

# REPUBLIC OF SOUTH AFRICA

## COMPANIES ACT, 2008 MEMORANDUM OF INCORPORATION OF A PRIVATE COMPANY ("MOI")

**Name of Company**                                    **DRAKENSBERG SUN CHALETS SHARE BLOCK  
PROPRIETARY LIMITED**

**Registration No of Company**                **1988/002500/07  
("the Company")**

This Memorandum of Incorporation was adopted in accordance with a proposal by the Board and by way of a special resolution passed by members at a General Meeting of the Company held on .....20.....in full substitution of the then existing Memorandum and Articles of Association.

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Chairman

### **Incorporation**

- (1) The Company is a pre-existing profit Company as defined in the Companies Act, 2008, and incorporated as a Share Block Profit Company, operating a property timesharing scheme in accordance with the provisions of the Share Blocks Control Act, 1980 and the Property Time-Sharing Control Act, 1983 and continues to exist as same in accordance with item 2 of Schedule 5 of the Companies Act, 2008
  
- (2) The Company is incorporated in accordance with, and governed by-
  - (a) The unalterable provisions of the Companies Act, 2008 that are applicable to Profit companies;
  - (b) The alterable provisions of the Companies Act, 2008 that are applicable to Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum;
  - (c) The provisions of the Share Blocks Control Act, 1980 and the Property Time-sharing Control Act, 1983
  - (d) The Use Agreement of the Company; and
  - (e) The provisions of this Memorandum of Incorporation.

**Note 1:** This Memorandum of Incorporation contains statutory provisions of the Share Blocks Control Act that shall apply to the Company as set out in Annexure A hereto.

- Note 2:** The Memorandum of Incorporation contained in Forms CoR 15.1 A and CoR 15.1B of the Companies Regulations, 2011 shall not apply to the Company and this unique memorandum of incorporation will instead apply thereof.
- Note 3:** The Company elects in terms of Section 34(2) of the Companies Act, 2008 to voluntarily 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, 2008, and elects in terms of section 118(1)(c)(ii) of the Companies Act, 2008, not to voluntarily submit to the provisions of Part B and C of Chapter 5 of the Companies Act and the takeover regulations.
- Note 5:** The Company is prohibited from amending any of the provisions prescribed by the Share Blocks Control Act, 1980 and as contained in this Memorandum of Incorporation.
- Note 6:** In terms of Section 8 (2) (b) of the Companies Act, 2008, 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 Section 3 (2) and Section 11 of the Share Blocks Control Act, 1980.
- Note 7:** The Company elects in terms of Section 39 (3) of the Companies Act, 2008, to negate Section 39 (2) of the Act and specifically relies on Section 11 of the Share Blocks Control Act, 1980.

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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, any word herein signifying:
  - 1.1.1. the singular shall include the plural and vice versa;
  - 1.1.2. the masculine shall include the other two genders;
- 1.2. any word herein which is defined in the Act and is not defined in article 1.6 shall bear that statutory meaning in this MOI;
- 1.3. any word, phrase or sentence herein which is not defined in the Act or in article 1.6 shall bear its usual meaning;
- 1.4. each term, power or authority herein shall be given the widest possible interpretation;
- 1.5. phrases as defined in the Share Blocks Control Act, 1980 shall have the meanings so assigned and words importing persons shall include legal entities described in article 1.6.28 below;
- 1.6. 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:
  - 1.6.1. "Act" shall mean the Companies Act, 71 of 2008 and its Regulations, as amended from time to time;
  - 1.6.2. "Article(s)" shall mean the numbered paragraph(s) and sub-paragraph(s) of this MOI;
  - 1.6.3. "Board" shall mean the board of directors for the time being of the Company elected in terms of article 21;
  - 1.6.4. "Buildings" means the buildings situated on the Company's immovable property as defined in sub article 1.6.13 hereunder;
  - 1.6.5. "Business days" shall mean such days as are determined in accordance with Section 5 (3) of the Act
  - 1.6.6. "Chairman" shall mean the Chairman of the Board of the Company for the time being, elected in terms of article 21;
  - 1.6.7. "Chalet equipment, movables or movable property" shall mean the equipment, movables or movable property as contained in a chalet as specified in Annexure B1 attached to the Use Agreement (Annexure B hereto)
  - 1.6.8. "Chalet(s)" shall mean residential accommodation erected or to be erected on the Company property and the exclusive use and occupation whereof has been granted to the holder of a share block in the Company;
  - 1.6.9. "Chalet property" shall mean such portions of the Company property upon which chalets or other improvements which serve the chalets or the occupants thereof are erected from time to time;
  - 1.6.10. "CIPC" shall mean the Companies and Intellectual Property Commission;

- 1.6.11. "Common Property" shall mean all portions and facilities located on the Company property including the adjacent hotel property and facilities which are ordinarily available for use by guests of the hotel but excluding the guest rooms;
- 1.6.12. "Company" shall mean DRAKENSBERG SUN CHALETS SHARE BLOCK PROPRIETARY LIMITED;
- 1.6.13. "Company Property" shall mean sub 112 of sub 4 of the farm Driefontein number 1389, Administrative district of Natal, measuring twenty decimal point one seven nine eight (20.1798) hectares and such other portions of the property upon which chalets or other improvements which serve the chalets or the occupants thereof are erected from time to time;
- 1.6.14 "Day(s)" shall mean calendar days including Saturdays, Sundays and Public Holidays;
- 1.6.15 "Directors" shall mean the directors for the time being of the Company elected in terms of article 21;
- 1.6.16 "Electronic Communication" shall bear the same meaning as set out in section 1 of the Electronic Communication and Transaction Act, 25 of 2002;
- 1.6.17 "General Meeting" shall mean any general meeting of the members /holders/ shareholders of the Company or any adjournment thereof, including an annual general meeting;
- 1.6.18 "Holder, Member or Shareholder" shall mean any of the shareholders of the Company referred to in 1.6. 17, 1.6.23, 1.6.36 and article 6;
- 1.6.19 "hotel property" shall mean the adjacent property owned by Drakensberg Sun Hotel Share Block Proprietary Limited including the hotel and its ancillary facilities
- 1.6.20 "Improvements" shall mean any improvements of a permanent nature erected or to be erected on the Company property to be used for any purposes whatsoever;
- 1.6.21 "Income Tax Act" shall mean the Income Tax Act, 58 of 1962, as amended from time to time;
- 1.6.22 "Levy" shall mean the annual levy payable by the member in accordance with the provisions of Article 30 of this MOI, the Use Agreement (Annexure B hereto) and includes any special levy raised;
- 1.6.23 "Member, Holder or Shareholder" shall mean any of the shareholders of the Company referred to in 1.6.17, 1.6.18, 1.6.36 and article 6;
- 1.6.24 "MOI" shall mean the Memorandum of Incorporation of the Company, as contained in this document, as duly amended from time to time;
- 1.6.25 "month" means a calendar month;
- 1.6.26 "Movables, movable property or Chalet equipment" shall mean the movables, movable property or chalet equipment as contained in a chalet as specified in annexure "B1" attached to the Use Agreement (Annexure B hereto);
- 1.6.27 "Office" shall mean the registered office of the Company;
- 1.6.28 "Person" shall include any natural person, Company or body corporate, a statutory body, a partnership or an association of persons, as the case may be, having the legal capacity required in terms of the laws of the Republic;
- 1.6.29 "Record date" shall mean the date in accordance with Section 59 3 (a) of the Act;
- 1.6.30 "Republic" shall mean the Republic of South Africa;

