

OFFER TO PURCHASE BEFORE OPENING A SECTIONAL TITLE REGISTER IN RESPECT OF THE VAL DE VIE POLO VILLAGE

SCHEDULE OF PARTICULARS

1. Parties

1.1 Seller **KEYSHA INVESTMENTS 213 (PTY) LTD,**
registration number 2007/022692/07

Address C/o 7 Val de Vie Estate, Kliprug Minor Road, Paarl
7646

VAT Number 4440244285

1.2 Purchaser

Full Names and Surname / Name of _____
Company / Name of Close Corporation/
Name of Trust _____

Identity number / Registration number _____

Full names and identity no. of person _____
signing this agreement on behalf of a
Company or Close Corporation or Trust or _____
other legal persona

Marital Status (if natural person) MARRIED IN / MARRIED ANC / UNMARRIED /
DIVORCED / OTHER

If marriage is not governed by the laws of
RSA specify which country's law is
applicable _____

Full names of spouse if married in
community of Property _____

Identity number of spouse, if married in
community of Property _____

Purchaser's chosen addresses:
Residential / Business Street Address _____

Postal Code _____

Postal Address _____

Postal Code _____

Telephone No (work) _____

(home) _____

(mobile) _____

Telefax No _____

E-mail address _____

2. Property

- 2.1 Unit (including any balcony or patio as shown on the unit layout plan) No. _____ approx area _____ m²
- 2.2 Basement Parking No. _____ approx area 14 m²
- 2.3 Basement Parking, if applicable No. _____ approx area 14 m²
- 2.4 Open Parking Bay, if applicable No _____ approx area 14 m²

3. Purchase Price (including VAT at 14%)

- 3.1 Purchase Price R _____

Purchase Price is comprised as follows :

- Unit (2.1) R _____
- Basement Parking (2.2) R 95 000-00
- Basement Parking (2.3), if applicable R _____
- Open Parking Bay (2.4), if applicable R _____
- 3.2 Deposit in the amount of 10% of the Purchase Price payable on signature by the Purchaser R _____
- 3.3 Balance Purchase Price payable on the Transfer Date R _____

4. Finance

- 4.1 Cash (incl Deposit) R _____
- 4.2 Bond amount R _____

or such lesser amount as the Purchaser may accept in its sole discretion.

- 4.3 Bond Approval (30 days from signature by Seller) _____

20__

4.4 Mortgage Originator

As appointed by the Seller to the exclusion of all others

5. Expected Date of Completion (subject to Clause 5 of the terms and conditions)

Between 1 June 2016 and 31 July 2016.

6.. Date of Possession

Subject to the conditions contained in Clause 6 of the terms and conditions, on the Transfer Date.

7. Transfer Date

As soon as legally possible in accordance with Clause 9.1 of the terms and conditions.

8. Estimated monthly levy (excluding rates)Monthly levy estimated at an average of R1 895 excluding VAT per unit or R20,13/m² excluding VAT per unit, which amount includes the levy payable to VDVHOA**9. Estimated monthly rates**

To be determined by the local authority

10. Conveyancers**Jooste Marais Inc, PJS Building**20 Zandwyk Park, Old Paarl Road,
Paarl

Tel: 0861 172 428 / +27 21 863 1089 (intl)

Fax: 0861 299 910 / +27 21 863 2173 (intl)

Email address

sandre@jminc.co.za

Account details for payment of deposit

Name : Jooste Marais Incorporated

Bank : Nedbank Limited

Account number : 106 812 3141

Branch code : 198765

Branch name : Inland Garden Route

Swift code : NEDSZAJJ

11. The Agent:

Agency Name:

Agent's Name

Agent's e-mail address

Agent's telephone number

Agent's address

Commission amount including VAT, if applicable

All payments made directly into Jooste Marais Incorporated's Trust account must reflect the unique Val de Vie Polo Village unit number and the Purchaser's surname/name:

VDVPV _____

CONSUMER PROTECTION ACT NOTICE

In complying with the Consumer Protection Act, certain portions of the agreement have been printed in bold. The reason for this is to specifically draw the Purchaser's attention to these clauses as they either:

- limit in some way the risk or liability of the Seller or any other person;
- constitute an assumption of risk or liability by the Purchaser;
- impose an obligation on the Purchaser to indemnify the Seller or any other person for some cause; or
- are an acknowledgement of a fact by the Purchaser.

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.

TERMS AND CONDITIONS

WHEREAS

- A. The Seller is the registered owner of the land on which a sectional title development is to be erected; and
- B. The Seller wishes to sell the Property prior to commencement of construction of the building; and
- C. The building has not been completed and the sectional plan not yet drawn nor registered and accordingly the exact and final boundaries of the components will only be reflected on the approved sectional plan; and
- D. The Seller intends to register the opening of a sectional title register on the land;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

In this agreement, unless inconsistent with the context:

- 1.1 **“agreement”** means this agreement of sale and shall include the schedule of particulars prefixed to this agreement, the terms and conditions of sale and all annexures thereto, which shall together constitute the entire agreement between the parties;
- 1.2 **“basement parking/s”** means the basement parking referred to in paragraph 2.2 and, if applicable, 2.3 of the schedule and indicated on the draft sectional plan and basement- and open parking layout plan, the identification number of which shall be as reflected in the sectional plan relating thereto as surveyed on completion of the basement parking/s and approved by the surveyor general being an exclusive use area. **The Purchaser shall be obliged to purchase one basement parking and may not purchase more than 2 (two) basement parkings in terms of this agreement;**
- 1.3 **“basement-and open parking layout”** means the basement- and open parking layout attached hereto marked “D”;
- 1.4 **“Body Corporate”** means the Val de Vie Polo Village Body Corporate, to be established in terms of Section 36 of the Act, to manage and control the common interest of owners of units within the scheme;
- 1.5 **“bond registration attorneys”** means the attorneys appointed by the relevant financial institution to attend to the registration of the Purchaser's simultaneous bond, if applicable;
- 1.6 **“building”** means the building/s erected and/or to be erected on the land as part of the scheme;
- 1.7 **“common property”** means:
 - 1.7.1 the land included in the scheme; and
 - 1.7.2 such parts of the building/s as are not included in a section and/or exclusive use area including but not limited to any:

- (a) walls;
 - (b) foundations;
 - (c) roofing;
 - (d) stairwells;
 - (e) corridors;
 - (f) walkways;
 - (g) external spaces and gardens;
 - (h) common parking spaces;
 - (i) leisure facilities;
- 1.8 **“components”** means the individual components stipulated in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable;
- 1.9 **“Conveyancers”** means the attorneys as described in paragraph 10 of the schedule;
- 1.10 **“CPA”** means the Consumer Protection Act 68 of 2008, as amended;
- 1.11 **“Date of Completion”** means the date as contained in paragraph 5 of the schedule, on which date the unit shall have reached the stage of completion where the Property is substantially complete and can effectively be used for the purposes intended and an occupancy certificate has been issued ;
- 1.12 **“Date of Possession”** means the date when occupation of the unit and the exclusive use areas are tendered to the Purchaser in accordance with the date as specified in paragraph 6 of the schedule, provided that such date shall not be prior to the date on which the Purchaser signs the letter of completion as well as :
- 1.12.1 in the event that the Purchase Price or any portion thereof is paid from the proceeds of a loan obtained from a registered credit provider as referred to in Clause 24.1.1 below, the Purchaser signs and provides all documents required by the said registered credit provider to issue a clearance for registration of the Purchaser’s bond and subsequent payment of the loan amount in terms of the guarantees issued on the Transfer Date; or
 - 1.12.2 in the event that the Purchase Price or any portion thereof is paid in cash, the Purchaser notifies the Conveyancers in writing that the Property has been completed satisfactorily and authorises and instructs the Conveyancers to proceed with registration of transfer of the Property into the Purchaser’s name as soon as is judicially possible and subsequent payment on the Transfer Date of the Purchase Price or any portion thereof to the Seller or its nominee;
- 1.13 **“defects”** means any aspect of materials and workmanship forming part of the Property that is due to the failure of the Seller to comply with its obligations in terms of this agreement;
- 1.14 **“developer”** means, jointly and severally, as the context may require :
- 1.14.1 Elements Development Projects (Pty)Ltd Registration number : 2001/018028/07, a private company duly registered in accordance with the Company Laws of the Republic of South Africa (“Elements”);
 - 1.14.2 Val de Vie Investments (Pty)Ltd Registration number : 2014/016853/07, a private company duly registered in accordance with the Company Laws of the Republic of South Africa (“Investments”); and/or

1.14.3 Any related party, interrelated party or subsidiary (as defined in Sections 2 and 3 of the Companies Act No 71 of 2008) of Elements and/or Investments

carrying out the development from time to time;

- 1.15 **“development period”** means the period from the date of the commencement of construction of the scheme envisaged in this agreement to the latter of the date of transfer of the last saleable sectional title unit in the scheme or the date of completion of any outstanding work in the scheme by the Seller, whichever occurs last;
- 1.16 **“development”** or **“township”** means the development of all land which comprises the township known as Val de Vie Winelands Lifestyle Estate which has been and is in the process of being developed by the developer. The township currently comprises Erf 1 Val de Vie and the township will be extended by the developer in terms of clause 44 of the Constitution of the VDVHOA to include *inter alia* Portion 2 of the Farm no 835, Farm 1348, Portion 7 of the Farm no 811, Portion 3 of the Farm no 826, Farm 1693, Farm 1486, Portion 12 of the Farm no 826, all situated in Division Paarl, Remainder Erf 549 Pearl Valley Estate, Erf 546 Pearl Valley Estate, Remainder Erf 550 Pearl Valley Estate and Erf 547 Pearl Valley Estate as shown on the preliminary masterplan attached hereto marked “E”, and includes all/any extension/s of the township approved by the local authority upon application by the developer from time to time. The VDVHOA has been established in respect of the development and the developer intends to develop the development in terms of use zoning to be approved from time to time;
- 1.17 **“direct marketing”** means to approach a person, either in person or by mail or electronic communication for the direct or indirect purpose of promoting or offering to supply the Property to that person;
- 1.18 **“draft sectional plan”** means the draft sectional plan and participation quota schedule attached hereto marked “G”;
- 1.19 **“exclusive use areas”** means the proposed exclusive use areas which will, upon registration of the sectional plan, consist of an exclusive use area to be described and numbered as a basement parking as indicated in paragraph 2.2 and, if applicable, 2.3 of the schedule and , if applicable, an open parking bay as indicated in paragraph 2.4 of the schedule and the approximate measurement of which exclusive use areas will on completion be as indicated in paragraphs 2.2, 2.3 and 2.4 of the schedule, which exclusive use areas will be constructed on the land substantially in accordance with the draft sectional plan and which exclusive use areas will as such be part of the common property, for the exclusive use by the owner or owners of one or more sections and to be ceded to the said owner/s in terms of a Notarial Deed of Cession in terms of section 27 (1) of the Act;
- 1.20 **“FICA”** means the Financial Intelligence Centre Act No. 38 of 2001 (or any modification or re-enactment thereof) and includes any regulations made thereunder from time to time;
- 1.21 **“final completion”** means the stage of completion where the Property is free of all defects;
- 1.22 **“floor area”** in relation to any unit means the floor area to the median line of the boundary walls of the section, as contemplated in the Act;
- 1.23 **“force majeure event”** shall mean and include, without limitation, acts of God, war (whether declared or not), revolution, invasion, insurrection, riots, terrorist acts, sabotage or other civil disorders, strikes or other labour disputes, fire, earthquake, storm, flood or other natural disaster, condemnation and expropriation, interruption or failure of utility service of any kind,

failure of transportation of any machinery, equipment, material or personnel, non-delivery or delayed delivery by either the contractor, breach of contract by any essential contractor or subcontractor, acts or omissions to act, laws, regulations or rules of any government or governmental agency, limitations imposed by exchange control regulations or foreign investment regulations or similar regulations or any other circumstances beyond the control of the Seller;

