

# ANNEXURES

**ANNEXURE 1**  
**GENERAL CONDITIONS OF SALE: SAXON SQUARE**

April 2021

The provisions of this annexure 1 are deemed to be incorporated in and form part of the agreement of sale to which they are annexed.

**NOW THEREFORE IT IS AGREED THAT:**

**1. Definitions**

1.1 In this agreement unless otherwise indicated or unless the contrary intention shall appear from the context, the following terms shall have the meanings assigned to them hereunder, namely:

1.1.1 "the Act" - the Sectional Titles Act, No. 95 of 1986, as amended, and all regulations made in terms thereof as amended or replaced from time to time and read together with the Management Act;

1.1.2 "the anticipated occupation date" – the date in 14 of the schedule;

1.1.3 "the architect" – means Distil Architecture Proprietary Limited or another independent professional architect or project manager or developer's representative as may be nominated by the seller;

1.1.4 "body corporate" - the body corporate to be established in accordance with the Act and in respect of the buildings and the scheme;

1.1.5 "building" or "buildings" - the building or buildings and all improvements which will in due course be erected by the seller on the land;

1.1.6 "common property" - the land and such part of the buildings as are not included in any section;

1.1.7 "cost contribution" – means the purchaser's contribution to the costs incurred by the seller in securing, insuring, cleaning and maintaining the buildings after the occupation date until transfer as set out in 15 of the schedule;

- 1.1.8 "the developer" - the seller or its successors in title or assigns and in the technical sense having the rights and powers conferred on a developer by the Act;
- 1.1.9 "the development" – means the buildings, to be developed by the seller on the land and comprising the scheme;
- 1.1.10 "exclusive use area" – means the parking bays, being part or parts of the common property more fully described in 22 of the schedule;
- 1.1.11 "the land" – means the land described in 1 of the schedule;
- 1.1.12 "the manager" - the managing agent to be appointed by the developer;
- 1.1.13 "Management Act"- means the Sectional Titles Schemes Management Act 8 of 2011;
- 1.1.14 "occupation date" – means the anticipated occupation date in 14 of the schedule but subject to 7.2;
- 1.1.15 "occupational interest" – means the occupational interest in 20 of the schedule;
- 1.1.16 "optional extras" – means annexure 5 to this agreement;
- 1.1.17 "participation quota" – means the area of the section as a percentage, to four decimal places, to the total area of all the sections in the scheme as reflected on the approved sectional title plan, read together with 17 of the schedule;
- 1.1.18 "the plans" – means annexures 2 to 4 to this agreement;
- 1.1.19 "the property" - collectively the land and the building or buildings;
- 1.1.20 "the purchase price" – means the amount in 7 of the schedule;
- 1.1.21 "revised date of occupation" – means the occupation date as revised by the seller in accordance with 7.2;
- 1.1.22 "the rules" - the rules of the body corporate in 9.1.3;

- 1.1.23 "the schedule" - shall mean the schedule prefixed to this agreement, forming part of the agreement of sale and which contains details of the unit sold, the purchase price and other details;
- 1.1.24 "the scheme" - the scheme as described in 2 of the schedule promoted by the developer in respect of the land;
- 1.1.25 "the section" - the section described in 3 of the schedule read with the plans notwithstanding that the sectional plan may not yet be registered and otherwise as reflected on the sectional plan;
- 1.1.26 "sectional plan" – means the sectional title plan which the seller will procure be approved by the Surveyor General in respect of the buildings and which plan will be required by the Registrar of Deeds for purposes of transfer;
- 1.1.27 "the sectional title register" - a sectional title register to be opened in respect of the property in accordance with the Act and comprising the scheme;
- 1.1.28 "the securing amount" – means the amount in 8 of the schedule;
- 1.1.29 "the seller's conveyancers" – means the conveyancers referred to in 18 of the schedule;
- 1.1.30 "the specification and schedule of finishes" – means annexure 4 to this agreement;
- 1.1.31 "the originators"- means Mortgage Market (Tim Akinnusi, email: [tim@mortgagemarket.co.za](mailto:tim@mortgagemarket.co.za), tel 011 568-1212), who will enjoy a mandate until 30 June 2021, whereafter such mandate will terminate, or such other person or persons appointed by the seller to procure approval in principle for the loan in 9 of the schedule read with 16, if applicable;
- 1.1.32 "transfer" – means the registration of transfer of the unit to the purchaser in the office of the Registrar of Deeds;
- 1.1.33 "the unit" - shall mean the unit specified in the schedule notwithstanding that the sectional plan upon which the section forming part of the unit is shown or is to be shown may not be presently registered;

- 1.1.34 In this agreement, unless the context otherwise requires:
- 1.1.34.1 words and expressions used in the Act shall have the same meanings as have been assigned to them in terms of the Act;
  - 1.1.34.2 the masculine shall include the feminine and vice versa and they shall both include neuter;
  - 1.1.34.3 the singular shall include the plural and vice versa;
  - 1.1.34.4 the headings are used for reference only and are in no way to be deemed to explain, modify, amplify or aid in the interpretation of this agreement;
  - 1.1.34.5 the rule of interpretation of a contract against the drafter thereof shall not be applicable.

