

made and entered into between

and

ERF NO:

--

INITIALS:

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THE SCHEDULE**A. THE SELLER:**

VAT REGISTRATION NUMBER (if applicable): _____

B. SELLER'S ADDRESS:

Physical Address: _____

Postal Address: _____

Telephone Number: _____

Email address: _____

C. THE PURCHASER:

VAT REGISTRATION NUMBER (if applicable): _____

D. THE PURCHASER'S ADDRESS AND CONTACT DETAILS:**Addresses:**

Physical Address: _____

Postal Address: _____

Telephone Numbers:

Home: _____

Business: _____

Cellular: _____

Others:

Email address: _____

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

Portion 417 of The Farm Lot 31 No. 1560 comprising all of the properties situate within The Hawaan Forest Estate with General Plans registered as follows:

- (i) Phase 1
 Erf 3 Hawaan Forest Estate
 General Plan S.G. No. 1022/2005
 34 erven numbered 7-40
- (ii) Phase 2
 Erf 4 Hawaan Forest Estate
 General Plan S.G. No. 1023/2005
 18 erven numbered 46-63
- (iii) Phase 3
 Erf 5 Hawaan Forest Estate
 General Plan S.G. No. 506/2006
 37 erven numbered 64, 66-74, 106-110, 112-124, 126, 128, 129, 133, 138-140, 159 and 171

- (iv) Phase 4
 Erf 6 Hawaan Forest Estate
 General Plan S.G. No. 508/2005
 34 erven numbered 65, 75-82, 84-98, 161-170
- (v) Phase 5
 Erf 172 Hawaan Forest Estate
 General Plan S.G. No. 1750/2008
 27 erven numbered 175-201

F. NAME OF DEVELOPMENT:

HAWAAN FOREST ESTATE

G. DESCRIPTION OF PROPERTY:

Erf _____ Hawaan Forest Estate, Registration Division FU, Province of Kwazulu-Natal, in extent _____ square metres

together with any buildings thereon in the event that the Property has been improved.

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) ("the **Purchase Price**") which amount is exclusive of VAT in the event that VAT is payable in respect of this transaction.

J. DEPOSIT:

(vide Clause 3.2)

A deposit in the sum of R _____ (_____ Rand) shall be paid by the Purchaser within a period of _____ (_____) **business days** of the Date of Signature.

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.

L. VALUE ADDED TAX ON PURCHASE PRICE OF PROPERTY (IF APPLICABLE):

(vide Clause 3)

The sum of R _____

(_____ Rand)
 ("VAT") is payable by the Purchaser on the basis that the Seller is registered as a vendor in terms of the VAT Act and VAT is payable in respect of this transaction. It is recorded that VAT has been calculated at the rate of **15% (fifteen percent)** of the purchase price reflected in paragraph I above, however, in the event that the rate at which VAT is chargeable being amended after the Date of Signature in circumstances in which the amended rate will apply to this transaction, then the rate at which VAT is payable will be adjusted accordingly and the Purchaser shall be liable to pay such VAT at the amended rate.

M. AMOUNT OF LOAN REQUIRED BY PURCHASER:

(vide Clause 4)

R _____
 (_____ Rand)

N. DATE BY WHICH LOAN TO BE GRANTED:

Within a period of _____ (_____) days of the Date of Signature.

O. DATE OF POSSESSION, DWELLING OCCUPATION DATE AND OCCUPATIONAL INTEREST:

(vide Clause 6)

- (i) The Date of Possession shall be the Transfer Date;
- (ii) The date on which the Purchaser shall be entitled to occupy the Property shall be _____ or the Transfer Date provided that the provisions of clause 1.16 have been complied with;
- (iii) In the event of the Purchaser taking occupation of the Property prior to the Transfer Date then the Purchaser shall be liable to pay the Seller Occupational Interest in the sum of R _____ (_____ Rand) per month in accordance with the provisions of clause 6 of the Terms and Conditions of Sale.

- *please note that this paragraph will need to be altered if risk is to pass on the date of occupation as opposed to the date of transfer*

P. ORIGINAL TRANSFER DATE:

The date of transfer of the Property to the first purchaser thereof from the Developer is the _____.

Q. ESTATE AGENT (IF APPLICABLE):

(vide Clause 12)

Agency: _____
 Name of Agent: _____
 Address: _____
 Office telephone number: _____
 Cellular telephone number: _____
 Email address: _____

R. ESTIMATED AMOUNTS PAYABLE TO ASSOCIATION AND THE HAWAAN FOREST CONSERVATION TRUST:

(vide Clause 11)

- i) R _____
(_____ Rand)
plus value added tax thereon, if applicable, being the estimated monthly levy payable by the Purchaser to the Association which excludes the levy payable to the Community Schemes Ombud Scheme in terms of the Community Schemes Ombud Service Act No. 9 of 2011;
- ii) **R35 000.00 (Thirty-Five 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;
- iii) R _____ (_____ Rand)
plus Value Added Tax thereon being the estimated monthly levy payable to the The Hawaan Forest Conservation Trust Registration Number IT 814/2003 as contemplated in clause 11.10 of the Terms and Conditions of Sale.
- iv) The compulsory levy in the amount prescribed from time to time (and presently subject to a maximum of **R40.00 (forty rand)** per property) which is due under the provisions of the Community Schemes Ombud Services Act No. 9 of 2011, which levy the Association is obliged to collect and pay over to the Community Schemes Ombud Service on behalf of every owner of a property in the Estate on a monthly basis.
- v) R1500.00 (One Thousand Five Hundred Rand) or such sum determined by the Association from time to time in respect of administration fees.

S. 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 **U** below unless otherwise advised in writing by the Seller.

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

The date stated in paragraph **O(i)** above.

** please note that this paragraph will need to be altered if risk is to pass on the date of occupation as opposed to the date of transfer.*

U. THE CONVEYANCERS:

Name: _____
Address: _____
Telephone Number: _____
Email: _____
Reference: _____

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

(vide clause 9)

The Purchaser

W. NAME/S AND ADDRESSES OF GUARANTOR/S:

Full names: _____

Identity Number: _____

Addresses:

Physical: _____

Postal: _____

Telephone Numbers:

Home: _____

Business: _____

Cellular: _____

Others:

Email: _____

X. LIST OF ANNEXURES:

Annexure "A" - TERMS AND CONDITIONS OF SALE

Annexure "B" - ESTATE LAYOUT PLAN

Annexure "C" - SITE & FOOTPRINT PLAN OF PROPERTY

Annexure "D" - GENERAL PLAN

(a) General Plan S.G. No. 1022/2005 (Phase 1)

(b) General Plan S.G. No. 1023/2005 (Phase 2)

(c) General Plan S.G. No. 506/2006 Phase 3)

(d) General Plan S.G. No. 508/2006 (Phase 4)

(e) General Plan S.G. No. 1750/2008 (Phase 5)

** delete whichever is not applicable***Y. SPECIAL CONDITIONS:**

ANNEXURE "A"**TERMS AND CONDITIONS OF SALE****PREAMBLE:****WHEREAS:**

1. The Seller is the registered owner of the Property more fully described in paragraph **G** of the Schedule to this Agreement.
2. The Seller wishes to sell and 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. | "Agreement" | - | means the Schedule, the Terms and Conditions and all annexures thereto; |
| 1.2. | "Association" | - | means the Hawaan Home Owners Association (RF) NPC, Registration Number 2004/008756/08; |
| 1.3. | "Conditions of Establishment" | - | means the Conditions of Establishment as contained in the Record of Decision; |
| 1.4. | "Conditions of Sale" | - | means these Terms and Conditions of Sale; |
| 1.5. | "Consumer Regulations" | - | means the regulations promulgated pursuant to the CPA under Government Notice R293 in Government Gazette 34180 of 1 April 2011; |
| 1.6. | "Conveyancers" | - | means the Seller's conveyancers referred to in paragraph U of the Schedule; |
| 1.7. | "CPA" | - | means the Consumer Protection Act No. 68 of 2008 and any regulations thereunder as amended from time to time; |
| 1.8. | "CPA Applies" | - | means circumstances exist where the CPA applies to this Agreement for the protection of the Purchaser because the Seller is selling the Property in the ordinary course of business and none of the exemptions in section 5(2) of the CPA apply; |
| 1.9. | "CSOSA" | - | means the Community Schemes Ombud Service Act No. 9 of 2011, and any regulations thereunder as amended from time to time; |
| 1.10. | "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 eThekweni Municipality and the final as built plans prepared by the Purchaser's architect and approved by the eThekweni Municipality and same are accepted by the Association in writing as being in order;

