

BLUE RISE VILLAGE

AGREEMENT OF SALE

For the Sale of Own Title - Plot and Plan Units

ENTERED INTO BY AND BETWEEN

SELLER

APPLEWOOD TRADING 83

Registration number: 2007/025294/07

287 Lynnwood Road, Menlo Park, Pretoria, Gauteng

(hereinafter referred to as "the Seller")

and

PURCHASER

and

(hereinafter referred to as "the Purchaser")

And

DEVELOPER

APPLEWOOD TRADING 83

Registration number: 2007/025294/07

287 Lynnwood Road, Menlo Park, Pretoria, Gauteng

(hereinafter referred to as "the Developer")

PROPERTY

ERF: _____ BLUE RISE VILLAGE

1 RECORDAL

- 1.1 The Seller is the registered owner of Erf 1896, Blue Downs, Cape Town (“the Development Land”) as depicted in Schedule F, attached hereto.
- 1.2 The Seller procured a Developer to develop residential housing units on the Development Land, under the Finance Linked Individual Subsidy Programme (“FLISP”). Consequently the Seller and the Developer signed a Land Availability Agreement in terms of which the Seller has made the Development Land available, to the Developer, for the establishment, marketing and selling of residential housing units to end-users.
- 1.3 The Purchaser will purchase an Erf in terms of this Agreement.
- 1.4 The Development Land will be improved by the Developer, which shall install infrastructure, construct residential houses and perform the entire development function in respect of the Development Land.
- 1.5 The Developer shall construct a residential house in terms of a Building Agreement to be concluded, between the Developer and the Purchaser, simultaneously with this Agreement.
- 1.6 This Agreement of Sale and the Building Agreement is codependent and therefore if either one of the Agreements terminates, for whatever reason, then so does the other.
- 1.7 It is recorded that the Seller will not be involved with the construction of the residential house and has no contractual obligation towards the Purchaser in respect of any construction/building work to be performed on the Development Land.

2 DEFINITIONS AND INTERPRETATIONS

- 2.1 In this Agreement, unless inconsistent with the context the following words shall have the corresponding meanings:
 - 2.1.1 “**Agent**” means IGrow Real Estate Proprietary Limited, Registration Number: _____
2017/469769/07, with a registered address at Barinor’s Vineyard North, Vineyards Office Estate, 99 Jip de Jager Drive, Durbanville, 7550, Telephone Number: 021 979 250;

- 2.1.2 “**Sale Agreement**” means this Agreement of Sale, signed by all parties, together with all annexures and schedules attached hereto forming an integral part of the agreement;
- 2.1.3 “**Arbitration Act**” means the Arbitration Act No 42 of 1965 (as amended);
- 2.1.4 “**Building Agreement**” means a Building Agreement to be concluded between the Developer and the Purchaser simultaneously with this Agreement for the construction of a residential dwelling;
- 2.1.5 “**Bond Originator**” means Igrow Home Loans, a division of Igrow Wealth Investments Proprietary Limited;
- 2.1.6 “**Bond Registration Attorney**” means the bond registration attorney described in the Information Schedule;
- 2.1.7 “**Building**” means a structure of a permanent nature erected or to be erected on the land as depicted on the Site Development Plan;
- 2.1.8 “**City of Cape Town**” means Cape Town Metropolitan Municipality the local authority having jurisdiction over the Development land;
- 2.1.9 “**CPA**” means the Consumer Protection Act 68 of 2008, (as amended);
- 2.1.10 “**Developer**” means the Seller;
- 2.1.11 “**Development Period**” means the period from the commencement of construction to the date which the last occupation certificate is issued for all saleable units in the Development;
- 2.1.12 “**Development Plan**” is as depicted in Schedule C of the plan amended from time to time, at the sole discretion of the Developer;
- 2.1.13 “**Direct Marketing**” means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of promoting/offering to supply, in the ordinary course of business, any goods or services to the person, as defined in the Consumer Protection Act 68 of 2008;
- 2.1.14 “**domicilium citandi et executandi**” means the physical and Email address chosen by a Party for purposes of the serving of summonses, legal documents and notices on such Party;

