



HARBOUR BAY

VILLAGE

EXCLUSIVE RETIREMENT LIVING

# HARBOUR BAY VILLAGE

DEED OF SALE

23.02.18

**HARBOUR BAY VILLAGE  
SIMONSTOWN**

**AGREEMENT OF SALE**

For the Purchase and Sale of a Sectional Title Unit  
prior to the opening of the Sectional Title Register

**ENTERED INTO BETWEEN**

**HARBOUR BAY VILLAGE (PTY) LTD  
Registration No: 2017/125655/07  
3<sup>rd</sup> Floor, Sunset Square  
No 7 Sunset Lane  
Fourways  
Gauteng**

and

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&

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UNIT: \_\_\_\_\_

***You are encouraged to seek independent legal advice in relation to this Agreement prior to concluding same, as in signing this Agreement you acknowledge that you understand the terms of this Agreement and its Annexures and agree to be bound thereby.***

## INFORMATION SCHEDULE

Terms defined in the main body of the Agreement have been used in this Information Schedule.

### 1. SELLERS DETAILS

Full Name: Harbour Bay Village (PTY)Ltd

Registration Number: 2017/125655/07

Registered Address: c/o C&A Friedlander Inc, 15 Carlton Close, Longbeach  
Business Village, Noordhoek

Telefax Number: 086 644 2111

E-mail Address: cathy@caf.co.za

VAT Registration number: PENDING

### 2. PURCHASER NO.1 DETAILS

Surname: \_\_\_\_\_

First Name(s): \_\_\_\_\_

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

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

Marital Regime (if married): \_\_\_\_\_

Date and Place of Marriage: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Cell Number: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

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

### 3. PURCHASER NO.2 DETAILS (IF APPLICABLE)

Surname: \_\_\_\_\_

First Name(s): \_\_\_\_\_

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

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

Marital Regime (if married): \_\_\_\_\_

Date and Place of Marriage: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Cell Number: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

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

**PURCHASERS DETAILS IF LEGAL ENTITY**

Full Name: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Registered Address: \_\_\_\_\_

Telefax Number: \_\_\_\_\_

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

VAT Registration number: \_\_\_\_\_

***Note: for the purposes of contractual notices given, the street address and e-mail address of Purchaser 1 will be the valid domicilium address for both Purchasers.***

**4. SECTIONAL TITLE UNIT AND EXCLUSIVE USE AREA(S)**

Unit type: \_\_\_\_\_

Section Number: \_\_\_\_\_ (provisional) Door Number \_\_\_\_\_

Estimated Floor Area of Section (excluding storeroom) \_\_\_\_\_ m<sup>2</sup>

Store Room No: \_\_\_\_\_, approximately \_\_\_\_\_ m<sup>2</sup> in extent

Estimated Final Participation Quota of Sectional Title Unit (including storeroom):  
\_\_\_\_\_ %

***Note: The Participation Quota given above is an estimate and based on the final number and sizes of units in the completed Scheme. The Scheme is a phased development (as more fully described in clause 18), and the official participation quota reflected in the interim Sectional Plans from time to time will fluctuate as and when the Scheme is extended.***

Exclusive Use Area(s) (delete if not applicable)

• Parking Bay No/s: \_\_\_\_\_, approximately \_\_\_\_\_ m<sup>2</sup>  
and \_\_\_\_\_ m<sup>2</sup> in extent; and

• Garden No: \_\_\_\_\_, approximately \_\_\_\_\_ m<sup>2</sup> in extent.

as will be allocated to the Section in the Management Rules of the Scheme in terms of section 27A of the Sectional Titles Act (now sections 10(7) and (8) of the Sectional Titles Schemes Management Act).

***Note:***

***(a) The Section and Exclusive Use Area(s) are more fully described on Annexures B and C to the Agreement. The areas mentioned above are estimations and the Purchaser's attention is brought to clauses 15, 16 and 17 in this regard.***

***(b) The Scheme is a phased development and the Section forms part of a particular phase. The Purchaser agrees that, prior to completion of the entire Scheme, the phase in which the Section is located (along with all other completed phases) will be a stand-alone Housing Development Scheme for all purposes of the Retired Person's Act.***

**5. ERF ON WHICH THE SCHEME IS SITUATED**

Erf Number: Erf 5261  
Extent: Approximately 2.7 hectares  
Magisterial District: Simon’s Town  
Registered Owner: Currently registered in the name of Southern Palace Investments 112 PTY LTD however registration into the name of Harbour Bay Village (Pty) Ltd is imminent  
Certificate of Registered Title: T1702/2017

**6. AGENT:**

Name: Amanda Stocks, Anton Malherbe and Bruce Durham  
Agency: Harbour Bay Village (Pty) Ltd  
Street Address: ABC Building, 92 St Georges Street, Simon’s Town  
City: Cape Province: Western Province, Postal Code: 7975  
Contact: Anton Malherbe - 083 233 3535  
Contact : Amanda Stocks - 083 566 4488  
Contact: Bruce Durham – 082 380 1880

E-mail Address:

[anton@harbourbayvillage.co.za](mailto:anton@harbourbayvillage.co.za)  
[amanda@harbourbayvillage.co.za](mailto:amanda@harbourbayvillage.co.za)  
[bruce@harbourbayvillage.co.za](mailto:bruce@harbourbayvillage.co.za)

Tax Number:

Anton Malherbe – 2118674031  
Amanda Stocks – 1806648034  
Bruce Durham - 088606203

**7. PURCHASE PRICE**

Total (VAT inclusive)

Deposit (within 30 days of Signature Date)

Balance (on Transfer Date)

R
R
R

**8. SALES AGENTS COMMISSION**

Commission of 3% (three percent) excluding VAT is payable on the full purchase price of the property by the Seller.

9. **LEVIES**

Property Levy	R
Services Levy	R
Medical Levy	R
Premier Living Levy	R
Discretionary Food and Beverage Allowance	R

<b>MONTHLY TOTAL 2020</b>	<b>R</b>	<b>/per</b>	<b>MONTHLY TOTAL 2021</b>	<b>R</b>	<b>/per</b>
	<b>month</b>			<b>month</b>	

***Note: the above amounts indicate the monthly levy (exclusive of VAT if applicable) which will be payable as from the Transfer Date. This amount is subject to escalation. Optional extra services will available at an extra cost.***

10. **ESTIMATED COMPLETION DATE** 31<sup>st</sup> March 2020

11. **ESTIMATED TRANSFER DATE** 31<sup>st</sup> May 2020

12. **LOAN SUSPENSIVE CONDITION (DELETE IF NOT APPLICABLE)**

This Agreement is subject to the condition precedent that the Purchaser is offered loan finance in principle from a financial institution on terms and conditions acceptable to the Seller, to be secured by a mortgage bond registered over the Property, for the amount of

R \_\_\_\_\_  
 \_\_\_\_\_

before the date falling 30 (THIRTY) days from the Signature Date. In order to facilitate the application by the Purchaser for mortgage finance, the Purchaser hereby consents to the disclosure by Harbour Bay Village of the information contained in this agreement to BetterBond bond originator which information shall be used for the sole purpose of the Purchaser’s application for mortgage finance.

***Note: See clause 24 for further terms and conditions relating to the use of mortgage bond finance.***

13. **SUBJECT TO SALE OF ANOTHER PROPERTY**

This offer is subject to the sale of another property **YES / NO**

**If yes, kindly complete addendum “A”.**

**14. CONSUMER PROTECTION ACT**

The Seller declares that it is selling the Property in the ordinary course of its business and certain of the provisions of the Consumer Protection Act may apply. In the event that this transaction resulted from direct marketing as contemplated in the Consumer Protection Act, the Purchaser has a right to rescind this Agreement without reason or penalty, by written notice to the Seller within 5 (FIVE) business days after the Signature Date.

The Purchaser confirms that (delete the answer that is not applicable):

1. He has read this Agreement and understands the contents thereof. **YES / NO**
2. That the Property was not introduced to him by means of direct marketing. **YES / NO**
3. That he is aware and understands his right to the cooling-off period after direct marketing **YES / NO**
4. The Purchaser is a juristic person (Company, Close Corporation, Trust, Partnership etc.) **YES / NO**
5. If the answer to 4 above is "yes", the Purchaser's annual turnover or asset value is more than R2 000 000.00 (TWO MILLION RAND) as on the Signature Date (not applicable if Purchaser is a natural person **YES / NO**
6. The Purchaser has purchased and will use the Property only for residential purposes. **YES / NO**

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## 1. PREAMBLE

This agreement is for the Purchase and Sale of a Sectional Title Unit in the scheme known as Harbour Bay Village prior to the opening of the Sectional Title Register. Harbour Bay Village is an exclusive retirement village consisting of luxury apartments and penthouses, premier living suites, garden cottages and garden villas for residents over the age of fifty. With its sophisticated security system and 24-hour on-site care, Harbour Bay Village provides an exceptional and secure solution for people looking to safeguard their future in style while taking advantage of the five-star leisure and social facilities.

