



In accordance with s16(1)(c)

**MEMORANDUM OF INCORPORATION  
OF A NON-PROFIT COMPANY  
WITH VOTING MEMBERS**

**EAGLE CANYON GOLF ESTATE  
HOMEOWNERS' ASSOCIATION NPC**  
(“the Company”)

Registration  
number  
2003/012328/08

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## Adoption of Amended Memorandum of Incorporation

This Memorandum of Incorporation (“MOI”) was adopted by the Members of the Company in an annual general meeting on 20 April 2026, in accordance with section 16(1)(c) of the Companies Act, 2008 (‘the Companies Act’), as evidenced by the special resolution to which this MOI is annexed.

### 1. Definitions and Interpretation

#### 1.1. Definitions

The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

<b>Access Erven</b>	means the Common Property Erven registered in the name of the Company and over which Members have a right of way and free access to afford them access to an internal road, as indicated in Appendix 1: 4
<b>Annual General Meeting</b>	means the Annual Meeting of the Members of the Company as required in terms of the Companies Act, and ‘AGM’ shall have a similar meaning;
<b>Architectural, Building and Landscaping Rules</b>	means the Architectural, Building and Landscaping Rules to be followed by Members of the Company in relation to all improvements to be erected on any Erf or any Unit situated within the Estate, which Rules may be amended from time to time by the Members in accordance with the provisions of the Act, Municipal by-laws, and this Memorandum of Incorporation;
<b>Auditors</b>	means the auditors of the Company, as appointed or re-appointed annually by the Members at the AGM;
<b>Beneficial Owner</b>	in the case of the Company, means a Member, director or officer who is able to exercise effective control of the Company; and in the case of a Member who is not a natural person, the natural person who ultimately owns the Member or is able to exercise effective control in respect of that Member, as contemplated in the Companies Act, the Trust Property Control Act 57 of 1988 and/or the Financial Intelligence Centre Act 38 of 2001, all as amended by the General Laws Amendment Act 22 of 2022;
<b>Board</b>	means the board of Directors of the Company appointed from time to time in accordance with this MOI and the Companies Act;
<b>Body Corporate</b>	means a body corporate established under the Sectional Titles Act;

<b>Budget</b>	means the annual budget as prepared for the yearly budgeted expenses of Eagle Canyon Golf Estate Home Owners' Association NPC with registration number: 2003/012328/08 and its wholly owned subsidiary the Eagle Canyon Country Club (Pty) Ltd with registration number: 2005/006726/07 as determined and presented by the Board of Directors to the Members in terms of clause 27;
<b>Building Penalty</b>	means a higher levy to be paid by a Member for failing to commence or complete building activities within a certain period, the primary purpose of which is to recover additional costs incurred by the homeowners' association as a result of delayed construction. Such costs include, for example, the cost of repairing damage to roads and kerbs caused by heavy construction vehicles and the additional cost of hiring security personnel to ensure that the security of other homeowners is not compromised by the presence of vacant stands or by the influx of construction workers. A building penalty levy of this nature qualifies for tax exemption as a levy and is not a penalty or fine.
<b>Business Day</b>	means any day except a Saturday, Sunday, or South African public holiday;
<b>Capital Expense</b>	means the cost of acquiring, upgrading and/ or maintenance of physical assets such as property, buildings, equipment, technology and/ or machinery, including cost of delivery and direct installation costs of such assets;
<b>Capital Repairs and Maintenance Cost</b>	means the expenses incurred for the normal maintenance, repairs and/or upkeep of assets that are necessary to keep the assets in their usual condition, which expenses are recurring in nature and do not extend the useful life of the asset;
<b>Capital Replacement Cost</b>	means the cost of replacing an existing asset when the whole or substantially the whole of an asset is replaced or reconstructed.
<b>Chairperson</b>	means the Chairperson of the Board and of any Meeting of Members of the Company;
<b>CIPC</b>	means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
<b>Commissioner</b>	means the Commissioner for the South African Revenue Service appointed under section 6 of the South African Revenue Service Act 34 of 1997, or the Acting Commissioner designated under section 7 of that Act as defined in section 1(1);

<b>Common Property</b>	means the parts of the estate that are not subject to any exclusive use of right by a Member and includes the golf course, club facilities, access control, infrastructure for common access, boundary walls on the perimeter of the estate, security and telecommunications infrastructure and any properties within the estate which may be acquired by, rezoned and developed by the Company for common use by the Members and “common immovable property” shall be construed as common property which is immovable in nature;
<b>Companies Act</b>	means the Companies Act, 71 of 2008;
<b>Company</b>	means Eagle Canyon Golf Estate Homeowners’ Association NPC, duly registered and incorporated in terms of the Companies Act with registration number 2003/012328/08, and being the sole shareholder of all the issued shares in Eagle Canyon Golf and Country Club (Pty) Ltd registration number 2005/006726/07;
<b>Conduct Rules</b>	means the Rules of the Company that govern the access, activities and behaviour of all Members and residents of the Estate, which are binding on all Members and their families, tenants, visitors, staff, or contractors (collectively “Persons”). These Rules may be subject to change in terms of clause 6 of this MOI and section 15 of the Companies Act;
<b>Country Club</b>	means the Eagle Canyon Country Club (Pty) Ltd, a private company duly registered and incorporated in terms of the Companies Act with registration number 2005/006726/07, and being a wholly owned subsidiary of the Company with its principal place of business on Erven 979 Extension 32;
<b>CSOS</b>	means the Community Scheme Ombud Service established in terms of the Community Schemes Ombud Service Act, Act 9 of 2011.
<b>Delegation of Authority</b>	means the matrix adopted and amended by the board of the Company from time to time;
<b>Developer</b>	means the owner of an Erf who has purchased an undeveloped Erf for the purpose of developing and transferring the developed Erf;
<b>Development levies</b>	means any levy due to the Company during the development period of any Erf or Unit that is owned by a developer but not yet developed and transferred. In the case of property which a developer has developed or does develop during the development period, normal levies shall be payable from the time when any building on the property has been completed, and an occupation certificate issued. In the event of building taking

longer than twelve (12) months to complete, then building penalties shall be applicable and payable twelve (12) months after building work has commenced until such time as an occupation certificate has been issued in respect of such building;

- Development period** means the period of time agreed between the Company and a developer that is reasonably required to develop an Erf/ Erven, which period shall be twelve (12) months, unless agreed otherwise between the Company and the developer in writing;
- Director/s** means a member or members of the Board of the Company, duly elected, or appointed in accordance with the provisions of this Memorandum of Incorporation and includes any person occupying the position of director or Officer by whatever name designated.
- Dispose** means to sell, alienate, transfer, exchange, make over, give, donate, unbundle, distribute, encumber, or otherwise dispose (whether by way of, *inter alia*, a donation, a dividend in specie or pursuant to the terms of a will, grant of option or any other transaction which has the same economic effect) and the word “disposal” shall bear a corresponding meaning;
- Erf or Erven** means any of the freeholding properties forming part of the Estate whether zoned for residential purposes or otherwise, developed or not;
- Electronic Communication** means communication by email or other digital platforms, as set out in section 1 of the Electronic Communications and Transactions Act, 25 of 2002 (“ECTA”);
- Electronic Voting** means a secure and verifiable electronic voting process (conducted via an online voting platform, email-based ballot, or other digital system approved by the Board) by which Members may cast, change (if permitted) and submit votes on a proposed resolution (excluding those resolutions that may only be considered at an AGM) without attending a meeting, and which process produces an auditable record sufficient to evidence the outcome for purposes of section 60 of the Companies Act;
- Estate** means the Eagle Canyon Golf and Lifestyle Estate, including all open spaces and land within the boundaries of the Estate, as set out in Appendix 1: 4;
- Finance Committee** means the subcommittee which must be appointed by the Board in terms of clause 16.3 consisting of suitably qualified Members to have oversight of, and to report to the Board, all financial matters of the Company and any subsidiaries, as authorised in terms of the subcommittee’s Terms of Reference;

<b>Fines or Penalties</b>	means any additional amount over and above any general or special levy, which is not related to expenditure incurred or to be incurred in relation to the common immovable property, usually imposed as a result of a Member's conduct, or lack of conduct, and instituted to encourage a desired behaviour and compliance;
<b>Golf Course</b>	means Erven 1258, 1259 and 1260 Honeydew Manor Extension 7 Township, which are owned by the Company;
<b>Income Tax Act</b>	means the Income Tax Act 58 of 1962, as amended from time to time;
<b>Late payment penalty</b>	means any penalty or interest charged on outstanding levies or other amounts payable that do not constitute levy income;
<b>Levy or Levy Income</b>	means the amount received or accrued from Members for the purposes of funding expenditure relating to their collective interests which is exempt from taxation in terms of section 10(1)(e)(i)(cc) of the Income Tax Act;
<b>Local authority</b>	means the municipal body having jurisdiction in respect of the land on which the Estate is situated, being the City of Johannesburg ("COJ") and any successor body to such entity from time to time;
<b>Meeting of Members</b>	means any meeting of Members of the Company, including the Annual General Meeting;
<b>Member</b>	means a registered owner of an Erf or a Unit, and who has, as a requirement of such ownership, been accepted as a Member of the Company.
<b>Member – In Good Standing</b>	means a Member who is not deemed to be a Member In Notable Arrears (as defined below), who, for the purposes of voting rights, shall hold full voting power on any matter to be decided by the Members;
<b>Member – In Notable Arrears</b>	means a Member who is more than 60 (sixty) days in arrears with levy payments exceeding the amount of 2 (two) months' levy due and payable to the Company in terms of a valid invoice issued to the Member, who, for the purposes of voting rights, shall hold twenty percent (20%) of the voting power compared to a Member In Good Standing on any matter to be decided by the Members;
<b>MOI</b>	means this Memorandum of Incorporation, as amended from time to time;
<b>Municipal Owned Entities</b>	means any department, division, or duly authorised contractor of the City of Johannesburg that maintains the City of Johannesburg's installations and provides municipal services to the Residents;

