

WILD DOG ESTATE DUET SHARE BLOCK LIMITED NO 1

APPENDIX 2

USE AGREEMENT WILD DOG ESTATE SHARE BLOCK LIMITED

The Company, the Developer and the Member hereby contract on the terms and conditions set out herein.

1. SCHEDULE OF DEFINITIONS

Unless inconsistent with or otherwise indicated by the context, the following words and expressions shall bear the meanings assigned to them hereunder.

- 1.1. "Act" the Share Blocks Control Act 59 of 1980.
- 1.2. "Architect's certificate" the certificate issued by the Architect in respect of the Units which have been erected, certifying that they have been erected in accordance with the approved plans and that they are suitable for occupation and in respect of the Units which have not yet been erected certifying, as and when the Units have been erected, that they will have been erected in accordance with the approved plans and that they are suitable for occupation.
- 1.3. "Architect" the architect appointed by the Developer from time to time.
- 1.4. "Booking Application" an application by a member to book specific Days in a given Calendar Year, and which application does not create any right in favour of any member, unless such application is approved by the Company and the booking is confirmed in writing.

- 1.5. "Booking Commencement Date" in respect of a particular Calendar Year, shall mean the first day of the PBP in the previous Calendar Year.
- 1.6. "Booking Register" a physical register of Booking Applications maintained by the Company, which shall be conclusive as to the order in which Booking Applications will be considered by the Company.
- 1.7. "Business Days" all days except Saturdays, Sundays and public holidays in the Republic of South Africa.
- 1.8. "Business Hours" hours between 08:00am and 16:00pm in the Republic of South Africa, on Business Days.
- 1.9. "Calendar" the use and occupation calendar setting out the Days available for booking by members of the Company in the relevant Calendar Years (subject to the provisions of this Agreement), in order for the members to exercise their Use Rights. The calendar shall be compiled and published by the Company annually in its sole discretion, and the first such calendar is annexed hereto as Annexure A.
- 1.10. "Calendar Commencement Date" the first Friday in January of every year, provided that no Days shall be allocated in terms of any Calendar Year prior to the Effective Date or the Occupation Date.
- 1.11. "Calendar Year" a period of 52 Days commencing on the Calendar Commencement Date.
- 1.12. "Company" Wild Dog Estate Duet Share Block Limited No 1
- 1.13. "Common Property" means the Company Common Property and the Estate Common Property;

- 1.14. "Company Common Property" those parts of the Property excluding any part of a Unit and Exclusive Use Areas, and also excluding those parts of the Property designated as reserved or restricted areas by the Directors from time to time.
- 1.15. "Completion Date" the date within 2 years of the Effective Date or such earlier date as certified by the Architect, that the Units are all ready for beneficial use and occupation.
- 1.15.1. "Day" a continuous period of 24 (twenty four) hours commencing at 10:00 a.m. on a particular day, and terminating at 10:00 a.m. the following day. The date indicated by a "Day" shall be the date on which it commences;
- 1.16. "Developer" Wild Dog Estate (Pty) Ltd 2003/029461/07, c/o Mr R Santini 1 Berg Road Underberg Natal 3257, and "WDE" shall have the same meaning.
- 1.17. "DFA Judgement" the judgement of the Development Tribunal (Kwazulu-Natal) in terms Chapter V Section 31 (2) of the Development Facilitation Act 67 of 1995 in approving Development Application Number: 2003/1097, as amended from time to time.
- 1.18. "Directors" the directors of the Company.
- 1.19. "Effective Date" is the date of the first Architect's certificate (which date shall be a date within two years from the date of the first transfer of a Share Block to a person other than the Developer).
- 1.20. "Estate" the Wild Dog Estate development as approved in terms of the Development Facilitation Act 67 of 1995 by the Development Tribunal (Kwazulu-Natal) Development

Application Number: 2003/1097, as amended, established on Portion 24 of the Farm Lot WP3 Number 9418, Situated in the Administrative District of Natal, Province of KwaZulu-Natal.

- 1.21. "Estate Common Property" the land forming those parts of the Estate which were required to be transferred to the WDHOA in terms of the DFA Judgement, but excluding:
- 1.21.1. the Company Common Property; and
 - 1.21.2. any exclusive use area as determined by the WDHOA;
 - 1.21.3. the reserved development areas being Portions 25, 26, 27 & 28 of the farm Lot WP3 Number 9418, Registration Division FS; and
 - 1.21.4. any Individual Portions; and
 - 1.21.5. any other land or portion of land identified by the Developer or WDHOA from time to time, in their sole and unfettered discretion, as being for specific, exclusive, private, reserved or restricted use and not forming part of the Common Property.
- 1.22. "Exclusive Use Areas" The terraces, stoeps and balconies allocated to the Units on the Plans, and also those parts of the Property designated as such and allocated to the occupiers of specific Units by the Directors from time to time.

- 1.23. "Further Loan Obligation" the total of all liabilities incurred by the Company from time to time in connection with improvements to the Property or the furnishing of the Units, excluding those liabilities that form part of the Initial Loan Obligation.
- 1.24. "Normal Day" Days indicated as such with the letter "N" on the Calendar, and a numeral indicating the Unit to which the relevant Day is linked.
- 1.25. "Individual Portions" Portions 30 to 71 (both included) of the farm Lot WP3 Number 9418, Registration Division FS.
- 1.26. "Initial Loan Obligation" the total of any obligations incurred by the Company from time to time in connection with the original construction and furnishing of the Units according to the Plans.
- 1.27. "Levy fund" the fund established by the company in terms of Section 13 of the Act.
- 1.28. "Levy quota" the fraction used as the basis for determining the Member's share of the costs, expenses and other amounts contemplated in Section 13(1) of the Act and in this Agreement, calculated in terms of the formula in paragraph 4 of Annexure E hereto.
- 1.29. "Loan Obligation" the combined Initial Loan Obligation and Further Loan Obligation from time to time.
- 1.30. "Maintenance Day" Days indicated as such with the letter "M" on the Calendar, and a numeral indicating the Unit to which the relevant Day is linked, during which time no member shall be entitled to occupy the relevant Unit, but the Company shall be entitled to conduct maintenance and repair work or in its sole discretion put the Unit to any other use, including but not limited to renting out the Unit during that Day for the benefit of the Levy Fund or allocating the relevant Day to the Rental Pool.

