

# **AGREEMENT OF SALE**

IN RESPECT OF

## **SECTIONAL TITLE UNITS AND EXCLUSIVE USE AREA/S**

In the Development of the proposed Sectional Title Scheme known as

**BERULA**

Situated at

**ERF 816 BRENTWOOD EXTENSION 29**

An Agreement entered into between

**CJP 1063 HOLDINGS (PTY) LTD**

**REGISTRATION NUMBER: 2017/398514/07**

**(the “Developer”)**

And

**THE PURCHASER**

**Whose details appear in the Information Schedule**

**(the “Purchaser”)**

**INFORMATION SCHEDULE**

**1. Developer's Details:**

**Full Name: CJP 1063 HOLDINGS (Proprietary) Limited**

**Registration Number: 2017/398514/07**

Business Physical Address: ERF 816 EXTENSION 29 BRENTWOOD PARK

Postal Address: PO BOX 4463 TZANEEN 0850

Telephone Number: 015 307 3734 / 083 305 1399

VAT Registration Number: 4710282999

Email: [cjpretor1@gmail.com](mailto:cjpretor1@gmail.com) / [cjp.eiendomme@mweb.co.za](mailto:cjp.eiendomme@mweb.co.za)

Authorised Signatory: CJ PRETORIUS

**2. Purchaser's Details:**

Full Names: \_\_\_\_\_

Registration Number/Identity Number: \_\_\_\_\_

Full Names: \_\_\_\_\_

Registration Number/Identity Number: \_\_\_\_\_

Full names of authorised person in the case of a legal entity or trust: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Postal Address \_\_\_\_\_

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

Cellular Phone Number: \_\_\_\_\_

Marital Status: \_\_\_\_\_

Place of Marriage: \_\_\_\_\_

VAT Registration Number (if applicable) \_\_\_\_\_

Income Tax Registration Number \_\_\_\_\_

**3. Purchase Price:**

Purchase Price (inclusive of VAT)	R
Deposit payable within 7 (Seven) days from date of acceptance	R30,000.00
Balance of Purchase Price:	R
Mortgage Bond Required – Y / N	
Amount Required	R
Date for loan approval	30 (Thirty) days from date of acceptance.
<b>Balance of Purchase price to be paid Into Conveyancer’s trust account or Guarantees to be delivered to the satisfactory of the Conveyancer’s</b>	Within 14 (Fourteen) days of signing of this agreement or within 14 days from obtaining bond approval

**4. Property Description:**

Section \_\_\_\_\_ BERULA (as indicated on the Site Development Plan attached hereto as Annexure “A”)

In extent: ± \_\_\_\_\_ sqm together with

Exclusive Use Area Garden

In extent: ± \_\_\_\_\_ sqm.    
Yes No

Exclusive Use Area Patio

In extent: ± \_\_\_\_\_ sqm.    
Yes No

**5. Estate Agent’s Details:**

Agency Name: \_\_\_\_\_

VAT No.: \_\_\_\_\_

Estate Agents Name: \_\_\_\_\_

Estate Agent’s Income Tax No.: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Commission: AS PER AGREEMENT BETWEEN THE DEVELOPER AND THE ESTATE AGENT.

**6. Bond Originator : IF APPLICABLE**

Agency Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Number: \_\_\_\_\_

**7. Conveyancers:**

Firm Name: JOUBERT & MAY ATTORNEYS.

Address: 50 BOUNDARYSTREET TZANEEN 0850

Contact Person: ELANA GOOSEN

Contact Number: 015 – 307 3660

Contact Email: [elana@joubertmay.co.za](mailto:elana@joubertmay.co.za)

**8. Conveyancers Banking Details:**

**JOUBERT MAY ATTORNEYS**

Bank: ABSA BANK

Branch: TZANEEN

Branch Code: 632-001

Account Number: 1260 430 161

Proof of Payment: [elana@joubertmay.co.za](mailto:elana@joubertmay.co.za)

**9. Surety:**

Full name: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Email: \_\_\_\_\_

**10. List of Annexures:**

**Annexure A – Proposed Site Development Plan**

**Annexure B – Schedule of Finishes**

**Annexure C - Suretyship**

## **CONSUMER PROTECTION ACT 68 OF 2008 (CPA)**

- **In order to protect the Purchaser's rights in terms of the CPA certain clauses in the terms and conditions of this sale agreement have been highlighted specifically to draw the Purchaser's attention thereto, as these clauses affect the rights, obligations and liabilities of the Purchaser.**
- **It is further recommended that:**
  - **The Purchaser carefully reads this agreement (and its Annexures);**
  - **The Purchaser consults a suitably qualified person to assist the Purchaser in the interpretation and conclusion of this agreement, and;**
  - **The Purchaser advises the Developer 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.**
- **Insofar the defects rectification process (more fully set out in paragraph 9 of the agreement) is concerned, it is specifically recorded that the Development has not yet been built and the Purchaser therefor expressly agrees to accept the property in the condition it is upon practical completion, subject further to the agreed defects rectification process which provides for the identification of and remedying of the defects in the property subsequent to the Purchaser having purchased and taken occupation of the property.**

### **WHEREAS:**

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

### **1. INTRODUCTION**

1.1 The Developer is the registered owner of the land situated at ERF 816 BRENTWOOD EXTENSION 29, Registration Division IR, GAUTENG PROVINCE.

1.2 The Developer is undertaking a Sectional Title Development on the land known as BERULA.

1.3 The Developer intends erecting the Development in phases. The Developer intends applying in terms of the provisions of Act 95/1986, as amended, for the opening of Sectional Title Registers in phases in respect of the aforesaid scheme.

