

# **USE AGREEMENT**

AGREEMENT ENTERED INTO BETWEEN

**HERMANUSDOORNS SHAREBLOCK LIMITED**

(Reg Number ; 91/06901/06)

(and its successors in title and assigns  
hereafter referred to as “the company”)

and

as the registered holder for the time being of the share block as hereafter defined  
in the company and also for each successive holder or purchaser, whether under  
a suspensive condition as to the passing of ownership or otherwise from time to  
time of the share block  
(hereafter called “the member”)

THE PARTIES HEREBY AGREE AS FOLLOWS:

## **1. DEFINITIONS**

1.1. For the purposes of this agreement, unless the context otherwise  
requires it :-

- 1.1.1. the “company” Hermanusdoorns Shareblock Limited  
(Reg Number : 91/06901/06)
- 1.1.2. the “member” The Holder of the Share Block
- 1.1.3. the “property” Portion 650 of the Farm  
Hermanusdoorns, and portion 592 of the  
farm La Rive in Registration Division  
K.Q., Northern Province, and the  
remaining portion 4 of the farm Mana  
Mane 201 in the Registration Division  
KQ Northern Province
- 1.1.4. the “unit” that part of the property that is linked to  
the share block
- 1.1.5. the “share block” all the shares in the capital of the  
company which provides the holder the  
right to occupy as described in the  
Memorandum of Incorporation of the  
company
- 1.1.6. “rules and regulations” the provisions as laid down from time to  
time by the directors or through them via  
regulations for the management and the  
administration of the property, save  
however the prescriptions of the  
Memorandum of Incorporation of the

company must be complied with by the member.

- 1.1.7. the “directors” the board of directors of the company
- 1.1.8. the “act” shall mean the Share Blocks Control Act No 59. of 1980 as ammended and regulations in terms thereof
- 1.1.9. “immediate family” shall mean the members spouse, parents and children over 18 years of age

1.2. Words and expressions utilized in this agreement shall have the meanings ascribed to them as set out in the act.

1.3. Where the masculine gender is used, this shall include the feminine and neuter genders and vice versa, and the singular shall include the plural.

## **2. RIGHT TO USE OF PORTION OF PROPERTY**

2.1. The member shall have the sole right to the exclusive use, occupation and enjoyment for relaxation purposes and other purposes that the directors approve from time to time and for no other purposes, linked to his share block, free from the payment of any rental therefore of the unit.

2.2. The member shall have the right to the reasonable use and enjoyment, in common with other members of the company and occupants of the remainder of the property, of such portions of the property as are

reserved for the common use of all occupiers as determined by the directors of the company from time to time.

- 2.3. The rights of the member as contained herein shall endure for as long as he continues to be the beneficial owner of the share block and observes and complies with all the terms and conditions of this agreement.

### **3. USE**

- 3.1. The unit and improvements made by the member, with the consent of the directors, shall be used by the member for vacational purposes only, and for no other purpose whatever. The unit shall be used and occupied personally by the member and members of his family or his guests with the understanding that the occupiers of the unit shall at no time exceed 8 (eight) persons and guests shall at all times be accompanied by the member or an immediate family member. In the event of the rights of use herein being held by a company or other legal person or trust, the unit shall be occupied by such person who may be nominated from time to time by the said company or legal person or trust, which occupation shall be subject to the prior approval of the directors of the relevant person, which approval shall not be unreasonably withheld. In so far as concerns the parking area, such parking area shall only be used for the parking of a motor vehicle or

trailer and for no other purpose whatever, save with the prior approval of the directors of the company.

- 3.2. No animals or pets shall be kept and harboured in the unit or on the property.
- 3.3. No liability shall be incurred by the company for any interruption or failure of the electrical, water or other services that may be supplied and/or other municipal or other services on the property, irrespective of the cause thereof, nor for any consequential damage the member may suffer by reason of such failure or interruption. Generators, other than those owned and operated by the Company, are not permitted.
- 3.4. The member shall not store or harbour within the unit any goods which may vitiate any fire insurance policy held by the company or increase the premium payable in respect of such policy.
- 3.5. The member shall not cause or permit any conduct of whatsoever nature or do or permit any act, matter or thing in or about the unit which shall constitute or cause a nuisance or any inconvenience to the company, its staff or to any other occupant of the remainder of the property.

#### **4. ELECTRICITY**

The member shall make use of electricity supplied by the company at his own cost. The Company will hold a deposit, as determined from time to time, in respect of estimated consumption.

## **5. LETTING**

No letting of the Unit or part thereof is permitted.

## **6. MAINTENANCE**

- 6.1. The member shall at all times at his own expense maintain the unit, including without limitation any improvements thereon in a thoroughly clean, tidy and tenantable condition and shall be responsible for all maintenance, repairs and replacements of whatever nature, the company having no liability therefore.
- 6.2. Where any dispute arises as to whose liability it is to maintain any portion of the unit or of the property, such dispute shall be determined by the directors of the company, and the decision of the directors shall be final and binding on the parties to the dispute.

