

SALES DOCUMENTATION

APARTMENT

AGREEMENTS

AGREEMENT OF SALE (APARTMENT)

AGREEMENT OF LEASE (BERTH)

SALES DOCUMENTATION: APARTMENT

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Notes: ANNEXURES 2.E to 2.K (AGREEMENT OF SALE) and 3.B (AGREEMENT OF LEASE) are separate documents and are to be signed by the PURCHASER and the SELLER (and their respective witnesses) and to be kept in the sleeve at the back cover of the SALES DOCUMENTATION.

ANNEXURES 2.B, 2.C AND 3.A are included in a separate booklet which has been provided to the PURCHASER simultaneously with the SALES DOCUMENTATION, which ANNEXURES are required to be signed by the PURCHASER on the relevant page in the front of the booklet.

CONTRACT SCHEDULE

PARTIES

A. SELLER / LESSOR (if applicable):

1. Name **EDEN ISLAND DEVELOPMENT COMPANY (SEYCHELLES) LIMITED
Registration Number 843-959-1**
2. Registered Address **c/o Law Chambers of Kieran B Shah, House of Ansuya, P O
Box 2, Revolution Avenue, Victoria, Mahe, Republic of Seychelles**

B. PURCHASER / LESSEE (if applicable):

1. Name _____
2. Passport Number/Registration Number _____
3. Nationality / Country of Incorporation _____
4. Physical Address in the Republic of Seychelles
(if applicable) _____

5. Physical Address _____

6. Contact Numbers
- (Home) _____
- (Business) _____
- (Mobile) _____
- (Facsimile) _____
- (E-mail) _____

SALE OF APARTMENT:

C. Description of APARTMENT:

1. Proposed APARTMENT Number _____
2. PHASE Number _____
3. Situate on PARCEL Number _____
4. Floor area of APARTMENT in square metres
(approximately) _____

5. EXCLUSIVE USE AREAS **Proposed Cart Bay Number** _____
Proposed Garden Number _____
6. Floor area of EXCLUSIVE USE AREAS
in square metres (approximately) _____
- D. PURCHASE PRICE OF APARTMENT:** US\$ _____
- E. METHOD OF PAYMENT OF PURCHASE PRICE:**
1. Initial payment of 10% of the PURCHASE
PRICE payable on DATE OF SIGNATURE US\$ _____
2. Balance of PURCHASE PRICE US\$ _____
- F. ESTIMATED MONTHLY LEVY:** US\$ _____ (per month)
(payloadable to the MANAGEMENT CORPORATION)
- G. ANTICIPATED COMMENCEMENT DATE:** _____
- H. ANTICIPATED DATE OF COMPLETION:** _____
- I. OCCUPATIONAL RENTAL OF APARTMENT:** US\$ _____ (per month).

LEASE OF BERTH (if applicable)

- J. LEASED AREA:**
- BERTH number on the MOORING PLAN _____
- K. ANNUAL RENTAL AND SERVICE CHARGES:**
1. Initial ANNUAL RENTAL US\$ _____
2. Annual escalation of ANNUAL RENTAL _____ %
3. Estimate initial SERVICE CHARGE US\$ _____ (per month)
- L. INITIAL PAYMENT:** US\$ _____
- (amount equal to 3 months' SERVICE CHARGE)

**AGREEMENT OF SALE
APARTMENT**

SIGNATURE DOCUMENT

1. OFFER TO PURCHASE

The PURCHASER hereby offers to purchase from the SELLER the APARTMENT, subject to the terms and conditions set out in the CONDITIONS OF SALE and the ANNEXURES, which form part of this AGREEMENT.

DATED at _____ this _____ day of _____ 20__.

AS WITNESSES:

1. _____
PURCHASER

2. _____

2. SIGNATORY'S UNDERTAKING

This portion is to be signed by the signatory signing for and on behalf of the PURCHASER, including a member, director, trustee, agent or representative of the PURCHASER, or such other person authorised to sign on behalf of the PURCHASER.

(full names in block letters)

as signatory of this AGREEMENT,

hereby consents to the conclusion of this AGREEMENT and agrees that in the event that the PURCHASER claims that the signatory did not have the necessary capacity and/or authority to sign this AGREEMENT on the PURCHASER'S behalf, the signatory shall, at the election of the SELLER, for all purposes be deemed to be bound as surety and co-principal debtor *in solidum* (see ANNEXURE A) with the PURCHASER to the SELLER, and be liable for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this AGREEMENT, under the renunciation of the benefits of excussion and division (see ANNEXURE A), the meaning and effect of which benefits are set out in ANNEXURE A and which renunciation of benefits the signatory acknowledges and agrees to understand. No variation or amendment or novation of this AGREEMENT shall prejudice the signatory's obligation hereby undertaken, the object being that the signatory shall at all times remain liable even if this AGREEMENT is varied or amended or novated and even if the aforesaid PURCHASER is granted an indulgence by the SELLER. The signatory chooses as his or her *domicilium citandi et executandi* (see ANNEXURE A) at which all processes and notices arising out of or in connection with this AGREEMENT may validly be served upon or delivered to as the *domicilium* (see ANNEXURE A) of the PURCHASER in terms of 28.1 of the CONDITIONS OF SALE.

DATED at _____ this _____ day of _____ 20__.

AS WITNESSES:

1. _____
SIGNATORY

2. _____

3. **ACCEPTANCE BY THE SELLER**

The SELLER hereby accepts –

- 3.1 the offer of the PURCHASER set out in 1; and
- 3.2 the rights and benefits in terms of the signatory's undertaking set out in 2 (if applicable).

DATED at _____ this _____ day of _____ 20__.

AS WITNESSES:

1. _____

2. _____

For and on behalf of
EDEN ISLAND DEVELOPMENT
COMPANY (SEYCHELLES) LIMITED
duly authorised

CONDITIONS OF SALE

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1. INTRODUCTION

- 1.1 The SELLER is the registered owner of the RESIDENTIAL DEVELOPMENT COMPONENT.
- 1.2 The SELLER has leased the COMMERCIAL DEVELOPMENT COMPONENT from the GOVERNMENT.
- 1.3 The SELLER has procured the right to develop EDEN ISLAND, which DEVELOPMENT comprises of the RESIDENTIAL DEVELOPMENT and the COMMERCIAL DEVELOPMENT.
- 1.4 The SELLER has constructed the CAUSEWAY on behalf of the GOVERNMENT and the GOVERNMENT has granted, or will grant, easements for a motorable right of way and for right of access for bulk services over the COMMERCIAL DEVELOPMENT COMPONENT and the CAUSEWAY in favour of owners of DWELLINGS. The CAUSEWAY links the COMMERCIAL DEVELOPMENT COMPONENT and the RESIDENTIAL DEVELOPMENT COMPONENT to the tarred road system on Mahé for purposes of access.
- 1.5 The SELLER is in the process of developing and marketing the RESIDENTIAL DEVELOPMENT COMPONENT in PHASES and of subdividing the RESIDENTIAL DEVELOPMENT COMPONENT into individual PARCELS and erecting a combination of DWELLINGS on the subdivided PARCELS falling within the relevant PHASES of the RESIDENTIAL DEVELOPMENT COMPONENT.
- 1.6 The SELLER may transfer certain common use and recreational areas within the RESIDENTIAL DEVELOPMENT COMPONENT, which may include structures such as jetties, moorings and waterways, to the ASSOCIATION, and the ASSOCIATION will let certain of these facilities to purchasers of MAISONS, VILLAS or APARTMENTS.
- 1.7 The SELLER will apply in terms of the ACT for the registration of certain PARCELS in the REGISTER OF CONDOMINIUM PROPERTY and when the CONDOMINIUM PLAN is registered, transfer the CONDOMINIUM UNITS comprising the CONDOMINIUM PROPERTY to purchasers thereof.
- 1.8 The PURCHASER has satisfied himself of the intended position, substance, features, character and all available detail/s of the DEVELOPMENT and desires to purchase the APARTMENT.

2. DEFINITIONS AND INTERPRETATION

- 2.1 For the purposes of this AGREEMENT, unless the context indicates to the contrary –
- 2.1.1 "ACT" means the Condominium Property Act (Cap 41A of the Laws of Seychelles) (as amended);
- 2.1.2 "this AGREEMENT" means the SIGNATURE DOCUMENT, these CONDITIONS OF SALE and all ANNEXURES;
- 2.1.3 "ANNEXURE" means an annexure to this AGREEMENT as amended and/or supplemented from time to time in accordance with 29.10;
- 2.1.4 "ANTICIPATED COMMENCEMENT DATE" means the anticipated commencement date of the WORKS, as specified in G of the CONTRACT SCHEDULE;
- 2.1.5 "ANTICIPATED DATE OF COMPLETION" means the date specified in H of the CONTRACT SCHEDULE;
- 2.1.6 "APARTMENT" means the CONDOMINIUM UNIT referred to in C of the CONTRACT SCHEDULE, together with an undivided share in the COMMON ELEMENTS in accordance with the SHARE VALUE attributable to that CONDOMINIUM UNIT;
- 2.1.7 "ARCHITECT" means Dennis Moss Planners and Architects (Proprietary) Limited (registration number 2003/007711/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa, or such other person nominated by the SELLER from time to time, and where required in terms of the laws of the Republic of Seychelles, duly assisted by an architect who is in possession of a license from the appropriate authorities to carry on his profession in the Republic of Seychelles;
- 2.1.8 "ASSOCIATION" means the Eden Island Village Management Association registered under the Registration of Association Act (Cap 201 of the Laws of Seychelles);
- 2.1.9 "ATTORNEYS" means such firm of attorneys as the SELLER may nominate from time to time, currently Mr Kieran B Shah, attorney-at-law and notary public, of House of Ansuya, P O Box 2, Revolution Avenue, Victoria, Mahé, Republic of Seychelles and/or Messrs Webber Wentzel, of 15thFloor, Convention Tower, Cnr. Heerengracht Street, Foreshore, Cape Town, Republic of South Africa;
- 2.1.10 "BERTH" means the mooring berth specified in I of the CONTRACT SCHEDULE (if applicable) leased by the PURCHASER in terms of the BERTH LEASE (if applicable);

- 2.1.11 "BERTH LEASE" means the written lease agreement (if applicable) entered into between the SELLER, as lessor, and the PURCHASER, as lessee, in respect of the BERTH (if applicable), which written lease agreement forms part of the SALES DOCUMENTATION;
- 2.1.12 "BOARD" means the board of officers of the ASSOCIATION from time to time;
- 2.1.13 "BUILDING LAY-OUT PLAN" means the building lay-out plan of the CONDOMINIUM PROPERTY relating to the floor on which the APARTMENT is situated, being ANNEXURE F;
- 2.1.14 "CAUSEWAY" means the bridge link erected between EDEN ISLAND and the main island of Mahé;
- 2.1.15 "CHANGE IN CONTROL" means any change or alteration in any way whatsoever of the CONTROLLING VOTING POWER in the PURCHASER;
- 2.1.16 "COMMERCIAL DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT into a commercial and retail development and a marina;
- 2.1.17 "COMMERCIAL DEVELOPMENT COMPONENT" means-
- 2.1.17.1 that portion of EDEN ISLAND that is being developed as commercial property and duly registered in terms of that LAND REGISTRATION ACT and leased to the SELLER by the GOVERNMENT;
- 2.1.17.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 2.1.17.3 any other extension/s or alteration/s to the COMMERCIAL DEVELOPMENT COMPONENT by the SELLER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 2.1.18 "COMMON AREAS" means those areas of the DEVELOPMENT, other than registered PARCELS on which DWELLINGS have been, or are to be, erected, including any IMPROVEMENTS that may have been erected on or made to such COMMON AREAS;
- 2.1.19 "COMMON ELEMENTS" means the common elements (as that term is defined in the ACT) on the CONDOMINIUM PROPERTY, as is more fully depicted on the CONDOMINIUM PLAN;
- 2.1.20 "CONDITIONS OF SALE" means the conditions of sale as set out in this document, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.21 "CONDOMINIUM BUILDING(S)" means the subdivided building erected on the CONDOMINIUM PROPERTY as shown on the CONDOMINIUM PLAN and divided into various CONDOMINIUM UNITS;
- 2.1.22 "CONDOMINIUM PLAN" means the condominium plan in respect of the CONDOMINIUM PROPERTY, which plan is to be prepared in terms of section 5 of the ACT and to be registered in the REGISTER OF CONDOMINIUM PROPERTY in terms of section 6 of the ACT;
- 2.1.23 "CONDOMINIUM PROPERTY" means the PARCEL referred to in C.3 of the CONTRACT SCHEDULE in respect of which a CONDOMINIUM PLAN has been, or is to be, registered;
- 2.1.24 "CONDOMINIUM UNITS" means the units into which the CONDOMINIUM BUILDING is or will be divided, and reflected as such on the CONDOMINIUM PLAN, each such unit together with an undivided share in the COMMON ELEMENTS in accordance with the SHARE VALUE attributable to that condominium unit, commonly also known as Apartments;
- 2.1.25 "CONSTITUTION" means the constitution of the ASSOCIATION, as amended and shall be deemed to include all rules and regulations made thereunder and or issued in terms thereof from time to time; as provided in the current draft CONSTITUTION being ANNEXURE B;
- 2.1.26 "CONTRACT REGISTRATION DATE" means the date of registration of the condition relating to the registration of this AGREEMENT against the transfer deed in respect of the CONDOMINIUM PROPERTY, as contemplated in 14.6;
- 2.1.27 "CONTRACT SCHEDULE" means the contract schedule named as such, which forms part of the SALES DOCUMENTATION;
- 2.1.28 "CONTRACTOR" means any person duly appointed by the SELLER to perform any obligation for and on behalf of the SELLER;

- 2.1.29 "CONTROLLING VOTING POWER" means –
- 2.1.29.1 if the PURCHASER is a company, the right or power in any way whatsoever including, without limitation, by virtue of holding or beneficially owning shares, stock, debentures or any other kind of interest in such company, or the holding company/ies of that company –
- 2.1.29.1.1 to cast, or to direct to be cast, a sufficiency of votes at any general meeting of the members of that company, to carry an ordinary resolution of such members against the opposite vote of all the other members of that company who are entitled to attend and to vote at such meeting; and/or
- 2.1.29.1.2 to control the appointment and/or removal of the director/s holding the majority of voting rights at any meeting of the board of directors of that company;
- 2.1.29.2 if the PURCHASER is a trust, the right or power in any way whatsoever –
- 2.1.29.2.1 to control the appointment or removal of the trustee/s holding the majority of voting rights at any meeting of the trustees of that trust; and/or
- 2.1.29.2.2 to control the appointment, nomination and/or removal of the beneficiary/ies being entitled to more than 50% of the capital or income of that trust;
- 2.1.29.3 if the PURCHASER is an association, or other entity or body corporate, the right or power in any way whatsoever, including, without limitation, by virtue of holding or beneficially owning any kind of interest in such association, or other entity or body corporate –
- 2.1.29.3.1 to cast, or to direct to be cast, a sufficiency of votes at any meeting of members or shareholders of that association, other entity or body corporate, to carry an ordinary resolution of such members or shareholders against the opposite votes of all the other members or shareholders of that association, or other entity or body corporate; and/or
- 2.1.29.3.2 to control the appointment or removal of the officers or other office bearers (as the case may be) who control and/or manage the affairs of that association, or other entity or body corporate;
- 2.1.30 "COUNCIL" means the council of the MANAGEMENT CORPORATION established in accordance with section 16 of the ACT;
- 2.1.31 "DATE OF POSSESSION" means the date on which possession of the APARTMENT is given to the PURCHASER in terms of this AGREEMENT;
- 2.1.32 "DATE OF SIGNATURE" means the date on which the SELLER signs this AGREEMENT;
- 2.1.33 "DATE OF TRANSFER" means the date upon which the TRANSFER DEED is registered in the PURCHASER'S name in accordance with the ACT and the LAND REGISTRATION ACT;
- 2.1.34 "DEAL or DEALING" means, in relation to or with the APARTMENT, the dealing with that APARTMENT or any part thereof or the dealing with any interest of whatsoever nature in respect of the APARTMENT, (including, for the avoidance of doubt, any share, stock, right or partnership interest in the entity or body corporate owning that APARTMENT), including any sale, granting of any option or a pre-emptive right, transfer, disposition, transmission, lease for a period exceeding 2 years (including any renewal periods) and any other encumbrance of that or in respect of that APARTMENT or part thereof or interest of whatsoever nature in respect of that APARTMENT, and includes any CHANGE IN CONTROL, irrespective of whether such dealing or CHANGE IN CONTROL (as the case may be) is subject to a suspensive or resolute condition;
- 2.1.35 "DEFECT" means any material defect or material snag relating to any aspect of the APARTMENT which is not in accordance with this AGREEMENT, including, without limitation, an imperfection that materially impairs the structure, composition or function of any aspect of the APARTMENT;
- 2.1.36 "DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT and the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.37 "DEVELOPMENT PERIOD" means the period from the date of establishment of the ASSOCIATION until the date on which the transfer of the last UNIT from the SELLER to an owner is registered, or until 30 June 2017, whichever is the earlier;
- 2.1.38 "DWELLING(S)" means all VILLAS , MAISONS and CONDOMINIUM UNITS comprising the DEVELOPMENT;

