

# PORTOFINO

NORTHERN SUBURBS • CAPE TOWN

## AGREEMENT OF SALE

### BEFORE OPENING OF A SECTIONAL TITLE REGISTER

Between

**MARKET DEMAND TRADING 539 PROPRIETARY LIMITED**

Registration Number 2008/004202/07

(The "Seller")

And

---

(The "Purchaser")

Levy Special (6 months) – no ground floor units

Name of Scheme: **PORTOFINO**

Unit No.: \_\_\_\_\_

Initial: \_\_\_\_\_

## COVERING SCHEDULE

<b>1. PARTIES</b>											
1.1. Seller:	Market Demand Trading 539 (Pty) Ltd Registration Number: 2008/004202/07										
Address:	Tyger Valley Chambers Block 4, 2 <sup>nd</sup> Floor 27 Willie Van Schoor Drive, Bellville, 7530										
1.2. Purchaser (full names):											
Identity No. / Registration No. / Date of Birth:											
Purchaser's Income Tax Reference No.:											
Representative's full names (if signing on behalf of a legal entity) :											
Residential Address (street address):											
Postal Address:											
Telephone No: (Home)											
(Work)											
(Cell)											
Fax:											
E-mail Address:											
Marital Status:	<table border="1"> <tr> <td>Single</td> <td></td> <td>Married</td> <td></td> </tr> </table>	Single		Married							
Single		Married									
(How married?)	<table border="1"> <tr> <td>in community of property</td> <td></td> </tr> <tr> <td>out of community of property without accrual</td> <td></td> </tr> <tr> <td>out of community of property with accrual</td> <td></td> </tr> <tr> <td>Married by Customary Law:</td> <td></td> </tr> <tr> <td>foreign marriage</td> <td></td> </tr> </table>	in community of property		out of community of property without accrual		out of community of property with accrual		Married by Customary Law:		foreign marriage	
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)										
Names Full of Spouse:											
Name of alternative contact person:											
Telephone No: (Home)											
(Work)											
(Cell)											
Fax:											
E-mail address:											



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<b>2. SUBJECT MATTER</b>		
2.1. Unit: (Section)	Unit No:	
	Extent (approximately):	
2.2. Parking Bays (Allocated in terms of Section 10(7) and (8) of the STSMA):	Parking Bay number:	
2.3. Exclusive Use Areas:		
2.3.1 Garden	Garden No:	
2.4. Property Description of Existing Property (subject to)		
2.5. Street Address of Existing Property		
<b>3. PURCHASE PRICE</b>		
3.1. Purchase Price of the Property (Inclusive of VAT)	R	
3.2. Upgrade to Specifications & Additional Costs	R	
3.3. Total Purchase Price (inclusive of VAT)	R	
3.4. Deposit	R25 000.00	
3.5. Balance of the Purchase Price	R	
3.5.1. Cash	R	
3.5.2. Loan Amount	R	
3.6. Date for payment of the Deposit	Within 7 (Seven) days after the Signature Date	
3.7. Date Loan must be granted by	Within 60 (Sixty) days after the Signature Date	
3.8. Date for issuing of the guarantee/s	Within 14 (Fourteen) days after the fulfilment of the later of the conditions precedent in Clauses 6 and 29 of the Agreement; or, if cash, within 30 (Thirty) days after the Signature Date	
<b>4. DATES</b>		
4.1. Estimated Occupation Date:	December 2022	
4.2. Estimated Transfer Date:	December 2022	
4.3. Sale Period:	A period of 90 (Ninety) days after the Signature Date	
4.4. Primary Transfer Date:	A period of 60 (Sixty) days after the fulfilment of the condition precedent as referred to in Clause 29.1 of this Agreement or 60 (Sixty) days after the Signature Date if Clause 29.5 is applicable	
<b>5. TRANSFERRING ATTORNEY</b>		
Name of Attorney:	Mostert & Bosman Attorneys  Madison Square, 4 Howick Close, Tygerfalls, Bellville, Attention: Riaan Kunz, Tel no: 021 914 3322.  Trust Account details: Mostert & Bosman, First National Bank, Account No: 55160095483, Branch Code 250655, Reference No: (Unit number) _____ client's surname	



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<b>6. BOND BROKER</b>	
Name of Bond Broker:	IMortgage (Pty) Ltd Reference: Kim Goodwin Tel: 087 890 0333 Email: kim@imortgage.co.za
<b>7. ESTATE AGENT</b>	
Principal Agent::	Rank Real Estate
Telephone Number:	087 802 9003
Sub-Agent:	
Cell Number:	
Email:	



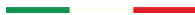
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## ANNEXURES

ANNEXURE A: DRAWINGS, ELEVATION AND BUILDING FLOOR PLAN  
ANNEXURE B: FINISHES AND SPECIFICATIONS  
ANNEXURE C: LIST OF PRELIMINARY PARTICIPATION QUOTAS  
ANNEXURE D: FICA REQUIREMENTS  
ANNEXURE E: SDP  
ANNEXURE F: ESTIMATED BUDGET AND LEVIES  
ANNEXURE G: PARKING LAYOUT PLAN AND PARKING BAY ALLOCATION  
ANNEXURE H: UPGRADE TO SPECIFICATIONS AND ADDITIONAL COSTS



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**1. PARTIES**

**1.1. SELLER**

The Seller means the Party as more fully described in Clause 1.1 of the Covering Schedule.

**1.2. PURCHASER**

The Purchaser means the Party as more fully described in Clause 1.2 of the Covering Schedule.

