



## AGREEMENT OF SALE

**Sale of:**

Section / Unit No: \_\_\_\_\_

Purchaser: \_\_\_\_\_

**COVERING SCHEDULE**

<b>1. PARTIES</b>	
<b>1.1 Seller:</b>	<b>FYNBOS LIFESTYLE VILLAGE CC</b> <b>Registration No. 2002/027226/23</b>
Address:	<b>C/O STBB Attorneys</b> <b>2<sup>nd</sup> Floor Buchanans Chambers</b> <b>Cnr Warwick and Pearce Streets,</b> <b>Claremont</b> <b>7700</b> <b>Ref: A White</b>
<b>1.2 Purchaser:</b>	
Company/Close Corporation/ Trust:	
Registration No.:	
Income Tax Reference No.:	
Identity Number/ Date of Birth: (Copy of Identity Document required)	
Residential Address: (Copy of Utility bill/Invoice required)	
Postal Address:	
Marital Status:	
Full Names of Spouse:	
Telephone No: (Home)	
(Work)	
(Cell)	
e-mail Address:	
<b>2. SUBJECT MATTER</b>	
2.1.1 Section/Unit 2.1.2 Garage	<b>Section / Unit No. _____</b> Area: _____ approx. Section/Unit No. _____
2.2.1 Exclusive Use Garden Area/Patio Area	EUA No. _____

2.2.2	Parking Bays	EUA No. _____
<b>3. PURCHASE PRICE (Inclusive of VAT)</b>		
3.1	Purchase Price:	R
3.1.1	Deposit by Purchaser on signature	<div>R</div> <div>10%</div> <div>R</div> <div>30%</div> <div>payable to Transferring Attorneys, STBB</div>
3.1.2	Mortgage Bond:	R
3.1.3	Balance on Transfer:	R
<b>4. ANTICIPATED OCCUPATION DATE (Refer Clause 2)</b>		
Date:		
<b>5. ESTIMATED TRANSFER DATE</b>		
Date:		
<b>6. LEVY (Refer Clause 6 &amp; Levy Schedule)</b>		
Village Basic:		R
<b>7. ESTIMATED RATES and TAXES</b>		
Rates and Taxes		R (TO BE ASSESSED BY THE LOCAL AUTHORITY)
<b>8. TRANSFERRING ATTORNEY</b>		
Name of Attorney		STBB Attorneys 2 <sup>nd</sup> Floor Buchanans Chambers, Cnr Warwick and Pearce Streets, Claremont Tel. 021 673 4700 Fax. 021 673 4952
Trust Account		STBB Trust Account ABSA Bank Claremont Branch Code 632005 Account no. 4035704865 Swift Code ZA JJ

<p>9. Nominated Occupants – (over 50 years)</p> <p>(ONLY REQUIRED IF A RETIREMENT UNIT)</p>	<p>1. Name: Identity Number:</p> <p>2. Name: Identity Number:</p>
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## SIGNATURE DOCUMENT

### PREAMBLE

- a. The Seller is the registered owner of **ERF 17787 FISH HOEK, IN THE CITY OF CAPE TOWN, WESTERN CAPE** in extent 3,4261 hectares.
- b. The Seller is establishing a Sectional Title Scheme called FYNBOS LIFESTYLE VILLAGE (part of which is to be sold in terms of the provisions of the **Development Schemes for Retired Persons Act No 65 of 1988**).
- c. The Seller has agreed to sell to the Purchaser who has agreed to purchase from the Seller the subject matter described in the covering schedule together with the undivided shares in the common property subject to the terms and conditions set out in this agreement.

### NOW THEREFORE THE PARTIES HEREBY CONTRACT AND AGREE WITH ONE ANOTHER AS SET OUT HEREUNDER

#### 1. SALE

The Seller sells and the Purchaser purchases the subject matter in accordance with the terms and conditions set out in:

- 1.1 The Covering Schedule
- 1.2 This signature document
- 1.3 The Conditions of Sale
- 1.4 The Annexures to the signature document.

all of which form an integral part of the Agreement of Sale between the parties and are deemed to be incorporated herein.

#### 2. PURCHASE PRICE

The purchase price payable by the Purchaser to the Seller is the amount set out in the covering schedule which amount is inclusive of VAT.

#### 3. PAYMENT OF THE PURCHASE PRICE

- 3.1 The Purchaser shall pay the purchase price as follows:

- 3.1.1 a deposit of 10% (ten per centum) of the purchase price being the amount reflected as such in the covering schedule which amount shall be paid to the Seller's Conveyancers on signature of this Agreement by the Purchaser and which shall be invested by the Seller's Conveyancers on call in an interest bearing account with such interest accruing to the Purchaser; and for which investment the provisions of this clause shall constitute authority

to the Conveyancers for such investment as contemplated by the provisions of Section 86(4) of the Legal Practice Act of 2014; and

3.1.2 the balance of the purchase price against registration of transfer of the unit and the exclusive use rights forming part of the subject matter where applicable, in the name of the Purchaser.

3.2 The Purchaser shall within 45 (forty five) calendar days of signature hereto by the Purchaser furnish the Conveyancers with:

3.2.1 an irrevocable bank guarantee issued by a recognised commercial bank which is acceptable to the Seller's Bankers; or

3.2.2 mortgage loan approval issued by a recognised commercial bank to the Purchaser, the terms of which shall be no more onerous to the Purchaser (and the Seller) than are considered standard practice ("standard practice" shall be determined by the Conveyancers, whose decision shall be binding on the parties);

for the due payment of the balance of the purchase price against registration of transfer of the unit forming part of the subject matter where applicable.

3.3 In the event of the Purchaser making payment of a 30% deposit or more as provided in 3.1.1 of the Schedule, the Purchaser shall guarantee or make payment of the balance of the Purchase Price to the Conveyancers 90 days prior to anticipate completion/ handover date of the Unit. The Conveyancers shall give written notice of such anticipated completion / handover date and will require that the guarantee / payment of the balance of the Purchase Price be provided within 14 days of dispatch of the said notice.

3.4 All amounts payable shall be paid to the Conveyancers at Cape Town free of exchange or commission without deduction or set off by bank cheque or bank guaranteed cheque.

