

# **FISH EAGLE MEWS**

**UNIT NO.** \_\_\_\_\_

**Situated on Erf 96 Bedfordview Ext 11**

## **AGREEMENT OF SALE**

### **RECORDAL**

The **Seller** is the owner of the **Land** defined in clause 2.15 of Annexure "A" and intends establishing a Sectional Title Scheme Known as **FISH EAGLE MEWS** substantially in accordance with the **Scheme Layout Plan** and the **specifications and schedule of finishes** Annexed hereto.

The **Seller** sells the **Unit** to the **Purchaser**, who hereby purchases the **Unit** on the Terms and Conditions set out in the **Schedule of Particulars** and **Standard Terms and Conditions** hereunder.

### **THE SELLER:**

**ALBEMARLE GARDENS PROPRIETARY LIMITED**  
**Registration Number 2017/141671/07**

Herein represented by \_\_\_\_\_, he being duly authorised thereto

AND

### **THE BUILDER:**

**ROTWE CONSTRUCTION (PTY) LIMITED**  
**REGISTRATION NUMBER: \_\_\_\_\_**

Herein represented by \_\_\_\_\_, he being duly authorised thereto

AND

### **THE PURCHASER/S:**

FULL NAMES: \_\_\_\_\_

IDENTITY / REGISTRATION NUMBER: \_\_\_\_\_

AND

### **SELLING AGENT:**

AGENCY: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**SCHEDULE OF PARTICULARS:**

1. **SELLER**

1.1 **NAME: ALBEMARLE GARDENS CC**

1.2 **REGISTRATION NUMBER: 2007/025594/23**

1.3 **DOMICILIUM ADDRESS: c/o OLIVIER & O'CONNOR INC., UNIT 1 BELLAIRS CORNER, 112 TRUE NORTH ROAD, MULBARTON**

1.4 **TEL NO: 011 433 3810**

1.5 **CONTACT PERSON: KIM CHALMERS**

1.6 **E-MAIL: kim@olivieroconnor.co.za**

2. **PURCHASER/S**

2.1 **FIRST PURCHASER**

2.1.1 **FULL NAMES:** \_\_\_\_\_

2.1.2 **SURNAME:** \_\_\_\_\_

2.1.3 **IDENTITY/REGISTRATION NUMBER:** \_\_\_\_\_

2.1.4 TELEPHONE NUMBERS: (W) \_\_\_\_\_

(C) \_\_\_\_\_

2.1.5 E-MAIL: \_\_\_\_\_

2.1.6 DOMICILIUM ADDRESS: \_\_\_\_\_

\_\_\_\_\_

2.1.7 PHYSICAL ADDRESS: \_\_\_\_\_

2.1.8 MARITAL STATUS: (Check the applicable box. Not required if a company, CC or trust)

- UNMARRIED
- DIVORCED
- WIDOW/WIDOWER
- MARRIED ANC
- MARRIED IN COMMUNITY OF PROPERTY

2.2 **SPOUSE OF 1<sup>ST</sup> PURCHASER / 2<sup>ND</sup> PURCHASER**

\* Delete if not applicable

2.2.1 **FIRST NAMES:** \_\_\_\_\_

2.2.2 **SURNAME:** \_\_\_\_\_

2.2.3 **IDENTITY NUMBER:** \_\_\_\_\_

2.2.4 TELEPHONE NUMBERS: (W) \_\_\_\_\_

(C) \_\_\_\_\_

2.2.5 E-MAIL: \_\_\_\_\_

2.2.6 DOMICILIUM ADDRESS: \_\_\_\_\_

\_\_\_\_\_

2.2.7 PHYSICAL ADDRESS: \_\_\_\_\_

2.2.8 MARITAL STATUS: (Check the applicable box. Not required if a company, CC or trust)

- UNMARRIED
- DIVORCED
- WIDOW/WIDOWER
- MARRIED ANC
- MARRIED IN COMMUNITY OF PROPERTY

3. **BUILDER:**

3.1 **FULL NAMES: ROTWE CONSTRUCTION (PTY) LIMITED**

3.2 **REGISTRATION NUMBER:** \_\_\_\_\_

3.3 **DOMICILIUM ADDRESS:** \_\_\_\_\_

3.4 TELEPHONE NUMBER: \_\_\_\_\_

3.5 CONTACT PERSON: \_\_\_\_\_

3.6 E-MAIL: \_\_\_\_\_

4. **UNIT**

Unit number \_\_\_\_\_ as reflected on the **Scheme Layout Plan** and, when approved, on the **Sectional Title Plan**.

5. **EXCLUSIVE USE AREAS**

Garden Area as indicated on the **Scheme Layout Plan** and Parking Bay/s allocated by the **SELLER** or Body Corporate.

6. **PURCHASE PRICE**

R \_\_\_\_\_ ( \_\_\_\_\_ Rand)

7. **DEPOSIT**

A **Deposit** of \_\_\_\_\_ ( \_\_\_\_\_ Rand) is payable by the **Purchaser** on signature hereof.

8. **BALANCE OF PURCHASE PRICE**

R \_\_\_\_\_ ( \_\_\_\_\_ Rand)

9. **LOAN AMOUNT**

R \_\_\_\_\_ ( \_\_\_\_\_ Rand); or such amount as the **Purchaser** may qualify for and which he is prepared to accept within 7 (SEVEN) days of date of granting of the Loan.

10. **ESTIMATED OCCUPATION DATE**

\_\_\_\_\_

11. **OCCUPATIONAL INTEREST**

An amount being 0.8% (ZERO POINT EIGHT PERCENT) per month of the **Purchase Price** in 5 above.

12. **ESTIMATED MONTHLY LEVY**

R \_\_\_\_\_ ( \_\_\_\_\_ Rand) for which the **Purchaser** is liable from Date of Occupation until date of Registration of Transfer of the **Unit**.

13. **TRANSFER AND BOND COSTS**

To be borne by the **Seller**, subject to Clauses 4.1.4 and 4.1.5 of the **Standard Terms and Conditions**, marked Annexure "A".

