

# WILD DOG ESTATE

## MEMORANDUM OF AGREEMENT

### PURCHASE AND SALE OF A STAND ON WILD DOG ESTATE



# ANNEXURE A

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## 1. **PARTIES**

The Parties to this Agreement are:

- 1.1. Wild Dog Estate (PTY) LTD, Registration Number 2003/029461/07, hereinafter referred to as the "Seller"
- 1.2. The Purchaser or purchasers who's particulars are set out on Annexure A hereto, hereinafter referred to as the "Purchaser"

## 2. **INTERPRETATION AND DEFINITIONS**

- 2.1. In this agreement, unless inconsistent with or otherwise indicated by the context, the following words and phrases shall have the following meanings:
  - 2.1.1. "Agreement" means the contents of this document and the annexures listed in the table of contents above;
  - 2.1.2. "Architect" means Mr Peter Whitehouse, Tel: 031-7646666, e-mail: [whouse@saol.com](mailto:whouse@saol.com), Loudon Park, 8 St Mary's Road, 3160, or any other architect appointed by the Developer from time to time;
  - 2.1.3. "Attorney's Trust Account" means the Trust account of the Conveyancers, or such other attorneys as may be appointed by the Developer from time to time;
  - 2.1.4. "Basic Services" means all services required to be provided by the Developer of the Scheme to owners of properties within the Scheme in terms of the DFA Judgement;
  - 2.1.5. "Buildings" means the Structures and all other improvements to be erected by or at the instance of the Purchaser on the Stand in accordance with the Plans and Specifications;
  - 2.1.6. "Building Contract" means the building contract to be entered into between the Purchaser and a building contractor, in terms of which the Unit will be constructed;

- 2.1.7. "Conveyancers" means Parris Incorporated, telephone number (012) 343 0157, fax number (012) 343 3007, e-mail lparris@parrisinc.co.za (reference Mrs L. Parris);
- 2.1.8. "Common Property" means the property forming the subject matter of the Scheme including those parts of the Estate which were required to be transferred to the WDHOA in terms of the DFA Judgement, but excluding:
- 2.1.8.1. any exclusive use area as determined by the WDHOA;
- 2.1.8.2. the reserved development areas being Portions 25, 26, 27 & 28 of the farm Lot WP3 Number 9418, Registration Division FS; and
- 2.1.8.3. any Individual Portions or Stands; and
- 2.1.8.4. any other land or portion of land identified by the Developer or the WDHOA from time to time, in their sole and unfettered discretion, as being for specific, exclusive, private, reserved or restricted use and not forming part of the Common Property.
- 2.1.9. "Deposit" means a deposit in the amount of R\_\_\_\_\_ for the purposes of clause 5.1.1 below;
- 2.1.10. "Developer" means the Seller, as defined below;
- 2.1.11. "Development" means the Wild Dog Estate Development as approved in terms of the Development Facilitation Act 67 of 1995 by the Development Tribunal (Kwazulu-Natal) Development Application Number: 2003/1097, as amended;
- 2.1.12. "DFA Judgement" means the judgement of the Development Tribunal (Kwazulu-Natal) in terms Chapter V Section 31 (2) of the Development Facilitation Act 67 of 1995 in approving Development Application Number: 2003/1097, as amended from time to time;
- 2.1.13. "EMP" means the environmental management plan (as amended) in respect of the Development as approved by the Department of Agriculture and Environmental Affairs (KwaZulu-Natal);

- 2.1.14. "Estate" means Portion 24 of the Farm Lot WP3 Number 9418, Situated in the Administrative District of Natal, Province of KwaZulu-Natal, in extent 363,6109 Hectares;
- 2.1.15. "General Plan" means the general plan compiled from the layout plan as approved in terms of the DFA Judgement, and approved by the Surveyor General, and "Township Plan" shall bear the same meaning;
- 2.1.16. "Guarantee Due Date" means the date upon which payment guarantees are due in terms of clause 5.1.2 below, or such other date as may be agreed upon in writing by the parties;
- 2.1.17. "Individual Portions" means Portions 30 to 71 (both included) of the farm Lot WP3 Number 9418, Registration Division FS;
- 2.1.18. "Interest Rate" means the interest rate published in terms of the Prescribed Rate of Interest Act 55 of 1975, from time to time, or the prime interest rate quoted by the Seller's Bankers from time to time, whichever is the greater;
- 2.1.19. "Land Surveyor" means Mr Ivan Freese of Tarboton, Holder and Ross Land Surveyors, or any other surveyor appointed by the Developer from time to time;
- 2.1.20. "Layout Plan" means the site plan attached marked Annexure B, indicating the situation of the Stand in the Estate;
- 2.1.21. "Lifestyle Package" means the Stand and access to and use of the Common Property and all benefits derived therefrom, subject to the Rules, but excluding the Unit;
- 2.1.22. "Loan Approval Date" means the date upon which the Purchaser obtains financing as referred to in clause 6 below, or the date upon which the condition referred to in clause 6 is waived, fulfilled or deemed to have been fulfilled, whichever date is the earlier;
- 2.1.23. "Occupation date" means the earlier of –
- 2.1.21.1 the date upon which the Stand is transferred into the Purchaser's name, or

2.1.21.2 the date upon which the Seller tenders occupation of the Stand to the Purchaser in circumstances where transfer of the Stand is registrable in the Deeds Office,

or as otherwise agreed in writing by the Parties;

