

**CABANA BEACH HOTEL**

**USE AGREEMENT**

**BETWEEN**

**CABANA BEACH SHARE BLOCK LIMITED**

and

**SOUTHERN SUN TIMESHARING (PROPRIETARY) LIMITED**

**as the registered Holder for the time being of all the issued A 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" -              | Cabana Beach Share Block Limited;   |
| 1.2  | "the Developer" -            | Southern Sun Timesharing (Proprietary) Limited;   |
| 1.3  | "the Building" -             | the Building situated on the Company's immovable property defined below and known as the Cabana Beach Hotel;  |
| 1.4  | "the Property" -             | Lots 623, 637 and 643, uMhlanga Rocks Township, County of Victoria, Natal, measuring three comma zero zero three four (3,0034) hectares and includes the Building;  |
| 1.5  | "the Residential Portion"-   | all portions of the Property not falling within the definition of the Business Portion;   |
| 1.6  | "the Business Portion" -     | the restaurants (including the kitchens and other storage or preparation areas serving those restaurants and the pavement area serving the restaurant known as "Café Cabana") and shops (including the storage areas, if any, serving those shops) on the Property;   |
| 1.7  | "the 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"-           | the land on which the Building is situated, public thoroughfares within the Building and such other parts of the Building as are not included in any Premises which are the subject of the Use Agreement or the Business Portion;   |
| 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 Saturday and terminates at 10h00 on the following Saturday. Weeks are consecutively numbered in respect of each year, commencing with the first Saturday of each year; |
| 1.10 | "the Share Block" -          | each of the Share Blocks comprised of the A 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 resolutive condition as to the passing of ownership or otherwise, and who has not yet taken transfer of the Share Block, but who is in or is entitled to the use of the Premises;   |
| 1.12 | "Movable Property" -         | the Movable Property specified in the schedule Annexure "B1" hereto;  |
| 1.13 | "the Management Agreement" - | the Agreement for the time being between the Company and the person appointed by the Company to manage and supervise the entire 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's 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" -         | a year reckoned from the 1 October of each year to 30 September of the following year or such other period of twelve months as the Directors may determine from time to time and for which levies in terms of clause 9 hereof are assessed;   |
| 1.18 | "Maintenance Week" -         | the specified Week in each operational year in respect of any Premises in the Building which is not attached to any Share Block in terms of the Company's Articles of Association and during which the Company shall have the right of use 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 B Class Shares" -       | the B Class Shares in the capital of the Company which, together with the Use Agreement relating thereto, entitle the Holder thereof to the use and occupation of the Business Portion;   |

- 1.21 words or expressions defined in the Share Blocks Control Act and the Property Timeshare Control Act shall have the meaning therein defined;
- 1.22 any words in this Agreement importing
  - 1.22.1 the masculine gender shall include female;
  - 1.22.2 the singular shall include the plural;
  - 1.22.3 persons shall include bodies corporate;
- 1.23 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 users of the remainder of the Property, subject -
  - 2.2.1 to the rights of the Manager under the Management Agreement and to the rights of the Holder of the B Class Share or any person authorized by the Holder of the B Class Shares, to occupy any part of the Business Portion;
  - 2.2.2 to such terms and conditions as may be imposed by the Directors from time to time.
- 2.3 The rights of the Holder hereunder shall endure 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 he would have no rights to participate or have any interest in the business or businesses conducted from time to time in the Business Portion.
- 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 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 is used by the Holder. Notwithstanding the aforesaid, 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 and provided further that any major refurbishment of the Premises (whether alone or together with other Premises) shall require the approval of the Company in general meeting.
- 2.6 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.
- 2.7 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 lifts in the Property or of electrical and/or water services that may be supplied or any other municipal 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 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 the building 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 of 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.

## 3. CONSIDERATION FOR RIGHTS OF USE

- 3.1 In consideration for the grant of the rights to the Holder pursuant to this Agreement, the Developer as the Holder of the Share Block agrees to pay to the Company whilst the Company is the owner of the Property, 1 (one) cent per share comprising the Share Block per annum indefinitely, which amount shall be paid annually in arrear commencing on the first anniversary of this Agreement and thereafter on each succeeding anniversary hereof provided that the Developer in its capacity as the Holder of the Share Block shall be entitled -
  - 3.1.1 to anticipate payment of any amount due hereunder from time to time, and
  - 3.1.2 at any time to pay to the Company the sum of 10 (ten) cents per share comprising the Share Block, being the capitalized value of the annual payment referred to above, at 10%, per annum as a lump sum payment in settlement of all amounts that would otherwise have become payable from time to time to the Company for the grant of the rights to the Holder hereunder, and upon such lump sum payment being made, the obligation to pay any further periodical amounts to the Company in terms of this clause shall cease.
- 3.2 Upon disposal by the Developer of the Share Block and the transfer of the rights and obligations of the Developer as the Holder under this Agreement, the Developer hereby guarantees to and in favour of the Company the due payment of all amounts owing and payable from time to time by the Holder pursuant to clause 3.1 above.

