

MEMORANDUM OF INCORPORATION

Republic of South Africa

KYALAMI ESTATES HOMEOWNERS ASSOCIATION NPC

Registration No. of Company
1990/004673/08

("the **COMPANY**")

Memorandum of Incorporation of a non-profit company adopting a unique memorandum of incorporation as contemplated in 13(1)(a)(ii) of the Companies Act, 71 of 2008 (as amended).

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WHEREBY IT IS AGREED AS FOLLOWS:

PART 1 – DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

1.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below will, when used in this MOI, bear the meanings ascribed to them and cognate words and expressions will bear corresponding meanings:

1.1.1 **ACT** — the Companies Act, 71 of 2008, as amended, consolidated or re-enacted from time to time, and includes all schedules thereto and the REGULATIONS;

1.1.2 **ALTERNATE DIRECTOR** – a person elected or appointed to serve, as the occasion requires, as a member of the BOARD in substitution for a particular elected or appointed DIRECTOR, who shall for the purposes of this MOI, be appointed in accordance with the provisions of clause 27;

1.1.3 **ARCHITECTURAL GUIDELINES** — the guidelines (as developed and amended from time to time) containing specified parameters relating to the approval process, architectural style and building requirements which OWNERS must adhere to in respect of the construction of any improvements to their RESIDENTIAL STANDS, such guidelines forming part of the ESTATE RULES;

1.1.4 **BOARD** — the board of DIRECTORS from time to time;

1.1.5 **BOARD COMMITTEE** — the board committees created by the BOARD to fulfil specific functions from time to time, as contemplated in clause 31;

1.1.6 **CHAIRMAN** — refers to the chairman of the BOARD elected in terms of clause 32;

1.1.7 **CIPC** — Companies and Intellectual Property Commission, as incorporated in the RSA;

- 1.1.8 **COMPANY** — Kyalami Estates Homeowners Association NPC, registration number 1990/004673/08, a non-profit company duly registered and incorporated under the laws of the RSA;
- 1.1.9 **CONTRACTORS' CODE OF CONDUCT** – a document (as developed and amended from time to time) containing specified conduct rules to which all contractors and other service providers must adhere to in respect of any construction activities undertaken by them on the ESTATE, such conduct rules forming part of the ESTATE RULES;
- 1.1.10 **DIRECTORS** — the directors for the time being of the COMPANY;
- 1.1.11 **ELECTRONIC COMMUNICATION** — has the meaning set out in section 1 of the Electronic Communications and Transactions Act, 2002;
- 1.1.12 **ESTATE** — the gated residential property development known as Kyalami Estates, comprised of the townships Kyalami Estate and Kyalami Estate Extensions 1, 2, 3, 4, 5, 7, 8, 10 and 12 (as amended by the addition/subtraction of additional townships/areas from time to time), located in Midrand in Region A of the City of Johannesburg Metropolitan Municipality, Gauteng Province;
- 1.1.13 **ESTATE RULES** - the rules (as developed and amended from time to time) made by the COMPANY regarding general conduct on the ESTATE as contemplated in clause 10 of this MOI;
- 1.1.14 **FINANCIAL YEAR** – subject to clause 44, 1st April of any year until the last day of March of the following year;
- 1.1.15 **FINANCIAL YEAR END** - subject to clause 44, the last day of March of each consecutive year;
- 1.1.16 **LEVY ACCOUNT** – the financial record/statement produced by the COMPANY setting out, from time to time, the amounts due by a MEMBER to the COMPANY, including amounts due in respect of ORDINARY LEVIES, SPECIAL LEVIES and any other amounts payable by the MEMBERS in

accordance with and/or pursuant to this MOI and/or as determined by the BOARD, including, but not limited to, penalties, contributions, fines and interest;

- 1.1.17 **MANAGER** - the managing agent, manager or managers with specified functions in terms of clause 30.1 as appointed from time to time;
- 1.1.18 **MEMBERS** – PERSONS who become members of the COMPANY in terms of clause 13 and "MEMBER" may mean any one of them as the context may indicate;
- 1.1.19 **MOI** – this memorandum of incorporation together with all annexures and addenda hereto, as amended from time to time;
- 1.1.20 **NON-VOTING MEMBERS** – those MEMBERS that are in arrears on their LEVY ACCOUNTS as at the date of any meeting of the MEMBERS, as contemplated in clause 15, and who may therefore not exercise a vote at such meeting in relation to any matter relating to the MEMBERS;
- 1.1.21 **OPEN SPACES** – the common and general areas, including but not limited to the gatehouse, landscaped areas, streets, streetlights, pavements, kerbs, sidewalks, road reserve, ESTATE offices, parks, sports facilities and other amenities and open spaces situated within the boundaries of the ESTATE;
- 1.1.22 **ORDINARY LEVY/LEVIES** – the fee/s determined by the BOARD and payable by the MEMBERS to the COMPANY in respect of the operations, maintenance and enhancement of the ESTATE, in pursuance of the objects of the COMPANY, which may include, but is not limited to, amounts to be held in reserve by the COMPANY to meet anticipated expenditure not of an annual nature;
- 1.1.23 **OWNER/S** – any PERSON who is a registered owner of a RESIDENTIAL STAND;

- 1.1.24 **PERSON** — a natural person, a juristic entity, a company (whether foreign or domestic), firm or association, close corporation, trust or partnership whether incorporated or unincorporated;
- 1.1.25 **PRESCRIBED OFFICER** – a person who, within a company, performs any function that has been designated by the Minister (i.e. the member of the Cabinet responsible for companies) in terms of section 66(10) of the ACT;
- 1.1.26 **REGISTER** - the register of MEMBERS;
- 1.1.27 **REGULATIONS** — the regulations under the ACT (as amended from time to time);
- 1.1.28 **RESERVES** — the income after tax and/or capital income retained by the COMPANY which may or may not be earmarked for any specific purpose in the future;
- 1.1.29 **RESIDENTIAL STAND/S** - the residential stand or erf is the freehold immovable property on the ESTATE transferred to an OWNER, subject to the conditions and/or restrictions recorded in the relevant title deed in respect of such erf or residential stand, as appears on a general plan or sub-divisional diagram;
- 1.1.30 **RSA** – the Republic of South Africa;
- 1.1.31 **SOLVENCY AND LIQUIDITY TEST** - the test set out in section 4 of the ACT;
- 1.1.32 **SPECIAL LEVY/LEVIES** – those fees determined and approved by the BOARD by way of an ordinary resolution in respect of any identified special security, operations, maintenance, enhancement or other project(s) to be undertaken by the COMPANY in pursuance of the objects of the COMPANY and which fees are payable by the MEMBERS in accordance with the time periods approved by the BOARD from time to time;
- 1.1.33 **VOTING MEMBERS** – those MEMBERS that have paid up in full their LEVY ACCOUNT as at the date of any meeting of the MEMBERS as contemplated

in clause 14 and who are therefore entitled to exercise a vote at such meeting in relation to any matter relating to the MEMBERS.

1.2 In this MOI:

1.2.1 a reference to a section by number refers to the corresponding section of the ACT;

1.2.2 words that are defined in the ACT, bear the same meaning in this MOI as in that ACT.

1.3 For the purpose of this MOI, the following rules of construction will apply, unless the context otherwise requires:

1.3.1 any reference to "present at such meeting" or "present at the meeting" will be construed in accordance with the definition of "**present at a meeting**" in the ACT;

1.3.2 "**in writing**" means legible writing and in English and includes printing, typewriting, lithography or any other mechanical process, as well as any ELECTRONIC COMMUNICATION in a manner and form such that it can be conveniently printed by the recipient within a reasonable time and at a reasonable cost; and

1.3.3 "**deliver**" means delivery of any notice, letter and/or any other document by hand at the MEMBER'S RESIDENTIAL STAND or to the MEMBER'S postal address as nominated and indicated by the MEMBER in writing and recorded in the REGISTER or dispatched by telefax or e-mail to the facsimile number or e-mail address as indicated by the MEMBER in writing from time to time and available for inspection at the registered office of the COMPANY on business days during business hours;

1.3.4 clause and paragraph headings are for purposes of reference only and will not be used in interpretation;

1.3.5 unless the context clearly indicates a contrary intention, any word denoting any gender includes the other gender, the singular includes the plural and

vice versa, natural persons includes artificial persons and vice versa and insolvency includes provisional or final sequestration, liquidation or Business Rescue proceedings;

- 1.3.6 when any number of days is prescribed such number will exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the RSA, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or a public holiday in the RSA. A reference to a business day is a reference to any day excluding Saturday, Sunday and a public holiday in the RSA;
- 1.3.7 a reference to days (other than to a business day), months or years will be a reference to calendar days, months or years, as the case may be;
- 1.3.8 when any time or date is referred to in this MOI same will be deemed to be a reference to such time and/or date, as the case may be, in the RSA;
- 1.3.9 where figures are referred to in numerals and in words and there is any conflict between the numerals and words, the words will prevail;
- 1.3.10 no provision herein will be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured, drafted or introduced such provision;
- 1.3.11 the use of the word "**include**", "**including**", "**in particular**", "**other**" and "**otherwise**" followed by specific examples will not be construed so as to limit the meaning of the general wording preceding it;
- 1.3.12 any reference to any statute, regulation or legislation is a reference to such statute, regulation or legislation as at date of signature hereof and as amended or substituted from time to time;
- 1.3.13 if any provision in a definition is a substantive provision confirming any right or imposing any obligation on any party, then notwithstanding that it is only in the definition clause, effect will be given to it as if it was a substantive provision in this MOI;

- 1.3.14 unless any annexure provides otherwise, any annexure to this MOI will be deemed to be incorporated in and form part of this MOI;
- 1.3.15 any provision of this MOI which contemplates performance or observance subsequent to any termination or expiration of this MOI will survive any termination or expiration of this MOI and continue in full force and effect notwithstanding that the clauses themselves do not expressly provide for this;
- 1.3.16 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Person, then, notwithstanding that it is only in a definition, effect will be given to that provision as if it were a substantive provision in the body of this MOI;
- 1.3.17 where any term is defined within a particular clause other than clauses in this MOI, that term will bear the meaning ascribed to it in that clause wherever it is used in this MOI;
- 1.3.18 any capitalised word or expression that is defined in the ACT and that is not otherwise defined in this MOI will have the meaning assigned to it in the ACT;
- 1.3.19 in accordance with the ACT, in any instance where there is a conflict between a provision (be it express, or tacit) of this MOI and a provision of the ESTATE RULES, the provision of this MOI will prevail to the extent of the conflict; provided that, if –
- 1.3.19.1 any provision of the ESTATE RULES merely supplements, but is not inconsistent with, this MOI; or
- 1.3.19.2 the ACT does not require the MOI to take precedence over the ESTATE RULES and that provision of this MOI itself provides for the ESTATE RULES to prevail,
- then that provision of the ESTATE RULES will prevail;

1.3.20 in any instance where there is a conflict between a provision of this MOI and an alterable provision of the ACT, the provision of this MOI will prevail to the extent of the conflict, provided that such alterable provision of the ACT expressly allows for the COMPANY to adopt the conflicting provision.

