



AGREEMENT
SEVEN OAKS

SCHEDULE

- A.1 THE SELLER: THE HOME MARKET NPC
("the Seller")
2. ADDRESS c/o Lexicon Attorneys, Westbourne & Clevedon
Roads, Central, Port Elizabeth
- B.1 THE PURCHASER: _____

("the Purchaser")
2. IDENTITY NUMBER/S /
REGISTRATION NUMBER: _____
3. ADDRESS: _____

4. TELEPHONE NUMBER: Home: _____
Business: _____
Fax: _____
Cell: _____
E-Mail: _____
5. INCOME TAX NUMBER: _____
6. IF MARRIED:
- 6.1 FULL NAMES OF SPOUSE: _____
- 6.2 DATE OF MARRIAGE: _____
- 6.3 IN OR OUT OF COMMUNITY: _____
- 6.4 PLACE OF MARRIAGE: _____

7. DIRECTORS, MEMBERS OR PARTNERS NAMES (if applicable) _____

C. DESCRIPTION OF UNIT

1. The UNIT to be established in terms of the Sectional Titles Act, 95 of 1986, as amended ("STA"), comprising:

1.1. The SECTION ("the SECTION") to comprise residential UNIT No. _____ in extent approximately _____ (_____) square metres in the building known as SEVEN OAKS ("the Scheme") situated on Erf 422 Wittedrift ("the Property").

1.2. An undivided share in the common property in the buildings and the property as shown and more fully described on the Plan and apportioned to the said Section in accordance with the participation quota of the said Section to be determined in accordance with the provisions of Section 32(1) of the STA and;

1.3. EXCLUSIVE USE AREA
Gated and walled-in outdoor living areas (yards) will be for the exclusive use of the related section owner. The maintenance of this area will be the responsibility of the related section owner.

D. THE PURCHASE PRICE R _____
(_____)
Inclusive of VAT
("the Purchase Price")

E. THE METHOD OF PAYMENT OF PURCHASE PRICE:

1. DEPOSIT: R _____
(_____)

PAYABLE BY _____

2. BALANCE OF PURCHASE PRICE: R _____
(_____)

F. AMOUNT OF MORTGAGE BOND
REQUIRED BY THE PURCHASER: R _____
(_____)

G. MORTGAGE BOND TO BE
APPROVED BY: _____

H. ANTICIPATED OCCUPATION DATE: _____
("The Anticipated Occupation Date")

I. OCCUPATIONAL INTEREST: R _____ per month
("The Occupational Interest")

J. ESTIMATED LEVY: R _____ per month

K. THE CONVEYANCERS: *Lexicon Attorneys*
Corner of Westbourne and Clevedon Roads,
Central, Gqeberha/Port Elizabeth
P.O. Box 23348, PORT ELIZABETH
Telephone: 041 373 7434
Fax: 041 373 7431
("the Conveyancers")

L. SURETY/IES FOR THE PURCHASER (IF ANY):
NAME/S: _____
ADDRESS: _____

M. MANAGING AGENT: _____

N. ESTATE AGENT AND COMMISSION:
1. Name of Estate Agency: _____
2. VAT Number: _____
3. Name of agent: _____
4. Income tax number: _____
5. Cell number: _____
6. E-Mail address: _____
7. Commission is calculated at the rate
agreed in terms of the mandate agreement _____
or _____ %
of the purchase price plus VAT.

O. CONTRACTOR
1. Name: O Steyn Construction CC, Registration No
1989/034087/23, represented by Ockert
Hermanus Steyn.
2. Physical Address 3 – 7th Avenue, Newton Park, Port
Elizabeth, 6045

3. Postal Address: P O Box 34837, Newton Park, Port Elizabeth, 6055
4. Telephone Number: (041) 3655602
5. Fax Number: (041) 3655606
6. E-Mail Address: okisteyn@gmail.com

CONDITIONS

1. BACKGROUND

The parties record the following background to this agreement:

- 1.1 The Seller is the owner of the Property.
- 1.2 The Seller is in the process of developing the Property by way of a phased Sectional Title Development ("the Development"), in terms of which it, inter alia, will acquire the real right to extend the Development in terms of the STA .
- 1.3 Home Market intends to erect the Buildings in accordance with approved plans ("the Plans").
- 1.4 Home Market has engaged the Contractor in order to construct the Development and, accordingly, the Unit.
- 1.5 The Seller intends applying in terms of the STA for the opening of a Sectional Title Register in respect of the Buildings on the Property and procuring cession to itself of the real right to extend referred to above.
- 1.6 The Purchaser wishes to purchase the UNIT described in Clause C of the Schedule.

2. INTERPRETATION

In this Agreement, unless otherwise indicated by context:

- 2.1 the words and phrases used and/or defined in this Agreement shall have the meanings assigned to them therein;
 - 2.1.1. **Buildings** shall mean all the buildings to be constructed on the Property;
 - 2.1.2. **CPA** shall mean the Consumer Protection Act 68 of 2008;

