

"4 on ANN"

AGREEMENT OF SALE

between

STONE LAND CASE 40 PROPRIETARY LIMITED

Registration No. 2016/345717/07

herein represented by Brian Azizollahoff in his capacity as director of the company duly authorised hereto by resolution
("the seller")

and

.....

("the purchaser")

INTRODUCTION

- a The seller is the owner of the Remaining Extent of Erf 4 Simba and has established a sectional title scheme on the said property. The seller, on opening the sectional title register, reserved the right to register a second phase of the scheme. The property herein sold constitutes a unit in the second phase of the scheme.
- b The seller hereby sells to the purchaser who purchases the unit as described herein and on the terms and conditions as set out in the schedule read together with annexures 1 to 4 annexed thereto being:
- annexure 1 - General conditions of sale
 - annexure 2 - Floor plan of the section (layout plan) including a key showing where the section is located in the building
 - annexure 3 - Site plan
 - annexure 4 - Specification and schedule of finishes

SCHEDULE TO AGREEMENT OF SALE

- | | | |
|----|---|---|
| 1 | Description of the land upon which the scheme is to be developed. | The Remaining Extent of Erf 4 Simba Township, Registration Division IR Province of Gauteng measuring approximately 3278 square meters. |
| 2 | Name of building/s to be erected on the land. | "4 on Ann" |
| 3 | Description of the section to be developed by the seller and sold to the purchaser in terms of this agreement and hereinafter referred to as "the section". | Section No as shown and more fully described in the plans annexed hereto marked annexures 2 and 3 read together with annexure 4. |
| 4 | Approximate measurement of the section. | square metres as measured to the median line of the dividing walls of such section. |
| 5 | Description of Unit | A unit comprising the section, together with an undivided share in the common property apportioned to the section in accordance with the participation quota. |
| 6 | Seller Details | Stone Land Case 40 Proprietary Limited |
| | Physical Address | Office 01314
34 Melrose Boulevard
Melrose Arch
2076 |
| | Postal Address | PostNet Suite 552
Private Bag X1
Melrose Arch
2076 |
| | E-mail: | brian@propertiq.co.za |
| 7. | Purchase price of the unit | R (including VAT) |

- 8 Deposit payable.
- 8.1 If the loan amount in 9, if applicable, is at least 80% of the purchase price in 7, and the purchaser is a South African resident, a deposit equivalent to 10% of the purchase price, being R....., shall be payable as follows:
- 8.1.1 R....., on signature hereof to the seller's conveyancers to be invested by them in an interest bearing trust account as provided for in 4.1 of annexure 1;
- 8.1.2 the balance of R..... on or before a date days from date of signature hereof to be paid to and invested by the seller's conveyancers as provided for in above;
- OR**
- 8.2 If the loan amount in 9, if applicable, is less than 80% of the purchase price in 7, and/or the purchaser is not a South African resident, a deposit equivalent to 20% of the purchase price, being R shall be payable as follows:
- 8.2.1 R....., on signature hereof to the seller's conveyancers to be invested by them in an interest bearing trust account as provided for in 4.1 of annexure 1;
- 8.2.2 the balance of R..... on or before a date days from date of signature hereof to be paid to and invested by the seller's conveyancers as provided for in above
- 9 Loan amount, to be secured by a mortgage bond to be registered over the unit. R.....
- 10 Balance of purchase price. Purchase price in 7, less the deposit in 8 and less the loan amount in 9, if applicable.
- 11 Date upon which an offer and in principle acceptance of the loan in 9 must be obtained. Within 30 days of signature of this agreement but subject to 16.3 of annexure 1.

