
ANNEXURE B

USE AGREEMENT ("Agreement") MADE AND ENTERED INTO BY AND BETWEEN

PEZULA PRIVATE RESIDENCE CLUB SHARE BLOCK COMPANY LIMITED
("the Company")

and

("the Shareholder")

(collectively, "**Parties**" and a reference to "**Party**" shall be a reference to either of them as the context requires)

1 DEFINITIONS

- 1.1 Unless the context clearly indicates otherwise, the following words and/or expressions shall have the following meanings in this agreement:
- 1.1.1 "**the Act**" means the Share Blocks Control Act No. 59 of 1980, as amended or substituted; and any regulations promulgated in terms thereof;
 - 1.1.2 "**the Allocated Loan**" means the portion of the Company's total loan obligation (as defined in the Act) which has been allocated to the Share Block in terms of the Act;
 - 1.1.3 "**the Common Property**" means the whole of the balance of the Property which is not occupied by the Residences and shall be understood in the context in which the term "common property" is used in the Sectional Titles Act No. 95 of 1986, as amended, and the common property shall be defined in accordance with the definition of that term in the said Act, mutatis mutandis applied to the Residences;
 - 1.1.4 "**Directors**" means the directors of the Company from time to time;
 - 1.1.5 "**the Loan Obligation**" means the Company's total loan obligation as referred to in clause 10;
 - 1.1.6 "**the Managing Agent**" means Pezula Resort Hotel and Spa (Pty) Ltd, and its successors in title and vice versa;
 - 1.1.7 "**the MOI**" means the memorandum of incorporation of the Company, as amended or substituted from time to time;
 - 1.1.8 "**the Nights**" means the twenty-one (21) nights per Use Year (commencing 1 March of each year) per Share Block owned during which the Shareholder is entitled to occupy a Residence

as described herein or to exercise the Benefits contemplated in the Rules in lieu of occupancy;

1.1.9 "**the Property**" means the five luxury Residences established on Erf 12414, Knysna in the municipality of Knysna, Province of Western Cape, in extent 9457 square metres (hereinafter referred to as "**Residences**") which Residences are owned by the Company;

1.1.10 "**the Residences**" means any of the five fully furnished and equipped luxury Residences on the Property, as further described in this Agreement;

1.1.11 "**the Rules**" means the rules made by the Directors from time to time in accordance with the provisions of the MOI;

1.1.12 "**Sale Agreement**" shall mean the Sale Agreement in terms of which a Shareholder acquires a Share Block and which specifies, amongst other things, the Share Block number acquired by the Shareholder and the purchase price payable in respect of such Share Block.

1.1.13 "**the Share Block**" means each of the share blocks:

1.1.13.1. numbered as indicated in the Company's MOI ;

1.1.13.2. which consist of the number of shares in the Company indicated in the said MOI, which shares have a nominal value as shown in the said MOI ;

1.1.13.3. which in terms of the Company's MOI affords to its beneficial owner the right to use the Residences in terms of this Use Agreement for the Nights; and

1.1.14 "**the Shareholder**" means the person identified as the "Shareholder" on the cover page of this Agreement and who has become a shareholder in the Company and his or her successors and assigns;

1.1.15 "**Signature Date**" means the date of signature of this Agreement by the last Party signing it.

1.2 The use of the masculine gender shall, if consistent with the context, be interpreted as the feminine gender and vice versa and the use of the singular shall, if consistent with the context, be interpreted as the plural, and vice versa.

1.3 All words or expressions used in this Agreement shall, unless the contrary is clearly indicated in the Agreement, have the meanings afforded them in the Act.

1.4 Terms which are used but not defined in this Agreement, but which are defined in the Sale Agreement or the Rules, shall have the meaning ascribed to them in the Sale Agreement or the Rules, as the case may be, for purposes of this Agreement.

2 RIGHT TO OCCUPY AND USE THE RESIDENCES AND COMMON PROPERTY

2.1 The Shareholder has the sole and exclusive right to the use, occupation and enjoyment of the Residences free of rental for the Nights linked to the Share Block in terms of this Agreement, the Rules and the Company's MOI.

2.2 The Shareholder acknowledges that he is aware of the fact that the exclusive right to use, occupy and enjoy the Residences also vests in other Shareholders of the Company in accordance with the provisions of this Agreement, the Rules and the MOI, at all other times.

