

ANNEXURE 1
GENERAL CONDITIONS OF SALE

14 February 2024
Mortgage bond
("Boardwalk Estate")

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 anticipated occupation date" - the date the seller anticipates being able to give the purchaser occupation of the property, being the date in 16 of the schedule;
- 1.1.2 "anticipated practical completion date" - means the date the architect anticipates being in a position to issue the practical completion certificate;
- 1.1.3 "the architect" - means Darryl Coombe of Architects or such other independent professional architect or any project manager as may be nominated by the seller;
- 1.1.4 "association" - means the Boardwalk Estate Homeowners Association NPC, to be established in accordance with the MOI and in compliance with the requirements of the Municipality;
- 1.1.5 "common property" - means the portions and associated common property improvements, including roads, gatehouse and clubhouse as described in 19 of the schedule and which will be transferred by the seller to the association prior to or simultaneously with the transfer of the first portion in the estate;
- 1.1.6 "CSOS Act" - means the Community Schemes Ombud Service Act 9 of 2011, pursuant to which the association will register as a community housing scheme;

- 1.1.7 "the developer" - the seller or its successors in title or assigns bein the developer of the estate;
- 1.1.8 "the dwelling" - means a dwelling house to be developed by the seller on the portion and in accordance with the plans, specification and schedule of finishes and on terms and conditions set out in this agreement;
- 1.1.9 "the development" - means the estate, to be developed by the seller on the land and comprising the portions with dwellings to be developed thereon;
- 1.1.10 "the plans" - means the sketch plans of the dwelling, being annexure 3 to this agreement;
- 1.1.11 "the estate layout" - means the "Boardwalk Estate" cluster or group housing development promoted by the developer in respect of the land;
- 1.1.12 "the estate plans" - means sketch plan of the estate annexed as annexure 2
- 1.1.13 "first phase" - means portions 1 to 31 of Erf 10046 Plettenberg Bay Township as indicated on annexure 2, to be developed by the seller as the first phase of the estate;
- 1.1.14 "general plan" - means the general plan of subdivision which the seller will procure be approved by the Surveyor General in respect of the first phase and indicates, in due course the subdivision diagrams for the second phase;
- 1.1.15 "the land" - means Erf 10046 Plettenberg Bay and Erven 8740 to 8743 Plettenberg Bay, otherwise as described 1 of the schedule;
- 1.1.16 "the manager" - means the managing agent, initially appointed by the developer and to be employed by the association;
- 1.1.17 "the MOI" - means the draft Memorandum of Incorporation of the association, being annexure 5 which may be amended as provided for herein;
- 1.1.18 "mortgage bond" – means, to the extent that 11 and 13 of the schedule read with 14 of this annexure 1 are applicable, a first mortgage bond to be registered over the portion simultaneously with transfer;

- 1.1.19 "occupation date" - means the anticipated occupation date in 16 of the schedule but subject to 7.2;
- 1.1.20 "occupational interest" - means the occupational interest in 22 of the schedule;
- 1.1.21 "the originators" - means Better Bond or such other person or persons appointed by the seller to procure the approval in principle for the loan in 11 of the schedule read with 13 of the schedule, if applicable
- 1.1.22 "the plans" – means the sketch plans of the dwelling, annexed hereto marked annexure 3 read together with the specification and schedule of finishes marked annexure 4;
- 1.1.23 "the portion" - means a portion of the land and as more fully described in annexures 2 and 3 of the schedule;
- 1.1.24 "practical completion certificate" - means a certificate to be issued by the contractor to the developer, certifying that the dwelling has been practically completed and is able to be used as a residential dwelling;
- 1.1.25 "the property" – means, collectively, the portion and the dwelling developed thereon;
- 1.1.26 "the purchase price" - means the purchase price of the property, being the amount in 9 of the schedule and which includes VAT;
- 1.1.27 "revised anticipated occupation date" - means the revised date the seller anticipates being able to give the purchaser occupation of the property in accordance with 7.2;
- 1.1.28 "the rules" - means the draft rules of the association being annexure 6 to this agreement which may be amended as provided for herein;
- 1.1.29 "the schedule" - shall mean the schedule prefixed to this agreement, forming part of the agreement of sale and which contains details of the property sold, the purchase price and other details hereinafter referred to;
- 1.1.30 "the second phase" - means the second phase of the development to be established in respect of the land and in particular on erven 8740 to 8743 Plettenberg Bay, which properties are to be rezoned, consolidated and re-subdivided into 9 portions and a common property indicated on annexure 2 and

which portions will be developed by the seller as the second phase of the estate;

