DEED OF SALE

MIXED USE SECTIONAL TITLE SCHEME:

ANDRINGA WALK, STELLENBOSCH
SCHEDULE OF PARTICULARS

1. THE PARTIES

The Parties to this Agreement are:-

1.1 THE SELLER

Eikestad Mall (Pty) Ltd
Registration number 2006/037145/07
Herein represented by Cornelius Naude Howard or Willem Jacobus Odendaal, being duly authorised thereto
Address: Office 301, Eikestad Mall, 43 Andringa Street, Stellenbosch, 7600
Tel: 021 886 5262
Fax: 021 886 6239
E-mail: neels@abacus6.co.za
(hereinafter referred to as “the Seller”)

1.2 THE PURCHASER

Full names: ________________________________
Identity number: ___________________________
Matrimonial status: ________________________
Spouse’s full names: ________________________
Spouse’s identity number: ___________________
or in case of a legal entity
Name: ________________________________
Registration number: ______________________
herein represented by _______________________
Identity number ___________________________, who by the signing of this agreement guarantees his/her authority to do so, and in the case of a trustee signing in his/her capacity as trustee, is authorised by a resolution signed by all
the trustees prior to the signature of this agreement, a copy of which resolution is attached hereto as Annexure “A”.

Registered / Residential address of Purchaser: ______________________________

Postal address of Purchaser: ____________________________________________

Contact details: Tel (b) ________________________________
Tel (h) ________________________________
Mobile: ________________________________
Fax: ________________________________
E-mail: ________________________________
SAID income tax registration no: ________________________________

(hereinafter referred to as “the Purchaser”)

2. THE PROPERTY

Unit No: ________________________________
Approximate size: ________________________________

Exclusive Use Area/s: No: Approximate size:

______________________________
______________________________
______________________________

(hereinafter referred to as “the Property”)
3. **THE PURCHASE PRICE (INCLUSIVE OF VAT)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Purchase Price</td>
<td>R__________</td>
</tr>
<tr>
<td>Less deposit payable</td>
<td>(R__________  )</td>
</tr>
<tr>
<td>Less bond amount</td>
<td>(R__________  )</td>
</tr>
<tr>
<td>Balance purchase price</td>
<td>R__________</td>
</tr>
</tbody>
</table>

4. **CONVEYANCERS**

Basson Blackburn Inc

371 Main Road, Paarl, 7646

P O Box 2524, Paarl, 7620

Tel: +27 21 871 1401

Fax: +27 21 872 6189

E-mail: linkas@bassonblackburn.com

For attention: L Slabber

Banking details:

- Bank: Absa Bank Ltd
- Branch: Paarl (632005)
- Type: Trust cheque account
- Account number: 01012691013
- Swift code: ABSAJJZA

5. **ESTIMATED POSSESSION DATE:** 1 December 2014

6. **OCCUPATIONAL RENTAL:** ________________________________

7. **ESTIMATED TRANSFER DATE:** As soon as possible after the possession date

8. **ESTIMATED LEVY:** R23,00 per square metre of apartment and R5,00 per square metre of parking bay and of balcony

9. **ESTIMATED ANNUAL RATES AND SERVICES:** To be levied by the Local Authority

10. **AGENCY:** ________________________________

    **AGENT’S NAME:** ________________________________

    **CONTACT NUMBERS:** ________________________________

    **E-MAIL:** ________________________________
TERMS AND CONDITIONS

1. INTERPRETATION

In this Agreement, unless inconsistent with the context –

1.1 "Agent" means the Agent, being the party described in paragraph 10 of the Schedule of Particulars;

1.2 “Act” means the Sectional Titles Act, No. 95 of 1986, (or any statutory modification or re-enactment thereof) and includes regulations promulgated thereunder from time to time;

1.3 “Agreement” means this agreement signed by the Parties hereto together with all annexures hereto, including any addendum and/or amendment recorded in writing and signed by the Parties or their duly authorised representatives;

1.4 “Architect” means dhk Architects (Pty) Ltd, Cape Town, or such other architect appointed by the Seller from time to time in respect of the Scheme to be developed on the Land and includes any member of its firm;

1.5 “Body Corporate” means the Body Corporate deemed to be established for the Scheme in terms of Section 36 of the Act, to manage and control the common interest of owners of units within the development;

1.6 “Building” means the building which shall be constructed on the Land, the plans and specifications of which more fully appear in Schedules B1 & B2 attached hereto, which Building will be subdivided into units and exclusive use areas to form the Scheme;

1.7 "Certificate of Practical Completion" means a certificate issued by the Principal Agent to the Contractor appointed by the Seller in respect of the Building, accepting that in the opinion of the Principal Agent the Unit and/or Exclusive Use Area (as the case may be) is substantially complete in terms of Schedules B1 and B2 and can effectively be used for the intended purpose;

1.8 “Common Property” means (i) the land included in the Scheme, and (ii) such parts of the Building/s as are not included in a Section and/or Exclusive Use Area;

1.9 “Completion Date” means the date upon which the Certificate of Practical Completion in respect of the Property is issued by the Architect;

1.10 “Contractor” means the JBCC appointed contractor from time to time and includes its successors in title and their respective successors;

1.11 “Conveyancers” mean the conveyancers described in paragraph 4 of the Schedule of Particulars;

1.12 “day” means any day which shall include Saturdays, Sundays and Public Holidays;
1.13 “Development” means the sectional title development established on the Land and known as “Andringa Walk”;