- 2.3 The Shareholder is entitled, during the Nights, to be present on the common property and to use the common property in conjunction with the Residences occupied by such Shareholder. The right to be present on and use the Common Property in conjunction with the Residences occupied by such Shareholder is given to all other Shareholders of the Company as well and the Shareholder's right to such use is therefore not exclusive and is to be exercised in conjunction with the rights of the said other Shareholders.
- 2.4 The Shareholder's rights described in clauses 2.1 to 2.3 above shall at all times be exercised subject to the terms and conditions contained or referred to in this agreement and to the Rules issued from time to time by the Directors as provided for in the MOI.
- 2.5 The rights acquired by the Shareholder in terms of this agreement endure for so long as the Shareholder remains a beneficial owner of the Share Block and complies with all the terms and conditions contained or referred to in this Agreement and the Rules.

3 USE

- 3.1 The Residences shall be used by the Shareholder, only for the accommodation of the Shareholder and his invitees and for no other purpose whatsoever. The Residences shall not be occupied at any time by more than the number of persons stipulated in the Rules.
- 3.2 The use of the Residences shall at all times be subject to the Rules as may be determined by the Directors from time to time.
- 3.3 Should the Shareholder be a company or other legal person, the Residences shall be used and occupied by such person or persons as may be indicated in writing by such legal person from time to time, but the use and occupation by such persons shall be subject to all the terms contained or referred to in this Agreement and furthermore the use of the Residences shall at all times be subject to the Rules as may be determined by the Directors from time to time.

4 ELECTRICITY AND WATER

- 4.1 The Company's expenditure relating to the consumption of electricity and water by Shareholders in or around the Residences and the Common Property shall be included in the Levy contemplated in clause 9 for which each Shareholder shall be liable.
- 4.2 The Company shall not be liable towards the Shareholder for any damage which may be suffered by the Shareholder or any of its invitees if the services in respect of the Residences, such as the provision of electricity and water and sewerage facilities, are interrupted whether or not such interruption is due to the Company's fault. Furthermore, the Shareholder shall not be entitled to cancel this Agreement or to withhold any payment due in terms of this Agreement by virtue of such interruption.

5 LETTING

The Shareholder shall not be entitled to let or sub-let or otherwise temporarily alienate for financial reward his right to occupy the Residences to a third party. The provisions of the Rules shall apply in the event of any breach of this clause 5.

6 MAINTENANCE

- 6.1 Excluding fair wear and tear, a Shareholder shall be liable for any damage to or loss of assets caused intentionally or negligently to the Residences or to any fittings, fixtures, appliances and furnishings in the Residences during the occupation of such Shareholder or any of his invitees of the Residences.

- 6.2 The Shareholders shall be obliged to keep the Residences and all fittings, fixtures, appliances and furnishings in it in a clean and neat condition.
- 6.3 Subject to the provisions of clause 6.1 and clause 6.2 above, all expenses for the maintenance, upkeep, repair or replacement of the Residences and all fittings, fixtures, appurtenances and furnishings shall be made good by the Company and be funded from the Levies contemplated in clause 9 below.
- 6.4 In the event of a dispute as to whether a Shareholder or the Company (the latter via the Levy Fund, as defined in clause 9.1) is liable for any expenditure relating to the expenses referred to in clauses 6.1 to 6.3 above, such dispute shall be decided by the Directors whose decision shall be final and binding on the Parties.

7 ALTERATIONS

The Shareholder and its invitees shall under no circumstances alter or effect any changes to the Residences or Common Property or to any fittings, fixtures or appurtenances in it whether such alterations or changes are of a structural nature or not. Furthermore, the Shareholder shall not, and shall procure that his invitees do not, drive any nails, screws or similar objects into any part of the Residences or Common Property or any of the fittings, fixtures or appurtenances in it nor shall the Shareholder remove anything from the Residences or the Common Property, and any such condition shall constitute damage caused to the unit by such Shareholder who shall be liable to the Company for all costs involved to make good such damages caused.

