

RENTAL POOL AGREEMENT IN RESPECT OF POOL D UNITS

Entered into by and between

WATERBERG MINERALE BRON (PTY) LTD

(hereinafter referred to as "the Company")

And

(hereinafter referred to as "the Client")

1. DEFINITIONS AND INTERPRETATIONS

In this agreement unless the context clearly indicates the contrary intention:

1.1 words importing:

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and vice versa, and

1.1.3 natural persons include created entities (corporate or unincorporated) and vice versa;

1.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings namely:

1.2.1 "the COMPANY" – means WATERBERG MINERALE BRON (PTY) LTD;

1.2.2 "GUESTS" – means any person who contracts with the COMPANY to occupy any of the PARTICIPATING UNITS on a short term basis and excludes the client and any person occupying through or under the client as a non-paying guest or invitee;

1.2.3 "the PARTICIPATING UNITS" – means all the units which are classified as pool D units which are made available to the COMPANY for use as part of the RENTAL POOL in respect of each RENTAL POOL PERIOD;

- 1.2.4 "PROPORTIONATE SHARE" – means the client's proportionate share of the RENTAL POOL based on the number of days for which the UNIT is let to third persons calculated in accordance with clause 6 below;
- 1.2.5 "RENTAL POOL" – means all properties which are classified as Pool A properties which are made available to the COMPANY in terms of clause 4.1 below for the relevant RENTAL POOL PERIOD for renting out to third parties in terms of agreements similar to this agreement and including this agreement;
- 1.2.6 "RENTAL POOL PERIOD" – means the period from the first day of each calendar year to the last day of each calendar year;
- 1.2.7 "the SIGNATURE DATE" – means the date on which the last signatory has signed this Agreement;
- 1.2.8 "the UNIT" – means Unit _____ as set out on the site development plan annexed hereto marked Annexure "X" which the client has the right to occupy during certain periods by virtue of his ownership of a share block or erf or sectional title unit in the DEVELOPMENT;
- 1.2.9 "UNIT OF TIME" – means each period of one week allocated to the client for occupation of the UNIT;
- 1.2.10 "DEVELOPMENT: - means the Development known as the Royal Victoria Holiday Resort

2. RENTAL POOL

The client hereby agrees to make the UNIT available to the COMPANY for the purposes of letting the UNIT to GUESTS as part of the RENTAL POOL under the supervision and management of the COMPANY subject to the terms and conditions contained herein for each UNIT OF TIME allocated to the client.

3. DURATION OF THE AGREEMENT

This agreement shall commence on the SIGNATURE DATE and shall endure:-

3.1 Where the owner is the owner of a share block in a share block company owning property situated anywhere in the DEVELOPMENT, until such stage as the owner no longer owns any share blocks in such share block company; or

3.2 Where the client is the owner of an erf or sectional title unit which does not form part of a share block company, 90 (ninety) days after the client has given notice to the COMPANY that it wishes to terminate this agreement which notice shall not be given prior to 36 months after the SIGNATURE DATE.

4. MAKING UNITS AVAILABLE FOR RENTAL POOL

4.1 If a client wishes to participate in the RENTAL POOL for a specific RENTAL POOL PERIOD, the client shall make available for the UNIT OF TIME the UNIT to the COMPANY for such RENTAL POOL PERIOD.

4.2 The client shall give the COMPANY at least 90 (ninety) days notice that it wishes to participate in the RENTAL POOL for the RENTAL POOL PERIOD.

4.3 If a client wishes to rent out the UNIT for a period of less than a week, the client shall request that COMPANY to effect such rental on behalf of the client.

4.4 If the client wishes to let the UNIT out for the UNIT OF TIME, but does not give the requisite notice to the COMPANY in terms of paragraph 4.2 above, the COMPANY shall at its election either include such UNIT OF TIME in the RENTAL POOL or alternatively use its best endeavours to let the UNIT out on behalf of the client during such period.

4.5 Once the client has requested the COMPANY to place the UNIT in the RENTAL POOL or to let the UNIT, the client may not thereafter withdraw the UNIT from the RENTAL POOL or not make such UNIT available for rental in respect of such period. If the client wishes to occupy the UNIT during such period, the client will be obliged to then pay to the COMPANY the amount which a third party would be obliged to pay to occupy the UNIT i.e. the client will in relation to the UNIT be treated as a third party lessee of the UNIT.

5. RIGHTS AND OBLIGATIONS OF THE COMPANY AND THE CLIENT

5.1 The COMPANY shall be entitled to let the UNIT to GUESTS during the period that the UNIT forms part of the RENTAL POOL or that the UNIT has been set aside for rentals.

