

ANNEXURE L



HARBOUR BAY

VILLAGE

EXCLUSIVE RETIREMENT LIVING

HARBOUR BAY VILLAGE

AGREEMENT OF LEASE

HARBOUR BAY VILLAGE

AGREEMENT OF LEASE

Entered into by and between:

(Identity No. _____)

(hereinafter referred to as the "Lessor")

And

(Identity No. _____)

(Identity No. _____)

(hereinafter referred to as the "Lessee")

The Lessor hereby leases to the Lessee the residential property situated at and known as _____ **(the "property")**, on the terms and conditions contained herein.

1. HARBOUR BAY VILLAGE EXCLUSIVE RETIREMENT VILLAGE

The Lessee acknowledges and agrees to the following:

- 1.1. Harbour Bay Village is an exclusive sectional title retirement village with an age restriction of 50 (fifty) years old.
- 1.2. All residents of the village are expected to abide by the Body Corporate Rules, including the Conduct Rules and Management Rules, failure to do so will be considered breach of contract in terms of clause 14 below.
- 1.3. This lease agreement is subject to the Body Corporate's approval, which approval shall not be unreasonably withheld.
- 1.4. It is compulsory for all tenants to undergo medical assessments within 14 (fourteen) days of completing the lease agreement with the Owner of the property. The Medical Assessment will be carried out by the Harbour Bay Village Care Provider to determine the level of care required by the Tenant.
- 1.5. The Estate Manager / Managing Agent shall consider the application for lease after the medical assessment has been completed and shall give its decision within seven working days (excluding weekends and public holidays) of application by the Owner of the Property.
- 1.6. The Estate Manager / Managing Agent may require a face to face interview with the tenant prior to approving a lease agreement.
- 1.7. The Owner of the property hereby cedes all medical benefits he is entitled to by virtue of his ownership of the Property to the Tenant for the duration of the Lease Agreement and the Tenant hereby accepts such medical benefits.

2. CONSUMER PROTECTION ACT (the "CPA")

The CPA, Act No. 68 of 2008 will not apply to the lease agreement entered into by juristic persons, regardless of their asset value or annual turnover. Section 14 of the CPA will only apply to lease agreements entered into for a fixed term.

In complying with the CPA, together with the Regulations thereto, certain portions of this lease agreement have been printed in ***bold italics***. The reason for this is to specifically draw the Lessee's attention to these clauses as they either:

- (i) Limit in some way the risk or liability of the Lessor or any other persons;
- (ii) Constitute an assumption of risk or liability by the Lessee;
- (iii) Impose an obligations on the Lessee to indemnify the Lessor or any other persons for some cause; or
- (iv) Is an acknowledgement of a fact by the Lessee.

The Lessee is required to ensure that before signing this lease agreement he has read, understands and agrees to the terms hereof and not only the sections in ***bold italics***.

In the event that the CPA is, for any reason whatsoever, found not to be applicable to this lease agreement, the Lessee's rights to the cooling off period and paragraph 1.1 hereof, do not apply to this lease agreement.

1. DIRECT MARKETING AND COOLING OFF

1.1 In terms of Section 16 of the CPA, if this lease agreement was concluded as a result of direct marketing, the Lessee has the right to cancel the agreement without reason or penalty, by written notice, within 5 (five) business days after the agreement has been concluded or after occupation of the property has been taken.

1.2 ***The Lessee warrants that this lease agreement has not been the result of direct marketing and the Lessor enters into this agreement in reliance of such warranty.***

2. **LEASE**

- 2.1 *In the event that the Lessor is, for any reason beyond his control, unable to provide the Lessee with vacant occupation of the property on the commencement date of this lease agreement, the Lessor shall not be liable for any damages suffered by the Lessee as a result thereof.*
- 2.2 The Lessee shall either have the option to wait for vacant occupation to be available or to cancel the lease agreement without penalty. In the event that the Lessee elects to wait for vacant occupation, the Lessee shall not be liable for rental or any other amounts for the period during which he was unable to take vacant occupation of the property.
- 2.3 In the event that the Lessee elects to wait for vacant occupation, the Lessor undertakes to advise the Lessee as soon as reasonably possible of the date upon which vacant occupation may be taken.
- 2.4 The Lessor shall deliver the property to the Lessee in the same condition, reasonable wear and tear excepted, as at the date of the signing of this lease agreement.

