

**REPUBLIC OF SOUTH AFRICA**

**COMPANIES ACT 2008**

**MEMORANDUM OF INCORPORATION OF A NON-PROFIT COMPANY**

**Name of Company: KAGGA KAMMA HOME OWNERS ASSOCIATION NPC**

**Registration Number: 1990/0058343/08**

**A Non-Profit Company with voting Members, incorporated for a communal or group interest**

**("the Company")**

**This Memorandum of Incorporation was adopted in accordance with a proposal by the Board by a special resolution taken by the members in full substitution of the then existing member (formerly Memorandum and Articles of Association).**



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**Chair**

## **INCORPORATION:**

- 1. The Company is incorporated as a Non-Profit Company, as defined in the Companies Act, 71/2008.**
- 2. The Company is incorporated in accordance with and governed by:**
  - a. The unalterable provisions of the Companies Act, that are applicable to Non-Profit Companies;**
  - b. The alterable provisions of the Companies Act, that are applicable to Non-Profit Companies, subject to any limitation, extension, variation or substitution set out in this MOI; and**
  - c. The provisions of this Memorandum of Incorporation.**

**Note 1: The Company elects in terms of section 34(2) of the Companies Act not to voluntarily comply with the provisions of chapter 3 of the Companies Act 2008.**

**Note 2: The Memorandum of Incorporation contained in Form CoR.15.1E of the Companies Regulations, 2011 shall not apply to the Company.**

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## **1. INTERPRETATION**

- 1.1.** In the interpretation of this MOI and unless contrary to or excluded by the subject or context;
- 1.2.** Any word herein signifying:
  - 1.2.1.** the singular shall include the plural and vice versa;
  - 1.2.2.** the one gender shall include the other two (2) genders;
- 1.3.** Any word herein which is defined in the Act and is not defined in article 1.7 shall bear that statutory meaning in this MOI;
- 1.4.** Any word, phrase or sentence herein which is not defined in the Act or in article 1.7 shall bear its usual meaning;
- 1.5.** Each term, power or authority herein shall be given the widest possible interpretation;
- 1.6.** Phrases as defined in the Share Blocks Act shall have the meanings so assigned words importing persons shall include legal entities described in article 1.7.27 below;
- 1.7.** Each of the following words and expression herein shall have the meaning stated and where applicable, shall include the word or expression stated opposite it:
  - 1.7.1.** "Act" shall mean the Companies Act, 71 of 2008, as amended from time to time;
  - 1.7.2.** "authorised representative" means a person duly authorised to act as the representative of a Company or other Corporate Body;
  - 1.7.3.** "board" shall mean the board of directors for the time being of the Company elected in terms of article 23;
  - 1.7.4.** "buildings" means all buildings erected on the properties of which the owners belong to the Association;
  - 1.7.5.** "Chair" shall mean the Chairman of the board of the Company for the time being, elected in terms of article 24;
  - 1.7.6.** "CIPC" shall mean the Companies and Intellectual Property Commission;
  - 1.7.7.** "common facilities" shall mean any Improvements on the land for the use of all Members of the Association;
  - 1.7.8.** "common property" means any demarcated and identified area of the land within the Greater Kagga Kamma Private Nature Reserve area where Corporate Bodies as members of the Association and their individual members may, by virtue of an agreement(s) between the Corporate Bodies and the KKHOA, have and are allowed access to and use of these demarcated areas on a non-exclusive basis. The nature and extent of the demarcated areas will be approved by the members in general meeting from time to time, and by way of example includes *inter alia* common areas such as demarcated roads, walkways, communal gardens, visitors parking areas, access thereto and egress therefrom, but specifically excludes such Common Property which is delineated as exclusive use area in respect of a specific erf;
  - 1.7.9.** "Company" shall mean Kagga Kamma Home Owners Association;
  - 1.7.10.** "Directors" shall mean the directors for the time being of the Company elected in terms of article 23;

- 1.7.11.** "electronic communication" shall bear the same meaning as set out in section 1 of the Electronic Communication and Transaction Act, 25 of 2002;
- 1.7.12.** "general meeting" shall mean any general meeting of the Company or any adjournment thereof;
- 1.7.13.** "improvements" shall mean any improvements of a permanent nature erected, alternatively, to be erected on the Land to be used for any purpose whatsoever;
- 1.7.14.** "legal representative" means any person who has submitted the necessary proof of his appointment as:
- 1.7.14.1.** the Executor of the Estate of a deceased Member or the Trustee, Curator, or Guardian of a Member whose Estate has been sequestrated or who is otherwise under legal disability;
- 1.7.14.2.** the liquidator of any Member which is a body corporate in the course of being wound up;  
or
- 1.7.14.3.** the judicial Manager of any Member which is a Company under judicial management;
- 1.7.15.** "management regulations / rules" shall mean such regulations, directions, procedures, rules or the like, made by the directors or the Managing Agent in terms of the MOI;
- 1.7.16.** "Managing Agent" shall mean the Managing Agent, if any, appointed from time to time by the Company for the purposes of managing the Association;
- 1.7.17.** "Member" shall mean Kagga Kamma Ontwikkeling (Pty) Ltd, the owners of respective portions of Farm Zwartrug 65 and /or their successors in title and the owner/s of the lodge or its successors in title and includes a purchaser who has purchased subject to a suspensive condition, irrespective as to whether such condition has been fulfilled and further includes a purchaser who has not yet taken transfer of the property;
- 1.7.18.** "Member present in person" includes present by authorised representatives and legal representatives who are present in person;
- 1.7.19.** "MOI" shall mean the Memorandum of Incorporation of the Company, as contained in this document, as duly amended from time to time;
- 1.7.20.** "month" means a calendar month;
- 1.7.21.** "office" shall mean the registered office of the Company;
- 1.7.22.** "person" shall include any natural person, Company or other Corporate Body, a statutory body, a partnership or a Company of persons, as the case may be, having the legal capacity required in terms of the laws of the Republic;
- 1.7.23.** "register" means the register of Members kept in terms of the Act and includes any branch register;
- 1.7.24.** "property" shall mean the erven known as portions 1 to 50 of the farm Zwartrug, Ceres RD;  
"Republic" shall mean the Republic of South Africa;
- 1.7.25.** "share blocks act" shall mean the Share Blocks Control Act no. 59 of 1980, as amended and the regulations promulgated from time to time in regard thereto;
- 1.7.26.** "share block Company" means Kagga Kamma Share Block (Pty) Ltd;
- 1.7.27.** "signature" shall include the reproduction of signature lithography, printing with an India-rubber stamp or any other electronic communication process partly the one and partly the other process;

