— Since 1987 —

HELDERBERG VILLAGE

HELDERBERG VILLAGE MASTER HOMEOWNERS ASSOCIATION NPC

Registration No.: 1993/003665/08

MEMORANDUM OF INCORPORATION

This MOI was adopted by Special Resolution 1 passed on 4 December 2023 and replaces in its entirety the MOI adopted by Special Resolution on 19 August 2019. This MOI was amended by Special Resolution 1 on 29 July 2024

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1. **INTERPRETATION**

In this MOI, -

1.1. words that are defined in the Companies Act, but not defined in this MOI, will bear the same meaning in this MOI as in the Companies Act;

1.2. definitions used in this MOI are:

1.2.1. **"Address"** means the address furnished by the Member to the Company for the delivery of notices from the Company;

1.2.2. **"Alienate"** means the change in ownership (notwithstanding registration of transfer), in any manner whatsoever, whether directly or indirectly, of any Unit or part thereof and / or Alienation by change of the Nominated Occupants of a Unit, including but not limited to, by way of sale, agreement, exchange, donation, petition deed, succession, intestate succession, death, will, cession, assignment, court order or insolvency, business rescue plan, and usufruct, and **"Alienation"** shall have a corresponding meaning;

1.2.3. **"Alienation Date"** means the date on which Alienation takes place;

1.2.4. **"Annual General Meeting"** means in relation to the Company an annual general meeting of the Members as contemplated in the Companies Act;

1.2.5. **"Approved Occupant"** means a person approved in Writing by the Company to occupy a Unit with a Member or Nominated Occupant, for no longer than the period that the Member or Nominated Occupant is in occupation;

1.2.6. **"Body Corporate"** shall have the meaning ascribed to it in the Sectional Titles Act and the STSM Act, and shall include specifically, the following bodies corporate, namely:

1.2.6.1. any Body Corporate established and operating within the Village in terms of section 36 of the Sectional Titles Act and / or the STSM Act; and

1.2.6.2. such further bodies corporate that may be registered and / or come into existence, from time to time, over any part of the land comprising or acceding to or otherwise becoming part of the Village.

1.2.7. **"Business Day"** excludes any public holiday, Saturday or Sunday. When a particular number of Business Days is provided for between the happening of one event and another, the number of days shall be calculated by excluding the day on which the first such event occurs and including the day on or by which the second event is to occur;

1.2.8. **"Capital Contribution Levy"** means the levy payable to the Company in respect of an Alienation as calculated in accordance with the provisions of this MOI;

1.2.9. **"Clearance Certificate"** means a certificate issued by the Company in respect of an Alienation by way of change of ownership, in accordance with the provisions of clause 24 of this MOI;

1.2.10. **"Common Property"** means:

1.2.10.1. the whole of the immovable property on which the Village has been developed, and all improvements thereon and / or any expansions and / or extensions thereto, including any roads and / or servitude rights of access and / or water and electricity reticulation services, sewerage systems, storm water systems, telecommunication systems, gates, fences, security systems, signage, landscaping and street lighting, and all Exclusive Use Areas but excluding Dwelling Units;

1.2.10.2. all such immovable property as may be registered to / owned by the Company from time to time; and

1.2.10.3. immovable property within the Village designated as such in accordance with the provisions of the Sectional Titles Act and / or the STSM Act.

1.2.11. **"Companies Act"** means the Companies Act, No. 71 of 2008, as amended from time to time, or any legislation which replaces it;

1.2.12. **"Company"** means Helderberg Village Master Homeowners Association NPC (Registration No.: 1993/003665/08), a non-profit Company duly registered in terms of the Companies Act;

1.2.13. **"Company Secretary"** means the Company Secretary of the Company, as may be appointed from time to time, in terms of the Companies Act;

1.2.14. **"Conduct Rules"** means the conduct rules of the Village as intended by section 10(2)(b) of the STSM Act, which Conduct Rules apply to all Bodies Corporate;

1.2.15. **"Deliver"** means to deliver documents or give notices in accordance with the Companies Act, as detailed in this MOI;

1.2.16. **"Director"** shall have the meaning ascribed to it in the Companies Act and, in addition, shall include where applicable, a director acting in their capacity as a trustee of a Body Corporate;

1.2.17. **"Dwelling Unit"** means the Section registered to the Member and excludes Exclusive Use Areas;

1.2.18. **"Electronic Address"** means any email Address furnished to the Company by the Member;

1.2.19. **"Electronic Communication"** shall have the meaning as set out in the Electronic Communications and Transactions Act 2002 (Act 25 of 2002);

1.2.20. **"Exclusive Use Area"** shall have the meaning ascribed to it in the Sectional Titles Act and the STSM Act;

1.2.21. **"Financial Year"** means a period of twelve months expiring on last day of February of each year, unless determined otherwise by the Members in a General Meeting;

1.2.22. **"General Meeting"** means, with respect to any particular matter, a meeting of the Members who are entitled to exercise voting rights in respect of that matter;

1.2.23. **"Juristic Person"** means an entity other than a natural person, including but not limited to a company, close corporation, or trust;

1.2.24. **"Levies"** means the ordinary and special levies, other than the Capital Contribution Levies, payable by the Members as contemplated in this MOI;

1.2.25. **"Levy Stabilisation Fund"** means the fund used to defray expenditure on the common immovable property;

1.2.26. **"Member"** means the registered owner of a Unit;

1.2.27. **"MOI"** means this Memorandum of Incorporation, as amended from time to time;

1.2.28. **"Nominated Occupant"** means the natural person(s) (maximum 2 (two)), nominated at the time of Alienation, and approved in Writing by the Company, to be the persons who may occupy and enjoy the benefits of occupancy of the Unit;

