

SECTION NO: _____

to be notarially tied to ERF NO: _____

CONTRACT OF SALE

entered into by and between

SHERPA TRADE AND INVEST 31 (PTY) LTD

and

in respect of the purchase and sale of a proposed unit in the
sectional title scheme to be known as

THE STABLES SEATON

1. **THE SCHEDULE**

1.1. **THE SELLER:** **Sherpa Trade and Invest 31 (Pty) Ltd**

Registration number: 2006/002292/07

Physical Address: c/o Lester Hall, Fletcher Inc., 44 Old Main Road, Kloof, 3610

Postal Address: c/o Lester Hall, Fletcher Inc., Private Bag X7016, Hillcrest, 3650

Telephone number: 0861 2777 27

Email: saf@lesterhall.co.za / kirsten@lesterhall.co.za

1.2. **THE PURCHASER:**

Name:

Identity Number/Registration Number:

VAT Registration Number:

Marital Status (for individual):

Physical address:

Postal address:

Telephone number:

Facsimile:

Cellular number:

E-mail:

1.3. **THE SCHEME:**

1.3.1. NAME: THE STABLES SEATON

1.3.2. LAND: Proposed Erf 785 Sheffield Manor, Registration Division FU, in extent approximately 9835 square metres

1.4. **DESCRIPTION OF PROPERTY:**

PROPOSED SECTION NO: _____

Approximate extent of the Section (m2) _____

together with an undivided share in the common property of the Land and Building to be erected

and apportioned to the said section in accordance with the Participation Quota of the section as will be specified on the schedule annexed to the sheets of the Sectional Plan.

1.5. THE PURCHASE PRICE:

The Purchase Price of the Property is the sum of: R _____
inclusive of VAT

1.6. PAYMENT OF PURCHASE PRICE: (delete what is not applicable)

1.6.1. DEPOSIT is the sum of: R _____
It is payable within 6 (six) days of Date of Signature to the Conveyancer's trust account, details of which can be found at clause 1.14 below.

1.6.2. FURTHER DEPOSIT/ GUARANTEE (S) NO.1 in the amount of: R _____
It is payable to the Conveyancer's trust account within 30 (thirty) days of the Conveyancer's request therefor. In the case of a guarantee being issued, it is to be made payable on Date of Transfer and secured by delivery thereof to the Conveyancers within 30 (thirty) days of the Conveyancer's request therefor. The guarantee shall be irrevocable, unconditional and issued by a financial institution in the form acceptable to the Conveyancers.

1.6.3. GUARANTEE(S) NO. 2 in the amount of: R _____
It is payable on the Date of Transfer and is to be provided for by the raising of a loan from a financial institution and shall be secured by guarantee(s) issued by such financial institution in the form acceptable to the Conveyancers. The guarantee(s) shall be delivered to the Conveyancers within 30 (thirty) days of fulfillment of clause 2.1 of the Conditions of Sale.

1.6.4. DEPOSIT FROM PRIOR SALE/ GUARANTEE(S) NO 3 of: R _____
It is payable to the Conveyancer's Trust Account. In the case of a guarantee being issued it is to be made payable to the Conveyancer's Trust Account on the date of registration of the Purchaser's property so sold. The guarantee shall be delivered to the Conveyancers within 14 (fourteen) days after the fulfilment of the conditions of clause 2.2.1 of the Conditions of Sale. The guarantee shall be irrevocable, unconditional and issued by a financial institution in the form acceptable to the Conveyancers.

1.7. DESCRIPTION OF PURCHASER'S PROPERTY (PRIOR SALE):

("the Purchaser's property")

1.8. ANTICIPATED DATE OF POSSESSION:

Subject to the terms and conditions set out in Clause 6 of the Conditions of Sale, the anticipated date of possession is: _____/_____/_____

1.9. OCCUPATIONAL RENTAL R2700.00

1.10. **ESTIMATED MONTHLY LEVY PAYABLE TO THE BODY CORPORATE:** R1000.00

1.11. **THE ESTATE AGENT:**

1.11.1. The estate agent _____

1.11.2. The estate agency appointed by the Seller namely: _____

1.11.3. The Commission payable by the Seller (inclusive of VAT) _____%

1.12. **THE CONVEYANCERS:**

<p>Lester Hall, Fletcher Inc. 44 Old Main Road, Kloof, 3610 Private Bag X7016, Hillcrest, 3650 Tel : 0861 2777 27 Email : saf@lesterhall.co.za / kirsten@lesterhall.co.za</p>	<p>Banking details: Lester Hall, Fletcher Inc. Trust Account Bank: Nedbank Account Number: 1339 378027 Branch: Pinetown Branch Code: 133926 Ref: The Stables Seaton Section No ____</p>
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1.13. **DATE BY WHICH CONDITIONS PRECEDENT ARE TO BE MET:** 30/06/2020

2. **SALE**

2.1. Subject to and in accordance with the provisions hereof and the Conditions of Sale annexed hereto as Annexure "A", the Seller sells to the Purchaser who purchases the Property described in clause 1.4 above.

2.2. The Section shall be erected substantially in accordance with the Plans. The Purchaser agrees that he shall not be entitled to amend or procure any amendments to the Plans. The Purchaser acknowledges that the Section will be situated on the Land in substantially the same position as indicated on The Club Seaton Layout Plan, annexed hereto as Annexure "B", and is to be built in accordance with the Plans.

2.3. The Purchaser agrees that the precise area, boundaries and description of the Property shall be shown on the Sectional Plan and as finally determined and approved by the Surveyor-General and shall be binding upon the parties, provided always that the building area of the Section shall be within 5% (five percent) of the area stated in 1.4 above. In the event of any dispute in regard hereto, the Land Surveyor's Certificate shall be final and binding on the parties.

3. **PAYMENT OF PURCHASE PRICE**

- 3.1. The deposit referred to in clause 1.6.1 above shall be paid to the Conveyancers as stipulated in clause 1.12 above. The deposit is non-refundable in the event of a breach by the Purchaser and subsequent cancellation, the Purchaser agreeing that the aforesaid penalty is fair and reasonable as to an agreed pre-estimate of losses that the Lessor may suffer as a result of such cancellation to be finally quantified in accordance with clause 15.1.2.1 of the Conditions of Sale.
- 3.2. Such payments shall be invested by the Conveyancers in an interest bearing account on behalf of the Purchaser until the Date of Transfer whereupon the Conveyancers shall release the capital to the Seller and all accrued interest earned in respect of such deposits, less 5% of the interest accrued which is payable to the Legal Practitioners' Fidelity Fund on a monthly basis in terms of Section 86(5)(b) of the Act, and the Conveyancer's usual fee, to the Purchaser.
- 3.3. The Purchaser hereby authorises the Conveyancers to invest such monies in an investment account as contemplated in section 86(4) of the Legal Practice Act.
- 3.4. The Purchaser acknowledges that:
- 3.4.1. the Conveyancers are designated as an "accountable institution" in terms of the Financial Intelligence Centre Act No. 46 of 2001 ("FICA");
- 3.4.2. 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;
- 3.4.3. the Conveyancers are not able to invest any amounts paid into trust with them on the Purchaser's behalf until such time as the Purchaser has complied with the requirements of FICA and has signed the necessary investment mandate, both of which the Purchaser undertakes to do as soon as possible after request therefor by the Conveyancers.
- 3.5. The Purchaser shall secure the due payment of the amounts referred to in clauses 1.6.2, 1.6.3 and 1.6.4 above by furnishing the Conveyancers with a guarantee(s) from a registered South African commercial bank, in a form and on terms acceptable to the Conveyancers for such amount. Such guarantee(s) shall be furnished by the Purchaser within the prescribed time frames stipulated in clauses 1.6.2, 1.6.3 and 1.6.4, provided that if the Purchaser requires a loan for the amount stated in 1.6.3 above or intends securing a portion of the purchase price by prior sale in the amount stated in 1.6.4, such guarantee(s) shall also not be called for until either the loan has been granted or the property has been conclusively sold in accordance with the conditions precedent contained in clauses 2.1 and 2.2 respectively of the Conditions of Sale. The aforesaid guarantee/s shall be payable on the Date of Transfer.
- 3.6. Alternatively, the Purchaser shall be entitled to pay the amount referred to in 1.6.2 and 1.6.4 above to the Conveyancers in cash, which amount shall be invested by the Conveyancers in accordance with the provisions of clause 3.2 above.
- 3.7. Notwithstanding anything to the contrary herein contained, inasmuch as the total Purchase Price is a Value Added Tax ("VAT") inclusive price determined at the current rate of 15% (fifteen percent) then, in the event of the rate at which VAT is chargeable being amended after the Date of Signature hereof by the Purchaser, but in circumstances in which the amended rate will apply to this transaction, then the purchase price shall be adjusted accordingly, the intention being that the Seller shall receive and retain the same net purchase price after payment of VAT regardless of the rate at which VAT is payable.
- 3.8. Unless otherwise provided, all payments hereunder shall be made without set-off, deduction or

demand to the Seller at the offices of the Conveyancers. All bank charges incurred by the Conveyancers in connection with this transaction, shall be for the account of the Purchaser.