- 1.1.31 "the seller's conveyancers" - means the conveyancers referred to in 20 of the schedule;
- 1.1.32 "the specification and schedule of finishes" - means the specifications and schedule of finishes of the dwelling, including of any optional extras and annexed hereto marked annexure 4;
- 1.1.33 "transfer" - means the registration of transfer of the portion on which the dwelling has been developed as provided for herein, being the property, to the purchaser in the office of the Registrar of Deeds, Cape Town;
- 1.1.34 In this agreement, unless the context otherwise requires:
 - 1.1.34.1 words and expressions used in the Act shall have the same meanings as have been assigned to them in terms of the Act;
 - 1.1.34.2 the masculine shall include the feminine and vice versa and they shall both include neuter;
 - 1.1.34.3 the singular shall include the plural and vice versa;
 - 1.1.34.4 the headings are used for reference only and are in no way to be deemed to explain, modify, amplify or aid in the interpretation of this agreement;
 - 1.1.34.5 the rule of interpretation of a contract against the drafter thereof shall not be applicable.

2. Sale

The seller hereby sells the portion together with the dwelling, being the property, to the purchaser who purchases the property from the seller on the terms and conditions set out in this agreement.

3. The association

- 3.1 The seller has established the association for purposes of, *inter alia*, procuring the provision of and the management of security measures in and for the estate, to take transfer of and own the common property and to manage and undertake the ongoing maintenance and operation of the common property and all facilities thereon and,

generally, to regulate and promote the communal interests of owners and occupiers within the estate.

- 3.2 The purchaser acknowledges that the MOI may be amended to the extent required by the seller or the Municipality as envisaged in 9.1.3.
- 3.3 The purchaser agrees that, on transfer:
 - 3.3.1 the purchaser will become a member of the association and be bound by the MOI;
 - 3.3.2 for so long as the purchaser is the registered owner of the portion, the purchaser shall remain a member of the association and be bound by the MOI;
 - 3.3.3 should the purchaser sell the property, the purchaser will ensure that the third party purchaser is made fully aware of the association, the MOI and the estate rules and agrees, in writing, to become a member of the association;
 - 3.3.4 the purchaser will not be entitled to transfer the property without obtaining a clearance certificate from the association, confirming that all outstanding levies and other monies due to the association have been paid and that any other obligations to the association have been complied with and that the prospective transferee has agreed, in writing, to become a member of the association.
- 3.4 The following provisions will be inserted into the Title Deed of the portion on transfer and in the form set out below or such other form as may be determined by the Registrar of Deeds, Cape Town and are conditions imposed in favour of the association:
 - 3.4.1 the owner of the property, or of any interest therein, shall not be entitled to transfer the property or any interest therein without the prior written consent of the association which shall not be withheld, provided all monies owing to the association by the owner to date of transfer have been paid and provided the transferee has bound himself/herself/itself to the satisfaction of the association to become a member thereof;
 - 3.4.2 the design of all improvements, including of any alterations to any existing improvements and any building plans in respect of such alterations or improvements be constructed on the property, as well as any improvements themselves, shall be subject to the prior written approval of the association;

- 3.4.3 the owner of the property shall not rezone, consolidate or notarially tie the property without the prior written consent of the association.
- 3.5 The provisions in 3.4 are for the benefit of the association and constitute a *stipulatio alteri* (contract for the benefit of a third party) which the association may accept at any time prior to transfer.
- 3.6 The purchaser hereby acknowledges and agrees that the association will be liable for all costs of and incidental to the maintenance, management and control of the common property, improvements thereon and for any security installations to the estate. The seller gives no warranties, whether in respect of the suitability or otherwise of the said common property or any improvements thereon or any perimeter security installation, nor will the seller have any obligation to maintain, upgrade or make any improvements thereto.

