

PLETT PLATINUM LUXURY RETIREMENT HOTEL

AGREEMENT OF SALE

ENTERED INTO BY AND BETWEEN

Southern Wealth Management Company (Pty) Ltd
t/a CPD - Garden Route Projects
Registration No. 2001/026065/07

(hereinafter referred to as “ the SELLER”)

AND

The Purchaser as defined in Annexure A of the Schedule of Particulars
(hereinafter referred to as “the PURCHASER”)

1 **IMPORTANT NOTICES**

- 1.1 This Agreement, its terms and conditions is subject to the provisions of the Consumer Protection Act, 68 of 2008 ('CPA'). As a result, the Parties to this Agreement are entitled to the benefit and protection of the CPA.
- 1.2 This Agreement contains terms and conditions which:
 - 1.2.1 may limit the risk or liability of the Seller or a third party, particularly at clauses-
 - 1.2.1.1 5.5, 7.2, 10.5, 11.1, 12.1
 - 1.2.2 may create an assumption of risk or liability for the Purchaser, particularly at clauses-
 - 1.2.2.1 7.1, 9.3, 10.1.2, 10.1.3, 10.3, 10.4, 10.6, 12.5
 - 1.2.3 serves as an acknowledgement, by the Purchaser, of any fact, particularly at clauses-
 - 11.4.1, 16, 17.2.1, 19.3
 - 1.2.4 The Parties' attention is drawn to these terms and conditions because they are important and should be carefully noted. By initialing this page, the Parties acknowledges that their attention has been specifically drawn to these clauses and that the Parties have had an adequate opportunity to comprehend the nature and consequences of the clauses as contemplated above.
 - 1.2.5 The Parties are expected to read and satisfy themselves as to the nature, contents, consequences and their respective understanding of all terms and conditions contained in this Agreement. The enforceability of this Agreement shall not be affected by reason only that this Agreement contains terms and conditions having the same effect as contemplated in clauses 1.2.1, 1.2.2 and 1.2.3 above but which have not been brought to the attention of either the Purchaser or the Seller.

Nothing in this Agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Purchaser or the Seller in terms of the CPA.

PREAMBLE

The Seller, and, subject to compliance with the conditions of this agreement, intends applying in terms of the Sectional Titles Act No. 95 of 1986, for the approval of the scheme and thereafter for the opening of a sectional title register on the land.

The Purchaser wishes to purchase a proposed sectional unit in the scheme together with all the rights attaching thereto from the Seller as contained in this agreement.

2 PARTIES

2.1 The Parties to this Agreement are –

2.1.1 Southern Wealth Management Company (Pty) Ltd, Registration number 2001/026065/07; and

2.1.2 The Purchaser identified in item 1 of the Schedule of Particulars.

2.2 The Parties agree as set out below.

3 INTERPRETATION

3.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

3.1.1 "**Act**" means the Alienation of Land Act, 1981 and all the regulations thereunder;

3.1.2 "**Agreement**" means the Schedule of Particulars including the general terms and conditions contained in this document including all Attachments hereto;

3.1.3 "**Balance of the Purchase Price**" means the Purchase Price less the Deposit;

3.1.4 "**Body Corporate**" means the body corporate (as contemplated in Section 36 of the Sectional Titles Act) in respect of the Scheme;

- 3.1.5 "**Bond Amount**" means the amount stipulated in item 5.2 of the Schedule of Particulars or such lesser sum as the Purchaser may accept;
- 3.1.6 "**Bond Grant Date**" means the final date for granting of a bond as stipulated in item 5.3 of the Schedule of Particulars;
- 3.1.7 "**Buildings**" means the Buildings and all improvements, erected or to be erected on the land;
- 3.1.8 "**Conditions Precedent**" means the suspensive conditions set out in clause 5;
- 3.1.9 "**Deposit**" means the amount stipulated in item 3.1 of the Schedule of Particulars;
- 3.1.10 "**Deposit Date**" means the date stipulated in item 3.2 of the Schedule of Particulars;
- 3.1.11 "**Developer**" means the Seller or its successors in title or assigns having the rights and powers conferred on a developer by the Act;
- 3.1.12 "**Entity**" means the company or close corporation to be formed pursuant to clause 20 below;
- 3.1.13 "**Exclusive Use Areas**" means the areas of common property reflected on the plans as being intended for the exclusive use of the owners of sections;
- 3.1.14 "**Guarantee Amount**" means the amount stipulated in item 3.3 of the Schedule of Particulars;
- 3.1.15 "**Guarantee Date**" means the due date for guarantees as stipulated in item 3.3 of the Schedule of Particulars;
- 3.1.16 "**Land**" means the land situated at Erf 8 Plettenberg Bay in the Municipality and Division of Knysna, Western Cape Province, measuring approximately 2 141 (Two Thousand One Hundred and Forty-One) square metres;
- 3.1.17 "**Linked Exclusive Use Areas**" means the Exclusive Use Areas identified in item 6 of the Schedule of Particulars;
- 3.1.18 "**Monthly Levy**" means the amount stipulated in item 8.1 and 8.2 of the Schedule of Particulars;

- 3.1.19 "**Occupation Date**" means the date stipulated in item 9 of the Schedule of Particulars or such later date determined in accordance with clause 19.1 hereunder;
- 3.1.20 "**Occupational Rent**" means the amount stipulated in item 10 of the Schedule of Particulars;
- 3.1.21 "**Participation Quota**" in relation to a section or the owner of a section, means the percentage determined in accordance with the provisions of section 32(1) or (2) of the Act in respect of that section for the purposes referred to in section 32(3) of the Act, and shown on a sectional plan in accordance with the provisions of section 5(3)(g) of the Act;
- 3.1.22 "**Parties**" means the parties to this Agreement;
- 3.1.23 "**Plans**" means the sectional plans in respect of the Scheme as registered and filed in the office of the appropriate Registrar of Deeds or in the event of such sectional plans not having been registered, the Building Plan;
- 3.1.24 "**Practical Completion**" means the completion of the Section, including the remedy of any patent defect in respect thereof, by the Seller or his contractors;
- 3.1.25 "**Property**" means the Unit and the Exclusive Use Area;
- 3.1.26 "**Purchaser**" means the Entity, provided it has been formed pursuant to clause 20 below, otherwise shall mean the person or Trustee, as the case may be, identified in the Schedule of Particulars;
- 3.1.27 "**Purchase Price**" means the amount stipulated in item 2.1 of the Schedule of Particulars;
- 3.1.28 "**Rules**" means the rules referred to in Section 35 of the Sectional Titles Act and shall include any substituting rules submitted by the Seller when submitting the application for the opening of the Sectional Title Register in respect of the Scheme;
- 3.1.29 "**Management Company**" means Southern Corporate Management Company (Pty) Ltd with registration number 2016/502140/07;
- 3.1.30 "**Scheme**" means the sectional scheme which is to be known as PLETT PLATINUM LUXURY RETIREMENT HOTEL;

