AGREEMENT OF LEASE

BERTH

CONDITIONS OF LEASE

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1. **INTRODUCTION**

1.1 The LESSOR has procured the right to develop EDEN ISLAND, which DEVELOPMENT will comprise of the RESIDENTIAL DEVELOPMENT and the COMMERCIAL DEVELOPMENT.

1.2 The LESSOR is the registered owner of the RESIDENTIAL DEVELOPMENT COMPONENT and will develop and market the RESIDENTIAL DEVELOPMENT COMPONENT in phases and subdivide the RESIDENTIAL DEVELOPMENT COMPONENT into individual land parcels and erect a combination of DWELLINGS thereon.

1.3 The LESSOR will market certain of those DWELLINGS together with BERTHS which will be leased to the registered owners of those DWELLINGS.

1.4 The LESSEE has entered or is about to enter into an agreement to purchase a DWELLING, and wishes to enter into a lease agreement to lease the BERTH specified in I of the CONTRACT SCHEDULE. The LESSOR is willing to let that BERTH, subject to and upon the terms and conditions of this AGREEMENT.

2. **DEFINITIONS AND INTERPRETATION**

2.1 For the purposes of this AGREEMENT unless the context indicates to the contrary –

2.1.1 "this AGREEMENT" means the SIGNATURE DOCUMENT, these CONDITIONS OF LEASE and all ANNEXURES;

2.1.2 "ANNEXURE" means an annexure to this AGREEMENT, as amended and/or supplemented from time to time in accordance with 18.7;

2.1.3 "ANNUAL RENTAL" means the annual rental payable by the LESSEE in terms of this AGREEMENT;

2.1.4 "APARTMENT" means a unit as defined in the Condominium Property Act (Cap 41A of the Laws of Seychelles) where a condominium scheme has been established on any land parcel within the RESIDENTIAL DEVELOPMENT COMPONENT, commonly also referred to as an Apartment;

2.1.5 "ASSOCIATION" means the Eden Island Village Management Association registered as an association under the Registration of Association Act (Cap 201 of the Laws of the Seychelles), established to administer, manage and control the RESIDENTIAL DEVELOPMENT, and includes its successor/s in title;

2.1.6 "BERTHING RIGHT" means the LESSEE'S sole and exclusive right to the use and enjoyment of the LEASED AREA in accordance with the provisions of this AGREEMENT;

2.1.7 "BERTHS" means all berths situated within the MOORING AREAS used for purposes of mooring VESSELS;

2.1.8 "COMMENCEMENT DATE" means the later date of the following –

2.1.8.1 the DWELLING POSSESSION DATE; and

2.1.8.2 the date on which the LEASED AREA is available for beneficial occupation;

subject to the provisions of 5;

2.1.9 "COMMERCIAL DEVELOPMENT" means the development of the COMMERCIAL DEVELOPMENT COMPONENT into a commercial and retail development and a marina;

2.1.10 "COMMERCIAL DEVELOPMENT COMPONENT" means the land parcel registered under Title No. V12514 in terms of the Land Registration Act (Cap 107 of the Laws of the Seychelles) and leased to the LESSOR by the GOVERNMENT, measuring currently approximately 1,02 hectares, and includes any and all subdivisions or consolidations thereof, any land area reclaimed into the COMMERCIAL DEVELOPMENT COMPONENT in terms of the RECLAMATION AGREEMENT and any extension or alterations of the COMMERCIAL DEVELOPMENT COMPONENT by the developer from time to time;

2.1.11 "CONDITIONS OF LEASE" means the conditions of lease set out in this document, read together with the information provided in the CONTRACT SCHEDULE;

2.1.12 "CONDUCT RULES" means any and all rules and regulations made by the ASSOCIATION in relation to the MOORING AREAS and the WATERWAYS, as amended from time to time, the current CONDUCT RULES attached hereto as ANNEXURE A;

2.1.13 "CONSTITUTION" means the constitution of the ASSOCIATION, as amended from time to time, including any rules and regulations made thereunder from time to time;

2.1.14 "CONTRACT SCHEDULE" means the contract schedule forming part of the SALES DOCUMENTATION;

2.1.15 "DEAL" or "DEALING" shall bear the same meaning as in the CONSTITUTION;

