

## "CENTRAL SQUARE"

27 January 2015

### ANNEXURE 1

This is annexure 1 as referred to in the agreement of sale – sectional title and the provisions hereof shall be deemed to be incorporated in and to form part of the aforesaid agreement of sale.

#### **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;

1.1.2 "the agent" - the estate agent in 20 of the schedule;

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

1.1.4 "the architect" – Nsika Architects or any other professional architect or professional project manager as may be nominated by the seller;

1.1.5 "body corporate" - the body corporate referred to in Section 36 of the Act established in respect of the buildings;

1.1.6 "building" or "buildings" - the building or buildings and all improvements which will be erected on the land, the first phase of which is as indicated on the plans;

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

1.1.8 "the non-residential units" – those units in the building as may be set aside and/or sold by the seller and which may be used for purposes other than residential including but not limited to retail, offices and for an hotel suite as

more fully described on the mixed use plan annexed hereto marked annexure 8.

- 1.1.9 "the conveyancers" – the conveyancers appointed by the seller being Strauss Scher Incorporated, 2nd Floor, 4 On Anslow, Anslow Lane, Bryanston, Gauteng (Ref : Julian Scher; Tel (011) 883-9798, Fax (011) 886-6661 email : gail@strausscher.co.za);
- 1.1.10 "the developer" - the seller or its successors in title or assigns having the rights and powers conferred on a developer by the Act;
- 1.1.11 "land" – the land described in 1 of the schedule; ;
- 1.1.12 "the manager" - the managing agent as appointed by the developer in terms of 14;
- 1.1.13 "occupation date" - the date when the section is ready for beneficial occupation as certified by the architect in accordance with 7.2;
- 1.1.14 "participation quota" - in relation to a section shall be the decimal fraction specified in 22 of the schedule and otherwise as reflected in the schedule to the approved sectional plan;
- 1.1.15 "the plans" - annexures 2 and 4 to this agreement read in the context of annexure 8 of the schedule;
- 1.1.16 "the property" - collectively the land and the building or buildings;
- 1.1.17 "the residential units" – those units in the building set aside and/or sold by the seller for and to be utilised for residential purposes as indicated on the mixed use plan annexed marked annexure 8;
- 1.1.18 "the rules" – the rules of the body corporate as referred to in 9.1.4 hereof;
- 1.1.19 "the schedule" - the schedule prefixed to this agreement, forming part hereof which contains details of the unit sold, the purchase price and other details hereinafter referred to;

- 1.1.20 "the scheme" - the "Central Park" development scheme promoted by the developer in respect of the property;
- 1.1.21 "the section" - the section described in clause 3 of the schedule and more fully indicated on the plans notwithstanding that the plans upon which the section is shown or to be shown are not yet registered;
- 1.1.22 "sectional title plan" – the sectional title plan of the first phase of the scheme comprising the buildings and which includes that part of the Piazza as indicated on the plans and approved by the Surveyor General;
- 1.1.23 "the sectional title register" - a sectional title register in respect of the land and the building/s comprised in the scheme from time to time;
- 1.1.24 "the specification and schedule of finishes" – annexure 3 hereto;
- 1.1.25 "transfer" – registration of transfer of the unit to the purchaser in the office of the Registrar of Deeds, Pretoria;
- 1.1.26 "the unit" - shall have the meaning defined in the Act and with regard to the unit hereby sold shall mean the unit which is 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;
- 1.1.27 In this agreement, unless the context otherwise requires:
- 1.1.27.1 words and expressions used in the Act shall have the same meanings as have been assigned to them in terms of the Act;
- 1.1.27.2 the masculine shall include the feminine and vice versa and they shall both include neuter;
- 1.1.27.3 the singular shall include the plural and vice versa;
- 1.1.27.4 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.

## 2. **Sale**

- 2.1 The seller hereby sells to the purchaser who hereby purchases the unit from the seller on the terms and conditions set out in this agreement.
- 2.2 The precise boundaries of the section forming part of the unit hereby sold shall be as depicted upon the sectional plan as and when approved in terms of the Act.

## 3. **Exclusive use areas and rules**

- 3.1 The seller shall make management rules in terms of Section 27(A) of the Act, which confer rights of exclusive use and enjoyment in favour of the purchaser whether exclusively or together with other purchasers/owners of certain sections in the building, of those parts of the property described as areas of exclusive use in 17 of the schedule.
- 3.2 The purchaser's rights of exclusive use in 3.1 shall at all times, be subject to the right of the representative of the body corporate or the developer to reasonable access thereto and to the rights of the other owners of unit whether situated in that part of the building in which the unit is situated or, generally as the case may be, to the use and enjoyment of such areas subject to the rules.
- 3.3 The parking bays in 17(a) of the schedule shall be allocated as exclusive use areas as provided for in 3.1 provided that the location thereof in the basement of the building shall be as close as possible to the lift lobby servicing the part of the building in which the unit are situated and shall be finally determined by the architect.
- 3.4 The purchaser acknowledges that the rules in 3.1, although conferring rights of exclusive use and enjoyment of those parts of the common property shall not be deemed to be a right to urban immovable property capable of being mortgaged.
- 3.5 The purchaser, as owner of the section entitled to the right of exclusive use of a part or parts of the common property whether exclusively or together with owners of other unit in the scheme as provided for in this agreement, shall be required to make such additional contributions, including any pro-rata contribution where exclusive use areas are allocated together with other owners, to the body corporate as are estimated necessary to defray the costs incurred by the body corporate in respect of *inter alia*

insurance, cleaning, 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 9.1.4, provide that the owner or owners concerned may be responsible directly either entirely or partially for such costs.

