

**AGREEMENT**  
**SCHEDULE**

- A.1. THE SELLER : ZELPY 2127 (PROPRIETARY) LIMITED  
Registration No. 2003/021162/07  
("the Seller")
2. ADDRESS : 12 Kubu Avenue PO Box 1067  
Riverhorse Kloof  
Durban 3640  
KwaZulu-Natal  
e-mail : [motprop@telkomsa.net](mailto:motprop@telkomsa.net)
- TELEPHONE : (031) 266 7399  
TELEFAX : (031) 266 7949
- B.1. THE PURCHASER : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
("the Purchaser")
2. ADDRESS : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
e-mail : \_\_\_\_\_
- TELEPHONE : (H) \_\_\_\_\_  
(O) \_\_\_\_\_  
TELEFAX : \_\_\_\_\_  
(Cell) \_\_\_\_\_
- C. DESCRIPTION OF PROPERTY:
1. Proposed Erf No.....Hillcrest, Registration Division FT, Province of KwaZulu-Natal, in extent .....(.....)square metres, as shown on General Plan SG No 1269/2008 and on the plan attached hereto, marked "A", known as 101 Acutts ("the Property").
- D. THE PURCHASE PRICE : R \_\_\_\_\_  
(\_\_\_\_\_)  
\_\_\_\_\_ RAND),  
inclusive of VAT  
("the Purchase Price").
- E. METHOD OF PAYMENT OF PURCHASE PRICE :
- 1.1 DEPOSIT : R\_\_\_\_\_
- (\_\_\_\_\_)

1.2 PAYABLE ON SIGNATURE OF THIS AGREEMENT BY THE PURCHASER: ----- RAND)

2.1 BALANCE OF PURCHASE PRICE : R-----  
(-----  
----- RAND).

2.2 PAYABLE ON TRANSFER

F.1 AMOUNT OF MORTGAGE BOND REQUIRED BY THE PURCHASER : R-----  
(-----  
----- RAND).

F.2 IF BOND FOR PURCHASE PRICE AND IMPROVEMENTS, AMOUNT AVAILABLE TO PAY SELLER AGAINST REGISTRATION OF TRANSFER : R-----  
(-----  
----- RAND).

G. MORTGAGE ORIGINATOR : Ooba

H. OCCUPATION DATE : Date of registration of transfer ("the Occupation Date")

I. ESTIMATED LEVY PAYABLE TO THE ASSOCIATION : R----- (---  
----- RAND),  
per month.

J. THE CONVEYANCERS : Goodrickes P O Box 5244  
6<sup>th</sup> Floor Durban  
6 Durban Club Place 4000  
Durban  
4001  
Telephone Number: 031-3016211  
Fax Number : 031-3016200  
e-mail :  
gayle@goodrickes.co.za  
("the Conveyancers")

K. THE SELLING AGENT : ("the Selling Agent")

L. SURETY/IES FOR THE PURCHASER (IF ANY) :  
NAME/S -----  
-----

ADDRESS/ES -----

- 
- 
- M. MORA INTEREST : 2 (TWO ) per cent per annum  
above the prime lending rate charged  
from time to time by Absa Bank  
Limited
- N. THE MANAGING AGENT : Maxprop Property Administration  
15 Builders Way  
Hillcrest  
("the Managing Agent")

**CONDITIONS**

1. **PREAMBLE**

- 1.1 The Seller is the owner of the Property described in C of the Schedule.
- 1.2 The Purchaser wishes to purchase the Property described in C of the Schedule.

