

# Kleijne Wingerd

## AGREEMENT OF SALE

For the Sale of a Sectional Title Unit prior to the completion of the Scheme

ENTERED INTO BY AND BETWEEN

SELLER

**SIMILAN DEVELOPMENTS (PTY) LTD**

Registration number: 2016/321062/07

(hereinafter referred to as "the Seller")

and

PURCHASER

\_\_\_\_\_

and

\_\_\_\_\_

(hereinafter referred to as "the Purchaser")

PROPERTY

**SECTION: \_\_\_\_\_ KLEIJNE WINGERD**

Kindly ensure that before signing this agreement that you have had an adequate opportunity to read and understand the terms of this agreement. If you do not understand these terms you have the obligation to ask for an explanation or to seek independent legal advice before signature of the agreement.

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**1 Table of Contents****Schedule of Annexures**

Annexure A: Site Development Plan

Annexure B: Building Specifications

Annexure C: Optional Extras (if applicable)

**2 INFORMATION SCHEDULE****A. Purchaser Information**

Complete section if the Purchaser is an Individual

INDIVIDUAL(S)	PURCHASER 1	PURCHASER 2 (if applicable)
Surname		
Full Name(s)		
Identity Number		
Income Tax Number		
Marital Status		
Marital Regime (if appl.)		
Full names of spouse		
Identity number spouse		
Spouse Income tax number		
Telephone Number (W)		
Telephone Number (H)		
Cell Phone Number		
E-mail Address		
Residential Address		
Postal address		

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## A. Purchaser Information

Complete section if the Purchaser is a Juristic Person (Company/Close Corporation/ Trust)

JURISTIC PERSON	PURCHASER 1
Registered Name	
Registration Number	
Entity Income Tax No.	
Entity VAT No.	
Entity Registered Physical Address	
Entity Registered Postal Address	
Representative's Name	
Representative's ID	
Contact Number	
E-Mail Address	
Residential Address	
Postal Address	

The parties choose as valid *domicilium* address in terms of Clause 27, the street-, postal- and Email addresses stated in this information schedule.

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## Transaction Information

<b>B. PROPERTY</b>	
Scheme Name	KLEIJNE WINGERD
Section Number	
Estimate Floor Area (Unit size incl. patio/balcony)	
<b>Sole Utilization Areas (In terms of management rules)</b>	
Parking Bays No. (Allocated)	
Additional Parking Bay No, (if purchasing)	
Garden No (if applicable)	
<b>C. PURCHASE PRICE</b>	
Purchase Price	R
Optional Extras (ITO Annexures B&C) <i>(If Applicable)</i>	R
Total Purchase Price (VAT Inclusive)	R
Full Purchase Price in Words	
Reservation Deposit <i>(*if applicable, refer clause 7.1.1)</i>	R10 000 (Ten Thousand Rand)
Additional/further deposit (if applicable)	R
Balance Purchase Price	R
SUBJECT TO BOND FINANCE?	YES / NO
MORTGAGE BOND AMOUNT <i>(*if applicable, refer clause 8.6)</i>	R
<b>ESTIMATE LEVIES</b>	Approx. R20 per square meter
<b>D. ESTIMATE OCCUPATION DATE</b>	
Phase 1 (Blocks 100 to 400)	Approx. August 2022
Phase 2 (Blocks 500 to 800)	Approx. January 2023

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<b>OCCUPATIONAL RENTAL</b> <b>(Incl. monthly levy up to date of registration)</b>	1 Bedroom apartments = R5 500 2 Bedroom apartments = R7 500
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<b>E. TRANSFERRING ATTORNEY</b>			
Full Name		Enderstein van der Merwe Inc.	
Registration Number			
Physical Address		1 High Street, 2nd Floor, Rosenpark, Bellville, 7530	
Postal Address		Same as physical	
Contact Person		Luzanne Enderstein	
Telephone	021 914 0770	E-Mail	luzanne@endvdm.co.za
Trust Bank Account Name		Enderstein van der merwe	
Bank		Standard Bank	
Account Number		370740904	
Branch Code		051001	
<b>BOND REGISTRATION ATTORNEY</b>			
Full Name		Same as transferring attorney	
Registration Number			
Physical Address			
Postal Address			
Contact Person			
Telephone		E-Mail	

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### 3 RECORDAL

- 3.1 The Seller purchased the land with the view of developing the Land by the Opening of a Sectional Title scheme on the land, as indicated on the Site Development Plan attached hereto.
- 3.2 The Sectional Plan has not been prepared or approved, as it can only be prepared once the construction of the building has reached such an advanced stage which allows the surveyor to prepare the Sectional Plan. The exact and final boundaries and area of the Section will be as indicated on the approved Sectional Plan.
- 3.3 The Sectional Plan will be registered and the Register will be opened in the relevant deeds registry as soon as it is reasonably possible after the Completion Date and that transfer of the Property shall preferably take place simultaneously with or as soon as possible after the opening of the Register.

### 4 DEFINITIONS

- 4.1 In this Agreement, unless inconsistent with the context the following words shall have the corresponding meanings:
- 4.1.1 **“Agent”** means Igrow Wealth Investments Proprietary Limited, Registration Number: 2015/093828/07, with registered address at Barinor’s Vineyard North, Vineyards Office Estate, 99 Jip de Jager Drive, Durbanville, 7550, Telephone Number: 021 979 250;
- 4.1.2 **“Agreement”** means this Agreement of Sale, signed by all parties, together with all annexures and schedules attached hereto forming an integral part of the agreement;
- 4.1.3 **“Arbitration Act”** means the Arbitration Act No 42 of 1965 (as amended);
- 4.1.4 **“Body Corporate”** means the body corporate as contemplated in section 36 of the Sectional Title Act and section 2(1) of the Sectional Titles Schemes Management Act;
- 4.1.5 **“Bond Originator”** means IGrow Home Loans, a division of Igrow Wealth Investments Proprietary Limited;
- 4.1.6 **“Bond Registration Attorney”** means the bond registration attorney described in the Information Schedule;
- 4.1.7 **“Building”** means a structure of a permanent nature erected or to be erected on the land as depicted on the Site Development Plan;
- 4.1.8 **“Common Property”** means the land included in the Scheme, such parts of the Building which are not included in the Section and land referred to in section 26 of the STA and section 5(1)(d) of the STSMA;
- 4.1.9 **“Completion Certificate”** means the certificate issued by the Principal Agent confirming that in the opinion of the Principal Agent, the Section has been completed free of patent defects other than Snags (as defined) and may be used for the intended purpose of residential accommodation;

