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Companies and Intellectual Property Commission

Republic of South Africa

MEMORANDUM OF INCORPORATION

OF

RAPTOR'S VIEW HOME OWNERS' ASSOCIATION NPC

(Registration number: 2001/000705/08)

("the Association")

A Non-Profit Company

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1 Definitions

- 1.1 In this MOI, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate words and expressions shall have a corresponding meaning, namely:
- 1.1.1 the Act means the Companies Act, 71 of 2008, as amended;
- 1.1.2 Alterable Provision means a provision of the Act in which it is expressly contemplated that its effect on the Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI;
- 1.1.3 Alternate Director means a person elected to serve as a member of the Board in substitution for a particular Director;
- 1.1.4 Board means the board of Directors of the Association, for the time being;
- 1.1.5 Business Day means any day that is not a Saturday, Sunday or official public holiday in South Africa;
- 1.1.6 CC Act means the Close Corporations Act, 69 of 1984, as amended;
- 1.1.7 Commission means the Companies and Intellectual Property Commission, established in terms of section 185 of the Act;
- 1.1.8 Common Property means all of the portions of the Estate as may be registered in the name of the Association from time to time, including the infrastructure, security facilities, paths and roads situated thereon, which are intended for the shared use of Members and their invitees;
- 1.1.9 Director means a director of the Association, and where the context so requires a director's Alternate Director;
- 1.1.10 Electronic Communication means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service;
- 1.1.11 Estate means the Raptor's View Wildlife Estate comprising Portions 1 to 323 of the Farm

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Happyland No. 241, Registration Division K.T.,
Limpopo Province;

- 1.1.12 Estate Rules means:
- 1.1.12.1 the Raptor's View Wildlife Estate Homeowners Rules;
- 1.1.12.2 the Raptor's View Wildlife Estate Architectural Rules;
- 1.1.12.3 the Raptor's View Wildlife Estate Contractor Rules;
- 1.1.12.4 the Schedule of Fines; and
- 1.1.12.5 and all other rules made by the Board from time to time in terms of **clause 24.2.1**;
- 1.1.13 Estate Manager means the estate manager appointed by the Board from time to time in terms of **clause 19.1**;
- 1.1.14 Member means a person defined in **clause 6.1** who holds membership in the Association;
- 1.1.15 MOI means this memorandum of incorporation of the Association and **Schedule 1** hereto;
- 1.1.16 Object means the stated object of the Association set out in **clause 5.1**;
- 1.1.17 Regulations means the Companies Regulations, 2011, published in terms of General Notice R351 in Government Gazette 34239 of 26 April 2011, and any further regulations made in terms of the Act from time to time;
- 1.1.18 Residential Portions means those portions of the Estate owned by Members which are used or are intended to be used for residential purposes;
- 1.1.19 South Africa means the Republic of South Africa; and
- 1.1.20 Unalterable Provision means a provision of the Act that does not expressly contemplate that its effect on the Association may be negated, restricted, limited, qualified, extended or otherwise altered in substance or effect by this MOI.
- 1.2 All other words and expressions defined in the Act shall, unless the context indicates otherwise, bear the same meanings in this MOI.
- 1.3 In this MOI, unless the context requires otherwise:
- 1.3.1 words importing any one gender shall include the other gender;

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

2 Status

- 2.1 The Association is a pre-existing company, as defined in the Act, and continues to exist as a non-profit company as if it had been incorporated and registered in terms of the Act. This MOI replaces and supersedes the memorandum of incorporation of the Association applicable immediately prior to the filing of this MOI.
- 2.2 The Association is a non-profit company in terms of section 1 of the Act, and accordingly:
- 2.2.1 the object for which the Association was incorporated relates to communal or group interests;
- 2.2.2 the Association must apply all of its assets and income, however derived, to advance its Object;
- 2.2.3 subject to **clause 2.2.2**, may acquire and hold securities issued by a profit company or directly or indirectly, alone or in conjunction with any other person, carry on any business, trade or undertaking consistent with or ancillary to its Object;

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- 2.2.4 may not distribute directly or indirectly pay any portion of its income or transfer any of its assets to any person who is or was an incorporator of the Association, a Member or Director or a person appointing a Director, except:
- 2.2.4.1 as reasonable remuneration for goods delivered or services rendered to, or at the direction of the Association or as reasonable payment of, or reimbursement for, expenses incurred to advance its Object;
- 2.2.4.2 as a payment of an amount due and payable by the Association in terms of a bona fide agreement between the Association and that person or another;
- 2.2.4.3 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association, in order to advance its Object; or
- 2.2.4.4 in respect of any legal obligation binding on the Association.
- 2.3 This MOI is in a form unique to the Association, as contemplated in section 13(1)(a)(ii) of the Act.
- 2.4 The Association is incorporated in accordance with, and governed by:
- 2.4.1 the Unalterable Provisions that are applicable to non-profit companies;
- 2.4.2 the Alterable Provisions that are applicable to non-profit companies, subject to any limitation, extension, variation or substitution set out in this MOI;
- 2.4.3 the provisions of this MOI; and
- 2.4.4 its Estate Rules and any other rules made by the Board in terms of **clause 24.1**, if any.