1.14 “Development Period” means the period from the commencement of construction to the transfer of the last saleable unit in the Development;

1.15 “domicilium citandi et executandi” means the physical address chosen by a Party for purposes of the serving of summonses, legal documents and notices on such Party;

1.16 "Exclusive Use Area" means a part or parts of the common property forming part of the Scheme reserved for the exclusive use of an owner of a specific section, as contemplated in Section 27 and/or Section 27A of the Act;

1.17 “Estimated Possession Date” means the estimated completion date of the Property being the date specified in paragraph 5 of the Schedule of Particulars;

1.18 “FICA” means the Financial Intelligence Centre Act, No. 38 of 2001, as amended from time to time;

1.19 “JBCC” means the Joint Building Contract Committee and its successors from time to time;

1.20 "Land" means certain immovable property being Erf 15733 Stellenbosch;

1.21 "Levy" means the contribution by an owner of a Unit and/or Exclusive Use Area to the fund established by the Body Corporate of the Scheme in respect of the Scheme in terms of Section 37(1)(a) of the Act. Reference to "estimated levy" in this Agreement refers to a Purchaser’s contribution payable to the Seller prior to the Body Corporate being established, being an estimate by the Seller of what the Levy will be upon the establishment of the Body Corporate;

1.22 “Participation Quota” means the participation quota of a Section being a percentage expressed to four decimal places and arrived at by dividing the floor area of the Section by the floor area of all the Sections in the Building comprised in the Scheme;

1.23 "Parties" means the Seller and the Purchaser and "Party" means either of them;

1.24 "Plans and Specifications" means the plans attached to this Agreement as Schedules B1 & B2, which provide a detailed presentation of the Building and the specifications to which the Building, the Unit and the Exclusive Use Areas will be completed;

1.25 “Possession Date” means the date upon which the Seller gives and the Purchaser physically takes possession and occupation of the Property which will be as near as possible to the Estimated Possession Date but not prior to the date of issue of the Certificate of Practical Completion;
1.26 “prime rate” means a rate of interest per annum which is equal to Absa Bank Ltd’s published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time. In the case of a dispute as the rate so payable, the rate shall be certified by any manager of 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;

1.27 “Principal Agent” means dhk Architects (Pty) Ltd which will be the principal agent appointed in terms of the JBCC-contract concluded / to be concluded between the Seller and the Contractor;

1.28 “Property” means the Unit and Exclusive Use Areas as identified in the Schedule of Particulars;

1.29 “Purchaser” means the purchaser of the Property, being the Party described in paragraph 1.2 of the Schedule of Particulars;

1.30 “Register” means the sectional title register opened in respect of the Scheme in terms of the Act;

1.31 “Rules” means the registered management and conduct rules in terms of which the Body Corporate will control the Scheme, a copy of which is attached hereto marked Annexure "C";

1.32 “Right of Extension” means the right of the Seller in terms of Section 25 of the Act to extend the Scheme as reserved in terms of this Agreement;

1.33 "Schedules B1 & B2” means the attached Schedules, marked Schedules B1 & B2, which forms part of this Agreement and which depicts the following namely:-

   **Schedule B1:** Floor Plan (indicating position of inter alia the Unit, parking bay and storeroom in the Building); and

   **Schedule B2:** Schedule of Finishes;

1.34 “Schedule of Particulars” means the schedule of particulars prefixed to this Agreement setting out the particulars of the Parties, the Property, the Purchase Price and additional information, which forms part of this Agreement;

1.35 “Scheme” means the sectional title scheme known as “Andringa Walk” established on the Land, which scheme consists of a residential component and a commercial component;

1.36 “Section” means a section shown as such on the Sectional Plan;

1.37 “Sectional Plan” means the sectional plan/s to be prepared and registered in respect of the Scheme;
1.38 “Seller” means the Seller of the Property, being the Party described in paragraph 1.1 of the Schedule of Particulars;

1.39 “Signature Date” means the date of signature by the Party doing so last in time;

1.40 “Transfer” means the registration of transfer of ownership of the Property from the Seller to the Purchaser;

1.41 “Transfer Date” means the date of registration of transfer in the Deeds Office of the Property into the name of the Purchaser;

1.42 “Unit” means a Section in the Scheme, together with an undivided share in the Common Property, apportioned to that Section in accordance with the Participation Quota allocated to the Section;

1.43 “VAT” means value-added tax at the applicable rate in terms of the Value Added Tax Act, No. 89 of 1991 (or any statutory modification or re-enactment thereof) and includes any regulations made thereunder from time to time.

1.44 Words and expressions defined in the Act shall have the meanings therein defined. 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 vice versa.

1.45 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.

1.46 Reference to this Agreement shall mean this agreement of sale and shall include the Schedule of Particulars prefixed to this Agreement, the heads of agreement, the terms and conditions of sale and all annexures thereto.

1.47 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.48 If any provision in a definition is a substantive provision imposing rights or obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

1.49 The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

1.50 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall
bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.

1.51 Where this Agreement requires a Party to use “best endeavours” in relation to an action or omission, that Party shall do all such things as are reasonably necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, the Parties shall, to the extent that it is commercially reasonable to do so, consult and co-operate with each other and continue to take action so as to achieve that action or omission, provided that any actions or omissions required to be undertaken shall not be such as to result in a breach of fiduciary duty or contravention of any law.