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- 4.1.10 **“Completion Date”** means the later of the date on which:
- 4.1.10.1 the section is complete for beneficial occupation as certified by the Principal Agent, whose decision as to the date will be final and binding upon the parties; or
  - 4.1.10.2 a certificate of occupancy is issued in respect of the Property by the local authority and service connections like electricity and water must be connected and operational;
- 4.1.11 **“Contractor”** means RAUBEX BUILDING with NHBRC number 1-118741731 with whom the Seller entered into a building agreement to conduct the buildings for this Scheme, which home builder is registered in terms of Section 10(6)(a) of the Housing Consumers Protection Measures Act, 1998 (No 95 of 1998).
- 4.1.12 **“CPA”** means the Consumer Protection Act 68 of 2008, (as amended);
- 4.1.13 **“Developer”** means the Seller;
- 4.1.14 **“Independent Property Inspector”** means SA Investor Rentals Proprietary Limited, Registration Number: 2014/186623/07, trading as IGrow Rentals whose representatives shall *inter alia* carry out inspections of all the sections in the Scheme and act as the liaison between the Purchaser and the Seller for the purposes as contemplated in this Agreement;
- 4.1.15 **“Information Schedule”** means pages 4 to 7 of this Agreement;
- 4.1.16 **“Land”** means:
- 4.1.16.1 **ERF 24422, Kuilsriver**, Western Cape;
- 4.1.17 **“Latent Defect”** means a fault or defect that would not readily be revealed by a reasonable inspection.
- 4.1.18 **“Legal Practice Act”** means the Legal Practice Act, Act 28 of 2014;
- 4.1.19 **“Managing Agent”** means the executive managing agent as contemplated in rule 2(g) of the management rules prescribed in terms of section 10(2)(a) of the STSMA and/or the managing agent as contemplated in rule 2(j) of the said management rules to be appointed by the Seller from time to time;
- 4.1.20 **“Municipal Charges”** means rates and taxes, and other charges as may be levied by the local authority in respect of the Property with effect from the Transfer Date;
- 4.1.21 **“NHBRC”** means the National Home Builders Registration Council established in terms of the Housing Consumers Protection Measures Act 95 of 1998;
- 4.1.22 **“Occupation Date”** means the date upon which occupation of the Unit is tendered to the Purchaser, provided that such date shall not be prior to the issuing of the Occupancy Certificate for the Section by the relevant Authority and provided that such date shall not be prior the date the electricity is to be connected to the Section and subject to compliance of the provisions of clause 9.1 to the satisfaction of the Seller;

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- 4.1.23 **“Participation Quota”** means, in relation to a section in the Scheme, the percentage determined in accordance with the provisions of section 32(1) or (2) of the STA in respect of that section for the purposes referred to in section 32(3) of the STA, and shown on the Sectional Plan in accordance with provisions 5(3)(g) of the STA;
- 4.1.24 **“Patent Defect”** means a fault or defect that are not hidden and should easily be discovered by a reasonable inspection.
- 4.1.25 **“Phase Development”** means the development of the Scheme in phases as contemplated in Section 25 of the STA and in respect of which the Seller will take out a Certificate of Real Rights as contemplated in section 12(1)(e) of the STA;
- 4.1.26 **“Principal Agent”** means a qualified architect or senior architectural technologist or a member of The South African Council for the Architectural Profession or a member of the South African Council for Project and Construction Management Professions (SACPCMP), to be appointed by the Seller’;
- 4.1.27 **“Property”** means collectively, the Section in the Scheme as indicated in the Schedule together with an undivided share in the Common Property apportioned in accordance with the Participation Quota and Sole Utilization Areas as indicated on the Sectional Plan.
- 4.1.28 **“Purchaser”** means the person or entity, described more fully in Paragraph A of the Information Schedule;
- 4.1.29 **“Purchase Price”** means the VAT inclusive amount constituting the reservation deposit, balance purchase price and optional extras as described in Paragraph B of the Information Schedule;
- 4.1.30 **“Reservation Deposit”** means the reservation deposit contemplated in clause 7.1.1 below, subject to the provisions of clause 7.3.
- 4.1.31 **“Rules”** mean the management and conduct rules from time to time applicable to the owners and residents in the Scheme, which initial rules are available online at <https://www.gov.za/documents/sectional-titles-schemes-management-act> and as contemplated in section 10 of the STSMA as published in Government Gazette 40335 of 7 October 2016;
- 4.1.32 **“SARS”** means the South African Revenue Services;
- 4.1.33 **“Scheme”** means the Sectional Title Scheme to be known as **KLEIJNE WINGERD** to be developed in phases on erf 24422, Kuilsriver, Western Cape.
- 4.1.34 **“Section”** means the Section in the Scheme stated in the Schedule above as depicted on the architect’s sketch plans attached hereto as Annexure “A” and to be indicated as such on the Sectional Plan;

- 4.1.35 “**Sectional Plan**” means the Sectional Plan drawn or to be drawn in respect of the Erf and Buildings in terms of the STA, approved or to be approved by the Surveyor-General and to be registered in the relevant deeds’ registry;
- 4.1.36 “**Sectional Title Register**” means the register in respect of the Erf and the buildings registered and opened in terms of the STA and STSMA;
- 4.1.37 “**Seller**” means the entity more fully described at Paragraph 1 of the Information Schedule;
- 4.1.38 “**Sole Utilization Areas**” means that part of the Common Property as indicated to the Purchaser and to be allocated to the Purchaser for his exclusive use and enjoyment as contemplated in section 10(7) of the STSMA once the amended rules are approved by the Body Corporate and registered with the Ombud in terms of the provisions of the STSMA;
- 4.1.39 “**Specifications**” means the building specifications attached hereto as Annexure B;
- 4.1.40 “**Signature Date**” means the date on which this Agreement is signed by the latter of the Seller or the Purchaser;
- 4.1.41 “**STA**” means the Sectional Titles Act, 95 of 1986, as amended, including the Regulations issues under the Act;
- 4.1.42 “**STSMA**” means the Sectional Titles Schemes Management Act 8 of 2011, as amended and include the Regulations issued under the said act;
- 4.1.43 “**Transfer Date**” means the date of registration by the Registrar of Deeds, in the relevant deeds’ office, of the transfer of the Property into the name of the Purchaser;
- 4.1.44 “**Transferring Attorney**” means the Transferring attorney described in the Information Schedule;
- 4.1.45 “**Trust Account**” means the trust bank account of the Transferring Attorney which details are set out in the Information Schedule;
- 4.1.46 “**VAT**” means value-added tax payable in terms of the VAT Act;
- 4.2 Clause headings are included for reference and convenience purposes only and shall not in any way affect or govern the interpretation or construction of this Agreement, unless the contents of this Agreement clearly indicate a contrary intention or expression which denotes:
- 4.2.1 Any one gender includes the other gender;
- 4.2.2 A natural person includes a juristic person and *vice versa*;
- 4.2.3 The singular includes the plural and *vice versa*;
- 4.2.4 Where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words will prevail;

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- 4.2.5 Words and expressions defined in the STA and the STSMA will have the meanings as ascribed to them therein. Subject thereto that where any reference is made in a clause hereof to a provision of the STA, and that provision has been repealed and the subject matter thereof dealt with in terms of the STSMA, then that clause will be read as referring to the relevant provision of the STSMA;
- 4.2.6 Reference to “**days**” shall be construed as calendar days unless qualified by the word “business day”, which shall mean any day other than a Saturday, Sunday or public holiday gazetted by the Government of the Republic of South Africa from time to time. Any reference to “**business hours**” shall be construed as being the hours between 8.30am and 16.30pm on any business day. Any reference to “time” shall be based upon South African Standard Time.