## 2. DEFINITIONS

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 2.1 "**Admiral Building**" means the building in the Scheme labelled as such on the Site Development Plan
- 2.2 "**Agent**" means the estate agent or broker mentioned in Item 6 of the Information Schedule;
- 2.3 "**Body Corporate**" means the Body Corporate of the Scheme as defined in the Sectional Titles Act as amended by the Sectional Titles Schemes Management Act;
- 2.4 "**Buildings**" means the buildings currently being or to be constructed on the Erf as depicted on the Site Development Plan and "Building" means the specific building of which the Section forms part;
- 2.5 "**Building Plans**" means the detailed building plans and drawings for the Section and the relevant Building, which Building Plans are annexed to this Agreement as Annexures "B" and "C";
- 2.6 "**Business Day**" means any day except a Saturday, Sunday or an official public holiday;
- 2.7 "**Care Provider**" means Medwell SA, contracted per contra by the Body Corporate to render care services to the Scheme as contained in Annexure J
- 2.8 "**Care Services**" means the services fully described in annexure J
- 2.9 "**Common Property**" means such parts of the land comprising the Erf that will not form part of a section of the Scheme and that will be designated as such on the Sectional Plan;
- 2.10 "**Common Facilities**" means Therapeutic Garden, Herb Garden, Estate Management Office, Main Reception, Concierge Desk, Library Lounge, Business Centre, Captain's Quarters, Restaurant, Care Centre and Laundry drop off and collection point. Health and Beauty Centre with Indoor Pool (including gym, yoga, beauty salon and hairdresser) will be **available on completion of phase two** of the development)

- 2.11 "**Completion Certificate**" means the certificate issued by the Principal Agent and furnished to the Purchaser, the Seller and the Conveyancers, confirming that in the opinion of the Principal Agent:
- 2.11.1 the Property has been sufficiently completed to be fit for the purposes of utilization as a residential dwelling by a retired person in terms of Section 6 of the Retired Person Act; and
  - 2.11.2 The Property has been erected substantially in accordance with the officially approved building plans, town planning scheme and any applicable by-laws of the Local Authority in terms of Section 6 of the Retired Person Act and is free of any patent defects as at the Completion Date.
- 2.12 "**Completion Date**" means the date upon which the Principal Agent issues the Completion Certificate in respect of the Property, and which estimated date is as set out in Item 10 of the Information Schedule;
- 2.13 "**Conduct Rules**" means the Conduct Rules from time to time applicable to owners and residents in the Scheme, which initial Conduct Rules are annexed hereto marked Annexure "F".
- 2.14 "**Consumer Protection Act**" means Consumer Protection Act, No. 68 of 2008;
- 2.15 "**Contract**" means this written Deed of Sale with all the annexures and schedules thereto and "Agreement" will have a corresponding meaning;
- 2.16 "**Contractor**" means the principal main building contractor appointed by the Seller for construction of the Building and the Property;
- 2.17 "**Conveyancers**" means C&A Friedlander Attorneys, 15 Carlton Close, Noordhoek, Tel: 021 785 5945
- 2.18 "**Deposit**" means the deposit described in 7 of the Information Schedule;
- 2.19 "**Developer**" means Harbour Bay Village, C/O C&A Friedlander Inc, 15 Carlton Close, Longbeach Business Village, Noordhoek. Tel: 021 7855945;
- 2.20 "**Development Period**" means 5 (five) years after establishment of the Body Corporate, alternatively such earlier date as may be notified in writing by the Seller to the trustees of the Body Corporate;
- 2.21 "**Erf**" means Erf 5261, Simon's Town, in extent approximately 2.7 hectares;
- 2.22 "**Estate Manager**" means a person / agency appointed and employed by the Body Corporate to manage the Estate;
- 2.23 "**Exclusive Use Area(s)**" means that/those portion(s) of the Common Property allocated to and for the exclusive use of the Purchaser as owner of the Section hereby sold in terms of Section 27 or 27A of the Sectional Titles Act (now sections 10 (7) and (8) of the Sectional Titles Schemes Management Act) (if applicable);

- 2.24 "**Floor Area**" means the floor area of the Section measured to the median line of the boundary walls of each section, as will be shown on the sectional title participation quota schedule that will form part of the Sectional Plan;
- 2.25 "**Harbour Bay Village Care Centre**" means the on-site care facility providing 24-hour nursing and clinic services, to be located in the Admiral Building, and which facility and services may be utilised by the Purchaser and its Nominated Occupant(s) including seven assisted living apartments and a twelve bed frail care facility.
- 2.26 "**Information Schedule**" means the Information Schedule contained in pages 1 to 6 of this Contract;
- 2.27 "**Levies**" or "**Levy**" means the monthly levy contributions that will be payable by the Purchaser to the Body Corporate in terms of section 37 the Sectional Titles Act and section 3 of the Sectional Titles Schemes Management Act, being initially the amounts specified in clause 9 of the Information Schedule and further set out in Annexure "H" annexed hereto;
- 2.28 "**Local Authority**" means the local authority having jurisdiction over the Erf, being at present the City of Cape Town, and shall include its successor in such capacity;
- 2.29 "**Management Agreement**" means the agreement concluded between the Body Corporate (represented by the Seller) and the Managing Agent (represented by an Estate Manager) regulating the terms and conditions on which the Managing Agent will manage the Scheme;
- 2.30 "**Management Rules**" means the Management Rules of the Body Corporate as indicated in Annexure E.
- 2.31 "**Managing Agent**" means such person or entity appointed, from time to time, by the Seller or the Body Corporate to manage the Scheme, it being recorded that the first Managing Agent of the Scheme shall be Latitude Property Solutions (Pty)Ltd;
- 2.32 "**Occupation Date**" means the date upon which the Purchaser takes possession and occupation of the Section in terms of Clause 9, and which date may be on or after, but not prior to, the Completion Date;
- 2.33 "**Occupational Health and Safety Act**" means the Occupational Health and Safety Act, No. 85 of 1993;
- 2.34 "**Occupational Interest**" means the amount payable by the Purchaser to the Seller from Occupation Date to the Transfer Date (estimated 31 May 2020);
- 2.35 "**Parties**" means the Seller and the Purchaser and "Party" means either one of them;

- 2.36 "**Premier Living Suites**" means the sections incorporated in the Admiral Building offering premium care services.;
- 2.37 "**Prime Overdraft Rate**" means the rate of interest per annum which is equal to ABSA Bank Limited's publicly quoted prime overdraft rate of interest per annum charged by the said bank on overdrawn current accounts of its most favoured clients from time to time. In the event of a dispute as to the prime overdraft rate, the rate shall be certified by any manager of any branch of the said bank, whose certificate will act as prima facie proof of the overdraft rate;
- 2.38 "**Principal Agent**" means the agent/project manager appointed by the Developer in terms of the JBCC Principal Building Agreement, which agent shall be an architect or quantity surveyor;
- 2.39 "**Property**" means collectively, the Sectional Title Unit and the Exclusive Use Area(s) (if applicable) as set out in Item 4 of the Information Schedule;
- 2.40 "**Purchase Price**" means the Purchase Price reflected in Item 7 of the Information Schedule;
- 2.41 "**Purchaser**" means collectively, the person or persons reflected in Item 2 and 3 of the Information Schedule;
- 2.42 "**Retired Persons' Act**" means the Housing Development Schemes for Retired Persons Act, No. 65 of 1988 (as amended);
- 2.43 "**Rules**" means the Management Rules and the Conduct Rules of the Scheme prescribed by the Developer as indicated in Annexure E and F;
- 2.44 "**Scheme**" means the sectional title scheme to be known as "HARBOUR BAY VILLAGE" comprising the Buildings which will be developed and built on the Erf, and which scheme will come into being on registration of the Sectional Plan against the title deed of the Erf and the opening of the Sectional Title Register in terms of the provisions of the Sectional Title Act in respect of the sections reflected thereon;
- 2.45 "**Section**" means the section in the Scheme hereby sold as more fully described on the Building Plans, and which section will be depicted as one section on the Sectional Plan with floor area approximately as set out in Item 4 of the Information Schedule;
- 2.46 "**Sectional Plan**" means the plan(s) to be drawn in respect of the Erf and Buildings in terms of the Sectional Titles Act and which is to be approved by the Surveyor General;
- 2.47 "**Sectional Titles Act**" means the Sectional Titles Act, No. 95 of 1986 and any amendment thereto and includes the regulations promulgated thereunder from time to time;

- 2.48 "**Sectional Titles Schemes Management Act**" means the Sectional Titles Schemes Management Act, No. 8 of 2011 and any amendment thereto and includes the regulations promulgated thereunder from time to time;
- 2.49 "**Sectional Title Unit**" means the Section along with an undivided share in the Common Property to be apportioned to the said Section in accordance with the participation quota which will be endorsed on the Sectional Plan;
- 2.50 "**Sectional Title Register**" means the sectional title register in respect of the Erf and the Buildings to be registered and opened in terms of the Sectional Titles Act;
- 2.51 "**Seller**" means Harbour Bay Village with further details as set out in Item 1 of the Information Schedule;
- 2.52 "**Signature Date**" means the date on which the last Party thereto signs this Contract;
- 2.53 "**Site Development Plan**" means the plan depicting the location and layout of the Buildings and the Scheme as a whole, which plan is attached as Annexure " A ";
- 2.54 "**Specifications**" means the schedule of specifications and finishes for the Section attached hereto as Annexure " D ";
- 2.55 "**Transfer Date**" means the date of registration of transfer in the Deeds Office of the Property in favour of the Purchaser, which estimated Transfer Date is set out in Item 11 of the Information Schedule;
- 2.56 "**VAT**" means Value Added Tax payable in terms of the VAT Act
- 2.57 "**VAT Act**" means the Value Added Tax Act, No. 89 of 1991.

