

MEMORANDUM OF INCORPORATION
of
PEARL VALLEY GOLF VILLAS 1 SHARE BLOCK COMPANY RF LIMITED



Index

MEMORANDUM OF INCORPORATION

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MEMORANDUM OF INCORPORATION

1 DEFINITIONS AND INTERPRETATION

1.1 In this Memorandum of Incorporation, unless inconsistent with or otherwise indicated by the context –

1.1.1 “**Acres Development**” means the residential housing development at Erf 645 to 821, Pearl Valley Estate, Paarl, situated in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province as set out in the General Plan (No 597/2020), attached hereto as **Appendix 1**;

1.1.2 “**Acres HOA**” means the Acres Home Owners Association, established or to be established in terms of the Land Use Planning Act, 2014, read with the Drakenstein Municipality By Law on Municipal Land Use Planning, 2018 or any other home owners association which replaces such home owners association as the home owners association in respect of which the owner of an Erf in the Acres Development becomes a member;

1.1.3 “**the Act**” means the Companies Act 71 of 2008, as amended;

1.1.4 “**Alternate Director**” means a person elected or appointed to serve, as the occasion requires, as a member of the Board of the Company in substitution for a particular elected or appointed Director of the Company;

1.1.5 “**Annual Financial Statements**” means the annual financial statements of the Company as contemplated by section 30 of the Act;

1.1.6 “**Auditors**” means the auditors of the Company from time to time;

1.1.7 “**Board**” means the board of Directors from time to time of the Company;

- 1.1.8 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;
- 1.1.9 “**Club**” means the Pearl Valley Golf Club as defined in the PV HOA’s constitution;
- 1.1.10 “**Code of Conduct**” means any code of conduct in force from time to time in respect of the use and enjoyment of facilities at the Pearl Valley Estate and the Acres Estate;
- 1.1.11 “**Company**” means Pearl Valley Golf Villas 1 Share Block Company RF Limited, a public share block company duly registered in accordance with the laws of the Republic of South Africa;
- 1.1.12 “**Constitutions**” means the constitutions of each of the HOAs, as amended from time to time;
- 1.1.13 “**Developer**” means Safariland Devco (Pty) Ltd, registration number 2017/013321/07, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa or its successor in title or assignees;
- 1.1.14 “**Director**” means a member of the Board as contemplated in section 66, or an Alternate Director, if applicable;
- 1.1.15 “**Electronic Communication**” has the meaning set out in section 1 of the Electronic Communication and Transaction Act No. 25 of 2002;
- 1.1.16 “**Erf**” means an erf in the Pearl Valley Estate, Paarl, situated in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province to be acquired by the Company, on which Erf the Golf Villa shall be located;
- 1.1.17 “**Golf Villa**” means the golf villa, constructed or to be constructed on the Erf, owned by the Company, or in the process of being acquired by the Company, located at the Acres Estate, Paarl;

- 1.1.18 “**HOAs**” means, collectively, the PV HOA, VDV1 HOA, VDVII HOA and the Acres HOA;
- 1.1.19 “**Levies**” means the levies payable by the Shareholders to the Company from time to time to *inter alia* meet the costs and expenses of owning and operating the Golf Villa;
- 1.1.20 “**Managing Agent**” means Propcentral (Pty) Ltd or such other managing agent as may be appointed by the Board from time to time;
- 1.1.21 “**MOI**” means this document, as amended from time to time, that sets out the rights, duties and responsibilities of Shareholders, Directors and others within and in relation to the Company;
- 1.1.22 “**Ordinary Shares**” means ordinary shares of the Company referred to in clause 4.1;
- 1.1.23 “**Ordinary Shareholders**” means the holders of issued Ordinary Shares from time to time, and who are entered as such in the securities register of the Company and “**Ordinary Shareholder**” shall mean any of them;
- 1.1.24 “**Pearl Valley Estate**” means the Pearl Valley Golf and Country Estate, which falls under the jurisdiction of the PV HOA;
- 1.1.25 “**PV HOA**” means the Pearl Valley Golf and Country Estate Home Owners Association, established in terms of the Land Use Planning Ordinance, 1985;
- 1.1.26 “**Rules**” means the rules issued by each of the HOAs, as amended from time to time;
- 1.1.27 “**Share**” means one of the units into which the proprietary interest in the Company is divided;
- 1.1.28 “**Share Blocks Act**” means the Share Blocks Control Act, 59 of 1980;

- 1.1.29 **“Shareholder”** means an Ordinary Shareholder;
- 1.1.30 **“Specially Protected Matters”** means the matters set out in clause 13;
- 1.1.31 **“Use Agreement”** means the agreement entered into between the Ordinary Shareholders to regulate *inter alia* their relationship with the Company, the relationship between the Shareholders *inter se* and the Shareholders’ rights in respect of the Golf Villa;
- 1.1.32 **“Use Rights”** means the rights of each Ordinary Shareholder which it will be entitled to enjoy in respect of the Golf Villa for so long as it holds an Ordinary Share and is not in breach of any provision of this MOI, the Use Agreement, the Constitutions and the Rules, the Code of Conduct or any other agreement to which the Ordinary Shareholder is a party in respect of its shareholding in the Company or which it has agreed to be bound to, which rights are as follows –
- 1.1.32.1 use of the Golf Villa on the terms set out in the Use Agreement;
and
- 1.1.32.2 subject to the provisions of the Use Agreement, when residing at the Golf Villa, pre-paid golf at Pearl Valley Jack Nicklaus Signature Golf Course (for such number of memberships of the Club as per clause 15.9).
- 1.2 In this MOI, unless the context clearly indicates otherwise or otherwise provided in clause 1.1 above –
- 1.2.1 a reference to a section by number refers to the corresponding section of the Act;
- 1.2.2 words that are defined in the Act bear the same meaning in this MOI as in the Act;