- 1.6.31 "Share" shall bear the 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;
- 1.6.32 "Share Blocks Control 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;
- 1.6.33 "Share Block Company" means DRAKENSBERG SUN CHALETS SHARE BLOCK PROPRIETARY LIMITED the activities of which comprise or include the operation of a share block property timesharing scheme;
- 1.6.34 "Share Block Developer" is as defined in section 1 of the Share Blocks Control Act and its successors in title and assigns;
- 1.6.35 "Share Block Scheme" means any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property in accordance with the Statutes;
- 1.6.36 "Shareholder / Holder/ Member" shall mean the holder of shares comprising a share block referred to in 1.6.17, 1.6.18, 1.6.23 above and article 6 and as recorded in the register of members of the Company and includes a purchaser thereof 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 shares comprising the share block;
- 1.6.37 "Sign"/"Signature" shall include the reproduction of signature lithography, printing with an india - rubber stamp or any electronic communication process partly the one and partly the other process;
- 1.6.38 "Statutes" means the Companies Act, the Share Blocks Control Act, the Property Time-sharing Control Act, and every other Act for the time being in force, concerning companies and affecting the Company;
- 1.6.39 "Timesharing Act" shall mean the Property Time-sharing Control Act No.75 of 1983, as amended and the regulations promulgated from time to time in regard thereto;
- 1.6.40 "Timesharing interest ", means any right to or interest in the exclusive use or occupation of a specified chalet and the common property, during specified periods in any year, referred to in the Use Agreement (Annexure B hereto);
- 1.6.41 "Use Agreement" means any agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated, and as further set out in Annexure B attached hereto;
- 1.6.42 "Week" means a specified period of exclusive use and occupation in respect of a specified chalet , as further defined in the Use Agreement (Annexure B hereto);
- 1.6.43. "Writing" shall include printing, typewriting, lithography or any electronic communication process, or partly one and partly the other;
- 1.6.44 "Year" means a calendar year.

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

The main purpose and object the Company is to operate a share block property timesharing scheme in respect of the Company property in accordance with the Share Blocks Control Act and the Timesharing Act, entitling a member to use specified parts of the Company's property for residential purposes and the use/s ancillary thereto on the terms and conditions contained in the Use Agreement (Annexure B hereto) entered into between the Company and the Company's members and promoting, sustaining and advancing the interests of the Company's members.

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

- 3.1 The Company has the powers and capacity of a person.
- 3.2 Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Act, the Share Blocks Control Act and the Timesharing Act empowers a Company to do.
- 3.3 The Company is restricted in its powers and capacity in terms of sections 15 (2) (b) or (c) and 15 (3) of the Act, the provision of the Share Blocks Control Act relating to other provisions for the control of the business of the Company and the statutory provisions as contained in this MOI as referenced in Annexure A hereto.
- 3.4 The Company shall have the power to perform any act and incur any expenditure to effect the opening, in terms of section 12 of the Sectional Titles Act 1986, as amended from time to time, of a sectional titles register in relation to its immovable property.
- 3.5 The Company shall ensure that substantially the whole of its activities are directed to the furtherance of its main and stated objects.
- 3.6 The Company shall utilise its assets and income to advance the stated objects for which it has been established.

## **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 Act, all other amendments of the MOI shall be effected in accordance with section 16 (1) of the 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 Act or this MOI, in accordance with the provisions of sections 15 (3) to 15 (5) of the Act.

- 4.3 If the directors make any rules, the Company must file and publish a copy of those rules in the manner prescribed in the Act.
- 4.4 If the directors alter this MOI or any rules made in terms of section 17 (1) of the Act, the Company must publish a notice of such alteration in the manner prescribed by the Act.

## **5. REGISTER OF MEMBERS / HOLDERS / SHAREHOLDERS**

The Company shall maintain at its registered office a register of members of the Company and the registration, transfer, issue, inspection and certification of shares shall be in accordance with the provisions of section 50 and 51 of the Act, this MOI, the Promotion of Access to Information Act, 2000 and the Protection of Personal Information Act, 2013.

## **6. SHARE CAPITAL**

- 6.1 The authorised share capital of the Company is R6 352.50 (SIX THOUSAND THREE HUNDRED AND FIFTY TWO RAND FIFTY CENTS) divided into 635 250 (SIX HUNDRED AND THIRTY FIVE THOUSAND TWO HUNDRED AND FIFTY) ordinary par value shares of 1 (ONE) cent each apportioned between 7800 share blocks numbered and allocated in accordance with schedule Annexure C hereto;
- 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 a chalet on the chalet property, for a specified week for residential purposes only and uses necessarily incidental thereto and the use of the common property, in common with the other members of the Company and users of the remainder of the Company property for the week or weeks as specified in the schedule annexed hereto (Annexure C) as read with and on the terms and conditions contained in the Use Agreement (Annexure B hereto) entered into between the Company and the holders of the shares aforesaid.
- 6.3. Oblige to the holder thereof from time to time to lend to the Company as a fixed loan, the amount specified in, and, on the terms and conditions in this MOI;
- 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 member 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 member, 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 member 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 confer upon the holder:

6.6.1. a right to vote at any meeting of the Company.