- 1.24 “**land**” means Remainder Erf 649 Val de Vie, in the Drakenstein Municipality, Paarl Division, Western Cape Province, in extent: 1,2897 hectares;
- 1.25 “**letter of completion**” means the letter signed by the Purchaser confirming the completion of the unit in accordance with the unit layout plan and specifications and that the components are fit for the purpose it was intended for;
- 1.26 “**levies**” means the monthly levy payable by the owner of the unit to the Body Corporate and/or the VDVHOA;
- 1.27 “**local authority**” means the Drakenstein Municipality or its successors in title;
- 1.28 “**management rules**” mean the Management Rules and Conduct Rules attached hereto marked "H";
- 1.29 “**master plan**” means the preliminary master plan attached hereto marked “E” which indicates the development;
- 1.30 “**NCA**” means the National Credit Act 34 of 2005, as amended;
- 1.31 “**normal wear and tear**” means the normal wear and tear ascribed to improvements to fixed Property in general, but excluding touch-up paint of any nature, hairline cracks in the plaster work, any mould growth caused by a lack of ventilation and/or condensation, any doors or windows slamming in windy conditions and any damage caused thereby, damage caused by wind and rain entering through open windows or doors;
- 1.32 “**occupancy certificate**” means the certificate that the local authority issues confirming that the unit has been completed in accordance with the unit layout plan and specifications;
- 1.33 “**open parking bay**” means the open parking bay referred to in paragraph 2.4, if applicable, of the schedule and indicated on the draft sectional plan and the basement- and open parking layout, the identification number of which shall be as reflected in the sectional plan relating thereto as surveyed on completion of the open parking bay and approved by the surveyor general being an exclusive use area. **The Purchaser is not obliged to purchase an open parking bay. However, should the Purchaser wish to purchase an open parking bay, he may not purchase more than 1 (one) open parking bay in terms of this agreement ;**
- 1.34 “**participation quota**” in relation to a section means the percentage determined in accordance with the provisions of section 32 of the Act;
- 1.35 “**parties**” means the Seller and the Purchaser;
- 1.36 “**principal agent**” means Elements Management (Pty) Ltd or such other principal agent appointed by the Seller from time to time with full authority and obligation to act in terms of the agreement;
- 1.37 “**Property**” means all the components collectively as set out in paragraph 2 of the schedule;

- 1.38 **“Purchaser”** means the Purchaser of the Property described in paragraph 1.2 of the schedule;
- 1.39 **“rates”** means all municipal assessment rates, taxes, fees, levies and other such or similar charges and expenses, including Value-Added Tax, payable in respect of the unit by the Seller or any owner thereof to the local authority and/or to any other competent authority entitled to levy and claim payment of any such charges and expenses including but not limited to those charges, taxes, levies or any amounts referred to in section 118(1) and 118(3) of the Local Government Municipal Systems Act, 32 of 2000;
- 1.40 **“residential ground- and first floor layout plan”** means the residential ground- and first floor layout plan attached hereto marked “B”;
- 1.41 **“schedule”** means the schedule of particulars prefixed to this agreement setting out the particulars of the parties, the Property, the Purchase Price, the finance, the estimated Date of Completion, the Date of Possession, the Transfer Date, the levies, the rates, the Conveyancers and the Agent;
- 1.42 **“scheme”** means the land and buildings to be developed on the land in phases as set out in Clause 37 below substantially in accordance with the site plan and draft sectional plan and to be known as the Val de Vie Polo Village in respect of which a sectional title register is proposed to be opened and which scheme will form part of the development;
- 1.43 **“section”** means the unit and as will be finally described on the sectional plan together with an undivided share in the common property apportioned to the section in accordance with the participation quota of the section, as will be endorsed on the sectional plan;
- 1.44 **“sectional plan”** means the sectional plan to be drawn and approved by the Surveyor General in terms of the provisions of the Act in respect of the scheme;
- 1.45 **“Seller”** means the Seller of the Property described in paragraph 1.1 of the schedule;
- 1.46 **“site plan”** means the site plan attached hereto marked "A";
- 1.47 **“specifications”** mean the specification schedule attached hereto marked “F”;
- 1.48 **“Sectional Titles Act”** or **“the Act”** means the Sectional Titles Act No 95 of 1986 (or any modification or re-enactment thereof) and includes the regulations made thereunder from time to time;
- 1.49 **“swimming pool”** means the swimming pool as indicated on the site plan;
- 1.50 **“total floor area”** means the total floor area of all sections within the scheme;
- 1.51 **“Transfer Date”** means the date of registration of transfer of the Property into the name of the Purchaser in the Deeds Office in accordance with the provisions of paragraph 7 of the schedule;
- 1.52 **“unit”** means the proposed unit as indicated in paragraph 2.1 of the schedule, as shown and more fully described on the draft sectional plan, which unit will be constructed on the land in accordance with the site plan and the unit layout plan and the residential ground- and first floor layout plan and the specifications and of which unit the approximate floor area will on completion be as indicated in paragraph 2.1 of the schedule and the identification number of

which shall be as reflected in the sectional plan relating thereto as surveyed on completion of the unit and approved by the surveyor general;

- 1.53 **“unit layout plan”** means the plan indicating the layout of the unit attached hereto marked "C", which shall form the basis for drawings to be submitted to the local authority for approval. Upon approval thereof, the approved plan shall substitute the unit layout plan and deemed to be the plan selected and approved by the parties for purposes of this agreement;
- 1.54 **“Val de Vie Polo Village”** means the scheme;
- 1.55 **“VAT”** means value-added tax at the applicable rate in terms of the Value-Added Tax Act No 89 of 1991 (or any modification or re-enactment thereof) and includes any regulations made thereunder from time to time;
- 1.56 **“VDVHOA”** means the Val de Vie Winelands Lifestyle Estate Homeowners' Association, established in terms of the Land Use Planning Ordinance 15 of 1985 (Western Cape) in respect of the development;
- 1.57 Words and expressions not defined above but defined in the Act, the CPA or NCA will have the meanings therein defined;
- 1.58 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa;
- 1.59 The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;
- 1.60 Any period referred to in this agreement by way of a reference to a number of days or weeks or months or other intervals, shall be reckoned exclusively of the first day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day;
- 1.61 All provisions and the various clauses of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this agreement shall remain of full force and effect. The parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof;
- 1.62 If any provision in a definition is a substantive provision imposing rights or obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;

- 1.63 The expiry or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.64 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.65 Words and expressions defined in any sub-clause shall bear the meanings assigned to such words and expressions in this entire agreement;
- 1.66 Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions;
- 1.67 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.68 The words "material" and "materially" means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect, or item in evaluating the party to which it relates and/or the event, condition, circumstance or effect contemplated in this agreement;
- 1.69 The use of the word "including" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the eiusdem generis rule (which is a rule of interpretation that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of the general descriptors must be restricted) shall not be applied in the interpretation of such general wording and/or such specific example or examples;
- 1.70 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.71 This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

2. SALE OF PROPERTY

- 2.1 The Seller sells and the Purchaser hereby purchases the Property subject to the conditions contained in the agreement.
- 2.2 The Seller cedes to the Purchaser all of its right, title and interest in and to the exclusive use area/s which cession shall take effect on registration in the Deeds Office of the exclusive use areas, provided that ownership of the unit has been transferred to the Purchaser.

3. PURCHASE PRICE AND PAYMENT

The Purchase Price of the Property is the amount set forth in paragraph 3.1 of the schedule inclusive of VAT. The Purchase Price shall be paid to the Seller on the Transfer Date and the

method of payment shall be as follows:

- 3.1 The Purchaser shall pay the deposit specified in paragraph 3.2 of the schedule to the Conveyancers on date of signature hereof by the Purchaser. The deposit shall be held in trust by the Conveyancers as stakeholder for the benefit of the parties, depending upon which becomes entitled thereto, and as agent for neither. The Purchaser hereby in terms of Section 78 (2.A) of the Attorneys Act 1979 gives consent to the Conveyancers to invest the deposit in an interest-bearing account with a Bank or other accredited 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 Conveyancers with all such documents and information required by the Conveyancers to meet their obligations in terms of FICA, which deposit and the interest accrued thereon shall be paid by the Conveyancers as follows :
- 3.1.1 the deposit to the Seller and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, to the Purchaser on the Transfer Date; or
- 3.1.2 the deposit and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, to the Seller if this agreement is cancelled pursuant to the provisions of Clause 16.1.1 hereof as the result of a breach by the Purchaser; or
- 3.1.3 the deposit and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, 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
- 3.1.4 if this agreement should be null and void due to non-fulfilment of the suspensive condition set forth in Clause 24.1.1 hereof, the amount of R5 000-00 (Five Thousand Rand) to the Seller and the balance of the deposit and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, to the Purchaser.
- 3.2 The Purchaser shall deliver a guarantee/s, to be issued by a financial institution without conditions other than the registration of a bond over the Property, and to be approved by the Seller, for payment of the Balance of the Purchase Price referred to in paragraph 3.3 of the schedule or effect payment of the said Balance of the Purchase Price to the Conveyancers within 30 (thirty) days after being requested to do so by the Conveyancers, provided that the Conveyancers may only request delivery of the guarantee/s and/or payment of the Balance of the Purchase Price after the suspensive condition mentioned in Clause 24.1.1 hereof has been fulfilled but prior to the Seller commencing with construction of the building. Should the Purchaser elect not to issue a guarantee but to pay the Balance of the Purchase Price to the Conveyancers when requested to do so as contained in this Clause 3.2, the Purchaser hereby in terms of Section 78 (2.A) of the Attorneys Act 1979 gives consent to the Conveyancers to invest the Balance of the Purchase Price in an interest-bearing account with a Bank or other accredited 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 Conveyancers with all such documents and information required by the Conveyancers to meet their obligations in terms of FICA, which Balance of the Purchase Price and the interest accrued thereon shall be paid by the Conveyancers as follows :
- 3.2.1 the Balance of the Purchase Price to the Seller and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, to the Purchaser on the Transfer Date; or
- 3.2.2 the Balance of the Purchase Price and the interest, less an administration fee in

respect of management and/or administration fees payable to the Conveyancers, to the Purchaser if this agreement is cancelled pursuant to the provisions of Clause 16.1.1 hereof as the result of a breach by the Purchaser; or

