

MONARCH



AGREEMENT OF SALE

ENTERED INTO BETWEEN

WCB PROPERTY HOLDINGS 2 PROPRIETARY LIMITED

IN THE SCHEME

TO BE KNOWN AS

“MONARCH”

UNIT NO:

PURCHASER:

STRAUSS DALY INC.

CONVEYANCER: SHELLEY ANN FELDMAN

INFORMATION SCHEDULE

1.	Seller's Details		
	Full Name		WCB PROPERTY HOLDINGS 2 PROPRIETARY LIMITED
	Registration Number		2022/512585/07
	Seller's Address (<i>domicilium citandi et executandi</i> address)		3 rd Floor, Tygervally Chambers, Willie van Schoor Avenue, Bellville, 7530
	Authorised Signatory	Full names	Craig Marcel West / Paul Nel
		Designation	Director
	VAT Number		4910309428
2A.	Purchaser's Details: Individual(s)		
	Full Name/s (complete names of all purchasers)		
	Identity Number(s) / Date(s) of Birth		
	Purchaser's Address (<i>domicilium citandi et executandi</i> address)		
	Telephone Numbers		Work:
			Mobile:
	E-mail address(es)		
	Marital Status (if an individual)	<i>Unmarried/married in COP/married out COP</i> <i>Other (specify _____)</i> <i>(*select/complete whichever is applicable)</i>	
	Income Tax Number(s)		
	VAT Number (if applicable)		
2B.	Purchaser's Details: Juristic Entity		
	Purchaser Type (*tick as applicable)	Company <input type="checkbox"/>	Close Corporation <input type="checkbox"/> Trust <input type="checkbox"/>
	Full Name		
	Registration Number		
	Purchaser's Registered Address (<i>domicilium citandi et executandi</i> address)		
	Telephone Numbers		Work:
Mobile:			

Seller initial here

Purchaser initial here

Witness initial here

Refer to item 7 of Information Schedule



Option 2:

30% non-refundable Deposit within 7 (Seven) days of Signature Date and Guarantees in terms of clause 5

Deposit: R _____

Balance of Purchase Price: R _____

In the event of this item 4 not being completed, it is agreed that this Agreement will not be subject to mortgage finance and will constitute a cash offer by the Purchaser.

	<u>Deposit Reconciliation:</u> Deposit as Above	R
	Less: Reservation Fee Paid <u>(The Reservation fee is non refundable on fulfilment of the conditions contained in clause 4)</u>	R
	Balance of Deposit Payable	R
5.	Occupation (estimated)	
	Occupation Date (estimated)	Phase 1 - _____ Phase 2 - _____ Phase 3 - _____
	Occupational Interest	The Prime Rate from time to time calculated annually and applied pro rata daily payable to the Seller monthly in advance from the Occupation Date until the Transfer Date
6.	Transfer Date (estimated)	As soon as reasonably possible after the Occupation Date
7.	Mortgage Loan	
	Loan amount required	R
	Date for loan approval	Individual(s): 21 (Twenty One) Business Days from Signature Date or such extended date as the Seller may approve in terms of clause 4 Juristic Entity: 30 (Thirty) Business Days from Signature Date or such extended date as the Seller may approve in terms of clause 4
8.	Bond Originator (appointed by the Seller)	
	Agency Name	Ooba
	Contact Name	Gail Olivier
	Contact Number	+27 21 481 6196
9.	Surety Details (juristic entity; refer to item 2B of Information Schedule)	

Seller initial here

Purchaser initial here

Witness initial here

- the Purchaser advises the Seller in writing of any information furnished to the Purchaser in a manner or form which the Purchaser deems not to be plain and understandable language.
- In so far the defects rectification process (more fully set out in clause 10 of this Agreement) is concerned, it is specifically recorded that the Development has not yet been built and the Purchaser therefore expressly agrees to accept the Property in its condition upon Practical Completion, subject further to the agreed defects rectification process which provides for the identification and remedying of any defects in the Property subsequent to the Purchaser having purchased and taken occupation of the Property.

Seller initial
here

Purchaser
initial here

Witness initial
here

The Purchaser hereby offers to purchase the Property from the Seller on the terms set out in the Information Schedule and as set out in the terms and conditions below. Upon acceptance of this offer by the Seller, this shall become a binding agreement of sale.

1. INTRODUCTION

- 1.1. The Seller is about to become the registered owner of Erf 35418 Bellville, in the City of Cape Town, Division Cape, Western Cape Province.
- 1.2. The Seller is undertaking a phased residential sectional title development known as "Monarch" on the Land.
- 1.3. The Seller intends to apply for the approval of the Development and the opening of a sectional title scheme in terms of the Act.
- 1.4. The Seller has agreed to sell and the Purchaser has agreed to purchase the Property together with the rights to the exclusive use area of the balcony, garden (if applicable), and parking bay/s described in the Information Schedule, as well as an undivided share in the common property on the terms and conditions contained in this Agreement. The Parties accordingly agree on the terms set out in this Agreement.

2. DEFINITIONS

In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins (that is, cognate expressions) shall have corresponding meanings:

- 2.1. "**Act**" means the Sectional Titles Act 95 of 1986 or any amendments thereto, and regulations promulgated in terms thereof;
- 2.2. "**Agreement**" means this agreement of sale, including all annexures, addenda, or written amendments;
- 2.3. "**Anticipated Transfer Date**" means the date specified in item 6 of the Information Schedule;
- 2.4. "**Approvals**" means the final approval by the relevant competent authorities (and where an appeal has been lodged against an approval, such approval shall become final upon the determination of such appeal); "**Approved**" shall have a corresponding meaning;
- 2.5. "**Architects**" means the firm appointed by the Seller, as identified in item 11 of the Information Schedule, or any other firm appointed by the Seller from time to time in its discretion, and "**Architect**" means any partner of the Architects (whose appointment should not be necessary to prove);

Seller initial
here

Purchaser initial
here

Witness initial
here

- 2.6. "**Best Endeavours**" means as being a more onerous obligation than "reasonable endeavours" and shall include doing everything known to be usual, necessary and proper for ensuring the expeditious success of the endeavour while prioritising the interest of the person to whom the obligation is owed. It does not imply that a party should put itself in a commercially detrimental position, but it does, however, include that everything that can be done should be done. All courses of action must be pursued which have the greatest chance of achieving the contracted results;
- 2.7. "**Building**" means the building(s), comprising sectional title sections in the Scheme, to be constructed on the Land, substantially in accordance with the Plans;
- 2.8. "**Body Corporate**" means the body corporate to be established in relation to the Scheme as contemplated in the Act and the Sectional Titles Schemes Management Act, and which, upon registration of the Sectional Plan and the opening of the Sectional Title Register will administer the Property;
- 2.9. "**Business Day**" means a day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa;
- 2.10. "**Common Property**" means such parts of the Scheme which do not form part of a Section, and it shall at all times be in the sole and unfettered discretion of the Seller as to:
- 2.10.1. the use to which the Common Property may be put; or
- 2.10.2. the nature of the exclusive use rights which will be granted in respect of the Common Property, provided only that such use is disclosed in the Sectional Plan;
- 2.11. "**Contractor**" means the main contractor appointed from time to time by the Seller, who shall be accredited with a National Home Builders Registration Council (NHBRC) Registration Certificate;
- 2.12. "**Conditions Precedent**" means the conditions precedent which this Agreement is subject to, as set out in clause 4 below;
- 2.13. "**Conveyancers**" means the attorneys as described in item 10 of the Information Schedule;
- 2.14. "**CPA**" means the Consumer Protection Act 68 of 2008, as amended;
- 2.15. "**Defects**" means a defect which a reasonable inspection of the Property would disclose, including the normal snagging items, identified by the Architects and the Purchaser and to be remedied by the Seller in order to achieve Final Completion, and as dealt with more fully in clause 10;
- 2.16. "**Defects List**" means the list setting out the Defects, prepared by the Architects;
- 2.17. "**Development**" means the phased development to be constructed and developed by the Seller, on the Land, known as "Monarch" comprising residential sectional title units;
- 2.18. "**Development Period**" means the period up to the date that all the sectional title units in the Development have been transferred from the Seller to third parties including all such additional area(s) as may be incorporated in further phases into the Development;
- 2.19. "**Direct Marketing**" means to approach a person in person, or by mail or electronic communication, for the direct or indirect purpose of promoting or offering to supply goods or services to the person;
- 2.20. "**Exclusive Use Area/s**" means the exclusive use area/s of a parking bay, garden and/or balcony, which, upon the opening of the Register, will become exclusive use area/s for the purposes of the Act and the Sectional Titles Schemes Management Act, which will be reserved in terms of Section 27(A) of the Act or allocated in terms of Section 10(7) of the Sectional Titles Schemes Management Act, and which will form part of the Property;

Seller initial
here

Purchaser initial
here

Witness initial
here

- 2.21. "**Final Completion**" means state of completion of the Section, when, in the opinion of the Architects, all the Defects in the Defects List have been remedied by the Seller and as certified by the Final Completion Certificate;
- 2.22. "**Final Completion Date**" means the date on which Final Completion is achieved;
- 2.23. "**Final Completion Certificate**" means the certificate issued by the Architect certifying that all Defects contained in the Defects List have been satisfactorily remedied by the Seller and that the Section is finally complete, which certificate shall be final and binding on the Parties. The Architect shall, in certifying as aforesaid, act as an expert and not an arbitrator;
- 2.24. "**Information Schedule**" means the covering schedule appearing at the start of this Agreement;
- 2.25. "**Land**" means the land to be registered in the name of the Seller, on which the Development is to be constructed, being Erf 35418 Bellville in the City of Cape Town, Division Cape, Western Cape Province, having its physical address at 1 Danena Close, O'Kennedyville, Durbanville Cape Town;
- 2.26. "**Land Surveyor**" means the land surveyor appointed by the Seller, to act as such from time to time, in respect of the Scheme, or a member of a firm so appointed;
- 2.27. "**Levies**" means the monthly levies raised by Body Corporate in terms of the Rules, as contemplated in the Sectional Titles Schemes Management Act the estimated levies being as set out in item 3 of the Information Schedule;
- 2.28. "**Local Authority**" means the City of Cape Town, and any other authority having jurisdiction over the Development;
- 2.29. "**Occupancy Certificate**" means the certificate/s issued by the Local Authority confirming that the Section and any Exclusive Use Areas, if applicable, have been completed in accordance with the building plans of the Development and that the Section/s is/are fit for occupation;
- 2.30. "**Occupation Date**" means the date on which the Purchaser is given beneficial occupation of the Property, being as close as possible to the occupation date recorded in item 5 of the Information Schedule;
- 2.31. "**Occupational Interest**" means the payment to be made by the Purchaser to the Seller pursuant to the Purchaser taking occupation of the Property prior to the Transfer Date, at the rate contemplated in item 5 of the Information Schedule, calculated monthly in advance from the Occupation Date to the Transfer Date, both dates inclusive, which shall be paid to the Conveyancers against Transfer;
- 2.32. "**Ombud**" means Ombud as defined in Section 1 of the Community Schemes Ombud Service Act of 2010;
- 2.33. "**Participation Quota**" means either the estimated Participation Quota as contemplated in item 3 of the Information Schedule, as more fully set out in Annexure C, or the final Participation Quota as determined in accordance with the provisions of sections 32(1) and (2) of the Act, and reflected on the Sectional Plan;
- 2.34. "**Parties**" means the Seller and the Purchaser(s) collectively, and "**Party**" means either one of them, as the case may be;
- 2.35. "**Plans**" means the draft plans and/or drawings prepared by the Architects, being:
- 2.35.1. a floor plan showing the position of the Section in the Building, attached as Annexure B; and
- 2.35.2. a floor plan showing the position of the Exclusive Use Areas as more fully described in the Information Schedule;