The **Purchaser** hereby warrants to the **Seller** that the foregoing information is true and correct and that he/she knows of no other information which is relevant to his/her creditworthiness and/or contractual capacity and/or status, which he/she have not disclosed to the **Seller**.

**SIGNED** by the parties on the dates and at the places set out below.

\_\_\_\_\_  
**PURCHASER(s)**

**who by his/her/their signature(s) hereto warrant(s) his/her/their capacity to enter into and sign this Agreement,**

Date: \_\_\_\_\_ Place: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

Assisted herein insofar as may be necessary by me, the **PURCHASER'S** spouse, and binding myself to the **SELLER** as surety for and co-printed debtor *in solidum* with my spouse for his/her obligations in terms of this Agreement.

---

**SPOUSE of PURCHASER**

Date: \_\_\_\_\_ Place: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

---

**For and on behalf of the SELLER**

Date: \_\_\_\_\_ Place: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

---

**BUILDER**

Date: \_\_\_\_\_ Place: \_\_\_\_\_

**Who warrants that it accepts the obligations and liabilities confined upon it by this Agreement and the NHBRC Certificate that would be obtained as provided for in Clause 21 of Annexure "A" to this Agreement.**

## **PAYMENT PARTICULARS**

**When making payment, please use the following trust account:**

**BENEFICIARY NAME: OLIVIER & O'CONNOR INC.  
ABBREVIATED NAME OF BUSINESS: O AND O  
NAME OF BANK: ABSA BANK  
ACCOUNT NO: 071 243 6352  
BRANCH CODE: 632 005**

**Kindly contact Olivier & O'Connor's KIM CHALMERS, for a reference if one has not already been provided to you.**

## **DOCUMENTS REQUIRED BY CONVEYANCERS**

**KINDLY FORWARD A COPY OF THE REQUIRED DOCUMENTS TO:**

Olivier & O'Connor Incorporated: Attention: Kim Chalmers Tel: (011) 433 3810 or Email address: [kim@olivieroconnor.co.za](mailto:kim@olivieroconnor.co.za)

If unmarried: Copy of first page of your Identity Document;

If married: Copy of both husband and wife's Identity Document, marriage certificate and if applicable, Antenuptial Contract;

If Company: Certified copy of the Memorandum of Incorporation and Certificate to commence business;

If CC: Certified copy of the Founding Statement;

If a Trust: Certified copy of the Trust Deed and Letters of Authority.

**In all cases the following is required to comply with the requirements of the Financial Intelligence Centre Act:**

1. **Proof of existing residence (e.g water & electricity account)**
2. **Income Tax Number**

## **LIST OF ANNEXURES**

- A. Standard terms and conditions;**
- B. Scheme Layout Plan; and**
- C. Specifications and schedule of finishes;**

**STANDARD TERMS AND CONDITIONS****1. PURCHASE AND SALE**

The **Seller** hereby sells to the **Purchaser**, who hereby purchases, the **Unit** for the **Purchase Price** and on the terms and conditions set out in this Agreement. The **Unit** shall be constructed in accordance with the **Scheme Layout Plan** read together with the **specifications and schedule finishes**.

**2. INTERPRETATION**

In this Agreement unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings assigned to them hereunder:

- 2.1 **"Act"** means the *Sectional Titles Act, 1986* and all regulations thereunder;
- 2.2 **"Agreement"** means this **Standard Terms and Conditions, Schedule of Particulars** and all annexures hereto;
- 2.3 **"Agent"** means \_\_\_\_\_  
(Registration no. \_\_\_\_\_);
- 2.4 **"Architect"** means \_\_\_\_\_;
- 2.5 **"Bond Originating Company"** means the **Bond Originating Company** nominated by the **Seller**;
- 2.6 **"Builder"** means **ROTWE CONSTRUCTION (PTY) LIMITED, REGISTRATION NUMBER: \_\_\_\_\_**, as appointed by the **Seller**, responsible for the construction of the **Unit** in accordance with the **specifications and schedule finishes**;
- 2.7 **"Buildings"** means the **Buildings** and all improvements to be erected on the **Land** in accordance with the **Scheme Layout Plan** applicable to each **Unit** in the **Scheme**;
- 2.8 **"Common Property"** means the portions of the Development not forming part of any **Unit** in the development in terms of the **Act**;
- 2.9 **"Deposit"** means the **Deposit** referred to in Clause 7 of the **Schedule of Particulars**;
- 2.10 **"Effective Interest Rate"** means 2% (TWO PERCENT) above the current Prime Interest Rate of FNB Bank Limited;
- 2.11 **"Exclusive Use Area"** means the garden area attributed to the **Unit** as indicated on the **Scheme Layout Plan** and reflected in clause 5 of the **Schedule of Particulars**;