- 12 Date when the balance of the purchase price in 10 and loan amount in 9 is to be secured. The balance of the purchase price shall be secured within 30 days of request in writing from the seller's conveyancers
13. Date upon which the seller will give transfer of the unit to the purchaser. After registration of the second phase of the scheme and against payment of the purchase price in 7.
- 14 Anticipated occupation date It is anticipated that the purchaser will be given and will take occupation of the section on 1 October 2021, but subject to the provisions of 7 of annexure 1.
- 15 Occupational levy payable to the seller from the occupation date to date of transfer. R..... per month.
- 16 Purchaser's domicilium address i.e. address where purchaser will accept service of legal documents. As reflected on the schedule headed "purchaser's details" on the final page of this schedule.
17. Areas of exclusive use to be allocated to the unit in the management rules in accordance with Section 10(7) and (8) of the Sectional Titles Schemes Management Act 8 of 2011. (a) open parking bay numbers to be determined;
(c) garden area adjoining the section as reflected if applicable;
- 18 Name & address of seller's conveyancers. Strauss Scher Attorneys
P O Box 786473
Sandton 2146
(ref : Mr R McCafferty/Gail Jansen)
Tel : 0027 11 883 9798
Fax : 0027 11 883 6661
[e-mail : gail@strausscher.co.za](mailto:gail@strausscher.co.za)
- 19 Penalty interest. 2% above the prime overdraft rate of Nedbank Limited from time to time.
- 20 Occupational Interest A monthly amount equivalent to 0.7% of the purchase price in 7 but subject to 5 of annexure 1.
- 21 Agent

PURCHASER'S DETAILS
(Purchaser's chosen domicilium in terms of 16 of this schedule)

Purchaser

Name :

Identity No.: / Registration No.: :

If natural person, are you married [YES/NO] :

If married, name and
 Identity No.: of spouse :

How are you married :
 (Antenuptial contract / in community
 of property / married other than by
 South African law)

Tax number :

Current residential address :

Current physical address :

Postal address :

E-mail address :

Telephone No. :

Cell No. :

Fax No. :

Signed at on 2020.

As Witness

1. _____ purchaser

2. _____
 spouse (assisting purchaser as far as
 needs be if married in community of
 property or if married other than by South
 African marriage where the husband was
 not domiciled in South Africa on the date
 of marriage)

Signed at on 2020.

As Witness

1. _____ seller _____

2. _____

ANNEXURE 1
GENERAL CONDITIONS OF SALE

August 2020
(Phase II)
("4 on Ann")

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

NOW THEREFORE IT IS AGREED THAT:

1. Definitions

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

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

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

1.1.3 "the architect" – means John Radford Architects or another independent professional architect or a project manager as may be nominated by the seller;

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

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

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

1.1.7 "the developer" - the seller or its successors in title or assigns and in the technical sense having the rights and powers conferred on a developer by the Act;

- 1.1.8 "the development" – means the buildings, developer and to be developed by the seller on the land in phases and comprising the scheme;
- 1.1.9 "the land" – means the land described in 1 of the schedule;
- 1.1.10 "the manager" - the managing agent appointed by the developer;
- 1.1.11 "Management Act"- means the Sectional Titles Schemes Management Act 8 of 2011;
- 1.1.12 "occupation date" – means the anticipated occupation date in 14 of the schedule but subject to 7.2;
- 1.1.13 "occupational levy" – means the occupational levy in 15 of the schedule;
- 1.1.14 "occupational interest" – means the occupational interest in 20 of the schedule;
- 1.1.15 "participation quota" – means the area of the section as a percentage, to four decimal places, to the total area of all the sections in the scheme as reflected in the schedule to the approved sectional plan of extension;
- 1.1.16 "phase" – means a phase of the scheme as envisaged in section 25 of the Act;
- 1.1.17 "the plans" – means annexure 2 and 3 to this agreement;
- 1.1.18 "the property" - collectively the land and the building or buildings;
- 1.1.19 "the purchase price" – means the amount in 7 of the schedule;
- 1.1.20 "revised date of occupation" – means the occupation date as may be revised by the seller in 7;
- 1.1.21 "the rules" - the rules of the body corporate in 9.1.4;
- 1.1.22 "the schedule" - shall mean the schedule prefixed to this agreement, forming part of the agreement of sale and which contains details of the unit sold, the purchase price and other details hereinafter referred to;