6.6.2. the same vote as every other share in the Company; and

6.6.3. a right of usage in accordance with this MOI and the Use Agreement  
(Annexure B hereto)

6.7. Save as is otherwise hereinafter provided for and subject to the provisions of the Share Blocks Control Act and without prejudice to any special rights previously conferred on the holder of existing shares in the Company, any share may be issued with such special rights or subject to such restriction as the Company may from time to time determine.

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

7.1. A Private Company is, in terms of Section 8 (2) (b) of the Act, and subject to Section 39 (2) and 39 (3) of the Act, required to prohibit in its MOI the offering of any of its securities to the public and to restrict the transferability of its securities; however the application of the restriction on public offers of securities is excluded by the application of Section 3 (2) and Section 11 of the Share Blocks Control 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 Control Act.

7.2. The Company therefore elects in terms of Section 39 (3) of the Act, to negate the provision of Section 39 (2) of the Act, and specifically relies on Section 11 of the Share Blocks Control Act.

7.3. Shares may be offered to the public for sale if, in lieu of compliance with any other requirements, such offer is accompanied by a statement that any proposed purchaser of any such shares is required to enter into a contract referred to in Section 17 of the Share Blocks Control Act in respect of such shares and that a copy of the contract required to be entered into is available for inspection free of charge at an address indicated in the statement.

7.4. Every person whose name is entered in the share register shall be entitled to one copy of a certificate certified by the Company 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. Every member shall be entitled to one certified copy of a share certificate free of charge but for every subsequent certificate the directors may make 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.
- 7.6. Notwithstanding anything to the contrary contained in this MOI the Company shall, upon the issue or replacement of a share certificate to a member, retain possession of the members original 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 member to the Company which share shall remain so pledged until the amount due has been settled or the share has been realised as provided in Article 9.4.
- 7.7. Share certificates shall be issued as required by section 50 of the Act under the authority of the directors and in such manner and form as the directors shall from time to time prescribe.
- 7.8. None of the shares in the capital of the Company which are not apportioned among the share blocks referred to in sub-article 6.1 above may be issued otherwise than on the authority of a special resolution of the members of the Company and subject to the proviso that if they are so issued, such shares shall be apportioned among share blocks and the shares comprising each such share block shall confer on the holder the rights referred to in sub-article 6.2 above, subject to the terms and conditions set out in and referred to in that sub-article.
- 7.9. No share in the capital of the Company shall be capable of being held independently from all the other shares contained in the same share block and 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 together with the transfer, cession and assignment of:
  - 7.9.1. the relevant portion of the loan obligation allocated to the share block in question;
  - 7.9.2. the use agreement pertaining to the share block in question;
  - 7.9.3. the assumption by the transferee of all the transferor's obligations there under; and
  - 7.9.4. all levies and amounts due to the Company and, if applicable, any property transfer duty have been paid.
- 7.10. Save as otherwise provided in this MOI or in terms of the issue of any class of shares:
  - 7.10.1. no share 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 does not apply to the transfer of any

shares by a member or his executors or administrators or other legal representatives to the spouse or any descendant or ascendant of such member; and

7.10.2. notwithstanding anything to the contrary in this MOI, no consent by the directors shall be necessary for the transfer of any shares held by the share block developer.

7.11. Subject to such of the restrictions as may be applicable, any member may transfer his shares by instrument in writing in any usual or common form or any other form which the directors may approve and shall be executed by both the transferor and the transferee but the directors are entitled to waive the requirement of the transferee's signature thereon.

7.12. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members as holder thereof.

7.13. The directors may decline to recognise any instrument of transfer unless accompanied by:

7.13.1. the certified copy of the share certificate of the shares in the event that the Company holds the original or where the member 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; and

7.13.2. the transfer fee, or proof of payment thereof, as approved by the directors due upon the registration of each share transfer and, if applicable, proof of payment of property transfer duty.

7.14. Every instrument of transfer shall be delivered to the transfer office of the Company at which it is presented for registration, accompanied by a certified copy of the certificate of the shares to be transferred, the transfer fee or proof of payment thereof and, if applicable, proof of payment of property transfer duty.

7.15. Every Power of Attorney given by the member authorising the transfer of shares shall when lodged, produced or exhibited to the Company 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.

7.16. The Company shall not be bound to allow the exercise of any act or matter by an agent for a member unless a duly certified copy of the agent's authority be produced and lodged with the Company.

7.17. 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.

- 7.18. Any person becoming entitled to a share in consequence of the death or insolvency of the member shall upon such evidence or insolvency of the member being produced as may from time to time be required by the directors, have the right, either to be registered as a member 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.
- 7.19. A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of the deceased member of the Company or the estate of a member whose estate has been sequestered, or who is otherwise under a disability or as the liquidator of a body corporate which is a member of the Company, shall be entered in the register of members of the Company *Nomine Officii*, and shall thereafter, for all purposes, be deemed to be a member of the Company.

## **8. ALTERATION OF SHARES, CONSOLIDATION, SUB DIVISION and REDUCTION of SHARE CAPITAL**

- 8.1. If at any time the share capital is 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 amended, modified, varied or cancelled with the consent in writing of the holder(s) of three - quarters of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class, and the provisions of section 65 of the Act shall mutatis mutandis apply to the said resolution and meeting as if the resolution were a special resolution, the necessary quorum shall be two persons at least holding or representing by proxy seventy-five percent (75%) 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 7.9 above being adhered to.
- 8.2. New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original share capital.
- 8.3. The Company may by special resolution resolve to:
- 8.3.1. increase the share capital by such sum divided into shares of such amount, or may increase the number of its shares of no par value to such number, as the resolution shall prescribe;
  - 8.3.2. consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares or consolidate and reduce the number of the issued shares of no par value;

- 8.3.3. increase the number of its issued no par value shares without an increase of its stated value as is fixed by this MOI;
- 8.3.4. sub-divide its existing shares or any of them into shares of smaller amount than is fixed by this MOI;
- 8.3.5. cancel any shares which, at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;
- 8.3.6. reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorised and consent required by law;
- 8.3.7. convert any of its shares whether issued or not into shares of another class
- 8.3.8. convert any of its shares having a par value into stated capital constituted by shares of no par value; or
- 8.3.9. as may be required by the statutes or this MOI.

