

**INFORMATION SCHEDULE TO
33@VIEW LIFESTYLE VILLAGE
AGREEMENT OF SALE AND BUILDING AGREEMENT**

A. SELLER: **33ATVIEW DEVELOPMENT (Pty) Ltd**
 Registration number: 2021/625923/07
 Barinor's Vineyard North, The Vineyards Office Estate, 99 Jip
 de Jager Road, Welgemoed, Cape Town, 7530

B. Purchaser/ Employer Information
 Complete section if the Purchaser is an Individual

INDIVIDUAL(S)	PURCHASER 1	PURCHASER 2 (if applicable)
Surname		
Full Name(s)		
Identity Number		
Income Tax Number		
Marital Status		
Marital Regime (if appl.)		
Full names of spouse		
Identity number spouse		
Spouse Income tax number		
Cell Phone Number		
E-mail Address		
Residential Address		
Postal address		

B. Purchaser/ Owner Information

Complete section if the Purchaser is a Juristic Person (Company/Close Corporation/ Trust)

JURISTIC PERSON	PURCHASER 1
Registered Name	
Registration Number	
Entity Income Tax No.	
Entity VAT No.	
Entity Registered Physical Address	
Entity Registered Postal Address	
Representative's Name	
Representative's ID	
Contact Number	
E-Mail Address	
Residential Address	
Postal Address	

The parties choose as valid *domicilium* address the street-, postal- and Email addresses stated in this information schedule.

Transaction Information

C. PROPERTY ADDRESS	
Scheme Name	33@VIEW
Type	
Estimated Square Metres of House (incl. Optional Extras if applicable)	
Erf Number	Portion of Erf 541 Rietvalleirand Extension 44 Township
Estimate Square Metres of Plot	
D. CONSIDERATION PAYABLE - CONTRACT SUM	
Erf Price (VAT Inclusive)	R
Building Costs (VAT Inclusive)	R
Optional Extras Costs (VAT Inclusive)	R
Building Cost PLUS Optional Extras Cost (VAT Inclusive)	R
TOTAL PURCHASE PRICE (Erf price plus Building Costs plus Optional Extras Costs)(VAT inclusive)	R
LESS Deposit	R
BALANCE PURCHASE PRICE	R
SUBJECT TO BOND FINANCE?	YES/ NO
MORTGAGE BOND AMOUNT	R
PROCEEDS FROM THE SALE OF ANOTHER PROPERTY IN THE AMOUNT OF:	R
E. INTEREST	The interim interest will be payable by the Purchaser to the financier
All Units	

F. ESTIMATED OCCUPATION DATE		<p>Twelve(12) Months(weather permitting) from the date of commencement of construction, subject to all the Local Authority building approvals and any other required approvals being in place, PROVIDED that this period will automatically be extended by another two months where construction is not completed. Any further extension of the completion date will be communicated in writing.</p> <p>The Contractor shall give a 30 day written notice of the final occupation date to the Purchaser.</p>	
G. ESTATE AGENT			
Listing Estate Agency		IGrow Wealth Investments (Pty) Ltd	
Registration Number of Listing Agent		2015/093828/07	
Agent Name			
Telephone:		E-Mail:	
Selling Agency (if other than Listing Agency):			
Registration Number:			
Agent Name:			
Telephone:		E-Mail	
H. TRANSFERRING ATTORNEY			
Full Name		Philip Coetzer Inc.	
Registration Number		2000 / 025862 /21	
Physical Address		<p>Falcon Crest Office Park, Unit 14</p> <p>142 South Street, Lyttelton, Centurion</p>	
Postal Address		PO Box 14369, Lyttelton, 0140	
Contact Person		Philip Coetzer	
Telephone (012) 667-5127/8		E-Mail philip.coetzer@philipcoetzerinc.co.za	
Trust Bank Account Name		Philip Coetzer INC	
Bank		Standard Bank	
Account Number		410248789	
Branch Code		012645 Electronic Payments: 051001	

I. BOND ATTORNEY			
Full Name		Hannes Gouws & Partners Inc	
Registration Number		1997/006654/21	
Physical Address		1st Floor, Lobby 3, Brooklyn Forum Building Cnr Veale & Fehrsen Streets, New Muckleneuk Brooklyn, Pretoria 0181	
Postal Address		Same	
Contact Person		Hannes Gouws	
Telephone	012 - 4010820/ 012- 3211008	E-Mail	hannes@hannesgouws.co.za

J. MORTGAGE ORIGINATOR			
Full Name		IGrow Home Loans	
Postal Address		PO Box 154, Durbanville, 7551	
Contact Person			
Telephone	021 979 2501	E-Mail	

K. ANNEXURES AND SCHEDULES	
ANNEXURE A	Agreement of Sale
ANNEXURE B	Building Agreement
SCHEDULE A	Specifications and Finishes
SCHEDULE B	House Floor Plans
SCHEDULE C	Site Development Plan
SCHEDULE D	Instruction to Invest
SCHEDULE E	General Plan
SCHEDULE F	Optional Extras
SCHEDULE G	Special Conditions (where applicable)

AGREEMENT OF SALE

33@VIEW

For the Sale of Own Title - The Plot

ENTERED INTO BY AND BETWEEN

SELLER

33ATVIEW DEVELOPMENT (Pty) Ltd

Registration number: 2021/625923/07

Barinor's Vineyard North, The Vineyards Office Estate, 99 Jip de Jager Road, Welgemoed, Cape Town, 7530 (hereinafter referred to as "the Seller")

and

PURCHASER

and

(hereinafter referred to as "the Purchaser (s)") with

reference to:

PROPERTY

ERF: _____ 33@VIEW

TERMS AND CONDITIONS IN RESPECT OF THE AGREEMENT TO PURCHASE IMMOVABLE PROPERTY

IMPORTANT NOTE

Although we have taken every effort in making this Agreement understandable in plain language we also understand that concepts and phrases may be difficult and intimidating to you. Please read and consider this Agreement and its Schedules carefully as it shall constitute a binding agreement. You will be requested to declare that you understand the content of this entire Agreement and more specifically the fact, nature and effect of clauses that are printed in bold type. Please note that printing a clause in bold type will not affect the enforceability of any of the other clauses of this Agreement. Please do not disregard any clauses not so emphasised as such clauses **will** be binding and enforceable. You are also encouraged to obtain independent legal advice.

1 RECORDAL

- 1.1 The Seller is the registered owner of Erf 541 Rietvalleirand Extension 44 Township, Registration Division J.R, The Province of Gauteng ("the Development Land") as depicted in Schedule E, attached hereto.
- 1.2 The Seller has obtained approval for the subdivision of Erf 541 Rietvalleirand Extension 44, Registration Division J.R, City of Tshwane (hereinafter also referred to as "the land") as a residential development herein referred to as 33@VIEW substantially in accordance with the Schedules annexed hereto marked "B" and Schedule "C", which **will** form a part of the development (also referred to herein as "the development").
- 1.3 The Seller intends to install municipal services to the boundary of the Property as required in terms of the subdivision conditions.
- 1.4 The Seller is hereby appointed as the Contractor to construct a house in terms of a Building Agreement to be concluded, between the Contractor and the Purchaser/Employer, simultaneously with this Agreement.
- 1.5 This Agreement of Sale and the Building Agreement is codependent and therefore if either one of the Agreements terminates, for whatever reason, then so does the other.

2 PURCHASE AND SALE

- 2.1 The Seller hereby sells to the Purchaser who hereby purchases the Erf (the Property) as contained in paragraph C of the Information Schedule at the purchase price in paragraph D of the schedule on the terms and conditions, read together with the attached Schedule of Particulars and the attached Schedules.
- 2.2 It is recorded that the VAT included in the purchase price was calculated at 15% (fifteen), being the current official VAT rate. Should the official VAT rate of 15% be increased or reduced, then, notwithstanding anything to the contrary contained or implied in this Agreement and if required as such by any applicable legislation, the VAT payable will be recalculated at the new VAT rate applicable to supply of the Property and any shortfall be paid by the Purchaser to the Transferring Attorneys (for credit of the Seller) on the date of transfer, but prior to the actual Deeds Office registration of transfer by way of a bank guaranteed cheque.

3 DEFINITIONS AND INTERPRETATIONS

3.1 In this Agreement, unless inconsistent with the context the following words shall have the corresponding meanings:

- 3.1.1 **"Agent"** means the Estate Agency described in Paragraph G of the Information Schedule;
- 3.1.2 **"Sale Agreement"** means this Agreement of Sale, signed by all parties, together with all Annexures and Schedules attached hereto forming an integral part of this Agreement;
- 3.1.3 **"Building Agreement"** means a Building Agreement (marked Annexure B) to be entered into between the Seller and the Purchaser simultaneously with this Agreement in terms whereof the Seller agrees to construct a residential dwelling on the Property;
- 3.1.4 **"Bond Originator"** means IGrow Home Loans, a division of IGrow Wealth Investments Proprietary Limited;
- 3.1.5 **"Bond Registration Attorney"** means the bond registration attorney described in paragraph I of the Information Schedule;
- 3.1.6 **"33@View Lifestyle Village Development"** means the own title residential development to be constructed on the Land, as indicated on the Site Development Plan attached hereto as Schedule C, which Land will be subdivided into 72 erven and developed in accordance with the Site Development plan attached hereto as Schedule C and the General Plan attached hereto as Schedule E;
- 3.1.7 **"Bond Costs"** means all costs of and incidental to the registration of the mortgage bond, if any, including but not limited to conveyancing fees, calculated at the fee chargeable in terms of the recommended guideline of conveyancing fees, and all incidental disbursements necessary to effect registration of the bond, together with VAT on such cost and disbursements;
- 3.1.8 **"Business Day"** means any day that is not on a Saturday, Sunday or South African public holiday;
- 3.1.9 **"Commission"** means the commission due to the Agent as agreed to between the Agent and the Seller;
- 3.1.10 **"Condition/s of Approval"** means the conditions of subdivision approval imposed by the Local Authority when approving the subdivision of the Land in terms of the Planning By-Law;
- 3.1.11 **"CPA"** means the Consumer Protection Act 68 of 2008, as amended;
- 3.1.12 **"Development"** means the 33@View Lifestyle Village Development as stipulated in Clause 3.1.6;
- 3.1.13 **"Development Plan"** is as depicted in Schedule C as the Site Development Plan as amended from time to time, at the sole discretion of the Seller;
- 3.1.14 **"Direct Marketing"** means to approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of promoting/offering to supply, in the ordinary course of business, any goods or services to the person, as defined in the Consumer Protection Act 68 of 2008;
- 3.1.15 **"General Plan"** means the General Plan (Draft) attached hereto as Schedule E;
- 3.1.16 **"Information Schedule"** means the schedule to which these standard terms and conditions are attached;

- 3.1.17 **"Land"** means: Erf 541 Rietvalleirand Extension 44 Township, Registration Division J.R., the Province of Gauteng;
- 3.1.18 **"Latent Defect"** means a fault or defect that would not readily be revealed by a reasonable inspection;
- 3.1.19 **"Local Authority"** means the City of Tshwane or its successors in title;
- 3.1.20 **"Municipal Charges"** means rates and taxes, and other charges as may be levied by the Local Authority in respect of the Property with effect from the Transfer Date;
- 3.1.21 **"the Parties or Party"** means the Party or Parties to this Agreement;
- 3.1.22 **"Planning By-Law"** means the City of Tshwane Municipal Planning By-Law, as may be amended from time to time;
- 3.1.23 **"Patent Defect"** means a fault or defect that is not hidden and should easily be discovered by a reasonable inspection;
- 3.1.24 **"Prime Rate"** means a rate of interest per annum which is equal to the minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts, from time to time. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, who shall not have to prove his/her appointment, same to be final and binding on the Parties;
- 3.1.25 **"Property"** means the erf described in paragraph C of the Information Schedule which property forms part of the 33@View Lifestyle Village Development, as more fully described on the General Plan attached as Schedule E.
- 3.1.26 **"Purchaser"** means the person or entity, described more fully in Paragraph 8 of the Information Schedule;
- 3.1.27 **"Purchase Price"** means the total purchase price payable by the Purchaser in respect of the Property (the Erf) which purchase price includes VAT and the Transfer Costs, interim interest (as stipulated in paragraph E of the Information Schedule) and in the event that the mortgage loan finance is secured by the Mortgage Originator, the Bond Costs, if applicable, and which amount is stipulated in Paragraph D of the Information Schedule;
- 3.1.28 **"Residential House"** means the house constructed on the Erf (described in Paragraph C of the Information Schedule) in terms of the Building Agreement (Annexure 8) and in accordance with the Unit Floor Plan (marked as Schedule B);
- 3.1.29 **"Seller"** means the entity more fully described at paragraph A of the Information Schedule;
- 3.1.30 **"Signature Date"** means the date on which this Agreement is signed by the Seller;
- 3.1.31 **"Transfer Costs"** means the cost of registration of transfer arising here from calculated at the fee chargeable in terms of the recommended guideline of conveyancing fees, and all incidental disbursements necessary to effect registration, together with VAT on such costs and disbursements
- 3.1.32 **"Transfer Date"** means the date of registration by the Registrar of Deeds, in the relevant Deeds Office, of the transfer of the Property into the name of the Purchaser;
- 3.1.33 **"Transferring Attorney"** means the Transferring attorney described in paragraph H of the Information Schedule;

- 3.1.34 "**Trust Account**" means the trust bank account of the transferring attorney which details are set out in paragraph H of the Information Schedule;
- 3.1.35 "**VAT**" means the value-added tax payable in terms of the Value Added Tax Act, 1991 (VAT Act);
- 3.2 Clause headings are included for reference and convenience purposes only and shall not in any way affect or govern the interpretation or construction of this Agreement unless the contents of this Agreement clearly indicate a contrary intention or expression.
- 3.3 Any one gender includes the other gender.
- 3.4 A natural person includes a juristic person and partnerships and *vice versa*.
- 3.5 The singular includes the plural and *vice versa*.
- 3.6 Where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words will prevail.
- 3.7 Reference to "**days**" shall be construed as calendar days unless qualified by the word "**business day**", which shall mean any day other than a Saturday, Sunday or public holiday. Any reference to "**business hours**" shall be construed as being the hours between 8.30 am and 16.30 pm on any business day.
- 3.8 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 3.9 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 3.10 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.
- 3.11 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 3.12 Expressions defined in this Agreement shall bear the same meanings in any Annexure and Schedule hereto which does not contain its own definitions.