3. **DURATION OF THE LEASE**

- 3.1 The lease shall be for a fixed period of _____ (_____) months, commencing on _____ and terminating on _____ at 17h00.
- 3.2 During the period of the lease and no earlier than 80 (eighty) business days and no less than 40 (forty) business days before the termination date, the Lessor or his duly appointed agent, shall send the Lessee written notice reminding him that the lease shall terminate on _____ 17h00.
- 3.3 The above notice shall advise the Lessee of the terms of this lease that will change in any way if the lease is to be renewed. The changes may relate to the rental, the new term, or any other conditions thereof.
- 3.4 In addition, the Lessor, or his duly appointed agent, shall advise the Lessee that the Lessee must, within 10 (ten) days of receipt of such notice, either:
- 3.4.1 accept the terms of the new lease as proposed by the Lessor;
- 3.4.2 reject the proposed terms and elect that the lease must finally terminate on the termination date, failing which the lease will not terminate at the end of the lease period but will continue on the new terms and conditions as proposed by the Lessor

in the notice, save that any period of renewal of the lease shall not apply and the lease will continue on a month-to-month basis and be capable of termination by either party giving the other party one months' notice of termination, provided that such notice is given on the last day of the month preceding the final month of lease. In the event that this lease agreement is not renewed for a further fixed period, the provisions of the CPA shall not be applicable.

3.4.3 In the event that the Lessee accepts the terms and conditions proposed by the Lessor and elects to continue with a further fixed period, the renewal hereof shall only be of force and effect once a renewal agreement or addendum hereto has been signed by both parties or their duly authorised agents, failing which, the provisions of 3.4.2 above shall apply. The acceptance in writing by the Lessee of the Lessor's proposed terms and conditions will not automatically give rise to a renewal of the lease agreement.

3.4.4 Notwithstanding the above, the Lessee shall have an option to renew this lease agreement for a further fixed period of _____(_____) months from the date of termination of the initial fixed period. The option may only be exercised by the Lessee if he has not, during the course of the initial period hereof, been in breach of any of the terms and conditions and provided that all rental and other payments are up to date.

3.4.5 The Lessee shall exercise the option by written notice to the Lessor or his duly authorised agent, such notice to be received no later than _____. In the event that the Lessee exercises the option, the rental will increase by ____% and the provisions hereof shall remain in full force and effect for the duration of the extended period, save that there shall be no further option to renew and the provisions of paragraphs 3.2, 3.3 and 3.4 shall apply to the extended period.

4. **RENTAL**

4.1 The rental payable by the Lessee to the Lessor for the property is the sum of R_____ (_____) per month, and the Lessee hereby acknowledges that such rental is reasonable. The rental shall be paid monthly in advance, on the first day of each and every month, free of bank charges and without deduction or set-off for any reason whatsoever. The rental shall be paid into the bank account nominated by the Lessor, the details whereof are:

Name of account holder: _____

Name of bank: _____

Branch name: _____

Branch Code: _____

Reference: _____

The Lessor shall be entitled to change the above bank account details by notifying the Lessee thereof in writing and on one month's written notice.

