



ANNEXURE 1

TERMS AND CONDITIONS OF SALE

1 PURCHASE AND SALE

- 1.1 The seller hereby sells to the purchaser, who hereby purchases, the unit for the purchase price and on the terms and conditions set out in the agreement. It is hereby recorded that, as at the signature date, construction of the scheme will either not yet have commenced or will have commenced but will not yet have been completed. The unit shall be constructed in accordance with the scheme layout plan and the floor plan read together with the specifications and schedule of finishes.
- 1.2 The seller shall not be under any obligation whatsoever and at any point in time to undertake or agree to carry out any changes to the unit.
- 1.3 The precise boundaries of the unit forming part of the unit hereby sold shall be as depicted upon the sectional plans once registered.

2 DEFINITIONS

- 2.1 In this agreement unless otherwise indicated or unless the contrary intention shall appear the following terms shall have the meanings assigned to them hereunder, namely:
 - 2.1.1 **“Act”** means 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;
 - 2.1.2 **“agent”** is Kent Gush Properties Pty Ltd having registration number 2008/025230/07.
 - 2.1.3 **“agreement”** means the purchase and sale agreement containing the Schedule of Particulars, this annexure 1 and all additional annexures annexed hereto being:
 - 2.1.3.1 Annexure 2 - the specifications for the development;
 - 2.1.3.3 Annexure 3 – the Site Development Plan;
 - 2.1.3.4 Annexure 4 – the unit plan;
 - 2.1.3.5 Annexure 5 – the elevation plan for the unit;
 - 2.1.3.6 Annexure 6 – optional extras.
 - 2.1.4 **“architect”** means Daffonchio and Associates Architects
 - 2.1.5 **“beneficial occupation”** means the unit is complete in that it is habitable, an occupancy certificate has been issued and save for work to be done in terms of clause 23 all the work in the unit has been completed;

- 2.1.6 “**body corporate**” means the body comprising of units owners which comes into existence on transfer of the first unit in the Scheme;
- 2.1.7 “**building contractor**” means Pentagon Projects CC, Registration Number 2000/055523/23, a home builder duly registered with the National Home Builders Registration Council;
- 2.1.8 “**buildings**” means the buildings to be erected by the building contractor on Erf 151 Sandown Extension 9, substantially in accordance with the plans and to be known as **4 On Gayre**;
- 2.1.9 “**common property**” means the land and such part of the buildings as are not included in any unit;
- 2.1.10 “**completion**” means completion by the Developer of the unit in that all wet work in respect thereof has been completed and that 80% of all work in the development has been completed, including the surrounding wall, the paving and the entrance to the complex;
- 2.1.11 “**developer**” means the seller or its successors in title or assigns having the rights and powers conferred on a developer by the Act;
- 2.1.12 “**exclusive use areas**” means the right and privilege to the exclusive use and occupation in respect of any parking bays, garden, store room or staff quarters assigned to the unit, in terms of the amended Management Rules of the Scheme and as depicted on the sketch plan to be attached to the said Management Rules.
- 2.1.13 “**homeowners association**” means the current homeowners association, Westbrooke Road Closure NPC, of which the body corporate will be a member;
- 2.1.14 “**interim levy**” means the purchaser’s share, calculated in accordance with the anticipated participation quota of the scheme, of the expenses incurred by the seller for the administration of the scheme as set out more fully in clause 8.6
- 2.1.15 “**manager**” means the managing agent as appointed by the developer;
- 2.1.16 “**occupation date**” means the date of registration of transfer subject to clause 6 below, the date stated in the 30 (thirty) day’s notice to be given by the seller notifying the purchaser of the confirmed occupation date.
- 2.1.17 “**participation quota**” means a percentage expressed to 4 decimal points and arrived at by dividing the floor area, to the nearest square metre, of the unit by the floor area, to the nearest square metre, of the scheme;
- 2.1.18 “**property**” means collectively the land and the building or buildings;
- 2.1.19 “**schedule of particulars**” means 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;
- 2.1.20 “**scheme**” means **4 On Gayre**;
- 2.1.21 “**sectional title register**” means a sectional title register in respect of the land and the building/s comprised in the scheme from time to time;

2.1.22 **“seller’s conveyancers”** means Kampel Kaufmann Attorneys, Attention Michelle Chavkin, Telephone 011 483 0966, Telefax 011 483 0337, e-mail michelle@kkaalaw.co.za;

2.1.23 **“the signature date”** means the date upon which the last of the purchaser and the building contractor and the seller signs this agreement.

