

# AGREEMENT OF SALE



**Between:**

**LERMITAGE RR TWO TO THREE, formerly Equity 124 Property Investments (Pty) Ltd  
Registration No: 2016/397784/07, and**

**LERMITAGE RR FIVE, formerly Equity 218 Property Investments (Pty) Ltd  
Registration No: 2017/414249/07**

Herein represented by J Fouche, Director, being duly authorized thereto

**Address:** Barinor's Vineyard North, The Vineyards Office Estate,  
99 Jip De Jager Drive, Welgemoed, Cape Town,

**("the Seller")**

**And**

**Full Names** : \_\_\_\_\_  
 \_\_\_\_\_

**Identity/Registration No.** : \_\_\_\_\_

**Marital Status** : \_\_\_\_\_

**Representative (for legal entity)** : \_\_\_\_\_

**Identity No. of Representative** : \_\_\_\_\_

**Postal address** : \_\_\_\_\_  
 \_\_\_\_\_

**Physical address** : \_\_\_\_\_  
 \_\_\_\_\_

**Telephone No. (Work)** : \_\_\_\_\_

**Telephone No. (Home)** : \_\_\_\_\_

**Cellular No.** : \_\_\_\_\_

**Email address** : \_\_\_\_\_

**("the Purchaser")**

### SUMMARY OF ANNEXURES

Annexure "A"	Location plan (Section and Parking Plan)
Annexure "B"	Block and Unit Typology
Annexure "C"	Specifications and Finishes
Annexure "D"	Loan Agreement (if applicable)
Annexure "E"	Instruction to Invest form

### SCHEDULE

#### A. DESCRIPTION OF SECTION/UNIT SOLD AND PURCHASED

The Unit to be established in terms of the Sectional Titles Act comprising:

- (i) The **residential unit** described as, **Unit No.** \_\_\_\_\_ in extent approximately \_\_\_\_\_ square metres, in the development known as "**L'ERMITAGE**" as indicated on the Location, Block and Unit Typology plans, Annexure "A" and "B" hereto and Specification of Finishes Annexure "C" hereto.
- (ii) The **garage unit** described as, **Unit No.** \_\_\_\_\_ in extent approximately \_\_\_\_\_ square metres, in the development known as "**L'ERMITAGE**" as indicated on the Location, Block and Unit Typology plans, Annexure "A" and "B" hereto and Specification of Finishes Annexure "C" hereto.
- (iii) An undivided share in the common property in the land and buildings as shown and more fully described on the Plans, apportioned to the said Unit in accordance with the participation quota of the said unit.
- (iv) Exclusive use of **Parking Bay** No. \_\_\_\_\_, and **Yard** No. \_\_\_\_\_. The said exclusive use area shall be allocated in terms of Section 10(7) and (8) of the Sectional Title Schemes Management Act No 8 of 2011 (**Management Rules**) in favour of the Purchaser. The parking bay and Yard is indicated on the Location plan marked Annexure "A" annexed hereto. The said exclusive use area cannot be mortgaged or be provided as additional security for Bond registration purposes.

(together described as "**the Property**")

#### B. DETAILS OF PURCHASE PRICE:

- |  |         |
|--|---------|
| (i) Purchase Price of the UNIT<br>(inclusive of VAT) | R _____ |
| (ii) Deposit (10%)                                   | R _____ |
| (iii) Bond/Loan amount required                      | R _____ |

**INTERPRETATION:**

In this agreement unless inconsistent with or otherwise indicated by the context the following words and expressions shall have the meanings assigned to them hereunder:

- 1.1 **"agent"** means IGROW WEALTH INVESTMENTS PTY LTD Registration number 2015/093828/07, Barinor's Vineyard North, The Vineyards Office Estate, 99 Jip De Jager Drive, Welgemoed, Cape Town;
- 1.2 **"architect"** means the architect as appointed by the Seller;
- 1.3 **"body corporate"** means the L'ERMITAGE BODY CORPORATE SS Number 121/2009.
- 1.4 **"Bond/financing date"** means within 21 days from date of last signature for approval and instruction to reach Seller's Conveyancers.
- 1.5 **"building or buildings"** means the buildings to be erected by the Seller's Contractors on the Property;
- 1.6 **"building lay-out plan"** means-  
 1.6.1 Location Plan attached marked **"A"**;  
 1.6.2 The Block and Unit Typology plans attached marked **"B"**;  
 1.6.3 Schedule of Development Specifications and Finishes attached marked **"C"**;
- 1.7 **"Chief Ombud"** means chief Ombud as defined in Section 1 of the Community Schemes Ombud Service Act, 2010
- 1.8 **"common property"** means the land included in the scheme as well as all parts of the building as are not included in any of the sections pertaining to Real Right 2, 3 and 5;
- 1.9 **"estimated monthly levy"** means R 1500;
- 1.10 **"floor plan"** means the plan showing the floor layout of the SECTION attached as Annexure **"B"**;
- 1.11 **"FICA"** means the Financial Intelligence Centre Act, Act 38 of 2001, as amended from time to time;
- 1.12 **"fixtures and fittings"** shall include, but not be limited to, wall plaster, tiles, plumbing, windows and doors, cupboards and electrical wiring and fittings;
- 1.13 **"independent property Inspector"** means the independent property inspector as appointed by the Seller;
- 1.14 **"land"** means OPPORTUNITY 2, 3 and 5, UNITS 59-76 (or as now numbered on the plans 59-76) (18) UNITS, described as REAL RIGHT 2, 3 and 5, in the Sectional Title Scheme L'ERMITAGE SS121/2009 and depicted on Diagram S.G. No. D440/2016;
- 1.15 **"location plan"** means the plan showing the position of the proposed section within the scheme attached as Annexure **"A"**;
- 1.16 **"managing agent"** means the managing agent as appointed by the body corporate;

