



Attorneys | Prokureurs

Member of the Phatshoane Henney Group

**AGREEMENT OF SALE FOR A SECTIONAL TITLE UNIT  
(PRIOR TO OPENING OF THE REGISTER)**

**HERITAGE SQUARE: UNIT \_\_\_\_\_**

**For JUST INVEST**

INITIAL HERE

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## TRANSACTION SCHEDULE

SELLERS	SELLER 1
First Names	NIKKEL TRADING 15 (PTY) LTD
ID / Reg. No.	2009/015555/07
Representative	LOUIS FOURIE
Business No.	082 492 9258
E-Mail Address	arno@lewismanhattan.co.za
Tax No.	9412821168
VAT registration number	4840254322
Registered business address and postal address	ERF 2817B, FRANSCHHOEK, FRANSCHHOEK, WESTERN CAPE, 7690
	POSTNET SUITE 50, PRIVATE BAG X19, FRANSCHHOEK, WESTERN CAPE, 7690

PURCHASERS	PURCHASER 1	PURCHASER 2
First Names		
Surname		
ID / Reg. No.		
Marital Status		
Mobile No.		
E-Mail Address		
Tax No.		
Home and postal address		

### CONVEYANCERS – NEIL ESTERHUYSEN & ASSOCIATES INC.

Address: **Unit 23 & 24 Norma Jean Square, 244 Jean Avenue, Centurion, 0157**

Contact Person	Neil Esterhuysen	082 418 5588
	Ronel Niemand	(012) 664-44113

<b>THE AGENT - JUST INVEST</b>	
Name of Agent	
Tel No:	E-Mail:
Contact Person:	Mobile No:
<b>THE PROPERTY</b>	
<b>Description of land</b>	Erf 982 Louwlandia Extension 48
<b>Name of Building to be erected</b>	HERITAGE SQUARE
<b>Description of Section</b>	Section No. _____ as shown and more fully described in the Plans annexed hereto marked Annexure "B" read together with the specifications and Schedule of Finishes annexed hereto marked Annexure "C".
<b>Approximate measurement of Section</b>	_____ m <sup>2</sup> as measured to the median line of the dividing walls of such Section.
<b>Areas of exclusive use</b>	Parking / yard / gardens as reflected in Annexure "B" hereto.
<b>Description of Unit Sold</b>	The Unit comprising the Section and exclusive use area, together with an undivided share in the common property apportioned to the Section in accordance with the participation quota. (Clause 2.1.34)
<b>THE PURCHASE PRICE AND PAYMENT</b>	
<b>Purchase Price of the Unit (Including VAT)</b>	R
<b>Reservation deposit (to be deducted from the Deposit)</b>	R50 000.00 (Clauses 6.5 and 19)
<b>Deposit</b>	R
<b>Loan amount</b>	R
<b>Date on which the Reservation Deposit shall be paid</b>	Within 7 (Seven) days of the Signature Date. (Clauses 6.5 and 19)
<b>Date on or before which the loan is to be approved</b>	Within 30 (Thirty) days of the Signature Date. (Clause 4.1)
<b>Date on or before which guarantees for the Purchase Price must be delivered</b>	Within 21 (Twenty One) days of the Effective Date. (Clause 6.1)
<b>Date by which the Purchase Price (incl VAT) and all other amounts shall be paid</b>	On or before the Transfer Date.

<b>RATES AND TAXES, LEVIES AND HOME OWNERS ASSOCIATION FEES</b>	
<b>Estimated initial monthly levy payable to Body Corporate</b>	R
<b>Estimated initial monthly levy payable to HOA</b>	R
<b>Estimated rates and taxes</b>	R
<b>OCCUPATION AND RENT</b>	
<b>Rent per month or portion thereof</b>	R
<b>Occupation date</b>	The Purchaser shall occupy the Unit against the issuing of the Occupation Certificate by the Project Manager. The estimated Occupation date is 31 July 2017, but it will be subject to the issuing of the said Occupation Certificate.
<b>Date after which the Seller will be able to transfer the Unit to the Purchaser</b>	After registration of the Sectional Plan and opening of the Sectional Title Register and against payment of all amounts due by the Purchaser. (Clause 16)
<b>BOND ORIGINATOR</b>	
<b>Name</b>	
<b>Contact person</b>	
<b>Contact number</b>	
<b>E-mail address</b>	
<b>ANNEXURES</b>	
<b>"A"</b>	Standard terms and conditions.
<b>"B"</b>	Demarcation and proposed plan of Unit.
<b>"C"</b>	Specifications and schedule of finishes.

SIGNATURE ON NEXT PAGE

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2017.

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_

Duly authorised for and on behalf of  
the Seller

2. \_\_\_\_\_

SIGNED at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2017.

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_

Duly authorised for and on behalf of  
Purchaser 1

2. \_\_\_\_\_

\_\_\_\_\_

Duly authorised for and on behalf of  
Purchaser 2

This is the annexure referred to in the Agreement of Sale for a Sectional Title Unit above and the provisions hereof shall be incorporated in and to form part of that Agreement.