1.3.21 in any instance where there is a conflict between a provision of this MOI and an unalterable provision of the ACT, the unalterable provision of the ACT will prevail to the extent of the conflict.

PART 2 – NATURE OF THE COMPANY

2 JURISTIC PERSONALITY OF THE COMPANY

The COMPANY is a pre-existing company as defined in the ACT and, as such, continues to exist as a non-profit company with members as if it had been incorporated and registered in terms of the ACT, as contemplated in Item 2 of the Fifth Schedule to the ACT.

3 NON-PROFIT COMPANY

The COMPANY is incorporated as a non-profit company with MEMBERS as contemplated in the ACT.

4 POWERS AND CAPACITY OF THE COMPANY

4.1 The COMPANY is incorporated in accordance with and governed by:

4.1.1 the alterable provisions of the ACT that are applicable to non-profit companies, subject to the limitations, extensions, variations or substitutions contemplated in this MOI; and

4.1.2 the unalterable provisions of the ACT, subject to any a higher standard, greater restriction, longer period of time or similarly more onerous requirement as set out in this MOI; and

4.1.3 other or additional provisions of this MOI.

4.2 Save as otherwise contemplated in this MOI, the COMPANY has the powers and capacity of an individual, except to the extent that a juristic person is incapable of exercising any such power or having such capacity.

4.3 No provision of this MOI constitutes a restrictive condition, as contemplated in section 15(2)(b) of the ACT.

PART 3 – OBJECTS OF THE COMPANY

5 OBJECTS AND POWERS OF THE COMPANY

5.1 Main Objects

5.1.1 The main objects of the COMPANY are to, generally, promote, advance and protect the communal interests of its MEMBERS and the lawful residents within the ESTATE, and in particular, to establish and maintain acceptable aesthetic, architectural and environmental standards in the ESTATE, develop and maintain recreational facilities within the ESTATE, and institute, manage and control such measures and procedures so as to ensure an acceptable standard of security and safety in the ESTATE.

5.2 Powers and Ancillary Objects

5.2.1 In advancing its objects, and without limiting the generality of the powers of the COMPANY, the COMPANY may pursue the following ancillary activities to meet the objects:

5.2.1.1 generally, to promote and manage the communal interests of all the MEMBERS;

5.2.1.2 to determine and collect, taking whatever legal and lawful steps as may be required, the ORDINARY LEVIES and any SPECIAL LEVIES which will be utilised towards and in pursuance of the objects and ancillary objects of the COMPANY, including but not limited to, promoting safety and security on the ESTATE and the maintenance, improvement and/or development of the ESTATE for the benefit of the MEMBERS and/or in pursuance of the objects of the COMPANY as contemplated herein;

- 5.2.1.3 to establish (and amend, from time to time) ESTATE RULES;
- 5.2.1.4 to establish, control and maintain an effective and efficient access control system for the benefit of lawful visitors to the ESTATE, residents in the ESTATE and OWNERS;
- 5.2.1.5 to control, promote and provide for the maintenance and upkeep of the ESTATE;
- 5.2.1.6 to control, promote, enforce and maintain architectural, aesthetic and environmental standards in the ESTATE as may be prescribed by the BOARD and/or specified in the ARCHITECTURAL GUIDELINES;
- 5.2.1.7 to control, promote, enforce and maintain conduct rules for building contractors and other service providers working in the ESTATE as may be prescribed by the BOARD and/or specified in the CONTRACTORS' CODE OF CONDUCT;
- 5.2.1.8 to generally enforce title deed conditions applicable and in favour of and/or against OWNERS;
- 5.2.1.9 to impose and enforce ESTATE RULES to facilitate good conduct in the ESTATE and the attainment of the objects of the COMPANY;
- 5.2.1.10 to formulate, execute and impose a penalty system for non-compliance of, or breach of any of the ESTATE RULES, standards and regulations made by the COMPANY, and to enforce same. Without limiting the generality of the foregoing, the BOARD shall be entitled to *inter alia*, decide on the amounts of fines and penalties payable by MEMBERS who breach the ESTATE RULES (or whose visitors, lessees and/or contractors breach the ESTATE RULES); and to take such actions as the BOARD deems necessary to enforce and/or ensure compliance with the ESTATE RULES;
- 5.2.1.11 to do all such other things as are necessary, incidental or conducive to the attainment of the objects of the COMPANY or any of them which

may be conveniently carried on and done in connection herewith or which may be calculated directly or indirectly to enhance the enjoyment of visitors to the ESTATE, residents of the ESTATE and OWNERS;

- 5.2.1.12 to promote the interests of the MEMBERS;
- 5.2.1.13 to ensure that the interests of the MEMBERS are taken into consideration by relevant government departments in any legislation that might affect the MEMBERS;
- 5.2.1.14 to adhere to all legislation and regulations thereunder pertaining to non-profit companies which may be applicable from time to time in the RSA, including, *inter alia*, the Non Profit Organisations Act, No 71 of 1997 (as amended);
- 5.2.1.15 to confer, consult, maintain contact and co-operate with any authorities, associations, societies, institutions, non-profit organisations, non-governmental organisations and/or bodies of persons established or to be established in the RSA or elsewhere to promote the aforementioned objects of the COMPANY;
- 5.2.1.16 to make arrangements for the work of the COMPANY to be carried out and for such purpose to engage and provide in whole or in part for the salaries, pensions, superannuation and gratuities for DIRECTORS, officers, servants and employees of the COMPANY;
- 5.2.1.17 to purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges in the RSA for the promotion of the objects of the COMPANY;
- 5.2.1.18 to construct, maintain and alter any property, buildings or erections necessary, convenient or fitted for the work of the COMPANY;
- 5.2.1.19 to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the COMPANY;

- 5.2.1.20 subject to the SOLVENCY AND LIQUIDITY TEST, to administer the affairs and property of the COMPANY in all respects without any restrictions whatsoever and in the same manner as an individual may manage his own affairs and property and, in particular to:
- 5.2.1.20.1 utilise any RESERVES to purchase assets for the COMPANY or to finance such assets in pursuance of the objects of the COMPANY;
- 5.2.1.20.2 take over and acquire all the property and assets of the COMPANY and to assume the obligations of the COMPANY and to do all such acts and things as may be incidental thereto, including but not limited to;
- 5.2.1.20.2.1 to seek and accept donations and legacies;
- 5.2.1.20.2.2 to borrow monies, whether on the security of any or all of the property of the COMPANY, or without security;
- 5.2.1.20.2.3 to invest the funds of the COMPANY not immediately required for its purposes in such manner as which may be prescribed by the BOARD;
- 5.2.1.20.2.4 to accept obligations and liabilities;
- 5.2.1.20.2.5 to undertake and execute any trusts which may be lawfully undertaken by the COMPANY in order to further its objects;
- 5.2.1.20.2.6 to give guarantees to registered financial institutions and any similar bodies whether in pursuance of continuing arrangements or not.

6 ASSETS AND INCOME OF THE COMPANY

6.1 Upon dissolution of the Company

- 6.1.1 Upon the winding up or dissolution of the COMPANY:

- 6.1.1.1 no past or present MEMBER or DIRECTOR, or person appointing a DIRECTOR, is entitled to any part of the net value of the COMPANY after its obligations and liabilities have been satisfied; and
- 6.1.1.2 the COMPANY'S net assets must be distributed to one or more non-profit companies carrying on activities within the RSA, voluntary associations or non-profit trust having objects similar to the COMPANY'S main objects; and such distribution may take place as follows:
 - 6.1.1.2.1 by way of special resolution of its MEMBERS; or
 - 6.1.1.2.2 by the court, if the MEMBERS fail to make such determination as contemplated in clause 6.1.1.2.1.

6.2 **Application of Assets and Income**

- 6.2.1 The COMPANY may receive irrevocable grants and donations from donors, which income and property will be applied solely towards the promotion of the objects as contemplated in clause 5 of this MOI, as amended from time to time, and no MEMBER, DIRECTOR, employee or any other person of the COMPANY will have any personal claim on any of the said income or property of the COMPANY.
- 6.2.2 No part of the income or property of the COMPANY will be paid or transferred to directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to any of its MEMBERS, DIRECTORS, employees or any other person, provided that nothing herein contained will prevent the payment in good faith of remuneration to any MEMBER, DIRECTOR, employee thereof or to any other person in return for services rendered to the COMPANY, on an arms-length basis, or the payment in good faith of expenses incurred by any such person in providing such services.
- 6.2.3 Save as contemplated in clause 6.1, the assets and income of the COMPANY may be applied as follows:

- 6.2.3.1 as reasonable remuneration for goods delivered and and/or services rendered to, or at the direction of, the COMPANY or in respect of DIRECTORS' remuneration approved at a MEMBERS' meeting;
- 6.2.3.2 as reasonable payment of, or reimbursement for, expenses incurred to advance the objects of the COMPANY as contemplated in clause 5;
- 6.2.3.3 as payment of an amount due and payable by the COMPANY in terms of a bona fide agreement between the COMPANY and another PERSON;
- 6.2.3.4 as payment in respect of any rights of that person, to the extent that such rights administered by the COMPANY in order to advance an object stipulated in clause 5 of this MOI; or
- 6.2.3.5 in respect of any legal obligation binding upon the COMPANY.
- 6.2.4 The DIRECTORS may set aside such funds out of the income of the COMPANY that the DIRECTORS deem appropriate for the benefit of the COMPANY.

PART 4 – GOVERNANCE

7 AMENDMENT OF THE MEMORANDUM OF INCORPORATION

- 7.1 The COMPANY is subject to section 15(2)(b) of the ACT and accordingly, this MOI may only be amended in the following manner:
 - 7.1.1 if a special resolution to amend the MOI is proposed by the DIRECTORS and it is adopted at a duly constituted quorate VOTING MEMBERS' meeting as contemplated in section 16(1)(c)(bb) of the ACT;
 - 7.1.2 if a special resolution to amend the MOI is proposed by MEMBERS entitled to exercise at least 10% (ten per cent) of the voting rights that may be exercised on such a resolution and it is adopted at a duly constituted quorate VOTING MEMBERS' meeting as contemplated in section 16(1)(c)(bb) of the ACT;

- 7.1.3 in compliance with a court order as contemplated in section 16(1)(a) which requires that the amendment must be effected by resolution of the BOARD and does not require a special resolution as contemplated in section 16(1)(c)(11) of the ACT; or
- 7.1.4 in accordance with section 16(1)(c) of the ACT where a special resolution is adopted at a MEMBERS' meeting;
- 7.1.5 in accordance with section 60 of the ACT; or
- 7.1.6 in accordance with section 17 of the ACT which provides that the BOARD, or an individual authorised by the BOARD, may alter the MOI in any manner necessary to correct a patent error in spelling, punctuation, reference, grammar or similar defect on the face of the document by publishing a notice of the alteration, in any manner required or permitted by the MOI or the rules of the COMPANY; and filing a notice of the alteration in accordance with the section 17 of the ACT.