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- 1.31. "Manager" the person or entity appointed from time to time by the Directors to manage and supervise the property and administer the Scheme on such terms and conditions as the Directors may decide from time to time.
- 1.32. "Maximum Interest Rate" means the maximum interest rate chargeable in terms of regulation 42 of the National Credit Regulations from time to time.
- 1.33. "Member" the holder of the Share Block from time to time.
- 1.34. "Member's Pack Certificate" the certificate affixed to the inside cover of this Member's Pack.
- 1.35. "Module" the 21 (Twenty One) Days booked by, and allocated by the Company to, the Member in a particular Calendar Year.
- 1.36. "Movables" means the furniture, fixtures, furnishings, bed linen, refrigerators and other movable items in the Units from time to time as described in Annexure D hereto, and as supplemented, replaced, removed or otherwise changed by the Company upon a resolution of the Directors from time to time.
- 1.37. "National Credit Act" the National Credit Act, Act 34 of 2005, as amended from time to time.
- 1.38. "National Credit Regulations" the regulations in terms of the National Credit Act, as amended or replaced from time to time.
- 1.39. "Occupation Date" the Completion Date, or the date upon which the Company advises the relevant member that sufficient Units have been constructed to allow that member to exercise the Use Rights, whichever date is the earlier.

- 1.40. "Operating Company" the Developer, or such other person or entity as may be nominated by the Company from time to time after the Developer has transferred 75% of the share blocks in the Scheme to purchasers thereof.
- 1.41. "PBP" the Primary Booking Period as indicated on the Calendar, and unless otherwise stated therein, a period commencing on 1 September of any Calendar Year at 09:00am and expiring at 16:00pm on the last day of November of any Calendar Year.
- 1.42. "Premier Day" Days indicated as such with the letter "P" on the Calendar, and a numeral indicating the Unit to which the relevant Day is linked.
- 1.43. "SBP" the Secondary Booking Period, being any part of the Calendar Year not falling within the PBP.
- 1.44. "Plans" the plans giving the approximate layout and specifications of each of the Units, subject to amendment in the discretion of the Developer in consultation with the Architect, and which are annexed hereto as Annexures C1 to C5 respectively.
- 1.45. "Property" the land made up of the Stands, forming part of the Estate.
- 1.46. "Rental Pool" the scheme established in terms of clause 11.4 below, established and administered by the Operating Company or its agents for the benefit of the Operating Company, the Company and the members.

- 1.47. "Rental Pool Fund" the fund referred to in clause 11.4.2.5, established and maintained by the Operating Company on behalf of the Company. Subject to clause 11.4, ownership of the fund vests in the Company, and control over it vests in the Operating Company.
- 1.48. "Rules" all rules applicable to the Scheme, including without limitation those set out in Annexure F (if any), those applicable to the Estate as published, extended, amended or replaced by WDE and/or WDHOA from time to time (the "Estate Rules", as well as any rules and regulations made by the Directors from time to time in order to regulate and administer the Scheme properly in terms of the Act "the Scheme Rules").
- 1.49. "Scheme" the share block scheme operated by the Company on the Property, in terms of which holders of share blocks are entitled to the use of the Units as set out in this Use Agreement.
- 1.50. "Sectional Titles Act" The Sectional Titles Act, 1971.
- 1.51. "Share Block" The Share Block identified in the Member's Pack Certificate consisting of ten shares of R1.00 each in the share capital of the Company and to which the use of the Units is linked pursuant to the Articles of Association of the company.
- 1.52. "share blocks" share blocks as defined in the Act consisting of 48 blocks of 10 shares each, each such share having a par value of R1.00, and which share blocks make up the entire issued share capital of the Company.
- 1.53. "Stand" the 1 portion of land described in Annexure B hereto.

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- 1.54. "Units" the residential dwelling units constructed on each one of the Stands forming part of the Property as indicated in Annexure B hereto, each of which shall:
- 1.54.1. be constructed approximately in accordance with the Plans; and
 - 1.54.2. be furnished according to Clause 3 below, and
- which provides sleeping accommodation for a number of persons as indicated on the relevant Plan, and the use of which is linked to share blocks pursuant to the Articles of Association of the company.
- 1.55. "Use Rights" means the rights of a member of the Company to use and occupy a Unit, but not a specific Unit, and an Exclusive Use Area associated with the relevant Unit, and have access to the Common Property, subject at all times to the Articles of Association of the Company, this Agreement and the Rules.
- 1.56. "WDE" the Developer.
- 1.57. "WDHOA" the Wild Dog Estate Home Owner's Association established by the Seller in terms of section 21 of the Companies Act 61 of 1973 in respect of the Estate.

1.58. "Week"	a continuous period of 7 (seven) days commencing at 16h00 on a Friday and terminating at 10h00 on the following Friday.
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- 1.59. and use of the Unit, observing any Rules, and access to the Common Property, shall include the Member, any persons to whom the member has legitimately (temporarily or permanently) transferred his right of occupation and the members of their respective families, their invitees, guests, servants, employees, tenants and agents.
- 1.60. Words signifying the singular shall include the plural and vice versa and words importing one gender shall include the other.
- 1.61. Save as provided herein, or unless the context otherwise requires, words and phrases defined or used in the Act or the Sectional Titles Act shall have the same meanings in this agreement.
- 1.62. The clause headings in this agreement have been inserted for reference purposes only, and shall not be taken into account in interpreting it.