## 1. INTRODUCTION

- WHEREAS** the Seller is the owner of Erf 982 Louwlandia Extension 48; (“the land”); and
- WHEREAS** the Seller will establish a residential Sectional Title Scheme thereon to be known as “Heritage Square”, in accordance with the applicable zoning and with the rights reserved in favour of the Seller in terms of Section 25 of the Sectional Titles Act, No. 95 of 1986, as amended; and
- WHEREAS** the Unit hereby sold is a proposed Sectional title Unit in the aforesaid Scheme; and
- WHEREAS** the Seller has erected buildings on the land materially in accordance with annexures “B” and “C” hereto; and
- WHEREAS** upon completion of the buildings the Seller shall apply for the opening of a Sectional Title Register in respect of the buildings erected and completed on the land; and
- WHEREAS** the Purchaser wishes to purchase a Unit in the Scheme and the Seller is agreeable to selling a Unit upon the terms and conditions set out in this Agreement; and
- WHEREAS** this Agreement comprises the Transaction Schedule read together with annexures “A”, “B” and “C” annexed hereto.

NOW THEREFORE IT IS AGREED THAT:

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement unless otherwise indicated or unless the contrary intention shall appear the following terms shall have the meanings assigned to them hereunder, namely:
- 2.1.1 **“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;
- 2.1.2 **“the Agent”** means Just Invest of Zomerlust Estate, Second Floor, Cnr Bergriver Boulevard & Bergsig avenue, Paarl, Cape Town, 7646;
- 2.1.3 **“the Agreement”** means the written document as set out in the Transaction Schedule inclusive of Annexures “A”, “B”, and “C”;
- 2.1.4 **“Body Corporate”** – means the Body Corporate as defined in the Sectional Title Management Act 8 of 2011;
- 2.1.5 **“the Bond Attorneys”** means Neil Esterhuysen and Associates Incorporated, Centurion, or its nominee;
- 2.1.6 **“the Bond Originator”** shall mean the entity as set out in the Transaction Schedule;
- 2.1.7 **“building or buildings”** – means a structure of a permanent nature erected or to be erected and which is shown on a Sectional Plan as part of a Scheme;
- 2.1.8 **“business day”** means any day other than a Saturday, Sunday or a day which is an official public holiday in South Africa and **“day”** shall mean a calendar day;
- 2.1.9 **“common property”** – means the land included in the Scheme, such part of the building or buildings as are not included in any Section and to which the Purchaser shall have use and access in accordance with the participation quota;
- 2.1.10 **“the Conveyancer/s”** – shall mean Neil Esterhuysen and Associates Incorporated, Centurion;
- 2.1.11 **“the Developer”** – shall mean the registered owner of the land, who is the Seller or its successors in title or assigns having the rights and powers conferred on a Developer by the Act;
- 2.1.12 **“Effective Date”** means the date of the fulfilment or waiver of the suspensive condition contained in Clause 4;
- 2.1.13 **“the Anticipated Occupation Date”** – means 31 August 2017, but conditional on the provisions of Clause 7.

- 2.1.14 **“the Occupation Date”** – the date on which the Project Manager issues an Occupation Certificate as is required by law, to the effect that the buildings and/or Unit is habitable.
- 2.1.15 **“the Parties”** means the Seller(s) and the Purchaser(s) as set out in the Schedule and “Party” means any one of them, as the context may indicate;
- 2.1.16 **“the prime rate”** means the nominal annual compounded monthly in arrears at the prime overdraft rate of interest charged by ABSA Bank Limited, from time to time publicly quoted as such by ABSA, calculated on a 365 (three hundred and sixty five) day factor, irrespective of whether or not the year is a leap year, as certified by any manager of ABSA, whose appointment as such it shall not be necessary to prove, which certificate shall serve as *prima facie* proof of its contents;
- 2.1.17 **“the Project Manager”** – Marco van Wyk of Marnell Construction;
- 2.1.18 **“the Property”** – means collectively the land and the buildings which shall comprise the Scheme, as will be shown on the Sectional Plan;
- 2.1.19 **“participation quota”** – in relation to a Section or the owner of a Section shall be a percentage expressed to four decimal places reflecting the undivided share in the common property of an owner of the Section, its collective rights and obligations in the Scheme, as determined in the Act, and as amended from time to time;
- 2.1.20 **“the Plans”** – the proposed demarcation and plans of the Unit set out in Annexure “B”;
- 2.1.21 **“the Purchase Price”** means the price as set out in the Schedule (Inclusive of VAT);
- 2.1.22 **“the Purchaser”** means the Purchaser(s) as set out in the Schedule;
- 2.1.23 **“the Purchaser’s address”** means the Purchaser(s)’ address(es) as set out in the Schedule;
- 2.1.24 **“the Rules”** – the rules as referred to in Clause 8 sublimated by the Rules as set out in Annexures 8 and 9 of the Act;
- 2.1.25 **“the Section”** – means the section described in the Transaction Schedule and more fully described on the Sectional Plans, notwithstanding that the Sectional Plans upon which it is shown or to be shown may not yet be registered;
- 2.1.26 **“the Scheme”** – means the Heritage Square Sectional Title Development promoted by the Seller in respect of the Property to be known as the Heritage Square Sectional Title Scheme;
- 2.1.27 **“the Sectional Plan”** in relation to a Scheme, means a Plan approved by the Surveyor General, which shows the building or buildings and the land comprising the Scheme, as divided into two or more Sections and common property;
- 2.1.28 **Sectional Title Register”** – means the Sectional Title Register to be opened and registered in terms of the Act and includes the Sectional Plan registered under the Act in respect of the land and buildings thereon;
- 2.1.29 **“the Seller”** means the Seller as set in the Schedule;
- 2.1.30 **“the Seller’s address”** means the Seller’s address(es) as set out in the Schedule;
- 2.1.31 **“the specifications and schedule of finishes”** – the particulars set out in annexure “C” to this Agreement;
- 2.1.32 **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
- 2.1.33 **“South Africa”** means the Republic of South Africa;
- 2.1.34 **“the Transaction Schedule”** – shall mean the Transaction Schedule prefixed to this Agreement, forming part of and incorporated in the Agreement;
- 2.1.35 **“the Transfer Date”** means the date of registration of transfer of ownership of the Unit in the relevant deeds registry into the name of the Purchaser.
- 2.1.36 **“the Unit”** – shall have the meaning defined in the Act and regarding the Unit hereby sold shall mean any Unit which is specified in the Transaction Schedule, notwithstanding that the Sectional Plan upon which the Section forming part of the Unit is shown or is to be shown may not be presently registered. The Unit shall comprise of the Section, the exclusive use areas as well as an undivided share in the common property in the Property as shown and more fully described on the Sectional Plan, and apportioned to the said Section in accordance with the participation quota of the Section to be determined in accordance with the provisions of Section 32(1) of the Act;
- 2.1.37 **“VAT”** means Value-added Tax payable in terms of the VAT Act;
- 2.1.38 **“VAT Act”** means the Value-added Tax Act No. 89, of 1991, as amended.
- 2.1.39 any reference to a “clause” is a reference to a clause of this Agreement;
- 2.1.40 any reference to the singular includes the plural and *vice versa*;
- 2.1.41 any reference to natural persons includes legal persons and *vice versa*;



