



# **MEMORANDUM OF INCORPORATION** **("MOI")**

of the

**THORNY BUSH MOKOPANE (RF) (NPC)**  
trading as **THORNY BUSH ESTATE HOME OWNERS ASSOCIATION (RF) (NPC)**  
**Registration Number: 2015/106278/08**

(which is referred to in the rest of this Memorandum of Incorporation as  
*"the Company"*)

**A) OBJECTS AND POWERS OF THE COMPANY:**

The Company is a Non-Profit Company with members, with the following objects:

1. The main object of the Company is to protect and advance the communal interest of individual residential property owners [herein later referred to as Members] and their bona fide occupants together with the common property which is held in ownership by the Home Owners' Association jointly comprising the THORNY BUSH ESTATE Township, as are more fully defined in this Memorandum of Incorporation, hereunder.
2. The First Board of Directors of the Company has been appointed as agreed to in the Offers to Purchase agreement(s) (OTP) signed by all individual property owners and the Developer, prior to registration of transfer. The Board of Directors resolved to, as soon as a reasonable number of home owners have taken transfer of erven within the township, convene a general meeting for the purpose of election from own ranks of a home owners' committee to assist with the management of the Home Owners' Association, herein later referred to as the Home Owners' Executive Committee (EC).
3. The EC, in accordance with the main object of the COMPANY will assist the Board of Directors to:-
  - 3.1 manage, control, and administer, on behalf of its Members, the Common Property which may include, and where required and necessary, all electric, water, reticulation services, sewerage systems, storm water systems, roads, telecommunication and intercom systems and security within the Township; and
  - 3.2 formulate rules for the upkeep, maintenance and control of buildings, walling, fencing, gates, lighting, signage, landscaping and to ensure compliance with such rules by the Members;
  - 3.3 ensure that Members comply with the building guidelines and aesthetical rules, building restrictions and requirements and where necessary to enforce such conditions, restrictions or requirements ;
  - 3.4 formulate, amend and implement rules for the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the estate and/or for the advancement of the interests of Members and/or Residents in the Township and without limitation thereto, for *inter alia* relating to security, landscaping, vegetation, parking, road use, signage and advertising, exterior finishes of buildings, fencing or walling;
  - 3.5 make and enforce rules concerning design, landscaping, ecological planning of any building activities and the control and collection of refuse;

- 3.6 consent to consolidation of any Erf(Erven) and to impose such conditions relating to any landscaping and aesthetic appearance, as they may deem fit;
- 3.7 control access to and from the Township;
- 3.8 impose and collect Levies and contributions towards funds of the Company for the attainment of the objects of the Company; and
- 3.9 create rules and / or amend rules concerning the conduct and obligations of Members and the use of Common Property on erven within the Township and to ensure that the terms, conditions and obligations as are imposed in this Memorandum of Incorporation ("MOI") and the Rules , are enforced equally upon all Members and are adhered to.
- 3.10 in general, to do all things necessary for the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the estate and/or for the advancement of the interests of members and/or lawful residents in the Township.

## **B) ADOPTION OF MEMORANDUM OF INCORPORATION:**

This Memorandum of Incorporation will be adopted by Special Resolution of the Members in Special or Annual General Meeting.

## **C) DEFINITIONS:**

(1) General

(1.1) In this Memorandum of Incorporation –

- (1.1.1) a reference to a section by number refers to the corresponding section of the Companies Act, 2008;
- (1.1.2) any word or expression which is defined in the Act and which is not otherwise defined in the MOI shall have the meaning assigned thereto in the Act as in force at the date of incorporation of the Company;
- (1.1.3) a reference to any Act shall include any amendment thereto or Act in substitution thereof;

- (1.1.4) the headings to the clauses in this Memorandum of Incorporation are for reference purposes only and shall not be taken into account in the interpretation of the provisions in this Memorandum of Incorporation;
- (1.2) The Schedule 1 Rules of Conduct, the Architectural Guidelines and Rules together with the OTP (Offer to Purchase) as attached to this Memorandum, are part of the Memorandum of Incorporation and deemed to be incorporated therein as original governing documents.
- (1.3) Unless the context otherwise requires, any words importing:-
- (1.3.1) the singular number, shall include the plural number and *vice versa*;
  - (1.3.2) the one gender shall include the other two genders; and
  - (1.3.3) persons shall include partnerships, trusts and corporate bodies, and *vice versa*;
- (1.4) Reference to the MOI means this Memorandum of Incorporation, including all schedules and annexures hereto;
- (1.5) If the due date for performance of any obligations in terms of the MOI is a day which is not a Business Day, then (unless otherwise stipulated), the due date for performance of the relevant obligation shall be the succeeding Business Day;
- (1.6) Any reference to a notice shall be construed as a reference to a written notice and shall include a notice which is transmitted electronically in a manner and form permitted in terms of the Act and/or the Regulations;
- (1.7) The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- (1.8) Unless otherwise provided in this MOI or the Act:
- (1.8.1) Defined terms appearing herein in upper case shall be given their meaning as defined, while the same terms

appearing in lower case shall (except where defined in the Act) be interpreted in accordance with the plain English meaning, and;

(1.8.2) Any words and expressions defined in any Article shall, unless the application of such word or expression is specifically limited to that Article, bear the meaning assigned to such word;

(1.8.3) Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

(2) The following words, expressions and abbreviations shall have the meanings hereinafter assigned to them:

*"The Act"* : means the Companies Act, 71 of 2008 (as amended);

*"Auditors"* : means the Company's appointed Auditors from time to time;

*"Authorized representative"* : means a person duly authorized by a Company or other legal entity or Trust, to act as its representative at any General Meeting of the Company;

*"Board"* : means the Board of Directors of the Company;

*"Business day"* : when, in this Memorandum of Incorporation, a particular number of 'business days' is provided for between the happening of one event and another, the number of days must be calculated by:

(a) excluding the day on which the first such event occurs;

(b) including the day on or by which the second event is to occur; and

(c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively;

- “Chairman”* : means the Chairman of the Executive Committee of the Home Owners’ Association accordingly elected by the Members at a General Meeting;
- “Common Property”* : refers to the common property areas in the township including all the infrastructure, amenities and equipment of any nature, developed and/or installed on the common property areas and / or within servitude / leased areas registered / held in favour of the Company, that are owned by the Company or leased to the Company and for which the Company bears the responsibility to maintain, and may include, but not limited thereto, the bio-diversity offset area (grazing land), streets, streetscapes, pavements, fencing, security fencing and systems, entrance gate, electrical reticulation, sewerage reticulation, storm water reticulation and any equipment or amenities used ancillary to such Common Property Areas, including private open space and buildings / structures thereupon but excluding the individual Erven held by Members and / or the Developer;
- “Common Property Areas”* : means the Common Property as defined above;
- “Company”* : means Thorny Bush Mokopane (RF) (NPC), Reg. No.: 2015/106278/08;
- “DC”* : means the Disciplinary Committee appointed from members of the EC with the Chairman and Secretary to serve ex officio.
- “Developer”* : means Proudafrique Trading 191 (Pty) Ltd (Registration Number : 2008/013752/07) (or its successor-in-title);
- “Development Period”* : means the period which commenced with proclamation of the Township and which terminates when the last residential Erf in the Township is transferred from the Developer to a third party buyer save if it is developed for occupation by the Developer, and upon issuing

of an occupation certificate;