4. Purchase price

- 4.1 The deposit in 10 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.
- 4.2 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 is automatically deducted therefrom and paid to the Legal Practitioners Fidelity Fund established in accordance with the said Act. The deposit together with any interest as aforesaid shall be paid to the seller on transfer or when the seller becomes entitled thereto in terms of this agreement.
- 4.3 The seller's conveyancers will charge an administration fee being the greater of R1,000.00 or of 6% of the net interest earned, which administration fee shall be exclusive of VAT and shall accrue to the seller's conveyancers on the earlier of transfer or cancellation of this agreement.
- 4.4 The purchaser hereby acknowledges that the deposit will only be invested as set out above once the suspensive conditions in this agreement have been met and that prior to the deposit in 9 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.

- 4.5 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.
- 4.6 The balance of the purchase price in 12 of the schedule shall be paid into trust with the seller's conveyancers and be invested in terms of 4.1 to 4.4 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 14 of the schedule.
- 4.7 The amount of the loan in clause 11 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 14 of the schedule.
- 4.8 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 the cost contribution, secondly to all other costs and charges due by the purchaser in terms hereof and thereafter in reduction of the purchase price. The purchaser shall not however be entitled, when furnishing guarantees or making payment of any amounts due by the purchaser in terms of this agreement to set off any interest earned or which is to be earned against such amount due.
- 4.9 Should the purchaser, as provided for in 19, select a particular optional extra, the purchase price shall be deemed, automatically, to have been increased by the cost of such optional extra as selected.
- 4.10 Should the parties conclude a written variation agreement in 19 and in terms of which the plans and/or specification and schedule of finishes are amended, the purchase price shall be deemed, automatically, to have increased or decreased, as the case may be, by the agreed cost of such variation.

5. Association levy and rates

- 5.1 With effect from the occupation date and irrespective of whether or not the purchaser takes physical occupation of the property, the purchaser shall pay to the seller the occupational interest and association levy and thereafter, monthly in advance on the first day of each month until transfer and irrespective of whether the Municipality has issued an occupation certificate in respect of the dwelling.
- 5.2 After transfer, the purchaser shall not be liable for occupational interest, shall pay the association levy directly to the association and be liable for all municipal rates. The parties record that the Municipality will, after and with effect from transfer, account to the purchaser in respect of rates.
- 5.3 In addition to the occupational interest and association levy in 5.1, the purchaser will, from the occupation date, be liable for and shall pay to the seller, within 7 days of invoice, the cost, at the rate at which the Municipality charges the seller, of all sewer, electricity, water, gas or other municipal charges consumed at the property, it being recorded that the association levy includes the costs of electricity and water consumed on the common property.
- 5.4 The purchaser acknowledges that the association may be liable for the payment of the consumption deposits, for water and electricity, at the Municipality to the extent that the association is required to open electricity and water accounts with the Municipality. In the circumstances, the association will recover a pro-rata share of such consumption deposits from its members, which recovery will be effected simultaneously with the first levy payable by the purchaser to the association after transfer.
- 5.5 In the circumstances in 5.4, the costs of the consumption of electricity and water by the association will be recovered from its members in the association levy.

6. Costs

- 6.1 The seller will be liable for all costs of and incidental to the subdivision of the land and in order to establish the estate, including the first and second phases thereof and in order to obtain the necessary clearances from the Municipality for purposes of transfer of the property to the purchaser.
- 6.2 The purchaser will be liable for all costs of and incidental to transfer, including conveyancing fees at the then applicable tariff less a discount of 20%, disbursements, deeds office charges and all VAT thereon.