- 1.1.23 "the scheme" - the scheme as described in 2 of the schedule promoted by the developer in phases in respect of the land;
- 1.1.24 "the section" - the section described in 3 of the schedule and more fully indicated on the plans notwithstanding that the sectional plan of extension upon which it is shown or will be shown, may not yet be registered;
- 1.1.25 "sectional plan of extension" – means the sectional plan of extension in respect of the second phase of the scheme which the seller will procure be approved by the Surveyor General in respect of the buildings and which plan will be required by the Registrar of Deeds for purposes of transfer;
- 1.1.26 "the seller's conveyancers" – means the conveyancers referred to in 18 of the schedule;
- 1.1.27 "the specification and schedule of finishes" – means the specification and schedule of finishes to the section, being annexure 4;
- 1.1.28 "the originators"- means persons appointed by the seller to procure approval in principle for the loan in 9 of the schedule read with 16, if applicable;
- 1.1.29 "transfer" – means the registration of transfer of the unit to the purchaser in the office of the Registrar of Deeds;
- 1.1.30 "the unit" - shall mean the unit specified in the schedule notwithstanding that the sectional plan of extension upon which the section forming part of the unit is shown or is to be shown may not be presently registered;
- 1.1.31 In this agreement, unless the context otherwise requires:
- 1.1.31.1 words and expressions used in the Act shall have the same meanings as have been assigned to them in terms of the Act;
- 1.1.31.2 the masculine shall include the feminine and vice versa and they shall both include neuter;
- 1.1.31.3 the singular shall include the plural and vice versa;

- 1.1.31.4 the headings are used for reference only and are in no way to be deemed to explain, modify, amplify or aid in the interpretation of this agreement;
- 1.1.31.5 the rule of interpretation of a contract against the drafter thereof shall not be applicable.

2. **Sale**

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

3. **Exclusive use areas and rules**

- 3.1 The seller has procured the approval by the Ombud, as envisaged in the Management Act, of the substitution, addition, amendment or appeal of the statutory management rules as set out in the Management Act to make provision for, *inter alia*, the establishment of the exclusive use areas as described in 17 of the schedule in accordance with section 10(7) and (8) of the Management Act, in favour of the purchaser.
- 3.2 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.
- 3.3 The purchaser, as owner of the section entitled to the right of exclusive use of a part or parts of the common property, may be required to make such additional contributions to the body corporate as are estimated necessary to defray the costs incurred by the body corporate in respect of *inter alia*, insurance, maintenance and consumption charges in respect of the said exclusive use areas or, alternatively, the seller may, in making the rules as provided for in 9.1.4 read with 3.1, provide that the owners concerned be responsible directly, whether entirely or partially, for such costs.
- 3.4 It is recorded that the body corporate or the developer, as the case may be, 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 purposes of maintenance of any services contained therein and for any other purpose reasonably associated with the development of the scheme.

- 3.5 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/her of any exclusive rights granted to him/her.

4. Purchase price

- 4.1 The deposit in 8 of the schedule will be paid to and held by the seller's conveyancers in an interest bearing trust account in accordance with the provisions of Section 86(4) of the Legal Practice Act 28 of 2014. Interest on the deposit will accrue to the purchaser. In accordance with Section 86(5) of the said Act, 5% of the interest accrued on the said investment shall be automatically deducted therefrom and paid to the Legal Practitioners Fidelity Fund established in accordance with the said Act. The deposit shall be paid to the seller on transfer or when the seller becomes entitled thereto in terms of this agreement. The seller's conveyancers will charge an administration fee of six percent of the net interest earned on the funds invested, which administration fee shall be exclusive of VAT and shall be paid to the conveyancers on the earlier of transfer or cancellation of this agreement in 15. The purchaser hereby acknowledges that prior to the deposit in 8 of the schedule being invested, the purchaser must comply with the seller's conveyancers' requirements with regard to the Financial Intelligence Centre Act and furnish the seller's conveyancers with copies of all information and documentation as may be requested for such purposes, failing which, interest on the deposit will not accrue to the purchaser, but will accrue to the Legal Practitioners Fidelity Fund established in accordance with the said Act.
- 4.2 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.
- 4.3 The balance of the purchase price in 10 of the schedule shall be paid into trust with the seller's conveyancers and be invested in terms of 4.1 or, at the purchaser's election, be secured by the furnishing to the seller's conveyancers of bankers guarantees in a format reasonably acceptable to the seller, within the time period as provided for in 12 of the schedule.
- 4.4 The amount of the loan in clause 9 of the schedule, if applicable, shall be secured by bankers guarantees issued by a registered South African Commercial Bank in a format

