

AGREEMENT OF SALE

(Section 11(1)(e) of the Value-added Tax Act, 1991 (Act No 89 of 1991))

between

Under The Boardwalk Properties 53 (Pty) Ltd

Registration Number: 2006/032047/07

(hereinafter referred to as the "Seller")

and

(hereinafter referred to as the "Purchaser")

(hereinafter referred to as the "Parties")

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WHEREBY THE PARTIES AGREE AS FOLLOWS

1 INTERPRETATION

1.1 In this Agreement and in the annexes to this Agreement (other than documents/accounts prepared before the date of signature of this Agreement) -

1.1.1 clause headings are for convenience and are not to be used in its interpretation;

1.1.2 unless the context indicates a contrary intention an expression which denotes -

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*;

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Agreement, unless the context indicates a contrary intention, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1.2.1 "Act" means the Value-added Tax Act, 1991 (Act No 89 of 1991);

1.2.2 "Agent" means _____

1.2.3 "Agreement Accounts" means the accounts to be prepared in respect of the Enterprise as at the Effective Date in accordance with the provisions of clause 15;

1.2.4 "Building" means the buildings and all structures or improvements on the Land;

1.2.5 "Common Property" means the area as defined in the Sectional Title Act 95 of 1986 which is owned and used by the owners jointly;

1.2.6 "Effective Date" means the date of registration of transfer of the Property into the name of the Purchaser;

1.2.7 "Enterprise" means the commercial concern which the Seller operates separately in respect of the Property and comprises the undermentioned assets -

1.2.7.1 all the Seller's right, title and interest in and to the relevant Lease;

1.2.7.2 the goodwill, if any, attaching to the relevant Enterprise;

1.2.7.3 the Property;

but excludes all liabilities whatsoever of the Seller relating to the Enterprise and the Property, and do not form part of the sale referred to in clause 4.1;

1.2.8 "Land" means Erf 61 Erand Gardens Ext 43 & Erf 366 Erand Gardens Ext 60, Province of Gauteng;

1.2.9 "Lease" means the Lease in respect of the Property;

1.2.10 "Loan Amount" means _____

1.2.11 "Parking Bays" means covered parking bays numbered _____ and open parking bays numbered _____ as shown on the Plan and to which the Purchaser shall be entitled to the sole and exclusive use in terms of the management rules;

1.2.12 "Plan" means the Plans relating to the Building in general and the Unit in particular, attached to this Agreement marked Annexure A;

1.2.13 "Property" means the Unit and the Parking Bays;

1.2.14 "Purchaser" means _____

1.2.15 "Purchaser's Address" means _____

Fax Number: _____

1.2.16 "Purchase Price" means _____

inclusive of Value-added tax at the rate of zero percent;

1.2.17 "Section" means the Section Number _____ in the Building complex known as "The Willows Office Park" situated on the Land, of which the Section floor area is approximately _____ square metres (excluding Parking Bays);

1.2.18 "Seller" means Under The Boardwalk Properties 53 (Pty) Ltd, Registration Number 2006/032047/07

- 1.2.19 "Seller's Address" means Block 1, Waterfall Terraces, Waterfall Park, Bekker Road, Midrand.
Fax Number 011 805 8335;
- 1.2.20 "Seller's Conveyancers" means Bowman Gilfillan Attorneys represented by Walter Tasmer;
- 1.2.21 "Signature Date" means the date of signature of this Agreement by the party last signing.
- 1.2.22 "Unit" means the Section number _____ together with its undivided share in the Common Property apportioned to the Section in accordance with the Participation Quota of the Section;
- 1.3 Any substantive provision conferring rights or imposing obligations on any party in the interpretation clause shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.5 The terms "holding company" and "subsidiary" shall bear the meanings assigned to them in the Companies Act, 1973 (Act No 61 of 1973).
- 1.6 Reference to months or years shall be construed as calendar months or years.
- 1.7 No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured or drafted such provision.
- 1.8 The eiusdem generis rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day.
- 1.10 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enacted from time to time.

1.11 This Agreement incorporates the annexes which annexes shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the word "Agreement" refers to this Agreement and the words "clause" or "clauses" and "annexe" or "annexes" refer to clauses of and annexes to this Agreement.