4. **PHASED DEVELOPMENT**

This sale is subject to the following special conditions which is imposed by the Seller in terms of Section 11(2) of Act 95/1986, namely, the Seller, in terms of Section 25 of Act 95/1986, hereby reserves for itself the real right to extend, for its personal account, the Scheme by the erection and completion from time to time but within a period of 20 (twenty) years of:

- 4.1. a further building or Buildings,
- 4.2. a horizontal extension of an existing Building or Buildings, and
- 4.3. a vertical extension of existing Buildings

on that part of the common property outlined on the Site Plan, to divide such Building or Buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more of such sections in the Scheme.

5. **CONDITIONS PRECEDENT**

5.1 This Contract is subject to and conditional upon the Seller:

- 5.1.1 approval by the Municipality (or Municipal Planning Tribunal) of the proposed township as per The Club Seaton Layout Plan and the issue of acceptable conditions of establishment in accordance with the Seller's SPLUMA application in respect thereof; and
- 5.1.2 acquiring Portion 11 of the Farm Lot 69 No. 817 and Portion 2 of the farm Greywater No.18435 making up Seaton Estate;
- 5.1.3 securing the relevant local authority approval for the Scheme;
- 5.1.4 being granted the necessary finance to commence the infrastructure on the Land as defined in 1.3.2 of the Contract of Sale,

all by no later than the date referred to in clause 1.13 above.

5.2 Should the aforesaid conditions not be met timeously, then in that event, this entire Contract shall lapse and be of no further force and effect between the Parties save that the Conveyancers shall refund to the Purchaser any amount paid by the Purchaser to the Conveyancers in respect of the purchase price together with all interest that may have accrued thereon while invested with the Conveyancers, less 5% of the interest accrued which is payable to the Legal Practitioners' Fidelity Fund on a monthly basis in terms of Section 86(5)(b) of the Act, and the Conveyancers usual fee.

5.3 It is recorded that the aforesaid conditions have been inserted solely for the benefit of the Seller, who may waive compliance with one or all of the aforesaid conditions within the time period afforded to the Seller in clause **Error! Reference source not found.** above.

5.4 This Contract is subject to and conditional upon the Purchaser either owning Immovable Property within Seaton Estate or purchasing Immovable Property within Seaton Estate. In the latter event, registration of transfer of the Property shall take place either after or simultaneously with the registration of transfer of the Immovable Property to the Purchaser. In the latter event, should the contract of sale for the purchase of Immovable Property to the Purchaser be cancelled for any reason whatsoever this Contract shall lapse and be of no further force or effect.

6. **NOTARIAL TIE**

The Property shall be notarially tied to the Immovable Property in order for the Association to ensure compliance with Article 33 of the Association's MOI which stipulates that ownership of the Property is restricted to owners of Immovable Property in Seaton Estate and a Deed of Notarial Tie shall be registered in the Deeds Registry to give effect to this requirement.

7. **SEATON MANAGEMENT ASSOCIATION (RF) NPC**

7.1. The Body Corporate (as opposed to the individual owners of the sectional title units therein) shall be the member of the Association in respect of the Land.

7.2. It is recorded that although the Body Corporate, as the member of the Association, is obliged to comply with the provisions of the MOI and Rules, the Body Corporate is further obliged to ensure that the Body Corporate's members, guests and invitees or any other person who may come upon the Land in question or Seaton Estate by virtue of their rights thereto, do likewise. The Purchaser shall be obliged to sign an undertaking in favour of the Association agreeing to comply with the MOI and Rules and to pay a portion of the levy payable by the Body Corporate to the Association (which portion shall be calculated by multiplying the total levy payable by the Body Corporate by the Participation Quota, as contemplated in the Sectional Titles Act, of that particular section) directly to the Association in the event of the Body Corporate failing to make payment of the total monthly levy to the Association timeously.

7.3. It is recorded that although the Body Corporate is the member of the Association, its members shall be entitled to the use and enjoyment of the Common Areas, Clubhouses and Equestrian Facilities subject to compliance with the Rules relating thereto.

7.4. The Association is obliged to become a member of the Master Management Association. The Purchaser shall also be obliged to sign an undertaking in favour of the Master Management Association agreeing to comply with its memorandum and rules and to pay that portion of the Purchaser's levy payable by the Association to the Master Management Association, directly to the Master Management Association, in the event of the Association failing to make payment of the total monthly levy to the Master Management Association timeously.

8. **CONSUMER PROTECTION ACT (delete whichever is not applicable)**

The Purchaser, who is a Juristic Person, warrants to the Seller that its asset value or annual turnover, at the Date of Signature and the Date of Transfer, shall equal or exceed the threshold determined by the Minister in terms of section 6 of the CPA (namely, R2,000,000.00 (two million rand)) and, as a consequence, the sale of the Property to the Purchaser in terms of this Contract, is exempt from the provisions of the CPA (save for the provisions of section 60 and 61 of the CPA). It is recorded that the aforesaid warranty is material to the Seller in entering into this Contract of Sale. The Purchaser undertakes, within 7 (seven) days of being requested to do so by the Seller, to furnish the Seller with its last audited financial accounts, and such other financial information in respect to the Purchaser as the Seller may reasonably require, in order to confirm that the Purchaser's asset value and/or turnover is as warranted.

OR

In terms of Section 49 of the CPA, the Purchaser's attention is drawn to the following clauses in this Contract that purport to either limit the risk or liability of the Seller, or constitute an

assumption of risk or liability by the Purchaser, or an indemnification of the Seller or an acknowledgement of any fact: -

- Contract of Sale clauses 2.2, 2.3, 3.1, 3.2, 5.2, 5.4, 6, and 7.
- Annexure "A" Conditions of Sale clauses 2.1.3, 2.1.4, 3, 4.2, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 6.3, 6.4, 6.7, 6.8, 7, 10.1, 10.4, 11, 12.4.1, 12.4.2, 12.4.6, 12.4.7, 12.4.8, 13, 14.2, 14.3, 14.4, 15, 16, 17, 18, 20.2, 21, 22, 23, 24 and 25.

The Seller has made every effort to incorporate the Purchaser's consumer rights, as provided for in the CPA, into this Contract. In the event that any provision in this Contract is found to contravene the CPA, the parties agree that such provision shall be severed from this Contract and be treated as if it were not part of this Contract.

OFFER AND ACCEPTANCE

The Purchaser acknowledges that this offer shall not be capable of being withdrawn and shall remain open for acceptance by the Seller for a period of 21 (twenty-one) days after the Date of Signature of the Purchaser.

DATED atthis day of20.....

AS WITNESS:

_____ Seller

DATED at this day of 20.....

AS WITNESS:

_____ Purchaser: Who acknowledges that he /she is acquainted with and understands the contents of the Contract and that all the annexures referred to in the Contract were attached hereto when he/ she signed same

Purchaser's spouse, where applicable

DATED at this day of 20.....

Agent: Who accepts any benefits conferred in terms of the Contract.

GUARANTOR

This portion to be signed by member / director/ trustee in the event of the Purchaser being a close corporation / company / trust.