- 3.6 It is recorded that the seller was the developer of the residential scheme situated to the west of the land and known as "Sunset Towers". The seller intends constructing a bridge in order to link Sunset Towers to the scheme and to permit pedestrian access between the respective schemes. To the extent that the seller constructs the aforesaid sky bridge and access, the body corporate of Sunset Towers will be liable for a pro rata share of the costs associated with the insurance, cleaning, security and maintenance thereof. The purchaser hereby appoints the seller, at the cost of the seller, to negotiate, sign and settle any documentation as may be necessary to procure the registration of any servitudes in respect of the aforesaid bridge, provided the purchaser will not be liable for any costs whatsoever associated with the construction and/or the registration of any servitudes in respect thereof.
- 3.7 All owners of units in the building will, on occupation, receive access cards (which cards if lost, will be replaced at the owner's cost) and will be required to contribute to the reasonable costs of the maintenance and operation of any parking booms, access control and other security equipment situated at the entrances and exits to the basement and parking areas in the building. In addition, the seller may install certain parking booms, access control and related security equipment at the entrances to those parts of the parking basement of the building set aside for the exclusive use for owners of the residential or non-residential units or for the exclusive use of owners of either units in a particular part of the building in which event the purchaser, together with the owners of the aforesaid units, will be required to contribute to the reasonable costs of the maintenance and operation thereof.
- 3.8 To the extent that any service ducts or areas housing or containing service equipment, airconditioning plants, pumps and the like may be set aside as exclusive use areas for either the owners of residential or non-residential units, as the case may be, the repair and maintenance of any equipment or services situated therein will be borne by the owners of the section to which such exclusive use has been reserved. In the event that any air-conditioning plants for provision of air-conditioning generally are installed, the body corporate shall be liable for the maintenance and upkeep thereof.

- 3.9 It is recorded that in law the exterior of the building constitutes common property for which the body corporate is responsible. The rules of the scheme shall however make provision that the owners of the residential unit in the scheme or the owners of residential unit in a particular part of the building in which the unit is situated, as the case may be, be responsible for the cost of the maintenance and for the cleaning of that portion of the exterior of the building and, in particular, for replacement of any window glass and similarly, owners of the non-residential unit, for the cost of the maintenance and for the cleaning of that portion of the exterior which covers the non-residential unit.
- 3.10 The seller may make management rules in terms of Section 27(A) of the Act conferring the rights of exclusive use and enjoyment of defined portions of the exterior of the building in favour of any owner of a unit in the scheme, for purposes of the erection of signage and in which event the owners of the relevant unit to which such exclusive use signage areas are allocated shall be entitled to install signage but to the satisfaction of the seller and the body corporate and as provided for in the rules.
- 3.11 It is recorded that the body corporate shall, at all times, have access through any unit to any ceiling void and/or service duct from time to time as may be necessary for the purpose of the installation and/or maintenance of any services contained therein.
- 3.12 The purchaser undertakes not to interfere with or hinder any other purchaser or owner of any unit forming part of the scheme in the exercise by him of any exclusive rights granted to him.
- 3.13 The seller may allocate exclusive use of the central piazza or square in the scheme to an owner or owners of unit to be utilized to provide a vibrant 'town square' atmosphere and to be used for recreation, theatre, markets, light musical events and other such uses in keeping with the upmarket nature of the scheme.

#### **4. Purchase price**

- 4.1 The purchase price of the unit payable by the purchaser to the seller is the amount referred to in 7 of the schedule, which amount shall be payable as follows:
- 4.1.1 the deposit referred to in 8 of the schedule shall be held in trust by the conveyancers and invested in an interest bearing trust account in terms of

Section 78(2A) of the Attorneys Act, interest accruing to the purchaser and paid to the seller or its nominee on transfer or when the seller is entitled thereto in terms of this agreement or to the purchaser when the purchaser is entitled thereto in terms of this agreement. The purchaser hereby acknowledges that prior to the deposit being invested in an interest bearing trust account by the seller's conveyancers, the purchaser is obliged to comply with the requirements of the Finance Intelligence Centre Act and to provide copies of certain documentation to the seller's conveyancers. Failure to comply with the seller's conveyancer's requests for the provision of the aforesaid documentation will result in the sums deposited in trust not earning interest for the purchaser. The seller's conveyancers shall, in respect of their ongoing management of the aforesaid deposit, charge an administration fee of one half of a percentage point of the rate of interest earned on the aforesaid trust account from time to time and which fee shall include VAT.

