

AGREEMENT OF SALE
FOR
JACANA ECO ESTATE

Between :

KOTZE FAMILY TRUST
NO. IT1346/2005/PMB
("the Seller")

and

("the Purchaser")

COMPRISING

Jacana Eco Estate Agreement of Sale

Jacana Eco Estate General Schedule of Conditions

Jacana Eco Estate Site Plan - Annexure A

Jacana Eco Estate Building Plans (vertical and horizontal elevations) - Annexure B

Jacana Eco Estate Specifications C

JACANA ECO ESTATE AGREEMENT OF SALE

The Seller and Purchaser enter into an agreement on the terms and conditions set out herein and also set out in the Schedule of Conditions and any other annexures hereto.

A. **Name of Seller :** **KOTZE FAMILY TRUST**
IT1346/2005/PMB

c/o Hilltops Office Park, 73 Villiers
Drive, Clarendon, Pietermaritzburg

B. **Full Names of Purchaser :** _____

Identity Number of Purchaser : _____

Address of Purchaser : _____

Telephone number: _____

Cell number: _____

Email Address: _____

C. **Description of Unit Sold :** Proposed Section _____, in extent _____ m², together with proposed Exclusive Use Area No. _____, in extent _____ m² in the buildings to be known as **JACANA ECO ESTATE** and more fully defined in the Schedule of Conditions annexed hereto together with an undivided share in the Common Property as more fully defined in the Schedule Conditions.

D. PURCHASE PRICE INCLUDING VAT : R_____

E. Payment:

Initial Deposit Amount: R_____

(Clause 3.1 General Schedule of
Conditions)

Deposit Due on: in terms of clause 3.1 of the General
Schedule of Condition

Amount of Balance: R_____

(Subject to finance within 21 days from signature)

(Clause 3.2 General Schedule of
Conditions)

F. Occupation Date : anticipated

(Clause 4.2 General Schedule of
Conditions)

or failing the disclosure of the Occupation Date as above, the Occupation Date scheduled in the Schedule of Conditions annexed hereto. Occupation is subject to the remaining terms of this Agreement which provides, amongst other matters, that the Seller shall be entitled to withhold occupation if the full purchase price has not been paid or properly guaranteed.

G. **Monthly Occupational Rental :** R_____

(Excluding Vat)

(and more fully referred to in Clause 4.4
General Schedule of Conditions)

H. **Amount of new Mortgage Bond** R_____

if any to be granted to Purchaser

(Clause 18 General Schedule of
Conditions)

Bank bondholder

I. **The name of the signatory to this** _____

agreement who also personally _____

guarantees the Purchaser's obligations:

(Clause 21 General Schedule of
Conditions)

J. **Selling Agent (if any):** _____

(Clause 19 General Schedule of
Conditions)

K. **Special Conditions:**

SIGNED by the SELLER at PIETERMARITZBURG

this day of 2017

AS WITNESSES:

1.

2.

Who warrants his authority hereto

SIGNED by the PURCHASER at PIETERMARITZBURG

this day of 2017

AS WITNESSES:

1.

2.

JACANA ECO ESTATE

GENERAL SCHEDULE OF CONDITIONS

The following are the Schedule of Conditions which, together with the Agreement of Sale to which this Schedule is attached, and together with the Annexures hereto shall constitute the Sale Agreement entered into between the Seller and the Purchaser.

WHEREAS

The Seller is constructing the Development Scheme known as **JACANA ECO ESTATE** in Hilton, Pietermaritzburg on the Property and the Purchaser has indicated that the Purchaser is desirous of acquiring registered ownership of a Unit in the Development Scheme.

NOW THEREFORE THESE PRESENTS WITNESSETH:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise indicates:

1.1.1 "Architect" shall mean Craig Wilson of Equilibrium Architectural Solutions CC, or failing, the party nominated in writing by him to act as Architect hereunder.

1.1.2 "Act" shall mean the Sectional Titles Act No. 95 of 1986 as amended together with its regulations as amended.

1.1.3 "Agreement" shall mean this Agreement, any annexures hereto and the documents incorporated by reference.

1.1.4 "Building Plans" shall mean the Building Plans of the Development Scheme prepared by the Architect and which are annexed hereto marked "B".

1.1.5 "Conveyancer" shall mean Stowell & Co of 295 Pietermaritz Street, Pietermaritzburg.

1.1.6 "Development Scheme" or "Scheme" shall mean the Development Scheme known as **Jacana Eco Estate** which is indicated on the

Site Plan and on the Building Plans and which is being constructed by the Seller upon the Property.