- 2.1.39 "EDEN ISLAND" means the island known as Eden Island, which island is situated offshore, opposite Roche Caiman, Mahé, Republic of Seychelles; including any and all consolidations or subdivisions thereof, as well as all areas reclaimed from time to time;
- 2.1.40 "ESCROW ACCOUNT" means the relevant beneficiary escrow account, the details of which are as follows –
- 2.1.40.1 Correspondent Bank: Standard Chartered Bank, One Madison Avenue, New York 10010-3603 USA, ABA: 026002561, Swift Code: SCBLUS33;
- 2.1.40.2 Beneficiary Bank: Nouvobanq SIMBC, Victoria House, PO Box 241, Victoria, Mahe, Seychelles, Account Number: 3582086430001 (with SCBLUS33), Swift Code: NOVHSCSC;
- 2.1.40.3 Beneficiary: Eden Island Development Company (Seychelles) Limited Escrow Account, Account Number: 32/0/02/037239/04/0;
- or such other escrow account as specified by the SELLER from time to time;
- 2.1.41 "€" means Euro, the lawful currency of the European Union's Eurozone;
- 2.1.42 "EXCLUSIVE USE AREAS" means those areas of the COMMON ELEMENTS stipulated in C.5 of the CONTRACT SCHEDULE and shown on the BUILDING LAY-OUT PLAN, in respect of which the PURCHASER, as OWNER of the APARTMENT, will hold EXCLUSIVE USE RIGHTS;
- 2.1.43 "EXCLUSIVE USE RIGHTS" means the right and privilege to the exclusive use and enjoyment (but not ownership) of an OWNER of a CONDOMINIUM UNIT of certain areas of the COMMON ELEMENTS, as allocated by the MANAGEMENT CORPORATION in terms of the RULES;
- 2.1.44 "FACILITIES" means certain recreational facilities and amenities within the DEVELOPMENT in suitably positioned COMMON AREAS, and public use spaces;
- 2.1.45 "FLOOR PLAN" means the floor plan of the APARTMENT, being ANNEXURE G;
- 2.1.46 "GOVERNMENT" means the government of the Republic of Seychelles;
- 2.1.47 "IMPROVEMENTS" means all and any DWELLINGS, buildings or other structures on any PARCEL or on the COMMON AREAS, including landscaping and planting, roads, pavements, irrigation, infrastructure services and or similar structures;
- 2.1.48 "INTEREST RATE" means the LIBOR RATE, plus 7.5% per annum;
- 2.1.49 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 2.1.50 "LEVY" or "LEVIES" means any levies for which the PURCHASER, as the OWNER of the APARTMENT, will be liable to pay to the MANAGEMENT CORPORATION, in accordance with the RULES, as contemplated in 19.3;
- 2.1.51 "LIBOR RATE" means the London Interbank Offered Rate (LIBOR), being the rate of interest at which banks participating in the London money market offer each other for one month deposits;
- 2.1.52 "MAISON(S)" means a duplex building erected, or to be erected, on a PARCEL, which building may share a common boundary wall with the building(s) on the adjacent PARCEL(S);
- 2.1.53 "MANAGEMENT CORPORATION" means the body corporate constituted for the CONDOMINIUM BUILDING in accordance with section 13(1) of the ACT as represented by its council constituted under section 16 of the ACT;
- 2.1.54 "NON-SEYCHELLOIS" means a person who is not a Seychellois as is more clearly defined in terms of the Immovable Property (Transfer Restriction) Act (Cap 95 of the Laws of Seychelles);
- 2.1.55 "NOTARY PUBLIC" means such notary public as nominated by the SELLER from time to time, currently Mr Kieran B Shah, attorney-at-law and notary public, of House of Ansuya, P O Box 2, Revolution Avenue, Victoria, Mahé, Republic of Seychelles;
- 2.1.56 "OCCUPANCY CERTIFICATE" means the certificate of occupancy issued by the Planning Authority: Quality Assurance Section of the GOVERNMENT (or its successor-in-title) pursuant to the Town & Country Planning Act (Cap 237 of the Laws of Seychelles) in respect of the APARTMENT, or such other certificate as may replace such certificate of occupancy in terms of the Laws of Seychelles;
- 2.1.57 "OCCUPATIONAL RENTAL" means the monthly occupational rental stipulated in I of the CONTRACT SCHEDULE;

- 2.1.58 "OWNER(S)" means the registered owner of a SINGLE RESIDENTIAL PARCEL and or the APARTMENT as the context may indicate;
- 2.1.59 "PARCEL" means any parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 2.1.60 "PARTY/IES" means the PURCHASER and the SELLER, or any one of them as the context may indicate;
- 2.1.61 "PHASES" means the various phases, into which the DEVELOPMENT will be divided, currently being phases 1, 2, 3, or such other phases as may be created by the SELLER from time to time;
- 2.1.62 "PLANS" means collectively the BUILDING LAY-OUT PLAN, the FLOOR PLAN, the SPECIFICATIONS and the VERTICAL SECTION;
- 2.1.63 "PRINCIPAL AGENT" means Atvantage Quantity Surveyors (Proprietary) Limited (registration number 2008/015689/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa, or such other person nominated by the SELLER from time to time;
- 2.1.64 "PURCHASER" means the person specified in B of the CONTRACT SCHEDULE;
- 2.1.65 "PURCHASE PRICE" means the purchase price payable by the PURCHASER in terms of this AGREEMENT;
- 2.1.66 "QUANTITY SURVEYOR" means Atvantage Quantity Surveyors (Proprietary) Limited (registration number 2008/015689/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa, or such other firm of quantity surveyors as may be nominated by the SELLER from time to time;
- 2.1.67 "RECLAMATION AGREEMENT" means the written agreement for reclamation works around EDEN ISLAND entered into between the GOVERNMENT and the SELLER on or about 28 October 2005, as amended;
- 2.1.68 "REGISTER OF CONDOMINIUM PROPERTY" means the register in which the CONDOMINIUM PLAN will be registered in terms of section 6 of the ACT;
- 2.1.69 "RESERVATION AGREEMENT" means the written agreement entered into between the PARTIES prior to signature of this AGREEMENT in terms whereof the SELLER granted the sole and exclusive right of reservation of the APARTMENT to the PURCHASER (if applicable);
- 2.1.70 "RESERVATION FEE" means the amount paid by the PURCHASER and received by the SELLER as a reservation fee in terms of the RESERVATION AGREEMENT (if applicable);
- 2.1.71 "RESIDENTIAL DEVELOPMENT" means the subdivision of the RESIDENTIAL DEVELOPMENT COMPONENT into individual PARCELS, the servicing of those PARCELS, the construction of DWELLINGS thereon, and the installation of certain FACILITIES;
- 2.1.72 "RESIDENTIAL DEVELOPMENT COMPONENT" means-
- 2.1.72.1 that portion of EDEN ISLAND that is being developed as residential property in freehold title in terms of the LAND REGISTRATION ACT;
- 2.1.72.2 any land area reclaimed and or converted from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT; and
- 2.1.72.3 any other extension/s or alteration/s of the RESIDENTIAL DEVELOPMENT COMPONENT by the SELLER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 2.1.73 "RULES" means any and all rules and regulations (as amended from time to time) passed by the COUNCIL and/or the MANAGEMENT CORPORATION in relation to the CONDOMINIUM PROPERTY and/or the CONDOMINIUM UNITS, a draft copy of the current rules are annexed hereto as ANNEXURE C;
- 2.1.74 "SALES DOCUMENTATION" means the written sales documentation for the sale of the APARTMENT and, if applicable, the lease of BERTH, and of which sales documentation this AGREEMENT forms a part;
- 2.1.75 "SANCTION" means the consent granted by the GOVERNMENT to the PURCHASER, if he is a NON-SEYCHELLOIS, in terms of the Immovable Property (Transfer Restriction) Act (Cap 95 of the Laws of Seychelles), to register the condition relating to this Agreement as contemplated in 14.6 (if required), and to acquire the APARTMENT in terms of this AGREEMENT and, if applicable, to lease the BERTH in terms of the BERTH LEASE;

- 2.1.76 "SCHEDULE OF FINISHES" means the schedule of finishes and fittings, being ANNEXURE K;
- 2.1.77 "SELLER" means Eden Island Development Company (Seychelles) Limited (registration number 843-959-1), a company with limited liability duly incorporated in accordance with the laws of the Republic of Seychelles, and includes its successor/s in title;
- 2.1.78 "SELLER'S FINANCE RATE " means the British Bankers' Association Interest Settlement Rates for the relevant currency on a month's deposit displayed on the appropriate page of the Moneyline Telerate screen and if the agreed page is replaced or the service has ceased to be available, the SELLER may specify another page or service displaying the appropriate rate, plus 3 percentage points;
- 2.1.79 "SHARE VALUE" means, in relation to a CONDOMINIUM UNIT, the quantum of the undivided share of the relevant OWNER in the COMMON ELEMENTS, which shall be determined in accordance with the provisions of the RULES;
- 2.1.80 "SIGNATURE DOCUMENT" means the signature document named as such which forms part of this AGREEMENT, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.81 "SINGLE RESIDENTIAL PARCEL" means a PARCEL on which a MAISON or a VILLA has been, or is to be erected;
- 2.1.82 "SITE PLAN" means the site plan in respect of the CONDOMINIUM PROPERTY, being ANNEXURE J;
- 2.1.83 "SPECIFICATIONS" means the specifications of the APARTMENT as specified in ANNEXURE I and ANNEXURE K;
- 2.1.84 "SUBDIVISION PLAN" means the subdivision plan for the RESIDENTIAL DEVELOPMENT COMPONENT, as amended by the developer from time to time, the current draft subdivision plan attached hereto as ANNEXURE E;
- 2.1.85 "TRANSACTION" means the transaction recorded in this AGREEMENT;
- 2.1.86 "TRANSFER DEED" means the instrument by which ownership in the APARTMENT is transferred from the SELLER to the PURCHASER;
- 2.1.87 "UNIT" means any SINGLE RESIDENTIAL PARCEL and or APARTMENT, as the context may indicate;
- 2.1.88 "US\$" means United States dollars, the lawful currency of the United States of America;
- 2.1.89 "VERTICAL SECTION" means the vertical section diagram of the APARTMENT, being ANNEXURE H;
- 2.1.90 "VILLA(S)" means a free standing building erected, or to be erected, on a PARCEL;
- 2.1.91 "WORKS" means the construction, completion and finishing off of all structures and improvements of a permanent nature to be erected on the CONDOMINIUM PROPERTY in accordance with the PLANS;
- 2.1.92 any reference to the singular includes the plural and vice versa (see ANNEXURE A);
- 2.1.93 any reference to natural persons includes artificial persons and vice versa (see ANNEXURE A);
- 2.1.94 any reference to a gender includes the other genders (including neuter);
- 2.1.95 any reference to months or years shall be construed as calendar months or years.
- 2.2 If the PURCHASER consists of more than one person, such persons shall be jointly and severally liable in solidum (see ANNEXURE A) for all the PURCHASER'S obligations in terms of this AGREEMENT.
- 2.3 Where applicable, the provisions of 2 shall impose substantive rights and/or obligations on the PARTIES as provided in the provision concerned.
- 2.4 The clause headings in this AGREEMENT have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.6 No provision of this AGREEMENT shall be construed against or interpreted to the disadvantage of any PARTY hereto by reason of such PARTY having or being deemed to have structured or drafted such provision.
- 2.7 The eiusdem generis rule (see ANNEXURE A) shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

- 2.8 When this AGREEMENT prescribes any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is a Saturday, Sunday or statutory public holiday generally recognized in the Republic of Seychelles, it will be deemed to fall on the next day that is not a Saturday, Sunday or statutory public holiday generally recognized in the Republic of Seychelles.
- 2.9 This AGREEMENT shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles, subject to 2.10, and the PARTIES consent to all proceedings instituted in connection with the terms of this AGREEMENT, being instituted in any competent court of the Republic of Seychelles, subject to the provisions of 26.
- 2.10 The words and phrases listed in ANNEXURE A shall be construed and interpreted in accordance with the laws of the Republic of South Africa. Where the laws of the Seychelles do not know or recognise or are not able to give legal interpretation to any legal term or phrase contained in this AGREEMENT, or any legal principle to which any of the provisions, terms or phrases or words contained in this AGREEMENT relate, that legal term or phrase, or legal principle shall be construed and interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

3. IRREVOCABLE OFFER

This AGREEMENT, once signed by the PURCHASER, shall be an irrevocable offer by the PURCHASER to purchase the APARTMENT, which offer shall be open for acceptance by the SELLER until it is withdrawn by the PURCHASER by notice in writing to the SELLER, such notice becoming effective on the date of receipt thereof by the SELLER, provided that the PURCHASER shall not be entitled to withdraw the offer within a period of 45 days from the DATE OF SIGNATURE of this AGREEMENT by the PURCHASER.

4. PURCHASE PRICE, PAYMENTS AND GUARANTEES

- 4.1 The PURCHASE PRICE shall be the amount specified in D of the CONTRACT SCHEDULE.
- 4.2 The PURCHASE PRICE shall be paid by the PURCHASER into the ESCROW ACCOUNT as follows –
- 4.2.1 the amount specified in E.1 of the CONTRACT SCHEDULE (which amount shall be inclusive of the RESERVATION FEE), on the DATE OF SIGNATURE;
- 4.2.2 an amount equivalent to 40% of the PURCHASE PRICE, 90 days before the ANTICIPATED COMMENCEMENT DATE;
- 4.2.3 an amount equivalent to 30% of the PURCHASE PRICE, 90 days after the date on which the WORKS have commenced, as notified by the SELLER in writing;
- 4.2.4 an amount equivalent to 20% of the PURCHASE PRICE, 180 days after the date on which the WORKS have commenced, as notified by the SELLER in writing.
- 4.3 The PURCHASE PRICE shall, subject to the provisions of 4.7, be disbursed from the ESCROW ACCOUNT to the SELLER in accordance with the following schedule of progress payments –
- 4.3.1 an amount equivalent to 25% of the PURCHASE PRICE, on the CONTRACT REGISTRATION DATE;
- 4.3.2 an amount equivalent to 25% of the PURCHASE PRICE, on the date of commencement of the WORKS, as certified by the QUANTITY SURVEYOR, provided that if the WORKS have already commenced at the CONTRACT REGISTRATION DATE, the payment contemplated in this 4.3.2 shall be made on the CONTRACT REGISTRATION DATE;
- 4.3.3 an amount equivalent to 30% of the PURCHASE PRICE, on the date that the WORKS have progressed to roof height, as certified by the QUANTITY SURVEYOR;
- 4.3.4 an amount equivalent to 10% of the PURCHASE PRICE, on the date of issue of the OCCUPANCY CERTIFICATE;
- 4.3.5 an amount equivalent to 10% of the PURCHASE PRICE, less US\$10 000,00, on the DATE OF TRANSFER;
- 4.3.6 an amount of US\$10 000,00 –
- 4.3.6.1 if the PURCHASER provides the SELLER with a list of DEFECTS in terms of 12.1.1, upon the SELLER having fulfilled all its obligations (if any) to rectify the DEFECTS in terms of 12.1 and 12.2; or
- 4.3.6.2 if the PURCHASER does not provide the SELLER with a list of DEFECTS timeously in terms of 12.1.1, within 60 days of the DATE OF POSSESSION.

- 4.4 All amounts paid by the PURCHASER into the ESCROW ACCOUNT shall, until disbursed to the SELLER in terms of this AGREEMENT, be held on behalf of the PURCHASER, and all interest (if any) on such amounts shall accrue for the benefit of the PURCHASER.
- 4.5 Notwithstanding anything contained in this AGREEMENT, all amounts due by the PURCHASER to the SELLER (including damages) in terms of or arising out of this AGREEMENT shall, unless paid on due date, bear interest at the INTEREST RATE, which interest shall be calculated monthly in advance from the date that such amount becomes due to the date of payment, both days inclusive.
- 4.6 The PURCHASER shall not be entitled to withhold, delay, abate or set-off payment of any amounts *prima facie* due to the SELLER in terms of this AGREEMENT by reason of any breach, or alleged breach, by the SELLER of his obligations in terms of this AGREEMENT, or for any work of whatsoever nature still required to be done at any time by the SELLER. Should the PURCHASER dispute the SELLER'S right to payment of any amounts due to the SELLER in terms of this AGREEMENT, the PURCHASER shall, pending the determination of such dispute, continue to pay to the SELLER on the due date thereof all amounts due under this AGREEMENT, and acceptance thereof by the SELLER shall be without prejudice to any of the SELLER'S rights in terms of this AGREEMENT.
- 4.7 The PARTIES record that in the event that the WORKS do not actually commence on or before the ANTICIPATED COMMENCEMENT DATE, the PURCHASER shall not be entitled to any right or claim of whatsoever nature against the SELLER as a result thereof. However, should the actual commencement of the WORKS not occur within a period of 6 months from the ANTICIPATED COMMENCEMENT DATE due to a reason for which the PURCHASER is not responsible, the PURCHASER shall be entitled to resile from this AGREEMENT by giving notice in writing to the SELLER and the SELLER shall then repay to the PURCHASER all applicable amounts paid by the PURCHASER into the ESCROW ACCOUNT as provided for in 4.2, plus any interest accrued thereon. The PARTIES record that they shall then be restored to their *status quo ante* (see ANNEXURE A) and save as aforesaid, the PARTIES shall have no claim against each other for anything done hereunder or arising herefrom.

5. SANCTION

- 5.1 In the event that the PURCHASER is a NON-SEYCHELLOIS, this AGREEMENT is subject to the resolute condition that the GOVERNMENT refuses or fails to grant SANCTION.
- 5.2 The PURCHASER shall, simultaneously with the signature of this AGREEMENT, sign all documents that are required to be signed, and furnish to the SELLER all documents and information necessary and/or required to be furnished to enable the procurement of SANCTION, within a period of 21 days of the DATE OF SIGNATURE or such longer period/s as extended from time to time by the SELLER in writing in its sole discretion. The application form to be signed will be substantially in accordance with ANNEXURE D.
- 5.3 Notwithstanding the provisions of 5.4, in the event that the PURCHASER –
- 5.3.1 fails and/or refuses to complete and/or submit the application form and/or other document within the time period provided in 5.2 (including any extension thereof); or
- 5.3.2 fails and/or refuses to provide any information as may be required to be provided for the purposes of SANCTION within the time period provided in 5.2 (including any extension thereof);

then the SELLER shall be entitled at any time to resile from this AGREEMENT, by notice in writing to the PURCHASER, in which event the SELLER shall repay to the PURCHASER the amount specified in E.1 of the CONTRACT SCHEDULE less the RESERVATION FEE (if applicable), which RESERVATION FEE the SELLER shall be entitled to retain, provided that if the PURCHASER'S failure and/or refusal in terms of this 5.3 is due to his wilful default, then the SELLER shall, notwithstanding any other rights which the SELLER may have in law or in terms of this AGREEMENT, be entitled to retain the amount specified in E.1 of the CONTRACT SCHEDULE inclusive of the RESERVATION FEE paid (if any).

