



**SALES DOCUMENTATION FOR THE PURCHASE OF A  
RESIDENTIAL SECTIONAL TITLE UNIT IN SHORELINE SIBAYA**

**BETWEEN  
VOLTAS TRADING (PROPRIETARY LIMITED  
IN RESPECT OF PROPOSED UNIT NUMBER \_\_\_\_\_**

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**AGREEMENT OF SALE: SHORELINE SIBAYA**

Between

**VOLTAS TRADING PROPRIETARY LIMITED**

**Registration No: 2016/349693/07**

Address : 8 Rydall Vale Crescent, Rydall Vale Office Park, La Lucia

Telephone No : (031) 566 4579

Telefax No : (031) 566 3835

Email Address : wicus@shgroup.co.za

("the SELLER")

and

\_\_\_\_\_  
Represented by \_\_\_\_\_

("the PURCHASER")

Identity No : \_\_\_\_\_

Marital Status : \_\_\_\_\_

Postal Address : \_\_\_\_\_

Physical Address : \_\_\_\_\_

Telephone No. (Work) : \_\_\_\_\_ Cell No. \_\_\_\_\_

Telephone No. Home) : \_\_\_\_\_ Fax No. \_\_\_\_\_

Email Address : \_\_\_\_\_

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of the AGREEMENT, unless the context indicates to the contrary:
- 1.1.1 "ACT" means the Sectional Titles Act 95 of 1986 (as amended) including amendments made by the Sectional Title Management Act No. 8 of 2011 and Regulations;
- 1.1.2 "ADMINISTRATOR" means CARMEL PROPERTIES PROPRIETARY LIMITED, REGISTRATION NUMBER 2017/097008/07;
- 1.1.3 "AGREEMENT" means the AGREEMENT OF SALE and all annexures;
- 1.1.4 "ARCHITECT" means ZERVOGIANNIS ASSOCIATION ARCHITECTS or its successors nominated by the SELLER;
- 1.1.5 "ASSOCIATION" means the SUB-PRECINCT 1D MANAGEMENT ASSOCIATION NPC (a non-profit Company);
- 1.1.6 "BODY CORPORATE" means the Body Corporate of the SCHEME to be established in terms of the ACT;
- 1.1.7 "BUILDING or BUILDINGS" means the buildings erected and to be erected on the PROPERTY by the SELLER'S contractors;
- 1.1.8 "CARE CENTRE" means the Sections to be used as a Care Centre as shown on the PLAN;
- 1.1.9 "COMMON PROPERTY" means the land included in the SCHEME as well as all parts of the BUILDING as are not included in any of the SECTIONS;
- 1.1.10 "CONVEYANCERS" means Larson Falconer Hassan Parsee Inc. of 2<sup>nd</sup> Floor, 93 Richefond Circle, Ridgeside Office Park, Umhlanga Rocks, Telephone No. (031) 534 1600 and Fax No. (031) 536 8038;
- 1.1.11 "DEVELOPER" means VOLTAS TRADING PROPRIETARY LIMITED;
- 1.1.12 "EFFECTIVE DATE" means the date that the SELLER signs the AGREEMENT;
- 1.1.13 "ESTATE" means all the properties falling under the jurisdiction of the SIBAYA PRECINCT MASTER MANAGEMENT ASSOCIATION;
- 1.1.14 "EXCLUSIVE USE AREA" means the exclusive use area/s allocated to the SECTION in terms of the Management Rules;
- 1.1.15 "LOCATION PLAN" means the plan showing the position of the proposed SECTION within the SCHEME;
- 1.1.16 "LOCAL AUTHORITY" means the Ethekwini Municipality;
- 1.1.17 "NOMINATED OCCUPANTS" means the Occupant/s of the UNIT, nominated in writing by the registered owner in terms hereof and approved in writing by the ADMINISTRATOR;
- 1.1.18 "OCCUPANT" means a natural person who is 55 (fifty five) years of age or older unless occupied by 2 (two) occupants who shall either be spouses or life partners, and the one occupant is younger than fifty five (55) years of age;
- 1.1.19 "OCCUPATION DATE" means the date specified in clause 3.10;
- 1.1.20 "OLDER PERSONS" means a person who, in the case of a male, is sixty-five years or older and, in the case of a female, is sixty years of age or older;
- 1.1.21 "OPERATOR" means the operator appointed by the ADMINISTRATOR which will operate the Care Centre and offer access to home based care as a commercial enterprise to NOMINATED OCCUPANTS. It is recorded that MY CARE PROVIDER PROPRIETARY LIMITED, Registration Number 2016/460538/07 has been appointed as the initial OPERATOR;
- 1.1.22 "PARTIES" means the SELLER and PURCHASER;
- 1.1.23 "PLAN or PLANS" means the, attached floor plan of the UNIT, the SITE DEVELOPMENT PLAN, building plans and SPECIFICATIONS;
- 1.1.24 "PROPERTY" means Portion 29 (of 12) of Erf 1 Sibaya, measuring 1,4175 Hectares (Phase 1) and Portion 42 (of 14) of Erf 1 Sibaya, measuring 1,6065 Hectares (optional Phase 2);

- 1.1.25 "PURCHASER" means the purchaser reflected on page 1 of the AGREEMENT;
- 1.1.26 "PURCHASE PRICE" means the total PURCHASE PRICE of the UNIT and EXCLUSIVE USE AREA, if applicable, including VAT referred to in clause 3.2;
- 1.1.27 "REGISTER" means the Sectional Title Register to be opened on the PROPERTY by the SELLER in respect of the SCHEME;
- 1.1.28 "RULES" means the rules of the ASSOCIATION;
- 1.1.29 "SECTION" means the section in the SCHEME depicted on the SECTIONAL PLANS to be prepared by the SELLER'S LAND SURVEYOR and which corresponds to the UNIT as reflected in clause 3.1 and as shown on the PLANS;
- 1.1.30 "SECTIONAL PLAN" means the sectional plan to be approved by the Surveyor General which is described as a sectional plan and which shows the BUILDING in the SCHEME as divided into two or more sections and COMMON PROPERTY and which complies with Section 5 of the ACT and the registered Amending Sectional Plans registered thereafter;
- 1.1.31 "SCHEME" means the sectional title development scheme to be developed on the PROPERTY and known as "SHORELINE SIBAYA";
- 1.1.32 "SIGNATURE DATE" means the date the PURCHASER signs this AGREEMENT;
- 1.1.33 "SELLER" means Voltas Trading (Proprietary) Limited;
- 1.1.34 "SELLING AGENT" means the agent referred to in clauses 3.12;
- 1.1.35 "SITE PLAN" or SDP" is the site and development plan annexed marked "C";
- 1.1.36 "SPECIFICATIONS" means the schedule of specifications and finishes of the UNIT;
- 1.1.37 "SIBAYA PRECINCT" means the "Sibaya Precinct" as defined in the MASTER MANAGEMENT ASSOCIATION'S Memorandum of Incorporation;
- 1.1.38 "SUB-PRECINCT" means the Sibaya Sub-Precinct 1D, consisting of the PROPERTY and Portion 35 (of 13) of Erf 1 Sibaya;
- 1.1.39 "TRANSFER DATE" means the date of registration of transfer of the UNIT from the SELLER to the PURCHASER';
- 1.1.40 "UNIT" means the SECTION corresponding to the UNIT number, as will be indicated on the SECTIONAL PLAN for the SCHEME, including an undivided share in the COMMON PROPERTY, apportioned to the 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.
- 1.2 Defined terms appear in capital letters in the AGREEMENT.
- 1.3 Words importing a gender shall include all genders and the singular shall include the plural and vice versa.
- 1.4 Clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate.

## **2. INTRODUCTION**

- 2.1 The SELLER has acquired Portion 29 (of 12) of Erf 1 Sibaya (Portion 29) and Portion 42 (of 14) of Erf 1 Sibaya (Portion 42);
- 2.2 The SELLER intends to develop a Lifestyle Centre for the accommodation and settlement of persons over the age of 55 years including a limited care centre facility, club house and related buildings;
- 2.3 It is specifically recorded that the Lifestyle Centre shall be developed in phases in such manner as the Developer in its sole discretion determines. The first phase of the Lifestyle Centre shall consist of the erection of 223 residential units, care centre and Clubhouse on Portion 29. That development in itself may be completed in phases. The second phase shall, at the election of the Developer, consist of between 200 to 250 units to be erected on Portion 42 which may also be developed in phases;
- 2.4 The PURCHASER wishes to purchase and the SELLER wishes to sell a UNIT in the SCHEME as more fully described in clause 3 of the AGREEMENT in accordance with the PLANS and the SPECIFICATIONS, with effect from the EFFECTIVE DATE.