1.12 Unless specifically otherwise provided, all amounts in this Agreement are exclusive of value-added tax as contemplated in the Act.

2 RECITAL

2.1 The Seller carries on a separate Enterprise which comprise the commercial concern including, inter alia, the owning and letting of the Property;

2.2 The Purchaser wishes to purchase, as a going concern, the parts of the Enterprise of the Seller which are capable of separate operation, and the Seller is prepared to sell parts of the said Enterprise to the Purchaser on the terms and conditions herein contained;

2.3 The parties wish to record in writing the terms and conditions upon which the Seller will sell to the Purchaser parts of the said Enterprise as a going concern.

3 SUSPENSIVE CONDITION

3.1 This Agreement is subject to the suspensive condition that the Purchaser is granted a loan for the Loan Amount by a financial institution upon security of a first mortgage bond to be passed over the Property, within a period of 30 (Thirty) days from the date of this Agreement.

3.2 Should the aforesaid suspensive condition not be complied with prior to the due date of fulfilment thereof, then in the absence of a prior extension of such period, recorded in writing by the Seller and the Purchaser, this Agreement will automatically terminate and save for the Seller's liability to pay the costs of this Agreement, the Seller and the Purchaser will have no further claims against each other arising out of this Agreement, it being recorded that this condition is for the benefit of the Purchaser who may waive the condition by written notice to the Seller at any time prior to the date of fulfilment thereof.

3.3 Pending the fulfilment of the suspensive conditions in this Agreement of Sale, the Seller shall have the right to continue to market the property. Should the Seller receive another *bona fida* Agreement of Sale which is unconditional or on more favourable terms and conditions, he/she will have the right to give notice to the Purchaser and all Agents involved of such transaction, together with written proof of the transaction's nature and to afford the Purchaser 72 (seventy two) hours, excluding Saturday, Sundays and Public Holidays, to either fulfill all outstanding conditions pertaining to this Agreement or to waive

any outstanding conditions pertaining to this Agreement. If the Purchaser does not fulfil or waive the outstanding conditions within that time, the Seller will have the right to cancel this Agreement lawfully and proceed with the transfer on the other transaction.

4 SALE

4.1 The Seller hereby sells to the Purchaser which hereby purchases the Enterprise, with effect from the Effective Date, as going concerns.

4.2 Possession and control of the Enterprise will be given to the Purchaser on the Effective Date, from which date they will be at the sole risk, loss or profit of the Purchaser.

5 PURCHASE PRICE

5.1 The Purchase Price of the Enterprise is payable by the Purchaser as follows:

5.2 the sum of R100,000.00 (One hundred thousand rand) by way of a cash deposit upon final signature of this Agreement, which amount will be paid to the Seller's Conveyancers and held in trust until the date of registration of transfer of the Property into the name of the Purchaser or termination of this Agreement;

5.3 the cash deposit payable by the Purchaser to the Seller's Conveyancers pursuant to clause 5.2 will be held in trust by the Seller's Conveyancers pending registration of transfer of the Property into the name of the Purchaser, and the Seller's Conveyancers are instructed in accordance with rule 77 of the rules of the Law Society of the Northern Provinces to invest such amount with a deposit-taking institution of their choice on the basis that -

5.3.1 the amount is invested in an interest-bearing account;

5.3.2 the interest-bearing account contains a reference to section 78(2A) of the Attorneys Act, 1979 (Act No 53 of 1979);

5.3.3 the interest which accrues on such investment is to be for the benefit of the Purchaser and will be paid, after deducting the Seller's Conveyancers' professional fee for administering the investment, to the Purchaser on registration of transfer of the Property into the name of the Purchaser;

5.3.4 the cash deposit paid by the Purchaser in terms of clause 5.2 will be paid to the Seller upon registration of transfer of the Property into the name of the Purchaser or on termination of this Agreement.

5.3.5 should the suspensive condition as set out in clause 3.1 above not be fulfilled as provided for herein the deposit paid by the Purchaser in terms of clause 5.2 will be refunded to the Purchaser forthwith.

