

AGREEMENT OF SALE

BY SECTIONAL TITLE FOR A NEW DEVELOPMENT

to be known as

ROSSI RACEWAY PARK

UNIT NUMBER: _____

made and entered into by and between

CAPE KILLARNEY PROPERTY INVESTMENTS (PTY) LTD

Registration Number: 1998/007174/07

(the "seller")

and

(the "Purchaser")

PREAMBLE**WHEREAS:**

- A. The Seller is the registered owner of Erf 35155, Milnerton, being a portion of Remainder of the Farm Blan 215 (the “land”);
- B. The Seller intends establishing a industrial sectional title scheme on the land (hereinafter referred to as “the Development Scheme”), which comprises units as set out in the drawings;
- C. The Seller intends to apply for the approval of the Development Scheme in terms of the Sectional Titles Act 1986 and the opening of a Sectional Title Register in respect thereof.

NOW THEREFORE IT IS AGREED AS FOLLOWS:**1. INTERPRETATION**

1.1 In this agreement, unless inconsistent with the context:

1.1.1 “the Act” means the Sectional Titles Act No. 95 of 1986, as amended, and includes the regulations framed thereunder or as amended from time to time;

1.1.2 “the Land” means a portion of Erf 35155 , Milnerton;

1.1.3 “the Buildings” means the buildings to be constructed upon the Land;

1.1.4 “the Development Scheme” means the Land and Buildings in respect of which the Seller intends to open a Sectional Title Register and any extensions thereof;

1.1.5 “the Unit” means the section together with the undivided share in the Common Property as may be apportioned to the section in accordance with the its participation quota and shall also include any parking bays to be allocated to the section in terms of this agreement as exclusive use areas to be allocated in accordance with the rules of the Body Corporate;

- 1.1.6 “the Exclusive Use Area” means those areas of the Common Property reserved for the exclusive use of the Purchaser of the section as shown on the drawings and described in paragraph C of the Schedule;
- 1.1.7 “the Common Property” means the property not forming part of any section and/or Unit in the Development Scheme in terms of the Act;
- 1.1.8 “the Architect” means an Architect or draftsman appointed to act as such from time to time by the Seller in respect of the Development Scheme and includes any member of such Architect or draftsman’s firm;
- 1.1.9 “the Occupation Date” means the date
- (a) upon which the Unit is handed over to the Purchaser; or
 - (b) on issue of a certificate by the Architect stating that the Unit is fit for beneficial use;
- whichever of these dates shall be the earliest, and from such date the Seller shall be discharged and released completely from all of its obligations, express or implied, under this agreement and any variation thereof or addition thereto, save and except to the extent of the undertakings contained in Clause 12;
- 1.1.10 “the Register” means the sectional title register in respect of the land and the Buildings to be opened in terms of the Act;
- 1.1.11 “the Rules” means the management and conduct rules prescribed by the Act and as may be amended from time to time by the Body Corporate;
- 1.1.12 “the Body Corporate” means the controlling body as contemplated in terms of Section 36 of the Act;
- 1.1.13 “the Estimated Participation Quota” in relation to a section means a decimal fraction determined in accordance with the Act;

- 1.1.14 “the Exclusive Use Area” means those areas of the Common Property as marked on the site plan annexed hereto and allocated in terms of Section 27A of the Sectional Titles Act No. 95 of 1986 and also ceded in terms of Section 27 of the said Act;
- 1.1.15 “the Sectional Plan” means the section plan as approved by the Surveyor General and registered by the Registrar or Deeds;
- 1.1.16 “the Seller’s Attorneys” means De Klerk & Van Gend Attorneys, 2 Oakdale Road, Claremont, contact person (Mr J W Odendaal);
- 1.1.17 “the Agent” means the Estate Agent referred to in paragraph I of the Schedule;
- 1.1.18 “the drawings” means the drawings depicting the proposed sectional title scheme, including the site plan, the front elevation of the Building, the floor plan of the section, the construction and other specifications as annexed hereto and initialled by the parties for purposes of identification (Annexure “B”, “C” & “D”);
- 1.1.19 “the Schedule” means the Schedule annexed to this agreement marked Annexure “A”;
- 1.1.20 “Mandate” means the mandate to the Seller’s attorneys to invest the deposit or any portion of the purchase price paid by the Purchaser, annexed hereto as Annexure “E”;
- 1.1.21 “Seller” means the Seller set forth in the Schedule;
- 1.1.22 “Purchaser” means the Purchaser set forth in the Schedule
- 1.2 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females, and words importing persons shall include partnerships and bodies corporate, and vica versa.
- 1.3 Reference to the agreement means this agreement and all annexures thereto.