**2. INTERPRETATION**

In this Agreement:

- 2.1. unless the context clearly indicates otherwise, words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others or such genders, and words importing persons shall include bodies corporate, and vice versa in each instance;
- 2.2. expressions with reference to writing shall be construed as including reference to printing, lithography, photography and other modes of representing or reproducing words in visible form;
- 2.3. when any number of days is prescribed, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.4. where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
- 2.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, then, notwithstanding that it is only in the definition Clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 2.6. the Annexures to this Agreement are deemed to be incorporated in and form part of the Agreement.
- 2.7. In this Agreement the following terms and conditions shall, unless inconsistent with the context, bear the meanings stated hereunder and cognate terms and expressions shall bear corresponding meanings:
  - 2.7.1. Agreement: means this Agreement together with all the Annexures thereto;
  - 2.7.2. Balance of the Purchase Price: means the Balance of the Purchase Price described in Clause 3.5 of the Covering Schedule;
  - 2.7.3. Basic Specifications: means the detailed specifications and finishing schedule being attached hereto as Annexure B and shall comprise the standard specifications and finishes which will be supplied by the Seller as part of the construction of the Building;
  - 2.7.4. BC Levies: means the Interim Levies and the Levies payable by the Purchaser to the Body Corporate and the Seller, as the case may be, as provided for in this Agreement;
  - 2.7.5. Body Corporate: means the Body Corporate in respect of the Scheme to be established in respect of the Development in terms of the provisions of Section 2 of the STSMA;

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2.7.6. Bond Broker:	means the Bond Broker referred to in Clause 6 of the Covering Schedule;
2.7.7. Building:	means the Building constructed or to be constructed on that portion of the Land as depicted on the Drawings and which will be constructed substantially in accordance with the Drawings and specifications;
2.7.8. Business Day:	means any Day except a Saturday, Sunday or officially proclaimed public holiday;
2.7.9. Common Property:	means the portion of the Development that does not form part of the Building or a Section, which portion will be designated as such on the Sectional Title Plan;
2.7.10. Completion Date:	means the date of the Handover Inspection;
2.7.11. Components:	means the individual components stipulated in Clause 2 of the Covering Schedule;
2.7.12. Covering Schedule:	means the Covering Schedule contained in the first part of this Agreement;
2.7.13. CPA:	means the Consumer Protection Act, Number 68/2008, as amended;
2.7.14. Day:	means any calendar day in the Republic of South Africa;
2.7.15. Defects List:	means the list of defects as agreed upon by the Parties during the Handover Inspection;
2.7.16. Deposit:	means the Deposit described in Clause 3.4 of the Covering Schedule;
2.7.17. Development:	means the residential development established on the Land, indicated as such on the SDP;
2.7.18. 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;
2.7.19. Drawings:	means the Drawings that are annexed to this Agreement as Annexure A, consisting of the Elevation and Building Floor Plan;
2.7.20. Due Date:	means the date for the fulfilment of any condition referred to in this Agreement or the date for the payments of any amounts due in terms of this Agreement, as the case may be;
2.7.21. Existing Property:	means the property being owned by the Purchaser on the Signature Date as more fully described in Clauses 2.4 and 2.5 of the Covering Schedule;



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2.7.22. Exclusive Use Area:	means the Exclusive Use Area stipulated in Clause 2.3 of the Covering Schedule, which forms part of the Common Property and is reserved for the exclusive use of the owner of the Section;
2.7.23. FICA:	means the Financial Intelligence Centre Act No. 38 of 2001, as amended;
2.7.24. First Meeting:	means the First Meeting of the Body Corporate in terms of Section 36(7) of the Sectional Titles Act;
2.7.25. Floor Area:	means the Floor Area shown on the preliminary participation quota as per Annexure C;
2.7.26. Garden Area:	means the area described in Clause 2.3 of the Covering Schedule;
2.7.27. Handover Inspection:	means an inspection of the Property by the Seller or it's representative, and the Purchaser, or it's representative, after the Completion Date, but before the Occupation Date, at which inspection the Parties will agree to the Defects List;
2.7.28. Initiation Fee:	means the Initiation Fee due and payable by the Purchaser to the bank or other financial institution approving the loan referred to in Clause 6.2 of this Agreement;
2.7.29. Interim Levies:	means the Levies that will be payable by the Purchaser to the Seller prior to the First Meeting;
2.7.30. JBCC:	means the Principal Building Agreement utilized by the Joint Building Contracts Committee Edition 4.1 Code 2101 March 2005 concluded between the Seller, the Main Contractor and the Sub-Contractor;
2.7.31. Land:	means a portion of Portion 123 of the Farm Langeberg No. 311, City of Cape Town, Division Cape, Western Cape, indicated as such on the SDP;
2.7.32. Levies:	means the Levies payable by the Purchaser to the Body Corporate, in respect of the Property, including any special levy that might be imposed by the Body Corporate;
2.7.33. Levy Payment Date:	means a period of <b>6 (Six)</b> months calculated from the Transfer Date or the Occupation Date, whichever is the earlier;
2.7.34. Loan Amount:	means the amount as referred to in Clause 3.5.2 of the Covering Schedule;
2.7.35. Local Authority:	means the Local Authority having jurisdiction over the Development, being at present the City of Cape Town, and shall include its successor in title;
2.7.36. Main Contractor:	means Market Demand Trading 539 (Pty) Ltd, Registration Number: 2008/004202/07;

