

THE ORCHARD ESTATE



**DEED OF SALE
OF A SECTIONAL TITLE UNIT**

(In terms of the Sectional Title Act 95 of 1986 and
the Sectional Titles Schemes Management Act 8 of 2011)

SCHEDULE OF PARTICULARS

1. THE SELLER:

- 1.1 Full Name: BUN MALAN BELEGGINGS PTY LTD
- 1.2 Registration Number: 1976/002670/07
- 1.3 Duly represented by: PIETER ANDRIES MALAN
- 1.4 E-mail: pieter@bunmalan.co.za; anelda@dupwest.co.za; sue-mari@dupwest.co.za
- 1.5 Name of contact person: PIETER MALAN

2. THE PURCHASER:

- 2.1 Full Name: _____
- 2.2 Identity Number / Passport / Registration Number: _____
- 2.3 Full name of spouse (if applicable): _____
- 2.4 Identity Number of spouse (if applicable): _____
- 2.5 Marital status: Unmarried
 - Married in community of property
 - Married out of community of property
 - Married, which marriage is governed by the laws of _____
(insert name of country if not South Africa)
 - Other
- 2.6 Business address: _____
- 2.7 Residential address: _____

- 2.8 Postal address: _____
- 2.9 Duly represented by: _____
- 2.10 E-mail: _____
- 2.11 Cell phone number: _____
- 2.12 Work number: _____
- 2.13 Occupation: _____
- 2.14 Name of person if Purchaser is Juristic Person: _____
- 2.15 SARS Tax Number: _____
- 2.16 Resident of South-Africa: Yes / No

3. THE CONVEYANCERS

- 3.1 Name: Du Plessis & Van Der Westhuizen Incorporated
- 3.2 Business address: 2 Edam Avenue, Waterval East Extension 37, Rustenburg, 0299
- 3.3 Tel no: 014 523 4600
- 3.4 E-mail addresses: Conveyancer/Attorney: sue-mari@dupwest.co.za
Conveyancing Secretary: anelda@dupwest.co.za

4. THE AGENT

- 4.1 Name of Agency: _____
- 4.2 Name of Agent: _____
- 4.3 E-mail: _____
- 4.4 Contact details: _____
- 4.5 SARS Tax Number: _____

5. THE PROPERTY

- 5.1 A Unit consisting of:
- i) Section No. _____ and measuring approximately _____ square metres, in the Sectional Title Scheme known as **THE ORCHARD ESTATE** situated on **ERF 537 WATERVAL EAST EXTENSION 40**;
- ii) together with its undivided share in the common property according to the Sectional Plan as shown on the attached pro forma:

The parties confirm that there may be a deviation in the size of the property on the plans of 15%. The size herein referred to are based on the plans of the architect in terms of which the measurement method was used, which will later be confirmed by the Sectional Plan to be drafted by the Land Surveyor. The parties agree that no party will have any claim against the other should the size be more or less than 15%.

6. **PURCHASE PRICE**

6.1 R _____ (_____)
("Purchase price")

6.2 Deposit of R _____ (_____)

6.2.1 Date deposit due: _____

6.3 Loan amount: R _____ (_____)

6.3.1 LOAN TO BE APPROVED WITHIN **14 CALENDER DAYS** FROM DATE OF SIGNATURE

6.3.2 Guarantees to be delivered by: _____

7. **BOND ORIGINATOR**

7.1 Contact person: _____

7.2 Contact details: _____

8. **OCCUPATION**

8.1 Date of occupation: 30 DAYS AFTER ISSUING OF **OCCUPATION CERTIFICATE** BY RUSTENBURG LOCAL MUNICIPALITY, and as more fully described in paragraph 4 of the Terms and Conditions of sale.