- 1.4 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

2. **ACKNOWLEDGEMENT BY THE PURCHASER**

The Purchaser acknowledges that:

- 2.1 The Sectional Plan has not been approved and that accordingly the exact and final boundaries and areas of the Section and Exclusive Use Areas will be those shown on the Sectional Plan as finally approved and the layout plan contemplated in Section 27A(b) of the Act.
- 2.2 The Register will be opened as soon as is reasonably possible after the completion of the Building and transfer of the Unit and cession of exclusive use rights, if any, shall take place simultaneously with or forthwith after the opening of the Register.
- 2.3 He is aware that the Seller will be allowing purchasers of the sections in the development to enjoy exclusive rights in respect of parking bays allocated to the Sections as Exclusive Use Areas as set out in Clause 27 hereunder.
- 2.4 He will be obliged to accept delivery of the Unit and the Exclusive Use Area/s:
 - 2.4.1 completed substantially according to the drawings; and
 - 2.4.2 as finally depicted and set out on the sectional plan.

3. **SALE**

The Seller sells to the Purchaser who hereby purchases:

- 3.1 the Unit; and
- 3.2 the right to the Exclusive Use Area;

all as more fully described in the Schedule read with the Drawings and as will be finally described in the Sectional Plan read with the Register.

4. **PURCHASE PRICE**

The purchase price of the Unit shall be the sum set forth in paragraph D of the Schedule Annexed hereto marked "A", which purchase price together with VAT thereon, shall be payable as follows:

- 4.1 A deposit of 15% (fifteen percent) as specified in the Schedule, payable to the Conveyancers on signature hereof by the Purchaser. The deposit shall be invested in an interest bearing trust account for the Purchaser until date of registration of transfer of the Property, at which time the capital invested will be released to the Seller and the interest to the Purchaser.
- 4.2 The balance of the Purchase Price to the Conveyancers on the date of registration of transfer of the Property, payment of which shall be secured by an irrevocable bank guarantee issued by a financial institution acceptable to the Seller. The said bank guarantee shall provide that payment in terms thereof shall be made, free of any exchange/or bank charges, to the Conveyancers (for credit of the Seller or its nominee) at Claremont and shall be delivered by the Purchaser to the Conveyancers within 30 (thirty) days from date of acceptance hereof by the Seller.
- 4.3 All or any payments to be effected to the Seller, shall be effected by the Purchaser to the Seller's Attorneys without deduction or set-off.

5. **INTEREST ON OVERDUE INSTALMENTS**

- 5.1 Unless otherwise provided herein, all monies payable by the Purchaser in terms hereof and unpaid on due date shall bear interest at 3% (three percent) above the prime bank commercial overdraft lending rate charged by ABSA Bank to its best grade customers on an unsecured basis 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, whose decision shall be final and binding on the parties.)

- 5.2 Interest as aforesaid shall be calculated from the due date for payment of the unpaid amount to the actual date of payment thereof (both dates inclusive) which interest shall be capitalized monthly in arrears on the last day of each calendar month that such amount remains unpaid.
- 5.3 Each payment made by the Purchaser shall be allocated first to the payment of interest and then to the payment of any other monies due in terms hereof and thereafter to the reduction of the purchase price.

6. **POSSESSION, OCCUPATION, RISK AND BENEFIT**

- 6.1 It is recorded that the Buildings are presently in the course of planning.
- 6.2 Possession and occupation shall be given to and taken by the Purchaser on the Occupation Date from which date all risk in and benefit of the Unit shall pass to the Purchaser.
- 6.3 Within 15 (fifteen) days of the occupation date, the Purchaser shall sign an Acceptance of Handover Form accepting possession of the Unit and acknowledging that they have examined the Units and have noted on the form any defects which may exist in the Unit at the time of handover. The Purchaser further acknowledges that he is aware that the Seller shall not be responsible for the rectification of any defects in the aforementioned items which are not noted on the Acceptance of Handover Form.
- 6.4 Should the Purchaser fail to deliver a signed acceptance handover form to the Seller within 15 (fifteen) days of the occupation date, in which he sets out any defects as referred to in Clause 6.3 above, then and in such event, the Purchaser shall be deemed to have acknowledged that there are no such defects.
- 6.5 Should registration of transfer take place after the Occupation Date, then, notwithstanding anything herein contained, the Purchaser shall pay occupational interest to the Seller in an amount equivalent to 1.25% (one comma two five percent) per month to the purchase price.