1.4 The Developer has agreed to sell and the Purchaser has agreed to purchase the property described in the Information Schedule, being a sectional title unit in a sectional title scheme to be constructed in the Development by the Developer. The parties accordingly agree on the terms set out in this agreement.

## 2. **INTERPRETATION**

In this agreement -

2.1. an expression which denotes any gender includes the other genders, a natural person includes a legal entity and *vice versa*, and the singular includes the plural and *vice versa*;

2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings -

2.2.1 "Acts" means Sectional Titles Act 95 of 1986 and Sectional Titles Schemes Management Act 8 of 2011 and all regulations attached to both acts;

2.2.2 "Agreement" means this sale agreement, including all annexures, addendums or written amendments;

2.2.3 "Approvals" means the final approvals 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;

2.2.4 "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 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;

- 2.2.5 “Building” means the buildings, comprising of sectional title sections in the scheme, to be constructed on the land. As appears more fully on the proposed site development plan;
- 2.2.6 “Body corporate” means the body corporate established in relation to the scheme as contemplated in the Acts, and which, upon registration of the Sectional Plans and the opening of the Sectional Title Register will administer the Property.
- 2.2.7 “Days” means a calendar days which is includes Saturday, Sunday or a Public Holiday in the Republic of South Africa;
- 2.2.8 “Common property” means the such parts of the scheme which do not form part of a section and it shall at all times be in the sole discretion of the Developer as to:
- 2.2.8.1 the use to which the common property may be put; or
- 2.2.8.2 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;
- 2.2.9 “Consumer Protection Act” means the Consumer Protection Act 68 of 2008;
- 2.2.10 “conditions precedent” means as set out in paragraph the agreement below;
- 2.2.11 “Conveyancers” means as described in the Information Schedule;
- 2.2.12 “Defects” means a defect which a reasonably inspection of the property would disclose, including the normal snagging items, identified by the Purchaser and to be remedied by the Developer in order to achieve final completion, and as dealt with more fully in paragraph 9 of this agreement.
- 2.2.13 “Defects List” means the list setting out the defects, prepared by the Purchaser;
- 2.2.14 “Developer” means as described in item 1 of the Information Schedule;
- 2.2.15 “Development” means the development to be constructed and developed by the Developer in phases, in the scheme known as BERULA , comprising of sectional title units, exclusive use areas and as more fully shown on the proposed Site Development Plan;

- 2.2.16 "Development Period" means the period up to the date that all the sectional title units in the Development have been transferred from the Developer to third parties and the property have been improved by the erection of buildings thereon, including all such additional area(s) as may be incorporated in further phases into the Development;
- 2.2.17 "Estate Agent" means as described in the information Schedule;
- 2.2.18 "Exclusive Use Areas" means the exclusive use areas which may include garden and/or patio or such other areas as may be more fully described in the Site Development plan and the Information Schedule, which upon the opening of the notarial execution and registration of the notarial deed into the name of the Purchaser will become exclusive use areas for the purposes of the Sectional Titles Scheme Act, and forming part of the property, which area will be for the benefit and exclusive use of the owner of the Sectional Title unit to which it was allocated.
- 2.2.19 "Final Completion" means state of completion of the Section, when all defects in the defects, if any, list have been remedied by the Developer;
- 2.2.20 "Final Completion Date" means the date on which final completion is achieved;
- 2.2.21 "Land" means the land owned by the Developer, on which the development is to be constructed being ERF 816, BRENTWOOD, Registration Division IQ GAUTENG Province;
- 2.2.22 "Levies" means the monthly levies raised by the Body Corporate in terms of the Rules, as contemplated in the Sectional Titles Scheme Act;
- 2.2.23 "Local Authority" means EKURELENI Local Municipality and any other authority having jurisdiction over the development;
- 2.2.24 "Occupancy Certificate" means the certificate issued by the Local Authority that the property has been completed in accordance with the approved Sectional Plan and that the Section is fit for occupation;
- 2.2.25 "Occupation Date" means the date on which the Purchaser is given beneficial occupation of the property;



- 2.2.26 "Property" means the Section and the Exclusive Use Areas as described in the Information Schedule, together with an undivided share in the common property, which forms the subject matter of this agreement;
- 2.2.27 "Purchase Price" means the purchase price of the property as recorded in the Information Schedule;
- 2.2.28 "Purchaser" means as described information Schedule;
- 2.2.29 "Register" means the sectional title register in respect of the scheme to be opened by the Developer in terms of the Act and to be amended from time to time;
- 2.2.30 "Scheme" means the proposed sectional title scheme to be known as BERULA;
- 2.2.31 "Section" means the building, more fully described in the Information Schedule which, on the opening of the register, will become a section for the purposes of the Acts;
- 2.2.32 "Sectional Plan" means the sectional plan in respect of the scheme as approved by the Surveyor-General and registered in the Deeds Office;
- 2.2.33 "Site Development Plan" means the proposed plan depicting the development, attached hereto as Annexure A;
- 2.2.34 "Signature Date" means the date of signature of this agreement by the party signing last in time;
- 2.2.35 "STA" means the Sectional Titles Act 95 of 1986;
- 2.2.36 "STMA" means the Sectional Titles Schemes Management Act 8 of 2011;
- 2.2.37 "Transfer" means registration of transfer of the property into the name of the Purchaser in the Deeds Office;
- 2.2.38 "Unit" means the Section together with its undivided share in common property apportioned to the section in accordance with its participation quota;
- 2.2.39 "VAT" means value-added tax from time to time in terms of the Value-Added Tax Act No. 89 of 1991.

### 3. SALE OF THE PROPERTY

The Purchaser hereby offers to purchase from the Developer the property which upon acceptance, the Developer agrees to sell on terms and conditions set out in this agreement, as will be finally described in the Sectional Plan read with the Register.