## 2. Sale

The seller hereby sells the unit to the purchaser who purchases the unit from the seller on the terms and conditions set out in this agreement.

## 3. Exclusive use areas and rules

- 3.1 The seller will procure the approval by the Ombud, as envisaged in the Management Act, and management rules to make provision for, *inter alia*, the allocation of the exclusive use areas.
- 3.2 The purchaser, as owner of the section entitled to the right of exclusive use of a part or parts of the common property, may be required to make such additional contributions to the body corporate as are estimated necessary to defray the costs incurred by the body corporate in respect of *inter alia*, insurance, maintenance and consumption charges in respect of the said exclusive use areas or, alternatively, the seller may, in making the rules as provided for in 9.1.3 read with 3.1, provide that the owners concerned be responsible directly, whether entirely or partially, for such costs.
- 3.3 It is recorded that all balconies and/or the terraces abutting ground floor sections constitute part of the section.

#### 4. Securing Amount and Purchase price

- 4.1 The securing amount in 8 of the schedule will be paid to and held by the seller's conveyancers in an interest bearing trust account in accordance with the provisions of Section 86(4) of the Legal Practice Act 28 of 2014. Interest on the securing amount will accrue to the purchaser. In accordance with Section 86(5) of the said Act, 5% of the interest accrued on the said investment is automatically deducted therefrom and paid to the Legal Practitioners Fidelity Fund established in accordance with the said Act. The securing amount together with any interest as aforesaid shall be paid to the seller on transfer or when the seller becomes entitled thereto in terms of this agreement. The seller's conveyancers will charge an administration fee of 6% of the net interest earned, which administration fee shall be exclusive of VAT and shall accrue to the seller's conveyancers on the earlier of transfer or cancellation of this agreement. The purchaser hereby acknowledges that the securing amount will only be invested as set out above once the suspensive conditions in this agreement have been met and that prior to the securing amount in 8 of the schedule being invested, the purchaser must comply with the seller's conveyancers' requirements with regard to the Financial Intelligence Centre Act and furnish the seller's conveyancers with copies of all information and documentation as may be requested for such purposes, failing which, interest on the securing amount will not accrue to the purchaser, but will accrue to the Legal Practitioners Fidelity Fund established in accordance with the said Act. It is specifically recorded that the securing amount shall not be utilised in the reduction of the purchase price but shall be applied to any outstanding occupational interest, costs contributions or consumption deposits payable by the purchaser.
- 4.2 The securing amount, instalments and all other amounts payable by either party to the other in terms of this agreement shall be payable free of all bank costs at that party's address or at such other place within the Republic of South Africa as that party may from time to time in writing direct.
- 4.3 The balance of the purchase price in 10 of the schedule shall be paid into trust with the seller's conveyancers and be invested in terms of 4.1 or, at the purchaser's election, be secured by the furnishing to the seller's conveyancers of bankers guarantees in a format reasonably acceptable to the seller, within the time period as provided for in 12 of the schedule.
- 4.4 The amount of the loan in clause 9 of the schedule, if applicable, shall be secured by bankers guarantees issued by a registered South African Commercial Bank in a format

reasonably acceptable to the seller and delivered to the seller's conveyancers within the time period provided for in clause 12 of the schedule.

- 4.5 Each payment made in terms of this agreement and any interest earned on the securing amount or other monies paid to the seller's conveyancers in terms of this agreement shall be allocated first to any occupational interest and to the cost contribution, secondly to all other costs and charges due by the purchaser in terms hereof and thereafter in reduction of the purchase price. The purchaser shall not however be entitled, when furnishing guarantees or making payment of any amounts due by the purchaser in terms of this agreement to set off any interest earned or which is to be earned against such amount due.