2. **INTERPRETATION**

- 2.1 In this Agreement, unless otherwise indicated by the context:
  - 2.1.1 the words and phrases used and/or defined in the Schedule shall have the meanings assigned to them therein;
  - 2.1.2 "the Property" shall mean the property described in C of the Schedule;
  - 2.1.3 the effective date of this Agreement shall be the date upon which this Agreement is signed by the Seller;
  - 2.1.4 "the Developer" shall, mean Zelpy 2127 (Proprietary) Limited, when acting in its capacity as developer of the Estate;
  - 2.1.5 "the Estate" shall mean "101 Acutts", in the process of establishment on Portion 2 of Erf 673 Hillcrest, as shown on General Plan SG No. 1269/2008;
  - 2.1.6 "the Association" shall mean the 101 Acutts Homeowners' Association (Association incorporated under Section 21) Registration No. 2008/018028/08;
  - 2.1.7 "the Articles" shall mean the Articles of Association of the Association , a copy of which is attached hereto, marked "B1", which Articles are in the process of being amended in the manner set forth in Annexure "B2" hereto;
  - 2.1.8 "the Conduct Rules shall mean the Conduct Rules of the Association, a copy of which is attached hereto, marked "C";
  - 2.1.9 "the Common Property" shall have the same meaning assigned to it as in the Articles and Conduct Rules;
  - 2.1.10 "the Building Contract" shall mean the building contract, substantially in the form of the JBCC Principal Building Agreement currently in use (but with Addendum I thereto in the form attached, marked "D"), to be entered into by and between Grid Construction (Proprietary) Limited and the Purchaser in terms of 18.3;
  - 2.1.11 words importing the singular shall include the plural and vice versa, and words importing a particular gender shall include the other genders;
  - 2.1.12 clause headings are for guidance only and are not relevant to the interpretation hereof;
  - 2.1.13 reference to a natural person shall include a reference to a body corporate and vice versa.
- 2.2 The provisions of the preamble are specifically incorporated in this Agreement.
- 2.3 This Agreement (including its annexures and any other documents specifically incorporated by reference herein) contains the whole agreement between the parties relative to the subject matter hereof and there are no other conditions, stipulations, warranties or representations which are binding between the parties other than those recorded herein. No variation of any of the terms or conditions of this Agreement shall be binding on the parties unless committed to writing and signed by them respectively.
- 2.4 The grant of any concession or condonation of any breach of the terms or conditions of this Agreement, or other act of relaxation or indulgence on the part of the Seller shall not in any way constitute, operate or be deemed to be a waiver by the Seller of any of its rights under this Agreement, nor shall it constitute a novation of this Agreement.

3. **SALE**

The Seller hereby sells to the Purchaser, which hereby purchases, the Property set out in C of the Schedule.

4. **PURCHASE PRICE AND PAYMENT**

The Purchase Price shall be the amount set out in D of the Schedule and shall be paid by the Purchaser as follows :

4.1 The amount set out in E.1.1 of the Schedule shall be paid in cash in the amount on or before the date set out in E.1.2 of the Schedule and lodged with the Conveyancers to be held by them in trust for the Purchaser and released to the Seller on the date of registration of transfer of the Property into the name of the Purchaser. Once the Purchaser has complied with the financial institution's and the Conveyancer's usual requirements in terms of the Financial Intelligence Centre Act, the said amount/s shall be deposited in an interest bearing Nedbank Corporate Saver or Investec Corporate Cash Manager account, in terms of Section 78 (2A) of the Attorneys Act, interest thereon less the Conveyancer's usual commission (6 (SIX) per cent of interest earned in the case of Nedbank or ,5 (COMMA FIVE) per cent per annum on the capital invested in the case of Investec) to be for the benefit of the Purchaser.

4.2 The amount set out in E.2.1 of the Schedule, representing the balance of the purchase price, shall be paid on registration of transfer of the Unit into the Purchaser's name and secured pending transfer by the Purchaser delivering to the Seller a bank guarantee/s, which guarantee/s shall be in a form acceptable to the Seller and shall provide for payment as aforesaid and which shall be delivered to the Seller within 14 (FOURTEEN) days after the Purchaser is requested to do so by the Conveyancers, which request shall not, however, be made prior to the date upon which the loan referred to in 21.1 is granted in terms thereof, but which may otherwise be made for delivery of the guarantees at any time, regardless of whether or not the documents for transfer are ready for lodging at the relevant time. Should the Purchaser elect to make a cash payment to the Conveyancers in lieu of a bank guarantee/s, then the provisions of 4.1 relating to investment, release and interest shall mutatis mutandis apply in respect thereof.

4.3 Notwithstanding anything to the contrary herein contained, inasmuch as the purchase price is the VAT inclusive price determined at the current rate of 14 (FOURTEEN) per cent, in the event of the rate at which VAT is chargeable being amended 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 amount after payment of VAT regardless of the rate at which VAT is payable.

5. **PLACE OF PAYMENT**

All payments to be made by the Purchaser to the Seller in terms of this Agreement shall be made, without deduction or demand and free of exchange, as follows :

5.1 in the case of the payment/s to be made in terms of 4.1, to the Conveyancers, provided that the Purchaser's cheque/s in the relevant amount/s in favour of the trust account of the Conveyancers shall be handed by the Purchaser to the Seller for onward transmission to the Conveyancers.