- 2.1.3. **Effective Date** of this Agreement shall be the date upon which this Agreement is signed by the Seller;
- 2.1.4. **Exclusive Use Area** shall mean the exclusive use area described in Clause C1.3. of the Schedule, to be allocated in terms of the rules to the STA;
- 2.1.5. **FICA** shall mean Financial Intelligence Centre Act 38 of 2001;
- 2.1.6. **HCPMA** means the Housing Consumers Protection Measures Act, 1998;
- 2.1.7. **Home Market** means the Home Market NPC 2002/013335/08, the Seller
- 2.1.8. **NHBRC** shall mean National Home Builders Registration Council;
- 2.1.9. **Parties** shall mean the Seller, Purchaser, the Contractor and Home Market, and/or any combination of them;
- 2.1.10. **POPIA** means the Protection of Personal Information Act 4 of 2013;
- 2.1.11. **Property** shall mean Erf 422 Wittedrift ;
- 2.1.12. **Section** shall mean the section described in Clause C1.1. of the Schedule;
- 2.1.13. **STA** shall mean the Sectional Titles Act 95 of 1986;
- 2.1.14. **Unit** shall mean the unit described in Clause C of the Schedule;
- 2.1.15. **VAT** and **VAT ACT** shall mean Value Added Tax and The Value Added Tax Act 69 of 1991.
- 2.2 words importing the singular shall include the plural and vice versa, and words importing a particular gender shall include the other genders;
- 2.3 clause headings are for guidance only and are not relevant to the interpretation hereof;
- 2.4 reference to all natural person shall include a reference to a juristic person or vice versa;

- 2.5 reference to days, months or years shall be construed as Gregorian calendar days, months or years.
- 2.6 when any number of days is prescribed in this Agreement, the days shall be reckoned exclusive of the first and inclusive of the last, unless the first or last day falls on a Saturday, Sunday or public holiday in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.7 the termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such termination or which of necessity must continue to have effect, notwithstanding that the clauses themselves, don't provide for this.
- 2.8 The provisions of the preamble are specifically incorporated in this Agreement.
- 2.9 The Agreement contains the whole agreement between the Parties relative to the subject matter hereof and there are no other conditions, stipulations, warranties or representations which are binding between the Parties other than those recorded herein. No variation of any of the terms and conditions of this Agreement shall be binding on the parties unless committed to writing and signed by the respectively.
- 2.10 The grant of any concession or condonation of any breach of the terms and conditions of this Agreement, or other act or relaxation or indulgence on the part of the Seller shall not in any way constitute, operate as or be deemed to be a waiver by the Seller of any of its rights under this Agreement nor shall it constitute a novation of this Agreement.

3. APPLICATION OF THE CPA

- 3.1 For the purposes of this Agreement, the Seller is acting in the ordinary course of its business.
- 3.2 If the Purchaser is a natural person, or an entity with an annual turnover or asset value of less than R2 000 000.00 (two million rand) at the same time of entering into this Agreement, then the CPA applies to this transaction.
- 3.3 Therefore, where it is necessary to comply with the CPA, certain clauses in the agreement have been highlighted in order to draw the Purchaser's attention thereto.

4. SALE

The Seller hereby sells, and the Purchaser hereby purchases:

- 4.1 a Section in the Development (“the UNIT”) comprising a portion of the buildings erected or to be erected in terms of the Scheme to be established in terms of the STA.
 - 4.1.1. UNIT Number and exclusive use areas numbers are set out in Clause “C” in the schedule;
 - 4.1.2. As per layout, plan and specification annexed hereto;
- 4.2 An undivided share in the common property in the land and buildings as shown and more fully described on the plans apportioned to the sections in accordance with the participation quota (the “PQ”) of the sections to be specified in a schedule to be endorsed on the Sectional Plan to be prepared in terms of the STA.

5. PURCHASE PRICE AND PAYMENT

The purchase price of the Unit shall be as set out in Clause D of the Schedule payable as follows:

- 5.1 A deposit in the amount as stipulated in Clause E1 of the Schedule shall be paid to the Conveyancers. The Conveyancers are authorised to invest the deposit in an interest-bearing account for the benefit of the Purchaser, as contemplated in Section 86 of the Legal Practice Act, until date of registration of transfer.
- 5.2 The balance of the purchase price in the amount as stipulated in Clause E2 of the Schedule shall be payable against registration of transfer of the UNIT into the name of the Purchaser, for which payment the Purchaser will within 14 (Fourteen) days of fulfilment of the suspensive conditions (if any), furnish the Conveyancers with cash or a guarantee approved by the Sellers conveyancers. The Conveyancers may request more than one guarantee.
- 5.3 Should the balance of the purchase price be paid in cash to the Conveyancers, they are authorised to invest the balance of the purchase price in an interest-bearing account for the benefit of the Purchaser, as contemplated in the Legal Practice Act, until date of registration of transfer.

- 5.4 The interest which accrues to the Purchaser will be paid to the Purchaser after deducting of the professional fee and costs for administering the investment, as soon as possible after date of registration of the transfer. While the funds are so invested with a bank, the funds are not protected against a possible liquidation of that bank.
- 5.5 All the payments to be made in terms of this agreement shall be made by the Purchaser to the Seller free of exchange without deduction or set-off.
- 5.6 The Seller and the Purchaser are required to comply with the FICA and consequently:
- 5.6.1 will, immediately upon request by the Conveyancers, furnish the Conveyancers with such documents and all such other information which the Conveyancers require from them in terms of FICA, including, but not limited to, certified copies of Identity documents and utility bills.
- 5.6.2 Acknowledges that any amounts paid by the Purchaser in terms of this agreement to the Conveyancer, cannot be invested by the Conveyancers, and accordingly interest cannot accrue on such amount until such time as the Purchaser has complied with FICA requirements as are required and requested by the Conveyancers.
- 5.6.3 Abandons any claim for interest, where the claim arises from the Conveyancers being unable to invest any amount as a result of the Purchaser not having properly complied with FICA.

