

CONTRACT OF SALE

entered into by and between

NATURAL BALANCE PROPRIETARY LIMITED

and

in respect of the purchase and sale of a proposed unit in the
sectional title scheme to be known as

MOUNT EDGECOMBE RETIREMENT VILLAGE
at Kindlewood

1. **THE SCHEDULE**

1.1 **THE SELLER: Natural Balance Proprietary Limited**

Registration number: 2007/013066/07
Physical Address: c/o Lester Hall, Fletcher Inc., 76 Old Main Road, Kloof, 3610
Postal Address: c/o Lester Hall, Fletcher Inc., Private Bag X7016, Hillcrest, 3650
Telephone number: 0861 2777 27
Facsimile: 031-767 5713
Email: saf@lesterhall.co.za

1.2 **THE PURCHASER:**

Name:
Identity Number/Registration Number:.....
VAT Registration Number:
Marital Status (for individual):
Physical address:.....
Postal address:.....
Telephone number:
Facsimile:.....
Cellular number:
E-mail:.....

1.3 **THE SCHEME**

1.3.1 NAME: MOUNT EDGECOMBE RETIREMENT VILLAGE
LAND: Proposed Portion 460 (of 305) of Erf 143 Mount Edgecombe, Registration Division FU, Province of KwaZulu-Natal, in extent approximately 2,1247 ha; and

Proposed Portion 322 (of 305) of Erf 143 Mount Edgecombe, Registration Division FU, Province of KwaZulu-Natal, in extent approximately 9,1764 ha
(may be consolidated to form Proposed Portion 464 of Erf 143 Mount Edgecombe, Registration Division FU, Province of KwaZulu-Natal, in extent approximately 11,3071 ha)

1.4 **DESCRIPTION OF PROPERTY**

1.4.1 **Proposed Section No:** _____

Approximate extent of the Section (m2) _____

1.4.2 **Exclusive Use Area (if applicable):**

Garden Area GA _____
(See clause 4.7 Conditions of Sale)

1.5 **PURCHASE PRICE:**

The Purchase Price of the Property is the sum of: R _____
inclusive of VAT

1.6 **PAYMENT OF PURCHASE PRICE: (delete what is not applicable)**

1.6.1 DEPOSIT is the sum of: R _____

1.6.2 GUARANTEE/S NO. 1 in the amount of: R _____
(See clause 2.1 Conditions of Sale)

1.6.3 FURTHER DEPOSIT/GUARANTEE/S NO.2 in the amount of: R _____

1.6.4 DEPOSIT FROM PRIOR SALE/GUARANTEE/S NO 3 in the amount of: R _____
(See clause 2.2 Conditions of Sale)

1.7 **THE ANTICIPATED DATE OF POSSESSION:**

Subject to the terms and conditions set out in clause 6 of the Conditions of Sale, the anticipated Date of Possession is: ____/____/____

1.8 **OCCUPATIONAL RENTAL** R_____ per month

1.9 **ESTIMATED MONTHLY LEVY PAYABLE TO:**

1.9.1 The Body Corporate R_____

1.9.2 The Association R1 700.00

1.10 **LEVY STABILISATION FUND CONTRIBUTION PAYABLE TO:**

1.10.1 The Body Corporate R 5 000.00

1.10.2 The Association R 16 000.00

1.11 **ESTATE AGENT:**

1.11.1 The estate agent _____

1.11.2

1.11.3 The estate agency appointed by the Seller namely: _____

1.11.4 The Commission payable by the Seller (inclusive of VAT) ____%

1.12 **DESCRIPTION OF PURCHASER'S PROPERTY (PRIOR SALE):**

("the Purchaser's property")

1.13 **CONVEYANCERS:**

Lester Hall, Fletcher Inc. (Sally Fletcher) 76 Old Main Road, Kloof, 3610 Private Bag X7016, Hillcrest, 3650 Tel: 0861 2777 27 Fax: 031 767 5713 Email: saf@lesterhall.co.za	Van Onselen Attorneys (David van Onselen) Unit 17B Canford Park, 53 Anthony Road Durban North, 4051 Tel: 0829084971 Email: david@voattorneys.co.za
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Initial

2.3 The Purchaser agrees that the precise area, boundaries and description of the Property shall be shown on the Sectional Plan and as finally determined and approved by the Surveyor – General and shall be binding upon the parties, provided always that the area of the Section shall be within 5% (five percent) of the areas stated in 1.4.1 above.

3. **PAYMENT OF PURCHASE PRICE**

3.1 The deposit referred to in 1.6.1 above (less the reservation fee, if applicable) shall be paid to the Conveyancers referred to in 1.13 above on Date of Signature.

3.2 Such payments shall be invested by the Conveyancers in an interest bearing account on behalf of the Purchaser until the Date of Transfer whereupon the Conveyancers shall release the capital to the Seller and all accrued interest earned in respect of such deposits, less the Conveyancer's usual fee to the Purchaser.

3.3 The Purchaser hereby authorises the Conveyancers to invest such monies with either Investec Corporate Cash Manager or Nedbank Corporate Saver in terms of section 78 (2A) of the Attorneys Act.

3.4 The Purchaser acknowledges that:

3.4.1 the Conveyancers are designated as an "accountable institution" in terms of the Financial Intelligence Centre Act No. 46 of 2001 ("FICA");

3.4.2 certain obligations are placed on the Conveyancers in terms of FICA and the Prevention of Organised Crime Act No. 21 of 1998 ("POCA") and the Regulations promulgated in terms thereof;

3.4.3 the Conveyancers are not able to invest any amounts paid into trust with them on the Purchaser's behalf until such time as the Purchaser has complied with the requirements of FICA and has signed the necessary investment mandate, both of which the Purchaser undertakes to do as soon as possible after request therefor by the Conveyancers.

3.5 The Purchaser shall secure the due payment of the amounts referred to in 1.6.2, 1.6.3 and 1.6.4 above by furnishing the Conveyancers with a guarantee/s from a registered South African commercial bank, in a form and on terms acceptable to the Conveyancers for such amount. Such guarantee/s shall be furnished by the Purchaser within 30 (thirty) days of request therefor by the Conveyancers, provided that: -

3.5.1 if the Purchaser requires a loan for the amount stated in 1.6.2 above, such guarantee shall not be called for until the loan has been granted in accordance with the conditions precedent contained in clause 2.1.1 of the Conditions of Sale; and/or

3.5.2 if a guarantee is to come from the sale of the Purchaser's property, such guarantee shall not be called for until fulfillment of the conditions precedent contained in clause 2.2.1 of the Conditions of Sale.

The aforesaid guarantee/s shall be payable on the Date of Transfer.

3.6 Alternatively, the Purchaser shall be entitled to pay the amounts referred to in 1.6.3 and/or 1.6.4 above to the Conveyancers in cash, which amounts shall be invested by the Conveyancers in accordance with the provisions of clauses 3.1.1 to 3.1.3 above.

3.7 Notwithstanding anything to the contrary herein contained, inasmuch as the total Purchase Price

is a Value Added Tax ("VAT") inclusive price determined at the current rate of 14% (fourteen percent) then, in the event of the rate at which VAT is chargeable being amend after the Date of Signature hereof by the Purchaser, but in circumstances in which the amended rate will apply to this transaction, then the purchase price shall be adjusted accordingly, the intention being that the Seller shall receive and retain the same net purchase price after payment of VAT regardless of the rate at which VAT is payable.

- 3.8 Unless otherwise provided, all payments hereunder shall be made without set-off, deduction or demand to the Seller at the offices of the Conveyancers. All bank charges incurred by the Conveyancers in connection with this transaction, shall be for the account of the Purchaser.

4. **PHASED DEVELOPMENT**

This sale is subject to the following special condition which is imposed by the Seller in terms of Section 11(2) of Act 95/1986:

The Seller, in terms of Section 25 of Act 95/1986, 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 20 (twenty) years of:

- a) a further building or buildings,
- b) a horizontal extension of an existing building or buildings and
- c) a vertical extension of existing buildings

on that part of the common property outlined on the Site Plan, 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 in the Scheme.