5.2 in the case of all other payments, to the Seller.

6. **OCCUPATION DATE**

6.1 The Purchaser shall be entitled to occupation of the Property on the Occupation Date set forth in H of the Schedule.

- 6.2 Occupation and possession of the Property shall be given to the Purchaser on the Occupation Date, on which date all risk in and to, and benefit of, the Property shall pass to the Purchaser which shall be liable for the payment of all rates, taxes, Association and other levies and other charges incurred in respect of the Property relating to any period after the Occupation Date. The Conveyancers shall make any necessary adjustment between the parties in this regard with effect from the Occupation Date.

7. **BEACONS / BUILDING ACTIVITIES**

- 7.1 The Seller shall not be required to indicate the position of the beacons or pegs on the Property.
- 7.2 The Purchase acknowledges that, on the Occupation Date, buildings on other erven in the Estate may be incomplete and that occupants of the Property may suffer inconvenience from building operations; and the Purchaser further acknowledges that it shall have no claim whatsoever against the Seller by reason of any such inconvenience.

8. **VOETSTOOTS**

- The Purchaser acknowledges that the Property is purchased and sold voetstoots, without any warranties, express or implied, and the Seller and its agents shall be free from all liability for any damage or loss suffered by the Purchaser by reason of any defect existing or arising in the Property. The Property is purchased subject to all conditions and servitudes, whether contained in the title deeds, imposed by the local or any other competent authority in terms of the applicable town planning scheme, imposed as a result of the private township application in terms of which the Property is created, imposed by the Seller in terms hereof, contained in the Articles and Conduct Rules, as well as those imposed in respect of any environmental approval, and the Purchaser acknowledges having made itself fully acquainted with the Property, its nature, situation and extent, the Plan and the Articles and Conduct Rules and all other relevant documents. The applicable environmental management plan, is available for inspection at the offices of the Seller.
- 8.2 The Purchaser further acknowledges that the Association shall become responsible for compliance with any environmental management plan applicable to the Estate, as amended or added to from time to time. The Purchaser accordingly undertakes to use its best endeavours to procure that the Association shall comply with such plan from time to time and shall further assume all of the Seller's obligations in respect thereof. In addition, the Purchaser undertakes to ensure that this acknowledgment and undertaking (including the obligation to make it binding on future purchasers) is drawn to the attention of, and made binding on, any purchaser of the Property from the Purchaser. The Purchaser acknowledges that it has read and understood the said environmental management plan, considers it fair and reasonable and will be bound thereby.
- 8.3 Without prejudice to the provisions of 8.1 and 8.2, the Seller shall not be liable under any circumstances or at any time prior to, during or after registration of transfer, for any indirect or consequential damages of any nature which the Purchaser may suffer at any time and for whatever reason, nor shall it have any liability whatsoever for any defects caused by or related to the soil or the geological condition of the Property.
- 8.4 The Purchaser acknowledges that upon the establishment of the body corporate of any sectional title scheme in the Estate, the Association shall carry out and assume all the functions and powers of the body corporate of the relevant scheme as the Association may require to be assigned to it by the said body corporate, all of which functions and powers shall be so assigned by the body corporate.

9. **TRANSFER**

- 9.1 The Seller shall not be obliged to pass transfer to the Purchaser, notwithstanding anything to the contrary herein contained, until such time as the total Purchase Price and all other amounts for which the Purchaser may be liable in terms hereof to the date of transfer have been paid and/or payment thereof has been secured as herein provided.
- 9.2 Transfer of the Property shall be effected by the Conveyancers representing the Seller and all expenses of and incidental to the preparation and registration of the transfer (plus VAT thereon, where applicable) and conveyancers fees in respect of such transfer, shall be borne by the Purchaser. The same shall apply to the payment of all conveyancer's fees, stamp duties and other similar conveyancer's disbursements in connection with the preparation and

registration of any bond granted to the Purchaser which is registered over the Property (plus VAT thereon, where applicable), including any initiation fee, security assessment fee and any other similar charges raised by the said Bank itself with regard to the Bond. The Purchaser shall, within 7 (SEVEN) days of being called upon to do so by the Conveyancers, furnish all such information, sign all such documents and pay all such costs which are for the Purchaser's account and which may be necessary or required to enable the Conveyancers to pass transfer and register any bond.