- “Directors” : means the Directors of the Company appointed as contemplated in article (A)(2) hereof who shall, for the purposes of the Act, be the directors of the Company;
- “EC” : means the Executive Committee of the Home Owners Association.
- “Effective Date” : means the date upon which CIPC accepts this Memorandum of Incorporation, or the date as recorded on Form CoR15.2, whichever event first occurs;
- “Erf” : means a full title freehold stand in the Township, developed or to be developed in terms of the Township Establishment Conditions and/or any consolidation thereof;
- “In writing” : means written, printed, type-written, lithographed, telefaxed, electronically mailed or any other process producing words in a visible form;
- “Law” : means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law and a reference to any statutory enactment shall be construed as a reference to that enactment as amended or substituted from time to time;
- “Levies” : means all contributions levied from time to time by the Company and / or EC upon eligible Members for the purpose of meeting all the expenses which the Company has incurred or which the EC reasonably anticipate the Company will incur in the attainment of its objects and the pursuit of its business, and as more fully stipulated in Article 1.5(6) of the Memorandum of Incorporation and other governing documents;

- “Managing Agent” / “MA”* : means any person or body or an estate agent as defined in the Estate Agents Act, Act 112 of 1976, appointed by the Company as an independent contractor from time to time, if at any time there is no MA then the reference to the MA shall be reference to the EC;
- “Member(s)”* : means the Developer and all legal entity(ies) or natural person(s) who are reflected in the Deeds Registry of the relevant Deeds Office as the registered owner of an Erf in the Township;
- “MOI”* : means this Memorandum of Incorporation of the Company from time-to-time including the other governing documents which shall be annexed thereto;
- “Resident(s)”* : means a person in lawful occupation of a Erf on a temporary or permanent basis by agreement with and/or consent from the owner of a relevant Erf or through his affiliation or association with such owner;
- “Subsequent Directors”* : means directors appointed to the Board after completion of Development Period as provided for in the MOI.
- “Serviced Erf”* Means an Erf on the township regarding which all engineering services (i.e. water-, electricity and Sewage connections) were installed.
- “Township” / “Estate”* : means the properties comprising the Thorny Bush Estate, otherwise known as Piet Potgietersrust Extension 25 Phase 1 and 2 consisting of 286 erven.

## **D) COMPANY ADMINISTRATION:**

### Article 1 – Incorporation and Nature of the Company

#### 1.1 Incorporation



- (1) The Company is a pre-existing Non-Profit Company, as defined in the Companies Act, 2008.
- (2) The Company is incorporated in accordance with, and governed by-
  - (2.1) the unalterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies;
  - (2.2) the alterable provisions of the Companies Act, 2008 that are applicable to Non Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum and the annexure's thereto jointly referred to as the governing documents;
  - (2.3) the provisions of this MOI and the other governing documents;
- (3) This MOI is in a form unique to this Company, as contemplated in Section 13(1)(a)(ii) of the Act.

## 1.2 Objects and Powers of the Company

- (1) The Objects of the Company are as set out in Part A hereof and, except to the extent necessarily implied by the stated objects, the Company has all of the legal powers and capacity of an individual and the purposes and powers of the Company are subject only to the restrictions referred to in Article 1.2(2) below and are not subject to any further restrictions, limitations or qualifications, as contemplated in section 19(1)(b)(ii).
- (2) The Company is prohibited from amending this Memorandum of Incorporation as envisaged in terms of the provisions of Section 15(2)(c) of the Act, if such amendment affects any of the pre-existing rights of the Developer during the Development Period.
- (3) Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1(4)(b) of Schedule 1 of the Companies Act, 2008, which holds that :-
  - (3.1) the net value of the Company must be distributed to one or more non-profit Companies, external non-profit companies carrying on activities within the Republic of South Africa, voluntary associations or non-profit trusts – having objects similar to the Company's main object; and

(3.2) as determined:

(3.2.1) by special resolution of the Members, immediately before the time of dissolution or, failing such determination;

(3.2.2) by a Court order.

(4) The Company is not permitted to distribute its assets to any person or entity other than a Non-profit Company, Voluntary Association or Non-profit Trust, having objects similar to the Company's main object.

### 1.3 Memorandum of Incorporation and Company rules

(1) Subject to the provisions of Article 1.2(2) above, this MOI of the Company may be altered or amended in the manner set out in section 16 or 17, subject to the requirement that any alteration of the MOI or the Rules, made in terms of Section 17(1), shall be published to the Members of the Company by forwarding a copy of the approved altered MOI or the Rules to each Member in the prescribed manner in terms of Article 8.

(2) The EC may make rules for the Company, without limitation or restriction and only subject to the provisions of Article 1.3(4), as contemplated in section 15(3) – (5), which Rules shall include, but not be limited, to the following matters:

(2.1) the preservation of the environment, including the right to control vegetation and the right to prohibit and/or control the erection of fences and other improvements to an Erf, whether upon or within the boundaries of any Erf, which may affect the general aesthetic appearance of the Township;

(2.2) all aspects of security, vegetation, parking, signage and advertising, exterior finishes of buildings or walling and fences, streetscapes and the maintenance of any Erf and any improvements thereon;

(2.3) the right to prohibit, restrict or control the keeping of any animal/bird/reptile which they may regard as dangerous or likely to cause a nuisance and/or disturbance to other residents in the Township;

(2.4) the placing or affixing of ornamentation or embellishments to the outside of the buildings or on an Erf within the Township,

including the power to remove, or order the removal, or to procure an order for removal of any such objects;

- (2.5) the conduct of any person or persons within the Township for the preservation of peace and tranquillity and the prevention of nuisance of any nature to any Member/Resident, or to prevent any harm to the environment;
- (2.6) the furtherance and promotion of any of the objects of the Company and/or for the better management of the affairs of the Company and/or for the advancement of the interests of Members of the Company;
- (2.7) the right to control reasonable access to the Township and to any Erf to protect the security of the Township, the Members and Residents and all users thereof;
- (2.8) the control of any visitors, contractors and labourers and restriction of their access to and activities within the Township;
- (2.9) the enforcement of any of the Rules;
- (2.10) the operations and activities of all business conducted on the Township;
- (2.11) the maintenance and preservation of the natural environment and the protection of fauna and flora and the eradication of undesirable flora;
- (2.12) rules concerning construction and material specification and Architectural Guidelines and Rules and requirements of all improvements and in particular, without derogating from the generality of the afore going, structures of whatsoever nature, paving, pavements / sidewalks, the appearance of streetscapes, installations of whatsoever nature, including without limiting the generality thereof, air-conditioning units, any power saving devices, generators, swimming pool pumps / filters, TV aerials / dishes / antennae, lighting, washing lines, refuse bins, building rubble, carports, awnings, security systems and landscaping features as well as the maintenance and upkeep of all the a foregoing;
- (2.13) the control of vehicular traffic of whatsoever nature, including parking;
- (2.14) the use of any facilities or amenities within the Township;

- (2.15) the safety and other regulations applicable to the playing of any sport or engagement in any other recreational activity, including, but not limited to, the use of balls and other sporting equipment, cycles, scooters, skateboards, etc.;
- (2.16) the control and recycling of refuse, littering and other safety and anti-pollution related measures;
- (2.17) the maintenance of all roads, pavements, buildings, outbuildings, structures, electricity-, water- and sewage reticulation, irrigation of Common Property, improvements of any nature and landscaping within the Township of any Common Property and Erven;
- (2.18) the right of reasonable access to any Erf in order to affect the maintenance of any matters referred to in this MOI or the rules;
- (2.19) the conditions for the use of all or certain parts of the Common Property, such as streets and other open spaces, etc.;
- (2.20) the restriction of domestic workers and other employees and their movement within the Township;
- (2.21) directives concerning processes to be followed regarding internal dispute resolution between Members and/or between Members and the Company concerning conduct and/or the use of Common Property;
- (2.22) rules that may become applicable, desirable or necessary from time to time to effectively discharge all the obligations of the Company as a juristic person and "responsible party" under:
- (2.23) the Protection of Personal Information Act No. 4 of 2013 and also the prescriptions of the Promotion of Access to Information Act No. 2 of 2000 for the proper protection, processing, control of and access to the personal information of its Members and any other data subjects that may come under its control;
- (2.24) the Community Schemes Ombud Service Act No.9 of 2011, when it comes into operation.
- (2.25) in general, rules in order to maintain tranquillity and a peaceful living environment in the Township.

