

**AGREEMENT OF SALE**  
**THE LEGACY SECTIONAL TITLE SCHEME**

THE  
LEGACY

**PURCHASER:**

**APARTMENT PHYSICAL  
NUMBER:**

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## THE SCHEDULE

### 1. UNIT DETAILS

	SECTIONS	EXCLUSIVE USE AREA		
	APARTMENT	PARKING BAY/S	STORE ROOM	TERRACE AND / OR GARDEN
PHYSICAL NUMBER				
SECTION / EXCLUSIVE USE AREA NUMBER				
ESTIMATED FLOOR AREA (m <sup>2</sup> )				

### 2. SELLER'S DETAILS

FULL NAMES	<b>145 ON MAIN (PROPRIETARY) LIMITED</b>
COMPANY NUMBER	<b>2007/026296/07</b>
CARE OF	SAUL BERMAN
DOMICILIUM ADDRESS	Suite 101, The Regent, 19-33 Regent Road, Sea Point, Cape Town, 3005
TEL	Office: +27 (0)21 439 9030 Mobile: +27 (0)82 553 1355
FACSIMILE	+27 (0)21 434 0473
EMAIL	<a href="mailto:saul@bermanbros.co.za">saul@bermanbros.co.za</a>
SELLER'S ATTORNEYS	<b>EDWARD NATHAN SONNENBERGS INC.</b>
POSTAL ADDRESS	ENS House, 1 North Wharf Square, Loop Street, Foreshore, Cape Town, 8001 / P O Box 2293 Cape Town
CARE OF	JEAN HERBERT / FP
TEL & FACSIMILE	Office: +27 (0)21 410 2500 Facsimile: +27 (0)21 410 2555
EMAIL	jherbert@ens.co.za

**3. PURCHASER'S DETAILS**

FULL NAMES	
IDENTITY NUMBER / PASSPORT NUMBER	
INCOME TAX NUMBER	
DETAILS OF PURCHASER'S SPOUSE  Full Names  Identity No. or Date of Birth	
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)	
POSTAL ADDRESS	
TELEPHONE NUMBER(S)	
MOBILE NUMBER	
FAX	
E-MAIL ADDRESS	

**4. TOTAL PURCHASE PRICE**

BASIC PRICE	R
PLUS VAT	R
TOTAL PURCHASE PRICE (VAT INCL.)	
LESS DEPOSIT	
BALANCE OF TOTAL PURCHASE PRICE (payable on date of registration of transfer)	

**5. MORTGAGE LOAN**

MORTGAGE LOAN AMOUNT	R
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**6. ESTIMATED MONTHLY LEVY PER UNIT (EXCLUDING "RATES")**

R
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**7. ANTICIPATED OCCUPATION DATE**

11 FEBRUARY 2011
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**8. ANTICIPATED DATE OF TRANSFER**

31 MARCH 2011
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**9. SELLING AGENT**

NAME:  <b>Anchorprops 205 (Proprietary) Limited t/a                  Seeff Properties, Atlantic Seaboard, Sea                  Point Medical Centre, Kloof Road, Sea Point</b>	VAT REGISTRATION NUMBER:  <b>487 020 1391</b>
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**10. THEME FINISH (TICK THE RELEVANT BOX)**

10.1. Purchaser to indicate its chosen Theme Finish by ticking the relevant box below (only ONE choice is allowed):

CREAM COCOA

COOL VELVET

10.2. In the event that no Theme Finish is indicated then Clause 9.1 of the Standard Terms and Conditions of the Agreement will be applicable.

**11. SURETY'S DETAILS (WHERE APPLICABLE) – CLAUSE 30**

FULL NAMES  (NATURAL PERSON)	
IDENTITY NUMBER OR CO, CC OR TRUST NO.	
MARITAL STATUS	
DETAILS OF SURETY'S SPOUSE  Full Names  Identity No. or date of Birth	
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)	

## STANDARD TERMS AND CONDITIONS

### 1. INTERPRETATION

1.1. In the Agreement, unless the context otherwise indicates:

- 1.1.1. “**Act**” means the Sectional Titles Act No 95 of 1986, as amended and including the Regulations promulgated thereunder from time to time;
- 1.1.2. “**the Agent**” means the Selling Agent referred to in clause 1.1.33 of the Agreement and as contemplated in Item 9 of the Schedule;
- 1.1.3. “**the Agreement**” means this agreement of sale comprising of both the Schedule and the Standard Terms and Conditions entered into by the Seller and the Purchaser, together with all annexures, written addenda and written variations hereto;
- 1.1.4. “**Area**” means area/s as determined in accordance with the Act and reference to “**Areas**” shall be construed accordingly;
- 1.1.5. “**Architect**” means MLB Architects of 2 Gordon Street, Gardens, Cape Town or such other firm as may be appointed by the Seller from time to time;
- 1.1.6. “**Attorneys**” means Edward Nathan Sonnenbergs Inc. of 1 North Wharf Square, Loop Street, Cape Town (c/o: Ms J Herbert / FP; tel: 021 410 2500, email: jherbert@ens.co.za);
- 1.1.7. “**Body Corporate**” means the controlling body of the scheme as contemplated in terms of section 36 of the Act;
- 1.1.8. “**Building**” means the new building to be constructed on the Property, to be known as “THE LEGACY”, situate at 145 Main Road, Green Point, which will comprise of 9 (nine) floors of residential apartments and 2 (two) floors of underground parking;
- 1.1.9. “**Business Day**” means any day other than a Sunday, Saturday or public holiday;
- 1.1.10. “**Certificate of Practical Completion**” means the certificate issued by the Principal Agent to the Seller stating the date on which Practical Completion is achieved;

- 1.1.11. **“Common Property”** means the Property and such parts of the Building which do not form part of a Section and it shall at all times be in the sole and unfettered discretion of the Seller as to:
- 1.1.11.1. the use to which the Common Property may be put; or
- 1.1.11.2. the nature of the exclusive use rights which will be granted in respect of the Common Property,
- provided only that such use is disclosed in the Sectional Plan;
- 1.1.12. **“Contractor”** means the building contractor who enters into the Principal Building Contract with the Seller;
- 1.1.13. **“Deposit Advantage Guarantee”** means the written guarantee issued by Deposit Advantage, underwritten by Lombard Insurance Company Limited, Registration Number 1990/001253/06, which is an authorised Financial Services Provider (FSP No. 1596), and which guarantee is issued to the Attorneys in substitution of the Purchaser’s obligation to make payment of the Deposit as contemplated in Item 4 of the Schedule;
- 1.1.14. **“Development Scheme”** or **“Scheme”** means the Property and the Building in respect of which the Seller intends to register a Sectional Title Scheme to be known as “THE LEGACY”;
- 1.1.15. **“the Dwelling Area”** means that portion of the Apartment Section defined in Item 1 of the Schedule, excluding any balcony or terrace area;
- 1.1.16. **“Exclusive Use Areas”** means, where applicable, the rights to the exclusive use area and enjoyment of Exclusive Use Areas in the Scheme referred to in Item 1 of the Schedule and further identified in the attached Plans;
- 1.1.17. **“FICA Act”** means the Financial Intelligence Centre Act No. 38 of 2001;
- 1.1.18. **“Occupation Date”** means the date upon which the external parts of the Building, and the Section have reached the stage of Practical Completion, notwithstanding that obvious and material defects as contemplated in clause 11.1 below may still require to be remedied. The anticipated date of occupation is 11 February 2011, as contemplated in Item 7 and subject further to clause 3.15 below;



- 1.1.19. **“Plans”** means collectively, drawings prepared by the Architect for the purposes of sale agreements being:
- 1.1.19.1. a floor plan of the Section which incorporates drawings on a smaller scale (plan and elevation) indicating the citing of the Section on each floor and in relation to the Building on the elevation, as per the plans attached hereto and marked **“Annexure B”**;
  - 1.1.19.2. a plan of the entire floor on which the section is situated, as per the attached plans;
  - 1.1.19.3. a basement plan showing the Parking Bays, as per the attached plans; and
  - 1.1.19.4. an elevation of the Building, as per the attached plans;
- 1.1.20. **“Parking Bays”** means the parking bay in the basement of the Building purchased by the Purchaser as more fully described in Item 1 of the Schedule and further identified on the attached Plans;
- 1.1.21. **“Practical Completion”** means the stage of completion whereby the Building, and the Section, are certified by the Principal Agent, as substantially complete and the Building, and the Section can effectively be used for the purpose intended. The decision of the Principal Agent shall be final and binding upon the parties;
- 1.1.22. **“Principal Agent”** means the Architect, or such other firm as may be appointed by the Seller from time to time; and shall perform their duties in terms of their **“Principal Agency”** role prescribed in the Principal Building Contract;
- 1.1.23. **“Principal Building Contract”** means the Joint Building Contracts Committee Series 2000 Edition 5.0 (July 2007) Principal Building Agreement, together with any addendum thereto, entered into between the Seller and the Contractor;
- 1.1.24. **“Prime Rate”** means a rate of interest per annum which is equal to the Seller’s banker’s minimum lending rate of interest per annum 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, on the basis that such interest is compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is at times also referred to as the prime rate

commercial overdraft rate of interest). In the case of a dispute as to the rate so payable, the rate shall be certified by a manager or assistant manager whose appointment it will not be necessary to prove, of any branch of the said bank, whose certificate shall be prima facie proof thereof;

