

# CLOVER RIDGE

## SALE AGREEMENT

Between

**HAOLIN CONSTRUCTION PROPRIETARY LIMITED**  
**Registration Number 2014/190923/07**

(the “**Seller**”)

and

---

(the “**Purchaser**”)

## INDEX

1.	PARTICULARS OF SELLER .....	3
2.	PARTICULARS OF PURCHASER .....	3
3.	PARTICULARS OF JOINT PURCHASER .....	3
4.	THE UNIT, PARKING BAYS AND EXCLUSIVE USE AREA(S) .....	4
5.	PURCHASE PRICE .....	4
6.	PAYMENT OF PURCHASE PRICE .....	4
7.	OCCUPATION .....	5
8.	AGENT .....	5
9.	TRANSFERRING ATTORNEYS / BOND ATTORNEYS .....	5
10.	INTRODUCTION .....	6
11.	INTERPRETATION .....	6
12.	SALE .....	9
13.	SPECIAL CONDITIONS .....	10
14.	THE PURCHASE PRICE AND THE PAYMENT THEREOF .....	12
15.	TRANSFER AND COST .....	14
16.	POSSESSION AND OCCUPATION .....	15
17.	SECTIONAL PLAN AND SPLUMA CERTIFICATE .....	17
18.	SECTIONAL TITLE, EXCLUSIVE USE AREAS AND RULES .....	18
19.	EXTRAS/VARIATIONS .....	18
20.	BUILDING NOT YET ERECTED .....	18
21.	PHASED DEVELOPMENT .....	19
22.	CONSUMPTION CHARGES .....	19
23.	RESALE OF THE SUBJECT MATTER .....	19
24.	CONDITIONS APPLICABLE PENDING TRANSFER .....	19
25.	RECTIFICATION OF DEFECTS .....	22
26.	CESSION AND ASSIGNMENT OF RIGHTS .....	23
27.	TITLE CONDITIONS .....	23
28.	ACKNOWLEDGEMENT AND DISCLOSURE .....	24
29.	MANAGING AGENT AND VOTING AT MEETINGS .....	24
30.	BREACH .....	24
31.	NOTICES AND DOMICILIA .....	25
32.	SELLING AGENT'S COMMISSION .....	25
33.	JURISDICTION/COSTS .....	25
34.	JOINT AND SEVERAL LIABILITY .....	26
35.	TRUSTEE .....	26
36.	COMPANY/CLOSE CORPORATION/TRUST .....	26
37.	SOLE CONTRACTUAL RELATIONSHIP .....	26
38.	CONSUMER PROTECTION ACT .....	27
39.	DISCLOSURES IN TERMS OF THE CONSUMER PROTECTION ACT .....	27

## ANNEXURES

1.	<b>Annexure "1"</b>	Resolution
2.	<b>Annexure "2"</b>	Site Plan
3.	<b>Annexure "3"</b>	Unit Plan
4.	<b>Annexure "4"</b>	Specifications
5.	<b>Annexure "5"</b>	Protection of Personal Information Act (POPI) Declaration

## SUMMARY SCHEDULE

### 1. PARTICULARS OF SELLER

- 1.1 Name: **HAOLIN CONSTRUCTION PROPRIETARY LIMITED**
- 1.2 Registration Number: **2014/190923/07**
- 1.2 Business Address: **NO 5 HEIDE ROAD, KEMPTON PARK, 1619**
- 1.3 Postal Address: **NO 5 HEIDE ROAD, KEMPTON PARK, 1619**
- 1.4 Telephone Number: **072 633 3883**
- 1.5 E-mail Address: **sheila@meilijian.co.za / sheilaliu@meilijian.co.za**

### 2. PARTICULARS OF PURCHASER

- 2.1 Full names/name of purchasing entity: \_\_\_\_\_
- 2.2 Identity Number/Registration Number: \_\_\_\_\_
- 2.3 Marital Status (if applicable): \_\_\_\_\_
- 2.4 Residential Address/Registered Address: \_\_\_\_\_
- 2.5 Business Address: \_\_\_\_\_
- 2.6 Postal Address: \_\_\_\_\_
- 2.7 Telephone Number: \_\_\_\_\_
- 2.8 E-mail Address: \_\_\_\_\_
- 2.9 Income Tax Number/Provisional Tax Number: \_\_\_\_\_

### 3. PARTICULARS OF JOINT PURCHASER \* (IF APPLICABLE)

- 3.1 Full names/name of purchasing entity: \_\_\_\_\_
- 3.2 Identity Number/Registration Number: \_\_\_\_\_
- 3.3 Marital Status (if applicable): \_\_\_\_\_
- 3.4 Residential Address/Registered Address: \_\_\_\_\_
- 3.5 Business Address: \_\_\_\_\_
- 3.6 Postal Address: \_\_\_\_\_
- 3.7 Telephone Number: \_\_\_\_\_
- 3.8 E-mail Address: \_\_\_\_\_

3.9 Income Tax Number/Provisional Tax Number: \_\_\_\_\_

4. **THE UNIT, PARKING BAYS AND EXCLUSIVE USE AREA(S)**

4.1 Unit: means a proposed unit to consist of –

(a) section \_\_\_\_\_ in the proposed scheme to be known as **CLOVER RIDGE** in respect of the land and building or buildings situated at CLOVERDENE EXTENSION 15 TOWNSHIP, LOCAL AUTHORITY: CITY OF EKURHULENI METROPOLITAN MUNICIPALITY, of which section the floor area, is estimated to be \_\_\_\_\_ square metres in extent **(including covered balconies and covered patio's, where applicable)**; and

(b) an undivided share in the common property in the scheme to be apportioned to the said section in accordance with the participation quota as endorsed on the said sectional plan.

4.2 Number of Parking Bays to be allocated to the Unit in terms of an amendment to the Management Rules of the Scheme:

\_\_\_\_\_

5. **PURCHASE PRICE**

Unit and the Exclusive Use Areas (to the extent applicable)

R. \_\_\_\_\_

6. **PAYMENT OF PURCHASE PRICE**

6.1 **Deposits and Final Payment:**  
**cash transaction**

6.1.1 Purchase Price payable within 30 (thirty) days from signature of the Agreement.

6.2 **Deposits, loan amount and  
Balance of Purchase Price:  
Transaction subject to loan  
Approval**

6.2.1 Loan amount required: R\_\_\_\_\_ within 30  
days of the signature date

6.2.2 Balance of Purchase  
Price (if applicable): R\_\_\_\_\_ within 7  
days of loan approval as set out in  
clause 14.1.1

7. **OCCUPATION**

7.1 Anticipated Occupation Date:  
(subject to clause 16) \_\_\_\_\_

7.2 Contractual Occupation Date: Date determined in terms of clause  
16.1

7.3 Monthly Occupational Rental: 1% (one percent) of purchase price  
per month

7.4 Monthly Anticipated Levy: 0,15% (zero comma fifteen percent)  
of the purchase price per month  
subject to clause 16.6