2.1.16 "DEVELOPER" means Eden Island Development Company (Seychelles) Limited (registration number 843-959-1), a company duly registered and incorporated according to the company laws of the Republic of Seychelles, and includes its successor/s in title and assignee/s as DEVELOPER of the DEVELOPMENT (or any parts thereof);

2.1.17 "DEVELOPMENT" means the development of EDEN ISLAND, comprising the COMMERCIAL DEVELOPMENT and the RESIDENTIAL DEVELOPMENT;

2.1.18 "DWELLING/S" means every VILLA, GRAND MAISON, MAISON and APARTMENT, or any one of them as the context may indicate;

2.1.19 "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;

2.1.20 "EDEN ISLAND" means the island known as Eden Island, situated offshore, opposite Roche Caiman, Mahé, Republic of Seychelles;

2.1.21 "GOVERNMENT" means the government of the Republic of Seychelles;

2.1.22 "GRAND MAISON" means a duplex building erected, or to be erected, on a land parcel within the RESIDENTIAL DEVELOPMENT, which building shares a common boundary with the building on the adjacent land parcel, and shall include the land parcel on which this building is, or is to be, erected;

2.1.23 "INITIAL PAYMENT" means an amount equal to 3 months' SERVICE CHARGES;

2.1.24 "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*;

2.1.25 "LEASED AREA" means the BERTH specified in J of the CONTRACT SCHEDULE;

2.1.26 "LESSEE" means the person specified in B of the CONTRACT SCHEDULE;

2.1.27 "LESSOR" means Eden Island Development Company (Seychelles) Limited (registration no 849–959–1), a company with limited liability duly incorporated in accordance with the laws of the Republic of Seychelles, and includes its successor/s in title and assign/s;

2.1.28 "MAISON" means a duplex building erected or to be erected on a land parcel within the RESIDENTIAL DEVELOPMENT, which building shares a common boundary with the building on the adjacent land parcel and shall include the land parcel on which that building is, or is to be erected;

2.1.29 "MANAGER" means any person or body employed or appointed (as the case may be) by the ASSOCIATION for the purposes of managing the MOORING AREAS and/or the WATERWAYS (or any parts thereof);

2.1.30 "MOORING AREAS" means –

2.1.30.1 those BERTHS on the WATERWAYS which are designated for the use of mooring VESSELS; and

2.1.30.2 those areas on the COMMERCIAL DEVELOPMENT COMPONENT leased by the LESSOR or 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;

2.1.31 "MOORING PLAN" means the plan of the MOORING AREAS (or parts thereof) attached hereto as ANNEXURE B;

2.1.32 "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);

2.1.33 "PARTY/IES" means the LESSOR and the LESSEE, or any one of them as the context may indicate;

2.1.34 "*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;

2.1.35 "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;

2.1.36 "RESIDENTIAL DEVELOPMENT" means the subdivision of the RESIDENTIAL DEVELOPMENT COMPONENT into individual land parcels, the servicing of those land parcels, the construction of DWELLINGS thereon, and the installation of certain recreational facilities and amenities on the RESIDENTIAL DEVELOPMENT COMPONENT;

2.1.37 "RESIDENTIAL DEVELOPMENT COMPONENT" means the land parcel duly registered as freehold title in terms of the Land Registration Act (Cap 107 of the Laws of Seychelles), initially measuring approximately 47,037 hectares and includes any and all subdivisions or consolidations thereof, any land area reclaimed into the RESIDENTIAL DEVELOPMENT COMPONENT in terms of the RECLAMATION AGREEMENT and any extension or alteration of the RESIDENTIAL DEVELOPMENT COMPONENT by the SELLER from time to time;

2.1.38 "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;

2.1.39 "SALES DOCUMENTATION" means the prescribed written sales documentation for the sale of an APARTMENT and the lease of a BERTH (if applicable), of which sales documentation this AGREEMENT forms a part;

2.1.40 "SANCTION" means sanction as contemplated in 5 of the SALE AGREEMENT, being the consent granted by the GOVERNMENT to the LESSEE, as purchaser of a DWELLING and as lessee of the LEASED AREA, in terms of the Immovable Property (Transfer Restriction) Act (Cap 95 of the Laws of Seychelles), to acquire that DWELLING in terms of the SALE AGREEMENT and to lease the LEASED AREA in terms of this AGREEMENT;

2.1.41 "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;

2.1.42 "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;

