



Where your new life begins...

MEMORANDUM OF AGREEMENT

between

CASHMERE TRADE 39 (PROPRIETARY) LTD

and

in respect of proposed

Unit No. _____ RiversEnd

Hathorn-Thatcher
ATTORNEYS & CONVEYANCERS

FJ HATHORN
49 LANSDOWNE CRES, DURBAN NORTH, 4051
PO BOX 20958, DURBAN NORTH, 4016
TEL: 27 31 564 0973 FAX: 27 31 564 0976
CELL: 082 414 7225
EMAIL: thatcher@telkomsa.net

A JOINT VENTURE PROJECT BY:  **TOPDRAWER**
PROPERTY GROUP

 domainproperty

SCHEDULE OF INFORMATION

A. ADDRESS OF THE SELLER:

Lifestyle Centre, Clifton Hill Estate,
Acutt Drive, Hillcrest.

B. THE PURCHASER:

1. Full Names: _____

2. Identity Number: _____

3. Marital status: _____

If married, in community of property or out of community of property

C. ADDRESS OF THE PURCHASER:

1. Physical Address: _____

2. Postal Address: _____

3. Telephone No.: _____ Cellphone No.: _____

4. Email Address: _____

D. THE BUILDINGS:

1. NAME: **RiversEnd**

2. COMPRISING: 459 units and exclusive use areas.

3. ADDRESS: 70 Connor Road, Pietermaritzburg

E. UNIT:

NUMBER: _____ approximate extent : _____ square metres.

F. THE EXCLUSIVE USE AREA:

Parking Bay: _____ approximate extent : _____ square metres.

THE PURCHASER wishes to acquire the rights to the following parking bay/s for a sum of R12 500,00 inclusive of VAT, per parking bay, which amount is included in the purchase price reflected in Item G below, being:

Parking Bay: _____ approximate extent : _____ square metres.

G. THE PURCHASE PRICE:

The purchase price of THE UNIT is the sum of

R _____ (_____)

inclusive of VAT at 14%, which shall be paid to THE SELLER on THE TRANSFER DATE and shall be secured in the meantime as follows:

1. R _____ (_____)

to be paid to THE CONVEYANCER'S TRUST ACCOUNT (Ref : _____) within 5 (FIVE) days of the date of signature by THE PURCHASER, failing which the agreement shall lapse and be of no further force or effect.

2. R _____ (_____)

to be paid to THE CONVEYANCER'S TRUST ACCOUNT (Ref : _____) within 21 (TWENTY-ONE) days of signature by THE PURCHASER.

3. R _____ (_____)

shall be paid on THE TRANSFER DATE and is to be provided by the raising of a loan from a financial institution and shall be secured by guarantees issued by a financial institution in a form acceptable to THE CONVEYANCERS which guarantees shall be delivered to THE CONVEYANCERS within 14 (FOURTEEN) days of granting of such loan.

H. THE ANTICIPATED OCCUPATION DATE: _____

I. THE OCCUPATIONAL RENTAL:

R _____ (_____)

The sum equal to 0,75 % (COMMA SEVEN FIVE PER CENTUM) of the purchase price payable monthly in advance by THE PURCHASER into THE CONVEYANCERS TRUST ACCOUNT from THE OCCUPATION DATE to THE TRANSFER DATE.

J. ESTIMATED LEVY:

R _____ (_____)
per month.

K. THE AGENT: _____

TERMS AND CONDITIONS OF CONTRACT

IT IS AGREED:

1. **PARTIES**

1.1 CASHMERE TRADE 39 (PROPRIETARY) LIMITED No 2006/037144/07 represented herein by IAN RICHARD MELVILLE WADESON and / or GENEVIEVE VANDA TEKLA McNEILL;

1.2 The person or persons referred to in ITEM B of THE SCHEDULE.

2. **DEFINITIONS**

2.1 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

2.2 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement notwithstanding that it is only contained in the interpretation clause.

2.3 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last

day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

2.4 Words and phrases used but not defined hereunder shall bear the meaning assigned to them in the ACT.

2.5 An expression which denotes any gender includes the other genders, a natural person includes an artificial person (whether incorporated or unincorporated) and vice versa and the singular includes the plural and vice versa, unless inconsistent with the text.

2.6 In this agreement, unless inconsistent with the text, the words and phrases set out below in the column on the left shall have assigned to them the meanings in the column on the right.

“ACT” The Sectional Titles Act No. 95 of 1986 (as amended) and any regulation made thereunder as amended from time to time or any act and regulations which may come into effect in substitution therefor.

“AGENT” The person or entity reflected in ITEM K of the SCHEDULE.

"ARCHITECT" shall mean WILLIAMS ASSOCIATE ARCHITECT, 5 Mountbatton Place, Winston Park.

“BODY CORPORATE” the controlling body of the BUILDINGS and the LAND established in terms of the ACT and to be known as the BODY CORPORATE OF RIVERS END.

"BOND ATTORNEYS" Austen Smith Inc. Walmsley House, Pietermaritz Street, Pietermaritzburg. Telephone No. 033 - 3920500

“BUILDINGS” The buildings to be erected on the LAND in accordance with the PLANS and SPECIFICATIONS, the name, composition and postal address of which buildings are set out in ITEM D of THE SCHEDULE.