## 5 CONSUMER PROTECTION ACT

- 5.1 The Seller declares that it is selling the Property in the ordinary course of its business and certain of the provisions of the Consumer Protection Act may be applicable.
- 5.2 The Purchaser confirms that he has read this Agreement and understands the contents thereof.
- 5.3 The Purchaser’s attention is drawn to the provisions of section 49 of the Consumer Protection Act (“section 49”). The Purchaser acknowledges that:
- 5.3.1 the Agent has satisfactorily explained the effect and consequences of the provisions of section 49 in relation to this Agreement and the Property to him in detail; and
- 5.3.2 this Agreement contains certain terms and conditions which limit the risk or liability of the Seller, which constitute an assumption of risk and liability on the Purchaser’s part, which impose an obligation on the Purchaser to indemnify the Seller and/or which constitute an acknowledgment of facts by the Purchaser.
- 5.3.3 The parties furthermore acknowledge that none of the terms of this Agreement, despite the express reference to the Consumer Protection Act, should be construed as an acknowledgement that the Consumer Protection Act applies to this transaction in circumstances where the same is not applicable to this transaction.

## 6 SALE

- 6.1 The Seller hereby sells to the Purchaser who hereby purchases from the Seller the Property as depicted on Annexure “A”. Since the Purchaser is purchasing the Property from the draft sketch plans attached hereto as Annexure “A”, provision is made as follows in the event that the extent of the Section as depicted on Annexure “A” differs from the actual measured extent as per the Sectional Plan to be approved by the Surveyor-General, in the event of a deviation:
- 6.1.1 less than or equal to 5%, the deviation is accepted by the Purchaser and the Purchase Price will remain unchanged;

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- 6.1.2 in excess of 5%, but less than 8%, a proportionate increase or decrease in the Purchase Price will be affected, which is hereby accepted by the parties;
- 6.1.3 more than 8%, this Agreement will lapse at the option of either party. If either party so elects in writing within a period of 10 (ten) days after the deviation has been communicated in writing to the Purchaser in which event the Purchaser will be entitled to a refund of the Reservation Deposit.

## 7 PURCHASE PRICE

- 7.1 The Purchase Price is the total amount set out in the Information Schedule and is payable as follow:
- 7.1.1 The Reservation Deposit will be paid upon the Signature Date into the Trust Account subject to clause 7.2.
- 7.1.2 the balance of the Purchase Price shall be due and payable to the Seller on registration of transfer and shall be secured by the Purchaser, as follow:
- 7.1.3 If the Purchaser not requiring a Mortgage Loan, furnish the Transferring Attorney with either:
- 7.1.3.1 an irrevocable guarantee issued by a recognized commercial bank in a form acceptable to the Transferring Attorney; or
- 7.1.3.2 a cash payment into the trust account of the Transferring Attorney.
- 7.1.3.3 within **14 (fourteen) days** after the Signature Date or such extended period as the Seller may in its sole discretion allow.
- 7.1.4 If the Purchaser requiring a Mortgage Loan in respect of any balance outstanding on the purchase price after having deducted the deposit and the amount of the Mortgage Loan from the purchase price, furnish the Transferring Attorney with either:
- 7.1.4.1 an irrevocable guarantee issued by a recognized commercial bank in a form acceptable to the Transferring Attorney; or
- 7.1.4.2 a cash payment into the trust account of the Transferring Attorney/Seller.
- 7.1.4.3 Within **14 (fourteen) days** after the Signature Date or such extended period as the Seller may in its sole discretion allow.
- 7.2 All payments made shall be made without deduction or set-off and free of all exchange and bank charges and commissions and shall be held in trust by the Transferring Attorneys.

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- 7.3 The Purchaser confirms that this Agreement constitutes the Purchaser's written consent and instruction to the Transferring Attorney to invest any funds paid by the Purchaser *in lieu* of the Purchase Price into the Trust Account in terms of section 86(4) of the Legal Practice Act, but further confirms that he is aware that the Transferring Attorney may require a separate authorisation to be signed by the Purchaser to invest the funds and undertake to furnish the Transferring Attorney on request with such authorisation together with such documentation under the Financial Intelligence Centre Act 38 of 2001 ("FICA") or other documentation as the Transferring Attorney may require. Interest earned on funds so invested will, subject to the provisions of section 86(5)(b) of the Legal Practice Act, accrue to the Purchaser and be paid to him on the Transfer Date after deduction of the investment fee due to the Transferring Attorney.
- 7.4 In the event of the Purchaser failing to notify the Transferring Attorney of any deposit made and to supply documentation necessary for FICA (Financial Intelligence Act 38 of 2001 or Prevention of Organised Crime Act 21 of 1998), the Seller's Conveyancers shall not be liable to account for any loss in interest.
- 7.5 Any payment in terms of this Agreement secured by a bank guarantee must be in a form acceptable to the Seller, in its sole and absolute discretion. The bank guarantee must be irrevocable and unconditional, save for providing for payment of the balance of the Purchase Price against: registration of the property into the name of the Purchaser or the registration of a new mortgage bond by the purchaser, if applicable.
- 7.5.1 The bank guarantee must be delivered to the Transferring attorneys on the dates as set out above.
- 7.5.2 Withdrawal by a guarantor of the bank guarantee for any reasons whatsoever after being issued shall constitute a material breach by the Purchaser of his obligations to deliver a bank guarantee in terms of this Agreement.
- 7.6 The reservation deposit referred to in clause 7.1.1 is a refundable deposit, except where the bond application documentation are not received in time as per clause 8.5.2 herein, OR if the Purchaser was in any way untruthful with his application for a mortgage bond OR if the Purchaser delay the registration process in any manner. The Seller/or his duly appointed agent, save for his rights that he may have in law, reserves the right to then deem an amount of R5000.00 (Five Thousand Rand) of the reservation deposit as an administration fee, and retain same as liquidated wasted costs.**
- 7.7 Should the Purchaser make payment of the Reservation Deposit plus an additional amount *in lieu* of the Purchase Price to the Transferring Attorney and subsequently obtains mortgage finance for the full amount of the Purchase Price, it is agreed that any amount so paid by the Purchaser in excess of the Purchase Price will be repaid to the Purchaser by the Transferring Attorney after the Transfer Date and upon receipt of payment by the Transferring Attorney of the full mortgage finance proceeds.

- 7.8 Any monies due and payable by the Purchaser in terms of this Agreement that remains unpaid on the due date or should the bank guarantee not be delivered timeously, the purchaser shall be liable to the Seller for penalty interest at the rate of 5% (five percent) per annum above the prime lending rate from time-to-time on the outstanding amount, calculated from the due date to the date of payment or delivery of a bank guarantee securing such payment to the transferring attorney.

## **8 MORTGAGE BOND AND BOND ORIGINATOR**

- 8.1 Should a mortgage bond amount be inserted in the Transaction Details of the information schedule in the preamble to this Agreement, then this sale is subject to the suspensive condition that the Purchaser is granted a mortgage bond from a recognised financial institution:
- 8.1.1 within 21 (twenty-one) days from the Signature Date, provided, that the said 21-day period will automatically be extended with a further 21 days if the loan is not approved within the first mentioned period; and
- 8.1.2 in the amount specified in the information schedule or such lesser amount as the Purchaser in his sole discretion may accept; and
- 8.1.3 on such financial institution's usual terms and conditions relating to such mortgage bonds.
- 8.2 The suspensive condition shall be deemed to have been fulfilled upon the issue to the Purchaser by the relevant financial institution of a written quotation as contemplated in section 92 of the National Credit Act, No. 34 of 2005 in respect of the mortgage bond in the said amount within the period referred to in clause 8.1.1, irrespective of the conditions contained therein.
- 8.3 If the bond is not granted within the extended prescribed time in clause 8.1.1 this agreement will lapse automatically and be of no force and effect and the Seller shall instruct the Transferring Attorney to refund to the Purchaser the reservation deposit paid in terms of clause 7.1.1, and all other amounts paid (if any) together with interest earned thereon subject to clause 7.2 and 7.6 hereof and to return the bank guarantee to the relevant financial institution.
- 8.4 The Purchaser warrants that he has the requisite financial means to obtain the mortgage bond in the amount indicated. He undertakes to use his best endeavours to ensure that the mortgage bond referred to in this clause 8.1 is granted timeously and to co-operate with the Seller and/or Agent to ensure that the mortgage bond is approved.
- 8.5 For the purpose of obtaining the mortgage bond, the Purchaser hereby authorises and appoints the Bond Originator named in the information schedule to act as his sole agent in submitting a mortgage bond application to any registered financial institution on his behalf and to sign all such documentation as may be required by the bank or other financial institution.