2.1.43 "SIGNATURE DATE" means the date on which the LESSOR signs this AGREEMENT, as reflected on the SIGNATURE DOCUMENT;

2.1.44 "SIGNATURE DOCUMENT" means the signature document forming part of this AGREEMENT, read together with the information provided in the CONTRACT SCHEDULE;

2.1.45 "US$" means United States dollars, the lawful currency of the United States of America;

2.1.46 "VESSEL" means a waterborne vessel of any type, size or description;

2.1.47 "VILLA" means a free standing building erected, or to be erected, on a land parcel within the RESIDENTIAL DEVELOPMENT and shall include that land parcel on which that building is, or is to be, erected;

2.1.48 "WATERWAYS" means all water channels (whether constructed, created or occurring naturally) and channel edges traversing the RESIDENTIAL DEVELOPMENT COMPONENT;

2.1.49 any reference to the singular includes the plural and *vice versa* (see ANNEXURE A);

2.1.50 any reference to natural persons includes artificial persons and *vice versa* (see ANNEXURE A);

2.1.51 any reference to a gender includes the other genders (including neuter); and

2.1.52 any reference to months or years shall be construed as calendar months or years.

2.2 If the LESSEE consists of more than one person, such persons shall be jointly and severally liable *in solidum* (see ANNEXURE A) for all their obligations in terms of this AGREEMENT.

2.3 Where applicable, the provisions of this 2 shall impose substantive rights and obligations on the PARTIES as provided for in the provision concerned.

2.4 The clause headings in this AGREEMENT have been inserted for convenience only and shall not be taken into account in its interpretation.

2.5 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

2.6 No provision of this AGREEMENT shall be construed against or interpreted to the disadvantage of any PARTY hereto by reason of such PARTY having or being deemed to have structured or drafted such provision.

2.7 The *eiusdem generis* (see ANNEXURE A) rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

2.8 When this AGREEMENT prescribes any number of days, such days must be reckoned exclusively of the first and inclusively of the last day. If the last day falls on a day that is not a Saturday, Sunday or statutory public holiday recognised in the Republic of Seychelles, it will be deemed to fall on the next Saturday, Sunday or statutory public holiday recognised in the Republic of Seychelles.

2.9 This AGREEMENT shall be governed by and construed and interpreted in accordance with the laws of the Republic of Seychelles subject to 2.10, and the PARTIES consent to all proceedings instituted in connection with the terms of this AGREEMENT, being instituted in any competent court of the Republic of Seychelles, subject to the provisions of 15.

2.10 Where the laws of the Republic of Seychelles do not know or recognise any legal term or phrase contained in this AGREEMENT, or any legal principle to which any of the provisions, terms, phrases or words contained in this AGREEMENT relate, that legal term or phrase, or legal principle, shall be construed and interpreted in accordance with the laws of the Republic of South Africa, and shall be implemented accordingly.

3. SANCTION

3.1 Should the LESSEE be a NON-SEYCHELLOIS, this AGREEMENT is subject to the resolutive condition that the GOVERNMENT fails or refuses to grant SANCTION, as contemplated in 5 of the SALE AGREEMENT.

3.2 Should the LESSOR, as seller in terms of the SALE AGREEMENT, cancel the SALE AGREEMENT summarily in terms of 5.3 of the SALE AGREEMENT, then this AGREEMENT shall automatically terminate and the LESSOR shall be entitled to retain the INITIAL PAYMENT paid by the LESSEE.

3.3 Should the LESSOR, as seller in terms of the SALE AGREEMENT, resile from the SALE AGREEMENT in terms of 5.4 of the SALE AGREEMENT, then this AGREEMENT shall, save for 1, 2, 3 and 14 to 18, lapse and become of no force and effect and neither PARTY shall have any claim against the other PARTY for anything done hereunder or arising therefrom, save that the LESSOR shall repay the INITIAL PAYMENT, if paid by the LESSEE, to the LESSOR.

3.4 Should the LESSEE, as purchaser in terms of the SALE AGREEMENT, resile from the SALE AGREEMENT in terms of 5.5 of the SALE AGREEMENT, this AGREEMENT shall lapse and become of no force and effect, and the provisions of 3.3 shall apply *mutatis mutandis* (see ANNEXURE A).

