

**CONDITIONS OF SALE – ANNEXURE “A”****1 DEFINITIONS AND INTERPRETATION**

For the purposes of the CONTRACT OF SALE and the CONDITIONS OF SALE, unless the context indicates to the contrary :

- 1.1 "ACT" means the Sectional Titles Act No. 95 of 1986 (as amended) and any regulations in force thereunder;
- 1.2 "ARCHITECT" means the professional architect nominated by the SELLER in terms of paragraph 1.11 of the CONTRACT;
- 1.3 "ASSOCIATION" means the Umhlanga Ridge Town Centre Management Association (an association incorporated under Section 21 of the Companies Act);
- 1.4 "BODY CORPORATE" means the future Body Corporate of the SCHEME as contemplated in the ACT;
- 1.5 "this CONTRACT" means the CONTRACT OF SALE and all Annexures thereto;
- 1.6 "CONTRACT OF SALE" means the contract of sale to which these conditions of sale are Annexure "A";
- 1.7 "CONDITIONS OF SALE" means these conditions of sale;
- 1.8 "CONVEYANCERS" means the SELLER'S conveyancers. Strauss Daly Attorneys., 9<sup>th</sup> Floor Strauss Daly Place, 41 Richefond circle, Ridgeside Office Park, Ridgeside 4320, (Tel +27 (0) 31 570 5602 | Fax +27 (0) 31 570 5797);
- 1.9 "DATE OF SIGNATURE" means the date of signature of this CONTRACT by the last signing of the SELLER or the PURCHASER;
- 1.10 "DATE OF POSSESSION" means the date that the SELLER specifies, in a notice to the PURCHASER, that the PROPERTY will be sufficiently complete for beneficial occupation (as contemplated in paragraph 4.1 of the CONDITIONS OF SALE)
- 1.11 "DATE OF TRANSFER" means the date of registration of transfer of the PROPERTY into the name of the PURCHASER in the Deeds Registry in Pietermaritzburg;
- 1.12 "DEVELOPMENT MANUAL" means the Umhlanga Ridge New Town Development Manual dated August 2003;

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- 1.13 "ENVIRONMENTAL MANAGEMENT RESTRICTIONS" mean:
- 1.13.1 the Record of Decision issued by the KZN Agricultural and Environmental Affairs Ministry;
- 1.13.2 the Construction Environmental Management Plan, compiled \_\_\_\_\_;
- 1.13.3 the Operational Environmental Management Plan, compiled \_\_\_\_\_;
- 1.14 "LOAN ACCOUNT" means "loan account" as defined in the SHAREHOLDERS AGREEMENT;
- 1.15 "PARENT PROPERTY" means the immovable property described in paragraph 1.15 of the CONTRACT OF SALE;
- 1.16 "PLAN" means the plan of the SECTION attached hereto marked **Annexure "D"** and the SPECIFICATIONS;
- 1.17 "PROPERTY" means the unit to be established in terms of the ACT, consisting of;
- 1.17.1 the SECTION and
- 1.17.2 an undivided share in the common property in the SCHEME apportioned to the SECTION in accordance with the draft participation quota specified in annexure TQ" hereto (it being recorded that the participation quota allocated to the PROPERTY in terms of annexure "PQ" hereto, is an estimate and is subject to change once all units in the SCHEME have been surveyed);
- 1.18 "PURCHASER" means the purchaser in terms of this CONTRACT designated as such in the introductory section of the CONTRACT OF SALE;
- 1.19 "QUANTITY SURVEYOR" means \_\_\_\_\_;
- 1.20 "RULES" means the rules of the BODY CORPORATE and the ASSOCIATION.
- 1.21 "SCHEME" means the proposed sectional title scheme comprising the PARENT PROPERTY and all buildings constructed and to be constructed thereon;
- 1.22 "SECTION" means the proposed section in the SCHEME, referred to in paragraph 1.1 of the CONTRACT OF SALE, which section is shown on the PLAN;
- 1.23 "SELLER" means

