

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

## MEMORANDUM OF INCORPORATION

### of a Private Company

(A private company with Shareholders, incorporated to operate a time-sharing scheme within a share block company)

**Name of Company: SANDY PLACE SHARE BLOCK (PTY) LTD**

**Registration No: 1969/11887/07**

**("the Company")**

This Memorandum of Incorporation was adopted in accordance with a proposal by the Board by a special resolution taken by the Shareholders at a General Meeting of the Company held at Pretoria on the 14<sup>th</sup> day of August 2015 in full substitution of the then existing Memorandum of Incorporation (formerly Memorandum and Articles of Association).

  
Chair

**INCORPORATION:**

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

- Note 1: This Memorandum of Incorporation contains statutory share block provisions which apply to the Company and which are referenced in Annexure "A" hereto.
- Note 2: The Company elects in terms of Section 34(2) of the Companies Act not to voluntarily comply with the provisions of chapter 3 of the Companies Act, 2008.
- Note 3: The Company is not a regulated Company as defined in the section 117 of the Companies Act and elects in terms of section 118(1)(c)(ii) of the Companies Act not to voluntarily submit to the provisions of Part B and C of Chapter 5 of the Companies Act and the takeover regulations.
- Note 4: The Memorandum of Incorporation contained in Form CoR 15.1 A or CoR 15.1 B of the Companies Regulations, 2011 shall not apply to the Company and this unique Memorandum of Incorporation will apply instead thereof.
- Note 5: The Company is prohibited from amending any of the provisions prescribed by the Share Blocks Control Act, and contained in this Memorandum of Incorporation.
- Note 6: In terms of Section 8 (2) (b) of the Act, A Private Company is required to prohibit the offering any of its securities to the public and to restrict the transferability of its securities in its Memorandum of Incorporation. The application of this restriction on the offering of shares is however excluded by the application of Section 3(2) and 11 of the Share Blocks Control Act 59 of 1980.
- Note 7: The Company negates the provision in terms of Section 39(3), and specifically relies on Section 11 of the Share Blocks Act.

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## 1. INTERPRETATION

- 1.1. In the interpretation of this Mol and unless contrary to or excluded by the subject or context:
- 1.2. any word herein signifying;
  - 1.2.1. the singular shall include the plural and vice versa;
  - 1.2.2. the one gender shall include the other two genders;
- 1.3. any word herein which is defined in the Act and is not defined in Article 1.7 shall bear that statutory meaning in this Mol;
- 1.4. any word herein which is defined in the Share Blocks Control Act and is not defined in Article 1.7 shall bear that statutory meaning in this Mol;
- 1.5. any word, phrase or sentence herein which is not defined in the Act or in Article 1.7 shall bear its usual meaning;
- 1.6. each term, power or authority herein shall be given the widest possible interpretation;
- 1.7. each of the following words and expression herein shall have the meaning stated and, where applicable, shall include the word or expression stated opposite it;
  - 1.7.1. "Act" shall mean the Companies Act, 71 of 2008, as amended from time to time;
  - 1.7.2. "Accommodation" shall mean the units/flats erected on the Land;
  - 1.7.3. "Board" shall mean the board of directors for the time being of the Company elected in terms of Article 20;
  - 1.7.4. "Buildings" shall mean the Company's improvements on the land;
  - 1.7.5. "Chair" shall mean the Chair of the Company for the time being, elected in terms of Article 21;
  - 1.7.6. "Units/Flats" shall mean the units/flats erected on the Land to be used for Whole Ownership, Co-ownership or Time-sharing residential purposes as reflected in Annexure "B";
  - 1.7.7. "CIPC" shall mean the Companies and Intellectual Property Commission or its successors;
  - 1.7.8. "Common facilities" shall mean any improvements on the land for the use of all Shareholders in common with others;
  - 1.7.9. "Company" shall mean Sandy Place Share Block (Pty) Ltd;
  - 1.7.10. "Directors" shall mean the directors for the time being of the Company elected in terms of Article 20;
  - 1.7.11. "Electronic Communication" shall bear the same meaning as set out in section 1 of the Electronic Communication and Transaction Act, 25 of 2002;
  - 1.7.12. "Income Tax Act" shall mean the Income Tax Act, 58 of 1962, as amended from time to time;
  - 1.7.13. "Improvements" shall mean any improvements of a permanent nature erected, alternatively, to be erected on the Land to be used for any purpose whatsoever;
  - 1.7.14. "Managing Agent" shall mean the Managing Agent, if any, appointed from time to time by the Company for the purposes of managing the Scheme;
  - 1.7.15. "Mol" shall mean the Memorandum of Incorporation of the Company, as amended from time to time;
  - 1.7.16. "Month/Monthly" shall mean a calendar month;
  - 1.7.17. "Movables" shall mean the Movables contained in the unit/flat and referred to in Section 4(1)(m) of the Time-Sharing Act;
  - 1.7.18. "Office" shall mean the registered office of the Company;
  - 1.7.19. "Period" / "Week" shall mean a share block holder's period of exclusive occupation in respect of the relevant portion of the Company's Buildings, as further defined in the Use Agreement;

- 1.7.20. "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;
- 1.7.21. "Property" shall mean the Company's land being Lot 5 St. Lucia, Province of Kwa-Zulu Natal, including the buildings;
- 1.7.22. "Republic" shall mean the Republic of South Africa;
- 1.7.23. "Scheme" shall mean the share block scheme and property time-sharing scheme in respect of the accommodation, improvements, common facilities and common property, in terms of the Share Blocks Act and Time-Sharing Act;
- 1.7.24. "Share" shall mean that 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;
- 1.7.25. "Shareholder" shall mean the holder of shares comprising a share block and being Shareholders of the Company defined in the Share Blocks Control Act and as registered in the Share Register referred to in Article 7, 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;
- 1.7.26. "Shareholders meeting" shall mean any Shareholders meeting of the Company or any adjournment thereof, including an annual Shareholders meeting convened in terms of Article 10.1 as the case may be;
- 1.7.27. "Share Blocks Act" shall mean the Share Blocks Control Act no. 59 of 1980, as amended and the regulations promulgated from time to time in regard thereto;
- 1.7.28. "Share Block Developer" shall mean any person by whom, on whose behalf or for whose benefit more than 50 per cent of the Shares of the company are held or controlled and, where two or more persons by whom, or on whose behalf or for whose benefit more than 50 per cent of the Shares in the company are jointly held or controlled, act in concert in relation to or are jointly connected with the business of the company, each of such persons;
- 1.7.29. "Sign" / "Signature" shall include the reproduction of signature lithography, printing with an india-rubber stamp or any other Electronic Communication process partly the one and partly the other process;
- 1.7.30. "Statutes" shall mean the Companies Act No. 71 of 2008, the Share Blocks Control Act No. 59 of 1980, the Property Time-sharing Control Act No. 75 of 1983, and every other Act for the time being in force, concerning companies and affecting the Company;
- 1.7.31. "Time-sharing Act" shall mean the Property Time-Sharing Control Act no 75 of 1983, as amended from time to time and the regulations promulgated from time to time in regard thereto;
- 1.7.32. "Time-sharing Interest" / "Module" shall mean any right to or interest in the exclusive use or occupation, during determined or determinable periods during any Year as per Annexure "C";
- 1.7.33. "Use Agreement" means the duly filed Use Agreement conferring a right to or an interest in the use of any immovable property in respect of which a share block scheme is operated, and as further set out in Annexure "C" attached hereto;
- 1.7.34. "Writing" shall include printing, typewriting, lithography or any other electronic communication process, or partly one and partly the other;
- 1.7.35. "Year" means a calendar year.



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

- 2.1. The main purpose and object of the Company is to operate a share block scheme in respect of the Property owned by the Company in accordance with the Share Blocks Act and the Time-sharing Act, entitling a Shareholder to use specified parts of the Buildings in accordance with the Use Agreement entered into between the Shareholder and the Company.

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

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

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

- 4.1. Save for correcting patent errors substantiated as such from objective evidence or which are self-evident errors in the Mol (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 Mol shall be effected in accordance with section 16 (1) of the Act.
- 4.2. This Mol 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 Mol, in accordance with the provisions of sections 15(3) to 15(5) of the Act.
- 4.3. If the Board makes any Rules, it must file and publish a copy of those Rules by sending a copy thereof to every member by pre-paid or electronic mail.
- 4.4. If the Board alters this Mol or any Rules made by it in terms of section 17(1) of the Act, it must file a copy and publish a notice of such alteration, by sending a copy thereof to every member by pre-paid or electronic mail.

## **5. REGISTER OF SHAREHOLDERS**

- 5.1 The Company shall maintain at its Office a register of Shareholders of the Company and the registration, transfer, issue, inspection and certification of Shares shall be in accordance with the provisions of section 24(4) (a), 50 and 51 of the Act and this Mol.

## **6. SHARES**

- 6.1. The existing authorised share capital of the Company is R670.60 (six hundred and seventy rand and sixty cents) divided into 67060 (sixty seven thousand and sixty) ordinary par value shares of R0.01 (one cent) each of which 67060 (sixty seven thousand and sixty) share have been issued and are apportioned between 22 (twenty two) share blocks numbered and allocated in accordance with the schedule annexed hereto marked annexure "B".
- 6.2. The shares comprising each share block shall confer on the holder for the time being of each share block the right of use of the share block, parking facilities and such other part of the company's immovable property for residential purposes only and the use/s ancillary thereto and the use of the common property in common with the other Shareholders of the Company and users of the remainder of the Property on the terms and conditions contained in the Use Agreement entered into between the Company and such holder. The share block numbers as set out in Annexure "B" hereto represent

the unit number followed by the number of the specified week i.e. share block number 11 represents suite number 1 and specified week number 1 and share block number 1039 represents unit number 10 and specified week number 39.

- 6.3. Subject to the provisions of Article 6.2 the Directors shall compile a table in terms of which the specific week during which the Shareholder may occupy the unit/flat for his week is determined. The table of weeks for the holiday year comprising 52 calendar weeks commencing on 28<sup>th</sup> December 2014 and terminating on 27<sup>th</sup> December 2015 shall be as set out in the first column of Annexure "B". Thereafter each subsequent year shall commence on the last Friday of the preceding holiday year and shall terminate on the 52<sup>nd</sup> Friday thereafter. Any decision made by the Directors in terms of this Article shall be final and binding on all Shareholders, irrespective of whether a Shareholder is a party to the decision or not.
- 6.4. Upon acquisition of Shares, the Shareholder acquires the right to, and usage interest as referred to in the Use Agreement (Annexure "C") filed with the CIPC in terms of Section 7(5) of the Share Blocks Act and shall from time to time confer upon the holder thereof:
  - 6.4.1. the right to use and occupy, that portion of the Company's Buildings and Property which is specified in the schedules referred to in Article 6.1 for the Period specified in Annexure "D" hereto, and subject to the terms and conditions specified in Annexure "C" hereto; and
  - 6.4.2. the right to, or interest in the indefinite recurrent annual exclusive use, possession and occupation of the accommodation for time-sharing residential purposes; and
  - 6.4.3. the right to, or interest in the recurrent annual use of the Movables; and
  - 6.4.4. the right to or interest in the indefinite recurrent annual use in common with other holders, of the common property.
  - 6.4.5. Oblige to the holder thereof from time to time to lend to the Company as a fixed loan, on the terms and conditions set out and specified in Annexure "C".
- 6.5. 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.
- 6.6. Unless the Directors otherwise decide, the Company may register as a Shareholder any person, company, trust, estate, institution or other legal person, including the trustee of a trust or administrator or curator of an estate, or a trustee, administrator or curator in his capacity as such, who lodges with the instrument of transfer required by this Mol, such other documents as the Company may require to establish the identity of the Shareholder, provided that the Company shall not be bound by or deemed to have taken cognisance of or compelled in any way to recognise any trust or interest express or implied in any document lodged, nor shall it be required to satisfy itself or be deemed to have taken any steps to have satisfied itself that the Shareholder had any contractual or other right to purchase the Shares or otherwise come into possession of them, or to retain or dispose of or transfer such Shares, nor shall the Company incur any liability in any way for so registering the Shares or for registering any subsequent transfer thereof.
- 6.7. All Shares of the Company shall:
  - 6.7.1. Confer a right to vote at any meeting of the Company;
  - 6.7.2. Confer the same vote as every other Share in the Company;
  - 6.7.3. Confer a right to an Interest in accordance with Article 6.4.



