

**MEMORANDUM OF
INCORPORATION**

of

KYALAMI PARK OWNERS ASSOCIATION NPC

Registration Number: 1991/000379/08

(hereinafter referred to as **“the Association”**)

INDEX

2.	INTERPRETATION.....	3
3.	DEFINITIONS	4
4.	OBJECTIVES OF THE ASSOCIATION.....	7
5.	WINDING UP, DEREGISTRATION OR DISSOLUTION	8
6.	MEMBERS AND TRANSFER OF MEMBERSHIP.....	9
8.0	INCOME AND PROPERTY OF THE ASSOCIATION	12
9.0	LEVIES.....	13
10.0	RULES	14
11.0	MEMBERS' MEETINGS.....	17
12.0	NOTICES TO MEMBERS.....	18
13.0	QUORUM FOR MEMBERS' MEETINGS.....	20
14.0	PROXIES.....	21
16	RECORD DATE FOR DETERMINING MEMBER RIGHTS	24
17	MEMBERS ACTING OTHER THAN AT THE MEETING.....	25
18	APPOINTMENT OF DIRECTORS	25
19	DISQUALIFICATION AND REMOVAL OF DIRECTORS.....	27
20	DIRECTORS MEETINGS	28
21	OFFICERS	30
22	COMMITTEES, MANAGERS AND AGENTS.....	30
23	COMPANY AND ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR	31
24	LIABILITY OF DIRECTORS	31

1. INCORPORATION AND NATURE OF THE ASSOCIATION

- 1.1 The Association is incorporated as a non-profit organisation established in accordance with, and governed by, the company laws of the Republic.
- 1.2 This Memorandum supercedes the previously applicable Memorandum and Articles of the Association and any resolutions of the Association passed by the Association prior to the adoption of this Memorandum.
- 1.3 The Association shall henceforth be governed by -
 - 1.3.1 the provisions of this Memorandum;
 - 1.3.2 the alterable provisions of the Act that are applicable to non-profit organisations that have not been altered by the Memorandum; and
 - 1.3.3 the unalterable provisions of the Act that are applicable to non-profit organisations.
- 1.4 The Association is not subject to any restrictive conditions applicable to the manner in which this Memorandum or any particular provision hereof may be amended in terms of the Act.
- 1.5 This Memorandum may only be altered or amended by way of a Special Resolution.

2. INTERPRETATION

In this Memorandum -

- 1.1 words importing -
 - 1.1.1 the singular shall include the plural and *vice versa*; and

the masculine gender shall include the feminine and neuter genders and *vice versa*;
- 1.2 the word "person" shall mean a natural person, partnership, syndicate, society or other voluntary association, close corporation, company or body, whether corporate or not; and

- 1.3 the headings are provided for convenience only and are not to be taken into account in the interpretation of this Memorandum.

3. DEFINITIONS

In this Memorandum, unless clearly inconsistent with or otherwise indicated by the context, the following words and phrases shall have the meanings ascribed to them below.

- 3.1 “**Act**” shall mean the Companies Act, 71 of 2008 as amended, supplemented or varied from time to time, including any regulations and subordinate legislation in terms thereof;
- 3.2 “**Annual General Meeting**” shall mean the annual general meeting of the Members, held in accordance with the provisions of this Memorandum;
- 3.3 “**Auditors**” shall mean the incumbent auditors of the Association as appointed from time to time;
- 3.4 “**Board**” shall mean the incumbent board of Directors at any point in time;
- 3.5 “**Body Corporate**” shall mean a body corporate established for a Property within Kyalami Park in terms of the Sectional Titles Act, 95 of 1986;
- 3.6 “**CIPC**” shall mean the Companies and Intellectual Property Commission;
- 3.7 “**Construction**” shall mean building work of any nature including, but not limited to, the erection of any new Structure and the repair, maintenance or alteration to any existing Structure within Kyalami Park;
- 3.8 “**Chairman**” shall mean the incumbent Chairman of the Board, elected as set out herein;
- 3.9 “**Common Areas**” shall mean the Roads as defined herein together with the erven within Kyalami Park that are owned by the Association, that is to say Erf 156 which extends from the R55 along Kyalami Boulevard to beyond the Kyalami Park gatehouse, and the four erven zoned as parks, that is to say Erven 157 to 160;

- 3.10 “**Day**” shall mean any day other than a Saturday, Sunday or statutory holiday in the Republic;
- 3.11 “**Director**” shall mean an incumbent director of the Association at any point in time;
- 3.12 “**Kyalami Park**” shall mean the township registered as Kyalami Park, comprising all the erven registered in the names of Members and all Common Areas;
- 3.13 “**Levies**” shall mean the basic monthly levy and any special levy payable by Members to the Association as provided in this Memorandum;
- 3.14 “**Member**” shall mean the registered owner of an erf within Kyalami Park, or where a sectional title scheme has been established over any erf, the Body Corporate registered in respect of such scheme;
- 3.15 “**Memorandum**” shall mean this Memorandum of Incorporation of the Association;
- 3.16 “**Ordinary Resolution**” shall mean a resolution adopted with the support of more than 50% (fifty percent) of the voting rights exercised on the resolution at a Members’ meeting or by Members acting other than at a meeting, as set out herein;
- 3.17 “**Park Installations**” shall mean all installations constructed or erected within Kyalami Park by the developers of Kyalami Park and handed over to the Association, or subsequently constructed or erected by the Association, including but not limited to –
- 3.17.1 the gatehouse at the entrance to Kyalami Park and all associated installations and equipment;
- 3.17.2 perimeter walls, fences, gates and security installations in and around Kyalami Park;