"BUILDING CONTRACTOR" shall mean the building company to be employed by the DEVELOPER to erect the BUILDINGS on the LAND

“COMPLETION DATE” the date of occupation determined in terms of Clause 8 hereof.

“CONVEYANCERS”		Hathorn-Thatcher, 49 Lansdowne Crescent, Durban North: Tele 031-5640973, Fax 031 5640976, email: thatcher@telkomsa.net.
“CONVEYANCER’S ACCOUNT”	TRUST	Standard Bank, Durban North Branch ACB 042-826, Account No. 05 136 989 3 in the name of Hathorn-Thatcher. Confirmation of payment to be faxed to 031 – 564 0976.
“DEVELOPER”		the SELLER and its successors in title or assigns
“DEVELOPMENT SCHEME”		the sectional title scheme in terms of which the SELLER has erected the BUILDINGS on the LAND and has divided such BUILDINGS into sections and known as RIVERS END.
“EXCLUSIVE USE AREA”		the right to the exclusive use of any area which relates to the UNIT, reflected on the SECTIONAL PLAN and described in ITEM F of the SCHEDULE, and to be allocated in terms of the RULES.
"FICA"		the Financial Intelligence Centre Act No. 39 of 2001.
"HOMEBULDERS ACT"		The Housing Consumers Protection Measures Act No. 95 of 1998, as amended.
“LAND”		the immovable property situated at 70 Connor Road, Pietermaritzburg, and described as: ERF 3164 PIETERMARITZBURG, Registration Division FT, Province of KwaZulu-Natal, in extent 9,6870 hectares.
“LAYOUT PLAN”		the Plan annexed hereto marked “Annexure A” which depicts the layout of the DEVELOPMENT SCHEME, the units in the scheme and exclusive use areas.
“LEVY”		The monthly contribution payable after the TRANSFER DATE to the BODY CORPORATE in respect of the UNIT, for the rates, repairs, upkeep, control, management and administration of the common property and for other purposes described in the ACT.
"PHASED DEVELOPMENT"		the Phased Development scheme comprising three or more phases of development in terms of the right reserved to the DEVELOPER pursuant to Section 25 of the ACT

"PLANS"	the drawings prepared by the ARCHITECT of the BUILDINGS in the DEVELOPMENT SCHEME, copies of which will be exhibited to the PURCHASER and relevant extracts depicting the UNIT described in ITEM E of the SCHEDULE are annexed hereto marked "B1" and "B2"
"PURCHASER"	The person referred to in ITEM B of the SCHEDULE including his heirs, executors, trustees or assigns, successors in title and co-purchaser if any.
"PURCHASE PRICE"	the amount set out in ITEM G of the SCHEDULE.
"RULES"	the Management and Conduct Rules prescribed in the ACT, a copy of which can be viewed on the website namely www.riversend.co.za relating to the administration and control of the Unit, the Exclusive Use Areas and the common property.
"SARS"	the South African Revenue Services
"SCHEDULE"	the document headed "SCHEDULE OF INFORMATION " which is attached hereto containing particulars relating to this transaction.
"SECTIONAL PLAN"	the Sectional Plan to be prepared and approved in accordance with the ACT in respect of the LAND and the BUILDINGS
"SELLER"	the entity referred to in clause 1.1 above
"SPECIFICATIONS"	means the written specification of fixtures, fittings and finishes prepared in respect of the BUILDINGS, annexed hereto marked "C"
"TRANSFER DATE"	the date of registration of transfer of the UNIT into the name of the PURCHASER in the office of the Registrar of Deeds for the Province of KwaZulu-Natal, pursuant to the provisions hereof.
"UNIT"	the unit to be created in terms of the ACT, comprising : <ol style="list-style-type: none">1. The section, the proposed number of which is described in ITEM E of the SCHEDULE, to be shown and more fully described on the SECTIONAL PLAN of the BUILDINGS to be known as RIVERS END, situate in the Msunduzi Municipality of which section the floor area will be approximately the extent

referred to in ITEM E of the SCHEDULE.

2. An undivided share in the common property in the LAND and the BUILDINGS to be shown and more fully described on the SECTIONAL PLAN, to be apportioned to the section in accordance with the participation quota as endorsed on the SECTIONAL PLAN.
3. The right and privilege to the exclusive use and occupation, but not ownership, and free from payment of any rental therefor of the EXCLUSIVE USE AREA recorded in ITEM F of the SCHEDULE.

3. **PREAMBLE**

- 3.1 It is recorded that the SELLER has entered into an agreement of purchase and sale in respect of the LAND. Should this agreement be cancelled for any reason whatsoever thereby preventing the SELLER from performing in terms of the Agreement, this Agreement will forthwith be cancelled and be of no further force or effect. In this event, the PURCHASER shall be refunded all payment made on account of the purchase price and neither party shall have any claim whatsoever against the other arising out of such cancellation.
- 3.2 The SELLER intends to undertake a phased development which will comprise approximately 459 two and three bedroomed residential units on the LAND in accordance with the PLANS and SPECIFICATIONS.
- 3.3 Application will be made by the SELLER in terms of the ACT for the opening of the Sectional Title register in respect of the BUILDINGS comprising each phase of the DEVELOPMENT once such buildings have been erected and are ready for occupation.
- 3.4 As subsequent phases are completed, the SELLER will apply for the extension of the SECTIONAL PLAN and of the Sectional Title Register in terms of the provisions of Section 25 of the ACT.