- 2.1.42 any reference to a gender includes the other genders;
- 2.1.43 any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.2 the Transaction Schedule to this Agreement forms an integral part of it;
- 2.3 a reference, description or definition of any matter or person in the Schedule shall have a corresponding meaning to the Agreement;
- 2.4 when any number of days is prescribed in this Agreement, it shall be reckoned exclusively of the first and inclusively of the last day.
- 2.5 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this interpretation clause.
- 2.6 no provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 2.7 the *eiusdem generis* rule shall not apply and whenever the term "including" is used followed by specific examples, such examples shall be interpreted to be illustrative only.
- 2.8 clause headings have been inserted for ease of reference only and shall not affect the interpretation of this Agreement.
- 2.9 the expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.10 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.11 this Agreement shall be governed by and construed and interpreted in accordance with the law of South Africa.

### **3. SALE**

- 3.1 The Seller hereby sells to the Purchaser who hereby purchases the Unit from the Seller, and on the terms and conditions set out in this Agreement.
- 3.2 The precise boundaries of the Section forming part of the Unit hereby sold shall be as depicted upon the Sectional Plan as and when approved in terms of the Act.
- 3.3 The signature of the agreement by the Purchaser shall constitute an irrevocable offer and remain open for acceptance by the Seller for a period of 90 (ninety) days from the date of signature hereof by the Purchaser.
- 3.4 As soon as the Seller shall have signed this document a binding agreement of purchase and sale shall come into being between the Seller and the Purchaser in spite of the fact that the Seller may not have communicated the fact of such signature and/or acceptance to the Purchaser. No notice to the Purchaser of the Seller's acceptance of the offer is required to bring about the agreement.

### **4. SUSPENSIVE CONDITION**

- 4.1 The whole of this Agreement (save for the provisions of 2, this 4, 12, 13, 15, 17 and 20 to 24 inclusive, which shall be of immediate force and effect) is subject to the fulfilment of the following suspensive condition, namely that:
- 4.1.1 the Purchaser is able to arrange a loan upon the security of a first mortgage bond to be passed over the Unit for a sum of not less than the amount referred to in the Schedule at prevailing bank rates and on conditions for similar properties for and Purchaser of a similar financial standing, on or before the date specified in the Transaction Schedule;
- 4.2 In the event of the suspensive condition in 4.1.1 above not being timeously fulfilled, this sale shall automatically lapse and be of no further force or effect. The Seller shall then refund the deposit, together with interest, as contemplated in 6.1.1 below, if applicable.
- 4.3 The Purchaser shall properly and expeditiously do all things necessary and sign all documents as may be required for the purpose procuring the fulfilment of the condition in 4.1.1.

- 4.4 The condition contained in 4.1.1 shall be fulfilled if timeous written advice is given by the Purchaser or the Purchaser's financial institution to the Seller or to the Conveyancers that the application was successful and that the loan within the meaning of the clause has been approved in principle by the proposed mortgagee.
- 4.5 The Purchaser hereby acknowledges that it is obliged to actively pursue the fulfilment of the condition in 4.1.1 and to make application for a loan in an amount not greater than the amount stated in clause 4.1.1 and that should it fail to do so, the Seller will be entitled to deem the Purchaser to have waived the benefit of the aforesaid suspensive conditions, it being recorded that the suspensive condition contained in 4.1.1 is a condition in favour of the Purchaser which may be waived, at any time prior to the fulfilment thereof, on notice to the Seller.
- 4.6 In the event of the Purchaser making application for a loan in an amount less than the sum in 4.1.1 and the said loan being approved in principle by the proposed mortgagee, clause 4.1.1 shall be deemed to have been fulfilled. Should the Purchaser make application for a loan in an amount greater than the amount in 4.1.1, or failed to take sufficient steps to fulfil the provisions of clause 4.1.1, the Purchaser will be deemed to have waived the benefit of the said suspensive condition.

