

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 2008

**MEMORANDUM OF INCORPORATION OF A PRIVATE COMPANY**

Name of Company:

**LA LUCIA SANDS SHARE BLOCK PROPRIETARY LIMITED**

(A private company with voting shareholders incorporated for communal or group interest benefit to operate a time-sharing scheme within a share block company)

**Registration Number: 1974/001166/07**

("the Company")

This Memorandum of Incorporation was adopted, in accordance with a proposal by the Board issued on 12<sup>th</sup> August 2017, by a special resolution taken by the shareholders at a general meeting of the Company held at Durban on the 13<sup>th</sup> December 2017 in full substitution of the then existing Memorandum of Incorporation.

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**INCORPORATION:**

1. The Company is a pre-existing company as defined in the Companies Act 71 of 2008 (“the Companies Act”), operating a share block scheme under the provisions of the Share Blocks Control Act 59 of 1980, and continues to exist as a private share block company in accord with Item 2 of Schedule 5 of the Companies Act under the same name and registration number previously assigned to it.
2. The Company is incorporated in accordance with, and governed by:
  - a. The provisions of the Share Blocks Control Act 59 of 1980 and the Property Time-Sharing Control Act 75 of 1983;
  - b. The unalterable provisions of the Companies Act 71 of 2008 applicable to private companies;
  - c. The alterable provisions of the Companies Act, 2008 applicable to private companies, subject to any limitation, extension, variation or substitution set out in this Memorandum of Incorporation;
  - d. The provisions of this Memorandum of Incorporation; and
  - e. The registered Use Agreement of the Company.

**NOTES**

- Note 1:** This Memorandum of Incorporation contains statutory share block provisions which apply to the Company and which are referenced in Annexure “A” hereto.
- Note 2:** The Company acknowledges that in terms of section 3 (2) of the Share Blocks Control Act the provisions of the Companies Act 71 of 2008 shall apply to a share block company only in so far as the provisions of the Companies Act are not in conflict with the provisions of the Share Blocks Control Act. The Company accordingly acknowledges the pre-eminence of the Share Blocks Control Act over the provisions of the former Companies Act 61 of 1973 and the current Companies Act 71 of 2008.
- Note 3:** The Company elects in terms of section 34 (2) of the Companies Act not voluntary to comply with the provisions of chapter 3 of the Companies Act, 2008.
- Note 4:** The Company is not a regulated Company as defined in the section 117 of the Companies Act yet elects in terms of section 118(1)(c)(ii) of the Companies Act voluntarily to submit to the provisions of Part B and C of Chapter 5 of the Companies Act and the takeover regulations.
- Note 5:** The Memorandum of Incorporation contained in Form CoR 15.1 A or CoR 15.1 B of the Companies Regulations, 2011 shall not apply to the Company and this unique Memorandum of Incorporation will apply instead thereof.
- Note 6:** The Company is prohibited from amending any of the provisions prescribed by the Share Blocks Control Act, and contained in this Memorandum of Incorporation.
- Note 7:** In terms of section 8 (2) (b) of the Companies Act, a private company is required to prohibit the offering any of its securities to the public and to restrict the transferability of its securities in its Memorandum of Incorporation. The application of this restriction on the offering of shares is however excluded by the application of sections 3 (2) and 11 of the Share Blocks Control Act 59 of 1980.

**Note 8:** The Company negates the provision in terms of section 39 (3), and specifically relies on section 11 of the Share Blocks Act.

**Note 9:** The current annual financial year commences on the 1st of January.

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## 1. INTERPRETATION

- 1.1. In the interpretation of this Memorandum of Incorporation ("MOI") and unless contrary to or excluded by the subject or context:  
 1.2. any word herein signifying the singular shall include the plural and *vice versa*;  
 1.3. any word herein which is defined in the Share Blocks Control Act and is not defined in Article 1.7 shall bear that statutory meaning in this MOI;  
 1.4. any word herein which is defined in the Companies Act and is not defined in Article 1.7 shall bear that statutory meaning in this MOI on condition it does not conflict with any definition in the Share Blocks Control Act, in which event the latter Act takes precedence;  
 1.5. any word, phrase or sentence herein which is not defined in the Share Blocks Control Act or the Companies Act or in Article 1.7 shall bear its usual meaning;  
 1.6. each term, power or authority herein shall be given the widest possible interpretation;  
 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;

"**accommodation**" means the flats erected in the buildings;

"**board**" means the board of directors for the time being of the Company elected in terms of Article 20;

"**buildings**" means the improvements on the land owned by the Company situated at 58 Marine Drive, La Lucia, Umhlanga Rocks 4320;

"**chair**" means the chairperson of the board for the time being, elected in terms of Article 21;

"**CIPC**" means the Companies and Intellectual Property Commission or its successors;

"**common facilities**" means any improvements on the land for the use of all shareholders in common with others;

"**Companies Act**" means the Companies Act 71 of 2008 as amended from time to time;

"**Company**" means La Lucia Sands Share Block (Pty) Ltd;

"**directors**" means the directors for the time being of the Company elected in terms of Article 20 and the executive directors appointed in terms of Article 18;

"**electronic communication**" has the same meaning as set out in section 1 of the Electronic Communication and Transaction Act 25 of 2002;

"**Income Tax Act**" means the Income Tax Act 58 of 1962 as amended from time to time;

"**improvements**" means any improvements of a permanent nature erected, alternatively, to be erected on the land owned by the Company;

"**managing agent**" means the managing agent, if any, appointed from time to time by the Company for the purposes of managing the share block and time-sharing schemes;

"**MOI**" means the Memorandum of Incorporation of the Company as amended from time to time;

"**month/monthly**" means a calendar month;

"**movables**" means the movables contained in a unit and referred to in section 4(1)(m) of the Property Time-Sharing Control Act 75 of 1983;

"**office**" means the registered office of the Company;

**“period”** means a share block holder’s period of exclusive occupation in the accommodation in respect of the relevant portion of the Company’s buildings as further defined in the Use Agreement and indicated in Annexure “B”;

**“person”** includes any natural person, company or body corporate, a statutory body, a partnership, a trust or an association of persons, as the case may be, having the legal capacity duly accorded and allowed in terms of the laws of the Republic;

**“property”** means the land situated at 58 Marine Drive, La Lucia, Umhlanga Rocks 4320, the accommodation, the buildings, the common property, the improvements on the land, and the movables owned by the Company and includes any movables leased by the Company from time to time for use in the accommodation or the common property;

**“Republic”** means the Republic of South Africa;

**“scheme”** means the share block scheme and property time-sharing scheme in respect of the accommodation, improvements, common facilities and common property, in terms of the Share Blocks Control Act and the Property Time-Sharing Control Act;