8 COMPANY RULES

- 8.1 The BOARD'S authority to make, amend or repeal rules for the COMPANY is not restricted and limited and accordingly the BOARD may make rules as contemplated in section 15(3) of the ACT.
- 8.2 The BOARD may make, amend or repeal any necessary or incidental rules relating to the governance of the COMPANY in respect of matters which are not addressed by the ACT or this MOI ("the COMPANY RULES").
- 8.3 **The COMPANY RULES:**
 - 8.3.1 must be consistent with the ACT and the MOI and to the extent that they are inconsistent they will be void;
 - 8.3.2 shall be binding on:

- 8.3.2.1 an interim basis from the time they take effect until they are put to a vote at the next General Meeting of MEMBERS; and
- 8.3.2.2 a permanent basis only if they have been ratified by an ordinary resolution at the aforesaid General Meeting of MEMBERS.
- 8.4 The COMPANY must publish a notice of any alteration of the COMPANY RULES made in terms of section 17(1) of the ACT by delivering a copy of those amendments to the MEMBERS by email or such other delivery method as may be determined by the BOARD.

PART 5 – SPECIAL COMPANY MATTERS

9 ORDINARY LEVIES AND SPECIAL LEVIES

9.1 Ordinary Levies

- 9.1.1 The BOARD will be obliged to establish and collect ORDINARY LEVIES for the purpose of meeting all the expenses and liabilities which the COMPANY has incurred, or which the BOARD reasonably anticipates the COMPANY will incur (which may include a reasonable provision for contingencies) for the ensuing FINANCIAL YEAR, in the furtherance of the COMPANY'S objects as contemplated in clause 5. The BOARD may include in such ORDINARY LEVIES an amount to be held as RESERVES.
- 9.1.2 The MEMBERS will be liable to pay ORDINARY LEVIES, as determined by the BOARD.
- 9.1.3 The amount of these ORDINARY LEVIES will be determined by the BOARD as frequently as circumstances may require, and such determination will be legally binding on all MEMBERS. Such ORDINARY LEVIES will be determined on the basis that they will be sufficient to meet the expenses of the COMPANY, subject to consideration of the SOLVENCY AND LIQUIDITY TEST.
- 9.1.4 ORDINARY LEVIES will be payable in full monthly in advance before or on the 1st day of each and every month of the FINANCIAL YEAR, or as otherwise determined by the BOARD.

9.1.5 ORDINARY LEVY payments by MEMBERS will be made in accordance with this clause 9 provided that:

9.1.5.1 any MEMBER who is the registered OWNER of more than one RESIDENTIAL STAND will be liable to contribute his share in respect of each such RESIDENTIAL STAND owned by him; and

9.1.5.2 subject to any restriction imposed or direction given at a general meeting of the COMPANY, the BOARD will have the power to, from time to time and at its sole and absolute discretion, determine and resolve what the additional monthly contribution to the ORDINARY LEVY will be, if any, of a MEMBER who has consolidated or notarially tied two or more RESIDENTIAL STANDS; and

9.1.5.3 the BOARD will, as soon as possible after the imposition of the ORDINARY LEVIES in terms of clause 9.1.3, notify each MEMBER in writing of the ORDINARY LEVIES payable by him.

9.2 **Special Levies**

9.2.1 The BOARD may from time to time determine SPECIAL LEVIES and call upon the MEMBERS to make special contributions over and above the ORDINARY LEVIES contemplated in clause 9.1.

9.2.2 SPECIAL LEVIES may be made payable in one sum or in instalments, as may be determined by the BOARD, and at such time or times as the BOARD deems fit.

9.2.3 The MEMBERS will be liable to pay SPECIAL LEVIES, as determined by the BOARD.

9.3 **General**

9.3.1 The COMPANY must ensure that LEVY ACCOUNTS are delivered to all MEMBERS on a monthly basis and in a timely manner to the address

provided by the MEMBER, or, if the MEMBER has not provided an address, to the MEMBER's RESIDENTIAL STAND.

- 9.3.2 MEMBERS must ensure that they advise the COMPANY timeously in writing of their addresses for delivery of any LEVY ACCOUNT and of any changes thereto.
- 9.3.3 Save for a manifest error, a MEMBER will not be entitled to withhold payment for any reason whatsoever of any amounts due by him to the COMPANY as reflected on the LEVY ACCOUNT from time to time.
- 9.3.4 Interest will be payable on any arrear amounts payable by a MEMBER, at such rate and at such intervals as may from time to time be determined by the BOARD provided that such rate of interest will not exceed the rate of interest prescribed from time to time by relevant legislation, including, but not limited to the National Credit Act (Act 34 of 2005).
- 9.3.5 Any amount due by a MEMBER will be a debt due by such PERSON to the COMPANY.
- 9.3.6 Any payment made to the COMPANY by a MEMBER will be applied firstly to any interest on arrears, secondly, to any fines, penalties and other contributions due, thirdly, to SPECIAL LEVIES and fourthly, to ORDINARY LEVIES.
- 9.3.7 Where two or more PERSONS are registered as the joint OWNERS of a RESIDENTIAL STAND/S, their liability to pay ORDINARY LEVIES, SPECIAL LEVIES, interest on arrears and any other fines, penalties and any other amounts due will be joint and several.
- 9.3.8 The obligations of a MEMBER to pay ORDINARY LEVIES and SPECIAL LEVIES will cease upon him ceasing to be a MEMBER, without prejudice to the COMPANY'S right to recover any amounts owing in terms of the LEVY ACCOUNT, including but not limited to arrear ORDINARY LEVIES, SPECIAL LEVIES, interest and/or any other fines, penalties and any other amounts due by the MEMBER to the COMPANY as at the time the MEMBER ceases to be a MEMBER.

- 9.3.9 No ORDINARY LEVIES, SPECIAL LEVIES, interest or any other fines, penalties or any other amounts paid by a MEMBER will under any circumstances be repayable by the COMPANY to the MEMBER upon him ceasing to be a MEMBER.
- 9.3.10 A MEMBER'S successor-in-title to the RESIDENTIAL STAND will be liable, with effect from the date upon which he becomes a MEMBER, in terms of the provisions of this MOI, to pay the ORDINARY LEVIES and/or SPECIAL LEVIES attributable to the RESIDENTIAL STAND concerned *mutatis mutandis*.
- 9.3.11 A MEMBER will be liable for and pay all legal costs, including costs as between an attorney and his own client, and collection commission, expenses and all other charges incurred by the COMPANY in obtaining the recovery of arrear ORDINARY LEVIES, SPECIAL LEVIES or any other arrear amounts due and owing by such MEMBER to the COMPANY or in the event the COMPANY imposes its rules adopted from time to time by the BOARD and the imposition of such rules requires an attorney.
- 9.3.12 A MEMBER who is in arrears with his payments as reflected in the LEVY ACCOUNT will not be entitled to exercise any of the rights and privileges of a VOTING MEMBER, and will specifically, without derogating from the generality of the aforesaid, not be entitled to vote at MEMBERS' meetings or other meetings of the COMPANY and will be deemed to be a NON-VOTING MEMBER.
- 9.3.13 A MEMBER who owns several RESIDENTIAL STANDS may only exercise his voting rights in respect of each RESIDENTIAL STAND where he has paid up his LEVY ACCOUNT in full.
- 9.3.14 A MEMBER will not be entitled to transfer his RESIDENTIAL STAND, unless a certificate under the hand of a duly authorized DIRECTOR or COMPANY employee has been issued certifying that all financial obligations of the MEMBER to the COMPANY have been met, including advance payments of ORDINARY LEVIES by the MEMBER for the reasonably anticipated period up to the date of registration of transfer.

- 9.3.15 In the event of a MEMBER not being a natural person ("JURISTIC MEMBER"), the JURISTIC MEMBER shall nominate a natural person to act as its representative ("REPRESENTATIVE") and shall in writing advise the COMPANY of such REPRESENTATIVE from time to time or as and when requested by the COMPANY. By making the nomination, the JURISTIC PERSON and the REPRESENTATIVE, jointly and severally, warrant that the REPRESENTATIVE has been nominated in accordance with all laws applicable to the JURISTIC PERSON and accepts such nomination, and the REPRESENTATIVE shall be obliged to ensure that the JURISTIC MEMBER and all of its invitees comply fully with the provisions of this MOI and the ESTATE RULES.
- 9.3.16 In the event of the BOARD instituting any legal proceedings against any MEMBER for the enforcement of any of the rights of the COMPANY in terms of the MOI and/or the ESTATE RULES, the COMPANY shall be entitled to recover all legal costs so incurred from the MEMBER concerned, calculated on a scale as between attorney and own client.

10 ESTATE RULES

- 10.1 The BOARD shall have the power to make, amend or repeal rules for the conduct on the ESTATE ('ESTATE RULES'), from time to time, to facilitate the promotion and advancement of the interests of the MEMBERS and the objects of the COMPANY as set out in clause 5 of this MOI.
- 10.2 The BOARD must publish any proposed amendments/additions to the ESTATE RULES by delivering a copy thereof to every MEMBER, which communication shall include the date upon which such amended/additional rule(s) shall become effective and binding.
- 10.3 The ESTATE RULES contemplated in clause 10.1 will be binding on MEMBERS, but must be ratified by the MEMBERS by ordinary resolution at the next General Meeting, failing which they will automatically lapse. Failure and/or refusal by the MEMBERS to ratify any ESTATE RULE/S will not invalidate such ESTATE RULE/S and/or actions taken pursuant to such ESTATE RULE/S retrospectively.