1.2.29. **"Ordinary Resolution"** means a resolution of Members adopted with the support of more than 50% (fifty percent) of the voting rights exercised on such resolution;

1.2.30. **"Parking Unit"** means an exclusive right of use allocated to a Dwelling Unit, or in reasonable proximity thereto, being a parking bay and / or a carport, existing or to be created;

1.2.31. **"Prime Rate"** means the basic rate of interest that commercial banks in South Africa charge clients on loans;

1.2.32. **"Representative Member"** means a person who meets the criteria set out in clause 7.3;

1.2.33. **"Section"** means a section shown as such on the Sectional Plan of the Village;

1.2.34. **"Sectional Titles Act"** means the Sectional Titles Act, No. 95 of 1986, as amended from time to time, or any legislation which replaces it;

1.2.35. **"Services"** means such services, utilities and amenities, as may from time to time, be provided by the Company to its Members;

1.2.36. **"Special Resolution"** means a resolution of Members adopted with the support of more than 65% (sixty-five percent) of the voting rights exercised on such resolution;

1.2.37. **"STSM Act"** means the Sectional Titles Schemes Management Act, No. 8 of 2011, as amended from time to time, or any legislation which replaces it;

1.2.38. **"Unit"** shall have the meaning ascribed to it in the Sectional Titles Act and shall include the Dwelling Unit, any Exclusive Use Areas and Parking Units; the exclusive right of use, to which the owner of the Unit is entitled to;

1.2.39. **"Village"** means the Sectional Title lifestyle retirement residential estate known as Helderberg Village in Somerset West consisting of Dwelling Units and the Common Property;

1.2.40. **"Village Manager"** means any person appointed by the Directors (and accountable to them) to undertake, under the oversight of the Directors, the management of the Village and the affairs of the Company or portions thereof and shall be the Chief Executive Officer of the Company; and

1.2.41. **"Writing"** includes Electronic Communication;

1.3. the headings are for reference purposes only and shall not affect the interpretation of this MOI;

1.4. words in the singular shall include the plural, and words in the plural shall include the singular, words referring to the masculine gender shall include all genders, and words referring to persons shall include natural persons, Juristic Persons and other created entities;

1.5. if any term is defined within any particular clause in this MOI, and not within this clause 1, the term clause shall bear the meaning so ascribed to it for all purposes in this MOI, notwithstanding its exclusion from this clause 1, unless the context clearly indicates the contrary;

1.6. if the provisions of this MOI are in any way inconsistent with the provisions of the Companies Act, the Companies Act shall prevail;

1.7. for ease of reading, these definitions have been capitalised in this MOI; and

1.8. this MOI was adopted by Special Resolution 1 passed on 4 December 2023 and replaces in its entirety the MOI adopted by Members on 19 August 2019.

2. OBJECTS OF THE COMPANY

2.1. The object of the Company, having accepted the assignment of all the powers, duties, rights and obligations, of the Bodies Corporate, is to manage, oversee and protect the collective interests of its Members and the Village, in compliance with the Companies Act and all laws and regulations applicable to its operations.

2.2. Without limiting the generality of clause 2.1, the Company shall have the plenary powers to fulfil its obligations including but not limited to the following specific powers and functions, namely:

2.2.1. the right to impose Levies upon the Members to advance its stated objects as set out in clause 2.1;

2.2.2. the right to set rules and guidelines that the Company may deem necessary in order to further its objectives, other than rules or guidelines that, in accordance with applicable legislation, require the specific approval of Members; and

2.2.3. the obligation to maintain, repair, improve and keep in good order and condition all facilities and Common Property.

3. POWERS AND CAPACITY OF THE COMPANY

3.1. The Company has all the legal powers and capacity of an individual except to the extent that a Juristic Person is incapable of exercising any such power or having any such capacity. The Company may do anything which the Companies Act empowers a Company to do and its powers and capacity shall not be limited, except in so far as same may be expressly limited by this MOI or any unalterable provision of the Companies Act.

3.2. The Company may sue or be sued in any court of law. All powers of attorney, bonds, deeds, contracts and other documents which may have to be executed on behalf of the Company or the Bodies Corporate shall be signed by any person authorised to do so by the Company. The Company has all the legal powers and capacities of a Body Corporate in terms of the provisions of the STSM Act and Sectional Titles Act.

3.3. Each Body Corporate in the Village has assigned its powers, duties, rights and obligations to the Company. The Company is vested with overall control of all matters affecting the Village.

3.4. The Directors shall be empowered to determine the rate of interest from time to time, linked to Prime Rate, and to charge interest on any overdue amount payable to the Company or the Company's clubs, compounded monthly in arrears.

4. AMENDMENTS TO THE MOI

4.1. The Directors are entitled and empowered to correct any self-evident minor errors in this MOI.

4.2. In addition to clause 4.1, this MOI, save where expressly indicated to the contrary, may be replaced, altered or amended by Special Resolution.

5. LEVIES

5.1. All Members shall be bound to contribute, by way of Levies determined by the Directors, towards the financial requirements of the Village.

