

SALES DOCUMENTATION

VILLA

AGREEMENTS

AGREEMENT OF SALE (VILLA)

AGREEMENT OF LEASE (BERTH)

SALES DOCUMENTATION: VILLA

TABLE OF CONTENTS

	Page
1. CONTRACT SCHEDULE	3
2. AGREEMENT OF SALE: VILLA	5
SIGNATURE DOCUMENT	6
CONDITIONS OF SALE	8
ANNEXURES	30
A: EXPLANATORY NOTE	30
B: VILLAGE MANAGEMENT ASSOCIATION: CONSTITUTION (Draft)	Separate Document
C: (NOT APPLICABLE)	
D: SPECIMEN SANCTION APPLICATION FORM	32
E: SUBDIVISION PLAN (Draft)	Separate Document
F: BUILDING LAY-OUT PLAN	Separate Document
G: FLOOR PLANS	Separate Document
H: VERTICAL SECTION	Separate Document
I: SPECIFICATIONS	Separate Document
J: SITE PLAN	Separate Document
K: SCHEDULE OF FINISHES	Separate Document
3. AGREEMENT OF LEASE: BERTH	37
SIGNATURE DOCUMENT	38
CONDITIONS OF LEASE	40
ANNEXURES	
A: CONDUCT RULES (Draft)	Separate Document
B: MOORING PLAN	Separate Document

Note: ANNEXURES 2.B, 2.E to 2.K (AGREEMENT OF SALE), and 3.A and 3.B (AGREEMENT OF LEASE) will be provided separately and are to be signed in full by the PURCHASER.

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 Mr 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 _____

5. Physical Address in the Republic of Seychelles
(if applicable) _____

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

SALE OF PARCEL:

C. Description of PARCEL:

1. Proposed PARCEL Number _____
2. PHASE Number _____
3. Extent of PARCEL in square metres
(approximately) _____
4. Type of DWELLING **VILLA**
5. Floor area of DWELLING in square metres
(approximately) _____

- D. PURCHASE PRICE:** (excluding any options or variations in respect of the DWELLING as contemplated in 11) 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 payable as set out in 4 US\$ _____
- F. INITIAL ESTIMATED MONTHLY LEVY:** (payable to the ASSOCIATION) US\$ _____ (per month)
- G. Anticipated DATE OF TRANSFER:** _____
- H. ANTICIPATED PRACTICAL COMPLETION DATE:** _____

LEASE OF BERTH (if applicable)

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

AGREEMENT OF SALE

VILLA

SIGNATURE DOCUMENT

1. OFFER TO PURCHASE

The PURCHASER hereby offers to purchase the PARCEL from the SELLER 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 acting 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 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 27.1 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

INDEX

	Page
CONDITIONS OF SALE	8
1. INTRODUCTION	9
2. DEFINITIONS AND INTERPRETATION	9
3. IRREVOCABLE OFFER	15
4. PURCHASE PRICE, PAYMENTS AND GUARANTEES	15
5. SANCTION	16
6. TRANSFER	17
7. POSSESSION	17
8. DEVELOPMENT	18
9. ACKNOWLEDGEMENTS BY PURCHASER IN RESPECT OF THE PARCEL	19
10. EDEN ISLAND VILLAGE MANAGEMENT ASSOCIATION	19
11. ERECTION OF WORKS	20
12. ELECTRIC POWERED VEHICLE	21
13. PRACTICAL COMPLETION	21
14. LIST OF DEFECTS AND FINAL COMPLETION	22
15. WARRANTIES IN RESPECT OF WORKS	23
16. FULFILMENT OF OBLIGATIONS	23
17. INSTRUCTIONS BY PURCHASER	23
18. BUILDING OPERATIONS AND FINISHES	23
19. ACKNOWLEDGEMENTS BY PURCHASER ON DEALING WITH THE PARCEL	24
20. RESTRAINT ON DEALING IN FAVOUR OF SELLER	24
21. UNREGISTERED SUBDIVISION	25
22. SALES AND MARKETING AGENT'S FEES	25
23. DEFAULT PENALTIES	25
24. BREACH AND CANCELLATION	25
25. ADJUDICATION	26
26. CAPACITY OF SIGNATORY	27
27. NOTICES AND DOMICILIUM	27
28. MISCELLANEOUS	28

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 will comprise of the RESIDENTIAL DEVELOPMENT and the COMMERCIAL DEVELOPMENT.
- 1.4 The SELLER has constructed the CAUSEWAY on behalf of the GOVERNMENT and the GOVERNMENT 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 the 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 land parcels and erecting a combination of DWELLINGS on the subdivided land 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, as soon as reasonably practical after the establishment of the ASSOCIATION, and the ASSOCIATION will let certain of these facilities to OWNERS of DWELLINGS.
- 1.7 The PURCHASER, who has satisfied himself of the intended position, substance, features, character and all available details of the DEVELOPMENT, desires to purchase the PARCEL and requires the SELLER to erect a DWELLING thereon, in accordance with the provisions of this AGREEMENT.
- 1.8 The SELLER is willing to sell to the PURCHASER the PARCEL and to erect a DWELLING thereon, in accordance with the provisions 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 SALE 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 28.10;
 - 2.1.3 "ANTICIPATED PRACTICAL COMPLETION DATE" means the date anticipated for PRACTICAL COMPLETION as specified in H of the CONTRACT SCHEDULE;
 - 2.1.4 "APARTMENT" means a unit (as that term is defined in section 2 of the CONDOMINIUM ACT) on a CONDOMINIUM PROPERTY
 - 2.1.5 "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 and Raymond Alexander, architect, of PO Box 31246, Camps Bay, Cape Town, Republic of South Africa or such other firm of architects 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;
 - 2.1.6 "ASSOCIATION" means the Eden Island Village Management Association registered, or to be registered, as an association under the Registration of Associations Act (Cap 201 of the Laws of Seychelles), ;
 - 2.1.7 "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 15th Floor, Convention Tower, Cnr. Heerengracht Street, Foreshore , Cape Town, Republic of South Africa;
 - 2.1.8 "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);

- 2.1.9 "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;;
- 2.1.10 "BUILDING LAY-OUT PLAN" means the building lay-out plan in respect of the WORKS, being ANNEXURE F;
- 2.1.11 "BUILDING PLAN APPROVAL DATE" means the date on which the building plans in respect of the DWELLING to be erected on the PARCEL are approved by all relevant authorities;
- 2.1.12 "CAUSEWAY" means the bridge link erected, or to be erected, between EDEN ISLAND and the main island of Mahé;
- 2.1.13 "CHANGE IN CONTROL" means any change or alteration in any way whatsoever of the CONTROLLING VOTING POWER in the PURCHASER;
- 2.1.14 "COMMERCIAL DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT into a commercial and retail development and a marina;
- 2.1.15 "COMMERCIAL DEVELOPMENT COMPONENT" means -,
- 2.1.15.1 that portion of EDEN ISLAND that is being developed as commercial property and duly registered in terms of the LAND REGISTRATION ACT;
- 2.1.15.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 2.1.15.3 any extension/s or alteration/s of the COMMERCIAL DEVELOPMENT COMPONENT by the SELLER from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 2.1.16 "COMMON AREAS" means those areas of the DEVELOPMENT, other than the 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;
- 2.1.17 "CONDITIONS OF SALE" means the conditions of sale set out in this document, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.18 "CONDOMINIUM ACT" means the Condominium Property Act (Cap 41A of the Laws of Seychelles) as amended;
- 2.1.19 "CONDOMINIUM BUILDING(S)" means a subdivided building (as contemplated in the CONDOMINIUM ACT) erected on a CONDOMINIUM PROPERTY;
- 2.1.20 "CONDOMINIUM PROPERTY" means the PARCEL in respect of which a condominium plan (as that term is defined in the CONDOMINIUM ACT) has been or is to be registered;
- 2.1.21 "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 being ANNEXURE B;
- 2.1.22 "CONTRACT SCHEDULE" means the contract schedule named as such, which forms part of the SALES DOCUMENTATION;
- 2.1.23 "CONTRACTOR" means any person duly appointed by the SELLER in respect of the WORKS;
- 2.1.24 "CONTROLLING VOTING POWER" means -
- 2.1.24.1 if the PURCHASER is a company, the rights 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 -
- 2.1.24.1.1 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
- 2.1.24.1.2 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;