3 Amendment and Alteration to this MOI

- 3.1 This MOI may only be amended:
- 3.1.1 in compliance with a court order, which amendment shall be effected by a resolution of the Board and does not require a special resolution as contemplated in **clause 3.1.3** below;
- 3.1.2 in the manner contemplated in sections 36(3), 36(4) and 152(6)(b) of the Act;
- 3.1.3 at any other time if a special resolution to amend this MOI:
- 3.1.3.1 is proposed by the Board or Members entitled to exercise at least 10% (ten percent) of the voting rights that may be exercised on such a resolution; and
- 3.1.3.2 is adopted at a Members meeting, or in accordance with **clause 12.1**.

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3.2 The Board, or any individual authorised by the Board, may alter this MOI in a manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by:

3.2.1 publishing a notice of any alteration by delivering a copy of such alteration to each Member by hand or e-mail; and

3.2.2 filing a notice of the alteration with the Commission.

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

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

5 **Object and Powers of the Association**

5.1 The sole object of the Association is to manage the collective interests common to all of the Members, which includes expenditures applicable to the Common Property and the collection of levies for which the Members are liable.

5.2 The Association has all of the legal powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having any such capacity. No provision contained in this MOI shall be interpreted or construed as restricting, limiting or qualifying the legal powers and capacity of the Association.

5.3 Save to the extent necessarily implied by its Object, the purposes and the powers of the Association are not subject to any restriction, limitation or qualification, as contemplated in section 19(1)(b)(ii) of the Act.

6 **Membership**

6.1 Membership of the Association shall be restricted to the registered owners of the Residential Portions and no other person shall be eligible or entitled to be a Member.

6.2 Where two or more persons are registered as the owners of the same Residential Portion, such persons shall collectively be deemed to be one Member.

6.3 A registered owner of a Residential Portion shall, upon ceasing to be the registered owner thereof, *ipso facto* cease to be a Member. A Member shall not, for as long as he is the registered owner of a Residential Portion, be entitled to resign as a Member.

7 **Membership Register**

7.1 The Association shall maintain a register of all of the Members in the form prescribed by the Act and the prescribed standards.

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- 7.2 The membership register maintained in accordance with the Act shall, in the absence of evidence to the contrary, be sufficient proof of the facts recorded therein.

8 **Members' Right to Information**

Each Member has a right to inspect and copy without any charge for any such inspection or on payment of no more than the prescribed maximum charge for any such copy, the information contained in the following records of the Association:

- 8.1 this MOI, any amendments thereto, the Estate Rules and any other rules made in respect of the Association;
- 8.2 the records in respect of the Directors contemplated in section 24(3)(b) of the Act;
- 8.3 the reports to annual Members meetings, and annual financial statements of the Association;
- 8.4 the notices and minutes of all Members meetings, including all resolutions adopted by them and any document made available by the Association to Members in relation to each such resolution;
- 8.5 copies of any written communications sent generally by the Association to Members; and
- 8.6 the membership register.

9 **Members Meetings**

9.1 Requirement to Hold Meetings

- 9.1.1 The Board may call a Members meeting at any time.
- 9.1.2 Subject to **clause 12**, the Association shall hold a Members meeting:
- 9.1.2.1 at least once a year, provided that not more than 15 (fifteen) months shall elapse between the date of the previous annual Members meeting and that of the next, and that an annual Member's meeting shall be held within 6 (six) months of the expiration of the Association's financial year;
- 9.1.2.2 at any time that the Board is required by the Act or this MOI to refer a matter to Members for decision;
- 9.1.2.3 whenever required in terms of section 70(3) of the Act to fill a vacancy on the Board; and
- 9.1.2.4 when otherwise required in terms of **clause 9.2**.

9.2 Members' Right to Requisition a Meeting

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

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

9.2.2 in aggregate, demands for substantially the same purpose are made and signed by the holders, as at the earliest time specified in any of those demands, of at least 20% (twenty percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

9.3 Location of Members Meetings

The Board may determine the location for any Members meeting, provided that a Member's meeting may only be held in Hoedspruit.

9.4 Notice of Members Meetings

9.4.1 The Association shall deliver a notice of each Members meeting to all of the Members as of the record date of the meeting, in written and/or electronic form, at least 10 (ten) Business Days before the meeting is to begin.

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

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

9.4.2.2 the general purpose of the meeting, and any specific purpose contemplated in **clause 9.2.1**;

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

9.4.2.4 in the case of an annual Members meeting, the financial statements to be presented or a summarised form thereof and directions for obtaining a copy of the complete annual financial statements for the preceding financial year; and

9.4.2.5 a reasonably prominent statement that:

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

9.4.2.5.2 a proxy need not also be a Member; and

9.4.2.5.3 section 63(1) of the Act requires participants to provide satisfactory identification to verify their right to participate at the Members meeting.

9.4.3 The Association may call a Members meeting on shorter notice than required in terms of **clause 9.4.1** provided that such a meeting may only proceed if every person who is

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entitled to exercise voting rights in respect of any item on the agenda is present at that meeting and votes to waive the required minimum notice of the meeting.

- 9.4.4 An immaterial defect in the form or manner of giving notice of a Members meeting, or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed, shall not invalidate any action taken at the meeting.

9.5 Electronic Participation

A Members meeting may not be conducted entirely by Electronic Communication, nor may any Member participate in a meeting by Electronic Communication.