- 3.2.3 notwithstanding anything to the contrary contained herein, the Balance of the Purchase Price and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, 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.
- 3.3 All amounts payable by the Purchaser in terms of this agreement shall be paid in South African currency to the Conveyancers 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 Conveyancer's trust account.
- 3.4 Should the official VAT rate of 14% be increased or decreased, then, notwithstanding anything to the contrary contained or implied in this agreement, and, if required by the applicable legislation, the VAT will be recalculated at the new VAT rate applicable on the supply of the Property; and
- 3.4.1 any shortfall shall be paid by the Purchaser to the Conveyancers (for credit of the Seller) upon demand but prior to lodgement of the actual deeds for registration of transfer, by way of a bank guaranteed cheque or electronic transfer; or
- 3.4.2 any excess be repaid by the Seller to the Purchaser on the Transfer Date provided the Seller shall have first received payment of the full Purchase Price.
- 3.5 **The Purchaser hereby acknowledges that it is aware of the fact and understands that the request for delivery of the guarantee/s and/or payment of the Balance of the Purchase Price by the Conveyancers shall be made prior to the Seller's commencement with construction of the building and the Seller shall not be obliged to commence with construction of the building prior to the Purchaser's obligations for payment of the deposit to the Conveyancers in accordance with the provisions of Clause 3.1 above and delivery of a guarantee for payment of the Balance of the Purchase Price and/or effecting payment of the said Balance of the Purchase Price to the Conveyancers in accordance with the provisions of Clause 3.2 above have been complied with.**

4. CONSTRUCTION OF THE UNIT

- 4.1 The Seller hereby undertakes to procure that the unit is erected substantially in accordance with the unit layout plan and specifications, **provided that the Seller shall be entitled to:**
- 4.1.1 **substitute items of a similar standard and quality for any specified item referred to in the specifications; and**
- 4.1.2 **vary the proposed site plan and/or residential ground-and first floor layout plan and/or basement- and open parking layout plan and/or draft sectional plan, should the Seller consider same reasonably necessary for technical or aesthetical reasons, including but not limited to the addition of balconies, re-positioning of windows to optimise view and the re-positioning of columns; and**

- 4.1.3 vary the proposed site plan and/or draft sectional plan of the building and/or residential ground- and first floor layout plan and/or basement- and open parking layout plan in such manner as may be required by the local and/or any authorities; and
- 4.1.4 subject to the conditions contained in Clause 4.4 below, change the area and/or layout of the unit and/or the exclusive use areas, provided that the floor area of the relevant component shall not be more than 5% less than the approximate area of the relevant component specified in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable; and
- 4.1.5 determine the exact location of the unit and/or the exclusive use areas and/or basement parking and/or open parking bay, it being recorded that their position will be approximately as indicated on the draft sectional plan and/or basement- and open parking layout and/or residential ground- and first floor layout plan.
- 4.2 In the event of any dispute between the parties as to the nature of the variations referred to in Clause 4.1, this dispute shall be referred for determination to the principal agent (acting as an expert and not an arbitrator) whose decision shall be final and binding on the parties.
- 4.3 Neither the Purchaser nor any person or firm employed by the Purchaser shall carry out any work on or to the Property prior to the Transfer Date. Any work subsequent thereto shall not be carried out without the prior written consent of the trustees of the Body Corporate and VDVHOA.
- 4.4 The Purchaser shall have no right of access to the development or buildings thereon while under construction and shall only be entitled to access on possession and occupation of the unit. The Purchaser shall, however, have the right of inspection of the building work carried out by the contractor on the Seller's behalf, provided that the Purchaser shall at all times be accompanied by either the Seller or the contractor or one of their duly appointed agents, and the Purchaser shall not personally or through his representative/s be entitled to issue instructions to any of the contractor's workmen or subcontractors or any other person employed or acting on their behalf.
- 4.5 If there is any dispute between the Purchaser and the Seller as to whether the unit has been constructed substantially in accordance with the unit layout plan and specifications and/or has been erected in substantially the position as reflected on the site plan and/or residential ground- and first floor layout, then such dispute shall be referred to the principal agent (acting as an expert and not as an arbitrator) whose decision shall be final and binding upon the parties.
- 4.6 The Seller warrants that the unit will be enrolled with the National Home Builders Registration Council as contemplated in the Housing Consumer Protection Measures Act, No. 95 of 1998.
- 4.7 As is required in terms of Section 13(2)(a) of the aforesaid Act 95 of 1998, the Seller warrants that:
- (a) the unit shall be constructed in a proper and workmanlike manner;
 - (b) the unit will be fit for habitation on the Date of Completion;
 - (c) the unit shall be constructed in accordance with:
 - (i) the National Home Builders Registration Council Technical Requirements to the extent applicable to the unit at the date of enrolment of the unit with the National Home Builders Registration Council; and

(ii) the terms, plans and specifications referred to in this agreement.

4.8 **Should the final floor area of the unit and/or the final area of the basement parking/s and/or the final area of the open parking bay, whichever may be applicable, as depicted on the sectional plan approved by the Surveyor General be more than 5% less than the approximate area of the components as set out in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable, the Purchaser shall be entitled to resile from this agreement by written notice to the Seller in which event the Purchaser shall have no claim against the Seller, save for the refund of the deposit and Balance of the Purchase Price paid by the Purchaser as contemplated in Clauses 3.1.3 and 3.2.3, if applicable, together with accrued interest thereon, less an administration fee in respect of management and/or administration fees payable to the Conveyancers. The parties further specifically agree that should the final floor area of the unit and/or the final area of the basement parking and/or the final area of the open parking bay, whichever may be applicable, as reflected on the sectional plan approved by the Surveyor-General, be more than the approximate area as stipulated in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable, the Purchase Price will not be increased pro rata to the extent of increase in the floor area aforesaid, but will remain as is set out in paragraph 3.1 of the schedule.**

5. DATE OF COMPLETION

- 5.1 The Seller hereby undertakes to procure that the unit is sufficiently complete for possession and occupation by the Date of Completion.
- 5.2 If, however, the Seller is of the opinion that, for whatever reason, the unit will not be sufficiently complete by the Date of Completion, then –
- (a) the Seller shall notify the Purchaser of such fact at least 30 (thirty) days before such date. In such event the Purchaser shall accept occupation and possession of the unit on the date the Seller notifies him in writing that the unit will be sufficiently complete for beneficial occupation and such subsequent date shall (subject to the provisions of Clause 9.10 below) be deemed for all purposes to be the Date of Completion; and
 - (b) if the unit is not sufficiently complete for beneficial occupation within 24 (twenty four) calendar months after the date specified in paragraph 5 of the schedule, the Purchaser shall have the right on notice to the Seller to resile from this Contract. In such event the Purchaser shall be entitled to receive a refund of an amount equal to the aggregate of all payments made by the Purchaser in respect of the Purchase Price referred to in paragraph 3.1 of the schedule and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers; and
 - (c) the Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for failing for any reason to complete the unit on or before the Date of Completion.
- 5.3 The Seller shall be entitled to anticipate the Date of Completion by way of written notice to the Purchaser provided that such anticipated date shall not be more than 120 (one hundred and twenty) days earlier than the date stated in paragraph 5 of the schedule. Should the Seller bring the Date of Completion forward by giving the Purchaser the written notice as aforesaid, such date shall be regarded as the Date of Completion for the purposes of this agreement (subject to the provisions of Clause 9.10 below).
- 5.4 In the event of any dispute as to when or whether the unit is sufficiently complete for occupation, a certificate by the principal agent (acting as an expert and not an arbitrator) certifying that the unit is sufficiently complete for occupation shall be final and binding upon the parties.

6. POSSESSION AND OCCUPATION

The Seller shall give and the Purchaser shall take possession and occupation of the Property on the Transfer Date.

7. CONDITIONS APPLICABLE PENDING TRANSFER

7.1 Should the parties enter into a written addendum to this agreement in terms whereof it is agreed that the Date of Possession shall be prior to the Transfer Date, then and in such event with effect from the Date of Possession of the unit and pending registration of transfer thereof, the following conditions shall apply:

7.1.1 save insofar as may be inconsistent with the provisions of this agreement, the provisions of section 44(1) of the Act shall apply;

7.1.2 the provisions of the Body Corporate Rules insofar as they cast any duty upon the owner or occupier of a unit, shall bind the Purchaser and be enforceable by the Seller;

7.1.3 the Purchaser may not make any alterations or additions to the unit;

7.1.4 the Purchaser shall maintain the unit in good order and condition;

7.1.5 the Purchaser shall not be entitled to alienate or sell or transfer the unit and/or cede any rights in respect of the exclusive use areas except with the prior written consent of the Seller who may charge a fee in respect of such resale for documentation, vetting of purchaser, obtaining legal advice, administration fee, etc in an amount not exceeding 2% (two percent) of the resale price;

7.1.6 the Purchaser shall pay to the Seller occupational interest on the Purchase Price at a rate of 1% per month calculated on the Purchase Price from the possession date until the date of registration of transfer (both dates inclusive). Occupational interest as aforesaid shall be paid monthly in advance to the Conveyancers commencing on the possession date and thereafter monthly in advance and the Conveyancers are hereby irrevocably authorised and instructed to pay the said occupational interest to the Seller before date of transfer as and when such money is received by the Conveyancers.

