

SALE OF PROPERTY AGREEMENT

TRANSACTION SCHEDULE

PARTIES	
1.1	Seller: Sandpiper Nature Reserve (Proprietary) Limited
1.1.1	Registration Number: 2005/017465/07
1.1.2	<i>Domicilium</i>
1.1.1.1	address: C/O Schneier & London, Augusta House, Inanda Greens, 54 Wierda Rd West, Wierda Valley, Sandton, 2196
1.1.1.2	marked for the attention of: Mr Dennis Finch / Mr Steffen Schneier
1.2	Purchaser:
1.2.1	(1)
	(2)
1.2.2	(1) Registration/Identity Number
	(2) Registration/Identity Number
1.2.3	<i>Domicilium</i>
1.2.3.1	address:
1.2.3.2	marked for the attention of:
1.2.4	Contact details:
1.2.4.1	(1) Telephone Number (2) Telephone Number
1.2.4.2	(1) Fax Number (2) Fax Number
1.2.4.3	(1) Email (2) Email
2	PORTION OF THE PROPERTY Erf..... Sedgefield Township, the Province of the Western Cape, measuring.....
3	STORAGE PORTION Portion Number _____ on the Site Development Plan
4	PURCHASE PRICE OF PORTION INCLUDING VAT Purchase Price including VAT: R..... comprising of the following amounts -
4.1	Portion Deposit: R.....
4.2	Portion Price: R.....
4.3	Agent's Commission: R.....
5	LOAN GRANT DATE
6	LOAN AMOUNT R.....
7	BUILDING CONTRACTOR Axiom Developments (Proprietary) Limited (Registration Number 2002/005530/07)
8	GUARANTEE DUE DATE
9	SUSPENSIVE CONDITION DATE
9.1 in respect of the Suspensive Condition referred to in clause 2.1.1
9.2 in respect of the Suspensive Condition referred to in clause 2.1.2
10	RESOLUTIVE CONDITION DATE 31 December 2009
11	ESTIMATE LEVY R1 000 per month
12	ESTIMATED CONNECTION FEE

R.....

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APPENDICES

- A. RESOLUTION BY THE BOARD OF DIRECTORS OF SANDPIPER NATURE RESERVE (PROPRIETARY) LIMITED
 - 1. ARCHITECTURAL DESIGN MANUAL
 - 2. BUILDING CONTRACT AND BUILDING GUIDELINES
 - 3. CONDITIONS OF SUBDIVISION
 - 4. RECORD OF DECISION
 - 5. AGREEMENT OF SERVITUDE
 - 6. SITE DEVELOPMENT PLAN OF THE PROPERTY

SALE OF PROPERTY AGREEMENT

1 DEFINITIONS AND INTERPRETATION

This Agreement is made and entered into between -

1.1 Definitions

(1) Sandpiper Nature Reserve (Proprietary) Limited (Registration Number 2005/017465/07); and

In this Agreement and the recitals, unless clearly inconsistent with or otherwise indicated by the context -

(2) the Purchaser/s referred to in the Transaction Schedule.

1.1.1 **"Acceptance Date"** means the date upon which this Agreement is accepted by the Seller in terms of 4.1;

RECITALS

A. The Seller is about to become the registered owner of the Property. The Seller has made application to the Local Authority to rezone the Property and to subdivide the Property into the Residential Portions, a Road Portion, the Storage Portions, the Municipal Portion and the Nature Reserve Portions, and has received the necessary approvals. The Seller intends to pursue the Development on the Property.

1.1.2 **"Adjustment Account"** means the adjustment account in respect of the Portion and the Storage Portion as at the Transfer Date, to be prepared by the Seller in terms of 5.3;

B. The Seller intends to -

1.1.3 **"Agents"** means agents mandated by the Seller to market and introduce prospective purchasers to the Seller and/or to the Development and **"Agent"** means any of them as the context may indicate;

B1. sell and the Purchaser intends to purchase the Portion; and

1.1.4 **"Agreement"** means the agreement set out in this document and its appendices;

B2. grant and the Purchaser intends to accept the Servitude,

1.1.5 **"Architect"** means such architect as may be appointed by the Seller from time to time;

on the terms and conditions set out in this Agreement.

C. The Purchaser intends to employ the services of the Builder to construct the Residence on the Portion on the terms and conditions set out in the Building Contract.

1.1.6 **"Architectural Review Committee"** means the architectural review committee, established in terms of the Articles of Association;

D. The Parties enter into this Agreement to record the sale of the Portion, the grant of the Servitude, the terms upon which the Residence may be constructed on the Portion and the manner in which the Purchaser may use and enjoy the facilities on the Property and all matters incidental thereto.

1.1.7 **"Architectural Design Manual"** means the architectural guidelines which govern the procedure for the preparation and submission of the Plans by the Purchaser to the Architectural Review Committee for approval, a copy of which is attached to this Agreement marked as **Appendix 1**;

The Parties agree as follows:

1.1.8 **"Articles of Association"** means the articles of association of the Residents Association;

- 1.1.9 **"Attorneys"** means Attorneys Glyn, Marais Inc. of "The Place", 1 Sandton Drive, Sandton, Tel: (011) 286 3700, (Reference: Mr Brian Frank);
- 1.1.10 **"Attorneys Act"** means the Attorneys Act No. 53 of 1979, as amended;
- 1.1.11 **"Auditors"** means Papilsky Hurwitz, 2nd Floor Aloe Grove, 196 Louis Botha Avenue, Houghton Estate, Johannesburg, 2198;
- 1.1.12 **"Boatpark"** means the storage portion for boats including certain facilities as illustrated on the Final Subdivision Plan;
- 1.1.13 **"Builder"** means the main building contractor referred to in the Transaction Schedule;
- 1.1.14 **"Building Act"** means the National Building Regulations and Building Standards Act No. 103 of 1977, as amended, and any regulations promulgated thereunder;
- 1.1.15 **"Building Contract"** means the standard JBCC building contract to be entered into between the Purchaser and the Builder for the construction of the Residence and the Boathouse, a copy of which is attached to this Agreement marked as **Appendix 2**;
- 1.1.16 **"Business Day"** means a day other than a Saturday, Sunday or a public holiday officially recognised in the Republic of South Africa and **"Business Days"** has a corresponding meaning;
- 1.1.17 **"Completion Date"** means the date upon which the Residence has been completed as evidenced by a certificate of practical completion issued by the Architect, which date shall not be later than a period of 4 (four) years reckoned from the Transfer Date;
- 1.1.18 **"Conditions of Subdivision"** means the conditions imposed by the Local Authority when granting its approval in terms of the Land Use and Planning Ordinance 15 of 1985 for the consolidation, subdivision and rezoning of the Property, a copy of which approval dated 25 July 2008 is attached to this Agreement marked as **Appendix 3**;
- 1.1.19 **"Conduct Rules"** means the rules for the time being and from time to time formulated under the Articles of Association governing the conduct of the Members in the Development referred to in 9.2.1.3;
- 1.1.20 **"Deeds Office"** means the office of the Registrar of Deeds at Cape Town;
- 1.1.21 **"Development"** means the proposed low impact and environmentally sensitive, residential and holiday housing scheme to be constructed on the Property comprising the Residential Portions with the Residences constructed thereon, the Storage Portions with the Boatpark thereon, the Road Portion, the Municipal Portion, the Reserved Portions, the Recreational Areas and the Nature Reserve Portions to be known as "Sandpiper Nature Reserve";
- 1.1.22 **"Environmental Management Plan"** means the construction environmental management plan prepared by Doug Jeffrey Environmental Consultants (Pty)Ltd (Reg : 1999/009151/07) dated May 2005;
- 1.1.23 **"Guarantee Due Date"** means either –
- 1.1.23.1 within 14 (fourteen) days of the fulfilment of the Suspensive Conditions referred to in 2.1; or
- 1.1.23.2 within 10 (ten) days of the Signature Date, if the

