

# OAK CORNER

## AGREEMENT OF SALE ENTERED INTO BY AND BETWEEN:

**SELLER:** **LEGACY 108 PROPERTY INVESTMENTS PROPRIETARY LIMITED**  
**Registration number: 2020/479901/07**  
 (hereinafter referred to as "the Seller")

**PURCHASER:**

<b>Individuals</b>	<b>PURCHASER 1</b>	<b>PURCHASER 2 (if applicable)</b>
Full names		
Identity number		
Income tax number		
Marital status		
Full names of spouse		
Identity number of spouse		
Income tax no. of spouse		
Work number		
Home number		
Cell number		
Email address		
Residential address		
Postal address		

**Juristic Persons** (Company / Close Corporation / Trust)

Registered name	
Registration number	
Representative's name	
Representative's identity number	
Entity income tax number	
Entity VAT number	
Contact number	
Email address	
Physical address	
Postal address	

(hereinafter referred to as "the Purchaser")

**Transaction details**

Scheme Name	<b>OAK CORNER</b>
Section Number	
Parking Bay	
Phase	
Purchase Price (Vat incl)	R
Purchase Price in words	
Bond Amount (*if applicable, refer clause 18.8)	R
Estimated Occupation Date	
Occupational Rent	R
Reservation deposit (*if applicable, refer clause 18.8)	R20 000 (Twenty Thousand Rand)
Estimated Monthly Levy	Approx. R20 per square meter

## 1. INTERPRETATION

1.1 In this Agreement, unless inconsistent with the context:

- 1.1.1 **Agent** means Igrow Wealth Investments Proprietary Limited, Registration Number: 2015/093828/07, with address at Barinor's Vineyard North, Vineyards Office Estate, 99 Jip de Jager Drive, Durbanville, 7550, telephone number: 021 979 2501 and fax number: 021 979 2505;
- 1.1.2 **Agreement** means this agreement of sale together with annexures (each an "Annexure") hereto being:
- 1.1.2.1 draft sketch plans - Annexure "A";
- 1.1.2.2 building specifications - Annexure "B"; and
- 1.1.2.3 management and conduct rules as published on the website: <https://www.csos.org.za/regulations/> - Annexure "C";
- 1.1.3 **Body Corporate** means the body corporate as contemplated in section 36 of the STA and section 2(1) of the STSMA;
- 1.1.4 **Bond Originator** means Igrow Home Loans, a division of Igrow Wealth Investments Proprietary Limited;
- 1.1.5 **Bond Registration Attorney** means Strauss Daly (Western Cape) Incorporated (Bellville Branch), Unit 13, Entrance A, First Floor, Canal Edge One, Tyger Waterfront (Tel 021-9148233) Email: [sbotha@straussdaly.co.za](mailto:sbotha@straussdaly.co.za);
- 1.1.5 **Building** means the building or buildings comprising the Scheme to be constructed on Erf 32775, Bellville;
- 1.1.6 **Common Property** means the land included in the Scheme, such parts of the Building which are not included in the Section and land referred to in section 26 of the STA and section 5(1)(d) of the STSMA;
- 1.1.7 **Completion Date** means the later of:
- 1.1.7.1 the date on which the Section is complete for beneficial occupation as certified by the Principal Agent, whose decision as to the date will be final and binding upon the parties;
- and
- 1.1.7.2 the date on which a certificate of occupancy is issued in respect of the Property by the local authority;
- 1.1.8 **Consumer Protection Act** means Act 68 of 2008;
- 1.1.9 **Defects** mean, depending on the context, the patent and/or latent defects as contemplated in this Agreement;
- 1.1.10 **Exclusive Use Area** means that part of the Common Property as indicated to the Purchaser and to be allocated to the Purchaser for his exclusive use and enjoyment as contemplated in section 10(7) of the STSMA once the amended rules are approved by the Body Corporate and registered with the Ombud in terms of the provisions of the STSMA;
- 1.1.11 **Independent Property Inspector** means SA Investor Rentals Proprietary Limited, Registration Number: 2014/186623/07, trading as IGrow Rentals whose representatives shall *inter alia* carry out inspections of all the sections in the Scheme and act as the liaison between the Purchaser and the Seller for the purposes as contemplated in this Agreement;
- 1.1.12 **Managing Agent** means the executive managing agent as contemplated in rule 2(g) of the management rules prescribed in terms of section 10(2)(a) of the STSMA and/or the managing

agent as contemplated in rule 2(j) of the said management rules to be appointed by the Seller as contemplated in clause 12 below;