## **5. LOAN APPLICATION**

- 5.1 The Purchaser undertakes to within 7 (seven) days from the Signature Date, sign all such documents relating such application and to do all such things as may be required to make application for a loan to a financial institution through the Mortgage Originator. The Purchaser acknowledges that he/she is familiar with all the relevant requirements of financial institutions relating to the granting of loan based, *inter alia*, on the Purchaser's income and liabilities, ability to pay and the total exposure of the Purchaser towards the relevant financial institution. The Purchaser warrants that he is solvent and that no existing judgments are recorded against his name.
- 5.2 The Purchaser hereby irrevocably authorizes and appoints the Mortgage Originator to make application on his behalf for the loan and undertakes immediately to sign all or any documents relating thereto. In order to attain these objectives, the Purchaser undertakes to furnish the Mortgage Originator with all the required information and documents (and to sign all required documents and / or forms) so that application may be made for and on behalf of the Purchaser for such loan.
- 5.3 Any failure by the Purchaser immediately, punctually and comprehensively to comply with the requirements of this clauses shall be deemed by the Parties to constitute a vital and material breach of this Agreement.

## **6. PURCHASE PRICE AND PAYMENT**

- 6.1 The Purchase Price shall be payable in cash on registration of transfer and shall be secured as follows:
- 6.1.1 a deposit as portion of the Purchase Price as set out in the Transaction Schedule shall on the date set out in the Transaction Schedule be paid to the Conveyancers, who shall hold the sum in an interest-bearing trust call account, interest for the benefit of the Purchaser, pending registration of transfer (if applicable);
- 6.1.2 the balance of the Purchase Price shall be paid in cash or be secured by the furnishing to the Seller's Conveyancers of acceptable bankers guarantees within 21 (Twenty One) days after the Signature Date, provided that should Clause 4.1.1 be applicable, the Purchaser will furnish the said guarantees within 21 (twenty one) days after the Effective Date. Guarantees are to be in a format acceptable to the Seller and expressed to be payable on registration of transfer of the Property to the Purchaser.
- 6.2 In the event of the Purchaser failing to furnish bankers guarantees timeously or failing to provide the required documentation, sign transfer, bond or any other conveyancing documents or to pay all costs of the transfer for which the Purchaser is liable within 7 (seven) days of demand therefor by the Conveyancers, the Purchaser shall be liable to pay penalty interest calculated at the prime rate, capitalised monthly in arrears. The penalty interest shall be calculated on the Purchase Price from the date that the guarantees were due to be furnished to the Seller's Conveyancers or from the expiry of the 7 (Seven) day period in this 6.2 until the date that the guarantees are furnished or the Purchaser complies with the demand above, both days included.
- 6.3 All payments in terms of or arising out of this Agreement shall be made free of bank exchange, commission and all other deductions to the Party entitled thereto upon the due date thereof and in the event of such due date not being a business day then the due date shall be the immediately following business day.
- 6.4 Neither Party shall have the right to defer, adjust or withhold any payment due to the other in terms of nor arising out of this Agreement or, to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.
- 6.5 Notwithstanding anything to the contrary herein contained the Reservation Deposit referred to in the Transaction Schedule shall be dealt with as follows:-
- 6.5.1 The Reservation Deposit shall be paid by the Purchaser to the Agent within 7 days of the date of signature of this Agreement by the Purchaser. The Reservation Deposit is a non-refundable fee paid to reserve the right to purchase the Unit. The only instance when the reservation fee shall be refundable is when the suspensive conditions are not fulfilled. In the event of the suspensive conditions being fulfilled, the reservation fee shall be allocated as partial settlement of the Purchase Price.

- 6.5.2 The Reservation Deposit shall be held by the Agent in trust and invested in an interest-bearing account for the Purchaser's benefit up to and including the Transfer Date, and where paid to the Conveyancers, shall be invested accordingly. Where the Reservation Deposit is paid to the Conveyancers, the Seller and the Purchaser by their signatures to this Agreement give written consent in terms of Section 78(2)(A) of the Attorneys Act authorizing the Conveyancers to invest all amounts received from the Purchaser in a Nedbank Corporate Saver account at prevailing call interest rates, from time to time.
- 6.5.3 In the event of the Agreement being cancelled for whatever reason other than the suspensive conditions not being fulfilled, however, the capital and interest shall be retained by and accrue to the Seller as contemplated in clause 19 hereafter.