6. **VENDOR FOR VAT**

Home Market is a vendor for VAT, and accordingly the Purchase Price is inclusive of VAT.

7. **SECTIONAL PLAN AND VARIATION OF BUILDING PLANS**

- 7.1 The Purchaser acknowledges that the Sectional Plan of the Scheme has not yet been prepared or approved and that accordingly the exact and final boundaries and area of the UNIT and the exclusive use areas will be those shown on the Sectional Plan as approved from time to time.
- 7.2 The Seller shall be entitled to vary the Plans and/or specifications of finishes for the Building, any parking areas and garages to such extent as may, in the Home Market's opinion, be reasonably necessary to:

- 7.2.1. Meet any requirements of any competent authority;
 - 7.2.2. Meet any special feature of the property;
 - 7.2.3. Meet any special impediments such as water, sewer or electrical lines either above or under ground or any rock or other soil condition;
 - 7.2.4. Give effect to any changes in materials, finishes or fittings which the Seller considers to be appropriate or which may not be readily available at the time due to shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the building and/or the UNIT; or
 - 7.2.5. To obtain the approval of the Sectional Title Development Scheme and/or the opening of the Sectional Title Register.
 - 7.2.6. The UNIT is sold subject to all conditions and servitudes attaching thereto and all conditions imposed by the STA.
- 7.3 The Seller shall similarly be entitled to vary the number/s allocated to the UNIT and the situation of any parking bays on the Plans.
- 7.4 The Purchaser shall not be entitled to claim cancellation of this Agreement or any such reduction in the purchase price by reason of any variation in the size of the UNIT.
- 7.5 The Purchaser undertakes to accept transfer of the UNIT as defined and renumbered in the final Sectional Plan approved by the Surveyor General.

8. RISK AND OCCUPATION

- 8.1 It is recorded that the UNIT is in the course of planning and that construction will commence as soon as possible but only after sufficient UNITS in the Phase in which this UNIT is to be built have been sold to justify the Home Market proceeding with the specific phase in the Development.
- 8.2 Home Market shall give the Purchaser possession on the Anticipated Occupation Date set out in Clause "H" of the Schedule or such alternate as may be notified to the purchaser by the Home Market in writing at any time (in which event Anticipated Occupation Date shall mean such earlier date).

- 8.3 Home Market does not guarantee that the UNIT will be ready for possession and occupation on the Anticipated Occupation Date and may give notice to the Purchaser in writing to extend such date, in which event "Anticipated Occupation Date" shall mean such extended date.
- 8.4 If for any reason whatsoever, the Home Market is unable to give the Purchaser occupation of the property on the Anticipated Occupation Date, the Purchaser shall not have a claim as a result thereof.
- 8.5 Home Market shall deliver to the Purchaser a notice in writing giving him 30 (thirty) days notice of the Anticipated Occupation Date on which the UNIT will be available for possession and/or occupation by the Purchaser and the Purchaser shall be obliged to take occupation on the date stipulated in the said Notice ("the Occupation Date").
- 8.6 All risk and benefit of the UNIT shall pass to the Purchaser on the Occupation Date.
- 8.7 If the Occupation Date precedes the transfer date, the Purchaser shall pay to Home Market occupational interest in the amount recorded in Clause "I" of the Schedule from Occupation Date to date of transfer.
- 8.8 With effect from the Occupation Date, the Purchaser shall be liable for an amount equal to all rates and taxes and levies and other duties that would be levied in respect of the UNIT as if the Sectional Title Register had been opened and shall immediately refund to Home Market a proportionate share of any rates and taxes and other duties paid by Home Market in respect of any period after the Occupation Date.
- 8.9 The Purchaser acknowledges that on the Occupation Date the common property and other sections may be incomplete and that the Purchaser and other occupiers will necessarily suffer inconvenience from building operations and from the noise and dust resulting there from and that the Purchaser shall have no claim whatsoever against Home Market by reason of such inconvenience.
- 8.10 the Purchaser hereby acknowledges that he will not have a claim in respect of the aforesaid against the Seller, the Contractor, or their contractors and/or employees as a result of any nuisance, noise or other inconvenience howsoever arising and the Purchaser hereby specifically acknowledges that the property will under these circumstances still be reasonably suitable for the purpose for which it is generally intended (namely residential accommodation), as envisaged in terms of Section 55 of the CPA.

- 8.11 To the extent permitted by law, in particular the CPA, the Purchaser agrees that he will not be entitled to withhold performance of any obligation or payment of any amount due to the Seller and specifically waives the right to claim that he is entitled to withhold performance by reason of the Seller allegedly not having granted occupation of the property timeously to the Purchaser, or by reason of the parts of the Scheme, Common Property and access road not being completed on the Occupation Date and/or date of transfer.
- 8.12 Should any dispute arise between the Seller and the Purchaser as to the date when the UNIT is available for beneficial occupation, then the decision of an architect appointed by Home Market as to the date of occupation shall be final and binding upon the parties.
- 8.13 However, should the Seller fail to give the Purchaser transfer within one year after date of possession, the Purchaser may cancel this agreement by giving written notice thereof to the Seller, care of Home Market at its chosen domicile. In this event the Purchaser may claim return of the deposit together with any money paid towards the purchase price and the interest accrued thereon.