### 3. INTERPRETATION

#### In this agreement:

- 3.1 the heading to the clauses of this Agreement are for reference and convenience purposes only and shall not aid in the interpretation of the clauses to which they relate;
- 3.2 unless a contrary intention clearly appears, words importing one gender shall include the other genders, the singular shall include the plural and vice versa and natural persons shall include juristic persons and vice versa;
- 3.3 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 3.4 the words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on any Party shall have the same meaning;

- 3.5 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time and unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 3.6 if any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day;
- 3.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 3.8 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 3.9 a Party includes a reference to that Party's successors in title and assigns allowed at law, including the Parties' estates, heirs, executors, administrators, trustees, assigns, debt counsellors, business rescue practitioners or liquidators;
- 3.10 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 3.11 the so-called *contra proferentem* rule (means the "interpretation against the draftsman") of construction shall not apply and accordingly none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;
- 3.12 the *iusdem generis* rule (means "of the same kind") of construction shall not apply and accordingly, the use of the words "includes" and "including" followed by a specific example or examples shall not be construed as limiting the meaning or ambit of the general wording preceding it, and the words "include" and "including" shall mean "include without limitation" and "including without limitation" respectively;
- 3.13 reference to "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002;
- 3.14 reference to any statutory enactment (including statutes, ordinances, regulations and by-laws) shall be construed as a reference to that enactment as at the Signature Date hereof and as amended or re-enacted or substituted from time to time thereafter;

- 3.15 where any reference is made in a clause hereof to a provision of the Sectional Titles Act, and that provision has been repealed and the subject matter thereof dealt with in terms of the Sectional Titles Schemes Management Act, then that clause will be read as referring to the relevant provision of the Sectional Titles Schemes Management Act;
- 3.16 the expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 3.17 the words "clause" or "clauses" and "annexure" or "annexures" and "schedule" or "schedules" refer to clauses of, annexures and schedules to this Agreement as listed below:
- 3.17.1 Annexure "A" – Site Development Plan;
  - 3.17.2 Annexure "B" – Detailed Unit Plan;
  - 3.17.3 Annexure "C" - Parking and Storage Layout Plan
  - 3.17.4 Annexure "D" – Unit Specification;
  - 3.17.5 Annexure "E" – Management Rules;
  - 3.17.6 Annexure "F" – Conduct Rules;
  - 3.17.7 Annexure "G" – Statutory Declaration (Retired Person's Act);
  - 3.17.8 Annexure "H" – Levy Schedule;
  - 3.17.9 Annexure "I" – 3 Year Management Expenditure;
  - 3.17.10 Annexure "J" – Care Services;
  - 3.17.11 Annexure "K" – Developer's Determination;
  - 3.17.12 Annexure "L" - Agreement of Lease
  - 3.17.13 Annexure "M" - Plant List

#### **4. RECORDAL**

- 4.1 The Seller wishes to develop the Erf by the construction of the Buildings and the opening of a Sectional Title Register thereon.
- 4.2 The Seller has procured the completion of the Building Plans and Specifications.
- 4.3 The Seller wishes to sell the Property prior to the completion of the construction of the Buildings.
- 4.4 The Buildings have not been completed and the Sectional Plan not yet drawn or registered and accordingly the exact and final boundaries of the Section and, where applicable, the Exclusive Use Area(s) will only be reflected on the completed and approved Sectional Plan.
- 4.5 The Parties have entered into this Agreement to record the terms and conditions relating to the sale of the Property and certain matters incidental thereto.

## 5. SALE

- 5.1 The Seller hereby sells to the Purchaser who hereby purchases:
- 5.1.1 the Sectional Title Unit; and
  - 5.1.2 the Exclusive Use Area(s) (if applicable) collectively referred to hereinafter as "the Property";
  - 5.1.3 on the terms and conditions set out in this Contract.

## 6. PURCHASE PRICE

- 6.1 The Purchase Price payable by the Purchaser to the Seller for the Property shall be the amount set out in Item 7 of the Information Schedule, payable as follows:
- 6.1.1 A Deposit in the amount of 10% (TEN PERCENT) of the Purchase Price is payable in cash to the Conveyancers within 30 (THIRTY) days of the Signature Date, which Deposit will be invested by the Conveyancers in an interest-bearing trust account for the Purchaser's benefit in terms of section 78(2A) of the Attorneys Act and section 6(3)(a) of the Retired Persons' Act for release to the Seller on the Transfer Date;
  - 6.1.2 In the event that the Purchaser applies for a Mortgage Bond to purchase the property, a Deposit in the amount of 10% (TEN PERCENT) of the Purchase Price is payable in cash to the Conveyancers within 30 (THIRTY) days of the Signature Date, which Deposit will be invested by the Conveyancers in an interest bearing trust account for the Purchaser's benefit in terms of section 78(2A) of the Attorneys Act and section 6(3)(a) of the Retired Persons' Act for release to the Seller on the Transfer Date;
  - 6.1.3 In the event that the sale of the Property is subject to a suspensive condition (other than mortgage bond in terms of clause 24 and Item 12 of the Information Schedule), the Deposit shall be 20% (TWENTY PERCENT) of the Purchase Price payable in cash to the Conveyancers within 30 (THIRTY) days of the Signature Date, which Deposit will be invested by the Conveyancers in an interest bearing trust account for the Purchaser's benefit in terms of section 78(2A) of the Attorneys Act and section 6(3)(a) of the Retired Persons' Act for release to the Seller on the Transfer Date; or
  - 6.1.4 The Purchaser shall, within 30 (THIRTY) days of being requested to do so in writing by the Conveyancers, furnish the Conveyancers with an irrevocable guarantee issued in favour of the Conveyancers for the balance of the Purchase Price (inclusive of VAT). The guarantee is to be issued by a bank or financial institution in a form acceptable to the Conveyancers and is to be payable against registration of transfer of the Property into the name of the Purchaser. **Please note that the Conveyancers will only call for guarantees once the Developer has fulfilled all suspensive conditions.**



- 6.2 All monies due by the Purchaser in terms of this Contract, and unpaid on the due date, shall bear interest at Prime Overdraft Rate plus 2% (TWO PERCENT) calculated from the due date to the actual date of receipt thereof by the Seller or the Conveyancers as the case may be.
- 6.3 All or any payments to be affected hereunder shall be affected by the Purchaser to the Conveyancers free of exchange at Cape Town and without deduction or set off.
- 6.4 In the event that the VAT rate in effect on the Signature Date is at any time thereafter increased or reduced in such a manner that the VAT payable on the supply of the Property is increased or reduced, the Purchase Price will be either increased or reduced as the case may be, to reflect the actual VAT payable on the supply of the Property in terms of this Contract.
- 6.5 The Purchaser shall not be entitled to withhold, delay or abate any payments, nor to deduct from or set off against payment of any amounts due to the Seller in terms of this Contract any amounts owed or allegedly owed by the Seller to the Purchaser from whatsoever cause arising.

## **7. UNIT LAYOUT AND SPECIFICATIONS**

- 7.1 Subject to the provisions of Clauses 7.2 to 7.5 hereunder, the Buildings and the Property shall be built substantially in accordance with the Building Plans and finished in accordance with the Specifications.
- 7.2 Certain choices, alterations, optional extras and/or changes will involve an extra cost, which will be payable to the Seller within 7 (SEVEN) days of invoice, and in any event, prior to the Occupation Date. Where the Purchaser fails to make any related extra payment within 7 (SEVEN) days of invoice by the Seller, the Seller or the Architect shall, in their sole and absolute discretion, be entitled to revert back to the original specifications (as amended only by the Purchaser's latest valid choices, alterations, and/or changes which involve no additional cost), in which event the Purchaser shall be obliged to accept the Section with such finishes.
- 7.3 Notwithstanding the provisions of clauses 7.2 above, and with prior consultation with the Purchaser, the Seller shall be entitled to:
- 7.3.1 substitute items of a similar standard and quality for any specified item referred to in the Specifications; and
  - 7.3.2 vary the Specifications of the Section, should the Architect consider the variation reasonably necessary for technical or aesthetic reasons.
- 7.4 Provided there has been consultation with the Purchaser, the latter shall be obliged to accept the changes made in terms of clauses 7.3.1 and 7.3.2 and shall have no claim of whatsoever nature against the Seller or the Architect as a result thereof.

- 7.5 In the event of there being any dispute between the Parties as to the selection of finishes or any other aspect referred to in this clause 7, the dispute shall be referred to the Architect for determination and his expert decision shall be final and binding on the Parties.