5. **Levy and rates**

- 5.1 With effect from the occupation date and irrespective of whether or not the purchaser takes physical occupation of the unit, the purchaser shall pay to the seller the occupational interest and cost contribution and thereafter, monthly in advance on the first day of each month until transfer and irrespective of whether the Municipality has issued an occupation certificate in respect of the building.
- 5.2 After transfer, the purchaser shall pay the body corporate levy and be liable for municipal rates. The parties record that the Municipality will, after and with effect from transfer, account to the purchaser in respect of rates.
- 5.3 In addition to the occupational interest and cost contribution in 5.1, the purchaser will be liable for and shall pay to the seller, within 7 days of invoice, the cost, at the rate at which the Municipality charges the seller, of all sewer, electricity, water, gas or other municipal charges consumed in the section and to the extent that such services are separately metered and, in addition, be liable for and pay the seller a pro-rata share of electricity and water consumed other than in other sections of the scheme, which calculation shall be based on the participation quota.
- 5.4 The purchaser acknowledges that the body corporate will be liable for the payment of the consumption deposits to the Municipality at the time it opens electricity and water accounts and that the body corporate will recover such consumption deposits from its member in accordance with the participation quota.

## **6. Costs of transfer and of bond registration**

- 6.1 Transfer shall be attended to by the seller's conveyancers.
- 6.2 The purchaser shall co-operate with and provide to the seller's conveyancers on their demand all documentation and information and shall within 7 days of their request, sign all documents, pay all costs and, generally, do whatever may be required by the seller's conveyancers for purposes of effecting transfer and if applicable, registration of a mortgage bond over the unit.
- 6.3 The seller will be liable for all costs of and incidental to transfer including conveyancing fees, disbursements and all VAT thereon.
- 6.4 Provided the seller's conveyancers are instructed to attend to registration of the mortgage bond, the seller will be liable for the costs of and incidental to registration of the mortgage bond, including conveyancing fees, disbursements and VAT thereon but excluding initiation fees and charges levied by the relevant bank, which fees and initiation fees and charges shall be paid by the purchaser on demand by the conveyancers attending to the registration thereof or, dependant on the purchaser's Bankers, may be capitalized to the loan.
- 6.5 Should the purchaser's Bank not instruct the seller's conveyancers to register the bond, the purchaser will be liable for all the costs in 6.4.
- 6.6 The seller will be liable for all costs of and incidental to the opening of the sectional title register.

## **7. Occupation**

- 7.1 Provided the purchaser has:
- 7.1.1 paid the securing amount in 8 of the schedule;
- 7.1.2 secured payment of the purchase price as provided for in 4;
- 7.1.3 paid occupational interest and the cost contribution, legal costs and any other amounts due by the purchaser in terms of this agreement; and



- 7.1.4 signed all documents as may be required by the seller's conveyancers, both in respect of transfer and registration of any mortgage bond, if applicable, including having signed any certificate of completion as may be required by the purchaser's bankers,

occupation of the section shall be given to and taken by the purchaser on the occupation date in 7.2. Whilst the seller will make every effort to ensure that the section is ready for occupation by the anticipated occupation date, the seller gives no warranties in this regard.

- 7.2 Occupation of the section shall be on the anticipated occupation date, provided that the seller shall be entitled, on 30 days written notice to the purchaser, to revise the anticipated occupation date or the revised occupation date, as the case may be and the purchaser will, subject to 7.1, take occupation of the section on the said revised date of occupation which shall then be the occupation date.
- 7.3 The purchaser shall have no claim whatsoever whether for damages, specific performance or otherwise against the seller arising from the revision of the anticipated occupation date or the occupation date, as the case may be.
- 7.4 The purchaser will, on request by the seller, and prior to the occupation date, sign any certificate of completion as may be required by the purchaser's bankers for purposes of registration of the mortgage bond over the unit, if applicable. The seller hereby acknowledges that the signature by the purchaser of the aforesaid certificate of completion does not, in any way, absolve the seller from its obligations to rectify any defects or snags in the unit as envisaged in 7.7.
- 7.5 The purchaser's obligation to pay the occupational interest, cost contribution and consumption charges shall commence from the occupation date irrespective of whether or not the purchaser is entitled to or takes physical occupation of the unit in 7.1.
- 7.6 It is recorded that the purchaser is aware that, on the occupation date, the building, common property and other sections in the building or buildings may be incomplete and under construction and that the purchaser must necessarily suffer inconvenience from building operations and from noise and dust resulting therefrom. The purchaser shall not be entitled to cancel this agreement nor have any claim whatsoever against the seller by reason of any of the foregoing however the seller or successors-in-title shall be

obliged to take reasonable steps to control such noise and dust and to minimise the inconvenience to the purchaser

- 7.7 The purchaser shall, within a period of 7 days from the occupation date, together with the architect, inspect the section whereafter the architect will prepare and issue to the seller, a list of items in the section which require rectification and the seller shall expeditiously attend to the items on the said list and do so to the satisfaction of the architect, whose decision shall be final, provided that in the event the purchaser does not participate in the aforesaid inspection, the list of items in the section which require rectification prepared by the architect shall be deemed to be the final approved list and, once attended to by the seller in consultation with the architect, the relevant defects shall be deemed to have been remedied by the seller.
- 7.8 The purchaser shall afford the seller or its appointed contractors reasonable access to the section to enable the seller to attend to the items on the snag list in 7.7 and in order to remedy any defects in the section. Should the purchaser not provide such reasonable access within 7 days of request by the seller and/or its contractors, the relevant defects shall be deemed to have been remedied by the seller.