- 3.1.31 "**Section**" means the section referred to in item 5.1 of the Schedule of Particulars as identified on the site plan by the same number of the section, the floor area of which corresponds with the area as stipulated in item 5 of the Schedule of Particulars;
- 3.1.32 "**Sectional Titles Act**" means the Sectional Titles Act, 95 of 1986 and all regulations thereunder;
- 3.1.33 "**Seller**" means Southern Wealth Management Company (Pty) Ltd, Registration Number 2001/026065/07, a company duly incorporated according to the laws of the Republic of South Africa;
- 3.1.34 "**Seller's Conveyancers**" means Mosdell Pama & Cox Attorneys situated at 6 High Street Plettenberg Bay (e-mail: acox@mpc.law.za);
- 3.1.35 "**Schedule of Particulars**" means the Schedule of Particulars preceding these general terms and conditions and to which these general terms and conditions are attached;
- 3.1.36 "**Signature Date**" means the date of signature of this Agreement by the Party last signing;
- 3.1.37 "**Transfer**" means registration of transfer of the Property into the name of either the Purchaser or the Entity, as the case may be, in the office of the Registrar of Deeds in terms of the Deeds Registries Act No. 47 of 1937;
- 3.1.38 "**Trustee**" means the person identified in item 1 of the Schedule of Particulars acting in his capacity as trustee for the Entity;
- 3.1.39 "**Unit**" means the Section together with an undivided share in the common property in the Scheme apportioned to the Section in accordance with the Participation Quota;
- 3.1.40 "**VAT**" means Value Added Tax payable in terms of the VAT Act;
- 3.1.41 "**VAT Act**" means the Value Added Tax Act No 89 of 1991 as amended.

3.2 In this Agreement -

- 3.2.1 clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- 3.2.2 an expression which denotes -
 - 3.2.2.1 any gender includes the other genders;
 - 3.2.2.2 a natural person includes a juristic person and *vice versa*;
 - 3.2.2.3 the singular includes the plural and *vice versa*; and
 - 3.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law.
- 3.3 Any reference in this Agreement to –
 - 3.3.1 "**business hours**" shall be construed as being the hours between 08h00 and 16h30 on any business day. Any reference to time shall be based upon South African Standard Time;
 - 3.3.2 "**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;
 - 3.3.3 "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
 - 3.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
 - 3.3.5 "**writing**" means legible writing and in English or Afrikaans and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.
- 3.4 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words

"include" and **"including"** followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

- 3.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 3 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 3.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 3.7 Words defined in the Act or the Sectional Titles Act shall, unless specifically defined in terms hereof, bear the meanings assigned to them in the legislation in which they are so defined.
- 3.8 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 3.9 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 3.10 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.
- 3.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 3.12 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 3.13 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.

- 3.14 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 3.15 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 3.16 Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 3.17 In this Agreement the words "**clause**" or "**clauses**" and "**Attachment**" or "**Attachments**" refer to clauses of and Attachments to this Agreement.
- 3.18 Where this Agreement refers to any rule, provision section or chapter of any Act, whether national or provincial, the Purchaser shall upon written request and at the Purchaser's cost and expense be entitled to receive a copy thereof from the Seller or the Seller's Conveyancers within 5 (five) days of the Seller having received such request.
- 3.19 The Parties record that, notwithstanding anything to the contrary contained in this Agreement, it is within the contemplation of the Parties that Transfer and payment of the Balance of the Purchase Price should be effected contemporaneously and that accordingly the provisions of Chapter II of the Act do not apply to this transaction.

4 INTRODUCTION

- 4.1 The Seller wishes to sell the Property to the Purchaser for the purchase price and the Purchaser wishes to purchase the Property from the Seller.
- 4.2 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

CONDITIONS PRECEDENT

- 5.1 This agreement is subject to the Seller selling **20** Units in the scheme on or before **28 February 2017**. The Seller is entitled to extend the date unilaterally. Failure on behalf of the Seller to fulfil this special condition or extend the aforementioned date, would render the entire agreement null and void and the Seller shall refund to the Purchaser the aggregate of all payments made by the Purchaser in respect of the Purchase Price and interest thereon.
- 5.2 Save for clauses 1 to 5, and clauses 7 to 11, 12 and 16 to 26 all of which will become effective immediately, this Agreement is subject to the fulfilment of the Condition Precedent that
- 5.2.1 the Deposit is paid by the Purchaser to the Seller's Conveyancers on the Deposit Date;
- 5.2.2 by not later than 16h30 on the Bond Grant Date (or such later date as may be agreed to in writing between the Parties as contemplated in clause 5.3 below), the Purchaser is granted a loan in writing of an amount not less than the Bond Amount, by a registered bank or other financial institution, upon security of a first mortgage bond to be passed over the Property;
- 5.3 The Bond Grant Date may be further extended by the Parties by mutual agreement, reduced to writing and signed by both the Parties provided that such extended period shall not exceed 30 (thirty) days from the Bond Grant Date. The Purchaser shall timeously request an extension of this deadline if the Purchaser anticipates that the bond will not be granted by the Bond Grant Date.
- 5.4 The Purchaser shall do all things reasonably necessary to procure the timeous fulfilment of these Conditions Precedent and shall, prior to the expiry of the relevant time period set out in this clause 5, furnish to the other Party documents evidencing the fulfilment of such Conditions Precedents to such other Party's satisfaction.
- 5.5 The Conditions Precedent in clause 5.2.2 has been inserted for the benefit of both Parties who will be entitled to waive fulfilment of the Conditions Precedent, in whole or in part, on written notice to the other Party prior to the expiry of the relevant time period set out in the relevant clause.

5.6 Unless all the Conditions Precedent have been fulfilled or waived by not later than the relevant dates for fulfilment thereof set out in clause 5.2 (or such later date or dates as may be agreed in writing between the Parties as contemplated in clause 5.3 above) the provisions of this Agreement, save for clauses 1 to 5, which will remain of full force and effect, will never become of any force or effect and the Parties will be restored as near as may be possible to their respective previous positions and neither of the Parties will have any claim against the other in terms hereof or arising from the failure of the Conditions Precedent.

6 **SALE**

The Seller sells to the Purchaser, and the Purchaser purchases the Property, subject to all the conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Property and to all such other conditions and servitudes as may exist in regard thereto, including the provisions of any applicable town planning scheme.