2. USE AND OCCUPATION

- 2.1. From the Effective Date the Member shall, for as long as he continues to hold the Share Block and complies with the provisions of this agreement:
 - 2.1.1. be entitled for 7 Days for each Shareblock owned, as recorded in the Offer to Purchase Agreement, during each Calendar Year, subject to availability and proper booking in terms of this Agreement, to exercise the Member's Use Rights, until redemption of the shares forming part of the Share Block in terms of the Articles of Association of the Company; and
 - 2.1.2. be entitled during the same period to the use and enjoyment of the Movables in the Unit booked by the Member; and
 - 2.1.3. be entitled to let or part with occupation of the section provided that:

- 2.1.3.1. no such letting and/or parting with occupation shall in any way release the Member from any of his obligations to the company hereunder;
 - 2.1.3.2. as a condition precedent to any such letting and/or parting with occupation the Member shall secure from the lessee, or the person to whom occupation is given, as the case may be, an undertaking in favour of the Company that such lessee or person shall duly observe all such regulations and conditions as are contained herein and which may be reasonably considered as being applicable to a lessee. Such undertaking shall be in such terms as the Directors shall from time to time require, and it shall be lodged with the Company prior to such lessee or person being given occupation of any Unit.
- 2.2. If the Member, having booked certain Days does not intend to exercise his rights in terms of Clause 2.1.1 and 2.1.2 in respect of those Days, he may, not less than 6 (Six) Weeks before the commencement of the relevant Days, notify the Operating Company in writing of his transfer of the Module (or part thereof) to the Rental Pool in terms of clause 11.4 below.
- 2.3. The member shall have the right during the Module to the use of the Common Property in common with the other members of the Company and occupiers of the remainder of the Estate, subject :
 - 2.3.1. at all times to the Rules; and
 - 2.3.2. in respect of the Company Common Property, to such directives, terms and conditions as may be imposed by the Directors from time to time.
- 2.4. The rights of the Member hereunder shall endure in perpetuity, or until the particular Member disposes of his Share Block to a successor-in-title in accordance with the Act, the Articles of Association of the Company, and this Agreement.

- 2.5. The premises shall be used by the Member for residential purposes only and for no other purpose whatever. The premises shall be used personally by the Member and members of his family or his invitees, provided that the number of users of the premises shall not exceed 2 persons per bedroom at any time, without the prior written consent of the Company or the Manager which consent shall be required separately in regard to any Week. The aforesaid consent shall not create any right or expectation in favour any person to exceed maximum occupancy levels in any other Days.
- 2.6. In the event of the Use Rights herein being held by a company or other body corporate, the premises shall only be used by the person lawfully entitled to control that company, trust or other body corporate and members of his family or his invitees who may be nominated from time to time by the said company, trust or body corporate, which use shall be subject to any restrictions as to the number of users at any one time, and further shall be subject to the prior approval of the Company or the Manager, which approval shall not be unreasonably withheld.
- 2.7. The Company shall not be responsible for any loss, damage or injury which the Member, or any person present on the Property through, with the permission of or at the instance of the Member, may sustain in any Unit or in or about the Estate by reason of any act whatsoever, or neglect on the part of the Company or the Company's servants or agents, nor shall the Company be responsible for any loss, damage or injury of any description which the Member or any such other person may sustain by reason of the Property or any of the Units 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 any other occupant thereof, or by reason of such repairs, renovations and maintenance work not being effected timeously or at all, and the Member shall not be entitled for any of the reasons aforesaid or for any other reason whatsoever to withhold any moneys due to the Company. Without limiting the generality of the foregoing, the Company shall not be liable for:
- 2.7.1. any acts or omissions of the Manager from time to time; and

- 2.7.2. any interruption or failure of electrical, water or any other services that may be supplied by WDHOA or any other municipal or other service provider to the Property or the Units, irrespective of the cause thereof, nor shall the Company be liable for any consequential damage the Member may suffer by reason of such failures or interruptions; and
- 2.7.3. the quality, condition or availability of any services or facilities on the Estate.
- 2.8. the Member shall under no circumstances have the right to sell, transfer or in any other way make over the ownership and/or rights in terms of the Share Block or the Use Agreement or rights attaching thereto to any club or similar timeshare holiday organisations without the express consent of the Developer which consent may be withheld in the Developer's sole discretion.

3. FURNISHING AND MAINTENANCE OF UNITS

3.1. In respect of Units

- 3.1.1. Each premises shall be furnished and provided with Movables which in terms of Annexure D hereto is specified for such premises, it being recorded that the Movables are the property of the Company and that nothing in this Agreement shall vest the Member with the ownership of any such Movables or entitle him to remove any such Movables from the relevant Unit during or upon termination of any Week that a Unit used by the Member. Notwithstanding the foregoing, the Company shall be entitled from time to time with the authority of a resolution of its directors to replace, remove, vary or add to the Movables described in Annexure D hereto, provided that any major refurbishment of a Unit (whether alone or together with other Units) shall require a resolution of the Directors passed with a two-thirds majority.