#### 4. OFFER

This agreement, once signed by the Purchaser, shall be regarded as an offer by the Purchaser and shall be open and irrevocable for acceptance by the Seller for a period of 14 (Fourteen) days from date of signature hereof and may not be withdrawn by the Purchaser.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

**AS WITNESSES:**

for and on behalf of:

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

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

\_\_\_\_\_  
SELLER

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_\_\_\_

**AS WITNESSES:**

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

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

**ANNEXURES**

<b>NO.</b>	<b>DESCRIPTION OF ANNEXURE</b>
A	Site Layout (Site Development Plan) and Phasing
B	Building Floor Plan
C	Levy Schedule
D	Specifications
E	Draft Additional Management and Conduct Rules of Body Corporate
F	Special Conditions if applicable

# FYNBOS LIFESTYLE VILLAGE

## CONDITIONS OF SALE

**SECTION / UNIT NO.:** \_\_\_\_\_

I/We the undersigned Purchaser/s do hereby acknowledge that I/We have read the Conditions of Sale, and that I/We fully understand and agree to same.

**PURCHASER/S:** \_\_\_\_\_

Or his/her duly authorised representative who warrants that he/she is duly authorised

**DATE SIGNED:** \_\_\_\_\_

**WITNESS:** \_\_\_\_\_

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## CONDITIONS OF SALE

### 1. INTERPRETATION

1.1 In this agreement, unless inconsistent with the context:

1.1.1 "alienate" means to divest of ownership of any unit, or share or part thereof, by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency, liquidation, prescription or expropriation, irrespective of whether such alienation is subject to a suspensive or resolutive condition, and "Alienation" shall have a corresponding meaning, provided that the granting or registration of a right of occupation (life right), *usus*, *usufruct*, *habitation* or long term lease agreement in respect of a unit shall be regarded as an Alienation and provided further that it shall be deemed to be an Alienation when a company, close corporation or trust that owns a Retirement unit nominates a new Nominated Occupant(s) and 'Deemed Alienation' shall have a corresponding meaning;

1.1.2 "architect" means STEVE MELLET ;

1.1.3 "the Act" or "Retired Persons Act" shall mean the Housing Development Schemes for Retired Persons, Act No. 65 of 1988, as amended from time to time and including all regulations relating thereto;

1.1.4 "body corporate" means the body corporate in relation to the building and the property, as contemplated in terms of section 36 of the Sectional Titles Act;

1.1.5 "the Seller/s" means Fynbos Lifestyle Village CC Registration No. 2002/027226/23;

1.1.6 "the Nominated Occupant(s)" shall mean the occupant(s) of a section nominated in writing by the registered owner of a Retirement unit being the only person(s) allowed to occupy the section, subject to the provisions of the rules of the Scheme.

1.1.7 "common property" means:

1.1.7.1 the land included in the scheme; and

1.1.7.2 such parts of the building as are not included in a section; and

1.1.7.3 any land in relation to the scheme, referred to in section 26 of the Sectional Titles Act;

1.1.8 "completion date" means the date upon which the certificate of practical completion in respect of the unit is issued by the architect, which certificate shall be final and binding upon the parties;

1.1.9 "covering schedule" means the covering schedule to this agreement;

1.1.10 "day" or "days" means calendar days;

- 1.1.11 "developer" means the Sellers or their nominee/s carrying out the development from time to time and includes their successors in title and their respective successors;
- 1.1.12 "development" means the sectional title development on the land known as Fynbos Lifestyle Village registered over Erf 17787, Fish Hoek;
- 1.1.13 "development period" means the period from the date of opening of the sectional title register until:
- (i) the developer notifies in writing the trustees of the body corporate that the development period is at an end; or
  - (ii) the registration of transfer of the last saleable section or exclusive use area within the scheme whichever is the earlier;
- 1.1.14 "exclusive use areas" shall mean, where applicable, the area of common property allocated for the Purchaser's exclusive use and enjoyment either in terms of Section 10 of the Sectional Titles Schemes Management Act or Section 27 of the Sectional Titles Act (to be determined by the Seller);
- 1.1.15 "Fair Market Value" means the amount at which a willing seller would sell and a willing buyer would buy the unit and which amount shall be prima facie established and determined by the body corporate, and in determining the amount the body corporate may in its sole discretion accept the selling / purchase price (if any) as the fair market value or rely upon the valuation/s of a third party or parties whether such party/ies is/are a sworn appraiser/s or not;
- 1.1.16 "land" means the property comprising Erf 17787, Fish Hoek;
- 1.1.17 "JBCC" means the standard Principal Building Agreement as drafted by the Joint Building Contracts Committee;
- 1.1.18 "the occupation date" means the date the architect certifies in writing to the Principal Agent (which certificate shall be final and binding on the parties) that the unit is ready for the beneficial occupation by the Purchaser;
- 1.1.19 "plans and specifications" mean the annexures to this agreement attached hereto (marked A, B & D) which annexures are listed in the index of this agreement;
- 1.1.20 "Principal Agent" means a representative of FYNBOS LIFESTYLE VILLAGE CC or its successors in title
- 1.1.21 "prime rate" means the best rate of interest charged by Investec Bank Limited, to its best customers in the private sector on unsecured loans from time to time and of which rate a certificate signed by a manager or assistant manager or any branch of the said bank shall be sufficient proof.
- 1.1.22 "Purchaser" means the purchaser of the subject matter being the party described in paragraph 1.2 of the covering schedule;
- 1.1.23 "register" means the sectional title register opened in respect of the scheme in terms of the Sectional Titles Act;

- 1.1.24 "Retirement Unit" means a Unit specifically allocated for the occupation of a Retired Person or Persons
- 1.1.25 "Retired Person" means a person who is 50 year of age or older.
- 1.1.26 "rules" mean the management and conduct rules relating to the scheme as may be amended by the Seller prior to registration of the scheme;
- 1.1.27 "scheme" means the sectional title scheme established on the property;
- 1.1.28 "sectional plan" means the sectional plan/s to be prepared and registered in respect of the scheme;
- 1.1.29 "Sectional Titles Act" means the Sectional Titles Act No 95 of 1986 (or any statutory modification or re-enactment thereof) and includes the regulations made thereunder from time to time;
- 1.1.30 "Seller" means FYNBOS LIFESTYLE VILLAGE CC its successors or nominees;
- 1.1.31 "Sellers' Conveyancers" means STBB of 2<sup>nd</sup> Floor Buchanans Chambers, Cnr Warwick an Pearce Streets, Claremont, Tel. 021 673 4700 (Ref. Allan White/Leone Oosthuizen) and "Conveyancers" shall have a corresponding meaning;
- 1.1.32 "subject matter" means the unit;
- 1.1.33 "total floor area" means the total floor area of all units within the development;
- 1.1.34 "transfer date" means the date of registration of transfer of the unit into the name of the Purchaser in the Deeds Office;
- 1.1.35 "unit" means the sectional title unit described on page 1 (the cover page) of this Agreement and indicated on the building floor plans annexed hereto including an undivided share in the common property in accordance with the participation quota/s to be determined in accordance with the Sectional Titles Act;
- 1.1.36 "VAT" means value-added tax at the applicable rate in terms of the Value-Added Tax Act No 89 of 1991 (or any statutory modification or re-enactment thereof) and includes any regulations made thereunder from time to time.
- 1.2 Words and expressions defined in the Sectional Titles Act shall have the meanings therein defined.
- 1.3 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa.
- 1.4 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

- 1.5 Reference to this agreement shall mean this agreement of sale and shall include the covering schedule appearing on the commencement of the signature document appearing after the covering schedule, these conditions of sale and all annexures to this agreement.
- 1.6 If any provision in the preamble to this agreement and/or in this clause 1 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the preamble and/or this clause 1, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.
- 1.7 Unless the context clearly indicates the contrary, the use of a capital letter as against the lower case shall not impart a different meaning.