7 **OFFER TO PURCHASE**

7.1 Signature of this contract by the Purchaser shall be deemed to constitute an offer by the Purchaser to the Seller to enter into this Agreement and purchase the Property, which offer shall not be capable of revocation or withdrawal by the Purchaser for a period of 7 (seven) days after signature of this Agreement by the Purchaser.

7.2 This Agreement shall be binding on the Seller only when duly signed by it until which time no obligation or liability on the part of the Seller shall be deemed to exist. It shall not be necessary for the Seller to communicate to the Purchaser its acceptance of the offer constituted in terms hereof for this Agreement to become valid and binding.

7.3 With effect from the Signature Date, unless this Agreement has been cancelled by reason of non-fulfilment of the Conditions Precedent as set out in clause 5, the Seller sells the Property to the Purchaser who purchases the Property from the Seller upon the terms and conditions as set out in this Agreement.

PAYMENT OF THE PURCHASE PRICE

The Purchase Price of the Property shall include a value added package as stipulated in Annexure A of the Schedule of Particulars and shall be payable as follows -

- 8.1 an initial Deposit and the balance of the Deposit shall be payable by the Purchaser on or before the Deposit Dates to the Seller's Conveyancers and held in trust until the date of Transfer and the Seller's Conveyancers are instructed to invest such amount with Nedbank on the basis that –
 - 8.1.1 the amount is invested in an interest-bearing account;
 - 8.1.2 the interest-bearing account contains a reference to section 78(2A) of the Attorneys Act, No. 53 of 1979;
 - 8.1.3 the interest which accrues on such investment is to be for the benefit of the Purchaser and will be paid, after deducting the Seller's Conveyancers professional fee for administering the investment, to the Purchaser on Transfer;
 - 8.1.4 The Deposits paid by the Purchaser in terms of clause 8.1 will be paid to the Seller against Transfer.
- 8.2 the Balance of the Purchase Price shall be payable by the Purchaser on the date of Transfer.
- 8.3 Pending Transfer, the Purchaser shall on or before the Guarantee Date furnish the Seller and/or the Seller's Conveyancers with acceptable guarantees (issued by a bank or other financial institution) for payment of the Balance of the Purchase Price in accordance with the provisions of this Agreement.

OCCUPATION, POSSESSION AND RISK

- 9.1 Occupation of the Section shall be given to the Purchaser on the Occupation Date.
- 9.2 Where the Occupation Date is prior to the date of Transfer the Purchaser shall :
 - 9.2.1 be entitled to the beneficial occupation of the Section as if he was the owner of the Section and even though the Body Corporate might not have come into being; and

- 9.2.2 be entitled to the use and enjoyment of those parts of the common property not subject to rights of exclusive use by the Purchasers of other units in the Scheme.
- 9.2.3 pay to the Seller or the Seller's nominee in consideration of such prior occupation, Occupational Rent as detailed in item 10 of the Schedule of Particulars which Occupational Rent shall be payable monthly in advance on the first day of each and every month, from the Occupation Date to the date of Transfer, both days inclusive and at such bank account as the Seller may designate in writing from time to time. Where the Occupation Date does not coincide with the first day of the month, the Purchaser shall on the Occupation Date pay a proportionate portion of the Occupational Rent.
- 9.3 If between the Signature Date and the date of Transfer, VAT becomes payable by the Seller in respect of Occupational Rent payable in terms of this Agreement then the amount of the Occupational Rent shall automatically be increased by an amount equal to the VAT so payable.
- 9.4 Should the Occupation Date be subsequent to the date of Transfer the Seller will pay to the Purchaser or the Purchaser's nominee in consideration of such period of occupation, Occupational Rent calculated and payable in accordance with the provisions of clause 9.2.3.
- 9.5 Possession of the Property shall be given to the Purchaser on the date of Transfer, from which date it shall be at the sole risk, loss or profit of the Purchaser, and the Purchaser shall from such date be entitled to the rentals (if any). The Purchaser shall, in addition thereto, be entitled to a refund from the Seller of the rentals (if any) collected prior to the date of possession in respect of any period subsequent to the date of Transfer.

10 **CONDITIONS OF OCCUPATION**

- 10.1 From the Occupation Date the Purchaser shall, during the currency of this Agreement -
- 10.1.1 comply with the provisions of the Sectional Titles Act and the Rules as if the Purchaser was the Owner of the Section

save that, if the Body Corporate has not yet come into existence, such of the provisions that cannot, under the circumstances, be applicable or are impliedly substituted by the provisions of this Agreement shall not be binding on the Purchaser;

- 10.1.2 be responsible for the payment of the Monthly Levy and/or all sectional title levies payable in respect of the Property, as the case may be. The Purchaser shall forthwith on demand refund to the Seller all such levies prepaid by the Seller beyond such date;
- 10.1.3 keep all buildings, fences and other improvements in and on the Property in good order, repair and condition to the satisfaction of the Seller, and should the Purchaser fail to do so, the Seller shall be entitled to have effected any repairs the Seller deems necessary to maintain the Property in good order, repair and condition and to recover the cost thereof from the Purchaser on demand, without prejudice to any other rights the Seller may have.
- 10.2 From the Occupation Date the Seller shall enjoy the same rights and powers as the Body Corporate and/or its trustees enjoy in terms of the Sectional Titles Act and the Rules.
- 10.3 During the currency of this Agreement the Purchaser shall not, without the prior written consent of the Seller and/or the Body Corporate, as the case may be, make or cause or allow to be made any improvements and/or alterations to the Property or remove or demolish any improvements and/or alterations whatsoever and will submit to the Seller and/or the Body Corporate as the case may be, for prior approval plans of any proposed buildings, improvements and/or alterations. It is a condition of any approval the Seller and/or Body Corporate may give in respect of such plans that the Purchaser procures, before building operations are commenced, a waiver by the contractor of any lien to which such contractor might otherwise become entitled.
- 10.4 If this Agreement is terminated or cancelled for any reason as may be contemplated herein prior to the date of Transfer, any improvements and/or alterations made to the Property, pursuant to clause 10.3 above, shall be deemed to accede to the Property, unless same can be removed without causing any damage or

unsightliness to the Property or where the Seller and/or the Body Corporate, notwithstanding the aforementioned, requires the Purchaser to remove such improvements and/or alterations within 14 (fourteen) days written notice to that effect.

- 10.5 Save for a written agreement between the Parties to the contrary in terms whereof the Seller and/or the Body Corporate has granted its consent as contemplated in clause 10.3 above, the Seller and/or the Body Corporate shall not be obliged to compensate the Purchaser (or any other person) for any improvements and/or alterations made to the Property.
- 10.6 The Seller and/or the Body Corporate shall be entitled to impose conditions (either by way of conditions of sectional title or in terms of the Rules) prohibiting the name of the Management Company from being changed and/or restricting any part or whole of the Property from being used for business or commercial purposes or any other use considered by the Seller (acting reasonably) to be undesirable.

