

MILKWOOD

**DEED OF SALE
ENTERED INTO BY AND BETWEEN**

ERF 1109 MARINA MARTINIQUE CC
Registration No. CK2003/022053/23

AND

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DEFINITIONS

In this agreement, and unless inconsistent with the context the following words shall have the meanings assigned to them below:

the act means the Sectional Titles Act No. 95 of 1986, together with any amendments thereof and regulations framed thereunder from time to time;

the seller's attorneys means SMITH TABATA BUCHANAN BOYES INCORPORATED of 2nd Floor, 5 High Street, Rosenpark, Tygervalley 7536, reference Hennie Mouton, telephone number 021-9433800, telefax number 021-9141080, e-mail henniem@stbb.co.za;

buildings mean all buildings constituting the development and erected on the land;

building specifications means the schedule of specifications annexed hereto as **annexure "2"**;

common property means those portions of the land not forming part of any section, exclusive use area, and/or unit in the development in terms of the act;

completion date means the date determined in terms of Clause 7.2 or the date which the seller's architect certifies the unit to be completed for beneficial occupation, in terms of Clause 7.3, whichever is the later;

development means the land and buildings erected/to be erected thereon and in respect of which the seller intends to open a Sectional Title register in the Deeds registry at Cape Town;

deposit means the deposit payable by the purchaser on signature hereof and as specified in **schedule "A"**;

estate agent shall mean _____

estimated participation quota means in relation to a section, a decimal fraction determined in accordance with the provisions of Section 32 (1) of the Act in respect of that section;

estimated completion date means the date specified in **schedule "A"**;

exclusive use area(s) means the area/s depicted as such on the plans in respect of which the purchasers shall have the sole and exclusive use and enjoyment;

floor area of the unit in terms of the act means the overall square meter area as calculated by the land surveyor preparing the plans for the buildings measured to the centre line of all common walls with other sections and the centre line of all other walls;

land means the land on which the development known as **MILKWOOD** or such other name as the sellers may decide upon, of which the unit hereby sold forms a part has been or is to be developed, and being Erf 1109 MARINA MARTINIQUE in the KOUGA MUNICIPALITY, Division Humansdorp, Province Eastern Cape;

levy means the contribution payable by the purchaser as contemplated in terms of section 37 of the act;

occupational rent means the occupational rental as specified in **schedule "A"** hereto;

plans means the architectural plan annexed hereto as **annexure "1"**;

purchase price means the total purchase price as specified in **schedule "A"**;

purchaser means the purchaser as defined in the schedule annexed as **schedule "A"**;

registrable means in relation to the unit, capable of being registered in the name of the purchaser and "**registrability**" shall have a similar meaning;

rules means the rules of the body corporate in force from time to time and shall include any house rules;

schedule means the schedule annexed hereto marked "**A**";

seller means ERF 1109 MARINA MARTINIQUE CC, Registration Number CK2003/022053/23.

unit means the unit(s) and any exclusive use areas(s) hereby sold, forming part of the development and includes an undivided share in the common property as determined in terms of the act and as more fully specified in **schedule "A"** hereto read in conjunction with the plans;

Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the female and neuter genders and words importing persons shall include partnerships and bodies corporate, and vice versa;

Reference to the agreement shall include the schedule and all annexures thereto;

The head notes to the paragraphs of this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1. **PREAMBLE**

- 1.1 The seller is the registered owner of the land.
- 1.2 The seller intends to apply for the approval of the development in phases in terms of the act and the opening of a Sectional Title register in respect thereof.
- 1.3 The purchaser wishes to purchase from the seller who wishes to sell a unit in the development upon the terms and conditions hereof.

AGREED:

2. **SALE OF UNIT**

The seller sells to the purchaser who purchases the unit in the development as is substantially depicted on the plans (marked in highlight) and building specifications annexed as **annexure "1" & "2"**.

3. **PURCHASE PRICE**

The purchase price of the unit shall be the sum set forth in the **schedule "A"**.

4. **PAYMENT OF PURCHASE PRICE**

- 4.1 The purchase price shall be payable by the purchaser to the seller in the following manner:
 - 4.1.1 A deposit of _____% (**_____ per centum**) shall be paid in cash or by bank guaranteed cheque on signature hereof by the purchaser and shall be held in trust by the attorneys, who shall invest same in an interest bearing trust account in terms of Section 78(2A), which interest shall accrue to the purchaser until registration of transfer of the unit has occurred, upon which event the deposit will be released to the seller and accrued interest shall be released to the purchaser, but subject to clause 25.1.
 - 4.1.2 The further amounts as set out in **schedule "A"** on registration of transfer.
- 4.2 All or any payments to be effected hereunder, shall be effected by the purchaser to the seller and/or the attorneys without deduction or set-off and free of exchange at Bellville.