8. **ESTATE AGENT**

8.1 Agent: \_\_\_\_\_

8.2 Telephone Number: \_\_\_\_\_

8.3 E-mail Address: \_\_\_\_\_

9.1 **TRANSFERRING ATTORNEYS**

9.1.1 Name: **BRITS ATTORNEYS INC**

9.1.2 Telephone Number: **(010) 492-4001**

9.1.3 E-mail Address: **liezell@britsinc.co.za**

9.1.4 Trust Account Details: **BRITS ATTORNEYS INC  
Account Number: 020294441  
Branch Code: 012442  
Ref: CRUnit\_\_\_\_\_/Surname**

9.1.5 Bank Panel Codes: Nedbank: 1210  
ABSA: 589  
SBSA: 1140  
FNB: 1685

## 9.2 BOND ATTORNEYS

- 9.2.1 Name: **VAN RENSBURG SCHOON INC**
- 9.2.2 Telephone Number: **(011) 970-1203**
- 9.2.3 E-mail Address: **sueliza@vrsc.co.za**

## 10. INTRODUCTION

- 10.1 The Seller is the registered owner of Cloverdene Extension 15 Township.
- 10.2 The Seller intends to establish Residential Sectional Title Scheme to be known as CLOVER RIDGE in two (2) or more Phases as contemplated in Section 25 of the Act and indicated on the Site Plan annexed hereto marked “2”. Therefore, the Subject Matter is not yet capable of registration as contemplated in the Alienation of Land Act No. 68 of 1981.
- 10.3 The Seller has agreed to sell to the Purchaser who has agreed to purchase a sectional title unit in the Development, together with an undivided share in the common property and Exclusive Use Area(s) (altogether known as the “**Subject Matter**”) for the purchase price and on the terms and conditions contained in this Agreement and the Annexures hereto.
- 10.4 Construction of the buildings in the Scheme has commenced.

## 11. INTERPRETATION

- 11.1 In this Agreement, unless inconsistent with the context:
- 11.1.1 “Agreement” or “Agreement of Sale” means this Agreement together with all Annexures and Plans, signed or initialed by and entered into by the Seller and Purchaser;
- 11.1.2 “Act” means the Sectional Titles Act No. 95 of 1986 or any amendment thereof and includes the Regulations promulgated there under from time to time;
- 11.1.3 “Architect” means the architect/s appointed by the Seller from time to time for the purposes of the Development;
- 11.1.4 “Beneficial Occupation” means the stage of completion where, in the opinion of the Principal Agent, the Subject Matter can effectively be used for the purposes intended;
- 11.1.5 “Bond Registration Costs” means the fee charged by bond registration attorneys for registration of the bond and the Deeds Office charge including the initiation fee, valuation fee or any administrative fee charged by and payable to the financial institution or insurance company;
- 11.1.6 “Bond Registration Attorneys” means Van Rensburg Schoon Attorneys, as indicated in clause 9.2 above;

- 11.1.7 “Building/s” means the building/s to be erected on the Property as part of the Scheme, reflected on the Annexures;
- 11.1.8 “By-Law” means the City of Ekurhuleni Municipal Planning By-Law, 2016;
- 11.1.9 “Common Property” means those portions of the Property and such parts of the buildings which do not form part of any Section in the Scheme and constitute common property in terms of the Act;
- 11.1.10 “Completion Date” means the date upon which the Subject Matter is sufficiently complete for beneficial occupation which date shall, in the event of a dispute, be as determined and certified by the Principal Agent whose decision as to that date shall be final and binding upon the Parties;
- 11.1.11 “Contractual Occupation Date” means the date upon which the Section is sufficiently complete for beneficial occupation as notified by the Seller to the Purchaser in terms of clause 16.1;
- 11.1.12 “Conveyancing Transfer Charges” means the fees payable to the Transferring Attorneys to register the transfer of the Subject Matter to the Purchaser as well as the Deeds Office charge in respect of the transfer;
- 11.1.13 “Council” means the City of Ekurhuleni Metropolitan Municipality or its successors in title;
- 11.1.14 “Developer” means the Seller or its nominee/s carrying out the Development from time to time in more than one phases and includes its successors in title and their respective successors and *vice versa*;
- 11.1.15 “Development” means the buildings to be erected and completed on the Property in more than one phases in respect of which the Seller intends to open a Sectional Title Register to be known as CLOVER RIDGE;
- 11.1.16 “Estimated Occupation Date” or “Anticipated Occupation Date” means the anticipated date of occupation of the Unit as in clause 7.1 but subject to clause 7.2 and clause 16;
- 11.1.17 “Estimated Transfer Date” means the anticipated transfer date of the Subject Matter as soon as practically possible after the Contractual Occupation Date;
- 11.1.18 “Exclusive Use Area(s)” means the area/s being a part or parts of the common property for the exclusive use of an owner of a unit in the Scheme, indicated on the Sectional Plan and to be ceded to the Purchaser by way of a Notarial Deed of Cession;

- 11.1.19 "Levies" means an amount in respect of Body Corporate levies;
- 11.1.20 "Occupational Rental" means the amount described in clause 7.3;
- 11.1.21 "Participation Quota" means the percentage allocated to the Section in the Sectional Plans of the Scheme as registered and filed in the office of the relevant Deeds Registry or, in the event of such Sectional Plans not having been registered a percentage expressed to four decimal places and arrived at by dividing the floor area correct to the nearest square metre, of all the Sections in the buildings comprised in the Scheme;
- 11.1.22 "plans" means site plan and the unit plan relating to the Scheme and the Units therein as attached hereto (**marked "2" and "3"**);
- 11.1.23 "prime rate" means a rate of interest per annum which is equal to commercial banks' published minimum lending rate of interest per annum, compounded monthly in arrears, charged by a commercial bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time;
- 11.1.24 "Principal Agent" means the architect or any other agent appointed by the Seller for purposes of the Development;
- 11.1.25 "Property" means Cloverdene Extension 15 Township, Registration Division I.R., Province of Gauteng;
- 11.1.26 "Register" means the Sectional Title Register to be opened in respect of the Scheme in terms of the Sectional Titles Act;
- 11.1.27 "Regulations" means the Regulations promulgated under the Act and the STSMA from time to time;
- 11.1.28 "Rules" means jointly the Management and Conduct Rules relating to the Scheme in terms of clauses 18 and 29 below;
- 11.1.29 "Specifications" mean the Annexure hereto (**marked "4"**);
- 11.1.30 "Scheme" means the Sectional Title Scheme to be known as **CLOVER RIDGE** consisting of more than one phase;
- 11.1.31 "Section" means the Section referred in clause 4.1 and more fully described in the site plan and the unit plan indicated on the Annexures hereto (**marked "2" and "3"**) which is sold and is to be transferred in terms of this



Agreement notwithstanding that the Sectional Plan relating thereto may not yet be approved or registered on the signature date;

- 11.1.32 “Signature Date” means the date on which the last signing party signs this Agreement;
  - 11.1.33 “SPLUMA” means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013);
  - 11.1.34 “STSMA” means the Sectional Title Schemes Management Act, 2011 (Act 8 of 2011) together with its Regulations;
  - 11.1.35 “Subject Matter” means the Unit and Exclusive Use Area(s) (if applicable) as finally described in the Sectional Plan, read together with the Register;
  - 11.1.36 “Transfer Date” means the date of transfer;
  - 11.1.37 “Transfer” means registration of transfer of the Subject Matter into the name of the Purchaser in the Deeds Office and includes the simultaneous cession of an Exclusive Use Area to the Purchaser by way of a Notarial Deed of Cession (if applicable);
  - 11.1.38 “Transferring Attorneys” means Brits Attorneys Incorporated, as described in clause 9 above; and
  - 11.1.39 “Unit” means the Section described in clause 4.1 and indicated on the unit plan annexed hereto (**marked “3”**) together with an undivided share in the common property as apportioned to the Section in accordance with the participation quota/s to be determined in accordance with the Act.
- 11.2 Words and expressions defined in the Sectional Titles Act shall have the meanings therein defined.
- 11.3 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include female and words importing persons shall include partnerships, trusts and bodies corporate and *vice versa*.
- 11.4 Reference to this Agreement shall mean the Agreement of Sale and all the Annexures thereto.

