

7.1 Pre-Emptive Right in Favour of the Developer

- 7.1.1 A Member shall not in any manner Alienate an Erf nor shall a Body Corporate Member allow any of its members to Alienate a Unit unless he shall first, in writing, have offered it for sale to the Developer who, for a period of 14 (fourteen) days calculated from the date of receipt of the offer, shall have the right to purchase the Erf or Unit upon the terms and conditions offered to it.
- 7.1.2 Should the Developer fail to accept the offer within the said 14-day period or waive its right to do so, in writing, before expiry of the aforesaid period, the Member or Body Corporate Member may accept any other written offer which he may have received for the Erf or Unit, the terms and conditions whereof he has conveyed to the Developer, provided that the price and/or terms are no more beneficial to the purchaser than those offered to the Developer, any variation of the price and/or terms and conditions being regarded as a fresh offer which the Member or Body Corporate Member shall again be obliged to convey to the Developer and to which the provisions of Article 7.1.1 above shall apply *mutatis mutandis*.

7.1.3 Subject to Article 7.1.1 and 7.1.2 above, *If a Member or Body Corporate Member decides to Alienate his Erf or Unit, the Member or Body Corporate Member shall be entitled to market and sell the Erf or Unit privately or shall be entitled to appoint an estate agent(s), provided such estate agent(s) is a Company approved estate agent(s) and provided such estate agent(s) is appointed as his agent(s) with a mandate for a period of at least 90 (ninety) days to sell the Erf or Unit to a third party on such terms as he agrees as to commission and otherwise as is acceptable to him, and in accordance with the prevailing and applicable Estate Security Rules and House Rules.*

The Company has the authority, acting reasonably, to appoint approved estate agents as the preferred selling agents within Fancourt, on such terms and conditions as the Company considers necessary and appropriate.

7.1.4 *If the Erf or Unit is not sold within the aforesaid 90-day period or such extended period as may be agreed between the Member or Body Corporate member and the estate agent in writing, the Member or Body Corporate member shall be entitled sell the Erf or Unit in such manner as he in his discretion determines, and shall be entitled to appoint such estate agent(s) as he chooses provided that the estate agent(s) agrees in writing to comply, and does for the period of the relevant mandate in fact comply, with the prevailing and applicable Estate Security Rules and House Rules.* Upon the transfer of any Erf or Unit whether pursuant to the exercise by the Developer of its pre-emptive right; or a sale concluded through the agency of an estate agent other than the Developer; or alienation by a Member, a Body Corporate Member, or pursuant to court order an administration fee equal to 1% (one percent) of the total consideration paid to the Member or Body Corporate Member in respect of the Erf or Unit (or if there is no consideration paid or payable, then 1% (one percent) of the fair market value of the Erf or Unit) shall be paid to the Company.

7.1.5 The Alienation by a shareholder of his shares in a company owning an Erf or Unit, or by a Member of his member's interest in a Close Corporation owning an Erf or Unit; or by a beneficiary of his interest in a Trust owning an Erf or Unit, shall be deemed to be the Alienation of

an Erf or Unit and the provisions of Articles 7.1.1 to 7.1.4 above shall apply mutatis mutandis.

- 7.1.6 The transfer of a Fancourt property or the shares in a company owning a Fancourt property from a deceased member to the surviving spouse, child or a trust created for the benefit of the surviving spouse/ child or such deceased member without the estate of the deceased member having to the 1% administration levy payable at alienation of a property as currently defined. This exemption will apply should the Board be satisfied that the respective relatives of the deceased member remain members and in occupation of the property. In such event the Board is authorized to impose such conditions as the Board deems fit in order to ensure that the 1% levy will be payable on relinquishing of the membership.

7.2 **Alienation and Occupation**

- 7.2.1 No Erf or Unit or any interest therein shall be alienated without the consent of the Company.

- 7.2.2 Such consent shall be withheld if :-

- 7.2.2.1 the Member or Body Corporate Member in question is indebted to the Company in any way in respect of Levies or other amounts which the Company may in terms of this MOI be entitled to claim from him;

- 7.2.2.2 in the case of an Erf, the proposed transferee has not agreed in writing to become a Member of the Company and the Fancourt Country Club;

- 7.2.2.3 in those cases where an Erf or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf or Unit at particular times during the year, the Company is not satisfied that the transferee of an undivided share in the Erf or Unit is aware of such arrangements and has bound himself to abide thereby;

- 7.2.2.4 the Finance Committee under the hand of 1 (one) of its Members has not certified that the Member will, as at date of transfer, have fulfilled all his financial obligations to the Company; and

7.2.2.5 the administration fee payable in terms of Article 7.1.4 above has not been paid, or a satisfactory undertaking to pay against transfer has not been furnished to the Company.

7.2.3 No Member shall let or otherwise part and in the case of a Body Corporate, allow its Members to let or otherwise part with occupation of his Erf or Unit without the consent of the Company which consent shall only be withheld if the Company is not satisfied that the provisions of the House Rules, and any other by-rules or regulations made in terms of this MOI, have been complied with and that the Resident of the Erf or Unit has in writing agreed to be bound by same.

7.2.4 The provisions of this MOI shall be binding upon all Members and, insofar as they may be applicable, to all persons and Residents occupying any Erf or Unit by, through or under any Member, whatever the nature of such occupation.

7.3 **Developer's Rights**

7.3.1 If the Developer, in one transaction Alienates all its rights and all undeveloped land vested in it from time to time in respect of the Township, it shall be entitled to cede to the transferee thereof all its rights in terms of this MOI and the transferee shall be entitled to exercise all such rights.

7.3.2 The Developer may at any time after the construction of such number of Dwellings or Sectional Title Schemes as it may determine, abandon in whole or in part the particular rights conferred upon it during the Development Period, provided that nothing hereinbefore contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member of the Company.

7.4 **Finance Committee and Levies**

There shall be established a Finance Committee which shall be appointed by the Board and which shall consist of a Developer representative, 1 (one) Member Director and the Estate Manager. The Chairperson of the Finance Committee shall be the Member Director.

7.4.1 The Finance Committee shall be empowered, in addition to such other rights as the Company may have in law as against its Members and/or

in terms of this MOI, to impose fines and/or levies against Members in respect of non-compliance with any of the provisions of this MOI and/or the applicable Building Guidelines and/or the applicable House Rules. The Finance Committee shall from time to time make levies upon the Members for the purpose of meeting all the expenses which the Company has incurred, or to which the Finance Committee reasonably anticipates the Company will be put by way of maintenance, repair, improvement and keeping in good order and condition of the Roads, Open Spaces and Facilities, and/or the exterior of any buildings, structures, erections and improvements in the Township, including Dwellings and Sectional Title Schemes but excluding the facilities of the Fancourt Country Club, and/or for payment of all rates and other charges payable by the Company in respect of the Erven vested in it and/or for the services rendered to it and/or for payment of the salaries and/or wages of the employees of the Company and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Company, the Township, and the Company's affairs, including all and any expenses reasonably or necessarily incurred in the attainment of the objects of the Company or the pursuit of its business.