## **8. Passing of risk**

All the benefit of and risk in and to the unit shall pass to the purchaser on transfer.

## **9. Purchaser's acknowledgment**

- 9.1 The purchaser acknowledges that he is aware of and fully acquainted with the matters hereinafter set forth, namely that:
- 9.1.1 the seller shall, after completion of its marketing campaign in respect of the scheme, commence with the development and shall, as soon as possible after construction of the building procure the approval of the sectional plan and make application to the Registrar of Deeds for the registration of the sectional plan in order to effect transfer;
- 9.1.2 the unit will be as reflected on the approved sectional plan and the participation quota endorsed thereon as and when approved and subject to any modification or alterations which may be made thereto from time to time in accordance with the

provisions of the Act or of any authority and subject to any conditions of the applicable zoning and all applicable conditions of title;

9.1.3 the seller intends to procure that upon the opening of the sectional title register and the establishment of the body corporate, the management and conduct rules contained in the Management Act shall apply subject to any changes and modifications allowed under the said Act and as may be approved by the Chief Ombud in accordance therewith as envisaged in this agreement and which the seller may deem necessary for the proper management and control of the building and the scheme;

9.1.4 a pre-paid electricity metering system may be installed by the seller to the section;

## 10. Warranties

10.1 The seller warrants that:

10.1.1 for a period of 3 months from the occupation date, the seller will expeditiously remedy any patent defects which appear in the section and which are due to faulty materials and/or improper workmanship provided that the purchaser notifies the seller, in writing of such defects within the said 3 month period;

10.1.2 for a period of 5 years after the occupation date the seller will expeditiously remedy any defects in the structure of the section and which are due to faulty materials and/or improper workmanship provided that the purchaser notifies the seller, in writing, of such structural defects, within the said 5 year period.

10.2 The purchaser records and accepts that prior to his signature of this agreement he was given ample opportunity to peruse and carefully consider all relevant details pertaining to the land, the nature and extent of the scheme, the architectural details, entrances and exits and the like, the plans of the building as well as the plans, specification and schedule of finishes of the section as annexed hereto. Accordingly, other than for the specific warranties in 10.1, the unit is sold voetstoots. The purchaser acknowledges that the unit will, on transfer, be of an adequate quality and standard and be fit for the purpose for which it was purchased. The seller shall, other than the warranties in 10.1, have no further or other liabilities in respect of any defects which appear in the section, whether patent or latent.

**11. Terms applicable pending transfer**

11.1 The purchaser shall, after the occupation date but before transfer:

11.1.1 not be entitled to make any alterations or additions to the section;

11.1.2 maintain the section in a fit and proper condition;

11.1.3 not be entitled to divide the section;

11.1.4 be liable for the consumption charges in 5.3;

11.1.5 be liable for and pay the occupational interest and cost contribution to the seller;

11.1.6 not use the section or the common property in such manner as to cause any damage thereto or to the other sections in the building, nor store or permit the storage therein of any inflammable materials which may vitiate any policy of insurance;

11.1.7 be entitled to use the section as a residential dwelling unit and in terms of the permitted zoning;

11.1.8 permit the seller either personally, or through the seller's servants or agents, to have access to the section at all reasonable times and on reasonable notice to the purchaser, for the purpose of inspecting it or to carry out maintenance or repairs which the seller may in terms hereof be obliged or entitled to perform, whether such repairs relate to the section or not, and the purchaser shall have no claim against the seller for any disturbance in his occupation arising out of the exercise by the seller of the rights hereby conferred;

11.1.9 not use and enjoy the common property in such manner so as to interfere with the use and enjoyment thereof by other occupiers of sections or purchasers thereof or other persons lawfully upon the property and shall comply with any rules which the seller in its discretion may make in regard thereto;

11.1.10 not use the section or permit it to be used in such manner or for such purposes as shall cause a nuisance to any other person or interfere with the amenities of the property or so as to breach any law, ordinance or by-laws or any town planning scheme in force in relation to the land;

11.1.11 ensure that the purchaser's family, employees or invitees comply with the obligations aforesaid;

11.1.12 park a motor vehicle only in the exclusive use area and not on any bays set aside for visitors parking;

11.2 The seller shall, after the occupation date but before transfer:

11.2.1 insure the buildings for their replacement value and maintain the common property and keep it in a state of good and serviceable repair;

11.2.2 keep, in a state of good and serviceable repair and maintain, the plant, machinery, fixtures and fittings used in connection with the common property;