5.2. In determining the Levies:

5.2.1. the Village Manager shall ensure that a complete and up to date database is maintained, reflecting the square metreage of all Units liable for Levies, differentiating between Dwelling Units, Parking Units and enclosed and / or partially enclosed Exclusive Use Areas;

5.2.2. the applicable budgeted levy rate per square metre for each Dwelling Unit, Parking Unit and enclosed and / or partially enclosed Exclusive Use Areas, shall be applied equitably and proportionately;

5.2.3. the Directors shall periodically take cognisance of the participation quota, i.e. the area of Dwelling Units and Parking Units as a percentage of the aggregate area of all such areas;

5.2.4. the Directors shall, not less than 30 (thirty) days prior to the end of each Financial Year or as soon thereafter as is reasonably possible, direct the Village Manager to prepare and Deliver to Members at their Address, an estimate in reasonable detail of the amount which shall be required by the Company to meet its objectives during the following Financial Year, and shall specify separately any estimated deficiency that may have resulted from the preceding year. The Directors shall include in such estimate a reasonable provision for contingencies and statutory reserve requirements;

5.2.5. such estimate shall include notification of the monthly Levy to be paid by the Members during the ensuing Financial Year; which Levy may be adjusted by the Directors during any Financial Year, should circumstances so require;

5.2.6. any amount due by a Member by way of a Levy shall be a debt due to the Company, payable at such time or times as determined by the Directors. If so determined by the Directors, the Levy determined in terms of this clause 5 shall be payable in equal monthly instalments, due in advance on the 1st (first) day of each month and payable by not later than the 7th (seventh) day of the month or within such other period as the Directors may determine;

5.2.7. in the event of the Directors, for any reason whatsoever, failing to prepare and Deliver the estimate referred to in clause 5.2.4 timeously, or to notify a Member of the amount of the monthly Levy determined, every Member shall, until notified of such estimate and notification as aforesaid, continue to pay the Levy previously imposed and shall, after such notice, pay the Levy specified in the notification referred to in clause 5.2.4; and

5.2.8. the Directors may from time to time, and as permitted by the applicable legislation, impose special Levies upon the Members and such special Levies shall be payable in such manner and at such times as the Directors may determine.

5.3. Any amount due by a Member by way of a Levy and / or interest accrued thereon shall be a debt due and payable to the Company. The obligation of a Member to continue to pay Levies and interest thereon (if applicable) shall cease upon ceasing to be a Member, but without prejudice to the Company's right to recover any arrear Levies and interest.

5.4. No Levies or interest paid by a Member, which were due and payable, shall under any circumstances be refunded by the Company upon the Member ceasing to be a Member of the Company.

5.5. In addition to Levies, a Member shall pay separately for any additional Service(s) rendered to the Member.

5.6. A Member's successor in title to any Unit shall, from the date upon which they become a Member, be liable to pay the current Levies and (if applicable) interest on that amount.

5.7. If a Member fails to make payment on due date of Levies or any other amount due, including interest, the Company will give notice to such Member requiring settlement to be made within such reasonable time as the Company determines. If the defaulting Member fails to settle the amount due by the deadline, the Company may suspend Services to the Member's Unit. Furthermore, the Company may institute legal proceedings against such Member without further notice and the Member will be liable for and shall pay all legal costs on the scale as between attorney and own client, together with collection commission and any other expenses and charges incurred by the Company in recovering such amounts.

5.8. In addition, while a Member is indebted to the Company for any arrear amounts due and payable to the Company in terms of clause 5.7, such Member shall be regarded as not being in good standing. For clarity this means that the Member concerned, whilst still being entitled to receive notices of General Meetings, shall not be entitled to appoint a proxy nor be counted in towards the quorum for the General Meeting or be permitted to vote. During any period whilst not in good standing, the Member's obligations to the Company in terms of this MOI shall nevertheless continue to apply.

5.9. As assignee of all the powers and functions of the Bodies Corporate, the Company shall be responsible to collect, on behalf of the Bodies Corporate, the Levies due and payable by the Members of the respective Bodies Corporate.

5.10. Capital Contribution Levies payable will be determined in terms of clause 23 of this MOI.

5.11. The Directors shall be entitled to suspend the rights and privileges of membership of any Member for such duration as the Directors may determine, and may suspend the right of use of any of the facilities on the Common Property, together with the provision of Services, until all outstanding arrear amounts including interest that are due to the Company have been paid. Members may not undertake any spoliation action or similar action against the Company should the Company exercise its rights in terms hereof.

6. LIMITATION OF LIABILITY

Should the Company be wound-up, each Member's liability shall be no more than R2,00 (two rand).

7. MEMBERSHIP

7.1. The number of Members of the Company shall be equal to the number of Units in the Village.

7.2. For the avoidance of doubt and subject to the provisions of clause 26, when a Unit is owned by more than one person, all such owners shall together be deemed to be one Member of the Company and shall have the rights and obligations of one Member of the Company, provided that all co-owners of any Unit shall be jointly and severally liable, in solidum, to the Company for the due performance of any of their obligations. It is recorded that all communications from the Company shall be addressed to the first named of such joint Members in the Member Register.

7.3. The Directors shall recognise any individual as a Representative Member by reason of their appointment as the:

7.3.1. duly authorised representative of a Member which is a Juristic Person;

7.3.2. executor, administrator, trustee, curator or guardian in respect of the estate of a deceased Member, or of a Member whose estate has been sequestrated, or of a Member who is otherwise under legal disability;

7.3.3. person(s) acting as an incorporator of a company in the course of formation;

7.3.4. liquidator of any Member which is a company or any other juristic entity in the course of being wound up; or

7.3.5. Nominated Occupant duly authorised by a Member.

7.4. Notifications of Representative Members must be done in Writing and, when received by the Company, details of the appointment shall be appropriately recorded in the Member Register.

7.5. No Member is entitled at any time to resign as a Member but membership shall automatically terminate on change of ownership and registration of transfer.

7.6. Where a Member is a Juristic Person, such Members shall, when requested, permit the Company, without fee or charge, to inspect the share register, founding statement, deed of trust, letter of authority, and any other documents as requested in order to confirm ultimate beneficial ownership.