- 7.4.2 In calculating the amount of the levies, the Finance Committee shall take into account income, if any, earned by the Company.
- 7.4.3 In computing the levy, the Finance Committee shall take into account all expenses relating to Sectional Title Schemes administered by the Company.
- 7.4.4 The Finance Committee shall, not less than 30 (thirty) days prior to the end of each Financial Year, 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 during the ensuing Financial Year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding Financial Year. The Finance Committee may include in such estimate an amount to be held in trust to meet anticipated future expenditure not of an annual nature.

- 7.4.5 Each notice to each Member shall specify the contribution payable by that Member to such expenses and trust fund.
- 7.4.6 Every levy shall be payable in equal monthly instalments due in advance on the first day of each and every month of each Financial Year or in such a manner as may be determined by the Finance Committee from time to time.
- 7.4.7 In the event of the Finance Committee for any reason whatsoever failing to prepare and serve the estimate referred to in Article 7.4.4 above timeously, every Member shall notwithstanding lack of service of such estimate continue to pay the levy previously imposed and shall once such notice is served, pay such levy as may be specified.
- 7.4.8 The Finance Committee may from time to time make special levies upon the Members in respect of all such expenses as are mentioned in Article 7.4.1 above, which were not included in any estimate made in terms of Article 7.4.4 above and the Finance Committee may in imposing such levies further determine the terms of payment thereof.
- 7.4.9 The Finance Committee shall be empowered, in addition to such other rights as the Company may have in law as against its Members, to impose fines against Members in respect of non-compliance with any of the provisions of this MOI and to determine the rate of interest from time to time chargeable upon arrear levies, provided that such rate of interest shall not exceed such rate laid down as is legally permissible and provided further that nothing contained in this MOI shall derogate from any other remedies available to the Company.
- 7.4.10 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 a Member to pay future levies 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 levies or interest paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. A Member shall be liable as from the date upon which he becomes a Member pursuant to the transfer of an Erf or Unit, to pay the levy and interest thereon attributable.
- 7.4.11 In calculating the levy payable by any Member, the Finance Committee shall as far as reasonably practical :

- 7.4.11.1 assign those costs arising directly out of the Erf itself to the Member owning such Erf;
- 7.4.11.2 assign a proportion of those costs attributable generally or specifically to a particular Sectional Title Scheme to the Body Corporate in respect of that Sectional Title Scheme; and
- 7.4.11.3 assign those costs relating to the Township generally to the owners of all Erven equally provided however that the Finance Committee may in any case where it considers it equitable so to do :
- 7.4.11.3.1 assign to any Business Unit such greater share of the costs and expenses mentioned in this Article 7.4 above as it may consider reasonable in the circumstances;
- 7.4.11.3.2 assign to any Member any greater or lesser share of the costs and expenses as it may consider to be reasonable in the circumstances; and
- 7.4.11.3.3 assign to any Member owning an Erf or Unit in a Group Development, any greater or lesser share of the costs and expenses as it may consider to be reasonable in the circumstances.
- 7.4.12 The Company may come to agreement with the Developer for the repayment by the Company to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services and the Facilities within the Township.
- 7.4.13 No Member shall be entitled to any of the privileges of Membership unless and until he shall have paid every fine, levy, penalty interest thereon in terms of Article 7.4.9 above, and any other sum (if any) which may be due and payable to the Company from whatsoever cause arising.
- 7.4.14 The Board or the Financial Committee shall be entitled, per Financial Year, to undertake on behalf of the Company any works of a capital nature to an aggregate limit of 12% of the Retained Earnings/ Accumulated Funds for the past Financial Year (as reported in the audited Financial Statements), without the sanction of a resolution of the Company in General Meeting.

- 7.4.15 The Finance Committee shall for the period from the date of commencement of business of the Company raise levies in accordance with the principles set out above.
- 7.4.16 Levy income will be exempt from tax in terms of the provisions of Section 10(1)(e) of the Income Tax Act 58 of 1962, provided that :
- 7.4.16.1 the sole object of the Company is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable; and
- 7.4.16.2 the Company is not permitted to distribute its funds to any person other than to a similar Company of persons.
- 7.5 **Erven Forming Roads and Open Spaces**
- 7.5.1 Neither the whole nor any portion of the Erven designated as Roads and Open Spaces shall be sold, let, Alienated, otherwise disposed of, sub-divided or transferred except in the circumstances laid down in the conditions of establishment of the Township or as otherwise sanctioned and/or approved by the Board.
- 7.5.2 No such Erven shall be :
- 7.5.2.1.1 mortgaged; or
- 7.5.2.1.2 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof.
- 7.5.2.1.3 the Board may, in its discretion, permit encroachments into open areas bordering on a Members property under the following provisos:
- 7.5.2.1.3.1 the Encroachment area is owned by the FMHA;
- 7.5.2.1.3.2 the Member will have no right to claim ownership of the Encroachment, nor to claim any rights or servitudes in addition to this personal right;

- 7.5.2.1.3.3 this personal use right is given for so long as the Member owns the Property, or unless it is cancelled in terms of a breach of agreement, and may not be transferred, ceded, encumbered or alienated in any way without the prior written consent of the FMHA, who shall be entitled to withhold or grant such consent in their sole discretion, and if they grant such consent, they shall be entitled to impose such conditions as they deem fit, in their absolute discretion;
- 7.5.2.1.3.4 this personal right entitles you to use the Encroachment as a garden area only, and for no other purpose. No permanent structures may be erected on the Encroachment;
- 7.5.2.1.3.5 the Member will, at their own cost, maintain and keep the Encroachment and the garden thereon in good order and condition, to the satisfaction of the FMHA for so long as you have use thereof.
- 7.5.3 Nothing contained in this MOI shall prevent the Developer from erecting, at its own cost, such buildings, or making such other improvements upon the said Erven as may be permitted in terms of the Town Planning Scheme.
- 7.6 **Fancourt Country Club**
- 7.6.1 It is recorded that the Developer owns and operates, for its own gain, profit and loss, the Fancourt Country Club.
- 7.6.2 In terms of the arrangement between the Company and the Developer, all Members and Members of a Body Corporate are obliged to become Members of the Fancourt Country Club before becoming Registered Owners of an Erf or Unit. Membership of the Fancourt Country Club is compulsory for any Member of the Company (and in the case of a Body Corporate, for all its Members) and is a pre-requisite for ownership of any Erf or Unit in the Township.
- 7.6.3 As a Member of the Fancourt Country Club, the Member shall be bound by and agrees to observe and be bound by the rules, regulations and

by-laws, such as may be made and promulgated by the Fancourt Country Club from time to time. Body Corporates shall ensure that a similar stipulation is contained in their own rules.

7.7 Chairman and Vice-Chairman

7.7.1 During the Development Period, the Chairman and Vice-Chairman shall be appointed by the Developer from amongst the Directors on the Board and shall be one of the Directors appointed by the Developer in terms of Article 3 of Part A of Schedule 4 below, unless the Developer otherwise agrees.