11.2.3 maintain and repair all pipes, wires, cables and ducts existing on the land or in the building and capable of being used in connection with the enjoyment of more than one section or of the common property, provided however that notwithstanding anything to the contrary herein contained, the seller shall be entitled to effect any repairs to the building (including the section) and/or the land even though the seller is not obliged to effect such repairs in terms of this agreement;

11.3 The purchaser shall, after transfer:

11.3.1 be liable for and to pay the body corporate all electricity, water and other municipal services whether consumed on the section or on the common property and as provided for in the Management Act;

11.3.2 be liable for the payment of the levy to the body corporate;

11.3.3 be liable for rates, basic sewer and refuse charges as may be payable to the Municipality in respect of the unit;

11.3.4 not use the section or the common property in such manner as to cause any damage thereto or to the other sections in the building, nor store or permit the storage therein of any inflammable materials which may vitiate any policy of insurance;

- 11.3.5 be entitled to use the section as a residential dwelling unit and in terms of the permitted zoning;
- 11.3.6 permit the seller either personally, or through the seller's servants or agents, to have access to the section at all reasonable times on reasonable notice to the purchaser for the purpose of inspecting it or to carry out maintenance or repairs which the seller may in terms hereof be obliged or entitled to perform, whether such repairs relate to the section or not, and the purchaser shall have no claim against the seller for any disturbance in his/her occupation arising out of the exercise by the seller of the rights hereby conferred;
- 11.3.7 use and enjoy the common property, including any exclusive use areas, in such manner so as not to interfere with the use and enjoyment thereof by other owners of units or purchasers thereof or other persons lawfully upon the property and shall comply with any rules which the seller in its reasonable discretion may make in regard thereto;
- 11.3.8 not use the section or permit it to be used in such manner or for such purposes as shall cause a nuisance to any other person or interfere with the amenities of the property or so as to breach any law, ordinance or by-laws or any town planning scheme in force in relation to the land;
- 11.3.9 ensure that the purchaser's family, employees or invitees comply with the obligations aforesaid;
- 11.3.10 park a motor vehicle only in the exclusive use area and not on any bays set aside for visitors parking.

## **12. Transfer and opening of sectional title register**

- 12.1 Subject to the purchase price, occupational interest, cost contribution or body corporate levy, as applicable and all other amounts whether in respect of transfer or registration of the mortgage bond for which the purchaser is liable in terms of this agreement, having been paid or secured to the seller's satisfaction, the seller shall give the purchaser transfer.
- 12.2 The purchaser acknowledges that it will only be possible for the seller to give transfer after the approval by the Surveyor General of the sectional plan and simultaneously with

the registration of the aforesaid plan and the unit being released from the operation of any existing mortgage bond as may be registered over the land.

- 12.3 The seller shall use its best endeavours to procure the registration of the sectional plan without delay in order that transfer can be effected.
- 12.4 The purchaser shall not have any claim whatsoever against the seller or be relieved of any of the purchaser's obligations in terms of this agreement or be entitled to any remission or rebate of any charges payable by the purchaser hereunder in the event of any delay in the opening of the sectional title register for whatever reason.
- 12.5 If, as a result of any act or omission by the seller, the sectional title register is not opened within 18 months from the anticipated occupation date then either party shall, within 30 days and on written notice to the other, be entitled to terminate this agreement and in which event the seller shall refund the purchaser the amount of the securing amount in 8 of the schedule and interest earned thereon as well as the balance of the purchase price paid in terms of 10 of the schedule and return to the purchaser any bankers or other guarantees which may have been furnished by the purchaser pursuant to this agreement. Save as herein provided, neither of the parties shall in such event have any further claim whatsoever and whether for damages or specific performance, against the other under this agreement, nor shall the purchaser be entitled to claim or allege any right of occupation or tenancy of the section under this agreement and shall vacate the same forthwith and until he/she so vacates all amounts shall be payable as provided for herein
- 12.6 The purchaser shall accept transfer of the unit subject to:
- 12.6.1 all provisions of the Act and subject to such further registerable conditions as may be imposed whether by the Local Authority or the developer in terms of Section 11 of the Act;
- 12.6.2 such servitudes as may be applicable to the land and/or the building;
- 12.6.3 such conditions reservations and servitudes contained or referred to in the title deed relating to the land and to any condition imposed by the Municipality; and
- 12.6.4 the rules.

