



**AGREEMENT OF SALE**

**BEFORE OPENING OF A SECTIONAL TITLE REGISTER**

Between

**THE HUDSON PROPRIETARY LIMITED**

Registration Number 2016/010304/07

(The "Seller")

And

-----  
(The "Purchaser")

Levy Special (12 months)

Name of Scheme : **The Hudson**

Unit Number : \_\_\_\_\_

Parking Bay Number : \_\_\_\_\_

V20/08/2021

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The agreement of sale between the Parties consist of this Agreement, which specifically includes the following Annexures:

**ANNEXURES**

- A. SCHEME SITE DEVELOPMENT PLAN
- B. SCHEME ELEVATION AND FLOOR LAYOUT PLAN
- C. UNIT FLOOR PLAN
- D. BASIC SPECIFICATIONS
- E. UPGRADE TO SPECIFICATIONS AND ADDITIONAL COSTS
- F. PARKING LAYOUT PLAN AND PARKING BAY ALLOCATION
- G. LIST OF PRELIMINARY PARTICIPATION QUOTAS
- H. ESTIMATED BUDGET AND LEVIES
- I. PURCHASER'S RESOLUTION (IF APPLICABLE)
- J. PURCHASER'S INVESTMENT MANDATE
- K. PURCHASER'S FICA REQUIREMENTS

all of which are to be read together as one agreement.

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## 1 INFORMATION SCHEDULE

A. PARTIES	
A.1. Seller	The Hudson (Pty) Ltd
Registration Number:	2016/010304/07
Address	Tyger Valley Chambers 4, 2nd Floor 27 Willie Van Schoor Drive, Bellville, 7530
Seller's VAT Registration No.:	
A.2. Purchaser (full names)	
Identity No. / Registration No. / Date of Birth	
Representative's full names (if signing on behalf of a Juristic Person)	**
<b>**IMPORTANT:</b> If the purchaser is a trust the transaction and the signatory must be authorised in terms of a resolution signed by all the trustees dated prior to the signing of this agreement	
Purchaser's Income Tax Reference No.	
Residential Address (street address)	
Postal Address	
Telephone No (Mobile)	
(Work)	
(Home)	
E-mail Address	
<b>**NOTE:</b> The following information in the remainder of Item A.2. is only required to be completed in the event of the Purchaser being a natural person.	

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Marital Status	Single		Married	
If married, how married?	In community of property			
	Out of community of property without accrual			
	Out of community of property with accrual			
	Married by Customary Law:			
	Foreign marriage			
If foreign marriage, governed by the laws of?	(state country)			
Full Names of Spouse				
Identity Number of Spouse				
<b>B. PROPERTY</b>				
B.1. Land on which the Scheme will be established:	Erf 331 Buhrein			
B.2. Name of Scheme:	The Hudson			
B.3. Section Number:				
B.4. Extent:				
B.5. Exclusive Use Area (Registered in terms of Section 27 of the STA)	Garden Number:			
B.6. Exclusive Use Area (Allocated in terms of Section 10 (7) and (8) of the STSMA as indicated on the Parking Layout Plan and Parking Bay Allocation)	Parking Bay Number:			
<b>C. PURCHASE PRICE</b>				
C.1. Purchase Price of the Property (Inclusive of VAT)	R			
C.2. Upgrade to Specifications & Additional Costs	R			
C.3. Total Purchase Price (Inclusive of VAT)	R			
C.4. Deposit	R 10 000.00			
C.5. Balance of the Purchase Price	R			
C.5.1. Cash	R			
C.5.2. Loan Amount	R			

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C.6.	Date for payment of the Deposit	Within 7 (seven) days after the Signature Date
C.7.	Date Loan must be granted by	Within 60 (sixty) days after the Signature Date
C.8.	Date for issuing of the guarantee/s	Within 14 (fourteen) days following the fulfilment of the suspensive conditions referred to in clauses 6 and/or 7 of the Agreement; or, if this Agreement is not subject to the suspensive conditions referred to in clauses 6 and 7, within 30 (thirty) days after the Signature Date
<b>D. SALE OF PURCHASER'S EXISTING PROPERTY</b> <i>Delete if not applicable</i>		
D.1.	Property Description	
D.2.	Street Address	
D.3.	Date that Purchaser's property must be sold	Within 90 (ninety) days after the Signature Date
D.4.	Date that the transfer of Purchaser's property must be registered	Within 60 (sixty) days following the fulfilment of all suspensive conditions referred to in clause 7.1.1 of the Agreement, or if the Existing Property is already unconditionally sold on the Signature Date, within 60 (sixty) days following the Signature Date
<b>E. TRANSFER DATE</b>		
	Estimated Date	As soon as reasonably possible after the Practical Completion Date
<b>F. PRACTICAL COMPLETION DATE</b>		
		December 2022
<b>G. TRANSFERRING ATTORNEYS</b>		
	Name of Attorney	ESI Attorneys Ref: Pieter Goosen Tel no: 021 943 5111 Bank Account details: Account Name: ESI Attorneys Bank: Nedbank Trust Branch: Tygerberg Winelands Account Number: 1036332667 Branch Code: 198765 Reference: The Hudson/Unit___& client's surname
<b>H. BOND BROKER</b>		
	Name of Bond Broker	IMortgage (Pty) Ltd Reference: Kim Goodwin Tel: 087 890 0333 Email: kim@imortgage.co.za

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<b>I. ESTATE AGENCY</b>	
I.1. Company	Rank Real Estate (Pty) Ltd Registration Number: 2015/313518/07
Telephone Number	087 802 9005
I.2. Sub-Agent	
Cell Number	
E-Mail	

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## 2 INTERPRETATION

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings —

- 2.1.1 **Agreement** means this Agreement together with all annexures (if applicable) hereto;
- 2.1.2 **Balance of the Purchase Price** means the Balance of the Purchase Price described in Item C.5 of the Information Schedule;
- 2.1.3 **Basic Specifications** means the detailed specifications and finishes schedule annexed hereto as Annexure D, setting out the standard specifications and finishes to be used in the construction of the Scheme;
- 2.1.4 **BEMPOA** means the Buh-Rein Estate Master Property Owners Association;
- 2.1.5 **Body Corporate** means the Body Corporate to be established in respect of the Scheme in terms of Section 2 of the STSMA;
- 2.1.6 **Bond Broker** means the Bond Broker referred to in Item H of the Information Schedule;
- 2.1.7 **Building** means the building(s) to be constructed or in the process of being constructed on the Land and which will be constructed substantially in accordance with the Drawings and Basic Specifications;
- 2.1.8 **Common Property** means that portion of the Scheme that does not form a part of a Section, which portion will be designated as such on the Sectional Plan;
- 2.1.9 **Constitution** means the constitution of BEMPOA;
- 2.1.10 **CPA** means the Consumer Protection Act, No. 68 of 2008, as amended;
- 2.1.11 **Defects List** means the list of Snags as agreed upon by the Parties during the Hand-over Inspection;
- 2.1.12 **Deposit** means the Deposit described in Item C.4 of the Information Schedule;
- 2.1.13 **Development** means the residential development being established by the Seller on the Land;
- 2.1.14 **Direct Marketing** means to approach a person, either in person or by mail or electronic communication for the direct or indirect purpose of promoting or offering to supply, the Property to that person;
- 2.1.15 **Drawings** means the drawings of the Scheme and the Unit, as detailed in Annexures A, B and C, as the context may require;
- 2.1.16 **Due Date** means the date for the fulfilment of any condition referred to in this Agreement or the date for the payments of any amount(s) due in terms of this Agreement, as the case may be;
- 2.1.17 **Estate Agency** means the Estate Agency referred to in Item J.1 of the Information Schedule;
- 2.1.18 **Exclusive Use Area(s)** means that portion of the Common Property as stipulated in Items B.5 and B.6 of the Information Schedule for the exclusive use of the Purchaser as owner of one or more Section;
- 2.1.19 **FICA** means the Financial Intelligence Centre Act No. 38 of 2001, as amended;
- 2.1.20 **First Meeting** means the First Meeting of the Body Corporate in terms of Section 2(8) of the STMA;