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

- 4.5 Each payment made in terms of this agreement and any interest earned on the deposit or other monies paid to the seller's conveyancers in terms of this agreement shall be allocated first to any occupational interest and to estimated levy payable, secondly to all other costs and charges due by the purchaser in terms hereof and thereafter in reduction of the purchase price. The purchaser shall not however be entitled, when furnishing guarantees or making payment of any amounts due by the purchaser in terms of this agreement to set off any interest earned or which is to be earned against such amount due.
- 4.6 Should any payment due in terms of this agreement or should any guarantees due not be made or delivered timeously as the case may be, the purchaser shall be liable for and shall pay, without demand by the seller, the penalty interest in 19 of the schedule calculated from the date that payment was due or guarantees were to be furnished, as the case may be, up to and including the date on which payment is made and/or the guarantees are furnished, as the case may be and without prejudice to the seller's rights in terms of 15 below.

5. **Levies and rates**

- 5.1 With effect from the occupation date and irrespective of whether or not the purchaser takes physical occupation of the unit, the purchaser shall pay to the seller the occupational interest and the occupational levy monthly in advance on the first day of each month until transfer.
- 5.2 After transfer, the purchaser shall pay a levy to the Body Corporate as well as rates and taxes to the Local Authority.
- 5.3 The first occupational levy payment in 5.1 shall include the amount in respect of the Body Corporate's obligation to repay the seller amounts paid by the seller, on behalf of the Body Corporate to Eskom and/or the local or relevant authority in respect of consumption deposits for the consumption of water and/or electricity, which amounts will be paid by the purchaser and be determined pro rata to the total number of units in the scheme.

6. Costs of transfer and of bond registration

6.1 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 days of their request, sign all documents, pay all costs and, generally, do whatever may be required by the seller's conveyancers for purposes of effecting transfer and if applicable, registration of a mortgage bond over the unit.

6.2 The purchaser will be liable for all costs of and incidental to transfer including conveyancing fees at the applicable tariff, disbursements and all VAT thereon.

6.3 Provided the provisions of 9 and 11 of the schedule read with 16 are applicable and further provided:

6.3.1 the purchaser provided the originator with all relevant information and documentation in 16.1 so as to put the originator in a position to procure the necessary approval in principal for a loan; and

6.3.2 the seller's conveyancers are appointed by the bank granting the loan to attend to the registration of a mortgage bond over the unit simultaneously with transfer; then,

in such circumstances conveyancers will discount the conveyancing fees in 6.2 and the conveyancing fees in respect of the registration of the mortgage bond, by 20% to the conveyancing tariff,

6.4 For the sake of the clarity, should, in the circumstances in 6.3:

6.4.1 the purchaser procure the approval in principal in 16.2 independently of the originator; or

6.4.2 should the purchaser's bankers instruct conveyancers other than Strauss Scher Incorporated to attend to the registration of the aforesaid mortgage bond

the costs of transfer in 6.2 and costs of the registration of the mortgage bond shall not be discounted but shall be at the applicable conveyancing tariff.

6.5 The seller will be liable for all costs of and incidental to the approval of the sectional plan of extension.

6.6 Should the purchaser exercise its rights to nominate a third party purchaser in 19, the sellers conveyancers shall charge an additional fee equivalent to 20% of the applicable conveyancing tariff in 6.2, for attending to the necessary work to implement the said instruction. Further, should the purchaser deposit cash into trust as envisaged in 4.1, the seller's conveyancers shall be entitled to charge an administration fee of R3,000.00 (plus VAT) in respect of each such cash deposit.