- 1.17 **"Mixed Use Sectional Title Scheme"** means a Sectional Title Scheme comprising of a Residential Component, Retail component and Commercial Component;
- 1.18 **"occupation date / date of occupation"** means the **31 March 2021**, being the date upon which occupation of the Unit is tendered to the PURCHASER, provided that such date shall not be prior to the issuing of the Occupancy Certificate for the unit by the relevant Authority and subject to compliance of the provisions of 4.6 to the satisfaction of the Seller;
- 1.19 **"occupational interest"** means 0.75% of the selling price per month;
- 1.20 **"participation quota"** means the participation quota allocated to the section in the sectional plans and upon extension of the sectional title register, the registered sectional plans;
- 1.21 **"plans"** means the Location Plan, Block and Unit Typology Plans, Building Plans and Specifications;
- 1.22 **"rules"** means the Management and Conduct Rules as currently registered in the Cape Town Deeds Registry and is available to Purchaser upon request;
- 1.23 **"scheme"** means the sectional title development scheme in respect of the buildings named **"L'ERMITAGE"**;
- 1.24 **"sectional plans"** means the proposed plan of extension to be approved by the Surveyor-General, which is described as a sectional plan and which shows the building in the scheme as divided into two or more sections and common property and which complies with section 5 of the Sectional Titles Act, No. 95 of 1986;
- 1.25 **"Seller's Conveyancer"** means DGH Attorneys Incorporated, Warren Hamer, Director, [sally@dghlaw.co.za](mailto:sally@dghlaw.co.za) - Tel: 021 976 0475.  
**DGH Attorneys Trust Bank Account details**, (Ref: L'Ermitage IGrow; Nedbank Trust Account: DEBRA GOUWS & HAMER INCORPORATED, Account Number 118 628 9317, Branch Code: 198-765);
- 1.26 **"Signature Date"** means the date upon which this Agreement is signed by the Seller;
- 1.27 **"supplier"** means the Seller who supplies the unit in terms of the Consumer Protection Act No. 68 of 2008;
- 1.28 **"this agreement"** means this agreement and all annexure's hereto;
- 1.29 **"unit"** means the section together with its undivided share in the common property determined in accordance with the participation quota and the exclusive use area;
- 1.30 the singular shall include the plural and vice versa and words importing one gender shall include the other genders;
- 1.31 headings to clauses are for reference purposes only and are not be used in the interpretation thereof.

## 1. PURCHASE AND SALE:

- 2.1 The Seller hereby sells to the Purchaser, who hereby purchases, the Property for the purchase price and on the terms and conditions set out in this agreement.
- 2.2 The property shall be erected substantially in accordance with the plans and specifications. The Purchaser agrees that he shall not be entitled to amend or procure any amendments to the plans except for the amendments attached herewith and marked Annexure B.
- 2.3 The Seller shall ensure that the development is registered with the National Homebuilders Registration Council.

## 2. PURCHASE PRICE AND PAYMENT:

- 3.1 The Purchaser shall pay the Seller's Conveyancer the deposit (10% of the Purchase Price) for the Property **within 7 (seven) days of signature of this Agreement** by the Purchaser, which deposit shall be held in trust by the Seller's attorneys and invested in an interest bearing account in accordance with the provisions of Section 26 of the Alienation of Land Act No 68 of 1981 (as amended) with interest to accrue to the Purchaser. The provisions of this clause 3.1 shall constitute authority to the Seller's Conveyancer, in terms of Section 86(4) of the Legal Practice Act, 2014(Act No. 28 of 2014), to invest the deposit for the benefit of Purchaser pending registration of transfer.
- 3.2 The Seller will not be bound to the Purchaser in terms of this Agreement until such time as the deposit has been paid to the Sellers Conveyancer's trust account referred to in clause 3.1 above.
- 3.3 Within 21 (twenty one) days after signature of this Agreement, the Purchaser shall furnish the Seller or the Seller's Conveyancer, with an irrevocable guarantee issued by a registered commercial bank for the due payment of the balance of the purchase price of the Property, or in the event of the Purchaser requiring a mortgage bond for purposes of purchasing the Property, within 21 (twenty one) days after signature of this Agreement confirmation of securing a mortgage bond. Should the Purchaser fail to comply with this clause 3.3, the contract will be deemed null and void. The Seller may however extend in his sole discretion as per clause 3.10.7 the period to secure the mortgage bond financing before the lapsing of the 21 days in terms of this clause 3.3.
- 3.4 Or alternatively to the delivery of the guarantee referred to in clause 3.3 above, the Purchaser shall within the same time periods as provided for in the aforesaid clause, pay into the trust account of the Seller's Conveyancer, the balance of the purchase price of the Property, to be held by such attorneys in an interest bearing trust account, interest to accrue for the benefit of the Purchaser until the date upon which payment of the relevant amount falls due to the Seller. The Purchaser hereby irrevocably authorises the attorneys to release from the funds so received, the payments due to the Seller in terms of the provisions of this Agreement.
- 3.5 All amounts payable by the Purchaser in terms of this Agreement shall be paid to the Seller's Conveyancer free of bank charges or commission at Cape Town and without deduction or set off by means of a bank guaranteed cheque or a cheque drawn by a registered South African commercial bank.
- 3.6 The purchase price of the Property shall be paid to the Seller on Transfer Date.
- 3.7 The purchase price shall be inclusive of value added tax. However, if there is any increase in the rate of value added tax after signature of this agreement which would affect this transaction, the Purchaser shall be liable for payment of any such increase and shall pay such amount to the Seller's Conveyancer on demand.
- 3.8 The Purchaser hereby acknowledges that he is aware that the monies payable in terms of this agreement will only be invested in an interest bearing account (as provided for herein), upon receipt by the Conveyancer of the duly completed and signed Instruction to Invest form (Annexure "E"), accompanied by copies of the relevant documents required.