7.7. The cessation of membership by a Member shall in no way release that Member from any obligation incurred by them prior to the date of their cessation of membership.

7.8. Every Member is obliged to comply with:

7.8.1. the provisions of this MOI and the Conduct Rules, as may be amended or replaced from time to time;

7.8.2. any rule implemented by the Company, if communicated to the Member, insofar as such rule may, directly or indirectly, impose obligations on a Member in their capacity as a Member; and

7.8.3. any directive given by the Directors in enforcing the provisions of this MOI.

8. MEMBER REGISTER

8.1. The Company shall maintain a Member Register.

8.2. It shall be the responsibility of the Member to keep such particulars current by written or Electronic Communication to the Company Secretary.

8.3. The Company shall not be bound to enter any person's details in the Member Register until that person provides all the relevant information and an Address for entry in the Member Register.

9. MEMBERS' MEETINGS AND QUORUM

General Meetings, including Annual General Meetings, shall be conducted in accordance with the provisions of the Companies Act applicable to non-profit companies, save as indicated otherwise in this MOI.

9.1. Subject to the provisions of clause 5.8, Members shall be entitled to attend all General Meetings of the Company and attendance for this purpose shall be:

9.1.1. a Member who is personally present; or

9.1.2 a Member who is represented by a proxy or any Representative Member as defined in clause 7.3.

9.2. The Company shall convene an Annual General Meeting once in every calendar year, but no more than 15 (fifteen) months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.

9.3. An Annual General Meeting and any General Meeting shall be called by not less than 15 (fifteen) Business Days' notice in Writing.

9.4. The notice of the Annual General Meeting must, at a minimum, provide for the following business to be transacted:

9.4.1. presentation of:

9.4.1.1. the audited financial statements, which shall include the auditor's report thereon for the immediately preceding Financial Year;

9.4.1.2. a statement setting out the status of reserves in respect of future repairs, maintenance and agreed replacements;

9.4.1.3. the reports of the various Statutory Committees of the Company;

9.4.2. the election of Directors, to the extent required by the Companies Act, or this MOI;

9.4.3. the appointment of an auditor for the ensuing year;

9.4.4. the approval of the schedule of building replacement values of the Units for insurance purposes; and

9.4.5. any discussion matters raised by Members, with or without advance notice to the Company, provided that voting may not take place on these matters at the meeting for which notice is given.

9.5. At the Annual General Meeting of the Company, Annual General Meetings of the Bodies Corporate will be held contemporaneously.

9.6. A General Meeting must be convened by the Directors if so required in terms of the Companies Act.

9.7. Every General Meeting shall be held at appropriate facilities within the Village at a time and date determined by the Directors.

9.8. Business may not begin to be considered nor transacted at a General Meeting unless a quorum of 10% (ten percent) of Members are personally present or represented, provided that not less than 3 (three) Members are present in person at the meeting. The quorum must be maintained for the duration of the business transacted at the meeting.

9.9. All business of the meeting shall be despatched by resolutions passed in the manner as outlined in clause 9.10 below:

9.10. The Company is empowered to pass two types of resolution, the requirements for each are as follows:

9.10.1. The majority needed to pass an Ordinary Resolution shall be a simple majority of those entitled to participate in the voting; and

9.10.2. The majority needed to pass a Special Resolution shall be at least 65% (sixty five percent) of those entitled to participate in the voting.

9.11. The chairman of the board, or failing them the deputy chairman, shall preside as chairman at General Meetings, provided that if neither of the chairman nor the deputy chairman are available, the Directors shall elect one of the other Directors to be the chairman of the meeting.

9.12. If a quorum is not present within 15 (fifteen) minutes from the time appointed for the General Meeting to commence, the General Meeting shall be automatically postponed, without motion, vote or further notice, subject to clause 9.14, for 1 (one) week to the same day in the next week or, if that day is not a Business Day, to the next succeeding day which is a Business Day, and if at such postponed General Meeting a quorum is not present within 15 (fifteen) minutes from the time appointed for the General Meeting, the person(s) entitled to vote, present at the meeting, shall be deemed to be the requisite quorum.

9.13. If the chairman of the meeting deems it appropriate not to postpone the meeting for a week, then it may be postponed without setting a date, in which event fresh notice to Members will be sent when a suitable date is decided upon.

9.14. If there is any change to the original agenda, or if the venue is changed, or if the resumption of the adjourned meeting was done without setting a date, then fresh notice must be given and the usual quorum provisions will apply.

9.15. General Meetings may be requisitioned by a majority of the Directors, or Members holding collectively not less than 10% (ten percent) of the voting rights. If at the time appointed for a requisitioned General Meeting to commence a quorum is not present, the meeting will be dissolved.

9.16. At any General Meeting, a resolution put to the vote may be decided on a show of hands or on a poll, as specified in the notice of the meeting, or as directed by the chairman of the meeting. Before or on the declaration of the result of the show of hands, a poll may be demanded by not less than 5 (five) persons having the right to vote on that matter.

9.17. A declaration by the chairman of the meeting that a resolution has been carried on a show of hands, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the Company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, such resolution.

9.18. No objection may be raised as to the admissibility of any vote except at the General Meeting at which the vote objected to is taken. Any such objection shall be referred to the chairman of the General Meeting, whose decision shall be final and binding.

9.19. If a poll is undertaken, it shall be taken in such manner as the chairman directs. Scrutineers shall be appointed by the chairman to verify the result of the poll, and the chairman of the General Meeting will then declare the result which shall be final and binding.

9.20. The demand or requirement for a poll shall not prevent the continuation of a General Meeting for the transaction of any business other than the question upon which the poll is required.