**“share”** means that meaning set out in section 1 of the Share Blocks Control Act and relates to the share block granting a right of use to the holder thereof in terms of section 7 (2) of the Share Blocks Control Act;

**“share register”** means the register of shareholders’ shares held by the Company in terms of the Share Blocks Control Act;

**“shareholder”** means the holder of shares comprising a share block and being a shareholder of the Company defined in the Share Blocks Control Act and as registered in the share register referred to in Article 7; the holding of a share entitles the holder to use the flat to which such share is linked in terms of the period appearing opposite the “PERIOD NUMBER” on Annexure “B” identical with the last two digits of the share held, for the times and dates set forth in Annexure “B”. For example, the holding of share number 0409 shall entitle the holder to use unit No 4 from 14h00 on 1 March to 10h00 on 8 March in each year for so long as he holds the share, subject only to the floating flat being allocated to him by the company in its absolute discretion for the whole or part of such period;

**“shareholders’ meeting”** means any meeting of the shareholders of the Company or any adjournment thereof, including an annual shareholders’ meeting convened in terms of Article 10.1 as the case may be;

**“Share Blocks Act”** means the Share Blocks Control Act, 1980 (Act No. 59 of 1980), as amended from time to time and the regulations promulgated in regard thereto;

**“sign/signature”** includes 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;

**“Statutes”** means the Share Blocks Control Act 59 of 1980, the Property Time-Sharing Control Act 75 of 1983, the Companies Act 71 of 2008, their Regulations and every other Act for the time being in force that concerns companies in so far as such affects the Company;

**“Time-Sharing Act”** means the Property Time-Sharing Control Act, 1983 (Act No. 75 of 1983), as amended from time to time and the regulations promulgated in regard thereto;

**“Use Agreement”** means the duly filed Use Agreement conferring a right to or an interest in the use of any immovable property in respect of which the share block scheme is operated and as specifically set out in Annexure “B” attached hereto;

**“writing”** shall include printing, typewriting, lithography or any other electronic communication process, or partly one and partly the other;

**“year”** means a calendar year.

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

- 2.1. The main purpose and object of the Company is to operate a share block scheme in respect of the property owned by the Company in accordance with the Share Blocks Act and the Time-Sharing Act to entitle a shareholder to use specified parts of the accommodation and buildings in accordance with the Use Agreement entered into between the shareholder and the Company and to promote, sustain and advance the communal and group interests of the Company's shareholders.

## 3. **POWERS AND CAPACITY OF THE COMPANY**

- 3.1. Subject to Article 3.3 the Company has the powers and capacity of a natural person of full capacity.
- 3.2. Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Statutes empower the Company to do.
- 3.3. The Company is restricted in its powers and capacity in terms of the provisions of the Share Blocks Act as contained in this MOI and as referenced in Annexure "A" hereto.

## 4. **MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- 4.1. 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 Companies Act, all other amendments of the MOI shall be effected in accordance with section 16 (1) of the Companies Act.
- 4.2. 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 Company in respect of matters that are not addressed in the Companies Act or this MOI, in accordance with the provisions of sections 15(3) to 15(5) of the Companies Act.
- 4.3. If the board makes any rules, it must file and publish a copy of those rules by sending a copy thereof to every member by ordinary or electronic mail.
- 4.4. If the board alters this MOI or any rules made by it in terms of section 17(1) of the Companies Act, it must file a copy and publish a notice of such alteration, by sending a copy thereof to every member by ordinary or electronic mail.

## 5. **REGISTER OF SHAREHOLDERS**

- 5.1 The Company shall maintain at its office a register of shareholders of the Company which register shall be kept in accordance with the provisions of the Share Blocks Act read with the relevant applicable provisions contained in sections 24 (4)(a), 50 and 51 of the Companies Act.

## 6. **SHARES**

- 6.1. The existing share capital in the Company is R 4,000.00 divided into 4,000 ordinary shares of R1.00 each of which 1920 shares are issued and are apportioned to share blocks numbered in accordance with the schedule annexed hereto marked Annexure "B".
- 6.2. The shares comprising each share block shall confer on the holder for the time being of each share block the right of use of the share block, parking facilities and such other part of the company's immovable property for residential purposes only and the use/s ancillary thereto and the use of the common property in common with the other shareholders of the Company and

users of the remainder of the property on the terms and conditions contained in the Use Agreement entered into between the Company and such holder.

- 6.3. Upon acquisition of shares, the shareholder acquires the right to, and usage interest as referred to in the Use Agreement (Annexure "C") filed with the CIPC in terms of section 7(5) of the Share Blocks Act and shall from time to time confer upon the holder thereof:
  - 6.3.1. the right to use and occupy, that portion of the Company's buildings and property which is specified in the schedules referred to in Article 6.1 for the period specified in Annexure "B" hereto, and subject to the terms and conditions specified in Annexure "C" hereto; and
  - 6.3.2. the right to, or interest in the indefinite recurrent annual exclusive use and occupation of the accommodation for time-sharing residential purposes; and
  - 6.3.3. the right to, or interest in the recurrent annual use of the movables; and
  - 6.3.4. the right to or interest in the indefinite recurrent annual use in common with other holders, of the common property;
  - 6.3.5. An obligation on the holder thereof to from time to time lend money to the Company as a fixed loan, on the terms and conditions set out in Article 33 below and as specified in Annexure "B".
- 6.4. Save as herein provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not (even when having notice thereof), except as ordered by a Court of competent jurisdiction, or as by law required, be bound to recognise any trust, charge, encumbrance, lien or any other claims whatever to or interest whatever in such share on the part of any other person.
- 6.5. Unless the directors otherwise decide the Company may register as a shareholder any person, company, trust, estate, institution, or other legal person, including the trustee of a trust or administrator or curator of an estate, or a trustee, administrator or curator in his capacity as such, who lodges with the instrument of transfer required by this MOI, such other documents as the Company may require to establish the identity of the shareholder, provided that the Company shall not be bound by or deemed to have taken cognisance of or compelled in any way to recognise any trust or interest express or implied in any document lodged, nor shall it be required to satisfy itself or be deemed to have taken any steps to have satisfied itself that the shareholder had any contractual or other right to purchase the shares or otherwise come into possession of them, or to retain or dispose of or transfer such shares, nor shall the Company incur any liability in any way for so registering the shares or for registering any subsequent transfer thereof.
- 6.6. All shares of the Company shall:
  - 6.6.1. Confer a right to vote at any meeting of the Company;
  - 6.6.2. Confer the same vote as every other share in the Company;
  - 6.6.3. Confer a right to an interest in accordance with Article 6.3;
  - 6.6.4. However, the shares do not confer a right to any dividend or distribution except in accordance with Article 36.1 below.