- 1.1.13 **Municipal Charges** means rates and taxes, imposts and other charges as may be levied by the local authority in respect of the Property with effect from the Transfer Date;
- 1.1.14 **NHBRC** means the National Home Builders Registration Council established in terms of the Housing Consumers Protection Measures Act 95 of 1998;
- 1.1.15 **Participation Quota** means, in relation to a section in the Scheme, the percentage determined in accordance with the provisions of section 32(1) or (2) of the STA in respect of that section for the purposes referred to in section 32(3) of the STA, and shown on the Sectional Plan in accordance with provisions 5(3)(g) of the STA;
- 1.1.16 **Phase Development** means the development of the Scheme in phases as contemplated in section 25 of the STA and in respect of which the Seller will take out a Certificate of Real Rights as contemplated in section 12(1)(e) of the STA;
- 1.1.17 **Principal Agent** means a qualified architect or senior architectural technologist or a member of The South African Council for the Architectural Profession to be appointed by the Seller;
- 1.1.18 **Property** means the Section in the Scheme as indicated above together with an undivided share in the Common Property in accordance with the Participation Quota as indicated on the Sectional Plan;
- 1.1.19 **Purchaser** means the Purchaser as indicated above;
- 1.1.20 **Purchase Price** means the VAT inclusive amount as indicated above;
- 1.1.21 **Register** means the sectional title register to be opened in respect of the land and Building comprising the Scheme in terms of the STA in the relevant deeds registry;
- 1.1.22 **Reservation Deposit** means the reservation deposit contemplated in clause 4.2.1 below, subject to the provisions of clause 18.8 below;
- 1.1.23 **Rules** mean the management and conduct rules contemplated in section 10 of the STSMA as published in Government Gazette 40335 of 7 October 2016;
- 1.1.24 **SARS** means the South African Revenue Services;
- 1.1.25 **Scheme** means the sectional title scheme to be known as **OAK CORNER** to be developed in phases on Erf 32775, Bellville;
- 1.1.26 **Section** means the Section in the Scheme stated in the Preamble above as depicted on the architect's sketch plans attached hereto as Annexure "A" and to be indicated as such on the Sectional Plan;
- 1.1.27 **Sectional Plan** means the sectional plan approved or to be approved by the Surveyor-General and to be registered in the relevant deeds registry;
- 1.1.28 **Seller** means the Seller as indicated above;
- 1.1.29 **Signature Date** means the date on which this Agreement is signed by the latter of the Seller or the Purchaser;
- 1.1.30 **Specifications** mean the building specifications attached hereto as Annexure "B";
- 1.1.31 **STA** means the Sectional Titles Act 95 of 1986, as amended and include the Regulations issued under the said act;

- 1.1.32 **ST SMA** means the Sectional Titles Schemes Management Act 8 of 2011, as amended and include the Regulations issued under the said act;
- 1.1.33 **Transfer Date** means the date on which the Property is registered in the name of the Purchaser in the relevant deeds registry;
- 1.1.34 **Transferring Attorney** means Hamer Attorneys Inc, Office 2, Heritage Square, Cnr of Gladstone & Vrede Streets, Durbanville, Western Cape Province, Tel: (021) 976 - 0475; Email: [Sally@hamerattorneys.co.za](mailto:Sally@hamerattorneys.co.za)
- 1.1.35 **Trust Account** means the trust account of the Transferring Attorney held as follows: Hamer Attorneys Inc, Nedbank, Branch code: 198765, Account number: 118 628 9317.
- 1.2 Words and expressions defined in the STA and the ST SMA will have the meanings as ascribed to them therein.
- 1.3 Words importing the singular will include the plural and vice versa and words importing the masculine gender will include the female gender and words importing persons shall include partnerships and body corporates and vice versa.
- 1.4 The head notes to the clauses of 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 The Purchaser's attention is drawn to the provisions of section 49 of the Consumer Protection Act ("section 49"). The Purchaser acknowledges:
- 1.5.1 that the Agent has satisfactorily explained the effect and consequences of the provisions of section 49 in relation to this Agreement and the Property to him in detail; and
- 1.5.2 that this Agreement contains certain terms and conditions which limit the risk or liability of the Seller, which constitute an assumption of risk and liability on the Purchaser's part, which impose an obligation on the Purchaser to indemnify the Seller and/or which constitute an acknowledgment of facts by the Purchaser.
- 1.6 The parties furthermore acknowledge that none of the terms of this Agreement, despite the express reference to the Consumer Protection Act, should be construed as an acknowledgement that the Consumer Protection Act applies to this transaction in circumstances where the same is not applicable to this transaction.
- 1.7 Reference to "days" shall be construed as calendar days unless qualified by the word "business day", which shall mean any day other than a Saturday, Sunday or public holiday gazetted by the Government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 8.30am and 16.30pm on any business day. Any reference to time shall be based upon South African Standard Time.
- 1.8 Reference to any legislation in this Agreement will include legislation passed in substitution thereof.

## 2 ACKNOWLEDGEMENTS BY PURCHASER

The Purchaser acknowledges and declares:

- 2.1 that the meanings and consequences of the provisions of this Agreement have been satisfactorily explained to him by the Agent;
- 2.2 that he is aware that the Seller purchased and lawfully acquired Erf 32775, Bellville and intends to develop it and erect the Building on the premises following transfer thereof to the Seller.
- 2.3 that he is fully aware that the Sectional Plan has not been prepared or approved as yet, as it can only be prepared once the construction of the Building has reached such an advanced state which allows the surveyor to prepare the Sectional Plan, and that the exact and final boundaries and area of the Section will be as indicated on the approved Sectional Plan;

- 2.4 that he shall not be entitled to cancel this Agreement or to any reduction in the Purchase Price by reason of any changes to the number of the Section necessary to be effected by the surveyor during the drafting of the Sectional Plan and the Purchaser undertakes to accept transfer of the Property as re-numbered on the approved Sectional Plan;
- 2.4 that he is fully aware that the Sectional Plan will be registered and the Register will be opened in the relevant deeds registry as soon as it is reasonably possible after the Completion Date and that transfer of the Property shall preferably take place simultaneously with or as soon as possible after the opening of the Register;
- 2.5 that he is fully aware that the Scheme will be developed in phases and that the Seller will reserve the right to extend the Scheme as contemplated in section 25 of the STA in respect of which the Seller will take out a Certificate of Real Rights as contemplated in section 12(1)(e) of the STA;
- 2.6 that the Seller will be a registered home builder before the commencement of the construction of the Building as contemplated in section 10 of the Housing Consumers Protection Measures Act 95 of 1998; and
- 2.7 that the investing of any funds by the Transferring Attorney in terms of section 86(4) of the Legal Practice Act 28 of 2014 ("the Legal Practice Act") is subject to the provisions of section 86(5)(b) thereof, which provides that 5% of the interest accrued on funds so invested must be paid to the Legal Practitioners' Fidelity Fund.