9. **TRANSFER**

- 9.1 It is recorded that the Seller will only be in a position to give transfer of the UNIT to the Purchaser after the opening of the Sectional Title Register in respect of the phase of the Sectional Title Development of which the UNIT forms a part of.
- 9.2 Subject to clause 9.1 transfer of the UNIT to the Purchaser shall be passed by the Conveyancers and shall be given and taken,
- 9.2.1. after fulfilment of waiver of the suspensive conditions;
- 9.2.2. against payment of the full purchase price.
- 9.3 The Purchaser hereby acknowledges that owing to the complexities and interrelated steps involved in opening the STA and registering title to it for all the prospective, purchasers, it is beneficial and in the best interest of the Purchaser that the Conveyancers of Home Market, attend to the registration of transfer of the UNIT.
- 9.4 Home Market shall be liable for the following:-
- 9.4.1. all costs of transfer together with VAT iro such costs;

9.4.2. all bond registration costs together with VAT iro such costs if applicable, provided that the Conveyancers are instructed to attend to registration of such bond. In the event that any other conveyancer/attorney is so instructed then the Purchaser shall be liable for such costs.

9.5 The Purchaser shall on request from the Conveyancers:-

9.5.1. sign all transfer and bond documents necessary to register transfer of the UNIT.

9.5.2. pay an assessment of rates and/or levies due, to Home Market or the Body Corporate, as the case may be, in respect of the period from the Occupation Date.

9.5.3. pay an estimate of the assessment rates, if any, and such other local authority expenses if any, for which the Purchaser will be liable in respect of a period from the transfer date to the end of the current rating year.

10. **PURCHASER'S ACKNOWLEDGEMENT / WARRANTIES**

10.1 Income Tax Status

The Purchaser warrants that he or she has complied with his or her tax obligations to the South African Revenue Services and that he or she will continue to comply with such obligations until transfer of the UNIT to the Purchaser.

10.2 Representations

It is recorded that the Seller or its Agents may have used models and brochures and other advertising material in the marketing and presenting the proposed Development to the Purchaser and the public at large. The furniture, finishing the fittings shown in the advertising material were for advertising purposes only and the Purchaser acknowledges that the finishing's and fittings to his or her property will comply with the finishing schedule that he or she has chosen.

10.3 Member of Body Corporate

Against registration of the transfer of the UNIT into the name of the Purchaser, the Purchaser will become a member of the Body Corporate, which Body Corporate will adopt the Rules prescribed by the STA.

- 10.4 The UNIT sold is subject to approval of the Sectional Plan by the Surveyor General and the Registrar of Deeds and subject to any applicable conditions of title. The Purchaser is aware that the Participation Quota will be changed as further phase developments are completed.
- 10.5 The Purchaser shall not have any claim to be relieved of any obligation under this Agreement or be entitled to any remission of monies due in terms hereof by reason of any delay or failure in obtaining approval of the Development or opening of the Sectional Title Register in terms of the STA or any other delay of any kind.
- 10.6 The Purchaser is aware that should the removal of the restrictive conditions in respect of the Property not be procured, or should the Development or Sectional Plan not be approved or the Sectional Register not be opened, it will not be possible for the Seller to transfer the UNIT to the Purchaser. In the event, the Purchaser acknowledges that the Purchaser's rights shall be limited to those set out in the Agreement and that he shall have no further claim upon the Seller for damages or otherwise by reason of the failure to transfer the UNIT to the Purchaser in terms of the STA.

11. COMPLETION AND HANDOVER AND WARRANTIES

- 11.1 The Home Market will take all reasonable steps necessary to obtain registration of the Sectional Plan in respect of the Buildings forming part of the Development in terms of the STA.
- 11.2 The Home Market does not furnish any explicit or tacit guarantees in regard to the UNIT. The Purchaser acknowledges that he was not persuaded into entering into this agreement by any representations made to him by the Home Market or any representative of the Seller, other than what is contained in this agreement.
- 11.3 The Purchaser or his representative shall within 30 (thirty) days from the Occupation Date prepare a list of defects in respect of the UNIT.
- 11.4 The list so prepared will be delivered to the Home Market who will add and/or omit any items therefrom which it considers reasonable with due regard to the annexed plans and specifications. The Purchaser will issue Home Market a single comprehensive written list of any such patent defects to be remedied or items to be completed and Home Market will attend to such defects and items within a reasonable period thereafter. Home Market will not be responsible for any damage or loss caused by

wear and tear, misuse, neglect, negligence or accident unless caused by Home Market or those for whom it is responsible. The Purchaser will provide the Developer with reasonable access to work in order to enable him to fulfil his obligations.

- 11.5 Provision of a defect lists and the remedying thereof shall not delay transfer. The Purchaser will not refuse to take transfer by reason thereof.
- 11.6 To the extent permitted by Law, in particular the CPA, the Purchaser acknowledges that the final defects list issued by an architect appointed by Home Market will bind the Parties and the Purchaser will be precluded from raising at a later time any defect, which is alleged to have been a patent defect on the date of the inspection, which does not appear on the list and will have no claim arising from such alleged defect.
- 11.7 Home Market will, within a reason time after the final defect list, remedy all defects recorded therein.
- 11.8 Home Market will remedy any material latent defect in the property due to faulty workmanship or materials manifesting itself within 90 (ninety) days after the Occupation Date, provided the Purchaser will have notified Home Market thereof within the said period.
- 11.9 Any dispute between the Parties in relation to a defect shall be referred to an architect appointed by Home Market for determination, whose decision will be binding upon the Parties.
- 11.10 Both the Home Market and the Contractor warrant that they are registered as home builders with the NHBRC as contemplated by the provisions of HCPMA. The Home Market and the Contractor further warrant that they will be bound by and comply with the provisions of HCPMA. To this end, without detracting from the generality of the foregoing, Home Market and the Contractor shall be obliged at their expense:
 - 11.10.1. repair any roof leaks that occur within 12 (twelve) months of the Occupation Date, provided that the Purchaser notifies Home Market thereof in writing within the said period;
 - 11.10.2. rectify any defect of a patent or latent nature in respect of the substructure, the superstructure, manifesting within a period of 5 (five) years of the Occupation Date, provided the Purchaser notifies Home Market in writing thereof within the said 5 (five) year period. Roof leaks are covered for 1 (one) year from date

of occupation, provided the Purchaser notifies Home Market within the 1 (one) year period.

