



THE HEROLDS BAY

LUXURY APARTMENTS

AGREEMENT OF SALE

**1 SCHEDULE**

Unless inconsistent with the context, words and phrases shall have the meanings set out as follows:-

**1.1 Seller:**

Name: **Fifth Season Investments 67 Pty Ltd**

Herein Represented by: *(Duly Authorised)*

Registration Number: 2005/008135/07

Address: c/o Millers Incorporated  
Beacon House  
123 Meade Street  
George  
6529

Tel. +27 (0)44 874 1140

Fax: +27 (0)86 517 8814

Email: trevor@millers.co.za

**1.2 Purchaser(s):**

Name: \_\_\_\_\_

If Entity, Represented by: *(Duly Authorised)*

ID or Registration Number: \_\_\_\_\_

Marital Status: \_\_\_\_\_

If Married, Tick one Box<sup>1</sup>:  ANC  C of P

Home Address: \_\_\_\_\_

Entity Address: \_\_\_\_\_

Tel. + \_\_\_\_\_

Tel. + \_\_\_\_\_

Fax: + \_\_\_\_\_

Email: \_\_\_\_\_ @ \_\_\_\_\_

## 1.3 Property:

Unit No \_\_\_\_ being Section \_\_\_\_ in the Sectional Title Scheme number SS 608/2008 known as "THE HEROLDS BAY", situate in the Municipality and Administrative District of GEORGE, Province of the Western Cape in extent 4423 m<sup>2</sup>, together with an undivided share in the common property, held by Certificate of Registered Sectional Title Number \_\_\_\_\_, with the Exclusive Use Area(s):

|              |            |       |
|--------------|------------|-------|
| Parking Bay: | <b>P :</b> | _____ |
| Storeroom:   | <b>SR:</b> | _____ |
| Patio:       | <b>PA:</b> | _____ |

## 1.4 Purchase Price:

|                         |           |  |
|-------------------------|-----------|--|
| Deposit Amount:         | <b>R:</b> | _____  |
| <i>Deposit Payable:</i> |           | <i>Within 7 (seven) days of Signature of the Agreement</i> |

|                            |           |                                    |
|----------------------------|-----------|------------------------------------|
| Balance:                   | <b>R:</b> | _____                              |
| <i>Balance Payable by:</i> |           | <i>On transfer of the Property</i> |

|               |           |       |
|---------------|-----------|-------|
| <b>Total:</b> | <b>R:</b> | _____ |
|---------------|-----------|-------|

|                  |           |       |
|------------------|-----------|-------|
| 1.5 Loan Amount: | <b>R:</b> | _____ |
|------------------|-----------|-------|

|                                  |       |
|----------------------------------|-------|
| 1.6 Name of Lending Institution: | _____ |
|----------------------------------|-------|

|                             |           |       |
|-----------------------------|-----------|-------|
| 1.7 Estimated Monthly Levy: | <b>R:</b> | _____ |
|-----------------------------|-----------|-------|

|                      |       |
|----------------------|-------|
| 1.8 Occupation Date: | _____ |
|----------------------|-------|

|                            |           |       |
|----------------------------|-----------|-------|
| 1.9 Occupational Interest: | <b>R:</b> | _____ |
|----------------------------|-----------|-------|

|                     |       |
|---------------------|-------|
| 1.10 Transfer Date: | _____ |
|---------------------|-------|

|                     |       |
|---------------------|-------|
| 1.11 Selling Agent: | _____ |
|---------------------|-------|

|                         |           |  |
|-------------------------|-----------|--|
| 1.12 Agents Commission: | <b>R:</b> | (being _____ % of Net Price)   |
|                         |           | <i>Payable on transfer of the Property from proceeds of the Sale</i> |

|                          |  |
|--------------------------|--|
| 1.13 Seller's Attorneys: | Millers Incorporated<br>Beacon House, 123 Meade Street, George, 6529 |
|--------------------------|--|

|                 |                   |
|-----------------|-------------------|
| Account Name:   | Millers Attorneys |
| Bank:           | Absa Bank         |
| Branch:         | George            |
| Account Number: | 010 206 609 84    |
| Branch Number:  | 632 005           |
| Swift Code:     | Absa ZA JJ        |

1.13 This Agreement, when signed by the Purchaser shall constitute an offer, open for acceptance by the Seller until 17h00 on the 7<sup>th</sup> business day from date of signature by the Purchaser, and failing which acceptance, the offer shall lapse.