9.3 It is recorded that the Seller will be unable to effect transfer of the Property into the name of the Purchaser until the phase of the Estate which includes the Property has been duly established as an approved private township, the certificate contemplated by section 28 (1) of the Town Planning Ordinance (No. 27 of 1949) has been issued in respect thereof, the reserved lots (if any) have been transferred and all suspensive conditions have been fulfilled and, further, that it is the intention to effect transfer as soon as possible thereafter. Subject to the provisions of section 36 of the said Ordinance, the Purchaser shall have no rights of whatsoever nature against the Seller, nor shall the Purchaser be entitled to cancel this Agreement, by reason of the Seller's failure to give transfer of the Property, either within a reasonable time or within any time whatsoever after the signing of this Agreement.

9.4.1 It is recorded that:

9.4.1.1 in order to effect transfer of the Property, the Conveyancers will be required to lodge, inter alia, a transfer duty exemption certificate, issued by the South African Revenue Services ("SARS") with the Deeds Registry;

9.4.1.2 SARS have adopted a policy of not issuing the aforesaid certificate in the event of any party to the transaction being in arrears with the payment of any amount/s SARS believes is/are due to it or otherwise not being in compliance with tax laws.

9.4.2 Accordingly, should SARS refuse to issue a transfer duty exemption certificate in respect of the sale of the Property in terms of this Agreement due to the fact that the Purchaser is in arrears with any payments to SARS or has otherwise not complied with any tax laws, then in that event, the Purchaser shall be deemed to be in breach of this Agreement and the Seller shall be entitled to exercise its rights in terms of 10 and/or 19

## 10. **BREACH**

10.1 In the event of any payment or payments in respect of the Purchase Price or other charges or payments for which the Purchaser is liable hereunder, or any obligation imposed on the Purchaser hereunder or in terms of the Articles or the Conduct Rules, remaining unpaid or unfulfilled for a period of 7 (SEVEN) days after notice in writing has been given by or on behalf of the Seller to the Purchaser, calling upon the Purchaser to make payment or fulfil such obligation, the Seller shall, at its election and without prejudice to any other rights which it may have in terms hereof or at law, have the right either to enforce this Agreement or alternatively to declare the sale cancelled. In the event of the Seller cancelling the sale as aforesaid, any amount or amounts paid to the Seller or the Conveyancers (including any amount paid in trust and any interest accrued thereon) shall be forfeited to and retained by the Seller as rouwkoop; alternatively, if the Seller so elects, it may recover any damages howsoever incurred as a result of such cancellation (including any losses 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 (including any amount paid in trust and any interest accrued thereon) will not be forfeited as rouwkoop but may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller.

10.2 A breach by the Purchaser, prior to registration of transfer, of any of the provisions of the Building Contract shall be deemed for all purposes to constitute a breach by it of a provision of this Agreement.

10.3 In the event of the Seller cancelling the sale as contemplated in 10.1, 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 therefor.

10.4 For all purposes of this Agreement, any act or omission on the part of any invitee of the Purchaser shall be deemed to be an act or omission of the Purchaser.

11. **CESSION AND ASSIGNMENT OF RIGHTS**

11.1 The Purchaser shall not be entitled to sell, assign, cede or make over its rights under this Agreement, or in any manner alienate its rights to the Property, prior to registration of transfer of the Property, without the prior written consent of the Seller.

11.2 The Seller shall, however, be entitled at any time prior to transfer of the Property to the Purchaser, to cede and assign its rights and obligations under this Agreement to a third party of its choice.

12. **NOTICES AND DOMICILIA**

Any notices required to be sent to either party in terms of this Agreement shall be in writing and shall be delivered personally, or alternatively sent by pre-paid registered post, and addressed to the party concerned at its domicilium address set forth in A in the case of the Seller, or B in the case of the Purchaser, of the Schedule, or at such other address (not being a post office box or post restante) in the Republic of South Africa as that party may nominate in writing to the other. Any notice sent by pre-paid registered post in accordance with the foregoing shall be deemed to have been received 4 (FOUR) days after posting. The parties hereby choose the said addresses as their respective domicilia citandi et executandi for all purposes under this Agreement. This clause shall not be construed as invalidating a written notice actually received by a party at any other address or by any other means.