- 2.1.24. "Parties" means the Seller and the Purchaser, and "Party" shall mean any one of them as the context may indicate;
- 2.1.25. "Purchase Price" means the sum of R\_\_\_\_\_ (\_\_\_\_\_ Rand), excluding VAT, in respect of the purchase of the Lifestyle Package but excludes the building costs of the Unit in terms of the Building Contract;
- 2.1.26. "Purchaser" means the person or persons identified as such on the attached "Annexure A – Purchaser's Particulars", subject to the provisions of Clause 20, and shall include the Purchaser's successors in title and assigns;
- 2.1.27. "Purchaser's address" means as completed on the attached "Annexure A – Purchaser's Particulars";
- 2.1.28. "Plans" means the draft building plans to be attached to the Building Contract, prepared by or at the instance of the Purchaser, which shall be subject to the prior written approval of the Architect, and shall further comply with the Rules, Specifications, EMP and any other limitations imposed by the Developer, the DFA Judgement or any other law;
- 2.1.29. "Registration Date" means the date of registration of transfer of the Stand into the Purchaser's name;
- 2.1.30. "Rostal Construction" means Rostal Construction (Pty) Ltd, registration number 2005/003573/07, or any other construction company nominated and approved of by the Seller from time to time;
- 2.1.31. "Rules" means the rules contained in Annexure C, which will be deemed to be binding on the Purchaser from the Signature Date, as extended, amended or replaced by WDHOA from time to time. The Rules will be incorporated in a manual prepared by the Developer or WDHOA, and any other provisions contained in the manual which are intended to restrict,

regulate or otherwise prescribe the conduct or activities of persons on the Estate shall likewise be binding on the Purchaser;

- 2.1.32. "Scheme" means the Development on the Estate as finally reflected on the General Plan and in the Township Register referred to in Section B paragraphs B 5 & 6 of the DFA Judgement;
- 2.1.33. "Seller" means Wild Dog Estate (Pty) Ltd, Registration Number 2003/029461/07, duly represented herein by Roberto Santini; and "Developer" shall have the same meaning;
- 2.1.34. "Seller's Bankers" means Standard Bank of South Africa Limited or such other bank as may be nominated by the Seller from time to time;
- 2.1.35. "Services" means the Basic Services together with any other services which are required to be established and properly maintained for the proper operation of the Scheme, including but not limited to electricity, water, sanitation, fencing, security and access control, fire control services, flora and fauna protection and development, roads and footpaths, airfield and runway maintenance (if applicable at any time in future), and any other recreational or other facilities or services to be established and/or maintained by the WDHOA as decided by the trustees of the WDHOA from time to time;
- 2.1.36. "Signature Date" means date of signature of this agreement by the Party signing last;
- 2.1.37. "Specifications" means the specifications and architectural guidelines with which all Buildings and other improvements on the Stand shall comply, reflected on or arising from Annexure D hereto, as amended by WDHOA from time to time, and also including any written directives or instructions given by the Architect to the Purchaser from time to time;
- 2.1.38. "Stand" Means- portion.....of the farm Lot WP3 Number 9418, Registration Division FS, being approximately 2 500 square meters in extent located on the Estate as indicated on the Layout Plan, the precise final position and size of which shall be determined by the Land Surveyor in consultation with the Developer;

- 2.1.39. "Structure" means foundations, brickwork, concrete, re-enforcing, plasterwork, cladding, floors and the roof together with all other components usually or reasonably incidental or accessory thereto;
- 2.1.40. "Township Register" means the township register opened in terms of section 46(1) of the Deeds Registries Act, Act 47 of 1937, in respect of the Scheme as required by the DFA Judgement;
- 2.1.41. "Unit" means the Unit to consist of the Buildings and the surrounding gardens, to be constructed on the Stand by Rostal Construction in accordance with the Plans and Specifications;
- 2.1.42. "WDE" means the Seller;
- 2.1.43. "WDHOA" means the Wild Dog Estate Home Owner's Association, established by the Seller in terms of section 21 of the Companies Act 61 of 1973 in order to provide the Basic Services and other goods and Services pursuant to and in accordance with the DFA Judgement.
- 2.2. The singular shall include the plural and vice versa and words importing one gender shall include the other genders, and natural persons includes artificial persons and vice versa;
- 2.3. In addition to the words and expressions defined in this clause 2, all words and expressions defined in the Annexures A, B, C and D hereto shall similarly have the meanings assigned to them throughout this Agreement unless inconsistent with or otherwise indicated by the context;
- 2.4. Headings to clauses are for reference purposes only and are not be used in the interpretation thereof.
- 2.5. Where a definition contains a substantive provision or imposes an obligation, such provision or obligation shall be binding on the Parties, notwithstanding that it is contained in the definitions clause.

### **3. RECORDALS**

- 3.1. The Parties record that the Seller is the registered owner of the Estate upon which the Seller intends to establish the Development;



- 3.2. The Parties further record that the Purchaser intends to purchase the Lifestyle Package, which forms part of the Estate, subject to the Rules, the DFA Judgement and the other terms and conditions of this Agreement.

#### **4. PURCHASE AND SALE**

The Seller hereby sells to the Purchaser, who hereby purchases from the Seller, the Lifestyle Package for the Purchase Price on the terms and conditions set out in this Agreement, with effect from the Effective Date.