9.21. Every Member present at a meeting in person or proxy, or represented, shall have:

9.21.1. on a poll, the number of votes equal to the number of voting rights held; and

9.21.2. on a show of hands, one vote irrespective of the number of voting rights held.

9.22. Where a Unit is owned by more than one person (whether a natural or a Juristic Person) in terms of clause 7.2, including Representative Members as contemplated in clause 7.3, the vote(s) attaching to such membership shall be cast by such Representative Member and in such manner as such persons may decide, provided that:

9.22.1. the chairman of the Meeting at which such vote(s) is / are to be cast shall be entitled to disallow the vote of such Representative Member unless they are able to produce proof to the satisfaction of the chairman as to their right to represent such Member; and

9.22.2. Where a Unit is owned by more than one person, whether a natural or a Juristic Person, if such persons do not so decide, then one of the said persons present at a meeting, whose name stands first on the Member Register of the Company shall alone be entitled to cast the vote(s) attached to such membership.

9.23. The representative of any holder of a registered mortgage bond over a Unit who has notified the Company in Writing of their interest, shall have the right to attend General Meetings of the Company and to speak at such meetings, but shall not be entitled to vote thereat.

9.24. Every instrument of proxy shall be in such form as the Directors may approve from time to time.

9.25. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed, unless the form appointing a proxy itself provides for a longer or shorter duration or the appointment is in respect of a specific General Meeting, but it may be revoked at any time. The appointment of a proxy is revocable by cancellation in Writing, or by making a later inconsistent appointment of a proxy, and delivering a copy of the revocation instrument to the person acting as proxy and to the Company.

9.26. The original form appointing:

9.26.1. a proxy; and / or

9.26.2. a power of attorney or other form of representation,

or certified copy thereof, must be delivered to the Company Secretary.

9.27. The appointed proxy shall vote as directed, unless no instruction has been given, in which case they may vote as they think fit.

10. GENERAL POWERS AND DUTIES OF THE DIRECTORS

10.1. The powers of management granted to the Directors in terms of the Companies Act shall not be limited, unless otherwise provided for in this MOI or any unalterable provision of the Companies Act.

10.2. In rendering their services to the Company and performing their duties and functions in terms of this MOI, the Directors shall comply with the Companies Act, all applicable laws, regulations and this MOI.

10.3. Without the sanction of a Special Resolution, Directors shall not be entitled to undertake on behalf of the Bodies Corporate and / or the Company, any works of a major capital nature where the cost exceeds the maximum amount as approved by Members from time to time.

11. DIRECTORS AND CO-OPTED DIRECTORS

11.1. Save as may be otherwise determined by the Company at a General Meeting, the minimum number of Directors shall be 3 (three) and the maximum number, excluding any co-opted Directors, shall be 7 (seven). A Director must be a Member or where approved by the Member, a Nominated Occupant. Directors may not be directly related to each other or be ineligible to be appointed as a Director in terms of the Companies Act.

11.2. Any casual vacancy occurring in the number of Directors may be filled by the Directors, but the individual so appointed shall cease to hold office at the termination of the first Annual General Meeting to be held after the appointment of such individual as a Director; however if available, they shall be eligible to be nominated for election as a Director at such Annual General Meeting.

11.3. The continuing Directors may act notwithstanding any vacancy but, in the event that their number is reduced below the minimum number fixed in terms of clause 11.1, the Directors or Director may act only for the purpose of summoning a General Meeting or to appoint Directors to make up their number.

11.4. Directors of the Company shall be elected and appointed by the Members at Annual General Meetings, subject to the provisions of the Companies Act and this MOI. The election of directors shall be conducted by a poll.

11.5. The Directors may, from time to time, appoint any other individual as a Director (hereinafter referred to as a co-opted Director) as an additional Director, provided that there shall be no more than three co-opted Directors at any one time and provided further, that the appointment made in terms of this clause 11.5 shall expire at the next Annual General Meeting. Co-opted Directors may be appointed by the Directors to serve for no more than two terms as a co-opted Director, whereafter they may offer themselves for election as a Director by Members at the ensuing Annual General Meeting. A co-opted Director must fulfil the qualifications for a Director to the extent required by the Companies Act and this MOI.

11.6. Nominations by Members for the election of Directors at an Annual General Meeting shall be given in Writing on the prescribed form available from the Company, which form must be signed by both a "proposer" and a "seconder" (both of whom must be Members) and by the person so nominated, to be received at the registered office of the Company at least 20 (twenty) Business Days before the date of the Annual General Meeting.

11.7. Each of the Directors (other than co-opted Directors), shall be elected to serve as a Director until they are required to retire by rotation in terms of clause 11.8 or they become ineligible to be a Director in accordance with the requirements of the Companies Act and this MOI.

11.8. At each Annual General Meeting, two of the Directors (excluding those who were co-opted or appointed to fill a casual vacancy during the year) shall retire by rotation, and if available, shall be eligible for re-election. Those retiring by rotation shall be those longest in office from the date of election or re-election, and, if their appointments are of equal duration, then as otherwise determined by the Directors.

11.9. Directors retiring by rotation may only make themselves available for re-election after their first term and, if re-elected for a second term, must automatically retire when their next retirement rotation falls due. Directors, including co-opted Directors, may make themselves available again for election following a period of one year calculated from their automatic retirement as a Director in terms of this clause 11.

11.10. At an Annual General Meeting, a retiring Director shall continue to act as a Director throughout the meeting at which they retire and, unless re-elected, their retirement shall become effective at the end of such meeting.

11.11. The Directors shall appoint from their number a chairman and deputy chairman within 7 (seven) Business Days of the holding of each Annual General Meeting. The chairman and deputy chairman shall hold their respective offices until the conclusion of the next succeeding Annual General Meeting held after their said appointments. In the event of any vacancy occurring in any of the aforesaid offices at any time, the Directors shall appoint one of their number as a replacement in such office within 7 (seven) Business Days.