## **7. ALTERATIONS**

- 7.1. The member may make improvements to the interior of the said unit, but no further improvements and no structural alterations or additions nor alterations to the water or electric conduits may be effected without the written consent of the company having been previously obtained and then subject to such conditions as the company may impose.
- 7.2. It shall be the member's responsibility to effect his own insurance in respect of any improvements, vehicles and other assets on the property

and to pay all premiums in respect thereof. The contents of the unit shall be at the entire risk of the member, who shall have no claim whatsoever upon any grounds against the company for any loss suffered howsoever arising.

7.3. Any vehicles being on the property shall be there at the entire risk of the member, who shall have no claim whatever upon any grounds against the company for any loss suffered howsoever arising. All vehicles must be maintained to a satisfactory road worthiness as determined by the Company.

## **8. OWN RISK**

The member shall have no claim against the company in the event that any fixtures or fittings or any installation in the unit or portion thereof are missing or in a defective state, it being agreed that the member acquires use and occupation of the unit on a voetstoots basis and in the condition in which it presently stands.

## **9. LEVIES**

9.1. The directors of the company shall establish and maintain a levy fund and shall from time to time make levies upon the members of the company in such amounts as are in their opinion sufficient for the maintenance, control, management and administration of the company and of those portions of the property for which individual members are

not personally liable, for the payment of rates and taxes and any other local authority charges on the property, any charges for the supply of electric current, gas, water, fuel and sanitary and any other services to the property for which individual members are not personally liable, and services required by the company, for the covering of any losses suffered by the company, for the payment of any premiums of and for the discharge of any other obligation of the company.

- 9.2. 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 any annual nature, such as expenses to be incurred for improvement or development of the company's property or any part thereof.
- 9.3. Every such levy shall be made payable annually, due in advance on the first day of March each and every year. For the purposes of this clause, the operational year of the company shall run from the first day of March in each year to the last day of February in the following year.
- 9.4. 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 9.1, and such levies may be made payable in one sum or by such installments and at such time or times as the directors shall think fit.

- 9.5. Notices shall be given in respect of levies payable by members to the company, and such notice shall be subject to the provisions relating to notices in the Memorandum of Incorporation.
- 9.6. Every levy which is made by the directors pursuant to these provisions shall be made upon the members of the company in the proportion that the number of shares held by each member bears to the total number of issued shares in the share capital of the company.
- 9.7. Any amount due by the member by way of a levy shall be a debt owed by the member to the company and shall be recoverable by the company. The member's right of use will be suspended should any levy be outstanding for in excess of 30 days from invoice date. The obligation of the 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 the member shall be refundable by the company on the termination of the member's right of occupation.

## 10. LOAN OBLIGATION

- 10.1. The member shall lend to the company free of interest the amount allocated to the share block by the company, which amount, together with any other amount or amounts that may be owing by the company to the member on loan account, if any, shall only be repayable by the company at the option of the company as the company may from time to time elect, save that any such loans shall be repaid if the company is wound up. The decision of the company as contemplated herein shall be determined by a resolution of at least 75% (SEVENTY FIVE PERCENT) in number of the members of the company, excluding from such members the share block developer, having the right to vote at the relevant meeting and holding in the aggregate at least 75% (SEVENTY FIVE PERCENT) of the total number of votes of all those members, but excluding from such number of votes the votes held by the share block developer.
- 10.2. After the member has advanced the full amount of his loan obligation as allocated to him, the company shall, upon the member's request, be obliged to furnish to the member a certificate or other evidence of the fact that the full amount has been advanced by the member.
- 10.3. The member shall at the company's option either advance the full amount of the loan to the company in one lump sum or advance the loan to the company in such installments as may be agreed between the member and the company.

10.4. If the company agrees to a member advancing his loan to the company by way of periodic installments, the member shall then be liable for and shall pay interest to the company on the balance of the loan to be advanced by him, which interest shall be paid together with and in addition to the periodic installments aforesaid, the calculation and rate of interest to be determined by the company's directors from time to time. Any costs or charges incurred or raised by the company from time to time in the collection of such installments shall be charged to and paid by the member. Likewise, any costs and fees incurred by the company in renewing and existing bond or procuring funds to repay any portion of the company's loan obligation shall be recoverable by the company and paid by the members of the company pro rata to each member's then indebtedness to the company in terms of this clause.

## **11. LIEN ON SHARES**

11.1. Save as provided herein below, the company shall have a first lien upon every share for all amounts owed to it, including the costs of any proceedings instituted by the company, and whether the period for the payment thereof shall have actually arrived or not.

11.2. For the purposes of enforcing such lien, the directors may sell the share at such time and in such manner and upon such terms and conditions as they may think fit. No sale shall be made in terms of this clause unless some sum is presently payable and has remained unpaid,

notwithstanding 30 (THIRTY) day's notice in writing to the member, stating the amount of and demanding payment of such sum, and stating the director's intention to sell, if payment is not made within the said period of 30 (THIRTY) days.

- 11.3. The net proceeds of any such sale shall be applied in or towards satisfaction of the amount owed to the company and the balance (if any) shall, subject to the rights of any other aforementioned pledgee, be paid to the member.
- 11.4. Upon any such sale as aforesaid, the directors may enter the purchaser's name in the register as member of the company and the purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in relation to the sale.
- 11.5. Save as provided herein, an affidavit by a director or the secretary of the company that a share has been duly sold in accordance with the preceding sub-clauses shall be conclusive evidence of the facts therein stated, as against all persons claiming to be entitled to such share or its proceeds and such affidavit and the receipt of the company for the purchase price of the share, shall constitute a good title to such share, and the validity of the sale may not be impeached by any person.

## **12. CESSION OF MEMBER'S RIGHTS**

The member shall only be entitled to cede his rights, title and interest in and to this agreement, provided always that he sells his shares in the manner provided by and subject to the Memorandum of Incorporation of the company and the terms of this agreement, and thereby confers upon such person the rights to occupy the said unit.

## **13. RIGHTS AND OBLIGATIONS OF THE COMPANY**

13.1. It shall be the duty of the company at its own expense :-

13.1.1. to maintain in good order and repair and in a clean and tenable condition and all such other portions of the property which are not reserved for the exclusive use of the member;

13.1.2. to effect such insurances over and in respect of the property against damage in accordance with any relevant resolutions passed by the members of the company from time to time at general meetings of the company and to renew such policies.

13.2. The company's duly authorized agent or workmen shall be permitted to enter any unit in the said property at any reasonable hour of the day, if authorized by the directors or by the secretary, 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 said property. If the member shall not be personally present to open the said unit, at any

time when for any reason entry shall be necessary or permissible, then the secretary or manager or supervisor or other duly authorized agent of the company shall be entitled to enter the said 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 damage or loss to the member's property.

#### **14. EXEMPTIONS**

The company shall not be responsible for any loss, damage or injury which the member, or any person occupying the unit through or on the authority of the member, may sustain in the unit 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 any loss, damage or injury of any description which the member or any such other person may sustain by reason of the property or the unit at any time falling into a defective state or by reason of any repairs, renovation 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 monies due to the company.

## 15. TERMINATION

This agreement shall only remain in full force and effect for so long as the member is the holder or beneficial owner of the share block or remains entitled to the transfer thereof, provided that 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, fail to remedy such breach within 14 (FOURTEEN) 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, then the company shall be entitled, notwithstanding any prior waiver on its part of any of its rights, and without prejudice to any other rights it may have, to cancel the agreement forthwith and :-

15.1. to obtain repossession of the said unit and for that purpose to take whatever action may be necessary for the immediate ejection of the member or occupier from the set unit, without prejudice to the company's rights to claim whatever monies 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

15.2. without prejudice to the company's right to sell the said share block at any stage, the company shall have the right as agent of the member and as procurator in rem suam to let the said unit and to collect all rent and monies payable by the tenant in respect of his occupancy thereof, and to deduct therefrom any monies whatsoever that may be owed by the member to the company; and

15.3. without prejudice to any other rights, the proceeds received by the company from the said sale shall be applied, in reduction of any indebtedness of the member to the company, whilst any surplus shall be paid over to the member, who shall nevertheless remain responsible for any deficiency.

## **16. MANAGEMENT REGULATIONS**

The member agrees that the company's directors, in so far as it shall not be contrary to the provisions of this agreement, shall be entitled at all times to lay down terms and conditions of occupation and use, both in respect of the unit and of the property generally, including in relation to the use of radios, sound equipment, television sets and aerials, air-conditioning units and other electrical appliances and apparatus, blinds and awnings and such other matters as the directors deem fit, the convenience and comfort and general well-being of all the occupants of the property and the appearance and management of the affairs of the property, and from time to time to vary, alter or amend the same. Such terms and conditions shall only be binding upon the member, however, after they have been ratified by the members of the company holding a majority of the issued shares of the company for the time being, which ratification may be given either in writing or at a general meeting of the company, and the member has been given notice thereof. In the event of there being any conflict between such management regulations and this agreement, the provisions of this agreement shall prevail.



## **17. WAIVER**

No latitude, relaxation, indulgence or extension of time which may be allowed to the member in respect of any matter or thing which the member 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.

## **18. DOMICILIUM**

The member appoints as his domicilium et executandi, for all purposes in terms of this agreement, the units upon which he from time to time has the right to use, or another address of which prior written notice has been given to the company.

## **19. JURISDICTION**

Should it be necessary for the company to institute any legal proceedings in terms hereof against the member, the company at its option to institute said legal proceedings in the High Court or Magistrates Court having jurisdiction in respect of the member's person, despite the fact that said process may fall out of the jurisdiction of the Magistrates Court, and in both possibilities the member shall be liable for all attorney and client costs and any collection commission that the company may incur.

20. All notices delivered or sent per registered post by one party to another is deemed to be received at time of delivery or 4 (FOUR) business days after the date of posting respectively.

SIGNED by the company acting through its duly authorized officer at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

AS WITNESSES:

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

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

SIGNED by the member acting through its duly authorized officer at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

AS WITNESSES:

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

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