7.2 Pending the establishment of the Body Corporate:

7.2.1 the Seller shall insure the building and all improvements, fixtures and fittings in or upon the Property for the full replacement value thereof against reasonable risks as the Seller may decide;

7.2.2 the Seller shall maintain the common Property, including the basement parking and open parking bay, and keep same in a state of good and serviceable repair and in a neat, tidy and sanitary condition;

7.2.3 the Seller shall administer the Property as administrator and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the common property and all other charges in connection with the common property. The Seller shall be entitled to collect these costs, insofar as the Purchaser is liable to pay a pro rata share thereof in terms of Clause 7.3.1, from the Purchaser;

- 7.2.4 After establishment of the Body Corporate, the Body Corporate shall refund any amounts paid by the Seller in terms of Clause 7.2.1 – 7.2.3 hereof beyond the date of registration of transfer of the first unit in the scheme to the Seller.
- 7.3 From the Date of Possession or Transfer Date, whichever shall occur first in terms of this agreement as may be amended from time to time, the Purchaser –
- 7.3.1 shall be liable for the payment of all services provided to the unit and any deposits and fees payable in connection with the supply of such services. In no way detracting from the aforesaid, it is specifically recorded that it shall be incumbent upon the Purchaser, at the Purchaser's cost, to make application for the connection of water, electricity and telephone services to the unit. If the unit is separately metered for the supply of electricity and/or water thereto, the Purchaser shall make arrangements with the suppliers to obtain the relevant connections and shall pay for any consumption thereof;
- 7.3.2 waives all claims against the developer, the VDVHOA, the Seller and the Body Corporate for any loss or damage to the unit or any injury to person which the Purchaser may sustain in or about the unit, any other part of the development and indemnifies the developer, the VDVHOA, the Seller and the Body Corporate against any such claim that may be made against the developer, the VDVHOA, the Seller or the Body Corporate by a member of the Purchaser's family or any tenant, nominee, invitee or any other person who occupies the unit and/or goes upon the development by virtue of the Purchaser's rights thereto, for any loss or damage to unit or injury to person suffered in or about the unit, or any other part of the development howsoever such loss or damage to unit or injury to person may be caused (save for any loss or damage to the unit or injury to person caused by the wilful or grossly negligent acts of the developer, the VDVHOA, the Seller or the Body Corporate, as the case may be);

8. LEVIES, RATES AND CONSUMABLES

- 8.1 The Purchaser shall be liable from the Date of Possession or the Transfer Date, whichever shall be the earliest in terms of this agreement as may be amended by the parties from time to time by means of an addendum, for:
- 8.1.1 levies payable in terms of Section 37(1) of the Act calculated in accordance with the rules using the participation quota of the unit; and
- 8.1.2 all electricity and water consumed in or on the unit; and
- 8.1.3 pro rata rates payable in respect of the Property; and
- 8.1.4 the costs of maintaining the exclusive use areas; and;
- 8.1.5 levies payable to the VDVHOA.
- 8.2 Such occupational levies shall be paid by the Purchaser to the Seller or its appointed agent until the Transfer Date and thereafter to the Body Corporate and/or VDVHOA and/or relevant authority, whichever may be applicable, monthly in advance on the first day of each and every calendar month commencing from the Date of Possession or the Transfer Date, whichever occurs first, provided that if the said date falls on any day other than the first day of a calendar month, then the Purchaser shall be obliged from the said date to pay a pro rata share of the levies due for the calendar month on which the said date occurs.
- 8.3 The occupational levies payable by the Purchaser of any unit shall be determined by the Seller in terms of the participation quota of the section purchased by the Purchaser.
- 8.4 The trustees may however consider any other factors allowed in terms of the Act and which the board of trustees in its sole discretion may deem relevant in determining the levies payable in the scheme.
- 8.5 During the development period, the Seller shall be responsible for expenses relating to the

undeveloped portions of the land in terms of agreements and reconciliations concluded between the Seller and the Body Corporate from time to time. Other than the aforesaid the Seller shall not be obliged to pay levies in respect of any portion of the land or units registered in its name.

- 8.6 The Purchaser shall be obliged to furnish the Seller prior to the Transfer Date, if applicable, and the Body Corporate and VDVHOA after the Transfer Date with a debit order drawn on the Purchaser's bank in respect of payment of all levies as contemplated in this Clause 8.

9. TRANSFER OF THE PROPERTY AND COSTS

- 9.1 It will only be possible for the Seller to give transfer of the Property to the Purchaser upon the registration of the sectional plan and the opening of the sectional title register in respect of the scheme in terms of the Act. The registration of the sectional plan and opening of the sectional title register will be registered as soon as is legally possible after: (a) Date of Completion; and (b) the local authority has issued a rates clearance certificate in respect of the Property for transfer purposes; and (c) fulfilment of the suspensive conditions contained in Clause 24 below; and (d) the Purchaser has complied with all its obligations herein, including but not limited to signature by the Purchaser of the letter of completion and compliance by the Purchaser with its obligations as contained in Clause 1.12.1 and/or 1.12.2, whichever may be applicable; and (e) the Purchaser has been given reasonable opportunity to inspect the Property to satisfy the Purchaser that the unit reasonably conforms with the unit layout plan and specifications. The Seller undertakes, in a reasonable time and at its own cost, to take such steps as may be reasonably necessary to procure the registration of the sectional plan. **Subject to the conditions contained in Clause 7.1, 7.2, 7.3, 8.1, 8.2 and 8.3 hereof, the Property shall be at the sole risk, loss and profit of the Purchaser from the Transfer Date.**
- 9.2 The Purchaser undertakes to sign all the transfer documents and, if applicable, bond documents, and to return same to the Conveyancers together with all other documents, resolutions and certificates which may be required by the Conveyancers within 14 (fourteen) days after the date of receipt of the said transfer documents and/or bond documents, if applicable, and/or a request from the Conveyancers for other documents. The date of receipt will be deemed to be the date upon which the transfer documents and, if applicable, bond documents, to be signed are handed over and/or delivered to the Purchaser or his representative.
- 9.3 The Purchaser furthermore undertakes if so requested in writing by the Conveyancers, within 14 (fourteen) days after receipt of the request to sign all the transfer documents and, if applicable, bond documents, at the offices of the Conveyancers and to furnish the Conveyancers with all other documents, resolutions and certificates which may be required by the Conveyancers for purposes of registration of transfer and, if applicable, a mortgage bond or otherwise.
- 9.4 Should the Purchaser fail within the 14 (fourteen) day period stipulated in Clauses 9.2 and 9.3 respectively above to comply with the provisions of the relevant Clause 9.2 and/or 9.3 above, the Purchaser will be in breach of this agreement in which event the Seller will be entitled, without prejudice to any and all other rights which the Seller may have in terms of this agreement, to act in terms of Clause 16.1 below.
- 9.5 **The Purchaser is liable for all transfer costs, VAT on such costs, costs of all necessary affidavits and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the registration of transfer of the Property into the name of the Purchaser and shall upon request of the Conveyancers be paid by the Purchaser to the Conveyancers.**

- 9.6 **The Purchaser shall be liable for and shall upon request of the Conveyancers pay all costs of the bond registration, including costs incidental to the arranging, obtaining and granting of the mortgage bond, costs of all necessary affidavits and all other costs which are incurred in order to comply with statutes or other enactments or regulations relating to registration of a mortgage bond over the Property, including complying with the provisions of FICA (Plus VAT on such costs).**
- 9.7 **The Purchaser shall pay all other charges which the financial institution or any competent authority may charge in respect of the Purchaser's bond, if applicable, including but not limited to, initiation and valuation fees. All amounts shall be paid immediately upon request of the Conveyancers and/or the applicable financial institution and/or competent authority.**
- 9.8 The Seller shall be liable for payment of the costs of and in connection with the original drafting of this agreement. Any costs arising out of or in connection with any amendments of or variations to this agreement effected at the Purchaser's request shall be borne and paid by the Purchaser on demand.
- 9.9 **Subject to the conditions contained in Clause 7.1, 7.2, 7.3, 8.1, 8.2 and 8.3 hereof, the Property shall be at the sole risk, loss and profit of the Purchaser from the Transfer Date.**
- 9.10 The Purchaser acknowledges that after the Transfer Date the Seller and/or its agents, contractors and workmen may be engaged in erecting other dwellings, driveways and other structures on the unit and the Purchaser agrees that the Seller and/or its agents, contractors and workmen shall at all times have reasonable access to the unit for the purposes of carrying out such work as may be necessary to enable the Seller to procure the erection and layout of the aforementioned dwellings, driveways and other structures. The Purchaser shall have no claim whatsoever against the Seller by reason of any inconvenience or interference with the Purchaser's rights arising here from and the Purchaser shall not, in any way whatsoever, interfere with the performance of the aforesaid work. On the Transfer Date the further possibility exists that the building/s and the other structures and/or improvements, including infrastructure and roads in the scheme may be incomplete 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 foregoing to refuse payment of any amounts due in terms of this agreement or to cancel or withdraw from this agreement or to claim damages from any person or institute interdict proceedings as a result of the nuisance.

10. RECTIFICATION OF DEFECTS, LEAKAGE AND STRUCTURAL DEFECTS

- 10.1 **The Seller shall within a reasonable time remedy any defects due to faulty workmanship or materials and replace defective parts in the unit which may manifest themselves within 6 months after the Transfer Date provided that the Purchaser notifies the Seller in writing within the said period of 6 months of any defects and provided further that the Purchaser grants the Seller and/or its workmen reasonable access to the unit to fulfil its obligations in terms of this Clause 10.1, failing which the Purchaser shall be deemed to have accepted the unit in the condition in which it was as at the transfer date.**
- 10.2 **Upon fulfilment of its obligations as contained in Clause 10.1 and/or in the absence of a notice by the Purchaser as referred to in Clause 10.1 above, the Purchaser shall be deemed to have accepted the Property in a fit and proper condition and be deemed to have acknowledged that the Seller has fully complied with its obligations as set out in**

the aforesaid Clause 10.1 and the principal agent shall forthwith issue a certificate of final completion to the Seller. The achievement of final completion shall be conclusive evidence as to the sufficiency of the completion of the building and/or the Property in accordance with the provisions of this agreement and, subject to the conditions contained in Clause 10.3 and Clause 10.4 below, the Seller shall, after expiry of the period referred to in Clause 10.1 above, no longer be liable for any defects in the Property or in respect of anything relating thereto.

- 10.3 The Seller furthermore undertakes to repair roof leaks occurring and of which the Seller is notified, in writing, by the Purchaser within a period of one (1) year from the Date of Completion provided that such leakage results from defective design, material or workmanship and provided further that the Purchaser grants the Seller and/or it's workmen reasonable access to the unit to fulfil its obligations in terms of this Clause 10.3.
- 10.4 The Seller furthermore undertakes to rectify any major structural defects in the unit caused by non-compliance with the National Home Builders Registration Council's Technical Requirements which occur and of which the Seller is given written notice by the Purchaser within a period of 5 (five) years from the Date of Completion (with the exception of hairline settlement cracks which are not guaranteed) and provided further that the Purchaser grants the Seller and/or it's workmen reasonable access to the unit to fulfil its obligations in terms of this Clause 10.4.
- 10.5 Notwithstanding anything contained herein or elsewhere, and in no way detracting from the generality to the aforesaid, it is specifically recorded that the Seller shall not be liable for the rectification of any defects or faults in the unit caused by surface water, storm water or rain water, normal settlement or cracking resulting from normal settlement, normal shrinkage, thermal cracking, geological disturbances, normal wear and tear from use or neglect by the Purchaser, 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.
- 10.6 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.
- 10.7 In the event that there are any disputes between the parties as to whether an item is a defect in terms of Clauses 10.1, 10.3 and/or 10.4 above or whether a defect has been rectified in terms of Clauses 10.1, 10.3 and/or 10.4 above according to accepted standards in the building industry, such dispute will be referred to the principal agent (acting as an expert and not as an arbitrator) whose ruling on the issue at hand will be final and binding on the parties.
- 10.8 On final completion, the Seller will furnish the Purchaser with all such certificates as are legally required at the time of final completion in accordance with the National Building Regulations.