- 2.1.24.2 if the PURCHASER is a trust, the right or power in any way whatsoever –
- 2.1.24.2.1 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
- 2.1.24.2.2 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;
- 2.1.24.3 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 –
- 2.1.24.3.1 to cast, or to direct to be cast, a sufficiency of votes at any meeting of members or shareholders of that association, or 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
- 2.1.24.3.2 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;
- 2.1.25 "DATE OF POSSESSION" means the date on which possession of the PARCEL is given to the PURCHASER in terms of this AGREEMENT;
- 2.1.26 "DATE OF SIGNATURE" means the date on which the SELLER signs this AGREEMENT;
- 2.1.27 "DATE OF TRANSFER" means the date on which the TRANSFER DEED is registered in the PURCHASER'S name in accordance with the LAND REGISTRATION ACT;
- 2.1.28 "DEAL or DEALING" means, in relation to or with the PARCEL, the dealing with the PARCEL or any part thereof, or the dealing with any interest of whatsoever nature in respect of the PARCEL, (including, for the avoidance of doubt, any share, stock right or partnership interest in the entity or body corporate owning that PARCEL), 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 the PARCEL or part thereof or interest of whatsoever nature in respect of the PARCEL, 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;
- 2.1.29 "DEFECT" means any material defect or material snag relating to any aspect of the WORKS on PRACTICAL COMPLETION, including, without limitation, an imperfection on PRACTICAL COMPLETION that materially impairs the structure, composition or function of any aspect of the WORKS;
- 2.1.30 "DEVELOPMENT" means the development of EDEN ISLAND, comprising of the COMMERCIAL DEVELOPMENT COMPONENT and the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.31 "DEVELOPMENT PERIOD" means the 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;
- 2.1.32 "DWELLING/S" means all VILLAS, MAISONS, and APARTMENTS and CONDOMINIUM BUILDINGS, comprising the DEVELOPMENT;
- 2.1.33 "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;
- 2.1.34 "ESCROW ACCOUNT" means the relevant beneficiary escrow account, the details of which are as follows –
- 2.1.34.1 Correspondent Bank: Standard Chartered Bank, One Madison Avenue, New York 10010-3603 USA, ABA: 026002561, Swift Code: SCBLUS33;
- 2.1.34.2 Beneficiary Bank: Nouvobanq SIMBC, Victoria House, PO Box 241, Victoria, Mahe, Seychelles, Account Number: 3582086430001 (with SCBLUS33), Swift Code: NOVHSCSC;
- 2.1.34.3 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;

- 2.1.35 "€" means Euro, the lawful currency of the European Union's Eurozone;
- 2.1.36 "FACILITIES" means certain recreational facilities and amenities within the DEVELOPMENT comprising, *inter alia* (see ANNEXURE A), tennis and/or squash court(s), private beaches, a club house with a kids' club facility, a swimming/plunge pool and public gazebos in suitably positioned COMMON AREAS, and public user spaces;
- 2.1.37 "FINAL COMPLETION" means the state of completion of the WORKS, where, in the opinion of the QUANTITY SURVEYOR, the WORKS are free of all DEFECTS or, where a list of DEFECTS has been issued, the matters on such list are, in the opinion of the QUANTITY SURVEYOR, satisfactorily completed and the FINAL COMPLETION CERTIFICATE is issued;
- 2.1.38 "FINAL COMPLETION CERTIFICATE" means a certificate issued by the QUANTITY SURVEYOR certifying that FINAL COMPLETION has been achieved;
- 2.1.39 "FINAL COMPLETION DATE" means the date on which, in the opinion of the QUANTITY SURVEYOR, FINAL COMPLETION has been achieved and the FINAL COMPLETION CERTIFICATE is issued by the QUANTITY SURVEYOR;
- 2.1.40 "FLOOR PLAN" means the floor plan in respect of the WORKS, being ANNEXURE G;
- 2.1.41 "GOVERNMENT" means the government of the Republic of Seychelles;
- 2.1.42 "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;
- 2.1.43 "INTEREST RATE" means the LIBOR RATE, plus 7.5% per annum;
- 2.1.44 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 2.1.45 "LEVY" OR "LEVIES" means any levies which the PURCHASER, as the OWNER of the PARCEL, will be liable to pay to the ASSOCIATION, as contemplated in 10.3;
- 2.1.46 "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;
- 2.1.47 "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);
- 2.1.48 "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);
- 2.1.49 "NOTARY PUBLIC" means such notary public 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;
- 2.1.50 "OWNER(S)" means the registered owner of a SINGLE RESIDENTIAL PARCEL and or an APARTMENT as the context may indicate;
- 2.1.51 "PARCEL" means any parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 2.1.52 "PARTY/IES" means the PURCHASER and the SELLER, or any one of them as the context may indicate;
- 2.1.53 "PAYMENT CERTIFICATE" means a document issued by the QUANTITY SURVEYOR certifying that an amount is due and payable by the PURCHASER to the SELLER in terms of this AGREEMENT;
- 2.1.54 "PHASES" means the various phases into which the DEVELOPMENT will be divided, currently being phases 1, 2 and 3, or such other phases as may be created by the SELLER from time to time;
- 2.1.55 "PLANS" means collectively the BUILDING LAY-OUT PLAN, the FLOOR PLAN, the SPECIFICATIONS and the VERTICAL SECTION;
- 2.1.56 "PRACTICAL COMPLETION" means the state of completion of the WORKS where, in the opinion of the QUANTITY SURVEYOR, completion of the WORKS has been substantially achieved and the WORKS can effectively be used for the purposes intended and the PRACTICAL COMPLETION CERTIFICATE has been issued;

- 2.1.57 "PRACTICAL COMPLETION CERTIFICATE" means a certificate issued by the QUANTITY SURVEYOR certifying that PRACTICAL COMPLETION has been achieved;
- 2.1.58 "PRACTICAL COMPLETION DATE" means the date on which, in the opinion of the QUANTITY SURVEYOR, PRACTICAL COMPLETION has been achieved and the PRACTICAL COMPLETION CERTIFICATE is issued by the QUANTITY SURVEYOR;
- 2.1.59 "PROGRESS PAYMENT/S" means the amounts payable by the PURCHASER to the SELLER by way of draws at the end of each evaluation period, as certified by the QUANTITY SURVEYOR by way of a PAYMENT CERTIFICATE;
- 2.1.60 "PURCHASER" means the person specified in B of the CONTRACT SCHEDULE;
- 2.1.61 "PURCHASE PRICE" means the purchase price payable by the PURCHASER in terms of this AGREEMENT;
- 2.1.62 "QUANTITY SURVEYOR" means HNV Project Managers (Proprietary) Limited (registration number 2004/018653/07), a private company duly incorporated in accordance with the laws of the Republic of South Africa, or such other firm of quantity surveyors nominated by the SELLER from time to time;
- 2.1.63 "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;
- 2.1.64 "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 PARCEL to the PURCHASER (if applicable);
- 2.1.65 "RESERVATION FEE" means the amount paid by the PURCHASER as a reservation fee in terms of the RESERVATION AGREEMENT (if applicable);
- 2.1.66 "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 the FACILITIES;
- 2.1.67 "RESIDENTIAL DEVELOPMENT COMPONENT" means -
- 2.1.67.1 that portion of EDEN ISLAND that is being developed as residential property in freehold title in terms of the LAND REGISTRATION ACT;
- 2.1.67.2 any land area reclaimed or converted from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT; and
- 2.1.67.3 any 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;
- 2.1.68 "SALES DOCUMENTATION" means the written sales documentation prescribed by the SELLER for the sale of the PARCEL and, if applicable, the lease of the BERTH, and of which sales documentation this AGREEMENT forms a part;
- 2.1.69 "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 acquire the PARCEL in terms of this AGREEMENT and, if applicable, to lease the BERTH in terms of the BERTH LEASE;
- 2.1.70 "SCHEDULE OF FINISHES" means the schedule of finishes and fittings, being ANNEXURE K, which will be provided to the PURCHASER prior to the DATE OF TRANSFER;
- 2.1.71 "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;
- 2.1.72 "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;
- 2.1.73 "SINGLE RESIDENTIAL PARCEL" means a PARCEL on which a MAISON or a VILLA has been, or is to be erected;
- 2.1.74 "SITE PLAN" means the site plan in respect of the PARCEL, being ANNEXURE J;

- 2.1.75 "SPECIFICATIONS" means the specifications in respect of the WORKS, as specified in being ANNEXURE I and ANNEXURE K;
- 2.1.76 "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 being ANNEXURE E;
- 2.1.77 "TRANSACTION" means the transaction recorded in this AGREEMENT;
- 2.1.78 "TRANSFER DEED" means the instrument by which ownership in the PARCEL is transferred from the SELLER to the PURCHASER;
- 2.1.79 "UNIT" means any SINGLE RESIDENTIAL PARCEL and or APARTMENT, as the context may indicate;
- 2.1.80 "US\$" means United States dollars, the lawful currency of the United States of America;
- 2.1.81 "VERTICAL SECTION" means the vertical section diagram in respect of the WORKS, being ANNEXURE H;
- 2.1.82 "VILLA(S)" means a free standing building erected, or to be erected, on a PARCEL ;
- 2.1.83 "WORKS" means the construction, completion and finishing off of all structures and improvements of a permanent nature to be erected on the PARCEL in accordance with the PLANS;
- 2.1.84 any reference to the singular includes the plural and *vice versa* (see ANNEXURE A), unless stipulated to the contrary;
- 2.1.85 any reference to natural persons includes artificial persons and *vice versa* (see ANNEXURE A);
- 2.1.86 any reference to a gender includes the other genders (including neuter);
- 2.1.87 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 this 2 shall impose substantive rights and 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* (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 a Saturday, Sunday or statutory public holiday generally recognised 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 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 25.
- 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, then 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 PARCEL and to have the SELLER erect the WORKS, 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 plus the amount (if any) for the fixtures and fittings selected by the PURCHASER on the SCHEDULE OF FINISHES.