5.4 the balance of the Purchase Price upon registration of transfer of the Property into the name of the Purchaser. As security for the payment of such amount, the Purchaser will within 30 (Thirty) days after the date of fulfilment of the suspensive condition furnish the Seller's Conveyancers with a bank guarantee or guarantees as required and approved of by the Seller or the Seller's Conveyancers, payable to the Seller or the Seller's nominee upon registration of transfer at such place or places as the Seller stipulates.

6 VALUE-ADDED TAX ACT

For the purposes of section 11(1)(e) of the Act -

6.1 the Seller warrants that it is a vendor as at the Signature Date and will be a vendor as at the Effective Date, being the time of supply, as contemplated in the Act;

6.2 the Purchaser warrants that it will be a vendor as at the Effective Date, being the time of supply, as contemplated in the Act and undertakes to furnish the Seller's conveyancers with a copy of its registration certificate for value-added tax purposes;

6.3 the Seller and the Purchaser have agreed that the Purchase Price of the Enterprise is inclusive of value-added tax at the rate of zero per cent;

6.4 it is recorded and acknowledged by the parties that the Enterprise constitutes income-earning activities carried on as a going concern as at the Signature Date and it is the intention of the parties that the Enterprise will be income-earning activities as at the Effective Date, provided that the Lease are not terminated due to default by the lessees or otherwise; and

6.5 the Seller records its intention that the Enterprise will remain active and operating until the Effective Date.

7 THE PROPERTY

7.1 The Seller makes no representations in regard to the nature or condition of the Enterprise or the Property which form part of the Enterprise other than any contained in this Agreement and, to the extent that the Property forms part of the Enterprise, the Property is acquired -

7.1.1 subject to all the conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Property and to all such other conditions and

servitudes as exist in regard thereto, including the provisions of any applicable town planning scheme;

7.1.2 voetstoets as they stand and in the condition in which they now are. The Seller has no claim in respect of any excess over the measurements appearing in the title deeds, nor is the Seller answerable in damages or otherwise to the Purchaser should the areas of the Property be less than such measurements.

7.1.3 subject to the rights of the tenant in terms of the Lease with which the Purchaser declares itself to be fully acquainted. The Purchaser acknowledges that the Seller is entitled to exercise any right in terms of the Lease prior to the Effective Date, including the right to cancel, in the event of default by a lessee, without reference to the Purchaser.

7.2 The Purchaser acknowledges having inspected the Property;

7.3 The Seller is not obliged to point out any pegs or beacons relating to the Property nor is the Seller responsible for the cost of locating them.

7.4 The Seller is not responsible for obtaining any certificate or other evidence that the Property is free from infestation by woodborers, termites, white ants, or any other timber destroying or boring insects, and should any such certificate or other evidence be required by the Purchaser it is the responsibility of the Purchaser to obtain such certificate or other evidence at the Purchaser's cost.

7.5 The Seller shall by not later than the date of registration of transfer of the Property into the name of the Purchaser furnish the Purchaser with a certificate of compliance as contemplated in the Regulations published in terms of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993), in respect of any electrical installation in or on the Property.

8 AGENTS COMMISSION

The Purchaser warrants that the Agent and nobody else initiated this sale and was the effective cause thereof and as such is entitled to agent's commission and that he was not introduced, either directly or indirectly, to the Seller or the Property by any other agent. The Seller will be liable for the payment of the commission on date of registration of transfer of the Property into the name of the Purchaser.

9 PURCHASER AS TRUSTEE

Should the juristic person which is to be formed and incorporated for the purpose of purchasing the Property not be registered within 30 (Thirty) days after the date of this Agreement or, having been so registered, fail to ratify and adopt this Agreement within 7 (Seven) days thereafter, then

the Trustee will be and become the Purchaser of the Property, and will be bound and obliged to comply with all the terms and conditions contained in this Agreement and imposed on the Purchaser.

10 TRUSTEE AS SURETY

In the event of the Purchaser ratifying and adopting this Agreement, the Trustee binds and obliges himself as surety and co-principal debtor *in solidum* for all the obligations of the Purchaser in terms of this Agreement, and hereby renounces the benefits of excussion and division, the meaning of which the Trustee declares himself to be fully acquainted with.