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2.7.37. NCA:	means the National Credit Act, No 34/2005, as amended;
2.7.38. Normal Wear and Tear:	means the Normal Wear and Tear ascribed to improvements to fixed 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 or 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;
2.7.39. Occupation Date:	means the estimated date referred to in Clause 4 of the Covering Schedule or the date on which the Local Authority issues the Occupancy Certificate, whichever is the earlier;
2.7.40. Occupancy Certificate:	means the Certificate that the Local Authority issues confirming that the Unit has been completed according to the building plan;
2.7.41. Occupational Interest:	means an amount equal to the Prime Overdraft Rate, calculated pro rata per month on the Purchase Price;
2.7.42. Parking Bay:	means the Parking Bay as described in Clause 2.2 of the Covering Schedule;
2.7.43. Parking Layout Plan:	means the plan which indicated the layout of all the Parking Bays in the Scheme as well as the allocation of such parking bays to individual Units annexed to this Agreement as Annexure G;
2.7.44. Parties:	means the Seller and the Purchaser;
2.7.45. Primary Transfer Date:	means the date of registration of transfer of the Existing Property, which date is determined in Clause 4.4 of the Covering Schedule and which date may be extended by the Seller as provided for in Clause 29.4 of this Agreement;
2.7.46. Prime Overdraft Rate:	means the rate of interest per year, which is equal to Investec's Bank's Limited publicly quoted Prime Overdraft Rate;
2.7.47. Principal Agent:	means the Principal Agent referred to in Clause 7 of the Covering Schedule;
2.7.48. Property:	means collectively all the Components together with an undivided share in the Common Property apportioned to the Section in accordance with the participation quota, as will be endorsed on the Sectional Title Plan;
2.7.49. Purchase Price:	means the Purchase Price described in Clause 3.1 of the Covering Schedule;



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2.7.50. Purchaser:	means the Purchaser referred to in Clause 1.2 of the Covering Schedule;
2.7.51. Rules:	means the Management and Conduct Rules prescribed by the STSMA, as may be amended from time to time, or as may be amended by the Seller in terms of the provisions of the STSMA, available on the Website;
2.7.52. Sale Period:	means the period in which the Purchaser must fulfill the condition precedent as referred to in Clause 29 of this Agreement, by selling the Existing Property, which period is determined in Clause 4.3 of the Covering Schedule and which period may be extended by the Seller as provided for in Clause 29.4 of this Agreement;
2.7.53. SARS:	means the South African Revenue Services;
2.7.54. Scheme:	means the Sectional Title Scheme known as <b>Portofino</b> that will come into being on registration of the Sectional Plan in terms of the provisions of the Sectional Title Act in respect of the Sections reflected thereon;
2.7.55. SDP:	means the Site Development Plan, approved or to be approved by the Local Authority, attached to this Agreement as Annexure E;
2.7.56. Section:	means the Unit;
2.7.57. Sectional Titles Act:	means the Sectional Titles Act, Act No. 95 of 1986 or any amendment thereto and includes the regulations promulgated thereunder, from time to time;
2.7.58. Sectional Title Register:	means the Sectional Title Register in respect of the Land and the Building to be registered and opened in terms of the Sectional Titles Act;
2.7.59. Sectional Plan:	means the provisional Sectional Plan to be drawn in respect of the Land and Building in terms of the provisions of the Sectional Titles Act and which is to be approved by the Surveyor General;
2.7.60. Seller:	means the Seller as described in Clause 1.1 of the Covering Schedule;
2.7.61. Signatory:	means the person who signs this Agreement for the benefit of a Company, Close Corporation, Trust or other legal person formed or as Trustee for a Company not yet incorporated;
2.7.62. Signature Date:	means the date on which the Seller signs the Agreement;
2.7.63. STSMA:	means the Sectional Titles Schemes Management Act, Act Number 8/2011, as amended;
2.7.64. Sub-Agent:	means the Sub-Agent referred to in Clause 7 of the Covering Schedule;



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- 2.7.65. Sub-Contractor: means MSP Developments (Pty) Ltd, Registration Number: 2001/019488/07 appointed by the Main Contractor in terms of the JBCC;
- 2.7.66. Total Purchase Price: means the Purchase Price plus the costs of the Upgrade to Specifications as per Clause 3.3 of the Covering Schedule;
- 2.7.67. Transferring Attorneys: means the Transferring Attorneys as referred to in Clause 5 of the Covering Schedule;
- 2.7.68. Transfer Date: means the estimated date referred to in Clause 4 of the Covering Schedule;
- 2.7.69. Trigger Date: means the date on which the last of the following conditions are fulfilled:
- 2.7.69.1. the condition precedent as referred to in Clause 6, 26 and Clause 29 of this Agreement;
  - 2.7.69.2. the date of the delivery of the guarantees as required In terms of Clause 5.1.2 of this Agreement, thereby securing the payment of the Purchase Price;
  - 2.7.69.3. the Property being registrable as defined in the Alienation of Land Act No. 68 of 1981;
- 2.7.70. Unit: means the Section, excluding an undivided share in the Common Property apportioned to the Section in accordance with the participation quota, as will be endorsed on the Sectional Title Plan;
- 2.7.71. Upgrade to Specifications & Additional Costs: means all costs and the upgrading from the Basic Specifications as set out in Annexure B attached to this Agreement, to the specifications described as per Annexure H;
- 2.7.72. VAT: means Value Added Tax payable in terms of the VAT Act;
- 2.7.73. VAT Act: means The Value Added Tax Act No 89 of 1991;
- 2.7.74. Website: means the Website of the Development available on the internet at the following website address: [www.portofinoplace.co.za](http://www.portofinoplace.co.za).

### **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 pertaining to the Property.
- 3.3. The Seller has procured the completion of the Drawings.
- 3.4. The Seller, as the appointed Main Contractor will manage the building works, and will appoint the Sub-Contractor by means of the JBCC to construct the Building as provided for in this Agreement.



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- 3.5. The Seller wishes to sell the Property prior to the commencement of the construction of the Building.
- 3.6. The Building has not been completed and the Sectional Plan not yet drawn nor registered and accordingly the exact and final boundaries of the Components will only be reflected on the approved Sectional Title Plan.