- 4.2 In the event that the rental is paid in cash, the Lessee shall be liable for any additional cash deposit fees incurred by the Lessor. The Lessor shall provide the Lessee with written receipts of all rental payments made in terms of Section 5(3)(a) and (b) of the Rental Housing Act, Act No. 50 of 1999 (the "RHA"). In the event that rental payments are effected by the Lessee by cheque, payment thereof must be made no less than 10 (ten) days prior to the first of each month so as to ensure that payment reflects in the Lessor's account on or before due date, failing which, the payment will be deemed to be late and **penalties as provided for herein will apply.**
- 4.3 The first months' rental shall become due and payable on _____ and the Lessee shall not be entitled to take occupation of the property, notwithstanding the date of commencement of the lease agreement, unless the deposit has been received by the Lessor.
- 4.4 The Lessee shall not, for any reason whatsoever, be entitled to withhold payment of the final months' rental or any portion thereof and to set such rental off against the deposit that is payable in terms hereof.
- 4.5 In the event that the Lessee attempts to apply a set-off of the final months' rental against the deposit, such act shall be deemed to be confirmation that the Lessee intends vacating the property and removing his goods therefrom without paying the final months' rental, in which case the Lessor shall be entitled to take immediate steps, without notice to the Lessee, to have his goods attached and removed from the property, to be held as security for payment of the final month's rental and/or any arrear rentals then owing by the Lessee.
- 4.6 Should the term of the lease agreement exceed the initial _____ (_____) month period, as agreed to in paragraph 3 above, then the rental shall automatically escalate by _____% (compounded), on _____ of each year.

5. **RATES**

- 5.1 The Lessor shall pay for all rates and/or levies due in respect of the property to the local authority, Body Corporate or Home Owners' Association.
- 5.2 In the event that the rates and/or levies in respect of the property are increased during the initial _____ (_____) month period of the lease agreement, the Lessor shall not be entitled to increase the rental payable in terms hereof. Should the lease be extended beyond the initial period by way of a renewal lease or addendum or if the lease continues on a month-to-month basis, the Lessor shall have the right to increase the rental by a percentage pro-rata to the rates or levy increase, which increase shall be in addition to any other increase in the rental agreed upon between the parties or as stipulated in 4.6 above.
- 5.3 The Lessor shall ensure that the municipal charges, levies, supply of services and relevant accounts in respect thereof are paid up in full at the date of commencement of this lease agreement, provided they are in receipt of the latest relevant accounts as at such date, failing which, the Lessor shall ensure that the relevant accounts are paid up within 7 (seven) days of receipt thereof.

6. **ELECTRICITY, WATER AND OTHER CHARGES**

- 6.1 The Lessee shall pay, as and when they become due, all charges for electricity and water, in respect of the property and shall make the necessary arrangements in respect of such payments with the Lessor or his duly appointed agents.
- 6.2 In the event that the Lessee fails to make payment of any amounts due in terms of 6.1 above and in the event that any services to the property are terminated, the Lessee shall be liable for any reconnection or other costs related to the re-supply of such services to the property.

7. **MAINTENANCE**

- 7.1 The Lessee shall be obliged, at all times, to maintain the property, its contents, fixtures and fittings in the same good order and condition as existed at the commencement date of this lease agreement and shall return same to the Lessor in such condition, fair wear and tear excepted, on termination of this lease agreement.

- 7.2 The Lessor shall maintain all external walls, roof coverings and other structural parts of the property in good order and repair throughout the duration of this lease agreement or any extended period thereof, provided however that in the event that the Lessee is in arrears with any payments due in terms of this lease agreement, such obligations shall be suspended until all and any arrear amounts have been paid in full.
- 7.3 ***The onus is on the Lessee to notify the Lessor timeously, in writing, of any defect/s in the external walls, roof coverings and other structural parts of the property and failing which, the Lessor shall not be liable for any loss or damages suffered by the Lessee which may arise as a result of any delay in notification.***
- 7.4 The Lessee's maintenance responsibilities shall include, but not be limited to, the maintenance, repair and/or replacement of all damaged door handles, locks, keys, glass, mirrors, light bulbs, window fasteners/latches, water taps, internal plumbing pipes, WCs, sinks, basins and the like and shall take good care of all paintwork, fitted carpets, wall paper, ceilings, floor coverings, fire places, curtain rods/rails and blinds, fair wear and tear excepted and shall be liable for the removal of all stains, scratches and marks found thereon during inspection by the Lessors or their duly appointed agent. The Lessee shall furthermore keep the property neat, clean and tidy and free from rubbish.
- 7.5 The Lessee shall not knowingly or negligently cause or allow to be caused any obstruction or blockage of or failure of any sewerage pipe, water pipe, drains, gutters or other supply equipment and installations serving the property and shall, at his own cost and expense, remove any obstruction or blockage which occurs as a result of the Lessee's actions or the actions of persons for whom he is responsible, whether as employees, invitees, guests or contractors. Any damage caused to any of the aforementioned equipment, installations or facilities caused by any of such actions, shall be repaired and/or made good at the Lessee's own costs and expense.

