

Hoedspruit Wildlife Estate



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

MEMORANDUM OF INCORPORATION

OF

HOEDSPRUIT WILDLIFE ESTATE NPC
(Registration number: 2004/010767/08)
("the Association")

A Non-Profit Company

This Memorandum of Incorporation was approved in terms of a special resolution adopted by Members at the annual general meeting of the Association held on 28 May 2022.

Table of Contents

1	Definitions	3
2	Status	5
3	Amendment and Alteration to this MOI.....	6
4	Application of Optional Provisions of the Act	6
5	Objects and Powers of the Association	7
6	Membership	8
7	Membership Register	9
8	Members' Right to Information	9
9	Members Meetings	10
10	Votes of Members.....	13
11	Proxies.....	14
12	Members Acting other than at a Meeting.....	15
13	Record Date for Exercise of Members' Rights.....	15
14	Directors	16
15	Board Meetings.....	19
16	Directors Acting Other Than at a Meeting	20
17	Committees of the Board	21
18	Auditors	21
19	Estate Manager.....	23
20	Indemnity	23
21	Restriction against Alienation, Subdivision and Consolidation.....	24
22	Restriction against Building on a Portion.....	25
23	Rules	25
24	Levies	27
25	Security, Maintenance, Services, Boundaries and Replacements.....	28
26	Winding-Up or Dissolution.....	29
27	Notices.....	29
28	Dispute Resolution.....	30
29	The Village.....	30

1 Definitions

1.1 In this MOI, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate words and expressions shall have a corresponding meaning, namely:

- | | | |
|--------|-----------------------------|--|
| 1.1.1 | the Act | means the Companies Act, 71 of 2008, as amended; |
| 1.1.2 | Alterable Provision | means a provision of the Act in which it is expressly contemplated that its effect on the Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI; |
| 1.1.3 | Board | means the board of directors of the Association, for the time being; |
| 1.1.4 | Business Day | means any day that is not a Saturday, Sunday or official public holiday in South Africa; |
| 1.1.5 | CC Act | means the Close Corporations Act, 69 of 1984, as amended; |
| 1.1.6 | Commercial Portion | means any Portion zoned for any use other than residential use; |
| 1.1.7 | Commission | means the Companies and Intellectual Property Commission, established in terms of section 185 of the Act; |
| 1.1.8 | Common Property | means the Road Portions and Private Open Space Portions, and all other portions of the Township as may be registered in the name of the Association from time to time, which are intended for the shared use of Members and their invitees recognising the privacy of Members and subject to the Rules; |
| 1.1.9 | Conditions of Establishment | means the statement of conditions to establish the Township; |
| 1.1.10 | Director | means a director of the Association; |
| 1.1.11 | Electronic Communication | means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service; |
| 1.1.12 | EMP | means the environmental management plan developed for the Property; |
| 1.1.13 | Estate Manager | means the estate manager appointed by the Board from time to time in terms of clause 19.1 to undertake any of the functions of the Association; |
| 1.1.14 | Member | means a person defined in clause 6 who holds membership of the Association; |
| 1.1.15 | MOI | means this memorandum of incorporation of the Association; |

- 1.1.16 Objects means the main objects and ancillary objects of the Association set out in **clause 5**;
- 1.1.17 Portion means an erf in the Township registered or capable of being registered in the name of any legal person as set out in the original Town Planning Scheme of Ext 6 Hoedspruit, and before any consolidation of any Portion, and including any subdivision of such Portion(s);
- 1.1.18 Private Open Portions means erven 709, 710 and 717 in the Township;
- 1.1.19 the Property means the Remainder of the Farm Amsterdam 208, Registration Division K.T., Limpopo;
- 1.1.20 Regulations means the Companies Regulations, 2011, published in terms of General Notice R351 in Government Gazette 34239 of 26 April 2011, and any further regulations made in terms of the Act from time to time;
- 1.1.21 Road Portion means erven 1466 and 1467 in the Township, which are zoned for use as roads;
- 1.1.22 ROD means the record of decision, being the approval document by the government for the development of the Property;
- 1.1.23 Rules means:
- 1.1.23.1 the Hoedspruit Wildlife Estate Building and Architectural Rules;
- 1.1.23.2 the Hoedspruit Wildlife Estate Rules and Regulations (House Rules);
- 1.1.23.3 the Hoedspruit Wildlife Estate Schedule of Charges and Penalties; and
- 1.1.23.4 all other rules made from time to time in terms of **clause 23.1**;
- 1.1.24 South Africa means the Republic of South Africa;
- 1.1.25 The Village means the freehold development within the Township known as The Village at Hoedspruit Wildlife Estate;
- 1.1.26 the Township means the proclaimed township of Hoedspruit Extension 6;
- 1.1.27 Unalterable Provision means a provision of the Act that does not expressly contemplate that its effect on the Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI; and
- 1.1.28 Village Members means the registered owners of the Portions forming part of The Village.
- 1.2 All other words and expressions defined in the Act shall, unless the context indicates otherwise, bear the same meanings in this MOI.
- 1.3 In this MOI, unless the context requires otherwise:
- 1.3.1 words importing any one gender shall include the other gender;
- 1.3.2 the singular shall include the plural and vice versa;

- 1.3.3 a reference to natural persons shall include created entities (corporate or unincorporated) and vice versa;
- 1.3.4 reference to any provision of the Act or Regulations shall include such provision as it may be modified or re-enacted from time to time;
- 1.3.5 any reference to any agreement or document shall be construed as a reference to such agreement or document as may have been, or may from time to time be, amended, varied, novated or supplemented.
- 1.4 In any instance where there is a conflict between a provision of this MOI and:
- 1.4.1 an Alterable Provision, the provision of this MOI shall prevail to the extent of the conflict; and
- 1.4.2 an Unalterable Provision, the Unalterable Provision shall prevail to the extent of the conflict unless this MOI imposes on the Association a higher standard, greater restriction, longer period of time or any similar more onerous requirement, in which event the relevant provision of this MOI shall prevail to the extent of the conflict.
- 1.5 In this MOI, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.
- 1.6 If anything in a definition is a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of this MOI.

2 Status

- 2.1 The Association is a pre-existing company, as defined in the Act, and continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act. This MOI replaces and supersedes the memorandum of incorporation of the Association applicable immediately prior to the filing of this MOI.
- 2.2 The Association is a non-profit company in terms of section 1 of the Act, and accordingly:
- 2.2.1 the Objects for which the Association were incorporated relate to communal or group interests;
- 2.2.2 must apply all of its assets and income, however derived, to advance its Objects;
- 2.2.3 subject to **clause 2.2.2**, may acquire and hold securities issued by a profit company or directly or indirectly, alone or in conjunction with any other person, and carry on any business, trade or undertaking consistent with or ancillary to its Objects;
- 2.2.4 may not distribute directly or indirectly pay any portion of its income or transfer any of its assets to any person who is or was an incorporator of the Association, a Member or Director or a person appointing a Director, except:
- 2.2.4.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Association or as reasonable payment of, or reimbursement for, expenses incurred to advance its Objects;

- 2.2.4.2 as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
 - 2.2.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association, in order to advance its Objects; or
 - 2.2.4.4 in respect of any legal obligation binding on the Association.
- 2.3 This MOI is in a form unique to the Association, as contemplated in section 13(1)(a)(ii) of the Act.
- 2.4 The Association is incorporated in accordance with, and governed by:
- 2.4.1 the Unalterable Provisions that are applicable to non-profit companies;
 - 2.4.2 the Alterable Provisions that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI;
 - 2.4.3 the provisions of this MOI; and
 - 2.4.4 its Rules.