11 **WARRANTIES, REPRESENTATIONS AND GUARANTEES**

- 11.1 Subject to clause 19 below, the Property is sold as it stands.
- 11.2 The Purchaser shall be obliged to accept Transfer subject to-
- 11.2.1 the conditions, reservations and servitudes contained in the Title Deed of the Land;
 - 11.2.2 such conditions of sectional title as are imposed by the Developer, the local authority, the administrator or any other authority;
 - 11.2.3 any change in the numbering of the Section.
- 11.3 Save as provided for in clause 19.8 below, if upon a resurvey or re-measurement the extent of the Land, the Section or the Participation Quota is found not to correspond to that set out in this Agreement, then the Seller shall not, only to the extent that the variation does exceed 7.5% of the extent as stated in item 5.2 of the Schedule of Particulars, be liable for any shortfall nor shall it be entitled to claim compensation for any surplus.
- 11.4 The Purchaser acknowledges that-

- 11.4.1 save as provided for herein or in terms of any law, no warranties, undertakings or representations whatsoever have been made or given by the Seller, whether expressly or impliedly;
- 11.4.2 no person has authority to make any representations whatsoever on the Seller's behalf; and
- 11.4.3 the Seller shall not be required to indicate the position of the beacons or pegs on the Land, the Building or the Section or the Linked Exclusive Use Areas or the boundaries thereof.

12 **TRANSFER AND COSTS**

- 12.1 Transfer shall be effected by the Seller's Conveyancers as soon as is reasonably possible after the Purchaser has complied with all his obligations in terms hereof and after the Seller has paid the costs and charges referred to in clause 12.2 below. Date of Transfer shall only be of the essence if the Parties specifically agree in writing that Transfer should take place on or before a certain date. Notwithstanding this, no responsibility will be accepted by the Seller and/or the Seller's Conveyancers for any delay falling outside of the Seller's and/or the Conveyancers control.
- 12.2 The Seller shall pay the costs of Transfer and of the Exclusive Use Area (if any).
- 12.3 There will be no transfer duty payable.
- 12.4 The Purchaser shall pay the costs of the registration of the bond (if any).
- 12.5 The Purchaser shall, within 10 (ten) days of being called upon to do so by the Seller or-
 - 12.5.1 Seller's Conveyancers at any reasonable time (having regard to the date when Transfer can and should be given) furnish all such information, sign all such documents as may be necessary or required to enable the Seller's Conveyancers to effect Transfer and register a mortgage bond simultaneously with Transfer.
 - 12.5.2 the Seller's Conveyancers, pay the costs and charges relating to any initiation, raising or administration fees levied

by the mortgagee and all bank charges payable the Seller's Conveyancers;

12.5.3 Mortgagee's attorneys (if applicable) furnish all such information, sign all such documents and pay all such amounts as may be necessary or required to enable the Mortgagee's attorneys to register a Mortgage Bond (if applicable) simultaneously with Transfer.

12.6 Save for a written Agreement concluded between the Parties to the contrary, the Purchaser shall not, by reason of any delay in the Transfer, be entitled to cancel this Agreement or to refrain from paying, or suspend payment of Occupational Rent or any other amount payable by him in terms of this Agreement or to claim and recover from the Seller any damages or compensation or any remission of Occupational Rent.

12.7 If the sectional title register is not opened within 18 (eighteen) months of the actual Occupation Date or such extended period as may be the result of any factors beyond the control of the Seller or such further period as may be agreed in writing between the Parties, then:

12.7.1 this Agreement shall lapse and the Purchaser entitled to be refunded the amount of the Deposit, subject to clause 12.8 below;

12.7.2 save as herein provided, neither of the Parties shall in such event have any further claim whatsoever for damages or specific performance, against the other under this Agreement, nor shall the Purchaser be entitled to claim or allege any right of occupation or tenancy of the Unit and Exclusive Use Areas under this Agreement and shall vacate them within one calendar month after such lapsing.

12.8 In the event that the Deposit must be refunded to the Purchaser, irrespective of circumstances and notwithstanding anything to the contrary contained in this, or any other Agreement, the Seller's Conveyancers shall be entitled to retain an amount of **R520** in respect of administrative costs, bank charges and postage and petties.

- 13.1 The Seller shall be obliged to furnish the Purchaser with the Inspection Notice within 10 (ten) days of Practical Completion.
- 13.2 The Inspection Notice must inform the Purchaser that the Section is available for inspection and that the Purchaser shall have (five) days from receipt of such notice within which to inspect the Property to satisfy himself that the Section and the Linked Exclusive Use Area corresponds with the description and specifications as set out in the Plans. The Inspection Notice shall, in addition, contain a list disclosing all defects present in the Property at the time of Practical Completion. The purpose of this list is to point out all defects, which the Seller is or could reasonably have been expected to be aware of, to the Purchaser prior to date of Transfer and the Seller will not be held liable for any loss or damage caused to the Property or for any death or personal injury sustained by any person whatsoever arising from any defect so disclosed.
- 13.3 If upon inspection of the Property as contemplated in clause 13.2 the Purchaser is of the view that the Property does not correspond with the description and specifications as aforementioned or that the Property contains certain defects that have not been disclosed by the Seller as contemplated in clause 13.2 above then the Purchaser must draw the Seller's attention to such failure or defect by way of written notice, which notice must be received by the Seller within 10 (ten) days of inspection as contemplated in clause 13.2 above and the Seller shall have 30 (thirty) days within which to rectify the failure or defect.
- 13.4 In the event that the Seller and/or the Seller's developer refuses to rectify the failure or defect within the time period as contemplated in clause 13.3 or if the circumstances are such that the requested rectification is not possible or economically feasible the Purchaser shall have the right to-
- 13.4.1 cancel this Agreement; and
- 13.4.2 receive a refund of the Deposit together with any interest earned thereon after the Seller's Conveyances have deducted their professional fee in accordance with clause 8.1.3 above.

- 14.1 The Management Company shall be employed to manage the Building and to provide the necessary staff to attend to the residents and shall receive remuneration as agreed by the Management Company and the Body Corporate.
- 14.2 The Purchaser shall be obliged to pay to the Body Corporate a minimum levy for care the amount for which is stipulated in Annexure A of the Schedule of Particulars annexed hereto.

15 **EXCLUSIVE USE AREAS**

Notwithstanding anything herein contained and/or contained in the Sectional Titles Act and/or implied by law the Seller reserves to itself the right, for its benefit and profit, to sell, alienate, dispose of or otherwise deal with all Exclusive Use Areas save that the Seller shall not by its actions prejudice the Purchaser's rights in and to the Linked Exclusive Use Areas in any way whatsoever.