12.7 If the measurements of the section as stipulated herein differ from those contained in the sectional plan eventually registered by the Registrar of Deeds, by not more than 5%, the purchaser shall accept transfer of the unit as set out in the registered sectional plan or plan of extension as the case may be, in satisfaction of the obligations of the seller in terms of this agreement. In the event that the measurement of the section as stipulated herein differs from that reflected on the sectional plan submitted to the Surveyor General for approval by more than 5%, the purchase price shall automatically be adjusted by an amount calculated by multiplying the difference in area, in excess of the said 5%, by a rate per square metre, determined by dividing the purchase price in 7 of the schedule by the area of the section in 4 of the schedule, provided that either party may, within 14 days of approval of the sectional plan, cancel this agreement on written notice to the other should the area of the section reflected on the approved sectional title plan differ by more than 15% from the area of the section in 3 of the schedule.

12.8 The area and dimensions of the section as reflected in 3 of the schedule is approximate. The seller shall make all reasonable efforts to ensure that the section is completed substantially in accordance herewith. The precise location and boundaries of the section shall be as reflected on the approved sectional title plans.

12.9 In the event that the purchase price of the unit is decreased as provided for in 12.7, the purchase price in 7 shall not be amended and the seller shall, on transfer, procure that the seller's conveyancers refund to the purchaser the amount determined in 12.7.

12.10 In the event that the purchase price of the unit is increased as provided for in 12.7, the purchaser shall, within 10 days of the conveyancer's request, either pay the said amount to the conveyancers to be held by them in accordance with 4.1 above or, alternatively, secure payment of the aforesaid amount by the furnishing of bankers guarantees to the said conveyancers in a format acceptable to the conveyancers and expressed to be payable on transfer of the unit to the purchaser.

### 13. **Default**

13.1 If the purchaser fails to pay on due date any instalment or other moneys which the purchaser may in terms hereof (provided that no notice need be given if the breach is the non-payment of the securing amount in 8 of the schedule) or commits any other breach of any of the terms and conditions of this agreement the seller shall be entitled without prejudice to any other remedies that it may have at law, if the purchaser fails to



remedy such breach, default or non-payment within 7 days of despatch of written notice per email, telefax or delivery thereof by hand calling upon the purchaser so to do:

- 13.1.1 to cancel this agreement and retake possession of the unit, in which event the seller may, at its election:
  - 13.1.1.1 claim all damages suffered by reason of the purchaser's breach of contract, in which event, pending the determination of such damages, the seller shall be entitled to retain in pledge, as security for the due payment by the purchaser of such damages, all amounts paid by the purchaser in terms of this agreement, and immediately the seller's claim for damages shall have been established, there shall be set off and credited against such damages the aforesaid amounts retained by the seller, provided that should such retained amounts exceed the damages so due to the seller, the seller shall refund the excess to the purchaser, but, that should the said damages exceed the said amounts retained, the purchaser shall be obliged to pay the amount of the shortfall to the seller on demand; or
  - 13.1.1.2 retain all payments already made by the purchaser in terms of this agreement, all amounts paid by the purchaser into trust with the seller's conveyancers and all interest earned thereon as an agreed penalty or as liquidated damages; or
- 13.1.2 to claim specific performance and immediate payment of any amounts then owing on the purchase price of the unit, all interest due and any other amounts payable by the purchaser in terms of this agreement against tender of performance by the seller as provided for in this agreement.
- 13.2 In the event that this agreement is cancelled and to the extent that the purchaser may be in occupation of the unit, the purchaser and all persons claiming occupation through the purchaser shall forthwith vacate the unit and deliver it back to the seller. No lease or other right of occupation in favour of the purchaser or any other party shall be created or come into existence by virtue of this agreement.
- 13.3 If the purchaser disputes the seller's right to cancel this agreement, then pending the determination of such dispute, the purchaser shall be obliged to continue to pay all amounts payable by him in terms of this agreement on the due dates thereof and the seller shall be entitled to accept such payments without prejudice to its rights of

cancellation as aforesaid. If such dispute is decided in favour of the seller then such amounts so received by the seller after cancellation as aforesaid shall be deemed to have been paid to the seller prior to cancellation.

13.4 Should this agreement be cancelled in terms of this 13 the purchaser shall not be entitled to claim or receive any compensation whatsoever from the seller for any alterations, additions or improvements effected to or on the section save only as otherwise provided by law.

14. **Mortgage finance (this clause applies only if clause 9 of the schedule has been completed)**

14.1 The seller has entered into an agreement with the originators for purposes of procuring loans for purchasers in the scheme. The purchaser shall provide all relevant necessary information or documentation to the originators to enable them, on the purchaser's behalf, to apply all relevant financial institutions for the necessary loan and shall co-operate with and assist the originator in such process.

14.2 This agreement is subject to the suspensive condition that the purchaser (or the originator on the purchaser's behalf) is able to procure an approval in principle from a Bank for a loan upon the security of a first mortgage bond to be registered over the unit on transfer and in an amount of not less than the amount in 9 of the schedule.