## 4. USE OF PREMISES 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 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 fulfillment of the Liquor Act and the Hotels Act to which law this Agreement shall, notwithstanding anything to the contrary herein contained, be subject;
- 5.2.2 carry out such of the obligations undertaken by the Company from time to time pursuant to any Agreement with the Holder of the B Class Shares or other occupant or occupants of any part of the business portion as may be agreed from time to time;
- 5.2.3 carry out such of the obligations undertaken by the Company from time to time pursuant to any Agreement with the Holder of the B Class Shares or other occupant or occupants of any part of the business portion as may be agreed from time to time;
- 5.2.4 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;
- 5.2.5 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;
- 5.2.6 duly service the Premises and for this purpose will daily sweep and clean the Premises and provide linen and towels;
- 5.2.7 control the checking in and departure of any person entitled to the use of the Premises;
- 5.2.8 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;
- 5.2.9 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;
- 5.2.10 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 and awnings, recreational facilities, the allocation and use of parking facilities, the parking of motor vehicles and such other matters as the Director and/or the Manager deem fit for the general control of the use of the Property and the residential portion and for the general convenience, comfort and well-being of all the users of the Property and from time to time to vary, alter and amend the same provided that any charge levied for the use of parking facilities will be for the benefit for the levy fund. 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 Maintenance of Premises

- 7.1.1 the Company shall at all times at least to such extent as may be required by the Liquor Act or the Hotel Act be responsible either itself or through the Manager for procuring the due and proper maintenance of the entire Premises including without limitation all electrical wiring and fittings and attachments, plumbing installations, piping and apparatus of all fittings whatever, the interior surfaces of all walls and all window frames, fittings and doors, as well as the maintenance of the Movable Property contained in the Premises, in a good and sound order and repair, replacing with new as the old become worn out or become lost to the Company, and shall be responsible for all maintenance, repairs and replacements of whatsoever nature, including all repairs and, if necessary, replacements, the clearing of any blockages of drains, sewers, plumbing and sanitary equipment and connections and maintenance and replacement thereof and all repairs and renovations to the Premises of whatsoever nature, the Holder having no liability therefore, save as prescribed in clauses 8 and 9 below.
- 7.1.2 It is agreed that the Holder acquires the use of the Premises and the Movable Property for the week on a voetstoots basis without any warranties express or implied and in the condition in which they presently stand or will stand when the Holder commences his use thereof. The Company will endeavour to procure that all reasonable steps to remedy any defect in the 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.
- 7.1.3 The Holder undertakes to be bound by any procedures which may be prescribed by the Management Regulations or by the Manager from time to time for the taking of inventories in respect of fixtures, fittings and the Movable Property at the commencement and conclusion of the relevant week or weeks of occupation.

### 7.2 Maintenance of remainder of Property

- It shall be the duty of the Company either itself or through the Manager -
- 7.2.1 save as specified in clause 7.1 and for the repair and maintenance obligations of the Holder of the B Class Shares in respect of certain portion of the business portion, to be responsible for procuring the due maintenance and repair of the exterior of the entire remainder of the Property both internally and externally including the entertainment, recreational and all other facilities serving the Property and the users thereof, including all furnishings, décor, equipment and appliances and Movable Property used in and in conjunction with the Property, the swimming pools squash courts and equipment, tennis courts and equipment and swimming pool areas and all outside tables, chairs, and furnishings together with the parking areas, garages and garden areas in good, secure, clean and thoroughly tenable order and condition and from time to time and as and when necessary or requisite to renovate or renew the same;
- 7.2.2 to effect such insurance over and in respect of the Property and of the Movable Property against such risks as may be deemed fit and proper by the Director or otherwise in accordance with the relevant resolutions passed by the members of the Company from time to time at general meetings of the Company and to renew such policies.
- 7.3 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.

- 7.4 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.
- 7.5 The Company shall not be responsible for and the Holder indemnifies the Company against any loss, damage or injury which the Holder or any person using the 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 the Company or by any user thereof, or by reason of such repairs, renovations and maintenance work not being effected timeously or at all and the Holder shall not be entitled for any loss of the reasons aforesaid, or for any other reason whatsoever, to withhold any moneys due to the Company.

## 8. HOLDER'S RESPONSIBILITIES

Notwithstanding the provisions of clauses 7.1 and 7.2 -

- 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 in the remainder of the Property in such manner as will ensure the preservation thereof in the best possible condition, subject always to the relevant provisions of the Management Regulations 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 or renovations to the Property or any portion thereof or the Movable Property including the Premises, or any facilities, furnishings 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 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 Director 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 dispute.