## 12. SALE

The Seller sells and the Purchaser purchases the Subject Matter in accordance with the terms and conditions set out in this Agreement and all Annexures thereto and which the Purchaser acknowledges having read, understood and considers himself bound thereto.

### 13. SPECIAL CONDITIONS

#### 13.1 SUSPENSIVE CONDITION - MORTGAGE LOAN

- 13.1.1 This sale is subject to and conditional upon the Purchaser being granted a mortgage secured loan against security of the Subject Matter by a financial institution approved by the Seller for an amount not less than that specified in clause 6.2.2. Such loan must be granted within 30 (thirty) calendar days from the signature date on terms and conditions normally applicable to such loans granted by financial institutions.
- 13.1.2 The loan as approved must be for an amount that will enable the Purchaser to deliver a guarantee or guarantees for not less than the amount stated in clause 6.2.2.
- 13.1.3 If this suspensive condition is not fulfilled or waived within the period mentioned in clause 13.1.1 above, the period shall be deemed to be automatically extended until the Seller gives 3 (three) days written notice to the Purchaser requiring that the condition be fulfilled within such 3 (three) days failing which the Seller shall have the right to cancel the sale forthwith.
- 13.1.4 If the Seller does not cancel the sale as contemplated in clause 13.1.3 above within 30 (thirty) days after the date of the notice referred to in clause 13.1.3 above, or if the suspensive condition is not waived within the period described in clause 13.1.3 above, this Agreement shall lapse and be of no further force or effect and Initial Deposit together with the interest earned thereon shall be refunded to the Purchaser.
- 13.1.5 The mortgage secured loan **may** be obtained on behalf of the Purchaser by a bond broker appointed by the Seller or the Estate Agent but always subject to clause 13.1.9 below.
- 13.1.6 The Purchaser undertakes to provide the bond broker (if appointed by the Seller) on request with all the information/documentation required to enable the bond broker to apply for the loan. The Seller shall however not be obliged to appoint a bond broker or to facilitate a loan to the Purchaser.
- 13.1.7 The suspensive condition shall be deemed to have been fulfilled upon the Purchaser accepting a suitable offer to lend from a financial institution.
- 13.1.8 A loan granted on the condition that a loan, payment of which is secured by a bond over another property, be paid in FULL and be cancelled, shall NOT constitute fulfilment of the suspensive condition contained in clause 13.1.1 above.

13.1.9 The Purchaser shall use his best endeavours to procure fulfilment of the suspensive condition and the Purchaser furthermore undertakes to fulfil all of the requirements laid down by the financial institution in question in connection with the grant of such loan. **If the Purchaser is unable to demonstrate to the Seller that the Purchaser actively or forcefully made all reasonable efforts in order procure fulfilment of the suspensive condition or fails to comply with or accept any condition reasonably imposed by the financial institution, the Seller may regard the suspensive condition as having been waived and demand performance by the Purchaser of his obligations in terms of this Agreement.**

13.1.10 The suspensive condition contained in clause 13.1.1 is expressed to be for the exclusive benefit of the Purchaser, who shall at any time prior to the due date for fulfilment thereof be entitled to waive such condition by written notice to the Seller, or the Transferring Attorneys and in the event of such waiver, the Purchaser will be obliged to pay the amount as set out in clause 6.2.3 to the Transferring Attorneys upon notifying the Seller or Transferring Attorneys that the condition contained in clause 13.1.1 has been waived.

13.1.11 Should the suspensive condition be fulfilled or waived as contemplated herein, and the grant of the loan is subsequently retained or withdrawn by the financial institution **at the instance of the Purchaser**, this Agreement shall not lapse or be rendered null and void or unenforceable as a result of such retention, cancellation or withdrawal by the financial institution, **and the Purchaser shall nevertheless be bound to fulfil his obligations in terms of this entire Agreement as if the condition was waived by the Purchaser.**

13.1.12 **The Purchaser acknowledges and understands that Van Rensburg Schoon Attorneys Incorporated will attend to registration of mortgage bonds in favour of Absa, Nedbank, Standard Bank and First National Bank and that the Purchaser may not instruct his bank to appoint another firm for registration of the mortgage bond.**

13.1.14 In the event that any other firm of Attorneys be appointed to register the mortgage bond on behalf of the Purchaser, the Purchaser will be liable to pay the bond registration costs of the attorneys appointed, as indicted in clause 11.1.5.

## 13.2 VIABILITY OF THE DEVELOPMENT AND DEVELOPMENT FINANCE

13.2.1 The Purchaser acknowledges that the viability of the Seller undertaking the Development is dependent on, *inter alia*,

the response by the public to the marketing campaign to be conducted by the Seller, the level of pre-sales achieved, and the Seller obtaining finance from a bank or recognised financial institution for the Development on terms and conditions acceptable to the Seller.

13.2.2 If the Seller determines that the Development is not viable, by the date stipulated in clause 7.1 ("the target date"), which date may be extended with 6 (six) months at the sole discretion of the Seller without notice to the Purchaser ("extended target date"), the Seller shall have the right to cancel this agreement by giving written notice of the Seller's election to cancel, which notice shall be given within **30 (thirty) calendar days** after the expiry of the target date or if the target date was extended by the Seller in terms of this clause 13.2.2, by not later than **30 (thirty) calendar days** after the expiry of the extended target date.

13.2.3 If the Seller elects to cancel the sale as contemplated in clause 13.2.2 above, the Deposits together with interest earned thereon shall be refunded to the Purchaser and the Purchaser shall have no claim of any nature against the Seller arising from the cancellation of this Agreement and the Sale contained therein.

#### 14. THE PURCHASE PRICE AND THE PAYMENT THEREOF

14.1 The Purchaser shall pay the purchase price to the Seller in cash against registration of transfer of the Subject Matter into the name of the Purchaser.

14.2 In the case of cash transactions, the Purchaser shall pay the **Third Deposit** via EFT to the Transferring Attorneys within 30 (thirty) days after the Purchaser was notified by the Transferring Attorneys that construction is anticipated to commence within approximately 30 days, and the **Final Payment** by via EFT to the Transferring Attorneys within 3 (three) calendar days after the Purchaser was notified by the Transferring Attorneys that construction of the first phase is anticipated to be completed within approximately 6 (six) months.