## 2 SALE

- 2.1 The Seller hereby sells and the Purchaser hereby purchases the Property, together with an undivided share in the common property in the land and building or buildings as shown and more fully described on the said Sectional Plan, apportioned to the said Section in accordance with the participation quota of the said Section specified in the Schedule endorsed on the said Sectional Plan, which sale is subject to the Terms and Conditions of Sale hereunder.
- 2.2 It is recorded that the Property carries with it the right to the exclusive use and occupation of the areas set out in 0 hereof which are to be ceded simultaneously with the transfer.

### FOR THE PURCHASER:

THUS DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

—

\_\_\_\_\_  
*Purchaser (Print)*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Witness (Print)*

\_\_\_\_\_  
*Signature*

### FOR THE AGENT:

THUS DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

—

The benefits in terms of this Offer to Purchase is hereby accepted by:-

\_\_\_\_\_  
*Agent (Print)*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Witness (Print)*

\_\_\_\_\_  
*Signature*

### FOR THE SELLER:

THUS DONE and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

—

\_\_\_\_\_  
*Seller (Print)*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Witness (Print)*

\_\_\_\_\_  
*Signature*

### 3 INTERPRETATION

- 3.1 Unless inconsistent with the context, words and phrases shall have the meanings set out as follows:
- |        |                       |  |
|--------|-----------------------|--|
| 3.1.1  | "the Act"             | being the Sectional Titles Act No. 95 of 1986 as amended and includes the regulations framed there under or as amended from time to time;  |
| 3.1.2  | "the Building(s)"     | the Building(s) upon the land more fully known as THE HEROLDS BAY.   |
| 3.1.3  | "Business day"        | any day other than a Saturday, Sunday or Public Holiday.   |
| 3.1.4  | "Common Property"     | the portions of the Development not forming part of any Section in the Development in terms of the Act and excluding any exclusive use areas.  |
| 3.1.5  | "Exclusive Use Areas" | the areas demarcated for exclusive use, and as set out in 1.3 of the Schedule, and depicted as such in the Exclusive Use Area Plan filed in terms of section 27(a) of the Act and the conduct rules.       |
| 3.1.6  | "Occupation Date"     | the date set out in 1.8 of the Schedule.   |
| 3.1.7  | "the Prime Rate"      | the publicly quoted basic rate of interest per annum as certified by any officer of the Seller's bankers lends in South African Rand on unsecured overdraft to first class corporate borrowers in general. |
| 3.1.8  | "the Property"        | the Unit(s) together with any Exclusive Use Area and Parking Area hereby purchased, as set out in 1.3 of the Schedule.   |
| 3.1.9  | "the Schedule"        | the Schedule being the first three pages excluding the cover page of this Agreement.   |
| 3.1.10 | "Transfer Date"       | the anticipated date of registration of transfer of the Property into name of the Purchaser, as set out in 1.10 of the Schedule.   |
- 3.2 In this Agreement, words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa.
- 3.3 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 3.4 This Agreement shall be binding on the estates, heirs, executors, administrators, liquidators, trustees or assigns of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, trustees, assigns or liquidators, as the case may be.
- 3.5 If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any parties, notwithstanding that it is only in the definition (interpretation) clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 3.6 The Schedule and the annexures hereto are deemed to be incorporated in and form part of this Agreement.
- 3.7 Words or expressions defined in the Act shall have the meanings therein defined.

## 4 PURCHASE PRICE AND PAYMENT

- 4.1 The Purchase Price inclusive of VAT is stated in clause 1.4.
- 4.2 The Deposit is payable in cash on or before the date entered in Clause 1.4 to the Seller's attorneys and will be invested in an interest bearing Client Trust account, which interest will accrue to the Purchaser. The Deposit will be paid to the Seller on registration of transfer.
- 4.3 If the Purchaser intends to borrow all or part of the Balance of the Purchase Price,
- 4.3.1 The Purchaser shall within 14 (Fourteen) business days of Signature of the Agreement of Sale, provide the Seller's attorneys with satisfactory evidence of approval of a mortgage or commercial loan from a South African bank for the full amount to be borrowed;  
and
- 4.3.2 The Purchaser shall subsequently provide the Seller's attorneys with an irrevocable guarantee for payment of the loan amount of the Purchase Price issued by a registered South African financial institution and in terms acceptable to the Seller's Attorneys not less than 60 (sixty) days prior to the date of registration of transfer;
- 4.4 If the Purchaser intends to pay all or part of the Balance of the Purchase Price in cash,
- 4.4.1 the Purchaser shall provide the Seller's attorneys with an irrevocable guarantee for payment of the cash balance of the Purchase Price within 14 (Fourteen) days of signature of the Agreement of Sale, issued by a registered South African financial institution and in terms acceptable to the Seller's Attorneys.
- 4.5 It is recorded that the Purchase Price is inclusive of VAT at 14%. In the event of there being any variation in the rate of VAT payable by the Seller, the Purchase Price shall increase or decrease accordingly.
- 4.6 All or any payments towards the Purchase price and related costs shall be effected by the Purchaser to the Seller's attorneys free of exchange without deduction or set-off.