- 6.6 Occupational interest as aforesaid shall be calculated monthly on the full purchase price reckoned from the Occupation Date to the last day of the month of registration of transfer and shall be paid monthly in advance to the Seller's Attorneys commencing on the Occupation Date and thereafter monthly in advance. Should registration of transfer take place on a day other than the last day of the month, then the interest in respect of the period from the date of registration of transfer to the end of the month will be refunded to the Purchaser by the Seller's Attorneys.
- 6.7 The Purchaser shall have no claim for any damages of whatsoever nature against the Seller arising out of any delays in completion of the development or in occupation of the unit.
- 6.8 The Purchaser acknowledges that:
- 6.8.1 the other portions of the Buildings may not necessarily be complete at the Occupation Date;
 - 6.8.2 the peaceful use and enjoyment of the Unit, Common Property of the Development Scheme and the common areas in the scheme may be temporarily interrupted from time to time during such building operations, provided it does not interrupt the Purchaser's beneficial occupation of the unit;
 - 6.8.3 the Purchaser shall have no claim whatsoever against the Seller, nor shall the Purchaser be entitled to any reduction in the purchase price or interest thereon by reason of any such inconvenience and/or interruption referred to in clause 6.8.2. The Seller shall however use his best endeavours to procure that such inconvenience or interruption is kept to a minimum.

7. **VOETSTOOTS**

- 7.1 Save as specifically set out in this Agreement, the Seller has made no representations and given no warranties in respect of the Unit, the Buildings or the Exclusive Use Area or in respect of anything relating thereto and this sale is accordingly "voetstoots" and the Seller, other than as provided for in Clause 12, shall not be

liable for any defects in the Unit, Buildings or Exclusive Use Area or in respect of anything relating thereto whether patent or latent.

7.2 The Purchaser shall accept transfer of the Unit subject to all conditions and servitudes benefiting or burdening the Unit and the Property whether existing or subsequently imposed by any competent authority or by the Seller.

7.3 The Purchaser acknowledges that:

7.3.1 the land is zoned Industrial;

7.3.2 it shall be the Purchaser's obligation to become acquainted with the terms and conditions of the Town Planning Scheme as referred to above;

7.3.3 notwithstanding the zoning use, the Purchaser is aware that the following conduct rules will be registered on the opening of the sectional title scheme;

"The following uses are precluded and no owner of a section shall allow a section to be utilised for such purpose:

industries emitting any noxious or offensive gases or dust, liquor outlets, scrap yards, builders yards, and any offensive industry as defined in terms of the Atmospheric Pollution Act. The following additional uses shall not be permitted along the Diep River Banks: any uses that will give rise to dust, smoke, effluent, odours or vibration that will be detrimental to this ecological sensitive area."

7.3.4 the Seller makes no warranty as to whether the Unit may be used for the purpose for which the Purchaser has purchased same, nor as to whether the Purchaser will obtain whatever consents (including but not limited to licences) that may be necessary or required by the Purchaser for his intended use of the Unit.

7.4 Save as specifically set out in this Agreement the Seller, the Selling Agent or anyone on behalf of the Seller, shall not in any way be bound by any representations or

warranties in respect of the unit or the buildings or the development scheme or in respect of anything relating thereto.

8. TRANSFER

- 8.1 It is recorded that it will only be possible for the Seller to give transfer of the Unit to the Purchaser upon the opening of the Sectional Title Register in respect of the Development Scheme in terms of the Act.
- 8.2 The Seller accordingly undertakes to use its best endeavours to procure the opening of the Sectional Title Register as soon as is legally possible and practicable after the Occupation Date.
- 8.3 Transfer shall be passed by the Seller's Attorneys at whose offices the Purchaser shall sign all documents necessary to give effect to this agreement within 7 (seven) days of being called upon to do so. The Purchaser shall be liable and pay for all costs of transfer due to the Seller's Attorneys and shall settle the costs of transfer, including Deeds Office fees, legal fees and the like, immediately upon request of the Seller's Attorneys.
- 8.4 The Purchaser shall accept transfer of the Unit subject to all conditions and servitudes benefiting or burdening the Unit and the Land whether existing or hereafter imposed by any competent authority and/or imposed by the Seller.
- 8.5 In the event of there being any minor difference between the dimensions of and/or the levies payable in respect of any Unit as depicted on the Sectional Plan from that reflected in this agreement, the Purchaser shall nevertheless accept transfer without any recourse or claim against the Seller in respect hereof.