- 10.4 The ESTATE RULES are binding on all MEMBERS, family, friends, employees, agents, appointees, or visitors or any other person who is in the ESTATE by permission or consent of the MEMBER. Each MEMBER shall comply with the ESTATE RULES and is responsible for ensuring compliance with the ESTATE RULES by family, friends, employees, agents, appointees, or visitors or any other person who is in the ESTATE by permission or consent of the MEMBER.
- 10.5 The MEMBER shall be personally liable for the payment of any fines and/or penalties imposed by the COMPANY and/or any damages suffered by the COMPANY as a result of a breach of the ESTATE RULES by family, friends, employees, agents, appointees, or visitors or any other person who is in the ESTATE by permission or consent of the said MEMBER.
- 10.6 The BOARD may, in the name of the COMPANY, enforce the provisions in the ESTATE RULES by application in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as it sees fit. In such event, the COMPANY shall be entitled to recover all legal costs so incurred from the MEMBER concerned, calculated on a scale as between attorney and own client.
- 10.7 Subject to 1.3.19, if any conflicts arise between the content of this MOI and the content of the ESTATE RULES, this MOI will prevail.
- 10.8 A copy of the ESTATE RULES shall not be required to be filed as contemplated in section 15(3) of the ACT, but may be filed, at the election of the BOARD.
- 10.9 Without limitation, but subject to this MOI and/or any restriction imposed by or direction given at a General Meeting of the MEMBERS, the BOARD may from time to time make rules pertaining to the following:
- 10.9.1 the standards and guidelines for the architectural design of all buildings and outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations to any such buildings or outbuildings or structures erected or to be erected in the ESTATE, and in particular to control the design of the exterior of such buildings, outbuildings or structures and the materials used on such exterior to ensure an attractive, aesthetically pleasing character to all the buildings in the ESTATE;

- 10.9.2 the siting of all buildings, outbuildings, structures of any nature, swimming pools, tennis courts and all additions and alterations thereto;
- 10.9.3 the standards, guidelines and controls for the design of all site works, buildings, structures, installations and projections on the properties in the ESTATE including aerials, pergolas, side walls, swimming pools, tennis courts, awnings, jacuzzis, carports, paved pathways and landscaping features and works as well as the right to set standards, guidelines and controls for the erection of double storey units together with the right to relax such standards, guidelines and controls so set;
- 10.9.4 the preservation of the environment including the right to control vegetation, the right to prohibit and/or control the erection of fences, whether upon or within the boundaries of any properties;
- 10.9.5 the right to prohibit, restrict or control the keeping of any animal which they regard as dangerous or a nuisance;
- 10.9.6 the conduct of any persons within the township for the prevention of nuisance of any nature to any MEMBER;
- 10.9.7 the preservation of the natural environment, vegetation and flora in the ESTATE;
- 10.9.8 the use of services, entertainment and recreation areas, amenities and facilities including the right to make reasonable charge for the use thereof;
- 10.9.9 the standards and guidelines for security systems for all buildings, outbuildings, walls and structures of any nature including the standards and guidelines for the installation of security systems;
- 10.9.10 for 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 and/or residents in the ESTATE;

- 10.9.11 for the maintenance of all buildings, outbuildings, structures, security systems, improvements of any nature and landscaping within the ESTATE;
- 10.9.12 the control of the operations and movements of builders, subcontractors, their employees, agents or assigns within the ESTATE;
- 10.9.13 obtaining building, alteration and landscaping deposits from each MEMBER prior to the commencement of any building, alterations and/or landscaping so as to compensate any party for any destruction or damage which might have arisen as a result of such building, operations and/or landscaping having been or being effected. Such deposits shall be refunded to the MEMBER, less any deductions aforementioned, free of interest within a reasonable period after the completion of the building, alterations and/or landscaping.
- 10.9.14 the control of the operations and movements of estate agents within the ESTATE which shall include control of their methods of sale, resale and/or advertising within the ESTATE.

11 ARCHITECTURAL GUIDELINES

- 11.1 No MEMBER may erect, renovate and/or modify any structure on any RESIDENTIAL STAND unless the intended construction is in compliance with the architectural style, building requirements and environmental specifications recorded in the ARCHITECTURAL GUIDELINES. All plans for buildings, outbuildings, structures, additions, alterations and any other works shall be submitted to the COMPANY for written approval, which must be obtained prior to any construction taking place.
- 11.2 The BOARD may order any unauthorised or unapproved structure which is not compliant with the ARCHITECTURAL GUIDELINES to be demolished, removed and/or adjusted and to recover the cost thereof from the MEMBER or MEMBERS concerned. The COMPANY and the MEMBERS hereby indemnify and hold harmless the DIRECTORS against any costs, expenses, damages and/or legal fees, which may arise against any such demolition, removal or adjustment order.

11.3 Where the boundary of a MEMBER's property also constitutes the boundary of the ESTATE, such MEMBER shall be obliged to permit the COMPANY to erect upon such MEMBER's property immediately adjacent to such boundary, walling, fencing, barbed wire or such other equipment as the COMPANY may determine. Such MEMBER shall not be entitled to interfere in any manner with such walling, fencing, barbed wire and other equipment, and will grant unrestricted access to the COMPANY to undertake maintenance and effect repairs on such walling, fencing, barbed wire and other equipment as may be necessary from time to time.

12 AMENITIES

12.1 The COMPANY will have control of all social and recreational facilities and amenities situated in the OPEN SPACES and the BOARD may determine and amend, from time to time, such rules as they may consider necessary for the use of any such facilities and amenities by the MEMBERS, their visitors, family, friends, employees, agents, appointees, or visitors or any other person who is in the ESTATE by permission or consent of the MEMBER, including the charging of any fees as they may deem reasonable for the use thereof.

12.2 The BOARD may establish or permit the establishment of clubs or associations of members to control and regulate the use of any such social and recreational facilities and amenities, and may delegate to the committees of such clubs or associations any or all of their functions, powers and duties in relation to the particular facility or amenity concerned as they may deem fit.

PART 6 – MEMBERS

13 MEMBERSHIP OF THE COMPANY

13.1 Membership of the COMPANY is open to the OWNERS.

13.2 The title deeds in respect of all RESIDENTIAL STANDS provide that all registered OWNERS of such erven will automatically become MEMBERS.

13.3 The COMPANY consists of MEMBERS, which may be VOTING MEMBERS and/or NON-VOTING MEMBERS, from time to time.

- 13.4 By purchasing one or more RESIDENTIAL STANDS a PERSON becomes eligible for membership of the COMPANY and such offer to purchase will constitute an application to become a MEMBER. Subject to registration of transfer of the RESIDENTIAL STAND into the name of the relevant PERSON(s) as contemplated in clause 13.5, such PERSON(s) will become a MEMBER.
- 13.5 A registration of transfer in the relevant deeds office relating to a RESIDENTIAL STAND will thus constitute acceptance by the COMPANY of the application of the (new) OWNER of such RESIDENTIAL STAND to become a MEMBER. A MEMBER will be deemed to have resigned their membership of the COMPANY in the event that they cease to be an OWNER. Save for the deemed resignation as aforesaid, an OWNER may not resign as a MEMBER.
- 13.6 Where two or more PERSONS are registered as joint OWNERS, such registered OWNERS will be deemed to be one MEMBER.
- 13.7 The COMPANY must maintain, at its registered office, the REGISTER.
- 13.8 If a MEMBER ceases to be a MEMBER as per clause 13.5, 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 such MEMBER ceasing to be an OWNER.

14 **VOTING MEMBERS**

- 14.1 Any MEMBER who has paid up in full all amounts that are due and payable in terms of his LEVY ACCOUNT will be a VOTING MEMBER.
- 14.2 VOTING MEMBERS are each entitled to exercise 1 (one) vote in respect of each RESIDENTIAL STAND that they own at any meeting of the MEMBERS. For the sake of clarity, where a VOTING MEMBER owns multiple RESIDENTIAL STANDS, he will have 1 (one) vote in respect of each of those RESIDENTIAL STANDS.
- 14.3 Where the COMPANY has failed to issue and deliver a monthly LEVY ACCOUNT to any MEMBER, and such MEMBER has fully paid his LEVY ACCOUNT up to and including the last LEVY ACCOUNT delivered to him, such MEMBER will be deemed to be a VOTING MEMBER for the purposes of any meeting of the MEMBERS.

15 **NON-VOTING MEMBERS**

Those MEMBERS who are in arrears on their LEVY ACCOUNTS will be NON-VOTING MEMBERS until such time as they have paid up in full all of their outstanding debt to the COMPANY. NON-VOTING MEMBERS may not exercise a vote at any meeting of the MEMBERS.

16 **MEMBERS' AUTHORITY TO ACT**

Save as otherwise provided for in this MOI, any matter that is required to be referred by the BOARD to the MEMBERS for a decision must be decided by the VOTING MEMBERS, notwithstanding that such VOTING MEMBER may also be a DIRECTOR and accordingly the provisions of section 57(4)(a)(i), (ii) of the ACT will not apply to the COMPANY.

17 **MEMBERS' RIGHT TO INFORMATION**

17.1 The MEMBERS and DIRECTORS are entitled to inspect the REGISTER, the list of DIRECTORS and minutes of DIRECTORS' meetings during business hours, and any other person will be entitled to inspect the REGISTER and the list of DIRECTORS only upon payment of a fee of not more than R100 (one hundred Rand).

17.2 Subject to the information rights set out in section 24, as read with section 26 of the Act and Part 3 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), this MOI does not establish additional information rights in respect of any person with respect to information pertaining to the COMPANY.

18 **MEMBERS' GENERAL MEETINGS**

18.1 In addition to those instances which may be required in terms of the ACT, the COMPANY is required to convene a MEMBERS' meeting:

18.1.1 annually, not later than 6 (six) months after the FINANCIAL YEAR END, subject to such a meeting not being longer than 15 (fifteen) months after the date of the previous Annual General Meeting;

- 18.1.2 whenever at least 10 % (ten percent) of the VOTING MEMBERS demand a MEMBERS' meeting of which such meetings may be held upon 14 (fourteen) days written notice to the BOARD and the MEMBERS;
- 18.1.3 whenever the BOARD may request a MEMBERS' meeting at any time as contemplated in section 61(1) of the ACT;
- 18.1.4 whenever required in terms of section 70(3) of the ACT to fill a vacancy on the BOARD.

19 LOCATION OF MEMBERS' MEETINGS

Annual General Meetings and other meetings of the MEMBERS will be held at such venue as the BOARD may determine from time to time, provided that the venue selected is easily accessible for the MEMBERS and situated no further than 15 (fifteen) kilometers from the ESTATE.

20 PROXY REPRESENTATION

- 20.1 A VOTING MEMBER entitled to attend and vote at a meeting is entitled to appoint a proxy (who need not also be a MEMBER) to attend, participate in, speak and vote at a meeting on his behalf.
- 20.2 Any such proxy appointment (and any invitation by the COMPANY to appoint a proxy and any form supplied by the COMPANY for the appointment of a proxy) will be governed by section 58 of the ACT and this clause.
- 20.3 A VOTING MEMBER or his proxy must provide satisfactory identification as contemplated in section 63(1) of the ACT.
- 20.4 The BOARD will determine a standard form of proxy appointment and make it available to MEMBERS in accordance with section 58(9) of the ACT.
- 20.5 The proxy appointment remains valid only until the end of the meeting at which it was intended to be used, subject to a revocation of a proxy appointment which constitutes a complete and final cancellation of a proxy's authority to act on behalf of the MEMBER as contemplated in section 58(5) of the ACT.