- 1.1.25. **“Property”** means Erf 2117 Green Point, more commonly known as 145 Main Road, Green Point and Erf 558 Green Point, more commonly known as 1 Wigtown Road Green Point, which Erven are to be consolidated;
- 1.1.26. **“Purchaser”** means the person whose details more fully appear in Item 3 of the Schedule;
- 1.1.27. **“Register”** means the sectional title register in respect of the Scheme to be opened in terms of the Act;
- 1.1.28. **“Rules”** means the Management and Conduct rules prescribed by the Act and as may be amended at the discretion of the Seller (as contemplated in clause 18.1) when opening the Register and/or the Body Corporate from time to time, as well as the House Rules which may be imposed pursuant to Rule 76 in **“Annexure C”**;
- 1.1.29. **“Schedule”** means the information schedule as set out on pages 2 to 5 the Agreement, and which constitutes a substantive term of the Agreement;
- 1.1.30. **“Section”** means the apartment in the Building more fully described in Item 1 of the Schedule which, on the opening of the Register will become a section for the purposes of the Act.
- 1.1.31. **“Sectional Plan”** means the sectional plan in respect of the Scheme as approved by the Surveyor-General and registered by the Registrar of Deeds;
- 1.1.32. **“Seller”** means 145 On Main (Proprietary) Limited, Registration Number 2007/026296/07 of Suite 101, The Regent, 19-33 Regent Road, Sea Point, Cape Town, 3005 whose further details are set out in Item 2 of the Schedule;
- 1.1.33. **“Selling Agent”** means Anchorprops 205 (Proprietary) Limited, Registration Number 2002/013822/07 t/a Seeff Properties, Atlantic Seaboard;
- 1.1.34. **“the Seller’s bankers”** means Rand Merchant Bank (a division of First National Bank) or such other bank as may be nominated by the Seller;

- 1.1.35. “**Specifications**” means the details of the Unit and the Building as set out in “**Annexure D**”;
- 1.1.36. “**the Standard Terms and Conditions**” means pages 6 to 31 of the Agreement;
- 1.1.37. “**the Surety**” means, where applicable, the person described as such in Item 11 of the Schedule;
- 1.1.38. “**Theme Finish**” means the finishes and the associated specification for the interior design of the Dwelling Area as chosen by the Purchaser in Item 10 of the Schedule and in terms of clause 9 the Agreement;
- 1.1.39. “**Total Purchase Price**” means the amount as calculated in Item 4 of the Schedule reflected thereto as the “TOTAL PURCHASE PRICE” and as contemplated in clause 5 of the Standard Terms and Conditions;
- 1.1.40. “**Transfer Date**” means the date of registration of transfer of the Unit, including the cession of the rights to the Exclusive Use Areas to the Purchaser;
- 1.1.41. “**Unit**” means:
- 1.1.41.1. the Sections together with an undivided share in the Common Property as will be apportioned to the Sections in terms of the participation quota of the Sections in accordance with the Act; and
- 1.1.41.2. the Exclusive Use Area (where applicable),
- all as more described in the Schedule and as will finally be described in the Sectional Plan in the case of the Sections and the Exclusive Use Areas (where applicable);
- 1.1.42. “**VAT**” means value-added tax in terms of the Vat Act; and
- 1.1.43. “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991.
- 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 *vice versa*.
- 1.3. The head notes to the paragraphs to the Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

- 1.4. Any reference in the Agreement to “**Date of Signature**” shall be read as meaning a reference to the date of the last signature of the Agreement.
- 1.5. The 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 the Agreement in the first instance and reference to any party shall be deemed to include such party’s estate, heirs, executors, administrators, trustees, assigns or liquidators, as the case may be.
- 1.6. Words and expressions defined in the Act shall have the meanings therein defined.
- 1.7. If any provision in the Schedule to the Agreement and/or if any provision contained in this clause 1 of the Standard Terms and Conditions of the Agreement is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the preamble and/or this clause 1, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.8. When any number of days is prescribed in the Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday; however if it is specifically stated that a period is to be reckoned according to business day/s then Saturdays, Sundays and public holidays will not be included in the reckoning of the said period.
- 1.9. If any clause (or part thereof) is at any time found to be invalid, such invalidity shall not in any way affect the validity of the remainder of the Agreement.
- 1.10. No extension of time or waiver or relaxation of any of the provisions or terms of the Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of the Agreement, shall operate as an estoppel against any Party in respect of its rights under the Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with the Agreement.
- 1.11. To the extent permissible by law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 1.12. Unless otherwise stated, all amounts referred to in the Agreement are exclusive of VAT and insofar as any VAT is payable on any such amounts, it shall be paid by the party making the payment in question.

## 2. CONDITION PRECEDENT

- 2.1. Save for clause 1 of the Standard Terms and conditions, this clause 2 and clauses 22 to 30 inclusive, which are of immediate and lasting effect, the Agreement is subject to the condition precedent that the sectional title register in respect of the Scheme is opened and registered in the Deeds Registry.
- 2.2. The condition precedent in clause 2.1 is not capable of waiver.
- 2.3. Should the Agreement become of no force and effect, then the parties shall be restored, as near as possible, to the position in which they would have been had the Agreement not been entered into and neither party shall have any claim against the other as a result of the failure of the condition precedent in clause 2.1.

## 3. ACKNOWLEDGEMENTS BY PURCHASER

The Purchaser makes the following acknowledgements as listed in clauses 3.1 to 3.17 below.

- 3.1. Save as specifically provided for in clauses 11.1 to 11.5, the Unit is sold “voetstoots”, which for the avoidance of doubt shall be taken by both parties to mean “**as is**” and the Seller shall not be liable for any defects in the Unit, whether latent or patent. The Purchaser further warrants that he fully understands the content and meaning of the term “**voetstoots**” as contained in this clause 3.1 and the Purchaser’s initial or signature hereto shall be relied upon by the Seller as *prima facie* proof of such warranty. Initial here:  
\_\_\_\_\_.
- 3.2. The Sectional Plan has not yet been prepared or approved and that accordingly the exact and final boundaries and areas of the Section and the Exclusive Use Areas, will be those shown on the Sectional Plan.
- 3.3. Transfer of the Unit and cession of the rights to the Exclusive Use Areas is able to take place only simultaneously with or forthwith after the opening of the Register.
- 3.4. The Purchaser has read and approved the Plans and the Specification and that he will be obliged to accept delivery of the Unit and the Exclusive Use Areas:
  - 3.4.1. completed substantially according to the Plans and the Specification; and
  - 3.4.2. as finally depicted and delineated on the Sectional Plan.
- 3.5. The Plans and the Specification, insofar as they relate to the structure of the Building may be subject to variation as a result of the requirements of :

- 3.5.1. all authorities having jurisdiction over the construction and finishing of the Building; and
- 3.5.2. the Architect, engineer or any other member of the professional team appointed to the development arising on either aesthetic, technical or construction grounds,

but that there will be no material change to the floor plan of the Section, nor to the Specification insofar as it relates to internal finishes in the Section other than with the prior written consent of the Purchaser, which consent shall not unreasonably be withheld or under the substitution provisions of clause 12.2.

- 3.6. The Purchaser is aware that at the time of the opening of the Register or transfer of the Unit into his name, it may not be possible simultaneously to cede the rights to the Exclusive Use Areas to him. In such an event, the cession of the rights to the Exclusive Use Areas, shall take place as soon as possible after the opening of the Register and the definition "Transfer Date" shall be interpreted accordingly.
- 3.7. On the Occupation Date some portions of the Common Property and other sections in the Building may be incomplete and that he may suffer inconvenience from on going building operations.
- 3.8. The Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience nor be entitled to withhold any payments to the Seller, provided that the Seller shall use its best endeavours to complete all aspects of the construction of the Building and the completion of the Scheme as soon as possible after the Occupation Date.
- 3.9. The Purchaser shall not dispose of the Section and/or Exclusive Use Area(s) without the prior written consent of the Seller in terms of clause 7.5, which consent may be withheld in the sole and unfettered discretion of the Seller until all the apartments in the Building have been sold by the Seller.
- 3.10. Other portions of the Building may not necessarily be complete at the Occupation Date.
- 3.11. The peaceful use and enjoyment of and access to the Unit and the Common Property may be temporarily interrupted due to noise and dust caused, from time to time, during such building operations.
- 3.12. The Purchaser shall have no claim whatsoever against the Seller, nor shall the Purchaser be entitled to any reduction in the Total Purchase Price or interest thereon by reason of any such inconvenience and/or interruption as referred to in clause 3.11 above. The Seller shall

however use all reasonable endeavours to procure that such inconvenience or interruption due to other portions of the Building being incomplete at the Occupation Date is kept to a minimum.

- 3.13. The Occupation Date shall under no circumstances be deferred or the Unit considered unsuitable for beneficial occupation by reason of any improvements, additions or alterations to be effected to the Unit, in terms of any agreement hereafter signed by the parties, not having been completed.
- 3.14. The occupation of the Unit by the Purchaser and those occupying through or under the Purchaser between the Occupation Date and the date of transfer shall not in any way constitute a tenancy between the Seller and the Purchaser and those occupying the Unit through or under the Purchaser.
- 3.15. The anticipated Occupation Date as reflected in Item 7 of the Schedule is only an estimate of the actual Occupation Date and no liability will attach to the Seller if the Occupation Date occurs after the date reflected in Item 7 of the Schedule.
- 3.16. The Seller shall be obliged to insure the Unit and the Building up to the date of transfer whereafter the Purchaser shall be obliged to ensure that the Body Corporate insures the Unit and the Building.
- 3.17. With effect from the Occupation Date, the Purchaser shall be entitled to request the Seller to increase the amount of insurance attributable to the Unit, in which event the Purchaser shall be obliged to pay the Seller monthly in advance any additional premiums occasioned thereby.