- 1.1.7 "Exclusive Use Area" shall mean the Exclusive Use Area/Garden Area to be allocated by the Seller and to be recorded, and registered in terms of Section 27 of the Act, which Exclusive Use Area is a garden and which is indicated on Annexure "B" but which will be specifically allocated as to position in the entire discretion of the Seller.
- 1.1.8 "Land Surveyor" shall mean the Land Surveyor nominated by the Seller.
- 1.1.9 "Management Act" shall mean the Sectional Title Schemes Management Act 2011 (Act No. 8 of 2011).
- 1.1.10 "Management and Conduct Rules" shall mean the management and conduct rules for the Development Scheme as set out in the Management Act.
- 1.1.11 "Occupation Date" shall mean the anticipated Occupation Date specified in the Agreement of Sale.
- 1.1.12 "Property" shall mean Portion 25 of Erf 330 Hilton, situate in the uMngeni Municipality, Registration Division FT, Province of KwaZulu-Natal.
- 1.1.13 "Purchaser" shall mean the party described as such on the first page of this Agreement.
- 1.1.14 "Section or Sections" shall mean the Section referred to in clause C of the Agreement of Sale in the building/buildings known as *JACANA ECO ESTATE*, to be erected on the Property, and which is described and indicated on the Site Plan and Building Plans.
- 1.1.15 "Sectional Plan" shall mean the Sectional Plan which relates to the Section or Sections, which will be prepared by the Land Surveyor in accordance with the Act in respect of the Development Scheme, in such final form as may be agreed between the Land Surveyor and

the Surveyor General, Pietermaritzburg and the Registrar of Deeds, Pietermaritzburg.

- 1.1.16 "Seller" shall mean Kotze Family Trust, IT1346/2005/PMB.
- 1.1.17 "Site Plan" shall mean that plan prepared by the Architect and which is annexed hereto and marked "A".
- 1.1.18 "Specifications" shall mean the Schedule of Specifications contained in the Annexure of Specifications annexed hereto and marked "C" and those specifications which are disclosed on the Building Plans. Should any conflict arise as between the Specifications, Annexure "C" and the Building Plans, the Specifications Annexure "C", shall prevail.
- 1.1.19 "Unit" shall mean the proposed Section or Sections together with an undivided share in the common property on the land and buildings apportioned to the Section in accordance with the Participation Quota of the Section which is to be determined by the Land Surveyor.
- 1.2 The head notes and the paragraphs of this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.3 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include the female and words importing persons shall include partnership and bodies corporate.
- 1.4 The terms and conditions of this Agreement are binding on the Heirs, Executors, Administrators, Trustees, Liquidators, Judicial Managers, Receivers, Assigns and/or Successors in Title of the prospective parties hereto as fully and effectually as if they had entered into this Agreement in the first place.
- 1.5 Reference to this Agreement includes this Agreement and all Annexures.
- 1.6 All monetary amounts referred to herein inclusive more especially of the purchase price, rentals, levies and outgoings are VAT exclusive, unless specifically referred to as VAT inclusive, as reflected in clause "D" of the Agreement of Sale.

2. SALE

The Seller hereby sells to the Purchaser who hereby purchases the Unit more fully described in clause C of the Agreement of Sale together with the Exclusive Use Area, which will be allocated by the Seller to such Unit, which Exclusive Use Area will be a garden area.

3. PURCHASE PRICE

The Purchase Price payable by the Purchaser to the Seller shall be payable without deduction and free of set-off or retention as follows:

3.1 The cash deposit which is reflected on the Agreement shall be paid by the Purchaser without deduction or demand to the Conveyancers within 30 (THIRTY) days of the last signature hereto unless otherwise specified in the Agreement and shall be held in Trust by them as Stakeholders for both Parties in an interest bearing account under the name of the Purchaser with interest for the benefit of the Purchaser pending registration of transfer whereupon payment shall be made to the Seller. The Conveyancers Trust Account details are Stowell & Co Trust Account, First National Bank, Account number 509 3007 2249, Branch Code 00-257-335, Liberty Midlands Mall, reference RJT.

3.2 The balance of the Purchase Price (**subject to finance within 21 days of signature**) or the entire Purchase Price as the case may be shall be paid by the Purchaser to the Seller upon date of registration of the Unit into the name of the Purchaser. The balance of the Purchase Price or the Purchase Price shall be secured by a cash payment paid to the Conveyancers, Stowell & Co or alternatively by the issue of bankers written guarantee/s in a form acceptable to the said Conveyancers, payable on date of transfer, free of any retention provisions, which cash or guarantee/s shall be lodged with the Conveyancer within 20 (TWENTY) days of the granting of the new Mortgage Bond to the Purchaser or within such extended period as the Seller in the Seller's sole discretion may agree to grant in writing; **OR** in the event that provision has not been made in this Agreement for the granting of a new Mortgage Bond loan to the Purchaser, within 30 (THIRTY) days of the last signature hereto, provided always that no such guarantee/s need be furnished unless and until same has been requisitioned by the Conveyancers on written notice addressed to the Purchaser.