### **3 SALE**

The Seller hereby sells to the Purchaser who hereby purchases from the Seller the Property as depicted on Annexure "A". Since the Purchaser is purchasing the Property from the draft sketch plans attached hereto as Annexure "A", provision is made as follows in the event that the extent of the Section as depicted on Annexure "A" differs from the actual measured extent as per the Sectional Plan to be approved by the Surveyor-General:

- 3.1 in the event of a deviation in the said extent in excess of 5%, but less than 8%, a proportionate increase or decrease in the Purchase Price will be effected, which is hereby accepted by the parties;
- 3.2 in the event of a deviation of less than 5%, such deviation is hereby accepted by the Purchaser and the Purchase Price will remain the same;
- 3.3 in the event of a deviation of more than 8%, this Agreement will lapse at the option of either party if either party so elects in writing within a period of 10 (ten) days after the deviation has been communicated in writing to the Purchaser in which event the Purchaser will be entitled to a refund of the Reservation Deposit and other amounts, if applicable, as contemplated in clause 24 below.

### **4 PURCHASE PRICE**

- 4.1 The Purchase Price payable by the Purchaser to the Seller on the Transfer Date is the amount stated above, which amount is inclusive of Value Added Tax ("VAT") at the applicable rate from time to time.
- 4.2 The Purchaser shall pay the Purchase Price to the Seller as follows:
  - 4.2.1 should it be so indicated in the Transaction Details of the schedule in the preamble to this Agreement, the Reservation Deposit will be paid upon the Signature Date into the Trust Account. The Reservation Deposit shall be invested by the Transferring Attorney in an interest-bearing account as contemplated in section 86(4) of the Legal Practice Act until the same is paid to the Agent in accordance with the mandate given by the Purchaser to the Transferring Attorney in clause 23 below. Interest earned on the Reservation Deposit prior to payment thereof to the Agent will, subject to the provisions of section 86(5)(b) of the Legal Practice Act, accrue to the Purchaser and be paid to him on the Transfer Date after deduction of the investment fee due to the Transferring Attorney.

4.2.2 the balance of the Purchase Price shall:

4.2.2.1 if the Purchaser does not require mortgage finance as contemplated in clause 18 below, be paid into the Trust Account within 5 (five) business days of being requested to do so by the Transferring Attorney, which amount shall be invested by the Transferring Attorney for the credit of the Purchaser in an interest-bearing account as contemplated in section 86(4) of the Legal Practice Act until the Transfer Date, alternatively and at the option of the Purchaser the balance of the Purchase Price shall be secured by the delivery of a bank guarantee acceptable to the Seller made payable on the Transfer Date within 5 (five) business days of request by the Transferring Attorney; and

4.2.2.2 if the Purchaser requires mortgage finance as contemplated in clause 18 below, be secured by the delivery of bank guarantees acceptable to the Seller made payable on the Transfer Date within 14 (fourteen) days after fulfilment of the suspensive condition contemplated in clause 18 below or by a combination of cash and guarantees.

4.3 Save as provided for in clause 3.3 above and clauses 6.4, 13.6, 19.2, 22.1 and 24.1.3 below, the parties agree that the Reservation Deposit referred to in clause 4.2.1 above will become non-refundable as soon as the suspensive condition contemplated in clause 18 below is fulfilled, or waived by the Purchaser in writing, or upon payment of the Reservation Deposit in the event that no mortgage finance is required.

4.4 The Purchaser confirms that this Agreement constitutes the Purchaser's written consent and instruction to the Transferring Attorney to invest any funds paid by the Purchaser in lieu of the Purchase Price into the Trust Account in terms of section 86(4) of the Legal Practice Act, but further confirms that he is aware that the Transferring Attorney may require a separate authorisation to be signed by the Purchaser to invest the funds as such and undertake to furnish the Transferring Attorney on request with such authorisation together with such documentation under the Financial Intelligence Centre Act 38 of 2001 ("FICA") or other documentation as the Transferring Attorney may require. Interest earned on funds so invested will, subject to the provisions of section 86(5)(b) of the Legal Practice Act, accrue to the Purchaser and be paid to him on the Transfer Date after deduction of the investment fee due to the Transferring Attorney.

4.5 All the monies payable by the Purchaser in terms of this Agreement which remains unpaid on the due date shall bear interest at the rate of 5% (five percent) per annum above the prime lending rate of The Standard Bank of South Africa from time to time and shall be calculated from the due date to the date of payment.

4.6 All payments to be effected hereunder shall be effected by the Purchaser to the Transferring Attorney without set-off or deduction and free of exchange.

4.7 Should the Purchaser make payment of the Reservation Deposit plus an additional amount in lieu of the Purchase Price to the Transferring Attorney and subsequently obtains mortgage finance for the full amount of the Purchase Price, it is agreed that any amount so paid by the Purchaser in excess of the Purchase Price will be repaid to the Purchaser by the Transferring Attorney after the Transfer Date and upon receipt of payment by the Transferring Attorney of the full mortgage finance proceeds.

## **5 TRANSFER**

Transfer of the Property shall be passed by the Transferring Attorney to the Purchaser as soon as is reasonably possible after the Completion Date, provided that the Purchaser has complied in full with all his contractual obligations in terms of this Agreement.

## **6 POSSESSION AND OCCUPATION**

6.1 The Purchaser will take occupation of the Property on the Transfer Date, from which date all risk in and benefit to the Property will pass to the Purchaser and from which date the Purchaser shall be liable for payment of the levies as contemplated in the STSMA and the Regulations issued in terms thereof as well as the Municipal Charges.