4 PURCHASE PRICE: CASH DEPOSIT

- 4.1 In the event that the Purchaser pays a cash deposit as stipulated in terms of Paragraph D of the Information Schedule, to the Seller for the Property, the said cash amount shall be paid by the Purchaser to the Transferring Attorneys within **3 (three) days** of signature of this Agreement by the last party hereto, and
- 4.2 the balance of the purchase price shall be secured by the approval and the simultaneous registration of a mortgage loan as per the provisions of Clause 6 or alternative secured by a bank guarantee acceptable to the Transferring Attorneys, which bank guarantee must be submitted within 14 days from being requested to do so by the, Transferring Attorneys the Purchaser may elect to pay the balance of the purchase price in cash into the Trust Account of the Conveyancer within 14 days from being requested to make such payment by the Conveyancer.

- 4.3 The Transferring Attorneys are authorised to invest (As per Schedule D: Mandate to Invest which shall be provided by the Transferring Attorneys) the deposit in an interest-bearing Trust account in terms of section 86(4) of the Legal Practice Act ("LPA"), with a registered financial institution for the benefit of the Seller or the Purchaser, depending upon which becomes entitled thereto, as soon as the Purchaser has furnished the Transferring Attorneys with all such documents and information required by the Transferring Attorneys to meet their obligations below, which investment will be subject to the provisions of Section 86(5)(b) of the LPA.
- 4.4 The deposit, and the interest accrued thereon shall be paid by the Transferring Attorneys as follows:
- 4.4.1 the deposit to the Seller and the interest to the Purchaser (less the amount due to the LPA) on the date of transfer; or
- 4.4.2 the deposit (where applicable) and the interest to the Seller if this Agreement is cancelled pursuant to the provisions of Clause 18 hereof as the result of a breach by the Purchaser; or
- 4.4.3 the deposit and the interest to the Purchaser if this Agreement is cancelled (other than as the result of a breach by the Purchaser) unless otherwise agreed to in writing by the Seller and the Purchaser; or
- 4.4.4 if applicable, the deposit and the interest to the Purchaser if this Agreement should be null and void due to non-fulfillment of the suspensive conditions set forth in terms of the provisions of this Agreement.
- 4.5 All amounts payable by the Purchaser in terms of this Agreement shall be paid to the Transferring Attorneys free of exchange or bank cost or commission and without deduction or set off by means of an electronic transfer, a cheque drawn by a recognised commercial bank or a bank guaranteed cheque. No physical cash payments will be accepted or may be made into the Transferring Attorney's trust account.

5 CONDITION OF PROPERTY

- 5.1 The Property is sold voetstoots to the Purchaser and the Seller gives no warranties with regard thereto, whether express or implied.
- 5.2 The Property is sold subject to all such conditions as are mentioned and/or referred to in the title deed/s relating to the Property, all rights and encumbrances set out in the conditions of establishment and/or contained in the relevant township plan, Conditions of Approval and such conditions as are or may hereafter be imposed by any Local Authority, including the conditions imposed in respect of the rezoning and/or subdivision of the Land.
- 5.3 If upon measurement of the Property the extent of the Property is found to be greater than the extent as set out in paragraph C of the Information Schedule, the Purchaser shall not be liable for any excess. Conversely, if the extent thereof is found to be less than the extent as set out in paragraph C of the Information Schedule, the Seller shall not be liable for any shortfall.

- 5.4 **The Seller shall indicate to the Purchaser the beacons or boundary pegs of the Property** prior to the Transfer Date and the Seller shall not be obliged again to indicate to the Purchaser or to locate the beacons or boundary pegs of the Property after the Transfer Date. The Purchaser furthermore acknowledges that he will satisfy himself as to the location of the boundary pegs or beacons and that same is an accurate reflection of the Site Development Plan before the Transfer Date.
- 5.5 **In the event of the Property having been erroneously described herein, such error shall not be binding upon the Parties but the description of the Property as set out on the Schedule annexed hereto marked "C" and "E" shall apply** and in such event the Seller shall be entitled to rectify such error by written notice given to the Purchaser advising him of such error and the rectification.
- 5.6 **The Seller shall be liable to see to the approval by the Local Authority, Surveyor General and any other competent authority of the subdivision of Erf 541 Rietvalleirand Extension 44 Township, Registration Division J.R., the Province of Gauteng** into the erven as indicated on the diagrams attached hereto marked Schedules "C" and "E" (or such amendments of the diagram as the Parties may agree to in writing after the date hereof) and the Property is sold subject to such restrictions as may be imposed by any Local Authority in respect of the rezoning and/or subdivision of the Property and the 33@View Lifestyle Village Development, including restrictions having regard to height, coverage or set back.
- 5.7 **The Seller shall be entitled to register such servitudes** (if any) across the Property and the 33@View Lifestyle Village Development as indicated on the General Plan and as may be necessary for the purposes of the installation of services, including, inter alia, gas, electricity, telephone, television, sewerage, storm water drainage, solid waste removal and water supply.

6 **SUSPENSIVE CONDITIONS**

The provisions of this Agreement are subject to the fulfilment of the following suspensive conditions (collectively "Conditions"):

6.1 **MORTGAGE BOND AND BOND ORIGINATOR**

- 6.1.1 Should the Purchaser require a loan in order to pay the Purchase Price or any part thereof, then this sale shall be subject to the suspensive condition that **the Purchaser obtains, within 30 (thirty) days from date of signature hereof by the Seller**, a loan, secured by a mortgage bond, on the customary conditions from a financial institution against the security of the Erf as described in Paragraph C of the Information Schedule, provided this 30 day period shall be automatically extended with another 30 days in the event that the loan was not approved within the first 30 days.
- 6.1.2 **In the event of the Purchaser failing to apply for the said loan within 10 (ten) days after the Signature date, he shall be deemed to have waived and renounced the benefit of this clause and this clause shall no longer apply. The Agreement shall accordingly no longer be subject to this condition, and the Purchaser shall then be obliged to pay the balance of the Purchase price to the Attorneys as set out in clause 4 above, alternatively and within the sole discretion of the Developer, exercised in writing, the sale shall lapse and shall be of no further force and effect.**
- 6.1.3 The Purchaser warrants that he has the requisite financial means to obtain the mortgage bond in the amount indicated and if the bond is granted will have sufficient financial means to meet his financial commitments. He undertakes to use his best endeavors to ensure that the mortgage bond is granted timeously and to cooperate with the Seller and/or his Agent to ensure that the mortgage bond is approved.

- 6.1.4 Withdrawal by a guarantor of the bank guarantee for reasons for which the Purchaser is at fault, after being issued shall constitute a material breach by the Purchaser of his obligations to deliver a bank guarantee in terms of this Agreement.
- 6.1.5 **For the purposes of obtaining the mortgage bond, the Purchaser hereby authorises and appoints the Bond Originator named in the paragraph J of the Information Schedule to act as his sole agent in submitting a mortgage bond application to any registered financial institution on his behalf and to sign all such documentation as may be required by the bank or other financial institution.**
- 6.1.6 The Purchaser undertakes to provide, on request of the Bond Originator all financial and other information and documentation required by the bank or other financial institution within a period of **7 (seven) business days** from the date on which the Bond Originator requests him to do so failing which clause 6.1.2 will be applicable.
- 6.1.7 The Purchaser further undertakes to promptly pay all amounts required to enable the mortgage bond to be registered simultaneously with the transfer.
- 6.1.8 The Purchaser is aware that the Development consists of multiple erven and that the Seller preferably requires the simultaneous transfer of the erven. The parties, therefore, agree that it is imperative that the bank or other financial institution at which the Purchaser applies for finance do not impose onerous conditions which may result in this delaying transfer, if such onerous conditions are imposed, the Purchaser warrants that he shall accept and comply with such conditions expeditiously, failing which the Seller may at his option, immediately cancel this Agreement.
- 6.1.9 **The Purchaser is aware that if the mortgage bond has been granted, this Agreement has become unconditional. If the mortgage bond is withdrawn on his instructions or otherwise due the fault of the Purchaser, before the transfer date, he will remain liable for the provision of guarantees for the balance purchase price (where a deposit was paid) or the full purchase price. He will be in breach of this Agreement should he fail to provide such guarantees or make payment of the balance purchase price or the full purchase price whichever is applicable into the Trust Account of the Conveyancing Attorneys within 14 (fourteen) days of the bond so withdrawn.**

Initial: ____ ,x

6.1.10 **BUILDING AGREEMENT**

A Building Agreement must be entered into between the Purchaser and the Contractor simultaneously with the signature hereof by the Purchaser, in terms whereof the Purchaser irrevocably offers to appoint the Seller as the Contractor in terms of the Building Agreement for the construction of the Works on the Property and fulfillment of the suspensive conditions as contained in the said Building Agreement within the periods as specified in the Building Agreement, failing which this Agreement between the Seller and the Purchaser shall forthwith lapse and be of no further force and effect.

6.1.11 **SALE OF PURCHASER'S PROPERTY**

- (i) Should the Purchaser require to sell his property to finance the Purchase Price or any part thereof from the proceeds of the sale of his property, then this sale shall be subject to the sale of that property as described in Schedule G, **within 90 days** from the Signature date of this Agreement.

- (ii) Should the Seller at any time prior to the fulfilment of all suspensive conditions receive an unconditional offer to purchase this Property from a second purchaser which offer in his sole discretion, he finds more acceptable and which he has accepted (written confirmation of all suspensive conditions to be produced when presenting such offer), then the Seller herein or the agent shall be obliged to notify the Purchaser in writing of such second unconditional offer which he has accepted. After this notification the Purchaser shall have 3 days (excluding Saturdays, Sundays, Public Holidays and the day on which the notice was delivered) from the day of delivery of the notice to waive in writing the benefit of all suspensive conditions in this Agreement.
- (iii) If the Purchaser does waive in writing the benefit of all suspensive conditions, the Purchaser will become unconditionally bound to purchase the property in terms of this Agreement. If the Purchaser fails to waive the benefits of the suspensive conditions in the 3-day period, this Agreement shall lapse and be of no further force or effect.

7 TRANSFER OF THE PROPERTY

- 7.1 Registration of transfer of the Property and registration of any simultaneous bond, if applicable, shall be passed by the Transferring Attorneys and Bond Registration Attorneys subject to the compliance with the conditions of Clause 6 hereof, transfer will be given by the Seller and taken by the Purchaser as soon as is judicially possible after the Local Authority has issued a rates clearance certificate in respect of the Property to the Seller for transfer purposes and on condition that the Purchaser shall have complied with all the Purchaser's obligations in terms hereof.
- 7.2 The Seller and the Purchaser shall respectively complete, sign and return the transfer documents and the Purchaser shall, sign the bond documents **within 5 (Five) days** after being requested to do so.

8 TRANSFER AND BOND COSTS

- 8.1 The Seller shall be liable to pay the fees and disbursements of the Transferring Attorney and the Bond Registration Attorney. However, should the financial institution which approves the Purchaser's loan application on its own accord or at the request of the Purchaser appoint an attorney other than the Bond Registration Attorney to attend to the registration of the bond, the Purchaser shall be liable for the payment of the bond registration costs to such attorney.
Initial: _____ X
- 8.2 Notwithstanding the provisions of clause 8.1, the Purchaser shall be liable for the payment of all fees and disbursements incurred or to be incurred by the Transferring Attorney and the Bond Registration Attorney in the signing of the transfer and/or bond documentation with any correspondent attorney. No such fees will be payable by the Purchaser if the transfer and Bond Attorneys are the Attorneys nominated by the Seller.
Initial: _____ X
- 8.3 Notwithstanding the provisions of clause 8.1, the Purchaser will be liable for the payment of the costs relating to the issue of the insurance certificate in respect of the Property, as well as the initiation fees and/or valuation fees levied by the financial institution that approves his loan application in the event that the same is not debited against the home loan account with the said institution on the Transfer Date.
Initial: _____ X
- 8.4 **This clause is only applicable if the Purchaser is a foreign national or temporary resident of South Africa:** The Purchaser's attention is drawn to the fact that the transaction may incur additional fees from the bank and/or transferring attorney. The Purchaser will be liable for the payment of such additional fees and will be payable directly to the said bank or transferring attorney by the Purchaser upon request.

8.5 If the Agreement is cancelled by the Seller due to the Purchaser's breach of the Agreement then the Purchaser shall immediately become liable for all wasted costs of the Transferring and/or Bond Registration Attorneys, arising out of or in connection with the preparation of transfer and bond documentation including other incidental charges relating to the registration of the transfer of the Property; and the Agent's commission, as will be reflected in an invoice submitted for which the Purchaser on delivery thereof will be obliged to pay.

Initial: _____x

9 POSSESSION & RISK

9.1 Possession of the Property will be given and taken up by the Purchaser on the Transfer Date, subject at all times to the Seller's rights in terms of the Building Agreement and shall be given to Purchaser free of any right of usufruct, right of usus and right of habitation in favour of a third party, from which date the Property shall be at the sole risk, loss and profit of the Purchaser.

9.2 The Purchaser shall as from and including the date of registration of transfer be liable for the payment of all rates, taxes, and other charges in respect of the Property and shall refund to the Seller any such monies which may have been paid in advance beyond such date, which refund shall be paid by the Purchaser to the Transferring Attorneys upon their request.

