

# legal

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## SHAREHOLDERS AND USE AGREEMENT

between

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("the company")

and

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("Aaaaaa")

### 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 shall mean the Companies Act, No 61 of 1973, as amended;

1.1.2 the auditors - shall mean the auditors for the time being and from time to time of the Company;

1.1.3 the development shall mean the development at \_\_\_\_\_ ;

1.1.4 the holiday roster - shall mean the roster annexed as Appendix 1 showing slot number \_\_\_\_\_ identifying the primary use time

1.1.5 the Managing agent - shall mean BBBBB Fractional Ownership and its successors in title;

1.1.6 the member - shall mean Aaaaaa who has become a shareholder in the company and his or her successors in title and assigns;

1.1.7 Memorandum and Articles - shall mean the Memorandum and Articles of Association of the company as amended from time to time and available for inspection upon request;

1.1.8 the levy fund - shall mean the fund to be constituted pursuant to clause 14;

1.1.9 the levies shall mean the monies payable by each member to the company pursuant to the provisions of this agreement, it being recorded and agreed that the members are obliged to pay the levies directly to the Managing agent;

1.1.10 the primary use time - shall mean the weeks stipulated in the holiday roster per share owned, during which the member is entitled to use and occupy the property;

1.1.11 the property - shall mean CCCCC and includes the dwelling house erected or to be erected thereon;

1.1.12 the share - shall mean the share which in terms of the Memorandum and Articles affords to the member the right to use the property in terms of this use agreement in and during the primary use time.

1.1.13 the shareholders - shall mean the those persons who are or who are to hereafter become shareholders in the company, including the member, it being recorded that as a prerequisite to becoming a shareholder in the company each shareholder shall enter into an agreement in terms identical to the terms of this shareholders and use agreement;

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 capitalized words or expressions used in this agreement shall, unless the contrary is clearly indicated in this agreement, have the meanings afforded them in the agreement of sale and its schedules.

## 2. Conflict with Memorandum or Articles of Association

2.1 The shareholders undertake forthwith hereafter to take all such steps and do all such things as may be necessary to alter the Memorandum and Articles of Association of the company so as to reflect, insofar as may be applicable, the provisions of this agreement. The Member shall be bound to exercise its voting rights in favour of any special resolution to amend the Memorandum and Articles of Association accordance with this clause.

2.2 Notwithstanding the provisions of the preceding clause, until such time as the memorandum and articles of association of the Company are amended as aforesaid, if there is any conflict between the provisions of this agreement and the memorandum and articles of association of the Company at any time, the provisions of this agreement shall prevail.

### 3. Directors

3.1 The Company shall have at least \_\_ (\_\_\_\_) but not more than \_\_ (\_\_\_\_) Directors who shall serve for a term running continuing until the next annual general meeting.

3.2 The Shareholders shall be entitled to nominate and appoint the Directors of the Company by a majority resolution at the annual general meeting, provided that the Managing agent shall be entitled to nominate and have appointed at least 1 (one) of the Directors of the Company at all times.

3.3 Any director may at any time summon a meeting of the Directors on reasonable notice to the other directors. A majority of the directors shall constitute a quorum at a meeting of the directors, provided that the director nominated by the Managing agent shall always be required to be present for purposes of constituting a quorum, unless he otherwise specifically directs.

3.4 Resolutions must be passed by a majority of directors present or by proxy, provided that such majority shall include the director nominated by the Managing agent. Should there be only two directors, unanimity must be reached in order for resolutions to be legal and binding.

3.5 The directors shall be entitled to open 1 (one) bank account for the Company at such bank as they in their sole discretion may decide.

3.6 All cheques, bills, drafts, promissory notes, contracts and other documents requiring signature of the Company and which do not relate to the day to day business of the Company, shall be signed by at least 2 (two) directors of the Company.

### 4. Shareholder's Meetings

4.1 A general shareholders meeting will be held annually during each financial year of the Company. This annual meeting will be held specifically for the appointment of directors and other officials with such responsibilities as the Shareholders may agree from time to time. The appointments made during the annual meeting will be in effect until the

next annual meeting.