5. **INTEREST ON OVERDUE AMOUNTS**

- 5.1 All monies payable by the purchaser in terms hereof and unpaid on due date shall bear interest at 2 % above the prime rate charged by First National Bank Limited in respect of unsecured overdrafts to its best customers from time to time reckoned from the due date to the actual date of payment. A certificate by the manager or accountant of any branch of such bank shall be satisfactory and sufficient proof of such rate of interest charged from time to time.
- 5.2 Each payment made by the purchaser shall be allocated first to the payment of interest and then to the payment of any other monies due in terms thereof and thereafter to the reduction of capital amounts owing.

6. **GUARANTEE**

Within 10 (TEN) days of being called upon to do so by the seller or the attorneys, the purchaser shall furnish the seller or the attorneys with a bank guarantee or other guarantee acceptable to the seller for the payment of the balance of the purchase price payable in terms of this agreement, provided that the seller or the attorneys shall not call for the guarantee until the suspensive conditions contained herein have been fulfilled. It is recorded that the furnishing of the guarantees aforesaid is necessitated by the requirement of the seller's bondholder to enable it to make advances under the development bond for the completion of the unit.

7. **POSSESSION, OCCUPATION, RISK AND BENEFIT**

- 7.1 It is recorded that the building(s) to be erected in the development are presently in the course of planning and/or construction.
- 7.2 The seller shall give the purchaser not less than 30 (THIRTY) calendar days notice in writing of the

completion date, on which date possession and occupation shall be given to and taken by the purchaser and from which date risk in and benefit of the property shall pass to the purchaser.

- 7.3 Should the seller not be able to give possession and occupation on the completion date specified, the purchaser shall take possession and occupation on the date when the seller is able so to give beneficial possession and occupation. The purchaser shall have no claim of whatsoever nature against the seller for any loss or damage, whether direct or consequential, should the seller not be able on completion date to give possession or occupation.
- 7.4 Should any dispute arise between the seller and purchaser as to the date on which the property was available for beneficial occupation, the decision of the seller's architect as to such date shall be final and binding.
- 7.5 Notwithstanding the foregoing, the seller shall be entitled to refuse the purchaser actual possession and occupation if the purchaser has not by then signed all transfer and bond documents and paid all transfer and bond registration costs and payment of the purchase price has been secured to the satisfaction of the seller. In that event, the purchaser shall nevertheless be deemed to have taken possession and occupation for all other purposes hereof.
- 7.6 The purchaser or his nominees shall inspect the unit on the completion date, and shall agree with the seller any defects found in the unit. Both parties shall record said defects in writing and the seller undertakes to remedy said defects within 3 (THREE) months of date of occupation.

8. OCCUPATIONAL RENTAL

- 8.1 Should registration of transfer take place after the completion date, the purchaser shall pay occupational rental at 1% of VAT Exclusive Price to the seller monthly in advance from the completion date until registration of transfer. If the completion date falls on any day other than the first day of a calendar month, then the purchaser shall be obliged to pay a pro rata amount for the calendar month in which the completion date fell.
- 8.2 The purchaser shall not be entitled to withhold, delay or set off any payment by reason of any outstanding work, including any work to be done in terms of the defect lists provided for in this agreement.
- 8.3 In the event that transfer of the unit is delayed by any act or omission on the part of the purchaser whether as a result of any failure to supply the attorneys with information required by them, delays in the signing of transfer or bond documents, delays in the payment of transfer or bond registration costs, or any delay in satisfying the requirements of the financial institution granting the loan or any other default on the part of the purchaser, then the purchaser shall be responsible for payment to the seller of an increased occupational rental at a rate equal to 2% above the prime interest rate charged by First National Bank Limited to its best grade customers on an unsecured overdraft from time to time from the date on which transfer would, but for such delay, have otherwise been registered to the date of the actual registration of transfer. For the purpose of this clause, the attorney's assessment of the date on which transfer would otherwise have been registered shall be binding upon the purchaser, unless the same is proved to be unreasonable. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding on the parties and shall be *prima facie* proof of such rate.