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- 2.1.21 **Foreigner** means a person who is not a citizen of the Republic of South Africa as defined in the South African Citizenship Act, No.88 of 1995, as amended;
- 2.1.22 **Garden** means the Garden described in Item B.5 of the Information Schedule, if applicable;
- 2.1.23 **Hand-over Inspection** means an inspection of the Property by the Seller or it's representative, and the Purchaser, or it's representative, before the Occupation Date, at which inspection the Parties will agree to the Defects List;
- 2.1.24 **Initiation Fee** means the Initiation Fee due and payable by the Purchaser to the bank or other financial institution approving the loan;
- 2.1.25 **Information Schedule** means the Information Schedule contained in pages 3-6 of this Agreement;
- 2.1.26 **JBCC** means the Principal Building Agreement utilized by the Joint Building Contracts Committee Edition 4.1 Code 2101 March 2005 concluded between the Seller and the Sub- Contractor;
- 2.1.27 **Juristic Person** means a body recognized by the law as being entitled to rights and duties in the same way as a natural person, for example (but not limited to) a company and a close corporation and for the purposes of this Agreement includes a trust and a partnership;
- 2.1.28 **Land** means the Erf on which the Scheme will be established as described in Item B.1 of the Information Schedule;
- 2.1.29 **Levies** means the Levies payable by the Purchaser to BEMPOA and the Body Corporate as provided for in the Constitution and the Rules;
- 2.1.30 **Loan Amount** means the amount as referred to in Item C.5.2 of the Information Schedule;
- 2.1.31 **Local Authority** means the City of Cape Town, and shall include its successor in title;
- 2.1.32 **LUPA** means the Western Cape Land Use Planning Act, No. 3 of 2014, as amended, and includes any superseding and/or sub-ordinate legislation;
- 2.1.33 **Main Contractor** means the Seller;
- 2.1.34 **Management Company** means the management company appointed by the Seller;
- 2.1.35 **NCA** means the National Credit Act, No 34/2005, as amended;
- 2.1.36 **NHBRC** means the National Home Builders Registration Council established in terms of section 2 of the Housing Consumers Protection Measures Act, No. 95 of 1998;
- 2.1.37 **Normal Wear and Tear** means the normal wear and tear ascribed to improvements to property in general, including but not limited to touch-up paint of any nature, hairline cracks in the plaster work, any shrinkage/movement and expansion cracks between different components / materials used or cracking which might appear in control movement joints, any mould growth caused by a lack of ventilation and/or condensation, any doors and windows slamming in windy conditions or any damages caused thereby, wind and rain entering through open windows and doors and hot water cylinders which is covered by the guarantee issued by the supplier thereof;
- 2.1.38 **Occupancy Certificate** means the certificate that the Local Authority issues confirming that the Building has been completed in accordance with the Drawings;

- 2.1.39 **Occupation Date** means the date on which the Purchaser attends the Handover Inspection, or in the circumstances as provided for in clause 12.2 (failure or refusal to attend the Handover Inspection), the Occupation Date will be deemed to be 5 (five) Business Days after the Practical Completion Date;
- 2.1.40 **Occupational Rent** means an amount equal to the Prime Overdraft Rate, calculated pro rata per month on the Purchase Price.
- 2.1.41 **Parking Layout Plan and Parking Bay Allocation** means the schedule which indicates the layout and allocation of the respective Exclusive Use Areas allocated in terms of Section 10 (7) and (8) of the STSMA, attached to this Agreement as Annexure F;
- 2.1.42 **Parking Bay** means the Parking Bay as described in Item, B.6 of the Information Schedule;
- 2.1.43 **Parties** means the parties to this Agreement and “**Party**” means any one of them, as the context may require;
- 2.1.44 **POCA** means the Prevention of Organised Crime Act 21/1998, including regulations framed thereunder;
- 2.1.45 **POPIA** means the Protection of Personal Information Act, No. 4 of 2013;
- 2.1.46 **Practical Completion Date** means the date upon which the Principal Agent issues the Practical Completion Certificate in respect of the Unit, which estimated date is as set out in Item F of the Information Schedule and an Occupancy Certificate has been issued in respect of the Unit;
- 2.1.47 **Practical Completion Certificate** means the certificate issued by the Principal Agent certifying that the Unit has been completed substantially in accordance with the Drawings and Basic Specifications, free of patent defects other than Snags, and that the Unit is fit for occupation as a residence;
- 2.1.48 **Prime Overdraft Rate** means the publicly quoted basic rate of interest from time to time published by First National Bank Limited (or its successor-in-title) as being its prime overdraft rate as certified by any manager of such bank, whose appointment and designation need not be proved;
- 2.1.49 **Principal Agent** means the principal agent appointed in terms of the JBCC;
- 2.1.50 **Property** means collectively, the Unit and the Exclusive Use Area(s);
- 2.1.51 **Purchase Price** means the Purchase Price described in Item C.1 of the Information Schedule;
- 2.1.52 **Purchaser** means the Purchaser referred to in Item A.2 of the of the Information Schedule;
- 2.1.53 **Rules** means the Management- and Conduct Rules of the Scheme, subject at all times to the provisions of the Constitution; available on the Website;
- 2.1.54 **SARS** means the South African Revenue Services;
- 2.1.55 **Scheme** means the sectional title scheme referred to in Item B.2 of the Information Schedule to be established on the Land in terms of the provisions of the STA and the STSMA;
- 2.1.56 **Scheme SDP** means the Site Development Plan in respect of the Scheme, as approved or to be approved by the Local Authority, annexed hereto as Annexure A;
- 2.1.57 **Section** means the Section referred to in Item B.3 of the Information Schedule which Section is depicted on the Sectional Plan;

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- 2.1.58 **Sectional Plan** means the Sectional Plan to be drawn in terms of the STA in respect of the Land and Building, comprising the Scheme, and to be approved by the Surveyor General;
- 2.1.59 **Sectional Title Register** means the Sectional Title Register in respect of the Scheme to be registered and opened in terms of the STA;
- 2.1.60 **Seller** means the Seller as described in Item A.1 of the Information Schedule;
- 2.1.61 **Signatory** means the person(s) or trustee(s) who sign this Agreement on behalf of a Juristic Person or on behalf of a company still to be incorporated;
- 2.1.62 **Signature Date** means the date on which the Seller signs the Agreement;
- 2.1.63 **Snags** means any imperfections and/or minor defects in the Unit, to be remedied and/or repaired by the Contractor, on behalf of the Seller, at the Seller's cost, but which are not so serious, substantial and/or material so as to render the Unit unfit for occupation as a residence;
- 2.1.64 **STA** means the Sectional Titles Act, No. 95 of 1986 or any amendment thereto and includes the regulations promulgated thereunder, from time to time;
- 2.1.65 **STSMA** means the Sectional Titles Schemes Management Act, No.8 of 2011, as amended;
- 2.1.66 **Sub-Agent** means the Sub-Agent as referred to in Item I.2 of the Information Schedule;
- 2.1.67 **Sub-Contractor** means MSP Developments (Pty) Ltd, Registration Number: 2001/019488/07;
- 2.1.68 **Total Purchase Price** means the sum of the Purchase Price and Upgrade to Specifications (if applicable) described in Item C.3 of the Information Schedule;
- 2.1.69 **Transferring Attorneys** means the Transferring Attorneys as referred to in Item G of the Information Schedule;
- 2.1.70 **Transfer Date** means the date of registration of transfer of ownership of the Property into the name of the Purchaser, which date is estimated to be the date referred to in Item E of the Information Schedule;
- 2.1.71 **Trigger Date** means the date when:
- 2.1.71.1 all the suspensive conditions contained in this Agreement (including those in favour of the Seller) are fulfilled; and
  - 2.1.71.2 the payment of the Total Purchase Price has been secured as provided for in clause 5.1.3 of the Agreement; and
  - 2.1.71.3 the Property is "**registrable**" as defined in the Alienation of Land Act, No.68 of 1981, alternatively (when not registrable), if the Seller has provided the Purchaser with an irrevocable and unconditional guarantee which complies with all the necessary requirements stipulated in Sections 26(3)(b) and 26(4) of the said Act.
- 2.1.72 **Unit** means a Section together with its undivided share in the Common property apportioned to that Section in accordance with the participation quota of the Section;
- 2.1.73 **VAT** means Value Added Tax payable in terms of the VAT Act;
- 2.1.74 **VAT Act** means The Value Added Tax Act, No 89 of 1991;

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- 2.1.75 **Website** means the Website of the Development available on the internet at the following website address: <https://the-hudson.co.za/>
- 2.2 In this Agreement —
- 2.2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 2.2.2 an expression which denotes —
- 2.2.2.1 any gender includes the other genders;
- 2.2.2.2 a natural person includes a juristic person and vice versa;
- 2.2.2.3 the singular includes the plural and vice versa;
- 2.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 2.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.
- 2.3 Any reference in this Agreement to —
- 2.3.1 **"business hours"** shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 2.3.2 **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a **"business day"** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.3.3 **"laws"** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning;
- 2.3.4 **"person"** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 2.4 The words **"include"** and **"including"** mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.7 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.