13. **SELLING AGENT'S COMMISSION**

To the extent that an agent has been the effective cause of this sale, such agent's name and address shall be reflected in K of the Schedule, in which event the Seller shall be liable for and shall pay to the Selling Agent agent's commission on the sale. In such circumstances, the Purchaser warrants that:

13.1 the Selling Agent was the sole effective cause of the sale;

13.2 it was not introduced to the Unit and/or the Exclusive Use Rights, or this Agreement, by any agent other than the Selling Agent named in the Schedule as aforesaid; and

13.3 no commission shall become payable by the Seller to any agent other than the Selling Agent named in the Schedule as aforesaid.

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 a breach of any of the foregoing warranties.

14. **JURISDICTION/COSTS**

14.1 The Purchaser hereby consents in terms of Section 45 of the Magistrates' Courts Act, No 32 of 1944, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction over its person under Section 28 of that Act, notwithstanding that any action or proceeding arising out of this Agreement would otherwise be beyond the jurisdiction of such Court. The Seller shall, however, have the right to institute action in any other Court of competent jurisdiction.

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

15. **JOINT AND SEVERAL LIABILITY**

Should this Agreement be signed by more than 1 (ONE) person as Purchaser the obligations of all the said signatories shall be joint and several.

16. **TRUSTEE**

If this Agreement is entered into by the signatory for the Purchaser in his capacity as trustee for a company or close corporation to be formed, then:

- 16.1 the said signatory, by his signature hereto, hereby binds himself in favour of the Seller as surety and co-principal debtor, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company or close corporation in terms of or arising out of this Agreement or any cancellation hereof; and
- 16.2 without prejudice to the provisions of 16.1, in the event of such company or close corporation not being formed within 30 (THIRTY) days after the date of signature of this Agreement, and/or failing within 7 (SEVEN) days of incorporation to ratify and make the provisions of this Agreement binding upon itself, and/or failing within the said 7 (SEVEN) day period to deliver to the Conveyancers the originals or notarially certified copies of its certificate of incorporation, memorandum and articles of association, certificate to commence business and all necessary resolutions of shareholders and/or directors in respect of this sale, in the case of a company, or of its founding statement, any applicable association agreement (or confirmation that there is none) and the written consent signed by all the members in respect of the ratification and adoption of this sale, in the case of a close corporation, then and in any such event, the said signatory shall be personally liable in terms hereof as if he had contracted in his own personal capacity.

17. **COMPANY/CLOSE CORPORATION/TRUST**

If this Agreement is signed as Purchaser by a person purporting to act for and on behalf of a company or close corporation or trust (other than a company or close corporation or trust not yet formed), he shall be deemed to warrant that he is duly authorised so to sign this Agreement and shall by his signature hereto bind himself in favour of the Seller as surety and co-principal debtor under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company or close corporation or trust in terms of or arising out of this Agreement or any cancellation hereof.

18. **SUSPENSIVE CONDITIONS**

This Agreement is subject to the suspensive conditions that :

- 18.1 the Purchaser raises and receives a loan, upon security of a first mortgage bond over the Property, from a recognised financial institution, upon its usual terms and conditions, in the amount referred to in F.1 of the Schedule by not later than the expiry of a period of 90 (NINETY) days after the date of signature of this Agreement by the Seller.
- 18.1.1 The Purchaser hereby undertakes to do all such things and to sign all such documents as may be necessary and/or requisite in order to apply for and procure the grant of the said loan from a bank, building society or other financial institution and to furnish written proof to the Seller of the granting or refusal thereof.
- 18.1.2 The Purchaser hereby irrevocably appoints the Mortgage Originator referred to in G of the Schedule as its agent to apply for such loan on the Purchaser's behalf and to obtain such written approval, consent and authority from any recognised financial institution and the Purchaser undertakes to sign all documents and do whatever may be necessary to be done.
- 18.1.3 The Seller shall have the right to extend the 90 (NINETY) day period referred to in 18.1 for a further period not exceeding 90 (NINETY) days, provided that it gives the Purchaser written notice thereof prior to expiry of the initial 90 (NINETY) day period.
- 18.1.4 The Purchaser acknowledges that it is fully aware of the requirements of the banks with regard to the maximum loan which banks are prepared to grant on the basis of income and commitments of the borrower and the Purchaser hereby warrants that its income is sufficient in relation to its commitments to meet the requirements of the banks in this regard and having regard to the amount of the loan to be applied for.
- 18.1.5 Where the Purchaser is married and the spouse of the Purchaser signs this Agreement as envisaged in 20, or where the Purchaser is a company or close corporation or trust (whether to be formed or already formed in the case of a company or close corporation), such spouse or the person/s signing this Agreement on behalf of, or as trustee for, the relevant company or close corporation or trust, by his/their signature hereto, undertakes to sign any documents which may be required by any person or institution in order to procure the loan and/or register the bond envisaged in 18.1, including without limitation, any deed of suretyship, loan

