

**AGREEMENT FOR SALE OF MEMBERSHIP OF A COMPANY**

**THIS AGREEMENT** is made the [ ] day of [ ] two thousand and [ ]

**BETWEEN**

- (1) **NEW WAVE SAILING LIMITED** ("**THE FOUNDER MEMBER**") a company incorporated in England and Wales with Company number 9366862 whose registered office is at at 20-22 Wenlock Road, London, N1 7GU and
- (2) [Purchaser] and [Purchaser] of, [address], bearers of passports no. [ ] and [ ], issued by the [United Kingdom/Irish] Passport Agency on [ ] and [ ] respectively ("the Purchaser").

**NOW IT IS AGREED** as follows:

**1. Background**

- 1.2 1.1 [UK holding company] Limited, a company incorporated under the laws of England and Wales, with registered office at PO Box 5, Willow House, Oldfield Road, Heswall, Wirral, United Kingdom, CH60 0FW ("the Company") shall be the owner of the vessel situated at [ ], comprising a Dufour [ ] recorded under the British flag as [boat name and registration number] ("the Vessel") **THE FOUNDER MEMBER** wishes to procure the admission of the Purchaser to membership of the Company and **THE FOUNDER MEMBER** has the power to procure such admission to membership.
- 1.3 Legal ownership of the Vessel will vest in the Company and the Company's ownership of the Vessel shall be registered at [ ] prior to Completion.
- 1.4 The Purchaser, together with other parties who have or will become members of the Company, shall have rights of usage and enjoyment related to such holding as provided for in the Memorandum and Articles of Association and the Rules and Regulations of the Company regarding usage. The Rules and Regulations of the Company are attached as the Fourth Schedule hereto. In addition to acquiring the Membership the Purchaser shall receive [ ] exchange points which can be exchanged for time in any vessel in the New Wave Sailing Limited fleet, a menu is attached as the Ninth Schedule hereto.
- 1.6 The Vessel will include all necessary basic services –water, sewerage, electrical, navigation and communication networks – and the Company will have the use of and the right to connect the Vessel to a GPS tracking system linked to the Manager, [ ].

- 1.7 The Company entered into a Preliminary Purchase Agreement with Dufour Yachts La Rochelle with registered office at [ ] ("the Manufacturer") where the Company promised to buy [ ]
- 1.8 The Company entered into a Contract with the Manufacturer setting out the terms and conditions whereby the Manufacturer will construct for the Company the Vessel in accordance with the Plan and the Specification in the Fifth Schedule hereto. 1.9 The Vessel will be furnished in accordance with the Inventory in the Sixth Schedule hereto.
- 1.10 The Company entered into a Management Agreement with [ ] with registered office at [ ] ("the Manager") attached as the Seventh Schedule hereto, whereby the Manager shall provide management services for the Vessel. 1.11 The Purchaser wishes to become a member of the Company to enjoy (in common with others) the Vessel.
- 1.12 The Company is incorporated in England as a private company limited by guarantee and its corporate compliance and taxation matters will be managed and administered by Fractional Administration Limited, of PO Box 5, Willow House, Oldfield Road, Heswall, Wirral, United Kingdom, CH60 0FW ("the Administrator") which expression shall include any subsidiary or associate of the Administrator under a Company Administration Agreement.

## **2. Agreement**

The Purchaser agrees to apply for membership of the Company. No further deposit from the Purchaser will be accepted by **THE FOUNDER MEMBER** until the expiration of 14 days from the date of this Agreement.

## **3. Consideration**

- 3.1 The price for membership shall be [ ] ([price in words] [currency]) ("the Purchase Price") and shall be paid to as follows:
- 3.1.1 30% deposit, fifteen days after signature of this Agreement - [ ] ([price in words] [currency]);
- 3.1.2 70%, upon Completion - [ ] ([price in words] [currency]).
- 3.2 The Purchaser shall also pay to the Manager, upon Completion, £[ ] such fee being 3 years Management fees as provided for in the Management Agreement.
- 3.3 The Purchaser will incur no further costs, charges or obligations other than those specified in this Agreement.

3.3 The Purchaser may cancel this Agreement without penalty or obligation up to 14 days after the date on which this Agreement is entered into in accordance with Part 2 of Schedule 1. The written notice from the Purchaser should be sent to **THE FOUNDER MEMBER**. The Purchaser may (but, for the avoidance of doubt, is not obliged to) use the cancellation notice provided at Schedule 2 to cancel this Agreement. Any notice of cancellation will cancel any related credit agreement.

**4. Completion**

Completion (“Completion”) shall mean no more than fourteen days after a written certification has been served upon the Purchaser by **THE FOUNDER MEMBER** to the effect that:

- a) The construction of the Vessel has been completed in accordance with the Fifth Schedule hereto; and
- b) Legal title to the Vessel has been conveyed to the Company.