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- 2.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 2.10 Except to the extent that any provision of this Agreement expressly provides otherwise, if the only day or the last day for the exercise of any right, performance of any obligation or taking (or procuring the taking of) any action in terms of any provision of this Agreement falls on a day which is not a business day, such right shall be capable of being exercised, or such obligation performed or action taken on the immediately succeeding business day.
- 2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement.
- 2.13 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.14 Any reference in this Agreement to "**this Agreement**" or to any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.15 In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

### **3 RECORDAL**

- 3.1 The Seller wishes to develop the Land by the construction of the Building thereon.
- 3.2 The Seller is in the process to procure the required development rights and Drawings.
- 3.3 The Seller is the Main Contractor and will manage the construction of the Building and will appoint the Sub-Contractor by means of the JBCC to construct the Building as provided for in this Agreement. The Seller and the Sub-Contractor will be registered with the NHBRC and will comply with all requirements pertaining to such registration.
- 3.4 The Seller wishes to sell the Property to the Purchaser prior to the commencement of the construction of the Building.
- 3.5 The Building has not been completed and the Sectional Plan has not yet been drawn or registered and accordingly the exact and final boundaries of the Property will only be reflected on the approved Sectional Plan.

### **4 SALE**

- 4.1 The Seller wishes to sell and the Purchaser wishes to purchase the Property from the Seller through the Estate Agency, subject to the terms and conditions contained in this Agreement.
- 4.2 The Property is more fully described on the Drawings and will be finally described on the Sectional Plan (where applicable).
- 4.3 The Purchaser hereby confirms that the Estate Agency has supplied him with sufficient documentation that has enabled him to positively identify the locality of the Scheme and the Property within the Scheme.

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## **5 PURCHASE PRICE**

5.1 The Total Purchase Price payable by the Purchaser to the Seller for the Property shall be the amount described in Item C.3 of the Information Schedule, which amount is payable as follows:

5.1.1 the Purchaser shall pay the Deposit in cash, on the date set out in Item C.6 of the Information Schedule, to the Transferring Attorneys. The Deposit will be held in trust by the Transferring Attorneys to be invested by them in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2018, until the Transfer Date. All interest on the above, less an administration fee of 1% (one percent) per year in respect of management and/or administration fees payable by the bank to the Transferring Attorneys, will accrue to the Purchaser.

5.1.2 The Transferring Attorneys are designated as an "accountable institution" in terms of FICA and certain obligations are placed on the Transferring Attorneys in terms of POCA. The Purchaser accordingly undertakes to provide to the Transferring Attorneys all information and documentation (including the FICA documents) to enable the Transferring Attorneys to fulfil its obligations in terms of both FICA and POCA. The Transferring Attorneys will not be able to invest the Deposit and the Purchaser shall not be entitled to any interest thereon until the Purchaser has provided the Transferring Attorneys with:

5.1.2.1 all the FICA documentation and information (as set out in Annexure K) required by the Transferring Attorneys to open an investment account; and

5.1.2.2 payment confirmation which must clearly state the reference number of the Transferring Attorneys; and

5.1.2.3 a duly signed investment mandate, authorizing the Transferring Attorneys to proceed with the investment, annexed hereto as Annexure J

5.1.3 the Purchaser shall, on the date as provided for in Item C.8 of the Information Schedule, furnish the Transferring Attorneys with a bank guarantee for the Balance of the Purchase Price, in favour of the Seller or a payee nominated by the Transferring Attorneys. The bank guarantee is to be to the satisfaction of the Seller, in his sole and absolute discretion, issued by a commercial bank and payable against registration of transfer of the Property into the name of the Purchaser. In the alternative, the Purchaser may elect to pay such amount in cash to the Transferring Attorneys, in which instance the amount must be invested, subject to the terms and conditions provided for in clause 5.1.1 above.

5.2 All payments due herein shall be effected by the Purchaser to the Transferring Attorneys free of exchange and without deduction or set off into the Transferring Attorneys' trust account as set out in Item G of the Information Schedule.

5.3 The Parties hereby irrevocably authorize the Transferring Attorneys to:

5.3.1 invest any monies paid by the Purchaser in terms of this Agreement, subject to compliance with clauses 5.1.2.1 to 5.1.2.3 above;

5.3.2 immediately after transfer of the Property into the name of the Purchaser, but in any event by no later than 1 (one) Business Day after such transfer, to pay the capital to the Seller and the interest to the Purchaser (if any), less:

5.3.2.1 any statutory deductions;

5.3.2.2 administrative fees levied by the Transferring Attorneys in respect of any amount invested, as provided for in clause 5.1.1; and

5.3.2.3 any amounts due by the Purchaser to the Seller and/or the Estate Agency in terms of this Agreement.

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- 5.4 All monies due by the Purchaser in terms of this Agreement, and unpaid on the Due Date, shall bear interest at the Prime Overdraft Rate for the first 3 (three) months after the Due Date, and thereafter at the Prime Overdraft Rate plus 2% (two percent) for any period exceeding the initial 3 (three) month period ("**Penalty Interest**"), calculated from the Due Date to the actual date of payment thereof to the Transferring Attorneys or delivery of a bank guarantee securing such payment to the Transferring Attorneys (both dates inclusive).
- 5.5 Where applicable, each payment made by the Purchaser shall be allocated first to the payment of Penalty Interest, then to the payment of any other monies due to the Seller and/or the Estate Agency interms hereof and thereafter to the reduction of the Total Purchase Price.
- 5.6 Any withdrawal or purported withdrawal by a financial institution / guarantor of the bank guarantee for any reason whatsoever after being issued shall constitute a material breach by the Purchaser of his obligations to secure the Balance of the Purchase Price in terms of this Agreement.
- 5.7 The Purchaser shall not be allowed to take occupation of the Property until such time as payment of the Total Purchase Price has been made to the Transferring Attorneys or secured to the satisfaction of the Seller.
- 5.8 The Purchaser warrants that he has the requisite financial means to fulfil his payment obligations in terms of this Agreement as and when such obligations fall due.
- 5.9 If applicable, in the event that the VAT rate in effect on the Signature Date is at any time thereafter increased or reduced in such a manner that the VAT payable on the supply of the Property is increased or reduced, the Total Purchase Price will be either increased or reduced as the case may be, to reflect the actual VAT payable on the supply of the Property in terms of this Agreement.

## **6 SUSPENSIVE CONDITION – LOAN**

- 6.1 In the event of an amount having been inserted in Item C.5.2 of the Information Schedule, this Agreement is subject to the Purchaser being granted a loan for such amount within the period specified in Item C.7 of the Information Schedule from a financial institution on the terms and conditions that the aforesaid financial institution normally approves mortgage loans in residential developments.
- 6.2 The condition set out in clause 6.1 above will be deemed fulfilled:
- 6.2.1 once the aforesaid financial institution to which application has been made for the loan has issued a quotation in terms of Section 92(2) of the National Credit Act, No. 34 of 2005 to the effect that the application has been approved notwithstanding the fact that such an approval is granted subject to the fulfilment of a condition(s) or subject to the reservation of the right by such financial institution to, at any time prior to payment of the proceeds of the loan to the Transferring Attorneys, on behalf of the Purchaser, withdraw such approval; and/or
- 6.2.2 even if such a loan is offered as a conditional approval by the financial institution whether in the form of a grant quotation or as an offer issued in respect of a mortgage loan or as a conditional offer preceding a quotation or otherwise. It is recorded that some financial institutions issue offers which are not official quotations in terms of the provisions of the NCA in order to indicate to a Purchaser that they would be willing to provide an official quotation in terms of the NCA to such a Purchaser and in respect of such specific property. In light of the same it is specifically agreed that this suspensive condition will be deemed to be fulfilled in the event that the financial institution issues a document which reflects the name of the Purchaser, the Property, a mortgage loan amount which is equal to or greater than the amount stipulated in Item C.5.2 of the Information Schedule and the rate of interest and such other information which would usually reflect on a quotation issued under the provisions of the NCA.
- 6.3 If the loan is approved for an amount less than the amount stipulated in Item C.5.2 of the Information Schedule and the Purchaser accepts such lower amount in writing, within the time period allowed for the fulfilment of this suspensive condition, this suspensive condition will be deemed to be fulfilled.