## 7. ISSUE TRANSFER AND TRANSMISSION OF SHARES

- 7.1. A Private Company is in terms of Section 8 (2) (b) of the Act, required to prohibit the offering of any of its securities to the public and to restrict the transferability of its securities in its Memorandum of Incorporation.
- 7.2. The Company does not offer any of its securities to the public as the Company is contractually limited to offering its securities to the Developer. However, in the unlikely event that this situation should not prevail, the application of the restriction on public offers relating to securities in the Company's Mol is excluded by the application of Section 3(2) and 11 of the Share Blocks Act which provides that any person may offer shares in a 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 other proposed purchaser of such shares is required to enter into a contract of sale which meets the conditions set out in section 17 of the Share Blocks Act.
- 7.3. The Company therefore elects in terms of Section 39 (3) to negate the provision of Section 39(2), and specifically relies on Section 11 of the Share Blocks Act should the exceptional circumstances in Article 7.2 arise.
- 7.4. Every original Shareholder shall be entitled to one certified copy of a Share Certificate free of charge but for every subsequent certified certificate the Directors may levy such charge as from time to time they may think fit; provided that if a Share certificate is defaced, lost or destroyed, it may be renewed on the payment of such fee, and on such terms, if any, as to the evidence and indemnity as the Directors may think fit.
- 7.5. Every person whose name is thereafter entered in the register of Shareholders shall be entitled to one certified copy of a certificate for all the Shares attached to the Share Blocks and use rights registered in his name or to several certified certificates, each for a part of such Shares.
- 7.6. Notwithstanding anything to the contrary contained in this Mol the Company shall, upon the issue or replacement of a Share certificate to a Shareholder, retain possession of the Shareholders 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 Shareholder to the Company which Share shall remain so pledged.
- 7.7. 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:
  - 7.7.1. the relevant portion of the loan obligation allotted to the share block in question;
  - 7.7.2. the use and occupation agreement pertaining to the share block in question, and the assumption by the transferee of all the transferor's obligations there under.
- 7.8. Prior to the transfer of Shares to any transferee, the levies and any other amounts due and payable to the Company must be settled in full, unless otherwise resolved by the Directors.
- 7.9. No Shares may be transferred to any transferee without the prior consent and approval of the Directors of the Company, which consent shall not be unreasonably withheld. This article shall not apply, however, to the transfer of any Shares by a Shareholder or his executors or administrators or other legal representatives to the spouse or any descendant or ascendant of such Shareholder. No such consent shall be necessary for the transfer of Shares held by the Share Block Developer in respect of further development rights.
- 7.10. The instrument of transfer of any Share of the Company not being a security in terms of Section 50 of the Act shall be executed by both the transferor and the transferee, and the transferor shall be deemed to remain the holder of this Share until the name of the transferee is entered into the register of Shareholders in respect thereof.

- 7.11. Subject to such of the restrictions as may be applicable, any Shareholder may transfer all or any of his Shares by instrument in Writing in any usual or common form or any other form which the Directors may approve.
- 7.12. The Directors may decline to recognise any instrument of transfer unless:
  - 7.12.1. the instrument of transfer is accompanied by the certified copy of certificate of the Shares in the event that the Company holds the original or where the Shareholder holds the original then such original certificate to which it relates, and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
  - 7.12.2. the share transfer duty (if any) has been paid thereon.
- 7.13. Every instrument of transfer shall be left at the transfer Office of the Company at which it is presented for registration, accompanied by a certificate of the Shares to be transferred. Every Power of Attorney given by the Shareholder authorising the transfer of Shares shall when lodged produced or exhibited to the Company or any of its proper Office be deemed, as between the Company and the donor of the power to continue and remain in full force and effect and the Company may allow that the power to be acted upon until such time as express notice in Writing of its revocation has been lodged at such of the Company's transfer Offices as the Power of Attorney lodged, produced or exhibited as aforesaid. The Company shall not be bound to allow the exercise of any act or matter by an agent for a Shareholder unless a duly certified copy of the agent's authority be produced and lodged with the Company.
- 7.14. 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.
- 7.15. Any person becoming entitled to a Share in consequence of the death or insolvency of the Shareholder shall upon such evidence or insolvency of the Shareholder and shall upon such evidence being produced as may from time to time be required by the Directors, have the right, either to be registered as a Shareholder in respect of the Share or instead of being registered himself to make such transfer of the Share as the deceased or insolvent could have made, but the Director 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.
- 7.16. The parent or guardian of a minor and the *curator bonis* of a lunatic Shareholder and any person becoming entitled to Shares in consequence of the death or insolvency of any Shareholder or the marriage of any female Shareholder or by any lawful means other than by the transfer in accordance with these articles, may, upon producing such evidence as sustains the character in which he proposes to act under these articles or of his title, as the Directors think sufficient, transfer those Shares to himself or to any other person subject to the articles as to transfer hereinbefore contained.
- 7.17. Any person becoming entitled to a Share by reason of the death or insolvency of the holder shall be entitled to the advantages to which he would have been entitled if he were the registered holder of the Share, except that he shall not, before being registered as a Shareholder in respect of the Share, be entitled in respect of it to exercise any right conferred by Shareholder in relation to the meeting of the Company.
- 7.18. A person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of the deceased Shareholder of the Company or the estate of the deceased Shareholder of the Company or the estate of a Shareholder whose estate has been sequestrated, or who is otherwise under a disability or as the liquidator of any body-corporate which

is a Shareholder of the Company, shall be entered in the register of Shareholders of the Company *Nomine Officii*, and shall thereafter, for all purposes, be deemed to be a Shareholder of the Company.

## **8. ALTERATION OF SHARES**

- 8.1. If at any time the Shares are divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may be varied with the consent in writing of the holder of three-quarters of the issued Shares of that class or with the sanction of a special resolution passed at a separate Shareholders meeting of the holders of the Shares of the class. But so that unless the class consists of one Shareholder only, the necessary quorum shall be two persons at least holding or representing by proxy three-quarters of all the issued Shares of the class. This paragraph does not curtail the power of the Company to vary the rights attached to any Share which has not been issued subject to the provisions of Article 7 above.
- 8.2. The Company may alter the shares by reducing or consolidating its number of shares.

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

- 9.1. The Company has a first and paramount lien and a pledge on every Share for the amounts due to it by the holder of such Share whether payment has become due or not. The amounts so due to the Company shall include the costs of any acts performed or proceedings instituted by the Company in its efforts to recover such amounts.
- 9.2. The Company shall not be obliged to recognise the pledge by a Shareholder of any Share in the Company to a third party but as soon as an amount becomes due and payable by a Shareholder to the Company, all Shares held by such Shareholder shall from that moment become pledged by such Shareholder to the Company.
- 9.3. In the event of such Shareholder holding the original Share certificate then in such event the Shareholder shall 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 Pledge in terms of Article 9.1 and any Share becoming pledged to it in terms of Article 9.2 and/or Article 9.3 by realising such Share in the following manner:
  - 9.4.1. the holder of the Share shall be given 14 (Fourteen) business days written notice through the post in a prepaid registered letter addressed to his last recorded registered address of the realisation;
  - 9.4.2. the notice shall state the amount of the claim, demand payment thereof within the said period of notice and advise the Shareholder that if the amount due remains unpaid the Share shall be sold to recover so much of the debt as may be realised by the sale;
  - 9.4.3. the sale shall be by way of a tender process or in such other duly publicised manner as in the *bona fide* opinion of Directors would realise a more favourable price in the circumstances.
- 9.5. The net return of any such sale shall be applied in respect of the amount due to the Company and the Shareholder shall remain liable for any shortfall.
- 9.6. In the event of an over recovery, the credit balance, if any, shall be due to the Shareholder upon demand.
- 9.7. On any sale as aforementioned the Directors may enter the name of the purchaser in the register of Shareholders of the Company and the purchaser shall have no responsibility to attend to the application of the purchase price.

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

## **10. SHAREHOLDERS MEETINGS**

- 10.1. The Company shall hold an annual Shareholders meeting once in every calendar year.
- 10.2. The Directors shall have the power to convene other Shareholders meetings of the Company at such time and place as the Directors determine.
- 10.3. The Directors shall also convene other Shareholders meetings where a requisition is made by the number of Shareholders 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.
- 10.4. Shareholder 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.

## **11. NOTICE OF SHAREHOLDERS MEETINGS**

- 11.1. Notice of meetings shall be given:
- 11.1.1. not less than 15 business days' notice in writing of an annual Shareholders meeting or of any other Shareholders meeting at which a special resolution is to be proposed, shall be given to all Shareholders;
  - 11.1.2. not less than 10 business days' notice in writing of any other Shareholders meeting shall be given to all Shareholders.
- 11.2. The notice period stated above shall be exclusive of the day on which the notice is given and exclusive of the date of the meeting.
- 11.3. The notice of a Shareholders meeting shall state –
- 11.3.1. the date time and place of that meeting;
  - 11.3.2. the general purpose of the meeting, and
  - 11.3.3. the matters which will be considered, and may be voted on, at such meeting.
- 11.4. In the event that a Shareholder gives the Company notice as contemplated in Section 61 in the form of the demand, such demand shall be executed by the board.
- 11.5. The Directors may provide for participation by Shareholders by Electronic Communication as set out in Section 63 of the Act.
- 11.6. A meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this Article, be deemed to have been duly called if it is so agreed by all of the Shareholders having a right to attend and vote at the meeting.
- 11.7. The inadvertent omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, or defects in terms of the notice or its contents shall be dealt with in terms of Section 62 (4) and (5) of the Act.

## **12. PROCEEDINGS AT SHAREHOLDERS MEETINGS**

- 12.1. A meeting convened in terms of article 10.1 must, at a minimum, provide for the following business to be transacted:
- 12.1.1. Presentation of—
    - 12.1.1.1. the directors' report;



- 12.1.1.2. the audited financial statements for the immediately preceding financial Year;
- 12.1.1.3. a report by the social and ethics committee (if any);
- 12.1.2. Election of directors;
- 12.1.3. Appointment of an auditor for the ensuing financial Year;
- 12.1.4. Approval of the insurance schedule; and
- 12.1.5. Other business duly and timeously laid before it.
- 12.2. Subject to the provisions of the Act, no business shall be transacted at any Shareholders meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum at any Shareholders meeting shall be no less than 1% (one percent) of all the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting and at least three Shareholders entitled to vote are present in person or by proxy.
- 12.3. A quorum at any General Meeting convened to pass special resolutions shall be no less than 25% (twenty five percent) of all the voting rights that are entitled to be exercised in respect of at least one special resolution to be decided at the meeting and at least three Shareholders entitled to vote are present in person or by Proxy at the commencement and throughout the meeting.
- 12.4. 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 Shareholders, shall be dissolved, in any other case it shall stand adjourned to a date 7 (seven) days later and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Shareholders present shall be deemed to be a quorum.
- 12.5. The Chair of the Board of Directors shall preside as Chair at every Shareholders meeting of the Company.
- 12.6. If at a Shareholders meeting there is no Chair or the Chair is not willing to act or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, one of the Directors present may be appointed as Chair of the meeting.
- 12.7. Should none of the Directors present wish to be appointed as Chair for the meeting the Shareholders present may appoint a Chair for the meeting.
- 12.8. Subject to the provisions of the Act, the Chair of the meeting may, with the consent of the majority of Shareholders present at any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

### **13. VOTES OF SHAREHOLDERS AT SHAREHOLDERS MEETINGS**

- 13.1. Every voting Shareholder who is represented either in person or by proxy at a Shareholders meeting shall have 1 (one) vote per share held by such Shareholder.
- 13.2. In the case of joint holders, the vote of the person whose name appears first in the register of Shareholders and tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- 13.3. On a show of hands a person entitled to vote is only entitled to one vote irrespective of the number of shares represented.
- 13.4. On a poll a person entitled to vote is entitled to the number of votes afforded by the shares held or represented by him.
- 13.5. A poll may be called or demanded (before or immediately after) the declaration of the result of the show of hands by:

- 13.5.1. the Chair of the meeting; or
- 13.5.2. by at least 5 (five) Shareholders present in person or by proxy having the right to vote at meetings; or
- 13.5.3. by any Shareholder or Shareholders present in person or by proxy having the right to vote at the meeting and representing not less than 10% (ten percent) of the total voting rights of all Shareholders having the right to vote at the meeting.
- 13.6. Any demand for a poll may be withdrawn.
- 13.7. The poll shall be taken in such a manner as the Chair of the meeting directs and the results of the poll shall be deemed to be the result of the meeting.
- 13.8. Where a poll is not demanded a declaration by the Chair of the meeting that a resolution has been passed as well as a making of an entry to that effect in the book containing the minutes of the proceedings of Shareholders 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.
- 13.9. In the case of an equality of votes, the Chair of the meeting shall not have a second or casting vote and the resolution shall be deemed not to have been passed.

