



**SARDINIA BAY**

Golf & Wildlife Estate

# **AGREEMENT OF SALE**

## SCHEDULE OF PARTICULARS

**1. THE SELLER**

- 1.1 Name: Aleco Properties 509 Proprietary Limited
- 1.2 Registration Number: 2011/008775/07
- 1.3 Physical Address: 8<sup>th</sup> Floor, 135 Musgrave Road, Durban
- 1.4 1.4.1 E-Mail: brad@stewards.co.za
- 1.4.2 Telephone number: 031 575 5000
- 1.4.3 Facsimile number: 031 575 5002
- 1.5 Name of person signing on behalf of Seller \_\_\_\_\_
- 1.6 Capacity of person signing on behalf of Seller \_\_\_\_\_

**2. THE PURCHASER**

- 2.1 Full name : \_\_\_\_\_
- 2.2 Identity /Passport /Registration number: \_\_\_\_\_
- 2.3 Full name of spouse (if applicable) : \_\_\_\_\_
- 2.4 Identity number of spouse (if applicable): \_\_\_\_\_
- 2.5 Marital status: \*unmarried
- \*married in community of property
- \*married out of community of property
- \*married, the marriage being governed by the laws of \_\_\_\_\_
- (insert name of Country if not South Africa)
- \*married according to Moslem Rites or Customary Rites
- (\* delete whichever not applicable)
- 2.6 Business address: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- 2.7 Residential address: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- 2.8 Postal address: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- 2.8 E-mail: \_\_\_\_\_
- 2.9 Telephone number: Home: \_\_\_\_\_ Work: \_\_\_\_\_
- 2.10 Cell / Mobile \_\_\_\_\_
- 2.11 Facsimile number: \_\_\_\_\_
- 2.12 Occupation: \_\_\_\_\_

- 2.13 Name of contact person if the Purchaser is a juristic person: \_\_\_\_\_  
 \_\_\_\_\_
- 2.14 Name of person signing this agreement on behalf juristic person or other legal entity (if applicable) \_\_\_\_\_
- 2.15 Capacity in which person referred to in 2.14 is signing (e.g. director / member / trustee) \_\_\_\_\_

### 3. **PROPERTY**

- 3.1 Erf Number: \_\_\_\_\_
- 3.2 Measuring approximately \_\_\_\_\_ square metres  
 being a residential erf in the Development as depicted on the Draft General Plan annexed hereto marked Annexure 1.  
 (subject to the provisions of clause 10.2 if applicable)

### 4. **PURCHASE PRICE**

Total Purchase Price of the vacant Erf inclusive of VAT: R \_\_\_\_\_

### 5. **PAYMENT OF PURCHASE PRICE**

- 5.1 Deposit payable within seven days of signature hereof R \_\_\_\_\_
- 5.2 Balance on registration of transfer R \_\_\_\_\_  
*(refer to paragraph 4.3 below)*

### 6. **BOND**

- 6.1 Amount required: R \_\_\_\_\_  
 (If no amount is specified it shall be deemed that a bond is not required and the provision of Clause 20.1 of the Standard Terms and Conditions shall not apply).
- 6.2 Date by which bond is to be granted : Within 30 days after the date of signature hereof by the Seller.

### 6A. **BUILDING CONTRACT (complete these clauses)**

- 6A.1 A building contract **IS / IS NOT** linked to this agreement (***select option***).  
 If a building contract is not linked to this agreement the last sentence in clause 13.2 shall not apply.

6A.2 It is hereby recorded that the Sardinia Bay Design Review Committee has restricted certain erven to Single story buildings that may only be erected, such building shall not exceed the height of \_\_\_\_\_ . Annexure A to this contract provides a list of erven that indicate which erven are restricted to Single Story buildings. This restriction will be registered in the Title Deed where applicable.

6A.3 Erf \_\_\_\_\_ to which this contract relates **IS / IS NOT** subject to paragraph 6A.2.

**7. ESTIMATED LEVIES**

The estimated levies shall be R880.00 per month up until \_\_\_\_\_ , whereafter the monthly levy shall be determined by the HOA.