	Purchaser does not require the Loan;		against the title deeds of the Portion;
1.1.24	" Loan " means the loan, in the amount set out in Item 6 of the Transaction Schedule, to be granted to the Purchaser by the Mortgagee for the purpose of enabling the Purchaser to purchase the Portion and if needs be, to construct the Residence and the Boathouse;	1.1.29	" Mortgagee " means the registered bank or other financial institution which grants the Loan to the Purchaser and which holds the Mortgage Bond;
		1.1.30	" Municipal Portion " means the portion of the Property indicated as Erf 4774 Sedgefield Township on the Site Development Plan, which portion will be zoned and reserved for municipal purposes and will be transferred by the Seller to the Local Municipality;
1.1.25	" Local Authority " means the Municipality of Knysna or such other authority having jurisdiction in respect of the Property for the time being and from time to time;		
		1.1.31	" Nature Reserve Portions " means those portions of the Property indicated as Erf 4800 and 4834 Sedgefield Township on the Site Development Plan, which will be transferred by the Seller to the Residents Association and which will be used predominantly as a nature reserve for the common benefit of the Members subject to the provisions of the Articles of Association, the Conduct Rules and the Servitude;
1.1.26	" Member " means a member of the Residents Association within the meaning of and subject to the conditions set out in the Articles of Association and referred to in 9.2 and " Members " shall bear a corresponding meaning;		
1.1.27	" Month " means –		
1.1.27.1	in reference to a number of months, from a specific date, a period commencing on that date to the same date of any subsequent month; and	1.1.32	" Parties " means the Seller and the Purchaser and " Party " shall mean either of them as the context may indicate;
1.1.27.2	in any other context, a month of the calendar, that is, one of the 12 (twelve) months of the calendar,	1.1.33	" Plans " means the architectural plans which have been or will be prepared by the Seller for the construction of the Residence and which have been or will be accepted by the Architectural Review Committee with or without modification;
	and " Monthly " has a corresponding meaning;		
1.1.28	" Mortgage Bond " means the first mortgage bond contemplated in 2.1 to be passed by the Purchaser over the Portion in favour of the Mortgagee as security for the repayment of the Loan and registered in the Deeds Office on the Transfer Date simultaneously with the Transfer	1.1.34	" Portion " means the portion of the Property described in Item 2 of the Transaction Schedule, which is being sold as vacant land to the Purchaser in terms of this Agreement and which is one of the Residential Portions;
		1.1.35	" Portion Deposit " means the amount set out in Item 4.1 of the Transaction Schedule

- payable by the Purchaser in terms of 5.2.2.1;
- 1.1.36 **"Portion Price"** means the amount set out in **Item 4.2** of the Transaction Schedule, being the Purchase Price including the VAT component less the Portion Deposit and the Plans Price payable by the Purchaser in terms of 5.2.2.2;
- 1.1.37 **"Prime Rate"** means the nominal, annual, compounded monthly in arrear rate of interest from time to time publicly quoted as such by the Seller's bankers, from time to time calculated on a 365 (three hundred and sixty five) day factor irrespective of whether or not the year is a leap year;
- 1.1.38 **"Property"** means the proposed Erf 4800 and 4834 Sedgefield Township, the Province of the Western Cape, measuring 10,30 (ten comma three zero) hectares which is about to be registered into the name of the Seller, of which the Portion forms a part;
- 1.1.39 **"Purchase Price"** means the amount set out in **Item 4** of the Transaction Schedule, being the total consideration for the purchase of the Portion and the grant of the Servitude, which is payable in terms of 5.2 and comprises of –
- 1.1.39.1 the Portion Deposit;
- 1.1.39.2 the Portion Price; and
- 1.1.40 **"Purchaser"** means the purchaser of the Portion, the grantee of the Servitude and the employer under the Building Contract referred to in **Item 1.2** of the Transaction Schedule;
- 1.1.41 **"Record of Decision"** means the record of decision issued by the Department of Environmental Affairs and Tourism on 29 September 2004 in terms of which the Department of Environmental Affairs and Tourism granted its authorisation for the Development in terms of the Environment Conservation Act No. 73 of 1989, as amended, subject to the conditions listed in the Record of Decision, a copy of which is attached to this Agreement marked as **Appendix 4**;
- 1.1.42 **"Recreational Areas"** means that part of the Nature Reserve Portions indicated as such on the Site Development Plan, which has been reserved for use by the Members for recreational purposes;
- 1.1.43 **"Reserved Portions"** means those portions on erf 4834 Sedgefield Township situated north of Leervis Street indicated as such on the Site Development Plan, to be selected by the Seller in its sole and absolute discretion and which have been reserved by the Seller for the construction and sale to purchasers thereof of a maximum of 7 (seven) further residences in compliance with the Conditions of Subdivision and the provisions of a future record of decision for the Seller's own account;
- 1.1.44 **"Residence"** means the dwelling and other improvements being the subject matter of the Works to be constructed by the Purchaser on the Portion in terms of this Agreement and the Building Contract;
- 1.1.45 **"Residential Portions"** means the subdivided portions of the Property which have been zoned for residential use comprising of 24 (twenty four) residential erven being Erven 4776 to 4799, both inclusive, of Sedgefield Township as indicated on the Site Development Plan, including the Portion, of which one

	Residential Portion is to be transferred to the Residents Association for the purposes of housing the estate manager or managing agent;		Portion, <i>inter alia</i> , granting to the Purchaser –
1.1.46	"Residents Association" means the Sandpiper Home Owners Association, (Reg. No. 2005/039000/08), an association incorporated under section 21 of the Companies Act, No. 61 of 1973, as amended, or constituted in any other appropriate form in respect of the Development;	1.1.51.1	rights of access to the Nature Reserve Portions, the right of use and enjoyment of the Recreational Areas in common with the other Members;
		1.1.51.2	the exclusive use to the Storage Portion; and
1.1.47	"Resolutive Condition Date" means the date set out in Item 10 of the Transaction Schedule upon which the Resolutive Conditions are to remain unfulfilled;		substantially on the terms and conditions set out in the agreement of servitude, a copy of which is attached to this Agreement marked as Appendix 5 ;
1.1.48	"Resolutive Conditions" means the resolutive conditions referred to in 3;	1.1.52	"Signature Date" means the date upon which this Agreement is signed by the Party signing last in time;
1.1.49	"Road Portions" means the portion of the Property, which has been zoned and reserved for road purposes as indicated on the Site Development Plan and which is to be transferred to the Residents Association;	1.1.53	"Site Development Plan" means the site development plan of the Property, a copy of which is attached to this Agreement marked as Appendix 6 ;
1.1.50	"Seller" means Sandpiper Nature Reserve (Proprietary) Limited (Registration Number 2005/017465/07), a company incorporated with limited liability, in accordance with the company laws of the Republic of South Africa, herein represented by Mr Steffen Schneier or Mr Dennis Finch, they being duly authorised thereto by virtue of a resolution of the board of directors of the Seller, a copy of which is attached to this Agreement marked as Appendix A ;	1.1.54	"Storage Portion" means that part of the Nature Reserve Portions forming part of the storage portions indicated on the Site Development Plan of which one Storage Portion has been allocated to the Purchaser bearing the number set out in Item 3 of the Transaction Schedule and to which the Purchaser is granted the exclusive right of use in terms of the Servitude;
		1.1.55	"Suspensive Conditions" means the suspensive conditions referred to in 2;
1.1.51	"Servitude" means the praedial servitude to be registered simultaneously with Transfer against the title deeds to the Property in favour of the Purchaser as owner of the	1.1.56	"Suspensive Condition Date" means the dates set out in Item 9 of the Transaction Schedule, being the dates by which each Suspensive Condition is to be fulfilled;