#### **14. RESOLUTIONS**

- 14.1. For an ordinary resolution to be adopted at a Shareholders meeting, it must be supported by more than 50% of the Shareholders who voted on the resolution, as provided in Section 65 (7) of the Act.
- 14.2. For a special resolution to be adopted at a Shareholders meeting, it must be supported by at least 75% of the Shareholders who voted on the resolution, as provided in Section 65 (9) of the Act.
- 14.3. A special resolution adopted at a Shareholders meeting is required in addition for:
  - 14.3.1. amendment of the Company's Memorandum of Incorporation to the extent required by section 16 (1) (c) and section 36 (2) (a);
  - 14.3.2. ratify a consolidated revision of a Company's Memorandum of Incorporation, as contemplated in section 18 (1) (b) of the Act;
  - 14.3.3. ratify actions by the Company or Directors in excess of their authority, as contemplated in section 20 (2) of the Act;
  - 14.3.4. approve the remuneration paid to Directors as contemplated in section 16 (9) of the Act;
  - 14.3.5. variation of rights attached to the Shares when the Share capital is converted into different classes;
  - 14.3.6. alienation of the Company's immovable Property;
  - 14.3.7. alteration of the Share capital;
  - 14.3.8. approve the voluntary winding up of the Company, as contemplated in section 80 (1) of the Act;
  - 14.3.9. approve the winding up of the Company in the circumstances contemplated in section 81 (1) of the Act;
  - 14.3.10. approve an application to transfer the registration of the Company to a foreign jurisdiction as contemplated in section 82(5) of the Act;
  - 14.3.11. approve any proposed fundamental transaction, to the extent required by Part A of Chapter 5; or
  - 14.3.12. revoke a resolution contemplated in section 164 (9) of the Act;
  - 14.3.13. as may be required in terms of the Act, the Share Blocks Act, the Time-Sharing Act and this Mol.



14.3.14. Prematurely cancel the Managing Agents agreement (if any).

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

- 15.1. Subject to the provisions of Section 60(5), 65 (7) and 65 (9) of the Act, a resolution in Writing signed by the majority of the Shareholders constituting at least a quorum shall be as valid and effective as if it had been passed at a Shareholders meeting properly held on the date on which the last signature is affixed.
- 15.2. Such resolution may consist of several documents in the same form, each of which is signed in terms of this article, by sufficient Shareholders to constitute a quorum and shall be deemed (unless a statement to the contrary is made on that resolution) to have been passed on the closing date stated in the notice which shall be no less than 20 (twenty) business days after the posting date.

**16. PROXIES**

- 16.1. The instrument appointing a proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing or, if the appointer is a body corporate, signed by an officer or agent authorised by the body corporate.
- 16.2. The holder of a general or special power of attorney, whether he is himself a Shareholder or not, given by a Shareholder, shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meetings.
- 16.3. The instrument appointing a proxy to vote at a meeting of the Company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purposes of Section 63(7) of the Act, a demand by a proxy shall be the same as a demand by a Shareholder.
- 16.4. The instrument appointing a proxy and the power of attorney or the other authority, if any, under which it is signed, or a duly certified copy of such power or authority, shall be deposited at the Office not less than 48 (forty-eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default of complying herewith, the instrument of proxy shall not be treated as valid.
- 16.5. No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date when it was signed, unless so specifically stated in the proxy itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 16.6. The instrument appointing a proxy shall, subject to the provisions of Section 58(8) of the Act, be in the following form or as near thereto as circumstances permit:

## PROXY FORM

## SANDY PLACE SHARE BLOCK PTY LTD

(A private company with Shareholders, incorporated to operate a time-sharing scheme pursuant to a Share Block company)

Registration number: 1969/11887/07

("the Company")

I ..... holding ..... shares representing ..... votes of

Being a Shareholder of the Company, hereby appoint

of.....

or failing him ..... of ..... or failing him the Chair of the meeting as my/our proxy to attend and speak and vote on a poll for me/us and on my/our behalf at the annual shareholders meeting or other shareholders meeting (as the case may be) of the Company to be held on the ..... day of ..... 20..... and at any adjournment thereof, as follows:

Resolution	In favour of	Against	Abstain

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

SIGNED at ..... on this ..... day of ..... 20 .....

Signature

Please note:

- Meeting participants (including proxies) are required to provide reasonably satisfactory identification before being entitled to attend or participate in a Shareholders' meeting. Forms of identification include valid identity documents, driver's licenses and passports.
- Any alteration or correction made to this form of proxy (excluding the deletion of alternatives, and excluding the deletion of singular / plural alternatives) must be initialled by the signatory/ies.
- Documentary evidence establishing the authority of a person signing this form of proxy in a representative capacity (e.g. on behalf of a Company, Close Corporation or Trust) must be attached to this form.
- The completion and lodging of this form of proxy will not preclude the relevant Shareholder from attending the meeting and speaking and voting in person thereat, to the exclusion of any proxy appointed in terms thereof, should such Shareholder wish to do so.
- Any Shareholder entitled to attend and vote is entitled to appoint a proxy to attend, vote or speak in his / her stead and such proxy need not also be a Shareholder of the Company.
- This proxy form should be forwarded to reach the registered office of the Company, 48 hours before the meeting is scheduled to commence
- Unless revoked, the appointment of a Proxy in terms of this Proxy form remains valid until the meeting is dissolved.

- *Companies and other corporate entities who are registered Shareholders of the Company as at the record date of the meeting, may, instead of completing this Proxy form, lodge a letter of representation or power of attorney naming and appointing a representative to represent them and exercise all of their rights at the meeting. The representative does not need to be a Shareholder of the Company. The notice will not be effective at the meeting unless it is accompanied by the resolution/s or other authorities in terms of which the representative is appointed.*
- *E Mail and Facsimile copies of this proxy form must be duly verified before commencement of the meeting to be eligible for acceptance.*
- *If the requirements contained herein are not fulfilled the proxy form and or the nomination of the Proxy will be null and void.*

**17. RECORDS OF SHAREHOLDERS MEETINGS**

- 17.1. The Directors shall cause minutes to be made of the proceedings at every Shareholders meeting, including all resolutions passed at such meetings and shall cause such minutes and all resolutions passed to be inserted in a book provided for that purpose, or to be kept in electronic form
- 17.2. Any copy of any record or resolution referred to in Article 17.1, which purports to be signed by any Director or the Chair, shall be *prima facie* evidence of the matters stated therein.

**18. NUMBER OF DIRECTORS:**

- 18.1. The number of Directors, unless otherwise determined by the Company in a Shareholders Meeting, shall be not less than 2 and not more than 5.
- 18.2. The Company may from time to time at a meeting of Shareholders resolve to determine the number of directors within the parameters outlined in clause 18.1.
- 18.3. Should the Company wish to amend the provisions of clause 18.1 it can only be done by a special resolution.
- 18.4. The Shareholders of the Company other than the Share Block Developer shall, if they:
  - 18.4.1. do not exceed ten (10) in number, have the right to appoint at least one of the Directors of the Company; and
  - 18.4.2. exceed ten (10) in number, have the right to appoint at least two (2) of the Directors of the Company.
- 18.5. The Company shall not fail to take steps to ensure the appointment of the Director or Directors referred to in article 18.4 (the elected Directors), 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 appoint or remove, under the provision of Article 18.4, any Directors so appointed.

**19. ROTATION OF DIRECTORS**

- 19.1. At each annual Shareholders meeting one half of the number of the elected Directors shall retire or if their number is not divisible by two, one of the two groups each as equal in number as possible into which the Directors have been divided for this purpose.
- 19.2. The Directors to retire in each year in terms of article 19.1 are those who have been the longest in office since their last election, but as between persons who were elected as Directors on the same day the ones to retire shall be determined by lot, unless they otherwise agree.
- 19.3. A retiring director is eligible for nomination and re-election.

**20. NOMINATION AND ELECTION OF DIRECTORS**

- 20.1. All nominations of Directors shall be made by Shareholders in the manner and on the form prescribed from time to time by the Directors.
- 20.2. The nomination form must be lodged with the secretary of the Company at least 48 (forty eight) hours before the commencement of the annual Shareholders meeting at which the nomination is to be considered.
- 20.3. In the event of any person howsoever being entitled to appoint the majority of the Directors of the Company, that person or his representative shall in fact guarantee compliance with any obligation of the Company specified in the MoI and confirmed by the Commissioner in the prescribed manner.
- 20.4. The appointment of 2 (two) or more persons as Directors of the Company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote against it.

- 20.5. Except for the provisions of article 20.4 above every resolution of a Shareholders meeting for the election of a Director shall relate only to the person who is nominated in that resolution.
- 20.6. Voting in respect of the appointment of Directors to fill the declared vacancies, shall in terms of article 20.5 be conducted on a poll whereby the net votes (abstentions are disregarded for purposes of the count) in respect of each nominee is calculated and the nominees with the highest net positive votes ranking will then in sequence of ranking fill the declared vacancies and will accordingly be appointed as the elected Directors.

## **21. ELECTION OF THE CHAIR**

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

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

- 22.1. The Directors may by unanimous resolution at any time subject to the restrictions of Article 18.4 appoint any other person as an additional director or to fill a casual vacancy, but so long as the total number of Directors shall not at any time exceed the number determined by article 18.1 or by special resolution at an annual Shareholders meeting.
- 22.2. The continuing Directors may act notwithstanding any vacancy in their number, but, if and for so long as their number is reduced below the minimum number fixed by or pursuant to this Mol as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a Shareholders meeting of the Company, but for no other purpose.
- 22.3. Provided that the Board of Directors shall comprise not less than two (2) directors, any casual vacancy occurring on the Board of Directors may subject to the provision of article 18.4 be filled by the Directors, but the Director so appointed will serve on a temporary basis only until the vacancy has been filled by election at an annual Shareholders' meeting.

## **23. ALTERNATE DIRECTORS**

- 23.1. Each Director shall have the power to nominate any person possessing the necessary qualifications of a Director as his alternate, provided that the appointment of an alternate Director shall be approved by the Board, and on such appointment being made, the alternate Director shall in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Company.
- 23.2. The alternate Directors whilst acting in the stead of the Directors, who appointed them, shall exercise and discharge all the powers, duties and functions of the Directors they represent.
- 23.3. The appointment of an alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever the Director who appointed him ceases to be a Director or gives notice to the secretary of the Company that the alternate Director representing him has ceased to do so.

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

- 24.1. In addition to Section 69 of the Act any director or alternate director shall cease to be a director of the Company on the happening of any of the following events:
- 24.1.1. his estate is finally sequestrated;
  - 24.1.2. he files a petition for the surrender of his estate as insolvent;
  - 24.1.3. he is placed under curatorship by any court of competent jurisdiction;
  - 24.1.4. he delivers a notice of his resignation at the office with effect from:
    - 24.1.4.1. the date on which that notice is delivered; or
    - 24.1.4.2. any later date stated in that notice to which the Directors agree;
  - 24.1.5. he is absent from two consecutive meetings of Directors of which he had received notice at least 10 (ten) days beforehand, provided that absence abroad or due to illness or condonation of absence due to special circumstances in terms of a Directors resolution shall suspend the operation of this provision; or
  - 24.1.6. if, he is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
  - 24.1.7. if, the Director is removed by an ordinary resolution in a Shareholders meeting of Shareholders in accordance with Section 71 of the Act;
- 24.2. Neither a Director nor an Alternate Director shall be disqualified from acting as such if he is not a Shareholder of the Company.

**25. DUTIES OF DIRECTORS**

- 25.1. Without in any way derogating from the generality of the duties of the Directors, the Directors shall in particular be obliged to:
- 25.1.1. determine the annual levy budget;
  - 25.1.2. from time to time open and/or hold a banking or similar account with accredited financial institution in the name of the Company and to deposit in such account all moneys which are due to the Company in the first instance;
  - 25.1.3. administer the funds of the Company and income accruing to the Company in order to achieve the main object of the Company;
  - 25.1.4. keep proper and comprehensive books of account and records;
  - 25.1.5. retain any financial records or other documents in respect of the Company for such period(s) as determined by the Act;
  - 25.1.6. utilise the funds of the Company solely for the main object of the Company or to invest funds available for investment only in accordance with the provisions of section 10(1)(e) of the Income Tax Act, as amended from time to time;
  - 25.1.7. remain informed and updated with regards to the current minutes, policies and codes of business of the Company, and to keep themselves updated by attending the required meetings.

**26. POWERS OF DIRECTORS**

- 26.1. The Board of Directors shall manage the Company and shall carry out the objects of the Company in such a manner as it may deem fit and proper subject, however, to:
- 26.1.1. the general policy of the Company; and
  - 26.1.2. any special instructions as may be laid down or given by the Shareholders in Shareholders meeting from time to time; and



- 26.1.3. the provisions of section 10(1)(e), read together with section 18A, of the Income Tax Act, 58 of 1962, as amended from time to time.
- 26.2. The Board of Directors may exercise all such powers as are not prohibited or limited by the 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 Shareholders meeting; but no regulation made by the Company in Shareholders meeting shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.
- 26.3. The Board of Directors may delegate any of its powers to committees consisting of such persons as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the Board.
- 26.4. The Board of Directors and the Company, must not provide a loan to secure a debt or obligation of, or otherwise provide direct or indirect financial assistance to, a director of the Company or a related or inter-related Company, or a person related to any such director, other than subject to Section 45 of the Act.
- 26.5. The Directors shall not have the power to use the funds of the Company for the carrying on of any business or trading activity in the name of the Company other than to the extent permitted in terms of section 10(1)(e) of the Income Tax Act, 58 of 1962, as amended from time to time.