9. TRANSFER

- 9.1 It is recorded that it will only be possible for the seller to give transfer of the unit to the purchaser upon the opening of the Sectional Title register in respect of the development and upon fulfilment by the purchaser of all his obligations in terms hereof.
- 9.2 Transfer shall be passed, subject to the Sectional Title register having being opened, as close to completion date as is practically possible by the attorneys at whose offices the purchaser shall sign all documents necessary to give effect to this agreement within 5 (FIVE) days of being called upon to do so.
- 9.3 The purchaser shall accept such transfer subject to all conditions, rules and servitudes benefiting or burdening the unit, the land and the development whether existing or hereafter imposed by any competent authority and/or imposed by the seller prior to signature hereof by the purchaser.
- 9.4 In the event of there being any marginal or minor difference between the dimensions of and or the specifications and/or the levies payable in respect of any unit as finally constructed from that reflected in this agreement, the purchaser shall nevertheless, and without any right to any form of compensation, accept transfer in satisfaction of the seller's obligations hereunder. The opinion of the seller's architect as

to what constitutes a marginal or minor difference shall be final and binding upon both parties and shall not be capable of dispute.

- 9.5 The purchaser warrants that he understands that there is a difference between the extent of the unit and the floor area of the unit in terms of the act. Levies payable in respect of the unit and exclusive use area as finally determined by the Body Corporate at its first or at a subsequent general meeting shall be calculated on the floor area of the unit in terms of the act.
- 9.6 The purchaser shall, subject to the rules, be entitled to the exclusive use and enjoyment of the exclusive use area, which shall be reserved in the rules of the Body Corporate, alternatively ceded to the purchaser in terms of Section 27(i)(b) of the act.
- 9.7 It is hereby recorded and agreed that the seller reserves in its favour all rights to advertising on the boundary walls surrounding the development and on the buildings forming part of the development. The developer shall be entitled to have such reservation registered as a title condition against the land and/or the unit.
- 9.8 The seller shall be entitled in its application for the registration of the sectional plan, to reserve the right in terms of Section 25 of the act to erect and complete from time to time, but within a period of 10 (ten) years after the opening of the register, for its own account, further buildings on the common property and to divide such buildings into 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 units.

10. **CONDITIONS APPLICABLE PENDING TRANSFER**

During the period from the completion date until date of transfer, the following conditions shall apply:

- 10.1 save insofar as may be inconsistent with the provisions of this agreement, the provisions of section 37 of the act shall apply;
- 10.2 the provision of the rules insofar as they cast any duty upon the owner or occupier of a unit shall bind the purchaser and be enforceable by the seller;
- 10.3 the purchaser may not make any alterations or additions whatsoever to the unit and/or the exclusive use area without the prior written consent of the seller;
- 10.4 the purchaser shall maintain the unit in the same condition as it was on the occupation date;
- 10.5 the purchaser shall be responsible for and pay to the seller promptly and on demand all costs of water consumed in the unit insofar as it may not be separately metered.

11. **LEVIES**

- 11.1 The purchaser shall be liable from the completion date for the levy calculated in accordance with the estimated participation quota attributable to each unit as if the purchaser was the registered owner of the unit.
- 11.2 Such levy shall be paid monthly in advance on the first day of each and every calendar month provided that if the completion date falls on any day other than the first day of a calendar month, then the purchaser shall be obliged to pay a pro rata share of the levy due for the calendar month in which the completion date occurs.
- 11.3 Such levy shall be paid to the seller until registration of transfer and thereafter to the body corporate of the sectional title scheme.
- 11.4 Notwithstanding the foregoing, it is recorded that with the establishment of the Body Corporate:
- 11.4.1 the seller will be obliged in terms of Section 15(b)(3)(b) to provide a rates clearance certificate which will necessitate the seller paying to the local authority the full year's rates and taxes in advance; and
- 11.4.2 the Body Corporate will of necessity incur certain other initial expenditure.
- 11.5 In view of the provisions of Clause 11.4 and in order for the Body Corporate to meet its obligations for immediate expenditure and to refund the seller all amounts paid by the seller in advance, the purchaser hereby:
- 11.5.1 agrees and undertakes to make payment in advance to the managing agents on the date of registration of the unit in his favour or such later date as required by the managing agents of a certain number of monthly levies as determined by the managing agents in its sole discretion, for the purpose of meeting the aforesaid expenditures. For the sake of clarity, upon payment of aforesaid, the purchaser will have paid levies in advance for the said number of months and

consequently the purchaser's obligations to pay levies will commence on the first day of the month following the expiry of the period for which levies have been paid in advance; and
 11.5.2 consents to the amendment of the rules, as provided in this agreement, to incorporate the foregoing provisions and acknowledges that he will be bound thereby.