- 1.7.28.** "special business" shall mean all business that is transacted at an annual general meeting excepting the business such meeting is obliged to transact in terms of article 14.1 , and all business that is transacted at any other general meeting;
- 1.7.29.** "Statutes" shall mean the Companies Act, the share blocks Act and every other Act for the time being in force, concerning companies and affecting the Company;
- 1.7.30.** "writing" shall include printing, typewriting, lithography or any other electronic communication process, or partly one and partly the other.

## **2. NON-PROFIT ASSOCIATION**

- 2.1.** The Association is incorporated as a Non-Profit Association as defined in the Act.
- 2.2.** The Association will not carry on any profit making activities; or participate in any business; profession or occupation carried on by any of its Members, or provide any financial assistance, premises, continuous services, or facilities to its Members for the purpose of carrying on any business, profession or occupation by them.

## **3. PURPOSE AND OBJECTS OF THE COMPANY**

- 3.1.** The main object of the Association is to promote, sustain and advance the communal and group interest of its Members by acting as an Association to administer, oversee, maintain and control the common areas, common services and common facilities erf by the members;
- 3.2.** To enter into agreements for the provision of services which may *inter alia* include, but not be limited to the provision of water, electricity, sewerage, security, reception and administration services to the Association and where required, to members of the Association;
- 3.3.** To administer and enforce the rules of the Association with due regard to the rights and obligations of the various members;
- 3.4.** To control and ensure compliance with all conditions imposed by the Local Authorities;
- 3.5.** To administer and collect the KKHOA Levies from its Members.
- 3.6. Ancillary Objects:**
- 3.6.1.** Without limiting the generality, the Association shall in general:
- 3.6.1.1.** Control, administer and manage its affairs and the affairs of its members as agreed on from time to time and in terms of applicable legislation, this MOI and the Association's Rules as amended;
- 3.6.1.2.** Regulate and control the harmonious development of the Kagga Kamma Nature Reserve and ensure that high standards are adhered to;
- 3.6.1.3.** Administer and collect the Kagga Kamma Home Owner's Association levies from its members;
- 3.6.1.4.** To have an interest in any Association or Companies, which have the same or similar objects as the Association for the purpose of acquiring the undertaking of all or any of the assets of liabilities of such Association for any other purpose which may seem, directly or

indirectly, calculated to benefit the Association, or to transfer to any such Association or Companies the undertaking or all, or any of the assets or liabilities of the Association;

- 3.6.1.5. To amalgamate with other Companies which have the same or similar objects as the Association;
- 3.6.1.6. To take part in the management, supervision and control of the business or operations of any other Association or Business which has the same or similar objects as the Association and to enter into partnership with any other Association or business which has the same or similar objects as the Association;
- 3.6.1.7. To remunerate any persons in cash for services rendered in its information or in the development of its business;
- 3.6.1.8. To make donations, provided that no donation may be made to any Director or member of the Association;
- 3.6.1.9. To pay gratuities and pensions and establish pension schemes and other incentives schemes for bona fide employees of the Association.

#### **4. CONDITIONS**

- 4.1. The Association shall ensure that substantially the whole of its activities are directed to the furtherance of its sole or principal object and not for the specific benefit of an individual Member or minority group.
- 4.2. The Association must not in terms of Schedule 1, item 1(3) of the Act:
  - 4.2.1. directly or indirectly, pay any portion of its income or transfer any of its assets, regardless of how the income or asset was derived, to any person who is or as an Incorporator of the Association, or who is a Member or Director, or person appointing a Director, of the Association, except as :
    - 4.2.2.1 reasonable remuneration for goods delivered or services rendered to, or at the direction of the Association; or
    - 4.2.2.2 payment of, or reimbursement for, expenses incurred to advance a stated object of the Association; or
    - 4.2.2.3 as a payment of an amount due and payable by the Association In terms of a bona fide Agreement between the Association and that person or another; or
    - 4.2.2.4 as a payment in respect of any rights of that person, to the extent that such rights are administered by the Association in order to advance a stated object of the Association;  
or
    - 4.2.2.5 in respect of any legal obligation binding on the Association.
  - 4.1.2 The Association shall utilise substantially the whole of its funds for the object for which it has been established.
  - 4.1.3 The Association may not, directly or indirectly, distribute any of its funds or assets to any person other than in the furtherance of its objectives.
  - 4.1.4 The Association shall not become a party to and will not permit itself to be used as part of an impermissible avoidance arrangement contemplated in Part 11A of Chapter 11 of the Income



Tax Act, or a transaction, operation or scheme contemplated in Section 103(5) of the Income Tax Act.

## **5 POWERS AND CAPACITY OF THE ASSOCIATION**

- 5.1 The Association has the powers and capacity of an individual.
- 5.2 Notwithstanding the omission from this MOI of any provision to that effect, the Association may do anything which the Act empowers a Company to do if so authorised by its MOI.
- 5.3 The Association shall be able to sue and be sued in its own name in respect of:
  - 5.3.1 any contract entered into by it;
  - 5.3.2 any damages suffered or caused by it;
  - 5.3.3 any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties in terms of this MOI;
- 5.4 The Association shall carry out the duties assigned to it under the Act and in terms of this MOI, which shall include the duty to use its best endeavours to manage and administer Kagga Kamma Nature Reserve for the benefit of the Members insofar as it lies within its competence and powers.