- 3.1.2. The Company shall fully service the Unit or procure that the Unit is fully serviced and without detracting from the generality of the foregoing, the Company shall, in particular, clean the rooms every day (except Sundays) and supply a change of linen once a Week. The Company shall also furnish the Movables and shall subject to the provisions of this Agreement regarding the replacement by a Member maintain the abovementioned items in a good, clean and usable condition. The Company reserves the right to charge extra for the daily cleaning service.
- 3.2. If at any time the Units require to be refurbished or renovated, the Company, the Developer, or the Manager shall be entitled themselves and their respective contractors and workmen during normal business hours to access to the Units for the :
- 3.2.1. purposes of carrying out such works as may be required to be done from time to time provided always that the Company and the Developer will use their respective best endeavours to procure that such works are preferably carried out during Maintenance Days. If the Member or any person using the premises however suffers any inconvenience from such operations conducted in any other part of the Property, the Member and such other person shall have no claim whatever against the Company, the Developer or the Manager.
- 3.2.2. In the event that the refurbishing or renovation operations referred to above are such as to deprive the Member 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, the Developer, or the Manager shall be entitled to provide the Member or such other user, without extra cost to the Member or other user with substantially equivalent temporary accommodation elsewhere on the Property for the duration of the relevant Days or for such time as the Unit is not so available as the case may be.

- 3.2.3. If any dispute arises at any time as to whether the Member or other user aforesaid is unable to enjoy beneficial use of a Unit 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 Member or such other person.
- 3.3. Notwithstanding anything to the contrary herein contained in the event that the Company, Developer or Manager is of the opinion that the admission to use any part of the Property by the Member or any person claiming any right to use the premises through or at the instance of the Member, would result in or constitute a contravention of any law the Company, Developer or Manager, as the case may be, will be entitled to refuse admission to the Property by the Member or such person, or if such person has gained admission thereto, to require or cause the Member or such person to leave or vacate the Property forthwith.
- 3.4. Any days remaining between the end of the Calendar Year and the beginning of the next Calendar Year shall be treated as Maintenance days.

4. CONDITIONS OF OCCUPATION

From the Occupation Date the Member –

- 4.1. shall at all times, as long as this agreement shall remain in force, comply with the provisions of Section 32 (excluding Section 32(f)) of the Sectional Titles Act as if he were the owner of the Unit in terms of that Act, and with the Rules, and procure compliance with the Rules by a member of the family of the Member, invitees, guests, servants, employees, tenants and agents. Provided that such of the provisions of the Sectional Titles Act and the Rules as cannot, under the circumstances, be applicable or are impliedly substituted by the provisions of this Agreement, shall not be binding on the Member;

- 4.2. shall waive all claims against the Company for any loss or damage to property or any injury to any person which the Member or other person may sustain in or about the Unit, the Property or the Estate and indemnify the Company against any such claim that may be made against the Company by any member of the Member's family or Members' invitees, employees, or agents for any loss or damage to property or injury to person suffered in or about the Unit, the Property or the Estate howsoever such loss or damage to property or injury to person may be caused;
- 4.3. shall be liable for and pay to the Levy Fund an annual levy, in the amount hereinafter determined.

5. LEVY

- 5.1. The Directors shall establish and maintain a Levy Fund to which end they shall from time to time make levies upon members of the Company in such amounts as are in their opinion sufficient for:
 - 5.1.1. the repair, upkeep, control, and management of the Property; and
 - 5.1.2. the administration of the Company;
 - 5.1.3. for the payment of rates, taxes and any other local authority charges on the Property, any charges for the supply of electric current, gas, water, fuel, sanitary and other services to the Property; and
 - 5.1.4. any services or facilities provided to the Scheme by WDHOA or WDE, or otherwise required by the Company for the proper administration of the Scheme; and
 - 5.1.5. the covering of any losses suffered by the Company; and
 - 5.1.6. the payment of any premiums of insurance; and

5.1.7. for the discharge of any other obligation of the Company

and the Company is authorised to employ and remunerate such persons as may be necessary to fulfil any function of administration, management, maintenance and/or control.

- 5.2. The Directors shall estimate the amount which shall be required by the Company to meet the aforesaid expenses during each Calendar Year or any portion thereof, together with the estimated deficiency, if any, as may have resulted from the preceding Calendar 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 or any part thereof.
- 5.3. The Member acknowledges being aware of the provision of the Articles of Association of the Company with regard to the levies which will be calculated and raised by the Directors, and are payable in terms of the Articles of Association of the company.
- 5.4. The total levy payable by a Member shall be in accordance with the Member's levy quota, and is payable in respect of each share block owned by the Member, calculated with reference to item 4 on Annexure E. The levy shall be payable monthly in advance, or in the case of the first Calendar Year on the Occupation Date. Should the levy not be paid on the due date the Company shall be entitled to charge interest on the arrear levies at the Maximum Interest Rate.
- 5.5. 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 mentioned in Clause 5.1 and 5.2 and such levies may be payable in one sum or by such instalments and at such time or times as the Directors shall think fit.

5.6. Notices shall be given in respect of levies payable by members of the company and such notices shall be given in such manner and form as the Directors may determine from time to time. The initial levy payable per month until otherwise decided by the Directors shall be;

5.6.1. R175.00 including VAT per Shareblock if paid via Debit Order monthly in advance, or

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5.6.2. R1850.00 including VAT per Shareblock if paid annually in advance.

5.7. Any amount due by the Member by way of a levy or instalment of a levy shall be a debt owed by the Member to the Company and shall be recoverable by the Company and any arrear amounts in respect of the levies shall bear interest at the Maximum Interest Rate. The obligations of a Member to pay a levy shall cease upon the lawful termination of the Member's right of use, save that any arrear levies to the date of such termination shall nevertheless be recoverable from the Member. No levies and no part of any levy paid by a Member shall be refundable by the Company on the termination of a Member's right of occupation.

5.8. Should the Member be in arrear with any levy obligation, he shall not be entitled to occupy the Unit for his period until such time as he has paid all his arrears and interest.

5.9. The Company shall at all times be and remain the owner of the Movable and the Member agrees that the Member's right to the use of the Movable shall be limited to the period of the Module and that the Member shall not be entitled to remove any of the Movable from the Unit. The member shall be obliged to exercise reasonable care to ensure that the Movable are maintained in good order and repair. If at the end of the Module the Company, in its sole discretion, determines that any of the Movable have been damaged or removed, then the Member shall upon request pay the costs of replacement of or repair of any particular item, which amount shall be payable in addition to the levy, fair wear and tear of the Movable excepted.