3.3 The Purchaser acknowledges that the Conveyancers are not able to invest the deposit 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. 38 of 2001 and has signed the necessary investment mandate, both of which the Purchaser undertakes to do as soon as reasonably practical in the circumstances.

4. OCCUPATION

4.1 The buildings comprising the Development Scheme, inclusive of the Unit sold, are presently in the course of planning and construction.

4.2 Occupation shall be given by the Seller and taken by the Purchaser on the Occupation Date provided that by that date the Unit shall be sufficiently complete and ready for beneficial occupation by the Purchaser, to the extent that it can be used for the purpose intended, and the Seller's architect has signed a Certificate of Practical Completion in respect thereof. This shall not necessarily mean that the Unit shall be fully complete and free of any snagging or other items still to be completed by the Seller to achieve full and final completion. The Purchaser shall not be entitled to obtain nor remain in occupation unless and until the Purchaser has signed all transfer documents to the extent that these are available for signature and has furnished all payments and guarantees required to be delivered under this Agreement and is not otherwise in breach of any other term of this Agreement.

4.3 Should the Seller be unable to furnish beneficial occupation on the Anticipated Occupation Date on account of the Section being incomplete for occupation purposes, due to delays by the Local Authority or any other authority in approving Building Plans, delays which may occur due to the non-availability of building materials, delays occasioned by rain, act of God, labour strikes or by sub-contractors in completing the work assigned to them or unforeseeable delays in building construction, then the Purchaser shall accept occupation at the earliest date on which the Seller is able to give the Purchaser occupation. The Purchaser shall in such event have the right to resile from this Agreement should the Seller not be able to give the Purchaser occupation within a period of 60 (SIXTY) days after the anticipated Occupation Date, and in such event the Seller shall be obliged to refund to the Purchaser all monies paid by the Purchaser in terms of this Agreement.

- 4.4 Should the anticipated Occupation Date occur at any time prior to registration of transfer, and irrespective of the cause of any delay in registering transfer (save deliberate obstruction by the Seller), then the Purchaser shall pay to the Seller the monthly occupational rental which shall be the amount specified in the Agreement of Sale and failing such specification, interest on the Purchase Price at prime Bank overdraft rate at the Seller's Bank. The occupational rental shall be payable monthly in advance on the first day of each and every month to the Seller or the Seller's nominee without deduction or demand from the occupation date until date of registration of transfer, both days inclusive, provided that should transfer be effected during the course of the month in respect of which the Purchaser has paid rental for the full month, the Purchaser shall be entitled to a pro rata refund of such overpayment.
- 4.5 No deduction, set-off or counterclaim shall be made or allowed for any incomplete item relating to the Unit or any Exclusive Use Area in the Development Scheme as at the Occupation Date provided always that the Purchaser's rights to claim beneficial occupation as is provided herein shall remain reserved to the Purchaser. Other than as specifically provided for herein, the Purchaser shall have no claim of whatsoever nature or howsoever arising against the Seller for failure for any reason to give the Purchaser occupation on the agreed anticipated Occupation Date.
- 4.6 In the event of any dispute arising as to the Occupation Date, or as to beneficial occupation or as to whether the Section is finally complete, a written certificate issued by the Architect acting as an expert, making a ruling on such issue, shall be final and binding on both the Seller and the Purchaser.
- 4.7 The Purchaser acknowledges that the Purchaser is acquiring a Unit in an incomplete Development Scheme and that on the anticipated Occupation Date, notwithstanding that the Unit may be available for occupation and ready for transfer into the Purchaser's name, the buildings and any other improvements on the common property inclusive of improvements still to be made to the Unit sold, may be partially incomplete with snagging still to be completed by the Seller, and furthermore that other Unit may also be incomplete and that driveways and common amenities may also be incomplete such that occupants in the Development Scheme, inclusive of the Purchaser, will necessarily suffer some inconvenience from building operations and from noise, dust and the like

resulting therefrom. The Purchaser shall have no claim against the Seller by reason of such interim incompleteness or inconvenience.

4.8 The Purchaser shall not be entitled to delay transfer in any manner by failing to sign documents, or otherwise, and shall not be entitled to withhold delivery of any guarantee due hereunder nor withhold any payment due in terms of this Agreement, nor impose any retention in respect of any obligation to be fulfilled by the Seller hereunder (inclusive of any incomplete construction of the building or any alleged defect or snag item of construction) pending final completion of the Unit and the Development Scheme. The fact that registration of transfer has taken place into the name of the Purchaser shall not derogate nor subtract from the Seller's obligations to fulfil its obligations under this Agreement inclusive of the obligation to finally and properly complete the Unit after registration of transfer has taken place.