9.6 Quorum for Members Meetings

The quorum requirements for a Members meeting to begin or for a matter to be considered are as follows:

- 9.6.1 a Members meeting shall not begin until sufficient persons are present at the meeting, in person or by proxy, to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised in respect of at least 1 (one) matter to be decided at that meeting; and

- 9.6.2 a matter to be decided at the Members meeting may not begin to be considered unless sufficient persons are present at that meeting, in person or by proxy, to exercise, in aggregate, at least 25% (twenty five percent) of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda,

provided that, even if the requirements in **clause 9.6.1** or **9.6.2** are satisfied, a Members meeting shall only begin, or a matter shall only begin to be debated, if at least 3 (three) Members are present at the meeting.

9.7 Chairperson

- 9.7.1 The chairperson of the Board, if any, shall preside as chairperson at every Members meeting.

- 9.7.2 If there is no chairperson, or if at any Members meeting he is not present within 15 (fifteen) minutes after the time appointed for the holding of the meeting or is unwilling to act as the chairperson, the Members present in person or by proxy shall choose one of their number to be chairperson.

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

9.8 Postponement and Adjournment of Members Meetings

- 9.8.1 If, within 30 (thirty) minutes of the appointed time for a Members meeting to begin, the quorum requirement stipulated in **clause 9.6.1**, or **9.6.2** if applicable:

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- 9.8.1.1 for that meeting to begin has not been satisfied, the meeting shall be postponed without motion, vote or further notice, for 1 (one) week, to be held at the same time;
- 9.8.1.2 for consideration of a particular matter to begin has not been satisfied:
- 9.8.1.2.1 if there is other business on the agenda of the meeting, consideration of that matter may be postponed to a later time in the meeting without motion or vote; or
- 9.8.1.2.2 if there is no business on the agenda of the meeting, the meeting shall be adjourned for 1 (one) week without motion or vote., to be held at the same time
- 9.8.2 The person intended to preside at a Members meeting, which cannot begin due to the quorum requirement stipulated in **clause 9.6.1**, or **9.6.2** if applicable, not being satisfied, shall be entitled to extend the 30 (thirty) minute limit allowed in **clause 9.8.1** for a reasonable period if:
- 9.8.2.1 exceptional circumstances affecting weather or transportation have generally impeded or are generally impeding the ability of Members to be present at the meeting; or
- 9.8.2.2 1 (one) or more particular Members, having been delayed, have communicated an intention to attend the meeting, and those Members, together with the Members in attendance, would satisfy the quorum requirements stipulated in **clause 9.6**.
- 9.8.3 After a quorum has been established for a Members meeting, or for a matter to be considered at a Members meeting, the meeting may continue or the matter may be considered, so long as at least 50 (fifty) Members, with voting rights entitled to be exercised at the meeting or on that matter, is present at the meeting.
- 9.8.4 The Association shall not be required to give further notice of a Members meeting that is postponed or adjourned in terms of **clause 9.8.1**, unless the location for the meeting is different from the location of the postponed or adjourned meeting, or from the location announced at the time of adjournment in the case of an adjourned meeting.
- 9.8.5 If, at the time appointed in terms of **clause 9.8.1** for a postponed Members meeting to begin, or for an adjourned meeting to resume, the quorum requirement stipulated in **clause 9.6.1**, or **9.6.2** if applicable, has not been satisfied, the Members present, in person or by proxy, will be deemed to constitute a quorum.
- 9.8.6 A Members meeting may not be adjourned beyond 15 (fifteen) Business Days after the date on which the adjournment occurred.

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10 Votes of Members

- 10.1 At any Members meeting, each Member present in person or by proxy shall be entitled to exercise one vote in respect of each Residential Portion which it is the registered owner.
- 10.2 For an ordinary resolution to be adopted at a Members meeting, it must be supported by more than 50% (fifty percent) of the voting rights exercised on the resolution.
- 10.3 For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% (seventy five percent) of the voting rights exercised on the resolution.

11 Proxies

11.1 Proxy Appointment

- 11.1.1 A Member may, at any time, appoint any individual, including an individual who is not a Member, as a proxy to:
- 11.1.1.1 participate in, and speak and vote at, a Members meeting on behalf of the Member;
- 11.1.1.2 give or withhold written consent on behalf of the Member to a decision contemplated in **clause 12**.
- 11.1.2 A proxy appointment is required to be in writing, dated and signed by the Member and remains valid for 1 (one) year after the date on which it was signed or any longer or shorter period expressly set out in the appointment, unless:
- 11.1.2.1 the appointment is revoked by the Member cancelling it in writing or making a later inconsistent appointment and delivering a copy of the revocation instrument to the proxy and to the Association; or
- 11.1.2.2 the Association issues an invitation to Members to appoint 1 (one) or more persons named by the Association as a proxy or supplies a form of instrument for appointing a proxy, in which case the proxy appointment shall expire at the end of the meeting it was intended to be used, subject to section 58(5) of the Act.

11.2 Requirement to Deliver Proxy Instrument

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

11.3 Representation by Concurrent Proxies

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

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11.4 Authority of Proxy to Delegate

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

11.5 Deliberative Authority of Proxy

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

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

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

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

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

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

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

12.2.2 if adopted, shall have the same effect as if it had been approved by voting at a Members meeting.