(Full names) _____

of _____

(Full address and telephone number)

hereby consents to the conclusion of this Contract and guarantees and binds himself as surety for and co-principal debtor in solidum with the Purchaser to the Seller for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the Purchaser to the Seller pursuant to this Contract, under renunciation of the benefits of excursion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of this Contract shall prejudice the suretyship obligations hereby and co-principal debtor, even if this Contract is varied or amended or novated and even if the aforesaid Purchaser is granted an indulgence by the Seller.

Signed by the Guarantor aton this..... day of.....20....

AS WITNESS

Guarantor

CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATIONS:

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

- 1.1 "Act 95/1986" means the Sectional Titles Act No. 95 of 1986, as amended, and regulations in force thereunder from time to time;
- 1.2 "Act 8/2011" means the Sectional Titles Schemes Management Act No. 8 of 2011 as amended, and any regulations in force thereunder from time to time;
- 1.3 "Act 9/2011" means the Community Schemes Ombud Service Act No. 9 of 2011 as amended, and any regulations in force thereunder from time to time;
- 1.4 "Architect" means Nsika Architecture and Design appointed by the Seller;
- 1.5 "Association" means Seaton Management Association (RF) NPC, Registration Number: 2019/287759/08;
- 1.6 "Body Corporate" means the controlling body of the Scheme established in terms of Act 8/2011;
- 1.7 "Buildings" means the buildings to be erected on the Land;
- 1.8 "Conditions of Sale" means these conditions of sale;
- 1.9 "Contract" means this Contract of Sale and all annexures hereto;
- 1.10 "Conveyancers" means the Conveyancers described in clause 1.12 of the Contract of Sale;
- 1.11 "CPA" means the Consumer Protection Act No 68 of 2008, as amended, and regulations made in terms of the Act;
- 1.12 "Date of Signature" means the date of signature of this Contract by the last signing of the Seller or Purchaser;
- 1.13 "Date of Transfer" means the date of registration of transfer of the Property into the name of the Purchaser in the Deeds Registry in Pietermaritzburg;
- 1.14 "Date of Possession" means the date of issue of the practical completion certificate by the Principle Agent for beneficial possession from which date all risk, profit and loss in and to the Property shall pass to the Purchaser, who shall be liable for levies and other outgoings in respect of the Property;
- 1.15 "Days" means ordinary calendar days, including Saturdays, Sundays and public holidays;
- 1.16 "Developer" means the Seller;
- 1.17 "Environmental Management Restrictions" means the environmental management restrictions as defined in the MOI which incorporates the environmental management plan, as amended from time to time, and the record of decision issued by the KZN Agricultural and Environmental

Affairs Department, copies of which are available upon request from the Developer;

- 1.18 "Equestrian Facilities" means but is not limited to, the stables (excluding The Stables Body Corporate), arenas, paddocks, pastures and polo fields;
- 1.19 "Estate Agent" means the Seller's agent described in clause 1.11 of the Contract of Sale;
- 1.20 "Floor Plan" means the floor plan for the Scheme being Annexure "C" hereto;
- 1.21 "Immovable Property" means the immovable property in Seaton Estate owned or to be owned by the Purchaser and to which this Property shall be notarially tied;
- 1.22 "Juristic Person" means a partnership, association, trust, body corporate, company, close corporation or other legal or juristic person;
- 1.23 "Land" means the land described in clause 1.3.2 of the Contract of Sale;
- 1.24 "Land Surveyor" means Chris Krause Land Surveyors;
- 1.25 "Master Management Association" means the North Coast Master Management Association RF NPC, Registration No. 2019/287710/08;
- 1.26 "MOI" means the Memorandum of Incorporation for the time being of either the Association or the Master Management Association as amended from time to time, as the context dictates, copies of which are available from the Association;
- 1.27 "Participation Quota" means, in relation to a section or the owner of a section, a percentage determined in accordance with the provisions of Section 32 (1) of Act 95/1986 in respect of that Section for the purposes referred to in Section 32(3) of that Act and shown on a Sectional Plan in accordance with the provisions of section 5(3)(g) of that Act.
- 1.28 "Plans" means The Club Seaton Layout Plan being Annexure "B" hereto and Floor Plan being Annexure "C" hereto;
- 1.29 "Property" means the Unit to be established in terms of Act 95/1986, consisting of:
- 1.29.1 the Section; and
- 1.29.2 an undivided share in the common property in the Scheme apportioned to the Section in accordance with the Participation Quota to be specified on the Sectional Plan.
- 1.30 "Purchaser" means the party referred to in clause 1.2 of the Contract of Sale, his successors in title and assigns;
- 1.31 "Rules" means the rules of the Association and the Body Corporate. The Body Corporate Management and Conduct Rules means: -
- 1.31.1 the Management Rules referred to in Act 8/2011 supplemented by such Additional Management Rules as may be proposed at the time of the opening the Sectional Title Register; and
- 1.31.2 the Substituted Conduct Rules as may be proposed at the time of opening the Sectional Title Register;

- copies of which are available from the Developer;
- 1.32 "Schedule" means the Schedule described in clause 1 of the Contract of Sale;
- 1.33 "Schedule of Finishes" means the specifications attached hereto marked "C". It is specifically recorded that the specifications contained in the Schedule of Finishes are subject to amendment from time to time and subject to final revision by the Architect and any reference to these specifications shall refer to final amended specifications as determined by the Architect;
- 1.34 "Scheme" means the sectional title scheme described in clause 1.3.1 of the Contract of Sale to be registered in accordance with the provisions of Act 95/1986 in respect of the Land and Buildings to be constructed thereon;
- 1.35 "Seaton Estate" means the Development as defined in the Association's MOI;
- 1.36 "Section" means the section comprised in and forming part of the Unit as described in clause 1.4 of the Contract of Sale;
- 1.37 "Sectional Plan" means the Sectional Plan to be prepared by the Land Surveyor in respect of the Building comprised in the Scheme;
- 1.38 "Sectional Title Register" means the register referred to in section 12 (1) (b) of Act 8/2011, and includes any sectional plan registered under said Act;
- 1.39 "Seller" means the party referred to in clause 1.1 of the Contract of Sale;
- 1.40 "The Club Seaton" means the development to the west of the N2 within Seaton Estate, as reflected on The Club Seaton Layout Plan;
- 1.41 "The Club Seaton Layout Plan" means the layout plan annexed to the Contract Sale and marked Annexure "B";
- 1.42 "Unit" means the Section purchased by the Purchaser from the Seller together with the undivided share in the common property apportioned to the Section in accordance with the Participation Quota to be specified on the Sectional Plan;
- 1.43 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.44 words or expressions defined in the Acts shall have the same meanings in this Contract;
- 1.45 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 1.46 no indulgence or relaxation which the Seller may allow to the Purchaser in regard to the carrying out of the Purchaser's obligations in terms of or pursuant to this Contract shall prejudice the Seller's rights under this Contract in any manner whatsoever, or be regarded as a waiver of the Seller's rights in terms of this Contract, or be construed to act as an estoppel against the Seller to otherwise strictly enforce compliance of the Purchaser's obligations in terms of this Contract;
- 1.47 if there is any conflict between the provisions or the information in the Contract and the Plans and Schedules which constitute annexures to this Contract, the provisions of the Contract shall prevail

- and be regarded as correct and binding;
- 1.48 any reference to a natural person shall include the legal person and/or an association of persons and vice versa;
- 1.49 where an expression has been defined, and such definition contains a provision conferring rights or imposing obligations on any party, effect shall be given to the provision as if it was a substantive provision contained in the body of this Contract;
- 1.50 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two; and
- 1.51 where a number of days are prescribed, they shall consist of all days (i.e. including Saturday, Sunday and Public Holidays) and shall exclude the first day and include the last day;
- 1.52 in interpreting this Contract, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule (i.e. whenever specific words of a particular class are used in conjunction with general words then the specific words shall not limit the scope of the general words. If any provision is followed by the word “including” in specific examples, such examples must not be construed as to limit the general ambit of the provision concerned);
- 1.53 any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;
- 1.54 this Contract shall be governed by and construed according to the Laws of the Republic of South Africa;
- 1.55 the expiration or termination of this Contract shall not affect those provisions of this Contract which expressly provide that they will operate after any such expiration or termination or, which out of necessity must continue to have effect after such expiration, notwithstanding the fact that the paragraphs do not expressly provide this;
- 1.56 this Contract shall be binding on and enforceable by the administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectually as if they had signed this Contract in the first instance and reference to any party shall be deemed to include such party’s administrators, trustees, successors in title, successors in office, assigns or liquidators, as the case may be;
- 1.57 nothing in the Contract shall be construed as binding the Seller and the Purchaser to the provisions of the CPA in instances where the CPA would not otherwise be binding on them. Where the CPA is applicable, the provisions of the Contract shall be read in conjunction with the provisions of the CPA, and insofar as the provisions of the Contract are inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail;
- 1.58 a fully executed facsimile copy of this Contract shall be accepted as an original and this Contract may be signed in counterparts and will be effective as such, each of which will be deemed an original and all of which together shall constitute one and the same Contract as at the date of signature of the party last signing one of the counterparts; and
- 1.59 this Contract incorporates annexures by reference, which annexures shall have the same force and effect as the provisions set out in the body of this Contract. The various documents forming part of this Contract are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Contract will prevail.