16 **ACKNOWLEDGEMENTS BY PURCHASER**

The Purchaser acknowledges that the Purchaser has been made aware of the following material facts and circumstances relating to the Sectional Title Scheme and the development area within which the section will be situated namely that –

- 16.1 Plans have not been prepared or approved by the Surveyor General and that accordingly the exact and final boundaries, areas and numbers of the Section will be those shown on the Plans which are finally approved by the Surveyor General;
- 16.2 at the Signature Date, the Unit and the Exclusive Use Areas are not registrable as defined in the Alienation of Land Act, 1981 and that the sectional title register will be opened as soon as is reasonably possible after the completion date and approval of the Plans by the Surveyor General and transfer of the Section shall take place simultaneously with or as soon as practically possible after the opening of the sectional title register. Accordingly, this Agreement is subject to the condition contained in clause 12.7 above.
- 16.3 the Purchaser has read and approved the annexes to the Agreement and that the Purchaser will be obliged to accept delivery of the Section: –

16.3.1 completed substantially in accordance with the annexes;
and

16.3.2 as finally depicted and delineated on the Plans.

16.4 The Purchaser shall not be permitted on site during the construction period unless prior arrangement has been made with the building contractor.

17 **SPECIAL PROVISIONS RELATING TO SALES BEFORE THE ESTABLISHMENT OF THE BODY CORPORATE AND/OR THE ADOPTION OF THE RULES**

17.1 From the Occupation Date the Purchaser shall, until the Body Corporate comes into being-

17.1.1 on demand by the Seller, pay the account for electricity consumed in the Section in accordance with the consumption of electricity as shown on the sub-meter of the Section. The Purchaser agrees that should separate water meters be installed at any stage in the Buildings, the Purchaser shall on demand by the Seller pay to the Seller the cost of water consumed in the Section;

17.1.2 be liable for and pay to the Seller monthly in advance on the first day of each and every month a "proportionate share" (calculated on the basis provided for in clause 17.2 below) of the actual total costs of managing, operating, administering, repairing, servicing and maintaining the common property, including, without restricting the generality of the foregoing, rates, taxes, sewerage and sanitation, insurances of every description as determined by the Seller, reasonable services, reasonable salaries, reasonable wages, licenses, care and maintenance of the common property, the cost of water and electricity consumed on the common property, and in the Section if not separately metered, reasonable wages and other reasonable expenses and reasonable administration costs, including the reasonable cost of collection and recover of the said costs (all of which costs and charges are hereafter referred to as "the Total Costs");

17.1.3 not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Seller in

respect of the Buildings may be rendered void or voidable, or as a result of which the premiums in respect thereof may be increased.

17.2 For the purpose of 17.1 above-

- 17.2.1 the Seller's auditors shall estimate the Total Costs for each year and the Purchaser's proportionate share thereof and shall furnish the Purchaser with a certificate signed by the Seller's auditors recording the estimated Total Costs and the Purchaser's proportionate share, which certificate shall be sufficient proof of the Total Costs and the Purchaser's proportionate share thereof and the Purchaser acknowledges its indebtedness in respect of any amount so certified;
- 17.2.2 the Purchaser shall, unless the Monthly Levy is increased in terms of clause 17.2.4 below in which case such increase shall be accounted for, pay in addition to the Occupational Rent and other cost and expense as provided for herein, 1/12th (one twelfth) of his proportionate share of the Total Costs thus estimated on the first day of each month during that calendar year upon receipt of the auditor's certificate as contemplated in clause 17.2.1;
- 17.2.3 if the Occupation Date does not coincide with the first day of the month, the Purchaser shall on the Occupation Date pay a proportionate share of his monthly levy in respect of such part month;
- 17.2.4 the Seller may on no less than 21 (twenty-one) days written notice to the Purchaser re-estimate the Total Costs, and in that case the Seller may increase the Monthly Levy accordingly or impose a special levy to make good any shortfall, and such special levy shall be payable in a lump sum or by way of installments and at such time or times as the Seller may reasonably determine.
- 17.2.5 it is recorded that, unless the Total Costs are, between the Signature date and the Occupation Date, re-estimated by the Seller in terms of 17.2.4 above, the estimated monthly levy will be the monthly levy initially payable in terms of 17.2.2 above. Unless the Initial Monthly Levy is varied, the

Seller need not furnish a certificate (as contemplated in 17.2.1 above) in respect of the first calendar year during which the Purchaser is in occupation of the Section in terms hereof; and

- 17.2.6 if the estimate of the Total Costs in any year proves to be inadequate, the Purchaser's proportionate share of the shortfall shall be paid within 30 (thirty) days of the determination of the amount thereof by the Seller. If the Purchaser has paid more than his proportionate share of the Total Costs as finally determined, the excess shall not be refunded to the Purchaser but shall be retained and applied to discharge the Purchaser's future liability in terms hereof. On establishment of the Body Corporate, the Seller shall transfer the full amount of any excess of payments in terms hereof over the Total Costs to the Body Corporate.
- 17.3 It is recorded that the Seller shall, until the Body Corporate comes into existence, insure the Buildings against such risk and for such reasonable and accurate amounts as it may in its reasonable discretion determine.
- 17.4 If, before the Body Corporate comes into existence and Transfer has not been effected, the Building is damaged or destroyed in such a way that :
 - 17.4.1 the Purchaser is (or the Parties agree that he will be) deprived of beneficial occupation of the Section for a period in excess of 3 (three) months, either Party shall have the right, by notice to the other, to cancel this Agreement in which event both Parties shall make restitution to the other so as to restore the *status quo ante*; or
 - 17.4.2 the Purchaser of any other section in the Buildings is deprived of beneficial occupation of such section for a period in excess of 3 (three) months, the Seller shall have the right, by notice to the Purchaser to cancel this Agreement in which event both parties shall make restitution to the other so as to restore the *status quo ante*.
- 17.5 Notwithstanding the provisions of this Agreement or of the Rules under which the Purchaser is obliged to maintain the Section, the Seller shall prior to Transfer, unless this Agreement has been cancelled in terms of 17.4 above, apply any insurance proceeds

received by it to the repair or reinstatement of the Section and any other damaged sections, but shall not, in any way whatsoever, be liable to the Purchaser if there are not proceeds or if such proceeds are inadequate to completely repair or reinstate the Section.