## 5 SUSPENSIVE CONDITIONS

- 5.1 This offer is conditional upon the Purchaser being granted a loan from a registered credit provider/ financial institution in the sum set out in clause 1.5 above, which loan is to be granted within 14 (FOURTEEN) business days of acceptance hereof or such other reasonable period of time the Seller, in their sole discretion may in writing, allow.
- 5.2 This Agreement shall be of no force or effect should this condition precedent not be fulfilled within 14 (Fourteen) business days of the date of signature hereof.
- 5.3 The loan shall be deemed to have been granted in written form by the credit provider/financial institution, as soon as the credit provider/financial institution issues the prescribed pre-agreement statement and a quotation in the prescribed form, as set out in Section 92(2) of the National Credit Act of 2005, for the Purchaser's signature, or any other written document confirming that a bond has been approved (even if only in principle), and, whether or not the Purchaser actually agrees to such specific terms and conditions set by the credit provider/financial institution (unless the Purchaser qualifies any specific terms or conditions upon which the bond must be granted, in this Agreement) and whether or not notice of such bond approval is conveyed to the Seller or his / her agent within the aforesaid 14 (FOURTEEN) business days.
- 5.4 The Purchaser undertakes to use his best endeavors to ensure that the loan is granted timeously and undertakes to sign all such documentation and to co-operate with the Seller fully in order to ensure that the said loan is approved. The Purchaser hereby authorizes the Selling Agent to apply for this loan on his behalf.

## **6 OCCUPATION**

- 6.1 Occupation of the Property shall be given to and taken by the Purchaser on the date set out in 1.8 of the Schedule.
- 6.2 Should registration of transfer of the Property take place after the Occupation Date, the Purchaser shall pay the Occupational Interest at the rate set out in 1.9 of the Schedule, monthly in advance reckoned from the Occupation Date, the first payment to be made on the Occupation Date and subsequent payments to be made on the first day of each and every consecutive month.
- 6.3 All monies payable by the Purchaser in terms of this Agreement, which are unpaid on due date, shall bear interest calculated from due date to the actual date of payment at the prime rate plus 3 (three) percentage points.
- 6.4 All payments made by the Purchaser shall be allocated first to the payment of interest, then to the payment of any other monies due in terms hereof and finally to the reduction of the Purchase Price

## **7 RISK**

- 7.1 Save as may hereinafter be provided, all benefits and risks of ownership in the Property shall pass to the Purchaser upon date of registration of transfer of the unit from which date the Purchaser shall be entitled to the rent, if any, accruing from the Unit and shall further be liable for levies and other imposts accruing thereon. The Purchaser shall refund to the seller a proportionate share of any such levies or other amounts paid by the Seller in advance in respect of the period from the said date of occupation forthwith upon transfer having been registered.

## **8 VOETSTOOTS**

- 8.1 The sale of the Property is voetstoorts and the Seller will not be liable for any latent or other defects in the property. The parties hereto acknowledge that the Seller has made no representations, or any other person on his behalf, to the Purchaser or any other person on his behalf, relating to the Property other than the representations contained herein. The Purchaser hereby acknowledges that he has inspected the Property and has satisfied himself as to its condition.

## **9 REGISTRATION AND TRANSFER**

- 9.1 The Seller's Attorneys shall effect transfer of the Property in the name of the Purchaser on the date set out in 1.10 of the Schedule, or as close thereto as is possible.
- 9.2 The Purchaser shall sign all documents and do all things necessary to pass transfer immediately upon being called to do so by the Seller's attorneys.

## **10 TRANSFER COSTS**

- 10.1 The Purchaser shall pay the costs of the Seller's Attorneys incidental to the registration of transfer and disbursements (including but not limited to transfer duty) necessary to effect registration together with the applicable Value Added Tax thereon forthwith upon being called upon to do so by the Seller's Attorneys.

## **11 EXCLUSIVE USE AREAS**

- 11.1 The Property and / or the Purchaser shall be entitled to the Exclusive Use Areas as set out in 1.3 of the Schedule and defined in 3.1.5 above.