1.1.57	"Transaction" means the sale and delivery of the Portion, including Transfer, and the grant of the Servitude on the basis set out in this Agreement and all matters ancillary and incidental thereto;	1.2	Interpretation
1.1.58	"Transaction Schedule" means the transaction schedule appearing on the face of this Agreement in respect of the Transaction;	1.2.1	In this Agreement and the recitals, unless clearly inconsistent with or otherwise indicated by the context -
1.1.59	"Transfer" means registration of the transfer of the Portion into the name of the Purchaser and the simultaneous registration of the Servitude and the Mortgage Bond, if applicable, in the Deeds Office;	1.2.1.1	any reference to the singular includes the plural and <i>vice versa</i> ;
1.1.60	"Transfer Date" means the date of Transfer;	1.2.1.2	any reference to natural persons includes legal persons and <i>vice versa</i> ; and
1.1.61	"VAT" means value added tax levied in terms of the VAT Act;	1.2.1.3	any reference to a gender includes the other genders.
1.1.62	"VAT Act" means the Value Added Tax Act, No. 89 of 1991, as amended;	1.2.2	Where appropriate, meanings ascribed to defined words and expressions in 1.1, shall impose substantive obligations on the Parties.
1.1.63	"Warranties" means the warranties and representations given and made by the Seller in 8 and elsewhere in this Agreement;	1.2.3	The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
1.1.64	"Works" means the building works to be undertaken by the Builder in the construction of the Residence and other improvements on the Portion , on the Storage Portion, in accordance with the Building Contract and the Plans; and	1.2.4	Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meanings assigned to such words and expressions in that sub-clause.
1.1.65	"Working Drawings" means the final working plans and drawings prepared by the Architects detailing the structures of the Residence (including, elevations, height and materials) for the construction of the Residence and the Boathouse as approved by the Architectural Review Committee and the Local Authority.	1.2.5	When any number of days is prescribed in this Agreement, the counting of such days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day. In the event that the date for the performance of any obligation or the exercise of any right in terms of this Agreement falls on a day which is not a Business Day, then the relevant date for performance of any obligation or the exercise of any right in terms of this Agreement shall be the

	immediately succeeding Business Day.		This Agreement is subject to the fulfilment of the following Suspensive Conditions, namely that by no later than 17h00 on the Suspensive Condition Date -
1.2.6	Schedules and the appendices to this Agreement shall be deemed to be incorporated in, and form an integral part of, the Agreement. Definitions in such schedules or annexures shall bear the same meanings as in this Agreement and in other schedules or annexures.	2.1.1	referred to in Item 9.1 of the Transaction Schedule, the Mortgagee agrees in writing to grant the Loan to the Purchaser on terms and conditions acceptable to the Purchaser, one of which conditions is that the Loan is to be secured by the registration of the Mortgage Bond over the Portion; and
1.2.7	Where this Agreement requires a Party to use " Reasonable Endeavours " in relation to an act or omission, that Party shall do all such things as are or may be reasonably necessary or desirable so as to achieve that act or to omit taking an action, unless the Parties agree that it is not reasonable to take the action or to omit taking an action.	2.1.2	referred to in Item 9.2 of the Transaction Schedule, the Purchaser and the Builder enter into the Building Contract.
		2.2	Time Limit for the satisfaction of the Suspensive Conditions
1.2.8	The use of the word " including " followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the <i>eiusdem generis</i> rule shall not be applied in the interpretation of such general wording and/or such specific example or examples.	2.2.1	The Purchaser shall use its Reasonable Endeavours to procure that the Suspensive Conditions are fulfilled as soon as practicable and in any event on or before the Suspensive Condition Date or the extended date contemplated in 2.2.2.
		2.2.2	The Parties may agree in writing to extend the Suspensive Condition Date to a date or dates extending beyond the relevant Suspensive Condition Date, provided such date shall not be more than 180 (one hundred and eighty) days commencing from the Signature Date, which latter date or dates shall then be regarded as the " Extended Suspensive Condition Date ".
1.2.9	Since this Agreement is the product of negotiations between the Parties, the <i>contra proferentem</i> rule of construction shall not apply nor shall this Agreement be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.	2.3	Waiver of Suspensive Conditions
1.2.10	This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.	2.3.1	The Suspensive Condition referred to in 2.1.1 is inserted for the benefit of the Purchaser.
		2.3.2	Notwithstanding the provisions of 2.1, the Purchaser is entitled, at any time prior to the Suspensive Condition Date or the Extended Suspensive
2	SUSPENSIVE CONDITIONS		
2.1	Suspensive Conditions		

	Condition Date, to waive compliance with the Suspensive Condition referred to in 2.1.1, whereupon such Suspensive Condition shall be deemed to have been fulfilled.	2.6.2.1	this Agreement, other than the Surviving Provisions, shall be of no further force or effect;
2.4	Deemed Fulfilment of the Suspensive Condition referred to in 2.1.1	2.6.2.2	no Party shall have any claim against any other Party arising out of or in connection with this Agreement, except for breach of the provisions of 2.2.1, 2.6.1 and the Surviving Provisions; and
	The Suspensive Condition referred to in 2.1.1 will be deemed to be fulfilled if the Mortgagee agrees to grant such Loan –	2.6.2.3	the Parties shall be restored to their <i>status quo ante</i> , save for any rights of any of the Parties which have accrued to such Party under this Agreement prior to the date of termination of this Agreement.
2.4.1	subject to the Loan being guaranteed by the Purchaser's spouse; and/or		
2.4.2	subject to any term usually imposed by the Mortgagee when granting loans in the private sector for the purchase of vacant land and/or for the construction of a residence thereon which are secured by a mortgage bond.		
2.5	Operative Conditions	3	RESOLUTIVE CONDITIONS
	The provisions of 1, this clause 2, 3, 12,13,15 and 16 of this Agreement, shall come into force and effect on the Signature Date and shall bind the Parties (the " Surviving Provisions "). The remainder of this Agreement shall come into force and effect on the fulfilment or waiver, as the case may be, of the last of the Suspensive Conditions.	3.1	Resolutive Conditions
2.6	General	3.1.1	The continuance of this Agreement after the fulfilment or waiver of the last of the Suspensive Conditions, is subject to the Resolutive Conditions that by no later than 17h00 on the Resolutive Condition Date, the Seller fails to -
2.6.1	The Purchaser undertakes to do and procure the doing of all such things as are required by the Purchaser to comply with its obligations in order to procure the fulfilment of the Suspensive Conditions.	3.1.1.1	take transfer of the Property; and
2.6.2	If the Suspensive Conditions have not been fulfilled or waived, as the case may be, on or before the Suspensive Condition Date or the Extended Suspensive Condition Date, then –	3.1.1.2	obtain all the necessary consents and approvals from the Local Authority and any other relevant authorities whose consents and/or approvals may be necessary for the proposed rezoning, consolidation and subdivision of the Property, including the provision of essential services to the Property on terms and conditions acceptable to the Seller.