- 1.2.3 a reference to a clause by number refers to a corresponding provision of this MOI;
- 1.2.4 in any instance where there is a conflict between a provision (be it expressed, implied or tacit) of this MOI and -
 - 1.2.4.1 a provision of any shareholders agreement, the provision of this MOI shall prevail to the extent of the conflict;
 - 1.2.4.2 an alterable provision of the Act, the provision of this MOI shall prevail to the extent of the conflict; and
 - 1.2.4.3 an unalterable provision of the Act, the unalterable provision of the Act shall prevail to the extent of the conflict.

2 INCORPORATION AND NATURE OF THE COMPANY

2.1 Incorporation

- 2.1.1 The Company is incorporated as a public company, as defined in the Act, and accordingly –
 - 2.1.1.1 the Company may offer any of its securities to the public, as defined in section 95 and section 96 of the Act; and
 - 2.1.1.2 the transferability of the Company’s securities is not restricted, save as provided for in the Use Agreement.
- 2.1.2 The Company is incorporated in accordance with and governed by–
 - 2.1.2.1 the unalterable provisions of the Act, save to the extent that this MOI imposes on the Company a higher standard, greater restriction, longer period of time or similarly more onerous requirement;
 - 2.1.2.2 the alterable provisions of the Act, subject to any limitation extension, variation or substitution set out in this MOI;

- 2.1.2.3 the provisions of this MOI;
- 2.1.2.4 the provisions of the Share Blocks Act; and
- 2.1.2.5 the rules of the Company, if any.

2.2 Powers of the Company

- 2.2.1 The Company's legal powers and capacity contemplated in the Act are limited and restricted to the business activities contemplated in clause 3.
- 2.2.2 Accordingly, the legal powers and capacity of the Company are subject to restrictions as contemplated in section 19(1)(b)(ii).

2.3 MOI and Company Rules

- 2.3.1 This MOI may be altered or amended only in the manner set out in section 16, 17 or 152(6)(b) and any amendment hereto shall be required to be approved by the Developer in writing for so long as the Developer owns property at the Acres Development.
- 2.3.2 The authority of the Board to make rules for the Company, as contemplated in section 15 (3) to (5) is not limited or restricted in any manner by this MOI.
- 2.3.3 The Board must publish any rules made in terms of section 15 (3) to (5) by delivering a copy of those rules to each Director.
- 2.3.4 The Company must publish a notice of any alteration of the MOI or the rules, made in terms of section 17(1) by delivering a copy of those rules to each Director.

3 BUSINESS OF THE COMPANY

The sole business and object of the Company shall be that of the ownership of the Erf and Golf Villa and the operation of the share block in respect of the

Golf Villa, which shall include all such activities required to be conducted which are ancillary to the operation of such scheme and the ownership of such Golf Villa.

4 SECURITIES

4.1 The Company is authorised to issue 7 (seven) ordinary shares having no nominal value and each such share entitles the holder thereof to –

4.1.1 attend, participate in, speak at and vote on any matter to be considered at, any meeting of Shareholders;

4.1.2 1 (one) vote on any matter to be decided by a vote of Shareholders;

4.1.3 participate proportionately in 100% (hundred percent) of the profit available for distribution to the Shareholders; and

4.1.4 participate proportionately in the distribution of 100% (hundred percent) of the residual value of the Company upon its dissolution.

4.2 In addition to the aforesaid rights, and subject to the express provisions of the Constitutions, the Rules, Codes of Conduct and any further rules and regulations issued by any of the HOAs, as amended from time to time, an Ordinary Shareholder shall by virtue of being the owner of a Share, be entitled to the Use Rights.

4.3 The Board shall have the power to –

4.3.1 increase or decrease the number of authorised Shares of any class of the Company's Shares;

4.3.2 reclassify any classified Shares that have been authorised but not issued;

4.3.3 classify any unclassified shares that have been authorised but not issued;

- 4.3.4 determine the preferences, rights, limitations or other terms of any Shares;
- 4.3.5 convert one class of Shares into one or more other classes of Shares;
- 4.3.6 consolidate and subdivide any class of Shares;
- 4.3.7 approve the issuing of any authorised shares of the Company as capitalisation shares, as set out in section 47(1); and
- 4.3.8 resolve to permit Shareholders to elect to receive a cash payment in lieu of a capitalisation share, as set out in section 47(1).

5 REGISTRATION OF BENEFICIAL INTEREST

The Company's securities may not be held by and / or registered in the name of one person for the beneficial interest of another person, as set out in section 56(1).

6 SHAREHOLDER'S RIGHT TO INFORMATION

Each Shareholder shall have the right to access the information set out in section 26(1) of the Act which shall include information contained in the following records –

- 6.1 the Company's MOI and any amendments to it, and any rules of the Company;
- 6.2 the records in respect of the Company's directors who have served as a Director;
- 6.3 the reports to the annual meetings and Annual Financial Statements;
- 6.4 the notices and minutes of annual meetings including resolutions adopted;
- 6.5 the securities register of the Company; and

6.6 any written communications sent generally by the Company to all holders of any class of the Company's shares, for a period of 7 (seven) years after the date on which such communications were issued.