- 5.4 In the event that the GOVERNMENT refuses or fails to grant SANCTION for any reason within a period of 60 days from the DATE OF SIGNATURE, then the SELLER shall, be entitled at any time to resile from this AGREEMENT, by notice in writing to the PURCHASER in which event the SELLER shall repay to the PURCHASER the amount specified in E.1 of the CONTRACT SCHEDULE inclusive of the RESERVATION FEE paid (if any), provided that the SELLER shall be entitled to retain any administration costs payable by the PURCHASER to the SELLER or the GOVERNMENT in respect of the submission of the application for SANCTION and any other amounts owed by the PURCHASER to the SELLER. Save as aforesaid, the PARTIES shall have no claim against each other for anything done hereunder or arising herefrom.
- 5.5 Provided that if –
- 5.5.1 the SELLER has not exercised its right to summarily cancel this AGREEMENT as stipulated in 5.3 ;
- 5.5.2 the SELLER has not exercised its right to resile from this AGREEMENT as stipulated in 5.4; and
- 5.5.3 the GOVERNMENT has not granted SANCTION to the PURCHASER within 180 (one hundred and eighty) days from the DATE OF SIGNATURE;

then the PURCHASER shall be entitled to resale from this AGREEMENT, by notice in writing to the SELLER, and the provisions of 5.4 shall apply *mutatis mutandis* (see ANNEXURE A).

6. PRE-SALES

- 6.1 This AGREEMENT is subject to the resolute condition that the SELLER, on a date not later than 6 months after the ANTICIPATED COMMENCEMENT DATE, gives written notice to the PURCHASER stating that the SELLER, as at the date of the notice, has not entered into valid and binding agreements of sale in respect of an adequate number and/or value of CONDOMINIUM UNITS in the CONDOMINIUM BUILDING (the determination of what constitutes "valid and binding agreements of sale" and "an adequate number and/or value" for purposes of this 6, shall be in the sole discretion of the SELLER).
- 6.2 If the SELLER provides the written notice as contemplated in 6.1, this AGREEMENT shall lapse and be of no further force or effect, save that the SELLER shall repay to the PURCHASER all applicable amounts paid by the PURCHASER into the ESCROW ACCOUNT as provided for in 4.2, plus any interest accrued thereon and the PARTIES shall be restored to their *status quo ante* (see ANNEXURE A). Save as aforesaid the PARTIES shall have no claim against each other for anything done hereunder or arising herefrom.
- 6.3 It is recorded that the resolute condition set out in 6.1 is inserted for the sole benefit of the SELLER, who shall, subject to 6.2, be entitled to waive such condition at any time prior to, and including, a date no later than 6 months after the ANTICIPATED COMMENCEMENT DATE, whereafter the provisions of this AGREEMENT shall continue to be of full force and effect.

7. DEVELOPMENT

- 7.1 The SELLER undertakes that the RESIDENTIAL DEVELOPMENT shall include the FACILITIES.
- 7.2 It is recorded that the SELLER intends to complete the DEVELOPMENT in various PHASES from time to time and that the SELLER shall be entitled, at any time and from time to time, to extend or alter the area of the DEVELOPMENT by –
- 7.2.1 incorporating into the DEVELOPMENT any additional areas which the SELLER shall be entitled to develop as it may deem fit;
- 7.2.2 excluding from the DEVELOPMENT any areas which the SELLER shall be entitled to develop as it may deem fit; and/or
- 7.2.3 altering the general use of any areas within the DEVELOPMENT.
- 7.3 The DEVELOPMENT is intended to involve the establishment of DWELLINGS on various PARCELS in various positions within the RESIDENTIAL DEVELOPMENT COMPONENT as well as a commercial and retail development and a marina within the COMMERCIAL DEVELOPMENT COMPONENT. The PURCHASER shall –
- 7.3.1 co-operate with the SELLER in an endeavour to facilitate the success and completion of the DEVELOPMENT;
- 7.3.2 not interfere with the DEVELOPMENT (or any part thereof), nor lodge any objection with any competent authority in respect of the DEVELOPMENT (or any part thereof); and
- 7.3.3 allow the SELLER to exercise its right to complete the DEVELOPMENT in the manner envisaged herein or any amended form as the SELLER deems fit, and shall not be entitled to interfere or obstruct the SELLER in any way from completing the DEVELOPMENT.
- 7.4 The SELLER shall be entitled, at any time, to apply for and, subject to approval by any relevant authority, vary the layout, zoning and boundaries of the DEVELOPMENT as the SELLER may deem fit. The rights in respect of zoning and use pertaining to the CONDOMINIUM PROPERTY and/or the APARTMENT shall in no way interfere with the rights relating to the zoning and use in respect of the remainder of the DEVELOPMENT which the SELLER has or may obtain from time to time. Where required by any relevant authority, the PURCHASER shall give all such consents which may be necessary or required to obtain the approval for any such variation of the layout, zoning and/or boundaries of the DEVELOPMENT, and the PURCHASER shall have no claim of whatsoever nature against the SELLER arising from any such variation.
- 7.5 The SELLER shall be entitled, at any time, to make amendments to the SUBDIVISION PLAN as the SELLER deems fit, and the PURCHASER shall not be entitled to lodge any objections to such amendments and shall be obliged to accept the SUBDIVISION PLAN, as amended by the SELLER from time to time, and shall give all such consents as may be necessary or required for such amendments.
- 7.6 Notwithstanding the provisions of 7.1 to 7.4, any extension or alteration of the area of the DEVELOPMENT, or any variation of the layout, zoning and/or boundaries of the DEVELOPMENT, or any variation of rights in respect of zoning and/or use pertaining to the DEVELOPMENT (or parts thereof), shall not have the effect of –

- 7.6.1 increasing that land area of the DEVELOPMENT, which is used for commercial and/or retail (but expressly excluding leisure) purposes, to more than 25% of the total land area of the DEVELOPMENT; and/or
- 7.6.2 increasing the density (resident per square metre of land area) within the RESIDENTIAL DEVELOPMENT by more than 20% of the density of PHASE 1.
- 7.7 On the DATE OF POSSESSION, the SELLER and/or his agents, CONTRACTORS and workmen, may be engaged in erecting other DWELLINGS and other structures within the DEVELOPMENT and the SELLER and/or his agents, CONTRACTORS and workmen, shall at all times have reasonable access to the CONDOMINIUM PROPERTY and the APARTMENT for the purposes of carrying out such work as may be necessary to enable the SELLER to procure the erection, construction and layout of the aforementioned DWELLINGS and other structures. Should the PURCHASER and other occupiers suffer inconvenience from building operations, then the PURCHASER shall have no claim whatsoever against the SELLER by reason of any such inconvenience or interference with the PURCHASER'S rights arising herefrom and the PURCHASER shall not, in any way whatsoever, interfere with the performance of the aforesaid work.
- 7.8 The provisions of this 7 constitute a *stipulatio alteri* (see ANNEXURE A) in favour of the SELLER, the benefits of which may be accepted at any time and in any manner.

8. CONDOMINIUM PLAN

- 8.1 The PURCHASER acknowledges and agrees that on the DATE OF SIGNATURE, the CONDOMINIUM PLAN may not yet be approved and that in such event, the exact number and floor area of the APARTMENT or of any other CONDOMINIUM UNIT shall be as shown on the final approved CONDOMINIUM PLAN.
- 8.2 The CONDOMINIUM PROPERTY shall be situated substantially in the position as shown on the SITE PLAN.
- 8.3 The SELLER warrants that the floor area of the APARTMENT will not vary by more than 5% of the area as specified in C.4 of the CONTRACT SCHEDULE. If the floor area of the APARTMENT varies by 5% or less from the floor area or areas shown on the BUILDING LAY-OUT PLAN, or the number of the APARTMENT is altered, then the PURCHASER undertakes to accept transfer of the APARTMENT as defined and renumbered on the CONDOMINIUM PLAN, as approved by the Director of Land Surveys.
- 8.4 The PURCHASER shall not be entitled to claim cancellation of this AGREEMENT or any reduction in the PURCHASE PRICE by reason of any alteration to the number or floor area of the APARTMENT or any other CONDOMINIUM UNIT or any increases in their number. The SELLER undertakes that any alterations will only be made in accordance with the provisions of 10.4 set out below.
- 8.5 Notwithstanding anything to the contrary contained in this AGREEMENT, should the floor area of the APARTMENT vary by more than 5% of the area as specified in C.4 of the CONTRACT SCHEDULE, then either PARTY shall be entitled to withdraw from this AGREEMENT, in which event the PARTIES shall be restored to their *status quo ante* (see ANNEXURE A). Such withdrawal shall be by notice in writing and shall be delivered to the other PARTY within 14 days of the date that the actual measurement of the floor area becomes known to the PARTY wishing to withdraw, failing which, the right to withdraw shall lapse and the PARTIES shall then accept the actual floor area of the APARTMENT as depicted on the CONDOMINIUM PLAN.

9. REGISTRATION OF CONDOMINIUM PROPERTY

- 9.1 It is recorded that the CONDOMINIUM PLAN may not yet have been registered, in which event the SELLER will apply in terms of the ACT for the registration of the CONDOMINIUM PLAN in the REGISTER OF CONDOMINIUM PROPERTY when the CONDOMINIUM BUILDING is completed.
- 9.2 In the event that the CONDOMINIUM PLAN is not yet registered at the DATE OF SIGNATURE of this AGREEMENT, the PURCHASER acknowledges and agrees that it is not possible for the SELLER to transfer the APARTMENT to the PURCHASER until such time as the CONDOMINIUM PLAN has been registered as contemplated by 9.1 above.
- 9.3 The SELLER undertakes, at its own expense, to take such steps as may be reasonably necessary to obtain registration of the CONDOMINIUM PLAN as soon as is reasonably possible, provided that the PURCHASER shall not have any claim whatsoever against the SELLER, or be relieved of any of his obligations in terms of this AGREEMENT, or be entitled to any remission or rebate of any charges payable by him in terms of this AGREEMENT, in the event of any delay in obtaining registration of the CONDOMINIUM PLAN for whatever reason.

10. SPECIFICATIONS OF APARTMENT

- 10.1 The APARTMENT shall be erected substantially in accordance with the PLANS.
- 10.2 The PURCHASER shall not give any instructions of any nature to the developer, the PRINCIPAL AGENT, CONTRACTOR and/or ARCHITECT or any of the relevant sub-contractor/s, without the SELLER'S prior written consent.

- 10.3 The PURCHASER shall be given the opportunity of making a selection in respect of certain finishes and fittings from the SCHEDULE OF FINISHES.
- 10.4 The PURCHASER shall, within 30 days after the DATE OF SIGNATURE, make his selection from the SCHEDULE OF FINISHES and provide the SELLER with the SCHEDULE OF FINISHES duly signed and initialled by the PURCHASER.
- 10.5 Should the PURCHASER fail to make such selection on the SCHEDULE OF FINISHES and/or to provide the SELLER with the SCHEDULE OF FINISHES duly signed by the PURCHASER, the SELLER or its representatives or agents may make such selection in respect of the finishes and fittings from the SCHEDULE OF FINISHES as they may deem fit, and the PURCHASER shall have no claim against the SELLER in respect of such selection.
- 10.6 The SELLER shall not be obliged to carry out any additions or variations requested by the PURCHASER to the PLANS, save for such additions or variations as allowed to be selected by the PURCHASER from the SCHEDULE OF FINISHES.
- 10.7 Subject to the provisions of 8.3 and 8.5, the SELLER shall be entitled to adapt or amend the PLANS to such an extent as may, in the SELLER'S opinion, be necessary after consultation with, and on written notice to, the PURCHASER, to –
- 10.7.1 meet any requirements of any relevant authority;
- 10.7.2 obtain the approval of the CONDOMINIUM PLAN and/or the registration of the CONDOMINIUM PROPERTY;
- 10.7.3 meet any special features of the land or any other rock or soil condition;
- 10.7.4 meet any special impediments such as water, sewerage or electrical services (either above or underground);
- 10.7.5 give effect to any change in materials, finishes or fittings without detracting from the quality of the APARTMENT.
- 10.8 Notwithstanding anything to the contrary contained in this AGREEMENT, should the PURCHASER, or his agent, issue instructions resulting in the variation of the PLANS, the SELLER shall not be held liable for any faults, DEFECTS or deficiencies in the CONDOMINIUM BUILDING and/or APARTMENT resulting from the execution of the aforesaid variations.
- 10.9 In the event of any dispute arising in connection with any matters referred to in this 10 (including any factual disputes), the matter shall be referred to the ARCHITECT for determination, whose decision shall be final and binding upon the PARTIES.

11. ELECTRIC POWERED VEHICLE

- 11.1 The APARTMENT shall be sold together with an electrically powered vehicle ("EPV"). The PURCHASE PRICE of the APARTMENT shall not be increased and accordingly, the PURCHASE PRICE of the APARTMENT shall be inclusive of the EPV.
- 11.2 The SELLER shall deliver, and the PURCHASER shall take delivery of, the EPV on the date on which the SELLER gives possession of the APARTMENT to the PURCHASER, in accordance with this AGREEMENT.
- 11.3 The SELLER shall cede any product warranties or guarantees to the PURCHASER, which the SELLER may hold in respect of the EPV.
- 11.4 Save as provided in 11.3, the EPV is sold without any warranties, express or implied, and the SELLER shall be free from any liability for any loss or damage suffered by the PURCHASER by reason of any fault, defect, or deficiency existing or arising in the EPV, whether patent or latent. The PURCHASER indemnifies the SELLER in respect of any claim against, or loss or liability of, the SELLER resulting from any fault, defect, or deficiency existing or arising in the EPV.
- 11.5 It is recorded that each OWNER of a PARCEL or a CONDOMINIUM UNIT within the RESIDENTIAL DEVELOPMENT will have access to –
- 11.5.1 one covered parking bay dedicated for EPV's and only to be used for an EPV; and
- 11.5.2 one covered parking bay dedicated for motor vehicles and only to be used for a motor vehicle;

which access will be provided free of any parking charges at a position on EDEN ISLAND or on Mahé in close proximity to EDEN ISLAND as determined from time to time by the SELLER and/or the ASSOCIATION.

12. CONSTRUCTION OF THE APARTMENT AND RECTIFICATION OF DEFECTS

- 12.1 The SELLER shall rectify any DEFECTS to the APARTMENT, subject to the following provisions that –

- 12.1.1 the PURCHASER provides the SELLER with a list of DEFECTS, in writing, within 60 days of the DATE OF POSSESSION, which list shall be deemed to be a comprehensive and final list of all DEFECTS which are to be rectified by the SELLER;
- 12.1.2 the SELLER shall not be obliged to rectify any DEFECTS if the PURCHASER fails to give to the SELLER the said list of DEFECTS on or before the expiry of the said 60 day period;
- 12.1.3 the SELLER shall commence to rectify the DEFECTS as soon as reasonably possible but in any event within a period of 90 days from the date of receipt of the list of DEFECTS and shall complete such rectification of the DEFECTS, within a reasonable period;
- 12.1.4 the PURCHASER shall give the SELLER access to the APARTMENT at any time, and provide reasonable assistance, to rectify the DEFECTS. Should the PURCHASER fail to allow access to the APARTMENT, within 5 days after receiving notice to do so, the SELLER'S obligation to rectify the DEFECTS shall be deemed to have lapsed; and
- 12.1.5 the SELLER shall only be obliged to rectify the DEFECTS where such DEFECTS arose under conditions of normal use and service, and the SELLER shall under no circumstances be responsible for any damage or loss caused by wear and tear, misuse, neglect, negligence, abuse or accident.
- 12.2 If a dispute arises between the PARTIES as to whether a DEFECT exists or whether the DEFECT has been duly rectified by the SELLER, such dispute shall be determined by the ARCHITECT, whose decision in this regard shall be final and binding upon the PARTIES.

13. WARRANTIES IN RESPECT OF CONSTRUCTION OF THE APARTMENT

- 13.1 The SELLER shall –
 - 13.1.1 rectify structural defects in respect of the APARTMENT, provided that the SELLER receives written notice from the PURCHASER requiring such rectification within 5 years from the DATE OF POSSESSION;
 - 13.1.2 repair roof leaks in respect of the APARTMENT attributable to defective workmanship, design or materials provided that the SELLER receives written notice from the PURCHASER requiring such repair within 12 months from the DATE OF POSSESSION.
- 13.2 The written notice referred to in 13.1 shall include sufficient details in respect of the defect, non-compliance and/or deviation concerned, failing which the SELLER'S obligations in terms of 13.1 shall be deemed to have lapsed.
- 13.3 The provisions of 13.1.1 and 13.1.2 shall only apply to structural defects and roof leaks where those arose under conditions of normal use and service, and the SELLER shall under no circumstances be responsible for any damage or loss caused by wear and tear, misuse, neglect, negligence, abuse or accident.
- 13.4 The SELLER shall commence rectification or repair (as the case may be) in terms of 13.1 within a period of 90 days from the date of receipt of the said written notice, and shall complete such rectification or repair (as the case may be) within a reasonable period.
- 13.5 Save as otherwise expressly provided in this AGREEMENT or required in law, the APARTMENT is purchased and sold without any warranties, express or implied, and the SELLER and its respective CONTRACTORS and/or agents shall be free from all liability for any damage or loss suffered by the PURCHASER by reason of any fault, DEFECT, or deficiency existing or arising in the APARTMENT, whether patent or latent.
- 13.6 The SELLER shall under no circumstances be liable for any consequential loss or indirect damage as a result of any fault, DEFECT, or deficiency existing or arising in the APARTMENT, whether patent or latent, and its liability is specifically limited to the matters stipulated in 13.1.
- 13.7 The SELLER and its representatives, agents and CONTRACTORS shall, for the purpose of rectification or repair (as the case may be) in terms of this 13, at all times be entitled to enter and be present at the APARTMENT and the PURCHASER shall provide reasonable assistance to the SELLER for the purpose of such rectification or repair (as the case may be). Should the PURCHASER fail to comply with its obligations in terms of this 13.7, any obligations of the SELLER in terms of this 13 shall be deemed to have lapsed.