5. **CONDITIONS PRECEDENT**

- 5.1 The Contract is subject to and conditional upon:

- 5.1.1 the Seller acquiring the components making up the Land;
- 5.1.2 the consolidation of the components, or the notarial tie of the components, to form the Land;
- 5.1.3 the building plans for the Scheme being approved by the relevant local authority;
- 5.1.4 the Seller being granted the necessary finance to develop the Scheme,

all by no later than the date referred to in clause 1.15 above.

- 5.2 Should any of the aforesaid conditions not be met timeously, then in that event, this entire Contract shall lapse and be of no further force and effect between the Parties save that the Conveyancers shall refund to the Purchaser any amount paid by the Purchaser to the Conveyancers in respect of the purchase price together with all interest that may have accrued thereon while invested with the Conveyancers, less the Conveyancers usual fee.

- 5.3 It is recorded that the suspensive conditions contained in 5.1 above are inserted for the benefit of the Seller who may elect to waive compliance with one or more of the suspensive conditions by giving written notice to the Purchaser within the time period afforded to the Seller in clause 5.1 above.

6. **MEMBERSHIP OF THE KINDLEWOOD MANAGEMENT ASSOCIATION NPC**

By virtue of the purchase of the Property, the Purchaser shall be obliged to become, and 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 and undertakes that he and all persons deriving use of the Estate or any part thereof through him shall, from the Date of Possession, duly comply with all the obligations imposed upon members under the Association's Memorandum 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 as contemplated in the Memorandum. In no way detracting from the generality of the aforesaid, the Purchaser undertakes to sign the Association's membership application, a copy of which is annexed to the Conditions of Sale marked "Q" and do whatever else may be required in order for the Purchaser to become a member of the Association (which it is recorded will include, inter alia the Purchaser irrevocably nominating, constituting and appointing the Association, as his representatives, to call, attend and vote at meetings of the Body Corporate, on the Purchaser's behalf, and to the Purchaser's exclusion, subject to the rights of the Seller). If there is any conflict between what is set out above and the final provisions of the Association's Memorandum, the latter shall prevail and the Seller shall not incur any liability, of any nature whatsoever, in this regard

7. **CONSUMER PROTECTION ACT (delete whichever is not applicable)**

The Purchaser, who is a Juristic Person, warrants to the Seller that its asset value or annual turnover, at the Date of Signature and the Date of Transfer, 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 Property to the Purchaser in terms of this Contract, is exempt from the provisions of the CPA (save for the provisions of section 60 and 61 of the CPA). It is recorded that the aforesaid warranty is material to the Seller in entering into this Contract of Sale. 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, 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.

OR

In terms of Section 49 of the CPA, the Purchaser's attention is drawn to the following clauses in this Contract that purport to either limit the risk or liability of the Seller, or constitute an assumption of risk or liability by the Purchaser, or an indemnification of the Seller or an acknowledgement of any fact: -

- Contract: of Sale clauses 2.2, 2.3, 3.2, 5.2 and 6.
- Annexure "A" Conditions of Sale clauses 2.1.3, 2.1.4, 4.2, 5.2, 5.3, 5.4, 5.6, 6.2, 6.3, 6.5, 7.4, 7.5, 7.6, 7.7, 7.10, 10.4.1, 10.4.2, 10.4.5, 12, 13.1, 13.3, 17, 18, 19, 22.2, 24, 26 and 28.

The Seller has made every effort to incorporate the Purchaser's consumer rights, as provided for in the CPA, into this Contract. In the event that any provision in this Contract is found to contravene the CPA, the parties agree that such provision shall be severed from this Contract and be treated as if it were not part of this Contract.

OFFER AND ACCEPTANCE

The Purchaser acknowledges that this offer shall not be capable of being withdrawn and shall remain open for acceptance by the Seller for a period of 21 (twenty-one) days after the Date of Signature of the Purchaser.

DATED at this day of 201__.

AS WITNESS:

_____ Seller

DATED at this day of 201__.

AS WITNESS:

_____ Purchaser: Who acknowledges that he /she is acquainted with and understands the contents of the Contract and that all the annexures referred to in the Contract were attached hereto when he/ she signed same

_____ Purchaser's spouse, where applicable

GUARANTOR

This portion to be signed by the legal guardian / member / director/ trustee in the event of the Purchaser being a minor / close corporation / company / trust.

(Full names) _____

of _____

(Full address and telephone number)

hereby consents to the conclusion of the Contract 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 fulfilment and discharge of all the conditions and obligations undertaken by the Purchaser to the Seller pursuant to the Contract, 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 the Contract 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 the Contract is varied or amended or novated and even if the aforesaid Purchaser is granted an indulgence by the Seller.

Signed by the Guarantor aton this..... day of.....201__.

AS WITNESS:

GUARANTOR

CONDITIONS OF SALE**1. DEFINITIONS AND INTERPRETATION:**

The following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them respectively, namely:

- 1.1 "Act 95/1986" means the Sectional Titles Act No. 95 of 1986, as amended, and regulations in force thereunder;
- 1.2 "Act 13/2006" means the Older Persons Act No. 13 of 2006, as amended, and regulations in force thereunder;
- 1.3 "Administrator" means the administration company described in clause 1.19 of the Contract of Sale which will deliver certain services to the Body Corporate and its members as provided for in this Contract;
- 1.4 "Architect" means the architect nominated by the Seller in terms of clause 1.14 of the Contract of Sale;
- 1.5 "Association" means the Association described in clause 1.18 of the Contract of Sale, a non-profit company incorporated by the Seller in terms of the Companies Act No. 71 of 2008;
- 1.6 "Body Corporate" means the controlling body of the Scheme to be established in terms of Act 95/1986;
- 1.7 "Bouquet of Services" means access to such optional services as shall be made available to the Nominated Occupants from time to time;
- 1.8 "Buildings" means the buildings to be erected on the Land;
- 1.9 "Care Centre" means the sections to be used as a care centre as reflected on the Site Plan;
- 1.10 "Conditions of Sale" means these conditions of sale;
- 1.11 "Contract" means the Contract of Sale and all annexures thereto;
- 1.12 "Contract of Sale" means the contract of sale to which these Conditions of Sale is Annexure "A"
- 1.13 "Conveyancers" means the conveyancers nominated by the Seller in terms of clause 1.13 of the Contract of Sale;
- 1.14 "CPA" means the Consumer Protection Act No 68 of 2008, as amended, and regulations in force thereunder;
- 1.15 "Date of Possession" means the date specified in clause 1.7 of the Contract of Sale, subject to the provisions of clause 6 of the Conditions of Sale;
- 1.16 "Date of Signature" means the date of signature of the Contract by the last signing of the Seller