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

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

13.1 in the case of a Members meeting, the latest date by which the Association is required to give Members notice of that meeting; or

13.2 the date of the action or event, in any other case.

14 **Directors and Officers**

14.1 Composition of the Board

The Board shall be comprised of at least 3 (three) Directors, to be elected by the Members entitled to exercise voting rights in accordance with **clause 14.3**. A director need not be a Member.

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14.2 Rotation of Directors

14.2.1 At each annual Members meeting, one-third of the Directors for the time being, or if their number is not three or a multiple of three, the number nearest to one-third, shall retire from office.

14.2.2 A retiring Director shall be eligible for re-election.

14.2.3 The Members may, at any annual general meeting at which a Director retires pursuant to **clause 14.2.1**, fill the vacancy office by re-electing that Director or electing another person thereto in accordance with **clause 14.3**.

14.3 The Election of Directors

The election of Directors shall be conducted as follows:

14.3.1 the election is to be conducted by a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board at that time have been filled; and

14.3.2 in each vote to fill a vacancy, each voting right entitled to be exercised may be exercised once and the vacancy is filled only if a majority of the voting rights exercised support the candidate.

14.4 Alternate Directors

14.4.1 Each Director shall be entitled by written notice to the Association to appoint one or more persons to act as an Alternate Director in his place during his absence or inability to act as a Director.

14.4.2 The Alternate Directors, whilst acting in the place of the Directors who appointed them, shall exercise all the duties and functions of the Directors they represent. The appointment of an Alternate Director shall cease on the happening of any event which, if he were a Director, would result in him ceasing to hold office in terms of the Act or this MOI, if the Director who appointed him ceases to be a Director or gives notice to the Association that the Alternate Director representing him shall cease to do so.

14.5 Vacancy on the Board

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

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14.6 Ineligibility and Disqualification of Directors

- 14.6.1 A person who is ineligible or disqualified in terms of this **clause 14.6** shall not be appointed or elected as a Director, consent to being appointed or elected as a Director or act as a Director.
- 14.6.2 The Association shall not knowingly permit an ineligible or disqualified person to serve or act as a Director.
- 14.6.3 A Director who becomes ineligible or disqualified in terms of this **clause 14.6** whilst serving as a Director shall, subject to section 70(2) of the Act, cease to be entitled to continue to act as a Director with immediate effect.
- 14.6.4 A person who has been placed under probation by a court in terms of section 162 of the Act or section 47 of the CC Act, shall not serve as a Director except to the extent permitted by the order of probation.
- 14.6.5 A person is ineligible to be a Director if the person is a juristic person, is an unemancipated minor or is under a similar legal disability.
- 14.6.6 A person shall be disqualified to be a Director if:
- 14.6.6.1 a court has prohibited that person to be a Director, or declared the person to be delinquent in terms of section 162 of the Act or section 47 of the CC Act;
- 14.6.6.2 subject to **clause 14.6.7** and section 69(10) and (11) of the Act, that person:
- 14.6.6.2.1 is an unrehabilitated insolvent;
- 14.6.6.2.2 is prohibited in terms of any public regulation to be a Director;
- 14.6.6.2.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
- 14.6.6.2.4 has been convicted, in South Africa or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence:
- 14.6.6.2.4.1 involving fraud, misrepresentation or dishonesty;
- 14.6.6.2.4.2 in connection with the promotion, formation or management of a company, or in connection with any act contemplated in **clause 14.6.1** or **14.6.4**; or
- 14.6.6.2.4.3 under the Act, the Insolvency Act, 24 of 1936, the CC Act, the Financial Intelligence Centre Act, 38 of 2001, the Securities Services Act, 36 of 2004, or Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

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- 14.6.7 A disqualification in terms of **clause 14.6.6.2.3** or **14.6.6.2.4** ends at the later of:
- 14.6.7.1 5 (five) years after the date of removal from office or the completion of the sentence imposed for the relevant offence, as the case may be; or
- 14.6.7.2 at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of section 69(10) of the Act.
- 14.6.8 This **clause 14.6** shall also apply to a prescribed officer of the Association or a person who is a member of a committee of the Board.
- 14.7 Authority of the Board
- 14.7.1 The business and affairs of the Association shall be managed by or under the direction of the Board, which has the authority to exercise all of the powers and perform any of the functions of the Association, subject to the provisions of the Act and this MOI.
- 14.7.2 All acts by the Board or by any person acting as a Director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of any Director, or that any of them were disqualified from or had vacated office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director.
- 14.7.3 The Board shall not be entitled to incur, on behalf of the Association, any capital expenditure exceeding R100,000.00 (one hundred thousand Rand) not included in the estimate prepared in terms of **clause 25.2** unless such expenditure has been approved in terms of an ordinary resolution of Members.
- 14.7.4 The amount stipulated in **clause 14.7.3** shall escalate at 5% (five percent) on 1 March of every second year. The first escalation shall take effect on 1 March 2017.
- 14.8 Director's Remuneration
- 14.8.1 Save for travelling, hotel and other expenses properly incurred by Directors in or about the performance of their duties as such, including those of attending and travelling to and from meetings of the Board, Members or any committee of the Board, the Directors shall not be entitled to any remuneration for their service as Directors.
- 14.8.2 The Board may pay to any Director who serves on any committee or who devotes special attention to the business of the Association or performs services which are outside the scope of his service as a director such remuneration or allowances as the Board may determine.