7 SHAREHOLDER'S REPRESENTATION BY PROXY

7.1 Any Shareholder may at any time appoint any natural person (or two or more natural persons concurrently), including a natural person who is not a Shareholder, as a proxy to –

7.1.1 participate in, and speak and vote, on behalf of that Shareholder, at Shareholders' meeting at which such Shareholder is entitled to vote; or

7.1.2 give or withhold written consent on behalf of that Shareholder to a decision contemplated in section 60 on which such Shareholder is entitled to vote.

7.2 A Shareholder has the right to appoint 2 (two) or more persons concurrently as proxies.

7.3 A proxy appointment –

7.3.1 must be in writing, dated and signed by the Shareholder; and

7.3.2 remains valid for –

7.3.2.1 1 (one) year after the date on which it was signed; or

7.3.2.2 any longer or shorter period expressly set out in the appointment, unless it is revoked or expires earlier as contemplated in the Act; and

7.3.2.3 is suspended at any time and to the extent that the Shareholder chooses to act directly and in person in the exercise of its voting rights.

- 7.4 A Shareholder's proxy may delegate the proxy's powers to another person, subject to any restrictions set out in the instrument appointing the proxy.
- 7.5 A Shareholder or his proxy must deliver to the Company a copy of the instrument appointing a proxy at least 24 (twenty-four) hours before the commencement of the meeting at which the proxy intends to exercise that Shareholder's rights.
- 7.6 Unless the instrument appointing a proxy provides otherwise, a Shareholder's proxy may decide, without direction from the Shareholder, whether to exercise or abstain from exercising any voting right of the Shareholder.

8 RECORD DATE

- 8.1 The Board may set a record date for the purpose of determining which Shareholders are entitled to –
- 8.1.1 receive notice of a Shareholders' meeting;
 - 8.1.2 participate in and vote at a Shareholders' meeting;
 - 8.1.3 decide any matter by written consent or by electronic communication as contemplated in section 60;
 - 8.1.4 receive a distribution; or
 - 8.1.5 be allotted or exercise other rights.
- 8.2 A record date determined by the Board –
- 8.2.1 may not be earlier than the date on which the record date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the record date is being set, is scheduled to occur; and

- 8.2.2 must be published to the Shareholders in a manner that satisfies any prescribed requirements.
- 8.3 If, at any time, the Board fails to determine a record date for any action or event, the record date shall be –
 - 8.3.1 in the case of a meeting, the latest date by which the Company is required to give the Shareholders notice of that meeting; or
 - 8.3.2 in any other case, the date of the relevant action or event.

9 SHAREHOLDERS MEETINGS

- 9.1 The Company shall hold an annual general meeting of Shareholders –
 - 9.1.1 initially, not later than 18 (eighteen) months from the date of the adoption of this MOI; and
 - 9.1.2 thereafter, once every calendar year, not later than 15 (fifteen months) after the date of the previous annual general meeting.
- 9.2 The annual general meeting of the Company must provide for, at least, the following matters –
 - 9.2.1 the presentation of the Director's report;
 - 9.2.2 the presentation of the audit committee report;
 - 9.2.3 the appointment of the audit committee, in accordance with section 94 of the Act and clause 23 below;
 - 9.2.4 the presentation of the audited financial statements for the immediately preceding financial year;
 - 9.2.5 the appointment of auditors of the Company; and

- 9.2.6 any other matters raised by the Shareholders, with or without notice to the Company.
- 9.3 The Company is not required to hold any Shareholders meetings other than those specifically required by the Act or as specifically provided for in this MOI.
- 9.4 The right of Shareholders to demand a meeting, as set out in section 61(3), may be exercised by the holders of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter to be considered at the meeting.
- 9.5 In the event that the Board receives a demand in terms of section 61(3), any Director shall be authorised to call a Shareholders meeting which complies with the demand by the Shareholders.
- 9.6 The minimum number of days for the Company to deliver a notice of a Shareholders meeting, to all Ordinary Shareholders as of the record date for the meeting, is 10 (ten) Business Days before the meeting is to begin.
- 9.7 The accidental omission to give notice of any meeting to any particular Ordinary Shareholder shall not invalidate any resolution passed at any such meeting.
- 9.8 The quorum requirement –
- 9.8.1 for a Shareholders' meeting to begin shall be 100% (one hundred percent) of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
- 9.8.2 for a matter to be considered shall be 100% (one hundred percent) of the voting rights that are entitled to be exercised in respect of that matter.
- 9.9 If within 30 (thirty) minutes after the appointed time for a meeting to begin, the quorum requirements for the meeting to begin have not been satisfied,

the meeting is postponed, without any motion, vote or further notice, for 1 (one) week, provided that the person intended to chair a meeting that cannot begin due to a failure to satisfy the quorum requirements may extend the 30 (thirty) minute limit for a reasonable period on the grounds that –

- 9.9.1 exceptional circumstances affecting weather, transportation or electronic communication have generally impeded or are generally impeding the ability of Shareholders to be present at the meeting; or
 - 9.9.2 one or more particular Shareholders, having been delayed, have communicated an intention to attend the meeting, and those Shareholders, together with others in attendance, would satisfy the quorum requirements.
- 9.10 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 9.9 unless the location for the meeting is different from –
- 9.10.1 the location of the postponed or adjourned meeting; or
 - 9.10.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 9.11 If at the time for an adjourned meeting to resume, the quorum requirements for a meeting to begin have not been satisfied within 30 (thirty) minutes of the time for the adjourned meeting, the Shareholders present in person or by proxy will be deemed to constitute a quorum.
- 9.12 After a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) Shareholder with voting rights entitled to be exercised at the meeting, or on that matter, is present at the meeting, and the provisions of section 64(9) are not limited or restricted by this Memorandum of Incorporation.

- 9.13 The chairperson, if any, of the Board shall preside as chairperson at every Shareholder's meeting.
- 9.14 If there is no such chairperson, or if at any meeting he or she is not present within 15 (fifteen) minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Directors present shall choose 1 (one) of their number to be chairperson. If no Director is willing to act as chairperson or if no Director is present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.
- 9.15 Even if he is not a Shareholder -
- 9.15.1 any Director; or
- 9.15.2 the Company's attorney (or where the Company's attorneys are a firm, any partner or director thereof), may attend and speak at any general meeting, but may not vote, unless he is a Shareholder or the proxy or representative of a Shareholder.
- 9.16 The Company may conduct a Shareholders' meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, provided that –
- 9.16.1 the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting;
- 9.16.2 any notice of any meeting of Shareholders at which it will be possible for Shareholders to participate by way of electronic communication shall inform Shareholders of the ability to so participate and shall provide any necessary information to enable Shareholders or their proxies to access the available medium or means of electronic communication; and

- 9.16.3 access to such Electronic Communication shall be at the expense of the Shareholder or proxy concerned, unless otherwise determined by the Board.

10 NOTICE OF SHAREHOLDER MEETINGS

- 10.1 The Company must deliver a notice of a Shareholders' meeting as required by Section 62 of the Act and accordingly, any such notice must be delivered to all Shareholders entitled to vote as of record date for the meeting at least 15 (fifteen) Business Days before the meeting is to begin.
- 10.2 The Company may call a meeting with less notice required by clause 10.1 above but such meeting may proceed only if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present and/or votes to waive the required minimum notice of the meeting.
- 10.3 The notice of a Shareholders' meeting must be in writing and must include –
- 10.3.1 the date, time and place of the meeting, and the record date for the meeting;
 - 10.3.2 the general purpose of the meeting;
 - 10.3.3 a copy of the proposed resolution of which the Company has received notice, and which is to be considered at the meeting, and a notice of the percentage of voting rights that will be required for that resolution to be adopted;
 - 10.3.4 in the case of an annual general meeting of the Company -
 - 10.3.4.1 the financial statements are to be presented or a summarised form thereof; and
 - 10.3.4.2 directions for obtaining a copy of the complete annual financial statements for the preceding financial year;

- 10.3.5 a reasonably prominent statement that –
 - 10.3.5.1 a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, participate in and vote at the meeting in the place of the Shareholder;
 - 10.3.5.2 a proxy need not also be a Shareholder of the Company; and
 - 10.3.5.3 the proxy must provide reasonable satisfactory identification and that the right of the person to participate and vote, either as a Shareholder, or as a proxy for a Shareholder has been reasonably identified.
- 10.4 An immaterial defect in the form or manner of giving notice of a Shareholders' meeting, or an accidental or inadvertent failure of the notice being received by a particular Shareholder to whom it was addressed, does not invalidate any action taken at the meeting.

11 SHAREHOLDERS ACTING OTHER THAN AT A MEETING

- 11.1 In accordance with the provisions of section 60, a resolution that could be voted on at a Shareholders meeting (including in respect of the election of Directors, but excluding a resolution contemplated in Chapter 5), may instead be –
 - 11.1.1 submitted for consideration by the Board to the Shareholders entitled to exercise the voting rights in relation to the resolution; and
 - 11.1.2 voted on in writing by such Shareholders within a period of 20 (twenty) Business Days after the resolution was submitted to them.
- 11.2 A resolution contemplated in clause 11.1 will have been adopted if it is supported by Shareholders entitled to exercise sufficient voting rights for it to have been adopted as an ordinary or special resolution.

- 11.3 Within 10 (ten) Business Days after adopting a resolution, or conducting an election of Directors in terms of the provisions of this clause 11 the Company shall deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the resolution, or vote on the election of a Director, as the case may be.
- 11.4 Notwithstanding the above, any matters that are required by this MOI and the Act to be conducted at an annual general meeting of the Company, may not be conducted in the manner contemplated in this clause 11.

12 SHAREHOLDER RESOLUTIONS

- 12.1 For an ordinary resolution to be adopted, it must be supported by the holders of more than 50% of the voting rights exercised on the resolution, as provided in section 65(7).
- 12.2 For a Special Resolution to be adopted it must be supported by the holders of more than 75% (seventy-five percent) of the voting rights exercised on the resolution as provided in section 65(9).
- 12.3 Only those matters set out in section 65(11) and any other matter specifically required by the Act, the Share Blocks Act or by this Memorandum of Incorporation to be resolved by means of a special resolution, shall be required to be approved by a special resolution adopted by Shareholders entitled to vote.
- 12.4 In the event that any Shareholder abstains from voting in respect of any resolution, such Shareholder will, for the purposes of determining the number of votes exercised in respect of that resolution, be deemed not to have exercised a vote in respect thereof.

13 SPECIALLY PROTECTED MATTERS

- 13.1 Notwithstanding anything to the contrary contained in this Memorandum of Incorporation, the Company shall not engage in, agree to, perform or

undertake any Specially Protected Matter, unless approved by a Special Resolution of Shareholders and the powers of the Board shall be limited accordingly.

13.2 The following shall be Specially Protected Matters for purposes of this Memorandum of Incorporation –

13.2.1 the determination of, or the basis for determining, remuneration payable to the Directors; and

13.2.2 any approval or amendment to the use schedule, being the schedule recording the rights of a Shareholder to occupy the Golf Villa, as dealt with more fully in the Use Agreement.

14 SHARE BLOCK PROVISIONS

14.1 As the Company is registered as a share block company in terms of the Share Blocks Act, the following provisions shall be applicable to the Company:

14.1.1 the Company shall not be entitled to alienate or cede the Golf Villa, save by way of special resolution of the Shareholders;

14.1.2 any act of the Company in excess of its capacity and powers shall be void, subject to the provisions of section 8(1)(d) of the Share Blocks Act;

14.1.3 the Board shall ensure that the Golf Villa is insured against damage in accordance with an ordinary resolution passed by the Shareholders; and

14.1.4 the Company shall not increase its loan obligations or encumber any of its assets unless the increase or encumbrance has been approved by a special resolution of the Shareholders.

15 LEVIES AND DEBTS DUE BY SHAREHOLDERS

- 15.1 The Directors shall establish and maintain a levy fund, to which end they shall from time to time impose levies upon the Shareholders in such amounts as are in their opinion sufficient for the repair, services, upkeep, control, security, management and administration of the Company and the Golf Villa and of those portions of the Golf Villa for which individual Shareholders are not personally liable, including but not limited to roads, fencing, and the costs of the Managing Agent appointed to manage the Golf Villa, his staff and in respect of Company administration, and for the discharge of any other obligation of the Company (including the payment of Levies to the Acres HOA).
- 15.2 Shareholders shall make payment of all Levies by bank direct debit payment or annually in advance. Where Levies are not paid by direct debit or in advance, an additional 5% handling fee may be charged on the Levies by the Company.
- 15.3 The Directors shall be required by the Company to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof and shall impose a levy upon the Shareholders equal as nearly as is reasonably practicable to such estimated amount. The Board may include in such Levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature.
- 15.4 By way of majority resolution of the Board, the Company may from time to time, impose special levies upon the Shareholders in respect of all such costs, expenses and requirements as are mentioned in clause 15.1 and such Levies may be made payable in one lump sum or in such instalments and at such time or times as the Board may deem fit.

- 15.5 Notice shall be given in respect of Levies payable by Shareholders, and such notice shall be subject to the provisions relating to notice in the Memorandum of Incorporation.
- 15.6 Any Shareholder failing to pay any amount due to the Company including in respect of Levies into the Company bank account, shall be deemed to be a debtor. Any Shareholder who is in debt to the Company, for any period more than thirty days beyond the due date, shall be considered to have an outstanding debt and be an outstanding debtor.
- 15.7 Any amount due by the Shareholder by way of a Levy, instalment of a Levy, penalty or interest shall be a debt owed by the Shareholder to the Company and shall be recoverable by the Company from the Shareholder. The Board shall be obliged, without exception, to recover all outstanding debts from all Shareholders. In the event of the Company instituting action against the Shareholder for recovery of any amounts due, pursuant hereto, the Shareholder shall be obliged to make payment of all legal costs incurred in the Company's attempt to recover such amounts, and all such costs shall be paid by the Shareholder.
- 15.8 The Company shall charge interest at a rate of 3% above the Prime Rate calculated on a 365-day year compounded monthly in arrears. Any outstanding debt of a Shareholder shall not be considered to have been discharged until the Shareholder has settled both the initial debt together with any accruing interest.
- 15.9 It is expressly recorded that the Levies due by Shareholders will take into account the levies due by the Company to the Acres HOA by virtue of its membership thereof. Accordingly, any increase in the levies due to the Acres HOA shall result in an increase in the Levies relative to such increase. Furthermore, it is recorded that the Acres HOA has secured the right of the Company to obtain up to 4 golf memberships with the Club for use by the Shareholders. For the first year following the Company acquiring ownership of the Golf Villa, all 4 golf memberships will be in place and payment of the membership fees in respect of such

memberships will be subsidised by the Developer. After the first anniversary of the date on which the Company acquires ownership of the Golf Villa, the Shareholders shall determine by way of ordinary resolution the number of golf memberships the Company should maintain with the Club, provided that the Company shall only be entitled to a maximum of 4 memberships, and the number of memberships held by the Company shall have a direct effect on the Levies payable, which amounts shall be calculated and determined by the Board.

16 LIEN ON SHARES

- 16.1 It is recorded that the Company has a first lien over the Shareholder's Shares and all rights accruing in respect thereof, including rights to dividends, for all amounts owed to the Company by the Shareholder, including the costs of any proceedings instituted by the Company against such Shareholder, and awarded to the Company, and whether or not the amount thereof is due and payable in terms of the Memorandum of Incorporation.
- 16.2 For the purpose of enforcing such lien, the Board may dispose of the Shares at such time or times and on such conditions as they may think fit, but subject always to the agreement of the purchaser of the Shares and provided the provisions of the Memorandum of Incorporation are complied with.
- 16.3 No sale of Shares shall be made in terms of this clause unless an amount is presently due and, at that time, payable by the Shareholder concerned and has remained unpaid, notwithstanding the giving of fourteen (14) Days' notice in writing to the Shareholder stating the amount due and payable and demanding payment of such amount, and stating the intention of the Board to sell such Shares and take further action as contemplated in this Agreement, if payment is not made within said period of fourteen (14) days.