- 2.12 **“Estimated initial Monthly Levy”** for which the **Purchaser** is liable from date of occupation as stipulated in Clause 12 of the **Schedule of Particulars**;
- 2.13 **“Fixtures and Fittings”** shall include, but will not be limited to, wall plaster, tiles, plumbing, windows, doors, cupboards and electrical wiring and fitting;
- 2.14 **“Guarantee Due Date”** means 7 (SEVEN) days after being called upon by the **Seller’s** Conveyancer, alternatively, if Clause 4 below is applicable, the **Guarantee Due Date** shall be 7 (SEVEN) days after granting of such Loan;
- 2.15 **“Land”** means ERF 96 BEDFORDVIEW EXT 11, held by Deed of Transfer No. T8941/2017;
- 2.16 **“Loan Amount”** means the **Loan Amount** referred to in Clause 9 of the **Schedule of Particulars**;
- 2.17 **“Managing Agent”** means the **Managing Agent**, to be appointed by the **Seller** for the management of the **Scheme** and **Buildings** and of the work to be undertaken by the Body Corporate;
- 2.18 **“Occupation Date”** means the date reflected in Clause 10 of the **Schedule of Particulars** or such date which the **Seller** may notify the **Purchaser** in terms of Clause 5.1 below;
- 2.19 **“Participation Quota”** means the **Participation Quota** allocated to the **Unit** in the **Sectional Title Plans** and upon opening of the Sectional Title Register, the registered **Sectional Title Plans**;
- 2.20 **“Purchaser”** means the **Purchaser** referred to in Clause 2 and 3 of the **Schedule of Particulars** and includes the **Purchaser’s** successors-in-title;
- 2.21 **“Purchase Price”** means the **Purchase Price** referred to in Clause 6 of the **Schedule of Particulars**;
- 2.22 **“Rules”** means the Management and Conduct Rules imposed in terms of the **Act**;
- 2.23 **“Scheme”** means the Sectional Title Development Scheme in respect of the **Buildings** to be named **FISH EAGLE MEWS**;
- 2.24 **“Scheme Layout Plan”** means the **Scheme Layout Plan** attached marked Annexure **“B”**;
- 2.25 **“Sectional Title Plans”** means the draft **Sectional Title Plan** to be prepared by the land surveyor, a copy of which will be available for inspection at the offices of the Land Surveyor and, on approval for inspection at the offices of the Surveyor-General;



- 2.26 **"Seller"** means the **Seller** referred to in Clause 1 of the **Schedule of Particulars**;
- 2.27 **"Seller's Conveyancers"** means Olivier & O'Connor Incorporated Tel: (011) 433-3810, Email: [kim@olivieroconnor.co.za](mailto:kim@olivieroconnor.co.za), Ref: Kim Chalmers or such other Conveyancer as the **Seller** may advise;
- 2.28 **"Signing Date"** means the date of signing of this **Agreement** by the **Purchaser**;
- 2.29 **"Sole Utilisation Area"** means the **Sole Utilisation Areas**, referred to in Clause 5 of the **Schedule of Particulars**, allocated to the **Unit** in terms of this **Agreement** and the **Rules**;
- 2.30 **"Structure"** means the foundations, brickwork, concrete and reinforcing and shall expressly exclude wall plaster;
- 2.31 **"Unit"** means the **Unit** reflected in Clause 4 of the **Schedule of Particulars** together with its undivided share in the **Common Property** determined in accordance with the **Participation Quota**.

### 3. **PURCHASE PRICE AND PAYMENT**

- 3.1 The **Purchase Price** shall be payable to the **Seller's Conveyancers** as follows:
- 3.1.1 The **Deposit** referred to in clause 7 of the **Schedule of Particulars** shall be payable on date of signature.
- 3.1.2 The balance of the **Purchase Price** shall be payable against Registration of Transfer of the **Unit** into the name of the **Purchaser** and shall be secured on or before the **Guarantee Due Date**, either:
- 3.1.2.1 by payment in Cash to the **Seller's Conveyancers**; or
- 3.1.2.2 by a bank Guarantee(s) approved by the **Seller**, drawn in favour of the **Seller** or its nominee and expressed to be payable at JOHANNESBURG free of exchange against transfer. Such Guarantee(s) shall be delivered to the **Seller's Conveyancers** on or before the **Guarantee Due Date**.
- 3.2 Any amounts paid to the **Seller's Conveyancers** in terms of 3.1.1 or 3.1.2 shall be held in trust and invested in an interest-bearing account under the provisions of *Section 86(4) of the Legal Practice Act, 28 of 2014* (the "LPA"); the interest earned thereon (less 5% (FIVE PERCENT) thereof due to the Legal Practice Council in terms of Section 86(5)(b) of the LPA) shall be paid to the **Purchaser** (less an administration charge for the investment), against registration of transfer of the **Unit** into the name of the **Purchaser** and the **Purchaser** accordingly consents thereto. The **Seller's Conveyancers** shall invest the money upon receipt of the **Purchaser's** written authority and provision of FICA documentation as requested and hereby irrevocably authorises the **Seller's**

**Conveyancers** on registration of transfer to pay the capital to the **Seller** and the interest to the **Purchaser**.

3.3 The **Purchase Price** is inclusive of Value Added Tax.

3.4 The **Purchaser** warrants that all outstanding tax returns have been submitted to the Receiver and all outstanding tax amounts have been paid to the Receiver, to enable the **Purchaser** to take transfer of the **Unit**, failing which the **Seller** reserves its rights in terms of Clause 12 of this **Agreement**.

#### 4. **SUSPENSIVE CONDITIONS**

##### 4.1 **LOAN (IF APPLICABLE)**

4.1.1 This **Agreement** is subject to the suspensive condition that the **Purchaser** is able to raise a loan for an amount of not less than the **Loan Amount** against the security of a first mortgage of the **Unit** at and upon prevailing bank rates and conditions within **30 (THIRTY)** days of the **Signing Date** or such later date as the **Seller** may determine by giving written notice to the **Purchaser** prior to the **30 (THIRTY)** days having lapsed, failing which this **Agreement** shall lapse and be of no further force or effect and the parties shall be restored to the status *quo ante*. This condition shall be deemed to be fulfilled immediately a letter is issued by a bank/financial institution stating that the loan has been approved in principle.

4.1.2 The **Purchaser** undertakes to do all things reasonably necessary to procure a loan for the **Loan Amount**. In giving this undertaking the **Purchaser** warrants the accuracy of the financial information provided by him.

4.1.3 In the event that the **Purchaser** needs a mortgage bond to finance the purchase of the **Unit** and the **Purchaser** elects to apply to one of the four major Banks for a Loan, all applications for the loan to the bank(s) must be dealt with exclusively by the **Bond Originating Company** (hereinafter referred to as "the bond originator") and the **Purchaser** shall make available all the required documentation to the bond originator in order to facilitate this.