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- 8.5.1 As the originator mentioned herein is appointed as the Bond Originator the purchaser will not be permitted to apply for the bond personally or through another bond originator or private banker without the written consent of the bond originator. If such consent is received the bond originator reserves the right to claim an amount of R10,000.00 (Ten-Thousand-Rand) inclusive of VAT as liquidated damages from the Purchaser. Upon request the Purchaser shall pay the amount to the trust account of the Transferring Attorney and the Purchaser hereby authorises the Transferring Attorney to pay the amount to the Bond Originator upon transfer of the Property.
- 8.5.2 The Purchaser undertakes to provide, on request of the Bond Originator all financial and other information and documentation required by the bank or other financial institution within a period of 7 (seven) business days from the date on which the Bond Originator requests him to do so failing which clause 7.1.1 will be applicable.
- 8.6 The Purchaser further undertakes to promptly do all things and pay all amounts required to enable the mortgage bond to be registered simultaneously with transfer.
- 8.7 The Purchaser is aware that the Scheme consists of multiple units and that the Seller preferably requires the simultaneous transfer of the units with the opening of the Register and the registration of the Sectional Plan or, as the case may be, the registration of the extension of the Scheme. The parties therefore agree that it is imperative that the bank or other financial institution at which the Purchaser applies for finance do not impose onerous conditions which may result in this delaying transfer, if such onerous conditions are imposed, the Purchaser warrants that he shall accept and comply with such conditions expeditiously, failing which the Seller may at his option, immediately cancel this Agreement.
- 8.8 The Purchaser is aware that if the mortgage bond has been granted this agreement has become unconditional. If the mortgage bond is withdrawn on his instructions or otherwise before the transfer date he will remain liable for the provision of guarantees for the balance purchase price. He will be in breach of this agreement should he fail to provide such guarantees or make payment of the balance purchase price into the trust account within **14 (fourteen) days** of the bond so withdrawn.

## 9 TRANSFER

- 9.1 Transfer of the Property shall be passed by the Transferring Attorney to the Purchaser as soon as is reasonably possible after the Completion Date, provided that the Purchaser has complied in full of all his contractual obligations in terms of this Agreement.
- 9.2 The Purchaser acknowledges and agrees that:

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- 9.3 when the construction of the apartments is close to completion, approximately two months prior to the anticipated occupation date, the land surveyor will survey the apartments and prepare the draft sectional title plans which will be submitted to the Surveyor-General for approval. The Transferring Attorneys will on receipt of the draft sectional title plans, draft the conveyancing documentation to transfer the property and contact the Parties to sign all required documentation to affect the registration of the transfer.
- 9.4 The Purchaser shall sign all transfer and/or bond documents and provide any such documents as may be required in respect of the transfer of the property and to comply with FICA within **7 (seven) days** of being requested to do so by the transfer and/or bond attorney.
- 9.5 pay to the Transferring Attorneys all incidental charges related to the registration of transfer of the property when called upon to do so subject to clause 10.
- 9.6 As a result of SARS conducting a risk analysis on both the transferor and the transferee on all property transactions, the Purchaser warrants to the Seller that he is not aware, and should not reasonably have been aware, of any tax issues, whether personally or otherwise including but not limited to tax returns and/or tax payments.
- 9.7 Notwithstanding the above, should SARS at any stage notify the Transferring Attorneys that the Purchaser does in fact have an outstanding liability, then the following provisions will be applicable such liability shall constitute a material breach of this Agreement; the Purchaser shall rectify such breach within the time period referred to in clause 28 below by: supply the Transferring Attorneys with original documentation from SARS that indicate that payment of the liability has been deferred or that satisfactory arrangements have been made for the payment thereof, failing which the provisions of clause 28 will be applicable.

## 10 TRANSFER AND BOND COSTS

- 10.1 The Seller shall be liable to pay the fees and disbursements of the Transferring Attorney and the Bond Registration Attorney. However, should the financial institution which approves the Purchaser's loan application on its own accord or at the request of the Purchaser appoint an attorney other than the Bond Registration Attorney to attend to the registration of the bond, the Purchaser shall be liable for the payment of the bond registration costs to such attorney.

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- 10.2 Notwithstanding the provisions of clause 10.1, the Purchaser will be liable for the payment of all fees and disbursements incurred or to be incurred by the Transferring Attorney and the Bond Registration Attorney in the signing of the transfer and/or bond documentation with any correspondent attorney. No such fees will be payable by the Purchaser if the transfer and mortgage bond documentation are signed at the offices of the Transferring Attorney and the Bond Registration Attorney or at any of their branches in the country.

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10.3 Notwithstanding the provisions of clause 10.1, the Purchaser will be liable for the payment of the costs relating to the issue of the insurance certificate in respect of the Property, as well as the initiation fees and/or valuation fees levied by the financial institution who approves his loan application in the event that the same is not debited against the home loan account with the said institution on the Transfer Date.

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10.4 If the Agreement is cancelled by the Seller due to the Purchaser's breach of contract then the Purchaser shall immediately be and become liable for:

10.4.1 All wasted costs of the Transferring and/or Bond Registration Attorneys, arising out of or in connection with the preparation of transfer and bond documentation including other incidental charges relation to the registration of the transfer of the unit; and/or the Agent's commission;

## 11 COMPLIANCE CERTIFICATES

11.1 The Seller, undertakes, at his expense, to provide the Transferring Attorneys/Purchaser, on or before date of lodgment of the Transfer in the Deeds Office with the following certificates, where applicable:

11.1.1 A valid Certificate of Compliance in respect of the section, from an accredited electrical contractor, in accordance with the provisions of the Electrical Installation Regulations of 2009 as published in terms of the Occupational Health and Safety Act 85 Of 1993; and

11.1.2 A valid Certificate of Conformity for the existing gas installation, be it piped or cylinder, issued by an authorised LPGSASA approved Inspection Authority as defined in the Pressure Equipment Regulations 2009 under Section 43 of the Occupational Health and Safety Act 85 of 1993 (if applicable); and

11.1.3 A copy of the certificate of occupancy; and

11.1.4 A copy of the NHBRC enrolment certificate pertaining to the Property.

11.1.5 Once provided with the Certificates mentioned above the Purchaser will have no claim against the Seller in respect of the electrical, plumbing and gas installations in the Section.

## 12 OCCUPATION POSSESSION AND RISK

12.1 It is anticipated that the Property will be ready for occupation on the Occupation Date ("the specified date") stipulated in the Information Schedule.

