

**DRAKENSBERG SUN HOTEL CHALETs**

**USE AGREEMENT**

**BETWEEN**

**DRAKENSBERG SUN SHARE BLOCK LIMITED**

**and**

**DRAKENSBERG SUN TIMESHARING TRUST**

as the registered Holder for the time being of all the issued ordinary shares of the Company, comprising the Share Blocks as hereafter defined.

**THIS AGREEMENT WITNESSETH:**

**1. DEFINITIONS**

For the purposes of this Agreement unless the context otherwise indicates the following words and expressions shall bear the following meanings -

- |      |  |  |
|------|--|--|
| 1.1  | "the Company" -  | Drakensberg Sun Share Block Limited;   |
| 1.2  | "the Developer" -  | Drakensberg Sun Timesharing Trust;   |
| 1.3  | "the Property" -   | Sub 4 of the Farm Driefontein 1389, Administrative District of Natal;  |
| 1.4  | "the Chalet property" -  | a certain portion of the property being Lease 1 on Sub 4 of the Farm Driefontein No. 1389, Administrative District of Natal; measuring 8,1240 hectares and such other portions of the Property upon which Chalets, as defined herein, or other improvements to the Property which serve the Chalets or occupants thereof, are erected from time to time;   |
| 1.5  | "a Chalet"-  | residential accommodation erected on the Property and the use and occupation whereof has been granted to the Holder of a Share Block;  |
| 1.6  | "the Hotel portion" -  | the portion of the Property accommodating the Hotel and its ancillary facilities and presently known as the Drakensberg Sun Hotel;   |
| 1.7  | "Premises" -   | the Premises linked to the Share Block purchased by the Holder or of which the Holder is the Registered Owner and to the use of which the Holder is entitled in terms of this Agreement;   |
| 1.8  | "Common Property"-   | all portions of the Property and all facilities located on the Property which are ordinarily available for use by guests of the Hotel, but excluding the guest rooms;  |
| 1.9  | "Week" -   | the specified Week as shown attaching to a Share Block in terms of the Company's Articles of Association during which the Holder is entitled to the use of the Premises which is linked to such Share Block. Each week commences at 14h00 on a Friday or a Saturday, as the case may be, and terminates at 10h00 on the following Friday or Saturday. Weeks are consecutively numbered in respect of each year, commencing with the first Friday or Saturday of each year. The Developer shall stipulate at the time it subscribes for additional Share Blocks whether the Rights of Use attaching to each Share Block shall commence on a Friday or Saturday. |
| 1.10 | "the Share Block" -  | each of the Share Blocks comprised of the ordinary shares in the Company and to which Premises are linked for a Week pursuant to this Agreement and the Articles of Association of the Company;  |
| 1.11 | "Holder" -   | the Holder of a Share Block and includes a Purchaser thereof, whether under a suspensive or resolute 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 Premises;   |
| 1.12 | "Movable Property" -   | the Movable Property specified in the schedule Annexure "B1" hereto;   |
| 1.13 | "the lease and Management Agreement" -   | the Agreement for the time being between the Company and the Manager, who holds a lease over the Chalets with an obligation to maintain a Hotel keeping operation in the Chalets and to manage and supervise the Chalet Property;  |
| 1.14 | "Manager"  | the person appointed from time to time to manage and supervise the Property and the Hotel business conducted therein pursuant to the Management Agreement;   |
| 1.15 | "the Directors" -  | the Directors of the Company;  |
| 1.16 | "the Acts" -   | collectively, the Share Block Control Act No. 59 of 1980 and the Property Time-Sharing Control Act No. 75 of 1983 or any amendment thereof or any Act which may be promulgated in substitution thereof. References to "the Act" shall be construed as a reference to either the Share Blocks Control Act or the Property Time Sharing Control Act, as the context may require;   |
| 1.17 | "Operational Year" -   | such period of twelve months as the Directors may determine from time to time, and for which levies in terms of clause 9 hereof are assessed;  |
| 1.18 | "Maintenance Week" -   | the specified Week in each operational year in respect of any Premises in the building as identified by the Developer and during which the Company shall have the Right of Use of and access to such Premises for any purpose that may be determined by the Company from time to time including the refurbishing, renovation or maintenance thereof;   |
| 1.19 | "Use"  | use as contemplated by the Acts;   |
| 1.20 | "the Lessee"   | the Lessee for the time being under the lease and Management Agreement and who for so long as an Hotel Liquor Licence is held and/or an hotel keeping function is maintained at the Chalet property and the Hotel portion shall be the Manager;  |
| 1.21 | "the Main lease"   | Deed of Lease over the Chalet property in favour the Drakensberg Sun Chalet Partnership;   |
| 1.22 | words or expressions defined in the Share Blocks Control Act and the Property Timeshare Control Act shall have the meaning therein defined;          |  |
| 1.23 | any words in this Agreement importing -  |  |
|      | 1.23.1 the masculine gender shall include females;   |  |
|      | 1.23.2 the singular shall include the plural;  |  |
|      | 1.23.3 persons shall include bodies corporate;   |  |
| 1.24 | headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of the Agreement. |  |