#### 4.2 Excluding annual general meetings and meetings

for special resolutions for which 21 (twenty one) days' written notice is required, all other meetings will be convened with 14 (fourteen) days' written notice (notices can for this purpose be emailed or faxed to the last known address or fax number and afterwards mailed by registered post to the last known postal address).

#### 4.3 The parties shall appoint a chairman for a meeting on a rotating basis. The chairman shall not have a casting or second vote in the case of an equality of votes.

#### 4.4 A quorum at shareholders' meetings of the

Company (excluding meetings for special resolutions where 75% of all the shareholders must be present) is at least 50% (fifty percent) of all shareholders of the Company plus 1 (one), in person by virtue of proxy, on the understanding that, should a quorum not be present within 30 (thirty) minutes after the appointed starting time of the meeting, the meeting will be adjourned.

#### 4.5 Resolutions of shareholders of the company

(other than special resolutions) in order to be of force and effect must be approved by the majority of the shareholders of the company present at any meeting in person or by proxy.

#### 4.6 Special resolutions of shareholders of the company in order to be of force and effect must be approved by 100% (one hundred percent) of the shareholders of the company.

### 5. Entrenched Matters

#### 5.1 Notwithstanding anything to the contrary

in this agreement or in the company's articles of association, no resolution passed by the shareholders or directors of the company at any time in respect of any of the following matters shall be valid unless consented to by special resolution of the Shareholders:-

##### 5.1.1 the amendment of the company's memorandum or articles of association;

##### 5.1.2 the creation and modification of mortgages, liens or charges on the property, company's fixed assets or issuing of guarantees;

##### 5.1.3 the alienation or cession of the whole or any portion of the property;

##### 5.1.4 the liquidation of the company;

##### 5.1.5 structural alterations to the buildings;

##### 5.1.6 changes to the nature of the business of the company;

5.1.7 modification of the holiday roster;

5.1.8 changes to rental rules and regulations.

(Instruction Note: These need to be expanded upon)

## 6. Right to occupy and use the property

- 6.1 The member has the sole and exclusive right to the use, occupation and enjoyment of the property free of rental for the primary use time linked to the share in terms of the Memorandum and Articles, this agreement and the Rules to be decided upon at the first shareholders meeting.
- 6.2 The member acknowledges that he is aware of the fact that the exclusive right to use, occupy and enjoy the property also vests in other shareholders at all other times.
- 6.3 The member is entitled, during the primary use time, to be present on the property and to use the property and the amenities in the development. The right to be present on and use the property is given to all other shareholders of the company and the member's right to such use is therefore to be exercised in conjunction with the rights of the said other Members.
- 6.4 The member's rights described in 6.1 to 6.3 above shall at all times be exercised subject to the terms and conditions contained or referred to in this agreement, the Memorandum and Articles and to the Rules issued from time to time by the company's directors as provided for in 21 below.
- 6.5 The rights acquired by the member in terms of this agreement endure for so long as the member remains a registered holder of the share and complies with all the terms and conditions contained or referred to in this agreement and the Rules.
- 6.6 The member acknowledges that its right to dispose of the share or pass resolutions relating to the property and the alienation thereof, are governed by the terms of the Shareholders and Use Agreement and the entrenched provisions of the Memorandum and Articles.

## 7. Shareholders allocated Use of the Property

- 7.1 The property shall be used by the member, only for the accommodation of the member and his invitees and for no other purpose whatsoever. The property shall be occupied at any time by the number of persons stipulated in the Rules of the development.
- 7.2 Should the member be a company or other legal person, the property 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 property shall at all times be subject to the Rules as may be determined by the company's directors from time to time, and also subject to the rules of the development, as amended from time to time.

## 8. Electricity and Water

### 8.1 The company's expenditure relating

to the consumption of electricity and water by members in or around the property shall be included in the monthly levy contemplated in 14 for which each shareholder shall be liable.

### 8.2 The company shall not be liable towards the

member for any damage which may be suffered by the member if the services in the property, 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 member shall not be entitled to cancel this agreement or to withhold any payment due in terms of this agreement as a result of such interruption.