#### 4. **SALE**

The Seller sells to the Purchaser who hereby purchases:

4.1. the Section together with an undivided share in the Common Property apportioned to the Section in terms of the participation quota of the Section (collectively referred to as “**the Unit**”, as defined in clause 1.1.41 of the Standard Terms and Conditions); and

4.2. the right to the exclusive use of the Exclusive Use Areas,

the details of which are more fully set out in Item 1 of the Schedule and the Plans and as will be finally described in the Sectional Plan read with the Register on the terms and subject to the conditions contained in the Agreement.

#### 5. **PURCHASE PRICE**

- 5.1. The Total Purchase Price due and payable by the Purchaser to the Seller in respect of the Unit is the amount specified in Item 4 of the Schedule, which Total Purchase Price is inclusive of value-added tax.
- 5.2. The Purchaser shall pay the Total Purchase Price to the Attorneys as contemplated in clauses 5.2.1 to 5.2.6, as applicable.
- 5.2.1. A Deposit as specified in Item 4 of the Schedule payable in cash on the Date of Signature (in trust to be invested by the Attorneys and interest earned to accrue to the Purchaser).
- 5.2.2. As an alternative to the cash Deposit as contemplated in clause 5.2.1 above, the Purchaser may furnish the Attorneys with the Deposit Advantage Guarantee for the amount of the deposit, issued by Deposit Advantage.

#### The Guarantee

- 5.2.3. Within 21 (twenty-one) days of the Date of Signature, the Purchaser shall furnish the Attorneys with an irrevocable, unconditional bank guarantee issued by a registered financial institution, on terms acceptable to the Seller and acceptable to the Attorneys, for the due payment of the Balance of the Total Purchase Price as recorded in Item 4 of the Schedule, on the Transfer Date and any other amounts due and payable in terms of the Agreement. The bank guarantee as contemplated in this clause 5.2.3 shall provide for payment to be effected at the central Cape Town branch of such bank immediately upon receipt by the bank of written notification from the Attorneys that transfer has been effected.

Alternatively, the Purchaser may pay such amounts directly to the Attorneys, which amounts will be dealt with on the same terms as provided for in clause 5.2.1.

#### Mortgage Loan

- 5.2.4. Should the Purchaser have indicated in Item 5 of the Schedule that he requires mortgage finance then this Agreement shall be subject to the condition precedent that the Purchaser, within 21 (twenty-one) days of the Date of Signature (“**the 21 day period**”), or within such extended period as the Seller in its sole discretion may agree to in writing, obtaining final mortgage loan approval for the amount as so specified in Item 5 of the Schedule, issued by a registered financial institution, on terms acceptable to the Seller and acceptable



to the Attorneys and upon the security of a first mortgage bond to be registered over the Unit at such rates of interest and on such conditions as are stipulated by the financial institution to which application for the mortgage loan is made.

5.2.5. The condition precedent contained in clause 5.2.4 above shall be deemed to have been fulfilled upon the issue to the Purchaser by the said financial institution of a written quotation and a written pre-agreement statement as contemplated in section 92 of the National Credit Act, No. 34 of 2005 (“**the National Credit Act**”) in respect of the mortgage loan as contemplated in Item 5 of the Schedule within the 21 day period, whether or not such quotation or pre-agreement statement is accepted by the Purchaser.

5.2.6. In the event of the condition precedent as set out in clause 5.2.4, read together with clause 5.2.5 above, not being met within the 21 day period, then the Agreement shall be of no further force *ab initio*, in which event the deposit paid by the Purchaser in terms of clause 5.2.1 above, together with accrued interest thereon, subject to the provisions of clause 5.4.2, shall be refunded to the Purchaser, the parties having no further claim against each other.

5.3. The Purchaser acknowledges and agrees that:

5.3.1. his failure to timeously take all steps and sign all documents that may be necessary and to comply and procure with all the requirements of the bondholder to procure the mortgage loan approval as contemplated in clauses 5.2.1 and 5.2.6 above; and/or

5.3.2. his failure to furnish the guarantee and/or payment as contemplated in clause 5.2.3; and/or

5.3.3. a withdrawal of the said mortgage loan approval as contemplated in clause 5.2.4, read together with clause 5.2.3 for any reason whatsoever; and/or

5.3.4. expiry of the said guarantee at any time prior to transfer; and/or

5.3.5. his failure to consent to and/or sign all documents required by the mortgage bondholder to enable it to process the bond and release the bond proceeds into the Attorneys trust account, including but not limited to the ‘Happy Letter’, to be issued by such mortgage bondholder,

shall constitute an automatic breach of this Agreement by him in which event the provisions of clause 22 shall become applicable.

- 5.4. The Purchaser shall be required to comply with the FICA Act and consequently:
- 5.4.1. the Deposit payable by the Purchaser as set out in Item 4 of the Schedule cannot be invested and accordingly, interest cannot accrue thereon, until such time as the said requirements have been met; and
- 5.4.2. the Purchaser hereby renounces any claim for interest, where the claim arises from the Attorneys being unable to invest the deposit as a result of the Purchaser not having properly complied with the FICA Act.
- 5.5. Notwithstanding the terms contained in clause 5.4, the Purchaser shall not assume that the Deposit, as set out in Item 4 of the Schedule, has been invested until such time as he has received written notification from the Attorneys to such effect.
- 5.6. In the event of the percentage of VAT at any time prior to transfer being amended from the current rate of 14% (fourteen percent), then the Total Purchase Price as reflected in Item 4 of the Schedule shall be appropriately amended such that the Total Purchase Price shall include VAT at the rate applicable to this transaction.
- 5.7. All or any payments to be made under the Agreement shall be made by the Purchaser to the Attorneys free of exchange at Cape Town and without deduction or set off.

## 6. **TRANSFER AND CESSION**

- 6.1. Transfer of the Section and cession of the right to the Exclusive Use Areas shall be registered by the Attorneys as soon as is reasonably possible after the Occupation Date and simultaneously with or as soon as possible after the opening of the Register. In the event of the Purchaser funding, whether partially or in full, the purchase of the Unit by way of a mortgage bond, the Purchaser shall endeavour that the registration of such mortgage bond be effected and registered by the Attorneys.
- 6.2. The Purchaser shall upon request by the Attorneys:
- 6.2.1. pay all costs of transfer of the Unit and the cession of the right to the Exclusive Use Areas, including but not limited to conveyancing costs, costs of all necessary affidavits, Deeds Office fees and all other costs which have to be incurred in order to comply with the statutes or other enactments or regulations relating to the transfer and registration of the bond, if applicable, together with VAT in respect of such costs; and
- 6.2.2. sign all preliminary transfer documents.

- 6.3. In the event of the Purchaser failing to comply, within 5 (five) days of being requested by the Attorneys to comply with the requirements of clauses 6.2.1 and 6.2.2, or where applicable, to ensure that all ancillary documentation is satisfactorily completed, then, the Purchaser shall pay to the Seller, monthly in advance, interest on the full Total Purchase Price at a rate of 5% (five percent) above the Prime Rate for the period of the delay.
- 6.4. In the event that minor work and/or rectification in the discretion of the Principal Agent still has to be done in the Unit, notwithstanding that he has given the Certificate of Practical Completion, the Purchaser hereby agrees to take transfer of the Unit and cession of the right to the Exclusive Use Areas and shall comply with all his obligations in terms of the Agreement.
- 6.5. The Purchaser shall accept transfer of the Unit subject to all conditions and servitudes benefitting or burdening the Property, whether existing or hereafter imposed by any competent authority and/or imposed by the Seller, the Rules of the Body Corporate in force from time to time and any amendments thereto, as well as the additional Conditions of Title (“**Annexure E**”) which the Seller will impose when opening the Register.
- 6.6. Without prejudice to any other rights it may have, the Seller shall be entitled to withhold transfer in the event of any monies being outstanding by the Purchaser whether in respect of the Total Purchase Price, costs, occupational rental, levies or any other amount under this Agreement.
- 6.7. The Purchaser shall not be entitled to resile from the Agreement nor to hold the Seller liable for damages or otherwise in the event of delays in the registration of the Sectional Plan.

## 7. **POSSESSION AND OCCUPATION**

- 7.1. Possession and vacant occupation of the Unit shall be given and taken by the Purchaser on the Occupation Date, on which date all risk and benefit in the Unit shall pass to the Purchaser.
- 7.2. With effect from the date of issue of the Certificate of Practical Completion, the Purchaser shall (if applicable):
- 7.2.1. pay to the Seller or the Attorneys, monthly in advance, occupational interest reckoned at the Prime Rate on the Total Purchase Price due, calculated from the date of issue of the Certificate of Practical Completion to the Transfer Date (both days inclusive); and

1.1.1. shall be responsible for and make payment of all electricity and (where applicable) water consumed on the Unit as from the date of issue of the Certificate of Practical Completion,

irrespective of whether or not the Purchaser has physical occupation of the Unit.

7.3. Should the Principal Agent, for whatever reason, not be able to issue a certificate of Practical Completion on the anticipated Occupation Date as reflected in Item 7 of the Schedule, the Purchaser shall accept occupation of the Section on a subsequent date upon which the Principal Agent issues the Certificate of Practical Completion to the Seller and such date will be deemed for all purposes to be the Occupation Date. It shall not be necessary for the Seller to give to the Purchaser any formal notice of a delay in the Occupation Date.