## **9. LIEN AND PLEDGE ON SHARES**

- 9.1. The Company has a first and paramount lien and a pledge on every share and share block 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 member of any share in the Company to a third party but as soon as an amount becomes due and payable by a member to the Company, all shares held by such member shall from that moment become pledged by such member to the Company.
- 9.3. In the event of such member holding the original share certificate then the member shall be deemed to hold the certificate relating to the pledged share as 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 realise any share on which it has a lien in terms of article 9.1 and any share becoming pledged to it in terms of article 7.6 and or article 9.1 and or article 9.2 and or article 9.3 by selling such share in the following manner:
  - 9.4.1. the holder of the share shall be given fifteen (15) business days written notice of sale of the share by electronic communication and by a prepaid registered letter addressed to his latest electronic communication and postal addresses as recorded in the register of members;
  - 9.4.2. the notice shall state the amount of the claim, demand payment thereof within the said period of notice and advise the member 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; and
  - 9.4.3. the sale shall be in such manner and upon such terms and conditions as in the bona fide opinion of directors would realise the most favourable price in the circumstances;

- 9.5. The net proceeds of any such sale shall be applied in respect of the amount due to the Company and the member shall remain liable for any shortfall.
- 9.6. In the event of a surplus, if any, arising after the amount due to the Company has been satisfied, such surplus shall be paid to the member upon demand.
- 9.7. If the surplus remains unclaimed for a period of three years following the sale of the shares, it shall be forfeited and credited to the levy fund.
- 9.8. On any sale as aforementioned the directors may enter the name of the purchaser in the register of members of the Company and the purchaser shall have no responsibility to attend to the application of the purchase price and his title and rights to the shares shall not be prejudiced by any irregularity or invalidity in the procedures in relation to the sale.
- 9.9. 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. LOAN OBLIGATION AND ALLOCATION**

- 10.1. The Company's loan obligation (as defined in the Share Blocks Control Act) will be allocated to the share blocks in the proportion which the number of shares held by each member bears to the total number of issued shares in the capital of the company from time to time.
- 10.2. Every member 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.
- 10.3. No monies paid to the Company in reduction or in settlement of the amount for which a member is liable in respect of the Company's loan obligation shall be applied otherwise than in accordance with the relevant provisions of this MOI or any agreement or arrangement in writing relating to the repayment of that amount between the Company and its members, or failing such provision, in accordance with a resolution as contemplated in paragraph 10.4.
- 10.4. 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 members, 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 members, excluding the number of votes held by the share block developer.

- 10.5. The provisions of the Act relating to notice and registration of a special resolution shall mutatis mutandis apply in respect of the resolution referred to in paragraph 10.4 above.
- 10.6. The provisions of paragraph 10.4 shall not apply:
- 10.6.1. in respect of an encumbrance which secures an existing liability comprised in the Company's loan obligation;
- 10.6.2. where at the time the shares of the Company were offered for subscription or sale, it was disclosed to all members 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.
- 10.7. It is recorded that at the date of conversion of the Company into a share block company, it was contemplated and the members of the Company agreed that the Company's loan obligation would be increased from time to time to such extent as may be determined by the share block developer and approved by the directors, for the acquisition or lease of additional land for integration within the Company's share block scheme, and, by the erection on the Company property and/or any such additional land of further chalets and/or by the erection on the Company property and/or such other land of certain infrastructural improvements to serve the chalets and certain other improvements which will be available for the use of members, provided that any such additional land, further chalets and improvements and increase will be in accordance with the following: (Subject to the provisions of the Share Blocks Control Act and the Act
- 10.7.1. the share block developer shall have the right:-
- 10.7.1.1. to procure or cause the Company to procure the development and layout of such portions of the Company property to such extent and as may be determined by the share block developer to be available for such additional chalets and improvements notwithstanding that such portions may at the time constitute common property;
- 10.7.1.2. to cause the Company to acquire additional land in proximity to the Company property as may be determined by the share block developer for integration with the Company's share block scheme and to procure the development of such additional land upon the terms referred to in article 10.7.1.1 which shall apply mutatis mutandis;
- 10.7.1.3. to subscribe for all the unissued shares in the capital of the Company relative to such additional chalets at par for cash upon the exercise of which rights the share block developer shall stipulate and assign to each of the chalets to which such shares will relate, a number relative to each share block subscribed for.

10.7.2. the share block developer shall be obliged to lend and advance to the Company, such amounts as are required by the Company to enable it to meet the Company's obligations to any third party in connection with any such acquisition and additional improvements and the other members will have no obligation to advance any amounts to the Company for this purpose.

10.7.3. the loan account of the share block developer arising from such advances will be deemed to have been allocated proportionately between all the members (including the share block developer) in the proportions of the issued shares in the Company's capital held by them, from time to time as and when such amounts are advanced by the share block developer in accordance with article 10.7.2

10.7.4. the amounts of the loan obligation previously allocated to the holders of the shares from time to time will be deemed to have been adjusted accordingly and to such extent as may be necessary; such amounts shall be deemed to have transferred across to such members. Notwithstanding the foregoing, there shall be no obligation on any of the members of the Company or on the share block developer to cause any additional acquisitions to be made or improvements to be effected to the Company property as contemplated herein.