- 6.2 Notwithstanding the provisions of clause 6.1 above, the Purchaser may take occupation of the Property prior to the Transfer Date, provided that:
- 6.2.1 the Seller or its agent has consented in writing that the Purchaser may take such prior occupation, which consent may only be given after the Completion Date;
- 6.2.2 the Purchaser may not take occupation of the Property unless the full Purchase Price has been paid or secured as contemplated above and the Purchaser has signed all documents of whatsoever nature on request of the Transferring Attorney and the bond registration attorney (if applicable); and
- 6.2.3 occupational interest shall be payable by the Purchaser at the rate of 0,75% (zero comma seven five percent) of the Purchase Price per month, which amount is payable to the Trust Account monthly in advance on or before the first business day of every month, which occupational interest includes monthly levies and municipal rates, but excludes electricity and water consumption charges for all of which the Purchaser shall be liable for payment from the occupation date.
- 6.3 It is anticipated that the Property will be ready for occupation on the Anticipated Occupation Date ("the specified date"). If, however, the Seller is of the opinion that, for whatever reason, the Property will not be sufficiently complete for beneficial occupation by the specified date, then the specified date shall automatically be extended by 6 months ("the extended date").
- 6.4 If the Property is not sufficiently complete for beneficial occupation by the extended date as provided for in clause 6.3 above, the Purchaser shall have the right, on written notice to the Seller, to immediately terminate this Agreement, provided that such notice is received by the Seller not later than 14 (fourteen) days after the extended date, and in which event the Purchaser will be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 24 below. The Purchaser records that he shall have no further claim of whatsoever nature or howsoever arising against the Seller for failing for any reason to give possession and occupation of the Property to the Purchaser timeously.
- 6.5 The Purchaser acknowledges:
- 6.5.1 that on the Transfer Date any improvements to be effected on the Common Property and/or the Building may still be incomplete and that the Purchaser or his occupiers may as a result thereof suffer inconvenience from building operations such as noise and dust resulting therefrom; and
- 6.5.2 that the Purchaser will have no claim of whatsoever nature against the Seller by reason of any such inconvenience, provided that such inconvenience is not caused by the intentional or grossly negligent act/s of the Seller or its agent/s or its employee/s.

## 7 DEFECTS LISTS

- 7.1 The Purchaser or his duly appointed representative shall upon completion of the Section (which is anticipated to be a date prior to the Occupation Date) at the request of the Seller or the Agent inspect the Section and submit in writing a list of patent (visible) Defects in respect to the Section ("snag list") to the Independent Property Inspector. The Seller will on receipt of such snag list instruct its contractors to remedy such Defects at its costs to the reasonable satisfaction of the Purchaser or his representative.
- 7.2 Once the patent Defects have been remedied to the reasonable satisfaction of the Purchaser, the Purchaser or his representative shall upon request from the Seller, Agent or the Transferring Attorney sign a letter of satisfaction ("happy letter") which, in the event that the Purchaser has obtained mortgage finance, has to be substantially in accordance with the mortgagee's requirements.
- 7.3 After the Occupation Date, the Purchaser will have a further 14 (fourteen) days to submit a further list of any patent Defects which could not necessarily be listed prior to the Occupation Date. Should such list of patent Defects not be received by the Independent Property Inspector within 14 (fourteen) days of the Occupation Date, the Purchaser will be deemed to have accepted the Property in a fit and proper condition and the Seller will be indemnified and released from any further responsibility to remedy any such patent Defects.

- 7.4 In the event of a dispute arising as to whether the patent Defects were duly brought to the attention of the Seller or whether the remedying of the patent Defects have been undertaken to the reasonable satisfaction of the Purchaser, the decision of the Principal Agent will be final and binding on the parties after both parties have been requested to submit written submissions.
- 7.5 The Purchaser accepts the appointment of the Independent Property Inspector to act as the exclusive liaison between the Purchaser and the Seller and undertakes not to contact the Seller directly.
- 7.6 The Purchaser undertakes to give access to the Seller and its contractors after the Completion Date to enable the Seller and its contractors to attend to the remedying of the patent Defects indicated in any of the above Defect lists. In the event that the Seller or its contractors are on at least 3 (three) occasions unsuccessful to get access to the Section within a period of 30 (thirty) days from date on which the Seller first notifies the Purchaser that access is required for the purposes contemplated in this clause, the parties agree that it will be deemed that the Purchaser does not require any such items to be remedied any longer, that the Purchaser is satisfied with the condition of the Section and that the Purchaser has released the Seller and its contractors from any obligations with regard to the repair of any patent Defects.
- 7.7 Any patent Defect arising within any of the periods referred to in clause 8 below which may be regarded as a material or an urgent defect and which may cause damage to the Section or to the Scheme if not attended to immediately, will have to be reported in writing to the Independent Property Inspector immediately if detected during business hours. If it is detected outside of business hours, the Purchaser or his representative will take reasonable steps to limit any damage which may be caused by such Defect until the Independent Property Inspector responds to the reported Defect.

## **8 LATENT DEFECTS AND SELLER'S WARRANTY**

- 8.1 Latent Defects (defects not visible at the Occupation Date) must be reported in writing to the Independent Property Inspector by the Purchaser or his representative within a period of 6 months from the Occupation Date, after which the Seller or its contractors will remedy such Defects at its costs.
- 8.2 In the event that the Purchaser fails to notify the Independent Property Inspector as contemplated in clause 8.1 above, the Purchaser will have no claim of whatsoever nature against the Seller for the remedying of such latent Defects.
- 8.3 Furthermore, notwithstanding anything previously provided, the Seller will under no circumstances be responsible for damage and/or loss caused by wear and tear, misuse, neglect, negligence, abuse or accidental damages caused by the Purchaser, his representative or his tenant and/or in the event of the late reporting of any Defect causing further damage.
- 8.4 The Purchaser acknowledges that it will be the responsibility of the Independent Property Inspector to convey all Defects reported by the Purchaser or his representative to the Seller and to facilitate communication insofar as required to give effect to clause 7 above and this clause 8.
- 8.5 The Purchaser will accept transfer of the Property subject to all conditions and servitudes benefiting or burdening the Property, including such conditions and servitudes already in existence and all such conditions and servitudes as may be imposed by any competent authority or by the Seller. The Purchaser acknowledges having made himself fully acquainted with the Section, its nature, location and extent, the draft sketch plans attached hereto as Annexure "A", the building specifications attached hereto as Annexure "B".
- 8.6 The Seller will ensure that its contractors comply with all applicable building regulations and conditions and that a Standard Home Builders Warranty be issued in accordance with legislation and the rules and practice of the National Home Builders Registration Council relating to the improvements on the Property. In the event that any portion of the Section has to be repainted due to a defect being reported, only that portion affected by the defect will be repainted.
- 8.7 The Purchaser will be furnished with a copy of the electrical compliance certificate as required in terms of the Occupational Health and Safety Act 85 of 1993, a copy of the certificate of occupancy and a copy of the NHBC enrolment certificate pertaining to the Property.