- 5.10. Until such time as the Member has paid any levy due in terms hereof together with any accrued interest or costs in connection therewith he may not exchange his Module or part thereof, or make his Days or part thereof available to any person, without the prior written consent of the Company.
- 5.11. In the event that the Member is ever, for a lawful reason, denied access to a Unit by the Company, the Manager, WDE or WDHOA, then for the period that such access is denied any right of the Member, or any person claiming any such right through or at the instance of the Member, to access the Estate or facilities thereon, shall be likewise suspended.

6. *RIGHTS AND OBLIGATIONS OF THE COMPANY*

- 6.1. The Company shall, out of funds set aside out of the Levy Fund:
 - 6.1.1. Maintain the exterior portion of the Units, including the Exclusive Use Areas, in good repair and from time to time and as and when necessary, renovate and repair the same;
 - 6.1.2. Maintain in good order and repair and in a clean and tenantable condition the interior of each Unit;
 - 6.1.3. Maintain in good order and condition all other portions of the Property;
 - 6.1.4. Effect such insurances over and in respect of the Property against damage in accordance with the relevant resolutions passed by the members of the Company from time to time at general meetings of the Company and renew such policies.
 - 6.1.5. Maintain in good order and repair and in a clean and usable condition all the Movable and shall replace such items once no longer of a standard acceptable to the Directors.

- 6.2. The Company's duly authorised agent or workmen shall be permitted to enter the Unit at any reasonable hour of the day, if authorised by the Directors or by the secretary of the Company, Manager or supervisor acting under powers delegated by the Directors, in order to examine the same or to effect repairs thereto, or to any part of the buildings. If the Member shall not be personally present to open the Unit at any time when for any reason entry be necessary or permissible, then the said Secretary or Manager or supervisor or other duly authorised agent of the Company shall be entitled to enter the Unit, without being liable to any claim or cause of action for damages by reason thereof, provided that during such entry such person shall take reasonable care not to cause unnecessary damage or loss to the Member's property.
- 6.3. If the Member fails to discharge any of his obligations in terms hereof, the Company may, without detracting from any other rights it might have and without notice discharge such obligation on the Member's behalf and recover the costs of doing so from the Member.
- 6.4. The Company may, at any time the body of members are present at the relevant meeting, consider that the persistent acts or omissions of a Member are prejudicial to the enjoyment of other Members or to the general harmony of the Units, compel a Member, by resolution, to sell this Share Block and cede his Use Agreement for a cash consideration, to any person nominated by the Directors of the Company. The cash consideration shall be the cash price at which a similar share block and Use Agreement were last sold or the best possible cash which can be obtained within 90 (Ninety) days, whichever is the lower.

7. **LOAN OBLIGATIONS**

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The Developer shall be liable for one forty eighth ($1/48^{\text{th}}$) of the total Loan Obligation from time to time for each share block held by it. Upon transfer of the Share Block to another person, trust or entity the Developer shall settle, alternatively remain liable for, the portion of the Initial Loan Obligation attaching to the Share Block, but the Member and his successors in title will be liable for one forty eighth ($1/48^{\text{th}}$) of the Further Loan Obligation from time to time. For

avoidance of doubt it is agreed that the Developer will always remain liable for the Initial Loan Obligation, even after transfer of share blocks to purchasers thereof. All holders of share blocks from time to time (including the Developer and his successors in title) will be liable for one forty eighth (1/48th) of the Further Loan Obligation for each share block held by them, and such liability shall always remain linked to each share block.

8. VOETSTOOTS

Occupation of any Unit is accepted by the Member *voetstoots*, without any warranty or representation of any nature whatsoever.

9. SECURITY

As security for the due and punctual performance of all his obligations in terms hereof, the Member hereby pledges the Share Block and cedes his rights and interests in this Use Agreement, and his Use Rights in terms thereof, to the Company. The Company shall be entitled at any time at its discretion to call upon the Member to deliver the Member's copy of the Use Agreement and the Share Block certificate, together with duly signed share transfer forms in respect of the Share Block to the Company in order to perfect the pledge (subject to the preferent rights of any other person).

10. CESSION OF MEMBER'S RIGHTS AND LETTING

The Member shall only be entitled to dispose of his interest in this Agreement if simultaneously therewith he disposes of his Share Block in the manner provided by and subject to the Articles of Association of the Company and the terms of this Agreement, and thereby confers upon such person the exclusive use and enjoyment of the Unit. If however, a purchaser has purchased the Share Block on suspensive conditions and has not yet taken transfer of those shares, such purchaser shall be required to obtain the prior written consent of the Company to the resale of those shares and the cession of his rights herein.

11. BOOKING OF DAYS

11.1. General:

11.1.1. The Member shall be entitled to book a maximum total of any

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7 days X No of Shareblocks owned by the Member

available (Premier or Normal) Days per Calendar Year.

11.1.2. The allocation of Days shall be subject at all times to the availability of the relevant Days in a Calendar Year, and the contents of the Booking Register shall be decisive in this regard. The contents of any published Calendar, whether published by the Company or any other person and whether published electronically or otherwise, and which purports to represent to the availability of Days in any Calendar Year shall not be binding on the Company.

11.1.3. NA

11.1.4. No Member is entitled to book any consecutive Days in different Units without the consent of the Company.

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11.1.5. The allocation of a particular Unit to a member making a booking is in the sole discretion of the Company. Members may however indicate their preference, provided that such indication shall not place any obligation on the Company to allocate or consider allocating a particular Unit to a member.

- 11.1.6. No Member who has booked specific Premier Days shall be entitled to book the same Premier Days in the following one Calendar Year. Provided that, if the said specific Premier Days were not booked during the PBP for the following one Calendar Years then the Member, subject at all times to the maximum annual limit in 11.1 above, shall be entitled to book the said Premier Days during the SBP on a first-come, first-served basis.
- 11.1.7. In the event of any dispute between Members or between any Member and the Manager in respect of the booking or allocation of Days, such dispute shall be referred to the Directors who shall resolve and determine such disputes in their sole and unfettered discretion.
- 11.1.8. Each Member shall be allocated a Member Number which shall be quoted by the Member on all correspondence, notices and Booking Applications, failing which such correspondence, notices and Booking Applications shall not be binding on or create any obligations on the part of the Company.

11.2. **Booking Process:**

- 11.2.1. Bookings for a particular Calendar Year shall open on the Booking Commencement Date. By way of example and for avoidance of doubt the bookings for the Calendar Year commencing in January 2011 shall open on 1 September 2010. Booking Applications for a particular Calendar Year received prior to the Booking Commencement Date shall be invalid and will not be considered by the Company at all.
- 11.2.2. The onus on proving that a Booking Application was properly completed and delivered, and received on or after the Booking Commencement Date, shall lie at all times with the Member.

- 11.2.3. Booking Applications shall be deemed not to have been received by the Company unless receipt is confirmed by the Company subsequently in writing.
- 11.2.4. Booking Applications will only be processed and considered during Business Hours, and in the order in which they appear in the Booking Register.
- 11.2.5. Booking Applications received shall, after receipt thereof has been acknowledged by the Company, be entered in the Booking Register and the time of entering each Booking Application shall be entered in the said Booking Register.
- 11.2.6. Priority for entering Booking Applications in the Booking Register shall be given to Booking Applications received by fax, subject to 11.2.3 above.
- 11.2.7. Booking Applications delivered by hand or received by fax, courier, postal services, telephonically or electronically will be deemed to have been received at the time that the details thereof are entered in the Booking Register.
- 11.2.8. Booking Applications will be considered in the order in which they appear in the Booking Register and priority for the allocation of any Days to a specific Member shall be decided on the sequence in which the respective Booking Applications appear therein.
- 11.2.9. Booking Applications shall be made in such a manner and form as the Company may prescribe from time to time. Confirmation of bookings shall likewise be in such manner and form as the Company may decide from time to time.

11.3. Cancellation:

11.3.1. In the event that the Member books certain Days and cancels the said booking, in the case of -

11.3.1.1. Premier Days, less than 60 (Sixty) days, and

11.3.1.2. Normal Days, less than 30 (Thirty) days,

before the relevant Days commence, then:

11.3.1.3. the Company may place such Days with the Operating Company in terms of the Rental Pool scheme; and

11.3.1.4. if the cancelled Days do not generate any rental income in the Rental Pool and are not booked by other Members,

then the Member shall be liable to pay for any other Days booked by it in substitution of the said cancelled Days ("replacement Days"), at a rental usually charged for such replacement Days by the Operating Company. Such liability shall constitute a debt due and payable by the Member to the Company immediately following the expiry of the cancelled Days.

11.3.2. In respect of any cancellations of bookings, the Company may return such Days to the Calendar and mark them as available. Cancellations may be made in any form acceptable to the Company, and the Booking Register shall be decisive in regard to the proof of any cancellation. The onus of proving or disproving that a booking was cancelled shall lie at all times with the Member.

11.3.3. No cancellations may be revoked.

11.4. Rental Pool:

The Operating Company shall design, establish and operate a rental pool scheme on such terms and conditions as it may deem fit in its sole discretion, subject however to the provisions of this Agreement. The following shall apply to the said rental pool scheme:

11.4.1. In the event that a Member places his Module or part thereof with the Rental Pool in terms of clause 2.2 above, then:

11.4.1.1. If the Operating Company hires out the relevant Unit for the whole or any part of the Module, the Member shall be entitled to 60% (or such other percentage as the Directors may determine from time to time) of the net charge levied and received by the Operating Company in respect of the Module or part thereof;

11.4.1.2. The Operating Company shall be entitled to deduct from the said 60% referred to in clause 11.4.1.1 any amounts which are then due by the Member to the Company for any reason whatsoever, pay such deducted funds over to the Company, and the balance shall be paid to the Member;

11.4.1.3. The Operating Company shall be entitled to payment by the Member of a commission equal to 40% (or such other percentage as the Directors may determine from time to time) of the net charge levied and received by it in respect of the relevant Module or part thereof, and is hereby authorised to deduct the said commission as a first charge against any funds received in respect of the hiring out of any Module, or part thereof, booked by the Member; and

11.4.1.4. There shall be no obligation on the part of the Operating Company to ensure that the Module, or part thereof, as the case may be, is successfully hired out, or that the charges for such hire are actually paid or collected, and the Operating Company is indemnified by the Member in respect of any loss, liability, injury or damages directly or indirectly connected with the hiring of the Module, or part thereof, to any person.

11.4.2. Where any Days –

11.4.2.1. are surplus due to all existing members already having booked their Modules, or

11.4.2.2. remain un-booked less than 10 (Ten) Business Days before the commencement of the relevant Week,

then:

11.4.2.3. the Company may place such Days with the Operating Company in terms of the Rental Pool scheme; and

11.4.2.4. any application by a member of the public to hire the relevant Week or part thereof shall be entered in the booking register as a Rental Pool booking and shall no longer be available to members; and

11.4.2.5. If the Operating Company hires out the relevant Unit for the whole or any part of the relevant Week, then 60% (or such other percentage as the Directors may determine from time to time) of the net charge levied and received by the Operating Company in respect of the relevant Week or part thereof shall be transferred to a fund to be known as the Rental Pool Fund, to be accounted for by the Operating Company. All such funds shall be deposited in a bank account administered by the Operating Company on behalf of the Company; and

11.4.2.6. The Operating Company shall be entitled to pay to the Company from the Rental Pool Fund referred to in clause 11.4.2.5 any amounts which are required by the Company from time to time to fund any shortfall between the budgeted and actual expenses of the Company and any extraordinary or unforeseen expenses occurring during that Calendar Year; and

- 11.4.2.7. The Operating Company shall be entitled to payment of a commission equal to 40% (or such other percentage as the Directors may determine from time to time) of the net charge levied and received by it in respect of the relevant Week or part thereof, and is hereby authorised to withdraw the said commission from the Rental Pool Fund as a first charge; and
- 11.4.2.8. The Operating Company shall be entitled to deduct from the Rental Pool Fund any costs and expenses incurred by it in respect of the said fund, including but not limited to bank charges, auditors fees for preparing the account referred to in clause 11.4.2.9, postage costs, legal fees in recovering or collecting monies due to the Rental Pool Fund; and
- 11.4.2.9. The Operating Company shall, at the end of each Calendar Year, prepare an account reflecting all transactions during that Calendar Year in respect of the Rental Pool Fund. The balance reflected on the account as at the end of the Calendar Year shall then be paid to the Company for distribution to the members by way of dividend or otherwise on such terms as the Directors may deem fit; and
- 11.4.2.10. There shall be no obligation on the part of the Operating Company to ensure that the relevant Days, or part thereof, as the case may be, are successfully hired out, or that the charges for such hire are actually paid or collected, and the Operating Company is indemnified by the Company and the members in respect of any loss, liability, injury or damages directly or indirectly connected with the hiring of the relevant Week, or part thereof, to any person.

11.4.3. For the purposes of clause 11.4 “net charge” refers to that portion of the total charge levied and received by the Operating Company in respect of the relevant Week (or part thereof) remaining after deduction of all costs, expenses, breakages, taxes or other amounts attributed thereto by the Operating Company in its sole discretion.

12. TERMINATION ON BREACH

12.1. 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 this agreement forthwith:

12.1.1. Should the Member commit any breach of any of the provisions of this Agreement or of the concurrent agreement of sale in terms of which the Member acquired the Share Block, or of any of the Rules, which is capable of being remedied, and should the member fail to remedy such breach within 14 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

12.1.2. in the event of the Member committing or suffering the commission of any breach of any term or condition of this Agreement or of the said Rules, which breach is of such a nature or occurrence that it cannot practically be remedied consequent upon the giving of a period of notice as aforesaid, at any time within a period of six months after due notice in writing has been given to the Member requiring the Member to desist from and/or not to repeat or suffer the repetition of the breach complained.

12.2. In the circumstances of cancellation as set out in clause 12.1, the Company shall also have the power to:

12.2.1. Obtain repossession of the Unit and, for that purpose, to take whatever action may be necessary for the immediate ejection of the Member or occupier from the Unit, without prejudice to the Company's rights to claim whatever moneys may be owed to it and such damage as the Company may sustain by reason of the Member's breach or default, including legal expenses of whatever nature; and

12.2.2. without prejudice to the Company's right to sell the Share Block at any stage, together with the member's rights and interests arising from this Use Agreement, but subject always to the prior rights of any pledgee of the Share Block from whom the Member acquired such Share Block, the Company shall have the right, as *procurator in rem suam* to allocate the Member's Days to the Rental Pool *mutatis mutandis* in terms of clause 11.4.1 and receive all rents and moneys payable by the Operating Company in terms of the said clause 11.4.1 and to deduct therefrom any moneys whatsoever that may be owed by the Member to the Company and thereafter that may be owed to the person from whom the Member acquired the Share Block; and

12.2.3. without prejudice to any other rights, but subject to the rights of any pledgee seller and with his consent, to sell the Share Block and the amount advanced by the Member, for and on behalf of the Member. The proceeds received by the Company from the said sale shall be applied, firstly, in reduction of any indebtedness of the Member to the Company and, thereafter, to the person from whom the Member acquired the Share Block, whilst any surplus shall be paid over to the Member, who shall nevertheless remain responsible for any deficiency.

13. REPAIRS TO AND REPLACEMENT OF UNITS AND OTHER PROPERTY

If Movables and/or improvements on the Property are damaged or destroyed, or become unsuitable for use by virtue of wear and tear or passage of time, the Company agrees that it will, as soon as is practicable, repair, replace or rebuild the same. The Company may borrow funds for this purpose and secure any loan in connection therewith by registering mortgage bonds over the Property or part thereof. The debt thus incurred from time to time may be allocated by the Directors to the Further Loan Obligation account. The Member shall have no claim against the Company by reason of the Unit being unfit for occupation or for any other reason whatsoever. The Company however reserves to itself the right to change or vary the type of Movable or the form of construction of the building or Unit on such rebuilding or repairing, but the Member shall have the same accommodation as regards the position and area of building enjoyed by him prior to destruction in such altered or varied construction. Notwithstanding the above, the Company shall not be bound to expend any more in fulfilling any of its said obligations than that sum which it may receive from its insurers arising from any of the aforesaid contingencies.

14. RULES

The Rules shall be binding on the Member and in the application of such Rules the following shall apply:

- 14.1. The rules set out in Annexure "F" (if any) shall be the initial rules applicable specifically to the Scheme, and may be varied by the Directors from time to time. The said rules may be amended prior to their formal adoption:
- 14.1.1. so as to comply with the requirements of any future bondholder;
 - 14.1.2. if the variation is of a formal nature only; or
 - 14.1.3. if the Company reasonably believes the amendment is necessary or desirable for the proper management and administration of the Scheme.