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- 6.4 The Purchaser hereby agrees that should he accept a loan for an amount lower than the amount stipulated in Item C.5.2 of the Information Schedule, he shall become liable for payment of an additional deposit, being the difference between the loan amount stated in Item C.5.2 of the Information Schedule and the lower loan amount actually accepted by the Purchaser, as reflected in the approval documents, which additional deposit shall be paid to the Transferring Attorneys within 14 (fourteen) Business Days of acceptance by the Purchaser of the lower loan amount in writing.
- 6.5 The Purchaser expressly authorizes the Bond Broker as its agent to submit a mortgage bond application on the Purchaser's behalf to any financial institution, based on the economic benefit and convenience to the Purchaser. The Purchaser agrees and undertakes to sign all necessary documents and to supply the Bond Broker with any information and/or document(s) which is/are required for this purpose, within 7 (Seven) days after having been requested to do so. The Purchaser hereby warrants that the information so provided shall be true, accurate and correct. The Purchaser acknowledges that it is in the best interest of the Parties to utilize the services of the Bond Broker as the Bond Broker have obtained pre-approved development packages with all relevant financial institutions, ensuring competitive interest rates and effective service levels. Initial
- 6.6 In the instance of the Purchaser electing not to make use of the services of the Bond Broker as provided for in this Agreement, then and in that instance the Purchaser shall pay a penalty fee of 1% (one percent) of the Purchase Price. This penalty fee must be paid in cash to the Seller on or before the Transfer Date or the Occupation Date, whichever date is the earlier. The Purchaser hereby confirms that he will be liable for the payment of the penalty fee over and above the payment of the bond registration costs as referred to in clause 10.2.4 of this Agreement. Initial
- 6.7 It is recorded that this suspensive condition is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this suspensive condition by communicating such waiver to the Seller in writing at any time before the expiry of the applicable time limit. In the event of a written waiver by the Purchaser, this Agreement will not lapse even though the Purchaser was not successful in obtaining a mortgage bond.
- 6.8 The Parties agree that should this suspensive condition not be fulfilled or waived timeously, then in that instance this Agreement will lapse, be of no further force or effect and the Parties will be restored to the position that they were in when they entered into this Agreement.

## 7 SUSPENSIVE CONDITION: SUBJECT TO SALE OF PURCHASER'S PROPERTY

- 7.1 If Item D of the Information Schedule have been completed, then this Agreement is subject to:
- 7.1.1 the sale of the Purchaser's property as described in Items D.1 and D.2 of the Information Schedule ("**the Existing Property**") at a price acceptable to the Purchaser and the fulfilment of all the suspensive conditions, if any, contained in such agreement of sale on or before the date as stipulated in Item D.3 of the Information Schedule; and/or
- 7.1.2 registration of transfer of the Existing Property on or before the date as stipulated in stipulated in Item D.4 of the Information Schedule.
- 7.2 The Purchaser shall be obliged to notify the Seller and the Transferring Attorneys in writing, immediately upon the conclusion of a successful sale in respect of the Purchaser's property and the fulfilment of any suspensive conditions to which such sale may be subject.
- 7.3 The Seller may, in its absolute and sole discretion, extend the date(s) stipulated in Item D.3 and/or Item D.4 of the Information Schedule with a maximum period of 30 (thirty) days by giving the Purchaser written notice to that effect on or before the Due Date.
- 7.4 It is recorded that this suspensive condition is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this suspensive condition by communicating such waiver to the Seller in writing at any time before the expiry of the applicable time limit. In the event of a written waiver by the Purchaser, this Agreement will not lapse even though the Purchaser was not successful in selling and/or registering his property within the applicable time limit.

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7.5 If this suspensive condition is not fulfilled on or before the date(s) as stipulated in Item D.3 and/or Item D.4 of the Information Schedule, then and in that instance this Agreement will become null and void, and be of no further force or effect and the Parties will be re-instated in their original position.

7.6 If this clause 7 is applicable, then the Purchaser hereby irrevocably grants to the Estate Agency a joint selling mandate to attend to the marketing and selling of the Purchaser's property and will use its best endeavours to appoint the Transferring Attorneys to attend to the registration of transfer of the Purchaser's property.

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## 8 72-HOUR NOTICE PERIOD

8.1 The Parties hereby specifically record and agree that the Seller may, prior to the fulfilment of the suspensive conditions in this Agreement, accept further offers ("**Further Offer**"). If the Further Offer is free from any suspensive conditions, or as soon as the suspensive conditions contained therein have been met, the Purchaser will have 72 (seventy two) hours, after being notified thereof, in which to comply with, or waive, the suspensive conditions contained in this Agreement. The 72 (seventy two) hours shall only apply in respect of Business Days.

8.2 The 72 (seventy) hours-notice shall commence when the Purchaser:

8.2.1 is notified in writing of the Further Offer during business hours (between 08H00 and 17H00) on a Business Day and provided with a copy of the Further Offer; and

8.2.2 has received proof that all suspensive conditions, if applicable, of the Further Offer have been fulfilled.

8.3 Should the Purchaser waive the suspensive conditions, then he must within 72 (seventy two) hours (from receipt of the 72 (seventy two) hours-notice) deliver a bank guarantee, acceptable to the Seller in his sole and absolute discretion, for payment of the Balance of the Purchase Price, alternatively make payment thereof in cash into the trust account of the Transferring Attorneys and deliver proof thereof to the Seller and the Transferring Attorneys.

8.4 Should the Purchaser:

8.4.1 be unable to fulfil the suspensive conditions within the requisite 72 (seventy two) hours; and/or

8.4.2 be unable to waive the suspensive conditions and provide the Seller and/or Transferring Attorneys with a bank guarantee for payment of the Balance of the Purchase Price or to make payment of the Balance of the Purchase Price in cash into the trust account of the Transferring Attorneys and deliver proof thereof to the Seller and the Transferring Attorneys,

then this Agreement will automatically lapse and become null and void and the Seller shall be entitled to accept the Further Offer without further notice to the Purchaser.

## 9 VAT

Except for the Purchase Price, or where expressly set out to the contrary, all other amounts payable by the Purchaser are described as excluding VAT and the Purchaser shall where applicable pay such amounts plus VAT calculated at the rate then applicable, to the Seller or any other party to whom such payment is due.

## 10 TRANSFER AND TRANSFER COSTS

10.1 Provided the Purchaser has complied with all his obligations as set out in this Agreement and in particular has paid the Deposit, delivered the guarantee referred to in clause 5.1.3 above and paid all other amounts owing in terms of this Agreement, registration of transfer of the Property shall be given by the Seller and taken by the Purchaser on the Transfer Date.

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10.2 The Seller shall within 5 (five) Business Days of being called upon by the Transferring Attorneys in writing to do so:

10.2.1 pay all costs and charges of and incidental to registration of transfer, including such administrative amounts as may be necessary to obtain a rates and/or levy clearance certificate to facilitate registration of transfer; and

10.2.2 pay the legal costs charged by the Transferring Attorneys in respect of the registration of transfer, determined in accordance with the tariffs set by the relevant law society or otherwise as agreed between the Transferring Attorneys and the Seller; and

10.2.3 if the Purchaser has to register a mortgage bond over the Property, the Seller shall pay all costs in respect of the registration of such a mortgage bond, excluding the Initiation Fee, subject to the following conditions:

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10.2.3.1 the mortgage bond being granted by ABSA Bank Ltd, Firststrand Bank Ltd, Nedcor Bank Ltd or Standard Bank Ltd; and

10.2.3.2 the mortgage bond over the Property being registered by the Transferring Attorneys, and

10.2.3.3 the mortgage bond being obtained through the services of the Bond Broker.

10.2.4 If Clauses 10.2.3.1, 10.2.3.2 and 10.2.3.3 are not complied with, the Purchaser will be liable for the payment of all costs in respect of the registration of transfer and the mortgage bond.

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10.3 The Purchaser shall, in addition to the Total Purchase Price within 5 (five) Business Days of being called upon by the Transferring Attorneys or such other firm of attorneys attending to the registration of the Purchaser's mortgage bond, (as the case may be) in writing to do so:

10.3.1 sign all transfer and bond documents and provide any such documents and information as may be required in respect of the registration of transfer of the Property and the registration of the Purchaser's mortgage bond over the Property; and

10.3.2 pay the Initiation Fee.

10.4 The Purchaser further acknowledges and accepts that the Purchaser has bought a Property in a development where a development mortgage bond is or will be registered. Transfer of the Property will occur simultaneous with transfers to other purchasers necessitated by the Property sold having to be released from the operation of the development mortgage bond. As a result of the above, lodgement of the Purchaser's transfer documents at the Deeds Office may be delayed. The Purchaser shall have no claim for damages (whether direct, indirect or consequential) against the Seller as a consequence of any delay as foreseen in this clause 10.4.

10.5 The Parties irrevocably authorizes the Transferring Attorneys to sign all necessary declarations and applications on their behalf to enable them to obtain the necessary transfer duty exemptions from the South African Revenue Services.

10.6 In the event of this Agreement being cancelled as a result of a breach of any of the terms of this Agreement by either the Purchaser or the Seller, the Party in breach shall be liable for and pay on demand to the Transferring Attorneys and/or such other firm of attorneys attending to the registration of the Purchaser's mortgage bond (as the case may be) all fees and disbursements reasonably incurred by the Transferring Attorneys and/or such other firm of attorneys as at the date of such cancellation.