## **7. OCCUPATION**

- 7.1 The Seller anticipates that the building will have reached practical completion by the Anticipated Occupation Date, but does not warrant that date, as the practical completion of the building may be influenced by matters such as, red tape, regulatory and/or local authority and/or deeds office and/or surveyor general delays, strikes, lock out, inclement weather, the lack of materials or the like and the Seller reserves the right in its sole discretion to advise the Purchaser of the amendment of the Anticipated Occupation Date.
- 7.2 If beneficial occupation is not given to the Purchaser within 6 (six) calendar months of the Anticipated Occupation Date, the Purchaser and the Seller shall each have the right on notice to the other of them to resile from this Agreement. In such event the Purchaser shall be entitled to receive a refund on all payments made by the Purchaser in terms hereof.
- 7.3 The Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for failure for any reason to give occupation to the Purchaser on the Anticipated Occupation Date.
- 7.4 Subject to the Purchaser having paid on due date deposits, levies, legal costs, and any other amounts due by the Purchaser in terms of this Agreement, have been paid or secured; occupation of the Section shall be given to and taken by the Purchaser on the Anticipated Occupation Date. The Seller shall make every effort to ensure that the Unit is ready for occupation on the Anticipated Occupation Date, however; the Seller does not warrant that the Unit will be ready for occupation on the said date. In the event that the Unit is ready for occupation either before or after the Anticipated Occupation Date, the Purchaser shall take occupation on the date as advised in terms of Clause 7.1 and shall have no claim whatsoever whether for damages, specific performance or otherwise against the Seller arising from the advised occupation in differing from the Anticipated Occupation Date.
- 7.5 In the event of the Occupation Date preceding the Transfer Date the Purchaser shall pay rental as set out in the Transaction Schedule to the Seller. The Purchaser's obligation to pay the rental as stipulated in the Transaction Schedule shall commence from the Occupation Date.
- 7.6 It is recorded that the Purchaser is aware that, on the Occupation Date, the building, common property, and other Sections may be incomplete and under construction and that the Purchaser must necessarily suffer inconvenience from building operations and from noise and dust resulting there from. 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.
- 7.7 The Parties shall jointly, within 7 (Seven) days of the Occupation Date, compile a list of any defects in the Unit ("the snag list") after which the Seller will, as soon as practically possible attend to all items on the said snag list.
- 7.8 From the Occupation Date until the Transfer Date the Purchaser shall:
- 7.8.1 Keep the Section in good repair;
- 7.8.2 Permit the Seller or his Agent at all reasonable times to enter and inspect the Section;
- 7.8.3 Be responsible for all costs of electricity and water consumed in the Section insofar as these may be separately metered;
- 7.8.4 Not make any alterations or additions to the Section, alter the color Scheme or redecorate, without the Seller's prior written consent;
- 7.8.5 Save insofar as may be inconsistent with the provisions of this Agreement, be responsible for all other obligations of an owner as set out in the Act;
- 7.8.6 Comply with all Rules and Regulations applicable to the Scheme;
- 7.8.7 Be liable for levies payable calculated in accordance with the participation quota attributable to the Section as if the Purchaser was the registered owner of the Section. Such levies shall be paid monthly in advance to the Seller on the first day of each and every calendar month provided that if the Occupation date falls on any day other than the first day of a calendar month, then the Purchaser shall pay pro-rata share of the levies due for the remainder of such calendar month. After the Transfer Date the levies shall be paid to the Body Corporate.
- 7.9 Save insofar as may be inconsistent with the provisions of this Agreement, the provisions of Sections 44(1) of the Act shall apply.

## **8. LEVIES AND RULES OF BODY CORPORATE**

- 8.1 Prior to the establishment of a Body Corporate as envisaged in the Act and from the Occupation date, the Purchaser shall make payment to the Seller monthly in advance on the first day of each month an amount calculated by the Seller as the Purchaser's contribution to all the expenses incurred by the Seller for the administration of the Buildings and the Property in accordance with the participation quota. Upon the establishment of the Body Corporate, the Purchaser shall be liable to pay to the Body Corporate a monthly levy in advance on the first day of each month, being a proportionate share in accordance with the participation quota of the actual cost of managing, operating, administering, repairing and maintaining the Scheme including, rates, taxes, sewerage and sanitation, insurance of every description as determined by the Body Corporate.
- 8.2 The Purchaser authorizes the Seller to make such alterations or amendments to the Rules of the Body Corporate ("the Rules") as well as to file and lodge such altered and amended Rules in the Deeds Registry at Pretoria as the Seller believes is necessary to give effect to the provisions of this Agreement so as to provide for the homogeneous and harmonious operation of the Scheme and/or as are required by any bondholder, and for that purpose the Purchaser irrevocably appoints a duly authorized representative of the Seller as the Purchaser's attorney and Agent and proxy on the Purchaser's behalf to attend all such meetings and do all things as are necessary to give effect to the provisions of this clause.
- 8.3 The Seller has and shall be entitled in its sole discretion to demarcate and allocate exclusive use areas to Units in the Scheme, which exclusive use areas shall be recorded and registered in the Rules in terms of Section 27 (1) of the Act on the opening of the Sectional Title Register for the Scheme. The Purchaser accepts the demarcation and allocation of the exclusive use areas as determined by the Seller and registered in terms of Section 27(1).