4. **SALE**

The SELLER hereby sells to the PURCHASER who purchases the UNIT. The PURCHASER acknowledges that the numbers of the section and exclusive use area in the SECTIONAL PLAN may differ from the numbers in the SCHEDULE.

5. **PURCHASE PRICE**

- 5.1 The price payable by THE PURCHASER in respect of THE UNIT is the amount set out and is payable in the manner set out in ITEM G of THE SCHEDULE.

- 5.2 THE PURCHASER shall be entitled to pay any amount or portion of amount referred to in ITEM G 1 or 2 of THE SCHEDULE in cash into THE CONVEYANCER'S TRUST ACCOUNT instead of securing such payment by way of a guarantee, on condition that such cash payment is made within the period specified for the delivery of the guarantee.
- 5.3 All monies paid by THE PURCHASER on account of THE PURCHASE PRICE shall be held in trust in terms of section 78 (2A) of the Attorneys Act by THE CONVEYANCERS to be released to THE SELLER on THE TRANSFER DATE, and any interest which is earned thereon less the nominal fee charged by THE CONVEYANCERS until it is released to THE SELLER shall be for the benefit of and shall be paid to THE PURCHASER as soon as possible after THE TRANSFER DATE.
- 5.4 THE PURCHASER acknowledges that all payments are to be made in South African currency and free of bank charges and other expenses, and that THE CONVEYANCERS are not entitled to invest the deposit in a savings account until THE PURCHASER has provided THE CONVEYANCERS with all documents required by THE CONVEYANCERS in terms of the Financial Intelligence Centre Act No. 38 of 2001 (FICA).

6. **SELECTION**

- 6.1 The PURCHASER shall, within THIRTY (30) days of signature hereof select which of the THREE (3) choices of finishes available in terms of THE SPECIFICATIONS he requires to be installed in THE UNIT, whereupon such selection shall be committed to writing, signed by or on behalf of THE PURCHASER and THE SELLER and attached as an addendum to this agreement whereafter THE SELLER shall, subject to other terms and conditions contained herein, complete THE UNIT in accordance therewith.
- 6.2 Should the PURCHASER fail to make such selection timeously, the SELLER may in its entire discretion select from those available in terms of the SPECIFICATIONS and the PURCHASER shall be bound to accept the choice of the SELLER. Similarly, the PURCHAER shall be bound by the selection of the SELLER should SELLER select items of a similar nature.

7. **CONDITIONS PRECEDENT**

- 7.1 This agreement is subject to the suspensive condition that the PURCHASER or the SELLER on behalf of the PURCHASER obtains a loan from a financial institution for a sum equivalent to the amount mentioned in ITEM G 3. of the SCHEDULE on security of a first mortgage bond to be registered over the UNIT and to be granted within TWENTY-ONE (21) days of the date of conclusion of this agreement on the basis that the funds will be immediately available for allocation to the loan on the TRANSFER DATE and that the BOND ATTORNEYS are appointed to attend to the registration of the mortgage bond. Should the aforesaid appointment not be a condition of the mortgage bond instruction, the loan shall be deemed not to have been granted.
- 7.2 The PURCHASER shall be obliged to accept a loan procured by the SELLER or the SELLER's agents on behalf of the PURCHASER provided such loan is granted upon terms and conditions which are not more onerous than those stipulated for by banks which grant residential loans against the security of the registration of a first mortgage bond against the title deeds of a Unit.
- 7.3 The PURCHASER shall forthwith make application for such loan and shall do all such things and sign all such documents as may be necessary to enable the loan to be granted. The

PURCHASER furthermore, by virtue of his signature hereto, grants permission to the SELLER or its agents to conduct a consumer profile search if required.

- 7.4 The granting of the said loan in principal shall be deemed to be fulfilment of this condition.
- 7.5 Should fulfilment as aforesaid not take place within the TWENTY-ONE (21) day period, this agreement shall continue to be of full force and effect unless either party cancels same on written notice to the other party.
- 7.6 The SELLER shall be liable for the conveyancing costs incurred in the preparation and registration of the transfer and, in the event that the PURCHASER uses the SELLER's chosen mortgage originator to apply for the loan then the SELLER shall be liable for the conveyancing costs incurred in the preparation and registration of the bond documents.

8. **OCCUPATION AND POSSESSION**

- 8.1 Provided that the PURCHASER has paid the deposit, secured payment of the balance of the purchase price to the satisfaction of the SELLER, and signed all transfer and/or mortgage bond documents if requested to do so, possession and occupation of the UNIT shall be given by the SELLER and taken by the PURCHASER on the first day of the week following the week in which the ARCHITECT issues to the SELLER a certificate to the effect that the UNIT has been sufficiently completed for occupation; i.e. the COMPLETION DATE. All efforts will be made by the SELLER to give the PURCHASER adequate notice of the anticipated date of receipt of the ARCHITECT's certificate referred to above.
- 8.2 Should the SELLER for any reason be unable to give occupation to the PURCHASER on the above date, the PURCHASER shall accept occupation of the UNIT on the earliest date thereafter on which the SELLER is able to give occupation and such subsequent date shall be deemed for all purposes to be the COMPLETION DATE and the agreed date of occupation. The PURCHASER shall have no claims, however arising, against the SELLER for failure to give occupation on any anticipated or promised date.
- 8.3 The decision of the ARCHITECT as to the completion of the UNIT shall be final and binding upon the PURCHASER.
- 8.4 In the event of the PURCHASER having received occupation of the UNIT prior to the TRANSFER DATE, the PURCHASER shall, in respect of the period from the COMPLETION DATE to the TRANSFER DATE be liable for and shall pay to the SELLER monthly in advance the OCCUPATIONAL INTEREST as set out in ITEM I of the SCHEDULE. The OCCUPATIONAL INTEREST shall be payable to the CONVEYANCER'S TRUST ACCOUNT.
- 8.5 Should the SELLER be obliged to pay municipal rates for the remainder of the rate year for a period after the TRANSFER DATE, the PURCHASER shall, on request, refund the SELLER a pro rata share of such rates. Likewise, the PURCHASER acknowledges that until THE TRANSFER DATE, the UNIT shall be insured with an insurance company selected by the SELLER. Thereafter, the UNIT will be insured by the BODY CORPORATE against such risks and for such sums as the SELLER may determine, but substantially in accordance with the provisions of the RULES. The PURCHASER shall be liable, on request, to pay his share of the insurance premium.