## 11 LAYOUT AND SPECIFICATIONS

11.1 The Building and the Property shall be built substantially in accordance with the Drawings and the Basic Specifications.

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11.2 In the event of any discrepancy arising between the Drawings and the Basic Specifications, the provisions of the Basic Specifications shall prevail.

11.3 The Seller shall be entitled to:

11.3.1 substitute items and materials as specified in the Basic Specifications with items and materials of a similar standard, colour, quality and appearance due to unavailability, discontinuations or for any other reason, reasonable in the circumstances; and

11.3.2 vary the Basic Specifications should the Principal Agent consider the variation reasonably necessary for technical or aesthetic reasons;

and the Purchaser shall be obliged to accept the changes made in terms of clauses 11.3.1 and 11.3.2, and shall have no claim of whatsoever nature against the Seller or the Principal Agent as a result thereof.

11.4 The Seller shall be entitled to change the name of the Scheme and the numbering of any or all of the Sections and/or Exclusive Use Areas should the number of any of these Sections and/or Exclusive Use Areas on the Drawings differ from the approved Sectional Plan. Should the Seller change the number of any Sections and/or Exclusive Use Areas in terms of this clause, the Purchaser shall sign all such documents as may be required to lawfully effect the said change.

11.5 In the event of there being any dispute between the Parties as to the selection of finishes or any other aspect referred to in this clause 11, the dispute shall be referred to the Principal Agent for determination and his expert decision shall be final and binding on the Parties.

## **12 HAND-OVER INSPECTION**

12.1 Following the Practical Completion Date, the Purchaser, or its representative, shall attend the Handover Inspection together with the Seller, or its representative, within 3 (three) Business Days of receiving written notice from the Seller to attend the Handover Inspection, during which inspection the Parties shall agree on the Defects List.

12.2 Should the Purchaser refuse and/or fail to agree to attend the Handover Inspection within the 3 (three) Business Days period provided for in clause 12.1, the Principal Agent will prepare the Defects List and the Occupation Date will be deemed to be 5 (five) Business Days after the Practical Completion Date.

12.3 In the event of a dispute between the Parties as to whether the alleged Snags as listed on the Defects List are in fact Snags which should be remedied by the Seller at the Seller's cost, the Principal Agent will make such determination in his sole and absolute discretion as an expert, and his decision will be final and binding on the Parties.

12.4 The Seller shall remedy the Snags on the Defects List as soon as reasonably possible following agreement thereon with the Purchaser or following a determination by the Principal Agent as provided for in clause 1.1 and the provisions of clause 11.3 shall apply *mutatis mutandis* should any substitutions and/or variations to the items and materials in the Basic Specifications be required. The Purchaser shall give the Seller, the Contractor and all subcontractors such access to the Property as may be reasonably required to remedy the Snags.

12.5 The Purchaser acknowledges that for purposes of registration of transfer, only the Practical Completion Certificate (as defined) is necessary. The existence or not of Snags will have no effect on the registration of transfer of the Property, the Transfer Date or payment to the Seller of the Total Purchase Price.

## **13 DEFECTS AND VOETSTOOTS**

13.1 The Property is sold subject to such conditions as may be mentioned or referred to in the Seller's title deed and all other conditions which may exist in regard thereto.

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- 13.2 The Purchaser acknowledges that he has acquainted himself with the nature, extent and locality of the Property.
- 13.3 The Seller shall, as provided for in the CPA (and in the event that the CPA finds application to this Agreement), remedy any material patent and latent defects in the Property due to faulty workmanship and/or materials, manifesting itself within 6 (six) months of the Occupation Date, provided that the Purchaser notifies the Seller thereof in writing within the said period of 6 (six) months ("**Defects Notice**"). The Purchaser agrees to strictly adhere to the correct retention procedures that will be given to him/her at the Handover Inspection, when reporting any material patent and latent defect in the Property during the 6 (Six) months retention period. The Parties agree that the retention procedure will be binding and that no amendments to the retention procedures will be allowed, except by mutual agreement between the Parties. Any dispute between the Seller and the Purchaser as to whether a defect constitutes a material defect shall be referred to the Principal Agent for determination, who shall make such determination as an expert, and whose decision shall be final and binding on the Parties. If the Seller must remedy any material patent and/or latent defect as referred to in this clause 13.3, the provisions of clause 11.3 will apply.
- 13.4 In the absence of a Defects Notice, the Purchaser shall be deemed to have accepted that the Property in a fit and proper condition and be deemed to have acknowledged that the Seller has fully complied with its obligations as set out in this Agreement and the sale of the Property will become "voetstoots". The Seller gives no further warranties, whether express or implied, other than those as set out in this Agreement, and shall not be liable for any defects in the Property (whether patent or latent) and/or in respect of anything relating to and/or arising from such defects, after expiry of the period as referred to in clause 13.3.
- 13.5 Notwithstanding the provisions of this clause 13, the Seller shall strictly enforce, for the benefit of the Purchaser, any guarantee and/or warranty which it may have. In as far as such guarantee and/or warranty relates to the Property, the Seller hereby cedes and assigns all its rights and obligations in terms thereof to the Purchaser and the Purchaser hereby accepts such cession and assignment.
- 13.6 The Seller shall in terms of the NHBRC requirements be obliged to:-
- 13.6.1 remedy any material latent defect in the Property due to faulty workmanship and/or materials, manifesting itself within 90 (ninety) days of the Occupation Date, provided that the Purchaser notifies the Seller thereof in writing within the said period of 90 (ninety) days;
  - 13.6.2 at its own expense repair any roof leaks that occur in respect of the Property within the first 12 (twelve) months of the Occupation Date, provided that the Purchaser notifies the Seller thereof in writing within the said period of 12 (twelve) months;
  - 13.6.3 rectify any defect of a patent or latent nature in respect of the substructure, the superstructure and the roof structure of the Property for a period of 5 (five) years of the Occupation Date, provided the Purchaser notifies the Seller in writing thereof within the said 5 (five) year period.
- 13.7 The Seller shall not be liable for any defects in the Property in respect of Normal Wear and Tear and/or any defects and/or damages caused by the conduct of the Purchaser, whether wilfully or by his negligence.
- 13.8 The Purchaser shall be obliged to give the Seller, the Contractor, their agents and any subcontractors such unobstructed access as may be reasonably required to remedy the patent or latent defects that are required to be remedied in terms of clause 12 and clause 13. Repairs will be done during business hours, Monday to Friday.
- 13.9 Copies of the following documentation will be supplied by the Seller to the Purchaser on the Transfer Date:
- 13.9.1 Electrical Compliance Certificate;
  - 13.9.2 Roof Certificate (A19) (if applicable);

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- 13.9.3 Approved Plan;
- 13.9.4 Occupation Certificate issued by the Local Authority;
- 13.9.5 Plumbing Certificate;
- 13.9.6 Gas Certificate (if applicable);
- 13.9.7 NHBC Certificate;
- 13.9.8 Guarantees from third parties (if applicable).

#### **14 OCCUPATION**

- 14.1 In the event that the Seller anticipates that the actual Practical Completion Date will be later than the estimated Practical Completion Date stipulated in Item F of the Information Schedule, it shall give written notice to the Purchaser, at least 30 (thirty) days prior to the estimated Practical Completion Date, of the new expected Practical Completion Date. The Purchaser shall have no claim against the Seller for any damages (whether direct, indirect or consequential) suffered by the Purchaser as a result of the Practical Completion Date having been extended.
- 14.2 The Purchaser shall be placed in vacant occupation of the Property on the Occupation Date. If the Purchaser is in breach of any of the provisions of this Agreement, the Seller shall be entitled, but not be obliged to refuse the Purchaser occupation of the Property.
- 14.3 If the Occupation Date is prior to the Transfer Date, the Purchaser shall in consideration of such occupation of the Property, and for the period of such occupation, pay to the Seller Occupational Rent. The Occupational Rent will be due and payable by the Purchaser to the Seller:
  - 14.3.1 monthly in advance (pro rata where applicable);
  - 14.3.2 on the first day of each subsequent month; and
- 14.4 With effect from the Occupation Date, the Purchaser shall be liable for the payment of all water and electricity charges.
- 14.5 The Purchaser shall, on the Transfer Date, be refunded a pro rata share of any Occupational Rent that he has paid in advance in respect of the period after the Transfer Date.
- 14.6 The Seller shall remain liable for the payment of all refuse, sewerage, rates and taxes levied in respect of the Property, as well as all Levies, and acknowledges that he is liable to maintain homeowner's insurance in respect of the Property until the Transfer Date.
- 14.7 The Purchaser hereby irrevocably indemnifies the Seller against any claim for damages suffered by the Purchaser in respect of any contents held on or inside the Property. The Purchaser acknowledges his responsibility to insure the contents held by him on or inside the Property as from the Occupation Date. For purposes of clarity, the external structure of the Building will be insured by the Body Corporate.
- 14.8 The Purchaser shall be liable to maintain the Property in good order and condition as from the Occupation Date and shall not be entitled to make any alterations and/or modifications of any nature to the Property before the Transfer Date without the prior written consent of the Seller, which consent shall be in the Seller's sole and absolute discretion. Should any alterations and/or modifications be made to the Property with or without the Seller's prior written consent and this Agreement is cancelled, the Seller may either:
  - 14.8.1 require of the Purchaser to remove such alterations and modifications and to restore the Property to its original condition at the Purchaser's cost; or

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14.8.2 retain all improvements made to the Property in which event the Purchaser shall have no claim for compensation of whatsoever nature and howsoever arising against the Seller for any such alterations and/or additions (improvements) made by the Purchaser.