3 **Amendment and Alteration to this MOI**

- 3.1 This MOI may only be amended:
- 3.1.1 in compliance with a court order, which amendment shall be effected by a resolution of the Board and does not require a special resolution as contemplated in **clause 3.1.3** below;
 - 3.1.2 in the manner contemplated in section 152(6)(b) of the Act;
 - 3.1.3 at any other time if a special resolution to amend this MOI:
 - 3.1.3.1 is proposed by the Board or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and
 - 3.1.3.2 is adopted at a Members meeting, or in accordance with **clause 12.1**.
- 3.2 The Board, or any individual authorised by the Board, may alter this MOI in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by:
- 3.2.1 publishing a notice of any alteration by delivering a copy of such alteration to each Member by hand or e-mail; and
 - 3.2.2 filing a notice of the alteration with the Commission.

4 **Application of Optional Provisions of the Act**

The Association, being a non-profit company, elects, in terms of section 34(2) of the Act, to voluntarily appoint an auditor, which satisfies the requirements in **clause 18.1**, each year at its annual Members meeting and to submit to the extended accountability requirements set out in Chapter 3 of the Act, to the extent set out in **clause 18**.

5 Objects and Powers of the Association

5.1 The main Objects of the Association shall be:

5.1.1 to carry on business as a homeowners association;

5.1.2 to promote, advance and protect the overall interests of the Property as one wildlife residential area;

5.1.3 to collect monthly levies, special levies and service charges from the Members;

5.1.4 to pay the monthly expenses of the homeowners association such as, but not limited to, electricity, water, security, salaries and wages, maintenance (on roads, fences, infrastructure and equipment), office expenses, consultants, game purchases and management costs, communication and all expenses related to the operation of the homeowners association;

5.1.5 to manage the Common Property, fauna and flora including the game on sound environmental practices in terms of the Conditions of Establishment, ROD and the EMP and to ensure there are no fences, barriers or restrictions within the Property, at the same time to ensure that fencing-off of private property is as per prescribed architectural guidelines;

5.1.6 to participate in the promotion, advancement and protection of the communal and group interests of the Members in a coordinated and integrated manner to benefit from the Property;

5.1.7 to act as a body for the representation, promotion and advancement of the communal interest of Members, and to integrate those interests as far as possible with practical measures that will enhance the Property generally;

5.1.8 to establish structures and committees to promote voluntary self-regulation of the activities of the Members; and

5.1.9 to contribute financially to the operation and maintenance of the common benefits and objectives of the Association and the Property.

5.2 The ancillary objects of the Association are to:

5.2.1 administer the Property as an eco-tourism project and residential wildlife estate known as "Hoedspruit Wildlife Estate".

5.2.2 promote and conserve, wildlife, fauna and flora on the Property as a sanctuary for wildlife, fauna and flora;

5.2.3 implement any environmental management plan of the Property based on universal principles of sound, integrated environmental management and in terms of the conditions of the Environmental Impact Assessment;

5.2.4 promote, support or oppose legislation or other official or unofficial measures affecting the Property as a whole, and if necessary, represent the Members in dealings with government

departments, other authorities and the public generally in regard to any matter which may be in the collective interest of the Members;

- 5.2.5 endeavour to ensure compliance by Members with the Rules and where necessary, endeavour to ensure that the local or any other competent authority enforces any relevant Conditions of Establishment;
- 5.2.6 consent to the operation of lodges and other overnight accommodation establishments and seek to ensure the compliance of such establishments with the Rules;
- 5.2.7 formulate the Rules for the control of buildings, walling, fencing, exterior lighting, signage, aesthetic planning and landscaping of the Portions at all times having regard to the interest of the Property and to ensure compliance with any such Rules as stipulated in the Hoedspruit Wildlife Estate Building and Architectural Rules;
- 5.2.8 implement best practice strategies for the Property as a whole relating to security, vegetation, continuity, parking, signage and exterior finishings and to endeavour to secure access to the Property;
- 5.2.9 endeavour to ensure that Members maintain their Portions in a clean and tidy condition and adhere to the specifications and Rules imposed from time to time by the Association and the Estate Manager relating to landscaping and ecological planning of Portions and conduct on the Property by Members and their invitees or visitors as stipulated in the Hoedspruit Wildlife Estate Rules and Regulations (House Rules);
- 5.2.10 undertake the maintenance of roads situated within the Property; and
- 5.2.11 create, maintain and administer the general security arrangements of the Property in keeping with the needs of the Property as a whole, with particular reference to controlling access, and the nature and type of security to be provided from time to time.
- 5.3 The Association has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity. No provision contained in this MOI shall be interpreted or construed as restricting, limiting or qualifying the legal powers and capacity of the Association.
- 5.4 Save to the extent necessarily implied by its Object, the purposes and the powers of the Association are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.

6 **Membership**

- 6.1 Membership of the Association shall be restricted to the registered owners of the Portions and the Home Owners' Association of The Village, subject to the rights, obligations and limitations on their membership imposed in terms of this MOI. No other person shall be eligible or entitled to be a Member.
- 6.2 The Association shall have two classes of members, namely:
- 6.2.1 voting Members, comprising the registered owners of the Portions (not forming part of The Village) and the Home Owners' Association of The Village; and

- 6.2.2 non-voting Members, comprising the Village Members.
- 6.3 Where two or more persons are registered as the owners of the same Portion, such persons shall collectively be deemed to be one Member, provided that all co-owners of any Portion shall be jointly and severally liable for the due performance of any obligation to the Association.
- 6.4 A registered owner of a Portion shall *ipso facto* become a member of the Association and, upon ceasing to be the registered owner thereof, *ipso facto* cease to be a Member. A Member shall not, for as long as he is the registered owner of a Portion, be entitled to resign as a Member.
- 6.5 No Member shall:
- 6.5.1 alienate or otherwise part with occupation of his Portion, whether temporarily or otherwise, unless he has agreed in writing with the purchaser or proposed occupier of such Portion as a *stipulatio alteri* in favour of the Association that such purchaser or occupier, as the case may be, shall be bound by all of the terms and conditions of this MOI and the Rules;
- 6.5.2 transfer his Portion to any other person, unless all amounts due by the Member to the Association, whether in respect of arrear levies, interest, costs, ancillary charges or otherwise, have been paid to the Association in full.

7 Membership Register

- 7.1 The Association shall maintain a register of all of the Members in the form prescribed by the Act.
- 7.2 The membership register maintained in accordance with the Act shall, in the absence of evidence to the contrary, be sufficient proof of the facts recorded therein.