10 DIRECT MARKETING AND COOLING OFF

10.1 In terms of section 16 of the CPA, if this Agreement has been entered into as a result of direct marketing, meaning that the Purchaser was directly or indirectly approached either in person or by mail or electronic communication by the Seller or the Agent for the purpose of promoting or offering to supply, in the ordinary course of business, the sale of the Property hereby sold, the Purchaser would have been entitled to cancel this Agreement without reason or penalty by written notice within **5 (five) days** after the Signature Date, or within **5 (five) days** after delivery of the Property.

10.2 The Seller is therefore not prepared to enter into any agreement with the Purchaser if such an agreement would have resulted from such direct marketing. The Purchaser, therefore, warrants that this transaction is not entered into as a result of such direct marketing conducted by the Seller and the Seller enters into this Agreement relying entirely upon such warranty.

10.3 **The Purchaser understands that if, after delivery of the Property, the Purchaser is successful in cancelling this Agreement by relying upon the right of cancellation flowing from the direct marketing provisions of the CPA, the Purchaser shall be liable for damages suffered by the Seller as a result thereof on the basis of the Purchaser's breach of this warranty.**

Initial: _____X

11 AGENT'S COMMISSION

11.1 **The Purchaser hereby warrants that the Agent referred to in paragraph G of the Information Schedule hereto is the only agent who introduced him to the Property and/or the Seller in connection with the transaction of sale and purchase of the Property hereby recorded ("the Transaction"), and hereby indemnifies the Seller against and holds it harmless from any claim, action or proceedings which may be made or instituted against the Seller by any agent other than the Agent for the payment of any commission in respect of the transaction, where such other agent claims to have actually introduced the Purchaser to the Property and/or to the Seller in connection with the transaction.**

11.2 The Seller shall pay commission to the Agent in the amount agreed to between the Seller and the Agent.

- 11.3 The commission shall be deemed to have been earned by the Agent on the date of transfer and against payment by the Purchaser of the Purchase Price in respect of the Property and will be paid to the Agent within **5 (five) days** after transfer and receipt of the payment aforesaid, provided that the Agent has issued a proper VAT invoice to the Seller, if applicable. In this regard the Transferring Attorneys are irrevocably authorized to deduct the commission from the proceeds of the sale on the date of registration of transfer and to pay the commission to the Agent.
- 11.4 Should this transaction lapse due to non-fulfilment of any of the suspensive conditions herein or be cancelled, and such cancellation is not due to the Seller's breach of this Agreement, then the Agent will have no claim against the Seller for Agent's commission.
- 11.5 In the event that this Agreement is cancelled by the Seller as a result of the Purchaser's breach thereof, the Agent shall have no claim against the Seller for the payment of the Commission and in such event the Purchaser agrees to pay the Agent the Commission immediately on demand by the Agent.
- 11.6 For purpose of the Agency's internal accounting and payment records it is recorded that where the Agent referred to in clause 11.1 above is not both the Selling Agent and the Listing Agent in respect of this sale, then in such event the commission payable to the agency in terms of this agreement shall be as per the agreed mandate.
- 11.6.1 Listing Agent : (Grow Wealth Investments)
- 11.6.2 Selling Agent: _____
(insert name)

12 SPECIAL CONDITIONS AND ACKNOWLEDGEMENT

- 12.1 The Purchaser acknowledges that it is aware of the provisions of the Financial Intelligence Centre Act (in this clause referred to as "the Act") and that by acquiring property and mortgage finance the Transferring and Bond Attorneys will have to comply with the appropriate provisions of the Act. The Purchaser accordingly agrees to provide the Transferring Attorneys with his full co-operation and disclosure in order that they may meet their obligations in this regard.
- 12.2 As a result of the South African Revenue Services (SARS) doing risk analysis on both the transferor and the transferee on all property transactions, both the Seller and the Purchaser warrant to each other and the Agent that they are not aware, and should not reasonably have been aware, of any tax issues (whether personally or otherwise), including but not limited to tax returns and/or tax payments, that are not current and up to date. In the event of any of them (hereinafter referred to as "the defaulting party"), notwithstanding his prior belief to the contrary, becoming aware of any such outstanding issues on his side, he shall immediately do the necessaries to set the matter right so as not to delay the registration of the transfer. Without prejudice to any other rights that an aggrieved party may have in law or may have in terms of this Agreement by virtue of a delay caused by any such outstanding tax issues, notwithstanding the efforts of the defaulting party to rectify the issues, the aggrieved party shall be entitled to be compensated by the defaulting party for damages suffered by him due to such delay.
- 12.3 The Purchaser acknowledges that all artistic, architectural, photographic and in any way visual presentation material including, but not limited to models, brochures and pamphlets, used by the Seller or its Agents in the marketing and selling of the Property or private areas hereby purchased and sold, have been prepared and distributed as advertised material only, and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, and that no representation is thereby made by the Seller, and that the parties shall be bound by the terms, conditions and specification contained in this Agreement only.

12.4 The Purchaser is aware and hereby acknowledges the Seller has the right to develop the Land of which the 33@View Lifestyle Village forms part and hereby consents to such development being carried out. In the event of such rights being exercised by the Seller or its successors-in-title the Purchaser consents to such changes/amendments to the development rights as may be required within the sole discretion of the Seller or its successors-in-title.

13 PHASED DEVELOPMENT

13.1 **The Purchaser acknowledges and agrees to the development of the 33@View Lifestyle Village in phases at the sole discretion of the Seller, and within periods in the Seller's sole discretion.**

13.2 **The Purchaser hereby irrevocably undertakes to sign, upon request by the Seller or its authorised Agent, all such documents as may be necessary to enable the Seller to proceed with the phased development.**

13.3 **Should the Purchaser fail to or refuse to sign any such document, then the Purchaser hereby appoints the Seller as his attorney and agent in rem suam to sign the same on his behalf. The Seller shall be entitled to cede any or all of its rights in terms of this Agreement to any third party of its choice.**

13.4 The parties agree that after the transfer date, the possibility exists that the building/s and the other structures and/or improvements, including infrastructure and roads in the development may be complete and that the Purchaser may suffer inconvenience from building operations, noise, dust and other nuisance factors. The Purchaser shall not be entitled by reason of any of the afore going to cancel or withdraw from this Agreement or to claim damages from any person or institute interdict proceedings nor shall the Seller be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of such building or development operations.

13.5 **The Purchaser shall not be entitled to sell and/or transfer the Property after the Transfer Date before all the phases in this Development has been completed, except with the prior written consent of the Seller and upon the conditions provided by the Seller and furthermore on condition that the new Purchaser and/or transferee of the Property agrees in writing to observe the terms and conditions of this Agreement.**

13.6 Where the Purchaser is a Close Corporation or a Company, the sale of a Property referred to in this Clause includes the sale of a member's interest in a Close Corporation or the sale of a share holding in a Company and where the Purchaser is a Trust, the sale of a Property referred to in this Clause includes the sale of a Trust by means of a change of beneficiaries and trustees.

13.7 The Seller shall be entitled at any time(s) to erect such signage, flagpoles, messages or any other form of notices or advertising on the servitude areas as may be legally permissible solely for the purposes of selling and/or letting erven in the Development, provided that it does not inconvenience the owners of other properties in the Development. The Purchaser shall not be entitled to display any "For Sale" and/or "To Let" signs on the Property or outside the Property until the Seller has completed and entirely sold out all the Properties in 33@View Lifestyle Village Development, without the prior written consent of the Seller.

13.8 The Purchaser acknowledges that he is aware of the fact that servitudes for purposes of internal access and road purposes and right of way, as well as for services and landscaping purposes may be registered over the Land.

13.9 The Purchaser acknowledges that he understands that the Seller makes no representations regarding the aforementioned developments or facilities and that the purpose of the inclusion of the aforementioned clauses into this Agreement is merely in order to bring potential inconvenience to

the Purchaser's attention, and the Seller shall not be obliged or bound to proceed with the
uncompleted

phases of the 33@View Lifestyle Village Development but may do so in stages or phases and within periods in the Seller's sole discretion.

14 BUILDINGS AND IMPROVEMENTS

14.1 No building works on the Property shall be commenced with prior to the written approval of the plans thereof by the Local Authority and/or any other competent authority and such buildings shall be erected strictly in accordance with such approved plans by the Seller in terms of the Building Agreement. The Purchaser may not erect or allow to be erected any building on the Property.

14.2 Should the Purchaser commit or permit the commission of any breach of the conditions set out in Clause 14.1 above, the Seller shall have the right to demand that any buildings erected on or improvements effected to the Property, be removed or demolished, without prejudice to any other rights which the Seller may then have against the Purchaser.

15 RENTAL MANAGEMENT AND FUTURE SALES OF THE PROPERTY

15.1 The Seller hereby consents that the Property and the Residential house to be erected on the Property in terms of the Building Agreement may be let to a suitable tenant with effect from the Completion Date if the Purchaser does not intend to occupy the Property himself.

15.2 The Purchaser hereby appoints SA Investor Rentals Proprietary Limited, Registration Number: 2014/186623/07, trading as IGrow Rentals, as its sole and exclusive agent to procure and place tenants in the Residential House and act as his rental agent for a period of **3 (three) years** from the Completion Date on the terms and conditions of the standard rental management agreement.

15.3 The Purchaser hereby agrees that should he decide to sell his Property with the Residential House in the future, that for convenience, consistency of future sales prices in the 33@View Lifestyle Village Development and to ensure realistic market related sales prices are offered in the open market, he shall offer **IGrow Group** the first opportunity to market and sell the Property with the Residential House on his behalf together with his choice of another agency if he so wishes.

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16 MORA

Should there be a delay in the registration of transfer for which the Purchaser is solely responsible, then the Purchaser shall pay to the Transferring Attorney, upon written demand, interest calculated at a rate of 2% (two percent) of the Purchase Price per month, and calculated from the date on which the Purchaser is notified in writing by the Transferring Attorney as being in mora to the date upon which the Purchaser has ceased to be in mora.

17 NOTICES AND DOMICILIUM

17.1 Each of the parties chooses as his *domicilium citandi et executandi* ("domicilium") for the purposes of giving of any notice or the serving of any process and for any other purpose arising from this Agreement their respective addresses as stated in the Information Schedule.

17.2 **Each of the parties will be entitled from time to time, by written notice to the other party to change his *domicilium* to any other address** within the Republic of South Africa which is not a post office box or paste restante. The changed address will be effective after **14 (fourteen) days** of such change.

17.3 Any notice in terms hereof may be delivered to the other party ("the recipient") by hand, prepaid



registered post or E-mail.

- 17.4 Any notice is given by a party to the other which:
- 17.4.1 is delivered by hand, to a responsible person, during ordinary business hours, at the physical address provided will be presumed to have been received (unless the contrary is proved by the addressee) on the day and time of delivery.
- 17.4.2 is sent by prepaid registered post, in a correctly addressed envelope, to the postal address specified above will presume to have been received by the recipient on the seventh day after the date of posting; or
- 17.4.3 is sent by email to the E-mail address specified **will** be deemed (unless the contrary is proved by the addressee), to have been received on the first business day after transmission.
- 17.5 Where in terms of this Agreement any communications are required to be in writing the term writing **will** include communications by email.

18 BREACH AND CANCELLATION

- 18.1 If either party ("the Defaulting Party") fail to pay any amount or fail to provide the guarantee(s) required in terms of this Agreement on the due date or commit a breach of any other of the terms and conditions of this Agreement then the other party ("the Aggrieved Party") will be entitled to give the Defaulting Party **10 (ten) business days** (unless the transaction has already been lodged at the deeds office for registration, in which event the notice period will be reduced to **24 (twenty-four) hours** written notice to remedy such breach. Should the Defaulting Party fail to comply with such notice, the Aggrieved Party shall be entitled, without prejudice to any other rights and remedies that it may have in law including the right to claim damages to:
- 18.1.1 cancel this Agreement without any further notice and claim damages and if the Purchaser being the Defaulting Party, the Seller shall be entitled to retain all monies paid by the Purchaser to the Seller and/or the Seller's agents or the Transferring Attorney in terms hereof, including monies paid as a deposit to the Transferring Attorney together with any interest earned thereon; pending determination of damages; or
- 18.1.2 to claim immediate performance and/or payment, of all the obligations of the defaulting party in terms of this Agreement, including immediate payment of the balance and/or whole of the purchase price in the event of the Purchaser being the defaulting party.
- 18.2 Should either party dispute the other party's right to cancel this Agreement, then pending the determination of the dispute, the Purchaser will be obliged to continue with the payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller will be entitled to recover and accept those payments without prejudice to any of the Seller's rights in terms of this Agreement. Failure to pay any of the aforesaid amounts **will** constitute a material breach of the Agreement.
- 18.3 Where the Purchaser has forfeited the deposit and other amounts in favour of the Seller or the Seller has become entitled to retain the Deposit or other amounts paid to the Trust Account, the Transferring Attorney **will** be obliged to pay such amounts to the Seller on demand.
- 18.4 Should the Agreement be cancelled by agreement the Purchaser shall remain liable for costs incurred which costs cannot be recovered from a subsequent purchaser as liquidated damages. Such costs shall include but not be limited to the wasted costs for preparing and drafting documentation.
- 18.5 Should the sale be cancelled after complying with clause 6.1 due to the failure of the Purchaser in carrying out any of his obligations in terms of this Agreement the Seller reserves the right to claim

from the Purchaser who will be liable to the Seller for payment on demand of a cancellation fee of up to 5% of the Purchase Price as wasted costs as well as Agents commission as liquidated damages.