8. **OCCUPATION**

The property shall be used for residential purposes only and for no other purpose whatsoever. No more than ____ (_____) persons may occupy the property on a permanent or semi-permanent basis. The Lessee shall not cause or permit to be caused any disorderly conduct of whatsoever nature upon the property, nor permit the doing of any act, matter or thing in or about the property which shall constitute or cause a nuisance or inconvenience to the neighbours or any other person/s.

9. **INCOMING INSPECTION**

9.1 The parties hereto acknowledge that in terms of Section 5(3) of the RHA a joint incoming inspection has to be carried out by both parties or their duly authorised agents prior to the Lessee taking occupation of the property. This inspection shall take place on _____.

A list of defects found during the incoming inspection shall be compiled and signed by both parties or their duly authorised agents and shall be annexed to this lease agreement and marked as annexure "A". In the event that the Lessee fails to attend the incoming inspection on the agreed date, he will be deemed to have acknowledged that the property is in a good state of repair with no defects of any nature whatsoever on the date he takes occupation thereof.

9.2 A joint out-going inspection of the property will take place no later than 3 (three) days prior to the termination date of the initial period of this lease agreement, or prior to the termination date of any period by which this lease agreement is extended. The parties or their duly authorised agents shall prepare a list of defects found during the out-going inspection. Should the Lessor fail to attend the out-going inspection, he shall be deemed to have accepted that the property is returned in a good state of repair and he shall have no claim against the Lessee in respect of any damages and shall be obliged to refund to the Lessee his full deposit and interest accrued thereon.

10. **DEPOSIT**

10.1 The Lessee shall pay a deposit in the sum of _____ (_____) **(not less than (two) months rental)** on signature hereof into the Lessor's bank account reflected in paragraph 4.1 above. **The Owner shall transfer the deposit to the Harbour Bay Village Body Corporate which will be invested in an interest-bearing account, the interest rate to be no less than the interest rate applicable on a savings account in a recognised banking institution in South Africa.** The Lessee shall not be entitled to take occupation of the property until such time as the deposit has been paid in full.

- 10.2 The deposit and accrued interest thereon will be refunded, (in accordance with the provisions of Section 5(3) of the RHA), within 7 (seven) days of expiry of the lease agreement if there are no amounts payable by the Lessee to the Lessor in respect of damages and/or arrear payments or within 14 (fourteen) days of the date of restoration of the property to the Lessor in the event that there are any amounts payable to the Lessor in respect of damages and/or arrear payments, in which case such damages and/or arrear payments will be deducted from the deposit and accrued interest, the balance remaining, if any, being payable to the Lessee.
- 10.3 The Lessor shall be entitled, but not obliged, to apply the deposit or portion thereof towards payment of any arrear amounts payable by the Lessee during the term of this lease or any extended period thereof, without prejudice to his rights to take action against the Lessee for breach of contract.

11. **ALTERATIONS AND ADDITIONS**

- 11.1 The Lessee shall not make any alterations or additions, whether structural or otherwise, to the property or to any portion thereof, nor shall the Lessee interfere with the electrical installations other than those provided and approved by the Lessor in writing. The Lessee shall not affix or connect any electric lamps, motors or heaters other than those designed for use for the electric current supplied to the property. Any damage done to the electrical installations shall be rectified by the Lessee at his cost.
- 11.2 If the Lessor consents, which consent must be in writing, to any alterations, additions or improvements to the property or any portion thereof, ownership of such alterations, improvements or additions immediately vests in the Lessor and the Lessee shall have no right to compensation and any such alteration, addition or improvement shall not be removed from the property by the Lessee on termination of the lease agreement or any extended period thereof unless the Lessor gives his written consent to the removal thereof, in which case the Lessee shall remove the alterations, additions or improvements at his own cost and shall return the property to the same condition as existed prior to such alteration, addition or improvement being effected.
- 11.3 The Lessor may, at his discretion, call upon the Lessee to remove any alterations, additions or improvement to the property effected by him during the currency of

the lease agreement or any extension thereof and to reinstate the property to the same good order and condition as existed prior to the alterations, additions or improvements and in the event that the Lessee fails to do so, the Lessor shall be entitled to attend to the removal and reinstatement, the costs whereof shall be for the Lessee's account.