3.9 Seller's Conveyancer's trust account details are recorded in clause 1.25 above.

### 3.10 Mortgage Bond

- 3.10.1 In the event of the Purchaser indicating in the Schedule hereto that loan finance is required, then and in such event this agreement shall be conditional upon a recognized South African financial institution approving a loan to the Purchaser on the usual terms and conditions for loans of such nature, in the amount as set out in the Schedule hereto, or such lesser sum as may be accepted by the Purchaser, to be secured by the registration of a mortgage bond over the property, within the period stipulated in clause 1.4, by which time the Seller or the Seller's Conveyancers are to be notified in writing of the approval of the loan. This condition will be deemed fulfilled once the aforesaid bank or financial institution to which application has been made for the loan has issued a quotation in terms of Section 92(2) of the National Credit Act to the effect that the application has been approved notwithstanding the fact that:
- 3.10.1.1 such an approval is granted subject to the fulfilment of a condition or conditions; or
- 3.10.1.2 such approval is subject to the reservation of the right by such a bank or other financial Institution to, at any time prior to payment of the proceeds of the loan to the Purchaser, withdraw such approval, or
- 3.10.1.3 such approval is subsequently withdrawn for whatever reason.
- 3.10.2 The Purchaser undertakes to sign all necessary documents for the purpose of applying for the mortgage bond and complying with all requirements for the granting of the bond and undertakes to provide such documentation and information as may be called for by such institution for such purpose.
- 3.10.3 The Purchaser is aware of the fact that the development consists of multiple units and that all sales should be registered simultaneously with the registration of the extension of the Sectional Title Register. It is therefore imperative that the mortgagee bank may not impose further suspensive conditions when granting such loan, since the Seller reserves the prerogative not to accept such grant as a bond approval. For the same reason and in the event the mortgagee bank determines that the taking out of insurance is a prerequisite, that the banks' offered insurance be accepted in an attempt to expedite the acceptance thereof although the Purchaser acknowledges that the Purchaser has the right to at any time subsequent to registration of transfer cancel such insurance and replace same with insurance of its' free choice which is acceptable to the mortgagee bank.
- 3.10.4 **The Purchaser is obliged to apply for such loan through the services of bond originators as appointed by IGROW WEALTH INVESTMENTS (PTY) LIMITED to do so.** The Seller reserves the right to not approve the financial institution to which the Purchaser has applied in the event the Seller is of the view that his right to prompt and efficient transfer of the Property may be prejudiced due to certain mortgage conditions the financial institution has imposed, which **may, inter alia, include the appointment of attorneys other than the bond registration attorneys referred to herein to attend to the registration of the mortgage bond for which the Purchaser may have applied.**
- 3.10.5 **The Purchaser hereby authorises IGROW WEALTH INVESTMENTS (PTY) LIMITED to lodge such application for finance as well as to sign the necessary documentation on behalf of the Purchaser.**
- 3.10.6 The Purchaser undertakes to provide, on request, all information required by the financiers within 5 (five) days from Seller's signature hereof to the appointed bond originator.
- 3.10.7 The Seller or his Agent in his sole discretion may extend the period for obtaining the grant of the mortgage bond by a further period of up to 14 (fourteen) days. In the event of such loan not being granted within the period prescribed above, this agreement shall ipso facto lapse and be regarded as never having been entered into. In the event of the agreement lapsing as a result of the Purchaser being unable to obtain a loan and not as result of his failure to apply for such a loan timeously or at all, Seller shall, upon demand, be obliged to repay any monies paid by the Purchaser in terms of this agreement without set-off or any deductions into the Purchaser's nominated bank account and once again the Purchaser indemnifies the Seller against any claim for such amount.
- 3.10.8 The Purchaser may not after his mortgage bond has been approved by a financial institution, substitute the said mortgage bond with a mortgage bond of another financial institution. Any delay caused by this practice will not be acceptable to the Seller and the Seller reserves all his rights.

- 3.10.9 In the event a bond has been approved and prior to date of registration of transfer, the bond is withdrawn, whether on the instructions of the Purchaser or for any other reason, by such financial institution, the suspensive condition pertaining to the bond approval will nevertheless already be fulfilled and the agreement will no longer be subject thereto. The Seller, will, in such event, be entitled to insist on specific performance by the Purchaser of his/her obligations hereof and demand delivery of the guarantees for payment of the (balance of the) purchase price. Should the Purchaser fail to do so, the Purchaser will be in breach of the terms and conditions of the agreement and the Seller shall be entitled to enforce its rights in terms of clause 20 below.
- 3.10.10 ***The Purchaser undertakes to procure that the financial institution from which the Purchaser obtains the loan instructs the Sellers Conveyancer, or such other attorneys as specified by the Attorneys, to attend to the registration of such bond due to the fact that this transaction forms part of a development sale by the Seller which is being attended to by the Sellers Conveyancer.***
- 3.10.11 The Seller is liable to pay attorney transfer and bond registration costs in connection with transfer of the Unit provided the Seller's Attorneys attends to both the transfer of the Unit and the bond registration. Should the financial institution, or the Purchaser, select to appoint another attorney of its choice to register the bond then the Purchaser will be liable for the bond registration costs. The Purchaser will, however, be liable to pay the sectional title insurance certificate, initiation fee and/or valuation fee levied by the financial institution. (The valuation fee may be debited from the bond account of the Purchaser). If the Purchaser does not require a bond to purchase the Unit, the Purchaser shall not be entitled to discount.