- (3) For the enforcement of any Rules, the Company shall be entitled to:
- (3.1) take such action, including proceedings in Court, as they may deem fit;
  - (3.2) implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
  - (3.3) any pre-approved fines and / or penalty structures in existence may be adjusted at a General Meeting by normal vote.
  - (3.4) in the event of contravention of any of these Rules, the following procedure will be followed and implemented:
    - (3.4.1) A letter of demand incorporating a penalty will be sent to the Member by hand delivery and / or electronic media (e-mail) , specifying the nature of the breach and demanding him to remedy the breach where applicable, within a period of 10 (ten) days from date of demand;
    - (3.4.2) Should the Member fail to remedy the breach, and / or fail to submit representation(s) and / or an objection notice [leaving the Member in default], an appropriate penalty / fine shall be implemented and levied against the Member's levy account and shall be enforceable, as if such penalty or fine constitutes a normal levy;
    - (3.4.3) If the transgression is disputed and upon receipt of any written objection ("*the objection notice*") from the Member, a Disciplinary Committee (DC) consisting of the Chairman, Secretary and Treasurer of the EC, whom shall convene a meeting with the Member within a period of 10 (ten) days, or as soon as reasonably possible after receipt of the objection notice, to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure, as the Chairman of the Committee shall direct; provided that the Rules of natural justice shall be observed and at which meeting the transgressing Member shall be entitled to address his objection and to call witnesses. No legal

representation shall be allowed at this meeting. If the transgressing member is a DC members, he / she will recuse himself / herself in which event the remaining DC members can appoint any other member of the EC

- (3.4.4) The decision of the DC shall be final unless objected to in writing within 10 (ten) days from notification of its decision;
  - (3.5.5) Should the Member refuse to accept the decision of the Committee on any matter, such dispute shall then be referred to arbitration in terms of Article 5;
  - (3.5.6) Any fine imposed upon any Member will be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.
- (4) In the event of any breach of the Rules by a Member's lessee, Resident, occupant, visitor, employee, contractor, guest, member of his family or of his lessee or occupant, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the rights of the Company to take or cause to be taken, such action against the person actually committing the breach, as the DC in their discretion may deem fit.
- (5) The EC shall publish any notice or rules made in terms of section 15(3) – (5) by delivering a copy of those Rules to each Member by ordinary mail and/or telefax and/or e-mail. The Rules are available for inspection at the office of the Company at all times within business hours and a copy will be made available against payment of the reasonable fee;
- (6) The EC shall publish a proposed alteration of the MOI or the Rules, made in terms of section 17(1) by delivering a copy of the notice and altered MOI or the Rules, to each Member in the prescribed manner in terms of Article 8.
- (7) All Rules made by the EC will be ratified by the Board of directors and all Members of the Company at the General Meeting following the publication of the Rules to the Members.

#### 1.4 Optional provisions of Companies Act, 2008 do not apply

Although the Board may elect to appoint an Auditor, such election will be voluntary and not subject to the provisions of Chapter 3 and specifically not subject to Sections 90, 91, 92 and 93 of the Act.

#### 1.5 (1) Membership of the Company

As contemplated in Item 4(1) of Schedule 1 of the Act, the Company has Members, who are all in a single class, being voting Members, each of whom has an equal vote in any matter to be decided by the Members of the Company.

#### (2) Qualification for Membership of the Company

Membership of the Company shall be limited to:-

- (2.1) the developers during the Development Period of the Township; and
- (2.2) those persons (natural persons or juristic entities) who, at incorporation or thereafter are reflected in terms of the Deeds Registries Act No. 47 of 1937, in the records of the Deeds Office concerned as the registered owners of Erven in the Township, notwithstanding the provisions of Article 1.5(3), and who will be bound by the provisions of the Companies Act, 2008, this MOI and any Rules made and incorporated hereunder or any previous governing documentation;
- (2.3) where any Erf in the Township is owned by more than one person, all the registered owners of that Erf shall together be deemed to be one Member of the Company and have the rights and obligations of one Member of the Company; provided however that all co-owners of an Erf shall be jointly and severally liable for the due performance of any obligations towards the Company.

#### (3) Membership of the Company

- (3.1) Subject to the provisions of Article 1.5(2.2), compulsory application for Membership of the Company shall be deemed to have been made in the initial Offer to Purchase (OTP) and approved on date of registration of transfer.
- (3.2) In terms of the original OTP a purchaser / Member declared himself bound by the terms and conditions of the MOI and all

other governing documentation of the Company and such person shall be deemed to have acquainted himself / herself with the terms and conditions thereof.

(4) Initial or periodic costs for membership

(4.1) All eligible Members as described in 1.5 (2)2.2 of Part D hereof but excluding the developer during the Development Period, shall be liable for payment of a monthly Levy, as may be determined by the EC and approved at a General Meeting of Members from time-to-time.

(5) Rights and obligations of Membership

(5.1) A Member of the Company shall remain a Member thereof until he ceases to be the registered owner of an erf in the Deeds Office, and a Member shall therefore not be entitled to resign as a Member of the Company unless he ceases to be an owner of an Erf in the Township.

(5.2) The rights and obligations of a Member shall not be transferable and every Member shall:

(5.2.1) further to the best of his ability the objects and interests of the Company;

(5.2.2) observe all Rules made by the Company;

(5.2.3) eligible members shall pay all Levies and special levies due by such Member, to the Company;

(5.2.4) comply with the Conditions of Establishment of the Township;

(5.2.5) comply with the Architectural Design Guidelines in force from time to time;

(5.2.6) obtain the prior written consent of the EC of any building plans, including plans for exterior alterations to an existing building, before submission thereof for approval to any local or other authority, prior to commencement with any building activity;

(5.2.7) not use his Erf or any part thereof, or any part of the common property or common services, or permit it to be used, in such a manner and/or for such purposes



as shall be injurious to the reputation of the Company or the developer;

(5.2.8) not contravene or permit the contravention of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any license, relating to or affecting the occupation of his Erf or of the common property or the carrying on of business, or so contravene or permit the contravention of the conditions of title applicable to his Erf or of any other Erf or the common property;

(5.2.9) maintain his Erf in a clean and tidy condition;

(5.2.10) allow any person so authorized by the EC to enter onto his Erf for purposes of inspecting any structure to be erected on his Erf. Members are responsible to allow entry to such persons for such purpose;

(5.2.11) not sub-divide or allow the sub-division of any Erf, nor erect a second dwelling on any Erf;

(5.2.12) abide by the MOI and adhere to the rules and regulations proclaimed by the EC from time to time;

provided that nothing contained in this MOI of the Company shall prevent a Member from ceding his rights in terms of this MOI as security to the mortgagee of the Member's Erf.

(5.3) No Member shall let or otherwise part with occupation of his Erf, whether temporarily or otherwise, unless the occupant or tenant has agreed, in writing, to be bound by all the terms and conditions of this MOI and any Rules made thereunder, and such written undertaking is lodged with the EC prior to the proposed occupier taking occupation of the Erf in question.

(5.4) Every Member shall, when he agrees to transfer ownership of his Erf in the Township, set it as a condition of the agreement of sale and transfer, that the new owner become a Member of the Company and therefore accepting his/her/its obligations towards the Company as Member.