5. **RISK, LEVIES AND OUTGOINGS**

The risks and benefits of ownership of the Unit and any Exclusive Use Area shall pass to the Purchaser on and from the Occupation Date, from which date the Purchaser shall be liable for all outgoings relating to the Unit and also for the Body Corporate monthly levy, or failing any monthly levy not having been imposed by the Body Corporate, an amount equivalent to a fair estimate of such monthly levy to be imposed by the Body Corporate, assessed by the Seller, in respect of the Unit. The Purchaser shall on request, furnish the Seller with a cash deposit for the Purchaser's estimated share thereof from time to time up until the Conveyancers estimated date of transfer.

6. **MORA INTEREST**

6.1 In the event of the Purchaser being responsible for any delay in connection with or relating to the date of registration of transfer for which the Purchaser is responsible, the Purchaser agrees, in addition to any other payment due by the Purchaser in terms hereof:

6.1.1 to pay interest to the Seller on the full purchase price at the rate equal to 2 (TWO) percentage points above the prime overdraft rate charged by the First National Bank from time to time, calculated from the date of the Purchaser is notified in writing by the Seller (or the Seller's agent) as being in mora, to the date upon which the Purchaser has ceased to

be in mora, both days inclusive. A certificate by any branch manager of the said Bank as to such prime overdraft rate shall prima facie proof of such rate; and

6.1.2 notwithstanding the provisions elsewhere contained in this Agreement of Sale the Purchaser shall pay to the Seller all rates, levies and other outgoings which may be fairly or equitably attributable or allocable to the Unit and the Exclusive Use Area or which arise from or relate to the Unit or the Exclusive Use Area (and calculated as if the Purchaser was the owner thereof) from the date that the Purchaser is notified in writing by the Seller or its agent, as being in mora to the date on which the Purchaser ceases to be in mora, both days inclusive.

6.2 A certificate by the Sellers auditors as to the amount of rates, levies and other outgoings that arose in respect of the Unit and the Exclusive Use Area during the period that the Purchaser was in mora, as aforesaid, shall be prima facie proof of such amounts.

7. CONSTRUCTION OF BUILDINGS

7.1 The Seller shall cause the Development Scheme, including the Sections and the Exclusive Use Area, to be erected and constructed, at its own cost in accordance with the Building Plans and the Specifications to the extent that a Certificate of Completion shall be obtained from the Local Authority.

7.2 At least 5 (FIVE) days prior to the anticipated Occupation Date the Purchaser shall make all necessary arrangements with the Seller or its authorised representative for the convening of an on-site meeting at the Sections for the purposes of inspecting same and to arrange for the delivery and handing over of the keys of the Sections to the Purchaser on the anticipated Occupation Date. At such meeting a written list of all patent defects shall be compiled and attached to a written Minute of the Meeting all of which will be signed at the Meeting by both Seller and Purchaser or their authorised representatives. The patent defects shall be repaired and completed by the Seller at its own cost within 30 (THIRTY) days after the Occupation Date. The Seller's liability for patent defects relating to the Unit/s shall be restricted only to those specified in such written Minute.

- 7.3 The Seller undertakes and warrants to the Purchaser that in the event of there being any roof leaks or latent defect in the Unit becoming apparent within 6 (SIX) months from the Occupation Date, the Seller shall remedy the same, provided that in the event of any substantial rains not falling during the aforesaid 6 (SIX) month period the period applicable to roof leaks shall be extended until such time as substantial rains have fallen.
- 7.4 The Seller shall remedy such roof leaks and latent defect only to the extent that these are brought to the attention of the Seller in writing, delivered by the Purchaser to the Seller within 6 (SIX) months of the Occupation Date.
- 7.5 In the event of the Purchaser failing to timeously deliver a written list of defects, the Seller shall be absolved from all obligation or liabilities to attend to such defect or any repair or maintenance work related thereto.
- 7.6 Subject to the provisions of this clause the Unit is sold and purchased voetstoots and the Purchaser agrees to accept it as it stands and the Purchaser is presumed to be acquainted with the Unit hereby purchased, its nature, extent, boundaries, zoning and localities.
- 7.7 The undermentioned items are excluded from the above express or any implied warranty by the Seller, namely:
- 7.7.1 defects in the Section or the Development Scheme or any improvements thereon, inclusive inter alia of road works and boundary walls, attributable to any act of God or any shrinkage, heaving or expansion caused by abnormal ground or sub-surface conditions, or defects caused by fair wear and tear, negligence or misuse on the part of the Purchaser or any other person other than the Seller or its contractors, or due to any act or omission which does not involve the negligence of the Seller, its contractors or agents;
- 7.7.2 inadequate or abnormal supplies of public utilities inclusive of low or variable electricity supplies, water main supplies or sewer reticulations which are substantially or partially attributable to the failure of the Local Authority or any other Authority who supplies such utilities to the property.