#### **5. PURCHASE PRICE AND PAYMENT**

- 5.1. The Purchase Price shall be payable as follows:

5.1.1. The Deposit is to be deposited with the Conveyancers within 7 (Seven) days of the Signature Date, and to be held in an interest bearing trust account in accordance with the provisions of Section 78(2A) of Act 55 of 1979, the interest to accrue to the Purchaser. The Purchaser hereby gives the Conveyancers instructions to deposit these monies in an interest bearing Trust Account selected by them in their discretion on his behalf. The Purchaser shall forfeit the entire deposit and accrued interest in favour of the Seller in the event that the Purchaser breaches any term or warranty contained in this Agreement, or if the Agreement is terminated for any reason other than default on the part of the Seller.

5.1.2. The balance of the Purchase Price in respect of the Lifestyle Package is to be secured by bankers guarantees in a form acceptable to the Seller, to be furnished to the Conveyancers-

5.1.2.1. in the case where financing is required to secure the balance of the Purchase Price (which shall be deemed to be the case if any amount is entered in the appropriate space in clause 6.1 below), then within 21 (Twenty One) days of fulfilment or waiver of the suspensive condition in paragraph 6.1 below, alternatively such extended period agreed to in writing by the Seller; or

5.1.2.2. if the Purchaser does not require such financial assistance, which shall be deemed to be the case if no amount is entered in the appropriate space in clause 6.1 below, then within 21 (Twenty One) days of the date upon which the deposit referred to in clause 5.1.1 above is due to be paid

which guarantee shall be expressed as being payable to the Seller or the Conveyancers, free of exchange at PIETERMARITZBURG, upon registration of the transfer of the Stand into the Purchaser's name.

- 5.2. The Seller or its agents shall be entitled to extend any time periods referred to in clause 5 and 6 by notice in writing to the Purchaser, and apply for a bond on behalf of the Purchaser who warrants that his financial situation is such that he will qualify for the said bond. The Purchaser shall provide all information and documents, complete and sign any documents and do all things necessary as may be required to complete any such application, upon request.
- 5.3. Any other amounts payable by the Purchaser in terms of this Agreement, shall, unless otherwise provided for, be paid on demand.
- 5.4. The full Purchase Price in respect of the Lifestyle Package will be paid over to the Seller on the Registration Date.
- 5.5. The Purchase Price shall be exclusive of all costs, charges, VAT, taxes, duties and other disbursements, which shall be for the account of the Purchaser, and payable to the Conveyancers on demand.

## 6. CONDITIONS

- 6.1. The whole of this agreement, with the exception of clauses 5.1, 5.2, 6, 7.3, 8.1, 16, 17, 20 and 21, is subject to the suspensive condition that the Purchaser obtains a loan in principle, on terms acceptable to the Seller, of not less than

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from a registered bank within 14 (Fourteen) days from the Signature Date. The Seller reserves the right to extent this period by a further 21 (Twenty One) days, or part thereof, at its discretion.

- 6.2. The condition precedent referred to in 6.1 above will be deemed to be fulfilled if any bank agrees to grant such loan in principle-
- 6.2.1. subject to it being guaranteed or otherwise secured by the Purchaser's spouse; and/or
- 6.2.2. subject to any term usually imposed by such bank.
- 6.3. The Purchaser –
- 6.3.1. warrants that his financial position is such that, having regard to the criteria or requirements usually applied by banks, his application for a loan will not be refused;
- 6.3.2. shall use his best endeavours to procure fulfilment of the said conditions precedent and, without limiting the generality of the foregoing, the Purchaser undertakes to do all such things as are normally required by any bank in connection with the grant of any such loan;
- 6.4. The Purchaser irrevocably and *in rem suam* appoints the Seller and/or the Seller's nominated agent, in his stead, to apply for the loan referred to 6.1 hereof.
- 6.5. In the event that the condition referred to in 6.1 hereof is not fulfilled or the Purchaser is granted a loan for a lesser amount than that applied for, the Seller shall be entitled to use its best endeavours to procure that a loan be granted by a third party to the Purchaser, either for the full amount referred to in 6.1 hereof or for the difference between the amount of the loan referred to in 6.1 hereof and the amount of the loan granted, as the case may be, against the security of a first or second mortgage bond to be registered over the property;
- 6.6. The Purchaser acknowledges that it is a specific requirement of the WDHOA that the Purchaser's bank shall be obliged to instruct one of the WDHOA's duly appointed Conveyancers to attend to the registration of the mortgage bond securing the Purchaser's loan or where the said bank refuses to do so, the Conveyancers are hereby authorised on behalf of the WDHOA to supervise the issuing of any consents required in terms of this Agreement, the costs whereof shall be borne by the Purchaser.