14.3 **The Purchaser acknowledges and agrees that after fulfilment of the Special Conditions contained in clause 13 above, all payments made to the Transferring Attorneys are non-refundable and the Purchaser takes note of the provisions of clause 30.1 below relating to a breach by the Purchaser of any provision of the Agreement.**

14.4 In the case of transactions subject to mortgage loan approval as set out in clause 13.1.1 above, the **Balance of the Purchase Price** shall be paid via EFT to the Transferring Attorneys within 7 days after the granting of a mortgage loan.

14.5 The Transferring Attorneys shall hold all funds deposited by the Purchaser in trust for the benefit of the Purchaser pending transfer of the Subject Matter. The Transferring Attorneys are authorised to invest all funds

deposited by the Purchaser and not required immediately in an interest-bearing account in terms of Section 86(4) of the Legal Practice Act 28 of 2014 ("LPA") and approved in terms of the LPA, upon receipt by the Transferring Attorneys of proof of payment by the Purchaser together with the required Financial Intelligence Centre Act, 38 of 2001 ("FICA") documentation. Interest on the investment will accrue to the Purchaser subject to the provisions of Section 86(5) of the LPA which stipulates that 5% of the interest accrued on accounts opened in terms of Section 86(4) of the LPA must be paid over to the Legal Practitioner's Fidelity Fund established in terms of the LPA ("LPFF") and vests in the LPFF.

- 14.6 As security for payment of the bond amount to be financed by the bank loan, the Purchaser shall provide the Transferring Attorneys within 14 (fourteen) calendar days after the grant of such loan, with banker's guarantees approved by the Seller for an amount equal to the bond amount, which guarantees shall:

14.6.1 be subject to such terms as are usually imposed by such bankers in issuing such guarantee/s;

14.6.2 be expressed to be payable free of exchange by way of a real time electronic funds transfer (EFT), on written advice from the Transferring Attorneys to the party which issues such guarantee and on no conditions other than registration of:

14.6.2.1 transfer of the unit and cession of Exclusive Use Area(s) from/by the Seller to the Purchaser;

14.6.2.2 release of the unit and Exclusive Use Area(s) from any existing bond; and

14.8.2.3 if applicable, registration of the bond

and shall not be expressed to be subject to the occurrence of any other event.

- 14.7 In as much as the purchase price is inclusive of VAT determined at the current rate of 15%, in the event of the rate being amended after the signing date, but in circumstances in which the amended rate will apply to this transaction and be payable by the Seller, the purchase price shall be adjusted accordingly. Any additional VAT shall be payable by the Purchaser immediately upon demand by the Transferring Attorneys.

- 14.8 Should any payment due in terms of this agreement or should any guarantees due not be made or delivered timeously as the case may be, the Purchaser shall be liable for and shall pay, without demand by the Seller, penalty interest at prime rate plus 2% (two percent) calculated from the date that payment was due or guarantees were to be furnished, as the case may be, up to and including the date on which payment is made and/or the guarantees are furnished, as the case may be and without prejudice to the Seller's rights in terms of clause 33 below.

## 15. **TRANSFER AND COSTS**

- 15.1 Transfer shall not be passed to the Purchaser until such time as the total purchase price and all other amounts for which the Purchaser may be liable for in terms hereof up and until the transfer date have been paid and/or payment thereof has been secured as herein provided, to the satisfaction of the Seller and the Purchaser has complied with all other obligations in terms of this Agreement.
- 15.2 Transfer of the Subject Matter shall be effected by the Transferring Attorneys and shall be given and taken as soon as possible after approval of the Sectional Plan, the issuing of the SPLUMA Certificate described in clause 17.5 below and the completion date.
- 15.3 Within 5 (five) working days after being requested to do so by the Transferring Attorneys, the Purchaser shall sign all such documents and furnish the Transferring Attorneys with all such documents as may be necessary or requisite for the purposes of the registration of transfer of the Subject Matter to the Purchaser.
- 15.4 **The Seller shall be liable for the conveyancing transfer charges incidental to the transfer of the Subject Matter to the Purchaser as well as the bond registration costs payable to the Transferring Attorneys in respect of the registration of the mortgage bond.**
- 15.5 **In addition to the provisions of clause 15.4 above, the Purchaser shall be liable for all water and electricity consumption charges from the Contractual Occupation Date, the cost of any insurance certificate required by the financial institution granting the loan, the initiation fees charged by the financial institution, any other charges imposed by the financial institution as well as any direct costs and disbursements arising from the grant of the loan and the bond required to be registered.**
- 15.6 **The Purchaser acknowledges and accepts that the Purchaser has purchased property in a Development where transfer to the Purchaser will take place simultaneous with transfers to other purchasers in the Development, as a result of which transfer of the Subject Matter to the Purchaser may be delayed. The Purchaser shall, despite a delay in transfer, be obliged to pay the Occupational Rental provided for in clause 7.3 above and clause 16.6 below to the Seller via EFT upon request by the Seller for such payment.**
- 15.7 **The Purchaser shall not have any claim against the Seller or be relieved of any of the Purchaser's obligations in terms of this Agreement or be entitled to any remission or rebate of any charges payable by the Purchaser in terms of this Agreement in the event of not unreasonable delay in the opening of the Sectional Title Register and transfer of the Subject Matter to the Purchaser.**
- 15.8 **Neither the Seller nor the Transferring Attorneys shall be required to off-set any financial obligation/s of the Purchaser against the Initial Deposit prior to transfer.**

## 16. POSSESSION AND OCCUPATION

- 16.1 The Seller shall give the Purchaser at least 60 (sixty) calendar days written notice of the Contractual Occupation Date.
- 16.2 In the event of the Seller being unable to make the Subject Matter available to the Purchaser on the Contractual Occupation Date, the Seller shall be entitled to postpone the Contractual Occupation Date by written or verbal notice to the Purchaser. If the Subject Matter is fit for occupation prior to the Contractual Occupation Date, the Seller may notify the Purchaser of an earlier Contractual Occupation Date on notice given not less than 60 (sixty) calendar days before the earlier Contractual Occupation Date.
- 16.3 The Seller shall give and the Purchaser shall take vacant occupation of the Subject Matter on the Contractual Occupation Date. Failure on the part of the Purchaser to take physical occupation (whether personally or by agent) or to accept the keys to the Subject Matter shall not affect the Contractual Occupation Date which shall remain as defined and described in clauses 16.1 and 16.2 above.
- 16.4 **The Seller shall be entitled to deny the Purchaser access to the Subject Matter until all outstanding obligations of the Purchaser have been fulfilled and the Purchaser shall, nevertheless, remain liable for payment of the Occupational Rental, notwithstanding the fact that actual occupation was denied by the Seller.**
- 16.5 Occupation of the Section by the Purchaser or anybody through the Purchaser shall not create a tenancy and in the event of this Agreement being cancelled, all rights to the occupation of the Subject Matter shall lapse and the Subject Matter shall be vacated forthwith.
- 16.6 From the Contractual Occupation Date until registration of transfer of the Unit into the Purchaser's name, and including such date, the Purchaser shall pay to the Seller Occupational Rental as described in clause 7.3, and the estimated monthly Body Corporate levies as described in clause 7.4, monthly in advance on the first day of each and every month to the Seller until the transfer date (both days inclusive), prorated for periods of less than a month. Should the actual levy be higher than the estimated levy, the Purchaser shall pay the actual monthly Body Corporate levy.
- 16.7 Should the Purchaser be in occupation of the Subject Matter and registration of transfer be delayed by reason thereof that the Purchaser:
- 16.7.1 refuses to pay any amount due in terms of this Agreement or to sign any document which the Purchaser is required to sign in terms of this Agreement; or
- 16.7.2 commits any other breach or fails to comply with any other term of this Agreement; or
- 16.7.3 refuses to sign the Letter of Satisfaction required by the Financial Institution which granted the mortgage loan in order to allow the Bond Attorneys to have the building retention uplifted,

