

**Offer to Purchase Hotel Unit in Brenton Bay Hotel**

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Entered into by and between:

Dynarc Brenton on Sea (Pty) Ltd – registration number: 2006/015632/07 c/o Rossouws Attorneys, 119 President Reitz Street, Westdene, Bloemfontein 9301; and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

("the Purchaser") of

Postal Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

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

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

Telephone No. (Cellular): \_\_\_\_\_

Fax No. \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Identity number/ Registration number: \_\_\_\_\_

Marital status (if individual): single / married / in community of property / ANC

**1. SCHEDULE**

1.1 Section number: \_\_\_\_\_ measuring: \_\_\_\_\_

1.2 Purchase Price:

1.2.1 R \_\_\_\_\_ plus;

1.2.2 VAT at the standard rate in the amount of: R \_\_\_\_\_

1.3 Deposit: R \_\_\_\_\_

(which the Purchaser shall, on signature of this agreement by him, deposit in the trust account of Rossouws Attorneys - Absa Bank Account number: 4066557029 branch code: 632005)

1.4 Amount of bond finance for which Purchaser will apply: R \_\_\_\_\_

1.5 Estate Agent: \_\_\_\_\_

1.6 Date of Occupation: means the date that the Seller will determine as the date of occupation by way of a written notice to the Purchaser which notice shall be delivered to the Purchaser within 270 days after acceptance of his Offer by the Seller

**2. OFFER**

The signature of this Agreement by the Purchaser constitutes an offer by the Purchaser, which the Seller shall be entitled to accept by the signature of this Agreement by the Seller at any time before a date 30 days after the date of signature by the Purchaser and a communication to the Purchaser of such acceptance shall not be required to create a binding effect. On acceptance of this offer an agreement of Sale shall come into being subject to and in accordance with the provisions hereof and the Conditions of Sale annexed hereto as Annexure "A" in terms of which the Seller sells and the Purchaser purchases the Property. If this offer is not accepted the Deposit together with accrued interest thereon shall be repaid to the Purchaser.

THUS DONE and SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 200\_\_\_\_\_

As Witnesses:

1 \_\_\_\_\_

Seller

2 \_\_\_\_\_

THUS DONE and SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 200\_\_\_\_\_

As Witnesses:

1 \_\_\_\_\_

Purchaser, who by his signature hereto, if signing in a representative capacity, warrants that he has been duly authorised to do so.

2 \_\_\_\_\_

THUS DONE and SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 200\_\_\_\_\_

As Witnesses:

1 \_\_\_\_\_

Surety

2 \_\_\_\_\_

hereby bind myself as surety for and co-principal debtor in solidum with the Purchaser to the Seller for the due performance by the Purchaser of all his obligations to the Seller arising out of and pursuant to this Agreement hereby waive and renounce the benefits of the legal exceptions *beneficium divisionis seu excussionis*.

LIST OF ANNEXURES:

Annexure "A": Conditions of Sale

Annexure "B": Specifications to which unit shall be built

Annexure "C" draft Sectional Plans comprising Site Plan, Floor Plan and Elevation of unit and Section 25 plan of extension.

Annexure "D" a list of furniture and fittings which be supplied by the Seller and will form part of the Property.

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**Conditions of Sale**

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**1. INTERPRETATION AND DEFINITIONS**

## 1.1 In this Agreement:-

1.1.1 clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify any of the provisions of this Agreement;

1.1.2 the Parties shall, wherever necessary or appropriate, be referred to by their defined designations as contained in the heading to the Offer;

1.1.3 a reference to:-

1.1.3.1 any particular gender shall include the other two genders;

1.1.3.2 the singular shall include the plural and *vice versa*;

1.1.3.3 a natural person shall include corporate or unincorporate created entities and *vice versa*;

1.1.4 all of the schedules and/or annexes are incorporated herein and shall have the same force and effect as if they were set out in the body of this Agreement;

1.1.5 words and/or expressions defined in this Agreement shall bear the same meanings in any schedules and/or annexes hereto which do not contain their own defined words and/or expressions;

1.1.6 where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;

1.1.7 where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intending such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday;

1.1.8 where an expression has been defined (whether in 1.2 below or elsewhere in this Agreement) and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement;

1.1.9 if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;

1.1.10 words and/or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement;

1.1.11 the *contra proferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;

1.1.12 the *eiusdem generis* rule shall not apply, and whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned;

1.1.13 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amending or re-enacted from time to time thereafter;

1.1.14 unless specifically provided to the contrary, all amounts referred to in this Agreement are exclusive of value added tax;

1.1.15 the expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or

termination or which of necessity must continue to apply after such expiration or termination;

1.1.16 any communication which is required to be "in writing" shall include a communication which is written or produced by any substitute for writing or which is partly written and partly so produced, and shall include printing, typewriting, lithography, facsimile or electronic mail or any form of electronic communication or other process or partly one and partly another.