8.2 Occupational Rent for the various Types will be as follows (*delete which option is not applicable*):

Type S: R9 000.00

Type D0: R10 500.00

Type D1: R11 000.00

Purchaser's initials:

9. **ESTIMATED LEVY**

9.1 Estimated levy in the amount of: R _____

9.2 **Once off administration fee of R1 200.00 which is payable by the Purchaser to the Conveyancers on date of signature of the transfer documents. This fee is for the registration of an access code to the complex and the Wheely-bin for trash.**

ANNEXURES

Annexure A – Site Development Plan

Annexure B – Pro forma Building Plan

Annexure C1 and C2 – Specification for Finishes List

Annexure D – Proposed Budget

Annexure E – Body Corporate Rules

Annexure F – Building Inspection Form (including "Happy Letter")

TERMS AND CONDITIONS OF SALE OF PROPERTY

1. PURCHASE AND SALE

The Seller hereby sells to the Purchaser, who hereby purchases the Property referred to in clause 5 of the Schedule of Particulars on the terms and conditions contained in this Agreement.

2. PURCHASE PRICE

2.1 The Purchase price as referred to in clause 6.1 in the Schedule of Particulars shall be payable as follows:

2.1.1 The deposit referred to in clause 6.2 of the Schedule of Particulars shall be payable by the Purchaser to the Conveyancers on the date referred to in clause 6.2.1 of the Schedule of Particulars and shall further be payable by the Conveyancers to the Seller against registration of transfer of the Property into the name of the Purchaser.

2.1.2 For the balance purchase price referred to in clause 6.3 of the Schedule of Particulars above, the Purchaser will apply for a loan on the terms and conditions set out in clause 3 below. The Purchaser shall, within 15 (FIFTEEN) days after fulfilment of the suspensive condition, furnish to the Seller guarantees to the satisfaction of the Seller for the payment of the purchase price and such guarantees shall in any event:

2.1.2.1 be payable to the Seller against registration of transfer of the Property into the name of the Purchaser;

2.1.2.2 be payable to the Conveyancers at such a place in the Republic of South Africa as the Seller may determine.

2.2 The Purchaser herewith irrevocably instructs and authorise the relevant agent and/or Seller to apply for a loan referred to in clause 3 through a Bond Originator mentioned in clause 7.1 of the Schedule of Particulars above. The Purchaser undertakes to complete any loan application/s, supply all the relevant documents to the agent or Seller to facilitate and obtain the aforesaid loan.

2.3 If the Purchaser did not apply for a loan referred to in clause 3 below, the Purchaser shall within 7 (SEVEN) days after being requested to do so by the Conveyancers, as security for payment of the balance of the purchase price, referred to in clause 6.3 of the Schedule of Particulars, provide the Conveyancer with acceptable guarantees which guarantees shall be payable to the Seller against registration of transfer of

the Property into the name of the Purchaser.

- 2.4 All payments to be made in terms of this agreement shall be unconditional and payable free of exchange and without any deduction or set-off at the offices of the Conveyancers referred to in clause 7 below or at such other place as the Seller may, in writing, determine. If payment is to be made to the Conveyancers, then the Seller hereby appoints them as its agent to receive all payments made and to give a good receipt therefor to the Purchaser, to utilise the proceeds received as applicable, to pay any commission to the estate agents herein referred to (if any) and to pay the balance over in terms of the Seller's instructions.

3. **SUSPENSIVE CONDITIONS**

- 3.1 This Agreement is subject to the following suspensive conditions:
- 3.1.1 That a bank ("the bank") approve of a loan to the Purchaser on or before the date specified in clause 6.3.1 of the Schedule of Particulars against security of a first bond to be registered against the Property for the balance purchase price plus the bank's usual additional amount, at the interest rate determined by the bank and subject to the bank's usual conditions in force for similar loans. A letter from the bank approving such loan, subject to the bank's normal conditions, shall be regarded as fulfilment of the suspensive condition referred to in this clause 3.1.1.
- 3.1.2 The Purchaser is obliged to use his best endeavours and to do all things reasonably necessary to secure the fulfilment of the suspensive condition referred to in clause 3.1.1 and to take the necessary steps to that end with the utmost dispatch and to accept the loan if it is granted and to sign all documents and to do all things reasonably necessary to give effect to the conditions of the bank.
- 3.1.3 **The extended Sectional Title Plan has to be approved by the Municipality and the Surveyor General before registration can take place.**
- 3.2 Should the suspensive conditions contemplated in this clause 3.1.1 and 3.1.3 not be fulfilled this agreement shall be automatically cancelled and shall be of no force or effect.