**8. INTRODUCTORY AGENT (if applicable)**

8.1 Name : \_\_\_\_\_

8.2 Telephone number :+ 27 41 \_\_\_\_\_

8.3 Telefax number: + 27 41 \_\_\_\_\_

**9. SELLER'S CONVEYANCERS**

|  |  |
|--|--|
| <b>Name of firm:</b>                   | Rob McWilliams Inc                               |
| <b>Business address:</b>               | 11 Lenox Street, Glendinningvale, Port Elizabeth |
| <b>Postal address:</b>                 | P.O.Box 27192 Greenacres, Port Elizabeth 6001    |
| <b>Telephone number:</b>               | (041) 373 0871                                   |
| <b>International Telephone number:</b> | + 27 41 373 0871                                 |
| <b>Facsimile number:</b>               | (041) 373 0872                                   |
| <b>International Facsimile number:</b> | + 27 41 373 0872                                 |
| <b>E-Mail:</b>                         | Justine@robmcw.co.za                             |
| <b>Website:</b>                        |  |
| <b>Name of contact person:</b>         | Justine Joubert / Rob McWilliams                 |

## **TERMS AND CONDITIONS**

### **INTRODUCTION**

- A. The Seller has purchased and intends developing Remainder Erf 378 Theescombe in accordance with the proposed subdivision depicted as subdivisions of Erf 4072 Theescombe on the draft general plan or approved general plan annexed hereto as Annexure 1, which development shall be known as The Sardinia Bay Golf & Wildlife Estate.
- B. The Development will comprise residential erven, a short golf course and a private nature reserve.
- C. The Seller shall retain absolute ownership of erven 3969 and 4067 Theescombe depicted on Annexure 1 hereto. Erf 3969 Theescombe is currently zoned Special Purpose Sports Centre and Erf 4067 Theescombe is currently zoned Special Purpose Clubhouse and Restaurant and the seller reserves the right to develop these erven in its sole and absolute discretion.
- D. The Sardinia Bay Golf & Wildlife Estate will be managed by a Homeowners Association and regulated by a constitution and conduct rules for the mutual benefit of owners in the estate, who will be obliged to become members of and comply with the constitution and the rules of the Homeowners Association.
- E. Erven 4065, 4066, 4068, 4069, 4070 and 4071 Theescombe depicted on Annexure 1 hereto and comprising the private nature reserve, the short golf course, internal roads and private open space shall be registered in the name of the Homeowners Association subject to the provisions of clause 25.1.
- F. The Purchaser wishes to purchase a property in the development from the Seller.

NOW THEREFORE the Seller and the Purchaser agree as follows:

#### 1. **INTERPRETATION AND DEFINITIONS**

- 1.1 The headnotes to the paragraphs in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the clauses to which they relate.

- 1.2 Words importing the singular shall include the plural and vice versa.
- 1.3 Words importing the masculine shall include the feminine and a reference to a natural person includes legal persons and vice versa.
- 1.4 Where figures are referred to in words and in numerals if there is any conflict between the two the words shall prevail.
- 1.5 If any provision of this agreement is in conflict or inconsistent with any law, the invalidity of such provision shall not affect the validity of the remainder of this agreement.
- 1.6 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:-
- 1.6.1 "the Agreement / this Agreement" means the schedule to this agreement together with all terms and conditions of this Agreement and all annexures to this Agreement;
- 1.6.2 "Architectural Guidelines" means the Architectural Guidelines as defined in the Constitution;
- 1.6.3 "Association" means The Sardinia Bay Golf & Wildlife Estate Homeowners Association and HOA and SBHOA shall have corresponding meanings;
- 1.6.4 "Constitution" means The Sardinia Bay Golf & Wildlife Estate Homeowners Association Constitution together with all annexures thereto;
- 1.6.5 "the Developer" means Aleco Properties 509 (Proprietary) Limited, Registration Number 2011/008775/07;
- 1.6.6 "the Development" means the Development referred to in the Introduction and as defined in the Constitution;
- 1.6.7 "the Development Period" means the Development Period as defined in the Constitution;
- 1.6.8 "Draft General Plan" means Annexure 1 hereto provided that the approved general plan may be attached as Annexure 1 if same is available at the time of the signing of this agreement;