1.52 The word “material” and “materially” means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in this Agreement.

1.53 The use of the word “including” followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the eiusdem generis rule (which is a rule of interpretation that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of the general descriptors must be restricted) shall not be applied in the interpretation of such general wording and/or such specific example or examples.

1.54 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

1.55 The Purchaser, by initialling next to the indicated clauses contained in this Agreement confirms that, by doing so, his/her/its attention has been drawn to such clause.

2 RECORDAL

2.1 The Seller is the registered owner of the Land, which it is in the process of improving by constructing a building comprising of commercial units, residential units, parking bays, storerooms and common property.

2.2 The Seller hereby sells to the Purchaser who hereby purchases the Property upon the terms and conditions more fully described below and subject to the fulfilment of the suspensive condition set out in clause 20.
3  PURCHASE PRICE

The Purchase Price of the Property is the amount reflected in the Schedule of Particulars of R__________________________ (__________________________ Rand), which amount includes VAT.

4  PAYMENT OF PURCHASE PRICE

4.1  The Purchase Price is payable by the Purchaser as follows –

4.1.1  A deposit of 10% (ten percent) of the Purchase Price (inclusive of VAT) in the case of a South African citizen or a South African based and/or registered legal entity or 20% (twenty percent) of the Purchase Price (inclusive of VAT) in the case of a foreign citizen or a foreign based and/or registered legal entity within 7 days from the Signature Date. The deposit is payable to the Conveyancers which deposit is to be invested in trust in an interest bearing account for the benefit of the Purchaser. In this regard it is recorded that the Conveyancers will only be in a position to invest the deposit upon receipt of the to be requested documentation required in terms of FICA.

4.1.2  The balance purchase price against registration of transfer.

4.2  Should this Agreement be subject to the suspensive condition contained in clause 21 (loan approvals) and a shortfall exists after taking into account the deposit paid by the Purchaser and the proceeds of the loan, then the Purchaser will be obliged to further deliver to the Conveyancers an unconditional and irrevocable guarantee reasonably acceptable to the Seller, issued by a South African Bank or a recognized South African Financial Institution to secure the shortfall which guarantee is to be made payable to the Party as nominated and indicated by the Seller from time to time. Such guarantee is to be delivered within 14 (fourteen) days from being requested to do so, which request will not be made prior to fulfilment of the suspensive condition contained in clause 21. Alternatively the Purchaser may elect to pay such shortfall to the Conveyancers who shall invest same together with the deposit as provided for in clause 4.1.

4.3  Should this Agreement not be subject to the suspensive condition contained in clause 21 hereof, then the Purchaser shall deliver to the Conveyancers within 30 (thirty) days from the Signature Date an irrevocable guarantee reasonably acceptable to the Seller, issued by a South African Bank or a recognized South African Financial Institution to secure the balance purchase price which guarantee is to be made payable to the party as nominated and indicated by the Seller from time to time. Alternatively the Purchaser may pay
such balance purchase price to the Conveyancers who shall invest same together with the deposit as provided for in clause 4.1.

4.4 All payments to be made by the Purchaser to the Seller shall be free of bank exchange and/or commission and/or bank charges.

4.5 The Purchaser hereby irrevocably authorises the Conveyancers to invest all moneys paid by the Purchaser to the Conveyancers on account of the Purchase Price in a trust savings account or other interest-bearing account for the Purchaser's benefit the capital amount of which will, as part of the Purchase Price, be paid in accordance with the Seller's instructions on the Transfer Date.

5  POSSESSION AND OCCUPATION

5.1 Possession and occupation of the Property shall be taken by the Purchaser on the Possession Date, on which date all risk and benefit in respect thereof shall pass to the Purchaser.

5.2 The Seller shall use its best endeavours to ensure that the Property is available for occupation by the Estimated Possession Date.

5.3 Notwithstanding the aforesaid and should the Seller for whatsoever reason fail to give the Purchaser occupation of the Property by the Estimated Possession Date, the Purchaser acknowledges the fact that the Estimated Possession Date is only an estimated date and the Purchaser accordingly shall have no claim of whatsoever nature whether for cancellation or damages against the Seller as a result of such failure.

5.4 The Seller shall give the Purchaser not less than 30 (thirty) days’ written notice of its intention to tender possession of the Unit to the Purchaser.

5.5 Occupation of the Property by the Purchaser or anybody through the Purchaser shall not create a tenancy, that is to say, in the event of this Agreement being cancelled all rights to the occupation of the Property shall lapse and the Property shall be forthwith vacated.

5.6 The block within which the Property will be situated will be complete on the Transfer Date. The Purchaser however acknowledges that all units within the Scheme may at that stage not be fully complete and that the Purchaser may suffer a slight inconvenience as a result. The Seller will however, prior to the Transfer Date, ensure that should such units in close proximity to the Property not be complete that it will be secured and hoarded off to limit any such inconvenience.
5.7 From the Possession Date until the Transfer Date the Purchaser shall:-

5.7.1 keep the Property in good repair;

5.7.2 permit the Seller or its agent at all reasonable times to enter and inspect the Property subject thereto that the Purchaser has been given prior notice of any such intended inspection;

5.7.3 be responsible for all costs of electricity and water consumed on any part of the Property insofar as these may be separately metered;

5.7.4 be responsible for all obligations of an owner of a Unit and the person holding exclusive use rights as set out in the Act;

5.7.5 comply with all rules and regulations applicable to the Scheme; and

5.7.6 be liable for the estimated levy recorded in the Schedule of Particulars, which estimated levy shall be payable monthly in advance to the Seller on the first day of each calendar month or, should the Possession Date fall on any day other than the first day of a calendar month, the Purchaser shall pay a pro rata share of the estimated levy for such particular month.