7.4. The Purchaser will have no claim whatsoever against the Seller, should the Seller for whatever reason fail to give occupation on the anticipated Occupation Date recorded in Item 7 of the Schedule.

7.5. Until the Transfer Date, the Purchaser shall not sell, nor advertise for sale, or in any other manner dispose of or part with the Unit and/or the Exclusive Use Area(s) or any of his rights thereto without the Seller's written consent first being had and obtained. The Seller shall be entitled to withhold such consent in its sole and absolute discretion. The Seller shall be entitled to impose such reasonable conditions as it considers necessary, in the event of the Seller granting such consent to the Purchaser as contemplated in this clause 7.5.

## **8. INTEREST ON OVERDUE AMOUNTS AND DELAYS**

8.1. All monies payable by the Purchaser in terms of the Agreement but which remain unpaid on the due date shall bear interest at the Prime Rate plus 3% (three percent) from the due date to the date of payment (both days inclusive).

8.2. In the event of a delay in transfer attributable (directly or indirectly) to the Purchaser, the Purchaser shall be liable to the Seller for interest, at the rate referred to clause 8.1 on the Total Purchase Price reckoned from the date which the Attorneys certify transfer would in their opinion have been effected had it not been for such delay, until the actual date of transfer. The said certificate of the Attorneys shall be final and binding on the parties.

## 9. ERECTION OF DEVELOPMENT SCHEME OF THE UNIT AND THEME FINISHES

- 9.1. In the event that the Purchaser has failed or omitted to indicate its chosen Theme Finish in Item 10 of the Schedule on the Date of Signature, then the Seller or the Architect shall choose a Theme Finish to apply, which choice shall be final and binding on the parties.
- 9.2. The Purchaser shall not be entitled to require any alterations to be made to the dimensions or specifications of the Unit specified in the Agreement or in the Plans or Specifications or Theme Finish.
- 9.3. Notwithstanding anything to the contrary contained in the Agreement, the Seller or the Architect shall be entitled to change any of the dimensions, specifications or detail design (including but not limited to materials, colours or layouts) as reflected in the Plans or Specifications or Theme Finish, provided such change does not materially affect the Development Scheme or the Unit. A certificate by the Architect that any changes so made do not result in a material change shall be conclusive proof thereof and shall be final and binding on the parties.
- 9.4. The Seller shall be entitled to vary the areas, layouts and/or siting of the apartments on any floor and the Parking Bays on the basement floors, provided such change does not materially affect the Unit. A certificate by the Architect that any variation does not result in a material change shall be conclusive proof thereof and shall be final and binding on the parties.
- 9.5. Notwithstanding anything to the contrary contained in the Agreement, in the event of the Unit differing by no more than 5%(five percent) from the boundaries or areas shown on the Plans, as certified by the Architect or by the land surveyor or engineer to the Development Scheme, the Purchaser shall be obliged to accept transfer of the Unit as completed. In the event of the Unit differing by more than 5% (five percent) from the boundaries or areas shown on the Plans, as certified by the said Architect, land surveyor or engineer, either party shall be entitled but not obliged to resile from the Agreement, by giving the other party written notice within 7 (seven) days of receipt of the said certificate. In the event of a party so resiling, neither party shall have any claim against the other arising therefrom save that the Seller shall refund to the Purchaser the deposit and the balance of the Total Purchase Price (if paid in cash as contemplated in clause 5.2.3) together with accrued interest and, in the event of the Purchaser having taken occupation of the Unit, the Purchaser undertakes to procure that he and all those occupying through or under the Purchaser shall forthwith vacate the Unit and shall restore vacant possession to the Seller in the same good order and condition as it was at the Occupation Date. In the event of such a difference of more

than 5% (five percent) and neither party so resiles, neither party shall have any claim whatsoever against the other.

- 9.6. Notwithstanding anything to the contrary elsewhere expressed, or implied, in the event of any of the materials (including the colour, style and/or design thereof) used in the finishes as detailed in the Specifications or the Theme Finish, not being available for any reason whatsoever, prior to or during the course of the construction then the Seller or the Architect shall choose another similar material (and/or style and/or design) which is available. The choice of the Seller or the Architect shall be final and binding on the parties. Similarly, where any material is not clearly specified or indicated in the Specifications and Theme Finish, the Seller or the Architect shall have the right to specify the material considered in the opinion of the Seller or the Architect to be most suitable, in which event the decision of the Seller or the Architect shall be final and binding on the parties.
- 9.7. The Purchaser shall in no manner whatsoever be entitled to interfere, including but not limited to the giving of directions or instructions, with the contractors and/or sub-contractors employed by the Seller.
- 9.8. The Purchaser acknowledges that:
- 9.8.1. the Specifications and Theme Finish of the Unit will not necessarily be the same as or similar to those illustrated in any showroom utilised for display purposes or contained in any other material exhibited by or on behalf of the Seller;
- 9.8.2. any images reflected in “**Annexure D**” and “**Annexure F**” are for illustrative purposes only and will not be binding on the Seller;
- 9.8.3. any model of the Building or the Unit made by or on behalf of the Seller and any advertisement or other advertising material used for the purposes of marketing the Development Scheme and/or the Unit shall not constitute a representation by the Seller and the Purchaser shall not be entitled to rely on any information therein;
- 9.8.4. all measurements and dimensions reflected in the Agreement and in the Annexures to the Agreement are approximate and are subject to finalisation on approval by the relevant authorities.

## 10. **EXCLUSIVE USE AREAS**

- 10.1. The Purchaser shall be entitled to the exclusive use and enjoyment of the Exclusive Use Area (where applicable), subject to the provisions of the Act, the Rules and this Agreement.

- 10.2. The rights to the Exclusive Use Area shall be allocated by way of a notarial cession in terms of Section 27 of the Act.
- 10.3. The Seller shall be entitled to sell and allocate exclusive use rights to other areas of Common Property to other purchasers in the Development Scheme.

## 11. DEFECTS AND REMEDIAL WORK

- 11.1. Subject to this clause 11.1, should any defect (whether obvious or material) or alleged defect in the Unit manifest themselves within 45 (forty five) days after the Occupation Date (“**the forty five day period**”), the Purchaser shall furnish the Seller at its domicile as provided for in clause 1.1.32 above, with a written and signed list of such defects (“**the Defects List**”) within 7 (seven) days of the expiry of the forty five day period, failing which the Purchaser shall be deemed to have accepted the Unit in good order and condition. The Seller shall cause reasonable repairs to the said defects to be effected as soon as reasonably possible after receipt of the Defects List. The Seller and all persons authorised or employed by the Seller shall be entitled to access the Unit for the purposes of inspection and effecting the said repairs. After such repairs have been effected, no liability shall attach to the Seller in respect of any defects.
- 11.2. The Seller’s obligations in terms of clause 11.1 shall :-
- 11.2.1. only apply in respect of defects arising as a result of faulty workmanship and/or materials used in the construction of the Unit and for no other defects or leaks, howsoever arising;
- 11.2.2. only apply, subject to clause 11.1, for so long as the Purchaser is the registered owner of the Unit;
- 11.2.3. not apply in respect of or arising in any way from any alterations to the Unit effected at the instance of the Purchaser; and
- 11.2.4. not entitle the Purchaser to claim any consequential damages from the Seller.
- 11.3. A certificate by the Architect stating that any repairs to any defect referred to in clause 11.1 are reasonable or that any defect for which the Seller is liable in terms of clause 11.1 has been made good, shall be final and binding on the parties and shall relieve the Seller from any further obligations in respect of such defect. In the event of a dispute between the Purchaser and the Seller as to whether or not any defect referred to in clause 11.1 arose as a result of faulty workmanship and/or materials, then such dispute shall be referred to the

Architect (acting as an expert and not as an arbitrator) whose decisions shall be final and binding on the parties.

- 11.4. Notwithstanding the provisions of clause 11.1, the Purchaser shall have no claim against the Seller, and in particular shall not be entitled to cancel this Agreement, for any non-material discrepancies of whatsoever nature between the finally approved plans and specifications relating to the Unit and/or between the Theme Finish reflected in “**Annexure F**”, as the case may be, and the completed Dwelling Area. In the event of a material discrepancy, other than as provided for in clause 11.3 the Seller shall cause same to be remedied within a reasonable time after having been informed thereof in writing by the Purchaser, provided that the liability of the Seller shall only endure for a period of 45 (forty five) days from the Occupation Date. In the event of a dispute between the Purchaser and the Seller as to whether or not any discrepancy is material as referred to in this clause 11.4, then such dispute shall be referred to the Architect (acting as an expert and not as an arbitrator) whose decisions shall be final and binding on the parties
- 11.5. After the establishment of the Body Corporate and after the Contractor has issued the ‘Final Certificate of Completion’ referred to and in terms of the Principal Building Contract, the Seller shall cede to the Body Corporate all rights which the Seller may have at that time against the Principal Agent in respect of the Building, including *inter alia* its rights pertaining to the ‘5 (five) year latent defects liability period’, provided that the Purchaser accepts that the Seller gives no warranties as to its ability to cede such rights, nor the effectiveness of enforcing such rights, nor anything relating thereto.
- 11.6. The Purchaser by way of his signature hereto hereby consents to the cession of the Sellers rights as contemplated in clause 11.5.
- 11.7. The Purchaser acknowledges that, the Seller shall not be bound by any representations, warranties, promises, undertakings and the like made by or on behalf of the Seller which are not contained in the Agreement.