- 4.1.2 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 4.1.1 or secured by the furnishing of bankers guarantees acceptable to the seller, within the time period and on the basis as provided for in 12 of the schedule.
- 4.1.3 the amount of the loan in 9 of the schedule shall be secured by bankers guarantees acceptable to the seller and delivered to the seller's conveyancers within the time period provided for in clause 12 of the schedule.
- 4.1.4 The purchaser shall be entitled, in lieu of furnishing bankers guarantees in 12 of the schedule, to pay the balance of the purchase price of the unit, or any part thereof, to the seller's conveyancers to be held by them in an interest bearing trust account in accordance with the provisions of Section 78(2A) of the Attorneys Act provided that the interest on such deposit shall accrue to the purchaser and further provided that the provisions of 4.1.1 above relating to the administration fee and Financial Intelligence Centre Act shall be applicable mutatis mutandis.
- 4.2 In the event that any payments or guarantees in 4.1 are not made or delivered timeously the purchaser shall, without notice or demand, become liable for and shall pay to the seller the penalty interest in 19 of the schedule, calculated from the date on which payment was to be made or the guarantee to be furnished until the date that

the payment is made or guarantee furnished, as the case may be and without prejudice to the seller's rights in 15.

4.3 The deposit/s, 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.

4.4 Each payment made in terms of this agreement and any interest earned on the deposit or other monies paid to the conveyancers in terms of this agreement shall be allocated first to occupational interest and the estimated levy, secondly to all other costs and charges due by the purchaser in terms hereof and thereafter in reduction of the balance of the purchase price.

#### **5. Occupational interest/estimated levies**

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 stated in clause 21 of the schedule and the estimated initial monthly levy stated in clause 15 of the schedule and thereafter monthly in advance on the first day of each month until transfer of the unit to the purchaser in terms hereof is registered.

5.2 After transfer, the purchaser shall pay the levy to the Body Corporate. It is recorded that the Body Corporate will pay consumption deposits in respect of water and electricity to the scheme to the local authority. Accordingly, the purchaser, as owner of the section, shall be liable for a pro-rata share, determined in accordance with the participation quota, of the amount of such consumption deposits payable by the Body Corporate. The Body Corporate shall recover the pro-rata share of the consumption deposits from owners in the scheme in accordance with their participation quotas..

5.3 The purchaser shall be liable for and pay rates and taxes to the local authority from date of transfer of the unit to the purchaser.



## 6. **Costs**

- 6.1 The purchaser will be liable for all costs of and incidental to transfer including but not limited to conveyancing fees, disbursements and all VAT thereon.
- 6.2 The purchaser shall be liable for and shall pay all costs of and incidental to the registration of any mortgage bond over the unit including all conveyancing fees, VAT thereon and other incidental charges. Should the seller's conveyancers attend to registration of the mortgage bond, the conveyancing fee for such registration shall be at the applicable tariff less 20%.
- 6.3 The seller will be liable for all costs of and incidental of the opening of the sectional title register and registration of a sectional plan of extension, if applicable.
- 6.4 Transfer shall be attended to by the seller's conveyancers. The purchaser shall cooperate with and provide to the seller's conveyancers on their demand all documentation and information and shall within 7 (seven) 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 registration of transfer and, if applicable, registration of a first mortgage bond over the unit.

## 7. **Occupation**

- 7.1 Provided the purchaser has paid or secured, as the case may be, on due date the deposit referred to in clause 8 of the schedule, the purchase price has been secured the occupational interest, estimated levy, legal costs and any other amounts due by the purchaser in terms of this agreement have been paid and further provided the purchaser has signed all documents as may be required by the conveyancers both in respect of the transfer of the unit to the purchaser and the registration of any mortgage bond, including all certificates of completion as may be required by the purchaser's bankers, occupation of the unit shall be given to and taken by the purchaser on the occupation date as determined in clause 14 of the schedule read together with clause 7.2 below. The seller shall make every effort to ensure that the unit is ready for occupation on the date in clause 14 of the schedule however, the seller does not warrant that the unit will be ready for occupation on the said date.