- 1.6.9 "Environmental Management Plan" means the Environmental Management Plan as defined in the Constitution;
- 1.6.10 "Private Nature Reserve" means the Private Nature Reserve referred to in the Introduction and as defined in the Constitution;
- 1.6.11 "the Property" means the property purchased by the Purchaser as described in the Schedule;
- 1.6.12 "the Purchaser" means the Purchaser described in the Schedule;
- 1.6.13 "the Purchase Price" means the purchase price detailed in the Schedule;
- 1.6.14 "the Seller" means the Seller described in the Schedule it being recorded that the Seller and the Developer are the same person;
- 1.6.15 "the Seller's Conveyancers" mean Wilson McWilliams Incorporated as described in the Schedule.

2. **IMMOVABLE PROPERTY SOLD**

The Seller hereby sells to the Purchaser who hereby purchases from the Seller the Property as defined in clause 3 of the Schedule on the terms and conditions contained in the this Agreement (subject to the provisions of clause 10.2 if applicable).

3. **PURCHASE PRICE**

The Purchase Price is the sum stipulated in clause 4 of the Schedule.

4. **PAYMENT OF THE PURCHASE PRICE**

- 4.1 The Purchase Price shall be paid by the Purchaser as stipulated in clause 5 of the Schedule.
- 4.2 The deposit payable, if any, shall be paid to the Seller's Conveyancers who shall, pending transfer, invest same in an interest bearing Trust Account in terms of Section 78(2A) of the Attorneys Act No 53 of 1979 with interest accruing to the Purchaser. Such interest shall be paid to the Purchaser on transfer of the Property to the Purchaser. The Purchaser hereby agrees to pay the administrative fee levied by the said Conveyancers in respect of the said investment.

- 4.3 The Purchaser shall pay to the Seller the Purchase Price or the balance thereof in cash against registration of transfer of the Property into the name of the Purchaser. The Purchaser shall within 30 (thirty) days of the signing of this Agreement or within 30 (thirty) days of the fulfillment of any suspensive conditions contained herein furnish the Seller's Conveyancers with a bank or other guarantee/s acceptable to the Seller for the payment of the Purchase Price or the balance thereof. The Seller shall be entitled to request more than one guarantee.

5 **POSSESSION / RATES AND LEVIES**

- 5.1 Possession and occupation of the property shall be given and taken on registration of transfer from which date all benefits and obligations of ownership shall pass to the Purchaser. From the date of possession the Purchaser shall be liable for all rates, taxes and any other charges levied upon the property by the state or municipal or other competent local authority, together with all levies charged by the Association in respect of the property.

- 5.2 In the event the Purchaser takes possession and occupation (with the consent of the Seller) prior to registration of transfer then the Purchaser shall pay to the Seller as a consideration for possession and occupation, interest on the purchase price at the prime lending rate charged by Standard Bank from time to time plus 2%, from date of possession and occupation to date of registration of transfer, both dates inclusive, the said interest to be payable monthly in advance and in any event prior to registration of transfer.

6. **COSTS OF TRANSFER AND BOND**

The Purchaser shall pay to the Seller's Conveyancers upon request, free of bank exchange at Port Elizabeth, all legal fees and costs of and incidental to registration of transfer and his mortgage bond and disbursements in connection therewith; including but not limited to the costs of this Agreement of Sale in the sum of R1,500.00 plus VAT and all such other costs as may be occasioned by steps necessary to complete registration of the said transfer and mortgage bond.

7. **BROKERAGE**

- 7.1 The Seller shall upon the registration of transfer of the property pay to,
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(hereinafter referred to as "the agents") brokerage in respect of this sale, as per the agreed commission, together with vat. It is recorded that the Agent Representative concluding this Agreement of Sale is

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7.2 In the event of the sale being cancelled by the Seller consequent upon the default of the Purchaser then the Purchaser hereby assumes liability for such brokerage and the agents shall be entitled to recover such brokerage (which shall be due and payable upon cancellation) from the Purchaser who shall pay same to the agents upon demand.