## **9. HOME OWNERS ASSOCIATION**

- 9.1 The Purchaser acknowledges that:
- 9.1.1 He is required upon registration of transfer of the Property into his name, the Scheme and its members shall become a member of the Heritage Hill Home Owners Association ("the Association") and agrees to do so, subject to the Memorandum and Articles of Association of the Association;
- 9.1.2 He was furnished with the following documentation of the Association and confirms that he will adhere thereto:
- 9.1.2.1 House Rules;
- 9.1.2.2 Aesthetic Rules;
- 9.1.2.3 Contractor's Code of Conduct;
- 9.1.2.4 Addendums; and
- 9.1.2.5 Extension of Building periods (if occupational certificates have not yet been issued);
- 9.1.3 For as long as he is the registered owner of the Unit, the Purchaser will remain a member of the Association and be bound by its Memorandum and Articles of Association;
- 9.1.4 Should the Purchaser alienate the Unit, he will ensure that the transferee is made fully aware of the Association and undertakes to become a member thereof;
- 9.1.5 Prior to the registration of the transfer of the Unit, the Purchaser will not be entitled to sell, donate, grant any option or any pre-emptive right in respect of, or in any manner deal with the Unit without the prior written consent of the Association;
- 9.1.6 As a member of the Association, the Purchaser shall with effect from the Transfer Date be obliged to pay the Association a monthly levy, which will be included in the Body Corporate levies;
- 9.1.7 The owner shall not be entitled to transfer the Unit or any interest therein or any Unit thereon without a clearance certificate from the Association to the effect that the provisions of the Articles of Association of the Association have been complied with.

## **10. ADDITIONAL RIGHTS & EXCLUSIVE USE**

- 10.1 The Seller shall reserve the right of exclusive use areas, in terms of Section 27(1) of the Act, which conferring rights of exclusive use enjoyment in favour of the Purchaser, of those parts of the Property described as areas of exclusive use in Clause 5 of the Transaction Schedule.
- 10.2 The Purchaser acknowledges that the exclusive use and enjoyment of those parts of the common property referred to in 10.1 above shall be a right to urban immovable property capable of being mortgaged.
- 10.3 The Purchaser's rights in terms of this clause may not without the prior consent of the Seller be sold or otherwise dispose of to anyone except the person to whom the Purchaser sells or disposes of the Unit.

- 10.4 The Purchaser undertakes not to interfere with or hinder any other purchaser or owner of any Unit forming part of the Scheme in the exercise by him of any exclusive rights granted to him.
- 10.5 In the event of Exclusive Use Areas not having been finally determined at date of signature hereof, until registration of a Sectional title Scheme in respect of the Development, the Seller hereby reserves the right in its absolute discretion to convert such portion/s of the common property, as it may determine, for exclusive use. The Seller shall act in collaboration with the land surveyor (as determined by the Seller) in so determining exclusive use areas and a decision so arrived at shall be binding on the Purchaser. It is recorded that an exclusive use area permits for the issue of a certificate of real right in respect of a right to exclusive use to such area.
- 10.6 The cost of and incidental to the creation of exclusive use areas shall be borne by the Seller and all Certificates or Registered Real Right in respect of exclusive use areas so created, shall be to and in the name of the Seller who shall be obligated to transfer the Right of Exclusive Use to the Purchaser by way of Notarial Deed.
- 10.7 The Purchaser hereby grants to the Seller an irrevocable power of attorney *in rem suam* (operative from the time that the Purchaser becomes a registered owner of the Unit/s forming the subject matter of this sale), to attend meeting/s of the Body Corporate and so to vote at such meeting/s on behalf of and to the exclusion of the Purchaser in support of such resolutions as may be necessary to give effect to the a foregoing sub clauses, and to exercise the proxy hereby granted by the Purchaser to the Seller in connection therewith, supplemented by the Rules Annexure 8 and 9 of the Act.
- 10.8 In the event of the Purchaser selling the Unit/s to a subsequent Purchaser, he shall then be obliged to transfer the rights of exclusive use by means of a Notarial Bond.
- 10.9 Should the Purchaser's signature be required to any documents necessary to procure implementation of the foregoing, the Purchaser undertakes to sign such document/s immediately upon request by the Seller.

## 11. RISK

All the benefit of risk in and to the Section shall pass to the Purchaser on the Occupation Date or the Transfer Date whichever the earlier.

## 12. PURCHASER'S ACKNOWLEDGEMENT

- 12.1 The Purchaser acknowledges that he is aware of and fully acquainted with the matters hereinafter set forth, *inter alia* that:
- 12.1.1 the Unit is sold in accordance with the Sectional Plan and the participation quota endorsed thereon as and when approved and subject to any modification or alterations which may be made thereto from time to time in accordance with the provisions of the Act or of any authority, and subject to any applicable conditions of title which may be incorporated therein;
- 12.1.2 it will only be possible for the Seller to give transfer of the Unit to the Purchaser after approval and registration of the Sectional Plan and the opening of a Sectional Title Register in respect of the buildings;
- 12.1.3 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 compensations for any surplus;
- 12.1.4 the Seller intends to procure that upon the opening of the Sectional Title Register and the establishment of the Body Corporate, the management and conduct Rules contained in the regulations to the Act shall apply subject to any changes and modifications allowed by the Act and which the Body Corporate may deem necessary.
- 12.1.5 the Unit is sold subject to the Rules and guidelines of the proposed Body Corporate, from time to time.
- 12.2 By his signature hereto the Purchaser irrevocably and *in rem suam* appoints the Seller as his Agent and attorney to attend any meeting of the Body Corporate at which the Purchaser is entitled to be present and then and there to vote, on behalf of the Purchaser for the amendment of the Rules as referred to in the paragraph above or the adoption of any house Rules, supplemented by the Rules set out in Annexure 8 and 9 of the Act.