### 4. PURCHASE PRICE AND PAYMENT

4.1. The purchase price for the property shall be the sum stated in the Information Schedule, which purchase price is inclusive of VAT at the rate at the time of signature of this agreement.

4.2. The purchase price shall be payable as follows:

4.2.1. a holding deposit in the amount of **R30,000.00** (Thirty Thousand Rand) within 7 (Seven) days of the signing date, which amount shall be paid to the Conveyancers in trust who, pending transfer of the property into the name of the Purchaser, shall invest such amount, and/or any other deposit paid by the Purchaser, with ABSA BANK (and are hereby authorised to do so,) on the basis that:

4.2.1.1. the amount is invested in an interest-bearing account in accordance with the provisions of Section 86(4) of the Legal Practice Act for the benefit of the Purchaser; and

4.2.1.2. on registration of transfer of the property into the name of the Purchaser, the Conveyancers shall pay the deposit to the Developer and the interest earned thereon to the Purchaser;

4.2.2. the balance of the purchase price shall be payable in cash against registration of transfer of the property into the name of the Purchaser and shall be secured by payment of the balance Purchase Price into the trust account of the Conveyancer or in the alternative by issuing a bank guarantee/s acceptable to the Conveyancer. Such guarantees shall be furnished to the Conveyancers within 14 (Fourteen) days from date of signature of this agreement or within 14 (Fourteen) days from date of approval of the bond as stipulated in this agreement.

4.2.3. The Conveyancers will be entitled to an investment fee on the above deposit.

4.2.4 **The Purchaser will be required to comply with the Financial Intelligence Centre Act No. 38 of 2001 and consequently:**

**4.2.4.1 acknowledge that the deposit payable by the Purchaser cannot be invested and accordingly, interest cannot accrue thereon, until such time the said requirements have been met; and**

**4.2.4.2 hereby renounces any claim or 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.**

## **5. TRANSFER OF THE PROPERTY**

5.1. Transfer of the property shall be registered by the Developers Conveyancers on or as soon as is reasonably possible and simultaneously with or as soon as possible after the opening of the Register.

5.2 **The Developer shall not be liable in any manner if transfer is delayed for whatever reason outside his control, and the Purchaser shall be obliged to take transfer when it is tendered. Should this period exceed a reasonable time, which the parties agrees is at least 24 (Twenty Four) months from date of signature until the date on which the transaction are ready to be lodged in the Deeds Office, the Developer will refund to the Purchaser all monies received and the transaction can be cancelled in writing by the Purchaser, giving due written notice to the Developer as per this agreement. Should this be the scenario, the Estate Agent will have no claim to either of the parties or the Conveyancers.**

5.3 Transfer shall not be passed to the Purchaser until such time as the total purchase price and other amounts (including costs) due by the Purchaser have been paid in full, and/or payment thereof has been secured to the satisfaction of the Conveyancers.

5.4. The Purchaser shall, upon request by the Conveyancer, pay all transfer fees, fees for registration of notarial deeds, bond registration fees if applicable, and any other costs incidental to the transfer. The Purchaser shall in addition pay

to the Developers Conveyancers an amount equal to 2 (two) months' monthly levy for the period following transfer.

- 5.5 **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 2% 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 Conveyancer's shall, in making the decision aforesaid, act as experts and not as arbitrators.**

## **6. POSSESSION AND RISK**

- 6.1. The Developer shall give the Purchaser possession and occupation of the property on the date of transfer or as otherwise agreed in writing by the parties.
- 6.2. On the Occupation Date, all risk and benefit in and to the Property shall pass from the Developer 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.
- 6.3. If, by agreement, the Developer gives the Purchaser possession of the property prior to registration of transfer, occupational rent will be payable monthly in advance by the Purchaser to the Developer in the amount of **R.....** which amount will be due and payable to the Developer from date of occupation and thereafter on the 1<sup>st</sup> day of each and every month.
- 6.4. The Purchaser will 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.

- 6.5 **Notwithstanding the above, the Developer shall not be obliged to give occupation of the property to the Purchaser, unless:**
- 6.5.1 **the deposit has been paid and the purchase price satisfactorily secured; and**
  - 6.5.2 **all transfer and bond documents have been signed to the satisfaction of the Conveyancer.**
- 6.6 Until the date of transfer, the Purchaser shall:
- 6.6.1 not sell, let or in any other manner dispose of or part with the property or any of its rights thereto without the Developers prior written consent. If granting consent, which the Developer is not obliged to do, the Developer shall be entitled to impose such reasonable conditions as it deems necessary; or
  - 6.6.2 not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Developer in respect of the property is rendered as void or voidable or as result of which any premiums are increased; and
  - 6.6.3 maintain the property in a clean and tidy condition;
  - 6.6.4 permit the Developer or agent at all reasonable times to enter and inspect the property, provided the Purchaser has been given prior notice;
  - 6.6.5 Shall be bound by all the provisions of the Acts.
- 6.7 If this agreement is cancelled or lapses prior to date of transfer, the Purchaser shall immediately vacate the property which shall revert to the Developer in the same condition as it was prior to Purchaser taking possession and occupation.