7.7.2 Subject to the provisions of Article 7.7.1 above, within 7 (seven) days of the holding of each Annual General Meeting, the Board shall elect the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointments, provided that the office of the Chairman or Vice-Chairman shall *ipso facto* be vacated by the Director holding such office upon his ceasing to be a Director for any reason. No one Director shall be appointed to more than one of the aforesaid offices. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Board shall immediately appoint one of their number as a replacement in such office.

7.7.3 Save as otherwise provided in this MOI, the Chairman shall preside at all Board meetings 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.

7.7.4 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.

7.8 Directors' Remuneration

7.8.1 Directors shall be entitled to be repaid all reasonable and *bone fide* expenses incurred by them respectively in or about the performance of their duties as Directors and/or Chairman, and/or Vice-Chairman, as the case may be.

7.8.2 The Directors shall not be entitled to remuneration in respect of the performance of their duties in terms hereof.

7.9 **Other Professional Officers**

Save as specifically provided otherwise in this MOI, the Board shall at all times have the right to engage on behalf of the Company, the service of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, Managing Agents, Estate Manager(s) and any other professional person or firm and/or other employee/s whatsoever for any reasons deemed necessary by the Board and on such terms as the Board shall decide subject to any of the provisions of this MOI.

7.10 **Non-profit Organisation Requirements**

7.10.1 The Company's income and/or property shall not be distributable to Members or offices-bearers, except as reasonable compensation for services rendered.

7.10.2 The Members or office-bearers shall have no rights in property or other assets of the Company solely by virtue of their being Members or office-bearers.

7.10.3 The Company's financial transactions shall be conducted by way of a banking account.

7.11 **Accounts**

7.11.1 The Company in General Meeting or the Board may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members of the accounts and books of the Company, and subject to such conditions and regulations, the accounts and books of the Company shall be open to inspection by Members at all reasonable times during business hours.

7.11.2 At each Annual General Meeting, the Board shall lay before the Company the Annual Financial Statements drawn up and audited in terms of the Act for the immediately preceding Financial Year of the Company. Every such Annual Financial Statement shall be attached to the notice sent to Members convening each Annual General Meeting.

7.12 **Service of Notices**

7.12.1 Any notice required to be given in terms of this MOI may be served by the Company on any Member by transmitting it by telefax or e-mail to

such address as the Member may have stipulated by written notice to the Company.

- 7.12.2 Notwithstanding the a foregoing, a written notice or communication actually received by any Member shall be an adequate written notice or communication to that Member notwithstanding that it was not sent to or delivered at his chosen telefax or e-mail address.

7.13 **Regulation of Township**

- 7.13.1 The Company may, in its discretion, permit the Members, subject to the provisions of this MOI, to use the Open Space and Roads, and shall do so unless by special resolution taken at an extraordinary General Meeting called for the purpose, it is otherwise resolved for good reason.

- 7.13.2 The Board may from time to time and whenever it deems necessary, limit, restrict, or suspend such use in relation to any part of such Roads and Open Space for good reason.

- 7.13.3 The Board shall take such measures as are necessary to ensure that the general public, with the exception of Members, their guests, lessees, and Members of their families, Members of the Fancourt Country Club, hotel guests and such other persons as the Board may reasonably permit, are excluded from the Township. No resolution to alter the terms of this MOI shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the Roads to such specification as may comply with the standard requirements of the Local Authority.

- 7.13.4 No resolution for the winding-up of the Company and the transfer of its assets shall be taken unless the Company shall have made adequate provision for the rights of Members to obtain access to their Erven, Dwellings and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.

- 7.13.5 Notwithstanding that Erven may be held either individually or in undivided shares by Members, Members shall be obliged at all times to allow any persons lawfully within the Township access over any Erf by means of any formed or paved access way including drive-ways, parking areas and pathways.

- 7.13.6 No Member shall operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983 in respect of any Dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 4 (four) Members per bedroom per unit, unless the Members by special resolution resolve otherwise.
- 7.13.7 Notwithstanding that Members hold title to their Erven individually, it is recorded that the development of the Township is of a homogeneous nature and that the Company shall be vested with the overall control of all matters affecting the Township. To this end, the Members agree:
- 7.13.7.1 in the event of a Member being a Body Corporate to cede and delegate its powers and duties to the Company;
- 7.13.7.2 in the event of any associations of Members being formed within the Township, specifically for owners of certain Erven, for Group Developments or for certain classes of Members, the Members forming such associations hereby agree to do all in their power to procure that the powers and duties of any such associations are ceded and delegated to this Company;
- 7.13.7.3 the Company may in turn cede and delegate the powers and duties ceded and delegated to it in terms of Articles 7.13.7.1 and 7.13.7.2 above to such other person or Company as it may deem fit;
- 7.13.8 no Member nor any Body Corporate in whom any property is vested may, without the prior written consent of the Company :
- 7.13.8.1.1 change the colour of the exterior walls of any building, nor the colour of the exterior of the doors and window frames thereof, nor any fixture or fitting excluding however door and window handles, locks, knockers and similar ornaments upon the exterior thereof;
- 7.13.8.1.2 replace any appurtenances, including but without limiting the generality of the foregoing, pergolas, blinds, shutters, awnings or ornaments upon the exterior walls or surfaces of any building, save only to renew such items as may initially have been so placed upon

- construction of the building, with such items of the same nature and of similar appearance;
- 7.13.8.1.3 make any additions or extensions to any buildings or erect any further buildings or structures or fences whether of a temporary or permanent nature upon any land vested in him in the Township;
- 7.13.8.1.4 remove any fixtures, fittings, doors or windows nor demolish any portion of the exterior of any building without the consent of the Town Planning Committee; and/or
- 7.13.8.1.5 in the event of the destruction of any Dwelling or Sectional Title Scheme (or part thereof), and the owner thereof deciding to rebuild same, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the Company which shall within 21 (twenty one) days of such submission to it, submit any comments which it may have in connection therewith to the Town Planning Committee and the Local Authority for approval. The decision of the Town Planning Committee in regard to the proposed rebuilding shall be final and binding;
- 7.13.8.2 no Member may undertake any planting, landscaping or gardening activities on any Erf save to the extent permitted in the House Rules;
- 7.13.8.3 no Member shall be entitled to subdivide or rezone any Erf or Unit during the Development Period without prior written consent of the Developer and thereafter without the prior written consent of the Company;
- 7.13.8.4 no Member or other person shall be entitled to sink or use any boreholes within the Township during the Development Period without the prior written consent of the Developer and thereafter without the prior written consent of the Company.
- 7.13.8.5 nothing contained in Article 7.13.8.1.3 above shall be construed as preventing the Developer from :

7.13.8.5.1 building upon any Erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the Town Planning Scheme and as depicted on the Township Development Plan, and as may be approved by the Local Authority.

7.13.8.5.2 erecting upon the land owned by the Company such improvements as may be permitted in terms of the Town Planning Scheme and approved by the Local Authority.