## 13. BUILDINGS NOT YET COMPLETED

- 13.1 It is recorded that the buildings may not yet have been completed. The Seller shall be entitled to vary the Plans and/or specifications of finishes for the Buildings to such extent as may, in the Seller's opinion, be reasonably necessary. If the completion of the Units is delayed as a result of viz major or any other cause beyond the control of the Seller including but not limited to delays by the local authority, labour unrest, inclement weather, unavailability of materials and supplies etc., then the Seller shall be entitled to a fair and reasonable extension of time for such actions and the Purchaser shall not for that reason have any claim against the Seller, whether for damages or otherwise. The Seller acknowledges that building activities will be undertaken on the land from time to time in the erection, construction and completion of the Buildings and the Purchasers accepts any reasonable inconvenience or nuisance occasioned thereby.

- 13.2 The Property and Units shall be built substantially in accordance with the Plans and specifications annexed and marked "B" and "C" provided that the Seller shall be entitled to substitute items of a similar standard and quality for any specific item. If any dispute arises between the Parties in respect of any such substitution, such dispute shall be referred to the Project Manager for decision who shall act as an expert and not an arbitrator. The decision of the Project Manager shall be final and binding on the Parties.
- 13.3 The Seller shall be entitled to vary the Plans for the Property for any reason considered reasonably necessary by the Seller but so that the Purchaser's rights will not be materially prejudiced or affected thereby.
- 13.4 The Seller shall have the right for technical or aesthetic reasons to make changes in the area or lay-out of the Property, the Common property, or of any other Unit or Exclusive Use Areas as indicated on the Plans.
- 13.5 If a dispute arises between the Parties as to either the design or standards of finishes then the Project Manager shall, in his absolute discretion, determine whether there has been substantial compliance and the Parties are bound by such decision, it being final and binding on them.
- 13.6 The Seller shall not be obliged at any stage to agree to any extras, omissions, variations or changes of any nature whatsoever to the Unit.
- 13.7 The Purchaser shall not employ any person or firm to carry out any work of whatsoever nature on or to the Unit prior to the Transfer Date.

#### **14. PROHIBITIONS ON PURCHASER PRIOR TO TRANSFER**

The Purchaser shall not in any way whatsoever cede, assign or alienate its rights to the Unit or let the Section or in any other manner dispose of or part with, its rights of occupation thereof prior to the date of registration of transfer except with the prior written consent of the Seller and then subject to such conditions as the Seller may impose in respect of such intended cession, assignment, alienation or disposal.

#### **15. WARRANTIES**

- 15.1 The Seller hereby furnishes to the Purchaser the Standard Home Builders Warranty prescribed by the National Home Builders Registration Council in respect of the Section and warrants that, subject to the provisions hereof, it will rectify any material deficiency related to workmanship and materials in respect of the Section provided that the Purchaser notifies the Seller in writing of such deficiency within a period of 30 (Thirty) days after the Occupation date. Failing such timeous notification in writing by the Purchaser to the Seller, the Purchaser shall have no further claim against the Seller in this regard, save to any extent provided in terms of the Standard Home Builders Warranty.
- 15.2 Subject to the provisions of 15.1, the Purchaser acknowledges that the Unit is purchased and sold voetstoots, without any warranties, express or implied, and the Seller and its Agents shall be free from all liability for any damages or loss suffered by the Purchaser by reason of any defect existing or arising from the Unit, or the common property. The Unit is purchased subject to all conditions and servitudes, and the Purchaser acknowledges having made itself fully acquainted with the Section, its nature, situation and extent, the Plan, the Specification of Materials and Finishes, the said Rules of the Development Scheme and all other relevant documents.

#### **16. TRANSFER**

- 16.1 The Seller shall not be obliged to pass transfer to the Purchaser, until such time as the total Purchase Price and all other amounts for which the Purchaser may be liable in terms hereof to the date of transfer have been paid and/or payment thereof has been secured as herein provided. Transfer shall be effected by the Conveyancers and the fees and expenses of and incidental to the preparations and registration of the transfer shall be included in the Purchase Price. The Parties shall immediately when called upon to do so by the Conveyancers sign all documents as are necessary to effect transfer.
- 16.2 The Seller shall pay to the Conveyancers all transfer fees, and all other incidental fees in regard to the transfer of the Unit.
- 16.3 The Seller shall pay all costs for registration of the bond, but excluding:
- 16.3.1 All initiation fees and valuation fees if these charges are not included in the bond;
- 16.3.2 An estimate provisional sum in respect of provisional levies to the Body Corporate;
- 16.4 In the event that the financial institution insists on registration of the bond by someone other than the Conveyancers, for whatsoever reason, the Seller shall have the discretion to allow such registration, but against payment by the Purchaser in such instance of all transfer and bond costs to the Seller's Conveyancers.