<b>Nominations Committee/ NomCom</b>	means the subcommittee which must be appointed by the Board in terms of clause 16.4 consisting of suitably qualified members to assess and advise the Board on the eligibility of nominees and directors of the Company and any subsidiaries, as authorised in terms of the subcommittee's Terms of Reference;
<b>Notice</b>	means written communication sent to the Directors or Members of the Company, sent in terms of clause 19.1 hereof, and includes any written communication via electronic mail;
<b>Officer/s</b>	means any natural person who exercises general executive control over, and management of the whole or greater portion of the business and activities of the Company, or regularly participates to a material degree therein, irrespective of any particular title given to an office held or function performed;
<b>Open Spaces</b>	means parks, common property, golfing areas, and other open spaces in the Estate;
<b>Ordinary Resolution</b>	means a resolution adopted with the support of more than 50% (fifty per centum) of the voting rights exercised by eligible Members in person or by proxy on the resolution at a duly constituted Meeting of Members or by Members acting other than at a meeting as contemplated in section 60 of the Act.
<b>Other Company Erven</b>	means Erven 980 Honeydew Manor Extension 32, upon which Erven the tennis club and Erven 621 Honeydew Manor Extension 8, upon which Erven the Homeowners' Association Administration Offices facilities have been established, and which Erven are owned by the Company.
<b>Person</b>	means any natural person, Member, company, close corporation, trust, partnership, or other entity, whether or not having separate legal personality.
<b>POPIA</b>	means the Protection of Personal Information Act No 4 of 2013;
<b>Prime Rate</b>	means the rate of interest publicly quoted by the Company's bankers, from time to time, as being its prime rate of interest (expressed as a nominal annual compounded monthly in arrear rate), calculated on a 365 day a year basis, irrespective of whether or not the year is a leap year and <i>prima facie</i> proved, in the event of there being a dispute in relation thereto, by a certificate signed by any manager of the aforesaid bank (whose appointment, qualification or authority need not be proved);
<b>Principal Member</b>	means the individual natural person so nominated in writing to the Company in terms of clause 9.3 and 9.7 hereof, and appointed by an owner or co-owners in terms of written agreement, to act for and on behalf of the owner/s in all dealings with the Company and

to exercise for and on behalf of such owner/s all rights and obligations of a Member in terms of this MOI, including the exercise of voting rights, and which individual the company will be entitled to deem to be fully mandated to act as if they are the Member themselves, until the authorisation is formally withdrawn by written notice to the Company;

**Private Open Spaces** means the Common Property Erven registered in the name of the Company and to which Members shall have free entrance and usage, being Erven 379 and 380 Honeydew Manor Extension 5, Erven 1257 Honeydew Manor Extension 7, and 622 Honeydew Manor Extension 8, Erf 729 Honeydew Manor Extension 9, Erf 749 Honeydew Extension 22, Erven 1203, 1204, 1205 and 1206 Honeydew Extension 24, and the soccer field facilities on Erven 981 Honeydew Manor Extension 32;

**Reserved Matter** means any commitment to, or implementation, amendment, termination, or cancellation by the Company of any resolutions, transactions, agreements, or other matters set out in Appendix 1 attached to this Memorandum of Incorporation shall be deemed to be a Reserved Matter;

**Resident/s** means all Members and any and all other Persons who reside on the Estate including the lawful tenant of any Member, irrespective of whether such Person is a Member or not;

**Rules and Regulations** means the governance rules and regulations of the Company, which may be amended from time to time in accordance with the provisions of section 15(3) of the Companies Act and this Memorandum of Incorporation, and which are available to the Members on the Eagle Canyon Golf Estate website, and also on request from the Company; which include, but are not limited to, the Architectural, Building and Landscaping Rules, the Conduct Rules and Regulations, levy and penalty schedules, including, *inter alia*, the Finance Committee Terms of Reference;

**Sectional Titles Act** means the Sectional Titles Act 95 of 1986;

**Special Levy** means a special levy that may be raised to pay for capital improvements or unforeseen expenses, by way of request by the Board at a meeting of Members, for Members' approval by way of Ordinary Resolution;

**Special Resolution** means a resolution adopted with the support of at least 75% (seventy-five per centum) of the voting rights exercised by eligible Members in person or by proxy on the resolution at a duly constituted Meeting of Members or by Members;

**SPLUMA** means the Spatial Planning and Land Use Management Act, 16 of 2013;

<b>TEU</b>	means the Tax Exemption Unit, which is a dedicated office within SARS that deals with all entities exempt from income tax under, <i>inter alia</i> , section 10(1)(e)(i)(cc) on behalf of the Commissioner;
<b>Threshold</b>	means an amount equal to or greater than R600,000 (six hundred thousand Rand) escalating annually from date of acceptance of this Memorandum of Incorporation as per the Consumer Price Index;
<b>Total Purchase Price</b>	Means the purchase price paid to an owner by a purchaser as consideration for the alienation of an Erf or Unit in the estate by the owner, whether improved or not;
<b>Unit</b>	means a sectional title unit as defined in the Sectional Titles Schemes Management Act, 8 of 2011 and duly demarcated on a sectional title plan approved by the Surveyor General and being capable of registration in the name of any Person in terms of the Deeds Registry Act, 37 of 1947 and intended for Residential purposes located within the Estate.

## 1.2. Interpretation

- 1.2.1. Unless the context otherwise requires, any words importing the singular shall also include the plural; any word denoting a gender includes any other form of broader gender within the spectrum of gender fluidity, whether binary or non-binary; and words importing persons shall include Bodies Corporate, and vice versa in each instance.
  - 1.2.2. Any reference to a section by number refers to the corresponding section in the act referred to;
  - 1.2.3. Any reference to a clause by number refers to the corresponding clause in this MOI;
  - 1.2.4. Words and expressions used and not otherwise defined in this MOI shall have the meaning assigned to them by the Companies Act.
  - 1.2.5. The headings above any of the clauses are intended for reference purposes only and shall not influence the interpretation of the clauses.
- 1.3. For purposes of this Memorandum of Incorporation, a reference in the Companies Act to “a shareholder”, or “a holder of voting rights entitled to be voted”, is a reference to the Members.
  - 1.4. This Memorandum of Incorporation is applicable to Members and/or Residents including all Body Corporates and owners of Units or any future sectional title developments or any residential or commercial developments, which are also to be governed by the Rules and Regulations of the Estate and subject to such

additional rules contained in the Regulations of the Sectional Titles Management Act, as amended.

- 1.5. Any communication which is required to be “in writing” shall, to the extent permitted in law, mean legible writing in English, and includes, save as otherwise provided in this MOI, a communication which is written or produced by any substitute for writing, or which is partly written or partly so produced, and shall include printing, typewriting, lithography, facsimile and electronic mail and any form of electronic communication contemplated in the ECTA.

## **2. Formation and Name**

- 2.1. The Company having the name, objects and powers set out herein was originally established and incorporated under the Companies Act 1973 as a section 21 “association not for gain” on 30 May 2003 but is now classified as a non-profit company with Members since the amendment of that act, and the passing of the Companies Act, 71 of 2008.
- 2.2. The name of the Company is Eagle Canyon Golf Estate Homeowners’ Association NPC, and its abbreviated name is ECGEHOA.
- 2.3. The Company is governed by -
  - 2.3.1. The unalterable provisions of the Companies Act that are applicable to non-profit companies;
  - 2.3.2. The alterable provisions of the Companies Act that are applicable to non-profit companies, subject to any limitation, extension, variation, or substitution set out in this MOI;
  - 2.3.3. The provisions of the Income Tax Act that are applicable to associations of persons exempt from the payment of normal tax in terms of section 10(1)(e);
  - 2.3.4. The provisions of the Rules and Regulations of the Company, as proposed by the Board and ratified by the Members of the Company from time to time in accordance with clause 6 of this MOI and section 15 of the Companies Act; and
  - 2.3.5. The provisions of this MOI.

## **3. Objects of the Company**

- 3.1. The principal or sole object of the Company is to manage the collective interests common to all its Members, which includes expenditure applicable to the common immovable property and the collection of levies for which such Members are liable.
- 3.2. The main function of the Company is to act as the Homeowners’ Association on behalf of the Members and any other related and ancillary business, which includes but is not limited to:
  - 3.2.1. controlling the character and architectural standards of buildings and other structures erected or to be erected in the Estate; approving building plans to ensure all buildings meet the approved guidelines of the Company;

- 3.2.2. owning, managing, and developing the Common Property Erven and the Other Company Erven;
- 3.2.3. proposing, issuing, and enforcing Rules and Regulations pertaining to:
  - 3.2.3.1. the good governance and orderly administration of the Company and the Estate;
  - 3.2.3.2. the Erven and Units;
  - 3.2.3.3. the conduct of Members, Residents, and other users on the Estate;
  - 3.2.3.4. the use and maintenance of streets, sidewalks, walkways, communal property, and Private Open Spaces in the Estate;
  - 3.2.3.5. the movement of vehicular traffic in the Estate;
  - 3.2.3.6. for the completion of the erection of homes and other structures on Erven in the Estate within prescribed periods; and
  - 3.2.3.7. any other internal matters which the Board deems appropriate to be regulated.
- 3.2.4. acquiring (by any *causa*) and holding and/ or leasing or letting out or disposing of immovable property;
- 3.2.5. maintaining all fixed assets of the Company;
- 3.2.6. advancing and implementing reasonable security and safety measures for the welfare of the Members, Residents and other Persons, and ensuring safety of their persons and property; which may include, subject to applicable law and the Conduct Rules, the right of security personnel to stop and request to search any Person in entering or exiting the Estate, when there are reasonable grounds to suspect that such Person –
  - 3.2.6.1. is in possession of an unlawful item or stolen property; or
  - 3.2.6.2. poses a reasonably apprehended threat to the safety of any person or property; or
  - 3.2.6.3. is involved in, or is reasonably suspected of attempting to commit, unlawful conduct;
  - 3.2.6.4. provided that any such stop or search must be carried out lawfully, with due regard to dignity, and without unfair discrimination, and that any Person may refuse a search, in which event security personnel may deny access to the Estate or require the Person to leave, and/or request assistance from SAPS, as appropriate
- 3.2.7. promoting and advancing the communal interests of its Members on an equitable basis;
- 3.2.8. imposing and collecting levies, fines, and penalties from the Members of the Company as empowered in this Memorandum of Incorporation, Rules and Regulations as determined by the Members, from time to time;
- 3.2.9. attending to all administrative and statutory obligations and services of the Company inclusive of consent to or not of the consolidation, rezoning of any Erf on the Estate;
- 3.2.10. administering the provision, administration, and control of communication networks for security;
- 3.2.11. ensuring that all Emergency Services of the Local Authority or similar emergency services have 24 (twenty-four) hour access to the Estate;
- 3.2.12. enforcing any Title Deed Conditions in favour of the Company;
- 3.2.13. properly and clearly displaying and subsequently maintaining the street

- names and ensure the enforcement of street numbers by Residents clearly displayed on the individual Erven in the Estate to the satisfaction of the City of Johannesburg;
- 3.2.14. requiring that all works constructed or maintained within the Estate, be supervised to ensure that the Company's Rules and Regulations are complied with and that all work is performed in a professional and workmanlike manner;
  - 3.2.15. proposing and fairly enforcing architectural design rules in respect of any construction to be conducted within the Estate, or any amendments thereto from time to time, as ratified by the Members by way of Ordinary Resolution in a general meeting of the Members; and
  - 3.2.16. providing robust governance and oversight of any subsidiary company held via shareholding, including following transparent processes of accountability to the Members of the Company in this regard.

