

1 DEFINITIONS AND INTERPRETATION	2
3 INCORPORATION	9
4 OTHER FORMALITIES RELATING TO THE COMPANY	10
5 OBJECTS OF THE COMPANY	10
6 POWERS OF THE COMPANY	12
7 LIMITATION OF LIABILITY	15
8 AMENDMENT OF MEMORANDUM OF INCORPORATION	15
9 COMPANY RULES	16
10 APPLICATION OF THE OPTIONAL PROVISIONS OF THE COMPANIES ACT	17
11 FINANCIAL STATEMENTS	17
12 ACCOUNTING RECORDS AND OTHER DOCUMENTS AND RECORDS	19
13 ANNUAL GENERAL MEETINGS	20
14 MAINTENANCE, REPAIR AND REPLACEMENT PLAN	21
15 INSURANCE	22
16 IMPROVEMENTS TO COMMON PROPERTY	23
17 MANAGING AGENT	23
18 ADMINISTRATIVE FUND AND RESERVE FUND	24
19 CONTRIBUTIONS AND CHARGES	25
20 MEMBERS	27
21 MEMBERS REGISTER	27
22 PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS OF MEMBERSHIP	27
23 DUTIES OF MEMBERS IN THEIR CAPACITY AS OWNERS	28
24 USE OF UNITS AND COMMON PROPERTY	29
25 OBLIGATION TO MAINTAIN	30
26 TERMINATION OF MEMBERSHIP OR SUSPENSION OF VOTING RIGHTS	30
27 GENERAL RULES PERTAINING TO MEMBERS AND THE SCHEME	31
28 REPRESENTATION BY PROXIES	32
29 MEMBERS ACTING OTHER THAN AT MEETING	33
30 REQUIREMENTS FOR MEMBERS MEETINGS	34
31 NOTICE OF MEMBERS MEETINGS	34
32 CONDUCT OF MEETINGS	35
33 QUORUM AND ADJOURNMENT FOR MEMBERS MEETING	36
34 CHAIRPERSON FOR MEMBERS MEETINGS	37
35 MEMBERS RESOLUTIONS	37
36 AUTHORITY OF THE BOARD OF DIRECTORS	38
37 COMPOSITION AND APPOINTMENT OF THE BOARD OF DIRECTORS	38
38 ALTERNATE DIRECTORS	40
39 VACANCIES	40

40 REMOVAL OF DIRECTORS	41
41 BOARD COMMITTEES	41
42 CHAIRPERSON OF THE BOARD	42
43 DIRECTORS' MEETINGS	42
44 BOARD RESOLUTIONS	43
45 DIRECTORS ACTING OTHER THAN AT MEETINGS	44
46 CHIEF EXECUTIVE AND RESPONSIBLE OFFICER:	44
47 INDEMNIFICATION OF DIRECTORS AND DIRECTORS' INSURANCE	45
48 FINANCIAL ASSISTANCE	46
49 ANNUAL BUDGET	46
50 APPLICATION OF FUNDS	47
51 MANAGEMENT OF THE COMPANY	47
52 CORPORATE EXISTENCE, LICENSES AND MAINTENANCE	48
54 SIGNING POWERS	49
55 WINDING UP	49
56 NOTICES	49
57 DETERMINATION OF DISPUTES	50
SCHEDULE "A"	53

1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this MOI, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

1.1.1 **“Administrative Fund”** means funds which are reasonably sufficient to cover the estimated annual operating costs:-

1.1.1.1 for the repair, maintenance, management and administration of the Common Property;

1.1.1.2 for the payment of rates and taxes, the Consumable Charges and other charges as may be levied by the Local Authority in relation to the Common Property;

1.1.1.3 for the payment of any insurance premiums payable by the Company in relation to the Scheme and in terms of this MOI; and

1.1.1.4 for the discharge of any duty or fulfilment of any other obligation of the Company in terms of this MOI;

1.1.2 **“Board”** means the properly constituted board of directors of the Company;

1.1.3 **“Body Corporate”** means the body corporate in relation to the Scheme which comes into effect in accordance with section 2(1) of the Sectional Titles Schemes Management Act with effect from the date on which any person other than the Developer becomes an owner of a Unit in the Scheme, of which the Developer and any person who thereafter becomes an owner of a Unit in the Scheme shall be members (provided that the Developer shall cease to be a member of the body corporate when he or she ceases to have a share in the Common Property);

1.1.4 **“Commission”** means the Companies and Intellectual Property Commission established by section 185 of the Companies Act;

1.1.5 **“Companies Act”** means the Companies Act, No. 2008 (Act No. 71 of 2008);

1.1.6 **“Companies Regulations”** means the Companies Regulations, 2011;

1.1.7 **“Company”** means The Club Heart Homeowners Association, a non-profit company to be registered and incorporated in accordance with section 13(1) read with section 14 of the Companies Act;

- 1.1.8 **“Common Property”** means the property included in the Scheme (excluding the Units), which shall specifically include all common areas, communal facilities, security gates, roofs and boundary walls forming a part of the Scheme or situated on the Property and such parts of the buildings as are not included in the Units;
- 1.1.9 **“Conduct Rules”** means the conduct rules applicable to the Scheme as set out in **Schedule B**;
- 1.1.10 **“Consumable Charges”** means the actual consumable charges/costs incurred in connection with the use of the Units or the Common Property, as the case may be, relating specifically to the consumption of electricity, water, refuse removal charges, effluent fees and other miscellaneous charges as may be levied by the Local Authority and as may appear on the municipal account statement and/or the separate meter readings in respect of the meter allocated to the Common Property and in relation to each of the Units;
- 1.1.11 **“Developer”** means Heartland Property Developers Proprietary Limited (Registration Number: 2016/177194/07), a private company duly registered and incorporated in accordance with the provisions of the Companies Act;
- 1.1.12 **“Dispose”** means to donate, dispose of, distribute, bequeath, make over, transfer or otherwise alienate a Unit within the Scheme, or any agreement, arrangement or obligation to do any of the foregoing, and **“Disposal”** has a corresponding meaning;
- 1.1.13 **“Director”** means a director appointed to the Board in accordance with the provisions of the MOI and the Companies Act, from time to time;
- 1.1.14 **“Effective Date”** means the date on which the Commission accepts the notice of incorporation filed together with this MOI and issues a registration certificate in accordance with section 14(1) of the Companies Act;
- 1.1.15 **“Encumber”** means to mortgage, pledge, cede, assign, confer security or other agreement or arrangement, the effect of which is to create security over a Unit within the Scheme and **“Encumbrance”** has a corresponding meaning;
- 1.1.16 **“IFRS for SMEs”** means the International Financial Reporting Standards for Small and Medium Enterprises, as adopted from time to time by the Board of the International Accounting Standards Committee and approved for use in South Africa from time to time by the Financial Reporting Standards Council established in terms of section 203 of the Companies Act;
- 1.1.17 **“Incorporators”** means those persons who shall also be the first Directors of the Company and who shall accept fiduciary responsibility for the Company and its activities for so long as they

may serve as Directors;

1.1.18 **"Local Authority"** means the City of Tshwane Metropolitan Municipality;

1.1.19 **"Managing Agent"** means a managing agent appointed to carry out all the functions and powers of the Company, in accordance with clause 17 below;

1.1.20 **"Major Capital Item"** means wiring, lighting and electrical systems, plumbing, drainage and storm-water systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities;

1.1.21 **"Member"** means the voting members of the Company which shall be comprised of the members of the Body Corporate;

1.1.22 **"MOI"** means this Memorandum of Incorporation;

1.1.23 **"Participation Quota"** means a percentage expressed to four decimal places, and arrived at by dividing the floor area (correct to the nearest square meter) of a Unit by the floor area (correct to the nearest square meter) of all the Units in the Scheme;

1.1.24 **"Ordinary Resolution"** means a resolution (i) passed by more than 50%, calculated both in value and in number, of the votes of the Members who are represented at a meeting or (ii) agreed to in writing by Members holding more than 50%, calculated both in value and in number, of all the votes;

1.1.25 **"Owners"** means the registered owner of a Unit situated within the Scheme;

1.1.26 **"Reserve Fund"** means funds set aside by the Board to meet the unexpected costs that may arise in future, including future cost of maintenance of the Major Capital Items in respect of the Scheme;

1.1.27 **"Responsible Officer"** means such a person as may be elected by the Board from time to time who shall be obligated to fulfil such functions as determined by the Board and as stipulated in clause 46.1 below;

1.1.28 **"Rules"** means the rules of the Company made, amended or repealed in accordance with clause 9 of this MOI read together with section 15(3) to 15(6) of the Companies Act;

1.1.29 **"Scheme"** means the sectional scheme known as The Club Heart (or any such other name as may be approved by the Surveyor General), situated at ERF 717 Waterkloof Ridge, with

address 98 Club Ave, Waterkloof Ridge, Pretoria, 0181, as set out in the sectional plan attached hereto and marked as **Schedule A**;

1.1.30 **“Sectional Titles Act”** means the Sectional Titles Act, 1986 (Act No. 95 of 1986);

1.1.31 **“Sectional Titles Schemes Management Act”** means the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011);

1.1.32 **“Sectional Titles Schemes Management Regulations”** means the Sectional Titles Schemes Management Regulations, 2016 published under general notice R1231 in Government Gazette 40335 of 7 October 2016;

1.1.33 **“Special Resolution”** means a resolution (i) passed by at least 75%, calculated both in value and in number, of the votes of the Members who are represented at a meeting or (ii) agreed to in writing by Members holding at least 75%, calculated both in value and in number, of all the votes;

1.1.34 **“Unanimous Resolution”** means a resolution (i) passed unanimously by all the Members at a meeting at which at least 80% calculated both in value and in number, of the votes of all the Members are present or represented and all the Members who cast their votes do so in favour of the resolution or (ii) agreed to in writing by all the Members;

1.1.35 **“Unit”** means any section as shown on the sectional plan of the Scheme and shall for purposes of this MOI include any part of the Common Property which is subject to a right of extension as contemplated in section 25 of the Sectional Titles Act and which is leased by the Company on behalf of the owner or holder of the right of extension in accordance with section 17 of the Sectional Titles Act.

1.2 INTERPRETATION

In this MOI:

1.2.1 words that are defined in the Companies Act bear the same meaning in this MOI as in that Act;

1.2.2 if the Companies Act is amended at any time to confer any right or benefit on the Company, then this MOI shall be deemed to have been amended so as to result in the Company enjoying the full benefit of any such amendment to the Companies Act;

1.2.3 words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;

1.2.4 any reference in this Agreement to –

- 1.2.4.1 **"business hours"** shall be construed as being the hours between 08h00 and 16h30 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.2.4.2 **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a **"business day"** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.2.4.3 **"laws"** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Entity; and the common law, and "law" shall have a similar meaning;
- 1.2.4.4 **"person"** means any natural person, company, close corporation, trust, partnership, joint venture, association, unincorporated association, Governmental Entity, or other entity whether or not having separate legal personality; and
- 1.2.4.5 **"tax"** means all income tax, capital gains tax, secondary tax on companies (or any similar tax replacing or substituting it), dividend tax, value-added tax, stamp duty, securities transfer tax, uncertificated securities tax, PAYE, levies, assessments, imposts, deductions, charges and withholdings whatsoever in terms of any tax legislation, and includes all penalties and interest payable as a consequence of any failure or delay in paying any taxes;
- 1.2.5 if a definition imposes substantive rights and obligations on a Director, Member or the Company, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.6 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which event the last day shall be the next succeeding business day;
- 1.2.7 where the day upon or by which any act is required to be performed is not a business day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding business day;
- 1.2.8 any provision in this MOI which is or may become illegal, invalid or unenforceable in any jurisdiction affecting this MOI, shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this MOI, without invalidating the remaining provisions of this MOI or affecting the validity or enforceability of such provision in any other

jurisdiction;

1.2.9 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis rule*) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;

1.2.10 the headings to the paragraphs of this MOI are inserted for purposes of reference only and shall not affect the interpretation of any provisions to which they relate;

1.2.11 if a manner of delivery of a document, record, statement or notice is prescribed in terms of this MOI for any purpose

1.2.11.1 it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed herein; and

1.2.11.2 any deviation from the prescribed manner does not invalidate the action taken by the person delivering the document, record, statement or notice, unless the deviation

1.2.11.2.1 materially reduces the probability that the intended recipient will receive the document, record, statement or notice; or

1.2.11.2.2 is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered;

1.2.12 if notice is required or permitted to be given or published to any person, it is sufficient if the notice is transmitted electronically directly to that person in a manner and form such that the notice can conveniently be printed by the recipient within a reasonable time and at a reasonable cost;

1.2.13 If, in terms of this Act, a document, record or statement, is required:

1.2.13.1 to be retained, it is sufficient if an electronic original or reproduction of that document is retained as provided for in section 15 of the Electronic Communications and Transactions Act, No. 25 of 2002; or

1.2.13.2 to be published, provided or delivered, it is sufficient if

1.2.13.2.1 an electronic original or reproduction of that document, record or statement is published, provided or delivered by electronic communication in a manner and form such that the

document, record or statement can conveniently be printed by the recipient within a reasonable time and at a reasonable cost; or

1.2.13.2.2 a notice of the availability of that document, record or statement, summarising its content and satisfying any prescribed requirements, is delivered to each intended recipient of the document, record or statement, together with instructions for receiving the complete document, record or statement.