7. **Occupation**

7.1 Provided the purchaser has:

7.1.1 paid the deposit in 8 of the schedule;

7.1.2 secured payment of the purchase price as provided for in 4;

7.1.3 paid the occupational interest and occupational levy, legal costs and any other amounts due by the purchaser in terms of this agreement; and

7.1.4 signed all documents as may be required by the seller's conveyancers in respect of transfer; and

7.1.5 signed all documents that may be required for purposes of the registration of the mortgage bond, if applicable, including having signed any certificate of completion as may be required by the purchaser's bankers for such purposes,

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

7.2 Occupation of the unit shall be on the occupation date, provided that the seller shall be entitled, on the advice of the architect and on 15 days' notice to the purchaser, to revise the anticipated occupation date or the revised occupation date, as the case may be and the purchaser will, subject to 7.1, take occupation of the unit on the said revised date of occupation.

- 7.3 The purchaser shall have no claim whatsoever whether for damages, specific performance or otherwise against the seller arising from the architect being unable to issue the certificate to occupy by the anticipated occupation date or by any revised date, as the case may be.
- 7.4 The purchaser will, on request by the seller, and prior to the occupation date, sign any certificate of completion as may be required by the purchaser's bankers for purposes of registration of the mortgage bond over the unit, if applicable. The seller hereby acknowledges that the signature by the purchaser of the aforesaid certificate of completion does not, in any way, absolve the seller from its obligations to rectify any defects or snags in the unit as envisaged in 7.9 or 10.1.10.1
- 7.5 In the event that the occupation date precedes transfer, the purchaser shall from the occupation date pay the occupational interest and the occupational levy to the seller and irrespective of whether or not the local authority has issued an occupancy certificate in respect of the building. Should the occupation date be after transfer, the seller shall pay the purchaser the said occupational interest and the levy payable to the body corporate.
- 7.6 The purchaser's obligation to pay the occupational interest and occupational levy in 7.5 shall commence from the occupation date irrespective of whether or not the purchaser is entitled to or takes physical occupation of the unit in 7.1. The seller shall however not be obliged to pay occupational interest and occupational levy to the purchaser in the event of the purchaser not having complied with all of its material contractual obligations as set out in this agreement.
- 7.7 It is recorded that the purchaser is aware that, on the occupation date, the building, common property and other sections in the building or phases thereof 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
- 7.8 The purchaser shall afford the seller or its appointed contractors reasonable access to the section to enable the seller to attend to the items on the snag list in 7.9 and in order to remedy any defects in the section. Should the purchaser not provide such

reasonable access within 14 days of request by the seller and/or its contractors, the relevant defects shall be deemed to have been remedied by the seller.

- 7.9 The purchaser shall be entitled, within a period of 14 days from the occupation date, to prepare and deliver to the seller a list of items which require rectification in the section and the seller shall expeditiously attend to the items on the said list and do so to the satisfaction of the architect.

8. **Passing of risk**

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

9. **Purchaser's acknowledgment**

- 9.1 The purchaser acknowledges that he is aware of and fully acquainted with the matters hereinafter set forth, namely that:

9.1.1 the seller shall, after completion of its marketing campaign in respect of the second phase of the scheme, commence with the development and shall, as soon as possible after construction of the relevant building in that phase of the scheme, procure the approval of the sectional plan of extension and make application to the Registrar of Deeds for the registration of the sectional plan of extension in order to effect transfer;

9.1.2 the unit shall be as reflected on the approved sectional plan of extension and the participation quota endorsed thereon as and when approved and subject to any modification or alterations which may be made thereto from time to time in accordance with the provisions of the Act or of any authority and subject to any conditions of the applicable zoning and all applicable conditions of title;

9.1.3 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 management and conduct rules contained in the Management Act shall apply subject to those changes as have been approved by the Chief Ombud which the

seller deemed necessary for the proper management and control of the building and the scheme.

9.2 By his signature hereto the purchaser irrevocably and in *rem suam* appoints the seller as his/her agent and attorney to attend meetings of the body corporate at which the purchaser is entitled to be present and then and there to vote, on behalf of the purchaser on any matter as may be necessary pertaining to the amendment of the rules or the adoption of any rules provided that the developer shall only exercise this right in circumstances where the purchaser is not physically present or represented by a duly authorised proxy at such meetings.