11.12. The chairman shall not have a second or casting vote in addition to their deliberative vote on any matter referred to the Directors.

12. REMUNERATION OF DIRECTORS

The Directors, or any person who is a co-opted Director, shall not be entitled to remuneration for their services as Directors or members of Statutory Committees or Board Committees as defined in clause 14.1. The Directors shall be entitled to reimbursement of all reasonable expenses incurred in the fulfilment of their duties.

13. DELEGATION

13.1. Without derogating from their overall responsibilities and provided that any such delegation of authority is reduced to writing and approved by the Directors, the Directors may from time to time, in their discretion, entrust to and confer upon the Village Manager for the time being, such of the powers vested in the board as they may think fit, and may confer such powers for such time and to be exercised for such objects and upon such terms and with such restrictions as they may think expedient, either collaterally or to the exclusion of, and in substitution for all or any of the powers of the Directors, and may from time to time revoke or vary all or any of such powers.

13.2. It is expressly stated that the Directors may not delegate any financial authority in excess of any directions or restrictions as agreed to by Members at an Annual General Meeting.

14. BOARD AND STATUTORY COMMITTEES

14.1. In addition to the committees required by statute ("Statutory Committees"), the Directors may appoint any number of other committees ("Board Committees") to assist them in the performance of their duties and responsibilities. The Directors shall set out the duties, responsibilities and scope of the Statutory Committees in a formal charter.

14.2. Board Committees may include non-voting persons who are not Directors. In deliberations of the Board Committees, members thereof do not have the authority to bind the Company to any decision, their power being limited to making recommendations to the Directors.

14.3. There are no general qualifications prescribed by the Company for a non-voting person to serve as a member of a Board Committee, but appropriate skills and knowledge as well as good judgement are needed.

14.4. A Director serving as a member of a Statutory Board Committee and / or Board Committee shall cease to hold office immediately upon ceasing to be a Director.

14.5. Statutory Committees and Board Committees may consult with or receive advice from any person at the reasonable expense of the Company, subject to the Directors' prior Written approval.

14.6. The Statutory Committees of the Company shall perform their duties in respect of the Company and its subsidiary companies.

15. PERSONAL FINANCIAL INTERESTS OF DIRECTORS

Personal financial interest of Directors and prescribed officers must be disclosed in accordance with the Companies Act.

16. PROCEEDINGS AT MEETINGS OF DIRECTORS

16.1. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

16.2. A Director:

16.2.1. may, at any time, request a meeting of the Directors; and

16.2.2. shall instruct the Company Secretary to call a meeting of the Directors within a reasonable period.

16.3. A meeting of the Directors may be conducted by Electronic Communication and / or one or more Directors may participate in a meeting of the Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

17. APPOINTMENT OF THE COMPANY SECRETARY

The Directors shall appoint a Company Secretary who must fulfil the duties of a Company Secretary as set out in the Companies Act, including such other duties as may be assigned by the Directors.

18. RECORDS, ACCOUNTING RECORDS AND FINANCIAL STATEMENTS

The Company shall keep documents, accounts, books, written records or other information in terms of the Companies Act.

19. AUDITOR

19.1. At each Annual General Meeting, the Company shall appoint an independent auditor to hold office for the ensuing year in accordance with the provisions of the Companies Act.

19.2. Prior to the Annual General Meeting, the suitability, eligibility and nomination for the appointment of the auditor at the Annual General Meeting shall be reviewed by the Risk Management and Audit committee of the Company. In such review, consideration shall be given to any requirement to rotate auditors.

19.3. Within 40 (forty) days of a vacancy occurring in the office of auditor, or if the Members fail to make an appointment at the Annual General Meeting, the Directors shall cause the vacancy to be filled in terms of the Companies Act.

19.4. In the performance of its duties, the auditor shall have unfettered access to all books and records of the Company and its subsidiary, and to obtain all explanations necessary, in order to meet their professional standards as regulated in the Auditing Professions Act.

20. INSURANCE

The Company will ensure that appropriate insurance policies are in place as required in terms of the applicable legislation as may be amended from time to time.

21. RISK

The Directors, together with the Risk Management and Audit Committee of the Company, shall regularly monitor the management of risk relating to the Village and the activities of the Company.

22. SPORTING AND RECREATION CLUBS

22.1. The Company will promote, provide and maintain cultural, social and recreational facilities and amenities in the Village.

22.2. The Directors, in their sole discretion, shall have overall control of all sporting, social and recreational facilities and amenities within the Village and may lay down such rules as they may consider necessary from time to time for the use of any such amenities, including the charging of a levy as they may deem reasonable for the use thereof. The Directors may establish or permit the establishment of clubs or associations of Members to use any of the sporting, social or recreational facilities, and may delegate to the committees of such clubs any or some of their functions, powers and duties in relation to the particular facility or amenity concerned as they may deem fit, provided that the constitutions of such clubs shall be subject to the approval of the Directors.

23. CAPITAL CONTRIBUTION LEVY

23.1. On Alienation, the Company shall collect, and Members are obliged to pay a Capital Contribution Levy, which levy shall be recovered and calculated in accordance with clause 23.3 of this MOI. Notwithstanding anything to the contrary herein contained, the obligation on the Company to recover, and the obligation of Members to pay the Capital Contribution Levy, as the case may be, shall not be capable of being removed or deleted from this MOI.

23.2. The Directors shall use the Capital Contribution Levy as a contribution to the Levy Stabilisation Fund and is a liability due by the Member.