- 3.17.3 all dams, gazebos, walls, paving, landscaping, benches, refuse containers, street numbering signs, and other installations on the Common Areas; and
- 3.17.4 the Kyalami Park security infrastructure and equipment;
- 3.18 “**Property**” shall mean an erf situated within Kyalami Park and registered in the Deeds Office in the name of a Member whether an owner or a Body Corporate;
- 3.19 “**Registered Office**” shall mean the address which the Association has elected as its registered trading address for service;
- 3.20 “**Republic**” shall mean the Republic of South Africa;
- 3.21 “**Roads**” shall mean all roadways within Kyalami Park, whether tar, brick, paving or otherwise, that is to say the access road extending from the R55 over Erf 156, to the Kyalami Park gatehouse, and all municipal roads within Kyalami Park, together with the road reserves, street frontages, and pavements of all such roadways;
- 3.22 “**Rules**” shall mean any rules and guidelines, duly passed by the necessary majority at a duly constituted meeting, as amended from time to time in accordance with this Memorandum, and in respect of matters arising prior to the promulgation of this Memorandum, shall include the rules in force under the Association’s then applicable Memorandum and Articles of Association;
- 3.23 “**Servitudes**” shall mean any right of way servitudes and other servitudes registered or which the Association is entitled to have registered in favour of the Association, over any Property within the Kyalami Park;
- 3.24 “**Special General Meeting**” shall mean a general meeting of the Members, held for a particular purpose, in accordance with the provisions of this Memorandum;
- 3.25 “**Special Resolution**” shall mean a resolution adopted with the support of at least 75% (seventy five percent) of the voting rights exercised on the resolution at a Members meeting or by the Members of the Association acting other than at a meeting, as set out herein;
- 3.26 “**Structure**” shall mean any structure, fixed or movable which is erected or intended to be erected at any Property and which is composed of parts arranged

together in some way, including but not limited to any building, fence, gate, waste bin enclosure, carport, shading, tower, communication dish, aerial, mobile telephone infrastructure, pole, light, container, or air-conditioner;

3.27 “**Unit**” shall mean a section in a sectional title scheme established within Kyalami Park in terms of the Sectional Titles Act, 95 of 1986, together with an undivided share in the common property in such scheme, as registered in the name of the Unit owner in the Deeds Office, and recorded in such Unit owner’s sectional title deed;

3.28 “**Vice-Chairman**” shall mean the incumbent Vice-Chairman of the Board elected as set out herein; and

3.29 “**Writing**” shall mean written or printed words.

4. OBJECTIVES OF THE ASSOCIATION

The Association’s objectives as a non-profit organization are -

4.1 to act as the supreme authority managing and controlling Kyalami Park;

4.2 to generally promote and manage the affairs of the Association and the communal interests and well-being of all Members and occupants of all Properties;

4.3 to do all such other things as are necessary for, or incidental or conducive to the attainment of the objectives of the Association and thus to the furtherance of the interests of owners of properties within Kyalami Park including the enhancement of the value of all Properties and Units, and to such end –

4.3.1 to enforce in favour of or against Members in Kyalami Park, title deed and the City Council of Johannesburg conditions and other regulations pertaining to each Property, insofar as they affect the Association or other Properties;

4.3.2 to impose and enforce compliance with the Rules, and other standards, guidelines and regulations applicable to Properties within Kyalami Park so as to facilitate good order in the Township and the attainment of the objectives of the Association and to this end to formulate and enforce a

penalty system for non-compliance with or breach of such Rules, standards, guidelines and regulations;

- 4.3.3 to control, promote, enforce and maintain architectural, aesthetical and environmental standards in Kyalami Park as prescribed in the applicable town-planning schemes relating to the Properties concerned, in the Rules and as determined from time to time by the Directors;
- 4.3.4 to control for the benefit of all Members and occupants of Kyalami Park, the use of all Roads, and to use the Association's best endeavours to procure the maintenance of such Roads by the local authority;
- 4.3.5 to control and provide for the maintenance and upkeep of all Common Areas and Park Installations;
- 4.3.6 to establish, control and maintain an effective and efficient security system for the benefit of the Members and any occupants of any Property in Kyalami Park; and
- 4.3.7 to promote and maintain an acceptable standard in respect of all services provided in the Kyalami Park.

5. WINDING UP, DEREGISTRATION OR DISSOLUTION

- 5.1 The Association may be voluntarily wound-up by way of a Special Resolution of its Members.
- 5.2 Upon dissolution of the Association, its net assets in their entirety after the Association's obligations and liabilities including those in respect of allowable remuneration as provided herein have been satisfied, shall be distributed to one or more non-profit companies, voluntary associations or non-profit trusts, having objectives similar to those of the Association and carrying on activities within the Republic.
- 5.3 Save for allowable remuneration as provided herein, no past or present Director or Member shall be entitled to any part of the net value of the Association.

6. MEMBERS AND TRANSFER OF MEMBERSHIP

- 6.1 A Member may be any person, including natural or juristic persons, other bodies, partnerships or associations of persons, whether corporate or not.
- 6.2 When a person becomes the registered owner of a Property, or a Body Corporate is registered over a Property, such person or Body Corporate shall become a Member of the Association. When such Member ceases to be the owner of any Property, or such Body Corporate is de-registered, such owner or Body Corporate shall, *ipso facto*, cease to be a Member.
- 6.3 Where any Property or Unit is owned by more than one person, all the registered owners of that Property or Unit shall together be deemed to be a single owner and shall have the rights and obligations of one Member or single Unit owner as the case may be, provided however that all such co-owners shall be jointly and severally liable for the due performance of any obligations to the Association, in respect of such Property or Unit.
- 6.4 A Member who is a Property owner shall upon the sale of a such Member's Property, procure that in the relevant agreement of sale, the purchaser of such Property acknowledges that by taking transfer of such Property, he by virtue of taking ownership, becomes a Member of the Association with effect from the registration of transfer of such Property into his name, and agrees to the satisfaction of the Association –
- 6.4.1 to be bound to the terms, conditions, and provisions contained in this Memorandum as well as any Rules made by the Association in terms hereof; and
- 6.4.2 to the recording in the new title deed to be registered reflecting his ownership of the Property being transferred, of the his agreement to be so bound..
- 6.5 A Member who is a Body Corporate shall, upon the sale of a Unit within the relevant sectional title scheme, procure that in the relevant agreement of sale, the purchaser of such Unit acknowledges that such Body Corporate is a Member of the Association and that by taking transfer of such Unit, he as purchaser, by virtue of taking ownership of the Unit, becomes obligated to comply with the

provisions of this Memorandum and the Rules and agrees to the satisfaction of the Association –