8 CONDITION OF RESIDENCES/VOETSTOOTS

The Shareholder accepts the Residences and everything in them and also the Common Property on a voetstoots basis (as is) and in the condition in which they stand on the Signature Date. Subject to the Company's maintenance duty referred to in clause 6.3 above, the Shareholder shall have no claim whatsoever against the Company by virtue of the condition of the Residences or the Common Property or any fittings, fixtures, appurtenances or furnishings in the Residences or the Common Property.

9 LEVIES

- 9.1 The Directors shall establish and maintain a fund of moneys ("**the Levy Fund**") collected by them annually from the Company's Shareholders. This duty may be delegated to the Managing Agent. The amount levied on Shareholders from time to time shall be determined in the sole and absolute discretion of the Directors and shall be sufficient to provide for:
 - 9.1.1 the proper maintenance, control, management and administration of the Company;
 - 9.1.2 the proper maintenance, upkeep, repair or replacement of the Residences and the Common Property and all fittings, fixtures, appliances and furnishings in respect thereof;
 - 9.1.3 any cost of electricity, water, fuel, sewerage services and refuse removal services for the Property and Residences;
 - 9.1.4 any professional or any other services including legal or accountings services which may be required by the Company as well as provisions for any loss which the Company may have suffered or may in future suffer;
 - 9.1.5 any payment or fee to any 3rd party for the provision and supply of housekeeping and other services, use or sharing of outside facilities for the benefit of the Company and its Shareholders during their use of the Residences;

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- 9.1.6 insurance premiums for which the Company may be liable from time to time;
- 9.1.7 the fees payable from time to time to the Managing Agent;
- 9.1.8 any other costs, expenditure, disbursements, taxes, levies or liability of the Company which may arise from time to time and generally to give effect to the proper use and enjoyment of the Residence by the Shareholders; and
- 9.1.9 any expenses not specifically referred to herein, but as may be contemplated in the Act.
- 9.2 The Directors shall in respect of every financial year estimate the amount which will be required by the Company in order to defray the costs referred to in clause 9.1 above as well as any deficiency which may exist in the Levy Fund with regard to the previous financial year. The Directors shall by way of the Levies collect from the Shareholders an amount as near as possible to the said estimated amount. The Directors should be entitled in addition to the matters specifically provided for in clause 9.1 above to include an amount to be retained as a provision for any future contingent expenditure not of a current nature.
- 9.3 Any Shareholder who acquires his Share Block during any Use Year in respect of which all Nights for that calendar year has already lapsed, shall not be liable for payment of any Levies for that (first) calendar year. Conversely, any Shareholder acquiring a Share Block during any calendar year in respect of any Nights relating to that calendar year occurs after the date of acquisition of the Share Block by such Shareholder shall be liable for the payment of the full Levies for that (first) calendar year, unless agreed otherwise with the Seller and recorded in the Sale Agreement.
- 9.4 Should the Directors deem it necessary or expedient, they shall be entitled, in addition to the amounts levied in terms of clauses 9.1 and 9.2 above, to levy special amounts from the Shareholders to defray any additional expenditure of the Company which was not included in the estimate of the Company's annual expenditure. A special levy may be collected in a single payment or in instalments of such amounts and payable over such periods as the directors may determine.
- 9.5 The Company shall as and when determined by the Directors despatch a written notice by email to each Shareholder notifying him of the amount levied in terms of this clause 9 and such notice shall be subject to the provisions of this Agreement relating to notice.
- 9.6 The failure by the Company to give the above-mentioned notice timeously to the Shareholder does not preclude the Shareholder's liability for payment of the Levies or give rise to any other rights on behalf of the Shareholder.
- 9.7 Payment of any amount due by the Shareholder in terms of this clause 9 may be claimed from the Shareholder by the Company. The Shareholder's obligation to pay the Levies cease when the Shareholder's rights in terms of this Agreement cease; provided further that in the event of the cancellation of this Agreement by the Company due to any fault by the Shareholder, then the Company's right to claim damages from the Shareholder shall not be affected by this provision. The Shareholder shall not be entitled to claim repayment of any amount contributed by him to the Levy Fund, whether or not such amount may have been paid by the Shareholder in respect of any period after the date upon which his rights in terms of this Agreement were terminated.
- 9.8 Without prejudice to any other rights which the Company may have, the Shareholder shall not be entitled to occupy or use the Residences or be present on the Common Property while any amounts due by him in terms of this clause are in arrears.
- 9.9 Any reference to Levies in this Agreement shall mean Levy and/or Levy Fund as referred to in the MOI of the Company and/or the Act and *vice versa*.
- 9.10 Levy payment