19 JURISDICTION

The Parties hereby consents in terms of section 45 of the Magistrate's Court Act, No. 32 of 1944, as amended, to the jurisdiction over any person under section 28 of that Act, notwithstanding that the value of the claim or the matter in dispute might otherwise exceed the jurisdiction of such Court. The parties shall, however, have the right to institute an action in any other Court of competent jurisdiction. The Purchaser agrees that in the event of the Seller instructing its attorneys and/or instituting legal proceedings against the Purchaser pursuant to a failure by the Purchaser to fulfill any of his obligations in terms hereof, then the Purchaser shall pay all legal costs together with VAT thereon incurred by the Seller, in connection therewith as between attorney and own client, including collection commission (where applicable).

20 DISPUTE RESOLUTION AND ARBITRATION

- 20.1 Any Party may, after written notice to this effect, refer any dispute arising from the terms of this Agreement to arbitration to be determined in terms of this clause in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("**AFSA**").
- 20.2 This clause shall not prevent any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator. The parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.
- 20.3 The parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either party, by written notice, require the arbitration to be held on an urgent basis. In such an event, either party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 20.4 The arbitration shall be held at the City of Tshwane with only the legal and other representatives of the Parties to the dispute present thereat and otherwise in terms of the Arbitration Act, unless otherwise provided for herein. The arbitrator shall be a practising advocate of the Bar of at least ten years' standing, appointed by agreement between the parties to the dispute. Should the parties fail to agree on an arbitrator within **14 (fourteen) days** after the giving of notice the arbitrator shall be appointed by the Chairperson of the Bar Council at the request of either party to the dispute.
- 20.5 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the High Court, at the instance of any of the parties to the dispute.
- 20.6 In the event that a party to a dispute wishes to appeal the decision of the arbitrator, such party shall apply to the arbitrator for leave to appeal within **14 (fourteen) days** from the date of the decision of the arbitrator.
- 20.7 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held before 3 (three) arbitrators appointed in accordance with clause 20.4.
- 20.8 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such party shall furnish security for the costs of the appeal in an amount of R100 000 (one hundred thousand Rand) within **30 (thirty) days** from the date on which leave to appeal is granted. Should the relevant party fail to furnish security to this effect the leave to appeal shall lapse and the prospective appellant will no longer be entitled to proceed with an appeal and the arbitrator's decision will be final and binding upon the Parties.

20.9 The parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.

21 SIGNING ON BEHALF OF A COMPANY OR A CLOSE CORPORATION

21.1 Should this Agreement be signed by a person entering into this Agreement as trustee or agent for a company to be incorporated as the Purchaser in terms hereof:

21.1.1 such company shall be duly incorporated within **30 (thirty) days** of signature hereof by the Purchaser;

21.1.2 such company shall duly adopt, ratify and render itself bound by this Agreement within **5 (five) days after** the date of incorporation of the company;

21.1.3 the provisions of the Companies Act No. 71 of 2008, as amended, applicable to pre-incorporation agreements, must be duly and properly complied with;

21.1.4 the person so signing this Agreement shall be deemed to have entered into this Agreement as Purchaser in his personal capacity should the provisions above not be complied with strictly in accordance with applicable legislative provisions concerning incorporation and pre-incorporation agreements;

21.1.5 after proper compliance with the provisions of this clause, the person so signing this Agreement shall be deemed personally bound to the Seller by his signature hereto as surety for and co-principal debtor together with such company, under renunciation of the benefits of excursions, division and cession of action, for the due fulfilment of all such company's obligations hereunder to the Seller.

21.2 Should this Agreement be signed by a person purporting to act for and on behalf of a company or a close corporation already incorporated or any other validly constituted juristic person, which juristic person is purportedly the Purchaser in terms hereof, such person shall be deemed to warrant to the Seller that he is duly authorised to act for and on behalf of such juristic person and shall be deemed personally bound to the Seller by his signature hereto as surety for and co-principal debtor together with such juristic person, under renunciation of the benefits of excursions, division and cession of action, for the due fulfilment of all such juristic person's obligations hereunder to the Seller.

22 RIGHTS AND OBLIGATIONS OF THE SELLER

22.1 The Seller is entitled to utilise any one or more of its unsold houses/ buildings on the 33@View Lifestyle Village Development until all the erven in the development have been sold as a sales office and/or a show house.

22.2 The Seller, or its successors-in-title shall, be entitled to apply for, and subject to the necessary approval being granted by the Local Authority, vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the 33@View Lifestyle Village Development, provided that the Seller shall do so in consultation with the Purchaser if any such variation shall materially adversely affect the rights of the Purchaser and shall be bound thereby and shall have no claim of whatsoever nature against the Seller or its successors-in-title arising therefrom.

23 GENERAL

23.1 No concession or any other indulgence which may be granted by the Seller to the Purchaser, whether in respect of time for payment or otherwise, regarding the terms and conditions of this Agreement shall be deemed to be a waiver or estoppel of and shall not affect, prejudice or derogate



from the rights of the Seller under this Agreement.

- 23.2 This Agreement is the sole agreement between the parties hereto and no amendment, variation or consensual cancellation hereof will be valid unless reduced to writing and signed by the parties or their duly authorised representatives hereto.
- 23.3 Save as otherwise agreed to in this Agreement, the Purchaser will not be relieved of any of his obligations under this Agreement or be entitled to any reduction of the purchase price or any other amount due in terms hereof, in the event that the Seller fails to obtain, or delay in obtaining, any approval of whatsoever nature which may be required for the development to be completed from any governmental authority.
- 23.4 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or un-enforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the agreement shall be carried out as nearly as possible according to its original terms and intent. The parties further agree to substitute for such invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 23.5 This Agreement is open for acceptance by the Seller for a period of **30 days** from the date of signature hereof by the Purchaser, with the option of extending this period at the discretion of the Seller with written notice to the Purchaser prior to the lapsing of the initial 30-day period.

24 PROTECTION OF PERSONAL INFORMATION ACT NO 4 OF 2013 (POPIA)

The Agent/Agencies involved in this sale are required to collect and process the personal information of the Parties herein to give effect to any of the parties' rights and obligations that flow from this Agreement. The Parties agree that their personal information may be processed by the Agent/Agencies and further shared with any professional parties involved in the transaction, including but not limited to conveyancing attorneys, bond cancellation attorneys, banks, mortgage originators and/or their business partners and municipalities or otherwise required by law. The Agent/Agencies will process the personal information of the Parties for the duration of the transaction as may be required and will retain the personal information as required by law. The Parties herein also hereby agree to their information being retained on the Agency's/Agencies' and conveyancing attorney's databases for future marketing purposes until the parties advise them otherwise in writing.

DATED AT	ON THIS	DAY OF	20__
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WITNESS			
<hr style="width: 80%; margin: 0 auto;"/>			
PURCHASER 1			
<hr style="width: 80%; margin: 0 auto;"/>			
PURCHASER 2			

DATED AT	ON THIS	DAY OF	20__
<hr style="width: 80%; margin: 0 auto;"/>			
SELLER			
33@VIEW Agreement of Sale: The Plot June 2024			<hr style="width: 80%; margin: 0 auto;"/>

DATED AT ON THIS DAY OF 20_

AGENT

The Agent by signature hereto accepts the benefits and obligations (if any) imposed on the Agent in terms of this Agreement.

Annexure B: Building Agreement Schedule

A: Specifications and Finishes Schedule B:

Unit Floor Plan

Schedule C: Site Development Plan

Schedule D: Schedule E: Instruction to Invest Trust Monies Schedule

E: General Plan

Schedule F: Optional Extras Schedule

G: Special Conditions



BUILDING AGREEMENT

33@VIEW

ENTERED INTO BY AND BETWEEN

EMPLOYER

and

(hereinafter referred to as "the EMPLOYER")

and

CONTRACTOR

PROPERTY

33ATVIEW DEVELOPMENT (Pty) Ltd

Registration number: 2021/625923/07

Barinor's Vineyard North, The Vineyards
Office Estate, 99 Jip de Jager Road,
Welgemoed, Cape Town, 7530

(hereinafter referred to as "the Contractor")

ERF: _____ **33@View**

IMPORTANT NOTE

Although we have taken every effort in making this Agreement understandable in plain language, we also understand that concepts and phrases may be difficult and intimidating to you. You are invited to discuss every aspect, item, phrase, word, concept, definition or any other aspect of this Agreement with our 33@View Lifestyle Village consultant or our legal advisors who will explain them to you. You are also encouraged to obtain independent legal advice.

Please read and consider this Agreement and the attached Schedules carefully as it shall constitute a binding agreement. You will be requested to declare that you understand the content of this entire Agreement and more specifically the fact, nature and effect of clauses which are printed in bold type. Please note that printing any clause in bold type will not affect the enforceability of any of the other clauses of this Agreement.

Please do not disregard any clauses not so emphasised as such clauses will be binding and enforceable. If you do not understand these terms you have the obligation to ask for an explanation or to seek independent legal advice before signing this Agreement.

RECORDAL

WHEREAS the CONTRACTOR undertakes to erect a residential house (the Works) on the Property in accordance with the Plan and Specification Schedules (as defined in Schedules A, B, C and F attached hereto) which have been signed simultaneously with this Agreement and are annexed hereto and

WHEREAS for purposes hereof the CONTRACTOR is authorised to:

- (a) Appoint architects and engineers to oversee and design the structural work of the Works to be constructed on the Property in accordance with the Plan and Specification Schedules signed by the parties, and/or
- (b) Appoint sub-contractors to construct and construct the Works in accordance with the Plan and Specification Schedule, and/or
- (c) Request the bank to make pro rata progress payments to the CONTRACTOR from the EMPLOYER'S bond in accordance with the valuation of the valuers of the Mortgagee on the EMPLOYER'S behalf or, in the event that the Contract Sum or a portion thereof is paid in cash, to request payment from the Conveyancing Attorneys in terms of the provisions of an Architect Certificate, and/or
- (d) Do whatever is appropriate and necessary to deliver to the EMPLOYER the complete Works on the Property within 12 (twelve) months of date of registration of the Property into the name of the EMPLOYER with completion certificates from the Local Authority provided that, for purposes of calculating the said 12 month period, the national CONTRACTOR'S holiday during December/January shall not be taken into account.

1. INTERPRETATION

- 1.1 This Agreement is to be read in conjunction with the Sale Agreement marked as Annexure A. Save as is otherwise defined in this clause 1.1 of this Building Agreement, any words and expressions bear the meanings assigned to them in the Sale Agreement and unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings -

- 1.1.1 **"Agent"** means the estate agency described as per paragraph G of the Information Schedule;
- 1.1.2 **"Architect"** means the architect appointed by the CONTRACTOR from time to time;
- 1.1.3 **"Agreement"** means the agreement as set out in this document and the Schedules attached hereto;
- 1.1.4 **"Schedules"** means the documents specified in paragraph K of the Information Schedule;
- 1.1.5 **"33@View Lifestyle Village Development"** means the own title 72 residential units to be constructed on Erf 541 Rietvalleirand Extension 44 Township, Registration Division J.R., the Province of Gauteng; as indicated on the Site Development Plan attached to the Sale Agreement as Schedule C and the General Plan attached to the Sale Agreement as Schedule E;
- 1.1.6 **"CONTRACTOR"** means the entity described as per paragraph A of the Information Schedule;
- 1.1.7 **"Building Loan"** means the building loan procured by the EMPLOYER, if applicable, for purposes of financing the payment of the Works and which loan is secured by a mortgage bond as per paragraph D of the Information Schedule;
- 1.1.8 **"Business Day"** means any day excluding a Saturday, Sunday or South African public holiday;
- 1.1.9 **"Cash Portion"** means the Contract Sum or portion thereof that is not to be paid from the proceeds of a Building Loan;
- 1.1.10 **"Commission"** means the commission due to the Agent, the amount of which is as agreed between the CONTRACTOR and the Agent;
- 1.1.11 **"Conditions Precedent"** means the conditions precedent set out in clause 3 below;
- 1.1.12 **"Contract Sum"** means the sum as per paragraph D of the Information Schedule;
- 1.1.13 **"CPA"** means the Consumer Protection Act 68 of 2008, as amended;
- 1.1.14 **"Defects"** means any aspect of the materials and workmanship forming part of the Works that is due to the failure of the CONTRACTOR to comply with its obligations in terms of this Agreement;
- 1.1.15 **"Defects List"** means the list of Defects, as agreed upon by the Parties at the Handover Inspection;
- 1.1.16 **"Delivery Date"** means the date on which the CONTRACTOR delivers the Works to the EMPLOYER, determined in accordance with the provisions of clause 7.11;
- 1.1.17 **"Determined by an Expert"** means determined by an independent third party acting as Expert and not as arbitrator as provided for in clause 9;
- 1.1.18 **"Event of Default"** means an event as envisaged in clause 10 of this Agreement;
- 1.1.19 **"Expert"** means an independent Expert appointed in accordance with clause 9;
- 1.1.20 **"EMPLOYER"** means the person or persons / entity or entities, as the case may be, described more fully in paragraph B of the Information Schedule;