- 11.4 The Lessee shall be permitted to drive nails or screws into the walls or ceilings of the property for the purposes of hanging picture frames, mirrors and like hangings during the currency of the lease agreement: Provided however that prior to vacating the property he shall remove all such nails and/or screws and make good all walls or ceilings, reinstating same to the same condition as existed at the time of taking occupation of the property.

12. **PETS**

No Pets allowed on the premises.

13. **NO CESSION OR SUB-LEASE**

The Lessee shall not cede or assign this lease agreement, nor sub-let the property or any part thereof, nor part with possession of the property or any portion thereof without the written consent of the Lessor, which consent shall be entirely in the Lessor's discretion and on such terms and conditions as the Lessor shall stipulate.

14. **BREACH**

14.1 Should the Lessee breach any term of this lease agreement; and

14.1.1 should the CPA apply to this lease agreement and the Lessee remains in breach of any term of hereof for a period of 20 (twenty) business days after receipt of written notice from the Lessor or his duly authorised agent to remedy such breach; or

14.1.3 should the CPA not apply to this lease agreement and the Lessee remains in breach of any term hereof for a period of 7 (seven) days after receipt of

written notice from the Lessor or their duly authorised agent to remedy such breach,

Then the Lessor shall be entitled, at his sole discretion and without prejudice to any other rights in law to either claim specific performance or to cancel this lease agreement forthwith and without further notice, claim arrear rentals, any other amounts that remain due and payable and any damages he may have suffered as a result of the breach.

- 14.2 Should the CPA not apply and should the Lessee breach any term hereof, whether such breach goes to the root of this lease agreement or not, on more than 2 (two) occasions in any consecutive 12 (twelve) month period, the Lessor shall be entitled to cancel this lease agreement forthwith without notice and claim possession of the property, notwithstanding any previous waiver or anything to the contrary in the lease agreement. This right being exercised without prejudice to the Lessor's claim for any arrear rentals or other amounts due in terms of this lease agreement and for any damages he may have suffered by virtue of such breach or cancellation.

15. **CANCELLATION**

- 15.1 Upon cancellation hereof by the Lessor, the Lessee agree to vacate the property immediately and the Lessor shall be entitled obtain possession thereof and for that purpose to take whatever action as may be necessary for the eviction of the Lessee and/or any other occupant/s of the property.
- 15.2 Should the defaulting party be the Lessee and should the Lessee dispute the Lessor's right to cancel and remain in occupation of the property after the date of cancellation, the Lessee shall continue to pay the rental and all other amounts due and payable by them in terms hereof as if the lease had not been cancelled. The Lessor shall be entitled to claim and accept such payment without prejudice to his claim for cancellation. Should the dispute be resolved in favour of the Lessor, the Lessor shall be entitled to retain all such payments on account of damages suffered for holding over, without prejudice to his rights to claim any further damages suffered.

16. **RIGHT OF ACCESS**

- 16.1 The Lessor and/or his duly authorised agent shall be entitled to inspect the property after reasonable notice to the Lessee, at all reasonable times and to make such repairs and alterations as are deemed necessary for the safety, preservation or improvement of the property, both internally and externally.
- 16.2 The above shall not limit the Lessor's rights to gain immediate access to the property or take any action in respect thereof, without notice, in cases of emergency.
- 16.3 The Lessor and/or his duly authorised agent shall have the right to access the property with potential purchasers or Lessees at all times during the currency of the lease agreement, on reasonable notice to the Lessee and at reasonable times. The Lessee undertakes to ensure that in the event of potential purchasers or Lessees being brought onto the property in terms hereof, the property shall be kept in a clean, neat and tidy state so as to be presentable.