9. CONDITIONS APPLICABLE PENDING TRANSFER

During the period from the Occupation Date till date of transfer, the following conditions shall apply:

- 9.1 save insofar as they may be inconsistent with the provisions of this agreement, the provisions of Section 44 of the Act shall apply;
- 9.2 the provisions of the Rules insofar as they cast any duty upon the owner or occupier of a Unit shall bind the Purchaser and be enforceable by the Seller;
- 9.3 the Purchaser may not make any alterations or additions, including but not limited to alterations to the colour scheme and to the redecoration of the Unit without the consent in writing of the Seller first being had and obtained;
- 9.4 the Purchaser shall maintain the Unit in a fit and proper condition;
- 9.5 the Purchaser shall not sell or in any other manner dispose of or alienate the Unit;
- 9.6 the Purchaser shall be responsible for and pay to the Seller promptly and on demand all costs of electricity and water consumed in the Unit from date of occupation until date of transfer (should date of occupation precede date of transfer).

10. **LEVIES**

- 10.1 The Purchaser shall be liable from the Occupation Date for levies payable in terms of the Act calculated in accordance with the participation quota attributable to each Unit as if the Purchaser was the registered owner of the Unit.
- 10.2 Such levies shall be paid monthly in advance on the first day of each and every calendar month provided that if the Occupation Date falls on any day other than the first day of a calendar month, then the Purchaser shall be obliged to pay a pro rata share of the levies due for the calendar month in which the Occupation Date occurs.
- 10.3 Such levies shall be paid to the Seller's Attorneys until registration of transfer and thereafter to the body corporate.
- 10.4 If the Body Corporate has not yet been established then, from the Occupation Date until the date of registration of transfer, the Purchaser shall pay to the Seller's Attorneys a monthly contribution towards the running costs of the development.

Such contribution shall be an amount equal to the estimated levy as contained in the Schedule.

- 10.5 Should the Body Corporate determine an actual levy after it having being established, then the actual levy shall be deemed to have replaced the estimated levy as referred to herein.

11. **THE RULES**

The Purchaser agrees to abide by the Rules of the Body Corporate.

12. **WARRANTIES BY SELLER**

- 12.1 The Seller shall carry out such works and repairs as may be necessary to honour the terms and the conditions of the Standard Builders Guarantee.

In order to implement such warranty, the Purchaser shall submit a written list of patent defects in the Unit to the Seller by no later than 15 (fifteen) days after the Occupation Date.

If the list referred to above is not furnished within the said prescribed period, the Purchaser shall be deemed to have accepted the unit free of defects.

- 12.2 Save as specifically set out in this agreement, the Seller has made no representations and given no warranties in respect of the Unit or the Buildings or in respect of anything relating thereto.

- 12.3 More particularly, and notwithstanding the provisions of Clauses 12.1 and 12.2, the Purchaser shall have no claim against the Seller, including the cancellation of this agreement for any discrepancies other than those of a substantial nature between the building plans relating to the Unit and the completed Unit, nor shall the Purchaser have any claim against the Seller, should the actual levy be higher than the estimated levy.

12.4.1 The parties agree that if any dispute arises with regard to any alleged defect in the Unit or the Exclusive Use Areas, including a dispute as to whether the Seller is liable for the rectification of such defect, then such dispute shall be referred to the Architect, who shall investigate the dispute and then make a determination as to whether the Seller is liable for rectification of the dispute and the extent of such rectification, if applicable. The decision of the Architect in this regard shall be final and binding on the parties and the parties agree that in acting as aforesaid, the Architect shall be acting as an expert.