1.2.14 if this MOI requires a document to be signed or initialled –

1.2.14.1 by or on behalf of a person, then the signing or initialling may be effected in any manner provided for in the Electronic Communications and Transactions Act, No. 25 of 2002; or

1.2.14.2 by two or more persons, it is sufficient if -

1.2.14.2.1 all of those persons sign a single original of the document, in person or as contemplated in clause 1.2.14.1; or

1.2.14.2.2 each of those persons signs a separate duplicate original of the document, in person or as contemplated in clause 1.2.14.1, and in such a case, the several signed duplicate originals, when combined, constitute the entire document.

2 INTRODUCTION

2.1 The schedule in terms of section 11(3) of the Sectional Titles Act, as certified by the conveyancers

appointed by the Developer when opening the Scheme, contains a condition restricting the transfer of the Units without the consent of this Company (an association) and in accordance with Regulation 6(4) of the Sectional Titles Schemes Management Regulations this MOI requires:

2.1.1 that all the members of the Body Corporate shall be required to be Members of the Company; and

2.1.2 the functions and powers of the Body Corporate shall be assigned to the Company.

2.2 The management rules as set out in the Sectional Titles Schemes Management Regulations shall be substituted (or to the extent required amended, repealed or added to) by the terms and conditions herein contained and this MOI shall serve as the management rules for the Scheme.

2.3 This MOI has been adopted and approved by the Incorporators of the Company and the MOI shall be effective with immediate effect from the date on which the Company is registered by the Commission.

INCORPORATION AND NATURE OF THE COMPANY

3 INCORPORATION

3.1 The Company is a non-profit company having voting members in accordance with the provisions of schedule 1 to the Companies Act.

3.2 The Company is incorporated for purposes of the achievement of the objects as set out in clause 5, which relate to one or more communal or group interests in accordance with the provisions of Schedule 1 of the Companies Act.

3.3 Subject to the provisions, limitations, alterations or extensions as set out in section 10 of the Companies Act and set out in Schedule 1 to the Companies Act, the Company is incorporated in accordance with and governed by:

3.3.1 the unalterable provisions of the Companies Act;

3.3.2 the alterable provisions of the Companies Act, but subject to those negations, restrictions, qualifications, limitations, extensions, variations or substitutions set out in this MOI; and

3.3.3 the other provisions of this MOI.

3.4 In accordance with Section 10 of the Companies Act, the following provisions of the Companies Act, and any regulations made in respect of any such provisions, do not apply to the Company:

3.4.1 Part D of Chapter 2 – Capitalisation of Profit Companies;

3.4.2 Part E of Chapter 2 – Securities registration and transfer;

3.4.3 Section 66 (8) and (9) and section 68 of – Remuneration and election of directors;

3.4.4 Parts B and D of Chapter 3, except to the extent that an obligation to appoint a company secretary, auditor or audit committee arises in terms of

3.4.4.1 a requirement in the Company's MOI, as contemplated in section 34 (2) of the Companies Act;
or

3.4.4.2 regulations contemplated in section 30 (7) of the Companies Act.

3.4.5 Chapter 4. – Public offering of Company Securities;

3.4.6 Chapter 5 – Takeovers, offers and fundamental transactions (except to the extent contemplated in item 2 of Schedule 1 to the Companies Act);

3.4.7 Sections 146 (d), and 152 (3) (c) – Rights of Shareholders to approve a business rescue plan (except to the extent that Company is itself a shareholder of a profit company that is engaged in business rescue proceedings); and

3.4.8 Section 164 – Dissenting Shareholders' appraisal rights (except to the extent that Company is itself a shareholder of a profit company).

3.5 A reference in the Companies Act to 'a shareholder', 'the holders of a company's securities', 'holders of issued securities of that company' or 'a holder of voting rights entitled to be voted' is a reference to the Members of the Company.

3.5 This MOI and any Rules of the Company are binding

3.5.1 between or among the Members of the Company; and

3.5.2 between the Company and

3.5.2.1 each Member;

3.5.2.2 each Director or prescribed officer of the Company; or

3.5.2.3 any other persons serving the Company as a member of a committee of the Board, in the exercise of their respective functions within the Company.

3.6 Incorporation of the Company as a non- profit company in terms of this Act, and compliance with the provisions of the Companies Act do not necessarily qualify the Company for any particular status, category, classification or treatment in terms of the Income Tax Act, No. 58 of 1962 or any other legislation, except to the extent that any such legislation provides otherwise.

4 OTHER FORMALITIES RELATING TO THE COMPANY

4.1 The financial year-end of the Company shall be the last day of February of each year; and

4.2 The registered office of the Company shall be 98 Club Ave, Waterkloof Ridge, Pretoria, 0181, unless changed by the Company in accordance with the provisions of section 23(3)(b)(ii) of the Companies Act.

5 OBJECTS OF THE COMPANY

5.1 The principal objective of the Company is to undertake, in the place and stead of the Body Corporate, the functions and powers of the Body Corporate which have all been assigned to the Company, and in doing so, to manage the collective and communal interests of the Owners and

the Developer in relation to the Scheme.

5.2 The ancillary objectives of the Company include (without limitation):

5.2.1 to establish and maintain an Administrative Fund;

5.2.2 to establish and maintain a Reserve Fund;

5.2.3 to insure the buildings in the Scheme and keep them insured;

5.2.4 to insure against such other risks as the Members may by Special Resolution determine;

5.2.5 to forthwith apply any insurance money received by the Company in respect of damage to the building or buildings, in rebuilding and/or reinstating such building or buildings;

5.2.6 to pay the premiums on any insurance policy effected by the Company;

5.2.7 to pay the rates and taxes and other charges levied by the Local Authority in respect of the Scheme, the Units or the Common Property;

5.2.8 to maintain all the Common Property and to keep the Common Property in a state of good and serviceable repair;

5.2.9 to maintain any plant, machinery, fixtures and fittings used in connection with the Common Property and Units and to keep them in a state of good and serviceable repair;

5.2.10 subject to the rights of the Local Authority, to maintain and repair (where reasonably necessary) the pipes, wires, cables and ducts existing on the land on which the Scheme is established and which is capable of being used in connection with the enjoyment of any Unit or of the Common Property;

5.2.11 to comply with any notice or order by any competent authority requiring any repairs or work in respect of the relevant land or building in the Scheme;

5.2.12 to ensure compliance with any law relating to the Common Property or the Scheme;

5.2.13 to ensure compliance of the Members with the terms and condition of this MOI (having substituted the management rules for the Scheme) and the Conduct Rules; and

5.2.14 in general, to control, manage and administer the Scheme and the Common Property for the benefit of all Members.

6 POWERS OF THE COMPANY

6.1 The Company has all the legal powers and capacity of a natural person, except to the extent that the Company, as a juristic person, is incapable of exercising any such power, or having any such capacity, it being recorded that the powers of the Company shall include the following powers:

6.1.1 to determine the amounts to be raised from each Member in respect of the Administrative Fund and/or the Reserve Fund and to raise and collect the amounts so determined by levying contributions on the Members in proportion to their Participation Quota, provided that:

6.1.1.1 the Company must require the Members of Units entitled to the right to the exclusive use of a part or parts of the Common Property (whether or not such right is registered or conferred by rules) to make such additional contribution to the Administrative Fund and/or the Reserve Fund as is estimated as being necessary to defray the costs of rates and taxes, the Consumable Charges, insurance and maintenance in respect of and attributable any such exclusive use area/s;

6.1.1.2 the Company may require from the Developer who is entitled to extend the scheme in terms of a right reserved in section 25 (1) of the Sectional Titles Act, to make such reasonable additional contribution to the Administrative Fund and/or the Reserve Fund as may be necessary to defray the cost of rates and taxes, Consumable Charges, insurance and maintenance in respect of and attributable such parts of the Common Property in respect of which the right of extension vests;

6.1.2 to levy members with a special contribution if additional income is required to meet an expense that cannot reasonably be delayed until provided for in the next financial year;

6.1.3 charge interest on any overdue amount payable to the Company in respect of contributions raised and levied by the Company, provided that the interest rate must not exceed the maximum rate of interest payable in respect of incidental credit agreements in accordance with the regulations published under the National Credit Act, 2005 (Act No. 34 of 2005);

6.1.4 to enter into an agreement with any Owner or occupier of a Unit for the provision of amenities or services by the Company to such Unit or to the Owner or occupier thereof;

6.1.5 to open a bank account in the name of the Company;

6.1.6 enter into and sign contracts in the exercise of its powers and duties;

6.1.7 to purchase, hire or otherwise acquire movable property for the use of Members for their enjoyment or protection or in connection with the enjoyment or protection of the Common

Property;

6.1.8 where practicable, to establish and maintain on the Common Property suitable lawns, gardens and recreational facilities;

6.1.9 to secure the repayment of moneys borrowed by it and the payment of interest thereon, by notarial bond over unpaid contributions whether levied or not, or by mortgaging any property vested in the Company;

6.1.10 to invest any moneys of the Administrative Fund and/ or Reserve Fund as the Board may deem prudent; and

6.1.11 to do all things reasonably necessary for the enforcement of the rules as set out in this MOI and for the management and administration of the Common Property and the Scheme.

6.2 Notwithstanding the foregoing provisions, the following powers of the Company shall in accordance with the Sectional Titles Schemes Management Act be subject to the following approval:

6.2.1 upon the passing of a Special Resolution, the right to let a portion of the Common Property to any such Owner or occupier by means of a lease other than a lease as contemplated in clause 6.2.2 below;

6.2.2 upon the passing of a Unanimous Resolution, on direction by the Members and with the written consent of any holder of a right of extension contemplated in section 25 of the Sectional Titles Act, alienate Common Property or any part thereof, or let the Common Property or any part thereof under a lease;

6.2.3 upon the passing of a Special Resolution, to borrow moneys required by it in the performance of its functions or the exercise of its powers;

6.2.4 upon the passing of a Special Resolution and when essential for the proper fulfilment of its duties, to purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of or hire or let the Units;

6.2.5 with the written consent of all the Members as well as the written consent of the mortgagee of each Unit in the Scheme, alienate, or in terms of the Sectional Titles Act to exercise or cede, a right of extension of the Scheme by the addition of sections, provided that an owner or mortgagee may not withhold such approval without good cause in law;

6.2.6 upon the passing of a Unanimous Resolution, enter into a notarial agreement to extend the period stipulated in the condition referred to in section 25 (1) of the Sectional Titles Act;

6.2.7 if duly authorised thereto in writing by all the Members, to purchase land to extend the Common Property,

6.2.8 upon the passing of a Unanimous Resolution, request the delineation and cession of exclusive

use rights to particular Owners in terms of section 27 (2) of the Sectional Titles Act;

6.2.9 upon the passing of a Special Resolution, enter into a notarial deed of cancellation of an exclusive use right in terms of section 27 (5) of the Sectional Titles Act;

6.2.10 upon Special Resolution, execute on behalf of the Owners a servitude or a restrictive agreement burdening the land shown on the relevant sectional plan and may accept on their behalf a servitude or restrictive agreement benefiting such land, as contemplated in section 29 of the Sectional Titles Act;

6.2.11 on application by an Owner and upon the passing of a Special Resolution, approve the extension of boundaries or floor area of a section in terms of the Sectional Titles Act.