4.2 The PURCHASE PRICE shall be paid by the PURCHASER and disbursed to the SELLER as follows –

4.2.1 the amount specified in E.1 of the CONTRACT SCHEDULE (which amount shall be inclusive of the RESERVATION FEE) shall be paid into the ESCROW ACCOUNT on the DATE OF SIGNATURE and disbursed to the SELLER on the DATE OF TRANSFER;

4.2.2 the amount specified in E.2 of the CONTRACT SCHEDULE plus the amount (if any) for the fixtures and fittings selected by the PURCHASER on the SCHEDULE OF FINISHES, representing the balance of the PURCHASE PRICE, shall be paid into the ESCROW ACCOUNT on the DATE OF TRANSFER and disbursed to the SELLER as follows –

4.2.2.1 an amount equivalent to 30% of the PURCHASE PRICE shall be disbursed on the DATE OF TRANSFER (in addition to the amount specified in E.1, so that at the DATE OF TRANSFER, the SELLER shall be entitled to the disbursement of an aggregate amount of 40% of the PURCHASE PRICE from the ESCROW ACCOUNT); and

4.2.2.2 the outstanding balance of the PURCHASE PRICE (an amount equal to 60% of the PURCHASE PRICE) shall be disbursed to the SELLER in accordance with the following schedule of PROGRESS PAYMENTS –

4.2.2.2.1 an amount of 10% of the PURCHASE PRICE on the date that the WORKS, as certified by the QUANTITY SURVEYOR, have progressed to ground floor level;

4.2.2.2.2 an amount of 30% of the PURCHASE PRICE on the date that the WORKS, as certified by the QUANTITY SURVEYOR, have progressed to roof height including trusses;

4.2.2.2.3 an amount of 20% of the PURCHASE PRICE, less US\$ 100 000.00, on the PRACTICAL COMPLETION DATE; and

4.2.2.2.4 the balance of the PURCHASE PRICE on the FINAL COMPLETION DATE;

subject to the provisions of 4.3.1.

4.3 As security for the payment of the amount payable in terms of 4.2.2, the PURCHASER shall, 90 days prior to the anticipated DATE OF TRANSFER as specified in G of the CONTRACT SCHEDULE (on such later date as advised by SELLER), or such later date as the SELLER in its sole and absolute discretion may allow in writing –

4.3.1 deliver to the SELLER a bank guarantee from Barclays Bank or such other international bank acceptable to the SELLER, in such form as may be approved in writing by the SELLER, for such amount. The guarantee shall be drawn in favour of the SELLER, or its nominee, and expressed to be payable free of exchange in accordance with the draw downs in terms of 4.2.2.1 and 4.2.2.2. The SELLER may allow the PURCHASER not to pay the amounts into the ESCROW ACCOUNT as provided in 4.2.2, if the SELLER is satisfied, in its sole and absolute discretion, that all payments stipulated in 4.2.2.1 and 4.2.2.2, including all draw downs stipulated in 4.2.2.2.1 to 4.2.2.2.4, will be paid by the relevant bank against presentation of that guarantee. Should such bank fail to pay any amount/s on due date against presentation of that guarantee, the PURCHASER shall forthwith pay the full outstanding amount into the ESCROW ACCOUNT; or

4.3.2 pay such amount in cash into the ESCROW ACCOUNT, and such amount shall be disbursed to the SELLER in accordance with 4.2.2.

4.4 Notwithstanding the provision of the bank guarantee in terms of 4.3.1, the PURCHASER shall deliver to the SELLER, within 30 days after the DATE OF SIGNATURE, a letter of comfort from Barclays Bank or such other instructional bank acceptable to the SELLER, confirming the PURCHASER'S good standing with the relevant bank and the PURCHASER'S financial ability to pay the PURCHASE PRICE.

- 4.5 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.
- 4.6 For purposes of this AGREEMENT, where any section of the WORKS has been partially completed, the value of the completed part shall be a fair and reasonable proportion of any PROGRESS PAYMENT, and a PAYMENT CERTIFICATE signed by the QUANTITY SURVEYOR specifying "the value of the WORKS" shall be *prima facie* (see ANNEXURE A) evidence of that value.
- 4.7 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.
- 4.8 The PURCHASER shall not be entitled to withhold, delay, abate or set-off payment of any amounts *prima facie* (see ANNEXURE A) 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 to the PARCEL. 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.

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 in writing by the SELLER 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 extensions thereof; or
 - 5.3.2 fails and/or refuses to provide any information as may be required to be provided for the purpose of SANCTION within the time period provided in 5.2 including any extensions thereof;

then the SELLER shall be entitled, at any time, to resile from this AGREEMENT, by giving 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 If –
 - 5.5.1 the SELLER has not exercised its right to resile from 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 failed to grant SANCTION to the PURCHASER within a period of 180 days from the DATE OF SIGNATURE;

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

6. TRANSFER

- 6.1 Registration of transfer of the PARCEL into the name of the PURCHASER shall be effected by the ATTORNEYS as soon as is reasonably possible after the DATE OF SIGNATURE, provided that –
- 6.1.1 the SUBDIVISION PLAN and the PLANS have been approved by all relevant authorities;
- 6.1.2 SANCTION has been granted; and
- 6.1.3 the PURCHASER has complied with all his obligations under this AGREEMENT.
- 6.2 Notwithstanding the provisions of 6.1, registration of transfer of the PARCEL into the name of the PURCHASER shall not be effected earlier than 12 months prior to the ANTICIPATED PRACTICAL COMPLETION DATE.
- 6.3 No liability of any nature whatsoever shall attach to the SELLER arising out of any delays in effecting transfer of the PARCEL into the PURCHASER'S name.
- 6.4 Ownership of the PARCEL shall vest in the PURCHASER with effect from the DATE OF TRANSFER.
- 6.5 The PURCHASER shall, within 10 days of being called upon to do so by the ATTORNEYS –
- 6.5.1 pay to the ATTORNEYS all costs of, and incidental to, the passing of transfer of the PARCEL into the PURCHASER'S name, including stamp duty (if any), SANCTION fees (if any), any other fees/charges imposed by the GOVERNMENT and all transfer fees and disbursements; and
- 6.5.2 furnish all such information and sign all such documents that may be necessary or required to enable the ATTORNEYS to execute the TRANSFER DEED and to pass transfer of the PARCEL into the PURCHASER'S name. In the event that the PURCHASER is unable to appear before the NOTARY PUBLIC to sign and execute the TRANSFER DEED, 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 in the PURCHASER'S name, place and stead.
- 6.6 The PURCHASER shall be obliged to accept transfer of the PARCEL subject to –
- 6.6.1 the conditions, reservations and easements in respect of the PARCEL in terms of this AGREEMENT or as may be required by any competent authority;
- 6.6.2 any change in the description of the PARCEL (the current PARCEL number is subject to change by the Director of Land Surveys who may designate an alternate number to the PARCEL); and
- 6.6.3 such restrictions and conditions being registered against the TRANSFER DEED to the effect that there shall be no DEALINGS in respect of the PARCEL without the prior written consent of the SELLER and/or the ASSOCIATION, the full details of which restriction and cautions are set out in 10.5, 19 and 20 below;
- 6.7 The PURCHASER shall not, by reason of any delay in the transfer of the PARCEL 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.