## 12. **UNDERTAKINGS AND WARRANTIES BY THE SELLER**

The Seller undertakes and warrants that it:

- 12.1. will take all reasonable steps necessary to procure the registration of the Sectional Plans and the opening of the Register as soon as possible after the Date of Signature together with the adoption of the Rules in accordance with clause 18;
- 12.2. will construct and complete the Scheme, the Unit and the Building substantially in accordance with the Plans read with the Specification, provided only that if any items in the



Specification are not available, the Seller shall be entitled to substitute items of the same standard and quality, with any dispute between the parties regarding standard and quality to be decided by the Architect (acting as an expert and not as an arbitrator) whose decision shall be final and binding on the parties;

- 12.3. will, within a reasonable time, remedy any obvious and material defects on the terms and subject to the conditions as contained in clause 11 above.
- 12.4. failing which the Purchaser shall be deemed to have accepted the Section and the Exclusive Use Areas in the condition in which they were at the Occupation Date.
- 12.5. For the purposes of clauses 11.1 and 12.3 above, the expression “material defects” means those defects the existence of which are recorded in writing by the Principal Agent as material and requiring to be remedied or repaired.

### **13. VARIATIONS**

- 13.1. For purposes of this clause “variations” shall mean any alteration or modification of the design or quality of finishes or any addition, substitution or omission to or from the Apartment as reflected in the annexed plans and specification, which have been recorded in writing and signed by the Parties or their authorised agents. The Seller is not obligated to agree to any “variations”. The cost of the “variations” will be determined by the Sellers’s Quantity Surveyors (the “QS”) and the invoice referred to in clause 13.2 will be based thereon. In establishing the cost of the “variations” the QS shall, in addition to the costs of the Principal Building Contractor (inclusive of builder's profit) in executing the “variations”, also take into account the reasonable professional charges in respect of the “variations” of Architects, QS, the Contractor’s Quantity Surveyors, Engineers (where necessary) and any other specialist consultant (where necessary), (which charges are collectively referred to as the “Professional Charges”) together with an administration fee to the aggregate of which must be added VAT. The VAT inclusive aggregate amount is the amount payable by the Purchaser for the “variations” The administration fee will be twenty per centum of the total of the costs of the Principal Building Contractor together with the Professional Charges.
- 13.2. In the event of the Seller agreeing in writing to undertake “variations” the Purchaser shall effect payment for such “variations” within 7 (seven) days of delivery to the Purchaser of an invoice in respect thereof. The Seller will not be required to proceed with the “variations” until payment for such “variations” has been made in full to the Seller. If the Purchaser fails to timeously make payment the Seller will not be obliged to implement the “variations” and will have an absolute discretion whether or not to proceed therewith. If the Seller elects to proceed with the “variations” prior to the receipt of payment in respect thereof the Purchaser

shall be liable for payment of interest calculated on the amount payable for the “variations” from the date of the invoice to date of payment at the rate of interest determined in accordance with clause 8.1 above.

14. **PROVISIONS APPLICABLE PENDING TRANSFER AND CESSION**

14.1. Upon the Purchaser taking occupation of the Unit and the Exclusive Use Areas and pending transfer and cession, save insofar as may be inconsistent with the provisions of the Agreement, the provisions of section 44(1) of the Act shall apply.

14.2. Section 44(1) of the Act is reproduced in “**Annexure A**”.

15. **MANAGING AGENT**

15.1. The Seller shall be entitled to appoint the first managing agent as provided for in the Rules of the Body Corporate which appointment shall be valid and binding on the Body Corporate for one year after the first general meeting of the Body Corporate.

15.2. The Purchaser hereby grants to the Seller an irrevocable authority to make the appointment of the first managing agent.

16. **INDEMNITY**

Notwithstanding anything to the contrary herein contained, the Seller shall not be responsible for any loss or damage which the Purchaser may suffer by any act or omission whatsoever or neglect on the part of the Seller, its servants, employees or agents. The Seller shall also not be responsible for any loss or damage of any description whether to property or persons which the Purchaser or any other person may suffer and the Purchaser shall not be entitled for any of the said reasons or for any other reason whatsoever, to withhold payment of any monies due to the Seller in terms hereof, and the Purchaser hereby indemnifies the Seller accordingly.

17. **JOINT AND SEVERAL LIABILITY**

In the event that the Agreement is signed by more than one person as Purchaser, the obligations and liability of all the said signatories shall be joint and several.

18. **THE RULES**

18.1. The Purchaser acknowledges that the Rules referred to in “**Annexure C**” are draft rules and the Seller reserves the right to effect any amendments, variations and/or deletions to the Rules in its sole and unfettered discretion.

18.2. The Purchaser grants to the Seller an irrevocable power of attorney in *rem suam* (operative from the time the Purchaser becomes the registered owner of the Unit) to attend the first meeting of the Body Corporate and on behalf of and to the exclusion of the Purchaser to vote at the first meeting for the amendment and/or adoption of the Rules.

19. **SCHEME EXTENSION**

The Seller reserves the right within a period of 25 (twenty-five) years after the date of registration of the Scheme to extend the Scheme in such a manner as the Seller in its sole and unfettered discretion decides, subject only to the provisions of Section 25 of the Act.

20. **PARTICIPATION QUOTA AND RATING OF THE SUBJECT MATTER**

20.1. The participation quotas referred to in the Schedule are subject to change as provided for in the Act and/or in the Rules of the Body Corporate and/or in the event that the floor area of any section differs from the floor area indicated on the plans.

20.2. The Purchaser acknowledges that the Seller may when registering the Scheme make rules under Section 35 of the Act by which a different value is attached to the vote of the owner of any section and/or the liability of the owner of any section to make contributions for the purposes of Section 47(1) of the Act is modified provided only that such differences are both fair and equitable in their effect upon all owners of units in the Scheme.

21. **ASSIGNMENT**

The Purchaser hereby consents to a future cession by the Seller of its rights and delegation of its obligations under the Agreement.

22. **DEFAULT**

22.1. If the Purchaser commits a breach of the Agreement or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser 7 (seven) days notice in writing to remedy such breach or failure, and if the Purchaser fails to comply with such notice then the Seller shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which it may have in law, including the right to claim damages:

22.1.1. to cancel the Agreement in which case the Purchaser shall forfeit to the Seller all payments made to the Seller, his agents or the Attorneys under the Agreement and the Seller reserves his right to recover from the Purchaser any amount of damages suffered by the Seller as a result of the Purchaser's default which exceeds the amount forfeited in terms of this clause 22.1.1; or

- 22.1.2. to claim immediate performance and/or payment of all the Purchaser's obligations in terms hereof.
- 22.2. In the event of the Seller or the Attorneys having to give notice to or make any demand against the Purchaser in terms of the Agreement and/or in the event of the Seller instituting legal proceedings against the Purchaser, then the Purchaser shall be obliged to pay all costs incurred thereby, including costs on an attorney and own client scale (reckoned on the non-litigious tariff of the Law Society of the Cape of Good Hope or its successor) and collection commission.
- 22.3. Should the Purchaser dispute the Seller's right to cancel the Agreement, then pending the determination of the dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of the Agreement or any other rights of the Seller whatsoever.
- 22.4. Upon cancellation of the Agreement for any reason whatsoever, the Purchaser shall forthwith vacate the Unit and/or Exclusive Use Area(s) and shall procure that the Unit and vacated by any persons who occupy it through the Purchaser's title or by his permission, and the Unit and/or Exclusive Use Area(s) shall be redelivered in the same good order and condition as at the Occupation Date.

### **23. BROKERAGE**

- 23.1. The Purchaser warrants that the Agent is the sole and effective cause of the Agreement. The Purchaser further warrants that the Unit and/or the Development Scheme and/or the Seller were not introduced to the Purchaser by any person or entity other than the Agent and hereby indemnifies the Seller and holds it harmless against any other claim for agent's commission that may be made by any other agent out of the transaction as contemplated in the Agreement.
- 23.2. The Seller shall pay commission to the Agent and irrevocably instructs the Attorneys to pay over the Agent's commission directly to the Agent on the Transfer Date. To the extent that the Agent has already received part payment of its commission prior to the Transfer Date in terms of its mandate with the Seller, then the balance of such commission shall be paid directly to the Agent on the Transfer Date.

### **24. MAGISTRATE'S COURT JURISDICTION**

The Purchaser hereby consents in terms of Section 45 of Act 32 of 1944 or any amendment thereof or substitution thereof or substitution therefore to the Seller taking any legal proceedings for

enforcing any of his rights under the Agreement for the recovery of moneys claimable under the Agreement, cancellation thereof, damages or otherwise in the Magistrate's Court of any district having jurisdiction in respect of the Purchaser by virtue of Section 28(1) of the aforesaid Act, if the Seller so elects.

## **25. RIGHT OF CESSION**

The Purchaser shall not be entitled to withhold, delay, abate or set off payment of any amounts due to the Seller in terms of the Agreement for any reason whatsoever.

## **26. GENERAL**

26.1. No alteration, consensual cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to the Agreement or their duly authorised representatives.

26.2. 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 herein.

26.3. No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under the Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of the Agreement.