(5.5) No Member of an Erf in the Township shall be entitled to transfer his Erf to any other person without the written consent

of the EC first having been obtained under the hand of the Chairman, which consent will not be withheld unless:

- (5.5.1) such Member is in arrears with any Levies, penalties, fines or interest or other payment due to the Company in terms of the MOI or the Rules or otherwise;
  - (5.5.2) such Member is in breach with any of his obligations towards the Company in terms of the governing documents and has failed to remedy such breach after having been called upon by the Company, in writing, to remedy such breach and he remains in breach, unless such breach is disputed in writing by the Member and forms the subject of a dispute resolution process;
- (5.6) No Member of an Erf in the Township shall be entitled to pass transfer thereof to any other person until the EC under the hand of the Chairman or Secretary has certified by way of a clearance certificate that such Member as at date of transfer has complied with all his/her/its financial and other obligations towards the Company.
- (5.7) The provisions of Article 1.5(5.5) and (5.6) shall apply *mutatis mutandis* to any alienation of an undivided share in an Erf in the Township.
- (5.8) The EC may impose an additional, reasonable fee upon the Members of the Company for the issuing of the Clearance Certificate as referred to in Article 1.5(5.6). The said fee will be determined by the EC from time to time;
- (5.9) Members shall have the rights prescribed by the Act, the MOI and any Rules made thereunder, which shall *inter alia* include the following rights:
- (5.9.1) the right to have access to the Company records in accordance with the provisions of Section 26 of the Act;
  - (5.9.2) the right to receive notice of, attend, speak and vote at General Meetings of the Company;
  - (5.9.3) the right to have access to the Financial Statements or related information of the Company;

- (5.9.4) provided that they are in good standing (i.e. if they have paid all levies and other amounts due and payable to the Company), shall have the right to vote at all meetings of the Company.
- (5.10) A Member/(s) shall not have the right to attend, to vote or to speak at any General Meeting, or as contemplated in terms of the provisions of Section 60 of the Act, if:
- (5.10.1) such Member is in arrears with any Levies, service costs, contributions, penalties, fines, legal costs or interest, or any other payment due to the Company in terms of this MOI or other governing documents;
- (5.10.2) such Member is in breach (other than payment of levies) with any of his obligations towards the Company in terms of this MOI or the governing documents and has failed to remedy such breach after having been called upon by the Company, in writing, to remedy such breach and he remains in breach, unless such breach is disputed in writing by the Member and forms the subject of a dispute resolution process.
- (5.11) A condition shall be included in the Title Deed of every Erf as prescribed in the OTP, which will ensure that the Erf may not be sold or transferred without the buyer or transferee binding himself to become a Member of the Company and without a clearance certificate as contemplated herein. The condition referred to shall be worded as near as possible to the following format:

"Thorny Bush Mokopane (RF) (NPC):

- A. *Subject to the following conditions imposed by the transferor from time to time, initially Proudafrique Trading 191 (Pty) Ltd (registration Number: 2008/013752/07) in its capacity as owner of the abovementioned property and enforceable by the Thorny Bush Mokopane (RF) (NPC), Registration Number: 2015/106278/08)*
1. *The transferee and its successors in title or assigns of the within mentioned property shall upon transfer thereof, become a member of the Company and remain as such and be subject to its Memorandum of*

*Incorporation, Rules and Architectural Guidelines framed in terms thereof, until the transferee or each subsequent successor in title or assign ceases to be the registered owner of the property. The Company shall have full responsibility to promote the communal interest of owners and residents in the township, which will include but not be limited to maintenance of private roads, private open spaces and servitudes, sewer purification and sanitary services, electricity facility, security facilities, water supply and purification and storm water drainage.*

2. *Neither the property nor any interest therein shall be transferred to any person who has not bound him/her/itself in writing to become a member of the Company.*
3. *The transferee and its successors in title or assigns shall not be entitled to transfer the property without a clearance certificate from the said Company certifying that all amounts owing by the registered owner to the aforesaid Company have been paid.*
4. *For purposes of clause A (1), (2) and (3) above the term "Home Owners Association" is a reference to THORNY BUSH MOKOPANE (RF) (NPC), Registration Number: 2015/106278/08.*
5. *In the event of the Registrar of Deeds requiring the amendment of any of the above conditions in any manner in order to effect registration thereof, the transferee hereby agrees to such amendment."*

#### (5.12) Binding Nature

(5.12.1) The provisions of this MOI and Rules, and the duties of a member in relation to the use and occupation of his Erf shall be binding on the member of any Erf and any lessee or other occupant of any Erf and it shall be the duty of the member to ensure compliance with this MOI and Rules upon such lessee or occupant, including visitors, employees, guests, any member of his family or that of his lessee or his occupant;

(5.12.2) It shall be the duty of any member to furnish a copy of this MOI and other governing documents to any

lessee or other occupant of his Erf and to refer in any Lease Agreement to the binding nature thereof.

- (5.13) If a member ceases to be a Member of the Company as a result of the transfer of an Erf to another person, such Member shall not be released from any liability to the Company in respect of any debt or other obligation, the cause of which arose prior to the transfer of such Erf.
- (5.14) Where an Erf is co-owned by more than 1 (one) person, all the registered co-owners of that Erf shall together be deemed to be collectively 1 (one) Member of the Company and have the rights and obligations of 1 (one) Member of the Company; provided however that all co-owners of any Erf shall be jointly and severally liable for the due performance of any obligation to the Company.
- (5.15) The rights and obligations of a Member shall not be capable of being ceded and/or assigned, in whole or in part, nor otherwise be transferable, save to a mortgagee in circumstances that an erf will be sold in execution.
- (5.16) Members shall not interfere with, nor give instructions to any officers, employees, agents or contractors of the Company and any complaints shall be addressed in writing to the EC. The EC may direct that any complaint made in terms of this clause, be dealt with at the next General Meeting of the Company.
- (5.17) To the extent reasonably possible, the EC shall respond to any request or complaint by a Member within 14 (fourteen) business days from receipt of such complaint/request and will at least advise how and when they intend to deal with the complaint/request, if same is not immediately addressed.

#### (6) Levies

- (6.1) The EC may from time to time determine the Levies payable by the eligible Members for the purpose of meeting all the expenses which the Company has incurred, or to which the Company reasonably anticipate it will be put in the attainment of its objects or the pursuit of its business.
- (6.2) In determining Levies, the following principles shall apply:

- (6.2.1) All Members shall pay equal Levies in respect of Erven of similar usage, save the remaining erven held by the developer during the Development period;
- (6.2.2) The Company shall not be entitled to differentiate in the determination of the Levies between Erven and levies shall be identical per erf.
- (6.3) The Developer during the Development Period shall not be liable to effect payment of Levies and/or special Levies in respect of any erven registered in its name during the Development Period. The Developer however consented to, during the Development Period, make a voluntary contribution to the security expenses of the Company equal to the cost of 1 (one) night guard, on the proviso that this guard roams on the estate in order to protect infrastructure.
- (6.4) In the event of a consolidation of Erven, the owner of the consolidated Erven shall effect payment of a Levy equal to the normal levy, multiplied by the number of Erven consolidated.
- (6.5) The Company shall not less than 30 (thirty) days prior to the end of each financial year or so soon thereafter as is reasonably possible, publish a notice indicating an estimate ("*estimated budget*"), in reasonable detail, of the amount which shall be required by the Company to meet the budgeted expenses during the following financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. This may include an amount to be held in reserve to meet anticipated expenditure not of an annual or recurring nature.
- (6.6) Each notice to each Member shall specify the contribution (levy) in accordance with the estimate, payable by that Member to such expenses and reserve fund. The Company may issue monthly statements of account / invoices but such issuing is not a prerequisite for payment and liability to effect payment of monthly or special levies.
- (6.7) The annual levy for the ensuing financial year or any special levy to be implemented shall become due and payable on the passing of a Resolution to that effect at a General Meeting of Members and the publication thereof as envisaged in Article 1.3(4). The annual levy shall be payable in equal monthly instalments due in advance on the 1<sup>st</sup> day of each and every month of each financial year.