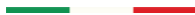
#### **4. SALE**

The Seller sells to the Purchaser who hereby purchases –

- 4.1. the Property subject to the terms and conditions contained in this Agreement and the Annexures.
- 4.2. The Property is more fully described on the Drawings and will be finally described on the Sectional Plan.
- 4.3. **The Purchaser hereby confirms that the Principal Agent and Sub-Agent have supplied him with sufficient documentation that enabled him to positively identify the locality of the Development.**
- 4.4. **The Purchaser agrees and undertakes to supply the FICA documentation and information required by the Seller as per Annexure D, to the Seller within 24 (Twenty Four) hours after the Signature Date.**

#### **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 Clause 3 of the Covering Schedule, which amount is inclusive of Value Added Tax and which amount is payable as follows:
- 5.1.1. the Purchaser shall pay the Deposit in cash, on the date set in Clause 3.6 of the Covering Schedule, to the Transferring Attorneys, which 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 28 of 2014, until the Transfer Date. The interest of the above, less an administration fee of 1% (One) per year in respect of management and/or administration fees payable by the bank to the Transferring Attorneys, will accrue to the Purchaser. The Transferring Attorneys will not be able to invest the Deposit unless the Purchaser has furnished the Transferring Attorneys with:
- 5.1.1.1. all the FICA documentation and information required by the Transferring Attorneys to open an investment account, as may be applicable on the Purchaser as per Annexure D and the Purchaser agrees to grant the Transferring Attorneys full co-operation and disclosure to comply with the FICA requirements and the Attorneys Act, which documentation must be supplied by the Purchaser to the Transferring Attorneys or before the Signature Date, and
- 5.1.1.2. payment confirmation which must clearly state the reference number, Section Number and contact details of the Purchaser concerned. The Purchaser shall not be entitled to any interest on the Deposit until the documentation has been provided to the Transferring Attorneys and proof of receipt thereof was acknowledged by the Transferring Attorneys, and
- 5.1.2. the Purchaser shall on or before the date in Clause 3.8 of the Covering Schedule furnish the Transferring Attorneys with a guarantee issued in favour of the Transferring Attorneys for the Balance of the Total Purchase Price, in favour of the Seller or a payee nominated by the Transferring Attorneys. The guarantee is to be issued by a bank and must be payable against registration of transfer of the Property into the name of the Purchaser, or the Purchaser may elect to pay such amount in cash in which instance the amount must be paid to the Transferring Attorneys, which amount must be invested by them, subject to the terms and conditions provided for in Clause 5.1.1 above.
- 5.2. **All monies due by the Purchaser in terms of this Agreement, and unpaid on the Due Date, shall bear interest at Prime Overdraft Rate plus 2 (Two) percent calculated from the Due Date to the actual date of payment thereof.**



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- 5.3. All or any payments to be effected hereunder shall be effected by the Purchaser to the Transferring Attorneys free of exchange at Cape Town and without deduction or set off.
- 5.4. **In the event that the VAT rate in effect on the Signature Date is at any time after the Signature Date increased or reduced in such a manner that the VAT payable on the supply of the Property is increased or reduced, the Seller may give the Purchaser notice of its intention to increase or decrease the Total Purchase Price according to the amendment in the VAT rate. If the Purchaser does not accept such amendment, the Seller may withdraw the above notice and notify the Purchaser of its intention to revert to the original Total Purchase Price, failing to do so this Agreement will lapse and be of no further force of effect.**

## **6. CONDITION PRECEDENT – LOAN**

- 6.1. In the event of an amount having been inserted in Clause 3.5.2 of the Covering Schedule, this Agreement is subject to the condition precedent that the Purchaser is granted a loan within the period specified in Clause 3.7 of the Covering Schedule from a bank or financial institution in the amount specified in Clause 3.5.2 of the Covering Schedule on the terms that the aforesaid bank or financial institution normally approves mortgage loans.
- 6.2. The condition set out in Clause 6.1 above will be deemed fulfilled once the aforesaid bank or 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 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 or conditions or subject to the reservation of the right by such a bank or other financial institution to, at any time prior to payment of the proceeds of the loan to the Purchaser, withdraw such approval.
- 6.3. **If the loan is approved for an amount less than the amount stipulated in Clause 3.5.2 of the Covering Schedule and the Purchaser accepts such lower amount in writing by his signature to the quotation as referred to in Clause 6.2 above, this condition will be deemed to be fulfilled.**
- 6.4. **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 since the Bond Broker have obtained pre-approved development packages with all relevant financial institutions, ensuring competitive interest rates and effective service levels.**
- 6.5. **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) 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 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 8.2 of this Agreement.**
- 6.6. It is recorded that the abovementioned condition precedent is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this condition by communicating such waiver to the Seller in writing at any time before the expiry of the abovementioned time limit, in which event this Agreement will not lapse despite the fact that the Purchaser was not successful in the fulfilment of the abovementioned condition.
- 6.7. The Parties agree that should the abovementioned condition precedent 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 in the position that they were in when they entered into this Agreement.

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7. **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.

8. **TRANSFER AND TRANSFER COSTS**

8.1. 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 above and paid Occupational Interest, Interim Levies, Levies and any 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 as close as possible to the Transfer Date.

8.2. **The Seller shall be liable for and shall on demand pay to the Transferring Attorneys any transfer fees plus VAT that may be payable by reason of this Agreement. 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, which fee will be for the account of the Purchaser, subject to the following conditions:**

INITIAL

8.2.1. **the mortgage bond is granted by ABSA Bank Ltd, Firststrand Bank Ltd, Nedcor Bank Ltd or Standard Bank Ltd as the Purchaser's financial institution of choice, and**

8.2.2. **the registration of the mortgage bond is effected by the Transferring Attorneys, and**

8.2.3. **the mortgage bond was procured by the Bond Broker.**

8.3. **If Clauses 8.2.1 to 8.2.3 are not complied with, all transfer and bond registration fees will be for the account of the Purchaser.**

8.4. The Purchaser shall not be entitled to delay transfer or withhold any monies by virtue of the fact that any of the Sections in or portion of the Building, or any portion of the Common Property, are not fully completed on the date that transfer is tendered to him.