- 7.8 In the event that the Seller disputes its liability to remedy any defect properly recorded hereunder, the Seller shall be entitled, on receipt of the written list of alleged defects to submit same to the Architect defined as such under this Agreement and such Architect, acting as expert, may decide and rule in writing on the nature and extent of the liability of the Seller to comply with such defect. The decision of such Architect, once delivered in writing, shall be final and binding on the parties.
- 7.9 The Purchaser shall not be entitled to withhold the furnishing of any guarantee or payment of any deposit or other monies due or payable under this Agreement due to any alleged defect or delay or breach of warranty or undertaking by the Seller, or, pending the resolution of any dispute arising out of or in connection with this Agreement or pending the completion of the Unit or the Development.
- 7.10 The Purchaser shall not be entitled to give any instruction or work order directly to the building contractor or the Architect or anyone else engaged in the Development Scheme. The Purchaser shall not be entitled to enter upon the Development Scheme or the Unit without the prior written consent of the Seller who shall be entitled if it grants such consent, to specify compliance rules regarding safety and security on the building site of the Development Scheme.
- 7.11 The Purchaser records that it has acquired the Section and entered into this Agreement by virtue of an enquiry made by the Purchasers and not as a result of any direct marketing approach by either the agent or the Seller.
- 7.12 **The Purchaser acknowledges that prior to signature of this Agreement by the Purchaser, the content of this Agreement had been explained to it by the Agent and the Agent had advised the Purchaser that the Purchaser is entitled to contact the Seller's Conveyancer on telephone number 033-8450500 and enquire from any of the practicing conveyancers and any staff members employed by the Seller's Conveyancer, R J Trotter, as to the content of the Agreement and to obtain clarity of any of the conditions contained in this Agreement of Sale which may not have been clear to the Purchaser and which the Purchaser requires to have explained prior to having signed the Agreement of Sale by the Purchasers.**
- 7.13 The Purchaser has read and understands the contents of this Agreement and the annexures and accepts the same.

8 VARIATION OF BUILDING PLAN

- 8.1 Should the Purchaser require any variation of the construction work, any such variation shall be reduced to writing and if agreed to by the Seller same shall be signed by the Parties. Any such variation shall specify the nature and cost of the work and shall thereupon constitute a variation to the Building Plan.
- 8.2 The Purchaser shall, prior to the commencement of such work for the variation, be obliged to lodge a cash amount equivalent to the agreed cost of such variation with the Conveyancers who shall pay such amount to the Seller upon the Purchaser taking occupation of the Unit/s.

9 ARBITRATION

- 9.1 Should any dispute arise out of or in connection with this Agreement in regard to the nature, method or quality of the construction of the Unit/s or any part of it or to the Scheme, inclusive of any defect whether latent or patent and whether such dispute or difference arises during the continuance of this Agreement or upon or after its discharge or termination, such dispute or difference shall be submitted to and be decided by arbitration unless a contrary procedure is specified elsewhere in this Agreement.
- 9.2 The arbitration referred to above shall be held in the Local Authority area in which the property is situated and shall be conducted in a summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures (for example there shall not be any pleadings or discovery) or the strict rules of evidence and such arbitration shall be held:
 - 9.2.1 Immediately and with a view to its being completed within 21 (TWENTY ONE) business days of its being demanded.
 - 9.2.2 Otherwise under the provisions of the Arbitration Act No. 42/1965 (as amended from time to time) except if these may be varied by the undermentioned provisions.
- 9.3 The Arbitrator for the purposes hereof shall be the Architect or failing the Architect, an arbitrator nominated by the President for the time being of the Natal Law Society.

9.4 The Arbitrator shall decide the matter submitted to him according to what he considers just and equitable in the circumstances and therefore the strict rules of law need not be observed or taken into account by him in arriving at his decision; provided that any decision requiring the application of law shall be determined in terms of the laws of South Africa.

9.5 The parties irrevocably agree that the decision of the arbitration proceedings shall be final and binding upon the parties and not subject to appeal and shall be carried into effect by all of the parties and may be made an order of Court of a Court of competent jurisdiction in the Republic of South Africa.

10 **PURCHASER'S OBLIGATIONS PRIOR TO TRANSFER**

10.1 Prior to registration of transfer the Purchaser :

10.1.1 shall not be entitled to make any additions or alterations to the Sections without the prior written consent of the Seller which consent shall be at the Seller's sole and absolute discretion;

10.1.2 shall keep the Section in a neat and tidy state and in good repair to the satisfaction of the Seller who shall have the right to carry out such repairs and maintenance as may be necessary and to claim a refund on demand of any costs incurred in this connection;

10.1.3 shall allow the Seller or its agent to inspect the Section and to enter the Section for the purposes of effecting repairs, maintenance or attending to defects;

10.1.4 shall not be entitled to sell, dispose of or alienate the Section or let or give up his rights of possession and occupation in the Section without the prior written consent of the Seller having first being obtained, which consent shall not be unreasonably withheld and which may be given subject to such conditions as the Seller may reasonably consider necessary;

10.1.5 shall be bound by the provisions of the Body Corporate Rules of the Development Scheme insofar as they cast any duty upon the owner or occupier of the Section, and shall bind the Purchaser and be enforceable by the Seller.