8 Members' Right to Information

- 8.1 Each Member has a right to inspect and copy without any charge for any such inspection or on payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Association:
- 8.1.1 this MOI, any amendments thereto, the Rules and any other rules made in respect of the Association;
- 8.1.2 the records in respect of the Directors contemplated in section 24(3)(b) of the Act;
- 8.1.3 the reports to annual Members meetings, and annual financial statements of the Association;
- 8.1.4 the notices and minutes of all Members meetings, including all resolutions adopted by them and any document made available by the Association to Members in relation to each such resolution;
- 8.1.5 copies of any written communications sent generally by the Association to Members; and
- 8.1.6 the membership register.

8.2 If a Member wishes to inspect any other document in the Association's possession, that Member shall be required to direct a request to the Association in accordance with the Promotion of Access to Information Act, 2 of 2000.

9 **Members Meetings**

9.1 Requirement to Hold Meetings

9.1.1 The Board may call a Members meeting at any time.

9.1.2 Subject to **clause 12**, the Association shall hold a Members meeting:

9.1.2.1 at least once a year, provided that not more than 15 (fifteen) months shall elapse between the date of the previous annual Members meeting and that of the next, and that an annual Members meeting shall be held within 9 (nine) months of the expiration of the Association's financial year;

9.1.2.2 at any time that the Board is required by the Act or this MOI to refer a matter to Members for decision;

9.1.2.3 whenever required in terms of section 70(3) of the Act to fill a vacancy on the Board; and

9.1.2.4 when otherwise required in terms of **clause 9.2**.

9.2 Members' Right to Requisition a Meeting

The Board shall call a Members meeting if 1 (one) or more written and signed demands for such a meeting are delivered to the Association and:

9.2.1 each such demand describes the specific purpose for which the meeting is proposed; and

9.2.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as at the earliest time specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

9.3 Location of Members Meetings

The Board shall determine the location and time for any Members meeting.

9.4 Notice of Members Meetings

9.4.1 The Association shall deliver a notice of each Members meeting to all Members as of the record date of the meeting, in written and/or electronic form, at least 15 (fifteen) Business Days before the meeting is to begin.

9.4.2 The notice contemplated in **clause 9.4.1** shall include the following information:

9.4.2.1 the date, time, place and record date of the Members meeting;

- 9.4.2.2 the general purpose of the meeting, and any specific purpose contemplated in **clause 9.2.1**;
- 9.4.2.3 a copy of any proposed resolution of which the Association has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
- 9.4.2.4 in the case of an annual Members meeting, the financial statements to be presented or a summarised form thereof and directions for obtaining a copy of the complete annual financial statements for the preceding financial year; and
- 9.4.2.5 a reasonably prominent statement that:
- 9.4.2.5.1 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;
- 9.4.2.5.2 a proxy need not also be a Member; and
- 9.4.2.5.3 section 63(1) of the Act requires participants to provide satisfactory identification to verify their right to participate at the Members meeting.
- 9.4.3 The annual Members meeting shall deal with and dispose all the matters prescribed by the Act, including the consideration of the annual financial statements, the election of Directors and the appointment of an auditor, and may deal with any other business laid before it.
- 9.4.4 The Association may call a Members meeting on shorter notice than required in terms of **clause 9.4.1**, provided that such a meeting may only proceed if every person who is entitled to exercise voting rights in respect of any item on the agenda is present at that meeting and votes to waive the required minimum notice of the meeting.
- 9.4.5 An immaterial defect in the form or manner of giving notice of a Members meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed, shall not invalidate any action taken at the meeting.
- 9.5 Quorum for Members Meetings
- The quorum requirements for a Members meeting to begin or for a matter to be considered are as follows:
- 9.5.1 a Members meeting shall not begin until sufficient persons are present at the meeting, in person or by proxy, to exercise, in aggregate, at least 10% (ten percent) of all of the voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at that meeting; and
- 9.5.2 a matter to be decided at the Members meeting may not begin to be considered unless sufficient persons are present at that meeting, in person or by proxy, to exercise, in aggregate, at least 10% (ten percent) of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda,

provided that, even if the requirements in **clause 9.5.1** or **9.5.2** are satisfied, a Members meeting shall only begin, or a matter shall only begin to be debated, if at least 3 (three) Members are present at the meeting.

9.6 Chairperson

- 9.6.1 The chairperson of the Board, if any, shall preside as chairperson at every Members meeting.
- 9.6.2 If there is no chairperson, or if at any Members meeting he is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting or is unwilling to act as the chairperson, the vice-chairperson of the Board shall act in his stead, or failing the vice-chairperson, the Members present in person or by proxy shall choose one of their number to be chairperson.
- 9.6.3 In the case of an equality of votes in a Members meeting, the chairperson of the meeting shall be entitled to a second or casting vote.

9.7 Postponement and Adjournment of Members Meetings

- 9.7.1 If, within 30 (thirty) minutes of the appointed time for a Members meeting to begin, the quorum requirement stipulated in **clause 9.5.1**, or **9.5.2** if applicable:
- 9.7.1.1 for that meeting to begin has not been satisfied, the meeting shall be postponed without motion, vote or further notice, for 1 (one) week, to be held at the same time;
- 9.7.1.2 for consideration of a particular matter to begin has not been satisfied:
- 9.7.1.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote;
or
- 9.7.1.2.2 if there is no business on the agenda of the meeting, the meeting shall be adjourned for 1 (one) week without motion or vote, to be held at the same time.
- 9.7.2 The person intended to preside at a Members meeting, which cannot begin due to the quorum requirement stipulated in **clause 9.5.1**, or **9.5.2** if applicable, not being satisfied, shall be entitled to extend the 30 (thirty) minute limit allowed in **clause 9.7.1** for a reasonable period if:
- 9.7.2.1 exceptional circumstances affecting weather or transportation have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
- 9.7.2.2 1 (one) or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with the Members in attendance, would satisfy the quorum requirements stipulated in **clause 9.5**.
- 9.7.3 After a quorum has been established for a Members meeting, or for a matter to be considered at a Members meeting, the meeting may continue or the matter may be considered, so long as at least sufficient persons are present at the meeting, in person or

by proxy, to exercise, in aggregate, at least 10% (ten percent) of all of the voting rights entitled to be exercised at the meeting or on that matter.

- 9.7.4 The Association shall not be required to give further notice of a Members meeting that is postponed or adjourned in terms of **clause 9.7.1**, unless the location for the meeting is different from the location of the postponed or adjourned meeting, or from the location announced at the time of adjournment in the case of an adjourned meeting.
- 9.7.5 If, at the time appointed in terms of **clause 9.7.1** for a postponed Members meeting to begin, or for an adjourned meeting to resume, the quorum requirement stipulated in **clause 9.5.1**, or **9.5.2** if applicable, has not been satisfied, the Members present, in person or by proxy, will be deemed to constitute a quorum.
- 9.7.6 A Members meeting may not be adjourned beyond 15 (fifteen) Business Days after the date on which the adjournment occurred.