1.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate words and expressions shall bear corresponding meanings:

1.2.1 "this Agreement" means this Offer to purchase which will, on acceptance thereof, become an agreement of sale and all Annexures thereto;

1.2.2 "Business Day" – any day other than a Saturday, Sunday or public holiday in terms of the laws of the Republic of South Africa;

1.2.3 "Conveyancers" – Rossouws Attorneys, 119 President Reitz Street, Westdene, Bloemfontein 9301 who are hereby instructed to attend to the registration of transfer of the Property into the name of the Purchaser;

1.2.4 "Date of Possession" means the date specified in 1.6 of the Agreement to which these Conditions of Sale are Annexure "A";

1.2.5 "Date of Transfer" means the date of registration of transfer of the Property into the name of the Purchaser;

1.2.6 "Draft Sectional Plans" mean the plans comprising Site Plan, Floor Plan and Elevation attached hereto as Annexure "C";

1.2.7 "Offer" means the Offer to Purchase to which these Conditions of Sale are Annexure "A";

1.2.8 "Parties" – collectively the Purchaser and the Seller, and "Party" shall mean either of them as the context requires;

1.2.9 "Practical Completion" shall mean completion of the unit to such an extent that an architect appointed by the Seller certifies that the unit is fit for occupation and "Date of Practical Completion" shall mean the date on which the said architect issues the said certificate;

1.2.10 "Prime Rate" – the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by Absa Bank Limited as being its prime overdraft rate, as certified by any manager of that bank whose appointment and designation it will not be necessary to prove;

1.2.11 "Property" means a Unit consisting of:

1.2.11.1 The Section referred to in clause 1.1 of the Offer as shown and more fully described on draft Sectional Plan in the scheme known as Brenton Bay Hotel in respect of the land and building or buildings situate at Remainder of Erf 198 Brenton in the Municipality and Division of Knysna Province of Western Cape in extent 9 189 square metres of which section the floor area according to the said sectional plan is indicated on the draft Sectional Plan; and

1.2.11.2 An undivided share in the common property in the scheme apportioned to the said section in accordance with the participation quota of the Section as determined in terms of the provisions of clause 13;

1.2.11.3 The furniture and fittings as per Annexure "D" which will, if the Purchaser enters into the Rental Pool Agreement provided for in clause 20, from time to time, as it becomes necessary through wear and tear, be replaced by the Purchaser on the basis that the interior of the unit shall not be changed in any way.

1.2.12 "the Purchase Price" means the Purchase Price reflected in clause 1.2 of the Offer;

1.2.13 "Purchaser" means the purchaser described on the face of the Offer;

1.2.14 "Rules" means the rules referred to in 10 of the Conditions of Sale;

1.2.15 "Seller" means the seller described on the face of the Offer;

1.2.16 "Specifications" means the specifications as contained in Annexure "B" to which the unit shall be built;

1.2.17 "VAT" means Value Added Tax and VAT Act means the Value-added Tax Act 89 of 1991(as amended);

## **2. BOND FINANCE**

2.1 The Purchaser undertakes forthwith to apply for a loan for the amount stated in 1.4 of the Offer and agrees that if such loan is not granted within 30 days of the acceptance of the offer contained in this Agreement by the Seller or by such later date as the Seller may agree to in writing, then this Agreement shall lapse and be of no further force or and the Seller shall forthwith repay to the Purchaser all amounts paid by the Purchaser in respect of the Purchase Price of the Property.

2.2 In order to facilitate the efficient and expeditious fulfilment of suspensive conditions it is recorded that the services of a mortgage originator appointed by the Seller will be used by the Purchaser when making application for a loan as referred to in 2.1 above; and that the Conveyancers shall be instructed to attend to the registration of any mortgage bond pursuant to such loan.