## **8. COMPLETION AND HAND OVER**

- 8.1 It is anticipated that construction of the Section will be complete by the Completion Date, as reflected in Item 10 of the Information Schedule.
- 8.2 In the event that the Seller anticipates that the Completion Date will not be as per Item 10 of the Information Schedule, then it shall give notice to the Purchaser of a new expected Completion Date, but such new Completion Date shall not later than (TWO) years from the anticipated date of transfer.
- 8.3 The Purchaser or his representative shall be entitled to attend a hand over inspection of the Section together with the Principal Agent or his agent at any pre-arranged time before the relevant Completion Date in order to inspect and examine the Section to compile a list of defects in the Property and all fixtures and fittings therein which defects are to be remedied by the Seller and/or the Contractor.
- 8.4 During the hand over inspection the Principal Agent or his agent may in his sole and absolute discretion, but in consultation with the Purchaser, add items to the list which will be remedied by the Seller and/or the Contractor.
- 8.5 In the event however, that the Purchaser or his representative fails to attend the hand over inspection, despite having been duly notified thereof, the Principal Agent or his agent shall conduct such inspection alone, and without input from the Purchaser or his representative.
- 8.6 The items included in the list of patent defects, if any, identified during the hand over inspection, shall be final and binding between the Parties. The Purchaser shall be precluded, from raising at any later time any defect which is alleged to have been a patent defect on the day of the inspection, but which does not appear on such defect list, and shall not have any claim against the Seller arising therefrom, nor shall the Purchaser be entitled to allege that any such unlisted defect renders the Section unfit for beneficial occupation.
- 8.7 The Seller and/or the Contractor shall remedy any defects that have been included on the list of defects as soon as reasonably possible.
- 8.8 Once the Principal Agent has satisfied himself that the housing development has been erected substantially, in accordance with any applicable official approved building plans and town-planning scheme and applicable by-laws and is sufficiently completed for the purposes of the housing interest concerned, he shall issue a Completion Certificate for the Property on date of completion and as per item 10 of the information schedule (but no later than 2 (two) years from the anticipated Transfer Date date), failing which the Purchaser shall be entitled to cancel this contract by written notice to the Seller, whereupon neither party shall have any claim of any nature against each other, except that the Purchaser shall be entitled to immediate repayment of the Deposit plus interest earned thereon, less any amount due in respect of interest or other amount due in terms of this Contract.

- 8.9 The Purchaser agrees that the Completion Certificate issued by the Principal Agent shall be sufficient proof that the Property is available for occupation and is free of any patent defects as at the Completion Date.
- 8.10 The Seller shall remedy any material latent defect in the Section due to faulty workmanship or materials, manifesting itself within 180 (ONE HUNDRED AND EIGHTY) days of the Transfer Date, provided that the Purchaser notifies the Seller thereof in writing within the said period. Any dispute between the Seller and the Purchaser as to whether a defect constitutes a material defect shall be referred to the Principal Agent for determination, who shall make such determination as an expert, and whose decision shall be final and binding on the Parties.
- 8.11 Notwithstanding the provisions of this clause 8, the Seller shall strictly enforce, for the benefit of the Purchaser, any guarantee or warranty which it may enjoy under the building contract with the Contractor.
- 8.12 To the extent that such guarantee or warranty relates to appliances fitted at the property, the Seller hereby cedes all its rights in terms thereof to the Purchaser. All documentation relating to the guarantee / warranty for appliances shall be handed to the Purchaser on transfer and the Purchaser shall be liable to enforce these guarantees / warranties if necessary.

## 9. POSSESSION AND OCCUPATION

**Possession and occupation of the Property shall be given by the Seller and taken by the Purchaser on the Transfer Date (estimated 31 May 2018) and this shall be the date upon which all risk and benefit attaching to the Property shall pass to the Purchaser.**

## 10. AGE RESTRICTION

- 10.1 The Purchaser acknowledges that Harbour Bay Village is a retirement village and the Primary Occupant of all units must be 50 (fifty) years old or over.
- 10.2 In the event that the Primary Occupant has a spouse or dependants under the age of 50 (fifty) years of age, the Primary Occupant may apply to the Estate Manager, as the representative of the Trustees of the Body Corporate, for special permission for the spouse / dependants to reside in the unit.
- 10.3 The decision of the Body Corporate is final and binding.
- 10.4 All residents, irrespective of age, are expected to abide by the Body Corporate Rules, including the Conduct Rules and Management Rules.

## 11. LETTING THE PROPERTY

- 11.1 The Purchaser acknowledges and accepts that before the Property may be let to a Tenant(s), the Estate Manager, acting on behalf of the trustees of the Body Corporate, must grant its written approval.

- 11.2 Within 14 (FOURTEEN) days of the Purchaser informing the Estate Manager or Managing Agent of the identity(ies) of the Tenant/s, the Purchaser undertakes, at his own expense, to furnish the Estate Manager / Managing Agent with reasonable proof that the Tenant has attained the age of 50 (FIFTY) years. It is therefore agreed that the Primary Occupant is required to be a minimum of 50 (Fifty) years old. Should any of the occupants of the property are under the age of 50 (Fifty) years old then such occupant is required to apply and obtain consent of the Body Corporate. Furthermore, should the primary occupant predecease the secondary occupant/s, then the secondary occupant would need to apply to the Estate Manager / Managing agent for the right to remain on the property, which decision will be binding. Such persons to be considered would be, but not limited to the following: Life Partner, Spouse or Dependant. Furthermore, the Developer shall have the right to decide on whether or not such dependant/s are permitted to reside in the units. Once the Developer has transferred the first unit, the body corporate will be formed and the nominated Trustees will attend to any further decisions regarding dependants under the age of 50(fifty) residing in the units
- 11.3 Within 14 (fourteen) days of the Purchaser informing the Estate Manager / Managing Agent of the identity(s) of the Tenant/s, the Tenant/s will have to undergo a medical assessment, which will be carried out by the Care Provider in order to determine the level of care required by the Tenant as well as the physical and mental condition of the Tenant/s which costs will be for the account of the Purchaser.
- 11.4 The Purchaser acknowledges and agrees that, depending on the contents of the Medical assessment, and prior to the Occupation Date, the Estate Manager / Managing Agent may require a face-to-face interview with the Tenant(s) in their sole and absolute discretion, in order to establish the care needs of Tenant(s) and assess the suitability of the proposed Tenant(s) to reside in the Scheme.
- 11.5 Pursuant to review of the documentation mentioned in clauses 11.2 and 11.3, (and the face-to-face interview if applicable), should the Estate Manager / Managing Agent (the Care Provider) recommend that the Tenant(s) requires a certain level of Care Services, then the written approval to be granted by the Estate Manager / Managing Agent will be conditional upon the Purchaser and/or the Tenant(s) signing up for such recommended Care Services, or signing a waiver form indemnifying the Estate Manager / Managing Agent and the Seller from all liability for personal injury or loss of life to the Purchaser and/or Tenant(s), insofar that it is contended that such injury or death was due to the insufficient or inadequate provision of Care Services to the Purchaser and/or the Tenant(s). Furthermore, the level of care required will be determined by the Care Provider and its recommendations and decisions will be binding.
- 11.6 In the event that the Purchaser lets his property to a Tenant/s, the Purchaser is obligated to use the standard Managing Agent approved lease agreement, annexed hereto marked Annexure "L".
- 11.7 The lease agreement referred to in clause 11.6 above will include a cession of the Purchaser's scheme related medical benefits to the Tenant/s for the duration of the lease.
- 11.8 The Purchaser is further obligated to obtain two months rental deposit from the Tenant/s. This deposit will be paid to the Body Corporate and will be invested in an interest-bearing account for the benefit of the Tenant/s until such time as the lease expires.
- 11.9 The Purchaser remains liable for payment of all levies for the Property for the duration of the lease agreement.

## 12. CONDITIONS APPLICABLE PENDING TRANSFER

Should the Occupation Date occur prior to the Transfer Date, the following conditions will apply to the Purchaser from the Occupation Date up to the Transfer Date:

- 12.1 The Purchaser will comply with all the duties placed on an owner as described inspection 44(1) of the Sectional Titles Act and section 13 of the Sectional Titles Schemes Management Act;
- 12.2 The provisions of the Rules, insofar as they cast any duty upon the owner, resident or occupier of a section, shall bind the Purchaser who will fully comply therewith;
- 12.3 The Purchaser shall not be entitled to make any additions, alterations or modifications of any nature to the Property, without the prior written consent of the Seller and the Body Corporate (if in existence);
- 12.4 The Purchaser shall be obliged to maintain the Property in a fit and proper condition;
- 12.5 The Purchaser shall not be entitled to subdivide the Section for the purpose of Selling, donating or in any other manner alienating or disposing of any portion thereof to any other person;
- 12.6 The Purchaser shall be liable for all water and electricity consumed in respect of the Property as from the Occupation Date;
- 12.7 The Purchaser shall not use the Property or the Common Property in such a manner so as to cause any damage thereto or to the other sections in the Building or the Scheme, nor shall it store or permit the storage therein of any inflammable materials which may violate any insurance policy in respect of the Scheme or Buildings or which is likely to have the effect of increasing the premiums payable in terms of any such insurance policy;
- 12.8 The Purchaser shall be entitled to use the Property only for residential purposes;
- 12.9 No person other than the Purchaser may occupy the Property, pending transfer, without the prior written consent of the Seller;
- 12.10 The Seller, either personally or through its agents, shall be entitled at all reasonable times, and on reasonable notice to the Purchaser, to have access to the Property for the purpose of inspecting it, or to carry out any maintenance or repairs which the Seller may, in terms hereof be obliged or entitled to perform, whether such repairs relate to the Property or not, and the Purchaser shall have no claim against the Seller for any disturbance in his occupation arising out of the exercise by the Seller of the rights hereby conferred;
- 12.11 The Purchaser may use and enjoy only those parts of the Common Property which are completed, in such manner so as not to interfere with the use and enjoyment thereof by other purchasers, occupiers or persons lawfully present in the Scheme. The Purchaser may not use and enjoy those parts of the Scheme which are not completed, or are in the process of being completed. The Purchaser shall ensure that its visitors and invitees comply with the provisions of this sub-clause.