## 2. POSSESSION AND OCCUPATION

- 2.1 The Seller shall use its best endeavours to give occupation on the anticipated Occupation Date set out in the covering schedule but cannot warrant same. The Seller shall, however, give the Purchaser not less than 30 days notice in writing of the occupation date of the unit, provided that, the Seller shall, after having given the Purchaser notice as contemplated aforesaid, be entitled to postpone the occupation date by giving further notice to the Purchaser to this effect within 21 days of date of receipt by the Purchaser of the first notice.
- 2.2 All risk and benefit in respect of the unit shall pass to the Purchaser on date of occupation.
- 2.3 If transfer of the unit is registered after the occupation date, the Purchaser shall pay to the Seller occupational interest at the prime rate calculated on the full purchase price from the possession date until the date of registration of transfer (both dates inclusive), subject to the provisions of clause 2.2 above. Notwithstanding the above the Purchaser has the option of making full payment of the purchase price to the Conveyancers Trust Account by date of occupation, in which event, the interest which accrues on the investment of the funds in the Conveyancers Trust Account shall be paid to the Seller in full settlement of the occupational rental due by the Purchaser until date of registration of transfer.
- 2.4 Should the Purchaser:
- 2.4.1 fail to pay any amount due in terms of this agreement or sign any document which the Purchaser is required to sign in terms of this agreement; or
- 2.4.2 commit any other breach of the provisions of this agreement;
- and fail to remedy such failure and/or breach within 7 days after receipt from the Seller's attorneys of a request to do so, then the interest payable by the Purchaser in terms of clause 2.3 above shall be the rate of 3% above the prime rate for as long as such failure and/or breach continues.
- 2.5 If for any reason whatsoever the Seller is unable to give the Purchaser occupation of the unit by the anticipated occupation date, then the Purchaser shall have no claim of whatsoever nature against the Seller as a result thereof.

- 2.6 The Purchaser acknowledges that on the transfer date, the building/s and the other structures and/or improvements, including infrastructure and roads in the scheme may be incomplete and that the Purchaser may suffer inconvenience from building operations, noise, dust and other nuisance factors. The Purchaser shall not be entitled by reason of any of the foregoing to cancel or withdraw from this agreement or to claim damages from any person or institute interdict proceedings nor shall the Seller be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of such building operations.
- 2.7 The Seller shall be liable for payment of all electricity and water consumed in or on the unit until occupation.
- 2.8 The failure on the part of the Purchaser to take physical occupation (whether personally or by agent) or to accept the keys to the section shall not affect the Date of Occupation, which shall remain as defined.
- 2.9 The Seller and/or the Seller's duly authorised agent shall be entitled to inspect the unit at all reasonable times during the currency of the Agreement.

### **3. OCCUPATIONAL INTEREST**

Should transfer take place after the Occupation Date, the Purchaser shall pay to the Seller occupational interest calculated as set out in 2.3 above, which rental shall be paid monthly in advance (on the first day of every calendar month) from the Occupation Date to the date of transfer aforesaid. The Purchaser hereby instructs the Conveyancers to utilise interest earned on deposits invested in Trust towards the settlement of occupational interest, which is due and payable. In the event of registration of transfer being effected during the course of a calendar month, the Purchaser shall be refunded occupational interest overpaid. The Purchaser shall also be responsible for all electricity and (where applicable) water consumed in the unit as from the Occupation Date.

### **4. TRANSFER**

- 4.1 Transfer shall be passed on occupation date or as soon as possible thereafter by the Seller's Conveyancers along with registration of the Sectional Title Scheme or an Extension thereof in the Deeds Office. The Purchaser shall sign all documents necessary to give effect to this agreement within seven (7) days of being called upon to do so.
- 4.2 The Purchaser shall accept transfer of the unit subject to all conditions and servitudes benefiting or burdening the unit and the land whether existing or hereafter imposed by any competent authority.

### **5. SPECIAL CONDITIONS PENDING TRANSFER**

- 5.1 Upon the Purchaser taking occupation of the unit and pending transfer, the following conditions shall apply:
- 5.1.1 save insofar as may be inconsistent with the provisions of this Agreement, the provisions of Section 44(1) of the Sectional Titles Act, shall apply as if the Purchaser were the owner of the unit;
- 5.1.2 the other provisions of the Sectional Titles Act and the provisions of the Rules insofar as they cast any duty upon the owner or occupier of a unit,

shall bind the Purchaser and be enforceable by the Seller as if the Purchaser was the owner of the unit;

- 5.1.3 until such time as the unit is registered in his name, the Purchaser shall not be entitled, without the prior written consent of the Seller, to make any alteration or improvement to the unit. Until the unit is registered in his name or until such time as the unit has been returned to the Seller as a result of cancellation of this agreement for whatever reason, the Purchaser shall be obliged to keep the unit in the same state of good repair in which he received it. If the unit is not kept in the same state of good repair, the Seller will have the right to repair same without notice to the Purchaser and recover the cost of such repairs from the latter;
- 5.1.4 the Purchaser shall maintain the interior of the unit in good order and repair;
- 5.1.5 the Purchaser shall not sell the unit, nor permit the transfer or cession of shares or members' interest or benefit under a company, close corporation or trust, as the case may be, if the Purchaser is such an entity, except with the written consent of the Seller;
- 5.1.6 the Purchaser may not let or in any other manner dispose of or part with (whether temporarily or otherwise) the unit or his rights of occupation thereof, unless the Purchaser has fully complied with all his obligations in terms of this Agreement and taken all steps required of him to enable transfer to be registered;
- 5.1.7 the Purchaser hereby waives all claims against the Seller for any loss or damage to property or any injury to or death of any person which the Purchaser may sustain in or about the property or the unit and indemnifies the Seller against any such claim (including but not limited to any claim for costs, including but not limited to Attorney and own client costs as determined in accordance with the non-litigious tariff of the Legal Practise Council Western Cape, or its successor) 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 or death of a person suffered in or about the Property or the unit, howsoever such loss or damage to property or injury to or death of the person may be caused. In this regard it is recorded that the Seller will ensure that Contractors employed by the Seller will take out the necessary and required Contractor's All Risk Insurance Policy;
- 5.1.8 without limiting the generality of clause 5.1.7 above, the Seller, its directors, employees and agents, shall bear no liability whatsoever to the Purchaser, the Purchaser's family, invitees, employees or agents in respect of any other development in or on the erven or any matter arising therefrom;
- 5.1.9 the Seller and/or the Seller's duly authorised agent/s shall be entitled to inspect the unit/s at all reasonable times during the period that the Purchaser is indebted to the Seller.