- 6.3 The purchaser will be liable for all costs of and incidental to registration of the mortgage bond, if applicable, including conveyancing fees, deeds office charges and all VAT thereon.
- 6.4 Should the seller's conveyancers be instructed to attend to the registration of the mortgage bond, the conveyancing fees payable to the seller's conveyancers in respect thereof shall be at the then applicable tariff less a discount of 20%.

7. Occupation

7.1 Provided the purchaser has:

- 7.1.1 paid the deposit in 10 of the schedule;
- 7.1.2 secured payment of the purchase price as provided for in 4;
- 7.1.3 paid occupational interest, association levy and legal costs and any other amounts due by the purchaser in terms of this agreement; and
- 7.1.4 signed all documents as may be required by the seller's conveyancers, both in respect of transfer and registration of any mortgage bond, if applicable, including having signed any certificate of completion as may be required by the purchaser's bankers, for purposes of registration of the mortgage bond.

occupation of the property shall be given to and taken by the purchaser on the occupation date determined in 7.2. Whilst the seller will make every reasonable effort to give the purchaser the anticipated occupation date, the seller gives no warranties in this regard.

- 7.2 The seller shall be entitled, on 30 days written notice to the purchaser and on the advice of the architect, to revise the anticipated occupation date or the then revised occupation date, as the case may be and the purchaser will, subject to 7.1, take occupation of the property on the said revised date of occupation which shall then be the occupation date. For the sake of clarity, the occupation date shall be a date as determined, by the architect as to when the dwelling will be practically complete and ready for occupation as a dwelling.
- 7.3 The purchaser shall have no claim whatsoever whether for damages, specific performance or otherwise against the seller arising from the revision of the anticipated occupation date or the occupation date, as the case may be.

- 7.4 The purchaser will, on request by the seller, and prior to the occupation date, sign any certificate as may be required by the purchaser's bankers for purposes of registration of the mortgage bond, if applicable. The seller hereby acknowledges that the signature by the purchaser of the aforesaid certificate does not, in any way, absolve the seller or the contractor from their obligations to rectify any defects or snags in the dwelling as envisaged in 7.8, read with 10.1.
- 7.5 The purchaser's obligation to pay the occupational interest, association levy and consumption charges shall commence from the occupation date irrespective of whether or not the purchaser is entitled to or takes physical occupation of the dwelling in 7.1.
- 7.6 It is recorded that the purchaser is aware that, on the occupation date, the construction of other dwellings in the estate, including, in due course, dwellings to be developed in phase two, may yet to commence or may be incomplete and under construction and that the purchaser must necessarily suffer inconvenience from building operations and from noise and dust resulting therefrom. The purchaser shall not be entitled to cancel this agreement nor have any claim whatsoever against the seller by reason of any of the foregoing however the seller or successors-in-title shall be obliged to take reasonable steps to control such noise and dust and to minimise the inconvenience to the purchaser
- 7.7 The purchaser shall, after the occupation date, afford the seller, or its appointed contractors and/or the architect reasonable access to the property to enable the seller to attend to the items on the snag list in 7.8 and in order to remedy any defects in the dwelling. Should the purchaser not provide such reasonable access within 14 days of written request by the seller, the architect and/or it's the seller's appointed contractors, the relevant defects shall be deemed to have been remedied by the seller.
- 7.8 The purchaser shall, within a period of 14 days from the occupation date, together with the architect, inspect the dwelling whereafter the architect will prepare and issue to the seller and the contractor, a list of items in the dwelling which require rectification and the seller shall expeditiously attend to the items on the said list and do so to the satisfaction of the architect.