13. **DEFAULT**

13.1 In the event of the Purchaser being in breach of any of his obligations contained in the terms and conditions of this Agreement and remaining in breach despite having been given 7 (seven) days' written notice by the Seller, the Seller shall forthwith be entitled (but not obliged) without prejudice to any other rights or remedies which they may have in law, including the right to claim damages:

13.1.1 to cancel this agreement on written notice to the Purchaser, in which event the Purchaser shall forfeit all monies paid to the Seller or its agents in terms hereof; or

13.1.2 to claim immediate performance and/or payment of all the Purchaser's outstanding obligations in terms hereof.

13.2 If the Purchaser disputes the Seller's right to cancel and/or remains in occupation of the Unit after date of cancellation or purported cancellation, the Purchaser shall continue to pay interest and levies as herein provided in consideration for continuing to occupy the Unit.

13.3 In the event of the Purchaser breaching any of its obligations in terms of this agreement, then and in such an event, the Purchaser shall be liable to the Seller for all legal costs incurred by the Seller as a result of such breach on the Attorney/own client scale irrespective of whether legal proceedings are instituted or not.

14. INSPECTION OF UNIT

The Seller and/or the Seller's duly authorized agent/s shall be entitled to inspect the Unit at all reasonable times during the period that the Purchaser is indebted to the Seller hereunder.

15. MORTGAGE BOND

- 15.1 This agreement is subject to the Purchaser obtaining a bond in principle from a bank on its usual terms in the amount as specified in paragraph H of the Schedule, if any. In this regard, it is specifically recorded that the Purchaser shall be obliged, if required by the Seller, to source his/her bond finance from any mortgage originator appointed by the Seller in writing. The Purchaser shall take all steps, do all things and sign all documents required by any bank, financial institution and/or originator for the purposes of pursuing any mortgage bond application required in terms of the schedule.
- 15.2 The Purchaser binds his utmost good faith in pursuing mortgage bond finance and it is a condition of this agreement that in the event of the Purchaser's application for a loan being successful, the registration of the mortgage bond shall be effected and registered by the Seller's Attorneys. The Purchaser undertakes to procure that the financial institution from which the Purchaser obtains the loan instructs the Seller's Attorneys to attend to the registration of such bond.
- 15.3 In the event of the Purchaser not obtaining such bond within 21 (twenty one) days of date of signature hereof by the Seller or within such extended period as the Seller in its sole discretion may determine; then in that event, this agreement shall be null and void.
- 15.4 In the event that this agreement shall become null and void in terms of Clause 16.3 above, then the Seller's Attorneys shall refund to the Purchaser such deposit as may have been paid by the Purchaser together with interest thereon and the parties shall have no further claims against each other.

15.5 The Purchaser shall be responsible for all costs incidental to the registration of the aforementioned mortgage bond, including but not limited to, Attorneys fees, stamp duty, Deeds Office registration fee and the bank's fees.

16. **MANAGING AGENT**

16.1 The Seller shall be entitled to appoint the first managing agent which appointment shall be valid and binding on the Body Corporate from date that the Body Corporate comes into existence and remains valid for 1 (one) year from the date of the first general meeting of the Body Corporate.

16.2 The Purchaser gives the Seller the irrevocable power to make this appointment.

16.3 The managing Agent appointed by the Seller is specified in paragraph J of the Schedule.

17. **JURISDICTION**

The Purchaser hereby consents in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended), or any legislation passed in substitution thereof, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28(1) of the said Act, in any action instituted by the Seller arising out of this agreement. Notwithstanding anything herein contained, the Seller shall be entitled to institute any action against the Purchaser arising out of this agreement in any Court having jurisdiction.

18. **GENERAL**

18.1 The terms of this agreement form the sole contractual relationship between the parties hereto and no variation or consensual cancellation of this agreement shall affect the terms hereof unless such variation or consensual cancellation shall be reduced to writing under the hands of the parties hereto. The parties further acknowledge that no other conditions, stipulations, warranties and/or representations whatsoever have been made by either party or their agents other than as set forth in this Agreement.