#### **4. Powers of the Company**

- 4.1. The Company shall have all the legal powers and capacity of an individual:
  - 4.1.1. except to the extent necessarily implied by its stated objects;
  - 4.1.2. except to the extent that a juristic person is incapable of exercising such a power or having such a capacity; and
  - 4.1.3. subject to such restrictive conditions and other limitations or qualifications, as are contained in this MOI.
- 4.2. The powers of the Company may only be executed in accordance with the sole object of the Company.
- 4.3. The Company may not:
  - 4.3.1. amalgamate or merge with, or convert to, a profit company; or
  - 4.3.2. dispose of any part of its assets, undertaking or business to a profit company, other than for fair value, except to the extent that such a disposal of an asset occurs in the ordinary course of the activities of the Company; or
  - 4.3.3. knowingly become a party to or knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5) of the Income Tax Act 58 of 1962, as amended ("the Income Tax Act").
- 4.4. All of the activities of the Company shall be carried out in a non-profit manner, and no such activity shall be intended to promote the economic self-interest of any director, officer, or employee of the Company directly or indirectly, otherwise than by way of reasonable remuneration payable to that director, officer, or employee.
- 4.5. The Company is empowered to collect levies from its Members to enable the Company to pay for expenditure arising from its responsibility to perform its principal object and the ancillary activities necessary for or incidental to the

principal object. The Sale Agreement shall contain a full disclosure of all levies to be imposed upon a Member as owner of land in the estate and by becoming a Member of the Company, the Member shall be bound to make payment of such levies to the Company in terms of this MOI and more specifically in accordance with the company rules.

- 4.6. Except to the extent necessarily implied by the Company's stated objects and business as well as this Memorandum of Incorporation, and the Rules and Regulations, the purposes and powers of the Company are not subject to any restriction, limitation or qualification of the legal powers and capacity of the Company, as contemplated in section 19(1)(b)(ii) of the Act.
- 4.7. The Company is not subject to any restrictive conditions as contemplated in section 15(2)(b) or (c) of the Act, or to any prohibitive conditions (as envisaged in section 16 of the Act) in respect of the amendment or addition to the requirements and provisions contained in this Memorandum of Incorporation.

## **5. Memorandum of Incorporation**

- 5.1. Amendments to this MOI may be proposed by –
  - 5.1.1. The Board of directors; or
  - 5.1.2. Members entitled to exercise at least 10% of the voting rights on the resolution (see section 16 of the Act).
- 5.2. The Board shall nevertheless have the power to alter this Memorandum of Incorporation to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar, or similar defects as envisaged in section 17(1) of the Companies Act. A notice of such alteration must be published by –
  - 5.2.1. delivering a copy of the notice of alteration to each Member by ordinary mail; or
  - 5.2.2. delivering a copy of the notice of alteration to each member by email (provided that a member shall be deemed to have received a copy of the notice if sent to his or her last known email address).
- 5.3. This MOI may only be altered or amended by special resolution of the Members or in terms of a court order in the manner set out in sections 16, 17, 60 or 152(6)(b) subject to the following:
  - 5.3.1. as the Company is exempted from payment of normal tax a copy of any amendments shall be sent to the Commissioner for the South African Revenue Services or their authorised representative within 30 days of the amendment.
- 5.4. The Company shall publish a notice of any alteration of the MOI by delivering a copy of those amendments to each Member by electronic mail provided that the Members have consented to the delivery of such communication by electronic mail and provided email addresses or other electronic addresses for communication.

## **6. Company Rules**

- 6.1 The Board may, subject to clause 6.2 below and in keeping with the requirements of prevailing regulations or the changing needs of the Members, make, amend, or repeal

Company Rules (which include the Estate Rules and Regulations relating to the conduct of the Members and the Architectural, Building and Landscape Rules) as necessary for the compliance with Local Authority regulations, the maintenance of the general aesthetic of the Estate, good governance and orderly administration of the Company and the Estate, subject to the conditions that any such amendment:

- 6.1.1 must be published to all the Members in the manner set out in clause 19.1 herein; and filed with the CIPC;
- 6.1.2 must be consistent with this MOI and the provisions of the CPA;
- 6.1.3 takes effect on a date that is the later of –
  - 6.1.3.1 10 business days after the rule is filed in terms of clause 6.1.1; or
  - 6.1.3.2 the date, if any, specified in the rule; and
- 6.1.4 is binding -
  - 6.1.4.1 on an interim basis from the time it takes effect until it is put to a vote at the next general Members meeting of the Company; and
  - 6.1.4.2 on a permanent basis only if it has been ratified by an Ordinary Resolution at the meeting contemplated in clause 6.1.4.1.
- 6.2 In the event that the board of directors and the Finance Committee are in disagreement with any proposed changes (as may be proposed by either party) to the Finance Committee's Terms of Reference, any such changes being the subject of disagreement, be put to a Members' vote by way of an Ordinary Resolution of Members present and represented by proxy in a duly constituted meeting of Members.
- 6.3 If a rule that has been filed in terms of clause 6.1.1 is subsequently –
  - 6.3.1 ratified as contemplated in 6.1.4.2, the Company must file a notice of ratification within five business days in the prescribed manner and form; and
  - 6.3.2 not ratified when put to a vote –
    - 6.3.2.1 the Company must file a notice of non-ratification within five business days after the vote in the prescribed manner and form; and
    - 6.3.2.2 the Company may not make a substantially similar rule within the ensuing 12 months unless it has been approved in advance by Ordinary Resolution of the Members.
- 6.4 Any failure to ratify the rules does not affect the validity of anything done in terms of those rules during the period that they had an interim effect as provided for in clause 6.1.4.1.
- 6.5 For the enforcement of any of the Rules and Regulations made in terms hereof, the Board may:
  - 6.5.1 Give notice to the Member concerned, requiring them to perform such obligation or to remedy such breach within a period as may be reasonably determined by the Board according to the nature of the obligation or breach;
  - 6.5.2 Take or cause to be taken such steps as may be determined necessary to perform such obligation or remedy such breach for which the Member is liable, and to debit the cost of so doing to the Member concerned, which amount shall be deemed to be a debt owing by the Member to the Company;

- 6.5.3 Impose a system of fines or penalties as prescribed in the relevant Rules or Regulations applicable from time to time; and
- 6.5.4 Take such other action as deemed necessary, including litigation, subject to the provisions of Appendix 1.

## **7. The Rights of The City of Johannesburg**

- 7.1. The Company shall have full responsibility for the functioning and proper maintenance of the Access Erven as well as Private Open Spaces to the satisfaction of the City of Johannesburg (“COJ”), failing which such maintenance shall be done by the COJ at the cost of the Company.
- 7.2. The Company is obliged to grant Municipal Owned Entities and emergency services of the City of Johannesburg guaranteed 24-hour access to the Access Erven and Private Open Spaces or any other Erven where essential engineering township services are located.
- 7.3. The Company is obliged, to the satisfaction of the COJ, to properly and clearly display and maintain the street names and street numbers allocated to individual Erven.
- 7.4. The Company is precluded from alienating or transferring or mortgaging the Access Erven or Private Open Spaces, which Erven have been transferred to the Company, or Erf 310 without the written consent of the COJ first being had and obtained. Such written consent is likewise required for any alienation, transfer, or cession of any interest in such Erven.
- 7.5. The Company is precluded from rezoning or filing an application to rezone the Access Erven or Private Open Spaces transferred to the Company without the written consent of the COJ first being had and obtained.
- 7.6. The Memorandum of Incorporation of the Company shall not be implemented and/or amended as far as such amendment relates to paragraphs 7.1 to 7.5 above and including this paragraph, without the written consent of the COJ first being had and obtained.

## **8. Application of optional provisions of the Act**

- 8.1 As a non-profit company, the Company is required to comply with the provisions of Chapter 3 (Enhanced Accountability and Transparency) of the Companies Act and elects not to voluntarily so comply unless and until so required in terms of Regulation 28.
- 8.2 As the Company’s Public Interest Score will exceed 350 in any financial year –
  - 8.2.1 the Company’s annual financial statements are required to be audited annually and accordingly the Company is required to appoint an auditor annually at the Company’s Annual General Meeting; and
  - 8.2.2 the Company is required to appoint a Social and Ethics Committee unless exempted from such requirement in accordance with the Companies Act and Regulations; and
  - 8.2.3 if so exempted, the Company must maintain a properly constituted Finance Committee as provided for in clause 16.3 below.