## 8. **WARRANTIES AND ACKNOWLEDGEMENTS**

8.1 The Property is sold as it stands and voetstoots, and the Seller excludes from the agreement:

8.1.1 the implied warranties in law against latent defects subject however to the provisions of the Consumer Protection Act No. 68 of 2008 (the CPA).

8.1.2 any rights whatsoever in law on the part of the Purchaser against the Seller in respect of any defect whatsoever, patent or latent or any burdens not mentioned in this agreement in or over the property, subject however to the provisions of the CPA.

8.2 This agreement constitutes the entire contract between the parties and the Purchaser hereby acknowledges that the rights and obligations of the parties are governed exclusively hereby. The Purchaser warrants not having been induced into entering into this contract by any representation not contained herein.

## 9 **ACKNOWLEDGEMENT BY PURCHASER**

9.1 The Purchaser by his signature hereto acknowledges that he has familiarised himself with and is bound by the conditions and provisions contained in the following:

9.1.1 The Sardinia Bay Golf & Wildlife Estate Homeowners Association Constitution

9.1.2 Annexure A to the Constitution – Conduct Rules

9.1.3 Annexure B to the Constitution – Architectural Guidelines

9.1.4 Annexure C to the Constitution – Contractors Rules and Regulations

9.1.5 Annexure D to the Constitution – Landscaping Plant List

9.1.6 The Environmental Management Plan (EMP)

and acknowledges that the aforementioned documents form part of this agreement and are specifically incorporated herein and confirms that he is aware that all of the abovementioned documentation can be viewed on the website [www.sardiniabayestate.co.za](http://www.sardiniabayestate.co.za) and / or is available to him in electronic format.

- 9.2 The Purchaser further acknowledges that the above shall apply notwithstanding the fact that the Association may not yet have come into existence at the time of the signing of this Agreement and agrees that even if this is the case the Constitution and all the Annexures thereto shall be binding upon him and shall form a part of this Agreement as if specifically incorporated therein.

10. **SELLER'S RIGHTS**

It is recorded that the Developer has retained certain rights which are more fully set out in the paragraph above.

11 **PHASES**

- 11.1 The Purchaser acknowledges and agrees that the Development may take place in phases and that the Seller has reserved the right to develop and sell erven in the Development over a period of time as and when and in such manner as it deems fit, the Seller retaining the sole discretion in this regard.
- 11.2 The Seller shall, in its absolute discretion, be entitled to include further land in the Development and apply for, and subject to, approval by the relevant authority, vary the layout and/or zoning and/or size and/or boundaries of erven and/or the extent and position of streets comprising the Development and members shall be bound thereby and shall have no claim of whatever nature against the Seller arising therefrom. Insofar as the consent of a member is required for any of the foregoing, the Seller is irrevocably granted a power of attorney to grant any/all such consents on behalf of members, as may be required.
- 11.3 The Purchaser acknowledges and accepts that as a consequence of the erven in the Development being sold over an extended period and because of the nature of the Development, on date of registration of transfer of the Property, the buildings on the other erven or other properties in the Development and other structures and/or improvements and facilities including but not limited to infrastructure and roads in the Development and

landscaping may be incomplete and the Purchaser agrees that he shall have no claim of whatsoever nature against the Seller as a result thereof.

12. **CONDITIONS OF TITLE IN FAVOUR OF THE ASSOCIATION**

12.1 In addition to all existing conditions of title pertaining to the Property and any new conditions imposed by any local or government authority when approving the Development the following additional clauses shall be inserted in the title deed of the Property in the following form or in such other form as may be acceptable to the Registrar of Deeds, all of which are imposed in favour of the Association:

12.1.1 Every owner shall automatically be and become a member of The Sardinia Bay Golf & Wildlife Estate Homeowners Association (the Association) upon registration of transfer of the Property into his name and shall remain a member and be bound by the Constitution of the Association until such time as he ceases to be an Owner.