- 1.24 "SHAREHOLDERS AGREEMENT" means the agreement entered into by the SHAREHOLDERS of the SELLER, to which the PURCHASER is a signatory;
- 1.25 "SITE PLAN" means the plan which is **Annexure "C"** hereto;
- 1.26 "SPECIFICATIONS" means the specifications in respect of the SECTION listed in **Annexure "H"** hereto;
- 1.27 "TOTAL BASE DEVELOPMENT COST" means the total base development cost of the SCHEME, as determined by the QUANTITY SURVEYOR, which shall include the cost headings referred to in Annexure "G" hereto;
- 1.28 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.29 words or expressions defined in the ACT shall have the same meanings in this CONTRACT;
- 1.30 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 1.31 if the PURCHASER consists of more than one person, such persons shall be jointly and severally liable in solidum for all their obligations in terms of this CONTRACT,
- 1.32 no indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this CONTRACT shall prejudice the SELLER'S rights under this CONTRACT in any manner whatsoever, or be regarded as a waiver of the SELLER'S rights in terms of this CONTRACT, or be construed to act as an estoppel against the SELLER to otherwise strictly enforce compliance of the PURCHASER'S obligations in terms of this CONTRACT;
- 1.33 if there is any conflict between the provisions or the information in the CONTRACT and the plans and schedules to the CONTRACT, the provisions of the CONTRACT shall prevail and be regarded as correct and binding;
- 1.34 any reference to a natural person shall include the legal person and/or an association of persons and vice versa;
- 1.35 where an expression has been defined, and such definition contains a provision conferring rights or imposing obligations on any party, effect shall be given to the provision as if it was a substantive provision contained in the body of this CONTRACT;

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- 1.36 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two; and
- 1.37 in interpreting this CONTRACT, no provision shall be construed in a limiting fashion or in accordance with the Eiusdem Generis Rule.
- 1.38 the rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply

## **2. LOAN FROM FINANCIAL INSTITUTION**

This CONTRACT is not subject to or conditional upon the PURCHASER obtaining a loan.

## **3. COMPLETION OF THE SECTION**

- 3.1 The SELLER hereby undertakes to procure that the SECTION is erected in a workmanlike manner substantially in accordance with the PLAN and is sufficiently complete for beneficial occupation, by the DATE OF POSSESSION, provided the PURCHASER has paid or duly secured the balance of the purchase price of the PROPERTY as referred to in 3.2 of the CONTRACT OF SALE.
- 3.2 The PURCHASER shall not give any instructions of any nature to the ARCHITECT contractor or sub-contractors). Should the SELLER agree to any deviation from the PLAN (which it is not obliged to do) (including, but in no way limited to, the installation of additional finishes in the SECTION), such deviation shall be reduced to writing and signed by the parties and any amounts payable in terms of such deviation shall be payable by the PURCHASER to the SELLER on demand).
- 3.3 The PURCHASER shall, within 30 (THIRTY) days of the DATE OF POSSESSION, 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.

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- 3.4 Save as provided in this CONTRACT, the PURCHASER purchases the PROPERTY voetstoots and shall have no claim against the SELLER in respect of any defects whether latent or patent in the PROPERTY or the common property of the SCHEME
- 3.5 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 beneficial 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
- 3.6 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 buildings and other structures on the PARENT PROPERTY and the PURCHASER agrees that the SELLER and/or its agents, contractors and workmen shall at all times have access to the PARENT 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 buildings 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 here out and the PURCHASER shall not, in any way whatsoever, interfere with the performance of the aforesaid work.
- 3.7 The SELLER warrants that the SECTION shall be constructed in accordance with:
- 3.7.1 the terms, plans and specifications referred to in this CONTRACT, and
- 3.7.2 the National Building Regulations and the requirements of the local authority.
- 3.8 In no way detracting from the generality of any other provision in this CONTRACT, it is recorded that the SELLER may, at the SELLER'S discretion, elect not to install any item in the SPECIFICATIONS provided that the SELLER installs a similar item of 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 an arbitrator) certifying that such item is of a similar quality, shall be final and binding on the parties.
- 3.9 Again, in no way detracting from the SELLER'S rights in terms of this CONTRACT or at law it is specifically recorded that the PURCHASER shall not be entitled to delay or refuse to comply with his obligations in terms of this CONTRACT (including, but in no way limited to the furnishing of the guarantees referred to in paragraph 3 of the CONTRACT OF SALE), if it

disputes that the PROPERTY is sufficiently complete for beneficial occupation or should it believe that the SELLER has not complied with his obligations in terms of paragraph 3.3 of the CONDITIONS OF SALE

- 3.10 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.