- 7.2 The occupation date shall be as certified in the certificate of occupation which shall be issued not less than 30 days prior to the occupation date.
- 7.3 Should, after the determination of the occupation date in the certificate of occupation, the seller than determine that the unit will not be practically complete and ready for occupation on the occupation date as set out in the certificate of occupation, the architect shall issue a further certificate of occupation and determine a revised occupation date, provided such further certificate of occupation shall be issued not less than 30 days prior to the revised occupation date.
- 7.4 The purchaser shall have no claim whatsoever whether for damages, specific performance or otherwise against the seller arising from the occupation date as certified in the certificate of occupation differing from the anticipated occupation date in clause 14 of the schedule. The architect, in certifying the occupation date shall, act in an impartial and professional manner.
- 7.5 The purchaser hereby undertakes, on the occupation date to 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 purchaser hereby acknowledges that the signature of the aforesaid certificate of completion does not absolve the seller from its obligations to remedy any defects in the units as provided for in clause 7.9below read with clause 10 of this annexure.
- 7.6 The occupational interest in clause 21 of the schedule and the estimated levy in clause 15 of the schedule shall be payable by the purchaser to the seller, irrespective of whether or not the local authority has issued an occupancy certificate in respect of the building or whether the snags in clause 7.9below have been attended to.
- 7.7 The purchaser's obligation to pay the occupational interest in 21 of the schedule and the estimated levy in clause 15 of the schedule shall commence from the occupation date irrespective of whether or not the purchaser is entitled to take occupation in accordance with clause 7.1 above and irrespective of whether the purchaser takes physical occupation of the unit.
- 7.8 It is recorded that the purchaser is aware that, on the occupation date, the building, common property, and other sections in the building 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.

- 7.9 The seller shall, at its cost, employ the services of an independent architect or construction consultant who shall, at the occupation date, furnish both the purchaser and seller with a list of any defects in the section ("the snag list"). The seller shall attend to the rectification of the items on the snag list as soon as possible after its receipt thereof. In the event of there being a dispute between the parties as to whether or not the seller has properly attended to the items on the snag list, such dispute shall be referred to the architect who shall, acting impartially and as an expert, summarily determine the matter and whose decision shall be final and binding on the parties.

## 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 unit is sold in accordance with the 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, conditions of consolidation, and any conditions of title;

9.1.2 it will only be possible for the seller to give transfer of the unit to the purchaser after approval and registration of the sectional plan and the opening of a sectional title register in respect of the building;

- 9.1.3 if the areas of the common property are found not to correspond to those set out in this agreement, the seller shall not be liable for any shortfall nor shall it be entitled to claim compensation for any surplus;
- 9.1.4 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 regulations to the Act shall apply subject to any changes and modifications allowed by the Act and as envisaged in this agreement and which the seller may deem necessary for the proper management and control of the building taking into account the mixed use nature thereof. It is recorded that the developer, when submitting the application for the opening of the sectional title register shall make rules in terms of Section 35 of the Act attaching a value of 50% to the vote of the owners of the residential section and a rule in terms of which the liability of owners of residential section shall, for the purposes of Section 37(1)(a) or Section 47(1) of the Act be modified so that the owners of the residential section are liable to contribute a total of 60% to the levy fund in terms of Section 37(1) of the Act.
- 9.1.5 The rules in 9.1.4 shall provide, *inter alia*, that an owner of a residential unit may not enter into a lease in respect of that unit for any period or periods less than 3 months without the prior written consent of the seller and, after its establishment, the body corporate, who shall grant such consent in the event that an apartment/hotel management company has not been established for purposes of managing any rental pooling arrangements as may be established in respect of the scheme from time to time or, if such serviced suites / hotel management company has been formed and has entered into an agreement with the purchaser pursuant to which the section will be managed as part of any rental pool arrangement or not. The seller may procure that the aforesaid be incorporated into the title deeds of the unit on transfer of the unit to the purchaser, in a format acceptable to the Registrar of Deeds.
- 9.1.6 It is recorded that the seller, that as a condition of its purchase of the land, is obliged to erect a sign on the common property containing the as following wording:  
  
*"The Kiss of the sun for pardon,  
The song of the birds for mirth*

*You are nearer God's heart in a garden  
Than anywhere else on earth"*

The seller shall erect the said sign at such position on the common property as the seller deems appropriate and such sign shall not be altered or removed save with the prior written consent of the seller.

- 9.2 By his signature hereto the purchaser irrevocably and in *rem suam* appoints the seller as his agent and attorney to attend any meetings of the body corporate at which the purchaser is entitled to be present but does not attend and then and there to vote, on behalf of the purchaser for the amendment of the rules.

## 10. Warranties

10.1 The seller warrants that:

- 10.1.1 it will take all steps necessary to obtain registration of the sectional plan in respect of the building in terms of the Act;
- 10.1.2 as at transfer, the seller will be the registered owner of the land and no person shall have any right to acquire the land or any portion thereof nor to the knowledge of the seller are there any expropriation proceedings contemplated in respect of any part of the property;
- 10.1.3 it shall promptly attend to the rectification of any items on the snag list in 7.9;
- 10.1.4 for a period of 90 days from the occupation date, the seller will expeditiously remedy any 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 any such defects, within the said 90 day period;
- 10.1.5 for a period of 3 years from the occupation date, the seller will expeditiously remedy any defects which appear in the structure of the section and which are due to faulty materials and/or improper workmanship, provided that the purchaser notify the seller, in writing, of such structural defects, within the said 3 year period;

- 10.2 Save for the provisions of 10.1.4 and 10.1.5 above, the seller shall have no further or other liabilities in respect of any defects which appear in the section whether patent or latent.
- 10.3 As at the date of transfer, it will be deemed to have ceded and assigned to the purchaser all warranties procured from the suppliers of any equipment and appliances installed in the section.