**5. THE FOUNDER MEMBER’s warranties**

5.1 **THE FOUNDER MEMBER** hereby warrants to the Purchasers and with effect as at Completion:-

- 5.1:1 That the Company was incorporated on [date of incorporation] and remains in good standing under the laws of England, being registered under Number [company registration number];
- 5.1:2 That the Company is a company limited by guarantee with a maximum of 52 Members;
- 5.1:3 That **THE FOUNDER MEMBER** has power to procure the membership of the Company by the Purchaser free from all liens and encumbrances;
- 5.1:4 That the Company has no unpaid or unsettled liabilities and it is not in dispute with any tax authorities, local authorities or neighbours and is not party to any litigation, arbitration or other proceedings and no notice of the same has been received by the Company, **THE FOUNDER MEMBER** (it’s subsidiaries or associates) or is anticipated, nor is any litigation threatened against the Company;
- 5.1:5 That the Company has no employees;
- 5.1:6 That the only asset that the Company has or shall have is the legal title to Vessel, that the Company has or shall have good legal title to the Vessel and that the title to the Vessel is or shall be free of all liens, charges and encumbrances (unless written authorisation has been given by all parties, including the Founder Member, to obtain mortgage funding);

- 5.1:7 That the Company is not in breach of any of its obligations concerning the Vessel and that all taxes in respect of the Vessel have been paid;
- 5.1:8 That the Statutory Books of the Company are fully up to date and the Company has filed all necessary returns at the relevant Companies Registry and complied with all legislation relating to it;
- 5.1:9 That there are no outstanding management charges or company registry charges in England in respect of the Company;
- 5.1:10 That the Company is not legally bound to make payments to any Director or employees or former Directors or former employees of the Company by way of compensation or as a contribution or by way of bonus, gratuity or otherwise;
- 5.1:11 That no guarantees have been given by or in respect of the Company;
- 5.1:12 That the Vessel is not subject to any covenants, restrictions or conditions and is not subject to any directions (made or proposed to be made) by any competent authority which affects or will affect the use or continued use hereof or any part thereof;
- 5.1:13 That all covenants, restrictions and conditions in all directions and orders made by any competent authority affecting the Vessel have been observed and performed.
- 5.1:14 That on the third anniversary of the purchase of the Vessel the Founder Member will take such steps as to sell the Vessel with 75% of the sale proceeds are to be split equally between the Ordinary Memberships.

## **6. Purchaser's undertakings**

- 6.1 To take such steps as may be required to become a member of the Company.
- 6.3 To adhere and comply at all times with the Rules and Regulations and the Member's Warranties as set out in the Management Agreement.
- 6.4 To comply with the provisions of the Company's Memorandum and Articles of Association and the Rules and Regulations as a code to govern relations between the members, the proper administration of the Company and the use and enjoyment of the Vessel.

## **7. Vendor's obligation to procure**

Upon completion of this Agreement **THE FOUNDER MEMBER** shall procure that there is delivered by the Administrator to the Purchaser a certificate of membership of the Company in respect of the Purchaser;

And upon request:

- 7.2 a copy of the Company's Memorandum and Articles of Association.
- 7.3 the Directors' warranty that the Company has not traded other than to acquire the Vessel;
- 7.4 the Directors' warranty that legal title to the Vessel has been conveyed to the Company;
- 7.5 an extract from the Company's registers of directors and members.

**8. Directors**

Upon registration of the 52<sup>nd</sup> Membership (excluding the Founder Member) the Company Directors named in the Eighth Schedule ("the Directors") shall continue to act unless the Administrator shall change.

**9. Secretary**

The Company Secretary named in the Eighth Schedule ("the Secretary") shall be responsible for the internal regulation of the Company including compliance with the formal matters contained in this Agreement. The Secretary shall continue to act unless the Administrator shall change.

**10. Notices**

- 10.1 Any notice under this Agreement to **THE FOUNDER MEMBER** shall be sent to **THE FOUNDER MEMBER**.
- 10.2 Any notice under this Agreement to any party other than **THE FOUNDER MEMBER** shall be sent to the recipient by first class, registered post (requiring signature upon receipt) at his last known address or in the case of a company to its registered office or its principal business address.
- 10.3 Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing and posting a letter containing the notice and to have been effective on the fifth working day after posting **PROVIDED** that in the case of an address outside Europe the letter shall have been sent by pre-paid first class airmail.

11. **Governing law**

This Agreement is governed by the laws of England and the courts of England shall have non-exclusive jurisdiction.

IN WITNESS of which the parties have executed this Agreement on the date first written above.

NEW WAVE

Signed by **THE FOUNDER MEMBER**

.....On: [Insert date of execution]

At: [Insert place of execution]

Signed by [Purchaser] and [Purchaser]

.....