application and the power of attorney to pass the bond. The said spouse or other person/s also hereby warrant/s that his/their income is sufficient to procure such loan and undertake/s to furnish forthwith any information requested by the person or institution/s to which application is made for such loan. Failure by such spouse or other person/s to comply with all or any of the provisions of this clause shall constitute a material breach of this Agreement.

- 18.1.6 This suspensive condition shall be deemed to have been fulfilled as soon as the Purchaser or its agent has received confirmation that the loan in question has been approved in principle by the financial institution, or a quotation in terms of the National Credit Act from the financial institution, irrespective of any loan agreement between the Purchaser and the institution, regardless of any conditions imposed by the institution in granting such loan and regardless of whether or not either or both of the aforesaid events occurs prior to the date of signature of this Agreement by the Seller provided that, where an amount is stipulated in F.2 of the Schedule, this suspensive condition shall only be deemed to have been fulfilled if the mortgage loan granted provides for the payment on transfer of the Property of an amount which is not less than the amount so stipulated in F.2 of the Schedule.
- 18.2 by not later than 90 (NINETY) days after the date of delivery of this Agreement, duly signed by the Purchaser, to the Seller, the persons (if any) named in L of the Schedule shall sign and deliver to the Seller a Deed of Suretyship approved by the Seller, guaranteeing the obligations of the Purchaser to the Seller in terms of this Agreement. This condition shall be deemed to have been fulfilled upon receipt by the Seller of the signed Deed/s of suretyship, regardless of whether or not such delivery occurs prior to the date of signature of this Agreement by the Seller;
- 18.3 the Building Contract is signed and entered into by and between the parties thereto by not later than expiry of a period of 90 (NINETY) days after the date of signature of this Agreement by the Seller and is thereafter perfected to the extent that all suspensive conditions to which it is subject are duly and timeously fulfilled;
- 18.4 the Purchaser is successful in procuring at its cost the approval by the Design Review Committee of the Association and the applicable local authority of its building plans in respect of the buildings and other improvements which the Purchaser intends to be erected on the Property in terms of the Building Contract, by not later than, in the case of Design Review Committee approval 90 (NINETY) days, and in the case of local authority approval 180 (ONE HUNDRED AND EIGHTY) days, after the date of signature of this Agreement by the Seller.
- 18.5 prior to lodgement of the documents for transfer in the Deeds Office, the Association gives its written consent to the transfer of the Property into the name of the Purchaser, which consent will only be granted once the Purchaser and the Seller have fulfilled all their obligations to the Association in terms of the Agreement and the Articles and Conduct Rules

In the event of any of the said suspensive conditions not being timeously fulfilled, then this sale shall lapse and be of no further force or effect between the parties and each party shall restore to the other party everything which it has received from the other party in terms hereof, neither party having any other claim against the other in respect thereof.

## 19. **MORA AND ARREAR INTEREST**

- 19.1 In the event of the Purchaser failing to comply with any terms or conditions of this Agreement on due date, as a result of which registration of transfer is delayed, the Seller shall in addition to any other rights which it may have in terms hereof or at law, be entitled to claim from the Purchaser interest on the full Purchase Price at the rate of 2 (TWO) per cent per annum above the prime overdraft rate charged from time to time by ABSA BANK calculated from 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, whichever is the longer. Such interest shall be payable by the Purchaser to the Seller on demand.
- 19.2 For the purposes of this clause (19) the Purchaser shall be deemed to be responsible for any delay in the date of transfer which is caused by failure on the part of any financial institution from which the Purchaser obtains mortgage finance or any conveyancer nominated by such financial institution to procure the issue of guarantees as contemplated in this Agreement and to lodge document in the Deeds Office when called upon to do so by the Conveyancers. In

addition and without prejudice to any other rights which the Seller may have in terms hereof or at law, the Purchaser shall be liable for interest on any amounts in arrears at a rate equal to the mora interest rate referred to in 19.1.