26.4. The Purchaser shall not have any claim to be relieved of any obligation under the Agreement or be entitled to any reduction of monies due in terms hereof by reason of any delay in obtaining approval of the Scheme or opening of the sectional title register or any other delay of any kind.

26.5. The Purchaser shall not be entitled to withhold, delay, abate or set off payment of any amounts due to the Seller in terms of the Agreement for any reason whatsoever.

26.6. The Agreement supersedes all previous agreement/s concluded between the parties in respect of the Unit.

26.7. The Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

## **27. CO-OPERATION**

27.1. Each of the parties hereby undertakes to:

- 27.1.1. sign and/or execute all such documents;
- 27.1.2. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 27.1.3. pass, and to procure the passing of all resolutions of any company and/or close corporation;

to the extent that the same may lie with such party's power and may be required to give effect to the import or intent of the Agreement, or any contract concluded pursuant to the provisions of the Agreement.

- 27.2. The Purchaser, in fulfilling his obligations referred to in clause 5.2.4, where applicable, hereby grants to the Principal Agent an irrevocable power of attorney in *rem suam* to sign the 'Happy Letter' required by the mortgage bondholder, in order to enable the mortgage bondholder to process the bond and release the bond proceeds into the Attorneys trust account.

## 28. NOTICES AND DOMICILIA

- 28.1. Each of the parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from the Agreement at their respective addresses set forth in clauses 1.1.32 and 1.1.26 of the Agreement and read together with Items 2 and 3 respectively of the Schedule.
- 28.2. Each of the parties shall be entitled from time to time, by written notice to the other to vary their domicilium to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 28.3. Any notice given and any payment made by a party to any of the others ("the addressee") which:
  - 28.3.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
  - 28.3.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting;

28.3.3. is transmitted by telefax during normal business hours of the addressee shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee within one hour after receipt of transmission.

28.4. Notwithstanding the provisions of clauses 28.3.1 and 28.3.3, in the event that a written notice or any process is actually received by a party, such receipt shall be valid for all purposes under the Agreement notwithstanding that it was not received at a party's chosen domicile.

## 29. **SIGNING AUTHORITIES**

29.1. In the event that any of the persons entering into the Agreement as Purchaser is married in community of property, or for any other reason stipulated in law requires spousal permission or any other form of permission or support from a third party to sign and enter into the Agreement, such persons shall, upon signature of the Agreement, obtain such permission or support in writing and append same to the Agreement, failing which such permission or support shall be deemed either to have been obtained or, alternatively, to not be a prerequisite to the signing of the Agreement by such persons.

29.2. In the event that any of the persons entering into the Agreement as Purchaser acts on behalf of a trust, a company, a close corporation or any other form of juristic person, whether existing or in the process of being formed, such persons shall, upon signature of the Agreement, produce evidence of having been authorised to act on behalf of such juristic person to the satisfaction of the Attorneys, which written evidence shall be appended to the Agreement.

29.3. In the event that the Purchaser is either a company, close corporation, a trust or any other form of a juristic person, the signatory for the Purchaser by his 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 of all its obligations in terms of the Agreement.

## 30. **SURETYSHIP**

Where the Purchaser is a company, close corporation or trust, the Surety renouncing benefits of excussion and division, the full meaning of which he declares himself to be fully acquainted, hereby binds himself as Surety and co-principal debtor with the Purchaser for all the latter's obligations under this Agreement and the provisions of the Deed of Suretyship in this clause 30.

## 31. **OFFER**

The signature by the Purchaser of the Agreement constitutes an offer by him to purchase the Unit and Exclusive Use Areas, which offer is irrevocable and remains open for acceptance by the Seller no later than 3 (three) days after signature by the Purchaser, at which time, unless accepted by the Seller, the offer will lapse and be of no further force and effect.

**32. COUNTERPARTS**

The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts. The parties undertake to take whatever steps may be necessary to ensure that both counterparts are duly signed by each of them without delay.

SIGNED at ..... on the ..... day of ..... 2010

**AS WITNESS:**

for and on behalf of:

\_\_\_\_\_  
Full Name: \_\_\_\_\_  
Identity \_\_\_\_\_  
Number \_\_\_\_\_

\_\_\_\_\_  
**SELLER**, duly authorised hereto



SIGNED at ..... on the ..... day of ..... 2010

**AS WITNESS:**

\_\_\_\_\_  
Full Name: \_\_\_\_\_  
Identity Number \_\_\_\_\_

\_\_\_\_\_  
**PURCHASER**, the signatory warrants his/her authority hereto, where applicable

SIGNED at ..... on the ..... day of ..... 2010

**AS WITNESS:**

for and on behalf of:

\_\_\_\_\_  
Full Name: \_\_\_\_\_  
Identity Number \_\_\_\_\_

\_\_\_\_\_  
**PURCHASER'S SPOUSE**, the signatory warrants his/her authority hereto, where applicable

SIGNED at ..... on the ..... day of ..... 2010

**AS WITNESS:**

\_\_\_\_\_  
Full Name: \_\_\_\_\_  
Identity Number \_\_\_\_\_

\_\_\_\_\_  
**SURETY**, the signatory warrants his/her authority hereto, where applicable

SIGNED at ..... on the ..... day of ..... 2010

**AS WITNESS:**

for and on behalf of:

\_\_\_\_\_  
Full Name: \_\_\_\_\_  
Identity \_\_\_\_\_  
Number \_\_\_\_\_

\_\_\_\_\_  
**SURETY'S SPOUSE**, if married in community  
of property

**Annexure A**

**THE PROVISIONS OF SECTION 44(1) OF THE ACT**

**Duties of owners**

An owner shall:

- (a) permit any person authorised in writing by the body corporate, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purposes of ensuring that the provisions of this Act and the rules are being observed;
- (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his section, other than such work as may be for the benefit of the building generally, and pay all charges, expenses and assessments that may be payable in respect of his section;
- (c) repair and maintain his section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;
- (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owner or other persons lawfully on the premises;
- (e) not use his section or exclusive use area, or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a section;
- (f) notify the body corporate forthwith of any change of ownership in his section and of any mortgage or other dealing in connection with his section; and
- (g) when the purpose for which a section is intended to be used is shown expressly, or by implication on or by a registered sectional plan, not use nor permit such section to be used for any other purpose: Provided that with the written consent of all owners such section may be used for another purpose.

Annexure B

**PLANS**

Annexure C

**AMENDMENT TO THE MANAGEMENT RULES FOR THE BUILDING KNOWN AS “THE LEGACY” AND THE PROPERTY UPON WHICH IT IS SITUATE AT NO. 145 MAIN ROAD, GREEN POINT NAMELY ERF 2117, GREEN POINT SITUATE IN THE CITY OF CAPE TOWN**

Amplification of Management Rules:

- a) In terms of Section 32(4) of the Act the Developer substitutes the following Rule 31(1) and determines that:

31(1) The liability of the owners to make contributions and the proportions in which the owners shall make contributions for the purposes of section 37(1) of the Act shall, with effect from the date upon which the body corporate comes into being, be borne by the owners in accordance with the Schedule of Estimated Levies (“**Annexure G**”)

The following rules are added:

- 72 **Developer Trustee:** For so long as the Developer is the registered owner of any Unit or the registered holder of any real right in the Scheme, the Developer shall at all times be entitled to appoint one trustee.
- 73 **“House Rules”** : The Trustees are empowered to impose such rules and regulations as may in their sole discretion be necessary for the efficient and proper day to day management and running of the Scheme (the “House Rules”) which House Rules may be imposed in relation, but in no way limited to, the use of swimming pools, security and access, waste removal, visitors’ parking bays and recreation areas (if any)

**AMENDMENT TO CONDUCT RULES ADDITION TO THE CONDUCT RULES FOR THE BUILDING KNOWN AS “THE LEGACY” AND THE PROPERTY UPON WHICH IT IS SITUATE at NO. 145 MAIN ROAD, GREEN POINT NAMELY ERF 2117, GREEN POINT SITUATE IN THE CITY OF CAPE TOWN**

ANIMALS, REPTILES AND BIRDS

- 32.1 An owner or occupier of a section (which shall include a terrace, balcony or garden) shall not, without the consent in writing of the trustees, which approval may not be unreasonably withheld, keep any animal, reptile or bird in a section or on the common property or any exclusive use area(s).
- 32.2 When granting such approval, the trustees may prescribe any reasonable condition.
- 32.3 The trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule 32.2.
33. An owner or occupier shall not be allowed to feed any wild animals or birds on the premises.

## REFUSE DISPOSAL

34. An owner or occupier of a section shall—
- 34.1. maintain in an hygienic and dry condition, a receptacle for refuse within his section, his exclusive use area or on such part of the common property as may be authorised by the trustees in writing;
  - 34.2. ensure that before refuse is placed in such receptacle it is securely wrapped and well sealed;
  - 34.3. for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the trustees;
  - 34.4. not permit any of his possessions or the possessions of any of his household or any of his visitors or invitees or any refuse or rubbish for the disposal of which he is responsible, to remain in any entrance, passage, staircase or other part of the premises to which occupiers have common access;
  - 34.5. Refuse is collected from outside the resident's sections by 08H00, Monday to Friday. Residents must dispose of their own refuse in the area allocated outside of these hours. The refuse must be in sealed plastic bags and deposited into the black bins provided in the open area parking. Refuse must not be left outside the section overnight.
  - 34.6. Debris, refuse and rubbish means such articles as are accepted for removal by the City Council in plastic bins. Old beds, fridges and any such similar items are to be removed by the person responsible and are not to be abandoned in the disposal area.