- 12.12 The Purchaser shall not use the Property or permit it to be used in such manner or for such purposes as shall cause a nuisance or annoyance to any other purchaser, occupant or resident in the Scheme or interfere with the amenities of the Scheme so as to breach any law, ordinance, by-law or town planning and/or zoning scheme in force and pertaining to the Erf or Scheme.
- 12.13 Neither the Seller nor the Estate Manager / Managing Agent, Body Corporate or the trustees of the Body Corporate, shall be responsible for any damages which the Purchaser and/or their guests and invitees may suffer as a result of personal injury or loss or damage of property, regardless of whether such personal injury or loss or damage of property was caused by the condition of the Property, or any part of the Scheme and/or any improvement thereon or equipment therein or by the conduct of any person in the service of the Seller, the Estate Manager / Managing Agent, Body Corporate or trustees of the Body Corporate.
- 12.14 The Purchaser hereby indemnifies the Seller, Estate Manager / Managing Agent, Body Corporate and the trustees of the Body Corporate against any claim which its Nominated Occupant(s) or any visitor, guest, invitee or employee or tenant of the Purchaser and/or Nominated Occupant(s) may institute against them on the basis of personal injuries or loss or damage to property, regardless of whether such injuries, loss or damage were caused by the condition of the Scheme or the Property and any improvement thereon or equipment therein or by the conduct of any person in the service of the Seller, Estate Manager / Managing Agent, the Body Corporate or the trustees of the Body Corporate.

### **13. CERTIFICATE OF COMPLIANCE**

- 13.1 On or prior to the Transfer Date, The Seller undertakes to provide the Purchaser, where necessary and at the Seller's cost, with the following certificates:
- 13.1.1 a certificate of compliance in respect of the Section in terms of the Electrical Installation Regulations of 2009 under the Occupational Health and Safety Act;
- 13.1.2 a certificate in respect of the plumbing of the Section, signed by an accredited plumber, certifying that the water installation in respect of the Section conforms to the National Building Regulations and the City of Cape Town Water By-law of 2010 as published in Government Gazette No 6847 dated 18 February 2011; and
- 13.1.3 certificate of conformity for gas installations in the Section in terms of the Pressure Equipment Regulations of 2009 under the Occupational Health and Safety Act (where relevant).
- 13.2 Once provided with such certificates, the Purchaser shall have no claim whatsoever against the Seller in respect of the electrical, plumbing and gas installations in the Section.

### **14. TRANSFER AND TRANSFER COSTS**

- 14.1 Provided the Purchaser has complied with all its obligations as set out in clause 6 this Contract, registration of transfer of the Property shall be given by the Seller and taken by the Purchaser on the Transfer Date, or as soon as reasonably possible after the Completion Date.

- 14.2 The Purchaser is aware that the Erf is currently registered in the name of Southern Palace Investments 112 (Pty) Ltd. Furthermore, the Seller undertakes to ensure that registration of the Erf into the name of the Developer will be affected prior to commencement of construction of the Scheme.
- 14.3 In the event that registration of transfer of the Property is delayed or frustrated by any act or omission of the Purchaser, the Purchaser shall pay to the Seller interest which shall be equivalent to interest on the Purchase Price at the Prime Overdraft Rate plus 2% (TWO PERCENT) calculated from the date on which the transfer would, but for such delay, otherwise have been registered up to the date of actual registration of transfer. For this purpose, the determination of the Conveyancers of the date on which transfer of the Property would, but for the delay, have been registered will be final and binding on the Parties. The Conveyancers will make such determination as an expert not an arbitrator. Any attempt by the Purchaser to delay or frustrate the registration of transfer or, where applicable, a mortgage bond, shall be deemed a breach of this Contract.
- 14.4 The Purchaser shall, once the Principal Agent has issued the Completion Certificate in respect of the Property, not be entitled to delay or refuse to take transfer or to pay the balance of the Purchase Price in respect of the Property by reason of any alleged defect therein or by reason of the fact that any part of the Building or Scheme has not yet been fully completed.
- 14.5 The Purchase Price includes VAT, and there will be no transfer duty payable by the Purchaser.
- 14.6 All costs, professional fees and expenses inherent in transferring the Property to the Purchaser and applying for or registering a mortgage bond will be for the account of the Purchaser in full.
- 14.7 The Purchaser will sign all documents necessary to effect transfer of the Property and return same and all other documents, resolutions, consents, applications and/or certificates as determined by the Conveyancers to the Conveyancers within 10 (TEN) days after having been requested to do so. The Parties agree that should the Purchaser fail to deliver any of the aforesaid documents within the aforesaid period, the Purchaser will be in breach of this Contract.

## **15. EXTENT, ONEROUS CONDITIONS AND WARRANTIES**

- 15.1 The Property is sold on the basis that the total extent of the Section shall be approximately that as set out in Item 4 of the Information Schedule.
- 15.2 The abovementioned extent is provisional. It is recorded that the estimated extent might change when the Section is finally measured and depicted on the Sectional Plan.
- 15.3 The Purchaser will have no claim against the Seller if the final extent determined as aforesaid is less than the extent described in clause 15.1, provided that if the extent of the Section as depicted on the Sectional Plan is more than 5% (FIVE PERCENT) less, the Purchaser will have a right to financial compensation per square meter lost. The financial compensation will be calculated by the Seller and based on the quoted square metres of the unit less the actual square metres of the unit.

- 15.4 It is recorded for the avoidance of doubt that the Purchaser shall not have the right to cancel this Contract or have any claim for damages in the event that the final extent determined in respect of the Exclusive Use Area(s) (if applicable) is less than the extent thereof as described in this Contract.
- 15.5 The Property is sold subject to all conditions and servitudes attaching thereto and all the provisions of, or conditions that may be imposed by the Sectional Titles Act and any conditions imposed by the Developer in terms of Section 11 (3) (b) of the Sectional Titles Act. The Purchaser acknowledges that he carries the obligation to satisfy himself by personal inspection, or by means of independent sources of information, concerning any burdens or servitudes to which the Erf and Property may be subject, and also concerning all advantages and disadvantages attaching to the Erf and Property and hereby agrees that the Seller shall not be liable to him in respect of any failure by the Seller or the Agent to inform him of any such qualities.
- 15.6 Except for the standard building warranties given by the Contractor (that will be enforced on behalf of the Purchaser by the Seller in terms of clause 8.11 if needs be), and except as specifically set out in this Contract, the Seller has made no representations and given no warranties in respect of the Property.
- 15.7 Subject to the Retired Persons' Act and the Consumer Protection Act, the Purchaser shall not have any claim of whatsoever nature against the Seller in respect of any defect or alleged defects in the Property, whether patent or latent, otherwise than to the extent provided for in this Contract.
- 15.8 The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of the Seller, unless same is expressly and specifically recorded in this Contract. The Purchaser hereby waives in favour of the Seller any rights whatsoever which he otherwise may have obtained against the Seller as result of any such information, statement or representation given or made by on behalf of the Seller which is not so expressly and specifically recorded It is recorded that all artistic, architectural, photographic and other visual presentation material including but not limited to models, brochures, websites, pamphlets and show units used by the Seller or its agents in the marketing and selling the Property hereby purchased and sold, have been prepared and distributed as advertising material only, and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, and that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only.
- 15.9 The Property may be used only as a residential dwelling, and Exclusive Use Area(s) will be used only for parking, storage or as a garden as the case may be, which permitted usages will be set out in the Rules.

## **16. PARTICIPATION QUOTAS**

- 16.1 The estimated participation quota of the Sectional Title Unit comprising the Property hereby sold in the completed Scheme is set out in Item 4 of the Information Schedule.
- 16.2 It is recorded that the participation quotas are calculated from the floor areas of the Building Plans, and the Parties acknowledge and accept that they may change after actual measurement of the completed Buildings.



- 16.3 The Purchaser acknowledges that the Scheme is a phased development as more fully described in clause 18, and, as such, the official participation quota reflected in the most current Sectional Plan from time to time will fluctuate as the Scheme is extended.

## **17. NUMBER CHANGES AND SIZE OF OTHER PROPERTIES**

- 17.1 The Seller shall be entitled to change the numbering of any or all of the sections and/or exclusive use areas comprising the Scheme should the number of any of these components on the Building Plans differ from the approved Sectional Plan.
- 17.2 Should the Seller change the number of the Section or the Exclusive Use Area(s) in terms of this clause, the Purchaser shall sign all such documents as may be required by the Seller in order record the amendments.
- 17.3 Subject to municipally approved zoning densities, and notwithstanding anything to the contrary that may be depicted, reflected or shown in any plans, drawings, visual media or marketing material, the Seller shall be entitled to adjust the sizes and layout of other sections in the Scheme prior to sale thereof to third party purchasers, depending on changing market tastes, preferences and demand.
- 17.4 The Purchaser acknowledges that the sections to be contained in the Harbour Bay Village Building have been designed in a modular fashion, and will be surveyed as the maximum number of smallest sections possible. In the event that the market demands larger sections, two or more sections will be consolidated to provide such larger sections. To the extent that it may be contended to be necessary, the Purchaser hereby consents to such consolidation.
- 17.5 The Purchaser acknowledges that circumstances may arise which will enable the Seller to give transfer of the Section whilst, for reasons beyond the Seller's control, the Seller will be unable to give the Purchaser transfer of (or the use of) one or more of the Exclusive Use Areas mentioned in Item 4 of the Information Schedule. In such circumstances, the Purchaser hereby consents to the Seller transferring the Section to the Purchaser in advance of transferring the Exclusive Use Area(s) to the Purchaser (or placing such Exclusive Use Area(s) at the disposal of the Purchaser). In such circumstances, the Seller shall provide the Purchaser with the use of comparable alternative exclusive use areas temporarily. In the unlikely event that the Seller is unable to give the Purchaser use of comparable temporary alternative exclusive use areas, the Conveyancers will retain an amount of R100 000.00 (ONE HUNDRED THOUSAND RAND) of the Purchase Price in trust which shall only be released to the Seller against the Seller providing the Purchaser with the use of Exclusive Use Area(s) or comparable alternative exclusive use areas.