- 1.1.21 **"Final Completion"** means the stage of completion where the Works are certified by the Principal Agent to be free of all defects, as contemplated in clause 8.7 below;
- 1.1.22 **"Force Majeure"** means an event beyond the control of the Party concerned, that is not caused by the fault of such Party and could not reasonably have been foreseen by it, that renders such Party unable to perform its obligations in terms of this Agreement and such events shall include, but not be limited to -
- 1.1.22.1 fire, flood, storm, rain, hail, lightning or any other inclement weather or natural disaster, civil disturbances, explosion, power failure or reduction of power supply, acts, orders or regulations of any governmental or regulatory authority, agency or department, lack or shortage of materials or inability to procure equipment and material;
 - 1.1.22.2 war, invasion, act of a foreign enemy, hostilities (whether war be declared or not), terrorism, civil war, rebellion, revolution, criminal action, theft or vandalism; and down of work, whether of the Party concerned or any contractor or service provider of such Party, delays by sub- contractors, or in the supply of materials or any delay occasioned by the EMPLOYER or third parties or arising from any additional work carried out;
- 1.1.23 **"Handover Inspection"** means an inspection of the Works by the CONTRACTOR, or it's representative, and the EMPLOYER, or it's representative, after the Practical Completion Date but before the Delivery Date, at which inspection the Parties will agree to the Defects List;
- 1.1.24 **"Latent Defect"** means a defect that, on a reasonable inspection of the Works by the EMPLOYER, would not have been revealed before agreement was reached in respect of the Defects List;
- 1.1.25 **"Major Structural Defect"** means a defect in the Works that compromises the structural integrity of a residential property, causing potential risk to the safety and wellbeing of the occupant;
- 1.1.26 **"Optional Extras"** means any addition to the Specification and Schedule of Finishes agreed to in terms of clause 6 below, the cost of which is not included in the Contract Sum;
- 1.1.27 **"Package Price"** means the total of the following amounts -
- 1.1.27.1 the Purchase Price, as defined in the Sale Agreement, including VAT at 15%; and
 - 1.1.27.2 the Building cost, as defined in paragraph D of the Information Schedule including VAT at 15%;
- 1.1.28 **"Parties" or "Party"** means the Party or Parties to this Agreement;
- 1.1.29 **"Payment Certificate"** means a certificate issued by the Principal Agent in respect of payments made to the CONTRACTOR from the Cash Portion or portion thereof paid to the Transferring Attorneys certifying that -
- 1.1.29.1 the amount requested by the CONTRACTOR, in its' opinion does not exceed the aggregate value of workmanship and materials employed in respect of the Works during the period for which the request for payment relates; and
 - 1.1.29.2 in the case of a request for payment other than a final payment, in the opinion of the Principal Agent, the balance of the Contract Sum not yet advanced will be sufficient to complete the Works; and

- 1.1.29.3 that part of the Works in respect of which payment is being claimed by the Contractor has been completed;
- 1.1.30 **"Practical Completion Certificate"** means the certificate issued by the Principal Agent on the Practical Completion Date;
- 1.1.31 **"Practical Completion Date"** means the date on which the Principal Agent issues a certificate certifying that the Works have been substantially completed in accordance with the Unit Floor Plan and the Specifications and Schedule of Finishes, the Property can effectively be used for its intended purpose and a municipal occupancy certificate has been issued in respect thereof;
- 1.1.32 **"Principal Agent"** shall be appointed by the Contractor;
- 1.1.33 **"Property"** means the erf as described as per paragraph C of the Information Schedule;
- 1.1.34 **"Retention Sum"** means an amount equal to R20 000.00 (Twenty Thousand Rand), which amount forms part of the Contract Sum;
- 1.1.35 **"Sale Agreement"** means the sale agreement to be entered into between the Purchaser and the Seller in terms whereof the Purchaser agrees to purchase the Property from the Seller;
- 1.1.36 **"Schedule"** means the schedules attached and as identified in paragraph K of the Information Schedule
- 1.1.37 **"Signature Date"** means the date on which this Agreement is signed by the Seller;
- 1.1.38 **"Specification and Schedule of Finishes"** means the Specification and Schedule of Finishes attached to this Agreement as Schedule A;
- 1.1.39 **"Transfer"** means the registration by the Registrar of Deeds in the relevant Deeds Office, of the transfer of the Property into the name of the EMPLOYER;
- 1.1.40 **"Unit Floor Plan"** means the unit floor plan attached to this Agreement as Schedule B, which shall for the purposes of this Agreement mean the signed drawings of the Works and shall form the basis for drawings to be submitted to the relevant Local Authority for approval and upon approval thereof, the approved Unit Floor Plan shall substitute the Unit Floor Plan and drawings and be deemed to be the Unit Floor Plan selected and approved by the Parties for the purposes of this Agreement and the execution of the Works in terms hereof;
- 1.1.41 **"VAT"** means value-added tax payable in terms of the VAT Act;
- 1.1.42 **"VAT Act"** means the Value Added Tax Act, 1991 as amended from time to time;
- 1.1.43 **"Works"** means the residential house erected by the CONTRACTOR in terms of the provisions of this Building Agreement.

2 PLAN AND SPECIFICATION SCHEDULE

- 2.1 The CONTRACTOR shall erect the Works substantially in accordance with the Plan and Specification and Finishes as per Schedules A, B and C as herein before defined and attached hereto.
- 2.2 In the event of any discrepancy arising between the Plan and the Specification Schedule, the provisions of the Specification Schedule shall prevail.
- 2.3 In the event of any Mortgagee or relevant authority requiring any alterations, variations, amendments or additions to the Plan and/or Specification Schedule, such alteration, variations, amendments or additions, shall be made in consultation with the EMPLOYER, and

contained in

variation orders which clearly set out the payment procedure for any additional costs incurred thereby.

- 2.4 The EMPLOYER irrevocably grants Power of Attorney to the CONTRACTOR and/or the Architect to sign and submit the necessary drawings and specifications, mentioned in Clause 2.1 above, to the Local Authority for its approval.

3. CONDITIONS PRECEDENT

- 3.1 This Agreement is subject to the condition precedent that the Sale Agreement is entered into on **the Signature Date** and that the Sale Agreement becomes valid and enforceable **on or before the dates stipulated for the fulfilment or waiver, as the case may be, of the conditions precedent contained therein.**

- 3.2 If the condition precedent as stipulated in Clause 3.1 has not been fulfilled or waived, as the case may be, by the due date for fulfilment thereof then this Agreement will automatically fail and be of no further force and effect and the Parties will use their respective best endeavours to restore the *status quo ante* and no Party shall, save as otherwise provided in this Agreement, have any claim against the other Party arising from this Agreement.

4. CONTRACT SUM AND PAYMENT

4.1 Contract Sum: No Building Loan

- 4.1.1 Payment of the Cash Portion to the CONTRACTOR shall be secured by the EMPLOYER either by-

4.1.1.1 delivery to the CONTRACTOR of a guarantee/s approved by the Transferring Attorneys for payment of the Cash Portion; or

4.1.1.2 payment of the Cash Portion to the Transferring Attorneys, within **14 (fourteen) days** after being requested to do so by the aforementioned Attorneys, provided that the conditions set out in the Sale Agreement, if applicable, has been fulfilled or waived, as the case may be.

4.1.2 In the event that only a portion of the Contract Sum shall not be payable from the proceeds of a Building Loan, the progress payments shall first be made against the Cash Portion and thereafter from the proceeds of the Building Loan in accordance with the provisions as set out in clause 4.2.1 hereof.

4.1.3 Should the EMPLOYER elect to deliver a guarantee for payment of the Cash Portion in accordance with the provisions of clause 4.1.1.1 above, the EMPLOYER hereby authorises and instructs the CONTRACTOR to request monthly progress payments from the registered credit provider who issued the guarantee, in accordance with the provisions of the said guarantee and this Agreement.

4.1.4 Should the EMPLOYER elect not to issue a guarantee but to pay the Cash Portion to the Transferring Attorneys when requested to do so as contemplated in clause 4.1.1.2 above, the EMPLOYER hereby in terms of Section 86(4) of the Legal Practice Act No. 28 of 2014 gives consent to the Conveyancing Attorneys to invest the Cash Portion in an interest-bearing account with a bank or other accredited financial institution for the benefit of the CONTRACTOR or the EMPLOYER, depending upon whom becomes entitled thereto, as soon as the EMPLOYER has furnished the Conveyancing Attorneys with all such documents and information required by the Conveyancing Attorneys to meet their obligations in terms of the Financial Intelligence Centres Act, which Cash Portion and the interest accrued thereon shall be paid by the Conveyancing Attorneys as follows .

- 4.1.4.1 to the CONTRACTOR, the Cash Portion by way of monthly progress payments determined in accordance with the provisions of clause 4.1.7 below on delivery of the Payment Certificate/s; and
- 4.1.4.2 to the CONTRACTOR, the Retention Sum on the date on which the CONTRACTOR has rectified the defects listed in the Defects List and the Principal Agent has issued the Final Completion Certificate; and
- 4.1.4.3 to the EMPLOYER, the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancing Attorneys; or
- 4.1.4.4 if this Agreement is cancelled by the CONTRACTOR as the result of any event stipulated in clauses 10.1.1 to 10.1.8-
 - 4.1.4.4.1 to the CONTRACTOR, such portion of the Cash Portion as is due to the CONTRACTOR based on the level of completion of the Works at that stage as certified by the Principal Agent plus any other amounts due by the EMPLOYER to the CONTRACTOR in terms of this Agreement less any payments made to the CONTRACTOR at that stage in terms of this Agreement; and
 - 4.1.4.4.2 to the EMPLOYER, the balance, if any, and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancing Attorneys; or
- 4.1.4.5 if this Agreement is cancelled by the EMPLOYER as a result of any event stipulated in clauses 10.1.8, 10.1.9 and 10.1.10 below, to the EMPLOYER, the amount standing to the credit of the account less an administration fee in respect of management and/or administration fees payable to the Conveyancing Attorneys.
- 4.1.5 Payments from the Cash Portion shall be made in accordance with the provisions of clauses 4.1.3 and 4.1.4 above, whichever is applicable.
- 4.1.6 In the event of the EMPLOYER prohibiting any interim or final draws in contravention of clauses 4.1.3 or 4.1.4 above, whichever may be applicable, the CONTRACTOR shall be entitled without prejudice to any other rights which he may have in terms of this Agreement or in law, to discontinue the Works forthwith and all damages arising, costs incurred and additional interest accruing shall be for the account of the EMPLOYER. The CONTRACTOR shall, however, not be entitled to discontinue the Works if payment is prohibited by the EMPLOYER or withheld by the registered credit provider who issued the Guarantee as result of-
 - 4.1.6.1 non-delivery by the CONTRACTOR of the CONTRACTOR's NHBRC Registration Certificate and NHBRC Enrolment Certificate; or
 - 4.1.6.2 outstanding defects, deviations or notes on the Works from the NHBRC or the relevant Local Authority; or
 - 4.1.6.3 failure to comply with a certificate of non-compliance issued by the NHBRC.
- 4.1.7 The CONTRACTOR shall submit a monthly payment request to the Principal Agent and if the Principal Agent issues a Payment Certificate then, subject to the provisions of clauses 4.1.3 and 4.1.4, the EMPLOYER shall pay to the CONTRACTOR such portion of the Contract Sum confirmed by the Principal Agent, within **5 (five) days** of being furnished with the Principal Agent's Payment Certificate or, if determined by the Expert, **within 5 (five) days** of the Expert's determination, as the case may be.

Upon receipt of the Principal Agent's certificate from time to time, as contemplated in this clause 4.1.7, the Conveyancing Attorneys shall furnish such certificate to the EMPLOYER via email.

Unless the EMPLOYER instructs the Conveyancing Attorneys to the contrary in terms of the provisions of this Agreement in respect of a specific certificate within 5 (five) days of the Conveyancing Attorneys' aforesaid email to the EMPLOYER, the Conveyancing Attorneys are further hereby irrevocably authorised and instructed by the EMPLOYER to pay to the CONTRACTOR such portions of the Contract Sum confirmed by the Principal Agent as and when they are due in terms of the provisions of this clause 4.1.7.

- 4.1.8 If the EMPLOYER disputes the amount due as certified by the Principal Agent in a Payment Certificate from time to time, the EMPLOYER shall be entitled to refer the matter to be determined by an Expert in accordance with the provisions of clause 9, provided that for purposes of determination of such dispute, the Expert shall be a member of either the South African Institute of Architects, or the South African Council for Project and Construction Management Professions (SACPCMP) or the Association of Construction and Project Managers (or their successors).
- 4.1.9 It is also specifically agreed the Contract Sum may be escalated by the EMPLOYER in the event that the registration of the of the Property is delayed for whatever reason or the building project is delayed for more than 3 (three) months from date of signature of the contract of Sale or this Agreement. Escalation will not exceed 10% (ten percent) per annum or portion thereof.

4.2 Contract Sum: Building Loan

- 4.2.1 In the event that the entire balance of the Contract Sum or a portion of the Contract Sum being payable from the proceeds of a Building Loan then -
- 4.2.1.1 payment of the proceeds of the Building Loan shall be made in accordance with the standard procedure of the registered credit provider (herein called the "**Mortgagee**") concerned, provided that payments may only be made according to instructions of the valuer of the Mortgagee; and
- 4.2.1.2 the CONTRACTOR is hereby authorised and empowered to receive direct payments of interim and final draws in respect of the Contract Sum from the Mortgagee and the EMPLOYER agrees to sign all documents required by the Mortgagee in order to process any progress payment due in terms of this Agreement as and when required by the CONTRACTOR to do so. In so far as it may be necessary, the EMPLOYER hereby irrevocably and unconditionally authorises the CONTRACTOR or its nominee to request payments of interim and final draws.
- 4.2.2 In the event of the Mortgagee through error or otherwise paying to the EMPLOYER or his agents any of the proceeds of the Building Loan prior to the CONTRACTOR having been paid the full Contract Sum plus any additional amounts herein contained, the CONTRACTOR may require the EMPLOYER to forthwith pay such amounts plus interest at the rate prescribed in clause 11.1, from the date of such payment to the EMPLOYER until the date of payment thereof to the CONTRACTOR.
- 4.2.3 In the event of the EMPLOYER failing or refusing to authorise payment of any interim or final draws in contravention of clauses 4.2.1.1 and 4.2.1.2 or failing or refusing to make payment to the CONTRACTOR in contravention of this clause 4.2.3, the CONTRACTOR shall be entitled without prejudice to any other rights which he may have in terms of this Agreement or in law, to discontinue the Works forthwith and all damages arising, costs incurred and additional interest accruing shall be for the account of the EMPLOYER.
- 4.2.4 The CONTRACTOR shall, however, not be entitled to discontinue the Works if payment is withheld by either the Mortgagee or the EMPLOYER as result of-
- 4.2.4.1 non-delivery by the CONTRACTOR of the CONTRACTOR'S NHBRC Registration Certificate and NHBRC Enrolment Certificate; or

- 4.2.4.2 outstanding defects, deviations or notes in respect of the Works from the NHBRC or the relevant local authority; or
- 4.2.4.3 failure to comply with a certificate of non-compliance issued by the NHBRC.
- 4.2.5 Provided that the EMPLOYER furnishes the Transferring Attorneys with the bank statement in respect of the Building Loan on the first Business Day of each and every month following the Transfer Date, the CONTRACTOR shall be liable for the payment of all and any interim interest levied by the Mortgagee under the Building Loan from the Transfer Date to the date of Practical Completion.
- 4.2.6 It is also specifically agreed the Contract Sum may be escalated by the EMPLOYER in the event that the registration of the of the Property is delayed for whatever reason or the building project is delayed for more than 3 (three) months from date of signature of the contract of Sale or this Agreement. Escalation will not exceed 10% (ten percent) per annum or portion thereof.