10. Warranties

10.1 The seller warrants that:

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

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

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

11. Terms applicable pending transfer

11.1 The purchaser shall, after the occupation date and prior to transfer:

11.1.1 save with the prior written consent of the seller, not be entitled to make any alterations or additions to the section;

11.1.2 maintain the section in a fit and proper condition, and keep it 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;

11.1.3 not be entitled to divide the section;

11.1.4 be liable for all electricity, water or gas consumed in the section and to the extent that such services are separately metered;

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

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

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

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

11.1.9 not use and enjoy the common property in such manner so as to interfere with the use and enjoyment thereof by other occupiers of sections or purchasers thereof or

other persons lawfully upon the property and shall comply with any rules which the seller in its discretion may make in regard thereto;

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

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

11.2 The seller shall, after the occupation date and prior to transfer:

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

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

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

11.3 Notwithstanding anything to the contrary contained in this agreement in the event of the seller not effecting transfer 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 6 months or longer, the seller shall thereupon be entitled within 21 days of the relevant event to rescind from the agreement, and upon the seller so doing, the seller shall refund to the purchaser, that amount which it would have been obliged to refund in terms of 13.5 below. Within fourteen days of such refund having been made, the purchaser shall vacate the section, unless he/she 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.

11.4 If the seller does not elect to resile from the agreement in terms of 11.3 then the seller shall:

11.4.1.1 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 including the section; and

11.4.1.2 if the buildings are replaced by new buildings, such new buildings shall 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 acting as an expert shall be binding;

11.4.1.3 not be liable to the purchaser for any claims whatsoever relating to any deprivation of section, displacement or inconvenience which may be caused during the replacement of the new buildings.

11.5 The purchaser shall, after transfer:

11.5.1 be liable for all electricity and other services provided to and consumed in respect of the section;

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

11.5.3 pay refuse disposal, basic sewer charges and rates to the local authority in respect of the unit;

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

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

12. Terms applicable between registration of the sectional plan of extension and transfer

12.1 It is recorded that the seller intends effecting transfer simultaneously with the registration of the sectional plan of extension. In the event that transfer cannot occur simultaneously with the registration of the said plan then from the occupation date but after the registration of the sectional plan of extension up until transfer, the following provisions shall apply:

- 12.1.1 the purchaser shall comply with all rules as if the purchaser were the registered owner of the unit;

- 12.1.2 the terms and conditions of 11 shall continue to apply as between the purchaser and the seller, *mutatis mutandis*;
- 12.1.3 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;
- 12.1.4 the purchaser shall pay the levies to the body corporate;
- 12.1.5 the purchaser shall pay the seller the occupational interest to the seller.

13. Transfer and registration of the sectional plan of extension

- 13.1 Subject to the purchase price, occupational interest, occupational levy or the body corporate levy as applicable and all other amounts, including payment of costs of transfer and registration of any bond for which the purchaser is liable in terms of this agreement, having been paid or secured to the seller's satisfaction, the seller shall give the purchaser transfer.
- 13.2 The purchaser acknowledges that it will only be possible for the seller to give transfer after the approval by the Surveyor General of the sectional plan of extension and simultaneously with the registration of the aforesaid plan and the unit being released from the operation of any existing mortgage bond as may be registered whether over the land.
- 13.3 The seller shall use its best endeavours to procure the registration of the sectional plan of extension without delay in order that transfer can be effected.
- 13.4 The purchaser shall not, subject to 13.5, 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 registration of the sectional plan of extension for whatever reason.
- 13.5 If, as a result of any act or omission by the seller, the sectional plan of extension is not registered 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 on written notice by either party to the other;
 - 13.5.2 the seller refund the purchaser the amount of the deposit in 8 of the schedule and interest earned thereon as well as the balance of the purchase price paid in terms of 10 of the schedule and return to the purchaser any bankers or other guarantees which may have been furnished by the purchaser pursuant to this agreement;
 - 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/she so vacates all amounts set out in 20 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 and to any condition imposed by the Municipality; and
 - 13.6.4 the rules;
 - 13.6.5 The registration, in favour of the seller, of a real right to develop the scheme in phases as provided for in 25.
- 13.7 If the measurements of the section as stipulated herein differ from those contained in the sectional plan of extension 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 of extension, 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 of extension approved

by the Surveyor General by more than 5%, the purchase price shall automatically be increased 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 of the schedule by the area of the section in 4 of the schedule provided that either party may cancel this agreement on written notice to the other, should the area of the section reflected on the approved sectional plan of extension differ by more than 15% from the area of the section in 3 of the schedule.