- 6.7. If the condition referred to in clause 6.1 is not fulfilled (or deemed to have been fulfilled) within the specified period or such extended period as the Seller may have agreed to or stipulated in writing, then this agreement shall cease to be of any force or effect and the parties shall be restored to the position in which they would have been had this agreement not been entered into and neither party shall have any claim against the other as a result of the failure of the condition precedent, except for such claim, if any, as may result from a breach of the provisions of this clause 6.
- 6.8. This Agreement, with the exception of clauses 5.1, 5.2, 6, 7.3, 8.1, 16, 17, 20 and 21, is further subject to the suspensive condition that the Purchaser enters into the Building Contract with a construction company approved of by the Seller. The condition referred to in this clause 6.2 is expressly for the benefit of the Seller, who shall be entitled to waive it by written notice to the Purchaser. If the condition referred to in this clause 6.2 is not fulfilled or waived within 30 (Thirty) days of the Registration Date, or such other period as the Seller may stipulate in writing, then this agreement shall cease to be of any force or effect and the parties shall be restored to the position in which they would have been had this agreement not been entered into and neither party shall have any claim against the other as a result of the failure of this condition precedent. In the event that the Seller waives the suspensive condition contained in this clause 6.2, then the Purchaser shall not be entitled to make or commence with any improvements to the Stand unless the Seller and the WDHOA have granted prior written approval of the plans for such improvements, and the persons who will carry them out. Nothing contained in this clause 6.2 will affect the rights of the Seller referred to in clause 8.2.5 and 14.3 below.

## **7. TRANSFER AND CONVEYANCING**

- 7.1. Registration of transfer of the Stand shall be attended to by the Conveyancers, provided that:
- 7.1.1. The deposit referred to in clause 5.1.1 has been duly paid;
- 7.1.2. the balance of the full Purchase Price payable in terms of this Agreement has been secured in a form acceptable to the Seller as provided for in this Agreement; and
- 7.1.3. The Purchaser has paid to the Conveyancers all other costs, charges and other amounts referred to in this Agreement.

- 7.2. The Parties acknowledge that:-
- 7.2.1. the Conveyancers are designated as an “accountable institution” in terms of the Financial Intelligence Centre Act No. 38 of 2001 (“FICA”);
  - 7.2.2. 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;
  - 7.2.3. the Conveyancers shall not invest and administer any deposits or any other monies paid by the Parties in terms of this Agreement unless the Parties have provided the Conveyancers with the documents that they require in terms of FICA, and accordingly the Parties undertake to comply with all requirements of and supply all information and documentation required by the Conveyancers to enable the Conveyancers to fulfil their obligations in terms of FICA and POCA and the Regulations promulgated in terms thereof.
- 7.3. The Purchaser is responsible for the payment of:
- 7.3.1. the costs of registration of transfer of the Stand, which costs include without limitation any conveyancing fees, Deeds Office levies, and all other monies payable to any competent authority for purposes of registration of transfer. The parties record that
    - 7.3.1.1. the purchase price excludes value added tax (VAT); and
    - 7.3.1.2. in the event that the Receiver of Revenue assesses the transaction for additional amounts or for transfer duty instead of VAT, then such amounts shall be paid by the Purchaser.
  - 7.3.2. rates and taxes and municipal levies in respect of the Stand due since the Occupation Date, inclusive of the monies necessary in order to obtain a clearance certificate from the local authority;
  - 7.3.3. wasted Conveyancer's fees and other costs arising from the non-fulfilment of any suspensive conditions contained in clause 6 by the Purchaser whether or not the Purchaser was at fault in regard to the non-fulfilment thereof, or

arising from any termination of this Agreement for any reason other than through the wilful default of the Seller.

which monies are payable on demand, and may be claimed by the Conveyancers as a first charge against the deposit referred to in clause 5.1.1 above.

## **8. SPECIAL CONDITIONS**

- 8.1. The Purchaser irrevocably agrees and undertakes to be bound by the Rules, and further undertakes to be bound by any additions to or amendments thereof as determined by the WDHOA, and shall promptly pay any levies which may be determined by the said WDHOA from time to time, on demand.
- 8.2. The Purchaser hereby consents and agrees that transfer of the Stand is subject to, and that the Conveyancers shall include, whether notarially or otherwise, the following conditions, adjusted *mutatis mutandis* to give proper effect thereto, in the Deed of Transfer:
- 8.2.1. The owner of the Stand (initially the Purchaser) and the owner's successors in title, shall be bound to become and remain a member of the WDHOA, and shall furthermore be bound by its memorandum and articles of association (as amended from time to time), and shall further be bound by all rules, regulations, levies and directions imposed by the said WDHOA. Such owner shall be deemed to have been removed as a member of the WDHOA forthwith upon transfer of the Stand to a subsequent owner;
- 8.2.2. The owner of the Stand (initially the Purchaser) and the owner's successors in title, shall not transfer or otherwise dispose of the Stand without the prior written consent of the WDHOA, which consent shall not be unreasonably withheld. A clearance certificate shall be obtained from the WDHOA prior to transfer of the Stand being effected, certifying that all amounts owing by the owner of the Stand to the WDHOA have been paid in full;
- 8.2.3. The owner of the Stand (initially the Purchaser) and the owner's successors in title, shall not alienate, or otherwise dispose of or encumber, the Stand for a period of 2 (Two) years after taking transfer of the Stand, without the prior written consent of the WDHOA, which consent shall not be unreasonably withheld;