11. BODY CORPORATE RULES

- 11.1 It is recorded that the Seller intends, when submitting the application for the opening of the register in respect of the scheme, to register Management and Conduct Rules for the Body Corporate under section 35 of the Act in the form as is attached hereto marked "H", which rules inter alia provide that an amount of five percent (5%) of the contributions payable by the members to the Body Corporate in terms of section 37(1) of the Act in respect of every financial year, shall be paid to a Val de Vie Community Trust, which trust shall be an NPO Trust to be established by the developer with the

sole aim of providing assistance to the disadvantaged communities in the Winelands area.

- 11.2 **The Purchaser acknowledges that it is aware of the fact that the Body Corporate will be liable for the maintenance and upkeep of the services infrastructure, street lights and roads in the scheme.**

12. MANAGING AGENT

- 12.1 The Seller shall be entitled to appoint the managing agent for the scheme during the development period, which appointment shall be valid and binding on the Body Corporate during the development period.
- 12.2 The Purchaser hereby grants the Seller the irrevocable power and authority to appoint the managing agent of the scheme.
- 12.3 The Purchaser further authorises the managing agent through the Seller to employ any staff as the managing agent deems appropriate, such as security guards, gardeners, administrative staff as may be required for the management and upkeep of the scheme prior to the establishment of the Body Corporate.

13. ACKNOWLEDGEMENTS BY THE PURCHASER

- 13.1 **The Purchaser acknowledges and agrees that:**

13.1.1 **the sectional plan of the scheme has not been prepared nor has it been approved and that accordingly the exact and final boundaries and area of the section and the exclusive use areas will be those shown on the sectional plan as approved;**

13.1.2 **the Purchaser is aware that the rules confer rights of exclusive use and enjoyment of parts of the common property upon members of the Body Corporate for use as basement parking and open parking bay in terms of section 27(1) of the Act;**

13.1.3 **the Purchaser has read and approved the unit layout plan and specifications and shall be obliged to accept possession of the unit erected in accordance with the unit layout plan and specifications on the Date of Completion and as finally depicted and delineated on the sectional plan relating thereto;**

13.1.4 **the areas reflected in the schedule and on the plans and specifications are estimates and do not constitute final floor areas or the areas as measured in terms of the Act;**

13.1.5 **the Purchaser shall not be entitled to amend or procure any amendments to the site plan and/or the unit layout plan and/or the specifications;**

13.1.6 **the Purchaser has no right of access to the development or buildings thereon while under construction and shall only be entitled to access on the Transfer Date of the unit. The Purchaser shall, however, have the right of inspection of the building work carried out by the contractor on the Seller's behalf, provided that the Purchaser shall at all times be accompanied by either the Seller or the contractor or one of their duly appointed agents, and the Purchaser shall not personally or through his representative/s be entitled to issue instructions to any of the contractor's workmen or subcontractors or any other person**

employed or acting on their behalf.

14. FICA

Due to the fact that the Conveyancers will have to comply with the appropriate provisions of the Financial Intelligence Centre Act regarding the acquiring of Property and mortgage finance, if applicable, by the Purchaser, the Purchaser agrees to provide the Conveyancers with his full co-operation and disclosure in order that they may meet their obligations in this regard. This includes but is not limited to delivery by the Purchaser on request of the Conveyancers of the relevant documents as may be applicable to the Purchaser as indicated on the FICA Requirements attached hereto marked "I".

15. SIGNING ON BEHALF OF A COMPANY OR A CLOSE CORPORATION

15.1 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:

15.1.1 such company shall be duly incorporated within 30 days of signature hereof by the Purchaser;

15.1.2 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;

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

15.1.4 the person so signing this agreement shall be deemed to have entered into this agreement as Purchaser in his personal capacity should the provisions of Clause 15.1.1 to 15.1.3 above not be complied with strictly in accordance with applicable legislative provisions concerning incorporation and pre-incorporation contracts;

15.1.5 after proper compliance with the provisions of Clauses 15.1.1 to 15.1.3 above, 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 excussion, division and cession of action, for the due fulfilment of all such company's obligations hereunder to the Seller.

15.2 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 excussion, division and cession of action, for the due fulfilment of all such juristic person's obligations hereunder to the Seller.

15.3 Should more than one person sign this agreement as mentioned in Clause 15.1 and 15.2 above, they shall jointly and severally be bound and liable to the Seller as set out in Clause 15.1.4, 15.1.5, and 15.2 above.

16. BREACH

16.1 Should the Purchaser commit a breach of any of the terms and conditions of this agreement and fail to rectify such breach within 10 (ten) days reckoned from the date of receipt of a notice handed or sent to the Purchaser by or on behalf of the Seller then, notwithstanding any previous indulgence on the part of the Seller and without prejudice to any other or further

rights of the Seller in terms hereof or otherwise, the Seller shall be entitled, without further notice:

16.1.1 to cancel this agreement in which event the Purchaser shall, subject to the provisions of Clause 3.2.2 above, forfeit the right to claim restitution of anything performed by the Purchaser in terms hereof, and, in particular, shall forfeit any rights which the Purchaser may have in respect of the deposit and the interest accrued thereon which deposit and accrued interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, shall, in this event, be paid by the Conveyancers to the Seller by way of a penalty or as liquidated damages or as a payment to the Seller in respect of the prejudice hereby agreed upon as will be suffered by the Seller as a result of the Purchaser's failure to comply with the Purchaser's obligations hereunder;

OR

16.1.2 to enforce performance by the Purchaser of the terms hereof and to claim payment from the Purchaser of the Balance of the Purchase Price and all other monies then owing by the Purchaser hereunder, which Balance and other monies shall then be claimable from and payable by the Purchaser immediately.

16.2 Should the Seller commit a breach of any of the terms and conditions of this agreement and fail to rectify such breach within 10 (ten) days reckoned from the date of receipt of a notice handed or sent to the Seller by or on behalf of the Purchaser then, notwithstanding any previous indulgence on the part of the Purchaser and without prejudice to any other or further rights of the Purchaser in terms hereof or otherwise, the Purchaser shall be entitled, without further notice:

16.2.1 to cancel this agreement and to recover from the Seller such damages as it may have suffered;

OR

16.2.2 to enforce performance by the Seller of the terms hereof.

16.3 Should the Purchaser dispute the right of the Seller to cancel this agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this agreement on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this agreement or any other rights of the Seller whatsoever.

16.4 Upon cancellation of this agreement for any reason whatsoever, the Purchaser hereby undertakes to forthwith vacate the unit and to re-instate the unit to its original state of repair.

16.5 In the event of the Seller instructing attorneys to enforce its rights or to compel the Purchaser's compliance with his obligations in terms hereof the Purchaser shall be liable for the legal costs incurred on a scale as between attorneys and own client together with VAT thereon.

16.6 Any amounts in arrears in terms of this agreement shall bear interest at the prime overdraft rate, from time to time, charged by Nedbank Limited, which interest shall be calculated monthly in advance from the date that such amount became due.

16.7 In the event of there being any delay in the Transfer Date for which the Purchaser is responsible or in the event of the Purchaser not furnishing the guarantees and/or making payment of the Balance of the Purchase Price referred to in Clause 3.2 above timeously, then

in such event, the Purchaser agrees, in addition to any other payment due in terms of this agreement, to pay interest on the full Purchase Price at the prime overdraft rate charged by Nedbank Limited from time to time, calculated from the date the Purchaser is notified in writing by the Conveyancers of the breach in terms of Clause 16.1 above to the date upon which the Purchaser has rectified his breach, both days inclusive.

- 16.8. A certificate by any branch manager of the said Nedbank Limited as to such prime overdraft rate, from time to time, shall be prima facie proof of such rate.

17. ADDRESSES AND NOTICES

- 17.1 The parties hereby choose their respective physical addresses mentioned in paragraphs 1.1 and 1.2 of the schedule for all purposes of this agreement of each party and as the respective physical and postal addresses of each party where any notice to be given to it in terms of the provisions hereof may be given.
- 17.2 Should any party at any time wish to change its abovementioned physical 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.
- 17.3 Any notice delivered by hand to the physical address of a party referred to in Clause 17.1 above or its changed physical address referred to in Clause 17.2 above, shall be presumed, until the contrary is proved, to have been received or communicated to such party on the date of delivery thereof.
- 17.4 Notwithstanding the provisions of Clause 17.1 above the Purchaser also chooses his e-mail address and/or fax number stated in paragraph 1.2 of the schedule for receipt of any written notice which the Seller and/or the Conveyancers are required to give to the Purchaser in terms of this agreement. The date of receipt of the written request will be deemed to be the first day following that upon which the written request is transmitted by the Seller and/or the Conveyancers to the Purchaser. The provisions of Clause 17.2 above will apply with the necessary changes, to any change to the Purchaser's e-mail address or his fax number.

18. COMMISSION

- 18.1 **The Purchaser hereby warrants that the Agent referred to in paragraph 11 of the schedule hereto is the only agent who introduced it 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.**
- 18.2 The Seller shall pay commission to the Agent in the amount as set out in paragraph 11 of the schedule.
- 18.3 The commission shall be deemed to have been earned by the Agent on the Transfer Date 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 Date 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 Conveyancers are irrevocably authorized to deduct the commission from the proceeds of the sale on the Transfer Date and to pay the commission to the Agent.
- 18.4 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 contract, then the Agent will have no claim against the Seller for Agent's commission.

- 18.5 **Should this agreement be cancelled or terminated by virtue of the Purchaser's breach, then, notwithstanding anything to the contrary herein contained or implied, the Purchaser shall be liable for payment forthwith of the commission payable to the Agent in terms of Clause 18.2 above, to the Agent direct.**

19. EXCLUSIVE USE AREAS

- 19.1 The portions of the common property which are depicted as basement parking and open parking bay on the draft sectional plan and basement- and open parking layout plan will be registered as parts of the common property, in respect of which the rights of exclusive use and enjoyment will be conferred upon the Purchaser as follows:

19.1.1 the basement parking in terms of Section 27(1) of the Sectional Titles Act;

19.1.2 the open parking bay in terms of Section 27(1) of the Sectional Titles Act;

19.1.3 In terms of the rules of the Body Corporate, the exclusive use areas shall be maintained by the Body Corporate at its cost.

- 19.2 The Purchaser shall not be entitled to sell, transfer and/or cede any rights in respect of the exclusive use areas to a person other than a registered owner of a unit within the scheme.