## 6. LEVIES

- 6.1 The Purchaser shall be liable from the occupation date for levies payable to the body corporate in terms of the Sectional Title Schemes Management Act attributable to

each unit as if the Purchaser were the registered owner of the unit. These levies are set out in Annexure C1. The Management Rules will also be amended in terms of Section 11(2) (a) , subject to CSOS approval, to allow for the allocation of an equal levy to each Section in the Scheme to cover costs where it would not be equitable to allocate according to the Participation Quota (e.g.Security).These levies are set out in Annexure C2.

The Purchaser furthermore acknowledges that the body corporate levy may be amended as a result of any additions made to the unit by the Purchaser (e.g. a sunroom to be constructed) which will result in the Participation Quota being amended to make provision for such addition and as a result thereof, an increased levy shall be paid by the Purchaser.

- 6.2 Such levies shall be paid monthly in advance on the first day of each and every calendar month provided that if the occupation date falls on any day other than the first day of a calendar month, then the Purchaser shall be obliged to pay a pro rata share of the levies due for the calendar month in which the occupation date occurs.
- 6.3 Such levies shall be paid to the Seller until registration of transfer and thereafter to the body corporate.
- 6.4 During the development period, the developer may not be required to pay levies in respect of any expenses of the body corporate, other than pro rata levies in respect of rates due to the local authorities in respect of the land, building/s or other improvements in the scheme in which the developer is the registered owner of a unit and insurance premiums in respect of the insurance of any building/s in which the developer is the registered owner of a unit.
- 6.5 It is recorded that the cost of the following will be charged as part of the basic levy, which is attributable to all units on the basis of the Participation Quota:
  - 6.5.1 Insurance of the units and the Common Property;
- 6.6 It is recorded that the cost of the following will be charged as part of the basic levy, which is attributable equally to all units in the Scheme:

Additional security;

Payment of common electricity and water;

Reception/ Administration facilities;

Provision of administrative staff and/or seconded as required for the efficient management and running of the Fynbos Lifestyle Village;

Provision of all the necessary items for the administration of the Fynbos Lifestyle Village;

Maintenance of the common property, the Club House and the exterior of all buildings, pumps, water features , Detention Ponds, storm water servitudes and irrigation; (if any);

- 6.7 The Rates and Taxes will be assessed and payable by individual purchasers directly to the Local Authority and are therefore not included in the basic levy.

## 7. CAPITAL CONTRIBUTION LEVY

- 7.1 Upon the Alienation or Deemed Alienation of a unit in the scheme, the Transferor or the owner of the Unit shall pay a Capital Contribution Levy to the body corporate for the credit of the levy stabilisation fund controlled by the body corporate, which levy shall be equal to 1% (one per cent) of the Fair Market Value of the unit at the time of the Alienation or Deemed Alienation, subject to the exemptions specified in 7.2 and 7.3 below.
- 7.2 Where a unit is transferred from the estate of the Transferor or from the joint estate of the Transferor and his or her surviving Spouse, to his or her surviving Spouse, such Alienation shall be exempt from the payment of a Capital Contribution Levy. This clause shall be applicable *mutatis mutandis* in the event of a Deemed Alienation.
- 7.3 No Capital Contribution Levy will be payable in respect of the Alienation of a unit from the Developer to the first purchaser or Transferee hereof or in any instance where there is a forced or distressed sale at the instance of a bond holder and there are insufficient proceeds of sale available after settlement of the bond holder's claim.

## 8. COSTS

The Purchaser shall pay all legal costs of transfer of the property and all other costs, which have to be incurred in order to comply with statutes or other enactments or regulations relating to the passing of transfer of the unit. All bond costs shall be for the Purchaser's account.

## 9. THE RULES

The Purchaser agrees to abide by the Rules of the Body Corporate (Management and Conduct Rules). The proposed additional draft Rules are annexed hereto as Annexure E.

## 10. MANAGING AGENT

- 10.1 The Seller shall be entitled, but not obliged, to appoint a managing agent for the scheme during the development period which appointment shall be valid and binding on the body corporate for a period of 1 (one) year following completion of the development period.
- 10.2 The Purchaser hereby grants the Seller the irrevocable power and authority to appoint the managing agent of the scheme.

## 11. AGE RESTRICTION, OCCUPATION AND TRANSFER

- 11.1 The Purchaser and Nominated Occupant(s) acknowledge and agree that the rights of occupation and ownership of **Retirement Units** comprised in the Fynbos Lifestyle Village shall be subject to the following limitations referred to in the Act:



- 11.1.1 no unit shall be occupied otherwise than in accordance with 11.2;
- 11.1.2 no unit may be transferred without the consent of the Body Corporate as more fully set out in 11.3;
- 11.1.3 there shall not be more than two Nominated Occupants per unit, unless the Body Corporate consents in writing.
- 11.2 A Retirement Unit shall be occupied only by the Nominated Occupant(s) being 50 years or older of age and shall not without the written consent of the Body Corporate be let or otherwise occupied by any other person, provided that:
  - 11.2.1 it shall be deemed not to be a breach of this clause for the Nominated occupant(s) of a Retirement Unit to part with occupation, whether on a sub-lease or other basis, during such occupants' temporary absence on holiday or otherwise, provided that the Body Corporate has consented thereto in writing, which consent will not be unreasonably withheld;
  - 11.2.2 it is agreed as a condition of this sale agreement that up to 40 % (Forty Percent) of the units in the development may be occupied by persons younger than 50 years of age and accordingly at least 60% of the units in the development will be Retirement Units;
  - 11.2.3 the Body Corporate shall be entitled to consent to the holding of a Retirement Unit by a Trust or Company or Close Corporation or like entity on behalf of a person who would be acceptable as an owner in terms of 11.3.1, which person shall thereafter be deemed to be the Nominated Occupant for the purposes of 11.2.
- 11.3 **Save for the first transfer of a unit in the scheme by the Seller**, no unit may be alienated and/or transferred unless the Body Corporate has granted its written consent to such alienation and/or transfer. Before granting any such consent, the Body Corporate shall be entitled:
  - 11.3.1 to be satisfied as to the suitability of the proposed transferee or occupant(s) in relation to need and compatibility, bearing in mind that the scheme has been established to provide accommodation partly to retired persons over the age of 50 years and **that at least 60% (Sixty percent) of the Units must be Retirement Units (as defined)**. The Body Corporate shall not be obliged to furnish any reasons for any decision, which it may make in terms hereof;
  - 11.3.2 to require that the Nominated Occupant(s) be stipulated and to require such reasonable proof as they may deem fit that the Nominated occupant(s) of a Retirement Unit has attained the age of 50 years or such other age as may be determined in accordance with the Act or any amendments thereto;
  - 11.3.3 to require a medical certificate from a qualified medical doctor certifying that the proposed transferee or occupant is medically fit and self sufficient to occupy the Retirement unit and live independently.