Seller initial
here

Purchaser initial
here

Witness initial
here

- 2.36. **“Practical Completion”** means the state of completion of the Section, when in the opinion of the Architects, the Section is complete and ready for beneficial occupation as evidenced by the Occupancy Certificate and as certified by the Practical Completion Certificate;
- 2.37. **“Practical Completion Certificate”** means the certificate issued by the Architects certifying that Practical Completion has been achieved, which certificate shall be final and binding on the Parties. The Architect shall in certifying as aforesaid act as an expert and not an arbitrator;
- 2.38. **“Prime Rate”** means the rate of interest per annum which is equal to Investec Limited’s published prime lending rate of interest per annum compounded monthly in arrears, charged by the said bank on the unsecured overdraft current accounts of its corporate clients in the private sector from time to time. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager, whose appointment it will not be necessary to prove, of any branch of the said bank, whose certificate shall be *prima facie* proof thereof;
- 2.39. **“Property”** means the Section and Exclusive Use Area(s) as described in item 3 of the Information Schedule, together with an undivided share in the Common Property, which forms the subject matter of this Agreement;
- 2.40. **“Purchase Price”** means the purchase price of the Property as recorded in item 4 of the Information Schedule;
- 2.41. **“Purchaser”** means the Party as described in the Information Schedule and its successors-in-title;
- 2.42. **“Register”** means the sectional title register in respect of the Scheme to be opened by the Seller in terms of the Act;
- 2.43. **“Regulations”** means the regulations promulgated under Section 55 of the Act and Section 19 of the Sectional Titles Schemes Management Act;
- 2.44. **“Rules”** means the management and conduct rules prescribed by the Act and the Sectional Titles Schemes Management Act and as may be amended from time to time by the Seller and/or the Body Corporate;
- 2.45. **“Scheme”** means the proposed residential sectional title scheme to be known as “Monarch” in respect of the Building/s and the Property, and which will form part of the Development, and fall under the jurisdiction, management, and control of the Body Corporate;
- 2.46. **“Section”** means the apartment in the Building, more fully described in item 3 of the Information Schedule which, on the opening of the Register, will become a section for the purposes of the Act;
- 2.47. **“Sectional Plan”** means the sectional plan/s in respect of the Scheme as approved by the Surveyor-General and registered by the Registrar of Deeds;
- 2.48. **“Sectional Titles Schemes Management Act”** means the Sectional Titles Schemes Management Act 8 of 2011;
- 2.49. **“Seller”** means as described in item 1 of the Information Schedule, being the developer of the Development and the Scheme, and its successors-in-title;
- 2.50. **“Signature Date”** means the date upon which this Agreement is signed by the party who signs same last in time;
- 2.51. **“Specifications”** means the Schedule of Finishes, attached as Annexure A applicable to the Section, the construction details of which are capable of unilateral variation by the Seller, but the details of finishes of which, insofar as they relate to the Section, may be varied from time to time only in terms of the substitution provisions in this Agreement;

Seller initial
here

Purchaser initial
here

Witness initial
here

- 2.52. **“Transfer”** means registration of transfer of the Property into the name of the Purchaser in the Deeds Office and **“Transfer Date”** means the date of Transfer;
- 2.53. **“Uncontrollable Event”** means any circumstance beyond the reasonable control of the Seller, including (without limitation) lockdown, whether applicable nationally or regionally, flood, fire, earthquake, pandemics, war, restrictions imposed by any relevant authority, acts of God, strikes, lockouts, casualties, labour difficulties, inability to procure materials, failure of power, applicable laws, riots, insurrection, accidents against which reasonable prudence could not have provided, or any act or omission on the part of a third party; and
- 2.54. **“VAT”** means value-added tax from time to time in terms of the Value Added Tax Act No. 89 of 1991.

3. SALE

The Purchaser hereby offers to purchase, and upon acceptance of such offer the Seller agrees to sell, the Property on the terms and conditions set out in this Agreement, which Property is as more fully described in the Plans read with the Specifications and as will be finally described in the Sectional Plan read with the Register.

4. CONDITIONS PRECEDENT

4.1. **This Agreement, save for this clause 4 which is immediately applicable, is subject to the fulfilment of the following conditions precedent, namely that:**

- 4.1.1. **if this Agreement is subject to the condition precedent that the Purchaser is granted a mortgage loan for the amount specified in item 7 of the Information Schedule by a financial institution:**
 - 4.1.1.1. **the mortgage loan shall be approved by the later of the date specified in item 7 of the Information Schedule or such extended period as the Seller in its sole discretion may notify the Purchaser in writing. In the event of a Purchaser obtaining mortgage loan approval for less than the required amount, the due date for the mortgage loan approval is automatically extended by a further 10 (Ten) Business Days in order for the Purchaser to resolve any shortfall applicable;**
 - 4.1.1.2. **the mortgage loan shall be unconditional subject to (i) such conditions as may be reasonably imposed by the financial institution, (ii) Transfer of the Property to the Purchaser and (iii) registration of an appropriate mortgage bond over the Property;**
 - 4.1.1.3. **this Condition Precedent shall be deemed to have been fulfilled upon the written advice given by the financial institution to the Seller, or to the Purchaser, that it has made an offer of a mortgage loan to the Purchaser. The Purchaser warrants that it has sufficient income to qualify for the mortgage loan amount specified in item 7 of the Information Schedule;**
 - 4.1.1.4. **the Purchaser agrees to appoint the bond originator specified in item 8 of the Information Schedule to assist it and attend to the necessary mortgage loan applications, and in this regard, shall immediately when requested to do so, submit all relevant information to the bond originator;**
 - 4.1.1.5. **The Purchaser hereby undertakes timeously to do all such things and to sign all such documents as may be necessary and/or requisite in order in to apply for and procure the approval of the said loan from a bank or other financial institution and to furnish written proof to the Seller of the granting or refusal thereof;**

Seller initial here

Purchaser initial here

Witness initial here

4.1.1.6. Failure by the Purchaser to comply with clause 4.1.1.5 above shall constitute a repudiation of this Agreement and, should the Seller accept such repudiation, the Seller shall, in cancellation of this Agreement be entitled to claim such damages that may follow from a cancellation of this Agreement;

4.1.1.7. in the event that this Agreement is subject to the National Credit Act 34 of 2005, the Purchaser warrants that:

4.1.1.5.1 At the time of signature of this agreement, the Purchaser is not:

- (1) over-indebted; and/or
- (2) subject to debt review; and/or
- (3) subject to an administration order;

4.1.1.5.2 Once the mortgage bond is approved and the pre-agreement statement 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 mortgage bond approval.

4.1.1.4.3 The Purchaser shall not do anything between the date of acceptance of the pre-agreement statement and quotation and the registration of the mortgage bond which may cause the Purchaser's financial situation to deteriorate;

4.1.1.8. in the event of the a mortgage bond being approved for an amount less than the mortgage loan amount specified in item 7 of the Information Schedule and the Purchaser accepting such lesser amount, the Purchaser undertakes to furnish the Conveyancers with either payment of or a bank guarantee for the shortfall within 7 (Seven) days from the Signature Date of a waiver by the Purchaser notwithstanding clause 4.1.1.9 below;

4.1.1.9. in the event of the sum secured by the bond proceeds being adjusted on signature of the bond documents, within 7 (Seven) days of signature of the bond documentation the Purchaser shall furnish the Conveyancers with either payment of or a bank guarantee acceptable to the Seller for payment of any amount/s no longer payable by means of a mortgage loan;

Seller initial
here

Purchaser
initial here

Witness initial
here

4.1.1.10. In the event that the condition in clause 4.1.1 is not fulfilled, this Agreement shall be of no force and effect and neither Party shall have any claim against the other, except that:

4.1.1.10.1. the Seller shall refund to the Purchaser the deposit referred to in item 4 of the Information Schedule, with accrued interest; and

4.1.1.10.2. The Purchaser shall be obliged immediately to vacate the Property, if the Property is occupied.

Seller initial
here

Purchaser
initial here

Witness initial
here

Seller initial
here

Purchaser initial
here

Witness initial
here

- 4.1.2. **by no later than 31 January 2025, or within such extended period as the Seller in its sole discretion may notify the Purchaser of in writing as provided for in 4.1.3 below, that the Seller acquires approval of all relevant development Approvals, building plans and departures (if any) for the Development from the relevant authorities, provided that such approval/s do not require the Seller to make material changes to the plan layouts of the Development which may result in an increase of greater than 5% (Five Percent) in the extent of any Section, that the Seller achieves sufficient sales of units within the Development so as to satisfy the Seller in its sole discretion that the Development is commercially viable, and that the Seller obtains approval of development loan finance and the entering into of a facility agreement with a recognised bank or similar financial institution in an amount acceptable to the Seller.**
- 4.1.3. **The Seller may, in its sole discretion and by written notice to the Purchaser, extend the due date for fulfilment of any of the Conditions Precedent contained in 4.1.2 by up to 90 (ninety) days.**
- 4.2. The Parties shall use their respective Best Endeavours, where it is within their respective power and control to do so, to procure the fulfilment of the Conditions Precedent and undertake to sign all documentation and do all things as reasonably necessary for this purpose.
- 4.3. Where a Condition Precedent is imposed for the benefit of a Party, that Condition Precedent may be waived by that Party in a written notice to such effect given to the other Party at any time before expiry of the relevant stated dates.
- 4.4. Unless the Conditions Precedent are fulfilled or waived, as the case may be, by the stated dates or such later date/s as may be notified by the Seller, in writing, this Agreement shall be of no force and effect, in which case the Parties shall be restored, as near as possible, to the position in which they would have been had this Agreement not been entered into and any deposit paid (with any interest accrued thereon), shall forthwith be repaid in full to the Purchaser.