7. POSSESSION

- 7.1 Notwithstanding the DATE OF TRANSFER, the SELLER shall give possession of the PARCEL to the PURCHASER on the PRACTICAL COMPLETION DATE. The PURCHASER shall be deemed to have taken possession of the PARCEL upon the issue of the PRACTICAL COMPLETION CERTIFICATE.
- 7.2 From the DATE OF TRANSFER until the PRACTICAL COMPLETION DATE, the SELLER shall retain and be entitled to retain possession of the PARCEL, that is, the right to undisturbed use of and access to the PARCEL, it being expressly recorded that any access by the PURCHASER to the PARCEL prior to the PRACTICAL COMPLETION DATE shall be subject to the prior written consent of the SELLER.
- 7.3 The SELLER shall, irrespective of whether the SELLER has granted the requisite consent to the PURCHASER to access the PARCEL, not be liable for any loss, damage or injury of whatsoever nature suffered by the PURCHASER (or any other person) as a result of the PURCHASER'S access to the PARCEL and the DEVELOPMENT. Accordingly, the PURCHASER hereby indemnifies the SELLER in respect of any claim against any of them for any such loss, damage or injury from whatsoever cause arising, including any negligence of the SELLER, and their respective agents, CONTRACTORS and/or representatives, as a result of the PURCHASER'S, or any of his invitees' access to the PARCEL and the DEVELOPMENT.

- 7.4 From the PRACTICAL COMPLETION DATE, the PURCHASER shall be liable for all obligations imposed upon the PARCEL and/or upon the PURCHASER in terms of the CONSTITUTION and any applicable law.

8. DEVELOPMENT

- 8.1 The SELLER undertakes that the RESIDENTIAL DEVELOPMENT shall include the FACILITIES.
- 8.2 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 –
- 8.2.1 incorporating into the DEVELOPMENT any additional areas which the SELLER shall be entitled to develop as it may deem fit;
- 8.2.2 excluding from the DEVELOPMENT any areas which the SELLER shall be entitled to develop as it may deem fit; and/or
- 8.2.3 altering the general use of any areas within the DEVELOPMENT.
- 8.3 The DEVELOPMENT is intended to involve the establishment of DWELLINGS on various land 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, at all times –
- 8.3.1 co-operate with the SELLER in an endeavour to facilitate the success and completion of the DEVELOPMENT;
- 8.3.2 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
- 8.3.3 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.
- 8.4 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 (if any) in respect of zoning and use pertaining to the PARCEL 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. Notwithstanding the provisions of this 8.4, the SELLER may not vary the use of the land parcels adjacent to the PARCEL as indicated on the SITE PLAN.
- 8.5 The SELLER shall be entitled, at any time, to make amendments to the SUBDIVISION PLAN as the SELLER may deem 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 the PURCHASER shall give all such consents which may be necessary or required for such amendments.
- 8.6 Notwithstanding the provisions of 8.2 to 8.3, any extension or alteration 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 any part thereof) shall not have the effect of –
- 8.6.1 increasing that land area of the DEVELOPMENT which is used for commercial and/or retail (but expressly excluding leisure) purposes, to more than 10% of the total land area of the DEVELOPMENT; and/or
- 8.6.2 increasing the density (resident per square meter of land) within the DEVELOPMENT by more than 10% of the density of PHASE 1.
- 8.7 On the DATE OF POSSESSION, the SELLER, its agents, CONTRACTORS and/or workmen may be engaged in erecting other DWELLINGS and other structures within the DEVELOPMENT and the SELLER, and its respective agents, CONTRACTORS and/or workmen shall at all times have reasonable access to the PARCEL 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.
- 8.8 The provisions of this 8 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.

9. ACKNOWLEDGEMENTS BY PURCHASER IN RESPECT OF THE PARCEL

- 9.1 The PURCHASER acknowledges and agrees that –
- 9.1.1 he has acquainted himself with the nature, condition and extent of the PARCEL;
- 9.1.2 the SELLER shall not be required to indicate the position of any beacons or pegs on the PARCEL;
- 9.1.3 the PARCEL is sold –
- 9.1.3.1 subject to all applicable laws; and
- 9.1.3.2 subject to all conditions and easements mentioned or referred to in the TRANSFER DEED of the PARCEL as well as any conditions which may be imposed by any authority in granting permission for any subdivision, and any conditions, easements, cautions or restrictions referred to in, or resulting from this AGREEMENT;
- 9.1.4 the PARCEL shall be situated substantially in the position as shown on the SITE PLAN;
- 9.1.5 he has inspected the draft SUBDIVISION PLAN attached as ANNEXURE E and declares himself to be fully acquainted with all relevant particulars relating to the PARCEL as shown on that SUBDIVISION PLAN;
- 9.1.6 he shall have no claim whatsoever against the SELLER for any deficiency in the extent of the PARCEL upon the approval of the SUBDIVISION PLAN by the relevant authority, nor shall the SELLER benefit from any possible excess, subject to the provisions of 9.2. If the PARCEL has been erroneously described in this AGREEMENT, such error shall not be binding on the SELLER, but the description of the PARCEL as set out in the approved SUBDIVISION PLAN shall apply, and shall be incorporated into the TRANSFER DEED; and
- 9.1.7 insofar as may be necessary for the installation of surveillance and communications systems, water pipes, irrigation and any other services, the PURCHASER hereby consents to the registration of the requisite easement over the PARCEL and undertakes, when requested to do so, to sign all documents as may be necessary for such purpose.
- 9.2 The extent of the PARCEL shall not vary by more than 5% to the area specified in C.3 of the CONTRACT SCHEDULE.
- 9.3 Should the extent of the PARCEL vary by more than 5% to the area specified in C.3 of the CONTRACT SCHEDULE, then the PURCHASER shall not be entitled to cancel this AGREEMENT, or to any other claim against the SELLER as a result of such variation, save that if the extent of the PARCEL is more than 5% smaller than the extent specified in C.3, the PURCHASE PRICE shall be reduced by the aggregate amount payable in terms of 4.2.1 and 4.2.2.1 (ie 40% of the PURCHASE PRICE) multiplied by the percentage of such shortfall in respect of the extent of the PARCEL.

10. EDEN ISLAND VILLAGE MANAGEMENT ASSOCIATION

- 10.1 The SELLER has formed or is about to form the ASSOCIATION to administer, manage and control the RESIDENTIAL DEVELOPMENT.
- 10.2 It is an express condition of this AGREEMENT that the PURCHASER shall –
- 10.2.1 on the DATE OF TRANSFER automatically become a member of the ASSOCIATION;
- 10.2.2 for as long as the PURCHASER is the OWNER of the PARCEL, remain a member of the ASSOCIATION, and be bound by, conform and comply with, the CONSTITUTION;
- 10.2.3 should the PURCHASER DEAL with the PARCEL, procure that the person, who intends to acquire the PARCEL as a result of such DEALING, is made fully aware of the provisions of the CONSTITUTION;
- 10.2.4 subject to 19 and 20, not DEAL with the PARCEL with any person without the prior written consent of the ASSOCIATION in terms of the CONSTITUTION;
- 10.2.5 not erect, alter or add to, any improvement of whatsoever nature on the PARCEL without the prior written consent of the ASSOCIATION in terms of the CONSTITUTION; and
- 10.2.6 sign all such documents and do all such things as may be necessary for purposes of complying with the CONSTITUTION.
- 10.3 The PURCHASER acknowledges and agrees that he will, as from the DATE OF POSSESSION, be liable to pay all LEVIES and all other contributions imposed by the ASSOCIATION upon all or any of its members.

- 10.4 The PURCHASER further acknowledges and agrees that he has read the CONSTITUTION and has satisfied himself as to the contents thereof. The PURCHASER shall ensure that all members of his household, his dependants, guests, tenants and/or other invitees will also comply with the CONSTITUTION, and acknowledges and agrees that he shall be liable for any breach or non-compliance of whatsoever nature of any of the provisions of the CONSTITUTION by any members of his household, any of his dependants, guests, tenants and/or other invitees.
- 10.5 The following additional provisions shall be inserted in the TRANSFER DEED of the PARCEL substantially in this form, or in such form as accords with the provisions of the LAND REGISTRATION ACT, and shall be imposed as conditions in favour of the ASSOCIATION –
- 10.5.1 the OWNER of the PARCEL shall not be entitled to DEAL with the PARCEL without prior written consent of the ASSOCIATION;
- 10.5.2 the OWNER of the PARCEL shall automatically become and shall remain a member of the ASSOCIATION and be subject to its CONSTITUTION until he ceases to be an OWNER as aforesaid and shall not DEAL with the PARCEL with any person who has not bound himself, to the satisfaction of the ASSOCIATION, to become a member thereof; and
- 10.5.3 the OWNER of the PARCEL shall not alter the access to the PARCEL without the prior written consent of the ASSOCIATION.
- 10.6 The provisions contained in this 10 constitute a *stipulatio alteri* (see ANNEXURE A) in favour of the ASSOCIATION, the benefits of which may be accepted at any time and in any manner.