- 1.11. "Date of Possession" - means the date specified in paragraph **O(i)** of the Schedule;
- 1.12. "Date of Signature" - means the date upon which the last signing party signs this Agreement;
- 1.13. "Developer" - means Hawaan Investments Proprietary Limited Registration Number 2001/000257/07;
- 1.14. "Development Manual" - means the development manual prepared by the Association'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 Association;
- 1.15. "Dwelling Occupation Date" - means the date that the Purchaser takes occupation of the dwelling erected or to be 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;
- 1.16. "Environmental Authorisation and Related Documentation" - means the Environmental Authorisation issued by KZN Agriculture, Environmental Affairs and Rural Development in respect of the Estate and any amendments or variations thereto as well as the Environmental Impact Assessment and the Environmental Management Plan for the Estate, which is available for inspection at the offices of the Association;
- 1.17. "Estate" - means the **HAWAAN FOREST ESTATE**;
- 1.18. "Estate Layout Plan" - means the Estate Layout Plan annexed hereto marked "**B**" which shows the immovable properties comprising the Estate;
- 1.19. "Estate Planting Palette" - means the estate planting palette prepared by the Association's landscape architect and which is available for inspection at the offices of the Association;
- 1.20. "FICA" - means the Financial Intelligence Centre Act No. 38 of 2001 and the Regulations thereunder as amended from time to time;
- 1.21. "General Plan" - means the relevant General Plan reflected in paragraph **X** of the Schedule hereto approved by the Surveyor-General and thereafter registered over the Parent Property by the Developer which depicts the Property hereby sold;

- 1.22. "Guarantor/s" - means those parties who will bind themselves as sureties and co-principal debtors with the Purchaser for the fulfilment of his/its obligations to the Seller as provided for in this Agreement and as reflected in paragraph **W** of the Schedule;
- 1.23. "Juristic Person" - means a partnership, an association, a trust, a body corporate, a company, a close corporation or other legal or juristic person;
- 1.24. "Land Surveyor" - means the Land Surveyor nominated by the Association;
- 1.25. "Land Use Management Scheme" - means the eThekweni Municipality's Spatial Planning and Land Use Management Scheme and By-Laws in force and as amended from time to time;
- 1.26. "Levies" - means the estimated levies or contribution reflected in paragraph **R** of the Schedule;
- 1.27. "Loan" - means the bank loan for the sum referred to in paragraph **M** of the Schedule;
- 1.28. "Managing Agent" - means the managing agent appointed by the Association to manage the Estate;
- 1.29. "MOI" - means the Memorandum of Incorporation of the Association as referred to in these Terms and Conditions;
- 1.30. "Municipality" - means the eThekweni Municipality or its successor in title;
- 1.31. "Original Transfer Date" - means the date that the Property was originally transferred from the Developer, which is the date recorded in paragraph **P** of the Schedule;
- 1.32. "Party/Parties" - means the Seller and the Purchaser or either one of them as the context may indicate as such referred to in this Agreement;
- 1.33. "Parent Property" - means the immovable property described in paragraph **E** of the Schedule;
- 1.34. "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;
- 1.35. "PPA" - means the Property Practitioners Act No. 22 of 2019 and the Regulations thereunder as amended from time to time;
- 1.36. "POPI Act" - means the Protection of Personal Information Act No. 4 of 2013 and the Regulations thereunder as amended from time to time;
- 1.37. "Prime Rate" - means a rate of interest per annum which is equal to the published maximum lending rate of interest per annum of Nedbank Limited or its successor in title, compounded monthly in arrears, charged by the said bank on the

unsecured overdrawn current accounts of its corporate clients in the private sector from time to time. In the case of any dispute as to the rate payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, who shall not have to prove his/her appointment, and which certificate shall be final and binding upon the Parties;

- 1.38. "Property" - means the Property described in paragraph **G** of the Schedule;
- 1.39. "Purchaser" - means the party referred to in paragraph **C** of the Schedule;
- 1.40. "Tribunal Judgement" - means the Tribunal Judgement issued by the Development Tribunal in respect of the Estate and any amendment thereto, a copy of which is available for inspection at the offices of the Association;
- 1.41. "Rules" - means the Rules of the Association as referred to in these Terms and Conditions of Sale and any Rules substituted therefor, amended or added to by the Association from time to time;
- 1.42. "Schedule" - means the Schedule preceding these Terms and Conditions of Sale and which is deemed to be part of this Agreement;
- 1.43. "Seller" - means the party referred to in paragraph **A** of the Schedule;
- 1.44. "Site and Footprint Plan" - means the Site and Footprint Plan of the Property annexed hereto marked "**C**" showing the Property and the building footprint;
- 1.45. "SPLUMA" - means the Spatial Planning Land Use Management Act No. 16 of 2013 as and any regulations thereunder as amended from time to time;
- 1.46. "Terms and Conditions of Sale" - means these Terms and Conditions of Sale;
- 1.47. "Town Planning By-Laws" - means the Ethekwini Municipality's Spatial Planning and Land Use Management By-Laws as amended from time to time;
- 1.48. "Transfer Date" - means the date of registration of the Property into the name of the Purchaser in the Deeds Registry at Pietermaritzburg;
- 1.49. "Trust" - means The Hawaan Forest Conservation Trust Registration Number IT 814/2003;
- 1.50. "VAT" - means Value Added Tax in accordance with the Value Added Tax Act No. 89 of 1991 and the Regulations thereunder as amended from time to time.
- 1.51. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of this Agreement;

- 1.52. 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;
- 1.53. 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.
- 1.54. For the purposes of this Agreement whenever any number of days is prescribed, they shall consist of all days i.e., 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;
- 1.55. Any reference to any statutes or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;
- 1.56. A fully executed 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;
- 1.57. 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;
- 1.58. 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;
- 1.59. 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;
- 1.60. 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;
- 1.61. 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;
- 1.62. 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;
- 1.63. 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;
- 1.64. 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;
- 1.65. 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;
- 1.66. 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;

- 1.67. 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;
- 1.68. The provisions of this Agreement shall be read in conjunction with the provisions of the CPA and insofar as the provisions of this Agreement are inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail in circumstances in which the CPA is applicable.
- 1.69. 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.

2. SALE

- 2.1. The Seller hereby sells to the Purchaser who hereby purchases the Property set out in paragraph G of the Schedule subject to and in accordance with the Schedule, the Terms and Conditions of Sale, the annexures hereto and the documents referred to herein.
- 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" and the relevant General Plan annexed hereto marked "D".

