

Elaleni

COASTAL FOREST ESTATE

MEMORANDUM OF AGREEMENT

made and entered into between

WESLEY PAUL BENCH-CAPON and INGO KLAUS GERHARD ROOLF
in their capacity as trustees for a company formed or to be formed
("the Seller")

and

("the Purchaser")

THE SCHEDULE

A. THE SELLER:

(vide clause 14.5)

WESLEY PAUL BENCH-CAPON and INGO KLAUS GERHARD ROOLF
in their capacity as trustees for a company formed or to be formed

B. SELLER'S ADDRESS:

Physical Address: 2 Shrimp Lane, Salt Rock 4391
Postal Address: P.O. Box 901 Ballito 4420
Telephone Number: 032 525 4477 / 0871951167
Email address: gertruida@ngg.co.za

C. THE PURCHASER:

1. _____ I.D. No. _____
_____ I.D. No. _____
 2. _____ Reg. No. _____
herein represented by _____ in his/her capacity as a member of the close corporation
/ director of the company he/she being duly authorised thereto
 3. _____ Reg. No. IT _____
herein represented by _____ in his/her capacity as a trustee of the Trust he/she being
duly authorised hereto
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D. THE PURCHASER'S ADDRESS AND CONTRACT DETAILS:

Addresses:

Physical Address: _____
Postal Address: _____

Telephone Numbers:

Home: _____
Business: _____
Cellular: _____

Others:

Facsimilie: _____
Email address: _____

E. DESCRIPTION OF THE LAND OF WHICH THE PROPERTY FORMS A PART (PARENT PROPERTY):

Remainder of Portion 38 of the Farm Lot 61 No. 1521, Registration Division FU, Province of KwaZulu-Natal, in extent 50,0742 (FIFTY COMMA ZERO SEVEN FOUR TWO) hectares (to be redesignated as Erf 910 Sheffield Beach)

F. NAME OF DEVELOPMENT:

ELALENI COASTAL FOREST ESTATE

G. DESCRIPTION OF PROPERTY:

Proposed Erf _____ Sheffield Beach, Registration Division FU, Province of Kwazulu-Natal, in extent approximately _____ square metres

H. PERMITTED USE OF PROPERTY:

It is recorded that the Property hereby sold may be used for residential purposes only.

I. PURCHASE PRICE OF PROPERTY:

(vide Clause 3)

The purchase price of the Property shall be the sum of R _____
(_____ RAND)
inclusive of Value Added Tax ("the Purchase Price")

J. DEPOSIT:

(vide Clause 3.2)

A deposit in the sum of R _____
(_____) shall be paid by the Purchaser within a period of 5 (FIVE) business days of the date of signature of this Agreement.

K. BALANCE OF PURCHASE PRICE:

(vide Clauses 3.4 & 4)

- i) the sum of R _____
(_____ RAND)
shall be paid in accordance with clause 3.4 of the Terms and Conditions of Sale;
 - ii) the sum of R _____ (_____ RAND) shall be paid out of the proceeds of the loan to be obtained by the Purchaser in terms of clause 4 of the Terms and Conditions of Sale.
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L. AMOUNT OF LOAN REQUIRED BY PURCHASER:

(vide Clause 4)

R _____ (_____ RAND)

M. DATE BY WHICH LOAN TO BE GRANTED:

Within a period of 21 (TWENTY ONE) business days of the date of signature of this Agreement.

N. DATE OF POSSESSION:

(vide Clause 6)

The date of registration of transfer of the Property into the name of the Purchaser.

O. SALES ADMINISTRATOR (IF APPLICABLE):

Name: _____

P. ESTIMATED LEVIES:

(vide Clause 11)

- i) R 2150.00 (TWO THOUSAND ONE HUNDRED AND FIFTY RAND) plus value added tax thereon if applicable being the estimated monthly levy payable by the Purchaser to the Association;
 - ii) R 15 000.00 (FIFTEEN THOUSAND RAND) plus value added tax thereon if applicable being the amount payable by the Purchaser towards the Levy Stabilisation Fund established in terms of the Associations Memorandum of Incorporation. This amount is payable by the Purchaser within 7 (SEVEN) days of request for such payment by the Conveyancers and shall be held in an interest bearing account, all interest to accrue for the benefit of the Purchaser until the Transfer Date, whereupon the Conveyancers shall pay the capital to the Association and all accrued interest, less their usual fee, to the Purchaser.
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Q. PLACE OF PAYMENT OF PURCHASE PRICE:

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 to the Conveyancers at the address as set out in S below unless otherwise advised in writing by the Seller.

R. THE DATE ON WHICH THE RISK, PROFIT AND LOSS OF THE PROPERTY SHALL PASS TO THE PURCHASER:

The date stated in paragraph N above.

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S. THE CONVEYANCERS:

COX YEATS ATTORNEYS

Umhlanga: 21 Richefond Circle, Ridgeside Office Park, Umhlanga Ridge
Ballito: 42 Cussonia Way, Shakas Rock Road, Simbithi Main Gate, Ballito
Telephone Number: (031) 536 8500
Email: thalstead@coxyeats.co.za / ipaola@coxyeats.co.za

TRUST ACCOUNT DETAILS:

Account Name : Cox Yeats
Bank : Standard Bank of South Africa Limited
Branch : Kingsmead Branch
Branch code : 04 00 26
Account number : 05 011 3682
Reference : ELALENI (Erf No. _____)

T. THE PARTY LIABLE FOR THE COSTS OF TRANSFER OF THE PROPERTY:

The Purchaser

U. LIST OF ANNEXURES:

Annexure "A" - TERMS AND CONDITIONS OF SALE
Annexure "B" - ESTATE LAYOUT PLAN
Annexure "C" - SITE & FOOTPRINT PLAN OF PROPERTY
Annexure "D" - PROPOSED PLAN OF GATEHOUSE AND OFFICES

V. SPECIAL CONDITIONS:

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ANNEXURE "A"

TERMS AND CONDITIONS OF SALE

- A. It is recorded that for the purposes of this Agreement the Seller is acting in the ordinary course of business.
- B. If the Purchaser is a natural person or a juristic person with an annual turnover or asset value less than the threshold determined by the Minister in terms of the Consumer Protection Act No. 68 of 2008, as amended ("the CPA") (currently more than the threshold determined by the Minister as defined in terms of the CPA, the sale of the Property to the Purchaser in terms of this Agreement, is exempt from the provisions of the CPA (save for the provisions of section 60 and 61 thereof).
- C. If the Purchaser is a juristic person with an annual turnover or asset value currently more than the threshold determined by the Minister as defined in terms of the CPA, the sale of the Property to the Purchaser in terms of this Agreement, is exempt from the provisions of the CPA (save for the provisions of section 60 and 61 thereof).
- D. In the event of paragraph C above being applicable, the Purchaser warrants to the Seller that its asset value or annual turnover at the Date of Signature and the Transfer Date shall equal or exceed the threshold determined by the Minister as defined in terms of section 6 of the CPA (currently R2 000 000.00 (TWO MILLION RAND) and the Purchaser shall furnish the Seller with a copy of its last audited financial statements or its auditor/accountants written confirmation and such other information in respect to the Purchaser as the Seller may reasonably require in order to confirm the Purchaser's asset value and/or turnover, within a period of 7 (SEVEN) days of being requested to do so by the Seller.

PREAMBLE:

WHEREAS:

- 1. The Seller is about to become the registered owner of the Parent Property more fully described in paragraph E of the Schedule to this Agreement.
- 2. The Seller will be registering a General Plan and/or Plans against the Parent Property as shown on the Estate Layout Plan annexed hereto marked "B".
- 3. The Seller will be developing the Parent Property in phases.
- 4. The Purchaser wishes to purchase the Property described in paragraph G of the Schedule to this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1.

DEFINITIONS

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

- 1.1. "this Agreement" - means the Schedule, the Terms and Conditions and all annexures thereto;

- 1.2. "the Approval Date" - means the date that the Kwadukuza Municipality issues the certificate in terms of Section 31 of the PDA in respect of the Property rendering the Property transferable;
- 1.3. "the Association" - means the Elaleni Coastal Forest Estate Homeowners Association (RF) NPC, a non profit company to be incorporated by the Seller in terms of the Companies Act No. 71 of 2008, as amended;
- 1.4. "the CSOSA" - means the Community Schemes Ombud Service Act No. 9 of 2011, and any regulations thereunder as amended from time to time;
- 1.5. "the Conveyancers" - means the Seller's conveyancers Cox Yeats Attorneys referred to in paragraph S of the Schedule;
- 1.6. "the Conditions of Establishment" - means the Conditions of Establishment as contained in the Record of Decision;
- 1.7. "the CPA" - means the Consumer Protection Act No. 68 of 2008 and any regulations thereunder as amended from time to time;
- 1.8. "the Consumer Regulations" - means the regulations promulgated pursuant to the CPA under Government Notice R293 in Government Gazette 34180 of 1 April 2011;
- 1.9. "the Date of Completion" - means the date on which the Purchaser delivers to the Association the certificate of practical completion issued by the Purchaser's accredited architect in respect of the erection of a dwelling on the Property, the occupation certificate issued by the Kwadukuza Municipality and the final as built plans prepared by the Purchaser's architect and approved by the Kwadukuza Municipality and same are accepted by the Association in writing as being in order;
- 1.10. "the Date of Possession" - means the date specified in paragraph N of the Schedule;
- 1.11. "the Date of Signature" - means the date upon which the last signing party signs this Agreement
- 1.12. "the Development Manual" - means the development manual prepared by the Seller's architect (which may be amended by the Association from time to time) which sets out the manner in which erven within the Estate shall be developed and which is available for inspection at the offices of the Seller and which shall be available for inspection in the future at the offices of the Association;
- 1.13. "the Development Period" - means the period from the date of issue of the Record of Decision to the date of registration of transfer of the last erf and/or unit in the Estate from the Seller to third party purchasers or the date upon which the Seller gives written notice to the Association of the termination of the Development Period, whichever occurs first;
- 1.14. "the Dwelling Occupation Date" - means the date that the Purchaser takes occupation of the dwelling



that he intends erecting on the Property which shall not be before the Municipality has issued a certificate of occupancy as prescribed by section 14 of the National Building Regulations and Building Standards Act No. 103 of 1977 and the regulations promulgated thereunder as amended from time to time and the Association confirms in writing that the Purchaser has complied with all of its requirements;