## **3. DEPOSIT AND GUARANTEES**

3.1 The deposit provided for in clause 1.3 of the Offer shall be paid to the Conveyancers on signature of this offer by the Purchaser. Such deposit shall be placed by the Conveyancers in an interest bearing account in terms of s78(2A) of the Attorneys Act 53 of 1979 with all interest to accrue for the benefit of the Purchaser until the Date of Transfer whereupon the Conveyancers shall release the capital to the Seller and all accrued interest less reasonable administration fees, to the Purchaser;

3.2 The Purchaser shall secure the due payment of the balance of the Purchase Price by furnishing the Seller with a guarantee/s from a registered commercial bank/s, in a form and on terms acceptable to the Seller, for such amount. The guarantee/s will be expressed payable on Date of Transfer;

3.3 The guarantee/s referred to in 3.2 above shall be furnished by the Purchaser within 30 days after fulfilment of the suspensive conditions contained in clause 2.1.

## **4. WARRANTIES**

The Purchaser acknowledges that no warranties or representations in respect of the Property, other than those contained in this Agreement, have been made or given by the Seller or anyone on its behalf, whether express or implied;

## **5. POSSESSION AND RISK**

Possession and occupation of the Property shall, subject to the provisions of clause 8.2, be given by the Seller, and taken by the Purchaser on the Date of Possession;

The risk and benefit in and to the Property shall pass to the Purchaser on Date of Possession;

Liability to pay all rates and taxes (if any), sectional title levies and other outgoings arising from the Property shall pass to the Purchaser on the Date of Possession (The Purchaser shall also be obliged to refund the Seller with a pro-rata share, based on the participation quota of the Property, of the water

and electricity deposit/s paid by the Seller. It is recorded that the said deposit/s shall become the property of the Body Corporate when it comes into being);

From the Date of Possession to the Date of Transfer, both days inclusive, the Purchaser shall pay to the Seller monthly occupational interest on the full Purchase Price calculated at the Prime Rate. Such occupational interest shall be payable monthly in advance to the Conveyancers directly on or before the first day of every month. Occupational interest shall be adjusted for any period of less than one month, the final adjustment to be made on the Date of Transfer;

The Purchaser undertakes, in the event of this Agreement being cancelled, for any reason whatsoever to vacate the Property and restore the Property to the same good order and condition in which it was at the Date of Possession, fair wear and tear excepted. Further, in the event of this Agreement being cancelled due to the breach of the Purchaser, the Purchaser shall not be entitled to any compensation for any improvements of whatever nature he may have effected to the Property while in occupation thereof.

## **6. VIABILITY**

It is recorded that the Seller will only proceed with the erection of the building/s comprising the scheme if such a number of units in the sectional title scheme of which the Property will form part are sold as will, in the sole and absolute discretion of the Seller, make the development viable. If the Seller, in its sole and absolute discretion, determines that the development will not be viable the Seller shall be entitled, by written notice to the Purchaser to that effect, to unilaterally cancel this agreement in which event the parties will be reinstated in the *status quo ante* the entering into of this agreement.

## **7. RESALE OF PROPERTY**

The Purchaser shall not be entitled to resell or in any other way alienate the Property until such time as the Property has been transferred into the name of the Purchaser. Should the Purchaser, before the date of transfer of the Property in its name, resell or in any other way alienate the Property the Seller shall be entitled but not obliged to unilaterally cancel this Agreement in which event the parties will be reinstated in the *status quo ante* the entering into of this Agreement.

## **8. UNDERTAKING BY THE SELLER TO COMPLETE THE UNIT**

8.1 The Seller undertakes to complete the Property substantially in accordance with the approved building plans to the stage of Practical Completion on or before the Date of Possession, subject however thereto that the Seller in his discretion will have the right to deviate from the building plans and specifications (also with regard to the positioning of the Unit) should it appear that such deviation would assist in the practical and economic completion of the buildings in the sectional title scheme of which the Property forms part.

8.2 If the Seller is unable to timeously complete the unit, due to any one or more of the following reasons namely fire, *vis major*, storm, inclement weather conditions, strikes, unavailability of building material, or any other reasonable cause, then the Seller shall be entitled to delay the Date of Possession for such a period as may be determined as reasonable by an architect appointed by the Seller at its cost.

8.3 The Purchaser shall be entitled and obliged to supply a retention list regarding patent defects to the Seller within 14 (fourteen) days after the Date of Possession failing which it will be deemed that no such defects exist. In the event of such a list being supplied by the Purchaser to the Seller, the Seller shall be obliged, within 90 days after receipt of the list, to rectify to those defects to the satisfaction of an architect appointed by the Seller at its cost.