4. **POSSESSION AND OCCUPATION**

- 4.1 The proposed occupation date subject to the necessary approvals and conditions will be on the date as referred to in clause 8.1 of the Schedule of Particulars and will the Seller give the Purchaser written notice of the occupation date.
- 4.2 Occupational rent as referred to in clause 8.2 of the Schedule of Particulars shall be payable by the Purchaser to the Conveyancers in trust, monthly in advance from date of occupation until date of registration.

Purchaser's initials:

4.3 Subject to the purchase price, and any other amount due by the Purchaser in terms of the provisions of this Agreement, have been paid or secured to the satisfaction of the Seller, possession and occupation of the Property shall be given to and taken by the Purchaser on the occupation date: Provided that an occupation certificate in respect of the Property having been issued by the Rustenburg Local Municipality.

4.4 **It is specifically agreed between the parties that the Purchaser must take occupation of the property, once an occupancy certificate in respect of the Property having been issued by the Rustenburg Local Municipality and the Seller has given notice to the Purchaser to occupy as per clause 4.1.**

Purchaser's initials:

4.5 From the occupation date the Purchaser shall:

4.5.1 be entitled to the beneficial occupation of the Property as if he were the owner of the section.;and

4.5.2 be entitled to the use and enjoyment of those units of the common property not subject to rights of exclusive use by the Purchasers of other units in the scheme;

4.5.3 shall pay from the occupation date until date of registration of transfer, occupational rental as set out in clause 4.2 above as well as levies. This occupational rental and levies shall be payable monthly in advance on or before the 1st day of the month to the Seller or his nominee, without deduction or demand, from the occupational date until date of registration of transfer, both dates inclusive. Should transfer be affected in the course of the month, the Purchaser shall be entitled to a *pro rata* refund of any occupational rental paid in advance.

5. **BUILDING INSPECTION FORM**

5.1 The Purchaser undertakes to make use of a reputable building contractor who must comply to the applicable building standards as provided for by applicable Building Regulations and must be registered at the NHBRC.

5.2 Before date of occupation referred to in clause 8.1 of the Schedule of Particulars, the Contractor, Agent and the Purchaser shall arrange a date and time to attend the Property together and to do a proper inspection and to complete the attached Building Inspection Form marked Annexure "D", which form shall be delivered to the Seller, who shall instruct the Contractor to rectify the defects contained in the form.

5.3 The Seller will only attend to the repairs listed in the Building Inspection Form and will the Seller not be liable for any additional repairs.

5.4 Should there be any dispute between the parties in regard to the defects, the matter shall be referred to the Seller's Architect or engineer who shall act as an expert and not an arbiter. The architect's or engineer's findings shall be final and the parties shall comply to his directive.

6. CONDITIONS OF OCCUPATION AND RISK

6.1 From the occupation date the Purchaser:

6.1.1 shall at all times as long as this agreement remains in force comply with the provisions of the Acts and the

Rules, save that,

6.1.1.1 the Purchaser shall comply with the rules as if he were the owner of the Property; and

6.1.1.3 the Seller shall enjoy the same rights and powers as the body corporate and the trustees enjoy in terms of the binding provisions;

6.1.2 waives all claims (to the extent that the Seller is not insured against such claims) against the Seller for any

loss or damage to property or any injury to person which the Purchaser may sustain in or about the Property, the building or the common property.

6.1.3 indemnify the Seller against any such claim that may be made against the Seller by any member of the Purchaser's family or the Purchaser's invitees, employees or agents for any loss or damage to property or injury to person suffered in or about the unit, the building or the property however such loss or damage to property or injury to person may be caused;

6.1.4 shall not until registration of transfer of the Property into his own name, without the prior written consent of the Seller, make or cause or allow to be made any improvements to the section or remove or demolish any improvements whatsoever. The Purchaser shall not, except insofar as his rights are preserved in terms of section 28 of the Act, have any claim against the Seller in respect of any expenditure upon or improvements to the Property, whether made with or without the Seller's consent, and notwithstanding the preservation of such rights, hereby waives his lien (if any) in respect of such improvements. All improvements to the Property made by or at the instance or expense of the Purchaser shall accede to the unit/right and belong to the Seller.