7.14 **Maintenance**

7.14.1 Every Member shall be obliged to maintain in good order and repair and in a clean and tidy condition, up to the high standards of the Township, the exterior of all buildings under the ownership and/or control and/or management of the Member including Common Property, private roads, public open space areas, boundary walls and fencing, falling within their jurisdiction, and in the case of a Body Corporate, shall ensure that its own Members do likewise.

7.14.2 Whenever the Board considers that the appearance of any portion of the Township, which for the purpose of this Article 7.14 means and includes any Erf or Unit and all structures and buildings thereon and all gardens forming part thereof, vested in a Member is such as to be unsightly or injurious to the amenities of the surrounding area or the Township generally, the Board shall be entitled to serve notice on such Member to take such steps as may be specified in the notice to eliminate such unsightly or injurious conditions :-

7.14.2.1 the Member to whom such notice is given may within 21 (twenty one) days of receipt of such notice refer the matter to the Town Planning Committee which shall either uphold the notice or declare it to be of no force or effect. In the event of the Town Planning Committee upholding the notice, it shall specify a period within which the steps referred to in the notice should be taken and in the event of the Member failing to take such steps within the time specified the Board may instruct the Estate Manager to take such steps as may be necessary and to recover the cost thereof from the Member concerned, which cost shall be deemed to be a debt owing to the Company.

- 7.14.2.2 in the event of the Member failing without referring the matter to the Town Planning Committee to comply with such notice within a reasonable time to be specified in such notice, the Board may instruct the Estate Manager to take such steps as may be necessary and to recover the cost thereof from the Member concerned, which costs shall be deemed to be a debt owing to the Company.
- 7.14.3 The Board shall be entitled to determine the routine maintenance requirements of the exterior of each and every building within the Township (other than those owned by the Fancourt Country Club) and to instruct the Estate Manager to attend to such requirements from time to time. The Members hereby agree that the Estate Manager shall be entitled whenever the Board decides such routine maintenance is required, to proceed therewith and to recover the costs thereof from the Company which shall in turn recover the costs thereof by way of levy from the Member concerned.
- 7.14.4 The Board shall be entitled from time to time to determine the routine maintenance requirements:
- 7.14.4.1 of all Open Spaces and Roads in the Township;
- 7.14.4.2 of all other ground within the Township not covered by buildings whether held by the Company or by Members either individually or in undivided shares;
- and to instruct the Estate Manager to attend to such maintenance requirements from time to time. The Members hereby agree that the Estate Manager may when so instructed by the Board, take such action as may be required by the Board and recover the cost from the Company, which shall in turn be entitled to recover the costs from the Members concerned by way of Levy.
- 7.14.5 The Board shall be entitled to appoint a committee to fulfil the obligations and duties conferred upon the Board in terms of this Article 7.14. The Board or any such committee shall be entitled to reasonable access to any Erf, Unit or building thereon at all reasonable times in pursuance of the purposes of this Article 7.14.
- 7.14.6 In the event of any portion of the exterior of any building requiring repair, the Estate Manager shall advise the Member thereof in writing of the

required repair. The Member may thereupon either affect the repair himself or instruct the Estate Manager to do so at the Member's cost. In the event of the Member failing to make the necessary repair within 14 (fourteen) days of the written notice referred to above, the Estate Manager shall be empowered to effect such repair himself, and to recover the cost either from such Member or direct from the Company, in which event the Company may recover such costs from the Member concerned either by way of the levy or otherwise as it deems fit.

7.15 Co-Owners and Bodies Corporate

- 7.15.1 Where any Erf is owned by more than 1 (one) person or in the event of a Body Corporate being a Member, the co-owners or Body Corporate concerned shall elect one of their number as a liaison officer and shall notify the Company of the name and address of such liaison officer. Any notices which may be required to be given in respect of such Erf or Sectional Title Scheme, regarding the appearance or maintenance or repair thereof shall be given to the liaison officer and served upon such liaison officer in terms of Article 7.12 above and shall be deemed for purposes of this MOI to have been served upon the Member.
- 7.15.2 In the event of the co-owners failing to elect a liaison officer as aforesaid, service of notice upon any one of the co-owners shall be deemed to be service upon all the co-owners.
- 7.15.3 Notwithstanding the provisions of Article 7.15.1 above, any notice required to be served upon any Body Corporate shall be deemed to have been properly served if served in terms of Article 7.12 above at the address given as the *domicillium citandi et executandi* of that Body Corporate.
- 7.15.4 In the event of any Erf being owned in undivided shares by more than 1 (one) Registered Owner on the basis that each owner of an undivided share shall be entitled to occupy the Erf for a particular period in each year, the owners shall as between them arrange the annual allocation of occupation periods to each particular co-owner and shall provide the Estate Manager with an occupation roster if required to do so.

7.16 Estate Manager(s)

- 7.16.1 The powers of any Committees established in terms of Article 5 of Part D of Schedule 4 below, and the powers of the Board, and the powers of the Company generally may be delegated to the Estate Manager(s) to such extent and upon such conditions and remuneration as the Board may determine from time to time. Such delegations may furthermore be revoked either in whole or in part or the conditions of such delegations may be varied by the Board in whole or in part from time to time.
- 7.16.2 The Company shall take out fidelity insurance to the satisfaction of the Board for all monies held by the Estate Manager on behalf of the Company from time to time.
- 7.16.3 Should there be no Estate Manager, then all references to the Estate Manager in this MOI relating to the constitution of committees of Board shall be deemed to be a reference to an additional Director as Member of the committee concerned, and all other references to the Estate Manager shall be deemed to be a reference to the Director, or committee, or persons appointed by them for the purpose concerned.
- 7.16.4 Subject to this MOI, and the terms of his appointment, the Estate Manager shall have the full power to manage and control the business and affairs of the Company, and may exercise all such powers of the Company and do all acts on behalf of the Company as may be exercised by the Company itself.
- 7.16.5 The Company may by special resolution do anything which in terms of the Act may be done by a Company only if authorised by its Articles, or only if authorised by its Memorandum and/or Articles.
- 7.17 **Dispute Resolution**
- 7.17.1 Any dispute, question or difference arising at any time between Members or between Members and Directors or between Members and the Company, or out of or in regard to :-
- 7.17.1.1 any matters arising out of this MOI; or
- 7.17.1.2 the rights and duties of any of the parties mentioned in this MOI;
or
- 7.17.1.3 the interpretation of this MOI;

shall be submitted to and decided by arbitration on notice given by any party to the other parties who are interested in the matter in question.

7.17.2 Notwithstanding Article 7.17.1 above, a party declaring a dispute in respect of payment of Levies, subject to Article 7.4 above, is not obliged to refer the dispute to arbitration and may institute Court proceedings.

7.17.3 The arbitration shall be held in the Township informally and otherwise in terms of the provisions of the Arbitration Act No 42 of 1965 (as amended or replaced from time to time), it being intended that, if possible, it shall be held and concluded within 21 (twenty one) business days after it has been demanded.

7.17.4 Save as otherwise specifically provided herein, the Arbitrator shall be, if the question in dispute is :-

7.17.4.1 primarily an accounting matter - an independent accountant;

7.17.4.2 primarily a legal matter - a practising counsel or attorney of not less than ten (10) years' standing;

7.17.4.3 any other matter - an independent and suitably qualified person appointed by the Auditors;

as may be agreed upon between the parties to the dispute.