- 2.1.15 “**FLISP subsidy**” is as described in Schedule D;
- 2.1.16 “**Housing Act**” means the Housing Act 107 of 1997;
- 2.1.17 “**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;
- 2.1.18 “**Land**” means: ERVEN 1896 Blue Downs, Cape Town;
- 2.1.19 “**Latent Defect**” means a fault or defect that would not readily be revealed by a reasonable inspection;
- 2.1.20 “**Legal Practice Act**” means the Legal Practice Act, Act 28 of 2014;
- 2.1.21 “**Mortgage Bond**” means the mortgage bond registered over the Property securing the Purchase Price described in the Information Schedule;
- 2.1.22 “**Mortgage Bond holder**” means any financial institution that has a mortgage bond registered over the Erf simultaneously with transfer of the Erf to the Purchaser;
- 2.1.23 “**Municipal Charges**” means rates and taxes, and other charges as may be levied by the local authority in respect of the Property with effect from the Transfer Date;
- 2.1.24 “**NHBRC**” means the National Home Builders Registration Council established in terms of the Housing Consumers Protection Measures Act 95 of 1998;
- 2.1.25 “**Patent Defect**” means a fault or defect that is not hidden and should easily be discovered by a reasonable inspection;
- 2.1.26 “**Prime Rate**” means a rate of interest per annum which is equal to the minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts, from time to time. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, who shall not have to prove his/her appointment, same to be final and binding on the Parties;
- 2.1.27 “**Purchaser**” means the person or entity, described more fully in Paragraph A of the Information Schedule;

- 2.1.28 **“Purchase Price”** means the VAT inclusive amount constituting the reservation deposit, balance purchase price and optional extras as described in Paragraph B of the Information Schedule;
- 2.1.29 **“Residential House”** means the house constructed on the Erf in terms of the Building Agreement;
- 2.1.30 **“SARS”** means the South African Revenue Services;
- 2.1.31 **“Seller”** means the entity more fully described at Paragraph 1 of the Information Schedule;
- 2.1.32 **“Signature Date”** means the date on which this Agreement is signed by the latter of the Seller or the Purchaser;
- 2.1.33 **“Transfer Date”** means the date of registration by the Registrar of Deeds, in the relevant deeds’ office, of the transfer of the Property into the name of the Purchaser;
- 2.1.34 **“Transferring Attorney”** means the Transferring attorney described in the Information Schedule;
- 2.1.35 **“Trust Account”** means the trust bank account of the Transferring Attorney which details are set out in the Information Schedule;
- 2.1.36 **“VAT”** means the value-added tax payable in terms of the VAT Act;
- 2.2 Clause headings are included for reference and convenience purposes only and shall not in any way affect or govern the interpretation or construction of this Agreement unless the contents of this Agreement clearly indicate a contrary intention or expression which denotes:
- 2.2.1 Any one gender includes the other gender;
- 2.2.2 A natural person includes a juristic person and *vice versa*;
- 2.2.3 The singular includes the plural and *vice versa*;
- 2.2.4 Where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words will prevail;

2.2.5 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 8.30 am and 16.30 pm on any business day. Any reference to “time” shall be based upon South African Standard Time.

3 CONSUMER PROTECTION ACT

3.1 The Purchaser acknowledges that:

3.1.1 he/she has acquainted himself/herself with the nature, condition, beacons, extent and locality of the land on which the Erf will be situated. The Purchaser confirms that he/she is aware of section 55 (6) of the Consumer Protection Act 68 of 2008 (“CPA”), in that the Erf is offered in the condition that it is in without any warranty, voetstoots and the Erf is accepted by the purchaser on that basis; and

3.1.2 the Purchaser has inspected the Erf and found the Erf, to the exclusion of any building thereon which forms the subject of a separate agreement, to be reasonably suitable for the purpose of which it is generally intended as set out in 55 (2) of the CPA;

3.1.3 it is recorded that the Seller and Developer are in the process of developing the land for the installation of services and consequently the Erf may have a different elevation and/or gradient once this has been completed due to soil transfer.