## **7. ACKNOWLEDGEMENTS BY PURCHASER**

The Purchaser acknowledges that:

- 7.1 The Property will fall under the governance of the relevant Sectional Title Acts and the Body Corporate with regards to all rules, regulations, conditions, servitudes of whatever nature pertaining to the Sectional Title Development and agrees to be bound thereby from date of occupation;
- 7.2 The Plans have not been finally prepared or approved, and that accordingly the exact and final boundaries and areas of the property will as shown on the Sectional Plan as finally approved and registered;

- 7.3 Transfer of the property is able to take place only upon completion of the unit and exclusive use areas sold in this agreement, simultaneously with or forthwith after the opening of the Sectional Title Register or the amendment thereof.
- 7.4 Subject to other terms in this agreement, 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 of the property from that shown in the Information Schedule;
- 7.5 It undertakes to accept transfer of the property as may be redefined and re-numbered in the Sectional Plan Approved by the relevant local authority and the Surveyor- General;
- 7.6 He is aware that the sections and exclusive use areas in the scheme may be utilised for residential purposes only, unless approved by the Body Corporate and local authority for other uses. It is clearly stipulated in this agreement that the Developer reserve the right to do rentals on certain parts of the Sectional Title Development, subject to compliance to the regulations of the local authority with regards to land use.
- 7.7 The exclusive use areas shall be allocated to the Purchaser by the Developer in terms of this agreement and in accordance with the Acts;
- 7.8 On occupation date, some portions of the development may be incomplete. The Purchaser acknowledges that the Developer intends to construct the development and install all the necessary services in phases, which may take place after transfer, and that the Purchaser may suffer inconvenience from ongoing building operations, noise, dust and other nuisance factors in this regard;
- 7.9 The Purchaser shall have no claim whatsoever against the Developer nor be entitled to interdict, cancel this agreement or withhold any payments to the Developer, provided that the Developer shall use its best endeavours to complete all aspects of the construction and the completion of the development as expeditiously as is possible in the circumstances;
- 7.10 Transfer to the Purchaser of the property may, in the discretion of the Developer, 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 rent shall remain and be unaffected by any delay occasioned by the above;

- 7.11 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 his obligations in terms of this agreement;
- 7.12 All artistic, architectural, photographic and other visual presentation material including brochures, and pamphlets, used by the Developer or its agents in marketing and selling the property have been prepared, distributed and shown as advertising material only, that the Developer 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 Developer, and that the parties shall be bound by the terms contained in this agreement only;
- 7.13 The Developer has at his own cost installed bulk sewerage, water and electrical reticulation required to service the property;
- 7.14 The Seller may be required to subdivide and/or rezone and/or consolidate any of the land in which case the Purchaser agrees and undertakes not to object against any such subdivision and/or rezoning and/or consolidation;
- 7.15 Warrant 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 certificate from SARS or cause any financial institution granting any loan finance (if applicable) to the Purchaser, to withdraw the aforesaid finance offered.
- 7.16 The purchase price is inclusive of VAT. Should the VAT rate change at any time, the purchase price will automatically be increased accordingly.

## **8. UNDERTAKINGS AND WARRANTIES BY THE DEVELOPER**

- 8.1 The Developer undertakes that it:
- 8.1.1 will take all reasonable steps necessary to procure the Approval of the Sectional Plan and the opening/amendment of the Register as soon as possible after the completion of the property in terms of this agreement;

- 8.1.2 will construct and complete the Scheme, Property and the Building substantially in accordance with the Plans, read with the Specifications, in good and workmanlike manner, provide only that if any items in the Specifications are not available, the Developer shall be entitled to substitute items of the same standard and quality, as provided in this agreement;
  - 8.1.3 will construct, erect and complete the Development substantially in accordance with the proposed Site Development Plan;
  - 8.1.4 subject only to "*vis maior*", industrial action and other factors beyond the control of the Developer, will take all reasonable steps necessary to procure that the Occupation Date will take place as soon as possible after the anticipated Occupation Date.
- 8.2 All undertakings hereby given to the Purchaser are personal to the Purchaser and cannot be alienated by it in any way.

## **9. DEFECTS**

- 9.1 The Purchaser 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 Developer 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 Developer's determination, and as contemplated in Section 53(1) of the CPA.
- 9.2 The Purchaser shall, within 30 (Thirty) days of the Date of Occupation, deliver to the Developer a list, signed by himself, enumerating any defects in the Section where same are due to defective materials or workmanship, and the Developer 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 Architect, 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 Developer within the aforesaid 30 (Thirty) day period, then in that event, the Purchaser shall be deemed to have inspected the Section and not found any defects therein.



- 9.3 The Developer 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 Architect or Principal Agent will issue the Final Completion Certificate, which shall be final and binding on the parties and no further liability shall attach to the Developer in respect of such Defects.
- 9.4 The Purchaser shall allow the Developer and all persons authorized or employed by the access the Property for the purposes of inspection and effecting the repairs. If the Purchaser fails or refuse to give such access, despite reasonable notice being given by the Developer, then the Purchaser shall be deemed to have accepted the Property is free of Defects.
- 9.5 For a period of 5 years from the Final Completion Date, the Developer shall expeditiously remedy any major latent and/or structural defects which appear in the Property, provided that the Purchaser notifies the Developer in writing of such structural defects within the said 5-year period.
- 9.6 From the Final Completion Date, for a period of 5 years, the Developer shall remedy any leaks in the roof of the Property, provided the Purchaser notifies the Developer in writing of such leaks in terms of the national Home Builders Registration Council (“NHBRC”).
- 9.7 Whether a defect is a defect falling within the provisions as described in this agreement, and if it is such a defect, whether the defect has been satisfactorily remedied, shall be finally determined by the Architect, whose certificate in this regard, save in the case of manifest error shall be final and binding on the parties. The project manager/developer shall act as an expert and not an arbitrator when making his determination aforesaid.
- 9.8 Subject to any law, the Developer’s obligation in terms of this paragraph 9, shall:
- 9.8.1. only apply in respect of Defects, and defects as described in this agreement, 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;
  - 9.8.2 not apply in respect of or arising in any way from any alterations to the Property effected at the instance of the Purchaser; and
  - 9.8.3. not entitle the Purchaser to claim any consequential damages from the Developer.
- 9.9 The Developer shall not be liable for any defects in the Property in respect of any of the following:

- 9.9.1 any damage or defects not having been caused by the Developer or any of its agents;
- 9.9.2 touch up paint of any nature;
- 9.9.3 hairline cracks in the plaster work;
- 9.9.4 any shrinkage/movement and expansion cracks between different components;
- 9.9.5 materials used or cracking which might appear in control movements joints;
- 9.9.6 any mould growth caused by condensation or by the Purchaser's failure to allow for proper ventilation;
- 9.9.7 any doors and windows slamming in windy conditions or any damage caused thereby; or
- 9.9.8 wind and rain entering through the windows and doors left open.