- (6.8) In the event of the Company through the EC for any reason whatsoever failing to prepare and timeously serve the notice referred to in Article 1.5(6.5) above, every Member shall until served with such notice, continue to pay the levy previously imposed and shall after service of such notice pay the levy specified therein. A Member shall pay any deficit (comprising the difference between the levies payable during the previous financial year and the new levy imposed, if any) within 30 (thirty) days of receipt of the notice specifying the new contribution payable by the Member.
- (6.9) Upon the change of ownership of an Erf, the successor in title becomes liable for the pro-rata payment of Levies from the date of change of such ownership.
- (6.10) The EC may, when pressing and urgent circumstances require, impose special Levies upon the Members in respect of any extra ordinary and / or unforeseen expense, to be ratified at a General Meeting as soon as is possible.
- (6.11) All Levies and any special Levies referred to in Article 1.5(6.1) and (6.10), becomes due on the passing of a Members' Resolution at a General meeting to that effect and may be recovered by the Company by action in any competent Court, having jurisdiction from the Member(s) who were owner(s) of the Erf/Erven at the time when such Resolution was passed.
- (6.12) The EC shall be empowered, 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. The interest rate shall not exceed any limitation as may be prescribed from time to time in terms of the National Credit Act, No. 34 of 2005, in which event the interest rate shall be limited to the maximum interest rate allowed. Interest shall be calculated monthly in arrears and compounded.
- (6.13) The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the Company's right to recover arrear Levies and interest and penalties, fines and other amounts due to the Company. No Levies (excluding Levies paid in advance), interest, penalties, fines or other amounts paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member. A Member's successor in title to an

Erf shall be liable for payment of Levies and/or special levies that are still payable in respect of the Erf, from as from the date upon which he becomes the registered owner of the Erf as reflected in the Deeds Registry.

- (6.14) No Erf registered in a Member's name shall be capable of being transferred without a Clearance Certificate first being obtained from the Company, confirming that all Levies (including payment of 3 (three) months' levies in advance or as may be determined by the Company from time to time), penalties, fines or other amounts due and interest have been paid up to and including date of registration of transfer thereof.
- (6.15) A Member shall be liable for and pay all legal costs, including costs as between attorney and own client, collection commission, expenses and charges incurred by the Company in obtaining the recovery of arrear Levies, penalties, fines, interest or any other arrear amounts due and owing by such owner to the Company or in enforcing compliance with the Act, the provisions of this MOI, or the Rules.
- (6.16) The EC may from time to time determine a charge to be levied against Members in arrears, as an administration charge payable to the Company.
- (6.17) Interest imposed shall not exceed any limitations set by legislation.
- (6.18) All payments made by a Member and received by the Company, shall be allocated firstly towards interest, legal costs and thereafter towards capital. The Company reserves the right to allocate payments as they deem fit in the absence of an express allocation. In the absence of an express allocation by the EC all payments will be allocated to the debt oldest in time but subject to prioritised historical, current first, second and later charges as approved by the EC from time-to-time. The principle applying being that any amount received from a Member shall be allocated firstly to his levy account before being allocated it will be allocated to pre-paid water and or electricity account, which will represent a last charge.
- (6.19) Members shall further have the rights and obligations as specified in the Rules incorporated in this MOI and the other governing documents which apply time to time.



(6.20) Should a Member fail to effect payment of Levies (annual and/or special) levied in terms of the MOI on due date, the full outstanding balance remaining unpaid for any financial year (or any part thereof) shall become due and payable on demand.

(6.21) All levies shall be due and payable in advance on the 1<sup>st</sup> (first) day of each month.

## 1.6 The financial year end

The financial year end of the Company shall be the last day of February of each year.

## Article 2 – Rights of Members

### 2.1 Members' right to Information

A Member has the right to information as set out in Section 26(1) of the Act. A Member shall be entitled to the information as recorded in the Member's Register. Unless authorised by a Member, the Company shall not be entitled to disclose any further contact details.

### 2.2 Authority of proxy to delegate

The authority of a Member's proxy to delegate the proxy's powers to another natural person, as set out in section 58(3)(b) is not limited or restricted by this MOI.

### 2.3 Requirements to deliver proxy instrument to the Company

The requirement that a Member must deliver to the Company a copy of the instrument appointing a proxy before that proxy may exercise the Member's rights at a Members meeting, as set out in section 58(3)(c) is varied to the extent that a copy of the instrument appointing a proxy must be delivered to the Company or to any other person acting on behalf of the Company (including a Board member or duly appointed Managing Agent) at any time before commencement of the proceedings or meeting at which the proxy exercises any rights of the Member.

#### 2.4 Deliberative authority of proxy

The authority of a Member's proxy to decide without direction from the Member whether to exercise, or abstain from exercising any voting right of the Member, as set out in section 58(7) of the Act, is not limited or restricted by this MOI.

#### 2.5 Record date for exercise of Member rights

If, at any time, the Company fails to determine a record date, as contemplated in section 59, the record date for the relevant matter shall be 15 (fifteen) business days prior to the action, meeting or event as contemplated in accordance with section 59(3).

### Article 3 – Members Meetings

#### 3.1 Requirement to hold meetings

(1) The Company shall within 12 (twelve) months after the end of each financial year hold a General Meeting in addition to any other General Meetings during that year, and shall specify the meeting as such in the notices, in terms of Article 3.4 below, calling such meeting;

(2) The abovementioned General Meeting shall be called the "Annual General Meeting" and all other General Meetings shall be called "Special General Meetings".

#### 3.2 Members' right to requisition a meeting

The right of Members to requisition a meeting, as set out in section 61(3), may be exercised by at least 10% of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting despite the provisions of that section.

#### 3.3 Location of Members meetings

All Members' meetings shall take place at a location within close proximity of the Township or vicinity thereof, not exceeding 10km from the main gate of the Township.

### 3.4 Notice of Members meetings

- (1) The minimum number of days for the Company to deliver a notice of a Members meeting to the Members, as required by section 62 is as provided for in section 62(1), being at least 15 (fifteen) Business Days.
- (2) The notice convening each meeting of the Company shall specify the place, the date and hour of the meeting and shall otherwise contain details of the business, including where relevant, special business, to be conducted at the meeting.
- (3) The notice convening the meeting shall contain adequate motivation and information of any business and especially concerning special business to be conducted at the meeting, to enable the Members to make an informed decision.

### 3.5 Electronic participation in Members meetings

The authority of the Company to conduct a meeting entirely by electronic communication, or to provide for participation in a meeting by electronic communication, as set out in section 63 is not limited or restricted by this MOI, provided that the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively at the meeting.

### 3.6 Quorum for Members meetings

- (1) The quorum requirement for a Members Meeting to begin, or for a matter to be considered, is 25% (twenty five percent) of the votes entitled to be exercised by the Members present in person or by proxy. Notwithstanding the quorum requirement, a Members' Meeting shall not begin unless at least 10 (ten) Members are present in person.
- (2) The time periods allowed in section 64(4) and (5) apply to the Company, subject to the following variations :
  - (2.1) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) [10% requirement] or 64(3) [at least 10 (ten) Members present in person], if applicable, for that meeting to begin have not been satisfied, the meeting is postponed without motion,

vote or further notice, for 1 (one) week, at the same place and time;

(2.2) If, within 15 (fifteen) minutes after the appointed time for a meeting to begin, the requirements of sub-sections 64(1) or 64(3), if applicable, for consideration of a particular matter to begin have not been satisfied.

(2.2.1) 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

(2.2.2) if there is no other business on the Agenda of the meeting, the meeting is adjourned for 1 (one) week, at the same place and time, without motion or vote.

(2.3) The person intended to preside at a meeting that cannot begin due to the operation of sub-section 64(1)(a) or 64(3), where a quorum is not present, may extend the 15 (fifteen) minute limit for a reasonable period on the grounds as specified in sub-section 64(5).

(3) The authority of a meeting to continue to consider a matter after the quorum has been met, so long as at least 10 (ten) Members remain present in person, is not limited or restricted by this MOI.