## 2. RIGHTS OF USE

- 2.1 The Holder shall have the sole right to the exclusive use of the Premises for the Week 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 guests of the Hotel subject to -
    - 2.2.1 the rights of the Manager and the Lessee under the lease and Management Agreement and to the rights of any person authorised by the Manager to occupy any part of the Hotel portion;
    - 2.2.2 to such terms and conditions as may be imposed by the Directors from time to time;
    - 2.2.3 to the provisions of the Main Lease;
  - 2.3 The rights of the Holder hereunder shall endure throughout the period of the Main Lease for the week in each year for as long as he continues to be the beneficial owner of the Share Block and remains in fulfillment of all the terms and conditions of this Agreement and of the Management regulations made pursuant to clause 3 below from time to time;
  - 2.4 The Holder acknowledges that -
    - 2.4.1 he would have no rights to participate or have any interest in the business or businesses conducted from time to time in the Hotel portion.
    - 2.4.2 the Rights of Use and occupation of the premises, is subject to a lease in favour of the Manager, which lease is, however subjects to the Holder's rights of use hereunder;
  - 2.5 The Premises shall be furnished and provided with the Movable Property which in terms of Annexure "B1" hereto is specified for such Premises, it being 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 Premises either during or upon the termination of any Week the Premises are used by the Holder. Notwithstanding the foregoing, the Company shall be entitled from time to time with the authority of a resolution of its Directors to vary or add to the Movable Property described in Annexure "B1" hereto, provided that such variation or addition shall not result in any substantial change in the general nature or standard of such Movable Property;
    - 2.6.1 The Premises shall be used by the Holder for residential purposes only and for no other purpose whatever. The Premises 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 Premises shall not exceed the number of beds provided in the Premises by the Company or such greater number as may be authorized in writing by the Manager from time to time. In the event of the Rights of Use herein being held by a Company or other Body Corporate, the Premises shall only be used by such person and members of his family or his invitees who may be nominated from time to time by the said Company or Body Corporate, which use shall be subject to the restrictions as to the number of users at any time, and further shall be subject to the prior approval of the Manager in the ordinary course of business, which approval shall not be unreasonably withheld.
    - 2.6.2 The Holder should secure from any person to whom use of the Premises is given by him a written undertaking in favour of the Company that such person or user shall 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 any Management Regulations applicable to the Premises and the Property generally, which undertaking shall be in such terms as the Company or the Manager shall from time to time require and which shall be lodged with the Company or the Manager if so required prior to any other such user being given use of the Premises. Any breach of any such undertaking or of the Use Agreement or Management Regulations by any such user shall be deemed to be a breach thereof by the Purchaser;
    - 2.6.3 In the event of the Holder lawfully allowing any person unaccompanied by himself to use the Premises during the week/s or any part thereof then the Holder and such person shall be obliged to conform with the relevant requirements of the Use Agreement and shall further be obliged to furnish the Manager with written notice prior to such other person commencing any use of the Premises of the full name and address of such other person and the details of such other person's proposed use of the Premises in the form required by the Manager, failing which the Manager shall be entitled to refuse such other person admission to the Premises or, having commenced such use, to require or cause him to vacate the Premises forthwith.
  - 2.7 No liability whatever shall rest upon the Company for any -
    - 2.7.1 failure or breach of the Management Agreement by the Manager or its employees, and
    - 2.7.2 thing done or omitted by the Manager from time to time, and
    - 2.7.3 interruption or failure of the electrical and/or water services that may be supplied or any other utility or other services to the Property, irrespective of the cause thereof nor for any consequential damage the Holder may suffer by reason of such failure or interruption.
  - 2.8.1 If at any time the Premises 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 Premises for the purposes of carrying out such works as may be required to be done from time to time provided always that the Company will use its best endeavours to procure that such works are preferably carried out during the Maintenance Week. If the Holder or any person using the Premises however suffers any inconvenience from such operations or any similar operations conducted in any other part of the Building, the Holder and such other person shall have no claim whatever against either the Company, the Developer, or the Manager.
  - 2.8.2 In the event that the refurbishing or renovation operations referred to above or any other building operations on the Property are such as to deprive the Holder or any person lawfully claiming use of the Premises or beneficial use thereof or should the Premises for any reason at any time and from time to time not be available for use, no claim whatever will arise against either the Company, the Developer, 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 substantially equivalent temporary accommodation elsewhere in a Chalet or accommodation in the Hotel property for the duration of the relevant Week or for such time as the Premises are not so available as the case may be.
  - 2.8.3 If any dispute arises at any time as to whether the Holder or other user aforesaid is unable to enjoy beneficial use of the Premises 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 person.
- 2.9 Notwithstanding anything to the contrary herein contained in the event that the Manager is of the opinion that the admission to use any part of the Property by the Holder or any person claiming any right to the use of the Premises through or at the instance of the Holder, would result in or constitute a contravention of any law or a breach of the Liquor Act, the Manager will be entitled to refuse admission to the Property by the Holder or such person, or if such person has gained admission thereto, to require or cause the Holder or such person to leave or vacate the Property forthwith.
- 2.10 If the Holder has use of a week that commences with a Friday or Saturday, as the case may be, no. 52 (fifty-two), the Holder shall be entitled in any calendar year in which there is a fifty-third Friday or Saturday, to use of the Premises for an additional week commencing from such fifty-third Friday or Saturday and terminating at 10h00 on the first Friday or Saturday of the following calendar year against payment of the levy in respect of that additional week and there shall be no intervening service period between the consecutive periods of use to which the Holder will be entitled.