7. REGISTRATION OF TRANSFER

7.1 All conveyancing in connection with the transfer of the Property into the name of the Purchaser shall be affected by Du Plessis & Van Der Westhuizen Incorporated, 2 Edam Avenue, Waterfall East, Ext.37, Rustenburg, 0299 ("**the Conveyancers**").

7.2 The Conveyancer's transfer fees pertaining to the transfer of the Property are for all intents and purposes included in the Purchase Price.

- 7.3 The fees pertaining to the registration of the Purchaser's bond will furthermore be included in the purchase price, on condition that the Purchaser make use of the services of a Bond Originator referred to in clause 7.1 in the Schedule of Particulars. Should the Purchaser not make use of the services of a Bond Originator, the Purchaser shall be responsible for payment of the bond registration costs directly to the Bond Attorneys.
- 7.4 The Purchaser shall be liable on an attorney and client scale for all costs and expenses which the Seller incurs as a result of any breach of the agreement by the Purchaser including all collection charges at the then ruling rate.
- 7.5 The Purchaser shall within 7 (SEVEN) days of being called upon to do so by the Conveyancers, provide the necessary FICA documents and sign all documents and perform all other acts which may, in the opinion of the Conveyancers, be necessary for the transfer of the Property in the name of the Purchaser and to give effect to the provisions of this agreement.

8. **RATES AND TAXES**

- 8.1 From the date of occupation, the Purchaser shall 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 building, the Purchaser shall on demand by the Seller pay to the Seller the costs of water consumed in the section.
- 8.2 The Seller shall be liable for clearance figures due to the Rustenburg Local Municipality in order to obtain the clearance certificate.

9. **THE ESTIMATED LEVY**

- 9.1 The Purchaser shall be liable for the estimated monthly levies referred to in clause 9.1 of the Schedule of Particulars from date of occupation and payable directly to the Body Corporate. The Seller or Body Corporate may however, at any time, but after following due processes, adjust the amount of the levy as stipulated in this clause, should the need arise.
- 9.2 The levy is apportioned to the property in accordance with the participation quota of the residential unit as reflected in the Sectional Plans and is payable by the Purchaser from date of occupation.

10. **BODY CORPORATE**

The Body Corporate which shall be established in terms of the relevant provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986) and the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011) in respect of this scheme.

11. **THE RULES**

- 11.1 The rules consist of the rules in terms of the relevant provisions of the Sectional Titles Act, 1986 (Act No. 95

of 1986) and the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011) which shall include any substituting rules submitted by the Seller submitting the application for the opening of the Sectional Title Register in respect of this scheme, which the Purchaser acknowledged that he has read.

11.2 The rules of the scheme are available on the Developer's website as well as an Annexure attached to this Agreement.

11.3 The Purchaser confirms that he/she has read and understands the necessary rules and undertake to abide by the said rules from date of occupation.

12. **MANAGING AGENT**

It is recorded that by signature hereof, the Purchaser consents to the appointment of Von Wielligh Property Management as managing agent and nominated by the Seller, to manage the scheme, for a period of at least two years from date of establishment of the Body Corporate of the Scheme.

13. **SCHEME**

The development scheme to be known as **THE ORCHARD ESTATE** in terms of which the building or buildings are situated or to be erected on the land known as **ERF 537 WATERVAL EAST EXTENSION 40**.

14. **PHASED DEVELOPMENT IN TERMS OF SECTION 25 OF THE SECTIONAL TITLE ACT**

14.1 It is hereby disclosed by the Seller as required in terms of the provisions of Section 25 of the Sectional Titles Act, 1986 (Act No. 95 of 1986) and as amended by the Sectional Titles Schemes Management Act, 2011 (Act

No. 8 of 2011) that the Development will be developed on a phased basis and that the Seller may in its discretion, simultaneously with the registration of the Sectional Plan, reserve a real right to extend the scheme, as provided in the afore mentioned legislation.