- 18.2 No extensions of time or indulgence granted by either party to the other shall be deemed in anyway to affect, prejudice or derogate from the rights of such party in any respect under this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement.
- 18.3 Each of the parties hereby undertakes to promptly sign and/or execute all necessary documents required for the purpose of effecting registration of transfer, including, but not limited to, the execution of the necessary Power of Attorney, Transfer Duty Declarations and mortgage bond documentation (if applicable).
- 18.4 If there is more than one Purchaser in terms of this agreement, then the liability of each of the Purchasers shall be joint and several.
- 18.5 The Purchaser hereby irrevocably and in *rem suam* gives and grants to his/her spouse the right to deal in all matters arising out of this agreement and to sign any documents relating hereto on his/her behalf.
- 18.6 In the event of the Purchaser being a Company or Close Corporation to be formed, the signatory for the Purchaser shall be personally liable for all obligations of the Purchaser as though he contracted in his personal capacity if:
- 18.6.1 the company or close corporation (as the case may be) in respect whereof he acts as trustee is not incorporated within 45 (forty-five) days of date of signature hereof by such signatory; and/or
- 18.6.2 the company or close corporation having been incorporated, fails to adopt and ratify unconditionally this transaction without notification within seven (7) days of incorporation;
- 18.6.3 upon timeous formation of the said company/close corporation and due and timeous ratification and adoption of this transaction as aforementioned the said signatory shall become and be liable to the Seller as surety for and co-principal debtor with the company/close corporation for its obligations as Purchaser in terms of this Agreement under renunciation of the benefits of excussion and division.

- 18.7 In the event of the Purchaser being a Company or Close Corporation or the trustees for the time being of a trust, the signatory for the Purchaser by signature hereto binds himself to the Seller as surety and co-principal debtor in solidum with the Purchaser under renunciation of the benefits of excussion and division for the performance by the Purchaser's obligations in terms of this Agreement.
- 18.8 The parties signing on behalf of the Purchaser warrants that he is duly authorized to enter into this agreement on behalf of the Purchaser and accordingly to bind the Purchaser hereto.
- 18.9 The Purchaser acknowledges that he has read the duties of owners/occupiers of sectional title units as set out in Section 44(1) of the Act and is accordingly aware of the said statutory requirements imposed on him in terms of the said Act.
- 18.10 It is recorded that the current proposed name for the development is "Rossi Raceway Park". It is specifically recorded however that the Seller shall have the right to change the name of the envisaged business park at any time in its sole discretion. In the event of such a name change, the Purchaser shall have no claim of whatsoever nature against the Seller in respect of such name change.

19. **NOTICES AND DOMICILIA**

- 19.1 The parties hereby choose *domicilium citandi et executandi* for all purposes under this agreement at the following addresses:
- 19.1.1 The Seller at the address set forth in Annexure "A" hereto;
- 19.1.2 The Purchaser at the address set forth in Annexure "A" hereto;
- 19.2 Any notice to any party shall be addressed to it as its *domicilium* aforesaid and sent by prepaid registered post, telefax or email or delivered by hand. A notice shall be deemed to have been duly given when:
- 19.2.1 sent by prepaid registered post – 7 (seven) calendar days after posting;
- 19.2.2 sent by telefax – 1 (one) working day after transmission;

19.2.3 sent by email – 1 (one) working days after transmission;

19.2.4 hand delivered – on the date of delivery.

19.3 The Purchaser shall with effect from the Occupation Date, be deemed to have changed the *domicilium* to the Unit.

20. **NO WITHHOLDING PAYMENTS**

The Purchaser shall not be entitled to withhold, delay or abate payment of any amounts due to the Seller in terms of this agreement by reason of any breach or alleged breach of the Seller's obligations hereunder or if any work of whatsoever nature is still required to be done by the Seller to the Unit at any time.

21. **COMMISSION**

21.1 The Seller acknowledges being solely responsible to the agent referred to in Paragraph I of the Schedule for payment of commission in accordance with the rates and terms agreed between the Agent and the Seller.

21.2 If this agreement is cancelled as a result of the Purchaser's failure to carry out any obligations in terms of this agreement, then and in such event, the Purchaser shall be liable for the Agent's commission without prejudice to any of the Seller's remedies and the Seller shall have no further liability to the Agent in respect of commission in such a case.

21.3 The Purchaser warrants that the said agent is the only agent who introduced him to the Unit and to the Seller.

21.4 The Purchaser hereby indemnifies and holds the Seller free and harmless against any claim which may be made by any other agent in respect of any commission arising out of the sale of the Unit where such agent claims to have actually introduced the Purchaser to the Unit and/or to the Seller in connection with this transaction or to be the effective cause of the sale.

21.5 Commission payable to the Agent, as set out in the Schedule hereto, shall be paid by the Seller to such Agent upon registration of transfer of the unit to the Purchaser and payment of the full purchase price by the Purchaser.