10.8. Each of the members of the Company:-

10.8.1. consents to such restructuring of the Company's loan obligation levy liabilities relating to the developments as hereinbefore contemplated as may be consistent with the rights in terms hereof of the share block developer;

10.8.2. undertakes that he will not in any way interfere with or obstruct the share block developer in the exercise of its rights as recorded in article 10.7.1;

10.8.3. agrees to support any special resolution that may be required to alter or re-allocate the relevant loan obligation and / or levy liabilities relating to the chalets and / or additional chalets as contemplated above, in order to give legal effect to the rights of the share block developer; and to that end, notwithstanding anything to the contrary contained in these articles, each member irrevocably appoints the nominee of the share block developer as the proxy and agent of the member, to the exclusion of the member, to attend, speak and vote at any meeting of the Company convened for the purpose of considering and adopting such special resolution;

10.8.4. undertakes to procure the passing of such special resolutions and such amendments to this MOI and to the use agreement as may be necessary to give effect to the rights of the share block developer in terms of the foregoing provisions;

10.8.5. consents to the Company concluding such agreements as may be necessary to implement these provisions.

10.9. The moneys owing to each member in respect of his loan obligation shall:-



- 10.9.1. constitute a loan to the Company;
  - 10.9.2. not be repayable to that member by the Company unless the Company at its option elects to do so;
  - 10.9.3. be repayable to the member in the event of the Company being wound up;
  - 10.9.4. be free of interest.
- 10.10. Any loan made or assumed by any member to the Company pursuant to the preceding provisions shall be deemed to be ceded to the Company as security for any outstanding obligation by the member to the Company 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 or alienate such loan unless such disposition or alienation is made simultaneously with the disposition of the relevant share block owned by the said member or to which the member is entitled.
- 10.11. Subject to the cession in favour of the Company, any such loan may be ceded by the member to a third party, provided that such cession:-
- 10.11.1. is made to the person to whom the said member has sold his share block;
  - 10.11.2. has been consented to by the directors of the Company, which approval shall not be unreasonably withheld
- 10.12. All monies paid to the Company by a member in respect of its loan obligation shall be dealt with strictly in accordance with the provisions of section 15 of the Share Blocks Control Act 1980.

## **11. BORROWING POWERS**

- 11.1. Subject to article 10.4, the restrictions contained in the Share Blocks Control Act and to the provisions of any agreement existing from time to time between the Company and any member or members:
- 11.1.1. the directors may in their discretion from time to time raise or borrow any sum or sums of money for the purposes of the Company without limitation, subject to approval by special resolution of the Company in general meeting;
  - 11.1.2. the directors may 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, subject to special resolution of the Company in general meeting.
  - 11.1.3. The directors may subject to the provisions of the statutes, from time to time, in their discretion, raise or borrow from the members 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 special resolution of the Company in a general meeting from time to time.

- 11.2. The directors may raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit, subject to special resolution of the Company in general meeting.

## **12. GENERAL MEETINGS of MEMBERS**

- 12.1. The Company shall hold annual general meetings 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.
- 12.2. The directors shall have the power to convene other general meetings of the Company at such time and place as the directors determine.
- 12.3. 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.
- 12.4. 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) clear business days' notice in writing shall be given to all members of an annual general meeting or of a general meeting at which a special resolution is to be proposed;
  - 13.1.2. not less than ten (10) clear business days' notice in writing shall be given to all members of any other general meeting;
- 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. if applicable, any specific purpose contemplated in Section 61 (3) (a) of the Act, including a copy of any proposed resolution of which the Company has received notice and which is to be considered at the meeting and confirming the percentage of voting rights that will be required for that resolution to be adopted;

13.3.4. the record date for determining members rights as determined by Section 59 (3) (a) of the Act; and

13.3.5 any member entitled to attend and vote is entitled to appoint a proxy to attend, vote and speak in his stead and such person need not also be a member

13.4. The directors may provide for participation by members by electronic communication as set out in Section 63 of the Act.

13.5. 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.

13.6. 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. An annual general meeting convened in terms of article 13.1.1 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 annual financial statements, including the report of the auditor for the immediately preceding financial year;

14.1.1.3. the audit committee report;

14.1.1.4. election of directors;

14.1.1.5. election of audit committee

14.1.1.6. appointment of an auditor for the ensuing financial year;

14.1.1.7. approval of the insured value of the property as recommended by the directors;

14.1.1.8. any other business laid before it; and

14.1.1.9. detailed income statement (unaudited)

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, subject to the provisions of Section 64 (3) of the Act, a quorum at any General Meeting shall be no less than three (3) members holding at least five (5) percent of the share capital, who are entitled to vote and who are present in person or by proxy 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 for one (1) business day 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 Chairman of the Board shall preside as Chair at every general meeting of the Company.
- 14.5. If at a general meeting there is no Chairman or the Chairman is not willing to act or is not present within fifteen (15) minutes after the time appointed for holding the meeting, one (1) of the appointed directors present shall be Chairman of the meeting.
- 14.6. Subject to the provisions of the Act, the Chairman 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.

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

- 15.1. Every member who is represented either in person or by proxy at a general meeting shall have one (1) vote for every share held 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 shall be decided on a show of hands, in which case the members or proxy shall have one vote irrespective of the number of shares held, and in the event of a poll, the member or proxy shall have one vote for every share held.
- 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 Chairman of the meeting; or
  - 15.4.2. by at least five (5) members present in person, represented or by proxy having the right to vote at meetings; or
  - 15.4.3. by any one or more members present in person, represented or by proxy having the right to vote at the meeting entitled to exercise at least ten per cent (10%) of the voting rights to be voted on that matter
- 15.5. Any demand for a poll may be withdrawn.
- 15.6. The poll shall be taken in such a manner as the Chairman 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 Chairman 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 event of an equality of votes, the Chairman shall not have a second or casting vote and the resolution shall be deemed not to have been passed.