17.6 When the Body Corporate comes into being and provided the Property has been Transferred, the Seller will be deemed to have ceded to the Purchaser all the Seller's rights in terms of the Sectional Titles Act and in terms of the Rules in respect of the insurance of the Buildings, the reinstatement thereof and the payment of compensation, subject to the following:

17.6.1 the Seller may, notwithstanding such cession, exercise its rights in terms of the Rules to require the trustees of the Scheme to specify a value in the insurance policy in respect of the Section and/or the Linked Exclusive Use Areas to the reinstatement value thereof as determined by the Seller in its reasonable discretion; and

17.6.2 notwithstanding such cession, any amounts payable on damage to or destruction of the Buildings to the Seller as owner of the Property shall be applied firstly to paying the full balance of the Purchase Price outstanding and the remainder (if any) shall be paid to the Purchaser.

18 **SPECIAL PROVISIONS RELATING TO SALES BEFORE THE OPENING OF THE REGISTER**

18.1 The Parties record that it is not possible for the Seller and/or the Seller's Conveyancers to Transfer the Property until such time as the Sectional Title Register in respect of the scheme is opened in terms of the Sectional Titles Act. Accordingly:

18.1.1 the Seller undertakes, within a reasonable time and at its own expense, to take such steps as may be reasonably necessary to procure the opening of the Section Title Register;

18.1.2 if the Sectional Title Register is not opened within the period as contemplated in clause 12.7 above, then failing any other agreements arrived at between the Parties and recorded in writing the following shall apply :

- 18.1.2.1 the Purchaser and every person claiming occupation through the Purchaser shall vacate the Section at the end of the applicable period and the Purchaser shall redeliver the Section to the Seller in the same good order and condition as at the Occupation Date, fair wear and tear excepted;
 - 18.1.2.2 the Seller shall refund to the Purchaser the amount (if any) by which the aggregate of all payments made by the Purchaser in respect of the Purchase Price and interest thereon exceeds the Occupational Rent in respect of each completed month (or part thereof) reckoned from the Occupation Date until the date on which the Purchaser vacates the Section in terms of clause 18.1.2.1 above. If the amount paid by the Purchaser at such time is not sufficient to cover the total amount thus calculated the Purchaser shall be obliged to pay the difference to the Seller on demand therefore. No refund shall be made of any amounts paid by the Purchaser in terms of clause 18 during his occupation of the Section; and
 - 18.1.2.3 save as herein provided, neither of the Parties shall in such event have any further claims whatsoever against the other of them, nor shall the Purchaser and/or every person claiming occupation of the Section through the Purchaser be entitled to claim or allege any right of occupation or tenancy of the Section.
- 18.2 The rules (both management rules and conduct rules) shall, at the time of the opening of the Sectional Title Register, be substituted by rules substantially in the form of the rules prescribed by regulation, but amended or amplified (subject always to the provisions of Section 35 of the Sectional Titles Act)-
 - 18.2.1 so as to comply with the requirements of any bondholder; and/or
 - 18.2.2 if the variation is of a formal nature only; and/or

- 18.2.3 if the Seller reasonably believes the amendment is desirable for the proper management and administration of the Scheme; and/or
- 18.2.4 regulating the manner and times during which merchandise is to be displayed; and or
- 18.2.5 reserving to the Seller the right to limit and/or control the keeping of animals, including the conditions (if any) upon which animals may be kept; and/or
- 18.2.6 reserving to the Seller the right to limit or control the extension of sections (which shall include but not be limited to the erection of pergolas and the fitting of awnings, and to impose conditions (if any) upon which any of the foregoing may be done.

19 **SPECIAL PROVISIONS RELATING TO SALES IN BUILDINGS UNDER CONSTRUCTION**

- 19.1 If the Seller is unable for any reason whatsoever to give beneficial occupation of the Section to the Purchaser on the Occupation Date, then-
 - 19.1.1 the Seller shall notify the Purchaser of such fact at least 30 (thirty) days before that date. In such event the Purchaser shall accept occupation of the Section on the date (of which he has been given at least 30 (thirty) days but not more than 2 (two) months' notice by the Seller) on which the Seller is able to give beneficial occupation and such subsequent date shall be deemed for all purposes to be the Occupation Date; and
 - 19.1.2 if beneficial occupation is not given within 8 (eight) calendar months of the Occupation Date, the Purchaser and the Seller shall each have the right (provided that the Seller shall not be entitled to give more than 1 (one) months' notice of the new occupation date in terms of 19.1.1) on notice to the other of them to resile from this Agreement. In such event the Purchaser shall be entitled to receive a refund of all payments made by the Purchaser in terms hereof; and

19.1.3 the Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for failure for any reason to give occupation to the Purchaser on the Occupation Date.

19.2 In the event of any dispute as to when or whether beneficial occupation of the Section has been given or tendered either in terms hereof or in terms of clause 19.5 (if applicable), a certificate by an independent architect (appointed jointly by the Parties and if the Parties cannot agree upon such appointment, then appointed by the president for the time being of the institute of architects (or its successor in title) acting as an expert and not as an arbitrator) (the "Expert") certifying that the Section is suitable for beneficial occupation shall be final and binding on the Parties notwithstanding that the buildings as a whole or the common property may not have been completed and that the Buildings as a whole are suitable for beneficial occupation at such date. The Occupation Date shall under no circumstances be deferred or the Section considered unsuitable for beneficial occupation by reason of any improvements, additions or alterations to be effected to the Section by or at the request of the Purchaser (which are in addition to the Plans relating to the Section, attached hereto) not having been completed. The cost of the Expert shall be paid by the Party against whom the Expert's decision has been made.

19.3 The Purchaser, acknowledges that, on the Occupation Date, the common property and other sections may be incomplete (subject to 19.2 above) and that occupants must necessarily suffer some minor inconvenience from building operations and from noise and dust resulting therefrom and that the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience. (any disputes in this regard shall be determined as set out in 19.2 above).