3.2	Time Limit for the satisfaction of Resolutive Conditions		any further force or effect; and
3.2.1	The Seller shall use its Reasonable Endeavours to procure that the Resolutive Conditions remain unfulfilled.	3.4.2.2	the provisions of 2.6.2 shall apply hereto <i>mutatis mutandis</i> .
3.2.2	The Parties may agree in writing to extend the Resolutive Condition Date within which the Resolutive Conditions are to remain unfulfilled, provided such date shall not be more than 240 (two hundred and forty) days commencing from the Signature Date, which latter date or dates shall then be regarded as the " Extended Resolutive Condition Date ".	4	IRREVOCABLE OFFER, SALE AND PURCHASE
3.3	Waiver of the Resolutive Conditions	4.1	Signature of this Agreement by the Purchaser shall be deemed to constitute an offer by the Purchaser to the Seller to enter into this Agreement, which offer shall –
3.3.1	The Resolutive Conditions are inserted for the benefit of the Seller only.	4.1.1	not be capable of revocation or withdrawal by the Purchaser for a period of 14 (fourteen) Business Days after signature of this Agreement by the Purchaser; and
3.3.2	Notwithstanding the provisions of 3.1, the Seller is entitled, at any time prior to the Resolutive Condition Date or the Extended Condition Date, as the case may be, by written notice given to the Purchaser to waive compliance with either or both of the Resolutive Conditions, whereupon such Resolutive Condition/s shall be deemed to remain unfulfilled.	4.1.2	remain open for acceptance thereafter,
3.4	General	4.2	unless specifically revoked by the Purchaser in writing. This Agreement shall be binding on the Seller only when duly signed by it, until which time no obligation or liability on the part of the Seller shall be deemed to exist. It shall not be necessary for the Seller to communicate to the Purchaser its acceptance of the offer constituted in terms hereof for this Agreement to become valid and binding.
3.4.1	The Seller undertakes to do and procure the doing of all such things as are required by it to comply with its obligations in order to procure that the Resolutive Conditions remain unfulfilled.	4.2.1	With effect from the Acceptance Date, the Seller hereby –
3.4.2	If any of the Resolutive Conditions is/are fulfilled on or before the Resolutive Condition Date or the Extended Resolutive Condition Date, then –	4.2.1	sells to the Purchaser and the Purchaser hereby purchases, the Portion;
3.4.2.1	this Agreement shall lapse and cease to be of	4.2.2	grants to the Purchaser and the Purchaser hereby accepts, the Servitude, including, the exclusive right of use to the Storage Portion,
			for the Purchase Price on the terms and conditions set out in this Agreement.

5 PURCHASE PRICE AND PAYMENT

5.1 Purchase Price

The Purchase Price for the Portion is the amount set out in the Transaction Schedule.

be paid to the Seller and the interest which accrued thereon whilst invested in the Account shall be paid to the Purchaser.

5.2 Payment of the Purchase Price

5.2.1 On the Transfer Date, the Purchaser shall pay the Purchase Price in cash to the Seller, without deduction or set-off whatsoever in accordance with the provisions of this 5.

5.2.2.3

Notwithstanding any other provision to the contrary, if this Agreement is cancelled as a result of any breach on the part of the Purchaser, then the Portion Deposit and the interest which has accrued thereon, shall be forfeited to the Seller as a pre-estimation of the damages suffered by the Seller, without prejudice to such other rights as the Seller may have at law or under this Agreement, including, *inter alia*, the right to claim further damages.

5.2.2 Payment of the Portion Deposit

5.2.2.1 On the date of signature of this Agreement by the Purchaser, the Purchaser shall pay the Portion Deposit in cash to the Attorneys. The Attorneys are hereby authorised to invest the Portion Deposit with a registered bank in a special savings account on the Purchaser's behalf in terms of section 78(2)(A) of the Attorneys Act pending Transfer (the "**Account**"). The money so invested will not constitute trust monies as contemplated by the Attorneys Act. The Account will be in the name of the Attorneys but will be identified with the Purchaser's name and a suitable reference to section 78(2)(A) of the Attorneys Act. The interest earned on the Portion Deposit whilst invested in the Account shall accrue for the benefit of the Purchaser and shall be paid to the Purchaser in accordance with 5.2.2.2.

5.2.3

Payment of the Portion Price

As security for the payment of the Portion Price, the Purchaser shall by no later than 17h00 on the Guarantee Due Date, deliver to the Attorneys, guarantees issued by a registered bank expressed to be payable to the –

5.2.3.1

existing mortgage bondholder/s, on behalf of the Seller, for the release of the Portion from the operation of the existing mortgage bond/s; and

5.2.3.2

Seller, or its order, in an amount equal to the Portion Price less the amount payable under the guarantee/s referred to in 5.2.3.1,

without any deductions whatsoever, set off or the cost of transfer of funds on the Transfer Date against written confirmation by the Attorneys of Transfer.

5.2.2.2 On the Transfer Date, the Portion Deposit shall

5.3	Adjustment Account		off, deduction and/or the cost of transfer of funds.
5.3.1	The Seller shall, at its cost, prepare an Adjustment Account as at the Transfer Date and shall deliver such Adjustment Account to the Purchaser within 30 (thirty) Business Days of the Transfer Date. The Adjustment Account shall reflect –	5.3.2	Any dispute which may arise under, out of, or in connection with or in relation to the provisions in this 5.3 shall be determined by the Auditors in accordance with the provisions of 12.2.
5.3.1.1	as amounts payable to the Seller, any amount paid by the Seller in respect of any period after the Transfer Date in respect of municipal rates and taxes, levies (including special levies), sewerage charges and like items, electricity, water, licenses, municipal services charges, including interest, which may have or is due to accrue thereon, insurance premiums and any other amounts of whatsoever nature.	6	OWNERSHIP, RISK, POSSESSION AND OCCUPATION On the Transfer Date, ownership, risk, possession and occupation of the Portion and the right of exclusive use to the Storage Portion shall be given by the Seller and taken by the Purchaser, from which date -
5.3.1.2	as amounts payable to the Purchaser, any of the items referred to in 5.3.1.1 which are in arrear and have not been paid by the Seller as at the Transfer Date in respect of any period prior to the Transfer Date.	6.1	ownership and all the benefits and risks of ownership, including possession and occupation, of the Portion, shall pass to the Purchaser;
5.3.1	If the Adjustment Account reflects a net balance –	6.2	the Purchaser shall be liable for the payment of all assessment rates and taxes, levies (including special levies), sewerage charges and like items, electricity, water, licenses, municipal service charges, any other imposts levied upon the Portion and the levies due to the Residents Association, including interest which may have or is due to accrue thereon; and
5.3.1.1	to the credit of the Seller, the Purchaser shall pay the Seller the amount of such net balance; and	6.3	all the benefits and risks pertaining to the exclusive use of the Storage Portion shall pass to the Purchaser and the Purchaser shall be liable for the payment of all the items referred to in 6.2 in respect of the Storage Portion.
5.3.1.2	to the credit of the Purchaser, the Seller shall pay the Purchaser the amount of such net balance, within 5 (five) Business Days after delivery of the Adjustment Account to the Purchaser, in cash and free of any further set	7	TRANSFER
		7.1	The Attorneys are hereby instructed to effect Transfer -
		7.1.1	as soon as is reasonably possible after -
		7.1.1.1	the last of the Suspensive Conditions has been fulfilled or waived, as the case may be, in terms of 2;