## **27. PROCEEDINGS OF DIRECTORS**

- 27.1. Any Director is at all times entitled to convene a meeting of the Directors by giving at least 10 (ten) days' written notice to all Directors, or such shorter notice as may be agreed to by all the Directors.
- 27.2. The quorum necessary for the transaction of any business of the Directors shall be the majority of Directors.
- 27.3. The Directors may participate in a meeting of the Directors by means of conference telephone or similar equipment by means of which all persons participating can participate at the same time and any such participation in a meeting shall constitute presence in person at the meeting.
- 27.4. All resolutions and actions of the Directors shall be by way of a majority of votes. In the event of an equality of votes, the Chair shall not have a second or casting vote and the resolution shall be deemed to have failed.
- 27.5. Subject to the provisions of Section 75(5) of the Act, a Director may not vote in respect of any contract or proposed contract with the Company in which he is interested, or any matter arising there from.
- 27.6. Subject to the provisions of Section 74 the Act, a decision that could be voted on at a meeting of the Directors may be adopted by written consent of a majority of the directors, given in person, or by electronic communication, provided that each director has received notice of the matter to be decided and such resolution shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted.
- 27.7. Any such resolution may consist of several documents in a like form, each Signed by one or more of the signatories to the resolution.
- 27.8. A resolution of Directors passed in terms of this Article shall be placed in a minute book of the Company and shall be noted at the next succeeding meeting of Directors and shall also be signed by the Chair of that meeting, whereupon the provisions of section 73(8) of the Act shall be deemed to apply to the resolution.
- 27.9. All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or person acting as aforesaid or that they are or any of them were disqualified, be as valid as if every such person had been duly appointed and were qualified to be a

director.

- 27.10. If within half an hour after the time appointed for a meeting, a quorum of Directors is not present, then the meeting shall stand adjourned to the next business day at the same time, 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 be deemed to form a quorum.

## **28. RECORDS OF 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 Shareholders meeting and all resolutions passed by the Directors at all meetings of the Directors.
- 28.2. Minutes of any resolution and proceedings mentioned in Article 27.8 appearing in one of the minute books of the Company shall be proof of the facts therein stated if Signed by-
- 28.2.1. the Chair 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 Chair's place;  
or
- 28.2.3. the Chair of a subsequent meeting of the Directors.
- 28.3. Any extracts from or copy of those minutes purporting to be signed by the Chair of that meeting or any Director shall be *prima facie* proof of the facts therein stated.

## **29. REMUNERATION OF DIRECTORS**

- 29.1. The remuneration of the Directors from time to time shall be determined by the Company in a Shareholders meeting in accordance with a special resolution approved by the shareholders within the previous two years, and unless such Resolution otherwise provides, shall be divisible among the Directors as they may agree or, failing agreement, equally; provided that a Director who holds office for part only of the period in respect of which such remuneration is payable shall be entitled to rank in such division only for the proportion of the remuneration as relates to the period during which he held office. Remuneration shall accrue from day to day.
- 29.2. An Alternate Director shall look to the Director who appointed him for any remuneration.
- 29.3. Any Director who holds any executive office or who serves on any committee or otherwise performs services which the Directors consider are outside the scope of the ordinary duties of a Director may be paid such extra remuneration by way of fees, salary, commission or otherwise as the Directors may determine.
- 29.4. The Directors shall be reimbursed for all travelling, accommodation and other expenses of whatsoever nature properly incurred by them in or about the performance of their duties as Directors including, but not limited to, the reasonable cost of attending and travelling from their normal place of residence to and from meetings of Directors or any committee of the Directors or any Shareholders meetings.

## **30. SHAREHOLDER LEVIES**

- 30.1. It is recorded that substantially the whole of the Company's funding shall be derived from Shareholder levies contribution in accordance with the provisions of section 13 of the Share Block Act, the levies being exempt from taxation in terms of Section 10(1) (e) of the Income Tax Act.
- 30.2. The Directors shall establish and maintain a levy fund sufficient in their opinion to provide for:
- 30.2.1. the administration of the Company and its affairs and the repair, upkeep, control and management of the immovable Property in respect of which the Company operates the share block scheme;

- 30.2.2. the payment of rates and taxes and other local authority charges on the said immovable Property, and charges for the supply of electric current, gas, water, fuel and sanitary and any other services to the said immovable Property;
- 30.2.3. services required by the Company;
- 30.2.4. the covering of any losses suffered by the Company;
- 30.2.5. the payment of any insurance premiums;
- 30.2.6. payment of all expenses incurred or to be incurred to effect the opening under section 5 of the Sectional Titles Act of a sectional titles register in relation to the said immovable property; and
- 30.2.7. the discharge of any other obligation of the Company.
- 30.3. The Directors must ensure that -
  - 30.3.1. all contributions to the levy fund forthwith be paid into a separate account kept for this purpose with a bank or be entrusted to an attorney answering to the definition of "practitioner" in the Attorneys Act 1979 or to an estate agent answering to the definition of "estate agent" in the Estate Agents Act 1976, and such contributions must be utilised to defray the costs in respect of the matters referred to in section 13 of the Share Block Act and Article 30.2 hereof;
  - 30.3.2. such accounting records are kept as are necessary fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the Company in respect of the share block scheme operated by the Company.
- 30.4. The Directors may include in such levy an amount to be kept in reserve to defray any expected future expense not being of an annual nature, such as the expenses to be incurred in redecorating and renewing the company's property and the replacement of any movable assets or part thereof.
- 30.5. The Directors may from time to time make special levies upon the shareholders of the Company in respect of any costs, expenses and requirements mentioned in article 30(2) not provided for, and such levies may be made payable in one sum or in such instalments and at such time as the Directors may seem fit.
- 30.6. The Directors may set aside out of the surplus of the Company funds such sums as they think proper as a reserve.
- 30.7. Any reserve shall, in the discretion of the Directors, be applied for meeting contingencies for which levies would otherwise be raised on the Shareholders or for any other purpose whatsoever for which a levy might be raised on the Shareholders or for any other purpose whatsoever for which a levy might be raised on the Shareholders and pending such application, and may at the discretion of the Directors, be invested in a banking institution for the benefit of the Company, as the Directors may from time to time determine.
- 30.8. The Directors shall be entitled to charge interest on all arrear amounts due by Shareholders to the Company.
- 30.9. The interest rate shall be determined by the Directors from time to time subject in as far as relevant to the provisions of the National Credit Act 34 of 2005 and/or the Prescribed Rate of Interest Act 55 of 1975, or any statutory re-enactment thereof
- 30.10. The interest so raised is as if the amount due was a principle debt in a money lending transaction.
- 30.11. Such interest shall be calculated monthly in advance from the date that such amount became due.
- 30.12. The Directors of the Company are expressly authorised to impose fines against defaulting Shareholders provided that fines must be reasonable, and without affecting the generality of the foregoing, fines shall be likened to a penalty claimed by an injured party arising out of breach of contract in terms of the conventional Penalties Act No.15 of 1962.

30.13. The Directors shall not be entitled to suspend a defaulting Shareholder's right to vote.

### **31. MANAGEMENT RULES**

- 31.1. The Directors and/or the Managing Agent, if any, may make such rules and procedures as they in their discretion may decide subject to Section 15 (3) – (5) of the Act.
- 31.2. The Management Rules and procedures shall be binding on a Shareholder or any other occupier of any Improvements. It shall be the duty of the Shareholder to ensure compliance with the Management Rules and procedures by any tenant, occupier, invitee or guest.

### **32. LOAN OBLIGATION**

- 32.1. The Company shall not increase its loan obligations or encumber any of its assets unless the increase or encumbrance has been approved by a resolution of at least seventy-five percent (75%) in number of the Shareholders, excluding the Share Block Developer, having the right to vote at the relevant meeting and holding in the aggregate at least seventy-five percent (75%) of the total number of votes of all the Shareholders, excluding the number of votes held by the Share Block Developer.
- 32.2. The provisions of paragraph 32.1 shall not apply:
  - 32.2.1. in respect of an encumbrance which secures an existing liability comprised in the Company's loan obligation;
  - 32.2.2. where at the time the Shares of the Company were offered for subscription or sale, it was disclosed to all Shareholders of the Company and to the Person to whom the Shares were offered that the Company contemplated increasing its loan obligations or encumbering its assets on stated terms and conditions and the Company has acted in accordance with such disclosure.
- 32.3. The loan obligation of the Company shall be allocated to all Shareholders of the Company, in accordance with the provisions of the Mol or any agreement or arrangement in Writing relating to the loan obligation between the Company and the Shareholders or, in the absence of such provisions, in the proportion of each Shareholder's Share to the total number of issued shares of the Company.
- 32.4. Every Shareholder of the Company shall be liable to the Company in respect of its loan obligation for an amount equal to that portion of the loan obligation for which he is liable on such of the grounds referred to in article 32.3 as may apply to him.
- 32.5. No monies paid to the Company in reduction or in settlement of the amount for which a Shareholder is liable in respect of the Company's loan obligation shall be applied otherwise than in accordance with the relevant provisions of the Mol of the Company or any agreement or arrangement in Writing relating to the repayment of that amount between the Company and its Shareholders or, failing such provision, in accordance with a resolution as contemplated in article 32.1.
- 32.6. The provisions of the Act relating to notice of a special resolution shall *mutatis mutandis* be observed in respect of a resolution referred to in article 32.1 as if such resolution were a special resolution.
- 32.7. All moneys paid to the Company by a Shareholder in respect of its loan obligation shall be dealt with strictly in accordance with the provisions of section 15 of the Share Blocks Act.
- 32.8. All moneys owing to the holder of the Shares in respect of his loan portion shall:
  - 32.8.1. constitute a loan to the Company;
  - 32.8.2. not be repayable to the Shareholder by the Company unless the Company, at its option, elects to do so;
  - 32.8.3. be repayable to the Shareholder in the event of the Company being wound up;
  - 32.8.4. be free of interest.



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

#### **33.1. In this article:**

33.1.1. "Sellers Loan Obligation" means the loan obligation of the Company owing or to be owing to the Share Block Developer;

33.1.2. "Completion" means upon the issue of a certificate in respect of Improvements in terms of or in like fashion as contemplated by section 7(1) of the Time-Sharing Act; and

33.1.3. "Improvements" means the completion of the units/flats which have not been erected as set out in Annexure "B".

33.2. The Sellers loan obligation will upon the creation thereof be allocated on completion of the Improvements, proportionately to the Share Blocks to which such improvements relate.

33.3. Whereas it is contemplated that at the discretion of the Share Block developer the uncompleted accommodation may be completed on the land and that such Improvements may be financed only by the sellers loan obligation or any third party loan obligation.

33.4. The Share Block Developer shall be entitled, in its discretion to allocate shareblocks as set out in Annexure "B" to the accommodation, in order to confer upon the holder of such shareblocks respectively a Time-Sharing Interest in respect of such accommodation. The Shareholders agree to the Share Block Developer so acting, hereby irrevocably appointing the Share Block Developer as their agent to attend any Shareholders meeting of the Company, or at any adjournment thereof and to vote for a motion by special resolution in terms of which such allocation is confirmed and Annexure "B" is accordingly amended.

33.5. Any loan made or assumed by any Shareholder to the Company pursuant to the preceding articles shall be deemed to be ceded to the Company as security for any outstanding obligation by the Shareholder to the Company from time to time, provided that the Company shall not be entitled, in realising such loan for the purpose of enforcing its security, to dispose of such loan, unless disposition is made simultaneously with the disposition of the relevant share block and the relevant Time-Sharing Interest owned by the said Shareholder.

33.6. Subject to the cession in favour of the Company in article 33.5, any such loan may be ceded by the Shareholder to a third party, provided that such cession:

33.6.1. is made to the Person to whom the said Shareholder has disposed of his share block and Time-Sharing Interest; and

33.6.2. is consented to by the Directors of the Company in terms of this Mol.

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

34.1. The Directors of the Company shall ensure that the immovable property owned or leased by the Company, together with all Improvements and assets of the Company, be insured at its replacement value from time to time.

34.2. The said replacement value shall be reviewed and determined annually at the Company's annual Shareholders meeting.

### **35. BORROWING POWERS**

35.1. Subject to the restrictions contained in the Share Block Act and the provisions of the Use Agreement existing from time to time between the Company and any Shareholder, the Directors may:

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

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

- 36.1. The income and Property of the Company, whence so ever derived, shall be applied solely towards the promotion of the Company's main object in terms of section 7(1) of the Share Blocks Act.
- 36.2. No portion of the income and Property shall be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise howsoever to the Shareholders of the Company or to its controlling or controlled company in terms of section 8(1)(b) of the Share Blocks Act, provided that nothing herein contained shall prevent the payment in good faith or reasonable remuneration to any officer or servant of the Company, or to any Shareholder thereof, as remuneration for any services actually rendered to the Company.