6.3 The Company must apply all of its assets and income, however derived, to advance its stated objects.

6.4 The Company must not, directly or indirectly, pay any portion of its income or transfer any of its assets, regardless how the income or asset was derived, to any person who is or was an Incorporator of the Company, or who is a Director, or person appointing a Director, of the Company, except:-

6.4.1 as reasonable (i) remuneration for goods delivered or services rendered to, or at the direction of, the Company or (ii) payment of, or reimbursement for, expenses incurred to advance a stated object of the Company;

6.4.2 as a payment of an amount due and payable by the Company in terms of a *bona fide* agreement between the Company and that person or another;

6.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the company in order to advance a stated object of the Company; or

6.4.4 in respect of any legal obligation binding on the Company.

6.5 The Company may not:-

6.5.1 amalgamate or merge with, or convert into, a profit company; or

6.5.2 dispose of any part of its assets, undertaking or business to a profit company, other than for fair value or except to the extent that such a disposition of an asset occurs in the ordinary course of the activities of the Company.

6.6 Any proposal to:-

6.6.1 dispose of all or the greater part of its assets or undertaking; or

6.6.2 amalgamate or merge with another non-profit company,

must be submitted to the Members for approval, in a manner comparable to that required of profit companies in accordance with sections 112 and 113 of the Companies Act, respectively, and provided further that sections 115 and 116 of the Companies Act, read with the changes required by the context, shall apply in respect of such approval.

6.7 This MOI does not contain any restrictive conditions applicable to the Company as contemplated in section 15(2)(b) of the Companies Act or prohibit the amendment of any particular provision of the MOI as contemplated in section 15(2)(c) of the Companies Act.

7 LIMITATION OF LIABILITY

7.1 A person is not, solely by reason of being an Incorporator, Director or Member of the Company, liable for any liabilities or obligations of the Company, except to the extent that this MOI or the Companies Act provides otherwise.

8 AMENDMENT OF MEMORANDUM OF INCORPORATION

8.1 The Company's MOI may be amended:

8.1.1 in compliance with a court order by way of a resolution passed by the Board of Directors of the Company;

8.1.2 at any other time if a special resolution to amend it is:

8.1.2.1 proposed by the Board; or

8.1.2.2 Members entitled to exercise at least 10% of the voting rights that may be exercised on such a resolution; and

8.1.2.3 is adopted:

8.1.2.3.1 at a Members meeting; or

8.1.2.3.2 in writing by Members entitled to exercise voting rights in relation to the said resolution within 20 (Twenty) business days after the said resolution was submitted to them in accordance with Section 60 of the Companies Act; or

8.1.3 by the Board, or an individual authorised by the Board but only to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the MOI, such amendment to be effected by forthwith publishing a notice of the alteration by delivering a copy thereof to each Member.

8.2 If the Company has amended its MOI, the MOI as previously adopted by the Company shall have no force or effect with respect to any other right, cause of action or matter occurring or arising after the date on which the amendment takes effect in accordance with the Companies Act.

9 COMPANY RULES

9.1 The authority of the Board to make, amend or repeal any necessary or incidental Rules relating to the governance of the Company in respect of those matters that are not addressed in the Companies Act or in the MOI, is not limited or restricted in any manner by this MOI.

9.2 If the Board is desirous of making, amending or repeal Rules of the Company, the Board shall forthwith publish a notice of any new rule or the repeal or alteration of the Rules by:

9.2.1 delivering a copy thereof to each Member; and

9.2.2 filing a copy thereof with the Commission.

9.3 Such new Rule or amendment or repeal of the rule/s shall take effect 10 (Ten) business days after the rule is filed with the Commission in accordance with clause 9.2.2.

9.4 Notwithstanding the foregoing, the making, amending or repealing of a rule by the Board is binding:

9.4.1 on an interim basis from the time it takes effect until it is put to a vote at the next Member's meeting of the Company; and

9.4.2 on a permanent basis only if it has been ratified by an ordinary resolution at the Member's meeting contemplated in Clause 9.4.1 above.

9.5 If a rule filed in terms of Clause 9.2.2 above, is not subsequently:

9.5.1 ratified as contemplated in clause 9.4.2 above, the Board must file a notice of ratification, with the Commission, within 5 (Five) business days in the prescribed manner and form; or

9.5.2 not ratified when put to a vote, then the Board must file a notice of non-ratification, with the Commission within 5 (Five) business days after the vote, in the prescribed manner and form, and the Board may not make a substantially similar rule within the ensuing 12 months, unless it has been approved in advance by ordinary resolution of the Members.

10 APPLICATION OF THE OPTIONAL PROVISIONS OF THE COMPANIES ACT

10.1 The Company elects:

10.1.1 not to comply voluntarily with the provisions of Chapter 3 of the Companies Act, in terms of Section 34(2) of the Companies Act; and

10.1.2 not to submit itself voluntarily to the provisions of Parts B and C of Chapter 5 of the Companies Act and to the Takeover Regulations, in terms of Section 118(1)(c)(ii) of the Companies Act, to the extent that same may be applicable.

FINANCIAL STATEMENTS AND OTHER ACCOUNTING RECORDS

11 FINANCIAL STATEMENTS

11.1 The Company shall each year prepare annual financial statements within 6 months after the end of its financial year, in accordance with the Companies Act and the Companies Regulations.

11.2 The Company shall have its annual financial statements independently audited only to the extent that it may be required in terms of Section 30(2)(b)(ii) of the Companies Act, on the basis of the public interest score derived from the annual turnover, workforce size and the nature and extent of the activities of the Company, in accordance with the Companies Regulations, failing which the Company shall only be required to have its annual financial statements independently reviewed.

11.3 The annual financial statements shall be prepared on a basis that is not inconsistent with any unalterable or non-elective provision of the Companies Act and shall –

11.3.1 satisfy, as to form and content, the financial reporting standards of IFRS for SMEs;

11.3.2 subject to and in accordance with IFRS for SMEs –

11.3.2.1 present fairly the state of affairs and business of the Company and explain the transactions and financial position of the business of the Company;

11.3.2.2 show the Company's assets, liabilities and equity, as well as its income and expenses and any other prescribed information;

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

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

11.4 Together with the annual financial statements the Company must prepare or have prepared a statement which must reflect the:-

11.4.1 amounts due to the Company in respect of contributions, special contributions and other charges, classified by Member and the periods for which such amounts were owed;

11.4.2 amounts due by the Company to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed;

11.4.3 amounts advanced to the Company by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the Company and the amounts paid by the Company and by any Member in terms of such arrangement;

11.4.4 amounts paid from the Administrative Fund relative to the budget for the relevant financial year and any amount of the Administrative Fund as may be left over (if any);

11.4.5 the amount of the Reserve Fund, showing the amount available for maintenance, repair and replacement of each Major Capital Item as a percentage of the accrued estimated cost and the rand value of any shortfall;

11.4.6 premiums and other amounts paid and payments received by the Company and any Member in terms of the insurance policies of the Company and the expiry date of each policy; and

11.4.7 amounts due and payable to the Community Schemes Ombud Service;

11.5 A copy of the annual financial statements of the Company and the statement in clause 11.4 shall be delivered to all Members as soon as possible after those annual Financial Statements have been approved by the Board.

12 ACCOUNTING RECORDS AND OTHER DOCUMENTS AND RECORDS

12.1 The Company must:

- 12.1.1 keep accurate and complete accounting records in English that record all its income, expenditure, assets and liabilities of the Company;
- 12.1.2 keep separate books of account for its Administrative Fund and Reserve Funds;
- 12.1.3 keep records which disclose all amounts recovered from members by the Company or the Managing Agent or other service provider acting on its behalf;
- 12.1.4 keep records which include individual accounts for each Member; and
- 12.1.5 keep records which include any prescribed accounting records, which must be kept in the prescribed manner and form in accordance with the Companies Act.

12.2 In addition to the records as may be required in terms of the Companies Act, the Company shall keep the following documents and records:-

12.2.1 minutes of meetings of the Board and the Members, including the following information

- 12.2.1.1 the date, time and place of the meeting;
- 12.2.1.2 the names and role of the persons present, including details of the authorisation of proxies or other representative;
- 12.2.1.3 the text or minutes of all resolutions; and
- 12.2.1.4 the results of the voting on all motions;

12.2.2 lists of Directors, Members and tenants of the Unit with their

- 12.2.2.1 full names;
- 12.2.2.2 identity numbers or, in the case of non-South African citizens, their passport numbers; and
- 12.2.2.3 unit numbers and mailing addresses;
- 12.2.2.4 cellphone numbers; and
- 12.2.2.5 email addresses;

12.2.3 lists of

12.2.3.1 Units shown on the sectional plan, indicating in each case the Participation Quota and the name of the Member in whose name it is registered;

12.2.3.2 exclusive use areas with descriptions of purposes and numbers, if any, indicating whether the rights to each area are conferred in terms of section 27 of the Sectional Titles Act or in terms of a rule, and a reference to the relevant rule where applicable; and

12.2.3.3 registered bondholders with their names and addresses;

12.2.4 details of all future development rights including

12.2.4.1 names and addresses of all registered holders of such rights; and

12.2.4.2 copies of all documentation prepared in terms of section 25(2) of the Sectional Titles Act for any such right.

12.3 The records shall be kept or may be accessed either digitally or physically at the registered office of the Company or the Managing Agent and must be retained for a period of six years after completion of the transactions, acts or operations to which they relate.

12.4 The records of the Company and shall always be open to inspection by the Directors and shall be open to inspection by Members (whether or not they are Directors) on written request, subject to any reasonable restrictions as to time and manner of inspection that may be imposed by the Directors.

13 ANNUAL GENERAL MEETINGS

13.1 Notwithstanding the provisions of section 61(7) of the Companies Act, it is recorded that the Company shall be compelled to hold an annual general meeting to be attended by the Directors and the Members and may be attended by the Developer. The annual general meeting shall be held once in every financial year, but not more than 6 months after the financial year end of the Company, provided that the annual financial statements have been prepared in accordance with clause 11 above.

13.2 The annual general meeting shall at a minimum, provide for the following business to be

transacted: 13.2.1 a presentation of the annual financial statements for the immediately preceding financial year;

13.2.2 a presentation of the report from the Board, providing feedback on:

13.2.2.1 the Company's operational and financial performance;

13.2.2.2 how the Administrative Fund and Reserve Fund was utilised or invested.

13.2.3 a presentation and approval, by way of an Ordinary Resolution of Members, of the maintenance, repair and replacement plan in accordance with clause 14 below;

13.2.4 the discussion and approval, by way of an Ordinary Resolution of Members, of the budget for the ensuing financial year in accordance with the provisions and requirements set out in clause 49;

13.2.5 election of Directors to the extent required by the Companies Act or the MOI;

and 13.2.6 any matter raised by the Members, with or without advance notice to the

Company; FUNCTIONS AND DUTIES RELATING TO THE SCHEME

14 MAINTENANCE, REPAIR AND REPLACEMENT PLAN

14.1 Save as otherwise set out herein, the Company shall be responsible for the maintenance of the Common Property and the replacement or repair of fixtures, fittings or equipment servicing the Common Property and belonging to the Company.