12.2 If, however, the Seller believes that, for whatever reason, the Property will be completed for beneficial occupation prior or not be sufficiently complete for beneficial occupation on the specified date, and provided that the delay is not being caused by the successful connection of the electricity to the Property by Eskom, then:

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- 12.2.1 the Seller/Agent shall be entitled to anticipate the new occupation date and give the Purchaser at least **30 (Thirty) days** written notice of the change in the anticipated occupation date. Once proper notice has been given to the Purchaser such new earlier or later date will be deemed as the occupation date for the purpose of this agreement and the Purchaser shall have no claim against the Seller for damages or compensation of any nature because of the Occupation Date having been amended provided that such later date will not exceed **6 (six) calendar months** from the initial occupation date specified in the information schedule.
- 12.2.2 If the Property is not sufficiently complete for beneficial occupation within **6 (six) calendar months** of the Occupation Date specified in the Information Schedule, the Purchaser shall have the right to immediately cancel this agreement, and provide the Seller's duly appointed agent with written notice, provided that such notice is received by the Sellers duly appointed agent within **60 (Sixty) days** of the date of the notice specified in clause. Should the Purchaser cancel the Agreement in terms of this clause he will be entitled to a refund of the Reservation Deposit and all other amounts paid to the Seller/Transferring Attorney and will have no claim of whatsoever nature arising against the Seller for failing for any reason to give possession and occupation of the property to the Purchaser timeously.
- 12.2.3 Should it be disputed that the unit is ready for occupation, a certificate to this effect by the Principle Agent will be the final ruling.
- 12.3 The Purchaser acknowledges that:
- 12.3.1 He shall have no further claim of whatsoever nature or howsoever arising against the Seller for failing for any reason to give possession and occupation of the Property to the Purchaser timeously.
- 12.3.2 On the Transfer Date and/or the Occupation date construction of parts of the Common Property and/or the Building may still be incomplete and that he or the person occupying the property through him, may as a result thereof, suffer inconvenience from building operations such as noise and dust. The Purchaser indemnifies the Seller against any claim by reason of such inconvenience, provided that such inconvenience is not caused by the intentional or grossly negligent act/s of the Seller or its agent/s or its employee/s.
- 12.4 Occupation of the property will be given on the Occupation date as defined in Clause 4.1.22 which date might be prior to the Purchaser taking possession and transfer of the Property.
- 12.5 As from the Occupation Date up until the Transfer date, the Purchaser shall be liable to the Seller for the payment of Occupational Interest in the amount stated in the Information Schedule as follow:
- 12.5.1 Occupational Interest will be payable monthly in advance as soon as occupation is tendered and payments for subsequent months, if any, shall be paid in advance on the first day of such subsequent months;

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12.5.1.1 If the Property is occupied by a tenant prior to registration the occupational interest must be paid by the Tenant directly to the Seller;

12.5.1.2 In any other event the Occupational Interest must be paid by the Purchaser to the Seller;

12.5.2 The occupational interest includes monthly levies and municipal rates, excludes electricity and water consumption charges for all of which the Purchaser shall be liable for payment from the occupation date;

12.6 **SALE OF PROPERTY AFTER OCCUPATION DATE:** If the property is sold or a mortgage bond is approved after the Occupation date as defined in clause 4.1.22, Occupation of the Property shall be given by the Seller and taken by the Purchaser on the Transfer Date.

12.7 Notwithstanding the provisions of clause 12.6 above, the Seller may, in his sole and absolute discretion, allow the Purchaser or a third party occupying the property through the Purchaser to take occupation of the Property prior to the Transfer Date if:

12.7.1 The Local Authority has issued an Occupancy Certificate for the Section;

12.7.2 The full Purchase Price has been paid or secured;

12.7.3 The Purchaser has signed all documentation of whatsoever nature on request of the Transferring Attorney and the Bond Registration Attorney (if applicable);

12.7.4 Occupational Interest will be payable from date of actual occupation to date of registration in terms of clause 12.5.

12.8 Possession of the Property will be given by the Seller and taken by the Purchaser on the Transfer Date, from which date all risk shall pass to the Purchaser and he will be entitled to all benefit and income arising from the Property.

12.8.1 The Purchaser shall, from the Transfer Date, be liable for the payment of the Property's rates, electricity, water, refuse and sewerage costs, connection fees, municipal deposits, amounts due to the Home Owners Association and all other related charges in respect of the Property.

### **13 CONDITIONS APPLICABLE PENDING TRANSFER**

13.1 Upon the Purchaser taking occupation of the Property prior to the Transfer Date, the following conditions will apply to the Purchaser from the Occupation Date until the Transfer Date:-

The Purchaser: -

13.1.1 will permit any person authorized in writing by the Seller or its agent/s or its employee/s at all reasonable hours on notice, except in the case of emergency (when no notice shall be required), to enter the Section and the Common Property for the purposes of inspecting, maintaining and repairing it, or for the purposes of ensuring that the provisions of the STA, the STSMA, the Rules and any other legislation are being observed;

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- 13.1.2 may use the property for residential purposes only, will be obliged to maintain the interior of the Property in a fit and proper condition and may not make any alterations or additions to the Property;
  - 13.1.3 will not use the Property or Common Property in a manner to cause any damage thereto;
  - 13.1.4 will be liable for all water and electricity consumed in respect of the Property as from the Occupation Date; and
  - 13.1.5 The Purchaser will not sell, let or in any manner dispose of or part with (whether temporarily or otherwise) the Property or his rights of occupation thereof before the Transfer Date, except with the written consent of the Seller, which consent will not unreasonably be withheld;
  - 13.1.6 the Purchaser will not appoint or engage any estate agent or other person to market, advertise and/or sell the Property other than the Agent.
- 13.2 The Seller shall, pending the opening of the sectional title register and the establishment of the Body Corporate:
- 13.2.1 insure the building and all improvements in or upon the Property for the full replacement value thereof against such risks as the Seller may decide; and
  - 13.2.2 maintain the Common Property and keep it in a state of good and serviceable repair and in a neat, tidy and sanitary condition; and
  - 13.2.3 administer the Property and the Common Property and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the Common Property and all other charges in connection with the Property and the Building.

#### **14 APPOINTMENT OF CONTRACTOR AND CESSION OF SELLER'S RIGHTS**

- 14.1 The Seller appointed the Contractor to construct the buildings for this Scheme and for this purpose entered into a building agreement with each other. The Seller and the Purchaser agree after completion and handover of the Property by the Seller to the Purchaser that:
- 14.1.1 The Seller cedes all its rights and interest in the building agreement, including all guarantees or warranties of whatsoever nature given to the Seller by the Contractor to the Purchaser who hereby accepts cession thereof.
  - 14.1.2 The Purchaser shall be entitled to enforce its rights and exercise its obligations in respect of the completion of the buildings in accordance with the plans and specifications forming part of the building agreement entered into between the Seller and the Contractor, as well as in respect of any faults, snags or workmanship as fully and effectually, for all intents and purposes as the Seller would be entitled to do against the Contractor.

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## **15 PHASED DEVELOPMENT**

- 15.1 The Seller reserves to itself, and to its successors in title as Developer, all such rights as are provided for in section 25 of the STA, to erect and complete a phased development on the Land from time to time, but no later than 15 (fifteen) years from the date of opening of the Sectional Title Register, for its personal account.