#### **4 OCCUPATION DATE**

- 4.1 The SELLER shall give the PURCHASER at least 60 (SIXTY) days prior written notice of the date on which the SECTION shall be sufficiently complete for the purposes of beneficial occupation, which date (subject to the provisions of paragraph 4.3 below) shall be the "DATE OF POSSESSION" for the purposes of this CONTRACT.
- 4.2 In the event of any dispute arising as to when or whether the SECTION is sufficiently complete for beneficial occupation, a certificate by the ARCHITECT (acting as an expert and not an arbitrator) certifying that the SECTION is sufficiently complete for beneficial occupation, shall be final and binding upon the parties.
- 4.3 Notwithstanding anything contained herein, the PURCHASER shall not be entitled to occupation of the SECTION until such time as:
- 4.3.1 the PURCHASER has secured the payment of the balance of the purchase price, as referred to in paragraphs 3.2 and 3.3 of the CONTRACT OF SALE;
  - 4.3.2 the PURCHASER has signed all the CONVEYANCERS documentation, provided all the information and documentation for the purposes of transfer and has paid the transfer costs, as contemplated in paragraph 7.1 of the CONDITIONS OF SALE and
  - 4.3.3 the PURCHASER is up to date with the payments of levies, occupational interest and all other amounts the PURCHASER is responsible for payment of in terms of the CONTRACT

Should the SECTION be sufficiently complete for beneficial occupation but the PURCHASER not have complied with its obligations as referred to above, then in that event, without prejudice to the SELLER'S rights to claim specific performance or to any other rights the

SELLER may have in terms of this CONTRACT or at law, and at the SELLER'S election, possession and occupation of the SECTION shall only be given to the PURCHASER once it has complied with its aforesaid obligations and such date of compliance shall be regarded as the DATE OF POSSESSION for the purposes of this CONTRACT.

## **5 RIGHTS AND OBLIGATIONS IN RESPECT OF OCCUPATION**

- 5.1 The PURCHASER acknowledges that, on the DATE OF POSSESSION, the SCHEME 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 SELLER or the ASSOCIATION, by reason of any such inconvenience.
- 5.2 From the DATE OF POSSESSION the PURCHASER –
- 5.2.1 shall be entitled to beneficial occupation of the SECTION and the SECTION shall be used only for office purposes subject to compliance with the RULES, and for no other purpose whatsoever;
- 5.2.2 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;
- 5.2.3 shall, at his own expense, maintain in a good working order and condition all electrical, plumbing and sewerage installations and appurtenances of whatever nature, within the SECTION,
- 5.2.4 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 of electricity/water;
- 5.2.5 shall be entitled to the use and enjoyment, along with occupiers of other sections in the SCHEME, of those parts of the common property of the SCHEME not subject to rights of exclusive use, subject to the RULES. In using the common property of the SCHEME, the PURCHASER shall do so in such a manner so as to not interfere unduly or unreasonably with the lawful rights of the use and enjoyment thereof by other occupiers of the sections in the SCHEME or other persons lawfully upon the SCHEME The PURCHASER shall procure that all other occupants of the SECTION comply with the provisions of this CONTRACT;
- 5.2.6 shall at all times comply with the provisions of the ACT and the RULES,
- 5.2.7 waives all claims against the SELLER and the ASSOCIATION for any loss or damage to property or any injury to person which the PURCHASER may sustain in or about the PARENT PROPERTY and indemnifies the SELLER and the ASSOCIATION against any claim

- that may be made against the SELLER or the ASSOCIATION by an employee of the PURCHASER'S or any tenant, nominee, invitee or any other person who goes upon the PARENT PROPERTY by virtue of the PURCHASER'S rights thereto, for any loss or damage to property or injury to person suffered in or about the PARENT PROPERTY howsoever such loss or damage to property or injury to person may be caused;
- 5.2.8 shall not, prior to the DATE OF TRANSFER, without the prior written consent of the SELLER, 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 SELLER then, without prejudice to any rights the SELLER may have in terms of the CONTRACT or at law, the PURCHASER shall not have any claim against the SELLER in respect of any expenditure upon or improvements to the SECTION;
- 5.2.9 shall be liable for the payment of all services provided to the SECTION in the form of telephones, television, electricity and water and any deposits and fees payable in connection with the supply of any such services and
- 5.2.10 shall be liable for the payment of rates and other outgoings arising from the PROPERTY.
- 5.3 All the benefit of and risk in and to the PROPERTY shall pass to the PURCHASER on the DATE OF POSSESSION;
- 5.4 The SELLER either personally or through their servants or agents shall be entitled at all reasonable times to have access to the SECTION and the common property of the SCHEME 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
- 5.5 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 in the SCHEME or interfere with the amenities of the SCHEME or so as to breach the RULES or any law, ordinance or by-law or provision of the Town Planning Scheme in force in relation to the SCHEME
- 5.6 From the DATE OF POSSESSION until the DATE OF TRANSFER (both days inclusive), the PURCHASER shall pay to the SELLER monthly occupational interest on the full (VAT inclusive) purchase price, at the prime rate charged by the Nedbank Limited, from time to time. A certificate by any manager of *the* said bank as to such prime overdraft rate shall be *prima facie* proof of such rate. Such occupational interest shall be payable monthly in advance on the 2<sup>nd</sup> (second) day of each and every month and shall be calculated using the aforesaid prime overdraft rate on the first day of that particular month.