**3. THE SCHEDULE**

3.1	The UNIT, being:	
	Proposed SECTION number	_____
		the position, layout and areas of which are shown on the attached PLANS, which have been initialed by the parties for identification purposes.
	extent of SECTION	_____
3.2	Total purchase price of UNIT/(S) (including VAT)	R _____
	payable as:-	
3.3	10% deposit due within 7 days from SIGNATURE DATE	R _____
3.4	Second deposit payable on _____	R _____
3.5	Balance to be provided by guarantee (See 6.1.4)	R _____
3.6	Bank loan required by PURCHASER (See clauses 4 and 6.1.3)	R _____
3.7	Date by which loan is to be granted (See clause 4)	30 days from SIGNATURE DATE
3.8	Estimated monthly levy to BODY CORPORATE	_____
3.9	Body Corporate Levy Stabilisation Fund (See clause 15.3)	Payable on Resale
3.10	OCCUPATION DATE	31 <sup>st</sup> January 2019
3.11	OCCUPATIONAL INTEREST	prime rate of interest charged by Nedbank Limited from time to time on the PURCHASE PRICE REFERRED to in clause 3.2
3.12	SELLING AGENT	_____
3.13	ASSOCIATION LEVY STABILISATION FUND (See clause 18)	R2 000,00
3.14	CONSERVATION TRUST LEVY STABILISATION FUND	R1 000,00
3.15	LEVY PAYABLE TO ASSOCIATION (PURCHASERS CONTRIBUTION)	R2,30 per bulk square metre
3.16	EXCLUSIVE USE AREAS	Parking Bay/s No. _____ Garden Area No. _____

**4. CONDITIONS AND PURCHASERS LOAN**

- 4.1 This AGREEMENT is subject to and conditional upon the following:
- 4.1.1 if clause 3.6 provides that the PURCHASER requires a loan, the PURCHASER then obtaining a loan from a recognised financial institution, secured by the registration of a first mortgage bond over the UNIT upon its usual terms and conditions, in the amount referred to in clause 3.6, within 30 days after the SIGNATURE DATE, subject to the extension granted by the SELLER in terms of clause 4.3;
- 4.2 The condition referred to in clause 4.1.1 shall be deemed to have been fulfilled upon the date of issue by a registered financial institution of a quotation as referred to in the National Credit Act to the PURCHASER or his agent, irrespective of any loan agreement between the PURCHASER and the institution and regardless of any conditions imposed by the institution in granting such loan.
- 4.3 Should the PURCHASER'S loan not be approved within the 30 day period referred to in clause 4.1.1 then such period shall be automatically extended until the SELLER gives the PURCHASER notice in writing advising that the extended period has terminated.
- 4.4 Should the condition referred to in clause 4.1.1 not be fulfilled prior to the date the SELLER gives the PURCHASER the letter contemplated in clause 4.3, then this sale shall lapse and be of no further force and effect whereupon neither party shall have any claim against the other, save that the SELLER shall procure that the CONVEYANCERS refund to the PURCHASER all monies paid by the PURCHASER on account of the PURCHASE PRICE, including interest earned thereon.
- 4.5 The PURCHASER hereby undertakes to do all such things and to sign all such documents as may be necessary and/or requisite in order to apply for and procure the grant of the said loan from a bank or other financial institution and to furnish written proof to the SELLER of the granting or refusal thereof.
- 4.6 Where the PURCHASER is married in community of property the spouse of the PURCHASER must sign this AGREEMENT, or where the PURCHASER is a company or close corporation (whether to be formed or already formed), such spouse or the person/s signing this AGREEMENT on behalf of, or as trustee for, the relevant company or close corporation, by his/their signature hereto, undertakes to sign any documents which may be required by any person or institution in order to procure the loan and/or register the bond contemplated in clause 4.1.1, including without limitation, any deed of suretyship, loan application and the power of attorney to pass the bond.

**5. SALE**

The SELLER sells to the PURCHASER, who hereby purchases the UNIT subject to the conditions contained in this AGREEMENT including all annexures.

**6. PURCHASE PRICE AND PAYMENT**

- 6.1 The PURCHASE PRICE of the UNIT shall be the amount reflected in clause 3.2 and shall be paid by the PURCHASER as follows:
- 6.1.1 the deposit reflected in clause 3.3 shall be paid to the Conveyancers by no later than the date referred to in that clause, to be lodged with the CONVEYANCERS in Trust and to be released to the SELLER on the TRANSFER DATE;
- 6.1.2 any bank guarantee referred to in clause 3.5, shall be in a form acceptable to the SELLER, expressed to be payable on the TRANSFER DATE and must be delivered to the CONVEYANCERS within 30 days after the SIGNATURE DATE;
- 6.1.3 if the PURCHASER requires a loan for the amount reflected in clause 3.6, the balance of the PURCHASE PRICE reflected in clause 3.5 and/or 3.6 shall be paid on the TRANSFER DATE and secured pending such date by the PURCHASER delivering (a) bank guarantee(s) to the CONVEYANCERS, which guarantee(s) shall be in a form acceptable to the SELLER and which shall be delivered to the CONVEYANCER within 14 days after the PURCHASER is requested to do so in writing by the CONVEYANCER, which written request shall not however be made prior to 30 days after the EFFECTIVE DATE;

- 6.1.4 if the PURCHASER does not require a loan for the balance of the PURCHASE PRICE then such balance shall be paid in cash to the CONVEYANCERS, or be secured in the form of a bank guarantee, which guarantee(s) shall be in a form acceptable to the SELLER and which cash or guarantee, as the case may be, shall be delivered to the CONVEYANCERS within 14 days after the PURCHASER is requested to do so in writing by the CONVEYANCERS, which written request shall not however be made prior to 30 days after the EFFECTIVE DATE.
- 6.2 Any cash payments made by the PURCHASER are to be held in trust by the CONVEYANCERS and shall be placed in an interest bearing bank account with a registered South African Bank, interest thereon to be for the benefit of the PURCHASER and the signature of this AGREEMENT by the PURCHASER constitutes written consent in terms of Section 78(2A) of the Attorneys Act authorising the CONVEYANCERS to invest the monies in accordance with this clause. The interest shall accrue for the benefit of the PURCHASER until the TRANSFER DATE whereupon the CONVEYANCERS shall release the capital to the SELLER, and all interest, less their usual commission and administration fee, to the PURCHASER. Should the transaction not proceed for any reason attributable to the PURCHASER, then the CONVEYANCERS shall be entitled to charge the PURCHASER an additional fair and reasonable fee in their discretion, to cover their reasonable costs and disbursements in administering this transaction, which fee shall be deducted from the deposit and/or any interest due to the PURCHASER under this clause.
- 6.3 The PURCHASER further acknowledges that the Conveyancers are not able to place the funds into a savings Account until supplied with all the prescribed FICA documents applicable to the PURCHASER. The PURCHASER undertakes to sign the declaration required in terms of the Foreign Account Tax Compliance Act ("FATCA") which is annexed hereto.

## 7. PLACE OF PAYMENT

- 7.1 All payments to be made by the PURCHASER to the SELLER in terms of this AGREEMENT shall be made, without deduction or demand or set off and free of exchange to the CONVEYANCERS.

## 8. COMPLETION OF THE SECTION

- 8.1 If the Section is not fully complete as at date of sale then the SELLER hereby undertakes to procure that the SECTION is erected substantially in accordance with the PLAN and is sufficiently complete for occupation, by the OCCUPATION DATE, provided the PURCHASER has paid or duly secured the Total Consideration referred to in 3.2 of the AGREEMENT.
- 8.2 The PURCHASER shall not give any instructions of any nature to the ARCHITECT or the relevant sub-contractor(s). Should the SELLER agree to any deviation from the PLANS and SPECIFICATIONS, such deviation shall be reduced to writing and any amounts payable in terms of such deviation shall be payable by the PURCHASER to the SELLER on demand.
- 8.3 The PURCHASER shall, within 30 (THIRTY) days after the DATE OF OCCUPATION, deliver to the SELLER a list, signed by himself, enumerating any defects in the SECTION where same are due to defective materials or workmanship, and the SELLER shall procure that such defects are made good as expeditiously as possible in the circumstances. Once such defects have been made good to the satisfaction of the ARCHITECT (acting as an expert and not an arbitrator and whose decision shall be final and binding on the parties), the PURCHASER shall have no further claim against the SELLER, save as otherwise provided for herein. Should the PURCHASER fail to deliver the aforesaid list to the SELLER within the aforesaid 30 (THIRTY) day period, then in that event, the PURCHASER shall be deemed to have inspected the SECTION and not found any defects therein.
- 8.4 Save as provided in this AGREEMENT and in the CPA to the contrary, the PURCHASER purchases the UNIT voetstoots and shall have no claim against the SELLER in respect of any defects whether latent or patent in the SECTION or the common property of the SCHEME.
- 8.5 The PURCHASER agrees that the precise area, boundaries and description of the SECTION shall be as shown on the sectional plan and as finally determined and approved by the Surveyor-General and/or the relevant competent authorities and shall be binding upon the parties, provided always that the area of the SECTION shall be within 10% (TEN PERCENT) of the area as stated in 3.1 of this AGREEMENT.
- 8.6 If there is any dispute between the PURCHASER and the SELLER as to whether the SECTION has been constructed substantially in accordance with the PLAN and/or has been erected in substantially the position as reflected in the SITE PLAN and/or is sufficiently complete for occupation and/or whether there are any defects in the SECTION due to defective materials or workmanship, then such dispute shall be referred to the ARCHITECT (acting as an expert and not as an arbitrator) whose decision shall be final and binding upon the parties.
- 8.7 To the extent that the PURCHASER has a right to select the finishes to the UNIT he must do so expeditiously and in any event no later than seven (7) days of request therefore from the SELLER failing which the SELLER shall select such finishes and complete the Section.