## VEHICLES

35. No owner or occupier shall park or stand any vehicle upon the common property, or permit or allow any vehicle to be parked or stood upon the common property, without the consent of the trustees in writing.
36. The owner or occupier, as well as the owner or occupier's visitors, invitees or family shall not park any trucks, caravans, trailers, boats or any other such heavy vehicles, on any part of the common property without the prior written consent of the Trustees.
37. The trustees may cause to be removed or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property without the trustees'

consent. Alternatively, the Trustees may cause for the vehicle to be clamped and a fine at the discretion of the Trustees may be imposed.

38. Owners and occupiers of sections shall ensure that their vehicles, and the vehicles of their visitors and guests, do not drip oil or brake fluid on to the common property or in any other way deface the common property.
39. No owner or occupier shall be permitted to dismantle or effect major repairs to any vehicle on any portion of the common property, an exclusive use area, or in a section.

#### PARKING CONTROL

40. The parking bays assigned to the various sections with “THE LEGACY” must be used for the express purpose of parking motor vehicles and no items of whatsoever nature may be stored, albeit temporarily, within the area on or around a parking bay.
41. The parking bays assigned to the various sections with “THE LEGACY” must be used for the express purpose of parking motor vehicles and shall not be used for any other purpose or storage of other items.
42. A motor vehicle driven by a bona fide visitor shall only be parked in the area designated for visitors’ parking (“Visitors’ Parking Bays”) and shall not be for a period of longer than 24 (twenty-four) hours or any such longer period as may be stipulated by the Trustees in their sole discretion. The Visitors’ Parking Bays shall be subject to such House Rules as may be imposed by the Trustees.
43. A motor vehicle parked in the visitors’ parking area may not be left in such parking area when the visitor has left the property.
44. The motor vehicles of registered residents shall be authorised to enter and park in the premises according to the number of parking bays allocated to the residents of such section.
45. Every motor vehicle parked on the common property or in the assigned parking bay is parked at the owner or occupier’s risk and responsibility. No liability shall be attached to the Body Corporate, its agents or any of its employees for any loss, damage of whatever nature which the owner, or any other person claiming through him, may suffer as a consequence of the vehicle being parking on the common property.
46. Vehicles may only be washed in those areas of the common property that are specifically designated for the purpose.

## TRAFFIC CONTROL

47. No person may operate a motor vehicle on the Common Property in a manner which may cause a nuisance or threat to the safety of persons or property.
48. Any person operating a motor vehicle on the Common Property must be licensed by law to operate such vehicle.
49. No person may reverse a motor vehicle for a distance greater than is reasonably necessary for the actual manoeuvring of such motor vehicle in or out of a parking bay or to move around any obstruction.
50. A warning device (i.e. a hooter) may not be sounded on the Common Property except in an emergency.
51. No person may stop or park a motor vehicle on the Common Property in a place other than a designated parking bay or in such a manner that it causes obstruction to the flow of traffic or to the access or egress from any parking bay or garage.
52. A motor vehicle must be parked within the lines demarcating a single parking bay.
53. No heavy motor vehicles, boats, caravans or trailers may be brought into the Scheme without the prior written consent of the Trustees.

## NOISE

54. Residents are required to exercise due respect and consideration to other residents at all times.
55. A resident shall at all times ensure that neither he, his visitors, guests nor his employees shall create a nuisance by making undue noise, which shall include the playing of musical instruments, television sets, hi-fi and similar equipment at a noise level or pitch so as to be audible to any other owner or occupier in the Scheme.
56. Children may not play in foyers, stairwells or near neighbouring sections. Rowdy and boisterous behaviour and excessive noise are not permitted in the Scheme. All residents in the Scheme must create as little noise as possible and noise levels may not be audible from outside the unit between 23H00 and 08H00.
57. The Trustees shall require an owner to take immediate remedial action against any resident who persistently creates a disturbance by making excessive noise or otherwise contravenes any of the Management or Conduct Rules.



58. Any air-conditioners permitted by the Trustees to be installed in a section or exclusive use area shall be of a noise level or pitch so as not to be audible to any other owner or occupier in the Scheme.

#### GAMES

59. No resident shall cause or permit the hitting, striking, throwing or bouncing of balls or other objects against any of the walls of the Common Property or of the buildings unless authorised by the Trustees.
60. No games, bicycle riding, skateboarding, roller skating or recreational activities of any nature shall be permitted in any part of the Common Property, unless authorised by the Trustees.

#### DAMAGE ALTERATIONS OR ADDITIONS TO THE COMMON PROPERTY

61. An owner or occupier of a section shall not -
- 61.1. mark, paint, drive nails or screws or the like into, or otherwise damage, or alter, any part of the Common Property without first obtaining the written consent of the trustees.
- 61.2. permit any woodwork, metalwork or any other work to be conducted in the parking bays, basement or any other part of the Building.
62. Notwithstanding rule 61 an owner or person authorised by him, may install :-
- 62.1. any locking devise, safety gate, burglar bars or other safety device for the protection of his section; or
- 62.2. any screen or other device to prevent the entry of animals or insects,
- provided that the trustees have first approved in writing the nature and design of the device and the manner of its installation.
63. An owner or occupier shall not :-
- 63.1. neglect to make good any damage cause to the premises by him, his family, tenant, invitee or guest or any other person over whom he has control;
- 63.2. neglect to repair within 3 (three) days any window pane broken from whatsoever cause (other than a willful act of a servant of the Body Corporate) in any part of the Scheme which he is entitled to occupy.

#### APPEARANCE FROM OUTSIDE

64. The owner or occupier of a section shall not :-
- 64.1. place or do anything on any part of the Common Property, including balconies, patios, stoeps, and gardens which, in the discretion of the trustees, is aesthetically displeasing or undesirable when viewed from the outside of the section.
  - 64.2. erect any blinds or awnings, without the Trustees prior written consent. In giving consent to the erection of blinds or awnings, the Trustees shall be empowered to impose such conditions as they deem necessary with regard to the type and colour of any blind or awning to be erected.
  - 64.3. notwithstanding clause 64.2, an owner or occupier shall ensure that the section is provided with adequate curtaining or blinds within 14 (fourteen) days of taking occupation of the section;
  - 64.4. install tinted glass windows in any residential section or exclusive use area, unless prior written permission is granted thereto by the Trustees;
  - 64.5. hang any items of whatsoever nature over walls, in windows or any other part of the Common Property that is visible to other occupants or the public;
  - 64.6. construct, attach to or affix to any part of the exterior of the building, including the balconies, any alterations, fixtures or additions, including not limited to items such as radio aerials, television aerials, satellite dishes, solar heating systems, air conditioners, chimneys, canopies, braais or similar items without the prior written consent of the Trustees, who may attach any such reasonable conditions to their consent. The prohibition in the rule relating to air conditioners, include air-conditioners installed inside a section or exclusive use area which is in any way visible from the outside.

#### LETTING AND OCCUPANCY OF SECTIONS

65. An owner of a section may only reside or let the section for residential purposes.
66. An owner may let or part with occupation of his section provided:
- 66.1. that no such letting and /or parting with occupation shall in any way release the owner from any of his obligations to the Body Corporate, in terms of these Conduct Rules or in terms of the Management Rules made in terms of the Sectional Titles Act.

- 66.2. that as a condition precedent to any such letting and/or parting with occupation, the owner shall secure from the lessee or the person to whom occupation is given as the case may be, an undertaking in favour of the Body Corporate that such lessee or person shall duly observe all these regulations and conditions as are contained in the Management and Conduct Rules and in the Sectional Titles Act. Such an undertaking shall be in terms as the Trustees shall from time to time require and it shall be lodged in writing with the Trustees prior to such lessee or person being given occupation of the section.
- 66.3. that in order to retain the nature of the Scheme, short-term holiday letting shall be permitted, provided that such short-term holiday letting is managed through a letting agency which is considered to be reputable for such purpose in the sole discretion of the Trustees. The Trustees shall in their sole discretion have the right to restrict any short-term letting.
- 66.4. that upon moving into the section, the tenant's furniture is to be moved through the entrance gate to the parking and not through the main entrance of the building. Furniture should be carried or on another carrying device and should not be dragged along the corridors on the Common Property. Should any furniture be moved by way of any of the lifts in the Building, the owner shall arrange for such lift shall be covered by a lift blanket for the duration of the period.
67. The maximum number of permanent residents in a section at any one time may not exceed two persons per bedroom, calculated by reference to the number of bedrooms only and excluding the lounges and other areas.
68. In terms of the Sectional Titles Act, owners/occupiers may not exchange accommodation on a part time basis for accommodation elsewhere, or cede occupancy for cash or kind on a part time basis, or create, or have any time-sharing scheme in respect of their section.

#### SIGNS AND NOTICES

69. No owner or occupier of a section, used for residential purposes, shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the Common Property or of a section, so as to be visible from outside the section, without the written consent of the trustees first having being obtained.

#### LITTERING

70. No owner or occupier of a section, or any employee of such owner or occupier shall deposit, throw, or permit or allow to be deposited or thrown any substance of any nature any rubbish, including dirt,

cigarette butts, food scraps or any other litter whatsoever from the windows, doors or balcony of the section onto the common property and any part of the exclusive use area(s).