## 7. **ISSUE TRANSFER AND TRANSMISSION OF SHARES**

- 7.1. In terms of the provisions of section 8 (2)(b) of the Companies Act a private company is required to prohibit the offering of any of its securities to the public and to restrict the transferability of its securities in its MOI, but the application of the restriction on public offers of securities is excluded by the application of section 3 (2) and 11 of the Share Blocks Act which provides that any person may offer shares of the share block company for sale to the public if *in lieu* of

compliance with any other requirements such offer is accompanied by a statement that any proposed purchaser of such shares is required to enter into a contract of sale meeting the conditions set out in section 17 of the Share Blocks Act.

- 7.2. The Company therefore elects in terms of section 39 (3) of the Companies Act to negate the provision of section 39 (2), and specifically relies on section 11 of the Share Blocks Act.
- 7.3. Every original shareholder shall be entitled to one certified copy of a share certificate free of charge but for every subsequent certified certificate the directors may levy such charge as from time to time they may think fit;  
Provided that if a share certificate is defaced, lost or destroyed, it may be renewed on the payment of such fee, and on such terms, if any, as to the evidence and indemnity as the directors may think fit.
- 7.4. Every person whose name is thereafter entered in the register of shareholders shall be entitled to one certified copy of a certificate for all the shares attached to the Share Blocks and use rights registered in his name or to several certified certificates, each for a part of such shares.
- 7.5. Notwithstanding anything to the contrary contained in this MOI the Company shall, upon the issue or replacement of a share certificate to a shareholder retain possession of the shareholder's original/replacement share certificate/s and shall hold the same in pledge as security for all and any amounts which may be or become owing by the shareholder to the Company which share shall remain so pledged.
- 7.6. No share may be transferred except simultaneously with and to the same transferee as the whole of the other shares included in the same share block scheme together with the transfer, cession and assignment of:
  - 7.6.1. the relevant portion of the loan obligation allotted to the shareblock in question;
  - 7.6.2. the use and occupation agreement pertaining to the shareblock in question, and the assumption by the transferee of all the transferor's obligations there under.
- 7.7. Prior to the transfer of shares to any transferee, the levies and any other amounts due and payable to the Company must be settled in full, unless otherwise resolved by the directors and no shares may be transferred to any transferee without the prior consent and approval of the directors of the Company, which consent shall not be unreasonably withheld. This Article shall not apply, however, to the transfer of any shares by a shareholder or his executors or administrators or other legal representatives to the spouse or any descendant or ascendant of such shareholder.
- 7.8. The instrument of transfer of any share of the Company not being a security in terms of section 50 of the Companies Act shall be executed by both the transferor and the transferee, and the transferor shall be deemed to remain the holder of this share until the name of the transferee is entered into the register of shareholders in respect thereof.
- 7.9. Subject to such of the restrictions as may be applicable, any shareholder may transfer all or any of his shares by instrument in writing in any usual or common form or any other form which the directors may approve.
- 7.10. The directors may decline to recognise any instrument of transfer unless:
  - 7.10.1 the instrument of transfer is accompanied by the certified copy of certificate of the shares in the event that the Company holds the original or where the shareholder holds the original then such original certificate to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer;
  - 7.10.2 the share transfer duty (if any) has been paid thereon.

- 7.11. Every instrument of transfer shall be left at the transfer office of the Company at which it is presented for registration, accompanied by a certificate of the shares to be transferred. Every power of attorney given by the shareholder authorising the transfer of shares shall when lodged produced or exhibited to the Company or any of its officers be deemed, as between the Company and the donor of the power to continue and remain in full force and effect and the Company may allow that the power to be acted upon until such time as express notice in writing of its revocation has been lodged at such of the Company's transfer offices as the power of attorney lodged, produced or exhibited as aforesaid.
- The Company shall not be bound to allow the exercise of any act or matter by an agent for a shareholder unless a duly certified copy of the agent's authority be produced and lodged with the Company.
- 7.12. The executor of the estate of the deceased's sole holder of a share shall be the only person recognised by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the executors of the deceased's survivor shall be the only persons recognised by the Company as having any title to the share.
- 7.13. Any person becoming entitled to a share in consequence of the death or insolvency of the shareholder shall upon such evidence or insolvency of the shareholder and shall upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a shareholder in respect of the share or instead of being registered himself to make such transfer of the share as the deceased or insolvent could have made, but the directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of the transfer of a share by the deceased or insolvent before death or insolvency.
- 7.14. The parent or guardian of a minor and the duly appointed *curator bonis* of a shareholder and any person becoming entitled to shares in consequence of the death or insolvency of any shareholder or the marriage of any female shareholder or by any lawful means other than by the transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which such shareholder proposes to act under these articles or of such title, as the directors think sufficient, transfer those shares to such person or to any other person subject to the articles as to transfer hereinbefore contained.
- 7.15. Any person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the advantages to which such person would have been entitled if such person were the registered holder of the share, except that such person shall not, before being registered as a shareholder in respect of the share, be entitled in respect of it to exercise any right conferred by shareholders in relation to the meeting of the Company.
- 7.16. A person who submits proof of appointment as executor, administrator, trustee, curator or guardian in respect of the estate of the deceased shareholder of the Company or the estate of a shareholder whose estate has been sequestered, or who is otherwise under a disability or as the liquidator of any body-corporate which is a shareholder of the Company, shall be entered in the register of shareholders of the Company *nomine officio* and shall thereafter, for all purposes, be deemed to be a shareholder of the Company.

## 8. ALTERATION OF SHAREHOLDER RIGHTS

- 8.1. If at any time the shares are divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holder of three-quarters of the issued shares of that class or

with the sanction of a special resolution passed at a separate shareholders' meeting of the holders of the shares of the class. But so that unless the class consists of one shareholder only, the necessary quorum shall be two persons at least holding or representing by proxy three-quarters of all the issued shares of the class. This paragraph does not curtail the power of the Company to vary the rights attached to any share which has not been issued subject to the provisions of Article 7 above.

8.2. The Company may alter the shares by reducing or consolidating its number of shares.

9. **LIEN AND PLEDGE ON SHARES AND SHAREHOLDERS INTEREST**

9.1. The Company has a first and paramount lien and a pledge on every share for the amounts due to it by the holder of such share whether payment has become due or not. The amounts so due to the Company shall include the costs of any acts performed or proceedings instituted by the Company in its efforts to recover such amounts.

9.2. The Company shall not be obliged to recognise the pledge by a shareholder of any share in the Company to a third party but as soon as an amount becomes due and payable by a shareholder to the Company, all shares held by such shareholder shall from that moment become pledged by such shareholder to the Company.