## **16 VERIFICATIONS OF SPECIFICATIONS**

- 16.1 The Building will be built substantially in accordance with the draft sketch plans annexed hereto as Annexure "A" and the building specifications attached hereto as Annexure "B", provided that the Seller shall be entitled to substitute items of a similar standard and quality for any specified item. The Purchaser acknowledges that no request for any variations to the Section and or the building specifications will be entertained. Moreover, the Seller shall be entitled to vary the plans for the Building and/or the Property, should the Seller consider the same reasonably necessary for technical or aesthetic reasons.
- 16.2 If any dispute should arise between the parties regarding the changes effected by the Seller as contemplated in clause 16.1, the decision of the Seller's Principal Agent will be final and binding as to whether or not there has been substantial compliance by the Seller of its obligations after the Principal Agent has requested written submissions from both the Purchaser and the Seller. Should the dispute be determined in favour of the Purchaser, then the Purchaser shall be entitled to cancel this Agreement and claim a refund of the Reservation Deposit and other amounts that was paid.
- 16.3 The Purchaser hereby confirms that the sole utilization areas specified in the Information Schedule have been allocated to the Unit by the Seller in terms of the Management Rules of the Scheme.

## **17 NON-INTERFERENCE BY THE PURCHASER**

- 17.1 The Purchaser will not in any way interfere with, or give instructions to any of the Seller's agents, employees, contractors or subcontractors. The Purchaser will not be allowed to enter the Section unless the prior written consent of the Seller is first had and obtained, in which event the Purchaser must be accompanied by the Independent Property Inspector or his representation.

## **18 RESOLUTIVE CONDITIONS**

- 18.1 The Purchaser acknowledges that the economic viability of the development of the Scheme depends largely on the response by the purchasing public to the advertising campaign launched by the Seller and/or the Agent in respect of the development. If the Seller is of the opinion that the development will not be financially viable or if the Seller has not managed to successfully sell a sufficient number of units in the Scheme and/or,

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- 18.2 The Seller may require finance for the acquisition and/or development of the Buildings and the Property in its discretion, for which the Seller shall apply for in due course when required. Should the Seller be unsuccessful in applying for such finance or insufficient finance is approved,
- 18.3 The Seller may give notice of the termination of this Agreement to the Purchaser, in which event this Agreement shall immediately terminate and be null and void and the Purchaser shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable). The said notice to the Purchaser will be given by the Transferring Attorney by way of email.

## 19 RECTIFICATION OF DEFECTS AND GUARANTEES

- 19.1 Prior to the occupation date, the Purchaser and/or his duly authorised representative shall, together with the duly authorised representative of the Seller, inspect the property on a date specified by the Seller.
- 19.2 The Purchaser and/or his duly authorised representative, shall within **3 (three) days** after inspection furnish the Sellers representative with a list of patent defects, which defects will be rectified by the Seller prior to occupation.
- 19.2.1 Once the patent defects have been remedied to a reasonable satisfaction of the Purchaser, the Purchaser or his representative will sign a letter of satisfaction (“happy letter”) which, in the event that the Purchaser obtained mortgage finance, has to be acceptable to the mortgagee.
- 19.3 The Purchaser and/or his duly authorised representative, shall furthermore submit a list of Latent Defects to the Sellers or the Sellers representative within a period 180 (One Hundred and Eighty) days from the date of occupation and the Seller undertakes to remedy such defects.
- 19.4 The Seller shall only be responsible for such defects provided in the Latent Defects List caused by faulty materials and/or workmanship and the Seller shall under no circumstances be liable for any consequential loss or damage and the Purchaser hereby waives any such claim and indemnifies the Seller in this respect.
- 19.5 The Purchaser accepts the appointment of the Independent Property Inspector to act as the exclusive liaison between the Purchaser and the Seller and undertakes not to contact the Seller directly.
- 19.6 It is recorded that the Purchaser shall not be precluded from exercising his rights in terms of Section 56 as read with Section 55 of the Consumer Protection Act in so far as they may be applicable.

19.7 The Purchaser undertakes to give access to the Seller and its contractors after the Occupation Date to enable the Seller and its contractors to attend to the remedying of the Defects indicated in any of the above defect's lists. In the event that the Seller or its contractors are on at least 2 (two) occasions unsuccessful to get access to the Section within a period of **30 (thirty) days** from date on which the Seller first notifies the Purchaser that access is required for the purposes contemplated in this clause,

19.7.1 the parties agree that it will be deemed that the Purchaser does not require any such items to be remedied any longer, that the Purchaser is satisfied with the condition of the Section and that the Purchaser has released the Seller and its contractors from any obligations with regard to the repair of any patent defects.

19.8 A certificate issued by the Principle Agent to the effect that the defects referred to in the Defect Lists have been rectified shall be final and binding on both parties and shall relieve the Seller from any further obligation in respect of such defect.

19.9 The Purchaser acknowledges and agrees that he shall have no claim against the Seller in respect of defects, whether latent, patent or otherwise in the Common Property or the Unit/s save for defects of which the Purchaser shall have notified the Seller.

19.10 The following warranties are given in terms of the NHBRC Act:

19.10.1 The Seller will ensure that its contractors comply with all applicable building regulations and conditions and that a Standard Home Builders Warranty be issued in accordance with legislation and the rules and practice of the National Home Builders Registration Council relating to the improvements on the Property. If any portion of the Section must be repainted due to a defect being reported, only that portion affected by the defect will be repainted.

19.10.2 The Seller will ensure that its contractors warrant to remedy, at its own expense, the entire Section in respect of:

19.10.2.1 major structural defects in the Building caused by non-compliance with the NHBRC technical requirements occurring within **5 (FIVE) years** of the Occupation Date;

19.10.2.2 any roof leaking in the Building manifesting itself within **12 (TWELVE) months** of the Occupation Date due to faulty materials, design or workmanship;

19.10.2.3 any deficiency manifesting itself within **90 (NINETY) days** of the Occupation date due to faulty materials, design or workmanship;

19.10.2.4 Subject thereto that the Contractor receives notice from the purchaser within each time-period.

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## 20 MANAGING AGENT

20.1 The Seller will be entitled to appoint the first Managing Agent, which appointment shall be valid and binding on the Body Corporate for a period of **1 (one) year** after the date of the first annual general meeting of the Body Corporate, provided that such appointment complies with section 6(2) of the Rules. Insofar as it may be necessary, the Purchaser hereby grants the Seller the irrevocable power to make such appointment.

## 21 MANAGEMENT AND CONDUCT RULES

21.1 The purchaser acknowledges that he is familiar with the rules as referred and contained in section 10 of the STSMA as published in Government Gazette 40335 of 7 October 2016.

21.2 A copy of the rules can be viewed on the website at <https://www.gov.za/documents/sectional-titles-schemes-management-act> or a copy will be made available to the Purchaser on request.

## 22 LEVIES

22.1 The *bona fide* estimate of the monthly levy, pending the final determination thereof, is as set out in the Transaction details of the Information Schedule.

## 23 DIRECT MARKETING AND COOLING OFF

23.1 In terms of section 16 of the CPA, if this Agreement has been entered into as a result of direct marketing, meaning that the Purchaser was directly or indirectly approached either in person or by mail or electronic communication by the Seller or the Agent for the purpose of promoting or offering to supply, in the ordinary course of business, the sale of the Property hereby sold, the Purchaser would have been entitled to cancel this Agreement without reason or penalty by written notice within **5 (five) days** after the Signature Date, or within **5 (five) business days** after delivery of the Property.