- 8.6 In addition to any other amounts due in terms hereof, be:-
- 8.6.1 liable for and shall pay to the SELLER all charges for which the SELLER is liable in respect of electricity, water and other utilities consumed in the UNIT, this being a continuing obligation which will not terminate on the TRANSFER DATE.
- 8.6.2 bound in relation to his occupancy of the UNIT and the other units in the DEVELOPMENT SCHEME and in relation to the use of the facilities and the common property by the RULES.
- 8.7 The UNIT shall be used for residential purposes only and the maximum number of persons who shall be entitled to occupy the UNIT shall be determined by multiplying the number of bedrooms contained in the UNIT by 2 (TWO).
- 8.8 The PURCHASER waives all claims that may arise against the SELLER for any loss or damage to property or any injury to any person which may be sustained by the PURCHASER in or about the UNIT or any other part of the DEVELOPMENT.
- 8.9 In the event of the PURCHASER wishing to let the UNIT, the PURCHASER undertakes that any lease will be reduced to writing and will include an obligation on the tenant to comply with the RULES and any other requirements of the BODY CORPORATE.

9. **PHASED DEVELOPMENT**

- 9.1 It is recorded that:
- 9.1.1 The LAYOUT PLAN reflects the entire proposed DEVELOPMENT SCHEME which the DEVELOPER shall be entitled in his entire discretion to complete in phases.
- 9.1.2 The DEVELOPER intends, in the application for registration of the SECTIONAL PLAN, to reserve the right to erect and complete, for his personal account a further building and/or buildings on part of the common property and to divide such building and/or buildings into a section or sections and common property, and to confer the right of exclusive use over part of such common property to the owner or owners of one or more of the sections.
- 9.2 The PURCHASER acknowledges that the foregoing is a full disclosure of the DEVELOPER'S intention to extend the scheme, and that Section 25(14) of the Act has been complied with in all respects and that insofar as may be necessary the PURCHASER consents thereto.
- 9.3 The PURCHASER acknowledges that the participation quota of the SECTION may be varied as a result of any amendment which may be made to the SECTIONAL PLAN and also that the participation quota will be reduced when the subsequent phases of the sectional title register are opened. The PURCHASER hereby confirms that this constitutes a full disclosure of the DEVELOPER's intentions with regard to the modification of the participation quotas.

10. **CONSTRUCTION OF THE BUILDINGS**

- 10.1 The DEVELOPER shall use its best endeavours to ensure that the BUILDINGS are completed substantially in accordance with the PLANS and the SPECIFICATIONS.
- 10.2 The SELLER shall have the right during the period of construction to effect minor alterations and modifications to the SECTION and to other sections in the DEVELOPMENT, to vary the PLAN, provided that the area of THE UNIT shall not vary by more than FIVE PERCENTUM (5%) of the area set out in Item E of THE SCHEDULE and the SPECIFICATIONS to such extent as may, in the SELLER's opinion, be reasonably necessary to :
- 10.2.1 meet any requirements of any competent authority;
- 10.2.2 meet any special features of the LAND;
- 10.2.3 meet any special impediment such as water, sewer or electrical lines either above or underground, or any rock or other soil condition;
- 10.2.4 give effect to any changes in materials, finishes or fittings (including without limitation the colours, and aesthetics of the BUILDINGS) which the SELLER considers to be appropriate or which may not be readily available at the time due to shortage and supply of such materials, finishes or fittings, without however detracting from the quality of the BUILDINGS;
- 10.2.5 obtain the registration of the SECTIONAL PLAN and/or the opening of the sectional title register.

The PURCHASER undertakes to accept the UNIT with such alterations or modifications.

- 10.3 The PURCHASER shall not be entitled to claim cancellation of this agreement or any reduction of the purchase price by reason of any changes as aforesaid, or any variation to the SECTIONAL PLAN as finally registered by the Registrar of Deeds, or any alterations to the number, size, location or participation quota of any other section/s or any increase in the number of sections forming part of the DEVELOPMENT SCHEME.
- 10.4 The PURCHASER may not give instructions to the BUILDING CONTRACTOR, its subcontractors, the quantity surveyor or anyone else engaged in the building work. During construction, the PURCHASER shall not have access to the LAND or to the BUILDINGS without the prior written consent of the SELLER. If, at the time when occupation of the UNIT is given and the building work has not been completed, the provisions of this clause shall apply to the BUILDINGS still to be erected or which are in the course of erection and to those areas of the LAND where building work is being performed.
- 10.5 The PURCHASER acknowledges that construction of the road access to the PROPERTY, the driveways and other common facilities on the LAND may not have been completed by the COMPLETION DATE and that he shall not have any claim against the DEVELOPER for any damage, inconvenience or otherwise which may be suffered while the DEVELOPER extends the SCHEME as aforesaid.