### 3.7 Adjournment of Members meetings

(1) If a quorum has not been reached within 15 (fifteen) minutes after the appointed time for the meeting to begin or such extended period as the Chairman directed, the Chairman appointed for the meeting will be authorized to adjourn the meeting of the Members for 1 (one) week. Adjournment will take place in accordance with the provisions of Sections 64(4)

(2) The maximum period allowable for an adjournment of a Members meeting is 15 (fifteen) Business Days after the date upon which the adjournment occurred.

(3) No business shall be transacted at an adjourned meeting, other than the business which failed to be transacted at the meeting from which the adjournment took place.

- (4) Notwithstanding any quorum requirement that may be applicable, a Members' Meeting shall not begin unless at least 10 (ten) Members are present in person.

### 3.8 Members resolutions

- (1) For any ordinary resolution to be adopted at a Members meeting, it must be supported by at least 50% plus 1 (one) vote of the Members who voted on the resolution, as stipulated in the provisions of section 65(7).
- (2) For a special resolution to be adopted at a Members meeting, it must be supported by at least 75% of the Members who voted on the resolution, as provided in section 65(9).
- (3) A special resolution adopted at a Members meeting is not required for a matter to be determined by the Company, except those matters set out in section 65(11) of the Act and the following matters:
  - (3.1) to amend the Company's MOI and / or other governing documents to the extent required by Section 16(1)(c);
  - (3.2) to approve the voluntary winding-up in the circumstances contemplated in Section 80(1);
  - (3.3) to approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Act, subject to Schedule 1 of the Act;
  - (3.4) to ratify actions by the Company in excess of their authority, as contemplated in Section 20(2);
  - (3.5) to authorize the Company to grant financial assistance in the circumstances contemplated in Section 44(3)(a)(ii) or 45(3)(a)(ii);
  - (3.6) to authorize payments as contemplated in Section 66(9).

### 3.9 Votes of Members

At every General meeting:

- (1) Every Member, including the Developer, in person or by proxy and entitled to vote, shall have 1 (one) vote for each Serviced Erf registered / held in his name;
- (2) If a Erf is registered in the name of more than one person, then all such co-owners shall jointly have 1 (one) vote per erf;
- (3) Save as expressly provided for in this MOI, no person other than a Member, duly registered and who has paid every levy or other sum due and payable to the Company in respect of or arising out of his membership, and who has complied with their obligations as are envisaged in Article 1.5(5), shall be entitled to be present or to speak or to vote on any question, either personally or by proxy, at any General Meeting;
- (4) With reference to section 63(4) and section 63(5) of the Act, at any General Meeting a Resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll (before or in the declaration of the result of a show of hands) is demanded by the Chairman or Members. A declaration by the Chairman that a Resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or has been declined, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or the proportion of the votes recorded in favour or against such Resolution. The demand for a poll may be withdrawn.
- (5) If a poll is duly demanded, it shall be taken in such manner as the Chairman directs, and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded. Two (2) Members shall be elected to determine the result of the poll.
- (6) In the case of an equality of votes, for and against any Resolution, whether on a show of hands or on a poll, the Resolution shall be deemed to have been defeated.
- (7) Every Resolution and every amended Resolution proposed for adoption by a General Meeting shall be seconded at the meeting and if not so seconded shall be deemed not to have been proposed.
- (8) An amendment proposed shall also require to be seconded, and if approved by the meeting, will replace the initial proposal, and such amended proposal must then be put to the vote.

- (9) Unless any Member present in person or by proxy at a General Meeting shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by a show of hands or otherwise, or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all aspects be deemed to have been properly and validly constituted and conducted and an entry in the minutes to the effect that any motion has been carried or defeated, with or without record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the votes so recorded.
- (10) The auditor of the Company, an attorney or other professional invited by the EC and / or Board may attend and speak to Members at any General Meeting.
- (11) No special resolution may be tabled at a General Meeting during the Development Period which negatively impacts on the rights and / or obligations of the Developer without its prior written consent thereto, or in the absence of or failure to give such consent, without an order of Court to this effect first having been obtained by the Members after approval of a Special Resolution in this regard at a General Meeting in terms of the provisions of the Companies Act, 2008.
- (12) The Thorny Bush Home Owners' Association and Developer will endeavour to maintain a fair voting balance between the parties. This is achieved by the Developer undertaking to refrain from the deliberate installation of engineering services to stands for the sole purpose of achieving a majority vote. A reasonable number of stands as per reasonable market demand at that particular time, will be serviced from time-to-time. The number of votes by the Developer at any particular time will however be limited 40 (Forty) votes, notwithstanding the amount of serviced stands registered in the name of the Developer.

### 3.10 Proxies

- (1) A Member may be represented at a General Meeting by a proxy, who need not be a Member.
- (2) The instrument appointing a proxy shall be in writing, duly signed by the Member concerned (or his appointed agent, duly authorized in writing) and shall be substantially in the form as set out in clause 3.10(5).

- (3) A copy of the instrument appointing a proxy must be delivered to the Secretary of the EC or to any other person acting on behalf of the Company (including a EC member) at any time within 7 (seven) days before commencement of the proceedings or meeting at which the proxy exercises any rights of the Member. Notwithstanding this provision, the EC may call upon a Member to lodge the original instrument appointing a proxy to the Company within 7 (seven) days prior to the meeting or proceedings.
- (4) Unless specifically specified in the proxy itself, no instrument appointing a proxy shall be valid for any meetings of the Company, other than the meeting for which a proxy was first appointed or in respect of any adjournment of that meeting.
- (5) The instrument appointing a proxy shall include a copy of the Identification document of the Member concerned (or of his appointed agent, duly authorized in writing) and where the Member is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company.
- (6) A vote given in accordance with the terms of a proxy shall be valid notwithstanding the death or insolvency of the principal prior to the time at which the meeting was due to start, or subsequent revocation of the proxy, provided, however, that no notice of the death or insolvency, or revocation shall have been received by the Company and the proxy at any time prior to the vote been taken in respect of which the proxy exercises such a vote.
- (7) In order to determine the authority and rights of the proxy holder, it is preferred that the proxy form be substantially in accordance with the following format and that the instructions to the proxy holder are indicated in an unambiguous manner:

**THORNY BUSH MOKOPANE (RF) (NPC)**  
**PROXY FORM**

I/We, \_\_\_\_\_, the undersigned, the registered owner of Stand/Erf number \_\_\_\_\_, or duly authorized by the registered owner, namely: \_\_\_\_\_ being a Member of the Company, do hereby appoint:

\_\_\_\_\_ of \_\_\_\_\_  
Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_  
Or failing him/her: \_\_\_\_\_ of \_\_\_\_\_



as my proxy to vote for me on my; behalf at the General Meeting of the Association to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ and at any adjournment thereof as follows:

1. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour                       Against                       Abstain
  
2. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour                       Against                       Abstain
  
3. Motion to \_\_\_\_\_  
(See attached draft resolution, if relevant)  
In favour                       Against                       Abstain

Where it has been indicated that the proxy may vote in favour of any of the resolutions, indicate further whether the proxy may vote in favour of any modification to any proposed resolution or not:

With modification                       Without modification

*If no indication has been made above as to how the proxy may vote, the proxy may vote as he thinks fit.*

Signed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE: \_\_\_\_\_

Note:

1. A member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. A proxy need not be a member of the Company.
2. The instrument appointing a proxy shall include a copy of the Identification document of the Member concerned (or of his appointed agent, duly authorized in writing) and where the Member is not a natural person, the instrument shall include a resolution of the entity authorizing the signatory, being the resolution of a Trust/CC/Company.

### 3.11 Conduct of Meetings

- (1) The Members may, from time to time, at the Annual General Meeting, by way of an Ordinary Resolution, determine the meeting procedures which shall be properly documented as such and which shall be strictly complied with at all General Meetings.
- (2) The Chairperson and EC shall acquaint themselves with the meeting procedures and the Chairperson of the relevant meeting shall be entitled to rule on any technical irregularity regarding the

conduct of any General Meeting, which ruling shall be final and binding upon the Members.