14.2 The Board must prepare and annually revise a written maintenance, repair and replacement plan for the Common Property, setting out:-

14.2.1 the Major Capital Items expected to require maintenance, repair and replacement within the next 10 years;

14.2.2 the present condition or state of repair of the Major Capital Items;

14.2.3 the estimated time when the Major Capital Items or the components of those items will need to be maintained, repaired or replaced;

14.2.4 the estimated cost of the maintenance, repair and replacement of the Major Capital Items or the components of those items;

14.2.5 the estimated life or number of years before it is expected that the cost of maintenance, repair or replacement of the Major Capital Items will be incurred; and

14.2.6 any other information the Company considers relevant.

14.3 A maintenance, repair and replacement plan takes effect on its approval by an Ordinary Resolution of Members at the annual general meeting.

15 INSURANCE

15.1 The Board shall insure the buildings in the Scheme and keep them insured to the replacement value thereof. The Company must obtain a replacement valuation of all buildings and improvements that it must insure at least every 3 (three) years and present such replacement valuation to the annual general meeting.

15.2 The insurance policies of the Company in terms of clause 5.2.3 and 5.2.4:

15.2.1 must provide cover against fire and lightning and may provide cover against explosion and smoke, riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation, storm, tempest, windstorm, hail and flood, earthquake and subsidence, water escape, including bursting or overflowing of water tanks, apparatus or pipes, impact by aircraft and vehicles and housebreaking or any attempt thereat, as the Board may deem prudent on the advice of the insurance brokers appointed by the Company from time to time;

15.2.2 must specify a replacement value for each Unit and exclusive use area to the extent applicable;
and

15.2.3 shall be on such terms and conditions as may be acceptable to the Board.

15.3 A Member shall responsible for any excess amount that relates to damage to any part of the buildings which that Member caused or is obliged to repair and maintain in terms of the Sectional Schemes Act or this MOI, and must furnish the Company with written proof from the insurer of payment of the excess amount within 7 (seven) days of written request by the Company that the Member pay the amount of such excess.

15.4 The Company must take out public liability insurance to cover the risk of any liability it may incur on or about the Common Property in order to pay compensation in respect of

15.4.1 any bodily injury to or death or illness of a person on or in connection with the Common Property;
and

15.4.2 any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the Common Property,

for an amount as the Board may deem prudent on the advice of the insurance brokers appointed by the Company from time to time.

16 IMPROVEMENTS TO COMMON PROPERTY

16.1 The Board may propose to make alterations or improvements to the Common Property, provided that no such proposal may be implemented until all Members are given at least 10 (ten) business days written notice with details of

16.1.1 the estimated costs associated with the proposed alterations or improvements;

16.1.2 details of how the Company intends to meet the costs, including details of any special contributions or loans to the Company that will be required for this purpose; and

16.1.3 a motivation for the proposal including drawings or plans of the proposed alterations or improvements (to the extent applicable);

provided that a proposal may not be implemented unless it is approved, with or without amendment, by (i) a Special Resolution if the alterations or improvements to the Common Property are reasonably necessary or (ii) a Unanimous Resolution if the alterations or improvements to the Common Property are not reasonably necessary (i.e. relates solely to the appearance, convenience or enjoyment of or in relation to the Common Property).

17 MANAGING AGENT

17.1 The Company may appoint a Managing Agent to perform all or a part of the functions and exercise the powers that would otherwise be performed and exercised by the Company.

17.2 Given that the Scheme is the product of the Developer and serves to establish the goodwill, reputation and brand attaching to the name of the Developer for future developments, it is recorded that the Developer shall, subject to clause 6.4 above, be entitled to nominate the Managing Agent to be appointed by the Board to act on behalf of the Company from time to time, provided that if the Developer fails or refuses to nominate the Managing Agent within 10 (ten) business days of a written request for such nomination from the Board, the Board shall be entitled to appoint the Managing Agent or to appoint one or more agents to perform specified financial, secretarial, administrative or other management services under the supervision of the Board.

17.3 The Board shall ensure that the Managing Agent:-

17.3.1 understands that it is subject to all the duties and obligations of a trustee of a body corporate under the Sectional Titles Scheme Management Act and the rules of the Scheme as set out in

this MOI;

17.3.2 is obliged to manage the Scheme with the required professional level of skill and care; 17.3.3 is liable for any loss suffered by the Company as a result of not applying such skill and care; 17.3.4 has a fiduciary obligation to every Member of the Company;

17.3.5 must arrange for the inspection of the Common Property at least every six months; and

17.3.6 must report to the Board at least every three months on the administration of the Scheme, which must include at least the following details

17.3.6.1 proposed repairs to and maintenance of the Common Property and assets of the Company within the next three months;

17.3.6.2 matters which the Managing Agent considers relevant to the condition of the Common Property and the assets of the Company;

17.3.6.3 the balance of each of the Administrative Fund and Reserve Fund of the Company on the date of the report and a reconciliation statement for Administrative Fund and Reserve Fund;

17.3.6.4 the expenses of the Company, including repair, maintenance and replacement costs; and

17.3.6.5 a brief description of the date and nature of all decisions made or actions taken by the Managing Agent during the period.

FUNDING AND LEVIES

18 ADMINISTRATIVE FUND AND RESERVE FUND

18.1 The Company must keep separate bank accounts for its Administrative Fund and Reserve Funds.

18.2 The Administrative Fund must be used to fund the operating expenses of the Company in a particular financial year and money may be paid out of the Administrative Fund by the Board in accordance with the approved budget for the Administrative Fund, subject to clause 50.2 below.

18.3 The Reserve Fund must be used for the implementation of the maintenance, repair and replacement plan of the Company and money may be paid out of the Reserve Fund by the Board

18.3.1 in accordance with the approved maintenance, repair and replacement plan; or

18.3.2 if the Board resolve that such a payment is necessary for the purpose of urgent maintenance,

repair or replacement expense, which purpose includes, without limitation to comply with (i) an order of a court or an adjudicator, (ii) to repair, maintain or replace any property for which the Company is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property, (iii) to repair any property for which the Company is responsible where the need for the repairs could not have been reasonably foreseen in preparing the maintenance, repair and replacement plan or (iv) to enable the Company to obtain adequate insurance for property that the Company is required to insure.

19 CONTRIBUTIONS AND CHARGES

19.1 The Board shall determine and levy a contribution due by the Members for purposes of the Administrative Fund and the Reserve Fund, provided that:

19.1.1 the total contribution to the Reserve Fund shall be determined as estimated cost for the maintenance, repair and replacement of the Major Capital Items LESS the funds in the Reserve Fund of the Company in respect of the estimated cost for the maintenance, repair and replace of the Major Capital Items) DIVIDED by the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a Major Capital Item will be incurred; and

19.1.2 the minimum amount of the budgeted annual contribution to the Reserve Fund:

19.1.2.1 if the amount of money in the Reserve Fund at the end of the previous financial year is less than 25% of the total contributions to the Administrative Fund for that previous financial year, must be at least 15 % of the total budgeted contribution to the Administrative Fund for ensuing financial year;

19.1.2.2 if the amount of money in the Reserve Fund at the end of the previous financial year is equal to or greater than 100% of the total contributions to the Administrative Fund for that previous financial year, then there is no minimum contribution to the Reserve Fund for the ensuing financial year; and

19.1.2.3 if the amount of money in the Reserve Fund at the end of the previous financial year is more than 25% but less than 100% of the total contributions to the Administrative Fund for that previous financial year, the budgeted contribution to the Reserve Fund must be at least equal to the amount budgeted to be spent from the Administrative Fund on repairs and maintenance to the Common Property in the ensuing financial year.

19.2 The Board must, as soon as possible after the approval of the budgets in accordance with clause 49 below, give each Member written notice of the contributions and charges due and payable by

that Member to the Company for the ensuing financial, which notice must

19.2.1 state the amount of the contributions and charges (save as set out in clause 19.3.1 below) that the Member has an obligation to pay;

19.2.2 specify the due date for each payment; and

19.2.3 if applicable, state that interest rate which will be payable on any overdue contributions and charges.

19.3 Notwithstanding the provisions of clause 19.2, the Board shall:

19.3.1 recoup the Consumable Charges attributable to the Unit from the Members, monthly in arrears on the basis of individual meter readings in respect of each Unit, which amounts shall be payable within 3 (three) business days of receipt of written demand from the Company;

19.3.2 be entitled to determine and levy a special contribution if additional income is required to meet any expenses that cannot reasonably be delayed until provided for in the next financial year, which amounts shall be payable on such date/s as may be reasonably determined by the Board.

19.4 If any amount due to the Company is not paid on or before the due date therefore, the Company shall send a final notice to the Member, which notice must provide the Member with 14 (fourteen) days' notice within which to remedy its/his/her default and pay the overdue contributions and charges and any applicable interest owing to the Company, failing which the Company shall be entitled to initiate proceedings against the Member in accordance with clause 19.7 below.

19.5 The Company must, on the written request from a member, make available a full and detailed account of all amounts debited and credited to the Member's account by the Company.

19.6 A certificate signed by any Director of the Company setting out the amount of the Member's indebtedness to the Company in respect of arrear contributions plus interest thereon (if any), shall constitute *prima facie* proof of the amount that the Member owes to the Company, and shall be valid as a liquid document in any court of competent jurisdiction, for the purposes of provisional sentence, summary judgement, or final judgement against the Member.

19.7 The Company shall be entitled to sue or recover any arrear levy instalment or other amount due to the Company by a Member, by instituting action against him/her/it in any Magistrate's Court having jurisdiction in respect of such contribution/levy, to which jurisdiction the Members are deemed to have consented in terms of the Magistrate's Court Act, 1944 (Act 32 of 1944). These provisions shall not preclude the Company from instituting proceedings in any other court which may have

jurisdiction in respect of the claim or person of the member concerned.

MEMBERS AND MEMBERSHIP

20 MEMBERS

20.1 The Company shall have a single class of Members, namely ordinary members. Each Member shall have the same rights as all other Members in any matter to be decided on by the Members of the Company, unless expressly provided otherwise in this MOI.

20.2 All members of the Body Corporate shall be admitted and be recognised as Members.

20.3 Persons qualifying to be admitted as a Member may be any persons including natural persons, companies, closed corporations, trusts, or partnerships.

21 MEMBERS REGISTER

21.1 The Company shall maintain a register of Members of the Company, the names, email addresses, postal addresses and other relevant contact details of each Member. No certificates of membership shall be issued by the Company.

22 PREFERENCES, RIGHTS, LIMITATIONS AND OTHER TERMS OF MEMBERSHIP

22.1 Any Member of the Company shall be entitled to attend, speak at and vote at any general meeting of Members.

22.2 Each Member shall have the information rights set out in Section 26(1) of the Companies Act.

22.3 All Members shall stand in a fiduciary relationship to one another and to the Company and shall consequently, but without prejudice to the generality of the foregoing owe one another and the Company the duty of the utmost good faith, integrity and honesty at all times.

22.4 No Member shall be entitled to Dispose of or Encumber any Unit in the Scheme without the prior written consent of the Board, which consent shall not be withheld unless such Member is indebted to the Company in any way in respect of any contributions, charges and/or interest which may be due to the Company.

22.5 In addition to the provisions of clause 22.4, it is recorded that no Member shall be entitled to Dispose of any Unit in the Scheme (other than to permit temporary occupation by way of lease agreement of less than 10 years) unless it/he/she has obtained a clearance certificate issued under the hand of a Director of the Company or the Managing Agent, certifying that the Member has at date of transfer fulfilled all its/his/her financial obligations to the Company including but not

limited to the payment of an administration fee, as may be reasonably imposed by the Board or Managing Agent for the issuance of a clearance certificate in terms hereof.