14.2 The Seller hereby reserves his right to extent the scheme horizontally and vertically by building further units on the common area, within **30 YEARS**.

15. **CHANGES TO SECTIONAL TITLE SCHEME AND LAYOUT PLAN**

15.1 The Seller reserves the right to change the layout plan of the scheme or the intended scheme as shown by the Seller or Agents, should the need arises to build more or less of one specific type of units.

15.2 The Seller may vote and sign on the Purchaser's behalf should any amendments be made to the layout plan or scheme amendments.

16. **PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)**

The Seller and Purchaser each hereby consent to the processing of the Agents and Conveyancers of their

personal information (which includes contact details and identification numbers) as may be required to give effect to or otherwise implement the provisions of this Agreement and the transactions contemplated herein. This will include, whether relevant, providing personal information to financial institutions, mortgage originators, Attorneys and other service providers such as those required to obtain compliance certificates.

17. DELAY IN TRANSFER

Should transfer of the property be delayed, or in the case of a building loan, payments, and such delay, in the opinion of Conveyancers, is caused by the Purchaser, or the Purchaser's agents, then the Conveyancers shall be entitled to give written notice to the Purchaser, calling upon him to remedy the delay failing which the Purchaser will be charged interest on the outstanding purchase price at the rate of 2% above the prime interest rate by way of *mora* interest until the Purchaser ceases to delay the matter. This interest, if applicable, shall be in addition to any occupational interest provided for herein. The Conveyancers opinion regarding the delay caused by the Purchaser shall be final and binding upon the parties.

18. MEDIATION AND ARBITRATION

- 18.1 In the event that any defaulting party does not fulfill its obligations demanded in terms of paragraph 19.1 or should any dispute or difference arising amongst the Parties with regard to the interpretation, implementation or enforcement of this Agreement, or as to whether or not this Agreement has been terminated or is void or voidable and/or any other difference or dispute relating to or arising from this Agreement or the enforcement thereof, then such dispute or difference will be referred to mediation before an mediator appointed by and in accordance with such rules and procedures as may be determined by and in accordance with the rules of the Rustenburg Mediation and Arbitration Centre (Pty) Ltd ("**RTMA**"). The parties shall be 50/50 liable for the cost of mediation.
- 18.2 In the event that the mediation is unsuccessful then the mediator shall refer the matter to Arbitration.
- 18.3 Notwithstanding anything to the contrary or stipulated by the RTMA, the arbitration will be held in Rustenburg, North West Province with a view to achieving an expeditious result and the arbitration will be conducted in camera, the Parties and the participants in the arbitration being obliged to maintain the utmost confidentiality with regard to all matters relating thereto or arising therefrom, save as otherwise expressly and peremptorily required by Law.
- 18.4 The rules of the Arbitration shall be determined by the RTMA;
- 18.5 The decision of the RTMA shall be final and binding on the Parties subject to any right of appeal as determined by the rules of the RTMA;
- 18.6 The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.
- 18.7 This arbitration clause shall not prevent the Parties from access to an appropriate court of law for –

18.7.1 interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration or expert determination, as the case may be;

18.7.2 an order for the payment of a liquidated amount of money on the basis of facts which are not *bona fide* in dispute at the commencement of such proceedings.

19. BREACH

19.1 If a Party ("**Defaulting Party**") commits any breach of this Agreement and fails to remedy such breach within 14 (FOURTEEN) 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 –

19.1.1 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

19.1.2 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. None of the Parties 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:

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

19.1.2.2 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.

19.2 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.

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

20. SUBSTITUTION

20.1 Either party ("**the non-defaulting party**") may at any time carry out any of the other party's ("**the defaulting party**") obligations in terms of this agreement which the defaulting party has failed to carry out within a reasonable time after being required by the non-defaulting party to do so, and the non-defaulting party may at its sole discretion exercise such right in addition to or instead of (but without prejudice to) any other right which it may have in terms hereof and the defaulting party shall pay to the non-defaulting party on demand all costs and expenses incurred by the non-defaulting party in carrying out the defaulting party's neglected obligations.