7.1.1.2	the Resolutive Conditions remain unfulfilled in terms of 3;		and recover any damages or compensation from the Seller.
7.1.1.3	the Seller has taken transfer of the Property;	8	WARRANTIES AND ACKNOWLEDGEMENTS
7.1.1.4	the Property has been rezoned, subdivided and all the regulatory approvals referred to in 3.1.1 have been obtained; and	8.1	The Seller warrants that it shall use its Reasonable Endeavours to ensure that on or before 31 December 2009 -
7.1.1.5	the Purchaser has complied with the Purchaser's obligations in terms of this Agreement, including the provisions of 5.2;	8.1.1	the Property is registered in the Deeds Office into its name;
7.1.2	at the cost of the Purchaser, which shall be responsible for all reasonable costs of and incidental to the Transfer, including conveyancing fees together with VAT thereon and any other costs or duties payable of a similar nature in respect thereof, which costs shall be paid by the Purchaser to the Attorneys within 7 (seven) Business Days of being requested by them to do so.	8.1.2	the Property has been rezoned and the consolidation and the subdivision thereof has been approved by the Local Authority to permit the Development;
7.2	The Parties hereby undertake in favour of each other –	8.1.3	all the regulatory approvals, Local Authority's requirements in the rezoning and subdivision of the Property and the Conditions of Subdivision have been complied with or secured to the satisfaction of the Local Authority.
7.2.1	within 7 (seven) Business Days after being required by the Attorneys to do so, to complete and/or sign all documents necessary to effect Transfer; and	8.2	The Purchaser acknowledges and agrees that -
7.2.2	to take all steps and do and procure the doing of all things as are reasonable in the circumstances so as to place the Attorneys in a position to effect Transfer.	8.2.1	save as specifically set out in this 8.1 and any other provision in this Agreement, the Portion is sold without any warranties or representations of any nature in regard to the Portion, express or implied. The Seller shall not be liable for any defects, latent or otherwise, or for any damage occasioned by such defects;
7.3	The Purchaser is not, by reason of any delay in the Transfer due to any cause whatsoever, entitled to cancel this Agreement or to refrain from paying, or suspend payment, of any amount payable by the Purchaser to the Seller in terms of this Agreement, or to claim	8.2.2	the Portion is sold and the grant of the exclusive rights of use to the Storage Portion is subject to –
		8.2.2.1	all the conditions, burdens and servitudes referred to in the title deeds of the Portion;
		8.2.2.2	the Servitude;
		8.2.2.3	the Conditions of Subdivision;

8.2.2.4	the Environmental Management Plan;		on its behalf for any inaccuracy in the Information.
8.2.2.5	the Record of Decision; and	9	UNDERTAKINGS BY THE PURCHASER
8.2.2.6	all such other conditions, burdens and servitudes which will, exist in regard thereto;	9.1	Alienation of Rights
8.2.3	the Purchaser is deemed to be acquainted with the nature, condition, beacons, extent and locality of the Portion, the Storage Portion, the Nature Reserve Portions, the Municipal Portion and the Recreational Areas, the Seller and the Seller's agents, including the Agent, being entirely free from all liability in respect thereof and the Seller shall not be required by the Purchaser to point out the beacons, pegs, boundaries or boundary marks of the Property, the Portion and/or the Storage Portion to the Purchaser;	9.1.1	The Purchaser is not entitled, without the Seller's prior written consent at any time prior to, the Completion Date and payment of all amounts owing by the Purchaser to the Seller in terms of this Agreement, to -
8.2.4	the Seller shall not be liable for any deficiency in the extent of the Portion or the Storage Portion which may be revealed on any resurvey, nor shall the Seller benefit by any excess; and	9.1.1.1	cede, assign, transfer, make over, alienate, encumber, burden, deal with, otherwise dispose of or otherwise transfer any of the Purchaser's rights under this Agreement;
8.2.4	the Seller shall not be liable for any deficiency in the extent of the Portion or the Storage Portion which may be revealed on any resurvey, nor shall the Seller benefit by any excess; and	9.1.1.2	sell, alienate, lease, burden, deal with or in any other way dispose of or transfer the Portion, the Residence and/or the improvements thereon, the Boathouse and the rights under the Servitude; and/or
8.2.5	insofar as the Seller or anyone else acting on its behalf may have handed the Purchaser any plans and documents (for the purposes of this 8.2.5, the "Information") in the course of the negotiations preceding this Agreement, the Purchaser acknowledges and accepts that the Information was given to the Purchaser in good faith and that while the Seller, its agents and/or its representatives will use its Reasonable Endeavours to ensure the accuracy thereof, it remains the Purchaser's responsibility to satisfy the Purchaser that the Information is factually correct. The Purchaser shall have no claim against, nor shall any liability attach to, the Seller or anyone else acting or purporting to act	9.1.1.3	grant a builders <i>lien</i> over the Portion and/or the Storage Portion to the Builder or any other person.
		9.1.2	If consent is given in terms of 9.1.1 -
		9.1.2.1	to a sale of the Portion or a cession of the Purchaser's rights to the Storage Portion under this Agreement and the Servitude, then the Purchaser shall in no way be released by such consent from any of the Purchaser's obligations under this Agreement;
		9.1.2.2	to an assignment of the Purchaser's rights and obligations under this

	Agreement, then the Purchaser hereby agrees that the Purchaser shall simultaneously with such assignment become bound as surety and co-principal debtor for all the obligations of the assignee in accordance with the provisions of 16.1.7 which shall apply hereto <i>mutatis mutandis</i> ; and		Member of the Residents Association;
		9.2.1.2	conform to and comply with the obligations imposed upon Members under the Articles of Association;
		9.2.1.3	conform to, and comply with, the Conduct Rules, formulated from time to time by the directors of the Residents Association in accordance with the power vested in them in the Articles of Association, a copy of which Conduct Rules are available for inspection upon request by the Purchaser; and
9.1.2.3	the Purchaser acknowledges and agrees that in entering into this Agreement, the Purchaser contracts on behalf of the Purchaser's successors-in-title, heirs, executors, administrators and assigns, all of whom shall be bound by the terms and conditions of this Agreement and the Servitude. Without limiting the generality of the foregoing, the Purchaser shall ensure that it shall be a term of any agreement of sale of the Portion (or any part thereof) that the third party purchaser acknowledges the terms and conditions imposed on the Purchaser under this Agreement and the documents referred to in 10.1.1 and 10.1.2 and that such third party purchaser agrees, in the aforesaid agreement of sale, to be bound by the terms and conditions under this Agreement and the documents referred to in 10.1.1 and 10.1.2.	9.2.1.4	pay all fees, levies and/or special levies raised and charged for the time being and from time to time by the Residents Association, the amount of which is to be determined, from time to time, by the directors of the Residents Association. In this regard, the Purchaser acknowledges that the foregoing is intended merely as a general description of the rights and obligations of a Member, the details of which are more fully dealt with in the Articles of Association and the Conduct Rules.
		9.2.2	The Purchaser is not entitled to –
9.2	Residents Association	9.2.2.1	sell the Portion and/or the rights under the Servitude to any person who has not agreed to become a Member of the Residents Association with effect from the date of transfer of the Portion to such third party purchaser; and
9.2.1	With effect from the Transfer Date, the Purchaser shall –		
9.2.1.1	become, and whilst the Purchaser is the registered owner of the Portion, remain a		

- 9.2.2.2 transfer the Portion or cede its rights under the Servitude into the name of any third party purchaser unless, and until, the Purchaser has received from the Residents Association a certificate stating that all amounts owing by the Purchaser to the Residents Association have been paid, and that the third party purchaser has agreed and undertaken to conform and comply with the provisions of this 9.2.
- 9.2.3 The Purchaser hereby irrevocably authorises the Seller to do and procure the doing of all such things as may be necessary to enrol the Purchaser as a Member of the Residents Association with effect from the Transfer Date.
- 9.2.4 The conditions of this 9.2, if registrable in the above form or in some modified form, shall be registered as a condition of title in the title deeds of the Portion and the Purchaser undertakes to sign any documents that may be required for that purpose.
- 9.3 **Architectural Review Committee and the Architectural Design Manual**
- 9.3.1 In order to maintain an attractive, harmonious and environmentally sensitive Development, the Purchaser agrees and undertakes to adhere to the architectural controls applicable to the Residence in accordance with the Architectural Design Manual.
- 9.3.2 Notwithstanding anything to the contrary herein or elsewhere contained, the Residence shall be erected on the Portion strictly in accordance with the -
- 9.3.2.1 Plans after the Plans have been submitted to and approved in writing
- 9.3.2.2 by the Architectural Review Committee; and Working Drawings after the Working Drawings have been submitted to and approved in writing by the Local Authority or any other competent authority,
- and no work whatsoever shall commence on the Portion or on the Storage Portion until such time as both of the aforesaid approvals have been obtained.
- 9.3.3 In order to enable the Architectural Review Committee to consider any such request for approval of the Plans or for any variance made to the Plans, the Purchaser shall provide the Architectural Review Committee with the following -
- 9.3.3.1 a site diagram showing the external boundaries of the footprint area and position of the Residence to be erected on the Portion together with a detailed sketch plan of all buildings and other fixtures to be erected on the Portion giving details of all external finishes as well as all elevations and sections sufficient to indicate the required site works. The sketch plan shall be drawn to a scale as directed by the Residents Association and shall comply with the Buildings Act; and
- 9.3.3.2 details of construction materials to be used.
- 9.3.4 The Residence shall be constructed by the Builder on behalf of the Purchaser.
- 9.3.5 The Seller and/or the Residents Association is entitled to condemn any work which is in its/their opinion sub-standard or which does not comply with the