- 9.10.1 Levy invoices will be issued in March of the current Use Year.
- 9.10.2 Levy Invoices will be payable by 31 May of the current Use Year, with no interest charged,
- 9.10.3 Levies not settled by a Shareholder by 31 May of the current Use Year will (i) incur interest charges at the prime rate of interest charged by the Company's bankers plus 3% per annum calculated from 1 June of the current Use Year, (ii) the automatic cancellation of current Use Year bookings, and (iii) no further reservations will be permitted until all outstanding amounts due by a Shareholder, including accrued interest, have been settled.
- 9.10.4 In the event that levies and accrued interest due by a Shareholder have not been settled by 30 November of the current Use Year to which the Levies relate, the Company will automatically and without delay commence the disposal of the defaulting Share Block in order to recover sums due, in accordance with its rights in the Use Agreement, as set out in clause 11.

10 LOAN OBLIGATION

- 10.1 The Shareholder acknowledges that he is aware, in terms of the Company's MOI, and/or the Rules and/or Use Agreement, that he and the other Shareholders shall be bound to a loan agreement with the Company in terms of which an amount of money (the "**Loan Obligation**") has been or will be loaned to the Company which amount shall be determined by the Directors from time to time; provided that any increase in the Loan Obligation should not be effected without the required resolution being passed by the Shareholders in terms of clause 10.2 and the MOI of the Company.
- 10.2 Any resolution of the Company referred to in this clause shall be a resolution of not less than 75% (seventy-five percent) in number of the Shareholders of the Company present (whether in person or by proxy) and actually voting at any meeting of the Shareholders (which Shareholders shall not include share block developers as defined in the Act) and who have the right to vote at the relevant meeting and which Shareholders shall together hold not less than 75% (seventy-five percent) of the total votes cast by all Shareholders present at the relevant meeting of the Shareholders excluding Shareholders who are share block developers.
- 10.3 As soon as the total amount due by the Shareholder in respect of his Loan Obligation has been paid to the Company the Company shall upon the written request of the Shareholder furnish the Shareholder with a written certificate to that effect.
- 10.4 The Parties record that, as at the Signature Date, the Company's Loan Obligation is R0 (Rand nil).

11 LIEN

- 11.1 Save as is provided herein, the Company shall have a first lien on every share and Share Block for all amounts owed to it, including the costs of any proceedings instituted by the Company against any Shareholder or other steps taken by the Company in order to implement and give effect to the provisions of this Agreement (including this clause 11) and whether the period for the payment thereof has actually arrived or not.
- 11.2 The Shareholder shall, pursuant to the lien contemplated in this clause 11, provide the Company with the following original documents:
 - 11.2.1 the original share certificate(s) in respect of the Share Block; and
 - 11.2.2 a signed securities transfer form in respect of the Share Block, signed in accordance with the provisions of the Companies Act No. 71 of 2008 and the MOI, undated and blank as to transferee.