2.1.24 **“unit”** shall have the meaning defined in the Act and with regard to the unit hereby sold shall mean any 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.

2.2 In this agreement, unless the context otherwise requires:

2.2.1 words and expressions used in the Act shall have the same meanings as have been assigned to them in terms of the Act;

2.2.2 the masculine shall include the feminine and vice versa and they shall both include neuter;

2.2.3 the singular shall include the plural and vice versa;

2.2.4 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.

3 **SELLER’S RIGHT TO TERMINATE**

3.1 It is recorded that a South African Registered Bank is the intended financier of the development.

3.2 The seller will have the right, in the event that the finance for the development of the scheme, to be provided by the intended financier, referred to in clause 3.1 is not granted, or having been granted, is withdrawn for any reason or is granted subject to terms and conditions unacceptable to the seller, to declare this agreement cancelled in which event:

3.2.1 the seller shall notify the purchaser of its election to exercise such right by way of letter or fax or e-mail to any of the addresses or numbers chosen by the Purchaser in respect thereof in this agreement;

3.2.2 any monies paid by the purchaser in terms of this agreement will immediately be refunded to the purchaser together with interest accrued thereon;

3.2.3 other than as aforesaid, neither party will have any further claim against the other in terms hereof or arising from the termination of this agreement.

4 **THE HOMEOWNERS ASSOCIATION**

The purchaser hereby acknowledges the existence of the homeowners association in the suburb in which the scheme is situated and of which the body corporate will be a member.

5 **PURCHASE PRICE**

The purchase price (including VAT) of the unit payable by the purchaser to the seller is the amount referred to in clause 7 of the schedule, which amount shall be payable as follows:

- 5.1 the deposit referred to in clause 8 of the schedule shall be held in trust by the seller's conveyancers and invested in an interest bearing trust account in terms of Section 78(2A) of the Attorneys Act, interest accruing to the purchaser. The deposit and balance of purchase price will be 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 as and when requested will result in the deposit not earning interest for the purchaser;
- 5.2 the balance of purchase price, where the purchaser is not obtaining a loan, shall be secured by bankers guarantees acceptable to the seller and delivered to the seller's conveyancers and / or the balance of the purchase price in clause 10 of the Schedule shall be paid into trust with the seller's conveyancers (and be invested in terms of clause 5.1) within 14 days from written request by the seller's conveyancers, which request will be made on submission of the sectional title plans to the Surveyor General's offices
- 5.3 The amount of the loan in clause 9 of the schedule shall be secured by bankers guarantees acceptable to the seller and delivered to the seller's conveyancers within 14 days from written request by the seller's conveyancers, which request will be made on submission of the sectional title plans to the Surveyor General's offices.
- 5.4 Should the payment and / or the guarantees referred to in this clause 5 not be paid or delivered timeously as the case may be, the purchaser shall be liable for and shall pay without demand to the seller the mora interest in clause 20 of the schedule.
- 5.5 It is recorded that the purchase price and any other amounts payable by the purchaser to the seller pursuant to this agreement are expressed as being inclusive of VAT. In the event that the standard rate of VAT changes from the existing 14%, the purchase price and other amounts as may be payable pursuant to this agreement shall automatically be increased or decreased as the case may be.

6 OCCUPATION

- 6.1 Occupation of the unit shall be given to and taken by the purchaser on the occupation date from which date the profit and loss in the unit shall pass to the purchaser. The seller however does not warrant that the unit will be ready for occupation on the occupation date and should the unit not be available for occupation on the occupation date the purchaser shall have no claim against the seller arising from such late occupation.
- 6.2 The purchaser shall not be entitled to take occupation of the unit unless the purchaser has, to the satisfaction of the seller's conveyancers, secured the full purchase price and signed all transfer documentation.
- 6.3 If the seller is unable, for any reason whatsoever, to give beneficial occupation of the unit to the purchaser on the intended occupation date, the purchaser shall accept occupation of the property on the earliest date thereafter on which the seller, by written notice of not less than 30 (thirty) days to the purchaser, is able to give beneficial occupation and such subsequent date shall be deemed, for all purposes, to be the occupation date.