- 8.8 The PURCHASER acknowledges that after the completion of the SECTION the SELLER and/or its agents, contractors and workmen may be engaged in erecting other dwellings, driveways and other structures on the PROPERTY and the PURCHASER agrees that the SELLER and/or its agents, contractors and workmen shall at all times have reasonable access to the PROPERTY for the purposes of carrying out such work as may be necessary to enable the SELLER to procure the erection and layout of the aforementioned dwellings, driveways and other structures. The PURCHASER shall have no claim whatever against the SELLER by reason of any inconvenience or interference with the PURCHASER'S rights arising hereout and the PURCHASER shall not, in any way whatsoever, interfere with the performance of the aforesaid work.
- 8.9 The SELLER warrants that the SECTION will be enrolled with the National Home Builders Registration Council as contemplated in the Housing Consumer Protection Measures Act, No. 95 of 1998.
- 8.10 As is required in terms of Section 13(2)(a) of the aforesaid Act 95 of 1998, the SELLER warrants that:
- 8.10.1 the SECTION shall be constructed in a proper and workmanlike manner;
- 8.10.2 the SECTION will be fit for habitation on the DATE OF OCCUPATION;
- 8.10.3. the SECTION shall be constructed in accordance with:
- 8.10.3.1 the National Home Builders Registration Council Technical Requirements to the extent applicable to the SECTION at the date of enrolment of such SECTION with the National Home Builders Registration Council; and
- 8.10.3.2 the terms, plans and specifications referred to in this AGREEMENT;
- 8.11 As provided for in Section 13(2)(b) of the aforesaid Act 95 of 1998, the SELLER undertakes to:
- 8.12 rectify any major structural defects in the SECTION caused by non-compliance with the National Home Builders Registration Council's Technical Requirements which occur within a period of five (5) years from the DATE OF OCCUPATION and of which the SELLER is notified of by the PURCHASER within that period;
- 8.13 rectify non-compliance with or deviation from the terms, plans and specifications referred to in this AGREEMENT or any deficiency related to design, workmanship or material, of which the SELLER is notified by the PURCHASER of within a period of three (3) months from the DATE OF OCCUPATION;
- 8.14 repair roof leaks attributable to workmanship, design or materials occurring and of which the SELLER is notified by the PURCHASER of within a period of twelve (12) months from the DATE OF OCCUPATION.
- 8.15 In no way detracting from the generality of any other provisions in this AGREEMENT, it is recorded that the SELLER may, at the SELLER'S discretion, elect not to install any item on the schedule of finishes (which forms part of the PLAN), provided that the SELLER installs a similar item of a similar quality in its place. In the event of there being any dispute as to whether the item installed by the SELLER is of a similar quality, a certificate by the ARCHITECT (acting as an expert and not as an arbiter) certifying that such item is of a similar quality, shall be final and binding on the parties.
- 8.16 Notwithstanding anything contained herein or elsewhere, under no circumstances whatsoever, shall the SELLER be liable to make good any damage to any unit or the common property of the SCHEME caused by the PURCHASER or the PURCHASER'S employees, contractors, agents, representatives or any other person who comes upon the SCHEME by virtue of the PURCHASER'S rights thereto. Further, the PURCHASER shall be liable for the costs of repairing any damage caused to the common property or any unit in the SCHEME by the PURCHASER, its contractors, agents, representatives, employees or other persons who come upon the SCHEME by virtue of the PURCHASER'S rights thereto.
- 8.17 Notwithstanding anything contained herein or elsewhere, and in no way detracting from the generality to the aforesaid, it is specifically recorded that the SELLER shall not be liable for the rectification of any defects or faults in the SECTION caused by surface water, storm water or rain water, normal settlement or cracking resulting from normal settlement, normal shrinkage, thermal cracking, geological disturbances, normal wear and tear from use or neglect by the PURCHASER.
- 8.18 It is recorded that the SECTION is a "special order good" as contemplated and defined in the CPA, in that the detailed design and specifications of the SECTION (as set out in Annexures "A", "B" and "C" hereto have been formulated and altered to meet the PURCHASER'S requirements.
- 9. OCCUPATION DATE**
- 9.1 The SELLER hereby undertakes to use its best endeavours to give to the PURCHASER occupation and possession of the SECTION by the date stipulated in 3.10 of the AGREEMENT, provided the PURCHASER has secured payment of the Total Consideration referred to in 3.2 of the AGREEMENT and the PURCHASER shall be obliged to accept occupation on such date.
- 9.2 If, however, the SELLER is of the opinion that, for whatever reason, the SECTION will not be sufficiently complete for occupation by the date specified in 3.10 of the AGREEMENT, then:-



- 9.2.1 the SELLER shall notify the PURCHASER of such fact at least 30 (THIRTY) days before such date. In such event the PURCHASER shall accept possession, occupation and use of the SECTION on the date the SELLER notifies him in writing that the SECTION will be sufficiently complete for occupation, and such subsequent date shall (subject to the provisions of clause 10 below) be deemed for all purposes to be the OCCUPATION DATE. There shall be no limit on the number of times the SELLER can extend the OCCUPATION DATE in terms of this clause 9.2.1; and
- 9.2.2 if the SECTION is not sufficiently complete for occupation within 24 (TWENTY FOUR) calendar months after the date specified in 3.10 of the AGREEMENT or if the Sectional Plan is not registered within 30 months, the PURCHASER shall have the right on notice to the SELLER to rescind from this AGREEMENT. In such event:
- 9.2.2.1 the PURCHASER shall be entitled to receive a refund of an amount equal to the aggregate of all payments made by the PURCHASER in respect of the Total Consideration referred to in 3.2 of the AGREEMENT; and
- 9.2.2.2 the PURCHASER shall have no claim of whatsoever nature or howsoever arising against the SELLER for failing for any reason to give possession, occupation and use of the SECTION to the PURCHASER on or before the DATE OF OCCUPATION.
- 9.3 The SELLER shall be entitled to anticipate the DATE OF OCCUPATION on 60 (SIXTY) days written notice to the PURCHASER provided that such anticipated date shall not be more than 120 (ONE HUNDRED AND TWENTY) days earlier than the date stated in 3.10 of the AGREEMENT. Should the SELLER bring the date of occupation forward by giving the PURCHASER the written notice as aforesaid, such date shall be regarded as the DATE OF OCCUPATION for the purposes of this AGREEMENT (subject to the provisions of clause 10 below).
- 9.4 In the event of any dispute as to when or whether the SECTION is sufficiently complete for occupation, a certificate by the ARCHITECT (acting as an expert and not an arbitrator) certifying that the SECTION is sufficiently complete for occupation, shall be final and binding upon the parties.
- 9.5 Notwithstanding anything contained herein, the PURCHASER shall not be entitled to occupation of the SECTION until such time as the Total Consideration, referred to in paragraph 3.2 of the AGREEMENT, has been paid in full to the SELLER. Should the SECTION be sufficiently complete for occupation but the amount referred to in 3.2 not have been paid in full to the SELLER, then in that event, (without prejudice to the SELLER'S right to claim specific performance from the PURCHASER or to any other rights the SELLER may have in terms of this AGREEMENT or at law), possession and occupation of the SECTION shall only be given to the PURCHASER once such amount has been paid and the date of such payment shall be regarded as the DATE OF OCCUPATION for the purposes of this AGREEMENT.

## **10. RIGHTS AND OBLIGATIONS IN RESPECT OF OCCUPATION**

- 10.1 The PURCHASER acknowledges that on the DATE OF OCCUPATION the SCHEME and the ESTATE, may be incomplete and that he and every person claiming occupation and use through him may suffer inconvenience from building operations and from noise and dust resulting therefrom and the PURCHASER shall have no claim whatsoever against the DEVELOPER, the ASSOCIATION, the SELLER or the BODY CORPORATE by reason of any such inconvenience.
- 10.1.2 From the DATE OF OCCUPATION the PURCHASER:-
- 10.1.2.1 shall be entitled to occupation of the SECTION, and the SECTION shall be used for residential purposes only and for no other purpose whatsoever. The maximum number of persons that shall be entitled to occupy the SECTION shall be determined by multiplying the number of bedrooms in the SECTION by two. The garage shall be used only for the parking of motor vehicles.
- 10.1.2.2 shall, at his own expense, maintain the interior of the SECTION in a good, clean and thoroughly tenable and attractive condition, and where necessary repair or refurbish any damaged item and replace any lost item.
- 10.1.2.3 shall, at his own expense, maintain in a good working order and condition all electrical, plumbing and sewerage installations and appurtenances of whatever nature, serving the SECTION.
- 10.1.2.4 shall, if the SECTION is separately metered for the supply of electricity and/or water thereto, make arrangements with the suppliers to obtain the relevant connections and shall pay for any consumption thereof;
- 10.1.2.5 shall be entitled to the use and enjoyment, along with the purchasers of other dwellings erected or to be erected on the PROPERTY, of those parts of the common property of the SCHEME not subject to rights of exclusive use by such purchasers, subject to the rules of the BODY CORPORATE;
- 10.1.2.6 shall at all times comply with the provisions of the ACT the RULES, and the rules of the BODY CORPORATE;