- 5.7 The PURCHASER shall, as owner of the PROPERTY, have exclusive use of those portions of the common property referred to in paragraph 1.2 of the CONTRACT OF SALE, the positions) of which are shown on the SITE PLAN. The PURCHASER shall only be entitled to utilize such areas in accordance with the RULES and the ACT. The aforesaid exclusive use area(s) shall be maintained by the BODY CORPORATE, at the PURCHASER'S cost, as contemplated in the ACT.
- 5.8 The PURCHASER shall be responsible for obtaining all consents that may be required (including, but in no way limited to, the consent of the BODY CORPORATE and the local authority) in order for the PURCHASER to make internal improvements / alterations to the SECTION (including, but in no way limited to, the erection of partitioning, dry walling and the like), the SELLER being entirely free from any obligation in this regard. It is further recorded in this regard that the PURCHASER shall not be entitled to make any internal improvements/alterations to the SECTION save in accordance with the plans approved of by the trustees of the BODY CORPORATE and that it shall be incumbent upon the PURCHASER, at the PURCHASER'S cost, to obtain the relevant occupation certificate from the BODY CORPORATE within 90 (NINETY) days of such internal improvements/alterations to the SECTION having been completed.

## 6 LEVY AND OTHER CHARGES

- 6.1 The PURCHASER accepts liability from the DATE OF POSSESSION for the payment of a monthly levy to the BODY CORPORATE (and prior to the BODY CORPORATE's formation, to the SELLER) in respect of those items listed in the ACT.
- 6.2 The amount stated in 1.9 of the CONTRACT OF SALE is an estimate of the monthly levy payable by the PURCHASER, made in good faith by the SELLER, and the SELLER shall not be responsible for any inaccuracy in this estimate.
- 6.3 The PURCHASER agrees that he shall have no right to reclaim from the BODY CORPORATE any amount paid by way of a monthly levy or special levy, save as provided herein.
- 6.4 Notwithstanding anything contained herein or elsewhere, in the event of the SELLER delaying the DATE OF POSSESSION due to the PURCHASER not having complied with its obligation in terms of the CONTRACT (as contemplated in paragraph 4.4 of the CONDITIONS OF SALE); then in that event, the PURCHASER shall be responsible for payment of the aforesaid levv from the date that the ARCHITECT certifies that the SECTION is sufficiently complete for

beneficial occupation (as contemplated in paragraph 4.3 of the CONDITIONS OF SALE).

- 6.5 In no way detracting from the generality of the aforesaid, or anything contained herein or elsewhere, it is recorded that the BODY CORPORATE shall be obliged to pay a monthly levy to the ASSOCIATION (as contemplated in paragraph 8 hereof) and that such contribution shall be collected by the BODY CORPORATE from its members as part of the monthly levy referred to in paragraph 61 above, in accordance with the participation quota of the SCHEME

## **7 TRANSFER**

- 7.1 The PURCHASER shall, within 7 (SEVEN) days of being called upon to do so by the CONVEYANCERS –
- 7.1.1 pay to the CONVEYANCERS all costs of and incidental to the passing of transfer of the PROPERTY and cession of the exclusive use area (referred to in paragraph 5.7 of the CONDITIONS OF SALE (if any)) to the PURCHASER, including bond costs, bank charges and all conveyancing fees and disbursements and\
- 7.1.2 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 PROPERTY and cession of the exclusive use areas (if any) as contemplated herein
- 7.2 The CONVEYANCERS shall pass transfer of the PROPERTY to the PURCHASER as soon as is reasonably practicable in the circumstances, provided the PURCHASER has complied with all his obligations under this CONTRACT
- 7.3 No liability of any nature whatsoever shall attach to the SELLER arising out of any delays in effecting transfer of the PROPERTY to the PURCHASER
- 7.4 The PURCHASER shall be obliged to accept ownership of the PROPERTY subject to –
- 7.4.1 the conditions, reservations and servitudes which affect the PARENT PROPERTY;
- 7.4.2 such conditions of sectional title as are imposed by the SELLER and the local authority;
- 7.4.3 any change in the number of the SECTION or any change in the name of the SCHEME (it being recorded that the current proposed name of the SCHEME is as set out in 1.14 of the CONTRACT OF SALE);
- 7.4.4 a condition registered against the title deeds to the PROPERTY to the effect that the PROPERTY shall not be used for any purpose whatsoever save for the purposes referred to in paragraph 1.10 of the CONTRACT;
- 7.4.5 a condition registered against the title deeds to the PROPERTY to the effect that the

PROPERTY, or any portion thereof, or interest therein, shall not be alienated or transferred without the prior written consent of the ASSOCIATION first having been obtained.

7.5 It is recorded that in order to effect transfer of the PROPERTY, the CONVEYANCERS shall be required to lodge, inter alia, a Transfer Duty exemption certificate, issued by the South African Revenue Services (hereinafter in this paragraph 7 5 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 CONTRACT, 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 CONTRACT OF SALE and the SELLER shall be entitled to cancel this CONTRACT 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 11 1 2 of the CONDITIONS OF SALE) 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 19 of the CONDITIONS OF SALE

7.6 The PURCHASER acknowledges that:

7.6.1 the documentation necessary to effect transfer of the PROPERTY to the PURCHASER may be lodged with the Deeds Registry as part of a set including the transfer of other units in the SCHEME and that no documentation in the set, including the documentation relating to the transfer of the PROPERTY, can be withdrawn from the Deeds Registry without the entire set being withdrawn,

7.6.2 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 CONTRACT, 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 relodgement and registration;

7.6.3 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 CONTRACT.

**8 UMHLANGA RIDGE TOWN CENTRE**

- 8.1 The PURCHASER acknowledges that the BODY CORPORATE shall be obliged to become, and remain a member of the ASSOCIATION with the meaning of and subject to the conditions set out in the ASSOCIATION'S Memorandum and Articles of Association (which will include, but in no way limited to the payment of a monthly levy to the ASSOCIATION).
- 8.2 Further the PURCHASER undertakes that, he and all persons deriving use of the PROPERTY or any part thereof through him will, from the DATE OF POSSESSION, duly comply with all obligations imposed upon occupiers of property within RIDGESIDE, by the ASSOCIATION.
- 8.3 In no way detracting from the aforesaid, the PURCHASER undertakes to sign the agreement with the ASSOCIATION, a copy of which is Annexure "B" hereto, immediately upon being requested to do so by the SELLER or the CONVEYANCERS.

**9. MEMBERSHIP MANAGEMENT ASSOCIATION NPC**

By virtue of the purchase of the PROPERTY by the PURCHASER, the PURCHASER shall be obliged to become, and to remain for the duration of his ownership of the PROPERTY, 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 ESTATE or any part thereof through him will, from the DATE OF POSSESSION, duly comply with all the obligations imposed upon members under the ASSOCIATION'S Memorandum of Incorporation including the obligation to pay a monthly levy to the ASSOCIATION, the amount of which is to be determined, from time to time, by the directors of the ASSOCIATION. (The above is intended merely as a general description of the rights and obligations of a member of the ASSOCIATION, the details of which are more fully dealt with in the Memorandum of Incorporation of the ASSOCIATION. If there is any conflict with what is set out above and what is contained in the Memorandum of Incorporation, the latter shall prevail and the PURCHASER shall have no claim against the SELLER arising out of such conflict).

**10. PURCHASER'S ACKNOWLEDGEMENTS**

- 10.1 The PURCHASER irrevocably and *in rem suam* appoints the SELLER to exercise the PURCHASER'S voting rights with regard to the appointment of the Trustees of the BODY

CORPORATE and the appointment of the Managing Agents of the SCHEME,

- 10.1.1 the PURCHASER shall not be entitled to vote in favour of the amendment of any of the RULES without the SELLER'S prior written consent,
- 10.1.2 The PURCHASER authorises the SELLER to make such alterations or amendments to the RULES as well as to file and lodge such altered and amended Rules in the Deeds Registry at Pietermaritzburg as the SELLER believes is necessary to give effect to the provisions of this CONTRACT, and so as to provide for the harmonious operation of this SCHEME, and for that purpose the PURCHASER irrevocably and *in rem suam* appoints the SELLER as the PURCHASER'S duly authorized attorney, agent and proxy on the PURCHASER'S behalf, and to the PURCHASER S exclusion, to call and attend all such meetings and do all such things as are necessary to give effect to the provisions of this clause.
- 10.2 The PURCHASER acknowledges that he is aware of the intended future development of Umhlanga Ridge Town Centre Management Association (hereinafter in this paragraph 9 2 referred to as ASSOCIATION". Such development is intended to involve the establishment, *inter alia*, of high quality business and commercial premises and residential dwellings on various portions of development 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 ASSOCIATION in an endeavor 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
- 10.2.1 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, licenses 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 (It being recorded however that ASSOCIATION does not intend making any rezoning application or applying for filling station or shopping center rights respect of any property)
- 10.2.2 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 RIDGESIDE 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

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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.

10.2.3 the PURCHASER shall not object to ASSOCIATION rezoning application required to accommodate ASSOCIATION Progressive lifestyle housing requirements within RIDGESIDE.

## 11. AGENTS COMMISSION

\*11.1 The PURCHASER warrants that it was introduced to the PROPERTY by the agent referred to in paragraph the CONTRACT OF SALE who was the effective cause of the sale of the PROPERTY to the PURCHASER. The PURCHASER shall pay the aforesaid estate agent a commission as agreed with the aforesaid estate agent in respect of the sale of the PROPERTY to the PURCHASER, the SELLER being entirely free from any obligation in this regard.

\*11.1 The PURCHASER warrants that no agent or agency was responsible for introducing him to the PROPERTY.

11.2 The PURCHASER further warrants that no agent or agency will have any claim against the SELLER for agent's commission arising out of this transaction.

11.3 The PURCHASER indemnifies and holds harmless the SELLER against any loss, damage or expense sustained, suffered or incurred by the SELLER arising out of any breach of the foregoing warranty

**\*Delete that which is not applicable.**

## 12. DEFAULT

12.1 If the PURCHASER –

12.1.1 fails to pay any amount in terms of this CONTRACT, or

12.1.2 commits any breach of the remaining conditions of this CONTRACT and should the PURCHASER fail to remedy such breach within 7 (SEVEN) days of the date of delivery, if delivered by hand, or receipt if posted by prepaid registered post, of a written notice calling on him to remedy such breach, or

12.1.3 commits a repetition of such breach within a period of two months after having been warned by the SELLER to desist therefrom,

the SELLER shall be entitled, without prejudice to any other rights which it may have at law or

in terms hereof and at the SELLER'S election to –

- a. cancel this CONTRACT, and retake possession of the PROPERTY, in which event all amounts paid to the SELLER or to the CONVEYANCERS (including any amount paid in trust) shall be forfeited to and retained by the SELLER as rouwkoop, alternatively if the SELLER so elects he may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the SELLER or the CONVEYANCERS as aforesaid shall 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 or
  - b. claim immediate performance by the PURCHASER of all his obligations in terms of this CONTRACT whether or not the due date for the performance shall otherwise have arrived.
- 12.2 It is recorded that any breach by the PURCHASER of the SHAREHOLDERS AGREEMENT shall constitute a breach of this CONTRACT entitling the SELLER to exercise its remedies in terms of paragraph 11.1 above (without prejudice to any other rights the SELLER may have in terms of this CONTRACT, the SHAREHOLDERS AGREEMENT or at law).
- 12.3 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 CONTRACT 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 its 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.
- 12.4 For all purposes of this CONTRACT any act or omission on the part of any tenant, nominee or other person who occupies the PROPERTY, or invitee of the PURCHASER, or of such tenant, nominee or other person who goes upon the PARENT PROPERTY, shall be deemed to be an act or omission of the PURCHASER.