- 8.2.4. The owner of the Stand (initially the Purchaser) grants in perpetuity and in favour of the owner, or owners as the case may be, of all land, or portions thereof, forming part of the Estate, and such other persons or categories of persons as may be specified by the WDHOA from time to time, the right to access and traverse the Stand for the purposes of hiking, access to other portions of the Estate, access to the rivers, and the implementation, execution and maintenance of the Services, subject at all times to the provisions of the Rules of the WDHOA: - provided that such traversing and access rights shall not apply in respect of the Unit, unless strictly necessary for the purposes of the implementation, execution and maintenance of the Services.
- 8.2.5. In the event that the owner of the Stand or the owner's successor in title fails to construct the Buildings in accordance with the requirements of the WDHOA in accordance with the prescribed Specifications on the Stand within 2 (Two) years calculated from the Registration Date, then Wild Dog Estates (Pty) Ltd shall be entitled to re-purchase the Stand from the owner at the price for which it was sold to the owner, escalated at the consumer price index (CPIX) per annum from the date the owner purchased it until the date upon which the said right is exercised by Wild Dog Estate (Pty) Ltd.
- 8.3. The Purchaser hereby consents and agrees that;
- 8.3.1. he is not entitled as of right to become a member of Platinum Destinations®, but shall be entitled to apply for such membership subject to any terms and conditions imposed by the SELLER or Platinum Destinations® from time to time. If the Purchaser's application is successful the Purchaser will remain bound at all times to the rules, terms and conditions applicable to Platinum Destinations®, as amended from time to time, and:
- 8.3.1.1. his unit will be part of Platinum Destinations®; and
- 8.3.1.2. he will remain a member for as long as Wild Dog Estate remains affiliated to Platinum Destinations®; and
- 8.3.1.3. he consents to the inclusion of Platinum Destinations® annual levies in the general levy. This will be applicable after the free two year membership period has expired.

8.4. This Agreement is subject to the following additional special conditions (*not applicable if not filled in or if not initialled by both parties or to the extent that the contents are contradictory to any of the other provisions of this Agreement*):

8.4.1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

8.4.2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

8.4.3. \_\_\_\_\_  
\_\_\_\_\_

8.5. The Seller, insofar as it is entitled to do so in law, grants in perpetuity, and in favour of the owner of the Stand (initially the Purchaser, and thereafter his successors in title), the right to access and traverse the Common Property for the purposes of hiking, access to other portions of the Estate, access to the rivers, subject at all times to the provisions of the Rules: Provided that such traversing and access rights shall not apply in respect of any area demarcated, or to be demarcated, by the WDHOA or the Seller of the Scheme as a hotel, fractional ownership scheme, sectional title scheme, time-share scheme, workshop/admin, farm, wellness centre, hydro, chalet, a Unit, or any other area referred to in clauses 2.1.8.1, 2.1.8.2, 2.1.8.3 and 2.1.8.4.

8.6. The Purchaser shall not, directly or indirectly and whether personally or through an agent, advertise or market the Stand or publicise any promotional or other material in respect of the Stand or the Development, without the prior written approval of the Seller or WDHOA, which approval shall be required in respect of each and every individual act of marketing and publication, and in respect of each individual piece of material to be marketed or publicised. Any breach of this clause 8.6 shall entitle the Seller to forthwith apply to the High Court of South Africa for an interdict prohibiting



such or any further unauthorised marketing or publication, and the Purchaser shall be liable for all of the Seller's legal costs on a scale as between attorney and client in doing so, all such costs to be added to the Purchaser's levy account, payable immediately.

**9. CONDITIONS OF OCCUPATION**

From the Occupation Date or the date upon which the Stand becomes registrable and the Seller tenders occupation thereof to the Purchaser, whichever date is the earlier, the Purchaser shall, until otherwise decided by the WDHOA:

- 9.1. comply with the provisions of the Rules, Specifications and EMP, and the Seller shall, until the WDHOA formally commences its activities as aforesaid, enjoy the same rights and powers as the WDHOA and the trustees enjoy in terms of the Rules.
- 9.2. waive all claims against the Seller for any loss or damage to the Stand or for any injury to any person which the Purchaser may sustain in or about the Stand or Estate as a whole and shall indemnify the Seller against any such claim that may be made against the Seller by any member of the Purchaser's family or the Purchaser's invitees, visitors, employees, contractors or agents for any loss or damage to Stand or injury to persons suffered in or about the Stand or Estate as a whole, howsoever such loss or damage to Stand or injury to persons may be caused.
- 9.3. pay on demand all costs incurred or charges in respect of electricity and other Services consumed or utilised in respect of the Stand provided that if the Purchaser fails to pay any such amount the Seller shall be entitled to make payment thereof on the Purchaser's behalf and to recover same from the Purchaser together with interest at the Interest Rate from the date on which such amount is disbursed by the Seller to the date upon which it is recovered, and to pay the charges raised by the relevant local authority for the commission and provision of the electrical supply to the Stand.
- 9.4. be liable for and pay, until otherwise determined by the WDHOA, to the Seller or the appointed managing agent in advance on the first day of each and every month, the monthly levy contribution calculated on the basis that the Purchaser shall be liable for one share of the costs being the estimated total monthly costs referred to below divided by the total number of Individual Portions transferred by the Seller to any purchasers from time to time (total number of Individual Portions transferred by the end of the month immediately prior to the relevant month for which the said levies are due). The estimated total monthly costs shall include the costs of managing, operating, administering, repairing, servicing and maintaining the common property

including, without restricting the generality of the foregoing, rates, taxes, sewerage and sanitation, insurance, Services, salaries, wages, licenses, care and maintenance of the Common Property, the cost of water and electricity consumed in the Common Property, wages and other expenses and administration costs, including the cost of collection and recovery of the said costs (all of which costs charges are hereinafter referred to as "total costs"). It is recorded that the total costs may be estimated and that in the event of such costs being greater than the actual costs incurred the excess shall be paid to the WDHOA on its establishment in order to create a reserve. In the event of the estimate being less than the actual costs incurred the shortfall shall be contributed by the Purchaser in manner to be determined by WDHOA. The provisions of this clause 9.4 shall continue to apply until such time as WDHOA commences with the issuing of invoices to owners of stands in the Estate.