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 authorised 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. the investment is subject to payment or payments made to the Conveyancers being unconditionally credited to the Conveyancers Trust and not being reversed;

- 3.3.5. as required by the Legal Practice Council of South Africa, 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;
- 3.3.6. 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 and less any deductions prescribed by the Legal Practice Act No. 88 of 2014. Any refund of monies to the Purchaser will include the accrued interest thereon;
- 3.3.7. the investment is subject to the payment or payments made to Conveyancers being unconditionally credited to the Conveyancers Trust Account and not being reversed;
- 3.3.8. should the funds invested in the abovementioned account be required by the Conveyancers to procure the issue of a guarantee by the bank in which such funds are invested in favour of a third party, the Purchaser expressly consents to the issue of a guarantee by the said bank at his cost against a pledge of the invested funds to secure payment by the Purchaser of the purchase price due to the Seller and to the Seller's bondholder, payment to be effected on the Transfer Date. The Purchaser hereby pledges and cedes the Purchaser's right title and interest in and to the funds to the said bank.
- 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 **30 (Thirty) 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.

** please note that the above provision may need to be amended if the Seller and the Purchaser agree on different time frames*

- 3.5. All payments shall be made in South African currency 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 **M** 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 **M** of the Schedule by no later than the date reflected in paragraph **N** of the Schedule or by such later date as the Seller, entirely in his own discretion, may grant to the Purchaser.
- 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 **M** 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 **N** of the Schedule or such later date as may be agreed to by the Seller in writing. In such event, any amounts paid by the Purchaser on account of the purchase price shall be refunded to it 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 **M** 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. In such event, the loan amount reflected in paragraph **M** of the Schedule shall automatically be amended to the lesser amount. Should the Purchaser elect not to accept the loan quotation or approval in principle for the lesser amount then this Agreement shall automatically lapse and be of no further force or effect.
- 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 unless the Seller directs otherwise in writing.

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 itself 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 and any amendment thereto;
 - 5.1.2.3. by the Developer as conditions of title, in particular the conditions set out in clause 18 hereof, the Municipality or any other authority;
 - 5.1.2.4. in terms of the Rules of the Association and any protocol established by the Association;
 - 5.1.2.5. in terms of the Memorandum of Incorporation of the Association;
 - 5.1.3. he is aware of the intended future development of the Parent Property and the Estate. Such development is intended to involve the establishment, *inter alia*, of buildings on various portions of the Parent Property and the Estate and/or the acquisition of additional property to be incorporated into the Estate at a future point in time and consents to the

incorporation thereof into the Estate to the extent that the Purchaser's consent is required and/or may be necessary. The Purchaser hereby undertakes that he will, at all times, co-operate with the Association 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 Association, its nominee or agent for any change of use or additional use in respect of any property within the Parent Property or the Estate;

- 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 and the Purchaser shall only be entitled to erect the maximum number of dwellings thereon as provided for in the Record of Decision subject to the terms and conditions contained therein;
- 5.1.6. the Property shall not be subdivided or consolidated with any adjoining property on the Parent Property by the Purchaser 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 unless otherwise determined by the Association;
- 5.1.7. in the event of the Association electing to rezone any erf established on the Parent Property or within the Estate or being directed to do so by any competent authority then the Purchaser grants his consent to any application for rezoning provided that such application conforms with any Land Use Management Scheme or any other scheme applicable from time to time and undertakes not to object to any such application;
- 5.1.8. at the Date of Signature the beacons relating to the boundaries of the Property may not be in place and the Seller or its agent shall point out the beacons of the Property once they are in place, whereafter the Seller shall have no further obligation to the Purchaser to either point out or establish any beacons in relation to the Property.
- 5.2. 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.
- 5.3. When selling the Property the Purchaser shall be obliged to utilise such documentation (including a standard sale agreement) prescribed by the Association.
- 5.4. It is recorded that the standard sale agreement prescribed by the Association may be amended by the parties thereto provided that no clause or condition in favour of or affecting the Association or the Trust may be amended.
- 5.5. 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.
- 5.6. 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 and the Seller, its Memorandum of Incorporation and Rules 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.

- 5.7. 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.
- 5.8. In no way detracting from the generality of any other provision of this Agreement, 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.
- 5.9. The Purchaser shall be obliged to either insure the Property and dwelling erected on the Property with the insurance company nominated by the Association (with whom the Association will have negotiated favourable terms for the insurance of property within the Estate) or to produce proof to the satisfaction of the Association that the Property is duly covered by a policy of insurance which meets the standards of cover offered by the Association's insurers and to keep the Property so insured from the Date of Possession and for so long as the Purchaser is the owner of the Property. Notwithstanding anything contained herein or elsewhere, it is recorded that the responsibility for procuring the insurance of the Property and for the payment of all premiums and other amounts due in respect of the aforesaid insurance policy, shall be the sole responsibility of the Purchaser 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 Association has agreed to procure the provision of certain security facilities as recorded in clause 30 hereof. In default of the Purchaser procuring such insurance or maintaining it in force at all times the Purchaser authorises and consents to the Association, in its sole discretion, instructing the Association's insurers to conduct a visual evaluation of the Property and to secure the amount of cover advised by them in which event the Association shall be entitled on written notice to that effect to the Purchaser to debit the Purchaser's levy account with monthly premiums payable in connection therewith and recover same from the Purchaser. Neither the Association nor its insurers shall, however, be liable to the Purchaser, or any third party should the value and terms of cover not be sufficient.
- 5.10. 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.
- 5.11. The Purchaser shall not be entitled to make application to rezone the Property or to change the use as set out in the any Record of Decision and/or the Land Use Management Scheme without the prior written consent of the Association.
- 5.12. The Purchaser shall be bound to observe and abide by the provisions of the CSOSA which shall be applicable to all erven and within the Estate and which shall, subject to the provisions of the Memorandum of Incorporation and Rules of the Association, prescribe the manner in which the Association shall operate, the manner of the application of rules promulgated by the Association and such entities and the establishment of dispute resolution mechanisms.
- 5.13. The Purchaser acknowledges that, in respect of any vacant land sold and purchased, 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".

6. POSSESSION AND OCCUPATION OF THE PROPERTY AND PAYMENT OF OCCUPATIONAL INTEREST

- 6.1. The Date of Possession of the Property shall be the date of registration of transfer of the Property in the name of 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 date reflected in paragraph **O(ii)** of the Schedule.
- 6.3. The Purchaser undertakes, in the event of this Agreement being cancelled or terminated for any reason, to restore the Property to the same good order and condition in which it was on the date reflected in paragraph **O(ii)** of the Schedule.
- 6.4. Furthermore, in the event of this Agreement being cancelled due to a breach of the terms and conditions hereof by the Purchaser, the Purchaser shall not be entitled to any compensation for any improvements of whatever nature he may have effected to the Property.
- 6.5. Notwithstanding anything contained herein, the Purchaser shall not be entitled to occupation of the Property until such time as the total purchase price reflected in paragraph **I** of the Schedule has been paid or secured by the Purchaser in full, as contemplated in clause 4 hereof.
- 6.6. The failure of the Purchaser to take physical occupation of the Property on the date reflected in paragraph **O(ii)** of the Schedule or to accept the keys to the Property shall not affect the date of occupation reflected in paragraph **O(ii)** of the Schedule which shall remain as defined.
- 6.7. The Purchaser acknowledges that on the date reflected in paragraph **O(ii)** of the Schedule, 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 Purchaser shall have no claim whatsoever against the Seller, the Association, the Municipality or any of their service providers or contractors and the like by reason of any such inconvenience and the Property shall be transferred to the Purchaser notwithstanding the aforementioned.
- 6.8. From the date reflected in paragraph **O(ii)** of the Schedule the Purchaser:
- 6.8.1. shall be entitled to beneficial occupation of the Property which shall be used only for the purpose reflected in paragraph **H** of the Schedule, subject to compliance with the MOI and Rules of the Association;
 - 6.8.2. shall, at his expense, maintain the interior of the Property in a good and clean condition and where necessary repair or refurbish any damaged item and replace any lost item;
 - 6.8.3. shall, at his expense, maintain in good working order and condition, all electrical, plumbing and sewerage installations and appurtenances of whatever nature, serving the Property;
 - 6.8.4. shall, at his own expense, maintain adequate public liability insurance against all risks that the Purchaser bears;
 - 6.8.5. shall make arrangements with the relevant suppliers of electricity and water to obtain the required connections and to pay for such connections as well as the consumption charges in respect of water and electricity;
 - 6.8.6. shall at all times comply with the MOI and Rules of the Association and shall ensure that all persons entering the Estate by virtue of the Purchaser's rights thereto do likewise;
 - 6.8.7. waives all claims against the Association for any loss or damage or any injury to person which the Purchaser or his invitees may sustain in or about the Estate and indemnifies the Association against any claim that may be made against it by any employee, tenant or invitee of the Purchaser for any loss or damage to person or property suffered in or about the Estate, howsoever such loss or damage may be caused: provided that if the CPA Applies to this transaction then the exclusion of liability and indemnity in this clause will not apply

to any loss directly or indirectly attributable to the gross negligence of the Association or any person acting for or contracted by it;