## 9. Letting

The member shall only be entitled to let or otherwise

temporarily alienate his right to occupy the property to a third party provided that any occupier or tenant remains bound to the terms and conditions of this use agreement, the Rules and the rules of the development.:

## 10. Repairs and Maintenance

### 10.1 Excluding fair wear and tear, the member

shall be liable for any damage caused intentionally, negligently or without fault to the property or to any fittings, fixtures, appurtenances and furnishings in the property during the occupation of the property or any of its guests, tenants, invitees, employees, agents or customers.

### 10.2 The shareholders shall be obliged to keep

the property and all fittings, fixtures, appurtenances and furnishings in it in a clean and neat condition.

### 10.3 Subject to the provisions of 10.1 and 10.2

above, all expenses for the maintenance, upkeep, repair or replacement of the property and all fittings, fixtures, appurtenances and furnishings shall be made good by the company and be debited to the levy fund contemplated in 14 below.

### 10.4 In the event of a dispute as to whether

the member or the company (the latter via the levy fund) is liable for any expenditure relating to the expenses referred to in clause 10.3 above, such dispute shall be decided by the Managing agents whose decision shall be final and binding on the member.

## 11. Alteration to the property

11.1 The member shall under no circumstances alter or effect any changes to the property or to any fittings, fixtures or appurtenances in it whether such alterations or changes are of a structural nature or not. Furthermore, the member shall not drive any nails, screws or similar objects into any part of the property or any of the fittings, fixtures or appurtenances in it nor shall the member remove anything from the property, and any such condition shall constitute damage caused to the unit by such member who shall be liable to the company for all costs involved in making good such damages caused.

11.2 The member acknowledges that the company or its agents shall be entitled at all reasonable times to carry out such work on the property as it deems necessary, whether in respect of renovations, alterations, refurbishment, change of use or otherwise.

## 12. Condition of property

The member accepts the property and everything on it, in a "voetstoots" basis. Subject to the company's duty to maintain the property as set out in clause 10.3 above, the member shall have no claim whatsoever against the company by virtue of the condition of the property or any fittings, fixtures, appurtenances or furnishings in it.

## 13. Levies

13.1 The company's directors shall establish and maintain a fund of moneys ( the levy fund ) collected by them monthly from the 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 company's directors and shall be sufficient to provide for:

13.1.1 the proper maintenance, control, management and administration of the company;

13.1.2 the proper maintenance, upkeep, repair or replacement of the property and all fittings, fixtures, appurtenances, and furnishings therein;

13.1.3 any cost of electricity, water, fuel, sewerage services, garden and pool services and refuse removal services for the property;

13.1.4 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;

13.1.5 any payment or fee to any third party for the provision and supply of housekeeping, garden and pool and other services, use or sharing of outside facilities for the benefit of the company and its

shareholders during their use of the property;

13.1.6 insurance premiums for which the company may be liable from time to time;

13.1.7 the fees payable from time to time to the Managing agent;

13.1.8 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 property by the shareholders.

13.2 The directors shall in respect of every calendar year estimate the amount which will be required by the company in order to defray the costs referred to in 13.1 above as well as any deficiency which may exist in the levy fund with regard to the previous calendar year. The directors shall by way of levies collect from the shareholders an amount as near as possible to the said estimated amount. The directors shall be entitled in addition to the matters specifically provided for in 13.1 above to include an amount to be retained as a provision for any future contingent expenditure not of a current nature.

13.3 The amount payable by the member to the Levy fund shall be paid monthly in advance by way of debit order into the account of the Company, on the 27th day of each and every consecutive month commencing in the month that the member is afforded occupation of the property and as defined in the sale agreement.

13.4 Should the directors deem it necessary or expedient, they shall be entitled, in addition to the amounts levied in terms of this clause 13 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 in their sole discretion determine.

13.5 The company shall, as and when determined by the directors, dispatch a written notice to the member notifying him of the amount levied in terms of this clause 13 and such notice shall be subject to the provisions of this agreement relating to notice.

13.6 The failure by the company to give the above-mentioned notice timeously to the member does not preclude the member's liability for payment of the levies or give rise to any other rights on behalf of the member.