- 5.2 The COMPANY shall at its sole and absolute discretion determine the rates at which the units are to be let to GUESTS but shall endeavour to ensure that such rates are market related.
- 5.3 The COMPANY shall in its sole discretion determine the terms and conditions upon which the UNIT is let to GUESTS.
- 5.4 In order to facilitate the implementing and development of The Royal Victoria Holiday Resort as a premier holiday destination to the benefit of all members of the RENTAL POOL, the COMPANY shall be entitled to publish regulations and conduct rules from time to time governing the conduct of the owners of share block UNITS and the GUESTS.
- 5.5 The client agrees or undertakes that he shall:-
- 5.5.1 not interfere in any manner with the conduct of the rental business by the COMPANY or the performance by the COMPANY or any of its staff in pursuing its rights and obligations in terms of this agreement;
- 5.5.2 not let or otherwise dispose of rights or occupation in and to the UNIT other than in accordance with the provisions of this agreement. It is specifically recorded that unless the UNIT is used by the client or by the invitees of the client who do not pay any amounts to the client, during the time that the client has the right to use the UNIT or to occupy the UNIT, the use of such UNIT shall be deemed to fall under the terms and conditions of this agreement and the persons occupying the UNIT during such period shall be deemed to have signed a lease with the COMPANY which will then entitle the COMPANY to claim from and receive from the client an amount equal to 50% of the rates charged by the COMPANY for comparable UNITS for such period. It is further recorded that if the client rents out the PROPERTY contrary to the provisions of this agreement for any period in respect of which the client has the right to occupy the PROPERTY or the client employs or engages any other party or entity to act as a rental agent or rental manager, the same shall be a violation of this agreement and the client agrees that as liquidated damages therefore he shall pay to the COMPANY on demand an amount equal to 50% of the rates charged for comparable UNITS at the complex for the period of such violation;

5.6 the COMPANY SHALL:-

- 5.6.1 ensure that it is at all times adequately and properly staffed and that the RENTAL POOL is under the control of a general manager suitably experienced in the running of a RENTAL POOL;
- 5.6.2 determine and establish recommended tariffs, prices and rates for the various facilities to be offered by the RENTAL POOL;
- 5.6.3 do or cause to be done whatever is necessary to ensure that the RENTAL POOL will be ready and able to operate from the date that the client takes transfer of the UNIT;
- 5.6.4 establish an accounting system for the control and administration of the RENTAL POOL which shall conform to generally accepted accounting practice;
- 5.6.5 establish an onsite reservation and front desk accounting system;
- 5.6.6 control central reservations including liaising with booking and travel agents, conference bookings and management of promotions to maximise occupancy;
- 5.6.7 arrange for the provision of such stationary and printed matter as may be necessary;
- 5.6.8 arrange for GUESTS to obtain keys to the UNIT on their arrival and to deliver the keys at the end of their stay in the UNIT;
- 5.6.9 inspect the UNIT when the GUEST vacates the UNIT at the end of each letting period in order to deduct from the deposits paid by the GUEST any damages caused to the UNIT;

6. PAYMENTS TO CLIENT

- 6.1 In respect of each RENTAL POOL PERIOD, the client shall be paid Rx where x equals GR-E all divided by PP where:-

GR equals the total revenue earned by the RENTAL POOL less the management fee of 30% of the total revenue earned by RENTAL POOL payable to the COMPANY, it

been recorded that such revenue excludes any amount payable in terms of clause 5.5.2 which amount shall not form part of the RENTAL POOL and which shall belong to the COMPANY; and

E equals all expenses incurred by the COMPANY relating to the RENTAL POOL including but not limited to the salaries of the staff operating such RENTAL POOL and all ancillary functions, all items supplied to the PARTICIPATING UNITS by the COMPANY during the relevant RENTAL POOL PERIOD including but not limited to toiletries and other consumables, third party booking fees, the client's portion of breakages and maintenance costs being the amount that is not recovered from the deposit paid by the GUESTS, all value added tax levies and other taxes (including income tax) payable by the COMPANY in respect of the revenue earned by the RENTAL POOL and accounting and auditing fees; and

PP equals the number UNITS OF TIME that the PARTICIPATING UNITS have allocated to the RENTAL POOL, eg. if there are ten PARTICIPATING UNITS and nine PARTICIPATING UNITS allocate one UNIT OF TIME to the RENTAL POOL and one PARTICIPATING UNIT allocates two UNITS OF TIME to the RENTAL POOL then PP shall be 11 (eleven).