## 12. SERVITUDES

The Purchaser acknowledges and agrees that certain parts of the common property will be subject to the below servitude/s imposed by the local authority as development conditions as set out in the title deed of the property and will be recorded in the Rules. These will impose obligations on the Body Corporate to maintain and abide by restrictions contained in:

- 12.1 An Environmental Conservation Servitude as reflected on plan LUM/35/17787-1 registered in favour of the City of Cape Town
- 12.2 Two Detention Pond and stormwater escape route Servitudes registered in favour of the City of Cape Town

**13. NURSING FACILITY**

- 13.1 A Nursing Facility will be situated in Fynbos Village, which will be managed by the Body Corporate

**14. FACILITIES**

The Facilities in Fynbos Village are set out in 15.4 below.

**15. INFORMATION REQUIRED TO BE STATED IN TERMS OF SECTION 4 OF THE ACT APPLICABLE TO RETIREMENT UNITS**

- 15.1 The owner of the balance of the land is the Seller and its address is set out above.
- 15.2 The Certificate contemplated in Section 6(1) of the Act will be issued and furnished to the purchaser on the Completion Date.
- 15.3 Rules governing the use of the unit and the conduct of the members are available for inspection at the address referred to above during normal business hours and at the sales and marketing office.
- 15.4 In terms of Section 4(1)(o) of the Act, the Seller states as follows:
  - 15.4.1 the facilities to be provided in the Fynbos Village are a Club House which includes a lounge, dining room, kitchen, reception, office, lobbies, toilet facilities and 2 Nursing Rooms;
  - 15.4.2 there will be no specific services provided.
  - 15.4.3 An estimate of all expenditure for the control, management and administration of the Fynbos Village and all services and facilities concerned for the period of 2 years is attached as Annexure C.
  - 15.4.4 The Purchaser is referred to the rights and remedies available to him in terms of Section 4(3), 8 and 9 of the Act.
  - 15.4.5 The management structure of the Body Corporate is set out in the Rules.
  - 15.4.6 The land is mortgaged in favour of Investec Bank.

**16. ADVERTISING ON THE COMMON PROPERTY**

- 16.1 The Seller shall be entitled at any time(s) to erect such signage, flagpoles, messages or any other form of notices or advertising on the common property and/or the building as may be legally permissible solely for the purposes of selling and/or letting sections in the scheme, provided that it does not inconvenience the owners of other sectional title units in the scheme.
- 16.2 The Purchaser shall not be entitled to display any "For Sale" and/or "To Let" signs on the building or on the property or outside the property:
- 16.2.1 until the Seller has completed and entirely sold the development, without the prior written consent of the Seller; and
- 16.2.2 thereafter, without the prior written consent of the Body Corporate.
- 16.3 The Seller shall be entitled, when applying for the opening of the register, to add to and/or amend the management rules and the conduct rules (prescribed by regulation in terms of the Sectional Titles Act) by inserting the provisions of clauses 16.1 and 16.2 in the rules.

**17. WITHHOLDING PAYMENTS AND NON-LIABILITY**

- 17.1 If any work of whatsoever nature is still required to be done to any unit or any other part of the building and/or the property on the date that transfer of the unit is tendered to the Purchaser, the Purchaser shall not be entitled to withhold, set off or retain any amounts owing by the Purchaser to the Seller nor shall the Purchaser be entitled to withhold or abate payment of any amount due to the Sellers in terms of this agreement by reason of any breach or alleged breach of the Seller's obligations under this agreement.
- 17.2 Notwithstanding anything to the contrary herein contained, the Seller shall not be responsible for any loss or damage which the Purchaser may suffer by any act or omission whatsoever or neglect on the part of the Seller, its servants, employees, contractors or agents, nor shall the Seller be responsible for any loss or damage of any description whether to the property or person which the Purchaser or any other person may suffer by reason of any unit and/or any other part of the building and/or the property at any time falling into a defective state or by reason of any construction of any other buildings and/or improvements conducted by the Seller on the property or any portion thereof. The Purchaser shall not be entitled for any of the said reasons or for any other reason whatsoever to withhold payment of any moneys due to the Seller in terms hereof.

**18. ARBITRATION**

- 18.1 Other than disputes relating to defects, any disputes, question or difference arising at any time between the parties to this agreement out of or in regard to any matters arising out of; or the rights and duties of any of the parties hereto; or the interpretation of; or the termination of; or any matter arising out of the termination of; or the rectification of this agreement, shall be submitted to and decided by arbitration on notice given by either party to the other of them in terms of this clause.

- 18.2 There will be one arbitrator who will be a practising junior member of the Cape Bar of not less than 10 years' standing.
- 18.3 Either party may declare a dispute by giving written notice to the other party to that effect. Thereafter the Seller shall within 7 (seven) days submit a written request to the Chairman for the time being of the Legal Practise Council Western Cape to appoint the arbitrator and send a copy of the request to the other party.
- 18.4 The arbitrator, who shall act as an expert, shall have the powers conferred upon an arbitrator under the Arbitration Act No. 42 of 1965, as amended or re-enacted in some other form from time to time but will not be obliged to follow the procedures described in that Act and will be entitled to decide on such procedures as he may consider desirable for the speedy determination of the dispute.
- 18.5 The arbitration shall be held in Cape Town in accordance with the provision of the Arbitration Act referred to above, save that the arbitration shall be informal and if possible, the arbitration shall be held and concluded within twenty-one days after it has been demanded.
- 18.6 The decision of the arbitrator, including any order as to the costs of the arbitration, shall be final and binding on the parties and may be made an order of any court of competent jurisdiction. Each of the parties hereby submits itself to the jurisdiction of the Western Cape High Court should any party wish to make the arbitrator's decision an order of the court.
- 18.7 This clause shall constitute each party's irrevocable consent to the arbitration proceedings and no party shall be entitled to withdraw here from or to claim at such arbitration proceedings that it is not bound by this clause.
- 18.8 This clause is severable from the rest of the agreement and shall therefore remain in effect even if this agreement is terminated.