#### LAUNDRY

71. An owner or occupier of a section shall not, without the consent in writing of the trustees, erect his own washing lines, nor hang any washing or laundry or any other items on any part of the building or the Common Property so as to be visible from outside the buildings or from any other sections.
72. An owner or occupier shall ensure that washing hanging in the drying area is removed immediately when it is dry, allowing other residents access to this facility.

#### STORAGE OF INFLAMMATORY MATERIAL AND OTHER DANGEROUS ACTS

73. An owner or occupier shall not store any material, or do or permit or allow to be done, any other dangerous act in the building or on the Common Property which will or may increase the rate of the premium payable by the Body Corporate on any insurance policy.
74. An owner or occupier shall not store any materials of a dangerous or explosive nature, the keeping of which contravenes any statute, local regulation, by-law or constitutes a nuisance to occupants, other portions of the buildings, voids any insurance effected by the Body Corporate or would result in the increase in the rate of such insurance.

#### ERADICATION OF PESTS

75. An owner shall keep his section free of white ants, borer and other wood destroying insects and to this end shall permit the trustees, the managing agent, and their duly authorised agents or employees, to enter upon his section from time to time for the purpose of inspecting the section and taking such action as may be reasonably necessary to eradicate any such pests. The costs of the inspection, eradicating any such pests as may be found within the section, replacement of any woodwork or other material forming part of such section which may be damaged by any such pests, shall be borne by the owner of the section concerned.

## GENERAL

76. Levy and electricity account payments due by the owners in the Scheme shall be paid monthly in advance on the 1<sup>st</sup> (first) day of each and every succeeding month.
77. The owner or occupier shall not :-
- 77.1. deny the Trustees, their servants, nominees or the Managing Agent access to any section, garage and/or any other part of the premises which the owner is entitled to occupy for the purposes of inspection;
  - 77.2. permit anything to be done in such section and/or exclusive use area(s) or upon any other portion of the premises or property which constitutes a nuisance or the unreasonable invasion of the privacy of the other occupiers at "THE LEGACY" or permit or make any disturbance by himself or any person for which he is responsible, to make any disturbance or noise which in the opinion of the Trustees, in their sole and absolute discretion, would constitute an invasion of the right to privacy of the other occupiers of the sections;
  - 77.3. be allowed to issue instructions to the cleaning staff or supervisor employed by the Trustees, unless so appointed by the Trustees to do so. Staff duties will be assigned by a duly appointed person within stipulated working hours. The owners or occupiers must arrange with the managing agent for tasks to be carried out by the cleaning staff outside of stipulated working hours;
  - 77.4. give orders or buying orders to third party contractors or suppliers pertaining to any part of the common property without the knowledge or permission of the Trustees or the managing agent;
  - 77.5. hold or permit to be held any auction sale in any portion of the premises or display any advertisement on or outside the buildings or any portion thereof;
  - 77.6. erect any tent or other structure or alter or remove any shrub, tree or plant in the garden or elsewhere in the grounds;
  - 77.7. permit his section and/or exclusive use area to be used for any other purpose than for which it is intended for which is indicated expressly or by implication on the necessary Sectional Plan; and
  - 77.8. permit anything to be done, in his section or on the Common Property, which will or may increase the rate of the premium payable by the Body Corporate on any insurance policy as referred to in the Management Rules.
78. The owner or occupier shall :-

- 78.1. only be permitted to braai on areas of the Common Property, as expressly designated by the Trustees for such purpose and provided that the braai is in the form of a kettle, gas or electrical braai. It is expressly forbidden to ignite wood or coal fires for the purposes of braaing or for any other purposes on any part of the property;
  - 78.2. ensure that any drain pipes in or from the Section shall be maintained, cleaned and unobstructed from time to time and shall forthwith in the event of the pipes becoming obstructed, have same cleaned at his expense;
  - 78.3. ensure that access to the building via the security system is restricted to the owner or occupier or person known to them at all times;
  - 78.4. ensure that the front security doors and all other access doors or gates are securely closed at all times;
  - 78.5. ensure that the firehoses located on the premises are only used in case of fire or emergency;
79. An interest bearing electricity deposit of R350.00 (three hundred rand), or such reasonable amount as determined by the Trustees from time to time, is to be lodged with the managing agent by each new tenant. On vacating the Section, the balance of the deposit, after deducting the outstanding electricity, will be refunded.

#### BINDING NATURE OF THESE RULES

80. All owners or tenants of Sections and other persons granted rights of occupancy by any owner of the relevant Section are obliged to comply with these Conduct Rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

#### BREACH

- 81.
- 81.1. In addition to and without prejudice to the rights created in accordance with the provisions of rule 128 of the Management Rules in the event-
    - 81.1.1. of the owner committing any breach of any of the provisions of the Management or Conduct rules made under the Act and failing to remedy such breach within 14 (fourteen) days of the date of delivery by hand or posting by prepaid

registered post of written notice calling upon such owner to remedy the same;  
or

81.1.2. of the owner committing or suffering the commission of any repetition of any breach of any of the terms and conditions of the Management or Conduct Rules of the Sectional Titles Act, which breach is of such a nature or occurrence that cannot practicably be remedied subsequent to the giving of a period of notice as aforesaid, at any time after due notice in writing has been given to the owner to desist from and/or not repeat or suffer the repetition of the breach complained of;

81.2. the Body Corporate or the Trustees or the managing agent if so authorised shall be entitled notwithstanding any indulgence that may have been shown to the defaulting owner, to take such action as may be available to it or them, either to enforce the relevant provision of the rules and/or the Act breached or alternatively to restrain the defaulting owner from continuing or repeating the unlawful conduct complained of as may be available to the Body Corporate or the Trustees or the managing agent as the case may be, all without prejudice to any other rights that may lie against the defaulting owner for the recovery of any damages or loss which the Body Corporate may suffer as a result of such breach and/or failure to remedy same. In the event of any steps or legal action being taken by the Body Corporate or the Trustees or the managing agent for the purpose of enforcing compliance with these rules or of the Act of procuring a due and proper remedy of such breach, all costs and expenses howsoever incurred by the Body Corporate or the Trustees or the managing agent arising thereout or in connection therewith shall be paid by and recovered from the defaulting owner.

#### COMPLAINTS

82. All complaints regarding “THE LEGACY” are to be addressed in writing to the chairman of the Body Corporate. All complaints of an urgent nature may be brought to the attention of the chairman or, in his absence, the managing agent, or any of the Trustees at any time.

#### DOMESTIC EMPLOYEES

83. An owner shall:

- 83.1. be responsible for the activities and conduct of his domestic employee(s) and shall ensure that his domestic employees understand and that they do not breach any rules, legislation or bye-laws which may affect the sectional title scheme;
- 83.2. ensure that his domestic employee(s) do not loiter on the common property.
- 84. Any owner or occupier of a section whose domestic employee consistently fails to abide by these conduct rules may be required to remove such domestic employee from the property if so instructed by the trustees.
- 85. No owner or occupier of a section may request personal duties to be performed by any member of staff employed by the body corporate.

#### SWIMMING POOL

- 86. Swimming pools, whether part of the Common Property or forming part of a section and/or exclusive use area, are used at the sole risk of owners, occupiers, members of their households, and their guests and no liability shall attach to the Body Corporate, its agents, employees and/or trustees for any loss of life, injury, loss or damage of whatever nature which any person entering such areas or using the facilities or any person claiming through or under him may suffer in consequence of such entry or use and the Body Corporate shall furthermore be deemed to have been indemnified against claims of any nature whatsoever arising from such use.
- 87. The following rules shall be adhered to in respect of swimming pools, whether part of the common property or forming part of a section and/or exclusive use area:
  - 87.1. Children under twelve years of age shall under no circumstances be allowed to use the swimming pool unless they are accompanied by an adult who shall be responsible for their conduct;
  - 87.2. No alcoholic beverages or glass containers of any type shall be permitted inside the area of the swimming pool;
  - 87.3. Radios, other sound reproduction equipment and musical instruments shall not be played within the area of the swimming pool;
  - 87.4. Users of the swimming pool shall refrain from making unnecessary noise and/or disturbing and/or causing a nuisance to owners and/or dripping water in the building;
  - 87.5. Users of the swimming pool shall keep the same in a clean and tidy state;



- 87.6. The automatic pool cleaning equipment to the swimming pool shall under no circumstances be removed from such area by any owner/occupier/guest; and
- 87.7. No animals or reptiles shall be permitted inside the enclosure surrounding the swimming pool.

CONFLICT WITH MANAGEMENT RULES

- 88. In the event that there is a conflict between the Conduct Rules and the Management Rules, the Management Rules shall prevail.

Annexure D

**SPECIFICATIONS**

**Annexure E**

**ADDITIONAL CONDITIONS OF TITLE**

The conditions of the title of the Sectional Scheme to be known as “THE LEGACY” shall be amplified by the following condition to be imposed by the Seller when opening the Register:

1. Sections which parking bays shall only be owned by owners of Sections which are Units.
2. Visitors’ parking bays, if any, forming part of the Common Property of the Scheme shall not be alienated or let, nor shall any rights over or in respect of such visitors’ parking bays be granted to any person.

No person(s) using or having access to any swimming pool in the Scheme (whether situate upon Common Property, Sections and/or Exclusive Use Areas) shall have any claim against the Body Corporate for any loss, injury, death or damage howsoever arising as a result of that person(s) use or access to the swimming pool and the Body Corporate is accordingly indemnified against any loss, injury, death or damage by any such person(s).

**Annexure F**

**THEME FINISHES**

Annexure G

**SCHEDULE OF ESTIMATED LEVIES**