## **6 MEMORANDUM OF INCORPORATION AND ASSOCIATION RULES**

- 6.1 Save for correcting patent errors substantiated as such from objective evidence or which are self-evident errors in the MOI (including, but without limitation, spelling punctuation, reference, grammar or similar defects), which the Board is empowered to do in terms of Section 17 (1) of the Act, all other amendments of the MOI shall be effected in accordance with Section 16 (1) of the Act.
- 6.2 This MOI does not restrict, limit or qualify the power of the Board to make, amend or repeal any necessary or incidental rules relating to the governance of the Association in respect of matters that are not addressed in the Act or this MOI, in accordance with the provisions of Sections 15 (3) to 15 (5) of the Act.
- 6.3 If the Board makes any rules, it must file and publish a copy of those rules in the manner prescribed in the Act.
  - 6.3.1 If the Board alters this MOI or any rules made by it in terms of Section 17 (1) of the Act, it must publish a notice of such alteration in the manner prescribed by the Act.

## **7 MEMBERSHIP**

- 7.1 Membership of the Association shall be limited to:
  - 7.1.1 Kagga Kamma Nature Reserve Share Block (Pty) Ltd;
  - 7.1.2 Kagga Kamma Ontwikkeling (Pty) Ltd;
  - 7.1.3 Bushman Lodge;
  - 7.1.4 Any other person owning property within the greater Kagga Kamma Nature Reserve and whose name is reflected in the members register;
- 7.2 Membership will automatically terminate once a person / corporate body ceases to be the registered owner of a portion of the land.

## **8. REGISTER OF MEMBERS**

**8.1** The Company shall maintain at its registered office a register of voting Members of the Company.

## **9. THE RIGHTS AND OBLIGATIONS OF MEMBERS:**

**9.1** Every Member is obliged to comply with:

**9.1.1** the provisions of this Memorandum of Incorporation and any regulations passed by the Association in terms hereof;

**9.1.2** the Association's Rules;

**9.1.3** any directive given by the Board in enforcing the provisions of this Memorandum of Incorporation;

**9.1.4** The rights and obligations of a Member is not transferable;

**9.1.5** Every Member shall to the best of its ability further the objects and interests of the Association;

**9.1.6** The Members shall in terms of the levy provisions be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.

**9.1.7** A Member is required to ensure that their guests or invitees comply with all applicable provisions of this Memorandum of Incorporation and the Rules.

## **10. LEVIES**

**10.1** The Directors may, from time to time, impose levies upon the members for meeting all the expenses which the Directors reasonably anticipate the Association will be put by way of payment of all charges payable by the Company, and / or the services rendered to it, and / or for payment of all expenses necessarily or reasonably incurred in connection with the management of the Association, as well as by way of maintenance, repair, improvement and keeping in good order and condition of such facilities as it is obliged to maintain and / or provide, and any other expenses reasonably incurred by the Association in the fulfilment of its duties.

**10.2** The Directors shall, not less than 30 (thirty) days prior to the end of each financial year, or as soon thereafter as reasonably possible, prepare and deliver to each member, at the address chosen by him, an estimate in reasonable detail, of the amount which shall be required to meet the Association's expenses during the following financial year. Any estimated deficiency resulting from the previous year shall be separately specified. The Directors may include in such estimate an amount to be held in trust to meet anticipated future expenditure not of an annual nature.

**10.3** The notice to members shall specify the contribution payable by the member.

**10.4** Levy shall be payable in equal monthly instalments due monthly in advance on the first day of each month during the financial year.

**10.5** In the event that the Directors, for any reason whatsoever, fail to prepare and deliver the estimate referred to in 10.2 above timeously, every member shall continue to pay the levy

previously imposed and shall, once notice is served, pay the levy amount specified.

- 10.6** The Directors may from time to time impose special levies upon the members in respect of all expenses which are not included in any estimate made in terms of article 10.2, and the Directors may in imposing such levies further determine the terms of payment thereof.
- 10.7** The Directors 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 prescribed.
- 10.8** Any amount due by a member shall be a debt due by him to the Association. The obligation of a member to pay levy and / or interest shall cease upon his ceasing to be a member without prejudice to the Association's rights to recover arrear levies and interest.
- 10.9** In calculating the levy payable by any member, the Directors shall as far as is reasonably practicable:
- 10.9.1** assign those costs arising directly out of the erf itself to the member owning such erf;
- 10.9.2** assign costs of a general nature to:
- 10.9.2.1** all members equally, provided however that the Directors may in any case where it considers it equitable so to do, assign to any member any greater or lesser share of the costs as may be reasonable in the circumstances.
- 10.10** No member shall be entitled to any privileges of membership unless and until he paid any outstanding levies, of whatever nature, and other sum (if any) including interest thereon, which is due and payable to the Association in terms of his membership.

## **11. CESSATION OF MEMBERSHIP**

- 11.1** No member ceasing to be a member of the Association (nor their successors, executors, curators, trustees or liquidators) shall have any claim upon or interest in or right to the funds or other property of the Association.
- 11.2** The Association may claim from any member or his estate any arrears or levy and interest or other sums due from him to the Association at the time of his ceasing to be a member.

## **12. GENERAL MEETINGS:**

- 12.1.** The Company shall hold annual general meetings:
- 12.1.1.** once in every calendar year, but no more than fifteen (15) months after the date of the previous Annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.
- 12.1.2.** The Directors shall have the power to convene other general meetings of the Company at such time and place as the Directors determine.
- 12.1.3.** The Directors shall also convene other general meetings where a requisition is made by the number of Members of the Company as required by the Act, failing which such

a meeting may be convened by the requisitionists themselves in accordance with the Act.

**12.1.4.** General meetings convened in accordance with sections 61 and 64 of the Act shall be held at such time and place as is determined in terms of those sections.