2. **SUSPENSIVE CONDITIONS**

2.1 **Mortgage bond**

2.1.1 If this Contract reflects a mortgage bond in clause 1.6.3 of the Contract of Sale, then this Contract is subject to and conditional upon the Purchaser obtaining a loan for the amount set out in clause 1.6.3 of the Contract of Sale from a recognized financial institution and the Seller receiving a copy of the written approval of such loan by the aforesaid financial institution within 90 (ninety) days from the Date of Signature of the Contract by the Seller or within such further period of time that the Seller, entirely in its own discretion may grant to the Purchaser in writing.

2.1.2 The Purchaser, who is not a private bank client, undertakes to utilize one of the Seller's accredited bond originators in making application for the aforesaid loan.

2.1.3 It is the intention of the Seller and the Purchaser that the Conveyancers be appointed by the financial institution to attend to the registration of the mortgage bond in favour of the aforesaid financial institution on Date of Transfer. The Purchaser undertakes to utilise his best endeavours to prevail upon the aforesaid financial institution to appoint the Conveyancers in this regard.

2.1.4 It is specifically recorded that on or about the Date of Possession the financial institution granting the mortgage bond shall require the Purchaser to sign a Letter of Satisfaction. In no way detracting from the Seller or Purchaser's rights in this Contract or in terms of Law, it is specifically recorded and agreed that the Purchaser shall in no way delay or refuse to comply with his obligations to timeously and on request sign the aforesaid Letter of Satisfaction without qualification. In this regard the Purchaser is specifically referred to his rights as set out under clauses 6 below and accepts the provisions of the penalties as set out under clause 16 below.

2.1.5 The Purchaser warrants that:

2.1.5.1 he is aware of the financial requirements of financial institutions relating to the mortgage loan that is to be applied for and undertakes to the best of his ability to immediately provide and sign, upon request by the relevant financial institution concerned, all information and documentation which may be required by it in order to apply for and approve his loan application;

2.1.5.2 there are no existing judgements noted against his name which would preclude any financial institution from approving his loan application.

2.2 **Sale of property (delete where not applicable)**

2.2.1 Purchase Price to come from the sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.7 of the Contract of Sale, which sale is not subject to any suspensive conditions.

OR

2.2.1 Purchase Price to come from the conditional sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.7 of the Contract of Sale, subject however to certain suspensive conditions which shall be required to be fulfilled within 90 (ninety) days after the Date of Signature of this Contract

by the Purchaser. If the sale of the Purchaser's existing property is dependent on prior transfers then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

OR

2.2.1 Sale subject to the Sale of the Purchaser's property

This sale is conditional upon the sale of the Purchaser's property as provided for in clause 1.7 of the Contract of Sale, which the Purchaser undertakes to actively market and to ensure the fulfilment of all suspensive conditions contained in that sale agreement within 90 (ninety) days after the Date of Signature by the Purchaser of this Contract. If the sale of the Purchaser's existing property is dependent on prior transfers then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

2.2.2 This Contract is also subject to the Purchaser's conveyancers effecting registration of transfer of the existing property within 60 (sixty) days of the sale becoming a conclusive sale.

2.2.3 In the event of the Seller receiving any other written offer which is not subject to the sale of another property from a bona fide third party, before the sale of the Purchaser's existing property becomes conclusive, which offer the Seller wishes to accept, the Seller shall by written notice advise the Purchaser of such offer and the Purchaser shall within 48 (forty eight) hours of receipt of such notice waive the suspensive conditions in this clause in writing to the Conveyancers failing which the Seller shall be entitled to accept the offer from the new Purchaser in which event this offer shall fall away and be of no further force or effect.

2.3 It is recorded that the suspensive conditions contained in 2.1 and/or 2.2 are inserted for the benefit of the Purchaser.

2.4 The Purchaser may elect to waive compliance with either one or both suspensive conditions by giving written notice to the Seller within the time period afforded to the Purchaser as referred to in 2.1 and 2.2 above.

2.5 Upon delivery of such notice of waiver, the suspensive condition/s shall be deemed to have been fulfilled and this Contract shall be of full force and effect.

2.6 Should the suspensive conditions referred to in 2.1 and/or 2.2 not be fulfilled within the prescribed time periods aforesaid and the period for fulfilment thereof not be extended in writing by the parties, then the Contract shall lapse and in that event the parties shall be obliged to restore each other to the status quo ante as at the Date of Signature.

3. **CONDITIONS OF TITLE AND OWNERSHIP**

The Purchaser shall be obliged to accept ownership of the Property subject to: -

3.1 the conditions, reservations and servitudes which affect the Property;

3.2 such conditions of sectional title as are imposed by the Seller, the local authority and the Minister of Local Government (KwaZulu-Natal);

3.3 a condition registered against the title deed to the Property to the effect that the Property or any

portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the Association and the Master Management Association first being had and obtained;

- 3.4 such other conditions in this Contract as the Developer may require to be registered against the title deeds to the Property on the Date of Transfer, in such form as the Registrar of Deeds may permit.

4. **OPENING OF REGISTER**

- 4.1 The Seller shall procure the registration of the Sectional Plans in phases upon completion of the Buildings.

- 4.2 If the Seller has not obtained the opening of the Sectional Title Register which relates to the Property hereby sold within 36 (thirty six) months of Date of Signature then the Purchaser shall at any time thereafter, have the right to cancel this sale by giving written notice thereof to the Seller, in which event the Purchaser shall forthwith restore possession of the Property to the Seller or his nominee as the Purchaser shall not be entitled to claim or allege any right of possession or tenancy of the Property. Against such restoration, the Purchaser shall be entitled to a refund of all payments made by the Purchaser in respect of the capital amount of the purchase price plus interest earned on any portion of the purchase price held in trust. Neither party shall have any claim of any nature whatsoever against the other arising out of such cancellation, provided the Unit is returned to the Seller in a condition which is similar to that in which it was on the date of possession, fair wear and tear excepted.

- 4.3 All costs of and incidental to the approval and registration of the Sectional Plans, the opening of the Sectional Title Register for all phases, the issue to the Seller of the Certificates of Real Right in terms of Section 25 of Act 95/1986, the issue to the Seller of the Certificates of Registered Sectional Title for the units referred to in the Sectional Plans, shall be paid by the Seller.

- 4.4 Until the Sectional Title Register is opened in the Deeds Office and the Body Corporate has been constituted, the Seller shall be entitled to exercise all the rights and powers which the Body Corporate would be empowered to exercise under Act 8/2011 in relation to the Scheme and owners or occupiers of sections in the building, as if the Register was open and the Property had been transferred to the Purchaser.

- 4.5 Until the applicable Sectional Title Register is opened and transfer of the Property to the Purchaser is effected and he becomes a member of the Body Corporate, the Purchaser shall continue to be liable to the Seller for the due and faithful performance of all his obligations in terms of this Contract and the Rules.

- 4.6 Any breach by the Purchaser of the Rules shall constitute a breach of the entire Contract in which event the Seller may avail itself of the provisions of clauses 15 and 16 hereof.

5. **COMPLETION OF THE SECTION**

- 5.1 The building work will be undertaken by the Seller and the Seller shall ensure that the Section is completed substantially in accordance with the Plans and Schedule of Finishes and in a proper and workmanlike manner in compliance with National Building Regulations and the requirements of the local authority.