10.6 The PURCHASER acknowledges being satisfied with the PLANS and SPECIFICATIONS and confirms that all the PURCHASER's requirements have been satisfied.

11. TRANSFER

11.1 Registration of transfer of the UNIT to the PURCHASER shall be effected as soon as possible after: -

11.1.1 the Sectional Title Register has been opened in respect of the SCHEME.

11.1.2 the PURCHASER has complied with all and any obligations which the PURCHASER is obliged to fulfil in terms hereof prior to the TRANSFER DATE.

11.2 Transfer of the UNIT to the PURCHASER shall be attended to by the CONVEYANCERS and the costs of transfer and of registration of the mortgage bond shall be borne by the SELLER, subject to the provisions of clause 5.6 hereof.

11.3 The PURCHASER shall, when called upon to do so by the CONVEYANCERS, sign all documents and provide all such other information as the CONVEYANCERS may require in order to effect registration of transfer of the UNIT to the PURCHASER.

11.4 The PURCHASER undertakes forthwith to furnish the SELLER or the CONVEYANCERS with copies of the PURCHASER's identity document, marriage certificate and antenuptial contract, if applicable. If the PURCHASER is married in community of property, the PURCHASER shall furnish a copy of the identity document of the spouse. The PURCHASER shall also furnish copies of such documents to the BOND ATTORNEYS.

11.5 To facilitate compliance with FICA, the PURCHASER undertakes, on request to supply the CONVEYANCERS and the BOND ATTORNEYS with all necessary information and all applicable documents referred to in the FICA schedule annexed to this agreement.

11.6 The PURCHASER warrants that the Income Tax and VAT returns that the PURCHASER is obliged to submit to SARS have been duly submitted and all income tax and VAT payments due to SARS have been paid. Should SARS withhold the issue of a transfer duty exemption receipt because the PURCHASER's affairs are not in order, that occurrence shall amount to a breach of the terms of this agreement. Should the sale be cancelled pursuant to such breach, the PURCHASER shall be liable for and shall pay all wasted costs incurred in the preparation of the transfer documents.

12. POWER OF ATTORNEY

12.1 The PURCHASER hereby irrevocably and *in rem suam* appoints the SELLER as the PURCHASER's duly authorised attorney and agent to represent the PURCHASER at any meetings of the BODY CORPORATE to vote for and adopt any amendments to the RULES which the SELLER in its sole discretion may consider desirable or necessary for the DEVELOPMENT SCHEME. This agreement shall serve as a proxy in favour of the SELLER.

- 12.2 Wherever in this agreement, the PURCHASER agrees to vote in favour of a resolution of the BODY CORPORATE proposed by the SELLER, this Power of Attorney and proxy shall authorise and empower the SELLER acting through its duly authorised representatives to vote for and on behalf of the PURCHASER and to the exclusion of the PURCHASER.

13. **BODY CORPORATE**

- 13.1 The PURCHASER acknowledges that he will become a member of the BODY CORPORATE from the TRANSFER DATE. The PURCHASER accepts the UNIT subject to the provisions of the ACT and the RULES relating to the duties and powers of the BODY CORPORATE, and in particular assumes liability for contributions to the fund to be established for the repair, upkeep, control, management and administration of the common property and for other purposes prescribed in the ACT.

- 13.2 Should the BODY CORPORATE be required to register any servitudes in favour of the municipality or over adjoining properties, the PURCHASER irrevocably agrees to vote in favour of any resolution authorising the registration of such servitudes.

- 13.3 Until the TRANSFER DATE, the UNIT will be insured with an Insurance Company selected by the SELLER. Thereafter it will be insured by the BODY CORPORATE against such risks and perils as the SELLER may require and for such sums as the SELLER may determine, but substantially in accordance with the provisions of the RULES. The PURCHASER shall be liable, on request, to pay the PURCHASER's share of the insurance premium.

14. **CESSION AND ASSIGNMENT**

- 14.1 The SELLER shall be entitled at any time to cede and assign all its right, title and interest and obligations in and to this agreement to such person or persons as the SELLER in its entire discretion sees fit and without notice to or the consent of the PURCHASER.

- 14.2 The PURCHASER shall not be entitled to cede or assign its right, title, interest or obligations in and to or arising out of this agreement, nor, prior to the TRANSFER DATE, to sell the UNIT or in any manner alienate any of his rights to the UNIT except with the prior written consent of the SELLER, which consent will be subject to the SELLER approving the terms of the subsequent sale agreement and to the subsequent purchaser agreeing to be bound to the SELLER in the same manner as is provided for in this agreement and provided that the subsequent purchaser gives the SELLER the same proxy rights as granted in clause 12 hereof. If required by the SELLER, a clause to this effect shall be inserted in the title deeds of the UNIT.