- 8.8 The Seller will ensure that its contractors warrant the entire Section in respect of major structural defects for a period of 5 (five) years and roof leakage for a period of 1 (one) year from the Completion Date in the event that the Defect is due to non-compliance with technical building standards.
- 8.9 Save as specifically set out in this Agreement, the Purchaser acknowledges that the Seller or the Agent has made no representations and given no warranties in respect of the Property, the Building or in respect of anything relating thereto other than as provided in this clause 8.

## 9 UNDERTAKING BY THE SELLER

The Seller undertakes that it will instruct its contractors to construct the Section substantially in accordance with the draft sketch plans attached hereto as Annexure "A".

## 10 CONDITIONS APPLICABLE PENDING TRANSFER

- 10.1 Should the Purchaser take occupation of the Property prior to the Transfer Date, the following provisions shall apply in addition to the provisions of clause 6.2:
- 10.1.1 the Purchaser shall permit any person authorized in writing by the Seller or its agent/s or its employee/s at all reasonable hours on notice, except in the case of emergency (when no notice shall be required), to enter the Section and the Common Property for the purposes of inspecting, maintaining and repairing it, or for the purposes of ensuring that the provisions of the STA, the STSMA, the Rules and any other legislation are being observed;
  - 10.1.2 the provisions of any legislation and local authority bylaws and regulations insofar as the same cast any duty upon the Purchaser or occupier of a property, shall bind the Purchaser and be enforceable by the Seller as if the Register has been opened;
  - 10.1.3 the Purchaser may not make any alterations or additions to the Section;
  - 10.1.4 the Purchaser will maintain the interior of the Section;
  - 10.1.5 the Purchaser will not sell, let or in any manner dispose of or part with (whether temporarily or otherwise) the Property or his rights of occupation thereof before the Transfer Date, except with the written consent of the Seller, which consent will not unreasonably be withheld; and
  - 10.1.6 the Purchaser will not appoint or engage any estate agent or other person to market, advertise and/or sell the Property other than the Agent.
- 10.2 The Seller shall pending the opening of the Register and the establishment of the Body Corporate:
- 10.2.1 insure the Building and all improvements in or upon the Property for the full replacement value thereof against such risks as the Seller may decide;
  - 10.2.2 maintain the Common Property and keep it in a state of good and serviceable repair and in a neat, tidy and sanitary condition; and
  - 10.2.3 administer the Property and the Common Property and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the Common Property and all other charges in connection with the Property and the Building.

## 11 LEVIES

The bona fide estimate of the monthly levy, pending the final determination thereof, is as set out in the Transaction details as set out in the preamble to this Agreement.

**12 MANAGING AGENT**

The Seller will be entitled to appoint the first Managing Agent, which appointment shall be valid and binding on the Body Corporate for a period of 1 (one) year after the date of the first annual general meeting of the Body Corporate, provided that such appointment complies with section 6(2) of the Rules. Insofar as it may be necessary, the Purchaser hereby grants the Seller the irrevocable power to make such appointment.

**13 DEFAULT**

13.1 Subject to the provisions of clauses 13.5, 13.6, 16 and 18 below, if either party commits a breach of the terms and conditions of this Agreement or fails to comply with any of the provisions hereof, then the aggrieved party will be entitled to give the defaulting party 5 (five) business days' written notice, (unless the transaction has already been lodged at the relevant deeds registry, in which event the notice period will be reduced to 12 (twelve) hours) to remedy such breach, failing which the aggrieved party may, without prejudice to any other rights or remedies he may have in law:

13.1.1 cancel this Agreement and claim damages; or

13.1.2 claim specific performance of the terms and conditions of this Agreement.

13.2 Notwithstanding the provisions of clause 13.1 above, the parties specifically agree that the Purchaser shall forfeit all monies paid by him to the Transferring Attorney, the Agent or to the Seller in the event that this Agreement is cancelled due to a breach by the Purchaser of the terms and conditions of this Agreement.

13.3 Should either party dispute the other party's cancellation of this Agreement, then pending the determination of the dispute, the Purchaser will be obliged to continue with the payment of all amounts payable by him in terms of this Agreement on the due date thereof and the Seller will be entitled to recover and accept those payments without prejudice to any of the Seller's rights in terms of this Agreement.

13.4 Upon cancellation of this Agreement by either party, the Purchaser and all persons who occupy the Property with his consent, will vacate the Property within 24 (twenty four) hours of such cancellation and will return the Property to the Seller in the same good order and condition as it was handed over at the Completion Date.