- 6.4 Save as aforesaid, the purchaser shall have no claim of whatsoever nature or howsoever arising against the seller for failure for any reason to give occupation to the purchaser on the occupation date.
- 6.5 In the event of any dispute as to when beneficial occupation of the unit may be given, a certificate by the architect (acting as expert and not as an arbitrator) certifying that the property is ready for beneficial occupation shall be final and binding on the parties.
- 6.6 The purchaser acknowledges that, on the occupation date, the buildings may be incomplete and that occupants of the unit may consequently suffer inconvenience from building operations and from noise and the dust resulting there from and that the purchaser shall have no claim whatsoever against the seller by reason of any such inconvenience.
- 6.7 The purchaser shall not be entitled to demand any amendments or repairs to the unit prior to the date of occupation where his/her/its rights in terms of clause 23 shall apply.

7 OCCUPATIONAL INTEREST

- 7.1 On and with effect from the occupation date up to and including the date of transfer the purchaser shall pay to the seller, monthly in advance, occupation interest at the occupational interest rate reckoned on the purchase price and set forth in clause 15 of the schedule of particulars
- 7.2 The purchaser shall be liable for occupational rent irrespective of whether he takes occupation or not and shall not be entitled to withhold the occupational interest or any part in respect of the work to be done as provided for in clause 23.
- 7.3 It is hereby agreed that no tenancy shall be created by the purchaser taking occupation prior to the date of registration of transfer.

8 CONDITIONS OF OCCUPATION

- 8.1 From the occupation date, the Purchaser shall, until the date of registration of transfer comply with the provisions of the Act and of the rules which will be applicable to the scheme on the basis that the Seller shall, until the body corporate comes into being, enjoy the same rights and powers as the body corporate and the trustees enjoy in terms of such rules.
- 8.2 The purchaser shall not be entitled to make any alterations or additions to the unit prior to transfer without the prior written consent of the Seller, which consent shall not be unreasonably withheld;
- 8.3 The purchaser shall be obliged to maintain the unit in a fit and proper condition, and to keep it neatly and properly painted and glazed. The purchaser shall further be obliged to maintain and from time to time replace, as may be necessary, all the interior fittings, electrical and service installations of the unit, and shall be obliged to keep the walls, floors and ceilings of the unit in proper repair, and generally to undertake all such maintenance and repairs not envisaged in clause 23;

- 8.4 The purchaser shall not be entitled to divide the unit for the purpose of selling, donating or in any other manner alienating or disposing of the purchaser's rights of occupancy or any portion thereof to any other person;
- 8.5 The purchaser shall be entitled, from date of occupation, to let the unit to a third party. The purchaser:
- 8.5.1 Undertakes to include in any lease agreement entered into between the purchaser and his/her/its tenant/occupier, a clause stipulating that such tenant/occupier will be bound by the rules of the body corporate;
 - 8.5.2 undertakes that he/she/it, his/her/its tenant and/or occupier will duly comply with all the rules;
 - 8.5.3 hereby indemnifies the Seller against and agrees to be held liable for, any damages or loss that the Seller may suffer as a result of the Purchaser's tenants or occupier's failure to comply with the rules;
 - 8.5.4 hereby agrees to accept liability and consents to be liable, for the purposes of this clause 8, for any legal costs on an attorney and own client scale, incurred by the Seller or the managing agent to enforce the rules against the Purchaser and/or his tenant/occupier including the legal costs of evicting the tenant/occupier.
- 8.6 The purchaser shall, from the occupation date until date of transfer and irrespective of whether or not the purchaser takes physical occupation of the unit, be liable for the interim levy raised, if applicable, in respect of rates, refuse and sewer charges for the proposed unit and for the purchaser's undivided share in the common property. In addition, the purchaser shall be liable from date of occupation for all water and electricity consumed in respect of the unit as well as the purchaser's proportionate share of the water and electricity consumed in the ordinary course for the proposed common property area.
- 8.7 The purchaser shall not use the unit or the common property in such manner as to cause any damage there or to the other units in the building, nor shall he/she/it store or permit the storage therein of any inflammable material which may vitiate any policy of insurance in respect of the building or which is likely to have the effect of increasing the premium payable in terms of any such insurance policy.
- 8.8 The seller either personally, or through its employees or agents shall be entitled at all reasonable times to have access to the unit for the purpose of inspecting same or to carry out any maintenance or repairs which the seller may in terms hereof be obliged or entitled to perform, whether such repairs relate to the unit or not, and the purchaser shall have no claim against the seller for any disturbance in his/her/its occupation arising out of the exercise by the seller of the rights hereby conferred.
- 8.9 the purchaser may use and enjoy the common property but shall do so in such manner so as not to interfere with the use and enjoyment thereof by other unit holders or other persons lawfully upon the property. The purchaser shall ensure that his/her/its tenants, invitees and employees comply with the provision of this clause;
- 8.10 the purchaser shall not use his/her/its unit or permit same to be used in such manner or for such purpose as shall cause a nuisance to any occupier of a unit or the common