- 14.2. In addition to the rules referred to in clause 14.1 above (the "initial rules"), the other rules referred to in clause 1.48 shall apply, subject to the following:
- 14.2.1. to the extent that there is a conflict between the initial rules and the Estate Rules, the Estate Rules shall prevail; and
 - 14.2.2. to the extent that there is a conflict between the initial rules and the Scheme Rules, the Scheme Rules shall prevail; and
 - 14.2.3. to the extent that there is a conflict between the Scheme Rules and the Estate Rules, the Estate Rules shall prevail in regard to all matters outside of the Property and in regard to access to and conduct on the Estate, and the Scheme Rules shall prevail in regard to the operation, management and administration of the Scheme.
- 14.3. If there is any eventuality provided for in the standard management and conduct rules referred to in the Sectional Titles Act (the "Sectional Title Rules") not covered by the other Rules, then the Sectional Title Rules shall to that extent be deemed to apply *mutatis mutandis* to the Scheme provided that they are not in conflict with Annexure F, the Act, the Scheme Rules, the Estate Rules or the Articles of Association of the Company, and shall continue to apply until such time as Scheme Rules have been supplemented accordingly by the Directors.

15. WARRANTIES AND REPRESENTATIONS

The Company hereby warrants:

- 15.1. that the Developer has concluded or will conclude a written Use Agreements with the Company in respect of all share blocks in regard to all Premier Days and Normal Days and the use of the Units, each of the agreements being subject to the same terms and conditions as are herein contained; and

- 15.2. the Company will not permit any amendment, addition or alteration to the said Use Agreements without approval by special resolution of a general meeting of the company of such change, addition or amendment or alteration.

16. PAYMENTS

All amounts payable by the Member to the Company in terms of this Use Agreement shall be paid to the Company, without deduction or set off and free of exchange at : WILD DOG ESTATE, (PTY) LTD 2003/029461/07, c/o Mr R Santini 1 Berg Road Underberg Natal 3257 or to such other person or company and at such other address as the Company may from time to time notify the Member.

17. NOTICES

- 17.1. All notices required to be given by the Company to the Member in terms of this Agreement shall be given in writing and delivered by hand to a Unit then occupied by or through the Member, or if the Member is not in occupation then sent by prepaid post to the postal address provided by the Member and reflected in the members' register of the Company.
- 17.2. A notice sent by prepaid post shall be deemed, unless the contrary is proved, to have been received within 14 (Fourteen) days after the date of posting.
- 17.3. The member chooses domicilium citandi et executandi at the Unit occupied by or through him, for all purposes under this agreement, during his use period, and at the address shown in Appendix 1, Clause 1.1.2 of the Agreement of Sale, at all other times.

18. GENERAL

- 18.1. No relaxation which the Company may allow the Member at any time in regard to the carrying out of any of the Member's obligations in terms of this Agreement shall prejudice or constitute a novation or a waiver of any of the Company's rights in terms of this Agreement.
- 18.2. This Agreement contains all the terms and conditions of the agreement between the Company and the Member relating to the subject matter thereof, and the Company has made no representations, given no warranties and agreed on no terms in regard to such subject matter other than as stated herein.
- 18.3. The Member shall not be entitled to retain or delay payment of any amount owing to the Company, for any reason, of any nature whatsoever.
- 18.4. No variation of this Agreement shall be of any force or effect unless reduced to writing and signed by the Company and the Member.
- 18.5. It is expressly agreed that this Agreement does not constitute a lease or any form of tenancy.

19. RIGHTS AND OBLIGATIONS OF THE DEVELOPER:

- 19.1. The Developer warrants that:
 - 19.1.1. It will conclude written agreements of use with the Company in respect of each Unit for each period in the Calendar Years, each of the agreements being subject to the same terms and conditions as are herein contained;
 - 19.1.2. The Developer will be the only person who incurs any liability whatsoever in respect of the Initial Loan Obligations of the Company.

- 19.2. The Developer, initially being the holder of share block number 1 and being the holder of the unsold share blocks, will be entitled to cause the Company to further develop the Property and the Units at its discretion. The Developer may cause the Company to incur financial obligations in the form of loans with appropriate security over the Property in order to fund the development of the Property and allocate such obligations to the relevant Loan Obligation account.
- 19.3. The Developer shall also be entitled to develop similar share block schemes in other share block companies or similar structures and acquire further properties and develop such properties at its discretion, without any duty to make such opportunities available to the Company or to disclose or account for any information in connection therewith to the Company or its members.

20. SEPARATE AND SEVERABLE

- 20.1. Insofar as any specific provision or provisions of this Use Agreement may, by ruling of a court, be held or by statute or by regulations in terms of any statute be contrary to or having the affect of being contrary to the provisions or intent of any law at the time hereof in force.
- 20.2. Then such provision shall be deemed to be
 - 20.2.1. pro non scripto; and
 - 20.2.2. distinct and severable from the remainder of this Use Agreement without however detracting from or affecting its enforceability.
- 20.3. To the extent that it may render this agreement either void ab initio or voidable at the instance of either the parties then the parties shall restore each other to their *status quo ante*, subject to any contrary provisions at law.

21. PENALTY ON ARREARS

All arrear or outstanding payments due in terms of this agreement and which are not paid on due date shall bear interest at the maximum rate allowed by law, such interest to be calculated from due date until date of actual payment and shall be considered as a penalty interest to accrue to the levy fund.

SIGNED BY THE MEMBER, COMPANY, AND THE DEVELOPER AT UNDERBERG ON THISDAY OF2010

AS WITNESSES:

1. MEMBER

2.

AS WITNESSES:

1. COMPANY REPRESENTATIVE

2.

AS WITNESSES:

1. DEVELOPER/OPERATING COMPANY REPRESENTATIVE

2.