## 9. Membership

- 9.1. Every owner who receives transfer of an Erf or a Unit, is required, upon registration of transfer to apply for Membership of the Company and to be bound by the Memorandum of Incorporation, and any Company Rules and Regulations as amended by the Company from time to time.
- 9.2. In order to procure compliance with the provisions of this Memorandum, it shall be registered as a condition of Ownership of an Erf or Unit that no Erf or Unit shall be alienated without the written consent of the Company first being had and obtained, which consent shall be given if the proposed transferee is or will be admitted as a Member of the Company and the transferor has complied with all their obligations to the Company (including but not limited to the payment of any monies due to the Company by such transferor). For the purposes of this clause "alienate" means to alienate any Erf or Unit or part thereof, and includes by way of sale, exchange, and donation, deed, intestacy, will, cession, assignment, court order or insolvency, irrespective as to whether such alienation is voluntary or involuntary, and further irrespective as to whether such alienation is subject to a suspensive or resolutive condition. In the case of a juristic person such as a company, close corporation or trust, a material change in the "beneficial ownership" or in the "controlling interest" thereof shall be deemed to constitute an alienation for the purposes of this MOI and, in the event of there being any dispute as to whether there has been a material change in beneficial ownership or in the controlling interest, the decision of the Board shall be binding on the juristic person. Written consent of the Company as aforesaid, shall not imply that the Erf or Unit follows the requirements of any Law, By-Law, Regulation or Rule.
- 9.3. In the event of any Erf or Unit being owned by a close corporation, a company or a trust, such close corporation, company or trust shall nominate one natural person to be the Member for the purposes of this Memorandum, provided that all Members / directors and shareholders / trustees and beneficiaries shall be bound by this Memorandum as if they were Members. Where the Membership in a close corporation or the shares in the company, or the beneficial interest in a trust already owning an Erf or Unit are alienated, Membership of the Company in respect of the natural person already nominated by the close corporation/ company/ trust shall cease and a new natural person shall be nominated by the close corporation/ company /trust and all requirements for first time Membership of the Company shall be applicable.
- 9.4. All Members shall be voting members, provided that the proportionality of voting may be varied in terms of this MOI, with those Members being either In Good Standing or In Notable Arrears, as defined in clause 1.1.
- 9.5. Every Person who shall have become a Member shall automatically cease being a Member as soon as such Person ceases being the registered owner of an Erf or Unit in the Estate. Notwithstanding any Person ceasing to be a Member, all levies attributable to any period whilst such Person was a member, shall continue to be of full force and effect and recoverable from such Person.

- 9.6. Where an Erf or Unit is owned by more than one Person, all the registered owners shall together be deemed to be one Member of the Company and shall together have the rights of one Member of the Company but shall jointly and severally be liable for the Member's obligations and shall together be counted as one Member, eligible to exercise one vote at meetings of the Company, subject to the definition in clause 1.1 hereof.
- 9.7. If the Person taking transfer of an Erf or Unit is not a natural person, it will be obliged prior to transfer, to nominate a natural person as Principal Member to represent it for the purposes of communication from the Company and to notify the Company of the full names, street address, postal address, email address and contact number of the said representative prior to or within seven (7) days of the parties becoming owners; failing which the Company may choose the identity of the representative from amongst the directors, Members, trustees, partners or other similar office bearers of the registered owner.
- 9.8. In the event of an alienation arising out of a deceased estate (whether testate or intestate) and the heir is the Spouse, the requirements for first time Membership (being those applicable upon acquiring an Erf or Unit and becoming a Member) shall not be applicable. This will also apply where there is a change in the "beneficial ownership" or in the "controlling interest" in the case of a Member that is juristic person such as a company, close corporation or trust in favour of a Spouse arising out of a deceased estate.
- 9.9. In the event of a divorce, the Spouse receiving the Erf or Unit (whether in part or the whole Erf or Unit) in a settlement or in accordance with an order of court, the requirements for first time Membership (being those applicable upon acquiring a Unit and becoming a Member) shall not be applicable. Similarly, this will also apply where there is a change in the "beneficial ownership" or in the "controlling interest" in the case of a Member that is juristic person such as a company, close corporation or trust in favour of a Spouse arising from a divorce.
- 9.10. No Member shall let or otherwise part with occupation of such Member's Erf or Unit, whether temporarily or otherwise, unless such Member has agreed with the proposed occupier of such Erf or Unit, as a *stipulatio alteri* in favour of the Company, that such occupier shall be bound by the provisions of this Memorandum of Incorporation of the Company and all the Rules and Regulations of the Company as amended from time to time Should the occupier fail to abide by the provisions of the MOI or any of the Company Rules, the Member shall remain liable to the Company for any transgressions committed by that occupier and their only remedy is in terms of the agreement they have with the occupier.

## 10. Rights and Obligations of Members

- 10.1. In keeping with Schedule 1 of the Companies Act, each voting Member has at least one vote.

- 10.2. The rights and obligations of a Member shall not be transferable, and every Member shall:
  - 10.2.1. to the best of such Member's ability further the business, objects, and interests of the Company;
  - 10.2.2. pay all levies, special levies, penalties, and charges due and payable as may be determined by the Board from time to time and ensure that the Members' account remains fully paid up at all times; and
  - 10.2.3. be bound by, abide by, and observe all the requirements and obligations imposed by the Memorandum of Incorporation and Rules and Regulations including the Architectural, Building and Landscaping Rules of the Company, which include:
    - 10.2.3.1. the obligation of all Members to maintain their individual Erven or units in a manner consistent with the overall aesthetic and standards of the Estate which includes, but is not limited to, maintaining landscaping, exterior structures, paint and hygiene/ cleanliness required for densely populated communities; and
    - 10.2.3.2. A Member's failure to comply with any obligations imposed by this MOI and the Company Rules and Regulations shall be considered to be a breach of that Member's contract with the Company which may be enforced according to clause 6.4 herein and any continued breach may result in the Company performing the necessary maintenance and/ or repairs at the cost of the Member.
- 10.3. A Member shall have the following rights to information, in addition to those contained in section 26 of the Companies Act, subject to due notice being given to the appropriate officer and confidentiality protocols being followed as necessary:
  - 10.3.1. The right to inspect the Members' and Directors' Disclosure Register;
  - 10.3.2. The right to inspect the financial statements of the Company and its wholly owned subsidiary, the Country Club;
  - 10.3.3. The right to inspect the Delegation of Authority Matrix;
  - 10.3.4. The right to inspect the Terms of Reference of all Board committees;
  - 10.3.5. The right to access the Members' Register and certain details of fellow Members, subject to the provisions of POPIA.
- 10.4. A Member may not resign as a Member for so long as such Member is the registered owner of an Erf or Unit.
- 10.5. Every Member shall ensure that a credit and background check is conducted to the satisfaction of the Board in the event that the Member shall let to a tenant or occupant such Member's Erf or Unit, whether temporarily or otherwise.
- 10.6. Subject to the Rules and Regulations of the Company, each and every Member of the Company shall have free access over the Access Erven to afford them access to an internal road unless such access has been suspended or withdrawn following due process as detailed in the Conduct Rules.
- 10.7. Subject to the Rules and Regulations of the Company, each and every Member

shall have free entrance and usage of Private Open Spaces, unless such entrance or usage has been suspended or withdrawn following due process, as detailed in the Conduct Rules.

## **THE BOARD AND COMMITTEES**

### **11. Appointment and Composition of Board and Officers**

- 11.1. The Board shall consist of not less than 5 (five) and not more than 10 (ten) persons, at least 3 (three) of whom shall be unconnected persons in terms of the Income Tax Act. The Directors shall be elected by Ordinary Resolution at a Meeting of Members.
- 11.2. A nominee to the Board shall be a Resident of the Estate and a suitably qualified natural person to serve on the Board.
- 11.3. A call for nominations will be issued by the Board to the Members in advance of any general meeting, or when a vacancy arises on the Board, and it is more than 2 (two) months until the next general meeting, subject to the provisions of 11.5 below. The nominee's details and short CV shall be presented to the Members in the respective notice of general meeting, without comment.
- 11.4. A Director appointed by Members at an AGM shall hold office until the conclusion of the second AGM following their appointment, subject to the requirement that at least one third of directors will be elected by the Members each year at the AGM.
- 11.5. The Board, if it consists of at least four (4) members elected at a duly constituted Annual General Meeting, shall have the power to co-opt any person who satisfies the requirements for election as a Director as provided for in clause 11.2 hereof to either fill a casual vacancy in their number or to act as an additional Director provided that any director co-opted by the Board is required to have their appointment ratified by way of ordinary resolution of the Members at a general meeting within thirty (30) days of their co-option.
- 11.6. No Person shall have the right to affect the direct appointment of one or more Directors as contemplated in section 66(4)(a)(i) of the Act.
- 11.7. The Board may appoint, from time to time, a suitably qualified person as General Manager of the Company, on such terms and conditions as may be determined from time to time by the Board, provided that if such a person was a Director before being appointed as General Manager, their appointment as such shall cease, subject to clause 11.8 below.
- 11.8. The General Manager of the Company, by virtue of the appointment as such by the Board, shall not automatically be a Director of the Company but may be co-opted or elected to the Board, subject to ratification of such appointment by the Members. The General Manager will be eligible to attend meetings of the Board but may not vote unless they have been co-opted or elected as a Director in

terms of clause 11.7 above.

- 11.9. Subject to the provisions of Schedule 1 to the Companies Act, each Director shall continue to hold office as such, from the date of their election or appointment to office until the next AGM following the expiration of the term. Upon expiration of the term, such Director shall be deemed to have retired from office but shall be eligible for re-election to the Board at the AGM, subject always to the provisions in clauses 11.10 to 11.14.
- 11.10. At least one third of the Directors must be elected annually by the Members at the AGM. Any serving Director is eligible for re-election. In order for equitable rotation to occur, should there be insufficient vacancies on the Board for these appointments, the requisite number of standing directors must resign, calculated based on increased length of service, in order to make way for new Member appointees. Any such Director is eligible for re-election subject to clauses 11.11 to 11.14.
- 11.11. A Director shall be eligible to be nominated and re-elected for a period of no longer than 4 (four) consecutive years. In the event of a Director being nominated and appointed for a consecutive period of 4 (four) years as aforementioned, a minimum period of 2 (two) years (“cooling-off period”) shall elapse before the Director becomes eligible for their re-election to the Board or a Committee.
- 11.12. There is no limit to the number of times a Director may be re-elected to the Board, provided always that the provisions of clauses 11.10 to 11.14 hereof shall apply to each such re-election.
- 11.13. The Company may not permit a Person to serve as Director if that person is ineligible or disqualified in terms of section 69 of the Companies Act.
- 11.14. A Director ceases to be a Director and shall be deemed to have vacated their office as such upon:
- 11.14.1. Their co-option not being ratified by way of ordinary resolution of the Members within thirty (30) days;
  - 11.14.2. having become disqualified to act as Director in terms of the provisions of section 69 of the Companies Act;
  - 11.14.3. any basis as referred to in section 70(1) of the Companies Act;
  - 11.14.4. being removed from office by the Board or Members as provided in section 71 of the Companies Act; or
  - 11.14.5. being declared a delinquent Director in terms of Section 162 of the Companies Act or who is disqualified from taking part in the management of a close corporation in terms of Section 47 of the Close Corporation Act, 69 of 1984;
  - 11.14.6. the Director in question or the Member they represent, either as Principal Member or as an Occupier of the Erf or Unit of the Member, falling into arrears with any amount that is due and payable to the Company and same is not remedied within 60 (sixty) days after receiving a Notice calling on such Director or Member to remedy the breach; or

- 11.14.7. no longer being a Resident of the Estate; and
- 11.14.8. a Director shall cease to be eligible to continue to act as a Director if they absent themselves from 2 (two) consecutive meetings of the Board without the leave of the Board.