### 3. OCCUPATION AND INTEREST:

- 4.1 It is anticipated that the Property will be ready for occupation on the date stipulated in 1.18 (subject to the issuing of the Occupancy Certificate for the Property by the relevant Authority).
- 4.2 If, however, the Seller is of the opinion that, for whatever reason, the property will not be sufficiently complete for beneficial occupation by the date specified in 1.18 then: -
- 4.2.1 the Seller shall notify the Purchaser in writing of such fact at least 30 (thirty) days before such date and shall specify in such notice the later date that the property shall be complete for the purposes of beneficial occupation (which date shall not be more than 6 (six) calendar months after the date specified in 1.18 and such later date shall be deemed for all purposes to be the date of occupation;
- 4.2.2 if the property is not sufficiently complete for beneficial occupation within six calendar months of the date specified in 1.18 (or within such extended time period as provided for in 4.2.1), the Purchaser shall have the right, on notice to the Seller, to rescind from this contract provided that such notice is received by the Seller within 14 (fourteen) days of the expiry of the aforesaid six calendar month period (or any extension thereof). In the event of the Purchaser so rescinding, the Purchaser shall be entitled to receive a refund of the amount paid to the Seller / Conveyancers and the Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for failing for any reason to give possession and occupation of the property to the Purchaser timeously.
- 4.3 If, however, the Seller is of the opinion that the Property will be sufficiently completed for beneficial occupation prior to the date specified in 1.18 then the Seller shall be entitled to anticipate the new date of occupation on 30 (thirty) days written notice to the Purchaser provided that such new anticipated date shall not be more than 90 (ninety) days earlier than the date stated in 1.18. Should the Seller bring the date of occupation forward by giving the Purchaser the written notice as aforesaid, such new date shall be regarded as the date of occupation for the purpose of this contract.
- 4.4 Any dispute between the Seller and the Purchaser, as to whether the property is ready for occupation shall be referred to the architect who, acting as an expert and not as an arbitrator, shall determine such dispute, his decision in this regard being final and binding on the parties.
- 4.5 From the occupation date the sole risk of profit and loss in respect of the Property shall pass to the Purchaser, from which date, notwithstanding any other provisions of this Agreement, the Purchaser will become liable to pay the monthly levies.

- 4.6 The Purchaser will pay monthly occupational interest in advance to the Seller in the amount of .75% of the total purchase price. The Purchaser shall however not be entitled to take occupation of the Property until such time as: -
- 4.6.1 the Purchaser has secured the payment of the full purchase price;
  - 4.6.2 the Purchaser has signed all the Seller's Conveyancer documentation;
  - 4.6.3 the Purchaser is up to date with the payment of levies, occupational interest and all other amounts that the Purchaser is responsible for payment in terms of the contract;
  - 4.6.4 the Purchaser (or his Agent) has signed a formal Acceptance/Handover document accepting that the Property is ready for beneficial occupation.

Once the aforesaid have been complied with, the Seller and/or his Agents will make arrangements with the Purchaser for the delivery of the keys to the property.

#### **4. CONDITIONS OF OCCUPATION:**

From the occupation date the Purchaser shall:

- 5.1 Comply with the provisions of all applicable legislation and of the scheme rules.
- 5.2 Waive all claims against the Seller for any loss or damage to property or for any injury to person which the Purchaser may sustain in or about the property, the building or the common property and shall indemnify the Seller against any such claim that may be made against the Seller by any member of the Purchaser's family or the Purchaser's invitees, employees or agents for any loss or damage to property or injury to persons suffered in or about the property, the building or the common property howsoever such loss or damage to property or injury to person may be caused.
- 5.3 Pay on demand all charges in respect of the electricity and other municipal services consumed or utilized in respect of the property on or before due date provided that if the Purchaser fails to pay any such amount the Seller shall be entitled to make payment thereof on the Purchaser's behalf and to recover same from the Purchaser together with interest at the effective interest rate from the date on which such amount is disbursed by the Seller to the date upon which it is recovered, and to pay the charges raised by the relevant local authority for the commission and provision of electrical supply to the property.
- 5.4 From the occupation date the Purchaser shall be liable for and pay to the body corporate monthly in advance on the first day of each and every month the monthly levy calculated on the basis of the participation quota in respect of the actual total costs of managing, operating, administering, repairing, servicing and maintaining the common property including, without restricting the generality of the foregoing, rates, taxes, sewerage and sanitation, insurances of every description as determined by the body corporate.
- 5.5 Not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Seller or the body corporate in respect of the building may be rendered void or voidable or as a result of which the premiums in respect thereof may be increased.
- 5.6 Not make any alterations to the interior or exterior of the property of whatsoever nature.
- 5.7 Maintain the property in a clean and orderly condition.
- 5.8 Should the Purchaser let or otherwise part with possession and occupation of the property prior to registration of transfer thereof, then the Purchaser undertakes to and shall be held liable to cover any and all costs, including legal costs to evict a tenant should this be necessary, as determined by the Seller. The Purchaser accepts that his liability as aforesaid shall be in solidum and that the Seller shall always be at liberty to proceed with collection and further legal proceedings against the Purchaser.
- 5.9 Not sell or otherwise alienate the property except with the prior written consent of the Seller which shall not unreasonably be withheld.



- 5.10 Acknowledge that on the occupation date the common property and other units may be incomplete and the Purchaser and other occupiers must necessarily suffer inconvenience from building operations and from the noise and dust resulting therefrom and that the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience, provided that such inconvenience is not caused by the intentional or grossly negligent acts of the Seller or its agent/s or its employee/s.
- 5.11 If any dispute arises between the Seller and the Purchaser as to the date when the property is available for beneficial occupation, then the decision of the architect as to such date shall be final and binding upon the parties.
- 5.12 The Seller reserves to itself the right, to make amendments to the Management and Conduct Rules as prescribed in terms of Section 10(2)(a) and (b) of the Sectional Titles Schemes Management Act no. 8 of 2011, subject to the approval of and certified by the Chief Ombud (if applicable) by which a different value is attached to the vote of the owner and/or the owner's liability modify his liability to make contributions to the body corporate.
- 5.13 If there is any dispute between the Seller and the Purchaser as to whether any materials or workmanship is of the required standard, then the decision of the architect in this regard shall be final and binding upon the parties.
- 5.14 Subject to the provisions of the Act, the Purchaser shall not, by reason of any delay in the transfer of the property to him due to any cause whatsoever, be entitled to cancel this contract or to refrain from paying, or suspend payment of, any amount payable by him in terms of this agreement or to claim and recover from the Seller any damages or compensation or any remission of rental.