### **3. ERECTION AND ACQUISITION OF OTHER IMPROVEMENTS**

- 3.1 It is contemplated by the parties that further Chalets or other improvements which will serve, (whether exclusively or otherwise) the Holders of the ordinary shares in the Company's capital, will be erected on the Chalet Property and if so determined by the Developer on other property in proximity to the Chalet Property from time to time. The Holder and the Company consent to the acquisition by the Company of any such additional land or rights thereto and the utilization of such land and the common property for the development of further Chalets and improvements as may be determined by the Developer.
- 3.2 It is further recorded that in terms of the Company's Articles of Association, the costs of such improvements and acquisition are to be borne by the Developer and that the other Holders of the ordinary shares in the Company's capital, will not be required to contribute any amounts in respect thereof.
- 3.3 The Holder hereby irrevocably authorizes the Company to increase its loan obligation by an amount equal to the cost of such acquisition and further improvements and the re-allocation of the amounts lent to the Company for that purpose to the Holder and the other members for the time being, in the manner set out in the Company's Articles of Association.

### **4. USE OF SUITE BY PERSONS OTHER THAN THE HOLDER**

- 4.1 The Holder, as long as he is entitled to use the Premises in terms of this Agreement, may with the prior consent in writing of the Manager which shall not be unreasonably withheld, permit or allow any other person or persons to use the Premises for the Week or any part thereof, provided however that -
  - 4.1.1 such consent shall not be required nor shall the provisions of this clause 4 apply (other than clause 4.2.3) in respect of the use of the Premises 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
  - 4.1.2 such other use shall not exceed the Week of the Holder's entitlements to the Premises; and
  - 4.1.3 the Holder shall not allow any other use as aforesaid unless he shall have furnished the Manager with written notice in a form prescribed by the Manager, prior to such other person or persons requiring the use of the Premises, 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 Premises; and
  - 4.1.4 should the Holder fail to observe the provisions of clause 4.1.3, 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 Premises to such other person or persons aforesaid or, having commenced such use, to require or cause him to vacate the Premises forthwith.
- 4.2 Notwithstanding the provisions of clause 4.1 -
  - 4.2.1 the Company shall not be deemed to waive any of its rights against the Holder under this Agreement either by virtue of Clause 4.1.1 or by giving any consent in terms of clause 4.1;
  - 4.2.2 as a condition precedent to the Company's consent being effective, the Holder shall lodge with the Company and with the Manager 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 this Agreement and the Management Regulations applicable to a third party as may be in force from time to time;
  - 4.2.3 any breach of any of the said conditions, either of this Agreement or of the Management Regulations by any third party or by any other person using the Premises in the Company or under the title of such third party or of the Holder shall be deemed to be a breach thereof by the Holder.