11.15. The Company shall file a Notice writing 10 (ten) Business Days with CIPC after a Director becomes ineligible or ceases to be a Director of the Company.

## **12. Authority of the Board**

- 12.1. The business and affairs of the Company shall be managed under the direction of the Board who shall have the authority to exercise all of the powers and perform all of the functions of the Company, except to the extent that the Companies Act or this Memorandum of Incorporation provides otherwise.
- 12.2. Subject to any limitation imposed by this Memorandum of Incorporation, the management of the business and the control of the Company shall be vested in the Board, who may exercise or delegate to any one or more persons certain powers and or delegate to any one or more persons the doing of certain acts in terms of a Delegation of Authority matrix, as approved by the incoming Board following each AGM, or at any other time as deemed necessary, as may be exercised or done by the Company, and are not in terms of the Companies Act or by this Memorandum of Incorporation expressly directed or required to be exercised or done by a Meeting of Members of the Company, subject, nevertheless, to that management and control:
  - 12.2.1. not being inconsistent with; and
  - 12.2.2. being in compliance with;  
any resolution passed at a Meeting of Members of the Company. No such resolution passed at a Meeting of Members shall invalidate the Company and prior acts of the Board or any delegate.
- 12.3. The Board shall not have the power or authority to affect a Reserved Matter unless that Reserved Matter has been approved by a Special Resolution at a duly constituted Meeting of Members or the Special Resolution is adopted in accordance with section 60 of the Companies Act and the powers of the Board shall be limited accordingly in terms of section 66 of the Companies Act.
- 12.4. The Board shall at all times have the right to engage on behalf of the Company, services of accountants, attorneys, advocates, architects, engineers, managing agents and any other professional firm or person or other employees subject to the provisions of Appendix 1.

## **13. Chairperson and Vice-Chairperson**

- 13.1. The Board shall appoint from their number a Chairperson and Vice-Chairperson within 30 (thirty) days of the AGM, who shall hold their respective offices until the next Annual General Meeting, provided that the Members or Directors may at any time call for a new election of either Chair or Vice Chairperson, which election shall be made by way of special resolution of the Board at a meeting

called for such purpose.

- 13.2. Except as otherwise provided, the Chairperson shall preside at all meetings of the Board and all Meetings of Members and in the event of their not being present within 10 (ten) minutes of the scheduled time for the start of the meeting, or in the event of their inability or unwillingness to act, the Vice- Chairperson shall act in their stead, or failing that, any Director elected by the Board, failing that, a retired judge to act as Chairperson as appointed by the Johannesburg Bar.
- 13.3. The Chairperson shall have a casting vote in the event of a deadlock in a Meeting of Members meeting or Board meeting.
- 13.4. Should the Chairperson be ineligible, unable, or unwilling to act as such, the Vice Chair will automatically step into the role of Chairperson, and the Board will convene a meeting at their earliest convenience in order to appoint a new Vice Chairperson.

#### **14. Proceedings of the Board**

- 14.1. The authority of the Board to consider a matter other than at a meeting as set out in section 74 of the Companies Act, is not limited, or restricted by this Memorandum of Incorporation. The Board may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit.
- 14.2. The right to requisition a meeting of the Board, as set out in section 73(1) of the Companies Act, may be exercised by any two Directors at any time and the Board shall be obliged to call a meeting.
- 14.3. Subject to clause 13.3 of this Memorandum of Incorporation, any resolution of the Board shall be carried on a simple majority of all votes cast.
- 14.4. The quorum for meetings of the Board shall be a majority of the Directors and further provided that:
  - 14.4.1. if a quorum is not present within thirty minutes after the time appointed for the commencement of any meeting of the Board, that meeting shall automatically be postponed without motion or vote to a date within 14 (fourteen) days as agreed between the Directors, at the same time and place. The postponed meeting may only deal with the matters that were on the agenda of the meeting that was postponed; and
  - 14.4.2. if at any such postponed meeting a quorum is not present within thirty minutes after the time appointed for the commencement of that meeting then, the Directors present shall be deemed to constitute a quorum and shall be sufficient to vote on any resolution which is tabled at that meeting, provided that such resolution shall be passed only if the majority of the Directors present vote in favour thereof; and
  - 14.4.3. if a meeting of the Board is postponed or adjourned, whether in terms hereof or otherwise, the Company must, within forty-eight (48) hours thereafter, send Notice of the postponement or adjournment to all Directors

who are entitled to receive Notice of the meeting (excluding those of the Directors who have agreed not to receive such Notice of postponement or adjournment or agreed that the meeting may proceed without them) and that Notice must contain the time and date of, and the location for, the holding or continuation of the meeting and the business to be dealt with thereat. If Notice is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh Notice must be given in accordance with this Memorandum of Incorporation.

14.5. If every Director of the Company:

- 14.5.1. acknowledges actual receipt of the Notice and agrees that the meeting should proceed;
- 14.5.2. is present at a meeting; and
- 14.5.3. waives short or no Notice of the meeting, the meeting may proceed even if the Company failed to give the required Notice of that meeting, or there was a defect in the giving of the Notice.

14.6. The Board:

- 14.6.1. may provide for a meeting of the Board to be conducted in whole or in part by Electronic Communication; and
- 14.6.2. shall always make provision for any Director to participate by electronic communication in every meeting of the Board that is held in person at any place other than the registered office of the Company, and any electronic communication facility so employed must ordinarily enable all persons participating in that meeting to at least speak and hear each other at approximately the same time, and to participate reasonably effectively in the meeting, without an intermediary. The authority of the Board in this regard is not limited or restricted by this Memorandum of Incorporation.

14.7. Directors shall:

- 14.7.1. disclose in advance,
- 14.7.2. inform the relevant meeting of material information and answer questions concerning,
- 14.7.3. not take part in any consideration of any such matter and leave the relevant meeting after disclosure, and
- 14.7.4. not be entitled to vote on or sign any document in relation to any matter in which they have, or any person in relation to whom they are a 'connected person' (as defined in the Income Tax Act) has, a personal financial interest.

14.8. A director must also disclose the acquisition of a personal financial interest in any matter after such matter has been approved by the Board or Members.

14.9. The Company shall keep minutes of the meetings of the board, and any of its committees, and include in the minutes:

- 14.9.1. any declaration given by notice or made by a director as required by

- section 75 of the Companies Act with reference to the personal financial interests of the director, whether it be an advance declaration of interests, or a specific declaration with reference to a specific matter; and
- 14.9.2. every resolution adopted by the board, which resolutions shall be dated, sequentially numbered, and will be effective from the date of the resolution, unless the resolution states otherwise.

- 14.10. Copies of the minutes of every meeting shall be dispatched by the person appointed by the board from time to time, to all directors within 30 days of the holding of the meeting.

## 15. Written Resolutions of the Board

- 15.1. The Company's Board of directors may consider a matter other than at a meeting, and the directors may, instead of voting to make a decision at a meeting, adopt a decision by Round Robin/ written consent of the majority of directors, given in person or by electronic communication, provided that each director has received notice of the matter to be decided upon. A decision so made shall have the same effect as if it had been approved at a meeting.

## 16. Appointment of Officers and Committees

- 16.1. The Board may appoint any Officers it considers necessary to better achieve the objects and business of the Company.
- 16.2. The Board has the authority to appoint Board committees and to delegate to any such committees any of the authority of the Board as set out in section 72(1) of the Companies Act. The Board may include in any such committee persons who are not Directors or Members as set out in section 73(2)(a) of the Companies Act, except to the extent that this Memorandum of Incorporation, or a resolution establishing such a committee, provides otherwise and provided that any such person must not be ineligible or disqualified to be a Director in terms of section 69 of the Companies Act.
- 16.3. The Board must establish a Finance Committee ("FinCom"), which shall:
- 16.3.1. be governed by the Finance Committee Terms of Reference as amended by the Board from time to time;
  - 16.3.2. always act in the best interests common to the Members of the Company;
  - 16.3.3. consist of suitably qualified Members who have requisite and balanced qualifications, time, skills and experience for their mandated role, including:
    - 16.3.3.1. the Finance Portfolio Director; and
    - 16.3.3.2. at least three (3) and not more than six (6) Members, provided that these Members may not also be Board members nor past directors who are in their two (2) year cool off period;
  - 16.3.4. appoint from their number a chairperson who shall preside over the meetings of the Finance Committee;
  - 16.3.5. report to the Board on the following matters, *inter alia*:
    - 16.3.5.1. AFS review;
    - 16.3.5.2. Budget Review;
    - 16.3.5.3. Budget versus Actual review on quarterly basis;

- 16.3.5.4. appointment of auditors; and
  - 16.3.5.5. Special investigations.
- 16.4. The Board must establish a Nominations Committee (“NomCom”), which shall:
- 16.4.1. be governed by the NomCom Terms of Reference as amended by the Board from time to time;
  - 16.4.2. always act in the best interests common to the Members of the Company;
  - 16.4.3. consist of suitably qualified Members who have requisite and balanced qualifications, time, skills and experience for their mandated role, including:
    - 16.4.3.1. the Chairperson of the Board;
    - 16.4.3.2. one other director of the Board; and
    - 16.4.3.3. at least three (3) Members of the Company, provided that these Members may not also be Board members;
  - 16.4.4. appoint from their number a chairperson who shall preside over the meetings of the NomCom;
  - 16.4.5. report to the Board and Members on the following matters, *inter alia*:
    - 16.4.5.1. the appropriate composition of the Board for it to execute its duties effectively;
    - 16.4.5.2. a formal and transparent process for nominating, electing and appointing Directors;
    - 16.4.5.3. the Induction and ongoing training and development of Directors;
    - 16.4.5.4. succession planning in respect of the Board and management;
    - 16.4.5.5. when requested by the Board to do so, the evaluation of the performance of the Board (including committees and individual Directors).
- 16.5 Meeting of committees and HOD/ management meetings of the HOA:
- 16.5.1 Notice to be sent to all board members, GM, FM and the relevant committee members;
  - 16.5.2 Any director, the GM and FM may attend any meeting as an observer but may not vote unless they are also a member of that committee.