## **10. SELECTION OF FINISHES**

- 10.1 The parties confirm that the Schedule of Finishes will be as set out on Annexure B attached to this agreement.
- 10.2 The Developer shall not be obliged, at any stage, to agree to any extras, omissions, variations of the specifications and/or changes of any nature whatsoever which the Purchaser may request the Seller to carry out.
- 10.3 Notwithstanding anything to the contrary in this agreement, should any of the materials (including, but not limited to the colour, style and/or design thereof) used in the Specifications not be available for any reason whatsoever, prior to or during the course of the construction, the project manager/developer shall choose another similar available material (including but not limited to the colour, style and/or design thereof). The Architect's choice of materials in terms of this clause shall be final and binding on the parties. The Architect shall act as an expert and not an arbitrator in making its choice aforesaid.

## **11. VARIATION OF SPECIFICATIONS AND POSITION OF PROPERTY**

- 11.1 The Property shall be constructed substantially in accordance with the Plans and Specifications, provided that the Developer shall be entitled to:
- 11.1.1 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;
  - 11.1.2 at its own cost, vary the site and building layout of any sectional title scheme, Land Unit, of the Common Property areas and of the Facilities should the Local Authority require such variation when Approving any aspect of the Development or should the Developer or the Architect consider this to be reasonably necessary for structural, technical or aesthetic reasons; and
  - 11.1.3 determine the exact location of the Section, it being recorded that its position will be approximately as indicated on the Plans.
- 11.2 If there is an error in the siting of the Dwelling or out-buildings or both by the Developer, such error shall not be deemed to constitute a breach of this agreement by the Developer, nor grounds for the Purchaser to cancel this agreement, and the Developer shall have the right to make such amendments, alterations or modifications to the plans and/or specifications and/or the Dwelling and out-buildings as may be necessary in order to legitimize the erroneous siting of the Dwelling and/or out-buildings or if necessary to re-site the Dwelling 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 Dwelling or out-buildings or both. The Purchaser shall have no claim of whatsoever nature or howsoever arising against the Developer for damages as a result of a change of or an error in the siting of the Dwelling or out-buildings or both in terms of this clause, and shall be obliged to take Transfer of the Property with the re-sited Dwelling.

## **12. VOETSTOOTS**

- 12.1 The Developer 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.
- 12.2 The Developer 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 Developer in respect of the boundaries of the Property, nor is the Developer required to point out the boundaries, nor is the Developer liable for the cost of locating same.
- 12.3 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 Property and to all such other conditions and servitudes which may be applicable.
- 12.4 If the Property has been erroneously described in this agreement, the intention of the parties is to describe the Property as set out in the title deed of the Property.

## **13. BODY CORPORATE AND OPENING OF SECTIONAL TITLE REGISTER**

- 13.1 The Purchaser acknowledges that as soon as he/she becomes the registered owner of the Property, he/she will automatically become a member of the Body Corporate, which shall be administered in accordance with the provisions of the Acts and in particular the approved management rules and conduct rules applicable in terms of the STMA.
- 13.2 It is expressly recorded that the Scheme has not yet been registered in the PRETORIA Deeds Registry.
- 13.3 The Sectional Plan can only be finalized when the building work is completed and must be submitted to the Surveyor General for his approval.
- 13.4 The Developer shall provide the Purchaser with a copy of the approved Sectional Plan, on request, and the cost of which copy/ies shall be payable by the Purchaser.

- 13.5 With effect from the date of signature hereof and notwithstanding the fact that the Body Corporate has not been established, the rules prescribed in terms of the Acts shall be applicable to the Purchaser insofar as the same impose obligations on the Purchaser which shall be enforceable by the Seller, his Agent or Body Corporate.
- 13.6 The Purchaser hereby grants to the Developer an irrevocable authority to make the appointment of the first managing agent of the Body Corporate as the Developer in its discretion shall determine.
- 13.7 The Developer shall be entitled to appoint the first managing agent as provided for in the Rules, which appointment shall be valid and binding on the Body corporate for 3 (Three) years after the first general meeting of the Body Corporate.

#### **14. THE RULES**

- 14.1 The Purchaser grants to the Developer an irrevocable power of attorney *in rem suam* (operative from the time the Purchaser becomes the registered owner of the Unit) to attend the necessary meetings of the Body Corporate and on behalf of and to the exclusion of the Purchaser to vote at the meetings for the amendment and/or adoption of the Constitution and Rules where necessary.
- 14.2 The Purchaser authorizes the Developer to make such alterations or amendments to the Body Corporate's Rules as well as to file and lodge such altered and amended rules with the ombud in accordance with Acts 8/2011 and 9/2011 as the Developer believes is necessary to give effect to the provisions of this Agreement so as to provide for the homogeneous and harmonious operation of this Scheme, and for that purpose the Purchaser irrevocably and *in rem suam* appoints the Developer as the Purchaser's duly authorized attorney, agent and proxy on the Purchaser's behalf and to the Purchaser's exclusion to attend all such meetings and do all such things as are necessary to give effect to the provisions of this clause.