19.4 The Seller shall have the right at its discretion to vary the layout and design of the Building provided that the Seller may only exercise such discretion in such a way that-

19.4.1 the layout and design of the Building as erected remains substantially the same as reflected in the Plans;

19.4.2 the location and design of the Section remains substantially the same as in the Plans; and

- 19.4.3 the Participation Quota and area of the Section as finally reflected in the Plans is within 10.5 % (ten and a half per cent) of the Participation Quota or area as reflected in the Plans.
- 19.5 If, at the date hereof, the Section is not yet completed, then:
- 19.5.1 the Seller hereby undertakes to have the Section completed in accordance with the finishes and specifications forming part of the Building Plan or those as may be separately agreed upon by the Seller and the Purchaser recorded in writing;
- 19.5.2 the Purchaser, shall, within 30 (thirty) days of the Occupation Date, deliver to the Seller a list signed by himself enumerating any fixtures, fittings or appurtenances in the Section and/or the Linked Exclusive Use Areas requiring repair, and upon repair of such items as reasonably require repair (which shall be effected within 30 (thirty) days of the date of the list referred to herein), the Purchaser shall have no further claim against the Seller;
- 19.5.3 save as provided herein, the Purchaser shall have no claims against the Seller in respect of defects in the Section or the common property, other than in respect of structural defects.
- 19.6 If at the date hereof, the Section is completed but the Building is not, then:
- 19.6.1 Subject to the existing title deed conditions, conditions imposed by the local authority on the Scheme and the Rules, the Purchaser will be deemed to have purchased the Property "voetstoots"; and
- 19.6.2 the Purchaser shall have no claims against the Seller in respect of defects (whether latent or otherwise) in the Property, other than in respect of structural defects to the Section.
- 19.7 On or after Practical Completion of the Section the Seller shall notify (the "Inspection Notice") the Purchaser that the Section is available for inspection. The Purchaser shall-
- 19.7.1 within 10 (ten) days of receipt of the Inspection Notice, inspect the Section to satisfy himself that the Section is in

accordance with the description thereof as set out in the Plans attached hereto;

- 19.7.2 if the expert finds the Section to differ from the description thereof in the Plans attached, be entitled to cancel this Agreement within 5 (five) days of receiving the Experts decision,
- 19.7.3 take transfer of the Property unless the right to cancel as set out in clause 19.7.2 above is exercised;
- 19.7.4 Refer the matter for adjudication to the expert as contemplated in clause 19.10 below;
- 19.8 The Purchaser shall be obliged to accept Transfer of the Property subject to any variation in the Unit and Linked Exclusive Use Areas as contemplated in 19.4 above.
- 19.9 If upon a resurvey or re-measurement the extent of the Land, the Unit and the Linked Exclusive Use Areas or the Participation Quota is found not to correspond to that set out in this Agreement, then subject to such variation not exceed the limits set out in 19.4 above, the Seller shall not be liable for any shortfall nor shall it be entitled to claim compensation for any surplus.
- 19.10 If there is any dispute between the Seller and the Purchaser as to whether the Buildings, any part thereof, the finishes or specifications are substantially the same as set out in the Plans or the separate record of the finishes and specifications, then such dispute shall be referred to the Expert (acting as an expert and not as an arbitrator) whose decision shall be final and binding upon the Parties.
- 19.11 The Seller intends to develop a separate service facility on the ground floor of the Scheme, not forming part of the assets of the Body Corporate, as a separate sectional title to be utilized by all the sectional title owners as well as the public. No Purchaser of any sectional title shall have any right to ownership of this facility. The facility will include, inter alia, a dining room, kitchen, library, administration offices, dispensary, frail care units and the gym / aqua pool area. Any specific benefits such as meals or drinks, outside the provision of the Caring Levy package will be for the account of the particular individual. This facility and services will be available from the completion of the Scheme.

20 **TRUSTEE FOR COMPANY/CLOSE CORPORATION TO BE FORMED**

20.1 The Parties record that if the Purchaser is acting in his capacity as Trustee for a company or close corporation to be formed. If, within 30 (thirty) days of date of signature of this Agreement, such company or close corporation -

20.1.1 has not been incorporated and/or

20.1.2 has not ratified or adopted or otherwise made this Agreement binding upon and enforceable by it,

20.1.3 then the person identified in 1.1 of the Schedule of Particulars in his personal capacity shall be deemed to be the Purchaser.

20.2 The person identified in 1.1 of the Schedule of Particulars in his personal capacity by his signature hereto binds himself, under renunciation of the exceptions of excussion and division, as surety for and co-principal debtor with the company or close corporation referred to in 21 for all of its obligations to the Seller in terms of or arising out of this Agreement including its cancellation or termination for any reason whatsoever.

21 **SPECIAL CONDITION RELATING TO BODY CORPORATE AND / OR THE ADOPTION OF THE RULES**

21.1 The Purchaser is hereby informed that the Property shall form part of a Sectional Title development for which a Body Corporate shall be established, and the constitution / management rules of the Body Corporate contains, amongst others, the following:

21.1.1 Each Purchaser shall become a member of the Body Corporate on registration of the transfer and remains a member as long as the Purchaser is the owner of the Property;

21.1.2 The Purchaser, by signing this Agreement, accepts the terms and conditions of the rules of the Body Corporate of which he/she has familiarised himself/herself and undertakes to comply therewith;

- 21.1.3 The Purchaser shall only be entitled to transfer the Property to a further Purchaser after obtaining a certificate from the Body Corporate in which it is confirmed that the Purchaser has complied with all the terms and conditions of the Body Corporate, and does not owe the Body Corporate any money;
- 21.1.4 This condition shall be registered against the Title Deed to ensure that any successors in title are bound thereby;
- 21.1.5 In the event of the Purchaser alienating the Property in any way, the Purchaser shall be obliged to pay an amount equal to 7,5% (seven comma five percent) of the gross purchase price or the market value of the Property, in instances where the Property is not sold or the purchase price is less than the reasonable market value of the Property to the Body Corporate on date of registration of the Property in the name of the third party. This amount shall be applied by the Body Corporate as follows:
- 21.1.5.1 2,5% (two comma five percent) to be retained by the Body Corporate in the levy fund; and
- 21.1.5.2 5% (Five percent) plus VAT to be paid to the Management Company.
- 21.1.6 The same conditions contained in 21.5 shall be applicable in the event of an alienation of shares in a company, membership in a close corporation or the transfer of rights to beneficiaries in the event of a trust where the Property is registered in the name of a company, close corporation or trust;
- 21.1.7 The Body Corporate shall be entitled to include this amount in the amount when requested for the issue of a certificate referred to in 21.3;
- 21.1.8 The Purchaser hereby gives an irrevocable authorization to the conveyancer attending to the registration of the transaction referred to in clauses 21.5 or 21.6 to issue an undertaking to the Body Corporate for the payment of the amount referred to in 21.5 and also for the payment to the Body Corporate from the proceeds of the transaction on date of registration of that transfer; and

21.1.9 The Purchaser is obliged to include the terms and conditions of this clause 21 in any contract entered into with a successor in title.

21.2 The Seller shall be entitled, and to the extent that it is necessary, the Purchaser consents to and authorises the Seller to make such alterations or amendments to the Rules as well as to file and lodge such altered and amended Rules in the Deeds Registry at Cape Town as the Seller in its discretion believes is necessary to give effect to the provisions of this agreement so as to provide for the homogeneous and harmonious operation of the scheme and/or as are required by any bondholder, and for that purpose the Purchaser irrevocably appoints a duly authorised representative of the Seller as the Purchaser's attorney, agent and proxy on the Purchaser's behalf and to the Purchaser's exclusion to attend all such meetings and to do all such things as are necessary to give effect to the provisions of this clause.