4. COMMENCEMENT AND TERMINATION

4.1 This AGREEMENT shall commence on the COMMENCEMENT DATE.

4.2 This AGREEMENT shall endure for a period of 99 years from the COMMENCEMENT DATE, subject to earlier termination in terms of this AGREEMENT.

4.3 This AGREEMENT shall automatically terminate upon the LESSEE ceasing to be the registered owner of any DWELLING. Where the LEASED AREA can only be accessed by accessing a particular DWELLING (including the relevant exclusive use area, if applicable), this AGREEMENT shall automatically terminate upon the LESSEE ceasing to be the registered owner of that DWELLING.

5. COMPLETION AND OCCUPATION OF THE LEASED AREA

5.1 If on the DWELLING POSSESSION DATE, building work or alterations are being conducted in respect of the LEASED AREA, and the LEASED AREA is, by virtue thereof, not available for beneficial occupation by the LESSEE (as determined, in the case of building work in the manner set out in 5.2) –

5.1.1 the COMMENCEMENT DATE shall be the date upon which the LEASED AREA is so available for beneficial occupation by the LESSEE;

5.1.2 the LESSEE shall accept occupation on such later date; and

5.1.3 the LESSEE shall not be obliged to pay any RENTAL in respect of the period between the DWELLING POSSESSION DATE and the date upon which the LESSEE is given beneficial occupation in terms of 5.1.1, and the LESSEE shall not have any claim against the LESSOR or the LESSOR'S representatives for compensation or damages nor any right of cancellation or other right whatsoever if the LESSOR is unable to give the LESSEE beneficial occupation of the

LEASED AREA on the DWELLING POSSESSION DATE, by reason of the LEASED AREA being incomplete or in a state of disrepair or by reason of any other fact.

5.2 In the event of any dispute between the PARTIES as to whether the LEASED AREA is available for beneficial occupation by the LESSEE, such dispute shall be referred for determination to an architect in private practice nominated by the LESSOR in writing, and the decision of that architect (who shall act as an expert and not as an arbitrator) shall for all purposes be final and binding on the PARTIES.

5.3 If the LEASED AREA or any part thereof is in the course of completion or renovation on the DWELLING POSSESSION DATE but is available for beneficial occupation and the LESSEE suffers any inconvenience or loss of beneficial occupation from building operations, noise and dust resulting therefrom, or from any such cause whatsoever, the LESSEE shall have no claim against the LESSOR or the LESSOR'S representatives for compensation or damages or for a remission of SERVICE CHARGES or ANNUAL RENTAL nor any right of cancellation or other right whatsoever by reason of any such inconvenience or loss of beneficial occupation during the period of completion.

6. RENTAL

6.1 The ANNUAL RENTAL payable by the LESSEE to the LESSOR in the first 12 calendar month period after the COMMENCEMENT DATE shall be the sum as set out in K.1 of the CONTRACT SCHEDULE.

6.2 The ANNUAL RENTAL shall be payable by the LESSEE to the LESSOR, in advance, on or before the first day of each and every 12 calendar month period and without deduction or set-off of any kind whatsoever, into a bank account nominated in writing by the LESSOR from time to time.

6.3 The ANNUAL RENTAL shall be increased on each anniversary of the COMMENCEMENT DATE by the rate as specified in K.2 of the CONTRACT SCHEDULE.

6.4 Should the COMMENCEMENT DATE not fall on the first day of any particular month –

6.4.1 the RENTAL for the period from the COMMENCEMENT DATE to the end of that particular month shall be calculated on a basis *pro rata* to the ANNUAL RENTAL payable under 6.1; and

6.4.2 the increase referred to in 6.3 shall take effect on each and every anniversary of the first day of the month following the COMMENCEMENT DATE.