## 12 BROKERAGE

- 12.1 The parties hereto acknowledge that the Selling Agent was the effective cause of this sale and the Purchaser warrants that he was not introduced to the Property by any other agent.
- 12.2 The Seller shall pay to the Selling Agent a commission in the amount of R\_\_\_\_\_ on date of registration of the property into the name of the Purchaser, and the Seller hereby authorises the Seller's attorneys to pay such commission to the Selling Agent from the proceeds of this sale.

## 13 ELECTRICAL CERTIFICATE

- 13.1 The Seller shall prior to the transfer date have the whole of the electrical installation of the Property examined by an Accredited Person who is registered as such with the Electrical Contracting Board of South Africa.
- 13.2 If any fault or defect is detected after an examination by the said Accredited Person, the Seller undertakes to have those defective parts of the electrical installation replaced at his own expense.
- 13.3 Upon the Seller furnishing the Purchaser with a Certificate of Compliance from the said Accredited Person that the whole electrical installation complies with the provisions of Regulation 4(1) of the Electrical Installation Regulations and that the installation is reasonably safe, the Purchaser shall have no claim whatsoever against the Seller and no further liability in this regard shall rest upon the Seller.

## 14 BREACH BY PURCHASER

- 14.1 If the Purchaser is in breach of this agreement, the Seller shall serve notice in writing permitting the Purchaser 7 (Seven) business days to make good the breach failing which the Seller shall thereafter be entitled, but not obliged, without prejudice to any other rights or remedies which the Seller may have in law, including the right to claim damages:
- 14.1.1 To hold the Purchaser bound to this agreement, and to enforce performance of the obligations of the Purchaser; or
- 14.1.2 To cancel this agreement forthwith and to receive and retain the Deposit and Interest accrued which the Purchaser shall forfeit on account of liquidated damages in the said deposit.
- 14.2 Should the Seller take steps against the Purchaser pursuant to a breach by the Purchaser, then without prejudice to any other rights which the Seller may have, the Seller shall be entitled to recover from the Purchaser:
- 14.2.1 all legal costs incurred by it including attorney and own client charges, tracing fees and such collection commission as the Seller is obliged to pay to its attorneys;
- 14.2.2 interest on all amounts outstanding from time to time under the Sale Agreement at a rate equal to 3% (three per centum) above the prime rate. In the event that interest is payable, all amounts paid by the Purchaser to the Seller shall be allocated firstly to interest and thereafter to the principal amounts due.

## 15 DOMICILIA AND NOTICES

- 15.1 The Parties hereby choose *domicilia citandi et executandi* for all purposes under this agreement at their respective addresses entered in clause 1.
- 15.2 Any notice to any Party shall be addressed to it at its *domicilium* and sent by registered post, delivered by hand or transmitted by fax.
- 15.3 A notice, which is sent by registered post in a correctly addressed envelope to the address specified above, will be deemed to have been received (unless the contrary is proved) within 7 (Seven) days from the date it was posted.
- 15.3.1 A notice delivered by hand to a responsible person during ordinary business hours at the above address, will be deemed to have been received on the day of delivery;
- 15.3.2 A fax sent to the specified fax number will be deemed, unless the contrary is proved, to have been received within 4 (four) hours of transmission if it is transmitted during normal business hours or by no later than 13h00 on the first business day after it is transmitted if it is transmitted outside normal business hours.



## **16 GENERAL CONDITIONS**

- 16.1 No alterations, cancellation, variation of or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this Agreement, or their duly authorised representatives.
- 16.2 No extension of time, leniency or indulgence granted by the Seller to the Purchaser shall be deemed in any way to effect, prejudice or derogate from the rights of the Seller in any respect under this Agreement, nor shall it in any way be regarded as a waiver of the Seller's rights hereunder, nor a novation of this Agreement.
- 16.3 The parties acknowledge that this Agreement contains the entire Agreement between them and that no other conditions, stipulations, undertakings, warranties and / or representations whatsoever have been made by either party or their agents other than as set forth in this Agreement.

## **17 JURISDICTION**

- 17.1 For the purposes of all or any proceedings hereunder, the parties consent to the jurisdiction of the Magistrate's Court, notwithstanding that such proceedings would otherwise be beyond the jurisdiction of such Court.
- 17.2 This clause shall be deemed to constitute the required written consent conferring the jurisdiction upon the said Court pursuant to section 45 of the Magistrate's Court Act of 1944 or any amendment or re-enactment thereof, provided that either party shall have the right in its sole option and discretion to institute proceedings in any other Court of competent jurisdiction.