- or Purchaser;
- 1.17 "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;
- 1.18 "Developer" means the Seller;
- 1.19 "Estate Agent" means the agent described in clause 1.11 of the Contract of Sale;
- 1.20 "Exclusive Use Area" means portions of the common property as referred to in clause 1.4.2 of the Contract of Sale which shall be allocated as garden areas in accordance with clause 4.7 below;
- 1.21 "Juristic Person, means a partnership, association, trust, body corporate, company, close corporation or other legal or juristic person;
- 1.22 "Land" means the land described in clause 1.3.2 of the Contract of Sale;
- 1.23 "Nominated Occupant/s" means the Occupant/s of the Property, nominated in writing by the registered owner in terms hereof and approved in writing by the Administrator;
- 1.24 "Occupant" means a natural person who is 50 (fifty) years of age or older unless occupied by 2 (two) occupants who shall be spouses or life partners, and the one occupant is younger than fifty (50) years of age;
- 1.25 "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;
- 1.26 "Operator" means the operator appointed by the Administrator which will operate the Care Centre and offer access to home based care within the ambit of Act 13/2006 as a commercial enterprise;
- 1.27 "Participation Quota" means the draft participation quota specified in Annexure "E" to the Contract of Sale (it being recorded that the Scheme will consist of two components, the residential component and the commercial component, with costs allocated to owners of each component by way of the participation quota for the component and costs allocated to all owners in the Scheme by way of the participation quota for the Scheme. It is acknowledged that the costs allocated is an estimate and is subject to change once all the units in the Scheme have been surveyed);
- 1.28 "Plan" means the floor plan and elevations of the Section, being Annexure "C" to the Contract of Sale, and the Schedule of Finishes, being Annexure "D" to the Contract of Sale;
- 1.29 "Property" means the Unit to be established in terms of Act 95/1986, consisting of:
- 1.29.1 the Section and
- 1.29.2 an undivided share in the common property in the Scheme apportioned to the Section in accordance with the Participation Quota; and
- 1.29.2.1 the Exclusive Use Area.
- 1.30 "Purchaser" means the party referred to in clause 1.2 of the Contract of Sale, his successors in

title and assigns;

- 1.31 "Residential Facility" means the sections of the Care Centre used primarily for purposes of providing accommodation and of providing a 24-hr service to older persons;
- 1.32 "Rules" means the rules of the Association and the Scheme. The Management Rules means the Management Rules referred to in Act 95/1986 supplemented by the Additional Management Rules as contained in Annexure "F1" to the Contract of Sale and such further Additional Management Rules as may be proposed at the time of the opening the Sectional Title Register and the Conduct Rules means the Substituted and Additional Conduct Rules as are contained in Annexure "F2" the Contract of Sale and by such further Additional Conduct Rules as may be proposed at the time of opening the Sectional Title Register;
- 1.33 "Schedule of Finishes" means the specifications attached to the Contract of Sale marked Annexure "D". It is specifically recorded that the specifications contained in the Schedule of Finishes are subject to amendment from time to time and subject to final revision by the Architect and any reference to these specifications shall refer to final amended specifications as determined by the Architect;
- 1.34 "Scheme" means the sectional title scheme described in clause 1.3.1 in the Contract of Sale to be registered in accordance with the provisions of Act 95/1986 in respect of the Land and Buildings to be constructed thereon;
- 1.35 "Section" means the proposed section in the Scheme comprised in and forming part of the Unit as described in clause 1.4.2 of the Contract of Sale;
- 1.36 "Sectional Plan" means the sectional plan to be prepared by a land surveyor in respect of the Buildings comprising the Scheme;
- 1.37 "Seller" means the party referred to in clause 1.1 of the Contract of Sale;
- 1.38 "Service Level Agreement" means the service level agreement and management contract to be concluded between the Administrator and the Operator in respect of the Care Centre;
- 1.39 "Site Plan" means the plan which is Annexure "B" to the Contract of Sale;
- 1.40 "Unit" means the Section purchased by the Purchaser from the Seller together with the undivided share in the common property apportioned to the Section in accordance with the Participation Quota;
- 1.41 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.42 words or expressions defined in the Acts shall have the same meanings in the Contract;
- 1.43 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 1.44 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 the Contract shall prejudice the Seller's rights under the Contract in any manner whatsoever, or be regarded as a waiver of the Seller's rights in terms of the 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 the Contract;

- 1.45 any reference to a natural person shall include the legal person and/or an association of persons and vice versa;
- 1.46 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 the Contract;
- 1.47 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two; and
- 1.48 where a number of day are prescribed, they shall consist of all days (i.e. including Saturday, Sunday and Public Holidays) and shall exclude the first day and include the last day;
- 1.49 in interpreting the Contract, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule (i.e. whenever specific words of a particular class are used in conjunction with general words then the specific words shall not limit the scope of the general words. If any provision is followed by the word "including" in specific examples, such examples must not be construed as to limit the general ambit of the provision concerned);
- 1.50 any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;
- 1.51 the Contract shall be governed by and construed according to the Laws of the Republic of South Africa;
- 1.52 the expiration or termination of the Contract shall not affect those provisions of the Contract which expressly provide that they will operate after any such expiration or termination or, which out of necessity must continue to have effect after such expiration, notwithstanding the fact that the clauses do not expressly provide this;
- 1.53 the Contract shall be binding on and enforceable by the administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectually as if they had signed the Contract in the first instance and reference to any party shall be deemed to include such party's administrators, trustees, successors in title, successors in office, assigns or liquidators, as the case may be;
- 1.54 nothing in the Contract shall be construed as binding the Seller and the Purchaser to the provisions of the CPA in instances where the CPA would not otherwise be binding on them. Where the CPA is applicable, the provisions of the Contract shall be read in conjunction with the provisions of the CPA, and insofar as the provisions of the Contract are inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail;
- 1.55 a fully executed facsimile copy of the Contract shall be accepted as an original and the Contract may be signed in counterparts and will be effective as such, each of which will be deemed an original and all of which together shall constitute one and the same Contract as at the Date of Signature;
- 1.56 the Contract incorporates annexures by reference, which annexures shall have the same force and effect as the provisions set out in the body of the Contract. The various documents forming part of the Contract are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Contract will prevail.

2. **CONDITIONS PRECEDENT**

2.1 **Loan**

2.1.1 If the Contract reflects a loan in terms of clause 1.6.2 of the Contract of Sale, then the Contract is subject to and conditional upon the Purchaser obtaining a loan in principle for the amount set out in in terms of clause 1.6.2 of the Contract of Sale from a recognized financial institution and the Seller receiving a copy of the written approval of such loan in principle by the aforesaid financial institution within 45 (forty five) days from the Date of Signature of the Contract or within such further period of time that the Seller, entirely in its own discretion, may grant to the Purchaser in writing.

2.1.2 The Purchaser undertakes to utilize one of the Seller's accredited bond originators in making application for the aforesaid loan.

2.1.3 In order to expedite the transfer of the Property to the Purchaser it is the intention of the Seller and the Purchaser that the Conveyancers be appointed by the financial institution to attend to the registration of the loan over the Property in favour of the aforesaid financial institution on Date of Transfer. The Purchaser undertakes to utilise his best endeavours to prevail upon the aforesaid financial institution to appoint the Conveyancers in this regard.

2.1.4 It is specifically recorded that on or about the Date of Possession the financial institution granting the loan shall require the Purchaser to sign a Letter of Satisfaction. In no way detracting from the Seller or Purchaser's rights in terms of the Contract or in terms of Law, it is specifically recorded and agreed that the Purchaser shall in no way delay or refuse to comply with his obligations to timeously and on request sign the aforesaid Letter of Satisfaction. In this regard the Purchaser is specifically referred to his rights as set out under clause 5 below, and accepts the provisions of the penalties as set out under clause 18 below.

2.1.5 The Purchaser warrants that:

2.1.5.1 he is aware of the financial requirements of financial institutions relating to the loan that is to be applied for and undertakes to the best of his ability to immediately provide and sign, upon request by the relevant financial institution concerned, all information and documentation which may be required by it in order to apply for and approve his loan application;

2.1.5.2 there are no existing judgements noted against his name which would preclude any financial institution from approving his loan application.

2.2 **Sale of Property** (* delete whichever is not applicable)

2.2.1 *Purchase Price to come from the sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.12 of the Contract of Sale, which sale is not subject to any suspensive conditions.

OR

2.2.1 * Purchase Price to come from the conditional sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.12 of the Contract of Sale, subject however to certain suspensive conditions which shall be required to be fulfilled within 45 (forty-five) days after the Date of Signature of the Contract. If the sale of the Purchaser's existing property is dependent on prior transfers, then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

OR

2.2.1 *Sale subject to the Sale of the Purchaser's Property

This sale is conditional upon the sale of the Purchaser's property as provided for in clause 1.12 of the Contract of Sale, which the Purchaser undertakes to actively market and to ensure the fulfilment of all suspensive conditions contained in that sale Contract within _____ (_____) days after the Date of Signature of the Contract. If the sale of the Purchaser's existing property is dependent on prior transfers, then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

2.2.2 The Contract is also subject to the Purchaser's conveyancers effecting registration of transfer of the existing property within 60 (sixty) days of the sale becoming a conclusive sale.