- 5.2 The Seller may, in its sole discretion, elect not to install any item on the Schedule of Finishes, provided that the Seller installs a similar item of a similar quality in its place. If there is any dispute

- as to whether the Seller has installed an item of similar quality, such disputes shall be referred to the Architect, acting as an expert and not an arbitrator, whose decision shall be final and binding on the parties
- 5.3 The Purchaser acknowledges that he shall not be entitled to give any instructions of any nature to the building contractors, subcontractors, the Architect or anyone else engaged upon the building work other than the representative of the Seller. If at the time when possession of the Section is given to the Purchaser the building work in respect of the rest of the scheme has not been completed, then the provisions of this clause shall apply to the Buildings still to be erected, or still in the course of erection, and to those areas of the Land where building work is being performed.
- 5.4 In no way detracting from the Seller's rights in terms of this Contract or at Law, it is specifically recorded that the Purchaser shall not be entitled to delay or refuse to comply with his obligations in terms of this Contract, if he disputes that the Property has been erected and completed as aforesaid in clause 5.1 or should he believe that the Seller has not complied with any of its obligations in terms of this Contract. Any dispute in this regard shall be referred to the Architect who, acting as an expert and not as an arbitrator, shall determine such dispute and his decision shall be final and binding on the parties. In addition, the Seller may elect, in its sole and absolute discretion, to cancel this Contract forthwith.
- 5.5 The Purchaser shall, within 30 (thirty) days of the Date of Possession, deliver to the Seller a list, signed by himself, enumerating any defects in the Section where same are due to defective materials or workmanship, and the Seller shall procure that such defects are made good as expeditiously as possible in the circumstances. Once such defects have been made good to the satisfaction of the Architect, acting as an expert and not an arbitrator, and whose decision shall be final and binding on the parties, the Purchaser shall have no further claim against the Seller, save as otherwise provided for herein. Should the Purchaser fail to deliver the aforesaid list to the Seller within the aforesaid 30 (thirty) day period, then in that event, the Purchaser shall be deemed to have inspected the Section and not found any defects therein.
- 5.6 Save as provided in this Contract and the CPA to the contrary, the Purchaser purchases the Property voetstoots and shall have no claim against the Seller in respect of any defects whether latent or patent in the Property or the common property of the Scheme.
- 5.7 The Seller warrants that the Property will be enrolled with the National Home Builders Registration Council as contemplated in the Housing Consumer Protection Measures Act, No. 95 of 1998.
- 5.8 As is required in terms of Section 13(2)(a) of the aforesaid Act 95 of 1998, the Seller warrants that:
- 5.8.1 the Section shall be constructed in a proper and workmanlike manner;
- 5.8.2 the Section will be fit for habitation on the Date of Possession;
- 5.8.3 the Section shall be constructed in accordance with:
- 5.8.3.1 the National Home Builders Registration Council Technical Requirements to the extent applicable to the Section at the date of enrolment of such Section with the National Home Builders Registration Council; and
- 5.8.3.2 the terms, Plans and specifications referred to in this Contract.

- 5.9 As provided for in Section 13(2)(b) of the aforesaid Act 95 of 1998, the Seller undertakes to:
- 5.9.1 rectify any major structural defects in the Section caused by non-compliance with the National Home Builders Registration Council's Technical Requirements which occur within a period of 5 (five) years from the Date of Possession and of which the Seller is notified of by the Purchaser within that period;
- 5.9.2 rectify non-compliance with or deviation from the terms, Plans and Schedule of Finishes referred to in this Contract or any deficiency related to design, workmanship or material, of which the Seller is notified by the Purchaser of within a period of 3 (three) months from the Date of Possession;
- 5.9.3 repair roof leaks attributable to workmanship, design or materials occurring and of which the Seller is notified by the Purchaser of within a period of 12 (twelve) months from the Date of Possession.
- 5.10 Notwithstanding anything contained herein or elsewhere, under no circumstances whatsoever, shall the Seller be liable to make good any damage to any Section or the common property of the Scheme caused by the Purchaser or the Purchaser's employees, contractors, agents, representatives or any other person who comes upon the Scheme by virtue of the Purchaser's rights thereto. Further, the Purchaser shall be liable for the costs of repairing any damage caused to the common property or any section in the Scheme by the Purchaser, its contractors, agents, representatives, employees or other persons who come upon the Scheme by virtue of the Purchaser's rights thereto.
- 5.11 Notwithstanding anything contained herein or elsewhere, and in no way detracting from the generality of any other provision of this Contract, it is specifically recorded that the Seller shall not be liable for the rectification of any defects or faults in the Section caused by surface water, storm water or rain water, normal settlement or cracking resulting from normal settlement, normal shrinkage, thermo cracking, geological disturbances, or normal wear and tear from use or neglect by the Purchaser.
- 5.12 The Purchaser agrees that the Seller and/or its agent, contractors and workmen shall at all times have access to the Section for the purposes of carrying out such work as may be necessary to enable the contractor to rectify any defects in terms of its contract with the Seller. The Purchaser shall have no claim whatsoever against the Seller by reason of any inconvenience or interference with the Purchaser's rights arising here out and the Purchaser shall not, in any way whatsoever, interfere with the performance of the aforesaid work.

6. **POSSESSION**

- 6.1 The Purchaser shall be entitled to inspect the Section, prior to the Date of Possession, at such times and on such dates as may be agreed to by the Seller (whose agreement shall not be unreasonably withheld), the Purchaser acknowledging that his visits to the site in this regard need to be limited and regulated due to the fact that the Land is partially a construction site (and thus poses a hazard to visitors) and further, as the presence of parties not connected with the construction of the Scheme may hinder the progress of same.
- 6.2 Subject to clause 6.7, the Seller undertakes to use its best endeavours to give the Purchaser beneficial occupation of the Section on the anticipated Date of Possession as set out in clause 1.8 of the Contract of Sale.
- 6.3 The Purchaser acknowledges that the actual occupation date may vary from that stated and the

Seller undertakes in this regard that in the event that there is a delay, or acceleration of the occupation date, "Date of Possession" shall be amended to mean such earlier or later date. The Seller will endeavour to give the Purchaser at least 30 (thirty) days written notice, where possible and/or foreseeable, of the new Date of Possession.

- 6.4 In no way detracting from the Seller's rights in terms of this Contract or at Law, it is specifically recorded that the Purchaser shall not be entitled to delay or refuse to comply with his obligations in terms of this Contract, if he disputes that the Section is sufficiently complete for beneficial Possession, or should he believe that the Seller has not complied with its obligations in terms of clause 6.2 hereof, or should he believe that the Seller has not complied with any other of its obligations in terms of this Contract. Any dispute as to whether or not the Section is sufficiently complete for Possession shall be referred to the Architect who, acting as an expert and not as an arbitrator, shall determine such dispute and his decision shall be final and binding on the parties.
- 6.5 Notwithstanding anything contained herein or elsewhere, the Seller shall not incur any liability whatsoever by reason of the Section not being available for possession on the anticipated Date of Possession.
- 6.6 The Purchaser waives all claims against the Seller for any loss or damage to property or any injury to person which the Purchaser may sustain in or about Seaton Estate, the Scheme or the Section and indemnifies the Seller against any such claim that may be made against the Seller by a member of the Purchaser's family or any tenant, employee, nominee, invitee or any other person, by virtue of the Purchaser's rights thereto, for any loss or damage to property or injury to person suffered in or about Seaton Estate, the Scheme or the Section, howsoever such loss or damage or injury to person may be caused (save for any damage to property or injury to person caused by the intentional or grossly negligent act of the Seller).
- 6.7 Notwithstanding anything contained herein, the Purchaser shall not be entitled to beneficial occupation of the Section until such time as he has made or secured all payments in terms of the purchase price, costs and all other amounts for which he is liable in terms of this Contract and the contract of sale for Immovable Property, if applicable, and signed all such documentation and supplied all such information as to enable the Conveyancers to effect transfer of the Property and Immovable Property, if applicable, without delay.
- 6.8 Should the Property be sufficiently complete for beneficial occupation but the Purchaser not have complied with his obligations as referred to in 6.7 above, then in that event, without prejudice to the Seller's right to claim specific performance or to any other rights the Seller may have in terms of this Contract or at Law, and at the Seller's election, the keys to the Property shall only be given to the Purchaser once he has complied with his aforesaid obligations. Notwithstanding the aforesaid, the Purchaser shall be deemed to be liable to pay occupational rental, levies, rates, utilities and all other outgoings in respect of the Property as if he had been given occupation thereof.
- 6.9 From the Date of Possession, the Purchaser:
- 6.9.1 shall be entitled to beneficial occupation of the Section (except in those instances as provided for in 6.7 above) and it shall be used subject to and in compliance with Act 8/2011, and the Rules of the Body Corporate and the Association and shall be used for stabling horses only and for no other purpose whatsoever;
- 6.9.2 shall, at his own expense, maintain the interior of the Section in a good, clean and thoroughly tenable and attractive condition, and where necessary repair or refurbish any damaged item and replace any lost item and permit the Seller or Body Corporate or its agent at all