- 10.1.2.7 waives all claims against the DEVELOPER, the ASSOCIATION, the SELLER and the BODY CORPORATE for any loss or damage to property or any injury to person which the PURCHASER may sustain in or about the SECTION, any other part of the PROPERTY and the ESTATE and indemnifies THE DEVELOPER, the ASSOCIATION, the SELLER and the BODY CORPORATE against any such claim that may be made against the DEVELOPER, the ASSOCIATION, the SELLER or the BODY CORPORATE by a member of the PURCHASER'S family or any tenant, nominee, invitee or any other person who occupies the SECTION and/or goes upon the ESTATE by virtue of the PURCHASER'S rights thereto, for any loss or damage to property or injury to person suffered in or about the SECTION, or any other part of the ESTATE howsoever such loss or damage to property or injury to person may be caused (save for any loss or damage to property or injury to person caused by the wilful or grossly negligent acts of the DEVELOPER, the ASSOCIATION, the SELLER or the BODY CORPORATE, as the case may be);
- 10.1.2.8 shall not, without the prior written consent of the ASSOCIATION, the BODY CORPORATE and the relevant local authority make or cause or allow to be made any change or improvements to the SECTION or remove or demolish any improvements whatever. If any such changes or improvements are made, with or without the prior written consent of the ASSOCIATION shall not have any claim against the ASSOCIATION in respect of any expenditure upon or improvements to the SECTION. In addition to any Local Authority requirements the PURCHASER'S attention is drawn to the necessity to obtain the approval of the ASSOCIATION'S Design Review Committee in addition to that of the BODY CORPORATE in respect of any alterations and/or additions and that in order to maintain the architectural theme of the ESTATE and/or the SCHEME such consent is unlikely to be granted.
- 10.1.2.9 shall be liable for the payment of all services provided to the SECTION and any deposits and fees payable in connection with the supply of such services. In no way detracting from the aforesaid, it is specifically recorded that it shall be incumbent upon the PURCHASER, at the PURCHASER'S cost, to make application for the connection of water, electricity and telephone services to the SECTION.
- 10.1.2.10 shall be liable for the payment of all services to the UNIT in the form of telephones, television, electricity and water and any other deposits payable in connection with the supply of any such services.
- 10.2 All the benefit of and risk in and to the UNIT shall pass to the PURCHASER on the DATE OF OCCUPATION.
- 10.3 The SELLER either personally or through its servants or agents shall be entitled at all reasonable times prior to TRANSFER DATE to have access to the SECTION for the purpose of inspection or to carry out any maintenance or repairs whether relative to the SECTION or not, and the PURCHASER shall have no claim against the SELLER for any disturbance in his occupation arising out of the exercise of the rights hereby conferred.
- 10.4 The PURCHASER shall procure that all occupants of the SECTION comply with the provisions of this AGREEMENT.
- 10.5 The PURCHASER shall not use the SECTION or permit it to be used in such manner or for such purposes as shall cause a nuisance to any occupier of any section erected on the PROPERTY or interfere with the amenities of the PROPERTY, or so as to breach the RULES, the BODY CORPORATE rules or any law, ordinance or by-law or provision of the Town Planning Scheme in force in relation to the PROPERTY.
- 10.6 Notwithstanding the fact that the risk and benefit in and to the SECTION shall pass to the PURCHASER on the DATE OF OCCUPATION, the SELLER undertakes to ensure that the SECTION is insured against the usual risks until such time as the UNIT is transferred to the PURCHASER.
- 10.7 The PURCHASER undertakes and shall be obliged to abide by the RULES and the BODY CORPORATE rules and to ensure that all tenants, nominees, invitees and other persons who occupy the UNIT and/or go upon the SCHEME by virtue of the PURCHASER'S rights thereto, do likewise.
- 10.8 The PURCHASER may be invited to inspect the SECTION, prior to the DATE OF OCCUPATION, at such times and on such dates as may be determined solely by the SELLER, the PURCHASER acknowledging that its visits to the site in this regard need to be limited and regulated due to the fact that the PROPERTY is partially a construction site (and thus poses a hazard to visitors) and further, as the presence of parties not connected with the construction of the SCHEME may hinder the progress of same. The PURCHASER waives all claims against the SELLER for any loss or damage to property or injury to person which the PURCHASER may sustain in or about the PROPERTY and indemnifies the SELLER against any claim that may be made against the SELLER by any employee of the PURCHASER or any tenant, nominee, invitee or other person who goes upon the PROPERTY by virtue of the PURCHASER'S rights in terms of this clause, for any loss or damage to property or injury may be caused (save for any damage to property or injury to person caused by the intentional or grossly negligent act of the SELLER).

**11. OCCUPATIONAL INTEREST**

From the OCCUPATION DATE until the TRANSFER DATE, the PURCHASER shall pay OCCUPATIONAL INTEREST to the SELLERS on behalf of the SELLER in the amounts reflected in clause 3.11, which OCCUPATIONAL INTEREST shall be paid monthly in advance from the OCCUPATION DATE to the TRANSFER DATE, both days inclusive, and prorated in respect of any portion of a month.

**12. EXCLUSIVE USE AREAS**

The PURCHASER acknowledges that the Exclusive Use Areas will be created by the SELLER who shall allocate them in terms of the BODY CORPORATE rules. The PURCHASER acknowledges that the rules laid down by the ASSOCIATION will govern the type of flora and manner of growth thereof in the gardens of the development including gardens that are allocated for the exclusive use of an owner. The OPERATOR and/or the BODY CORPORATE shall maintain all gardens in the development and shall render a reasonable charge to the owner of a garden exclusive use area for such service. The SELLER may in its sole discretion, elect to create the exclusive use areas as Real Rights and cede them to the relevant PURCHASER the cost of cession being for the account of the PURCHASER.

**13. CONDITIONS OF SALE**

13.1 The UNIT is sold subject to all conditions and servitudes contained in the existing title deeds or otherwise recorded against the PROPERTY and the Sectional Title Scheme at the Registrar of Deeds and as may be created herein.

13.2 The PURCHASER acknowledges that he has satisfied himself as to the nature, locality and extent of the PROPERTY and the SELLER shall not be liable for any deficiency in the extent thereof nor shall it benefit by any surplus.

**14. PURCHASER'S ACKNOWLEDGEMENTS AND UNDERTAKINGS**

The PURCHASER:

14.1 The PURCHASER undertakes that he will, at all times, co-operate with the DEVELOPER in an endeavour to facilitate the success of the said development and undertakes that he shall not unreasonably interfere with any such proposed development nor unreasonably lodge any objection with any competent authority in respect of any such development;

**15. LEVIES TO BODY CORPORATE AND ASSOCIATION**

15.1 From the OCCUPATION DATE, the PURCHASER shall be responsible to pay two monthly amounts that shall be referred to for convenience as "levies", one to the BODY CORPORATE in respect of those items referred to in Section 37(1) of the ACT, and the second to the ASSOCIATION in accordance with the Memorandum of Incorporation of the ASSOCIATION.

15.2 The following shall apply in respect of the levy to the BODY CORPORATE:

15.2.1 the estimated monthly levy payable by the PURCHASER in terms hereof shall be payable monthly in advance from the OCCUPATION DATE to the SELLER until the TRANSFER DATE and to the BODY CORPORATE after the TRANSFER DATE;

15.2.2 the amount to be levied against the PURCHASER is to be calculated in accordance with the participation quota of the SECTION and the figure stated in clause 3.8 is an estimate of such levy, made in good faith by the SELLER and the SELLER shall not be responsible for any inaccuracy in this estimation;

15.2.3 notice of any increase in the amount of the levy payable by the PURCHASER in terms hereof may be given in writing by or on behalf of the SELLER at any stage after the EFFECTIVE DATE.

15.3 Upon resale of the UNIT by the PURCHASER and upon any subsequent resale an amount of one (1%) per cent of the sales price shall be payable to the BODY CORPORATE into a fund entitled "Levy Stabilisation Fund" which fund shall be utilized by the BODY CORPORATE for the general maintenance and upkeep of the development and for any capital improvements or replacements. Such amount shall be paid by no later than the date of transfer of the UNIT in pursuance of such a resale and the PURCHASER (Seller on resale) shall cause his Conveyancers to secure payment directly to the BODY CORPORATE in such manner as the BODY CORPORATE may solely determine. It is recorded that the Developer shall not be liable to pay the Levy Stabilisation amount in respect of any UNITS where it is the SELLER.

15.4 The levy payable to the ASSOCIATION shall not be calculated in accordance with the participation quota of the SECTION, but in accordance with the provisions of the Memorandum of Incorporation of the ASSOCIATION.

15.5 For the purposes of calculating the participation quota of the SECTION and other sections in the SCHEME, these shall be calculated on a similar basis, being the ratio that the area of a respective section bears to the total area of all sections in the SCHEME.

**16. PHASED DEVELOPMENT**

This sale is subject to the following special conditions, which will be imposed by the SELLER in terms of Section 11(2) of the ACT:

- 16.1 The SELLER in terms of Section 25 of the ACT hereby reserves for itself the real right to extend, for its personal account, the SCHEME by the erection and completion from time to time but within a period of TWENTY (20) years:
- 16.1.1 a further building or buildings, or
- 16.1.2 a horizontal extension of an existing building, or
- 16.1.3 a vertical extension of an existing building
- on part of the common property as outlined on the FUTURE DEVELOPMENT PLANS, **Annexure "D"** to this AGREEMENT, to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more of such sections or any other section in the SCHEME.
- 16.2 The SELLER further reserves the right to "separate" the real right to extend the SCHEME by alienating the right to erect the various individual sections to different third parties.
- 16.3 The SELLER shall be entitled to make minor amendments to the SITE PLAN and the layout of the SCHEME, prior to opening the sectional title register of the SCHEME.
- 16.4 The SCHEME shall initially consist of phase 1 on Portion 29 as more fully defined in clause 1.1.24 and 2.3 which phase may in turn be developed in phases in accordance with this clause 16.
- 16.5 While the SELLER has at the outset filed future development plans which incorporate phase 2 on Portion 42 there shall be no obligation on the SELLER to proceed with phase 2 in which event the SELLER shall retain Portion 42 for its own purposes. To the extent that the SELLER elects to incorporate phase 2 into the SCHEME and erect a further 200/250 units on Portion 42 for its own account and incorporate same into the SCHEME, The PURCHASER hereby irrevocably agrees and consents to the incorporation of phase 2 into the SCHEME and hereby appoints the SELLER as its Attorney and Agent *in rem suam* to attend any meeting of the BODY CORPORATE which may be required to be held and to vote and speak at such meeting in favour of such incorporation to the exclusion of the PURCHASER. Once so incorporated the BODY CORPORATE shall take out and cede to the SELLER a Certificate of Real Right of Future Development in respect of Portion 42 in accordance with the FUTURE DEVELOPMENT PLANS.
- 16.6 Portions 29 and 42 shall be tied by means of a Notarial Deed of Restraint of Free Alienation to be registered in favour of the Local Authority upon incorporation as set out in clause 16.5.