10 Votes of Members

- 10.1 At every Members meeting:
- 10.1.1 With the exception of any resolutions to vary, substitute or amend this MOI or any Rules, or the election of Directors, which shall be conducted as a poll, all voting shall be by show of hands unless the chairperson directs that the voting shall be by way of poll.
- 10.1.2 Subject to **clause 10.1.3**, every voting Member present in person or by proxy shall be entitled to exercise 1 (one) vote in respect of each Portion of which he is the registered owner if the vote is conducted by poll.
- 10.1.3 The Village shall have 4 (four) votes and shall be represented by the Director appointed to the Board in terms of **clause 14.1.1** (or his alternate or proxy).
- 10.1.4 If a Portion is registered in the name of more than one person, or a juristic person, then all such co-owners shall jointly, and the juristic person shall, have 1 (one) vote.
- 10.1.5 In terms of section 63(5) of the Act, if voting is by show of hands, any person who is present at the meeting, whether as a Member or a proxy for a Member and is entitled to exercise voting rights has 1 (one) vote, irrespective of the number of Portions owned by that Member.
- 10.1.6 Despite any provision of this MOI, or agreement to the contrary, a polled vote must be held on any particular matter to be voted on at a meeting if a demand for such vote is made by:
- 10.1.6.1 at least 5 (five) persons having the right to vote on that matter, either as a voting Member or a proxy representing a voting Member; or
- 10.1.6.2 a person who is, or persons who together are, entitled, as a voting Member or proxy representing a voting Member, to exercise at least 10%(ten percent) of the voting rights entitled to be voted on that matter.
- 10.2 In respect of each poll:

- 10.2.1 the poll shall be taken in such a manner and at such time as the chairperson of the meeting directs;
- 10.2.2 the chairperson of the meeting shall be entitled to appoint a scrutineer/s;
- 10.2.3 the result of the poll shall be deemed to be the resolution of the meeting on any matter on which the poll is taken;
- 10.2.4 in the case of an equality of votes, the chairperson of the meeting at which the poll is taken shall be entitled to a second or casting vote;
- 10.2.5 an objection to the admissibility of a vote on a poll shall be raised at the meeting at which that poll is to take place. The objection shall be determined by the chairperson of the general meeting, and his decision thereon shall be final and binding. Accordingly, any vote not disallowed at the meeting shall be valid for all purposes; and
- 10.2.6 a resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the chairperson of that meeting (whose decision thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless in the opinion of the chairperson of that meeting (whose decision thereon shall be final and binding) the inclusion of that vote would have altered the result of the voting on that resolution.
- 10.3 For an ordinary resolution to be adopted at a Members meeting, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution.
- 10.4 For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution.
- 10.5 No Member shall be entitled to any of the privileges of membership of the Association unless he shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that Member to the Association, from whatsoever cause arising.

11 Proxies

11.1 Proxy Appointment

- 11.1.1 A Member may, at any time, appoint any individual, including an individual who is not a Member, as a proxy to:
- 11.1.1.1 participate in, and speak and vote at, a Members meeting on behalf of the Member;
- 11.1.1.2 give or withhold written consent on behalf of the Member to a decision contemplated in **clause 10**.
- 11.1.2 A proxy appointment is required to be in writing, dated and signed by the Member and remains valid for 1 (one) year after the date on which it was signed or any longer or shorter period expressly set out in the appointment, unless:

- 11.1.2.1 the appointment is revoked by the Member cancelling it in writing or making a later inconsistent appointment and delivering a copy of the revocation instrument to the proxy and to the Association; or
- 11.1.2.2 the Association issues an invitation to Members to appoint 1 (one) or more persons named by the Association as a proxy or supplies a form of instrument for appointing a proxy, in which case the proxy appointment shall expire at the end of the meeting it was intended to be used, subject to section 58(5) of the Act.

11.2 Requirement to Deliver Proxy Instrument

A copy of the instrument appointing a proxy must be delivered to the Association, or to any other person on behalf of the Association, before the proxy exercises any rights of the Member at a Members meeting.

11.3 Representation by Concurrent Proxies

A Member may not appoint 2 (two) or more persons concurrently as proxies.

11.4 Authority of Proxy to Delegate

A proxy may not delegate his authority to act on behalf of a Member to another person.

11.5 Deliberative Authority of Proxy

A proxy shall be entitled to exercise or abstain from exercising any voting right of the Member without written directions from that Member, except to the extent that the instrument appointing the proxy provides otherwise.

12 **Members Acting other than at a Meeting**

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

- 12.1.1 submitted for consideration to Members entitled to exercise voting rights in relation to the resolution; and
- 12.1.2 voted on in writing by Members entitled to exercise voting rights in relation to the resolution within 20 (twenty) Business Days after the resolution was submitted to them.

12.2 A resolution contemplated in **clause 12.1**:

- 12.2.1 shall be adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution, as the case may be, at a properly constituted Members meeting; and
- 12.2.2 if adopted, shall have the same effect as if it had been approved by voting at a Members meeting.

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

If, at any time, the Board fails to determine a record date, the record date for the relevant matter is:

- 13.1 in the case of a Members meeting, the latest date by which the Association is required to give Members notice of that meeting; or
- 13.2 the date of the action or event, in any other case.

14 Directors

14.1 Composition of the Board

- 14.1.1 The Board shall be comprised of at least 5 (five) and not more than 10 (ten) Directors, one of whom shall be appointed by The Village and the remainder to be elected by the Members.
- 14.1.2 A Director shall be a natural person, but need not himself be a Member of the Association. A Director, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of the MOI.

14.2 Rotation of Directors

- 14.2.1 Each Director shall continue to hold office from the date of his appointment until the annual Members meeting held in the second year following his appointment, at which meeting such Director shall be deemed to have retired from office but shall be eligible for re-election to the Board at such meeting.
- 14.2.2 The Members may, at any annual Members meeting at which a Director elected by the Members retires pursuant to **clause 14.2.1**, fill the vacancy office by re-electing that Director or electing another person thereto in accordance with **clause 14.1.1**.

14.3 Vacancy on the Board

The Board may appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on a temporary basis until the vacancy has been filled by election in terms of **clause 14.2**, and during that period any person so appointed shall have all of the powers functions and duties, and is subject to all of the liabilities, of any other Director.

14.4 Chairperson and Vice-Chairperson

- 14.4.1 The Directors shall at the first Board meeting after each annual Members meeting appoint from their number a chairperson and vice-chairperson, who shall hold their respective offices until the next annual Members Meeting after the said appointments, provided that the office of the chairperson and vice-chairperson shall *ipso facto* be vacated by a Director holding such office upon him ceasing to be a Director for any reason. In the event of any vacancy occurring in either of the aforesaid offices at any time, the Board shall forthwith appoint one of their number as a replacement in such office.
- 14.4.2 Except as otherwise herein provided, the chairperson shall preside at all meetings of the Board and all Members meetings, and in the event of him not being present within 10 (ten) minutes of the scheduled time for the start of the Board meeting or in the event of his inability or unwillingness to act, the vice-chairperson shall act in his stead, or failing the vice-chairperson, the Directors may choose one of their number to be chairperson of the meeting.