- reasonable times to enter and inspect the Section, and if found to be in default of this provision, the Seller shall have the right at the cost of the Purchaser to carry out such repairs as are necessary to maintain the particular Section in good state of repair or to comply with any law, by-law, ordinance or regulation. The Purchaser shall refund any such amounts expended by the Seller on demand;
- 6.9.3 shall, at his own expense, maintain in a good working order and condition all electrical, plumbing installations and appurtenances of whatever nature, within the Section;
- 6.9.4 shall be entitled to the use and enjoyment, along with owners of other sections in the Scheme, of the common property of the Scheme. In using the common property of the Scheme, the Purchaser shall do so in such manner so as to not interfere unduly or unreasonably with the lawful rights of the use and enjoyment thereof by other owners of the units in the Scheme or other persons lawfully upon the Scheme;
- 6.9.5 shall accept the benefit of and risk in and to the Property;
- 6.9.6 shall be liable for the payment of all services provided to the Section in the form of electricity and water and any deposits and fees payable in connection with the supply of any such services;
- 6.9.7 shall not use the Section in such a manner as to cause damage thereto or to the other sections, nor shall he store or permit the storage therein of any flammable materials which may cause damage or pose a fire risk, or vitiate any policy of insurance in respect of the Buildings, or which is likely to have the effect of increasing the premium payable in terms of such insurance policy;
- 6.9.8 shall not be entitled to alienate or dispose of the Purchaser's right of occupancy of any portion thereof to any other person prior to the Date of Transfer;
- 6.9.9 shall not be entitled to let or otherwise part with Possession of the Section, except upon the express prior written permission of the Seller and on condition that any such letting and/or parting with Possession shall in no way release the Purchaser from any of the Purchaser's obligations to the Seller hereunder or in terms of the Rules that may be enforceable from time to time;
- 6.9.10 acknowledges that on the Date of Possession The Club Seaton and Seaton Estate may be incomplete and that he and every person claiming occupation and use through him may suffer inconvenience from building operations and from noise and dust resulting therefrom and the Purchaser shall have no claim whatsoever against the Seller, its contractors, the Association or the Body Corporate, by reason of any such inconvenience;
- 6.9.11 acknowledges that, on the Date of Possession, construction of the infrastructure (including driveways) on the Land may not be completed until the erection of all the Buildings, provided however that prior to possession of the Section, the Seller will provide access to the Section for use by the occupants of the Section and their invitees and their vehicles; and
- 6.9.12 acknowledges that from the Date of Possession he shall be responsible for the security of the Section purchased.
- 6.10 The Seller shall, either personally or through its servants or agents, be entitled at all reasonable times to have access to the Section and the common property of the Scheme for the purpose of inspection or to carry out any maintenance or repairs whether relative to the Section or not, and the Purchaser shall have no claim against the Seller for any disturbance in his possession arising

out of the exercise of the rights hereby conferred.

7. PURCHASER'S ACKNOWLEDGMENTS

- 7.1 The Body Corporate shall not do anything which shall be in contravention of the Association's MOI or its Rules and the Body Corporate, once formed, shall be required to give the Association an undertaking to this effect.
- 7.2 The Purchaser shall be obliged to accept transfer of the Property, subject to a condition registered against the title deed to the Property to the effect that the Property, or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the Association first having been obtained.
- 7.3 The Purchaser shall be obliged to accept transfer of the Property, subject to a condition registered against the title deed to the Property to the effect that the Property, or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the Master Management Association first having been obtained.
- 7.4 The Purchaser acknowledges that in the event of the Purchaser disposing of the Property or in the event of the Purchaser being an artificial person, such as a close corporation, company or trust and the member's interest, shares or beneficial interest (as the case may be), being disposed, of privately, (i.e. without the assistance of an estate agent), or in the event of the Purchaser letting the Property, then in that event, the Purchaser acknowledges that it shall be responsible for payment of an administration fee charged by the Association in consideration for attending to its formalities in this regard. The aforesaid administration fee charged by the Association shall be in the sole discretion of the Association.
- 7.5 In no way detracting from the generality of any other provision in this Contract, it is specifically recorded that the Purchaser shall at all times comply with the provisions of the Environmental Management Restrictions.
- 7.6 In the event of the Purchaser breaching the provisions of clause 7, then in that event, the Seller shall be entitled, (without prejudice to any rights the Seller may have in terms of this Contract or at Law), claim from the Purchaser all damages, including consequential damages, the Seller may suffer as a result of the Purchaser's breach of the provisions of this clause. In addition, should the Purchaser breach the conditions of the Environmental Management Restrictions, he shall be liable for a fine imposed by the Association, in its sole and absolute discretion, in an amount as determined by the Association from time to time.
- 7.7 The Purchaser acknowledges that the common property of the Scheme may not be landscaped save in accordance with the Master Management Association's Nature and Landscape Code.
- 7.8 The Purchaser acknowledges that the Association may require some (or all) functions and powers of the Body Corporate of the Scheme to be assigned to the Association and by his signature hereto, appoints the Chairman of the Association from time to time, irrevocably and in *rem suam*, as his attorney and agent to call and attend any meeting of the Body Corporate of the Scheme required to vote in favour of such assignment.
- 7.9 It is recorded that the Developer and the developer of the neighbouring Zululami Estate have concluded a reciprocity agreement for the entrenchment of reciprocal traversing rights over the private open spaces of both Seaton and Zululami Estates for the benefit of Members of both Estates. The purpose of this agreement is for residents of both Estates to enjoy the benefit of the private open spaces, including, but not limited to, traversing the foot paths, mountain bike

trails, golf cart paths and bridle paths, and access to, and the use and enjoyment of, the clubhouses on Seaton and Zululami Estates. Neither association shall be obliged to provide monetary compensation to the other for this reciprocal right. These traversing rights shall be entrenched by way of notarial deeds of servitude over the private open spaces of Seaton and Zululami Estates.

- 7.10 When selling the Property, the Purchaser shall ensure that the agreement makes provision for the requirements contained in clauses 7.2 and 7.9 above.
- 7.11 In no way detracting from the generality of any other provision of this Contract it is recorded that the design and layout of the Scheme may vary as the Scheme is developed and the Developer shall in no way be bound to its current plans for the design and layout of the Scheme.
- 7.12 The Purchaser shall not, sell, assign, cede or dispose of the Purchaser's rights under this Contract.

8. **RULES**

- 8.1 The Purchaser acknowledges that the directors of the Association shall be entitled at all times to lay down rules as provided for in Article 24 of the Association's MOI and the Purchaser undertakes and shall be obliged, with effect from the Date of Possession, to abide by such rules as if he was the owner of the Property and to ensure that all tenants, nominees, invitees and other persons who occupy the Property and/or go upon the Estate by virtue of the Purchaser's rights thereto, do likewise.
- 8.2 The Purchaser authorizes the Seller to make such alterations or amendments to the Body Corporate's Rules as well as to file and lodge such altered and amended rules with the Ombud in accordance with Acts 8/2011 and 9/2011 as the Seller believes is necessary to give effect to the provisions of this Contract so as to provide for the homogeneous and harmonious operation of this Scheme, and for that purpose the Purchaser irrevocably and *in rem suam* appoints the Seller as the Purchaser's duly authorised attorney, agent and proxy on the Purchaser's behalf and to the Purchaser's exclusion to attend all such meetings and do all such things as are necessary to give effect to the provisions of this clause.
- 8.3 For so long as the Seller owns a right to extend the Scheme by the erection of a unit or owns a unit in the Scheme: -
 - 8.3.1 the Purchaser irrevocably and *in rem suam* appoints the Seller to exercise the Purchaser's voting rights with regard to the appointment of the Trustees of the Body Corporate and in the appointment of the Managing Agents of the Scheme, the Purchaser acknowledging that the Seller or it's nominee may apply and be appointed as Managing Agents of the Scheme;
 - 8.3.2 the Purchaser shall not be entitled to vote in favour of the amendment of any of the Body Corporate's Rules without the Seller's prior written consent.