11 BODY CORPORATE AND RULES

- 11.1 The Purchaser is aware that upon registration of transfer of the Unit into its name, the Purchaser will become a member of the Body Corporate to be established for the Development Scheme. The Purchaser accepts transfer subject to all of the provisions of the Act and the Management Act relating to the duties and powers of the Body Corporate and in particular assumes liability for contributions by way of levies to be paid to the fund established or to be established for the repair, upkeep, control, management and administration of the common property and for other purposes described in the Act which levy is still to be specified by the Body Corporate.
- 11.2 The Purchaser undertakes and warrants to the Seller that with effect from the Occupation Date it agrees to abide by the Management and Conduct Rules for the Development Scheme as set out in the Management Act and in addition as they may be adopted and put into force and effect pursuant to this Agreement.
- 11.3 Until the Sectional Title Register has been opened, the Seller shall be entitled to exercise all the rights and powers which a Body Corporate would be empowered to exercise under the Act in relations to the buildings, property and the owners or occupiers of the Unit/s in the Development Scheme.
- 11.4 In order that appropriate amendments may be made to the statutory Management and Conduct Rules of the Body Corporate (inclusive of House Rules) so as to give legal force and effect to the provisions thereof, and more particularly to effect a valid and proper allocation of any Exclusive Use Areas which are disclosed in this or any other Agreement relating to the Development Scheme, but which for survey or procedural or other reasons are not initially registered on the Sectional Plan at date of registration thereof, the Purchaser hereby nominates, constitutes and appoints the Seller or the Seller's nominee, irrevocably and in *rem suam*, and to the Purchaser's exclusion, to be the Purchaser's Attorney and Agent with power of substitution, to represent and vote for the Purchaser at any meeting of the Body Corporate called inter alia, for the purposes referred to above. The Purchaser undertakes to furnish to the Seller whatever additional proxy/proxies or Powers of Attorney, or other documents that may be required to give effect hereto.

12 EXTENSION OF SCHEME

12.1 The Seller records that upon registration of the First Phase of the Sectional Plan, the Developer shall reserve to itself or its successors in title in terms of Section 25(1)(a) of the Act a right of extension. The reservation and the plans which are required to be file in the Deeds Office, pursuant to Section 25 of the Act, shall be similar to the Site Plan and the Building Plans which are attached hereto.

12.2 The Purchaser acknowledges that the Seller shall include the below mentioned terms and conditions of title when reserving the right to erect and complete further buildings on the Property in terms of Section 25 of the Act, and shall be bound by all such terms and conditions and to perform the obligations placed upon the Purchaser by such terms.

“The Developer shall notwithstanding that transfer of various units in the Development Scheme have been effected, be entitled but not obliged within a period of 10 (TEN) years of date hereof, to erect for their own benefit, ownership and resale the vertical or horizontal extension/s of the Development Scheme as is indicated on the plan to be lodged in the Deeds Office, Pietermaritzburg in accordance with Section 25(2)(a) of the Act and to also reserve and thereafter to confer the right of exclusive use over part or parts of the common property upon owners of one or more of the sections in the Development Scheme.”

12.3 The Seller records that it may in its discretion apply to the relevant authorities for permission to extend the allowable density and/or footprint applicable to the Property thereby entitling the Seller or its successor in title to cause additional Units to be constructed on the Property and to further extend the Scheme. Provided that this application is made in accordance with the uMngeni Town Planning Scheme and/or subject to the uMngeni authority, the Purchaser undertakes not to object to any such town planning or environmental application. The Seller records that it is its intention to cause the title deed condition to such effect to be created against the Scheme.

13 VARIATION OF MEASUREMENTS ON SECTIONAL PLAN

- 13.1 If the measurements of the proposed Sections or Exclusive Use Area are varied from that indicated on the Building Plans or on the proposed Sectional Plan to an extent that is not substantive and material or if such variations are necessary for the approval of the Building Plans or approval and final registration of the Sectional Plan, the Purchaser shall be obliged to accept the same and shall thus not be entitled to claim cancellation of this Agreement, or any reduction in the purchase price by reason of such variations between the Building Plan and the Sectional Plan.
- 13.2 The Parties hereby grant and delegate to the Land Surveyor absolute discretion in the final computation of the various extents of the Unit and the Exclusive Use Area and calculations of the final Participation Quotas, whose decision shall be final and binding in such regard and the Purchaser undertakes to accept the extent of the Unit and Exclusive Use Area in such final form as calculated by the Land Surveyor, to be in satisfaction of the obligations of the Seller in terms of this Agreement. The Land Surveyor is also granted authority to vary the Section numbers as may be required or prescribed by the Surveyor General or the Local Authority.