11. ERECTION OF WORKS

- 11.1 The SELLER shall procure that the WORKS shall be erected substantially in accordance with the PLANS.
- 11.2 The floor area of the DWELLING erected on the PARCEL shall not vary by more than 2.5% to the area specified in C.5 of the CONTRACT SCHEDULE.
- 11.3 Should the floor area of the DWELLING erected on the PARCEL vary by more than 2.5% to the area specified in C.5 of the CONTRACT SCHEDULE, then the PURCHASER shall not be entitled to cancel this AGREEMENT, or to claim against the SELLER as a result of such variation, save that if the floor area of the DWELLING on the PARCEL is more than 2.5% smaller than the floor area specified in C.5, the PURCHASE PRICE shall be reduced by an amount equal to the amount payable in terms of 4.2.2.2 (ie 70% of the PURCHASE PRICE) multiplied by the percentage of such shortfall in respect of the floor area.
- 11.4 The PURCHASER shall be given the opportunity of making a selection in respect of certain finishes and fittings from the SCHEDULE OF FINISHES.
- 11.5 The PURCHASER shall, within 30 days after receipt from the SELLER of the SCHEDULE OF FINISHES, make his selection from the SCHEDULE OF FINISHES and provide the SELLER with the SCHEDULE OF FINISHES duly signed and initialled by the PURCHASER.
- 11.6 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, within the said 30 day period, the SELLER or his 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.
- 11.7 The SELLER shall not be obliged to effect 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.
- 11.8 Notwithstanding anything to the contrary contained in this AGREEMENT, should the PURCHASER, or his agent, issue any instructions resulting in the variation of the PLANS, the SELLER shall not be held liable for any faults, DEFECTS or deficiencies in the PARCEL or the DWELLING resulting from the execution of the aforesaid variations.
- 11.9 In the event of any dispute arising in connection with any matter referred to in this 11 (including any factual disputes), the matter shall be referred to the ARCHITECT for determination, whose decision shall be final and binding on the PARTIES.
- 11.10 Any additions or variations requested by the PURCHASER to the PLANS shall be subject to –
- 11.10.1 the PARTIES having agreed in writing to such additions or variations;
- 11.10.2 a variation order stating the additional cost for such additions or variations having been completed and signed by the PURCHASER, and accepted by the SELLER in writing; and

- 11.10.3 the PURCHASER having paid to the SELLER all additional costs stipulated in the said variation order.
- 11.11 If the SELLER agrees (in its sole and absolute discretion) to any additions or variations, the SELLER shall be entitled to a fair and reasonable extension of time in respect of ANTICIPATED PRACTICAL COMPLETION DATE.
- 11.12 Subject to the provisions of 11.2 and 11.3, the SELLER shall be entitled to adapt or amend the PLANS in any way, which the SELLER may consider necessary, after consultation with, and on written notice to, the PURCHASER, in order to –
 - 11.12.1 meet any requirements of any relevant authority;
 - 11.12.2 meet any special features of the land or any other rock or soil condition;
 - 11.12.3 meet any special impediments such as water, sewerage or electrical services (either above or underground);
 - 11.12.4 give effect to any change in materials, finishes or fittings, without however detracting from the quality of the WORKS.

12. ELECTRIC POWERED VEHICLE

- 12.1 The PARCEL shall be sold together with an electrically powered vehicle ("EPV"). The PURCHASE PRICE of the PARCEL shall not be increased and accordingly, the PURCHASE PRICE of the PARCEL shall be inclusive of the EPV.
- 12.2 The SELLER shall deliver, and the PURCHASER shall take delivery of, the EPV on the PRACTICAL COMPLETION DATE.
- 12.3 The SELLER shall cede any product warranties or guarantees to the PURCHASER, which the SELLER may hold in respect of the EPV.
- 12.4 Save as provided in 12.3, 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.
- 12.5 It is recorded that each OWNER of a VILLA within the RESIDENTIAL DEVELOPMENT will have access to –
 - 12.5.1 one covered parking bay dedicated for EPV's and only to be used for an EPV; and
 - 12.5.2 two covered parking bays dedicated for motor vehicles and only to be used for motor vehicles;

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

13. PRACTICAL COMPLETION

- 13.1 The SELLER shall endeavour to reach PRACTICAL COMPLETION on or before the ANTICIPATED PRACTICAL COMPLETION DATE.
- 13.2 Should PRACTICAL COMPLETION not be reached on or before the ANTICIPATED PRACTICAL COMPLETION DATE, the PURCHASER shall not be entitled to any right or claim of whatsoever nature against the SELLER as a result thereof, save that the PURCHASER shall be entitled to cancel this AGREEMENT, by giving notice in writing to the SELLER, if PRACTICAL COMPLETION is not achieved within 6 months after the ANTICIPATED PRACTICAL COMPLETION DATE, due to a reason for which the PURCHASER is not responsible, in which event the PARTIES shall be restored to their *status quo ante* (see ANNEXURE A) and the provision of 5.4 shall apply *mutatis mutandis* (see ANNEXURE A).
- 13.3 On PRACTICAL COMPLETION, all amounts, save for the amount payable in terms of 4.2.2.2.4, owing by the PURCHASER in terms of this AGREEMENT, shall immediately become due and payable to the SELLER, and the PURCHASER shall, with effect from the PRACTICAL COMPLETION DATE, be liable for interest on all outstanding amounts, which interest shall be calculated at the INTEREST RATE, notwithstanding anything to the contrary contained in the AGREEMENT.
- 13.4 The PURCHASER shall be responsible for entering into any agreement or other arrangements that may be necessary for the supply of water and electricity to the PARCEL. Any deposits and connection and installation fees in this regard shall be for the account of the PURCHASER.
- 13.5 All risk in and to the WORKS shall pass wholly and entirely to the PURCHASER with effect from the PRACTICAL COMPLETION DATE.

- 13.6 The SELLER shall be entitled to an extension of the ANTICIPATED PRACTICAL COMPLETION DATE, if the SELLER cannot make progress with the WORKS resulting from any delays howsoever caused or arising, for which the SELLER is not solely responsible, which shall include, without limitation, the following –
- 13.6.1 delays caused by *vis major* (see ANNEXURE A);
- 13.6.2 delays caused by inclement weather conditions which do not reasonably permit construction of the WORKS;
- 13.6.3 delays caused by civil commotion, riot, strike, lock-out or labour unrest;
- 13.6.4 delays caused by a CONTRACTOR and/or sub-contractors appointed upon the request of the PURCHASER;
- 13.6.5 delays caused by a delay in the approval or alteration of the PLANS or in relation to approvals or inspection of the completed WORKS by any relevant authority;
- 13.6.6 delays caused by unavailability of materials; and/or
- 13.6.7 delays as a result of the withholding of any PROGRESS PAYMENTS as contemplated in 4.3.
- 13.7 Notwithstanding anything to the contrary contained in this AGREEMENT, the PURCHASER shall not be entitled to possession of the PARCEL before the PURCHASER has –
- 13.7.1 paid, in full, all amounts payable by him at such time in terms of this AGREEMENT, save for the retention amount of US\$ 100 000 payable on the FINAL COMPLETION DATE; and
- 13.7.2 complied with all his other obligations in terms of this AGREEMENT.
- 13.8 The SELLER shall give the PURCHASER reasonable notice of the date on which the PURCHASER shall be obliged to take possession of the PARCEL, and the PURCHASER shall make all arrangements that may be necessary to enable him to take such possession.
- 13.9 Should there be any dispute between the PARTIES as to whether PRACTICAL COMPLETION has been achieved, the matter shall be referred to an independent architect nominated and agreed to by the PARTIES, or failing such agreement, as appointed by the QUANTITY SURVEYOR, whose decision in this regard shall be final and binding on both PARTIES.
- 14. LIST OF DEFECTS AND FINAL COMPLETION**
- 14.1 The SELLER shall rectify any DEFECTS, subject to the following provisions that –
- 14.1.1 the PURCHASER provides to the SELLER a list of DEFECTS, in writing, within 60 days of the PRACTICAL COMPLETION DATE, which list shall be deemed to be a comprehensive and final list of all DEFECTS which are to be rectified by the SELLER;
- 14.1.2 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;
- 14.1.3 the SELLER shall commence to rectify the DEFECTS 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;
- 14.1.4 the PURCHASER shall give the SELLER access to the PARCEL and the DWELLING erected thereon at any time, and provide reasonable assistance, to rectify the DEFECTS. Should the PURCHASER fail to give such access and/or to provide such reasonable assistance, within 14 days after receiving notice to do so, the SELLER'S obligation to rectify the DEFECTS shall be deemed to have lapsed; and
- 14.1.5 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.
- 14.2 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.
- 14.3 The SELLER, and its representatives, agents and CONTRACTORS shall at all times until FINAL COMPLETION, be entitled to enter and be present at the PARCEL for purposes of performing its obligations in terms of this AGREEMENT. At no time whatsoever shall the PURCHASER be entitled to make a claim, attach or in any way claim possession or retention of any of the SELLER'S or its CONTRACTORS' tools, equipment or building material and, by signature hereof, the PURCHASER waives any rights which he may have in this regard.