11.6 In the event of the seller having prepaid the managing agents as provided in clause 11.5 above, the Purchaser shall be obliged and undertakes to with effect from and on the date of possession and occupation to refund the seller a *pro rata* amount of the levies so paid in advance by the seller.

12. **COSTS**

The purchaser shall pay all costs of transfer, costs of all necessary affidavits, and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the passing of transfer of the unit, including value added tax on costs. The purchaser shall pay the costs of any bond over the unit and the fees charged by the financial institution, and attorney's fees. The purchaser shall ensure that the attorneys are instructed by the financial institution granting the bond to attend to the registration of the said bond. It is recorded that no transfer duty is payable by the purchaser.

13. **THE RULES AND EXCLUSIVE USE AREAS**

13.1 The purchaser acknowledges that the rules contained in annexure 8 and 9 of the regulations promulgated under Section 55 of the act shall be applicable and acknowledges and agrees that he is acquainted with the provisions thereof.

13.2 The purchaser further acknowledges that the seller shall from time to time impose additional rules in terms of the provisions of Section 35 of the act and of which the Purchaser acknowledges he will be bound. Such additional rules will be available for inspection at the office of the attorneys prior to registration of transfer.

13.3 The seller hereby reserves the right, on the opening of the Sectional Title register, to make rules under Section 35 of the act, whereby the liability of the purchaser of any unit to make contributions in terms of the act is modified.

13.4 It is recorded that the exclusive use of the parking bays will be allocated in terms of the Body Corporate Rules, while the garages and carports will be registered as exclusive use areas.

14. **WARRANTIES**

14.1 The purchaser shall within 3 (THREE) months after the completion date notify the seller of all or any further defects to those recorded in terms of clause 7.6 hereof, failing which the purchaser shall be deemed to have accepted the unit in good order and condition. The seller shall cause all or any reasonable repairs as notified by the purchaser to be effected as soon as reasonable possible thereafter at its cost. The seller shall not be liable for any patent or latent defects of whatsoever nature thereafter, whensoever such may appear.

14.2 The seller shall only be responsible in terms of this clause and clause 7.6 for defects arising as a result of faulty workmanship and/or materials and shall under no circumstances be responsible for damage or loss caused by wear and tear, misuse, neglect, negligence, abuse, accident or in respect of or arising from any risk insurable in terms of homeowner's insurance policies issued by South African insurance companies in respect of residential or commercial properties, whichever is applicable, and the seller shall under no circumstances be liable for any consequential loss or damage.

14.3 The seller furthermore guarantees the unit in respect of substructure and roof structure in accordance with the standard Home Builders Warranty prescribed by the National Home Builders Regulation Council in their SHBW010396 Form.

14.4 A certificate by the seller's architect stating that any defect for which the seller is liable in terms of clause 14.1 has been made good shall be final and binding on both parties and shall relieve the seller from any further obligations in respect of such defect.

14.5 Save as specifically set out in this agreement, the seller has made no representations, and given no warranties in respect of the unit or the buildings or in respect of anything relating thereto which are otherwise sold voetstoots.

14.6 In addition, the purchaser shall not have any claim of any nature against the seller for any loss, damage or injury which the purchaser, his family, his agents and/or invitees may directly or indirectly suffer by reason of any latent or patent defects in the unit or by reason of the unit or any part thereof being in a defective condition of state of disrepair or any particular repair not being effected by the seller timeously or at all or arising out of vis major or casus fortuitus of any other cause either wholly or partly beyond the seller's control or arising out of any act or omission by any other purchaser of a unit in the development.

15. **DEFAULT**

15.1 If the purchaser commits a breach of this agreement or fails to pay any amount due to the seller or the attorneys, and persists with such breach or failure to pay, and fails for more than 7 (Seven) days after being called upon in writing to rectify same, then the seller shall be entitled (but not obliged) without prejudice to any other rights or remedies which it may have in law, including the right to claim damages:

15.1.1 to cancel this agreement, in which event the purchaser shall forfeit all monies paid to the seller or its agents in terms hereof as liquidated, predetermined damages, which the purchaser acknowledges to be reasonable; or

15.1.2 to claim immediate performance and/or payment of all the purchaser's outstanding obligations in terms hereof.