**11. Terms applicable pending establishment of body corporate**

For the period from the occupation date to transfer, the purchaser shall:

- 11.1 not be entitled to make any alterations or additions to the sections without the prior written consent of the seller;
- 11.2 maintain the section and exclusive use areas in a fit and proper condition, and keep them neatly and properly painted and glazed, and from time to time replace, as may be necessary, all the interior fittings, electrical and service installations of the section, and keep the walls, floors and ceilings of the section in proper repair, and generally undertake all such maintenance and repairs not envisaged in clause 10.1.3 to 10.1.4;
- 11.2.1 not be entitled to divide the section;
- 11.3 be liable for all electricity, gas and water consumed in respect of the section whether and to the extent that such are separately metered whether by pre-paid metres or otherwise;
- 11.4 be liable, subject to 7 for the payment of the occupational interest in 21 and the estimated initial monthly levy in 15 of the schedule;
- 11.5 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;

- 11.6 be entitled to use the section as a residential dwelling in terms of the permitted zoning and for no other purposes save for the prior written consent of the seller. On transfer, a condition in title, in a format acceptable to the Registrar of Deeds, may in the discretion of the seller, be inserted into the title deed of the unit to the effect that the unit may not be used for any other purposes other than as a residential dwelling save with the prior written consent of the seller.
- 11.7 permit the seller either personally, or through the seller's servants or agents, to have access to the section at all reasonable times 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;
- 11.8 use and enjoy the common property in such manner so as not to interfere with the use and enjoyment thereof by other unit holders 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;
- 11.9 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;
- 11.10 ensure that the purchaser's employees or invitees comply with the obligations aforesaid;
- 11.11 From the occupation date to transfer, the seller shall:
- 11.11.1 insure the buildings on the land and maintain the common property and keep it in a state of good and serviceable repair, including any structural repairs to the improvements erected thereon;
- 11.11.2 keep, in a state of good and serviceable repair and maintain, the plant, machinery, fixtures and fittings used in connection with the common property;

- 11.11.3 maintain and repair all pipes, wires, cables and ducts existing on the land or in the building and capable of being used only 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;
- 11.11.4 notwithstanding anything to the contrary contained in this agreement in the event of the seller being unable to transfer the unit to the purchaser by reason of either destruction of the building or expropriation of the land or in the event of destruction of the section to the extent that the purchaser is deprived or likely to be deprived of beneficial occupation thereof for a period of six months or longer, either party shall thereupon be entitled within 21 days of the relevant event to resile from the agreement, and upon either party so doing, the seller shall refund to the purchaser, that amount which it would have been obliged to refund in terms of clause 13.5 below. Within fourteen days of such refund having been made, the purchaser shall vacate the section, unless he has already vacated or been deprived of possession thereof and save as aforesaid shall have no further claim against the seller. If there is any dispute as to the likely period for which the purchaser will be deprived of beneficial occupation of the section, such dispute shall be referred to the architect whose decision shall be final and binding and who shall act as an expert and not as an arbitrator;
- 11.11.5 Should neither party elect to resile from the agreement in terms of 11.11.4 then the seller shall:
- 11.11.5.1 apply the whole of the monies received by it from the proceeds of any applicable insurance policy to the repair or replacement of the buildings;  
and
- 11.11.5.2 if the building are replaced by new buildings, such new buildings shall (subject to the sufficiency of the said insurance monies) be erected substantially in accordance with the plans for the existing buildings and the purchaser shall accept a section most nearly comparable to the section to which he was entitled in the existing building, and the provisions of this



agreement shall continue to apply *mutatis mutandis* to such new section and to his occupation thereof in the re-erected building. In the event of any dispute as to the new accommodation which the purchaser is entitled and obliged to receive in pursuance of this clause, the decision of the seller's architect shall be binding.

## **12. Terms applicable between opening of sectional title register and transfer**

Whilst the seller intends effecting transfer of the unit to the purchaser simultaneously with the opening of the sectional title register, in the event that such transfer does not occur simultaneously then immediately after the opening of the sectional title register and until transfer, the following provisions shall apply:

- 12.1 the purchaser shall comply with all rules and regulations of the body corporate whatever form they may take as if the purchaser were the registered owner of the unit;
- 12.2 the remaining terms and conditions of clause 11 shall continue to apply as between the purchaser and the seller, *mutatis mutandis*;
- 12.3 the seller shall be entitled to exercise all the rights and enjoy the capacity which it would have in a body corporate which comes into existence in terms of the Act in respect of the land and the buildings;
- 12.4 the purchaser shall pay the levy to the body corporate;
- 12.5 the purchaser shall, subject to 7, pay occupational interest in 21 of the schedule to the seller.