15. **AMENDMENT OF THE RULES**

- 15.1 The PURCHASER hereby authorises the SELLER to make such alterations and additions to The Statutory Management and Conduct Rules as the SELLER believes may be necessary to give effect to the provisions of this agreement and/or to provide for the harmonious operation of the scheme and /or as are required by any bondholder.

- 15.2 Insofar as is necessary for the purposes of this clause, the PURCHASER hereby irrevocably and *in rem suam* appoints the SELLER as his duly authorised attorney, agent and proxy on

his behalf and to his inclusion to attend to all such meetings and do all such things as are necessary to give effect to the provisions of this clause.

16. **CONDITIONS OF TITLE AND OWNERSHIP**

The UNIT is sold subject to:

- 16.1 and in accordance with the SECTIONAL PLAN and the participation quota endorsed thereon and any modifications or alterations which may be made thereto from time to time in accordance with the provisions of this agreement or the ACT;
- 16.2 and entitled to the servitudes for support and for essential services referred to in the ACT;
- 16.3 the conditions contained in the Schedule referred to in Section 11 (3)(b) of the ACT;
- 16.4 such conditions of title the Premier, the MUNICIPALITY or any other authority may impose on the LAND or on the DEVELOPMENT SCHEME;
- 16.5 the reservation of a real right in terms of section 25 of the ACT in favour of the DEVELOPER to enable the DEVELOPER to undertake the phased development of the DEVELOPMENT SCHEME;
- 16.6 the Management and Conduct Rules as amended by the DEVELOPER or as subsequently amended by the BODY CORPORATE at the request of the DEVELOPER;
- 16.7 such servitudes as may be required to be registered by the municipality or as may be required for the benefit of the PROPERTY.

17. **EXCLUSIVE USE AREAS**

The DEVELOPER shall make provision in the RULES for the allocation of the exclusive use areas to the PURCHASER in terms of Section 27A of the ACT. Should it be necessary for the RULES to be amended by the substitution of the exclusive use plan or the addition of further exclusive use plans, the PURCHASER irrevocably undertakes to vote in favour of any necessary amendment so as to allocate additional exclusive use areas as required by the DEVELOPER.

18. **SECTIONAL TITLE REGISTER**

- 18.1 The SELLER may effect such alterations to the SECTIONAL PLAN as are necessary or desirable to obtain registration thereof.
- 18.2 If the SELLER has not obtained the opening of the Sectional Title Register in respect of the phase of which the UNIT forms a part within a period of 3 (THREE) years from the date of signature hereof, the PURCHASER shall be entitled to give the SELLER written notice of his intention to resign from this contract unless the Sectional Title Register for the relevant phase is opened within 45 (FORTY-FIVE) days of the date of such written notice, in which event

the *status quo* as far as is then reasonably possible, will be restored between the parties and neither party shall have any further claim in damages or loss against the other party.

18.3 In the event of cancellation and if the PURCHASER has obtained occupation of the UNIT he shall restore possession thereof to the SELLER within 30 (THIRTY) days of this agreement coming to an end as aforesaid.

18.4 The SELLER shall, against re-delivery of the UNIT by the PURCHASER as aforesaid, repay to the PURCHASER all and any monies paid in terms hereof to that date, less

18.4.1 any amount which the ARCHITECT certify in writing is necessary to repair any damages caused to the UNIT by the PURCHASER;

18.4.2 all amounts unpaid by the PURCHASER up to the date of vacating respect of OCCUPATIONAL INTEREST;

all of which amounts the SELLER shall be entitled to retain these amounts in lieu of rental for the UNIT for the period during which the PURCHASER was in occupation thereof, in respect of which period the PURCHASER shall be deemed, in such case, to have occupied as a lessee.

18.3 In the event of the agreement failing as a result of the Sectional Title Register not being opened as aforesaid, the PURCHASER shall not have any further claim against the SELLER arising out of the agreement save as provided above.

19. **SALE VOETSTOOTS**

19.1 Save as provided for herein, the UNIT is sold and purchased *voetstoots* without any warranties, express or implied. the PURCHASER acknowledges that no warranties or representations have been made or given by the SELLER to anyone on its behalf other than those contained in this agreement.

19.2 Within a period of 2 (TWO) weeks of the COMPLETION DATE, The PURCHASER shall provide the SELLER with written notice of any defect arising from faulty materials or workmanship in the UNIT, and the SELLER shall make good any such defect in the UNIT within a period of 3 (THREE) months of the COMPLETION DATE. Any dispute between the SELLER and the PURCHASER as to :-

19.2.1 whether or not any of the alleged defects are due to faulty materials or workmanship on the part of the SELLER;

19.2.2 the nature of the remedial work to be undertaken;

19.2.3 whether or not such remedial work has been properly completed;

shall be determined by the ARCHITECT, whose decision on the dispute shall be final and binding on the parties.

19.3 the SELLER shall at its own expense comply with all requirements to enable a Certificate of Compliance to be procured from an accredited person in respect of all electrical installations

on the UNIT in accordance with the provisions of Regulation 4(1), which Certificate shall be furnished to the CONVEYANCERS prior to the TRANSFER DATE.

20. HOME BUILDERS ACT

20.1 The SELLER warrants that the BUILDING CONTRACTOR is registered as a home builder in terms of the Home Builders Act and that the UNIT being a dwelling will be enrolled with the National Home Builders Registration Council (NHBRC) in terms of section 14(1) of the Act.