5. PURCHASE PRICE

- 5.1. The Purchaser shall pay the Purchase Price, without deduction or set-off, free of bank charges, in South African currency, as follows:
- 5.1.1. a deposit in the amount recorded in item 4 of the Information Schedule payable by the date specified, to the Conveyancers, in trust, and which is to be invested by them in an interest-bearing account in the name of the Purchaser with a registered financial institution. Notwithstanding the provisions of clause 22, should the Purchaser fail timeously to pay the deposit, the Seller shall be immediately entitled to cancel this Agreement by giving 2 (Two) days' written notice to the Purchaser (costs caused by the cancellation being for the Purchaser's account); and
- 5.1.2. the balance of the Purchase Price in the amount recorded in item 4 of the Information Schedule on the Transfer Date.
- 5.1.3. The Purchaser acknowledges that on fulfilment of the conditions contained in clause 4 the reservation fee is non refundable.
- 5.2. The provisions of clause 5.1 shall constitute authority given by the Purchaser to the Conveyancers in terms of Section 86(4) of the Legal Practice Act to invest any amounts paid on account of the Purchase Price.
- 5.3. Interest earned on the investment of any funds in respect of Purchase Price, less any statutory deductions and reasonable administration charges, shall accrue to the Purchaser and the capital shall

Seller initial
here

Purchaser initial
here

Witness initial
here

be paid to the Seller on the Transfer Date.

- 5.4. The Purchaser shall secure the balance of the Purchase Price contemplated in clause 5.1.2 above as follows:

In the event of the Purchaser selecting Option 1 in item 4 of the Information Schedule:

- 5.4.1. an irrevocable guarantee issued by the financial institution being the mortgagee of the bond to be registered over the Property which shall be a recognised commercial bank, in a form acceptable to the Seller, within 14 (fourteen) days of the Conveyancers' request;
- 5.4.2. in respect of any balance, a cash payment into the Conveyancers' trust account within 14 (Fourteen) days of the Conveyancers' request.

In the event of the Purchaser selecting Option 2 in item 4 of the Information Schedule, either:

- 5.4.3. An irrevocable guarantee issued by a recognised commercial bank in a form acceptable to the Seller within 14 (Fourteen) days of the Seller's Conveyancers' request, which request will be made as an estimate by 1 October 2025, which is an estimate date only, and which date may be earlier, as determined by the Conveyancers in their sole discretion, or
- 5.4.4. A cash payment into the Seller's Conveyancers' trust account within 14 (Fourteen) days of the Seller's Conveyancers' request, which request will be made as an estimate by 1 October 2025, which is an estimate date only, and which date may be earlier, as determined by the Conveyancers in their sole discretion.
- 5.5. Withdrawal by a guarantor of a guarantee issued in compliance with any provision of this clause 5, for any reason whatsoever, shall constitute a breach by the Purchaser of its obligations and in respect of which breach the Seller shall not be required to give notice in terms of clause 22 below.
- 5.6. All payments referred to in this clause 5 shall be made to the Conveyancers free of commission, exchange, and bank charges, and may be directly deposited into their trust account.
- 5.7. **The Purchaser will be required to comply with the Financial Intelligence Centre Act No. 38 of 2001 and consequently:**
- 5.7.1. **acknowledges that the deposit payable by the Purchaser cannot be invested and accordingly, interest cannot accrue thereon, until such time as the said requirements have been met; and**
- 5.7.2. **hereby renounces any claim for interest, where the claim arises from the Conveyancers being unable to invest the deposit (or any other monies) as a result of the Purchaser not having properly complied with the said requirements.**

Seller initial
here

Purchaser
initial here

Witness initial
here

- 5.8. The Purchaser acknowledges that it is recommended that prior to making any payment to the Conveyancers' trust account, a test payment is made.

- 5.9. **The Purchaser acknowledges that the Conveyancers shall not inform the Purchaser of a change in the Conveyancers' trust account details and any attempt to do so should be regarded as an attempt by a third party to defraud the Purchaser.**

Seller initial
here

Purchaser
initial here

Witness initial
here

Seller initial
here

Purchaser initial
here

Witness initial
here

- 5.10. **In the event of the Purchaser failing to notify the Seller's Conveyancers of any deposit made, the Seller's Conveyancers shall not be liable to account for any loss in interest.**
- 5.11. **On the Transfer Date, the Seller's Conveyancers will pay over the capital amount to the Seller and the accrued interest to the Purchaser. Notwithstanding the aforesaid, accrued interest will only be paid to the Purchaser once the Purchaser has settled all amounts due in terms of this Agreement, including but not limited to, the Purchase Price, initiation fee related to a mortgage bond (if applicable), levies, Occupational Interest, and penalty interest (if any), failing which the Purchaser agrees to the deduction of any amounts due from the accrued interest. If this Agreement is cancelled as a result of the Purchaser's breach of its obligations, then the provisions of clause 22 shall apply.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 5.12. Notwithstanding anything to the contrary herein contained, in as much as the total Purchase Price includes VAT determined at the current rate of 15% (fifteen percent), in the event of the rate at which VAT is chargeable being amended after the Date Of Signature hereof by the Purchaser, but in circumstances in which the amended rate will apply to this transaction, then the total Purchase Price shall be adjusted accordingly, the intention being that the Seller shall receive and retain the same nett Purchase Price after payment of the VAT regardless of the rate at which VAT is payable.

6. POSSESSION AND OCCUPATION

- 6.1. Possession and vacant occupation of the Property shall be given by the Seller and taken by the Purchaser as close as possible to the anticipated Occupation Date specified in item 5 of the Information Schedule.
- 6.2. Notwithstanding the provisions of clause 5.1, the Seller shall be entitled to give notice to the Purchaser of no less than 30 (Thirty) days of the date on which the Property will be available for occupation, which date shall be the Occupation Date. The Occupancy Certificate shall be provided by the Seller on the Occupation Date.
- 6.3. **The failure on the part of the Purchaser to take physical occupation (whether personally or by an agent) or to accept the keys to the Property shall neither affect the Occupation Date nor the Purchaser's responsibility to make payment of Occupational Interest.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 6.4. **Should the Seller, for whatever reason, not be able to give occupation of the Property to the Purchaser on the anticipated Occupation Date, or the date notified in terms of clause 6.2, the Purchaser shall accept occupation of the Property on a subsequent date upon which the Seller notifies the Purchaser that the Property is ready for occupation and such date will be deemed for all purposes to be the Occupation Date. It shall not be necessary for the Seller to give to the Purchaser any formal notice of a delayed Occupation Date and the Purchaser undertakes to accept a written notice given by the Seller for this purpose. Notwithstanding the aforesaid, the Occupation Date may be 6 (Six) months earlier or later than the anticipated Occupation Date, as envisaged in item 5 of the Information Schedule. If for any reason whatsoever the Seller is unable to give the Purchaser occupation on the anticipated Occupation Date, the Purchaser shall not be entitled to resile from this Agreement and shall have no claim of whatsoever nature against the Seller as a result thereof.**

Seller initial
here

Purchaser initial
here

Witness initial
here

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 6.5. **The Purchaser will have no claim whatsoever against the Seller or the right to resale from the Agreement should the Seller for whatever reason fail to give occupation on the anticipated Occupation Date recorded in item 5 of the Information Schedule or as recorded in the clause 6.2 notice.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 6.6. **Should the Occupation Date precede the Transfer Date:**

- 6.6.1. **the Purchaser shall, from the Occupation Date until the Transfer Date, pay to the Seller the Occupational Interest specified in item 5 of the Information Schedule monthly in advance, or a *pro rata* share for a portion of a month, whether or not the Purchaser has taken physical possession of the Property, save for the first payment of Occupational Interest, which shall be equal to 2 (Two) calendar months' Occupational Interest. If the Occupation Date does not fall on the first day of the month then the interest payable shall be pro-rated for that month. Notwithstanding the above, the Seller reserves the right to require that such Occupational Interest be paid to the Conveyancers monthly in advance (payable within 3 (Three) days of being requested to do so), or deducted from the Purchaser's accrued interest. Failure to pay the Occupational Interest shall be deemed to be a material breach of this Agreement. The Purchaser authorises the Conveyancers to pay the Seller the Occupational Interest collected by the Conveyancer or deducted from the Purchaser's accrued interest;**
- 6.6.2. **in addition to the Occupational Interest contemplated in item 5 of the Information Schedule, the Purchaser shall be liable for the payment of all electricity and water consumption charges, as well as the Levies envisaged in item 3 of the Information Schedule in respect of the Property;**
- 6.6.3. **no tenancy shall be created by the Purchaser taking occupation prior to the Transfer Date and the Purchaser's right of occupation shall terminate on cancellation of this agreement for whatever reason; and**
- 6.6.4. **the Purchaser shall not be entitled to make any alterations or additions or undertake any renovation to the Property or the Section prior to the Transfer Date without the Seller's prior written consent. If this agreement is terminated for whatever reason, the Seller shall not be liable to reimburse the Purchaser for any expenditure it incurs on the Property.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 6.7. **The Purchaser shall not be given occupation until the Deposit, as envisaged in clause 5.1.1, and the Occupational Interest and related charges in clause 6.6.1 and 6.6.2 have been paid, the guarantees required in terms of clause 5 have been delivered, all necessary transfer and bond documents have been signed to the satisfaction of the Conveyancers, and the Purchaser is not otherwise in breach of any of the provisions of this Agreement. Notwithstanding the aforesaid, the Purchaser shall remain liable for payment of Occupational Interest, electricity and water charges, as well as levies, calculated from the date that beneficial occupation would have been given but for the Purchaser's failure to pay all costs and charges envisaged herein.**

Seller initial
here

Purchaser initial
here

Witness initial
here

Seller initial
Here

Purchaser
initial here

Witness initial
here

6.8. Until the Transfer Date, the Purchaser shall:

- 6.8.1. not sell, let, or in any other manner dispose of or part with the Property or any of its rights thereto without the Seller's prior written consent. If granting consent, which the Seller is not obliged to do, the Seller shall be entitled to impose such reasonable conditions as it deems necessary;
- 6.8.2. not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Seller in respect of the Property is rendered void or voidable or as a result of which any premiums are increased;
- 6.8.3. maintain the Property in a clean and tidy condition and be responsible for all costs of electricity and water consumed in the Property;
- 6.8.4. permit the Seller or its agent at all reasonable times to enter and inspect the Property, provided the Purchaser has been given prior notice;
- 6.8.5. be bound by the provisions of section 13 (1) of the Sectional Titles Schemes Management Act; and
- 6.8.6. make payment of the Occupational Interest, calculated at the rate contemplated in item 5 of the Information Schedule.