8.4 The Purchaser acknowledges that on the date of occupation and possession, the buildings or improvements or structures (including roads) comprising the further extensions of the scheme, may be incomplete. The Purchaser may suffer inconvenience from building operations, noise, dust, and other nuisance factors resulting therefrom. The Purchaser shall not be entitled to cancel or withdraw from this Agreement or claim damages from any person or institute interdict proceedings, by reason of any such inconvenience.

8.5 The Purchaser acknowledges the fact that the extent of the property shown on the Building Plan and the Sectional Title Plan may differ due to the fact that different methods of measurement are used in measuring the extent of the unit on the Building Plan and Sectional Title Plan. The Purchaser shall not be entitled to cancel or withdrawn from this Agreement or claim damages from any person or institute interdict proceedings by reason of such difference.

## **9. LEVY AND OTHER CHARGES**

The Purchaser accepts liability with effect from the Date of Possession for payment of municipal rates and taxes (if any) and the levies payable to the Body Corporate of the Sectional Title Scheme;

## **10. SECTIONAL TITLE RULES**

The Purchaser binds him *vis a vis* the Seller and all purchasers in the scheme to comply with the rules of the scheme being the Management Rules contained in Annexure 8 and the Conduct Rules contained in Annexure 9 of the Sectional Titles Act, 1986.

## **11. TRANSFER**

11.1 The Conveyancers shall pass transfer of the Property to the Purchaser as soon as is reasonably practicable in the circumstances, provided that the Purchaser has complied with all his obligations under this Agreement;

11.2 It is recorded that the Purchase Price excludes VAT and all costs of and incidental to the passing of transfer of the Property to the Purchaser, all conveyancing fees and disbursements, all bond costs, conveyancing fees regarding the registration of any bond and bank charges;

11.3 The Purchaser shall, within 7 (seven) days of being called upon to do so by the Conveyancers:-

11.3.1 pay to the Conveyancers all conveyancing fees and disbursements pertaining to the passing of transfer of the Property to the Purchaser, all bond costs, conveyancing fees regarding the registration of any bond and bank charges;

11.3.2 furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the Conveyancers to pass transfer of the Property;

11.3.3 No liability of any nature whatsoever shall attach to the Seller arising out of any delays in effecting transfer of the Property to the Purchaser;

11.4 The Purchaser shall be obliged to accept transfer of the Property subject to the conditions, reservations and servitudes which burden the land on which the Property is situated.

## **12. AGENT'S COMMISSION**

12.1 The Purchaser warrants to the Seller that he was introduced to the Property by the agent of the agency referred to in paragraph 1.5 of the Offer;

12.2 The Purchaser warrants that no agent other than that referred to in clause 1.5 of the Offer was responsible for introducing him to the Property and further warrants that no other agent will have any claim against the Seller for agent's commission arising out of this transaction. The Purchaser indemnifies and holds harmless the Seller against any loss, damage or expense sustained, suffered or incurred by the Seller arising out of any breach of the foregoing warranty.

### **13. RETENTION OF SECTIONS BY THE DEVELOPER, CALCULATION OF PARTICIPATION QUOTA AND PAYMENT OF LEVIES**

13.1 The parties record that the Seller will retain all the sections and exclusive use areas ("the Retained Sections and Retained Exclusive Use Areas ") of the development, and ultimately of the Sectional Title Scheme, as are necessary for the operation of the hotel and the development as whole. The parties agree that the Seller shall be entitled to sell the Retained Sections and Retained Exclusive Use Areas (or any one or more of them) to a third party in its sole discretion, and the Parties further record that the conditions of this agreement shall apply *mutatis mutandis* in the event of such a sale.

13.2 Without in any way limiting the above, the parties record that the Seller will specifically retain:

13.2.1 the restaurant, and that the provisions of this clause 13 shall apply *mutatis mutandis* to the restaurant which will, together with any exclusive use are required for the operation thereof, be deemed to be one of the Retained Sections and Retained Exclusive Use Areas;

13.2.2 all parking bays the use of which shall be allocated by the Seller (or his successor in title as owner of the retained Exclusive Use Areas) on the basis that one (1) parking bay will be allocated per hotel Unit.