8.5. **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 as well as the opening of the Sectional Title Register for the Development in the Cape Town Deeds Registry.**

9. **CO-OPERATION TO EXPEDITE TRANSFER**

The Purchaser will sign all documents necessary to effect transfer of the Property and return same and all other documents, resolutions, certificates and payment of the transfer costs and fees as determined by the Transferring Attorneys, to the Transferring Attorneys within 5 (Five) Business Days after having been requested to do so.

10. **EXTENT, ONEROUS CONDITIONS AND WARRANTIES**

10.1. **The Property is sold on the basis that the extent of the Sections is as set out in Clause 2.1 of the Covering Schedule. This extent is a provisional one. The aforesaid extent might change when the Units comprising the Development are finally measured on completion and depicted on the Sectional Title Plan. The Seller shall have no claim for any additional consideration should the extent of the Units, as finally surveyed, be more than the aforesaid extent.**

10.2. **The Purchaser will have no claim if the final extent, determined as aforesaid, is less than the extent described in Clause 2.1 of the Covering Schedule. If the extent of the Unit as depicted on the Sectional Plan is more than 10% (Ten) less than the extent described in Clause 2.1 of the Covering Schedule, the Parties will endeavor to agree on an amendment to the Total Purchase Price, failing do so, either Party will have the right to cancel this Agreement by written notice to the other Party.**



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- 10.3. The Property is sold subject to all conditions and servitudes pertaining thereto, imposed by any competent authority and/or the Seller, whether registered or to be registered against the Title Deed of the Property.
- 10.4. The various budgets presented to the Purchaser are estimates of income and expenditure as at the time of conclusion of this Agreement.
- 10.5. The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of the Seller, and that fixtures, fittings or extras displayed by the Seller in the Show Village/Unit, does not form part of the improvements on or to the Property 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. 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 the show unit used by the Seller or its Principal Agent and Sub-Agent in the marketing and selling of the Section/s or Exclusive Use Areas hereby purchased and sold, have been prepared and distributed as advertising material only; and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby; and that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only.

## **11. POSSESSION AND OCCUPATION**

- 11.1. The Purchaser shall be placed in occupation of the Property as close as possible to the Occupation Date. In the event that the Seller anticipates that the Occupation Date will differ from the expected Occupation Date, it shall give notice to the Purchaser thereof, at least 30 (Thirty) days prior to the Occupation Date. The Purchaser shall have no claim against the Seller for damages or for compensation of any other nature by reason of the Occupation Date having been amended.
- 11.2. The Purchaser acknowledges that on the Transfer Date construction of parts of the Development may not yet have been completed. The Purchaser accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.
- 11.3. Where the Occupation Date is a date prior to the Transfer Date, risk in the Property will pass to the Purchaser on the Transfer Date.
- 11.4. The Purchaser shall be liable for all Interim Levies, rates and taxes and water and electricity consumed in respect of the Property from the Occupation Date.
- 11.5. The Purchaser shall not be entitled to make any alterations or modifications of any nature to the Property between the Occupation Date and the Transfer Date.
- 11.6. Occupational Interest is payable by the Purchaser to the Seller if the Transfer Date is after the Completion Date, whether or not occupation has actually been given to and taken by the Purchaser, which Occupational Interest will be payable as follows:
- 11.6.1 The Purchaser shall pay the Occupational Interest to the Seller monthly in advance and thereafter on the first day each subsequent month, and
- 11.6.2 The Purchaser shall, on the Transfer Date, be refunded a pro rata share of any Occupational Interest that has been paid in advance in respect of the period after the Transfer Date.
- 11.7. Between the Occupation Date and the Transfer Date the provisions of the Constitution and the Rules will be binding on the Purchaser.



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## **12. UNIT LAY OUT AND SPECIFICATIONS**

- 12.1. The Building and the Property shall be built substantially in accordance with the Drawings, the Basic Specifications and the Upgrade to Specifications (if and where applicable). Any material and/or specification will only serve as a guideline and the Seller reserve the right to amend the specification and/or material specified at his sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in the Basic Specifications, Upgrade to Specifications or material will be of similar quality, colour and appearance.
- 12.2. If the Purchaser proceed to Upgrade to Specifications by indicating such on Annexure H attached to this Agreement or the Seller gives a quotation for acceptance by the Purchaser, the Purchaser must accept the quotation in writing within 24 (Twenty Four) hours after same was delivered to him, and pay all costs arising from this to the Seller within 24 (Twenty Four) hours after acceptance of the quotation. The Seller will however have the absolute right to refuse to accept and do any Upgrade to Specifications, in its sole discretion.
- 12.3. The Seller shall be entitled to vary the name of the Scheme and the numbers allocated to the Property on the Drawings.

## **13. COMPLETION AND HAND OVER**

- 13.1. The Parties or their representatives shall be obliged to attend the Handover Inspection at any pre-arranged time, during which inspection the Parties shall agree to the Defects List.
- 13.2. If the Purchaser fails to attend a Handover Inspection within a reasonable period after having received written notice thereof by the Seller, then the Completion Date will be determined by the principal agent in terms of the JBCC.
- 13.3. The Seller shall remedy the defects on the Defects List as soon as reasonably possible.
- 13.4. Notwithstanding the provisions of this Clause 13, the Seller shall strictly enforce, for the benefit of the Purchaser, any guarantee or warranty which it may enjoy. To the extent that such guarantee or warranty relates to the Property, the Seller hereby cedes all its rights in terms thereof to the Purchaser and/or the Body Corporate.