- provisions of this Agreement, the Plans, the Working Drawings, the Record of Decision, the Environmental Management Plans and/or the Conduct Rules in which event the Purchaser shall procure that such substandard work is made good to a standard acceptable to the Seller and/or the Residents Association.
- 9.3.6 The conditions of this 9.3 if registrable in the above form or in some modified form, shall be registered as a condition of title in the title deeds of the Portion and the Purchaser undertakes to sign any documents that may be required for that purpose.
- 9.4 **Obligation to complete the Residence on or before the Completion Date**
- 9.4.1 The Purchaser agrees that ownership in the Portion and the exclusive right of use to the Storage Portion has been sold and granted to the Purchaser on the basis that the Residence is to be constructed on the Portion by the Purchaser as soon as possible after this Agreement becomes unconditional in all respects, but in any event before the Completion Date. The purpose of this stipulation is to ensure that the Development is completed as expeditiously as possible such that the Property does not indefinitely remain as a building site or a development consisting of uncompleted residences. This stipulation is inserted for the benefit of the Seller and all the Members.
- 9.4.2 The Purchaser acknowledges and agrees that the Seller is under no obligation to construct the Residence . The Purchaser acknowledges and agrees that the Purchaser has no claims of any nature whatsoever against the Seller as a result of the appointment of the Builder, the Building Contract any acts or omissions on the part of the Builder or its sub-contractors, any defects which arise out of the Works, any delays in the commencement or completion of the Works and all matters incidental thereto.
- 9.4.3 By no later than the Completion Date, the Purchaser shall be obliged, to have built and completed the construction of the Residence on the Portion as evidenced by a certificate of practical completion issued by the Architect.
- 9.4.4 By reason of the provisions of 9.4.1, the Purchaser agrees that should the Purchaser fail to fulfil the Purchaser's obligation in accordance with the provisions of 9.4.1, the Development will be prejudiced and the Seller will suffer damages. Accordingly on the first Business Day following the Completion Date, the Purchaser shall be deemed to have offered for sale the Portion and the exclusive right of use to the Storage Portion and the rights under the Servitude to the Seller. The Seller is entitled within 90 (ninety) days of the Completion Date, by written notice to the Purchaser, to accept such offer whereupon a binding sale of the Portion and the cession of the rights under the Servitude between the Purchaser, as seller, and the Seller, as purchaser, (the "**Repurchase Agreement**") shall take place on the following terms and conditions -
- 9.4.4.1 the purchase price of the Portion and the rights under the Servitude shall be an amount equal to the Purchase Price less an amount equivalent to 20% (twenty per cent) of the Purchase Price less the commission paid to the Agent in terms of 14 (if applicable) plus VAT (the "**Repurchase Price**");
- 9.4.4.2 the Attorneys will be instructed to attend to the registration of the transfer of the Portion and the cession of the rights under the

	Servitude into the name of the Seller in the Deeds Office ("Re-Transfer");	9.4.4.7	the Attorneys are hereby instructed to effect Re-Transfer -
9.4.4.3	on the date of registration of the Re-Transfer the Repurchase Price shall be paid by the Seller to the Purchaser;	9.4.4.7.1	as soon as reasonably possible after the Seller has complied with 9.4.4.4 and 9.4.4.7.2; and
9.4.4.4	as security for the payment of the Repurchase Price, the Seller shall, prior to the lodgement of the documents necessary for the Re-Transfer in the Deeds Office, furnish the Attorneys on behalf of the Purchaser with a bank or any similar financial institution guarantee's, in the amount equal to the Repurchase Price expressed to be payable in favour of the Attorneys, on behalf of the Purchaser, on the date of Re-Transfer against written confirmation by the Attorneys of Re-Transfer;	9.4.4.7.2	at the cost of the Seller, the provisions of 7.1.2 and 7.2 shall apply hereto <i>mutatis mutandis</i> .
		9.4.4.8	The offer referred to in 9.4.4 is assignable by the Seller, within a period of 30 (thirty) days of the acceptance by the Seller of such offer, by written notice to the Purchaser of such assignment and the giving of the name of such assignee.
9.4.4.5	the Purchaser shall, at its cost, prepare an adjustment account in respect of the Portion and the Storage Portion as at the date of Re-Transfer and shall deliver such adjustment account to the Seller within 30 (thirty) Business Days of the date of Re-Transfer and the provisions of 5.3 shall apply hereto <i>mutatis mutandis</i> ;	9.4.5	The Purchaser hereby nominates, constitutes and appoints Mr Steffen Schneier and Mr Dennis Finch of the Seller, with Power of Substitution, to be the Purchaser's lawful attorney and agent in his name, place and stead to sign the Repurchase Agreement and any necessary transfer documents for the purposes of the re-acquisition of the Portion and the exclusive right of use of the Boathouse by the Seller or its assignee and generally for affecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually, for all intents and purposes, as the Purchaser might or could do if personally present and acting herein, and hereby ratifies, allows, confirms, adopts, promises and agrees to ratify, allow, confirm and adopt all and whatsoever the said attorney and agent shall lawfully do, or cause to be done, by virtue of the aforesaid.
9.4.4.6	on the date of Re-Transfer, ownership, risk, possession and occupation of the Portion shall be given by the Purchaser and taken by the Seller and the provisions of 6 shall apply hereto <i>mutatis mutandis</i> ;		