15.2 If the purchaser disputes the seller's right to cancel and/or remains in occupation of the unit after date of cancellation or purported cancellation the purchaser shall continue to pay the occupational rental and the levy as herein provided in consideration for continuing to occupy the unit.

15.3 In the event of the seller having to incur any legal costs to enforce its rights in terms of this agreement, whether action is instituted or not, the purchaser shall be liable for payment of such costs on the scale as between attorney and own client.

16. **INSPECTION OF UNIT**

The seller and/or the seller's duly authorised agent shall be entitled to inspect the unit at all reasonable times during the period that the purchaser is indebted to the seller for any amount in terms of this agreement.

17. **INSPECTION CERTIFICATE**

The purchaser shall within 7 (seven) days after being requested to do so, by telefax or hand delivered letter, inspect the unit, and if in order, sign the required inspection certificate.

Should the purchaser fail to inspect the unit, the seller shall have the option to cancel this agreement forthwith in which event all monies already paid by the purchaser shall be reimbursed to him.

18. **MORTGAGE LOAN - SUSPENSIVE CONDITION**

18.1 Should the **schedule "A"** so record then it is agreed that the purchaser requires a bank and/or financial institution to grant on its normal terms and conditions, a mortgage loan in the amount as specified in **annexure "1"** on the security of the property, and which shall be finally approved by not later than the date of approval referred to in the schedule. Should such loan not be approved by such date this agreement shall not automatically lapse and shall lapse only if such loan is not approved within a period of 5 (FIVE) days of either party giving the other notice in writing of the fact that the loan was not granted by the original scheduled date of approval. This loan shall be regarded as granted upon the issuing of a quotation and pre-agreement statement by the bank.

18.2 This agreement shall operate irrevocably and in rem suam as a power of attorney in favour of the seller, who shall have the power to apply for a mortgage loan on behalf of the purchaser and to appoint a mortgage originator of its choice to deal with bond applications. The purchaser undertakes to supply the seller and/or mortgage originator with such information as may be reasonably required to ensure that the bond application is processed as expeditiously as possible.

18.3 If the condition referred to in clause 18.1 above is not fulfilled, then:

18.3.1 the purchaser shall vacate the unit;

18.3.2 the seller shall be entitled to retain all occupational rental and levies payable by the purchaser in terms hereof.

18.3.3 the seller shall refund to the purchaser all amounts paid by the purchaser in reduction of the capital amount of the purchase price plus accrued interest thereon after deduction of any amount which may be due by the purchaser to the seller in terms of sub-clause 18.3.2 above.

18.4 The purchaser undertakes to ensure that the financial institution granting the purchaser's bond instructs the seller's attorneys to attend to the registration of the bond.

18.5 The purchaser shall be obliged to apply for such mortgage loan through MORTGAGE SA, Eastern Cape branch as may be appointed by the seller from time to time.

19. **MANAGING AGENT**

19.1 The seller may appoint and delegate any or all of its powers and duties to a managing agent for a maximum period of 2 (two) years from the date of the opening of the Sectional Title register, who shall be entitled to exercise all such powers as the seller may determine. The purchaser gives the seller the irrevocable power to make this appointment.

19.2 Nothing in this clause shall, however, be construed as relieving the seller of any of its obligations to the purchaser in terms hereof.

20. **HOME OWNERS ASSOCIATION**

20.1 The purchaser is aware that as owner of the unit, he shall be obliged to be a member of the MARINA MARTINIQUE HOME OWNERS ASSOCIATION.

20.2 The unit may not be resold without the written consent of the said home owners association.

20.3 The purchaser hereby grants CHRISTO SWART ESTATES and irrevocable Power of Attorney for a period of 3 (three) years from date of transfer to vote on his behalf at any meeting or decision making of such home owners association.

21. **JURISDICTION**

21.1 The purchaser hereby consent in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended), or any legislation passed in substitution thereof to the jurisdiction of any Court having jurisdiction in terms of Section 28 (1) of the said act, or of any legislation passed in substitution thereof, in any action instituted by the seller arising out of this agreement.

21.2 Notwithstanding anything herein contained, the seller shall be entitled to institute any action against the purchaser arising out of this agreement in any court having jurisdiction and shall not be prejudiced in any costs order as a result of his choice of legal forum.