## 9. LEVY FUND

- 9.1 The Holder shall pay any charges or expenses for any services made available to the Property, 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 a levy fund, to which end they shall from time to time make levies upon members of the Company, for the repair, upkeep, renovation, control, management and administration of the Company and the 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 which may from time to time become due in respect of the Property including any rates, taxes and any other local authority charges on the Property, which are payable by the Company, any charges for the supply of electric current, gas, water, fuel, sanitary and other services to the Company and the Property, the Movable Property and the Premises, for which the individual members are not personally liable, for any services or facilities required by the Company and the covering of any losses suffered by the Company, the payment of any premiums of insurance and for the discharge of any other obligation of the Company, including all the costs, fees and payments which become due and payable from time to time to the Manager.
- 9.3 The Directors shall estimate the amount which shall be required by the Company to meet the aforesaid expenses during each operational year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding operational year or portion thereof, and shall make a levy upon the members of the Company equal as nearly as is reasonably practicable to such estimated amount. The Directors may include in such levies an amount to be held in reserve to meet any anticipated future expenditure not of an annual nature, such as the expenses to be incurred for the redecoration or renovation of the Company's Property and for the replacement of any Movable Property or any part thereof or to meet any obligation of the Company in connection therewith.
- 9.4 All such levies shall be payable to the Company annually in one lump sum within 21 (twenty one) days after written request being made by the Company or the Manager and shall be for the Holder's share of the estimated total expenses of the Company for the forthcoming operational year.
- 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.
- 9.5 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 or are not recoverable pursuant to clauses 9.3 and such levies may be made payable in one sum or by such and at such time or times as the Directors shall think fit.
- 9.6 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.
- 9.7 For purposes of establishing the weekly levy amount -

9.7.1 week numbers shall be classified as follows -

Levy Class	Season	Week Numbers	Total
Standard	Low	18 to 25, 31 to 38	16
Standard	Mid	3 to 12, 16, 17, 26, 30, 39 to 48	24
Peak	High	1 to 2, 13 to 15, 27 to 29, 49 to 52	12
			<u>52</u>

9.7.2 the levy amount shall be the percentage of the total annual levy budget bearing reference to the levy class and type of Accommodation as stated in this paragraph -

Type	Standard %	Peak %
Beach Front Cabana	0,0058	0,0076
Terrace Cabana/Penthouse Cabana	0,0076	0,0099
Tower Cabana (including Tower Duplex)	0,0094	0,0122
Duplex Cabana	0,0139	0,0181

- 9.7.3 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 53<sup>rd</sup> Saturday the Holders of Share Blocks in respect of week number 52 shall pay an additional levy in that year for such 53<sup>rd</sup> week in an amount equivalent to that paid in respect of week number 52.
- 9.8 Any amount due by the Holder by way of a levy or instalment of a levy shall be a debt owed by the Holder to the Company and shall be recoverable by the Company. The obligation of a Holder to pay a levy shall cease upon the lawful termination of the Holder's right of use, save that any arrear levies to the date of such termination shall nevertheless be recoverable from that Holder. No levies and no part of any levy paid by a Holder shall be refundable by the Company on the termination of a Holder's right of occupation.

- 9.9 Should the Holder fall into arrear with any levy obligation or part thereof or liability in terms of clause 9.9.1 below, then without prejudice to any other rights the Company may have hereunder, the Holder;
- 9.9.1 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
- 9.9.2 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.
- 9.10 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 building being –
- 10.1.1 totally or substantially destroyed by any cause whatever so that the majority in number of the units in the Building to which Share Blocks relate cannot be beneficially utilised, 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 building;
- 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 building 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. 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 any of the circumstances set out in 10.1 or upon the exercise by the Company of any of its rights in terms of 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.
- 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 any 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 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 9.9.2 above; or 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 or any offence 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 Company, the business portion of any activities conducted on the Property;
- 12.4.2 cause any material damage to the Premises or any other part of the Property;
- 12.4.3 cause a nuisance to other occupiers of portions of the 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; 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 rights to claim whatever monies may be owed to it, and such damage to 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 monies payable by the hiring user in respect of his use thereof, and to deduct therefrom any monies 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 pledge 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 of 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 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, a 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 authorised agents.
- 13.4 If by virtue of any provision of the Management Agreement any conflict arises in the obligations of the Holder vis-a-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 it being necessary for the Company to take any legal proceedings against the Holder hereunder, Company shall, at its option, 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 2<sup>nd</sup> Floor, Twin Towers East, Sandton City, Sandhurst 2146 (marked for the attention of the managing Director) and a 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 10 Beach Mews, 10 Lagoon Drive, Umhlanga Rocks 4320;
- 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 an address in the Republic of South Africa the Holder's domiciliary address shall then be deemed to be the address of the 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 its 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.
- 15.3 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 CABANA BEACH SHARE BLOCK LIMITED**