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

- 13.1 Subject to the full purchase price, occupational interest, estimated levy and all other amounts including costs in 6 having been paid or secured to the seller's satisfaction the purchaser shall simultaneously with or as soon as possible after the sectional title register has been opened, take transfer of the unit.

- 13.2 The purchaser acknowledges that it will only be possible for the seller to give transfer of the unit to the purchaser after the sectional title register in respect thereof has been opened, and the unit has been released from the mortgage bond (if any) at any time registered over the land or the units in the scheme.
- 13.3 The seller shall use its best endeavours to obtain opening of the sectional title register without delay in order to effect transfer.
- 13.4 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.
- 13.5 If, as a result of any act or omission by the seller, the sectional title register is not opened within one year of the occupation date or such further period as may be agreed in writing between the parties then either party shall, on written notice to the other be entitled to elect that:
- 13.5.1 this sale shall terminate;
- 13.5.2 the seller refund the purchaser the amount of the deposit referred to in 8 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;
- 13.5.3 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 so vacates all amounts set out in 21 and 15 of the schedule shall be payable as provided for herein;
- 13.6 The purchaser shall accept transfer of the unit subject to:

- 13.6.1 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;
  - 13.6.2 such servitudes as may be applicable to the land and/or the building;
  - 13.6.3 such conditions reservations and servitudes contained or referred to in the title deed relating to the land;
  - 13.6.4 the rules of the scheme as envisaged in 9.1.4; and
  - 13.6.5 the provisions of this agreement.
- 13.7 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 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 approved by the Surveyor General by more than 5%, the purchase price shall automatically be increased or decreased by an amount calculated by multiplying the excess over the abovementioned 5% by a rate per square metre determined by dividing the purchase price in 7 by the area of the section in 4 of the schedule. Notwithstanding the aforesaid, either party shall be entitled within 10 days of approval of the said sectional title plan, on written notice to the other, to cancel this agreement in the event that the said measurements differ by more than 15% from those reflected on the approved sectional plan.
- 13.8 The area and dimensions of the section as reflected in 4 of the schedule is approximate. The seller shall make all reasonable efforts to ensure that the section is completed substantially in accordance herewith.
- 13.9 In the event that the purchase price of the unit is increased as provided for in 13.7, 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.

#### 14. **Appointment of manager**

The seller shall be entitled to and the purchaser shall be obliged to, if so required by the seller, as soon as possible after opening of the sectional title register, to procure the appointment by the body corporate of a professional manager in respect of the building and land in terms of the rules.

#### 15. **Default**

15.1 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 deposit as provided for in clause 8 of the schedule) or commits any other breach of any of the terms and conditions of this agreement or of the rules, 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 10 days of despatch of written notice per prepaid registered or certified post or delivery thereof by hand calling upon the purchaser so to do:

15.1.1 to cancel this agreement, retake possession of the unit and:

15.1.1.1 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

- 15.1.1.2 claim payment of all arrear payments then due and retain all payments already made by the purchaser to the seller prior thereto, as rouwkoop or as a penalty or as liquidated damages; or
- 15.1.1.3 to claim immediate payment of the full balance of the purchase price interest and all other amounts payable by the purchaser in terms of this agreement against tender of transfer by the seller of the unit to the purchaser.
- 15.2 If this agreement is cancelled as hereinbefore provided, the purchaser and all persons claiming a right of occupation through the purchaser, shall forthwith be obliged to vacate the unit and to deliver it to the seller. No lease or other right of occupation in favour of the purchaser shall be created or come into existence by virtue of this agreement.
- 15.3 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.
- 15.4 Should this agreement be cancelled in terms of this clause 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.

**16. Mortgage finance/suspensive condition**

- 16.1 This agreement is (provided the amount for which the loan required in 9 of the schedule has been duly completed) subject to the condition that the purchaser (or the seller or its agent, if any, on the purchaser's behalf) is able to raise a loan upon the security of a first mortgage bond to be passed over the unit for a sum of not less than the amount shown in 9 of the schedule. Such bond shall be substantially on the same terms and conditions as bonds granted by any bank or other financial institution

in respect of similar properties and for purchasers of a similar financial standing. This condition shall be deemed to have been fulfilled upon receipt by the seller or the agent of written advice by the lender whether to the seller, to the seller's agent or to the purchaser, that an offer for finance to the purchaser has been accepted by the purchaser notwithstanding that it may only be possible to formally finalise the loan once the sectional plans have been approved.