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15 Board Meetings

15.1 Requisition of Board Meetings

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

15.2 Notice of Board Meetings

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

15.2.2 If all of the Directors acknowledge actual receipt of the notice or are present at the meeting or waive notice of the meeting, the meeting of the Board may proceed even if the Association failed to give the required notice of that meeting, or there was a defect in the giving of the notice.

15.3 Electronic Participation

A meeting of the Board may be conducted entirely by Electronic Communication or 1 (one) or more Directors may participate in a meeting by Electronic Communication, provided that the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

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

15.4.1 At least 3 (three) Directors must be present at a Board meeting before a vote may be called at that meeting.

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

15.5 Chairperson

15.5.1 The Directors may elect a chairperson of their meetings and determine the period for which he is to hold office.

15.5.2 If no chairperson is elected, or at any meeting of the Board the chairperson is not present within 15 (fifteen) minutes after the time appointed for holding it, the Directors may choose one of their number to be chairperson of the meeting.

15.5.3 In the case of a tied vote, the chairperson of the Board shall not have a casting or deciding vote.

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16 Directors Acting Other Than at a Meeting

A decision that could be voted on at a meeting of the Board may instead be adopted by written consent of a majority of the Directors, given in person or by Electronic Communication, provided that each Director has received notice of the matter to be decided. A decision made in the manner contemplated in this **clause 16** shall be of the same effect as if it had been approved by voting at a meeting of the Board.

17 Committees of the Board

The Board may appoint any number of committees of the Board and delegate to any committee any of the authority of the Board. Except to the extent that a resolution establishing a committee of the Board provides otherwise, the committee:

- 17.1 may include persons who are not Directors, provided that any such person shall not be ineligible or disqualified to be a Director in terms of **clause 14.6** and no such person has a vote on a matter to be decided by the committee;
- 17.2 may consult with or receive advice from any person; and
- 17.3 has the full authority of the Board in respect of a matter referred to it.

18 Auditors

18.1 Appointment of Auditors

- 18.1.1 To be appointed as an auditor of the Association, a person or a firm is required to be a registered auditor, who is not:
 - 18.1.1.1 a Director or prescribed officer of the Association;
 - 18.1.1.2 an employee or consultant of the Association who was or has been engaged for more than 1 (one) year in the maintenance of any of the Association's financial records or the preparation of any of its financial statements;
 - 18.1.1.3 a director, officer or employee of a person appointed as company secretary of the Association;
 - 18.1.1.4 a person who, alone or with a partner or employees, habitually or regularly performs the duties of accountant or bookkeeper, or performs related secretarial work, for the Association;
 - 18.1.1.5 a person who, at any time during the 5 (five) financial years immediately preceding the date of appointment, was a person contemplated in **clauses 18.1.1.1 to 18.1.1.4**; or
 - 18.1.1.6 a person related to a person contemplated in **clauses 18.1.1.1 to 18.1.1.5**.

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- 18.1.2 If the Association appoints a firm as an auditor, the individual determined by that firm to be responsible for performing the functions of auditor is required to satisfy the requirements set out in **clause 18.1**.
- 18.1.3 A retiring auditor may be automatically reappointed at the annual Members meeting without any resolution being passed, unless:
- 18.1.3.1 the retiring auditor is no longer qualified for the appointment or is no longer willing to accept the appointment; or
- 18.1.3.2 the Association has notice of an intended resolution to appoint some other person or persons in place of the retiring auditor.
- 18.1.4 If, at an annual Members meeting, an auditor is not appointed or reappointed, the Directors are required to, within 40 (forty) Business Days of the date of such meeting, fill the vacancy in accordance with the procedure set out in **clause 18.2.2**.
- 18.2 **Resignation of Auditors and Vacancies**
- 18.2.1 An auditor of the Association may resign from office by giving the Association 1 (one) month written notice or less than 1 (one) month written notice, with the approval of the Board. The resignation of an auditor shall be effective when the notice is filed.
- 18.2.2 If a vacancy arises in the office of auditor of the Association, the Board:
- 18.2.2.1 if there was only 1 (one) incumbent auditor of the Association, shall appoint a new auditor within 40 (forty) Business Days; and
- 18.2.2.2 if there was more than 1 (one) incumbent, may appoint a new auditor at any time, but while any such vacancy continues, the surviving or continuing auditor may act as auditor of the Association.
- 18.2.3 In the event that the Association appoints a firm as its auditor, any change in the composition of the members of that firm does not by itself create a vacancy in the office of auditor for that year, subject to **clause 18.2.4**.
- 18.2.4 If, by comparison with the membership of a firm at the time of its latest appointment, less than one half of the members remain after a change contemplated in **clause 18.2.3**, that change constitutes the resignation of the firm as the auditor of the Association, giving rise to a vacancy.
- 18.2.5 If the auditor is removed from office by the Board, the auditor may require the Association to include a statement in its annual financial statements relating to that financial year, not exceeding a reasonable length, setting out the auditor's contention as to the circumstances that resulted in the removal. Should the auditor of the Association wish to exercise the power referred to in this **clause 18.2.5**, the auditor shall give written notice to that effect to the Association by not later than the end of the

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financial year in which the removal took place and that notice shall include the statement referred to in this **clause 18.2.5**.