6. OCCUPATIONAL RENTAL

6.1 Should registration of transfer take place after the Possession Date, the Purchaser shall pay as occupational rental to the Seller an amount of R_______________________ (___________________________________ __________________________ Rand) per month, pro rata, payable monthly in advance commencing on the Possession Date and thereafter on the first day of each and every succeeding month until the Transfer Date.

6.2 Should occupational rental and/or any levies be payable in advance for purposes of Transfer, the Purchaser shall be liable to pay his pro rata share of the occupational rental and levies as estimated by the Conveyancers within 10 (ten) days of written demand.

6.3 The Purchaser shall only be liable to pay occupational rental in respect of those components which he occupies.

7. TRANSFER

7.1 Transfer shall be passed by the Conveyancers and shall be given and taken as soon as is reasonably possible after the date upon which the Certificate of Practical Completion has been issued, subject to the Purchaser having complied with all its obligations in terms of this Agreement.
7.2 The Purchaser shall, within 7 (seven) days of being so requested by the Conveyancers to do so, furnish the Conveyancers with any and all documentation as may be required to give effect to the provisions of this Agreement.

7.3 Should the Transfer be delayed as a consequence of a breach on the part of the Purchaser, then without derogating from any other rights or remedies of the Seller in terms of this Agreement, the Purchaser shall be liable to compensate the Seller in respect of the said delay by making payment to the Seller of interest in respect of the Delay Period calculated at the prime rate plus 3% (three percent) on the Purchase Price.

7.4 The Parties agree that the Seller shall not be in breach of its obligations in the event that the delay is occasioned by circumstances which are beyond the Seller’s control, such as for example, delays caused by rain, strikes, building supply delays and/or litigation which prevents the completion of the Building and/or the Property and/or any delays by and/or the failure of any regulatory body to grant any permission which may be necessary and/or delays occasioned by the conveyancing process.

8. CONDITIONS APPLICABLE PENDING TRANSFER

8.1 With effect from the Possession Date of the Property and pending Transfer, the following conditions shall apply:-

8.1.1 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 and/or the Body Corporate;

8.1.2 the Purchaser may not make any alterations or additions to the Property;

8.1.3 the Purchaser shall maintain the Property in good order and condition.

9. TITLE CONDITIONS

The Purchaser acknowledges that the Property is sold subject to the Rules and all conditions, restrictions and servitudes benefiting or burdening same and the Land whether existing or hereinafter imposed by any competent authority or by the Seller.

10. RULES

10.1 The Seller, as developer of the Scheme, has made amended Rules in respect of the Scheme according to the provisions of section 35(2)(a) and section 35(2)(b) of the Act, read with Regulation 30(1) to the Act.
10.2 Whereas the amended Rules are based upon the standard rules prescribed under the Act, various provisions therein have been amended, in particular provisions regarding the calculation and apportionment of levies and regarding voting rights. The purchasers of Units 6, 8, 9, 10, 11 and 12 must be aware of the fact that those units or balconies encroach as is more fully set out and disclosed in Rule 72 of the Management Rules. Copies of the Management Rules and Conduct Rules are attached to this Deed of Sale, signing of which by the Purchaser serving to confirm that the Purchaser has taken due notice of the amended Rules.

11. MANAGING AGENT

11.1 The Seller shall be entitled to appoint the first managing agent which appointment shall be valid and binding on the Body Corporate for 1 (one) year after the first general meeting of the Body Corporate.

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


12.1 The Property shall be substantially in accordance with the Plans and Specifications provided that the Seller shall be entitled to:-

12.1.1 substitute any specified item referred to in the attached Plans and Specifications provided that the substituted items are aesthetically similar and of a standard and quality similar to such items which they are replacing; and/or

12.1.2 vary the identification and floor plan of the Unit in the attached Plans and Specifications with the prior written consent of the Purchaser, which consent shall not be unreasonably withheld should the Seller consider same to be reasonably required for technical or aesthetic reasons; and/or

12.1.3 determine the exact location of the Exclusive Use Areas, it being recorded that the position of such Exclusive Use Areas will be approximately as indicated on the identification and floor plan of the Unit in the attached Plans and Specifications.

12.2 Should the local and/or any authorities and/or any professional consultants appointed by the Seller in respect of the Development require that the Unit layout plan and/or Sectional Plan for the Building be varied, the Seller may be entitled to allow such variation in such manner as required provided that:-
12.2.1 the Seller give the Purchaser notice of the variations as soon as reasonably possible; and

12.2.2 the Purchaser shall be entitled to resile from the Agreement if the variations represent a material departure from the Unit layout and/or Sectional Plan and if the Purchaser gives the Seller written notice to that effect within 14 (fourteen) days of receipt of the notice as provided for in clause 12.2.1 above.