14. TRANSFER

- 14.1 Registration of transfer of the APARTMENT into the name of the PURCHASER shall be effected by the ATTORNEYS simultaneously with the registration of the CONDOMINIUM PLAN, or, where the CONDOMINIUM PLAN has already been registered, as soon as reasonably possible after the DATE OF SIGNATURE, provided that –
 - 14.1.1 SANCTION has been granted; and

- 14.1.2 the PURCHASER has complied with all his obligations in terms of this AGREEMENT.
- 14.2 Ownership of the APARTMENT shall vest in the PURCHASER with effect from the DATE OF TRANSFER.
- 14.3 The PURCHASER shall, within 10 days of being called upon to do so by the ATTORNEYS –
- 14.3.1 pay to the ATTORNEYS all costs of, and incidental to, the registration of the condition referred to in 14.6 and the passing of transfer of the APARTMENT into the PURCHASER'S name, including stamp duty (if any), SANCTION fees (if any), any other fees/charges (if applicable) imposed by the GOVERNMENT and all transfer fees and disbursements; and
- 14.3.2 furnish all such information and sign all such documents that may be necessary or required to enable the ATTORNEYS to register the condition referred to in 14.6, to execute the TRANSFER DEED and to pass transfer of the APARTMENT to the PURCHASER. In the event that the PURCHASER is unable to appear before the NOTARY PUBLIC to sign and execute the TRANSFER DEED (and/or any document which may be signed by the PURCHASER for the purposes of registration of the condition referred to in 14.6), the PURCHASER shall grant and hereby grants to the ATTORNEYS a power of attorney, in such form as accords with the provisions of the LAND REGISTRATION ACT, to appear before the NOTARY PUBLIC to sign and execute the TRANSFER DEED (and sign any such document for the purposes of registration of the condition referred to in 14.6) in the PURCHASER'S name, place and stead.
- 14.4 The PURCHASER shall be obliged to accept transfer of the APARTMENT subject to –
- 14.4.1 the conditions, reservations and easements which burden the APARTMENT and/or CONDOMINIUM PROPERTY;
- 14.4.2 any change in the description of the APARTMENT (the present APARTMENT number may be subject to change by the SELLER and/or Director of Land Surveys who may designate an alternate number to the APARTMENT); and
- 14.4.3 restrictions or cautions registered against the TRANSFER DEED in respect of the APARTMENT to the effect that the APARTMENT shall not be DEALT with, without the prior written consent of the SELLER, the MANAGEMENT CORPORATION and/or the ASSOCIATION, the full details of which restrictions or cautions are set out in 18to 21 hereunder.
- 14.5 The PURCHASER shall not, by reason of any delay in registration of the condition referred to in 14.6 and/or the transfer of the APARTMENT to him, be entitled to cancel this AGREEMENT, or to refrain from paying, or to suspend payment of, any amount payable by him in terms of this AGREEMENT, or be entitled to claim and/or recover any damages or compensation of whatsoever nature from the SELLER, provided that should transfer of the APARTMENT into the name of the PURCHASER not be effected within 12 months after the ANTICIPATED DATE OF COMPLETION, due to reasons for which the PURCHASER is not responsible, either PARTY may resile from this AGREEMENT by written notice to the other PARTY, and in the event of either PARTY so resiling, the SELLER shall reimburse to the PURCHASER all amounts paid by the PURCHASER as at date, plus interest on such amounts at the LIBOR RATE calculated from the date of payment of the respective amount/s by the PURCHASER until the date of reimbursement by the SELLER.
- 14.6 Provided that SANCTION has been granted and the PURCHASER has complied with all its obligations in terms of this AGREEMENT The SELLER shall procure that as soon as reasonably possible after the grant of the SANCTION, the following condition shall be inserted in, and registered against, the transfer deed in respect of the CONDOMINIUM PROPERTY in favour of the PURCHASER, substantially in according with this form, or in such other form as accords with the provisions of the LAND REGISTRATION ACT –
- "The SELLER records that it has entered into an agreement of sale with the PURCHASER in respect of the APARTMENT, which agreement is registered as a restrictive agreement in the encumbrance section of the SELLER's title, and which shall be binding on the SELLER's successors-in-title."
- 14.7 The cost of registration of the condition referred to in 14.6 shall be borne by the PURCHASER and shall be payable in accordance with the provisions of 14.3.1.
- 14.8 The SELLER shall procure, at its cost, that the charge registered in favour of the SELLER's bankers against the transfer deed in respect of the CONDOMINIUM PROPERTY be discharged on the CONTRACT REGISTRATION DATE.
- 14.9 Should the Agreement be cancelled for whatever reason, the PURCHASER hereby nominates and appoints the SELLER to be its attorney and lawful agent to appear before the Notary Public and to sign and execute a cancellation and retransfer agreement and all documents required and necessary to cancel the condition registered against the transfer deed in respect of the CONDOMINIUM PROPERTY and the retransfer (if applicable) of the APARTMENT, together with any easements in favour of the APARTMENT, to the SELLER.

15. EXCLUSIVE USE AREAS

- 15.1 The SELLER undertakes that the MANAGEMENT CORPORATION will grant to the PURCHASER, upon registration of transfer of the APARTMENT into the PURCHASER'S name, EXCLUSIVE USE RIGHTS to the PURCHASER in respect of the EXCLUSIVE USE AREAS. Those EXCLUSIVE USE RIGHTS shall be granted in terms of the RULES.
- 15.2 It is recorded that –
- 15.2.1 the MANAGEMENT CORPORATION and the ASSOCIATION and any of their respective representatives, agents or contractors shall each be entitled to access the EXCLUSIVE USE AREAS at any time; and
- 15.2.2 the COUNCIL and the BOARD may each make rules from time to time relating to the use of the EXCLUSIVE USE AREAS.
- 15.3 The EXCLUSIVE USE RIGHTS of the PURCHASER, as OWNER of the APARTMENT, in respect of the EXCLUSIVE USE AREAS may not be amended, or abandoned without –
- 15.3.1 the prior written approval of all OWNERS of CONDOMINIUM UNITS (including the PURCHASER, as OWNER of the APARTMENT); and
- 15.3.2 the prior written approval of the BOARD.

16. POSSESSION

- 16.1 Possession of the APARTMENT shall be given to and taken by the PURCHASER on DATE OF TRANSFER, subject to 16.2.
- 16.2 Should the APARTMENT, in the opinion of the SELLER, be sufficiently complete for possession prior to the DATE OF TRANSFER, the SELLER shall, subject to –
- 16.2.1 SANCTION having been granted; and
- 16.2.2 the PURCHASER having complied with all his obligations in terms of this AGREEMENT;
- 16.2.3 the OCCUPANCY CERTIFICATE having been issued,
- be entitled (but not obliged) to give possession of the APARTMENT to the PURCHASER on the date as determined by the SELLER. The SELLER shall notify the PURCHASER of the date it so determines to give possession, by notice in writing at least 30 days before such date.
- 16.3 In the event that the DATE OF POSSESSION is prior to the DATE OF TRANSFER, then the PURCHASER shall, with effect from the DATE OF POSSESSION and until the DATE OF TRANSFER, pay OCCUPATIONAL RENTAL to the SELLER in the amount specified in H of the CONTRACT SCHEDULE, which OCCUPATIONAL RENTAL shall be paid to the SELLER monthly in advance from the DATE OF POSSESSION to the DATE OF TRANSFER and shall be *pro rata* in respect of any portion of a month, provided that PURCHASER shall only be obliged to pay OCCUPATIONAL RENTAL for a maximum period of 6 months calculated from the DATE OF POSSESSION.
- 16.4 Should the amount specified in H of the CONTRACT SCHEDULE be higher or lower (as the case may be) than the SELLER'S FINANCE RATE, the SELLER may, in its sole discretion, increase or decrease (as the case may be) that amount accordingly.
- 16.5 In the event that the PURCHASER has taken possession of the APARTMENT and a dispute arises between the PARTIES at any time prior to the DATE OF TRANSFER in respect of any matter pertaining to this AGREEMENT, the PURCHASER and all persons claiming a right of possession through the PURCHASER shall forthwith be obliged to vacate the APARTMENT.

17. CONDITIONS OF POSSESSION

- 17.1 From the DATE OF POSSESSION, the PURCHASER shall –
- 17.1.1 be liable for all obligations imposed in respect of the APARTMENT in terms of the RULES, the CONSTITUTION or any applicable law;
- 17.1.2 comply with the provisions of the ACT and of the RULES, which will be applicable on the basis that the SELLER shall, until the MANAGEMENT CORPORATION comes into being, enjoy the same rights and powers as the MANAGEMENT CORPORATION and/or the COUNCIL enjoy in terms of such RULES;
- 17.1.3 waive all claims against the SELLER, the developer and the MANAGEMENT CORPORATION for any loss or damage to the APARTMENT or for any injury to person which the PURCHASER may sustain on the CONDOMINIUM PROPERTY,

and the PURCHASER shall indemnify the SELLER, the developer and the MANAGEMENT CORPORATION against any such claim that may be made against the SELLER, the developer and/or the MANAGEMENT CORPORATION by any member of the PURCHASER'S household or the PURCHASER'S invitees, visitors, employees or agents for any loss or damage to property or injury to persons suffered in the APARTMENT or on the CONDOMINIUM PROPERTY howsoever such loss or damage to property or injury to person may be caused;

- 17.1.4 if the APARTMENT is separately metered for the supply of electricity and/or water thereto, make arrangements with the suppliers to obtain the relevant connections and shall pay for the consumption thereof;
- 17.1.5 not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the SELLER or the MANAGEMENT CORPORATION (as the case may be) in respect of the CONDOMINIUM PROPERTY may be rendered void or voidable or as a result of which the premiums in respect thereof may be increased;
- 17.1.6 at all reasonable times, permit the SELLER and the developer, either personally, or through its servants or agents, to have access to the APARTMENT and the CONDOMINIUM PROPERTY for the purpose of inspecting same or carry out any maintenance or repairs which the SELLER or the developer (as the case may be) may be obliged or entitled to perform, whether such repairs relate to the APARTMENT or the CONDOMINIUM PROPERTY (or any part thereof), and the PURCHASER shall have no claim against the SELLER or the developer (as the case may be) for any disturbance in his occupation arising out of the exercise by the SELLER or the developer (as the case may be) of the rights hereby conferred;
- 17.1.7 not, without the prior written consent of the SELLER, make any alterations to the interior or exterior of the APARTMENT of whatsoever nature;
- 17.1.8 maintain the APARTMENT in a clean and orderly condition; and
- 17.1.9 use and enjoy the APARTMENT and COMMON ELEMENTS in such a manner as not to interfere unduly or unreasonably with the lawful rights of use and enjoyment thereof by other purchasers or other persons lawfully upon the CONDOMINIUM PROPERTY. The PURCHASER shall procure that all occupants of the APARTMENT comply with the provisions of this AGREEMENT.
- 17.2 The SELLER hereby undertakes, pending the establishment of the MANAGEMENT CORPORATION, to procure that –
 - 17.2.1 the CONDOMINIUM PROPERTY is insured to its replacement value against fire and all other risks against which the SELLER may deem it prudent to insure, and that all premiums falling due in respect of that insurance/s are duly paid;
 - 17.2.2 the COMMON ELEMENTS are maintained and kept in a state of good and serviceable repair;
 - 17.2.3 the plant, machinery, fixtures and fittings used in connection with the COMMON ELEMENTS are maintained and kept in a state of good serviceable repair;
 - 17.2.4 all pipes, wires, cables and ducts existing on the CONDOMINIUM PROPERTY and capable of being used only in connection with the enjoyment of more than one CONDOMINIUM UNIT or of the COMMON ELEMENTS, are maintained and repaired, provided, however, that notwithstanding anything to the contrary herein contained, the SELLER and the developer shall each be entitled to effect any repairs to the CONDOMINIUM PROPERTY (including the APARTMENT) even though the SELLER or the developer (as the case may be) are not obliged to effect such repairs in terms of this AGREEMENT.

18. RIGHTS OF SELLER

- 18.1 Pending the registration of the CONDOMINIUM PLAN, the SELLER shall be entitled to –
 - 18.1.1 make conduct rules for the use and enjoyment of the COMMON ELEMENTS;
 - 18.1.2 enter the APARTMENT at all reasonable times or to authorize its agents or workmen so to enter, to inspect same or to carry out repairs;
 - 18.1.3 exercise all the rights and powers which the MANAGEMENT CORPORATION would be entitled to exercise in terms of the ACT in respect of the CONDOMINIUM PROPERTY and the OWNERS and/or occupants of CONDOMINIUM UNITS; and
 - 18.1.4 exercise all the rights and powers which the ASSOCIATION would be entitled to exercise in terms of the CONSTITUTION.
- 18.2 The PURCHASER hereby appoints the SELLER'S nominee, irrevocably and *in rem suam* (see ANNEXURE A) and with power of substitution, to be his lawful agent and attorney –

- 18.2.1 to convene the first meeting of the MANAGEMENT CORPORATION and be there to vote in favour of any resolution of the MANAGEMENT CORPORATION to –
 - 18.2.1.1 make and adopt the RULES which will be substantially in accordance with the draft rules attached hereto as ANNEXURE C;
 - 18.2.1.2 grant exclusive use rights in respect of certain parts of the COMMON ELEMENTS; and
 - 18.2.1.3 pass any other resolution as may be required by the SELLER;
- in order to ensure the proper and efficient management and control of the CONDOMINIUM PROPERTY, or to ensure that the SELLER is able to exercise in full its rights to complete the DEVELOPMENT; and
- 18.2.1.4 to sign all documents necessary or required to comply with the PURCHASER'S obligations in terms of this AGREEMENT.

19. MANAGEMENT CORPORATION AND RULES

- 19.1 It is an express condition of this AGREEMENT that the PURCHASER shall –
 - 19.1.1 on the DATE OF TRANSFER automatically become a member of the MANAGEMENT CORPORATION;
 - 19.1.2 for as long as the PURCHASER is the OWNER of the APARTMENT, remain a member of the MANAGEMENT CORPORATION, and be bound by the RULES;
 - 19.1.3 should the PURCHASER DEAL with the APARTMENT, ensure that the person intending to acquire the APARTMENT is made fully aware of the RULES;
 - 19.1.4 subject to 20 to 22, not DEAL with, grant any option or pre-emptive right in respect of, the APARTMENT without the prior written consent of the MANAGEMENT CORPORATION;
 - 19.1.5 not DEAL with the APARTMENT otherwise than in accordance with section 8 of the ACT;
 - 19.1.6 not DEAL with the APARTMENT unless the person intending to acquire the APARTMENT has irrevocably bound himself to become a member of the MANAGEMENT CORPORATION, and to observe the provisions of the RULES, in such form as may be acceptable to the COUNCIL;
 - 19.1.7 not DEAL with the APARTMENT unless the person intending to acquire the APARTMENT has irrevocably accepted cession and assignment of all rights and all obligations in terms of the BERTH LEASE (if applicable), where the access to the relevant BERTH can only be provided by having access to the APARTMENT or the EXCLUSIVE USE AREAS;
 - 19.1.8 not make any improvements of whatsoever nature to the APARTMENT without the prior written consent of the COUNCIL and the ASSOCIATION; and
 - 19.1.9 sign all such documents and do all such things as may be reasonably necessary for purposes of complying with the ACT, the RULES and/or any other rules or regulations imposed by the MANAGEMENT CORPORATION, and the CONSTITUTION.
- 19.2 The following additional provisions shall be inserted in the TRANSFER DEED in respect of the APARTMENT substantially in accordance with this form, or in such form as accords with the provisions of the ACT or the LAND REGISTRATION ACT, and are imposed as conditions in favour of the MANAGEMENT CORPORATION –
 - 19.2.1 the OWNER of the APARTMENT shall not be entitled to DEAL with the APARTMENT, without prior written consent of the MANAGEMENT CORPORATION;
 - 19.2.2 every OWNER of the APARTMENT shall automatically become and shall remain a member of the MANAGEMENT CORPORATION and be subject to its RULES and the CONSTITUTION, until he ceases to be an OWNER as aforesaid. The APARTMENT shall not be transferred to any person who has not bound himself, to the satisfaction of the MANAGEMENT CORPORATION, to become a member thereof.
- 19.3 The PURCHASER acknowledges and agrees that –
 - 19.3.1 as from the DATE OF TRANSFER, he will be liable to pay all LEVIES and other contributions imposed upon all or any members of the MANAGEMENT CORPORATION in accordance with the RULES. It is recorded that the MANAGEMENT CORPORATION shall establish a management fund sufficient, in its opinion, to fund all expenses incurred, or to be incurred, by the MANAGEMENT CORPORATION in relation to controlling, managing and

administering the COMMON ELEMENTS, paying premiums of insurance, paying rates, taxes and other charges imposed on the CONDOMINIUM PROPERTY, paying all its levies and other amounts due to the ASSOCIATION, and discharging any other obligations of the MANAGEMENT CORPORATION;

19.3.2 all amounts due by the PURCHASER to the MANAGEMENT CORPORATION shall be paid free of exchange by means of an electronic funds transfer system into an account nominated by and in the form prescribed by the MANAGEMENT CORPORATION from time to time.

19.4 The PURCHASER further acknowledges that he has read a copy of the RULES and that he has satisfied himself as to the contents thereof. The PURCHASER agrees to abide by the RULES and undertakes to ensure that his dependants, guests, tenants and/or other invitees will also abide by the RULES.

20. EDEN ISLAND VILLAGE MANAGEMENT ASSOCIATION

20.1 The SELLER has formed the ASSOCIATION to administer, manage and control the RESIDENTIAL DEVELOPMENT COMPONENT.

20.2 The PURCHASER acknowledges that the MANAGEMENT CORPORATION shall be obliged, with effect from its establishment to –

20.2.1 become a member of the ASSOCIATION;

20.2.2 be bound to, and conform and comply with the CONSTITUTION; and

20.2.3 pay all LEVIES raised and charged by the ASSOCIATION against its members in terms of its CONSTITUTION.

20.3 It is recorded that all obligations imposed, and all rights conferred to the MANAGEMENT CORPORATION, as member of the ASSOCIATION, shall apply to every OWNER (including the PURCHASER), mutatis mutandis (see ANNEXURE A). The ASSOCIATION shall be entitled (but not obliged) to enforce compliance with those obligations directly against the OWNER concerned.

20.4 Should the MANAGEMENT CORPORATION fail to pay to the ASSOCIATION any levies or other amounts charged by the ASSOCIATION to the MANAGEMENT CORPORATION on due date, the ASSOCIATION shall be entitled (but not obliged) to claim those levies and other amounts directly from every OWNER in proportion to that OWNER'S share of those levies or other amounts in accordance with that OWNER'S SHARE VALUE in terms of the RULES.

20.5 The PURCHASER acknowledges and agrees that he has read the CONSTITUTION and that he has satisfied himself as to the contents thereof. The PURCHASER agrees to abide by that CONSTITUTION and undertakes to ensure that his dependants, guests, tenants and/or invitees will also abide by that CONSTITUTION.