- 9.5. not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Seller in respect of the Scheme is rendered void and voidable or as a result of which the premiums in respect thereof may be increased.
- 9.6. not make any alterations to the Unit of whatsoever nature without the prior written consent of the Seller that shall not unreasonably be withheld.
- 9.7. maintain the Stand and the Unit in a clean and orderly condition.
- 9.8. not be entitled to let or otherwise part with possession and occupation of the Unit except with the prior written consent of the Seller or WDHOA which shall not unreasonably be withheld.
- 9.9. not sell or otherwise alienate the unit except with the prior written consent of the Seller that shall not unreasonably be withheld.
- 9.10. not appoint any estate agent or building contractor unless such agent or contractor has a permit from the Seller or the WDHOA to conduct business within the Estate.
- 9.11. ensure that the members of the Purchaser's family, the Purchaser's invitees, visitors, employees, contractors and agents, abide by and undertake to be bound by, the provisions of the Rules, Specifications and the EMP.

## **10. REPRESENTATIONS BY THE SELLER**

- 10.1. The Stand is sold subject to the conditions, reservations and servitudes contained in, or which are required by the DFA Judgement or any other law to be contained in, the

title deed, and such other conditions of the Scheme and EMP as may be imposed by the Seller, or in terms of this Agreement, or the local authority or any other competent authority.

- 10.2. The Purchaser shall not be entitled to claim cancellation of this agreement or any reduction in the Purchase Price by reason of any minor variations between the Layout Plan and the General Plan as finally approved by the Surveyor General.
- 10.3. The Purchaser acknowledges that he is aware that there is a pending land claim which includes the land situated within the Estate, that the Seller has made no misrepresentations in regard to such land claim, and that the Purchaser will have no claim against the Seller arising from or in connection with such claim.
- 10.4. The Purchaser hereby authorises the Seller, unconditionally and irrevocably, to represent the Purchaser's interests in respect of the Stand and the Estate in any proceedings or other dealings in connection with the land claim referred to above.

## **11. GENERAL PLAN AND TOWNSHIP REGISTER**

- 11.1. The Purchaser acknowledges that the exact boundaries forming a part of the Stand are those shown on the final approved General Plan. The Seller shall use his reasonable efforts to ensure that, subject to clause 11.3 below, the boundaries will be substantially in accordance with those set out in the Annexures hereto.
- 11.2. The Purchaser shall not be entitled to claim cancellation of this Agreement or any reduction in the Purchase Price by reason of any minor alteration to the number, size or location of any Stands or Units or any increases in their number. The Seller undertakes that any alteration will be made only after due consultation with the Architect and/or the Land Surveyor.
- 11.3. If the boundaries or the area of the Stand or any other Unit or building differ from the boundaries or areas shown on the Layout Plan annexed hereto or the number of the Stand being altered or any area adjoining the Stand is altered the Purchaser undertakes to accept transfer of the Stand as defined and renumbered in the General Plan approved by the relevant municipal and other authorities, and the Surveyor General.
- 11.4. The Seller is required to mark the final boundaries on the Stand and has instructed a duly qualified Land Surveyor to do so, but shall be under no further obligation to point

out boundaries, beacons or pegs to the Purchaser from time to time. The Purchaser acknowledges that the General Plan is a public document, copies of which can be obtained from the Surveyor General's offices, and the Seller shall be under no obligation to provide the Purchaser with a copy of the finally registered General Plan or any other plan or diagram in respect of the Stand.

## **12. TRANSFER OF THE STAND**

- 12.1. The Purchaser shall, within 7 (Seven) days of being called upon to do so in writing by the Conveyancers at any reasonable time (having regard to the date when transfer can and should be given) pay to the Conveyancers all costs of transfer, furnish all such information, sign all such documents and, pay all such amounts as may be necessary or required to enable the Conveyancers to pass transfer of the Stand to the Purchaser.
- 12.2. Subject to the other provisions of this Agreement and the Act, the Purchaser shall not, by reason of any delay in the transfer of the Stand to him due to any cause whatsoever, be entitled to cancel this contract or to refrain from paying, suspend payment of any amount payable by him in terms of this Agreement or to claim and recover from the Seller any damages or compensation.

## **13. RISK, DAMAGE AND DESTRUCTION**

- 13.1. All benefit of and risk in and to the Stand and the Unit (where applicable) shall vest in the Purchaser on the Occupation Date.
- 13.2. Notwithstanding the provisions of clause 13.1 if any material part of the Scheme is damaged or destroyed and any other Units in the Scheme are damaged or destroyed, or if the Seller is in any other way obstructed or prevented by any legal or illegal intervention from continuing with the Development, and the Seller reasonably considers it advisable to terminate the Development, the Seller shall have the right, by notice to the Purchaser, to cancel the Development and in that event the Seller will have the right to cancel this agreement in its entirety and the Purchaser shall be entitled to demand his 10% deposit back together with such interest as may have accrued thereon, and the parties shall have no further claims against each other of any nature whatsoever.