- 20.6 A proxy will not be entitled to exercise any rights of the MEMBER who appointed that proxy unless the proxy is accompanied by such proof of the identity and authority of the signatory as may reasonably be required by the BOARD or the chairman of any meeting referred to in this clause or to any other PERSON entitled to accept the proxy appointment or revocation on behalf of the COMPANY.
- 20.7 A proxy, as contemplated in section 58(7) of the ACT, will be entitled, in the proxy's own discretion, to exercise, or abstain from exercising, any voting right of the VOTING MEMBER, provided that if the instrument appointing the proxy specifically provides otherwise, then the specific provisions of such proxy appointment will prevail.
- 20.8 A VOTING MEMBER may appoint 2 (two) or more persons concurrently as proxies, as contemplated in section 58(3)(a) of the ACT.
- 20.9 A VOTING MEMBER must deliver to the COMPANY, or to a person designated by the COMPANY for this purpose, a copy of the instrument appointing a proxy before that proxy may exercise the VOTING MEMBER'S rights at a quorate VOTING MEMBERS meeting as contemplated in section 58(3)(c) of the ACT.
- 20.10 The authority of a VOTING MEMBER's proxy or proxies to decide without direction from the VOTING MEMBER whether to exercise or abstain from exercising any voting right of the VOTING MEMBER, and thereby exercise its deliberative authority, is restricted as contemplated in section 58(7) of the ACT.
- 20.11 A proxy may not delegate the proxy's authority to act on behalf of the MEMBER to another PERSON, unless the right to delegate is specifically contained in the proxy appointment and the delegation occurs by way of a further proxy appointment which itself complies with the requirements of the ACT and this MOI for a proxy appointment as contemplated in section 58(3)(b) of the ACT.

21 PERIOD OF NOTICE OF MEMBERS' MEETINGS

- 21.1 The minimum number of days for the COMPANY to deliver a notice of a MEMBERS' meeting to the MEMBERS as contemplated in section 62(2) of the ACT in writing or by way of ELECTRONIC COMMUNICATION is:

- 21.1.1 in respect of an Annual General Meeting, 15 (fifteen) business days before the meeting commences;
- 21.1.2 in respect of a meeting to pass a special resolution, 15 (fifteen) business days; and
- 21.1.3 in respect of any other MEMBERS' meeting, 10 (ten) business days.

22 ELECTRONIC PARTICIPATION IN MEMBERS' MEETINGS

The COMPANY may, as contemplated in section 63 of the ACT, conduct a MEMBERS' meeting by ELECTRONIC COMMUNICATION and the BOARD shall in respect to each MEMBERS' meeting determine whether:

- 22.1 a MEMBERS' meeting should be conducted entirely by ELECTRONIC COMMUNICATION; or
- 22.2 one or more person or their proxies may participate by ELECTRONIC COMMUNICATION in all or part of a MEMBERS' meeting that is to be held in person,

and determine any conditions relating to the foregoing so as to ensure a conducive and effective meeting.

23 QUORUM FOR MEMBERS' MEETINGS

- 23.1 The quorum requirement for a MEMBERS' meeting to commence or for a matter to be considered are as contemplated in section 64(1) of the ACT with variation which requires that at least 20% (twenty percent) of the VOTING MEMBERS entitled to exercise voting rights in respect of a matter to be decided are present at the meeting either personally or by proxy.
- 23.2 The time periods allowed in sections 64(4) and (5) of the ACT apply to the COMPANY without variation and accordingly if within 30 (thirty) minutes after the appointed time for a meeting to begin, the requirements for a quorum for that meeting have not been satisfied:

- 23.2.1 the meeting is postponed without motion, vote or further notice for a period of 1 (one) week; or
- 23.2.2 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
- 23.2.3 if there is no other business on the agenda of the meeting, the meeting is adjourned for 1 (one) week without motion or vote.
- 23.3 The person presiding at a meeting that cannot begin due to a quorum being absent, may within his/her sole discretion, extend the 30 (thirty) minutes limit allowed for a reasonable period on the grounds that -
 - 23.3.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of VOTING MEMBERS to be present at the meeting; or
 - 23.3.2 one or more particular VOTING MEMBERS, having been delayed, have communicated an intention to attend the meeting, and those VOTING MEMBERS, together with others in attendance, would satisfy the requirements for a quorum have not been met.
- 23.4 The authority of a meeting to continue to consider a matter as contemplated in section 64(9) of the ACT is not limited or restricted by this MOI.

24 **ADJOURNMENT OF MEMBERS' MEETINGS**

- 24.1 An adjournment of a MEMBERS' meeting, or consideration of a matter being debated at such meeting may either be to a fixed time and place or until further notice as contemplated in section 64(11)(a) of the ACT. Further notice need only be given to MEMBERS of the adjourned meeting in the event that the adjournment specified "until further notice" as contemplated in section 64(11)(b) of the ACT.
- 24.2 The maximum period allowable for an adjournment of a MEMBERS' meeting is:

- 24.2.1 the earlier of the date that is 120 (one hundred and twenty) business days after the RECORD DATE determined in accordance with section 59 of the ACT; or
- 24.2.2 the date that is 60 (sixty) business days after the date on which the adjournment occurred.

25 **ORDINARY AND SPECIAL MEMBERS' RESOLUTIONS**

- 25.1 Every resolution and every amended resolution proposed for adoption at a meeting of the MEMBERS shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 25.2 For an ordinary resolution to be adopted by the VOTING MEMBERS at a quorate MEMBERS' meeting, it must be supported by more than 50% (fifty percent) of the VOTING MEMBERS who voted on the resolution at a quorate meeting, as provided for in section 65(7) of the ACT.
- 25.3 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 MEMBERS at a quorate meeting who voted on the resolution, as provided for in section 65(9) of the ACT.
- 25.4 A special resolution adopted at a MEMBERS' meeting is required, in addition to the matters contemplated in section 65(11) of the ACT, as follows:
 - 25.4.1 to amend the MOI to the extent required by section 16(1)(c);
 - 25.4.2 to approve the sale of any of the COMPANY'S major assets;
 - 25.4.3 to approve the voluntary winding up of the COMPANY.
- 25.5 NON-VOTING MEMBERS may attend MEMBERS' meetings but will not be entitled to make any representations in respect of any matter proposed at such meeting or to vote in respect thereof.

- 25.6 At a meeting of the MEMBERS, voting may take place by way of a show of hands, or by polling as contemplated in section 63(4) of the ACT. Subject to section 63(7) of the Act, the method of voting shall be determined by the Chairman of the meeting.
- 25.7 Unless any MEMBER present in person or in proxy at a MEMBERS' meeting shall have objected to any declaration made by the Chairman, prior to closure of the meeting, as to the result of any voting at the meeting, whether by show of hands or otherwise, or to the correctness or validity of the procedure at such a meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall be deemed to have been properly and validly constituted and conducted, and an entry in the minutes of the meeting to the effect that the motion has been carried or lost, with or without a record of the number of votes recorded in favour or against, shall be conclusive evidence of the votes so recorded.

PART 7 – DIRECTORS AND OFFICERS

26 COMPOSITION OF THE BOARD

- 26.1 The BOARD must be comprised of at least 5 (five) DIRECTORS and a maximum of 10 (ten) DIRECTORS.
- 26.2 The DIRECTORS must be comprised of MEMBERS or a Related Person [as defined in the Act] of such MEMBER. In the event of the MEMBER being a JURISTIC MEMBER, the JURISTIC MEMBER must nominate a REPRESENTATIVE who is a natural person to serve as the DIRECTOR, and such REPRESENTATIVE must accept the nomination.
- 26.3 There will be no *ex officio* DIRECTORS, as contemplated in section 66(4)(a)(ii) of the ACT, and no PERSON will have the right to effect the direct appointment or removal of one or more DIRECTORS as contemplated in section 66(4)(a)(i) of the ACT.
- 26.4 In addition to satisfying the qualification and eligibility requirements contemplated in section 69 of the ACT, to become or remain a DIRECTOR or a PRESCRIBED OFFICER of the COMPANY, a person need not satisfy any further eligibility requirements or qualifications.

- 26.5 Each appointed DIRECTOR serves from the date of his/her appointment to office until the COMPANY's Annual General Meeting immediately following his/her said appointment, at which meeting each DIRECTOR shall be deemed to have retired from office, unless they cease to be a DIRECTOR before such time as contemplated in this MOI.
- 26.6 A DIRECTOR may stand for re-election as DIRECTOR for further term/s if nominated.
- 26.7 The COMPANY may not permit a PERSON to serve as a DIRECTOR if that PERSON is ineligible or disqualified in terms of the ACT.
- 26.8 Notwithstanding the provisions of clause 26.2, only a Member or his/her Related Person (and not both a Member and his/her Related Person) may at any point in time serve as a DIRECTOR in respect of a Residential Stand. Accordingly, in the event that both a Member and his/her Related Person are nominated to serve as DIRECTORS on the basis of the same Residential Stand, the nominee with the highest number of votes shall be elected as a DIRECTOR. If after the nomination of DIRECTORS there is no need to vote for the DIRECTORS (i.e. the number of persons nominated to be DIRECTORS does not exceed the maximum number of DIRECTORS as contemplated in clause 26.1), a Member and his/her Related Person shall agree as to who between them shall become a DIRECTOR, failing which, the Chairperson of the meeting shall decide who between them shall become a DIRECTOR or the Members shall determine by way of a vote as to who between them shall become a DIRECTOR."

27 NOMINATION AND APPOINTMENT OF ALTERNATE DIRECTORS

- 27.1 Each DIRECTOR may, by written notice to the COMPANY, -
- 27.1.1 nominate any one or more than one PERSON who is a MEMBER in the alternative (including any of his co-DIRECTORS) to be his ALTERNATE DIRECTOR provided that the appointment of any ALTERNATE DIRECTOR shall require the approval of the BOARD; and
- 27.1.2 at any time, terminate any such appointment.

- 27.2 The appointment of an ALTERNATE DIRECTOR will terminate when the DIRECTOR to whom he is an ALTERNATE DIRECTOR –
- 27.2.1 ceases to be a DIRECTOR; or
- 27.2.2 terminates his appointment.
- 27.3 An ALTERNATE DIRECTOR will –
- 27.3.1 subject to this MOI, generally exercise all the rights of the DIRECTOR to whom he is an ALTERNATE DIRECTOR in the absence or incapacity of that DIRECTOR; and
- 27.3.2 in all respects be subject to the terms and conditions existing with reference to the appointment, rights and duties and the holding of office of the DIRECTOR to whom he is an ALTERNATE DIRECTOR, but will not have any claim of any nature whatsoever against the COMPANY for any remuneration of any nature whatsoever, unless otherwise agreed to between the COMPANY and such ALTERNATE DIRECTOR.