13.3 All the Sections which do not form part of the Retained Sections and Retained Exclusive Use Areas will, in this clause 13 be referred to as the "the Other Sections".

13.4 It is recorded that the scheme is not a scheme for residential purposes only and, as the Seller is obliged to do in terms of Section 32 (2) (b) of the Sectional Titles Act 95 of 1986, the Seller hereby discloses that the participation quotas shall be as follows:

13.4.1 The Retained Sections and Retained Exclusive Use Areas will be nil rated for the purposes of determining the Participation Quota;

13.4.2 The participation quotas of the Other Sections shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the relevant section by the aggregate floor area, correct to the nearest square metre, of the Other Sections.

13.5 The Purchaser irrevocably agrees that apart from the normal levies imposed by the Body Corporate, the levy will include a charge by the operator to cover all expenses incurred by the operator in providing the services to which all Purchasers (owners) will be entitled to benefit from.

### **14. BREACH**

14.1 Should any party (the "defaulting party") commit a breach of any of the provisions of this Agreement, then the party which is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (seven) days of receipt thereof, subject to any other provisions of this Agreement to the contrary, the aggrieved party shall be entitled to cancel this Agreement or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in terms of this Agreement, common law or statute;

14.2 In the event of the Seller cancelling this Agreement as aforesaid, any amount or amounts paid by the Purchaser to the Seller or the Conveyancers (including any amount paid in trust) shall be forfeited to and retained by the Seller as *rouwkoop*; alternatively, if the Seller so elects, he may recover any damages howsoever incurred as a result of such cancellation (including any losses and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the Seller or the Conveyancers as aforesaid (including any amount paid in trust) will not be forfeited as *rouwkoop* but may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller;



14.3 Notwithstanding the foregoing, should the Seller exercise any of his rights in terms hereof and should the Purchaser dispute the Seller's right to do so, then pending the determination of that dispute, the Purchaser shall continue to pay all amounts payable in terms of this Agreement on the due date thereof and to comply with all the terms hereof, and the Seller shall be entitled to recover and accept such payments and/or other performance without prejudice to the seller's claim to have exercised rights in terms hereof, and in the event of the Seller succeeding in such dispute, the Seller shall be entitled to retain such amounts received in the interim as payment for the occupational rights exercised and/or enjoyed by the Purchaser in the interim.

## 15. JURISDICTION AND COSTS

15.1 In the event of any action or application arising out of this Agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction, this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended;

15.2 Notwithstanding anything to the contrary herein contained, the Seller shall have the right at the Seller's sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction;

15.3 In the event of it becoming necessary for the Seller to take any action against the Purchaser as contemplated herein the Purchaser agrees to pay to the Seller all the attendant costs and expenses incurred by the Seller, on a scale as between attorney and client.

## 16. DOMICILIUM AND NOTICES

16.1 The Parties choose *domicilium citandi et executandi* ("Domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement their addresses as contained in the heading to the Offer

16.2 The Parties shall be entitled from time to time, by written notice to the other of them, to vary their Domicilium to any other address within the Republic of South Africa which is not a post office box or *poste restante*.

16.3 Any notice given by either Party to the other of them ("Addressee") which is delivered by hand during the normal business hours of the Addressee at the Addressee's Domicilium for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee at the time of delivery.

16.4 Any notice given by either Party to the other of them which is transmitted by facsimile to the Addressee at the Addressee's facsimile address for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee on the first Business Day after the date of successful transmission thereof.

16.5 Any notice given by either Party to the other of them which is transmitted by e-mail to the Addressee at the Addressee's e-mail address for the time being shall be presumed, until the contrary is proved by the Addressee, to have been received by the Addressee on the first Business Day after the date of successful transmission thereof.

16.6 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen Domicilium.

## 17. COSTS

Each party shall bear its own costs incurred in connection with the negotiation, drafting and execution of this Agreement.

## **18. TRUSTEE FOR A COMPANY OR CLOSE CORPORATION TO BE FORMED**

In the event of the Purchaser having concluded this Agreement in his capacity as a Trustee for a company or close corporation to be formed then:

18.1 the Purchaser by his signature hereto warrants that the said company or close corporation:

18.1.1 will be formed;

18.1.2 will ratify and adopt the terms and conditions of the Agreement; and

18.1.3 will provide the Seller with written proof thereof, all within a period of 60 (sixty) days from the date of signature of this Agreement by the Purchaser;

18.2 the Purchaser, in his personal capacity hereby under renunciation of the benefits of the legal exception *beneficium divisionis seu excussionis* with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company or close corporation to be formed by him in favour of the Seller for the due and punctual performance of such company's or close corporation's obligations to the Seller in terms of this Agreement;

18.3 if the terms and conditions of clause 18.1 above are not fulfilled then the Purchaser will by his signature to this Agreement be deemed ipso facto to have concluded this Agreement in his personal capacity as Purchaser.