23 DUTIES OF MEMBERS IN THEIR CAPACITY AS OWNERS

23.1 A Member must

23.1.1 permit any person authorised in writing by the Board, during reasonable hours and on notice (except in case of emergency, where no notice shall be required), to enter its/his/her Unit or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing any pipes, wires, cables or ducts existing on or about the Unit or exclusive use area and capable of being used in connection with the enjoyment of any other Unit or the Common Property, or for the purpose of ensuring that the Sectional Titles Schemes Management Act and the rules set out in the MOI are being observed;

23.1.2 forthwith carry out all work that may be ordered by any competent authority in respect of its/his/her Unit or exclusive use area, other than such work as may be required for the benefit of the building generally, and to pay all charges, expenses and assessments that may be payable in respect of its/his/her Unit;

23.1.3 repair and maintain its/his/her Unit and to keep its/his/her Unit in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;

23.1.4 use and enjoy the Common Property in such a manner so as to not unreasonably interfere with the use and enjoyment of the Common Property by other Members or other persons lawfully on the Common Property;

23.1.5 not use its/his/her Unit or exclusive use area, or permit it to be used, in a manner or for a purpose which may cause a nuisance to any occupier of a Unit in the Scheme;

23.1.6 notify the Company forthwith of any change of ownership or occupancy its/his/her section and of any mortgage granted in respect of the Unit; and

23.1.7 not use nor permit the Unit or exclusive use area to be used for any other purpose than that for which it is intended in accordance with the Sectional Plan and the rules of the Scheme, provided that with the written consent of all other Members such Unit or exclusive use area may be used for the purpose so consented to.

23.2 Notwithstanding the existence of a valid insurance policy effected by the Company, an owner may obtain an insurance policy in respect of any damage to its/his/her Unit arising from risks not covered by the policy effected by the Company and nothing herein shall limit the rights of a

Member to insure against risks other than damage to its/his/her Unit.

24 USE OF UNITS AND COMMON PROPERTY

24.1 A Member or any other occupier of a Unit or exclusive use area shall not

24.1.1 use the Common Property so as to unreasonably interfere with other persons lawfully on the Common Property;

24.1.2 use a Unit or exclusive use area so as to cause a nuisance or in a manner or for a purpose which may cause a nuisance to any occupier of a Unit in the Scheme;

24.1.3 contravene the provisions of any

24.1.3.1 law or by-law relating to the Scheme or the use of the Unit or the exclusive use area;

24.1.3.2 conditions of a license relating to use of the building or the Common Property, or the carrying on of a business in the building; or

24.1.3.3 zoning or conditions of title applicable to the Units or exclusive use areas;

24.1.4 make alterations to a Unit or an exclusive use area that is likely to impair the stability of the building or interfere with the use and enjoyment of other Units, the Common Property or any exclusive use areas;

24.1.5 do anything to a Unit or exclusive use area that has a material negative affect on the value or utility of any other Unit, an exclusive use area or the Common Property;

24.1.6 use a Unit or exclusive use area for a purpose other than for its intended use as 24.1.6.1 shown expressly or by implication on a registered sectional plan or an approved building plan;

24.1.6.2 can reasonably be inferred from the provisions of the applicable town planning by-laws or the rules of the Company; or

24.1.6.3 is obvious from its construction, layout and available amenities;

24.1.7 construct or place any structure or building improvement on an exclusive use area which may constitute a section or an extension of the boundaries or floor area of a Unit without complying with the requirements of the Sectional Titles Schemes Management Act and the Sectional Titles Act, provided that the Board may: -

24.1.7.1 give consent for such a structure or building improvement, if they are satisfied that it does not require compliance with such requirements;

24.1.7.2 prescribe any reasonable condition in regard to the use or appearance of the structure or building improvement; and

24.1.7.3 withdraw any consent if the Member or other occupier of the Unit breaches any such condition.

24.1.8 Not divide, consolidate or extend the Unit (or Units) without the prior consent of the Board and having complied with the provisions of the Sectional Titles Act and the Sectional Titles Schemes Management Act.

25 OBLIGATION TO MAINTAIN

25.1 If despite written demand by the Company, a Member refuses or fails to

25.1.1 carry out work in respect of that Member's Unit ordered by a competent authority as required by section 13(1)(b) of the Sectional Titles Schemes Management Act; or

25.1.2 repair or maintain the Unit owned by that Member in a state of good repair as required by section 13(1)(c) of the Sectional Titles Schemes Management Act;

and the failure threatens the stability of the Common Property, the safety of the building or otherwise materially prejudices the interests of the Company, its Members or the occupiers of the Units generally, the Company may remedy the Member's failure and recover the reasonable cost of doing so from that Member, provided that in the case of an emergency, no demand or notice needs be given by the Company to the Member concerned.

25.2 Notwithstanding that a geyser or water-heating installation may form a part of the Common Property or may be insured by the Company, a Member shall be responsible for and must maintain, repair and, when necessary, replace any geyser or water-heating installation which serves that Member's Unit or exclusive use area, provided that where such an installation serves Units owned or exclusive use areas held by more than one Member, the Members concerned must share the maintenance, repair and replacement costs on a *pro-rata* basis.

26 TERMINATION OF MEMBERSHIP OR SUSPENSION OF VOTING RIGHTS

26.1 A Member's membership of the Company shall forthwith terminate when he/she/it ceases to be a member of the Body Corporate.

26.2 A previous Owner whose membership of the Company has been terminated or the estate of that person (as the case may be) shall remain fully liable for all amounts that may, at the date of such termination, be due and payable to the Company.

26.3 A Member shall be entitled to the return of any amounts paid to the Company in respect of any contribution to the Administration Fund as reflecting in the books of the Company as at date of termination of membership of the Company, which was paid by the Member prior to the termination of its/his/her membership in respect of any period after the termination of membership, it being specifically recorded that the exiting Member shall have no claim in respect of any portion or part of the contribution which is demarcated for and allocated as being for the Reserve Fund of the Company. It is further recorded that the Member shall not be entitled to any interest on an amount to be refunded in terms of this clause.

26.4 A final reconciliation statement issued by the Board or the accountant/auditor of the Company, shall, save for manifest error, be *prima facie* proof of any surplus amounts owing to the Member (if any) and which amounts shall be settled by the Company within 30 (thirty) days of the date on which such final reconciliation statement is issued by the Company.

27 GENERAL RULES PERTAINING TO MEMBERS AND THE SCHEME

27.1 In the event of the Board instituting any legal proceedings against any Member, guest or visitor of a Member or lessee of a Member, the Company shall be entitled to recover all such legal costs so incurred directly from the relevant Member concerned and calculated on the basis as between attorney and own client.

27.2 In the event of any breach of the provisions of the MOI or the Rules of the Company by any member of the household of any Member, or by any guest or visitor of a Member, or resident or lessee occupying the Unit of any Member, such breach shall be deemed to have been committed by the Member so concerned. Notwithstanding the foregoing, the Board may without prejudice also take such steps against the person actually committing the breach as they in their discretion may deem fit.

27.3 Each and every Member individually shall indemnify and hold harmless the Company against any action by the Member, members of his family or any person within the Scheme at the invitation of or under the control of the Member concerned, whatsoever the nature of such claim and howsoever arising.

27.4 It is the responsibility of Members to ensure that they, their family members, tenants occupying the Units and their visitors are properly informed of the provisions of this MOI and the Conduct Rules and to ensure that all such persons, whilst being present in the Scheme, are required to comply with the Conduct Rules.

27.5 The Board may make Rules relating to security measurements and access control to the Scheme.

MEMBERS MEETINGS

28 REPRESENTATION BY PROXIES

28.1 A Member may, at any time by written proxy, appoint any individual, including an individual who is not a Member of the Company, as a proxy to:

28.1.1 participate in, and speak and vote at, a Members' meeting on behalf of the Member; or

28.1.2 give or withhold written consent on behalf of that Member to a resolution referred to in Clause 29 below.

28.2 The instrument appointing a proxy shall be in the form as shown in **Schedule C** hereto, or in any other form which the Directors shall approve.

28.3 A Member may not appoint more than one person concurrently as proxies, and may not appoint more than one proxy to exercise voting rights attached to Participation Quota allocated to that Member.

28.4 A proxy may not delegate the proxy's authority to act on behalf of the Member to another person.

28.5 A Member must deliver to the Company a copy of the instrument appointing a proxy at any time before the time for holding the meeting (including an adjourned meeting) at which the person named in the proxy form proposes to vote.

28.6 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, is not limited or restricted by this MOI.

28.7 A proxy appointment:

28.7.1 must be in writing, dated and signed by the Member concerned; and

28.7.2 remains valid for:

28.7.2.1 (one) year after the date on which it was signed; or

28.7.2.2 any longer or shorter period expressly set out in the appointment, unless it is revoked in a manner contemplated in Clause 28.8.3 or expires earlier as contemplated herein.

28.8 Irrespective of the form of instrument used to appoint a proxy:

28.8.1 the appointment is suspended any time and to the extent that the Member chooses to act directly

and in person in the exercise of any rights as a Member;

28.8.2 the appointment is revocable, unless the proxy appointment expressly states otherwise; and

28.8.3 if the appointment is revocable, the Member may revoke the proxy appointment by: 28.8.3.1 cancelling it in writing, or making a later inconsistent appointment of a proxy; and 28.8.3.2 delivering a copy of the revocation instrument to the proxy, and to the Company.

28.9 The revocation of a proxy appointment constitutes a complete and final cancellation of the proxy's authority to act on behalf of the Member as of the later of:

28.9.1 the date stated in the revocation instrument, if any; or

28.9.2 the date on which the revocation instrument was delivered as required in Clause 28.8.3.2 above.

29 MEMBERS ACTING OTHER THAN AT MEETING

29.1 A resolution that could be voted on at a Members meeting may instead be

29.1.1 submitted for consideration to the Members entitled to exercise voting rights in relation to that resolution; and

29.1.2 voted on in writing by Members entitled to exercise voting rights in relation to that resolution within 20 (Twenty) business days after the resolution was submitted to them.

29.2 Any resolution of the Members may be taken in the manner contemplated in Clause 29.1 above, except the business that is required by the Companies Act to be conducted at a Members meeting.

29.3 Unless the contrary is stated in the resolution, any such resolution shall be deemed to have been adopted on the date on which the Company received the written vote of the Member or the proxy of the Member whose vote resulted in the resolution by being supported by sufficient votes for its adoption.

29.4 Within 10 (Ten) business days of adopting a resolution referred to in Clause 29.1, the Company must deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution.

30 REQUIREMENTS FOR MEMBERS MEETINGS

30.1 The Company is not required to hold Members' meetings other than those meetings specifically required by the Companies Act, the Sectional Titles Schemes Management Act or by this MOI.

30.2 The right of Members to requisition a meeting, may be exercised, in writing, and signed by the holders of at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at such meeting, provided however that the demand for a meeting must describe the specific purpose for which the meeting is proposed, or where requested by more than one Member, and such Members being entitled to exercise at least 10% of the voting rights in aggregate, then the demands of the aforesaid Members should relate to substantially the same purpose;

30.3 Subject to Clause 29, the Board must call a Members' meeting:

30.3.1 at any time that the Board is required by the Sectional Titles Schemes Management Act, the Companies Act or the MOI to refer a matter to Members for decision;

30.3.2 whenever required in terms of Section 70(3) of the Companies Act to fill a vacancy on the Board;

and

30.3.3 when otherwise demanded in terms of Clause 30.2 above.

30.4 The authority of the Board to determine the location of any Members' meeting is not otherwise limited or restricted by the MOI, provided that such meeting shall be held in the Republic of South Africa but not in any foreign country.