12.3 The following provisions will apply should the actual surveyed extent of the Unit differ from the estimated extent recorded in the Schedule of Particulars read with the Plans and Specifications ("the Deviation"):-

12.3.1 If the Deviation is less than 5% (five percent) neither Party shall have any claim against the other, it being recorded in these circumstances:-

12.3.1.1 the Purchaser shall benefit from any increase in the extent; or

12.3.1.2 the Purchaser shall abide any decrease in the extent;

12.3.2 If the Deviation is in excess of 5% (five percent):-

12.3.2.1 either Party shall be entitled, but not obliged, to elect to resile in which event:-

12.3.2.1.1 the Parties shall be restored to their respective positions prior to the conclusion of the Agreement, and

12.3.2.1.2 neither Party shall have any claim against the other save and except for a claim to be restored to their respective positions prior to the conclusion of the Agreement.

12.4 The Purchaser shall not employ any person to carry out any work of whatsoever nature in respect of the Unit and/or Exclusive Use Area/s prior to the Transfer Date unless this is specifically agreed to in writing by the Seller.

13. CHOICE OF FINISHES AND VARIATIONS

13.1 The Purchaser will be given the opportunity to exercise a choice of certain finishes from a selection to be made available by the Seller. The Purchaser undertakes to finalise the Purchaser's choice of such finishes in collaboration with the Architect and/or the Seller's project manager within 14 (fourteen) days of being requested to do so by the Seller failing which the Purchaser shall be deemed to have appointed the Architect as its agent to make such
selection on its behalf. In the event of the latter the Architect's choice of selection shall be final and binding on the Purchaser.

13.2 The Seller shall not be obliged to accommodate any requests by the Purchaser to carry out any variations to and in respect of any parts of the Property. Should the Purchaser request the Seller to accommodate variations and the Seller is satisfied, entirely in its own discretion, that it will be able to accommodate such variations without causing any delay to the program of construction and accordingly the date upon which the Property will be available for transfer to the Purchaser, then:-

13.2.1 the Seller will cost any variation request made by the Purchaser;
13.2.2 the Purchaser shall make payment to the Conveyancers of the additional amounts which may be payable by the Purchaser arising from the variations to be carried out on behalf of the Purchaser within 7 (seven) days and on receipt and acceptance by the Purchaser of the costing to be provided by the Seller as contemplated aforesaid; and
13.2.3 the costing to be made by the Seller shall include a reasonable cost allowance for the attendances of the Seller (or any professionals appointed by it) in considering and negotiating with the Purchaser with regard to such variations as well as the costing of the variations; and
13.2.4 the monies so paid to the Conveyancers may be drawn down by the Seller to fund the variations prior to Transfer.

14. PRACTICAL COMPLETION

14.1 “Practical Completion" means the stage of completion where the Unit is substantially complete and can be used for the purposes intended and the Purchaser acknowledges that the Seller may still have to make good any snags at this stage.

14.2 “Practical Completion Date" shall mean the date upon which Practical Completion occurs and a Certificate of Practical Completion is issued.

14.3 If the Architect certifies that Practical Completion has been achieved:-

14.3.1 the Seller may require the Purchaser to take Transfer of and to pay for the Unit; and/or
14.3.2 the Seller may tender possession of the Unit and liability for payment in respect of occupational rental may, if appropriate, be triggered accordingly.
15. **RECTIFICATION OF DEFECTS**

15.1 The Purchaser undertakes to give the Seller written notification of any defects manifesting themselves as soon as is reasonably possible, but by no later than 14 (fourteen) days after the possession date, and in such notice specify the nature of the defect complained of. In the event that the Purchaser fails to give such notice and the cost of the repairs to the Seller is increased, the Purchaser shall be liable to compensate the Seller in respect of such additional expense.

15.2 The Purchaser is obliged to notify the Seller in writing in the event of any further defects manifesting, which notice is required:

15.2.1 to be given to the Seller as soon as reasonably possible after coming to the attention of the Purchaser; and

15.2.2 to specify the nature of the defect complained of.

15.3 The Seller shall cause any reasonable repairs as notified by the Purchaser in terms of this clause 15 to be effected as soon as is reasonably possible thereafter at its cost.

15.4 The Seller shall only be responsible in terms of this clause for defects arising as a result of faulty workmanship and/or materials and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence or abuse.

16. **BODY CORPORATE**

16.1 The Purchaser agrees that:

16.1.1 on becoming a registered owner of the Property, the Purchaser will immediately and automatically become a member of the Body Corporate and will be and remain bound by its Rules for as long as the Purchaser is a registered owner;

16.1.2 should the Purchaser sell the Property, the Purchaser will ensure that its purchaser is made fully aware of the existence of the Body Corporate and the fact that such successor purchaser will automatically become a member of the Body Corporate.

17. **ADVERTISING ON THE COMMON PROPERTY**

17.1 The Seller or its agents shall be entitled to erect such flagpoles, messages, signage or any other form of notices or advertising on the common areas and/or Building as may be legally permissible solely for the purposes of selling and/or letting properties in the Development provided that it does not inconvenience the owners/occupants in the Development.
17.2 During the Development Period the Purchaser shall not be entitled to display any “For Sale” and/or “To Let” signs on the Property or outside the Property without the prior written consent of the Body Corporate.

18. **LEVIES**

18.1 In accordance with the provisions of section 32(4) of the Act, it is the intention of the Seller, as developer of the Scheme, when submitting the application for opening of the sectional title register, to lodge the Rules whereby the liabilities of owners of sections to make contributions for the purposes of section 37(1)(a) or section 47(1), and the values attached to their votes, have been modified.