- 6.2 The amounts payable to the client shall be reduced by an amount which shall be determined by the auditors of the COMPANY acting as experts to take into account those periods that the UNIT participated in the RENTAL POOL PERIOD in respect of which the client was not the owner of the UNIT;
- 6.3 If a dispute arises as to whether an item should form part of E in the formula set out in paragraph 6.1 above, such dispute shall be referred to the auditors of the COMPANY whose decision in regard to the same shall be final and binding on the parties and not subject to review or appeal;
- 6.4 The parties record that, by definition, it is impossible at this stage to determine which expenses should be allocated to the running and administration of the RENTAL POOL and it is for this reason that the parties agree that the auditors of the COMPANY shall, whenever necessary, make a determination as to what expenses and what proportion of any expenses constitute those expenses which relate to or are in respect of the running and administration of the RENTAL POOL;
- 6.5 In respect of those periods where the UNIT has been let in terms of paragraphs 4.3 or 4.4 above and does not form part of the RENTAL POOL, the client shall be paid GR-E where:-

GR equals the total revenue earned for the UNIT during such period less a management fee of 35% of the rental for the UNIT during such period payable to the COMPANY; and

E equals all expenses incurred by the COMPANY relating to such rental including but not limited to all items supplied to the UNIT by the COMPANY during the period that the UNIT was so let including but not limited to toiletries and other consumable, third party booking fees, the client's portion of breakages and maintenance costs being the amount which is not recovered from the deposit paid by the GUEST, all value added tax levies and other taxes (including income tax) payable by the COMPANY in respect of such rental.

- 6.6 The amounts due to the client shall be paid out once a year within 90 (ninety) days after the end of the financial year of the COMPANY. The COMPANY shall simultaneously therewith account to each member of the RENTAL POOL in respect of the total rental received, commissions paid, other expenses and the revenue split.
- 6.7 The COMPANY shall cause the RENTAL POOL to be audited by the auditors of the COMPANY at the end of each financial half year of the company. The client shall, upon request, be entitled to receive from the COMPANY a copy of the audited financial accounts for such RENTAL POOL for each such period upon payment of the fair and reasonable photocopying charges and postage charges relating to the same.
- 6.8 Save for the information set out in 6.6 and 6.7 above, the client shall not be entitled to access to any of the books and records of the COMPANY all of which remain strictly confidential.

7. **MANAGEMENT FEE**

- 7.1 The client as well as all the other owners agrees to pay the COMPANY a management fee of 30% of the gross rentals collected by the COMPANY in respect of the RENTAL POOL which management fees are included in the calculations referred to in 6.1 above;
- 7.2 The client agrees to pay a management fee of 35% of the total amount collected by the COMPANY in respect of all other rentals in respect of the rental of the UNIT which management fee is included in the calculation referred to in paragraph 6.5 above.

8. **LIMITATION OF LIABILITY**

- 8.1 The COMPANY gives no warranties of whatever nature to the client regarding the amount of income to be earned by the client pursuant to this agreement;
- 8.2 The client hereby waives all claims which it may in the future have against the COMPANY and indemnifies the COMPANY against any claim which may be made by third parties arising out of the loss of income or other damages which may be suffered by the client or any other party whatsoever arising from or relating to anything done or omitted to be done by the COMPANY in terms of or pursuant to this agreement;
- 8.3 The COMPANY shall not in any way be liable to the client for any losses or damage caused to the UNIT or the contents thereof (including through theft arising from the occupation of the UNIT by third parties) and the client hereby indemnifies the COMPANY against any claims which may be brought by any of the shareholders of the share block company arising out of the same.
- 8.4 It is recorded that suitable Public Liability Insurance will be taken out by the COMPANY and the premiums and the cost thereof shall be part of the expenses referred to in 6.1 above.

9. **VALUE ADDED TAX**

All the fees, charges and costs set out herein are exclusive of VAT and the clients shall pay all value added tax charges thereon.

10. **CHANGE OF OWNERSHIP**

A change of ownership of the UNIT shall not affect the validity and continuation of this agreement. The parties agree that any new owner of the UNIT will take over and will be fully bound by the terms of this agreement in substitution for the client. The client undertakes to ensure that in any sale agreement for the UNIT reference is made in such agreement to this agreement and that such agreement will provide that this agreement will continue in full force and effect in respect of such Purchaser once the purchaser takes transfer of such unit.