- 16.2 In the event that the aforesaid loan cannot be raised as in 16.1 by not later than the date in 11 of the schedule, provided the time period 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, subject to the provisions of 16.3, lapse and no longer be of any force or effect, in which event the purchaser hereby agrees that a sum equivalent to 5% of the deposit be retained by the seller as an agreed compensation for all costs incurred by the seller during the period of the suspensive condition. The sum equivalent to 5% of the deposit shall be automatically deducted from the deposit and the balance of the deposit together with interest thereon shall be repaid to the purchaser.
- 16.3 The purchaser undertakes to use the purchaser's best endeavours in order to raise the aforesaid loan and furthermore undertakes to sign all such documents as are reasonably necessary for this purpose. The purchaser warrants that he has sufficient income to obtain the bond in the amount indicated.
- 16.4 In the event, after the fulfilment of the suspensive condition in 16.1, the final grant of a loan is withdrawn by the relevant financial institution irrespective of the reason for such withdrawal, the purchaser shall remain bound to the terms and conditions of this agreement and shall, within 30 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.
- 16.5 The purchaser shall be entitled, on written notice to the seller, to accept a final grant of the loan in an amount less than the amount in 9 of the schedule, provided the purchaser does so in writing prior to the expiry of the period in 11 of the schedule read with 16.2 above provided that 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.

**17. 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.

**18. Suretyship**

Should the purchaser be a company or close corporation or trust or should the purchaser have nominated a third party as purchaser in terms of 19, the signatory to this agreement warrants that he is duly authorised to enter into this agreement on behalf of the company or close corporation or trust as the case may be and hereby binds himself as surety and co-principal debtor in favour of the seller for all the obligations of the purchaser and the nominated purchaser in 19 if applicable in 19 of this agreement (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 signatory/surety acknowledges he knows and understands.

**19. Resolutive condition (nomination clause in terms of Section 5(2) of the Transfer Duty Act)**

19.1 This agreement is subject to the resolutive condition that the purchaser may nominate a third party purchaser ("the nominated purchaser") under this agreement as follows:

19.1.1 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;

19.1.2 both the nomination and the nominated purchaser's acceptance of the nomination must be in writing and must be delivered to the seller within 60 days from date of signature hereof (or such extended date as the seller may advise the purchaser in writing) failing which the right to nominate will lapse and the original purchaser will remain bound as purchaser under this agreement;

19.1.3 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 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:

- 19.1.3.1 reference to the date of this agreement will continue to refer to this date and not to the date of the new agreement;
- 19.1.3.2 the deposit, if any, paid by the original purchaser will be refundable by the seller to the original purchaser on payment by the nominated purchaser of the new deposit, provided that the nominated purchaser may pay the new deposit to the original purchaser in discharge both of the nominated purchaser's liability to pay the new deposit to the seller and the seller's liability to refund the old deposit to the original purchaser;
- 19.1.3.3 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.
- 19.1.4 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.
- 19.1.5 the original purchaser will, as an entirely new and separate obligation, 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 knows and understands.
- 19.2 It is recorded that the agent has agreed that if a new sale to the nominated purchaser comes into existence pursuant to this clause, commission will only be payable to the agent on the new sale to the nominated purchaser and not on the sale to the original purchaser which has fallen away.



## **20. Sale prior to transfer**

- 20.1 The purchaser shall not conclude an agreement of sale in respect of the unit prior to transfer save with the prior written consent of the seller. The purchaser shall, in seeking the aforesaid prior written consent of the seller, furnish the seller with details of the proposed purchaser with any other information as may be reasonably requested by the seller for such purpose. Should the seller grant such consent, the purchaser acknowledges that it shall not be absolved, in any way, from its obligations in terms of this agreement and in particular that the purchaser is obliged to take transfer of the unit pursuant hereto. The seller may grant consent to the aforesaid sale and shall be entitled, in granting such consent, to stipulate that the purchaser appoint either the seller or the seller's approved sales agents for purposes of the marketing and procuring a purchaser for the unit and, further, simultaneous transfer of the unit to the purchaser's third party purchaser may only, in the sole discretion of the seller be permitted provided such transfer is attended to by the seller's conveyancers and further provided that such simultaneous transfer in no way delays the transfer of the unit from the seller to the purchaser.
- 20.2 The purchaser acknowledges that due to the complex nature of the development scheme and in particular that is a mixed-use scheme to be developed in phases over a number of years, any property broker or estate agents to be appointed by the purchaser for purposes of the re-sale of the unit will require a specialised and intimate knowledge of the scheme. In the circumstances and until the seller has registered the sectional plan of extension in respect of the final phase of the scheme as envisaged in 25, the purchaser shall only appoint property brokers or estate agents as accredited by the seller from time to time. The seller shall be entitled, on transfer of the unit to the purchaser to incorporate the provisions of this 20.2 into the title deeds of the unit, in a format acceptable to the Registrar of Deeds.

## **21. Selection of finishes and variations**

- 21.1 The purchaser shall not be entitled and the seller shall not be obliged to effect any variations whatsoever to the schedule of finishes annexed hereto provided that the purchaser may be required, from time to time, to make particular finish selections as provided for in clause 21.2 below.