20.6 The following additional provisions shall be inserted in the TRANSFER DEED in respect of the APARTMENT substantially in accordance with this form, or in such form as accords with the provisions of the LAND REGISTRATION ACT, and are imposed as conditions in favour of the ASSOCIATION –

20.6.1 the OWNER of the APARTMENT shall not be entitled to DEAL with the APARTMENT without prior written consent of the ASSOCIATION, which will be given in terms of the CONSTITUTION;

20.6.2 the OWNER of the APARTMENT shall not alter the access to the APARTMENT without the prior written consent of the ASSOCIATION, which will be given in terms of the CONSTITUTION.

20.7 The provisions contained in this 20 constitute stipulatio alteri (see ANNEXURE A) in favour of the ASSOCIATION, the benefits of which may be accepted at any time and in any manner.

21. ACKNOWLEDGEMENTS BY PURCHASER ON DEALING WITH THE APARTMENT

21.1 The PURCHASER acknowledges and agrees that –

21.1.1 due to the nature of the proposed DEVELOPMENT and the various matters about which any PURCHASER should become aware when buying into the DEVELOPMENT, if the PURCHASER wishes to DEAL with the APARTMENT, he shall not utilise any sales and marketing agent other than the sales and marketing and/or realtor agent nominated by the SELLER, without the prior written consent of the SELLER, which consent shall not be unreasonably withheld, provided that such sales and marketing and/or realtor agent nominated by the SELLER shall be appointed upon substantially the same terms and conditions as the sales and marketing agent in respect of the sale in terms of this AGREEMENT;

- 21.1.2 he shall include a clause, on the same terms of this 21, in any document pursuant to which he DEALS with the APARTMENT, so that the SELLER will always have the right to appoint the sales and marketing agent when the APARTMENT is DEALT with; and
- 21.1.3 when the SELLER appoints a sales and marketing agent in terms hereof, it shall do so as an agent in rem suam (see ANNEXURE A) on behalf of the PURCHASER.
- 21.2 In the event of the PURCHASER DEALING with the APARTMENT, then the PURCHASER acknowledges that it shall be responsible for payment of a capital contribution fee charged by the ASSOCIATION in this regard. The aforesaid fee charged by the ASSOCIATION shall be determined in the manner set out in the CONSTITUTION.
- 21.3 When DEALING with the APARTMENT, the OWNER shall utilise such documentation as prescribed by the ASSOCIATION from time to time.
- 21.4 Notwithstanding the provisions of 25, in the event of a breach of this 21, the SELLER shall be entitled in its absolute discretion to refuse the written approval as required for DEALING with the APARTMENT until the provisions of this clause are complied with or grant approval subject to certain conditions and the PURCHASER shall have no claim for damages against the SELLER arising out of the SELLER'S refusal to give such written approval.

22. RESTRAINT ON DEALING IN FAVOUR OF SELLER

- 22.1 Notwithstanding anything to the contrary contained in this AGREEMENT, the PURCHASER shall not in any way DEAL with the APARTMENT at any time prior to the DATE OF TRANSFER, without the prior written consent of the SELLER, which consent the SELLER may withhold in its sole and absolute discretion.
- 22.2 If the PURCHASER desires to DEAL with the APARTMENT during the DEVELOPMENT PERIOD, the PURCHASER shall be obliged to first make an offer to DEAL with the APARTMENT to the SELLER, by giving notice in writing thereof (hereinafter "PURCHASER'S OFFER") to the SELLER. The PURCHASER'S OFFER shall be open for acceptance by the SELLER for a period of 14 days after receipt thereof. Should the SELLER fail to accept the PURCHASER'S OFFER within the said 14 days period, the PURCHASER shall be entitled, for a period of 60 days after the expiry of the time for acceptance by the SELLER, to DEAL with the PARCEL to a bona fide (see ANNEXURE A) party, provided that —
- 22.2.1 the PURCHASER shall only be entitled to DEAL with the APARTMENT at the same price and the same terms and conditions contained in the PURCHASER'S OFFER, mutatis mutandis (see ANNEXURE A);
- 22.2.2 the third party in question is approved by the SELLER in writing, which approval the SELLER shall not unreasonably withhold or delay without good cause being shown, failing which the PURCHASER shall not be entitled to DEAL with his APARTMENT or any interest therein to such third party; and
- 22.2.3 if the PURCHASER fails to DEAL with the APARTMENT within the said 60 day period, and if the PURCHASER still desires to DEAL with the APARTMENT, he shall be obliged to again comply with the provisions of this 22.2.
- 22.3 The provisions of 22.1 and 22.2 shall be registered as restrictive conditions in favour of the SELLER in the TRANSFER DEED in respect of the APARTMENT in such form as accords with the provisions of the ACT and/or the LAND REGISTRATION ACT.
- 22.4 Should the SELLER, the MANAGEMENT CORPORATION and/or the ASSOCIATION allege that the PURCHASER DEALS, has DEALT or is about to DEAL, for purposes of the provisions of 19, 21 or 22, with the APARTMENT, then the PURCHASER shall have to prove the contrary, failing which the PURCHASER shall be deemed to so DEAL, have DEALT or about to DEAL with the APARTMENT.

23. SALES AND MARKETING AGENT'S FEES

The SELLER shall pay the applicable sales and marketing agent's fees in respect of this TRANSACTION, provided that should this TRANSACTION be cancelled due to a breach of the terms and conditions hereof by the PURCHASER, then the PURCHASER shall be liable for the sales and marketing agent's agreed fees in respect of the APARTMENT. The PURCHASER acknowledges that no sales and marketing agent, other than the SELLER'S appointed sales and marketing agent, has been the effective cause of this TRANSACTION.

24. DEFAULT PENALTIES

In the event of there being any delay in connection with any act of registration required in terms of this AGREEMENT or in respect of the implementation of this AGREEMENT for which delay the SELLER alleges that the PURCHASER is responsible, then the PURCHASER shall be required to prove that he is not so responsible, failing which the SELLER shall, in addition to any other rights which it has in terms of this AGREEMENT, be entitled to escalate the PURCHASE PRICE by an amount equal to 1.5% of the PURCHASE PRICE for each and every month (or part thereof) of delay, calculated from the date the PURCHASER is notified in writing by the SELLER as being in default, to the date upon which the PURCHASER has ceased to be in default, both days inclusive.

25. BREACH AND CANCELLATION

- 25.1 In the event that the PURCHASER breaches any term of this AGREEMENT, and remains in breach for a period of 10 days, after having received a written notice from the SELLER to remedy such breach, then the SELLER shall be entitled, at its option and without prejudice to any other rights which it may have in law, to either –
- 25.1.1 cancel this AGREEMENT and claim from the PURCHASER such damages as the SELLER may have suffered as a result of such cancellation, in which event the SELLER shall be entitled to retain any amounts paid by the PURCHASER as a genuine pre-estimate of damages for breach of contract; or
- 25.1.2 claim immediate specific performance of the PURCHASER'S obligations, including payment of the full PURCHASE PRICE, which will become immediately due and owing by the PURCHASER.
- 25.2 Notwithstanding the aforesaid, in the event that the PURCHASER fails to pay the PURCHASE PRICE (or any part thereof) in terms of 4.2, then the SELLER shall be entitled to summarily cancel this AGREEMENT by notice in writing to the PURCHASER and claim from the PURCHASER such damages as the SELLER may have suffered as a result of such cancellation, in which event the SELLER shall be entitled to retain any amounts paid by the PURCHASER as a genuine pre-estimate of such damages.
- 25.3 In the event that the PARTIES mutually agree in writing to cancel this AGREEMENT, the SELLER shall be entitled to retain all payments made up to and including the date of mutual cancellation, as its sole property, and for its own benefit, without obligation to repay any amounts to the PURCHASER for whatever reason, alternatively, the SELLER shall be entitled to all amounts due and owing on the date of mutual cancellation, after deducting any amounts already received by the SELLER. Any amounts due and owing shall be certified by the ARCHITECT.
- 25.4 Should the SELLER commit a breach of any of its obligations in terms of this AGREEMENT which –
- 25.4.1 is a material breach;
- 25.4.2 goes to the root of this AGREEMENT; and
- 25.4.3 cannot be compensated by a monetary award;
- and fail to remedy such breach within 10 days after receipt of written notice from the PURCHASER requiring the SELLER to remedy such breach, the PURCHASER shall only be entitled to cancel this AGREEMENT and claim restitution. It is hereby recorded that the PURCHASER shall have no claim against the SELLER for damages or any consequential damages he has suffered as a result of such cancellation or such breach.
- 25.5 Should this AGREEMENT be cancelled prior to the DATE OF TRANSFER for any reason whatsoever, the PURCHASER and all persons claiming a right of occupation through the PURCHASER shall forthwith be obliged to vacate the APARTMENT. It is hereby specifically recorded in this regard that no lease or other similar right of occupation in favour of the PURCHASER shall be created or come into existence by virtue of this AGREEMENT.

26. ADJUDICATION

- 26.1 Subject to any specific provision to the contrary in this AGREEMENT, in the event of any dispute of any nature whatsoever arising between the PARTIES on any matter provided for in, or arising out of this AGREEMENT, that dispute shall be referred to and be determined by adjudication in accordance with this clause.
- 26.2 This 26 shall not preclude any PARTY from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 26.3 The adjudication shall be held –
- 26.3.1 at Victoria, Mahé, the Republic of Seychelles;
- 26.3.2 on the basis that the proper law of this AGREEMENT shall be the law of the Republic of Seychelles;
- 26.3.3 with only the PARTIES and their legal and other representatives present thereat;
- 26.3.4 in terms of the Arbitration Act of the Republic of Seychelles (as amended).
- 26.4 The adjudicator shall be, if the matter in dispute is principally –
- 26.4.1 a legal matter, a practising advocate or attorney either from the Republic of Seychelles, the Republic of South Africa, Mauritius or the United Kingdom, of at least 10 years standing;

- 26.4.2 an accounting matter, a practising chartered accountant either from the Republic of Seychelles, the Republic of South Africa, Mauritius or the United Kingdom, of at least 10 years standing;
- 26.4.3 any other matter a suitably qualified independent person either from the Republic of Seychelles, the Republic of South Africa, Mauritius or the United Kingdom, of at least 10 years standing.
- 26.5 Should the PARTIES fail to agree whether the dispute is principally a legal, accounting or other matter, the matter shall be deemed to be a legal matter.
- 26.6 Should the PARTIES fail to agree on an adjudicator within 30 days, the adjudicator shall be appointed at the request of either PARTY to the dispute by the Law Society of the Cape of Good Hope (Republic of South Africa) according to the provisions of 26.4 and the PARTIES hereby indemnify the Law Society of the Cape of Good Hope (Republic of South Africa) against any claims resulting from the appointment of such adjudicator.
- 26.7 The adjudicator shall have the power to fix all procedural rules for the holding of the adjudication, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, inspection of documents, examination of witnesses and any other matter relating to the conduct of the adjudication. The adjudicator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit.
- 26.8 The award of the adjudicator shall be binding upon the PARTIES subject to the PARTIES' right to lodge an appeal against such award within a period of 5 days after the award was given, which appeal will be referred to a tribunal of 3 adjudicators appointed in accordance with 26.4, and to which appeal the provisions of this 26 shall apply mutatis mutandis (see ANNEXURE A).
- 26.9 The PARTIES agree to keep the adjudication, including the subject matter of the adjudication and the evidence heard during the adjudication confidential, and not to disclose the same to anyone, except to their respective shareholders (if applicable), and except for purposes of the adjudication proceedings in terms of this 26, any review thereof, and/or obtaining interim relief in terms of 26.2.
- 26.10 The provisions of this clause —
- 26.10.1 constitute an irrevocable consent by the PARTIES to any proceedings in terms hereof and no such PARTY shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 26.10.2 constitute a separate agreement, severable from the rest of this AGREEMENT and shall remain in effect despite termination, or invalidity for any reason, of this AGREEMENT.

27. CAPACITY OF SIGNATORY

- 27.1 The signatory hereby consents to the conclusion of this AGREEMENT and agrees that in the event that the PURCHASER claims that the signatory did not have the necessary capacity and/or authority to sign this AGREEMENT on the PURCHASER'S behalf, the signatory shall, at the election of the SELLER, for all purposes be deemed to be bound as surety and co-principal debtor in solidum (see ANNEXURE A) with the PURCHASER to the SELLER and be liable for the due and punctual fulfilment and discharge of all of the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this AGREEMENT, under the renunciation of the benefits of excussion (see ANNEXURE A) and division, the meaning and effect of which the signatory acknowledges and agrees to understand.
- 27.2 No variation or amendment or novation of this AGREEMENT shall be subject to the consent of the signatory, or shall prejudice the signatory's obligations undertaken in terms of this 27, the object being that the signatory shall at all times remain liable, even if this AGREEMENT is varied or amended or novated and even if the PURCHASER is granted an indulgence by the SELLER.

28. NOTICES AND DOMICILIUM

- 28.1 The PARTIES choose as their domicilium citandi et executandi (see ANNEXURE A) at which all processes and notices arising out of or in connection with this AGREEMENT, its breach or termination may validly be served upon or delivered to the PARTIES —
- 28.1.1 in respect of the SELLER, at the address specified in A2 of the CONTRACT SCHEDULE;
- 28.1.2 in respect of the PURCHASER, at the physical addresses, facsimile number or e-mail address specified in B5 and B6, respectively, of the CONTRACT SCHEDULE, or at the physical address of the APARTMENT, provided that the physical address of the APARTMENT shall only be a valid domicilium (see ANNEXURE A) after the DATE OF TRANSFER;

or at such other address in the Republic of Seychelles, not being a post office box or *poste restante* (see ANNEXURE A), facsimile numbers and e-mail address of which the PARTY concerned may notify the other in writing.

- 28.2 Any notice given in terms of this AGREEMENT shall be in writing and shall –
- 28.2.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- 28.2.2 if delivered by recognised international courier service, be deemed to have been received by the addressee on the first day following the date of such delivery by the courier service concerned; and
- 28.2.3 if transmitted by facsimile or electronically by e-mail, be deemed to have been received by the addressee one day after dispatch.
- 28.3 For the purpose of this clause, if a notice is received on a day that falls on a Saturday, Sunday or statutory public holiday generally recognized in the Republic of Seychelles, such notice will be deemed to be received on the next day that is not a Saturday, Sunday or statutory public holiday generally recognized in the Republic of Seychelles.
- 28.4 Notwithstanding anything to the contrary contained in this AGREEMENT, a written notice or communication actually received by one of the PARTIES from the other, shall be adequate written notice or communication to such PARTY.

29. MISCELLANEOUS

29.1 signature

This AGREEMENT shall not be binding on the SELLER until such time as it has signed the AGREEMENT. Subject to the provisions of the RESERVATION AGREEMENT (if applicable), the PURCHASER shall not, before the DATE OF SIGNATURE, be entitled to claim the existence of an oral contract or other agreement with regard to any of the matters referred to herein.

29.2 warranty of authority

Each signatory warrants that he has the power, authority and legal right to sign and perform this AGREEMENT and that this AGREEMENT has been duly authorised by all necessary actions of his directors/ member/trustees or other officers or management body (as the case may be) and constitutes valid and binding obligations on him in accordance with the terms of this AGREEMENT.

29.3 further assurances

The PARTIES hereto agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate for purposes of implementing this AGREEMENT.

29.4 payment and interest

- 29.4.1 All payments in terms of or arising out of this AGREEMENT shall be made free of bank exchange, commission and all other deductions, to the PARTY entitled thereto.
- 29.4.2 The PURCHASER shall not have the right to defer, adjust or withhold any payment due to the SELLER in terms or arising out of this AGREEMENT or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 29.4.3 All amounts due by the PURCHASER to the SELLER (including damages) in terms of or arising out of this AGREEMENT shall, unless paid on due date, bear interest at the INTEREST RATE, which interest shall be calculated monthly in advance from the date that such amount becomes due, to the date of payment, both days inclusive.

29.5 representations by the SELLER

The PURCHASER acknowledges and agrees that he has not been influenced or induced to enter into this AGREEMENT by any express or implied information, statement, warranty or representation in any way given or made by or on behalf of the SELLER, or information and details contained in any advertising material, pictures, drawings or brochures, other than as set out in this AGREEMENT. Accordingly, the SELLER shall not be bound by any representation contained in any advertising material of whatever nature and the SELLER shall be entitled as it sees fit to amend any aspects of the DEVELOPMENT as may be indicated on advertising material, models and brochures from time to time.

29.6 independent advice

Each of the PARTIES hereto acknowledges that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this AGREEMENT, and that they have either taken *vis-à-vis* such independent

legal advice or dispensed with the necessity of doing so. Further, each of the PARTIES hereto acknowledge that all of the provisions of this AGREEMENT and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the PARTIES in connection with this AGREEMENT.

29.7 **non-assignment**

The PURCHASER shall not be entitled to cede or assign any of his rights or delegate any of his obligations under this AGREEMENT without the express prior written consent of the SELLER.

29.8 **nomination**

Should the signatory sign on behalf of a PURCHASER being a company or other company or other entity to be formed, or should the PURCHASER wish to nominate another party to be the PURCHASER in terms of this AGREEMENT, such company or other entity to be formed, or such nominated party, shall be subject to the prior written approval of the SELLER, in its sole discretion, and pending such approval, the signatory and/or initial PURCHASER shall be and remain liable for all obligations of the PURCHASER in terms of this AGREEMENT.

29.9 **whole agreement**

Subject to the provisions of the RESERVATION AGREEMENT (if applicable), this AGREEMENT constitutes the whole agreement between the PARTIES as to the subject matter hereof and no agreement (including any oral agreement), representations or warranties between the PARTIES other than those set out in this AGREEMENT are binding on the PARTIES.

29.10 **variation**

No addition to or variation, consensual cancellation or novation of this AGREEMENT, shall be of any force or effect, unless reduced to writing and signed by both the PARTIES. A facsimile of any addition to or variation, consensual cancellation or novation of this AGREEMENT duly signed by both PARTIES shall constitute a valid addition variation, cancellation or novation.

29.11 **relaxation**

No indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this AGREEMENT shall prejudice the SELLER'S rights under this AGREEMENT in any manner whatsoever, or be regarded as a waiver of the SELLER'S rights in terms of this AGREEMENT.