31 NOTICE OF MEMBERS MEETINGS

31.1 The Company:

31.1.1 must deliver a notice of every Members' meeting in the prescribed manner and form to all of the Members of the Company as of the Record Date for the meeting, at least 10 (Ten) business days before the meeting is to begin; and

31.1.2 may call a meeting with less notice than required by Clause 31.1.1 above, but such a meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda:

31.1.2.1 is present at the meeting; and

31.1.2.2 votes to waive the required minimum notice of the meeting.

31.2 A notice of a Members' meeting must be in writing, and must include:

31.2.1 the date, time and place for the meeting, and the record date for the meeting;

31.2.2 the general purpose of the meeting and any specific purpose contemplated in Clause 30.2, if applicable;

31.2.3 a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and the notice of the percentage of voting rights that will be required for that resolution to be adopted;

31.2.4 a reasonably prominent statement that:

31.2.4.1 a Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Member;

31.2.4.2 a proxy need not also be a Member of the Company; and

31.2.4.3 that meeting participants are required to provide satisfactory identification.

32 CONDUCT OF MEETINGS

32.1 The Company:

32.1.1 may provide for a Members Meeting to be conducted in whole or in part by electronic communication; and

32.1.2 must make provision for any Member, or proxy for a Member, to participate by electronic communication in every Members Meeting that is being held in person at any place other than the Registered Office of the Company, and any electronic communication facility so employed must ordinarily enable all persons participating in the meeting to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, with or without an intermediary.

32.2 The Company shall ensure that any notice of any meeting of Members, at which it will be possible for Members to participate by way of electronic communication, shall inform Members of that form of participation and shall provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication.

32.3 At a meeting of Members, voting may either be by a show of hands, or by polling

32.3.1 if voting is by a show of hands, any person who is present at the meeting, whether as a Member or as proxy for a Member and entitled to exercise voting rights has the number of votes determined in accordance with the voting rights associated with the Participation Quota allocated that Member; or

32.3.2 if voting on a particular matter is by polling, any person who is present at the meeting, whether as a Member or as proxy for a Member, has the number of votes determined in accordance with the voting rights associated with the Participation Quota allocated to that Member.

33 QUORUM AND ADJOURNMENT FOR MEMBERS MEETING

33.1 The quorum requirement:

33.1.1 for a Members' meeting to begin, is at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at that meeting;

33.1.2 a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25%, of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.

33.2 Despite the quorum percentage set forth in Clauses 33.1.1 and 33.1.2 respectively, if the Company has more than two Members, a meeting may not begin, or a matter may not be debated, unless:

33.2.1 at least three Members are present in person or by proxy at the meeting; and

33.2.2 the requirements of Clauses 33.1.1 and 33.1.2 are satisfied.

33.3 If, within 30 (thirty) minutes after the appointed time for the meeting to begin, the quorum requirements of Clause 33.1 or 33.2 are not satisfied:

33.3.1 for that meeting to begin, the meeting is postponed without motion or vote to the same day (or if that day is not a business day, the next business day) in the next week;

33.3.2 for consideration of a particular matter to begin:

33.3.2.1 if there is other business on the agenda, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or

33.3.2.2 if there is no other business on the agenda of the meeting, the meeting is adjourned, without motion or vote, to the same day (or if that day is a public holiday, the next business day) in

the next week.

33.4 The chairperson at the meeting that cannot begin due to the operation of Clause 33.1 or 33.2, may extend the 30 (thirty) minute limit allowed in terms of Clause 33.3 for a reasonable period on the grounds that:

33.4.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Members to be present at the meeting; or

33.4.2 one or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with others in attendance, would satisfy the requirements of Clause 33.1 or 33.2.

33.5 The Company is not required to give further notice of a meeting that is postponed or adjourned, unless the location for the meeting is different from the location of the postponed or adjourned meeting, or a location announced at the time of adjournment, in the case of an adjourned meeting

33.6 If, at the time appointed in terms of Clause 33.3 for the postponed meeting to begin, or for an adjourned meeting to resume, and the requirements of the proviso to Clause 33.1 or 33.2, have not been satisfied, the Members of the Company present in person or by proxy will be deemed to constitute a quorum.

33.7 After a quorum has been established for the Members meeting, or for a matter to be considered at a Members meeting, the meeting may continue, or the matter may be considered, regardless of whether the quorum remains established for the entire meeting or until the said matter has been finally considered (as the case may be).

34 CHAIRPERSON FOR MEMBERS MEETINGS

34.1 The chairperson for Members meetings shall be the chairperson of the Board or, failing him, the deputy chairperson of the Board, provided that, if no chairperson or deputy chairperson is present and willing to act, the Members present shall elect one of the Directors or, if no Director is present and willing to act, a Member, to be the chairperson of that Members' Meeting.

35 MEMBERS RESOLUTIONS

35.1 At any meeting of Members, any person who is present at the meeting, whether as a Member or as a proxy for a Member, shall be entitled to exercise the number of voting rights associated with the Participation Quota allocated such Member, which voting rights shall be determined in accordance with the preferences, rights, limitations and other terms, as set out in this MOI.

35.2 A Special Resolution or Unanimous Resolution is not required, except in the case of the matters referred to herein, in the Sectional Titles Schemes Management Act and in the Companies Act.

35.3 If any Member or proxy abstains from voting in respect of any resolution, that Member will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.

35.4 If there is a deadlock between the Members, the Chairperson shall not have a casting vote in the case of a deadlock and the vote shall not pass. Any such deadlock shall not constitute a ground for the winding up of the Company.

DIRECTORS' POWERS AND PROCEEDINGS

36 AUTHORITY OF THE BOARD OF DIRECTORS

36.1 The affairs of the Company shall be managed by or under the direction of the Board, which shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Companies Act or this MOI provides otherwise.

36.2 The Board may delegate to any one or more persons all such powers and delegate to any one or more persons the doing of all such acts (including the right to sub delegate).

36.3 Any failure by a Company at any time to have the minimum number of Directors required by the Companies Act or the MOI, does not limit or negate the authority of the Board, or invalidate anything done by the Board or the Company.

36.4 A Director, in his personal capacity, or any other entity in which the Director has any interest, or another Company of which the Director is also a Director and/or Member, may render professional services to the Company and he or such entity, shall be entitled to remuneration for those professional services, irrespective of the Director's directorship, provided that nothing herein contained shall authorise a Director or that entity to act as Auditor of the Company.

37 COMPOSITION AND APPOINTMENT OF THE BOARD OF DIRECTORS

37.1 The Board must comprise at least 3 (three) Directors and shall not exceed a maximum number of 6 (six) Directors.

37.2 At least one third of the Directors of the Company must be elected by the Members, with the proviso that the Directors of the Company who are in office at the time of the adoption of this amended MOI,

shall remain in office until such time as they resign or are removed, as provided for in this

MOI. 37.3 Directors shall be appointed as follows:

37.3.1 in accordance with section 66(4)(a)(i) of the Companies Act, the Developer shall, subject to clause 37.6 and 37.7, have a perpetual right to nominate (3) three persons to the Board of the Company (and such entitlement includes the right to nominate a person for election to the Board to replace any previous nominee, who has, for any reason, ceased to be a Director) and the remaining Members undertake to vote in favour of such nomination,

37.3.2 each director, in addition to the director elected in terms of clause 37.3.1, shall be elected by way of a vote passed by way of ordinary resolution of the Members.

37.4 The Developer, being entitled to nominate a Director in terms of Clause 37.3.1, is also entitled to request the removal, and if they so choose to request the replacement, of that Director.

37.5 There shall be no *ex officio* Directors, as contemplated in Section 66(4)(a)(i) of the Companies Act.

37.6 A person becomes entitled to serve as a Director of the Company when that person: 37.6.1 has been appointed or elected in accordance with these Clause 37.3; and 37.6.2 has delivered to the Company a written consent to serve as a Director of the Company.

37.7 A person need not satisfy any further eligibility requirements or qualifications, in addition to those set out in Section 69 of the Companies Act, in order to become or remain a Director or a prescribed officer of the Company.

37.8 Each Director shall serve for an indefinite term, as contemplated in Section 68(1) of the Companies Act, provided that a Director shall cease to hold office and a vacancy arises if a Director:

37.8.1 resigns or dies;

37.8.2 becomes incapacitated to the extent that the person is unable to perform the functions of a Director, and is unlikely to regain that capacity within a reasonable time, subject to section 71 (3);

37.8.3 is declared delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a Director of the company, in terms of section 162;

37.8.4 becomes ineligible or disqualified in terms of section 69, subject to section 71(3); or

37.8.5 is removed by resolution of the Members in terms of section 71(1), a resolution of the Board in terms of section 71 (3), or by order of the court in terms of section 71 (5) or (6).

37.9 The Board shall not be entitled to fill a vacancy arising on the Board in accordance with section 68(3) of the Companies Act.

38 ALTERNATE DIRECTORS

38.1 Each Director may, by notice to the Company at any time

38.1.1 nominate any one person in the alternative (including any of his co-Directors) to be his Alternate Director;

38.1.2 terminate any such appointment.

38.2 The appointment of an Alternate Director shall terminate when the Director to whom he is an Alternate Director ceases to be a Director; or terminates his appointment.

38.3 An Alternate Director shall subject to this MOI :

38.3.1 act as a Director and generally exercise all the rights of the Director to whom he is an Alternate Director, but only during in the absence or incapacity of that Director; and

38.3.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the Director to whom he is an Alternate Director, but shall not have any claim of any nature whatsoever against the Company for any remuneration of any nature whatsoever.

39 VACANCIES

39.1 If a vacancy arises on the Board, it must be filled by:

39.1.1 a new appointment in terms of clause 37.3.1, if the Director was appointed as contemplated in Clause 37.3.1, subject to the nomination of a replacement Director by the Developer; or

39.1.2 in any other case, by a new election conducted within six months after the vacancy arose:

39.1.2.1 at a Members meeting called for the purpose of electing the Director; or

39.1.2.2 by a poll of the persons entitled to exercise voting rights in an election of the Director as contemplated in Clause 29.

40 REMOVAL OF DIRECTORS

40.1 A Director may be removed by an ordinary resolution adopted at a Members' meeting by Members entitled to vote on the election of that Director, provided however that before the Members of the Company may consider a resolution for the removal of that Director:

40.1.1 the Director concerned must be given at least 10 (Ten) business days' notice of the meeting; and

40.1.2 the Director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.

40.2 If the Company has more than two Directors and a Member or Director has alleged that a Director of the Company has:

40.2.1 become ineligible or disqualified in terms of Section 69 of the Companies Act, other than on the grounds contemplated in Section 69(8)(a);

40.2.2 become incapacitated to the extent that the Director concerned is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; or

40.2.3 neglected, or been derelict in the performance of the functions of Director,

then the Board, other than the Director concerned, must determine the matter by resolution and may remove the Director concerned whom it has determined to be ineligible or disqualified, incapacitated, negligent, or derelict, as the case may be, provided however that the Board shall first comply with the provisions of Section 71(4) of the Companies Act.

41 BOARD COMMITTEES

41.1 The Board may

41.1.1 Appoint any number of committees of the Board;

41.1.2 delegate to any committee any of the authority of the Board (including the authority to sub delegate);

41.1.3 include any Person who is not a Director of the Company in such committees.

41.2 The authority and power of any committees established by the Board, as contemplated in Section

72(2) of the Companies Act, is not limited or restricted by this MOI, but may be restricted by the Board when establishing one committee or by subsequent resolution.

42 CHAIRPERSON OF THE BOARD

42.1 The Board shall be entitled, from time to time, to appoint a Director to act as the chairperson of the Board and to remove that chairperson from his post, with or without nominating a replacement.

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

42.3 The chairperson shall, subject to the Companies Act and this MOI and any decision of the Board,

determine the procedure to be followed at all meetings of the Board and of the Members.

DIRECTOR'S MEETINGS

43 DIRECTORS' MEETINGS

43.1 A Director authorised by the Board may call a meeting of the Board at any time and must call such a meeting if required to do so any one director..