The formulae whereby such modifications will be made are disclosed in the attached copies of the Rules and by signing this Deed of Sale the Purchaser is deemed to have taken notice thereof.

18.2 From and including the Possession Date, the Purchaser shall be liable to pay to the Body Corporate a monthly levy in advance (pro rata in respect of any portion of a month) on the first day of each and every month, being a proportionate share of the total cost of managing, operating, administrating, repairing and maintaining the Property and Building.

18.3 The total of Participation Quotas allocated by the Seller to units in the Residential Component shall be divided among them in the proportion as referred to in Section 32(1) of the Act.

18.4 Pending the determination of the actual amount of such levy, the Purchaser shall from the Possession Date pay on account of such monthly levy an amount which shall be certified by the Seller as being its *bona fide* estimate of such monthly levy. Upon the determination of the actual monthly levy so payable any amount unpaid or overpaid shall forthwith be paid or reimbursed by one Party to the other.

18.5 Such levies shall be paid to the Seller until registration of transfer and thereafter to the Body Corporate, monthly in advance on the first day of each and every month provided that if the possession date falls on any day other than the first day of a month, then the Purchaser shall be obliged to pay a pro rata share of the levies due for the month in which the Possession Date occurs.

18.6 Such levies are estimated as per paragraph 8 of the Schedule of Particulars.

19. **DEFAULT**

19.1 If either one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the aggrieved Party shall be entitled to give the other Party 20 (twenty) days’ notice in writing by means of either registered post, telefax, e-mail, or by hand to remedy such breach,
failing which the aggrieved Party shall have the right, but not be compelled to, and without prejudice of any of his rights or remedies, including his right to damages, either -

19.1.1 to cancel this Agreement, in which event and should the defaulting Party be the Purchaser, he shall forfeit all monies paid to the Seller or his agent(s) in terms hereof; or

19.1.2 to claim immediate performance of all the defaulting Party's obligations in terms hereof;

19.2 Should the defaulting Party dispute the aggrieved Party's right to cancel this Agreement then, pending the determination of that dispute, the respective Parties shall be obliged to continue to payment of all amounts payable by them in terms of this Agreement on the due dates thereof and/or honour the further provisions of this Agreement and the other Party shall be entitled to recover and accept payments and/or delivery of any services without prejudice to such Party's claim for cancellation of this Agreement or any other rights of such Party whatsoever.

19.3 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to forthwith vacate the Property and to procure that the Property shall be vacated by any person who occupies it through the Purchaser's title or by this permission. Occupation shall be redelivered in the same good order and condition as at the date of possession.

19.4 In the event that this Agreement is cancelled due to the default of the Purchaser, the Purchaser shall be liable to pay Estate Agent's commission as prescribed by the Estate Agents Boards from time to time, on the Purchase Price referred to in clause 3 above. The Parties specifically confirm that in such circumstances the Seller will have no further obligations in respect to the payment of Estate Agents Commission and any claim by the Estate Agent will be made directly to the Purchaser.

19.5 Should either of the Parties take steps against the other pursuant to a breach by such Party of this Agreement, such Party shall, in addition to the rights aforementioned, be entitled to recover from the defaulting Party, who shall be liable to that Party for payment of all its legal costs incurred on the scale between attorney and own client, including tracing fees and collection commission.

20. NO CLAUSE

21. SUSPENSIVE CONDITIONS IMPOSED FOR THE BENEFIT OF THE PURCHASER

21.1 This Agreement is subject to the suspensive condition that within 30 (thirty) days after the Signature Date, a loan be granted to the Purchaser by a
recognized South African Financial Institution upon, *inter alia*, the following conditions –

21.1.1 Against registration of a first mortgage bond as security for the loan over the Unit for a total amount of R________________________

________________________ (________________________ Rand). In this regard it is specifically agreed that the aforementioned condition precedent shall be fulfilled as soon as a financial institution has issued the Purchaser with a pre-agreement and quotation, in whichever form, as provided for in the *National Credit Act, No. 34 of 2005*.

21.2 If the suspensive condition in clause 21.1 is not fulfilled or waived within the time period contemplated above ("the Specified Date"), then this Agreement shall not automatically lapse and be of no further force and effect, but any Party may after the Specified Date, on written notice ("the Notice") to the other Parties, require that the suspensive condition be fulfilled within 30 (thirty) days after the date of the Notice and, failing fulfilment or waiver (to the extent legally permissible) of the suspensive condition within the aforesaid 30 (thirty) day period, then this Agreement shall cease to be of any force and effect and no Party shall have any claim against the other of them as a result of the failure of the suspensive condition.

21.3 In the event of the Seller giving notice to the other as provided for above for the lapsing of the Agreement the Parties shall, subject to the provisions of clause 19.5, be placed in the same position as they were prior to this Agreement and shall have no claim, the one against the other, except that the Purchaser shall be liable to pay the occupational rental as provided for in this Agreement and any damage caused to the Property and/or Land during such occupation.

21.4 In the event that the Purchaser has paid a deposit in terms of clause 4.1 above and should this Agreement have lapsed as a result of the Purchaser not obtaining the finance as required in clause 21.1 above, then the Seller shall give notice to the Conveyancers of such fact, whereupon the Conveyancers will repay the deposit together with the accrued interest thereon (if any) to the Purchaser within 10 (ten) days after receipt of such notice from the Seller.