## 17. Indemnification and Insurance for Directors

- 17.1. If directors or officers of the Company, or Members of any committee of the Company:
- 17.1.1. defend any legal proceedings, whether civil or criminal, for any liability or charge arising from their position in or authorised actions on behalf of the Company; and
  - 17.1.2. judgment is given in their favour, or they are acquitted, or the proceedings are abandoned, or the proceedings are in connection with any application under Section 77(9) of the Companies Act and relief is granted to them by the Court,  
they shall be indemnified by the Company against costs arising from the defence of such proceedings and the company may advance to the director funds to cover the legal costs of defending these proceedings.
- 17.2. The Company will indemnify directors, officers, or employees of the Company

against personal liability for:

- 17.2.1. loss or expense incurred by the Company through the insufficiency or deficiency of any security in or upon which any of the funds of the Company are invested;
  - 17.2.2. loss or damage arising from the bankruptcy, insolvency or delictual acts of any persons with whom monies, securities or effects are deposited; or
  - 17.2.3. loss or damage occasioned by any error of judgment or oversight on his/her part; or
  - 17.2.4. other loss, damage, or misfortune whatever which happens in the execution of the duties of his/her office, or in relation thereto, unless the loss, damage, or expense:
    - 17.2.4.1. happened through his/her own gross negligence, gross default, gross breach of duty or wilful misconduct or wilful breach of trust; or
    - 17.2.4.2. is a fine arising from conviction for an offence (provided that the Company will indemnify against fines imposed in circumstances where there is no wrongful conduct by the director, officer, or employee, but the fine is imposed by law purely because of the position held in the Company).
- 17.3. The Company's Board of directors shall purchase insurance to protect the Company or director, officer, or employee against any liability for which the Company provides an indemnity.

## **18. Meetings of the Members of the Company**

- 18.1. The Company shall not be required to hold any Meetings of Members other than those required by the Companies Act, provided that the Company shall hold an Annual General Meeting and such Annual General Meeting shall be held no more than 6 (six) calendar months after the end of each ensuing financial year.
- 18.2. The Company shall hold a Meeting of Members in the circumstances contemplated in section 61(2) of the Companies Act:
  - 18.2.1. at any time that the Board is required by the Companies Act or this Memorandum of Incorporation to refer a matter to Members for a decision; and
  - 18.2.2. within six months of a vacancy occurring on the Board or at the next Annual General Meeting, whenever required in terms of section 70(3) of the Companies Act, to fill a vacancy on the Board; and
  - 18.2.3. under any other circumstances as may be contemplated in the Companies Act or in terms of this Memorandum of Incorporation.
- 18.3. The Board or the Chairperson shall convene a Meeting of Members within 30 (thirty) calendar days if one or more written and signed demands by Members for such a meeting are delivered to the Company, and:
  - 18.3.1. each such demand describes the specific purpose for which the meeting is proposed; and
  - 18.3.2. in aggregate, demands for substantially the same purpose are made and signed by the holders, of at least 100 Members eligible to vote in relation

- 18.3.3. to the matter proposed to be considered at the meeting; or  
in aggregate, demands for substantially the same purpose are made and signed by the holders, of less than 100 Persons eligible to vote in relation to the matter proposed to be considered at the meeting, and the Board, subject to its reasonable discretion, deems the specific purpose for which the meeting is proposed significant enough to warrant a meeting to be convened, or for the issue to be placed on the agenda of the next Meeting of Members.
- 18.4. Should the Board or Chairperson fail to convene a meeting in terms of clause 18.3, any Member of the Company shall be empowered to call such meeting.
- 18.5. Any Meeting of Members shall be held in person within the Estate provided that this does prevent Members from attending such meeting via electronic communication, subject to the provisions of section 60 of the Companies Act.
- 18.6. During each Annual General Meeting, the Board shall present to Members the actual audited financial results compared to the budget for that financial year, for both the Eagle Canyon Golf Estate Home Owners' Association NPC and the Eagle Canyon Country Club (Pty) Ltd, providing detailed explanation for all variances between budget and actual results in excess of R50 000 (Fifty Thousand Rand) or 10% of the budgeted amount (whichever the greatest).

## 19. Notices

- 19.1. Any Notice that is required to be given by the Company to Members or Directors as the case may be, may be given in any manner prescribed as methods and times for delivery as set out in the Table CR3 to the Regulations of the Companies Act and the manner shall be resolved upon by the Board and that Notice shall be deemed to have been duly delivered if the manner, method and time as provided for in Table CR3 of the regulations to the Companies Act has been met.
- 19.2. Each Member and Director as the case may be, shall notify the Company in writing of:
- 19.2.1. an electronic email address, which address shall be his registered address for the purposes of receiving electronic Notices from the Company and if he has not named such an electronic address, he shall be deemed to have waived his right to be so served with electronic Notices; and
- 19.2.2. notify the Company in writing of a physical address, which address shall be his registered address for the purposes of receiving Notices from the Company by hand and, if he has not named such an address, he shall be deemed to have waived his right to be so served with Notices by hand.

## 20. Proxy Representation

- 20.1. A Member may in terms of section 58 of the Companies Act, at any time by a dated and signed written proxy appointment, appoint any individual, including an individual who is not a Member of the Company, as a proxy to:

- 20.1.1. participate in, and speak and vote at a Meeting of Members on behalf of the Member; or
  - 20.1.2. give or withhold written consent on behalf of the Member to a proposed resolution;
  - 20.1.3. and any such proxy appointment (and any invitation by the Company to appoint a proxy and any form supplied by the Company for the appointment of a proxy) shall be governed by section 58 of the Companies Act and this clause 19.
- 20.2. The Board may determine a standard form of proxy appointment and make it available to Members on request.
- 20.3. A Member may not appoint more than one person concurrently as proxy and may not appoint more than one proxy to exercise voting rights attached to different rights and interests of the Member.
- 20.4. A proxy may not delegate the proxy's authority to act on behalf of the Member to another person unless the right to delegate is specifically contained in the proxy appointment and the delegation occurs by way of a further proxy appointment which itself complies with the requirements and this Memorandum of Incorporation for a proxy appointment.
- 20.5. A proxy shall, as contemplated in section 58(7) of the Companies Act, be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the Member, provided that if the instrument appointing the proxy specifically provides otherwise, then the specific provisions of the proxy appointment shall prevail.
- 20.6. The Board may at its own discretion implement an electronic voting mechanism, subject to such mechanism allowing for a fair and transparent process.

## 21. Record Dates

- 21.1. Subject to clause 21.2 hereof, the Board may, in accordance with section 59 of the Companies Act and the Regulations to the Companies Act, determine, and publish a record date for the purposes of determining which Members are entitled to:
- 21.1.1. receive a Notice of a Meeting of Members; and
  - 21.1.2. participate in and vote at a Meeting of Members; and
  - 21.1.3. decide any matter by written consent or by Electronic Communication; or
  - 21.1.4. be awarded or exercise any other rights.
- 21.2. If the Board does not determine a record date for any action or event, as contemplated in this clause 20, the record date shall be as determined in accordance with section 59(3) of the Companies Act:
- 21.2.1. in the case of a meeting, the latest date by which the Company is required to give Members Notice of that meeting; or
  - 21.2.2. the date of the action or event, in any either case.

## **22. Notice of Meetings of Members**

- 22.1. The Company must deliver Notice of each Meeting of Members to all Members as of the Record Date for receiving Notice of that meeting at least 15 (Fifteen) Business Days (or such shorter period as may be agreed to in writing by all of the Members at the time of that meeting) before that Meeting of Members is to begin. The Business Days shall be calculated excluding the day of the Notice is disseminated and including the date upon which the Meeting of Members is to be held.
- 22.2. The Notice of a Meeting of Members shall be in writing and shall include the items set out in section 62(3) of the Companies Act.
- 22.3. The Notice of a Meeting of Members must be delivered in accordance with the provisions of clause 19.1 hereof.
- 22.4. The Notice shall specify the following:
  - 22.4.1. the venue, the date, and the time of the meeting;
  - 22.4.2. in the case of special business, in addition to any other requirements contained in this Memorandum of Incorporation, the general nature of the business; and
  - 22.4.3. in the case of a proposed Special Resolution, the terms, effects, and reasons, therefore.

## **23. Conduct of Meetings**

- 23.1. Before any Person may attend or participate in a Meeting of Members:
  - 23.1.1. that Person must present identification in order to reasonably identify that Person as a Member or proxy or representative of a Member;
  - 23.1.2. the Chairperson of the Meeting of Members must be reasonably satisfied that the right of that Person to participate and vote, either as Member or as proxy for a Member, has been reasonably verified;
  - 23.1.3. the Chairperson may take reasonable steps necessary to verify the identity of any Person which attends, votes, or speaks at a Meeting of Members.
- 23.2. The Company:
  - 23.2.1. may, as contemplated in section 63 of the Companies Act, provide for a Meeting of Members to be conducted in whole or in part by electronic communication; and
  - 23.2.2. may make provision for any Member or proxy for a Member, to participate by electronic communication in every Meeting of Members that is being held at any place other than the registered office of the Company, and any electronic communication facility so employed must ordinarily enable all Persons participating in the Meeting of Members to at least speak and hear each other at approximately the same time and to participate reasonably effectively in the meeting, without an intermediary.