## **18. PHASED DEVELOPMENT**

- 18.1 The Purchaser is made aware that the Scheme is a phased development, as per annexure A attached hereto, and the Property forms part of a particular phase. The Purchaser agrees that initially, prior to completion of the entire Scheme, the phase in which the Property is located (along with all other completed phases, if any) will be a stand-alone Housing Development Scheme (as referred to in the Retired Person's Act).
- 18.2 Commencement of construction of Phase 1 will only proceed if the following conditions are fulfilled by 1 February 2019 (with an automatic extension of 12 (twelve) months at the sole discretion of the Seller):

- 18.2.1 80% unconditional sales (all deposits and guarantees to be in place);
  - 18.2.2 Development Finance granted for Phase 1;
  - 18.2.3 Site Development Plan and Council approval granted for entire development.
- 18.3 Phase 1 will include the completion of the following:
- 18.3.1 The Mariner building consisting of luxury apartments;
  - 18.3.2 The Sails development consisting of luxury garden cottages;
  - 18.3.3 The Admiral Building consisting of premier living suites and luxury apartments;
  - 18.3.4 Care will be provided from the Harbour Bay Village Care Centre situated in the Admiral Building.
  - 18.3.5 Common Facilities including Main Reception, Concierge Desk, Library Lounge, Business Centre, Captain's Quarters, Restaurant, Laundry drop off and collection point, Therapeutic Garden and Herb Garden. (Wellness Centre including indoor pool, gym, yoga, beauty salon & hairdresser will be **available on completion of phase two.**)
- 18.4 Levies payable by Residents on completion of Phase 1 include the following:
- 18.4.1 **Property Levy** (including 24-hour security, data, telephone line and IT support, estate manager, management fee, common area cleaning, common property and external envelope building insurance, common area rates and taxes, landscaping maintenance, common area water and electricity) (refer to Annexure H).
  - 18.4.2 **Services Levy** (refer to Annexure H).
  - 18.4.3 **Medical Levy** (refer to Annexure J)
  - 18.4.4 **Premier Living Levy** as contained in Annexure J (if applicable).
  - 18.4.5 **Discretionary Food and Beverage Allowance**
- 18.5 In accordance with the phased nature of the Scheme, the Purchaser acknowledges that the Seller will be reserving three real rights of extension in favour of Harbour Bay Village (Pty) Ltd to develop phase 2, 3 and 4 of the development as envisaged in section 25(1) of the Sectional Titles Act by the erection and completion from time to time but within a period of 5 (FIVE) years from date of opening of the Sectional Title Register, for its own account further buildings on a part of the Common Property and to divide such buildings into sections and common property and to confer the right to exclusive use over parts of such common property upon the owner or owners of one or more of such sections.
- 18.6 The Purchaser acknowledges this clause to constitute proper notice as is required in terms of section 25(14) of the Sectional Titles Act and hereby consents to such extensions aforesaid being carried out.

- 18.7 In event of such rights of extension being exercised by Harbour Bay Village (Pty) Ltd or its successors-in-title and due to changed circumstances making strict compliance with the Sectional Plan, Building Plans and other documentation and specifications as is referred to in section 25 (2) of the Sectional Titles Act impracticable, then the Purchaser consents to such changes/amendments as may be necessitated due to such circumstances within the sole discretion of the Seller or its successors-in-title.
- 18.8 The Sellers contractors shall be entitled to all such access to completed phases, and sections and Common Property therein, as it may require in respect of the development of later phases, which rights of access shall include the rights to construct and lay pipelines, sewers, drains and the like and the Purchaser shall have no claim against the Seller in respect thereof, provided that the Seller shall exercise such rights so as not to cause any undue inconvenience to the Purchaser
- 18.9 The Purchaser acknowledges that, although it is the intention of the Seller to complete the Scheme as soon as reasonably possible, the Scheme may be incomplete on the Transfer Date, and that the Purchaser may suffer inconvenience from noise, dust and other nuisance factors due to or arising from the completion of the Scheme. The Purchaser shall not be entitled by reason of any of the foregoing to cancel, rescind or otherwise withdraw from this Agreement, to claim a reduction in the Purchase Price, nor request a delay in the Transfer Date.

## **19. BODY CORPORATE**

- 19.1 The Body Corporate of the Scheme shall be established in terms of section 36 of the Sectional Titles Act and section 2 of the Sectional Titles Schemes Management Act.
- 19.2 The Body Corporate will exercise the powers and perform the functions entrusted to it as set out in the Sectional Titles Act, the Retired Persons Act, the Sectional Titles Schemes Management Act and the Rules, and such ancillary functions, which may not be in conflict with the provisions of the said authorities, as may be necessary in pursuit of its objectives.
- 19.3 The Purchaser acknowledges that on transfer of the Property into its name, it will become a member of the Body Corporate and be obliged to comply with all the obligations imposed upon it by the Rules, the Sectional Titles Act, the Sectional Titles Schemes Management Act and the Retired Persons Act, and that its successors-in-title will be similarly bound.
- 19.4 It is recorded that the ownership in the Common Property will pass to the Body Corporate on its establishment. The Architect shall prepare a list of patent defects relating to the Common Property, which defects the Seller shall remedy within a reasonable period after the establishment of the Body Corporate. Such defects list will be tabled at the first general meeting of the Body Corporate.
- 19.5 The Purchaser acknowledges that the Rules provide that the Developer will have the right to elect the majority of the trustees of the Body Corporate throughout the Development Period.

## **20. RULES**

- 20.1 The Developer will, when submitting the application for the opening of the Sectional Title Register, substitute the default management rules and conduct rules as prescribed by section 35 of the Sectional Title Act (now section 10 of the Sectional Titles Schemes Management Act), with the Rules.
- 20.2 The Purchaser acknowledges that rights of exclusive use of parts of the Common Property are allocated to the owners of certain sections to be used as gardens, yards or parking bays in terms of the Rules and section 27A of the Sectional Titles Act (now sections 10(7) and (8) of the Sectional Titles Schemes Management Act).
- 20.3 The Purchaser, as prospective owner and member of the Body Corporate:
- 20.3.1 hereby acknowledges and affirms that the Rules (as may be altered in terms of clause 20.4) shall be the rules by which the Scheme will be managed and administered and which shall be binding upon all owners and members; and
- 20.3.2 hereby grants an exclusive and irrevocable power of attorney to the Seller to vote on its behalf at the inaugural general meeting of the Body Corporate for acceptance of the Rules (as may be altered in terms of clause 20.4).
- 20.4 Should the Chief Ombudsman (as defined in the Sectional Titles Schemes Management Act and Community Schemes Ombudsman Services Act, No. 9 of 2011) require any substitutions, additions, amendments to or deletion of the language or content of the Rules in order to grant approval or certification in terms of section 10(5) of the Sectional Titles Schemes Management Act, then the Purchaser hereby consents to and approves of all such changes as may be required.
- 20.5 The provision of all Care Services will be subject to the standard terms and conditions of the Care Provider. The Care Provider and/or the Estate Manager / Managing Agent shall be empowered make further rules as may be required for the orderly provisioning of the Care Services, and to change such from time to time when necessary, such rules and terms and conditions will be binding on the Purchaser and/or the Nominated/Occupants in terms of the Rules.
- 20.6 The Purchaser acknowledges, agrees and accepts that during the Development Period, none of the Rules may be altered, deleted or added to without the Developer's written consent.

## **21. MANAGING AGENT**

- 21.1 The Management Rules provide that the trustees must appoint an Estate Manager / Managing Agent for the Scheme to assist the trustees with the control, management and administration of the Scheme and to exercise such other powers and duties as may be entrusted to the Estate Manager / Managing Agent, including the power to collect Levies.
- 21.2 The Seller shall be entitled to appoint the first estate manager / managing agent with effect from the establishment of the Body Corporate, which appointment shall be valid and binding on the Body Corporate.

21.3 It is placed on record that the Seller has appointed Latitude Property Solutions (Pty) Ltd to function as estate manager / managing agent for the Scheme. The Purchaser hereby gives the Seller the irrevocable power and authority to make this appointment, and authorizes the Seller to exercise all of the Purchaser's voting rights in this regard in order to give effect the appointment of Latitude Property Solutions (Pty) Ltd until such time as the development is completed and handed over to the Body Corporate.