#### **5. DEVELOPER: LIABILITY FOR DEFECTS:**

- 6.1 The property is sold subject to the conditions, reservations and servitudes contained in the sectional title register and such conditions of sectional title as may be imposed by the Seller, the local authority or any other authority. Save as provided for in the Consumer Protection Act and this contract to the contrary, the Purchaser purchases the property "voetstoots" and shall have no claim against the Seller in respect of defects whether latent or patent in the property or the common property of the scheme.
- 6.2 Notwithstanding the above, the Seller shall rectify defects or fault in the property, which arises from faulty materials or workmanship and which appears within a period of 6 (six) months from the occupation date, provided that notice of any defects or faults are given in writing by the Purchaser to the Seller within the said period. If the Purchaser fails timeously to notify the Seller of any defects, the Purchaser shall have no further claims against the Seller for rectification of such defects.
- 6.3 If there is any dispute regarding the existence or extent of any defect referred to in 6.2, the matter shall be referred to the architect, whose decision shall be final and binding upon the parties.
- 6.4 The Seller shall within a reasonable time remedy any defect in respect of roof leaks and gutter leaks in the building which may manifest themselves within 1 (one) year after the date of occupation provided that the Purchaser notifies the Seller in writing within the said period of 1 (one) year of any such defects, failing which, the Purchaser shall be deemed to have accepted the property in the condition in which the same are as at the date of occupation.
- 6.5 The Seller shall within a reasonable time remedy any material structural defects in the building which may manifest themselves within 5 (five) years after the date of occupation provided that the Purchaser notifies the Seller in writing within the said period of 5 (five) years of any such defects, failing which, the Purchaser shall be deemed to have accepted the unit and the exclusive use areas in the condition in which the same are as at the completion date.
- 6.6 Notwithstanding the provisions of clauses 6.1 to 6.5 above, the Seller shall not be liable for any defects in the unit and/or the exclusive use areas in respect of the following:
- 6.6.1 touch up paint of any nature; and
  - 6.6.2 hairline cracks in the plaster work; and
  - 6.6.3 any shrinkage/movement and expansion cracks between different components/materials used or cracking which might appear in control movement joints; and
  - 6.6.4 any mould growth caused by a lack of ventilation and/or condensation; and
  - 6.6.5 any doors and windows slamming in windy conditions or any damage caused thereby; and
  - 6.6.6 wind and rain entering through the windows and doors left open.

- 6.7 All warranties and undertakings given by the Seller to the Purchaser in terms of this agreement are personal to the Purchaser who shall not be entitled to cede, assign or make over its rights thereto.
- 6.8 The certificate of final completion (as defined in the standard JBCC building contract) issued by the architect shall be conclusive evidence as to the completion of the unit and/or the exclusive use areas, and that all patent defects have been made good which certificate will be issued, only in the event of a dispute, after the completion of the property and the architect is satisfied that all patent defects have been made good in terms of clause 6.2 and 6.3 above.
- 6.9 Upon the issue of a certificate of final completion by the architect in respect of the unit and/or the exclusive use areas, the Purchaser shall have no claim whatsoever against the Seller in respect of the unit and/or exclusive use areas and/or any defects therein (whether patent or latent) other than in terms of this clause.
- 6.10 If, at any time the Purchaser fails to make payment of any amount which is at that time owing due and payable to the Seller, the Seller shall not be obliged to commence or complete any remedial work in terms of this paragraph until the entire amount then outstanding has been paid.

### **6.11 Defects Lists**

- 6.11.1 The Purchaser will within 7 (seven) days of occupation submit a written list of visible defects (patent defects) to the property ("snag list"), to the Independent Property Inspector and the Seller will endeavour at its own cost to instruct the contractor to remedy such defects on terms and conditions as provided for elsewhere in the agreement at his earliest convenience but within normal business hours once notified by the Independent Property Inspector. The Purchaser will sign the Mortgagees "happy letter" (letter of satisfaction) once requested to do so by the agent since proper provision has been made in this agreement for the Purchaser to report defects and for the Seller to have same attended to.
- 6.11.2 Should the snag list referred to, not be received by the Independent Property Inspector within 7 (seven) days of occupation, the Purchaser will be deemed to have accepted the property in a fit and proper condition and the Seller will be indemnified and released from any further responsibility to attend to defects.
- 6.11.3 In the event of a dispute arising as to whether the defects are identified or whether the repairs have been satisfactorily undertaken, the decision of the Seller's Principal Agent for the development will be final and binding on the parties.
- 6.11.4 The Purchaser accepts the appointment of the Independent Property Inspector to act as the exclusive liaison between the Purchaser and Seller and therefore undertake not to liaise with the Seller directly for the duration of the appointment of the Independent Property inspector as provided for herein.
- 6.11.5 It will remain the Purchaser's responsibility after occupation of the PROPERTY, to arrange for access to the property that needs to be attended to by the Seller for purpose of attending to latent defects / snags as reported by the Purchaser. In the event of at least 3 (three) unsuccessful attempts by the Seller to schedule reasonable access to the property with the Purchaser within a period of 30 (thirty) calendar days from date the Seller notified the Purchaser of access that is being required, the Seller may assume that the Purchaser finds the property acceptable in its current state and may not be held responsible to attend to same.
- 6.11.6 Any latent defect arising within any of the periods referred to which may be regarded as a material / urgent defect which may cause further damage if not attended to immediately, will have to be reported in writing to the Independent Property Inspector on the date it occurs, unless it was not noted during normal business hours, where it would be expected of the Purchaser to attempt to limit any further damage caused by such defect in the interim until the Independent Property Inspector responded to the reported defect.