property or interfere with the amenities of the property or so as to breach any law, ordinance or by-law or any town planning scheme in force or to come into force in relation to the land;

- 8.11 The seller hereby undertakes, pending the establishment of a Body Corporate –
- 8.11.1 to keep the building insured for replacement value against fire and all other risks against which the seller may deem it prudent to insure, and to pay the premiums falling due thereon from time to time.
 - 8.11.2 to maintain the property and to keep it in a state of good and serviceable repair, including any structural repairs to the improvements erected there on;
 - 8.11.3 to keep in a state of good and serviceable repair and maintain the plant, machinery, fixtures and fittings used in connection with the common property;
 - 8.11.4 to maintain and repair all pipes, wires, cables and ducts existing on the land or in the buildings and capable of being used only in connection with the enjoyment of more than one unit 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 buildings (including the unit) and/or the land even though the seller is not obliged to effect such repairs in terms of this agreement;
- 8.12 Notwithstanding anything to the contrary contained in this agreement and pending the establishment of the Body Corporate as aforesaid it is hereby agreed that in the event of the seller being unable to effect transfer by reason of either destruction of the building or expropriation of the land or for any other reason whatsoever save for such reason as may be attributed to the fault of the seller, or in the event of destruction of the unit to the extent that the purchaser is deprived or likely to be deprived of beneficial occupation thereof for a period of 12 months or longer, either party shall thereupon be entitled to resile from the agreement.

9 COSTS OF TRANSFER/BOND REGISTRATION

- 9.1 The deposit/s, instalments and all other amounts payable to the seller in terms of this agreement shall be payable free of all bank costs at the seller's address or at such other place within South Africa as the seller may from time to time in writing direct.
- 9.2 Each payment made in terms of this agreement and any interest earned on the deposit or other monies paid to the seller's conveyancers in terms of this agreement shall be allocated first to occupational rental, 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.
- 9.3 The seller shall be liable for and shall pay all costs of and incidental to the transfer of the unit to the purchaser including all conveyancing fees, VAT thereon and other incidental charges. Transfer shall be attended to by the seller's conveyancers.
- 9.4 The purchaser will be liable for all bond registration costs and bank charges if any.

- 9.5 Transfer of the unit shall be effected by the seller's conveyancers. The purchaser shall provide all documentation and information, sign all documents and do whatever may be required by the said conveyancers within 7 days of request.
- 9.6 The purchaser hereby warrants that his/her/its tax affairs are in order and that SARS will be in a position to issue the necessary Transfer Duty Exemption certificate for purposes of the transfer of the unit on the request therefore.

10 DISCREPANCIES

- 10.1 If the unit, in its completed state, in all material respects and characteristics corresponds to the unit which a reasonable purchaser would be entitled to expect based on the description of the unit as set out in the annexures hereto, the purchaser shall have no claim against the seller or the building contractor for any discrepancies of whatsoever nature between the unit as depicted in the annexures on the one hand and the unit in its completed state on the other hand.
- 10.2 Should a dispute arise between the parties as to the completed state of the unit and/or the exclusive use areas, then such dispute should be determined by the architect, acting as an expert and not as an arbitrator and his/her determination shall, in the absence of manifest error or fraud, be final and binding on the parties. The architect's determination shall include a determination as to which of the parties shall bear liability for payment of the architect's costs in making his/her determination.