6.9. If this Agreement is cancelled or lapses prior to the Transfer Date, the Purchaser shall immediately vacate the Property which shall revert to the Seller in the same condition as it was prior to the Purchaser taking possession and occupation.

7. TRANSFER AND COSTS

7.1. Transfer of the Property, including cession of any Exclusive Use Area/s (if any) and registration of the mortgage bond/s shall be registered by the Conveyancers on or as close as is reasonably possible to the anticipated Transfer Date as recorded in item 6 of the Information Schedule and simultaneously with or as soon as possible after the opening of the Register. The Seller shall not be liable in any manner if Transfer is delayed for whatever reason, and the Purchaser shall be obliged to take Transfer when it is tendered.

7.2. Transfer shall not be passed to the Purchaser until such time as the total Purchase Price and other amounts due by the Purchaser in terms of this Agreement (including all legal costs of and incidental to the transfer, including VAT and/or Transfer Duty, if applicable, and/or cession of the rights to Exclusive Use Area/s, if applicable) have been paid in full, and/or payment thereof has been secured to the satisfaction of the Conveyancers, which costs include but are not limited to the following, namely administration costs associated with the investment of funds, Deeds Office fees and all other costs (excluding all costs of and incidental to obtaining rates clearance certificates from the local authority) in order to comply with statutes and/or other enactments and/or regulations relating to the transfer and registration of the mortgage bond, if applicable, together with VAT in respect of such costs. **For the avoidance of doubt, in the event of the Transfer of the Property not proceeding for any reason whatsoever, the Conveyancer shall be entitled, but not obliged, to receive payment in the amount of R2,000-00 (Two Thousand Rand) from the Purchaser in respect of an administration and investment fee, and to claim wasted costs calculated in terms of the Conveyancing Fees Guidelines – Apportionment of Fees: Wasted Costs issued by the Legal Practice Council from time to time. I**

Seller initial
here

Purchaser initial
here

Witness initial
here

Seller initial
Here

Purchaser
initial here

Witness initial
here

7.3. The Purchaser shall within 5 (Five) Business Days of written request by the Conveyancers:

7.3.1. sign all transfer documents; and

7.3.2. if applicable, do all things and sign all documents required to ensure that the Purchaser's mortgage bond documentation and all ancillary documentation is satisfactorily and timeously signed and completed, which documents may include a so-called "happy letter" in terms of which it is confirmed that the Property has been completed by the Seller in accordance with the Approved Plans. The Purchaser undertakes not to delay or withhold unreasonably the signature of the "happy letter". If there is a dispute as to whether or not the Purchaser should sign the "happy letter", the decision of the Architects shall be final and binding on the Purchaser and the Architects are hereby authorised to sign same should the Purchaser refuse to do so, provided written notice of hand over and of occupation has been given in accordance with clause 6.2 above.

7.4. The Seller will be liable for payment of all transfer registration costs payable to the Conveyancers and bond registration costs (if applicable) payable to the bond registration attorneys..

7.5. The Parties irrevocably authorise any director/partner of the Conveyancers to sign any declaration required by the South African Revenue Services ("**SARS**") for the purposes of applying for a transfer duty receipt or exemption and/or claiming any refunds.

7.6. It is recorded that in order to effect transfer of the Property, the Conveyancers shall be required to lodge, *inter alia*, a Transfer Duty Exemption Certificate, issued by SARS with the Deeds Registry. It is further recorded that SARS have adopted a policy of not issuing this certificate if any party to the transaction is in arrears with the payment of any amounts SARS believes is due to it, or otherwise not being in compliance with applicable tax laws. Should SARS refuse to issue a Transfer Duty Exemption Certificate in respect of the sale of the Property in terms of this Agreement, due to the fact that the Purchaser is in arrears with any payments to SARS or has otherwise not complied with any applicable tax laws, then in that event, the Purchaser shall be deemed to be in material breach of this Agreement entitling the Seller to the remedies in terms of clause 22. Further, should there be any delay in the issue of the aforesaid Transfer Duty Exemption Certificate by SARS for any reason attributable to the Purchaser, then in that event, the Purchaser shall be deemed to be delaying the registration of Transfer which shall entitled the Seller to claim *mora* interest from the Purchaser as contemplated in clause 7.7.

7.7. If the Transfer Date is delayed for any reason attributable to or occasioned by the Purchaser, then the Purchaser shall pay to the Seller, monthly in advance, interest on the full Purchase Price at a rate of 3% (Three Percent) above the Prime Rate for the period of the delay. The Conveyancers' decision as to whether or not there is a delay, and as to whether or not such delay is attributable to or occasioned by the Purchaser, and the calculation of interest, shall be final and binding on the Parties. The Conveyancers shall, in making the decision aforesaid, act as experts and not as arbitrators.

Seller initial
Here

Purchaser
initial here

Witness initial
here

8. ACKNOWLEDGEMENTS BY PURCHASER

Seller initial
here

Purchaser initial
here

Witness initial
here

The Purchaser acknowledges that:

- 8.1. **the Property will form part of the Scheme and that the Purchaser has satisfied itself regarding the Rules, regulations, conditions, and servitudes of whatever nature pertaining to the sale, ownership, and use of the Property and agrees to be bound thereby from the Occupation Date;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 8.2. **the Plans have not yet been finally prepared or Approved, and that accordingly the exact and final boundaries and areas of the Property will be those shown on the Sectional Plan as finally Approved and registered;**

- 8.3. Transfer of the Property is able to take place only simultaneously with or forthwith after the opening of the Register;

- 8.4. **subject to clauses 8.5 and 8.6, the Purchaser shall not be entitled to claim cancellation of this Agreement or any reduction in the Purchase Price by reason of any alteration to the number, size, location or estimated Participation Quota of the Property from that shown in the Information Schedule;**

- 8.5. **the Purchaser undertakes to accept Transfer of the Property as may be redefined and re-numbered in the Plans and Sectional Plans approved by the Local Authority and the Surveyor-General;**

- 8.6. the Purchaser has read and approved the Plans and the Specifications and acknowledges that it shall be obliged to accept delivery of the Property:

8.6.1. completed substantially according to the Plans and the Specifications;

8.6.2. as finally depicted and delineated on the Sectional Plan;

provided only that if the area of the Section and any Exclusive Use Area as finally built deviates from the size indicated on the draft Plans by:

8.6.3. not more than 5% (Five Percent), it shall be regarded as a minor alteration and neither Party shall be entitled to claim cancellation of this Agreement or any adjustment to the Purchase Price and shall be obliged to accept transfer of the Section as completed; or

8.6.4. more than 5% (Five Percent) but less than 10% (Ten Percent) from the area shown in the Plans, the Purchaser shall not be entitled to claim cancellation of this Agreement, however, the Purchase Price shall increase or decrease, whichever is applicable, proportionally by 1% (One Percent) for every percent above or below 5% (Five Percent) for which the size is different. By way of example, if on survey the extent of the Section is decreased by 8% (Eight Percent), the Purchase Price will decrease by 3% (Three Percent), i.e., 8% (Eight Percent) being 3% (Three Percent) greater than the 5% (Five Percent) threshold; or

8.6.5. more than 10% (Ten Percent), the Purchaser shall be entitled, but not obliged to claim cancellation of this Agreement, failing which an adjustment to the Purchase Price determined according to method described in clause 8.6.4 shall be applicable; or

8.6.6. the Land Surveyor shall have the sole decision whether a deviation referred to in clauses 8.6.3 to 8.6.5 above is minor or if a percentage deviation adjustment to the Purchase Price is required. The decision of the Land Surveyor shall be binding on the Parties;

Seller initial
here

Purchaser initial
here

Witness initial
here

- 8.6.7. the Seller shall at all times have the sole and exclusive right to advertise on the exterior space of the Building and that the Purchaser shall not be permitted to, at any stage whatsoever, advertise on the exterior space of the Building. Should the Purchaser advertise on the exterior space of the Building, the Seller shall have the right, without prejudice to any other rights which it may have in law, to immediately remove such advertising by the Purchaser and the Purchaser indemnifies and holds the Seller harmless in this respect from any claim of whatsoever nature and howsoever arising;
- 8.7. the Purchaser is aware that the Property may be utilised for residential purposes only;
- 8.8. the Exclusive Use Areas may be allocated to the Purchaser or other owners in the Scheme in terms of the Rules on the basis contemplated in terms of the Sectional Titles Schemes Management Act or registered in terms of the Act;
- 8.9. **the Purchaser shall have no claims against the Seller for any delays in occupation or Transfer occasioned by any delay in obtaining the necessary Approvals for the Plans and/or for the Development and/or for the Scheme;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 8.10. on the Occupation Date, some portions of the Common Property, the Development, the Scheme, and landscaping may be incomplete, which may take place after Transfer, that the completion of this construction and any installation may result in the inaccessibility of portions of the Common Property, the Development, and the Scheme, and that the Purchaser may suffer inconvenience from ongoing building operations, noise dust and other nuisance factors in this regard;
- 8.11. **the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience contemplated in clause 8.10 nor be entitled to interdict, cancel this Agreement, or withhold any payments to the Seller, provided that the Seller shall use its Best Endeavours to complete all aspects of the construction and the completion of the Development and the Scheme as expeditiously as is possible in the circumstances;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 8.12. **transfer to the Purchaser of the Property may, in the discretion of the Seller, be simultaneous with transfers to other purchasers in the Scheme. Accordingly, lodgement of the Purchaser's transfer documents at the Deeds Office shall be entirely in the discretion of the Conveyancers and the Purchaser's obligation to pay Occupational Interest as provided for in clause 6.6.1 shall remain and be unaffected by any delay occasioned by the above;**
- 8.13. in the event that minor work and/or rectification still has to be done to the Property, the Purchaser agrees to take Transfer of the Property and comply with all its obligations in terms of this Agreement;
- 8.14. it shall not be entitled, for whatever reason, 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 by reason of any breach of the Seller's obligations or for any other reason whatsoever;
- 8.15. **it shall have no claim against the Seller in respect of defects, whether latent, patent, or otherwise, in the Property save for defects of which the Purchaser shall have notified the Seller pursuant to clause 10;**