7.17.5 If agreement cannot be reached on whether the question in dispute falls under Articles 7.17.4.1, 7.17.4.2, 7.17.4.3 above, or upon a particular arbitrator in terms of Article 7.17.4.3 above, within 3 (three) business days after the arbitration has been demanded, then :-

7.17.5.1 the President for the time being of the Cape Law Society (or its successors) shall determine whether the question in dispute falls under Articles 7.17.4.1, 7.17.4.2 or 7.17.4.3 above; or

7.17.5.2 the President for the time being of the Cape Law Society (or its successors) shall nominate the arbitrator in terms of this Article 7.17.5 within 7 (seven) business days after the parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 21 (twenty one) business days referred to in Article 7.17.3 above.

7.17.6 The arbitrator shall make his award within seven (7) days after completion of the arbitration and shall in giving his award, have regard

to the principles laid down in terms of this MOI. The arbitrator may determine that the cost of the arbitration may be paid either by one or other of the disputing parties or by the Company as he in his sole discretion may deem fit.

7.17.7 The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town (or its successors) upon the application of any party to the arbitration.

7.17.8 Notwithstanding anything to the contrary contained in Articles 7.17.1 to 7.17.7 above inclusive, the Directors shall be entitled to institute legal proceedings on behalf of the Company by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this MOI.

7.18 **Amendments to Articles**

For the avoidance of doubt, this MOI or any part thereof as contained herein shall not be repealed or amended, and no new articles shall be made, save by a special resolution adopted at an Annual General Meeting or General Meeting of the Members.

SCHEDULE 1 – INCORPORATION AND NATURE OF THE COMPANY

PART A

See Annexure A

PART B

None

PART C

Distribution of Assets on Dissolution

1. Upon its winding-up, deregistration or dissolution any assets remaining after satisfaction of all its liabilities shall be given or transferred to some other company or institution or companies or institutions having objects similar to the Company's main object to be determined by the Members of the Company at or before the time of its dissolution, or failing such determination, by the Court.

Audit

2. Once at least in every Financial Year, the accounts of the Company shall be audited in terms of the Act.
3. The duties of the Auditors shall be regulated in accordance with Part C of Chapter 3 of the Act.

PART D

Delivery of Notification of Rules and Alterations to MOI

1. The Board must notify each Member that it has made rules in terms of sections 15(3) to (5) of the Act or altered the MOI in terms of section 17 and send each Member a copy of any notice, rules and alterations by electronic mail or telefax to that Member's email address or facsimile number as reflected in the Company's records.
2. Each Member is deemed to have received any notice, rules or alterations sent to it in terms of this Part D:
 - 2.1 if it was sent by electronic mail to the email address of the addressee, on the first business day following the date on which it was transmitted from the information system under the control of the sender; or
 - 2.2 if it was telefaxed to the selected facsimile number, on the first business day following the date of transmission.

3. If a Member actually receives any notice, rules or alterations, it will be deemed to have been sent to them as prescribed in this Part.

PART E

Terms and conditions of Membership

1. Membership of the Company shall be limited to :
 - 1.1 the Developer in its capacity as such during the Development Period; and
 - 1.2 all Registered Owners of any Erf in the Township; and
2. in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme shall be a Member of the Company (and not the individual owners of Units).
3. Any person reflected in the records of the Deeds Registry concerned as the registered owner or joint registered owner of any Erf shall be deemed to be the Registered Owner of such Erf and shall further be deemed, *ipso facto*, to be a Member of the Company.
4. Where any Erf is owned by more than one Registered Owner, all such owners of that Erf shall together be deemed to be 1 (one) Member of the Company, subject to the provisions of Article 7.3 of Part C of Schedule 3 below as to voting.
5. When a Member ceases to be the Registered Owner or joint Registered Owner of an Erf, he shall *ipso facto* cease to be a Member of the Company.
6. No Registered Owner or joint Registered Owner of any Erf may resign as a Member of the Company for so long as he remains a Registered Owner.
7. No Body Corporate may resign as a Member of the Company.
8. The rights and obligations of a Member shall not be transferable and every Member shall, to the best of its ability :-
 - 8.1 further the aims, objects and interests of the Company; and
 - 8.2 observe and be bound by this MOI, the House Rules and all other by-rules and regulations made by the Company or the Board from time to time.
9. Nothing contained in this MOI shall prevent a Member from ceding his rights in terms of this MOI as security to the mortgagee of that Member's Erf.
10. Subject to and as detailed more fully in Article 7.6 above, Members shall have a permanent right of access to the Fancourt Country Club provided such Member is a Member of the Fancourt Country Club and that his membership of the Fancourt Country Club is current.

11. The Developer shall, when it is no longer the owner of any land in the Township, cease to be a Member of the Company.
12. The Board may by regulation, provide for the issue of a membership certificate which certificate shall be in such form as may be prescribed by the Board.
13. Each Member of the Company shall, *inter se*, be jointly liable to the Company for any expenditure incurred by the Company in connection with the object or purpose of the Company and for anything done by the Company in accordance with this MOI with the intention of benefiting the Members; provided that the a foregoing shall not be construed as creating any liability on the part of the Members for any debts, actions or omissions of the Company to an extent greater that the contributions made by such Member by way of Levies. The Members shall not be liable to any third party for any claim for damages or otherwise (whether in contract or in delict) made or instituted by such third party against the Company.
14. No Member ceasing to be a Member of the Company for any reason shall (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Company, but this article shall be without prejudice to the rights of the Company to claim from such Member or its successors-in-title any arrears of Levies or subscriptions or other sums due from him to the Company at the time of him so ceasing to be a Member.
15. The Company may claim from any Member or his estate any arrears or Levy and interest or other sums due by him to the Company at the time of his ceasing to be a Member.
16. Any Member who is in breach of any provision of this MOI, or who is in arrears with respect to any amount payable to the Company or any related committee, shall not be entitled to the rights and powers provided to him in terms of this MOI, for so long as he remains in breach or arrears.

SCHEDULE 2 – RIGHTS OF MEMBERS

PART A

None

PART B

None

PART C

Proxies

1. A Member may be represented at a General Meeting by a proxy, who shall be a Member of the Company. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent, but need not be in any particular form, provided that where a Member is more than 1 (one) person, a majority of those persons shall sign the instrument appointing a proxy on such Member's behalf. Where a Member is a Company, the proxy may be signed by the chairman of the Board of that Company or by its secretary, and where a Company of persons, by the secretary or duly authorised representative thereof.
2. The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the registered office of the Company at least 4 (four) hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, unless the Chairman otherwise directs. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution.
3. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy provided that no intimation in writing of the death or revocation shall have been received by the Board at least 1 (one) hour before the time fixed for the holding of the meeting.
4. A proxy may not delegate his authority to act to another person.
5. The proxy must vote in accordance with the instructions received from the person who appointed him.