7. SERVICE CHARGE

7.1 In addition to his obligation to pay the ANNUAL RENTAL, the LESSEE shall be obliged to pay a SERVICE CHARGE to the LESSOR, which SERVICE CHARGE shall be an amount equal to the *PRO RATA* SHARE, subject to the provisions of 7.2, of all general expenditure incurred in connection with the operation, administration, management and maintenance of the MOORING AREAS and the WATERWAYS, including, without limitation, costs incurred in respect of –

7.1.1 the MANAGER'S remuneration;

7.1.2 the provision of the SERVICES;

7.1.3 maintenance and repair of the MOORING AREAS and the WATERWAYS, and the facilities related thereto;

7.1.4 harbour dues and/or other taxes imposed by any relevant authority;

7.1.5 insurance premiums for all insurance, without limitation, in respect of the MOORING AREAS and/or WATERWAYS (or any part thereof), which insurance shall include breakdown insurance for plant and machinery situated in the MOORING AREAS and/or WATERWAYS, public risk insurance for legal liability in respect of personal injury, loss of or damage to property and/or persons arising out of the use and operation of the MOORING AREAS and/or WATERWAYS, insurance for all persons employed by the LESSOR for purposes of the MOORING AREAS and/or WATERWAYS (i.e. persons employed in the maintenance, operation and administration of the MOORING AREAS and/or WATERWAYS), as well as any other insurance effected by the LESSOR, in its sole discretion, against liability for any risk relating to the MOORING AREAS and/or WATERWAYS;

7.1.6 lighting and electricity for signs, plant and equipment and other communal lighting within the MOORING AREAS and/or WATERWAYS;

7.1.7 the provision of security services in and around the MOORING AREAS and/or WATERWAYS;

7.1.8 the provision of fire prevention control and suppression systems within the MOORING AREAS and/or WATERWAYS; and

7.1.9 all fresh water consumed in connection with the MOORING AREAS and/or WATERWAYS not separately metered to the LESSEE.

7.2 In calculating the SERVICE CHARGE payable by the LESSEE to the LESSOR in terms of 7.1, the LESSOR may, in it's sole discretion, take, in addition to the *PRO RATA* SHARE, the following factors into account –

7.2.1 the proportion that the area of the LEASED AREA bears to the aggregate area of all BERTHS;

7.2.2 the type and size of the VESSEL of the LESSEE;

7.2.3 provided, however, that the LESSOR may consider any other factors which it, in its sole discretion, may deem relevant.

7.3 The LESSOR shall, not less than 30 days prior to the end of each financial year (or so soon thereafter as is reasonably possible), prepare and cause to be served upon the LESSEE, a notice containing an estimate of the SERVICE CHARGE for the following financial year, which notice shall specify the estimated shortfall (if any) resulting from the preceding year. The LESSOR may also include in such estimate an amount to be held in a reserve fund to meet anticipated expenditure not of an annual nature.

7.4 The SERVICE CHARGES shall be payable by the LESSEE in advance, in 12 equal monthly instalments, due on the first day of each and every month, the first such payment being due on or before the first day of the month in which this AGREEMENT commences. All SERVICE CHARGES and other amounts due by the LESSEE to the LESSOR shall be paid free of exchange by means of electronic transfer system into the account nominated by and in the form prescribed by the LESSOR from time to time and, in this respect, every LESSEE shall sign all such documents and do all such other things which are necessary to arrange for that electronic transfer (including, without limitation, the execution of a debit order).

7.5 In the event of the LESSOR, for any reason whatsoever, failing to timeously prepare and serve the estimate referred to in 7.3, the LESSEE shall, until receipt of such estimate, continue to pay the SERVICE CHARGE previously imposed.

7.6 In addition, the LESSOR may, from time to time, impose additional SERVICE CHARGES upon the LESSEE and may, in imposing such additional SERVICE CHARGES, determine the terms of payment thereof.

7.7 Any arrear SERVICE CHARGES shall bear interest at the INTEREST RATE.

7.8 Any amount due by the LESSEE by way of SERVICE CHARGE and/or interest thereon shall be a debt due by the LESSEE to the LESSOR and a document purporting to be signed by the LESSOR specifying such debt shall be *prima facie* (see ANNEXURE A) proof thereof.

7.9 On termination of this AGREEMENT for any reason whatsoever, the LESSEE shall remain liable for, and the LESSOR shall have the right to recover from the LESSEE, all SERVICE CHARGES due up to the date of termination of this AGREEMENT, together with interest thereon at the INTEREST RATE.

7.10 No SERVICE CHARGES or interest paid by the LESSEE shall under any circumstances be refundable by the LESSOR upon this AGREEMENT being terminated or cancelled for whatever reason.