11 PURCHASER'S DEFAULT

- 11.1 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 in clause 8 of the schedule) or commits any other breach of any of the terms and conditions of this agreement (or of any of the rules and regulations to which the purchaser is subject in respect of the land and/or building, including the unit), 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 prepaid registered or certified post or delivery thereof by hand calling upon the purchaser so to do:

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

- 11.1.1.1 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

- 11.1.1.2 claim payment of all arrear payments then due and retain all payments already made by the purchaser to the seller prior thereto, as rouwkoop for damages as agreed in clause 5 of the schedule of particulars; or
- 11.1.2 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.
- 11.2 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.
- 11.3 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.
- 11.4 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 unit save only as otherwise provided by law.

12 MORTGAGE FINANCE

- 12.1 This agreement is 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, within the time frames stipulated in clause 12 of the schedule of particulars, 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 clause 10 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 written advice by the lender to the seller or the purchaser that it is prepared to make the loan notwithstanding that funds might not immediately be available and notwithstanding that the final approval of the loan cannot be given until the sectional plans have been approved.
- 12.2 The purchaser undertakes to use his/her/its best endeavours 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/she/it earns sufficient to obtain the bond in the amount indicated.
- 12.3 The suspensive condition in 12.1 is inserted for the benefit of the purchaser who shall be entitled, at any time prior to the time period for the fulfilment thereof, to waive the benefit thereof, on written notice to the seller.
- 12.4 Should the in principal approval be for a lesser amount than the amount for in 9 of the schedule of particulars, the purchaser shall be entitled to, on written notice to the seller or it's agent, accept the loan amount set out in the in principal approval, which notice

must be delivered to the seller prior to the date in 12 of the schedule of particulars, whereafter this agreement shall come into full force and effect.

12.5 The shortfall being the difference between the loan amount and the actual amount approved shall be secured by bankers guarantees acceptable to the seller and delivered to the seller's conveyancers or paid into trust with the seller's conveyancers (and be invested in terms of clause 5.1) within 14 days from written request by the seller's conveyancers, which request will be made on submission of the sectional title plans to the Surveyor General's offices.

12.6 In the event that the loan approved, at any time prior to transfer, be withdrawn, whether on instruction from the purchaser or for any other reason by such financial institution, it will be regarded that the suspensive condition was met at a prior date and the purchaser shall continue to be bound by the provisions of this agreement and shall secure the loan amount and do so by no later than 10 days from withdrawal of the loan.

13 **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.

14 **SURETYSHIP**

Should the purchaser be a company or close corporation or trust or should the purchaser have nominated a company or close corporation or trust as co-purchaser in terms of clause 15, the signatory to this agreement warrants that she/he is duly authorised to enter into this agreement on behalf of the company or close corporation and hereby binds himself as surety and co-principal debtor in favour of the seller for all the obligations of the purchaser in terms 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.

15 **RESOLUTIVE CONDITION (NOMINATION CLAUSE IN TERMS OF SECTION 5(2) OF THE TRANSFER DUTY ACT)**

15.1 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:

15.1.1 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;

15.1.2 both the nomination and the nominated purchaser's acceptance of the nomination must be in writing and must be delivered to the seller within 14 days of signature of this agreement (or such extended date as the parties may agree in writing) failing which the right to nominate will lapse and the original purchaser will remain bound as purchaser under this agreement;

15.1.3 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:

- 15.1.3.1 reference to the date of this agreement will continue to refer to this date and not to the date of the new agreement;
 - 15.1.3.2 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;
 - 15.1.3.3 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.
- 15.1.4 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.
- 15.1.5 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 knows and understands.
- 15.2 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.

16 **WARRANTIES**

The seller undertakes to cede all warranties in respect of the building, more specifically, the roof of the building to the Body Corporate.

17 **SALE PRIOR TO TRANSFER**

The purchaser shall not, save with the prior written consent of the seller, sell the unit prior to transfer. Consent, if any, shall not absolve the purchaser in any way from any of its obligations in terms hereof and in particular the obligation to take transfer of the unit pursuant hereto. Simultaneous transfer of the unit to the purchaser's third party purchaser may be permitted at the sole discretion of the seller and only provided such simultaneous transfer in no way delays the transfer of the unit to the purchaser.