PART D

None

SCHEDULE 3 – MEMBERS' MEETINGS

PART A

Annual General Meeting

1. The Company shall within 6 (six) months after the end of each Financial Year hold a meeting as its Annual General Meeting, in addition to any other General Meetings during that Year, and shall specify the nature of the meeting in the notice calling it.
2. Such Annual General Meeting shall be held at such time and place, subject to the foregoing provisions, as the Board shall decide from time to time.
3. All General Meetings other than the Annual General Meetings shall be called extraordinary General Meetings.
4. The Board may, whenever it deems fit, convene an extraordinary General Meeting, and an extraordinary General Meeting shall also be convened on a requisition of Members made in terms of section 61(3) of the Act, or in default, may be convened by the requisitionists as provided by and subject to the provisions of the said section 61(3).

PART B

Venue of Meetings

1. Meetings of the Company shall take place at such place as shall be determined by the Board from time to time, within the Township of Fancourt, provided however that the Members may by simple majority direct that the Annual General Meeting of the Company shall be held at such other place as the Members may by simple majority deem fit.

PART C

Notices of Meetings

1. An Annual General Meeting and a General Meeting called for the passing of a Special Resolution shall be called by 15 (fifteen) business days notice in writing at least, and an extraordinary General Meeting, other than one called for the passing of a Special Resolution shall be called by 10 (ten) business days notice in writing at least. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, in addition to any other requirements contained in this MOI, the general nature of that

business, and in the case of a Special Resolution the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Board to such persons as are under this MOI entitled to receive such notices from the Company; provided that a General Meeting of the Company shall, notwithstanding that it is called by a shorter notice period than that specified in this MOI, be deemed to have been duly called if it is so agreed :

- 1.1 in the case of a meeting called as the Annual General Meeting : by the Members entitled to attend and vote thereat, and
- 1.2 in the case of an extraordinary General Meeting : by a majority in number of the Members having a right to attend and vote at the meeting being a majority together holding not less than 95% (ninety five percent) of the total voting rights of all Members;
2. The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this MOI, or in terms of the Act, or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive the same, shall not invalidate the proceedings at or any resolution passed at any meeting.

Agenda at Meetings

3. In addition to any 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:
 - 3.1 the confirmation of the minutes of the preceding Annual General Meeting and of any General Meetings held subsequently;
 - 3.2 the consideration of the Chairman's report to the Members;
 - 3.3 the consideration of the Estate Manager's report to the Members;
 - 3.4 the consideration and approval of the report of the Auditors;
 - 3.5 the election of Board, the Auditors and any other office bearers;
 - 3.6 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
 - 3.7 the consideration of the income statement and balance sheet of the Company for the last Financial Year of the Company preceding the date of such meeting;

- 3.8 the noting of the levy for the Financial Year during which such Annual General Meeting takes place;
- 3.9 the consideration and fixing of the remuneration of the Auditors for the Financial Year of the Company preceding the Annual General Meeting; and
- 3.10 any other matters as may be required to be dealt with by the Members or the Directors.

Proceedings at General Meetings

- 4. The Chairman shall preside as such at all General Meetings, provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 5. The Chairman may, with the consent of any General Meeting at which a quorum is present, and shall if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 7 (seven) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 6. Save as otherwise provided in this MOI, the proceedings at any General Meeting shall be conducted in such reasonable manner as the Chairman of the meeting shall decide.

Voting

- 7. At every General Meeting :-
 - 7.1 the Developer, during the Development Period, shall in aggregate have the same number of votes as that of the Members;
 - 7.2 every Member, including the Developer, in person or by proxy, and entitled to vote shall have 1 (one) vote for each Erf registered in his name;
 - 7.3 if an Erf is registered in the name of more than 1 (one) person then all such co-owners shall jointly have 1 (one) vote;

- 7.4 in the event of any Member including the Developer holding undeveloped land in the Township, such Member shall have 1 (one) vote for each separate piece of land depicted as an Erf on the general plan of the Township and registered in his name.
- 7.5 Save as expressly provided for in this MOI, no person other than a Member, and who shall have paid every Levy and other sum, if any, which shall be due and payable to the Company in respect of or arising out of his Membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any General Meeting.
- 7.6 Where a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member.
- 7.7 Where a Member comprises more than 1 (one) person, such Member shall be represented by such representative as the Member may determine provided that :-
- 7.7.1 the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
- 7.7.2 if such persons cannot so decide unanimously, then the person whose name stands first in the register of Members shall be entitled to cast the vote; and
- 7.7.3 the vote(s) cast to the satisfaction of the Chairman shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.
- 7.8 Unless the Chairman of the meeting otherwise directs, all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting may direct.
- 7.9 Notwithstanding the provisions of Article 7.8 above, after the Development Period, voting on the election of a Chairman of a General Meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.

- 7.10 Every resolution and every amendment of a resolution proposed for adoption by a General Meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 7.11 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, by Members present in person or by proxy and entitled to vote at the meeting, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 7.12 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless :-
- 7.12.1 written notice of the revocation is received by the Company prior to the meeting concerned; or
- 7.12.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 7.13 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
- 7.14 If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the Chairman, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 7.15 Read with Article 7.13 of this Schedule 3, unless any Member present in person or by proxy at a General Meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of

votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

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

PART D

Quorum

1. No business shall be transacted at any General Meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any General Meeting shall be Members holding an aggregate of not less than 25% (twenty five percent) of the total of all Members entitled to vote at such General Meeting, present in person or by proxy, provided that there will always be at least 3 (three) Members present in person and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.
2. If within half an hour from the time appointed for the holding of a General Meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, or at such other place as the Chairman of the meeting shall appoint.
3. If within half an hour from the time appointed for the holding of an adjourned meeting, a quorum is not present, the meeting shall stand adjourned for a second time to the same day in the next week at the same place and time, or at such other place as the Chairman of the meeting shall appoint.
4. If at such second adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum, provided that, for the duration of the Development Period, the Developer is present in person or by proxy for the first meeting and for the first adjourned meeting in order for a quorum to be constituted. The Developer need not be present at the second adjourned meeting for a quorum to be constituted.

PART E

None

PART F

Special Resolutions

1. Any special resolutions or an amendment of a special resolution, shall be caused at a General Meeting of which not less than 15 (fifteen) business days notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which :-
 - 1.1 Members holding in the aggregate not less than 25% (twenty five percent) of the total votes of all the Members, are present in person or by proxy; and
 - 1.2 the resolution has been passed on a show of hands by not less than 75% (seventy five percent) of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy, or where a poll has been demanded, by not less than 75% (seventy five percent) of the total votes to which the Members present in person or by proxy are entitled.

PART G

Special Resolutions are required for the following matters:

1. No Erven forming roads and open spaces shall be :-
 - 1.1 mortgaged; or
 - 1.2 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of the Board.
2. The Company may, in its discretion, permit the Members, subject to the provisions of this MOI, to use the Open Space and Roads, and shall do so unless by special resolution taken at an extraordinary General Meeting called for the purpose, it is otherwise resolved for good reason.
3. No Member shall operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983 in respect of any Dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 4(four) Members per bedroom per unit, unless the Members by special resolution resolve otherwise.
4. For the avoidance of doubt, the Company may by special resolution do anything which in terms of the Act may be done by a Company only if authorised by its MOI.