12.1.2 The Property or any part thereof shall not be transferred without the Association's prior written consent which shall not be unreasonably withheld, and without the Association having confirmed in writing that all amounts due by the owner to the Association have been paid.

12.1.3 The Owner of the Property shall not make any application for the rezoning, consolidation or subdivision of his Property without the prior written consent of the Association.

12.1.4 Not more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith may be erected on any one Erf in the Development.

13. **BUILDING CONTRACTORS AND OBLIGATION TO BUILD**

13.1 The Seller and/or the Association shall compile a list of approved building contractors from time to time and the erection of the dwelling house on the Property and any building work effected on the Property by the Purchaser may be carried out by any one of the contractors on the list. Should the Purchaser wish to utilise the services of another contractor who is not on the approved list of contractors, then the contractor may apply to be added to the list and the decision of the Seller and/or the Association shall be final and binding in this regard.

- 13.2 Purchaser undertakes to complete the erection of a dwelling house on the Property (as evidenced by the issue of a Certificate of Completion / Occupation by the local authority) within 36 months of becoming the registered owner of the Property and any person to whom the purchaser alienates the property shall be bound by this provision and shall complete the erection of a dwelling within the aforementioned 36 month period. A Building Contract is linked to the Agreement of Sale and if not entered into within 30 days this contract will be null and void..
- 13.3 The Purchaser acknowledges that the Homeowners Association may impose sanctions or penalties for breach of the Purchaser's building obligations in terms of this clause.
- 13.4 Should the Purchaser fail to comply with the provisions of clause 13.2 above the Seller and/or its nominee and/or its successors in title shall have the right (but shall not be obliged), at any time after the expiry of the aforementioned 36 month period, to repurchase the property from the Purchaser on the following terms and conditions:
- 13.4.1 The Seller shall exercise its rights by written notice to the Purchaser's domicilium set out in the Schedule.
- 13.4.2 Should there be no improvements on the Property the purchase price shall be an amount equal to 75% (Seventy Five Percent) of the purchase price at which the Seller first sold the Property to the Purchaser, less all costs of and incidental to transferring the Property to the Seller.
- 13.4.3 Should the Property have been improved the purchase price shall be an amount equal to 75% (Seventy Five Percent) of the purchase price at which the Seller first sold the Property to the Purchaser plus 75% of the cost to the Purchaser of the improvements as they stand or 75% of the value of the improvements, whichever is the lower, less the costs of and incidental to transferring the Property to the Seller. The costs of the improvements shall be determined by a Quantity Surveyor appointed by the Seller whose decision shall be final and binding on the parties and who, in arriving at such decision, shall have acted as an expert and not as an arbitrator. The value of the improvements shall be determined by a sworn appraiser appointed by the seller whose decision shall be final and binding upon the parties and who, at arriving at such decision, shall have acted as an expert and not as an arbitrator.
- 13.5 The Purchaser shall ensure that the building contractor complies with the Contractors Rules and Regulations (Annexure C to the Constitution).

14. **RESTRICTION AGAINST ALIENATION**

- 14.1 The Purchaser be entitled to alienate the Property prior to registration of transfer of the Property into the name of the Purchaser provided that the prospective new purchaser complies with the Seller's requirements for resale of an erf and utilises the Seller's standard approved resale agreement and such resale shall be in terms of the approved resale agreement and no amendments shall be made thereto without the prior consent of the Seller being obtained.
- 14.2 In the event of the Purchaser alienating his erf at any time during the Development Period then such transfer shall be effected by the Seller's (the Developer's) Attorneys.
- 14.3 The Property shall not be consolidated with an adjoining erf without the prior written consent of the Seller who, for so long as it is the owner of land in the Development Area, shall have the power to decide whether or not to give consent to an application by an owner for the consolidation of the property with another erf.
- 14.4 In the event of the Purchaser selling a property as contemplated in this clause and such property being unimproved at the time of the sale, the Purchaser shall pay the Seller and administration fee calculated at the rate of 5% plus VAT of the purchase price which will be received by the Purchaser in respect of the sale of such property.
- 14.5 Should the Purchaser wish to resell the Property, he may only place advertising boards with the permission of the Seller and/or the Homeowners Association and at such place designated by the aforementioned persons.
- 14.6 The Purchaser shall advise the Seller of his intention to sell the Property and the asking price in respect thereof.
- 14.7 The Property shall not be subdivided.
- 14.8 Should the Purchaser wish to resell his property at any time during the development period and employs the services of an estate agent to sell the property, then in such event the Purchaser agrees to appoint the estate agent nominated by the Developer to handle sales during the development period.