2.2.3 In the event of the Seller receiving any other written offer which is not subject to the sale of another property from a bona fide third party, before the sale of the Purchaser's existing property becomes conclusive, which offer the Seller wishes to accept, the Seller shall by written notice advise the Purchaser of such offer and the Purchaser shall within 48 (forty eight) hours of receipt of such notice waive the suspensive conditions in this clause in writing to the Conveyancers failing which the Seller shall be entitled to accept the offer from the new Purchaser in which event this offer shall fall away and be of no further force or effect.

2.3 It is recorded that the suspensive conditions contained in 2.1 and/or 2.2 are inserted for the benefit of the Purchaser.

2.4 The Purchaser may elect to waive compliance with either one or both suspensive conditions by giving written notice to the Seller within the time period afforded to the Purchaser as referred to in 2.1 and 2.2 above.

2.5 Upon delivery of such notice of waiver, the suspensive condition/s shall be deemed to have been fulfilled and the Contract shall be of full force and effect.

2.6 Should the suspensive conditions referred to in 2.1 and/or 2.2 not be fulfilled within the prescribed time periods aforesaid and the period for fulfilment thereof not be extended in writing by the parties, then the Contract shall lapse and in that event the parties shall be obliged to restore each other to the status quo ante as at the Date of Signature.

3. **CONDITIONS OF TITLE AND OWNERSHIP**

The Purchaser shall be obliged to accept ownership of the Property subject to: -

- 3.1 the conditions, reservations and servitudes which affect the Land;
- 3.2 such conditions of sectional title as are imposed by the Seller and the local authority;
- 3.3 any change in the number of the Section;
- 3.4 a condition imposed by the Seller and registered against the title deed to the Property to the effect that the Section shall not be permanently occupied by a person not approved by the Administrator and who is not 50 (fifty) years of age or older;
- 3.5 in order to protect the Administrator's rights, a condition imposed by the Seller and registered against the title deed to the Property to the effect that the Property or any portion thereof or interest therein, real right thereon or sectional title unit erected thereon shall not be alienated, leased or transferred without the written consent of the Administrator first being had and obtained;
- 3.6 in order to protect the Operator's rights, a condition imposed by the Seller and registered against the title deed to the Property to the effect that the Property or any portion thereof or interest therein, real right thereon or sectional title unit erected thereon shall not be alienated, leased or transferred without the written consent of the Operator first being had and obtained;
- 3.7 a condition registered against the title deed to the Property to the effect that the Property or any portion thereof or interest therein, real right thereon or sectional title unit erected thereon shall not be alienated, leased or transferred without the written consent of the Association first being had and obtained; and
- 3.8 a condition registered against the title deed to the Property to the effect that the Property or any portion thereof or interest therein, real right thereon or sectional title unit erected thereon shall not be alienated, leased or transferred without the written consent of Tongaat Hulett first being had and obtained.

4. **OPENING OF REGISTER**

- 4.1 The Purchaser acknowledges that it is not possible for the Seller to give transfer of the Property to the Purchaser until such time as the sectional title register of the Scheme is opened in terms of Act 95/1986. Accordingly, the Seller undertakes, in a reasonable time and at its own expense, to take such steps as may be reasonably necessary to procure the opening of the said sectional title register.
- 4.2 Should the sectional title register not be opened by the date referred to in clause 1.16 of the Contract of Sale then failing any agreement to the contrary arrived at between the parties and recorded in writing, the Purchaser shall have the right on written notice to the Seller to resile from the Contract, provided that such notice is delivered to the Seller within 7 days of the date referred to in clause 1.16 of the Contract of Sale, and in such event:
 - 4.2.1 the Purchaser shall be entitled to be refunded all monies paid on account of the purchase price, less the Conveyancers usual charges;

- 4.2.2 save as herein provided, in such event, neither party shall have any further claims whatsoever against the other, nor shall the Purchaser be entitled to claim or allege any right of occupation or tenancy of the Property; and
- 4.2.3 the Purchaser, and every person claiming occupation through the Purchaser, shall vacate the Section on a date stated in such notice to the Seller (provided that such date shall not be later than 30 (thirty) days from the date of the notice) and the Purchaser shall re-deliver the Section in the same good order and condition as at the Date of Possession, fair wear and tear expected.
- 4.3 All costs of and incidental to the approval and registration of the Sectional Plans, the opening of the sectional title register for all phases, the issue to the Seller of the certificates of real right in terms of Section 25 of Act 95/1986, and the issue to the Seller of the certificates of registered sectional title for the units referred to in the Sectional Plans, shall be paid by the Seller. The Seller shall also be responsible for the costs of preparing a common property allocation plan as provided for in Section 27(A) of Act 95/1986.
- 4.4 Until the sectional title register is opened in the Deeds Office and the Body Corporate has been constituted, the Seller shall be entitled to exercise all the rights and powers which the Body Corporate would be empowered to exercise under Act 95/1986 in relation to the Scheme and owners or occupiers of sections in the building, as if the register was open and the Property had been transferred to the Purchaser.
- 4.5 Until the applicable Sectional Title Register is opened and transfer of the Property to the Purchaser is effected and the Purchaser becomes a member of the Body Corporate, the Purchaser shall continue to be liable to the Seller for the due and faithful performance of all its obligations in terms of the Contract and the Rules.
- 4.6 Any breach by the Purchaser of the Rules shall constitute a breach of the entire Contract in which event the Seller may avail itself of the provisions of clauses 17 and 18 hereof.
- 4.7 The Purchaser acknowledges that it is the Seller's intention to allocate exclusive use areas by way of an allocation to be contained in the Rules. The Purchaser further acknowledges that it may not be practicable to allocate such exclusive use areas until such time as the entire Scheme has been completed, and the Purchaser hereby irrevocably and in *rem suam* appoints the Seller as his duly authorised attorney, agent and proxy and on his behalf and to his exclusion, to attend all meetings either special or general, of the Body Corporate, and then and there to do all such things as are necessary to vote in favour of any proposed amendment of the Rules required to allocate exclusive use areas as described above.
5. **COMPLETION OF THE SECTION**
- 5.1 The Seller hereby undertakes to procure that the Section is erected substantially in accordance with the Plan and in a proper and workmanlike manner in compliance with National Building Regulations and the requirements of the local authority.
- 5.2 The Seller may, in its sole discretion, elect not to install any item on the Schedule of Finishes, provided that the Seller installs a similar item of a similar quality in its place. If there is any dispute as to whether the Seller has installed an item of similar quality, such disputes shall be referred to the Architect, acting as an expert and not an arbitrator, whose decision shall be final and binding on the parties