**17. TRANSFER AND COSTS**

- 17.1 The CONVEYANCERS shall pass transfer of the UNIT to the PURCHASER as soon as is reasonably practicable, provided the PURCHASER has made payment of the deposit and secured payment of the balance of the purchase price of the UNIT (as provided for in paragraph 3 of the AGREEMENT), paid the transfer costs, levies or other charges due prior to transfer, or has secured same to the reasonable satisfaction of the SELLER.
- 17.2 The PURCHASER shall, within 7 (SEVEN) days of being called upon to do so by the CONVEYANCERS:-
- 17.2.1 pay to the CONVEYANCERS all costs of and incidental to the passing of transfer of the UNIT to the PURCHASER, including bond costs, bank charges and all conveyancing fees and disbursements; and
- 17.2.2 furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the CONVEYANCERS to pass transfer of the UNIT;
- 17.3 No liability of any nature whatsoever shall attach to the SELLER arising out of any delays in effecting transfer of the UNIT to the PURCHASER.
- 17.4 The PURCHASER shall be obliged to accept transfer of the UNIT subject, *inter alia*, to:-
- 17.4.1 the conditions, reservations and servitudes which burden the PROPERTY and the UNIT;
- 17.4.2 any change in the description of the UNIT;
- 17.4.3 a condition registered against the title deed to the PROPERTY/UNIT to the effect that the UNIT or interest therein shall not be alienated or transferred without the written consent of the ASSOCIATION first being had and obtained (it being recorded however that the transfer of the UNIT to the PURCHASER in terms of this AGREEMENT and the registration of a mortgage bond by the PURCHASER simultaneously therewith, shall specifically not require the consent of the ASSOCIATION);

- 17.4.4 a condition registered against the title deed to the PROPERTY/UNIT to the effect that the UNIT or interest therein shall not be alienated or transferred without the written consent of the MASTER MANAGEMENT ASSOCIATION first being had and obtained (it being recorded however that the transfer of the UNIT to the PURCHASER in terms of this AGREEMENT and the registration of a mortgage bond by the PURCHASER simultaneously therewith, shall specifically not require the consent of the MASTER MANAGEMENT ASSOCIATION);
- 17.4.5 a condition registered against the title deed to the UNIT to the effect that the UNIT or any portion thereof or interest therein shall not be alienated or transferred without the written consent of the SELLER and the OPERATOR first being had and obtained; and
- 17.4.6 the conditions in favour of the SELLER, ASSOCIATION and the MASTER MANAGEMENT ASSOCIATION as set out in this AGREEMENT as the SELLER may in its sole discretion require and in such form as the Registrar of Deeds may permit.
- 17.5 It is recorded that in order to effect transfer of the UNIT, the CONVEYANCERS shall be required to lodge, inter alia, a Transfer Duty exemption certificate, issued by the South African Revenue Services (hereinafter referred to as "SARS") with the Deeds Registry. It is further recorded that SARS have adopted a policy of not issuing the aforesaid certificate in the event of any party to the transaction in question being in arrears with the payment of any amounts SARS believes is due to it or otherwise not being in compliance with Tax Laws. Should SARS refuse to issue a Transfer Duty exemption certificate in respect of the sale of the PROPERTY, in terms of this AGREEMENT, due to the fact that the PURCHASER is in arrears with any payments to SARS or has otherwise not complied with any Tax Laws, then in that event, the PURCHASER shall be deemed to be in breach of this AGREEMENT and the SELLER shall be entitled to cancel this AGREEMENT should the PURCHASER not rectify such breach within 7 (SEVEN) days of receipt of a notice from the SELLER calling upon him to remedy such breach (as contemplated in paragraph 42 of this AGREEMENT). Further, should there be any delay in the issue of the aforesaid Transfer Duty exemption certificate by SARS for either of the aforesaid reasons, then in that event, the PURCHASER shall be deemed to be delaying the registration of transfer which shall entitle the SELLER to claim mora interest from the PURCHASER as contemplated in paragraph 37 of this AGREEMENT.
- 17.6 The PURCHASER acknowledges that:
- 17.6.1 the documentation necessary to effect transfer of the UNIT to the PURCHASER may be lodged with the Deeds Registry as part of a set including the transfer of other properties in the SCHEME and that no documentation in the set, including the documentation relating to the transfer of the UNIT, can be withdrawn from the Deeds Registry without the entire set being withdrawn;
- 17.6.2 if it becomes necessary to withdraw the aforesaid set from the Deeds Registry, due to the fact that the PURCHASER has not complied with all its obligations under this AGREEMENT, the SELLER shall suffer damages including, but in no way limited to the loss of interest that would have accrued to the SELLER on the purchase price of the properties in the set, from the date of the withdrawal of the set until the date of its re-lodgement and registration;
- 17.6.3 the SELLER shall be entitled to recover from the PURCHASER all damages the SELLER may have suffered (including the aforesaid interest) as a result of the aforesaid set having to be withdrawn and all transfers in the set having been delayed by virtue of the PURCHASER's failure to comply with the provisions of this AGREEMENT.

## **18. MEMBERSHIP OF SUB-PRECINCT 1D MANAGEMENT ASSOCIATION (RF) NPC**

- 18.1 By virtue of the purchase of the UNIT, the PURCHASER shall be obliged to become, and remain for the duration of his ownership of the UNIT, a member of the ASSOCIATION within the meaning of and subject to the conditions set out in the ASSOCIATION'S Memorandum of Incorporation, and undertakes that he and all persons deriving use of the UNIT or through him will, from the DATE OF OCCUPATION, duly comply with all the obligations imposed upon members under the ASSOCIATION'S Memorandum of Incorporation (In no way detracting from the generality of the aforesaid, the PURCHASER undertakes to sign the ASSOCIATION'S membership registration form, a copy of which is Annexure "E" hereto, immediately on being requested to do so by the SELLER or the CONVEYANCERS).
- 18.2 The PURCHASER shall be obliged to pay the Levy Stabilisation Fund together with monthly levies to the ASSOCIATION.
- 18.3 The PURCHASER acknowledges that the ASSOCIATION shall be obliged to become and remain a member of the MASTER MANAGEMENT ASSOCIATION (the aims and objectives of which are set out in Annexure "F" hereto) and shall be obliged to make payment of a levy to the MASTER MANAGEMENT ASSOCIATION (which shall include a contribution to the MASTER MANAGEMENT ASSOCIATION'S expenses and the ASSOCIATION'S contribution to the CONSERVATION TRUST).



- 18.4 It is recorded that the ASSOCIATION shall be entitled to cede any of its rights in terms of this AGREEMENT to the MASTER MANAGEMENT ASSOCIATION and vice-a-versa.

## 19. RULES

- 19.1 The PURCHASER acknowledges that the directors of the ASSOCIATION shall be entitled at all times to lay down rules in regard to:-

- 19.1.1 the preservation of the natural environment,
- 19.1.2 vegetation and flora and fauna in the SIBAYA SUB-PRECINCT,
- 19.1.3 the placing of movable objects upon or outside the buildings included in the SIBAYA SUB-PRECINCT, including the power to remove any such objects,
- 19.1.4 the storing of flammable and other harmful substances,
- 19.1.5 the conduct of any persons within the SIBAYA SUB-PRECINCT and the prevention of nuisance of any nature to any owner of immovable property in the SIBAYA SUB-PRECINCT,
- 19.1.6 the use of land within the SIBAYA SUB-PRECINCT,
- 19.1.7 the use of roads, pathways and open spaces;
- 19.1.8 the imposition of fines and other penalties to be paid by members of the ASSOCIATION;
- 19.1.9 the management, administration and control of the common areas and open spaces;
- 19.1.10 the Design Guidelines for the establishment, installation and maintenance of gardens, both public and private;
- 19.1.11 the use by owners and their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 19.1.12 the use of road frontages and parking areas;
- 19.1.13 security and
- 19.1.14 generally in regard to any other matter which the ASSOCIATION from time to time considers appropriate and the PURCHASER undertakes and shall be obliged, with effect from the DATE OF OCCUPATION, to abide by such rules as if he was the owner of the PROPERTY and to ensure that all tenants, nominees, invitees and other persons who occupy the UNIT and/or go upon the SUB-PRECINCT by virtue of the PURCHASER'S rights thereto, do likewise.

- 19.2 The PURCHASER shall be obliged to bring the RULES and the BODY CORPORATE rules to the attention of any tenant in writing, prior to such tenant obtaining access to the UNIT or any portion thereof.

## 20. PURCHASERS ACKNOWLEDGEMENTS

- 20.1 The PURCHASER acknowledges that he is aware of the intended future development of the SIBAYA PRECINCT by Tongaat Hulett Developments (Proprietary) Limited (THD). Such development is intended to involve the establishment of resorts, high quality business and commercial premises and residential dwellings on various portions of the SIBAYA PRECINCT and so designed as to facilitate an aesthetic and harmonious blending with the environment. The PURCHASER undertakes that he will, at all times, co-operate with THD in an endeavour to facilitate the success of the said developments. Also in this respect, the PURCHASER undertakes that he shall not interfere with any such proposed development nor lodge any objection with any competent authority in respect of any such development. In particular, but without derogating from the generality of the foregoing, the PURCHASER agrees that he will not object to any application made by or on behalf of THD, its nominee or agent for special usage consent, licences for shopping, commercial or filling station rights, rezoning, removal of conditions of title under the Removal of Restrictive Conditions Act or by way of any application to Court or to any local or other competent authority in respect of any property within the SIBAYA PRECINCT. In no way detracting from the generality of the aforesaid, the PURCHASER specifically acknowledges that owners of land surrounding the PROPERTY will be erecting buildings and other structures on the surrounding land which may block or otherwise interfere with the views from the PROPERTY. The PURCHASER agrees he shall have no right to object to the construction of any building or other structure on the land in the SIBAYA PRECINCT on the basis that such building or other structure blocks or otherwise interferes with the views from the PROPERTY, nor will he have any claim for any alleged diminishment in the value of the PROPERTY arising out of any interference with the views from the PROPERTY by reason of the construction of any such building or other structure.