- 11.3 For the purposes of enforcing such lien the Directors may take all such steps and sign all such documents as may be required to sell the Share Block at such time or times and in such manner and upon such terms and conditions as they may think fit. No sale shall be made in terms of this clause unless such sum is presently payable and remains unpaid notwithstanding 14 (fourteen) days' notice to the Shareholder, stating the amount and demanding payment of such sum, and stating the Directors' intention to sell if payment has not been made within the said period of 14 (fourteen) days.
- 11.4 The Shareholder hereby, for purposes of this clause 11, irrevocably and in rem suam nominate, constitute and appoint any person nominated by the Company for purposes of giving effect to this clause 11 (and in particular clause 11.2), as the Shareholder's sole and exclusive attorney and agent in my name, place and stead, to sign and execute all such documents and to do all such things as such person in his sole and absolute discretion may consider to be necessary or desirable to give effect to the terms set out in this clause 11. The Shareholder shall not be entitled to in any way Encumber the Share Block or the Allocated Loan. For purposes of this Agreement, "**Encumber**" shall mean to pledge, mortgage, hypothecate, charge, cede in security, create a lien over, subordinate, grant an option over, grant a right of retention over, or otherwise encumber in any way whatsoever, or hedge, or lend, or enter into any arrangement or transaction whatsoever (whether or not subject to any suspensive or resolutive condition) which may have the same or similar effect as any of the aforementioned.
- 11.5 Should the Share Block be transferred to a third party pursuant to this clause 11, the Shareholder's rights and obligations in respect of the Allocated Loan will simultaneously be ceded, assigned and delegated to such third party.
- 11.6 The net proceeds of any sale pursuant to this clause 11 shall firstly be applied in or towards the satisfaction of the amount owed to the Company and any expenses incurred by the Company (including all direct and incidental legal, marketing, sales and other costs) in order to give effect to the provisions of this clause 11, and the balance, if any, shall then be paid to any pledgee or the Shareholder as the case may be. Should the proceeds be insufficient to redeem the said amounts, the Shareholder shall remain liable for the shortfall which will be paid to the Company without delay.
- 11.7 Upon any such sale as aforesaid, the Directors may give effect to the transfer of the Share Block to the purchaser and enter the purchaser's name in the register of Shareholders of the Company and the purchaser shall not be bound to see to the application for the purchase money, nor shall his title to the Share Block be affected by the irregularities or invalidity in the proceedings in relation to the sale.
- 11.8 An affidavit by a Director or the secretary of the Company that the Share Block has been duly sold in accordance with this clause shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to such share or its proceeds. Such affidavit, and a receipt of the Company for the purchase price of the Share Block, shall constitute a good title to such Share Block and the validity of the sale may not be impeached by any person.

12 CESSION OF AMOUNTS ADVANCED BY SHAREHOLDERS TO THE COMPANY

- 12.1 In addition to the lien created in clause 11 in favour of the Company on the Shareholder's Share Block, all amounts which are advanced from time to time by the Shareholder to the Company are hereby ceded to the Company as security for the Shareholder's outstanding obligations towards the Company from time to time. Such cession shall be a continual covering security. The Shareholder shall not be entitled to cede or otherwise transfer or alienate his right, title and interest in any such amounts or any part thereof without the Company's prior written consent excepting together with an alienation by the Shareholder of this shareholding in the Company, his Allocated Loan and his rights in terms of this Agreement. Should the Company agree to a cession or other alienation of such amounts the cession or other alienation shall nevertheless not be binding on the Company in spite of the Company's consent having been granted, if the Shareholder breaches the provisions of this Agreement in such a manner that the Company becomes entitled to enforce the provisions of clause 16 of this Agreement against the Shareholder and in such event any claim by a cessionary or other receiver of the said amount, shall be subject to the Company's claim and shall only be satisfied after all amounts due by the Shareholder to the Company have been paid in full. Should the

Company act against the Shareholder in terms of the provisions of clause 17 of this Agreement, the Company shall, however, be obliged to give the same notice to the said cessionary or other receiver as it is obliged to give to the Shareholder in terms of clause 17 in order to afford the said cessionary or other receiver an opportunity of remedying the Shareholder's breach.

- 12.2 Subject to the Company's lien on the Shareholder's Share Block, no Share Block shall be sold or otherwise alienated, unless at the same time and as part of the same indivisible transaction, the Shareholder's rights and obligations in respect of the Loan Obligation Allocated Loan and this Use Agreement are sold or alienated and vice versa.

13 CESSION OF RIGHTS BY SHAREHOLDERS

- 13.1 A Shareholder shall only be entitled to cede or otherwise transfer, alienate or waive his right, title and interest in this Agreement together with:
- 13.1.1 the alienation or waiver by him of his Share Block in the manner prescribed in and subject to the terms of the Company's MOI and furthermore subject to the terms of this Agreement; and
 - 13.1.2 the alienation or waiver by him of his rights in terms of the Loan Obligation and the Share Block on condition that they are alienated in favour of the same party in a single indivisible transaction. No such alienation or waiver shall be effective unless the right is thereby given to the person in whose favour the alienation is made, to occupy the Residences subject to all the provisions contained or referred to in this Agreement, the Rules and in the Company's MOI.
- 13.2 The Company shall not register any party who acquires the Share Block from the Shareholder as a Shareholder of the Company until satisfactory evidence has been produced to the Company that the Shareholder's rights and obligations in respect of the Loan Obligation have been ceded and delegated to that party and the Purchaser has concluded a new Use Agreement with the Company.