8. Passing of risk

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

9. Purchaser's acknowledgment

9.1 The purchaser acknowledges being aware of and acquainted with the following:

- 9.1.1 the seller shall, after completion of its marketing campaign in respect of the estate and approval by the Municipality of the application for the subdivision of the land comprising the first phase thereof, commence with the development of the first phase and shall, as soon as possible after approval of the general plan of subdivision, the issue by the Municipality of all required clearance certificates, including an occupation certificate, effect transfer;
- 9.1.2 the layout and extent of the portion will be as finally reflected on the approved general plan of subdivision and is purchased subject to the conditions of subdivision and subject to all conditions of the applicable zoning and conditions in title;
- 9.1.3 the purchaser will, on transfer, be a member of the association and be bound by its MOI and the estate rules, subject to any changes thereto as may be required by the Chief Ombud in terms of the CSOS Act, the Municipality in accordance with the conditions of subdivision or by the developer or which the seller deems necessary for the property management and control of the estate;
- 9.1.4 a pre-paid electricity metering system may be installed by the seller to the dwelling;

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 dwelling 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 dwelling 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;
- 10.1.3 For a period of 12 months from the occupation date, the seller will expeditiously remedy any leaks in the roof of the dwelling and which are due to faulty materials

and/or improper workmanship provided the purchaser notifies the seller, in writing, of the existence of such roof leaks within the said 12 month 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 first and second phases of the estate, the nature and extent of the estate, the proximity of the proposed retail shopping centre, as well as the architectural details relating to the gatehouse, clubhouse and related facilities. In addition, the purchaser records and accepts that prior to signature of this agreement, it has thoroughly examined the plans, as well as the specification and schedule of finishes of the dwelling as annexed hereto. Accordingly, other than for the specific warranties in 10.1, the property is sold voetstoots.
- 10.3 The contractor, by its signature to this agreement, confirms that it is bound, as a homebuilder, as defined in the NHBRC Act to attend to rectification of defects in the dwelling as provided for in 7.7 and 7.8 and 10.1p.

11. Terms applicable pending transfer

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

- 11.1.1 not be entitled to make any alterations or additions to the dwelling;
- 11.1.2 maintain the dwelling in a fit and proper condition;
- 11.1.3 be liable for the consumption charges in 5.3;
- 11.1.4 be liable for and pay the occupational interest and cost contribution to the seller;
- 11.1.5 not use the property or the common property in such manner as to cause any damage thereto or to the other properties in the estate;
- 11.1.6 be entitled to use the property as a residential dwelling in terms of the permitted zoning;
- 11.1.7 permit the seller either personally, or through the seller's servants or agents, to have access to the dwelling 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 dwelling 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;

- 11.1.8 not use and enjoy the common property in such manner so as to interfere with the use and enjoyment thereof by other occupiers of properties in the estate or other persons lawfully in the estate and shall comply with any rules which the seller, in its discretion, may make in regard thereto;
- 11.1.9 not use the property 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;
- 11.1.10 use and ensure that the purchaser's family, employees or invitees, use the property lawfully and comply with the obligations as set out above.

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

- 11.2.1 insure the dwelling for its replacement value and be liable to maintain the dwelling;
- 11.2.2 maintain the common property and to the extent that the common property has been transferred to the association, ensure that the association does so;
- 11.2.3 keep, in a state of good and serviceable repair and maintain, the plant, machinery, fixtures and fittings used in connection with and situated on the common property, provided that should the common property have been transferred to the association, the seller shall procure that the association do so;
- 11.2.4 make timeous payment of the association levy to the association.

11.3 The purchaser shall, after transfer:

- 11.3.1 to the extent that the association has entered into supply agreements with the Municipality in respect of the supply of water and electricity, be liable for and to pay the association all metered electricity, water and other municipal services consumed at the property;
- 11.3.2 other than in the circumstances in 11.3.1, be liable for and pay to the supplier thereof, water, electricity and other municipal services consumed at the property;
- 11.3.3 be liable for the payment of the association levy;
- 11.3.4 comply with the MOI of the association and with its estate rules;

- 11.3.5 be liable for rates, basic sewer and refuse charges as may be payable to the Municipality in respect of the property;
- 11.3.6 use the property lawfully and in accordance with the permitted zoning;
- 11.3.7 permit the seller either personally, or through the seller's servants or agents, to have access to the dwelling 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 dwelling 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;