- 20.2 The defaulting party hereby authorizes the non-defaulting party with power of substitution to sign all the necessary documents on its behalf to give effect to the non-defaulting party's powers in terms of clause 20.1.
21. **MISCELLANEOUS**
- 21.1 Save as expressly permitted hereunder, a Party shall not, without the prior written approval of the other Party, which shall not be unreasonably withheld, assign, cede, delegate, transfer or otherwise dispose of any right or obligation under this Agreement to any other person.
- 21.2 The Purchaser shall not subcontract with any person for the carrying out of any of its obligations under this Agreement, without, in each case, the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.
- 21.3 The Parties consent to the jurisdiction of the Magistrate court but shall not be obliged to institute action in such a lower court if such a party prefer to utilize the applicable High Court.
- 21.4 No provision of this Agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this Agreement, except (in any such case) by an agreement in writing signed by the Parties.
- 21.5 Any relaxation, indulgence or delay (together "**Indulgence**") by either Party in exercising, or any failure by either Party to exercise, any right under this Agreement shall not be construed as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right (whether against that Party or any other person).
- 21.6 Except where expressly provided to the contrary in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.
- 21.7 This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Agreement for all purposes.
- 21.8 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by electronic mail to the recipient Party at its relevant address set out below:
- 21.9 Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given.
- 21.10 Any notice or other communication given by any Party to the other Party which –

- 21.10.1 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or
- 21.10.2 is delivered by hand during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 21.10.3 is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
- 21.10.4 is transmitted by electronic mail to the addressee at the addressee's specified electronic mail address shall be rebuttably presumed to have received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 21.11 The Parties choose their respective physical addresses in clause 21.8 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.

22. AGENT'S COMMISSION

- 22.1 The Purchaser guarantee that he was not introduced by any other estate agent and that no other person except for the estate agent as referred to in the Schedule of Particulars, will have any right to claim commission. The Purchaser indemnifies the Seller against any such claims. Should the contract be breached by the Purchaser, and the Seller elected to cancel the agreement , the Purchaser will be liable to the estate agent for his/her commission.
- 22.2 The Seller shall pay the agent's commission.
- 22.3 The Agent shall be required to immediately once the contract is signed by the Purchaser, deliver the signed Agreement of Sale to the offices of the Conveyancers, whereafter the contract will be properly dated with a stamp of receipt. The said date and time will indicate the order in which contracts are received and to be signed by the Seller.

23. IMPROVEMENTS AND ALTERATIONS

- 23.1 Should the Purchaser take occupation of the Property prior to the date of registration of the transfer of the Property into the name of the Purchaser, the Purchaser may only affect any alterations, additions, fixtures or improvements to the Property with the Seller's written consent, and should the Purchaser effect such alterations, additions, fixtures or improvements to the Property without such consent -

- 23.1.1 it shall be at the cost of the Purchaser;
- 23.1.2 the Seller shall not be liable to compensate the Purchaser therefore;
- 23.1.3 all improvements shall become the property of the Seller and should the Seller so request, the Purchaser shall be obliged, at its cost, to return the Property to the condition thereof at the date of signature of this agreement, should this agreement be cancelled due to the fault of the Purchaser and the Seller repossess the Property.
- 23.2 The Purchaser hereby indemnifies and holds the Seller harmless against any action, prosecution or charges of any nature whatsoever, which may be brought against the Seller by virtue of the Purchaser's occupation or utilization of the Property, or by the Purchaser's infringement of any statutory requirement, regulation or by-law, while the Property is registered in the name of the Seller.
- 23.3 The Seller may not from the date of signature of this agreement by the parties effect any alterations, additions, fixtures or improvements to the Property without the Purchaser's written consent.
- 23.4 If the Purchaser requires any deviation from the plans, drawings and specifications as per Annexures "B" and "C" or requires any additional work to be done, the Seller shall carry out the required building works, provided that such deviations, additional work, etc. have been recorded in writing and an additional contract price payable in respect thereof has been agreed upon between the parties in writing. Any additional amount payable to the Seller as a result hereof shall be paid by the Purchaser directly to the Seller after completion of the said works.
- 23.5 Any item or service not described or indicated in Annexure "B and C" shall, by definition, constitute extra work. The implementation of extra work shall be provided in writing. However, a verbal agreement may be confirmed by written notification by the Seller, which will be regarded as accepted by the Purchaser if the Seller is not advised otherwise in writing within 1 (ONE) week after the written notification.