13.5

<p><b>In the event that the Purchaser causes an unjustified delay in the registration of the Property and/or the registration of the bond, which delay results in the relevant documents not being lodged for registration in the relevant deeds registry at the time of the lodging of the application for the opening of the Register and the registration of the Sectional Plan or the registration of the extension of the Scheme, the Seller will have the right, without prejudice to any other right or remedy he may have in law (including but not limited to the right to claim damages) to either immediately cancel this Agreement or to claim specific performance of the terms and provisions of this Agreement. In the event that the Seller claims specific performance, the Purchaser shall in addition to the monthly levies as contemplated in clause 11 above and the monthly occupational interest contemplated in clause 6.2.3 above, also be liable for the payment of an amount of R10 000,00 (Ten Thousand Rand) per month from the date on which the documents pertaining to the opening of the Register and the registration of the Sectional Plan or the registration of the extension of the Scheme could have been lodged in the relevant deeds registry until the actual date of lodgement thereof.</b></p>	<p>INITIAL HERE</p>
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13.6 Notwithstanding anything stated to the contrary herein, the Purchaser shall be entitled to cancel this Agreement by written notice to the Seller if the Seller fails to pass transfer of the Property into the name of the Purchaser within a period of 30 (thirty) months from the Signature Date, in which event the Purchaser shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 24 below.

## 14 JURISDICTION

The Purchaser consents in terms of the Magistrates' Court Act 32 of 1944 to the jurisdiction of any court having jurisdiction in terms of sections 28 and 29 of the said act in any action instituted by the Seller arising out of this Agreement, provided that the Seller will at all times be entitled to institute any action arising out of this Agreement against the Purchaser in any High Court of competent jurisdiction.

## 15 COSTS

### 15.1

**The Seller shall be liable to pay the fees and disbursements of the Transferring Attorney and the Bond Registration Attorney. However, should the financial institution which approves the Purchaser's loan application on its own accord or at the request of the Purchaser appoint an attorney other than the Bond Registration Attorney to attend to the registration of the bond, the Purchaser shall be liable for the payment of the bond registration costs to such attorney.**

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### 15.2

**Notwithstanding the provisions of clause 15.1 above, the Purchaser will be liable for the payment of all fees and disbursements incurred or to be incurred by the Transferring Attorney and the Bond Registration Attorney in the signing of the transfer and/or bond documents with any correspondent attorney. No such fees will be payable by the Purchaser if the transfer and mortgage bond documents are signed at the offices of the Transferring Attorney and the Bond Registration Attorney or at any of their branches in the Western Cape.**

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### 15.3

**Notwithstanding the provisions of clause 15.1 above, the Purchaser will be liable for the payment of the costs relating to the issue of the insurance certificate in respect of the Property, as well as the initiation fees and/or valuation fees levied by the financial institution who approves his loan application in the event that the same is not debited against the home loan account with the said institution on the Transfer Date.**

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## 16 TAX AFFAIRS

The Purchaser declares that his personal income tax and/or VAT affairs are in order and any resultant delay in the transfer of the Property in the name of the Purchaser, if this appears not to be the case, will be a material breach of this Agreement which will entitle the Seller to the immediate cancellation of this Agreement.

## 17 NOTICES AND DOMICILIA

17.1 Each of the parties chooses as his *domicilium citandi et executandi* ("domicilium") for the purposes of giving of any notice or the serving of any process and for any other purpose arising from this Agreement their respective physical addresses as stated above.

17.2 Each of the parties will be entitled from time to time, by written notice to the other party to change his domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

17.3 Any notice given by a party to the other ("the recipient") which:

17.3.1 is delivered by hand during business hours will be presumed to have been received by the recipient at the time of delivery, until the contrary is proved by the recipient; or

17.3.2 is posted by prepaid registered post from an address within the Republic of South Africa, will be presumed to have been received by the recipient on the fourth business day after the date of posting; or

17.3.3 is sent by email will be deemed to have been received by the recipient on the first business day after the date it was sent.

17.4 Where in terms of this Agreement any communications are required to be in writing the term writing will include communications by email.

## 18 MORTGAGE BOND AND BOND ORIGINATOR

18.1

<p>Should a bond amount be inserted in the Transaction Details of the schedule in the preamble to this Agreement, then it will be subject to the suspensive condition that the Purchaser obtains a loan to be secured by the registration of a mortgage bond over the Property or over another property registered in the name of the Purchaser from a recognised bank or other financial institution for the difference between the Purchase Price and the Reservation Deposit, or such other amount as may be acceptable to the Purchaser, within a period of 21 (twenty one) days from the Signature Date; provided, however, that the said 21 day period shall automatically be extended with a further 21 day period if the loan is not approved within the first mentioned 21 day period. In the event of such loan not being granted within the periods prescribed herein, this Agreement shall automatically lapse in which event neither party shall have any claim of whatsoever nature against the other, save for the Purchaser who shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 24 below. The date on which a quotation in terms of section 92 of the National Credit Act 34 of 2005 is issued will constitute the date of fulfilment of this suspensive condition, irrespective of the conditions contained therein.</p>	<p>THIS CLAUSE MUST BE DELETED IF THE PURCHASER DOES NOT REQUIRE MORTGAGE FINANCE</p>
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18.2 The Purchaser is aware of the fact that the Scheme consists of multiple units and that the Seller preferably requires the transfer of all such units simultaneously with the opening of the Register and the registration of the Sectional Plan or, as the case may be, the registration of the extension of the Scheme. The parties therefor agree that it is imperative that the bank or other financial institution at which the Purchaser applies for finance do not impose onerous conditions which may result in this not happening and, if such onerous conditions are imposed, the Purchaser warrants that he shall accept and comply with such conditions expeditiously, failing which the Seller may at his option, immediately cancel this Agreement. For clarity purposes, the following serves as an example:

The bank or other financial institution requires that the Purchaser takes out risk insurance or life insurance and includes the monthly premiums in the cost of credit. Even if the Purchaser could obtain such insurance at reduced costs from third party insurance companies, the Purchaser shall nevertheless accept the said monthly premiums in respect of such insurance as quoted by the bank or financial institution in order to ensure that registration is effected expeditiously, as the Purchaser may subsequent to the Transfer Date cancel such insurance and replace the same with insurance of his own choice. Should the Purchaser, however, insist on the obtaining of insurance from third party insurance companies prior to registration, such insistence may delay the contemplated simultaneous registration alluded to above, in which event the Seller may cancel this Agreement.