4.3 General

- 4.3.1 The EMPLOYER undertakes not to directly or indirectly interfere and/or refuse to co-operate with the payment processes set out in this clause 4.
- 4.3.2 **Save for the Retention Sum, the full balance of the Contract Sum shall be due and payable on the Practical Completion Date and it is specifically agreed that the CONTRACTOR shall not be obliged to give the EMPLOYER possession of the Property or the Works until such time as all amounts due to the CONTRACTOR by the EMPLOYER, save for the Retention Sum, have been settled in full.**
- 4.3.3 **All payments to be made to the CONTRACTOR in terms of this Agreement shall be made to the CONTRACTOR without any deduction or set-off of any nature whatsoever and the EMPLOYER shall not be entitled to withhold or defer payment of the Contract Sum, or portion thereof, for any reason whatsoever. In amplification hereof, the EMPLOYER agrees to not under any circumstances withhold payment from the CONTRACTOR of any amounts whatsoever in respect of minor work still to be completed, or withhold its own payment or any payment from a Mortgagee as a result of any of the Optional Extras being incomplete.**

5 EXECUTION OF WORKS

- 5.1 The CONTRACTOR agrees to execute and complete the Works in accordance with the Unit Floor Plans, Specification and Schedule of Finishes and in accordance with industry norms.
- 5.2 The CONTRACTOR shall ensure that the Unit Floor Plans and Specification and Schedule of Finishes complies with the provisions of the Conditions of Approval as defined in the Sale Agreement.
- 5.3 The EMPLOYER shall in no manner whatsoever be entitled to interfere with, or allow any interference with the CONTRACTOR, its' employees, agents or subcontractors or with the completion of the Works, including but not limited to the giving of instructions or directions.
- 5.4 Notwithstanding any provision to the contrary herein, the CONTRACTOR shall be entitled to, without reference to the EMPLOYER, subcontract the whole or any part of its obligations in terms of this Agreement to any other person that is in the opinion of the CONTRACTOR qualified to execute the Works in a good, proper and workmanlike manner, but shall notwithstanding such appointment remain liable to the EMPLOYER as the CONTRACTOR in terms of this Agreement.
- 5.5 All specialists, merchants, tradesmen and sub-contractors who are to execute any work or supply any goods shall be sub-contractors normally used by the CONTRACTOR. The CONTRACTOR shall be under no obligation to utilise the services of any other contractor or sub-contractor.

- 5.6 The EMPLOYER, its officers, employees, agents and contractors shall not have any claim of any nature against the CONTRACTOR or any of its officers, employees, agents and contractors for any loss, damage or injury which any of them may directly or indirectly suffer as a result of the execution of the Works (save in so far as such loss, damage or injury is caused through the CONTRACTOR's gross negligence).
- 5.7 In the event of any circumstances arising, caused by or attributable to the EMPLOYER, which delays or which could have the effect of delaying the completion of the Works, or of increasing the cost of the Works, the CONTRACTOR shall not disburse monies due and owing and not incur expenses on behalf of the EMPLOYER in order to facilitate the completion of the Works without first obtaining the consent of the EMPLOYER. All such monies disbursed or expenses incurred shall be payable by the EMPLOYER to the CONTRACTOR on demand. The CONTRACTOR shall within a reasonable time of disbursing such funds or incurring such expenses, notify the EMPLOYER of the nature and extent thereof.
- 5.8 Should any dispute arise between the Parties as to -
- 5.8.1 the amount of monies due and disbursed by the CONTRACTOR on the EMPLOYER's behalf as contemplated in clause 5.7 above; or
- 5.8.2 whether the Works have been constructed substantially in accordance with the Unit Layout Plan, Specifications and Schedule of Finishes and/or has been erected in substantially the position as reflected on the Unit Layout Plan, as certified by the Principal Agent, such dispute shall be referred to be determined by an Expert in accordance with the provisions of clause 9, provided that for purposes of determination of such dispute, the Expert shall be a member of either the South African Institute of Architects, or the South African Council for Project and Construction Management Professions (SACPCMP) or the Association of Construction and Project Managers (or their successors).
- 5.9 The EMPLOYER shall not be entitled to sell and/or transfer the Property until the Delivery Date, except with the prior written consent of the CONTRACTOR. If the CONTRACTOR so consents, the new purchaser and/or transferee of the Property must agree in writing to observe the terms and conditions of this Agreement.
- 5.10 Where the EMPLOYER is a close corporation or a company, the sale of the Property referred to in clause 5.9 includes the sale of a member's interest in a close corporation or the sale of shares in a company and where the EMPLOYER is a trust, the sale of the Property referred to in this clause includes a change of beneficiaries and trustees.

6 SPECIFICATIONS AND OPTIONAL EXTRAS

6.1 General

- 6.1.1 The Works shall be erected substantially in accordance with the Unit Floor Plan and the Specification and Schedule of Finishes, provided that the CONTRACTOR shall be entitled to:
- 6.1.1.1 substitute items of similar standard and quality for any specified item referred to in the Specification and Schedule of Finishes; and
- 6.1.1.2 vary the Unit Floor Plan on notice to the EMPLOYER should the CONTRACTOR consider it reasonably necessary for technical reasons as a result of site conditions or to meet the Local Authority's requirements or other statutory requirements.
- 6.1.2 In the event of any dispute between the Parties as to the nature of the variations referred to in clause 6.1.1, as certified by the Principal Agent, the dispute shall be referred to be determined by an Expert in accordance with the provisions of clause 9, provided that for purposes of determination of such dispute, the Expert shall be a member of either the South African

Institute of Architects, or the South African Council for Project and Construction Management Professions (SACPCMP) or the Association of Construction and Project Managers (or their successors).

6.1.3 Neither the EMPLOYER nor any person or firm employed by the EMPLOYER shall carry out any work on the Property.

6.1.4 **In the event of any of the materials set out in the Specification and Schedule of Finishes being in short supply or unavailable, the CONTRACTOR shall be entitled to, on notice to the EMPLOYER, select substitute material of a similar quality from amongst like material readily procurable by the CONTRACTOR. Any difference in costs shall be for the account of the EMPLOYER and payable by the EMPLOYER to the CONTRACTOR on demand.**

6.2 Optional Extras:

6.2.1 The EMPLOYER shall be entitled at its own expense, in addition to the Contract Sum, to request that the Works be completed with Optional Extras as per Schedule F.

6.2.2 The EMPLOYER will not be entitled to any omissions or to downgrade the quality of the finishes recorded in the Specification and Schedule of Finishes.

6.2.3 The EMPLOYER may make a single request in writing, incorporating all Optional Extras desired, complete with sufficient detail to enable the CONTRACTOR to quote thereon, provided such request is received by the CONTRACTOR within **45 (forty five) days** of the date of fulfilment of the Conditions Precedent.

6.2.4 The CONTRACTOR shall inform the EMPLOYER by written quotation of the additional amount to be charged for the Optional Extras (in addition to the Contract Sum). The EMPLOYER shall be required to accept the quote in writing and make payment in cash directly to the CONTRACTOR of the amount required for the extras within **7 (seven) days** of receipt of the CONTRACTOR'S invoice and send proof of payment of such additional amount to the Conveyancing Attorneys. In the event of there being more than 1 (one) EMPLOYER, the signature of either of the EMPLOYERS shall be binding on all of the EMPLOYERS in respect of any Optional Extras.

6.2.5 In the event of the EMPLOYER not accepting in writing and/or not making payment of the amount on receipt of the CONTRACTOR'S invoice, then:

6.2.5.1 the Works shall be completed in accordance with the Unit Floor Plan and Specification and Schedule of Finishes and the EMPLOYER shall be obliged to take occupation thereof in terms of the provisions of this Agreement; and

6.2.5.2 the EMPLOYER shall forfeit any payment made to the CONTRACTOR in accordance with clause 6.2.4 above.

6.2.6 The EMPLOYER shall be liable for payment of all additional costs that may be incurred for purposes of the finalisation and installation of the Optional Extras which shall include but shall not be limited to the fees of an architect, a quantity surveyor, a structural/mechanical engineer, a land surveyor, attorneys, the Agent and any other professional fees of whatsoever nature that may be required, such fees which shall be payable on request whether or not the EMPLOYER proceeds with the Optional Extras.

7 COMMENCEMENT AND COMPLETION

7.1 The EMPLOYER shall give the CONTRACTOR undisturbed possession of the Property from the date of Transfer and shall not require the CONTRACTOR to give up possession of the Property for so long as any amounts are due to the CONTRACTOR in terms of this

Agreement. It is recorded that any waiver of CONTRACTOR's lien which may have been signed or will be signed by the CONTRACTOR or any person to whom the CONTRACTOR has ceded or will cede its rights, shall be exclusively for the benefit of that party and shall under no circumstances confer any rights or benefits on the EMPLOYER.

- 7.2 The CONTRACTOR shall commence the construction of the Works within **30 (thirty) days after the latter of the following events or dates, as the case may be -**
- 7.2.1 date of registration of transfer of the Property into the EMPLOYER's name;
 - 7.2.2 the Unit Floor Plans having been approved and any other consents or approvals obtained from the Local Authority;
 - 7.2.3 all bank guarantees and/or payments in respect of the Contract Sum due in terms of this Agreement having been delivered to the Conveyancing Attorneys;
 - 7.2.4 receipt by the CONTRACTOR of the enrolment certificate in respect of the Works to be carried out on the Property with the National Home CONTRACTOR's Registration Council; and
 - 7.2.5 all Optional Extras as provided for in clause 6.2 above, if applicable, have been approved by the CONTRACTOR and the cost attributable to same have been paid by the EMPLOYER directly to the CONTRACTOR.
- 7.3 The CONTRACTOR shall complete the construction of the Works, to a state where a Practical Completion Certificate may be issued, within 12 (twelve) months from the date on which construction commences. Should any dispute arise as to the actual date on which the construction is commenced, a certificate signed by the Principal Agent shall be final and conclusive proof of such date.
- 7.4 The CONTRACTOR shall complete the Works in accordance with the Unit Floor Plan and the Specifications and Schedule of Finishes within the period provided for in clause 7.3 above, provided that -
- 7.4.1 this date has not been extended by the Principal Agent in accordance with clauses 7.5, 7.6 and/or 10.3.3; and
 - 7.4.2 that the CONTRACTOR has taken all reasonable steps to prevent and/or minimise the delay; and
 - 7.4.3 that the delay is not due to intent or negligence on the part of the CONTRACTOR.
- 7.5 If the period during which the construction of the Works is being carried out coincides with any statutory or customary CONTRACTOR'S holiday, then the period for the completion of the Works shall be extended by the duration of such holiday, as certified by the Principal Agent.
- 7.6 **The CONTRACTOR shall not be liable to the EMPLOYER for any damages or penalty of whatever nature, whether consequential or otherwise, which may be sustained by the EMPLOYER as the result of an event of Force Majeure or other event which it could not reasonably have foreseen, and the period for the completion of the Works shall be extended by the duration of any such event, as certified by the Principal Agent.**
- 7.7 The CONTRACTOR shall notify the EMPLOYER by e-mail at the chosen e-mail address herein of the contemplated Practical Completion Date and the CONTRACTOR shall, on request, allow the EMPLOYER 7 days, from date of the aforesaid notification until the date of the Handover Inspection, to examine the Works for the purpose of ascertaining whether the EMPLOYER is satisfied that the Works reasonably conform to the material specifications of the Works as set out in Schedule A, Schedule B and, if applicable, any Optional Extras agreed upon in accordance with the provisions of this Agreement.
- 7.8 In the event of any dispute between the Parties as to when or whether the Works have reached a stage of practical completion, as certified by the Principal Agent, the dispute shall be referred to be determined by an Expert in accordance with the provisions of clause 9, provided that for purposes of determination of such dispute, the Expert shall be a member of

African Institute of Architects, or the South African Council for Project and Construction Management Professions (SACPCMP) or the Association of Construction and Project Managers (or their successors).

- 7.9 **On the Practical Completion Date all risk in and to the Works shall pass to the EMPLOYER.**
- 7.10 Within **7 (seven) days** of the Practical Completion Date, the Parties will meet for the Handover Inspection, at which inspection the EMPLOYER and the CONTRACTOR shall agree on the Defects List.
- 7.11 Notwithstanding anything to the contrary contained in this Agreement, delivery and possession of the Works shall only be given to the EMPLOYER on the later of the following dates, upon which date the EMPLOYER agrees to accept delivery of the Works -
- 7.11.1 in so far as the CPA applies to this Agreement and to the extent that the EMPLOYER and CONTRACTOR have in writing confirmed that delivery of the Works has been given and taken, the date of such written confirmation; and
 - 7.11.2 the 4th working day after the Handover Inspection; and
 - 7.11.3 the date on which the EMPLOYER and the CONTRACTOR agree on the Defects List; and
 - 7.11.4 the date on which the EMPLOYER signs a letter confirming the completion of the Works in accordance with the Specification and Schedule of Finishes, Unit Floor Plan and, if applicable, the Optional Extras, and that the Works is fit for the purpose for which it was intended; and
 - 7.11.5 in the event that the Contract Sum or any portion thereof is paid from the proceeds of a Building Loan, the date on which all documents required by the Mortgagee to make the final payment in terms of the Building Loan are signed by the EMPLOYER and the telephonic authorisation to make the payment as may be required by the relevant Mortgagee has been given by the EMPLOYER; and
 - 7.11.6 in the event that the Contract Sum or any portion thereof is from the Cash Portion, the date on which the EMPLOYER confirms in writing that the Works have been completed satisfactorily and irrevocably authorises and instructs the Conveyancing Attorneys to effect payment of the full balance of the Contract Sum save for the Retention Sum to the CONTRACTOR.