24. **CERTIFICATES OF COMPLIANCE**

- 24.1 The Seller shall be liable to provide all the required compliance certificates, which includes but are not limited to the following, and which said certificates forms part of the building documents prior to registration of the Property:
- 24.1.1 Occupation Certificate;
- 24.1.2 Electrical Compliance Certificate;
- 24.1.3 Engineer's Certificate;
- 24.1.4 Pest Control Certificate;
- 24.1.5 NHBC Unit Enrolment Certificate;
- 24.1.6 Roof Certificate;
- 24.1.7 Plumbing Certificate;
- 24.1.8 Gas Certificate;

24.1.9 NHBRC Builders Enrolment Certificate

25. PROVISIONS PENDING THE EXTENSION OF THE SCHEME

25.1 From the date of occupation, the Purchaser shall:

25.1.1 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.

25.2 It is recorded that the property on which the Sectional Title Scheme is developed, is subject to the provisions of the **Waterval East Extension 40 Home Owners Association**. The Body Corporate will act on behalf of the sectional title owners and see to the fact that all sectional title owners also adhere to the rules of the **Waterval East Extension 40 Home Owners Association**.

25.3 The Purchaser undertakes to adhere to the rules.

26. REGISTRATION OF EXTENSION OF SECTIONAL TITLE PLAN

26.1 The parties record that it is not possible for the Seller to give transfer of the Property to the Purchaser until such time as the Sectional Title Extension Plan in respect of the scheme is registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986) and the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011)

26.2 The Seller undertakes, within a reasonable time and at its own expense, to take such steps as may be reasonably necessary to procure the registration.

27. CONSUMER PROTECTION ACT 2008 (ACT NO. 68 OF 2008) (the "CPA")

27.1 It is recorded that the Seller is a "**Producer**" and "**Supplier**", as defined in the **CPA** and that the Property is sold, with an "**implied warranty of quality**", as provided for in **section 56 of the CPA**, being a warranty that the Property complies with the requirements and standards contemplated in **section 55 of the CPA**, which section provides that the Purchaser has a right to receive the Property on the basis that: -
it will be reasonably suitable for the purposes for which it is generally intended;

27.1.1 it is of good quality, in good working order and free from any defects;

27.1.2 it will be useable and durable for a reasonable period of time, having regard to the use to which the Property, would normally be put and to all the surrounding circumstances, of its supply,

Except to the extent to which the Property have been altered, after having left the control of the

Seller.

- 27.2 It is however (as provided for in **section 55 (6) of the CPA**) recorded that:-
- 27.2.1 The Purchaser agrees to accept the Property, as it stands: Provided that the Property is erected in a workmanlike fashion and substantially in terms of the attached plans and specifications;
- 27.2.2 In the event of a dispute as to whether the Property shall have been erected in a workmanlike fashion and substantially in terms of the attached plans and specifications, the matter shall be referred for arbitration in terms of clause 18 above.
- 27.3 The Purchaser declares that he understands the wording of the contract completely and has had the opportunity to clear up any misunderstandings or words not understood.
- 27.4 The Purchaser declares that the conditions and terms in this agreement are fair and reasonable.
- 27.5 If the property was marketed directly to the Purchaser in terms of the CPA, the Purchaser enjoyed a cool off period of 5 days.
- 27.6 The Seller has the right to claim any cost or damages suffered to repair the property to the same condition it was found by the Purchaser, should the Purchaser vacate the property in terms of his rights afforded to him by the CPA.