9.3. In the event of such shareholder holding the original share certificate then the shareholder shall hold the certificate relating to the pledged share as an agent for the Company. A share shall remain so pledged until the amount due has been settled or the share has been realised as provided in Article 9.4.

9.4. The Company shall be entitled to repossess the share and may realise any share on which it has a pledge in terms of Article 9.1 and any share becoming pledged to it in terms of Article 9.2 and/or Article 9.3 by realising such share in the following manner:

9.4.1. the holder of the share shall be given 14 (Fourteen) business days written notice through the post in a prepaid registered letter addressed to his last recorded address of the realisation;

9.4.2. the notice shall state the amount of the claim, demand payment thereof within the said period of notice and advise the shareholder that if the amount due remains unpaid the share shall be sold to recover so much of the debt as may be realised by the sale;

9.4.3. the sale shall be by way of a tender process or in such other duly publicised manner as in the *bona fide* opinion of directors would realise a more favourable price in the circumstances.

9.5. The net return of any such sale shall be applied in respect of the amount due to the Company and the shareholder shall remain liable for any shortfall.

9.6. In the event of an over recovery, the credit balance, if any, shall be due to the shareholder upon demand.

9.7. On any sale as aforementioned the directors may enter the name of the purchaser in the register of shareholders of the Company and the purchaser shall have no responsibility to attend to the application of the purchase price.

9.8. Except as herein further provided, an affidavit by a director or the secretary of the Company that the share has been duly sold in accordance with the provisions of the preceding sub-articles shall be conclusive evidence of the facts therein stated as against all persons laying claim to such

shares or the proceeds thereof, and such affidavit and the receipt by the Company of the purchase price of shares shall be conclusive proof of the rights to such shares.

**10. SHAREHOLDERS' MEETINGS**

- 10.1. The Company shall hold an annual shareholders' meeting in every calendar year.
- 10.2. The directors shall have the power to convene shareholders' meetings of the Company at such time and place as the directors determine.
- 10.3. The directors shall also convene shareholders' meetings where a requisition is made by the number of shareholders of the Company as required by the Companies Act, failing which such a meeting may be convened by the requisitionists themselves in accordance with the Companies Act.
- 10.4. Shareholder meetings convened in accordance with sections 61 and 64 of the Companies Act shall be held at such time as is determined in terms of those sections.

**11. NOTICE OF SHAREHOLDERS' MEETINGS**

- 11.1. Notice of meetings shall be given:
  - 11.1.1 not less than 15 business days' notice in writing of an annual shareholders' meeting or of any other shareholders' meeting at which a special resolution is to be proposed, shall be given to all shareholders;
  - 11.1.2 not less than 10 business days' notice in writing of any other shareholders' meeting shall be given to all shareholders.
- 11.2. 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.
- 11.3. The notice of a Shareholders' meeting shall state –
  - 11.3.1. the date time and place of that meeting;
  - 11.3.2. the general purpose of the meeting, and
  - 11.3.3. the matters which will be considered, and may be voted on, at such meeting.
- 11.4. In the event that a shareholder gives the Company notice as contemplated in Section 61 of the Companies Act in the form of a demand, such demand shall be executed by the board. The requirements of Section 61 are –
  - 11.4.1. the request must be in writing;
  - 11.4.2. It must describe a specific purpose;
  - 11.4.3. In aggregate, demands for substantially the same purpose must be made and signed by holders of at least 10% of the voting rights entitle to be exercised in relation to the matter proposed to be considered at the meeting.
- 11.5. The directors may provide for participation by shareholders by Electronic Communication as set out in section 63 of the Companies Act.
- 11.6. 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 shareholders having a right to attend and vote at the meeting.
- 11.7. 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, or defects in terms of the notice or its contents shall be dealt with in terms of Section 62 (4) and (5) of the Companies Act.

## 12. PROCEEDINGS AT SHAREHOLDERS' MEETINGS

- 12.1. A meeting convened in terms of Article 10.1 must, at a minimum, provide for the following business to be transacted:
- 12.1.1. Presentation of—
- 12.1.1.1 the directors' report;
  - 12.1.1.2 the audited financial statements for the immediately preceding financial Year;
  - 12.1.1.3 a report by the social and ethics committee (if any);
  - 12.1.1.4 a report by the Audit Committee (if any);
- 12.1.2. Election of directors;
- 12.1.3. Appointment of an auditor and audit partner for the ensuing financial Year;
- 12.1.4. Approval of the insurance schedule; and
- 12.1.5. Any other business duly laid before it.
- 12.2. Subject to the provisions of the Companies Act, no business shall be transacted at any shareholders' meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum at any shareholders' meeting shall be at least three shareholders present in person and entitled to vote and shareholders holding or representing no less than 25% of all the voting rights that are entitled to be exercised at the meeting, present for the duration of the meeting.
- 12.3. If within one hour after the time appointed for the meeting a quorum is not present the meeting, if convened upon the requisition of shareholders, shall be dissolved, in any other case it shall stand adjourned to a date 7 (seven) 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 shareholders present shall be a quorum.
- 12.4. The Chair of the board of directors shall preside as Chair at every shareholders' meeting of the Company.
- 12.5. If at a shareholders' 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, one of the directors present may be appointed as Chair of the meeting.
- 12.6. Should none of the directors present wish to be appointed as Chair for the meeting the shareholders present may appoint a Chair for the meeting.
- 12.7. Subject to the provisions of the Companies Act, the Chair of the meeting may, with the consent of the majority of shareholders 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.

## 13. VOTES OF SHAREHOLDERS AT SHAREHOLDERS' MEETINGS

- 13.1. Every voting Shareholder who is represented either in person or by proxy at a shareholders' meeting shall have 1 (one) vote per share held by such shareholder.
- 13.2. In the case of joint holders (if any), the vote of the person whose name appears first in the register of shareholders and tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

- 13.3. On a show of hands a person entitled to vote is only entitled to one vote irrespective of the number of shares represented.
- 13.4. On a poll a person entitled to vote is entitled to the number of votes afforded by the shares held or represented by him.
- 13.5. A poll may be called or demanded (before or after) the declaration of the result of the show of hands by:
  - 13.5.1 the Chair of the meeting; or
  - 13.5.2 by at least 5 (five) shareholders present in person or by proxy having the right to vote at meetings; or
  - 13.5.3 by any shareholder or shareholders 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 shareholders having the right to vote at the meeting.
- 13.6. Any demand for a poll may be withdrawn.
- 13.7. 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.
- 13.8. Where a poll is not demanded a declaration by the Chair of the meeting that a resolution has been passed 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.
- 13.9. 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.