21.5 The Purchaser undertakes to sign all documents and do all things necessary to ensure the successful granting of the loan referred to herein. Without derogating from the generality of the foregoing, the Purchaser shall make a written application for a bond within 5 (five) days of the Signature Date and should such application be unsuccessful, the Purchaser shall nevertheless continue to use his best endeavours and to do all things that may be necessary in order to obtain the loan elsewhere.
22. **NOTICES AND DOMICILIUM CITANDI ET EXECUTANDI**

22.1 The Parties hereby choose as their *domicilium citandi et executandi* (“domicilium”) for all purposes at their respective addresses specified in the preamble.

22.2 Any notice to any Party shall be addressed to it at its aforesaid *domicilium* and either be sent by prepaid registered post, or be delivered by hand, telefax or e-mail.

22.3 All notices to be given in terms of this Agreement will be in writing and –

22.3.1 if delivered by hand during normal business hours, be rebuttably presumed to have been received on the date of delivery;

22.3.2 if sent by prepaid registered post from within the Republic of South Africa, be rebuttably presumed to have been received within 8 (eight) days of posting;

22.3.3 if sent by telefax or e-mail before 16h30, be rebuttably presumed to have been received on date of successful transmission of the telefax or e-mail. Any telefax or e-mail sent after 16h30, will rebuttably be presumed to have been received on the following day.

22.4 Notwithstanding the above, any notice actually received by the Party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice had not been given in accordance with the provisions of this clause.

23. **COSTS**

23.1 The Purchaser is liable for and shall on demand pay the following –

23.1.1 mortgage bond costs stipulated in the applicable tariff, Deeds Office fees and other normal costs incidental to registration of a mortgage bond, including bond, initiation and valuation fees due to the relevant bank;

23.1.2 all levies and rates and taxes payable in respect of the Property beyond the date of possession;

23.1.3 pro rata amount due for occupational interest.

23.2 The Seller shall be liable to pay the Conveyancers’ transfer fees as stipulated in the applicable tariff, Deeds Office fees and other normal costs incidental to registration of transfer, including all costs in respect of a levy clearance certificate, rates clearance certificate and consent/s of any relevant homeowners association/s;
which amounts, plus VAT thereon where applicable, shall be payable upon demand and prior to registration to the Conveyancers free of exchange and bank charges.

24. **CO-OPERATION**

24.1 Each of the Parties hereby undertakes to –

24.1.1 immediately upon request sign and/or execute all such documents, including without limiting the generality of the aforesaid, the execution of the necessary Power of Attorney and Transfer Duty Declarations and Affidavits; and

24.1.2 do, and to procure the doing by other persons of all such acts;

24.1.3 pass, and to procure the passing of all such resolutions of directors, shareholders or trustees of any legal personae or trust;

24.1.4 to the extent that the same may lie within such Party’s power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

24.2 it is furthermore specifically agreed that the Purchaser hereby undertakes to:-

24.2.1 so as to ensure that a loan be granted timeously, immediately on request sign all application forms and submit the requested financial information to the relevant financial institution so as to accordingly enable them to consider the Purchaser’s application for finance as required. The aforesaid must be done immediately after the Signature Date;

24.2.2 deliver/furnish the Conveyancers with all such documents/information as may be reasonably required by them or as required in terms of the FICA;

24.2.3 to keep all appointments;

24.2.4 to, within a period of 3 (three) days from receiving a request thereto, sign all documents at the offices of the Conveyancers or any other office appointed for this purpose.

Failure to comply with the provisions of clauses 24.2.1 to 24.2.4 constitutes a material breach of this Agreement in which event the Seller shall be entitled to immediately cancel this Agreement. In the event of the agreement being cancelled as a result of non compliance with clauses 24.2.1 to 24.2.4 the Seller shall be entitled to, amongst other things, retain the deposit paid as pre-estimated damages.
25. **AGENT'S COMMISSION**

25.1 The Seller shall pay commission to the Agent in respect of the sale of the Property at the agreed tariff, which commission shall only be deemed to be earned upon the Transfer Date.

25.2 The Seller hereby authorises the Conveyancers to pay such commission to the Agent from any monies held in trust by them for account of the Seller against the Transfer Date.

25.3 The Purchaser warrants to the Seller that no other Agent was instrumental in introducing the Purchaser to the Property and/or being the effective cause of this Agreement save as disclosed herein.

25.4 The Purchaser hereby indemnifies the Seller against any claim which may be made against it arising out of a breach of the warranty referred to in clause 25.3 above.

25.5 Should this Agreement be terminated as a consequence of a breach on the part of the Purchaser:

   25.5.1 the Agent may not claim the agent's commission from the Seller;

   25.5.2 the Agent shall be entitled to claim and recover from the Purchaser the agent's commission and/or such damages that the Agent may have suffered as a consequence.
26. **COMPANIES, CLOSE CORPORATIONS AND TRUSTS**

26.1 If the person signing this Agreement as Purchaser is acting for and on behalf of a company, close corporation or trust which is already duly formed and legally entitled to trade, then –

26.1.1 the signatory hereto warrants in respect of the company, close corporation or trust that he is duly authorized to sign this agreement on its behalf and that it is in existence and duly registered with the relevant statutory authority;

26.2 If the Purchaser is acting for a company to be formed, then, as is provided for in Section 21 of the *Companies Act of 2008*, in the event of the said company not being formed, or if formed, not ratifying and adopting this Agreement within the requisite three months from formation, the Purchaser shall in his personal capacity be the Purchaser hereunder and shall be bound by all the terms and obligations of this Agreement. Should the company be duly formed and accordingly adopts and ratifies this Agreement, then the signatory hereto binds himself as surety and co-principal debtor, jointly and severally with the company for the fulfilment of all the terms and conditions of this Agreement.