6.5.1 to be bound to the terms, conditions, and provisions contained in this Memorandum, as well as any Rules made by the Association in terms hereof; and

6.5.2 to the recording of the his agreement to be so bound, in the new title deed to be registered reflecting his ownership of Unit being transferred.

6.6 No Member shall transfer his Property, or in the case of the Member being a Body Corporate, give Body Corporate clearance for the transfer of any Unit, without first obtaining a written clearance certificate for the transfer from the Association, which certificate the Association shall not be required to issue unless such Member has-

6.6.1 complied with all such Member's obligations towards the Association, whether as aforesaid or otherwise in terms of this Memorandum; and

6.6.2 paid all amounts due to the Association including a reasonable provision as determined by the Association, for Levies that will fall due before transfer is registered.

6.7 In the event of a Unit owner failing to comply with the terms of this Memorandum or the Rules, the Body Corporate concerned, shall, if so required by the Association, cede it's rights to the Association to enable the Association to enforce such terms or Rules directly against such Unit owner.

7.0 RIGHTS AND DUTIES OF MEMBERS

7.1 A Member shall at all times –

7.1.1 further the objectives and interests of the Association to the best of such Member's ability;

7.1.2 comply with the conditions imposed by the local authority in terms of Section 89 of Ordinance 25 of 1965, for the for incorporation into the Town Planning Scheme for Kyalami Park subject to –

7.1.2.1 subsequent amendments to that Scheme; and

7.1.2.2 in respect of individual Properties, specific amendments to that Scheme in the form of rezonings duly approved by the local authority and the Association;

7.1.3 comply with the conditions of any servitude registered over such Member's Property, in favour of the Association;

7.1.4 observe all Rules made by the Association whether such Rules form part of this Memorandum or otherwise; and

7.1.5 observe all legislation, regulations and by-laws of the local authority, the provincial authority and the National legislation of the Republic, pertaining to Kyalami Park or the Association's activities; and

the failure on the part of any other Member to comply with any of the foregoing or the Association's failure to act on or require remedial action or impose penalties for such non-compliance, shall not serve as a precedent upon which any other defaulting Member may place reliance to justify another non-compliance or to demand a similar response from the Association..

7.2 Insofar as amendments to the Town Planning Scheme for Kyalami Park are concerned, save for any application for an increase in the floor space ratio ("FSR") applicable to any Property from 0,40 to 0,44 or lower, which FSR the Association deems acceptable and to which applications the Association shall raise no objection, any application for such amendments lodged after 1st June, 2007, shall be deemed to have been opposed by the Association, and no further applications shall be lodged by any Member. Where any Member has lodged an application deemed in terms of the foregoing to have been opposed by the Association, or fails to comply with the foregoing provisions of this clause in any way, to the extent that building plans for the Property concerned show work for which an amendment to the Town Planning Scheme for Kyalami Park is a prerequisite, the Board shall not approve such plans.

7.3 In respect of any Property over which a Body Corporate has control, the Body Corporate for that scheme shall ensure that Unit owners within that scheme comply with the terms of this Memorandum and with the Rules.

7.4 Whilst the rights and obligations of Members shall not be transferable nothing contained in this Memorandum, shall prevent a Member or Unit owner from

ceding his rights in terms hereof to the mortgagee of that Member's Property or Unit owner's Unit, as security for loan finance.

- 7.5 No Member shall let, or otherwise part with, occupation of such Member's Property or any portion thereof, whether temporarily or otherwise, unless such Member has agreed in writing with the proposed occupier or tenant of such Property, as a *stipulatio alteri* in favour of the Association, that such occupier or tenant shall be bound by the provisions of this Memorandum and the Rules.
- 7.6 No Member which is a Body Corporate, shall permit the letting of or parting with, occupation of any Unit within the sectional title scheme managed by that Body Corporate, or any portion such Unit, whether temporarily or otherwise, unless the Unit owner concerned has agreed in writing with the proposed occupier or tenant of such Unit, as a *stipulatio alteri* in favour of the Association, that such occupier or tenant shall be bound by the provisions of this Memorandum and the Rules made pursuant thereto.
- 7.7 Members shall upon request by the Association furnish the Association with the such information concerning leases over Properties or portions thereof, and the tenants under such leases, including their staff, as may reasonably be required for the management of Kyalami Park affairs and security measures.
- 7.8 In the event of a tenant occupying any Property or Unit, or any portion thereof, failing to comply with the terms of this Memorandum or the Rules, the Member, being the Body Corporate or Property owner concerned, and the Unit owner concerned, shall, if so required by the Association, cede it's rights to the Association to enable the Association to enforce such terms or Rules directly against such or tenant.

8.0 INCOME AND PROPERTY OF THE ASSOCIATION

- 8.1 The income and property of the Association, irrespective of when it arose or may arise, shall be applied solely towards the promotion of the objectives of the Association and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise whatsoever to any Member.
- 8.2 Having regard to the objectives of the Association, this clause does not preclude the payment or transfer of property in good faith as reasonable remuneration -

- 8.2.1 to any officer or servant of the Association or to any Member in return for any services actually rendered to the Association; or
- 8.2.2 to any person or persons for services rendered in the administration, conduct or development of the Association's activities.