SCHEDULE 4 – DIRECTORS OF THE COMPANY

PART A

Election and Appointment

1. There shall be a Board of Directors of the Company which shall consist of not less than 5 (five) nor more than 7 (seven) Directors.
2. A Director shall be an individual, but need not himself be a Member of the Company. A Director however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of this MOI.
3. The Board shall during the Development Period consist of not less than 2 (two) nominees of the Developer. Any other Directors to be appointed to office shall be elected by the Members, other than the Developer. Each Member will vote for five Directors:
 - 3.1 1 (one) of whom shall be elected from the owners of lodges;
 - 3.2 4 (four) of whom shall be elected from the owners of residential erven other than Lodges, with at least one from Cape Dutch.

Removal and Rotation

4. Save as set forth in Article 6 of this Schedule 4 and save for the Directors appointed by the Developer, each Director shall continue to hold office as such from the date of this appointment to office until the Annual General Meeting next following his said appointment, at which meeting each Director shall be deemed to have retired from office as such, but will be eligible for re-election to the Board at such next meeting.
5. A Director shall be deemed to have vacated his office as such upon :-
 - 5.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 5.2 the commission by him of any act of insolvency;
 - 5.3 his conviction for any offence involving dishonesty;
 - 5.4 his becoming of unsound mind or being found mentally ill;
 - 5.5 his resigning from such office in writing delivered to the Chairman;
 - 5.6 his death;
 - 5.7 his being removed from office as provided in Section 71 of the Act; or

- 5.8 in the event of his being a Member of the Company, his being disentitled to exercise a vote in terms of Article 7.5 of Part C of Schedule 3 above,
- 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 Board.
6. Upon any vacancy occurring on the Board 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 on the Board; provided however that if the Director who vacates his office as aforesaid was the nominee of the Developer, the Developer shall be entitled to nominate a Director in his stead and provided that if the Director who vacates his offices as aforesaid was elected by the Members other than the Developer, the remaining Directors elected by the Members other than the Developer shall be entitled to nominate a Director in his stead.
7. Nominations for the appointment of Directors (save for those appointed by the Developer) shall be in writing proposed by 2 (two) Members, which written nomination shall be delivered to the registered office of the Company not later than 14 (fourteen) clear days prior to the Annual General Meeting, failing which the nomination will be invalid.

PART B

None

PART C

None

PART D

Functions and Powers of the Board

1. Subject to the express provisions of this MOI, the Board 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 the Estate Manager(s), and save as may be expressly provided in this MOI, 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 nevertheless to any provision of the Act, and to such House Rules, regulations

and/or by-laws as may be prescribed by the Company in General Meeting from time to time.

2. The Board may in its discretion from time to time for the purposes of the Company borrow or raise such sum or sums of money from Members or from such other source as the Board may decide. The Board may further secure the repayment of any sums so raised in such manner and upon such terms as it may deem fit, whether by the mortgaging of the property of the Company or any part thereof (subject to Article 7.5 above), or otherwise.
3. The Board shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
4. The Board shall have the right to co-opt onto the Board any person or persons chosen by it. A co-opted Director need not necessarily be a Member of the Company. A co-opted Director shall have the right to be notified of and to attend all Board meetings and to speak thereat in all respects as if he were a full Board Member but shall have no vote at any such meetings and may not be elected to the office of Chairman or Vice-Chairman. Notwithstanding the a foregoing, in the event of a Director being co-opted to make up the required complement of Directors owing to insufficient nominations tabled at the Annual General Meeting, then such co-opted Director shall enjoy full voting rights but may not be elected to the office of Chairman or Vice-Chairman. Save as aforesaid, a co-opted Director shall enjoy all the rights and be subject to all the obligations of a Director.
5. The Board shall be entitled to appoint committees consisting of such number of their Members and such outsiders, including the Estate Manager(s) as it may deem fit and to delegate to such committees such of its functions, powers and duties as it may deem fit, with further power to vary or revoke such appointments and delegations as the Board may from time to time deem necessary.

House Rules, Regulations and By-Laws

6. Subject to any restriction imposed or direction given at a General Meeting of the Company and provided same are not inconsistent with this MOI or any House Rules made by the Company, the Board may from time to time make House Rules and shall be entitled to cancel, vary or modify any of the same from time to time, in regard, but not limited to :

- 6.1 the relationship between :

- 6.1.1 the Members and the Company;
- 6.1.2 the Board and the Members; and
- 6.1.3 the Board and the Company;
- 6.2 the harmonisation of the aesthetic upmarket appearance of the Township;
- 6.3 the use by Members, the Members of their households or Sectional Title Schemes, their guests, lessees and Residents, of the Roads and Open Spaces, including the right to prohibit, restrict or control such use of the Roads, driveways and Open Spaces or any portion thereof as may from time to time be necessary or expedient;
- 6.4 the preservation of the natural environment, vegetation and fauna in the Township;
- 6.5 maintenance, renovations, upkeep, repair and construction or building works within the Township;
- 6.6 the use of parking areas;
- 6.7 the right to control, restrict and prohibit the keeping of pets in and upon the Development and restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 6.8 the use of Erven and Units in the Township;
- 6.9 the use and control of business premises and Business Units;
- 6.10 the placing of movable objects upon the outside of buildings, including the power to remove any such objects;
- 6.11 the keeping of flammable substances;
- 6.12 the conduct of any persons within the Township for the prevention of nuisance of any nature to any Member;
- 6.13 the maintenance of all buildings, out buildings, structures, improvements of any nature and landscaping within the Township;
- 6.14 the use, maintenance, renovations, installations and repairs of the Common Property;
- 6.15 taking into account the Hotel Operation and the Fancourt Country Club, the admission of any person within the Township, and the eviction of any person not entitled to be thereon;

- 6.16 any such other rules as the Board in its discretion considers fit and proper for the proper management of the Township, the Company, the different categories of Dwellings, Group Developments, Sectional Title Schemes and Business Units, provided such rules are fair and reasonable and do not conflict with any provisions of this MOI.
7. The Board may make regulations and by-laws, not inconsistent with this MOI, or any regulations or by-laws prescribed by the Company in General Meeting :
- 7.1 as to disputes generally;
- 7.2 for the furtherance and promotion of any of the objects of the Company;
- 7.3 for the better management of the affairs of the Company;
- 7.4 for the advancement of the interests of Members;
- 7.5 for the conduct of Board meetings and General Meetings;
- 7.6 to assist it in administering and governing the Company's activities generally;
- 7.7 governing the manner and methods of the use of the Common Property by or on behalf of the Members or any Resident;
- 7.8 to assist it in administering and governing its activities generally;
and shall be entitled to cancel, vary or modify any of the same from time to time.
8. For the enforcement of any of the House Rules, regulations and/or by-laws made by the Board in terms hereof, the Board may :
- 8.1 take or cause to be taken such steps as it may consider necessary to remedy the breach thereof by Members, and debit the cost of doing so to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Company; and/or
- 8.2 impose a system of fines or other penalties; and/or
- 8.3 take such other action including Court proceedings, as the Board may deem fit.
9. In the event of any breach of the House Rules, regulations and/or by-laws by the Members of any Member's household, or his guests, lessees or Residents, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the a foregoing, the Board may take or cause of be taken such steps against the person actually committing the breach as it in its discretion may deem fit.