18 COMMISSION

The seller shall pay the Agent commission in terms of its mandate, which commission shall be deemed to be earned on the conclusion of this agreement, and should the agreement be subject to a suspensive condition, then upon fulfilment of such condition shall be payable on the registration of transfer of the property into the Purchaser's name. Should this agreement be cancelled for any reason whatsoever or should transfer of the property not be registered for any reason whatsoever, or should the Purchaser and / or Seller breach this agreement, then the Agent may claim Estate Agent's commission from the defaulting party.

19 ADDRESSES AND NOTICES

19.1 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.

19.2 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.

19.3 Any notice given in connection with this agreement shall:

19.3.1 be delivered by hand; or

19.3.2 be sent by prepaid registered post; or

19.3.3 be sent by telefax (if the domicilium includes a telefax number); or

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

to the domicilium chosen by the party concerned.

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

19.4.1 if delivered, on the date of delivery;

19.4.2 if sent by post, 7 days after posting;

19.4.3 if sent by telefax, on the day that the telefax is transmitted

19.4.4 if sent by email, on the day the email is sent.

20 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 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.

22 ADDITIONAL SUSPENSIVE CONDITIONS

This entire agreement shall be subject to the suspensive condition that the development plan is approved by the relevant local authority.

This condition is inserted for the benefit of the seller only and can be waived and/or extended by it at any time in writing prior.

23 PATENT DEFECTS

23.1 The expression "Patent Defects" as it appears in this clause 23 and elsewhere in this agreement, means all and any incomplete work in the unit and all and any faults or defects in the unit which are as a result of the defective design and/or of the use of defective materials and/or defective workmanship and which:

23.1.1 said incomplete work and/or faults and/or defects reasonably impair the use of the unit as a residential dwelling,

23.1.2 are visible upon a reasonable inspection of the unit,

23.1.3 do not constitute a major structural defect as contemplated in clause 27.2, and

23.1.4 are reasonably required to be remedied in order to render the unit reasonably suitable for occupation as a residential dwelling.

23.2 Provided that the conveyancers shall have secured payment of the purchase price, the seller (or its representative) and the purchaser shall arrange to meet on an agreed date at the unit within 14 (fourteen) days after occupation date and there and then to jointly inspect the unit and compile a comprehensive written list of all any patent defects ("the defects list").

23.3 The seller (or its representative) and the purchaser shall both sign the defects list.

23.4 The seller and the building contractor shall, at their own cost, remedy the patent defects listed in the defects list within 20 (twenty) business days after the date on which the defect list was signed.

23.5 As soon as the patent defects in the defects list have been remedied the unit will be deemed to be finally completed.

23.6 The purchaser shall grant the necessary workmen and contractors reasonable access to the unit for the purpose of remedying the patent defects if the purchaser is in

occupation of the unit during the 20 day period during which the patent defects are to be remedied.

23.7 Should the purchaser fail to attend the said joint inspection of the unit or fail to grant access as contemplated in clause 23.6, then the purchaser shall be deemed to have acknowledged, as at the date of transfer, that:

23.7.1 no patent defects existed;

23.7.2 the seller is not under any obligation to remedy any patent defects.

23.8 In the event of any dispute as to whether the patent defects have been remedied a certificate by the scheme's architect (acting as expert and not as an arbitrator) certifying that the patent defects have been remedied shall be final and binding on the parties

23.9 Provided that the seller and the building contractor have remedied the patent defects listed in the defects list or the architect has determined that the unit is reasonably suitable for occupation, the purchaser shall within no more than 2 (two) business days after presentation of the letter of satisfaction, attend to signature thereof in the format required by the seller and/or the mortgagee, if applicable, wherein the purchaser unequivocally and unconditionally declares his acceptance of the unit as being complete.

24. **CERTIFICATES**

24.1 The seller shall, at its cost, procure the issue of:

24.1.1 an electrical certificate of compliance issued in accordance with the provisions of the Occupational Health and Safety Act No. 85 of 1993;

24.1.2 an occupancy certificate issued by the relevant local authority.

24.2 The seller shall deliver copies of the abovementioned certificates to the purchaser on the date of signature of the letter of satisfaction.