4.1.4 **The Purchaser hereby authorises the Seller to procure the appointment of the Conveyancers for the registration of any mortgage bond(s) that may be required for the purposes of this transaction.**

4.1.5 **The Purchaser undertakes, within 10 (TEN) days from signature of this Agreement, to hand to the Seller's bond originator all and any information including, but not limited to financial statements, salary advice, personal information and documentation to enable the Seller's bond originator to apply to a financial institution for the Loan Amount. If the Purchaser fails to comply with this condition or the terms of condition 4.1.4 above for any reason, then without prejudice to any other right which the Seller may have at law, the Purchaser shall be liable to the Conveyancers appointed by the Bank for his own Bond Registration Costs.**

4.1.6 If the **Purchaser** fails to do all things reasonably necessary to procure a loan or fail to comply with or accept any condition reasonably imposed by any potential lender, he shall be deemed to be in breach of this **Agreement** and the **Seller** shall be entitled at its

election to regard this suspensive condition as having been fulfilled and may exercise its rights in terms of Clause 12.

4.1.7 The **Purchaser**, shall at any time prior to the due date for fulfilment thereof, be entitled to waive such condition by written notice to the **Seller** and in such event the **Purchaser** will be obliged to furnish Guarantees as provided in Clause 3.1.2.

#### 4.2 **SECTIONAL TITLE PLAN**

This **Agreement** shall be subject to and conditional upon the relevant Local Authority approving the **Sectional Title Plan**.

#### 5. **OCCUPATION AND OCCUPATIONAL RENTAL**

5.1 The **Purchaser** shall be entitled to occupation of the **Unit** from the **Occupation Date** specified in Clause 10 of the **Schedule of Particulars** provided that should the **Unit** not be available for occupation on such date, the **Purchaser** shall have no claim of any kind against the **Seller** or right of cancellation arising from such failure to give occupation. In such event the **Purchaser** shall be obliged to accept occupation of the **Unit** on such date as the **Seller's Architect** shall specify in writing and of which the **Purchaser** receives not less than 30 (THIRTY) days' notice which date shall be the "**Occupation Date**" for all purposes thereof. The decision of the **Seller's Architect** shall be final and binding on the parties.

5.2 From the **Occupation Date** until registration of transfer, the **Purchaser** shall pay occupational rental at the rate provided for in Clause 11 of the **Schedule of Particulars**. Such occupational rental shall be paid:

5.2.1 on the **Occupation Date** for the period from the **Occupation Date** until the last day of month in which the **Occupation Date** falls; and

5.2.3 thereafter monthly in advance on the first day of each and every succeeding month.

5.3 If the **Occupation Date** falls on a day other than the first day of a month, the Occupational Rental payable shall be adjusted proportionately.

5.4 **The Purchaser shall be liable for occupational rental irrespective of whether or not the Purchaser takes occupation or not.**

5.5 If a dispute arises between the parties as to whether the **Unit** is occupiable on the **Occupation Date**, the dispute shall be resolved by the **Seller's Architect**, whose decision shall be final.

5.6 **Notwithstanding any provision of this Agreement to the contrary, the Purchaser may only occupy the Unit once Guarantees have been furnished in compliance with this Agreement, all other payments due in respect of the Purchase Price have been provided and all retentions held by any Mortgagee granting any loan to the Purchaser for the acquisition of the Unit have been released (which might entail the Purchaser having to confirm in writing to the Mortgagee that the Purchaser is satisfied, in all respects, with the Unit and the Purchaser has signed all documentation necessary to have the Unit transferred into the name of the Purchaser and has delivered such documentation to the Seller's Conveyancers.**

- 5.7 **The Purchaser shall on the Occupation Date attend upon the Unit together with the Seller or its representative to inspect the Unit and compile a list of defects in respect of the Unit, which list must be signed by both the PURCHASER and the Seller or its representative. In the event that the Purchaser fails to attend upon the Unit between 8h00 and 16h00 on the Occupation Date, the Seller shall inspect the Unit and compile the list of defects on behalf of both the Seller and Purchaser and it shall be deemed that the Purchaser has agreed to and accepted the list of defects.**
- 5.8 The **Seller** undertakes to repair the defects referred to in paragraph 5.7 above within a reasonable time of receipt of a list from the **Purchaser** subject to the **Purchaser** giving reasonable access to the **Seller** to remedy the defects.
- 5.9 The **Purchaser** acknowledges and agrees that no further defects apart from that appearing on the defects list referred to in 5.7 above, shall be attended to by the **Seller**.
- 5.10 The **Seller** warrants the **Structure** and roof of the **Unit** against any defects for a period of 1 (ONE) year calculated from the **Occupation Date**, however, the **Seller** shall not be liable for any consequential damages arising, *inter alia*, from any leakage, for example any repair to or replacement of carpets, household goods, electrical appliances and the like, all of which shall be for the **Purchaser's** account.
- 5.11 On the **Occupation Date**, the **Purchaser** shall be obliged and required to pay water and levy deposits calculated by the **Managing Agent** before the keys to the **Unit** will be handed to the **Purchaser** and occupation and possession given to the **Purchaser**.

## 6. **CONDITIONS OF OCCUPATION**

From the **Occupation Date** the **Purchaser** shall, until the date of registration:

- 6.1 Comply with the provisions of the **Act** and of the **Rules** which will be applicable to the **Scheme** on the basis that the **Seller** shall, until the body corporate comes into being, enjoy the same rights and powers as the Body Corporate and the Trustees enjoy in terms of such **Rules**.
- 6.2 Waive all claims against the **Seller** for any loss or damage to property or for any injury to person which the **Purchaser** may sustain in or about the **Unit**, the **Buildings** or the **Common Property** and shall indemnify the **Seller** against any such claim that may be made against the **Seller** by any member of the **Purchaser's** family or the **Purchaser's** invitees, employees or agents for any loss or damage to property or injury to persons suffered in or about the **Unit**, the **Buildings** or the **Common Property** howsoever such loss or damage to property or injury to person may be caused.
- 6.3 Pay on demand all charges in respect of the electricity and other municipal services consumed or utilised in respect of the **Unit** on or before due date provided that if the **Purchaser** fails to pay any such amount the **Seller** shall be entitled to make payment thereof on the **Purchaser's** behalf and to recover same from the **Purchaser** together with interest at the **Effective Interest Rate** from the date on which such amount is disbursed by the **Seller** to the date upon which it is recovered, and to pay the charges raised by the relevant local authority for the commission and provision of electrical supply to the **Unit**.