20.2 The SELLER warrants in terms of Section 13(2)(a) of the Home Builders Act that the UNIT (referred to as a dwelling in the Act) will be constructed in a workmanlike manner, will be fit for habitation and will be constructed in accordance with the NHBRC technical requirements.

20.3 As required by Section 13(2)(b) of the said Act and if required by the PURCHASER, the SELLER will cede to the PURCHASER its rights of action against the BUILDING CONTRACTOR in respect of the UNIT in terms of which the BUILDING CONTRACTOR will be obliged:

20.3.1 to rectify non-compliance with or deviation from the terms of this agreement, the PLANS or SPECIFICATION of any deficiency related to design, workmanship or material notified to the SELLER within a period of 3 (THREE) months from the COMPLETION DATE; and

20.3.2 to repair roof leaks attributable to workmanship, design or materials occurring and notified to the SELLER or the BUILDING CONTRACTOR within a period of 12 (TWELVE) months from the COMPLETION DATE;

20.3.3 upon demand by the PURCHASER to rectify major structural defects in the UNIT (referred to as the dwelling in the Act) caused by non-compliance with the NHBRC technical requirements and which occur within a period of 5 (FIVE) years from the COMPLETION DATE provided such defects are notified to the BUILDING CONTRACTOR within that period.

subject always to the limitations prescribed by Regulation 14.

20.3.4 The liability of the SELLER or the BUILDING CONTRACTOR, as the case may be, in respect of any defect shall be limited to making good the defect during normal working hours within a reasonable time of receiving notice thereof. The PURCHASER will have no claim for any consequential damages.

20.4 The SELLER and the BUILDING CONTRACTOR shall not be liable for defects caused by normal shrinkage or expansion of materials or due to fair wear and tear, misuse, negligence or abuse on the part of the PURCHASER, or due to accident or any risk insured against in terms of normal Homeowners' Insurance policies issued in respect of residences.

20.5 The SELLER is not obliged to remedy the following specific defects after the COMPLETION DATE, namely:

- 20.5.1 low or variable water main pressure;
- 20.5.2 defects caused by storms, surface or underground water, geological disturbances or blasting, or any condition attaching to the state of the ground or subsoil upon which the BUILDINGS are erected, or normal settlement;
- 20.5.3 defects in items supplied by parties nominated by the PURCHASER, howsoever provided, and effects caused in consequence thereof;
- 20.6 Should there be any dispute on whether the BUILDING CONTRACTOR has repaired or rectified any defects, the dispute shall be referred to the ARCHITECT, whose decision on the matter shall be final and binding upon the parties.
- 20.7 The PURCHASER shall not be entitled to effect any improvements or alterations to the UNIT without the prior written consent of the SELLER and, once the BODY CORPORATE has come into existence, without the prior written consent of the trustees of the BODY CORPORATE.

21. **BREACH**

- 21.1 In the event of the PURCHASER committing any breach of this agreement or of the RULES or of the ACT and failing to remedy such breach within SEVEN (7) days of the date that the PURCHASER is deemed to have received written notice by the SELLER or its agents, requiring such breach to be remedied, the SELLER shall, in addition to any other rights which it any have at law, be entitled to cancel this agreement.
- 21.2 In the event that occupation of the UNIT has been given to the PURCHASER at that time, the SELLER shall be entitled to retake possession thereof and in any case retain all payments made by the PURCHASER in terms hereof until that date, including any monies paid into trust (which shall be released to the SELLER forthwith) as liquidated damages in respect of such breach, without prejudice to the rights of the SELLER to claim payment of any other damages whatsoever nature which the SELLER may have suffered as a result of such breach.
- 21.3 In the event of the PURCHASER disputing the amount of the damages as aforesaid on the basis that the amount paid until the date of cancellation and retained by the SELLER are excessive, and accordingly fall to be reduced in terms of the provision any legislation otherwise howsoever, the onus of proving this shall be on the PURCHASER who shall not be entitled to withhold possession of and prevent the SELLER retaking possession of the UNIT pending the determination of such damages.
- 21.4 Until such time as the damages, or any reduction thereof are determined, the SELLER shall be entitled to retain all monies paid by the PURCHASER as aforesaid.
- 21.5 Any latitude or extension of time which may be allowed by the SELLER to the PURCHASER shall not be deemed to be a waiver of the SELLER's rights hereunder.

22. **WAIVER**

In the event of any party hereto allowing any other party any lenience, extension of time or indulgence, this shall be without prejudice to the rights of the party granting such leniency, extension of time or indulgence, who shall be entitled to enforce his rights in terms hereof at any time.

23. **NOTICES**

All notices shall be considered validly served if sent by prepaid registered post by one party to the another party, or if delivered by hand and the date of service shall be the THIRD (3rd) day after the date of posting or the date of delivery, as the case may be, and the parties declare their addresses as set out in the SCHEDULE to be their *domicilium citandi et executandi* for the purposes of this agreement, provided that either party shall be entitled to change its *domicilium citandi et executandi* to any other address in the Republic of South Africa which they may from time to time, in writing, appoint.