- 20.2 The PURCHASER acknowledges that no buildings or other structure may be erected on the PROPERTY and further, no alteration or extension may be made to any existing building or other structure, save in accordance with building plans that have been approved of by the MASTER MANAGEMENT ASSOCIATION, acting through the DESIGN REVIEW COMMITTEE, and the LOCAL AUTHORITY. Furthermore, the PURCHASER agrees that he will have no claim whatsoever, arising out of whatever cause, against the MASTER MANAGEMENT ASSOCIATION, any members of the DESIGN REVIEW COMMITTEE or the SELLER for any loss suffered by reason of the DESIGN REVIEW COMMITTEE refusing to approve or delay the approval of any plans submitted by the PURCHASER save where the PURCHASER can prove male fides on the part of the DESIGN REVIEW COMMITTEE.
- 20.3 The PURCHASER shall not be entitled to sell or otherwise transfer ownership of the PROPERTY unless it is a suspensive condition of such sale or other transfer that the transferee, in a manner acceptable to the ASSOCIATION, agrees to become a member and is admitted as a member of the ASSOCIATION. In no way detracting from the generality of the aforesaid, it is specifically recorded that the ASSOCIATION shall not give its consent in this regard if, inter alia, any levies, or other amounts payable to the ASSOCIATION by the PURCHASER are outstanding or in the event of the final approval certificate not have been issued by the LOCAL AUTHORITY or the DESIGN REVIEW COMMITTEE not having given DEVELOPMENT APPROVAL in respect of the development on the PROPERTY.
- 20.4 In the event of a breach of this clause 20, the SELLER shall be entitled in its absolute discretion to refuse its written approval as required to the sale and transfer of the UNIT until the provisions of this clause 20 are complied with and no party to this AGREEMENT shall have any claim for damages arising out of the SELLER'S refusal to give such written approval.
- 20.5 In order to protect THD's rights in this regard, the PROPERTY/UNIT shall be transferred to the PURCHASER, subject to a condition in the Title Deeds to the PROPERTY/UNIT to the effect that the PROPERTY/UNIT, or any portion thereof or interest therein shall not be alienated or otherwise transferred without the prior written consent of THD first been having obtained, which consent THD shall grant provided that the PURCHASER is not in breach of this clause.
- 21. TELECOMMUNICATIONS ROOM SERVITUDE**
- 21.1 The PROPERTY shall be subject to a telecommunications room servitude in favour of the ASSOCIATION, entitling the ASSOCIATION, inter alia, to erect, maintain and service a telecommunications room on the PROPERTY. The aforesaid servitude shall also grant the ASSOCIATION the right to lease out the area covered by the aforesaid servitude, including any structure erected thereon, for the purposes of erecting, maintaining and servicing a telecommunications room and to receive rental, for its own account, in this regard.
- 21.2 Although the position of the aforesaid telecommunications room and its design shall be decided by the DESIGN REVIEW COMMITTEE in consultation with the owner of the PROPERTY, the final decision in this regard shall be in the sole discretion of the DESIGN REVIEW COMMITTEE.
- 21.3 The aforesaid servitude shall grant the ASSOCIATION and any service provider(s) or other parties, nominated by the ASSOCIATION, all such rights as may be required in order to erect, maintain and operate the telecommunications room. These rights shall include, but shall in no way be limited to, the right to have 24 (TWENTY FOUR) hour vehicular and pedestrian access to the telecommunications room and the right to lay and maintain all electric and other cables across the PROPERTY to the telecommunications room that may be required in order to properly operate the aforesaid telecommunications room.
- 22. SEWER, STORMWATER AND GENERAL SERVICES SERVITUDE AND NON-USER SERVITUDE**
- 22.1 The PROPERTY shall be subject to a 6 (SIX) metre wide sewer, stormwater and general services servitude, in favour of the LOCAL AUTHORITY and the MASTER MANAGEMENT ASSOCIATION. In addition, the PROPERTY shall be subject to a 6 (SIX) metre wide non-user servitude in favour of the MASTER MANAGEMENT ASSOCIATION covering the same area as the aforesaid sewer, stormwater and general services servitude.
- 22.2 The PROPERTY shall also be subject to a general electric cable servitude and general water pipeline servitude in favour of the LOCAL AUTHORITY.
- 22.3 Should the ASSOCIATION so require, the servitudes outlined in this paragraph 22 shall also be registered in favour of the relevant ASSOCIATION and/or other service providers.



### **23. COMMUNICATION AND SECURITY SERVITUDE**

The PROPERTY is sold subject to a communication and security servitude in favour of the ASSOCIATION which shall grant the ASSOCIATION, *inter alia*, all such rights as the ASSOCIATION may require in order to install and maintain an electronic surveillance security and data communications system in the SIBAYA PRECINCT (including on the PROPERTY). The aforesaid servitude shall also grant the ASSOCIATION the right to lay cables generally, to transmit data through such cables and the right to enter upon the PROPERTY to lay and maintain same.

### **24. SECURITY SERVICES**

24.1 The ASSOCIATION may in accordance with the provisions of its Memorandum of Incorporation, and any direction given by members in general meeting from time to time, and the BODY CORPORATE may provide security services within the SIBAYA PRECINCT and to the PROPERTY. The PURCHASER agrees that no liability shall rest upon the BODY CORPORATE or the ASSOCIATION for any failure or inefficiency of any of the security services in the SIBAYA PRECINCT or the PROPERTY, irrespective of the cause thereof, or for any consequential damage the PURCHASER may suffer by reason of such failure or insufficiency. The PURCHASER further indemnifies the BODY CORPORATE and the ASSOCIATION against any claim that may be made against the BODY CORPORATE or the ASSOCIATION for any failure or inefficiency of any security services in the SIBAYA PRECINCT that may be made against the BODY CORPORATE or the ASSOCIATION by any tenant, invitee or other person who occupies the UNIT or goes upon the SIBAYA PRECINCT by virtue of the PURCHASER's right thereto. The ASSOCIATION shall be entitled to charge its members for the cost of providing such security, which cost shall form part of the monthly levy payable to the ASSOCIATION as more fully referred to in this AGREEMENT and the ASSOCIATION's Memorandum of Incorporation.

### **25. QUALIFYING AGE OF OCCUPANTS**

25.1 As the Scheme will be operated as a Lifestyle Centre for persons over the age of Fifty Five (55) years the UNIT may only be occupied by the NOMINATED OCCUPANTS. The provisions of this clause 25 shall apply to all UNITS within the SCHEME.

25.2 Prior to occupation of the UNIT, the PURCHASER shall confirm in writing to the OPERATOR, or its nominee, details of the proposed occupant/s, for approval of the NOMINATED OCCUPANTS in writing by the OPERATOR, or its nominee. This procedure shall apply to any change in occupant.

25.3 The restrictions contained in this clause 25 have been established by the SELLER for the benefit of the OPERATOR, the BODY CORPORATE and its members.

25.4 For the purposes of this clause 25, "life partners" shall be persons who share a permanent relationship.

25.5 Any visitors of the NOMINATED OCCUPANT or owner residing in the UNIT for more than a week shall obtain the written permission of the OPERATOR, or its nominee, upon such terms and conditions as the OPERATOR shall in its discretion decide.

### **26. ADMINISTRATOR'S APPOINTMENT AND ITS FUNCTIONS**

26.1 The appointment of the ADMINISTRATOR shall not be capable of being terminated by the BODY CORPORATE or its members unless the SELLER has indicated in writing that it no longer wishes to make such appointment.

26.2 The ADMINISTRATOR shall fulfil the functions specified in its memorandum of incorporation.

26.3 The ADMINISTRATOR shall appoint the OPERATOR and the appointment of the OPERATOR shall not be capable of being terminated by the BODY CORPORATE or its members.

### **27. SERVICES RENDERED BY THE OPERATOR**

27.1 The Operator shall: -

27.1.1 operate a Care Centre as a commercial enterprise which shall also comprise a Residential Facility which shall be used primarily for purposes of providing residential rental accommodation and of providing a 24 – hour service to OCCUPANTS in need of care.

27.1.2 facilitate access to home based care to NOMINATED OCCUPANTS.

- 27.1.3 provide a Basic Bundle of Care Services as set out in Appendix "I" to OCCUPANTS which services shall be funded by the general levy of the BODY CORPORATE.
- 27.2 The OPERATOR shall conclude a Service Level Agreement with the ADMINISTRATOR with respect to the Care Centre and the SCHEME in general.
- 27.3 The OPERATOR shall offer Care and Support Services to the owners of UNITS in the SCHEME as set out in Appendix II at fees as may be determined by the OPERATOR from time to time. The OPERATOR shall be the sole provider of these services unless permission is granted by the ADMINISTRATOR and the OPERATOR in their sole discretion to the BODY CORPORATE to outsource these services.
- 27.4 The OPERATOR, in consultation with the ADMINISTRATOR, shall determine the annual adjustments applicable to the fees in respect of the bouquet of services and shall give notice of any adjustments to be so implemented on or before 1 January of every year, on the basis that such adjustments shall come into effect on 1 March of each year.
- 27.5 The OPERATOR, or its nominee, is not the managing agent for the SCHEME. The BODY CORPORATE may elect to appoint the OPERATOR, or its nominee, as managing agent as contemplated in Act 95/1986, which appointment, if made, shall be subject to annual review. Any managing agent shall not duplicate or detract from the specific functions to be fulfilled by the OPERATOR or its nominee.

## **28. CARE FACILITY**

- 28.1 The Care Facility shall: -
- 28.1.1 be operated by the OPERATOR as an independent commercial enterprise;
- 28.1.2 be a registered facility within the ambit of Act 13/2006;
- 28.1.3 comprise of frail care, assisted living facilities and provide basic health care services as set out in Appendix III;
- 28.1.4 offer 24-hour care and support services to frail older persons and OLDER PERSONS who need special attention; and
- 28.1.5 be occupied primarily by OLDER PERSONS on a rental basis.
- 28.2 NOMINATED OCCUPANTS shall be given preference should they require rental accommodation in the Residential Facility.