<p>9.5 Access Servitude</p> <p>9.5.1 The Purchaser acknowledges and agrees that -</p> <p>9.5.1.1 the Nature Reserve Portions are subject to –</p> <p>9.5.1.1.1 an access servitude in favour of the Residents Association and its Members;</p> <p>9.5.1.1.2 the use and enjoyment by all the Members of the Recreational Areas;</p> <p>9.5.1.1.3 the exclusive right of use of the Members to the Storage Portions;</p> <p>9.5.1.2 the rights of exclusive use to the Storage Portion cannot be ceded to any person who is not the successor in title of the Purchaser as owner of the Portion and that the rights to the Storage Portion are inextricably attached to the Portion;</p> <p>9.5.1.3 the Purchaser for so long as the Purchaser is the registered owner of the Portion, the Purchaser and the Purchaser's successors in title, as owner of the Portion, are entitled to the rights and subject to the obligations set out in the Servitude, a copy of which is attached to this Agreement marked as Appendix 5;</p> <p>9.5.1.4 the terms and conditions of the Servitude referred to in 9.5.1.2, which shall be registered into the name of the Purchaser on the Transfer Date in the Deeds Office as a</p>	<p>9.5.2 The Purchaser undertakes to immediately, upon request, sign all documents that may be required by the Attorneys for the purposes of giving effect to this 9.5.</p> <p>10 ACKNOWLEDGEMENTS BY THE PURCHASER</p> <p>10.1 The Purchaser hereby acknowledges and agrees that –</p> <p>10.1.1 the Purchaser has read the documents set out hereunder, copies of which are available to the Purchaser upon request, and hereby accepts and agrees to be bound by the terms and conditions of the following documents the –</p> <p>10.1.1.1 Articles of Association;</p> <p>10.1.1.2 Environmental Management Plan; and</p> <p>10.1.1.3 Conduct Rules;</p> <p>10.1.2 the Purchaser has read the documents set out hereunder, which are attached to this Agreement marked as Appendices 1, 3, 4, 5 and 6 and hereby agrees to be bound by the terms and conditions of the following -</p> <p>10.1.2.1 the Architectural Design Manual;</p> <p>10.1.2.2 the Record of Decision;</p> <p>10.1.2.3 the Site Development Plan;</p> <p>10.1.2.4 the Conditions of Subdivision;</p> <p>10.1.2.5 the Servitude;</p>	<p>praedial servitude will apply to successive owners of the Portion in the title deeds of the Portion.</p>
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10.1.3	<p>notwithstanding anything to the contrary contained herein, the Purchaser shall draw the attention of each prospective purchaser of the Portion and the rights under the Servitude or any part thereof, the Builder, any sub-contractors and their employees and/or to the Purchaser's successors-in-title, heirs, executors, administrators and assigns to the Portion or any part thereof (collectively or individually referred to as the "Successors-in-Title") to the provisions of this Agreement and the documents referred to in this 10.1 and shall procure that each of the Successors-in-Title consent in writing to assume all of the rights and obligations of the Purchaser set out herein and in the documents referred to in 10.1 (where applicable). In this regard the provisions of 9.1.2.3 apply <i>mutatis mutandis</i>;</p>		<p>Purchaser's peaceful occupation of the Portion and the Storage Portion being disturbed. The Seller disclaims all responsibility and liability for all or any damages suffered by the Purchaser (including consequential damages) whether in delict or otherwise as a result of the building operations as aforesaid, and the Purchaser shall not have any claim against the Seller in this regard.</p>
		10.1.8	<p>Connection Fees</p>
		10.1.8.1	<p>The Purchaser acknowledges that the Seller and/or the Seller's managing agent will have made certain payments to the Local Authority and/or suppliers of essential services for the supply of electrical and other services to the Portion and the Storage Portion.</p>
10.1.4	<p>the Purchaser's tax affairs are in order and that the Purchaser has no reason to believe that a VAT clearance certificate necessary in order to effect Transfer will not be issued by reason of the fact that the Purchaser has not complied with the Purchaser's tax obligations;</p>	10.1.8.2	<p>The Purchaser shall be liable to pay the Purchaser's estimated portion of the connection and service fees referred to in the Transaction Schedule to the Seller by no later than 30 (thirty) days prior to the Transfer Date.</p>
10.1.5	<p>the General Plan or Diagram, as the case may be, drafted in accordance with the Site Development Plan has been approved by the Surveyor General in terms of Section 26 of the Lane Use Planning Ordinance No 15 of 1986 (Cape) as amended;</p>	10.1.8.3	<p>The Purchaser is not entitled to any refund of the connection fees from either the Seller, the Residents Association or the Seller's managing agent.</p>
10.1.6	<p>the Seller is at present not the registered owner of the Property.</p>	10.1.8.4	<p>Should the estimated portion of the connection and service fees not be sufficient to cover the amounts payable by the Purchaser to the Local Authority, the Seller shall be entitled to recover any additional amounts from the Purchaser to cover the Purchaser's actual liability of the</p>
10.1.7	<p>Building Operations</p> <p>The Purchaser acknowledges that building operations will take place upon the Property and on the Storage Portions which may, during such building operations result in the</p>		

connection and service fees.

in this Agreement, save for those changes occasioned by the context.

10.1.9 **Exclusion of Erven 4772 and 4775 Sedgefield Township**

The Purchaser acknowledges and agrees that whilst Erven 4772 and 4775 Sedgefield Township are indicated on the Site Development Plan, such erven will be excised from the Development and will constitute separate erven which will not form part of the Development and the owners of which will not become members of the Residents Association and will not be liable to contribute to the levy fund of the Residents Association.

11 THE RESERVED PORTIONS

11.1 Ownership in the Reserved Portions shall remain vested in the Seller and such Reserved Portions will not be transferred simultaneously to purchasers thereof with the Portion and/or any other of the Residential Portions.

11.2 The Seller reserves unto itself the right to -

11.2.1 erect and complete from time to time for its personal account further buildings on the Reserved Portions;

11.2.2 alienate any or all of the Reserved Portions whether improved by the erection of a further building or buildings or otherwise.

11.3 In the exercise of the Seller's rights as set out in 11.2, the Seller is not subject to any time constraints and is entitled to exercise such rights at such time and in such manner as the Seller deems fit.

11.4 In the event of the Seller alienating any or all of the Reserved Portions whether improved or otherwise, such Reserved Portion shall only be alienated subject to the terms and conditions contained

12 DISPUTE RESOLUTION

12.1 Arbitration

12.1.1 The Parties agree that the terms of this Agreement shall be performed in the spirit of mutual co-operation, trust and confidence. The Parties further agree to use their reasonable endeavours to resolve, through mutual consultation, without involving any third party or parties, any dispute which may arise under, out of, or in connection with or in relation to this Agreement. If following such mutual consultation, the dispute still remains outstanding, the matter shall be referred to the representatives of the Parties as may be elected by them, who shall negotiate for a period of up to 7 (seven) Business Days from the date of such referral, in an attempt to resolve such dispute. If following the expiry of such 7 (seven) Business Day period, the dispute is still unresolved, then, save where otherwise provided in this Agreement, the matter shall be referred to arbitration in accordance with the remaining provisions of this 12.1.

12.1.2 This 12.1 is a separate, divisible agreement from the rest of this Agreement and shall –

12.1.2.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this 12.1. The Parties intend that any such issue shall be subject to

	arbitration in terms of this 12.1; and	12.1.4	The Parties shall agree on the arbitrator. If agreement is not reached within 21 (twenty one) Business Days after any Party in writing calls for agreement, the arbitrator shall be –
12.1.2.2	remain in effect even if the Agreement terminates or is cancelled.		
12.1.3	Save to the extent to the contrary provided for in this Agreement, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement including, without limitation, any dispute concerning –	12.1.4.1	if the arbitration relates primarily to a financial matter, a practising chartered accountant of at least 20 (twenty) years' standing nominated at the request of any Party by the President for the time being of the South African Institute of Chartered Accountants; or
12.1.3.1	the existence of this Agreement apart from this 12.1;		
12.1.3.2	the interpretation and effect of this Agreement;	12.1.4.2	if the arbitration relates to any other matter, an attorney or advocate of at least 20 (twenty) years' standing on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"), or such other institution of similar standing as the Parties may agree, nominated at the request of any Party by the Registrar of AFSA, or such other similar institution of standing as the Parties may agree, for the time being,
12.1.3.3	the Parties' respective rights or obligations under this Agreement;		
12.1.3.4	the rectification of this Agreement;		
12.1.3.5	the breach, termination or cancellation of this Agreement or any matter arising out of such breach, termination or cancellation; and/or		
12.1.3.6	damages in contract, in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement, apart from this 12.1, is valid and enforceable,		provided that if the Parties are unable to agree on whether the arbitration relates to a financial or other matter, such matter shall be deemed to be a matter provided for in 12.1.4.2.
	shall be decided by arbitration as set out in this 12.1.	12.1.5	The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Parties who may, within 21 (twenty one) Business Days, submit written comments on the request to the addressor of the request.