27. **DISPUTE RESOLUTION**

27.1 Any dispute as provided for in clause 12, 13 and 14 of this Agreement shall in the first instance be referred to the most senior representatives of each Party so as to resolve it amicably.

27.2 If it is not resolved then such or any other dispute may, at the request of any Party or Parties to the dispute, be referred to arbitration by a single arbitrator, in accordance with the provisions of this clause.

27.3 The arbitration referred to in the above clause shall be held: -

27.3.1 at Cape Town, South Africa;

27.3.2 in accordance with the High Court Act and Rules, as amended by agreement between the Parties or at the direction of the arbitrator after hearing representatives from all Parties; and the provisions of the Arbitration Act;

27.3.3 The arbitrator shall be a practising architect of at least 10 (ten) years’ standing as such.

27.4 Should the Parties fail to agree on an arbitrator within 7 (seven) days after the giving of notice in terms of clause 27.2 the arbitrator shall be appointed at the request of either Party to the dispute by the chair of the Board of Architects or its successor in title.
27.5 The decision of the Arbitrator shall be final and binding and not be subject to the right of appeal.

27.6 The provisions of this clause 27 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;

27.7 The arbitrator shall have the power to give default judgement if any Party fails to make submissions on a due date either in terms of the provisions of paragraph 27.3.2 and/or as determined by the arbitrator, and/or fails to appear at the arbitration.

28. **JOINT AND SEVERAL LIABILITY**

   Should this Agreement be signed by more than 1 (one) person as Purchaser, the obligations and liability of all the said signatories shall be joint and several.

29. **JURISDICTION**

   The Purchaser hereby consents in terms of Section 45 of the *Magistrate’s Court Act, No. 32 of 1944*, as amended, to the jurisdiction of any Magistrates’ Court having jurisdiction over its person under Section 28 of that Act, notwithstanding that any action of proceeding arising out of this Agreement would otherwise be beyond the jurisdiction of such court. The Seller shall, however, have the right to institute action in any other court of competent jurisdiction.

30. **RIGHT OF CESSION**

   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.

31. **REAL RIGHT OF EXTENSION**

   It is hereby recorded that the Seller has reserved a real right of extension in terms of Section 25 of the Act for the extension of the Scheme. This clause serves as a disclosure in terms of Section 25(14) of the Act.

32. **WARRANTY BY PURCHASER**

   The Purchaser warrants that he is not currently and will, at least until Transfer, not be in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of a transfer duty receipt or exemption certificate from such South African Revenue Service or cause the financial institution granting loan finance (if applicable) to withdraw the aforesaid finance offered.
33. GENERAL PROVISIONS

33.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorized representatives.

33.2 This document contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded in this Agreement.

33.3 No indulgence, leniency or extension of time which any Party may grant or show to any other Party, shall in any way prejudice such Party or preclude it from exercising any of its rights in the future.

33.4 Any period referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals shall be reckoned exclusively on the 1st (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

33.5 This Agreement shall be binding on the estates, heirs, executors, administrators, liquidators, trustees or assigns of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party’s estate, heirs, executors, administrators, liquidators, trustees or assigns, as the case may be.

34. SEVERABILITY

34.1 All provisions of this Agreement are severable notwithstanding the manner in which they have been grouped together or linked grammatically.

34.2 Any provision of this Agreement which is or becomes unenforceable, whether due to voidness, invalidity, unlawfulness or for any other reason whatsoever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto (not to be read) and the remaining provisions of this Agreement shall remain in full force and effect.

34.3 The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

35. SURETY AND CO-PRINCIPAL DEBTOR

35.1 In the event of the signatory to this Agreement signing on behalf of a company, trust or close corporation, he/she hereby binds himself/herself in favour of the Seller as surety and co-principal debtor in solidum, for the proper and timeous fulfilment of all the terms and conditions of this
Agreement by the Purchaser for and on whose behalf he/she has entered into this Agreement.

35.2 The liabilities which might be forthcoming from this suretyship shall endure and remain in existence even if the Seller cancels the Agreement in terms of the cancellation clause.

35.3 The signatory signing on behalf of a company, a close corporation or a trust hereby warrants that he is duly authorised to sign as such and that all internal requirements pertaining to such authorisation has been complied with.

SIGNED at __________________ on the ______ day of ______________________________ 20_____.

AS WITNESSES:

1. __________________________

2. __________________________
   For and on behalf of the Seller,
   duly authorised thereto

SIGNED at __________________ on the ______ day of ______________________________ 20_____.

AS WITNESSES:

1. __________________________

2. __________________________
   For and on behalf of the Purchaser, duly authorised thereto
Deed of Sale

SIGNED at __________________ on the _____ day of __________________________ 20____.

AS WITNESSES:

1. ______________________

2. ______________________  As surety and co-principal debtor in terms of clause 35 of this Agreement

SIGNED at __________________ on the _____ day of __________________________ 20____.

AS WITNESSES:

1. ______________________

2. ______________________  For and on behalf of the Agent, duly authorised thereto