13.7 Payment of any amount due by the member in terms of this clause 13 may be claimed from the member by the company. The member's obligation to pay the levies ceases when the member'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 default by the member, then the company's right to claim damages from the member shall not be affected by this provision. The member 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 member in respect of any period after the date upon which his rights in terms of this agreement were terminated.

13.8 Without prejudice to any other rights which the company may have, the member shall not be entitled to occupy or use the property or be present on the property while any amounts due by him in terms of this clause are outstanding and/or in arrears.

#### 14. Inspection of Books and Records

The books of account and other books and documents of the Company shall be kept at the Company's registered office, and subject to any reasonable restrictions as to the time and manner of inspection as may be imposed by the shareholders from time to time, shall be open to the inspection of the members during the hours of business.

#### 15. Appointment of Managing agent

15.1 The parties acknowledge and irrevocably consent to the appointment of Seeff Fractional Ownership or its nominee as Managing agent to undertake the management of the Company's affairs (including the secretarial duties) for a period of 2 (two) years from date of first occupation, which agreement is extendable on the same terms and conditions.

15.2 The Managing agent's functions shall include, without limiting the generality thereof:

15.2.1 managing and maintaining compliance with the Rules and the rules of the development and the holiday roster;

15.2.2 representing the Company in any dealings with exchange programmes and to vote on the members' behalf at any meetings of programmes;

15.2.3 attending to the administration and statutory affairs of the Company, including the convening of the General Meetings, Board meetings and Annual General Meetings of the Company;

15.2.4 assisting the Board with the fulfilment of its obligations, including the facilitating the preparation by the Auditors of the annual financial statements of the Company;

15.2.5 ensuring that the property is furnished and equipped and that any defects or repairs are attended to timeously;

15.2.6 ensuring that Membership levies and other amounts owing by the Members to the Company from time to time are invoiced for timeously;

15.2.7 facilitating the collection and administration

of the Membership levies and other amounts payable by the Members;

15.2.8 facilitating payment of the Company's debts and obligations;

15.2.9 facilitating and administering such other matters as are ancillary to the above and/or to the proper administration of the Company and its affairs.

15.3 The Managing agent shall be allowed to appoint such other sub-contractors as it deems fit to provide necessary services to the Company and/or fulfil its prescribed functions and services.

15.4 The Managing agent shall be required to fulfil its functions in good faith and with such diligence as can reasonably be required by the Company of Managing agent appointed to perform the above functions.

## 16. Pledge

16.1 Save as is provided herein, the company shall have a pledge of the share for all amounts owed to it, including the costs of any proceedings instituted by the company against the member and whether the period for the payment thereof has actually arrived or not.

16.2 For the purposes of enforcing such pledge the directors may in their discretion and, subject to 16.7 below, sell the share 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 member, stating the amount and demanding payment of such sum, and stating the directors intention to sell the share if payment has not been made within the said period of 14 (fourteen) days.

16.3 Should the share be subject to any pledge in respect of which the company shall have received written notice, the company shall give such pledgee 21 (twenty-one) days notice to the address furnished by the pledgee to the company, to remedy the breach of the member, failing which the company shall be entitled to proceed with the sale.

16.4 Save as is provided herein, no pledgee shall have any prior claim against the company.

16.5 The net proceeds of any such sale shall firstly be applied in or towards the satisfaction of the amount owed to the company, and the balance, if any, shall then be paid to any pledgee or the member as the case may be.

16.6 Upon any such sale as aforesaid, the directors may enter the name of the buyer of the share in the register of shareholders, nor shall his title to the share be affected by any irregularities or invalidity in the proceedings in relation to the sale.

16.7 An affidavit by a director or the secretary of the company that the share 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 the share or its proceeds. Such affidavit, and a receipt of the company for the purchase price of the share, shall constitute a good title to that share and the validity of the sale may not be impeached by any person.

## 17. Cession of rights by the member

17.1 The member shall only be entitled to cede or otherwise transfer, alienate or waive his right, title and interest in this agreement together with the alienation or waiver by him of his shares in the manner prescribed in and subject to the terms of the Memorandum and Articles and furthermore subject to the terms of this agreement and provided further 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 property subject to all the provisions contained or referred to in this agreement and in the Memorandum and Articles.