18.3 Subject to clause 18.4 below, the Purchaser is not allowed to apply for the loan contemplated in clause 18.1 above other than through the Bond Originator.

18.4 Should the Agent consent to the Purchaser applying on his own or through originators or his personal banker for the abovementioned loan, the Purchaser shall effect payment of an amount of R10 000,00 (Ten Thousand Rand) inclusive of VAT to the Transferring Attorney prior to the Transfer Date, which amount will be paid by the Transferring Attorney to the Bond Originator on the Transfer Date. . The Agent shall advise the Transferring Attorney and Purchaser accordingly and the Purchaser shall effect payment to the Trust Account.

- 18.5 The Purchaser hereby authorises the Bond Originator to lodge the abovementioned loan application on his behalf and to sign on his behalf all such documentation as may be required by the bank or other financial institution.
- 18.6 The Purchaser undertakes to provide, on request of the Bond Originator all financial and other information required by the bank or other financial institution within a period of 5 (five) days from the date on which the Bond Originator requests him to do so.
- 18.7 In the event that the Purchaser's loan application is approved as per clause 18.1 above and the bond is withdrawn prior to the Transfer Date by the bank or other financial institution, whether upon the instructions of the Purchaser or otherwise, the Purchaser records that he is aware that this Agreement has become unconditional when such loan was granted and that he will in such event be in breach of the terms and conditions of this Agreement should guarantees for the balance of the Purchase Price not be furnished or payment of the balance of the Purchase Price not be effected into the Trust Account within 14 (fourteen) days from the date that the bond is so withdrawn.
- 18.8 For the avoidance of doubt, this Agreement shall not be subject to the provisions of clauses 4.2.1 and 18 and a mortgage bond or a Reservation Deposit shall be not be required if it is not so expressly indicated in the Transaction Details of the schedule in the preamble to this Agreement

## **19 VARIATIONS OF SPECIFICATIONS AND PROPERTY**

- 19.1 The Building will be built substantially in accordance with the draft sketch plans annexed hereto as Annexure "A" and the building specifications attached hereto as annexure "B", provided that the Seller shall be entitled to substitute items of a similar standard and quality for any specified item. The Purchaser acknowledges that no request for any variations to the Section and or the building specifications will be entertained. Moreover, the Seller shall be entitled to vary the plans for the Building and/or the Property, should the Seller consider the same reasonably necessary for technical or aesthetic reasons.
- 19.2 If any dispute should arise between the parties regarding the changes effected by the Seller as contemplated in clause 19.1 above, the decision of the Seller's Principal Agent will be final and binding as to whether or not there has been substantial compliance by the Seller of its obligations after the Principal Agent has requested written submissions from both the Purchaser and the Seller. Should the dispute be determined in favour of the Purchaser, then the Purchaser shall be entitled to cancel this Agreement and shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 24 below.

## **20 NO INTERFERENCE**

The Purchaser will not in any way interfere with, or give instructions to any of the Seller's agents, employees, contractors or subcontractors. The Purchaser will not be allowed to enter the Section unless the prior written consent of the Seller is first had and obtained, in which event the Purchaser must be accompanied by the Independent Property Inspector or his representative.

## **21 OFFER**

The Purchaser's signature to this document constitutes an offer to the Seller, which offer will be deemed to be irrevocable for a period of 30 (thirty) days from such signature.

## **22 RESOLUTIVE CONDITIONS**

- 22.1 The Purchaser acknowledges that the economic viability of the development of the Scheme depends largely on the response by the purchasing public to the advertising campaign launched by the Seller and/or the Agent in respect of the development. In the event that the Seller is of the opinion that the development will not be financially viable or if the Seller has not managed to successfully sell a sufficient number of units in the Scheme, the Seller may give notice of the termination of this Agreement, in which event this Agreement shall immediately terminate and be null and void and the Purchaser shall be entitled to a refund of the Reservation Deposit and other amounts (if applicable) as contemplated in clause 24

below. The said notice to the Purchaser will be given by the Transferring Attorney by way of email or any other form of electronic message.

22.2 The Seller may require finance for the acquisition and/or development of the Buildings and the Property in its discretion, for which the Seller shall apply for in due course when required. Should the Seller be unsuccessful in applying for such finance or insufficient finance is approved, the Seller may give notice of the termination of this Agreement, in which event this Agreement shall immediately terminate and be null and void. The said notice to the Purchaser will be given by the Transferring Attorney by way of email or any other form of electronic message

## **23 AGENT'S COMMISSION AND PAYMENT OF COMMISSION PRIOR TO THE TRANSFER DATE**

23.1 The parties warrant that the Agent was the effective cause of this Agreement and that no other person or estate agent introduced the Purchaser to the Property or the Purchaser to the Seller, and the Seller shall be liable to effect payment of the Agent's commission as agreed to in this Agreement.

23.2 The parties record that the Agent shall be entitled to part payment of commission in an amount equal to the Reservation Deposit, and the Transferring Attorney is authorised to pay such commission to the Agent, once:

23.2.1 the full balance of the Purchase Price is secured by the Purchaser to the satisfaction of the Seller should the Purchaser not require mortgage finance as contemplated in clause 18 above; or

23.2.2 once the bond registration attorney receives an instruction from the bank or other financial institution who approved the Purchaser's loan application to attend to the registration of a mortgage bond over the Property or another property registered in the name of the Purchaser as security for the loan, should the Purchaser require mortgage finance as contemplated in clause 18 above and the balance of the Purchase Price (if any) is secured to the satisfaction of the Seller; and

23.2.3 after the Purchaser has been furnished with an irrevocable and unconditional guarantee by a banking institution registered under the Banks Act 1965 or a registered insurer as defined in the Insurance Act 1943, in terms of which the said banking institution or insurer undertakes to repay the said amount to the Purchaser if the Property is not registrable within a period specified in the said guarantee.