- 6.8.8. shall not, without the prior written consent of the Seller, make or cause or allow to be made any change or improvements to the Property or any buildings thereon prior to the Transfer Date. If any such changes or improvements are made, with or without the prior written consent of the Seller then, without prejudice to any rights the Seller may have in terms of this Agreement or at law, the Purchaser shall not have any claim against the Seller in respect of any expenditure upon or improvements to the Property;
- 6.8.9. shall be liable for the payment of all services (including consumption) provided to the Property and any deposits, fees or contributions payable in connection with the supply of such services. In no way detracting from the aforesaid, it is specifically recorded that it shall be incumbent upon the Purchaser, at the Purchaser's cost, to make application for the connection of water, electricity, telephone and fibre services to the Property;
- 6.8.10. shall not be entitled to let or otherwise part with occupation of the Property without the prior written consent of the Seller, and should the Seller so agree it shall be on 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 MOI and Rules of the Association;
- 6.8.11. shall permit the Seller or his agent, at all reasonable times, to enter and inspect the Property in order to ensure that the Purchaser is keeping the Property in a good state of repair and condition, and if the Purchaser is found to be in breach of this provision, the Seller shall have the right, at the cost of the Purchaser, to carry out such repairs as are necessary to maintain the Property in a good state of repair and condition or to comply with any law, by-law, ordinance, regulation or the like. The Purchaser shall refund any such amounts expended by the Seller on demand by the Seller;
- 6.9. The Purchaser shall not use the Property or permit the Property to be used in such manner or for such purposes as shall cause or shall be likely to cause a nuisance to any occupier of property in the Estate or interfere with the amenities of the Estate or so as to breach the MOI or Rules of the Association or any law, by-law, ordinance or provision of the Town Planning Scheme in force in relation to the Estate.
- 6.10. The Purchaser undertakes, in the event of this sale being cancelled or terminated for any reason whatsoever, to restore the Property to the same good order and condition in which it was on the date reflected in paragraph **O(ii)** of the Schedule. In addition, the Purchaser and all persons claiming occupation through him shall be obliged to vacate the Property immediately, the Purchaser acknowledging that no tenancy shall have been established by virtue of his occupation of the Property.
- 6.11. From the date reflected in paragraph **O(ii)** of the Schedule, the Purchaser shall be liable to pay the Seller the occupational interest reflected in paragraph **O(iii)** of the Schedule.
- 6.12. The aforementioned occupational interest shall be payable by the Purchaser to the Seller or the Conveyancers monthly in advance on the first day of each and every month from the date reflected in paragraph **O(ii)** of the Schedule to the Transfer Date, both days inclusive. If the date reflected in paragraph **O(ii)** of the Schedule is not the first day of the month, the Purchaser shall pay a pro rata share of the occupational interest due for that month with the final adjustment being made on the Transfer Date.

7. ARCHITECTURAL AND LANDSCAPE CONTROLS AND IMPROVEMENTS TO PROPERTY

- 7.1. In order to maintain high standards and with a view to ensuring an attractive and harmonious development within the Estate, all Purchasers of erven within the Estate shall be required to adhere to the Association's Development Manual, the Land Use Management Scheme and Controls, the Environmental Impact Assessment, Environmental Management Plan, the Estate Planting Palette, any

protocol established by the Association and the Association's Memorandum of Incorporation and Rules.

- 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 adhere to the provisions of the relevant agreement of sale concluded by the purchaser when purchasing property in the Estate as well as the MOI and Rules of the Association and any other governing documents promulgated in accordance therewith.
- 7.3. The general principles relating to construction of dwellings on erven within the Estate are reflected in the MOI.
- 7.4. Again, in no way detracting from the generality of the aforesaid it is specifically recorded that 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.
- 7.5. Notwithstanding anything to the contrary herein or elsewhere contained and without prejudice to the requirements of clause 7.1 above, 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.
- 7.6. To enable the Association to consider any such request for approval the Purchaser shall provide the Association with, inter alia, the following as a minimum:
 - 7.6.1. 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 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);
 - 7.6.2. details of construction materials to be used;
 - 7.6.3. the fee prescribed by the Association in respect of the perusal and approval of building plans;
 - 7.6.4. a geo-technical report of the Property undertaken by a professional geo-technical engineer;
 - 7.6.5. a detailed survey of the Property which shall include the position of the following:
 - 7.6.5.1. all indigenous trees, (showing both the position of the girth as well as the umbrella);
 - 7.6.5.2. the road edges and road markings;
 - 7.6.5.3. 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);
 - 7.6.5.4. all embankments;

- 7.6.5.5. all retaining walls;
 - 7.6.5.6. road reserves and cadastral boundaries of the Property; and
 - 7.6.5.7. any further information, documentation and/or reports as may be required by the Association from time to time in terms of the Memorandum of Incorporation, Rules, Development Manual or any other protocol, guideline or regulation applicable within the Estate from time to time.
- 7.7. 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 and to the Association has authorised the commencement of construction.
- 7.8. Any building or other structure to be erected on the Property shall be designed by an architect approved by the Association and constructed by a contractor approved by the Association, which construction shall be supervised by an architect or project manager approved by the Association.
- 7.9. 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 Developer 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 7.9, 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, he shall be liable for a fine imposed by the Association, in its sole and absolute discretion.
- 7.10. 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, approved 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).
- 7.11. 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 unless agreed otherwise by the Association in writing.
- 7.12. 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.
- 7.13. 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.
- 7.14. The Purchaser shall be entitled to enclose the Property by means of a fence, wall or the like provided that he has obtained the prior written approval of the Association and provided further that such fence, wall or the like is erected in accordance with the guidelines and specifications prescribed by the Association from time to time.

- 7.15. 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 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 Association 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 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 Association against any claim that may be made against 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: provided that if the CPA Applies the exclusion of liability and indemnity in this clause will not apply to any loss directly or indirectly attributable to the gross negligence of the Association or any person acting for or controlled by any of them;
 - 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 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 MOI, Rules or any law, ordinance or by-law or provision of the Land Use Management Scheme in force in relation to the Property.
- 8.4. 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 MOI and Rules of the Association, the Land Use Management Scheme, the Development Manual and the Environmental Management Plan.

9. **TRANSFER AND TRANSFER COSTS**

- 9.1. All expenses incidental to the preparation and registration of transfer of the Property to the Purchaser, including VAT, bank charges, disbursements, levies, proportionate share of rates and taxes and the costs of registration of any mortgage 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 Transfer or for any period for which the Purchaser is liable in terms of this Agreement, the Purchaser shall be obliged to refund the Seller its pro-rata share of such rates upon demand by the Seller. The Purchaser shall, within **7 (seven) days** of being called upon to do so by the Conveyancers:
- 9.1.1. 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, contributions and connection fees; and
- 9.1.2. 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.
- 9.2. 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.
- 9.3. 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 or the Association arising out of any delays in effecting transfer of the Property to the Purchaser.
- 9.4. 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 receipt, 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 receipt 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 receipt 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 it to SARS have been paid by him.