## **14. DEFECTS AND VOETSTOOTS**

- 14.1. The Seller shall remedy any material patent and latent defect in the Property due to faulty workmanship or materials, manifesting itself within 6 (Six) months of the Transfer Date, provided that the Purchaser notifies the Seller thereof in writing within the said period of 6 (Six) months. 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 Seller and the Purchaser.
- 14.2. If the Seller must remedy any patent and latent defect as referred to in Clause 14.1 above, the material used and/or the Basic Specifications and/or the Upgrade to Specifications, will only serve as a guideline and the Seller reserve the right to amend the Basic Specifications, and/or Upgrade to Specifications and/or material at his sole discretion if necessitated by availability, discontinuations or for any other reason. Any deviation in the Basic Specifications, Upgrade to Specifications or material will be of similar quality, colour and appearance.
- 14.3. **In the absence of notice as referred to in Clause 14.1 above, the Purchaser shall be deemed to have accepted 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 the aforesaid Clause and the purchase of the Property will become "voetstoots". The Seller, other than as provided for herein, shall not be liable for any defects in the Property or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 14.1.**



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- 14.4. In addition to the obligation of the Seller in Clause 14.1 to remedy patent and latent defects, the Seller shall in terms of the NHBRC requirements be obliged to:-
- 14.4.1. remedy any material latent defect in the Property due to faulty workmanship 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;
- 14.4.2. 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;
- 14.4.3. 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.
- 14.5. **The Seller shall not be liable for any defects in the Property in respect of Normal Wear and Tear or any defects or damages caused by the conduct of the Purchaser, whether wilfully or by his negligence.**
- 14.6. **The Purchaser shall be obliged to give the Seller, its agents and contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clauses 13 and/or 14.**
- 14.7. Copies of the following documentation will be supplied by the Seller to the Purchaser on Transfer Date:
- 14.7.1. Electrical Compliance Certificate
- 14.7.2. Roof Certificate (A19) (if applicable)
- 14.7.3. Approved Plan
- 14.7.4. Occupation Certificate issued by the Local Authority
- 14.7.5. Plumbing Certificate
- 14.7.6. Gas Certificate (if applicable)
- 14.7.7. NHBRC Certificate
- 14.7.8. Guarantees from third parties (if applicable).

**15. CONDITIONS APPLICABLE PENDING TRANSFER**

**The following conditions will apply to the Purchaser from the Occupation Date up to the Transfer Date:**

- 15.1. **The Purchaser will comply with all the duties on an owner as described in Section 44(1) of the Sectional Titles Act;**
- 15.2. **The provisions of the Rules insofar as they cast any duty upon the owner or occupier of a Section, shall bind the Purchaser, who will fully comply therewith;**
- 15.3. **The Purchaser may not make any additions to the Property;**
- 15.4. **The Purchaser shall be obliged to maintain the Property in a fit and proper condition and properly painted and shall also maintain the geyser of the Property;**



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15.5. The Purchaser shall not be entitled to subdivide any component for the purpose of selling, donating or in any other manner alienating or disposing of the Purchaser's rights of occupancy or any portion thereof to any other person;

15.6. The Purchaser shall be liable for all water and electricity consumed in respect of the Property from the Occupation Date.

**16. NATIONAL CREDIT ACT AND OUTSTANDING TAXES**

In the event that this Agreement is subject to the National Credit Act, Act 34 of 2005, then the Purchaser warrants that:

16.1. Once the bond 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 National Credit Act or cause the bank to withdraw the bond.

16.2. 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.

16.3. At the time of the Signature Date, the Purchaser is not:

16.3.1. over-indebted; and/or

16.3.2. subject to debt review; and/or

16.3.3. subject to an administration order.

16.4. The Purchaser does not and will not be, on the Signature Date and until the Transfer Date, in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of transfer duty receipts or exemption certificates from the South African Revenue Services or not do anything or omit to do anything that will or can cause such a delay.

**17. CAPACITY OF PURCHASER**

17.1. If more than one Purchaser signs this Agreement, the Purchasers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.

17.2. The Signatory shall in his personal capacity be liable for the due fulfilment of all the terms and conditions of this Agreement.

**18. BODY CORPORATE**

18.1. The Purchaser will become a member of the Body Corporate and become obliged to comply with all the obligations imposed upon him by the Rules and Sectional Titles Act from the Transfer Date.

18.2. The Seller reserves the right to substitute and/or amend the Rules in terms of Section 10 of the STSMA.

18.3. The Body Corporate will collect Levies from the Purchaser for, amongst others, the maintenance of the area under its jurisdiction and/or in respect of services being utilized by the Body Corporate.



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**19. PARTICIPATION QUOTAS**

- 19.1. The participation quotas of the Units comprising the Development will, subject to Clause 19.2 hereunder, be as set out in Annexure C hereto. The total of the said participation quotas are also set out on Annexure C hereto.
- 19.2. **It is recorded by the Seller that the participation quotas were calculated from the Drawings, and the Parties agree that it may change after approval of the Sectional Title Plan.**

**20. INTERIM LEVIES AND LEVIES**

- 20.1. The Seller shall, until the date of opening of the Sectional Title Register in the Cape Town Deeds Registry:
- 20.1.1. keep the Building insured for its replacement value against all risks mentioned in the Rules and against any other risk against which the Seller may deem it prudent;
- 20.1.2. maintain the Common Property and to keep it in a state of good and serviceable repair;
- 20.1.3. keep in a state of good and serviceable repair and maintain the plant, machinery, fixtures and fittings used in connection with the Common Property;
- 20.1.4. administer 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 Common Property.
- 20.1.5. **If the Seller incurs any expenditure between the date of the opening of the Sectional Title Register and the First Meeting, it shall recover such expenditure by way of the Interim Levies, as follows:**
- 20.1.5.1. **the Interim Levies will be calculated by dividing the monthly expenditure as described in Clauses 20.1.1 to 20.1.4 above between the various Sections comprising the Scheme in accordance with the Participation Quotas of the Sections;**
- 20.1.5.2. **the Interim Levy is payable, monthly in advance, from the Occupation Date until the Transfer Date or the date of the First Meeting, whichever is the latest;**
- 20.1.5.3. **it is expected that the Interim Levy may not be equal to the amount as more fully set out on Annexure F hereto. The Purchaser will remain obliged to pay the Interim Levy as calculated in terms of this Clause 20 notwithstanding any difference in the amount.**
- 20.2. After the First Meeting, the Purchaser shall be liable to pay the Levies to the Body Corporate.
- 20.3. It is estimated that the Levy payable to the Body Corporate will approximately be equal to the amount as set out in Annexure F attached to this Agreement, and is calculated in terms of the Estimated Budget and Levies.
- 20.4. **The Levies will be payable monthly in advance on the 1<sup>st</sup> first day of the month, save for the first month after the Transfer Date, in which instance the Purchaser will pay the BC Levies for 2 (Two) months in advance.**
- 20.5. As from the Transfer Date or the Occupation Date, whichever is the earlier, until the Levy Payment Date, the Seller shall be liable to pay the Levies (**excluding any special levy**).
- 20.6. After the Levy Payment Date, the Purchaser will be liable for the payment of the Levies, from time to time in accordance with the budgets of the Body Corporate.