7.11 Subject to 7.12, the SERVICE CHARGES shall also include specific expenses relating to the LESSEE which shall be calculated by the LESSOR as far as reasonably practical, in accordance with the following principles –

7.11.1 those expenses arising directly out of the LEASED AREA itself, to the LESSEE;

7.11.2 those expenses attributable generally to a leasehold of multiple BERTHS, to the lessees of such BERTHS; and

7.11.3 those expenses relating to the MOORING AREAS and WATERWAYS generally, to all lessees of BERTHS.

7.12 The calculation of SERVICE CHARGES in terms of this 7 shall be done equitably, provided, however, that the LESSOR may in any case where they, in their absolute and sole discretion consider it equitable to do so, assign to any tenants of a BERTH any greater or lesser share of the expenses as they may consider appropriate in the circumstances.

7.13 The LESSEE shall not be entitled to any of the privileges relating to the BERTHING RIGHT whilst any ANNUAL RENTAL, SERVICE CHARGES, or interest thereon, and/or any other sum which may be due and payable by the LESSEE to the LESSOR from whatsoever cause arising, remains unpaid. The LESSEE'S obligations shall not, however, be suspended or discharged whilst his privileges are not exercisable as aforesaid.

8. DAMAGE OR DESTRUCTION

8.1 Should the LEASED AREA be completely destroyed or damaged to an extent which prevents the LESSEE from having beneficial occupation of the LEASED AREA or should the LEASED AREA thereby become substantially untenantable, 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 VESSELS to the LESSOR as may be required by the LESSOR from time to time as it may deem fit.

9.2 Should the LESSEE dispose of his VESSEL and wish to use the LEASED AREA for the purposes of mooring another VESSEL, the LESSEE shall provide details of the new VESSEL to the LESSOR within 5 days after having acquired that new VESSEL.

9.3 The length and beam of the hull of any VESSEL moored at the LEASED AREA shall not exceed the length and width of the LEASED AREA.

10. CONDUCT RULES

10.1 The LESSEE, by his signature of this AGREEMENT, acknowledges that he has familiarised himself with the content of the CONDUCT RULES.

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

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

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

11.1 moving that VESSEL from the LEASED AREA to any other place within the MOORING AREAS in order to maintain or repair the LEASED AREA, or for any other reasonable cause whatsoever;

11.2 providing the SERVICES to the LEASED AREA and/or that VESSEL moored at the LEASED AREA;

11.3 inspecting, maintaining, repairing or altering the LEASED AREA; and/or

11.4 inspecting and/or repairing that VESSEL moored at the LEASED AREA.

12. **RESTRICTIONS ON RIGHTS OF LESSEE**

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

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

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

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

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

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

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

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

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

12.4 Should –

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

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

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

13. **INITIAL PAYMENT**

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

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

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

13.4 The LESSEE shall not be entitled to set-off against the INITIAL PAYMENT any ARREAR RENTAL, SERVICE CHARGE or other amount payable by him.

13.5 The LESSEE shall not be entitled to any interest on the INITIAL PAYMENT.

13.6 Should the INITIAL PAYMENT be or become less than the amount of 3 months' SERVICE CHARGES due to any increase of the SERVICE CHARGES, then the INITIAL PAYMENT shall be increased to the amount of 3 months' SERVICE CHARGES and the LESSEE shall be obliged to forthwith pay the shortfall to the LESSOR.

14. **BREACH**

14.1 Should the LESSEE –

14.1.1 fail to pay any amount due by the LESSEE in terms of this AGREEMENT on the due date and remain in default for a period not less than 3 days after being notified in writing to remedy the default, by the LESSOR;

14.1.2 commit any breach of the CONDUCT RULES and fail to remedy such breach within a period of 7 days after being notified to do so by the LESSOR, the ASSOCIATION, the MANAGER or any of their respective representatives;

14.1.3 commit any other breach of any terms of this AGREEMENT and fail to commence remedying that breach within a period of 3 days after being notified in writing to do so by the LESSOR and fail to complete the remedying of such breach within a reasonable time;

14.1.4 fail to pay the ANNUAL RENTAL on the due date thereof during any calendar year of this AGREEMENT after the LESSOR has, during such year, given the LESSEE notice under clause 14.1.1 on more than two occasions;

14.1.5 repeatedly breach any of the terms of this AGREEMENT in such manner so as to justify the LESSOR in holding that the LESSEE'S conduct is inconsistent with the intention or ability of the LESSEE to carry out the terms of this AGREEMENT;