### **5. MANAGEMENT**

- 5.1 The management, control and administration of the Property, including the Premises, 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 and employed from time to time pursuant to the Management Agreement and who at all reasonable times shall have access thereto for all lawful purposes.
- 5.2 The Company shall procure that the Manager shall -
  - 5.2.1 whilst the Property or any portion thereof is utilized for the purpose of conducting therein the business of a licensed Hotel, at all times comply with and ensure the due fulfilment of the Liquor Act and the Hotels Act to which law this Agreement shall, notwithstanding anything to the contrary herein contained, be subject and shall procure that the Chalets are regarded part of the Hotel for the purpose of the Hotels Act and graded accordingly but it is recorded that the Chalet Property will be excluded from the Liquor Licence relating to the conduct of such Hotel;
  - 5.2.2 carry out all obligations undertaken by the Company from time to time pursuant to this Agreement;
  - 5.2.3 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;
  - 5.2.4 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;
  - 5.2.5 duly service the Premises and for this purpose will daily sweep and clean the Premises and provide linen and towels on a basis agreed with the Developer;
  - 5.2.6 control the checking in and departure of any person entitled to the use of the Premises;
  - 5.2.7 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 Share Blocks Control Act and the Property Time Share Control Act;
  - 5.2.8 control the general use of the Building, including the Premises, by Holders for their mutual benefit and comfort and ensure whilst the Hotel business is conducted in the Property that at all times such business and operation is properly conducted;
  - 5.2.9 arrange to give effect to the Rights of Use of the Holder pursuant to this Agreement in accordance with such procedural rules as may be prescribed by the Manager from time to time.
- 5.3 The Holder for himself and for any person using the Premises 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 4.1.4 above shall apply mutatis mutandis.
- 5.4 The Holder agrees that the Manager shall be entitled at all times to lay down terms and conditions of use and maintenance, both in respect of the Premises and of the Property generally and including those relating to the care and upkeep of the Premises and the Property, use of radios, television sets and aerials, air-conditioning machines and other electrical appliances and apparatus, blinds, awnings, fire places, recreational facilities, the allocation and use of parking facilities, the parking of 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 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 such regulations and this Agreement, the provisions of this Agreement shall prevail.

### **6. ALTERATIONS AND DECORATION**

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

## **7. MAINTENANCE**

- 7.1 the Company shall, either itself or through the Manager, maintain and repair the whole of the Chalet Property and all improvements thereon, and the Movable Property and all other furnishings, appliances, decor and equipment of whatever nature used in conjunction with the Premises or the Property and which is owned by the Company, in a good, secure, clean and thoroughly tenantable order and condition and from time to time as and when necessary or requisite, renovate or renew the same.
- 7.2 It is agreed that the Holder acquires the use of the Premises and the Movable Property for the Week on a voetstoets basis without any warranties express or implied and in the condition in which the Premises 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 Premises or the Movable Property are taken within a reasonable time of having been given notice thereof. Any items, goods or property brought into the Premises by the Holder shall as concerns the Company be at the sole risk of the Holder, who shall have no claim whatever upon any grounds against the Company for any loss suffered by the Holder howsoever arising.
- 7.3 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 of occupation.
- 7.4 The Company shall effect such insurance over and in respect of the Property and all Movable Property, furnishings, décor, equipment and appliances used in conjunction therewith and which is owned by the Company, in such manner and against such risks as may be determined in accordance with resolutions passed by the members of the Company from time to time, and maintain such policies in force and pay all premiums in respect thereof from time to time.
- 7.5 The Company's or the Manager's duly authorized workmen shall be permitted to enter the Premises at any reasonable hour of the day, if authorized by the Directors or by the secretary, Manager or supervisor acting under the powers delegated by the Directors, in order to examine the same or to effect repairs thereto, or to any part of the Property. If the Holder shall not be personally present to open the Premises at any time when and for any reason entry shall be necessary or permissible, then the secretary or the Manager or supervisor or any other duly authorized agent of the Company shall be entitled to enter the Premises without being liable to any claim or cause of action for damage by reason thereof.
- 7.6 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 Premises through or at the instance of the Holder, which the Holder may sustain in the Premises or in or about the Company's Property by reason of any act whatsoever, 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 Premises 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 any other person, 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 reason aforesaid, or for any other reason whatsoever, to withhold any moneys due to the Company.