3.2 For the purposes of the CPA, the Purchaser and the signatory on his behalf (where applicable), after due consideration, by his signature of this Agreement, acknowledges and agrees that:

3.2.1 he/she has entered into this Agreement freely and voluntarily and that no circumstances exist for him/her alleging either now or at any future time that he/she was at a disadvantage in agreeing to the terms and conditions contained herein:

3.2.2 he/she has done his/her own investigation prior to deciding to enter into this Agreement and without any undue influence, pressure, duress, harassment or unfair tactics from the Seller or Developer;

3.2.3 he/she understands the content, significance and import of this Agreement without undue effort, having regard to -

- 3.2.3.1 the context, comprehensiveness and consistency of the Agreement;
- 3.2.3.2 the organization, form and style of the Agreement;
- 3.2.3.3 the vocabulary, usage and sentence structure of the agreement; and
- 3.2.3.4 the use of any illustrations, examples, headings or other aids to reading and understanding.
- 3.2.3.5 The Developer shall on or before the signature date hereof disclose any defects on the Erf to the Purchaser if there are any.

4 SALE

- 4.1 The Seller hereby sells to the Purchaser who hereby purchases from the Seller the Erf stipulated in the Information Schedule subject to the terms and conditions as hereinafter recorded.
- 4.2 The Developer shall construct a residential house on the Erf in accordance with the terms and conditions of the Building Agreement.
- 4.3 **The Purchaser is aware of the fact that the Property hereby sold, forms part of the Development Land that is being developed in phases, as determined by the Developer and may possibly be governed by the terms and conditions imposed by the City of Cape Town.**
- 4.4 The Purchaser shall, within 21 (twenty-one) days after the date of fulfilment of the suspensive conditions contained in Clause 5 hereof, (which period may be extended at the sole discretion of the Developer), lodge with the Transferring Attorney an irrevocable guarantee or guarantees, which shall:
 - 4.4.1 be issued by a bank with the terms and conditions of such guarantee, acceptable to the Developer and the Transferring Attorney;
 - 4.4.2 and secure payment of all monies payable in terms of this Agreement against registration of transfer of the Property in the name of the Purchaser and registration of a mortgage bond, taking into account any deposit paid by the Purchaser.

- 4.5 Any monies due and payable by the Purchaser in terms of this Agreement that remains unpaid on the due date or should the bank guarantee not be delivered timeously, the purchaser shall be liable to the Seller for penalty interest at the rate of **5% (five percent)** per annum above the prime lending rate from time-to-time on the outstanding amount, calculated from the due date to the date of payment or delivery of a bank guarantee securing such payment to the transferring attorney.
- 4.6 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 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.
- 4.7 In the event of the Purchaser failing to notify the Transferring Attorney of any deposit made and to supply documentation necessary for FICA (Financial Intelligence Act 38 of 2001 or Prevention of Organised Crime Act 21 of 1998), the Transferring Attorney shall not be liable to account for any loss in interest.
- 4.8 **The reservation deposit referred to in this agreement is a refundable deposit, except where the bond application documentation is not received in time, OR if the Purchaser was in any way untruthful with his application for a mortgage bond OR if the Purchaser delays the registration process in any manner. The Seller/or his duly appointed agent, save for his rights that he may have in law, reserves the right to then deem an amount of R5000.00 (Five Thousand Rand) of the reservation deposit as an administration fee, and retain same as liquidated wasted costs.**
- Initial: _____
- 4.9 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 SUSPENSIVE CONDITIONS

The provisions of this Agreement are subject to the fulfilment of the following suspensive conditions (collectively "Conditions"):

5.1 MORTGAGE BOND AND BOND ORIGINATOR

5.1.1 Should the Purchaser require a loan in order to pay the Purchase Price or any part thereof, then this sale shall be subject to the suspensive condition that the Purchaser obtains, within **30 (thirty) days** from date of signature hereof, a loan, secured by a mortgage bond, on the customary conditions from a financial institution against the security of the Erf.

5.1.2 The Purchaser undertakes to forthwith lodge, through the bond originator, the required application and supporting documents for the said loan with a financial institution and to do everything that may be necessary to acquire the said loan. It is recorded that this clause is for the sole benefit of the Purchaser.