15. WARRANTIES IN RESPECT OF WORKS

- 15.1 The SELLER shall –
- 15.1.1 rectify major structural defects in respect of the WORKS provided that the SELLER receives written notice from the PURCHASER requiring such rectification within 5 years from the PRACTICAL COMPLETION DATE;
- 15.1.2 repair roof leaks in respect of the WORKS 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 PRACTICAL COMPLETION DATE.
- 15.2 The written notice referred to in 15.1 shall include sufficient details in respect of the defect, non-compliance and/or deviation concerned, failing which the SELLER'S obligations in terms of 15.1 shall be deemed to have lapsed.
- 15.3 The provisions of 15.1.1, 15.1.2 and 15.4 shall only apply to structural defects, roof leaks, and/or deficiencies 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.
- 15.4 The SELLER shall commence rectification or repair (as the case may be) in terms of 15.1 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.
- 15.5 Save as otherwise expressly provided in this AGREEMENT or required in law, the PARCEL 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 PARCEL or the WORKS, whether patent or latent.
- 15.6 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 PARCEL or the WORKS, whether patent or latent, and its liability is specifically limited to the matters stipulated in 14.1 and 15.1.
- 15.7 The SELLER and its representatives, agents and CONTRACTORS shall, for the purposes of rectification or repair (as the case may be) in terms of this 15, at all times be entitled to enter and be present at the PARCEL or the DWELLING erected thereon, 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 his obligations in terms of this 15.7, any obligations of the SELLER in terms of this 15 shall be deemed to have lapsed.

16. FULFILMENT OF OBLIGATIONS

The attainment of PRACTICAL COMPLETION shall be a complete and irrevocable acknowledgement by the PURCHASER that the SELLER has fulfilled all its obligations in terms of this AGREEMENT (save as is provided for in 14 and 15) and that the SELLER has become entitled to payment forthwith of the full balance of the PURCHASE PRICE, save for the retention amount of US\$ 100 000 payable in terms of 4.2.2.2.3, plus any additions thereto in terms of this AGREEMENT, as well as any interest and other charges (if applicable).

17. INSTRUCTIONS BY PURCHASER

- 17.1 The PURCHASER shall not have the right, either personally or through his agent, to issue instructions to any of the CONTRACTORS, workmen and/or sub-contractors employed to carry out the WORKS, or any other person employed by, or acting on behalf of, the SELLER.
- 17.2 Notwithstanding anything to the contrary contained in this AGREEMENT, should the PURCHASER, or his agent, issue instructions, the SELLER shall not be held liable for any faults, defects or deficiencies in the WORKS resulting from the execution of the aforesaid instructions.

18. BUILDING OPERATIONS AND FINISHES

The PURCHASER acknowledges and agrees that –

- 18.1 the SELLER shall be entitled to delegate all or any of its obligations in terms of this AGREEMENT, or to sub-contract to any other person, in respect of the execution and/or completion of any part or portion of the WORKS, subject, however, to the supervision by the SELLER of such execution and/or completion of the WORKS. Such CONTRACTOR and/or other sub-contractor shall at all relevant times be answerable to the SELLER;
- 18.2 the SELLER shall not, under any circumstances or at any time prior to, during or after completion of the WORKS, be liable for any indirect or consequential damages of any nature which the PURCHASER may suffer in respect of the PARCEL or the WORKS at any time and for whatever reason;

- 18.3 the finishes to the WORKS in any show house or other visual interpretation in any marketing or other material is for illustrative purposes only, and the WORKS may not be an exact replica thereof, and specifically the WORKS will exclude any decorations or non-standard items contained in such marketing or other material;
- 18.4 should the SELLER be unable to procure the exact finishes to the WORKS and the items listed in the SPECIFICATIONS, the SELLER shall be entitled to use replacement finishes and items, provided that such replacement finishes and items are of similar standard to the finishes of the WORKS and items listed in the SPECIFICATIONS;
- 18.5 he shall, under no circumstances, be entitled to claim a reduction in the PURCHASE PRICE, or have any other claim, as a result of the SELLER'S inability to procure the exact finishes to the WORKS and the items listed in the SPECIFICATIONS as contemplated in 18.4 above; and
- 18.6 any loose materials required for the WORKS and delivered to the PARCEL shall not become the property of the PURCHASER until payment of the full PURCHASE PRICE. Any excess material delivered to the PARCEL shall remain the sole and absolute property of the SELLER.

19. **ACKNOWLEDGEMENTS BY PURCHASER ON DEALING WITH THE PARCEL**

- 19.1 The PURCHASER acknowledges and agrees that –
 - 19.1.1 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 PARCEL, he shall not utilise any sales and marketing agent and/or realtor other than the sales and marketing agent nominated by the SELLER, without the prior written consent of the SELLER, which consent shall not be unreasonably withheld. The sales and marketing agent nominated by the SELLER shall be appointed upon substantially the same terms and conditions as the sales and marketing agent and/or realtor in respect of the sale in terms of this AGREEMENT was appointed;
 - 19.1.2 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; and
 - 19.1.3 he shall include a clause, on the same terms of this 19.1, in any document in terms of which he DEALS with the PARCEL, so that the SELLER will always have the right to nominate the sales and marketing agent when the PARCEL is dealt with.
- 19.2 In the event of the PURCHASER DEALING with the PARCEL or any interest therein, the PURCHASER acknowledges and agrees 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.
- 19.3 When DEALING with the PARCEL, the PURCHASER shall utilise such documentation as prescribed by the ASSOCIATION from time to time.
- 19.4 Notwithstanding the provisions of 24, in the event of a breach of this 19, the SELLER shall be entitled, in its sole and absolute discretion, to refuse the written approval as required for DEALING with the PARCEL until the provisions of this 19 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 (conditional) approval.

20. **RESTRAINT ON DEALING IN FAVOUR OF SELLER**

- 20.1 Notwithstanding anything to the contrary contained in this AGREEMENT, the PURCHASER shall not in any way DEAL with the PARCEL, at any time prior to the issue of the FINAL COMPLETION CERTIFICATE, without the prior written consent of the SELLER, which consent the SELLER may withhold in its sole and absolute discretion.
- 20.2 If the PURCHASER desires to DEAL with the PARCEL during the DEVELOPMENT PERIOD, the PURCHASER shall be obliged to first make an offer to DEAL with the PARCEL 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 day 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 –
 - 20.2.1 the PURCHASER shall only be entitled to DEAL with the PARCEL at on the same price and the same terms and conditions contained in the PURCHASER'S OFFER, which shall apply *mutatis mutandis* (see ANNEXURE A);
 - 20.2.2 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 PARCEL or any interest therein to such third party; and

- 20.2.3 if the PURCHASER fails to DEAL with the PARCEL within the said 60 day period, and if the PURCHASER still desires to DEAL with the PARCEL, he shall be obliged to comply with the provisions of this 20.2 again.
- 20.3 The provisions of 20.1 and 20.2 shall be registered as restrictive conditions in favour of the SELLER in the TRANSFER DEED in respect of the PARCEL, in such form as accords with the provisions of the LAND REGISTRATION ACT.
- 20.4 Should the SELLER and/or the ASSOCIATION allege that the PURCHASER DEAL, has DEALT or is about to DEAL for the purposes of the provisions of 10, 19 or 20 with the PARCEL, 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 PARCEL.
- 21. UNREGISTERED SUBDIVISION**
- 21.1 It is recorded that the PARCEL may, at the DATE OF SIGNATURE, be an unregistered subdivision.
- 21.2 The SELLER shall be responsible for procuring, as soon as reasonably practical, the approval of the SUBDIVISION PLAN and the granting of such consents as may be required in order to render the PARCEL registrable as a separate parcel. All costs in respect of, and incidental to, the application in this regard shall be for the sole account of the SELLER.
- 22. 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 PARCEL. 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.
- 23. DEFAULT PENALTIES**
- Notwithstanding any other right which the SELLER may have in terms of this AGREEMENT, in the event that the ATTORNEYS have effected transfer of the PARCEL into the PURCHASER'S name but the actual completion of the WORKS extends 6 months beyond the initial ANTICIPATED PRACTICAL COMPLETION DATE due to delays, which the PURCHASER has caused, which shall include, without limitation, delays resulting from the cessation of the WORKS, or as a result of non or insufficient payment of any amounts due and owing to the SELLER in terms of this AGREEMENT, then the SELLER shall be entitled, after expiry of the said 6 month period, 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.
- 24. BREACH AND CANCELLATION**
- 24.1 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 –
- 24.1.1 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
- 24.1.2 to claim immediate specific performance of the PURCHASER'S obligations, including payment of the PURCHASE PRICE, which will become immediately due and owing by the PURCHASER.
- 24.2 Notwithstanding the aforesaid, in the event that the PURCHASER –
- 24.2.1 fails to provide the guarantee to secure the balance of the PURCHASE PRICE or pay such amount in cash as contemplated in 4.3; or
- 24.2.2 fails to pay the PURCHASE PRICE (or any part thereof);
- 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.
- 24.3 The PURCHASER shall not be entitled to withhold the payment of any PROGRESS PAYMENT, if the QUANTITY SURVEYOR avers that such PROGRESS PAYMENT is due and payable, as a result of any dispute between the SELLER and the PURCHASER regarding the WORKS. In the event of a such dispute arising, the matter shall be referred to an independent architect nominated and agreed to by the PARTIES, or failing such agreement, an architect licensed to practice in the Republic of Seychelles appointed by the QUANTITY SURVEYOR, whose decision in this regard shall be final and binding on both PARTIES.