then the Occupational Rental payable by the Purchaser in terms of clause 16.6 above shall be the amount described plus a further R3,500.00 per month, for as long as such failure and/or refusal and/or breach continues, calculated from due date and to date of remedying such failure and/or refusal and/or breach. In addition, under such circumstances, the Seller shall, upon becoming aware of the delay caused by the Purchaser, be entitled to instruct the Transferring Attorneys to withhold or exclude the transaction from the first lodgement batch and the Purchaser shall nevertheless then remain liable to pay the increased Occupational Rental as well as all Body Corporate levies and rates payable in respect of the Subject Matter.

- 16.8 In the event of any dispute as to when or whether beneficial occupation of the Unit has been given or tendered either in terms hereof or otherwise, a certificate by the Principal Agent (acting as an expert and not as an arbitrator) certifying that the Unit is suitable for beneficial occupation shall be final and binding on the Parties, notwithstanding that the building as a whole or the common property may not have been completed or might not be suitable for beneficial occupation at such date. **The Contractual Occupation Date shall under no circumstances be deferred by the Purchaser, whether or not the Unit is considered suitable for beneficial occupation by reason of any improvements, additions or alterations to be effected to the Section, by or at the request of Purchaser, not having been completed.**
- 16.9 The Purchaser acknowledges that on the transfer date, the building/s and the other structures and/or improvements, including infrastructure and roads in the Scheme may be incomplete and that the Purchaser may suffer inconvenience from building operations, noise, dust and other nuisance factors. **The Purchaser shall not be entitled by reason of any of the foregoing to cancel or withdraw from this Agreement or to claim damages from any person or institute interdict proceedings nor shall the Seller be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of such building operations.**
- 16.10 The Purchaser acknowledges that the common areas may not be complete by the time that the Purchaser's Unit is completed and the Purchaser **agrees that the Purchaser shall not be entitled to refuse to accept occupation or transfer of the Unit as a result thereof.**
- 16.11 **If for any reason whatsoever the Seller is unable to give the Purchaser occupation of the Unit or the Contractual Occupation Date, then the Purchaser shall have no claim of whatsoever nature against the Seller as a result thereof.**
- 16.12 Possession of the Subject Matter shall be given to and taken by the Purchaser on transfer.
- 16.13 All monies of the Purchaser held by the Transferring Attorneys shall be utilized firstly towards the settlement of the financial obligations of the Purchaser towards the Seller pending transfer and lastly towards the purchase price.



- 16.14 The Purchaser will, within 5 (five) working days after being requested to do so by the Seller or the Transferring Attorneys and prior to the Contractual Occupation Date, sign any Letter of Satisfaction as may be required by the Purchaser's bankers for purposes of registration of the mortgage bond over the Subject Matter, if applicable. The Seller hereby acknowledges that the signature by the Purchaser of the aforesaid Letter of Satisfaction does not, in any way, absolve the Seller from its obligations to rectify any defects or snags in the Unit as envisaged in clause 25.

**17. SECTIONAL PLAN AND SPLUMA CERTIFICATE**

- 17.1 The Purchaser acknowledges that the Sectional Plan has not yet been approved and that the exact boundaries of the Section forming part of the Unit shall be those shown on the final approved Sectional Plan and will be substantially in accordance with those set out in the Annexures hereto. The undivided share in the common property apportioned to the Section shall be in accordance with the Participation Quota which is ultimately determined in terms of the Act upon approval and registration of the Sectional Plan.
- 17.2 The Purchaser acknowledges that the extent of the Unit on the final Sectional Plan will be measured by the Land Surveyor in accordance with the Act and which will show the floor area of the Section to the median line of the boundary walls of the Section. The extent on the plans annexed hereto prepared by the Architect excludes the walls which may result in a variance.
- 17.3 **The Purchaser shall not be entitled to claim cancellation of this Agreement or any reduction in the purchase price by reason of any minor alteration to the number, size, location or participation quota of any Section, or any increase in their number, in comparison to that shown on the plans annexed hereto. The Purchaser undertakes to accept transfer of the Unit as may be re-defined and re-numbered in the Sectional Plan approved by the Surveyor General. For purposes of clarity and good order, a minor alteration in size shall be an increase or decrease in the area of the Section not greater than 15% (fifteen per centum), which must exclude the variance in clause 17.2 above. Should the size be increased or decreased with more than 15% (fifteen per centum) the Purchaser will be notified and the Purchase Price will be adjusted (increased or decreased as the case may be) accordingly.**
- 17.4 **The Purchaser acknowledges that it may be necessary for the Seller to amend or change the design and/or layout of all or some of the Units. In the event of such changes being required, the Purchaser shall accept the amendments or changes and remain bound to this Agreement.**
- 17.5 **The Purchaser acknowledges that the Scheme will only be rendered registrable after approval of the Sectional Plan pursuant where to a compliance clearance certificate will be required from the local authority in terms of Section 53 of the By-Laws of the Council promulgated under the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013). The Seller shall not be responsible for**

**any procedural and/or administrative delays resulting from this requirement.**

**18. SECTIONAL TITLE, EXCLUSIVE USE AREAS AND RULES**

18.1 The Purchaser, as owner of the section entitled to the right of exclusive use of a part or parts of the common property, may be required to make such additional contributions to the Body Corporate as are estimated necessary to defray the costs incurred by the Body Corporate in respect of *inter alia*, insurance, maintenance and consumption charges in respect of the said exclusive use areas or, alternatively, the Seller may, in making the Rules provide that the owners concerned be responsible directly, whether entirely or partially, for such costs (if applicable).

18.2 It is recorded that the Body Corporate or the Developer, as the case may be, shall at all times, have access through any unit to any ceiling void and/or service duct from time to time as may be necessary for the purposes of maintenance of any services contained therein and for any other purpose reasonably associated with the development of the Scheme.

18.3 The Purchaser undertakes not to interfere with or hinder any other purchaser or owner of any unit forming part of the Scheme in the exercise by him/her of any exclusive rights granted to him/her.

**19. EXTRAS/VARIATIONS**

19.1 The Seller shall not be obliged to agree to any variation, modification, addition or omission to or from the structure design, layout, finishes, fixtures or fittings in respect of the Unit as set out in the Annexures hereto.