**14. BUILDINGS AND PLANS**

- 14.1. The Purchaser shall build a residence on the Stand in accordance with the Building Contract, which the Purchaser shall ensure complies with the Specifications, and for the purposes thereof is entitled to appoint his own building contractors to construct his Buildings on his Stand, provided that such contractors shall first be approved of by the WDHOA, failing which the WDHOA shall be entitled to deny the said contractor's access to the Estate.
- 14.2. When appointing a Building Contractors the Purchaser binds himself, prior to such appointment, to:
- 14.2.1. Apply to the Seller in such manner as the Seller may direct, for approval of the Building Contractor (which approval may be withdrawn at any time in the sole discretion of the Seller, or issued subject to such conditions as the Seller may in its sole discretion prescribe). The granting of approval shall be in the sole discretion of the Seller. No Building Contractor shall be entitled to enter the Estate with such approval.
- 14.2.2. Submit the Plans to the Architect for approval, prior to submitting such Plans to the relevant local authority, in order to ensure compliance with the Rules and the Specifications. The Architect's costs shall be paid by the Purchaser and the Purchaser shall only be entitled to commence constructing the Buildings once the Architect has issued a certificate confirming that such Plans meet the requirements of the Rules and the Specifications.
- 14.2.3. ensure that his Building Contractor signs an agreement with the Seller prior to the commencement of any building. This agreement will stipulate the conditions under which the Contractor may build on the Estate, and will provide for the payment of a Sellers Fee by the Building Contractor to the Seller equal to 5% of the total contract sum payable by the Purchaser for the construction of the Unit. The Purchaser hereby guarantees payment of the Seller's Fee by his Building Contractor to the Seller.
- 14.3. The Buildings shall be constructed within 2 (Two) years calculated from the Registration Date, or as prescribed by or agreed to by the Homeowner's Association from time to time, failing which the Seller shall be entitled to re-purchase the property from the Purchaser at the Purchase Price, escalated at the consumer price index

(CPIX) per annum from the Registration Date until the date upon which the right is exercised by the Seller.

**15. FURTHER RIGHTS OF SELLER**

Pending establishment and finalisation of all aspect of the Scheme, the Seller shall be entitled to establish and participate in the operation of the WDHOA by nominating at least seven members thereof, in order to:

- 15.1. make rules for the Scheme, and regulate the use and enjoyment of the Common Property and all other parts of the Estate;
- 15.2. regulate voting arrangements, the calculation and payment of levies and penalties;
- 15.3. regulate access to the Estate and matters relating to security and the environment;
- 15.4. enter the Stand at all reasonable times or to authorise its agents or workmen so to enter, to inspect the same or to carry out the Services;
- 15.5. The Seller shall further enjoy all rights accorded to or granted to the applicant in terms of the DFA Judgement.

**16. BREACH OF AGREEMENT**

- 16.1. If any of the parties of this Agreement fails to keep to the terms of the Agreement and fails to remedy his breach within 14 (Fourteen) calendar days after receiving a letter of demand, demanding compliance with the terms of this Agreement, at his domicilium citandi et executandi the aggrieved party may in his sole discretion:
  - 16.1.1. Cancel the agreement; and/or
  - 16.1.2. Claim damages; and/or
  - 16.1.3. Claim specific performance from the other party; and/or
  - 16.1.4. Make use of any other legal remedy available to the aggrieved party; and/or

- 16.1.5. Claim any legal costs from the defaulting party on a scale as between attorney-and-client, which costs shall be calculated from date of the letter of demand.
- 16.1.6. The parties agree that all clauses of this Agreement are material and go to the root of this Agreement, and any breach of the terms thereof by one party ("the defaulting party") shall give the other party ("the innocent party") the right to cancel and rescind this Agreement on written notice, provided that no such written notice of cancellation and rescission shall be given by the innocent party, unless the innocent party gives written notice to the defaulting party demanding that the defaulting party remedy the breach within 14 (Fourteen) calendar days from the date of the notice, and the defaulting party has failed to remedy the breach within the said period.
- 16.2. In the event that the Purchaser fails to deliver guarantees on the Guarantee Due Date or pay the full Purchase Price when due, then interest shall accrue on the Purchase Price at the Interest Rate, compounded monthly in arrears, from the date upon which the guarantees or payment was due, until the guarantees are actually delivered to the Conveyancers or payment in full is made (as the case may be).

**17. DOMICILIUM**

- 17.1. The parties choose their domicilium citandi et executandi for all purposes under this Agreement whether in respect of Court process, notices or other documents or communications of whatsoever nature at the following addresses:

- 17.1.1. the Seller :

C/O Mr R. Santini  
1, Berg Road  
Underberg  
3257

- 17.1.2. the Purchaser:

At the Purchaser's Address set out in the attached Annexure A:-  
"Purchaser/s Particulars".

17.2. Any party shall be able to change his domicilium citandi et executandi on written notice to other. Such change of domicilium citandi et executandi shall take effect on the fourteenth day after delivery to the other parties of the notice referred to therein.