## **7 SECTIONAL PLAN:**

- 7.1 The Purchaser acknowledges that the extension to the sectional plan has not yet been approved and hereby agrees that the exact boundaries forming a part of the unit shall be those shown on the final approved sectional plan. The Seller warrants that, subject to 7.3 below, the boundaries will be substantially in accordance with those set out in the annexure's hereto, and that the undivided share of the common property apportioned to the section shall be in accordance with the participation quota which is ultimately determined in terms of the Act upon approval and registration of the sectional plan.
- 7.2 The Purchaser shall not be entitled to claim cancellation of this agreement or any reduction in the purchase price by reason of any alteration to the number, size, location or participation quota of any section or sections or any increases in their number. The Seller undertakes that any alteration will be made only after due consultation with the architect and with the local authority.
- 7.3 If the area of the section or any other section or building differ in minor respects (not more than 5% variation) from the areas shown on the building lay-out plan annexed hereto or the number of the section being altered or the undivided share in the common property attaching to the unit is altered or the exclusive use area (if applicable) adjoining the unit is altered, the Purchaser undertakes to accept transfer of the unit as defined and renumbered in the sectional plan approved by the Municipality and the Surveyor-General.
- 7.4 The Seller undertakes to make every effort to ensure that the units are constructed in accordance with the plans. However, the Purchaser shall be obliged to accept the unit without any variation in the purchase price provided the deviation in the size of the unit when complete is no greater than 5% (five percent) from that reflected in the plans.
- 7.5 The Purchaser acknowledges that the unit plans and specifications as well as the site development plan are subject to such changes as the architect, the developer and the local authority may deem necessary and the Purchaser shall have no claim against the Seller in respect of such amendments.

## **8 REGISTRATION OF THE EXTENSION OF THE SECTIONAL TITLE REGISTER:**

The parties' record that it is not possible for the Seller to pass transfer of the property to the Purchaser until such time as the extension of the scheme is approved and the sectional title register is extended in terms of the Sectional Titles Act. Accordingly:

- 8.1 The Seller undertakes, within a reasonable time and at its own expense, to take such steps as may be reasonably necessary to obtain approval of the extension of the scheme and the sectional title register;
- 8.2 Notwithstanding anything to the contrary herein contained, if the sectional title register is not extended within 18 (eighteen) months of the occupation date or such further period as may be agreed in writing between the parties, the Purchaser shall be entitled to declare this agreement null and void in which event:
- 8.2.1 the Purchaser and every person claiming occupation through the Purchaser shall vacate the property and the Purchaser shall redeliver the property to the Seller in the same good order and condition as at the occupation date, fair wear and tear excepted;
  - 8.2.2 the Seller shall refund to the Purchaser any deposits paid by the Purchaser in terms hereof;
  - 8.2.3 save as herein provided neither of the parties shall in such event have any further claim whatsoever against the other of them arising out of the termination of this agreement.

## **9 TRANSFER OF THE PROPERTY:**

- 9.1 It is the Seller's intention that transfer of the property shall be affected by the Seller's Conveyancers simultaneously with the registration of the extension of the sectional title register.
- 9.2 The Seller shall not be obliged to pass transfer of the property to the Purchaser, until such time as the total purchase price and all amounts to which the Purchaser may be liable have been paid and/or payment thereof has been secured as herein provided, and the Purchaser has complied with all the obligations under this agreement.
- 9.3 The Purchaser shall within 7 (seven) days of being called upon to do so by the Seller's Conveyancers, furnish all such information, sign all such documentation as may be necessary or required to enable the Seller's Conveyancers to pass transfer.

- 9.4 The Purchaser must ensure that his tax affairs and the tax affairs of his representatives, if applicable, are up to date as required by SARS to facilitate prompt issue by SARS of the Transfer Duty Exemption.
- 9.5 Subject to the provisions of the Act, the Purchaser shall not, by reason of any delay in the transfer of the property to him due to any cause whatsoever, be entitled to cancel this contract or to refrain from paying, or suspend payment of, any amount payable by him in terms of this agreement or to claim and recover from the Seller any damages or compensation or any remission of rental.
- 9.6 The Seller shall pay all costs of transfer (plus VAT on such costs), costs of all necessary affidavits and all other costs which have to be incurred in order to comply with the statutes or other enactments or regulations relating to the passing of transfer of the Property.

**10 RISK, DAMAGE AND DESTRUCTION:**

- 10.1 All benefit of and risk in and to the property shall pass to the Purchaser on the occupation date.
- 10.2 Notwithstanding the provisions of 10.1 if, before the extension of the scheme is registered, the building is damaged or destroyed in such a way that:
- 10.2.1 the Purchaser is (or the parties agree that he will be) deprived of beneficial occupation of the property for a period in excess of three months either party shall have the right by notice to the other to cancel this agreement; or
- 10.2.2 if any other sections in the buildings are damaged or destroyed and the Seller reasonably considers it advisable to terminate the scheme the Seller shall have the right, by notice to the Purchaser, to cancel this agreement and in either event the provisions of 10.2.1 above shall apply *mutatis mutandis*.
- 10.3 Notwithstanding the provisions of the rules the Seller shall, unless the contract has been cancelled in terms of 10.2 above apply any insurance proceeds received by it in respect of the damage or destruction of the building to the repair and reinstatement of the property and any other damaged units but shall not, in any way whatsoever, be liable to the Purchaser if there are no such proceeds or if such proceeds are inadequate to completely repair and reinstate the property.
- 10.4 It is recorded that the Seller intends, before the scheme is extended, but without any obligation or duty whatsoever to the Purchaser, to insure the buildings against such risks and for such amounts as it may in its sole discretion determine.