14.5 Ineligibility and Disqualification of Directors

- 14.5.1 A person who is ineligible or disqualified in terms of this **clause 14.5** shall not be appointed or elected as a Director, consent to being appointed or elected as a Director, or act as a Director.
- 14.5.2 The Association shall not knowingly permit an ineligible or disqualified person to serve or act as a Director.
- 14.5.3 A Director who becomes ineligible or disqualified in terms of this **clause 14.5** whilst serving as a Director shall, subject to section 70(2) of the Act, cease to be entitled to continue to act as a Director with immediate effect.
- 14.5.4 A person who is not in good standing with the Association in that such person or a Member, which such person represents, is in breach of the Rules or the MOI, and has remained in such breach for more than 20 (twenty) Business Days shall not serve as a Director.
- 14.5.5 A person who has been placed under probation by a court in terms of section 162 of the Act or section 47 of the CC Act, shall not serve as a Director except to the extent permitted by the order of probation.
- 14.5.6 A person is ineligible to be a Director if the person is a juristic person, is an unemancipated minor or is under a similar legal disability.
- 14.5.7 A person shall be disqualified to be a Director if:
- 14.5.7.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162 of the Act or section 47 of the CC Act;
- 14.5.7.2 subject to **clause 14.5.8** and section 69(10) and (11) of the Act, that person:
- 14.5.7.2.1 is an unrehabilitated insolvent;
- 14.5.7.2.2 is prohibited in terms of any public regulation to be a Director;
- 14.5.7.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 14.5.7.2.4 has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
- 14.5.7.2.4.1 involving fraud, misrepresentation or dishonesty;
- 14.5.7.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in **clause 14.5.1** or **14.5.5**; or
- 14.5.7.2.4.3 under the Act, the Insolvency Act, 24 of 1936, the CC Act, the Financial Intelligence Centre Act, 38 of 2001, the Securities Services Act, 36 of 2004, or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

- 14.5.8 A disqualification in terms of **clause 14.5.7.2.3** or **14.5.7.2.4** ends at the later of:
- 14.5.8.1 5 (five) years after the date of removal from office or the completion of the sentence imposed for the relevant offence, as the case may be; or
- 14.5.8.2 at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of section 69(10) of the Act.
- 14.5.9 This **clause 14.5** shall also apply to a prescribed officer of the Association or a person who is a member of a committee of the Board.
- 14.6 Authority of the Board
- 14.6.1 The business and affairs of the Association shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Association, subject to the provisions of the Act and this MOI.
- 14.6.2 All acts by the Board or by any person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of any Director, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director.
- 14.6.3 Without limiting the generality of **clause 14.6.1** above, the Board shall have the powers to:
- 14.6.3.1 engage on behalf of the Association the services of accountants, auditors, attorneys, advocates, architects, engineers, the Estate Manager, or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the Board and on such terms as the Board may decide, and the Board may delegate any or all of its powers to the said Estate Manager as the Board may determine, subject to any restrictions imposed or direction given at any Members meeting of the Association.
- 14.6.3.2 appoint a person who satisfies the requirements for election as a Director to fill any vacancy and serve as a Director on a temporary basis in terms of **clause 14.3** above;
- 14.6.3.3 require the submission for approval of such applications for consent or approval, plans, drawings and other information as they may deem necessary to ensure compliance by Members with the MOI and the Rules;
- 14.6.3.4 require that any works being constructed within the Property are supervised and that all work is performed in a proper and workmanlike manner;
- 14.6.3.5 within the Objects and subject to the requirements of the Association and in terms of the EMP and ROD to determine the access to the Portions;
- 14.6.3.6 nominate such nominees for election to serve on the Board of Trustees of the Conservancy, as may be permitted in terms of the Constitution of the Conservancy, provided that the nominees shall be from the Members or their respective directors, members or trustees; and

14.6.3.7 make Rules as provided for in **clause 23** and determine and impose penalties and fines for breaches on the Rules.

14.7 The Association and the Board shall not have the power to:

14.7.1 mortgage or bind the Associations' **property or any part thereof; or**

14.7.2 borrow money other than in the ordinary course of conducting its business and as approved in a Members meeting.

14.8 Directors' Expenses

The **Directors shall be entitled to be repaid all reasonable and qualified expenses incurred by them respectively, in or about the performance of their duties as Directors, provided the Directors shall not be entitled to any remuneration for performance of their duties in terms hereof.**

15 **Board Meetings**

15.1 Requisition of Board Meetings

Any Director may, at any time, call a meeting of the Board.

15.2 Notice of Board Meetings

15.2.1 The Board may determine the form and time for giving notice of its meetings, but, subject to **clause 15.2.2**, no meeting of the Board may be convened without notice to all of the Directors.

15.2.2 If all the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, the meeting of the Board may proceed even if requisite notice of that meeting has not been given, or there was a defect in the giving of the notice.

15.3 Electronic Participation

A meeting of the Board may be conducted entirely by Electronic Communication or 1 (one) or more Directors may participate in a meeting by Electronic Communication, provided that 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.

15.4 Quorum for Board Meetings, Voting Rights and Requirements for Approval of a Resolution

15.4.1 At least 4 (four) Directors must be present at a Board meeting before a vote may be called at that meeting. If, within 30 (thirty) minutes of the time approved for a meeting, a quorum is not established, the meeting shall stand adjourned to the same time and day the following week, or such other time and place as the chairperson may direct, and the persons present at the adjourned meeting shall constitute a quorum for that meeting.

15.4.2 Each Director has 1 (one) vote on a matter before the Board. A majority of the votes cast on a resolution is sufficient to approve that resolution.

15.4.3 In the case of an equality of votes, the chairperson of the meeting shall be entitled to a second or casting vote.

15.5 Personal Financial Interest

If any 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:

15.5.1 must disclose the interest and its general nature before the matter is considered at the meeting;

15.5.2 must disclose to the meeting any material information relating to the matter, and known to the Director;

15.5.3 may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

15.5.4 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in **clause 15.5.2** or **15.5.3**;

15.5.5 may not take part in the consideration of the matter, except to the extent contemplated in **clauses 15.5.2** and **15.5.3**;

15.5.6 whilst absent from the meeting in terms of this **clause 15.5**:

15.5.6.1 is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and

15.5.6.2 is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

15.5.6.3 must not execute any document on behalf of the Association in relation to the matter unless specifically requested or directed to do so by the Board.

15.6 The Board shall cause minutes to be kept of every Board meeting, which minutes shall, without undue delay after the meeting has closed, be reduced to writing and sent to all Directors and certified correct, with or without amendments, by the chairperson at the next Board meeting.

15.7 Save as provided in this MOI, the proceedings of any Board meeting shall be conducted in such reasonable manner and form as the chairperson of the meeting shall decide.

16 **Directors Acting Other Than at a Meeting**

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. A decision made in the manner contemplated in this **clause 16** shall be of the same effect as if it had been approved by voting at a meeting of the Board.

17 Committees of the Board

The Directors shall be entitled to appoint committees consisting of such number of Members and such outsiders, including the Estate Manager, as they deem fit, with the further power to vary or revoke such appointments and delegations as the Directors may from time to time deem necessary.