5.1.3 In the event of the Purchaser failing to apply for the said loan within **10 (ten) days** after the date of signature hereof, he/she shall be deemed to have waived and renounced the benefit of this clause and this clause shall no longer apply. The Agreement shall accordingly no longer be subject to this condition, and the Purchaser shall then be obliged to pay the balance of the Purchase price to the Attorneys as set out in clause 4 above, alternatively and within the sole discretion of the Developer, exercised in writing, the sale shall lapse and shall be of no further force and effect.

5.1.4 The Purchaser warrants that he has the requisite financial means to obtain the mortgage bond in the amount indicated and if the bond is granted will have sufficient financial means to meet his financial commitments. He undertakes to use his best endeavours to ensure that the mortgage bond is granted timeously

and to cooperate with the Seller and/or Agent to ensure that the mortgage bond is approved.

- 5.1.5 Withdrawal by a guarantor of the bank guarantee for any reasons whatsoever after being issued shall constitute a material breach by the Purchaser of his obligations to deliver a bank guarantee in terms of this Agreement.
- 5.1.6 For the purposes of obtaining the mortgage bond, the Purchaser hereby authorises and appoints the Bond Originator named in the information schedule to act as his sole agent in submitting a mortgage bond application to any registered financial institution on his behalf and to sign all such documentation as may be required by the bank or other financial institution.
 - 5.1.6.1 The Purchaser undertakes to provide, on request of the Bond Originator all financial and other information and documentation required by the bank or other financial institution within a period of **7 (seven) business days** from the date on which the Bond Originator requests him to do so.
- 5.1.7 The Purchaser further undertakes to promptly do all things and pay all amounts required to enable the mortgage bond to be registered simultaneously with the transfer.
- 5.1.8 The Purchaser is aware that the Development consists of multiple erven and that the Seller preferably requires the simultaneous transfer of the units. The parties, therefore, 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 delaying transfer, 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.
- 5.1.9 The Purchaser is aware that if the mortgage bond has been granted, this agreement has become unconditional. If the mortgage bond is withdrawn on his instructions or otherwise before the transfer date, he will remain liable for the provision of guarantees for the balance purchase price. He will be in breach of this agreement should he fail to provide such guarantees or make payment of the balance purchase price into the trust account within **14 (fourteen) days** of the bond so withdrawn.

6 BUILDING AGREEMENT

- 6.1 This Agreement is subject to the Building Agreement being entered into simultaneously with the signature of this Agreement.
- 6.2 Therefore, should the Building Agreement be cancelled or terminated for any reason whatsoever, then and in that event this Agreement shall also be cancelled or terminated and shall be of no further force or effect.

7 VAT

It is recorded that The Seller is not a registered vendor and consequently there is no VAT payable in respect of the Purchase Price.

8 TRANSFER OF PROPERTY

- 8.1 The Attorneys shall pass transfer of the Erf to the Purchaser as soon as is practically possible after fulfilment of the suspensive conditions contained herein.
- 8.2 It is recorded that the Purchaser is aware that the Erf is currently not serviced. The Developer undertakes to commence with the installation of services only after 60% of the erven in the Development has been sold.
- 8.3 The Purchaser shall sign all documents necessary and make available all information and documents required to give effect to this Agreement within **7 (seven) days** after being called upon to do so. In this regard, the Purchaser authorizes the Attorneys to sign declarations to the Receiver of Revenue for purposes of transfer duly exemption.
- 8.4 The Purchaser shall accept title set out or referred to in the title deed of the Property, and the transfer to all conditions, rules and servitudes benefitting or burdening the Property and the land, whether existing or hereafter imposed by any competent authority and/or imposed by the Seller.

9 TRANSFER AND BOND COSTS

- 9.1 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.

Initial: _____

- 9.2 Notwithstanding the provisions of clause 9.1, 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 documentation with any correspondent attorney. No such fees will be payable by the Purchaser if the transfer and Bond Attorneys are the Attorneys nominated by the Seller.

Initial: _____

- 9.3 Notwithstanding the provisions of clause 9.1, 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 that 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.