- 9.5. The Purchaser shall be deemed to be responsible for any delay in registration of transfer that is occasioned, inter alia, by:
- 9.5.1. the Purchaser's failure to provide any documentation or sign bond or transfer documents and pay related costs;
 - 9.5.2. delays in the provisions of guarantees by Conveyancers appointed by a financial institution to attend to the registration of the Purchaser's bond;
 - 9.5.3. delays in the VAT registration of the Purchaser, if required;
 - 9.5.4. delays in SARS issuing the transfer duty exemption receipt due to the Purchaser's, or its representatives tax affairs not being in order;
 - 9.5.5. delays caused in the registration of the Purchaser's mortgage bond;
 - 9.5.6. 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, repeal or replace 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 permitted 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;
 - 10.1.11. the appointment of the managing agents to manage 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. approval 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 or the Dwelling Occupation Date, whichever occurs first, 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.

11. LEVIES

- 11.1. With effect from the Date of Possession the Purchaser accepts liability for the payment of an annual levy to the Association in **12 (twelve)** monthly instalments subject to the terms of the Association's Memorandum of Incorporation (the estimated amount of the monthly levy being the amount reflected in paragraph **R(i)** of the Schedule).
- 11.2. The Purchaser shall pay to the Association from time to time the estimated levy as set out in paragraph **R(i)** of the Schedule which is calculated by the Association 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 amount reflected in paragraph **R(ii)** of the Schedule to the Association for deposit into its Levy Stabilisation Fund 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 **R(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, annual levy, penalty levy, CSOS levy or special levy as provided for herein or the amount reflected in paragraph **R(ii)** of the Schedule, save as specifically provided for herein or in the Association's Memorandum of Incorporation.
- 11.8. The Purchaser shall pay the amounts reflected in paragraphs **R(i)** and **R(ii)** of the Schedule to the Conveyancers upon request therefor and same shall be dealt with in accordance with the provisions of those paragraphs. After the Date of Transfer the monthly levy shall be paid to the Association.
- 11.9. In addition to the levies payable by the Purchaser in terms of paragraphs **R(i)** and **R(ii)** of the Schedule, the Purchaser also accepts liability, with effect from the Date of Transfer, for payment of the compulsory levy reflected in paragraph **R(iv)** of the Schedule in the amount prescribed from time to time (and presently subject to a maximum of **R40.00 (forty rand)** per erf and/or unit) which is due under the provisions of the Community Schemes Ombud service Act No. 9 of 2011, which levy the Association is obliged to collect and pay over to the Community Schemes Ombud Service on behalf of every owner of an erf or unit in the Estate on a monthly basis.

- 11.10. In addition to the levies payable in terms of paragraph **R(i)** and **R(iv)** of the Schedule, the Purchaser accepts liability, with effect from the Date of Transfer, for the payment of a monthly levy to the Trust, the estimated amount of which is set out in paragraph **R(iii)** of the Schedule. The Purchaser acknowledges that the aforementioned levy shall be determined by the Association from time to time and shall be paid by the Purchaser to the Association on a monthly basis together with the levy reflected in paragraph **R(i)** of the Schedule.
- 11.11. 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.
- 11.12. In the event that the Association incurs any bank or other charges in collecting any levies due by the Purchaser such charges shall be recoverable by the Association from the Purchaser.

12. ESTATE AGENTS COMMISSION

- 12.1. The Seller shall pay selling commission to the agent referred to in paragraph **Q** of the Schedule in accordance with the mandate entered into between the Seller and the agent. The Purchaser warrants that the agent referred to in paragraph **Q** of the schedule and no other agency or agent whatsoever was responsible for introducing the Purchaser to the Property and was the effective cause of the sale of the Property to the Purchaser. The Purchaser indemnifies and holds the Seller harmless against any loss, damage or expense sustained, suffered or incurred by the Seller arising out of any breach of the foregoing warranty.
- 12.2. The aforementioned commission shall be deemed to have been earned and shall be paid by the Seller to the agent on the date of registration of transfer of the Property to the Purchaser.
- 12.3. The agent referred to in paragraph **Q** of the Schedule warrants that:
- 12.3.1. he is in possession of a valid Fidelity Fund Certificate as defined in Section 47(1) of the PPA as at the Date of Signature;
 - 12.3.2. the estate agency reflected in paragraph **Q** of the Schedule and every director thereof is in possession of a valid Fidelity Fund Certificate as at the Date of Signature;
 - 12.3.3. he and the agency reflected in paragraph **Q** of the Schedule are in possession of a valid tax clearance certificate issued by the South African Revenue Service;
 - 12.3.4. the Fidelity Fund Certificates referred to in clauses 12.3.1 and 12.3.2 above will be valid on the date on which the selling commission referred to in clause 12.1 above is paid to him or the agency referred to in paragraph **Q** of the Schedule.
- 12.4. The agent and the agency reflected in paragraph **Q** of the Schedule acknowledge that:
- 12.4.1. in terms of Section 56(1) and (2) of the PPA, they shall not be entitled to the selling commission referred to in clause 12.1 above by either the Seller, the Purchaser or the Conveyancers when such commission falls due if they are in breach of the provisions of clause 12.3 above;
 - 12.4.2. in terms of Section 56(5) of the PPA, the Conveyancers may not pay any remuneration or other monies to the estate agent or agency reflected in paragraph **Q** of the Schedule unless the agent and the agency has provided the Conveyancers with a certified copy of his/her/its Fidelity Fund Certificate which must be valid during the period and on the date of this transaction and on the date of payment of such selling commission.
- 12.5. In the event of paragraph **Q** of the Schedule not having been completed by inserting the name of an agent, the Purchaser warrants that no agent was responsible for introducing him to the Property and further warrants that no agent will have any claim against the Seller for agents commission arising out of this transaction. The Purchaser indemnifies and holds the Seller harmless against any loss,

damage or expense sustained, suffered or incurred by the Seller arising out of any breach of the foregoing warranty.

- 12.6. In the event of this sale being cancelled by the Seller as a result of a breach by the Purchaser of the terms and conditions of this Agreement, then the Purchaser shall be liable for the payment of all selling commission due to the agent in terms of the mandate concluded between the Seller and the agent and the Seller shall have no liability whatsoever for the payment thereof.

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 Memorandum of Incorporation and Rules of the Association;

13.2.6. subject to the acknowledgements made by the Purchaser in terms of Clause 5 hereof.

- 13.3. If the CPA Applies, the Property is sold and purchased voetstoots which means that the Property is sold and will be delivered as it stands and the Seller will not be liable to the Purchaser for any latent or patent defects which are to be found in the Property **6 (Six) months** or later after the Transfer Date if such defects were not known to the Seller at the Transfer Date and were not disclosed and brought to the attention to the Purchaser.

- 13.4. 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 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.

- 13.5. 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.
- 13.6. The Purchaser hereby 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 Property or the Estate and indemnifies the Seller and the Association against any such claims that may be made against them by a member of the Purchaser's 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.
- 13.7. In no way detracting from any other provision of this Agreement, it is specifically recorded that there shall be no obligation on the Seller and the Association of any nature whatsoever to clear any vegetation, trees and the like on the Property or to remove any structures on the Property which may require demolition.