14.9 The Purchaser acknowledges that as at the Transfer Date, various portions of the Development will not yet have been completed by the Seller. The Purchaser accordingly hereby agrees that he will not have any claim of whatsoever nature and howsoever arising (including a claim founded in delict) against the Seller, the Seller's directors, employees, representatives, agents, consultants and/or contractors as a result of and/or in respect of any nuisance, noise, inconvenience and/or any damage that the Purchaser may suffer as a result thereof; nor shall the Purchaser for any of the aforementioned reasons, be entitled to withhold performance of any obligation and/or payment of any amount owing by him in terms of this Agreement, including but not limited to the payment of Levies.

## **15 POSSESSION, OWNERSHIP, BENEFIT AND RISK**

Possession and ownership of and all benefits and risk in the Property shall pass to the Purchaser on the Transfer Date from which date the Purchaser shall be liable for all expenses pertaining to the Property.

## **16 CONDITIONS PENDING TRANSFER**

The following conditions will apply to the Purchaser as from the Occupation Date up to the Transfer Date (as if the Purchaser had already taken transfer of the Property):

- 16.1 The Purchaser will comply with all the duties placed on an owner as set out in section 13 of the STSMA.
- 16.2 The Purchaser shall not be entitled to subdivide the Section for the purpose of selling, donating or in any other manner alienating or disposing of any portion thereof to any third party.
- 16.3 The Purchaser shall not use the Property or the Common Property in such a manner so as to cause any damage thereto or to the other sections in the Building or the Scheme, nor shall the Purchaser store or permit the storage therein of any inflammable materials which may violate any insurance policy in respect of the Scheme or Building or which is likely to have the effect of increasing the premiums payable in terms of any such insurance policy.
- 16.4 The Purchaser shall be entitled to use the Property only for residential purposes.
- 16.5 No person other than a bona fide guest of the Purchaser may occupy the Property without the prior written consent of the Seller.
- 16.6 The Seller, either personally or through its agents, shall be entitled at all reasonable times, and on reasonable written notice to the Purchaser, to have access to the Property for the purpose of inspecting it or to carry out any maintenance or repairs which the Seller may be obliged or entitled to perform, whether such repairs relate to the Property or not, and the Purchaser shall have no claim against the Seller for any disturbance in his occupation arising out of the exercise by the Seller of the rights hereby conferred.
- 16.7 The Purchaser may use and enjoy only those parts of the Common Property which are completed, in such a manner so as not to interfere with the use and enjoyment thereof by other purchasers, occupiers or persons lawfully present in the Scheme. The Purchaser may not use and enjoy those parts of the Scheme which are not completed or are in the process of being completed. The Purchaser shall be obliged to ensure that his visitors and invitees comply with the provisions of this clause 16.7 at all times.
- 16.8 The Purchaser shall not use the Property or permit it to be used in such a manner or for such purposes as shall cause a nuisance or annoyance to any other purchaser, occupant or resident in the Scheme and/or interfere with the amenities of the Scheme so as to breach any laws in force and pertaining to the Land or Scheme.

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- 16.9 Neither the Seller, nor the Body Corporate or the trustees of the Body Corporate, shall be liable for any damages which the Purchaser and/or his guests and invitees may suffer as a result of personal injury and/or loss of or damage to property, regardless of whether such personal injury and/or loss of or damage to property was caused by the condition of the Property or any part of the Scheme and/or any improvement thereon and/or equipment therein and/or by the conduct of any person in the service of the Seller, the Body Corporate or trustees of the Body Corporate.
- 16.10 The Purchaser hereby indemnifies the Seller, the Body Corporate and the trustees of the Body Corporate against any claim which any visitor, guest, invitee or employee or tenant of the Purchaser may institute against them on the basis of personal injuries and/or loss of or damage to property, regardless of whether such injuries, loss or damage were caused by the condition of the Scheme or the Property and/or any improvement thereon and/or equipment therein and/or by the conduct of any person in the service of the Seller, the Body Corporate or the trustees of the Body Corporate.

## **17 ACCEPTANCE OF SECTIONAL PLAN, EXTENT, ONEROUS CONDITIONS AND WARRANTIES**

- 17.1 The Purchaser acknowledges and agrees that the Sectional Plan for the Scheme has not been prepared nor has it been approved and that accordingly, the exact and final boundaries of the Section and the Exclusive Use Area/s in the Scheme will be those shown on the Sectional Plan as approved, subject thereto that the approved Sectional Plan will not materially differ from the Drawings annexed to this Agreement. The Seller and the Purchaser shall have no claims against each other should the extent of the Section and/or the Exclusive Use Area(s) as finally surveyed, be more or less than the aforesaid extent.
- 17.2 The Property is sold subject to all conditions and servitudes pertaining thereto, imposed by the Seller or any other competent authority in terms of any applicable laws. The Seller may amend the layout of the Scheme, if required by the Seller or if required from the Seller by any competent authority in terms of any applicable laws.
- 17.3 Subject to clause 0, the Property is sold subject to the Seller's right, in its sole and absolute discretion, and without compensation to the Purchaser, to register further servitudes over the Land, as and when so required by Seller, its successors-in-title, BEMPOA, the Local Authority or any other appropriate authority.
- 17.4 The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express and/or implied information, statement and/or representation given or made by or on behalf of the Seller, unless same is expressly and specifically recorded in this Agreement. The Purchaser hereby waives in favour of the Seller any rights whatsoever which he otherwise may have obtained against the Seller as result of any such information, statement or representation given or made by or on behalf of the Seller which is not so expressly and specifically recorded herein. It is recorded that all artistic, architectural, photographic and in any way visual presentation material, including but not limited to models, brochures and pamphlets and any show unit ("**Marketing Material**") used by the Seller and/or the Estate Agency and/or the Sales Agent in the marketing and selling of the Property hereby purchased and sold, have been prepared and distributed as advertising material only. Accordingly, neither the Seller, nor the Estate Agency, nor the Sales Agent shall in any way be bound, and the Purchaser shall have no claim of whatsoever nature and howsoever arising, in respect of any information stated in or impression conveyed by the Marketing Material. The Parties shall be bound by the express terms contained in this Agreement only.
- 17.5 The Purchaser acknowledges that he is aware that the view currently enjoyed and/or the projected view from the Unit hereby sold, may be affected by the construction of any further buildings in the Development or any adjacent plot/development in the vicinity of the Unit. The Purchaser accordingly acknowledges and agrees that the Purchaser shall have no claim or right of action whatsoever against the Seller arising from such impact on or impairment of the view from the Unit, or any derogation from the value thereof, as a result of any such ongoing development or further buildings.

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- 17.6 The Purchaser hereby irrevocably consents to any amendments to the current SDP and/or development rights in respect thereof, as may be agreed between the Seller (in its sole and absolute discretion) and the Local Authority or as may be imposed upon the Seller in terms of LUPA or any other relevant legislation. The Purchaser hereby irrevocably waives its rights to object to any such (proposed) amendment(s) as provided for in this clause.
- 17.7 All undertakings and commitments given by the Seller to the Purchaser in terms of this Agreement are personal to the Purchaser who shall not be entitled to cede, assign or make over its rights thereto.
- 17.8 Despite the fact that the Development (including the Property), may already be subject or entitled to certain servitudes, it is specifically recorded that the Property is sold subject to the right of the Seller, without compensation to the Purchaser, to register further servitudes over the Development as and when so required by the Seller, its successors-in-title, any adjacent land owner(s), BEMPOA, the Local Authority or any other appropriate authority.