## **16. RESOLUTIONS**

- 16.1. For an ordinary resolution to be adopted by members at any meeting, it must be supported by more than fifty percent (50%) of the members who voted on the resolution, as provided in Section 65 (8) of the Act.
- 16.2. For a special resolution to be adopted by members at any meeting, it must be supported by more than sixty per cent (60%) of the members who voted on the resolution, as provided in Section 65 (10) of the Act.
- 16.3. A special resolution adopted at a members meeting is required to:
- 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 the 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 remuneration paid to directors as contemplated in Section 66 (9) of the Act
  - 16.3.5. vary rights attached to the shares when the share capital is divided into different classes.
  - 16.3.6. alienate the Company's immovable property.
  - 16.3.7. alter the share capital of the Company.
  - 16.3.8. approve the voluntary winding up of the Company, as contemplated in Section 80 (1) of the Act;
  - 16.3.9. approve the winding up of the Company in the circumstances contemplated in Section 81 (1) of the Act;
  - 16.3.10. approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5;
  - 16.3.11. revoke a resolution contemplated in Section 164 (9) of the Act; or
  - 16.3.12. as may be required in terms of the Act, the Share Blocks Control Act, the Timesharing Act and this MOI.

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

- 17.1. Subject to the provisions of Sections 60 (5), 65 (7) and 65 (9) 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. Any member entitled to attend and vote is entitled to appoint a proxy to attend, vote and speak in his stead and such proxy need not also be a member of the Company
- 18.2. 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 company, close corporation, trust or body corporate, signed by an officer or agent authorised by such organisation.
- 18.3. 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.
- 18.4. 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.
- 18.5. The instrument appointing a proxy and the power of attorney or the other authority, if any, under which it is signed, or a certified copy of such power or authority, shall be deposited at the registered office of the Company not less than forty eight (48) 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.
- 18.6. No instrument appointing a proxy shall be valid after the expiration of 6 months (six) 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.
- 18.7. 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:

**Drakensberg Sun Chalets Share Block Proprietary Limited**

Registration Number: 1988/002500/07

("the Company")

I / we..... holding .....ordinary shares in the Company with rights of use of Chalet(s) ..... , week(s) .....

hereby appoint.....or failing him,

.....or failing him,

the Chairman of the meeting

As my/our proxy to attend, speak and vote for me/us and on my/our behalf at the annual general meeting or general meeting (as the case may be) of the Company to be held on the abovementioned date 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:**

- ***Any member entitled to attend and vote is entitled to appoint a proxy to attend, vote and speak in his stead and such proxy need not also be a member of the Company.***
- ***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 licences and passports.***

- ***Any alteration or correction made to this form of proxy (excluding the deletion of alternatives and / or 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, trust or body corporate) must be attached to this form, failing which the proxy form will be null and void.***
- ***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.***
- ***This proxy form should be forwarded to reach the registered office of the Company, not less than forty eight (48) hours before the meeting.***
- ***If the requirements contained herein are not fulfilled the proxy form and or the nomination of the proxy will be null and void.***

## **19. RECORD OF PROCEEDINGS AT GENERAL MEETINGS**

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

## **20. DIRECTORS**

- 20.1. The number of directors shall be not less than three (3) and not more than five (5).
- 20.1.1. The Company may from time to time at a meeting of members resolve by special resolution to amend the MOI, to determine the number of directors within the parameters outlined in clause 20.1.
- 20.2. The members of the Company other than the share block developer shall, if they:
- 20.2.1. do not exceed ten (10) in number, have the right to appoint at least one (1) of the directors of the Company; and
- 20.2.2. exceed ten (10) in number, have the right to appoint at least two (2) of the directors of the Company;
- 20.3. The Company shall ensure the appointment of the director or directors referred to in article 20.2, and, notwithstanding anything to the contrary contained in any law, a share block developer shall not be entitled to vote on a proposed resolution to remove, under the provision of article 20.2, any directors so appointed.



## **21. RETIREMENT AND ELECTION OF DIRECTORS AND CHAIRMAN**

- 21.1. At each annual general meeting all directors shall retire.
- 21.2. A retiring director is eligible for nomination and re-election.
- 21.3. All nominations for the election of directors shall only be made by members;
- 21.4. Written nominations must be received at the registered offices of the Company not less than forty eight (48) hours before the commencement of the meeting, stating the names of the proposer and seconder, the name of the nominee, his written acceptance and accompanied by a curriculum vitae.
- 21.5. Any person may be nominated for election at an annual general meeting and shall not be required to hold any qualification shares. A director who is not a member of the Company shall nevertheless be entitled to attend and speak at general meetings.
- 21.6. A nomination for election of a director may be made at the meeting provided the nominee, proposer and / or seconder are present in person or by proxy or if the nominee is not present but has confirmed in writing his acceptance of his nomination together with his curriculum vitae and either of the proposer and / or seconder are present in person or by proxy at the meeting.
- 21.7. Nothing contained in the provision of this article 21 shall prevent the appointment of a person as managing director in terms of article 26.4 nor shall it apply to a person so appointed.
- 21.8. 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 this MOI and confirmed by CIPC in the prescribed manner.
- 21.9. The election 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. In the event that such resolution is not moved, each person nominated shall be individually voted on as director.
- 21.10. Except for the provisions of Article 21.9 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.
- 21.11. Where voting in respect of the election of directors to fill the declared vacancies is conducted on a poll, the net votes (abstentions are disregarded for purposes of the count) in respect of each nominee is calculated by deducting any vote against the nominee from votes in his favour 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.
- 21.12. At the commencement of the first meeting of the Board and thereafter immediately after each annual general meeting, the directors shall elect a Chairman from among their number who shall hold office as such until the next annual general meeting.
- 21.13. The Chairman shall not have a casting vote.
- 21.14. 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 such meeting, the directors may elect one of their number to be Chairman of the meeting.

## **22. DIRECTORS REMUNERATION**

Director's remuneration shall be determined in general meeting by special resolution in terms of the provisions of Section 66 (9) of the Act.

## **23. FILLING OF CASUAL VACANCIES OF DIRECTORS**

- 23.1. Directors may by unanimous resolution at any time subject to the restrictions of article 20.2 appoint any other person as an additional director or to fill a casual vacancy, provided that the total number of directors shall not at any time exceed the number determined this MOI or by special resolution at an annual general meeting.
- 23.2. 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.
- 23.3. Provided that the Board shall comprise not less than three (3) directors, any casual vacancy occurring on the Board may, subject to the provision of article 20.3, be filled by the directors, but the director so appointed shall be subject to retirement at the next annual general meeting and eligible for re-election.