- 24.4 In the event that any withholding of PROGRESS PAYMENTS by the PURCHASER causes a delay in the PRACTICAL COMPLETION of the WORKS, the SELLER shall be entitled to a fair and reasonable extension of time in respect of the ANTICIPATED PRACTICAL COMPLETION DATE equivalent to the period of such delay.
- 24.5 Notwithstanding any other right which the SELLER may have in terms of this AGREEMENT or in law, should any amount due to the SELLER in terms of this AGREEMENT not be paid on the due date, the SELLER shall be entitled to exercise any rights it may have under any builder's lien, or any other right of retention.
- 24.6 In the event that the SELLER commits a breach of any of its obligations and remains in breach for a period of 20 days after having received a written notice from the PURCHASER to remedy such breach, then the PURCHASER shall be entitled –
- 24.6.1 to claim immediate specific performance of the SELLER'S obligations; or
- 24.6.2 to cancel this AGREEMENT, provided that it is a material breach which goes to the root of this AGREEMENT and the SELLER fails to compensate the PURCHASER by an adequate monetary award in, which event of cancellation the PARTIES shall be restored to their status *quo ante*(see ANNEXURE A), and the provisions of 5.4 shall apply *mutatis mutandis* (see ANNEXURE A);
- but the PURCHASER shall not have any other rights or claims against the SELLER as a result of that breach, including any right to claim damages.
- 24.7 Should this AGREEMENT be cancelled for any reason whatsoever, or in the event of any dispute between the PARTIES of whatsoever nature prior to the DATE OF TRANSFER, the PURCHASER and all persons claiming a right of occupation through the PURCHASER shall forthwith be obliged to vacate the PARCEL, it is hereby expressly recorded that no lease or a similar right of occupation in favour of the PURCHASER or any other person shall be created or come into existence by virtue of this AGREEMENT.
- 25. ADJUDICATION**
- 25.1 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 25.
- 25.2 This 25 shall not preclude any PARTY from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 25.3 The adjudication shall be held –
- 25.3.1 at Victoria, Mahé, Republic of Seychelles;
- 25.3.2 on the basis that the proper law of this AGREEMENT shall be the law of the Republic of Seychelles;
- 25.3.3 with only the PARTIES and their legal and other representatives present thereat; and
- 25.3.4 in terms of the Arbitration Act of the Republic of Seychelles (as amended).
- 25.4 The adjudicator shall be, if the matter in dispute is principally –
- 25.4.1 a legal matter, a practising advocate or attorney from either the Republic of Seychelles, the Republic of South Africa, or the United Kingdom, of at least 10 years standing;
- 25.4.2 an accounting matter, a practising chartered accountant either from the Republic of Seychelles, the Republic of South Africa, or the United Kingdom, of at least 10 years standing;
- 25.4.3 any other matter, a suitably qualified independent person either from the Republic of Seychelles, the Republic of South Africa, or the United Kingdom, of at least 10 years standing.
- 25.5 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.
- 25.6 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 25.4 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.
- 25.7 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.

- 25.8 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 25.4, and to which appeal the provisions of this 25 shall apply *mutatis mutandis* (see ANNEXURE A).
- 25.9 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 25, any review thereof, and/or obtaining interim relief in terms of 25.2.
- 25.10 The provisions of this 25 –
- 25.10.1 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
- 25.10.2 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.

26. CAPACITY OF SIGNATORY

- 26.1 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 the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this AGREEMENT, under the renunciation of the benefits of *excussio* and *division* (see ANNEXURE A), the meaning and effect of which the signatory acknowledges and agrees to understand.
- 26.2 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 26, the object being that the signatory shall at all time remain liable, even if this AGREEMENT is varied or amended or novated and even if the PURCHASER is granted an indulgence by the SELLER.

27. NOTICES AND DOMICILIUM

- 27.1 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 –
- 27.1.1 in respect of the SELLER, the address specified in A.2 of the CONTRACT SCHEDULE;
- 27.1.2 in respect of the PURCHASER, the physical addresses and facsimile number or e-mail address specified in B.4, B.5 and B.6, respectively, of the CONTRACT SCHEDULE, the physical address of the PARCEL, provided that the physical address of the PARCEL shall only be a valid *domicilium* (see ANNEXURE A) after the DATE OF POSSESSION;
- or 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.
- 27.2 Any notice given in terms of this AGREEMENT shall be in writing and shall –
- 27.2.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- 27.2.2 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
- 27.2.3 if transmitted by facsimile, be deemed to have been received by the addressee one day after despatch.
- 27.3 For the purpose of this 27, 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.

- 27.4 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.
28. **MISCELLANEOUS**
- 28.1 **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.
- 28.2 **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, 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.
- 28.3 **further assurances**
- The PARTIES 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.
- 28.4 **payment and interest**
- 28.4.1 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.
- 28.4.2 The PURCHASER shall not have the right to defer, adjust or withhold any payment due to the SELLER in terms of 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.
- 28.4.3 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 become due to the date of payment, both days inclusive.
- 28.5 **representations by SELLER**
- The PURCHASER 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 SELLER, 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 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, pictures, drawings and brochures from time to time.
- 28.6 **independent advice**
- Each of the PARTIES 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 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.
- 28.7 **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.
- 28.8 **nomination**
- Should the signatory sign on behalf of a PURCHASER being a 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.

28.9 **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.

28.10 **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.

28.11 **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.

28.12 **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).

28.13 **costs**

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

28.13.2 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 of share capital held by Non-Seychellois
.....%
 - (b) if the applicant company is controlled by another company additionally, state 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 the BERTH from the LESSOR, 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 in block letters)

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 LESSEE is granted an indulgence by the LESSOR. 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 LESSEE in terms of 17.1 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 LESSEE 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

INDEX

	Page
CONDITIONS OF LEASE	40
1. INTRODUCTION	41
2. DEFINITIONS AND INTERPRETATION	41
3. SANCTION	44
4. COMMENCEMENT AND TERMINATION	44
5. COMPLETION AND OCCUPATION OF THE LEASED AREA	45
6. RENTAL	45
7. SERVICE CHARGE	45
8. DAMAGE OR DESTRUCTION	47
9. DETAILS OF VESSEL	47
10. CONDUCT RULES	47
11. LESSOR'S ACCESS TO THE LEASED AREA AND VESSEL	47
12. RESTRICTIONS ON RIGHTS OF LESSEE	48
13. INITIAL PAYMENT	48
14. BREACH AND CANCELLATION	49
15. ADJUDICATION	50
16. CAPACITY OF SIGNATORY	51
17. NOTICES AND <i>DOMICILIUM</i>	51
18. MISCELLANEOUS	51
ANNEXURES	54

