

## C.6 SPECIAL CONDITIONS OF SALE

### 1 GENERAL TERMS OF SALE

After the award of the properties by Council, the successful Tenderer (hereinafter referred to as the "Purchaser") will be required to sign a Sale Agreement within 21 days of being requested to do so by the City (hereinafter referred to as the "Seller"), which may include *inter alia* the following conditions as well as additional properties-specific and development conditions as may be determined through contract negotiations with the exception of the contract price which will be determined at tender award stage and will only be adjusted for escalation or re-evaluation as indicated in the pricing instructions.

The Sale Agreement will be subject to the fulfilment of the following Conditions Precedent:

#### 1.1 Corporate Approvals

Within 15 (fifteen) days of the Signature Date, the board of directors of the Purchaser has approved and ratified the development of the Properties, as contemplated in this Agreement.

#### 1.2 Regulatory and Funding Approvals

- 1.2.1 Within 6 (six) months of the Signature Date, the Purchaser shall receive approval for funding for the projected capital costs of the development of the Properties from a recognized financial institution or produces proof of funds, in such amount and on such terms and conditions acceptable to the Purchaser, and all transaction documents in respect of such funding have been concluded.
- 1.2.2 Within 6 (six) months of the Signature Date, the Purchaser shall provide the Seller with proof from a recognised financial institution of funds available for the Purchase Price or failing that, proof of own funds which will be acceptable to the Seller.
- 1.3 In the event that any application for funding in terms of clauses 1.2 is rejected, the Purchaser shall notify the Seller in writing within 15 (fifteen) days of the Purchaser being notified of the outcome of the application.
- 1.4 Within 30 (Thirty) days of the fulfilment of the Conditions Precedent in clause 1.2, the Purchaser shall furnish the Seller with guarantees in respect of the Aggregate Purchase Price of the Properties, in a form reasonably acceptable to the Seller or the Conveyancers.
- 1.5 The Purchaser shall use reasonable endeavours to procure fulfilment of the Conditions Precedent in respect of clause 1.2 as soon as reasonably possible after the Signature Date and shall, to the extent that such Conditions Precedent have been fulfilled prior to the expiry of the time period set out in clauses, furnish to the Seller documents evidencing the fulfilment of such Conditions Precedent to the Sellers reasonable satisfaction.
- 1.6 Unless all the Conditions Precedent have been fulfilled by no later than the relevant dates for fulfilment thereof, the provisions of this agreement will never become of any force or effect and the status quo ante will be restored as near as may be possible and neither of the Parties will have any claim against the other in terms hereof or arising from the failure of the Conditions Precedent.

**In additional to the above, the following also applies:**

#### 1. Adherence to Development Programme Timelines

- 1.1 The Developer shall strictly comply with all timelines, milestones and deliverables set out in the approved Development Programme ("the Programme").
- 1.2 Failure to adhere to the Programme shall constitute a breach of this Agreement unless such non-compliance is excused in terms of Clause 2 below.

#### 2. Communication of Delays and Recovery Plan

- 2.1 The Developer shall notify the City in writing and without delay, and in any event within five (5) business days of becoming aware of any actual or anticipated delay in meeting any milestone in the Programme.
- 2.2 Such notification shall be accompanied by—
  - (a) a detailed explanation of the cause of the delay; and

(b) a proposed recovery plan, outlining remedial measures and revised timelines to bring the Programme back on track.

2.3 The City reserves the right to accept, reject, or require amendments to the proposed recovery plan.

### 3. Revisions to the Development Programme

3.1 Any request by the Developer to revise, amend or extend any aspect of the Programme must be submitted to the City in writing, together with a full motivation demonstrating the necessity and impact of the proposed revision.

3.2 No revision, amendment, or extension shall be valid unless approved in writing by the City.

3.3 Until written approval is granted, the Developer remains bound by the existing Programme.

#### **Upon fulfilment of the Conditions Precedent, the following terms to the sale agreement will be applicable which may be amended subject to agreement between the parties:**

1.1.1 The Seller sells to the Purchaser, and the Purchaser purchases the Properties, subject to all the conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Properties and to all such other conditions and servitudes as may exist in regard thereto, including the provisions of any applicable town planning scheme.