## **18 PHASED DEVELOPMENT**

- 18.1 The Seller reserves to itself, and to its successors-in-title, 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, by not later than 50 (fifty) years from the date of opening of the Sectional Title Register, for its personal account. The phased development may consist of a further building or buildings, a horizontal extension of the Building or another existing building, or a vertical extension of the Building or another existing building. The Seller shall be entitled to divide such buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more of such sections. After completion of the extension to the Scheme as aforementioned, the participation quotas of all the sections in the Scheme will be recalculated in accordance with the provisions of Section 32 of the STA.
- 18.2 From the date of the establishment of the Body Corporate to the date of registration of the Sectional Plan in respect of the extension envisaged in clause 18.1, the Seller shall be responsible for the upkeep, control, management and administration of that portion of the Common Property upon which such additional buildings or extension of existing buildings are to be erected.

## **19 NATIONAL CREDIT ACT AND OUTSTANDING TAXES**

If this Agreement is subject to the NCA, then the Purchaser warrants that:

- 19.1 Once the loan as referred to in clause 6 is approved and the pre-agreement and quotation is accepted, the Purchaser shall not do anything that may cause the Purchaser to become over-indebted in terms of the NCA or cause the relevant financial institution to withdraw the bond.
- 19.2 The Purchaser shall not do anything between the date of acceptance of the pre-agreement and quotation, and registration of the bond, which may cause the Purchaser's financial position to deteriorate.
- 19.3 The Purchaser warrants, as at the Signature Date, that he is not:
- 19.3.1 over-indebted; and/or
  - 19.3.2 subject to debt review; and/or
  - 19.3.3 subject to an administration order.
- 19.4 The Purchaser furthermore warrants that he is not and will not be, as at the Signature Date and until the Transfer Date, in default of any income or other tax law obligations to SARS which will serve to delay the obtaining of transfer duty receipts or exemption certificates from SARS, and will not do anything or omit to do anything that will or can cause such a delay. Notwithstanding the above, should SARS at any stage notify the Transferring Attorneys that the Purchaser does in fact have any outstanding liability, then the following provisions shall apply:

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- 19.4.1 such liability shall constitute a material breach of this Agreement;
- 19.4.2 the Purchaser shall rectify such breach within 10 (ten) Business Days of being called upon to do so in writing by:
- 19.4.2.1 making payment of cleared funds in the amount of the outstanding liability to the Transferring Attorneys (who will be appointed by SARS as an agent); or
- 19.4.2.2 producing to the Transferring Attorneys original documentation from SARS that indicate that payment of the liability has been settled or deferred or that satisfactory arrangements have been made for the payment thereof, failing which the provisions of clause 24 shall apply.

## 20 CAPACITY OF PURCHASER

- 20.1 If there is more than 1 (one) Purchaser in terms of this Agreement, the liability of each Purchaser shall be joint and several.
- 20.2 In the event of the Purchaser being a Juristic Person, the Signatory for the Purchaser by his signature hereto binds himself to the Seller as surety with and co-principal debtor *in solidum* with the Purchaser under renunciation of the benefits of excussion and division for the performance by the Purchaser of all the Purchaser's obligations in terms of this Agreement.
- 20.3 In the event of the Purchaser being a company to be formed the Signatory for the Purchaser shall be personally liable for all the obligations of the Purchaser as though he contracted in his personal capacity if the company in respect whereof he acts as trustee, is not incorporated within 30 (thirty) days of the Signature Date and/or the company having been duly incorporated, fails to adopt and ratify this transaction without modification within 7 (seven) days of date of incorporation.
- 20.4 Upon timeous formation of the company and due and timeous ratification and adoption of this transaction as aforementioned, the Signatory shall become and be liable to the Seller as surety for and co-principal debtor *in solidum* with the company for its obligations as Purchaser in terms of this Agreement under renunciation of the benefits of excussion and division.

## 21 BEMPOA, THE BODY CORPORATE AND LEVIES

- 21.1 Between the Signature Date and the Transfer Date the provisions of the Constitution and the Rules will be binding on the Purchaser.
- 21.2 The Purchaser will become a member of the Body Corporate and a sub-member of BEMPOA as from the Transfer Date.
- 21.3 **The Purchaser shall become liable to pay Levies to the Managing Agent, acting on behalf of BEMPOA and the Body Corporate, as from the Transfer Date. The Seller undertakes to pay the Levies on behalf of the Purchaser to the Body Corporate for the first 12 (twelve) months from the Transfer Date.**
- 21.4 The Seller shall have no liability or obligation to pay or to contribute to any Levies or Special Levies (in respect of unsold Units), provided that in the instance of a Unit being registered in the name of the Seller and such a Unit is occupied, then the Seller will, from the date of occupation of such a Unit, be liable for all Levies and Special Levies pertaining to such a Unit.
- 21.5 As a member of the Body Corporate and a sub-member of BEMPOA, the Purchaser shall at all times be obliged to comply with all obligations as imposed on him in terms of the Constitution and the Rules and any other rules and/or guidelines referred to therein and/or that may be issued and/or amended by the Seller and/or BEMPOA from time to time. The Seller reserves the right to substitute and/or amend the Rules as provided for in Section 10 of the STSMA.

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- 21.6 The functions and powers of the Body Corporate are assigned to BEMPOA, as provided for in section 6(4) of the Regulations promulgated in terms of the STSMA and are more fully specified in and subject to the further provisions of the Rules and the Constitution. The Seller shall, on the Transfer Date, register a title deed condition against the Property, in terms of which the Property shall not be transferred without the written consent of BEMPOA.

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## **22 VOTING AND LIABILITY TO CONTRIBUTE - AMENDED VALUE**

- 22.1 The Seller will make rules stipulating that the value attached to the vote of an owner of any Section, or the liability of an owner of any Section to make contributions for the purposes of section 3(1)(a) or 14(1) of the STSMA, is modified.
- 22.2 Each owner will contribute equally and has a vote equal in value with any other owner in the Scheme (i.e. the value attached to the vote or the liability of an owner to make contributions will not be determined by participation quota).
- 22.3 The Levies due and payable by each member to the Body Corporate shall be calculated by dividing the total of the expenses by the number of Units. Levies shall be payable monthly in advance on the 1st (first) day of the month, save for the first month following the Transfer Date, in which instance the Purchaser shall be liable to pay Levies 2 (two) months in advance. Such advance Levies shall be paid by the Purchaser when called upon to do.
- 22.4 It is estimated that the Levies payable by the Purchaser to the Body Corporate will be equal to the amount set out in Annexure H.

## **23 BROKERAGE**

- 23.1 Commission in the amount agreed to between the Seller and the Estate Agency shall be deemed to have been earned upon the signature of the Agreement by both the Seller and the Purchaser and the fulfilment, or waiver, (as the case may be) of all suspensive conditions contained herein.
- 23.2 The commission is payable by the Seller to the Estate Agency as follows:
- 23.2.1 an amount equal to the Deposit on the Trigger Date; and
- 23.2.2 the balance of the commission on the Transfer Date.
- 23.3 The Parties irrevocably and unconditionally:
- 23.3.1 instruct the Transferring Attorneys to pay the Deposit (excluding any interest thereon) to the Estate Agency on the Trigger Date;
- 23.3.2 indemnify and hold the Transferring Attorneys harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Parties from any cause arising, as a result of the payment referred to in clause 23.3.1 above.
- 23.4 In the event that this Agreement is cancelled by the mutual consent of the Seller and the Purchaser, the Purchaser and Seller shall be liable, jointly and severally, for payment of the commission to the Estate Agency, which commission shall become due and payable to the Estate Agency immediately upon written demand therefor.
- 23.5 If this Agreement is cancelled as a consequence of a default or breach by the Purchaser, the Purchaser acknowledges that he shall be liable to the Estate Agency for the payment of an amount equal to the commission which would have been paid by the Seller had this Agreement not been cancelled. The Purchaser acknowledges that if this Agreement is cancelled because of his breach, the Estate Agency will suffer damages in the form of the loss of its commission and accordingly the Purchaser will be liable to the Estate Agency for payment of this amount, which amount shall become due and payable to the Principal Agent immediately upon written demand therefor.

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- 23.6 In the circumstances foreseen in above clause 23.5, the Purchaser hereby expressly and irrevocably authorizes the Transferring Attorneys to deduct such commission from any amounts paid by the Purchaser to the Transferring Attorneys under this Agreement and to pay such commission directly to the Estate Agency.
- 23.7 The Purchaser warrants that it was not introduced to the Property by any agent other than the Estate Agency or the Sub-Agent. The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Seller arising out of a breach of this warranty.