- 16.4 In the event that the Company becomes entitled to sell the Shares following the written notice to the Shareholder and the failure of the Shareholder to make payment as aforesaid, the Shareholder undertakes that it will do all such actions and sign all such documents as may be required to give effect to the sale of the Shares to a purchaser nominated by the Company. In the event that the Shareholder fails to sign the required documents, the Shareholder hereby appoints the Company *in rem suam* with power of attorney to execute all documents on the Shareholder's behalf and all actions taken in this regard be and are hereby approved.
- 16.5 The net proceeds of any such sale shall be applied in or towards satisfaction of the amount owed to the Company (whether in respect of Levies, Penalties, interest, legal fees or any other amount due by the Shareholder to the Company), and thereafter to any pledgee, where applicable, and the balance, if any, shall be paid to the Shareholder.
- 16.6 Upon such sale as aforesaid, the Board may enter the purchaser's name in the register as Shareholder of the Company and the purchaser shall not be bound to see to the application of the purchase price, nor shall his title to the Shares be affected by any irregularity or invalidity in the proceedings in relation to the sale. Furthermore, following the sale of the Shares, the Company shall be entitled to all such other remedies as are available to it in terms of this Agreement.
- 16.7 An affidavit by a duly authorized director of the Company that a Share has been duly sold in accordance with clause 16.2 above shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to such Share or its proceeds, and such affidavit and the receipt by the Company of the purchase price of the Share, shall constitute a good title to such Share, and the validity of the sale may not be impeached by any person.
- 16.8 It is recorded that all costs incurred by the Company in attempting to and/or recovering any such outstanding levies and / or incurred by the

Company in obtaining a court order to execute against the Shares of the Shareholder, insofar as same may be required, shall be for the defaulting Shareholder's account and shall be debited to the Shareholder's monthly levies.

17 COMPOSITION OF THE BOARD OF DIRECTORS

- 17.1 Subject to the minimum number of Directors, if any, that the Company must have to satisfy any requirement in terms of the Act to appoint an audit committee, or a social and ethics committee, the Board must comprise of no less than 3 (three) and no more than 7 (seven) Directors.
- 17.2 For so long as the Developer owns any property at the Acres Development, it shall be entitled to nominate a maximum of 4 (four) Directors and 4 (four) alternate Directors for appointment to the Board.
- 17.3 The Shareholders shall elect the remaining Directors, including any Alternate Director, in accordance with the further provisions of this clause.
- 17.4 The aforesaid Directors shall be elected in terms of section 68(1) by the persons entitled to exercise voting rights in such an election, being the Ordinary Shareholders of the Company unless otherwise determined.
- 17.5 An Alternate Director shall cease to be an Alternate Director if the Director whom he represents ceases for any reason to be a Director of the Company.
- 17.6 In any election of Directors –
- 17.6.1 the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with the series of votes continuing until all vacancies on the Board have been filled;
- 17.6.2 in each vote to fill a vacancy, each vote entitled to be exercised may be exercised once; and

- 17.6.3 a vacancy is fulfilled only if the election of the candidate is approved by a majority of votes exercised in respect of the election of the candidate.
- 17.7 There shall be no ex officio Directors of the Company, as contemplated in section 66(4), in addition to the elected Directors.
- 17.8 Each Director serves as such for an indefinite term as contemplated in section 68(1).
- 17.9 Apart from satisfying the qualification and eligibility requirements set out in section 69, a person need not satisfy any further eligibility requirements or qualifications to become or remain a Director or a prescribed officer of the Company.
- 17.10 The Directors may from time to time elect a chairperson and determine the period for which the chairperson is to hold office.

18 AUTHORITY OF THE BOARD OF DIRECTORS

The business and affairs of the Company must be managed by or under the direction of the Board, which has the authority to exercise all powers and perform any of the functions of the Company, subject to the provisions of section 66(1) of the Act and this MOI.

19 DIRECTORS MEETINGS

- 19.1 Save as may be provided otherwise herein, the Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 19.2 In addition to the provisions of section 73(1), 2 (two) or more Directors shall at any time be entitled to call a meeting of the Directors.
- 19.3 The Board may consider any matter other than at a meeting, as set out in section 74.

- 19.4 The Board may determine the form and time for giving notice of its meeting, provided that –
- 19.4.1 notice can be provided by way of Electronic Communication;
 - 19.4.2 no Board meeting may be convened without notice to all Directors, subject to clause 19.5; and
 - 19.4.3 in the event that the Board fails to make any determination in respect of the form and time for giving notice of a Board meeting, notice shall be given in writing not later than 7 (seven) days prior to the meeting.
- 19.5 Any meeting of the Board may proceed, despite the failure of the Company to give the required notice or any defect in the giving notice, if all the Directors –
- 19.5.1 acknowledge receipt of the notice; or
 - 19.5.2 are present at a meeting; or
 - 19.5.3 waiver notice of the meeting.
- 19.6 The chairperson of the Board shall preside over all meetings of the Board. If no chairperson is elected, or if at any meeting the chairperson is not present, the Directors present shall choose 1 (one) of their number to be the chairperson of such meeting.
- 19.7 The quorum requirement for a Directors' meeting (including an adjourned meeting) shall be a majority of the Directors, provided that at least one Director appointed by the Shareholders is present at the meeting.
- 19.8 If within 30 (thirty) minutes after the appointed time for a meeting to begin, the quorum requirements set out in 19.7 have not been satisfied, the meeting is postponed, without any motion, vote or further notice, for 1 (one) week.