14.3 For so long as the Developer owns a right to extend the Scheme by the erection of a unit or owns a unit in the Scheme (subject thereto that it is the intention of the Developer to sell the unit and the unit being actively marketed by the Developer):-

14.3.1 the Purchaser irrevocably and *in rem suam* appoints the Developer to exercise the Purchaser's voting rights with regard to the appointment of the Trustees of the Body Corporate and in the appointment of the Managing Agents of the Scheme, the Purchaser acknowledging that the Developer or its nominee may apply and be appointed as managing Agents of the Scheme;

14.3.2 the Purchaser shall not be entitled to vote in favour of the amendment of any of the Body Corporate's Rules without the Developer's prior written consent.

## **15. PARTICIPATION QUOTA AND RATING OF THE SALE PROPERTY**

15.1 The estimated participation quota shall be finally determined in accordance with the provisions of the Act.

15.2 As at the Signature Date, no provisions has been made by law for the separate rating of units in the Scheme, but the Developer reserve the discretion to apply to the relevant Local Authority for such separate rating, in which event the Purchaser will be liable for all rates and taxes levied directly against the Property, from the Occupation Date. Should the law have been amended at the time of signature of this agreement, the above will automatically apply.

## **16. MORTGAGE BOND (IF APPLICABLE)**

16.1. This agreement is subject to the purchaser obtaining a loan from a bank or other recognised financial institution for not less than the amount (if any) stated in the Information Schedule against the security of a first mortgage bond to be registered over the property.

16.2. The Purchaser shall use its best endeavours to obtain such loan as soon as is reasonably possible after signature of this agreement by the Seller.

16.3. In the event of such loan not being granted within **30 (Thirty)** days after signature hereof by the last party to this agreement, then this agreement shall

become of no force or effect in which event the Developer shall, subject to the contents of this agreement, refund to the Purchaser the deposit paid in terms of the particulars schedule, together with the accrued interest thereon, less the Conveyancer's reasonable charges for managing such deposit. It is recorded by the parties that the Developer may agree in writing to an extension of this period at his own discretion.

- 16.4. The Purchaser acknowledges that he is aware of the requirements of financial institutions relating to the grant of loans of the size and nature of the loan specified in this agreement and warrants to the Developer that he has the means and income to satisfy such requirements.
- 16.5 The Purchaser acknowledges that this property forms part of a Development and that the Development has been pre-approved by all the major financial institutions. The Developer has appointed **JOUBERT & MAY ATTORNEYS** ("the bond attorneys") as the bond attorneys FOR ALL ABSA BANK, STANDARD BANK AND FIRST NATIONAL BANK BONDS AND THESE BANK agreed that JOUBERT & MAY ATTORNEYS will attend to the registration of all bonds with regards to this Development on their behalf. For all NEDBANK BOND the developer has appointed BOTHA & LOVEGROVE ATTORNEYS. The Purchaser confirms that he understands the above and contractually agrees hereto by signing this agreement.

## **17. BOND ORIGINATING**

- 17.1 The Purchaser acknowledges that the he can appoint his own bond originator in this matter.

## **18. LEVIES**

- 18.1 In terms of the Act and the Management Act, the Body Corporate may impose Levies upon its members for the purpose of meeting the expenses of the Body Corporate.

- 18.2 From and including the Occupation Date the Purchaser shall be liable to pay the Body Corporate a monthly levy in advance (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, administrating, repairing and maintaining the Building and the Scheme, which levies have been assessed in terms of section 37(1) of the STA (as if the Body Corporate had come into existence on the Completion Date).
- 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 as contemplated above, unless other arrangements have been made to the satisfaction of the Developer / Body Corporate.
- 18.4 For the duration of the Development Period, the Developer shall not be liable for the payment of Levies in respect of any unsold Land Units or undeveloped land arising from his Real Right to extend. The Developer shall, however, pay the difference between the actual expenses incurred by the Body Corporate in accordance with the Act and the aggregate of the Levies payable jointly by the members of the Body Corporate. In order to make this aspect clear, during the Development Period, each owner of a unit will contribute to the expenses of the Body Corporate pro rata and as set the Acts as well as the Rules. The Developer will be responsible for payment of the balance of the expenses until completion of the Development.
- 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 Developer or the auditors of the Developer 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 Developer or its appointed agent and thereafter (once established) to the body Corporate monthly in advance as stated above.

## 19. **SCHEME REGULATIONS**

- 19.1 The Scheme is subject to all provisions that may be imposed by any relevant authority.



- 19.2 Should any relevant authority impose any provisions with regards to the Scheme, such conditions shall be registered against the title deed conditions applicable to the Scheme.

**20. STATUTORY CERTIFICATES**

- 20.1 The Developer, at its cost, shall furnish the Purchaser with the following certificate on or before the Transfer Date:

20.1.1 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.

**21. CONSUMER PROTECTION ACT**

The parties expressly warrant that they have familiarized themselves with the provisions of the Consumer Protection Act No. 68 of 2008 and further undertake to comply with same as far as is applicable to this agreement.

**22. ADVERTISING ON THE COMMON PROPERTY**

22.1 The Developer shall be entitled to erect such signage, flagpoles, messages or any other form of notices or advertising on the Land as may be legally permissible solely for the purposes of selling and/or letting properties in the Development, provided that it causes as little inconvenience as possible to the owners/ occupants of the Development.

22.2 Other than as provided above, Purchasers shall not be entitled to display any "For Sale" and/or "To Let" signs on the Property or outside the property and the Developer or Body Corporate shall be entitled to remove or require the removal of any such signs placed within the Scheme.

**23. RIGHT TO EXTEND**

23.1 This sale is subject to the following special conditions, which are imposed by the Developer in terms of Section 11(2) of STA Act 95/1986.