1.1.2 The Sale shall comprise an indivisible sale of each of the Properties, if applicable, it being agreed that all of the Properties shall be transferred simultaneously.

1.2 The purchase price payable to the Seller by the Purchaser for the Properties in terms of the Sale ("Purchase Price") is exclusive of VAT and subject to the provisions of clause 1.14 which will be based on the price offer made by the Purchaser.

1.3 The Purchaser shall pay a deposit equal to [•]% of the Purchase Price within [•] days of the Signature Date (the **Deposit**) which shall be held in trust on behalf of the Purchaser. The Deposit shall be repaid to the Purchaser if the Conditions Precedent are not fulfilled in terms of this Agreement or the Agreement is cancelled due to the Seller's breach of a material term of the Agreement.

1.4 The Purchase Price of the Properties (adjusted in terms of clause 1.15, if applicable) shall be paid by the Purchaser to the Seller against registration of transfer of ownership of all of the Properties into the name of the Purchaser.

1.5 As security for the payment of the Purchase Price, the Purchaser shall furnish the Conveyancers with a bank guarantee or guarantees as required and approved by the Seller or the Conveyancers, acting reasonably, payable to the Seller upon registration of Transfer at such place or places as the Seller stipulates as per clause 1.4 above.

1.6 The Purchase Price of the Properties shall be increased by 5% (five percent) per annum compounded annually on a pro rata basis commencing 6 (six) months after the date of closure of the tender ("Tender Closure Date"), until date of registration of Transfer ("Additional Amount") (the Purchase Price and the Additional Amount hereinafter referred to as the "Escalated Price");

1.7 Should the Transfer Date be more than 36 (thirty six) months from Tender Closure Date, the Properties shall be revalued by the Seller at the then market value ("New Valuation") and any amount in excess of the Purchase Price shall be the Additional Amount, which will be subject to an escalation of 5% (five percent) per annum compounded annually on a pro rata basis commencing 6 (six) months after the date of the New Valuation until the Transfer Date. For the avoidance of doubt the New Valuation shall be determined on the same basis and the amended Purchase Price shall be determined using the same discount formula as the current determination.

1.8 Should the Purchaser amend the site development plan so as to increase the approved bulk on the site by more than 5% (five percent), then the Seller shall revalue the Properties and shall notify the Purchaser in writing of this valuation ("**Increased Amount**").

1.9 The Seller shall procure that the Conveyancers, not less than 14 (fourteen) days prior to the date on which the Conveyancers reasonably anticipate they will lodge the necessary documents for registration of transfer of the Properties in the Cape Town Deeds Office, provide the Purchaser

with written notice reflecting the anticipated date of such lodgement, the anticipated Transfer Date and the Additional Amount or Adjusted Amount, as applicable, (including VAT thereon). The Purchaser shall deliver to the Conveyancers, by no later than such anticipated lodgement date, a bank guarantee for payment of the Additional Amount, or Adjusted Amount, on the Transfer Date or pay such amount to the Conveyancers to be held in a trust pending Transfer ("**Total Amount**"). To the extent that there is –