- 23.3. The responsibility for, and any expense of, gaining access to the medium or means of electronic communication employed for any Meeting of Members may be borne by the Member or proxy. If a provision has been made for participation in a Meeting of Members by electronic communication and the medium or means of such is available and functioning, then the Meeting of Members shall be entitled to proceed even if a Member or proxy is not able to gain access to the medium or means of electronic communication so employed, provided that such member may not make up the number for a quorum of such meeting.
- 23.4. The Company shall ensure that any Notice of any Meeting of Members at which it will be possible for Members to participate by way of electronic communication, shall inform Members of that form of participation and shall provide any necessary information to enable Members or their proxies to access the available medium or means of electronic communication.
- 23.5. A resolution passed at any meeting that employs electronic communication shall, notwithstanding that the Members are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting duly called and constituted on the day on which, and at the time at which, the meeting was so held. For the avoidance of doubt, it is recorded that all of the provisions of clauses 22 to 24 hereof shall apply to these meetings.
- 23.6. At a Meeting of Members, voting shall be conducted by either a way of a poll, in which event the provisions of section 63(6) of the Companies Act shall apply, or on a show of hands, in which event the provisions of section 63(5) of the Companies Act shall apply. The voting shall be conducted in such manner as the Chairperson of the meeting directs.

## **24. Quorum of Meetings of Members and Adjournment**

- 24.1. The quorum requirements for Meetings of Members shall, subject to clauses 21.1, 22.1 and 22.2 hereof, be that such a meeting shall not begin unless 100 (one hundred) Members are present in person or by proxy and eligible to vote in respect of at least one matter to be decided at the meeting.
- 24.2. Notwithstanding the provisions of section 64(4) of the Companies Act and clause 23.1 hereof, if, within 30 (thirty) minutes after the appointed time for a meeting:
- 24.2.1. the quorum requirements for a meeting to begin have not been satisfied, the meeting shall automatically be postponed without motion or vote to a date within 14 (Fourteen) days as decided by the Board at the same time and place.
- 24.3. If at the adjourned meeting under clause 24.2.1 hereof a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Members at that adjourned meeting shall constitute a quorum, provided that at least 50 (fifty) Members are present in person or by proxy. If fewer than 50 members are present in person or by proxy the meeting shall fail.

- 24.4. The adjourned or postponed meeting may only deal with the matters that were on the agenda of the meeting that was adjourned or postponed.
- 24.5. The Chairperson of the meeting shall be entitled to extend the 30 (thirty) minute limit referred to in clause 23.3 hereof in the circumstances contemplated in section 64(5) of the Companies Act.
- 24.6. After a quorum has been established for such an adjourned meeting, or for a matter to be considered at such an adjourned meeting, the meeting may continue, or the matter may be considered, provided that the number required for a quorum remains either in person or by proxy.
- 24.7. Subject to clause 24.9 hereof, a Meeting of Members, or the consideration of any matter being debated at a Meeting of Members, may be adjourned as contemplated in sections 64(10), 64(11) and 64(12) of the Companies Act, it being recorded that the periods of adjournment set out in section 64(12) of the Companies Act shall apply without variation.
- 24.8. The Board may, at any time after Notice of a Meeting of Members (other than a Meeting of Members required to be held in terms of clause 18.3 hereof) has been given but prior to the commencement of that meeting, postpone that meeting to such later date as may be determined by the Board at the time of determining to postpone the meeting, or may be postponed to an unspecified date to be decided by the Board at a later stage, provided that the Board may not so postpone the date of any such meeting beyond that date (if any) by which that meeting is required by the Companies Act or this Memorandum of Incorporation to be held.
- 24.9. If a Meeting of Members is postponed or adjourned, the Company must, within forty-eight (48) hours thereafter, send communication to all Members who were entitled to receive Notice of the meeting of the postponement or adjournment and that Notice must contain the time and date of, and the location for, the continuation or resumption of the meeting, the business to be dealt with thereat and any other information which the Board may decide to include therein. If this communication is not so given, the postponed or adjourned meeting may not be held or resumed and the business that would have been dealt with thereat can be dealt with at a new meeting of which fresh Notice has been given in accordance with this Memorandum of Incorporation.
- 24.10. The Chairperson of a Meeting of Members shall, subject to the Companies Act and this Memorandum of Incorporation and any Rules and Regulations, determine the procedure to be followed at that meeting.

## **25. Members' Resolutions**

- 25.1. Every resolution of Members is either an Ordinary Resolution (requiring more than 50% approval of Members voting) or a Special Resolution (requiring at least 75% approval of Members voting).

- 25.2. The provisions of sections 65(3) and 65(4) of the Companies Act shall apply with regard to any resolutions proposed by Members.
- 25.3. At any Meeting of Members, any Person who is present at the meeting, whether as a Member or as a proxy for a Member, shall be entitled to exercise the number of voting rights held by such Member, which voting rights shall be determined in accordance with the rights, limitations, and other terms of his or her proprietary rights, as set out in this Memorandum of Incorporation.
- 25.4. If any Member abstains from voting in respect of any resolution, that Member shall, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect of that resolution.
- 25.5. Except for those matters which require the approval or authority of a Special Resolution in terms of section 65(11) of the Companies Act any other section of the Companies Act or any provision of the Regulations or this Memorandum of Incorporation, no other matters which the Company may undertake require the approval or authority of a Special Resolution of the Members.

## **26. Electronic Voting by Members**

- 26.1. A resolution that could be voted on by written vote of the Members, as contemplated in section 60 of the Companies Act, shall be conducted by Electronic Voting, as defined in this MOI, and the Board shall determine the voting period and procedure.
- 26.2. An Ordinary or Special Resolution that could be voted on at a Meeting of Members may instead be adopted by Electronic Voting if it is supported by the required percentage of the voting rights exercised by eligible Members who voted during the prescribed voting period, for it to be adopted as an Ordinary or Special Resolution, as the case may be.
- 26.3. Unless the contrary is stated in the Notice of Voting:
  - 26.3.1. any such resolution shall be deemed to have been adopted on the date on which the Company received the electronic vote of the Member whose vote resulted in the resolution by being supported by sufficient votes for its adoption; and
  - 26.3.2. the voting period shall not be less than 10 (ten) Business Days and not more than 20 (twenty) Business Days.
- 26.4. For greater certainty, in terms of section 60(5) of the Companies Act, any business of a company that is required by this Act or the company's Memorandum of Incorporation to be conducted at an annual general meeting of the company, may not be conducted in the manner contemplated in section 60.

## **27. Agenda of Meetings**

- 27.1. In addition to any other matters required by the Companies Act or this

Memorandum of Incorporation or the Rules and Regulations to be dealt with at an Annual General Meeting of the Members, the following matters shall be dealt with at every Annual General Meeting:

- 27.1.1. the consideration of the Chairperson's report;
- 27.1.2. the election of Directors;
- 27.1.3. the consideration of any other matters raised at the Annual General Meeting, including any resolutions proposed for adoption by such meeting and voting upon any such resolutions;
- 27.1.4. the consideration of the books and records of accounts and annual financial statements and reports for the preceding financial year; and
- 27.1.5. the consideration of the Auditors' report, their terms of engagement and appointment for the next financial year, as well as approval of their remuneration.

## **28. Voting at Meetings of Members**

- 28.1. Every Member, in person or represented by proxy and entitled to vote, shall have 1 (one) vote for each Erf or Unit registered in their name, subject to their Member status as determined by clause 1.1 herein.
- 28.2. Where an Erf or a Unit is registered in the name of more than 1 (one) Person, all such co-owners shall jointly have 1 (one) vote, with 1 (one) Person being nominated as the Principal Member in writing by such owners to vote, and any such nomination shall be delivered to the Company at least two (2) working days in advance of a meeting.
- 28.3. The Company shall deliver to all of the Members within 72 (seventy-two) hours of any meeting the results of voting that took place at a Meeting of Members. Any Member shall be entitled to query such results within 7 (seven) days of receipt of those results upon request to the Company.

## **LEVIES**

### **29. Budget**

- 29.1. The HOA Management must prepare a budget to meet the expenses and the capital expenditure of the company during each financial year. The budget must:
  - 29.1.1. Specify any estimated deficiency which will result from the preceding financial year; and
  - 29.1.2. The Capital budget must specify all items of expenditure including those subject to Appendix 1 of this MOI. No unspent capital can be automatically carried forward but must be included as an item in the new year.
  - 29.1.3. Include clear distinction between normal operating costs; Capital Replacement Costs; Capital Repair and Maintenance Costs and/ detail any special project costs included in such budget; and
  - 29.1.4. Include any amount to be held in reserve to meet anticipated future expenditure not of an annual nature.
- 29.2. The annual budgets for the Eagle Canyon Golf Estate Home Owners' Association NPC and the Eagle Canyon Country Club (Pty) Ltd ("Budgets") must be prepared and delivered to all of the Members for their information not less than 1 month before the end of each financial year (or as soon as reasonably possible

thereafter). The budget must be accompanied by a notice specifying the levy payable by each member as a contribution to the expenses and any reserve fund for the forthcoming financial year; containing sufficient detail and explanatory information in order for Members to make an informed decision, inclusive of Operating Expenses, Special Projects and Capital Projects below and above the threshold as detailed in Appendix 1 paragraph 2.1 of the MOI and clearly represented separately, which budget needs to be approved by an Ordinary Resolution of Members present or represented by proxy during a meeting of Members held no later than two months after the annual levy increase is implemented.

- 29.3. If the Board fails for any reason to approve the budget or to notify members of the levies, then every member shall (until the budget and levy notice has been issued) continue to pay the levy imposed in the previous financial year as an interim measure.
- 29.4. Should the Budgets not be approved by Members, the levy shall revert back to the preceding year's levy until such time as new budgets are presented and approved by Members.