23.2 The Developer in terms of Section 25 of STA Act 95/1986 hereby reserves for itself the real right to extend, for its personal account, by the erection and completion from time to time, in the Scheme, but within a period of 20 (twenty) years of:

23.2.1 further building or buildings;

23.2.2 horizontal extension(s) of an existing building or buildings and;

23.2.3 vertical extension(s) of existing buildings;

23.2.4 recreational buildings and/or facilities;

23.2.5 units to be rented out by the Seller as Short Term Rentals to third parties;

23.2.6 exclusive use units or areas to be allocated to specific units.

on that part of the common property outlined on the plan, 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.

## **24. BREACH**

24.1 If either party breaches any provision of this agreement and remains in breach for 10 (TEN) 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:

24.1.1 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

24.1.2 (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.

24.2 In the event of the Developer cancelling this agreement in terms of this clause:

24.2.1 all amounts paid by or on behalf of the Purchaser in terms of this agreement, including amounts paid to third parties, shall be forfeited to the Developer, unless the Developer elects to claim damages in lieu of such forfeiture, in which latter event:

- 24.2.1.1 the Developer shall be entitled to hold such amounts pending determination of the amount of the damages by agreement, order of court, or otherwise;
    - 24.2.1.2 if the damages as determined are greater or less than the amounts held by the Developer, the difference shall be paid to the party entitled to the difference, by the other party;
  - 24.2.2 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 his permission, and the Property shall be redelivered in the same good order and condition as at the Occupation Date; and
  - 24.2.3 the Purchaser shall not be entitled to claim any compensation in respect of any improvements and additions made to the Property.
- 24.3 If the Purchaser for any reason fails to vacate the Property after cancellation:
  - 24.3.1 the Purchaser shall be obliged to perform obligations under this agreement as if it had not been cancelled;
  - 24.3.2 the occupational rental shall in these circumstances be deemed to be an amount equivalent to double the occupational rental as recorded in this agreement;
  - 24.3.3 The Developer's acceptance of such performance shall be without prejudice to any of its rights;
  - 24.3.4 the Developer shall, in addition, be entitled to claim all damages flowing from such unlawful occupation, including but not limited to:
    - 24.3.4.1 the fair and reasonable costs of restoring the property to the condition in which it was at the Occupation Date;
    - 24.3.4.2 damages for holding over from the date on which the agreement was cancelled to the date on which the property is restored to the Developer;
    - 24.3.4.3 payment of an amount equivalent to all levies, rates and taxes and service charges and all other amounts which the Developer has had to pay during the subsistence of the holding over; and

24.3.4.4 such further damages as the Developer 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.

24.4 The Developer's remedies in terms of this clause are without prejudice to any other remedies to which the Developer may be entitled in law.

## **25. DISPUTE RESOLUTION**

25.1 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.

25.2 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:

25.2.1 primarily an accounting matter, be an independent practicing accountant of not less than 10 (ten) year's standing as such;

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

25.2.3 any other matter, be a suitably qualified independent person.

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;

25.3 the arbitration shall be held at a venue in BENONI or as mutually agreed between the parties and shall be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa;

25.4 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;

25.5 any order or award that may be made by the arbitrator:

25.5.1 shall be final and binding;

25.5.2 shall be carried into effect; and

25.5.3 may be made an order of any competent court.

25.6 Nothing in this clause shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction.

**26. CESSION**

26.1 The Purchaser shall not be entitled to cede any of his rights in terms of this agreement without the prior written consent of the Developer.

26.2 The Developer shall be entitled to cede its rights and delegate its obligations in terms of this agreement without the consent of the Purchaser.

**27. 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 jointly and severally.

**28. NOMINATION CLAUSE**

The Purchaser shall not be entitled to nominate a company, close corporation or trust in terms of this agreement.

**29. NOTICES AND DOMICILE**

29.1 For the purposes of the giving of notices and the serving of legal process in terms of this agreement, each of the parties chooses as their respective addresses, the addresses specified in this agreement in the Information Schedule ("Domicile").

29.2 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.

29.3 Any notice to a party:

29.3.1 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

29.3.2 sent by e-mail to his chosen e-mail address shall be deemed to have been received on the date of dispatch. E-Mail receipt shall be sufficient proof that the email has been send and delivered and should the day that it was send fall on a public holiday or a weekend, it will be regarded to be received on the first business day following the day on which it was sent;

29.4 Despite the provisions of this clause, a written notice or communication actually received by a party shall be an adequate written notice or communication to notwithstanding that it was not sent to or delivered at his Domicile or at the above methods

### **30. INDEMNITY**

30.1 Notwithstanding anything to the contrary in this agreement, the Developer 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 Developer, its servants, employees or agents.

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

### **31. JURISTIC PERSON**

Should the Purchaser be a company, close corporation or trust the authorized signatory described I the Information Schedule warrants that he is duly authorized to enter into this agreement on behalf of the company, close corporation or trust.

### **32. SURETY**

The Surety described in the item 9 of the Information Schedule, hereby binds himself as surety and co-principal debtor in favour of the Developer 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 *deduobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the Surety acknowledges he knows and understands, as detailed in the suretyship annexed hereto, marked Annexure C.

### **33. WARRANTIES BY THE PARTIES**

The parties warrant in favour of each other that:

- 33.1 they the legal capacity and all necessary approvals required to empower and authorize them to enter into this agreement and that such approvals pre-date of signature of this agreement by both parties; and
- 33.2 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.

