

**SCHEDULE "3"**

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Memorandum of Incorporation for a non-profit Company

Republic of South Africa

Companies Act, 71 of 2008

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**Memorandum of Incorporation of:**

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**HOLLINS PLACE HOMEOWNERS ASSOCIATION (RF) NPC**

**(REGISTRATION NUMBER: [TBA])**

**SECOND MEMORANDUM OF INCORPORATION**

Statement in terms of Section 13(3):

The ability to amend this Memorandum of Incorporation is restricted. Please refer to clauses 8.3; 50.1(b) and 56.7 of this Memorandum of Incorporation for full details of such restrictions.

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1. **INTERPRETATION AND DEFINITIONS**  
**CLAUSE 1]**

[CoR 15.1E –

In this MOI, –

1.1 words that are defined in the Companies Act (which are contained Schedule 1 for easy reference) but not defined in this MOI will bear the same meaning in this MOI as in the Companies Act. For ease of reading, such terms have been capitalised in this MOI;

1.2 unless the context otherwise requires –

- (a) **“Access Portion”** means Portion 13 of Erf 3102 Bryanston Extension 7 Township, Registration Division I.R., Province of Gauteng, Measuring 845 Square Metres;
- (b) **“Act”** means the Companies Act No. 71 of 2008 (as amended);
- (c) **“Alienate”** means in relation to land or erf or unit, is to sell, alienate or dispose of land or erf or unit to a third party;
- (d) **“Association”** means the Company hereby incorporated, by whatever name it may be known from time to time;
- (e) **”Chairperson”** means the Chairperson of the Board of Directors;
- (f) **“Common Facilities”** means all facilities which form part of the Estate and which are intended for the shared use of all Homeowners (and their invitees) in the Estate;
- (g) **“the Company”** means Hollins PPlace Homeowners Association (RF) NPC or by whatever other name it may be known from time to time;
- (h) **“Company Owned Property”** means the Common Facilities, the security gates, guardhouse and the boundary walls around the Estate and any erven or servitudes in the Estate that may be acquired;
- (i) **“Deliver”** means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 41 (*Notices*) and the Companies Act (a list of which is in Schedule 3);
- (j) **”Development Period”** means the period commencing on the date of registration of the Company and terminating on the earlier of:
  - (i) the date on which the Developer alienates the last of the land, erven or units of the development in the Estate; or
  - (ii) the date on which the Developer gives written notice to the Company that the Development Period has terminated; or
  - (iii) if no notice has been given to the Company by the Developer, then 5 (five) years after the Developer actually ceased all or

any form of development in the Estate for a continuous period of 5 (five) years;

- (k) **"Deeds Registries Act"** means the Deeds Registries Act 47 of 1937, as amended;
- (l) **"Developer"** means 16 West Hertford Development Proprietary Limited (registration number 2019/583461/07), a company duly registered and incorporated in accordance with the company laws of the Republic of South Africa;
- (m) **"Electronic Address"** means in regard to Electronic Communication, any email address furnished to the Company by the Member;
- (n) **"Erf"** means an erf as defined in the Deeds Registries Act, Act No 47 of 1937;
- (o) **"Estate"** means Hollins Place which Estate is situated on Erf 3102 Bryanston Extension 7 Township, Registration Division IR, Province of Gauteng;
- (p) **"Estate Conduct Rules"** means rules, as approved from time to time by the Members as set out in clause 11 of this MOI and that apply to the Management of the Estate and the conduct of the Members, residents, and their guests, employees and invitees;
- (q) **"Estate Manager"** means any person or body appointed by the Association as an independent contractor to undertake routine management of the Estate and of the affairs and the Association, and/or the designated Estate Manager;
- (r) **"Financial Year"** means the financial year of the Association which shall run from the first day of March in any year to the last day of February in the subsequent year unless otherwise required by law;
- (s) **"Governance Rules"** means rules as envisaged in section 15(3) of the Act for the governance of the Company, made and amended from time to time by the Directors as set out in clause 12 of this MOI;
- (t) **"Homeowner"** means the registered owner of land or erf or unit in the Estate and this definition includes the Developer if it still owns land or erf or unit in the Estate;
- (u) **"Ineligible or Disqualified"** means ineligible or disqualified as contemplated in the Act (a list of which is in Schedule 2) or as contemplated in clause 30, which shall apply not only to Directors and Alternate Directors, but also to Members of Board of Directors committees and Prescribed Officers;

- (v) **"In Writing"** means written, printed or lithographed or partly one and partly another, and other modes of representing or producing words in a visible form;
- (w) **"Land"** means land as defined in the Deeds Registries Act, Act No 47 of 1937, as amended;
- (x) **"Local Authority"** means the local authority having jurisdiction over the Estate or any portion thereof;
- (y) **"Member"** means a person who holds Membership in and specified rights in respect of this Non-Profit Company, as contemplated in Item 4 of Schedule 1 to the Companies Act, but subject to Article 3 of this MOI;
- (z) **"MOI"** means this Memorandum of Incorporation;
- (aa) **"Office"** means the registered office of the Association;
- (bb) **"Regulations"** means regulations published pursuant to the Companies Act;
- (cc) **"Roads and Open Spaces"** means such roads including driveways as may be constructed in the Estate and any open space provided for in the applicable town planning scheme for the Estate;
- (dd) **"Sectional Titles Act"** means the Sectional Titles Act 95 of 1986, as amended;
- (ee) **"Sectional Unit"** means a unit as defined in terms of the Sectional Titles Act No 95 of 1986, as amended;
- (ff) **"Services"** means the provision of water, sewerage, electricity, drainage, telecommunications, refuse removal, fire fighting, libraries, transport and such other utilities and amenities as may be provided by the Association;
- (gg) **"Town Planning Scheme"** means the town planning scheme for the Estate as amended from time to time;
- (hh) **"These Presents"** means this MOI and any regulations of the Association, as approved and from time to time in force;
- (ii) **"Unit"** includes a sectional unit, cluster unit and business unit, and any other unit defined as such in the Sectional Titles Act No 95 of 1986, as amended;
- (jj) **"Vice-Chairperson"** means the Vice-Chairperson of the Board of Directors of the Company;

- (kk) **"Writing"** includes Electronic Communication but as regards any Member entitled to vote, only to the extent that such Member has notified the Company of an Electronic Address;
- 1.3 references to Members represented by proxy shall include Members entitled to vote represented by an agent appointed under a general or special power of attorney;
- 1.4 references to Members entitled to vote Present at a Meeting or acting in person shall include juristic persons represented by duly authorised representative or acting in the manner prescribed in the Act;
- 1.5 all references to "section/s" in this MOI refer to the sections of the Act unless the context indicates otherwise;
- 1.6 the headings are for reference purposes only and shall not affect the interpretation of this MOI;
- 1.7 words in the singular number shall include the plural, and words in the plural number shall include the singular, words importing the masculine gender shall include the female gender, and words importing persons shall include created entities (corporate or not);
- 1.8 if any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision;
- 1.9 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.
- 1.10 unless the context otherwise requires, any words importing singular number shall also include the plural number, and *vice versa* and words importing any one gender only shall include the other two genders;
- 1.11 subject as aforesaid, any words or expressions defined in the Act or Deeds Registries Act No 47 of 1937 or in the Sectional Titles Act No 95 of 1986 or any statutory modifications of such Acts in force at the date on which this MOI becomes binding on the Association shall, if not inconsistent with the subject or context, bear the same meaning in this MOI.
2. **NON-PROFIT COMPANY** **[COR 15.1E -**  
**CLAUSE 1.1]**
- 2.1 The Company –
- (a) is a Non-Profit Company with voting Members, incorporated for a public benefit or other object as required by Item 1(1) of Schedule 1 of the Act;

- (b) is one, of which the income and property of which cannot be distributed to its Incorporators, Members, Directors, Officers or persons related to any of them, except to the extent permitted by Item 1(3) of Schedule 1 to the Act.

2.2 The Company shall at all times comply with the legal requirements and/or provisions for the incorporation, existence and continuation of the Company as a legal entity of a Non Profit Company as defined and contemplated in the Act.

### 3. **MEMBERSHIP**

3.1 Membership of the Association shall be limited to:

- (a) the Developer in its capacity as such, and
- (b) to any other person, including the Developer who is in terms of the Deeds Registries Act (and where applicable the Sectional Titles Act) reflected in the records of the Deeds Office concerned as the Homeowner of any land or erf or unit in the Estate. The registration of land or erf or unit in the name of a person, who is to become a Member of the Association, will function as an application for Membership and the passing of transfer by the Homeowner will function as a resignation.

3.2 The entering or removal of a person's name in the Membership Register constitutes the Association's acceptance of respectively the application for Membership or the resignation of that person as Member;

3.3 Any person reflected in the records of the Deeds Office concerned as the registered owner of any land or erf or unit in the Estate shall be deemed to be the Homeowner of such land or erf or unit.

3.4 Where any land or erf or unit is owned by more than one person, all the registered owners of that land or erf or unit shall together be deemed to be one Member of the Association.

3.5 The Homeowner of land or erf or unit may not resign as a Member of the Association if the Homeowner is still registered as the registered owner in the Deeds Office records of any land or erf or unit in the Estate.

3.6 The rights and obligations of a Member shall not be transferable and every Member shall –

- (a) further to the best of his ability the objects and interests of the Association;
- (b) observe all Estate Conduct Rules made by the Directors of the Association,



provided that nothing contained in this MOI shall prevent a Member from temporally ceding his rights as security to a mortgagee of that member.