8 DEFECTS

- 8.1 A defects liability period of **30 (thirty) days** shall commence on the date that the Defects List (final snag list) is agreed upon. The CONTRACTOR shall rectify the defects listed in the Defects List within the said 30 (thirty) day period, provided that this date may be extended in accordance with clauses 7.5, 7.6 and/or 10.3.3 by the Principal Agent and provided further that the EMPLOYER grants the CONTRACTOR and/or it's workmen reasonable access to the Works to fulfil its obligations, failing which the EMPLOYER shall be deemed, subject to the provisions of clause 8.3, to have accepted the Works in the condition in which same was as at the Practical Completion Date.
- 8.2 Should the EMPLOYER and/or the Principal Agent not issue a notice of a Defects List within the period prescribed in this Agreement, subject to the provisions of clause 8.4, the Works shall be deemed to have been completed satisfactorily.

- 8.3 Once the defects listed in the final snag list referred to in Clause 8.1 have been remedied to a reasonable satisfaction of the EMPLOYER, the EMPLOYER or his representative will sign a letter of satisfaction ("happy letter") which, if the EMPLOYER obtained mortgage finance, has to be acceptable to the mortgagee.
- 8.4 The CONTRACTOR shall within a reasonable time repair -
- 8.4.1 any Latent Defects and defects due to faulty workmanship, faulty material and defective components in the Works which may manifest themselves within 3 (three) months from the Practical Completion Date, provided that the EMPLOYER notifies the CONTRACTOR in writing within the said 3 (three) month period of any such defects and provided further that the EMPLOYER grants the CONTRACTOR and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this clause, failing which the EMPLOYER shall be deemed, subject to the defects contained in the Defects List, to have accepted the Works in the condition in which same was as at the Practical Completion Date;
- 8.4.2 any roof leakage that results from defective material or workmanship or damage to the Works caused thereby which may manifest itself within a period of 12 (twelve) months from the Practical Completion Date, provided that the EMPLOYER notifies the CONTRACTOR in writing within the said 12 (twelve) month period of any such leakage or damage and provided further that the EMPLOYER grants the CONTRACTOR and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this clause, failing which the EMPLOYER shall be deemed to have accepted the Works in the condition in which same was as at the Practical Completion Date; and
- 8.4.3 any Major Structural Defects which may manifest itself within 5 (five) years from the Practical Completion Date, provided that the EMPLOYER notifies the CONTRACTOR in writing within the said 5 (five) year period of any such Major Structural Defect and provided further that the EMPLOYER grants the CONTRACTOR and/or it's workmen reasonable access to the Works to fulfil its obligations in terms of this clause, failing which the EMPLOYER shall be deemed to have accepted the Works in the condition in which same was as at the Practical Completion Date.
- 8.5 **The CONTRACTOR shall only be responsible in terms of this clause for defects arising as a result of faulty workmanship and/or materials and shall under no circumstances be responsible for-**
- 8.5.1 **damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of or arising from any risk insured against in terms of Home Owner's Insurance Policies normally issued by the South African Insurance companies in respect of residential purposes; and/or**
- 8.5.2 **any faults or defects resulting from surface or storm water, ground containing clay or other shifting soil, settlement cracking, geological disturbances, subsidence and/or adverse subsoil conditions; and/or**
- 8.5.3 **any defects in the house in respect of the following:**
- 8.5.3.1 **touch up paint of any nature; and/or**
- 8.5.3.2 **hairline cracks in the plaster work; and/or**
- 8.5.3.3 **any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints; and/or**

8.5.3.4 any mould growth caused by a lack of ventilation and/or condensation which defects the Purchaser acknowledges will not render the unit less acceptable than persons generally would be reasonably entitled to expect in the circumstances or less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances; and/or

8.5.4 any consequential loss or damage howsoever arising.

- 8.6 Any dispute arising between the Parties with respect to the CONTRACTOR'S liability to repair a defect or whether a defect has been rectified according to accepted standards in the building industry, as certified by the Principal Agent, the dispute shall be referred to be determined by an Expert in accordance with the provisions of clause 9, provided that for purposes of determination of such dispute, the Expert shall be a member of either the South African Institute of Architects, or the South African Council for Project and Construction Management Professions (SACPCMP) or the Association of Construction and Project Managers (or their successors).
- 8.7. Upon fulfilment of its obligations as contained in clause 8.4 and/or in the absence of a notice by the EMPLOYER as referred to in clause 8.2 above, the EMPLOYER shall be deemed to have accepted the Works in a fit and proper condition and be deemed to have acknowledged that the CONTRACTOR has fully complied with its obligations as set out in clause 8.4.1 and the Principal Agent shall forthwith issue a certificate of Final Completion to the CONTRACTOR.
- 8.8 The achievement of Final Completion shall be conclusive proof as to the sufficiency of the completion of the Works in accordance with the provisions of this Agreement, that all defects have been made good and that the works is fit for the purpose it was intended for.
- 8.9 Subject to the conditions contained in clauses 8.4.2 and 8.4.3 above, the CONTRACTOR shall, after expiry of the period referred to in clause 8.4.1, no longer be liable for any defects in the Works or in respect of anything relating thereto.
- 8.10 With effect from the date on which both Parties have complied with all of their obligations in terms of this Agreement, the CONTRACTOR agrees to cede to the EMPLOYER, as an outright cession all of its rights under the guarantees and/or warranties, as the case maybe, given by the subcontractors and suppliers in relation to the Works or any parts thereof.
- 8.11 On Final Completion, the CONTRACTOR **will** furnish the EMPLOYER with all such certificates as are legally required at the time of Final Completion in accordance with the National Building Regulations, including an electrical certificate, plumbing certificate and an occupation certificate.

9 EXPERT DECISION

- 9.1 Whenever any dispute or other matter in this Agreement is required to be determined by the Expert then, unless otherwise agreed to by the Parties in writing, the following provisions shall apply:
- 9.1.1 Either Party ("the **Referring Party**") shall be entitled to refer the dispute for determination by notifying the other Party in writing of its intention to refer such dispute ("the **Dispute Notice**"). The Dispute Notice shall include the names of not less than 3 (three) natural persons which the Referring Party proposes for appointment as the Expert.
- 9.1.2 Unless otherwise specifically stated to the contrary in this Agreement should the Parties fail to agree to an Expert within 5 (five) business days of the Dispute Notice, the Expert shall be appointed, at the written request of any Party (which request shall be copied to the other Party), by the Chairman for the time being of the

relevant Bar Council (or its successor).

- 9.2 The Expert shall act as an Expert and not as an arbitrator.
- 9.3 The Parties will be entitled to make representations to and to appear before the Expert who will be obliged to consider such representations and to permit such appearances, subject to such reasonable time and other limits as the Expert may prescribe. The Expert shall have regard to any such representations but shall not necessarily be bound by them.
- 9.4 The hearing shall be held at the City of Tshwane.
- 9.5 The hearing shall be held in accordance with the formalities and procedures settled by the Expert, which shall be in an informal and summary manner.
- 9.6 The Expert shall be entitled to: -
- 9.6.1 for the purpose of his determination, have such access as he may reasonably require to the books, records and documents of the Parties;
 - 9.6.2 call upon any professional advisers of the Parties or any of their predecessors, for such documents and information as the Expert may reasonably require for the purposes of his determination and the Parties shall give or, so far as they are able, procure that appropriate authority is given to those advisers to make the disclosures required of them and that they as far as they are able, give the Expert all such facilities and information as the Expert may reasonably require for the purposes of his determination;
 - 9.6.3 consult third parties and take account of their determinations, assessments, opinions, valuations and the like, but not necessarily be bound by them;
 - 9.6.4 investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision;
 - 9.6.5 decide the matters submitted to him according to what he considers just and equitable in all the circumstances, having regard to the purpose of this Agreement; and
 - 9.6.6 make such award, including an award for specific performance, an interdict, damages or a penalty or the costs as he in his discretion may deem fit and appropriate.
- 9.7 The Expert's determination shall be completed as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded and the decision of the Expert shall be final and binding on the Parties, and shall not be subject to an appeal or review except in the case of a manifest or material error on the part of the Expert.
- 9.8 This clause is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.
- 9.9 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the Expert.
- 9.10 The parties hereby consent to the non-exclusive jurisdiction of the relevant High Court of South Africa in respect of the proceedings in this clause and the above Court shall have jurisdiction to enforce any award made by an Expert under this clause.

10 EVENT OF DEFAULT & TERMINATION

- 10.1 Each and every of the following events shall constitute an Event of Default -

10.1.1 if the EMPLOYER fails to pay the CONTRACTOR any amount which becomes payable by it pursuant to this Agreement on the due date for such payment; and/or

- 10.1.2 if the EMPLOYER commits a breach of a term of this Agreement, the Sale Agreement and/or the Building Loan; and/or
 - 10.1.3 if the EMPLOYER repudiates this Agreement, the Sale Agreement and/or the Building Loan; and/or
 - 10.1.4 if the EMPLOYER commits an act of insolvency, as contemplated in the Insolvency Act No. 24 of 1936, as amended; and/or
 - 10.1.5 if the EMPLOYER'S shareholder/s and/or Directors propose or pass a resolution for its liquidation or winding-up or to place it under business rescue proceedings; and/or
 - 10.1.6 if any circumstances exist which may result in the EMPLOYER being placed under business rescue proceedings, whether voluntarily or on application by a third party; and/or
 - 10.1.7 if a third party launches an application in terms whereof such third party seeks to place the EMPLOYER under business rescue proceedings; and/or
 - 10.1.8 if the EMPLOYER or CONTRACTOR has an order granted against or in respect of it, in terms of which that Party is sought to be provisionally or finally wound up, liquidated, dissolved, sequestrated or has any equivalent application or proceedings brought against it in terms of any equivalent applicable legislation; and/or
 - 10.1.9 if the CONTRACTOR, without cause, wholly suspends the Works before the completion thereof and fails to re-commence with the Works within a period of 30 (thirty) days of being called upon to do so by the EMPLOYER in writing; and/or
 - 10.1.10 if the CONTRACTOR refuses to execute the Works in accordance with industry norms and persists in its refusal for a period of 30 (thirty) days after being called upon by the EMPLOYER in writing to rectify its breach.
- 10.2 If an Event of Default occurs, then, notwithstanding, without detracting from and in addition to any other right which the Parties may have, in terms of or arising from this Agreement or at law, the CONTRACTOR or the EMPLOYER, as the case may be shall be entitled -
- 10.2.1 **to immediately cease to perform any further Works in so far as such Works are not complete, pending rectification of the breach; or**
 - 10.2.2 to cancel this Agreement on written notice to the other Party or to claim specific performance of this Agreement by the other Party; and
 - 10.2.3 to claim damages from the other Party.
- 10.3 In the event that the Works are suspended as contemplated in clause 10.2.1 above, the Parties agree that-
- 10.3.1 the EMPLOYER shall bear the risk in and to the completed Works and for all stock and material on the Property;
 - 10.3.2 the EMPLOYER shall be liable for all escalations in the Contract Sum and shall make payment of such amounts forthwith against the CONTRACTOR's demand for such payment; and
 - 10.3.3 the date before which the Works are to be completed, as determined in terms of clause 7.3 above, shall be extended by a period equal to the number of days between the date of the Event of Default and the date of rectification thereof as certified by the Principal Agent.

10.4 Notwithstanding anything to the contrary herein contained, if for any reason whatsoever the start of the building operations is delayed for a period of 12 (twelve) months or longer, reckoned from the Signature Date, for reasons beyond the control of the CONTRACTOR, then at the option of the CONTRACTOR, this Agreement may be cancelled by the CONTRACTOR on written notice to the EMPLOYER and thereafter neither Party shall have any claim against the other howsoever arising, save to the extent that such delay is attributable to the EMPLOYER, in which event the EMPLOYER shall be liable for all of the costs incurred by the CONTRACTOR pursuant to this Agreement.

10.5 If in any legal proceedings or arbitration relating to the enforcement by the CONTRACTOR of its rights in terms of this Agreement, a Court or arbitrator awards costs to the CONTRACTOR, such costs shall be determined and recoverable on the scale as between an attorney and own client and shall include collection charges, the costs incurred by the CONTRACTOR in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any award or judgment awarded in favour of the CONTRACTOR in relation to its rights in terms of or arising out of this Agreement.

11 INTEREST & MORA

11.1 The EMPLOYER shall pay interest at the rate of 2% (two percent) per month or part thereof on all amounts falling due for payment in terms of this Agreement and which are not paid on the due date for payment thereof. Interest shall be calculated on the amount due from the due date for payment thereof to the date of actual payment thereof.

11.2 Should there be a delay in obtaining the Practical Completion Certificate for which the EMPLOYER is solely responsible then, in addition to the CONTRACTOR'S rights in terms of clauses 10.2 and 10.4 above and without prejudice to any other rights that the CONTRACTOR may have in terms of this Agreement or in law, the EMPLOYER shall pay to the CONTRACTOR, upon demand, interest calculated at a rate of 2% (two percent) of the Contract Sum per month, and calculated from the date on which the EMPLOYER is notified in writing by the CONTRACTOR as being in mora to the date upon which the EMPLOYER has ceased to be in mora.