14. TRUSTEE FOR A COMPANY TO BE FORMED

- 14.1. In the event of the signatory to this Agreement, on behalf of the Purchaser, having concluded this Agreement in his capacity as a trustee for a company to be formed (which signatory is hereinafter referred to as the "Signatory") then the Signatory by his signature hereto warrants that the said company:
- 14.1.1. will be formed and the Memorandum of Incorporation of which shall contain as one of its objects the adoption and ratification of this Agreement; and
 - 14.1.2. will ratify and adopt the terms and conditions of this Agreement within **7 (seven) days** after registration;
 - 14.1.3. 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.
- 14.2. The Signatory, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the Seller for the due and punctual performance of such company's obligations to the Seller in terms of this Agreement. For the avoidance of any doubt:
- 14.2.1. Excussion - the effect of renouncing this benefit is that the seller will be entitled to proceed against the signatory for the full amount of the purchase price or other obligations owing without first proceeding against and excussing the Purchaser;
 - 14.2.2. Division - the effect of renouncing this benefit is that if there is more than one surety then the Seller will be entitled to proceed against one or some of such sureties to the exclusion of the others for the full amount of the purchase price or other obligations owing.
- 14.3. The Signatory shall be a shareholder of the company.
- 14.4. If the terms and conditions of clauses 14.1, 14.2 and 14.3 above are not fulfilled, then the Signatory shall 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.

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 (other than a company to be formed), a close corporation 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 PLANS

- 16.1. It is recorded that the General Plans reflected in paragraph X of the Schedule have been registered in the Pietermaritzburg Deeds Registry against the various portions of the Parent Property.

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. The Purchaser acknowledges:
- 17.2.1. having received a copy of the Association's Memorandum of Incorporation and Rules;
 - 17.2.2. having read and understood same; and
 - 17.2.3. agrees that he is bound by the provisions thereof.
- 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 a third party, namely the Association, and shall be binding by and between the Association and the Purchaser and its successors-in-title. The Purchaser undertakes that he and all persons deriving use of the Estate or any part thereof through him shall, 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 Memorandum of Incorporation and Rules 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, subject to the provisions of this Agreement, 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 signature of this Agreement.

18. CONDITIONS OF TITLE

- 18.1. The Purchaser shall be bound by conditions of title as well as any other conditions imposed by the Association and/or any other competent authority.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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, 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.
- 18.5. 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 its cost, elects to build a retaining wall to the satisfaction of the Municipality and the Association.
- 18.6. Encroachment over the aforementioned servitude shall be allowed at the discretion of the Municipality and the Association.

19. SERVICES

- 19.1. 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.

- 19.2. 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 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 Association and neither shall the Purchaser be entitled to exceed the electricity supply approved by the Association without its prior written consent, which it may in its 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 it 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:

20.1.2.1. cancel this sale, and retake possession of the Property, in which event all amounts paid to the Seller or to the Conveyancers on account of the purchase price (including any amount paid in trust and interest that may have accrued thereon) shall be forfeited to and retained by the Seller as rouwkoop (that is not the cost of enforcement but a cost of breaching this Agreement) alternatively, if the Seller so elects, he may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty) in which case the amounts already paid to the Seller or the Conveyancer's as aforesaid shall not be forfeited as rouwkoop but may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller subject to following due process required in law, in which event the Conveyancers, should the aforementioned funds be deposited with them, are hereby irrevocably authorised to pay any amounts held by them in trust to the Seller; or

20.1.2.2. declare all of the Purchaser's obligations in terms of this Agreement to be immediately due and payable and claim immediate performance by the Purchaser of all his obligations in terms of this Agreement.

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

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.
- 20.4. If this Agreement is cancelled by the Seller as provided for in clause 20.1 above, the Purchaser and all persons claiming occupation through the Purchaser, shall forthwith be obliged to vacate the Property. No lease or other right of occupation in favour of the Purchaser shall be created or come into existence by virtue of this Agreement.
- 20.5. If the Purchaser disputes the Seller's right to cancel this Agreement, then pending the determination of such dispute, the Purchaser shall be obliged to continue to pay all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller shall be entitled to accept such payments without prejudice to his rights of cancellation as aforesaid. If such dispute is decided in favour of the Seller then such amounts so received by the Seller after cancellation as aforesaid shall be deemed to have been paid to the Seller prior to cancellation.
- 20.6. Should this Agreement be cancelled by the Seller in terms of this clause the Purchaser shall not be entitled to claim or receive any compensation whatsoever from the Seller for any alterations, additions or improvements effected to or on the section save only as otherwise provided by law.

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 (three) percentage points** above the prime overdraft rate charged by Nedbank Limited or its successors in title 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 Nedbank Limited or its successors in title 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

If applicable, the Seller shall deliver to the Purchaser a copy of the Certificate of Compliance for any electric fence system on the 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. **7,5% (seven comma five percent)** of the purchase price in the case of the foreign Seller being a natural person;

23.1.2. **10% (ten percent)** of the purchase price in the case of the foreign Seller being a company or close corporation;

23.1.3. **15% (fifteen 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 he 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.

OR

- 23.3. In this regard it is recorded that the Seller is not a South African "resident" (as defined in the Income Tax Act) and therefore the Conveyancers are hereby irrevocably and unconditionally authorised and instructed by the Parties to deduct the amount due to SARS and to pay same to SARS as soon as possible after the Transfer Date in fulfilment of the Purchaser's obligations outlined in clause 23.1 above. Furthermore, the Seller and the Purchaser undertake to sign all documentation (including any declarations and the like) and to furnish all information that may, in the sole opinion of the Conveyancers, be required in order for the Parties to comply with their obligations in terms of the Income Tax Act (in particular Section 35A of that Act) within a period of **7 (seven) days** of being requested to do so by the Conveyancers.

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

*** Delete clause 23.2 in the event of the Seller being a non-resident and the total purchase price exceeding R2 million.**

**** Delete clause 23.3 in the event of the Seller being a resident or if the total purchase price does not exceed R2 million.**

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 term 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 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 AND INDEPENDENT ADVICE

- 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 purposes of or connected with this Agreement the parties hereby choose their respective *domicilia citandi et executandi*, the addresses and email addresses set out in paragraphs **B** and **D** of the Schedule to this Agreement.
- 27.2. Either party shall be entitled to change his/her aforesaid domicilium on giving not less than **30 (thirty) days** prior written notice by registered post to the other party of his/her 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.
- 27.3. Any notice which is:
- 27.3.1. delivered by hand at the addressee's street address domicilium shall be deemed to have been received by the addressee on the day of delivery; or
 - 27.3.2. posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its domicilium, shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting; or
 - 27.3.3. transmitted by e-mail to the addressee at the domicilium shall be deemed to have been received by the addressee on the date of transmission.

- 27.4. 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 him/her even if it has not been sent in the manner or to the address/email address provided for in paragraphs **B** and **D** of the Schedule.

28. JURISDICTION AND COSTS

- 28.1. In the event of any action or application arising out of or in connection with this Agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction, this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended. As a result, any litigation in relation to this Agreement may be conducted in the Magistrate's Court having geographical jurisdiction even if the monetary amount in question exceeds the jurisdiction of the Magistrate's Court.
- 28.2. Notwithstanding anything to the contrary herein contained either Party hereto shall have the right at its/his sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction.
- 28.3. All legal costs incurred by either Party in consequence of any default of the provisions of this Agreement by the other shall be payable by the defaulting Party on demand to the maximum amount permitted by Law and shall include collection charges, the costs incurred by the aggrieved party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgement awarded in favour of the aggrieved Party in relation to, in terms of or arising out of this Agreement together with VAT thereon.