### **13. NOTICE OF GENERAL MEETINGS**

**13.1.** Subject to the provisions of the Act

**13.1.1.** not less than fifteen (15) business days' notice in writing of an Annual general meeting or of a general meeting at which a Special resolution is to be proposed, shall be given to all Members;

**13.1.2.** not less than ten (10) business days' notice in writing of any other general meeting shall be given to all Members.

**13.2.** The notice period stated above shall be exclusive of the day on which the Notice is served or deemed to be served and exclusive of the date of the meeting.

**13.3.** The notice of a general meeting shall state –

**13.3.1.** the date time and place of that meeting;

**13.3.2.** the general purpose of the meeting, and

**13.3.3.** the matters which will be considered, and may be voted on, at such meeting.

**13.4.** If applicable any specific purpose contemplated in section 61 (3) (a), including a copy of any proposed resolution of which the Company has received notice and which is to be considered at the meeting confirming the percentage of voting rights that will be required for that resolution to be adopted.

**13.5.** The Directors may provide for participation by Members by electronic communication as set out in section 63 of the Act.

**13.6.** A meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by all of the Members present having a right to attend and vote at the meeting.

**13.7.** The inadvertent omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings at that meeting.

### **14. PROCEEDINGS AT GENERAL MEETINGS**

**14.1.** A meeting convened in terms of article 13.1 must, at a minimum, provide for the following business to be transacted:

**14.1.1.** Presentation of—

**14.1.1.1.** the Directors' Report;

**14.1.1.2.** the Audited Financial Statements for the immediately preceding financial year;

**14.1.2.** Election of Directors;

**14.1.3.** Appointment of an Auditor for the ensuing financial year; and

**14.1.4.** Other business lain before it.

- 14.2.** Subject to the provisions of the Act, no business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum at any general meeting shall be no less one per centum (1%) of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting and at least three Members entitled to vote are present in person at the commencement and throughout the meeting.
- 14.3.** If within 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 seven (7) days later and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person or by Proxy shall be a quorum.
- 14.4.** The Chair of the board of Directors shall preside as Chair at every general meeting of the Company.
- 14.5.** If at a general meeting there is no Chair or the Chair is not willing to act or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, 1 (one) of the appointed Directors present shall be Chair of the meeting.
- 14.6.** Subject to the provisions of the Act, the Chair of the meeting may, with the consent of the majority of Members present at any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting, 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.
- 14.7.** A general meeting shall, notwithstanding that it is called by shorter notice than that specified in this MOI, be deemed to have been duly called if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting, who hold not less than ninety five per centum of the total voting rights of all the Members;
- 14.8.** A general meeting shall be entitled to deal with special business, the general nature of which has not been notified, if it is so agreed by a majority in number of the Members having a right to attend and vote at the meeting, who between them hold not less than fifty per centum of the total voting rights of the Members.
- 14.9.** Where a Company or other Body Corporate is a Member of the Company it may, in the appropriate manner, nominate any person it deems fit to act as its authorised representative at any general meeting and such authorised representative shall be entitled to exercise the same rights and powers which that Company would have had at that meeting if it were a natural person and present in person or by Proxy.

## **15. VOTES OF MEMBERS AT GENERAL MEETINGS**

- 15.1.** Every voting Member who is represented either in person or by Proxy at a general meeting shall have one (1) vote per erf owned by such Member.
- 15.2.** In the case of joint holders, the vote of the person whose name appears first in the register of Members

and tenders a vote, whether in person or by Proxy, shall be accepted to the exclusion of the votes of the other joint holders.

- 15.3.** At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, in which case the Members or Proxy shall have 1 (one) vote for each erf owned and in the event of a poll the Member or Proxy shall have 1 (one) vote for each erf owned.
- 15.4.** A poll may be called or demanded (before or after the declaration of the result of the show of hands by:
  - 15.4.1.** the Chair of the meeting; or
  - 15.4.2.** by at least five (5) Members present in person or by Proxy having the right to vote at meetings; or
  - 15.4.3.** by any Member or Members present in person or by Proxy having the right to vote at the meeting and representing not less than 10% (ten percent) of the total voting rights of all Members having the right to vote at the meeting.
- 15.5.** Any demand for a poll may be withdrawn.
- 15.6.** The poll shall be taken in such a manner as the Chair of the meeting directs and the results of the poll shall be deemed to be the result of the meeting.
- 15.7.** Where a poll is not demanded a declaration by the Chair of the meeting that a resolution has been passed as well as a making of an entry to that effect in the book containing the minutes of the proceedings of general meetings, 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, that the resolution was so passed.
- 15.8.** In the case of an equality of votes, the Chair of the meeting shall not have a second or casting vote and the resolution shall be deemed not to have been passed.
- 15.9.** Any objection to the admissibility of a vote on a show of hands or on a poll shall be raised at the general meeting at which that show of hands or poll is to take place or takes place. That objection shall be determined by the Chairman of that general meeting and his decision thereon shall be final and binding. Accordingly any vote not disallowed at that meeting shall be valid for all purposes.
- 15.10.** A resolution shall not be invalid because a vote which should not have been included has been taken into account unless, in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding), the exclusion of that vote would have altered the result of the voting on that resolution. Conversely a resolution shall not be invalid because a vote which should have been included has not been taken into account unless in the opinion of the Chairman of that meeting (whose decisions thereon shall be final and binding) that the inclusion of that vote would have altered the result of the voting on that resolution.
- 15.11.** Any legal representative may vote at a general meeting in the same manner as if he were the registered holder of the relevant erf; provided that (except where the Directors have previously accepted his right to vote in respect of that erf) at least twenty-four (24) hours before the time of the holding of the meeting at which he proposes to vote, he shall satisfy the Directors as to his capacity as legal representative.