- 5.3 The Purchaser acknowledges that he shall not be entitled to give any instructions of any nature to the building contractors, subcontractors, the Architect or anyone else engaged upon the building work. If at the time when occupation of the Section is given to the Purchaser the building work in respect of the rest of the scheme has not been completed, then the provisions of this clause shall apply to the Buildings still to be erected, or still in the course of erection, and to those areas of the Land where building work is being performed.
- 5.4 The Purchaser acknowledges that the Seller has established several basic configurations for sections to be built on the Land. The Seller shall have the right at its sole discretion to determine the number of sections to be built in terms of each configuration notwithstanding the plan and estimated participation quota schedule lodged in the Deeds Registry by virtue of Section 25 of Act 95/1986. The Purchaser acknowledges that the Seller's right will not be prejudicial to the Purchaser and undertakes not to make application to Court as provided for in Section 25(13) of Act 95/1986.
- 5.5 In the event of the Purchaser utilising his own sub-contractors for any part of the construction of the Section, or should the Purchaser purchase any materials from suppliers other than those nominated by the Seller, the Purchaser shall not be entitled to delay payment of the purchase price as a result of any delays in the completion of the construction of the Section.
- 5.6 In no way detracting from the Seller's rights in terms of the 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 the Contract, if he disputes that the Property has been erected and completed as aforesaid in clause 5.1 or should he believe that the Seller has not complied with any of its obligations in terms of the Contract. Any dispute in this regard shall be referred to the Architect who, acting as an expert and not as an arbitrator, shall determine such dispute and his decision shall be final and binding on the parties. In addition, the Seller may elect, in its sole and absolute discretion, to cancel the Contract forthwith.
- 5.7 It is recorded that the Schedule of Finishes makes provision for the Purchaser to choose certain finishes. The Purchaser shall be obliged to make his selection in this regard within 15 (fifteen) days after the Seller gives the Purchaser written notice thereof, failing which the Seller will be entitled to make this selection on the Purchaser's behalf. Any amounts payable in terms hereof shall be payable by the Purchaser to the Seller on demand, prior to installation and before the Date of Transfer. Should the Purchaser not make or secure payment timeously upon demand, the mora and/or breach provisions of the sale Contract may become applicable or the Seller may elect, at its sole discretion, to ignore the Purchaser's selection and the Purchaser shall be obliged to accept unit accordingly.
- 5.8 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.
- 5.9 Save as provided in the Contract and the CPA to the contrary, 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.

- 5.10 The Seller warrants that the Property will be enrolled with the National Home Builders Registration Council as contemplated in the Housing Consumer Protection Measures Act, No. 95 of 1998.
- 5.11 As is required in terms of Section 13(2)(a) of the aforesaid Act 95 of 1998, the Seller warrants that:
- 5.11.1 the Section shall be constructed in a proper and workmanlike manner;
- 5.11.2 the Section will be fit for habitation on the Date of Possession;
- 5.11.3 the Section shall be constructed in accordance with:
- 5.11.3.1 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
- 5.11.3.2 the terms, plans and specifications referred to in the Contract.
- 5.12 As provided for in Section 13(2)(b) of the aforesaid Act 95 of 1998, the Seller undertakes to:
- 5.12.1 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 5 (five) years from the Date of Possession and of which the Seller is notified of by the Purchaser within that period;
- 5.12.2 rectify non-compliance with or deviation from the terms, Plans and Schedule of Finishes referred to in the Contract or any deficiency related to design, workmanship or material, of which the Seller is notified by the Purchaser of within a period of 3 (three) months from the Date of Possession;
- 5.12.3 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 12 (twelve) months from the Date of Possession.
- 5.13 Notwithstanding anything contained herein or elsewhere, under no circumstances whatsoever, shall the Seller be liable to make good any damage to any Section 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 section in the Scheme by the Purchaser, his contractors, agents, representatives, employees or other persons who come upon the Scheme by virtue of the Purchaser's rights thereto.
- 5.14 Notwithstanding anything contained herein or elsewhere, and in no way detracting from the generality of any other provision of the Contract, 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, thermo cracking, geological disturbances, or normal wear and tear from use or neglect by the Purchaser.
- 5.15 The Purchaser agrees that the Seller and/or its agent, contractors and workmen shall at all times

have access to the Section for the purposes of carrying out such work as may be necessary to enable the contractor to rectify any defects in terms of its contract with the Seller. The Purchaser shall have no claim whatsoever 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.

6. **OCCUPATION**

6.1 The Seller undertakes to use its best endeavours to give the Purchaser beneficial occupation of the Section to the Purchaser on the anticipated Date of Possession as set out in clause 1.7 of the Contract of Sale, provided the Purchaser has secured the purchase price referred to in clause 1.5 of the Contract of Sale.

6.2 The Purchaser acknowledges that the actual occupation date may vary from that stated and the Seller undertakes in this regard that in the event that there is a delay, or acceleration of the occupation date, "Date of Possession" shall be amended to mean such earlier or later date. The Seller will endeavour to give the Purchaser at least 60 (sixty) days written notice, where possible and/or foreseeable, of the new Date of Possession.

6.3 In no way detracting from the Seller's rights in terms of the 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 the Contract, if he disputes that the Section is sufficiently complete for beneficial occupation, or should he believe that the Seller has not complied with its obligations in terms of clause 6.2 hereof, or should he believe that the Seller has not complied with any other of its obligations in terms of the Contract. Any dispute as to whether or not the Section is sufficiently complete for occupation shall be referred to the Architect who, acting as an expert and not as an arbitrator, shall determine such dispute and his decision shall be final and binding on the parties.

6.4 Notwithstanding anything contained herein or elsewhere, the Seller shall not incur any liability whatsoever by reason of the Section not being available for occupation on the anticipated Date of Possession.

6.5 Notwithstanding anything contained herein, the Purchaser shall not be entitled to beneficial occupation of the Section until such time as he has made or secured all payments in terms of the purchase price, costs and all other amounts for which he is liable in terms of the Contract, and signed all such documentation and supplied all such information as to enable the Conveyancers to effect transfer of the Property without delay.

6.6 Should the Property be sufficiently complete for beneficial occupation but the Purchaser not have complied with his obligations as referred to in clause 6.5 above, then in that event, without prejudice to the Seller's right to claim specific performance or to any other rights the Seller may have in terms of the Contract or at Law, and at the Seller's election, the keys to the Property shall only be given to the Purchaser once he has complied with his aforesaid obligations. Notwithstanding the aforesaid, the Purchaser shall be deemed to be liable to pay occupational rental, levies, rates, utilities and all other outgoings in respect of the Property as if he had been given occupation thereof.

6.7 From the Date of Possession, the Purchaser:

6.7.1 shall be entitled to beneficial occupation of the Section (except in those instances as provided for in clause 6.5 above) and it shall be used only for residential purposes subject to compliance with the Rules and for no other purpose whatsoever;

- 6.7.2 shall, at his own expense, maintain the interior of the Section in a good, clean and thoroughly tenantable and attractive condition, and where necessary repair or refurbish any damaged item and replace any lost item and permit the Seller at all reasonable times to enter and inspect the Section, and if found to be in default of this provision, the Seller shall have the right at the cost of the Purchaser to carry out such repairs as are necessary to maintain the particular Section in good state of repair or to comply with any law, by-law, ordinance or regulation. The Purchaser shall refund any such amounts expended by the Seller on demand;
- 6.7.3 shall, at his own expense, maintain in a good working order and condition all electrical, plumbing sewerage installations and appurtenances of whatever nature, serving the Section;
- 6.7.4 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 manner so as to not interfere unduly or unreasonably with the lawful rights of the use and enjoyment thereof by other occupiers of other sections in the Scheme or other persons lawfully upon the Scheme;
- 6.7.5 shall procure that all other occupants of the Section comply with the provisions of the Contract;
- 6.7.6 shall at all times comply with Act 95/1986 and the Rules, of both the Association and the Scheme;
- 6.7.7 waives all claims against the Seller for any loss or damage to property or any injury to person which the Purchaser may sustain in or about the Scheme or the Property, and indemnifies the Seller against any such claim that may be made against the Seller by a member of the Purchaser's family or any tenant, employee, nominee, invitee or any other person who occupies the Section or goes about the Scheme, by virtue of the Purchaser's rights thereto, for any loss or damage to property or injury to person suffered in or about the Scheme, the Section, or any other part of the Land, howsoever such loss or damage or injury to person may be caused (save for any damage to property or injury to person caused by the intentional or grossly negligent act of the Seller).
- 6.7.8 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 any such services; and
- 6.7.9 shall not use the Section in such a manner as to cause damage thereto or to the other sections, nor shall he store or permit the storage therein of any flammable materials which may cause damage or pose a fire risk, or vitiate any policy of insurance in respect of the Buildings, or which is likely to have the effect of increasing the premium payable in terms of such insurance policy;
- 6.7.10 shall not be entitled to divide the Property for the purpose of selling, donating or in any other manner alienating or disposing of the Purchaser's right of occupancy of any portion thereof to any other person prior to the Date of Transfer;
- 6.7.11 shall not be entitled to let or otherwise part with occupation of the Section, except upon the express prior written permission of the Seller and on condition that any such letting and/or parting with occupation shall in no way release the Purchaser from any of the Purchaser's

obligations to the Seller hereunder or in terms of the Rules that may be enforceable from time to time;

6.7.12 acknowledges that 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 by reason of any such inconvenience;

6.7.13 shall only be entitled to utilise the Exclusive Use Area for ITS designated purpose in accordance with the Rules. The Purchaser shall maintain such Exclusive Use Area, as contemplated in Act 95/1986 and Rules, at its cost, in a good and neat condition at all times.