11 WARRANTIES

The Seller hereby warrants that -

11.1 as at the Signature Date, neither the Seller nor the tenant is in breach of any term or condition of the Lease;

11.2 it has not consented, and will not as at the Effective Date, have consented the tenant -

11.2.1 ceding, transferring or burdening any of their rights or delegating any of their obligations under the Lease;

11.2.2 sub-letting or granting possession or occupation of the whole or any part of the Property to any person.

11.3 No addition to, variation or consensual cancellation of the Lease will be agreed to by the Seller between the Signature Date and the Effective Date.

12 LABOUR RELATIONS ACT, 1995 (ACT NO 66 OF 1995)

The Seller further warrants that the Enterprise do not include any employee that will be transferred to the Purchaser in accordance with the provisions of section 197 of the Labour Relations Act, 1995 (Act No 66 of 1995). The Seller, without prejudice to any other right or remedy that the Purchaser may have in consequence of a breach of this warranty, hereby indemnifies the Purchaser and holds the Purchaser harmless against any liability, claim, loss, cost or expense (including, without limitation, salaries, accrued leave pay, severance pay and all other fringe benefits and employment costs) that may arise either directly or indirectly as the result of the retrenchment by the Purchaser after the Effective Date of any such employee.

13 INDEMNITY BY SELLER

13.1 It is recorded that all liabilities of the Seller whether in relation to the Enterprise or any other matter whatsoever, do not form part of the subject matter of this Agreement and the Purchaser accepts no responsibility in respect thereof.

13.2 The Seller hereby indemnifies the Purchaser and holds the Purchaser harmless against any losses, damages, costs and claims arising out of such liabilities.

14 DELIVERY

14.1 Notwithstanding the Signature Date, the delivery and transfer by the Seller to the Purchaser of the Enterprise, as going concerns, will take place on the Effective Date.

14.2 The Seller shall, not later than 30 (Thirty) days after the Effective Date deliver to the Purchaser -

14.2.1 the Lease;

14.2.2 the deposits, if any, held in terms of the Lease;

14.2.3 all books of accounts, receipts and other relevant records relating specifically to the Enterprise;

14.2.4 if so requested by the Purchaser, and at the cost of the Purchaser, a separate deed of cession and/or assignment in respect of any right and/or obligation which forms part of the Enterprise;

14.2.5 all such other information and matters as may reasonably be required to give the Purchaser full and unfettered control of the Enterprise and permit the exercise of its rights relating thereto.

15 AGREEMENT ACCOUNTS

15.1 The Seller shall cause the Agreement Accounts to be prepared in respect of the Enterprise as at the Effective Date, and delivered to the Purchaser within 30 (Thirty) days of the Effective Date.

15.2 The Agreement Accounts will reflect inter alia all receipts and payments relating to the Enterprise, including deposits held, rentals and contributions to operating expenses collected in terms of the Lease, and assessment rates, sewerage and other municipal charges and levies relating to the Property.

16 ADJUSTMENT ACCOUNT

16.1 The Seller shall, within 30 (Thirty) days after the Effective Date, prepare and deliver to the Purchaser, an adjustment account in respect of the period prior to the Effective Date reflecting the amount, if any, which the Purchaser is obliged to pay to the Seller in respect of rates, taxes, levies, and other municipal charges relating to the Property, including water and electricity consumption, and pre-paid by the Seller in respect of any period subsequent to the Effective Date. The amount payable by the Purchaser in terms thereof will be the same proportion of the said amounts pre-paid, as the unexpired period to which they relate bears to the total period to which they relate.

16.2 Any amount payable by the Purchaser to the Seller in terms of the adjustment account will be payable upon presentation of the adjustment account.

17 TRANSFER AND COSTS

17.1 Transfer shall be effected by the Seller's conveyancers.

17.2 The Purchaser shall on request from the Seller's conveyancers -

17.2.1 pay all costs of and incidental to transfer of the assets comprising the Enterprise, including the Property, into the name of the Purchaser;

17.2.2 sign all documents required to be signed by the Seller's conveyancers in order that transfer of the assets comprising the Enterprise, including the Property may be effected.

17.3 The Purchaser shall not sell or otherwise dispose of the Enterprise or the Property, nor cede any right or assign any obligation under this Agreement prior to the registration of transfer of the Property without the prior written consent of the Seller.