12. Transfer

- 12.1 Transfer shall be attended to by the seller's conveyancers as soon as practically possible after the issue by the Municipality of an occupation certificate in respect of the dwelling, together with all other certificates as may be required by the seller's conveyancers for purposes of transfer.
- 12.2 The purchaser shall co-operate with and provide to the seller's conveyancers on their demand all documentation and information and shall within 7 days of their request, sign all documents, pay all costs and, generally, do whatever may be required by the seller's conveyancers for purposes of effecting transfer and if applicable, registration of a mortgage bond over the property.
- 12.3 Provided the purchaser has complied with all of its obligations as set out in this agreement, the seller shall give the purchaser transfer.
- 12.4 The purchaser acknowledges that transfer will be effected only after the issue of the necessary certificates in 12.1 and simultaneously with the property being released.
- 12.5 The purchaser shall not have any claim whatsoever against the seller or be relieved of any of the purchaser's obligations in terms of this agreement or be entitled to any remission or rebate of any charges payable by the purchaser hereunder in the event of any delay in transfer for whatever reason.
- 12.6 If, as a result of any act or omission by the seller, transfer is not effected within 18 months from the anticipated occupation date then either party shall, within 30 days and on written notice to the other, be entitled to terminate this agreement and in which event the seller shall refund the purchaser the amount of the deposit in 10 of the

schedule and interest earned thereon as well as the balance of the purchase price paid in terms of 12 of the schedule and return to the purchaser any bankers or other guarantees which may have been furnished by the purchaser pursuant to this agreement. Save as herein provided, neither of the parties shall in such event have any further claim whatsoever and whether for damages or specific performance, against the other under this agreement, nor shall the purchaser be entitled to claim or allege any right of occupation or tenancy of the property under this agreement and shall vacate the same forthwith and until he/she so vacates all amounts shall be payable as provided for herein

12.7 The purchaser shall accept transfer subject to:

- 12.7.1 any conditions of subdivision of the land as may be imposed by the Municipality;
- 12.7.2 such servitudes as may be applicable to the land and/or the portion;
- 12.7.3 all prior or existing conditions in the title deed of the land; and
- 12.7.4 the MOI and estate rules.

12.8 The purchaser acknowledges that the layout, dimensions and floor area of the dwelling as reflected on the plans are approximate and whilst the seller shall make every reasonable effort to ensure that the dwelling is completed substantially in accordance with the plans, specification and schedule of finishes, the purchaser shall have no claim against the seller as a consequence of the final built area of the dwelling differing from that set out on the plans as aforesaid.

13. **Default**

13.1 If the purchaser fails to pay on due date any instalment or other moneys which the purchaser may in terms hereof (provided that no notice need be given if the breach is the non-payment of the deposit in 10 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 or delivery thereof by hand calling upon the purchaser so to do:

- 13.1.1 to cancel this agreement and retake possession of the property, in which event the seller may, at its election:
 - 13.1.1.1 claim all damages suffered by reason of the purchaser's breach of contract, in which event, pending the determination of such damages, the seller shall

be entitled to retain in pledge, as security for the due payment by the purchaser of such damages, all amounts paid by the purchaser in terms of this agreement, and immediately the seller's claim for damages shall have been established, there shall be set off and credited against such damages the aforesaid amounts retained by the seller, provided that should such retained amounts exceed the damages so due to the seller, the seller shall refund the excess to the purchaser, but, that should the said damages exceed the said amounts retained, the purchaser shall be obliged to pay the amount of the shortfall to the seller on demand; or

13.1.1.2 retain all payments already made by the purchaser in terms of this agreement, all amounts paid by the purchaser into trust with the seller's conveyancers and all interest earned thereon as an agreed penalty or as liquidated damages; or

13.1.2 to claim specific performance and immediate payment of any amounts then owing on the purchase price, all interest due and any other amounts payable by the purchaser in terms of this agreement against tender of performance by the seller as provided for in this agreement.