14.3 In the event that the approval in principal in 14.2 is not procured by the date in 11 of the schedule, which date may be extended by the seller on written notice to the purchaser for a further period or periods not exceeding a total extension period of 90 days, this agreement shall lapse and no longer be of any force or effect.

14.4 The purchaser undertakes to use its best endeavours to procure the fulfilment of the suspensive condition in 14.2 and shall co-operate with the originator and provide all information and sign all documentation reasonably required by them and/or the relevant financial institution for this purpose. The purchaser warrants that he has sufficient income to procure a loan in the amount in 9 of the schedule.

14.5 In the event, after the fulfilment of the suspensive condition in 14.2 but before transfer, the approval in principal or grant of a loan, as the case may be, is then withdrawn by the relevant financial institution and irrespective of the reasons for such withdrawal, the purchaser shall remain bound to the terms and conditions of this agreement and shall,

within 10 days of such withdrawal, furnish the seller's conveyancers with bank guarantees, in a format acceptable to the seller in the loan amount as set out in the final grant.

14.6 The purchaser shall be entitled, on written notice to the seller, or to the originator, to accept an approval in principal of a loan in an amount less than the amount in 9 of the schedule, provided the purchaser does so before the end of the period in 11 of the schedule as may be extended in 14.3. The purchaser shall, within 30 days of such written notice, furnish the seller's conveyancers with banker's guarantees, in a format acceptable to the seller in respect of the difference between the loan amount in 9 of the schedule and the lower loan amount as accepted by the purchaser.

**15. Joint and several liability**

Should this agreement be signed by more than one person as purchaser, the obligation of all such signatories shall be joint and several.

**16. Nomination clause (in terms of Section 5(2)(a) of the Transfer Duty Act)**

16.1 The purchaser ("original purchaser"), as a resolute condition, may nominate a third party purchaser ("nominated purchaser") under this agreement as follows:

16.1.1 the nominated purchaser need not be in existence at the time this agreement is signed but must be in existence at the time of the nomination;

16.1.2 both the nomination and the nominated purchaser's acceptance of the nomination must be in writing and must be delivered to the seller within 30 days from date of signature of this agreement, failing which the right to nominate will lapse and the original purchaser will remain bound as purchaser under this agreement;

16.1.3 if a nomination and an acceptance are duly delivered as set out above, the sale to the original purchaser will automatically fall away and be dissolved and the property will completely revert to the seller and the purchaser will automatically relinquish all rights on such delivery and a new sale to the nominated purchaser on the same terms and conditions will automatically simultaneously come into existence provided that:

- 16.1.3.1 reference to the date of this agreement will then refer the date of the acceptance of the nomination in 16.1.3;
- 16.1.3.2 all funds paid by the purchaser to the seller's conveyancers in terms of this agreement, together with all interest earned thereon ("the funds") will be refundable by the seller to the original purchaser on the payment by the nominated purchaser, to the seller's conveyancers, of an amount equal to the funds. Notwithstanding the aforesaid, the nominated purchaser may, on written notice to the seller's conveyancers, make payment of the funds directly to the original purchaser, which payment will be in discharge both of the nominated purchaser's obligation to pay the funds to the seller and the seller's liability to refund the said funds to the original purchaser;
- 16.1.3.3 there shall be no consideration whatsoever payable by the nominated purchaser to the purchaser or to the seller arising out of the cancellation of this sale and the coming into existence of the new sale pursuant to this clause and the purchaser will not receive any consideration arising from such cancellation and dissolution.
- 16.1.4 the original purchaser's rights to nominate a third party as purchaser is conditional on the original purchaser not being in breach of any obligation under this agreement.
- 16.1.5 The conveyancers will charge an administration fee of R7,500.00 to manage the nomination as outlined in this clause, which fee shall be payable by the purchaser.
- 16.2 The original purchaser acknowledges that the seller's conveyancers will procure the issue of an IT3(b) tax certificate in respect of the interest component of the funds for the period up to and including the date the seller's conveyancers, pursuant to the acceptance by the nominated purchaser of the above nomination, closing the original purchaser's trust investment and investing the funds in trust in the name of the nominated purchaser in accordance with Section 86(4) of the Legal Practice Act, 2014. The original purchaser will automatically be bound as surety and co-principal debtor for the nominated purchaser's obligations to the seller arising out of this sale (including any amounts which may become owing arising out of any breach of this agreement) and renounces the benefits of excussion, division, cession of action and *de duobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the original purchaser acknowledges he/she knows and understands.

16.3 The original purchaser acknowledges that should, after the nomination in 16.1.3, SARS demand and require payment of transfer duty or VAT in respect of the new sale to the nominated purchaser, such transfer duty or VAT, as the case may be, shall be payable by the purchaser.