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

- 37.1. The Directors shall cause such accounting records as are prescribed by the provisions of sections 13 and 15 of the Share Blocks Act to be kept, including such accounting records as are referred to in article 37.3 hereunder and also such other accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.
- 37.2. The Directors shall ensure that such accounting records as are necessary in terms of the Statutes fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the Company in respect of the levy fund, referred to in article 30 are kept.
- 37.3. The Directors shall keep separate books, accounting records and financial statements such as are necessary to fairly reflect and explain the state of affairs in respect of all moneys paid to the Company by Shareholders in reduction of the Company's loan obligation as referred to in Section 14 of the Share Blocks Act and the Directors shall ensure that the Company's books and accounting records relating to these moneys are balanced at least every 6 (six) months and that these books, accounting records and financial statements are audited by the Company's auditors at least once annually.
- 37.4. The accounting records shall be kept at the registered Office of the Company or at such other place or places as the Directors think fit, and shall always be open to inspection by the Directors and to other parties in accordance with the provisions of the Act and the Promotion of Access to Information Act No. 2 of 2000.



**38. NOTICES**

- 38.1. A notice may be given by the Company to any Shareholder either personally, or by sending it by Electronic Communication or by prepaid post addressed to such Shareholder at his registered address or (if he has no registered address in the Republic) at the address (if any) within the Republic supplied by him to the Company for the giving of notices to him.
- 38.2. Where any consent or approval is required for any act by a party, including the Company and Directors, such consent shall:
- 38.2.1. be in writing and signed by the party or his authorised agent whose consent or approval is required; and
  - 38.2.2. be given prior to the party taking such action; and
  - 38.2.3. not be unreasonably withheld.
- 38.3. Notice of every Shareholders meeting shall be given in any manner authorised:
- 38.3.1. to every Shareholder of the Company, except those Shareholders who have not supplied to the Company an address within the Republic for the giving of notices to them. The Company may send the notice by facsimile or by Electronic Communication;
  - 38.3.2. to the auditor for the time being of the Company.
- 38.4. No other Person shall be entitled to receive notice of Shareholders Meetings.
- 38.5. Any notice shall be deemed to have been received:
- 38.5.1. In the case of prepaid mail, 7 days after the letter was mailed;
  - 38.5.2. In the case of a fax or electronic communication, on the 1<sup>st</sup> business day after the day it was sent.
- 38.6. It shall be sufficient proof that the letter containing the notice was properly addressed and posted.

**39. INDEMNITY**

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

**40. LIMITATION OF LIABILITY OF DIRECTORS**

- 40.1 Each Director, alternate director, manager, Prescribed Officer and other officer of the Company, and 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.

**41. WINDING-UP**

- 41.1. If the Company be wound up, the assets remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be applied as follows:
- 41.1.1. To repay the Shareholders the amounts paid up on the shares respectively held by each of them; and
  - 41.1.2. To repay to the Shareholders all amounts paid in respect of the Company's loan obligation, providing that such refund shall be reduced by the amount that any such Shareholder is in

arrear with any debt due to the Company as at the date of winding up of the Company.

41.1.3. The balance remaining after the payments referred to in sub-articles 41.1.1 shall be paid to the Shareholders in proportion to the number of Shares held by each Shareholder to the total issued share capital.

41.2. In winding-up, any part of the assets of the Company, including any shares or securities of other companies may, with the sanction of a special resolution of the Company, be paid to Shareholders of the Company in specie, or may with the same sanction, be vested in Trust for the benefit of such Shareholders, and the Company dissolved.

## **42. ARBITRATION**

42.1. In the event of any dispute or difference arising between the Company and/or Directors and/or the Shareholders (hereinafter referred to as "the parties") as to the interpretation of the Use Agreement and/or any other agreement between the parties and/or the Statutes and/or the rights and/or obligations of the parties arising from the Mol, 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.

42.2. The arbitrator shall be appointed by agreement between the parties, provided that in the event of the parties failing to agree on the appointment of an arbitrator within 14 (fourteen) days after receipt of the notice to do so, the party requesting arbitration proceedings may request the Chair, for the time being, of the Society of Advocates of the High Court of South Africa of the High Court Division in which the Buildings are situate, to appoint an arbitrator, and, if the dispute arises from the determination of the amount of the value of the surrendered use of the timeshare module at the time of winding up, the Chair, for the time being, of the Professional Valuers Association of South Africa.

42.3. The decision of the arbitrator shall be final and binding and may be made an order by any court to whose jurisdiction the parties to the dispute are subject.

## **43. MAINTENANCE TIME MODULE**

43.1. It is recorded that at least 1 (one) share block conferring at least 1 (one) time-sharing interest for at least 1 (one) time module in each unit/flat, will be used for maintenance purposes of such accommodation, or for such other purpose as the Directors from time to time might deem advisable.

**"SHARE BLOCK" PROVISIONS INCLUDE:**

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

1. Section 3 – Application of certain laws in respect of share block companies;
  - 1.1. Refer: Article 1.7.11, 1.7.12, 1.7.31, 7.1, 25.1.6, 26.1.3, 26.5 and 30.1
2. Section 5 – Restrictions on the operation of a share block scheme;
  - 2.1. Refer: Article 3.3
3. Section 7 – Main Objects;
  - 3.1. Refer: Article 2
4. Section 10 – Rights attaching to shares in a Share Block Company;
  - 4.1. Refer: Article 7
5. Section 11 – Offer of sale of shares;
  - 5.1. Refer: Article 7.1
6. Section 12 – Directors and Developer Directors;
  - 6.1. Refer: Article 18.4
7. Section 13 - Levy Fund and Trust Accounts;
  - 7.1. Refer: Article 30
8. Section 14 – Loan Obligation;
  - 8.1. Refer: Article 32
9. Borrowing Powers;
  - 9.1. Refer: Article 35
10. Accounting Records;
  - 10.1. Refer: Article 37
11. Annual Financial Statements;
  - 11.1. Refer: Article 12.1.1.2 and 37
12. Auditor;
  - 12.1. Refer: Article 12.1.3
13. Use Agreement;
  - 13.1. Refer: Annexure "C"

## ANNEXURE "B"

Schedule of Share Blocks and Allocated Loans for the Commencement Year (28 December 1984 to 27 December 1985)  
Units numbered 7 and 8 of block B serve as residential units for management and do not have any share allocated

UNIT NO/S			A			B			C			D		
			1 - 6			9 - 12			14 - 19			20 - 25		
Month	Week		Share block No/s	Quantity of Shares	Allocated Loan	Share block No/s	Quantity of Shares	Allocated Loan	Share block No/s	Quantity of Shares	Allocated Loan	Share block No/s	Quantity of Shares	Allocated Loan
Jan	1	28/12 - 4/1	11 - 61	85	R 654.00	71 - 1001	70	R 539.00	1101 - 1601	80	R 616.00	1701 - 2201	95	R 731.00
	2	4/1 - 11/11	12 - 62	65	R 498.00	72 - 1002	50	R 383.00	1102 - 1602	65	R 498.00	1702 - 2202	75	R 575.00
	3	11/1 - 18/1	13 - 63	50	R 385.00	73 - 1003	35	R 269.00	1103 - 1603	45	R 346.00	1703 - 2203	60	R 462.00
	4	18/1 - 25/1	14 - 64	30	R 231.00	74 - 1004	20	R 154.00	1104 - 1604	25	R 192.00	1704 - 2204	35	R 269.00
	5	25/1 - 1/2	15 - 65	30	R 231.00	75 - 1005	20	R 154.00	1105 - 1605	25	R 192.00	1705 - 2205	35	R 269.00
Feb	6	1/2 - 8/2	16 - 66	30	R 231.00	76 - 1006	20	R 154.00	1106 - 1606	25	R 192.00	1706 - 2206	35	R 269.00
	7	8/2 - 15/2	17 - 67	30	R 231.00	77 - 1007	20	R 154.00	1107 - 1607	25	R 192.00	1707 - 2207	35	R 269.00
	8	15/2 - 22/2	18 - 68	30	R 231.00	78 - 1008	20	R 154.00	1108 - 1608	25	R 192.00	1708 - 2208	35	R 269.00
	9	22/2 - 1/3	19 - 69	30	R 231.00	79 - 1009	20	R 154.00	1109 - 1609	25	R 192.00	1709 - 2209	35	R 269.00
Mar	10	1/3 - 8/3	110 - 610	30	R 231.00	710 - 1010	20	R 154.00	1110 - 1610	25	R 192.00	1710 - 2210	35	R 269.00
	11	8/3 - 15/3	111 - 611	30	R 231.00	711 - 1011	20	R 154.00	1111 - 1611	25	R 192.00	1711 - 2211	25	R 269.00
	12	15/3 - 22/3	112 - 612	30	R 231.00	712 - 1012	20	R 154.00	1112 - 1612	25	R 192.00	1712 - 2212	35	R 269.00
	13	22/3 - 29/3	113 - 613	85	R 654.00	713 - 1013	70	R 539.00	1113 - 1613	80	R 616.00	1713 - 2213	95	R 731.00
Apr	14	29/3 - 5/4	114 - 614	85	R 654.00	714 - 1014	70	R 539.00	1114 - 1614	80	R 616.00	1714 - 2214	95	R 731.00
	15	5/4 - 12/4	115 - 615	85	R 654.00	715 - 1015	70	R 539.00	1115 - 1615	80	R 616.00	1715 - 2215	95	R 731.00
	16	12/4 - 19/4	116 - 616	85	R 654.00	716 - 1016	70	R 539.00	1116 - 1616	80	R 616.00	1716 - 2216	95	R 731.00
	17	19/4 - 26/4	117 - 617	85	R 654.00	717 - 1017	70	R 539.00	1117 - 1617	80	R 616.00	1717 - 2217	95	R 731.00
May	18	26/4 - 3/5	118 - 618	30	R 231.00	718 - 1018	20	R 154.00	1118 - 1618	25	R 192.00	1718 - 2218	35	R 269.00
	19	3/5 - 10/5	119 - 619	50	R 385.00	719 - 1019	35	R 269.00	1119 - 1619	45	R 346.00	1719 - 2219	60	R 462.00
	20	10/5 - 17/5	120 - 620	50	R 385.00	720 - 1020	35	R 269.00	1120 - 1620	45	R 346.00	1720 - 2220	60	R 462.00
	21	17/5 - 24/5	121 - 621	50	R 385.00	721 - 1021	35	R 269.00	1121 - 1621	45	R 346.00	1721 - 2221	60	R 462.00
	22	24/5 - 31/5	122 - 622	85	R 654.00	722 - 1022	70	R 539.00	1122 - 1622	80	R 616.00	1722 - 2222	95	R 731.00
Jun	23	31/5 - 7/6	123 - 623	70	R 537.00	723 - 1023	55	R 421.00	1123 - 1623	60	R 460.00	1723 - 2223	75	R 575.00
	24	7/6 - 14/6	124 - 624	70	R 537.00	724 - 1024	55	R 421.00	1124 - 1624	60	R 460.00	1724 - 2224	75	R 575.00
	25	14/6 - 21/6	125 - 625	70	R 537.00	725 - 1025	55	R 421.00	1125 - 1625	60	R 460.00	1725 - 2225	75	R 575.00
	26	21/6 - 28/6	126 - 626	80	R 614.00	726 - 1026	65	R 498.00	1126 - 1626	75	R 575.00	1726 - 2226	90	R 691.00
Jul	27	28/6 - 5/7	127 - 627	85	R 654.00	727 - 1027	70	R 539.00	1127 - 1627	80	R 616.00	1727 - 2227	95	R 731.00
	28	5/7 - 12/7	128 - 628	85	R 654.00	728 - 1028	70	R 539.00	1128 - 1628	80	R 616.00	1728 - 2228	95	R 731.00
	29	12/7 - 19/7	129 - 629	85	R 654.00	729 - 1029	70	R 539.00	1129 - 1629	80	R 616.00	1729 - 2229	95	R 731.00
	30	19/7 - 26/7	130 - 630	85	R 654.00	730 - 1030	70	R 539.00	1130 - 1630	80	R 616.00	1730 - 2230	95	R 731.00
Aug	31	26/7 - 2/8	131 - 631	65	R 498.00	731 - 1031	50	R 383.00	1131 - 1631	60	R 460.00	1731 - 2231	75	R 575.00
	32	2/8 - 9/8	132 - 632	65	R 498.00	732 - 1032	50	R 383.00	1132 - 1632	60	R 460.00	1732 - 2232	75	R 575.00
	33	9/8 - 16/8	133 - 633	65	R 498.00	733 - 1033	50	R 383.00	1133 - 1633	60	R 460.00	1733 - 2233	75	R 575.00
	34	16/8 - 23/8	134 - 634	65	R 498.00	734 - 1034	50	R 383.00	1134 - 1634	60	R 460.00	1734 - 2234	75	R 575.00
	35	23/8 - 30/8	135 - 635	65	R 498.00	735 - 1035	50	R 383.00	1135 - 1635	60	R 460.00	1735 - 2235	75	R 575.00
Sept	36	30/8 - 6/9	136 - 636	65	R 498.00	736 - 1036	50	R 383.00	1136 - 1636	60	R 460.00	1736 - 2236	75	R 575.00
	37	6/9 - 13/9	137 - 637	50	R 385.00	737 - 1037	35	R 269.00	1137 - 1637	45	R 346.00	1737 - 2237	60	R 462.00
	38	13/9 - 20/9	138 - 638	50	R 385.00	738 - 1038	35	R 269.00	1138 - 1638	45	R 346.00	1738 - 2238	60	R 462.00
	39	20/9 - 27/9	139 - 639	50	R 385.00	739 - 1039	35	R 269.00	1139 - 1639	45	R 346.00	1739 - 2239	60	R 462.00
Oct	40	27/9 - 4/10	140 - 640	85	R 654.00	740 - 1040	70	R 539.00	1140 - 1640	80	R 616.00	1740 - 2240	95	R 731.00
	41	4/10 - 11/10	141 - 641	85	R 654.00	741 - 1041	70	R 539.00	1141 - 1641	80	R 616.00	1741 - 2241	95	R 731.00
	42	11/10 - 18/10	142 - 642	85	R 654.00	742 - 1042	70	R 539.00	1142 - 1642	80	R 616.00	1742 - 2242	95	R 731.00
	43	18/10 - 25/10	143 - 643	85	R 654.00	743 - 1043	70	R 539.00	1143 - 1643	80	R 616.00	1743 - 2243	95	R 731.00
Nov	44	25/10 - 1/11	144 - 644	40	R 267.00	744 - 1044	25	R 190.00	1144 - 1644	30	R 229.00	1744 - 2244	40	R 306.00
	45	1/11 - 8/11	145 - 645	40	R 267.00	745 - 1045	25	R 190.00	1145 - 1645	30	R 229.00	1745 - 2245	40	R 306.00
	46	8/11 - 15/11	146 - 646	35	R 267.00	746 - 1046	25	R 190.00	1146 - 1646	30	R 229.00	1746 - 2246	40	R 306.00
	47	15/11 - 22/11	147 - 647	35	R 267.00	747 - 1047	25	R 190.00	1147 - 1647	30	R 229.00	1747 - 2247	40	R 306.00
	48	22/11 - 29/11		0			0			0			0	
Dec	49	29/11 - 6/12	149 - 649	65	R 499.00	749 - 1049	55	R 423.00	1149 - 1649	60	R 461.00	1749 - 2249	75	R 576.00
	50	6/12 - 13/12	150 - 650	85	R 654.00	750 - 1050	70	R 539.00	1150 - 1650	80	R 616.00	1750 - 2250	95	R 731.00
	51	13/12 - 20/12	151 - 651	85	R 654.00	751 - 1051	70	R 539.00	1151 - 1651	80	R 616.00	1751 - 2251	95	R 731.00
	52	20/12 - 27/12	152 - 652	85	R 654.00	752 - 1052	70	R 539.00	1152 - 1652	80	R 616.00	1752 - 2252	95	R 731.00
Shares/Unit			3140			2440			2865			3545		
Units/Block			6			4			6			6		
Shares/Block			18840			9760			17190			21270		