22. **GENERAL**

22.1 The terms of this agreement form the sole contractual relationship between the parties hereto and no variation of this agreement shall affect the terms hereof unless such variation is reduced to writing and signed by the parties hereto.

22.2 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect of this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement.

22.3 Each of the parties hereto undertakes to sign and/or execute all such documents (and without limiting the generality of the foregoing), same shall include the execution of the necessary power of attorney and transfer duty declarations.

22.4 If there is more than one purchaser in terms of this agreement, the liability of each of the purchasers shall be joint and several.

22.5 The purchaser hereby irrevocably and in rem suam gives and grants to his/her spouse the right to deal with

all matters arising out of this agreement and to sign any documents relating hereto on his/her behalf.

23. **NOTICES AND DOMICILIA**

23.1 The parties hereby choose domicilium citandi et executandi for all purposes under this agreement at the following addresses:

23.1.1 the seller at the address of the seller's attorneys as set forth in the definitions;

23.1.2 the purchaser at the address set forth in the **schedule "A"** hereto until the occupation date and thereafter the address of the unit hereby sold;

23.2 Any notice to any party shall be addressed to it at its domicilium aforesaid and either sent by prepaid registered post or delivered by hand or sent by fax to the fax number recorded on the schedule "A". In case of any notice:

23.2.1 sent by prepaid registered post, it shall be deemed to have been received, unless the contrary is proved, on the 4th (fourth) day after posting;

23.2.2 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided that such date "is a business day or otherwise on the next following business day."

23.2.3 sent by fax shall be deemed to have been received on the date of the transmission of the fax, provided that such date is a business day as above, and provided the transmitter can display a confirmation report of successful transmission.

24. **NO WITHHOLDING PAYMENTS**

The purchaser shall not be entitled to withhold, delay, abate or set off payment of any amounts due to the seller in terms of this agreement by reason of any breach or alleged breach of the seller's obligations hereunder.

25. **COMMISSION**

25.1 The attorneys shall pay commission, plus VAT thereon, directly to the agent. 50% of the commission due to the agent will be paid by the seller from the deposit paid by the purchaser upon fulfilment of all suspensive conditions, but subject to the consent of the purchaser. The balance of the commission will be paid against registration of transfer.

25.2 The purchaser warrants that the agent is the only agent who introduced him to the unit and to the seller. The purchaser hereby indemnifies and holds the seller free and harmless against any claim, which may be made by any other agent in respect of any commission arising out of the sale of the unit where such agent claims to have actually introduced the purchaser to the unit and/or to the seller in connection with this transaction.

26. **OFFER**

Inasmuch as this agreement, once signed by the purchaser, shall be regarded as an offer by the purchaser, same shall be open and may not be withdrawn by the purchaser until midnight on the 30th (THIRTIETH) day after signature hereof by the purchaser.

27. **RESALES**

Prior to the sale by the seller of all the units in the development, the purchaser shall not sell, alienate or in any way dispose of the unit or ownership thereof except with the prior written consent of the seller, which consent shall not be unreasonably withheld. The purchaser shall ensure and warrants that, in the event of the seller granting such consent, any subsequent agreement relating to the sale, alienation or disposal of the unit, shall contain this clause.

28. **COMPANY/CLOSE CORPORATION/TRUST**

If this Agreement is signed by a person as purchaser purporting to act for and on behalf of a Company, Close Corporation (other than a Company, Close Corporation not yet formed) or Trust, he shall be deemed to warrant that

he is duly authorised to sign this agreement and shall by his signature hereto bind himself in favour of the seller as surety and co-principal debtor in solidum with such Company, Close Corporation or Trust under renunciation of the benefits of division, excussion, cession of action and where applicable *de duobus vel pluribus reis debendi*, for the due performance of all the obligations of the said Company, Close Corporation or Trust in terms of or arising out of this Agreement or any cancellation hereof.

29. **RESOLUTIVE CONDITION**

- 29.1 The purchaser acknowledges that the economic viability of the development depends on the rate and volume of sales achieved by the seller. The purchaser also acknowledges that the seller must meet certain zoning and planning conditions and the building project, which is the subject of this deed of sale, is subject to the municipal approval.
- 29.2 This agreement is subject to the resolutive condition that the seller decides, within its entire discretion to proceed with the development by the development date as defined in the schedule. If the seller does not by the development date despatch by registered, written notice to the effect that the development is not being proceeded with, then the resolutive condition shall be deemed to have been fulfilled and the sale shall be deemed to proceed.
- 29.3 In the event of the resolutive condition not being fulfilled, this agreement shall automatically lapse and the seller shall refund to the purchaser the deposit together with any interest that may have been earned thereon.
- 29.4 Save as aforesaid, the parties shall have no claim against one another.