28 VACANCIES, NOMINATIONS AND REMOVAL OF DIRECTORS

- 28.1 Should the number of DIRECTORS comprising the BOARD fall below the minimum number set out in clause 26.1 then the VOTING MEMBERS, must as soon as possible, and, in any event, not later than 2 (two) months from the date that the number of DIRECTORS falls below the minimum, fill sufficient vacancies until the minimum number is met. In this regard, the remaining DIRECTORS shall call a MEMBERS' meeting to be held within 2 (two) months from the date that the number of DIRECTORS falls below the minimum, for purposes of filling such vacancies, failing which any MEMBER entitled to exercise voting rights in the election of a DIRECTOR may convene a MEMBERS meeting for the purpose of appointing DIRECTORS and/or filling a vacancy.
- 28.2 A failure by the COMPANY to have the minimum number of DIRECTORS during the 2 (two) month period referred to in clause 28.1 does not limit or negate the

authority of the remaining BOARD or invalidate anything done by the BOARD or the COMPANY as contemplated in section 66(11) of the ACT.

- 28.3 A DIRECTOR will cease to be a DIRECTOR in the following circumstances:
- 28.3.1 where a DIRECTOR resigns or dies as contemplated in section 70(b)(i) of the ACT;
 - 28.3.2 where a DIRECTOR becomes incapacitated to the extent that the person is unable to perform the functions of a DIRECTOR, and is unlikely to regain that capacity within a reasonable time, subject to section 71(3) of the ACT;
 - 28.3.3 where a DIRECTOR becomes ineligible or disqualified to act as a DIRECTOR as contemplated in section 69 of the ACT, subject to section 71(3) of the ACT; or
 - 28.3.4 where a DIRECTOR is removed by resolution of the BOARD, other than the DIRECTOR concerned, in terms of section 70(1)(b)(vi)(bb) subject to 71(3) of the ACT; or
 - 28.3.5 as contemplated in section 69(6)(a) of the ACT, where a DIRECTOR absents himself from meetings of DIRECTORS for 3 (three) consecutive months without the leave of the other DIRECTORS, and the other DIRECTORS resolve that his office will be vacated, provided that this provision will not apply to a DIRECTOR who is represented by an ALTERNATE DIRECTOR who does not so absent himself; or
 - 28.3.6 where a DIRECTOR was appointed as a DIRECTOR on the basis of his/her position and such DIRECTOR ceases to occupy such a position for any reason whatsoever; or
 - 28.3.7 where a DIRECTOR is no longer the REPRESENTATIVE as contemplated in clause 9.3.15; or
 - 28.3.8 where a DIRECTOR ceases to be a MEMBER; or

- 28.3.9 if required to resign by the existing BOARD or upon requisition of at least 25% (twenty five percent) of the VOTING MEMBERS upon written notice to the COMPANY, if such DIRECTOR has been in arrears on his LEVY ACCOUNT for a period of 3 (three) months or more; or
- 28.3.10 where a DIRECTOR's term of office expires, as contemplated in clause 26.5; or
- 28.3.11 where a DIRECTOR is removed from office by an ordinary resolution of MEMBERS in terms of section 71 of the ACT.

29 ELECTION AND APPOINTMENT OF DIRECTORS

- 29.1 All new DIRECTORS nominated must be elected and duly appointed by way of ordinary resolution of the VOTING MEMBERS at a duly constituted quorate meeting of VOTING MEMBERS as contemplated in section 66(4)(a) of the ACT.
- 29.2 Nomination in terms of clause 29.1 must comply with the following requirements:
 - 29.2.1 the nomination must be made by the VOTING MEMBERS using the nomination form prescribed by the BOARD from time to time; and
 - 29.2.2 the nominee must accept the nomination by countersigning the aforesaid nomination form and must deliver the countersigned nomination form to the COMPANY at least 7 (seven) days prior to the Annual General Meeting.
- 29.3 The VOTING MEMBERS may by ordinary resolution at an Annual General Meeting resolve to accept any nomination which does not comply with the requirements of clause 29.2, including accepting any nomination made at the Annual General Meeting.

30 AUTHORITY OF THE BOARD

- 30.1 Subject to the provisions hereof, the BOARD shall manage and control the business and affairs of the COMPANY, shall have full powers in the management and direction of such business and affairs including the right of appointment and dismissal of employees (including but not limited to the MANAGER), may

exercise all such powers of the COMPANY and do all such acts on behalf of the COMPANY, subject to any restriction or direction given at a meeting of the MEMBERS, or as required by the ACT or by this MOI.

30.2 Save as specifically provided herein, the BOARD shall at all times have the right to engage on behalf of the COMPANY the services of accountants, auditors, attorneys, advocates, engineers, architects or any other professional firm or person or other employees whatsoever for any reasons deemed necessary by the DIRECTORS and on such terms as the BOARD shall decide.

31 BOARD COMMITTEES

31.1 The BOARD may, as contemplated in section 72 of the ACT –

31.1.1 appoint any number of committees comprising of DIRECTORS;

31.1.2 delegate to any committee the authority of the BOARD; and

31.1.3 include any person who is not a DIRECTOR on such committees as contemplated in section 72(2)(a) of the ACT, and, accordingly, the authority of the BOARD in this regard is not limited or restricted by this MOI.

31.2 The authority and power of the committees, as contemplated in section 72(2) of the ACT, is not limited or restricted by this MOI, but may be restricted by the BOARD when establishing a committee or by subsequent resolution.

32 CHAIRMAN AND DEPUTY CHAIRMAN

32.1 The BOARD will be required to elect a CHAIRMAN and a DEPUTY CHAIRMAN of the BOARD and subject to the term served by DIRECTORS as contemplated in clause 26.5, the BOARD will be entitled to determine the period for which the CHAIRMAN and DEPUTY CHAIRMAN will hold office provided that the offices of the CHAIRMAN and DEPUTY CHAIRMAN shall *ipso facto* be vacated by the DIRECTOR holding such office upon his ceasing to be a DIRECTOR for any reason whatsoever. Should any vacancy occur in either of the aforesaid offices at any time then the BOARD shall immediately elect one of their number as a replacement in such office.

- 32.2 The DEPUTY CHAIRMAN shall assume the powers and duties of the CHAIRMAN in the absence of the CHAIRMAN or his inability or refusal to act as the CHAIRMAN, and failing the appointment or presence of the DEPUTY CHAIRMAN, a DIRECTOR nominated by the majority of the remaining DIRECTORS shall assume such powers and duties.
- 32.3 In the event of a quorate meeting of DIRECTORS, the CHAIRMAN and/or the DEPUTY CHAIRMAN will not have a casting vote where there is a deadlock.
- 32.4 The CHAIRMAN or, failing him, the DEPUTY CHAIRMAN will preside as the chairman of each DIRECTORS' AND MEMBERS' meetings, provided that, if no CHAIRMAN or DEPUTY CHAIRMAN is present and/or willing to act, the DIRECTORS or MEMBERS present will elect one of the DIRECTORS to be the chairman of that DIRECTORS' or MEMBERS' meeting, respectively.
- 32.5 The CHAIRMAN, or if he is absent, then the DEPUTY CHAIRMAN, will, subject to the ACT, the REGULATIONS, this MOI and a decision of the BOARD, determine the procedure to be followed at all meetings of the BOARD or MEMBERS.
- 32.6 The CHAIRMAN and/or the DEPUTY CHAIRMAN may serve a maximum term of 3 (three) consecutive years, whereafter a new CHAIRMAN and/or DEPUTY CHAIRMAN must be elected.

33 BOARD MEETINGS

- 33.1 The BOARD may –
- 33.1.1 meet, adjourn and otherwise regulate their meetings as they think fit; provided that, in accordance with section 73(2) of the ACT, any DIRECTOR will be entitled to convene or direct the PERSON so authorised by the BOARD to convene a meeting of the BOARD;
- 33.1.2 determine the form and time of the notice that will be given of their meetings and the means of giving that notice, as contemplated in section 73(4) of the ACT, provided that –

- 33.1.2.1 no meeting may be convened without 7 (seven) days written notice being given to all of the DIRECTORS and the COMPANY;
 - 33.1.2.2 each such notice will include a proposed agenda of such meeting, which agenda may be amended on reasonable notice to the DIRECTORS;
 - 33.1.2.3 any appointed ALTERNATE DIRECTOR will be entitled to receive notice for every meeting of DIRECTORS as if he was an actual DIRECTOR; and
 - 33.1.2.4 any such prior determination may be varied, depending on the circumstances and reasons for the DIRECTORS' meeting in question.
- 33.2 If all of the DIRECTORS –
- 33.2.1 acknowledge actual receipt of the notice and agree that the meeting should proceed;
 - 33.2.2 are present at a meeting (physically or via ELECTRONIC COMMUNICATION as contemplated in clause 33.3); or
 - 33.2.3 waive notice of the meeting, the meeting may proceed even if the COMPANY failed to give the required notice of that meeting, or there was a defect in the giving of the notice.
- 33.3 Notwithstanding any contrary provision contained in this MOI, a DIRECTOR shall be entitled to participate in any meeting of the BOARD via ELECTRONIC COMMUNICATION, on condition that the ELECTRONIC COMMUNICATION facility employed must ordinarily enable all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting. Accordingly, a DIRECTOR shall be deemed to be present in any meeting of the BOARD if such DIRECTOR participates in a meeting of the BOARD in the manner contemplated in this clause 33.3.

33.4 Any DIRECTOR who is more than 3 (three) months in arrears on his LEVY ACCOUNT will not be entitled to attend a BOARD meeting and such DIRECTOR will not be considered for the purposes of a quorum and voting by the BOARD.

34 **QUORUM FOR BOARD MEETINGS**

34.1 The quorum requirements, the voting rights requirements and the requirements of the approval of a resolution, as set out in sections 73(5)(b) to 73(5)(d) of the ACT will not apply and accordingly the following provisions will apply:

34.1.1 a quorum for the meeting of the BOARD will be the majority of the DIRECTORS. In the event that a DIRECTOR (i.e. the nominating DIRECTOR) is absent at a meeting of the BOARD but his ALTERNATE DIRECTOR is present, the said ALTERNATE DIRECTOR shall be counted (in the stead of the appointing DIRECTOR) for the purposes of establishing whether or not a quorum is present;

34.1.2 if a quorum is not present within 15 (fifteen) minutes after the time appointed for the commencement of any meeting of the BOARD, that meeting will stand adjourned to the same day in the following week, at the same time and place, or such other date, time or place as the CHAIRMAN of the meeting will appoint. The adjourned meeting may only deal with the matters that were on the agenda of the meeting that was adjourned;

34.1.3 if at any adjourned meeting a quorum is not present within 15 (fifteen) minutes after the time appointed for the commencement of that meeting, then, notwithstanding the provisions of section 73(5)(b) of the ACT, the DIRECTORS present will constitute a quorum and will be sufficient to vote on any resolution which is tabled at that meeting;

34.1.4 at any meeting of the BOARD, -

34.1.4.1 an ALTERNATE DIRECTOR will be entitled to attend and speak, but will not be entitled to vote, unless the DIRECTOR to whom he is an ALTERNATE DIRECTOR is absent from that meeting;

34.1.4.2 each DIRECTOR appointed to the BOARD will be entitled, in respect of each matter to be voted on by the BOARD, to cast 1 (one) vote and no DIRECTOR will be entitled to exercise a second or casting vote in respect of any matter to be voted on by the BOARD; and

34.1.4.3 a resolution of the BOARD will be passed by a majority of the votes cast in the manner set out in clause 34.1.4.2 at a quorate meeting of the BOARD.