14 THE COMPANY'S RIGHTS AND OBLIGATIONS

- 14.1 The Company is:
- 14.1.1 obliged to maintain the Residences in a good and tidy condition and defray the costs in this regard out of the Levy Fund;
 - 14.1.2 obliged to procure such insurance relating to the Residences and all other improvements thereon against such risks and for such amounts as the Directors may from time to time, taking into account the advice of the Company's insurers and exercising their fiduciary duties, determine;
 - 14.1.3 entitled, through any representative or agent, at all reasonable times to enter any Residence occupied by a Shareholder in order to inspect it. Should the Company not be satisfied with the condition of such Residence, it shall be entitled to require the occupying Shareholder immediately to comply with his obligations relating to the condition of the Residence. Should the Shareholder fail to comply with the said request by the Company, the Company shall be entitled to notify the Shareholder in writing to restore the Residence to its required condition and should the Shareholder fail to comply with such notice within 4 (four) hours after such written notice has been given, the Company shall be entitled, without prejudice to any other rights which it may have, to restore the Residence into the required condition and to claim any expenditure so incurred from the Shareholder;
 - 14.1.4 if authorised thereto by the Directors or the Company's secretary or manager, the Company, through its authorised agents or employees, may enter a Residence at any time in order to effect necessary maintenance or repairs to it in which event any occupying Shareholder shall

have no claim against the Company for damages, remission of his liability in respect of the Levies or otherwise; and

14.1.5 obliged at all times to keep the Residences adequately furnished and equipped for occupation and use by the permitted number of persons (as contemplated in the Rules) provided that:

14.1.5.1. the Directors shall in their discretion from time to time decide the exact nature, quantity and quality of the furnishings;

14.1.5.2. all movables present on the Residences and the Common Property are and remain the property of the Company;

14.1.5.3. the Company may, if the Directors so decide from time to time, add to, replace or vary such furnishings; and

14.1.5.4. a Shareholder may not remove any of the furnishings or appliances from the Residences or the Property and shall use them with due care for their preservation and good condition.

15 SHAREHOLDERS' INFORMATION OBLIGATIONS

The Shareholder shall inform the Company, as soon as possible and in any event within three Business Days of any such change occurring, of any change in the Shareholder's details, including but not limited to the identity of the Shareholder's representatives (if applicable) and/or the Shareholder's contact details (i.e. physical address, facsimile number, telephone numbers and/or email address). This is particularly important for email addresses, the Company's most common method of communication with Shareholders.

16 LOSS, DAMAGE, DEATH OR INJURY

The Company, its Directors, officers and representatives ("**Indemnified Parties**"), shall not be liable for any loss or damage suffered by the Shareholder or any person occupying a Residence or the Property while the Shareholder or such other person is in occupation of the Residences or the Property. Furthermore, the Indemnified Parties shall not be liable for the injury or death of the said parties while in occupation of the Residences or the Property. The Indemnified Parties' liability is excluded whether or not the said loss, damage, injury or death was caused directly or indirectly by the negligence or gross negligence of the Indemnified Parties or any of their respective directors, officials, shareholders, employees or agents and whether or not it was caused by the fact that the Residences or the Property was in a defective condition. The Shareholder shall furthermore not be entitled to withhold payment of any amount due to the Company or to cancel this Agreement by virtue of any such loss, damage, injury or death. The Shareholder hereby indemnifies the Indemnified Parties, as well as their respective directors, officials, shareholders, employees and agents, and holds them harmless, against any claim which may be made against the Indemnified Parties or any of their respective directors, officials, shareholders, employees or agents by the Shareholder's invitees or any party who obtains his rights to occupy or use the Residences or the Property through the Shareholder. This clause 16 constitutes a stipulation alteri for the benefit of the each of the Indemnified Parties and their respective directors, officials, shareholders, employees or agents and is capable of acceptance by any of them at any time.