30. **ELECTRICAL COMPLIANCE CERTIFICATE**

The seller undertakes at its own expense to arrange for the supply to the purchaser of an electrical certificate of compliance in respect of the premises.

31. **CONDITIONS PRECEDENT**

The purchaser acknowledges that the sale and the buildings to be built on the property are subject to:

- 31.1 the approval of the development scheme by the local authority;
- 31.2 the opening of the Sectional Title register in the Cape Town Deeds Office within 3 (three) months calculated as from the date of occupation or such further period as the parties may agree to in writing;
- 31.3 the seller obtaining development finance on acceptable terms from a financial institution.

32. **EXTRAS**

- 32.1 The seller shall not be obliged at any stage to agree to any extras, omissions, variation or changes of any nature whatsoever to the unit, where it is, in the opinion of the architect, not in the interest of the development.
- 32.2 Notwithstanding the foregoing, in the event of the seller agreeing to the execution of extra work then the seller will not proceed with the variations to the unit until such time that payment for such extra work has been made in full, alternatively is secured to the satisfaction of, the seller.
- 32.3 The purchaser acknowledges that variation can delay the completion of the unit and hereby indemnifies the seller against any claims by the purchaser arising out of delays caused as a result of extras.

33. **PROVISIONAL LAYOUT**

- 33.1 It is recorded that the layout of the unit on the plans is a provisional layout and is subject to variation dependent upon sales and letting and the final layout as determined by the seller. In the event of any modifications and/or alterations being required to be made to the layout or the number of areas of the units comprising the development either by the relevant authorities or architect, the purchaser shall accept such

reasonable modification and/or alterations, which he acknowledges, will not constitute grounds to invalidate or cancel this agreement.

- 33.2 The purchaser acknowledges that any development proposals depicted on the plans or on any other development proposal prepared by the seller or its agents, whether in respect of the development pertaining to the unit or any surrounding development shall not be regarded as constituting any inducement or representation of whatsoever nature in the purchaser entering into this agreement.
- 33.3 The seller reserves the right to amend or omit any details indicated or reflected on any annexure hereto by reason of any variation in the site conditions or local authority requirements or amendments thereto or to meet any further requirements or amendments of the seller. In the event of any such variations or omissions, the purchaser shall not be entitled to any compensation therefore and shall accept the unit as completed.

DATED AT _____ . THIS _____ DAY OF _____ 200_____

for **SELLER**, who warrants that he is duly authorised

DATED AT _____ . THIS _____ DAY OF _____ 200_____

for **PURCHASER**, who warrants that he is duly authorised

MILKWOOD

SCHEDULE A

Full names of purchaser

Physical address of purchaser

Postal address of purchaser

.....

.....

Identity Number / Reg. No. :

Full names of Spouse:

Married in/out of

Community of Property:

Date of Marriage:

Place of Marriage:

Telephone Number: (WORK).....

(HOME).....

(CELL).....

(FAX).....

(E-MAIL).....

Purchase Price: Including VAT

Unit No. R

Garage No. R

Carport No R

Parking Bay No R

Balcony R

Optional Extras (annexure "3") R

TOTAL: R

Constituted as follows: Deposit: R

Bond:..... R

Cash Balance: R

Date of granting of bond: Within 30 (thirty) days of signature

Development date (being the date by which the seller may
withdraw from the development in terms of clause 30.)

Estimated Completion:

Occupational Rental: 1 % of VAT Exclusive Purchase Price

Attorneys' details: Smith Tabata Buchanan Boyes
2nd Floor, 5 High Street, Rosenpark, Tygervalley 7536
Telephone number: 021-9433800
Telefax number: 021-9141080/0866 150352
E-mail : henniem@stbb.co.za
Reference: Hennie Mouton/Janice du Toit

Trust account details: ABSA Bank, Bellville Branch (Branch Code 630110)
Account number: 4035042536

ANNEXURE "1"
PLANS

ANNEXURE "2"
BUILDING SPECIFICATIONS