20. ADVERTISING ON THE COMMON PROPERTY

The Seller shall be entitled at any time to erect such signage, flagpoles, messages or any other form of notices or advertising on the common property and/or the building as may be legally permissible solely for the purposes of selling and/or letting units in the scheme.

21. RESALE OF THE PROPERTY

The Purchaser shall not be entitled to alienate or sell and/or transfer the Property until the Purchaser in terms of this agreement has taken transfer of the Property, except with the prior written consent of the Seller and unless the Purchaser and/or transferee of the Property agrees in writing to observe the terms and conditions of this agreement and in which event the Seller may charge a fee in respect of such resale for documentation, vetting of purchaser, obtaining legal advice, administration fee, etc in an amount not exceeding 2% (two percent) of the resale price. Where the Purchaser is a Close Corporation or a Company, the sale of a Property referred to in this Clause 21 includes the sale of a member's interest in a Close Corporation or the sale of a shareholding in a Company and where the Purchaser is a Trust, the sale of a Property referred to in this Clause 21 includes the sale of a Trust by means of a change of beneficiaries and trustees.

22. EXTENT, ONEROUS CONDITIONS AND WARRANTIES

- 22.1 The Property is purchased subject to all conditions, restrictions and servitudes set out or referred to in Certificate of Consolidated Title no T47934/2010 applicable to the land or which may apply to or exist in respect of the land at any time as well as all conditions of establishment and special conditions of title and the conditions of any applicable Town Planning Scheme which have been or may be laid down in respect of the scheme and/or the Property and/or the development by any competent authority and any amendments of any such conditions which may be made at any time.

- 22.2 Subject to the conditions contained in Clause 4.8 above, the Property is sold on the basis that

the extent of the components are as set out in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable, which measurements are provisional and might change when the components are finally measured and depicted on the sectional plan. The Seller will have no claim for any additional consideration should the extent of the components, as finally surveyed, be more than the extent of the components as set out in paragraphs 2.1 – 2.4 of the schedule, whichever may be applicable.

- 22.3 The estimated monthly levy as set out in paragraph 8 of the schedule is based on an estimated budget as at the date of signature of the agreement and is exclusive of any VAT that may be payable by the Purchaser in respect thereof.

23. ELECTRICAL INSTALLATION

The Seller shall, prior to the Date of Possession or Transfer Date, whichever shall be the earlier, at his expense deliver to the Purchaser or the Conveyancers, for delivery to the Purchaser a Certificate of Compliance in respect of the electrical installations on the Property in terms of the Occupational Health & Safety Act No. 85 of 1993 or any amendment or substitution thereof.

24. SUSPENSIVE CONDITIONS

This agreement is subject to the following suspensive conditions:

- 24.1.1 That a mortgage loan is granted to the Purchaser within a period of 30 (thirty) days reckoned from the date of signature hereof by the Seller by a registered credit provider against the security of a first mortgage bond to be registered over the Property for the amount referred to in paragraph 4.2 of the schedule or, subject to the conditions contained in Clause 24.1.2 below, such lesser amount as the Purchaser in its sole discretion may accept subject to such terms and conditions as are normally imposed by such registered credit providers when granting mortgage loans to finance the purchase of sectional title units and exclusive use areas, which condition will be deemed to be fulfilled once the said financial institution issues a quotation in terms of section 92(2) of the NCA to the effect that the mortgage loan application has been approved notwithstanding the fact that such approval is granted subject to the fulfilment of a condition or conditions or subject to the reservation of the right of the said registered credit provider at any time prior to the payment of the proceeds of such mortgage loan to the Purchaser, to withdraw such approval.
- 24.1.2 If the loan is approved for an amount less than the amount referred to in paragraph 4.2 of the schedule and the Purchaser accepts such lower amount in writing by his signature to the quotation as referred to in Clause 24.1.1 above, this condition will be deemed to be fulfilled.
- 24.1.3 For the purposes of obtaining the loan referred to in Clause 24.1.1 above the Purchaser hereby authorises the Mortgage Originator referred to in paragraph 4.4 of the schedule to submit a loan application on the Purchaser's behalf to any financial institution, and agrees and undertakes to furnish the Mortgage Originator with any such information or any document, and to sign all such documents, which are required or necessary for the purposes of such loan application forthwith. The Purchaser shall not make application for the loan referred to in Clause 24.1.1 through any person other than the Mortgage Originator appointed by the Seller without the prior written consent of the Seller. The parties place on record that the Purchase Price agreed upon is based on the premise that all the Purchasers in the scheme will

utilize the same Mortgage Originator in respect of the bond applications and accordingly appointing the Mortgage Originator will result in economic benefit and convenience for the Purchaser.

- 24.1.4 The Purchaser shall cause the Conveyancers to be appointed as the bond registration attorneys for the registration of the mortgage bond in respect of the loan referred to in Clause 24.1.1 above. The parties place on record that the Purchase Price agreed upon is based on the premise that all the Purchasers in the scheme will utilize the same Conveyancers in respect of the transfers and the bond registrations and accordingly appointing such Conveyancer's will result in an economic benefit and convenience for the Purchaser.
- 24.2 Notwithstanding anything to the contrary contained in Clause 24.1.1 above, it is recorded that the conditions of the said Clause 24.1.1 are inserted solely for the benefit of the Purchaser, who shall be entitled by notice in writing to the Seller and/or the Conveyancers at any time before expiry of the period mentioned in Clause 24.1.1 above to unconditionally waive the provisions of Clause 24.1.1 above in which event this agreement will no longer be subject to the suspensive condition stated in Clause 24.1.1 above.
- 24.3 In the event that the suspensive condition in Clause 24.1.1 is not fulfilled on or before the date as contained in the said Clause 24.1.1, this agreement shall be of no force and effect and neither party shall have any claim against the other, save that the Conveyancers shall forthwith pay the amount of R5 000-00 (Five Thousand Rand) to the Seller and the balance of the deposit and the interest, less an administration fee in respect of management and/or administration fees payable to the Conveyancers, shall be refunded to the Purchaser.

25. GENERAL PROVISIONS AND RECORDINGS

- 25.1 This agreement shall be binding on the estates, heirs, executors, administrators, liquidators, trustees or assigns of the parties as fully and effectively as if they had signed this agreement in the first instance and reference to any party shall be deemed to include such party's estate, heirs, executors, administrators, liquidators, trustees or assigns, as the case may be.
- 25.2 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.
- 25.3 This agreement shall be deemed to have been entered into at the place where it is signed on behalf of the Seller.
- 25.4 **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 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 in terms of this contract have 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.
- 25.5 The Purchaser acknowledges that the Purchaser has been given an adequate opportunity to read and understand the terms and conditions recorded in this agreement and that the Purchaser is aware of all the terms printed in bold type.
- 25.6 The Purchaser hereby acknowledges having chosen English as the official language in which this agreement shall be drawn up.
- 25.7 All provisions and the various clauses of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this agreement shall remain of full force and effect. The parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 25.8 The Seller shall be entitled to change the numbering of any or all of the components should the number of any of these components on the attachments hereto differ from the approved sectional plan, in which event the Purchaser shall sign all such documents as may be required to effect the change in number.
- 25.9 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.
- 25.10 The Purchaser acknowledges that he is aware of the fact that the view currently enjoyed and/or the projected view from the Property hereby sold, may be affected by the development of the scheme and/or the construction of further buildings in Val de Vie Polo Village and/or the ongoing construction of further buildings in the development. The Purchaser accordingly acknowledges and agrees that the Purchaser shall have no claim or right of action whatsoever against the Seller arising from such impact on or impairment of the view from the Property, or any derogation from the value thereof as a result of any such ongoing construction.
- 25.11 The Purchaser acknowledges that he is aware of the fact that the Seller is in the process of negotiations in respect of the positioning of the entrance to the scheme, which have not been finalized and which may affect the site layout.

26. VAL DE VIE HOMEOWNERS ASSOCIATION

26.1 It is recorded that a homeowners association known as Val de Vie Winelands Lifestyle Estate HomeOwners' Association ("VDVHOA") has been established to administer and control all aspects relating to the property, buildings, services and landscaping constructed and/or to be constructed in the development as reflected on the master plan, so as to protect the communal interests of all owners of property in the development.

26.2 The Purchaser acknowledges that he is aware of the fact that there will be a title condition registered against the Property that the Property may not be sold without the written consent of the VDVHOA and that the owner of the land and its successors in title shall become members of the VDVHOA.

26.3 All members of the VDVHOA are bound by the Constitution of the VDVHOA.

26.3 The Purchaser will take all such steps which are necessary to familiarise himself with the Constitution and any rules and/or resolution/s passed by the VDVHOA from time to time, and by which the Body Corporate established in respect of the scheme will be bound.

26.4 **The Constitution of VDVHOA and its current rules are available on the website at www.valdevie.co.za, which Constitution is currently in the process of being amended to provide for the following :**

26.4.1 Membership to VDVHOA by the owners of Units in the development and by the Body Corporate;

26.4.2 Owners of Units in the development shall be liable for payment of levies to VDVHOA, which levies shall be calculated from time to time by the Trustees of VDVHOA using a specific formula as prescribed by the Trustees of VDVHOA from time to time. More specifically, the Body Corporate and its members will be liable to VDVHOA for payment of a contribution equal to the levies payable in respect of 12 (twelve) erven in the development to VDVHOA from time to time, and which contribution shall be apportioned to the owners of units in the scheme as levies according to the participation quotas attaching to their respective sections.

26.4.3 For purposes of this Clause 26.4, "owners of Units in the development" shall refer to sectional title units in the development in general and not only the unit purchased in terms hereof.

The Seller undertakes to furnish the Purchaser with the revised Constitution as soon as the amendments have been finalized.

26.5 The Purchaser agrees that as a member of the VDVHOA he shall with effect from the Transfer Date be responsible and liable for payment of a monthly levy to the said VDVHOA and, furthermore, that the Purchaser shall upon written request reimburse the Seller in respect of the monthly levy, if any, paid by the Seller in advance to the VDVHOA for any period reckoned from the Date of Possession or Transfer Date, whichever may be earlier. The Purchaser shall be obliged to furnish the VDVHOA with a debit order drawn on the Purchaser's bank in respect of payment of all levies as contemplated in this Clause 26.

26.6 The Purchaser shall be entitled to access to the facilities and property/ies set out in in this Clause 26.6, subject to conditions of membership or other rules laid down by the owner of

such property from time to time. This will include

- the right to become a member of the Polo Club, subject to such club's rules and constitution, including the obligation to pay membership fees as determined by the club.
- the right of reasonable access to the farm land along servitudes created in favour of the VDVHOA, subject to the rules laid down by the developer.

26.7 The facilities and property set out in Clause 26.6 shall be maintained from the levy fund of the VDVHOA.

26.8 The developer may at any time and in its sole discretion, sell or transfer any such erf or erven to any third party or entity. In such event, the third party or entity shall assume the rights and obligations of the developer under the Constitution of the VDVHOA. The VDVHOA will in such event have the right of first refusal in respect of such non-residential land, other than the farmland, except when the developer sells same to a subsidiary, as set out in the Constitution of the VDVHOA.