9. **OCCUPATIONAL RENTAL**

From Date of Possession until the Date of Transfer (both days inclusive), the Purchaser shall pay to the Seller monthly occupational rental as stipulated in clause 1.9 of the Contract of Sale. Such occupational rental shall be payable monthly in advance on the 1st (first) day of each and every month and shall be calculated using the aforesaid prime overdraft rate on the first day of that particular month. All payments in terms of this clause are to be made payable to the Conveyancers upon demand.

10. **LEVY AND OTHER CHARGES**

- 10.1 The Purchaser accepts liability from the Date of Possession for the payment of a monthly levy referred to in clause 1.10 of the Contract of Sale to the Body Corporate (and prior to the Body Corporate's formation, to the Seller) in respect of those items listed in Act 8/2011.
- 10.2 The amount as determined in clause 1.10 of the Contract of Sale is an estimation of the monthly levies payable by the Purchase to the Body Corporate, made in good faith by the Seller and the Seller shall not be responsible for any inaccuracy in this estimation.
- 10.3 The Purchaser shall be debited with livery on the levy account issued by the Association in an amount to be determined by the Association from time to time from the date on which the Purchaser stables a horse on the Property or rents out the Property to a resident in Seaton Estate and that tenant house a horse on the Property until a date 30 days after written notice is given to the Association that the Property is to be vacated.
- 10.4 It is specifically recorded that the Purchaser shall be required to sign a debit order on an account with a South African registered commercial bank in favour of the Body Corporate in order to ensure that the aforesaid monthly levies are paid timeously.

11. **EQUESTRIAN FACILITIES**

- 11.1 It is recorded that the Seller intends erecting Equestrian facilities on Seaton Estate for the use and enjoyment of all owners of property on Seaton Estate.
- 11.2 The aforesaid Equestrian Facilities shall be owned by the Association and operated by the Association or its agents.
- 11.3 The Purchaser shall be entitled to access the Equestrian Facilities subject to the Rules of the Association and this may include –
- 11.3.1 the right to become a member of any such club operated from the Clubhouses and/or Equestrian Facilities, subject to such club's constitution and rules, which may include the obligation to pay membership fees as determined by such club; and
- 11.3.2 the right of reasonable access to property owned by the Master Management Association and any other property over which servitudes are registered in favour of the Master Management Association for this purpose.
- 11.4 Membership of these Clubs will be optional and will not be exclusive to owners within Seaton Estate.

12. **TRANSFER**

- 12.1 Transfer of the Property shall be attended to by the Conveyancers referred to in clause 1.12 of the Contract of Sale.
- 12.2 The Purchaser shall immediately upon request by the Conveyancers do all such things and furnish them with all necessary information and documentation and sign all such documentation as is required to prepare for and effect registration of transfer into the name of the Purchaser.
- 12.3 All conveyancing fees and disbursements incidental to the preparation and registration of transfer to and bonds by the Purchaser, occupational rent, and a pro rata share of the rates and levies,

shall be paid by the Purchaser to the Conveyancers immediately upon request.

12.4 The Purchaser acknowledges that:

- 12.4.1 he is aware that in order for the sale to proceed a tax clearance is required from SARS. The Purchaser warrants that all income tax and all VAT obligations are current and undertakes to the best of his ability immediately to provide upon request by SARS, all information, other documentation which may be required by them in order to enable them to issue a tax clearance certificate and to facilitate prompt issue of the transfer duty exemption receipt;
- 12.4.2 a valid query by SARS regarding the Purchaser's tax affairs;
- 12.4.3 failure to comply with the request by the Conveyancers to furnish information or documentation required by them or to sign conveyancing documents, or to pay conveyancing costs upon request; shall constitute a breach by the Purchaser of his obligations and shall entitle the Seller to give notice in terms of Clauses 15 and/or 16 hereof;
- 12.4.4 he shall not be entitled to transfer of the Property until the whole of the purchase price, costs, interest and other charges have been paid or secured to the Conveyancers' satisfaction;
- 12.4.5 the Seller will not be in a position to give transfer of the Property to the Purchaser until such time as the Buildings which comprises the Property has been completed, and the Sectional Plan relating thereto has been registered in the Deeds Office, Pietermaritzburg;
- 12.4.6 subject to the Sectional Plan aforesaid having been registered, the Purchaser shall be entitled to transfer when, and not until, the full purchase price costs, interest and other charges have been paid or secured to the Conveyancers' satisfaction;
- 12.4.7 upon registration of transfer, an adjustment in respect of the parties' liability in respect of occupational interest, levies and other charges relating to the Property, shall be made by the Conveyancers;
- 12.4.8 the documentation necessary to effect registration of transfer may be lodged in the Deeds Registry as part of a set, including the transfer of other sections in the Scheme, and that no documentation in that set, including the documentation relating to the transfer of the Property, can be withdrawn from the Deeds Registry without the entire set being withdrawn. If it becomes necessary to withdraw the aforesaid set from the Deeds Registry, due to the fact that the Purchaser has not complied with his obligations in terms of this Contract, the Seller shall suffer damages, including, but in no way limited to the loss of interest that it would have accrued to the Seller on the accumulative purchase price of the properties in the set, from the date of withdrawal of the set until the date of its re-lodgement and subsequent registration. The Seller shall be entitled to recover from the Purchaser all damages which the Seller may have suffered (including the aforesaid interest) as a result of the aforesaid set having to be withdrawn and all transfers in the set having been delayed by virtue of the Purchaser's failure to comply with the provisions of this Contract.

13. **INSURANCE**

Until the Sectional Title Register has been opened and the Body Corporate established the Section shall be insured by the Seller with an insurance company selected by the Seller against such risks and perils as the Seller may require for such sums as the Seller may determine, but substantially in accordance with the provisions of the Rules.

14. **AGENT'S COMMISSION**

- 14.1 The Purchaser warrants that he was introduced to the Property by the Estate Agent referred to in clause **Error! Reference source not found.** of the Contract of Sale who, it is recorded, was the effective cause of the sale in terms of the Contract. The Seller shall pay a selling commission to the agency referred to in clause **Error! Reference source not found.** of the Contract of Sale in terms of the mandate between the Seller and the agency. The aforesaid commission shall be deemed to have been earned and shall be payable on the Date of Transfer.
- 14.2 In such circumstances, the Purchaser warrants that:
- 14.2.1 the Estate Agent was the sole effective cause of the sale,
- 14.2.2 he was not introduced to the Property and/or this Contract, by any agent other than the Estate Agent named in the Schedule as aforesaid; and
- 14.2.3 no commission shall become payable by the Seller to any agent other than the Estate Agent named in the Schedule as aforesaid.
- 14.3 The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against/suffered by the Seller arising out of breach of any of the foregoing warranties.
- 14.4 Should this sale be cancelled by the Seller as a result of any failure by the Purchaser to carry out his obligations in terms of this Contract or should the Purchaser resale from this Contract for any reason whatsoever, then the Purchaser shall be liable for the payment of agent's commission and the Seller shall have no liability whatsoever for the payment thereof.