25. **LATENT DEFECT**

25.1 For the purposes of this clause 25, the expression "latent defects" shall mean all and any incomplete work in the unit and all and any faults or defects in the unit which are as a result of defective design and/or the use of defective materials and/or defective workmanship, and

25.1.1 which said incomplete work and faults or defects reasonably impair the use of the unit as a residential dwelling which:

25.1.1.1 existed at the time of the joint inspection of the unit mentioned in clause 23.2 but were not visible during the said inspection or if the joint inspection was not held by virtue of the purchaser having failed to attend same, would in any event not have been visible during the said joint inspection), and/or

25.1.1.2 in so far as the roof of the unit is concerned, becomes manifest or apparent within a period of 12 (twelve) months after the occupation date, and in so far as parts of the unit other than

the roof is concerned, becomes manifest or apparent within a period of 6 (six) months after the occupation date,

- 25.1.2 which do not constitute major structural defects contemplated in clause 27.2,
 - 25.1.3 which did not arise out of any misuse or abuse of the unit by the purchaser;
and
 - 25.1.4 which are reasonably required to be remedied in order to render the unit reasonably suitable for occupation as a residential dwelling.
- 25.2 The seller and the building contractor shall, at their cost, and within a reasonable period of time, rectify any latent defects in the unit, provided that:
- 25.2.1 the purchaser shall have given the seller notice of the latent defect within the time period stipulated in clause 25.1.1.2;
 - 25.2.2 the purchaser grants the relevant workmen and contractors reasonable access to the unit for the purposes of remedying the latent defect/s.

26 CONSTRUCTION OF THE UNIT

The seller shall be entitled to vary the plans and/or specifications and choice of finishes for the unit and/or the buildings (as referred to Annexures 2 – 6 annexed hereto) to such an extent as may, in the architect's opinion, be reasonably necessary to:

- 26.1 meet any requirements of any competent authority;
- 26.2 be necessary to provide for special features of the property;
- 26.3 provide for any special impediments such as water, sewerage or power supply to the property;
- 26.4 give effect, without detracting from the quality of the unit or the scheme, to any changes in materials, finishes or fittings which the Architect considers appropriate or where such materials, finishes or fittings may not be readily available;
- 26.5 obtain the approval of the sectional title development and to open the sectional title register including, provided the extent of the unit shall not vary by more than 5%;
- 26.6 vary the number/s allocated to the units and/or the gardens/storerooms/parking bays on the plans;
- 26.7 alter the name of the scheme.

27 DEFECTS IN STRUCTURE OF DWELLING

- 27.1 The seller warrants that the unit is enrolled with the National Home Builders Registration Council ("NHBRC") in accordance with the provision of the Housing Consumer Protection Measures Act No. 95 of 1998 ("HCPMA") .
- 27.2 For the purposes of this clause 27, the expression "major structural defects" shall mean a defect which gives rise or which is likely to give rise to damage of such severity that

it affects, or is likely to affect, the structural integrity of the unit and which requires complete or partial rebuilding of the unit or extensive repair work to it, subject to the limitations, qualifications or exclusions that are prescribed in terms of the HCPMA.

27.3 The seller and the building contractor warrant that:

27.3.1 the building plans pertaining to the unit will have been approved by the relevant local building authority having jurisdiction over the property by the occupation date;

27.3.2 the unit will be constructed in accordance with the said approved building plans;

27.3.3 the unit will be constructed in accordance with the NHBRC's technical requirements (as defined in the HCPMA);

27.3.4 subject to the limitations, qualifications and exclusions that may be prescribed in the HCPMA, they shall solely at their cost and within such period of time as may be reasonable (due regard being had to the nature and extent of the major structural defect in question) rectify any major structural defect in the unit caused by the non-compliance with the NHBRC's technical requirements (as defined by the HCPMA) provided that:

27.3.4.1 such major structural defects occur within a period of 5 (five) years from the occupation date;

27.3.4.2 the purchaser gives the seller notice of such major structural defects within the said 5 (five) year period, and

27.3.4.3 the purchaser grants the relevant workmen and contractors reasonable access to the unit for the purpose of remedying such major structural defects.

28 PASSING OF RISK

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

29 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.