**13. JURISDICTION AND COSTS**

- 13.1 In the event of any action or application arising out of this CONTRACT, 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
- 13.2 Notwithstanding anything to the contrary herein contained the SELLER shall have the right at the SELLER'S sole option and discretion to institute proceedings in any other court, which might otherwise have jurisdiction;
- 13.3 In the event of it becoming necessary for the SELLER to take any action against the PURCHASER as contemplated herein, the PURCHASER agrees to pay to the SELLER all the attendant costs and expenses incurred by the SELLER as between attorney and client

**14. SOLE CONTRACT**

The PURCHASER acknowledges that this CONTRACT constitutes the sole basis of the contract between himself and the SELLER, and that he has not been induced to enter into such contract by any representations or warranties (including, but in no way limited to, any artist's impression of the SCHEME, 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. Any agreement between the PURCHASER and the SELLER to cancel, alter or add to this CONTRACT shall not be binding and shall be of no force or effect unless reduced to writing and signed by the parties hereto, or by their agents acting on their written instructions,

**15. INDEMNITY**

The SELLER does not warrant any information given in respect of the PROPERTY, whether this information is given prior to or subsequent to the signing of this CONTRACT, save for the information in respect of the PROPERTY specifically warranted in this CONTRACT. The SELLER shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given in good faith by the SELLER to the PURCHASER, his agent or his nominee in respect of the PROPERTY and the PURCHASER hereby indemnifies the



SELLER and holds it harmless against any 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 in good faith (save for the information specifically warranted in this CONTRACT).

## **16. DOMICILIUM**

- 16.1 The PURCHASER chooses as his domicilium citandi et executandi and as the address at which notices may be delivered to him, the addresses set out in the heading to the CONTRACT OF SALE.
- 16.2 Any notice to the PURCHASER sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the PURCHASER'S postal address set out in the heading to this CONTRACT shall be deemed to have been received on the 7<sup>th</sup> day after posting (unless the contrary is proved), or
- 16.2.1 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 date of delivery.
- 16.3 Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by the PURCHASER (including any notice facsimiled to the PURCHASER) shall be an adequate written notice or communication to it, notwithstanding that it was not sent or delivered to its chosen domicilium citandi et executandi.

## **17. COSTS**

The SELLER shall bear its own costs in connection with the preparation and execution of this CONTRACT.

## **18. CESSION AND RESALE**

The PURCHASER shall not:

- 18.1 sell, assign, cede or dispose of the PURCHASER'S rights under this CONTRACT or
- 18.2 sell, or in any way agree to sell or otherwise alienate the PROPERTY or
- 18.3 in the event of the PURCHASER being a juristic person (such as a company, close corporation or trust), allow the alienation of its shares, members' interest or beneficial interest (as the case may be) prior to the DATE OF TRANSFER, without the written consent of the SELLER, which

consent the SELLER may, in its sole and absolute discretion grant (on such terms and conditions as the SELLER may require) or refuse.

## **19. ARREARS**

19.1 Any amounts in arrears in terms of this CONTRACT shall bear interest at the prime overdraft rate, from time to time, charged by the Standard Bank of South Africa Limited, which interest shall be calculated monthly in advance from the date that such amount became due.

19.2 A certificate by any manager of the said bank as to such prime overdraft rate, from time to time, shall be prima facie proof of such rate.

## **20. MORA INTEREST**

20.1 In the event of there being any delay in the DATE OF TRANSFER for which the PURCHASER is responsible or in the event of the PURCHASER not furnishing the guarantees referred to in paragraph 3 of the CONTRACT OF SALE timeously, then in that event, the PURCHASER agrees, in addition to any other payment due in terms of this CONTRACT (including, but in no way limited to the payment of occupational rental in terms of paragraph 5.6 of the CONDITIONS OF SALE), to pay interest on the full purchase price at the prime overdraft rate charged by Nedbank Limited, from time to time, plus 4 percentage points, calculated from the date the PURCHASER is notified in writing by the SELLER (or the SELLER'S agent) as being in mora, to the date upon which the PURCHASER has ceased to be in mora, both days inclusive.

20.2 A certificate by any manager of the said bank as to such prime overdraft rate shall be prima facie proof of such rate.

## **21. ELECTRICAL CERTIFICATE**

21.1 The SELLER shall at the SELLER'S own expense furnish a certificate of compliance from an accredited person in respect of all electrical installations in the PROPERTY installed by the SELLER, in accordance with the requirements of the Electrical Installation Regulations made under the Occupational Health and Safety Act No 85 of 1993 such certificate shall be delivered to the PURCHASER prior to the DATE OF POSSESSION

21.2 If the accredited person reports that he is unable to issue such certificate of compliance unless certain works are taken to the electrical installation, the SELLER shall be entitled to have the work done so that the certificate can be furnished timeously.