26.9 The developer shall be entitled to cede and/or assign all or any of its rights and delegate its obligations as set out in this agreement.

26.10 The developer shall, in its absolute discretion 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 development and the Purchaser shall be bound thereby and shall have no claim of whatsoever nature against the developer arising therefrom.

26.11 Insofar as the consent of the Purchaser, including its successors in title, is required to consent to any of the aforesaid, the Purchaser and his successors in title hereby specifically and irrevocably grants to the developer (represented by any one of its directors) a power of attorney *in rem suam* to grant any/all such consents on his behalf as may be required.

26.12 **The Purchaser acknowledges that he is aware that the Property hereby purchased, will be part of an operating farm/s and wine cellar. He hereby accepts he, his family, visitors and invitees will be exposed to such activities which may result in an amount of inconvenience.**

26.13 **The Purchaser furthermore acknowledges that equestrian and recreational activities will take place on the private open spaces and that he, his family, visitors and invitees may be exposed to such activities.**

26.14. The Purchaser acknowledges that :

- (a) for reasons of security in the township and due to the nature of the proposed development of the township and the various matters about which any purchaser should become aware when buying into the township, if the Purchaser wishes to dispose of the unit, or any share therein or any subdivision thereof, he shall, to the extent that he requires the services of an estate agent in regard to such disposal, do so in accordance with this Clause 26.14;
- (b) this clause is inserted for the benefit of the VDVHOA, who shall be entitled to enforce its terms by law;
- (c) any owner who acquires the unit and who thereafter wishes to dispose of the unit, shall—
 - (i) to the extent that he requires the services of an estate agent, do so exclusively through an estate agent accredited by the VDVHOA; and
 - (ii) whether or not he utilises the services of an estate agent, include a clause in any document pursuant to which he disposes of the unit on the same terms as contained in this Clause 26.14 to ensure that any future owner of the unit shall, to the extent that such owner requires the service of an estate agent in regard to the disposal of the unit, be required to appoint only an estate agent

accredited by the VDVHOA.

- 26.15 The Purchaser further acknowledges that in the event of the Purchaser being an artificial person, such as a close corporation, company or trust, and in the event of the member, director, shareholder, trustee or beneficiary of the Purchaser (as the case may be) wishing to dispose of the member's interest, shares or beneficial interest in the Purchaser (as the case may be) the Purchaser shall procure that such party shall, to the extent that such party requires the services of an estate agent in regard to such disposal, complies with the provisions of Clause 26.14 which shall apply, *mutatis mutandis*.
- 26.16 The conditions contained in this Clause 26.1 – 26.15 above are intended merely as a general description of the rights and obligations of a member of the VDVHOA, the details of which are more fully dealt with in the Constitution of the VDVHOA. If there is any conflict with what is set out above and what is contained in the Constitution of the VDVHOA, the latter shall prevail and the Purchaser shall have no claim against the Seller arising out of such conflict.

27. VARIATION AND WAIVER

- 27.1 This agreement constitutes the entire contract between the parties. Neither party shall be liable to the other for any other terms, conditions, promises or statements, warranties or representations of any nature, express or implied, made by any person whomsoever, whether or not he purported to act on behalf of any party, save as are recorded herein.

- 27.2 No agreement or arrangement between the parties in terms of which:

27.2.1 any of the provisions hereof are cancelled, amended or added to; or

27.2.2 this agreement is cancelled in its entirety (other than a cancellation in terms of Clause 16 above); or

27.2.3 this agreement, after it has been terminated or cancelled for any reason whatsoever, is reinstated;

shall be binding upon the parties or be of any force or effect unless such agreement or arrangement is reduced to writing and signed by the parties or by their duly authorised agents.

- 27.3 No indulgence, extension of time for any payment, latitude or concession, in respect of the performance of any obligation hereunder, made, granted or allowed by the Seller to the Purchaser at any time shall under any circumstances be deemed to be a waiver by the Seller of any of the Seller's rights against the Purchaser arising from this agreement, or to be a novation of any such obligation, or to create a precedent, and shall not in any way affect, diminish or prejudice any of the Seller's rights against the Purchaser or any surety for the Purchaser in terms hereof, and the Seller shall be entitled at any time to demand strict and punctual fulfilment of all the Purchaser's and such surety's obligations hereunder, despite any such indulgence, extension, latitude or concession.

28. DISPUTES - MATTERS DETERMINED BY THE PRINCIPAL AGENT

- 28.1 The parties confirm that in the event of the Seller and/or the Purchaser (in this clause referred to as the "disputing party") disputing any determination or instruction given by the principal agent pursuant to the provisions of the Clauses 4.2 and/or 4.5 and/or 5.4 and/or 10.7 above, the principal agent and the disputing party shall meet within 3 (three) days after being requested by any one of the parties, with the view to resolve any dispute raised by the disputing party in respect of the matters referred to in Clauses 4.2 and/or 4.5 and/or 5.4 and/or 10.7 above within 72 (seventy two) hours.

- 28.2 In the event of the principal agent and the disputing party reaching an agreement in respect of the matter in dispute, same shall be deemed to be the principal agent's determination in respect of the matter for purposes of the relevant Clauses 4.2 and/or 4.5 and/or 5.4 and/or 10.7 above, and same shall be binding on the Seller and the Purchaser.
- 28.3 In the event of the principal agent and the disputing party not being able to reach an agreement in respect of the matter in dispute within the 72 (seventy two) hour period referred to in Clause 28.2, any one of the parties or the principal agent shall refer the matter to an architect to be appointed by the parties and, failing agreement within forty eight hours as to the identity of the architect to be appointed, either party may request the South African Institute of Architects to make the appointment on their behalf.
- 28.4 Such party's determination (acting as an arbitrator) shall be final and binding on the parties in respect of the relevant matter and deemed to be the principal agent's determination in respect of matter for purposes of Clauses 4.2 and/or 4.5 and/or 5.4 and/or 10.7 above

29. DISPUTE RESOLUTION

- 29.1 Subject to the conditions contained in Clauses 4.2 and/or 4.5 and/or 5.4 and/or 10.7 above, either party may, after written notice to this effect, refer any dispute arising from the terms of this agreement to arbitration to be dealt with in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("**AFSA**") read with the Uniform Rules of Court made in terms of the Supreme Court Act, 59 of 1959 ("**the Supreme Court Act**").
- 29.2 In the event of a party referring a dispute to arbitration as provided for in Clause 29.1 above:-
- 29.2.1 the parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Expedited Rules of AFSA should either party by written notice require the arbitration to be held on an urgent basis. In such event the parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 29.2.2 The arbitration shall be held –
- 29.2.2.1 at Cape Town;
- 29.2.2.2 with only the legal and other representatives of the parties to the dispute present thereat;
- 29.2.2.3 *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice of the Western Cape High Court, Cape Town; and
- 29.2.2.4 otherwise in terms of the Arbitration Act, No 42 of 1965 ("**Arbitration Act**"), unless otherwise provided for herein or agreed between the parties in writing.
- 29.3 The arbitrator shall be a practising senior advocate of the Cape Bar of at least ten years' standing, appointed by agreement between the parties to the dispute, subject to Clause 29.4.

- 29.4 Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the matter is referred to arbitration, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either party to the dispute.
- 29.5 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to herein.
- 29.6 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in Clause 29.5 at the instance of any of the parties to the dispute.
- 29.7 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 in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice of the Western Cape High Court, Cape Town.
- 29.8 In the event that a party to the dispute is granted leave to appeal the decision of the arbitrator, such appeal shall be held –
- 29.8.1 before 3 (three) arbitrators appointed in accordance with 29.3 and 29.4; and
 - 29.8.2 *mutatis mutandis* in accordance with the provisions of the Supreme Court Act, the Uniform Rules and the practice of the Western Cape High Court, Cape Town.
- 29.9 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.

30. JOINT PURCHASERS

Should this agreement be signed by more than one person as Purchaser, they shall be liable jointly and severally to the Seller for the due fulfilment of all of the Purchaser's obligations hereunder.

31. THE GYMNASIUM AND OTHER RECREATIONAL FACILITIES

- 31.1 The Purchaser shall be entitled to make use of the gymnasium and other recreational facilities and to use the gymnasium and other recreational facilities in accordance with the Rules as formulated from time to time by the Body Corporate and/or VDVHOA or their nominees from time to time.
- 31.2 The Purchaser shall from the Transfer Date become a member of the Gymnasium and other recreational facilities.
- 31.3 No entrance fee shall be payable for such membership. Membership fees for such gymnasium and other recreational facilities will be included in the levies payable to the VDVHOA.
- 31.4 The gymnasium and other recreational facilities have been transferred to the VDVHOA by the developer.

32. SHORT TERM RENTALS

Should the Purchaser not wish to occupy the unit himself save on an irregular basis and wish to rent the unit out on short-term basis and/or to provide temporary accommodation for consideration, the Purchaser shall be obliged to appoint the agency appointed by the Body Corporate from time to time to manage and co-ordinate short-term rentals and/or temporary accommodation for consideration in the scheme.

33. PHASED DEVELOPMENT OF VAL DE VIE

33.1 **The Purchaser is aware and hereby acknowledges the developer has the right in terms of clause 44 of the Constitution of the VDVHOA to extend the development of which the scheme forms part as more fully contained in paragraph 1.16 of the schedule and hereby consents to such development being carried out. In the event of such rights being exercised by the developer the Purchaser consents to such changes/amendments to the development rights as may be required within the sole discretion of the developer. The parties record that the developer obtained certain use rights in respect of the development and may in future apply for further or amended use rights in respect of the development including but not limited to single residential, group housing, townhouses, hotel use, religious use rights, business/commercial, restaurants, theatre facility/ies, sport, light industrial and educational use rights. The Purchaser hereby consents to such use rights and hereby firmly bind itself not to make any objections or to oppose any application which may be made by the developer to the local or other competent authority concerned in this regard.**

33.2 The developer has reserved the right and shall be entitled to build and establish on the development other amenities and facilities as it in its sole discretion deems fit. The developer furthermore reserves the right to subdivide from property comprising the development the sites for such aforesaid amenities and facilities as separate erven and shall be entitled to operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the development. The developer shall in its sole discretion, be entitled to establish such aforementioned amenities and facilities on any portion of the development with the approval of the local authority.

33.3 The developer has reserved the right to and has designated the Polo Pavilion as a separate erf and to retain the ownership thereof for its own benefit.