**B. CORTE**  
\_\_\_\_\_  
Authorised Signatory

**SIGNED FOR SOUTHERN SUN TIMESHARING (PROPRIETARY) LIMITED**

**B.M. STOCKS**  
\_\_\_\_\_  
Authorised Signatory

### Update to Notices 15

#### Cabana Beach Share Block Limited

Registration Number: 1965/004874/06

("the Company")

Registered Office  
Palazzo Towers East  
Montecasino Boulevard  
Fourways, 2055

## LIST OF MOVABLE PROPERTY

DESCRIPTION	Beach Front	Pent-house	Terrace	Tower		DESCRIPTION	Beach Front	Pent-house	Terrace	Tower
Duplex						Duplex				
Kitchen Equipment						Kitchen Utensils				
Crockery & Glassware						Bread Knife	1	1	1	1
Bowls:						Can Opener	1	1	1	1
Dessert	2	4	6	6	8	Cork Screw	1	1	1	1
Soup	2	4	6	6	8	Grater	1	1	1	1
Coffee Pot	1	1	1	1	1	Kitchen Set	1	1	1	1
Cup & Saucers	2	4	6	6	8	Orange Squeezer	1	1	1	1
Egg Cups	2	4	6	6	8	Tea Strainer	1	1	1	1
Fruit Bowl	1	1	1	1	1	Vegetable Peeler	1	1	1	1
Glasses:						Vegetable Knife	1	1	1	1
Large	2	4	6	6	8	Wooden Spoon	1	1	1	1
Small	2	4	6	6	8					
Wine	2	4	6	6	8	Furnishings				
Gravy Dish	1	1	1	1	1	Bedroom/s				
Milk Jug	1	1	1	1	1	Dustbin	1	1	1	1
Plates:						Bedside Lamps	2	2	2	2
Dinner	2	4	6	6	8	Headboards	1	1	1	1
Fish	2	4	6	6	8	Radio	1	1	1	1
Side	2	4	6	6	8	Vanity Stool	1	1	1	1
Sugar Bowl	1	1	1	1	1	Easy Chairs	1	1	1	1
Tea Pot	1	1	1	1	1	Standing Lamps	1	1	1	1
Water Jug	1	1	1	1	1	Pedestals	2	2	2	2
Cutlery						Dressing Table	1	1	1	1
Carving Set	1	1	1	1	1	Bathroom				
Forks:						Bin	1	1	1	2
Large	2	4	6	6	8	Shower Curtain	1	1	1	2
Small	2	4	6	6	8	Tissue Holder	1	1	1	2
Knives:						Clothes Line	1	1	1	2
Large	2	4	6	6	8	Childrens Bedroom				
Small	2	4	6	6	8	Beds			2	2
Steak	2	4	6	6	8	Dustbin			1	1
Salad Server Set	1	1	1	1	1	Pictures			1	1
Spoons:						Dining Room				
Dessert	2	4	6	6	8	Dining Chairs	4	4	6	8
Soup	2	4	6	6	8	Dining Table	1	1	1	1
Table	2	4	6	6	8	Liquor Cabinet	1	1	1	1
Teaspoon	2	4	6	6	8	Mirror	1	1	1	1
Kitchen Equipment						Picture	1	1	1	2
Fridge	1	1	1	1	1	Lounge				
Kettle	1	1	1	1	1	Convertible Settee		1	1	2
Stove	1	1	1	1	1	Radio	1	1	1	1
Toaster	1	1	1	1	1	Side Table		2	2	3
Sandwich Toaster	1	1	1	1	1	Easy Chairs		2	2	3
Miscellaneous						Telephone	1	1	1	1
Bread Bin	1	1	1	1	1	Television Stand	1	1	1	1
Bread Board	1	1	1	1	1	Pictures	1	2	2	3
Brush & Pan Set	1	1	1	1	1	Coffee Table	1	1	1	1
Drying Rack	1	1	1	1	1					
Dustbin	1	1	1	1	1	<b>Patio</b>				
Egg Beater	1	1	1	1	1	Dining Table		1		1
Ice Bucket	1	1	1	1	1	Chairs	2	4	2	6
Toast Rack	1	1	1	1	1	Chaise Loungers		2		2
Pots, Pans & Servers						Drinks Table	1	2	1	3
Butter Dish	1	1	1	1	1	Drinks Trolley		1		1
Colander	1	1	1	1	1	Umbrella		1		1
Frying Pan	2	2	2	2	2	Braai Unit		1		1
Roasting Pan	1	1	1	1	1	Lounge Chairs				3
Saucepan	2	2	2	2	2					
Serving Platters	1	1	2	2	2					
Serving Bowls	1	1	2	2	3					
Salt & Pepper Set	1	1	1	1	1					