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

13.9 In the event that the purchase price of the unit is increased as provided for in 13.6.5, 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 has procured the appointment by the body corporate in terms of the rules of a professional manager in respect of the scheme.

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 in 8 of the schedule) or commits any other breach of any of the terms and conditions of this agreement the seller shall be entitled without prejudice to any other remedies that it may have at law, if the purchaser fails to remedy such breach, default or non-payment within 7 days of despatch of written notice per email, telefax or delivery thereof by hand calling upon the purchaser so to do:

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 retain all payments already made by the purchaser in terms of this agreement, all amounts paid by the purchaser into trust with the seller's conveyancers and all interest earned thereon, as an agreed penalty or as agreed pre-liquidated damages; or
- 15.1.2 to claim specific performance and immediate payment of any amounts then owing on the purchase price of the unit, all interest due and any other amounts payable by the purchaser in terms of this agreement against tender of performance by the seller as provided for in this agreement.
- 15.2 In the event that this agreement is cancelled and to the extent that the purchaser may be in occupation of the unit, the purchaser and all persons claiming occupation through the purchaser shall forthwith vacate the unit and deliver it back to the seller. No lease or other right of occupation in favour of the purchaser or any other party shall be created or come into existence by virtue of this agreement.
- 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 15 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 (this clause applies only if clause 9 of the schedule has been completed)

16.1 To the extent the seller notifies the purchaser that it has entered into an agreement with an originator for purposes of procuring the approval in principle of a loan in the amount in clause 9 of the schedule, the purchaser shall provide all relevant necessary information or documentation to the originator to enable them, on the purchaser's behalf, to apply all relevant financial institutions for the necessary loan and shall co-operate with and assist the originator in such process.

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

16.3 In the event that the approval in principal in 16.2 is not procured by the date in 11 of the schedule, which date may be extended by the seller on written notice to the purchaser for a further period or periods not exceeding a total extension period of 90 days, this agreement shall, lapse and no longer be of any force or effect.

16.4 The purchaser undertakes to use its best endeavours to procure the fulfilment of the suspensive condition in 16.2 and shall co-operate with the originator and provide all information and sign all documentation reasonably required by them and/or the relevant financial institution for this purpose. The purchaser warrants that he has sufficient income to procure a loan in the amount in 9 of the schedule.

16.5 In the event, after the fulfilment of the suspensive condition in 16.2 but before transfer, the approval in principal or grant of a loan, as the case may be, is then withdrawn by the relevant financial institution and irrespective of the reasons for such withdrawal, the purchaser shall remain bound to the terms and conditions of this agreement and shall, within 10 days of such withdrawal, furnish the seller's conveyancers with bank guarantees, in a format acceptable to the seller in the loan amount as set out in the final grant.

16.6 The purchaser shall be entitled, on written notice to the seller, or to the originator, to accept an approval in principal of a loan in an amount less than the amount in 9 of the schedule, provided the purchaser does so before the end of the period in 11 of the schedule as may be extended in 16.3. The purchaser shall, within 30 days of such written notice, furnish the seller's conveyancers with banker's guarantees, in a format acceptable to the seller in respect of the difference between the loan amount in 9 of the schedule and the lower loan amount as accepted by the purchaser.

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, close corporation or trust or should the purchaser have nominated a company, close corporation or trust as purchaser in terms of 19, the signatory to this agreement warrants that he/she is duly authorised to enter into this agreement on behalf of the company, close corporation or trust and hereby binds himself/herself 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/she knows and understands.