Seller initial
here

Purchaser initial
here

Witness initial
here

8.16. **the finishes to the Section will not necessarily be identical to any “show apartment” in the Scheme and all furniture and fittings shown on the attached Plans are for illustration purposes only and that the Specifications alone shall record the finishes in the Section;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

8.17. **all artistic, architectural, photographic and other visual presentation material, including show apartments, brochures and pamphlets, used by the Seller or its agents in marketing and selling the Property have been prepared, distributed and shown as advertising material only, that the Seller shall not be bound thereby and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

8.18. **all specialists, merchants, tradesmen, and sub-contractors who are to execute any work or supply any goods shall be contractors appointed by the Contractor or the Seller and neither the Seller nor the Contractor shall be under any obligation to utilise the services of any contractor or sub-contractor required by the Purchaser. The Purchaser shall in no manner whatsoever interfere, including the giving of directions and instructions, with the contractors and/or sub-contractors employed by the Seller or the Contractor;**

8.19. **the view currently enjoyed from the Property may be affected by the ongoing development of the Land and the Development and/or the erection of any further buildings on the Land and/or in the vicinity of the Property. The Purchaser acknowledges and agrees that the Purchaser shall have no claim or right of any action whatsoever against the Seller arising from any such impact on or impairment of the view from the Property, or any derogation from the value thereof, as a result of any aspect of the construction of the Development and/or the erection of further building/s on the Land;**

Seller initial
Here

Purchaser
initial here

Witness initial
here

8.20. **warrants that the Purchaser is not currently (and will, at least until after Transfer not be) in default of any income or other tax law obligations to SARS which will serve to delay the obtaining of transfer duty receipt or exemption certificates from SARS or cause any financial institution granting any loan finance (if applicable) to the Purchaser, to withdraw the aforesaid finance offered;**

8.21. **this sale is subject to all such conditions, encumbrances, restrictions, and servitudes as are mentioned and/or referred to in the title deeds of the Land or Property and to all such other conditions and servitudes which may be applicable; and**

Seller initial
Here

Purchaser
initial here

Witness initial
here

8.22. **it has been provided sufficient opportunity to consider the terms of this Agreement and that the Agreement was concluded as a result of a process of negotiation between the Parties.**

Seller initial
here

Purchaser initial
here

Witness initial
here

9. UNDERTAKINGS AND WARRANTIES BY THE SELLER

9.1. The Seller undertakes that it:

- 9.1.1. will take all reasonable steps necessary to procure the Approval of the Sectional Plan and the opening of the Register as soon as possible after the Signature Date;
- 9.1.2. will construct and complete the Scheme, Property, and the Building substantially in accordance with the Plans, read with the Specifications, in a good and workmanlike manner, provided only that if any items in the Specifications are not available, the Seller shall be entitled to substitute items of the same standard and quality, as provided in clause 12; and
- 9.1.3. will take all reasonable steps necessary to procure that the Occupation Date will take place as soon as possible after the anticipated Occupation Date recorded in item 5 of the Information Schedule, and read together with clause 6.

9.2. All undertakings hereby given to the Purchaser are personal to the Purchaser and cannot be alienated by it in any way.

10. DEFECTS

10.1. **The Architects shall inspect the Property prior to the Occupation Date in order to identify any "defect" or "failure" as defined in Section 53(1) of the CPA which defects or failure the Seller shall remedy prior to the Occupation Date to ensure that on the Occupation Date, the Property shall be free from any "defect" or "failure" according to the Seller's determination, and as contemplated in Section 53(1) of the CPA.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

10.2. The Purchaser shall, within 90 (Ninety) days of the Occupation Date, deliver to the Seller a list, signed by the Purchaser, enumerating any defects in the Section where same are due to defective materials or workmanship, and the Seller shall procure that such defects are made good as expeditiously as possible in the circumstances. Once such defects have been made good to the satisfaction of the Architects, acting as an expert and not an arbitrator, and whose decision shall be final and binding on the Parties, the Purchaser shall have no further claim against the Seller, save as otherwise provided herein. Should the Purchaser fail to deliver the aforesaid list to the Seller within the aforesaid 90 (Ninety) day period, then in that event, the Purchaser shall be deemed to have inspected the Section and not found any defects therein.

10.3. **The Seller shall cause reasonable repairs to the Defects on the Defects List to be remedied within 90 (Ninety) days after receipt of the Defects List. Once the Defects have been remedied, the Architects will issue the Final Completion Certificate, which shall be final and binding on the parties and no further liability shall attach to the Seller in respect of such Defects.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

10.4. The Purchaser shall allow all persons authorised or employed by the Seller access to the Property for the purposes of inspection and effecting the repairs. If the Purchaser fails or refuses to give such access, despite reasonable notice being given by the Seller, then the Purchaser shall be deemed to have accepted that the Property is free of Defects.

10.5. For a period of 12 (Twelve) months from the Final Completion Date, the Seller shall expeditiously remedy any major latent defects which appear in the Property, provided that the Purchaser notifies the Seller in

Seller initial
here

Purchaser initial
here

Witness initial
here

writing of such latent defects within the said 12-month period. In respect of major structural defects, as stipulated in the Housing Consumers Protection Measures Act 95 of 1998 (“HCMPA”), the Purchaser shall be entitled to require the Seller to remedy such major structural defects within a period of 5 (Five) years after the Occupation Date, as defined in the HCMPA;

- 10.6. **From the Final Completion Date, for a period of 12 (Twelve) months, the Seller shall remedy any leaks in the roof of the buildings in the Scheme, provided the Purchaser notifies the Seller in writing of such leaks in terms of the rules and regulations of the National Home Builders Registration Council (“NHBRC”);**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 10.7. **Whether a defect is a defect falling within the provisions of clause 10.5 and/or clause 10.6, and, if it is such a defect, whether the defect has been satisfactorily remedied, shall be finally determined by the Architects, whose certificate in this regard, save in the case of manifest error, shall be final and binding on the Parties. The Architects shall act as an expert and not an arbitrator when making his determination aforesaid.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

- 10.8. Subject to any law, the Seller's obligation in terms of this clause 10, shall:

- 10.8.1. only apply in respect of Defects, and defects in terms of clauses 10.1, 10.5 and 10.6 arising as a result of faulty workmanship and/or materials and/or design used in the construction of the Property and for no other defects or roof or water leaks howsoever arising;
- 10.8.2. not apply in respect of or arising in any way from any alterations to the Property effected at the instance of the Purchaser or the Body Corporate; and
- 10.8.3. not entitle the Purchaser to claim any consequential damages from the Seller.

- 10.9. **The Seller shall not be liable for any defects in the Property in respect of any of the following:**

- 10.9.1. **any damage or defects not having been caused by the Seller or any of its agents;**
- 10.9.2. **touch up paint of any nature;**
- 10.9.3. **hairline cracks in the plaster work;**
- 10.9.4. **any shrinkage/movement and expansion cracks between different components;**
- 10.9.5. **materials used or cracking which might appear in control movement joints;**
- 10.9.6. **any mould growth caused by condensation or by the Purchaser’s failure to allow for proper ventilation;**
- 10.9.7. **any doors and windows slamming in windy conditions or any damage caused thereby;**
or
- 10.9.8. **wind and rain entering through the windows and doors left open.**

- 10.10. 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 initial
here

Purchaser initial
here

Witness initial
here

Seller in terms of this Agreement, regardless of whether any defects as identified herein have not yet been rectified.

10.11. For the sake of clarity, the Seller will not be responsible for any defects arising from work/variations done to the Section by the Purchaser or his/her/its representatives.

11. SELECTION OF FINISHES

- 11.1. Only if and when applicable, the Purchaser will, within 14 (Fourteen) days of being called upon to do so by the Seller, select the finishes to be applied to the Section from the Seller's options as notified. In the event of the Purchaser failing to make the said selection within the prescribed time period, the Architects will in its sole discretion determine such finishes. No variations to the finishes of the Section will be consented to or attended to by the Seller. The Purchaser may not have any changes made to the Section's finishes prior to the Transfer Date. In the event that the Purchaser has selected no upgrade as provided for in the Information Schedule, the standard terms and finishes will be applicable.
- 11.2. The Purchaser shall not be entitled to require any alterations be made to the dimensions or specifications of the Section specified in this Agreement or in the plan specifications or theme finish. This includes but is not limited to, the position of internal walls, plumbing points, door and window positions and electrical fittings.
- 11.3. Notwithstanding anything to the contrary contained in this Agreement, the Seller or the Architects shall be entitled to change any dimensions, specifications or detail design (including but not limited to materials, colours or layouts) as reflected in the Plans or theme finish or Section specifications so made in terms of this Agreement, provided such change does not materially affect the Scheme or the Section. A certificate by the Architects that any changes so made do not result in a material change shall be conclusive proof thereof and shall be final and binding on the Parties
- 11.4. The Seller shall be entitled to vary the areas, layouts and or site plan of the Sections on any floor provided such changes do not materially affect the Section. A certificate by the Architects that any variations do not result in a material change shall be conclusive proof thereof and shall be binding on the Parties.
- 11.5. Notwithstanding anything to the contrary elsewhere expressed, or implied, in the event that any materials (including the colour, style and/or design thereof) used in the finishes of the Sections as detailed in the theme finish specifications not being available for any reason whatsoever, prior to or during the course of construction, the Seller or Architects shall choose another similar material (and/or style and/or design) which is available. The choice of the Seller or the Architect shall be final and binding on the Parties. Furthermore, where any material is not clearly specified or indicated on the theme finish or Section specifications, the Seller shall have the right to specify the material considered in the Seller's opinion to be the most suitable, in which event the decision of the Seller shall be final and binding on the Parties.
- 11.6. The Purchaser shall in no manner whatsoever be entitled to interfere, including but not limited to the giving of directions and instructions, with the contractors and/or sub-contractors employed by the Seller.
- 11.7. The Purchaser acknowledges that the specifications and theme finish or specifications of the Section will not necessarily be the same but may be similar to those displayed in any showroom utilised for display purposes or contained in any other sample or marketing material exhibited by or on behalf of the Seller.