- 6.4 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 **Buildings** may be rendered void or voidable or as a result of which the premiums in respect thereof may be increased.
- 6.5 Not make any alterations, additions or extensions to the interior or exterior of the **Unit** of whatsoever nature prior to transfer. After registration of transfer, all alterations, additions or extensions shall be dealt with in accordance with the **Rules**.
- 6.6 Maintain the **Unit** in a clean and orderly condition.
- 6.7 Be liable for and pay to the **Seller** or the appointed **Managing Agent** monthly in advance on the first day of each and every month the **estimated monthly levy** calculated on the basis of the **Participation Quota** in respect of the actual total costs of managing, operating, administering, repairing, servicing and maintaining the **Common Property** including, without restricting the generality of the foregoing, rates, taxes, sewerage and sanitation, insurances of every description as determined by the **Seller**, services, salaries, wages, licences, care and maintenance of the **Common Property**, the cost of water and electricity consumed in the **Common Property**, wages and other expenses and administration costs, including the cost of collection and recovery of the said costs (all of which costs and charges are hereinafter referred to as "total costs"). It is recorded that the total costs have been estimated and that in the event of such costs being greater than the actual costs incurred the excess shall be paid to the body corporate on its establishment in order to create a reserve. In the event of the estimate being less than the actual costs incurred the shortfall shall be contributed in accordance with the **Participation Quota**.
- 6.8 Not be entitled to let or otherwise part with possession and occupation of the **Unit** unless:
- 6.8.1 the **Purchaser** has obtained the prior written consent of the **Seller** which shall not unreasonably be withheld;
- 6.8.2 the **Purchaser** has furnished the **Seller** with the full names and details of the tenant/occupier that the **Purchaser** intends to let or grant possession and occupation of the **Unit** to;
- 6.8.3 the **Purchaser** has furnished the **Seller** or the **Managing Agent** with a copy of the Lease Agreement entered into between the **Purchaser** and his tenant/occupier, which Agreement must include a Clause stipulating that such tenant/occupier will be bound by the **Rules**;
- 6.8.4 the **Purchaser** hereby undertakes and guarantees that he, his tenant and/or occupier will duly comply with all the **Rules**;
- 6.8.5 the **Purchaser** hereby indemnifies the **Seller** against and agrees to be held liable for, any damages or loss that the **Seller** may suffer as a result of the **Purchaser's** tenant's or occupier's failure to comply with the **Rules**;
- 6.8.6 the **Purchaser** hereby agrees to accept liability and consents to be liable, for the purposes of this Clause 6, for any legal costs on an attorney and own client scale, incurred by the **Seller** or the **Managing Agent** to enforce the **Rules** against the **Purchaser** and/or his tenant/occupier; and

- 6.8.7 failure by the **Purchaser** to comply with this Clause 6.8 will be deemed a material breach of the **Agreement** and the **Seller**, notwithstanding anything else herein contained, will be entitled to invoke its rights in terms of Clause 12 hereunder.
- 6.9 Not sell or otherwise alienate the **Unit** except with the prior written consent of the **Seller**, which shall not unreasonably be withheld.
- 6.10 Acknowledge that on the **Occupation Date** the **Common Property** and other **Units** may be incomplete and the **Purchaser** and other occupiers must necessarily suffer inconvenience from building operations and from the noise and dust resulting therefrom and that the **Purchaser** shall have no claim whatsoever against the **Seller** by reason of any such inconvenience.

## 7. **CONDITION OF THE UNIT**

- 7.1 The **Purchaser** shall be obliged to accept transfer of the **Unit** subject to the Conditions, Reservations and Servitudes contained in the Sectional Title Register and the **Seller**, the Local Authority or any other authority may impose such conditions of Sectional Title.
- 7.2 The **Purchaser** acknowledges that the **Seller** shall be entitled at any time to make such changes to the **specifications and schedule of finishes** as may be reasonably necessary:
- 7.2.1 by reason of the non-availability of any item specified;
- 7.2.2 to meet the requirements of the financial institution providing mortgage finance to **Purchasers** in the **Scheme** or of the local authority; or
- 7.2.3 by reason of any directives given by the **Architect** of the **Scheme** for the enhancement generally of the **Scheme**, provided that there shall not be substantial or material change to the **specifications and schedule of finishes** which results in an inferior finish to the **Unit**.
- 7.3 **Subject to Clauses 5.7, 5.9 and 5.10 above, the Purchaser agrees to accept the Unit voetstoots and the Purchaser shall have no other claims against the Seller in respect of defects (whether latent or otherwise) in the Common Property or the Unit.**
- 7.4 The **Purchaser** shall not be entitled to withhold, set off, delay, abate payment or impose any conditions against payment of any amounts due to the **Seller** in terms of this **Agreement** by reason of any breach or alleged breach of the **Seller's** obligations hereunder or if any work of whatsoever nature is still required to be done by the **Seller** to any **Unit** at any time.

## 8. **SECTIONAL TITLE PLANS**

- 8.1. The **Purchaser** acknowledges that the **Sectional Title Plans** have not yet been approved and hereby agrees that the exact boundaries of the **Unit** forming a part of the **Unit** shall be those shown on the final approved **Sectional Title Plans** and the **Seller** warrants that they will be substantially in accordance with those set out in the Annexures hereto, and that the undivided share of the **Common Property** apportioned to the **Unit** shall be in accordance with the **Participation Quota** which is ultimately determined in terms of the **Act** upon approval and registration of the **Sectional Title Plans**.