15. **TRANSFER**

15.1 Transfer shall be effected by the Seller's Conveyancers as soon as possible after all suspensive conditions have been fulfilled and the Purchaser has complied with all his obligations in terms hereof.

15.2 The Purchaser acknowledges that registration of transfer of the Property shall be registered in such batches as might be deemed appropriate in the sole discretion of the Seller and that there may accordingly be a delay in effecting transfer to the Purchaser. The Purchaser shall have no claim against the Seller of whatsoever nature as a result of any such delay including (without derogating from the generality of the above) any claim for cancellation of this Agreement.

15.3 The Purchaser shall accept transfer of the Property subject to all conditions and servitudes benefitting and burdening the Property and the land and subject to the conditions imposed by the competent authorities when approving the subdivision and rezoning of the land, and subject to the Constitution of the Association.

16. **COMPANIES, CLOSE CORPORATIONS AND TRUSTS**

16.1 If the person signing this agreement as Purchaser is acting for and on behalf of a company, close corporation or trust duly formed:

16.1.1 The signatory hereto warrants in respect of the company, close corporation or trust, that he is duly authorised to sign this agreement on its behalf and, that it is in existence and duly registered with the relevant statutory authority.

16.1.2 The registered address of the company or close corporation or nominated address of the trust will be: \_\_\_\_\_

\_\_\_\_\_ and shall, in addition to the address specified in clause 18 below shall be a *domicilium citandi et executandi*,

16.1.3 The signatory, by virtue of his signature hereto, binds himself as surety and co-principal debtor, jointly and severally with the company, close corporation, or trust for the fulfilment of all the terms and conditions of this agreement, and waives all benefits arising from the relevant legal exceptions the force and effect of which the signatory declares himself to be fully acquainted.

16.1.4 The Seller shall be entitled to require all directors of such company or the Members of such close corporation or the trustees of such trust to bind themselves jointly and severally as sureties for and co-principal debtors *in*

*solidum* with the Purchaser to the Seller for the due and proper performance by the Purchaser of all its obligations in terms hereof, and to execute on demand deeds of suretyship in such form as may be required by the Seller.

- 16.1.5** If the Purchaser is acting as a trustee for a company or close corporation to be formed then in the event of the said company or close corporation not being formed or if formed, not ratifying and adopting this agreement within 30 (thirty) days of the date of sale, the Purchaser, in his personal capacity, shall be the Purchaser hereunder and shall be bound by all the terms of this agreement. If the company or close corporation is formed and duly adopts and ratifies this sale as aforesaid, then the signatory by virtue of his signature hereto binds himself as surety and co-principal debtor, jointly and severally with the company or close corporation, as the case may be, for the fulfillment of all the terms and conditions of this agreement, and waives all benefits arising from the relevant legal exceptions the force and effect of which the signatory declares himself to be fully acquainted.

**17. BREACH**

Should the Purchaser breach any of his obligations under this agreement and remain in default thereof for a period of 7 (seven) days after receiving written notice from the Seller calling upon the Purchaser to remedy such breach, the Seller shall have the right, without prejudice to any other rights to which it may be entitled in law, or under this agreement

EITHER

- 17.1 to hold the Purchaser bound to this agreement, to enforce performance of the obligations of the Purchaser hereunder and to claim immediate payment of all amounts payable by the Purchaser under this agreement, including payment of the full balance of the purchase price outstanding together with any interest accruing thereon, costs and other charges;