13.2 In the event that this agreement is cancelled and to the extent that the purchaser may be in occupation of the property, the purchaser and all persons claiming occupation through the purchaser shall forthwith vacate the property and deliver it back to the seller. No lease or other right of occupation in favour of the purchaser or any other party shall be created or come into existence by virtue of this agreement.

13.3 If the purchaser disputes the seller's right to cancel this agreement, then pending the determination of such dispute, the purchaser shall be obliged to continue to pay all amounts payable by him in terms of this agreement on the due dates thereof and the seller shall be entitled to accept such payments without prejudice to its rights of cancellation as aforesaid. If such dispute is decided in favour of the seller then such amounts so received by the seller after cancellation as aforesaid shall be deemed to have been paid to the seller prior to cancellation.

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

14. Mortgage finance (this clause applies only if clause 11 of the schedule has been completed)

- 14.1 The seller has entered into an agreement with the originators for purposes of them expediting the procuring of bonds/loans for purchasers in the estate. The purchaser, should it intend applying for a loan to either one of Nedbank, First National Bank, Standard Bank or ABSA Bank is encouraged to provide all relevant necessary information or documentation to the originators to enable them, on the purchaser's behalf, to apply all relevant financial institutions for the necessary loan and shall co-operate with and assist the originator in such process.
- 14.2 This agreement is subject to the suspensive condition that the purchaser (or the originator on the purchaser's behalf) is able to procure a written offer for a loan/approval in principle from a Bank upon security of the mortgage bond and in an amount of not less than the amount in 11 of the schedule.
- 14.3 In the event that the offer for the loan/approval in principle in 14.2 is not procured by the date in 13 of the schedule, which date may be extended by the seller on written notice to the purchaser for a further period or periods not exceeding a total extension period of 90 days, this agreement shall lapse and no longer be of any force or effect.
- 14.4 The purchaser undertakes to use its best endeavours to procure the fulfilment of the suspensive condition in 14.2 and shall co-operate with the originator and provide all information and sign all documentation reasonably required by them and/or the relevant financial institution for this purpose. The purchaser warrants that he has sufficient income to procure a loan in the amount in 11 of the schedule.
- 14.5 In the event, after the fulfilment of the suspensive condition in 14.2 but before transfer, is withdrawn by the relevant financial institution and irrespective of the reasons for such withdrawal, the purchaser shall remain bound to the terms and conditions of this agreement and shall, within 10 days of such withdrawal, furnish the seller's conveyancers with bank guarantees, in a format acceptable to the seller in the loan amount as set out in the final grant.
- 14.6 The purchaser shall be entitled, on written notice to the seller, or to the originator, to accept an offer or approval in principle of a loan in an amount less than the amount in 11 of the schedule, provided the purchaser does so before the end of the period in 13 of the schedule as may be extended in 14.3. The purchaser shall, within 30 days of such written notice, furnish the seller's conveyancers with banker's guarantees, in a

format acceptable to the seller in respect of the difference between the loan amount in 11 of the schedule and the lower loan amount as accepted by the purchaser.

15. Joint and several liability

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

16. 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 17, 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.

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

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

17.1.1 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;

17.1.2 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, or such further period as the seller may, on written notice to the purchaser, determine, failing which the right to nominate will lapse and the original purchaser will remain bound as purchaser under this agreement;

17.1.3 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:

- 17.1.3.1 reference to the date of this agreement will then refer the date of the acceptance of the nomination in 17.1.3;
- 17.1.3.2 all funds paid by the purchaser to the seller's conveyancers in terms of this agreement, together with all interest earned thereon ("the funds") will be refundable by the seller to the original purchaser on the payment by the nominated purchaser, to the seller's conveyancers, of an amount equal to the funds. Notwithstanding the aforesaid, the nominated purchaser may, on written notice to the seller's conveyancers, make payment of the funds directly to the original purchaser, which payment will be in discharge both of the nominated purchaser's obligation to pay the funds to the seller and the seller's liability to refund the said funds to the original purchaser;
- 17.1.3.3 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.
- 17.1.4 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.
- 17.1.5 The conveyancers will charge an administration fee of R7,500.00 to manage the nomination as outlined in this clause 17, which fee shall be payable by the purchaser. Should SARS, when the necessary documents are submitted by the seller's conveyancers for purposes of the issue of the transfer duty exemption, demand the payment of transfer duty on the new sale in 17.1.3, such transfer duty shall be payable by the nominated purchaser.
- 17.2 The original purchaser acknowledges that the seller's conveyancers will procure the issue of an IT3(b) tax certificate in respect of the interest component of the funds for the period up to and including the date the seller's conveyancers, pursuant to the acceptance by the nominated purchaser of the above nomination, closing the original purchaser's trust investment and investing the funds in trust in the name of the nominated purchaser in accordance with Section 86(4) of the Legal Practice Act, 2014. The original purchaser will automatically be bound as surety and co-principal

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

18. Sale prior to transfer

- 18.1 The purchaser acknowledges that given the nature and complexity of the estate, it shall not be entitled to sell the property prior to transfer, save with the prior written consent of the seller which shall not be unreasonably withheld.
- 18.2 The seller in giving written consent in 18.1 may permit simultaneous transfer to the 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 in respect of the property. Transfer of the property to a third party purchaser shall be attended to simultaneously with the transfer of the property from the seller to the purchaser and by the seller's conveyancers.
- 18.3 The purchaser hereby acknowledges and accepts that the sale and transfer of the property to a third party purchaser shall not, in any manner whatsoever, absolve the purchaser from its obligations set out in this agreement.

19. Optional extras, finishes selections and variation

- 19.1 The seller shall be under no legal obligation to agree to any variation or changes in the plans and/or the specification and schedule of finishes.
- 19.2 In the event that the purchaser and seller, in writing, agree to vary the plans and/or the specification and schedule of finishes, the costs of such variation, as agreed, will automatically increase or decrease, as the case may be, the purchase price.
- 19.3 The purchaser may, in terms of the specification and schedule of finishes and/or the seller may require the purchaser, in writing, to select particular finishes or optional extras.
- 19.4 Should the purchaser fail, within 14 days of written request by the seller in 19.3, to select the particular finishes or optional extras, the architect shall, on the purchaser's

behalf, make the finishes selection, which selection shall be final and binding on the purchaser.

19.5 Should the purchaser fail, within 10 days of written request by the seller, to select any optional extras, such optional extras will not be installed to the dwelling.

19.6 For the sake of clarity, the selection by the purchaser of any finishes or of any optional extras shall be in writing.

19.7 In the event of the seller being unable to source and install any particular finishes, materials, or any optional extras as may have been selected, whether described in the specification and schedule of finishes or the optional extras schedule, as the case may be, the architect shall be entitled to specify or select alternative finishes or materials, provided those are substantially of the same standard and appearance.

19.8 The purchaser acknowledges that all architects' digital renders are indicative only of the appearance and design details of the common property and/or the dwelling within the development.

20. Practitioner's commission

20.1 The purchaser warrants that it was introduced to the property and to the seller by the property practitioner and that no other property practitioner was the effective cause of this sale.

20.2 Commission shall be payable by the seller to the practitioner in accordance with a mandate agreement as concluded between the said parties.

21. Miscellaneous matters

21.1 addresses and notices

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

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

21.1.3 Any notice given in connection with this agreement shall:

- 21.1.3.1 be delivered by hand; or
- 21.1.3.2 be sent by email (if the domicilium includes an email address);
to the *domicilium* chosen by the party concerned.
- 21.1.4 A notice given as set out above shall be deemed to have been duly given:
 - 21.1.4.1 if delivered, on the date of delivery;
 - 21.1.4.2 if sent by email, on the date the email is transmitted provided if the date is a Saturday, Sunday or Public Holiday, the email will be deemed to have been delivered on the first business day thereafter.

21.2 **entire contract**

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

21.3 **variation and cancellation**

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

21.4 **indulgences**

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