43.2 The Board may determine the form and time for giving notice of its meetings, but no meeting of the Board may be convened without at least 5 (Five) business days' written notice having been given to all of the Directors.

43.3 If all of the Directors of the Company :

43.3.1 acknowledge actual receipt of the notice;

43.3.2 are present at the meeting;

43.3.3 waive notice of that meeting; or

43.3.4 if the date for the meeting has previously been agreed between all Directors

then the meeting may proceed even if the Company failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

43.4 The authority of the Board to consider a matter other than at a meeting is not limited or restricted by this MOI and therefore, a decision that could be voted on at a meeting of the Board, may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided that each Director has received the required notice of the matter to be decided.

43.5 The authority of the Board to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, is not limited or restricted by this MOI; provided however that the electronic communication facility employed enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

43.6 the quorum for meetings of the Board shall be a majority in number of the Directors then in office who are capable of voting on the matter before the Board; provided that:-

43.6.1 if a quorum is not present within sixty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to the same day in the following week (or if that day is not a business day, the next business day), at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed;

43.6.2 if at any such postponed meeting a quorum is not present within sixty minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of Section 73(5)(b) of the Companies Act, the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting.

43.7 If a Director has a personal financial interest in respect of a matter to be considered at a meeting of the Board, or knows that a related person has a personal financial interest in the matter, the Director must disclose such personal financial interest and the Board comply in all respects, in the manner contemplated in section 75 of the Companies Act.

44 BOARD RESOLUTIONS

44.1 For purposes of a Board resolution:

44.1.1 A simple majority of the votes cast on a resolution is sufficient to approve that resolution.

44.1.2 In the case of a tied vote, the chairperson shall not have a deciding vote and the matter shall be referred to a vote of the Members of the Company.

44.2 Each other Director shall have one vote on a matter that serves before the Board.

44.3 an Alternate Director shall not be entitled to attend, speak or vote unless the Director to whom he is an Alternate Director is absent from that meeting.

44.4 The Board must keep minutes of the meetings of the Board, and any of its committees, and include in the minutes:

44.4.1 any declaration of interest given by notice or made by a Director as required by Section 75 of the Companies Act; and

44.4.2 every resolution adopted by the Board.

44.4.3 a record of every vote exercised by any Director against a proposed resolution which is eventually passed by the Board.

44.5 Resolutions passed by the Board :

44.5.1 must be dated and sequentially numbered; and

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

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

45 DIRECTORS ACTING OTHER THAN AT MEETINGS

45.1 A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person, or by electronic communication, provided that each Director has received notice of the matter to be decided.

45.2 A decision made in the manner contemplated in clause 45.1 is of the same effect as if it had been approved by voting at a meeting.

46 CHIEF EXECUTIVE AND RESPONSIBLE OFFICER:

46.1 As and when it may become appropriate, the Board shall be entitled to appoint such person as may be qualified for such office as Chief Executive Officer of the Company with such responsibilities, accountability and authority as the Board may determine.

46.2 In addition the Board is entitled to appoint and/or replace its Responsible Officer from time to time

as and when it deems fit. In addition to having such responsibilities, accountability and authority as the Board may determine, the Responsible Officer shall:

46.2.1 serve as the Company's public officer for purposes of communications with the South African Revenue Services;

46.2.2 serve as the Company's information officer for purposes of the Promotion of Access to Information Act No. 2 of 2000; and

46.2.3 serve as the Company's information officer for purposes of the Protection of Personal Information Act No. 4 of 2013.

47 INDEMNIFICATION OF DIRECTORS AND DIRECTORS' INSURANCE

47.1 For purposes of this Clause 47, "Director " includes a former Director and an alternate Director, a prescribed officer; and a person who is a member of a committee of the Board, or of the audit committee of the Company (if applicable), irrespective of whether or not that person is also a member of the Board.

47.2 The Company may not directly or indirectly pay any fine that may be imposed on its Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence, unless the conviction was based on strict liability.

47.3 The Company may :

47.3.1 advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and

47.3.2 directly or indirectly indemnify a Director for expenses contemplated in Clause 47.3.1, irrespective of whether it has advanced those expenses, if the proceedings:

47.3.2.1 are abandoned or exculpate the Director; or

47.3.2.2 arise in respect of any liability for which the Company may indemnify that Director, in terms of the Companies Act.

47.4 The Company may generally indemnify a Director in respect of any liability arising other than, in respect of any liability arising :

47.4.1 in terms of Section 77 (3)(a), (b) or (c) of the Companies Act; or

47.4.2 from wilful misconduct or wilful breach of trust on the part of the said Director; or

47.4.3 any fine contemplated in Section 77(3)

47.5 The Company may purchase insurance to protect:

47.5.1 a Director against any liability or expense for which the Company is permitted to indemnify a Director in accordance with Clause 47.4 above for such amount per Director as the Board may resolve; or

47.5.2 the Company against any contingency including, but not limited to:

47.5.2.1 any expenses:

47.5.2.1.1 that the Company is permitted to advance in accordance with Clause 47.3.1;

47.5.2.1.2 in respect of any liability for which the Company is permitted to indemnify a Director in accordance with Clause 47.4 above, for such amount per event as the Company may resolve.

47.6 The Company is entitled to claim restitution from a Director of the Company or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with this Clause 47.

GENERAL PROVISIONS RELATING TO THE COMPANY

48 FINANCIAL ASSISTANCE

48.1 The Company must not provide a loan to, secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the company or of a related or interrelated company, or to a person related to any such Director, unless:-

48.1.1 is in the ordinary course of the company's business and for fair value

48.1.2 constitutes an accountable advance to meet (i) legal expenses in relation to a matter concerning the Company or (ii) anticipated expenses to be incurred by the person on behalf of the company

48.1.3 is to defray the person's expenses for removal at the company's request; or 48.1.4 is in terms of an employee benefit scheme generally available to all employees or a specific class of employees.

49 ANNUAL BUDGET

49.1 The annual budget shall include but not be limited to:

- 49.1.1 a projected expenditure budget for the Administrative Fund;
- 49.1.2 a projected expenditure budget for the Reserve Fund on the basis of the approved maintenance, repair and replacement plan
- 49.2 During or about the end of each financial year, the Board shall, after consideration by the Board of any reports, estimates and budgets prepared by the Board, the Managing Agent or the professional advisors of the Company, cause to be prepared and tabled at the annual general meeting of the Company, a budget in final form which shall be approved as the budget for the ensuing financial year by the Members, by way of an Ordinary Resolution.
- 49.3 Until such time as the new annual budget has been approved in accordance with this clause 49.2, the previous annual budget will be applied by the Board and will be binding as if it had been approved in accordance with this clause 49.2.

50 APPLICATION OF FUNDS

- 50.1 The Company shall apply its funds and resources:
- 50.1.1 only in accordance with the provisions of the approved budget current at any particular point in time; and
- 50.1.2 solely to advance and for the furtherance of the objects of the Company, with the understanding that excess funds in any particular financial year may:
- 50.1.2.1 be contributed to the Administrative Fund for the ensuing financial year;
- 50.1.2.2 be invested to generate income for future use to advance and for the furtherance of the objects; or
- 50.1.2.3 be reasonably set aside as a Reserve Fund in order to ensure the long-term financial stability of the Scheme, the Company and to cater for unforeseen financial obligations or circumstances.
- 50.2 Notwithstanding the provisions of clause 50.1.1, the Board shall be entitled to approve any reasonable departure from the annual budget as may be necessary under the circumstances, subject to an Ordinary Resolution of the Members.

51 MANAGEMENT OF THE COMPANY

- 51.1 Control and management of the Company will vest in the Board.

51.1.1 The Board will be responsible for and have the following powers and authority –

51.1.1.1 the management of the Company;

51.1.1.2 determining the strategic policy of the Company and preparing the annual budget from time to time; and

51.1.1.3 ensuring compliance by the Members with the MOI, the Conduct Rules and any approvals framework from time to time.

51.2 The day-to-day management of the Company will be –

51.2.1 subject to the policies and principles determined from time to time by the Board; and

51.2.2 the responsibility of an executive directors who will be appointed from among the Directors by the Board.

52 CORPORATE EXISTENCE, LICENSES AND MAINTENANCE

52.1 The Board will use its best endeavours at all times to –

52.1.1 cause to be done all things necessary to maintain, preserve and renew the Company's existence as a company organised under the laws of the Republic;

52.1.2 comply with all provisions of the law applicable to the Company and to preserve and keep in force and effect all intellectual property rights, licences and permits necessary and material to the Company and/or the Scheme; and

52.1.3 maintain and keep, and cause to be maintained and kept, the property and assets belonging to it, in good repair, working order and condition (except for normal wear and tear), and from time to time to make all needful and proper repairs, renewals and replacements.

53 TAXES

The Board will use its best endeavours to duly pay and discharge all taxes, assessments and governmental charges upon or against the Company on or before same become due and before penalties accrue thereon, unless and to the extent that such taxes, assessments and governmental charges are being contested in good faith and by appropriate proceedings and the Company shall have set aside on their books adequate reserves with respect thereto.

54 SIGNING POWERS

54.1 Signing rights in respect of any agreements or banking accounts of the Company including any cheques which may be drawn, signed, made or endorsed by the Company, and all other bills of exchange or negotiable instruments, shall be so executed by such signatories duly authorised thereto by way of a Board resolution, from time to time.

55 WINDING UP

55.1 Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company:-

55.1.1 no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company after its obligations and liabilities have been satisfied; and

55.1.2 the entire net value of the Company must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts:-

55.1.2.1 having objects similar to its main object; and

55.1.2.2 as determined

55.1.2.2.1 by the Directors, at or immediately before the time of its dissolution; or

55.1.2.2.2 failing the Directors, by an ordinary resolution of Members, at or immediately before the time of its dissolution; or

55.1.2.2.3 by the court, if the Directors or the Members fail to make such a determination.

56 NOTICES

56.1 Each Member and Director and the Developer shall notify the Company in writing of an e-mail address and physical address, which address shall be his chosen addresses for the purposes of receiving written notices from the Company and, if he has not named such an address, notice may be given in any manner prescribed in the Table CR3 to the Companies Regulations and that notice shall be deemed to have been delivered as provided for in the Companies Regulations as a result of the relevant method of delivery.

56.2 Any notice shall, unless the contrary is proved, be deemed to be received:

56.2.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address of the Director/ Member. If delivery is not on a business day, or is after ordinary business hours on a business day, the notice is deemed to be received on the business day after the date of delivery; or

56.2.2 on the date of transmission, if sent by email to the recipient's email address of the Director/ Member. If transmission is not on a business day, or is after ordinary business hours on a business day, the notice is deemed to be received on the business day after the date of delivery;

56.3 Notwithstanding anything to the contrary herein contained, any notice actually received by any Member shall be deemed to be an adequate notice for purposes hereof.

56.4 Whenever a Notice is to be given personally or sent by post, the notice may be given by the Company to the persons entitled to a share in consequence of the death or insolvency of a Member, or by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustees of the insolvent or by any like description at the address (if any) in the Republic supplied for the purpose by the persons claiming to be so entitled, or (until such address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

57 DETERMINATION OF DISPUTES

57.1 Any dispute of whatsoever nature which arises out of or in connection with this MOI, including but not limited to its validity, interpretation, application, the parties respective obligations, or with regard to anything arising from or relating to, or otherwise concerning the Members, Directors or officers of the Company, then either party shall be entitled to, by notice to that effect, formally notify the other of the existence of a dispute.

57.2 Such notice shall briefly formulate:

57.2.1 the issues in dispute;

57.2.2 the particular party's position in that regard; and

57.2.3 the particular party's views as to how the dispute shall be resolved.

57.3 Upon receipt of such notice the Parties or the representatives of the Parties, respectively, shall use their best endeavours to resolve such dispute, as expeditiously and as amicably as possible by conferring, negotiating and mediating with one another in complete confidence and utmost good faith.