## **16. RESOLUTIONS**

- 16.1.** For an ordinary resolution to be adopted at a Members meeting, it must be supported by more than fifty per centum (50%) of the Members who voted on the resolution, as provided in section 65 (7) of the Act.
- 16.2.** For a Special resolution to be adopted at a Members meeting, it must be supported by at least seventy five per centum (75%) of the Members who voted on the resolution, as provided in section 65 (9) of the Act.
- 16.3.** A Special resolution adopted at a Members meeting is required in addition for:
- 16.3.1.** amend the Company's Memorandum of Incorporation to the extent required by section 16 (1) (c) and section 36 (2) (a);
  - 16.3.2.** ratify a consolidated revision of a Company's Memorandum of Incorporation, as contemplated in section 18 (1) (b) of the Act;
  - 16.3.3.** ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20 (2) of the Act;
  - 16.3.4.** approve the voluntary winding up of the Company, as contemplated in section 80 (1) of the Act;
  - 16.3.5.** approve the winding up a Company in the circumstances contemplated in section 81 (1) of the Act;
  - 16.3.6.** approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82 (5) of the Act;
  - 16.3.7.** approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5;
  - 16.3.8.** as may be required in terms legislation or this MOI.

## **17. MEMBERS ACTING OTHER THAN AT MEETING**

- 17.1.** Subject to the provisions of section 60 (5) and 65 (7) of the Act, an Ordinary resolution in writing signed by the majority of Members of the Company entitled to attend and vote at a general meeting shall be as valid and effective as if it had been passed at a general meeting properly held on the date on which the last signature is affixed.
- 17.2.** Such resolution may consist of several documents in the same form, each of which is signed in terms of this article, by sufficient Members to constitute a quorum and shall be deemed (unless a statement to the contrary is made on that resolution) to have been passed on the closing date stated in the notice which shall be no less than twenty (20) business days after the posting date.

## **18. PROXIES**

- 18.1.** The instrument appointing a Proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing or, if the appointer is a Corporate Body, signed by an officer or agent authorised by the Body Corporate.

- 18.2.** The holder of a General or Special Power of Attorney, whether he is himself a Member or not, given by a Member, shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meetings.
- 18.3.** The instrument appointing a Proxy to vote at a meeting of the Company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of section 63 (7) of the Act, a demand by a Proxy shall be the same as a demand by a Member.
- 18.4.** The instrument appointing a Proxy and the Power of Attorney or the other authority, if any, under which it is signed, or a duly certified copy of such Power or Authority, shall be deposited at the office not less than 48 (forty eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default of complying herewith, the instrument of Proxy shall not be treated as valid.
- 18.5.** No instrument appointing a Proxy shall be valid after the expiration of twelve (12) months from the date when it was signed, unless so specifically stated in the Proxy itself and no Proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 18.6.** The instrument appointing a Proxy shall, subject to the provisions of section 58 (8) of the Act, be in the following form or as near thereto as circumstances permit:



**KAGGA KAMMA HOME OWNERS ASSOCIATION NPC**

(a Non-Profit Association incorporated for a communal or group interest benefit)

Registration Number: **1990/0058343/08**

("the Association")

I ..... holding ..... Votes  
 Of .....  
 being a Member of the Association, hereby appoint .....  
 of ..... or failing him .....of  
 or failing him .....of .....or failing him the Chair of the  
 meeting as my / our Proxy to attend and speak and vote on a poll for me / us and on my / our behalf at the Annual  
 General Meeting or General Meeting (as the case may be) of the Association to be held on the ..... day of  
 ..... 20..... and at any adjournment thereof, as follows:

Resolution	In Favour of	Against	Abstain

This Proxy shall be binding upon me until such time as I personally withdraw it and it is limited to the voting on the Special and Ordinary Resolutions referred to herein. Unless otherwise instructed, the Proxy will vote as he thinks fit.

- SIGNED this ..... day of..... 20.....
- .....
- Signature
- Please note:
- **Meeting participants (including Proxies) are required to provide reasonably satisfactory identification before being entitled to attend or participate in a Members' meeting. Forms of identification include valid identity documents, driver's licenses and passports.**
- **Any alteration or correction made to this form of Proxy (excluding the deletion of alternatives and excluding the deletion of singular / plural alternatives) must be initialled by the signatory/ies.**
- **Documentary evidence establishing the authority of a person signing this form of Proxy in a representative capacity (e.g. on behalf of an Association, Close Corporation or Trust) must be attached to this form.**
- **The completion and lodging of this form of Proxy will not preclude the relevant Member from attending the meeting and speaking and voting in person thereat, to the exclusion of any Proxy appointed in terms thereof, should such Member wish to do so.**

- ***Any Member entitled to attend and vote is entitled to appoint a Proxy to attend, vote or speak in his / her stead and such Proxy need not also be a Member of the Association.***
  - ***This Proxy form should be forwarded to reach the registered office of the Association, no later than 48 hours before the meeting.***
  - ***E Mail and Facsimile copies of this Proxy form must be duly verified before commencement of the meeting to be eligible for acceptance.***
  - ***If the requirements contained herein are not fulfilled the Proxy form and or the nomination of the Proxy will be null and void***
-

## **19. RECORDS OF GENERAL MEETINGS**

- 19.1.** The Directors shall cause Minutes to be made of the proceedings at every general meeting, including all resolutions passed at such meetings and shall cause such Minutes and all resolutions passed to be inserted in a book provided for that purpose, or to be kept in electronic form
- 19.2.** Any copy of any record or resolution referred to in article 19.1, which purports to be signed by any Director or the Chair, shall be *prima facie* evidence of the matters stated therein.

## **DIRECTORS**

### **20. NUMBER OF DIRECTORS**

- 20.1.** The number of Directors, unless otherwise determined by the Company in general meetings, shall be not less than three (3) and not more than four (4).
- 20.2.** The Company may from time to time at a meeting of Members resolve to determine the number of Directors within the parameters outlined in Article 20.1.
- 20.3.** Should the Company wish to amend the provisions of Article 20.1, it can only be done subject to the provisions of section 66 (2)(b) of the Act.

### **21. REMUNERATION OF DIRECTORS**

- 21.1.** The Directors shall not receive remuneration by way of fees, salary, commission or otherwise.
- 21.2.** The Directors shall be reimbursed for all reasonable travelling, hotel and other expenses of whatsoever nature properly incurred by them in or about the performance of their duties as Directors including, but not limited to, the reasonable cost of attending and travelling from their normal place of residence to and from meetings of Directors or any committee of the Directors or any general meetings.