17 TERMINATION

This Agreement shall only be of force and effect while the Shareholder remains the beneficial owner of the Share Block; provided that:

17.1 should the Shareholder fail to comply punctually with any provision of this Agreement or of the Rules or of the Company's MOI and should such failure be of such a nature that it can be remedied and

should the Shareholder have been notified in writing by prepaid registered mail to remedy the failure and should it not have been remedied 14 (fourteen) days after the said notice; or

17.2 should the Shareholder fail to comply punctually with any of provision of this Agreement or of the Rules or of the Company's MOI and should the failure be of such a nature that it cannot be remedied and should the Shareholder have been notified in writing by prepaid registered mail to desist from the particular breach and not to repeat it and should he at any time within a period of 12 (twelve) months after such notice repeat the relevant breach or failure; then the Company shall be entitled notwithstanding any previous latitude or indulgence and without prejudice to any other rights which it may have, to cancel this Agreement summarily and in the event of such cancellation:

17.2.1 the Company shall be entitled to repossess the use of the Residences and Common Property and for this purpose to take any steps necessary to evict the Shareholder or any person occupying through the Shareholder from the Residences and Common Property without prejudice to the Company's rights to claim the immediate payment of all amounts due to it and which are in arrear together with such damages as the Company may have suffered due to the Shareholder's breach including legal costs on an attorney and own client scale; and

17.2.2 the Company shall be entitled, without prejudice to any other rights which it has, to sell the Shareholder's Share Block together with all amounts which may have been advanced by the Shareholder to the Company and his rights under this Agreement and the Loan Obligation. Such sale may be made on behalf of and in the name of the Shareholder. The proceeds of the sale shall in the first instance be utilised to redeem any amount due by the Shareholder to the person from whom the Shareholder acquired the Share Block and thereafter to redeem any amount due by the Shareholder to the Company. Should any balance remain after the said amounts have been reduced it shall be paid to the Shareholder, but should the proceeds be insufficient to redeem the said amounts, the Shareholder shall remain liable for the shortfall.

17.3 This document constitutes an irrevocable power of attorney by the Shareholder in favour of the Company given in rem suam, to represent the Shareholder and to bind him to the sale contemplated in clause 17.2.2 above. The Shareholder hereby, for purposes of this clause 16, irrevocably and in rem suam nominate, constitute and appoint any person nominated by the Company for purposes of giving effect to this clause 17 (and in particular clause 17.3), as the Shareholder's sole and exclusive attorney and agent in my name, place and stead, to sign and execute all such documents and to do all such things as such person in his sole and absolute discretion may consider to be necessary or desirable to give effect to the terms set out in this clause 17.

17.4 For purposes of this clause 17, any breach of the Rules by any person which the Shareholder permits to have access to, or be present at, the Residences and/or Common Property will constitute a breach of the Rules and this Agreement by the Shareholder.

18 RULES

18.1 Apart from the provisions of the Act, the Company's MOI and of this Agreement, the Residences and the Property (including the use of the Common Property) shall be controlled and managed by way of the Rules made by the Directors from time to time.

18.2 The Directors shall make the said Rules which shall become binding as soon as they have been adopted by a resolution of the Directors. Any Rule made by the Directors as set out above may be set aside by a resolution passed by at least 75% of the voting rights exercised by Shareholders actually voting on any such decision (whether in person or by proxy).

18.3 The Directors may from time to time revoke any Rule or alter it or add to it, provided that any Rule so revoked, altered or added may be set aside by a resolution passed by at least 75% of the voting rights exercised by Shareholders actually voting on any such decision (whether in person or by proxy).

- 18.4 The above-mentioned Rules may relate to the control, management, administration, use and enjoyment of the Residences and the Common Property, reservations procedures and letting of the Residences to persons other than the Shareholders. Without derogating from the generality of the foregoing, the said Rules may in particular relate to the following:
- 18.4.1 the neatness and general appearance of the Residences and the Common Property;
 - 18.4.2 the general behaviour of the Shareholder and other occupiers and users of the Residences and the Common Property so as to ensure that no Shareholder or other occupier creates a nuisance in a Residences or on the Common Property;
 - 18.4.3 the use of any facilities of the Residences and the Common Property which may be available to the Shareholder; and
 - 18.4.4 of the Residences.
- 18.5 Should any Rule made in terms of this clause 18 be in conflict with any provision of this Agreement, the provision of the Rules shall prevail.