57.4 Should there be no such conferring, negotiating or mediating, or should such dispute not be resolved within 7 (Seven) days after the delivery of the dispute notice, then the dispute shall be referred to arbitration.

57.5 In the case of arbitration, the arbitrator shall, if the dispute is:

57.5.1 primarily an accounting matter, be an independent practising partner of a reputable accounting firm of not less than 10 years' standing as such;

57.5.2 primarily a legal matter, be an attorney of not less than 10 years' standing as such or a practising senior counsel;

57.5.3 any other matter, be a suitably qualified independent person

agreed upon in writing by the Parties, provided that if the Parties do not, within 7 (Seven) days after the date on which the dispute is referred for arbitration, agree in writing as to the identity of the arbitrator, then the arbitrator shall be a practicing senior counsel or an attorney of no less than 10 years standing nominated by the President of the Legal Practice Council of South Africa, from time to time.

57.6 The arbitration shall be held at a venue in Pretoria and in accordance with the High Court Rules, unless the Parties agree otherwise.

57.7 Immediately after the arbitrator has been appointed, any Party to the dispute shall be entitled to call upon the arbitrator to fix a date and place when and where to meet with the arbitrator to settle the manner in which the arbitration proceedings will be held.

57.8 The arbitrator shall have the power, inter alia, to:

57.8.1 investigate any matter, fact or thing which they consider necessary or desirable in connection with the dispute;

57.8.2 summon as a witness any person who may be able to give relevant evidence. Each Party shall use reasonable endeavours to procure the attendance when summoned of any witness employed by it or otherwise under its control;

57.8.3 interview, question and cross examine under oath any witness;

57.8.4 record evidence;

57.8.5 make an award regarding the responsibility for payment of legal fees. The scale of legal costs should be that of the High Court;

57.8.6 call for the assistance of any other person who they may deem necessary to assist them in arriving at their decision;

57.8.7 make such temporary or final order or award (including a rule nisi, a declaratory order, an order for specific performance, an interdict and an award of damages or a penalty) as a High Court would be competent to make in the circumstances;

57.8.8 exercise any additional powers which are conferred on them in terms of the Arbitration Act, 1965; and

57.8.9 to allow or cause any of the aforementioned things to be done.

57.9 Any order or award that may be made by the arbitrator

57.9.1 shall be final and binding;

57.9.2 shall be carried into effect; and

57.9.3 may be made an order of any competent court.

57.10 The hearing of the arbitration shall be held in camera. Unless otherwise agreed between the Parties

in writing, save to the extent strictly necessary for the purposes of the arbitration or for any court proceedings related thereto, none of the Parties to the dispute shall disclose or permit to be disclosed to any person any information concerning the arbitration or the award (including the existence of the arbitration and all process, communications, documents or evidence submitted or made available in connection therewith).

57.11 This clause shall not preclude any Party from access to an appropriate court of competent jurisdiction for interim relief on an urgent basis pending the decision of the arbitrator or in respect of such arbitration.

57.12 This clause:-

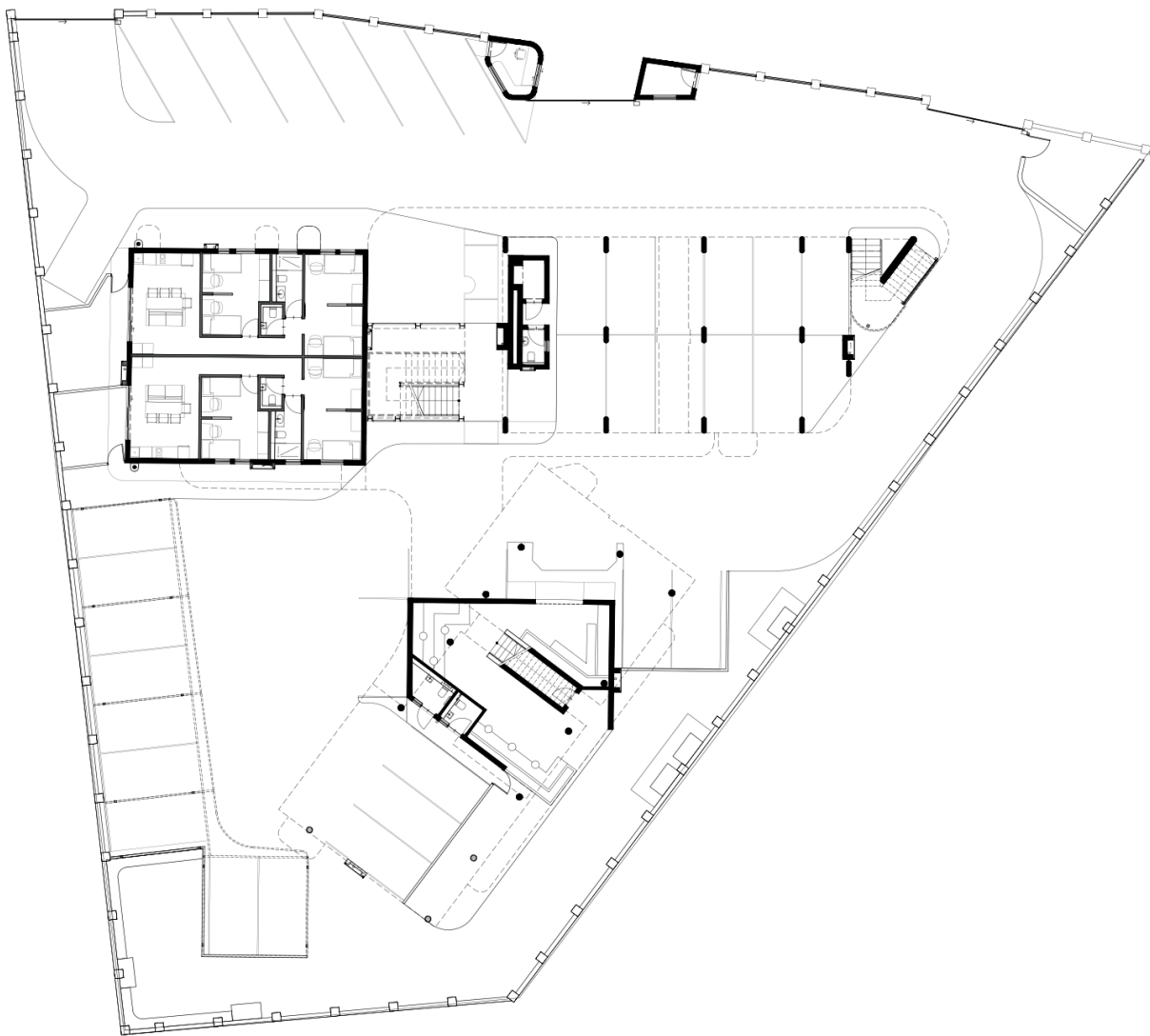
57.12.1 constitutes an irrevocable consent by the Parties to any proceedings in terms hereof; and

57.12.2 is severable from the other provisions of this MOI and shall remain in effect notwithstanding the termination or invalidity for any reason of this MOI.

57.13 The Parties agree that the written notice by a Party to the dispute in terms of this clause, that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

SCHEDULE "A"

THE SCHEME (Ground floor, only for reference purposes)



SCHEDULE “B”

THE CONDUCT RULES

1 Keeping of animals, reptiles and birds

- 1.1 The Owner or occupier of a Unit must not, without the written consent of the Board, given that Glewnood Heart is not marketed as pet friendly, keep an animal, reptile or bird in a Unit, exclusive use area or on the Common Property.
- 1.2 An Owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the Board’s consent to keep that animal in a Unit and to accompany him or her on the Common Property.
- 1.3 The Board may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a Unit, exclusive use area or on the Common Property.
- 1.4 The Board may withdraw any consent if the Owner or occupier of a Unit breaches any condition imposed in terms of clause 1.3.

2 Refuse and waste disposal

- 2.1 The Owner or occupier of a Unit must not leave refuse or other materials on the Common Property in a way or place likely to interfere with the enjoyment of the Common Property by another Owner or occupier.
- 2.2 Unless the Company provides some other way to dispose of refuse, the Owner or occupier of a Unit must keep a receptacle for refuse of a type specified by the Board in a clean and dry condition and adequately covered in the Unit, or on a part of the Common Property designated by the Board for that purpose.
- 2.3 The Owner or occupier of a Unit must
- 2.3.1 move the refuse receptacle referred to in clause 2.2 to places designated by the Board for collection purposes at the times designated by the Board and promptly retrieve it from these places; and
- 2.3.2 ensure that the Owner or occupier does not, in disposing of refuse, adversely affect the health, hygiene or comfort of the Owners or occupiers of other Units.

3 Vehicles

3.1 The Owner or occupier of a Unit must not, except in a case of emergency, without the written consent of the Board, park a vehicle, allow a vehicle to stand or permit a visitor to park or stand a vehicle on any part of the Common Property other than a parking bay allocated to that Unit or a parking bay allocated for visitors' parking.

3.2 A consent under clause 3.1 must state the period for which it is given.

4 Damage to common property

4.1 The Owner or occupier of a Unit must not, without the Board's written consent, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the Common Property.

4.2 An Owner or occupier of a Unit must be considered to have the Board's consent to install a locking or safety device to protect the Unit against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with a design, colour, style and materials approved in writing by the Board.

4.3 The owner or occupier of a Unit must keep a device installed under clause 4.2 in good order and repair.

5 Appearance of Unit and exclusive use area

5.1 The Owner or occupier of a Unit must not, without the Board's written consent, make a change to the external appearance of the Unit or any exclusive use area allocated to it unless the change is minor and does not detract from the appearance of the Unit or the Common Property.

5.2 The Owner or occupier of a Unit must not, without the Board's written consent

5.2.1 erect washing lines on the Common Property;

5.2.2 hang washing, laundry or other items in a Unit or any exclusive use area allocated to it if the articles are visible from another section or the Common Property, or from outside the Scheme;
or

5.2.3 display a sign, notice, billboard or advertisement if the article is visible from another Unit or the Common Property, or from outside the Scheme.

6 Storage of flammable materials

6.1 Subject to clause 6.2 the Owner or occupier of a Unit must not, without the Board's written consent,

store a flammable substance in a Unit or on the Common Property unless the substance is used or intended for use for domestic purposes.

6.2 This rule does not apply to the storage of fuel or gas in

6.2.1 the fuel tank of a vehicle, boat, generator or engine; or

6.2.2 a fuel tank or gas cylinder kept for domestic purposes.

7 Behaviour of occupiers and visitors in Units and on Common Property

7.1 The Owner or occupier of a Unit must not create noise likely to interfere with the peaceful enjoyment of another Unit or another person's peaceful enjoyment of their Unit or the Common Property.

7.2 The Owner or occupier of a Unit must not obstruct the lawful use of the Common Property by any other person.

7.3 The Owner or occupier of a Unit must take reasonable steps to ensure that the Owner or occupier's visitors do not behave in a way likely to interfere with the peaceful enjoyment of another Unit or another person's peaceful enjoyment of the Common Property.

7.4 The Owner or occupier of a Unit is obliged to comply with these Conduct Rules, notwithstanding any provision to the contrary contained in any lease or any other grant of rights of occupancy.

8 Eradication of pests

8.1 The Owner of a Unit must keep the section free of wood-destroying insects, including white ants and borer beetles.

8.2 The Owner or occupier of a Unit must allow the Board, the Managing Agent, or their duly authorised representatives to enter the Unit on reasonable notice to inspect it and take any action reasonably necessary to eradicate any such pests and replace damaged woodwork and other materials.

8.3 The Company must recover the costs of the inspection and replacement referred to in 8.2 from the Owner of the Unit.

9 Student Accommodation

9.1 Inline with student accommodation policies, the Owner or occupier of a Unit must be between the ages of 17-28 years and attend a nearby university or college, unless written consent is given by the Board.