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

19.1 This agreement is subject to the resolute 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 30 days

from date of signature of this agreement, failing which the right to nominate will lapse and the original purchaser will remain bound as purchaser under this agreement;

- 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 and the property will completely revert to the seller and the purchaser will automatically relinquish all rights on such delivery and a new sale to the nominated purchaser on the same terms and conditions will automatically simultaneously come into existence provided that:
- 19.1.3.1 reference to the date of this agreement will then refer the date of the acceptance of the nomination in 19.1.3;
- 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 on written notice to the seller's conveyancers, pay the new deposit plus interest earned on the deposit, to the original purchaser in discharge both of the nominated purchaser's liability to pay the new deposit and accrued interest to the seller and the seller's liability to refund the old deposit and accrued interest 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 and the purchaser will not receive any consideration arising from such cancellation and dissolution.
- 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.
- 19.2 The original purchaser acknowledges that an IT3(b) tax certificate will be issued by the seller's conveyancers bankers in respect of all interest earned as provided for in 4 for the period funds were invested up to and including the date the seller's conveyancers close the aforesaid trust investment and establish the necessary trust investment in the name of the nominated purchaser as provided for in **Error! Reference source not found.** The original purchaser will automatically be bound as

surety and co-principal debtor for the nominated purchaser's obligations to the seller arising out of this sale (including any amounts which may become owing arising out of any breach of this agreement) and renounces the benefits of excussion, division, cession of action and *de duobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the original purchaser acknowledges he/she knows and understands

20. Sale prior to transfer

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

20.2 The seller in giving written consent in 20.1 may permit simultaneous transfer to the purchaser's third party purchaser but only provided such simultaneous transfer in no way delays transfer and provided that the seller is satisfied that the purchaser has made it clear to the third party purchaser that there is no contractual nexus or relationship between the seller and the third party purchaser. Transfer of the unit to a third party purchaser shall be attended to simultaneously with the transfer of the unit from the seller to the purchaser and by the seller's conveyancers.

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

21. Optional extras and finishes selections

21.1 The purchaser shall, within 10 days of written notification by the seller, be entitled to select optional extras and/or make finish variations in accordance with the specification and schedule of finishes.

21.2 Should the purchaser not, within 14 days of written notification in 21.1, select any optional extras or make a particular finishes selection, the architect shall on the purchaser's behalf make the finishes selection which shall be final and binding on the purchaser.

21.3 Any selection by the purchaser of optional extras or particular finishes in 21.2 shall be in writing.

21.4 In the event of the seller being unable to source and install any particular optional extras, finishes or materials, the architect shall be entitled to specify or select alternative optional extras, finishes or materials, provided those are substantially of the same standard and appearance.

21.5 Should a particular optional extra or finish selection in 21.2 be at an additional cost as provided for on the specification and schedule of finishes as agreed in 21.3, the purchase price shall be deemed to have been automatically increased by the amount of such additional cost. The increased purchase price shall be payable by the purchaser, within 10 days of the finish selection in 21.2, to the seller's conveyancers and be held by them in trust as provided for in 4.1 and be payable to the seller on transfer.

22. **Arbitration**

22.1 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):

22.1.1 the interpretation thereof;

22.1.2 the rectification thereof;

22.1.3 the effect thereof;

22.1.4 the parties' respective rights or obligations thereunder;

22.1.5 a breach thereof;

22.1.6 the termination thereof;

22.1.7 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 paragraph 22.

22.2 The arbitrator shall be a practising counsel at the Johannesburg Bar agreed to by the parties and failing agreement, be appointed by the senior director of the seller's conveyancers.

22.3 The arbitration referred to in 22.1 shall be held in accordance with the expedited rules of the Arbitration Foundation of Southern Africa or its successor in office or title.

22.4 This paragraph 22 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.

23. Resolutive condition

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

23.2 The seller shall be entitled to exercise its rights in 23.1 during the period from signature of the agreement up to and including 1 November 2020, wherafter the seller's rights shall lapse.

23.3 In the event of the seller exercising its rights in 23.2 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.

24. Agent's commission

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

24.2 Agent's commission shall be payable by the seller to the agent in accordance with a mandate agreement as concluded between the said parties.

25. Miscellaneous matters

25.1 addresses and notices

25.1.1 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.

25.1.2 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.

25.1.3 Any notice given in connection with this agreement shall:

25.1.3.1 be delivered by hand; or

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

to the *domicilium* chosen by the party concerned.

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

25.1.4.1 if delivered, on the date of delivery;

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

25.2 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.

25.3 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.

25.4 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.