4. **MEMBERSHIP OF THE ASSOCIATION** [CoR 15.1E –  
**CLAUSE 2]**
- 4.1 As contemplated in item 4(1) of Schedule 1 of the Act, the Company has Members.
- 4.2 When a Member ceases to be the Homeowner of land or erf or unit, he shall *ipso facto* cease to be a Member of the Association.
- 4.3 The Developer shall, when it is no longer the Homeowner of any land or erf or unit in the Estate, cease to be a Member of the Association.
- 4.4 If the Developer, in one transaction alienates all its rights and all undeveloped land vested in it in respect of the Estate, it shall be entitled to cede to the transferee all its rights and the transferee shall be entitled to exercise all such rights.
- 4.5 The Developer may at any time abandon in whole or in part the particular rights conferred upon it during the Development Period and shall be deemed to have done so at the end of the Development Period, provided that nothing hereinbefore contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member of the Association.
- 4.6 The acquisition of Membership of the Company shall be automatic and non-renounceable by persons qualifying for it in terms of clause 3 hereof.
- 4.7 Any qualifying natural or juristic person may be a Member of the Company.
- 4.8 Each Member shall have one vote on every resolution proposed, whether on a show of hands or on a ballot.
- 4.9 If a Homeowner comprises more than 1 (one) person such persons shall nominate one of them to be the Member for the purposes of this MOI; provided that the joint owners shall be bound by the provisions of the MOI, jointly and severally as if they were Members. Such nomination shall be made in writing to the Association within 7 (seven) days of such joint owners becoming Homeowners;
- 4.10 The Board of Directors may from time to time prescribe the amounts of any contributions or levies payable by Members and the periods covered thereby.
- 4.11 The obligation of the Member to pay a levy shall cease upon the Member ceasing to be a Member, save that he shall remain liable for the full outstanding debit amount on his account on the date that he ceases to be a Member.
- 4.12 A Member shall be obliged to pay interest on any amount not paid on the due date at the annual interest rate allowed in terms of applicable legislation

calculated on the debit balance on the Member's account from the due date until the date that the arrear amounts have been paid in full to the Company.

- 4.13 If any Member fails to make payment on the due date of levies and/or other amounts payable by such Member including interest, the Company may give notice to such Member requiring him to remedy such failure within such period as the Directors may determine and should he fail to make such payments, the Member will be liable for and shall pay all legal costs on the scale as between attorney and own client, including tracing fees and collection commission.

## 5. **RIGHTS PRIVILEGES AND OBLIGATIONS OF MEMBERS**

- 5.1 Subject to the rights of Membership as prescribed by the Act, Membership of the Association shall confer upon Members, unless otherwise stipulated, the following rights:

- (a) the right to receive copies of the annual financial statements of the Association; **[CoR 15.1 E – Clause 2.2]**
- (b) the right to vote, either personally or by ballot, at all general meetings of the Association in accordance with and subject to the provisions of this MOI;
- (c) the right to receive notices of, attend and speak at all general meetings of the Association, in accordance with the provisions of this MOI; and
- (d) should Members holding between them, in aggregate, not less than 25% (twenty five per centum) of the voting rights in the Association, collectively so decide, the right to convene a general meeting. **[ CoR 15.1 E – Clause 3.2]**
- (e) the right to vote upon the Company's winding-up, deregistration or dissolution.

- 5.2 The right to access and use of the Common Facilities on the Company Owned Property, in accordance with the Estate Conduct Rules;

- 5.3 No Member shall (unless otherwise determined by the Directors) be entitled to any of the privileges of Membership until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the Company.

## 6. **ISSUE OF CERTIFICATE**

The Directors may by regulation, provide for the issue of a Membership Certificate, which certificate shall be in such form as may be prescribed by the Directors.

**7. CESSATION OF MEMBERSHIP**

- 7.1 No Member ceasing to be a Member of the Association for any reason shall (nor shall any such Members, their executors, curators, trustees or liquidators) have any claim upon or interest or right to the funds or other property of the Association.
- 7.2 The Association may claim from any Member or his estate any arrears of levy and interest or other sums due from him to the Association at the time of his ceasing to be a Member.

**8. MAIN BUSINESS AND OBJECTS OF THE ASSOCIATION [CoR 15.1E – CLAUSE 1.2]**

- 8.1 The main business and objects of the Association are the maintenance of the internal engineering services of the Estate (i.e. water, sewerage, electricity and the road and storm water sewers), as well as to promote, advance and protect the communal interests, safety and welfare of its Members with regards to the Estate. The Association will entitle its Members to share in the use of and benefit from recreational facilities, security facilities, parking facilities, open areas and other common areas and facilities on a common basis, and to share the costs incurred in keeping, repairing and maintaining the Common Facilities as a common expense and generally to regulate and control access to and the use of the Common Facilities.
- 8.2 In advancing its main business and objects, and without limiting the generality of its powers, the Company may do the following:
- (a) impose Membership fees and levies on the Members of the Association
  - (b) administer and enforce the Estate Conduct Rules
  - (c) manage, oversee and control access to the Estate
  - (d) maintain, repair and improve the Company Owned Property; and
  - (e) pay all rates, services charged and other taxes and/or levies charged and payable to any Local Authority in respect of the Company Owned Property and/or the employees of the Company.
- 8.3 The main business and objects of the Association shall not be amended without the written consent of the City of Johannesburg Metropolitan Municipality first having been obtained.

**9. POWERS OF THE COMPANY [CoR 15.1E – CLAUSE 1.2]**

- 9.1 The specific powers or part of any powers of the Company which are excluded from the plenary powers set out in the Act are :-

- (a) The power to distribute *in specie* or in kind any of its assets among its Members, Directors, Incorporators or persons appointing Directors, save in terms of clause 9.2;
  - (b) The power to form and have an interest in other Companies;
  - (c) The power to amalgamate with other Companies;
  - (d) The power to participate in the management or control of other Companies;
  - (e) The power to make donations.
- 9.2 The specific powers or part of any specific powers of the Company which are qualified or modified are as follows :-
- (a) The power to remunerate any person for services rendered is modified to read :  
  
*“to remunerate any person or persons in cash or otherwise for services rendered in its formation or in the development of its business, or in terms of Item 1(3) of Schedule 1 to the Act”;*
- 9.3 The general powers of the Company are limited, as set out in Items 1(3) and 1(4) of Schedule 1 of the Act.
- 10. AMENDMENTS TO THE MOI [CoR 15.1E – SCHEDULE 1 - PART D]**
- 10.1 This MOI may be amended only by Special Resolution adopted at a Members’ meeting or in terms of a court order.
  - 10.2 This MOI contains restrictive conditions for its amendment in addition to those set out in Section 16 of the Act, as contemplated in Section 15(2)(b) or (c) of the Act and as set out in clause 59 of this MOI.
  - 10.3 Amendments to the MOI may be proposed by the Board of Directors or by Members entitled to exercise at least 10 (ten) per cent of the voting rights.
  - 10.4 The Board of Directors shall have the power to alter this MOI to the extent necessary to correct patent errors in spelling, punctuation, reference, grammar or similar defects as envisaged in section 17 of the Act. A notice of any such alteration must be posted on the Company’s web site at least 15 (fifteen) business days prior to the filing of the notice of alteration with the Commission.
- 11. ESTATE CONDUCT RULES [CoR 15.1E – CLAUSE 1.3]**
- 11.1 The Directors shall have the power to make Estate Conduct Rules from time to time as well as the power to substitute, add to, amend or repeal same, for the management, control, administration, use and enjoyment of the Estate,

for the purposes of giving proper effect to the provisions of this MOI and financial penalties to be paid by those Members who fail to comply with the provisions of this MOI or the Rules

11.2 In no way detracting from the generality of the foregoing, the Directors may from time to time make Estate Conduct Rules, applicable within the Estate, specifically in regard to:

- (a) the preservation of the natural environment;
- (b) vegetation and flora and fauna in the Estate;
- (c) the placing of movable objects upon or outside the buildings included in the Estate, including the power to remove any such objects;
- (d) the storing of flammable and other harmful substances;
- (e) the conduct of any Persons within the Estate and the prevention of nuisance of any nature to any Homeowner;
- (f) the use of land or erf or unit within the Estate;
- (g) the use of roads, pathways and other Common Facilities including appropriate traffic calming measures;
- (h) the imposition of fines and other penalties to be paid by Members of the Association;
- (i) the management, administration, control and use of the Common Facilities;
- (j) the maintenance of all buildings, outbuildings and structures;
- (k) conditions with regard to the use and supply of electricity, water, sewerage reticulation on or about the Estate;
- (l) conditions and restrictions in respect of landscaping of land or erven and common properties;
- (m) the keeping of pets;
- (n) the use by Homeowners of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings; and
- (o) generally in regard to any other matter which the Directors from time to time considers appropriate.

11.3 For the enforcement of any of the Estate Conduct Rules made by the Directors in terms hereof, the Directors may –

- (a) take or cause to be taken such steps as they may consider necessary to remedy the breach of the Estate Conduct Rules of which the

Member may be guilty, and debit the cost of so doing to the Member concerned, which amount shall then be deemed to be a debt owing by the Member concerned to the Association; and/or

- (b) impose a system of fines and other penalties. The amounts of such fines shall be reviewed and confirmed at each Annual General Meeting of the Association; and/or
- (c) take such other action including proceedings in court, as they may deem fit.