18 Auditors

18.1 Appointment of Auditors

18.1.1 To be appointed as an auditor of the Association, a person or a firm is required to be a registered auditor, who is not:

18.1.1.1 a Director or prescribed officer of the Association;

18.1.1.2 an employee or consultant of the Association who was or has been engaged for more than 1 (one) year in the maintenance of any of the Association's financial records or the preparation of any of its financial statements;

18.1.1.3 a director, officer or employee of a person appointed as company secretary of the Association;

18.1.1.4 a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the Association;

18.1.1.5 a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was a person contemplated in **clauses 18.1.1.1 to 18.1.1.4**;
or

18.1.1.6 a person related to a person contemplated in **clauses 18.1.1.1 to 18.1.1.5**.

18.1.2 If the Association appoints a firm as an auditor, the individual determined by that firm to be responsible for performing the functions of auditor is required to satisfy the requirements set out in **clause 18.1**.

18.1.3 A retiring auditor may be automatically reappointed at the annual Members meeting without any resolution being passed, unless:

18.1.3.1 the retiring auditor is no longer qualified for the appointment or is no longer willing to accept the appointment; or

18.1.3.2 the Association has notice of an intended resolution to appoint some other person or persons in place of the retiring auditor.

18.1.4 If, at an annual Members meeting, an auditor is not appointed or reappointed, the Directors are required to, within 40 (forty) Business Days of the date of such meeting, fill the vacancy in accordance with the procedure set out in **clause 18.2.2**.

18.2 Resignation of Auditors and Vacancies

- 18.2.1 An auditor of the Association may resign from office by giving the Association 1 (one) month written notice or less than 1 (one) month written notice, with the approval of the Board. The resignation of an auditor shall be effective when the notice is filed.
- 18.2.2 If a vacancy arises in the office of auditor of the Association, the Board:
- 18.2.2.1 if there was only 1 (one) incumbent auditor of the Association, shall appoint a new auditor within 40 (forty) Business Days; and
- 18.2.2.2 if there was more than 1 (one) incumbent, may appoint a new auditor at any time, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Association.
- 18.2.3 In the event that the Association appoints a firm as its auditor, any change in the composition of the members of that firm does not by itself create a vacancy in the office of auditor for that year, subject to **clause 18.2.4**.
- 18.2.4 If, by comparison with the membership of a firm at the time of its latest appointment, less than one half of the members remain after a change contemplated in **clause 18.2.3**, that change constitutes the resignation of the firm as the auditor of the Association, giving rise to a vacancy.
- 18.2.5 If the auditor is removed from office by the Board, the auditor may require the Association to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the auditor's contention as to the circumstances that resulted in the removal. Should the auditor of the Association wish to exercise the power referred to in this **clause 18.2.5**, the auditor shall give written notice to that effect to the Association by not later than the end of the financial year in which the removal took place and that notice shall include the statement referred to in this **clause 18.2.5**.
- 18.2.6 The statement of the auditor referred to in **clause 18.2.5** shall be included in the Board's report in the Association's annual financial statements.

18.3 Rotation of Auditors

The same individual or firm of auditor may not serve as the designated auditor of the Association for more than 5 (five) consecutive years.

18.4 Rights and Restricted Functions of Auditors

The auditor of the Association shall:

- 18.4.1 have the right of access at all times to the accounting records and all books and documents of the Association, and shall be entitled to require from the Directors or prescribed officers of the Association any information and explanations necessary for the performance of the auditor's duties; and
- 18.4.2 be entitled to attend any Members meeting, receive all notices of and other communications relating to such meetings and be heard at such meetings on any part of the business of the meeting that concerns the auditor's duties or functions.

19 Estate Manager

- 19.1 The Board may, from time to time, appoint an Estate Manager in terms of a written contract to control, manage and administer the business and affairs of the Association and to exercise such powers and duties as may be entrusted to that person, including the power to collect levies, fines and penalties imposed by the Board.
- 19.2 The Estate Manager shall keep full records of his administration and shall report to the Association on all matters which in his opinion detrimentally affect the value or amenity of the Estate.
- 19.3 The Board shall give the Estate Manager reasonable notice of all meetings of the Board and the Estate Manager shall be entitled to be present thereat.
- 19.4 Should an Estate Manager not be appointed in terms of this **clause 19**, then all references to the Estate Manager in this MOI shall be deemed to be a reference to the Board.

20 Indemnity

- 20.1 The Association:
- 20.1.1 may advance expenses to a Director, the Estate Manager, any officer, agent, servant or employee of the Association or person engaged as auditor to defend litigation in any proceedings arising out of their service to the Association; and
- 20.1.2 hereby directly and indirectly indemnifies the Directors, the Estate Manager, any officer, agent, servant or employee of the Association and every person employed by the Association as auditor for expenses contemplated in **clause 20.1.1**, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or the proceedings exculpate such persons or arise in respect of any liability for which the Association indemnifies those persons, in terms of **clause 20.2**.
- 20.2 The Association hereby indemnifies each of the Directors, the Estate Manager, any officer agent, servant or employee of the Association and every person employed by the Association as auditor in respect of any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties other than:
- 20.2.1 in respect of any fine imposed on such persons as a consequence of having been convicted of an offence (unless the conviction was based on strict liability); or
- 20.2.2 any other liability arising:
- 20.2.2.1 as a direct or indirect consequence of any such person having:
- 20.2.2.1.1 acted in the name of the Association, signed anything on behalf of the Association, purported to bind the Association or authorised the taking of any action by or on behalf of the Association, despite knowing that he lacked the authority to do so;

- 20.2.2.1.2 acquiesced in the carrying on of the Association's business despite knowing that the business of the Association was being conducted in a manner prohibited by section 22(1) of the Act; or
- 20.2.2.1.3 been a party to an act or omission by the Association despite knowing that the act or omission was calculated to defraud a creditor or employee of the Association, or a Member, or had another fraudulent purpose;
- 20.2.2.2 from wilful misconduct or wilful breach of trust on the part of any such person.
- 20.3 The Association may purchase insurance to protect:
- 20.3.1 a Director against any liability or expenses for which the Association is permitted to indemnify a Director in accordance with **clause 20.2**; or
- 20.3.2 the Association against any contingency, including, but not limited to:
- 20.3.2.1 any expenses that the Association is permitted to advance in accordance with **clause 20.1.1**, or for which the Association is permitted to indemnify a Director in accordance with **clause 20.1.2**; or
- 20.3.2.2 any liability for which the Association is permitted to indemnify a Director in accordance with **clause 20.2**.
- 20.4 Each Member absolves the Association and the Directors, the Estate Manager, its employees, officers, sub-committee members and agents ("the Indemnified Parties") from all liability and indemnifies them from any claim by any person (including but not limited to a claim by a dependent) for damages or loss of whatever nature (including but not limited to consequential damages or special damages) flowing directly or indirectly from any injury (including fatal injury) suffered by that Member or damage to that Member's property whilst on the Property whatever the cause/causes are (including any negligent or grossly negligent act or omission by any of the Indemnified Parties), save only for the exclusion of intentional action on the part of the Indemnified Parties.