- 1.9.1 an overpayment in respect of the Total Amount on the Transfer Date, the Conveyancers are hereby instructed to refund the applicable surplus amount to the Purchaser by no later than the day following the Transfer Date; or
- 1.9.2 an under payment in respect of the Additional Amount on the Transfer Date, the Purchaser shall pay an amount equal to the applicable shortfall to the Seller by no later than the day following the Transfer Date.
- 1.10 In the event of the Purchaser electing to pay any Total Amount to the Conveyancers in terms of clause 1.11 the Conveyancers are instructed to invest such amount with a bank of their choice on the basis that –
  - 1.10.1 it is invested in an interest-bearing account.
  - 1.10.2 the interest-bearing account contains a reference to section 86(4) of the Legal Practice Act, No 28 of 2014 ("Legal Practice Act"); and
  - 1.10.3 save for such portion thereof as is payable to the Legal Practitioners' Fidelity Fund in accordance with the provisions of section 86(5)(b) of the Legal Practice Act (being 5% (five percent) (thereof), the interest which accrues on such investment is to be for the benefit of the Purchaser.
- 1.11 Save as may be recorded herein, the Seller furnishes no warranties to the Purchaser whatsoever regarding the Properties and the Purchaser purchases same voetstoots.
- 1.12 Without limiting the generality of the foregoing, the Parties agree that the Seller —
  - 1.12.1 shall not be required by the Purchaser to point out the beacons, pegs, boundaries or boundary marks of the Properties to the Purchaser; and
  - 1.12.2 shall not be liable to the Purchaser if the extent of the Properties is found to differ from that stated in the title deed.
- 1.13 Possession and vacant occupation of the Properties will be given to the Purchaser simultaneously on the Transfer Date, from which date the Properties will be at the sole risk, loss or profit of the Purchaser, and the Purchaser will, from such date, be liable for all rates, taxes and other charges in respect of the Properties. For purposes of this Agreement, "vacant occupation" means that there shall be no tenants or other occupiers (whether or not occupation is authorised).
- 1.14 Notwithstanding clause 1.20, the Parties record that it is the intention that the Purchaser should be enabled to commence the development of the Properties as soon as reasonably possible after the Signature Date and that the Purchaser shall, accordingly, be entitled to require the Seller to grant it possession and vacant occupation of the Properties prior to the Transfer Date thereof, in which event –
  - 1.14.1 the Seller shall consider progress by the Purchaser, and should the Seller be satisfied, it shall grant the Purchaser possession and vacant occupation of the Property;
  - 1.14.2 all risk in and benefit of such Properties will pass to the Purchaser on the Occupation Date;
  - 1.14.3 the Purchaser shall pay occupational rental in the amount equal to 6% (six percent) of the Purchase Price per annum from the date of actual occupation of the Properties up until the Transfer Date. The occupational rental shall be paid monthly in advance to the Conveyancers;
  - 1.14.4 the Purchaser shall pay all rates, taxes and other charges in respect of such Properties from the Occupation Date;
  - 1.14.5 the Seller or the Seller's duly authorised agent is entitled to inspect such Properties at all reasonable times; and
  - 1.14.6 the Purchaser will be obliged to vacate such Properties upon termination of this Agreement; it being agreed that no tenancy is created by such prior occupation.