- 19.9 The Company shall not be required to give further notice of a meeting that has been postponed or adjourned in terms of clause 19.8 unless the location for the meeting is different from –
- 19.9.1 the location of the postponed or adjourned meeting; or
- 19.9.2 the location announced at the time of adjournment, in the case of an adjourned meeting.
- 19.10 If at the time of an adjourned meeting to resume, the requirements of clause 19.7 have not been satisfied within 30 (thirty) minutes of the time appointed for the adjourned meeting, the Directors present will be deemed to constitute a quorum.
- 19.11 Each Director, or his alternate, as the case may be, shall have 1 (one) vote.
- 19.12 In order for a Directors' resolution to be passed it shall be approved by a majority of the votes.
- 19.13 In the case of a tied vote, the chairperson of the relevant Directors' meeting shall not have a casting vote.
- 19.14 A decision that could be voted on at a meeting of the Board may be adopted by written consent of a majority of the Directors, provided that each Director has received notice of the matter to be decided.
- 19.15 The Board may conduct Board meetings entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication, provided that the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 19.16 In the event that any Director has a personal financial interest, as contemplated in section 75 of the Act, in respect of a matter to be

considered at a meeting of the Board, the relevant Director will notify the Board of his personal financial interest, will excuse himself from the Board meeting when the matter is being decided upon and shall not be entitled to vote on such matter.

20 OFFICERS AND COMMITTEES

- 20.1 The Board may appoint any officers it considers necessary to better achieve the objects of the Company.
- 20.2 The authority of the Board to appoint committees of Directors, and to delegate to any such committee any of the authority of the Board as set out in section 72(1), or to include in any such committee persons who are not Directors, as set out in section 73(2)(a) is not limited or restricted by this MOI.
- 20.3 The authority of a committee appointed by the Company's Board, as set out in section 72(2)(b) and (c) is not limited or restricted by this MOI.

21 DIRECTORS COMPENSATION AND INDEMNIFICATION

The Board shall be entitled to –

- 21.1 pay remuneration to the Directors, in accordance with a special resolution approved by the Shareholders entitled to vote, within the previous two years, as set out in sections 66(8) and 66(9);
- 21.2 advance expenses to a Director, or indemnify a director, in respect of the defence of legal proceedings, as set out in section 78(4);
- 21.3 indemnify a Director in respect of liability, as set out in section 78(5); and
- 21.4 purchase insurance to protect the Company, or a Director, as set out in section 78(7).

22 APPOINTMENT OF COMPANY SECRETARY AND AUDITORS

- 22.1 The Board shall appoint a company secretary in accordance with the provisions of section 86 of the Act.
- 22.2 The company secretary shall be qualified to act as such and the provisions of sections 87 to 89 of the Act shall regulate the company secretary's appointment and duties.
- 22.3 The audit committee and / or the Board shall appoint the auditors of the Company from time to time, which appointment shall be governed in accordance with the provisions of sections 90 to 93, section 94 (7)(a) to (e) and section 94 (8) and (9) of the Act.

23 ESTABLISHMENT OF AUDIT COMMITTEE

- 23.1 The Company shall establish an audit committee comprising of at least 3 (three) members.
- 23.2 Each member of an audit committee of the Company shall –
- 23.2.1 be a Director of the Company, who satisfies any applicable requirements prescribed in the Regulations from time to time;
- 23.2.2 not be –
- 23.2.2.1 involved in the day-to-day management of the Company's business or have been so involved at any time during the previous financial year;
- 23.2.2.2 a prescribed officer, or full-time employee, of the Company or another related or inter-related company, or have been such an officer or employee at any time during the previous three financial years; or
- 23.2.2.3 a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the

circumstances that the integrity, impartiality or objectivity of that director is compromised by that relationship; and

23.2.3 not be related to any person who falls within any of the criteria set out in paragraph 23.2.2.

23.3 The audit committee shall have the duties as are set out at section 94(7) of the Act.

24 ANNUAL FINANCIAL STATEMENTS

24.1 The Company shall keep all such accurate and complete accounting records, in English, as are necessary to enable the Company to satisfy its obligations in terms of –

24.1.1 the Act;

24.1.2 any other law with respect to the preparation of financial statements to which the Company may be subject;

24.1.3 the Regulations; and

24.1.4 this MOI.

24.2 The Company shall each year prepare Annual Financial Statements within 6 (six) months after the end of its financial year.

24.3 The Annual Financial Statements of the Company shall be audited and include all such information as is required in terms of the Act, including but not limited to the information required in terms of section 30 of the Act.