21 **Restriction against Alienation, Subdivision and Consolidation**

- 21.1 A Member shall not in any manner alienate or transfer a Portion or any undivided share therein without the prior consent of the Association. The Association is obliged to give its consent provided that:
- 21.1.1 the proposed transferee consents and agrees in the sale or other written agreement to become and remain a Member of the Association for the duration of his ownership of the Portion;
- 21.1.2 a clearance certificate has been issued by the Association to the effect that all monies due to the Association by the Member have been paid, or security to the satisfaction of the Association has been provided to the Association for the payment thereof; and
- 21.1.3 the Association has certified that the Member is not in breach of any provision of this MOI or the Rules.

- 21.2 Should a Member be a juristic entity, any change in ownership of such juristic entity shall be notified in writing to the Association within 20 (twenty) Business Days of such change of ownership. If no notice is given to the Association, the previous owners of the juristic entity will be jointly and severally liable with the juristic entity for any amounts due.
- 21.3 The registration of transfer of the Portion in the name of the transferee shall ipso facto constitute the transferee as a Member.
- 21.4 The provisions of **clause 21.1** shall apply *mutatis mutandis* to any alienation of an undivided share of the Portion.
- 21.5 No Member shall let or otherwise part with the occupation of his Portion whether temporarily or otherwise unless the proposed occupier has agreed to be bound by the MOI and the Rules.
- 21.6 The Association in issuing the certificate referred to in **clause 21.1.2** shall be entitled to charge a reasonable fee therefore to be determined by the Board from time to time, subject to review by the Members in a Members' meeting.
- 21.7 The provisions of **clause 21.1** shall be registered as a condition of title of each Member's title deeds.
- 21.8 No Portions shall be consolidated or subdivided without a special resolution of members authorising such consolidation or subdivision.

22 **Restriction against Building on a Portion**

No Member shall be entitled to commence or procure the commencement of any building on a Portion unless all amounts owing to the Association by the Member concerned, and any interest levied thereon, have been settled in full.

23 **Rules**

- 23.1 The Board shall, from time to time, make, amend or repeal Rules in regard to the use, protection and enjoyment of the Common Property and any conduct on the Common Property and other Portions of the Property, all of which shall be binding on Members. The Rules as made, amended or repealed shall be ratified by the Members at the next Members' Meeting in accordance with section 15(4) of the Act.
- 23.2 Without derogating from the generality of the provisions of **clause 23.1**, the Board shall be entitled to make, amend or repeal Rules in relation to:
- 23.2.1 the proper preservation of the Property as a wildlife estate;
 - 23.2.2 the keeping of pets;
 - 23.2.3 traffic calming measures;
 - 23.2.4 the imposition of fines and other penalties on Members;
 - 23.2.5 building activities by Members on Portions;

- 23.2.6 the aesthetic appearance, design, specifications and maintenance of buildings on Portions;
- 23.2.7 noise other nuisance on the Property; and
- 23.2.8 all such other matters as may be necessary for the harmonious and beneficial use and enjoyment of the Property.
- 23.3 In the event of a breach of any of the Rules by a Member, the Board and/or Estate Manager shall be entitled to:
- 23.3.1 give notice to the Member concerned requiring him to remedy such breach within such reasonable period as the Board and/or Estate Manager determines;
- 23.3.2 take or cause to be taken such steps as they may consider necessary to remedy the breach of the Rule of which the Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member concerned to the Association;
- 23.3.3 impose a system of fines or other penalties. The amounts of such fines shall be determined from time to time by the Board and notified to the Members, provided that fines are required to be ratified by the Members at the next Members' meeting;
- 23.3.4 take such other action, including the institution of court proceedings in the name of the Association and the appointment of attorneys and counsel, as it may deem fit.
- 23.4 In the event of the Board instituting any legal proceedings against any Member or tenant for the enforcement of any of the rights of the Association in terms hereof, the Association shall be entitled to recover all legal costs so incurred from the Member or tenant concerned, calculated as between attorney and own client including collection commission and tracing agent's fees.
- 23.5 In the event of any breach of the Rules by any guests, visitors, residents or tenants of a Member, or his contractors, agents or employees, such breach shall be deemed to have been committed by the Member himself, but, without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they may, in their discretion deem fit.
- 23.6 In the event of any Member disputing the fact that he has committed a breach of any of the Rules, or the quantum of the fine, the Member shall be entitled to make representations to a committee of 3 (three) Directors appointed by the chairperson of the Board who shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the chairperson shall direct.
- 23.7 Should a Member wish to dispute the committee's determination in terms of **clause 23.6**, the Member shall refer the dispute for determination in terms of **clause 28** within 10 (ten) Business Days of the committee's decision, failing which the Board shall be entitled to take any action contemplated in **clause 23.3** for the breach of the Rule.
- 23.8 Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Association and shall be recoverable by ordinary civil process.

24 Levies

- 24.1 It is compulsory for all Members to pay levies and costs referred to in this **clause 24**.
- 24.2 The Board shall from time to time determine the levies payable and charge levies to the Members, for the purpose of meeting all the expenses which the Association has incurred, or to which the Directors reasonably anticipate the Association will incur in the attainment of its Objects or the pursuit of its business. It is specifically recorded that included in those expenses will be expenses that are necessary to achieve the requirements that are common to the Portions and relate to services, facilities, amenities that are for the benefit of the Members whether or not such use is subject to other rules, or constitutions or require further Membership or use fees to be paid. Such common expenses include but are not limited to the maintenance and upkeep of the big game fence, the road network of the Property, general security of the Property, staff salaries and accommodation, sewerage plants, general water and electricity services and use, common communication, general administration and management fees and amounts payable to service providers.
- 24.3 Members shall be liable in respect of any levy made in terms of this **clause 24** from time to time, which levy shall be based on one levy per Portion subject to the proviso that the Board shall be entitled to charge additional levies for the Commercial Portions and Portions used as lodges or other overnight accommodation facilities and also give certain rebates or increase levies on cost items, the cost of which is directly related to usage. Village Members shall pay a levy calculated in accordance with **clause 29.2** below, which the Board shall be entitled to review.
- 24.4 The Board shall also recover, through levies or direct charges, the cost of any metered services provided to a Member such as water and electricity services, and any other additional service charges including but not limited to housekeeping, laundry services, garden services and maintenance.
- 24.5 The Board shall present the members at the annual Members meeting with an itemised estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies and to meet anticipated expenditure not of an annual nature) of the Association during the ensuing financial year, in respect of the Common Property and therefrom calculate the amount required to be levied upon the Members during such ensuing financial year and impose a levy on the Members in such estimated amount having regard to **clause 24.3**.
- 24.6 The Board shall, as soon as possible after the imposition of the levy in terms of **clause 24.2**, advise each Member in writing of the amount payable by him. Such amount shall be payable in equal monthly instalments due in advance on or before the first day of each month and shall be deemed to be in arrears if not settled by the 7th (seventh) day of each month.
- 24.7 In the event of the Board, for any reason whatsoever, failing to prepare and deliver the estimate referred to in **clause 24.5** timeously, every Member shall until delivery of such estimate as aforesaid, continue to pay the levy previously imposed, and shall after such delivery pay such levy as may be specified in the notice referred to in **clause 24.5**.
- 24.8 The Board shall be entitled, from time to time, to impose special levies upon Members who are liable on the basis set out in **clause 24.3** or call upon them to make special contributions in respect of all such expenses as are mentioned in **clause 24.2** (which are not included in any

estimate made in terms of **clause 24.5**) and such levies and contributions may be made payable in one sum or by such instalments with or without interest and if with interest at such rate as may be determined by the Board, and at such time or times as the Board deems fit.