#### 14. **RESOLUTIONS**

- 14.1. For an ordinary resolution to be adopted at a shareholders' meeting, it must be supported by more than 50% of the shareholders who voted on the resolution, as provided in section 65 (7) of the Companies Act.
- 14.2. For a special resolution to be adopted at a shareholders' meeting, it must be supported by at least 75% of the shareholders who voted on the resolution, as provided in Section 65 (9) of the Companies Act.
- 14.3. A special resolution adopted at a Shareholders' meeting is required in addition for:
  - 14.3.1 amendment of the Company's Memorandum of Incorporation to the extent required by section 16 (1)(c) and section 36 (2)(a);
  - 14.3.2 ratify a consolidated revision of a Company's Memorandum of Incorporation, as contemplated in section 18 (1) (b) of the Companies Act;
  - 14.3.3 ratify actions by the Company or directors in excess of their authority, as contemplated in section 20 (2) of the Companies Act;
  - 14.3.4 approve the remuneration paid to directors as contemplated in section 66 (9) of the Companies Act;
  - 14.3.5 variation of rights attached to the shares when the share capital is converted into different classes;
  - 14.3.6 alienation of the Company's immovable property;
  - 14.3.7 alteration of the share capital;
  - 14.3.8 approve the voluntary winding up of the Company, as contemplated in section 80 (1) of the Companies Act;
  - 14.3.9 approve the winding up of the Company in the circumstances contemplated in section 81 (1) of the Companies Act;

- 14.3.10 approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5) of the Companies Act;
- 14.3.11 approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5 of the Companies Act; or
- 14.3.12 revoke a resolution contemplated in section 164 (9) of the Companies Act;
- 14.3.13 as may be required in terms of the Share Blocks Act, the Time-Sharing Act, the Companies Act and this MOI.

**15. SHAREHOLDERS ACTING OTHER THAN AT MEETING**

- 15.1. Subject to the provisions of section 60 (5), 65 (7) and 65 (9) of the Companies Act, a resolution in writing signed by the majority of the shareholders constituting at least a quorum shall be as valid and effective as if it had been passed at a shareholders’ meeting properly held on the date on which the last signature is affixed.
- 15.2. Such resolution may consist of several documents in the same form, each of which is signed in terms of this Article, by sufficient shareholders 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 20 (twenty) business days after the posting date.

**16. PROXIES**

- 16.1. 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 body corporate, signed by an officer or agent authorised by the body corporate.
- 16.2. 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 Companies Act, a demand by a proxy shall be the same as a demand by a shareholder.
- 16.3. It will be helpful if shareholders could deposit their forms of proxy at the office as early as possible, but at least 48 hours prior to the meeting, to enable the company to ensure that the requirements for a quorum will be met at the meeting.
- 16.4. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) 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.
- 16.5. The instrument appointing a proxy shall, subject to the provisions of Section 58(8) of the Companies Act, be in the following form or as near thereto as circumstances permit and applicable to a specific and particular shareholder so recorded.

**PROXY FORM**

XXX SHARE BLOCK (PTY) LTD

Registration number: \_\_\_\_\_

(“the Company”)

I ..... (full name/s) holding ..... shares representing ..... votes, of  
 .....(physical address)  
 Being a Member of the Company, hereby appoint .....

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 shareholders’ meeting or other shareholders’ meeting (as the case may be) of the Company 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 at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Signature

<b>Shareholder specific number</b>
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Please note:

- *Meeting participants (including proxies) are required to provide reasonably satisfactory identification before being entitled to attend or participate in a shareholders’ 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 a Company, Close Corporation or Trust) must be attached to this form.*
- *The completion and lodging of this form of proxy will not preclude the relevant shareholder from attending the meeting and speaking and voting in person thereat, to the exclusion of any proxy appointed in terms thereof, should such shareholder wish to do so.*
- *Any shareholder 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 shareholder of the Company.*
- *In order for the company to verify the authenticity of proxy forms sent by email or facsimile and to establish that a quorum will be present at the meeting, shareholders are requested to forward their proxy forms so as to reach the registered office of the Company at least 48 hours prior to the commencement of the meeting.*
- *Email and facsimile copies of this proxy form must be duly verified before commencement of the meeting to be eligible for acceptance.*

**17. RECORDS OF SHAREHOLDERS’ MEETINGS**

- 17.1. The directors shall cause minutes to be made of the proceedings at every shareholders’ 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
- 17.2. Any copy of any record or resolution referred to in Article 17.1, which purports to be signed by any director or the Chair, shall be *prima facie* evidence of the matters stated therein.

**18. NUMBER OF DIRECTORS:**

- 18.1. The number of directors, unless otherwise determined by the Company in a shareholders’ meeting, shall be not less than 3 and not more than 7. The Company shall have two executive

directors being the Chief Executive Officer and the Chief Financial Officer, as contemplated in section 66 (4)(2)(ii) of the Companies Act, unless a Managing Agent has been appointed, in which case only one executive director need be appointed.18.2. The Company may from time to time at a meeting of shareholders resolve to determine the number of directors within the parameters outlined in clause 18.1.

- 18.3. Should the Company wish to amend the provisions of clause 18.1 it can only be done by a special resolution.
- 18.4. The shareholders of the Company other than the Share Block Developer shall, if they:
- 18.4.1 do not exceed ten (10) in number, have the right to appoint at least one of the directors of the Company; and
- 18.4.2 exceed ten (10) in number, have the right to appoint three of the directors of the Company.
- 18.5. The Company shall not fail to take steps to ensure the appointment of the director or directors referred to in Article 18.4, and a share block developer shall not be entitled to vote on a proposed resolution to remove, under the provision of Article 18.4, any directors so appointed.

#### 19. **ROTATION OF DIRECTORS**

- 19.1. At each annual shareholders' meeting one third of the number of the non-executive directors shall retire or if their number is not divisible by three, one of the three groups each as equal in number as possible into which the directors have been divided for this purpose.
- 19.2. The directors to retire in each year in terms of Article 19.1 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.
- 19.3. A retiring director is automatically eligible for nomination and re-election.

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

- 20.1. All nominations of directors shall be made by shareholders in the manner and on the form prescribed from time to time by the directors.
- 20.2. The nomination form must be lodged with the secretary of the Company at least 30 business days prior to the meeting to allow for inclusion of the name and brief CV in the Notice of Meeting.
- 20.3. 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.
- 20.4. The appointment of 2 (two) or more persons as directors of the Company by a single resolution shall not be permitted.
- 20.5. Except for the provisions of Article 20.4 above every resolution of a shareholders' meeting for the election of a director shall relate only to the person who is nominated in that resolution.
- 20.6. Voting in respect of the appointment of directors to fill the declared vacancies, shall in terms of Article 20.5 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 appointed as the elected directors.