22 PHASED DEVELOPMENT

The Purchaser is aware and hereby acknowledges the Seller may develop the scheme in phases and reserves the right for extension of the scheme as envisaged in Section 25(1) of the Sectional Titles Act No. 95 of 1986. The Purchaser acknowledges this clause to constitute proper notice as is required in terms of Section 25(14) of the Sectional Titles Act No. 95 of 1986 and hereby consents to such extensions aforesaid being carried out. In the event of such right being exercised by the Seller or its successors-in-title and due to changed circumstances making strict compliance with the sectional plan, building plan and other documentation and specifications as is referred to in Section 25(2) of the Sectional Titles Act No. 95 of 1986 impracticable, then the Purchaser consents to such changes/amendments as may be necessitated due to such circumstance within the sole discretion of the Seller or its successors-in-title. The Purchaser shall have no claim against the Seller in respect of any inconvenience suffered by the Purchaser or any of the Tenants as a result the building operations in respect of any further phases or extensions that may be effected as referred to herein.

23. SUSPENSIVE CONDITIONS

23.1 The Purchaser acknowledges that the viability of the proposed development depends on the response received to the Sellers' marketing campaign and the approval by the Local Authority of the plans for the Development Scheme and the Seller is given transfer of the Land.

23.2 Accordingly, this agreement is subject to the suspensive conditions that:

23.2.1 the Seller is satisfied with the results achieved by its marketing campaign and, in its sole discretion, confirms that the development is viable;

23.2.2 the Local Authority approves the building plans for the Development Scheme;

- 23.3 Should the above suspensive conditions not be fulfilled within 9 (nine) months of the date of signature of this Deed of Sale ("the Suspensive Period") or such extended period/s not exceeding 6 (six) months in aggregate as the Seller may require by notice in writing to the Purchaser, this agreement shall *ipso facto* lapse and be of no force or effect and the Seller shall refund to the Purchaser the deposit paid in terms of Clause 4.1 together with any interest that may have been earned thereon.
- 23.4 The above suspensive conditions shall be deemed to have been fulfilled unless the Seller dispatches written notice to the Purchaser within the Suspensive Period, as extended if applicable, notifying the Purchaser that the suspensive conditions have not been fulfilled.
- 23.5 Save as aforesaid, the parties shall have no claim against one another arising out of the lapsing of this agreement for the reason set out above.

24. **NOMINATION**

- 24.1 The Purchaser shall be entitled to nominate any third party to be the Purchaser in terms of this Agreement.
- 24.2 For a nomination to be binding on the Seller, the Purchaser shall nominate his/her nominee:
- 24.2.1 on the same day as date of signature of this agreement;
- 24.2.2 by notice in writing to the Seller to that effect accompanied by the nominee's written acknowledgement that he is bound by the provisions of the agreement.
- 24.3 Should the Purchaser nominate a nominee in terms of Clause 24.2 above,
- 24.3.1 all reference to the Purchaser in this agreement shall be deemed to be a reference to his/her nominee;

24.3.2 all obligation of the Purchaser's nominee in terms hereof shall be the joint and several obligations of the Purchaser and his/her nominee.

24.4 Should the Purchaser fail to nominate a nominee in terms of Clause 24.2 above, he/she shall not hereafter be entitled to nominate a nominee but shall be bound to perform all the obligations of the Purchaser in terms hereof.

24.5 Should such nomination attract transfer duty in any form, such transfer duty shall be for the account of the Purchaser.

25. **COMMON PROPERTY IMPROVEMENTS**

25.1 The Purchaser acknowledges that the Architect will accept handover of all the improvements constructed on the Common Properties on behalf of the Body Corporate and issue a certificate of completion for such improvements after he has satisfied himself that the facilities are fit for beneficial use.

25.2 The Purchaser acknowledges that on the Occupation Date, the common property and other sections may be incomplete and the Purchaser and other occupiers must necessarily suffer inconvenience from building operations and from the noise and dust resulting therefrom and that the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience.