- 11.11 In the event of the CPA does not apply to the transaction between the parties it is hereby recorded, despite any other provision to the contrary, that clauses 11.2 – 11.9 will not apply and that the UNIT is sold voetstoots to the Purchaser and that the Purchaser shall have no claim of any nature against the Seller for any defects in the UNIT, except as provided for in this agreement.
- 11.12 the UNIT is sold subject to the terms and conditions and servitudes mentioned or referred to in the current and/or prior title deeds and to the conditions of establishment of the Township in which it is situated and to the zoning applied to it under any town planning scheme, the Seller shall not profit by any excess nor shall it be answerable for any deficiency in the extent thereof. None of the Seller, Contractor or the Agent shall be responsible for pointing out to the Purchaser any surveyor's pegs or beacons in respect of the UNIT unless requested to do so by the Purchaser or unless Home Market and/or Agent had knowledge of any material deficiencies in the extent;
- 11.13 the Purchaser acknowledges that he has not been induced into entering into this Agreement by any express or implied information, statement, advertisement or representation made or given any warranties in respect of the UNIT or anything relating thereto, by the Agent or any other person, or by or on behalf of the Seller and that is not contained in this Agreement;
- 11.14 the Purchaser acknowledge that he has fully acquainted himself with the UNIT that he has purchased alternatively that he/she has elected to purchase the UNIT without fully acquainting him/herself therewith.
- 11.15 The UNIT shall be built substantially in accordance with the specifications and plans annexed hereto.
- 11.16 The Seller / Developer shall be entitled to:
- 11.16.1. substitute items of a similar standard and quality for any specified item referred to in the specifications;
 - 11.16.2. vary the plans of the UNIT should it be considered necessary for technical or aesthetic reasons;

- 11.16.3. change the area or layout of the UNIT or any of the components thereof should the change be reasonably necessary for technical or aesthetic reasons.
- 11.17 The Purchaser will be obliged to accept such changes and have no claim by reason thereof.
- 11.18 Home Market will not agree to any extras, omissions, variations or changes of any nature to the Plans and/or the Specification and Schedule of Finishes, unless same is recorded in writing and signed by both parties.
- 11.19 The sale is also subject to all conditions and servitudes contained in or referred to in the deed, and to all limitations laid down by the statutory authority and/or Body Corporate and to all conditions of any applicable town planning scheme or any sub-divisional or approval requirements.
- 11.20 The Purchaser shall not be entitled to withhold any amounts payable to the Seller under this agreement for any reason whatsoever in view of the seller's undertaking and warranties in this clause, even if the Bank mentioned in Clause 18 retains any amount pending completion of work. If the Bank does retain any such amount, the Purchaser shall in the first instance pay any such amount to Home Market and recover the amount from the Bank.

12. DAMAGE OR DESTRUCTION OF THE BUILDINGS

- 12.1 If the buildings forming part of the Development comprising the UNIT are damaged or destroyed:
- 12.1.1. After a Sectional Title Register has been opened and the Body Corporate established, in accordance with the provisions of Section 48 of the STA; or
- 12.1.2. Before the Body Corporate has been established the Seller shall apply all monies received from the proceeds of any applicable insurance policy to the repair or replacement of the buildings.
- 12.2 If the buildings are replaced by new buildings, such new buildings shall, subject to the insurance money being sufficient, be erected in accordance with the plans for the existing buildings, and the Purchaser shall be obliged to accept a UNIT comparable with the UNIT to which he was entitled in the existing building. The provisions of this Agreement shall apply equally to such new UNIT and to the Purchaser's right of occupation thereof. If there is any dispute as to the new accommodation to which the

Purchaser is entitled and obliged to accept in pursuance of the paragraph, the decision of Home Market's architect shall be binding.

12.3 Unless expressly provided to the contrary, the Purchaser shall have no claim against the Seller for damages:

12.3.1. Arising by reason of his loss of the right of occupation of the UNIT from causes beyond the control of the Seller, whether such right be lost permanently or temporarily.

12.3.2. Arising by reason of inadequate insurance, provided such insurance had been effected for the amount recommended by the Body Corporate or pending establishment of the Body Corporate, by an established firm of insurance brokers as being the full replacement value.

12.3.3. Arising out of the winding up consequent upon the loss or destruction of the UNIT.

13. **UNSOLD UNITS**

13.1 Home Market shall be deemed to be a Purchaser in respect of each unsold UNIT in the Development for the purpose of determining the Seller's rights and obligations in respect of such unsold UNITS.

13.2 Home Market's voting rights and share of insurance proceeds and of compensation in respect of any expropriation as provided in this Agreement shall be determined in accordance with the Seller's rights in relation to unsold UNITS.

14. **PHASED DEVELOPMENT**

14.1 It is recorded that the owner of the Property and/or Home Market reserves to itself the right to develop the property in Phases. In this regard they may develop the common property as a Phased Development in terms of Section 25 of the STA.