On: [Insert date of execution]

At: [Insert place of execution]

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**FIRST SCHEDULE**

**FRACTIONAL OWNERSHIP STANDARD INFORMATION FORM**

**PART 1:**

<p><b>Identity, place of residence and legal status of the trader(s) which will be party to the contract:</b></p> <p><i>[Provide details for Founder Member]</i></p>
<p><b>Short description of the product (e.g. description of the immovable property):</b></p> <p><i>[Provide accurate description of the accommodation and its location]</i></p> <p><b>Exact nature and content of the right(s):</b></p>
<p><b>Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:</b></p> <p><b>Date on which the consumer may start to exercise the contractual right:</b></p> <p><b>If the contract concerns a specific property under construction, date when the accommodation and services/facilities will be completed/available:</b></p>
<p><b>Price to be paid by the consumer for acquiring the right(s);</b></p> <p><b>Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual fees, other recurrent fees, special levies, local taxes):</b></p>
<p><b>A summary of key services available to the consumer (e.g. electricity, water, maintenance, refuse collection) and an indication of the amount to be paid by the consumer for such services:</b></p>

**A summary of the facilities available to the consumer (e.g. swimming pool or sauna):**

***[Provide a definitive list of all services that the purchaser will have access to]***

**Are these facilities included in the costs indicated above?**

**If not, specify what is included and what has to be paid for:**

**Is it possible to join an exchange scheme?**

**If yes, specify the name of the exchange scheme:**

**Indication of costs for membership/exchange:**

**Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?**



## PART 2:

### General information:

- The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later.
- During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.
- The consumer must not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.

Signature of the consumer:

### PART 3:

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

#### 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- Conditions governing the exercise of the right which is the subject of the contract within the territory of the Member State(s) in which the properties concerned are situated and information on whether those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled.
- Where the contract provides rights to occupy accommodation to be selected from a pool of accommodation, information on restrictions on the consumer's ability to use any accommodation in the pool at any time.

#### 2. INFORMATION ABOUT THE PROPERTIES

- Where the contract concerns a specific immovable property, an accurate and detailed description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodations other than immovable property, an appropriate description of the accommodation and the facilities.
- The Services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions.
- Where applicable, the common facilities, such as swimming pool, sauna etc., to which the consumer has or may have access and under what conditions.

#### 3. ADDITIONAL REQUIREMENTS FOR ACCOMMODATION UNDER CONSTRUCTION (WHERE APPLICABLE)

- The state of completion of the accommodation and of the services rendering the accommodation fully operational (gas, electricity, water and telephone connections) and any facilities to which the consumer will have access.
- The deadline for completion of the accommodation and of the services rendering it fully operational (gas, electricity, water and telephone connections) and a reasonable estimate of the deadline for the completion of any facilities to which the consumer will have access.
- The number of the building permit and the name(s) and full address(es) of the competent authority or authorities.
- A guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

#### **4. INFORMATION ON THE COSTS**

- An accurate and appropriate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumer and how and when such costs may be increased; the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs).
- Where applicable, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation.

#### **5. INFORMATION ON TERMINATION OF THE CONTRACT**

- Where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination.
- Conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

#### **6. ADDITIONAL INFORMATION**

- Information on how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues.
- Information on whether or not it is possible to join a system for the resale of the contractual rights, information about the relevant system and an indication of costs related to resale through this system.
- Indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints.
- Where applicable, the possibility for out-of-court dispute resolution.

**Acknowledgement of receipt of information:**

**Signature of the consumer:**

## SECOND SCHEDULE

### Standard Withdrawal Form

**[Note: form of withdrawal to be completed before providing contract to consumer.]**

#### Right of withdrawal

The consumer has the right to withdraw from this contract within 14 days without giving any reason.

The right of withdrawal starts from ..... (to be filled in by the trader before providing the form to the consumer).

Where the consumer has not received this form, the withdrawal period starts when the consumer has received this form, but expires in any case after one year and 14 days.

Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 days.

To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below by using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.

Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.

In addition to the right of withdrawal, national contract law rules may provide for consumer rights, e.g. to terminate the contract in case of omission of information.

#### Ban on advance payment

During the withdrawal period any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc.

It includes not only payment to the trader, but also to third parties.

#### Notice of withdrawal

- To (Name and address of the trader) (\*):
- I/We (\*\*) hereby give notice that I/We (\*\*) withdraw from the contract,
- Date of conclusion of contract (\*):
- Name(s) of consumer(s) (\*\*):
- Address(es) of consumer(s) (\*\*):

- Signature(s) of consumer(s) (only if this form is notified on paper) (\*\*):

- Date (\*\*):

(\*) To be filled in by the trader before providing the form to the consumer.

(\*\*) Delete as appropriate.

(\*\*\*) To be filled in by the consumer(s) where this form is used to withdraw from the contract.

Acknowledgement of receipt of information:

Signature of consumer:

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**THIRD SCHEDULE**

Copy of Certificate of Incorporation of the Company

**FOURTH SCHEDULE**

Rules and Regulations

**FIFTH SCHEDULE**

The Plan and the Specification of Works

**SIXTH SCHEDULE**

Inventory

**SEVENTH SCHEDULE**

Management Agreement

**EIGHTH SCHEDULE**

The Administrator and Officers

**NINTH SCHEDULE**

*Menu*



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