24. **PURCHASER AS JURISTIC ENTITY**

Should the PURCHASER sign this agreement in the capacity of a trustee for a company or a close corporation to be formed, the PURCHASER agrees and undertakes by the PURCHASER's signature hereof and in the PURCHASER's personal capacity :

- 24.1 to effect registration of the company or close corporation within 30 (THIRTY) days of the date of this Agreement;
- 24.2 to obtain the adoption and ratification, as the case may be, by the Company or Close Corporation of the Agreement not later than 7 (SEVEN) days after the date of incorporation or registration, as the case may be;
- 24.3 that should such registration of the Company or Close Corporation not be effected within the period of 30 (THIRTY) days aforesaid, or should the Company or Close Corporation when so registered fail to ratify and adopt this agreement within the further 7 (SEVEN) days aforesaid, or should the Company or Close Corporation fail in any way whatsoever to implement the terms of this agreement, then the PURCHASER in his individual and personal capacity will be liable as purchaser of the UNIT as if this agreement were made with the PURCHASER in his personal capacity;
- 24.4 to effect delivery to the CONVEYANCERS of the Certificate of Incorporation and Memorandum and Articles of Association of the Company or the Founding Statement of the Close Corporation, as the case may be, as soon as such documents are received from the Registrar of Companies/Close Corporations;
- 24.5 to be bound jointly and severally as surety for and co-principal debtor with the Company and Close Corporation for the due and proper fulfilment of each and every term, condition and provision of this Agreement.
- 24.6 Any such body shall be entitled to nominate in writing a natural person as its representative on the BODY CORPORATE.

25. **JOINT AND SEVERAL LIABILITY**

Should there be more than one purchaser or a co-purchaser, the obligations of the purchasers in terms of the agreement shall be joint and several. The term "Purchaser" includes a co-purchaser.

26. **SALES COMMISSION**

26.1 The parties acknowledge that this agreement was concluded between the SELLER and the PURCHASER through the offices of the AGENT who shall be entitled to receive sales commission as agreed between the SELLER and the AGENT which commission shall be deemed to have been earned and shall be payable by the SELLER on the TRANSFER DATE.

26.2 The AGENT acknowledges being responsible for the implementation of the Agreement by both parties which will include assisting with the collection and delivery of documents, including documents required for compliance with FICA, the fulfilment of the suspensive conditions of sale and generally with bringing the transaction to fruition.

27. **MORA INTEREST**

In the event of registration of transfer being delayed through any act of or omission on the part of the PURCHASER, the SELLER shall be entitled to call upon the PURCHASER to pay, in addition to the OCCUPATIONAL RENTAL reflected in ITEM I of the SCHEDULE, *mora* interest calculated at the rate of 15.5% per annum on the purchase price from the date upon which the PURCHASER receives or is deemed to have received a notice placing him in *mora*, to the date upon which the PURCHASER ceases to be in *mora*.

28. **JURISDICTION**

The parties hereby consent in terms of section 45 of the Magistrates' Court Act of 1944 to any legal proceedings being instituted in the Magistrates' Court of any district having jurisdiction in respect of the PURCHASER by virtue of the provisions of Section 28(1) of the said Act. Notwithstanding such consent, the SELLER shall have the option of instituting proceedings against the PURCHASER in the High Court of South Africa.

29. **LANGUAGE**

The PURCHASER confirms that he has chosen English as the language in which this agreement is to be drawn.

30. **REPRESENTATIONS**

The PURCHASER acknowledges not having relied upon any representations or warranties given by any person other than those contained in this agreement.

31. **WHOLE AGREEMENT**

This agreement contains all the terms and conditions of the agreement between the parties who acknowledge that neither made any warranties, terms, promises or undertakings. Save as contained herein, and who agree that no variation hereto shall be valid and binding unless reduced to writing and signed by both parties.

32. **PERIOD FOR ACCEPTANCE**

After signature by THE PURCHASER, this agreement shall remain open for acceptance by THE SELLER for a period of 14 (FOURTEEN) calendar days.

OFFER AND ACCEPTANCE

The PURCHASER hereby:

1. acknowledges that he has read and understands this entire agreement including the Schedule of Information, the Definitions and the Terms and Conditions of the Contract;
2. offers to purchase the UNIT in accordance with the provisions thereof.

SIGNED at _____ on this the _____ day of _____ 2007.

AS WITNESSES:

- 1.
- 2.

THE PURCHASER

Name: _____

Identity № _____

I, _____, Identity № _____

DO HEREBY consent in terms of Section 15 (2) of the MATRIMONIAL PROPERTY ACT, No. 88 of 1984, to my spouse, to whom I am married in community of property, entering into this Agreement.

AS WITNESSES:

1.

PURCHASER'S SPOUSE

2.

If the PURCHASER is a minor or a juristic entity the following section must be signed and completed :

I, the undersigned:

FULL NAMES: _____

Identity No.: _____

of : _____

_____ (physical address)

DO HEREBY bind myself as surety for and co-principal debtor *in solidium* with the PURCHASER for the due performance by the PURCHASER of all his obligations arising from and pursuant to this Agreement, renouncing the legal exceptions of *de duobus vel pluribus reis debendi*, *beneficium ordinis seu excussionis* and *beneficium divisionis*. I agree I will remain liable as surety and co-principal debtor for the duration of the agreement notwithstanding any amendment thereto.

SIGNED at _____ on this _____ day of _____ 2007.

As witnesses:

1.

2.

ACCEPTANCE

This offer is hereby accepted by the SELLER at _____ on this the _____ day of _____ 2007.

AS WITNESSES:

1.

For and on behalf of the SELLER by

2.

who warrants his authority hereto

Name: _____

Identity No _____