19.2 Should the Seller agree to any extras over and above the Optional Extras in Annexure 4 or variations, then those will be attended to entirely at the cost of the Purchaser and shall include such charges as the Seller may levy for attending thereto. All such costs shall be paid in cash, on agreement to proceed, to the Seller prior to any such work being proceeded with by the Seller, **which payment shall at all times be non-refundable irrespective of any circumstances whatsoever.**

**20. BUILDINGS NOT YET ERECTED**

20.1 It is recorded that the Buildings have not yet been constructed and the Subject Matter is sold off-plan.

20.2 The Seller shall be entitled to vary the details set out in the Annexures hereto, as well as the extras referred to in clause 19 above, to such extent as may be reasonably necessary to:

20.2.1 meet any requirements of any competent authority;

20.2.2 meet any special features of the Property;

- 20.2.3 meet any special impediments such as water, sewer or electrical lines either above or underground or any rock or other soil condition;
- 20.2.4 give effect to any changes in materials, finishes or fittings which the Seller considers to be appropriate or due to the fact that the original materials may not be readily available at the time due to shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the buildings and/or the Section;
- 20.2.5 obtain the approval of the building plans and/or the registration of the Sectional Plans; and
- 20.2.6 to vary the number/s allocated to the Section on the plans and the name of the Development.

**21. PHASED DEVELOPMENT**

**The Seller will complete the Scheme in more than 1 (one) phase and on opening of the register, in its application for registration of the sectional plan, reserve, in a condition imposed in terms of section 11 (2) of the Act, the right to erect and complete from time to time, for the personal account of the Seller further Sections or a further building or buildings on a specified portion of the common property, and to divide such building or buildings into a section or sections and common property and to confer the right exclusive use over parts of such common property upon the owner or owners of one or more sections.**

**22. CONSUMPTION CHARGES**

- 22.1 Subject to the provisions of clause 22.2 the Purchaser shall as from and including the Contractual Occupation Date be liable for the charges in respect of all electricity and water consumed in or on the Unit.
- 22.2 The Scheme shall be equipped with pre-paid electricity and bulk metered water.

**23. RESALE OF THE SUBJECT MATTER**

**Prior to transfer of the Subject Matter to the Purchaser, the Purchaser shall not be entitled to sell the Subject Matter, without the prior written consent of the Seller.**

**24. CONDITIONS APPLICABLE PENDING TRANSFER**

- 24.1 The Purchaser shall, after the occupation date and prior to transfer:
  - 24.1.1 save with the prior written consent of the Seller, not be entitled to make any alterations or additions to the section;
  - 24.1.2 maintain the section in a fit and proper condition;
  - 24.1.3 not be entitled to divide the section;

- 24.1.4 be liable for all electricity, water or gas consumed in the section and to the extent that such services are separately metered;
  - 24.1.5 be liable for and pay to the Seller, the Occupational Rental in clause 7.3 and the estimated initial monthly levy in clause 7.4;
  - 24.1.6 not use the section or the common property in such manner as to cause any damage thereto or to the other sections in the building, nor store or permit the storage therein of any inflammable materials which may vitiate any policy of insurance;
  - 24.1.7 be entitled to use the section as a residential dwelling unit and in terms of the permitted zoning;
  - 24.1.8 permit the Seller either personally, or through the Seller's servants or agents, to have access to the Section at all reasonable times and no reasonable notice to the Purchaser, for the purpose of inspecting it or to carry out maintenance or repairs which the Seller may in terms hereof be obliged or entitled to perform, whether such repairs relate to the Section 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;
  - 24.1.9 not use and enjoy the common property in such manner so as to interfere with the use and enjoyment thereof by other occupiers of Sections or purchasers thereof or other persons lawfully upon the property and shall comply with any rules which the Seller in its discretion may make in regard thereto;
  - 24.1.10 not use the Section or permit it to be used in such manner or for such purposes as shall cause a nuisance to any other person or interfere with the amenities of the property or so as to breach any law, ordinance or by-laws or any town planning scheme in force in relation to the land;
  - 24.1.11 ensure that the Purchaser's family, employees or invitees comply with the obligations aforesaid;
  - 24.1.12 comply with the rules of the proposed Body Corporate from time to time.
- 24.2 The Seller shall, after the occupation date and prior to transfer:
- 24.2.1 insure the buildings for their replacement value and maintain the common property and keep it in a state of good and serviceable repair;

- 24.2.2 keep, in a state of good and serviceable repair and maintain, the plant, machinery, fixtures and fittings used in connection with the common property;
  - 24.2.3 maintain and repair all pipes, wires, cables and ducts existing on the land or in the building and capable of being used in connection with the enjoyment of more than one section or of the common property, provided however that notwithstanding anything to the contrary herein contained, the Seller shall be entitled to effect any repairs to the building (including the section) and/or the land even though the Seller is not obliged to effect such repairs in terms of this agreement.
- 24.3 Notwithstanding anything to the contrary contained in this agreement in the event of the Seller not effecting transfer by reason of either destruction of the building or expropriation of the land or in the event of destruction of the section to the extent that the Purchaser is deprived or likely to be deprived of beneficial occupation thereof for a period of 6 (six) months or longer, the Seller shall thereupon be entitled within 21 (twenty one) days of the relevant event to resile from the agreement and upon the Seller so doing, the Seller shall refund to the Purchaser, that amount which it would have been obliged to refund in terms of clause 24.6.2 below. Within 14 (fourteen) days of such refund having been made, the Purchaser shall vacate the section, unless he/she has already vacated or been deprived of possession thereof and save as aforesaid shall have no further claim against the Seller. If there is any dispute as to the likely period for which the Purchaser will be deprived of beneficial occupation of the section, such dispute shall be referred to the Principal Agent whose decision shall be final and binding and who shall act as an expert and not as an arbitrator.
- 24.4 If the Seller does not elect to resile from the agreement in terms of clause 24.3 then the Seller shall:
- 24.4.1 apply the whole of the monies received by it from the proceeds of any applicable insurance policy to the repair or replacement of the buildings including the section;
  - 24.4.2 if the buildings are replaced by new buildings, such new buildings shall be erected substantially in accordance with the plans for the existing buildings and the Purchaser shall accept a section most nearly comparable to the section to which he was entitled in existing building and the provisions of this agreement shall continue to apply *mutatis mutandis* to such new section and to his occupation thereof in the re-erected building. In the event of any dispute as to the new accommodation which the Purchaser is entitled and obliged to receive in pursuance of this clause, the decision of the Seller's Principal Agent acting as an expert shall be binding;
  - 24.4.3 not be liable to the Purchaser for any claims whatsoever relating to any deprivation of section, displacement or

inconvenience which may be caused during the replacement of the new buildings.

24.5 The Purchaser shall, after transfer:

- 24.5.1 be liable for all electricity and other services provided to and consumed in respect of the Section;
- 24.5.2 be liable for the payment of the levy to the Body Corporate as determined by the Body Corporate from time to time;
- 24.5.3 pay refuse disposal and basic sewer charges and taxes to the Local Authority in respect of the Unit;
- 24.5.4 comply with the rules of the proposed Body Corporate from time to time.