19.3 In any case where the Seller is entitled to mora interest in terms of 19.1, the Purchaser shall in addition thereto be liable for all rates, levies and other expenses arising from the Property.

20. **MARRIED PURCHASER**

In the event of the Purchaser being married, the spouse of the Purchaser, by his signature hereto, in addition to assisting his spouse to enter into this Agreement to the extent that this may be necessary, also binds himself, his heirs, executors or assigns to and on behalf of the Seller, its order or assigns, as surety and co-principal debtor, jointly, severally and in solidum for the due performance by the Purchaser of all its obligations in terms of this Agreement and hereby renounces the benefits of excussion and division, with the meaning of which he declares himself to be fully acquainted. Furthermore, the spouse agrees that it shall always be in the discretion of the Seller, without notice to the spouse, to grant time or other indulgences to the Purchaser, to delay the date/s for any payment/s or for the performance of all or any of the obligations of the Purchaser in terms of this Agreement or to vary the terms of this Agreement or to make any arrangements with the Purchaser; and the spouse agrees that he shall not be entitled to give notice of termination of his liability under this Agreement or to withdraw from this suretyship or in any way to limit his liability hereunder for so long as the Purchaser has failed to carry out or fulfil all of its obligations in terms of this Agreement.

21. **ESTATE AND ASSOCIATION**

21.1 From the Occupation Date the Purchaser shall :

21.1.1 comply with the provisions of the Conduct Rules;

21.1.2 waive all claims against the Association and/or the Seller for any loss or damage to property or for any injury to person which the Purchaser may sustain in or about the Property or the Common Property; and

21.1.3 indemnify the Association and/or the Seller against any such claim that may be made against the Association and/or the Seller by any of the Purchaser's invitees, employees or agents for any loss or damage to property or injury to person/s howsoever such loss or damage or injury may be caused.

21.2. The Purchaser shall:

21.2.1 on registration of transfer of the Property into its name become and, whilst it is the registered owner of the Property, remain a member of the Association;

21.2.2 conform to and comply with the Memorandum of the Association and the Articles;

21.2.3 conform to and comply with any Conduct Rules formulated from time to time by the directors of the Association in accordance with the powers vested in them in the said Articles;

21.2.4 conform to and comply with the Building Design Code and Landscape Design Code applicable to the Estate, copies of which are attached hereto, marked "E1" and "E2", and shall also comply with the environmental management plan; and

21.2.5 whilst a member of the Association and with effect from the date of registration of the Property into its name, pay all fees, levies and/or special levies raised and charged by the Association against the members of the Association.

21.3 The Purchaser :

21.3.1 irrevocably authorises the Seller to do all such things as may be necessary to enrol the Purchaser as a member of the Association with effect from the date of registration of transfer and consents to sign any documentation necessary in this regard; and

21.3.2 shall remain a member until it ceases to be the owner of the Property.