17.3. All notices in terms of this Agreement shall be either delivered to the recipient at his aforesaid address in which case it shall be deemed to have been received when delivered or sent by prepaid registered post in which case it shall be deemed to have been received on the fifth day after posting.

**18. PHASED DEVELOPMENT**

The Seller shall be entitled to, at its election and its costs, attend to the development of any portion of the Scheme as a sectional title scheme or any other form of development, the provisions of this agreement applying mutatis mutandis in accordance with the Sectional Titles Act, Act 95 of 1986 ("the Act") or any other applicable legislation in respect of such further developments which shall be undertaken in phases, such phases to possibly include a Hotel complex, hydro, executive and corporate chalets (in sub-phases), a timeshare village, horse stud, polo facilities, a tourist farm and an arts, crafts and commercial centre. The Purchaser acknowledges and accepts that this may cause an increase or decrease in the participation quota and/or the amount of levies due from time to time, and consents to such amendments or variations implemented by the WDHOA by his signature hereto

**19. AGENT'S COMMISSION**

The parties record that Agent's commission, in the amount of ....., is payable to Financial & Corporate Services cc T/A FCS Property Brokers, by the Seller, as a result of this Agreement. Commission will be payable when the Stand has been transferred into the Purchaser's name and the full Purchase Price paid to the Seller. In the event that this Agreement is cancelled due to any breach on the part of the Purchaser, and the Seller becomes liable to pay such commission to the Agent, then the Seller shall be entitled to recover the said estate agent's commission from the Purchaser, and shall be entitled to use any deposit paid by the Purchaser for this purpose.

**20. CLOSE CORPORATION/COMPANY TO BE FORMED**

20.1. Should the Purchaser be a Company still to be incorporated or a Close Corporation still to be registered, the Purchaser in his personal capacity agrees and undertakes by his signature hereto:



- 20.1.1. to effect registration of the Company or Close Corporation within 30 (Thirty) days of the Signature Date;
  - 20.1.2. to obtain the adoption or ratification as the case may be by the Company or Close Corporation of this Agreement not later than 7 (Seven) days after the date of incorporation of such Company or Close Corporation;
  - 20.1.3. until such time as Clauses 20.1.1 and 20.1.2 have been fulfilled, to procure the timeous implementation of the Purchaser's obligations in terms of this Agreement;
  - 20.1.4. that should registration of the Company or Close Corporation not be effected within the period of 30 (Thirty) days aforesaid or should the Company or Close Corporation when so registered fail to adopt or ratify this Agreement within the within the further period of 7 (Seven) days aforesaid or should the Company or Close Corporation fail in any way whatsoever to implement the terms of this Agreement, then the Purchaser in his personal capacity will continue to be responsible as Purchaser in respect of this Agreement.
- 20.2. Should this Agreement be signed by any person who purports to be acting in a representative capacity and should such person's alleged principal deny the authority of the signatory to sign on behalf of the alleged principal, then the signatory shall be deemed to be the Purchaser in his personal capacity.

## **21. GENERAL**

- 21.1. This Agreement represents the entire agreement between the parties in regard to the subject matter hereof. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect save as expressly included herein or incorporated by reference. Save as otherwise provided for herein, no variation of or addition to or consensual cancellation of this agreement and no waiver by the Seller of any of its rights hereunder shall be of any force unless reduced to writing and signed by or on behalf of the parties.
- 21.2. No latitude, extension of time or other indulgence which may be given or allowed by the Seller to the Purchaser in respect of any of its obligations in terms of this

Agreement shall constitute a waiver, abandonment or novation of the Seller's rights in terms hereof.

21.3. The Seller shall be entitled to delegate, cede, assign and transfer all of its rights and obligations in terms of this Agreement to an entity nominated by it to be the Seller of the Scheme, in which event every reference to "Seller" in this Agreement shall be deemed to refer to that Seller.

21.4. It is recorded and agreed that this Agreement, upon signature by both the Purchaser and the Seller, supercedes and replaces any previous or existing agreement between the Parties.

THUS done and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**SELLER**

THUS done and SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**PURCHASER**

\_\_\_\_\_  
**PURCHASER'S SPOUSE**

*(where the Purchaser is married in community of property)*

## ANNEXURE A

## PURCHASER'S PARTICULARS

NAME OF COMPANY CLOSE CORPORATION OR TRUST	
REGISTRATION NUMBER	
FULL NAMES OF INDIVIDUAL PURCHASER AND REPRESENTATIVE (if applicable)	
IDENTITY NUMBER	
IDENTITY NUMBER OF REPRESENTATIVE (if applicable)	
REGISTERED ADDRESS / PHYSICAL ADDRESS	
POSTAL ADDRESS	
TEL NUMBER	
CELL NUMBER	
FAX NUMBER	
EMAIL	
CONTACT NAME	

**ANNEXURE A ( Continued )****PURCHASER'S SPOUSE'S PARTICULARS (if PURCHASER married in community of property)**

FULL NAMES OF SPOUSE	
IDENTITY NUMBER	
IDENTITY NUMBER OF REPRESENTATIVE (if applicable)	
PHYSICAL ADDRESS	
POSTAL ADDRESS	
TEL NUMBER	
CELL NUMBER	
FAX NUMBER	
EMAIL	
WORK TEL. NO.	