Total Amount of Shares as per abovementioned Shares/Block

67060

**USE AGREEMENT OF SANDY PLACE SHARE BLOCK (PTY) LTD**

- In this Use Agreement –
  - Any references to “Articles of Association” are to be read as references to the “Memorandum of Incorporation”;
  - Any references to the “Companies Act” are to be read as references to the Companies Act No. 71 of 2008;
  - Any references to Estuary Properties Share Block Limited shall be references to Sandy Place Share Block (Pty) Ltd.



## Annexure "C"

**SANDY PLACE  
USE AGREEMENT**

between

ESTUARY PROPERTIES SHARE BLOCK LIMITED

(the "COMPANY")

and

LTR BELEGGINGS (EIENDOMS) BEPERK  
as the registered holder for the time being of all the issued shares or the COMPANY

(the "HOLDER")

THIS AGREEMENT WITNESSETH:

1. DEFINITIONS

1.1 In this Agreement, unless the context otherwise indicates, the following words and expressions shall have the meanings attributed to them:

"ACT"	The Share Block Control Act No 59 of 1980 on any amendments thereto or any Act which may be promulgated in substitution thereof;
"ALLOCATED LOAN"	that portion of the HOLDER's loan account in the COMPANY which is allocated to the SHARE BLOCK in terms of the Articles of Association of the COMPANY as set out in Annexure "G";
"BUILDING"	the buildings on lot 5, St Lucia, known as SANDY PLACE, ST LUCIA;
"COMMON PROPERTY"	the land upon which the BUILDING stands and such portions of the BUILDING which are not involved in a SUITE;
"COMPANY"	ESTUARY PROPERTIES SHARE BLOCK LIMITED;
"DIRECTORS"	The DIRECTORS of the COMPANY;
"HOLDER"	the holder of the SHARE BLOCK and includes a purchaser thereof, whether under a suspensive or resolutive condition as to the passing of ownership or otherwise, and who has not yet taken transfer of the SHARE BLOCK, but who is in or is entitled to the USE of the SUITE;
"MAINTENANCE WEEK/ WEEKS"	those specific weeks in each OPERATIONAL YEAR in respect of each suite which are not attached to any SHARE BLOCK in terms of the COMPANY's Articles of Association and during which the COMPANY shall have the right of use and access to a SUITE for any purpose that may be determined by the COMPANY from time to time including the refurbishing, renovation or maintenance thereof;
"MANAGER"	the person appointed from time to time to manage and supervise the PROPERTY, provided that where no such person has been so appointed the term shall mean the COMPANY's nominee;
"MANAGEMENT AGREEMENT"	the agreement concluded between the COMPANY and the MANAGER in terms of which the MANAGER has agreed to manage and supervise the PROPERTY;
"MOVABLE PROPERTY"	the movable property specified in Annexure "B1" hereto;
"OPERATIONAL YEAR"	the year reckoned from the 1st March to the end of February each year or such other period of twelve months as the DIRECTORS may determine from time to time and for which levies in terms of clause 10 hereof are assessed;
"PROPERTY"	the COMPANY's PROPERTY including the buildings thereon situate at Lot 5 St Lucia, Province of Natal;
"SHARE BLOCK"	the SHARE BLOCK consisting of shares in the COMPANY and to which a SUITE is linked for a WEEK pursuant to this agreement and the Articles of Association of the COMPANY;
"SUITE"	the suite in the BUILDING which is furnished pursuant to clause 2.4 below and which is linked to a SHARE BLOCK pursuant to the Articles of Association of the COMPANY;
"USE"	use as contemplated by the ACT;
"WEEK"	the specified week, which is attached to a SHARE BLOCK in terms of the COMPANY's Articles of Association during which the holder is entitled to the use of the SUITE which is linked to such SHARE BLOCK.

1.2 Words or expressions defined in the ACT shall have the same meaning herein.

1.3 Headings of clauses are only explanatory and do not form part of this agreement.

## 2. RIGHTS OF USE

- 2.1 The HOLDER shall have the sole right to the exclusive USE of the SUITE for the WEEK (WEEKS), appertaining to his SHARE BLOCK.
- 2.2 the HOLDER shall have the right during the WEEK to the USE of the common property in common with the other members of the COMPANY and users of the remainder of the PROPERTY, subject to:
- 2.2.1 to the rights of the MANAGER of the PROPERTY in terms of the MANAGEMENT AGREEMENT; and
- 2.2.2 such terms and conditions as may be imposed by the DIRECTORS from time to time in terms of the Management Regulations.
- 2.3 The rights of the HOLDER hereunder shall endure for the WEEK(WEEKS) in each year for as long as he continues to be the beneficial owner of the SHARE BLOCK and remains in fulfillment all the terms and conditions of this agreement and of the Management Regulations made pursuant to clause 11 from time to time.
- 2.4 The suite shall be furnished and provided with the MOVABLE PROPERTY which is specified for the SUITE and which will not materially deviate from the architect's plans shown to the PURCHASER and will in essence include those items specified in Annexure "B1" hereto, but the quantity of items shall vary in accordance with the size of the flat. A final inventory will be sent to the PURCHASER together with his signed copy of this contract. It is recorded that the MOVABLE PROPERTY is the property of the COMPANY and that nothing in this agreement shall vest the HOLDER with the ownership of any such MOVABLE PROPERTY or entitle him to remove any such MOVABLE PROPERTY from the SUITE either during or upon the termination of any WEEK during which the SUITE is used.
- 2.5 Notwithstanding the provisions of 2.4, the COMPANY shall be entitled from time to time with the authority of an ordinary resolution of the COMPANY passed at any general meeting of the COMPANY to vary or add to the MOVABLE PROPERTY described in Annexure "B1" hereto, provided that the quality and extent of the furnishings and equipment shall not be reduced.
- 2.6 The SUITE shall be used by the HOLDER for residential purposes only and for no other purpose whatever. The SUITE shall be used personally by the HOLDER and by members of his family or his invitees, provided that in any event the number of users of the SUITE shall not at any time exceed the stipulated maximum as set out in the Management Regulations. In the event of the rights of USE herein being held by a company or other body corporate, the SUITE shall only be used by the nominees of such company or body corporate or by members of their families or by their invitees, subject to the same restrictions as to the number of users at any time, and further subject to the prior approval of the MANAGER having been obtained, which approval shall not be unreasonably withheld.
- 2.7 No liability whatever shall rest upon the COMPANY for any:
- 2.7.1 breach of the conditions of the MANAGEMENT AGREEMENT by the MANAGER or its employees;
- 2.7.2 thing done or omitted by the MANAGER;
- 2.7.3 interruption or failure in the water and electrical services that may be supplied or any other municipal or other services to the PROPERTY, irrespective of the cause thereof and notwithstanding the fact that the HOLDER may have suffered consequential damage by reason of such failure or interruption.
- 2.8
- 2.8.1 If at any time the SUITE requires to be refurbished or renovated, the COMPANY or the MANAGER, shall be entitled themselves and their respective contractors and workmen during normal business hours to access to the SUITE for the purposes of carrying out the necessary work provided that the COMPANY will use its best endeavours to ensure that such work is preferably carried out during the MAINTENANCE WEEK(S) and with the least inconvenience. If the HOLDER or any other persons using the SUITE however suffers any inconvenience from such operations or any similar operations conducted in any other part of the BUILDING, the HOLDER and such other persons shall have no claim whatsoever against either the COMPANY or the MANAGER.
- 2.8.2 In the event that the refurbishing or renovation operations referred to above are such as to deprive the HOLDER or any other person lawfully claiming USE of the SUITE or should the SUITE for any reason at any time and from time to time not be available for USE, no claim whatever will arise against the COMPANY or the MANAGER, but the COMPANY or the MANAGER shall be entitled to provide the HOLDER or such other user without extra cost to the HOLDER or other user with temporary accommodation in any other SUITE in the BUILDING for the duration of the relevant WEEK or such portion thereof as the SUITE is not so available as the case may be.
- 2.8.3 If any dispute arises as to whether the HOLDER or any other user is unable to enjoy beneficial use of the SUITE at any time, such dispute shall be determined by the MANAGER who in making such decision shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the HOLDER or such other persons.

## 3. USE OF SUITE BY PERSONS OTHER THAN THE HOLDER

- 3.1 The HOLDER for so long as he is entitled in terms of the USE AGREEMENT with the COMPANY to use the SUITE may, with the prior consent in writing of the MANAGER, which shall not be unreasonably withheld, permit or allow any other person to use the SUITE for the WEEK or any part thereof, provided however that:
- 3.1.1 such consent shall not be required nor shall the provisions of this clause 3 apply (other than clauses "3.1.2", "3.2.1" and "3.2.3") in respect of the USE the SUITE by the spouse, children, parents or grandchildren of the HOLDER or any person accompanying the HOLDER or his spouse, children, parents or grandchildren aforesaid; and
- 3.1.2 such other use shall not exceed the period of the WEEK;
- 3.1.3 the HOLDER shall not allow any other use as aforesaid unless he shall have furnished the MANAGER with written notice in the form prescribed by the MANAGER, prior to such other person or persons requiring the use of the SUITE, of the full name and address of the proposed person or persons and the details of such other person or persons and his or their proposed use of the SUITE;

- 3.1.4 should the HOLDER fail to observe the provisions of clause "3.1.3", without prejudice to any other rights that the COMPANY may have in terms of this agreement, the MANAGER shall be entitled to refuse admission to the SUITE to such other person or persons aforesaid, or having commenced such USE, to require or cause him to vacate the SUITE forthwith.