**21. ELECTION OF THE CHAIR**

- 21.1. At the commencement of the first meeting of the board of directors and thereafter immediately after each annual shareholders' meeting, the members of the board of directors shall elect a Chairman of the Board from among their number who shall hold office as such until the next annual shareholders' meeting.
- 21.2. The Chairman shall not have a casting vote.
- 21.3. In the event that no such Chairman is elected, or if at any meeting the Chairman is not present within fifteen (15) minutes after the time appointed for holding the same, the directors may elect one of the other directors to Chair the meeting.

**22. FILLING OF CASUAL VACANCIES ON THE BOARD OF DIRECTORS**

- 22.1. The directors may by resolution at any time subject to the restrictions of Article 18.4 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 Article 18.1 or by special resolution at an annual shareholders' meeting.
- 22.2. 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 shareholders' meeting of the Company, but for no other purpose.
- 22.3. Provided that the board of directors shall comprise not less than one (1) director, any casual vacancy occurring on the board of directors may subject to the provision of Article 18.4 be filled by the directors, but the director so appointed will serve on a temporary basis only until the vacancy has been filled by election at an annual shareholders' meeting and subject to rotation.

**23. ALTERNATE DIRECTORS**

- 23.1. Each director shall have the power to nominate any person as his alternate, 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 and conditions existing with reference to the other directors of the Company.
- 23.2. 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.
- 23.3. 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.

**24. DISQUALIFICATION OF DIRECTORS AND ALTERNATE DIRECTORS**

- 24.1. In addition to section 69 of the Companies Act any director or alternate director shall cease to be a director of the Company on the happening of any of the following events:
- 24.1.1 his estate is finally sequestrated;
- 24.1.2 he files a petition for the surrender of his estate as insolvent;
- 24.1.3 he is placed under curatorship by any court of competent jurisdiction;
- 24.1.4 he delivers a notice of his resignation at the office with effect from:
- 24.1.4.1 the date on which that notice is delivered; or
- 24.1.4.2 any later date stated in that notice to which the directors agree;

- 24.1.5 he is absent from two consecutive meetings of directors of which he had received notice at least 10 (ten) 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
  - 24.1.6 if, he is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Companies Act and if the director acts contrary to the standards of a director's conduct contemplated in section 76 of the Companies Act;
  - 24.1.7 if, the director is in default of any amount due to the Company, like levies or other debts to the Company;
  - 24.1.8 if, the director is removed by an ordinary resolution in a shareholders' meeting of shareholders in accordance with section 71 of the Companies Act;
- 24.2. A director or an alternate director need not be a shareholder of the Company.

25. **DUTIES OF DIRECTORS**

- 25.1. Without in any way derogating from the generality of the duties of the directors, the directors shall in particular be obliged to:
- 25.1.1 determine the annual levy budget;
  - 25.1.2 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;
  - 25.1.3 administer the funds of the Company and income accruing to the Company in order to achieve the main object of the Company;
  - 25.1.4 keep proper and comprehensive books of account and records;
  - 25.1.5 retain any financial records or other documents in respect of the Company for such period(s) as determined by the Companies Act ;
  - 25.1.6 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.

26. **POWERS OF DIRECTORS**

- 26.1. The board of directors shall manage the Company and shall carry out the objects of the Company in such a manner as it may deem fit and proper subject, however, to:
- 26.1.1 the general policy of the Company; and
  - 26.1.2 any special instructions as may be laid down or given by the shareholders in shareholders meeting from time to time; and
  - 26.1.3 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.
- 26.2. The board of directors may exercise all such powers as are not prohibited or limited by the Statutes or any amendment thereof, and subject to such regulations not inconsistent with this MOI or provisions as may be prescribed by the Company in shareholders' meeting; but no regulation made by the Company in shareholders' meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.
- 26.3. The board of directors may 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.

- 26.4. 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 subject to section 45 of the Companies Act.

**27. PROCEEDINGS OF DIRECTORS**

- 27.1. Any director is at all times entitled to convene a meeting of the directors by giving 10 (ten) days' written notice to all directors, or such shorter notice as may be agreed to by all the directors.
- 27.2. The quorum necessary for the transaction of any business of the directors shall be 3 (three).
- 27.3. 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 can participate at the same time and any such participation in a meeting shall constitute presence in person at the meeting.
- 27.4. 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 to have failed.
- 27.5. Subject to the provisions of section 75(5) of the Companies 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.
- 27.6. Subject to the provisions of section 74 the Companies Act, a decision that could be voted on at a meeting of the directors may be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided and such resolution shall be as valid and effective as if it had been passed at a meeting of the directors duly called and constituted.
- 27.7. Any such resolution may consist of several documents in a like form, each signed by one or more of the signatories to the resolution.
- 27.8. 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, whereupon the provisions of section 73(8) of the Companies Act shall be deemed to apply to the resolution.
- 27.9. All acts done by any meeting of the directors or a committee of 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.
- 27.10. If 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 (3) working days, and not later than seven (7) 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.

**28. RECORDS OF DIRECTORS' MEETINGS**

- 28.1. The directors shall cause minutes to be made of all meetings held by the directors, the names of the directors present at each meeting and all resolutions passed by the directors at all meetings of the directors.
- 28.2. Minutes of meetings of directors should be pasted into a directors' meetings book and be confirmed as a true record and signed by the Chairman at the next meeting, or the person acting as Chairman at the next meeting if the appointed Chairman is not present.

- 28.3. 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.

29. **REMUNERATION OF DIRECTORS**

- 29.1. The remuneration of the directors from time to time shall be determined by the Company in a shareholders' meeting in accordance with a special resolution approved by the shareholders within the previous two years, and unless such resolution otherwise provides, shall be divisible among the directors as they may agree or, failing agreement, equally; provided that a director who holds office for part only of the period in respect of which such remuneration is payable shall be entitled to rank in such division only for the proportion of the remuneration as relates to the period during which he held office.
- 29.2. Any director who holds any executive office or who serves on any committee or otherwise performs services which the directors consider are outside the scope of the ordinary duties of a director may be paid such extra remuneration by way of fees, salary, commission or otherwise in accordance with a board resolution.
- 29.3. The Directors shall be reimbursed for all travelling, accommodation 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 shareholders' meetings.