**19. RIGHTS ON BREACH OF CONTRACT**

- 19.1 In the event of either party committing any breach of this contract or failing to sign the transfer documentation at the offices of the Conveyancers and/or fail to supply information required by the Conveyancers when requested thereto by the Conveyancers, then and in such event, the aggrieved party will be entitled to give the defaulting party written notice of such breach, which notice is either to be handed to the defaulting party or sent to him by prepaid registered post, describing the defaulter's breach of contract, demanding that such breach be rectified within not less than 7 (seven) days (or 48 hours if the transfer documents have been lodged in the Deeds Office) from the date on which such notice was handed to the defaulter or sent to him as above stated, as the case may be. In the event of the defaulter failing to comply with such demand within the said 7 (seven) days (or 48 hour period abovestated), the aggrieved party will be entitled, without prejudice to any other rights to which he may, in law, be entitled:
- 19.2 Should the aggrieved party be the Seller:
- 19.2.1 to sue for the immediate payment of all monies then remaining owing in terms of this contract, whether then due or not and the fulfilment of all the terms and conditions hereof; or

- 19.2.2 to cancel this contract, to recover possession and occupation of the Property and to eject the Purchaser or any other occupier of the Property who has obtained his right of occupation from the Purchaser and the Purchaser will have no right of recourse against the Seller in respect of any improvements effected by him to the Property and the Purchaser will have no right of retention and the Seller will furthermore, subject to the relevant statutory provisions, have the right to retain as rouwkoop or predetermined damages all payments made by the Purchaser and, without prejudice to the Seller's other rights and remedies and the right to claim such damages plus VAT as has actually been suffered by him in either event;
- 19.2.3 in the event of the Purchaser failing to vacate the Property for any reason, then the Seller will, without prejudice to any of his rights to eject the Purchaser and recover damages, be entitled to recover interest from the Purchaser equal to the interest which would have been payable but for the cancellation, plus all payments due in terms of the provisions of clause 7 above; or
- 19.2.4 to recover such damages plus VAT as he may have suffered;
- 19.2.5 the Purchaser further undertakes to pay all attorney and own client costs plus VAT, collection commission and tracing costs plus VAT which the Seller might incur in collecting any amount owing in terms of this Agreement by the Purchaser and which is not paid on the due date thereof including interest on such amount as per clause 2.4 above from the date such an amount becomes due, until date of receipt of payment;
- 19.2.6 in the event of the failure of the Purchaser to vacate the property for any reason, then the Seller shall, without prejudice to any of his rights to eject the Purchaser and recover damages, be entitled to recover interest from the Purchaser equal to the interest which would have been payable but for this cancellation, plus all payment due in terms of the provisions of clause 8 above;
- 19.3 Should the aggrieved party be the Purchaser:
- 19.3.1 to institute proceedings for the enforcement of his rights in terms hereof, or;
- 19.3.2 to terminate this contract, to recover all payments made to the Seller in payment of the purchase price in terms hereof and, in either event;
- to recover such damages as he may have suffered.

## 20. PHASED DEVELOPMENT

- 20.1 The Seller hereby discloses, as required by Sub-section 25(14) of the Sectional Titles Act that the Developer shall simultaneously with registration of the Sectional Plan, reserve a real right to extend the scheme as contemplated in Section 25 of the Sectional Titles Act. It is recorded further that the nature of the extension, the specifications, finishes and material used shall at all times be at the discretion of the Seller or its successors in title.
- 20.2 The Purchaser (and/or Nominated Occupant(s) as far as needs be) hereby consent:

- 20.2.1 where applicable, to the Seller preparing and submitting in terms of the Sectional Titles Act, No. 95 of 1986 a scheme or schemes to the Local Authority in terms of the said Section for approval and upon such approval, taking all necessary steps to erect additional buildings in the Fynbos Village and thereafter applying for the registration of a Sectional Plan or Plans;
- 20.2.2 to the imposition by the Seller, as conditions of title, all or any of the terms of this paragraph 20.
- 20.2.3 The Purchaser (and/or Nominated Occupant(s) as far as needs be) agree to allow the Seller to exercise its positive and real right to proceed with the development in the manner agreed upon and shall not be entitled to interfere with or obstruct the Seller from erecting on the Common Property or any portion thereof, the agreed upon buildings contemplated above, nor shall the Purchaser or Nominated Occupant(s) have the right of use of, or access to, to which he would otherwise be entitled, any portion or portions of the Common Property upon which as the agreed upon buildings are being erected until such time as the aforesaid agreed upon buildings have been completed and the sectional plan or plans thereof registered; provided that the Seller shall pay all rates and taxes and imposts calculated pro rata to the area involved, due in respect of such portion whilst this condition remains applicable.
- 20.2.4 The Purchaser shall have no right to, or in, any such buildings, of which units the Seller shall be the sole owner and certificates of registered sectional title shall be issued to and in the name of the Seller, who will be entitled to dispose of or otherwise deal with such units for its own exclusive benefit and account.
- 20.2.5 The Purchaser consents to his Participation Quota being reviewed and adjusted, as provided for in the Sectional Title Act (upon registration of the sectional plan or plans of the aforesaid additional building or buildings).
- 20.2.6 Neither the Purchaser nor any successor in title to the Purchaser or any other person to whom the Purchaser or his successors in title to the unit has granted any real right, shall be entitled to withhold his consent to the opening of the Sectional Title Register or Registers or the phased development, as contemplated in this Agreement of Sale.
- 20.2.7 The Purchaser hereby irrevocably authorises and appoints the Seller to sign all documents as may be necessary to enable the Seller to proceed with the aforesaid phased developments and registrations.
- 20.2.8 Should the Purchaser fail to or refuse to sign any such document, the Purchaser hereby appoints the Seller as his attorney and agent in *rem suam* to sign the same on his behalf.
- 20.2.9 The proceeds of the sale of all the units comprising the additional buildings shall be for the Seller's sole account.

## 21. JURISDICTION

The Purchaser hereby consents in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended), or any legislation passed in substitution thereof to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 (1) of the said Act,

or of any legislation passed in substitution thereof, in any action instituted by the Seller arising out of this agreement. Notwithstanding anything herein contained, the Seller shall be entitled to institute any action against the Purchaser arising out of this agreement in any Court having jurisdiction.