12. VARIATION OF SPECIFICATIONS AND POSITION OF PROPERTY

12.1. **The Property shall be constructed substantially in accordance with the Plans and Specifications, provided that the Seller shall be entitled to:**

Seller initial
here

Purchaser initial
here

Witness initial
here

- 12.1.1. **substitute any specified item with items of a similar standard and quality and provided these are aesthetically similar to the items which they are replacing;**
- 12.1.2. **at its own cost, vary the site and building layout, Common Property areas, and elevation and floor layout of the Plans should the Local Authority require such variation when Approving the Plans or should the Seller or the Architect consider this to be reasonably necessary for structural, technical, or aesthetic reasons;**
- 12.1.3. **determine the exact location of the Section, it being recorded that its position will be approximately as indicated on the Plans.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

12.2. **If there is an error in the siting of the Section by the Seller, such error shall not be deemed to constitute a breach of this Agreement by the Seller, nor grounds for the Purchaser to resile from this Agreement, and the Seller shall have the right to make such amendments, alterations, or modifications to the Plans and/or Specifications and/or the Section as may be necessary in order to legitimise the erroneous siting of the Section, or if necessary to re-site the Section so as to comply with any law, bylaw, regulation, condition of title or the like, which would otherwise have been breached by such erroneous siting of the Section. The Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for damages as a result of a change of or an error in the siting of the Section in terms of this clause 12.2, and shall be obliged to take Transfer of the Property with the re-sited Section.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

13. RISK AND PROPRIETARY CHARGES

- 13.1. On the Occupation Date, all risk and benefit in and to the Property shall pass from the Seller to the Purchaser and the Property shall thereafter remain solely at the risk and be for the profit and/or loss of the Purchaser, and from which date the Purchaser shall be liable, amongst other things, for the payment of all Levies, rates, taxes, service charges, and municipal charges levied against the Property.
- 13.2. **The Purchaser shall be liable for all consumption charges for electricity, water, sewerage and the like from the Occupation Date, including all and any deposits that may be required by the Local Authority and all insurance premiums. Prepayments made by either Party for any period subsequent to the Transfer Date shall be adjusted proportionately.**

14. VOETSTOOTS

To the extent that the CPA does not apply to this Agreement –

- 14.1. **the Seller has made no representations and given no warranties in respect of the Property or the Development, in respect of latent or patent defects, or in respect of anything relating thereto, other than as contained in this Agreement, and save for the aforesaid warranties, the Property is accordingly sold *voetstoots*, in the condition in which it stands at Transfer; and**
- 14.2. **save as provided for in clause 8.6, the Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the Property and no warranties are given by the Seller in respect of the boundaries of the Property, nor is the Seller required to point out the boundaries, nor is the Seller liable for the cost of locating same.**

Seller initial
here

Purchaser initial
here

Witness initial
here

15. APPOINTMENT OF MANAGER/BODY CORPORATE AND LEVIES

- 15.1. The Purchaser hereby grants to the Seller an irrevocable authority to make the appointment of the first managing agent such as the Seller in its discretion shall determine, which appointment shall be valid and binding on the Body Corporate for 3 (three) years after the first general meeting of the Body Corporate.
- 15.2. The Purchaser shall become a member of the Body Corporate on Transfer and shall be bound by the Rules. The Purchaser warrants that it is familiar with and fully acquainted with the Rules and agrees to abide by the provisions thereof.
- 15.3. From and including the Occupation Date the Purchaser shall be liable to pay a monthly levy (*pro rata* in respect of any portion of a month) monthly in advance on the first day of each and every month, being a proportionate share of the total cost of managing, operating, administering, repairing, and maintaining the Building and the Scheme, which levies have been assessed in terms of section 37(1) of the Act (as if the Body Corporate had come into existence on the Completion Date).

16. THE RULES

- 16.1. It is recorded that the body corporate of the Scheme shall be deemed to be established on the registration of the first transfer of the Section in terms of Section 36 of the Act and Section 2(1) of the Sectional Titles Schemes Management Act.
- 16.2. The Purchaser acknowledges that the Rules shall be applicable and acknowledges and agree that it is acquainted with the provisions thereof.
- 16.3. **The Purchaser furthermore acknowledges that the Seller shall be entitled from time to time, and prior to the opening of the sectional title register of the Scheme, to impose additional Rules in terms of the provisions of Section 10 of the Sectional Titles Schemes Management Act and of which the Purchaser acknowledges that it will be bound.**

Seller initial
Here

Purchaser
initial here

Witness initial
here

17. PARTICIPATION QUOTA AND RATING OF THE SALE PROPERTY

- 17.1. Sections in the Scheme shall be sold and utilised for residential purposes.
- 17.2. It is therefore agreed that the proposed Scheme in respect of the Development will accordingly be a scheme as envisaged in terms of Section 32(2) of the Act.
- 17.3. The Participation Quota of a Section shall be a percentage expressed to four decimal places, as determined by the Seller.
- 17.4. The total of the Participation Quotas allocated by the Seller to the residential sections shall be divided among them in proportion to a calculation of their quotas made in terms of Section 32(1) of the Act.
- 17.5. It is recorded by the Seller and the Purchaser that the estimated participation quotas contained in Annexure C are calculated from draft plans and/or drawings prepared by the Architects and that same may change after actual measurement of the completed building and all constituent Sections.
- 17.6. The estimated Participation Quota referred to in the Information Schedule shall be finally determined in accordance with the provisions of the Act, and shall be reflected in the Approved Sectional Plan.
- 17.7. As at the Signature Date, no provision has been made by law for the separate rating of units in the Scheme, but the Seller intends applying to the relevant Local Authority for such separate rating, in which

Seller initial
here

Purchaser initial
here

Witness initial
here

event the Purchaser will be liable for all rates and taxes levied directly against the Property, from Occupation Date.

18. LEVIES

- 18.1. In terms of the Rules, the Body Corporate shall impose Levies upon its members for the purpose of meeting the expenses of the Body Corporate.
- 18.2. The Purchaser acknowledges that it shall be liable for the payment of Levies with effect from the Occupation Date, the estimated levy being as per item 3 of the Information Schedule.
- 18.3. The Purchaser shall be obliged to furnish the Body Corporate with a debit order drawn on the Purchaser's bank in respect of payment of all Levies.
- 18.4. For the duration of the Development Period, the Seller shall not be liable for the payment of Levies in respect of any unsold sections in the Scheme. The Seller shall, however, pay the difference between the actual expenses incurred by the Body Corporate (excluding any provisions for a reserve fund), and the aggregate of the Levies payable jointly by the members who are registered owners of sections, including any other income received by the Body Corporate (e.g. penalties). For the avoidance of any doubt it is recorded that in determining the aggregate of individual Levies payable by members who are registered owners from time to time for the purposes of this clause 18.4, the aggregate shall include all Levies payable by such members, irrespective of whether or not such Levies have actually been paid by those members.
- 18.5. Pending the determination of the actual amount of such Levies, the Purchaser shall from the Occupation Date pay on account of such Levies an amount as shall be certified by the Seller as being their *bona fide* estimate of such monthly Levies. Upon the determination of the actual monthly Levies so payable any amount underpaid or overpaid shall forthwith be paid or reimbursed by one party to the other.
- 18.6. Levies shall be paid to the Seller or its appointed agent and thereafter (once established) to the Body Corporate monthly in advance on the first day of each and every calendar month commencing from the Occupation Date, *pro rata*.

19. SCHEME REGULATIONS

- 19.1. The Scheme is subject to, *inter alia*, the following provisions which may be imposed by the City of Cape Town in respect of the Development, namely:
 - 19.1.1. the person who at any time is the owner of any Section shall be required, without compensation:
 - 19.1.1.1. to allow gas mains, electricity, telephone and television cables and/or wires, main and/or other water pipes and foul sewers and storm water pipes, ditches and channels of any other neighbouring properties, sections or units to be conveyed across the Scheme, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the City of Cape Town, in such manner and position as may from time to time be reasonably required; this shall include the right of access to and/or over the Scheme at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above, and
 - 19.1.1.2. to receive such material or permit such excavation on the Scheme as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the Scheme, unless it elects to build retaining walls to the satisfaction of and within a period to be determined by the City of Cape Town;

Seller initial
here

Purchaser initial
here

Witness initial
here

19.2. If so required by the relevant authority, the conditions set out in clause 19.1 shall be registered against the title deed conditions applicable to the Scheme.

20. STATUTORY CERTIFICATES

The Seller, at its cost, shall furnish the Purchaser with the following certificates on or before the Transfer Date:

20.1. Electrical Compliance Certificate as contemplated in Article 3 of the Regulation 2920 promulgated in terms of the Machinery and Occupational Safety Act, Act 6 of 1983, in respect of the electrical installation;

20.2. Certificate of Compliance of Water Installation in respect of the property issued by a suitably qualified plumber and in accordance with the legal requirements laid down in the City of Cape Town: Water By-Law 2010, promulgated in the Western Cape Provincial Gazette No. 6847 on 18 February 2011; and

20.3. Certificate of Conformity in respect of such installation as is required by Section 17(3) of Government Notice R734 of 15 July 2009, Government Gazette 32395 (pertaining to gas installations), if applicable.

21. STIPULATION FOR THE BENEFIT OF THE BODY CORPORATE

Any conditions in this Agreement which are expressed as being for the benefit of the Body Corporate shall constitute a *stipulatio alteri* in favour of the Body Corporate which it may accept at any time.

22. BREACH

22.1. If either Party breaches any provision of this Agreement and remains in breach for 7 (Seven) days after written notice to such Party requiring that party to rectify that breach, or if either party repudiates this Agreement ("**Defaulting Party**"), the other party ("**Aggrieved Party**") shall be entitled, at the Aggrieved Party's election to:

22.1.1. sue for the immediate specific performance of any or all of the Defaulting Party's obligations under this Agreement whether or not any such obligation is then due; or

22.1.2. (either as an alternative to a claim for specific performance or upon the abandonment of such a claim) cancel this Agreement. Written notice of such cancellation shall be given by the Aggrieved Party to the Defaulting Party and the cancellation shall take effect on the giving of such notice.