30. **SHAREHOLDER LEVIES**

- 30.1. It is recorded that substantially the whole of the Company's funding shall be derived from shareholder levies contribution in accordance with the provisions of section 13 of the Share Block Act, the levies being exempt from taxation in terms of s 10 (1)(e) of the Income Tax Act.
- 30.2. The directors shall establish and maintain a levy fund sufficient in their opinion to provide for:
- 30.2.1 the administration of the Company and its affairs and the repair, upkeep, control and management of the immovable property in respect of which the Company operates the share block scheme;
  - 30.2.2 the payment of rates and taxes and other local authority charges on the said immovable property, and charges for the supply of electric current, gas, water, fuel and sanitary and any other services to the said immovable property;
  - 30.2.3 services required by the Company;
  - 30.2.4 the covering of any losses suffered by the Company;
  - 30.2.5 the payment of any insurance premiums;
  - 30.2.6 payment of all expenses incurred or to be incurred to effect the opening under section 5 of the Sectional Titles Act of a sectional titles register in relation to the said immovable property; and
  - 30.2.7 the discharge of any other obligation of the Company.
- 30.3. The directors must ensure that -
- 30.3.1 all contributions to the levy fund forthwith be paid into a separate account kept for this purpose with a bank or be entrusted to an attorney answering to the definition of "practitioner" in the Attorneys Act 53 of 1979 or to an estate agent answering to the definition of "estate agent" in the Estate Agency Affairs Act 112 of 1976, and such contributions must be utilised to defray the costs in respect of the matters referred to in section 13 of the Share Block Act and Article 30.2 hereof;

- 30.3.2 such accounting records are kept as are necessary 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 share block scheme operated by the Company.
- 30.4. The directors may include in such levy an amount to be kept in reserve to defray any expected future expense not being of an annual nature, such as the expenses to be incurred in redecorating and renewing the company's property and the replacement of any movable assets or part thereof.
- 30.5. The directors may set aside out of the surplus of the Company funds such sums as they think proper as a reserve.
- 30.6. Any reserve shall, in the discretion of the directors, be applied for meeting contingencies for which levies would otherwise be raised on the shareholders or for any other purpose whatsoever for which a levy might be raised on the shareholders and pending such application, and may at the discretion of the directors, be invested in a banking institution for the benefit of the Company, as the directors may from time to time determine.
- 30.7. The directors shall be entitled to charge interest on all arrear amounts due by Shareholders to the Company.
- 30.8. The interest rate shall be determined by the directors from time to time.
- 30.9. Such interest shall be calculated monthly in advance from the date that such amount became due.
- 30.10. The Directors of the Company are expressly authorised to impose fines against defaulting shareholders provided that fines must be reasonable, and without affecting the generality of the foregoing, fines shall be likened to a penalty claimed by an injured party arising out of breach of contract in terms of the Conventional Penalties Act 15 of 1962.
- 30.11. The directors shall not be entitled to suspend a defaulting shareholder's right to vote.

31. **MANAGEMENT RULES**

- 31.1. The directors and/or the managing agent, if any, may make such rules and procedures as they in their discretion may decide subject to section 15 (3) – (5) of the Companies Act.
- 31.2. The management rules and procedures shall be binding on a shareholder or any other occupier of any improvements. It shall be the duty of the shareholder to ensure compliance with the management rules and procedures by any tenant, occupier, invitee or guest.

32. **LOAN OBLIGATION**

- 32.1. The Company shall not increase its loan obligations or encumber any of its assets unless the increase or encumbrance has been approved by a resolution of at least seventy-five percent (75%) in number of the shareholders, excluding the Share Block Developer, having the right to vote at the relevant meeting and holding in the aggregate at least seventy-five percent (75%) of the total number of votes of all the Shareholders, excluding the number of votes held by the Share Block Developer.
- 32.2. The provisions of paragraph 32.1 shall not apply:
- 32.2.1 in respect of an encumbrance which secures an existing liability comprised in the Company's loan obligation;
- 32.2.2 where at the time the Shares of the Company were offered for subscription or sale, it was disclosed to all shareholders of the Company and to the person to whom the shares were offered that the Company contemplated increasing its loan obligations or

encumbering its assets on stated terms and conditions and the Company has acted in accordance with such disclosure.

- 32.3. The loan obligation of the Company shall be allocated to all shareholders of the Company, in accordance with the provisions of the MOI or any agreement or arrangement in writing relating to the loan obligation between the Company and the shareholders or, in the absence of such provisions, in the proportion of each shareholder's share to the total number of issued shares of the Company.
- 32.4. Every shareholder of the Company shall be liable to the Company in respect of its loan obligation for an amount equal to that portion of the loan obligation for which he is liable on such of the grounds referred to in Article 32.3 as may apply to him.
- 32.5. No monies paid to the Company in reduction or in settlement of the amount for which a shareholder is liable in respect of the Company's loan obligation shall be applied otherwise than in accordance with the relevant provisions of the MOI of the Company or any agreement or arrangement in writing relating to the repayment of that amount between the Company and its shareholders or, failing such provision, in accordance with a resolution as contemplated in Article 32.1.
- 32.6. The provisions of the Companies Act relating to notice of a special resolution shall *mutatis mutandis* be observed in respect of a resolution referred to in Article 32.1 as if such resolution were a special resolution.
- 32.7. All moneys paid to the Company by a shareholder in respect of its loan obligation shall be dealt with strictly in accordance with the provisions of section 15 of the Share Blocks Act.
- 32.8. All moneys owing to the holder of the shares in respect of his loan portion shall:
- 32.8.1 constitute a loan to the Company;
  - 32.8.2 not be repayable to the Shareholder by the Company unless the Company, at its option, elects to do so;
  - 32.8.3 be repayable to the Shareholder in the event of the Company being wound up;
  - 32.8.4 be free of interest.

### 33. **ALLOCATION OF LOAN OBLIGATION**

- 33.1. In this Article:
- 33.1.1 "Sellers loan obligation" means the loan obligation of the Company owing or to be owing to the Share Block Developer;
  - 33.1.2 "Completion" means upon the issue of a certificate in respect of improvements in terms of or in like fashion as contemplated by section 7(1) of the Time-Sharing Act; and
  - 33.1.3 "Improvements" means the completion of the units which have not been erected as set out in Annexure "B".
- 33.2. The sellers loan obligation will upon the creation thereof be allocated on completion of the improvements, proportionately to the Share Blocks to which such improvements relate.
- 33.3. Whereas it is contemplated that at the discretion of the Share Block developer the uncompleted accommodation may be completed on the land and that such improvements may be financed only by the sellers loan obligation or any third party loan obligation.
- 33.4. The Share Block Developer shall be entitled, in its discretion to allocate shareblocks as set out in Annexure "B" to the accommodation, in order to confer upon the holder of such shareblocks respectively a time-sharing interest in respect of such accommodation. The shareholders agree

to the Share Block Developer so acting, hereby irrevocably appointing the Share Block Developer as their agent to attend any shareholders' meeting of the Company, or at any adjournment thereof and to vote for a motion by special resolution in terms of which such allocation is confirmed and Annexure "B" is accordingly amended.