## 22. CONDITIONS

- 22.1 This agreement is subject to the condition that the Seller, in its sole discretion, achieves sufficient sales of Units within the Scheme so as to ensure its commercial viability by 30 September 2024. This period for fulfilment may be extended by the Seller a further 6 (Six) months by written notice to the Purchaser.
- 22.2 The Condition Precedent set out in 22.1 above is for the benefit of the Seller who may waive the condition on written notice to the Purchaser prior to the date for fulfillment set out above or any extended date.
- 22.3 If the Condition Precedent is not fulfilled timeously this agreement shall be of no force and effect and neither party shall have any claim against the other save that the Seller shall forthwith refund the amount paid by the Purchaser in respect of a deposit together with the accrued interest thereon.

## 23. GENERAL

- 23.1 The terms of this agreement form the sole contractual relationship between the parties hereto and no variation of this agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the parties hereto. The parties further acknowledge that no other conditions, stipulations, warranties and/or representations whatsoever have been made by either party or their agents other than as set forth in this agreement.
- 23.2 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement.
- 23.3 Each of the parties hereby undertakes to 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, Transfer Duty Declarations.
- 23.4 If there is more than one Purchaser in terms of this agreement, then the liability of each of the Purchasers shall be joint and several.
- 23.5 The Purchaser hereby irrevocably and in rem suam gives and grants to his/her spouse the right to deal in all matters arising out of this agreement and to sign any documents relating hereto on his/her behalf.

## 24. SELECTION OF FINISHES

- 24.1 From date of signature the Purchaser shall have 45 (forty five) days within which the Purchaser must select his finishes from Annexure "D" hereto;
- 24.2 Should the Purchaser fail to select the internal finishes during the selection period mentioned above then and in such event the Architect shall in his sole and unfettered discretion select the finishes from Annexure "D" hereto. The Purchaser

shall accept the Architect's selection and shall have no claim against the Seller pursuant to such selection.

- 24.3 Notwithstanding anything to the contrary contained in this agreement, the Seller or the architect shall be entitled to change any of the dimensions, specifications or detail design (including but not limited to materials, colours or layouts) as reflected in any of the plans or specifications hereto annexed as Annexures "B" and "D" respectively provided such change does not materially affect the Development Scheme or the unit. If any material changes are deemed necessary to be effected, the Seller undertakes to consult and confirm such changes in writing with the Purchaser prior to such changes being effected. A certificate by the architect that any changes so made do not result in a material change shall be conclusive proof thereof and shall be final and binding on the parties.
- 24.4 Notwithstanding anything to the contrary contained in this agreement, in the event of the unit differing by no more than five percent (5%) from the boundaries or areas shown on the Plans, as certified by the Architect to the Scheme, the Purchaser shall be obliged to accept transfer of the unit as completed. In the event of such a difference of more than five percent (5%), as certified by the said architect, either party shall be entitled but not obliged to resile from this agreement, by giving the other party written notice within seven (7) days of receipt of the said certificate. In the event of a party so resiling, neither party shall have any claim against the other arising therefrom save that the Seller shall refund the deposit together with accrued interest, and in the event of the Purchaser having taken occupation of the unit, the Purchaser undertakes to procure that he and all those occupying through or under the Purchaser shall forthwith vacate the unit and shall restore vacant possession to the Seller in the same good order and condition as it was at the Occupation Date. In the event of such a difference of more than five percent (5%) and neither party so resiles, neither party shall have any claim whatsoever against the other.
- 24.5 Notwithstanding anything to the contrary elsewhere expressed or implied, in the event of any of the materials (including the colour, style and /or design thereof) used in the finishes as detailed in the specifications, not being available for any reason whatsoever, prior to or during the course of the construction then the Seller or the architect shall after consultation with the Purchaser choose another similar material (and/or colour and/or style and/or design) which is available. **The choice of the Seller or the architect shall be final and binding on the parties.** Similarly, where any material is not clearly specified or indicated in the specifications and theme finish, the Seller or the architect shall have the right to specify the material considered in the opinion of the Seller or the architect to be the most suitable, in which event the decision of the Seller or the architect shall be final and binding on the parties.
- 24.6 The Purchaser shall in no manner whatsoever be entitled to interfere, including but not limited to the giving of directions or instructions, with the contractors and/or sub-contractors employed by the Seller.
- 24.7 The Purchaser acknowledges that:
- 24.7.1 the specifications of the unit may not necessarily be exactly the same as those illustrated in any showroom utilised for display purposes or contained in any other material exhibited by or on behalf of the Seller however same shall be substantially the same and any material difference will be discussed with the Purchaser. The Seller and architect's decision shall however be binding on the parties;



24.7.2 all measurements and dimensions reflected in this agreement and in the Annexures to this Agreement are approximate and are subject to finalisation on approval by the relevant authorities.

24.8 It is hereby recorded that the sectional title plans have not yet been prepared or registered and the final floor areas and siting of the unit and the detail of the finishes in them may vary as a result of either the requirements of the authorities having jurisdiction over the construction and finishing of the building in which the unit is situated and the requirements of the developer's professional team arising from aesthetic, technical or construction considerations.

## 25. EXTRAS / VARIATIONS

25.1 Should the Purchaser require extras/variatioins, the Purchaser shall, not less than 45 (forty five) days after signature hereof submit in writing one request to the Seller in which request the extras/variatioins shall be set out in sufficient detail to enable the Seller's contractor or sub-contractor to quote thereon and provided further the Seller shall not be obliged to agree to any extras/variatioins.

25.2 The Seller shall advise the Purchaser either that the extras/variatioins are refused or inform the Purchaser by written quotation (which need not be specified) that an additional amount (to the original purchase price) will be charged for such extras/variatioins as required. The Purchaser must, within 7 (seven) days accept in writing the additional amount payable and deliver such written acceptance to the Seller together with payment of such additional amount.

25.3 Should the written acceptance and additional payment not be received timeously, implementation of the extras/variatioins will be *ipso facto* refused and the Property shall be completed in accordance with this signed agreement and annexures hereto.

25.4 All specialists, merchants, tradesmen and subcontractors who are to execute any work or supply any goods shall be contractors normally used by the main contractor appointed by the Seller. The main contractor shall be under no obligation to utilise the services of any other contractor or sub-contractor.

25.5 The Purchaser shall be liable for payment of all costs that may be incurred for purposes of the finalisation and installation of such extras/variatioins which shall include but shall not be limited to the fees of the Architect, Quantity Surveyor, Structural/Mechanical Engineer, Land Surveyor, Attorneys, Agent and any other professional fees of whatsoever nature, such fees which shall be payable on request whether or not the Purchaser proceeds with the proposed extras/variatioins.