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- 20.7. If the Purchaser sells the Property prior to the Levy Payment Date, the liability of the Seller for the payment of the Levies as provided for in Clause 20.5 of this Agreement, will cease on date of registration of transfer of the Property in favour of the new purchaser. The payment of the Levies in accordance with Clause 20.5 of this Agreement is accordingly not transferable.

## **21. BROKERAGE**

- 21.1. Commission in the amount agreed to between the Seller and the Principal Agent shall be earned by the Principal Agent, and be payable by the Seller to the Principal Agent, on the Trigger Date.
- 21.2. The Parties irrevocably and unconditionally:
- 21.2.1. instruct the Transferring Attorneys to pay the Deposit (excluding any interest thereon) to the Principal Agent on the Trigger Date; INITIAL
- 21.2.2. 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 21.2.1 above. INITIAL
- 21.3. If this Agreement is cancelled as a result of a breach by either one of the Parties, the defaulting party will be liable for the payment of the Principal Agent's commission. In the event of the default being committed by the Purchaser after the Trigger Date and the said Commission in that instance has been paid by the Seller to the Principal Agent, the said Commission will then immediately and without further notice becomes due and payable by the Purchaser to the Seller.
- 21.4. The Purchaser warrants that it was not introduced to the Property, or this Agreement, by any Agent other than the Principal Agent or the Sub-Agent stipulated in Clause 7 of the Covering Schedule. 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.

## **22. NUMBER CHANGES**

The Seller shall be entitled to change the numbering of any or all of the Components of the Property should the number of any of these Components on the Drawings differ from the approved Sectional Plan. Should the Seller change the number of any component in terms of this Clause, the Purchaser shall sign all such documents as may be required.

## **23. BREACH**

- 23.1. **If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 14 (Fourteen) days, or in the instance of any financial obligation or a breach in terms of Clause 9 of this Agreement, within 7 (Seven) days, or in the instance a breach in terms of Clause 6.4 of this Agreement, within 3 (Three) days, or in the instance a breach in terms of Clause 4.4 of this Agreement, within 1 (One) day after receipt of written notice from the other party calling upon it to 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:**
- 23.1.1. **cancel this Agreement and claim such damages as it may have sustained from the defaulting party; or**
- 23.1.2. **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;**
- 23.2. **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.**



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- 23.3. **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. Occupation shall be redelivered in the same good order and condition as at the Occupation Date.**
- 23.4. **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.**
- 23.5. **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 3 (Three) days, 7 (Seven) days or 14 (Fourteen) days period provided for in Clause 23.1**
- 23.6. Where the Seller is entitled to retain any cash payments in terms of Clause 23.2, the Transferring Attorneys is hereby authorized to pay such amounts to the Seller on its request.
- 23.7. 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 Interest 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.
- 23.8. **In the event of the cancellation of this Agreement as a result of the conduct of the Purchaser, the Purchaser hereby agrees to pay the following amounts, amongst others, but not limited to, to the Seller: the amount due to the Principal Agent and referred to in Clause 21 of this Agreement plus the wasted fees and costs of the Transferring Attorneys plus an amount equal to 20% (Twenty) of the Purchase Price. These amounts must be paid by the Purchaser to the Seller within a period of 3 (Three) days after written demand thereto by the Seller or the Transferring Attorneys.**

#### **24. ADDRESSES FOR SERVICE AND DELIVERY OF LEGAL DOCUMENTS**

- 24.1. The Parties choose their addresses as set out on in Clause 1 of the Covering Schedule of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.
- 24.2. Any notice given in terms of the Agreement which is:
- 24.2.1. delivered by hand during normal business hours to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser at the time of delivery;
- 24.2.2. posted by prepaid registered post to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser on the 7th day after the day of its posting.
- 24.2.3. communicated by facsimile or e-mail, shall be deemed to have been received by the Seller or Purchaser on received confirmation of the successful transmission thereof.
- 24.3. Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

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**25. GENERAL**

- 25.1. 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.
- 25.2. 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.
- 25.3. 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.
- 25.4. 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.
- 25.5. 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.
- 25.6. The Main Contractor will manage the construction of the Building, who in turn will appoint the Sub-Contractor in terms of the JBCC for the construction of the Building. The Seller warrants that the Contractor and the Sub-Contractor will be registered with the NHBRC and will comply with all requirements pertaining to such registration.

**26. CONDITION PRECEDENT IN FAVOUR OF THE SELLER**

**26.1. MINIMUM SALES**

- 26.1.1. It is recorded that the Scheme will comprise Sections. This Agreement is made subject to the Seller selling Sections in the Scheme to a value of at least 80% (Eighty) percent of the aggregate value of all Sections in the Scheme within 12 (Twelve) months after the date that marketing commenced. For purposes of this Clause "sell" will mean the coming into existence of a deed of sale between the Seller and the Purchaser, which is not subject to the condition precedent referred to in Clause 6 and/or Clause 29, or in respect of which such condition precedent, if imposed, has 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 maximum period of 6 (Six) months after the Due Date, or such longer period as the Parties may agree to in writing (the Extended Date).
- 26.1.3. It is recorded that this condition precedent is inserted solely for the benefit of the Seller. The Seller may waive the benefit of this condition.
- 26.1.4. In the event of this condition not being fulfilled, the Seller will refund the Purchaser all amounts paid in terms of this Agreement.