29. APPLICATION OF THE CONSUMER PROTECTION ACT

- 29.1. It is recorded that the sale of the Property by the Seller in terms of this Agreement is not a transaction conducted by the Seller "in the ordinary course of business" as contemplated in the Consumer Protection Act No. 68 of 2008 ("the CPA"). If the sale of the Property by the Seller is concluded in the "ordinary course of business" then the Seller shall bear the responsibility to ensure that this Agreement is appropriately amended (with the approval of the Association having been obtained in each case) so as to comply with the provisions of the CPA, the Association being free from all responsibility in this regard.
- 29.2. If this Agreement is entered into as a result of Direct Marketing as defined in the CPA, the Purchaser may within **5 (Five) Business Days** of the Date of Signature cancel this Agreement by giving written notice thereof to the Seller. Thereafter neither the Seller nor the Purchaser shall have any further claim against the other. The Purchaser records that he was first introduced to the Property through one of the following:

- 29.2.1. newspaper advertisement; ☐
- 29.2.2. recommendation by a person other than the Seller or its agent; ☐
- 29.2.3. the Purchaser first approached the Seller or its agent; ☐
- 29.2.4. the Seller or its agent first approached the Purchaser via ordinary mail, email, sms or in person; ☐
- 29.2.5. the Purchaser learnt about the property through an agent, an advertisement or upon the recommendation of a third party; ☐
- 29.2.6. other, namely: _____ ☐

(tick the appropriate box)

- 29.3. After due consideration, and by his signature hereto the Purchaser or its representative, as the case might be, hereby acknowledges and records that:
- 29.3.1. 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;
 - 29.3.2. 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;
 - 29.3.3. he understands the context, significance and import of the terms of this Agreement without undue effort, having regard to:
 - 29.3.3.1. the context, comprehensiveness and consistency of the Agreement;
 - 29.3.3.2. the organization, form and style of the Agreement;
 - 29.3.3.3. the vocabulary, use of language and sentence structure of the Agreement;
 - 29.3.3.4. the use of illustrations, headings, examples or other aids to reading and understand the Agreement.
- 29.4. 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.
- 29.5. 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).
- 29.6. 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 31.5 above.
- 29.7. 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.
- 29.8. 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.
- 29.9. It is recorded that the acknowledgements and warranties contained in this clause are material to the Seller entering into this Agreement.
- 29.10. Insofar as the CPA may be applicable to this Agreement, this agreement endeavours to incorporate the Purchaser's consumer rights as provided for in the CPA. Should any clause in this Agreement be found to be unenforceable, illegal or void it shall be severed from this agreement as being of no force or effect while the remaining terms of this Agreement shall continue to be of full force and effect.

30. SECURITY

The Purchaser acknowledges that the Association has procured the provision of certain security facilities in the Estate and has the obligation of maintaining and operating all such security facilities. The Purchaser agrees that no liability shall rest upon the Association for any failure or insufficiency of any of the security facilities included in the Estate or on the Parent Property irrespective of the cause thereof, or for any consequential damage the Purchaser may suffer by reason of such failure or insufficiency: provided that if the CPA Applies, the exclusion of liability in this clause will not apply to any loss directly or indirectly attributed to the gross negligence of the Association or any person acting for or controlled by the Association.

31. CESSION AND RESALE

31.1. The Purchaser shall not:

31.1.1. sell, assign, cede, transfer or dispose of the Purchaser's rights under this Agreement; or

31.1.2. sell, or in any way agree to sell or otherwise alienate the Property; or

31.1.3. 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);

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

31.2. In no way detracting from the generality of clause 31.1, should the Seller, in its sole and absolute discretion, grant its consent as contemplated in clause 31.1 then:

31.2.1. the Seller shall be entitled to impose such conditions as it deems appropriate; and

31.2.2. 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

31.2.3. 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.

32. ALIENATION OF LAND ACT

32.1. 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.

32.2. 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.

33. LETTING

- 33.1. In order to ensure that any tenant of any dwelling in the Estate is made aware of and complies with the Memorandum of Incorporation and Rules of the Association it is agreed that any lease in respect of the Property shall be reduced to writing, signed by the parties thereto and shall comply with the Association's requirements (which shall include, but in no way be limited to, an explanation of the Memorandum of Incorporation and Rules of the Association, an undertaking by the lessee to comply with same and the signature of the Association's standard documentation).
- 33.2. To the extent that the Purchaser requires the services of a rental agency to let the Property, he shall be obliged to utilise a rental agency which has agreed in writing to abide by the Association's security protocols, Memorandum of Incorporation and Rules and has provided the Association with adequate means of identification and registration with the relevant authorities, including but not limited to the Property Practitioners Regulatory Authority.
- 33.3. Irrespective of whether the Purchaser utilises the services of a rental agency in respect of the leasing of the Property or not, it is recorded that the lessee of the Property shall be required to attend an orientation meeting with a rental agency approved by the Association, the costs of which meeting shall be for the account of the Purchaser.

34. MANAGING AGENT

The Purchaser agrees to the appointment of a managing agent chosen by the Association in its sole discretion.

35. CONDITIONS IN TERMS OF PROTECTION OF PERSONAL INFORMATION ACT**35.1. The Purchaser:**

- 35.1.1. acknowledges that the Seller, the Conveyancers, the Association and the estate agent reflected in paragraph Q of the Schedule will collect the Purchaser's personal information, including but not limited to name(s), identity numbers, registration numbers, birth dates, email addresses, physical addresses, postal addresses, telephonic numbers, geographic locations and other correspondence which may be private and/or confidential;
- 35.1.2. acknowledges that the Association will use the personal information for the purposes of use in all matters pertaining to the Purchaser as a resident in the Estate;
- 35.1.3. acknowledges that the Conveyancers will use the Purchaser's personal information for the purposes of effecting transfer of the Property to the Purchaser;
- 35.1.4. consents to the Conveyancers, the Association and the estate agent processing the Purchaser's personal information, including but not limited to collecting, recording, organising, disseminating and making the personal information available for the uses set out in clauses 35.1.2 and 35.1.3 above;
- 35.1.5. consents to the Seller, the Conveyancers, the Association and the estate agent collecting the Purchaser's aforementioned personal information directly from the Purchaser and from any other source;
- 35.1.6. consents to the Seller, the Conveyancers, the Association and the estate agent retaining records of the Purchaser's aforementioned personal information for so long as they, in their sole discretion, deem it necessary to do so;
- 35.1.7. accepts the contents of this consent as adequate notification of the collection and processing of the Purchaser's aforementioned personal information by the Seller, the Conveyancers, the Association and the estate agent and consents to the aforementioned parties failing to provide full notification in terms of Section 18 of the Protection of Personal

36. BORER CERTIFICATE

36.1. The Seller shall at his own expense procure from a Government approved Entomologist a Certificate to the effect that:

36.1.1. the Property has been inspected for infestation by timber destroying termites and/or insects; and

36.1.2. at the date of the said inspection the said Property is apparently free from infestation by any timber destroying termites and/or insects.

36.2. Such Certificate shall be furnished to the Purchaser before the Transfer Date and shall be based on an inspection carried out in the three month period preceding the Transfer Date. If it is discovered that there is or has been any infestation by any of the aforesaid pests, the Seller, at his expense, shall have the said buildings treated and rendered free from apparent infestation provided the work is completed and the foregoing Certificate is issued before the Transfer Date.

**Delete if the Property constitutes vacant land*

37. ELECTRICAL INSTALLATION CERTIFICATE

37.1. The Seller shall at his expense, furnish a certificate of compliance from an accredited person in respect of all electrical installations on the Property in accordance with the requirements of the Electrical Installation Regulations under the Occupational Health and Safety Act No. 85 of 1993. Such certificate shall be delivered to the Purchaser prior to the Transfer Date.

37.2. If the accredited person reports that he is unable to issue such a Certificate of Compliance unless certain works are undertaken to the electrical installation, the Seller shall have the work done at his expense so that the Certificate can be furnished, provided that same is completed before the Transfer Date.