3.2 Notwithstanding the provisions of clause 3.1:

- 3.2.1 the COMPANY shall not be deemed to waive any of its rights against the HOLDER under this agreement either by virtue of clause "3.1.1" or by giving any consent in terms of clause 3.1;
- 3.2.2 as a condition precedent to the COMPANY's consent being effective, the HOLDER shall obtain a written undertaking by such third party on such terms as the MANAGER shall reasonably require that the third party will duly comply with the lawful requirements of the COMPANY and of the MANAGER at all times and observe all the conditions of the USE AGREEMENT and the Management Regulations;
- 3.2.3 any breach of the said conditions, either of this USE AGREEMENT or of the Management Regulations by any third party or by any other person using the SUITE in the company or in the name of such third party or of the HOLDER shall be deemed to be a breach thereof by the HOLDER.

4. MANAGEMENT

- 4.1 The management, control and administration of the PROPERTY, including all SUITES, and the MOVABLE PROPERTY and the USE, servicing and maintenance thereof shall be under the direction and control of the MANAGER, who shall be appointed from time to time pursuant to the MANAGEMENT AGREEMENT and who shall at all reasonable times have access to the SUITE for lawful purposes.
- 4.2 The COMPANY shall use its best endeavours to procure that the MANAGER shall:
- 4.2.1 carry out all obligations undertaken by the COMPANY from time to time pursuant to this agreement;
- 4.2.2 be responsible for fulfilling all obligations assigned to it pursuant to such MANAGER's appointment in terms of the MANAGEMENT AGREEMENT, including the enforcement of the Management Regulations;
- 4.2.3 employ, be responsible for and discharge any supervisor, caretaker and staff or other person engaged to carry out any duties or effect any service in respect of the PROPERTY or the COMPANY's business;
- 4.2.4 duly service the SUITES;
- 4.2.5 control the checking-in and departure of any person entitled to use the SUITE;
- 4.2.6 in the name of the COMPANY, collect and deal with all moneys owing to the COMPANY from time to time by the HOLDER pursuant to the requirements of the ACT;
- 4.2.7 control the general use of the BUILDING, including the SUITE, by HOLDERS for their mutual benefit and comfort and ensure that the business and operation of the COMPANY is properly managed at all times;
- 4.2.8 arrange to give effect to the rights of USE of the HOLDER pursuant to this agreement in accordance with the Management Rules which may be prescribed by the MANAGER from time to time.
- 4.3 The HOLDER for himself and for any person using the SUITE from time to time undertakes to observe and comply with the lawful directives of the MANAGER at all times, provided that should the HOLDER and/or any such other person fail to observe the check-in procedures prescribed by the MANAGER from time to time, the provisions of clause "3.1.4" shall apply mutatis mutandis.

5. ALTERNATIONS AND DECORATION

The HOLDER shall not improve, decorate or make any alterations or additions to the interior or exterior of the SUITE or tamper with any fittings, connections or plumbing serving the SUITE.

6. MAINTENANCE

6.1 Maintenance of SUITE

- 6.1.1 The COMPANY shall at all times be responsible for procuring the due and proper maintenance of the entire SUITE including without limitation all electrical wiring and fittings and attachments, plumbing installations, piping and apparatus of all fittings whatever, the interior surfaces of all walls and all windows, window frames, fittings and doors, as well as the maintenance of the MOVABLE PROPERTY contained in the SUITE, in a good and sound order and repair, replacing with new as the old become worn out or become lost to the COMPANY, and shall be responsible for all maintenance, repairs and replacements of whatsoever nature, including all repairs and, if necessary, replacements, the clearing of any blockages of drains, sewers, plumbing and sanitary equipment and connections and maintenance and replacement thereof and all repairs and renovations to the SUITE of whatsoever nature. the HOLDER having no liability therefor, save as otherwise specified and as prescribed in clauses "7" and "10" below.
- 6.1.2 It is agreed that the HOLDER acquires the USE of the SUITE and the MOVABLE PROPERTY for the WEEK on a Voetstoots basis without any warranties express or implied and in the condition in which they presently stand or will stand when the HOLDER commences his USE thereof. The COMPANY will endeavour to procure that all reasonable steps to remedy any defect in the SUITE or the MOVABLE PROPERTY are taken within a reasonable time of having been given notice thereof. Any items, goods or property brought into the SUITE by the HOLDER shall, as concerns the COMPANY, be at the sole risk of the HOLDER, who shall have no claim whatsoever upon any grounds against the COMPANY for any loss suffered by the HOLDER irrespective of whether it arose as a result of the condition of the SUITE or for any other reason whatsoever.
- 6.1.3 The HOLDER undertakes to be bound by any procedures which may be prescribed by the Management Regulations or by the MANAGER from time to time for the taking of inventories in respect of fixtures, fittings and the MOVABLE PROPERTY at the commencement and conclusion of the relevant WEEK or WEEKS.

## 6.2 Maintenance of Remainder of PROPERTY

It shall be the duty of the COMPANY:

- 6.2.1 save as specified in clause 6.1, to be responsible for procuring the due maintenance and repair of the exterior of the entire remainder of the PROPERTY both internally and externally including the entertainment, recreational and all other facilities serving the PROPERTY and the USERS thereof, including all furnishings, decor, equipment and appliances and movable property used in and in conjunction with the PROPERTY and all outside terraces, chairs and furnishings together with the parking areas, garages and garden areas in good, secure, clean and thoroughly tenantable order and condition and from time to time and as and when necessary or requisite to renovate or renew the same;
- 6.2.2 to effect such insurance over and in respect of the PROPERTY and of the movable property against such risks as may be deemed fit and proper by the DIRECTORS or otherwise in accordance with the relevant resolutions passed by the members of the COMPANY from time to time at general meetings of the COMPANY.
- 6.3 The COMPANY and the MANAGER's respective agents or employees shall at all times be entitled to inspect the SUITE used by the HOLDER, and if the COMPANY is dissatisfied with the condition thereof or its contents, it may call upon the HOLDER to immediately remedy such defective condition. Should the HOLDER fail to remedy the defect(s), the COMPANY shall be entitled forthwith thereafter and without prejudice to any other rights it may have, to put the same into good order and condition at the expense of the HOLDER and to recover from the HOLDER any expenditure thereby incurred.
- 6.4 The COMPANY's and the MANAGER's duly authorised workman shall be permitted to enter any SUITE in the PROPERTY at any reasonable hour of the day, in order to examine the same or to effect repairs thereto or to any other part of the PROPERTY. If the HOLDER shall not be personally present to open the said SUITE at any time when and for any reason entry shall be necessary or permissible, then any duly authorised agent of the COMPANY or of the MANAGER shall be entitled to open and enter the said SUITE without being liable to any claim for damages by reason thereof.
- 6.5 The COMPANY shall not be responsible for and the HOLDER indemnifies the COMPANY against any loss, damage or injury which the HOLDER or any person using the SUITE through or at the instance of the HOLDER, may sustain in the SUITE or in or about the COMPANY's PROPERTY by reason of any act or neglect on the part of the COMPANY or the COMPANY's servants, nor shall the COMPANY be responsible for and the HOLDER indemnifies the COMPANY against any loss, damage or injury of any description which the HOLDER or any such other person may sustain by reason of the PROPERTY or the SUITE at any time falling into a defective state, or by reason of any repairs, renovations and/or maintenance work to the rest of the PROPERTY which are effected or are to be effected by the COMPANY or by any other user thereof, or by reason of such repairs, renovations and maintenance work not being effected timeously or at all and the HOLDER shall not be entitled for any of the reasons aforesaid, or for any other reason whatsoever, to withhold any monies due to the COMPANY.

## 7. HOLDER'S RESPONSIBILITIES

Notwithstanding the provisions of clauses "6.1" and "6.2":

- 7.1 The HOLDER shall be obliged to keep the SUITE in a clean and tidy condition and use the contents of the SUITE and all facilities in the remainder of the PROPERTY in such manner as will ensure the preservation thereof in the best possible condition, subject always to the relevant provisions of the Management Regulations.
- 7.2 If in the opinion of the MANAGER any repairs or renovations to the PROPERTY or any portion thereof including the SUITE, or any facilities, furnishings or equipment serving the PROPERTY or available for USE by the HOLDER, are rendered necessary by reason of any act or neglect whether accidental, negligent or wilful by the HOLDER or any member of his household or of any other visitor or user of the SUITE, the HOLDER shall be liable for the cost of repairing, restoring or renovating the relevant portion of the PROPERTY or movable property in question. The costs of such repairs, renovations or restoration shall be recoverable by the COMPANY from the HOLDER.
- 7.3 Any dispute as to whose liability it is to maintain or repair any portion of the PROPERTY and any facilities serving same, the SUITE or of the MOVABLE PROPERTY, shall be determined by the MANAGER (acting as an expert and not an arbitrator) and the decision of the MANAGER shall be final and binding on the parties to the dispute.
- 7.4 Any cost or expense incurred by the COMPANY in fulfilling its obligations in terms of "6" hereof, and which is not in terms of the provisions of this agreement directly recoverable from a HOLDER or HOLDERS, shall be paid out of the levy fund constituted in terms of "10".

## 8. INTEREST ON ALLOCATED LOANS AND REPAYMENT THEREOF

All moneys from time to time owing by the COMPANY to the HOLDER in respect of the ALLOCATED LOAN shall be free of interest and not repayable while this USE AGREEMENT is in force, or while the HOLDER or his successor in title is otherwise entitled to the USE of the SUITE, or while any amount due by the COMPANY to any of its shareholders remains unpaid, provided that any such ALLOCATED LOAN shall be repayable in the event of the COMPANY being wound up. The liquidation resolution as contemplated herein shall be approved by at least 75 (SEVENTY FIVE) per cent in number, of the members of the COMPANY, excluding from such members the share block developer, having the right to vote at the relevant meeting and holding in the aggregate at least 75 (SEVENTY FIVE) per cent of the total number of votes of all those members, but excluding from such number of votes the votes held by the share block developer.

## 9. ALLOCATED LOAN

- 9.1 The amount of the ALLOCATED LOAN allocated to the SHARE BLOCK in terms of the Articles of Association of the COMPANY (Annexure "G") shall be lent to the COMPANY by the HOLDER free of interest, in consideration of the rights of occupation granted to the HOLDER pursuant to this USE AGREEMENT.
- 9.2 After the MEMBER has advanced the full amount of his loan obligation as allocated to him, the COMPANY shall upon the MEMBER's request be obliged to furnish to the MEMBER a certificate or other evidence of the fact that the full amount has been advanced by the MEMBER.