24.6 If, as a result of any act or omission by the Seller, the sectional title register is not opened within 18 (eighteen) months of the Contractual Occupation Date or such further period as may be agreed in writing between the parties then either party shall, on written notice to the other be entitled to elect that:

- 24.6.1 this sale shall terminate on written notice by either party to the other;
- 24.6.2 the Seller refund the Purchaser the amounts in clause 6.1 and 6.2 and interest earned thereon and return to the Purchaser any bankers or other guarantees which may have been furnished by the Purchaser pursuant to this agreement;
- 24.6.3 save as herein provided, neither of the parties shall in such event have any further claim whatsoever and whether for damages or specific performance, against the other under this agreement, nor shall the Purchaser be entitled to claim or allege any right of occupation or tenancy of the section under this agreement and shall vacate the same forthwith and until he/she so vacates Occupational Rental and estimated body corporate levies shall be paid by the Purchaser until date of vacation.

## 25. RECTIFICATION OF DEFECTS

25.1 The Purchaser shall within 7 (seven) days after the Contractual Occupation Date notify the Seller in writing by way of a snaglist of all or any defects in the Unit, failing which the Purchaser shall be deemed to have accepted the Unit in good order and condition. Only **ONE** snaglist shall be considered. The Seller shall within a reasonable time thereafter at its cost repair all such defects and the Seller undertakes to rectify all latent and/or patent defects which become apparent to the Purchaser within 3 (three) calendar months from the Contractual Occupation Date and which is the result of defective materials and/or workmanship.

- 25.2 The Seller shall within a reasonable time remedy any defect in respect of exterior roof leaks and gutter leaks in the Unit (if applicable) which may manifest themselves within 12 (twelve) months after the Contractual Occupation Date provided that the Purchaser notifies the Seller in writing within the said period of 12 (twelve) months of any such defects, failing which, the Purchaser shall be deemed to have accepted the Section in the condition in which the same is as at the Contractual Occupation Date.
- 25.3 The Seller shall within a reasonable time remedy any material structural defects in the Section which may manifest themselves within 5 (five) years after the Contractual Occupation Date provided that the Purchaser notifies the Seller in writing within the said period of 5 (five) years of any such defects, failing which, the Purchaser shall be deemed to have accepted the Section in the condition in which the same is as at the Contractual Occupation Date.
- 25.4 **The Seller shall only be responsible in terms of clauses 25.1 to 25.3 above for defects caused by faulty materials and/or workmanship and the Seller shall under no circumstances be liable for any consequential loss or damage.**
- 25.5 **Upon the issue of a certificate of final completion by the Principal Agent in respect of the Unit the Purchaser shall have no claim whatsoever against the Seller in respect of the Subject Matter and/or any defects therein (whether patent or latent) other than in terms of clauses 25.1, 25.2 and 25.3 (inclusive) above.**
- 25.6 All undertakings hereby given to the Purchaser are personal to the Purchaser and cannot be alienated or disposed of by the Purchaser in any way.
- 25.7 The Purchaser shall not be entitled to withhold, set off or retain any amounts owing by the Purchaser to the Seller nor shall the Purchaser be entitled to withhold or abate payment of any amount due to the Seller in terms of this Agreement.
- 25.8 In the event of any dispute arising between the Seller and Purchaser as to the reasonableness of any defect contained in the snaglist provided by the Purchaser referred to in clause 25.1 above, the Principal Agent will decide as to the reasonableness or not, acting as an expert and not as an arbitrator and his decision shall be final and binding on the Parties.

## 26. **CESSION AND ASSIGNMENT OF RIGHTS**

The Purchaser shall not be entitled to sell, assign, cede or make over its rights under this Agreement, without the prior written consent of the Seller, prior to registration of transfer of the Subject Matter.

## 27. **TITLE CONDITIONS**

- 27.1 The Seller shall not be answerable for any deficiency in the declared extent of the Unit and/or the land, and no warranties are given in respect of the boundaries of the Unit and/ or the Property, subject to clauses 17 and 219 above.

- 27.2 The Purchaser shall accept transfer of the Subject Matter subject to the Rules and all title conditions and servitudes benefiting or burdening same and the Property whether existing or hereinafter imposed by any competent authority or by the Seller.

28. **ACKNOWLEDGEMENT AND DISCLOSURE**

The Purchaser acknowledges that:

- 28.1 the Purchaser has been given sufficient time to consider all provisions of this Agreement and to obtain advice; and
- 28.2 the Subject Matter is not in existence at the time of signing this Agreement and as such it is not possible for the Parties to conduct an inspection of the Subject Matter at this time. The Parties will be given an opportunity to agree on a list of defects on handover or delivery of the Subject Matter, whichever occurs first, and note such defects in writing.

29. **MANAGING AGENT AND VOTING AT MEETINGS**

- 29.1 The Seller shall appoint a managing agent for the Scheme for a period of at least 3 (three) years after the date of establishment of the Body Corporate. The Purchaser hereby grants the Seller the irrevocable power and authority to appoint the managing agent of the Scheme for such aforementioned period.
- 29.2 By his/her signature hereto the Purchaser irrevocably and in *rem suam* appoints the Seller as his/her agent and attorney to attend meetings of the Body Corporate at which the Purchaser is entitled to be present and then and there to vote, on behalf of the Purchaser on any matter as may be necessary pertaining to the amendment of the rules or the adoption of any rules provided that the Developer shall only exercise this right in circumstance where the Purchaser is not physically present or represented by a duly authorised proxy at such meetings.

30. **BREACH**

- 30.1 Should the Purchaser breach any provision of this Agreement and fail to remedy such breach within 7 (seven) days after dispatch of a written notice requiring such breach to be remedied, or should the Purchaser breach any provision of this Agreement at a time critical to the registration procedure and fail to remedy such breach within 48 (forty eight) hours after receipt of written notice requiring such breach to be remedied, **the Seller shall be entitled, without prejudice to any other rights in law, to cancel this Agreement forthwith and the Purchaser agrees that the Seller shall in such event be entitled to retain all payments made by the Purchaser in terms hereof, as a genuine pre-estimate of damages.**
- 30.2 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate the Unit forthwith and shall cease to have any rights under this Agreement and the Seller shall immediately be entitled to resell or let the Subject Matter.



31. **NOTICES AND DOMICILIA**

- 31.1 Each of the Parties chooses *domicilium citandi et executandi* ("*domicilium*") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in clause 1.
- 31.2 Each of the Parties shall be entitled to change its *domicilium* in writing to any other address within the Republic of South Africa and provided that it consists of or includes a physical address at which process can be served or any notice given.
- 31.3 Any notice given and any payment made by a Party to any of the others ("the addressee") which is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery.
- 31.4 Where, in terms of this Agreement communication of any nature is required the term "notice" and/or the term "writing" shall include communications by e-mail and shall be deemed to have been received by the addressee 1 (one) hour after the time of transmission of such communication.
- 31.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium*.