- 1.15 Subject to the fulfilment or waiver of the Conditions Precedent, Transfer shall be effected by the Conveyancers no later than 12 (twelve) months after the Occupation Date as determined in terms of clause 1.19 after the Purchaser has delivered the guarantee/s referred to in clauses 1.10 and 1.14 and has paid the costs and charges referred to in clause 1.23.1 and has otherwise complied with the provisions of this Agreement.
- 1.16 Transfer shall be effected at the cost of the Purchaser who shall, on demand from the Conveyancers –
  - 1.16.1 pay all costs and charges incidental to the transfer of the Properties, including transfer duty (where applicable) the request for which will not be made prior to lodgment; and
  - 1.16.2 sign all documents required to be signed by the Conveyancers in order that transfer may be effected.
- 1.17 The Purchaser shall not sell or otherwise dispose of the Properties, or any portion thereof, nor cede any right or assign any obligation under this Agreement prior to the Transfer Date without the prior written consent of the Seller.
- 1.18 the Seller is a VAT vendor and that the sale of the Properties in terms of this Agreement constitutes a taxable supply as contemplated in the VAT Act, and that VAT is payable in respect thereof; and
- 1.19 the purchase price of the Properties is exclusive of VAT and the Purchaser shall pay such VAT as may be payable to the Seller on registration of transfer of the Properties into the name of the Purchaser.
- 1.20 As security for the payment of such VAT, the Purchaser shall within the time period/s specified in clause 1.12 furnish the Conveyancers with a bank guarantee in accordance with the provisions of clause 1.12 which apply mutatis mutandis to secure the payment of VAT.
- 1.21 The Purchaser shall provide the Seller with a report on an annual basis, on or before 30 June of each year, or on such date as agreed between the parties, a schedule of new and amended lease agreements in order for the City to monitor the affordability of the units in terms of the Council adopted affordable housing definition.
- 1.22 The Purchaser shall provide monthly progress reports in terms of the agreed development programme.
- 1.23 The Seller has agreed to sell the Properties at a discounted price relative to the market value to assist the Purchaser, as developer, furthering the Seller's objective of leveraging its immovable properties assets to create affordable housing opportunities.
- 1.24 The Properties will be transferred to the Purchaser subject to certain conditions to be registered against the title deeds of the Properties being:
  - 1.24.1 that a minimum of 145 units shall be developed for no purpose other than for the provision of Affordable Rental Housing and ancillary purposes in terms of the Council adopted affordable housing definition and in the event of default the Seller will be entitled to compensation equivalent to the difference between the current market value of the Properties at time of default and the Purchase Price; and
  - 1.24.2 a right of reversion in favour of the Seller in the event of the development, not being commenced within a period of 5 (five) years reckoned from the Transfer Date, or any such extended period, agreed to by the Seller, of further 6 (six) months after of a written notice from the Seller calling upon the Purchaser to commence development of the Properties, following the expiration of the initial 5 (five) year period (Remedy Period).
- 1.25 In the event of the Seller becoming entitled and electing to exercise its right in terms of clause 1.38 the Seller shall do so by means of notice in writing to the Purchaser given notice within 60 (sixty) days of the expiry of the Remedy Period should the Purchaser have failed to commence development of the Properties as aforesaid, in which event the Purchaser shall be deemed to have sold and the Seller to have purchased the Properties for an amount equal to the Purchase Price or the Additional Amount and the Purchaser shall take all such steps as are reasonably possible in order to procure the transfer of ownership of the Properties to the Seller, against payment of such amounts, as soon as reasonably possible after receipt of such notice. The cost of such transfer shall be borne by the Purchaser.

- 1.26 Should the Purchaser not complete the developments for the intended purpose of an Affordable Rental Housing development comprising of a minimum of 145 units within 7 (seven) years from the Transfer Date, or such later date as agreed between the Parties in writing, then the Purchaser shall be obliged to pay compensation to the Seller in an amount equal to the difference between the Purchase Price paid and the prevailing market value of the Property, without improvements, as at the date of default.
- 1.27 Prior to the expiry of the period/s contemplated in clause 1.31.2 and not thereafter, should the Properties not be used for Affordable Rental purposes, or should the Purchaser at any time cease to use the Properties for Affordable Rental Housing purposes, the Properties and any improvements thereon shall revert to the Seller without payment of compensation for such Properties and improvements thereon made by the Purchaser. The cost of such transfer to the Seller shall be borne by the Purchaser. Alternatively, the Purchaser or its successor in title may request cancellation of this restrictive condition against payment to the Seller of the difference between the Purchase Price, including any increases thereto and the then prevailing market value of the Properties, subject to the approval of the Seller which approval shall not be unreasonably withheld or delayed. Such payments are to be made within 30 (thirty) days of such election by Purchaser.
- 1.28 The Purchaser has the right, by giving written notice to the Seller within 30 (thirty) days from the Signature Date and before fulfilment of the condition precedent, to nominate any associated entity (Nominee) to acquire the Property as the Purchaser in its place, on the basis that:
  - 1.28.1 such written notice shall be delivered to the Seller and shall clearly and fully describe and furnish complete details of the Nominee;
  - 1.28.2 the written notice shall be accompanied by a written agreement (in a form acceptable to the Seller, acting reasonably and in good faith) in terms of which the Nominee agrees to assume all of the rights and obligations of the Purchaser in terms of this Agreement; and
  - 1.28.3 the Purchaser shall be jointly and severally be liable with the Nominee for the fulfilment of all and any obligations of the Nominee towards the Seller in terms of this Agreement and shall remain a party to this Agreement for such purpose.