17.2 The company shall not register any party who acquires the share from the member in the register of shareholders until satisfactory evidence has been produced to the company that the member's rights and obligations in terms of this use agreement have been ceded and delegated to that party.

17.3 The member shall not be entitled to mortgage, pledge or otherwise encumber the property or his share other than in terms of this agreement or the sale agreement.

17.4 The member shall only be entitled to offer the share for sale through the agency of the Managing agent and only after the share has first been offered to the other shareholders, and the other shareholders have refused the offer within a period of 7 (seven) days.

## 18. The company's rights and obligations

### 18.1 The company:

18.1.1 is obliged to maintain the property in a good and tidy condition and defray the costs in this regard out of the levy fund;

18.1.2 is obliged to procure such insurance relating to the property and all other improvements thereon against such risks and for such amounts as the directors of the company may from time to time decide and to maintain or renew such policies from time to time and to pay the premiums regularly and to defray its costs in this regard out of the levy fund;

18.1.3 is entitled, through any representative or agent, at all reasonable times to enter any property occupied by a member in order to inspect it. Should the company not be satisfied with the condition of such property, alternatively the furnishings or movable items situated therein, it shall be entitled to require the occupying member immediately

to comply with his obligations relating to the condition of the property.  
Should the member fail to comply with the said request by the company, the company shall be entitled to notify the member in writing to restore the property to its required condition and should the member fail to comply with such notice within 4 (four) hours after such notice has been given, the company shall be entitled, without prejudice to any other rights which it may have, to restore the property into the required condition and to claim any expenditure so incurred from the member.

18.1.4 may, if authorised thereto by the company's directors, secretary or manager, through its authorised agents or employees, enter the property at any time in order to effect necessary maintenance or repairs to it in which event the occupying member shall have no claim against the company for damages, remission of his levies, liability or otherwise;

18.1.5 is obliged at all times to keep the property adequately furnished and equipped for occupation and use by the permitted number of persons provided that:

18.1.5.1 the company's directors shall in their discretion from time to time decide the exact nature, quantity and quality of the furnishings;

18.1.5.2 movables are and remain the property of the company;

18.1.5.3 the company may, if the directors so decide from time to time, add to, replace or vary such furnishings; and

18.1.5.4 the member may not remove any of the furnishings or appliances from the property or the property and shall use them with due care for their preservation and good condition.

## 19. Loss, damage, death or injury

The company shall not be liable for any loss or damage suffered by the member or any person occupying the property while the member or such other person is in occupation of the property. Furthermore, the company shall not be liable for the injury or death of any person while in occupation of the property. The company's liability is excluded whether or not the said loss, damage, injury or death was caused directly or indirectly by the negligence of the company or any of its officers, members, employees or agents and whether or not it was caused by the fact that the property is in a defective condition. The member 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 member hereby indemnifies the company against any claim which may be made against the company by any party who obtains his rights to occupy or use the property or the property through the member.

## 20. Termination

This agreement shall only be of force and effect while the member remains the beneficial owner of the share or while he remains entitled to the transfer thereof; provided that:

20.1 should the member fail to comply punctually with any provision of this agreement or of the Rules issued in terms of 21 below or of the Memorandum and Articles and should such failure be of such a nature that it can be remedied and should the member 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

20.2 should the member fail to comply punctually with any of the provisions referred to in 20.1 above and should the failure be of such a nature that it cannot be remedied and should the member 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, at the discretion of the directors, notwithstanding any previous latitude or indulgence and without prejudice to any other rights which it may have, forthwith to cancel this agreement by notice in writing to the member and in the event of such cancellation:

20.2.1 the company shall be entitled to repossess the use of the property and for this purpose to take any steps necessary to evict the member or any person occupying through the member from the 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 member's breach including legal costs on an attorney and own client scale; and

20.2.2 the company shall be entitled as agent for and on behalf of the member and in the member's name to let the property and to collect rental and all other amounts due by the lessee thereof and out of such amounts to defray all amounts due by the member to the person from whom the member acquired the share and thereafter to defray all amounts due to the company and thereafter to pay any remaining balance to the member. The remedy in this clause shall not prejudice the company's right to forfeit and sell the member's Share and the provisions of 20.2.3 of this agreement shall apply to such forfeiture and sale mutatis mutandis; and