6.8 The Seller shall, either personally or through its servants or agents, 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.

7. PURCHASER'S ACKNOWLEDGMENTS

The Purchaser acknowledges that: -

7.1 the Seller shall be entitled to subdivide any section in the Scheme owned by it and/or consolidate any two adjacent sections in the Scheme owned by it, as the Seller in its sole and absolute discretion requires. The Purchaser hereby consents to the aforesaid subdivisions and consolidations, insofar as his consent may be required, and hereby irrevocably and in *rem suam*, nominates, constitutes and appoints any director of the Seller, with power of substitution, to call and attend any meeting of the Body Corporate or of the trustees of the Body Corporate, on the Purchaser's behalf, and to vote in favour of such resolution that may be required to give effect to any consolidation or subdivision of the sections in the Scheme that the Seller may require, as aforesaid;

7.2 for so long as the Seller owns a section or the right to extend the Scheme by the erection of at least one section, as anticipated in Section 25 of Act 95/1986;

7.2.1 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 Managing Agents of the Scheme, the Purchaser acknowledging that the Administrator or its nominee may apply to be appointed as Managing Agents of the Scheme; and

7.2.2 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,

provided all the Seller's rights and obligations in terms hereof shall lapse when the Seller no longer owns a section in the Scheme or the right to extend the Scheme by the erection of at least one section, as anticipated in Section 25 of Act 95/1986.

7.3 he will 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 –

- 7.3.1 the Association grants its written consent to such sale or other transfer (which consent it shall be entitled to withhold, *inter alia*, in the event of any monies being due and owing to the Association by the Purchaser or the Purchaser being in breach of any of the Memorandum of Incorporation of the Association or any Rules made by the Association, from time to time, and failing to remedy such breach);
- 7.3.2 the transferee, in a manner acceptable to the Association, agrees to become a member and is admitted as a member of the Association;
- 7.3.3 the Administrator and the Operator grant their consent, which consent shall not be unreasonably withheld, to such sale or other transfer (which consent it shall be entitled to withhold, *inter alia*, in the event of any monies being due and owing to the Operator by the Purchaser or the Purchaser failing to abide by the conditions of resale as stipulated in clause 25 below.
- 7.4 the Seller may make such alterations or amendments to the Management and/or Conduct Rules as well as to file such altered and amended Management and/or Conduct 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*, nominates, constitutes and appoints the Seller as the Purchaser's duly authorised attorney, agent and proxy on the Purchaser's behalf, and to the Purchaser's exclusion, to attend all such meetings and do all such things as are necessary to give effect to the provisions of this clause. Provided all the Seller's rights and obligations in terms hereof shall lapse when the Seller no longer owns a section in the Scheme or the right to extend the Scheme by the erection of at least one section, as anticipated in Section 25 of Act 95/1986;
- 7.5 the Seller's appointment of the Administrator, on terms and conditions as herein recorded and to fulfil the functions as provided for in this Contract, is irrevocable, final and binding on the Purchaser;
- 7.6 the Administrator's appointment of the Operator to fulfil the functions as provided for in the Service Level Agreement, is irrevocable, final and binding on the Purchaser;
- 7.7 he has purchased the Property in the Scheme and transfers will be effected in phases. Transfer to the Purchaser will take place simultaneously with transfers to other purchasers in the Scheme, as a result of which transfer of the Property to the Purchaser may be delayed. The Purchaser shall pay occupational rental and other charges described in clause 6 above from Date of Possession to Date of Transfer, both days inclusive;
- 7.8 the maximum number of people who shall be entitled to occupy the property shall be determined by multiplying the number of bedrooms of any Unit by two;
- 7.9 the Seller and/or the Estate Agents may have used models, brochures and other advertising material in marketing the Scheme to the Purchaser and the public at large. The furniture, finishes and fittings shown in the advertising material is for advertisement purposes only and the finishes shall be in accordance with the Schedule of Finishes;
- 7.10 he shall be bound by the terms set out Annexure "R" hereto;
- 7.11 he understands the English language and considers itself fluent therein;

- 7.12 he has had an opportunity to carefully read and consider the provisions of the Contract and that he has been free to secure independent legal advice in respect of the provisions of same;
- 7.13 the Seller undertook that the Seller or the Conveyancers, would explain any provisions of the Contract which the Purchaser may not have understood fully and, to the extent that the Purchaser made the Seller aware of any provisions of the Contract he did not understand, such provisions were fully explained to the Purchaser.

8. **OCCUPATIONAL RENTAL**

From Date of Possession until the Date of Transfer (both days inclusive), the Purchaser shall pay to the Seller monthly occupational rental as stipulated in clause 1.8 of the Contract of Sale. Such occupational rental shall be payable monthly in advance on the 1st (first) day of each and every month. All payments in terms of this clause are to be made payable to the Conveyancers upon demand.

9. **LEVY AND OTHER CHARGES**

- 9.1 The Purchaser accepts liability from the Date of Possession for the payment of a monthly levy referred to in clause 1.9.1 of the Contract of Sale to the Body Corporate (and prior to the Body Corporate's formation, to the Seller) in respect of those items listed in Act 95/1986.
- 9.2 In addition to the levy referred to in 9.1 above, the Purchaser shall, from the Date of Possession, be liable for the payment of a monthly levy referred to in clause 1.9.2 of the Contract of Sale to the Association in respect of those items and amounts payable in terms of the Association's Memorandum of Incorporation. (In no way detracting from the generality of the aforesaid, it is specifically recorded that the Purchaser shall be required to sign debit orders on an account with a South African registered commercial bank in favour of the Body Corporate and the Association in order to ensure that the aforesaid monthly levies are paid timeously.)
- 9.3 The amount as determined in clause 1.9.1 of the Contract of Sale is an estimation of the monthly levies payable by the Purchaser to the Body Corporate, made in good faith by the Seller and the Seller shall not be responsible for any inaccuracy in this estimation.
- 9.4 The amount payable by the Purchaser and his successors in-title towards the Levy Stabilization Fund established in terms of the Management Rules is stipulated in clause 1.10.1 of the Contract of Sale. This amount is payable within 7 (seven) days of request for such payment by the Conveyancers.
- 9.5 The amount payable by the Purchaser towards the Levy Stabilization Fund established in terms of the Association's Memorandum of Incorporation is stipulated in clause 1.10.2 of the Contract of Sale. This amount is payable within 7 (seven) days of request for such payment by the Conveyancers.
- 9.6 The Purchaser agrees that he shall have no right to reclaim from the Association any amount paid by way of a monthly levy or special levy, save as may be provided herein.
- 9.7 The Purchaser will also be liable for the payment of all utilities such as rates, electricity and water consumed in respect of the Unit from the Date of Possession.