17. **INSURANCE AND RISK**

- 17.1 ***The Lessee shall not bring, nor permit or allow to be brought, onto the property any goods, furniture or effects which may by their nature increase the rate of insurance premiums or violate the fire insurance policy or which may be impregnated by any termite or any other wood boring or destroying insect of any kind. Should the Lessee contravene this paragraph, this will amount to a material breach of this lease agreement and the Lessor will be liable for any damages suffered by the Lessor.***
- 17.2 The Harbour Bay Village Body Corporate shall insure and keep insured the property against risk of damage by fire.
- 17.3 ***The Lessee shall be responsible for effecting his own insurance in respect of his household contents, furniture, effects and appliances at his own cost.***
- 17.4 ***The Lessor shall not be responsible for any loss or damage or any personal injury suffered by the Lessee or his family, invitees or employees on the property, irrespective of whether such loss or injury is caused by fire, theft, storm, riot, civil commotion, robbery, accident or any other cause whatsoever and the Lessee hereby indemnifies the Lessor and his duly authorised agent and holds them harmless in respect of any such claim arising. The provisions hereof shall not however exclude the Lessor from liability for damages if such damage has arisen as***

a result of his gross negligence or if such damage has been caused by failure to honour his obligations in terms of paragraph 7 above.

18. **DAMAGE OR DESTRUCTION**

18.1 In the event of a fire or flood occurring at the property through no fault of the Lessor or Lessee, the Lessees shall be entitled to a total or partial reduction of rental according to the period during which he was deprived of beneficial occupation of the property but the Lessee shall have no claim against the Lessor for consequential damages.

18.2 If the property is totally destroyed through no fault of the Lessor or Lessee, the parties agree that this lease agreement shall terminate and neither party shall have any claim against the other arising therefrom.

19. **LATE PAYMENTS**

The Lessee agree that in the event of any payment due by him in terms hereof being made after due date, a penalty of 10% on any such amount will be payable by the Lessee.

20. **LEGAL COSTS**

In the event that the Lessor is obliged to take any legal action against the Lessee arising from a breach by them of this lease agreement, the Lessee shall be liable for the lessors' legal costs on the scale as between an attorney and his own client, including, where applicable, tracing fees and collection commission.

21. **DOMICILLIUM**

21.1 The Lessee chooses, as his domicilium citandi et executandi address for all notices and legal proceedings arising from this lease agreement, the address of the property hereby leased.

21.2 The Lessee hereby appoints, in addition to the above domicilium address, the e-mail address: _____, being an address at which he consents to delivery of all notices and legal process.

21.3 The Lessor chooses, as his domicilium citandi et executandi address for all notices and legal proceedings arising from this lease agreement, the following address: _____

21.4 The Lessor hereby appoints, in addition to the above domicilium address, the e-mail address: _____, being an email address at which he consents to delivery of all notices and legal proceedings arising from this lease agreement.

21.5 Notices by either party to the other may be given by delivery to the above domicilium addresses by registered post, hand delivery or by email. If sent by registered post, notice will be deemed to have been received 4 (four) days after posting thereof. If delivered by hand, notice will be deemed to have been received on the date of delivery. If delivered by e-mail, notice will be deemed to have been received on the day and at the time that it was transmitted.

21.6 A notice actually received by either party shall be adequate notice, notwithstanding that it was not delivered to one of the above addresses.

22. **CONDUCT RULES / HOME OWNERS' ASSOCIATION RULES**

The Lessee agrees to strictly observe all Government, Provincial and Municipal Laws, Bylaws and Regulations applicable to the property and the Conditions of Title thereof and the Rules of the Body Corporate including the Conduct Rules and Management Rules. A copy of the Rules referred to herein will be made available for inspection by the Lessee on request and failing such request, the Lessee shall bear the onus of obtaining such Rules from the Body Corporate.

A transgression by the Lessee of any of the Rules of the Body Corporate shall constitute a material breach of the terms and conditions of this lease agreement and the Lessor shall be entitled to proceed in terms of the provisions of paragraph 14 above. In the event that the

AS WITNESSES:

1. _____

2. _____

LESSEE

AS WITNESSES:

1. _____

2. _____

LESSEE