20.2.3 the company shall be entitled without prejudice to any other rights which it has, but subject to the rights of any seller of the share who has a pledge of the share and with such seller's permission, to sell the member's Share together with all amounts which may have been advanced by the member to the company. Such sale may be made on behalf of and in the name of the member. The proceeds of the sale shall in the first instance be utilised to redeem any amount due by the member to the person from whom the member acquired the share and thereafter to redeem any amount due by the member to the company. Should any balance remain after the said amounts have been reduced it shall be paid to the member, but should the proceeds be insufficient to redeem the said amounts, the member shall remain liable for the shortfall.

20.3 This document constitutes an irrevocable power of attorney by the member in favour of the company given in rem suam, to represent the member and to bind him to the sale contemplated in 20.2.3 above.

## 21. Rules

- 21.1 Apart from the provisions of the Act, the Memorandum and Articles and this agreement, the use of the property may all be controlled and managed by way of Rules.
- 21.2 The company's directors shall promulgate the initial set of Rules within 14 (fourteen) days of their election, which Rules shall become binding as soon as they have been adopted by a resolution of the board of directors.
- 21.3 The company's directors may from time to time revoke any Rule or alter it or add to it.
- 21.4 Without derogating from the generality of the foregoing, the Rules may in particular relate to the following:
- 21.4.1 the neatness and general appearance of the property;
- 21.4.2 the general behaviour of the member and other occupiers and users of the property as to ensure that the member and such other occupier do not create a nuisance on the property or in the development;
- 21.4.3 the use of any facilities of the property and the development which may be available to the member; and
- 21.4.4 such other matters in the interest of the comfort and general well-being of occupiers of the property;
- 21.5 Should any Rule made in terms of this clause be in conflict with any provision of the company documents, the company documents shall prevail.

## 22. Damage to the property / Insurance

- 22.1 Should the dwelling house erected on the property be materially damaged or destroyed, the company shall be obliged as soon as practically possible to restore or rebuild it. The member 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 dwelling house 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 dwelling house to alter the form or method of construction thereof, provided that the altered dwelling house shall be materially of the same dimensions and be materially in the same location on the dwelling house as the previous dwelling house. In spite of the foregoing provisions of this clause, the company shall not be obliged in restoring or rebuilding any damaged or destroyed dwelling house 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 dwelling house as set out in this clause 22.1 notwithstanding that the damage or destruction may have been caused by the fault of a member. Without prejudice to any other rights which the company

may under such circumstances have against the member, the company shall be entitled to claim from the member any damages suffered by it as a result of such damage or destruction caused by his fault.

22.2 The company is obliged to keep all the dwelling house insured for its 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 dwelling house insured at all times for their full replacement value.

22.3 Should the member be precluded from occupying the property during any period of his Primary use time due to it having been damaged or destroyed as contemplated in 22.1 above, the company shall refund to the member pro rata his annual contribution to the levy fund (not including any special contribution as contemplated in 13.4).

22.4 In the event of a dispute concerning any matter arising out of the provisions of 22.1, 22.2 or 22.3 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.

## 23. Indulgence

No indulgence by the company with regard to the performance by the member 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 member of all obligations assumed under this agreement.

## 24. Conflicting provisions

In the event of a conflict between the provisions of this agreement and the provisions of the company documents, the provisions of the company documents shall prevail.

## 25. Commencement of rights and obligations

Notwithstanding that the member's right to occupy, use and enjoy the property is limited to the primary use time 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 member.

## 26. Management

It is recorded that the company will enter into a management agreement with the Managing agent for the management of the property. The management agreement shall be concluded on an arms length basis for an initial period of 2 (two) years with an option to the Managing agent to renew

for further periods of 1 (one) year. The Managing agent shall be entitled to claim a fee amount of 15 (fifteen) percent of the total management fee (excluding Value Added Tax). During the currency of such agreement, the management agreement can only be terminated by the company upon breach by the Managing agent

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ 2009.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_ THE COMPANY

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_ 2009.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_ PURCHASER