10. **TRANSFER**

- 10.1 Transfer of the Property shall be attended to by the Conveyancers.
- 10.2 The Purchaser shall immediately upon request by the Conveyancers do all such things and furnish them with all necessary information and documentation, and sign all such documentation as is required to prepare for and effect registration of transfer into the name of the Purchaser.
- 10.3 All conveyancing fees and disbursements incidental to the preparation and registration of transfer to and bonds by the Purchaser, occupational rent, and a pro rata share of the rates and levies, shall be paid by the Purchaser to the Conveyancers immediately upon request.
- 10.4 The Purchaser acknowledges that:
- 10.4.1 he is aware that in order for the sale to proceed a tax clearance is required from SARS. The Purchaser warrants that all income tax and all VAT obligations are current and undertakes to the best of his ability immediately to provide upon request by SARS, all information, other documentation which may be required by them in order to enable them to issue a tax clearance certificate and to facilitate prompt issue of the transfer duty exemption receipt;
- 10.4.2 a valid query by SARS regarding the Purchaser's tax affairs and a failure to comply with the request by the Conveyancers to furnish information or documentation required by them or to sign conveyancing documents, or to pay conveyancing costs upon request; shall constitute a breach by the Purchaser of his obligations and shall entitle the Seller to give notice in terms of Clauses 13 and/or 14 hereof;
- 10.4.3 he shall not be entitled to transfer of the Property until the whole of the purchase price, costs, interest and other charges have been paid or secured to the Conveyancers' satisfaction;
- 10.4.4 upon registration of transfer, an adjustment in respect of the parties' liability in respect of occupational interest, levies, rates and other charges relating to the Property, shall be made by the Conveyancers;
- 10.4.5 the documentation necessary to effect registration of transfer may be lodged in the Deeds Registry as part of a set, including the transfer of other sections in the Scheme, and that no documentation in that set, including the documentation relating to the transfer of the Property, can be withdrawn from the Deeds Registry without the entire set being withdrawn. If it becomes necessary to withdraw the aforesaid set from the Deeds Registry, due to the fact that the Purchaser has not complied with his obligations in terms of the Contract, the Seller shall suffer damages, including, but in no way limited to the loss of interest that it would have accrued to the Seller on the accumulative purchase price of the properties in the set, from the date of withdrawal of the set until the date of its re-lodgement and subsequent registration. The Seller shall be entitled to recover from the Purchaser all damages which 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 Purchasers failure to comply with the provisions of the Contract.

11. **INSURANCE**

Until the Sectional Title Register has been opened and the Body Corporate established the

Section shall be insured by the Seller with an insurance company selected by the Seller against such risks and perils as the Seller may require for such sums as the Seller may determine, but substantially in accordance with the provisions of the Rules.

12. **QUALIFYING AGE OF OCCUPANTS**

- 12.1 As the Scheme will be operated as a retirement scheme the Unit may only be occupied by the Nominated Occupants. The provisions of this clause 12.1 shall apply to all units within the scheme.
- 12.2 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.
- 12.3 The restrictions contained in this clause 12 have been established by the Seller for the benefit of the Operator, the Body Corporate and its Members.
- 12.4 For the purposes of this clause 12, "life partners" shall be persons who share a permanent relationship.
- 12.5 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.

13. **ADMINISTRATOR'S APPOINTMENT AND ITS FUNCTIONS**

- 13.1 The appointment of the Administrator shall not be capable of being terminated by the Body Corporate or its members.
- 13.2 The Administrator shall fulfil the functions specified in its memorandum of incorporation.
- 13.3 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

14. **SERVICES RENDERED BY THE OPERATOR**

- 14.1 The Operator shall: -
 - 14.1.1 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 older persons as defined in Act 13/2006; and
 - 14.1.2 facilitate access to home based care by Nominated Occupants.
- 14.2 The Operator shall conclude a Service Level Agreement with the Administrator with respect to the Care Centre and the Scheme in general.
- 14.3 The Operator shall offer a Bouquet of Services to the owners of units in the Scheme 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

14.4 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.

14.5 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.

15. **RESIDENTIAL FACILITY**

15.1 The Residential Facility shall: -

15.1.1 be operated by the Operator as an independent commercial enterprise;

15.1.2 be a registered facility within the ambit of Act 13/2006;

15.1.3 comprise of frail care, assisted living facilities and provide basic health care services;

15.1.4 offer 24-hour care and support services to frail older persons and older persons who need special attention; and

15.1.5 be occupied primarily by Older Persons on a rental basis.

15.2 Nominated Occupants shall be given preference should they require rental accommodation in the Residential Facility.

16. **AGENT'S COMMISSION**

16.1 The Purchaser warrants that he was introduced to the Property by the Estate Agent referred to in clause 1.11.1 of the Contract of Sale who, it is recorded, was the effective cause of the sale in terms of the Contract. The Seller shall pay a selling commission to the agency referred to in clause 1.11.2 of the Contract of Sale in the amount referred to in clause 1.11.3 of the Contract of Sale. The aforesaid commission shall be deemed to have been earned and shall be payable on the Date of Transfer.

16.2 In such circumstances, the Purchaser warrants that:

16.2.1 the Estate Agent was the sole effective cause of the sale,

16.2.2 he was not introduced to the Property and/or the Contract, by any agent other than the Estate Agent named in clause 1.11.1 of the Contract of Sale as aforesaid; and

16.2.3 no commission shall become payable by the Seller to any agent other than the Estate Agent named in clause 1.11.1 of the Contract of Sale as aforesaid.

16.3 The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against/suffered by the Seller arising out of breach of any of the foregoing warranties.

16.4 Should this sale be cancelled by the Seller as a result of any failure by the Purchaser to carry out

his obligations in terms of the Contract, or should the Purchaser resale from the Contract for any reason whatsoever, then the Purchaser shall be liable for the payment of agent's commission and the Seller shall have no liability whatsoever for the payment thereof. By his signature hereto, the Purchaser authorises the Conveyancers to make payment of the agent's commission from the deposit held by the Conveyancers.

17. **BREACH**

17.1 If the Purchaser:

17.1.1 fails to pay any amount in terms of the Contract, or commits any breach of the remaining conditions of the Contract or of the Association's Memorandum of Incorporation or of the Rules, and should the Purchaser fail to remedy such breach within 7 (seven) days of receipt of a written notice calling on him to remedy such breach, or

17.1.2 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 the Contract, and retake possession of the Property, in which event, should the Seller so elect, it 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 (including any amount held in trust by the Conveyancers or any interest thereon) may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller (it being recorded that damages that the Seller may suffer in this regard may include, inter alia, lost interest, agents commission and other professional fees incurred, holding costs incurred in respect of the Property, including but in no way limited to, rates and levies payable in respect of the Property, and should the Property subsequently be resold for a lower purchase price than that referred to in the Contract, the difference in such purchase price) or
- b) claim immediate performance by the Purchaser of all his obligations in terms of the Contract whether or not the due date for the performance shall otherwise have arrived.

17.2 For the purposes of the Contract any act or omission on the part of any tenant, nominee or other person who occupies the Property or invitee of the Purchaser who goes upon the Property shall be deemed to be an act or omission of the Purchaser.

17.3 If the Contract is cancelled as hereinbefore provided, the Purchaser and all persons claiming a right of occupation through the Purchaser shall forthwith be obliged to vacate the Property and to deliver it to the Seller. It is specifically recorded in this regard that no lease or other similar right of occupation in favour of the Purchaser shall be created or come into existence by virtue of the Contract. 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 the 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.

17.4 In the event of the Seller cancelling the sale as contemplated in the above clauses, any and all improvements made to the Property shall belong to and vest in the Seller, without any obligation on the part of the Seller to compensate the Purchaser therefore.

17.5 In the event of the Seller cancelling the sale as contemplated in the above clauses, the Conveyancers shall be entitled to retain an amount of R1 500,00 from the deposit in consideration for administrative costs, bank charges, postages and petties.