23.2 The Seller is therefore not prepared to enter into any agreement with the Purchaser if such agreement would have resulted from such direct marketing. The Purchaser therefore warrants that this transaction is not entered into if such direct marketing conducted by the Seller and the Seller enters into this Agreement relying entirely upon such warranty.

23.3 The Purchaser understands that if, after delivery of the Property, the Purchaser is successful in cancelling this Agreement by relying upon the right of cancellation flowing from the direct marketing provisions of the CPA, the Purchaser shall be liable for damages suffered by the Seller as a result thereof on the basis of the Purchaser's breach of this warranty.

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## 24 AGENT'S COMMISSION

- 24.1 The parties warrant that the Agent was the effective cause of the sale and that no other person or estate agent introduced the Purchaser to the Property or to the Seller, and the Seller shall be liable to effect payment of the Agent's commission as agreed to in this Agreement
- 24.2 The parties record that the Agent shall be entitled to part payment of commission in an amount equal to the Reservation Deposit, and the Transferring Attorney is authorised to pay such commission to the Agent, once:
- 24.2.1 the full Purchase Price is secured by the Purchaser to the satisfaction of the Seller should the Purchaser not require mortgage finance as contemplated in clause 8.1 above; or
- 24.2.2 once the bond registration attorney receives an instruction from the bank or other financial institution who approved the Purchaser's loan application to attend to the registration of a mortgage bond over the Property or another property registered in the name of the Purchaser as security for the loan, should the Purchaser require mortgage finance as contemplated in clause 8 above and the balance of the Purchase Price (if any) is secured to the satisfaction of the Seller; and
- 24.3 The balance of the commission shall be paid by the Transferring Attorney to the Agent on the Transfer Date.
- 24.4 The Purchaser confirms that he is aware that once a portion of the commission is paid by the Transferring Attorney to the Agent, interest will only be earned on the remaining balance of funds invested by the Transferring Attorney in terms of the Legal Practice Act.

## 25 RENTAL MANAGEMENT

- 25.1 The Seller hereby consents that the Property may be let to a suitable tenant with effect from the Completion Date if the Purchaser does not intend occupying the Property himself.
- 25.2 The Purchaser hereby appoints the Independent Property Inspector as its sole and exclusive agent to procure and place tenants in the Property and act as his rental agent for a period of **3 (three) years** from the Completion Date on the terms and conditions of the Independent Property Inspector's standard rental management agreement from time to time.

## 26 REFUND TO THE PURCHASER

- 26.1 The Purchaser shall be entitled to a refund of all amounts paid *in lieu* of the Reservation Deposit and the balance of the purchase price as contemplated in clause 7 should this Agreement:
- 26.1.1 Lapse as contemplated in this agreement due to a deviation in the initial extent of the property of more than 8% or if the suspensive conditions as stipulated in this agreement (specifically the obtaining of a mortgage bond, if applicable) are not met; or
- 26.1.2 Terminate as contemplated in this agreement if the property is not sufficiently completed by the extended Anticipated Occupation date; or
- 26.1.3 Be cancelled due to the breach of this Agreement by the Seller; or
- 26.1.4 Be cancelled due to an unresolved dispute arising between the parties regarding the variations of specifications of the property; or
- 26.1.5 Be cancelled due to a deviation of more than 8% on the initial extent of the property; or
- 26.1.6 Be cancelled due to the failure of the Seller to transfer the property to the Purchaser within **36 (thirty-six) months** from date of signature of this agreement.
- 26.2 The Agent shall refund to the Purchaser's nominated bank account that portion of the commission paid by the Transferring Attorney to the Agent as commission as contemplated in the Agent Commission clause.
- 26.3 The Transferring Attorney shall refund to the Purchaser's nominated bank account such amounts as remain in trust with the Transferring Attorney after deduction of a portion of the interest accrued liable to the Legal Practitioners' Fidelity Fund in terms of Section 86(5)(b) of the Legal Practice Act and the attorney's investment fee.
- 26.4 The Purchaser shall have no recourse against the Seller and/or the Transferring Attorney for the reimbursement of any monies paid over by the Transferring Attorney to the Agent in terms of his commission.

## 27 NOTICES AND DOMICILIUM

- 27.1 Each of the parties chooses as his *domicilium citandi et executandi* ("domicilium") for the purposes of giving of any notice or the serving of any process and for any other purpose arising from this Agreement their respective addresses as stated above.
- 27.2 Each of the parties will be entitled from time to time, by written notice to the other party to change his *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante. The changed address will be affective after 14 (fourteen) days of such change.
- 27.3 Any notice in terms hereof may be delivered to the other party ("the recipient") by hand, prepaid registered post or E-mail.

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27.4 Any notice given by a party to the other which:

27.4.1 is delivered by hand, to a responsible person, during ordinary business hours, at the physical address provided will be presumed to have been received (unless the contrary is proved by the addressee) on the day and time of delivery.

27.4.2 is sent by prepaid registered post, in a correctly addressed envelope, to the postal address specified above will be presumed to have been received by the recipient on the seventh day after the date of posting; or

27.4.3 is sent by email to the E-mail address specified will be deemed (unless the contrary is proved by the addressee), to have been received on the first business day after transmission.

27.5 Where in terms of this Agreement any communications are required to be in writing the term writing will include communications by E-mail.

## 28 BREACH AND CANCELLATION

28.1 If either Party ("the Defaulting Party") fail to pay any amount, or fail to provide the guarantee(s) required in terms of this Agreement on due date, or commit a breach of any other of the terms and conditions of this agreement then the other party ("the Aggrieved Party") will be entitled to give the Defaulting Party **5 (five) business days'** (unless the transaction has already been lodged at the deeds office for registration, in which event the notice period will be reduced to **24 (twenty four) hours**) written notice to remedy such breach. Should the Defaulting Party fail to comply with such notice, the Aggrieved Party shall be entitled, without prejudice to any other rights and remedies that it may have in law including the right to claim damages to:

28.1.1 cancel this Agreement without any further notice and claim damages and if the Purchaser being the defaulting party, the Seller shall be entitled to retain all monies paid by the Purchaser to the Seller and/or the Seller's agents or the Transferring Attorney in terms hereof, including monies paid as a deposit to the Transferring Attorney together with any interest earned thereon; pending determination of damages; or

28.1.2 to claim immediate performance and/or payment, of all the obligations of the defaulting party in terms of this Agreement, including immediate payment of the balance and/or whole of the purchase price in the event of the Purchaser being the defaulting party.

28.2 Should either party dispute the other party's right to cancel this Agreement, then pending the determination of the dispute, the Purchaser will be obliged to continue with the payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller will be entitled to recover and accept those payments without prejudice to any of the Seller's rights in terms of this Agreement. Failure to pay any of the aforesaid amounts will constitute a material breach of the Agreement.

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- 28.3 Where the Purchaser has forfeited the Deposit and other amounts in favour of the Seller or the Sellers has become entitled to retain the Deposit or other amounts paid to the Trust Account, the Transferring Attorney will be obliged to pay such amounts to the Seller on demand.
- 28.4 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser/all persons occupying the Property through him hereby undertakes to vacate the Property within **24 (twenty-four) hours** of such cancellation and the Seller shall immediately be entitled to resell the Property.
- 28.5 If the Purchaser causes an unjustified delay in the registration of the Property and/or the registration of the bond, which delay results in the relevant documentation not being lodged for registration in the relevant deeds registry at the time of the lodging of the application for the opening of the Register and the registration of the Sectional Plan or the registration of the extension of the Scheme, the Seller will have the right, without prejudice to any other right or remedy he may have in law (including but not limited to the right to claim damages) to either: immediately cancel this Agreement or claim specific performance of the terms and provisions of this Agreement.
- 28.6 In the event that the Seller claims specific performance, the Purchaser shall in addition to the monthly levies and the monthly occupational interest, also be liable for the payment of an amount of R10 000,00 (Ten Thousand Rand) per month from the date on which the documentation pertaining to the opening of the Register and the registration of the Sectional Plan or the registration of the extension of the Scheme could have been lodged in the relevant deeds registry until the actual date of lodgement thereof.