9.0 LEVIES

- 9.1 The Directors shall have the right to determine and prescribe, as frequently as circumstances may require, the basic monthly Levies, and where they deem necessary, special Levies, payable by Members in respect of each Property on approval of same at a Special or Annual General Meeting.
- 9.2 Such Levies shall be calculated on such basis and payable by Members at such times as the Directors deem fit in order to defray all the costs and expenses which the Association may have incurred, or which the Directors reasonably anticipate the Association shall incur in the attainment of its objectives.
- 9.3 Levies shall be prescribed for each Member's Property based on the proportion that the area of that Property bears to the total area of all Properties, provided that the Directors may, in cases where they in their sole discretion consider it equitable to do so, assign to any Property, greater or lesser Levies as they deem reasonable in the circumstances.
- 9.4 The Levies payable in respect of each sectional title scheme shall be paid by the Body Corporate for such scheme.
- 9.5 Where a Property is owned by more than 1 (one) person, all registered co-owners shall be jointly and severally liable for the due payment of any amount due to the Association in respect of that Property.
- 9.6 The Directors shall be entitled at their discretion to determine penalties for and the rate of interest chargeable on arrear Levies.
- 9.7 Determinations of the Directors as envisioned herein shall be binding on all Members and the amounts due shall in the case of Levies, be payable monthly in advance, and in the case of penalties, interest and legal costs, be payable on the first day of the month following the day of the relevant determination. Payment

shall be by adjustment to the Member's monthly Levy debit order or other method as required by the Directors.

- 9.8 The amount of any Member's indebtedness to the Association at any time, the interest rates applicable from time to time and any other factor relating to the determination of such indebtedness as well as the due date for payment of such amount shall, at the option of the Directors, be proved at any stage either in legal proceedings or by a certificate signed by any Director whose appointment it shall not be necessary to prove. This shall include any amount or amounts due by a Member, by way of Levies, interest thereon, penalties and other costs due in terms hereof or the Rules.
- 9.9 The Association shall, in recovering or attempting to recover any unpaid Levies from a Member, be entitled to recover from such Member, all legal costs, including collection commission and tracing fees where applicable, on an attorney-and-own-client scale and such shall be recoverable whether or not legal proceedings are instituted by the Association, and attorneys and counsel invoices for services to the Association shall serve as prima facie evidence of the amounts due.
- 9.10 Upon becoming a Member of the Association, by virtue of registration of transfer of a Property into his name, or of registration of a new sectional title scheme, the new Member shall become liable from the date following the date of such registration, for all Levies and other charges relating to the aforesaid Property. Where such registration occurs on any day other than the last day of a calendar month, the new Member shall become liable on the date following his becoming a Member, to pay proportionately reduced Levies for the month in which such registration takes place.
- 9.11 A Member whose Membership has been terminated shall, subject to adjustment for any other amount due or obligation to the Association as determined by the Directors, be entitled to a proportionate refund of any Levies already paid to the Association for the month in which such termination takes place.

10.0 RULES

- 10.1 Subject only to any restriction imposed by the Act or other applicable laws or regulations, or in this Memorandum, or to any direction given at a Special or

Annual General Meeting, the Directors shall be vested with the sole power and obligation to make in their discretion Rules pertaining to all activities in Kyalami Park for purposes of achieving the objects of the Association. The Directors' rights in this regard shall not be otherwise limited or restricted.

10.2 To the extent that any Rule is does not meet or is inconsistent with the aforesaid requirements, such Rule shall be void.

10.3 The Rules may include -

10.3.1 the setting of guidelines for the architectural design of all buildings and outbuildings, Structures and improvements of any nature in Kyalami Park;

10.3.2 the regulation of the aesthetic appearance of all buildings and outbuildings, Structures and improvements of any nature in Kyalami Park, including the management thereof to ensure that any construction is done correctly and in accordance with the Rules;

10.3.3 the setting of minimum standards with which all buildings, outbuildings, Structures, improvements, signage and advertising of any nature in Kyalami Park must comply;

10.3.4 the regulation of the preservation, control and planting of vegetation in Kyalami Park;

10.3.5 the prohibition, restriction or controlling or the keeping of any animal in Kyalami Park;

10.3.6 the storage of any containers, materials, equipment or furniture outside the building or buildings on any Property and the screening thereof from the sight of any other persons;

10.3.7 the regulation of the conduct and activities of all persons in the Township including, and without derogating from the generality of the foregoing, the conduct of Members, employees, tenants and visitors;

10.3.8 the regulation of the use of any accommodation in Kyalami Park for temporary or permanent residential purposes of any nature;

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- 10.3.9 the regulation of all sanitary standards and practices of Kyalami Park;
 - 10.3.10 the regulation of access to and from, and of traffic controls in Kyalami Park;
 - 10.3.11 the regulation of parking of motor vehicles, motorcycles and other vehicles and all other activities pertaining thereto in Kyalami Park;
 - 10.3.12 the regulation of the use of Common Areas for entertainment ;
 - 10.3.13 the regulation of all security matters in Kyalami Park;
 - 10.3.14 the furtherance and promotion of the objectives of the Association, the management of the affairs of the Association and the advancement of the interests of Members;
 - 10.3.15 the regulation of the maintenance of Kyalami Park, all buildings and other improvements, as well as security systems and landscaping in Kyalami Park; and
 - 10.3.16 the creation and enforcement of a penalty system in order to enforce compliance with the Rules and other rights of the Association.
- 10.4 In exercising their right and obligation to make decisions regarding the Rules as aforesaid, the Directors shall file a record of such decisions with the CIPC and shall give notice to all Members in the manner prescribed in this Memorandum, of the decision taken.
- 10.5 Such decisions shall be enforceable against the Members, 10 (ten) Days after both the filing thereof at CIPC and delivery of notice thereof to the Members, regardless of whether or not such decisions came to the actual notice of any or all the Members.
- 10.6 Notwithstanding anything to the contrary contained herein, the Directors may, in the name of the Association, enforce the provisions of the Rules of the Association in any court of competent jurisdiction and may for this purpose, appoint such attorneys and counsel as they deem necessary.

10.7 Until such time as new Rules are promulgated in terms of this Memorandum, the previously applicable Rules of the Association shall continue to apply, those being stipulated in -

10.7.1 the Design Manual as formally adopted by a resolution of Members on 3rd July, 2007, and comprising the Kyalami Park Development Guide : 2007, which incorporates the Kyalami Park Town Planning Scheme as amended, and the Kyalami Park Landscape Design Manual;

10.7.2 the resolution of the Board passed on 17 August 2011 dealing with the management of Association funds by the Association's managing agent; and

10.7.3 the resolution of Members formally adopted on 17th August, 2011, pertaining to the formation and functioning of a Security Subcommittee to deal with the upgrading of security measures in Kyalami Park, and providing for the implementation of a Security Levy for that purpose.

11.0 MEMBERS' MEETINGS

11.1 The Association shall convene Members meetings -

11.1.1 annually, provided that no more than 15 (fifteen) months shall be allowed to lapse between the date of one Annual General Meeting and that of the next; and

11.1.2 at any time upon the written demand by Members holding a minimum of 25% (twenty five percent) of the total voting rights.

11.2 Annual and Special General Meetings and other Members meetings shall be held at such a time and place as the Directors nominate, but chosen to accommodate the Members as far as reasonably possible.

11.3 As a minimum, the following business shall be addressed at each Annual General Meeting:

- 11.3.1 The presentation of the Directors' report and audited financial statements for the preceding financial year.
- 11.3.2 The appointment of Directors and an auditor for the ensuing financial year.
- 11.3.3 Any matters raised by Members, with or without advanced notice to the Association.

12.0 NOTICES TO MEMBERS

- 12.1 The address of the Property of each Member shall be the *domicilium citandi et executandi* for the Member in respect of all legal proceedings and notices, provided that a Member shall be entitled to change his *domicilium* to another physical address within the Republic, by written notice of such effect to the Association.
- 12.2 All notices to Members as envisioned in this Memorandum, shall be given—
 - 12.2.1 personally by hand during normal business hours on any Day where the Member is natural person; or
 - 12.2.2 by an acknowledged electronic mail to an address nominated by such Member; or
 - 12.2.3 by registered prepaid post addressed to such Member at his *domicilium*; or
 - 12.2.4 where a Member is a company or close corporation, by hand or registered pre-paid post to such Member's registered physical address.
- 12.3 Any notice sent by registered post shall be deemed to have been served 7 (seven) Days after posting.
- 12.4 Notices of Members meeting shall be given to all Members in the manner prescribed above, and if the Directors so elect, to either the incumbent or the proposed auditor of the Association, or to both of them. No other persons shall be entitled to receive notice of Members meetings.

- 12.5 Notice of Members' meetings shall be in writing and shall include-
- 12.5.1 the date, time and place for the meeting as well as the record date for the meeting;
 - 12.5.2 the purpose of the meeting;
 - 12.5.3 a copy of any proposed resolution of which the Association has received notice and which is to be considered at the meeting together with a notice of the percentage of voting rights that will be required for that resolution to be adopted;
 - 12.5.4 in the case of an Annual General Meeting, the financial statements to be presented or a summarised format thereof;
 - 12.5.5 a statement that all Members attending in their personal capacities or their duly appointed representatives must, if required by the Chairman, provide a satisfactory identification document, and
 - 12.5.6 a statement that any Member may appoint as further provided herein, a proxy to attend, participate in and vote at the meeting his behalf.
 - 12.5.7 The minimum number of days for the Association to deliver notice, in writing, of a Members meeting shall in respect of –
 - 12.5.8 Annual or Special General Meetings, be 21 (twenty one) calendar days; or
 - 12.5.9 an adjourned Annual or Special General Meeting or any other Members' meeting, be 14 (fourteen) calendar days.
- 12.5 If notice of a Members meeting has been duly served but there has been a material defect in the notice, the meeting may proceed, provided that every Member and person present and who is entitled to exercise voting rights in respect of any item on the agenda of the meeting, votes in favour of the ratification of the defective notice.
- 12.6 If a material defect in the giving of notice of a meeting relates only to one or more particular matters on the agenda for the meeting -

- 12.6.7 any such matter may be severed from the agenda and such notice shall remain valid with respect to any remaining matters on the agenda; or
- 12.6.8 the meeting may proceed to consider a severed matter if the defective notice in respect of that matter has been ratified as set out above.
- 12.7 An immaterial defect in the form or manner of giving notice of a Members meeting or an accidental or inadvertent failure in the delivery of the notice to any particular Member to whom it was addressed shall not invalidate any action taken at the meeting.

13 QUORUM FOR MEMBERS' MEETINGS

- 13.5 No meeting shall begin, no matter begin to be debated, and no business be transacted at any Members meeting, unless there is a quorum of at least 15% (fifteen percent) of the Members or their proxies at the commencement of and throughout the meeting.
- 13.6 Should there be no quorum at the time appointed for the meeting the Chairman shall allow a further 30 (thirty) minutes for a quorum to convene, and may at his discretion allow a further reasonable period for a quorum to convene where Members have due to exceptional circumstances been delayed, but have nevertheless communicated their continued intention to attend the meeting.
- 13.7 If despite allowances as aforesaid a quorum has not convened, the meeting shall stand adjourned without motion to vote, to a date determined by the Board, for which notice shall be given to all Members as provided herein, provided that -
- 13.7.7 if at such adjourned meeting a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Members' present in person or by proxy shall constitute a quorum; and
- 13.7.8 no business shall be transacted at the resumption of an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14 PROXIES

- 14.5 Any person representing Member at a Members meeting who is not an individual owner or a director of a company or a member of close corporation which is a Member, shall fulfil the requirements set out herein to act as a proxy for the Member being represented.
- 14.6 A Member shall be entitled to appoint any person, who need not be a Member as a proxy to attend, speak and vote in his stead at any Members' meeting.
- 14.7 A proxy's appointment shall be evidenced in a written proxy instrument or general or special power of attorney signed by the Member or his duly authorized representative and shall save where specifically stated to the contrary in itself, remain valid until the end of the meeting at which it was intended to be used, or such meeting as adjourned.
- 14.8 The authority of a Member's proxy to delegate his appointment to another person is not limited or restricted by this Memorandum, provided that the prescribed form and procedure in this Memorandum are followed.
- 14.9 The appointment of persons concurrently as proxies representing a single Member shall not be permissible in terms of this Memorandum.
- 14.10 Prior to the commencement of the meeting for which the proxy has been appointed, the proxy shall, besides providing a satisfactory identification document, also furnish a written copy of the proxy instrument or power of attorney evidencing his appointment, and where the Member being represented is not a natural person, a copy of the duly signed resolution of that Member confirming the appointee's authority.
- 14.11 If the Association issues an invitation to Members to appoint any persons named by the Association as a proxy, the invitation shall be sent to every Member who is entitled to notice of the meeting at which the proxy is intended to be exercised.
- 14.12 If the Association supplies Members with a proxy instrument form for appointing a proxy such form shall -

- 14.12.7.1 specify the nature, place and time of the meeting for which the proxy is appointed;
- 14.12.7.2 contain adequate blank space to enable a Member to write in the name and if so desired, an alternative name, as his chosen proxy;
- 14.12.7.3 stipulate that the proxy is appointed to appear, speak and vote on behalf of the appointing Member at that meeting and that the proxy appointment shall save where specifically stated to the contrary in itself, remain valid until the end of the meeting at which it was intended to be used, or such meeting as adjourned.
- 14.12.7.4 provide adequate space for the Member to indicate any amendments to or restrictions on the proxy and whether the proxy is to vote in favour of or against, or abstain from voting on any resolution or resolutions to be put at the meeting;
- 14.12.7.5 state that the proxy appointment is revocable at any time prior to the commencement of the meeting for which it is intended; and
- 14.12.7.6 state that the use of the form is not mandatory and that it may be substituted with any alternative form approved by the person chairing the meeting.

15 PROCEEDINGS AT MEMBERS' MEETINGS

- 15.1 The Chairman, or in the Chairman's absence the Vice Chairman, or in the absence of both the Chairman and Vice Chairman, any Director shall preside over Members' meetings. Should at any meeting, neither the Chairman nor the Vice Chairman nor any other Director be present within 15 (fifteen) minutes after the time appointed for holding the meeting or should none of them despite being present, be willing to act as Chairman, the Members present shall choose one of their number to act as Chairman. The person chairing the meeting shall have the right to cast a deciding vote.
- 15.2 Before any person may attend or participate in a Members meeting-
 - 15.2.1 that person shall present reasonably satisfactory identification, if so requested; and
 - 15.2.2 the person chairing the meeting shall be reasonably satisfied that the right of that person to participate and vote, either as a Member or as a proxy for a Member, has been reasonably verified.

- 15.3 Only Members entitled to vote in terms of this Memorandum or their proxies, shall be allowed to cast votes on a resolution proposed at a Members meeting and only such votes shall be taken into account for purposes of determining the result of the vote.
- 15.4 A Member who is more than 2 (two) months in arrears with any Levy due to the Association shall not be entitled to exercise any of the rights or privileges of Membership of the Association and shall specifically not, without derogating from the generality of the aforesaid, be entitled to vote at Members' meetings or other meetings of the Association.
- 15.5 Voting at a Members' meetings may be either by show of hands or by polling provided that, irrespective of any provision of this Memorandum to the contrary, a polled vote shall be held on any particular matter to be voted on at a meeting if a demand is made for such by –
- 15.5.1 at least 5 (five) Members having the right to vote on that matter, either as a Member or proxy representing a Member; or
- 15.5.2 a person who is, or persons who together are, entitled to exercise at least 10% (ten percent) of the voting rights entitled to be voted on in that matter.
- 15.6 Whether voting is by way of a show of hands or polling, each Member shall be a voting Member and shall have 1 (one) vote for each Property owned or Body Corporate represented.
- 15.7 Where two or more Properties are consolidated, the resultant consolidated Property shall constitute a single Property to which a single vote shall be attributable.
- 15.8 Where any Property is owned by more than one person, all the registered owners of that Property shall together be deemed to be one Member and have the rights and obligations of one Member; provided however that all co-owners of any Property shall be jointly and severally liable for the due performance of any obligations to the Association, in respect of such Property.
- 15.9 Each Body Corporate of a sectional title scheme shall represent the interests of the Unit owners within that scheme. Individual Unit owners, unless acting as representatives of their Body Corporate, shall accordingly have no right to vote.
- 15.10 Participation at Members meeting may be conducted by electronic communication, provided that the electronic communication technology employed enables all persons participating in the meeting to communicate reasonably effectively and concurrently with each other without an intermediary and provided further that -
- 15.10.1 the notice of that meeting has informed Members of the availability of that form of participation and provided any necessary information to

enable Members or their proxies to access the available medium of means of electronic communication; and

15.10.2 access to the medium or means of electronic communication shall be at the expense of the Member or proxy making use of it.