**11 ACCEPTANCE OF PLANS:**

The Purchaser acknowledges and agrees that:

- 11.1 the Purchaser has read and approved the annexures hereto and shall be obliged to accept possession of the unit and the exclusive use areas on the completion date and as finally depicted and delineated on the sectional plans relating thereto;
- 11.2 the areas reflected in the plans and specifications are estimated and do not constitute floor areas as measured in terms of the Sectional Titles Act;
- 11.3 it and its successor/s in title shall not be permitted at any time to:
- 11.3.1 extend the unit without prior written consent of the body corporate; and
- 11.3.2 subdivide the unit without the prior written consent of the Seller (or its successor-in-title) and the body corporate;

**12 RIGHTS OF SELLER:**

- 12.1 Pending extension of the scheme, the Seller shall be entitled to:
- 12.1.1 make amendments to the rules for the use and enjoyment of the common property;

- 12.1.2 enter the property at all reasonable times or to authorize its agents or workmen so to enter, to inspect same or to carry out repairs;
  - 12.1.3 to exercise all the rights and powers which a body corporate would be entitled to exercise in terms of the Act in respect of the building, the land and the owners and/or occupants of the property.
- 12.2 The Purchaser hereby appoints the Seller's nominee, irrevocably and *in rem suam* and with power of substitution, to be his lawful agent and attorney:
- 12.2.1 to convene a meeting of the body corporate and there to vote in favour of any resolution of the body corporate to amend the rules or pass any other resolution as may be required:
    - 12.2.1.1 by any bondholder for the grant of its consent to the extension of the sectional title register;
    - 12.2.1.2 by the local or provincial authority and/or by a mortgagee prior to the grant of a sectional mortgage bond over a unit in the scheme;
    - 12.2.1.3 by the Seller in order to ensure the proper and efficient management and control of the scheme, or to ensure that the developer can exercise in full his rights to further develop the scheme.
  - 12.2.2 to sign all documents necessary or required to comply with the Purchaser's obligations in terms of this agreement.

### 13 BREACH BY PURCHASER:

If the Purchaser defaults in the payment of any sum whatsoever payable by him in terms hereof or breaches any of his other obligations (all of which are agreed to be material) hereunder or in terms of the Act or the rules and fails to remedy such default or breach within 7 (seven) days of the dispatch of written notice requiring the remedy of such default or breach, the Seller shall be entitled, without prejudice to any other rights available to it in terms of this agreement or in law:

- 13.1 To claim and recover from the Purchaser forthwith the whole of the balance of the purchase price then outstanding together with interest thereon reckoned as herein before provided up to the date of payment of such balance as well as all other sums for which the Purchaser may then be liable in terms of this agreement; provided that if the Purchaser fails to make payment as provided for in terms of this sub-clause, the rights of the Seller under this agreement shall not be exhausted and the Seller shall notwithstanding the election to claim immediate payment be entitled to exercise any of the rights available to it in terms hereof or at law; or
- 13.2 To cancel this agreement, repossess the section and claim from the Purchaser such damages as it may have sustained by reason of the cancellation; or
- 13.3 To cancel this agreement, repossess the section and retain all amounts which the Purchaser has paid in terms hereof as a genuine pre-estimate of the damages which the Seller has sustained by reason of such cancellation in which event the Purchaser shall be deemed to have authorized the agent to pay to the Seller any amount paid by him in terms hereof and invested by the agent on his behalf.

### 14. DOMICILIUM:

- 14.1 Each of the parties chooses as its exclusive address/es ("*domicilium*") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this agreement at their respective addresses, e-mail addresses or telefax numbers set forth in the Schedule.
- 14.2 Each of the parties shall be entitled from time to time, by written notice to the other to vary its exclusive address/es to any other address within the Republic of South Africa which is not a post office box.
- 14.3 Any notice given and any payment made by a party to any of the others ("*the addressee*") which:
  - 14.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's exclusive address for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

- 14.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's exclusive address for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.
- 14.4 Where, in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by e-mail. Communications by e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

**15. AGENT AND COMMISSION:**

- 15.1 Commission on this sale shall become due and payable on the fulfilment of any suspensive condition contained in this agreement, and shall be paid by the Seller to the agent as agreed between the Seller and the agent and shall be payable on registration of transfer of individual units. However, if the Purchaser commits any breach of this agreement in consequence of which this agreement is cancelled or if this agreement is cancelled on request by the Purchaser, the Purchaser shall be liable TO PAY THE AGENT the commission, calculated at 5% of the purchase price plus VAT, immediately upon such cancellation.
- 15.2 The Purchaser hereby warrants that the only agent who introduced the Purchaser to the unit is the agent and hereby indemnifies the Seller against any claim which may be made by any other agent in respect of the sale of the property.

**16. FICA & POCA & CPA:**

The Purchaser acknowledges that: -

- 16.1 The Seller's Conveyancers are designated as an "accountable institution" in terms of the Financial Intelligence Centre Act 38 of 2001 ("FICA").
- 16.2 Certain obligations are placed on the conveyancers in terms of FICA and the Prevention of Organised Crime Act 121 of 1998 ("POCA") and regulations promulgated in terms thereof.
- 16.3 The Seller's Conveyancers will not invest and administer any deposits or any other monies paid by the Purchaser in terms of this Agreement unless the Purchaser has provided the Seller's Conveyancers with the documents that they require in terms of FICA and accordingly the Purchaser undertakes to comply with all requirements of and supply all information and documentation required by the Seller's Conveyancers to enable the conveyancers to fulfil their obligations in terms of the abovementioned legislation and regulations.
- 16.4 In complying with the Consumer Protection Act, certain portions of the Agreement have been printed in **bold italics**. The reason for this is to specifically draw the Purchaser's attention to these paragraphs as they either:
- 16.4.1 limit in some way the risk or liability of the Seller or any other person;**  
**16.4.2 constitute an assumption of risk or liability by the Purchaser;**  
**16.4.3 impose an obligation on the Purchaser to indemnify the Seller or any other person for some cause; or**  
**16.4.4 is an acknowledgement of a fact by the Purchaser.**
- 16.5 Kindly ensure that before signing this Agreement that you have had an adequate opportunity to understand these terms. If you do not understand these terms or if you do not appreciate their effect, please ask for an explanation and do not sign the agreement until the terms have been explained to your satisfaction.**
- 16.6 The Sale of this property therefore constitutes a 'special-order' as may be contemplated by Section 17 of the Consumer Protection Act No. 68 of 2008**

**17. INDEMNITY:**

The Seller shall not warrant any information given in respect of the property / unit, whether this information is given prior to or subsequent to the signing of this contract, save for the information in respect of the property

specifically warranted in this agreement. The Seller shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given in good faith by the Seller to the Purchaser, his agent or his nominee in respect of the property / unit and the Purchaser hereby indemnifies the Seller and hold it harmless against and in respect of any loss or damage caused which the Purchaser may suffer as a result of any inaccuracies in any information given by the Seller in good faith.