## **29. LETTING AND TIMESHARE**

- 29.1 The UNIT may not be let on a short term rental basis. Any lease of the UNIT must endure for a period of not less than Six (6) months and shall be subject to the BODY CORPORATE and the OPERATOR consenting thereto in writing;
- 29.2 The PURCHASER shall ensure that any tenant is bound by the RULES of the ASSOCIATION and the BODY CORPORATE and any breach thereof by the tenant shall also be deemed to be a breach by the PURCHASER who shall, at all times be responsible for the conduct of his tenant.
- 29.3 The UNIT or any part thereof shall not be used for the purposes of a Shareblock Scheme under the provisions of the Share Blocks Control Act No.59/1980, a Time Share Scheme under the provisions of the Property Time Sharing Control Act No.75/1983, a "fractional ownership scheme" or any such similar schemes without the written consent of the ADMINISTRATOR.

## **30. RESALE AND ASSIGNMENT**

- 30.1 The PURCHASER may not resell the UNIT prior to registration of transfer except with the prior written consent of the SELLER who shall charge a fee in respect of such resale for documentation, vetting of purchaser, obtaining legal advice, administration fee etc in an amount of FIVE (5%) PER CENT of the gross resale price.
- 30.2 After registration of transfer no sale, assignment, disposition or transfer of the UNIT or any part thereof at any time entered into unless sold upon the SELLERS Standard Resale Agreement in respect of Shoreline Sibaya and shall not be of any legal effect unless:-
- 30.2.1 the Purchaser has paid any and all outstanding expenses regarding registration, transfer and related fees as required by the relevant South African Governmental Authorities, the ASSOCIATION and the BODY CORPORATE so as to effect transfer;

- 30.2.2 the PURCHASER has paid all outstanding levies;
- 30.2.3 the PURCHASER has paid any amounts owing in relation to facilities or services to the BODY CORPORATE or OPERATOR;
- 30.2.4 The PURCHASER have secured payment to the BODY CORPORATE of the Levy Stabilisation amount referred to in 15.3;
- 30.2.5 the transferee, in a manner acceptable to the ASSOCIATION, agrees to become a member and is admitted as a member of thereof.
- 30.3 In the event of a breach of this Clause 30, the SELLER shall be entitled in its absolute discretion to refuse its written approval as required to the sale and transfer of the UNIT until the provisions of this Clause 30 are complied with and no party to this AGREEMENT shall have any claim for damages arising out of the SELLER'S refusal to give such written approval.
- 30.4 In order to protect the SELLER'S rights in this regard, the PROPERTY/UNIT shall be transferred to the PURCHASER, subject to a condition in the Title Deeds to the PROPERTY/UNIT to the effect that the PROPERTY/UNIT, or any portion thereof or interest therein shall not be alienated or otherwise transferred without the prior written consent of the Seller first having been obtained, which consent the SELLER shall grant provided that the PURCHASER has complied with all its obligations in terms of this AGREEMENT and in particular, and in no way detracting from the generality of the aforesaid, has complied with its obligations in terms of this Clause 30. The SELLER shall be entitled to cede and delegate these rights to either the ADMINISTRATOR and/or the BODY CORPORATE, alternatively appoint the ADMINISTRATOR or the BODY CORPORATE as its Attorney and Agent in order to attend to the administrative functions arising out of this clause 30.4.

### **31. BODY CORPORATE RULES**

- 31.1 The Management and Conduct Rules of the SCHEME shall be the Management and Conduct rules contained in the ACT duly amended by the Conveyancer upon the opening of the Sectional Title Register so as to incorporate all the relevant provisions of this AGREEMENT in such form and as amended in terms of any requirements stipulated by the Community Schemes Ombudsman.
- 31.2 In particular the BODY CORPORATE rules shall provide that no pets shall be allowed except small dogs which do not exceed 15kg in weight when fully grown and are, in the sole opinion of the OPERATOR not dangerous. Owners of pets must ensure that no part of the common property is soiled by their pets and must clean up after them and may not let them roam unattended on the common property. In no circumstances will cats be allowed to be kept as pets.
- 31.3 No owner or its pets may cause any noise or nuisance on the PROPERTY which affects the general use and enjoyment of the SCHEME by fellow Owners.
- 31.4 The provisions of clause 31.2 shall not apply to residents who, in the opinion of the OPERATOR, are in need of a guide dog to assist with blindness.

### **32. SELLING AGENT'S**

- 32.1 Subject to clause 32.2, to the extent that an agent has been the effective cause of this sale, the SELLER shall be liable for and shall pay agreed commission to the SELLING AGENT.
- 32.2 In the event of registration of transfer of the UNIT not being registered in the name of the PURCHASER for any reason whatsoever, the SELLING AGENT shall not be entitled to any commission.
- 32.3 The PURCHASER acknowledges that:-
- 32.3.1 for reasons of security on the SCHEME and due to the nature of the proposed development of the SCHEME and the various matters about which any PURCHASER should become aware when buying into the SCHEME, if the PURCHASER wishes to dispose of the UNIT, or any share therein or any subdivision thereof he shall, to the extent that he requires the services of an estate agent in regard to such disposal, do so in accordance with this clause;
- 32.3.2 this clause is inserted for the benefit of the OPERATOR, who shall be entitled to enforce its terms by law;
- 32.3.3 any owner who acquires the UNIT and who thereafter wishes to dispose of the UNIT, shall –
- a) to extent that he requires the services of an estate agent, do so exclusively through an estate agent(s) accredited by the OPERATOR and
  - b) whether or not he utilises the services of an estate agent, include a clause in any document pursuant by which he disposes of the UNIT on the same terms precisely as this clause so that any future owner of the UNIT shall, to the extent that such owner requires the service of an estate agent in regard to the disposal of the UNIT, be required to appoint only an estate agent(s) accredited by the OPERATOR.

- 32.4 The PURCHASER further acknowledges that in the event of the PURCHASER being an artificial person, such as a close corporation, company or trust, and in the event of the member, director, shareholder, trustee or beneficiary of the PURCHASER (as the case may be) wishing to dispose of the member's interest, shares or beneficial interest in the PURCHASER (as the case may be) the PURCHASER shall procure that such party shall, to the extent that such party requires the services of an estate agent in regard to such disposal, complies with the provisions of clause 32.3 which shall apply, *mutatis mutandis*.

### 33. JURISDICTION

In the event of any action or application arising out of this AGREEMENT, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction, this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.

### 34. COSTS

The PARTIES agree that in the event of either party instructing its attorneys and/or taking legal proceedings against the other party pursuant to a failure by the party in breach to fulfil any of its obligations in terms hereof, then the party in breach shall pay all legal costs plus VAT incurred by the other party in connection therewith as between attorney and own client, including collection commission laid down at the tariff rate applicable.

### 35. JOINT AND SEVERAL LIABILITY

Should this AGREEMENT be signed by more than one person as PURCHASER the obligations of all the said signatories shall be joint and several.

### 36. ARREARS

- 36.1 Any amounts in arrear in terms of this AGREEMENT shall bear interest at the rate equal to 2% percentage points above the minimum overdraft rate from time to time published by the Nedbank Limited (NOTE BANK) as being its minimum overdraft rate to its prime customers in the private sector, which interest shall be calculated from the date that such amount becomes due until the date of payment, both days inclusive.
- 36.2 A certificate by any manager of the said bank as to such minimum overdraft rate from time to time shall be prima facie proof of such rate.

### 37. INTEREST ON DELAYS OCCASIONED BY THE PURCHASER

- 37.1 In the event of there being any delay in connection with the registration of transfer for which the PURCHASER is responsible, the PURCHASER undertakes, in addition to any OCCUPATIONAL INTEREST that may be due in terms of clause 11 for the relevant period, to pay interest on the PURCHASE PRICE at the rate of 15%, calculated from the date when the PURCHASER is notified in writing by the SELLER or the CONVEYANCERS, as delaying the matter, to the date on which the PURCHASER has ceased to delay the matter.
- 37.2 The PURCHASER shall be deemed to be responsible for any delay in registration of transfer that is occasioned inter alia by:-
- 37.2.1 the PURCHASER'S failure to provide any documentation or sign bond or transfer documents and pay related costs;
  - 37.2.2 delays in the provisions of guarantees by conveyancers appointed by a financial institution to attend to the registration of the PURCHASER'S bond;
  - 37.2.3 delays in the VAT registration, of the purchaser, if required;
  - 37.2.4 delays in SARS issuing the transfer duty exemption receipt due to the purchaser's, or its representatives tax affairs not being in order ;
  - 37.2.5 delays caused in the registration of the PURCHASER'S mortgage bond;
  - 37.2.6 delays in any other related transactions that the PURCHASER requires to be registered prior to or simultaneously with the transfer of the UNIT.

**38. ELECTRICAL COMPLIANCE CERTIFICATE**

38.1 The SELLER shall at the SELLER'S own expense furnish a certificate of compliance from an accredited person in respect of electrical installations in the UNIT in accordance with the requirements of the electrical installations regulations made under the Machinery and Occupational Safety Act No. 6 of 1993. Such certificate shall be delivered to the PURCHASER prior to the TRANSFER DATE.

**39. RIGHT TO CANCELLATION: DIRECT MARKETING**

39.1 Pursuant to the provisions of Section 16 of the Consumer Protection Act, should this Agreement be the result of direct marketing efforts by the SELLER or his agents, the PURCHASER has the right, within 5 (Five) business days after concluding this Agreement or 5 (Five) business days after delivery to him of the UNIT, as the case might be, to cancel this Agreement without reason or penalty by written notice to the SELLER.

39.2 The SELLER is unable to accept the risk of such cancellation without reason or penalty, as it could have sold the UNIT to another prospective purchaser during the period between the conclusion of the Agreement and the cancellation thereof. In addition, cancellation after delivery of the UNIT will result in the SELLER having to carry the holding cost of the UNIT for an undetermined period whilst marketing same to new purchasers. This has the potential to result in significant losses for the SELLER.