**Delete if the Property constitutes vacant land.*

38. GAS INSTALLATION CERTIFICATE

38.1. The Seller warrants that the gas installations on the Property have been inspected and certified by an accredited person in accordance with the Pressure Equipment Regulations made under the Occupational, Health and Safety Act No. 85 of 1993.

38.2. The Seller shall, prior to the Transfer Date, and at the Seller's expense, furnish the Purchaser with a certificate of conformity, from an accredited person, in respect of all gas installations on the Property and such certificate shall confirm that:

38.2.1. all gas installations on the Property have been inspected and tested; and

38.2.2. in terms of Regulation 17(3) of the Pressure Equipment Regulations to the Occupational, Health and Safety Act No. 85 of 1993, such installations are safe and free from any leakage.

38.3. The Seller further warrants that he has not modified or altered the aforesaid gas installations and is not aware of any such modifications or alternations having been made to same, subsequent to the issuing of the aforesaid certificate.

38.4. If an accredited person reports that he is unable to issue such certificate of conformity unless certain works are undertaken to the gas installations on the Property, the Seller shall have the work done, at its own cost, so that the certificate can be issued timeously.

**Delete if the property constitutes vacant land or is otherwise not applicable*

39. SALE OF PURCHASER'S PROPERTY

- 39.1. This Agreement shall be subject to and conditional upon the sale of the Purchaser's immovable property described as:

having its physical address at:

(hereinafter the "Purchaser's Property")

on or before the _____ and the Seller acknowledges that the amount of R_____ due in terms of paragraph _____ of the Schedule is to be paid from the proceeds of the sale of the Purchaser's Property.

- 39.2. If the Purchaser's Property is not sold by the date reflected in clause 39.1 above, or by such later date as the parties may agree upon in writing, the Purchaser shall be entitled to terminate this Agreement on written notice to the Seller, provided that such notice is given within **7 (Seven) Days** of the expiry of the date stated in clause 39.1 above or the extended date, in which event, the Seller shall forthwith repay or procure the repayment of all amounts paid by the Purchaser in respect of the purchase of the Property, and if the Purchaser is in occupation, the Purchaser shall forthwith vacate the Property.
- 39.3. If no such notice is given by the Purchaser within the **7 (Seven) Day** period the Purchaser shall be deemed to have waived the protection of clause 39.2 and this Agreement will continue to be of full force and effect and each party shall be obliged to comply with his obligations in terms of this Agreement and the Purchaser shall on request by the Conveyancers secure the amount stated in 39.1 by delivering to the Conveyancers a South African commercial bank guarantee, on terms and conditions reasonably acceptable to the Conveyancers, within **7 (Seven) Days** of their making request therefor.
- 39.4. If the Purchaser's Property is sold within the given period of time, the Purchaser shall notify the Seller of such sale within **24 (Twenty-Four) Hours** of the date the relevant agreement of sale is signed by both parties thereto. When notifying the Seller of such sale the Purchaser shall furnish the Seller with a copy of the relevant written agreement of sale and this Agreement shall be subject to the Seller approving the terms thereof, in writing, within **4 (Four) Days** of receipt by it of the written agreement. If, for whatever reason, the Seller does not approve the terms of such agreement of sale, and he notifies the Purchaser of such disapproval, this Agreement shall thereupon fall away and be of no further force and effect, and the Seller shall repay or procure the repayment of all amounts paid by the Purchaser in respect of the Property and the Purchaser if in occupation shall forthwith vacate the Property.
- 39.5. Notwithstanding anything to the contrary herein contained, if the Seller, prior to the fulfilment of the conditions referred to in above receives an offer or offers to purchase the Property from any other person, and any of such offers is, in the sole opinion of the Seller, upon terms more favourable to the Seller than the Purchaser's offer under this Agreement, the Seller shall notify the Purchaser that it has received such offer and the Purchaser shall have **24 (Twenty-Four) Hours** following the time of such notification to notify the Seller in writing that he waives fulfilment of the conditions referred to in clause 38. If the Seller receives such written notice within the aforesaid time period, then this Agreement shall no longer be subject to the sale of the Purchaser's Property and the Purchaser shall on request of the Conveyancer secure the amount stated in clause 39.1 in accordance with the

provisions of clause 39.3 above. If, however, the Seller does not receive such written notice within the aforesaid time period, then this Agreement shall fall away and be of no further force and effect and in such event the Seller shall forthwith repay or procure the repayment of all amounts paid by the Purchaser in respect of the purchase price of the Property and the Purchaser shall if in occupation forthwith vacate the Property.

****Delete if not applicable***

40. FIXTURES AND FITTINGS

- 40.1. The Property is sold inclusive of all fixtures and fittings, which the Seller warrants are fully paid for and included in the purchase price of the Property.
- 40.2. In no way detracting from the generality of the aforesaid, it is specifically recorded that the sale of the Property includes the following items, namely:

- 40.3. The following items are excluded from the sale of the Property, namely:

41. GENERAL

- 41.1. 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.
- 41.2. 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.
- 41.3. The Purchaser acknowledges being fluent in and understanding the English language.
- 41.4. Although every effort has been made to make this Agreement understandable in plain language, certain concepts and phrases may be difficult for the Purchaser to understand. To this end, the Purchaser is invited to discuss every aspect, phrase, word, clause, concept, definition or any other provision of this Agreement with the Conveyancers or an attorney of his choice prior to signature hereof. The Purchaser is requested to read and consider this Agreement and all of its annexures carefully as it shall constitute a binding agreement once signed.

42. 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 _____ (_____) 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.

SIGNED by the **PURCHASER** at _____ on this the _____ day of _____ 20____.

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 hereto 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 (GUARANTOR) ON THIS THE _____ DAY OF _____ 20____

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 and renounces the following benefits, the meaning and effect of which he/she acknowledges himself / herself to be fully acquainted with:

- | | | | |
|------|-----------|---|---|
| (i) | Excussion | - | the effect of renouncing this benefit is that the Seller will be entitled to proceed against the guarantor for the full amount of the purchase price or other amounts owing and other obligations due without first proceeding against and excussing the Purchaser. |
| (ii) | Division | - | the effect of renouncing this benefit is that if there is more than one guarantor then the Seller will be entitled to proceed against one or some of the guarantors, to the exclusion of the others, for the full amount or other obligations owing. |

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 _____ 20__.

AS WITNESSES:

1. _____

2. _____

SELLER

Name of signatory:

If signing in a representative capacity the signatory warrants by his/her signature that he/she is duly authorised hereto and that he/she is acquainted with and understands the contents of this Agreement

SIGNED by the **ASSOCIATION** at _____ on this the _____ day of _____ 20__.

AS WITNESSES:

1. _____

2. _____

ASSOCIATION

For: **HAWAAN FOREST ESTATE**

HOMEOWNERS ASSOCIATION NPC

Name of signatory:

The signatory(ies) warrant(s) by his/her/their signature that he/she/they are duly authorised hereto accepting the benefits conferred upon it and undertaking to comply with the obligations imposed upon it in terms of this Agreement

SIGNED by the **ESTATE AGENCY** at _____ on this the _____ day of _____ 20__.

AS WITNESSES:

1. _____

2. _____

ESTATE AGENCY

For:

Name of signatory:

The signatory warrants by his/her signature that he/she is duly authorised hereto accepting the benefits conferred upon the said Estate Agency in terms of clause 12 of the Terms and Conditions of Sale

NOTE

The provisions contained in this Agreement of Sale may be amended by the parties hereto with the approval of the Association, provided that no provision or condition in favour of or affecting the Association and the Trust may be amended by the parties. The Association therefore assumes no responsibility and shall not be liable for any errors or omissions in the content hereof or any legal implications in regard thereto, the parties acknowledging that they have been free to obtain independent legal advice in regard to the provisions contained in this Agreement of Sale and the implications thereof.