8.2 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 **Participation Quota** of any **Unit** or **Units** or any increases in their number. In the event of the boundaries or the area of the **Unit** or any other **Unit** or **Building** differing in minor respects from the boundaries or areas shown on the **Scheme Layout Plan** or the number of the **Unit** being altered or the undivided share in the **Common Property** attaching the **Unit** being altered or any **Exclusive Use Area** or **Sole Utilisation Area** being altered, the **Purchaser** undertakes to accept transfer of the **Unit** as defined and renumbered in the **Sectional Title Plans** approved by the applicable municipality and the Surveyor-General.

8.3 The **Seller** undertakes to make every effort to ensure that the **Units** are constructed in accordance with the **Sectional Title Plans**. However, the **Purchaser** shall be obliged to accept the **Unit** without any variation in the **Purchase Price**, provided the deviation in the size of the **Unit** when complete, is no greater than 10% (TEN PERCENT) from that reflected in the **Sectional Title Plans**.

## 9. **OPENING OF THE SECTIONAL TITLE REGISTER**

The parties record that it is not possible for the **Seller** to pass transfer of the **Unit** to the **Purchaser** until such time as the **Scheme** is approved and the Sectional Title Register is opened in terms of the **Act**. Accordingly:

9.1 The **Seller** undertakes, within a reasonable time and at its own expense, to take such steps as may be reasonably necessary to obtain approval of the **Scheme** and the opening of the Sectional Title Register.

9.2 **Notwithstanding anything to be contrary herein contained, if the sectional title register is not opened within 18 (EIGHTEEN) months of signature date or 6 (SIX) months of the Occupation Date, whichever is the later, or such further period as may be agreed in writing between the parties, the Purchaser shall be entitled to declare this Agreement null and void in which event:**

9.2.1 the **Purchaser** and every person claiming occupation through the **Purchaser** shall vacate the **Unit** and the **Purchaser** shall redeliver the **Unit** to the **Seller** in the same good order and condition as at the **Occupation Date**, fair wear and tear excepted;

9.2.2 the **Seller** or the **Seller's Conveyancers** shall refund to the **Purchaser** any deposits paid by the **Purchaser** in terms hereof;

9.2.3 save as herein provided neither of the parties shall in such event have any further claim whatsoever against the other of them arising out of the termination of this **Agreement**.

9.3 The **Participation Quota** for the residential **Units** of the **Scheme** shall be determined as a percentage expressed to 4 (FOUR) decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the **Unit** of the floor area, correct to the nearest square metre, of all the **Units** in the **Building(s)** comprised in the **Scheme**.

## 10. TRANSFER OF THE UNIT

- 10.1 It is the **Seller's** intention that transfer of the **Unit** shall be effected by the **Seller's Conveyancers** simultaneously with the opening of the Sectional Title Register or so soon thereafter as may be reasonably possible.
- 10.2 The **Purchaser** shall, within 7 (SEVEN) days of being called upon to do so by the **Seller's Conveyancers** at a reasonable time (having regard to the date when transfer can and should be given) furnish all such information, sign all such documents and pay all such amounts as may be necessary or required to enable the **Seller's Conveyancers** to pass Transfer of the **Unit**.
- 10.3 **The costs of Transfer and Bond shall be borne by the Seller, subject to the conditions contained in Clauses 4.1.4, 4.1.5 and 4.1.6 above.**
- 10.4 Subject to the provisions of the **Act**, the **Purchaser** shall not, by reason of any delay in the transfer of the **Unit** to him due to any cause whatsoever, be entitled to cancel this contract or to refrain from paying, or suspend payment of, any amount payable by him in terms of this **Agreement** or to claim and recover from the **Seller** any damages or compensation or any remission of occupational rental.

## 11. RISK, DAMAGE AND DESTRUCTION

- 11.1 All benefit of and risk in and to the **Unit** shall pass to the **Purchaser** on the **Occupation Date**.
- 11.2 It is recorded that the **Seller** shall, before the body corporate comes into existence, insure the **Buildings** against such risks and for such amounts as it may in its sole discretion determine.

## 12. BREACH BY PURCHASER

- 12.1 If the **Purchaser** defaults in the payment of any sum whatsoever payable by him in terms hereof or delays the registration of transfer of the **Unit** for whatsoever reason or the **Purchaser** markets the **Unit** in any manner by placing advertisements or appoint a selling agent, or any other manner of marketing before the **Unit** is registered into the name of the **Purchaser** (save as may be provided for) or breaches any of his other obligations (all of which are agreed to be material) hereunder or in terms of the **Act** or the **Rules** and fails to remedy such default or breach within 7 (SEVEN) days of despatch of a written notice requiring the remedy of such default or breach, the **Seller** shall be entitled, without prejudice to any other rights available to it in terms of this **Agreement** or in law:
- 12.1.1 to claim and recover from the **Purchaser** forthwith the whole of the balance of the **Purchase Price** then outstanding together with interest thereon reckoned as herein before provided up to the date of payment of such balance as well as all other sums for which the **Purchaser** may then be liable in terms of this **Agreement**, including, but not limited to, any costs (as between attorney and own client) incurred by the **Seller** in exercising its rights under or enforcing the provisions of this contract in addition to costs of attendance whether action has been instituted or not, and including costs of tracing; provided that if the **Purchaser** fails to make payment as provided for in terms of this sub- clause, the rights of the **Seller** under this **Agreement** shall not be exhausted and the **Seller** shall notwithstanding the election to claim immediate payment be entitled to exercise any of the rights available to it in terms hereof or at law; or