Initial: _____

- 9.4 This clause is only applicable if the Purchaser is a foreign national or temporary resident of South Africa: The Purchaser's attention is drawn to the fact that the transaction may incur additional fees from the bank and/or transferring attorney. The Purchaser will be liable for the payment of such additional fees and will be payable directly to the said bank or transferring attorney by the Purchaser upon request.

- 9.5 If the Agreement is cancelled by the Seller due to the Purchaser's breach of contract then the Purchaser shall immediately be and become liable for all wasted costs of the Transferring and/or Bond Registration Attorneys, arising out of or in connection with the preparation of transfer and bond documentation including other incidental charges relating to the registration of the transfer of the unit; and/or the Agent's commission.

10 OCCUPATION POSSESSION AND RISK

- 10.1 Possession and occupation of the Erf shall be given to and taken by the Purchaser on the Transfer Date unless the Parties specifically agree to another date in writing.
- 10.2 All the risk and benefit in respect of possession of the Erf shall pass to the Purchaser on the Transfer Date.

- 10.3 The Seller and Developer shall not be liable for any damages that the Purchaser may suffer as a result of a delay in registration of transfer.
- 10.4 The Purchaser acknowledges and accepts that while the Development is incomplete, the Purchaser and/or other occupants of properties which are part of the Development may suffer inconvenience from building operations and from noise and dust resulting therefrom.
- 10.5 The Purchaser shall not have any claim whatsoever against The Seller and/or Developer by reason of any inconvenience suffered as a result of building/construction on the Development.

11 ELECTRICAL CONNECTION

- 11.1 The Developer shall deliver to the Purchaser, at the expense of the Developer, a certificate of electrical compliance and electrical connection, such certificate to be delivered to the Purchaser on the Transfer date.
- 11.2 The Purchaser shall arrange for the connection of water and electricity directly from Cape Town Metropolitan Municipality and/or the relevant supply authority.

12 RIGHT OF RESILE

- 12.1 The Agreement shall be subject to the following resolute conditions:
- 12.1.1 The Seller and/or Developer reserve the right to resile from this Agreement by 31 December 2021 in the event of insufficient sales of Erven in the Development or for any other reason making the development not feasible for the Developer. In such an event, The Seller and Developer shall not be liable to the Purchaser for any loss whatsoever.
- 12.1.2 In the event of The Seller and/or Developer resiling from this Agreement, any amounts paid towards the Purchase Price together with interest earned thereon shall be refunded to the Purchaser.
- 12.1.3 This clause is inserted for the benefit of The Seller and/or Developer and they may waive the benefits arising from this clause at any time and in which event no agent fee will be payable.

12.1.4 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. If 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 and/or.

12.1.5 The Seller may require finance for the acquisition and/or servicing of the Property in its discretion, for which the Seller shall apply in due course when required. Should the Seller be unsuccessful in applying for such finance or insufficient finance is approved.

12.1.6 The Seller may give notice of the termination of this Agreement to the Purchaser, 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). The said notice to the Purchaser will be given by the Transferring Attorney by way of an email.

13 NON-INTERFERENCE BY THE PURCHASER

13.1 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 Property 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 representation.

13.2 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 in due course when required. Should the Seller be unsuccessful in applying for such finance or insufficient finance is approved:

13.2.1 The Seller may give notice of the termination of this Agreement to the Purchaser, 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). The said notice to the Purchaser will be given by the Transferring Attorney by way of an email.

14 DIRECT MARKETING AND COOLING OFF

- 14.1 In terms of section 16 of the CPA, 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.
- 14.2 The Seller is therefore not prepared to enter into any agreement with the Purchaser if such an agreement would have resulted from such direct marketing. The Purchaser, therefore, warrants that this transaction is not entered into if such direct marketing conducted by the Seller and the Seller enters into this Agreement relying entirely upon such warranty.
- 14.3 The Purchaser understands that 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 CPA, 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.