10. In the event of any Member disputing the fact that he committed a breach of any of the House Rules, regulations and/or by-laws aforesaid, a Committee of 3 (three) Directors appointed by the Board 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 Board may direct.
11. Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.
12. Notwithstanding the a foregoing, the Board may in the name of the Company, enforce the provisions of any House Rules, regulations and/or by-laws by civil process in a Court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit.
13. Notwithstanding the above, in the event of any Member being in persistent or flagrant breach of any of this MOI or any House Rules, regulations and/or by-laws made in terms hereof, or being in breach thereof and failing to remedy such breach, the Board may after not less than 7 (seven) days notice in writing to the Member concerned, that they intend so to do, discontinue any service provided to the Member by the Company for such period as the Board may deem fit.
14. It shall be the duty of the Estate Manager, or such other person or body as may be empowered by the Board, to ensure compliance with the House Rules, regulations and/or by-laws by the Members, their guests, lessees, Residents and all other persons within the Township, and to this end, to issue such notices, impose and collect such fines (as determined in Article 8.2 of this Part D of Schedule 4) or do such things as may be necessary or requisite.
15. Each Member undertakes to the Company that he shall comply with any House Rules, regulations and/or by-laws made in terms of this MOI.
16. Notwithstanding the a foregoing, the Company may, in General Meeting, itself make any House Rules, regulations and/or by-laws which the Board is entitled to make and shall be entitled to cancel, vary or modify any House Rules, regulations and/or by-laws made by it or by the Board from time to time.

PART E

None.

PART F

Proceedings of the Board of Directors

1. The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it deems fit, subject to the provisions of this MOI.
2. Board meetings shall be held on at least 1 (one) occasion every quarter, provided that if all the Directors shall in writing have waived the above requirement in respect of a particular quarter, then no Board meeting needs to be held for that quarter.
3. The quorum necessary for the holding of any Board meetings shall be 4 (four) Directors (including co-opted Directors entitled to vote) present personally or participating via video or telephone conference call, provided however that during the Development Period the presence of at least 1 (one) nominees of the Developer shall be necessary at all meetings of the Board in order to form a quorum. Failing a quorum, the meeting shall be adjourned.
4. The Chairman shall preside as such at all Board meetings provided that should at any Board meeting, the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those Directors present shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
5. The Directors shall cause minutes to be taken of every Board meeting, although not necessarily *verbatim*, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting. All minutes of Board meetings shall after certification as aforesaid be placed in a Directors' Minutes Book to be kept in accordance with the provisions of the law relating to the keeping of minutes of meetings of Directors of Companies. The Directors' Minutes Book shall be open for inspection at all reasonable times by any Director, the Auditors, the Members and the Estate Manager(s).
6. All competent resolutions recorded in the minutes of any Board meeting shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of the Board shall be of any force or effect, or shall be binding upon the Members or any of the Directors unless such resolution is competent within the powers of the Board.

7. Save as otherwise provided in this MOI, the proceedings at any Board meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
8. A resolution of the Board at a duly constituted meeting shall be caused by a simple majority of all votes cast.
9. Notwithstanding the a foregoing provisions, a resolution signed by all the Directors shall be valid in all respects as if it had been duly passed at a Board meeting duly convened.
10. The Estate Manager(s) shall be entitled to attend all meetings of the Board and shall act as secretary of such meetings but shall not have a vote, unless the Estate Manager has been appointed or co-opted to the Board as a Director to fill a vacancy, in which circumstances shall be entitled to vote.

PART G

Indemnity

1. All Directors and the Estate Manager shall be indemnified out of the funds of the Company against any liabilities *bona fide* incurred by them in their respective said capacities, and in the case of a Director, in his capacity too as Chairman or Vice-Chairman, whether in defending any proceedings, civil, criminal or otherwise.
2. Every Director, every servant, agent and employee of the Company and the Estate Manager(s) shall be indemnified by the Company against, and it shall be the duty of the Board 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, including in the case of a Director, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Company shall specifically indemnify every such person against all losses of whatsoever nature incurred arising out of any *bona fide* act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter had been done or written in good faith.
3. A Director shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Directors, whether in their capacities as Directors or as Chairman or Vice-Chairman or for any loss or expense sustained or incurred by the Company through the insufficiency or deficiency of title to any property acquired by the Board for

or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested, or for any loss or damage arising from the insolvency or delictual act of any person with whom any monies, securities or effects shall be deposited, or for any loss or damage occasioned by any error or judgement or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office or in relation therefore, unless the same shall happen through lack of *bona fides* or breach of any fiduciary duty or breach of trust.

PART H

None.

PART I

Committees

1. The Board shall be entitled to appoint committees consisting of such number of their Members and such outsiders, including the Estate Manager(s) as it may deem fit and to delegate to such committees such of its functions, powers and duties as it may deem fit, with further power to vary or revoke such appointments and delegations as the Board may from time to time deem necessary.

ANNEXURE A

Limitations on the Powers of the Company

1. The Company has the power to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property and assets, subject to the conditions of establishment of the estate or as otherwise sanctioned and/or approved by a special resolution adopted at an Annual General Meeting or General Meeting of the Members;
2. The Company has the power to form and to have an interest in any company or companies, provided that such company or companies share the same or similar objects to the Company, for the purpose of acquiring the undertaking of all or any of the assets or liabilities of that company or companies or for any other purpose which may seem, directly or indirectly, calculated to benefit the Company, and to transfer to any such Company or companies the undertaking or all or any of the assets or liabilities of the Company;
3. The Company has the power to amalgamate with other companies, provided such companies have the same or similar objects to the Company;
4. The Company has the power to take part in the management, supervision and control of the business or operations of any other company or business, provided such company or business has the same or similar objects as the Company and to enter into partnerships having the same or similar objects as the Company;
5. The Company has the power to make donations, provided that no donations shall be made to the Members of the Company;
6. The Company has the power to pay gratuities and pensions and establish pension schemes, profit-sharing plans and other incentive schemes for employees of the Company; and
7. The Company does not have the power to distribute in specie or in kind any of its assets among its Members.
8. The income and property of the Company, however derived, shall be applied solely towards the promotion of its main object, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus, or otherwise howsoever, to any Members of the Company, or its controlling or controlled Company.

9. 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.
10. For the avoidance of doubt:
 - 10.1 The Company shall be entitled to bind Members to contribute by way of subscriptions and levies towards the funds of the Company and to enforce payment of, and to collect and receive from Members such contributions and levies.
 - 10.2 The Company shall be entitled to enforce compliance with its MOI in such manner as it may deem fit, and in particular by means of a system of fines or such other penalties as it may see fit to prescribe.