14.1.6 repeatedly breach any of the provisions of the CONDUCT RULES in such a manner as to justify the LESSOR or the ASSOCIATION in holding that the LESSEE'S conduct is inconsistent with the intention or ability of the LESSEE to carry out the terms of the CONDUCT RULES; or

14.1.7 commit an act of insolvency if the LESSEE is a natural person, and if the LESSEE is an artificial person, the LESSEE commits an act which would have been an act of insolvency, were the LESSEE a natural person;

then and in any one of such events the LESSOR shall, without prejudice to its rights to claim damages or to its right to eject the LESSEE from the premises or to any other claim of any nature whatever that the LESSOR may have against the LESSEE, as a result thereof –

14.1.8 be entitled to cancel this AGREEMENT;

14.1.9 in the case of 14.1.3, be entitled to remedy such breach and immediately recover the total cost incurred by the LESSOR in so doing from the LESSEE; and/or

14.1.10 enter upon the LEASED AREA and any VESSEL moored at the LEASED AREA to take such action as may be required to remedy the breach.

14.2 The LESSOR shall, in the event of a breach by the LESSEE, have the right immediately to re-enter upon and take possession of the LEASED AREA and to eject the LESSEE and/or any other person or persons from the LEASED AREA. Any cancellation, re-entry or ejectment shall, however, in no way prejudice any claim which the LESSOR may then or thereafter have against the LESSEE for any ANNUAL RENTAL or SERVICE CHARGES or other amounts due by the LESSEE and/or for damages or for any other breach of any of the terms and conditions of this AGREEMENT, and the LESSOR shall in no way be liable to compensate the LESSEE for any damage he or she may suffer by reason of any cancellation, re-entry or 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 this AGREEMENT expire, terminate or be cancelled for whatever reason, the LESSEE and all persons claiming a right of occupation through the LESSEE shall vacate the LEASED AREA before 12h00 on the effective date of such expiry, termination or cancellation (as the case may be).

14.5 Nothing in this 14 shall derogate from or in any way diminish the right of the LESSOR to institute proceedings in any court of competent jurisdiction for recovery of any money due by the LESSEE arising from any cause of action whatsoever, or for any other relief.

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

15. ADJUDICATION

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

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

15.3 The adjudication shall be held –

15.3.1 at Victoria, Mahé, Republic of Seychelles;

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

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

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

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

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

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

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

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

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

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

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

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

15.10 The provisions of this 15 –

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

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

16. CAPACITY OF SIGNATORY

16.1 The signatory hereby consents to the conclusion of this AGREEMENT and agrees that in the event that the LESSEE claims that the signatory has the necessary capacity and/or authority to sign this AGREEMENT on the LESSEE'S behalf, the signatory shall, at the election of the LESSOR, for all purposes, be deemed to be bound as surety and co-principal debtor *in solidum* (see ANNEXURE A) with the LESSEE to the LESSOR and be liable for the due and punctual 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 (see ANNEXURE A) and division, the meaning and effect of which the signatory acknowledges to understand and to which the signatory agrees.

16.2 No variation or amendment or novation of this AGREEMENT shall be subject to the consent of the signatory, or shall prejudice the signatory's obligations undertaken in terms of this 16, the object being that the signatory shall at all times

remain liable, even if this AGREEMENT is varied or amended or novated and even if the LESSEE is granted an indulgence by the LESSOR.

17. NOTICES AND *DOMICILIUM*

17.1 The PARTIES choose as their *domicilium citandi et executandi* (see ANNEXURE A) and as the addresses at which all processes and notices arising out of or in connection with this AGREEMENT, its breach or termination may validly be served upon or delivered to the PARTIES –

17.1.1 the LESSOR – the address set out in A.2 of the CONTRACT SCHEDULE; and

17.1.2 the LESSEE – physical addresses, facsimile number or email address specified in B5 and B6 of the CONTRACT SCHEDULE, or at the physical address of the DWELLING of the LESSEE; or

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

17.2 Any notice given in terms of this AGREEMENT shall be in writing and shall –

17.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

17.2.2 if delivered by recognised international courier service, be deemed to have been received by the addressee on the first business day following the date of such delivery by the courier service concerned; and

17.2.3 if transmitted by facsimile, be deemed to have been received by the addressee one day after despatch.