32. **SELLING AGENT'S COMMISSION**

- 32.1 The Seller shall pay the commission of the Estate Agent named in clause 8. Such commission will be earned and be payable as per an agreement concluded between the Seller and the Agent.
- 32.2 **Notwithstanding the provisions of clause 32.1, should this Agreement be cancelled due to a breach by the Purchaser as contemplated in clause 30 above, the Purchaser will be liable for payment of the commission of the Estate Agent upon cancellation.**
- 32.3 The provisions of this clause 32 are intended as a contract for the benefit of the Estate Agent and may be enforced by the Estate Agent who accepts the benefits conferred on it and agrees to the terms hereof.

33. **JURISDICTION/COSTS**

- 33.1 The Purchaser hereby consents in terms of Section 45 of the Magistrate's Courts Act, No. 32 of 1944, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction over its person under Section 28 of that Act, notwithstanding that any action or proceeding arising out of this Agreement would otherwise be beyond the jurisdiction of such court. The Seller shall, however, have the right to institute action in any other court of competent jurisdiction.

33.2 The Purchaser agrees that, in the event of the Seller instructing its attorneys and/or taking legal proceedings against the Purchaser pursuant to a failure by the Purchaser to fulfil any of its obligations in terms hereof, then the Purchaser shall pay all legal costs plus VAT incurred by the Seller in connection therewith as between attorney and own client, including collection commission laid down at the tariff rate applicable.

**34. JOINT AND SEVERAL LIABILITY**

Should this Agreement be signed by more than 1 (one) person as Purchaser the obligations and liability of all the said signatories shall be joint and several.

**35. TRUSTEE**

If this Agreement is entered into by the signatory for the Purchaser in his capacity as representative for a company to be formed, then:

35.1 the said signatory, by his signature hereto, binds himself in favour of the Seller as surety and co-principal debtor, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company in terms of or arising out of this Agreement or any cancellation hereof; and

35.2 without prejudice to the provisions of clause 35.1 above in the event of such company or close corporation not being formed within 30 (thirty) days after the signature date and/or failing to ratify and make the provisions of this Agreement binding upon itself, and/or failing within 7 (seven) days to deliver to the Seller's Attorney the originals or notarially certified copies of its Memorandum of Incorporation, certificate to commence business and all necessary resolutions of shareholders and/or directors in respect of this sale, in the case of a company, or of its founding statement, any applicable association agreement then and in any such event, the said signatory shall be personally liable in terms hereof as if he had contracted in his own personal capacity.

**36. COMPANY/CLOSE CORPORATION/TRUST**

If this Agreement is signed as Purchaser by a person purporting to act for and on behalf of a company, close corporation or trust (other than a company not yet formed), he shall be deemed to warrant that he is duly authorised so to sign this Agreement and shall by his signature hereto bind himself in favour of the Seller as surety and co-principal debtor in solidum with such company, close corporation or trust under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company, close corporation or trust in terms of or arising out of this Agreement or any cancellation hereof.

**37. SOLE CONTRACTUAL RELATIONSHIP**

**37.1 The Parties hereto acknowledge that this Agreement represents the entire agreement between them and that no other conditions, stipulations, warranties and/or representations whatsoever whether**

**express or implied have been made by either party or their agents other than as set forth in this Agreement.**

37.2 Subject to clause 17.4 above, no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the Parties hereto.

37.3 No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in respect of this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.

**38. CONSUMER PROTECTION ACT**

**38.1 The Parties confirm that this sale did not come about as a result of direct marketing by the Seller and/or its agent/s but has been concluded as a result of consultative negotiations between the Parties.**

**38.2 The Purchaser acknowledges that this Agreement contains certain provisions which:**

**38.2.1 limit the risk or liability of the Seller;**

**38.2.2 constitute an assumption of risk or liability on the part of the Purchaser;**

**38.2.3 impose an obligation on the Purchaser to indemnify the Seller; and/or**

**38.2.4 constitute an acknowledgement of facts by the Purchaser.**

**39. DISCLOSURES IN TERMS OF THE CONSUMER PROTECTION ACT ("CPA") NO. 68 OF 2008**

**39.1 It is recorded that the Seller is a "supplier" as defined in the CPA and that the Subject Matter is sold with an "implied" warranty of quality as contemplated in Section 56 of the CPA to the extent that the Subject Matter shall meet the standards described in Section 55 of the CPA and that the Purchaser has the right to receive the Subject Matter:**

**39.1.1 reasonably suitable for the purpose for which it is generally intended;**

**39.1.2 of good quality, in good working order and free of any material defects;**

**39.1.3 useable and durable for a reasonable period of time.**

**39.2 Since the Buildings still need to be erected, it is recorded in terms of Section 55(6) of the CPA, that the Purchaser agrees to accept the Subject Matter as it stands, provided that the buildings are erected in**

**a workmanlike fashion and substantially in accordance with the attached plans and specifications.**

**39.3 Acknowledgments by the Purchaser:**

**The Purchaser acknowledges:**

39.3.1 that the sectional plan of the scheme has not yet been prepared or approved and that accordingly the exact and final boundaries and area of the Section will be that shown on the Sectional Plan/s as approved (from time to time); and

39.3.2 that the Purchaser is aware thereof that the building/s will be equipped with pre-paid electricity supply and metered water.

**39.4 Representations**

It is recorded that the Seller or its Agents may have used models and brochures and other advertising material in marketing and presenting the proposed development to the Purchaser and the public at large. **The furniture, finishes and fittings shown in the advertising material were for advertisement purposes only and the Purchaser acknowledges that the finishes and fittings to this Section will comply with the finishing schedule that he has chosen.**

**39.5 Severability**

The Seller has made every effort to incorporate the Purchaser's consumer rights, as provided for in the CPA, into this Agreement. In the event that any provision in this Agreement is found to contravene the CPA, the parties agree that such provision shall be severed from this Agreement and be treated as if it were not part of this Agreement.

**39.6 Guarantees and Conditions**

39.6.1 The Seller does not furnish any explicit or tacit guarantees in regard to the Subject Matter. The Purchaser acknowledges that he was not persuaded into entering this Agreement by any representations made to him by the Seller or any representative of the Seller, other than what is contained in this Agreement.

39.6.2 The Purchaser should take note that in addition to patent (visible) defects in the Subject Matter, there may be latent (not visible) defects in the Subject Matter.

39.6.3 Clause 25 provides for rectification of defects in the Subject Matter.

PURCHASER signed at \_\_\_\_\_ on \_\_\_\_\_ 202\_\_\_\_\_

\_\_\_\_\_  
Purchaser 1

\_\_\_\_\_  
Purchaser 2 (if applicable)

**AS WITNESSES FOR THE PURCHASER:**

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

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

SELLER signed at \_\_\_\_\_ on \_\_\_\_\_ 202\_\_\_\_\_

\_\_\_\_\_  
for and on behalf of the Seller

**AS WITNESSES FOR THE SELLER:**

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

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

AGENT signed at \_\_\_\_\_ on \_\_\_\_\_ 202\_\_\_\_\_

\_\_\_\_\_  
for and on behalf of the Agent

**AS WITNESSES FOR THE AGENT:**

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

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