- 33.5. Any loan made or assumed by any shareholder to the Company pursuant to the preceding articles shall be deemed to be ceded to the Company as security for any outstanding obligation by the shareholder to the Company from time to time, provided that the Company shall not be entitled, in realising such loan for the purpose of enforcing its security, to dispose of such loan, unless disposition is made simultaneously with the disposition of the relevant share block and the relevant time-sharing interest owned by the said shareholder.
- 33.6. Subject to the cession in favour of the Company in Article 33.5, any such loan may be ceded by the shareholder to a third party, provided that such cession:
- 33.6.1 is made to the person to whom the said shareholder has disposed of his share block and time-sharing interest; and
- 33.6.2 is consented to by the directors of the Company in terms of this MOI.

**34. INSURANCE OF IMMOVABLE PROPERTY AND IMPROVEMENTS**

- 34.1. The directors of the Company shall ensure that the immovable property owned or leased by the Company, together with all improvements and moveable assets of the Company, be insured at its replacement value from time to time.
- 34.2. The said replacement value shall be reviewed and determined annually at the Company's annual shareholders' meeting.

**35. BORROWING POWERS**

- 35.1. Subject to the restrictions in the Share Block Act and the provisions of the Use Agreement existing from time to time between the Company and any shareholder, the directors may:
- 35.1.1 in their discretion from time to time raise or borrow any sum or sums of money for the purposes of the Company without limitation;
- 35.1.2 raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of bond, perpetual or redeemable, secured or unsecured debentures, or any mortgage, charge or other security on the undertaking of the whole or in part of the property of the Company, both present and future;
- 35.1.3 subject to the provisions of the statutes, from time to time, in their discretion, raise or borrow from the shareholders or other persons any sum or sums of money for the purposes of the Company, provided that the amounts in the aggregate so raised or borrowed from time to time shall not exceed such amount as may be determined by the Company in a shareholders' meeting from time to time;
- 35.1.4 raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit.

**36. PROHIBITION ON DISTRIBUTION OF INCOME AND PROPERTY**

- 36.1. Except in the event of the winding up of the Company as provided for in Article 41 below, no portion of the income and property shall be paid or transferred directly or indirectly, by way of

- dividend, bonus or otherwise to the shareholders of the Company or to its controlling or controlled company in terms of section 8(1)(b) of the Share Blocks Act;
- 36.2 Provided that nothing herein contained shall prevent the payment in good faith or reasonable remuneration to any officer or servant of the Company, or to any shareholder thereof, as remuneration for any services actually rendered to the Company.

37. **ACCOUNTING RECORDS, FINANCIAL STATEMENTS AND AUDIT**

- 37.1. The directors shall cause such accounting records as are prescribed by the provisions of sections 13 and 15 of the Share Blocks Act to be kept, including such accounting records as are referred to in Article 37.3 hereunder and also such other accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the business of the Company.
- 37.2. The directors shall ensure that such accounting records as are necessary 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, referred to in Article 30 are kept.
- 37.3. The directors shall keep separate books, accounting records and financial statements such as are necessary fairly to reflect and explain the state of affairs in respect of all moneys paid to the Company by shareholders in reduction of the Company's loan obligation as referred to in s 14 of the Share Blocks Act and the directors shall ensure that the Company's books and accounting records relating to these moneys are balanced at least every month and that these books, accounting records and financial statements are audited by the Company's auditors at least once annually.
- 37.4. 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 Share Blocks Act read with the relevant applicable provisions contained in the Company Act and the Promotion of Access to Information Act No. 2 of 2000.

38. **NOTICES**

- 38.1. A notice may be given by the Company to any shareholder either personally, or by sending it by Electronic Communication or by prepaid post addressed to such shareholder at such shareholder's registered address or (if such shareholder has no registered address in the Republic) at the address (if any) within the Republic supplied by such shareholder to the Company for the giving of notices.
- 38.2. Where any consent or approval is required for any act by a party, including the Company and directors, such consent shall:
- 38.2.1 be in writing and signed by the party or the party's authorised agent whose consent or approval is required; and
- 38.2.2 be given prior to the party taking such action; and
- 38.2.3 not be unreasonably withheld.
- 38.3. Notice of every shareholders' meeting shall be given in any manner authorised:
- 38.3.1 to every Shareholder of the Company, except those Shareholders who have not supplied to the Company an address for the giving of notices to them. The Company may send the notice by facsimile or by Electronic Communication;
- 38.3.2 to the auditor for the time being of the Company.
- 38.4. No other person shall be entitled to receive notice of shareholders' meetings.

- 38.5. Any notice by prepaid post shall be deemed to have been received:  
38.5.1 In the case of prepaid mail, seven (7) days after the letter was mailed;  
38.5.2 In the case of a facsimile or electronic communication, on the 1st business day after the day it was sent.
- 38.6. It shall be sufficient proof that the letter containing the notice was properly addressed and posted.

39. **INDEMNITY**

- 39.1 Subject to the provisions of section 78 of the Companies Act, the shareholders, 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.
- 39.2 Subject to the provisions of section 77 of the Companies Act, if a shareholder, the board or any officers of the Company are found to have incurred costs and expenses to the Company in connection with their conduct of the affairs of the Company negligently, dishonestly or fraudulently such may be held liable to the Company, and if the Company indemnified such in terms of Article 39.1, such will repay the Company the amount so indemnified.

40. **LIMITATION OF LIABILITY OF DIRECTORS**

- 40.1 Each director, alternate director, manager, prescribed officer and other officer of the Company, 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 Companies Act in which relief is granted to him by a court of competent jurisdiction.

41. **WINDING-UP**

- 41.1. If the Company be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:  
41.1.1 To repay the shareholders/members the amounts paid up on the shares respectively held by each of them to the value of R 1 per share; and  
41.1.2 To repay to the members all amounts paid in respect of the Company's loan obligation (if any), providing that such refund 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 winding up of the Company.  
41.1.3 The balance remaining after the payments referred to in sub-article 41.1.1 shall be paid to the members in proportion to the number of shares held by each member to the total issued share capital.
- 41.2. In a winding-up any part of the assets of the Company not distributed as set out above may be paid to members of the Company *in specie*, or may with the same sanction, be vested in trust for the benefit of such members, and the Company dissolved.

42. **ARBITRATION**

- 42.1. Arbitration shall only be pursued once all other less formal avenues of dispute resolution have been exhausted. These less formal avenues include direct discussion with the directors in the first instance, followed by a best practice mediation process.
- 42.2. In the event of any unresolved dispute or difference arising between the Company and/or Directors and/or the Shareholders (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 duties 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 provisions of the Arbitration Act No 42 of 1965 as amended.
- 42.2. The arbitration will be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa (“AFSA”) by an arbitrator appointed by AFSA.
- 42.3. 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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