- 1.15. "the Environmental Impact Assessment and Environmental Plan"- means the approved Environmental Impact Assessment and the Environmental Management Plan for the Estate which is available for inspection at the offices of the Seller and which shall be available for inspection in the future at the offices of the Association;
- 1.16. "the Estate Layout Plan" - means the Estate Layout Plan annexed hereto marked "B" which shows the immovable properties comprising the Estate;
- 1.17. "the Estate" - means the Elaleni Coastal Forest Estate;
- 1.18. "the Estate Planting Palette" - means the estate planting palette prepared by the Seller's landscape architect and which is available for inspection at the offices of the Seller and which shall be available for inspection in the future at the offices of the Association;
- 1.19. "the Site and Footprint Plan" - means the Site and Footprint Plan annexed hereto marked "C" showing the Property and the building footprint;
- 1.20. "the General Plan" - means the General Plan or Plans to be registered by the Seller over the Parent Property;
- 1.21. "Juristic Person" - means a partnership, an association, a trust, a body corporate, a company, a close corporation or other legal or juristic person;
- 1.22. "the Land Surveyor" - means the Land Surveyor nominated by the Seller;
- 1.23. "the MOI" - means the Memorandum of Incorporation of the Association which shall be available for inspection at the offices of the Seller on or before the 31 December 2016;
- 1.24. "the Municipality" - means the Kwadukuza Municipality;
- 1.25. "the Parties" - means the Seller and the Purchaser as such referred to in this Agreement;
- 1.26. "the Parent Property" - means the immovable property described in paragraph E of the Schedule;
- 1.27. "the PDA" - means the Kwazulu-Natal Planning and Development Act No. 6 of 2008 as amended and any regulations thereunder as amended from time to time;



- 1.28. "the Property" - means the Property described in paragraph G of the Schedule;
- 1.29. "the Purchaser" - means the party referred to in paragraph C of the Schedule;
- 1.30. "the Record of Decision" - means the approval issued by the Municipal Planning Tribunal of the Kwadukuza Municipality;
- 1.31. "the Rules" - means the Rules of the Association as referred to in the Terms and Conditions of Sale;
- 1.32. "the Schedule" - means the Schedule preceding the Terms and Conditions of Sale and which is deemed to be part of this Agreement;
- 1.33. "the STSMA" - means the Sectional Titles Schemes Management Act No. 8 of 2011 and any regulations thereunder as amended from time to time;
- 1.34. "the Seller" - means the party referred to in paragraph A of the Schedule;
- 1.35. "SPLUMA" - means the Spatial land Use Management Act No. 16 of 2013 as amended and any regulations thereunder as amended from time to time;
- 1.36. "the Town Planning By-Laws" - means the Kwadukuza Municipality's Spatial Planning and Land Use Management By-Laws in force and as amended from time to time;
- 1.37. "the Town Planning Scheme" - means the Umhlali Beach Town Planning Scheme / Kwadukuza Land Use Scheme of the Kwadukuza Municipality or any successor thereto;
- 1.38. "the Transfer Date" - means the date of registration of the Property into the name of the Purchaser in the Deeds Registry at Pietermaritzburg;
- 1.39. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of this Agreement;
- 1.40. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law;
- 1.41. This Agreement shall be governed by and construed according to the laws of the Republic of South Africa. Notwithstanding the place of signature of this Agreement, this Agreement shall be deemed to have been concluded in Durban, Province of KwaZulu-Natal.
- 1.42. For the purposes of this Agreement whenever any number of days is prescribed, they shall consist of all days ie. including Saturdays, Sundays or South African public holidays unless the words "business days" is prescribed in which event they shall consist of all days excluding Saturdays, Sundays and South African Public holidays. In both instances, when calculating the prescribed number of days the first day shall be excluded and the last day shall be included;
- 1.43. Any reference to any statutes or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;

- 1.44. A fully executed facsimile copy of this Agreement shall be accepted as an original and this Agreement may be signed in counterparts and will be effective as such each of which will be deemed an original and all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts;
- 1.45. Any reference to "Business Hours" shall be construed as being the hours between 8.30am and 5.00pm on any business day. Any reference to "time" shall be interpreted as South African Standard Time;
- 1.46. Where figures are referred to in numerals and in words and there is any conflict between the two, the words shall prevail, unless the context clearly indicates the contrary intention;
- 1.47. The terms defined in this Agreement shall be construed as binding provisions and any rights conferred and obligations imposed upon the Parties by such definitions shall be binding upon them;
- 1.48. Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 1.49. In this Agreement, the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 1.50. No provision herein shall be construed against or interpreted to the disadvantage of a party by reason merely of the fact of such party having or being deemed to have drafted, introduced or structured such provision;
- 1.51. In the event that any of the provisions of this Agreement are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms which shall continue to be valid and enforceable;
- 1.52. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this;
- 1.53. To the extent that this Agreement is signed on a date which results in the use of any tense being inappropriate, the Agreement shall be read in the appropriate tense;
- 1.54. If any provision in a definition or in this clause 1 is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.55. This Agreement shall be binding on and shall be enforceable by the estates, heirs, executors, administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectively as if they had signed this Agreement in the first instance and reference to any party shall be deemed to indicate such party's estate, heirs, executors, administrators, trustees, successors in title, successors in office, assigns or liquidators as the case may be;
- 1.56. This Agreement incorporates the Annexures, which Annexures shall have the same force and effect as if set out in the body of this Agreement. The various documents forming part of this Agreement are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Agreement shall prevail.

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2.

SALE

- 2.1. The Seller hereby sells to the Purchaser who hereby purchases the Property set out in the Schedule subject to and in accordance with the Schedule, the Terms and Conditions of Sale, the annexures hereto and the documents referred to in paragraphs 1.6, 1.12, 1.15, 1.16, 1.18, 1.23 and 1.31 hereof.
- 2.2. The Purchaser acknowledges that the Property will be situated on the Parent Property substantially as depicted on the Estate Layout Plan annexed hereto marked "B".

3.

PAYMENT OF PURCHASE PRICE

- 3.1. The purchase price reflected in paragraph I of the Schedule shall be paid to the Seller by the Purchaser in cash against registration of transfer of the Property into the name of the Purchaser.
- 3.2. The deposit reflected in paragraph J of the Schedule shall be paid within the time period recorded therein and shall be held in trust by the Conveyancers pending registration of transfer of the Property to the Purchaser.
- 3.3. The Conveyancers are hereby authorized by the Seller and the Purchaser to invest any monies paid in by the Purchaser in an interest bearing account with a registered bank and all such interest earned thereon less the Conveyancers usual fee until registration of transfer of the Property to the Purchaser shall accrue for the benefit of the Purchaser and thereafter for the benefit of the Seller. The Purchaser acknowledges that:
 - 3.3.1. the Conveyancers are designated as an "accountable institution" in terms of the Financial Intelligence Centre Act No. 38 of 2001 ("FICA");
 - 3.3.2. certain obligations are placed on the Conveyancers in terms of FICA and the Prevention of Organised Crime Act No. 21 of 1998 ("POCA") and the Regulations promulgated in terms thereof and the Foreign Account Tax Compliance Act of the United States of America and the inter-government agreement for FACTA compliance concluded between the United States of America and the Republic of South Africa;
 - 3.3.3. the Conveyancers are not able to invest the amount referred to in paragraph J of the Schedule, nor any other amount paid into trust with them on the Purchaser's behalf until such time as the Purchaser has complied with the requirements of the Financial Intelligence Centre Act No. 28 of 2001, as amended, and has signed the necessary investment mandate, both of which the Purchaser undertakes to do as soon as possible after request therefor by the Conveyancers;
 - 3.3.4. as required by the Kwazulu-Natal Law Society, while any funds are so invested on the Purchaser's behalf, such funds are not protected against a possible liquidation of the bank in which such funds are invested;
 - 3.3.5. the investment shall be on a temporary basis pending transfer of the Property to the Purchaser or the earlier termination of this transaction. The Conveyancers shall have exclusive control of the account into which any funds have been deposited and shall, upon completion or termination of this transaction, account to the Purchaser for the interest earned less their costs of administering the investment.
- 3.4. The balance of the purchase price reflected in paragraph K of the Schedule shall be paid in cash to the Seller against registration of transfer of the Property to the Purchaser. The Purchaser shall furnish the Conveyancers with a guarantee from a registered South African Commercial bank in a form and on terms acceptable to the Seller and the Conveyancers securing payment of the aforementioned amount within 21 (TWENTY ONE) business

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days of the date of signature of this Agreement, however, in the event that the Purchaser requires a loan in respect of such balance then the aforementioned guarantee shall be delivered by the Purchaser to the Conveyancers within a period of 7 (SEVEN) business days of request therefore by the Conveyancers, provided that such guarantee shall not be called for by the Conveyancers until the loan referred to in clause 4 below has been approved. The Purchaser shall be entitled to pay the balance of the purchase price in cash in which event same shall be invested by the Conveyancers in the manner and on the terms provided for in clause 3.3 above.

- 3.5. It is recorded that in as much as the purchase price is the Value Added Tax ("VAT") inclusive price determined at the current rate of 14 (FOURTEEN) percent, in the event of the rate at which Vat is chargeable being amended after the date of the 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.
- 3.6. It is recorded that the Seller will at the relevant time be registered as a vendor in terms of the Value Added Tax Act, 1991 as amended.
- 3.7. All and any bank charges incurred by the Conveyancers and the Seller in connection with this transaction shall be for the account of the Purchaser.

4.

LOAN

- 4.1. Should the Purchaser indicate, by completing paragraph L of the Schedule, that the Purchaser requires a loan to finance the purchase price or any balance thereof, then this Agreement shall be subject to and conditional upon the Purchaser being able to raise a bank or other financial institution loan in principle for not less than the amount reflected in paragraph L of the Schedule by no later than the date reflected in paragraph M of the Schedule or by such later date as the Seller may agree to in writing.
- 4.2. The Purchaser shall forthwith apply for and use his best endeavours to raise the abovementioned loan against the security of the Property and warrants in favour of the Seller that he is fully aware of and understands the customary requirements of financial institutions regarding eligibility based on income, credit rating and other qualifications, particularly the considerations applied by financial institutions in terms of the provisions of the National Credit Act No. 34 of 2005. The Purchaser further warrants that he is eligible for a loan in an amount not less than the amount reflected in paragraph L of the Schedule and that it is a material term of this agreement that he provides the relevant financial institutions with the necessary documentation and failure to do so will constitute a breach of this Agreement and shall have the effect of this clause being fictionally fulfilled.
- 4.3. The required loan shall be deemed to have been approved upon:
 - 4.3.1. the issue by the relevant financial institution of an approval in principle in writing; or
 - 4.3.2. the issue by the relevant financial institution of a quotation and statement as defined in the National Credit Act No. 34 of 2005 in the event of the financial institution granting the required loan applying the provisions of that Act.
- 4.4. Provided that the Purchaser has complied in full with the provisions hereof, this sale shall lapse and be of no force or effect whatsoever if the Purchaser is unable to raise the required loan by the date reflected in paragraph M of the Schedule or such later date as may be agreed to by the Seller in writing. In such event, any amounts

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paid by the Purchaser on account of the purchase price shall be refunded to him together with all interest thereon. It is recorded that this clause has been inserted for the benefit of both the Seller and the Purchaser.

- 4.5. Should a loan be granted to the Purchaser for an amount less than the amount reflected in paragraph L of the Schedule then the Purchaser shall be entitled to accept such loan provided that the Purchaser immediately pays an amount equal to the difference between the amount equal to the difference between the amount of the loan granted to the Purchaser by the financial institution concerned and the balance of the purchase price.
- 4.6. Should a loan be granted to the Purchaser for the full amount of the purchase price notwithstanding the fact that a deposit has been paid by the Purchaser, then the Conveyancers shall continue to hold the deposit in trust until the date of registration of transfer of the Property to the Purchaser.