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 provisions 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 18.9;
- 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 CONDOMINIUM ACT) on a CONDOMINIUM PROPERTY;
- 2.1.5 "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 and Raymond Alexander, architect, of PO Box 31246, Camps Bay, Cape Town, Republic of South Africa or such other firm of architects nominated by the LESSOR 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;
- 2.1.6 "ASSOCIATION" means the Eden Island Village Management Association registered, or to be registered, as an association under the Registration of Association Act (Cap 201 of the Laws of the Seychelles);
- 2.1.7 "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;
- 2.1.8 "BERTHS" 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 COMPONENTS;
- 2.1.9 "COMMENCEMENT DATE" means the DWELLING POSSESSION DATE;
- 2.1.10 "COMMERCIAL DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT into a commercial and retail development and a marina;
- 2.1.11 "COMMERCIAL DEVELOPMENT COMPONENT" means –
- 2.1.11.1 that portion of EDEN ISLAND that is being developed as commercial property and duly registered in terms of the LAND REGISTRATION ACT and leased to the LESSOR by the GOVERNMENT;
- 2.1.11.2 any land area reclaimed and incorporated in the COMMERCIAL DEVELOPMENT COMPONENT from time to time; and
- 2.1.11.3 and any 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;
- 2.1.12 "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 "COMMON AREAS" means those areas of the DEVELOPMENT, other than the registered PARCELS on which the DWELLINGS have been, or are to be, erected, including any IMPROVEMENTS that may have been erected on or made to such COMMON AREAS;
- 2.1.16 "CONDITIONS OF LEASE" means the conditions of lease set out in this document, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.17 "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 being attached hereto as ANNEXURE A;
- 2.1.18 "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;
- 2.1.19 "CONTRACT SCHEDULE" means the contract schedule named as such, which forms part of the SALES DOCUMENTATION;
- 2.1.20 "DEAL" or "DEALING" means, in relation to a means, in relation to a UNIT, the dealing with that UNIT or any part thereof or the dealing with any interest of whatsoever nature in respect of that UNIT (including, for the avoidance of doubt, any share, stock, right or partnership interest in the entity or body corporate owning that UNIT), including any sale, granting of any option or pre-emptive right, transfer, disposition, transmission, lease for a period exceeding two years (including any renewal periods) and other encumbrance of that or in respect of that UNIT or part thereof or interest of whatsoever nature in respect of that UNIT, and includes any CHANGE IN CONTROL in respect of that UNIT or part thereof or interest therein, irrespective of whether such dealing or CHANGE IN CONTROL (as the case may be) is subject to a suspensive or resolute condition;
- 2.1.21 "DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT and the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.22 "DWELLING(S)" means every VILLAS, MAISONS, CONDOMINIUM BUILDINGS comprising the DEVELOPMENT;
- 2.1.23 "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;
- 2.1.24 "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;;
- 2.1.25 "GOVERNMENT" means the government of the Republic of Seychelles;
- 2.1.26 "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;
- 2.1.27 "INITIAL PAYMENT" means an amount equal to 3 months' SERVICE CHARGES;
- 2.1.28 "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*;
- 2.1.29 "LAND REGISTRATION ACT" means the Land Registration Act (Cap 107 of the Laws of Seychelles) (as amended);
- 2.1.30 "LEASED AREA" means the BERTH specified in I of the CONTRACT SCHEDULE;
- 2.1.31 "LESSEE" means the person specified in B of the CONTRACT SCHEDULE;
- 2.1.32 "LESSOR" means Eden Island Development Company (Seychelles) Limited (registration no 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 and assignee/s;
- 2.1.33 "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);

- 2.1.34 "MANAGER" means any person or body employed or appointed by the ASSOCIATION or the LESSOR for the purposes of managing the MOORING AREAS and/or the WATERWAYS (or any parts thereof);
- 2.1.35 "MOORING AREAS" means –
- 2.1.35.1 those BERTHS on the WATERWAYS which are designated for the use of mooring VESSELS; and
- 2.1.35.2 those areas on the COMMERCIAL DEVELOPMENT COMPONENT leased by the ASSOCIATION for the purposes of mooring VESSELS of any size;
- including the primary and secondary breakwater, wave attenuator, harbour entrance lights, together with all ancillary facilities located within those areas;
- 2.1.36 "MOORING PLAN" means the plan of the MOORING AREAS (or parts thereof), being ANNEXURE B;
- 2.1.37 "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);
- 2.1.38 "PARCEL" means any parcel (as that term is defined in the LAND REGISTRATION ACT) within the DEVELOPMENT, together with all IMPROVEMENTS (if any) thereon;
- 2.1.39 "PARTY/IES" means the LESSOR and the LESSEE, or any one of them as the context may indicate;
- 2.1.40 "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;
- 2.1.41 "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;
- 2.1.42 "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 recreational facilities and amenities on the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.43 "RESIDENTIAL DEVELOPMENT COMPONENT" means -
- 2.1.43.1 that portion of EDEN ISLAND that is being developed as residential property in freehold title in terms of the LAND REGISTRATION ACT;;
- 2.1.43.2 any land area reclaimed and or converted from time to time and incorporated in the RESIDENTIAL DEVELOPMENT COMPONENT in terms of the RECLAMATION AGREEMENT, and
- 2.1.43.3 any extension/s or alteration/s of the residential development component by the LESSOR from time to time;
- and includes any and all subdivisions, consolidations and amalgamations thereof;
- 2.1.44 "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;
- 2.1.45 "SALES DOCUMENTATION" means the prescribed written sales documentation for the sale of a VILLA and, if applicable, the lease of a BERTH, and of which sales documentation this AGREEMENT forms a part;
- 2.1.46 "SANCTION" means the 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 a DWELLING in terms of the SALE AGREEMENT and to lease the LEASED AREA in terms of this AGREEMENT;
- 2.1.47 "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;
- 2.1.48 "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;
- 2.1.49 "SIGNATURE DATE" means the date on which the LESSOR signs this AGREEMENT;

- 2.1.50 "SIGNATURE DOCUMENT" means the signature document appearing in this AGREEMENT, read together with the information provided in the CONTRACT SCHEDULE;
- 2.1.51 "US\$" means United States dollars, the lawful currency of the United States of America;
- 2.1.52 "VESSEL" means a waterborne vessel of any type, size or description;
- 2.1.53 "VILLA(S)" means a free standing building erected, or to be erected, on a PARCEL;;
- 2.1.54 "WATERWAYS" means all water channels (whether constructed, created or occurring naturally) and channel edges traversing the RESIDENTIAL DEVELOPMENT COMPONENT;
- 2.1.55 any reference to the singular includes the plural and *vice versa* (see ANNEXURE A);
- 2.1.56 any reference to natural persons includes artificial persons and *vice versa* (see ANNEXURE A);
- 2.1.57 any reference to a gender includes the other genders (including neuter); and
- 2.1.58 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 the LESSEE'S 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* 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 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, resale from the SALE AGREEMENT in terms of 5.3 or 5.4 (as the case may be) of the SALE AGREEMENT, then this AGREEMENT shall automatically terminate.
- 3.3 Should the LESSEE, as purchaser in terms of the SALE AGREEMENT, resale from the SALE AGREEMENT in terms of 5.5 of the SALE AGREEMENT, this AGREEMENT shall automatically terminate.

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, 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 the ARCHITECT and the decision of the 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 specified in J.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 month 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 J.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 7.1; 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 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 (ie 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*, into account the type and size of the VESSEL of the LESSEE and any other factors, which the LESSOR may, in its sole discretion, 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 annual 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 annual SERVICE CHARGE 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 MOORINGS and WATERWAYS generally, to all lessees of BERTHS.
- 7.12 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 tenantable; 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 VESSEL 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 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;
 - 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 AGREEMENT 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);

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 ANNUAL RENTAL and 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 AND CANCELLATION

- 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 fail to pay the ANNUAL RENTAL or the SERVICE CHARGE 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;
- 14.1.3 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 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;
- 14.1.5 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;
- 14.1.7 commit a breach of the SALE AGREEMENT; or
- 14.1.8 commit an act of insolvency, if the LESSEE is a natural person, and if the LESSEE is an artificial person, any act that would have been an act of insolvency if the LESSEE were 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 –

- 14.1.9 be entitled to cancel this AGREEMENT;
- 14.1.10 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
- 14.1.11 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 ejectment shall, however, in no way prejudice any claim which the LESSOR may then or thereafter have against the LESSEE for any ANNUAL RENTAL, SERVICE CHARGE 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 may suffer by reason of any cancellation, re-entry or ejectment.
- 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 the SALE AGREEMENT be cancelled, be resiled from, or be terminated, for whatever reason, this AGREEMENT shall automatically be cancelled, resiled from or be terminated.
- 14.5 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).

- 14.6 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.
- 14.7 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, Mauritius, the Republic of South Africa, 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, Mauritius, the Republic of South Africa, 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 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 of 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 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 – the physical addresses, facsimile number or e-mail – see SALE AGREEMENT address specified in B.4, B.5 and B.6 of the CONTRACT SCHEDULE, or at the physical address of the DWELLING of the LESSEE;
- at such other address in the Republic of Seychelles, not being a post office box or *poste restante* (see explanatory note) 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 signature

This AGREEMENT shall not be binding on the LESSOR until such time as it has signed the AGREEMENT. The LESSEE shall not, before the SIGNATURE DATE, be entitled to claim the existence of any other contract or other agreement with regard to any of the matters referred to herein.

18.2 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.

18.3 **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.

18.4 **payment and interest**

18.4.1 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.

18.4.2 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.

18.4.3 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.

18.4.4 Such interest shall be –

18.4.4.1 calculated at the INTEREST RATE; and

18.4.4.2 capitalised monthly in arrear on the balance due.

18.5 **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.

18.6 **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.

18.7 **nomination**

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

18.8 **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.

18.9 **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 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).

18.10 **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.

18.11 **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.

18.12 **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 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.

18.13 **costs**

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

18.13.2 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.