15.11 Notwithstanding anything to the contrary contained herein, the Members in a Members meeting shall not have the power to make Rules, nor to make any amendment whatsoever in respect thereof.

15.12 To be adopted at a Members meeting, the minimum support required for an Ordinary Resolution shall be 50% (fifty percent) of the votes cast, and for a Special Resolution, shall be 75% (seventy five percent) of the votes cast.

15.13 A Members meeting, or the consideration of any matter being debated at the meeting, may be adjourned from time to time without further notice, subject to the below, on a motion supported by the Members entitled to exercise the majority of the voting rights held by all of the Members who are present at the meeting at the time.

15.14 An adjournment of a meeting, or of a consideration of a matter being debated at the meeting, as set out above, may be to a fixed time and place, or as agreed at the meeting, or until further notice, in which event notice as prescribed herein, shall be given in due course, to those Members in attendance, no business shall be transacted at the resumption of an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

16 RECORD DATE FOR DETERMINING MEMBER RIGHTS

16.1 The Directors may set a record date for the purpose of determining which Members are entitled to receive notice of a Members meeting, participate in and vote at a Members meeting, decide any matter by written consent or electronic communication, or be allotted or exercise other rights.

16.2 If the Directors do not determine a record date for any action or event, the record date shall be -

16.2.1 in the case of a meeting ,the date on which the Association gives Members notice of that meeting; or

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

17 MEMBERS ACTING OTHER THAN AT THE MEETING

17.1 A resolution that could be voted on at a Members meeting may instead be -

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

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

17.2 A resolution contemplated in the clause above -

17.2.1 shall have been adopted if it is supported by persons entitled to exercise sufficient voting rights for it to have been adopted as an Ordinary Resolution or Special Resolution, as the case may be, at a properly constituted Members' meeting; and

17.2.2 shall, if adopted, have the same effect as if it has been approved by voting at a meeting.

18 APPOINTMENT OF DIRECTORS

18.1 The number of Directors, unless otherwise determined by the Association in a Directors' meeting, shall be not more than 7 (seven) and not less than 4 (four).

18.2 Any person satisfying the qualification criteria set out herein or as may from time to time be determined in accordance with the Act, this Memorandum or the Rules, whether or not a Member, and whether or not a retiring Director, shall be eligible for election as a Director.

18.3 A person shall be or become disqualified from being a Director of the Association if –

18.3.1 a court has prohibited that person from being a Director, or declared the person to be a delinquent; or

18.3.2 the person -

-
- 18.3.3 is a juristic person; or
- 18.3.4 is an unemancipated minor or person under a similar legal disability; or
- 18.3.5 is an unrehabilitated insolvent;
- 18.3.6 is a person not satisfying the qualification and eligibility requirements set out in section 69 of the Act; or
- 18.3.7 is prohibited in terms of any public regulation to be a Director of a company;
- 18.3.8 has been removed from an office of trust on the grounds of misconduct involving dishonesty; or
- 18.3.9 has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined for theft, fraud, forgery, perjury or any other offence –
- 18.3.9.1.1 involving misrepresentation or dishonesty; or
 - 18.3.9.1.2 in connection with the promotion, formation or management of a company, or with any act contemplated in sections 69(2) or 69(5) of the Act; or
 - 18.3.9.1.3 under the Act, the Insolvency Act 24 of 1936, the Close Corporations Act 69 of 1984, the Competition Act 89 of 1998, the Financial Intelligence Centre Act 38 of 2001, the Securities Services Act 36 of 2004 or Chapter 2 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.
- 18.4 Directors are to be appointed yearly by the Members of the Association in the Annual General Meeting by show of hands if 7 (seven) or less prospective directors are nominated, otherwise by way of secret ballot.
- 18.5 To be elected at an Annual General Meeting, all persons nominated as Directors must be present at the meeting or have confirmed their agreement to stand, failing which they will not be eligible for election.

- 18.6 If less than the minimum number of Directors are elected at the Annual General Meeting, or if a vacancy subsequently arises for any reason, or if there are at any spare seats on the Board, the Board may at its discretion, by unanimous vote elect additional Directors at any time -
- 18.6.1 by written polling of all of the Members entitled to exercise voting rights in relation to the election of that Director as contemplated in section 60(3) of the Act; or
- 18.6.2 by being co-opted by the incumbent Directors by unanimous vote.
- 18.7 If as a result of vacancies arising on the Board there are no remaining Directors of the Association, any Member may convene a Members' meeting for the purpose of such an election.
- 18.8 Within 10 (ten) Days after the election of Directors at the Annual General Meeting, or by subsequent polling or co-opting, the Association shall confirm such election in writing to all Members.
- 18.9 Directors shall not be entitled to appoint alternate Directors.

19 DISQUALIFICATION AND REMOVAL OF DIRECTORS

- 19.1 Notwithstanding anything to the contrary contained in this Memorandum or in any agreement between a Director and the Association, or the fact that the Director's prescribed term has not expired, the Association shall, where more than 50% (fifty percent) of the other Directors of the Association have voted in favour of such resolution, be entitled to remove any Director by Ordinary Resolution passed at a Special General Meeting called for that purpose, provided that the Director concerned shall be given a reasonable opportunity to make representations in writing against his removal and that special notice of that meeting, including such representations, has been given as prescribed herein.
- 19.2 A Director shall cease to be a Director, if -

- 19.2.1 he delivers a notice of his resignation at the registered office of the Association in which event his resignation shall apply with effect from -
- 19.2.1.1 the date on which the notice is delivered; or
- 19.2.1.2 any later date stated in that notice, to which the Directors agree; or
- 19.2.2 he without prior apology and without good cause, fails to attend 3 (three) consecutive meetings of the Board, unless such failure is unanimously condoned by the remaining Board members; or
- 19.2.3 he becomes ineligible or disqualified or is removed as contemplated in the Act; or
- 19.2.4 he is declared a delinquent by a court, or placed on probation under conditions that are inconsistent with continuing to be a director of the Association; or
- 19.2.5 an application has been filed to surrender his estate or his estate is finally sequestrated or he is placed under curatorship by any court of competent jurisdiction; or
- 19.2.6 he dies or becomes incapacitated to the extent that he is unable to perform the functions of a director and is unlikely to regain that capacity within a reasonable time.