5.

ACKNOWLEDGEMENTS BY PURCHASER

- 5.1. The Purchaser acknowledges that:
 - 5.1.1. he has acquainted himself with the layout of the Estate and has acquainted himself with the nature, condition, locality and extent of the Property;
 - 5.1.2. he accepts the Property subject to the servitudes, other real rights and conditions, if any burdening or benefiting the Property whether existing or hereafter imposed:
 - 5.1.2.1. in terms of the Seller's Title Deeds and/or any prior deed/s of the Parent Property;
 - 5.1.2.2. in terms of the Record of Decision;
 - 5.1.2.3. by the Seller as conditions of title, in particular the conditions set out in clause 18 hereof;
 - 5.1.2.4. in terms of the Rules of the Association;
 - 5.1.3. he is aware of the intended future development of the Parent Property by the Seller. Such development is intended to involve the establishment of additional residential erven and/or units (commercial and residential) on various portions of the Parent Property and/or the acquisition of additional property to be incorporated into the Estate. The Purchaser hereby undertakes that he will, at all times, co-operate with the Seller in an endeavour to facilitate the success of the said development and he undertakes not to interfere with any such proposed development nor lodge an objection with any competent authority in respect of any such development. The Purchaser agrees he will not object to any application made by or on behalf of the Seller, its nominee or agent for any change of use or additional use in respect of any property within the Parent Property. In addition, the Purchaser specifically acknowledges that owners of land surrounding the Property in the Estate will be erecting buildings and other structures on surrounding land which may block or otherwise interfere with views from the Property and the Purchaser agrees that he shall have no right to object to the construction of any building or other structure on land within the Estate on the basis that such building or other structure blocks or otherwise interferes with the views from the Property, nor will he have any claim for any alleged diminishment of value of the Property arising out of any interference from the views from the Property for the reason of construction of such building or other structure;
 - 5.1.4. the Seller has pointed out the beacons indicating the boundaries of the Property to him, he has satisfied himself regarding the position of same and shall be responsible for conducting a survey of the Property at his expense for submission to the Association and/or the Municipality together with any building plans for approval;
 - 5.1.5. the Property shall only be used for residential purposes;

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- 5.1.6. the Property shall not be subdivided or consolidated with any adjoining property without the prior written consent of the Association and shall be subject to such conditions as the Association, in its sole and absolute discretion, may impose. In the event of the Purchaser consolidating any properties owned by him in the Estate then the Purchaser shall be liable to pay a levy to the Association in respect of the consolidated property equivalent to the levy payable in respect of each property consolidated. In the event of the Seller consolidating any of the properties within the Estate it shall not be obliged to pay any additional levies in respect of the consolidated property and shall only be liable to pay one levy in respect thereof;
- 5.1.7. notwithstanding the provisions of clause 5.1.6, the Seller may subdivide and/or consolidate any property owned by it within the Estate without the necessity of obtaining the consent of the Association;
- 5.1.8. that portion of the Parent Property depicted in red on the Estate Layout Plan annexed hereto marked "B" and designated as proposed Erf 1040 Sheffield Beach shall, in the sole discretion of the Seller, be excluded from the Estate and shall be developed separately by the Seller;
- 5.1.9. the offices depicted in blue on the Estate Layout Plan and plan annexed hereto marked "D" (designated as proposed Erf 1039 Sheffield Beach) shall be leased by the Seller to the Association from the date of completion thereof at a minimum base rental of R200.00 (TWO HUNDRED RAND) per square metre on the basis that the rental charged by the Seller to the Association shall cover the Seller's costs of establishing and maintaining same;
- 5.1.10. the Seller may in the future acquire additional land for the purpose of affording the residents in the Estate beach access and in the event of the Seller doing so and incorporating same into the Estate by transferring same to the Association then the Association shall raise a special levy in order to cover the cost of acquisition of such land and the establishment of any facilities thereon and the Purchaser undertakes not to object to and to vote in favour of the acquisition thereof by the Association, the rezoning thereof if required and the incorporation thereof into the Estate;
- 5.1.11. the Seller shall retain ownership of certain areas within the Estate and whilst it is intended that the Purchaser and other owners shall have access to such areas, such access shall at all times be subject to the control and discretion of the Seller who may impose rules and reasonably allocated and proportioned costs in respect thereof.
- 5.2. In order to protect the Seller's rights, the Property shall be transferred to the Purchaser, subject to a condition that the Property, or any portion thereof or interest therein shall not be alienated or otherwise transferred without the prior written consent of the Seller first being had and obtained, which consent the Seller shall grant provided the provisions of this clause 5 have been complied with.
- 5.3. It is recorded that all owners of properties within the Estate shall be required to adhere to the Environmental Impact Assessment and Environmental Management Plan. Any alteration or extension of any existing dwelling or other structure on the Property, shall be done strictly in accordance with the building plans that have been submitted and approved in writing by the Association and the Municipality or other competent authority and no work whatsoever shall commence until such time as the relevant approvals have been obtained.
- 5.4. The Purchaser acknowledges that in the event of the Purchaser disposing of the Property or in the event of the Purchaser being a close corporation, company or trust and the members interest, shares or beneficial interest being disposed of then the Purchaser shall be liable for the payment of a fee to the Association as a contribution towards the costs of marketing the Estate as well as the costs of attending to the Association's formalities in respect of a transfer of the Property. The aforementioned fee shall be equal to 1% of the sale price of the Property, member's interest, shares or beneficial interest, as the case may be plus value added tax thereon if applicable. The aforementioned fee shall be paid by the Purchaser to the Association on the date of registration of transfer of the Property and the Purchaser shall be obliged to secure the payment of this fee to the Association's satisfaction.



- 5.5. When selling the Property the Purchaser shall be obliged to utilise such documentation (including a standard sale agreement) prescribed by the Association.
- 5.6. The Purchaser shall not be entitled to sell or otherwise transfer ownership of the Property unless it is a suspensive condition of such sale or other transfer that the transferee agrees to become and remain a member of the Association for the duration of his ownership and is admitted as a member of the Association.
- 5.7. The Association shall be entitled, in its absolute, discretion, to refuse its written approval as required to the sale and transfer of the Property until such time as the provisions of this Agreement in favour of the Association, its Memorandum of Incorporation and the Seller have been complied with and no party shall have any claim for damages arising out of the Association's refusal to give such written approval.
- 5.8. In order to protect the Association's rights in this regard the Property shall be transferred to the Purchaser subject to a condition in the title deeds to the Property to the effect that the Property, or any portion thereof or interest therein shall not be alienated or otherwise transferred without the prior written consent of the Association first being had and obtained.
- 5.9. It is recorded that the design and layout of the Estate may vary as the Estate is developed and the Seller shall in no way be bound to its current plans for the design and layout of the Estate.
- 5.10. In the event of the Property having been improved then the Association shall be entitled to inspect the Property before furnishing its required consent to the transfer in order to ensure that the Property and the buildings and other structures thereon strictly comply with the Association's requirements and if they do not the Association shall be entitled to refuse to issue such consent until such time as its requirements have been complied with by the Purchaser.
- 5.11. The Purchaser shall be obliged to insure the dwelling erected on the Property and the contents thereof with an insurance company and the Seller and the Association shall have no liability whatsoever in respect of any loss and/or damage suffered by the Purchaser in regard to the Property, the dwelling erected thereon or the contents thereof notwithstanding the fact that the Seller and/or the Association have agreed to procure the provision of certain security facilities as recorded in clause 33 hereof.
- 5.12. In order to ensure that any tenant of any dwelling on any property in the Estate is made aware of and complies with the Rules of the Association the Purchaser acknowledges and agrees that any lease in respect of any dwelling on the Property shall be reduced to writing, signed by the parties and shall comply with the Association's requirements.
- 5.13. The Purchaser shall not be entitled to make application to rezone the Property or to change the use as set out in the Record of Decision and/or the Town Planning Scheme without the prior written consent of the Seller and the Association.
- 5.14. The Purchaser shall be bound to observe and abide by the provisions of the CSOSA and the STSMA which shall be applicable to all sectional title schemes, erven and common areas within the Estate and which shall prescribe the manner in which bodies corporate and the Association shall operate, the manner of the application of rules promulgated by such entities and the establishment of dispute resolution mechanisms.
- 5.15. The Purchaser acknowledges that any dwelling constructed on the Property shall be constructed within the footprint depicted on the Site and Footprint Plan of the Property annexed hereto marked "C".
- 5.16. The Purchaser acknowledges that a portion of the Parent Property depicted in blue on the Estate Layout Plan annexed hereto marked "B" and designated as proposed Erf 1039 Sheffield Beach is zoned "limited commercial" and will be developed and/or sold and/or let by the Seller for commercial use.

6.

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POSSESSION AND OCCUPATION OF THE PROPERTY

- 6.1. The Date of Possession of the Property shall be the date of registration of transfer of the Property to the Purchaser from which date all risk in regard thereto shall pass to the Purchaser and the Purchaser shall be liable for all rates, taxes, levies, deposits and other outgoings in respect thereof.
- 6.2. Occupation of the Property shall take place on the Dwelling Occupation Date.

7.

ARCHITECTURAL AND LANDSCAPE CONTROLS AND IMPROVEMENTS TO PROPERTY

- 7.1. All Purchasers of Erven within the Estate shall be required to adhere to the Association’s Development Manual, the Town Planning Controls, the Environmental Impact Assessment, Environmental Management Plan and the Estate Planting Palette.
- 7.2. In order to minimise the disruption caused by the construction of the dwelling on the Property to residents of the Estate, the Association shall impose such controls as it, in its sole discretion deems necessary in respect of the aforesaid building process. In no way detracting from the generality of the aforesaid it is specifically recorded that the Purchaser shall be required to:
 - 7.2.1. commence construction of a dwelling on the Property within a period of 5 (FIVE) years of the Transfer Date failing which he shall be liable for the payment of an additional levy to the Association equal to the monthly levy payable by him at the relevant time from the day after the aforementioned 5 (FIVE) year period has expired to the date on which the Purchaser commences construction of a dwelling on the Property; and
 - 7.2.2. complete erection of a dwelling on the Property within a period of 18 (EIGHTEEN) months of the date of commencement of construction failing which the Purchaser shall be liable to pay the Association an additional monthly levy equal to the monthly levy payable by him at the relevant time from first day of the month following the period aforementioned to the date on which the dwelling is completed.

The Association shall be entitled, in its sole discretion, to extend and/or waive any of the aforementioned time frames on application by the Purchaser on good cause shown. Value Added Tax shall be payable on the aforementioned amounts if applicable.

- 7.3. Again, in no way detracting from the generality of the aforesaid it is specifically recorded that after the date on which the first Purchaser of a property and/or unit in the Estate occupies same, the Purchaser shall not allow any building contractor to work on the Property on Saturdays or Sundays or public holidays. In addition, no construction activities may take place during the annual builders’ shutdown (the dates of which are varied annually by the Master Builders Association but which normally covers the period from 16 December to 8 January each year). The aforesaid rule may be relaxed by the Association, in its sole and absolute discretion, in specific and exceptional circumstances, on advance written application to the Association.
- 7.4. Notwithstanding anything to the contrary herein or elsewhere contained, any dwelling or other structure to be erected on the Property shall be erected strictly in accordance with building plans which have been submitted to and approved of in writing by the Association and the Municipality or any other competent authority and no work whatsoever shall commence on the Property until such time as the relevant approvals have been obtained.
- 7.5. To enable the Association to consider any such request for approval the Purchaser shall provide the Association with, inter alia, the following:
 - 7.5.1. a site diagram showing the external boundaries of the building footprint and position of the dwelling to be erected on the Property together with a detailed sketch plan of all buildings and other fixtures (including proposed fencing) to be erected on the Property giving details of all external finishes as well

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as all elevations and sections sufficient to indicate the required site works. (The sketch plan shall be drawn to a scale as directed by the Association and shall comply with the National Building Regulations);

- 7.5.2. details of construction materials to be used;
- 7.5.3. the fee prescribed by the Association in respect of the perusal and approval of building plans;
- 7.5.4. a geo-technical report of the Property undertaken by a professional geo-technical engineer;
- 7.5.5. a detailed survey of the Property which shall include the position of the following:
 - 7.5.5.1. all indigenous trees, (showing both the position of the girth as well as the umbrella);
 - 7.5.5.2. the road edges and road markings;
 - 7.5.5.3. all services, including but in no way limited to water, stormwater, sewer and electricity services (proposed services, not installed as a result of the construction programme, should also be shown);
 - 7.5.5.4. all embankments;
 - 7.5.5.5. all retaining walls; and
 - 7.5.5.6. road reserves and cadastral boundaries of the Property;
- 7.6. The Purchaser shall not be entitled to commence construction on the Property nor alter the Property in any manner whatsoever until the Transfer Date and until the Purchaser has complied with the Association's requirements .No work whatsoever shall commence on the Property until such time as the Association has approved the final working drawings in respect of the buildings to be erected on the Property and the Municipality has approved the building plans in respect of any dwelling or other structure to be erected on the Property.
- 7.7. Any building or other structure to be erected on the Property shall be designed by an architect accredited by the Association and constructed by a contractor accredited by the Association, which construction shall be supervised by an architect or project manager accredited by the Association.
- 7.8. In no way detracting from the generality of any other provision in this Agreement, it is specifically recorded that the Purchaser shall at all times comply with the provisions of the Environmental Impact Assessment and Environmental Management Plan, and, again in no way detracting from the generality of the aforesaid, shall take over the obligations and duties of the Seller and the Association in respect of stormwater and sewer management on the Property as contemplated in the Environmental Management Plan. In the event of the Purchaser breaching the provisions of this clause 7.8, then in that event, the Association shall be entitled, without prejudice to any rights the Association may have in terms of this Agreement or at law, to claim from the Purchaser all damages, including consequential damages, the Association may suffer as a result of the Purchaser's breach of the provisions of this clause. In addition, should the Purchaser breach the conditions of the Environmental Management Plan, it shall be liable for a fine imposed by the Association, in its sole and absolute discretion.
- 7.9. The Purchaser shall submit to the Association for approval, a garden design plan, in accordance with the Association's rules and requirements and in accordance with the Estate Planting Palette.The Purchaser shall utilise a landscape contractor, accredited by the Association, to install the aforesaid garden and landscaping in accordance with the aforesaid plan. No alteration to the landscaping on the Property shall be permitted unless the prior approval of the Association's planning and aesthetics committee has been obtained. (It is recorded that the Purchaser may be obliged to remove certain alien flora from the Property and if so this shall be done at the Purchaser's cost and this removal shall be included in the aforesaid garden design plan).

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- 7.10. The Purchaser shall be obliged to complete the aforesaid landscaping of the Property, in terms of the landscaping guidelines, within a period of 3 (THREE) months of the completion of construction of the dwelling on the Property.
- 7.11. The Association shall from time to time provide owners with architectural guidelines as well as information as to its objectives in ensuring architectural uniformity within the Estate.
- 7.12. The erection of a dwelling shall be deemed to have commenced, once the Property has been handed over by the Association to the Purchaser or its contractors for the purposes of carrying out earthworks and/or erecting a dwelling on the Property.
- 7.13. The Purchaser shall not be entitled to enclose the Property by means of a fence, wall or the like.
- 7.14. While the Property is undeveloped the Purchaser shall ensure that any grass on the Property is mowed and that the property is kept neat, clean and tidy.

8.

RIGHTS AND OBLIGATIONS IN RESPECT OF OCCUPATION

- 8.1. The Purchaser acknowledges that, on the Date of Possession and the Dwelling Occupation Date, the Estate may be incomplete and that he and every person claiming occupation and use through him may suffer inconvenience from building operations and from noise and dust resulting therefrom and the Seller, its contractors, the Municipality, the Association and other service providers may be constructing roads and/or installing services and the like and the Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience and the Property shall be transferred to the Purchaser notwithstanding the aforementioned.
- 8.2. From the Date of Possession all risk and profit or loss in the Property shall pass to the Purchaser and the Purchaser shall be entitled to any income earned from the Property. In addition, the Purchaser:
 - 8.2.1. shall only use the Property for residential purposes subject to compliance with the Rules, and for no other purpose whatsoever;
 - 8.2.2. shall, at his own expense, maintain adequate public liability insurance against all risks that the Purchaser bears, and without limiting the foregoing, shall include cover for the Purchaser’s fixtures and fittings, all vehicles parked on the Property and the Estate, damages resulting from fire, storm and special perils, explosions, floods, earthquake, tempest, hail, riot and robbery.
 - 8.2.3. shall be entitled to the use and enjoyment, along with occupiers and/or owners of other erven and/or units in the Estate, of those parts of the common property of the Estate, subject to the Rules. In using the common property of the Estate, the Purchaser shall do so in such a manner so as to not interfere unduly or unreasonably with the lawful rights to the use and enjoyment thereof by other owners of erven in the Estate or other persons lawfully upon the Estate. The Purchaser shall procure that all other occupants of the Property comply with the provisions of this Agreement and the Rules;
 - 8.2.4. shall at all times observe and comply fully and effectually with the provisions of the Memorandum of Incorporation of the Association and the Rules and shall ensure that all persons entering the Estate by virtue of the Purchaser’s rights thereto do likewise;
 - 8.2.5. waives all claims against the Seller and the Association for any loss or damage to property or any injury to person which the Purchaser may sustain in or about the Estate and indemnifies the Seller and the Association against any claim that may be made against the Seller or the Association by an employee of the Purchaser’s or any tenant, nominee, invitee or any other person who goes upon the Estate by virtue of the Purchaser’s rights thereto, for any loss or damage to property or injury to person suffered in or about the Estate howsoever such loss or damage to property or injury to person may be caused;

- 8.2.6. shall be liable for the payment of all services (including consumption) provided to the Property in the form of telephones, television, internet, electricity and water and any deposits and/or other costs or charges payable in connection with the supply of any such services to the Property (including connection fees in the case of water and electricity);
 - 8.2.7. shall be liable for the payment of levies, the rates due to the Municipality, utility charges and all other expenses pertaining to the Property;
 - 8.2.8. shall not be entitled to re-sell the Property or to cede, assign or transfer any of the Purchaser's rights in terms of this Agreement, except with the prior written consent of the Seller as envisaged in clause 34 hereof;
 - 8.2.9. shall not be entitled to let or otherwise part with occupation of the Property, except upon the express condition that any such letting and/or parting with occupation shall in no way release the Purchaser from any of the Purchaser's obligations to the Seller hereunder or in terms of the Rules that may be enforceable from time to time;
- 8.3. The Purchaser shall not use the Property or permit it to be used in such manner or for such purposes as shall cause a nuisance to any occupier of any Property in the Estate or interfere with the amenities of the Estate or so as to breach the Rules or any law, ordinance or by-law or provision of the Town Planning Scheme in force in relation to the Property.
 - 8.4. The Purchaser shall not be entitled to have access to the Estate at any time prior to the Date of Possession without the express written permission of the Seller. Should the Purchaser breach this provision, then in that event, the Seller shall, inter alia, be entitled to have the Purchaser removed from the Estate forthwith.
 - 8.5. The Purchaser shall ensure that any tenant, contractor, invitee or any other person who goes upon or resides on the Property is aware of and abides by the Rules of the Association, the Town Planning Scheme, the Development Manual and the Environmental Management Plan.

9.

TRANSFER

- 9.1. The Purchaser acknowledges that owing to the complexities and interrelated steps involved in the transfer of the properties reflected on the Estate Layout Plan annexed hereto marked "B" to the various purchasers thereof (including the Property hereby sold), it is beneficial and in the best interests of the Purchaser that the Conveyancers attend to the registration of transfer of the Property to the Purchaser.
- 9.2. The Purchaser acknowledges that it is not possible for the Seller to give transfer of the Property to the Purchaser until such time as the services have been installed to the Property by the Seller, the Municipality has issued the certificate contemplated in section 31 of the PDA and section 53 of SPLUMA and the Property is registerable. Accordingly the Seller undertakes, subject to the provisions of clause 9.3 hereof, in a reasonable time and at its own expense, to take such steps as may be reasonably necessary to procure the installation of the aforementioned services.
- 9.3. Notwithstanding anything to the contrary herein contained, this Agreement in its entirety is subject to the Seller installing the aforementioned services and obtaining the certificate from the Municipality contemplated in section 31 of the PDA by the Municipality within a period of 36 (THIRTY SIX) months of the Date of Signature and should the Seller fail to do so then either party shall be entitled to resile from this Agreement by giving the other party written notice to that effect, in which event:
 - 9.3.1. this Agreement shall be deemed to be null and void ab initio and of no further force and effect between the parties;

- 9.3.2. the Purchaser shall be entitled to be refunded all monies paid on account of the purchase price but not on account of occupational rent, levies and utilities (if applicable);
- 9.3.3. save as herein provided, neither party shall in such event have any further claims whatsoever against the other.
- 9.4. The Purchaser shall, within 7 (SEVEN) days of being called upon to do so by the Conveyancers:
- 9.4.1. pay to the Conveyancers all costs of and incidental to the passing of transfer of the Property to the Purchaser, including bond costs, bank charges and all conveyancing fees and disbursements and levies and rates for which the Purchaser is liable in terms hereof and electricity and water deposits and connection fees; and
- 9.4.2. furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the Conveyancers and/or the conveyancers attending to the registration of any mortgage bond to pass transfer of the Property and register any mortgage bond thereover;
- 9.5. The Conveyancers shall pass transfer of the Property to the Purchaser as soon as is reasonably practicable in the circumstances, provided the Purchaser has complied with all his obligations under this Agreement.
- 9.6. Except to the extent impermissible in terms of section 48 of the CPA read with Regulation 44 of the Consumer Regulations, where applicable no liability of any nature whatsoever shall attach to the Seller arising out of any delays in effecting transfer of the Property to the Purchaser.
- 9.7. It is recorded that in order to effect transfer of the Property, the Conveyancers shall be required to lodge, inter alia, a transfer duty exemption certificate, issued by the South African Revenue Services (hereinafter referred to as "SARS") with the Deeds Registry. It is further recorded that SARS have adopted a policy of not issuing the aforesaid certificate in the event of any party to the transaction in question being in arrears with the payment of any amounts SARS believes is due to it or otherwise not being in compliance with Tax Laws. Should SARS refuse to issue a transfer duty exemption certificate in respect of the sale of the Property, in terms of this 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 cancel this Agreement should the Purchaser not rectify such breach within 7 (SEVEN) days of receipt of a notice from the Seller calling upon him to remedy such breach. Further, should there be any delay in the issue of the aforesaid transfer duty exemption certificate by SARS for either of the aforesaid reasons, then in that event, the Purchaser shall be deemed to be delaying the registration of transfer which shall entitle the Seller to claim mora interest from the Purchaser as contemplated in clause 21 hereof. Notwithstanding the aforementioned, the Purchaser warrants that all taxes due by him to SARS have been paid by him.
- 9.8. The Purchaser acknowledges that:
- 9.8.1. the documentation necessary to effect transfer of the Property to the Purchaser shall be lodged with the Deeds Registry as part of a set including the transfer of other erven in the Estate and that no documentation in the set, including the documentation relating to the transfer of the Property, can be withdrawn from the Deeds Registry without the entire set being withdrawn;
- 9.8.2. if it becomes necessary to withdraw the aforesaid set from the Deeds Registry due to the fact that the Purchaser has not complied with all of his obligations under this Agreement, the Seller will suffer damages including, but in no way limited to, interest payable by the Seller to the mortgagee of the Parent Property from the date of the withdrawal of the set until the date of its re-lodgement and registration;
- 9.8.3. the Seller shall be entitled to recover from the Purchaser all damages the Seller may have suffered (including the aforesaid interest) as a result of the aforesaid set having to be withdrawn and all transfers in the set having been delayed by virtue of the Purchaser's failure to comply with the provisions of this Agreement.



- 9.9. It is recorded that the Conveyancers will use their best endeavours to protect the interests of both the Purchaser and the Seller, however, the Purchaser acknowledges that the Conveyancers are also the Seller's attorneys. Consequently, should a dispute arise between the Purchaser and the Seller, the Conveyancers in their capacity as the Seller's attorneys, if instructed by the Seller, will act for the Seller against the Purchaser and in such event the Purchaser acknowledges that he will be obliged to seek independent advice.
- 9.10. The Purchaser shall be deemed to be responsible for any delay in registration of transfer that is occasioned, inter alia, by:
- 9.10.1. the Purchaser's failure to provide any documentation or sign bond or transfer documents and pay related costs;
 - 9.10.2. delays in the provisions of guarantees by Conveyancers appointed by a financial institution to attend to the registration of the Purchaser's bond;
 - 9.10.3. delays in the VAT registration of the Purchaser, if required;
 - 9.10.4. delays in SARS issuing the transfer duty exemption receipt due to the Purchaser's, or its representatives tax affairs not being in order;
 - 9.10.5. delays caused in the registration of the Purchaser's mortgage bond;
 - 9.10.6. delays in any other related transactions that the Purchaser requires to be registered prior to or simultaneously with the transfer of the Property.

10.

RULES

- 10.1. The Purchaser acknowledges that the Association shall be entitled, in terms of the Memorandum of Incorporation, at all times to lay down Rules (and to amend and repeal same) in regard to, inter alia:
- 10.1.1. the preservation of the natural environment;
 - 10.1.2. vegetation and flora and fauna in the Estate (including, but in no way limited to, the use of exotic and indigenous plants);
 - 10.1.3. the right to keep any animal, reptile or bird;
 - 10.1.4. the use of recreation areas and amenities and facilities and the right to make a reasonable charge for such use;
 - 10.1.5. the storing of flammable and other harmful substances;
 - 10.1.6. the use of property in the Estate;
 - 10.1.7. the conduct of any persons within the Estate and the prevention of nuisance of any nature;
 - 10.1.8. the imposition of the fines and other penalties to be paid by members of the Association and persons accredited to work in the Estate;
 - 10.1.9. the management, administration and control of the common areas and open spaces;
 - 10.1.10. the erection of all buildings and other structures, including but in no way limited to, service connections to the buildings;

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- 10.1.11. the accreditation of the managing agents to manage sectional title schemes on the Estate;
 - 10.1.12. the establishment, installation and maintenance of gardens, both public and private (including the accreditation of landscape architects, landscape contractors and garden maintenance personnel);
 - 10.1.13. the use by owners of their tenants of the buildings and all other structures and the upkeep, aesthetics and maintenance of such buildings;
 - 10.1.14. the use of roads, pathways and open spaces;
 - 10.1.15. accreditation of contractors and architects for Estate;
 - 10.1.16. the letting of property in the Estate; and
 - 10.1.17. the use and control of business premises in the Estate (if any);
 - 10.1.18. generally in regard to any other matter which the Association from time to time considers appropriate;
- and the Purchaser undertakes and shall be obliged, with effect from the Date of Possession, to abide by such Rules and to ensure that all tenants, nominees, invitees and other persons who occupy the Property and/or go upon the Estate by virtue of the Purchaser's rights thereto, do likewise.

10.2. The Purchaser hereby irrevocably agrees to vote for and to support any subsequent amendments to the Rules required by the Seller. The Purchaser specifically acknowledges and agrees that the Seller may, in its sole discretion, amend the Rules from time to time and the Purchaser hereby irrevocably undertakes to vote in favour of such amendments.

11.

LEVIES

- 11.1. With effect from the Date of Possession the Purchaser shall be liable for the payment of two monthly levies as set out in paragraphs P (i) and P(ii) of the Schedule.
- 11.2. The Purchaser shall pay to the Association from time to time the estimated levy as set out in paragraph P(i) of the Schedule which is calculated by the Seller as the Purchaser's contribution in respect of all the expenses incurred by the Association for the administration of the buildings and the property within the Estate. Such levy shall be paid monthly in advance from the Date of Possession.
- 11.3. The Purchaser shall pay the estimated levy as set out in paragraph P(ii) of the Schedule to the Association in accordance with the Associations Memorandum of Incorporation and/or Rules.
- 11.4. The Purchaser acknowledges that the Association shall require the Purchaser to sign a debit order with a South African registered commercial bank in favour of the Association to ensure timeous payment of the levy referred to in clause 11.1 hereof.
- 11.5. It is recorded that the amount reflected in paragraph P(i) of the Schedule is an estimation of the monthly levy payable by the Purchaser, made in good faith by the Seller and the Seller shall not be responsible for any inaccuracy in this estimation.
- 11.6. The Purchaser acknowledges that the levy payable to the Association shall be calculated in accordance with the provisions of the Associations Memorandum of Incorporation.

- 11.7. The Purchaser agrees that he shall have no right to reclaim from the Association any amount by way of a monthly levy or special levy as provided for herein.
- 11.8. The Purchaser shall pay the amounts reflected in paragraphs P(i) and P(ii) of the Schedule to the Conveyancers upon request therefor and same shall be dealt with in accordance with the provisions of those paragraphs.
- 11.9. In the event of Value Added Tax being levied in respect of any levy payable by the Purchaser in terms of this clause, such amount shall be added to the levy payable and shall be borne by the Purchaser.

12.

COSTS

All expenses incidental to the preparation and registration of transfer of the Property including stamp duty, Value Added Tax, bank charges and disbursements, levies, proportionate share of rates and taxes and the costs of registration of any bond shall be borne by the Purchaser. It is recorded that in the event of the Seller being obliged to pay rates to the Municipality for the remainder of the rate year after the date of registration of transfer of the Property to the Purchaser, the Purchaser shall be obliged to refund the Seller its pro rata share of such rates. Such amount shall be paid by the Purchaser to the Conveyancers in accordance with the provisions of clause 9.4 hereof.

13.

GUARANTEES AND CONDITIONS

- 13.1. **The Seller does not furnish any explicit or tacit guarantees in regard to the Property. The Purchaser acknowledges that he was not persuaded into entering into this Agreement by any representations made to him by the Seller or any representative of the Seller, other than what is contained in this Agreement.**
- 13.2. **In the event that the Consumer Protection Act does not apply to the transaction between the parties, it is hereby recorded and the Purchaser acknowledges that the Property is sold and purchased:**
 - 13.2.1. **voetstoots (save as provided for in this Agreement) absolutely as it stands, with all its defects whether patent or latent and the Purchaser shall have no claim against the Seller in respect of any defects in the Property whether patent or latent;**
 - 13.2.2. **subject to and in accordance with the Estate Layout Plan, the Site and Footprint Plan and the General Plan;**
 - 13.2.3. **subject to and with the benefit of the servitudes for support and essential services;**
 - 13.2.4. **subject to all servitudes and conditions of title contained in title deeds of the Parent Property referred to in paragraph E of the Schedule, the zoning thereof, and the conditions imposed by the Seller, the Municipality and the Record of Decision;**
 - 13.2.5. **subject to the Rules of the Association;**
 - 13.2.6. **subject to the acknowledgements made by the Purchaser in terms of Clause 5 hereof.**
- 13.3. **The Seller does not warrant any information given in respect of the Property, including that it is suitable for the Purchaser's proposed use thereof, whether such information is given prior to or subsequent to the**

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signature of this Agreement save for such information in respect of the Property specifically warranted in terms of this Agreement, except to the extent impermissible in terms of section 48 of the CPA read with Regulation 44(3) of the Consumer Regulations where applicable. The Seller shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given by the Seller to the Purchaser or his agent in respect of the Property and the Purchaser hereby indemnifies the Seller and holds it harmless against and in respect of any injury, loss or damage however caused which the Purchaser may suffer as a result of any inaccuracies in any information given by the Seller (save for information specifically warranted in this Agreement). Notwithstanding the aforementioned, the Purchaser agrees that he has not relied in any way upon any information and/or advice given by the Seller and/or the Agent in the preparation, negotiation and/or implementation of this Agreement and has taken all reasonable actions to satisfy himself as to the consequences of entering into this Agreement. The Purchaser acknowledges that he has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that he has either taken such independent and other advice or dispensed with the necessity of doing so.

- 13.4. It is recorded that the extent of the Property as shown on the Site and Footprint Plan of the Property annexed hereto marked "C" is approximately as set out in paragraph G of the Schedule. The final measurements, demarcation and boundaries of the Property shall be reflected on the General Plan and the Seller shall not be liable for any deficiency in the extent thereof and neither shall it benefit from any surplus and the Purchaser shall be obliged to accept the Property as demarcated on the General Plan: provided that should the extent of the Property be reduced by more than 10 % (TEN PERCENT) of the extent reflected in paragraph G of the Schedule once the Property has been surveyed, then the Purchaser shall be entitled to resile from this Agreement by giving the Seller written notice to that effect within a period of 7 (SEVEN) days of the Purchaser being notified by the Seller or the Conveyancers of the reduced extent of the Property. In such event, all amounts paid by the Purchaser on account of the purchase price together with all interest earned thereon shall be refunded to him.
- 13.5. The Purchaser hereby waives all claims against the Seller for any loss or damage to property or any injury to person which the Purchaser may sustain in or about the Property or the Estate and indemnifies the Seller against any such claims that may be made against it by a member of the Purchasers family or any tenant, nominee, invitee or any other person who occupies the Property and goes upon the Estate or any building within the Estate by virtue of the Purchaser's rights thereto, for any loss or damage to property or injury to person suffered in or about the Property, or the buildings within the Estate, howsoever such loss or damage to the property or injury to person may be caused.

14.

TRUSTEE FOR A COMPANY OR CLOSE CORPORATION TO BE FORMED

- 14.1. In the event of the signatory to this Agreement purchasing the Property as a trustee for a company or close corporation to be formed then the signatory by his signature hereto warrants that:
- 14.1.1. the said company or close corporation will be formed and the Memorandum of Incorporation or Founding Statement of which shall contain as one of its objects the adoption and ratification of this Agreement; and
- 14.1.2. the said company or close corporation will ratify and adopt the terms and conditions of this Agreement within 7 (SEVEN) days after registration;
- 14.1.3. he will provide the Seller with written proof thereof;
- all within a period of 30 (THIRTY) days of the date of signature of this Agreement by the signatory.

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- 14.2. The signatory, in his personal capacity, guarantees as surety and co-principal debtor in solidum and under renunciation of the benefits of excussion and division the due and faithful observance by the company or close corporation of all the terms, conditions and stipulations of this Agreement and the payment of any claims flowing from breach of Agreement;
- 14.3. The signatory shall be member and/or shareholder of the company or close corporation;
- 14.4. If the terms and conditions of clauses 14.1, 14.2 and 14.3 above are not fulfilled, then the signatory will by his signature to this Agreement be deemed ipso facto to have concluded this Agreement in his personal capacity shall take transfer of the Property and take over the purchase of the said Property and pay the purchase price as if this Agreement was made in his personal capacity.
- 14.5. It is recorded that the Seller has signed this Agreement in his capacity as trustee for a company formed or to be formed and the Seller undertakes to notify the Purchaser of the entity formed by no later than 31 December 2016.

15.

SIGNING AUTHORITIES

- 15.1. In the event of this Agreement being signed as Purchaser by a person purporting to act for and on behalf of a company or close corporation (other than a company or close corporation to be formed) or a trust such person warrants that he is duly authorised to represent the party that he purports to represent and to sign this Agreement and shall by his signature hereto bind himself in favour of the Seller as surety and co-principal debtor under the renunciation of the benefits of excussion, division and cession of actions, 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 thereof.
- 15.2. If it transpires that the signatory was not so duly authorised then this Agreement shall be deemed to be an agreement of sale with the signatory in his personal capacity and not the represented party.
- 15.3. In the event that any of the persons entering into this Agreement as Purchaser are married in community of property, or for any other reason stipulated in law, require spousal permission or any other form of permission or support from a third party to sign and enter into this Agreement, such persons shall, upon signature of this Agreement, obtain such permission or support in writing and append same to this Agreement, failing which such permission or support shall be deemed either to have been obtained or alternatively, to not be a prerequisite to the signing of this Agreement by such persons.

16.

REGISTRATION OF GENERAL PLAN IN RESPECT OF UNREGISTERED SUBDIVISION

- 16.1. It is recorded that the Property is an unregistered subdivision and the Seller has not yet complied with the Conditions of Establishment as set out in the Record of Decision and accordingly the Property is not yet registrable as contemplated in section 1 of the Alienation of Land Act No. 68 of 1981;
- 16.2. The Seller shall be responsible for:
 - 16.2.1. obtaining approval of a General Plan/s by the Surveyor General and obtaining registration thereof at its cost;

- 16.2.2. procuring the granting of all consents as are required in order to render the Property registrable as a separate subdivision;
- 16.2.3. arranging for the issue of the certificate in terms of section 31 of the PDA in respect of the Property.
- 16.3. It is recorded that the Seller shall be entitled to change the name of the Estate at any time prior to the transfer of the Property to the Purchaser.
- 16.4. Should the Seller be unable to obtain the certificate referred to in clause 16.2.3 above within a period of 36 (THIRTY SIX) months of the Date of Signature, then the provisions of clause 9.3 hereof shall apply.

17.

MEMBERSHIP OF THE ASSOCIATION AND RELATED DOCUMENTATION

- 17.1. The Purchaser acknowledges that the Association has been constituted in accordance with the Record of Decision.
- 17.2. A copy of the Association's Memorandum of Incorporation shall be available for inspection at the offices of the Seller on or before the 31 December 2016.
- 17.3. The Purchaser acknowledges that he shall be obliged to become a member of the Association within the meaning of and subject to the conditions set out in the Association's Memorandum of Incorporation upon registration of transfer of the Property into his name and shall remain a member for so long as he owns the Property.
- 17.4. The Purchaser hereby agrees to abide by the Association's Memorandum of Incorporation and Rules as may be imposed from time to time. This clause is a benefit given by the Purchaser in favour of the Seller and a third party, namely the Association, and shall be binding by and between the Association and the Purchaser and its and his successors-in-title. The Purchaser undertakes that he and all persons deriving use of the Estate or any part thereof through him will, from the Date of Possession, comply with all the obligations imposed upon members in terms of the Association's Memorandum of Incorporation and/or Rules.
- 17.5. Should the Purchaser sell the Property he shall ensure that his Purchaser is made fully aware of the Association's Constitution and the obligations as detailed in clause 17.4 above.
- 17.6. The Purchaser shall not be entitled to sell, donate, grant any option or pre-emptive rights in respect of, alienate, transfer or in any way deal with the Property without the prior written consent of the Association, which shall not be unreasonably withheld.
- 17.7. By virtue of his membership of the Association, the Purchaser shall be obliged to make payment of levies to enable the Association to maintain the common roads and areas, private open space and services (if any) and to cover its administrative costs, and the Association shall not be obliged to give the written consent referred to in clause 17.6 above until all amounts due to it by the Purchaser have been paid in full.
- 17.8. The Purchaser shall be deemed to have agreed to all the terms and conditions as contained in the Memorandum of Incorporation (and any amendment thereto) and to be bound thereby by virtue of his acknowledgement of receipt thereof from the Seller at the relevant time.

18.

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RESERVATION OF CONDITIONS OF TITLE

- 18.1. The following conditions shall, to the extent possible, be registered against the title deed of the Property in the form set out hereunder, or in such other form as may be required by the Registrar of Deeds:
 - 18.1.1. the conditions, reservations and servitudes which affect the Parent Property;
 - 18.1.2. such conditions imposed by the Municipal Planning Tribunal of the Municipality in terms of the Record of Decision;
 - 18.1.3. a condition registered against the title deed of the Property to the effect that the Property or any portion thereof or any interest therein shall not be alienated, leased or transferred without the prior written consent of the Association being obtained;
 - 18.1.4. no improvement of any nature may be effected to or on the Property, nor may the access to the Property be altered without the prior written approval of the Association and any building plans in respect of the improvements to be erected on the section shall be subject to the prior written approval of the Association. Such approval will be required without limitation to all external finishes, including materials and colours for all walls, roofs and windows;
 - 18.1.5. the Property shall not be used for any purpose whatsoever save for residential purposes;
 - 18.1.6. a condition in favour of the Seller and the Association to the effect that the Property, or any portion thereof, or any interest therein, shall not be alienated, leased or transferred without the prior written consent of the Seller first being had and obtained. (It is recorded that the Seller shall be entitled to agree to the cancellation of this condition once the last property in the Estate has been sold and transferred to the Purchaser thereof).
 - 18.1.7. a condition registered against the title deed to the effect that the Property or any part thereof shall not be used for the purpose of a time share scheme under the provisions of the Property Time Sharing Control Act No. 75 of 1983, or a share block scheme under the Share Blocks Control No 59 of 1980 or any similar such schemes without the prior written consent of the Association.
- 18.2. The Purchaser shall be bound by such conditions whether or not they are so registered as well as any other conditions imposed by the Seller, the Association and/or any other competent authority.
- 18.3. The Property shall be transferred to the Purchaser subject to, inter alia, planting, services, omnibus, security, communication, rights of way, conservation and non-development servitudes in favour of the Municipality and/or the Association and/or any service provider. The aforementioned servitudes shall grant the Municipality and/or the Association and/or other service providers the right, without compensation, to plant any vegetation and to erect, lay and maintain sewers, drains, water supply and piping within such servitudes and electricity mains above or underground. The Municipality and/or the Association and/or other service providers shall have access to the aforementioned servitude areas for the purposes of maintenance, removal or extension. The owner of the Property shall, without compensation, be obliged to allow the sewerage and drainage of any other land or street to be conveyed along such sewers and drains and shall not permit such drain to be damaged or allow any material from whatever source to impede the flow within it.
- 18.4. No building or other structures may be erected within the aforesaid servitude areas and no large rooted trees shall be planted within the area of such servitude and the ground level shall not be altered without the written consent of the Municipality or the Association as the case may be.
- 18.5. The Municipality and/or the Association shall be entitled to deposit temporarily on the area of the Property adjoining the aforesaid servitude, such materials as may be excavated by it during the course of construction,

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maintenance or removal of such sewerage mains and other works as it, in its discretion, may deem necessary and shall further be entitled to reasonable access to the said area of the aforesaid purposes, subject to any damage done during the process of construction, maintenance, removal of such sewerage mains and other works, being made good by the local authority or the Association.

- 18.6. The Purchaser shall without compensation, be obliged to permit such deposits of material or excavation on the Property as may, in connection with the formation of any street in the township and owing to differences in level between the Property and the street, be deemed necessary by the Municipality and the Association, commencing from the boundary of the Property unless the Purchaser shall, at his cost, elects to build a retaining wall to the satisfaction of the Municipality and the Association.
- 18.7. Encroachment over the aforementioned servitude shall be allowed at the discretion of the Municipality and the Association.
- 18.8. The Municipality shall have the dominant right over the servitude in the event of any conflict between the Association and the Municipality.

19.

GUARANTEES IN RESPECT OF SERVICES

- 19.1. The Purchaser acknowledges that it is not possible for the Seller to pass transfer of the Property to the Purchaser until such time as a certificate has been issued by the Municipality in terms of section 31 of the PDA and section 53 of SPLUMA confirming that the Conditions of Establishment as set out in the Record of Decision have been complied with by the Seller.
- 19.2. Should the Municipality and other relevant authorities agree, the Purchaser acknowledges that the Seller may elect to provide the Municipality and such authorities with guarantees to ensure the installation of basic services to the Estate notwithstanding the fact that such basic services have not been installed.
- 19.3. In such event, the Purchaser agrees to take transfer of the Property notwithstanding the fact that such basic services have not been installed.
- 19.4. In the event of transfer of the Property being passed to the Purchaser prior to the installation of the aforementioned services, the Seller warrants that such basic services shall be installed to the Property by no later than the Dwelling Occupation Date provided that the Purchaser has given the Seller at least 4 (FOUR) months written notice of the Dwelling Occupation Date.
- 19.5. Notwithstanding the aforementioned, the Seller shall ensure that temporary roads to the Property shall be in place during the period of construction of the dwelling thereon provided that the Purchaser furnishes the Seller with at least 3 (THREE) months written notice of his intention to commence construction on the Property.
- 19.6. The Purchaser acknowledges that it is incumbent upon him, at his cost, to make application to the Municipality and to the water and sewer service provider for the supply of electricity and water and sewer services to the Property and to pay all deposits in connection therewith as well as the cost of the electrical, water and sewer connections on the Property to the relevant service provider. The Purchaser shall be obliged to provide his own generator and/or water to facilitate construction during the period of construction of the dwelling on the Property. The Purchaser acknowledges that it is the intention of the Seller to make application to the Municipality for the Association to maintain the internal electrical reticulation in the Estate and in addition, for the Association to bill the owners of properties in the Estate in respect of electricity consumed by them and that in such event the Association may assume certain of the rights and obligations of the Municipality. The Purchaser

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hereby consents to the Seller and/or the Association making the aforementioned application and acknowledges and agrees that in the event of the Municipality approving such application then, in addition to any other rights that it may be granted by the Municipality, the Association shall be entitled to bill the Purchaser in respect of electricity consumed and the Purchaser shall be liable to pay the Association all amounts due in respect thereof as well as the cost of the electrical connection on the Property upon presentation to the Purchaser of an invoice reflecting the amount due.

- 19.7. It is recorded that the maximum electricity supply that the Purchaser shall be entitled to apply to the Municipality for in respect of the Property shall be determined by the Association and the Seller upon submission of the Purchaser's building plans for approval so as to ensure that the electricity supplied by the Municipality to the Estate is distributed evenly amongst the owners of the properties in the Estate. It is further recorded that the Purchaser shall not be entitled to make application to the Municipality for the supply of electricity without the prior written consent of the Seller and the Association and neither shall the Purchaser be entitled to exceed the electricity supply approved by the Seller and the Association without their prior written consent, which they may in their sole and absolute discretion grant or refuse.

20.

DEFAULT

20.1. If the Purchaser:

20.1.1. **fails to pay any amount in terms of this Agreement; or**

20.1.2. **commits any breach of the remaining conditions of this Agreement or of the Association's Memorandum of Incorporation or the Rules and should the Purchaser fail to remedy such breach within 7 (SEVEN) days of date of delivery, if delivered by hand, or receipt if posted by prepaid registered post, of a written notice upon calling him to remedy such breach, the Seller shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof and at the Seller's election to:**

- (a) **cancel this sale, and retake possession of the Property, in which event all amounts paid to the Seller or to the Seller's Conveyancers on account of the purchase price (including any amount paid in trust and interest that may have accrued thereon) shall be retained by the Seller's Conveyancers in trust pending determination of the amount of any damages recoverable by the Seller as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), or**
- (b) **claim immediate performance by the Purchaser of all his obligations in terms of this Agreement whether or not the due date for the performance shall have arrived.**

20.2. **If the Seller commits any breach of the terms and conditions of this Agreement and should the Seller fail to remedy such breach within 7 (SEVEN) days of the date of delivery, if delivered by hand, or receipt if posted by prepaid registered post, of a written notice calling upon it to remedy such breach, then the Purchaser shall be entitled, without prejudice to any other rights which he may have at law or in terms hereof at the Purchasers election to:**

20.2.1. **cancel this sale and return possession of the Property to the Seller in which event the Seller shall be obliged to repay all amounts paid by the Purchaser to the Seller or the Conveyancers on account of the purchase price together with all interest earned thereon; or**

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20.2.2. claim immediate performance by the Seller of all of its obligations in terms of this Agreement provided that the Seller is reasonably in a position to perform.

20.3. For the purposes of this Agreement any act or omission on the part of any tenant, nominee or other person who occupies the Property, or any invitee of the Purchaser (or such tenant, nominee or other person who occupies the Property) who goes upon the common property, shall be deemed to be an act or omission of the Purchaser.

21.

LATE PAYMENT AND MORA INTEREST

21.1. If any amount payable by the Purchaser is not paid on the due date therefor, the Purchaser shall pay interest on the amount outstanding from the due date for payment thereof until it is paid, both days inclusive, at a rate equal to 3 percentage points above the prime overdraft rate charged by Investec Bank Limited Registration Number 1969/004763/06 from time to time;

21.2. In the event of:

21.2.1. the purchaser failing to make payment of the amount referred to in paragraph J of the Schedule timeously;

21.2.2. the purchaser not furnishing all information, signing all documentation required by the Conveyancers and paying the relevant transfer and/or bond registration costs and all other amounts for which the Purchaser is liable in terms of this Agreement within the time periods envisaged herein;

21.2.3. the Purchaser fails to pay the amounts or furnish the guarantees referred to in paragraph K (i) and (ii) of the Schedule read with clauses 3.4 and 4 of the Terms and Conditions of Sale timeously;

21.2.4. the Purchaser, in the opinion of the Conveyancers, delaying the registration of transfer in any manner whatsoever;

then, in such event, the Purchaser shall be deemed to be immediately in breach of this Agreement and *in mora* and shall then be responsible for the payment of interest on the full purchase price referred to in paragraph I of the Schedule at a rate equal to the prime rate charged by Investec Bank Limited Registration Number 1969/004763/06 from time to time, plus 3 (THREE) percentage points calculated from the date that the Purchaser is deemed to be *in mora* until such time as the Purchaser has remedied his aforesaid breach, both days inclusive.

21.3. In regard to clauses 21.1 and 21.2 above, a certificate by any branch manager of the said bank as to such prime overdraft rate from time to time shall be prima facie proof of such rate.

21.4. The amounts payable by the Purchaser in terms of clauses 21.1 and 21.2 above shall be paid by the Purchaser in addition to any other amounts that may be due by the Purchaser in terms of this Agreement.

22.

ELECTRICAL FENCE SYSTEM CERTIFICATE OF COMPLIANCE

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The Seller shall deliver to the Purchaser a copy of the Certificate of Compliance for any electric fence system on the Parent Property as referred to in Regulation 12(4) of the electrical Machinery Regulations, 2011 to the Occupational Health and Safety Act No. 85 of 1993, to the effect that the installation complies with the provisions of Regulation 13(1) and that the installation is safe. Such certificate shall be delivered by the Seller to the Purchaser prior to registration of transfer of the Property to the Purchaser.

23.

WITHHOLDING TAX

23.1. It is recorded that in terms of section 35A of the Income tax Act No. 58 of 1962, as amended, any person (“the purchaser”) who purchases immovable property from a person who is not a South African resident (“foreign Seller”) must withhold from the purchase price an amount equal to:

23.1.1. 5% (FIVE PERCENT) of the purchase price in the case of the foreign Seller being a natural person;

23.1.2. 7,5% (SEVEN COMMA FIVE PERCENT) of the purchase price in the case of the foreign Seller being a company or close corporation;

23.1.3. 10% (TEN PERCENT) of the purchase price in the case of the foreign Seller being a trust;

which amount is to be paid by the buyer to the South African Revenue Services (as an advance in respect of the foreign Seller’s liability for the tax year during the immovable property in question was sold).

23.2. The Seller warrants that it is a resident as defined in the Income Tax Act, as amended and accordingly the provisions of Section 35A of the ITA do not apply to this transaction.

23.3. The Seller and the Purchaser hereby indemnify the Conveyancers from any liability in terms of the provisions of the Income Tax Act, as amended.

24.

WAIVER OF RIGHTS

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

25.

NATIONAL ENVIRONMENTAL BIODIVERSITY ACT

The Seller warrants that it does not hold any permit in respect of any “alien and invasive species” as contemplated and defined in Chapter 7 of the National Environmental Management Biodiversity Act No. 10 of 2004 and the regulations thereunder (“the NEMBA”) on the Property and there may be such alien and invasive species on the Property. Notwithstanding the aforementioned, it is recorded that the Seller is not an expert in this regard and nor has a suitably qualified expert carried out an inspection of the Property in this regard. It is therefore incumbent upon the Purchaser, at

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the Purchaser's cost, to make any necessary enquiry in this regard with the relevant expert, the Property having been sold voetstoots and the Seller being entirely free from any obligations or liabilities in respect of any alien and invasive species which may in fact be on the Property and which the Purchaser, as the registered owner of the Property, will be obliged to deal with in accordance with the provisions of Section 73 of the NEMBA. The Association will, however, be liable to comply with the provisions of NEMBA in respect of all common areas and shall be entitled to raise levies for this purpose.

26.

ENTIRE AGREEMENT

- 26.1. The Purchaser acknowledges that this Agreement constitutes the sole basis of the Agreement between himself and the Seller and that he has not been induced to enter into such Agreement by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specifically dealt with herein. No agreement to vary the terms and conditions of this Agreement or any consensual cancellation hereof shall be of any force and effect unless reduced to writing and signed by both parties hereto or their agents duly authorized in writing.
- 26.2. The Purchaser acknowledges that he has had an opportunity to carefully read and consider the provisions of this Agreement and that he has been free to obtain independent legal advice in regard to those provisions. The Purchaser acknowledges that the Seller undertook that the Seller or the Conveyancers would explain any provision of this Agreement which the Purchaser may not have fully understood and, to the extent that the Purchaser made the Seller aware of any provision of this Agreement that he did not understand, such provisions were fully explained to the Purchaser.

27.

DOMICILIUM

- 27.1. For all the purposes of or connected with the Agreement, the parties choose as their respective *domicilia citandi et executandi* the address set out in paragraph B and D of the Schedule to this Agreement which includes the facsimile numbers and email addresses reflected therein.
- 27.2. Any notice or communication shall:
- 27.2.1. if delivered by hand at the address selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery; and
 - 27.2.2. if sent by prepaid registered post to the selected address, be deemed to have been received 5 (FIVE) days after the date of posting (unless the contrary is proved); and
 - 27.2.3. if telefaxed to the selected telefax number or emailed to the selected email address, be deemed to have been received on the date of transmission.
- 27.3. Notwithstanding anything to the contrary contained herein, any written notice or communication which has actually been received by a party shall be regarded as adequate written notice or communication to it even if it has not been sent in the manner or to the address/telefax number/email address provided for above.

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27.4. Any party shall be entitled to change its/his aforesaid domicilium on giving not less than 30 (THIRTY) days prior written notice by registered post to the other party of its/his intention to do so provided 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.

28.

JURISDICTION AND COSTS

28.1. The parties hereby consent in terms of Section 45 of the Magistrates Court Act No. 32 of 1944, as amended to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any legal proceedings arising out of this Agreement notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction and this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the aforementioned Act.

28.2. Notwithstanding anything to the contrary herein contained, the parties shall have the right, to institute proceedings in any other court which might otherwise have jurisdiction.

28.3. In the event of the Seller having to instruct its attorneys to secure compliance by the Purchaser with his obligations under this Agreement, then the Purchaser shall be obliged to pay on demand the Seller's legal costs on an attorney and client basis together with VAT thereon.

29.

PHASED DEVELOPMENT

It is recorded that the Seller shall be developing the Estate in phases on such basis and in such time frames as it, in its sole discretion, deems fit.

30.

MANAGING AGENT

The Purchaser agrees to appoint a Managing Agent appointed by the Seller from time to time in its sole discretion as the Managing Agent for the Estate for the duration of the Development Period.

31.

CONSTRUCTION OF COMMUNAL FACILITIES

31.1. The Seller shall construct certain communal facilities being a Leisure Centre and a Forest Club House during the Development Period.

31.2. The Seller shall, in its sole discretion, determine when, during the Development Period, the commencement and completion of such communal facilities shall take place.

31.3. Such communal facilities shall comprise such structures and/or equipment as the Seller, in its sole discretion, may determine.

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APPLICATION OF THE CONSUMER PROTECTION ACT

32.1. It is recorded that for the purposes of this Agreement the Seller is acting in the ordinary course of business.

32.2. The Purchaser records that he was first introduced to the Property through one of the following:

- 32.2.1. newspaper advertisement;
- 32.2.2. recommendation by a person other than the Seller or its agent;
- 32.2.3. the Purchaser first approached the Seller or its agent;
- 32.2.4. the Seller or its agent first approached the Purchaser via ordinary mail, email, sms or in person;
- 32.2.5. other, namely: _____ .

(tick the appropriate box)

32.3. After due consideration, and by his signature hereto the Purchaser or his representative, as the case might be, hereby acknowledge and record that:

32.3.1. he has entered into this Agreement freely and of his own accord and that no circumstances exists that would entitle him to allege, now or in future, that he was at a disadvantage or unequal bargaining position to the Seller in negotiating and concluding the terms and conditions contained in this Agreement;

32.3.2. he has carried out his own investigations with respect to whether or not to enter into this Agreement and that he has done so without any under influence, pressure, duress, harassment or unfair tactics from the Seller;

32.3.3. he understands the context, significance and import of the terms of this Agreement without undue effort, having regard to:

32.3.3.1. the context, comprehensiveness and consistency of the Agreement;

32.3.3.2. the organization, form and style of the Agreement;

32.3.3.3. the vocabulary, use of language and sentence structure of the Agreement;

32.3.3.4. the use of illustrations, headings, examples or other aids to reading and understand the Agreement.

32.4. If the Purchaser is a natural person or a juristic person with an annual turnover or asset value less than the threshold determined by the Minister as defined in terms of Section 6 of the Consumer Protection Act No. 68 of 2008, as amended ("the CPA") (currently R2 000 000.00 (TWO MILLION RAND)) at the time of entering into this Agreement, then the CPA applies to this transaction.

- 32.5. If the Purchaser is a juristic person, it hereby warrants to the Seller that its asset value or annual turnover, at the Date of Signature, shall equal or exceed the threshold determined by the Minister as defined in terms of the CPA and, as a consequence, the sale of the Property to the Purchaser in terms of this Agreement, is exempt from the provisions of that Act (save for the provisions of Sections 60 and 61 thereof).
- 32.6. The Purchaser undertakes, within 7 (SEVEN) days of being requested to do so by the Seller, to furnish the Seller with its last audited financial accounts or its auditors written confirmation and such other financial information in respect to the Purchaser as the Seller may reasonably require in order to confirm the Purchasers asset value/turnover as warranted in clause 32.5 above.
- 32.7. If this Agreement has been entered into as a result of direct marketing (meaning that the Seller or the Seller's agents first approached the Purchaser either in person, by ordinary mail or by electronic communication such as via a text message or email with an offer to sell the Property), the Purchaser may, within 5 (FIVE) business days of the Date of Signature cancel this Agreement by giving written notice thereof to the Seller and in such circumstances, neither the Purchaser nor the Seller shall have any claim against each other.
- 32.8. To the extent that the CPA is applicable, the Purchaser acknowledges that he is acquainted with the nature, condition and extent of the Property as reflected on the General Plan and the Purchaser accepts the Property for value having undertaken an independent review of the Estate and acknowledges the Property to be fit for the purposes of the Purchaser.
- 32.9. It is recorded that the acknowledgements and warranties contained in this clause are material to the Seller entering into this Agreement.

33.

SECURITY

The Purchaser acknowledges that the Seller shall procure the provision of certain security facilities in the Estate and shall delegate to the Association the obligation of maintaining and operating all such security facilities. The Purchaser agrees that no liability shall rest upon the Seller or the Association for any failure or insufficiency of any of the security facilities included in the Estate, irrespective of the cause thereof, or for any consequential damage the Purchaser may suffer by reason of such failure or insufficiency.

34.

CESSION AND RESALE

- 34.1. The Purchaser shall not:
- 34.1.1. sell, assign, cede, transfer or dispose of the Purchaser's rights under this Agreement; or
 - 34.1.2. sell, or in any way agree to sell or otherwise alienate the Property; or
 - 34.1.3. in the event of the Purchaser being a juristic person (such a company, close corporation or trust), allow the sale or otherwise alienation of its shares, members interest or beneficial interest (as the case may be);

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prior to the Transfer Date without the prior written consent of the Seller, which consent the Seller may, in its sole and absolute discretion grant (on such terms and conditions as the Seller may require) or refuse.

- 34.2. In no way detracting from the generality of clause 34.1, should the Seller, in its sole and absolute discretion, grant its consent as contemplated in clause 34.1 then:
- 34.2.1. the Seller may impose such conditions as it deems appropriate, including but in no way limited to conditions in respect of the use of an estate agency and the selling price of the Property; and
 - 34.2.2. the Purchaser shall not be entitled to transfer the Property to any person to whom the Purchaser may have sold the Property simultaneously with the transfer of the Property to the Purchaser unless, in the opinion of the Conveyancers, this will not cause a delay in the registration of transfer of the Property to the Purchaser; and
 - 34.2.3. the Purchaser shall not in any way be relieved of his obligations in terms of this Agreement and shall be obliged to comply with his obligations in terms of this Agreement timeously, and in particular, and in no way detracting from the generality of what is set out here, shall be obliged to pay the purchase price set out in paragraph I of the Schedule in the manner set out in this Agreement.
- 34.3. The Seller shall have the right to cede, assign, sell, transfer or part with its rights and delegate its obligations under this Agreement or any part thereof without the consent of the Purchaser, however, to the extent necessary the Purchaser hereby consents to such cession, assignment, sale or transfer as the case may be.
- 34.4. It is recorded that should the Purchaser wish to re-sell the Property during the Development Period then the Purchaser shall be obliged to grant a sole mandate to one or all of the estate agents accredited by the Association to sell properties in the Estate.

35.

ALIENATION OF LAND ACT

- 35.1. In terms of Section 29A of the Alienation of Land Act No. 68 of 1981, as amended, the Purchaser of the Property may, within a period of 5 (FIVE) days of the signature by him (or his agent acting on his written authority) of this Agreement and provided that the purchase price is the sum of R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND) or less, revoke or terminate this Agreement, as the case may be, by written notice delivered by the Purchaser to the Seller or its agent within the aforementioned period.
- 35.2. Notwithstanding the aforementioned, it is recorded that such provision of the Alienation of Land Act is not applicable to the sale of the Property by the Seller to the Purchaser in terms of this Agreement as the purchase price exceeds the sum of R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND) as provided for in Section 29(5)(a) of the aforementioned Act.

36.

CONDITIONS PRECEDENT

- 36.1. This entire Agreement is subject to and conditional upon the Seller obtaining development finance to enable it to proceed with the proposed development within a period of 12 (TWELVE) months of the Date of Signature failing which the Seller shall, at its option and in its sole discretion, be entitled to resile from this Agreement by

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giving the Purchaser written notice to that effect, in which event this Agreement shall be deemed null and void *ab initio* and of no further force or effect between the parties.

- 36.2. In the event of the Seller electing to cancel this Agreement as envisaged in terms of clause 36.1, above, then in event of the Purchaser having paid the deposit in terms of paragraph J of the Schedule hereto or any other amount comprising the purchase price, such amounts together with all interest earned thereon shall be refunded to the Purchaser and neither party shall have any claim against the other as a result of the failure of the aforementioned conditions precedent.
- 36.3. It is recorded that the aforesaid conditions have been inserted for the benefit of the Seller only who may waive compliance with one or more of the aforesaid conditions prior to the expiry of the period referred to in clause 36.1 above.

37.

GENERAL

- 37.1. In the event of this Agreement being signed by more than one person as Purchaser such persons shall be jointly and severally liable under this Agreement.
- 37.2. No specification, descriptive material, matter or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into this Agreement.
- 37.3. **The Purchaser acknowledges being fluent in and understanding the English language.**

38.

IRREVOCABLE OFFER

This Agreement shall, when signed by the Purchaser and submitted to the Seller, constitute an offer to purchase the Property from the Seller, which offer shall be irrevocable for a period of 30 (THIRTY) days from the date of signature hereof by the Purchaser, whereafter, if it has not been accepted by the Seller, the Purchaser may withdraw it on written notice to the Seller. This Agreement shall be deemed to have been concluded upon signature by the Seller within the aforementioned time period and its validity shall not be dependent on the Seller having communicated its signature to the Purchaser.

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SIGNED by the PURCHASER at

on this the

day of

2016.

AS WITNESSES:

1. _____

2. _____

PURCHASER

Name of signatory:

If signing in a representative capacity the signatory warrants by his/her signature that he/she is duly authorised and that he/she is acquainted with and understands the contents of this Agreement and further warrants that all of the annexures referred to in this Agreement were attached hereto when he/she signed same

CONSENTING SPOUSE

SIGNED BY THE MEMBER / DIRECTOR / TRUSTEE OF A PURCHASER WHO IS A CLOSE CORPORATION / COMPANY / TRUST
ON THIS _____ DAY OF _____ 2016.

AS WITNESSES:

1. _____

2. _____

FULL NAMES OF GUARANTOR

Address:

Telephone No:

By his/her signature hereto the signatory consents to the conclusion of this Agreement and guarantees and binds himself/herself as surety for and co-principal debtor in solidum with the Purchaser to the Seller for the due and punctual fulfilment and discharge of all the obligations undertaken by the Purchaser to the Seller pursuant to this Agreement, under the renunciation of the benefits of excussion and division, the meaning and effect of which benefits and the renunciation thereof he/she acknowledges himself/herself to be acquainted. No variation or amendment or novation of this Agreement shall prejudice the suretyship obligations hereby undertaken by the aforesaid guarantor,

the object being that he/she shall remain liable at all times as surety and co-principal debtor, even if this Agreement is varied, amended or novated and even if the aforesaid Purchaser is granted an indulgence by the Seller.

SIGNED by the **SELLER** at _____ on this the _____ day of _____ 2016.

AS WITNESSES:

1. _____
2. _____

SELLER

Name of signatories: **WESLEY PAUL BENCH-CAPON AND INGO KLAUS GERHARD ROOLF**

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