- 24.9 The Association is not a credit provider according to the National Credit Act, 34 of 2005. All invoices are payable on presentation. Every invoice presented is a final demand for payment.
- 24.10 Interest shall be payable on arrear levies and the Board shall be empowered in addition to such other rights as the Association may have in law against its Members, to determine the rate of interest from time to time payable on arrear levies, provided that such rate of interest shall not exceed the maximum rate laid down by legislation from time to time.
- 24.11 Any amount due by a Member by way of levy and interest shall be a debt due by him to the Association. The Association shall have the right to recover arrear levies and interest from any Member or previous Member. No levies or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. Furthermore, a Member on ceasing to be such, shall have no claims whatsoever on any other monies held by the Association, whether obtained by way of a sale of the Association's assets or otherwise. A Member's successor in title to a Portion shall be liable as from the date upon which the successor in title becomes a Member pursuant to the transfer of that Portion, to pay the levy and interest thereon attributable to that Portion.
- 24.12 A Member shall be liable for and pay all legal costs, including costs as between attorney and client and collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such Member to the Association.
- 24.13 No Member shall be entitled to any of the privileges of Membership unless and until he shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that Member to the Association, from whatsoever cause arising.
- 24.14 No Portion shall be capable of being transferred without a certificate first being obtained from the Association confirming that all the levies and interest have been paid up to and including the date of registration of transfer of such Portion.
- 24.15 The Board shall be entitled to levy a different levy upon any owner of a Portion depending upon the services available to and the use and zoning of that Portion.

25 **Security, Maintenance, Services, Boundaries and Replacements**

- 25.1 The Board shall be entitled to:
- 25.1.1 erect security fencing and implement such security measures as it deems necessary to ensure control of access to the Property;
- 25.1.2 cause any gatehouse at any access point to the Property to be manned by security personnel, and to institute appropriate security measures as it deems fit; and
- 25.1.3 maintain the Common Property and instruct the Estate Manager to attend to such landscaping and maintenance requirements on behalf of and at the cost of the Association.

- 25.2 In the event of the Association electing to provide a security service and/or other services for Members, all Members shall be obliged to:
- 25.2.1 permit the installation of any equipment on the Portion or in the buildings on the Portion for the purpose of such services as may be determined by the Association from time to time;
 - 25.2.2 make payment of the charges raised by the Association in respect of such services; and
 - 25.2.3 abide by such terms and conditions as may be laid down by the Association from time to time in respect of such equipment and services.
- 25.3 Where the boundary of any Member's Portion also constitutes the boundary of the Property, such Member shall be obliged to permit the Association to erect upon such Member's Portion immediately adjacent to such boundary, such fencing as the Association may determine. Such Member shall not be entitled to interfere in any manner whatsoever with any such fencing and shall permit the Association, from time to time, access to such Member's Portion in order to inspect such fencing and to effect such repairs and/or maintenance as may be necessary from time to time.

26 **Winding-Up or Dissolution**

Upon the winding-up or dissolution of the Association:

- 26.1 no past or present Member, Director or person appointing a Director, shall be entitled to any part of the net value of the Association after the obligations and liabilities of the Association have been satisfied; and
- 26.2 the entire net value of the Association must be distributed to one or more non-profit companies, registered external non-profit companies carrying on activities in South Africa, voluntary associations or non-profit trusts having a similar object as that of the Association and as determined:
 - 26.2.1 by the Members, if any, or the Directors, at or immediately before the time of the dissolution of the Association; or
 - 26.2.2 by the court, if the Members fail to make such a determination.

27 **Notices**

- 27.1 All notices required to be given by the Association to any Member shall be given in writing in any manner authorised by the Regulations and particularly Table CR3 annexed to the Regulations.
- 27.2 Each Member shall notify in writing to the Association:
 - 27.2.1 an address, which address shall be his registered address for the purposes of receiving written notices from the Association by post and if he has not named such an address, he shall be deemed to have waived his right to be so served with notices; and
 - 27.2.2 an e-mail address, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.

- 27.3 Each Member selects his Portion as his *domicilium citandi et executandi* for the service of any legal process by the Association on the Member. The Member shall be entitled to change his *domicilium* on written notice to the Association to another physical address in South Africa in which event the change shall take effect 10 (ten) Business Days after the date of receipt of such notice by the Association.

28 Dispute Resolution

- 28.1 Should any dispute or disagreement as to any matter arising out of this MOI, including, but without detracting from the generality from the foregoing, any question of interpretation or implementation of any provisions hereof, or any decision to be taken by the Directors in the discharge of their functions, subsist or arise or amongst the Members or between a Member/s and the Association, such dispute shall be referred to an advocate of not less than 10 (ten) years' standing at the Johannesburg Bar, such advocate to be appointed by a majority decision of the Board.
- 28.2 The advocate appointed in terms of **clause 28.1** above shall:
- 28.2.1 act as an arbitrator in accordance with the provisions of the Arbitration Act, 42 of 1965;
- 28.2.2 follow such formal or informal procedures as the arbitrator, in his sole discretion, determines with a view to the arbitration being concluded in an expedited manner;
- 28.2.3 receive evidence or submissions, orally or in writing, sworn or unsworn, at joint meetings with the parties or by the exchange of written statements or submissions between the parties with copies to the advocate, provided that the rules of natural justice shall be followed; and
- 28.2.4 be entitled to seek and pay for independent advice of a technical nature, and his decision, including as to who shall pay his costs and disbursements, shall be final and binding upon all parties to or affected by such dispute, and may be made an order of any court of competent jurisdiction.
- 28.3 The parties to or affected by such dispute submit to the concurrent jurisdiction of the Gauteng Local Division and the Limpopo Division of the High Court of South Africa should any party wish to make the arbitrator's decision an order of Court.

29 The Village

- 29.1 Village Members shall have all the rights and obligations of Members subject to the limitations contained in this MOI.
- 29.2 The levy (and any ancillary charge) payable to the Association by Village Members (in addition to any levy or other charge payable by them to The Village) shall always be calculated as a fraction of the levy and other charges payable by any other Member in terms of **clause 24.3**. The Association shall invoice The Village for the total monthly levy and other charges attributable to its members, and The Village shall collect such contribution from its members and pay the full amount over (regardless of collection) monthly in advance.

- 29.3 The rules and regulations applicable within The Village shall apply to the exclusion of the Rules for all matters specified therein within The Village, but such rules and regulations shall always be subject to the approval (which shall not be unreasonably withheld) of the Board. All other matters, and the conduct of all Village Members when they are anywhere else within the Township, shall be governed by the Rules. The Association shall be entitled, at any time, to require that The Village shall enforce its own rules or the Rules on any Village Member.
- 29.4 In the event of continued transgression of Rules by a Village Member and after having been warned by the Association, the Village Member will be fined in accordance with the fine structure as approved by the Board.