33.4 **The Purchaser acknowledges and agrees to the development of the township in phases at the sole discretion of the developer. The developer shall not be obliged or bound to proceed with the uncompleted phases of development but may do so in stages or phases and within periods in the developer's sole discretion. The Purchaser agrees to allow the developer to exercise its right to proceed with the development and shall not be entitled to interfere with or obstruct the developer from proceeding with the development in phases nor to lodge an objection with any competent authority in respect of any such development. In particular, but without derogating from the generality of the aforesaid, the Purchaser agrees that he will not object to any application made by or on behalf of the developer for special usage consent, licences for shopping, commercial, rezoning, removal of conditions of title under the Removal of Restrictive Conditions Act or by way of an application to Court or to any local or other competent authority in respect of any property within the development. Again in no way detracting from the generality of the aforesaid, the Purchaser specifically acknowledges that owners of land surrounding the unit will be erecting buildings and other structures on surrounding land which may block or otherwise interfere with the views from the unit. The Purchaser agrees he shall have no right to object to the construction of any building or other structure on any land within the development on the basis that such building or other structure blocks or otherwise interferes with the views from the unit, nor will he have any claim for any alleged diminution in value of the unit arising out of any interference with the views from the unit by reason of the construction of any such building or structure.**

33.5 **The Purchaser hereby irrevocably undertakes to sign upon request by the developer or its authorised agent all such documents as may be necessary to enable the developer to proceed with the phased development. Should the Purchaser fail to or refuse to sign any such document, then the Purchaser hereby appoints the developer as his attorney and agent in rem suam to sign the same on his behalf. The developer shall be entitled to cede any or all of its rights in terms of this agreement to any third party of its choice.**

34. SWIMMING POOL

34.1 The Purchaser acknowledges and agrees that the owner/occupier of the unit shall be entitled to the use of the swimming pool, which use shall be regulated by virtue of the rules of the Body Corporate from time to time..

34.2 The Purchaser acknowledges and agrees that the swimming pool will be completed on the date of completion of the last unit in the scheme.

35 CONTRA-PROPERENTUM RULE

35.1 **The Purchaser has been invited to procure his own legal advice in relation to the terms of this agreement.**

35.2 The parties have agreed that the contra-proferentum rule (i.e. the rule of construction that, in the event that there is an ambiguity, the contract shall be interpreted against the party responsible for the drafting or preparation of the contract) shall not apply.

36. LEGAL COSTS

In the event of either party breaching any of its obligations to the other (the "aggrieved party") in terms of this agreement and further in the event of it being necessary for the aggrieved party to consult attorneys, and/or seek legal advice and/or institute legal action in order to enforce the aggrieved party's rights herein contained, then and in any of the foregoing events, the defaulting party shall be liable to bear the aggrieved party's legal costs so incurred on the scale as between attorney and client calculated at the actual rate charged by the aggrieved party's attorneys subject to a maximum of twice the prevailing High Court tariff as amended from time to time (notwithstanding the fact that proceedings may be sued out of the Arbitration Foundation of South Africa).

37. PHASED DEVELOPMENT OF THE POLO VILLAGE

37.1 **The Purchaser acknowledges that he is aware of the fact that the Seller may in its sole discretion develop the scheme in phases and the Purchaser hereby agrees to the development of the scheme in these phases.**

37.2 The Seller shall not be bound to proceed with the uncompleted phases of the scheme or the extension of the scheme at once but may do so in stages over a period not exceeding 3 (THREE) years in duration.

37.3 The Seller shall further not be obliged to act upon its right to extend the scheme which shall be at the Seller's sole discretion, irrespective of the success of the sales and the commercial viability of the scheme.

37.4 The Purchaser agrees to allow the Seller to exercise its positive and real right to proceed with the scheme in the manner envisaged herein and shall not be entitled to interfere with or obstruct the Seller from erecting on the common property or any portion thereof, the additional buildings contemplated above, nor shall the Purchaser have the right of use of or access to, to which he would otherwise be entitled, any portion or portions of the common property upon which additional buildings are being erected until such time as the aforesaid additional buildings have been completed.

37.5 The Purchaser 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 aforesaid phased development.

37.6 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.

38 CONSUMER PROTECTION ACT

38.1 The Purchaser acknowledges that in terms of the CPA he has the right to receive goods ("the Property") that:

38.1.1 are reasonably suitable for the purposes for which the goods are generally intended;

38.1.2 are of good quality, in good working order and free of defects;

38.1.3 comply in general with the requirements and standards contemplated in section 55 of the CPA, and accordingly the Purchaser declares and acknowledges that upon signature of the letter of completion and documents referred to in Clause 1.12.1 and/or 1.12.2, whichever may be applicable, the Purchaser will satisfy himself that taking into account the usage of the goods ("the Property") for residential purposes, the provisions of the CPA are complied with to the extent applicable.

38.2 If and to the extent applicable, for the purposes of the CPA, the Purchaser and the signatory on its behalf (where applicable), after due consideration, by his signature of this agreement acknowledge and agree that:

38.2.1 he has entered into this agreement freely and voluntarily and that no circumstances exist for his alleging either now or at any future time that he was at a disadvantage in agreeing to the terms and conditions contained herein or was in anything other than an equal bargaining position with the Seller agreeing to such terms and conditions as are contained herein;

38.2.2 he has done his own investigations whether to enter into this agreement or not without any undue influence, pressure, duress, harassment or unfair tactics from the Seller;

38.2.3 he understands the content, significance and import of this agreement without undue effort, having regard to –

38.2.3.1 the context, comprehensiveness and consistency of the agreement;

38.2.3.2 the organisation, form and style of the agreement;

38.2.3.3 the vocabulary, usage and sentence structure of the agreement; and

38.2.3.4 the use of any illustrations, examples, headings or other aids to reading and understanding.

39. DIRECT MARKETING COOLING OFF RIGHT

- 39.1 In terms of section 16 of the CPA, if this sale has resulted from direct marketing by the Seller or its agents, the Purchaser has the right to cancel this agreement without reason or penalty by written notice within 5 business days after the agreement was concluded, or within 5 business days after delivery of the Property.
- 39.2 The Seller is unable to accept the risk of cancellation without reason within 5 business days of delivery of the Property as the Seller could in the interim have sold the Property to someone who was not so affected. In addition, if the transaction is cancelled after delivery to the Purchaser, the Seller will be left to carry the holding costs of the Property for an uncertain period whilst looking for a replacement Purchaser. This has the potential to create substantial losses for the Seller.
- 39.3 The Seller is therefore not prepared to enter into this agreement with any buyer if the transaction has resulted from direct marketing.
- 39.4 The Purchaser therefore warrants that this transaction has not resulted from direct marketing and understands that the Seller enters into this transaction relying entirely upon such warranty.
- 39.5 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 the damages suffered by the Seller as a result thereof on the basis of the Purchaser's breach of this warranty.

40. CONFIRMATION BY THE PURCHASER IN TERMS OF THE CPA

The Purchaser confirms that:

- 40.1 he has read this agreement and understands the contents thereof YES/NO
- 40.2 that the Property was not introduced to him by means of direct marketing YES/NO
- 40.3 that he is aware and understands his rights to the cooling-off period after direct marketing YES/NO
- 40.4 the Purchaser is a juristic person (Company, Close Corporation, Trust, Partnership, etc.) YES/NO
- 40.5 if the Purchaser's answer to Clause 40.4 above is YES, on date hereof it's annual turnover or asset value is more than R2 000 000,00 (Two Million Rand) YES/NO

(Clause 40.5 is not applicable if Purchaser is a natural person)

- 40.6 he has purchased and will use the Property only for residential purposes YES/NO

41. OFFER

- 41.1 This agreement, once signed by the Purchaser, shall be regarded as an offer by the Purchaser and shall be irrevocable and open for acceptance by the Seller for a period of 14 (FOURTEEN) days from date of signature hereof by the Purchaser, and shall be irrevocable during the said period.
- 41.2 Acceptance of the Purchaser's offer shall be conveyed to the Purchaser as soon as possible after acceptance thereof by the Seller by furnishing the Purchaser with a copy of the signed agreement.

SIGNED at _____ on this _____ day of _____ 20____

AS WITNESSES:

1. _____

2. _____

Purchaser or his duly authorised representative

I acknowledge that I am acquainted with and understand the contents of this agreement and that all the annexures referred to in this agreement were attached hereto when I signed same.

I, the undersigned, being the spouse of the Purchaser, do hereby consent to this transaction as far as needs be in terms of the Matrimonial Property Act 1984.

AS WITNESSES:

1. _____

2. _____

Spouse of the Purchaser

This portion to be signed by legal guardian / member / director/ trustee in the event of the Purchaser being a minor / close corporation / company / trust.

(Full names of the Guarantor)

of

(Full address and telephone number)

who warrants that he is duly authorised hereto and for purposes of Clause 15.1.5 and 15.2 of the terms and conditions, also in his personal capacity and hereby consents to the conclusion of this agreement and guarantees and binds himself/herself as surety for and co-principal debtor in solidum with the Purchaser to the Seller for the due and punctual fulfilment and discharge of all the obligations undertaken by the Purchaser to the Seller pursuant to this agreement, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of this agreement shall prejudice the suretyship obligations hereby undertaken by the aforesaid guarantor, the object being that he shall remain liable at all times as surety and co-principal debtor, even if this agreement is varied or amended or novated and even if the aforesaid Purchaser is granted an indulgence by the Seller.

Signed at _____ on this _____ day
of _____ 20 _____ :

AS WITNESSES:

1. _____

2. _____

Guarantor

SIGNED at _____ on this _____ day of _____ 20____

AS WITNESSES:

1. _____

2. _____

For the Seller who warrants that he is duly
authorised hereto by the Seller

ACCEPTANCE BY THE AGENT AND BY THE CONVEYANCERS

We, the Agent as defined in paragraph 11 of the schedule above, hereby accept the provisions of Clause 18 of the terms and conditions (COMMISSION) above to the extent that they apply to us. We undertake to record the VAT Registration Number of the Seller on all Tax Invoices which we may submit to the Seller and confirm that we are aware that our failure to do so will result in payment of the relevant Tax Invoice being withheld until a Tax Invoice which complies with this requirement has been submitted to the Seller.

who warrants his/her/their authority

PLACE : _____

DATE : _____

We, the Conveyancers as defined in paragraph 10 of the schedule above, hereby accept the provisions of this agreement to the extent that they apply to us.

for **JOOSTE MARAIS INCORPORATED**

who warrants her authority

PLACE : _____

DATE : _____

ANNEXURE INDEX

| | |
|--------------|---|
| ANNEXURE "A" | - site plan Val de Vie Polo Village |
| ANNEXURE "B" | - residential ground- and first floor layout plan |
| ANNEXURE "C" | - unit layout plan |
| ANNEXURE "D" | - basement- and open parking layout |
| ANNEXURE "E" | - master plan |
| ANNEXURE "F" | - specifications |
| ANNEXURE "G" | - draft sectional plan |
| ANNEXURE "H" | - Management and Conduct Rules |
| ANNEXURE "I" | - FICA Requirements |