19 DAMAGE TO THE RESIDENCES / INSURANCE

- 19.1 Should the Residences be materially damaged or destroyed, the Company shall be obliged as soon as practically possible to restore or rebuild it. The Shareholder shall, however, have no claim for damages, or for cancellation of this Agreement if as a result of such damage or destruction he is not able to occupy the Residences nor shall he have any such claim against the Company by virtue of any other consequence of such damage or destruction. The Company shall be entitled when restoring or rebuilding the Residences to alter the form or method of construction thereof, provided that the altered Residences shall be materially of the same dimensions and be materially in the same location on the Common Property as the previous Residences. In spite of the foregoing provisions of this clause, the Company shall not be obliged in restoring or rebuilding any damaged or destroyed Residences to expend more than the amount received by the Company from its insurances under a claim lodged in respect of the said damage or destruction. The Company is obliged to restore or rebuild damaged or destroyed Residences as set out in this clause 19.1 notwithstanding that the damage or destruction may have been caused by the fault of a Shareholder. Without prejudice to any other rights which the Company may under such circumstances have against the Shareholder, the Company shall be entitled to claim from the Shareholder any damages suffered by it as a result of such damage or destruction caused by his fault.
- 19.2 The Company is obliged to keep all the Residences insured for their full replacement value from time to time against damage and/or destruction by fire and such other risks as dwellings are customarily insured against. The Company shall timeously pay the premiums and shall from time to time adjust the amount of the insurance cover if this is necessary to keep the Residences insured at all times for their full replacement value.
- 19.3 Should the Shareholder be precluded from occupying the Residences during any period of his Nights due to it having been damaged or destroyed as contemplated in clause 18.1 above, the Company shall refund to the Shareholder *pro rata* his annual levy contribution (not including any special levy as contemplated in clause 9.4).
- 19.4 In the event of a dispute concerning any matter arising out of the provisions of clause 19.1, 19.2 or 19.3 above, the dispute will be decided by an architect appointed by the Company's directors and his decision will be final and binding on the Parties. The cost in obtaining the Architect's decision shall be paid by the Party against whom the decision is mainly given.

20 SECTIONAL TITLE

The Company may cause a sectional title register to be opened in respect of the Residences and the Common Property.

21 WARRANTY

The Company hereby warrants unto the Shareholder that the Company shall not agree to any amendment, addition or consensual cancellation of this Agreement without the prior written consent of not less than 75% (seventy-five percent) in number of the Company's Shareholders from time to time.

22 INDULGENCE

No indulgence by the Company with regard to the performance by the Shareholder of any obligation in terms of this Agreement, shall under any circumstances prejudice the Company's rights or novate this Agreement and the Company shall in spite of such indulgence at all times be entitled to enforce punctual performance by the Shareholder of all obligations assumed under this Agreement.

23 CONFLICTING PROVISIONS

In the event of a conflict between the provisions of this Agreement and the provisions of the Act or the MOI, the provisions of the Act and relevant documents shall prevail in the following order:

23.1 the Act;

23.2 the MOI;

23.3 the Rules; and

23.4 this Agreement.

24 COMMENCEMENT OF RIGHTS AND OBLIGATIONS

Notwithstanding that the Shareholder's right to occupy, use and enjoy the Residences is limited to the Nights during every year, the Parties' rights and obligations in terms of this Agreement commence as soon as this Agreement has been signed by the Company and the Shareholder.

25 MANAGEMENT

It is recorded that the Company has entered into a management agreement with the Managing Agent for the management of the Residences and the Common Property and the provision of certain facilities to occupiers of Residences. The Managing Agent shall be entitled to claim a fee amount of 15% of the total Levies, calculated before inclusion of the management fee itself and after deducting all amounts payable in respect of electricity for the Use Year in question and other adjustments as agreed from time to time between the Company and the Managing Agent (excluding VAT).

THUS DONE AND SIGNED AT _____ ON THIS THE ____ DAY OF
_____ 20__.

SHAREHOLDER

AS WITNESSES:

1. _____ 2. _____

THUS DONE AND SIGNED AT _____ ON THIS THE ____ DAY OF
_____ 20__.

COMPANY

AS WITNESSES:

1. _____ 2. _____