### 3.12 Agenda of General Meetings

In addition to any other matters required by the Act or in terms of this MOI, to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- (1) The consideration of the Chairman's Report;
- (2) The election of the other EC members additional to the appointed / nominated directors, the latter serving ex officio;
- (3) The consideration of any other matters raised as a written motion by a Members and seconded by another Member at least 15 (fifteen) days prior to the meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions;
- (4) The appointment and consideration of the accountant/auditors of the Company for the ensuing financial year;
- (5) The consideration of the financial report of the auditors;
- (6) The ratification/amendment/repeal of any Rules approved by the EC;
- (7) Confirmation of the estimate of income and expenditure ("*budget*") and determination of levies payable by Members, as determined by the EC;
- (8) The consideration and approval of Minutes of previous General Meeting(s).

## Article 4 – Directors / Officers Bearers

### 4.1 Composition of the Board of Directors

- (1) During the Development Period the Board of Directors of the Company comprises 2 (two) directors nominated (from time-to-time) by the Developer in terms of the OTP signed by all home owners, and 2 (two) from the EC being the Chairman and Vice-

Chairman of the EC from time-to-time *ex officio*. The Board will be limited to 4 (four) directors until expiry of the Development Period;

- (2) After 90% of all erven in the Township have been sold and transferred by the Developer and notwithstanding the provisions of (1) above, the Company may, from time-to-time in a General Meeting increase the number of Directors and appoint additional Directors after normal election;
- (3) Upon the election / nomination of Directors as contemplated in (1) above, a Director in office or a former Director shall be eligible for re-election to the Board of Directors provided he / she is an eligible Member and shall serve for a term of 2 (two) years, the following positions on the EC shall alternate after a second term : chairperson, vice-chairperson, secretary and treasurer;
- (4) In addition to satisfying the qualification and eligibility requirements set out in Section 69, to become or remain a Director of the Company, a person must satisfy the following additional eligibility requirements and qualifications and he must therefore:
  - (1) be a paid-up Member, or a representative of a paid-up Member where the Member is a legal entity, and/or the spouse of a paid-up Member, of the Company at the time of appointment as Director;
  - (2) not be in breach of any of his/her obligations as a Member of the Company, as stipulated in the MOI or the Rules;
  - (3) not be disqualified from acting as Director of the Company in terms of the Companies Act, 2008;
  - (4) not be a representative of a Member who is a legal entity and which entity is in breach of any of its obligations in terms of the MOI or the Rules;
  - (5) not be an employee of the Company.
- (5) A Director shall be deemed to have vacated his office as such when:
  - (1) he resigns his office by notice in writing to the Company;
  - (2) he has been disqualified to act as a Director in terms of the provisions of Sections 69 of the Act;

- (3) he has been discharged from office under circumstances in terms of Section 71 of the Act;
  - (4) he becomes of unsound mind;
  - (5) he is absent from more than 2 (two) consecutive Directors meetings without leave having been granted to him and if the Board so resolves;
  - (6) he is suspended by the Board due to disciplinary procedures pending or to be initiated, unless the cause of such disciplinary action is disputed by the Director concerned;
  - (7) he / she dies.
- (6) The above qualifications and eligibility requirements for Directors is mutatis mutandis applicable to Office Bearers (EC members).

#### 4.2 Accounting records

- (1) The Company shall cause such accounting records as are prescribed by Section 28 of the Act to be kept. Proper accounting records shall not be deemed to be kept if they are not kept sufficiently to fairly present the state of affairs and business of the Company and to explain and support the transactions and financial position of the Company.
- (2) The accounting records shall be kept or be accessible from the registered office of the Company during normal business hours of the Company.

#### 4.7 Annual Financial Statements, Audit and Independent Review

- (1) The Company shall from time to time, in accordance with Section 29 and 30 of the Act, cause to be prepared and laid before the Company in General Meeting, such Annual Financial Statements as are referred to in those Sections.
- (2) The Company's Annual Financial Statements shall be prepared in accordance with the provisions of Section 30 of the Act and is subject to either a statutory audit, or non-statutory audit by Company Resolution only, independent review, if so required in terms of Sections 30(2), 30(2A) and 30(7) and Regulations 26, 28 and 29.

- (3) In the event that the Company appoints an Auditor in terms of a Resolution as contemplated in Section 30(2)(b)(ii)(aa), the Auditor shall not be subject to Section 90 (Appointment of Auditor), Section 91 (Resignation of Auditors and vacancies), Section 92 (Rotation of Auditors), and Section 93 (Rights and restricted functions of Auditors) of the Act.
- (4) In terms of the Act and this MOI, a copy of the relevant Annual Financial Statements must be presented at the first General Members Meeting after the statements have been approved by the Board, provided that such copy may be made available electronically to the Members.
- (5) A copy of any Annual Financial Statements which are to be laid before the Company in Annual General Meeting, in terms of Section 30(3)(d) of the Act, shall be included in the notice of the Annual General Meeting, at which it is to be considered.

#### 4.8 Compensation and financial assistance

The Directors and / or EC shall not be paid any remuneration for their services.

### **Article 5 – Dispute Resolution, Fines and Penalties and Rule Enforcement**

#### 5.1 Dispute Resolution

- (1) A dispute between the EC and a Member or between Members arising out of or in connection with or related to the provisions of this MOI (including any or all of its Annexures) but excluding a dispute about payment of levies, can be determined in terms of these dispute resolution provisions, on the proviso that all Parties to a dispute agree thereto. Nothing contained herein shall prejudice any parties' right to approach a court of law.
- (2) Mediation / Arbitration:
  - (2.1) Parties shall endeavour to resolve a dispute through mediation first and before opting for arbitration.
  - (2.2) If a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the Chairman of the EC and, if appointed, the Estate Manager should the dispute

or complaint not be resolved / mediated within 14 (fourteen) days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration.

- (2.3) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties shall appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.
- (2.4) If the parties cannot agree as to the person of the arbitrator to be appointed in terms of Article 5.1(2) within 5 (five) days after the mediation / arbitration has been demanded, the EC shall upon written application of any of the parties, appoint in writing an mediator / arbitrator within 7 (seven) days after they have been required to make the appointment.
- (2.5) The mediation / arbitration shall be held informally or otherwise as the arbitrator may determine in his own discretion. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. If such failure to furnish security for payment persists for longer than 7 (seven) days after demand for security for payment was made, the other party shall be entitled to abandon arbitration proceedings.
- (2.6) The intention being that the arbitration shall be concluded within 45 (forty five) days after an arbitrator has been appointed or security for costs has been furnished.
- (2.7) The provisions of the Arbitration Act, No. 42 of 1965 shall be applicable.
- (2.8) The Arbitration shall be held in Mokopane and subject to the discretion of the Arbitrator to amend such rules shall be conducted in terms of the rules of the Arbitration Association South Africa(2007 edition) ("AASA")

## 5.2 Enforcement of Rules:

For the enforcement of any Rules made by the Company, the EC or DC shall be entitled to:

- (1) take such action, including proceedings in Court, as they may deem fit;
- (2) implement a system of fines and penalties from time to time in order to deter any contravention of these Rules and to ensure the due enforcement of these Rules.
- (3) Any penalties imposed by the EC or DC are subject to adjustment and/or ratification by Members in General Meeting.
- (4) In the event of contravention of any of these Rules, the following procedure will be followed and implemented by the Company :
  - (4.1) A letter of demand incorporating a penalty will be sent to the Member, specifying the nature of the breach and demanding him to remedy the breach where applicable, within a period of 10 (ten) days from date of demand;
  - (4.2) Should the Member fail to adhere to the demand letter and to remedy the breach then, unless written objection is received by the owner concerning the alleged contravention, the prescribed penalty shall be implemented and levied against the Member's levy account and shall be enforceable, as if such penalty or fine constitutes a normal levy;
  - (4.3) If the transgression is disputed and upon receipt of any written objection ("*the objection notice*") from the Member, a Disciplinary Committee of 3 (three) EC members shall appointed by the Chairman for this purpose, shall convene a meeting with the Member within a period of 10 (ten) days, or as soon as reasonably possible after receipt of the objection notice, to adjudicate upon the issue. The meeting shall take place at a venue and time, and in accordance with such procedure, as the Chairman of the Committee shall direct; provided that the Rules of natural justice shall be observed and at which meeting the Member shall be entitled to address his objection and to call witnesses.
  - (4.4) The decision of the Board shall be final unless objected to in writing within 10 (ten) days from notification of its decision;
  - (4.5) Should the Member refuse to accept the decision of the Committee on any matter, such dispute shall then be referred to arbitration in terms of Article 5;

- (4.6) Any fine imposed upon any Member will be deemed to be a debt due by the Member to the Company and shall be recoverable by ordinary civil process.