#### 18. COMPLIANCE CERTIFICATES:

The Seller hereby undertakes to deliver to the Purchaser on or before the date of transfer the required compliance certificates.

#### 19. GENERAL:

19.1 This agreement represents the entire agreement between the parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect save as expressly included herein. No variation of or addition to or consensual cancellation of this agreement and no waiver by the Seller of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.

**19.2 If this agreement is signed by more than one person as Purchaser the obligations of all the signatories shall be joint and several. If this agreement is not signed by all the persons named as Purchasers, this agreement shall nonetheless be and shall remain binding on the Purchasers who have signed this agreement.**

19.3 No latitude, extension of time or other indulgence which may be given or allowed by the Seller to the Purchaser in respect of any of its obligations in terms of this agreement shall constitute a waiver, abandonment or novation of the Seller's rights in terms hereof.

#### 20. MORA INTEREST:

**20.1 In the event of there being any delay in connection with the registration of transfer for which the Purchaser is responsible, the Purchaser agrees to pay interest on the full purchase price at the prime interest rate charged by the Standard Bank of South Africa Limited on mortgage bond facilities from time to time calculated from the date the Purchaser is notified in writing by the Seller (or the Seller's agent) as being in mora, to the date upon which the Purchaser has ceased to be in mora, both days inclusive.**

20.2 If, at any time the Purchaser fails to make payment of any amount which is at that time owing due and payable to the Seller, the Purchaser agrees to pay interest on the full outstanding amount at the prime interest rate charged by the Standard Bank of South Africa Limited on mortgage bond facilities from time to time calculated from the date the Purchaser is notified in writing by the Seller (or the Seller's agent) as being in mora, to the date upon which the Purchaser has ceased to be in mora, both days inclusive.

20.3 A certificate by any Branch Manager of the said bank as to such prime interest rate on mortgage bond facilities, shall be prima facie proof of such rate.

#### 21. PHASED MIXED-USE DEVELOPMENT:

**21.1 The Purchaser acknowledges that the Seller intends to extend the scheme by erecting and completing from time to time further buildings on specified parts of the common property, to divide such buildings into sections and common property and confer the right of exclusive use over parts of such common property upon the owner or owners of one or more of such sections and to reserve its right in this regard in accordance with provisions of section 25(1) of the Act.**

**21.2 The Purchaser shall be obliged to allow the Seller or its successor in title ("the developer") to exercise its right to develop the sections in the manner envisaged herein, and shall not be entitled to interfere with or obstruct the developer in any way from erecting the said buildings on the common property.**

**21.3 The Purchaser acknowledges that he is aware that the scheme is a Mixed-Use Development, comprising residential, retail and commercial components.**

**22. SPECIAL CONDITIONS:**

**22.1 Suspensive Condition**

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**23. SALE AND LETTING OF UNITS**

23.1 It is recorded and agreed for convenience and in the interest of the security of the development that the Seller may appoint, at its discretion, the letting agency to act on behalf of Purchasers in securing tenants for the property.

**23.2 The Seller hereby appoints L'ERMITAGE CHATEAU (PTY) LTD as the sole and exclusive Agency to act on behalf of the Purchasers to procure and place tenants for L'ERMITAGE in terms of the rules.**

23.3 The Purchaser hereby acknowledges it is aware of the provisions and financial implications of the Fremco Trust and levies payable to the said Trust on alienation or sale of the property as contained in the Consolidated Articles of Association of the Master POA. The Fremco trust has been established to disburse levy funds to them on behalf of the local authority. The Fremco levies would be paid to Fremco trust as zero comma two five percent (0.25%) on all further on-sales from time to time, in perpetuity, of any land or portion of land, by any owner thereof from time to time, in perpetuity. Of the Fremco levies ninety percent (90%) is destined for the empowerment of the previously disadvantaged, and ten percent (10%) for the Mont Rochelle nature reserve adjoining FHE.

**24. SPECIFICATIONS AND FINISHES:**

24.1 The material and specifications (Annexure "C") are guidelines and the Seller is entitled to make amendments thereto. If the material cannot be sourced, the Seller will be entitled to replace it with similar material.

24.2 The Seller does not guarantee colour, match, texture, availability, or quality of sanitary ware, carpets, tiles, and face bricks (where applicable) and will not be responsible for reasonable colour variations.

**25. OFFER TO PURCHASE:**

Signature of this agreement by the Purchaser shall be deemed to constitute an offer by the Purchaser to the Seller to enter into this agreement which offer shall not be capable of revocation or withdrawal by the Purchaser for a period of ten days after signature of this agreement by the Purchaser. This agreement shall be binding on the Seller only when duly signed by it until which time no obligation or liability on the part of the Seller shall be deemed to exist. It shall not be necessary for the Seller to communicate to the Purchaser its acceptance of the offer constituted in terms hereof for this agreement to become valid and binding.

**SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES SET OUT BELOW:**

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**SELLER**



SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_ PURCHASER

2. \_\_\_\_\_ PURCHASER

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_ AGENT:

## Annexure "A"

### Location plan (Section and Parking Plan)

**Block and Unit Plan UNIT**

**Specifications and Finishes**

**Annexure “D”**

**Addendum (if applicable)**

## Annexure “E”

### Instruction to invest form