**26.2. DEVELOPMENT FINANCE**

- 26.2.1. This Agreement is subject to the condition precedent in favour of the Seller in 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.
- 26.2.2. In the event of this condition not being fulfilled, the Seller will refund the Purchaser all amounts paid in terms of this Agreement.



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26.3. **SECTIONAL TITLE REGISTER**

26.3.1. This Agreement is subject to the condition precedent in that the Seller must be able to obtain approval of the Sectional Title Plan by the Surveyor-General as well as the opening of the Sectional Title Register in the Cape Town Deeds Registry on or before the Transfer Date.

26.3.2. In the event of this condition not being fulfilled, the Seller will refund the Purchaser all amounts paid in terms of this Agreement.

26.4. **REZONING AND OWNERSHIP**

26.4.1. This Agreement is subjecting to the condition precedent in that the Seller must obtain approval of the rezoning and subdivision of the Property, by all relevant authorities, to enable the Seller to commence with the Development on or before October 2021.

26.4.2. This Agreement is subject to the condition precedent in favour of the Seller in that the Seller or its nominee must become the registered owner of the Land on or before the Transfer Date.

26.4.3. In the event of anyone of the conditions referred to in Clauses 26.4 of this Agreement not being fulfilled, the Seller will refund the Purchaser all amounts paid in terms of this Agreement.

27. **COOLING-OFF IN TERMS OF THE CPA**

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. **CONFIRMATION BY THE PURCHASER IN TERMS OF THE CPA**

28.1. The Purchaser confirms that:

28.1.1. he has read this Agreement and understands the contents thereof;

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

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

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

28.2. 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. **CONDITIONS PRECEDENT IN FAVOUR OF THE PURCHASER**

29.1. If Clauses 2.4 and 2.5 of the Covering Schedule have been completed, then and in that instance this Agreement is subject to the condition precedent in favour of the Purchaser in that the Purchaser must be able to sell the Existing Property and obtain fulfilment of all and any conditions precedent thereto within the Sale Period. Transfer of the Existing Property must be registered in the relevant Deeds Registry on or before the Primary Transfer Date.

29.2. In the instance of this condition precedent not being fulfilled within the Sale Period, 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.



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- 29.3. It is recorded that this condition precedent is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this condition by communicating such waiver to the Seller in writing at any time within the Sale Period or on/or before the Primary Transfer Date, as the case may be. In the event of a waiver by the Purchaser as aforesaid this Agreement will not lapse, despite the Purchaser's failure to sell the Existing Property.
- 29.4. The Seller may, in its absolute and sole discretion, extend the Sale Period and/or the Primary Transfer Date with a maximum period of 30 (Thirty) days by giving the Purchaser written notice to that effect on or before the Due Date.
- 29.5. If the Existing Property has already been sold on the Signature Date, then and in that instance the Existing Property must be transferred on or before the Primary Transfer Date.
- 29.6. **In the instance of this Clause 29 being applicable, the Purchaser must grant a joint selling mandate to Rank Real Estate (Pty) Ltd, Registration Number: 2015/313518/07 to attend to the marketing and selling of the Existing Property and will use its best endeavours to appoint the Transferring Attorneys to attend to the registration of Transfer of the Existing Property to a purchaser.**

### **30. CANCELLATION**

- 30.1. **Should the Seller prior to the fulfillment of the conditions precedent as referred to in Clauses 6 and 29 of this Agreement, receive another offer which it, in its sole discretion, wishes to accept, then the Seller shall be obliged to notify the Purchaser of its intention in writing. The Purchaser shall then have 3 (Three) Business Days after the sending of such notification, to waive in writing the benefit of the conditions precedent as referred to in Clauses 6 and 29 of this Agreement, thereby binding himself unconditionally and declaring himself financially able to fulfill all its obligations provided for in this Agreement, failing which this Agreement shall lapse, be of no further force or effect and whereafter the Parties will be restored in the position that they were in when they entered into this Agreement.**
- 30.2. In the event of this Agreement lapsing by reason of the condition in Clause 30.1, the Seller will:
- 30.2.1. immediately instruct the Transferring Attorneys to repay the Deposit plus interest earned thereon to the Purchaser; and
- 30.2.2. **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.**

### **31. PHASED DEVELOPMENT**

- 31.1. **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 Sectional Titles Act, 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 an existing Building, or a vertical extension of an 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 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 Sectional Titles Act.**
- 31.2. **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 31.1, 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.**

INITIAL

Initial: \_\_\_\_\_



31.3. The right of the Seller reserved in terms of this Clause may be exercised by the Seller or its successors in title to such right even though the Seller or such successors in title, as the case may be, provided that the exercise of such right is in accordance with the Sectional Titles Act.

**32. OFFER**

The offer to the Seller constituted by the Purchaser having signed this Agreement shall be irrevocable and may not be withdrawn except by written notice sent to the Seller by registered post, which, in any event, may not be given prior to the expiry of a period of 30 (Thirty) Business Days from the date of signature by the Purchaser.

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

**BY THE SELLER**

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

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
SELLER

**BY THE PURCHASER**

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

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
PURCHASER (1)

\_\_\_\_\_  
PURCHASER (2)

If Purchaser is a Company, Close Corporation or Trust:

Name of Signatory: \_\_\_\_\_

Designation of Signatory: \_\_\_\_\_



Initial: \_\_\_\_\_