OR

- 17.2.1 to cancel this agreement forthwith;
- 17.2.2 to retake possession of the property (in the event that the Purchaser has been given possession), the Purchaser hereby waiving any lien which he may have over the property for improvements; and
- 17.2.3 to retain all payments made and due at the time of cancellation by the Purchaser to the Seller as being the amount which the parties record will be the prejudice suffered by the Seller, regard being had to his proprietary and

other interest in this sale, which will be prejudiced by the aforesaid breach;  
or

- 17.2.4 to claim damages in lieu of sub-clause 17.2.3 in which event it shall not be obliged to return to the Purchaser such amounts already paid by the Purchaser, but shall be entitled to retain such amounts, together with interest accruing thereon, pending the determination of the amount of such damages and upon such determination in favour of the Seller such amounts shall be deemed to have been paid by the Purchaser on account of the damages suffered by the Seller.

18. **DOMICILIA AND NOTICES**

Any notice which may be required to be given in terms of this agreement may be given by the dispatch of such notice in writing to the following address by prepaid registered post:

- 18.1 the Seller: as contained in the Schedule hereto

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- 18.2 the Purchaser: as contained in the Schedule hereto

In the event of the notice being dispatched as aforesaid, such notice shall be deemed to have been given and received, 5 (five) days after the posting thereof from any Post Office within the Republic of South Africa. The exhibition of the certificate of posting shall be full and complete proof of the date of dispatch of the said notice. The parties, hereto shall also be entitled to give such notice by telefax at the telefax number as set out herein and the party receiving the notice shall be deemed to have received such notice no later than 3 hours after transmission thereof. The Seller and the Purchaser choose their respective addresses as set out herein as their *domicilia citandi et executandi*.

19. **ARBITRATION**

- 19.1 If any dispute, difference or question arises at any time between the parties out of or in regard to any matters arising out of the rights and duties of any of the parties, or the interpretation of, or termination of, or any matter arising out of the termination of, or the rectification of this Agreement, or any other matter such dispute shall be submitted to and decided by arbitration on notice in writing given by either party to the other of them in terms of this clause.



- 19.2 Such arbitration shall be held in Port Elizabeth in accordance with the Arbitration Act, No. 42 of 1965 (as amended or replaced from time to time) save that the arbitration shall be informal and the arbitrator shall have the absolute discretion to determine the procedure to be adopted, it being the intention that the arbitration shall be held and concluded without delay.
- 19.3 The arbitrator shall be such independent and suitably qualified person as may be agreed upon between the parties in writing, and failing such agreement, the arbitrator shall be appointed by the President for the time being of the Cape Law Society or its successor/s at the request of either party.
- 19.4 This clause 19 is severable from the rest of the Agreement and shall remain in force notwithstanding the termination of this Agreement for whatever reason.

20 **SUSPENSIVE CONDITIONS**

This Agreement is subject to the following suspensive conditions:-

20.1 **Mortgage Bond**

This sale is subject to the condition that the Purchaser is granted a loan in the sum detailed in clause 6 of the Schedule within the 30 (thirty) day period specified therein from a Bank or other financial institution upon its normal terms and conditions, such loan to be secured by a First Mortgage Bond to be registered over the property simultaneously with transfer. The Purchaser shall take all necessary steps to secure the granting of this loan without delay. This condition shall be deemed to have been fulfilled upon receipt by the Purchaser or his / her agent of a written quotation issued in terms of the National Credit Act in respect of such loan from the Bank / Financial Institution regardless of any conditions attaching to such loan or attaching to such quotation **PROVIDED THAT** in the event of the loan being obtained and subsequently withdrawn through no fault of the Purchaser, then the Purchaser shall be entitled to resile from this agreement. The onus shall be on the Purchaser to prove the conditions detailed in this proviso.

21. **GENERAL CONDITIONS**

- 21.1 In the event that there is more than one Purchaser, then they shall be liable jointly and severally and in solidum for all the obligations of the Purchaser in terms of this agreement.