- 12.1.2 to cancel this **Agreement**, repossess the **Unit** and claim from the **Purchaser** such damages as it may have sustained by reason of the cancellation; or
- 12.1.3 to cancel this **Agreement**, repossess the **Unit** and retain all amounts which the **Purchaser** has paid in terms hereof as a genuine pre-estimate of the damages which the **Seller** has sustained by reason of such cancellation in which event the **Purchaser** shall be deemed to have irrevocably instructed the **Seller's Conveyancers** to pay to the **Seller** any **Deposit** paid by him in terms hereof and invested by the **Seller's Conveyancers** on his behalf.
- 12.2 If this **Agreement** is cancelled as hereinbefore provided, the **Purchaser** and all persons claiming a right of occupation through the **Purchaser** (together with all those holding through or under the **Purchaser**), shall forthwith **vacate** the **Unit** and deliver it to the **Seller**. No Lease or Right of Occupation in favour of the **Purchaser** shall be created or come into existence by virtue of this **Agreement**.
- 12.3 If the **Purchaser** disputes the **Seller's** right to cancel this **Agreement**, then pending the determination of such dispute, the **Purchaser** shall be obliged **to continue to pay all** amounts payable by him in terms of this **Agreement** on the due dates thereof and the **Seller** shall be entitled to accept such payments without prejudice to its rights of cancellation as aforesaid. If such dispute is decided in favour of the **Seller** then such amounts so received by the **Seller** after cancellation as aforesaid shall be deemed to have been paid to the **Seller** prior to cancellation.

### 13. **DOMICILIUM**

13.1 The parties choose their *citandi et executandi* for all purposes under this **Agreement** whether in respect of court process, notices or other documents or communications of whatsoever nature, at the following addresses:

13.1.1 the **Seller**:

Domicilium address: as per Clause 1.3 of the **Schedule of Particulars**

E-mail: as per Clause 1.6 of the **Schedule of Particulars**

13.1.2 the **Purchaser**:

Domicilium address: as per Clause 2.1.6 of the **Schedule of Particulars**

E-mail: as per Clause 2.1.5 of the **Schedule of Particulars**

13.2 Any party shall be able to change his *domicilium citandi et executandi* by written notice to the other. Such change of *domicilium citandi et executandi* shall take effect on the fourteenth day after the delivery to the other parties of the notice referred to therein.

13.3 All notices in terms of this **Agreement** shall be in writing and shall be either:

13.1.1 delivery by hand to the *domicilium citandi et executandi* of the other party, in which case it shall be deemed to have been given and such other party shall be deemed to have been informed of the contents of the notice when the notice is so delivered; or

13.1.2 sent by e-mail at the *domicilium citandi et executandi* of the other party, in which case it shall be deemed to have been given to the other party and such other party shall be

deemed to have been informed of the contents of the notice on the day on which it was sent by e-mail.

#### 14. **CAPACITY OF PURCHASER**

- 14.1 Should the **Purchaser** be married in community of property he/she warrants that his/her spouse shall forthwith countersign this **Agreement** where indicated and thereby:
- 14.1.1 contractually assist him/her herein as far as may be necessary, if at all; and
- 14.1.2 bind him/herself as surety and co-principal debtor jointly and severally with him/her for all his/her obligations arising from this **Agreement**; and
- 14.1.3 Commit him/herself also to assist and so bind him/herself in respect of the **Purchaser's** application and to procure a Mortgage Loan and in respect of the Mortgage Loan itself, as contemplated in Clause 4.1 hereof, should any proposed Mortgage be so required.
- 14.2 Should there be a plurality of **Purchasers** in terms of this **Agreement**; their obligations arising from this **Agreement** shall be joint and several.
- 14.3 Should the **Purchaser** sign this **Agreement** as trustee or agent for a company or close corporation to be formed, the signatory shall be deemed to be personally liable in terms of this **Agreement** should the company or close corporation not be incorporated or ratify and adopt this **Agreement** within 60 (SIXTY) days of the date of signature hereof. Upon incorporation and ratification as aforesaid, the **Purchaser** by his signature hereto bind himself as surety for and co-principal debtor *in solidum* with the company or close corporation **Purchaser** of its obligations arising out of this **Agreement**. The **Purchaser** shall be obliged to furnish the **Seller's Conveyancers** with written proof of such incorporation and ratification within 10 (TEN) days of such incorporation and adoption, failing which the signatory shall be the **Purchaser** in his/her personal capacity.

#### 15. **OFFER TO PURCHASE**

Signature of this **Agreement** by the **Purchaser** shall be deemed to constitute an offer by the **Purchaser** to the **Seller** to enter into this **Agreement** which offer shall not be capable of revocation or withdrawal by the **Purchaser** for a period of 30 (THIRTY) days after signature of this **Agreement** by the **Purchaser**. This **Agreement** shall be binding on the **SELLER** only when duly signed by it until which time no obligation or liability on the part of the **SELLER** shall be deemed to exist. It shall not be necessary for the **Seller** to communicate to the **Purchaser** its acceptance of the offer constituted in terms hereof for this **Agreement** to become valid and binding.

#### 16. **JURISDICTION**

The **Seller** and the **Purchaser** hereby consent in terms of *Section 45 of the Magistrate's Court Act, No 32 of 1944*, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction over their respective person under Section 28 of the above Act, to determine any action or other legal proceedings arising out of this contract. Notwithstanding anything aforesaid, the **Seller** shall not be bound to bring any action arising from this contract in or before a Magistrate's Court, but may do so in any other court of competent jurisdiction should it so wish.

## 17. REFEREE

If the **Purchaser** disputes any decision of or matter certified by the **Seller's Architect** in terms of this **Agreement**, a referee shall determine such disputes that shall be an **Architect** agreed upon between the parties and, failing Agreement, nominated by the Institute of South African Architects. The said referee shall act as an expert and not as an arbitrator and shall accordingly not be bound by any rules of court and/or arbitrators. The said referee shall be entitled to determine whether, how, where and when submissions are to be made to him, it being the intention of the parties that any such disputes shall be determined at the minimum cost and with the minimum delay possible in the circumstances. Any decision of the said referee, including any decision as to costs, shall be final and binding upon the parties and shall not be open to dispute by either of them.

## 18. SELLER'S RIGHT

18.1 Pending establishment of the body corporate the **Seller** shall be entitled to:

18.1.1 make **Conduct Rules** for the use and enjoyment of the **Common Property**;

18.1.2 enter the **Unit** at all reasonable times or to authorise its agents or workmen so to enter to inspect same or to carry out repairs; and

18.1.3 exercise all the rights and powers which a body corporate would be entitled to exercise in terms of the **Act** in respect of the **Building**, the **Land** and the owners and/or occupants of **Units**.