## **18 JOINT PURCHASERS**

- 18.1 Insofar as there may be more than one Purchaser of the Property sold under this Agreement of Sale, the liability of each of the Purchasers shall be joint and several and in solidum.

## **19 COMPANY / CLOSE CORPORATION TO BE FORMED**

- 19.1 In the event of the Purchaser being a Company or a Close Corporation to be formed, the signatory for the Purchaser shall be personally liable for all the obligations of the Purchaser as though he contracted in his personal capacity if:
- 19.1.1 the Company or Close Corporation is not formed within 60 (sixty) days from the date of signature of the Sale Agreement; and
- 19.1.2 the Company or Close Corporation having been formed, fails to adopt and ratify unconditionally this transaction without modification within 7 (Seven) days of date of incorporation;
- 19.2 Upon timeous formation of the Company, Close Corporation and due and timeous ratification and adoption of this transaction, the said signatory shall become and be liable to the Seller as surety for and co-principal debtor with the Company, Close Corporation for its obligations as Purchaser under the terms of the Sale Agreement under renunciation of the benefits of excussion and division.

## **20 COMPANY / CLOSE CORPORATION / TRUST – FORMED**

- 20.1 In the event of the Purchaser being a Company or a Close Corporation or The Trustees for the time being of a Trust, the signatory for the Purchaser by his signature hereto binds himself to the Seller as surety and co-principal debtor in solidum for the Purchaser under renunciation of the benefits of excussion and division for the performance by the Purchaser of all the Purchaser's obligations in terms of this Agreement

## 21 NOMINATION

- 21.1 If the Signatory reserves the right to nominate a Purchaser, he shall be entitled to nominate any third party to be the Purchaser provided that such nomination:
- 21.1.1 is made by no later than midnight on the date of signature hereof;
  - 21.1.2 be made in a form of written notice and acceptance delivered to, and to the satisfaction of, the Seller;
- 21.2 Should the Purchaser validly nominate a nominee in terms of the foregoing then:
- 21.2.1 all reference to the Purchaser in this Agreement shall be deemed to be a reference to such nominee, save that there shall be no further right of nomination;
  - 21.2.2 all rights of the original Purchaser (the signatory to this Agreement as Purchaser) in and to the deposit and all other monies paid in terms hereof shall be deemed to be ceded to the nominee;
  - 21.2.3 the original Purchaser shall be liable in solidum with the Purchaser (his nominee) as surety and co-principal debtor, under renunciation of the benefits of excussion and division, for all the obligations of the Purchaser (the nominee) to the Seller arising out of or in connection with this Agreement.
- 21.3 Should the Purchaser fail to nominate a Purchaser within the permitted time, he shall not thereafter be entitled to nominate a Purchaser but shall thereafter be bound to perform all the obligations of the Purchaser.

## 22 BODY CORPORATE

- 22.1 The Purchaser acknowledges that he / she / it is aware thereof that on the Transfer Date the Purchaser will become a member of the Body Corporate, and as such will be obliged to pay levies to the Body Corporate from the Transfer Date, and be subject to the Management Rules and Conduct Rules of the Body Corporate, and as contemplated in terms of the Act, and as amended and substituted by the Seller upon opening of the Sectional Title register in respect of The Herolds Bay.

## 23 RETENTION OF SECTIONS BY THE SELLER (DEVELOPER), CALCULATION OF PARTICIPATION QUOTA AND PAYMENT OF LEVIES

- 23.1 The parties record that the Seller will retain certain sections and exclusive use areas of the development, and ultimately of the Sectional Title Scheme, as are necessary for the operation of the hotel and the development as whole. The parties agree that the Seller shall be entitled to sell the retained sections and exclusive use areas to a third party in its sole discretion and the parties' further record that the conditions of this agreement shall apply mutatis mutandis in the event of such a sale.
- 23.2 Without in any way limiting the above, the parties record that the Seller will specifically retain the restaurant, and that the provisions of this clause 23 shall apply mutadis mutandis to the restaurant.
- 23.3 The sections retained by the Seller in terms of this paragraph will be nil rated for the purposes of determining the Participation Quota. It is also agreed that all exclusive use areas retained by the Seller will be nil rated for the purposes of determining the Participation Quota.
- 23.4 The Purchaser irrevocably agrees that apart from the normal levies imposed by the Body Corporate, the levy will include a charge by the operator to cover all expenses incurred by the operator in providing the services to which all Purchasers (owners) will be entitled to benefit from.