17.3 For the purpose of this 17 if a notice is received on a day that falls on a Saturday, Sunday or statutory public holiday generally recognised in the Republic of Seychelles, such notice will be deemed to be received on the next day that is not a Saturday, Sunday or statutory public holiday generally recognised in the Republic of Seychelles.

17.4 Notwithstanding anything to the contrary contained in this AGREEMENT, a written notice or communication actually received by one of the PARTIES from the other, shall be adequate written notice or communication to such PARTY.

18. MISCELLANEOUS

18.1 warranty of authority

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

18.2 further assurances

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

18.3 payment and interest

18.3.1 All payments in terms of or arising out of this AGREEMENT (including the payment of the ANNUAL RENTAL, the SERVICE CHARGES and any other amount due by the LESSEE) shall be made free of bank exchange, commission and all other deductions to the PARTY entitled thereto.

18.3.2 Neither PARTY shall have the right to defer, adjust or withhold any payment due to the other, in terms or arising out of this AGREEMENT, or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.

18.3.3 All amounts due by one PARTY to the other (including damages) in terms of or arising out of this AGREEMENT shall, unless paid on due date, bear interest from the due date to date of payment.

18.3.4 Such interest shall be –

18.3.4.1 calculated at the INTEREST RATE; and

18.3.4.2 capitalised monthly in arrear on the balance due.

18.3.5 If payment is demanded of a PARTY of any amount in terms of or arising out of this AGREEMENT, and the PARTY of whom demand is made disputes their obligation to make payment, that PARTY will be entitled to make the payment under protest and to institute action therefor and, if successful, to recover interest thereon calculated at the INTEREST RATE.

18.4 **LESSOR'S hypothec**

Any VESSEL or other movable goods on the LEASED AREA shall be subject to the LESSOR'S hypothec as security for any ANNUAL RENTAL, SERVICE CHARGES and other amounts due and payable by, and any other obligation of the LESSEE, and the LESSOR shall at any time, and from time to time as and when such ANNUAL RENTAL, SERVICE CHARGES or other amounts are due and payable, or such other obligation is to be fulfilled by the LESSEE, be entitled to take possession of the VESSEL and any other movable goods on the LEASED AREA.

18.5 **independent advice**

Each of the PARTIES hereto acknowledge that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this AGREEMENT, and that they have either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the PARTIES hereto acknowledge that all of the provisions of this AGREEMENT and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the PARTIES in connection with this AGREEMENT.

18.6 **whole agreement**

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

18.7 **variation**

No addition to or variation, consensual cancellation or novation of this AGREEMENT, and no waiver of any right arising from this AGREEMENT or its breach or termination, shall be of any force or effect unless reduced to writing and signed by both PARTIES, subject to the proviso that the ASSOCIATION shall be entitled, at any time, to vary the terms of this AGREEMENT in any manner approved by way of a special resolution at a meeting of members of the ASSOCIATION. A facsimile or any addition to or variation, consensual cancellation or novation of this AGREEMENT duly signed by both PARTIES shall constitute a valid addition, variation, cancellation or novation (as the case may be).

18.8 **representations by LESSOR**

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

18.9 **relaxation**

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

18.10 **severability**

The agreements and undertakings of PARTIES contained in this AGREEMENT shall each be construed as an agreement and undertaking independent of any other provision of this AGREEMENT. The PARTIES hereby expressly agree that it is not the intention of any PARTY to violate any public policy, statutory or other applicable law, and that if any sentence, paragraph, clause or combination of the same is in violation of the laws of the Republic of Seychelles, such sentence, paragraph, clause or combination of the same alone shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this AGREEMENT shall remain binding upon the PARTIES hereto. Notwithstanding the aforesaid, in the event of any of the provisions of this AGREEMENT being claimed by the LESSEE to be unenforceable or declared as being unenforceable by an arbitrator or any court of competent jurisdiction, the LESSOR shall have the right, in its sole and absolute discretion, to resile from this AGREEMENT by written notice to the LESSEE to that effect.

18.11 **conflict**

In the event of any dispute, disagreement, notification or proceedings and in the interpretation or application of any of the provisions of this AGREEMENT, the LESSOR'S averments shall be accepted as *prima facie* (see ANNEXURE A) proof,

and the LESSEE shall be required to prove the contrary, failing which the averments of the LESSOR shall be deemed to be correct.

18.12 **costs**

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

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

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