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- 28.7 Notwithstanding anything stated to the contrary herein, the Purchaser shall be entitled to cancel this Agreement by written notice to the Seller if the Seller fails to pass transfer of the Property into the name of the Purchaser within a period of **36 (thirty-six) months** from the Signature Date, in which event the Purchaser shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 26.
- 28.8 Should the contract be cancelled by agreement the Purchaser shall remain liable for costs incurred which costs cannot be recovered from a subsequent purchaser as liquidated damages. Such costs shall include but not be limited to the wasted costs for preparing and drafting documentation not exceeding R5,000.00 (Five Thousand Rand).
- 28.9 Should the sale be cancelled after complying with clause 8.2 due to the failure of the Purchaser in carrying out any of his obligations in terms of this agreement the Seller reserves the right to claim from the Purchaser who will be liable to the Seller for payment on demand of a cancellation fee of up to 5% of the Purchase Price as wasted costs as well as Agents commission as liquidated damages.

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28.10 The reservation deposit or part thereof shall be used by the Seller/Agent to recover the costs mentioned in clause 28.8 and 28.9. The Seller and Purchaser authorise the Transferring Attorney to pay the amount due to the Agent/Seller from the Transferring Attorneys trust account within **5 (five) days** of the cancellation of the agreement subject to clause 7.2.

## 29 JURISDICTION

29.1 The Parties hereby consents in terms of section 45 of the Magistrate's Court Act, No. 32 of 1944, as amended, to the jurisdiction over any person under section 28 of that Act, notwithstanding that the value of the claim or the matter in dispute might otherwise exceed the jurisdiction of such Court. The Parties shall, however, have the right to institute action in any other Court of competent jurisdiction.

29.2 The Purchaser agrees that, in the event of the Seller instructing its attorneys and/or proceeding in terms of clause 30 below and/or instituting legal proceedings against the Purchaser pursuant to a failure by the Purchaser to fulfil any of his obligations in terms hereof, then the Purchaser shall pay all legal costs together with VAT thereon incurred by the Seller in connection therewith as between attorney and own client, including collection commission (where applicable).

## 30 DISPUTE RESOLUTION AND ARBITRATION

30.1 Any Party may, after written notice to this effect, refer any dispute arising from the terms of this Agreement to arbitration to be determined in terms of this clause in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("**AFSA**").

30.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator. The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.

30.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

30.4 The arbitration shall be held at Cape Town, Western Cape, with only the legal and other representatives of the Parties to the dispute present there at and otherwise in terms of the Arbitration Act, unless otherwise provided for herein. The arbitrator shall be a practising advocate of the Johannesburg or Pretoria Bar of at least ten years' standing, appointed by agreement between the parties to the dispute. Should the Parties fail to agree on an arbitrator within **14 (fourteen) days** after the giving of notice the arbitrator shall be appointed by the Chairperson of the Bar Council at the request of either Party to the dispute.

30.5 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the High Court, at the instance of any of the parties to the dispute.

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- 30.6 In the event that a party to a dispute wishes to appeal the decision of the arbitrator, such party shall apply to the arbitrator for leave to appeal within **14 (fourteen) days** from the date of the decision of the arbitrator.
- 30.7 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held before 3 (three) arbitrators appointed in accordance with clauses 30.5 and 30.4, it being agreed that for the purposes of appeal the appointed arbitrators may include a retired judge otherwise appointed in accordance with clauses 30.4.
- 30.8 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator such party shall furnish security for the costs of the appeal in an amount of R100 000 (one hundred thousand Rand) within **30(thirty) days** from the date on which leave to appeal is granted. Should the relevant party fail to furnish security to this effect the leave to appeal shall lapse and the prospective appellant will no longer be entitled to proceed with an appeal and the arbitrator's decision will be final and binding upon the Parties.
- 30.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

### **31 COMPANY / CLOSE CORPORATION / TRUST**

1. 31.1 If the purchaser is a Company, Close Corporation or a Trust, or any person acting in a representative capacity, the person signing this Agreement on behalf of the Purchaser shall be deemed to have bound himself as surety and co-principal debtor(s) for all the obligations of the Purchaser (and, if applicable, jointly and severally with any other persons signing this Agreement on behalf of the Purchaser), such surety hereby renouncing the benefits of excussion and division the effect of which he acknowledge himself to be aware.

### **32 GENERAL**

- 32.1 No concession or any other indulgence which may be granted by the Seller to the Purchaser, whether in respect of time for payment or otherwise, in regard to the terms and conditions of this Agreement shall be deemed to be a waiver or estoppel of and shall not affect, prejudice or derogate from the rights of the Seller under this Agreement.
- 32.2 If there is more than one Purchaser in terms of this Agreement, the liability of each of the Purchasers will be joint and several.

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- 32.3 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement, provided however that the remaining provisions shall contain at least the minimum requirements for a valid and binding agreement for the sale of immovable property.
- 32.4 This Agreement is the sole agreement between the parties hereto and no amendment, variation or consensual cancellation hereof will be valid unless such amendment, variation or consensual cancellation has been reduced to writing and signed by the parties or their duly authorised representatives hereto.
- 32.5 Save as otherwise agreed to in this Agreement, the Purchaser will not be relieved of any of his obligations under this Agreement or be entitled to any reduction of the purchase price or any other amount due in terms hereof in the event that the Seller fails to obtain, or delay in obtaining, any approval of whatsoever nature which may be required for the development to be completed from any governmental authority or if the opening of the Register is delayed for whatever reason.
- 32.6 The Purchaser acknowledges by his signature hereto that the Seller has provided sufficient time and opportunity for the Purchaser to receive and comprehend the nature and effect of the provisions of this Agreement and to obtain independent legal advice.

### **33. PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)**

Agent and Seller are required to collect and process the personal information of the parties herein to give effect to any of the parties' rights and obligations that flow from this agreement. The parties agree that their personal information may be processed by Agent / Seller and further processed and shared with any professional parties involved in the transaction, including but not limited to conveyancing attorneys, bond cancellation attorneys, banks, mortgage originators and/or with their business partners and municipalities or otherwise as required by law. Agent / Seller will process the personal information of the parties for the duration of the transaction as may be required and will retain the personal information as required by law.

Initial  
here:

**33 SIGNATURES**

DATED AT _____ ON THIS _____ DAY OF _____ 20__	
_____	_____
WITNESS 1	PURCHASER 1
_____	_____
WITNESS 2	PURCHASER 2

DATED AT _____ ON THIS _____ DAY OF _____ 20__	
_____	_____
WITNESS 1	SELLER
_____	_____
WITNESS 2	

DATED AT _____ ON THIS _____ DAY OF _____ 20__	
_____	_____
WITNESS 1	CONTRACTOR / BUILDER
_____	_____
WITNESS 2	

Initial  
here: