

GARLINGTON CARE CENTRE: LIFE RIGHTS AGREEMENT

between

THE GARLINGTON CARE CENTRE TRUST

("the Developer")

Postal address: PO Box 11
Hilton, 3245

Domicilium: Hilton Quarry Park, Block H, Ground Floor
400 Old Howick Road
Hilton, 3245

Telephone: 033 343 4473/4
Telefax: 033 343 4201
e-mail:

and

GUY MORTON SHAW SMITH

acting as trustee for a close corporation or company to be formed

("the Management Company")

(Contact details and *domicilium* as above)

and

.....

Identity No.

("the Purchaser")

Postal address: _____

Domicilium: _____

Telephone: (h) _____ (b) _____

Telefax: _____

e-mail: _____

1 INTERPRETATION

- 1.1 In this agreement, unless the context clearly indicates the contrary, each reference to –
- 1.1.1 the singular shall include a reference to the plural and *vice versa*;
- 1.1.2 any one gender shall include a reference to each of the other two genders; and
- 1.1.3 a natural person shall include a reference to a body corporate and *vice versa*.
- 1.2 The introduction, set out in clause 2, shall form part of this agreement. Any substantive provisions contained in the introduction or the definitions shall be binding between the parties.
- 1.3 Unless the context otherwise requires, the following words shall have the meanings assigned to them:
- 1.3.1 "**agent**" means of;
- 1.3.2 "**architect**" means Sally Adams Architect, Suite 4, 41 Cedar Road, Durban, 4001;
- 1.3.3 "**attorneys**" means the Developer's attorneys, namely Venn Nemeth and Hart Inc., 281 Pietermaritz Street, Pietermaritzburg, 3200;
- 1.3.4 "**bedroom**" means a single en-suite bedroom without a lounge;
- 1.3.5 "**beneficiary**" means the person nominated by the Purchaser in terms of clause 9.3;
- 1.3.6 "**Care Centre**" means the Garlington Care Centre, which is to be developed on the property in accordance with the plans prepared by the architect;
- 1.3.7 "**Life Right owner**" means a person who has purchased a Life Right and is listed in the register of Life Right owners;
- 1.3.8 "**property**" shall mean Portion A of Erf 284 Garlington as shown by the figure ABCD on the plan attached hereto marked "**A**";
- 1.3.9 "**register of Life Right owners**" means the register referred to in clause 6;
- 1.3.10 "**spouse or partner of the beneficiary**" means the person nominated as such by the Purchaser in terms of clause 9.3; and

1.3.11 "suite" shall include an en-suite bedroom and lounge. A typical suite is as shown on the plan attached hereto as Annexure "B".

2 INTRODUCTION

2.1 The Developer has purchased the property from the Garlington Development Trust and intends developing a Care Centre for people requiring assisted living or frail care facilities.

2.2 The Care Centre will comprise a maximum of thirty suites and en-suite bedrooms. The exact ratio of suites to bedrooms will be determined by the Developer, in its discretion.

2.3 The Care Centre shall be managed by the Management Company on behalf of the Developer.

2.4 The Purchaser wishes to acquire a Life Right in the Care Centre.

3 GRANT OF LIFE RIGHT

3.1 The Developer grants to the Purchaser a Life Right in respect of a suite in the Care Centre on the terms and conditions set out in this agreement.

3.2 The Purchaser acknowledges that the Life Right does not relate to the bedrooms, which shall be let out by the Management Company to non-Life Right owners.

4 CONSIDERATION AND PAYMENT

4.1 The consideration payable by the Purchaser to the Developer for the Life Right is the sum of R.....

4.2 The consideration will be payable as follows *(delete whichever is inapplicable)*:

4.3 Option 1

4.3.1 A deposit of R25 000 shall be paid to the attorneys within 7 days of the purchaser signing this agreement;

- 4.3.2 A further amount of R25 000 shall be paid to the attorneys on or before 31 December 2010;
- 4.3.3 A further amount of R50 000 shall be paid to the attorneys on or before 31 May 2011; and
- 4.3.4 The balance of the consideration shall be paid to the attorneys on or before 30 September 2010. Alternatively, this amount may be secured by one or more bank or attorney's guarantees in terms acceptable to the Developer to be furnished on or before the same date. The guarantee shall secure payment of the balance of the consideration against the issuing of the certificates referred to in clause 4.5.2.
- 4.4 **Option 2**
- 4.4.1 A deposit of R25 000 shall be paid to the attorneys within 7 days of the purchaser signing this agreement;
- 4.4.2 A further amount of R25 000 shall be paid to the attorneys on or before 31 December 2010;
- 4.4.3 A further amount of R50 000 shall be paid to the attorneys on or before 31 May 2011; and
- 4.4.4 The balance of the consideration shall be paid to the attorneys in 24 monthly instalments of R5000 each, the first payment being due on 1 July 2011 and thereafter on the first day of each month, with the final payment being due on 1 June 2012.
- 4.5 The amounts paid by the Purchaser to the attorneys in terms of this clause 4 shall –
- 4.5.1 be held in trust by the attorneys in an interest-bearing account, upon the standard terms applied by the attorneys, with interest accruing for the benefit of the Purchaser pending the issuing of the certificates referred to in clause 4.5.2; and
- 4.5.2 only be released by the attorneys to the Developer upon -
- 4.5.2.1 the architect issuing a certificate confirming that the phase, in respect of which the Purchaser has purchased a Life Right in the Care Centre, has been completed and furnished and is ready for occupation; and

- 4.5.2.2 the Management Company issuing a certificate to the attorneys confirming that it is in a position to manage the Care Centre and to accept patients.

5 INTEREST

In the event that any payment referred to in clause 4 is not paid on due date, then interest shall accrue on the outstanding amount from the date when the payment was due until the date when payment is made to the attorneys. Interest shall be calculated at the prime overdraft rate of the Standard Bank from time to time plus 2%

6 REGISTER OF LIFE RIGHT OWNERS

Within thirty days of the issue of the two certificates referred to in clause 4.5.2, the auditors of the Management Company shall issue a certificate to the Purchaser confirming that the Purchaser has been recorded as an owner of a Life Right in the Care Centre.

7 LEGAL NATURE OF A LIFE RIGHT

- 7.1 The Purchaser acknowledges that the Life Right –
- 7.1.1 creates personal rights and obligations between the Developer, the Management Company and the Purchaser;
 - 7.1.2 does not give the Purchaser any right to any particular suite; and
 - 7.1.3 is not a form of property ownership and cannot be registered against the title deeds of the property.
- 7.2 The Developer undertakes that, in the event that the property is alienated and the Life Right extinguished, the Developer shall pay out to each Life Right owner an amount equivalent to a *pro rata* share in the purchase price of the property or the market value of the Life Right at the time, whichever is the lower.

8 **LIMITING THE NUMBER OF LIFE RIGHTS**

The Developer undertakes to grant no more than 10 Life Rights for every suite built or planned to be built in the Care Centre.

9 **NOMINATION OF BENEFICIARIES**

9.1 Ownership of a Life Right entitles the Purchaser to nominate a beneficiary who will be entitled to occupy a suite at the Care Centre. This person may be –

9.1.1 the purchaser him or herself (and his or her spouse or partner); or

9.1.2 either of the following:

9.1.2.1 a relative of the purchaser who is dependant on the purchaser for more than half of his or her subsistence (and his or her spouse or partner); or

9.1.2.2 with the consent of the trustees of the Garlington Care Centre Trust, a person who is not a relative but who is dependant on the purchaser for more than half of his or her subsistence (and his or her spouse or partner).

9.2 The Purchaser is entitled to make only one nomination of a person or persons other than him or herself.

9.3 The Purchaser acknowledges that –

9.3.1 owning a Life Right does not, in itself, entitle the Purchaser and his or her spouse or partner to occupy a suite at the Care Centre or to receive any of the services offered by the Care Centre; and

9.3.2 only the nominated beneficiary, and his or her spouse or partner, shall be entitled to occupy a suite and receive such services.

9.4 The Purchaser shall nominate a beneficiary by completing and signing the nomination form attached to this agreement as Annexure "D" –

9.4.1 on signature of this agreement; or

9.4.2 by delivering the nomination form to the developer within 30 days of the date of signature of this agreement by the Purchaser.

- 9.5 In the event that the Purchaser fails to exercise a nomination in terms of clause 9.3 within the time period allowed, then the Purchaser, together with his or her spouse or partner as at the date of signature of this agreement by the Purchaser, if any, shall be deemed to be the beneficiary or beneficiaries.

10 DEVELOPMENT OF CARE CENTRE

- 10.1 The Developer shall develop the Care Centre on the property.
- 10.2 The Care Centre once fully complete will comprise of not more than thirty suites and en-suite bedrooms and shall be developed in phases as determined by the Developer.
- 10.3 It is the Developer's intention that the first phase shall comprise of six or seven suites and one or two en-suite bedrooms together with the necessary supporting facilities, and shall be built in accordance with the plan attached hereto marked "C". The Developer shall have the right to change the plan should it deem this necessary but subject to the condition that the facilities provided shall be not less than those shown on the plan and the size of the suites shall not vary by more than ten percent of those shown on the plan. Notwithstanding the foregoing, the exact ratio of suites to bedrooms shall be in the discretion of the Developer.
- 10.4 The Care Centre shall, once complete, comprise a maximum of four houses, each of which shall be capable of accommodating between six and ten beneficiaries in separate rooms or suites, provided that this may be varied in the Developer's discretion.
- 10.5 The Developer shall not be obliged to develop more than the first phase and the supporting facilities.
- 10.6 Construction of the building of the first phase shall not commence until such time as the Developer has granted 60 Life Rights. The Developer intends, but is not obliged to, construct subsequent phases as follows:
- 10.6.1 the second phase once the Developer has granted 100 Life Rights;
- 10.6.2 the third phase once the Developer has granted 140 Life Rights; and
- 10.6.3 the fourth phase once the third phase has been completed.

- 10.7 The en-suite bedrooms and suites shall be furnished by the beneficiaries at their cost and with their personal furniture, while the common facilities shall be furnished by and at the cost of the Developer.

11 OCCUPATION OF A SUITE

- 11.1 The beneficiary, and his or her spouse or partner, shall have the right to occupy a suite in the Care Centre from the occupation date until -

11.1.1 the termination of the Life Right; or

11.1.2 the death of the beneficiary and his or her spouse or partner,

whichever occurs last, provided that a medical practitioner appointed by the Management Company from time to time has certified that the beneficiary or his or her spouse or partner is reasonably in need of the care and services offered by the Care Centre.

- 11.2 The beneficiary, and his or her spouse, shall give to the Management Company not less than 30 days notice in writing of his or her intention to take occupation of a suite in the Care Centre.

- 11.3 The Beneficiary is not guaranteed that accommodation will be available in the Care Centre at all times. In the event that –

11.3.1 all the suites have been allocated at any one time, then the Management Company may place a beneficiary, or his or her spouse or partner, in one of the bedrooms until such time as a suite is available; and

11.3.2 neither a suite nor a bedroom is available, the Management Company shall offer the services available at the Care Centre to the beneficiary in the beneficiary's home (provided that this home is within 20 kilometres of the Care Centre) or such alternative accommodation as may be arranged between the beneficiary and the Management Company.

- 11.4 The Management Company shall allow a beneficiary and his or her spouse to share a room in a suite should they so choose.

12 **SHORT-TERM LEASES TO NON-LIFE RIGHT OWNERS**

The Management Company may, during periods of low occupancy, lease one or more bedrooms to non-Life Right owners at a rental higher than the levy payable by beneficiaries and for periods not exceeding 30 days at a time. The suite may be let for longer periods at the discretion of the Management Company but they shall be obliged to take into account the requirements of the Life Right owner and their nominee.

13 **MONTHLY CARE CENTRE LEVY**

- 13.1 From the date when the beneficiary, or his or her spouse or partner, takes occupation of a suite or bedroom, the beneficiary, spouse or partner shall be liable for the payment of a monthly levy.
- 13.2 The monthly levy shall be fixed by the Management Company from time to time and shall cover services and facilities set out below. The monthly levy payable by beneficiaries and their spouses or partners shall be less than that payable by non-Life Right owners in respect of suites or bedrooms leased.
- 13.3 In the case of a spouse or partner sharing a suite with the beneficiary, then the levy for the spouse or partner shall be seventy percent of the monthly levy.
- 13.4 The monthly levy shall include the following:
- 13.4.1 Accommodation in a suite or a bedroom;
 - 13.4.2 Three meals a day and refreshments;
 - 13.4.3 A bedroom cleaning service, including the daily making of beds;
 - 13.4.4 Laundry services for linen and personal clothing;
 - 13.4.5 Primary or basic nursing care;
 - 13.4.6 Daily bathing and dressing assistance if necessary;
 - 13.4.7 Electricity and water;
 - 13.4.8 Rates, taxes and homeowners' association levies;
 - 13.4.9 A 24-hour nursing call system;
 - 13.4.10 Building and public liability insurance;
 - 13.4.11 Maintenance of all gardens;

- 13.4.12 Management accounts, investments and cash management;
 - 13.4.13 Administration of all medicines;
 - 13.4.14 General health monitoring in conjunction with the beneficiary's doctor or alternatively a doctor appointed by the Management Company;
 - 13.4.15 Maintenance of the interior and exterior of the buildings; and
 - 13.4.16 Reception facilities.
- 13.5 The monthly levy shall be payable on the first day of each month, the first payment being made on or before the occupation date.
- 13.6 Excluded from the levy, and the services offered by the Care Centre, are the following:
- 13.6.1 Professional fees including those of doctors and specialists;
 - 13.6.2 Hospital fees;
 - 13.6.3 Medicines, dressings and other medical consumables;
 - 13.6.4 Specialised and/or intensive nursing care; and
 - 13.6.5 Extra meals, which may be required by guests of the Beneficiary.
- 13.7 For the purpose of clarity, it is recorded that the Care Centre is a frail care facility and not a hospital or specialized geriatric unit, capable only of providing primary nursing care. Any occupant requiring specialised care treatment, supervision or nursing shall not be able to receive this at the Care Centre.
- 13.8 No guarantee is given that the Care Centre, being a frail care facility, is capable of meeting the occupant's frail care needs.
- 13.9 The beneficiary's obligation to pay the levy shall cease on the last day of the calendar month during which the Life Right Agreement is terminated, subject however to the beneficiary granting to the Management Company vacant occupation of the suite or bedroom.

14 THE BENEFICIARY'S OBLIGATIONS

The beneficiary hereby agrees:

- 14.1 To co-operate with the management and staff of the Management Company in the execution of their duties;
- 14.2 Be responsible for insuring their own possessions, it being noted that the Management Company and the Developer take no responsibility for the Occupant's possessions regardless of their value;
- 14.3 Refrain from any action that may increase insurance premium payable or adversely affect the insurance policy in respect of the Care Centre;
- 14.4 Abide by the house rules of the Care Centre and the house rules of the Garlington Homeowners Association; and
- 14.5 Keep the interior of the suite or bedroom in good order. The occupant shall however be entitled to hang pictures and or make such modifications to the suite as may be agreed upon by the Management Company. Any modifications shall however be undertaken on the basis that upon the termination of the Life Rights, the unit shall be restored to the condition that it was at the time when the beneficiary took occupation. The cost of any remedial work shall be for the account of the beneficiary and shall be deducted from the consideration, which the purchaser or the purchaser's estate shall be entitled to in terms of this agreement.

15 **THE MANAGEMENT COMPANY'S OBLIGATIONS**

The Management Company shall be responsible for the management and operation of the Care Centre, which shall include and not be limited to:

- 15.1 Ensuring that services provided to the beneficiaries are provided in a proper manner;
- 15.2 Employing and supervising all staff required to give the necessary services;
- 15.3 Maintaining the buildings of the Care Centre;
- 15.4 Preparing annual budgets;
- 15.5 Ensuring that the Life Right register is maintained;
- 15.6 Ensuring that all levies and municipal rates due are paid to the Garlington Homeowners Association and local authority;

- 15.7 Maintaining all gardens, which form part of the Care Centre;
- 15.8 Insuring all the buildings; and
- 15.9 Providing such nursing facilities as are normally associated with frail care facilities.

16 **SUCCESSION**

- 16.1 A Life Right holder shall be entitled, at any time prior to the termination of a Life Right, to propose the beneficiary's successor to the Life Right. The successor may be –
 - 16.1.1 the Life Right owner him or herself (and his or her spouse or partner), if he or she was not the beneficiary; or
 - 16.1.2 a dependant or relation who is primarily dependent on the Life Right owner (and his or her spouse or partner); or
 - 16.1.3 if the Life Right Holder owns a property at Garlington, the successor in title to that property (and his or her spouse or partner).
- 16.2 The Purchaser shall nominate a successor to the beneficiary by completing and signing the successor nomination form attached to this agreement as Annexure "E" and delivering the same to the Developer at any time prior to termination of this agreement.
- 16.3 The Life Right holder's proposals in this regard shall be subject to approval by the Garlington Care Centre Trust.
- 16.4 A refurbishment levy shall be payable on each succession, as contemplated in clause 20. The levy is payable before transfer of the Life Right is entered in the Register of Life Right Holders.

17 **TERMINATION OF THE LIFE RIGHT**

A Life Right shall be terminated upon the happening of any of the following events:

- 17.1 On a death of both the beneficiary and the beneficiary's spouse or partner, unless a successor has been nominated in terms of clause 16; or
- 17.2 On mutual agreement between the parties that the Life Right be terminated; or

- 17.3 Upon the Purchaser giving two calendar months notice to terminate the Life Right.

18 TERMINATION OF OCCUPATION

- 18.1 The Purchaser or his or her beneficiary (or spouse or partner), as the case may be, shall vacate the Centre:
- 18.1.1 Upon cancellation of the Life Right in terms of clause 19 below; or
- 18.1.2 The Management Company's medical practitioner certifies that the condition of the Purchaser or his or her beneficiary (or spouse or partner), as the case may be, is such that he or she cannot be adequately cared for in the Care Centre or that his or her condition is disruptive to the normal routine of the Care centre and or other occupants.
- 18.2 If the Purchaser or his or her beneficiary (or spouse or partner) disputes the cancellation of the right of occupation, and remains in occupation, then the levy shall continue to be payable.
- 18.3 The beneficiary, or his spouse or partner, as the case may be, shall vacate any suite or bedroom occupied in terms of this agreement on or before the last day of the month in which this agreement is terminated.

19 BREACH

Should the Purchaser –

- 19.1 fail to pay any amount of money due in terms of this agreement on due date and fail to remedy such breach within 7 days of written notice requiring the breach to be remedied; or
- 19.2 commit a material breach of any other term or condition of this agreement and fail to remedy such breach within 30 days of written notice requiring the breach to be remedied,

then the Developer will be entitled, at its option, either to cancel this agreement and claim damages or to claim specific performance of all the Purchaser's obligations, together with damages, if any, whether or not such obligations have fallen due for performance. On cancellation of this agreement, the Purchaser or his or her beneficiary

(or spouse or partner), as the case may be, shall immediately vacate the centre. If the Purchaser or his or her beneficiary (or spouse or partner) disputes the cancellation of the agreement, and remains in occupation, then the levy shall continue to be payable.

20 CONSEQUENCES OF TERMINATION OF LIFE RIGHT

- 20.1 Upon termination of this agreement, the Management Company shall determine the market value of the Life Right.
- 20.2 Once the value of the Life Right has been determined, then the Management Company shall:
- 20.2.1 if the Purchaser has nominated a successor, offer the Life Right to the successor, subject to payment of a refurbishment levy equivalent to –
- 20.2.1.1 10% of the market value of the Life Right where the beneficiary has lived in the Care Centre for less than 12 months;
- 20.2.1.2 20% of the market value of the Life Right where the beneficiary has lived in the Care Centre for more than 12 months but less than 24 months; and
- 20.2.1.3 30% of the market value of the Life Right where the beneficiary has lived in the Care Centre for more than 24 months,
- 20.2.2 if the Purchaser has not nominated a successor, offer the Life Right for sale to a third party and, upon sale, pay the proceeds to the estate of the deceased less a refurbishment levy equivalent to -
- 20.2.2.1 10% of the market value of the Life Right where the beneficiary has lived in the Care Centre for less than 12 months;
- 20.2.2.2 20% of the market value of the Life Right where the beneficiary has lived in the Care Centre for more than 12 months but less than 24 months; and
- 20.2.2.3 30% of the market value of the Life Right where the beneficiary has lived in the Care Centre for more than 24 months.
- 20.3 On the above happening the auditors shall amend the Life Right Register to record the transfer of the Life Right and a new certificate shall be issued, against surrender

of the old certificate or submission of an affidavit by the purchaser declaring that, after diligent search, the old certificate cannot be found.

- 20.4 The Management Company shall be entitled to set off any monies due by the Purchaser or his or her beneficiary (or spouse or partner) in respect of accommodation, services or products provided by the Care Centre against any monies due to the Purchaser in terms of this clause 20.

21 AGENT'S COMMISSION

- 21.1 The Purchaser warrants that the Purchaser was introduced to the Developer by the Agent and that the Agent is the effective cause of this sale.
- 21.2 The Developer shall pay the Agent's commission, namely 5% of the purchase price, when –
- 21.2.1 the Developer has commenced construction of the first phase of the Care Centre; and
- 21.2.2 60 Life Rights have been sold.
- 21.3 The commission shall be payable from the deposit paid by the Purchaser to the attorneys and the Purchaser consents to the release of the Agent's commission on the basis set out in this clause.
- 21.4 If this sale is cancelled through the default of the Purchaser, then the Agent shall have no claim against the seller, but the Purchaser shall be liable for the payment of the commission to the Agent. In this regard, the Purchaser gives the attorneys irrevocable authority to pay an amount equivalent to the commission to the Agent from any monies held by the attorneys on behalf of the Purchaser.

22 MISCELLANEOUS MATTERS

22.1 addresses and notices

- 22.1.1 For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose *domicilium citandi et executandi* ("**domicilium**") at the addresses recorded on the first page of this agreement.

22.1.2 A party may at any time change that party's *domicilium* by notice in writing, providing that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.

22.1.3 Any notice given in connection with this agreement shall be delivered by hand or be sent by prepaid registered post to the *domicilium* chosen by the party concerned.

22.1.4 A notice given as set out above shall be deemed to have been duly given, if delivered, on the date of delivery or if sent by post, 4 days after posting.

22.2 **entire contract**

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

22.3 **variation and cancellation**

No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

22.4 **indulgences**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement.

Signed on behalf of the Developer at on
..... 2010.

As witness:

for: **GARLINGTON CARE CENTRE
TRUST**
duly authorised hereto

Signed on behalf of the Management Company at on
..... 2010.

As witness:

for: **THE MANAGEMENT COMPANY**

Signed by the purchaser at on
..... 2010.

As witness:

THE PURCHASER

Signed by the Agent at on
..... 2010.

I,
of
hereby accept the benefits confirmed under this agreement.

As witness:

THE AGENT