### **22. ROTATION OF DIRECTORS**

- 22.1.** At each annual general meeting one half of the number of the directors shall retire or if their number is not divisible by two, one of the two groups each as equal in number as possible into which the directors have been divided for this purpose.
- 22.2.** The Directors to retire in each year in terms of article 22.1 are those who have been the longest in office since their last election, but as between persons who were elected as Directors on the same day the ones to retire shall be determined by lot, unless they otherwise agree.
- 22.3.** A retiring Director is eligible for re-election.

### **23. NOMINATION AND ELECTION OF DIRECTORS**

- 23.1.** all nomination of Directors shall be made by Members only in the manner and on the form prescribed from time to time by the Directors;
- 23.2.** the nomination form must be lodged with the Secretary of the Company at least 48 (forty eight) hours before the commencement of the Annual general meeting at which the nomination is to be considered.

- 23.3.** In the event of any person howsoever being entitled to appoint the majority of the Directors of the Company, that person or his representative shall in fact guarantee compliance with any obligation of the Company specified in the MOI and confirmed by the Commissioner in the prescribed manner.
- 23.4.** The appointment of two (2) or more persons as Directors of the Company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote against it.
- 23.5.** A Director shall not be required to be a member of the Association. A Director who is not a Member of the Company shall nevertheless be entitled to attend and speak at general meetings.
- 23.6.** Except for the provisions of article 23.4 above every resolution of a general meeting for the election of a Director shall relate only to the person who is nominated in that resolution.
- 23.7.** Voting in respect of the appointment of Directors to fill the declared vacancies, shall in terms of article 23.6 be conducted on a poll whereby the net votes (abstentions are disregarded for purposes of the count) in respect of each nominee is calculated and the nominees with the highest net positive votes ranking will then in sequence of ranking fill the declared vacancies and will accordingly be regarded as the elected Directors.

#### **24. ELECTION OF THE CHAIR**

- 24.1.** At the commencement of the first meeting of the board of Directors and thereafter immediately after each annual members meeting, the Members of the board of Directors shall elect a Chair from among their number who shall hold office as such until the next annual meeting.
- 24.2.** The Chair shall not have a casting vote.
- 24.3.** In the event that no such Chair is elected, or if at any meeting the Chair is not present within ten (10) minutes after the time appointed for holding the same, the Directors may elect 1 (one) of the other Directors to be Chair of the meeting.

#### **25. FILLING OF CASUAL VACANCIES ON THE BOARD OF DIRECTORS**

- 25.1.** The Directors may by unanimous resolution at any time appoint any other person as an additional Director or to fill a casual vacancy, but so long as the total number of Directors shall not at any time exceed the number determined by resolution at an Annual general meeting.
- 25.2.** The continuing Directors may act notwithstanding any vacancy in their number, but, if and for so long as their number is reduced below the minimum number fixed by or pursuant to this MOI as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of the Company, but for no other purpose.
- 25.3.** Provided that the board of Directors shall comprise not less than three (3) Directors, any casual vacancy occurring on the board of Directors may be filled by the Directors, but the Director so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose stead he is appointed was last elected as Director.

## **26. ALTERNATE DIRECTORS**

- 26.1.** Each Director shall have the power to nominate any person possessing the necessary qualifications of a Director, provided that the appointment of an alternate Director shall be approved by the board, and on such appointment being made, the alternate Director shall in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Company.
- 26.2.** The alternate Directors whilst acting in the stead of the Directors, who appointed them, shall exercise and discharge all the powers, duties and functions of the Directors they represent.
- 26.3.** The appointment of an alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever the Director who appointed him ceases to be a Director or gives notice to the Secretary of the Company that the alternate Director representing him has ceased to do so.
- 26.4.** Alternate Directors, while acting in the place of the Directors who appointed them, shall exercise and discharge all the duties and functions of the Directors they represent. The appointment of an alternate Director shall cease upon the happening of any event, which, if he were a Director, would cause him to cease to hold office in terms of this MOI or if the Director who appointed him ceases to be a Director or gives notice to the Company dismissing him as alternate Director. An alternate Director shall look to the Director who appointed him for his remuneration for his services as a Director unless the Company in general meeting otherwise resolves.
- 26.5.** Notwithstanding the foregoing an alternate shall not;
- 26.5.1.** be entitled to remuneration;
  - 26.5.2.** be entitled in his capacity as alternate, to attend any meeting of Directors at which his nominator is present; or
  - 26.5.3.** be entitled to sign a resolution passed otherwise than at a meeting of Directors' in terms of this MOI unless the Director who appointed him is incapacitated or is absent from the town in which the office is situate.

## **27. DISQUALIFICATION OF DIRECTORS AND ALTERNATE DIRECTORS**

- 27.1.** In addition to section 69 of the Act any Director or alternate Director shall cease to be a Director of the Company on the happening of any of the following events:
- 27.1.1.** his Estate is finally sequestrated;
  - 27.1.2.** he files a petition for the surrender of his Estate as insolvent;
  - 27.1.3.** he is placed under curatorship by any Court of competent Jurisdiction;
  - 27.1.4.** he delivers a notice of his resignation at the office with effect from:
    - 27.1.4.1.** the date on which that notice is delivered; or
    - 27.1.4.2.** any later date stated in that notice to which the Directors agree;
  - 27.1.5.** he is absent from two consecutive meetings of Directors of which he had received notice at least ten (10) days beforehand, provided that absence abroad or due to illness or condonation of absence due to special circumstances in terms of a Directors resolution shall suspend the operation of this provision; or

- 27.1.6. if, he is directly or indirectly interested in any contract of proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
  - 27.1.7. if, the Director is removed by an Ordinary resolution in a general meeting of Members in accordance with the Act;
  - 27.1.8. he resigns his office by notice in writing to the Company;
  - 27.1.9. he is, where there are three or more Directors of the Company, dismissed by a notice signed by all of his co-Directors;
- 27.2. Neither a Director nor an Alternate Director shall be disqualified from acting as such if he is not a Member of the Company.