23.3. The Capital Contribution Levy will be due on Alienation and will be calculated as follows:

23.3.1. The Capital Contribution Levy shall be 25% (twenty five percent) of the difference between the selling price of the Unit, (or its deemed selling price as established in accordance with clause 23.3.2.3,) and the purchase price paid by the Seller on acquisition of the Unit, (or deemed purchase price as established in accordance with cause 23.3.2.3).

23.3.2. For the sake of clarity:

23.3.2.1. the purchase price or deemed purchase price on the most recent acquisition of the Unit by the seller is as recorded by the Company and shall exclude any transfer duties, cost of improvements or any other amounts paid;

23.3.2.2. the selling price at which the Unit is valued at the time of notification of the change of Nominated Occupants in the event of a sale, shall be the price as recorded and shall not be reduced by legal expenses, sales commission or brokerage or any other costs incurred on Alienation by the seller or any other person on their behalf. The Company reserves the right to establish a deemed value if it reasonably disputes the transaction value;

23.3.2.3. in the event of an Alienation other than a sale, the deemed value of the Unit at the time of either purchase or Alienation shall be determined by the Company taking into account the relevant market related information recorded in the Company records, together with the location and condition of the Unit;

23.3.2.4. the Company or its subsidiary shall be afforded reasonable access to the Unit for purposes of establishing any deemed value; and

23.3.2.5. in the event that there are two Nominated Occupants, the Capital Contribution Levy will only become due and payable on Alienation of the Unit by the last Nominated Occupant.

23.4. The Capital Contribution Levy shall be payable to the Company on presentation of an invoice. The invoice will be produced on registration of transfer, or on Alienation on change of the Nominated Occupant.

23.5. Where an executor must be appointed for the estate of a natural person who is the owner of a Unit, and registration of transfer and / or nomination of Nominated Occupants has not taken place within one year of Alienation Date, a deemed selling price will be determined and an invoice for the Capital Contribution Levy will be presented and will be due and payable.

24. ALIENATION OF UNIT

24.1. A Member wishing to seek the consent of the Company to an Alienation privately, with or without the assistance or intervention of an estate agent, must notify the Company forthwith of the proposed Alienation.

24.2. Members must utilise the Company's documentation to give effect to any Alienation.

24.3. No Member may transfer a Unit by any means unless the Member has applied for and has been issued with a Clearance Certificate.

24.4. The Company shall, be entitled to charge a reasonable fee for the issuing of a Clearance Certificate and for providing administrative services in respect of an Alienation.

24.5. No Member shall Alienate their Unit to any person, unless in accordance with the provisions of clause 25.1 and the proposed Nominated Occupant meets the criteria as determined by the Company from time to time. The proposed Nominated Occupant(s) must furnish a written undertaking to the Company (on such terms as the Company may determine) to observe all the terms and conditions of the MOI and Conduct Rules.

24.6. No Clearance Certificate shall be granted by the Company unless:

24.6.1. the Company has satisfied itself that there is no debt owed to the Company in any way in respect of Levies, Services or other amounts which the Company may in terms of this MOI be entitled to claim, and that a Member has complied with all their obligations in terms of this MOI and the Conduct Rules in force from time to time;

24.6.2. the Capital Contribution Levy has been paid to the Company, or a guarantee from a bank or other financial institution acceptable to the Company, has been furnished for the payment thereof; and

24.6.3. the Company is satisfied as to the suitability of the Alienation in relation to the needs and compatibility of the proposed new Nominated Occupants, provided that the Company shall not be obliged to furnish any reasons for any decision made by it in this regard.

24.7. No Member may Alienate their Unit by way of sale to any person ("the Alienee") except in accordance with the provisions of this MOI including that the:

24.7.1. Alienee is contractually bound, when acquiring the Unit, to become a Member of the Company and further, the Alienee and their Nominated Occupant(s) shall be subject to this MOI and the Conduct Rules, upon taking occupation or upon transfer and registration of the Unit, whichever is the earlier; and

24.7.2. registration of transfer of the Unit into the name of the Alienee, shall constitute the Alienee as a Member of the Company.

25. RIGHTS OF USE AND OCCUPATION

25.1. All Nominated Occupants, Approved Occupants and tenants must meet the criteria outlined in the Dwelling Unit and Healthcare Occupancy Policy as determined by the Company, and as amended from time to time.

25.2. Before acceptance of a sale agreement or the approval of any other form of Alienation, natural persons (being limited to 2 (two) in number) must be nominated to be the occupant(s) and resident(s) of the relevant Unit and only such Nominated Occupant(s) shall be entitled to reside and exercise the rights of exclusive use and occupation of the said Unit, together with the rights of shared use of the communal facilities in the Village and Common Property.

25.3. On Alienation, the new owner of the Unit shall nominate new Nominated Occupants. Where an executor is to be appointed for the estate of a natural person who is the owner, and registration of transfer and / or nomination of Nominated Occupants has not occurred within one year of Alienation Date, a deemed selling price will be determined, and an invoice for the Capital Contribution Levy will be presented and will be due and payable.

25.4. Nominated Occupants must be nominated in Writing by the Member for prior approval by the Company.

25.5. The Alienee, whether a Juristic Person or a Natural Person, must furnish reasonable proof that the Nominated Occupants concerned are over the age of 50 (fifty) and have met the Company's requirements, including but not limited to general health requirements.

25.6. The Company may admit at its discretion, Nominated Occupants under the age of 50 (fifty), but so as not to exceed a limit of 20% (twenty percent) of the total membership of the Company from time to time.