## **24. ALTERNATE DIRECTORS**

- 24.1. Each director shall have the power to nominate any person as an alternate 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 and conditions applicable to the other directors of the Company.
- 24.2. 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.
- 24.3. 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.
- 24.4. If a director retires at a general meeting of the Company and is re-elected at the same meeting, he shall not, for the purposes of this article, be deemed to have ceased to be a director.

## **25. DUTIES OF DIRECTORS**

- 25.1. Without in any way derogating from the generality of the duties of the directors, directors shall in particular be obliged to:
- 25.1.1. determine the annual levy budget in terms of the provisions of the Use Agreement and section 13 of the Share Blocks Control Act;
  - 25.1.2. administer and utilise the funds of the Company and income accruing to the Company to achieve the main object of the Company;
  - 25.1.3. keep proper and comprehensive books of account and records;
  - 25.1.4. retain any financial records or other documents in respect of the Company for such period(s) as determined by the Act;
  - 25.1.5. invest surplus funds in major financial institutions only, in accordance with the provisions of section 10(1) (e) of the Income Tax Act, as amended from time to time;
  - 25.1.6. remain informed and updated with regards to the current minutes, policies and business of the Company and by attending the required meetings; and
  - 25.1.7. adhere to a standard of conduct consistent with the provisions of Section 76 of the Act.

## **26. POWERS OF DIRECTORS**

- 26.1. The directors shall manage the Company and shall carry out the objects of the Company in such manner as they 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 members in general meeting from time to time;
  - 26.1.3. the provisions of section 10(1)(e) of the Income Tax Act, 58 of 1962, relating to the use of levy funds of the Company for the carrying on of any business or trading activity in the name of the Company.
- 26.2. The 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.
- 26.3. The directors may delegate any of their 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 directors.
- 26.4. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such period and at such remuneration as they

may think fit; but his appointment shall cease ipso facto if he shall cease from any cause to be a director.

- 26.5. 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.
- 26.6. Neither the directors nor the Company, shall 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 Act.

## **27. PROCEEDINGS OF DIRECTORS**

- 27.1. Any director is at all times entitled to convene a meeting of the directors by giving ten (10) business 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 three (3) personally present throughout the meeting.
- 27.3. Any meeting of the directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions conferred upon them by this MOI.
- 27.4. The directors may participate in a meeting of the directors by means of conference telephone, electronically or such 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.
- 27.5. 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 Chairman shall not have a second or casting vote and the resolution shall be deemed not have passed.
- 27.6. 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 therefrom.
- 27.7. Subject to the provisions of 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. Any such resolution may consist of several documents in a like form, each signed by one or more of the signatories to the resolution. 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 Chairman of that meeting, whereupon the provisions of Section 73 (8) of the Act shall be deemed to apply to the resolution.

- 27.8. 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.
- 27.9. 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 no later than one (1) business day after the date of the meeting, 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 PROCEEDINGS AT DIRECTORS' MEETINGS**

- 28.1. 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 meeting; all resolutions passed by the directors and the proceedings at all such meetings of the directors.
- 28.2. Minutes of any resolution and proceedings mentioned in article 28.1 appearing in the minute books of the Company shall be proof of the facts therein stated if signed by –
- 28.2.1. the Chairman of the meeting to which it relates; or
  - 28.2.2. any person present at the meeting and appointed by the directors to sign in the Chairman's place; or
  - 28.2.3. the Chairman of a subsequent meeting of the directors;
- 28.3. Any extracts from or copy of those minutes purporting to be signed by the Chairman of that meeting, any director or the secretary of the Company shall be prima facie proof of the facts therein stated.

## **29. DISQUALIFICATION and REMOVAL of DIRECTORS and ALTERNATE DIRECTORS**

- 29.1. In addition to the provisions of Section 69 of the Act any director or alternate director shall cease to be a director of the Company on the occurrence of any of the following:
- 29.1.1. his estate is finally sequestrated;
  - 29.1.2. he files a petition for the surrender of his estate as insolvent;
  - 29.1.3. he is placed under curatorship by any court of competent jurisdiction;
  - 29.1.4. he delivers a notice of his resignation at the office with effect from:
    - 29.1.4.1. the date on which that notice is delivered; or
    - 29.1.4.2. any later date stated in that notice to which the directors agree;

- 29.1.5. he is absent, without prior apology, from two consecutive meetings of directors of which he had received notice at least fourteen (14) 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;
- 29.1.6. 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 Act;
- 29.1.7. passes, publishes or causes to be published any confidential information, directly or indirectly, which could be detrimental to the Company in any way;
- 29.1.8. if he is removed by an ordinary resolution in a general meeting of members in accordance with section 71 of the Act.

29.2. Neither a director nor an alternate director shall be disqualified from acting as such if he is not a member of the Company.

### **30. MEMBERS LEVIES**

30.1. It is recorded that substantially the whole of the Company's funding shall be derived from levies contributed by members in accordance with the provisions of section 13 of the Share Blocks Control Act and the Use Agreement, such levies being exempt from taxation in terms of Section 10(1) (e) of the Income Tax Act.

30.2. The members annual levy contribution is a debt due by the member payable to the Company in a single amount within thirty (30) days after written request by the Company and is as calculated in accordance with the Use Agreement.

30.3. Levies are payable by no later than ninety (90) days prior to the commencement date of the specified week.

30.4. Special levies are payable as determined by the Directors and the provisions of the Use Agreement.

30.5. If a member is in arrears with his levy, special levy or any part thereof, then, without prejudice to any other rights of the Company: -

30.5.1. The member automatically becomes liable, and deemed to have accepted liability as against the Company, for an amount as determined by the directors in their discretion as appropriate in terms of the Use Agreement to compensate the Company for any inconvenience or loss suffered by the Company as a result such non-payment; and

30.5.2. The member shall not be entitled to access or use the chalet or any other right or benefit to which members are entitled until he shall have paid all arrear amounts; and

30.5.3. The rights of the Company as to its lien on and pledging and realising the member's share shall be as set out in this MOI and the Use Agreement.