29.12 **severability**

The agreements and undertakings of the PARTIES contained in this AGREEMENT shall each be construed as an agreement and undertaking independent of any other provision of this AGREEMENT. The PARTIES hereby expressly agree that it is not the intention of any PARTY to violate any public policy, statutory or other applicable law, and that if any sentence, paragraph, clause or combination of the same is in violation of the laws of the Republic of Seychelles, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this AGREEMENT shall remain binding upon the PARTIES hereto. Notwithstanding the aforesaid, in the event of any of the provisions of this AGREEMENT violating any public policy, statutory or other applicable law, as being void or unenforceable for any reason whatsoever, the SELLER shall have the right, in its sole and absolute discretion, to resile from this AGREEMENT by written notice to the PURCHASER to that effect, in which event the PARTIES shall be restored to their *status quo ante* (see ANNEXURE A).

29.13 **conflict**

In the event of any dispute, disagreement, notification or proceedings, and in the interpretation or application of any of the provisions of this AGREEMENT, the SELLER'S averments shall be accepted as *prima facie* proof, and the PURCHASER shall be required to prove the contrary, failing which the averments of the SELLER shall be deemed to be correct.

29.14 **costs**

29.14.1 Each PARTY shall pay its own costs in respect of negotiating, drafting, preparing and implementing this AGREEMENT.

29.14.2 Any charges and/or costs payable to the GOVERNMENT in respect of the TRANSACTION (if applicable) shall be paid by the PURCHASER.

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EXPLANATORY NOTE

EXPLANATORY NOTE

1. bona fide – in good faith;
2. benefit – division - in the event of more than one surety, a waiver of this benefit by a co-surety entitles the creditor to recover the full debt from such co-surety, without first having to apportion the liability amongst the co-sureties;
3. benefit – excussion – a waiver of this benefit by a surety entitles the creditor to claim payment from the surety without first exhausting its legal remedies against the principal debtor;
4. domicilium citandi et executandi - for the purpose of serving notices, the domicilium in this connection is synonymous with address;
5. eiusdem generis – instrument of interpretation where the meaning of general words in association with specific words has to be ascertained;
6. estoppel – exclusion or prohibition;
7. inter alia – amongst others;
8. in re suam – in one's own affair; regarding one's own interest;
9. in solidum – joint and several liability;
10. mutatis mutandis – subject to the necessary alterations;
11. poste restante – service where the post office holds the mail until the recipient calls for it;
12. prima facie – on the face of it; at first sight;
13. status quo ante – position before whatever was done;
14. stipulatio alteri – an agreement for the benefit of a third party;
15. vice versa – the other way around;
16. vis major – greater or superior force; irresistible force.

SPECIMEN SANCTION APPLICATION FORM

IP/1

This application must be completed and forwarded with appropriate plans to:
**PRINCIPAL SECRETARY
MINISTRY OF LAND USE & HOUSING
P.O. BOX 199
INDEPENDENCE HOUSE, VICTORIA**

**REPUBLIC OF SEYCHELLES
Immovable Property (Transfer Restriction) Act Cap.95**

Application for Sanction to purchase/hold an option to purchase immovable property

1. **Name in full:**
(state whether Mr./Mrs./Miss)

Nationality :

Occupation:

2. **Permanent Address:**

3. **If a company:**

- (i) Name of Company
- (ii) Address of Registered Office
- (iii) State full names and nationalities of directors and shareholders
- (iv) State whether registered under the Companies Act 1972 and give Registration No.
- (v) If an overseas company state country in which originally formed
- (vi) State:
 - (a) percentage o share capital held by Non-Seychellois
.....%
 - (b) if the applicant company is controlled by another company additionally, sate the above details in respect of the controlling company
- (vii) Nature of business:

4. **Name and address of bankers in country of origin:**

5. **Name and address of bankers in Seychelles:**

6. **Name of Notary or Attorney:**

7. **Date of arrival in Seychelles:**

8. **Details of entry permit:**

9. **Description of property to be purchased:**

- Parcel number(s):
- Area in sq. metres:
- Location:
(A survey and location plans must be attached)

10. **Give brief description of any buildings included in the property (e.g. dwelling house, business premise)**

Value in Rupees:

11. **Name, Address and Nationality of Vendor:**

12. **Purchase price in Rupees:**

13. **State the currency which will be used for the purchase: (e.g. US Dollars, Euros, Pounds Sterling, etc)**

14. **State the purpose of the proposed purchase in detail: (See note 1)**

15. **If the proposed development requires planning permission, has such permission been applied for in outline form?**

16. **If a licence is required for the proposed development, please state which licence has been applied for:**

17. **Give details of any property now or previously owned or leased by you in Seychelles (Parcel No., Area Location, Buildings...)**

I apply for the sanction of the Council of Ministers to purchase/hold an option to purchase (delete as appropriate) the property described in this application. I certify that the particulars given herein are to the best of my knowledge true and correct.

I authorise the Government of Seychelles to obtain references from the bankers named in Sections 4 and 5 of the application.

Name:

If signed by
an agent

Signed:.....

Name:.....

Profession:.....

Address:.....

Owner's Consent:

Name:.....

Date :

Official Use:

Received:

NOTES

1. Proposed Use of Land. In the case of a proposed development project, please attach letter of approval obtained from the Seychelles Investment Board.
2. The following documents **must** accompany this application:
 - (a) **In the case of an individual(s):**
 - Certified true copy of applicant/(s) valid passport details which must be accompanied by the contact details of the certifying Notary or Attorney
 - Copies of 2 utility bills as proof of residential address which should not be older than 3 months from the date of the application
 - Original Current Police Clearance Certificate not older than 6 months from the date of the application in country of residence in the last 2 years
 - Signed declaration that the individual is not (or is) a Politically Exposed Person (PEP)
 - Signed declaration of source of funds to be used for the proposed transaction (declaration form can be downloaded from www.luh.gov.sc)
 - Signed declaration of proof of funds from the originating bank validating the proposed transaction (e.g. a bank-signed bank statement showing the requisite balance of funds or a letter of reference stating availability of funds from the bank)

(b) **In the case of a corporate body:**

- Certificate of Incorporation
- Memorandum and Articles and Association
- Share certificates and register of directors
- Written declaration by the natural person(s) who are the ultimate beneficial owner(s) of the corporate body which is duly certified by a Notary or Attorney and with the contact details of the certifying Notary or Attorney
- Signed declaration that the individual is not (or is) a Politically Exposed Person (PEP)
- Certified true copy of valid passport details of the ultimate beneficial owner(s) which must be accompanied by the contact details of the certifying Notary or Attorney
- Copies of 2 utility bills of the ultimate beneficial owner(s) as proof of residential address which should not be older than 3 months from the date of the application
- Original Current Police Clearance Certificate of the ultimate beneficial owner(s) not older than 6 months from the date of the application in country of residence in the last 2 years
- Proof of identity in the form of 2 utility bills and certified true copies of valid passport details with the contact details of the certifying Notary or Attorney for each director and for each shareholder holding 25% or more of the shares of the corporate body
- Signed declaration of source of funds to be used for the proposed transaction (declaration form can be downloaded from www.luh.gov.sc)
- Signed declaration of proof of funds from the originating bank validating the proposed transaction (e.g. a bank-signed bank statement showing the requisite balance of funds or a letter of reference stating availability of funds from the bank)

N.B All submitted documents which are not in English or French language must be translated with the full contact details of the translator

AGREEMENT OF LEASE

BERTH

SIGNATURE DOCUMENT

1. OFFER TO LEASE

The LESSEE hereby offers to lease from the LESSOR the BERTH, subject to the terms and conditions as set out in the CONDITIONS OF LEASE and the ANNEXURES, which form part of this AGREEMENT.

DATED at _____ this _____ day of _____ 20__.

AS WITNESSES:

1. _____
LESSEE

2. _____

2. SIGNATORY'S UNDERTAKING

This portion is to be signed by the signatory acting for and on behalf of the LESSEE, including a member, director, trustee, agent or representative of the LESSEE, or such other person authorised to sign on behalf of the LESSEE.

(full names)

as signatory of this AGREEMENT,

hereby consents to the conclusion of this AGREEMENT and agrees that in the event that the LESSEE claims that the signatory did not have the necessary capacity and/or authority to sign this AGREEMENT on the LESSEE'S behalf, the signatory shall, at the election of the LESSOR, for all purposes be deemed to be bound as surety and co-principal debtor *in solidum* (see ANNEXURE A) with the LESSEE to the LESSOR, and be liable for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the LESSEE to the LESSOR pursuant to this AGREEMENT, under the renunciation of the benefits of excussion and division (see ANNEXURE A), the meaning and effect of which benefits are set out in ANNEXURE A and which renunciation of benefits the signatory acknowledges and agrees to understand. No variation or amendment or novation of this AGREEMENT shall prejudice the signatory's obligation hereby undertaken, the object being that the signatory shall at all times remain liable even if this AGREEMENT is varied or amended or novated and even if the aforesaid PURCHASER is granted an indulgence by the LESSOR. The signatory chooses as his or her *domicilium citandi et executandi* (see ANNEXURE A) at which address all processes and notices arising out of or in connection with this AGREEMENT may validly be served upon or delivered to as the *domicilium* (see ANNEXURE A) of the LESSEE in terms of 18.1 of the CONDITIONS OF LEASE.

DATED at _____ this _____ day of _____ 20__.

AS WITNESSES:

1. _____
SIGNATORY

2. _____

3. **ACCEPTANCE BY THE LESSOR**

The LESSOR hereby accepts –

3.1 the offer of the LESSOR set out in 1; and

3.2 the rights and benefits in terms of the signatory's undertaking set out in 2 (if applicable).

DATED at _____ this _____ day of _____ 20____.

AS WITNESSES:

1. _____

2. _____

For and on behalf of
EDEN ISLAND DEVELOPMENT
COMPANY (SEYCHELLES) LIMITED
duly authorised

CONDITIONS OF LEASE

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1. INTRODUCTION

- 1.1 The LESSOR has procured the right to develop EDEN ISLAND, which DEVELOPMENT will comprise of the RESIDENTIAL DEVELOPMENT and the COMMERCIAL DEVELOPMENT.
- 1.2 The LESSOR is the registered owner of the RESIDENTIAL DEVELOPMENT COMPONENT and will develop and market the RESIDENTIAL DEVELOPMENT COMPONENT in phases and subdivide the RESIDENTIAL DEVELOPMENT COMPONENT into individual land parcels and erect a combination of DWELLINGS thereon.
- 1.3 The LESSOR will market certain of those DWELLINGS together with BERTHS which will be leased to the registered owners of those DWELLINGS.
- 1.4 The LESSEE has entered or is about to enter into an agreement to purchase a DWELLING, and wishes to enter into a lease agreement to lease the BERTH specified in I of the CONTRACT SCHEDULE. The LESSOR is willing to let that BERTH, subject to and upon the terms and conditions of this AGREEMENT.

2. DEFINITIONS AND INTERPRETATION

- 2.1 For the purposes of this AGREEMENT unless the context indicates to the contrary –
- 2.1.1 "this AGREEMENT" means the SIGNATURE DOCUMENT, these CONDITIONS OF LEASE and all ANNEXURES;
- 2.1.2 "ANNEXURE" means an annexure to this AGREEMENT, as amended and/or supplemented from time to time in accordance with 18.7;
- 2.1.3 "ANNUAL RENTAL" means the annual rental payable by the LESSEE in terms of this AGREEMENT;
- 2.1.4 "APARTMENT" means a unit (as that term is defined in section 2 of the t CONDOMINIUM ACT on a CONDOMINIUM PROPERTY;
- 2.1.5 "ASSOCIATION" means the Eden Island Village Management Association registered under the Registration of Association Act (Cap 201 of the Laws of the Seychelles);
- 2.1.6 "BERTHING RIGHT" means the LESSEE'S sole and exclusive right to the use and enjoyment of the LEASED AREA in accordance with the provisions of this AGREEMENT;
- 2.1.7 "BERTH(S)" means every mooring berth situated within the RESIDENTIAL DEVELOPMENT COMPONENT and such mooring berths situated within the COMMERCIAL DEVELOPMENT COMPONENT, which mooring berths are adjacent to the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.8 "COMMENCEMENT DATE" means the later date of the following –
- 2.1.8.1 the DWELLING POSSESSION DATE; and
- 2.1.8.2 the date on which the LEASED AREA is available for beneficial occupation;
- subject to the provisions of 5;
- 2.1.9 "COMMERCIAL DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT into a commercial and retail development and a marina;
- 2.1.10 "COMMERCIAL DEVELOPMENT COMPONENT" means
- 2.1.10.1 that portion of EDEN ISLAND that is being developed as commercial property and duly registered in terms of that LAND REGISTRATION ACT and leased to the LESSOR by the GOVERNMENT;
- 2.1.10.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 2.1.10.3 any other extension/s or alteration/s to the COMMERCIAL DEVELOPMENT COMPONENT by the LESSOR from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;

- 2.1.11 "CONDITIONS OF LEASE" means the conditions of lease set out in this document, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.12 "CONDOMINIUM ACT" means the Condominium Property Act (Cap 41A of the Laws of Seychelles) as amended;
- 2.1.13 "CONDOMINIUM BUILDING(S)" means a subdivided building (as contemplated in the CONDOMINIUM ACT) erected on a CONDOMINIUM PROPERTY;
- 2.1.14 "CONDOMINIUM PROPERTY" means a PARCEL in respect of which a condominium plan (as that term is defined in the CONDOMINIUM ACT) has been, or is to be registered;
- 2.1.15 "CONDUCT RULES" means any and all rules and regulations made by the ASSOCIATION in relation to the MOORING AREAS and the WATERWAYS, as amended from time to time, the current CONDUCT RULES attached hereto as ANNEXURE A;
- 2.1.16 "CONSTITUTION" means the constitution of the ASSOCIATION, as amended and shall be deemed to include all rules and regulations made thereunder and or issued in terms thereof from time to time;
- 2.1.17 "CONTRACT SCHEDULE" means the contract schedule forming part of the SALES DOCUMENTATION;
- 2.1.18 "DEAL" or "DEALING" shall bear the same meaning as in the CONSTITUTION;
- 2.1.19 "DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT and the RESIDENTIAL DEVELOPMENT; COMPONENT;
- 2.1.20 "DWELLING(S)" means all VILLAS, MAISONS and CONDOMINIUM BUILDINGS comprising the DEVELOPMENT;
- 2.1.21 "DWELLING POSSESSION DATE" means the date on which the LESSEE, as purchaser of a DWELLING, takes possession of that DWELLING in terms of the SALE AGREEMENT;
- 2.1.22 "EDEN ISLAND" means the island known as Eden Island, which island is situated offshore, opposite Roche Caiman, Mahé, Republic of Seychelles, including any and all consolidations or subdivisions thereof, as well as all areas reclaimed from time to time;
- 2.1.23 "GOVERNMENT" means the government of the Republic of Seychelles;
- 2.1.24 "IMPROVEMENTS" means all and any DWELLINGS, buildings or other structures on any PARCEL or on the COMMON AREAS, including landscaping and planting, roads, pavements, irrigation, infrastructure services and or similar structures;
- 2.1.25 "INITIAL PAYMENT" means an amount equal to 3 months' SERVICE CHARGES;
- 2.1.26 "INTEREST RATE" means the London Interbank Offered Rate (LIBOR), being the rate of interest which banks participating in the London money market offer each other for short-term deposits, plus 7,5% *per annum*;
- 2.1.27 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 2.1.28 "LEASED AREA" means the BERTH specified in J of the CONTRACT SCHEDULE;
- 2.1.29 "LESSEE" means the person specified in B of the CONTRACT SCHEDULE;
- 2.1.30 "LESSOR" means Eden Island Development Company (Seychelles) Limited (registration no 849-959-1), a company with limited liability duly incorporated in accordance with the laws of the Republic of Seychelles, and includes its successor/s in title and assign/s;
- 2.1.31 "MAISON(S)" means a duplex building erected, or to be erected, on a PARCEL, which building may share a common boundary wall with the building(s) on the adjacent PARCEL(S);
- 2.1.32 "MANAGER" means any person or body employed or appointed by the ASSOCIATION for the purposes of managing the MOORING AREAS and/or the WATERWAYS (or any parts thereof);
- 2.1.33 "MOORING AREAS" means the BERTHS, the primary and secondary breakwater, wave attenuator, harbour entrance and lights, together with all ancillary facilities located within those areas;
- 2.1.34 "MOORING PLAN" means the plan of the MOORING AREAS (or parts thereof) attached hereto as ANNEXURE B;

- 2.1.35 "NON-SEYCHELLOIS" means a person who is not a Seychellois as is more clearly defined in terms of the Immovable Property (Transfer Restriction) Act (Cap 95 of the Laws of Seychelles);
- 2.1.36 "PARCEL" means any parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 2.1.37 "PARTY/IES" means the LESSOR and the LESSEE, or any one of them as the context may indicate;
- 2.1.38 "PRO RATA SHARE" means, in respect of a BERTH, a percentage expressed to 2 decimal places calculated by dividing one by the aggregate number of all BERTHS;
- 2.1.39 "RECLAMATION AGREEMENT" means the written agreement for reclamation works around EDEN ISLAND entered into between the GOVERNMENT and the LESSOR on or about 28 October 2005, as amended;
- 2.1.40 "RESIDENTIAL DEVELOPMENT" means the subdivision of the RESIDENTIAL DEVELOPMENT COMPONENT into individual land parcels, the servicing of those land parcels, the construction of DWELLINGS thereon, and the installation of certain recreational facilities and amenities on the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.41 "RESIDENTIAL DEVELOPMENT COMPONENT" means-
- 2.1.41.1 that portion of EDEN ISLAND that is being developed as residential property in freehold title in terms of the LAND REGISTRATION ACT;
- 2.1.41.2 any land area reclaimed and or converted from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT; and
- 2.1.41.3 any other extension/s or alteration/s of the RESIDENTIAL DEVELOPMENT COMPONENT by the DEVELOPER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 2.1.42 "SALE AGREEMENT" means the written sale agreement entered into or about to be entered into between the LESSEE and the LESSOR in terms of which the LESSEE purchases from the LESSOR a DWELLING, which sale agreement forms part of the SALE DOCUMENTATION;
- 2.1.43 "SALES DOCUMENTATION" means the prescribed written sales documentation for the sale of an APARTMENT and the lease of a BERTH (if applicable), of which sales documentation this AGREEMENT forms a part;
- 2.1.44 "SANCTION" means sanction as contemplated in 5 of the SALE AGREEMENT, being the consent granted by the GOVERNMENT to the LESSEE, as purchaser of a DWELLING and as lessee of the LEASED AREA, in terms of the Immovable Property (Transfer Restriction) Act (Cap 95 of the Laws of Seychelles), to acquire that DWELLING in terms of the SALE AGREEMENT and to lease the LEASED AREA in terms of this AGREEMENT;
- 2.1.45 "SERVICE CHARGE/S" means the service charge/s payable by the LESSEE in respect of the LEASED AREA in accordance with the provisions of 7;
- 2.1.46 "SERVICES" means the facilities provided in respect of the BERTHS and/or the WATERWAYS including, without limitation, facilities relating to the supply of water and metered phase power, connections for television and telephone, communal area lighting, removal of sewerage and solid refuse, fire fighting and fuel docking;
- 2.1.47 "SIGNATURE DATE" means the date on which the LESSOR signs this AGREEMENT, as reflected on the SIGNATURE DOCUMENT;
- 2.1.48 "SIGNATURE DOCUMENT" means the signature document forming part of this AGREEMENT, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.49 "US\$" means United States dollars, the lawful currency of the United States of America;
- 2.1.50 "VESSEL(S)" means a waterborne vessel of any type, size or description;
- 2.1.51 "VILLA(S)" means a free-standing building erected, or to be erected, on a PARCEL;
- 2.1.52 "WATERWAYS" means all water channels (whether constructed, created or occurring naturally) and channel edges traversing the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.53 any reference to the singular includes the plural and *vice versa* (see ANNEXURE A);