15 AGENT'S COMMISSION

- 15.1 The parties warrant that the Agent was the effective cause of the sale and that no other person or estate agent introduced the Purchaser to the Property or to the Seller, and the Seller shall be liable to effect payment of the Agent's commission as agreed to in this Agreement.
- 15.2 The parties record that the Agent shall be entitled to part payment of commission payable in installments as follow:
- 15.2.1 50% of the erf commission on date of registration of transfer in the name of the Purchaser;
- 15.2.2 50% of the total commission (erf and building) two months from date of registration of transfer in the name of the Purchaser;

15.2.3 50% of the total commission (erf and building) two months from date of registration of transfer in the name of the Purchaser;

15.3 The Transferring Attorney is authorised to pay such commission to the Agent, once:

15.3.1 The full Purchase Price is secured by the Purchaser to the satisfaction of the Seller should the Purchaser not require mortgage finance; or

15.3.2 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 and the balance of the Purchase Price (if any) is secured to the satisfaction of the Seller; and

15.3.3 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.

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

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

16 RENTAL MANAGEMENT

- 16.1 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 to occupy the Property himself.
- 16.2 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 Inspectors standard rental management agreement from time to time.

17 NOTICES AND DOMICILIUM

- 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 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. The changed address will be effective after 14 (fourteen) days of such change.
- 17.3 Any notice in terms hereof may be delivered to the other party ("the recipient") by hand, prepaid registered post or E-mail.
- 17.4 Any notice is given by a party to the other which:
- 17.4.1 is delivered by hand, to a responsible person, during ordinary business hours, at the physical address provided will be presumed to have been received (unless the contrary is proved by the addressee) on the day and time of delivery.
- 17.4.2 is sent by prepaid registered post, in a correctly addressed envelope, to the postal address specified above will presume to have been received by the recipient on the seventh day after the date of posting; or
- 17.4.3 is sent by email to the E-mail address specified will be deemed (unless the contrary is proved by the addressee), to have been received on the first business day after transmission.
- 17.5 Where in terms of this Agreement any communications are required to be in writing the term writing will include communications by Email.

18 BREACH AND CANCELLATION

- 18.1 If either party ("the Defaulting Party") fail to pay any amount or fail to provide the guarantee(s) required in terms of this Agreement on the due date or commit a breach of any other of the terms and conditions of this agreement then the other party ("the Aggrieved Party") will be entitled to give the Defaulting Party **10 (ten) business days** (unless the transaction has already been lodged at the deeds office for registration, in which event the notice period will be reduced to **24 (twenty-four) hours**) written notice to remedy such breach. Should the Defaulting Party fail to comply with such notice, the Aggrieved Party shall be entitled, without prejudice to any other rights and remedies that it may have in law including the right to claim damages to:
- 18.1.1 cancel this Agreement without any further notice and claim damages and if the Purchaser being the defaulting party, the Seller shall be entitled to retain all monies paid by the Purchaser to the Seller and/or the Seller's agents or the Transferring Attorney in terms hereof, including monies paid as a deposit to the Transferring Attorney together with any interest earned thereon; pending determination of damages; or
- 18.1.2 to claim immediate performance and/or payment, of all the obligations of the defaulting party in terms of this Agreement, including immediate payment of the balance and/or whole of the purchase price in the event of the Purchaser being the defaulting party.
- 18.2 Should either party dispute the other party's right to cancel 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 dates 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. Failure to pay any of the aforesaid amounts will constitute a material breach of the Agreement.
- 18.3 Where the Purchaser has forfeited the Deposit and other amounts in favour of the Seller or the Sellers has become entitled to retain the Deposit or other amounts paid to the Trust Account, the Transferring Attorney will be obliged to pay such amounts to the Seller on demand.
- 18.4 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser/all persons occupying the Property through him hereby undertakes to vacate the Property within **24 (twenty-four) hours** of such cancellation and the Seller shall immediately be entitled to resell the property.