21.3 For so long as the Seller retains an interest as developer in the scheme the Purchaser shall not be entitled to vote in favour of any amendment of any of the Rules without the Seller's prior written consent.

22. **NATURE OF SCHEME AND DEVELOPER'S RESERVATIONS**

22.1 The scheme shall comprise of residential uses and activities on the land, and care units. The Purchaser acknowledges that the commercial uses and activities shall be for professional use and for the care of the members.

22.2 The Purchaser acknowledges that:-

22.2.1 the Seller reserves the right in terms of Section 25 of the Sectional Titles Act to erect for its own account, in various phases for a period of 20 years from the date of the opening of the sectional register for the scheme, further buildings and/or extensions to existing buildings on the common property (including the additional common property acquired pursuant to **22.2.2**) comprising additional sectional units in the scheme, which right will be imposed as a condition of title applicable to the scheme in favour of the Seller and includes the following terms:-

- 22.2.1.1 no person including any mortgagee of a sectional unit whose consent is required to enable the Seller to erect further buildings or extensions/additions to existing buildings in terms of the applicable Sectional Title legislation shall be entitled to withhold such consent, and shall furnish its written consent immediately when called upon to do so;
 - 22.2.1.2 no person having any interest in a sectional unit or common property shall be entitled to interfere with or obstruct the Seller from erecting such further buildings or extensions/additions to existing buildings;
 - 22.2.1.3 no person having any interest in a sectional unit or common property shall have any right to or receive any benefit from any additional sectional units comprised in such further buildings or extensions/additions to existing buildings, which sectional units shall be for the sole ownership of the Seller who shall be entitled to dispose of or otherwise deal with such sectional units for its own exclusive benefit and account;
- 22.2.2 the Seller has the right to acquire additional land from neighbouring properties and incorporate such additional land into the scheme. The Purchaser shall not bear any costs or expenses relating to the acquisition of such additional land. The Purchaser shall not be entitled to cancel this agreement or seek a reduction in the purchase price by virtue of any increase or decrease in the area of the common property. For the purposes of giving effect to the provisions of this clause **22.2.2** the Purchaser grants the Seller or its duly authorised representative an irrevocable power of attorney to convene any meeting of the Body Corporate for the purpose of passing any resolution as may be necessary, to attend any such meeting and to vote on behalf of the Purchaser to the exclusion of the Purchaser at such meeting in order to bring about the unanimous resolutions of the Body Corporate for that purpose;

22.2.3 the Seller shall reserve the right to be imposed as a condition of title applicable to the scheme in favour of the Seller, the right:-

22.2.3.1 to sub-divide any sectional title unit/s, registered in the Seller's name into 2 or more sections, in terms of Section 22 of the Sectional Titles Act, at any time whilst the Seller is the registered owner of those units;

22.2.3.2 to consolidate any 2 or more sectional title units registered in the Seller's name in terms of Section 23 of the Sectional Titles Act at any time whilst the Seller is the registered owner of those units;

22.2.3.3 to extend any sectional title unit/s registered in the Seller's name, in terms of Section 24 of the Sectional Titles Act, at any time whilst the Seller is the registered owner of that unit.

22.2.4 The registered owner of any sectional title unit in the scheme appoints the Seller, its cessionary or nominee, as its agent and grants the Seller or its nominee a power of attorney authorising the Seller or its nominee to convene a meeting of the owners of the scheme (in their capacity as owners) and to the exclusion of such owner to vote at such meeting in favour of a resolution authorising any sub-division, consolidation or extension of the units as contemplated in **22.2.3**.

22.2.5 The registered owner of any sectional title unit in the scheme shall be obliged to sign all and necessary documents, when called upon to do so, in order to give effect to the provisions of **22.2.3**.

22.2.6 No person whose consent is required in terms of Section 22, 23 or 24 of the Sectional Titles Act shall be entitled to withhold written consent to the Seller submitting any applications for the approval and registration of the sub-divisions, consolidations and/or extensions of any unit of which the Seller is the registered owner in terms of Section

22, 23 and 24 of the Sectional Titles Act and as contemplated in **22.2.3**.

23 **SELLING AGENT'S COMMISSION**

- 23.1 The Seller shall pay commission to the selling agent on the registration date, which is the date on which such commission shall be deemed to have been earned by the selling agent.
- 23.2 The amount of the selling commission payable by the Seller to the selling agent shall be 7% (Seven percent) plus VAT.
- 23.3 In the event of this agreement being cancelled arising from the Purchaser's breach then the selling agent's claim for commission or damages, as the case may be, shall be against the Purchaser, with the Seller being absolved from all liability to pay any commission to the selling agent.

24 **GENERAL WARRANTIES**

- 24.1 Each of the Parties hereby warrants to and in favour of the other that –
 - 24.1.1 It has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
 - 24.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
 - 24.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not –
 - 24.1.3.1 contravene any law or regulation to which that Party is subject;
 - 24.1.3.2 contravene any provision of that Party's constitutional documents; or
 - 24.1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and

- 24.1.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
 - 24.1.5 it is entering into this Agreement as principal (and not as agent or in any other capacity);
 - 24.1.6 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
 - 24.1.7 no other party is acting as a fiduciary for it; and
 - 24.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
- 24.2 Each of the representations and warranties given by the Parties in terms of clause 24.1 shall –
- 24.2.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
 - 24.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
 - 24.2.3 *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.

25 BREACH

- 25.1 If a Party ("**Defaulting Party**") commits any breach of this Agreement and fails to remedy such breach within 7 (seven) business days ("**Notice Period**") of written notice requiring the breach to be remedied, then the Party giving the notice ("**Aggrieved Party**") will be entitled, at its option –
- 25.1.1 to claim immediate specific performance of any of the Defaulting Party's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance and to require the

Defaulting Party to provide security to the satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or

25.1.2 to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice. Neither Party shall be entitled to cancel this Agreement unless the breach is a material breach. A breach will be deemed to be a material breach if –

25.1.2.1 it is capable of being remedied, but is not so remedied within the Notice Period; or

25.1.2.2 it is incapable of being remedied or is not remedied within the Notice Period, and payment in money will compensate for such breach but such payment is not made within the Notice Period.

25.2 The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

25.3 The Aggrieved Party's remedies in terms of this clause 25 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.

26 NOTICES AND DOMICILIA

26.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers –

Name	Physical Address	E-mail
Seller	6 High Street, Plettenberg Bay, Western Cape	acox@mpc.law.za

spouse must sign below

The benefits in favour of and accruing to the selling agent are accepted.