35 MINUTES OF BOARD MEETINGS

35.1 The COMPANY will keep minutes of the meetings of the BOARD, and any of the BOARD COMMITTEES, and include in those minutes –

35.1.1 any declaration given by notice or made by a DIRECTOR, as required by section 75 of the ACT; and

35.1.2 every resolution adopted by the BOARD.

36 BOARD RESOLUTIONS

36.1 Resolutions adopted by the BOARD –

36.1.1 must be dated and sequentially numbered; and

36.1.2 are effective as of the date of the resolution, unless the resolution states otherwise.

36.2 Any minutes of a meeting, or a resolution, signed by the chairman of the meeting, or by the chairman of the next meeting of the BOARD, is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

36.3 The authority of the BOARD to consider a matter other than at a meeting contemplated in section 74 of the ACT is not limited or restricted by this MOI.

- 36.4 The authority of the BOARD to proceed with a meeting despite a failure or defect in giving notice of the meeting, as contemplated in section 73(5) of the ACT is not limited or restricted by this MOI and accordingly:
- 36.4.1 if all the DIRECTORS acknowledge actual receipt of the notice; are present at a meeting; or waive notice of the meeting, the meeting may proceed even if the COMPANY failed to give the required notice of that meeting, or there was a defect in the giving of the notice;
- 36.4.2 a majority of the DIRECTORS must be present at a meeting before a vote may be called at a BOARD meeting;
- 36.4.3 each DIRECTOR has 1 (one) vote on any matter before the BOARD;
- 36.5 A majority of the votes cast on a resolution is sufficient to approve that resolution; in the case of a tied vote, the matter being voted on shall fail.
- 36.6 The quorum requirement for a BOARD meeting to begin, the voting rights at such a meeting, and the requirements for approval of a resolution at such a meeting are as contemplated in section 73(5) of the ACT, without variation.
- 36.7 The provisions of the ACT and this MOI relating to special resolutions and ordinary resolutions will apply *mutatis mutandis* to the BOARD meetings.

37 DIRECTORS ACTING OTHER THAN AT A MEETING

- 37.1 A decision that could be voted on at a meeting of the BOARD may instead be adopted as a written resolution that has been submitted to all of the DIRECTORS and signed by the majority of the DIRECTORS (or their ALTERNATE DIRECTOR) and such resolution will be as valid and effective as if it had been adopted by a duly convened and constituted meeting of DIRECTORS.
- 37.2 Unless the contrary is stated in the resolution, any such resolution will be deemed to have been passed on the date on which it was signed by or on behalf of the DIRECTOR who signed it last.

37.3 The resolution may consist of one or more documents, each signed by one or more DIRECTORS (or their ALTERNATE DIRECTOR).

37.4 An ALTERNATE DIRECTOR will only be entitled to sign a resolution passed otherwise than at a meeting of DIRECTORS in terms of clause 37.1 if the DIRECTOR to whom he is an ALTERNATE DIRECTOR is then absent from the RSA, or is incapacitated.

38 DIRECTORS' REMUNERATION

The COMPANY may pay reasonable remuneration to a DIRECTOR for services as a DIRECTOR; provided that such remuneration is paid in accordance with a special resolution approved by the MEMBERS within the previous two years, with such special resolution setting out in detail the basis and the quantum of any such remuneration.

39 PERSONAL FINANCIAL INTERESTS AND CONFLICTS OF INTEREST

39.1 Each DIRECTOR will, subject to the exemptions contained in section 75(2) of the ACT and the qualifications contained in section 75(3) of the ACT, comply with all of the provisions of section 75 of the ACT in the event that they (or any person who is a related person to them) have a personal financial interest in any matter to be considered by the BOARD.

39.2 A decision by the BOARD, or a transaction or agreement approved by the BOARD, is valid despite any personal financial interest of a DIRECTOR, subject to the provisions of section 75 of the ACT.

39.3 If any DIRECTOR or a related person to such DIRECTOR has a personal financial interest in any matter to be considered by the BOARD as contemplated in section 75 of the ACT, that DIRECTOR:

39.3.1 must notify the BOARD timeously of such personal financial interest in advance of any deliberation or voting on such matter;

39.3.2 must disclose to the meeting any material information relating to the matter, and known to the DIRECTOR;

- 39.3.3 if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in 39.3.1 or 39.3.2;
- 39.3.4 must not take part in the consideration of and/or voting in relation to the matter, except to the extent contemplated in 39.3.2;
- 39.3.5 while absent from the meeting in terms of this clause 39.3, is to be regarded as being present at the meeting for the purpose of determining whether sufficient DIRECTORS are present to constitute a quorum.
- 39.4 For the purposes of this clause (*Personal Financial Interest and Conflicts of Interest*), "DIRECTOR" includes a PRESCRIBED OFFICER and a person who is a member of a BOARD COMMITTEE, irrespective of whether or not the person is also a member of the BOARD, as more fully contemplated in section 75(1) of the ACT.

40 INDEMNIFICATION AND DIRECTORS' INSURANCE

- 40.1 For the purposes of this clause, a DIRECTOR includes –
- 40.1.1 a former DIRECTOR;
- 40.1.2 a current and former ALTERNATE DIRECTOR;
- 40.1.3 a current and former PRESCRIBED OFFICER; and
- 40.1.4 a PERSON who is or was a member of a committee of the BOARD, irrespective of whether or not the PERSON is or was also a member of the BOARD.
- 40.2 The COMPANY may, as contemplated in sections 78(4), 78(5) and 78(7) of the ACT, -
- 40.2.1 advance expenses to a DIRECTOR to defend litigation in any proceedings arising out of the DIRECTOR's service to the COMPANY; and

- 40.2.2 directly or indirectly indemnify a DIRECTOR for expenses contemplated in this clause, irrespective of whether or not it has advanced those expenses, if the proceedings –
 - 40.2.2.1 are abandoned or exculpate that DIRECTOR; or
 - 40.2.2.2 arise in respect of any liability for which the COMPANY may indemnify the DIRECTOR, in terms of this clause;
- 40.2.3 indemnify a DIRECTOR against any liability arising from the conduct of that DIRECTOR, other than a liability set out in section 78(6) of the ACT; and
- 40.2.4 purchase insurance to protect –
 - 40.2.4.1 a DIRECTOR against any liability or expense for which the COMPANY is permitted to indemnify the DIRECTOR in accordance with this clause;
 - 40.2.4.2 the COMPANY against any contingency, including –
 - 40.2.4.2.1 any expenses –
 - 40.2.4.2.1.1 that the COMPANY is permitted to advance in accordance with this clause; or
 - 40.2.4.2.1.2 for which the COMPANY is permitted to indemnify a DIRECTOR in accordance with this clause; or
 - 40.2.4.2.2 any liability for which the COMPANY is permitted to indemnify a DIRECTOR in accordance with this clause,

and the authority of the BOARD in this regard is not limited or restricted by this MOI.

- 40.3 The COMPANY will and is hereby obliged to indemnify each DIRECTOR against (and pay to each DIRECTOR, on demand by that DIRECTOR, the amount of) any loss, liability, damage, cost (including all legal costs reasonably incurred by the

DIRECTOR in dealing with or defending any claim) or expense ("LOSS") which that DIRECTOR may suffer as a result of any act or omission of that DIRECTOR in his capacity as a DIRECTOR; provided that —

40.3.1 this indemnity will not extend to —

40.3.1.1 any LOSS against which the COMPANY is not permitted to indemnify a DIRECTOR by section 78(6) of the ACT; or

40.3.1.2 any LOSS arising from any gross negligence or recklessness on the part of that DIRECTOR, or

40.3.1.3 any loss of or damage to a DIRECTOR'S reputation;

40.3.1.4 any LOSS, in the event and to the extent that the DIRECTOR has recovered or is entitled and able to recover the amount of that LOSS in terms of any insurance policy (whether taken out or paid for by the COMPANY or otherwise);

and DIRECTORS will not be entitled to recover the LOSSES referred to in this clause from the COMPANY. All losses other than those referred to in this clause are referred to herein as "INDEMNIFIED LOSSES";

40.3.2 each DIRECTOR'S right to be indemnified by the COMPANY in terms of this indemnity will exist automatically upon his/her becoming a DIRECTOR and will endure even after he/she ceases to be a DIRECTOR until he/she can no longer suffer or incur any INDEMNIFIED LOSSES;

40.3.3 then —

40.3.3.1 if any claim is made against a DIRECTOR in respect of any INDEMNIFIED LOSSES, the DIRECTOR will not admit any liability in respect thereof and the DIRECTOR will notify the COMPANY of any such claim within a reasonable time after the DIRECTOR becomes aware of such claim, in order to enable the COMPANY to contest such claim. Notwithstanding the foregoing provisions of this clause, the COMPANY'S liability in terms of this indemnity will not be affected by

any failure of the DIRECTOR to comply with this clause, save in the event and to the extent that the COMPANY proves that such failure has resulted in the INDEMNIFIED LOSSES being greater than it would have been had the DIRECTOR complied with this clause;

40.3.3.2 the COMPANY will, at its own expense and with the assistance of its own legal advisers, be entitled to contest any such claim in the name of the DIRECTOR until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and will be entitled to control the proceedings in regard thereto; provided that –

40.3.3.2.1 the DIRECTOR will (at the expense of the COMPANY and, if the DIRECTOR so requires, with the involvement of the DIRECTOR's own legal advisers) render to the COMPANY such assistance as the COMPANY may reasonably require of the DIRECTOR in order to contest such claim;

40.3.3.2.2 the COMPANY will regularly, and in any event on demand by the DIRECTOR, inform the DIRECTOR fully of the status of the contested claim and furnish the DIRECTOR with all documents and information relating thereto which may reasonably be requested by the DIRECTOR;

40.3.3.2.3 the COMPANY will consult with the DIRECTOR prior to taking any major steps in relation to or settling such contested claim and, in particular, before making or agreeing to any announcement or other publicity in relation to such claim;

40.3.4 to the extent that any LOSS consists of or arises from a claim or potential claim that the COMPANY might otherwise have had against the DIRECTOR, then the effect of this indemnity will be to prevent the COMPANY from making such claim against the DIRECTOR, who will be immune to such claim, and such claim will therefore be deemed not to arise;

- 40.3.5 if this clause is amended at any time, no such amendment will detract from the rights of the DIRECTORS in terms of this clause in respect of any period prior to the date on which the resolution effecting such amendment is adopted by the DIRECTORS;
- 40.3.6 all provisions of this clause are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this clause which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, will, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this MOI will remain of full force and effect;
- 40.3.7 this indemnity will not detract from any separate indemnity that the COMPANY may sign in favour of the DIRECTOR.