22.2. In the event of the Seller cancelling this Agreement in terms of clause 22.1:

22.2.1. all amounts paid by or on behalf of the Purchaser in terms of this Agreement, including amounts paid to third parties, less an administration fee of 0,5% of the total interest earned in respect of invested funds, together with Transfer costs, calculated in terms of the Conveyancing Fees Guidelines – Apportionment of Fees: Wasted Costs payable to the Conveyancer, shall be forfeited to the Seller, unless the Seller elects to claim damages in lieu of such forfeiture, in which latter event:

22.2.1.1. the Conveyancer shall be irrevocably authorised to disburse such amounts to the Seller, who shall be entitled to hold such amounts pending determination of the amount of the damages by agreement, order of court, or otherwise;

22.2.1.2. if the damages as determined are greater or less than the amounts held by the Seller, the difference shall be paid to the Party entitled to the difference, by the other Party; and

22.2.1.3. the Purchaser shall forthwith vacate the Property and shall procure that the Property is vacated by any persons who occupy it through the Purchaser's title or by its permission, and the Property shall be redelivered in the same good order and

Seller initial
here

Purchaser initial
here

Witness initial
here

condition as at the Occupation Date. The Purchaser shall not be entitled to claim any compensation in respect of any improvements and additions made to the Property.

22.3. If the Purchaser for any reason fails to vacate the Property after cancellation:

22.3.1. the Purchaser shall be obliged to perform obligations under this Agreement as if it had not been cancelled, and the Seller's acceptance of such performance shall be without prejudice to any of its rights;

22.3.2. the Occupational Interest shall in these circumstances be calculated at a rate equivalent to double the rate as recorded in item 5 of the Information Schedule;

22.3.3. the Seller shall, in addition, be entitled to claim all damages flowing from such unlawful occupation, including but not limited to:

22.3.3.1. the fair and reasonable costs of restoring the Property to the condition in which it was at the Occupation Date;

22.3.3.2. damages for holding over from the date on which this Agreement is cancelled to the date on which the Property is restored to the Seller;

22.3.3.3. payment of an amount equivalent to all Levies, rates, taxes, service charges, and all other amounts which the Seller has had to pay during the subsistence of the holding over; and

22.3.3.4. such further damages as the Seller may have suffered as a consequence of the Purchaser's holding over, including a loss of profits arising out of any subsequent sale which the Seller may prove would have been concluded but for the holding over.

22.4. The Defaulting Party agrees that, in the event of the Aggrieved Party instructing its attorneys and/or taking legal proceedings against the Defaulting Party pursuant to a breach by the Defaulting Party, then the Defaulting Party shall pay all legal costs plus VAT incurred by the Aggrieved Party in connection therewith as between attorney and own client, including collection commission at the tariff rate applicable, and transfer costs, as envisaged in clause 7.2, payable to the Conveyancer, which Transfer costs shall be calculated in terms of the Conveyancing Fees Guidelines – Apportionment of Fees: Wasted Costs.

22.5. The Parties' remedies in terms of this clause are without prejudice to any other remedies to which they may be entitled in law.

23. DISPUTE RESOLUTION

23.1. In the event of a dispute arising out of or in connection with this Agreement or the breach, termination, or invalidity thereof, then the dispute shall be settled by arbitration in accordance with the provisions of this clause 23.

23.2. Upon written notice from any Party to the other (the "Dispute Notice") the dispute shall be referred to a suitably qualified independent arbitrator. The arbitrator shall, if the dispute is agreed in writing by the Parties to be:

23.2.1. primarily an accounting matter, be an independent practising accountant of not less than 10 (ten) years' standing as such;

23.2.2. primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such or a practising senior counsel;

23.2.3. any other matter, be a suitably qualified independent person;

Seller initial
here

Purchaser initial
here

Witness initial
here

agreed upon in writing by the Parties; provided that if the Parties do not, within 14 (fourteen) days of the Dispute Notice agree in writing as to the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Registrar of the Arbitration Foundation of Southern Africa upon request by any Party to make such appointment.

- 23.3. The arbitration shall be held at a venue in Cape Town and shall be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa;
- 23.4. Immediately after the arbitrator has been appointed, any Party shall be entitled to call upon the arbitrator to fix a date and place when and where to meet with the arbitrator to settle the manner in which the arbitration proceedings will be held;
- 23.5. Any order or award that may be made by the arbitrator:
 - 23.5.1. shall be final and binding;
 - 23.5.2. shall be carried into effect; and
 - 23.5.3. may be made an order of any competent court.
- 23.6. Nothing in this clause 23 shall preclude any Party from seeking interim and/or urgent relief from a court of competent jurisdiction.
- 23.7. The provisions of this clause 23 shall remain binding on the Parties notwithstanding any cancellation or termination of this Agreement.

24. CESSION

- 24.1. The Purchaser shall not be entitled to cede any of its rights in terms of this Agreement without the prior written consent of the Seller, at its sole and unfettered discretion.
- 24.2. The Seller shall be entitled to cede its rights and delegate its obligations in terms of this Agreement without the consent of the Purchaser. However, it is recorded that the Seller will require the consent of its bankers prior to any cession.

25. JOINT AND SEVERAL LIABILITY

If this Agreement is signed by more than one person as Purchaser, the obligations and liabilities of all the said signatories shall be joint and several.

26. NOTICES AND DOMICILE

- 26.1. For the purposes of the giving of notices and the serving of legal process in terms of this Agreement, each of the Parties choose as their respective addresses, the addresses specified in the Information Schedule ("**Domicile**").
- 26.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.
- 26.3. Any notice to a Party:
 - 26.3.1. sent by prepaid registered post in a correctly addressed envelope to that Party's Domicile shall be deemed to have been received on the 7th (seventh) Business Day after posting (unless the contrary is proved);
 - 26.3.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as his Domicile shall be deemed to have been received on the day of delivery;
or

Seller initial
here

Purchaser initial
here

Witness initial
here

26.3.3. sent by e-mail to its chosen e-mail address shall be deemed to have been received on the date of despatch (unless the contrary is proved).

26.4. Despite the provisions of this clause 26, a written notice or communication actually received by a Party shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at that Party's chosen Domicile.

27. INDEMNITY

27.1. **Notwithstanding anything to the contrary in this Agreement, the Seller shall not be responsible for any loss or damage to property or any injury to or death of any person being sustained in or about the Property, the Scheme, or the Land which the Purchaser or any third party may suffer arising from any act or omission whatsoever or neglect on the part of the Seller, its servants, employees, or agents.**

27.2. **The Purchaser or any other person shall not be entitled for any of the said reasons in clause 27.1 or for any other reason whatsoever, to withhold payment of any monies due to the Seller in terms hereof, and the Purchaser hereby indemnifies the Seller accordingly.**

27.3. **The Purchaser acknowledges that it understands the English language and considers itself fluent therein.**

Seller initial
here

Purchaser
initial here

Witness initial
here

28. SURETY

The Surety described in item 9 of the Information Schedule, hereby binds him/herself as surety and co-principal debtor in favour of the Seller for due and proper performance by the Purchaser of all of his obligations in terms of this Agreement (including any amounts which may become owing arising out of any breach of this Agreement) and hereby renounces the benefits of excussion, division, cession of action, and *de duobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the Surety acknowledges he/she knows and understands, as detailed in the Deed of Suretyship annexed hereto, marked Annexure E, which must be completed in full by the Surety.

29. WARRANTIES BY THE PARTIES

The Parties warrant in favour of each other that:

29.1. should the Purchaser be a company, close corporation, or trust, the authorised signatory described in item 2B of the Information Schedule enjoys the legal capacity and all necessary approvals required to empower and authorise them to enter this Agreement and that such approvals pre-date the Date of Signature; and

29.2. they are not aware of the existence of any fact or circumstance that may impair their ability to comply with all of their obligations in terms of this Agreement;

30. ESTATE AGENT'S COMMISSION

The Purchaser warrants that no agent initiated this sale or was the effective cause thereof and that no commission is therefore payable to any agent.

31. CO-OPERATION

Each of the Parties hereby undertakes to:

31.1. sign and/or execute all such documents (and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney and transfer duty declarations);

Seller initial
here

Purchaser initial
here

Witness initial
here

31.2. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and

31.3. pass, and to procure the passing of all such resolutions of directors or shareholders of any company, or members of any close corporation, or trustees of any trust, as the case may be;

to the extent that the same may lie within the power of such Party and may be required to give effect to the import or intent of this Agreement, and any contract concluded pursuant to the provisions of this Agreement.

32. RIGHT TO EXTEND

In terms of Section 25 of the Act, the Seller hereby reserves for itself the real right to extend, for its personal account, the Scheme by the erection and completion from time to time but within a period of 50 (fifty) years of:

32.1 a horizontal extension of an existing building or buildings and

32.2 a vertical extension of existing buildings

on that part of the Common Property outlined on the Plans, to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such Common Property upon the owner or owners of one or more of such sections in the Scheme.

33. GENERAL PROVISIONS

33.1. Continued Marketing

If this Agreement is subject to the fulfilment of conditions precedent in terms of clause 4, then:

33.1.1. the Purchaser acknowledges that the Seller will be entitled to continue to market the Property and accept offers in respect of the Property;

33.1.2. Should the Seller at any time prior to fulfilment of the conditions precedent in clause 4 receive another *bona fide* offer which it in its sole discretion wishes to accept then it shall notify the Purchaser thereof, in writing, of its intention to accept such offer (a copy of such offer shall simultaneously be shown to the Purchaser) and the Purchaser shall have 72 (seventy two) hours from receipt of such notification (excluding Saturdays, Sundays & public holidays) within which to waive, in writing, the benefit of all Conditions Precedent of this Agreement and to furnish the Seller with the guarantees required in terms of clause 5, as the case may be, whereupon this Agreement shall become final and binding. Should the Purchaser fail to so waive and fail to furnish the required guarantees then this Agreement shall lapse and be of no further force or effect.

33.2. Governing Law and Jurisdiction

33.2.1. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

33.2.2. The Purchaser hereby consents in terms of section 45 of the Magistrate's Court Act 32 of 1944, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction in terms of 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.

33.3. General

33.3.1. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

Seller initial
here

Purchaser initial
here

Witness initial
here

- 33.3.2. This document contains the entire Agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein. To the extent permissible by law, no Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 33.3.3. No indulgence, leniency or extension of time which any Party ("the Grantor") may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 33.3.4. The Purchaser and the Seller warrant that all material terms of this Agreement have adequately been explained to them prior to signature of this Agreement.