14.2 The Purchaser hereby consents:

14.2.1. To the owner and/or Seller preparing and submitting in terms of Section 25 a Scheme or Schemes to the local authority in terms of the said Section for approval and upon such approval taking all necessary steps to erect buildings on the land and thereafter applying for the registration of a Sectional Plan or Plans;

- 14.2.2. To the imposition by the Seller as conditions of title, all or any of the terms of this clause.
- 14.3 Neither the Purchaser nor any successor-in-title to the Purchaser or another person to whom the Purchaser or his successors-in-title to the UNIT has granted any real right, shall be entitled to withhold his consent to the opening of a STA or registers, the Phased Development, or a mortgage, as contemplated in this agreement.
- 14.4 The Purchaser hereby grants to the Seller an irrevocable Power of Attorney with effect from the time the Purchaser becomes the registered owner of the UNIT to attend for the above purposes the necessary meeting/s of the Body Corporate and on behalf of the Purchaser to vote at the meeting/s.
- 14.5 The Purchaser agrees to allow the Seller to exercise its positive right to proceed with the Development in the manner envisaged herein and shall not be entitled to interfere with or obstruct the Seller from erecting on the common property or any portion thereof, the buildings contemplated above; the Purchaser shall not have the right of use of or access to, to which he would otherwise be entitled, any portion or portions of the common property upon which the buildings are being erected until such time as the aforesaid buildings have been completed and the Sectional Plan or plans thereof registered, provided that the seller shall pay all rates and taxes and imposes, calculated pro rata to the area of land involved, due in respect of such portion of the land whilst this condition remains applicable.
- 14.6 The Purchaser shall have no right to or in any UNIT comprising the said buildings of which UNITS the Seller shall be the sole owner, and Certificate of Registered Sectional Title shall be issued to and in the name of the Seller, who will be entitled to dispose of or otherwise deal with such UNITS for its own exclusive benefit and account.
- 14.7 The Purchaser consents to his PQ being reviewed and adjusted as provided for in the STA upon registration of the Sectional Plan or Plans of the aforesaid building or buildings.
- 14.8 The Purchaser undertakes to sign upon request by the Seller all such documents as may be necessary to enable the Seller to proceed with the aforesaid Phased Development.

- 14.9 Should the Purchaser fail or refuse to sign any such document, then the Purchaser hereby appoints the Seller or its nominee as his attorney and agent in *rem suam* to sign on his behalf.
- 14.10 The proceeds of the sale of all the UNITS comprising the buildings shall be for Home Market's sole account and shall not be for the account of the Body Corporate.
- 14.11 The Purchaser moreover undertakes to give notice to any prospective bondholder or Purchaser of the UNIT of the foregoing and to procure its/their consent in terms of Section 21 and/or Section 25 of the STA of 1985 and to any alternations or extensions that Home Market may effect pursuant to the provisions of this clause, the costs of such consent to be for the account of Home Market.
- 14.12 The Purchaser acknowledges being aware that the STA in respect of any floor or storey can of necessity only be opened with or subsequent to the Register in respect of any lower floor or storey.
- 14.13 The Purchaser acknowledges that on date of registration of the UNIT, the other UNITS in this Development may be incomplete and that the purchaser and other occupiers may suffer inconvenience from building operations and from the noise and dust resulting therefrom and the Purchaser shall have no claim whatsoever against the Seller or the contractor by reason of any such inconvenience.

15. **COMMISSION**

- 15.1 Home Market shall be liable for payment of agent's commission due to the Estate Agent in the amount as recorded in Clause N of the Schedule to the Deed of Sale. The commission shall be deemed to have been earned upon fulfilment of the conditions contained herein and shall be paid by no later than registration of transfer. The Home Market hereby instructs the Conveyancers to pay the commission from the proceeds of the sale on date of transfer.
- 15.2 The Purchaser warrants that it was not introduced to the property by any other agent, except the agent as stipulated in Clause N of the Schedule.
- 15.3 The Purchaser indemnifies the Seller and holds them harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made / suffered by them arising out of a breach of the foregoing warranty.

16. IMPROVEMENTS AND RESALE

Until registration of transfer the Purchaser may not:

- 16.1 Make any alterations to the building and structures on the UNIT without the written consent of Home Market, the Purchaser shall not be entitled to any compensation for such improvements if this agreement is cancelled.
- 16.2 Sell the UNIT without the prior written consent of Home Market which shall not be unreasonably withheld if the Purchaser has fulfilled all the Purchaser's obligations.

17. DEFAULT

- 17.1 If Home Market or the Purchaser fails within 14 (fourteen) days of the giving of a written notice to carry out any of the terms and conditions of this Agreement, either may sue the defaulting party for specific performance, or alternatively cancel this sale without prejudice to any other rights the Seller or the Purchaser may have in law.
- 17.2 The cancellation shall be by written notice.
- 17.3 Should the purchaser be the defaulting party, and should Home Market choose cancellation of this contract and to claim damages from the Purchaser, the Seller will be entitled to:
 - 17.3.1. cancel this agreement and to claim damages from the Purchaser. Pending determination of such damages, the deposit and any other amounts paid by the Purchaser to the Conveyancers shall be retained in trust until finalisation of the claim and will be applied to satisfy any successful claim brought by the Seller.
 - 17.3.2. The Purchaser's attention is specifically drawn to this clause, pursuant to the CPA and his initial hereto serves as proof thereof.
- 17.4 Any latitude or extension of time which may be allowed for any payment or any matter which the other party is obliged to perform or observe shall not be deemed to be a waiver of any right to require strict compliance with every provision of this Agreement.