18.2.6 The statement of the auditor referred to in **clause 18.2.5** shall be included in the Directors' report in the Association's annual financial statements.

18.3 **Rights and Restricted Functions of Auditors**

The auditor of the Association shall:

18.3.1 have the right of access at all times to the accounting records and all books and documents of the Association, and shall be entitled to require from the Directors or prescribed officers of the Association any information and explanations necessary for the performance of the auditor's duties; and

18.3.2 be entitled to attend any Members meeting, receive all notices of and other communications relating to such meetings and be heard at such meetings on any part of the business of the meeting that concerns the auditor's duties or functions.

19 **Estate Manager**

19.1 The Board shall, from time to time, appoint a third party in terms of a written contract to control, manage and administer the business and affairs of the Association and to exercise such powers and duties as may be entrusted to that person, including the power to collect levies, fines and penalties imposed by the Board.

19.2 The Board shall ensure that the contract of appointment of the Estate Manager includes a provision to the effect that, in the event that the Estate Manager is in breach of his contract of appointment or if he is guilty of conduct which at common law would justify the termination of a contract between a master and servant, the Board may cancel such contract of appointment and the Estate Manager shall have no claim against the Association or the Members as a result of such cancellation.

19.3 The contract of appointment of the Estate Manager shall further provide for the termination of the Estate Manager's appointment and that the Estate Manager shall cease to hold office if:

19.3.1 where the Estate Manager is a company, an order is made for its provisional or final liquidation, or, where the Estate Manager is a natural person, he surrenders his estate as an insolvent or his estate is sequestrated, whether provisionally or finally;

19.3.2 the Estate Manager is convicted of an offence involving fraud or dishonesty, or, where the Estate Manager is a company, any of its directors is convicted of an offence involving fraud or dishonesty; or

19.3.3 a special resolution of the Members is passed to that effect, provided that in such event the Estate Manager so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

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- 19.4 The Estate Manager shall keep full records of his administration and shall report to the Association on all matters which in his opinion detrimentally affect the value or amenity of the Estate.
- 19.5 The Board shall give the Estate Manager reasonable notice of all meetings of the Board and the Estate Manager shall be entitled to be present thereat.
- 19.6 Should an Estate Manager not be appointed in terms of this **clause 18**, then all references to the Estate Manager in this MOI shall be deemed to be a reference to the Directors.

20 Indemnity

- 20.1 The Association:
- 20.1.1 may advance expenses to a Director, the Estate Manager, any officer of the Association and every person employed by the Association as auditor to defend litigation in any proceedings arising out of their service to the Association; and
- 20.1.2 hereby directly and indirectly indemnifies the Directors, the Estate Manager, any officer of the Association and every person employed by the Association as auditor for expenses contemplated in **clause 20.1.1**, irrespective of whether it has advanced those expenses, if the proceedings are abandoned or the proceedings exculpate such persons or arise in respect of any liability for which the Association indemnifies those persons, in terms of **clause 20.2**.
- 20.2 The Association hereby indemnifies each of the Directors, the Estate Manager, any officer of the Association and every person employed by the Association as auditor in respect of any liabilities *bona fide* incurred by them in their respective capacities in the proper discharge of any of their duties other than:
- 20.2.1 in respect of any fine imposed on such persons as a consequence of having been convicted of an offence (unless the conviction was based on strict liability); or
- 20.2.2 any other liability arising
- 20.2.2.1 as a direct or indirect consequence of any such person having:
- 20.2.2.1.1 acted in the name of the Association, signed anything on behalf of the Association, purported to bind the Association or authorised the taking of any action by or on behalf of the Association, despite knowing that he lacked the authority to do so;
- 20.2.2.1.2 acquiesced in the carrying on of the Association's business despite knowing that the business of the Association was being conducted in a manner prohibited by section 22(1) of the Act; or

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

21 **Restriction against Alienation**

- 21.1 No Member shall alienate or dispose of a Residential Portion of which it is the registered owner, unless:
- 21.1.1 it is a condition of the sale agreement that:
- 21.1.1.1 the person to whom such Residential Portion is to be sold or otherwise to be alienated (“the transferee”) has bound himself to the satisfaction of the Association, as a contract for the benefit of the Association, to become a Member upon registration of the transfer of the Residential Portion to him;
- 21.1.1.2 in the event that the transferee is a juristic person, the director, member of trustee of the transferee, as the case may be, has bound himself as surety for all of the transferee’s obligations to the Association in terms of this MOI and the Estate Rules in the form set out in **Schedule 1** hereto; and

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- 21.1.1.3 the registration of transfer of such Residential Portion to the transferee shall *ipso facto* constitute the transferee as a Member;
- 21.1.2 the Association, under the hand of the Estate Manager or the Board, has certified in writing that the Member has fulfilled all of his financial obligations to the Association in respect of the period up to and including the date specified in such certificate and the transfer takes place prior to or on that date; and
- 21.1.3 the transferee has agreed in writing to become a Member and such written agreement has been lodged with the Association.
- 21.2 Notwithstanding the provisions of **clause 21.1**, registration of transfer of a Residential Portion to any person shall *ipso facto* constitute that person as a Member.
- 21.3 No Residential Portion may be marketed on the Estate, whether for sale or for rent, through the agency of any estate or other agent other than an agent approved in writing by the Association.
- 21.4 No Residential Portions shall be sub-divided under any circumstances, or consolidated without the Board's prior written approval thereof.
- 21.5 The Association shall be entitled to claim from any Member or his estate any arrear levies, interest, fines or penalties or any other amount due by him to the Association at the time of him ceasing to be a Member.
- 21.6 No Member may improve any Residential Portion unless the plans for such improvement have been submitted to and approved by the Board in accordance with the Estate Rules.