18 PUBLICATION IN TERMS OF INSOLVENCY ACT

The parties agree that notice of the sale of the Enterprise pursuant to this Agreement will not be published as contemplated in section 34 of the Insolvency Act, 1936 (Act No 24 of 1936).

19 SUPPORT CLAUSE

19.1 The parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such steps as may be open to them and necessary for or incidental to the fulfilment of the conditions precedent and the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

19.2 The Seller shall as soon as is reasonably possible after the Signature Date, deliver to the Seller's conveyancers the original title deeds relating to the Property together with such other documents and information as may be required for the purposes of transfer of the assets comprising the Enterprise, including the Property into the name of the Purchaser.

20 BREACH

Should either party commit a breach of this Agreement, the aggrieved party is entitled to give the defaulting party notice in writing calling upon the defaulting party to remedy the breach. Should the defaulting party fail to comply with such notice within 7 (Seven) days of receipt of such notice, then without prejudice to any other rights the aggrieved party may have in law, the aggrieved party is entitled -

20.1 to cancel this Agreement and thereupon recover such damages as the aggrieved party suffers; or

20.2 to enforce performance in terms of this Agreement; without prejudice to any right the aggrieved party may have to claim damages from the defaulting party.

21 NOTICES AND DOMICILIUM

21.1 The parties choose their respective Addresses as their respective domicilium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement provided that a party may from time to time change any address to any other physical address or telefax address within the Republic of South Africa by written notice to the other party to that effect. Such change of address will be effective 7 (Seven) days after receipt of notice of the change of domicilium.

21.2 All notices to be given in terms of this Agreement will be in writing and -

21.2.1 if delivered by hand during normal business hours, be presumed to have been received on the date of delivery;

21.2.2 if sent by telefax before 16h30 on a business day be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after 16h30 or on a day which is not a business day will be presumed to have been received on the following business day.

21.2.3 Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause.

22 GENERAL

- 22.1 This Agreement constitutes the whole of the Agreement between the parties hereto relating to the matters dealt with in this Agreement and save to the extent otherwise provided herein no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on any of the parties.
- 22.2 No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the parties hereto.
- 22.3 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by or on behalf of the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 22.4 Save as otherwise herein provided, neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other parties.
- 22.5 Any consent or approval required to be given by any party in terms of this Agreement will, unless specifically otherwise stated, not be unreasonably withheld.
- 22.6 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the party last signing one of the counterparts. The parties undertake to take whatever steps may be necessary to ensure that all counterparts are duly signed by all of them without delay.
- 22.7 The Purchaser hereby consents in terms of Section 45 of the Magistrate's Court Act 32 of 1944 to the Seller taking any legal proceedings for enforcing any of its rights in terms of this Agreement in the Magistrate's Court of the district having jurisdiction by virtue of Section 28(1) of such Act. The Seller shall notwithstanding this consent be entitled to institute action in the High Court.

23 INDEMNITY BY PURCHASER

Notwithstanding the fact that the Purchase Price of the Enterprise is inclusive of value-added tax at the rate of zero per cent, the Purchaser hereby indemnifies the Seller and holds the Seller

harmless against any claim or liability for value-added tax in respect of the sale of the Enterprise in the event that value-added tax is at any time and for whatever reason levied or becomes payable at a rate other than zero per cent.

24 OFFER

This agreement, once signed by the Purchaser, shall constitute an irrevocable offer to the Seller upon the terms and conditions of this agreement and if such offer is not accepted by the Seller by means of the Seller signing this agreement and returning same to the Purchaser by 12 noon on or before the 10th (tenth) business day after the date of signature of this agreement by the Purchaser, then this offer shall be deemed to be withdrawn and no further rights or obligations shall exist between the parties.

SIGNED at _____ on the _____ day of _____ 2007

AS WITNESSES

1. _____
_____ For and on behalf of the Purchaser, duly authorised

2. _____

SIGNED at _____ on the _____ day of _____ 2007

AS WITNESSES

1. _____
_____ For and on behalf of the Seller, duly authorised

2. _____

ANNEXURE A

PLANS