- 17.5 The Seller or the Purchaser shall be entitled to recover from the defaulting party all costs taxed as between Attorney and Client on the High Court scale plus VAT, irrespective of whether a Summons is issued, due to the neglect or default in complying with this Agreement.

18. **MORTGAGE BOND**

The agreement is subject to the suspensive condition that the Purchaser (or the estate agent on behalf of the Purchaser) obtains a quotation (as referred to in the NCA) from a Financial Institution for the sum of not less than the amount set out in Clause "F" of the Schedule or such lesser amount as the Purchaser agrees to in writing, on or before the date stipulated in Clause "G" of the Schedule hereof.

- 18.1 This condition shall be deemed to be fulfilled upon notification by the financial institution to the Purchaser or his agent of a quotation having been issued upon normal banking conditions.
- 18.2 If such loan is approved by the date and in the manner as set out above, this agreement shall become of full force and effect, but if not, it shall lapse.
- 18.3 The Purchaser agrees to do all in the Purchaser's power to obtain approval of the loan and to sign all necessary documents and to comply with the conditions of the loan. If failure to obtain the loan is due to the default or neglect of the Purchaser, then this Deed of Sale shall at the option of Home Market, be binding on the Purchaser.
- 18.4 The Purchaser hereby authorises Home Market or the estate agent to apply for the loan referred to above.
- 18.5 The Purchaser shall be responsible for the payment of the registration costs of any mortgage bond to be registered in respect of this transaction.

19. **CERTIFICATES**

19.1 ELECTRICAL CERTIFICATE OF COMPLIANCE

To comply with the Electrical Installations Regulations, as published in Government Notice 14350 dated 23 October 1992 under the Occupational Health and Safety Act No 85 of 1993, Home Market, as a user of the electrical installations at the UNIT, shall furnish a valid certificate of compliance, used by and electrical contractor who is registered in terms of the Regulations, not older than 3 (three) months from date of sale, to the Conveyancers.

- 19.1.1. All costs incurred in obtaining such a certified, including costs of repairs and replacements in order for the certificate to be issued, shall be paid by Home Market.
 - 19.1.2. Upon Home Market furnishing the Seller's conveyancers with such a certificate, the Purchaser shall have no claim in respect of electrical installations and no further liability in this regard shall rest on the Seller.
 - 19.1.3. Home Market warrants that subsequent to the issue of such certificate, there will have been no addition or alterations to the electrical installations existing on the UNIT.
- 19.2 To comply with the Pressure Equipment Regulations 2009 made by the Minister of Labour under Section 43 of the Occupational Health and Safety Act 85 of 1993, the Home Market will, if applicable, furnish a certificate of conformity in respect of any gas installations at the UNIT, from an authorised person registered with the liquefied Petroleum Gas Safety Association of Southern Africa, not older than 3 (three) months from date of sale, to the Conveyancers.
 - 19.2.1. All costs incurred in obtaining such a certificate, including corrective work, in order for the certificate to be issued, shall be paid by the Home Market.
 - 19.2.2. Upon furnishing the Conveyancers with such a certificate, the Purchaser shall have no claim against the Seller or Contractor in respect of any gas installations at the property and no further liability shall rest on them.
 - 19.2.3. The Seller warrants that subsequent to the issue of such certificate, there will have been no addition or alternation to the gas installations existing on the UNIT.
- 19.3 To comply with Regulation 12 of the Electrical Machinery Regulations, the Seller will, if applicable, furnish a certificate of compliance in respect of any electric fence system. The electric fence system certificate is separate from the electrical compliance certificate in 19.1 above.

20. **EXTENSION OF TIME**

20.1 Home Market reserves the right to extend any time period by which the Purchaser is bound to perform any obligation in terms of this agreement.

20.2 Such extension shall not be binding on Home Market unless given in writing by the Conveyancers on behalf of the Seller.

21. **SIGNATURE OF COPIES**

21.1 This Agreement shall also be binding if each party has signed a separate copy.

21.2 A telefaxed or emailed copy may constitute proof of signature.

22. **CONDITIONS RELATING TO SECTIONAL TITLE**

22.1 From the Date of Occupation the Purchaser will comply with the Rules for the control and management of the building/s of which the UNIT is part.

22.2 On transfer the Purchaser will become a member of the Body Corporate of the building/s of which the UNIT forms part.

22.3 The Purchaser accepts the UNIT subject to all the provisions of the STA relating to:

22.3.1. the duties and powers of the Body Corporate.

22.3.2. the rights and duties of an owner of a UNIT in terms of the STA.

23. **MANAGING AGENT**

The Purchaser acknowledges that Home Market has the right to appoint a Managing Agent of the Body Corporate for the first year.

24. **DOMICILIUM**

24.1 The parties choose *domicilium citandi et executandi* (i.e. the addresses for the service of notices, summonses etc) for all purposes of this agreement as follows:

24.1.1. Home Market at 7 Upper Dickens St, Central, Gqeberha/Port Elizabeth lance@mplan.co.za

24.1.2. The Purchaser at the address set out in Clause "A3" of the Schedule.

24.1.3. The Contractor at the address set out in Clause "O" of the Schedule.

24.2 Either party may nominate an address in substitution for an address set out above by giving the other party 21 (twenty-one) days' written notice.

24.3 Any notice shall be given by delivery by hand to the hand delivery address or by email.

24.4 Delivery or service may also take place by a method acceptable for the service of a High Court of Magistrate's Court summons.