### **34. AGENTS COMMISSION**

- 34.1 The Purchaser warrants that he was introduced to the Developer and to the Property by the Estate Agent, and by no other person or agent, and indemnifies the Developer, Conveyancer and all third parties accordingly.
- 34.2 The Developer shall be liable for and shall pay Commission to the Estate Agent in the amount specified in the Information Schedule. The Commission shall be deemed to have been earned upon acceptance of the offer by the Developer and after fulfilment or waiver, as the case may be, of any conditions precedent, and shall be payable by the Developer to the Estate Agent on the Transfer Date against registration of transfer of the Property to the Purchaser or on the date of cancellation of this agreement by mutual consent between the Seller and the Purchaser. The Developer hereby irrevocably authorizes the Conveyancers to pay the Commission to the Estate Agent from the Purchase Price on the Transfer Date.

- 34.3 If this agreement is cancelled by reason of the Purchaser's default, the Developer shall have no obligation to the Estate Agent in respect of commission and hereby cedes and assigns to the Estate Agent, any right to claim commission owing from the Purchaser, which arises from such cancellation.
- 34.4 Should the agreement being legally cancelled by the Purchaser as a result of an unreasonable delay to the Development by the Developer and should this reasons for the delay be a result of unforeseen delays by the Developer, the agent will not be entitle to any commission from any party. A letter from the Conveyancer in this regard will be sufficient proof as to the reason for delay as per this agreement.

### **35. CO-OPERATION**

Each of the parties hereby undertakes to:

- 35.1 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);
- 35.2 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
- 35.3. 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.

### **36. GENERAL TERMS AND CONDITIONS**

- 36.1 This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 36.2 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to in writing and signed by all parties to this agreement or their duly authorized representatives.
- 36.3 This document contains the entire agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or like not recorded herein.



- 36.4 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.
- 36.5 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.
- 36.6 The Purchaser and the Developer warrant that all material terms of this agreement have adequately been explained to them prior to signature of this agreement.

### **37. GENERAL PROVISIONS**

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

- 37.1 any reference to “writing” includes electronic communication as defined in the Electronic Communications and Transactions Act 2002 and “written” shall have a corresponding meaning.
- 37.2 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;
- 37.3 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;
- 37.4 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 sequestrated, be applicable also to and binding upon that party’s liquidator or trustee, as the case may be;
- 37.5 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 Developer to the Purchaser. Any dispute which may arise between the Developer and the Purchaser as to the liability for and/or payment of VAT or the amount thereof in terms of this agreement shall be referred to the auditors of the Developer for decision and their decision shall be final and binding between the parties and carried into effect.

**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 5 (FIVE) days after the date of signature by the Purchaser, where after it expires. It is specifically recorded that the production of a counter offer by the Developer 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.

38.2 The Developer undertakes to send a copy of this agreement signed by him evidencing acceptance of the offer contained herein to the Agency as soon as reasonably possible after signing thereof, but the Developer's failure to do so timeously shall not invalidate this offer.

**39. 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.

SIGNED BY THE DEVELOPER AT \_\_\_\_\_ ON THIS  
\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_.

AS WITNESSES:

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

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

\_\_\_\_\_  
**DEVELOPER**

SIGNED BY THE PURCHASER AT \_\_\_\_\_ ON THIS  
\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_.

AS WITNESSES:

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

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

**PURCHASER**

SIGNED BY THE SURETY AT \_\_\_\_\_ ON THIS  
DAY OF \_\_\_\_\_ 20\_\_\_\_\_.

AS WITNESSES:

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

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

**SURETY**

SIGNED BY THE AGENT AT \_\_\_\_\_ ON THIS  
DAY OF \_\_\_\_\_ 20\_\_\_\_\_.

AS WITNESSES:

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

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

**AGENT**

**PROPOSED SITE DEVELOPMENT PLAN**

**ANNEXURE "B"**

**SCHEDULE OF FINISHES FOR HOMES, RECREATIONAL CENTRE  
AND SECTIONAL TITLE UNITS.**

**SURETYSHIP**

1. This 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 Developer as sureties and co-principal debtors in solidum with the Purchaser as set out in item 1 of the Information Schedule of this Agreement for the due fulfilment of all the obligations of the Purchaser (including but not limited to damages) arising from this 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 or its successors and collection commission incurred, by the Developer in securing or endeavouring to secure fulfilment of the Purchasers obligations under the Agreement as well as the suretyships obligations hereunder.
3. The Developer 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 Developer its absolute discretion deems fit.
4. The suretyship shall remain in force until such time as the Purchasers indebtedness to the Developer in term of this Agreement is discharged in full.
5. The Surety agrees that a certificate purporting to be signed by any director of the Developer showing the amount of any indebtedness due / and or payable by the Purchaser to the Developer at any particular time shall be prima facie proof of the amount due and the fact that is then due and payable.
6. The Surety renounces each and every one of the benefits and exceptions known as *beneficium ordines sei excussionis, non causa debiti*, and revision of account.

7. The Surety is fully and independently acquainted with the meanings and nature of the abovementioned benefits and with the consequences thereof, the Surety acknowledges that the summaries of the meaning and effect of each benefit and exceptions are no more than summaries and to the extent (if any) to which they do not fully explain or are inconsistent with the legal principles to which they apply.
8. 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 Developer. This document is and shall remain the Developer's property.
9. The protection afforded to the Developer shall under this suretyship shall extend to the Developer assigns and any persona or entity to whom the Developer may cede its rights herein.
10. All notices to be given in terms of this Suretyship shall be in writing and shall be delivered to the Surety at the following address, at which address the Surety choses his domicilium citandi et executandi for all purposes of this suretyship:  
  
\_\_\_\_\_
11. The Surety agrees that it shall be at any time entitled to change its his domicilium citandi et executandi wich shall take effect only upon serving the notice thereof to the Developer by pre-paid registered mail at its address set out in the Agreement.
12. Notwithstanding anything to the above any notice actually received by the Surety shall be adequate notice to the Surety, even if not delivered at the Surety's chosen his 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. \_\_\_\_\_