- 2.1.54 any reference to natural persons includes artificial persons and *vice versa* (see ANNEXURE A);
- 2.1.55 any reference to a gender includes the other genders (including neuter); and
- 2.1.56 any reference to months or years shall be construed as calendar months or years.
- 2.2 If the LESSEE consists of more than one person, such persons shall be jointly and severally liable *in solidum* (see ANNEXURE A) for all their obligations in terms of this AGREEMENT.
- 2.3 Where applicable, the provisions of this 2 shall impose substantive rights and obligations on the PARTIES as provided for in the provision concerned.
- 2.4 The clause headings in this AGREEMENT have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.6 No provision of this AGREEMENT shall be construed against or interpreted to the disadvantage of any PARTY hereto by reason of such PARTY having or being deemed to have structured or drafted such provision.
- 2.7 The *eiusdem generis* (see ANNEXURE A) rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 2.8 When this AGREEMENT prescribes any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a Saturday, Sunday or statutory public holiday recognised in the Republic of Seychelles, it will be deemed to fall on the next Saturday, Sunday or statutory public holiday recognised in the Republic of Seychelles.
- 2.9 This AGREEMENT shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles subject to 2.10, and the PARTIES consent to all proceedings instituted in connection with the terms of this AGREEMENT, being instituted in any competent court of the Republic of Seychelles, subject to the provisions of 15.
- 2.10 Where the laws of the Republic of Seychelles do not know or recognise any legal term or phrase contained in this AGREEMENT, or any legal principle to which any of the provisions, terms, phrases or words contained in this AGREEMENT relate, that legal term or phrase, or legal principle, shall be construed and interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

3. SANCTION

- 3.1 Should the LESSEE be a NON-SEYCHELLOIS, this AGREEMENT is subject to the resolute condition that the GOVERNMENT fails or refuses to grant SANCTION, as contemplated in 5 of the SALE AGREEMENT.
- 3.2 Should the LESSOR, as seller in terms of the SALE AGREEMENT, cancel the SALE AGREEMENT summarily in terms of 5.3 of the SALE AGREEMENT, then this AGREEMENT shall automatically terminate and the LESSOR shall be entitled to retain the INITIAL PAYMENT paid by the LESSEE.
- 3.3 Should the LESSOR, as seller in terms of the SALE AGREEMENT, resile from the SALE AGREEMENT in terms of 5.4 of the SALE AGREEMENT, then this AGREEMENT shall, save for 1, 2, 3 and 14 to 18, lapse and become of no force and effect and neither PARTY shall have any claim against the other PARTY for anything done hereunder or arising therefrom, save that the LESSOR shall repay the INITIAL PAYMENT, if paid by the LESSEE, to the LESSOR.
- 3.4 Should the LESSEE, as purchaser in terms of the SALE AGREEMENT, resile from the SALE AGREEMENT in terms of 5.5 of the SALE AGREEMENT, this AGREEMENT shall lapse and become of no force and effect, and the provisions of 3.3 shall apply *mutatis mutandis* (see ANNEXURE A).

4. COMMENCEMENT AND TERMINATION

- 4.1 This AGREEMENT shall commence on the COMMENCEMENT DATE.
- 4.2 This AGREEMENT shall endure for a period of 99 years from the COMMENCEMENT DATE, subject to earlier termination in terms of this AGREEMENT.
- 4.3 This AGREEMENT shall automatically terminate upon the LESSEE ceasing to be the registered owner of any DWELLING. Where the LEASED AREA can only be accessed by accessing a particular DWELLING (including the relevant exclusive use area, if applicable), this AGREEMENT shall automatically terminate upon the LESSEE ceasing to be the registered owner of that DWELLING.

5. COMPLETION AND OCCUPATION OF THE LEASED AREA

- 5.1 If on the DWELLING POSSESSION DATE, building work or alterations are being conducted in respect of the LEASED AREA, and the LEASED AREA is, by virtue thereof, not available for beneficial occupation by the LESSEE (as determined, in the case of building work in the manner set out in 5.2) –
- 5.1.1 the COMMENCEMENT DATE shall be the date upon which the LEASED AREA is so available for beneficial occupation by the LESSEE;
- 5.1.2 the LESSEE shall accept occupation on such later date; and
- 5.1.3 the LESSEE shall not be obliged to pay any RENTAL in respect of the period between the DWELLING POSSESSION DATE and the date upon which the LESSEE is given beneficial occupation in terms of 5.1.1, and the LESSEE shall not have any claim against the LESSOR or the LESSOR'S representatives for compensation or damages nor any right of cancellation or other right whatsoever if the LESSOR is unable to give the LESSEE beneficial occupation of the LEASED AREA on the DWELLING POSSESSION DATE, by reason of the LEASED AREA being incomplete or in a state of disrepair or by reason of any other fact.
- 5.2 In the event of any dispute between the PARTIES as to whether the LEASED AREA is available for beneficial occupation by the LESSEE, such dispute shall be referred for determination to an architect in private practice nominated by the LESSOR in writing, and the decision of that architect (who shall act as an expert and not as an arbitrator) shall for all purposes be final and binding on the PARTIES.
- 5.3 If the LEASED AREA or any part thereof is in the course of completion or renovation on the DWELLING POSSESSION DATE but is available for beneficial occupation and the LESSEE suffers any inconvenience or loss of beneficial occupation from building operations, noise and dust resulting therefrom, or from any such cause whatsoever, the LESSEE shall have no claim against the LESSOR or the LESSOR'S representatives for compensation or damages or for a remission of SERVICE CHARGES or ANNUAL RENTAL nor any right of cancellation or other right whatsoever by reason of any such inconvenience or loss of beneficial occupation during the period of completion.

6. RENTAL

- 6.1 The ANNUAL RENTAL payable by the LESSEE to the LESSOR in the first 12 calendar month period after the COMMENCEMENT DATE shall be the sum as set out in K.1 of the CONTRACT SCHEDULE.
- 6.2 The ANNUAL RENTAL shall be payable by the LESSEE to the LESSOR, in advance, on or before the first day of each and every 12 calendar month period and without deduction or set-off of any kind whatsoever, into a bank account nominated in writing by the LESSOR from time to time.
- 6.3 The ANNUAL RENTAL shall be increased on each anniversary of the COMMENCEMENT DATE by the rate as specified in K.2 of the CONTRACT SCHEDULE.
- 6.4 Should the COMMENCEMENT DATE not fall on the first day of any particular month –
- 6.4.1 the RENTAL for the period from the COMMENCEMENT DATE to the end of that particular month shall be calculated on a basis *pro rata* to the ANNUAL RENTAL payable under 6.1; and
- 6.4.2 the increase referred to in 6.3 shall take effect on each and every anniversary of the first day of the month following the COMMENCEMENT DATE.

7. SERVICE CHARGE

- 7.1 In addition to his obligation to pay the ANNUAL RENTAL, the LESSEE shall be obliged to pay a SERVICE CHARGE to the LESSOR, which SERVICE CHARGE shall be an amount equal to the *PRO RATA SHARE*, subject to the provisions of 7.2, of all general expenditure incurred in connection with the operation, administration, management and maintenance of the MOORING AREAS and the WATERWAYS, including, without limitation, costs incurred in respect of –
- 7.1.1 the MANAGER'S remuneration;
- 7.1.2 the provision of the SERVICES;
- 7.1.3 maintenance and repair of the MOORING AREAS and the WATERWAYS, and the facilities related thereto;
- 7.1.4 harbour dues and/or other taxes imposed by any relevant authority;
- 7.1.5 insurance premiums for all insurance, without limitation, in respect of the MOORING AREAS and/or WATERWAYS (or any part thereof), which insurance shall include breakdown insurance for plant and machinery situated in the MOORING AREAS and/or WATERWAYS, public risk insurance for legal liability in respect of personal injury, loss of or

damage to property and/or persons arising out of the use and operation of the MOORING AREAS and/or WATERWAYS, insurance for all persons employed by the LESSOR for purposes of the MOORING AREAS and/or WATERWAYS (i.e. persons employed in the maintenance, operation and administration of the MOORING AREAS and/or WATERWAYS), as well as any other insurance effected by the LESSOR, in its sole discretion, against liability for any risk relating to the MOORING AREAS and/or WATERWAYS;

- 7.1.6 lighting and electricity for signs, plant and equipment and other communal lighting within the MOORING AREAS and/or WATERWAYS;
 - 7.1.7 the provision of security services in and around the MOORING AREAS and/or WATERWAYS;
 - 7.1.8 the provision of fire prevention control and suppression systems within the MOORING AREAS and/or WATERWAYS; and
 - 7.1.9 all fresh water consumed in connection with the MOORING AREAS and/or WATERWAYS not separately metered to the LESSEE.
- 7.2 In calculating the SERVICE CHARGE payable by the LESSEE to the LESSOR in terms of 7.1, the LESSOR may, in its sole discretion, take, in addition to the *PRO RATA SHARE*, the following factors into account –
- 7.2.1 the proportion that the area of the LEASED AREA bears to the aggregate area of all BERTHS;
 - 7.2.2 the type and size of the VESSEL of the LESSEE;
 - 7.2.3 provided, however, that the LESSOR may consider any other factors which it, in its sole discretion, may deem relevant.
- 7.3 The LESSOR shall, not less than 30 days prior to the end of each financial year (or so soon thereafter as is reasonably possible), prepare and cause to be served upon the LESSEE, a notice containing an estimate of the SERVICE CHARGE for the following financial year, which notice shall specify the estimated shortfall (if any) resulting from the preceding year. The LESSOR may also include in such estimate an amount to be held in a reserve fund to meet anticipated expenditure not of an annual nature.
- 7.4 The SERVICE CHARGES shall be payable by the LESSEE in advance, in 12 equal monthly instalments, due on the first day of each and every month, the first such payment being due on or before the first day of the month in which this AGREEMENT commences. All SERVICE CHARGES and other amounts due by the LESSEE to the LESSOR shall be paid free of exchange by means of electronic transfer system into the account nominated by and in the form prescribed by the LESSOR from time to time and, in this respect, every LESSEE shall sign all such documents and do all such other things which are necessary to arrange for that electronic transfer (including, without limitation, the execution of a debit order).
- 7.5 In the event of the LESSOR, for any reason whatsoever, failing to timeously prepare and serve the estimate referred to in 7.3, the LESSEE shall, until receipt of such estimate, continue to pay the SERVICE CHARGE previously imposed.
- 7.6 In addition, the LESSOR may, from time to time, impose additional SERVICE CHARGES upon the LESSEE and may, in imposing such additional SERVICE CHARGES, determine the terms of payment thereof.
- 7.7 Any arrear SERVICE CHARGES shall bear interest at the INTEREST RATE.
- 7.8 Any amount due by the LESSEE by way of SERVICE CHARGE and/or interest thereon shall be a debt due by the LESSEE to the LESSOR and a document purporting to be signed by the LESSOR specifying such debt shall be *prima facie* (see ANNEXURE A) proof thereof.
- 7.9 On termination of this AGREEMENT for any reason whatsoever, the LESSEE shall remain liable for, and the LESSOR shall have the right to recover from the LESSEE, all SERVICE CHARGES due up to the date of termination of this AGREEMENT, together with interest thereon at the INTEREST RATE.
- 7.10 No SERVICE CHARGES or interest paid by the LESSEE shall under any circumstances be refundable by the LESSOR upon this AGREEMENT being terminated or cancelled for whatever reason.
- 7.11 Subject to 7.12, the SERVICE CHARGES shall also include specific expenses relating to the LESSEE which shall be calculated by the LESSOR as far as reasonably practical, in accordance with the following principles –
- 7.11.1 those expenses arising directly out of the LEASED AREA itself, to the LESSEE;
 - 7.11.2 those expenses attributable generally to a leasehold of multiple BERTHS, to the lessees of such BERTHS; and
 - 7.11.3 those expenses relating to the MOORING AREAS and WATERWAYS generally, to all lessees of BERTHS.

- 7.12 The calculation of SERVICE CHARGES in terms of this 7 shall be done equitably, provided, however, that the LESSOR may in any case where they, in their absolute and sole discretion consider it equitable to do so, assign to any tenants of a BERTH any greater or lesser share of the expenses as they may consider appropriate in the circumstances.
- 7.13 The LESSEE shall not be entitled to any of the privileges relating to the BERTHING RIGHT whilst any ANNUAL RENTAL, SERVICE CHARGES, or interest thereon, and/or any other sum which may be due and payable by the LESSEE to the LESSOR from whatsoever cause arising, remains unpaid. The LESSEE'S obligations shall not, however, be suspended or discharged whilst his privileges are not exercisable as aforesaid.

8. DAMAGE OR DESTRUCTION

- 8.1 Should the LEASED AREA be completely destroyed or damaged to an extent which prevents the LESSEE from having beneficial occupation of the LEASED AREA or should the LEASED AREA thereby become substantially untenable, the LESSEE shall have no claim of any nature whatsoever against the LESSOR as a result thereof, provided that the LESSOR shall, at its election –
- 8.1.1 pay to the LESSEE the proceeds (or the relevant portion thereof) of the insurance policy/ies received by the LESSOR as a result of the destruction of the LEASED AREA, in which event this AGREEMENT shall automatically terminate; or
- 8.1.2 reconstruct the LEASED AREA within a reasonable period.
- 8.2 If the LESSOR elects to reconstruct the LEASED AREA as contemplated in 8.1.2, this AGREEMENT shall not be terminated, but the LESSEE'S obligations in terms hereof shall be suspended and, in particular, the LESSEE shall not be liable for payment of rental or SERVICE CHARGES in respect of the period calculated from the date of such destruction or damage until date of the LEASED AREA having been reconstructed and occupation thereof being given to the LESSEE.
- 8.3 Should the LEASED AREA be damaged in such a manner that it is nevertheless available for beneficial occupation by the LESSEE, this AGREEMENT shall not terminate, but the ANNUAL RENTAL and SERVICE CHARGES shall be reduced until the damage has been repaired, having regard to the extent to which, and period during which, the LESSEE is unable to enjoy full beneficial occupation of the LEASED AREA.
- 8.4 Should any dispute arise between the LESSOR and the LESSEE with regard to –
- 8.4.1 whether or not the LEASED AREA is available for beneficial occupation and/or reasonably tenable; and/or
- 8.4.2 the amount or extent of the reduction in the ANNUAL RENTAL and SERVICE CHARGES to which the LESSEE may be entitled;

such dispute shall be determined by a mutually agreed expert, and failing agreement within 7 days, by an appropriately qualified independent expert appointed by the LESSOR, who shall determine such dispute in his capacity as an expert and not as an arbitrator, and whose decision shall be final and binding on the PARTIES. The expert's fees and disbursements, including all inspection costs, shall be borne and paid by the PARTIES in equal shares, unless the expert determines otherwise.

9. DETAILS OF VESSEL

- 9.1 The LESSEE shall provide written details of his VESSELS to the LESSOR as may be required by the LESSOR from time to time as it may deem fit.
- 9.2 Should the LESSEE dispose of his VESSEL and wish to use the LEASED AREA for the purposes of mooring another VESSEL, the LESSEE shall provide details of the new VESSEL to the LESSOR within 5 days after having acquired that new VESSEL.
- 9.3 The length and beam of the hull of any VESSEL moored at the LEASED AREA shall not exceed the length and width of the LEASED AREA.

10. CONDUCT RULES

- 10.1 The LESSEE, by his signature of this AGREEMENT, acknowledges that he has familiarised himself with the content of the CONDUCT RULES.
- 10.2 The LESSEE shall at all times observe and abide by the CONDUCT RULES and shall ensure that the CONDUCT RULES are observed at all times by all representative employees, crew, contractors or invitees of the LESSEE, or any other users of the LEASED AREA, and to that end, the LESSEE shall be liable for any breach and/or non-compliance with any provisions of the CONDUCT RULES by any user of the LEASED AREA.

11. LESSOR'S ACCESS TO THE LEASED AREA AND VESSEL

The LESSOR, the ASSOCIATION and the MANAGER, and their respective representatives, agents, employees and contractors, shall be entitled, at any time, to access the LEASED AREA and any VESSEL moored on the LEASED AREA for purposes of –

- 11.1 moving that VESSEL from the LEASED AREA to any other place within the MOORING AREAS in order to maintain or repair the LEASED AREA, or for any other reasonable cause whatsoever;
- 11.2 providing the SERVICES to the LEASED AREA and/or that VESSEL moored at the LEASED AREA;
- 11.3 inspecting, maintaining, repairing or altering the LEASED AREA; and/or
- 11.4 inspecting and/or repairing that VESSEL moored at the LEASED AREA.

12. RESTRICTIONS ON RIGHTS OF LESSEE

12.1 Subject to the provisions of 12.2 and 12.4, the LESSEE shall not be entitled to –

12.1.1 sub-let or otherwise dispose of possession or occupation of the LEASED AREA (whether temporarily or otherwise and whether by agreement of sub-lease or otherwise), without the prior written consent of the LESSOR, which consent may not be unreasonably withheld;

12.1.2 the LESSEE shall not be entitled to cede or assign any of his rights or delegate any of his obligations under this AGREEMENT without the express prior written consent of the LESSOR; and/or

12.1.3 encumber in any way whatsoever the AGREEMENT (or any right thereunder) or the LEASED AREA or its BERTHING RIGHTS in any manner whatsoever, without the prior written consent of the LESSOR, which consent the LESSOR may, in its sole and absolute discretion, withhold or withdraw.