## **8. HOLDER'S RESPONSIBILITIES**

Notwithstanding the provisions of clauses 7 -

- 8.1 The Holder shall be obliged to keep the Premises in a clean and tidy condition and use the contents of the Premises and all facilities on 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 with regard thereto;
- 8.2 If in the opinion of the Manager, which the Directors may require to be confirmed by them at any time, any repairs renovations to the Property or any portion thereof or the Movable Property including the Premises, or any facilities, furnishing or equipment serving the Property or available for use by the Holder, are rendered necessary by reason of any act whether accidental, negligent or willful by the Holder or any member of his household or of any other visitor to or user of the Premises, 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 a debt due by the Holder to the Company;
- 8.3 The Company shall at all times, through the Manager or the Company's agents or servants, be entitled to inspect the Premises used by the Holder, and if dissatisfied with the condition thereof or its contents, it may call upon the Holder forthwith to remedy such defective condition. Should the Holder fail to remedy the defect, 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;
- 8.4 Where any dispute arises as to whose liability it is to maintain or repair any portion of the Property and any facilities serving same, the Premises or of the Movable Property, such dispute shall be determined by the Directors or by the Manager acting under the delegated authority of the Directors and the decision of the Directors or, as the case may be, the Manager, shall be final and binding on the parties to the dispute.

## **9. LEVY FUND**

- 9.1 The Holder shall pay any charges or expenses for any services made available to the Premises 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.
- 9.2 The Directors shall establish and maintain the levy fund and for this purpose they shall from time to time make levies upon the members of the Company, for the maintenance, repair, upkeep, control, management and administration of the Chalet Property and the Movable Property (including the Premises) and/or for the payment of any obligation of the Company in connection therewith, for the payment of any amounts (including any rates, taxes and any other local authority charges) which may from time to time become due by the Company as a result of the erection of improvements on the Chalet Property, for the payment of any charges for the supply of electric current, gas, water, fuel, sanitary and other services to the Chalet Property and/or the Premises and for which the individual members are not personally liable, for any services or facilities required by the Company exclusively for the Chalet Property, the Chalets or the occupants thereof and to cover any losses suffered by the Company in respect thereof, for the payment of any premiums of insurance in respect of the Chalet Property and the Movable Property and for the discharge of any other obligation of the Company relating to Chalet, the Chalet Property and the Movable Property, and all costs, fees and other payments which become due and payable from time to time to the Manager in terms of the lease and Management Agreement and for such portion of the costs of and incidental to the administration of the Company and the maintenance of its corporate existence, and any other costs of whatever nature which may otherwise or for any other reason whatever be incurred by the Company and which are attributable in whole or in part to the conduct by the Company of a timesharing scheme on the Property or to the existence of the shares in its capital or the Use Agreements with the Company's members, provided that the provisions hereof shall not be construed as entitling the Company to debit the levy with any portion of the expenses which are solely attributable to the conduct on the property of a Hotel business and which would not have been incurred had such timesharing scheme not been in operation.



- 9.3 The costs of and incidental to the maintenance, repair, upkeep, control, management and administration of any additional improvements on the Property after the date hereof (other than Chalets and other improvements to the Chalet property) will, if available for the common use of occupants of the Chalets and guests of the Hotel, be partly attributed to the levy fund being apportioned in the proportion that the number of completed Chalets from time to time bears to the number of guest rooms available on the Hotel portion, to the extent to which such charges are not separately specified and recoverable in terms of the Management Agreement. As and when any further Chalets are completed, the attribution of such costs may be adjusted or alternatively, the Directors will be entitled in making any estimate for the purpose of 9.3, to allocate costs to the levy fund on a basis determined by them to be reasonable and which takes account of the completion of any such further Chalets during the year in question.
- 9.4 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.
- 9.5 All such levies shall be payable to the Company annually in one lump sum within 30 (thirty) days after written request being made by the Company or the Manager and shall be for the Holder's share of the estimated total expenses of the Company for the forthcoming operational year and which shall be attributed to the levy fund. Notwithstanding the foregoing, in the event that the Holder is the Developer the annual levies payable in respect of the Share Block shall be paid monthly in arrears commencing on the last day of the first month of the operational year and thereafter on the last day of each successive month.
- 9.6 The Directors may from time to time make special levies upon the members of the Company in respect of all such costs, expenses and requirements as are either not mentioned in clause 9.2, 9.3 or are not recoverable pursuant to clauses 9.4 and such levies may be made payable in one sum or by such installments and at such time or times as the Directors shall think fit and shall not necessarily be applied directly in the ratio of mid and high season weeks as set out in this clause 9.
- 9.7 Written notices shall be given in respect of levies payable by members of the Company and such notice shall be subject to the provisions relating to notices in the Articles of Association.
- 9.8 For the purposes of establishing the weekly levy amount -
- 9.8.1 Week numbers shall initially and subject to 9.8.4 be classified as follows -