## 26. RECTIFICATION OF DEFECTS

26.1 The Seller shall within a reasonable time remedy any defects in the unit and/or the exclusive use areas which may manifest themselves within 30 days after the possession date provided that the Purchaser notifies the Seller in writing within the said period of 30 days of any defects, failing which, the Purchaser shall be deemed to have accepted the unit and the exclusive use areas in the condition in which same are as at the possession date. Provided further that the Purchaser shall not be precluded from exercising its rights in terms of the provisions of Section 56 as read with Section 55 of the Consumer Protection Act 68 of 2008 insofar as they may be applicable.

- 26.2 The Seller shall within a reasonable time remedy any defect in respect of roof leaks and gutter leaks in the building which may manifest themselves within 1 year after the completion date provided that the Purchaser notifies the Seller in writing within the said period of 1 year of any such defects, failing which, the Purchaser shall be deemed to have accepted the unit and the exclusive use areas in the condition in which the same are as at the completion date.
- 26.3 The Seller shall within a reasonable time remedy any material structural defects in the building which may manifest themselves within 5 years after the completion date provided that the Purchaser notifies the Seller in writing within the said period of 5 years of any such defects, failing which, the Purchaser shall be deemed to have accepted the unit and the exclusive use areas in the condition in which the same are as at the completion date.
- 26.4 Notwithstanding the provisions of clauses 26.1 to 26.3, the Seller shall not be liable for any defects in the unit and/or the exclusive use areas in respect of the following:
- 26.4.1 touch up paint of any nature; and
- 26.4.2 hairline cracks in the plaster work; and
- 26.4.3 any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints; and
- 26.4.4 any mould growth caused by a lack of ventilation and/or condensation; and
- 26.4.5 any doors and windows slamming in windy conditions or any damage caused thereby.
- 26.5 All warranties and undertakings given by the Seller to the Purchaser in terms of this agreement are personal to the Purchaser who shall not be entitled to cede, assign or make over its rights thereto.
- 26.6 The certificate of final completion issued by the architect as contemplated in clause 1.1.9 shall be conclusive evidence as to the completion of the unit and/or the exclusive use areas, and that all patent defects have been made good. Such certificate will only be issued in the event of a dispute between the parties after the completion of the unit in terms of clause 26.1 above.
- 26.7 Upon the issue of a certificate of final completion by the architect in respect of the unit and/or the exclusive use areas, the Purchaser shall have no claim whatsoever against the Seller in respect of the unit and/or the exclusive use areas and/or any defects therein (whether patent or latent) other than in terms of clauses 26.1, 26.2 and 26.3.
- 26.8 The Purchaser acknowledges that the Seller shall not be bound by any representations, warranties, promises, undertakings and the like made by or on behalf of the Seller which are not contained in this Agreement.

## 27. NOTICES AND DOMICILIA

- 27.1 The parties to the agreement choose the addresses set out in 1.1 and 1.2 of the Covering Schedule as their respective domicilia citandi et executandi for all

purposes arising here out and as their respective addresses for the service of any notices required to be served upon them hereunder.

- 27.2 Any notice or communication required or permitted in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give such notice by email.
- 27.3 Either party may by notice to the other change the physical address chosen as its/his domicilium, or may advise an email address; provided that such change(s) shall only become effective on the sixth business day after the date of receipt, or deemed date of receipt, of such notice by the addressee.
- 27.4 Any notice to a party shall -
- 27.4.1 If sent by pre-paid registered post, be deemed to have been received on the fourth business day after posting unless the contrary is proved.
- 27.4.2 If delivered by hand, shall be deemed to have been received on the day of delivery or on the next business day if the day of delivery is not a business day.
- 27.4.3 If sent by email, shall be deemed to have been received on the date of dispatch or on the next business day if the time of dispatch is not on a business day unless the contrary shall otherwise be proved.
- 27.5 Notwithstanding anything to the contrary herein contained, any written notice or communication actually received by a party to this agreement shall be an adequate written notice or communication to it/him notwithstanding that it was not sent to or delivered at the chosen domicilium citandi et executandi or transmitted to such party's email address as stipulated herein.

## 28. **COMPANY, CLOSE CORPORATION OR TRUST ALREADY FORMED**

- 28.1 If this agreement is signed by a person acting or purporting to act for and on behalf of a company, close corporation or trust (other than one not yet incorporated or formed) such person hereby warrants that the company, close corporation or trust as the case may be is in existence and is registered and that he is duly authorised to sign this agreement on its behalf, and he is hereby bound in favour of the Seller as surety and co-principal debtor *in solidum*, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company, close corporation or trust in terms of or arising out of:-
- 28.2 this agreement; or
- 28.2.1 any cancellation of this agreement; or
- 28.2.2 section 35 of the Insolvency Act No. 24 of 1936, as amended, pursuant to the abandonment by a liquidator or cancellation by a Court of this agreement, in the event of the said company, close corporation or trust being wound-up.

## 29. **OFFICIAL LANGUAGE**

The Purchaser acknowledges that this contract has been drawn up in the language of his/her choice.

**30. JOINT AND SEVERAL LIABILITY**

Should the Purchaser be more than one person, then the persons comprising the Purchaser shall be jointly and severally liable to the Seller for the due and proper fulfilment of all the obligations of, and the punctual payment of all amounts which are or may become due by the Purchaser in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof.

**31. ALIENATION OF LAND ACT**

In the event of the unit not being registerable, any amount(s) paid to the Seller's attorneys on account of the purchase price shall be held in trust. The Seller's attorney is, however, hereby instructed to invest such amount(s) on behalf of the Seller, interest accruing for the benefit of the Purchaser.

**32. DIRECT MARKETING AND COOLING OFF PERIOD**

The Purchaser, in the event of having concluded this agreement as a result of Direct Marketing as defined in the provisions of the Consumer Protection Act No. 68 of 2008, confirms that he/she/it has been informed of his rights as provided for in Section 16 read with Section 20 (2) (a) of the aforementioned Act, to rescind a transaction, without reason or penalty, within 5 (five) business days after the later of the date on which:-

- a) the transaction or agreement was signed; or
- b) the goods that were the subject of the transaction were delivered to the consumer.

**33. PROPERTY PRACTITIONERS ACT**

The Purchaser acknowledges that the Agreement contains clauses for the Seller to address items relating to the condition of the Subject Matter after handover. In this context of an "off plan" purchase, there can be no "property condition report attached.

**34. PLANS**

The agreement is conditional upon the local authorities approving the amended site development plan (SDP) submitted by the appointed town planner.