## **28. DUTIES OF DIRECTORS**

- 28.1. Without in any way derogating from the generality of the duties of the Directors, the Directors shall in particular be obliged to:
- 28.1.1. determine the annual levy budget;
  - 28.1.2. from time to time open and / or hold a banking or similar account with accredited financial institution in the name of the Company and to deposit in such account all moneys which are due to the Company in the first instance;
  - 28.1.3. administer the funds of the Company and income accruing to the Company in order to achieve the main object of the Company;
  - 28.1.4. keep proper and comprehensive account books of account and records;
  - 28.1.5. retain any financial records or other documents in respect of the Company for such period(s) as determined by the Act ;
  - 28.1.6. utilise the funds of the Company solely for the main object of the Company or to invest funds available for investment only in accordance with the provisions of section 10(1)(e) of the Income Tax Act, as amended from time to time;
  - 28.1.7. remain informed and updated with regards to the current minutes, policies and codes of business of the Company, and to keep themselves updated by attending the required meetings;
  - 28.1.8. The Directors shall procure that there is at least, one (1) meeting per quarter, and that these meetings be minuted.

## **29. POWERS OF DIRECTORS**

- 29.1. The business of the Company shall be managed by the Directors who may pay all expenses incurred in promoting and incorporating the Company and shall exercise all such powers of the Company as are not, by the Act or by this MOI, required to be exercised by the Company in general meeting, but subject always to such regulations (not inconsistent with this MOI or the Act) as may be prescribed by the Company in general meeting. No regulation made by the Company in general meeting shall invalidate

any prior act of the Directors which would have been valid had that regulation not been made.

- 29.2.** The board of Directors shall manage the Company and shall carry out the objects of the Company in such manner as it may deem fit and proper subject, however, to:
- 29.2.1.** the general policy of the Company; and
  - 29.2.2.** any special instructions as may be laid down or given by the Members in general meeting from time to time; and
  - 29.2.3.** the provisions of section 10(1)(e), read together with section 18A, of the Income Tax Act 58 of 1962, as amended from time to time;
- 29.3.** The board of Directors may exercise all such powers as are not prohibited or limited by the Act or any amendment thereof and subject to such regulations not inconsistent with this MOI or provisions as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.
- 29.4.** The board of Directors delegate any of its powers to committees consisting of such persons as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the board.
- 29.5.** The Directors may from time to time entrust to or confer upon a Managing Director or Manager such of the power and authorities vested in them, as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they may think expedient. The Directors may confer such powers and authorities of the Directors and may from time to time revoke or vary all or any such powers and authorities.
- 29.6.** The board of Directors and the Company, must not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a Director of the Company or a related or inter-related Company, or a person related to any such Director, other than that subject to Item 5(4) of Schedule 1 of the Act.
- 29.7.** The Directors shall not have the power to use the funds of the Company for the carrying on of any business or trading activity in the name of the Company otherwise than to the extent permitted in terms of section 10(1)(e) of the Income Tax Act, 58 of 1962, as amended from time to time.

### **30. PROCEEDINGS OF DIRECTORS**

- 30.1.** Any Director is at all times entitled to convene a meeting of the Directors by giving ten (10) days written notice to all Directors, or such shorter notice as may be agreed to by all the Directors.
- 30.2.** The quorum necessary for the transaction of the business of the Directors when the number of Directors exceeds three, be three and when the number of Directors does not exceed three, shall be two.
- 30.3.** if such Director or Directors, if any, is or are not present within half an hour after the time appointed for a meeting, a quorum of Directors is not present, then the meeting shall stand adjourned to a day not

earlier than three working days, and not later than seven working days after the date of the meeting, according as may be decided, and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the Directors present shall form a quorum.

- 30.4.** The Directors may participate in a meeting of the Directors by means of conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time and any such participation in a meeting shall constitute presence in person at the meeting.
- 30.5.** All resolutions and actions of the Directors shall be by way of a majority of votes. In the event of an equality of votes, the Chair shall not have a second or casting vote and the resolution shall be deemed not have passed.
- 30.6.** Subject to the provisions of section 75 (5) of the Act, a Director may not vote in respect of any contract or proposed contract with the Company in which he is interested, or any matter arising there from.
- 30.7.** Subject to the provisions of section 74 the Act, a resolution in writing signed by such Directors in number that is not less than is sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted.
- 30.8.** Any such resolution may consist of several documents in a like form, each signed by 1 (one) or more of the signatories to the resolution.
- 30.9.** A resolution of Directors passed in terms of this article shall be placed in a minute book of the Company and shall be noted at the next succeeding meeting of Directors and shall also be signed by the Chair of that meeting, whereupon the provisions of section 73(8) of the Act shall be deemed to apply to the resolution.
- 30.10.** The Directors may delegate any of their powers to committees consisting of such Member or Members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any rules that may be imposed on them by the Directors.
- 30.11.** A committee may elect a chairman of its meeting. If no such chairman is elected, or if at any meeting is not present within five minutes after the time appointed for holding the same, the Members present may choose one of their number to be chairman of the meeting.
- 30.12.** A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present, and in case of an equality of votes the chairman shall not have a second or casting vote,
- 30.13.** All acts done by any meeting of the Directors or a committee or Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid or that they are or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a Director.

## **31. RECORDS OF DIRECTORS' MEETINGS**

- 31.1.** The Directors shall cause minutes to be made of all appointments of officers made by the Directors, the names of the Directors present at each general meeting of the Directors and all resolutions passed by



the Directors at all meetings of the Directors.