25.7. Members may apply to the Company for approval of a person as an Approved Occupant to reside at their Unit where such person does not meet the above criteria to qualify as a Nominated Occupant. Approval will be at the sole discretion of the Company and on the terms set by the Company. If approved, the Approved Occupant may only reside at the Unit whilst the Member or Nominated Occupant is in occupation. The Member or Nominated Occupant must give a written undertaking that the Approved Occupant will abide by the Conduct Rules. Approval may be withdrawn by the Company at any time by giving notice to the Member.

25.8. If, prior to the date of adoption of this MOI, an executor has been appointed for the estate of a natural person who is the owner of a Unit and registration of transfer and / or nomination of Nominated Occupants has not occurred by the date of adoption of this MOI, the time period contemplated in clause 25.3 shall commence on the date of adoption of this MOI. For the avoidance of doubt, a deemed selling price will be determined, and an invoice for the Capital Contribution Levy, which will be due and payable, presented on the first anniversary of the amendment of this MOI.

26. CO-OWNERSHIP AND PROHIBITION OF TIME-SHARING

26.1. No Unit shall be held in co-ownership by more than 2 (two) co-owners.

26.2. No Member shall, in any manner whatsoever, embark upon schemes such as time-sharing, Airbnb, house exchange arrangements or life rights arrangements in respect of any Unit or part thereof or by any other form or method.

27. LETTING AND GRANTING OF RIGHTS OF OCCUPANCY

27.1. Except with the prior written consent of the Company, no Member may let or re-let any Unit, or any portion thereof, or otherwise grant the right to use or occupy a Unit. The Nominated Occupant(s) must co-sign every lease agreement.

27.2. No Member shall let or otherwise allow occupation of a Unit unless the proposed occupant meets the criteria determined by the Company in terms of clause 25.1 and the Company has granted their consent thereto in Writing.

27.3. Each Member shall, if it lets out any Unit, enter into a written lease, which may be no longer than 12 (twelve) months, with the tenant using the documentation provided by the Company, in which the tenant shall undertake to comply and abide with the Conduct Rules and relevant clauses of this MOI.

27.4. Without detracting from the aforegoing, the Members shall remain jointly and severally liable for the acts and omissions of the occupants of their Units, in respect of their obligations under this MOI and the Conduct Rules.

27.5. A Member may not let or otherwise part with occupation of a Unit, or any portion thereof or part with the use and occupation thereof, whether, temporarily or otherwise, except in accordance with the provisions of this MOI.

28. **GENERAL**

28.1. Members shall be obliged at all times to allow any persons lawfully within the Village, access over any Common Property by means of the roads or any other form of defined access way within the Village.

28.2. Members shall be obliged and agree to permit any person duly authorised by the Company access at all reasonable times to any Unit to enable the Company to inspect, provide, construct, alter, maintain or renew any works or Services of whatsoever nature, provided that the Company shall make good any damage caused by it in the exercise of the power hereby conferred.

28.3. Members hereby grant to the Directors of the Company a power of attorney to amend, in their discretion, the Conduct Rules and management rules of any Body Corporate in the Village in order to achieve their objectives, provided always that any such amendments proposed by the Directors will have been approved by the Members.

28.4. Subject to the provisions of clause 31, any action arising out of this MOI shall be subject to the jurisdiction of the Magistrate's Court in Somerset West.

29. **DOMICILIUM CITANDI ET EXECUTANDI**

The Directors shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Company and Bodies Corporate and shall notify Members in Writing of any changes to such address.

30. **NOTICES**

30.1. The Company may give notices, documents, records or notices of availability of the aforegoing by personal delivery to the Member or by delivery through the post or by transmitting via Electronic Communication.

30.2. Any Member who has furnished an Electronic Address to the Company, by doing so irrevocably:

30.2.1. authorises the Company to use Electronic Communication to give notices, provide documents, records or statements or notices of availability of the aforegoing to them; and

30.2.2. confirms that same can conveniently be printed by the Member on their own facilities or by the Company within a reasonable time and at a reasonable cost.

30.3. Any notice, document, record or statement or notice of availability of the aforegoing sent by the Company shall be deemed to have been delivered on the date and time determined.

30.4. The Company shall not be responsible for the loss in transmission or late receipt of any document sent to any Member or to any other Address requested by the Member, irrespective of the medium of Delivery.

31. **ARBITRATION**

31.1. As an alternative to having any dispute arising relating to the provisions of this MOI between the Company and a Member settled by a Court, either party may choose to have such dispute resolved through arbitration.

31.2. If either party notifies the other that it wishes to refer a dispute to arbitration, the parties shall try to reach agreement on the appointment of an independent expert to resolve the dispute.

31.3. If the parties are unable to agree on the selection of an independent expert:

31.3.1. a senior advocate or attorney with at least 10 (ten) years' experience must be appointed by the auditor of the Company to resolve the dispute; or

31.3.2. the dispute must be resolved through an arbitration process, which will be conducted under the Expedited Rules of the Arbitration Foundation of Southern Africa, by an arbitrator selected in accordance with such rules.

31.4. The party referring the dispute to arbitration must pay any costs related to the arbitration, but such costs may be recovered by either party through any costs order made by the arbitrator.

31.5. If a dispute is referred to arbitration, the dispute will be resolved only by arbitration to be held in Somerset West.

32. WINDING UP OR DISSOLUTION

32.1. Despite any provision in any law or agreement to the contrary, upon the winding-up or dissolution of the Company, after making provision for the costs of dissolving the Company, the entire net value of the Company must be distributed to any similar public organisation and / or any entity which has similar objects to those of the Company in accordance with item 1(4) of Schedule 1 of the Companies Act.

32.2. Members of the Bodies Corporate may appoint an alternate company and / or structure to protect all their rights as sectional title owners.