14. REGISTRATION OF THE SECTIONAL PLAN

To enable the Seller to give transfer of the Unit to the Purchaser it will be necessary for the Seller to obtain registration of the Sectional Plan in the Deeds Office, Pietermaritzburg. This sale is therefore subject to the condition that the registration of the Sectional Plan takes place within 30 (THIRTY) months from date of signature hereof provided that in the event of the Sectional Plan having not been registered within the aforesaid 30 (THIRTY) month period, this Agreement shall not immediately and summarily terminate but either party wishing to terminate the Agreement at the expiry of the said 30 (THIRTY) month period shall be entitled to give to the other 2 (TWO) months notice of intention to cancel this Agreement. In the event of such cancellation, the Purchaser shall vacate the Section and re-deliver the same to the Seller in the same good order and condition as at the date of occupation, fair wear and tear excepted and the Seller shall refund to the Purchaser all amounts paid by the Purchaser on account of the purchase price less an amount equivalent to occupational rental calculated as hereinbefore specified which shall be payable by the Purchaser in consideration for its occupation of the Unit. No refunds shall be made of any levies, electricity or water charges paid or due

by the Purchaser. The Seller shall be required to do all things reasonably possible to achieve the registration of the required Sectional Plan as soon as is possible.

15. REGISTRATION OF TRANSFER AND COSTS

- 15.1 All documents in connection with the preparation of transfer shall be prepared and registered by the Seller's Conveyancers, STOWELL & Co and the costs of and incidental to such transfer, shall be paid by the Purchaser. The costs of and incidental to the negotiation, preparation and completion of this Agreement shall be borne by the Seller and Purchaser in equal shares notwithstanding the non-fulfilment of any condition hereof. The Purchaser shall on request sign all transfer and other conveyancing documents required to be signed in connection with such transfer and shall on request from the said Conveyancers, furnish them with a cash deposit for the aforesaid estimated costs.
- 15.2 Registration of transfer of the Unit into the name of the Purchaser shall take place as soon as the Unit becomes registerable which shall occur immediately the Sectional Plan for the Unit has been approved by the Surveyor General, notwithstanding that final completion of the Unit has not yet been completed, provided always that the Seller shall be entitled to withhold transfer if the full purchase price has not been fully paid or secured as is provided herein
- 15.3 All costs incurred in the preparation and survey of the Development Scheme in regard to the preparation of and registration of the Sectional Plan and the costs of the registration thereof, as incurred by the Land Surveyors and the Conveyancers, and any disbursements necessarily effected by them, shall be borne by the Seller.
- 15.4 The Property, and the Unit will be transferred subject to all of the existing registered conditions of title and the Purchaser is deemed to be acquainted with same.
- 15.5 The Seller shall be entitled to withhold transfer to the Purchaser, or lodgement of the transfer documents, until the purchase price and all other charges due by him are paid or secured to the satisfaction of the Seller, in accordance with this Agreement.

16. BREACH

- 16.1 In the event of the Purchaser failing to carry out any whatsoever of its obligations hereunder and in the event of the Purchaser continuing in such breach for more than seven (7) days after written notice has either been handed to such Purchaser or has been posted to such Purchaser by prepaid registered post by or on behalf of the Seller requiring the Purchaser to remedy such breach then the Seller shall without prejudice to any other rights or remedies that it may have in Law , have the right either to enforce this Agreement, or at the Seller's option, to declare the same cancelled in which case the Seller shall be entitled to resume possession of the assets sold and to resell the same either by private sale or by public auction at the expense of the Purchaser immediately or at such later date as the Seller may in its own entire discretion think fit, in which case the Purchaser shall make good all losses sustained by the Seller by reason of such cancellation and resale including costs on an attorney and own client scale, but without being entitled to the benefits, if any, accruing therefrom and the Purchaser shall have no claim for compensation for any improvements, which improvements shall thereupon become the Property of the Seller free of any lien or other right of retention which may exist in favour of the Purchaser.
- 16.2 Without prejudice to the foregoing, if such cancellation takes place, all monies paid or deposits made in terms of this Agreement whether in trust or otherwise, shall be deemed to have been forfeited to the Seller on account of the damages suffered by the Seller and shall be paid out to the Seller for its own use upon such cancellation.

17. DOMICILIA - ADDRESSES AND E-MAIL

- 17.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this agreement, whether in respect of Court process, notices or other documents or communications or whatsoever nature, at the addresses specified on the first page of the Agreement of Sale opposite their respective names.
- 17.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only in writing but it shall be complete to give notice by e-mail to the recipients chosen e-mail address stipulated above.