Levy Class	Week numbers	Total
Standard	2 to 10, 15 to 25, 30 to 49	40
Peak	1, 11 to 14, 26 to 29, 50 to 52	<u>12</u>
		<u>52</u>

- 9.8.2 The levy amount payable by the Holder and the other Holders of the shares, shall be on the basis that the levy payable in respect of the peak weeks will not exceed the levy payable in respect of the standard weeks by more than 20% thereof.
- 9.8.3 Subject to 9.8.2 the standard weekly levy amount shall be determined by dividing the estimated levy amount referred to in 9.4, by the total number of completed Chalets multiplied by 51 Weeks, which standard levy may be increased in amount to a peak levy as provided in 9.8.2 and 9.8.5.
- 9.8.4 The Directors shall be entitled to round the weekly levy amount to ease calculation and administration thereof. In any year in which there is a 53rd Friday or Saturday the Holders of Share Blocks in respect of Week number 52 shall pay an additional levy in that year for such 53rd Week in an amount equivalent to that paid in respect of Week number 52.
- 8.8.5 Notwithstanding the above the Directors in their sole discretion shall be entitled from time to time to reclassify weeks as Standard or Peak and vice versa based on school holidays and the consequent preponderance of double occupancy in the Chalets. The Directors shall advise the Holders at the Annual General Meeting of the Company of any reclassification. There shall not be more than 12 Peak Weeks.
- 9.9 Any amount due by the Holder by way of a levy or installment 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 occupation.
- 9.10 Should the Holder fall into arrear with any levy obligation or part thereof or liability in terms of clause 9.10.1 below, then without prejudice to any other rights the Company may have hereunder, the Holder -
- 9.10.1 shall automatically become liable for and agrees to pay to the Company such reasonable amount as the Directors in their discretion shall deem fit from time to time to compensate the Company for any inconvenience and loss that the Directors or the Manager consider the Company may suffer by reason of such default, together with interest on the amount of the levy obligation or relevant portion thereof reckoned from the due date thereof to date of payment at such rate of interest prescribed by the Directors from time to time but not exceeding the maximum permissible rate allowed from time to time by the Limitation and Disclosure of Finance Charges Act No. 73 of 1968 as amended, and
- 9.10.2 shall not be entitled to gain admission to or use the Premises for the Week until such time as he has paid all such arrears including interest and other charges.
- 9.11 The Holder shall have no right to reclaim from the Company any amount paid by him by way of 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 clause 9.4 above.

## 10. DAMAGE TO OR DESTRUCTION OF BUILDING

- 10.1 In the event of the majority in number of the Chalets being -
- 10.1.1 totally or substantially destroyed by any cause whatsoever so that they cannot be beneficially utilized, 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 three months after the date of the relevant damage to the Chalets;
- 10.1.2 partially damaged or destroyed by any cause whatsoever but so that the majority in number of units to which Share Blocks relate can be beneficially used, then this Agreement shall not be terminated, and the Company shall as soon as reasonably practical proceed to rebuild or repair or reinstate the destroyed or damaged portion of the Chalet Property and proceed expeditiously to the completion thereof within a reasonable time provided that should the Company at any time elect to rebuild, repair or reinstate the building this Agreement shall automatically continue in full force and effect in respect of the restored building and if the Company shall have terminated this Agreement, such termination shall be set aside and be of no force and effect, notwithstanding anything to the contrary herein contained. The Company shall have the right to change or vary the form of construction of the Chalets or the Premises 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 Premises enjoyed by him for his period prior to the damage or destruction in such altered or varied construction. Notwithstanding the above or anything else to the contrary herein contained, the Company shall not be bound to expend any more in fulfilling any of its said obligations than that sum which it receives from its insurance arising from any of the aforesaid contingencies.