12.2 Should the LESSEE dispose of his DWELLING, he shall be entitled to cede and assign all (and not some) of his rights and obligations under this AGREEMENT to the person acquiring that DWELLING, subject to the prior written consent of the LESSOR being obtained, which consent shall not be withheld unless –

12.2.1 the LESSEE is indebted to the LESSOR and/or the ASSOCIATION in respect of the ANNUAL RENTAL, any SERVICE CHARGES or other amounts;

12.2.2 the LESSEE is in breach of any of the provisions of this AGREEMENT or the CONDUCT RULES; and/or

12.2.3 the person intending to acquire that DWELLING unintentionally fails to accept cession and assignment of all rights and obligations of the LESSEE in terms of this AGREEMENT.

12.3 The LESSOR may make its consent in terms of 12.2 subject to the condition that the LEASED AREA will be substituted with another BERTH of similar or greater size, as the LESSOR may deem fit.

12.4 Should –

12.4.1 the LESSEE DEAL with his DWELLING (subject to the conditions of, and to such consents and approvals as may be required in terms of the SALE AGREEMENTS and/or the CONSTITUTION); and

12.4.2 the only access to the LEASED AREA from land be provided by accessing the LESSEE'S DWELLING (which includes all exclusive use areas allocated to that DWELLING, if applicable);

then the LESSEE shall be obliged to cede and assign all of his rights and all of his obligations under this AGREEMENT and shall procure that the cedent and assignee agree in writing to such cession and assignment.

13. INITIAL PAYMENT

13.1 The LESSEE shall, on the COMMENCEMENT DATE, be required to pay the INITIAL PAYMENT to the LESSOR.

13.2 The LESSOR shall be entitled, at any time prior to termination of this AGREEMENT, to appropriate the INITIAL PAYMENT (or any portion thereof) in order to pay any amounts outstanding by the LESSEE (including RENTAL or SERVICE CHARGES) in terms of this AGREEMENT. If the INITIAL PAYMENT is so applied, the LESSEE shall forthwith re-instate the INITIAL PAYMENT to its original amount.

13.3 The INITIAL PAYMENT shall be retained by the LESSOR or its agent until after the termination of this AGREEMENT and the complete discharge of all the LESSEE'S obligations to the LESSOR arising from this AGREEMENT and any part of the INITIAL PAYMENT not applied in terms of this clause shall be reimbursed to the LESSEE.

- 13.4 The LESSEE shall not be entitled to set-off against the INITIAL PAYMENT any ARREAR RENTAL, SERVICE CHARGE or other amount payable by him.
- 13.5 The LESSEE shall not be entitled to any interest on the INITIAL PAYMENT.
- 13.6 Should the INITIAL PAYMENT be or become less than the amount of 3 months' SERVICE CHARGES due to any increase of the SERVICE CHARGES, then the INITIAL PAYMENT shall be increased to the amount of 3 months' SERVICE CHARGES and the LESSEE shall be obliged to forthwith pay the shortfall to the LESSOR.

14. BREACH

- 14.1 Should the LESSEE –
- 14.1.1 fail to pay any amount due by the LESSEE in terms of this AGREEMENT on the due date and remain in default for a period not less than 3 days after being notified in writing to remedy the default, by the LESSOR;
- 14.1.2 commit any breach of the CONDUCT RULES and fail to remedy such breach within a period of 7 days after being notified to do so by the LESSOR, the ASSOCIATION, the MANAGER or any of their respective representatives;
- 14.1.3 commit any other breach of any terms of this AGREEMENT and fail to commence remedying that breach within a period of 3 days after being notified in writing to do so by the LESSOR and fail to complete the remedying of such breach within a reasonable time;
- 14.1.4 fail to pay the ANNUAL RENTAL on the due date thereof during any calendar year of this AGREEMENT after the LESSOR has, during such year, given the LESSEE notice under clause 14.1.1 on more than two occasions;
- 14.1.5 repeatedly breach any of the terms of this AGREEMENT in such manner so as to justify the LESSOR in holding that the LESSEE'S conduct is inconsistent with the intention or ability of the LESSEE to carry out the terms of this AGREEMENT;
- 14.1.6 repeatedly breach any of the provisions of the CONDUCT RULES in such a manner as to justify the LESSOR or the ASSOCIATION in holding that the LESSEE'S conduct is inconsistent with the intention or ability of the LESSEE to carry out the terms of the CONDUCT RULES; or
- 14.1.7 commit an act of insolvency if the LESSEE is a natural person, and if the LESSEE is an artificial person, the LESSEE commits an act which would have been an act of insolvency, were the LESSEE a natural person;
- then and in any one of such events the LESSOR shall, without prejudice to its rights to claim damages or to its right to eject the LESSEE from the premises or to any other claim of any nature whatever that the LESSOR may have against the LESSEE, as a result thereof –
- 14.1.8 be entitled to cancel this AGREEMENT;
- 14.1.9 in the case of 14.1.3, be entitled to remedy such breach and immediately recover the total cost incurred by the LESSOR in so doing from the LESSEE; and/or
- 14.1.10 enter upon the LEASED AREA and any VESSEL moored at the LEASED AREA to take such action as may be required to remedy the breach.
- 14.2 The LESSOR shall, in the event of a breach by the LESSEE, have the right immediately to re-enter upon and take possession of the LEASED AREA and to eject the LESSEE and/or any other person or persons from the LEASED AREA. Any cancellation, re-entry or ejection shall, however, in no way prejudice any claim which the LESSOR may then or thereafter have against the LESSEE for any ANNUAL RENTAL or SERVICE CHARGES or other amounts due by the LESSEE and/or for damages or for any other breach of any of the terms and conditions of this AGREEMENT, and the LESSOR shall in no way be liable to compensate the LESSEE for any damage he or she may suffer by reason of any cancellation, re-entry or ejection.
- 14.3 The LESSEE hereby accepts liability for all legal costs, including attorney and own client charges and collection charges, and other expenses of any nature whatsoever, which may be incurred by the LESSOR by reason of the LESSEE'S breach of any condition of this AGREEMENT, and hereby agrees to pay such amounts to the LESSOR on demand.
- 14.4 Should this AGREEMENT expire, terminate or be cancelled for whatever reason, the LESSEE and all persons claiming a right of occupation through the LESSEE shall vacate the LEASED AREA before 12h00 on the effective date of such expiry, termination or cancellation (as the case may be).
- 14.5 Nothing in this 14 shall derogate from or in any way diminish the right of the LESSOR to institute proceedings in any court of competent jurisdiction for recovery of any money due by the LESSEE arising from any cause of action whatsoever, or for any other relief.

14.6 In the event of any breach of this AGREEMENT by the members of any LESSEE'S household, or his representatives, agents, employees, crew, contractors or invitees, or any users of the LEASED AREA, such breach shall be deemed to have been committed by the LESSEE himself; provided that the LESSOR shall be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it, to take such steps against the person actually committing the breach, with or without proceeding against the LESSEE.

15. ADJUDICATION

15.1 Subject to any specific provision to the contrary in this AGREEMENT, in the event of any dispute of any nature whatsoever arising between the PARTIES on any matter provided for in, or arising out of, this AGREEMENT, then that dispute shall be referred to and be determined by adjudication in accordance with this 15.

15.2 This 15 shall not preclude any PARTY from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

15.3 The adjudication shall be held –

15.3.1 at Victoria, Mahé, Republic of Seychelles;

15.3.2 on the basis that the proper law of this AGREEMENT shall be the law of the Republic of Seychelles;

15.3.3 with only the PARTIES and their legal and other representatives present thereat;

15.3.4 in terms of the Arbitration Act of the Republic of Seychelles (as amended).

15.4 The adjudicator shall be, if the matter in dispute is principally –

15.4.1 a legal matter, a practicing advocate or attorney from the Republic of Seychelles, the Republic of South Africa, Mauritius or the United Kingdom, of at least 10 years standing;

15.4.2 an accounting matter, a practicing chartered accountant either from the Republic of Seychelles, the Republic of South Africa, Mauritius or the United Kingdom, of at least 10 years standing;

15.4.3 any other matter, a suitably qualified independent person either from the Republic of Seychelles, Mauritius, the Republic of South Africa, or the United Kingdom.

15.5 Should the PARTIES fail to agree whether the dispute is principally a legal, accounting or other matter, the matter shall be deemed to be a legal matter.

15.6 Should the PARTIES fail to agree on an adjudicator within 30 days of the date of a dispute arising, the adjudicator shall be appointed at the request of either PARTY to the dispute by the Law Society of the Cape of Good Hope (Republic of South Africa) according to the provisions of 15.4 and the PARTIES hereby indemnify the Law Society of the Cape of Good Hope (Republic of South Africa) against any claims resulting from the appointment of such adjudicator.

15.7 The adjudicator shall have the power to fix all procedural rules for the holding of the adjudication, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, inspection of documents, examination of witnesses and any other matter relating to the conduct of the adjudication. The adjudicator may receive and act on all such evidence, whether oral or written, strictly admissible or not, as he in his discretion may deem fit.

15.8 The award of the adjudicator shall be binding upon the PARTIES subject to the PARTIES' right to lodge an appeal against such award within a period of 5 days after the award was given, which appeal will be referred to a tribunal of 3 adjudicators appointed in accordance with 15.4, and to which appeal the provisions of this 15 shall apply *mutatis mutandis* (see ANNEXURE A).

15.9 The PARTIES agree to keep the adjudication, including the subject matter of the adjudication and the evidence heard during the adjudication, confidential, and not to disclose the same to anyone, except to their respective shareholders (if applicable), and except for purposes of the adjudication proceedings in terms of this 15, any review thereof, and/or obtaining interim relief in terms of 15.2.

15.10 The provisions of this 15 –

15.10.1 constitute an irrevocable consent by the PARTIES to any proceedings in terms hereof and no such PARTY shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

15.10.2 constitute a separate agreement, severable from the rest of this AGREEMENT and shall remain in effect despite the termination of, or invalidity, for any reason, of this AGREEMENT.

16. CAPACITY OF SIGNATORY

- 16.1 The signatory hereby consents to the conclusion of this AGREEMENT and agrees that in the event that the LESSEE claims that the signatory has the necessary capacity and/or authority to sign this AGREEMENT on the LESSEE'S behalf, the signatory shall, at the election of the LESSOR, for all purposes, be deemed to be bound as surety and co-principal debtor *in solidum* (see ANNEXURE A) with the LESSEE to the LESSOR and be liable for the due and punctual fulfillment and discharge of all of the conditions and obligations undertaken by the LESSEE to the LESSOR pursuant to this AGREEMENT, under the renunciation of the benefits of excussion (see ANNEXURE A) and division, the meaning and effect of which the signatory acknowledges to understand and to which the signatory agrees.
- 16.2 No variation or amendment or novation of this AGREEMENT shall be subject to the consent of the signatory, or shall prejudice the signatory's obligations undertaken in terms of this 16, the object being that the signatory shall at all times remain liable, even if this AGREEMENT is varied or amended or novated and even if the LESSEE is granted an indulgence by the LESSOR.

17. NOTICES AND DOMICILIUM

- 17.1 The PARTIES choose as their *domicilium citandi et executandi* (see ANNEXURE A) and as the addresses at which all processes and notices arising out of or in connection with this AGREEMENT, its breach or termination may validly be served upon or delivered to the PARTIES –
- 17.1.1 the LESSOR – the address set out in A.2 of the CONTRACT SCHEDULE; and
- 17.1.2 the LESSEE – physical addresses, facsimile number or email address specified in B5 and B6 of the CONTRACT SCHEDULE, or at the physical address of the DWELLING of the LESSEE; or
- at such other address in the Republic of Seychelles, not being a post office box or *poste restante* (see ANNEXURE A) of which the PARTY concerned may notify the other in writing.
- 17.2 Any notice given in terms of this AGREEMENT shall be in writing and shall –
- 17.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 17.2.2 if delivered by recognised international courier service, be deemed to have been received by the addressee on the first business day following the date of such delivery by the courier service concerned; and
- 17.2.3 if transmitted by facsimile, be deemed to have been received by the addressee one day after despatch.
- 17.3 For the purpose of this 17 if a notice is received on a day that falls on a Saturday, Sunday or statutory public holiday generally recognised in the Republic of Seychelles, such notice will be deemed to be received on the next day that is not a Saturday, Sunday or statutory public holiday generally recognised in the Republic of Seychelles.
- 17.4 Notwithstanding anything to the contrary contained in this AGREEMENT, a written notice or communication actually received by one of the PARTIES from the other, shall be adequate written notice or communication to such PARTY.

18. MISCELLANEOUS

18.1 warranty of authority

Each PARTY warrants to the other PARTY that it has the power, authority and legal right to sign and perform this AGREEMENT and that this AGREEMENT has been duly authorised by all necessary actions of its directors or members, trustees or other officers or management body (as the case may be) and constitutes valid and binding obligations on it in accordance with the terms of this AGREEMENT.

18.2 further assurances

The PARTIES hereto agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate for purposes of implementing this AGREEMENT.

18.3 payment and interest

- 18.3.1 All payments in terms of or arising out of this AGREEMENT (including the payment of the ANNUAL RENTAL, the SERVICE CHARGES and any other amount due by the LESSEE) shall be made free of bank exchange, commission and all other deductions to the PARTY entitled thereto.
- 18.3.2 Neither PARTY shall have the right to defer, adjust or withhold any payment due to the other, in terms or arising out of this AGREEMENT, or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.

- 18.3.3 All amounts due by one PARTY to the other (including damages) in terms of or arising out of this AGREEMENT shall, unless paid on due date, bear interest from the due date to date of payment.
- 18.3.4 Such interest shall be –
- 18.3.4.1 calculated at the INTEREST RATE; and
- 18.3.4.2 capitalised monthly in arrear on the balance due.
- 18.3.5 If payment is demanded of a PARTY of any amount in terms of or arising out of this AGREEMENT, and the PARTY of whom demand is made disputes their obligation to make payment, that PARTY will be entitled to make the payment under protest and to institute action therefor and, if successful, to recover interest thereon calculated at the INTEREST RATE.
- 18.4 **LESSOR'S hypothec**
- Any VESSEL or other movable goods on the LEASED AREA shall be subject to the LESSOR'S hypothec as security for any ANNUAL RENTAL, SERVICE CHARGES and other amounts due and payable by, and any other obligation of the LESSEE, and the LESSOR shall at any time, and from time to time as and when such ANNUAL RENTAL, SERVICE CHARGES or other amounts are due and payable, or such other obligation is to be fulfilled by the LESSEE, be entitled to take possession of the VESSEL and any other movable goods on the LEASED AREA.
- 18.5 **independent advice**
- Each of the PARTIES hereto acknowledge that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this AGREEMENT, and that they have either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the PARTIES hereto acknowledge that all of the provisions of this AGREEMENT and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the PARTIES in connection with this AGREEMENT.
- 18.6 **whole agreement**
- This AGREEMENT constitutes the whole agreement between the PARTIES as to the subject matter hereof and no agreement (including any oral agreement), representations or warranties between the PARTIES other than those set out in this AGREEMENT, are binding on the PARTIES.
- 18.7 **variation**
- No addition to or variation, consensual cancellation or novation of this AGREEMENT, and no waiver of any right arising from this AGREEMENT or its breach or termination, shall be of any force or effect unless reduced to writing and signed by both PARTIES, subject to the proviso that the ASSOCIATION shall be entitled, at any time, to vary the terms of this AGREEMENT in any manner approved by way of a special resolution at a meeting of members of the ASSOCIATION. A facsimile or any addition to or variation, consensual cancellation or novation of this AGREEMENT duly signed by both PARTIES shall constitute a valid addition, variation, cancellation or novation (as the case may be).
- 18.8 **representations by LESSOR**
- The LESSEE acknowledges and agrees that he has not been influenced and induced to enter into this AGREEMENT by any express or implied information, statement, warranty or representation in any way given or made by or on behalf of the LESSOR, or any information and details contained in any advertising material, models, pictures, drawings or brochures, other than as set out in this AGREEMENT. Accordingly, the LESSOR shall not be bound by any representation contained in any advertising material of whatever nature and the LESSOR shall be entitled, as it sees fit, to amend any aspects of the DEVELOPMENT as may be indicated on advertising material, models, pictures, drawings and brochures from time to time.
- 18.9 **relaxation**
- No indulgence or relaxation which the LESSOR and/or the ASSOCIATION allow to the LESSEE in regard to the carrying out of the LESSEE'S obligations in terms of or pursuant to this AGREEMENT, shall prejudice the LESSOR'S and/or the ASSOCIATION'S rights under this AGREEMENT in any manner whatsoever, or be regarded as a waiver of the LESSOR'S and/or ASSOCIATION'S rights in terms of this AGREEMENT.
- 18.10 **severability**
- The agreements and undertakings of PARTIES contained in this AGREEMENT shall each be construed as an agreement and undertaking independent of any other provision of this AGREEMENT. The PARTIES hereby expressly agree that it is not the intention of any PARTY to violate any public policy, statutory or other applicable law, and that if any sentence, paragraph, clause or combination of the same is in violation of the laws of the Republic of Seychelles, such sentence,

paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this AGREEMENT shall remain binding upon the PARTIES hereto. Notwithstanding the aforesaid, in the event of any of the provisions of this AGREEMENT being claimed by the LESSEE to be unenforceable or declared as being unenforceable by an arbitrator or any court of competent jurisdiction, the LESSOR shall have the right, in its sole and absolute discretion, to resile from this AGREEMENT by written notice to the LESSEE to that effect.

18.11 **conflict**

In the event of any dispute, disagreement, notification or proceedings and in the interpretation or application of any of the provisions of this AGREEMENT, the LESSOR'S averments shall be accepted as *prima facie* (see ANNEXURE A) proof, and the LESSEE shall be required to prove the contrary, failing which the averments of the LESSOR shall be deemed to be correct.

18.12 **costs**

18.12.1 Each PARTY shall pay its own costs in respect of negotiating, drafting, preparing and implementing this AGREEMENT.

18.12.2 The LESSEE shall be liable for stamp duty (if any), any other fees/charges (if applicable) imposed by the GOVERNMENT and all disbursements incurred in respect of this AGREEMENT.

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