- 30.6. The annual levy includes the annual membership fee of an exchange organisation with which the Company or manager is affiliated as determined from time to time by the directors in their discretion and of which such exchange organisation the shareholder is automatically a member.
- 30.7. Peak weeks, the respective levies and the exchange points / values are determined in accordance with the Use Agreement but such weeks may differ from public holidays and school terms as approved by government legislation from time to time.
- 30.8. Capital expenditure and any future operating costs associated therewith may be incurred in establishing infrastructural and other improvements located on land adjacent to or in close proximity to the Company's property for the benefit of the Company, to serve the chalets and common property and be available for use by members.

### **31. INSURANCE OF IMMOVABLE PROPERTY AND IMPROVEMENTS**

- 31.1. The Directors are obliged that in each financial year and in accordance with the Share Blocks Control Act to ensure that the immovable property owned or leased by the Company, together with all Improvements and assets of the Company, be insured at replacement value.
- 31.2. The said replacement value shall be reviewed and approved by members at the annual general meeting of the Company.

### **32. DIVIDENDS**

Save for the winding up of the Company in terms of Article 37 of this MOI, no portion of the income and Company property shall be paid or transferred directly or indirectly by way of bonus, dividend or otherwise howsoever to members of the Company or to its controlling or controlled company in terms of Section 8 (1) of the Share Blocks Control Act.

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

- 33.1. The directors shall cause such accounting records to be kept as are prescribed by Sections 28, 29 and 30 of the Act and the provisions of sections 13 and 15 of the Share Blocks Control Act, including such accounting records as are referred to in article 33.3 hereunder and also such other accounting records as are necessary to fairly present the state of affairs and business of the Company and to explain the transactions and financial position of the Company.
- 33.2. The directors shall appoint registered auditors to ensure that such accounting records as are necessary are kept in terms of the statutes to fairly 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.

- 33.3. The directors shall keep separate books, accounting records and financial statements such as are necessary to fairly reflect and explain the state of affairs in respect of all moneys paid to the Company by members in reduction of the Company's loan obligation as referred to in Section 14 of the Share Blocks Control Act and the directors shall ensure that the Company's books and accounting records relating to these moneys and the levy fund are balanced at least every six months and that these books, accounting records and financial statements are audited by the Company's auditors at least once annually.
- 33.4. 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 Act, the Promotion of Access to Information Act No.2 of 2000 and the Protection of Personal Information Act, 2013.

#### **34. NOTICES**

- 34.1. A Notice shall be given by the Company to any member in accordance with Regulation 7 of the Companies Act, either personally, by electronic communication or by sending it by prepaid post addressed to such member at his registered electronic communication and postal addresses 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.
- 34.1.1 Every member shall notify the Company in writing or by electronic communication of which of their postal, physical and / or electronic communication addresses shall be deemed to be their registered address for the receipt of notices and communications from the Company.
- 34.1.2 Any changes to such deemed address shall be given in writing or by electronic communication.
- 34.2. Notice of every General Meeting shall be given to:
- 34.2.1. every member of the Company except, in the case of notices to be given personally, by electronic communication or sent by post, those members who (having no registered address within the Republic) have not supplied to the Company an address within the Republic for the giving of notices to them;
- 34.2.2. all directors of the Company who are not members;
- 34.2.3. the auditors, for the time being, of the Company.
- 34.3. No other person shall be entitled to receive notice of general meetings.
- 34.4. Any notice shall be deemed to be served in accordance with Annexure 3 (Table CR3) of the Regulations of the Act.



### **35. INDEMNITY**

Subject to the provisions of section 77 of the Act, the directors 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.

### **36. LIMITATION OF LIABILITY OF DIRECTORS**

Each director, alternate director, manager, prescribed 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.

### **37. WINDING-UP**

37.1 If the Company shall be wound up, the assets which remain after payment of the debts and liabilities of the Company and the costs of liquidation shall be applied as follows:

37.1.1 To repay to the members the amount paid up on the shares respectively held by the each of the members.

37.1.2. To repay to the members all amounts paid in respect of the Company's loan obligation, 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; and

37.1.3. The balance remaining after the payments referred to in sub-articles 37.1.1 and 37.1.2 shall be paid to the members in proportion to the number of Shares held by each member to the total issued share capital.

37.2. In any winding up, any part of the assets of the Company may with the sanction of a special resolution, be paid to the members in specie or may with the same sanction be vested in Trust for the benefit of such members and the Company dissolved.

### **38. ARBITRATION**

38.1. 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 this 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.

- 38.2. 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 fourteen (14) 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 Property is situate, to appoint an arbitrator.
- 38.3. 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.

## ANNEXURE A

The statutory provisions of the Share Blocks Control Act No. 59 of 1980 control the business of the Company in the following Sections:

1. **Section 3 –Application of certain laws in respect of share block companies**  
Refer: articles 1.6.7, 1.6.8, 1.6.26, 1.6.31, 1.6.32, 1.6.33,1.6.34,1.6.35,1.6.36  
1.6.38,1.6.39, 1.6.40,1.6.41 and 1.6.42.
2. **Section 5 –Restrictions on the operation of a share block scheme**  
Refer: article 3.3
3. **Section 7 –Main Objects (Purpose and Objects)**  
Refer: article 2
4. **Section 8A –Sectional Title Register**  
Refer: article 3.4
5. **Section 10 – Rights attaching to shares in a Share Block Company**  
Refer: articles 1.6.35, 1.6.36, 1.6.39, 1.6.40, 1.6.41,1.6.42 and 6.2, 6.3 and 6.6.
6. **Section 11 – Offer of sale of shares**  
Refer: articles 7.1 and 7.3
7. **Section 12 – Directors and Developer Directors**  
Refer: articles 20.3 and 21.8.
8. **Section 13 - Levy Fund and Trust Accounts**  
Refer: article 33
9. **Section 14 – Loan Obligation**  
Refer: article 10.
10. **Borrowing Powers**  
Refer: article 11
11. **Accounting Records**  
Refer: article 33
12. **Annual Financial Statements**  
Refer: article 14.1.1.2 and 33
13. **Auditor**  
Refer: article 14.1.1.6 and 33.2
14. **Use Agreement**  
Refer: Annexure B