17.3 Any party may by notice to any other party change the physical address or telefax number chosen as its *domicilium citandi et executandi*, *vis-a-vis* that party to another physical address in South Africa or e-mail, provided that the change shall become effective *vis-a-vis* that addressee on the seventh business day from the deemed receipt of the notice by the addressee.

17.4 Any notice to a party

17.4.1 sent by prepaid registered post (by airmail if appropriate), in a correctly addressed envelope to that party at its *domicilium citandi et executandi* shall be deemed to have been received on the seventh business day after posting, unless the contrary is proved;

17.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi*, shall be deemed to have been received on the day of delivery;

17.4.3 sent by e-mail to its chosen e-mail address stipulated above, shall be deemed to have been received on the date of despatch unless the contrary is proved.

17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

18. SPECIAL CONDITION : FIRST MORTGAGE BOND LOAN

18.1 In the event that the Purchaser has indicated on the Agreement that the Purchaser requires a Mortgage Bond in order to fund the purchase price or part of the purchase price then this sale shall be subject to the condition that the Purchaser is able to raise a loan from a registered Bank, upon the security of a first new Mortgage Bond to be passed over the Unit/s for the sum of not less than the amount of the new Mortgage Bond, all as is referred to in the Agreement at prevailing Bank rates and conditions.

18.2 If the requisite loan is not procured and made available, and the Seller is not advised by written notice within 45 (FORTY FIVE) days of signature hereof, (or such extended period as the Seller may allow in writing on notice to the Purchaser)

then either party shall be entitled to cancel this Agreement on written notice addressed to the other provided that no such notice shall be addressed by the Purchaser unless the Purchaser has discharged its obligation to procure the mortgage bond loan by properly and timeously applying for same immediately after signature hereof. The Purchaser undertakes to make immediate application for such loan and authorises the selling agent to apply on it's behalf. If application is made by the Purchaser for a mortgage bond for an amount less than that specified herein or if such mortgage bond loan is accepted by the Purchaser at any time, for an amount less than that specified herein, then the specified amount of the mortgage bond loan herein shall be deemed to have been reduced and varied so as to comply with such lesser amount.

19 **COMMISSION** *(delete if not applicable)*

- 19.1 The Seller shall pay any Selling Agents Commission that may be due to its own Selling Agent on date of registration of transfer.
- 19.2 If the sale is cancelled as a result of the Purchaser failing to carry out any of the Purchaser's obligations hereunder, the Purchaser shall be liable to the said Agents for such commission, and in such event authorises the said Agents or whomsoever shall have control of the purchase price, to deduct and pay such commission from any monies held in Trust by them on the Purchaser's account.
- 19.3 The Purchaser warrants that he has not been introduced to the Unit by any other Agent/s other than the agent specified in the Agreement and indemnifies the Seller against any loss which the Seller may suffer as a result of a breach of this warranty.

20 NO COMMISSION PAYABLE *(delete if not applicable)*

The Purchaser warrants that he has not been introduced to the property by any Agent and has no knowledge of any claim which any Agent may have against the Seller for selling commission in respect of the sale to the Purchaser. In the event of the Seller suffering any loss as a result of any breach of such warranty, the Purchaser hereby indemnifies the Seller against any such loss.

21 PERSONAL GUARANTEE

If the signatory has not signed this Agreement as Purchaser in his personal capacity but rather in a representative capacity for the Purchaser, then the signatory in his personal capacity hereby renouncing the benefits of excussion and division, hereby interposes and binds himself to and in favour of the Seller as surety and as co-principal debtor with the Purchaser for the fulfilment of the obligations of the Purchaser under this Agreement, the said signatory acting personally hereby acknowledging by these presents that in the event of the Purchaser failing to honour and perform any of its obligations under this Agreement that the said signatory shall be personally responsible for the obligations of the Purchaser under this Agreement.

22 GENERAL

22.1 This Agreement constitutes the entire contract between the parties and no warranties, representations or conditions not recorded herein shall be binding upon either party unless recorded in writing and signed by the parties hereto. Likewise any variation of the terms of the conditions hereof shall be of no force or effect unless reduced to writing and signed by the both parties hereto.

22.2 Any latitude or extension of time which may be allowed by the Seller including the grant of any concession or condonation of any breach of the conditions hereof shall not in any way constitute, operate as, or be deemed to be a waiver by the Seller of any of the Seller's rights hereunder nor shall it constitute a novation hereof.

22.3 In the event of the Seller instructing an Attorney to take action against the Purchaser in respect of any breach of the Purchaser's obligations in terms of this Agreement, the Purchaser shall be liable for and shall pay all disbursements and legal costs on an attorney and own client scale including collection charges.

22.4 All amounts payable to the Seller shall be paid without deduction or demand and free from bank exchange at Pietermaritzburg, Natal in the currency of the Republic of South Africa.