- 11.4 In the event of any breach of the Estate Conduct Rules by the Members of any Member's household, or his guests, or lessees, such breach shall be deemed to have been committed by the Member himself, but without prejudice to the foregoing. The Directors may take or cause to be taken such steps against the person actually committing the breach as they in their discretion may deem fit.
- 11.5 In the event of any Member disputing the fact that he has committed a breach of any of the Estate Conduct Rules aforesaid, a committee of 2 (two) Directors appointed by the Chairperson for the purpose, shall adjudicate upon the issue at such time and in such manner and according to such procedure (provided that natural justice shall be observed) as the Chairperson may direct. Any fine imposed upon any Member shall be deemed to be a debt due by the Member to the Association and shall be recoverable by ordinary civil process.
- 11.6 Notwithstanding the foregoing, the Directors may in the name of the Association enforce the provisions of any Estate Conduct Rules by civil application or action in a court of competent jurisdiction and for this purpose may appoint such attorneys and counsel as they may deem fit. The Association shall be entitled to recover all such legal costs from such Member on an attorney and own client scale including the costs of counsel on the highest scale, in full, whether or not legal action is actually instituted.
- 11.7 It shall be the duty of the Estate Manager, or such other person or body as may be empowered by the Directors, to ensure compliance by the Members with the Estate Conduct Rules, and to this end to issue such notices or fines or do such things as may be necessary or requisite.
- 11.8 Each Member undertakes to the Association that he shall comply with any Estate Conduct Rules made.
- 11.9 The Estate Conduct Rules may not be amended in any way during the Development Period, without the prior written consent of the Developer.
- 11.10 If any conflict should arise between the content of this MOI and the content of the Estate Conduct Rules, this MOI shall prevail;

- 11.11 Any Rules made by the Directors shall be reasonable and shall be in the interest of the Association and the Estate.
- 11.12 Any Estate Conduct Rule that has taken effect as contemplated in 11.1 above will remain binding on an interim basis until put to a vote at the next general meeting of the Members of the Company and will become permanently binding if ratified by an ordinary resolution

## 12. **GOVERNANCE RULES**

- 12.1 Subject to clause 12.4 below, the Board of Directors will have the authority to make any necessary or incidental Governance Rules for the governance of the Company in respect of matters not addressed in the Act or in this MOI, and to amend or repeal any such rules.
- 12.2 The Board of Directors must publish any proposed Governance Rules to be made in terms of clause 12.1 above by publishing it on its web site or delivering a copy of their proposed Governance rule to each Member by ordinary mail.
- 12.3 Subject to clause 12.4 below, any Governance Rule proposed by the Board of Directors will take effect 20 (twenty) business days after publication as set out in clause 12.2 above or on the later date specified in the Governance Rule.
- 12.4 Any Governance Rule proposed by the Board of Directors will not take effect, and may not be filed with the Commission, if written objections by holders of 25% (twenty five) per cent or more of the voting rights are received by the Board of Directors within 20 (twenty) business days after publication as set out in clause 12.2 above.
- 12.5 Any Governance Rule that has taken effect as contemplated in clause 12.3 above will remain binding on an interim basis until put to a vote at the next general meeting of the Members of the Company and will become permanently binding if ratified by an ordinary resolution.
- 12.6 If by reason of clause 12.4 above a Governance Rule does not take effect, the Board of Directors must promptly inform each Member of this result on its web site or per ordinary mail.
- 12.7 In making any Governance Rules in question the Board of Directors may determine that any other method of publication may or shall be used.

## 13. **CONDITIONS** **[COR 15.1E – SCHEDULE 1 - PART A]**

- 13.1 The special conditions which apply to the Company are –
  - (a) the income and Company Owned Property whencesoever derived shall be applied solely towards the promotion of its main business and objects and no portion thereof shall be paid or transferred,

directly or indirectly, by way of dividend, bonus or otherwise howsoever to the Members of the Company or to its holding company or subsidiary, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Company or to any Member thereof in return for any services actually rendered to the Company;

- (b) upon its winding-up, deregistration or dissolution, the assets of the Company remaining after satisfaction of all its liabilities shall be given or transferred to a public benefit organisation in South Africa approved by the Commissioner for the South African Revenue Service in terms of Section 30 of the Income Tax Act 1962, as amended, ("the ITA") and the Ninth Schedule of the ITA and which –
  - (i) is exempt from income tax and donations tax on bequests or accruals from the estates of deceased persons in favour of public benefit organisations or which are exempt from the payment of estate duty and are exempt from the payment of skills development levies in terms of the Skills Development Levies Act 1999;

**[CoR 15.1E – Schedule 1 – Parts A & B]**

- (ii) is registered, insofar as may be necessary, in terms of the Non-Profit Organisations Act 1997.

13.2 If the Members of the Company fail at or before the time of its dissolution fail to make such determination, same shall be made by the court.

14. **CALCULATION OF BUSINESS DAYS** **[CoR 15.1E – CLAUSE 1]**

When a particular number of Business Days is provided between the happening of one event and another, the number of days must be calculated by –

- 14.1 excluding the day on which the first such event occurs;
- 14.2 including the day on or by which the second event is to occur; and
- 14.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 14.1 and 14.2 respectively.

15. **FINANCIAL YEAR** **[SECTION 27 OF THE ACT]**

The financial year of the Company shall commence on the 1<sup>st</sup> of March and end on the last day of February in the subsequent year.



16. **ACCOUNTING RECORDS AND FINANCIAL STATEMENTS [SECTIONS 24 – 26 OF THE ACT]**

- 16.1 The Company shall maintain the necessary Accounting Records which shall be accessible from its Registered Office.
- 16.2 The Company shall prepare its Financial Statements in accordance with the International Financial Reporting Standards or, if it qualifies, in accordance with the International Financial Reporting Standards for Small and Medium Enterprises, as adopted by the International Accounting Standards Board of Directors or its successor body.
- 16.3 The Directors shall from time to time determine at what times and places (save in the case of Accounting Records which shall be accessible from the Registered Office) and under what conditions, subject to the requirements of the regulations published under the Act, the documents which its Members are entitled to inspect and take copies.
- 16.4 Apart from its Members and Directors, no other Person shall be entitled to inspect any of the documents of the Company unless expressly authorised by the Directors or by Ordinary Resolution.
- 16.5 The Company shall notify its Members of the availability of any annual Financial Statements of the Company, setting out the steps required to obtain a copy of those Financial Statements. If a Member or Director demands a copy of the annual Financial Statements, the Company shall make same available to such Member or Director, free of charge.

17. **MEMBERS MEETINGS** **[CoR 15.1E – CLAUSE 3.5]**

- 17.1 The Board of Directors, or any prescribed officer of the Company authorised by the Board of Directors, is entitled to call a Member's meeting at any time;
- 17.2 The Association shall hold a General Meeting in every calendar year as its Annual General Meeting.
- 17.3 The General Meeting shall be held on such date, time and place as may be determined by the Directors, and shall specify the meeting as such in the notice calling it.
- 17.4 The Annual General Meeting shall:
- (a) initially be held 18 (eighteen) months of its date of incorporation
  - (b) thereafter, once in every calendar year, but not later than 6 (six) months after the end of each financial year of the Association and not more than 15 (fifteen) months shall elapse after the holding of the last preceding annual general meeting
- 17.5 The Company shall hold a Members Meeting:-

- (a) at any time that the Board of Directors is required by the Act or this Memorandum to refer a matter to Members for decision;
  - (b) whenever required in terms of the Act to fill a vacancy on the Board of Directors;
  - (c) when demanded by Members in terms of clause 17.6 below; or
  - (d) when required by any other provision of the MOI.
- 17.6 The Board of Directors shall call a meeting of Members if written and signed demands calling for such a meeting are delivered to the Company and-
- (a) each such demand describes the specific purpose for which the meeting is proposed; and
  - (b) in aggregate, demands for substantially the same purpose are made and signed by the holders of at least 10% (ten per cent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.
- 17.7 Each Annual General Meeting of the Company contemplated in clause 17.2 shall provide for at least the following business to be transacted –
- (a) the presentation of the financial statements for the immediately preceding financial year of the Company
  - (b) the election of Directors, to the extent required by the Act or by this Memorandum
  - (c) the appointment of an Auditor for the following financial year, and
  - (d) any matters raised by the Members, with or without notice to the Company.
18. **NOTICE OF GENERAL MEETING** **[CoR 15.1 E –**  
**CLAUSE 3.4]**
- 18.1 The Annual General Meeting and any meeting called for the passing of a Special Resolution shall be called by giving not less than 15 (fifteen) days' notice in writing. Any other General Meeting shall be called by giving not less than 10 (ten) days' notice in writing.
- 18.2 Notice of the meeting shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Association in General Meeting, to such Persons as are, under this MOI, entitled to receive such notices from the Association. Provided that a meeting of the Association shall, notwithstanding the fact that it is called by the shorter notice than that specified in this clause, be deemed to have been duly called if it is so agreed by all the Members having right to attend the meeting.

19. **QUORUM** **[CoR 15.1 E –**  
**CLAUSE 3.6]**

19.1 A quorum for:

- (a) a General Meeting shall be 25% (twenty five per cent) of the Members entitled to vote, personally present or by proxy;
- (b) a General Meeting called for the passing of a Special Resolution, Members holding between them, in aggregate, not less than 40% (forty per cent) of the voting rights in the Association, present, in Person or by proxy, and entitled to vote.