23.3 The balance of the commission shall be paid by the Transferring Attorney to the Agent on the Transfer Date.

23.4 The Purchaser confirms that he is aware that once a portion of the commission is paid by the Transferring Attorney to the Agent as contemplated in clause 23.2 above, interest will only be earned on the remaining balance of funds invested by the Transferring Attorney in terms of the Legal Practice Act.

## **24 REFUND TO THE PURCHASER**

24.1 The Purchaser shall be entitled to a refund of all amounts paid in lieu of the Reservation Deposit and the balance of the purchase price as contemplated in clause 24.2 below should this Agreement:

24.1.1 lapse as contemplated in clauses 3.3 and 18.1 above; or

24.1.2 terminate as contemplated in clauses 6.4, 22.1 and 22.2 above; or

24.1.3 be cancelled due to a breach of this Agreement by the Seller; or

24.1.4 be cancelled as contemplated in clauses 13.6 and 19.2 above.

24.2 The Agent shall refund to the Purchaser's nominated bank account that portion of the commission paid by the Transferring Attorney to the Agent as commission as contemplated in clause 23.2 above. The Transferring Attorney shall refund to the Purchaser's nominated bank account such amounts as remain in trust with the Transferring Attorney after deduction of portion of the interest accrued as contemplated in clause 2.8 above and the Transferring Attorney's investment fee as contemplated in clause 4.4 above. The Purchaser shall have no recourse against the Seller or the Transferring Attorney for the reimbursement of any monies paid over by the Transferring Attorney to the Agent as contemplated in clause 23.2 above.

**25 RENTAL MANAGEMENT**

- 25.1 Subject to the terms and conditions of this clause 25, the Seller hereby consents that the Property may be let to a suitable tenant with effect from the Completion Date if the Purchaser does not intend occupying the Property himself.
- 25.2 The Purchaser hereby appoints the Independent Property Inspector as its sole and exclusive agent to procure and place tenants in the Property and act as his rental agent for a period of 3 (three) years from the Completion Date on the terms and conditions of the Independent Property Inspector's standard rental management agreement from time to time.

**26 COMPANY / CLOSE CORPORATION / TRUST**

In the event of the Purchaser being a Company, Close Corporation or a Trust, or any person acting in a representative capacity, the person signing this Agreement on behalf of the Purchaser shall be deemed to have bound himself/herself/themselves as surety(ies) and co-principal debtor(s) for all the obligations of the Purchaser (and, if applicable, jointly and severally with any other persons signing this Agreement on behalf of the Purchaser), such surety(ies) hereby renouncing the benefits of excussion and division the effect of which he/she/they acknowledge himself/ herself/ themselves to be aware.

**27 DIRECT MARKETING AND COOLING OFF**

- 27.1 In terms of section 16 of the Consumer Protection Act, if this Agreement has been entered into as a result of direct marketing, meaning that the Purchaser was directly or indirectly approached either in person or by mail or electronic communication by the Seller or the Agent for the purpose of promoting or offering to supply, in the ordinary course of business, the sale of the Property hereby sold, the Purchaser would have been entitled to cancel this Agreement without reason or penalty by written notice within 5 (five) days after the Signature Date, or within 5 (five) business days after delivery of the Property.
- 27.2 The Seller is therefore not prepared to enter into any agreement with the Purchaser if such agreement would have resulted from such direct marketing. The Purchaser therefore warrants that this transaction is not entered into as a result of such direct marketing conducted by the Seller and the Seller enters into this Agreement relying entirely upon such warranty.
- 27.3 If after delivery of the Property, the Purchaser is successful in cancelling this Agreement by relying upon the right of cancellation flowing from the direct marketing provisions of the Consumer Protection Act, the Purchaser shall be liable for damages suffered by the Seller as a result thereof on the basis of the Purchaser's breach of this warranty.

**28 GENERAL**

- 28.1 This Agreement is the sole agreement between the parties hereto and no amendment, variation or consensual cancellation hereof will be valid unless such amendment, variation or consensual cancellation has been reduced to writing and signed by the parties or their duly authorised representatives hereto.
- 28.2 No extension of time or indulgence granted by either party to the other deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor will it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.
- 28.3 Each of the parties hereby undertakes when called upon to do so by the Transferring Attorney and the bond registration attorney to forthwith sign all required documents in order to effect the registration of the transfer of the Property and/or the mortgage bond and to furnish all documents which may be required in order to comply with the requirements of FICA.
- 28.4 If there is more than one Purchaser in terms of this Agreement, the liability of each of the Purchasers will be joint and several.

28.5 Save as otherwise agreed to in this Agreement, the Purchaser will not be relieved of any of his obligations under this Agreement or be entitled to any reduction of the purchase price or any other amount due in terms hereof in the event that the Seller fails to obtain, or delay in obtaining, any approval of whatsoever nature which may be required for the development to be completed from any governmental authority or if the opening of the Register is delayed for whatever reason.

28.6 This agreement may be executed in counterparts, which shall together constitute one agreement. Any party may enter into this agreement by signing any such counterpart.

28.7 The Purchaser acknowledges by his signature hereto that the Seller has provided sufficient time and opportunity for the Purchaser to receive and comprehend the nature and effect of the provisions of this Agreement and to obtain independent legal advice.

DATED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

WITNESSES:

1. \_\_\_\_\_ **PURCHASER 1**

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

DATED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

WITNESSES:

1. \_\_\_\_\_ **SELLER**

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

DATED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

WITNESSES:

1. \_\_\_\_\_ **AGENT**

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

The Agent by signature hereto accepts the benefits and obligations (if any) imposed in terms of this Agreement.

## **ANNEXURE C – MANAGEMENT AND CONDUCT RULES**

The management and conduct rules published on the website:

<https://www.csos.org.za/regulations/>