## **24 BREACH**

- 24.1 If any Party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 7 (seven) days after receipt of written notice from the other Party calling upon the defaulting Party remedy such breach, then the innocent Party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and/or at law to:
- 24.1.1 cancel this Agreement and claim such damages as it may have sustained from the defaulting Party; or
  - 24.1.2 claim immediate performance by the defaulting Party of all its obligations in terms of this Agreement whether or not the Due Date for performance shall otherwise have arrived;
- 24.2 The Seller may retain any cash payments made by the Purchaser prior to cancellation as liquidated damages, without prejudice to any other right that the Seller may have.
- 24.3 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate the Property forthwith, and to procure that the Property shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. The Property shall be redelivered in the same good order and condition as received but the Purchaser.
- 24.4 The defaulting Party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.
- 24.5 It is specifically recorded that should any breach by the Purchaser occur at a time critical to the registration procedure, the Seller shall be entitled to require the Purchaser to remedy such breach within a period of 24 (twenty four) hours, and not within the 7 (seven) days period provided for in clause 24.1.
- 24.6 Where the Seller is entitled to retain any cash payments in terms of clause 24.2, the Purchaser hereby expressly and irrevocably authorizes the Transferring Attorneys to pay such amounts to the Seller on its written request.
- 24.7 Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement which will include Levies and Occupational Rent on the Due Dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever. Failure to pay any of the aforesaid amounts will constitute a material breach of this Agreement.
- 24.8 If this Agreement is cancelled because of a default or breach by the Purchaser, the Purchaser hereby agrees to pay to the Seller, without prejudice to any other rights that the Seller may have, an amount equal to 20% (twenty percent) of the Purchase Price. This amount must be paid by the Purchaser to the Seller within 3 (three) days of written demand by the Seller or the Transferring Attorneys.

## **25 ADDRESSES FOR SERVICE AND DELIVERY OF LEGAL DOCUMENTS**

- 25.1 The Parties choose their addresses as set out on in Items A.1 and A.2 of the Information Schedule of this Agreement to serve as their addresses for the service and delivery of legal documents for all purposes of this Agreement, which includes the giving of notice and the serving of documents or process, provided

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that such addresses of the Parties may be changed by written notice to the other, with effect from the date of receipt by the other Parties of such notice.

25.2 If the Purchaser is a Foreigner and does not have a *domicilium* address in South Africa, then the Purchaser must elect the address of his accountant/auditor or attorney, practicing in South Africa, as his *domicilium* address.

25.3 Any notice given in terms of the Agreement which is:

25.3.1 delivered by hand during normal business hours to a Party's *domicilium* address shall, unless the contrary is proven, be deemed to have been received by that Party at the time of delivery; or

25.3.2 transmitted by e-mail, shall, unless the contrary is proven, be deemed to have been received by a Party on the day of transmission provided that transmission occurred during business hours. If transmitted outside of normal business hours, such e-mail shall be deemed to have been received within 1 (one) hour of commencement of the next Business Day.

25.4 Where, in terms of this Agreement any communication is required to be in writing, the term "**writing**" shall include communications by e-mail.

25.5 Any notice actually received by a Party, shall be deemed to have been properly given, irrespective of the manner in which it was given and irrespective of whether it was addressed to such Party's chosen *domicilium* address.

## **26 SUSPENSIVE CONDITIONS IN FAVOUR OF THE SELLER**

### **26.1 MINIMUM SALES**

26.1.1 It is recorded that the Building/s will comprise of various Units and that this Agreement is made subject to the Seller selling these Units within 12 (twelve) months after the date that marketing commenced, for a value of at least 80 (eighty) % of the aggregate value of all the Units in the Scheme. For purposes of this clause "**sell**" will mean the coming into existence of an agreement of sale between the Seller and a purchaser, which is not subject to a suspensive condition(s), or in respect of which such suspensive condition(s), if imposed, has/have been fulfilled.

26.1.2 In the event of the aforesaid condition not being fulfilled within the abovementioned time period, the time period will automatically be extended with a period of 6 (six) months, or such longer period as the Parties may agree to in writing.

### **26.2 DEVELOPMENT FINANCE**

This Agreement is subject to the that the Seller must be able to secure and obtain development finance to enable the Seller to proceed with the execution of the Development. The terms and conditions of the development finance must be to the satisfaction of the Seller in its sole and absolute discretion.

### **26.3 SECTIONAL TITLE REGISTER**

This Agreement is subject thereto that the Seller must be able to obtain approval of the Sectional Plan by the Surveyor-General as well as the opening of the Sectional Title Register.

### **26.4 REZONING AND OWNERSHIP**

26.4.1 This Agreement is subject thereto that the Seller must obtain approval of the rezoning and subdivision of the Land, by all relevant authorities, to enable the Seller to commence with the Development on or before November 2021.

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- 26.4.2 This Agreement is subject thereto that the Seller must become the registered owner of the Land on or before the Transfer Date.
- 26.5 It is recorded that the suspensive conditions referred to in clauses 26.1, 26.2, 26.3, and 26.4 are inserted solely for the benefit of the Seller and may be waived by the Seller, by communicating such waiver to the Purchaser and the Transferring Attorneys in writing.
- 26.6 In the event of this Agreement lapsing by reason of any of the suspensive conditions in clause in clauses 26.1, 26.2, 26.3, and 26.4, not being fulfilled, the Seller shall give the Purchaser written notice thereof and shall:
- 26.6.1 immediately instruct the Transferring Attorneys to repay the Deposit, plus interest earned thereon and any other cash amounts received from the Purchaser to the Purchaser; and
- 26.6.2 neither the Seller nor the Purchaser will have any claim for damages or for any other amount or any other claim whatsoever against the other Party arising from this Agreement.

## **27 GENERAL**

- 27.1 The Parties undertake to do all such things that may be necessary, incidental or conducive to the implementation of the terms, conditions and import of the Agreement.
- 27.2 The Agreement constitutes the sole and entire Agreement between the Parties and no other terms and conditions of whatsoever nature not contained or recorded herein, shall be of any force or effect.
- 27.3 No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representative.
- 27.4 No indulgence which either party may grant to the other shall constitute a waiver of any of his rights and shall not thereby be precluded from exercising any of his rights which may have arisen in the past or which might arise in the future.
- 27.5 The Purchaser warrants that all consents required in terms of the Matrimonial Property Act, No. 88 of 1984, if applicable, have been obtained.
- 27.6 Each and any provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of the Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) is found by any Court of competent jurisdiction to be invalid and or unenforceable then, notwithstanding such invalidity and or unenforceability, the remaining provisions of this Agreement shall be and remain of full force effect.
- 27.7 This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. A counterpart of this Agreement in scanned e-mail form shall be conclusive evidence of the original signature(s) and shall be as effective in law as the counterparts in original form showing the original signatures.

## **28 CONFIRMATIONS IN TERMS OF THE CPA**

- 28.1 If the Property was introduced to the Purchaser by means of Direct Marketing, then and in that instance the Purchaser may rescind this Agreement without reason or penalty, by giving written notice, or another recorded manner and form, to the Seller, within 5 (five) business days after the Signature Date.
- 28.2 The Purchaser confirms that:
- 28.2.1 he has read this Agreement and understands the contents thereof;

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28.2.2 that the Property was not introduced to him by means of Direct Marketing;

28.2.3 that he is aware and understands his right to the cooling-off period after Direct Marketing;

28.2.4 he has purchased and will use the Property only for residential purposes.

28.3 In the instance of the Purchaser being a Juristic Person, the signatory hereby declares its' annual turnover or asset value is more than R2 000 000.00 (Two Million Rand) per year, as on the Signature Date.

## 29 CONSENT IN TERMS OF POPIA

The Purchaser hereby give consent to the Estate Agency, the Sub-Agent, the Seller, the Transferring Attorneys, and the Bond Broker to process their personal information for all purposes related to this Agreement, in accordance with the provisions of POPIA.

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## 30 OFFER

30.1 The Purchaser's offer shall constitute an irrevocable offer, which may not be withdrawn prior to presentation to the Seller, and which offer shall remain available for acceptance for a period of period of 30 (thirty) business days, where after it shall lapse and be of no further force and effect.

30.2 The Purchaser warrants that all material terms of this Agreement have been adequately explained to him by the Sales Agent prior to the signature of the Agreement.

SIGNED by the Parties hereto on the dates and places hereinafter set forth.

BY THE SELLER

At \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

<b>SELLER</b>  If Seller is a Juristic Person: Name of Signatory: _____ Designation of Signatory: _____	<b>AS WITNESSES:</b>  1. _____  2. _____
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BY THE PURCHASER

At \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

<b>PURCHASER (1)</b>  <b>PURCHASER (2)</b>  If Purchaser is a Juristic Person: Name of Signatory: _____ Designation of Signatory: _____	<b>AS WITNESSES:</b>  1. _____  2. _____
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