11. **FAILURE TO MAINTAIN THE UNIT AND BREACH**

- 11.1 Should the furnishings or equipment or the general condition of the interior of the UNIT fall below the standards maintained for similar units in the RENTAL POOL, or

should the client commit any other breach of this agreement and not remedy the same within 14 (fourteen) days of despatch by prepaid registered post of a notice called upon the client to remedy the same, the COMPANY shall be entitled but not obliged to withdraw the UNIT from the RENTAL POOL or to request the auditors to make the necessary adjustment to the amount of monies which are to be paid to the client from the RENTAL POOL based on the auditors decision as to what would be fair and reasonable under the circumstances by virtue of the fact that the rental achievable in such UNIT will be reduced.

- 11.2 In respect of those units which do not form part of a share block company, the COMPANY shall be entitled to specify from time to time what furnishings and equipment must be in the UNIT from time to time and the client shall be obliged to ensure that the unit is furnished with such furnishings and equipment.

12. **CLIENT REPRESENTED BY THE DIRECTORS OF THE SHARE BLOCK COMPANY**

Where the client has the right to occupy the UNIT by virtue of his ownership of a share block the client irrevocably appoints the directors of such share block company and, if the share block company has a managing agent, the managing agent of such share block company as his agent in regard to all dealings on his behalf with the COMPANY in relation to matters arising from or in connection with this agreement and hereby agrees to confirm and ratify where ever necessary all steps taken by such managing agent or directors of the share block company on his behalf.

13. **GENERAL**

- 13.1 No amendment or consent to cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 13.2 The parties hereto consent to the jurisdiction of the Magistrates Court in respect of any dispute arising out of this agreement.

13.3 No indulgence of whatsoever nature or any relaxation or latitude which any party hereto (hereinafter referred to as the grantor) may show, grant or allow to any other party (hereinafter referred to as the grantee) shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the grantee which may then have already arisen or which may thereafter arise.

13.4 It is recorded that neither party hereto has made any representations or warranties other than those specifically referred to and contained in this agreement.

14. **SEVERABILITY**

In the event of any word, phrase, clause, sentence or provision of this agreement found to be invalid, unlawful or unenforceable such word, phrase, clause, sentence or provision shall be severed from the remaining words, phrases, clauses, sentences and provisions which shall continue to be valid and enforceable. The fact that any word, phrase, sentence or clause has been severed shall in no way affect the validity of the contract.

15. **DOMICILIUM CITANDI ET EXECUTANDI**

15.1 The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communication of whatsoever nature (including the exercise of any option), the following addresses:

15.1.1 THE COMPANY – _____
Physical domicilium – _____

(for hand delivery for which an acknowledgment of receipt must be obtained)

Postal domicilium - _____
(for pre-paid registered post only)

15.1.2 The client – _____
Physical domicilium – _____

(for hand delivery for which an acknowledgment of receipt must be obtained)

Postal domicilium -

(for pre-paid registered post only)

- 15.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.
- 15.3 Any party hereto shall be entitled to change his physical domicilium by written notice to the other provided that such change of address shall be a physical address within the Republic of South Africa and to change his postal domicilium provided that the same is a postal address within the Republic of South Africa. Such change of domicilium shall take effect on the seventh day after delivery to the other party of a notice referred to herein.
- 15.4 All notices in terms of this agreement shall be given by prepaid registered post to the postal domicilium address (in which case it shall be deemed to have been received on the tenth business day after posting unless the contrary be proved) or by hand to the physical domicilium address in which event it shall be deemed to be received on the date that it is so delivered provided that an acknowledgment of receipt is obtained.
- 15.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or written communication to it notwithstanding that it was not sent to or delivered as its chosen domicilium citandi et executandi.

16. CAPACITY OF PARTIES

If the client is a company or close corporation or trust or other juristic person or entity, the person who signs the agreement in the name of such company or close corporation warrants that the company or close corporation or trust or other juristic person or entity is registered in terms of the applicable legislation and binds himself as surety and co-principal debtor with such company or close corporation or trust or other juristic person or entity in favour of the COMPANY for all the obligations of such company or close corporation or trust or juristic person or other entity in terms of this agreement. Such person shall be personally liable as the contracting party in terms of this agreement if such company or close corporation or trust or juristic person or other entity legally does not exist, or for whatever reason is not bound to this agreement or fails to comply with the provisions hereof.

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF
_____ 2008

As witnesses:-

1. _____

2. _____

THE COMPANY

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF
_____ 2008

As witnesses:-

1. _____

2. _____

THE CLIENT