25. WAIVER OF CONDITIONS AND LAPSE OF AGREEMENT

25.1 The Purchaser may, at any time prior to the fulfilment of any suspensive condition contained in this Agreement, advise the Home Market in writing that he waives the benefit of such condition, in which event this Agreement will no longer be subject to such condition.

25.2 Should any suspensive condition contained in this agreement not be timeously fulfilled, the entire Agreement shall automatically lapse and be of no further force or effect. In such event all amounts paid by the Purchaser (excluding the occupational interest) shall be refunded to him together with any interest that has accrued thereon.

26. PURCHASER'S COOLING OFF RIGHT

The Purchaser hereby acknowledges that the above Agreement contains provisions which are of the nature referred to in Section 49 of the CPA.

Section 49 of the CPA stipulates as follows:

- 1 Any notice to consumers or provision of a consumer agreement that purports to –
 - (a) limit in any way the risk or liability of the supplier or any other person;
 - (b) constitute an assumption of risk or liability by the consumer;
 - (c) impose an obligation on the consumer to identify the supplier or any other person for any cause; or
 - (d) be an acknowledgement of any fact by the consumer,

must be drawn to the attention of the consumer in a manner and form that satisfies the formal requirements of subsections (3) and (5).

2

3 A provision, condition or notice contemplated in subsection (1) of (2) must be written in plain language, as described in Section 22.

4 The fact, nature and effect of the provision or notice contemplated in subsection (1) must be drawn to the attention of the consumer –

(a) In a conspicuous manner and form that is likely to attract the attention of an ordinary alert consumer, having regard to the circumstances; or

(b) Before the earlier of the time at which the consumer –

(i) enters into the transaction or agreement, begins to engage in the activity, or enters or gains access to the facility; or

(ii) is required or expected to offer consideration for the transaction or agreement.

5 The consumer must be given an adequate opportunity in the circumstances to receive and comprehend the provision or notice as contemplated in subsection (1)".

The Purchaser hereby acknowledges that prior to signature of this Agreement he was granted adequate opportunity to receive and comprehend the Agreement, and that he understood the content thereof and that the Seller/Developer and/or his Agent complied with the provision of Section 49 of the CPA.

27. **PERSONAL INFORMATION**

27.1 By signature of this Agreement, the Purchaser agrees to provide personal information to the Parties.

27.2 Signature of this Agreement constitutes consent, as required under Section 11(1)(a) of POPIA.

- 27.3 The Parties will have access to personal details which have been furnished for the purposes of attending to the sale and registration of transfer and mortgage bond relating to this Agreement and all matters ancillary thereto.
- 27.4 The Parties are authorised to release personal information to any financial institution, mortgage originator, insurer, attorney, body corporate, estate agent as may be involved in this transaction as well as any other related Parties for the purposes of this transaction.

28. **GENERAL**

- 28.1 The parties acknowledge that this agreement constitutes the entire contract between them and that no other conditions, warranties or representations have been made by either party or their agents other than those included in this agreement.
- 28.2 No variation of the terms and conditions of this agreement or any consensual cancellation thereof shall be of any force or effect unless reduced to writing, and signed by the parties or their duly authorised representatives.
- 28.3 No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.
- 28.4 All clauses in this agreement are separate and severable from each other and shall each be capable of standing on their own. Any provision of clause of this agreement which is or becomes unenforceable or illegal or void may be removed from this agreement as if it never formed part of this agreement while the remaining provisions or clauses shall continue to operate and be of full force and effect.
- 28.5 Should the agreement be signed by more than one person as co-purchaser, the signatories shall be jointly and severally liable to comply with all the obligations of the purchaser as set out in this agreement
- 28.6 The Purchaser warrants that all consents required in terms of the Matrimonial Property Act No.88 of 1984 have been obtained.

29. **CONTINUED MARKETING**

Home Market may continue to market the Unit until such time as all suspensive condition/s contained herein has / have been fulfilled.

Should Home Market, during this time, receive another acceptable unconditional offer ("the competing offer") to purchase the Property, it will have the right to call upon the Purchaser by notice in writing to waive all suspensive conditions to which this offer is subject, thereby making this sale unconditional, within 3 (three) days (excluding weekends and public holidays) of the date when such notice is delivered to the Purchaser, or such extended period as Home Market in its sole discretion may allow ("the waiver period"). Such notice shall include a copy of the competing offer. If the Purchaser fails to waive his/her rights in writing within the waiver period, Home Market shall be entitled, but not obliged, to accept the competing offer, upon which this sale shall lapse and be null and void.

30. **SPECIAL CONDITIONS**

31. **SIGNATURES**

Signed at _____ on this _____

AS WITNESSES

1.

FULL NAMES

ADDRESS

For and on behalf of Seller who warrants his authority to sign

2.

FULL NAMES

ADDRESS

Signed at _____ on this _____

AS WITNESSES

1.

FULL NAMES _____

ADDRESS _____

For and on behalf of Purchaser who
warrants his/her authority to sign

2.

FULL NAMES _____

ADDRESS _____

As Surety and Co-Principal Debtor

The **CONTRACTOR** joins this agreement for the purposes of accepting all benefit, making all warranties, and assuming all obligations imposed upon it in terms of this agreement.

For and on behalf of the Contractor
who warrants his authority to sign

The **ESTATE AGENT** joins this agreement for the purposes of accepting all benefit, making all warranties, and assuming all obligations imposed upon it in terms of this agreement.

For and on behalf of the Estate Agent
who warrants his authority to sign