## 22. LEVIES

- 22.1 It is estimated that the initial Levies payable by the Purchaser to the Body Corporate will be equal to the amount set out in Item 9 of the Information Schedule.
- 22.2 As from the Transfer Date the Purchaser shall be liable to pay the Levy to the Body Corporate.
- 22.3 An estimate, for a period of 3 (THREE) years in advance, of the total expenditure for the control, management and administration of the Scheme (including all common amenities and facilities contained therein) and for the provisioning and availability of the compulsory minimum Care Services is given in Annexure I.
- 22.4 An estimate, for a period of 2 (TWO) years in advance, of the Levy payable by the Purchaser (and every owner of a Unit in completed phases of the Scheme) is given in Item 9 of the Information Schedule.
- 22.5 In accordance with a determination made by the Developer in terms of section 32(4) of the Sectional Titles Act (now section 11(2) of the Sectional Titles Schemes Management Act), certain components of the Levy will be based on the Floor Area (or participation quota) of the Section, and other components will be charged per Section, irrespective of the size of the Section. A breakdown of the levy components and the basis of their allocation is reflected in the Developer's Determination annexed hereto marked Annexure K.
- 22.6 The Purchaser (along with other members of the Body Corporate) shall be liable for the payment of the expenditure mentioned in clause 22.5 via the Levies raised and charged on it as owner of the Property, but the Purchaser shall, during the abovementioned 2 (TWO) year period, not be liable for the payment of any such expenditure over and above such levy estimate given in clause 22.4 above.
- 22.7 The Seller will, in addition to the levies which it will be liable for as owner of sections in phases which have been completed, cover the income shortfalls for a period of 3 (three) years from date of establishment of the Body Corporate to ensure that the expenses of the Body Corporate are covered.
- 22.8 The compulsory minimum Care Services which are included in the Levy and some of the optional extra Care Services which are available for an additional fee are set out in Annexure J. During the Development Period, and depending on demand and uptake, the Seller and/or the Estate Manager / Managing Agent reserves the right to add to or substitute (provided such substitution offers a similar facility or service) any of the services listed in Annexure J.
- 22.9 In the event that the Occupation Date is earlier than the Transfer Date, the Purchaser shall reimburse the Seller on demand for all Levies that the Seller may have paid on the Property between the Occupation Date and the Transfer Date.

22.10 The Seller shall prior to the establishment of the Body Corporate:

22.10.1 keep the Buildings insured for their replacement value against all risks mentioned in the Rules and against any other risk which the Seller may deem it prudent to insure;

22.10.2 maintain the Common Property and to keep it in a state of good and serviceable repair;

22.10.3 keep in a state of good and serviceable repair and maintain the plants, machinery, fixtures and fittings used in connection with the Common Property; and

22.10.4 administer the Common Property and make all payments in respect of rates, taxes and other charges in connection with the Common Property.

22.11 Should transfer of the Property form part of the first batch of transfers at the Scheme, with the result that the Body Corporate is not yet in existence and the Purchaser has taken occupation prior to the Transfer Date, then the Seller will be entitled to recoup a pro-rata share of the costs and expenses listed in clause 22.10 from the Purchaser, and the Purchaser shall pay those costs and expenses to the Conveyancers on demand. The pro-rata costs will be determined by the auditor of the Seller, who shall make such determination as an expert, and such determination shall be final and binding on the Parties.

22.12 **In addition to the Levies, and to provide for levy stabilisation, an exit levy of 25% (TWENTY FIVE PERCENT) of the difference between the initial purchase price and the Selling price, after deduction of reasonable costs of improvements / enhancements and deduction of agents commission, is payable to the Body Corporate by the Purchaser on alienation of the Property. For sake of clarity improvements are defined as anything that adds value to the property and would be allowed as a deduction in terms of Capital Gains Tax.**

**IN THE EVENT THAT THE PROPERTY IS SOLD BY THE MORTGAGEE BY WAY OF DISTRESSED SALE OR FORECLOSURE AND SHOULD THERE NOT BE SUFFICIENT FUNDS TO COVER THE BOND CANCELLATION AMOUNT AND THE LEGAL FEES INCURRED BY THE MORTGAGEE, THIS SUB CLAUSE 22.12 SHALL BE WAIVED BY THE BODY CORPORATE.**

22.13 Notwithstanding clause 22.12 above, in the event that the property is transferred to an heir in terms of a Last Will and Testament, the Deceased Estate shall be exempt from paying the exit levy.

22.14 The Body Corporate, assisted by the Managing Agent and/or Estate Manager, will administer the levy fund for the benefit of the Scheme.

### **23. COMMISSION**

The Purchaser warrants to the Seller that it was introduced to the Property by the Agent and that it has not been introduced to the Property by any other third-party estate agent or broker which may be said to have been the effective cause of this sale, and indemnifies the Seller against any and all claims in this regard. The Seller shall be liable for payment of commission in terms of a separate mandate agreement entered into between it and the Agent.

## **24. LOAN FINANCE**

The following terms are applicable:

- 24.1 It is recorded that the finance suspensive condition mentioned in Item 12 of the Information Schedule (if applicable) has been inserted for the benefit of the Purchaser and may be waived at any time prior to the date for fulfilment thereof, by written notice of waiver, delivered to the Seller.
- 24.2 The Purchaser shall use its best efforts and endeavours to procure the fulfilment of the condition, and shall apply for such loan finance immediately after the Signature Date.
- 24.3 Should the Purchaser fail to apply for the loan finance within 14 (fourteen) days of signature of this agreement, Harbour Bay Village (Pty) Ltd is hereby authorised to apply for the loan on behalf of the Purchaser.
- 24.4 The condition referred to in Item 12 of the Information Schedule will be deemed to be fulfilled upon the issue to the Purchaser by the said bank or financial institution of a written quotation and a written pre-agreement statement as contemplated in section 92 of the National Credit Act, No 35 of 2005 in respect of the loan in the said amount.
- 24.5 If, despite such endeavours, the condition is not fulfilled (or waived) within 60 (sixty) days of signature date or by such extended date as the Parties hereto may agree in writing, then this Agreement shall fail to come into existence and be of no further force and/or effect. In such event, the status quo ante will be restored as far as possible and no Party will have any claim against the other in terms of this Agreement or arising from the failure of the condition, except where a Party deliberately frustrates the fulfilment of the condition.

## **25. ON-SALE OF PROPERTY**

- 25.1 The Purchaser may at no stage, without the prior written consent of the Seller, sell or alienate a right of occupation over the Property.
- 25.2 Should the Purchaser wish to sell the Property:
  - 25.2.1 the Seller and / or Body Corporate shall enjoy a perpetual right of pre-emption (or right of first refusal) to repurchase the Property from the Purchaser (which right may be freely ceded or transferred to a third party without the consent of the Purchaser);
  - 25.2.2 it will be obliged to use the Agent affiliated to the Managing agent or an agent who is registered with the Managing agent and who has been duly qualified by the Managing agent to sell in the scheme, as per the Body Corporate conduct and management rules as broker for the Property, subject to further terms and conditions as set out in the Management Rules; and
  - 25.2.3 it will be obliged to use a standard deed of sale as approved and endorsed by the Body Corporate from time to time.

- 25.3 The provisions mentioned in this clause 25 will endure in perpetuity, and are/will be described in greater detail in the Rules and/or form part of the conditions imposed by the Developer in terms of Section 11(3)(b) of the Sectional Titles Act and/or the individual Sectional Deeds of Title where appropriate.
- 25.4 The Purchaser is prohibited from selling the property until such time as he has taken transfer of the property.
- 25.5 **THE PROVISIONS OF THIS ENTIRE CLAUSE 25 SHALL BE WAIVED BY THE BODY CORPORATE IN THE EVENT THAT THE PROPERTY IS SOLD BY THE MORTGAGEE BY WAY OF DISTRESSED SALE OR FORECLOSURE.**

## **26. DISCLOSURES AND PRIOR INFORMATION**

- 26.1 The Purchasers attention is drawn to the rights and remedies available to it in terms of sections 4(3), 8 and 9 of the Retired Persons' Act.
- 26.2 It is recorded that there has been compliance with the disclosures required in terms of section 4 of the Retired Persons' Act, which information is set out in Annexure "G".
- 26.3 The Parties acknowledge that the information referred to in regulation 5 of the Retired Persons' Act, including copies of the Site Development Plan, a complete set of the draft building plans for the Scheme, a blank copy of this standard Deed of Sale, the Management Agreement and a detailed projection of the estimated income and expenses in respect of the operation of the Scheme (including reasonable provision for future maintenance and repairs certified as adequate by the Developer and Estate Manager / Managing Agent) were made readily available to the Purchaser for inspection at the office of the Agent.
- 26.4 The Purchaser undertakes to provide a prior medical condition disclosure to the Managing agent and/or the Seller upon signature hereof, should same be deemed necessary by the Seller and/or managing agent.
- 26.5 The Purchaser acknowledges that this Agreement of Sale is subject to the following conditions:
- 26.5.1 The Developer obtaining development finance from a financial institution for the development of phase 1 of the development by no later than 1 February 2019;
- 26.5.2 Transfer of Erf 5261, Simon's Town into the name of the Developer by no later than 1 February 2019;
- 26.5.3 80% (eighty percent) presales of the phase 1 development by no later than 1 February 2019.
- 26.5.4 Site Development Plan and Council approval granted for entire development.