**17. Sale prior to transfer**

17.1 The purchaser acknowledges that given the nature and complexity of the scheme, it shall not be entitled to sell the unit prior to transfer, save with the prior written consent of the seller which shall not be unreasonably withheld.

17.2 The seller in giving written consent in 17.1 may permit simultaneous transfer to the purchaser's third party purchaser but only provided such simultaneous transfer in no way delays transfer and provided that the seller is satisfied that the purchaser has made it clear to the third party purchaser that there is no contractual nexus or relationship between the seller and the third party purchaser. Transfer of the unit to a third party purchaser shall be attended to simultaneously with the transfer of the unit from the seller to the purchaser and by the seller's conveyancers.

17.3 The purchaser hereby acknowledges and accepts that the sale and transfer of the unit to a third party purchaser shall not, in any manner whatsoever, absolve the purchaser from its obligations set out in this agreement.

**18. Optional extras**

18.1 The purchaser shall under no circumstances be entitled to request the seller to make any variations whatsoever to the specifications and the schedule of finishes and the seller shall be under no obligation to vary or make any changes thereto. In the event that the parties agree in writing to change the specifications and schedule of finishes, the costs of any agreed changes plus an administration fee, being the greater of 10% of the agreed cost of changes or R7,500.00 (plus VAT), shall immediately be payable by the purchaser to the seller.

18.2 The purchaser shall, in terms of annexure 5 read with 7 of the schedule, be entitled to select optional extras.

18.3 Any selection by the purchaser of any optional extras in 18.2 shall be in writing.

18.4 Should any optional extras be selected by the purchaser, the purchase price shall automatically increase by the cost thereof as reflected in 7 of the schedule.

18.5 In the event of the seller being unable to source and install any particular finishes, materials, or any optional extras, whether described in the specification and schedule of finishes or the optional extras schedule or should the seller be required, by lawful authority, to amend the plans, as the case may be, the architect shall be entitled to amend the plans and/or to specify or select alternative finishes, materials or optional extras, provided the amendments and the materials selected are of substantially the same standard and appearance.

18.6 The purchaser hereby acknowledges that:

18.6.1 The “on site sales centre”, where the purchaser may have inspected the particular finishes or optional extras does not represent the size, extent or layout of the section, which shall be as reflected on the plans read with this agreement.

18.6.2 The seller’s marketing materials, whether on display at the said sales centre or otherwise, depict particularly how the section can be decorated or furnished. The section does not include such décor furniture or other equipment as may be so depicted.

18.6.3 Similarly, all renderings are indicative and no furniture, fittings or décor items as may have been displayed, whether in the sales centre or reflected on any renderings, are included.

## 19. **Resolutive condition**

19.1 The purchaser acknowledges that the viability of the seller undertaking the development, is dependent on, *inter alia*, the response by the public to the marketing campaign to be conducted by the seller in respect thereof and the level of sales achieved. Accordingly, the seller shall be entitled, should it in its sole and absolute discretion, determine that the scheme is not viable and on written notice to the purchaser, resile from this agreement.

19.2 The seller shall be entitled to exercise its rights in 19.1 during the period from signature of the agreement up to and including 30 November 2021, whereafter the seller's rights shall lapse.

19.3 In the event of the seller exercising its rights in 19.2 timeously, this agreement shall resolve and shall no longer be of any force or effect and the securing amount together with all interest thereon shall be refunded to the purchaser.

**20. Agent's commission**

20.1 The purchaser warrants that it was introduced to the unit and to the seller by the agent and that no other property broker or estate agent was the effective cause of this sale.

20.2 Agent's commission shall be calculated at 1% of the purchase price, which amount shall be earned by the agent and paid by the seller to the agent on transfer of the unit.

**21. Miscellaneous matters**

**21.1 addresses and notices**

21.1.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose domicilium *citandi et executandi* ("domicilium") at the addresses set out in the schedule.

21.1.2 A party may at any time change that party's domicilium by notice in writing to each of the other parties, provided that the new domicilium is in the Republic of South Africa and consists of, or includes, a physical address at which process can be serviced, such new address being effective on receipt by the addressee of such written notice.

21.1.3 Any notice given in connection with this agreement shall:

21.1.3.1 be delivered by hand; or

21.1.3.2 be sent by email (if the domicilium includes an email address);

to the *domicilium* chosen by the party concerned.

21.1.4 A notice given as set out above shall be deemed to have been duly given:

21.1.4.1 if delivered, on the date of delivery;

21.1.4.2 if sent by email, on the date the email is transmitted provided if the date is a Saturday, Sunday or Public Holiday, the email will be deemed to have been delivered on the first business day thereafter.

## 21.2 **entire contract**

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

## 21.3 **variation and cancellation**

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

## 21.4 **indulgences**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.