25 RESOLUTION OF DISPUTES

25.1 In the event of there being any dispute or difference between any persons bound by this MOI, including any dispute or difference arising out of or in respect of –

- 25.1.1 any of the provisions of this MOI; and/or
- 25.1.2 any relationship between any 2 (two) or more persons in their capacities as Shareholders; and/or
- 25.1.3 any relationship between any person, in its capacity as a Shareholder, on the one hand, and the Company on the other hand; and/or
- 25.1.4 any relationship between any person, in his or her capacity as a Director, on the one hand, and the Company on the other hand; and/or
- 25.1.5 any relationship between any person, in his or her capacity as a prescribed officer of the Company, on the one hand, and the Company on the other hand; and/or
- 25.1.6 any relationship between any person, in his or her capacity as a member of a committee of the Board, on the one hand, and the Company on the other hand; and/or
- 25.1.7 any right and/or obligation of any Shareholder, in its capacity as a Shareholder, against or to the Company and/or any other Shareholder; and/or
- 25.1.8 any right and/or obligation of the Company against or to any Shareholder (in its capacity as a Shareholder), and/or any Director (in his or her capacity as a Director), and/or any prescribed officer of the Company (in his or her capacity as a prescribed officer of the Company), and/or any other person serving the Company as a member of a committee of the Board with reference to such service; and/or
- 25.1.9 any right and/or obligation of any Director (in his or her capacity as Director) against or to the Company; and/or

- 25.1.10 any right and/or obligation of any prescribed officer of the Company (in his or her capacity as a prescribed officer of the Company) against or to the Company; and/or
- 25.1.11 any right or obligation of any other person serving the Company as a member of the committee of the Board with reference to such service;

then the Parties shall resolve such dispute in accordance with the following provisions.

25.2 Limitation on proceedings

25.2.1 The Parties agree that it is a condition precedent to the commencement of any litigation proceedings by a Party in respect of a dispute under this MOI that the Party has complied fully with the dispute resolution process (regardless of the level or levels on which the dispute has previously been considered) except where:

25.2.1.1 a Party seeks urgent interlocutory, injunctive or declaratory relief; or

25.2.1.2 the other Party has failed to observe the requirements of this clause and the Party seeks to enforce compliance with the dispute resolution process,

in respect of the dispute.

25.3 Dispute Resolution Process

25.3.1 Where a dispute arises a Party may give a notice of dispute (“**Dispute Notice**”) to the other party/ies to initiate the formal dispute resolution process.

25.4 Form of notice

25.4.1 The Dispute Notice must:

- 25.4.1.1 state that the notice is given under this sub-clause;
- 25.4.1.2 describe the nature of the Dispute; and
- 25.4.1.3 nominate a representative of the Party who is authorised to negotiate and settle the Dispute on the Party's behalf.

25.5 Representative of Other Party

- 25.5.1 The other Party must within 7 days after receipt of a Dispute Notice nominate in writing to the other Party a senior representative authorised to negotiate and settle the Dispute on its behalf.

25.6 Negotiation by Representatives

- 25.6.1 The Parties' representatives must negotiate in good faith with a view to resolving the Dispute within 14 (fourteen) days after the receipt of the Dispute Notice, (or such longer period as those representatives agree), failing which the dispute must be referred to mediation.

25.7 Mediation

- 25.7.1 Mediation of the Dispute must:
 - 25.7.1.1 be conducted by the person or body agreed to by the Parties or, failing agreement within 35 (thirty five) days after receipt of the Dispute Notice, as nominated by the President for the time being of Arbitration Foundation of Southern Africa ("**AFSA**") on request by either Party;
 - 25.7.1.2 be conducted in accordance with such rules as may be agreed to by the Parties or, failing agreement within 35 (thirty five) days after receipt of the Dispute Notice, in accordance with the rules nominated by the person or body agreed or nominated to conduct the mediation;

25.7.1.3 be at the cost and expense of the Parties equally (except that each Party must pay its own advisers, consultants and legal fees and expenses) unless the Parties otherwise agree; and

25.7.1.4 if not earlier resolved, be continued for a period expiring on the date being 14 (fourteen) days after the nomination of the mediator (or such other period as the Parties may agree) after which either Party may at any time after that date commence litigation or arbitration proceedings as provided for hereinafter in respect of the Dispute.

25.8 Arbitration

25.8.1 Any Party may demand that a dispute be determined in terms of this clause 25.8 by written notice given to the other Parties in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”).

25.8.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.

25.8.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

25.8.4 The arbitration shall be held –

25.8.4.1 at Cape Town;

25.8.4.2 with only the legal and other representatives of the Parties to the dispute present thereat; and

- 25.8.4.3 otherwise in terms of the Arbitration Act, No 42 of 1965 (**“Arbitration Act”**), unless otherwise provided for herein.
- 25.8.5 The arbitrator shall be a practising advocate of the Cape Bar Council of at least ten years’ standing, appointed by agreement between the parties to the dispute, subject to clause 25.8.6.
- 25.8.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 25.8.1, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either Party to the dispute.
- 25.8.7 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 25.8.8.
- 25.8.8 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 25.8.7, at the instance of any of the parties to the dispute.
- 25.8.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 25.8.10 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 25.8.1 shall be resolved strictly in accordance with the provisions of this clause 25.8. The Parties accordingly agree and undertake as follows -
- 25.8.10.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;
- 25.8.10.2 that it shall not make any application to the arbitration tribunal as contemplated in terms of section 20(1); and

25.8.10.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

25.8.11 The provisions of this clause 25 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

ADOPTION OF MOI

This Memorandum of Incorporation was adopted by the Shareholders of the Company by way of a special resolution in accordance with the provisions of the Act.

GENERAL PLAN