15. **BREACH**

- 15.1 If the Purchaser:
- 15.1.1 fails to pay any amount in terms of this Contract, or commits any breach of the remaining conditions of this Contract or of the Association's MOI or of the Rules, and should the Purchaser fail to remedy such breach within 7 (seven) days of receipt of a written notice calling on him to remedy such breach, or
- 15.1.2 commits a repetition of such breach within a period of two months after having been warned by the Seller to desist therefrom,

the Seller shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof and at the Seller's election to -

- 15.1.2.1 cancel this Contract, and retake possession of the Property, in which event, should the Seller so elect, it may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the Seller or the Conveyancers (including any amount held in trust by the Conveyancers or any interest thereon) may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller (it being recorded that damages that the Seller may suffer in this regard may include, inter alia, lost interest, agents commission and other professional fees incurred, holding costs incurred in respect of the Property, including but in no way limited to, rates and levies payable in respect of the Property, and should the Property subsequently be resold for a lower purchase price

than that referred to in this Contract, the difference in such purchase prices) or

- 15.1.2.2 claim immediate performance by the Purchaser of all his obligations in terms of this Contract whether or not the due date for the performance shall otherwise have arrived.
- 15.2 For the purposes of this Contract any act or omission on the part of any tenant, nominee or other person who occupies the Property or invitee of the Purchaser who goes upon the Property shall be deemed to be an act or omission of the Purchaser.
- 15.3 If this Contract is cancelled as hereinbefore provided, the Purchaser and all persons claiming a right of possession through the Purchaser shall forthwith be obliged to vacate the Property and to deliver it to the Seller. It is specifically recorded in this regard that no lease or other similar right of possession in favour of the Purchaser shall be created or come into existence by virtue of this Contract. Notwithstanding the foregoing, should the Seller exercise any of his rights in terms hereof and should the Purchaser dispute the Seller's right to do so, then pending the determination of that dispute, the Purchaser shall continue to pay all amounts payable in terms of this Contract on the due date thereof, and to comply with all the terms hereof, and the Seller shall be entitled to recover and accept such payments and/or other performance without prejudice to the Seller's claim to have exercised its rights in terms hereof, and in the event of the Seller succeeding in such dispute, the Seller shall be entitled to retain such amounts received in the interim as payment for the occupational rights exercised and/or enjoyed by the Purchaser in the interim.
- 15.4 In the event of the Seller cancelling the sale as contemplated in the above clauses, any and all improvements made to the Property shall belong to and vest in the Seller, without any obligation on the part of the Seller to compensate the Purchaser therefore.

16. **MORA AND ARREAR INTEREST**

- 16.1 In the event of the Purchaser failing to comply with any of his obligations or any terms or conditions of this Contract on due date or in the event of there being any delay in connection with the registration of transfer for which the Purchaser is responsible, the Purchaser hereby undertakes to automatically pay interest on the full purchase price at the prime overdraft rate charged from time to time by Investec Bank plus 2%, calculated for the date upon which the obligation in question fell due for performance up to the date upon which it was actually performed, or for the period of any delay in registration of transfer which results therefrom, which period shall be determined solely by the Conveyancers. The Purchaser shall be obliged to pay such penalty interest to the Conveyancers before registration of transfer. A certificate signed by the conveyancers confirming the amount of such interest shall be conclusive proof of the amount owing by the Purchaser to the Seller.
- 16.2 For the purpose of this clause the Purchaser shall be deemed to be responsible for any delay in the registration of transfer which is caused *inter alia* by failure on the part of any financial institution from which he obtains mortgage finance or any bond registration conveyancers nominated by such financial institution to procure the issue of guarantees as contemplated in this Contract and to lodge documents in the Office of the Registrar of Deeds when called upon to do so by the Conveyancers.
- 16.3 Furthermore, the Purchaser shall automatically, and without notice, be liable for interest on any amounts in arrear at the prime overdraft rate charged from time to time by Investec Bank, which interest shall be calculated from the date upon which such amount became due to date of payment, both says inclusive.

17. **DOMICILIUM**

- 17.1 The Parties chose as their respective *domicilia citandi et executandi* (the address nominated by the Parties where notices may be sent) the physical, postal address and/or facsimile number stated in the Schedule.
- 17.2 Either party shall be entitled to change the *domicilium* address by giving written notice thereof to the other which may be delivered by hand, by facsimile or by prepaid registered post.
- 17.3 Any notice which is given by either party to the other party's *domicilium* address, being the physical, postal or facsimile number stated in the Schedule, shall be deemed to have been duly given:
- 17.3.1 if hand delivered; on the day on which hand delivery takes place, either by handing such notice to the party concerned or by placing/affixing it in a prominent place at the party's *domicilium*;
- 17.3.2 if posted by pre-paid registered post; on the fourth day following the date of posting of such notice;
- 17.3.3 where sent by facsimile to the stated facsimile number in the Schedule to this Contract; on the day on which the facsimile is actually sent which date shall be established by reference to the aforesaid machine's activity report used to send such notice.
- 17.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by either party shall be an adequate written notice to it notwithstanding that it was not sent or delivered to its chosen *domicilium citandi et executandi*.

18. **JURISDICTION AND COSTS**

- 18.1 The parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of Magistrate Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction; this clause shall constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.
- 18.2 Notwithstanding anything to the contrary herein contained either party hereto shall have the right at its sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction.
- 18.3 All legal costs incurred either party in consequence of any default of the provisions of this Contract by the other, shall be payable by the defaulting party on demand to the maximum amount permitted by law and shall include collection charges, the cost incurred by the aggrieved party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the aggrieved party in relation to, in terms of or arising out of this Contract in respect of any legal proceedings arising out of this Contract.

19. **ELECTRICAL CERTIFICATE**

- 19.1 The Seller shall at the Seller's own expense furnish a certificate of compliance from an accredited person in respect of all electrical installations in the Property in accordance with the requirements

of the Electrical Installation Regulations made under the Occupational, Health and Safety Act No. 85 of 1983. Such certificate shall be delivered to the Purchaser prior to the Date of Possession.

19.2 If the accredited person reports that he is unable to issue such certificate of compliance unless certain works are undertaken to the electrical installation, the Seller shall be entitled to have the work done so that the certificate can be furnished timeously.

20. **TRUSTEE FOR A COMPANY TO BE FORMED**

20.1 In the event of the signatory to this Contract having concluded this Contract in his capacity as a Trustee for a company to be formed (which signatory is hereinafter in this paragraph 22 referred to as the "Signatory"), then the Signatory by his signature hereto warrants that the said company:

20.1.1 will be formed;

20.1.2 will ratify and adopt the terms and conditions of the Contract; and

20.1.3 will provide the Seller with written proof thereof;

all within a period of 30 days from the date of signature of this Contract by the Signatory.

20.2 The Signatory, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the Seller for the due and punctual performance of such company's obligations to the Seller in terms of this Contract.

20.3 If the terms and conditions of Clause 20.1 above are not fulfilled then the Signatory will by his signature to this Contract be deemed ipso facto to have concluded the Contract in his personal capacity as Purchaser.

21. **JOINT AND SEVERAL LIABILITY**

Should this Contract be signed by more than one person as Purchaser the obligations of all the signatories shall be joint and several.

22. **WAIVER**

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

23. **INDEMNITY**

The Seller does not warrant any information given in respect of the Property, whether this information is given prior to or subsequent of this Contract, save for the information in respect of the Property specifically warranted in this Contract. The Seller shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given in good faith by the Seller or the agent to the Purchaser in respect of the Property, or contained in any marketing material, and the Purchaser hereby indemnifies the Seller and holds it harmless against and in respect of any injury, loss or damage however caused which the Purchaser may suffer as a result of any inaccuracies in any information given by the Seller in good faith (save for the

information specifically warranted in this Contract).

24. **ANNEXURES**

The Purchaser acknowledges that the following annexures also form an integral part of the Conditions of Sale and form annexures to this Contract.

- "A" - Conditions of Sale
- "B" - The Club Seaton Layout Plan
- "C" - Floor Plan and Schedule of Finishes

25. **ENTIRE CONTRACT**

The Purchaser acknowledges that this Contract constitutes the sole basis of the contract between himself and the Seller, and that he has not been induced to enter into such contract by any representations or warranties (including, but in no way limited to, any artist's impression of the Scheme, whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specially dealt with herein. Any mutual Contract between the Purchaser and the Seller to cancel, alter or add to this Contract shall not be binding and shall be of no force or effect unless reduced to writing and signed by the parties hereto, or by their agents acting on their written instructions.