21.2 No agreement to cancel this contract, whether in whole or in part, nor any variation of, or addition to, the provisions hereof, nor any waiver by either party of any of his rights hereunder, and in particular, without in any way limiting the generality of the foregoing, of his rights in terms of this clause, shall be of any force and effect unless reduced to writing and signed by the parties hereto.

21.3 Any condonation of the provisions hereof or any other act or relaxation, indulgence or grace on the part of either party shall not in any way operate as, nor be deemed, a waiver by such party of any rights under this agreement, nor be construed as a novation hereof, nor shall in any way stop such party from exercising any rights under this agreement.

22. **DIRECT MARKETING AND COOLING OFF PERIOD**

22.1 The Seller declares that it is selling the hereinmentioned Property in the ordinary course of its business and the provisions of the Consumer Protection Act No. 68 of 2008 (the CPA) apply.

22.2 The Purchaser in the event of having concluded this agreement as a result of direct marketing as defined in the provisions of the CPA, confirms that he has been informed of his rights as provided for in Section 16 read with Section 20(2)(a) of the CPA (the provisions of which are detailed in Annexure 2 hereto) to rescind a transaction, without reason or penalty, within 5 business days after the day on which the transaction or agreement was signed or the goods that are the subject of the transaction were delivered to the Purchaser, whichever is the later.

23. **GOLF COURSE**

23.1 The HOA, represented by the developer, has entered into an agreement (the contract) with an independent contractor (the contractor) to operate the golf course as a business for his own account. The HOA will accordingly, during the currency of the contract, not be responsible for the maintenance of the golf course. In terms of the contract the contractor shall be liable, *inter alia*, for the costs of maintaining the golf course and shall be entitled to all profits derived therefrom. For the duration of the contract the public and the owners shall be entitled to play on the golf course provided they pay the fee prescribed by the contractor. The developer shall endeavour to negotiate a preferential fee on behalf of the owners.

23.2 The contractor shall, for the duration of the contract, operate the golf course

business from the existing club house facility which is situated on Erf 4067 (the ownership of which erf shall be retained by the developer). If, after expiry of the contract, the aforementioned club house facility is for any reason no longer available as a club house or alternatively the developer and the other owners are not able to reach agreement on the conditions upon which the existing club house facility may be used, then in such event the developer undertakes to make another club house facility available to the owners on Erf 4067 or Erf 4066 (the golf course erf). Such club house shall be constructed of brick and mortar, shall be not less than 50 square metres in extent and shall have no less than one gents toilet and one ladies toilet. The costs and incidental to the erection of such an alternative club house facility shall be borne by the developer including, but not limited to, costs of construction, any legal costs and costs of obtaining the necessary approval for the erection of the club house.

24. **UNDERTAKINGS BY DEVELOPER**

The developer undertakes to:

- 24.1 upgrade the existing game fence which has been erected on the perimeter of the development to an electrified security fence by the end of the Development Period.
- 24.2 to erect a gatehouse at the entrance to the development by no later than 31 December 2012.

25. **SPECIAL CONDITIONS**

- 25.1 In the event of an application for the rezoning of erven 4066 or 4070 being made at any time after registration of transfer of the aforementioned erven into the name of the Homeowners Association or in the event of the aforementioned properties actually being rezoned, then in such event ownership in the abovementioned properties shall immediately revert to the Seller or its assigns and the Homeowners Association shall take all such steps as may be necessary and sign all such documents as may be necessary to effect registration of transfer of the aforementioned erven into the name of the Seller, its assigns or successors in title.
- 25.2 In the event of the Purchaser failing to make payment of any amount

payable in terms of this agreement on due date then the Purchaser shall be liable to pay to the Seller interest on such amount at the prime rate of interest charged by Standard Bank from time to time plus 2%.

SIGNED BY THE PURCHASER AT \_\_\_\_\_ on \_\_\_\_\_

AS WITNESSES

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

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

\_\_\_\_\_  
Who warrants that he is duly  
authorized thereto

SIGNED BY THE SELLER AT PORT ELIZABETH on \_\_\_\_\_

AS WITNESSES

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

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

\_\_\_\_\_  
Who warrants that he is duly  
authorized thereto