- 26.6 In the event that the conditions listed in Clause 26.6 above are not fulfilled timeously, the Seller has the sole discretion to extend the time limit referred to in clause 26.6.1 to 26.6.3 by 12 (twelve) months. In the event that the Seller does not extend the time limit, this agreement shall become null and void and all deposits plus interest will be refunded to the Purchaser. The Purchaser shall have no claim for damages against the Seller.
- 26.7 The Purchaser acknowledges that the Residents / Owners of the 44 (fourty four) luxury apartments situated on erf REM 5273, Simonstown have the option to pay a monthly levy to the Body Corporate to utilise the amenities and services of Harbour Bay Village. The Estate Manager, as a representative of the Trustees, will assess written applications on a case by case basis and determine the monthly levy on an annual basis.
- 26.8 In addition to the monthly levy mentioned in clause 26.7 above, the Residents of the Harbour Bay luxury apartments will pay a once off joining fee if they wish to use the Harbour Bay Village facilities which will be added to the Levy Stabilisation Fund and benefit the Residents of Harbour Bay Village.

## **27. BREACH**

- 27.1 Subject to the Retired Persons' Act, should the Purchaser fail on the due date to pay the Occupational Interest or any other amount due by it in terms of this Contract, or fail to comply with any of its other obligations in terms of this Contract before or on the date stipulated therefore or breach this Contract in any other way and fail to remedy such breach or to comply with his obligations within 7 (SEVEN) days after having received a written notice from the Seller to remedy such breach or to comply with such obligation(s), the Seller shall have the right at any time, without prejudice to any other powers or rights which it may have by law or by virtue of this Contract:
- 27.1.1 to sue for or obtain payment of the full amount of the Purchase Price and any other amounts outstanding as at the date of such breach, notwithstanding anything to the contrary herein contained and where the Purchaser has failed to pay Occupational Interest that has fallen due, to eject the Purchaser from the Section and the Exclusive Use Area(s) and to regain vacant occupation thereof; or
- 27.1.2 to cancel this Contract by giving the Purchaser written notice of such cancellation, and in that event:
- 27.1.2.1 the Purchaser shall be obliged, if the Purchaser has already obtained possession of the Section and, where applicable, the Exclusive Use Area(s), to vacate the Section or the Exclusive Use Area(s) immediately and place the Seller in possession thereof; and
- 27.1.2.2 to claim damages from the Purchaser in which event the Seller shall be entitled to retain the Deposit, after payment of the Estate agents commission to the Estate agent, and any amount or amounts already paid to it or to the Conveyancers, and to set them off against the Seller's damages in due course.

- 27.1.3 Where the Purchaser has forfeited the Deposit and other amounts in favour of the Seller or the Seller has become entitled to retain the Deposit and other amounts paid to the Conveyancers, the Conveyancers will be obliged to pay such amounts to the Seller on demand, after payment of the Commission to the Estate agent.
- 27.2 Upon cancellation of this Contract for any reason whatsoever, the Purchaser undertakes to vacate the Section and, where applicable, the Exclusive Use Area(s) forthwith, and to procure that the Section shall be vacated by any persons who occupy it through the Purchaser's title or by its permission. Possession and occupation shall be redelivered to the Seller in the same good order and condition as at the Occupation Date.
- 27.3 Should the Purchaser dispute the Seller's right to cancel this Contract, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Contract on the due dates thereof and the Seller shall be entitled to recover and accept those payments without
- 27.4 prejudice to the Seller's claim for cancellation of this Contract or any other rights of the Seller whatsoever. Failure to pay any of the aforesaid amounts will constitute a material breach of this Contract.
- 27.5 The Purchaser shall pay all legal and other costs, including costs on the attorney and own client scale, incurred by the Seller in successfully enforcing the provisions of this Contract or in acting against the Purchaser in terms of this clause 27. Similarly, the Seller will pay all legal and other costs incurred by the Purchaser in successfully enforcing the provisions of this Contract.
- 27.6 It is specifically recorded that should any breach by the Purchaser occur at a time critical to the registration procedure, the Seller shall be entitled to require the Purchaser to remedy such breach within a period of 24 (TWENTY-FOUR) hours, and not within the seven days' period provided for in Sub-Clause 27.1 above.

## 28. NOTICES

- 28.1 The Parties choose as their *domicilia citandi et executandi* their respective street addresses as set out in Items 1, 2 and 3 of the Information Schedule, and at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 28.2 Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and addressed to the Party in alleged breach at the respective chosen domicilium addresses.
- 28.3 At any time during the duration of this Agreement, any Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical street address where postal delivery occurs in the Republic of South Africa (provided same is not a post restante address), provided that the change shall become effective *vis-à-vis* that addressee on the 7th business day from the deemed receipt of the notice by the addressee.

28.4 Any notice to a Party-

28.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 4th (fourth) business day after posting;

28.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

28.4.3 Sent by e-mail or telefax to an e-mail address or fax number contained in this agreement shall be deemed to have been received on the date of transmission.

28.5 **The Purchaser confirms that in the event that ANY of his / her contact details change, including but not limited to e-mail address, postal address, residential address, cell phone number, home telephone number and business telephone number, he / she will immediately notify the Conveyancing Attorneys to ensure registration of transfer is not delayed.**

**29. JURISTIC PERSON AS PURCHASER**

29.1 If the Purchaser purchases the Property as representative of a third party and fails to disclose the name of his principal and furnish written proof of his mandate to the Seller on the Signature Date and/or the Seller is not supplied proof to its satisfaction that the representative's principal has ratified this Agreement on the Signature Date, the representative will be personally liable for all the obligations of the Purchaser in terms of this Agreement, and the Agreement will be regarded as having been entered into in the personal capacity of the person who signed this Agreement as Purchaser or on behalf of the Purchaser.

29.2 Should this Agreement be signed by a person entering into this Agreement as trustee or agent for a company to be incorporated as the Purchaser in terms hereof-

29.2.1 such company shall be duly incorporated within 30 (thirty) days of signature hereof by the Purchaser;

29.2.2 such company shall duly adopt, ratify and render itself bound by this Agreement within 5 (five) days after the date of incorporation by the company;

29.2.3 the provisions of the Companies Act applicable to the pre-incorporation contracts, must be duly and properly complied with; and

29.2.4 the person so signing this Agreement shall be deemed to have entered into this Agreement as Purchaser in his personal capacity should the provisions of this clause 29.2.1 to 29.2.3 above not be complied with strictly in accordance with applicable legislative provisions concerning incorporation and pre-incorporation contracts.

29.3 The person signing this Agreement on behalf of any company or company to be formed, close corporation or trust, as aforesaid, shall be liable, jointly and severally, with the Purchaser to the Seller as surety and co-principal debtor for all the obligations of the Purchaser to the Seller arising out of or in connection with this Agreement and, provided that the CPA does not apply to this Agreement, renounces the benefits of excussion and division.

### 30. GENERAL

30.1 This Contract constitutes the whole agreement between the Parties as to the subject matter hereof and neither of them shall be bound by any agreements, warranties, representations or undertakings whatsoever unless incorporated herein.

30.2 No addition to or variation, consensual cancellation or novation of this Agreement, including this clause 30.2, and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

30.3 No latitude, leniency, relaxation, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver, novation of, abandonment of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

30.4 Should any provision of this Agreement be held to be unenforceable, illegal or invalid for any reason whatsoever, such provision shall in the first instance be construed and interpreted to the minimum extent necessary so as to comply with the relevant legislation or law. Should such interpretation not be possible, then such provision shall be treated as *pro non scripto* and will be separate and severable from the remaining provisions of this Agreement which shall continue

30.5 to be of full force and effect, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein.

In such event, this Agreement shall be carried out as nearly as possible according to its original terms and intent, and the Parties further agree to substitute for such invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.

30.6 The Parties to this Agreement acknowledge that they are entitled, at their own cost, to obtain independent legal advice in relation to the contents of this Agreement and that it is in their sole discretion to either take such advice or dispense with the necessity of taking such advice.

- 30.7 The Parties acknowledge that the provisions contained in this Agreement are fair and reasonable and reflect their overall intention.

### **31. OFFER**

- 31.1 This Agreement, once signed by the Purchaser shall constitute an irrevocable offer to purchase by the Purchaser, which shall remain open for acceptance by the Seller for a period of 14 (FOURTEEN) days from date of signature by the Purchaser.
- 31.2 The Purchaser agrees that the offer will not automatically lapse in the event that the Seller has failed to accept same during the aforesaid 14 (FOURTEEN) day period but shall only lapse when the Purchaser gives the Seller 3 (THREE) days' written notice of its intention to withdraw the offer (which notice cannot be given prior to the expiry of the said 20-day period). Pending such written notice, the offer will remain open for acceptance by the Seller.
- 31.3 The Seller or the Conveyancers shall notify the Purchaser as soon as is reasonably possible of the Sellers acceptance of the offer.

### **32. SIGNATURE**

- 32.1 This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.
- 32.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
- 32.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 32.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.
- 32.5 This Agreement shall be binding on and enforceable against the Parties' estates, heirs, executors, administrators, trustees, assigns or liquidators as fully and effectually as if they had signed this Agreement in the first instance.
- 32.6 Should this Agreement be signed by more than one Purchaser, then the Purchasers shall be jointly and severally liable to comply with all the obligations of the Purchaser as set out in this Agreement.

Signed at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

AS WITNESSES:

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PURCHASER 1

Signed at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

AS WITNESSES:

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PURCHASER 2

Signed at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

AS WITNESSES:

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SELLER / DEVELOPER

Signed at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_\_

AS WITNESSES:

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AGENT

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AGENT