18.2 The **Purchaser** hereby appoints the **Seller** or the **Seller's** nominee, irrevocably and in *rem suam* and with power of substitution, to be his lawful agent and attorney to convene such meetings of the body corporate as it deems necessary and there to vote as the **Purchaser's** proxy in favour of any resolution of the body corporate to amend the **Rules** or pass any other resolution as may be required:

18.2.1 by any Bondholder for the grant of its consent to the opening of the Sectional Title Register;

18.2.2 by the Local or Provincial Authority and/or by a Mortgagee prior to the grant of a Sectional Mortgage Bond over a **Unit** in the **Scheme**;

18.2.3 by the **Seller** in order to ensure the proper and efficient management and control of the **Scheme**, or to ensure that the **Seller** is able to exercise in full its rights to develop the **Scheme** further and to do all things and sign all documents on the **Purchaser's** behalf to give effect to such resolution.

## 19. CESSION OF RIGHTS

19.1 The **Seller** hereby undertakes wherever possible to cede to the body corporate all its rights in respect of any guarantees or warranties provided to the **Seller** by contractors employed by it during the construction of the **Scheme**.

19.2 If any right is ceded in terms of Clause 19.1 above, the **Purchaser** acknowledges that the sole right to prosecute any claim in terms of any warranty shall vest in the body corporate only. The **Purchaser** therefore waives any claim which it might otherwise have had against the **Seller** in respect of any defect in workmanship or materials covered by the warranty or

guarantee ceded to the Body Corporate by the **Seller**; provided that this Clause shall not affect any claim the **Purchaser** may have against the **Seller** in terms of Clause 7.3.

19.3 Insofar as may be necessary, the **Purchaser** hereby authorises and directs the body corporate, when established, to accept any cession of the **Seller's** rights included in any warranty by any contractor as contemplated herein.

## 20. **ELECTRICAL COMPLIANCE CERTIFICATE**

20.1 The **Seller** shall be responsible for obtaining, on or before the **Occupation Date**, a Certificate of Compliance in accordance with the provisions of Regulations issued in terms of the *Machinery and Occupational Safety Act (No. 6 of 1983)*. Such Certificate shall be made available to the **Seller's Conveyancers** when called for by them.

20.2 The party in occupation of the **Unit** at any time after issue of the Certificate contemplated in Clause 20.1 above, undertakes not to effect any alteration of whatsoever nature to the electrical installation in respect of the **Unit** after the date of issue of such Certificate.

## 21. **NHBRC**

The **Seller** and the **Builder** will, on behalf of the **Purchaser** ensure that the **Builder** obtains the required NHBRC Enrolment Certificate/s in the name of the **Builder** and undertakes to abide by all the Rules and Regulations imposed by the NHBRC from time to time.

## 22. **AGENT**

The **Seller** shall pay the **Agent's** commission to the estate **Agent**. The **Agent's** commission shall be deemed to be earned on signature of this **Agreement** by both the **Seller** and the **Purchaser** and fulfilment of all the suspensive conditions contained herein and payable on registration of transfer of the **Unit** into the name of the **Purchaser**. **Should the Purchaser fail to carry out any condition of this Agreement, the Seller and/or the Agent shall be entitled to claim commission from the Purchaser notwithstanding the non-registration of the transfer in the name of the Purchaser.**

## 23. **EXTRAS**

23.1 **The Seller shall at no point in time be obliged to agree to any extras, omissions, variations or changed of any nature whatsoever to the Unit.**

23.2 **In the event that the Seller agrees to the execution of any extra work, then in such event, the Seller will not commence and/or proceed with such work until such time that:**

23.2.1 **all suspensive conditions contained herein have been met; and**

23.2.2 **payment for such extra work has been made in advance and in full to the Seller.**

24. **GENERAL**

- 24.1 This **Agreement** represents the entire **Agreement** between the parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect save as expressly included herein. No variation of or addition to or consensual cancellation of this **Agreement** and no waiver by the **Seller** of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.
- 24.2 If more than one person as **Purchaser** signed this **Agreement** the obligations of all the signatories shall be joint and several. If this **Agreement** is not signed by all the persons named as **Purchasers**, this **Agreement** shall nonetheless be and shall remain binding on the **Purchasers** who have signed this **Agreement**.
- 24.3 No latitude, extension of time or other indulgence which may be given or allowed by the **SELLER** to the **Purchaser** in respect of any of its obligations in terms of this **Agreement** shall constitute a waiver, abandonment or novation of the **Seller's** rights in terms hereof.
- 24.4 The **Purchaser** shall pay all costs and charges incurred by the **Seller** including attorney and own client charges and collection commission incurred by the **Seller** in recovering any amount due in terms of this **Agreement** or in enforcing any provision of this **Agreement**.
- 24.5 This **Agreement** shall be binding on the **Seller** only when duly signed by it until which time no obligation or liability on the part of the **Seller** shall exist and no right shall be acquired by the **Purchaser**.

25. **CONSUMER PROTECTION ACT**

- 25.1 The **Purchaser** acknowledges that this **Agreement** contains certain provisions which:
  - 25.1.1 **limit the risk or liability of the Seller;**
  - 25.1.2 **constitute an assumption of risk or liability on the part of the Purchaser;**
  - 25.1.3 **impose an obligation on the Purchaser to indemnify the Seller; and / or**
  - 25.1.4 **constitute an acknowledgement of facts by the Purchaser.**
- 25.2 **The Purchaser's attention is specifically drawn to these provisions, which are highlighted in bold text. The Purchaser acknowledges that the Seller has provided sufficient time and opportunity for the Purchaser to receive and comprehend the nature and effect of the provisions.**

26. **SPECIAL CONDITIONS**

---

---

---

---