19.2 If within a half-an-hour after the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved; in any other case it shall stand adjourned to a date not earlier than 5 (five) Business days and not later than 15 (fifteen) Business days after the date of the meeting and if at such adjourned meeting a quorum is not present within a half-an-hour after the time appointed for the meeting, the Members present in Person or by proxy shall be a quorum.

19.3 Where a meeting has been adjourned as aforesaid, the Association shall, upon a date not later than 2 (two) Business days after the adjournment, send written notice to each Member of the Association stating:

- (a) the date, time and place to which the meeting has been adjourned.
- (b) the grounds of adjournment.

19.4 Notwithstanding anything to the contrary provided in clause 19.1, there shall not be a quorum at any General Meeting of Members (whether ordinary or special) in the Development Period, unless the Developer is represented at such meeting, whether in person or by proxy.

19.5 Business may be transacted at any Members' Meeting only while a quorum is present.

20. **MEETINGS BY ELECTRONIC COMMUNICATION**

20.1 Any Members Meeting may be conducted entirely by electronic communication or one or Members, or proxies for Members, may participate by electronic communication in all or part of any Members' Meeting that is being held in person, so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.

20.2 Any notice of any Members Meeting at which it will be possible for Members to participate by way of electronic communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of

electronic communication, provided that such access shall be at the expense of the Member or proxy concerned.

21. **CHAIRMAN**

21.1 The Chairman, if any, of the Directors shall preside as Chairman at every General Meeting of the Association. If there is no such Chairman, or if at any meeting he is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as Chairman, the Members shall elect one of their Members to be Chairman. Notwithstanding the foregoing, during the Development Period, the Chairman shall be a nominee of the Developer.

21.2 The Chairman may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place. When a meeting is adjourned, the provisions of clauses 19.2, 19.3 and 19.4 shall *mutatis mutandis* apply to the adjourned meeting.

22. **PROXY**

22.1 The instrument appointing a proxy shall be:

- (a) under the hand of the appointer and shall be in such form as the Directors shall approve; and
- (b) deposited at the Office of the Association not less than 48 (forty eight) hours before the time for the holding of the meeting at which the Person named in such instrument purports to attend or vote pursuant thereto or in respect thereof. In default of compliance herewith the instrument shall be treated as invalid for the purpose of attending or voting at that meeting or any adjournment thereof. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date of its execution, unless the proxy otherwise provides. **[CoR 15.1 E – Clause 2.5]**

22.2 A vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation or the proxy, unless the intimation in writing of the death or revocation shall have been received at the Office or by the Chairman of the meeting before the vote is given.

22.3 If a Member is a close corporation, company, trust or other juristic person, such Member shall lodge at the Offices of the Association, a resolution authorising a particular natural Person to represent the Member generally and to exercise the Members vote on its behalf. Such resolution shall be lodged at the Offices of the Association at least 48 (forty eight) hours before

the time for the holding of any meeting at which a Member wishes to be represented and/or vote.

22.4 A proxy need not be a Member;

- (a) the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;
- (b) participants in a Members' Meeting are required to furnish satisfactory identification in terms of Section 63(1) of the Act in order to reasonably satisfy the Chairman presiding at the Members' Meeting.

### 23. **VOTING BY MEMBERS**

23.1 Each Member present at a meeting of Members of the Association, in person or by proxy, shall be entitled to 1 (one) vote in respect of every land or erf or unit of which the Member is a Homeowner.

23.2 No Member shall (unless otherwise determined by the Directors) be entitled to any of the privileges of Membership until he shall have paid every levy and interest thereon and any other amount which may be due and payable by him to the Association;

23.3 The Developer shall be entitled to:

- (a) one (1) vote for every erf or unit still owned by it in the Estate; and
- (b) an additional five (5) votes during the Development Period.

23.4 Voting shall be conducted by means of a balloted (casting a secret ballot paper) vote in respect of any matter to be voted on at a meeting of the Members if a demand is made for such a vote by –

- (a) at least 5% (five) percent of the persons having the right to vote on that matter, either as Members or as proxies representing Members; or
- (b) a person who is, or persons who together are, entitled, as Members or proxies representing Members, to exercise at least 10% (ten) per cent of the voting rights entitled to be voted on that matter; or
- (c) the Chairperson of the meeting.

23.5 At any meeting of the Company a resolution put to the vote of the meeting shall be decided on a show of hands, unless a ballot is (before or on the declaration of the result of the show of hands) demanded in accordance with provisions of clause 23.4 above and unless a ballot is so demanded, a declaration by the Chairperson that a resolution has, on show of hands, been carried or carried unanimously or by particular majority or defeated, and an entry to that effect in the book containing the minutes of the proceeding of the Company, shall be conclusive evidence of the fact, without proof of the

number or proportion of the votes recorded in favour of or against such resolution. The demand for a ballot may be withdrawn.

- 23.6 If a ballot is duly demanded, it shall be taken in such a manner as the Chairperson directs, and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. In computing the majority on the ballot, regards shall be had to the number of votes to which each Member is entitled.
- 23.7 In the case of an equality of votes, whether on a show of hands or on a ballot, the Chairperson of the meeting at which the show of hands takes place, or at which the ballot is demanded, shall not be entitled to a second or casting vote.
- 23.8 Where two or more Homeowners are regarded as one Member is envisaged in clause 3.4, they shall be counted as one Member for determining whether a quorum is present and may only exercise one vote between them at meetings of the Company, irrespective of whether voting takes place by show of hands or by ballot. If more than one of such joint holders is present at any meeting, personally or by proxy, the person so present whose name stands first in the Membership register shall alone be entitled to vote.
- 23.9 The Board of Directors of any Company or the controlling body of any other entity or person that is a Member of the Company may authorise any person to act as its representative at any meeting of Members of the Company, in which event the following will apply –
- (a) the person so authorised may exercise the same powers of the authorising company, entity or person as it could have exercised as if it were an individual Member;
  - (b) the authorising company, entity or person shall lodge a resolution of the Directors of such company or controlling body of such other entity or person confirming the granting of such authority, and certified under the hands of the chairperson or secretary thereof, with the Company before the commencement of any Members Meeting at which such person intends to exercise any rights of such Member, unless excused from doing so by the Chairperson of such meeting.

## 24. MEMBER RESOLUTIONS

- 24.1 For an **Ordinary** Resolution to be adopted at a Meeting of Members, it must be supported by the holders of more than 50 (fifty) per cent of the votes exercised on the resolution.
- 24.2 For a **Special** Resolution to be adopted at a Members Meeting, it must be supported by the holders of at least 75 (seventy five) per cent of the voting rights exercised on the resolution.

**25. WRITTEN RESOLUTIONS**

25.1 A resolution that could be voted on at a Members Meeting, including the election of Directors, may instead be -

- (a) submitted by the Board of Directors for consideration to the Members entitled to exercise the voting rights in relation to the resolution; and
- (b) voted on in writing by such Members within a period of 20 (twenty) days after the resolution was submitted to them

25.2 A resolution contemplated in clause 25.1 above –

- (a) will have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary or Special Resolution, as the case may be, at properly constituted Members' Meeting; and
- (b) if adopted, will have the same effect as if it had been approved by voting at a meeting

25.3 In addition to a resolution passed in terms of clause 25.1 above, a resolution in writing signed by all the Members entitled to vote thereon shall be as valid and effectual as if adopted at a duly convened members meeting.

25.4 Within 10 (ten) business days after adopting a resolution, or conducting an election of Directors in terms of the provision of clause 25.1 above, the Company shall deliver a statement describing the results of the vote, consent process, or election to every Member who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.

**26. INSPECTION OF MINUTES**

Minutes must be kept of every General Meeting and Annual General Meeting of the Association under the Act,

**27. DIRECTORS**

27.1 All the Directors must be Members of the Association, apart from the Director(s) representing the Developer.

27.2 The number of Directors shall be determined from time to time by Members in General Meeting subject to the following provisions:

- (a) during the Development Period, there shall be a minimum of 3 (three) and maximum of 5 (five) Directors of whom the Developer shall be entitled to appoint a majority of the Directors, after the expiry of the Development Period, there shall be a minimum of 3 (three) and maximum of 5 (five) Directors;
- (b) a retiring Director shall be eligible for re-election;

- (c) a nominee of the Developer shall be a Director for so long as the Developer does not revoke his appointment and for so long as the Developer is a Member;
- (d) save as set out in clauses 27.2(c) and 30 each Director shall continue to hold such office from the date of his commencement of office until the Annual General Meeting next following the said appointment, at which meeting each Director shall be deemed to have retired from office as such but shall be eligible for re-election to the Board of Directors of Directors at such meeting. If, as a result of retirement, resignation or otherwise, the total number of Directors falls below the prescribed number, the Directors shall act promptly to bring the number of Directors up to the required number as specified in this MOI. If the Director so retiring or resigning was a nominee of the Developer, then his successor shall be appointed by the Developer.

27.3 Any Director, with the exception of a Director appointed by the Developer, may be removed as contemplated in Section 71 of the Act. The appointment by the Board of Directors of any Director to fill any vacancy for whatever reason shall be made within 45 (forty five) calendar days of the date upon which such vacancy occurs. The Directors shall have the power to co-opt persons onto the Board of Directors for the purposes of assisting the Directors in carrying out any of their functions. The Board of Directors has the authority to fill any vacancy on the Board of Directors on a temporary basis, as set out in section 70 of the Act.

## 28. **ALTERNATE DIRECTORS**

Any Director may for any reason, and at or for any time, appoint an alternate. Any Director may obtain leave of absence by a resolution of the majority of the Directors, and the Directors may thereupon appoint an alternate to act for him during his absence with all powers and privileges enjoyed by him. The appointment of such alternate shall not, however, be valid unless confirmed by a resolution of Directors present at the meeting. No Alternate Director shall be entitled to appoint any Person as an Alternate Director to himself/herself.

## 29. **POWERS AND DUTIES OF DIRECTORS [CoR 15.1 E – SCHEDULE 4 – PARTS A-H]**

29.1 The business of the Association shall be managed by the Directors who may on behalf of the Association pay all expenses incurred in promoting and incorporating the Association, and may exercise all such powers of the Association as are not required by the Act, or by this MOI, to be exercised by the Association in general meeting.

29.2 Without in any way affecting the generality clause 29.1, the Directors shall have the power to enter into contracts and agreements with third parties to give proper effect to the provisions of this MOI. The Directors may, pursuant to their rights, obligations and duties in terms of this Memorandum, incur



such expenditure as is necessary to enable them to give proper effect to the provisions of this MOI. After the termination of the Development Period, the Association in General Meeting shall have the right to limit and restrict the powers of the Directors, provided that no resolution of the Association shall invalidate any prior act of the Directors which would otherwise have been valid.

29.3 The Board of Directors may from time to time appoint one or more of the Directors to the office of Managing Director (provided always that the number of Directors so appointed as Managing Director or joint Managing Directors and/or the holders of any other executive office including a Chairperson who holds an executive office but not a Chairperson who is a non-executive Director shall at all times be less than  $\frac{1}{2}$  (one half) of the number of Directors in office) for such period and at such remuneration (by way of salary or commission, or participation in profits or partly in one way and partly in another but at a level of total remuneration no more than median of the market related remuneration for an equivalent role as determined by a third party expert relying on actual South African labour market data).

30. **DISQUALIFICATION OR RESIGNATION OF DIRECTORS OR ALTERNATE DIRECTORS**

30.1 The Office of Directors shall be vacated if the Director:

- (a) ceases to be a Member; or
- (b) ceases to be a Director by effluxion of the period of appointment, or becomes prohibited from being a Director due to any provision of the Act or this MOI; or
- (c) resigns his office by notice in writing to the Association and the Registrar; or
- (d) becomes insolvent or assigns his estate for the benefit of, or compounds with his prior leave of absence; or
- (e) is found to be a lunatic or of unsound mind; or
- (f) is absent for 3 (three) consecutive regular meetings of the Directors without obtaining prior leave of absence; or
- (g) in the case of a Director appointed by the Developer, on the Developer revoking his appointment (**subject to Section 71 of the Act**); or
- (h) is ineligible or disqualified in terms of the Act; or
- (i) when he/she dies; or
- (j) he/she removed by Ordinary Resolution (**subject to Section 71 of the Act**).

30.2 All the elected Directors shall retire each year immediately before the Annual General Meeting and shall be replaced thereat. Such retiring Directors shall be eligible for re-election.

**31. PROCEEDING AT MEETING OF DIRECTORS [CoR 15.1 E –  
CLAUSE 4.3]**

**(Section 73 of the Act)**

31.1 The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

31.2 A Director may, on 14 (fourteen) calendar days' written notice to all other Directors, at any time, summon a meeting of the Directors.

31.3 The quorum necessary for the transaction of the business of the Directors shall be a majority of Directors holding Office at that time provided that there shall be no quorum of Directors unless, during the Development Period, a majority of Directors present are appointees of the Developer.

31.4 If at a meeting neither the Chairman nor the Deputy Chairman is present within 10 (ten) minutes after the time appointed for holding the same, the Directors present may choose one of their number to be Chairman for that meeting.

31.5 Questions arising at any meeting of the Directors shall be decided by a majority of votes of the Directors, present in person or by an Alternate. Each Director shall be entitled to exercise 1 (one) vote, provided that during the Development Period, no resolution of Directors shall be carried unless at least one nominee of the Developer votes in favour of such resolution. Where a Person is an Alternate Director to more than one Director, or where an Alternate Director is also a Director in his personal capacity, he shall have a separate vote on behalf of each of the Directors he is representing. A meeting of Directors may be conducted by Electronic Communication and/or one or more Directors may participate in a meeting of Directors by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

31.6 All acts done in terms of any resolution passed at any meeting of the Directors or a committee of Directors or by any Person acting as a Director, notwithstanding that it may afterwards be discovered that there was some defect in their acting as aforesaid or that they or any of them were disqualified so to act, shall be as valid as if any such Person acting as Director in a meeting of Directors or a committee of Directors has been duly appointed and had qualified to be a Director.

31.7 The Directors may delegate any of their powers to committees consisting of such Persons as they think fit, the Chairman of which committees may be

appointed by the Directors. Any committee so formed shall be in an advisory capacity to the Directors and shall report to and be responsible to the Directors and in the exercise of the powers so delegated, conform to the Rules that may be imposed on it by the Directors.

- 31.8 Should the Directors not appoint the Chairman of a committee, the Members of that committee shall elect a Chairman of its meetings. If at any meetings the Chairman is not present within 10 (ten) minutes after the time appointed for holding the same, the committee Members present may elect one of their number to be Chairman for that meeting.
- 31.9 A committee may meet and adjourn as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the committee Members present. No Director shall be liable for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same happened through his own wilful misconduct or breach of trust, or for acting without proper authority from the Association or undertaking an act prohibited by the Act, or for perpetuating a fraudulent act.
- 31.10 The Company must keep minutes of the meetings of the Board of Directors, and any of its committees, and include in the minutes –
- (a) any declaration given by notice or made by a Director as required by clause 38 (*Personal Financial Interests of Directors*); and
  - (b) every resolution adopted by the Board of Directors.
- 31.11 Resolutions adopted by the Board of Directors —
- (a) must be dated and sequentially numbered; and
  - (b) are effective as of the date of the resolution, unless the resolution states otherwise.
- 31.12 Any minutes of a meeting, or a resolution, signed by the chair of the meeting, or by the chair of the next meeting of the Board of Directors, are/is evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.
- 31.13 A Round Robin Resolution of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted, provided that each Director in South Africa has received notice of the matter to be decided upon. An Alternate Director shall be entitled to sign a Round Robin Resolution if one or more Directors are not present in South Africa to sign and without his/their vote/s the requisite majority cannot be achieved.
- 31.14 Should there be an equality of votes in respect of any matter for decision by the Board, then the matter will fail and be referred to the Members for decision at a special general meeting of the Members called for such purpose.

32. **DELEGATION OF POWERS OF DIRECTORS** [CoR 15.1  
**E – CLAUSE 4.5]**

The Directors may from time to time entrust to and confer upon the Estate Manager, or any other designated official of the Association or consultant or any other Person or firm, for the time being, such of the powers and authorities vested in it as it may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and subject to such terms and conditions and restrictions as it may think expedient, and they may confer such powers and authorities either collaterally or to the exclusion of, or in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

33. **ASSIGNMENT OF POWERS AND FUNCTIONS**

The Association shall have all powers as are reasonably required by it for purposes of carrying out its functions. Without limiting the generality of the foregoing the Association shall perform such functions and have such powers as are conferred upon a body corporate in terms of Section 37 and 38 of the Sectional Titles Act No. 95 of 1986, as amended.

34. **LEVY FUND**

34.1 The Directors shall establish and maintain a levy fund sufficient in their opinion for the repair, upkeep, control, management and administration of the Association and of the Estate including the provision of security services for the Estate, garden maintenance services, insurance premiums, the payment of rates and taxes and other charges on the Estate levied by the local or any other authority, any charges for the supply of electrical current, gas, water and sewage disposal, refuse collection and any other Services to the Estate and other Services required by the Association to enable it to carry out its main and ancillary objects, for the covering of any losses suffered by the Association for the payment of any premiums of insurance and of all other expenses incurred or to be incurred in relation to the Estate and for the discharge of any other obligations of the Association (provided that nothing in this MOI shall be construed as obliging the Association to pay service charges due by Homeowners to the relevant authority).

34.2 All levies due by Members shall be payable, monthly in advance, to the Association immediately same becomes due and owing without deduction, demand or set-off.

34.3 No Member shall be entitled to withhold payment for any reason whatsoever of any levy or special levy or contribution due by him to the Association while pending resolution of a dispute.

34.4 The Members shall make contributions towards the levy fund in terms of clause 34.1 in equal proportions.

- 34.5 Levies shall be payable in respect of all land or erf or unit whether or not they have been developed with the construction of a building thereon.
- 34.6 It is expressly recorded that the Developer shall not be required to pay any levies, other than levies on account of the land which the Developer retains for personal use and which is not hold for sale.
- 34.7 All contributions received from Members shall forthwith be deposited in a separate account which the Association shall open and keep with a financial institution.
- 34.8 The monies in the levy fund shall be utilised to defray the expenses referred to in clause 34.1 above.
- 34.9 Notwithstanding any Person ceasing to be a Member, all levies attributable to any period whilst such Person was a Member, shall continue to be of full force and effect and recoverable from such Person.
- 34.10 Any amount due by a Member whether in respect of a levy or any other amount falling due for payment under this MOI, which remains unpaid after same has fallen due, shall bear interest as from the due date for payment to the date of actual payment at a rate of interest determined from time to time by the Directors and such interest shall be calculated daily and compounded monthly.
- 34.11 The Directors shall have the power to impose additional special levies on Members in respect of any unforeseen expenditure or expenditure that is not been budgeted for and/or if, in the discretion of the Directors, budgeted income of the Association will be insufficient to discharge the liabilities of the Association (whether unforeseen or not) and shall determine how such levies are to be paid.
- 34.12 A Member shall not be entitled to demand repayment of any amount standing to the credit of his levy account.
- 34.13 All contributions levied under the provisions of this MOI shall be due and payable by Members on the passing of a resolution to that effect by the Directors and may be recovered by the Association by action in any Court (including any Magistrates' Court) of competent jurisdiction from the Persons who were Members at the time when such contributions became due. The Association shall be entitled to recover all expenses and charges incurred in the recovery of arrear levies and associated charges on the attorney and own client scale including costs of counsel on the highest scale.
- 34.14 Should a Member be more than 30 (thirty) days in arrears with the payment of any levies or any other amount of any nature whatsoever due to the Association by such Member (including but not limited to any fine that may be imposed by the Association on any such Member) and remain in arrears notwithstanding demand for payment by the Association, then in that event such Member shall not be entitled either in Person or by proxy to speak or

vote at a meeting of Members of the Association. A letter addressed to the Chairman of any such meeting by the Chairman of the Directors dated not more than 14 (fourteen) calendar days prior to any such meeting shall constitute proof of non-payment of any arrear levies by such Member and shall entitle the Chairman of such meeting of the Members of the Association to prevent such Member or his proxy speaking or voting at such meeting (even if payment is made by such Member before such meeting but subsequent to the aforesaid letter having been signed by the Chairman).

34.15 In the event of there being a dispute as to the amount of any levy due by the Member, such dispute shall be referred to the Auditors for a decision, whose decision shall be final and binding on the parties.

34.16 The Directors may create a levy stabilisation fund to supplement any levies paid by Member in terms of this clause 34. Such levy stabilisation fund shall be funded in such manner as may be determined by the Directors from time to time.

35. **APPROPRIATION**

The Directors shall give the appointed Estate Manager or agent the right, in its sole and absolute discretion when receiving payment of any monies from a Member and notwithstanding any direction given by such Member as to which indebtedness of the Member to the Association such payment is to be appropriated, to appropriate and/or re-appropriate such payment/s received, to any indebtedness whatsoever of the Member to the Association, owing for the time being.

36. **BOARD COMMITTEES** **[CoR 15.1E – SCHEDULE 4 – PART H]**

36.1 The Directors may appoint any number of Board Committees and delegate to such committees any authority of the Board of Directors. The Members of such committees may include Persons who are not Directors as long as they are not Ineligible or Disqualified to be Directors.

36.2 No Person shall be appointed as a Member of a Board Committee, if she/he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a Member of a Board Committee nor act as such a Member. A Person placed under probation by a court must not serve as a Member of a Board Committee unless the order of court so permits.

36.3 There are no general qualifications prescribed by the Company for a Person to serve as a Member of a Board Committee in addition to the requirements of the Act.

36.4 A Member of a Board Committee shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Act.

36.5 Committees of the Board may consult with or receive advice from any person.

36.6 Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) Member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

37. **REMUNERATION OF DIRECTORS AND ALTERNATE DIRECTORS AND MEMBERS OF BOARD COMMITTEES** [SECTIONS 66(8) AND (9) OF THE ACT]

The Directors or Alternate Directors or Members of Board Committees shall not be entitled to any remuneration for their services as Directors or Alternate Directors or Members of Board Committees as may have been determined from time to time.

38. **PERSONAL FINANCIAL INTERESTS OF DIRECTOR** [SECTION 75 OF THE ACT]

38.1 For the purposes of this clause 38 (*Personal Financial Interests of Directors*), "Director" includes an Alternate Director, a Prescribed Officer, and a person who is a Member of a committee of the Board, irrespective of whether or not the Person is also a Member of the Board of Directors.

38.2 A Person may not --

- (a) approve or enter into any agreement in which that Person or a Related Person has a Personal Financial Interest; or
- (b) as a Director, determine any other matter in which that Person or a Related Person has a Personal Financial Interest,

unless the agreement or determination is approved by an Ordinary Resolution of Members after the Director has disclosed the nature and extent of that Personal Financial Interest to those entitled to vote on such Ordinary Resolution.

38.3 At any time, a Director may disclose any Personal Financial Interest in advance, by delivering to the Board of Directors, or Members a notice in Writing setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

38.4 If a Director has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Directors, or Knows that a Related Person has a Personal Financial Interest in the matter, the Director –

- (a) must disclose the Personal Financial Interest and its general nature before the matter is considered at the meeting;

- (b) must disclose to the meeting any material information relating to the matter, and known to the Director;
- (c) may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;
- (d) if present at the meeting, must leave the meeting immediately after making any disclosure contemplated in clauses 38.4(b) and 38.4(c);
- (e) must not take part in the consideration of the matter, except to the extent contemplated in clauses 38.4(b) and 38.4(c);
- (f) while absent from the meeting in terms of clause 38.4(d):
  - (i) is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute a quorum; and
  - (ii) is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and
  - (iii) must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board of Directors.

38.5 If a Director acquires a Personal Financial Interest in an agreement or other matter in which the Company has a material interest, or knows that a Related Person has acquired a Personal Financial Interest in the matter, after the agreement or other matter has been approved by the Company, the Director must promptly disclose to the Board of Directors, or to the Holders entitled to vote, the nature and extent of that Personal Financial Interest, and the material circumstances relating to the Director or Related Person's acquisition of that Personal Financial Interest.

38.6 A decision by the Board of Directors, or a transaction or agreement approved by the Board of Directors, or by the Members, is valid despite any Personal Financial Interest of a Director or Person Related to the Director, only if --

- (a) it was approved following the disclosure of the Personal Financial Interest in the manner contemplated in this clause 38; or
- (b) despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by a court.



39. **PRESCRIBED OFFICERS** **[SECTION 77 OF THE ACT]**

39.1 No Person shall hold office as a Prescribed Officer, if she/he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in her/him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

39.2 A Prescribed Officer shall cease to hold office as such immediately she/he becomes Ineligible or Disqualified in terms of the Act.

40. **APPOINTMENT OF SECRETARY**

The Directors may appoint any suitably qualified person or company as the secretary of the Company from time to time.

41. **NOTICES**

41.1 The Company may give notices, documents, records or statements or notices of availability of the foregoing by personal delivery to the Member or by sending them prepaid through the post or by transmitting them electronically fax or email.

41.2 Any Member who/which has furnished an Electronic Address to the Company, by doing so –

(a) authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the foregoing to her/him/it; and

(b) confirms that same can conveniently be printed by the Member within a reasonable time and at a reasonable cost.

41.3 Any notice, document, record or statement or notice of availability of the foregoing sent by the Company shall be deemed to have been delivered on the date and time determined in accordance with Schedule 3.

41.4 A Member shall be bound by every notice Delivered to the Person who was, at the date on which that notice was Delivered or established to the satisfaction of the Directors (as the case may be) as the Member, notwithstanding that the Member may then have been dead or may subsequently have died or have been or become otherwise incapable of acting as a Member.

41.5 The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the foregoing, contemplated in the Regulations in respect of which provision is made for

deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the foregoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 14 (*Calculation of Business Days*)), the provisions of clause 14 (*Calculation of Business Days*) shall also be applied.

41.6 As regards the signature of an Electronic Communication by a Member, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Member indicating in the Electronic Communication that it is the Member's intention to use the Electronic Communication as the medium to indicate the Member's approval of the information in, or the Member's signature of the document in or attached to, the Electronic Communication which contains the name of the Member sending it in the body of the Electronic Communication.

42. **INDEMNITY** **[SECTION 78 OF THE ACT]**  
**THE ACT]**

42.1 For the purposes of this clause 42 (*Indemnity*), "Director" includes a former Director, an Alternate Director, a Prescribed Officer, a person who is a Member of a committee of the Board, irrespective of whether or not the person is also a Member of the Board of Directors.

42.2 The Company may –

- (a) not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation;
- (b) advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company; and
- (c) directly or indirectly indemnify a Director for –
  - (i) any liability, other than in respect of –
    - (1) any liability arising in terms of Section 77(3)(a), (b) or (c) of the Companies Act or from wilful misconduct or wilful breach of trust on the part of the Director; or
    - (2) any fine contemplated in clause 42.2(a);
  - (ii) any expenses contemplated in clause 42.2(b) irrespective of whether it has advanced those expenses, if the proceedings –
    - (1) are abandoned or exculpate the Director; or

- (2) arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 42.2(c)(i).

42.3 The Company may purchase insurance to protect —

- (a) a Director against any liability or expenses contemplated in clause 42.2(b) or 42.2(c); or
- (b) the Company against any contingency including but not limited to —
  - (i) any expenses –
    - (1) that the Company is permitted to advance in accordance with clause 42.2(b); or
    - (2) for which the Company is permitted to indemnify a Director in accordance with clause 42.2(c)(ii); or
  - (ii) any liability for which the Company is permitted to indemnify a Director in accordance with clause 42.2(c)(i).

42.4 The Company is entitled to claim restitution from a Director or of a related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with Section 78(8) of the Companies Act.

#### 43. **FINANCE COMMITTEE AND LEVIES**

43.1 There shall be established a finance committee which shall consist of the Estate Manager and 1 (one) Director appointed by the Board of Directors, provided that during the Development Period the Director appointed to the finance committee shall be nominated by the Developer.

43.2 The finance committee shall from time to time, make levies upon the Members for the purpose of meeting all the expenses which the Association has incurred, or to which the finance committee reasonably anticipate the Association will be put by way of maintenance, repair, improvement and keeping in good order and condition of the roads, open space and services, and/or the exterior of any buildings, structures, erections and other improvements in the Estate and/or for payment of all rates and other charges payable by the Association in respect of the land or erven vested in it and/or for the services rendered to it, and/or for payment of the salaries and/or wages of the employees of the Association and generally for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, the Estate, and the Association's affairs.

43.3 The finance committee shall not less than 30 (thirty) days prior to the end of each financial year, prepare and serve upon every Member at the address chosen by him an estimate in reasonable detail of the amount which shall be required by the Association to meet the expenses during the following

financial year, and shall specify separately such estimated deficiency, if any, as shall result from the preceding year. The finance committee may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature.

- 43.4 Each notice to each Member shall specify the contribution payable by that Member to such expenses and reserve fund.
- 43.5 Every levy shall be payable in equal monthly instalments due in advance on the first day of each and every month of each financial year.
- 43.6 In the event of the finance committee for any reason whatsoever failing to prepare and serve the estimate referred to in clause 43.3 timeously, every Member shall until service of such estimate as aforesaid continue to pay the levy previously imposed and shall after such service pay such levy as may be specified in the notice referred to in clauses 43.3 and 43.4.
- 43.7 In calculating the levy payable by any Member, the finance committee shall as far as reasonably practical –
- (a) determine levies by dividing the total operating expenses incurred by the Association by the total number of erven in the Estate, during the Development Period, the land which remains registered in the name of the Developer, other than the land which the Developer will retain for its personal use and which is not held for sale, will be excluded from the calculation of the total land area proclaimed for residential use in the Estate;
  - (b) levies are payable either from the date of transfer or from the date of possession of proclaimed land, whichever is the earlier;
  - (c) levies not paid within 30 days of invoice will be handed over for collection.

#### 44. **SPECIAL LEVIES**

- 44.1 The finance committee may from time to time make special levies upon the Members in respect of all such expenses as are mentioned in clause 43.2, and the finance committee may in imposing such levies further determine the terms of payment thereof.
- 44.2 No Member shall be entitled to any of the privileges of Membership unless and until he shall have paid every levy, interest thereon in terms of clause 45.1, and any other sum (if any) which may be due and payable to the Association, from whatsoever cause arising.

#### 45. **INTEREST ON ARREAR LEVIES**

- 45.1 The finance committee shall be empowered, in addition to such other rights as the Association may have in law as against its Members, to determine the rate of interest from time to time chargeable upon arrear levies, provided that

such rate of interest shall not exceed the maximum rate laid down in terms of the National Credit Act 34 of 2005, as amended.

- 45.2 Any amount due by a Member by way of a levy and interest shall be a debt due by him to the Association. The obligation of a Member to pay a levy and interest shall cease upon his ceasing to be a Member without prejudice to the Association's right to recover arrear levies and interest. No levies or interest paid by a Member shall under any circumstances be repayable by the Association upon his ceasing to be a Member. A Member's successor-in-title to land or erf or unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of that unit, to pay the levy and interest thereon attributable to that land or erf or unit.

46. **ACCOUNTING RECORDS** **[SECTION 24 – 26 OF THE ACT]**

- 46.1 The Directors shall cause such accounting records as are prescribed by the Act to be kept. Accounting records shall be deemed to be proper if they represent fairly the state of affairs and business of the Association.

- 46.2 The accounting records shall be kept at the registered Office of the Association or at such other place or places that the Directors think fit, and shall always be open to inspection by the Members.

47. **ANNUAL FINANCIAL STATEMENTS** **[SECTION 24-26 OF THE ACT]**

- 47.1 The Directors shall from time to time, in accordance with the Act, cause to be prepared and laid before the Association in General Meeting such financial statements as are prescribed by the Act.

- 47.2 A copy of any annual financial statements which are to be laid before the Association in Annual General Meeting shall, not less than 15 (fifteen) business days before the date of the meeting, be sent to every Member of the Association. Provided that this Clause shall not require a copy of those documents to be sent to any Person of whose address the Association is not aware.

48. **AUDITOR** **[CoR 15.1 E – CLAUSE 4.5]**

The Company elects to comply voluntarily with the Act's requirements and therefore appoints an auditor who shall audit the annual financial statements of the Company as contemplated in section 30(2)(b)(ii)(aa) of the Act, unless the Members pass an Ordinary Resolution altering this provision.

49. **NOTICES AND DOMICILIUM ADDRESS** **[CoR 15.1 E – CLAUSE 3]**

- 49.1 A notice may be given by the Association to any Member either by advertisement (which will only be allowed if all other methods of service have

failed) or personally, or by sending it by registered post by prepaid letter addressed to such Member at his registered address, or if he has no registered address in the Republic at the address (if any) within the Republic supplied by him to the Association for the giving of notices to him. Any notice which may be given by advertisement shall be inserted in such newspaper as the Directors may from time to time determine.

- 49.2 A notice may be given by the Association to a Member and/or the Developer personally or by sending it by registered post by pre-paid letter addressed to the Member and/or the Developer at such address as the Member and/or the Developer may from time to time notify the Association in writing:
- 49.3 Notice of every General Meeting shall be given in any manner authorised:
- (a) to every Member of the Association. If a Member has not supplied the Association with an address within the Republic of South Africa for the service of notice by hand or by registered post, then it shall be considered sufficient for the Association to serve the notice at the address of the land or erf or unit owned by the Member;
  - (b) to the auditor for the time being of the Association.
- 49.4 No other Person shall be entitled to receive notice of general meetings.
- 49.5 Any notice by registered post shall be deemed to have been served at the time when the letter containing the same was posted, and any notice by advertisement shall be deemed to have been given on the day upon which the advertisement was published in the newspaper, and in providing the giving of the notice by registered post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 49.6 The failure to give to any Member or the failure of any Member to receive a notice shall not vitiate any proceedings of the Association.
- 49.7 The *domicilium citandi et executandi* of each Member or Director shall be the address of the land or erf or unit registered in his name within the Estate: provided that such Homeowner shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be a physical address situated in the Republic (which shall not be a PO Box or Postnet Suite address) and that the change shall only be effective on receipt of written notice thereof by the Association at its domicilium.
- 49.8 It is accepted therefore that the domicilium address provided will be the address at which the Homeowner agrees to accept service of all court processes for the purpose of matters arising between the Association and the Owner.

50. **WINDING-UP, DEREGISTRATION OR DISSOLUTION OF THE ASSOCIATION [CoR 15.1 E – CLAUSE 1.2 READ WITH SCHEDULE 1]**

50.1 The Winding-up, deregistration or dissolution of the Company may only be authorised by

- (a) a Special Resolution of the Members; and
- (b) [and with the written consent by the City of Johannesburg Metropolitan Municipality]

and if no authorisation is forthcoming, by the court.

50.2 In the event of the Association being wound up, its net value shall devolve upon such other non-profit companies or registered external non-profit companies carrying on activities within the republic or voluntary associations or non-profit trusts, provided that such entities have aims and objectives similar to those of the Association. No past or present Member or Director of this Association or person appointing a Director of this Association, is entitled to any part of the net value of the Association, after its obligations and liabilities have been satisfied.

51. **CAPITAL ITEMS**

The Directors of the finance committee shall not be entitled to undertake on behalf of the Association any works of a capital nature, without the sanction of a Special Resolution of the Association in general meeting.

52. **RIGHT OF WAY SERVITUDES**

The Association shall be entitled to register any servitudes, required by the Local Authority, to ensure access to any land or erf or unit within the Estate. A Member shall sign any documents required to ensure registration of a servitude over the property registered in his name should such servitude be required by the Local Authority in terms of the Town Planning Scheme or amendment thereof.

53. **RESTRICTION ON ALIENATION**

53.1 A Member shall not in any manner alienate land or erf or unit unless it is a condition of the agreement of alienation that -

- (a) the proposed transferee has bound himself, to the satisfaction of the Association, as a contract for the benefit of the Association, to become a Member of the Association, upon transfer of the land or erf or unit to him;
- (b) the registration of transfer of that land or erf or unit into the name of that transferee shall *ipso facto* constitute the transferee as a Member of the Association.

53.2 The provisions of clause 53.1 shall apply *mutatis mutandis* to any alienation of an undivided share in land or erf or unit.

54. **GENERAL**

54.1 The Association may at its pleasure permit the Members subject to the provisions of this MOI to use the open space and roads, and shall do so unless by Special Resolution taken at an extraordinary General Meeting called for the purpose, it is otherwise resolved.

54.2 The Directors may from time to time and whenever they deem it necessary, limit, restrict, or suspend such use in relation to any part of such roads and open space.

54.3 The Directors shall take such measures as are necessary to ensure that the general public, with the exception of Members, their guests, lessees, and Members of their families and such other persons as the Directors may reasonably permit, are excluded from the scheme or township. No resolution to alter the terms of this MOI shall be taken unless simultaneously with the taking of such resolution, a resolution is taken to widen and reconstruct the roads to such specification as may comply with the standard requirements of the Local Authority.

54.4 No resolution for the winding-up of the Association and the transfer of its assets shall be taken unless the Association shall have made adequate provision for the rights of Members to obtain access to their erven or units and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.

55. **THE ESTATE HOMEOWNERS ASSOCIATION**

55.1 In the event of the destruction of any building, or unit, and the Homeowner thereof deciding to rebuild such building, unit, the plans for such rebuilding shall prior to such rebuilding taking place, be submitted to the Association, which shall within 21 (twenty one) calendar days of such submission to it, submit any comments which it may have in connection therewith to the Local Authority.

55.2 Nothing contained above shall be construed as preventing the Developer from -

- (a) building upon any land or erven owned by it, any buildings of whatsoever nature which it may be entitled to erect in terms of the Town Planning Scheme, and as may be approved by the Local Authority;
- (b) erecting upon the land owned by the Association such improvements as may be permitted in terms of the Town Planning Scheme and approved by the Local Authority.



**56. CONDITIONS OF SUBDIVISION**

- 56.1 The access portion shall be transferred by the Developer to the Company (free of any consideration) and shall not be sold or transferred to any other person/entity and shall not be mortgaged.
- 56.2 The Company shall undertake not to submit an application to rezone the access portion.
- 56.3 Each and every Homeowner of a land or erf or unit in the Estate shall have free access over the access portion to afford them access to a public road.
- 56.4 The Municipal Owned Entities and emergency services of the City of Johannesburg Metropolitan Municipality are guaranteed 24 hour access to the access portion to maintain, where applicable, the City of Johannesburg Metropolitan Municipality's installation and provide services to the residents in the Estate.
- 56.5 The Company shall have full responsibility for the functioning and proper maintenance of the access portion and the engineering services within the said erven, all to the satisfaction of the City of Johannesburg Metropolitan Municipality, failing which such maintenance shall be done by the City of Johannesburg Metropolitan Municipality at the costs of the Company.
- 56.6 The Company shall properly and clearly display the street name and street numbers allocated to the individual erven in the Estate and shall maintain such to the satisfaction of the Local Authority.
- 56.7 Clauses 59.1 to 59.6; and this clause and any other clause in the Memorandum which requires the consent of the City of Johannesburg Metropolitan Municipality may only be amended with the written consent of the City of Johannesburg Metropolitan Municipality.
- 56.8 The Company will contribute to the functioning and proper maintenance of the access portion.

**57. ARTICLES BINDING**

- 57.1 The provisions of this MOI shall be binding upon all Members, and insofar as they may be applicable, to all persons occupying any land or erf or unit by, through or under any Member, whatever the nature of such occupation.
- 57.2 The powers of the committees established in terms of this MOI, and the powers of the Directors, and the powers of the Association generally may be delegated to the Estate Manager to such extent and upon such condition as the Directors may determine from time to time, and such delegations may from time to time be revoked either in whole or in part or the conditions of such delegations changed as the Directors may from time to time deem fit. If an Estate Manager be appointed, such Estate Manager shall be obliged to take out fidelity insurance to the satisfaction of the Directors for all moneys held by the Estate Manager on behalf of the Association from time to time. If

there be no Estate Manager, then all references to the Estate Manager in these Articles relating to the constitution of committees of Directors shall be deemed to be a reference to an Additional Director as Member of the committee concerned, and all other references to the Estate Manager shall be deemed to be a reference to the Directors, or committee, or persons appointed by them for the purpose concerned.

## SCHEDULE 1

### Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;<sup>1</sup>

"**Alternate Director**" means a person elected or appointed to serve, as the occasion requires, as a Member of the Board of Directors of a company in substitution for a particular elected or appointed director of that company;

"**annual general meeting**" means the meeting of a public company required by section 61(7);

"**audit**" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**Banks Act**" means the Banks Act, 1990 (Act No. 1194 of 1990);

"**Board of Directors**" means the Board of Directors of Directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in Section 189;

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

"**convertible**" when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including—

- (a) any non-voting securities issued by the company and which will become voting securities—
  - (i) on the happening of a designated event; or
  - (ii) if the holder of those securities so elects at some time after acquiring them; and

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<sup>1</sup> Regulation 25(3) contains requirements as to what the accounting records must include.

- (b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

"**creditor**" means a person to whom a company is or may become obligated in terms of any liability or other obligation that would be required to be considered by the company if it were applying the solvency and liquidity test set out in section 4;

"**Director**" means a Member of the Board of Directors of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

"**effective date**", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

"**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**employee share scheme**" has the meaning set out in section 95(1)(c);

"**exchange**" when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"**ex officio director**" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

"**external company**" means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

"**financial statement**" includes—

- (a) annual financial statements and provisional annual financial statements;
- (b) interim or preliminary reports;
- (c) group and consolidated financial statements in the case of a group of companies; and
- (d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

**"group of companies"** means a holding company and all of its subsidiaries;

**"holding company"**, in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in Section 2(2)(a) or 3(1)(a);

**"incorporator"**, when used—

- (a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in Section 13; or
- (b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in Section 13 to bring about the incorporation of that company;

**"individual"** means a natural person;

**"inter-related"**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in Section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

**"juristic person"** includes—

- (a) a foreign company; and
- (b) a trust, irrespective of whether or not it was established within or outside the Republic;

**"knowing"**, **"knowingly"** or **"knows"**, when used with respect to a person, and in relation to a particular matter, means that the person either —

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have —
  - (i) had actual knowledge;
  - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
  - (iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

**"nominee"** has the meaning set out in Section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

**"ordinary resolution"** means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in Section 65(8) at a Members' meeting.

"**person**" includes a juristic person;

"**personal financial interest**", when used with respect to any person—

- (a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but
- (b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"**prescribed officer**" means a person who, within a company, performs any function that has been designated by the Minister in terms of Section 66(10);

"**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;

"**record date**" means the date established under Section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

"**registered office**" means the office of a company, or of an external company, that is registered as required by Section 23;

"**related**", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in Section 2(1)(a) to Section (c);

"**rules**" and "**rules of a company**" means any rules made by a company as contemplated in Section 15(3) to (5);

"**Special Resolution**" means —

- (a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10) at a Members' meeting; or
- (b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorized person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"**subsidiary**" has the meaning determined in accordance with Section 3;

**"wholly-owned subsidiary"** has the meaning determined in accordance with Section 3(1)(b).

## **SCHEDULE 2**

### **Ineligible / disqualified in terms of Section 69(7) and (8) of the Companies Act read with Regulation 39(3)**

A person is ineligible to be a Director if the Person —

1. is a juristic person;
2. is an unemancipated minor, or is under a similar legal disability; or
3. does not satisfy any qualification set out in the MOI.

A person is disqualified to be a Director if —

4. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of Section 162, or in terms of Section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
5. the Person —
  - 5.1 is an unrehabilitated insolvent;
  - 5.2 is prohibited in terms of any public regulation to be a Director;
  - 5.3 has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or
  - 5.4 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand) for theft, fraud, forgery, perjury or an offence —
    - (a) involving fraud, misrepresentation or dishonesty;
    - (b) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or
    - (c) under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004)

**SCHEDULE 3**

**Prescribed Methods of Delivery in the Regulations**

| <b>Person to whom the document is to be delivered</b> | <b>Method of delivery</b>  | <b>Date and Time of Deemed delivery</b>   |
|---|--|---|
| Any Person  | <p>By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;</p> <p>By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;</p> <p>By sending the notice or a certified copy of the document by registered post to the Person's last known address;</p> <p>By any other means authorised by the High Court; or</p> <p>By any other method allowed for that Person in terms of the following rows of this Table.</p> | <p>On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.</p> <p>On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.</p> <p>In accordance with the order of the High Court.</p> <p>As provided for that method of delivery.</p> |
| Any natural Person                                    | <p>By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old</p>  | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time recorded on a receipt for the delivery.</p>   |



| Person to whom the document is to be delivered | Method of delivery   | Date and Time of Deemed delivery  |
|--|--|---|
|  | <p>and in charge of the premises at the time;</p> <p>By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.</p>  | <p>On the date and at the time recorded on a receipt for the delivery.</p>  |
| <p>A company or similar body corporate</p>     | <p>By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;</p> <p>If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.</p> | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p> |
| <p>The state or a province</p>                 | <p>By handing the notice or a certified copy of the document to a responsible employee in any office of the State Attorney.</p>  | <p>On the date and at the time recorded on a receipt for the delivery.</p>  |
| <p>A municipality</p>                          | <p>By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.</p>  | <p>On the date and at the time recorded on a receipt for the delivery.</p>  |

| <b>Person to whom the document is to be delivered</b> | <b>Method of delivery</b>   | <b>Date and Time of Deemed delivery</b>   |
|---|---|---|
| A trade union   | <p>By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.</p> <p>If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.</p> | <p>On the date and at the time recorded on a receipt for the delivery.</p> <p>On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.</p> |
| Employees of the Company                              | By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.   | On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.   |
| A partnership, firm or Association                    | By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or Association;  | On the date and at the time recorded on a receipt for the delivery.   |
|   | If the partnership, firm or Association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the Chairman or secretary of the managing or other controlling body of the Association, as the case may be.                         | On the date and at the time recorded on a receipt for the delivery.   |