21.2 The purchaser shall, within 45 days of signature hereof be obliged to select particular finishes for the unit in accordance with annexure 6. In the event that the purchaser fails, within 45 days of signature hereof to select the particular finishes as aforesaid, the architect shall, on the purchaser's behalf, make such finish selection which selection shall be final and binding on the purchaser.

21.3 Any variation to the specifications and/or schedule of finishes shall be in writing and shall provide that the purchaser pay to the seller, on signature of such variation agreement, the full agreed cost of such variation. No agreement varying the specification and/or schedule of finishes shall be valid and binding unless reduced to writing and signed for on behalf of the parties.

## 22. **Agents commission**

The purchaser warrants that it was introduced to the seller or to the unit by the agent and that the agent was the effective cause of the sale.

## 23. **Mixed use development**

23.1 The purchaser acknowledges that the zoning of the land entitles the seller to develop the buildings incorporating both the residential units and non-residential units as indicated on the mixed use plan annexed as annexure 8, including but not limited to.

23.1.1 a multi-storey parking basement;

23.1.2 retail units including restaurants, shops and a gym;

23.1.3 other non-residential or related non-residential units including an hotel; and

23.1.4 for residential units.

## 24. **Water, gas and electricity**

24.1 All charges for water consumed in the residential units will be shared by owners of the residential units in accordance with their participation quotas and likewise all charges

in respect of water consumed in the non-residential units will be shared by owners thereof in accordance with their participation quotas.

- 24.2 Separate meters will be installed internally to ensure that water charges for consumption in the non-residential units are kept separate from the charges for water and consumption in the residential units.
- 24.3 The gas and electricity consumed in each unit, whether residential or non-residential, will be separately metered, whether by pre-paid meter or otherwise.
- 24.4 Over and above the individual consumption of electricity, all lighting and general electric power supply to the residential units including any airconditioning plant, mechanical ventilation and any technical or other equipment dedicated to the residential units, will be metered separately from the lighting and general electric power supply to the non-residential units. Similarly, the power supply to any airconditioning plant, mechanical ventilation pumps or any other equipment for the non-residential units will be metered separately. The electricity so metered for the residential units will be shared between the residential units in accordance with their participation quotas and the same will apply *mutatis mutandis* to that metered for the non-residential units.

25. **Phased scheme**

It is recorded that the seller will develop the scheme in phases as contemplated in Section 25 of the Act and will reserve, on the opening of the Sectional Title Register, the right, in its favour, to erect and complete, from time to time, for its own account, further buildings on specified parts of the common property as indicated on annexure 4 read with annexure 8 and to divide those buildings into sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners thereof.

26. **Arbitration**

- 26.1 Save in respect of urgent relief, whether of an interim or final nature, any difference or dispute arising out of this agreement including (but without limiting the generality of the foregoing):

- 26.1.1 the interpretation thereof;
- 26.1.2 the rectification thereof;
- 26.1.3 the effect thereof;
- 26.1.4 the parties' respective rights or obligations thereunder;
- 26.1.5 a breach thereof;
- 26.1.6 the termination thereof;
- 26.1.7 and/or any matter arising out of the termination thereof;

shall be subjected to and decided by arbitration in the manner set out in this clause 26.

- 26.2 The arbitration referred shall be held in accordance with the expedited rules of the Arbitration Foundation of Southern Africa or its successor in office or title.
- 26.3 The arbitrator shall be a senior advocate at the Johannesburg Bar appointed by the senior director of the seller's conveyancers.
- 26.4 This clause 26 shall constitute the irrevocable consent of the parties hereto to the arbitration proceedings in terms hereof, and neither party shall be entitled to withdraw therefrom or to claim at any such arbitration proceedings that it is not bound by this paragraph

## 27. **Resolutive condition**

- 27.1 The purchaser acknowledges that the viability of the scheme 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 determine, in its sole and absolute discretion that the scheme is not viable and on written notice, to the purchaser, resile from this agreement.

27.2 The seller shall be entitled to exercise its rights in 27.1 during the period up to and including 30 August 2015 wherafter the seller's rights shall lapse.

27.3 In the event of the seller exercising its rights in 27.2 timeously, this agreement shall resolve and shall no longer be of any force or effect and the deposit together with all interest thereon shall be refunded to the purchaser.

## 28. **Miscellaneous matters**

### 28.1 **addresses and notices**

28.1.1 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.

28.1.2 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.

28.1.3 Any notice given in connection with this agreement shall:

28.1.3.1 be delivered by hand; or

28.1.3.2 be sent by prepaid registered post; or

28.1.3.3 be sent by telefax or email (if the domicilium includes a telefax number or email address),

28.1.4 to the *domicilium* chosen by the party concerned.

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

28.1.5.1 if delivered, on the date of delivery;

28.1.5.2 if sent by post, 7 days after posting;

28.1.5.3 if sent by telefax or email, on the date that the telefax or email is transmitted provided that such date shall be a business day i.e. shall not be over a weekend or on a public holiday.

## 28.2 **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.

## 28.3 **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.

## 28.4 **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.