## Article 6 – Company Rules

- 6.1 In accordance with the provisions of Section 15 of the Act, the Rules as set out in Schedule 1 hereto, are effective as at the township proclamation date, which Rules may from time to time be ratified, amended, supplemented or repealed in accordance with the provisions of the MOI and the Act. Any Rules made, amended or repealed by the Company from time to time shall be published in accordance with the following requirements:
- (1) Any alteration / amendment of the MOI or the Rules made in terms of Section 17(1) shall be published to the Members by delivering a copy of the altered MOI or the Rules to each Member in the prescribed manner in terms of Article 8.
  - (2) Any Rules made from time to time by the Company in terms of Section 15(3) – (5), or any amendment or repeal thereof, shall be published to the Members of the Company by delivering a copy of those Rules to each Member in the prescribed manner in terms of Article 8.
- 6.2 The Rules concern all matters referred to in Article 1.3(2) and 1.3(3), and the conduct of Members, Residents and visitors of the Township, including Guidelines concerning any improvements, encroachments on Common Property and alterations thereto, to the extent that such improvements/alterations may influence the aesthetical and harmonious appearance of the Township.
- 6.3 Save to the extent that the Rules as set out in Schedule 1 hereto were amended, the Rules issued by the Company with regards to conduct of Members or any other matter, in force on the date before this MOI is accepted by the Members, will remain of force and effect as if they were issued in terms of Article 1.3(2).

## Article 7 – Domicilium Citandi Et Executandi

- 7.1 The address of the Company constituting its *domicilium citandi et executandi*, shall be as is registered in terms of the Notice of



Incorporation registered with the Companies and Intellectual Property Commission ("CIPC").

- 7.2 The *domicilium citandi et executandi* of each Member shall be the address of the Erf registered in his name, provided that such Member shall be entitled to change the said domicilium but that any new domicilium selected shall be situated in the Republic of South Africa, and that the change shall only be effective upon receipt of written notice thereof by the EC of the HOA.

## Article 8 – Notices

- 8.1 For any notice or document to be delivered or published for any purpose contemplated in the Act, the Regulations, this MOI or the Rules of the Company, the provisions of Table CR3 in terms of Regulation 7, as amended in terms of this MOI, shall apply and for which purpose such notice may be delivered:

- (1) by fax, if the addressee has a fax number; or
- (2) by electronic mail, if the addressee has an address for receiving electronic mail; or
- (3) by registered post to the addressee's *domicilium citandi et executandi* or last known address; or
- (4) by hand to the addressee or to any representative authorized in writing by the addressee to accept service; or
- (5) by leaving the notice at the addressee's place of residence or business with a person who is apparently at least 16 years old and in charge of the premises at the time; or
- (6) by leaving the notice at the addressee's place of employment with a person who is apparently at least 16 years old and apparently in authority.

- 8.2 A notice will be deemed to have been delivered if:

- (1) by fax – on the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or a different time;
- (2) by electronic mail – on the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time;

- (3) by registered post – on the 3<sup>rd</sup> (third) day following the day on which the notice or document was posted, as recorded by the Post Office, unless there is conclusive evidence that it was delivered on a different day;
  - (4) by hand – on the date and at the time recorded on a receipt for the delivery;
  - (5) by leaving the notice at the place of residence or business of the addressee – on the date and at the time recorded on a receipt for the delivery;
  - (6) by leaving the notice at the addressee's place of employment – on the date and at the time recorded on a receipt for the delivery.
- 8.3 Any notice to be given by a Member to the Company shall be delivered to the Company by delivery of such notice to the registered address of the Company, as recorded in the records of CIPC from time to time, unless a Managing Agent is appointed, in which event such notice shall be delivered to the office of the Administrator or Estate Manager, as will be recorded and reflected in the Minutes of the Annual General Meeting from year to year.

## Article 9 – Deposit and Investment of Funds

- 9.1 The Company shall cause all moneys received by it to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Company and, subject to any direction given or restriction imposed at a General Meeting of the Company, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Company or investment in terms of Article 9.3.
- 9.2 The EC may authorise the Administrator or estate manager to administer and operate the accounts under the supervision of the treasurer of the EC.
- 9.3 Any funds not immediately required for disbursement, may be invested in an interest bearing savings or similar account with any bank approved by the EC.
- 9.4 Interest on moneys invested shall be used by the Company for any purpose consistent with its objectives.

## Article 10 – No refunds or distribution of profits or assets

- 10.1 No Levies (excluding Levies paid in advance), interest, penalties, fines or other amounts paid by a Member shall under any circumstances be repayable by the Company upon his ceasing to be a Member, unless the EC so resolves.
- 10.2 No portion of the profits or gains of the Company shall be distributed to any Member or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

## Article 11 – Kameeldoring Golf Club Membership

- 11.1 All Members of the Company shall automatically be Home Owner Members of the Kameeldoring Golf Club (KCC) with associated benefits and playing privileges and shall remain so for as long as they are Members of the Company or owners of an Erf. No such member shall be entitled to resign as a member of the KCC whilst he is a Member of the Company or owner of an Erf.
- 11.2 The terms and conditions of the Memorandum of Understanding (MOU) between KCC and the HOA regarding the Home Owners Membership shall be annexed to this MOI and form part thereof. The rights and obligations of Members are also entrenched in a Co-operation Agreement and an Amplification Agreement between the KCC and the Developers, which agreements remain legal and binding notwithstanding the MOU.

# Schedule 1

## Rules of the Thorny Bush Home Owners Association (RF) (NPC)

The Rules comprise of:

- (A) Estate Rules (Conduct Rules)
- (B) Architectural Design.
- (C) The original Offer to Purchase.

## GENERAL DISCLAIMER

Any person wishing to enter Thorny Bush Estate and / or make use of the facilities / Private Open Spaces in the Estate does so at his / her own risk. The Thorny Bush Estate Homeowners Association and the individual registered Owners, their agents, employees and appointees, shall not be liable for any death, injury, loss or damage sustained by any owner or any other person or their property arising from any cause whatsoever,

including without limitation thereto, the negligence of any of the above persons or the intentional acts of any agents, employees and appointees. Without in any manner derogating from the above, all entrants to the Estate make use of the streets, parks and other facilities thereon, whether public or private, at his / her own risk. Whilst every effort is made to secure and monitor the Estate, the Homeowners Association and individual registered Owners, all their agents, employees or appointees shall not be deemed to have warranted the safety of any owner or other persons or their property (whether moveable or immovable) on the Estate.

## WARNING

The Estate has a security system comprising perimeter security, access control and physical patrolling. The system has a detection purpose only. It serves as a deterrent and is not guaranteed to prevent any intrusion into the Estate. The fence on the perimeter is electrified and could cause injury if touched.