39.3 In the premises, the SELLER is not prepared to enter into any Agreement with any purchaser that might have been the result of direct marketing.

39.4 The PURCHASER accordingly warrants that this transaction has not resulted from direct marketing and the SELLER enters into this Agreement relying entirely on such warranty.

39.5 Should the PURCHASER be successful, pursuant to the direct marketing provisions of the Consumer Protection Act, in cancelling this Agreement after delivery of the UNIT, the Purchaser shall be liable for the damages suffered by the SELLER as a result of the breach of such warranty.

**40. CONSUMER PROTECTION ACT**

After due consideration, and by his signature hereto, the Purchaser or his representative, as the case might be, hereby acknowledge and record that:-

40.1 he has entered into this Agreement freely and of his own accord and that no circumstance exists that would entitle him to allege, now or in future, that he was at a disadvantage or unequal bargaining position to the Seller in negotiating and concluding the terms and conditions contained in this Agreement;

40.2 he has done his own investigations with respect to whether or not to enter into this Agreement and that he has done so without any undue influence, pressure, duress, harassment or unfair tactics from the Seller;

40.3 he understands the content, significance and import of the terms of this Agreement without undue effort, having regard to:-

40.3.1 the context, comprehensiveness and consistency of the Agreement;

40.3.2 the organization, form and style of the Agreement;

40.3.3 the vocabulary, usage of language and sentence structure of the Agreement;

40.3.4 the use of illustrations, headings, examples or other aids to reading and understanding the Agreement.

40.4 If the PURCHASER, is a JURISTIC PERSON, it hereby warrants to the SELLER that its asset value or annual turnover, at the DATE OF SIGNATURE and the DATE OF CESSION, shall equal or exceed the threshold determined by the Minister in terms of section 6 of the CPA (namely, R2,000,000.00 (TWO MILLION RAND)) and, as a consequence, the sale of the UNIT to the PURCHASER in terms of this AGREEMENT, is exempt from the provisions of the CPA (save for the provisions of Section 60 and 61 of the CPA).

40.5 It is recorded that the aforesaid warranty is material to the SELLER in entering into this AGREEMENT.

40.6 The PURCHASER undertakes, within 7 (SEVEN) days of being requested to do so by the SELLER, to furnish the SELLER with its last audited financial accounts or its Auditors written confirmation, and such other financial information in respect to the PURCHASER as the SELLER may reasonably require, in order to confirm that the PURCHASER'S asset value and/or turnover is as warranted in paragraph 40.1 above.

**41. INDEMNITY**

The SELLER does not warrant any information given in respect of the PROPERTY or the UNIT, whether this information is given prior to or subsequent to the signing of this AGREEMENT, save for the information in respect of the UNIT specifically warranted in this AGREEMENT. The SELLER shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given by the SELLER to the PURCHASER, his agent or his nominee in respect of the PROPERTY or UNIT and the PURCHASER hereby indemnifies the SELLER and holds harmless against and in respect of any injury, loss or damage however caused which the PURCHASER may suffer as a result of any inaccuracies in any information given by the SELLER (save for the information specifically warranted in this AGREEMENT).

**42. BREACH**

- 42.1 Should any party (the "defaulting party") commit a breach of any of the provisions of this AGREEMENT then the party which is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (SEVEN) days of receipt thereof, subject to any other provisions of this AGREEMENT to the contrary, the aggrieved party shall be entitled to cancel this AGREEMENT or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in terms of this AGREEMENT, common law or statute.
- 42.2 In the event of the SELLER cancelling this AGREEMENT as aforesaid any amount or amounts paid to the SELLER or the CONVEYANCERS (including any amount paid in trust and any interest that may have accrued thereon) shall be forfeited to and retained by the SELLER as rouwkoop; alternatively, if the SELLER so elects, he may recover any damages howsoever incurred as a result of such cancellation (including any losses and expenses on a re-sale, whether by public auction or private treaty), in which case the amount or amounts paid to the SELLER or the CONVEYANCERS as aforesaid (including any amount paid in trust and any interest that may have accrued thereon) will not be forfeited as rouwkoop but may be retained by the SELLER by way of set off or partial set off against the damages claimed by the SELLER.
- 42.3 Notwithstanding the foregoing, should the SELLER exercise any of his rights in terms hereof and 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 recover and accept such payments and/or other performance without prejudice to the SELLER'S claim to have exercised rights in terms hereof, and in the event of the SELLER succeeding in such dispute, the SELLER shall be entitled to retain such amounts received in the interim as payment for the occupational rights exercised and/or enjoyed by the PURCHASER in the interim.
- 42.4 For all purposes of this AGREEMENT any act or omission on the part of any tenant, nominee or other person who occupies the PROPERTY by virtue of the PURCHASER'S rights hereunder, shall be deemed to be an act or omission of the PURCHASER.

**43. NOTICES AND ADDRESSES FOR SERVICE**

- 43.1 The parties choose as their domicilia citandi et executandi for all purposes under this AGREEMENT, whether in respect of court processes, notices or other documents or communications of whatsoever nature, their address as set out in the heading to this AGREEMENT.
- 43.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 43.3 Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-à-vis that party to another physical address in the Republic of South Africa or its telefax number, provided that the change shall become effective vis-à-vis that address on the 7th business day from the deemed receipt of the notice by the addressee.
- 43.4 Any notice to a party:-
- 43.4.1 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 43.4.2 sent by telefax to its chosen telefax number shall be deemed to have been received on the date of dispatch;
- 43.4.3 transmitted by email to the chosen email address shall be deemed to have been received on the date of transmission.
- 43.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen domicilium citandi et executandi.



**44. SOLE AGREEMENT**

44.1 The PURCHASER acknowledges that this AGREEMENT constitutes the sole basis of the AGREEMENT between himself and the SELLER, and that he has not been induced to enter into such AGREEMENT by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specially dealt with herein.

44.2 No contract to cancel this AGREEMENT or to vary the terms and conditions shall be of any force and effect unless reduced to writing and signed by the parties or their agents duly authorised in writing.

44.3 This AGREEMENT shall be governed by and construed according to the law of South Africa.

44.4 If any provision of this AGREEMENT is, or becomes, invalid or unenforceable, it shall be severable from the rest of the AGREEMENT, which shall continue to be binding on the parties.

44.5 For the purposes of this AGREEMENT: "day" means a calendar day; "business day" means any day other than a Saturday, Sunday or South African Public Holiday; "month" means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month; "calendar month" means one of the 12 months of the year from the 1st to the last day of such month; and

whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.

44.6 The various documents forming part of this AGREEMENT are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the AGREEMENT will prevail.

**45. CONDITIONS PRECEDENT**

45.1 This entire AGREEMENT is subject to the SELLER obtaining:-

45.1.1 the approval of its building plans in respect of Phase 1 of the SCHEME by the ASSOCIATION'S Design Review Committee by no later than 31<sup>st</sup> December 2017; and

45.1.2 the approval of the plans referred to in 45.1.1 by Ethekwini Municipality by no later than 30<sup>th</sup> April 2018; and

45.1.3 achieving pre-sales in Phase 1 of the SCHEME in the sum of R350 000 000,00 (Three Hundred and Fifty Million) by 30<sup>th</sup> April 2018; and

45.1.4 obtaining the requisite Mortgage Finance to fund the development of the SCHEME by no later than 31<sup>st</sup> August 2018. Should this AGREEMENT be entered into after 30<sup>th</sup> April 2017 then this condition will be deemed to have been fulfilled;

45.2 Should any one condition set out in clause 45.1 not be fulfilled timeously then this AGREEMENT shall immediately lapse and be of no further force and effect and all monies paid by the PURCHASER together with any interest earned thereon shall be refunded to the PURCHASER.

**46. SPECIAL CONDITIONS**

The following special conditions shall be applicable to the AGREEMENT:

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**47. OFFER AND ACCEPTANCE**

To the extent that the signature of the PURCHASER to this AGREEMENT constitutes an offer to the SELLER, it shall remain open for acceptance by the SELLER within a period of 7 (SEVEN) days from the date of signature of this AGREEMENT by the PURCHASER, whereafter it shall be deemed to have lapsed and to be of no further force and effect.

SIGNED by the PURCHASER at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**AS WITNESSES:**

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

For: **THE PURCHASER**

who hereby warrants that (s)he is duly  
authorised to sign this agreement on its behalf

Full name \_\_\_\_\_

Designation \_\_\_\_\_



**GUARANTOR**

This portion to be signed by spouse / legal guardian / member / director/ trustee in the event of the PURCHASER being a person married in community of property / minor / close corporation / company /trust

\_\_\_\_\_  
[Full names]

of

\_\_\_\_\_  
[Full address and telephone number]

hereby consents to the conclusion of this AGREEMENT and guarantees and binds himself as surety for and co-principal debtor in solidum with the PURCHASER to the SELLER for the due and punctual fulfillment and discharge of all the conditions and obligations undertaken by the PURCHASER to the SELLER pursuant to this AGREEMENT, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of this AGREEMENT shall prejudice the suretyship obligations hereby undertaken by the aforesaid guarantor, the object being that he shall remain liable at all times as surety and co-principal debtor, even if this AGREEMENT is varied or amended or novated and even if the aforesaid PURCHASER is granted an indulgence by the SELLER.

SIGNED by the GUARANTOR at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
**WITNESS**

\_\_\_\_\_  
**GUARANTOR**

SIGNED by the SELLER at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
For:  
**VOLTAS TRADING (PTY) LIMITED**  
who hereby warrants that (s)he is duly  
authorised to sign this agreement on its behalf

Full name \_\_\_\_\_

Designation \_\_\_\_\_