21.4 The Purchaser shall not :

- 21.4.1 sell the Property to any person unless it incorporates a provision in the agreement of sale that such purchaser acknowledges that it is aware of the Association and that such purchaser shall be obliged, on receiving transfer of the Property, to become a member of the Association and be subject to all the obligations of such membership;
- 21.4.2 be entitled to register the transfer of the Property to such proposed purchaser unless and until it has received from the Association a certificate stating that all amounts owing to the Association have been paid.
- 21.5 Without limiting the provisions of 11.1 the Purchaser acknowledges that the conditions of title of the Property may include a condition to the effect that:
- The ownership of neither the lot, nor any further subdivision, nor any unit erected thereon as defined in the Sectional Titles Act No. 95 of 1986, shall be transferred to another person or entity until such person or entity is bound to become, and remain, a member of the "Home Owners Association" for the duration of such person's or entities ownership thereof and a clearance certificate has been issued by such association to the effect that its articles of association have been complied with;
- such condition to be registered in such form as the Association's/Developer's conveyancers may determine and the Registrar of Deeds may permit.
- 21.6 The Purchaser acknowledges that it is aware that:
- 21.6.1 the Association may be obliged by to acquire ownership of private roads and private open spaces in the Estate and accordingly the Purchaser undertakes to do everything possible as a member of the Association to facilitate such acquisition and subsequent transfer of the said private roads and/or open spaces to the Association; and
- 21.6.2 the services which will be provided by the Association to its members will include, but are not limited to maintenance of Common Property and servitude areas within same.
- 21.7.1 The Purchaser acknowledges and agrees that, in order for the Developer to successfully complete the Estate, it is deemed necessary by the directors of the Developer to have control of the Association and they shall during the Development Period as that term is defined in the Articles, be entitled to:
- 21.7.1.1 nominate all the directors of the board of the Association to the exclusion of the appointment of any other person by the owners;
- 21.7.1.2 carry or veto any proposed ordinary or special resolution of the Association by voting in favour of or against such resolution;
- 21.7.1.3 enter into any contract or pre-incorporation contract which it may in its own discretion deem necessary on behalf of the Association.
- 21.7.2 The Purchaser, hereby irrevocably and in rem suam appoints the Seller or it nominee, to specifically exercise any of its rights which it might have in regard to:
- 21.7.2.1 voting for the election of 100 (ONE HUNDRED) per cent of the directors (including the chairman) of the board of the Association;
- 21.7.2.2 attendance at all meeting of the Association;
- 21.7.2.3 voting in favour or against any proposed ordinary or special resolution of the Association.
- 21.7.3 The rights of the Seller as set out above shall cease at the termination of the said Development Period and thereafter the Purchaser shall be entitled to 1 (ONE) vote for each unit or erf registered in its name.
- 21.7.4 It is specifically recorded however pursuant to the requirements of the Ethekwini Municipality that the provisions of the above clauses shall not apply to the control and implementation of the environmental management plan for the Estate and that the Purchaser and other purchasers in the Estate shall have the right to stand and be appointed as a director of the

Association, limited however to the portfolio of environmental matters and the implementation and control of the environmental management plan.

21.8 The parties agree that, to the extent that it is in their power to do so, but only if the Seller so requires, they shall appoint the Managing Agent referred to in N of the Schedule as the Managing Agent for the Estate.

21.9 The Purchaser acknowledges that the construction of double-storey residential dwellings is permitted in the Estate and the Purchaser undertakes and agrees not to object or appeal against, or in any way interfere with, the Developer's rights or the rights of any other owners in the Estate in this regard.

22. **SECURITY**

22.1 The Developer in developing the Estate will install certain security systems, facilities and procedures.

22.2 The Developer and the Seller shall assign to the Association the responsibility for maintaining and operating such security systems, facilities and procedures and the obligation of procuring any additional security requirements which the Association might in due course deem necessary.

22.3 The Purchaser acknowledges that it is aware of the rights of access in favour of the Association for the purposes of providing security to the Estate, as provided in the proposed amended Articles.

22.4 The Purchaser acknowledges that the Developer and the Seller shall in no way be liable for any failure, collapse or insufficiency of any of the abovementioned security systems, facilities or procedures, irrespective of the cause thereof, nor be liable for any consequential damage suffered by the Purchaser as a result of any such failure, collapse or insufficiency.

23. **PRIVATE TOWNSHIP**

It is recorded that the private township comprising the Estate has not been declared an approved private township with the result that the provisions of section 36 (3) of the Town Planning Ordinance No 27 of 1949 apply in respect of this Agreement.

24. **OFFER / ACCEPTANCE**

Inasmuch as this Agreement, signed by the Purchaser and delivered to the Seller, shall constitute an offer to purchase the Unit and the Exclusive Use Rights, such offer shall not be capable of being withdrawn and shall remain open for acceptance by the Seller signing same (communication thereof to the Purchaser not being necessary to constitute acceptance) within 210 (TWO HUNDRED AND TEN) days after the date of signature thereof by the Purchaser. It shall also remain open for acceptance by the Seller on the same basis after expiry of the said 210 (TWO HUNDRED AND TEN) day period unless the Purchaser specifically withdraws it by giving written notice thereof to the Seller. In this regard, it is recorded that the provisions of Section 29(A) of the Alienation of Land Act, No. 68 of 1981 (as amended), do not apply to this Agreement as the purchase price exceeds R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND).

SIGNED by the SELLER at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
**AS WITNESSES :**

1. ....

2. ....

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

**AS WITNESSES :**

1. ....

2. ....

.....  
If signed in representative capacity, print name of  
signatory  
.....