- 18.5 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 **36 (thirty-six) 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).
- 18.6 Should the contract be cancelled by agreement the Purchaser shall remain liable for costs incurred which costs cannot be recovered from a subsequent purchaser as liquidated damages. Such costs shall include but not be limited to the wasted costs for preparing and drafting documentation.
- 18.7 Should the sale be cancelled after complying with clause 5 due to the failure of the Purchaser in carrying out any of his obligations in terms of this agreement the Seller reserves the right to claim from the Purchaser who will be liable to the Seller for payment on demand of a cancellation fee of up to 5% of the Purchase Price as wasted costs as well as Agents commission as liquidated damages.
- 18.8 The reservation deposit or part thereof shall be used by the Seller/Agent to recover the costs mentioned in clause 28.8 and 28.9. The Seller and Purchaser authorise the Transferring Attorney to pay the amount due to the Agent/Seller from the Transferring Attorneys trust account within **5 (five) days** of the cancellation of the agreement subject to clause 7.2.

19 JURISDICTION

- 19.1 The Parties hereby consents in terms of section 45 of the Magistrate's Court Act, No. 32 of 1944, as amended, to the jurisdiction over any person under section 28 of that Act, notwithstanding that the value of the claim or the matter in dispute might otherwise exceed the jurisdiction of such Court. The Parties shall, however, have the right to institute an action in any other Court of competent jurisdiction.
- 19.2 The Purchaser agrees that in the event of the Seller instructing its attorneys and/or instituting legal proceedings against the Purchaser pursuant to a failure by the Purchaser to fulfil any of his obligations in terms hereof, then the Purchaser shall pay all legal costs together with VAT thereon incurred by the Seller in connection therewith as between attorney and own client, including collection commission (where applicable).

20 DISPUTE RESOLUTION AND ARBITRATION

- 20.1 Any Party may, after written notice to this effect, refer any dispute arising from the terms of this Agreement to arbitration to be determined in terms of this clause in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 20.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator. The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.
- 20.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such an event, either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 20.4 The arbitration shall be held at Cape Town with only the legal and other representatives of the Parties to the dispute present thereat and otherwise in terms of the Arbitration Act unless otherwise provided for herein. The arbitrator shall be a practising advocate of the Cape Town Bar of at least ten years’ standing, appointed by agreement between the parties to the dispute. Should the Parties fail to agree on an arbitrator within **14 (fourteen) days** after the giving of notice the arbitrator shall be appointed by the Chairperson of the Bar Council at the request of either Party to the dispute.
- 20.5 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the High Court, at the instance of any of the parties to the dispute.
- 20.6 In the event that a party to a dispute wishes to appeal the decision of the arbitrator, such party shall apply to the arbitrator for leave to appeal within **14 (fourteen) days** from the date of the decision of the arbitrator.
- 20.7 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held before 3 (three) arbitrators appointed in accordance with clauses 20.5 and 20.4, it being agreed that for the purposes of appeal the appointed arbitrators may include a retired judge otherwise appointed in accordance with clauses 20.4.

- 20.8 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such party shall furnish security for the costs of the appeal in an amount of R100 000 (one hundred thousand Rand) within **30(thirty) days** from the date on which leave to appeal is granted. Should the relevant party fail to furnish security to this effect the leave to appeal shall lapse and the prospective appellant will no longer be entitled to proceed with an appeal and the arbitrator's decision will be final and binding upon the Parties.
- 20.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

21 GENERAL

- 21.1 No concession or any other indulgence which may be granted by the Seller to the Purchaser, whether in respect of time for payment or otherwise, in regard to the terms and conditions of this Agreement shall be deemed to be a waiver or estoppel of and shall not affect, prejudice or derogate from the rights of the Seller under this Agreement.
- 21.2 If there is more than one Purchaser in terms of this Agreement, the liability of each of the Purchasers will be joint and several.
- 21.3 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement, provided however that the remaining provisions shall contain at least the minimum requirements for a valid and binding agreement for the sale of immovable property.
- 21.4 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.

21.5 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.

21.6 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.

22 SIGNATURES

DATED AT _____ ON THIS _____ DAY OF _____ 20__.

Witness my hand

PURCHASER 1

PURCHASER 2

DATED AT _____ ON THIS _____ DAY OF _____ 20__.

Witness my hand

SELLER 1

DATED AT _____ ON THIS _____ DAY OF _____ 20__.

Witness my hand

DEVELOPER

DATED AT _____ ON THIS _____ DAY OF _____ 20__.

Witness my hand

AGENT