- 10.2 The Holder shall have no claim against the Company for damages or compensation under of any of the circumstances set out in 10.1 or upon the exercise by the Company of any of its rights in terms 10.1 -
  - 10.2.1 arising by reason of his loss of the Right of Use of the Premises, whether such right be lost permanently or temporarily;
  - 10.2.2 arising by reason of the fact that the Company's Movable Property or Property 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 Share Blocks Control Act);
  - 10.2.3 arising out of any winding up consequent upon the destruction of the Property, save for claims expressly provided for in the Company's Articles of Association.
- 10.3 Nothing contained in clause 10.1 above shall operate to relieve the Holder of liability to the Company or to any other Holder who may be entitled to the use of the Premises in respect of any Week in the event of any destruction or damage contemplated herein arising out of or being attributable to any negligence or breach of this Agreement by the Holder or any person for whom the Holder is responsible in law.

#### 11. CESSION OF RIGHTS

- 11.1 The Holder shall only be entitled to cede his rights herein -
  - 11.1.1 to the Transferee of the Share Block to which this Use Agreement is linked and together with the allocated loan;
  - 11.1.2 simultaneously and together with the transfer of the Share Block unless the Directors agree to defer the transfer of the Share Block.
  - 11.1.3 simultaneously and together with the assignment to and acceptance and agreement of the Transferee to be bound by all the Holder's obligations to the Company hereunder and in terms of the Articles of Association;
  - 11.1.4 subject to the relevant provisions of the Articles of Association and to the Company's prior written consent;
- 11.2 Any such cession and assignment shall be in such form and upon such conditions as the Company may from time to time stipulate.

#### 12. TERMINATION

This Agreement shall only remain in full force and effect and only in respect of the Week for so long as the Holder is the holder or beneficial Owner of a Share Block or remains entitled to the transfer thereof, provided that -

- 12.1 should the Holder or any person lawfully using or entitled to the use of the Premises fail to vacate the Premises or as the case may be, the Property -
    - 12.1.1 upon the conclusion or 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 arrangement to continue in use with or have obtained the consent of the Holder entitled to the successive Week or Weeks and shall otherwise have complied with the relevant requirements of clause 4 above;
    - 12.1.2 upon the request of the Directors or the Manager in the circumstances referred to in clauses 2.9, 4.1.4 or 9.10.2 above; or
  - 12.2 should the Holder commit any other breach of the provisions of this Agreement or of the Company's Articles of Association or of the concurrent Agreement of Sale in terms of which the Holder acquired the Share Block or of any of the Management Regulations made in terms of clause 5 above and should the Holder fail to remedy such breach within seven days of the date of delivery by hand or posting by prepaid registered post of a written notice calling upon him to remedy the same; or
  - 12.3 in the event of the Holder committing or suffering the commission of any other breach of the said terms and conditions and committing or suffering a repetition of such breach within a period of thirteen consecutive months after having been warned in writing by the Directors or the Manager to desist therefrom; or
  - 12.4 should the Holder -
    - 12.4.1 commit or permit the commission of any offence under or any contravention of any law which endangers or which may endanger the validity of any Hotel registration, Hotel grading or other licence of whatever nature relating to the Property, or the Chalet property or any activities conducted on the Property or the Chalet Property;
    - 12.4.2 cause any material damage to the Premises or any other part of the Property or the Chalet Property;
    - 12.4.3 cause a nuisance to other occupiers of portions of the Property or the Chalet Property from time to time;
    - 12.4.4 commit or permit the commission of any act which places at risk the validity of any insurance policy over the Property, the Company shall be entitled notwithstanding any prior waiver on its part of any of its rights and without prejudice to any other rights it may have, to cancel the Agreement forthwith; and
  - 12.5 to obtain repossession of the said Premises and for that purpose to take whatever action may be necessary for the immediate ejection of the Holder and/or other user from the said Premises, without prejudice to the Company's right to claim whatever moneys may be owed to it, and such damage as the Company may sustain by reason of the Holder's breach or default, including legal expenses of whatever nature; and
  - 12.6 without prejudice to the Company's right to sell the said 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 Premises and to collect all consideration and moneys payable by the hiring user in respect of his use thereof, and to deduct therefrom any moneys whatsoever that may be owed by the Holder firstly to the Company and thereafter to the person from whom the Holder acquired the Share Block; and
  - 12.7 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 said Share Block. The proceeds received by the Company from the said sale shall be applied firstly in reduction of any indebtedness of the Holder to the Company and thereafter to the person from whom the Holder acquired the Share Block, whilst any surplus shall be paid over to the Holder who shall nevertheless remain responsible for any deficiency. For all purposes of this Agreement any act or omission on the part of any person entitled to the use of the Premises or his invitee shall be deemed to be the act or omission of the Holder.
- In pursuance of the Company's rights in terms of the foregoing provisions, the Company shall be entitled to give transfer to the shares and cession of this Agreement to the purchaser 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 of the Company 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.