**31.2.** Minutes of any resolution and proceedings mentioned in article 30.1 appearing in one of the minute books of the Company shall be proof of the facts therein stated if signed by:

**31.2.1.** the Chair of the meeting to which it relates; or

**31.2.2.** any person present at the meeting and appointed by the Directors to sign in the Chair's place; or

**31.2.3.** the Chair of a subsequent meeting of the Directors;

**31.3.** Any extracts from or copy of those Minutes purporting to be signed by the Chair of that meeting or any Director shall be *prima facie* proof of the facts therein stated.

## **32. APPOINTMENT, POWERS AND DUTIES OF MANAGING AGENT**

**32.1.** Notwithstanding anything to the contrary herein contained, the Board of Directors may from time to time and shall in any event if so required by the Members in General Meeting, appoint in terms of a written contract a Managing Agent to manage and administer the Association, and to exercise such powers and duties as may be entrusted to it, including the power to collect levies.

**32.2.** Any Managing Agent so appointed shall:

**32.2.1.** keep full records of his administration and shall report to the Board and the Trustees on all matters which in its opinion may materially detrimentally affect the value or amenity of the accommodation or the Scheme;

**32.2.2.** attend all meetings of the Members and the Board of Directors;

**32.2.3.** be entitled to, and the Board of Directors shall from time to time furnish such Managing Agent with, copies of the minutes of all meetings of the Members and the Board of Directors.

**32.3** The decision to change the Managing Agent shall only be taken and validly confirmed by Special Resolution of the Association at a General Meeting.

## **33. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY**

**33.1.** The income and property of the Company, whence so ever derived, shall be applied solely towards the promotion of the Company's main object 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 controlling or controlled Company, provided that nothing herein contained shall prevent the payment in good faith or reasonable remuneration to any officer or servant of the Company, or the any Member thereof, as remuneration for any services actually rendered to the Company.

## **34. ACCOUNTING RECORDS, FINANCIAL STATEMENTS AND AUDIT**

**34.1** Directors shall ensure that such accounting records as are necessary y are kept in terms of the Statutes fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the Company in respect of the levy fund.

- 34.2** The accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets shall be ascertained by the Auditors at least once during any financial year
- 34.3** The accounting records shall be kept at the registered office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors and to other parties in accordance with the provisions of the Act and the Promotion of Access to Information Act No. 2 of 2000.

## **35 NOTICES**

- 35.1** A notice may be given by the Company to any member either personally, or by sending it by Electronic Communication or by prepaid post 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 Company for the giving of notices to him.
- 35.2** Where any consent or approval is required for any act by a party, including the Company and Directors, such consent shall:
- 35.2.1** be in Writing and Signed by the party or his authorised agent whose consent or approval is required; and
  - 35.2.2** be given prior to the party taking such action; and
  - 35.2.3** not be unreasonably withheld.
- 35.3** Notice of every members meeting shall be given in any manner authorised:
- 35.3.1** to every member of the Company, except those members who have not supplied to the Company an address within the Republic for the giving of notices to them. The Company may send the notice by facsimile or by Electronic Communication;
  - 35.3.2** to the auditor for the time being of the Company.
- 35.4** No other Person shall be entitled to receive notice of Members Meetings.
- 35.5** Any notice by prepaid post shall be deemed to have been received:
- 37.5.1**In the case of prepaid mail, 7 days after the letter was mailed;
  - 37.5.2**In the case of a fax or electronic communication, on the 1<sup>st</sup> business day after the day it was sent or published.
- 35.6** It shall be sufficient proof that the letter containing the notice was properly addressed and posted.

## **36 INDEMNITY**

- 36.1** Subject to the provisions of section 77 of the Act, the Members of the board and Officers of the Company shall be indemnified by the Company against all proceedings, costs and expenses incurred by reason of any claim made against them in connection with their conduct of the affairs of the Company, not arising from their negligence, dishonesty or fraud.

## **37 LIMITATION OF LIABILITY OF DIRECTORS**

**37.1** Each Director, alternate Director, Manager, Executive Officer and other Officer of the Company, and person employed by the Company as its Auditor, shall be indemnified by the Company against any liability incurred by him from time to time in that capacity in defending any proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in respect of any of those proceedings which are abandoned or in connection with any application made under section 78 of the Act in which relief is granted to him by a Court of competent jurisdiction.

## **38 WINDING-UP**

**38.1** Upon dissolution of the Company, its net assets must be distributed in the manner determined in accordance with Item 1 (4) (b) of Schedule 1 of the Companies Act, 2008 after fulfilment of its obligations in terms of Items 1(3) of Schedule 1 of the Companies Act, 2008.

**38.2** If the Company be wound up, all amounts due to the Members as creditors of the Company in relation to the loan obligation and the fair market value of their right to, and usage interest as approved by the board, shall be paid to each such creditor, provided that such payment shall be reduced by the amount that any such Member is in arrear with any debt due to the Company as at the date of the winding up of the Company.

**38.3** Upon winding-up, deregistration or dissolution, the net value remaining after the satisfaction of all its liabilities shall be given or transferred to one or more Non-Profit companies having similar main objects as the Company, as may be determined by the Members at or before the time of its dissolution or, failing such determination, in terms of the provisions of the Act or by order of Court.

## **39 ARBITRATION**

**39.1** In the event of any dispute or difference arising between the Company and / or Directors and / or the Members (hereinafter referred to as "the parties") as to the interpretation of the use agreement and / or any other agreement between the parties and / or the statutes and / or the rights and / or obligations of the parties arising from the MOI, such dispute or difference shall be referred to an Arbitrator who shall settle the dispute in terms of and subject to the principles and conditions of the Arbitration Act No 42 of 1965 as amended.

**39.2** The Arbitrator shall be appointed by agreement between the parties, provided that in the event of the parties failing to agree on the appointment of an Arbitrator within 14 (fourteen) days after receipt of the notice to do so, the party requesting arbitration proceedings may request the Chairperson, for the time being, of the Society of Advocates of the High Court of South Africa of the High Court Division in which the buildings are situated, to appoint an Arbitrator.

**39.3** The decision of the Arbitrator shall be final and binding and may be made an order by any Court to whose jurisdiction the parties to the dispute are subject.

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