26. **VARIATIONS TO SPECIFICATIONS**

26.1 The Buildings and the Unit shall be built substantially in accordance with the Drawings and in specific, the specifications lists which is annexed hereto marked "C" and "D", provided that the Seller shall be entitled to:

26.1.1 substitute items of a similar standard and quality for any specified item referred to in the specifications lists (Annexure "C" and "D");

26.1.2 vary the Sectional Plans for the Buildings should the Seller consider the same reasonably necessary for technical or aesthetic reason; and

- 26.1.3 change the area or lay-out of the unit, save only that the area of the unit shall not vary by more than 5% (five percent) of the estimated area.
- 26.2 In the event of the area of the section being smaller than 90% (ninety percent) of the estimated area set forth in part C of the Schedule, the Purchaser shall have the right, to be exercised in writing prior to signature of the documents for transfer, to resile from the Agreement, in which event all monies paid by him to date on account of the purchase price and costs shall be referred (together with any interest earned thereon) and the parties shall have no further claims against on another.
- 26.3 In the event of there being any dispute between the parties as to the nature of the variations referred to in Clause 26.1, the dispute shall be referred for determination to the Architect, and his decision shall be final and binding on the parties.
- 26.4 Neither the Purchaser nor any person or firm employed by him shall carry out any work on or to the Unit prior to registration of transfer. Work subsequent thereto shall not be carried out without the permission of the Body Corporate in terms of the Rules.
- 26.5 Notwithstanding the provisions of Clause 26.1, the Purchaser shall be entitled to request that the Unit be completed with final internal finishes other than those in the lists of specifications (Annexure "C" and "D"), provided that this request does not result in the Occupation Date being delayed and provided that the Seller shall not be obliged to comply with such request unless -
- 26.5.1 such request in writing, is received by the Seller within 30 (thirty) days after signature of this Agreement;
- 26.5.2 the Purchaser no later than 14 (fourteen) days after receipt of a written quotation from the Seller pay the additional cost arising from the Purchaser's request referred to in Clause 26.5.1, including a 10% Architectural fee and 20% Developer's profit; all plus VAT. The additional costs shall be that determined and certified by either the Seller's quantity surveyor or contractor at the Seller's election, which shall be final and binding on the parties.

- 26.6 In the event of the Purchaser requesting changes to the internal finishes of the Unit as contemplated in and in accordance with the provisions of Clause 26.5, and the Purchaser not accepting the amount determined for such changes in terms of Clause 26.5.2, the Unit shall be completed in accordance with the specification lists (Annexure "C" and "D") and the Purchaser shall be obliged to take transfer thereof in terms of the provisions of this Agreement.
- 26.7 The Purchaser shall in no manner whatsoever be entitled to interfere in any manner whatsoever, including but not limited to the giving of directions or instructions, with the contractors and/or sub-contractors employed by the Seller.
- 26.8 In the event of the Seller, after receipt of the approved building plans pertaining to the buildings from the Architect, informing the Purchaser that the said plans are available for inspection at the Seller's office, the Purchaser shall be deemed to have accepted the plans as complying with the provisions of Clause 26.1, unless the Purchaser, within 10 (ten) days of date of the notice as aforesaid, informs the Seller in writing to the contrary. Should the Purchaser, after having inspected the building plans within the aforementioned period, be of the view that the plans do not comply with the provisions of the said Clause, the Purchaser shall, within the 10 days period furnish the Seller with the reason for it not accepting the building plans and the matter shall then be referred to the Architect for a ruling as to whether the plans comply with Clause 26.1. The decision of the Architect shall be final and binding to the parties.

27. PARKING BAYS

It is recorded that the parking and loading bays shall be allocated to the Unit as follows:

- 27.1 2 (two) parking bays for the first 80m² of actual floor area per unit, and
- 27.2 thereafter 1 (one) parking bay per 80m² of actual floor area (with a minimum of 3 parking bays per unit and at least 1 (one) loading bay.

28. RIGHT OF CESSION

28.1 The Seller shall be entitled to cede any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be necessary, the Purchaser consents thereto.

28.2 Until date of transfer, the Purchaser shall not be entitled to cede, assign or make over any of his rights in terms of and/or any of his obligations under this Agreement, nor to sell the subject matter, nor to sell his right to claim transfer.

29. OFFER

This Agreement, once signed by the Purchaser, shall be regarded as an offer by the Purchaser which shall be irrevocable and open for acceptance by the Seller and may not be withdrawn by the Purchaser for at least 30 (thirty) days after delivery of the Agreement signed by the Purchaser to the Seller.

SIGNED at _____ on this _____ day of _____

AS WITNESSES:

1. _____

2. _____

PURCHASER

SIGNED at _____ on this _____ day of _____

AS WITNESSES:

1. _____

2. _____

SELLER