33.4. Interpretation

In this Agreement and all annexures and schedules, unless specifically provided otherwise:

- 33.4.1. any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning;
- 33.4.2. words importing the masculine gender include the feminine and neutral genders and vice versa; the singular includes the plural and vice versa; and natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 33.4.3. references to a "person" include a natural person, company, close corporation, or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 33.4.4. when any number of days is prescribed in this Agreement, same shall be deemed to be calendar days, unless specifically referred to as a "Business Day", and reckoned exclusively of the first and inclusively of the last day;
- 33.4.5. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 33.4.6. The Purchaser confirms that the Purchaser has chosen English as the language of this Agreement, and all transfer documents to be prepared by the Seller's Conveyancers in that language.
- 33.4.7. **If any provision of this Agreement is in conflict or inconsistent with the law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions hereof.**

Seller initial
here

Purchaser
initial here

Witness initial
here

- 33.4.8. any reference in this Agreement to a Party shall include a reference to that party's assigns expressly permitted under this Agreement and, if such party is liquidated or sequestered, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 33.4.9. references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT. All or any VAT payable by the Purchaser in terms of this Agreement shall become due for payment and shall be paid by the Purchaser forthwith upon presentation of the relevant invoice by the Seller to the Purchaser. Any dispute which may arise between the Seller and the Purchaser as to the liability for and/or payment of VAT or the amount thereof

Seller initial
here

Purchaser initial
here

Witness initial
here

in terms of this Agreement shall be referred to the auditors of the Seller for decision and their decision shall be final and binding between the Parties and carried into effect. The auditor shall act as an expert and not an arbitrator when making its determination as aforesaid.

34. COMPANY TO BE FORMED

34.1. If this Agreement is entered into by the signatory for the Purchaser in a capacity as director for a company to be formed, then the said signatory, by the signatory's signature hereto, hereby binds himself/herself 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.

34.2. Without prejudice to the provisions of clause 33.1 above, in the event of such company not being formed within 30 (Thirty) days after the date of signature of this Agreement by the Purchaser, and/or failing to ratify and make the provisions of this Agreement binding upon itself, and/or failing within 7 (Seven) days of being formed to deliver to the Seller's Conveyancers the originals or notarially certified copies of its memorandum of incorporation, certificate to commence business, certificate of incorporation 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 the signatory had contracted in his/her own personal capacity

35. 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 or close corporation not yet formed) the signatory shall be deemed to warrant that the signatory is duly authorised so to sign this Agreement and shall by the signatory's signature hereto bind himself thereto in favour of the Seller as surety and co-principal debtor together with such company or close corporation under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company or close corporation in terms of or arising out of this Agreement or any cancellation hereof.

36. DIRECT MARKETING

If the Purchaser was introduced to the transaction as a result of Direct Marketing, the Purchaser/s attention is, in terms of Section 32 of the Consumer Protection Act, drawn to Section 16(3) and (4) of the Act, which determines that the consumer may rescind a transaction resulting from any Direct Marketing without any reason or penalty, by notice to the Seller in writing, within 5 (Five) Business Days from the date of this Agreement.

37. UNCONTROLLABLE EVENT/S (FORCE MAJEURE)

In the event that the Seller shall be delayed, hindered in or prevented from doing or performing any act or thing required hereunder by reason of an Uncontrollable Event, then the Seller shall not be responsible for such delays and the doing or performing of such act or thing shall be excused for the period of delay arising from the Uncontrollable Event, and the period for the performance of any such act or thing shall be extended for a reasonable period arising from the Uncontrollable Event. In such an event, the Purchaser shall not have the right to resile from this Agreement upon the occurrence of an Uncontrollable Event and shall furthermore not have any claim of whatsoever nature against the Seller in respect of the same.

38. OFFER

38.1. The Purchaser's signature to this Agreement constitutes an offer and this offer is irrevocable and open for a period of 10 (Ten) Business Days after the date of signature by the Purchaser, whereafter it expires. It is specifically recorded that the production of a counter-offer by the Seller to whom this offer is made shall not be deemed to be a refusal of this offer and the offer shall accordingly remain irrevocable until expiry of the period stated above.

Seller initial
here

Purchaser initial
here

Witness initial
here

38.2. The Seller undertakes to send a copy of this Agreement signed by it evidencing acceptance of the offer contained herein to the Conveyancer as soon as reasonably possible after its signature, but the Seller's failure to do so timeously shall not invalidate this offer.

39. PROTECTION OF PERSONAL INFORMATION ACT

By its signature hereto, the Purchaser acknowledges and consents to the following –

The Seller and the Conveyancers will collect information from the Purchaser for the purposes of the transaction contemplated in this Agreement. Such information will be used for the obvious purposes relating to giving effect to the transaction on behalf of the Purchaser and subject to the provisions of the Protection of Personal Information Act.

40. COUNTERPARTS

This Agreement may be signed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when a counterpart has been signed by each of the Parties.

TO BE SIGNED IN WET INK ONLY, DIGITAL SIGNATURES ARE NOT PERMITTED IN TERMS OF THE ALIENATION OF LAND ACT, 68 OF 1991

SIGNED BY THE SELLER AT _____ ON THIS ____ DAY OF _____ 20____.

AS WITNESSES

1. _____

On behalf of **WCB PROPERTY HOLDINGS 2 PROPRIETARY LIMITED**

2. _____

SIGNED BY THE PURCHASER AT _____ ON THIS ____ DAY OF _____ 20____.

AS WITNESSES

1. _____

PURCHASER

2. _____

PURCHASER

SIGNED BY THE SURETY AT _____ ON THIS ____ DAY OF _____ 20____.

AS WITNESSES

1. _____

SURETY

2. _____

Seller initial here

Purchaser initial here

Witness initial here

Annexure A – Schedule of Finishes

Seller initial
here

Purchaser initial
here

Witness initial
here

Annexure B – Floor Plans of Section

Seller initial
here

Purchaser initial
here

Witness initial
here

Annexure C – Draft Participation Quota Schedule

Seller initial
here

Purchaser initial
here

Witness initial
here

ANNEXURE D

RESOLUTION OF THE BOARD OF DIRECTORS / TRUSTEES / MEMBERS

OF _____ (**“the Purchaser”**)

REGISTRATION NUMBER _____

DATED _____

It has been resolved that the Purchaser will enter into an Agreement of Sale with WCB PROPERTY HOLDINGS 2 PROPRIETARY LIMITED for the purchase of Section _____ in the scheme to be known as Monarch on Erf 35418 Bellville situate at 1 Danena Close, O’Kennedyville, Durbanville.

It has further been resolved that _____ (ID no _____) is hereby authorised to act on behalf of the Purchaser and sign the Agreement of Sale and any and all documents and contracts required to finalise the above-mentioned purchase.

Signed at _____ on this _____ day of _____ 2024.

Signature: _____

Signature: _____

Name: _____

Name: _____

ID No: _____

ID No: _____

Director / Trustee / Member 1

Director / Trustee / Member 2

Signature: _____

Signature: _____

Name: _____

Name: _____

ID No: _____

ID No: _____

Director / Trustee / Member 3

Director / Trustee / Member 4

Seller initial here

Purchaser initial here

Witness initial here

DEED OF SURETYSHIP

1. This Deed of Suretyship is an annexure to the Agreement. The terms and phrases defined in the Agreement shall be of application herein.

I / we the undersigned

(Full names and Identity Number)

(The Surety)

hereby confirm that I/we have bound ourselves jointly and severally to and in favour of the Seller as sureties and co-principal debtors *in solidium* with the Purchaser as set out in item 2 of the Information Schedule and in terms of the nominee clause 34 and 25 of the Agreement for the due fulfilment of all the obligations of the Purchaser (including but not limited to damages) arising from the Agreement and annexures to the Agreement.

2. In addition to the amounts payable in terms of the Agreement, the Surety shall be liable to pay legal costs, including attorney and client costs reckoned on the non-litigious tariff as recommended by the Legal Practice Council or its successors, and collection commission incurred, by the Seller in securing or endeavouring to secure fulfilment of the Purchaser’s obligations under the Agreement as well as my/our obligations hereunder.

3. The Seller shall be entitled, without prejudice to its rights against the Surety, to release any security given or to give time to or compound or make any agreement with the Surety or with the Purchaser in regard to the payment of the indebtedness of the Purchase to it with the Seller its absolute discretion deems fit.

4. This Deed Suretyship shall remain in force until such time as the Purchaser’s indebtedness to the Seller in terms of the Agreement is discharged in full.

5. I/we agree that a certificate purporting to be signed by any director of the Seller showing the amount of any indebtedness due and payable by the Purchaser to the Seller at any particular time shall be *prima facie* proof of the amount due and the fact that is then due and payable.

6. I/we renounce each and every one of the benefits and exceptions known as *beneficium ordines sei excussionis, non causa debiti*, and revision of account, the meanings of which I/we are fully and independently acquainted with the meanings and nature of the abovementioned benefits and exceptions, and with the consequences thereof.

7. No variation of the terms of this Deed of Suretyship shall be of any force and effect unless reduced to writing and signed by both the Surety and the Seller. This document is and shall remain the Seller’s property.

8. The protection afforded to the Seller under this Deed of Suretyship shall extend to the Seller's assigns and any persona or entity to whom the Seller may cede its rights herein.

9. All notices to be given in terms of this Deed of Suretyship shall be in writing and shall be delivered to me/us at the following address, which address I/we chose as *domicilium citandi et executandi* for all purposes of this surety:

Seller initial here

Purchaser initial here

Witness initial here

-
10. The Seller agrees that I/we shall be, at any time, entitled to change the *domicilium citandi et executandi*, which change shall take effect only upon serving notice of such change on the Seller in accordance with the provisions of clause 26 of the Agreement.
 11. Notwithstanding anything to the above, any notice actually received by me/us shall be deemed adequate notice, even if not delivered at my/our chosen *domicilium citandi et executandi*.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20____.

AS WITNESSES:

1. _____

 in his/her personal capacity as Surety
2. _____

SIGNED AT _____ ON THIS _____ DAY OF _____ 20____.

AS WITNESSES:

1. _____

 Surety Spouse if married in Community of Property
2. _____

Seller initial here

Purchaser initial here

Witness initial here