22 Restriction against Letting

- 22.1 No Member shall let a Residential Portion of which it is the registered owner, unless it is a condition of the lease that the tenant acknowledges that upon occupation of the premises, he and his family, his employees and any guests or individuals shall abide by the provisions of this MOI, the Estate Rules and any other rules of whatever nature applicable to the control, management and running of the Estate.
- 22.2 Prospective tenants may only view the Residential Portion concerned by appointment and if accompanied by a Member or an agent approved in terms of **clause 21.3**.
- 22.3 A Member shall, prior to a tenant taking occupation of a Residential Portion:
- 22.3.1 provide the tenant with a copy of this MOI the Estate Rules and any other rules of whatever nature applicable to the control, management and running of the Estate;
- 22.3.2 furnish the Association with a copy of the tenant's identity or, in the case of a company, incorporation documents, a copy of the lease signed by both the Member and the tenant and a duly completed and a signed tenant information form.

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- 22.4 No Member shall let a Residential Portion of which it is the registered owner for a period of less than 30 (thirty) consecutive days unaccompanied by the Member concerned without the prior written approval of the Association.

23 Restriction against Building on a Residential Portion

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

24 Rules

24.1 Association Rules

The Board may make, amend or repeal any necessary or incidental rules relating to the governance of the Association in respect of matters that are not addressed in the Act or this MOI by delivering a copy of the rules to each Member by hand or e-mail and filing a copy of the rules with the Commission.

24.2 Estate Rules

- 24.2.1 Subject to any restriction imposed or direction given at a Members' meeting of the Association, in addition to the rules contemplated in **clause 24.1**, the Board may, from time to time, make rules in regard to the use and enjoyment of the Common Property and any conduct on the Common Property and the Residential Portions.

- 24.2.2 Without derogating from the generality of the provisions of **clause 24.2.1**, the Board may make Estate Rules in relation to:

24.2.2.1 the proper preservation of the Estate as a wildlife estate;

24.2.2.2 the keeping of animals, reptiles, fish or birds;

24.2.2.3 the introduction of traffic calming measures;

24.2.2.4 the imposition of fines and other penalties on Members;

24.2.2.5 building activities by Members on the Residential Portions;

24.2.2.6 the aesthetic appearance, design, specifications and maintenance of buildings on Residential Portions; and

24.2.2.7 all such other matters as may be necessary for the harmonious and beneficial use and enjoyment of the Estate.

- 24.2.3 The Estate Rules shall be binding between the Association and each Member. Each Member shall comply with all of the Estate Rules.

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- 24.2.4 In the event of any breach of the Estate Rules by any guests, visitors, residents or tenants of a Member, or his contractors, agents or employees, such breach shall be deemed to have been committed by the Member himself, but, without prejudice to the foregoing, the Board may take or cause to be taken such steps against the person actually committing the breach as they may, in their discretion deem fit.
- 24.2.5 In the event of a breach of any of the Estate Rules by a Member, the Board may:
- 24.2.5.1 take or cause to be taken such steps as it may consider necessary to remedy the breach of the Estate Rule of which the Member may be guilty, and debit the cost of doing so to the Member concerned, which amount shall then be deemed to be a debt owing by the Member to the Association;
- 24.2.5.2 take such other action, including the institution of court proceedings in the name of the Association and the appointment of attorneys and counsel, as it may deem fit;
- 24.2.5.3 impose, in its sole discretion, fines, penalties or other charges on the Member for such breach; or
- 24.2.6 Should a Member dispute the fact that he has breached any of the Estate Rules:
- 24.2.6.1 the Board may appoint a committee of 2 (two) Directors to determine the dispute, provided that, if the Member disputing the breach is also a director, he shall not be appointed to such committee;
- 24.2.6.2 the dispute shall be determined in an expedited manner with a view to it being completed as soon as possible at such time and in such manner as the Board may direct; and
- 24.2.6.3 the Member concerned shall cooperate with the committee appointed in terms of **clause 24.2.6.1** in relation to the determination of the dispute.
- 24.2.7 The Board shall be entitled in its sole discretion, but not obliged, to waive compliance with any of the Estate Rules, but any waiver granted shall not constitute a precedent which shall automatically apply to any other Members.

25 Levies

- 25.1 The Board shall, from time to time, impose levies upon Members for the purpose of meeting all the expenses, including consumption and administration charges, which the Association has incurred, or which the Board reasonably anticipates that the Association will incur, in the furtherance of its Object.
- 25.2 The Board shall, prior to the end of each financial year of the Association, prepare an itemised estimate of the anticipated income and expenditure (which may include a reasonable provision for contingencies) of the Association during the ensuing financial year, and therefrom calculate the amount required to be levied on Members.