**17. BREACH**

- 17.1 In the event of any payments in respect of the Purchase Price, Occupational Rent or other charges or payments for which the Purchaser is liable hereunder not being paid on due date, or any other obligation imposed on the Purchaser hereunder which remains unfulfilled for a period of 7 (Seven) days after notice in writing has been given to the Purchaser calling upon the Purchaser to fulfil such other obligation, the Seller shall, at its election and without prejudice to any other rights which it may have in terms hereof or at law, have the right either to enforce this Agreement or alternatively to declare the sale cancelled without further notice. In the event of the Seller cancelling this Agreement any amount or amounts paid to the Seller or the Conveyancer in terms of Clause 6.5 shall be forfeited to and retained by the Seller as *roukoop*, alternatively, be retained as liquidated and agreed damages, save for the exemptions contained herein.
- 17.2 If this Agreement is cancelled as hereinbefore provided the Purchaser and all persons claiming a right of occupation through the Purchaser shall forthwith be obliged to vacate the Unit and to deliver it to the Seller. It is specifically recorded in this regard that no lease or other similar right of occupation in favour of the Purchaser shall be created or come into existence by virtue of this Agreement. Should the Purchaser dispute the Seller's right to do so, then pending the determination of that dispute, the Purchaser shall continue to pay all amounts payable in terms of this Agreement on the due date thereof, and to comply with all the terms hereof and the Seller shall be entitled to retain such amounts received in the interim.

**18. INDEMNITIES**

Notwithstanding anything to the contrary herein contained, the Seller shall not be responsible for any loss or damage which the Purchaser may suffer by any act or omission whatsoever or neglect on the part of the Seller, its servants, employees or Agents, nor shall the Seller be responsible for any loss or damage of any description whether to the Property or person which the Purchaser or any other person may suffer by reason of the Property or the Building (s) at any time falling into defective state or by reason of any repairs to the remainder of the development which are to be effected by the Seller or any other occupant not being effected timeously or at all, and the Purchaser shall not be entitled for any of the said reasons or for any other reason whatsoever, to withhold payment of any monies due to the Seller in terms hereof.

**19. COMMISSION**

- 19.1 The Seller shall pay the Agency 3% (excl V.A.T) of the Purchase Price per successful registered transaction concluded.
- 19.2 Commission shall be deemed to be earned by the Agent, against signature by the Seller and Purchaser presented to him by the Agent and fulfilment of any suspensive condition in the Agreement, which commission shall be paid to the Agency by the Conveyancer, against registration of transfer of such Unit/s in the Deeds Office.
- 19.3 The Seller will instruct the Conveyancer to pay the commission on the Transfer Date. An invoice will be forwarded to the Seller indicating the commission payable.
- 19.4 In order to give effect to this clause the Seller records that:
- 19.4.1 the Conveyancer is irrevocably instructed to pay the commission from any deposit or from the Purchase Price being held on trust to the Agent within 2 (two) business days of the Transfer Date;
- 19.4.2 should the Agreement be cancelled for any reason after fulfilment of the suspensive conditions, the defaulting party shall be liable for the payment of the remainder of the commission to the Agent on demand;
- 19.4.3 in the event of no deposit or other amounts being paid or such amounts paid being insufficient, then the Agent has the right to take action against the Purchaser who shall furthermore be liable for all legal costs, on attorney and own client scale incurred by the Agent in instituting the claim. If necessary, the Agent shall take cession of the Seller's claim and enforce the same. The Developer undertakes to sign all documentation to give effect hereto.

**20. NOTICES AND DOMICILIA**

- 20.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 20.2 For purposes of this Agreement the Parties' respective addresses shall be:
- The Seller at:                              The address reflected in the Transaction Schedule.
- The Purchaser at:                            The address reflected in the Transaction Schedule.

Or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

**21. JURISDICTION**

The Parties hereby consent to the jurisdiction of any Magistrate Court having jurisdiction in terms of Section 28 of Act No. 32 of 1944, as amended, relative to all and any disputes directly or indirectly connected with this Agreement.

**22. GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the laws of the Republic of South Africa.

**23. GOOD FAITH**

The Parties shall use their best endeavours to execute this Agreement and co-operate and consult with each other regarding this Agreement, it being the intention that the relationship between them shall be governed by the principles of the utmost good faith.

**24. MISCELLANEOUS**

**24.1 Independent Advice**

Each of the Parties hereto acknowledges that they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the Parties hereto acknowledge that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with the Agreement.

**24.2 Further Assurances**

The Parties agree to act at all times in good faith and agree to perform any further acts and to execute and deliver any further documents, which may be necessary or appropriate to carry out the purposes and the implementation of this Agreement.

The Parties shall at all times observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.

**24.3 Whole Agreement**

This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no Agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

**24.4 Variation**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives. No latitude, extension of time or other indulgence which may be given or allowed by any one Party to the other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any one Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

**24.5 Confidential**

The Parties shall at all times keep confidential (and ensure that their employees and Agents shall keep confidential) all confidential information which they have or may acquire in relation to this Agreement and shall specifically, not disclose to any third Parties, the terms of the offer.

**24.6 Costs**

Each Party is responsible for its own costs incurred in the negotiation, and settlement of this Agreement