#### 13. VARIATION OF AGREEMENT

- 13.1 Save as provided for in Clause 2.5 and 3 above, the Company will not permit any amendment, addition or alteration of any Use Agreement pertaining to any unit in the Property for any period without the prior consent of not less than 75% (seventy five percent) in numbers of the Holders for the time being of the shares in the Company.
- 13.2 No latitude, relaxation or indulgence or extension of time which may be given to the Holder in respect of any matter or thing which the Holder is bound to perform or observe in terms hereof shall under any circumstances be deemed to be a waiver of the Company's rights and the Company shall at all times be entitled to require strict and punctual compliance with each and every provision hereof.

- 13.3 No variation of this Agreement shall be of any force or effect unless -
- 13.3.1 the Liquor Board has consented thereto if, at the date of such amendment, an Hotel liquor licence has been issued in respect of the Property or if such amendment affects any liquor licence issued in respect of any portion of the Property; and
  - 13.3.2 save as provided for in clause 2.5 above and subject to clause 13.1 such variation is reduced to writing and signed by the parties or their duly authorized agents.
- 13.4 If by virtue of any provision of the Management Agreement any conflict arises in the obligations of the Holder vis-à-vis the Company or vice versa by virtue of any direct involvement of the Holder as the Manager, this Agreement shall prevail.

#### **14. JURISDICTION**

In the event of being necessary for the Company to take any legal proceedings against the Holder hereunder, the Company shall, at its opinion, be entitled to take such legal proceedings in the Supreme Court or the Magistrate's Court having jurisdiction in respect of the Holder's person, notwithstanding the fact that such proceedings which might arise are beyond the jurisdiction of such Magistrate's Court and, in either of the foregoing events, the Holder shall be liable for all attorney and client costs and any collection charges incurred by the Company.

#### **15. NOTICES**

- 15.1 The following addresses are hereby selected as the respective domicilia citanda for all purposes under this Agreement in respect of the relevant parties -
- 15.1.1 the Company at Fourth Floor, Hatfield Forum Building, 1077 Arcadia Street, Pretoria: copy to the Developer at the address specified in clause 15.1.2 below marked for the attention of the Managing Director;
  - 15.1.2 the Developer at Fourth Floor, Hatfield Forum Building, 1077 Arcadia Street, Pretoria;
  - 15.1.3 the Holder at the relevant address for the time being recorded in the share register of the Company provided that if such address is not and address in the Republic of South Africa the Holder's domiciliary address shall then be deemed to be the address of the premises on the Chalet Property until such time as the Holder duly appoints an address pursuant to clause 15.2 below.
- 15.2 The Holder may by written notice to the Company change his domiciliary address to another address in the Republic of South Africa not being a Post Office Box number or Post Restante at the expiration of not less than thirty days written notice dispatched by prepaid registered post to the Company and the Developer may by written notice, including advertisement in any publication sent to all Holders, change their respective domiciliary addresses.
- 15.3 Subject to 15.2, all notices delivered or sent by prepaid registered post by any party to the other shall be deemed to have been received at the time of delivery or on the fourth business day following the date of posting in the Republic of South Africa, as the case may be.

#### **16. DIVISIBILITY**

The provisions of this Agreement -

- 16.1 shall apply and be linked to each individual Share Block in the capital of the Company; and
- 16.2 are divisible in respect of each of the Share Blocks in the capital of the Company.

SIGNED FOR DRAKENSBERG SUN SHARE BLOCK LIMITED

SIGNED FOR DRAKENSBERG SUN TIMESHARING TRUST

#### **Update to Notices 15**

##### **Drakensberg Sun Share Block Limited**

Registration Number: 1988/002500/06

("the Company")

Registered Office  
Palazzo Towers East  
Montecasino Boulevard  
Fourways, 2055