20 DIRECTORS MEETINGS

- 20.1 Directors meetings shall be held no less frequently than biannually and may be requisitioned on prior written notice at any time to all Directors by the Chairman, or in his absence the Vice Chairman, or alternatively by any 2 (two) Directors.
- 20.2 A meeting of the Directors may be conducted by electronic communication, or 1 (one) or more Directors may participate in a meeting by electronic communication, as long as the electronic communication facility employed enables all persons participating in that meeting to communicate concurrently

with each other without an intermediary and to participate effectively in the meeting.

- 20.3 The quorum for the transaction of the business of the Directors shall be 3 (three).
- 20.4 Questions arising at any meeting shall be decided by a majority of votes, each Director having 1 (one) vote, provided that in the event of equal votes, the person chairing the meeting shall have a second or casting vote.
- 20.5 The authority of the Directors to consider a matter other than at a meeting shall not be limited or restricted by this Memorandum.
- 20.6 The agenda for each meeting may be distributed beforehand or at the meeting, or alternatively drawn up at the meeting itself.
- 20.7 The Association shall keep minutes of the meetings of the Directors, and include in the minutes -
 - 20.7.1 any declaration given by notice or made by a Director that he or a related person has a personal financial interest in any agreement or decision; and
 - 20.7.2 every resolution adopted by the Directors.
- 20.8 A resolution of Directors passed in terms of this clause shall be reduced to writing, dated and sequentially numbered, signed by the person who chaired the meeting at which it was passed, placed in the Association's minute book, and noted at the next succeeding meeting of Directors.
- 20.9 A resolution may be reduced to written form in several like documents, each signed by one or more of the signatories to the resolution.
- 20.10 Resolutions adopted by the Directors shall be effective as of the date of the resolution, unless the resolution states otherwise.
- 20.11 Any minutes of a meeting, or a resolution, signed by the Chairman, or in his absence the Vice-Chairman, or where a Resolution is passed at a meeting, the person who chaired the meeting, shall be evidence of the proceedings of that meeting, or adoption of that resolution, as the case may be.

21 OFFICERS

- 21.1 The Directors shall, from amongst their number, elect a Chairman and Vice Chairman, and shall allocate portfolios to the other Directors.
- 21.2 Any office bearer shall cease to be an officer if he ceases to be a Director of the Association.
- 21.3 Within 30 (thirty) days of an officer ceasing to hold that office, either because he resigns from that office or as a result of disqualification as a set out above, a replacement shall be appointed.
- 21.4 The Directors may from time to time confer upon any officer, any of the powers and authority vested in them as Directors, for such time and purpose, and subject to such terms, conditions and restrictions, as they in their discretion, deem fit, and may at any time revoke or vary all or any of such powers and authorities.

22 COMMITTEES, MANAGERS AND AGENTS

- 22.1 The Directors may provide for the management of the business and affairs of the Association in such manner as they deem fit and may with this objective establish committees to manage any part of the business and affairs of the Association and delegate to such committees any of their powers, authorities and discretions, and may revoke or vary any such delegations.
- 22.1.1 The quorum for meetings of committees shall be 50% (fifty percent) of the members thereof, provided that should the number of members not be divisible by two then the quorum will be the next whole number after 50% (fifty percent).
- 22.1.2 The meetings, procedures and acts of a committee shall be governed by the provisions of this Memorandum in so far as this can be applicable, provided that no decisions binding the Association shall be taken without the approval of the Board.
- 22.2 The Directors may in addition, appoint any persons as managers, employee, agents or contractors of the Association for such purpose and on such terms, as to remuneration or otherwise, as they deem fit.

22.3 The creation of and delegation of any power to a committee, or the action taken by a committee, or the appointment of any persons as aforesaid, shall not alone satisfy or constitute compliance by a Director with the duty of that Director to the Association.

23 COMPANY AND ACCOUNTING RECORDS, ANNUAL FINANCIAL STATEMENTS AND AUDITOR

Every Member of the Association shall have the right to access information by direct request made to the Association in writing, either in person, or through an attorney or other personal representative designated in writing or in accordance with the Promotion of Access to Information Act 2 of 2000.

24 LIABILITY OF DIRECTORS

24.1 Each Director, secretary and other officer of the Association shall be and is hereby indemnified by the Association against any liability incurred by him from time to time in that capacity, that is not inconsistent with the provisions of the Act.

24.2 The Association -

24.2.1 shall cover and advance to a Director expenses incurred in defending litigation in any proceedings arising out of the Director's service to the Association; and

24.2.2 if the proceedings are in respect of any liability for which the Association may indemnify Directors, indemnifies such Director against expenses as contemplated in the clause immediately above, irrespective of whether the Director has already advanced those expenses,.

24.3 The Association indemnifies the Directors in respect of any liability arising other than as contemplated in section 78(6) of the Act.

24.4 The Association shall purchase insurance to protect -

- 24.4.1 the Directors against any liability for which the Association is permitted to indemnify the Directors in accordance with section 78(5) of the Act; and
 - 24.4.2 the Association against any contingency including, but not limited to, any expenses that the Association is permitted to advance in terms of this Memorandum.
- 24.5 The Association shall be entitled to claim restitution from a Director for any money paid directly or indirectly by the Association to or on behalf of that Director in any manner inconsistent with section 78 of the Act.