18. **MORA AND ARREAR INTEREST**

18.1 In the event of the Purchaser failing to comply with any of his obligations or any terms or conditions of the Contract on due date or in the event of there being any delay in connection with the registration of transfer for which the Purchaser is responsible, the Purchaser hereby undertakes to automatically pay interest on the full purchase price at the prime overdraft rate charged from time to time by Investec Bank plus 2%, calculated for the date upon which the obligation in question fell due for performance up to the date upon which it was actually performed, or for the period of any delay in registration of transfer which results therefrom, which period shall be determined solely by the Conveyancers. The Purchaser shall be obliged to pay such penalty interest to the Conveyancers before registration of transfer. A certificate signed by the conveyancers confirming the amount of such interest shall be conclusive proof of the amount owing by the Purchaser to the Seller.

18.2 For the purpose of this clause the Purchaser shall be deemed to be responsible for any delay in the registration of transfer which is caused *inter alia* by failure on the part of any financial institution from which he obtains mortgage finance or any bond registration conveyancers nominated by such financial institution to procure the issue of guarantees as contemplated in the Contract and to lodge documents in the Office of the Registrar of Deeds when called upon to do so by the Conveyancers.

18.3 Furthermore, the Purchaser shall automatically, and without notice, be liable for interest on any amounts in arrear at the prime overdraft rate charged from time to time by Investec Bank, which interest shall be calculated from the date upon which such amount became due to date of payment, both says inclusive. A certificate by the manager of the bank confirming the prime overdraft rate shall be *prima facie* proof of such rate.

19. **DOMICILIUM**

19.1 The Parties chose as their respective *domicilia citandi et executandi* (the address nominated by the Parties where notices may be sent) the physical, postal address and/or facsimile number stated in clauses 1 and 2 of the Contract of Sale.

19.2 Either party shall be entitled to change the *domicilium* address by giving written notice thereof to the other which may be delivered by hand, by facsimile or by prepaid registered post.

19.3 Any notice which is given by either party to the other party's *domicilium* address, being the physical, postal or facsimile number stated in clauses 1 and 2 of the Contract of Sale, shall be deemed to have been duly given:

19.3.1 if hand delivered; on the day on which hand delivery takes place, either by handing such

notice to the party concerned or by placing/affixing it in a prominent place at the party's *domicilium*;

19.3.2 if posted by pre-paid registered post; on the fourth day following the date of posting of such notice;

19.3.3 where sent by facsimile or email to the stated facsimile number or email address; on the day on which the facsimile or email is actually sent which date shall be established by reference to the aforesaid machine's activity report used to send such notice.

19.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by either party shall be an adequate written notice to that party notwithstanding that it was not sent or delivered to its chosen *domicilium citandi et executandi*.

20. **JURISDICTION AND COSTS**

20.1 The parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of Magistrate Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction; this clause shall 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.

20.2 Notwithstanding anything to the contrary herein contained either party hereto shall have the right at that party's sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction.

20.3 All legal costs incurred either party in consequence of any default of the provisions of the Contract by the other, shall be payable by the defaulting party on demand to the maximum amount permitted by law and shall include collection charges, the cost incurred by the aggrieved party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the aggrieved party in relation to, in terms of or arising out of the Contract in respect of any legal proceedings arising out of the Contract.

21. **ELECTRICAL CERTIFICATE**

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 in accordance with the requirements of the Electrical Installation Regulations made under the Occupational, Health and Safety Act No. 85 of 1983. Such certificate shall be delivered to the Purchaser prior to the Date of Possession.

22. **TRUSTEE FOR A COMPANY TO BE FORMED**

22.1 In the event of the signatory to the Contract having concluded the Contract in his capacity as a Trustee for a company to be formed (which signatory is hereinafter in this clause 22 referred to as the "Signatory"), then the Signatory by his signature hereto warrants that the said company:

22.1.1 will be formed;

22.1.2 will ratify and adopt the terms and conditions of the Contract; and

22.1.3 will provide the Seller with written proof thereof;

all within a period of 30 days from the date of signature of the Contract by the Signatory.

22.2 The Signatory, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the Seller for the due and punctual performance of such company's obligations to the Seller in terms of the Contract.

22.3 If the terms and conditions of Clause 22.1 above are not fulfilled, then the Signatory will by his signature to the Contract be deemed ipso facto to have concluded the Contract in his personal capacity as Purchaser.

23. **MANAGING AGENT**

The Purchaser agrees to appoint the managing agent referred to in clause 1.17 of the Contract of Sale, as the managing agent for the Scheme, as provided for in Section 46 of the Management Rules, set out in Annexure 8 of Act 95/1986. The Purchaser irrevocably nominates, constitutes and appoints the Seller to call any meeting of the Body Corporate required for the purposes of appointing a managing agent, on the Purchaser's behalf, and to vote in favour of appointing the managing agent referred to in clause 1.17 of the Contract of Sale. Should no Managing Agent be referred to 1.17 of the Contract of Sale, then in that event the Purchaser agrees to accept the Managing Agent to be appointed by the Seller.

24. **CESSION AND RESALE PENDING TRANSFER**

The Purchaser shall not sell, assign, cede or dispose of the Purchaser's rights under this Contract without the prior written consent of the Seller.

25. **CONDITIONS OF RESALE**

25.1 The Purchaser shall ensure that Annexure "R" is annexed to any agreement entered into in respect of the future alienation of the Property so that any future transferee of the Property shall be bound by the terms set out in Annexure "R".

25.2 The Purchaser shall ensure that Annexure "S" is annexed to any agreement entered into in respect of the future alienation of the Property so that any future transferee of the Property shall be bound by the terms set out in Annexure "S".

26. **JOINT AND SEVERAL LIABILITY**

Should the Contract be signed by more than one person as Purchaser the obligations of all the signatories shall be joint and several.

27. **WAIVER**

No latitude or extension of time which may be allowed by the Seller in respect of any payment provided for herein, or any matter or thing which the Purchaser is bound to perform or observe in terms hereof shall under any circumstances be deemed to be a waiver of the seller's rights at any time and without notice, to require strict and punctual compliance with each and every provision or term hereof.

28. **INDEMNITY**

The Seller does not warrant any information given in respect of the Property, whether this information is given prior to or subsequent of the Contract, save for the information in respect of the Property specifically warranted in the 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 or the agent to the Purchaser in respect of the Property, or contained in any marketing material, and the Purchaser hereby indemnifies the Seller and holds it 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 in good faith (save for the information specifically warranted in the Contract).

29. **ANNEXURES**

29.1 The Purchaser acknowledges that the following annexures also form an integral part of the Conditions of Sale and form annexures to the Contract.

- “A” - Conditions of Sale
- “B” - Site Plan showing position of sections
- “C” - Plan of the section and elevations
- “D” - Schedule of Finishes
- “E” - Draft Participation Quota
- “F1” - Additional Management Rules for Mount Edgecombe Retirement Village Body Corporate
- “F2” - Substituted Conduct Rules for Mount Edgecombe Retirement Village Body Corporate
- “Q” - Application for Membership
- “R” - Association and Tongaat Hulett terms of sale
- “S” - Mount Edgecombe Retirement Village terms of sale

29.2 The Purchaser acknowledges that the following annexures form an integral part of the Conditions of Sale and should be viewed on the website (www.merv.co.za):

- How to live with Vervets
- Environmental Management Plan
- Landscaping Philosophy
- Security Protocol

Any queries regarding, or objections to, the content contained in the said annexures should be addressed in writing, to david@camprop.co.za, within 5 (five) days of signature hereof by the Purchaser. Should no objection be received within the stipulated period, the Purchaser will be deemed to have read the annexures and accepted the contents thereof. The Purchaser acknowledges that the submission of an objection/query/complaint or such does not nullify this contract or detract from its validity in any way whatsoever.

30. **ENTIRE CONTRACT**

The Purchaser acknowledges that the 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 mutual

agreement between the Purchaser and the Seller to cancel, alter or add to the 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.