## **19. RIGHT TO EXTEND AND LIMITATION OF RIGHT TO APPLY TO COURT**

19.1 It is recorded that the Seller has reserved a right to extend the scheme in terms of subsection 25 (1) of the Act by the erection of further units and exclusive use areas on that portion of the property as provided for on Annexure "C". It is recorded that the Act provides that the developer shall, in terms of the provisions of Section 25 (13) of the Act, be obliged to erect the building or buildings strictly in accordance with the documents referred to in subsection 25 (2) of the Act, due regard being had to changed circumstances which would make strict compliance impracticable, and that any owner of a unit in the scheme who is prejudiced by his failure to comply in this manner, may apply to the Court, whereupon the Court may order proper compliance with the terms of the reservation, or grant such other relief, including damages, as the Court may deem fit.

19.2 Notwithstanding the provisions of the Act as set out in clause 19.1 it is agreed that the Purchaser shall not have the right to thus apply to Court provided whatever is built by the Seller or its successor in title is built in accordance with plans approved by the relevant authorities. The Purchaser shall not be entitled to sell or otherwise alienate the Property unless it is a condition of such sale or alienation that the successor in title of the Purchaser shall be bound by the provisions of this clause 19.2.

## **20. RENTAL POOL**

20.1 It is recorded that the Seller intends to build a hotel which will form part of the same sectional title scheme in which the Property falls. When the hotel shall have been erected the Purchaser shall be entitled, if satisfied with the terms and conditions on which the Seller intends to conduct a rental pool, to enter into a Rental Pool Agreement with a Rental Pool Operator nominated by the Seller and on terms and conditions to be negotiated at that time.

20.2 The Purchaser shall not be entitled to sell or otherwise alienate the Property unless it is a condition of such sale or alienation that the successor in title of the Purchaser shall be bound to sign a Rental Pool Agreement on exactly the same terms and conditions as those contained in the Rental Pool Agreement (if any) concluded by and between the Purchaser and the Rental Pool Operator nominated by the Seller.

## **21. CONDITIONS AND SERVITUDES**

The Purchaser shall be obliged to accept transfer of the Property subject to:

21.1 the conditions, reservations and servitudes which burden the land on which the Property is situated and;

21.2 a condition registered against the title deed of the Property to the effect that the Property or any interest therein shall not be alienated without the written consent of The Seller first being had and obtained, which consent The Seller shall be obliged to give provided the deed of alienation contains the conditions provided for in clauses 19.2 and 20 of this Agreement.

21.3 The Seller's right to extend the scheme by the erection of the buildings and the creation of exclusive use area provided for in the Section 25 plan which right The Seller may alienate and cede as it deems fit.

## **22. GENERAL**

22.1 This Agreement together with its annexes constitute the sole record of the agreement between the Parties in regard to the subject matter hereof.

22.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or reduced to writing and signed by or on behalf of the Parties.

22.3 No addition to, variation, or agreed cancellation of this Agreement and no waiver of any of the rights in terms of this Agreement (including the terms of this clause 22) shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

22.4 No indulgence which either Party ("Grantor") may grant to any other ("Grantee") shall constitute a waiver of any of the rights of the Grantor, which shall not thereby be precluded from exercising any rights against the Grantee which may have arisen in the past or which may arise in the future.

22.5 If any provision of this Agreement should be wholly or partially invalid, unenforceable or unlawful, then this Agreement shall be severable in respect of the provision in question (to the extent that it is invalid, unenforceable or unlawful) and the remaining provisions of this Agreement shall remain of full force and effect.

## **23. EXECUTION**

This Agreement:

23.1 may be executed in separate counterparts, none of which need contain the signatures of all of the Parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement;

23.2 shall be valid and binding upon the Parties thereto, notwithstanding that one or more of the Parties may sign a facsimile copy thereof and whether or not such facsimile copy contains the signature of any other Party.