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## 10. LEVY FUND

- 10.1 The HOLDER shall pay any charges or expenses for any services made available to the PROPERTY, SUITE and/or the users thereof in respect of the WEEK during which he is entitled to the USE thereof, including without affecting the generality of the foregoing, charges for any recreational and entertainment facilities, telephone calls, transport and any services not recoverable as part of the levy fund.
- 10.2 The DIRECTORS shall establish and maintain a levy fund, to which end they shall from time to time make levies upon members of the COMPANY in such amounts as are in their opinion sufficient for the repair, upkeep, renovation, control, management and administration of the COMPANY, the PROPERTY and the MOVABLE PROPERTY, including all SUITES and/or for the payment of any obligation of the COMPANY in connection therewith, for the payment of rates, taxes and any other local authority charges on the PROPERTY, any charges for the supply of electric current, gas, water, fuel, sanitary and other services to the COMPANY and the PROPERTY, the MOVABLE PROPERTY and the SUITE, for which the individual members are not personally liable, for any services or facilities required by the COMPANY and the covering of any losses suffered by the COMPANY, the payment of any premiums of insurance and for the discharge of any other obligation of the COMPANY, including all the costs, fees and payments which become due and payable from time to time to the MANAGER.
- 10.3 The DIRECTORS shall estimate the amount which 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 make a levy upon the members of the COMPANY equal as nearly as is reasonably practicable to such estimated amount. The DIRECTORS may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such as the expenses to be incurred for the redecoration or renovation of the COMPANY's PROPERTY, and for the replacement of any MOVABLE PROPERTY or any part thereof or to meet any obligation of the COMPANY in connection therewith.
- 10.4 All such levies shall be payable to the COMPANY annually in one lump sum within 21 (TWENTY ONE) days after written request being made by the COMPANY or the MANAGER and shall be for such amount as shall be certified by the Secretary of the COMPANY or the MANAGER to be an estimate of the HOLDER's share of the total expenses of the COMPANY for the forthcoming OPERATIONAL YEAR payable, pursuant to such levy.
- 10.5 The DIRECTORS may from time to time make special levies in respect of all such costs, expenses and requirements as are either not mentioned in clause "10.2" or are not recoverable pursuant to clauses "10.3" and "10.4", and such levies may be made payable in one sum or by such instalments and at such time or times (as the DIRECTORS shall think fit).
- 10.6 Every levy which is made by the DIRECTORS pursuant to these provisions shall be made upon the members of the COMPANY on a POINT BASIS (as hereinafter defined) in accordance with the following provisions:
- 10.6.1 100 (ONE HUNDRED) points are allocated to each SHARE BLOCK in respect of PEAK SEASON weeks (being weeks no 1, 13, 14, 15, 16, 17, 22, 26, 27, 28, 29, 30, 40, 41, 42, 43, 50, 51 and 52 as set out in Annexure "G").
  - 10.6.2 95 (NINETY FIVE) points are allocated to each SHARE BLOCK in respect of IN-SEASON weeks (being weeks nos 2, 23, 24, 25, 31, 32, 33, 34, 35, 36 and 49 as set out in Annexure "G");
  - 10.6.3 90 (NINETY) points are allocated to each SHARE BLOCK in respect of MID-SEASON weeks (being weeks nos 3, 19, 20, 21, 37, 38 and 39 as set out in Annexure "G");
  - 10.6.4 80 (EIGHTY) points are allocated to each SHARE BLOCK, in respect of SEMI-SEASON weeks (being weeks nos 4, 5, 6, 7, 8, 9, 10, 11, 12, 18 and 44 as set out in Annexure "G");
  - 10.6.5 POINT BASIS means that the tariff per POINT (as described in 10.6.1 - 10.6.4) is calculated by dividing the total Levy Fund for the OPERATIONAL YEAR by the aggregate of the POINTS in respect of all the SHARE BLOCKS representing the total issued share capital of the COMPANY;
  - 10.6.6 The tariff per SHARE BLOCK is calculated by multiplying the tariff per POINT by the number of POINTS allocated to a given SHARE BLOCK.
- 10.7 Any amount due by the HOLDER by way of a levy or instalment of a levy shall be a debt owed by the HOLDER to the COMPANY and shall be recoverable by the COMPANY. The obligation of a HOLDER to pay a levy shall cease upon the lawful termination of the HOLDER's right of USE, save that any arrear levies to the date of such termination shall nevertheless be recoverable from that HOLDER. No levies and no part of any levy paid by a HOLDER shall be refundable by the COMPANY on the termination of a HOLDER's right of USE.
- 10.8 The HOLDER shall be liable for the payment of interest to the COMPANY on all levies (or any portion thereof) in arrear at an interest rate equal to 2% (TWO PER CENTUM) greater than the prime overdraft rate charged by VOLKSKAS LIMITED from time to time on overdraft facilities.
- 10.9 The HOLDER shall not be entitled to gain admission to or use the SUITE until such time as he has paid all such arrears.
- 10.10 The HOLDER shall have no right to reclaim from the COMPANY any amount paid by him by way of any contribution or special levy, but in the event of the HOLDER disposing of his SHARE BLOCK, the transferee thereof shall be entitled to any credit which may have accrued to the HOLDER in terms of "10.4".

## 11. MANAGEMENT REGULATIONS

The HOLDER acknowledges that the MANAGER shall be entitled at all times to lay down terms and conditions of use and maintenance, both in respect of the SUITE and of the PROPERTY generally and including those relating to the care and upkeep of the SUITE and the PROPERTY, use of radios, television sets and aerials, airconditioning machines and other electrical appliances and apparatus, blinds and awnings, recreational facilities, parking, motor vehicles and such other matters as the DIRECTORS and/or the MANAGER deem fit for the general control of the USE of the PROPERTY and the SUITES and for the general convenience, comfort and well-being of all the users of the PROPERTY and from time to time to vary, alter or amend the same. In the event of there being any conflict between the Management Regulations and this USE AGREEMENT, the provisions of this USE AGREEMENT shall prevail.



## 12. DAMAGE TO OR DESTRUCTION OF THE BUILDING

## 12.1

- 12.1.1 In the event of the BUILDING being totally or substantially destroyed by any cause whatever so that the HOLDERS cannot enjoy beneficial USE of the major portion of the SUITES in the BUILDING, this entire agreement shall be automatically cancelled and at an end and the proceeds of any insurance policy shall be paid to members on a pro rata share basis.
- 12.1.2 In the event the BUILDING being partially destroyed by any cause whatever so that the HOLDERS or the majority of them are able to USE the major portion of the SUITES, the COMPANY shall be entitled to elect whether or not to continue with this agreement, provided that it shall convey its decision to the HOLDER in writing not later than 3 (THREE) month's after the date of the damage to the BUILDING.
- 12.1.3 In the event of the COMPANY deciding pursuant to 12.1.2 that the USE AGREEMENT should not terminate, but should continue, the COMPANY shall as soon as practicable after such decision, proceed to rebuild or repair the destroyed or damaged portion of the BUILDING and proceed expeditiously to the completion thereof. The COMPANY shall have the right to change or vary the form of construction of the BUILDING or the SUITE on such rebuilding or repairing, but the HOLDER shall be entitled to have substantially the same accommodation as regards the position and area of the SUITE enjoyed by him prior to the damage or destruction of the BUILDING. Notwithstanding anything to the contrary herein contained the COMPANY shall not be bound to expend any more on the rebuilding or repairs than that sum which it receives from the Insurer arising from the damage to or partial destruction of the BUILDING.
- 12.2 Save as specifically provided for in clause "12.1.3" the HOLDER shall have no claim against the COMPANY for damages:
- 12.2.1 arising by reason of his loss of his right of USE of the SUITE, whether such right be lost permanently or temporarily;
- 12.2.2 arising by reason of the fact that the COMPANY's MOVABLE PROPERTY or the BUILDING was not insured or inadequately insured, even if such failure to insure or to insure adequately arose from the negligence of the COMPANY or any of its agents or employees (but subject always to section 19 of the ACT);
- 12.2.3 arising out of any winding up consequent upon the destruction of the BUILDING.
- 12.3 Nothing contained in clause "12.1" shall relieve the HOLDER of liability to the COMPANY or to any other HOLDER who may be entitled to the USE of the SUITE in respect of any other WEEK in the event of any destruction or damage arising out of any negligence or breach of this USE AGREEMENT by the HOLDER or any person for whom the HOLDER is responsible in law.

## 13. CESSION OF RIGHTS

- 13.1 The HOLDER shall only be entitled to cede his rights herein to the transferee of the SHARE BLOCK to which this USE AGREEMENT is linked:
- 13.1.1 simultaneously and together with the transfer of the SHARE BLOCK unless the DIRECTORS agree to defer the transfer of the SHARE BLOCK;
- 13.1.2 simultaneously and together with the delegation to and acceptance of responsibility by the transferee of all the HOLDER's obligations to the COMPANY hereunder and in terms of the Articles of Association;
- 13.1.3 subject to the relevant provisions of the Articles of Association and to the COMPANY's prior written consent.
- 13.2 Any such cession and delegation shall be in such form and upon such conditions as the COMPANY may from time to time stipulate.

## 14. TERMINATION

- 14.1 This USE AGREEMENT shall only remain in full force and effect (and only in respect of the WEEK) for so long as the HOLDER is the registered or beneficial owner of a SHARE BLOCK or remains entitled to the transfer thereof, provided that:
- 14.1.1 should the HOLDER or any person lawfully using or entitled to the USE of the SUITE fail to vacate the SUITE and/or the BUILDING:
- 14.1.1.1 at the end of any WEEK without first having secured the written consent thereto of the MANAGER, unless the HOLDER shall have validly concluded an agreement to continue in use with or have obtained the consent of the HOLDER of the succeeding WEEK or WEEKS and shall otherwise have complied with the relevant requirements of clause "3" above;
- 14.1.1.2 upon the request of the DIRECTORS or MANAGER in the circumstances referred to in clauses "3.1.4", "4.3" or "10.9" above; or
- 14.1.2 should the HOLDER commit any breach of the USE AGREEMENT, the Articles of Association of the COMPANY, the concurrent Agreement of Sale in terms of which the HOLDER acquired the SHARE BLOCK or of the Management Regulations and should the HOLDER fail to remedy such breach within 14 (FOURTEEN) days of dated receipt of written notice calling upon him to remedy the breach;

the COMPANY shall be entitled notwithstanding any prior indulgence and without prejudice to any other rights it may have, to cancel this USE AGREEMENT forthwith and to obtain repossession of the SUITE and for that purpose to institute legal proceedings for the ejectment of the HOLDER and/or any other user of the SUITE, without prejudice to the COMPANY's right to claim whatever moneys may be owed to it and such damages as the COMPANY may sustain by reason of the HOLDER's default, including legal costs on an attorney-and-client basis irrespective of whether action has been instituted or not.

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14.2 In the circumstances specified in 14.1 the COMPANY will have the following additional rights:

14.2.1 without prejudice to the COMPANY's right to sell the SHARE BLOCK at any stage, the COMPANY shall have the right as agent for and on behalf of the HOLDER and as a procurator in rem suam to hire out the use of the SUITE and to collect all rentals paid by any lessee, and firstly to deduct therefrom letting commission @ 15% (FIFTEEN PER CENTUM) thereafter any moneys that may be owed by the HOLDER to the COMPANY and thereafter any moneys that may be owed by the HOLDER to the person from whom he acquired the SHARE BLOCK; and

14.2.2 without prejudice to any other rights and without having to obtain the consent of any pledgee-seller from whom the HOLDER acquired the SHARE BLOCK, to sell the SHARE BLOCK. The proceeds received by the COMPANY from the said sale shall be applied firstly in payment of agents commission, thereafter in reduction of any indebtedness of the HOLDER to the COMPANY and thereafter in reduction of any amount owed by the HOLDER to the person from whom he acquired the SHARE BLOCK and any surplus shall be paid over to the HOLDER who shall remain liable for any deficiency. For all purposes of this USE AGREEMENT any act or omission on the part of any person entitled to the use of the SUITE or his invitee shall be deemed to be the act or omission of the HOLDER.

14.3 In pursuance of the COMPANY's rights in terms of the foregoing provisions, the COMPANY shall be entitled to give transfer of the shares and cession of this USE AGREEMENT to the purchaser of the SHARE BLOCK for and on behalf of the HOLDER, who shall forthwith deliver his share certificate to the COMPANY. In the event of a failure so to deliver, the COMPANY shall be entitled to make the necessary entries of transfer in its register of members and records without the share certificates being delivered to it and upon such entries being made, the defaulting HOLDER shall cease to be a member and cease to have any further rights hereunder and his share certificates shall be deemed to be cancelled and the purchaser shall be deemed to have good title.

#### 15. ENTIRE CONTRACT

This USE AGREEMENT constitutes the entire contract between the parties. The HOLDER acknowledges that no warranties have been given or representations made to him save as set out in this USE AGREEMENT. No variation hereof shall be of any force or effect unless the same be reduced to writing and signed by all the parties.

#### 16. EXTENSIONS OR INDULGENCES

No extension or indulgence which the COMPANY may grant to the HOLDER in connection with the fulfilment of any of its obligations, shall prejudice or constitute a novation of any of the COMPANY's rights in terms of this USE AGREEMENT.

#### 17. DOMICILIA CITANDI ET EXECUTANDI

17.1 The parties select as their respective domicilia citandi et executandi for the due service of notices and process pursuant to this USE AGREEMENT, the following addresses:

THE COMPANY: 24c, Delport Street, Schweizer-Reneke 2780

THE HOLDER: 24c, Delport Street, Schweizer-Reneke 2780

The addresses to be inserted in this paragraph must be street addresses (and not postal addresses).

17.2 The parties shall be entitled from time to time to change their respective domicilia citandi et executandi to other addresses within the Republic of South Africa (which addresses shall however not be postal addresses) by way of written notice given to the other parties to that effect, which notice shall take effect from date of receipt by the other parties.

17.3 Any notice which must be given pursuant to this Agreement, must be in writing and shall be delivered by hand or despatched by prepaid registered post in which latter case, the notice shall be deemed until the contrary has been proved, to have been received on the seventh day after posting.

#### 18. DIVISIBILITY

the provisions of this USE AGREEMENT:

18.1 shall apply and be linked to each individual SHARE BLOCK in the capital of the COMPANY, and

18.2 are divisible in respect of each of the SHARE BLOCKS in the capital of the COMPANY.

THUS SIGNED AT Schweizer-Reneke ON THE 12th DAY OF August 1988

AS WITNESSES

1. [Signature]  
2. [Signature]

[Signature]  
ESTUARY PROPERTIES SHARE  
BLOCK COMPANY LIMITED

THUS SIGNED AT Schweizer-Reneke ON THE 12th DAY OF August 1988

AS WITNESSES

1. [Signature]  
2. [Signature]

[Signature]  
LTR BELEGGINGS  
(EIENDOMS) BEPERK