PART 8 - GENERAL MATTERS

41 ACCESS TO COMPANY RECORDS

All access to COMPANY records are as set out in this MOI and in accordance with those rights created by section 24, as read with section 26 of the ACT.

42 DIRECTOR'S RIGHT TO INFORMATION

The DIRECTORS, without limitation, have a right to inspect and copy, without any charge for such inspection or upon payment of no more than the prescribed fee in terms of the REGULATIONS, all information contained in the records of the COMPANY.

43 BORROWING POWERS OF THE COMPANY

Subject to the SOLVENCY AND LIQUIDITY TEST, the BOARD may from time to time exercise borrowing powers in respect of the COMPANY to further its aim and objects.

44 FINANCIAL YEAR END OF THE COMPANY

Unless resolved otherwise by the MEMBERS, the financial year end of the COMPANY will be the end of March of each consecutive year.

45 FINANCIAL STATEMENTS AND ACCESS TO COMPANY INFORMATION

- 45.1 The COMPANY will prepare annual financial statements in accordance with the ACT and the REGULATIONS and will, only to the extent required by the ACT, the REGULATIONS or the BOARD, have those annual Financial Statements audited or reviewed, provided that this clause does not prevent the COMPANY from undertaking, as a contractual arrangement between the COMPANY and its MEMBERS or any other person, to have its Financial Statements audited or reviewed.
- 45.2 A copy of the annual financial statements of the COMPANY will be made available to any MEMBER electronically should such MEMBER request a copy.

46 NOTICES

- 46.1 Save as otherwise required in terms of the ACT and the REGULATIONS, all financial reports, notices and/or communications with MEMBERS and DIRECTORS may be by way of ELECTRONIC COMMUNICATION.
- 46.2 Any notice that is required to be given to MEMBERS or DIRECTORS may be given in any manner prescribed in Table CR3 in the REGULATIONS and that notice will be deemed to have been distributed as provided in Table CR3 in the REGULATIONS for the relevant method of distribution and/or may be posted on the COMPANY'S website.
- 46.3 Notices and copies of any documents required to be given to MEMBERS or DIRECTORS in terms of the ACT and the REGULATIONS must also be open for inspection at the COMPANY'S registered office on business days during ordinary business hours.
- 46.4 Each MEMBER and DIRECTOR –
- 46.4.1 will notify in writing to the COMPANY a postal address, which address will be his registered address for the purposes of receiving written notices from the COMPANY by post and, if he has not named such an address, he will be deemed to have waived his right to be so served with notices; and

- 46.4.2 will notify in writing to the COMPANY an e-mail address or facsimile number, which address will be his address for the purposes of receiving notices by way of e-mail or facsimile.
- 46.5 A notice may be given by the COMPANY to any MEMBER, either personally or by telefax or ELECTRONIC COMMUNICATION or by sending it by post in a prepaid letter addressed to such member at his registered address supplied by him to the COMPANY for giving notices to him.
- 46.6 Any notices given by post will be deemed to have been served at the time when the letter containing same is put into the Post Office, and provided it will be sufficient to prove that the letter containing the notice was properly addressed and put into the Post Office. Any notice transmitted by telefax or electronic mail will be deemed (in absence of proof of the contrary) to have been received within one hour of transmission where it is transmitted during normal business hours and within two hours of the commencement of the following business day where it is submitted outside normal business hours.
- 46.7 Notice of every MEMBERS' meeting will be given in any manner authorised by the BOARD to the MEMBERS as set out in clause 46.8 hereof and to the auditor of the COMPANY. No other persons will be entitled to receive notice of MEMBERS' meetings. Failure to give notice to the auditor of the Company as aforesaid shall not invalidate any action or decision taken at a MEMBERS' meeting.
- 46.8 A notice of a MEMBERS' meeting must be in writing, and must include:
- 46.8.1 the date, time and place for the meeting;
- 46.8.2 the general purpose of the meeting;
- 46.8.3 a copy of any proposed resolution of which the COMPANY has received notice and which has to be considered at the meeting;
- 46.8.4 in the case of an Annual General Meeting of the COMPANY, the financial statements to be presented.

- 46.9 If there was a material defect in the giving of the notice of a MEMBERS' meeting, the meeting may proceed, provided that every MEMBER and person present and who is entitled to exercise voting rights in respect of any item on the agenda of the meeting, votes in favour of the defective notice.
- 46.10 If a material defect in the form or manner of giving notice of a meeting relates only to one or more particular matters on the agenda for the meeting:
- 46.10.1 any such matter may be severed from the agenda, and such notice will remain valid with respect to any remaining matters on the agenda; and
- 46.10.2 the meeting may proceed to consider a severed matter, if the defective notice in respect of that matter has been ratified.
- 46.11 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 does not invalidate any action taken at the meeting.

47 LIMITATION OF LIABILITY

No PERSON will be liable, for any liabilities or obligations of the COMPANY solely by reason of being an incorporator, MEMBER or DIRECTOR.

48 DISPUTE RESOLUTION - MEDIATION AND ARBITRATION

- 48.1 Subject to the provisions of clause 48.15, should there be a breach of any term and/or condition of this MOI, or should any dispute arise from or in connection with this MOI, whether directly or indirectly, the parties that are bound by this MOI must refer the dispute for resolution firstly by way of mediation and in the event of the failure of such mediation, to arbitration. The reference to mediation is a condition precedent to the parties having the dispute resolved by way of arbitration.
- 48.2 For the purposes of this clause, the term "dispute" will be interpreted in its widest sense and includes any dispute or difference in connection with or in respect of the conclusion or existence of this MOI, the carrying into effect of this MOI, the interpretation or application of the provisions of this MOI, the parties

respective rights and obligations in terms of and arising out of this MOI or the validity, enforceability, rectification, amendment, termination or cancellation, whether in whole or in part, of this MOI.

48.3 The mediation will be held in Johannesburg and the parties may agree on the mediation procedure and the mediator, and failing such agreement, the mediator will be appointed on their behalf by the Arbitration Foundation of Southern Africa ("AFSA") or its successor in title.

48.4 The parties agree that:

48.4.1 the parties will personally attend such mediation proceedings, or, in the case of a legal entity, an officer of that entity with decision making authority will personally attend the mediation proceedings;

48.4.2 the parties will participate in good faith in the mediation;

48.4.3 the parties will share equally in the costs and expenses of the mediation, such costs not including costs or expenses incurred by a party for an expert opinion in connection with the mediation;

48.4.4 an expert may be appointed by either party at their own cost. Any party appointing an expert must give sufficient notice to the other party to allow them to appoint their own expert;

48.4.5 copies of any expert opinion must be provided to the mediator and all other parties before the mediation process begins.

48.5 The parties acknowledge and agree that:

48.5.1 all mediation proceedings, proposed settlements, communications, statements and offers, whether oral or written, made in the course of the mediation by any of the parties or their respective agents, employees, experts and attorneys, are confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable for the purposes of

arbitration will not be rendered inadmissible or non-discoverable as a result of its use for arbitration;

48.5.2 any and all agreement reached during the course of mediation and reduced to writing and signed by the parties will be binding upon all the parties.

48.6 The provisions of this clause may be enforced by any court having competent jurisdiction.

48.7 If for any reason, including, but not limited to lack of co-operation by any of the parties, a dispute is not settled and/or the parties are unable to reach mutual agreement through the mediation process within 30 (thirty) days after the commencement of mediation proceedings, any of the parties may request that the matter be referred to an arbitrator in accordance with the Commercial Rules of AFSA (or its successor in title).

48.8 The arbitrator will be agreed upon by the parties, and failing such agreement, the arbitrator will be appointed by AFSA. The arbitrator's decision will be final and binding on the parties to the dispute and may be appealed as contemplated in this clause.

48.9 The arbitration will be held in Johannesburg in accordance with the provisions of the Arbitration Act, No. 42 of 1965 (as amended or replaced from time to time) and the arbitrator is entitled to;

48.9.1 investigate any matter, fact or thing which he considers necessary or desirable in connection with the dispute;

48.9.2 interview and question under oath representatives of either of the parties;

48.9.3 decide the dispute according to what he considers just and equitable in the circumstances;

48.9.4 to make such award, including an award for specific performance, damages, and penalty and/or otherwise as he/she in his discretion may deem fit and appropriate;

- 48.9.5 the arbitrator will also be entitled to make a ruling on the costs of arbitration;
- 48.9.6 the arbitrator will have the discretion to determine the procedure to be adopted for the filing of all documentation and statements of case, the narrowing of the issue in dispute and the procedure generally in respect of evidence and discovery and the procedure at the arbitral hearing.
- 48.10 The arbitrator must complete the arbitration within 120 (one hundred and twenty) days of it having been demanded by the party so demanding.
- 48.11 The arbitrator will be, if the issue in dispute is:
- 48.11.1 primarily an accounting matter, an independent, practising chartered accountant of not less than 10 (ten) years standing;
- 48.11.2 primarily a legal matter, a practising advocate or attorney of not less than 10 (ten) years standing.
- 48.12 If agreement cannot, within 7 (seven) days after the arbitration has been requested, be reached as to whether the issue in dispute is primarily a legal or accounting matter, the matter will be deemed to be a legal matter.
- 48.13 The parties agree that any award by the arbitrator will be subject to a right of appeal at the instance of any one of them who is a party to the arbitration, subject to the following provisions:-
- 48.13.1 the appeal arbitrators will be 3 (three) in number each of whom will be, if the issue in dispute is:
- 48.13.1.1 primarily an accounting matter, three independent, practising chartered accountants of not less than 10 (ten) years standing;
- 48.13.1.2 primarily a legal matter, three practising advocates and/or attorneys of not less than 10 (ten) years standing.

- 48.13.2 If agreement cannot be reached within 14 (fourteen) days of the arbitration award as to the choice of the appeal arbitrators, then the AFSA will appoint such appeal arbitrators.
- 48.13.3 The appeal arbitrators will have the discretion to determine the procedure adopted prior to and at the appeal hearing.
- 48.13.4 The decision of the arbitrators shall be final and binding on the parties, with no further right to appeal.
- 48.14 The provisions of this clause shall not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters pending finalisation of this dispute resolution process.
- 48.15 The dispute resolution process set out hereinabove shall only apply in the event that any of the parties ("the affected party") that is bound by this MOI elects not to resolve the dispute in accordance with the provisions of the Community Schemes Ombud Service Act No 9 of 2011 ("CSOS Act"), as amended. Accordingly, in the event that the affected party submits to the dispute resolution process set out hereinabove, the affected party shall be deemed to have elected not to resolve the dispute in accordance with the provisions of CSOS Act.