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- 25.3 The Board shall, as soon as possible after the calculation of the levies in terms of **clause 25.2**, advise each Member in writing of the amount payable. Such amount shall be payable by the Member in equal monthly instalments in advance on or before the first day of each month.
- 25.4 Each Member shall pay an equal levy.
- 25.5 In addition to the levies imposed in terms of **clause 25.1**, the Board may, from time to time, impose:
- 25.5.1 special levies upon Members or call upon them to make special contributions in respect of all such expenses which are not included in any estimate made in terms of **clause 25.2**; or
- 25.5.2 building levies upon Members who undertake or cause building to be undertaken on the Estate,
- any special levies or contributions imposed in terms of this **clause 25.5** may be made payable in one sum or in instalments, with or without interest, and at such time or times as the Board deems fit.
- 25.6 The Board shall be entitled to raise interest on arrear levies (whether imposed in terms of **clause 25.1** or **25.5**, as the case may be) at such rate as may, from time to time, be determined by the Board.
- 25.7 Any amount due by a Member by way of levy or interest thereon shall be a debt due by him to the Association.
- 25.8 Upon a Member ceasing to be an owner of a Residential Portion:
- 25.8.1 the obligation of that Member to pay levies shall cease, without prejudice to the Association's right to recover arrear levies and interest thereon; and
- 25.8.2 the Association shall not be liable to repay any levies or interest thereon paid by a Member.
- 25.9 A Member's successor-in-title to a Residential Portion shall be liable, as from the date upon which he becomes a Member pursuant to the transfer of that portion, to pay the levies and interest thereon attributable to the Residential Portion concerned.
- 25.10 A Member shall be liable for and pay all legal costs, including costs as between attorney and own client, and collection commission, expenses and charges incurred by the Association in obtaining the recovery of arrear levies or any other arrear amounts due and owing by such Member to the Association.
- 25.11 No Member shall be entitled to any of the privileges of membership of the Association unless he shall have paid every levy and interest thereon, and any other sum, if any, which may be due and payable by that Member to the Association, from whatsoever cause arising.

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26 Security, Maintenance and Replacements

The Board may:

- 26.1 erect security fencing and implement such security measures as it deems necessary to ensure control of access to the Estate and all persons therein;
- 26.2 cause any gatehouse at any access point to the Estate to be manned by security personnel, and to institute appropriate security measures as it deems fit; and
- 26.3 maintain the Common Property and instruct the Estate Manager to attend to such landscaping and maintenance requirements on behalf of and at the cost of the Association.

27 Winding-Up or Dissolution

Upon the winding-up or dissolution of the Association:

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

28 Notices

- 28.1 All notices required to be given by the Association to any Member shall be given in writing in any manner authorised by the Regulations and particularly Table CR3 annexed to the Regulations.
- 28.2 Each Member shall notify in writing to the Association:
 - 28.2.1 an address, which address shall be his registered address for the purposes of receiving written notices from the Association by post and if he has not named such an address he shall be deemed to have waived his right to be so served with notices; and
 - 28.2.2 an e-mail address and/or facsimile number, which address shall be his address for the purposes of receiving notices by way of Electronic Communication.
- 28.3 Any Member whose address in the membership register of the Association is an address not within South Africa, and who shall from time to time furnish the Association with an address

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within South Africa at which notices can be served upon him, shall be entitled to have notices served upon him at such address.

28.4 Any notice sent by any means permitted in Table CR 3 annexed to the Regulations shall be deemed to have been delivered as provided for that method of delivery in that table.

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Schedule 1

DEED OF SURETYSHIP

I the undersigned

(Identity Number: _____)

do hereby interpose and bind myself to

RAPTOR'S VIEW HOME OWNERS' ASSOCIATION NPC

(Registration number: 2001/000705/08)
(hereinafter referred to as the "Association")

as surety in solidum for and co-principal debtor with

(Registration Number: _____)
(hereinafter referred to as the "Debtor")

for the due performance by the Debtor to the Association of all obligations owing by the Debtor to the Association arising from Association's memorandum of incorporation or any rules made by the board of directors of the Association from time to time in terms thereof.

I renounce all benefits arising from or out of the exceptions of excussion and division, the meaning and effect of which exceptions and the renunciation whereof I acknowledge myself to be fully acquainted.

I agree that in the event of any insolvency or compromise, any payments which the Association may receive from the Debtor or from any other person shall not prejudice their right to recover from me the balance of the amount which may remain owing by the Debtor.

I agree that this Suretyship shall be in addition to and without prejudice to any other security which the Association may at any time have for the obligations of the Debtor.

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In the event of the Association proceeding against me for the recovery of any amount in terms of this Suretyship, I acknowledge that I shall be liable for all legal costs incurred by the Association on an attorney own client scale.

THUS DONE AND SIGNED AT _____ ON THIS DAY OF _____.

AS WITNESSES

1. _____

2. _____

Name: _____

DOCUMENT REVISION HISTORY

Date	Description	Rev	Director's Signature
24 April 2015	Approved by the Board, subject to the amendments reflected in the document.	1	