### **30. Levies Payable by Members**

- 30.1. The Company through its Board shall from time to time determine the levies payable by the Members for the purpose of meeting all the expenses, which the Company has incurred, or to which the Board reasonably anticipate the Company will be put in the attainment of its objects or the pursuit of its business.
- 30.2. The Board is empowered when determining the levies to allocate expenses which are not common to the Estate, but which are for the maintenance and upkeep of certain allocated areas of the Estate and which only benefit a certain group of the Members, to allocate those expenses to those Members.
- 30.3. The monthly amount levied upon each Member of the Company in relation to each Erf or Unit owned by such Member as that Member's share of the Company's expenses in relation to such Erf or Unit, will be calculated by using the following formula:

$$ML = 1 / TE \times AME$$

Where:

- |     |   |  |
|-----|---|--|
| ML  | = | Monthly Levy per Erf or Unit   |
| TE  | = | Aggregate number of Erven and Units within the Estate, liable for the payment of levies  |
| AME | = | Actual or estimated aggregated monthly expenses and capital expenses of the Company and a monthly amount deemed appropriate by the Board referred to in clause 30.2 hereof to satisfy the requirements of the Replacement Reserve. |

- 30.4. The Board shall, not less than 1 (one) calendar month prior to the end of each financial year, or so soon thereafter as is reasonably possible, prepare and serve upon every Member at the address chosen by them an estimate in reasonable detail of the amount which shall be required by the Company to meet the expenses and capital expenses during the ensuing financial year, and shall specify separately such estimated deficiency, if any, as a result from the preceding year. The Board may include in such estimate an amount to be held in a Reserve Fund to meet anticipated future expenditure of an annual nature.
- 30.5. Each Notice to each Member shall specify the contribution payable by that Member towards such expenses.
- 30.6. Levies shall be payable in equal monthly contributions, due in advance on the first day of each and every month of each financial year.
- 30.7. In the event of the Board, for any reason whatsoever, failing to prepare and timeously serve the estimate referred to in clause 30.4 hereof, every Member shall, until served with such estimate, continue to pay the levy as previously imposed and shall, after such service, pay such levy change as well as any levies that are entitled to be charged to Members but have not been due to circumstances beyond the control of the Board, as may be specified in the Notice.
- 30.8. The Board may from time to time impose special levies upon the Members in respect of all expenses as are mentioned in clause 30.1 hereof, which are not included in any estimate made in terms of clause 30.4 hereof and may in imposing such service charges determine the terms of payment thereof.
- 30.9. The Board shall be empowered, and in addition to such other rights as the Company may have in law against its Members, to determine the rate of interest from time-to-time chargeable upon arrear levies; provided that such rate of interest shall not exceed the maximum statutory legislated rate at the time.
- 30.10. Any amount due by a Member by way of levy, special levy, interest, penalties, and any other amount contemplated in the Rules and Regulations shall be a debt due by such Member to the Company, subject to a reasonable appeal process. The continued obligation of a Member to pay a levy, special levy, interest, and penalties shall cease upon their ceasing to be a Member, without prejudice to the Company's right to recover arrear levy charges, interest, and penalties. No levy charges, interest, or penalties paid by a Member shall under any circumstances be repayable by the Company upon their ceasing to be a Member. A Member's successor in title to any Erf or Unit in the Estate shall be liable as from the date upon which they become a Member pursuant to the transfer of that Erf or Unit to pay the levy charge, interest, and penalties attributable to that Erf or Unit.
- 30.11. No Erf or Unit in the Estate shall be capable of being transferred without a

certificate first being obtained from the Company confirming that all levy charges, interest, penalties, and any other amount contemplated in the Rules and Regulations have been paid up to and including the date of registration of transfer of such property.

- 30.12. No Erf or any Unit or any undivided share therein, shall be transferred to any Person who has not bound himself to the satisfaction of the Company to become a Member of the Company and bound by the provisions of this MOI, and any Company Rules, as amended from time to time.

### **31. SECTIONAL TITLE SCHEMES: ASSIGNMENT OF POWERS AND FUNCTIONS AND RULES**

- 31.1. The Company may on good cause carry out such functions and assume such powers as provided in Sections 3, 4 and 5 of the Sectional Title Schemes Management Act No 8 of 2011, as the Company may reasonably require be delegated to it by the relevant Body Corporate in relation to any sectional title scheme on the Estate, but is not obliged to do so. In addition to the foregoing any controlling body of any scheme operating on the Estate shall, when requested by the Board to do so, assign such powers and functions to the Company as the Company may require be delegated to it.
- 31.2. The rules of any sectional title scheme established within the Estate shall be aligned with and at all times be subservient to and in no way shall conflict with this Memorandum and any Rules of the Company and in the event that there is any conflict between the rules of a sectional title scheme and this Memorandum or any rules of the Company, the provisions of this Memorandum and the rules of the Company shall prevail.
- 31.3. It shall be the responsibility of the Body Corporate of each sectional title scheme within the Estate to furnish the Company with copies of its applicable management and conduct rules and any amendments thereto on an ongoing basis together with copies of its management accounts and annual financial statements immediately upon request by the Company.
- 31.4. Where obligations are imposed on any Body Corporate of any sectional title scheme within the Estate in terms of this Memorandum or any rules of the Company, the relevant Owners/Members comprising that Body Corporate shall be jointly liable as members of the Body Corporate to give effect to and comply with such obligations.
- 31.5. No Body Corporate of any sectional title scheme within the Estate shall pass any rule in conflict with this Memorandum or any rule of the Company and/or regulation made in terms thereof and all rules made by any sectional title Body Corporate shall require the prior written approval of the Company before being adopted by the Body Corporate.
- 31.6. An Owner of a sectional title Unit within the Estate shall pay a levy to both the Body Corporate of such sectional title scheme and the Company.

## **32 Financial Statements and Access to Company Information**

- 32.1 The financial year end of the Company is the end of February.
- 32.2 The Company shall prepare annual financial statements and reports in accordance with the Companies Act and the Regulations and shall have those annual financial statements audited.
- 32.3 A copy of the audited annual financial statements and reports of the Company shall be delivered to all Members in the Notice convening the Annual General Meeting of the Company.

## **33 Architectural, Building and Landscape Rules**

- 33.1 No construction of any nature, whether internal or external, may be commenced on any Erf or Unit, without the prior written approval of the Company first being obtained and such improvement must be in accordance with the provisions of the applicable Architectural, Building and Landscaping Rules of the Company as amended from time to time.
- 33.2 The Board may, in collaboration with the requirements of prevailing regulations or the changing needs of the Members, to make, amend or repeal rules and requirements relating to the Architectural, Building and Landscape Rules necessary for compliance with Local Authority, good governance and orderly administration of the Company and the Estate, subject to the conditions of section 15 of the Companies Act.

## **34 Winding Up, Deregistration or Dissolution**

- 34.1 Upon the winding-up, de-registration or dissolution of the Company, no past or present Member or Director of the Company, or person appointing a Director of the Company, is entitled to any part of the net value of the Company, but the assets of the Company remaining after the satisfaction of all its liabilities shall be given or transferred to some other organisation or organisations to be determined by the Members of the Company at or immediately before the time of its dissolution, or failing such determination, by the court and which:
  - 34.1.1 are non-profit;
  - 34.1.2 have objects similar to the Company's main object; and
  - 34.1.3 is a similar association of persons that is also exempt from income tax under section 10(1)(e) of the Income Tax Act.

## APPENDIX 1

Decisions to be determined by Special Resolution of Members of the Company in Meeting of Members:

### 1. Decisions requiring a Special Resolution under the Companies Act

- 1.1. Amending the Memorandum of Incorporation as contemplated in section 16(1)(c) and section 36(2)(a) read with section 65(11) of the Companies Act;
- 1.2. Ratifying an action by the Company or the Directors outside the authority of the Memorandum of Incorporation as contemplated in section 20(2) of the Companies Act;
- 1.3. Approval of the voluntary winding up of the Company, as contemplated in section 80(1) of the Companies Act;
- 1.4. Winding up of a solvent Company by court order as contemplated in section 81(1) of the Companies Act;

### 2. Matters requiring a Special Resolution related to the Threshold

*The term "Threshold" shall mean an amount equal to or greater than R600,000 (six hundred thousand rand) escalating annually with the latest Consumer Price Index as quoted by the South African Reserve Bank at the time of announcing the annual levy increase each year, which Consumer Price Index used to determine the newly established threshold will be announced with the levy increase each year, together with the new threshold to be applied for purposes of this additional matters during the new financial year:*

- 2.1. Any capital expenditure on any one project in excess of the Threshold including capital expenditure to increase the scope of an asset's operations or add future economic benefit to the operation that did not exist in the past and including the creation of a new or enhanced asset with an improved income-earning capacity, but excluding such capital expenditure as defined as Capital Repairs and Maintenance Costs or defined as Capital Replacement Costs;
- 2.2. The purchase, sale, of any immovable property where the value is in excess of the Threshold;
- 2.3. The hiring or leasing of any immovable property where the annual value is in excess of the Threshold;
- 2.4. The commencement of action or application proceedings in a civil court where the legal costs are reasonably foreseen to be in excess of the Threshold;
- 2.5. The settling of any claim against the Company where the quantum of the settlement amount is in excess of the Threshold, provided that this cannot prevent the payment of court-ordered claims/ reasonable legal costs/ reasonable out-of-court settlements which quantum must be communicated to the members for their information only, subject to confidentiality requirements for sensitive information that may infringe the dignity of the claimant;

- 2.6. The establishment or the acquisition and purchase of other businesses, either directly or indirectly by means of purchasing shares in or assets of the Company to which such business may belong, if such establishment, acquisition, or purchase shall cost the Company an amount in excess of the Threshold;
- 2.7. The pledging, mortgaging, hypothecating, or encumbering of any assets of the Company in any manner whatsoever, where such pledging, mortgaging, hypothecating or encumbering results in an exposure of the Company to an amount exceeding the Threshold.

### **3. Other Additional Matters Requiring a Special Resolution**

- 3.1. Rezoning Company-owned Erven for the common benefit of the Members;
- 3.2. The issue or giving of any guarantees or suretyships, letters of comfort, indemnities, or other similar undertakings of any nature whatsoever where such undertaking shall result in a potential exposure of the Company to an amount exceeding the threshold, except when doing so forms part of the normal operational expenses of the Company as budgeted annually by the Company;
- 3.3. The creation or modification of mortgages, liens, or other charges on the Company's assets, except where such creation or modification form part of the normal operational expenses of the Company as budgeted annually by the Company;
- 3.4. The liquidation, winding-up, de-registration or the discontinuance of the business activities, of the Company;
- 3.5. The making of any loan to any party;
- 3.6. The conclusion of any contract outside the Company's main objects and business as defined in clause 3 of the Memorandum of Incorporation;
- 3.7. Changing the nature of or discontinuing, or expansion of the business of the Company or causing the Company to become engaged in any business other than its objects and business as set out in the Memorandum of Incorporation;
- 3.8. Selling or disposing of, by one or more transactions or series of transactions (whether related or not), the whole or any part of the Company's business (including intangible assets); and
- 3.9. Compromising generally with the Company's creditors.

#### 4. Map of Eagle Canyon Golf Estate