28 **NATIONAL HOME BUILDERS REGISTRATION COUNCIL (the “NHBC”)**

- 28.1 In the event of this agreement being subject to the provisions of Housing Consumers Protections Measures Act No. 95 of 1998 (as amended from time to time) it is hereby recorded and/or agreed as follows:
- 28.1.1 That the Seller appoints a **Contractor** who is registered as a home builder in terms of the provisions of Section 10(1) of the aforementioned Act;
- 28.1.2 That the improvements will be completed in accordance with the technical requirements and guidelines which may from time to time be given and/or imposed by the NHBC;
- 28.1.3 That this agreement includes the warranties as set out in Section 13(2) of the aforementioned Act namely:

The agreement between a home builder and a housing consumer for the construction or sale of a home shall be deemed to include warranties enforceable by the housing consumer against the home builder in any court, that—

- (a) the home, depending on whether it has been constructed or is to be constructed—

- (i) is or shall be constructed in a workmanlike manner;
- (ii) is or shall be fit for habitation; and
- (iii) is or shall be constructed in accordance with—
 - (aa). the NHBRC Technical Requirements to the extent applicable to the home at the date of enrolment of the home with the Council; and
 - (bb) the terms, plans and specifications of the agreement concluded with the housing consumer as contemplated in subsection (1);

(b) the home builder shall—

(i) subject to the limitations and exclusions that may be prescribed by the Minister, at the cost of the home builder and upon demand by the consumer, rectify major structural defects in the home caused by then on-compliance with the NHBRC Technical Requirements and occurring within a period which shall be set out in the agreement and which shall not be less than five years as from the occupation date, and notified to the home builder by the housing consumer within that period;

(ii) rectify non-compliance with or deviation from the terms, plans and specifications of the agreement or any deficiency related to design, workmanship or material notified to the home builder by the housing consumer within a period which shall be set out in the agreement and which shall not be less than three months as from the occupation date: and

(iii) repair roof leaks attributable to workmanship, design or materials occurring and notified to the home builder by the housing consumer within a period which shall be set out in the agreement and which shall not be less than 12 months as from the occupation date.

28.2 That a certificate in terms of the provisions of Section 14(1)(c) alternatively Section 14(2)(c) of the aforementioned Act will be handed to the Purchaser as soon as the Seller is issued with the said certificate.

29 LIMITATIONS TO CONTRACTORS LIABILITY

The Contractor shall be obliged to purchase/acquire building material from reputable suppliers but shall by no means guarantee such material. Any defective material and/or goods shall be to the risk of the Purchaser on condition that it is new SABS approved material bought/acquired by the Contractor and/or material approved of by the Purchaser financial institution as aforementioned. Any claims, actions or proceedings against the supplier/dealer/factory are herewith ceded by the Contractor to the Purchaser.

30. ACCIDENTS TO WORKMEN AND OTHERS

30.1 The Seller and Contractor hereby indemnifies the Purchaser against all claims in respect of any accident to any workmen of the Seller and Contractor arising out of and in the course of the construction of the

improvements and against all actions, claims and demands whatsoever by any third person arising from the negligent performance of the construction works by the Seller and Contractor, their workmen or agents.

30.2 Should the Purchaser or any of his visitors, visit the building site during any stage of the execution of the building works and be injured due to whatsoever cause neither the Seller and Contractor nor any of its members or employees will be liable for any damages or to make good any claims in this regard.

30.3 The Purchaser acknowledges the fact that the Sectional Title Scheme will be developed in phases, and thus acknowledge the fact that there will still be building works in the process after he has taken occupation, until such time as the scheme has been completed in the discretion of the Developer/Seller.

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

For and on behalf of
The Seller by

who warrants his/her authority hereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

For and on behalf of
The Purchaser by

who warrants his/her authority hereto

who warrants his/her authority hereto

Thus done and signed at.....on this.....day of.....20.....

As witnesses:

For and on behalf of
The Agent by

who warrants his/her authority hereto