12 THE CERTIFICATE OF INDEBTEDNESS

12.1 A certificate signed by any director or manager of the CONTRACTOR (whose appointment, authority or qualification need not be proved) shall be -

12.1.1 *prima facie* proof of the quantum of the amount due to the CONTRACTOR in terms of this Agreement; and

12.1.2 valid, together herewith, for any purpose and as a liquid document (alternatively, as proof of a liquidated amount) in any Court of competent jurisdiction or arbitration for the purpose of obtaining an arbitration award, provisional sentence, summary judgement or any other judgement against the EMPLOYER.

13 INSURANCE

13.1 The CONTRACTOR shall effect a CONTRACTOR'S All Risk Policy and public liability insurance generally covering accidental injury or death of a person and accidental loss or damage to material property on the Property until the Practical Completion Date and shall at all times during the progress of the Works keep the buildings in the course of erection insured to the full value thereof against loss or damage by fire or other appropriate risks.

- 13.2 The EMPLOYER shall ensure that the Property is insured to the full value thereof against loss or damage by fire and any other appropriate risks and shall further, from the Practical Completion Date, be responsible for keeping the Works insured to the full value thereof against loss or damage by fire or other appropriate risks.

14 ACCESS AND INCONVENIENCE

- 14.1 **The EMPLOYER acknowledges that the 33@View Lifestyle Village Development will be an ongoing process and that certain inconvenience may be caused thereby. The CONTRACTOR shall not be held liable for such inconvenience or any damages that flows therefrom and shall be entitled, (where necessary) to enter upon the Property for purposes of obtaining access to adjoining erven in the course of the 33@View Lifestyle Village Development.**

- 14.2 **The EMPLOYER further acknowledges that the possibility exists that the building/sand the other structures and/or improvements, including infrastructure and roads in the 33 @View Lifestyle Village Development may be incomplete and that the EMPLOYER may suffer inconvenience from building operations, noise, dust and other nuisance factors on all days of the week and on public holidays but not on Sundays.**

- 14.3 **The EMPLOYER shall not be entitled by reason of any of the afore going clauses 14.1 and 14.2, to cancel or withdraw from this Agreement or to claim damages from any person or institute interdict proceedings nor shall the CONTRACTOR be responsible for any loss, damage or inconvenience suffered by the EMPLOYER by reason of such building or development operations.**

- 14.4 The EMPLOYER shall have the right of inspection of the Works, provided that-

14.4.1 such right of inspection shall be limited to 1 (one) inspection per month from the commencement of the Works until Practical Completion;

14.4.2 the CONTRACTOR shall pre-arrange any such inspections with the EMPLOYER on a date and time suitable to the CONTRACTOR;

14.4.3 the EMPLOYER shall at all times be accompanied by either the CONTRACTOR or one of its duly appointed agents; and

14.4.4 the EMPLOYER shall not personally or through his agent be entitled to issue instructions to any of the CONTRACTOR's employees, contractors or subcontractors or any other person employed or acting on their behalf.

15 COMPANY, CLOSE CORPORATION, TRUST AS EMPLOYER

- 15.1 If the signatory signs this Agreement as representative of a third party and fails to disclose the name of his principal and furnish written proof of his mandate to the CONTRACTOR on the Signature Date and/or the CONTRACTOR is not supplied with proof to its satisfaction that the representative's principal has ratified this Agreement on the Signature Date, the representative will be personally liable for all the obligations of the EMPLOYER in terms of this Agreement, and the Agreement will be regarded as having been entered into in the personal capacity of the person who signed this Agreement as EMPLOYER or on behalf of the EMPLOYER.

- 15.2 Should this Agreement be signed by a person entering into this Agreement as trustee or agent for a company to be incorporated as the EMPLOYER in terms hereof -

15.2.1 such company shall be duly incorporated within 30 (thirty) days of signature hereof by the EMPLOYER;

- 15.2.2 such company shall duly adopt, ratify and render itself bound by this Agreement within 5 (five) days after the date of incorporation of the company;
 - 15.2.3 the provisions of the Companies Act applicable to pre-incorporation contracts, must be duly and properly complied with; and
 - 15.2.4 the person so signing this Agreement shall be deemed to have entered into this Agreement as EMPLOYER in his personal capacity should the provisions of clause 15.2.1 to 15.2.3 above not be complied with strictly in accordance with applicable legislative provisions concerning incorporation and pre-incorporation contracts.
- 15.3 **The person signing this Agreement on behalf of any company or company to be formed, close corporation or trust, as aforesaid, shall be liable, jointly and severally, with the EMPLOYER to the CONTRACTOR as surety and co-principal debtor for all the obligations of the EMPLOYER to the CONTRACTOR arising out of or in connection with this Agreement and, provided that the CPA does not apply to this Agreement, renounces the benefits of excussion and division.**

16 ADDRESSES FOR RECEIVING NOTICES

- 16.1 The Parties choose as the address for receiving any notices or legal process in terms of this Agreement, their respective addresses set out in paragraphs A and B of the Information Schedule for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 16.2 Should any Party at any time wish to change its abovementioned physical address and/or e-mail address, written notice of such change shall be delivered to the other Party provided that such changed physical address shall be a physical address within the Republic of South Africa and provided further that such change shall only be effective as from the date of receipt of such notice or such later date as may be stipulated in such notice.
- 16.3 Any notice given in terms of this Agreement shall be in writing and shall -
 - 16.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
 - 16.3.2 if transmitted by electronic mail message be deemed to have been delivered to and received by the addressee on the Business Day following the date of transmission.
- 16.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

17 DISPUTE RESOLUTION

- 17.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, other than disputes or differences required by the Agreement to be determined by the Expert, the said dispute or difference shall on written demand by either Party be submitted to arbitration in Gauteng in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 17.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) business

days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon

the chairperson of the relevant Bar Association to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute.

- 17.3 In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.
- 17.4 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 17.5 Any arbitration in terms of this clause 17 (including any appeal proceedings) shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 17.6 This clause 17 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 17.7 The Parties agree that the written demand by a Party to the dispute in terms of clause 17 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

18 GENERAL

- 18.1 In the event of there being more than 1 (one) EMPLOYER, the EMPLOYERS shall be jointly and severally liable for all of the EMPLOYERS obligations in terms of this Agreement.
- 18.2 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement.
- 18.3 The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.
- 18.4 If the operation of this Agreement is suspended or conditional upon the happening of any event and if any obligation or restriction imposed on the parties or any of them is clearly intended to be implemented and given effect to notwithstanding the fact that this Agreement in its entirety may at that time not yet be unconditional, then the relevant obligation or restriction shall nevertheless apply and be given effect to, and the relevant provisions shall create binding obligations on the parties.
- 18.5 Provided that the CPA does not apply to this Agreement, the Parties agree that this Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 18.6 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights an enforcing the obligations of the other Party in terms of this Agreement.

- 18.7 No addition to, alteration, cancellation, variation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.
- 18.8 The CONTRACTOR shall be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the EMPLOYER.
- 18.9 The EMPLOYER shall not be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the CONTRACTOR.
- 18.10 This Agreement is open for acceptance by the Seller for a period of 30 days from the date of signature hereof by the Purchaser, with the option of extending this period at the discretion of the Seller with written notice to the Purchaser prior to the lapsing of the initial 30 day period.

19 SURVEY OF PROPERTY

- 19.1 In the event of the CONTRACTOR being unable to readily locate the boundary pegs of the PROPERTY, then the CONTRACTOR shall be entitled to employ a Land Surveyor to locate the said pegs. The CONTRACTOR shall be responsible for payment of the Land Surveyor's fees.
- 19.2 Where the CONTRACTOR considers it necessary to alter the siting of either the Works from the positions shown on the Plan, the CONTRACTOR shall in conjunction with the Employer make the necessary changes. Any additional costs incurred in making these alterations shall be borne by the CONTRACTOR.
- 19.3 In the event of an error in the siting of the Works or outbuildings or both by the CONTRACTOR, such error shall not be deemed to constitute a breach of this Agreement by the CONTRACTOR, but the CONTRACTOR shall have the right and the EMPLOYER hereby automatically authorises the CONTRACTOR to make such amendments, alterations or modifications to the Plans and/or Specifications and/or the Works and outbuildings as may be necessary in order to resite the same so as to comply with any law, bylaw, regulation, condition of title or the like, which would otherwise have been breached by such erroneous sitings of the dwelling house or outbuildings or both and furthermore the EMPLOYER shall have no claim of whatsoever nature or howsoever arising against the CONTRACTOR for damages as a result of such error in resiting the dwelling house or outbuildings or both and the CONTRACTOR shall be liable for all costs included in such amendments, alterations or modifications.

20 FINAL PAYMENT AND INTERIM INTEREST

- 20.1 On the Practical Completion Date, the outstanding portion of the Contract Sum shall be paid to the Conveyancing Attorneys, who is hereby authorized and instructed to make payment thereof to the CONTRACTOR, provided that R20 000 of the Contract Sum shall be retained by the Conveyancing Attorneys and shall only be paid by the Conveyancing Attorneys to the CONTRACTOR as set out in this clause.
- 20.2 As soon as the CONTRACTOR is of the opinion that the work on the final snag list has been completed, the CONTRACTOR shall inform the EMPLOYER who shall inspect such work together with the Architect within 7 days of receipt of such notice. Where, in the opinion of the Architect, the work on the final snag list either:
 - 20.2.1 has been satisfactorily completed, the Architect shall forthwith issue an Architect Certificate to this effect to the CONTRACTOR and to the Conveyancing Attorneys, or

- 20.2.2 has not been satisfactorily completed, the Architect shall forthwith identify the items on the final snag list that are not yet complete and inform the CONTRACTOR and the Conveyancing Attorneys thereof and in which event the CONTRACTOR and Architect shall repeat the procedure of notice for inspection and inspecting as set out in this clause.
- 20.3 As soon as the Architect has issued the certificate referred to in clause 20.2.1, the Conveyancing Attorneys is hereby irrevocably authorized and instructed to pay the R20 000 retention held by them in terms of clause 20.1 to the CONTRACTOR.
- 20.4 Should the EMPLOYER and /or the Architect not issue a final snag list or the updated list as referred to in clauses 20.2.1 and 20.2.2 respectively within the period prescribed in the said clause, the Works shall be deemed to have been completed satisfactorily and the Architect Certificate as referred to in clause 20.1 shall be deemed to have been issued on the Practical Completion Date. In such event, the Conveyancing Attorneys is hereby irrevocably authorized and instructed to pay the retention held by them in terms of clause 20.1 to the CONTRACTOR.
- 20.5 The Certificate of Final Completion issued by the Architect as contemplated in this clause 20 shall be prima facie evidence as to the completion of the Works in conformance with the Plan and Schedule of Finishes, that all defects have been made good and that the Works are fit for the purpose it was intended for. The said certificate will be issued after the completion of the Works and the Architect is satisfied that all defects have been made good in terms of clause 20.1 above, and which date shall constitute the date of delivery of the Works, as set out in the CPA.
- 20.6 In the event that this transaction resulted from direct marketing as contemplated in the CPA the EMPLOYER has a right to rescind this agreement by written notice to the CONTRACTOR within 5 (five) business days after the delivery of the Works.

21 COMMISSION

- 21.1 The EMPLOYER hereby warrants that the agency and the agent referred to in paragraph G of the Information Schedule (herein collectively called the "Agent") is the only agent and/or agency who introduced him to the Property and/or the CONTRACTOR in connection with the transaction of construction of the Works on the Property hereby recorded ("the Transaction"), and hereby indemnifies the CONTRACTOR against and holds it harmless from any claim, action or proceedings which may be made or instituted against the CONTRACTOR by any agent other than the Agent for the payment of any commission in respect of the Transaction, where such other agent claims to have actually introduced the EMPLOYER to the Property and/or to the CONTRACTOR in connection with the Transaction.
- 21.2 The commission shall be paid to the agent on the terms and conditions as agreed to between the Contractor and the agent, provided that the agent has issued a proper VAT invoice to the CONTRACTOR, if applicable.
- 21.3 Should this transaction lapse due to non-fulfilment of any of the suspensive conditions herein or be cancelled, and such cancellation is not due to the EMPLOYER'S breach of contract, then the Agent will have no claim against the EMPLOYER for Agent's commission. Should, however, this Agreement be cancelled or terminated by virtue of the EMPLOYER'S breach, the EMPLOYER shall be liable for payment forthwith of the commission stated in clause 21.2 above to the Agent direct.

22 PROTECTION OF PERSONAL INFORMATION ACT NO 4 OF 2013 (POPIA)

The estate agent/agencies involved in this sale is required to collect and process the personal information of the parties herein to give effect to any of the parties' rights and obligations that flow from this agreement. The parties agree that their personal information may be processed by the estate agent/agencies and further processed and shared with any professional parties involved in the transaction, including but not limited to conveyancing attorneys, bond cancellation attorneys, banks, mortgage originators and/or their business partners and municipalities or otherwise required by law. The agent/agencies will process the personal information of the parties for the duration of the transaction as may be required and will retain the personal information as required by law. The parties herein also hereby agree to their information being retained on the agency/agencies and conveyancing attorney's data bases for future marketing purposes until the parties advise them otherwise in writing.

SIGNATURES

DATED AT	ON THIS	DAY OF	20_
_____		_____	
WITNESS		EMPLOYER 1	

		EMPLOYER2	

DATED AT	ON THIS	DAY OF	20_

		CONTRACTOR	

DATED AT	ON THIS	DAY OF	20_

		AGENT	
<p>The Agent by signature hereto accepts the benefits and obligations (if any) imposed in terms of this Agreement.</p>			