- 12.1.6 The arbitration shall be held in **Sandton** and the Parties shall endeavour to ensure that it is completed within 120 (one hundred and twenty) Business Days after notice requiring the claim to be referred to arbitration is given.
- 12.1.7 The proceedings in the arbitration shall as far as practicable take place in private and be kept confidential.
- 12.1.8 The arbitration shall be governed by the Arbitration Act, No. 42 of 1965, as amended, or any replacement enactment and shall take place in accordance with the Commercial Arbitration Rules of AFSA, or such other rules as the Parties may agree.
- 12.1.9 An order or award that may be made by the arbitrator shall be carried into effect and shall be final and binding upon the Parties and may be made an order of court of competent jurisdiction.
- 12.1.10 This 12.1 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 12.1.11 Notice of a dispute or pending arbitration proceedings shall not entitle any Party to suspend compliance with any of its obligations in terms of this Agreement or any agreement contemplated in this Agreement.
- 12.2 **Expert Determination**
- 12.2.1 Save as specifically provided to the contrary elsewhere in this Agreement, if –
- 12.2.1.1 any forecast or calculation is required to be made by an independent expert for the purposes of determining an amount payable by one Party to another Party hereunder; or
- 12.2.1.2 any dispute arises between the Parties which calls for the appointment of an independent expert for an expert determination as opposed to such dispute being referred for arbitration in terms of 12.1,
- then the identity of the independent expert shall be decided by agreement between the Parties, failing agreement between the Parties, by the chairman for the time being of AFSA (the "**Independent Expert**").
- 12.2.2 Each forecast or calculation to be made by the Independent Expert shall be made in accordance with prevailing best industry practice.
- 12.2.3 In making a forecast or a calculation or in determining a dispute the following provisions shall apply –
- 12.2.3.1 the Independent Expert shall act as an expert and not as an arbitrator, with the view that the matter for determination be dealt with as expeditiously as possible;
- 12.2.3.2 each Party shall be entitled to make representations to the Independent Expert in such manner and form as the Independent Expert shall determine in his sole discretion;
- 12.2.3.3 if this Agreement is found to be lacking in any material respect in relation to the matter concerned, the Independent Expert shall be entitled to interpret and give effect to what

	he perceives to be the intention of the Parties and to make the determination accordingly;		compromise or defer payments of debts owing by the Purchaser to his creditors;
12.2.3.4	the Independent Expert shall be entitled to obtain further advice in relation to the matter concerned; and	13.1.4	the Purchaser's estate is sequestrated or liquidated (whether provisionally or finally) or placed under judicial management;
12.2.3.5	the Independent Expert shall furnish written reasons supporting his forecast, calculation determination, order or award.	13.1.5	the Purchaser precludes or prevents the performance by the Seller of any of its obligations in terms of this Agreement; or
12.2.4	The costs of the Independent Expert in making his determination of the dispute in terms of this 12.2.4 shall be borne equally between the Seller, for the one part and the Purchaser for the other, unless the Independent Expert determines otherwise.	13.1.6	any judgment is entered against the Purchaser and the Purchaser fails, within 14 (fourteen) days thereafter, either to satisfy the judgment or take effective steps to set it aside,
12.2.5	A determination, order or award, including any determination as to the payment of costs made by the Independent Expert, shall be carried into effect by the Parties and shall be final and binding upon the Parties and may be made an order of court of competent jurisdiction.		then and in any one or more of the said events the Seller will, after the expiry of 7 (seven) days from receipt of written notice by the Seller calling upon the Purchaser to effect payment of such amount or remedy such breach, or rectify such position, be entitled to the remedies stipulated in 13.2.
		13.2	If the Purchaser commits a breach under 13.1 and fails to remedy or rectify such breach in the period referred to in 13.1, then the Seller is entitled to -
13 BREACH		13.2.1	either -
13.1 If –		13.2.1.1	claim payment of the full amounts owing (if any), which amount shall immediately become due and payable;
13.1.1	the Purchaser fails to effect payment of the Portion Deposit, the Portion Price or any other money due to the Seller in terms of this Agreement;	13.2.1.2	claim payment of any damages which the Seller may suffer arising from such breach;
13.1.2	the Purchaser commits a material breach of any of the terms and conditions of this Agreement or any of the documents referred to in 10.1.1 and 10.1.2;	13.2.1.3	exercise any other rights which the Seller may have in terms of this Agreement or in law;
13.1.3	the Purchaser compromises, defers or attempts to	13.2.1.4	or alternatively, cancel the Agreement in which

event subject to the provisions of 5.2.2.3, the Seller shall be entitled to retain all monies paid by the Purchaser in terms of the Agreement and which monies shall then be deemed to be forfeited without prejudice to the Seller's rights under 13.3.

13.3 In the event of the Seller claiming damages from the Purchaser in terms of 13.2.1.2, the Seller is entitled, pending the determination of such damages to retain all amounts paid by the Purchaser to the Seller under this Agreement to be set off against the said damages upon the determination thereof.

13.4 The above remedies shall be without prejudice to and shall not preclude the exercise of any other remedies which the Seller may have in terms of this Agreement or at law or arising from any other source whatsoever. The in-operation or invalidity of all or any of the above remedies shall not prejudice or in any way reduce the effectiveness and enforceability of any other remaining remedies.

14 **AGENT'S COMMISSION**

14.1 The Agent is entitled to receive payment of the Agent's commission plus VAT in the amount agreed to between the Seller and the Agent (the "**Commission**").

14.2 Subject to 14.4, the Seller shall be responsible for the payment of the Commission.

14.3 The Commission shall be deemed to be earned and payable on the Transfer Date and shall be paid as soon as possible after the Transfer Date.

14.4 If this Agreement is cancelled for any reason, other than as a result of the Seller's breach, then the Purchaser is liable for the payment of the Commission, which Commission shall be paid by the Purchaser to the Agent on demand.

14.5 The Purchaser warrants that the Purchaser was not introduced to the Seller or to the Portion by any estate agent or other person, other than the Agent, the introduction of which could give rise to a claim for estate agent's commission or other payment against the Seller. The Purchaser indemnifies and holds the Seller harmless against any claim made by an estate agent or other person, other than the Agent, for estate agent's commission or other payment arising out of this Transaction.

14.6 The Agent, by its signature at the foot of this Agreement, hereby accepts all the benefits conferred upon it under this Agreement.

15 **NOTICES AND DOMICILIUM**

15.1 The Parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all the processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

15.2 For the purpose of this Agreement, the Parties' respective addresses shall be as set out in the Transaction Schedule or at such other address in the Republic of South Africa, not being a post office box or *poste restante*, of which the party concerned may notify the others in writing.

15.3 Any notice given in terms of this Agreement shall be in writing and shall be deemed to have been duly received by the addressee, unless the contrary is proved -

15.3.1 on the date of delivery, if delivered by hand to the addressee's chosen physical *domicilium citandi et executandi*; and

15.3.2 on the 1st (first) Business Day following the date of such delivery if delivered by recognised international courier service to the addressee's chosen physical *domicilium citandi et executandi*.

- 15.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another, shall be adequate written notice or communication to such Party.
- 16 **MISCELLANEOUS**
- 16.1 **Company or Close Corporation to be formed**
- 16.1.1 If the person who signs this Agreement for the Purchaser does so acting as a trustee or agent (for the purposes of this 16.1, the "Trustee") for a company or close corporation to be formed, then the provisions of this 16.1 shall apply.
- 16.1.2 Such company or close corporation shall be incorporated by not later than 15 (fifteen) days after the Signature Date.
- 16.1.3 Subject to 16.1.2, if a company is formed for the purpose of ratifying or adopting this Agreement, then the Seller shall not be bound by such ratification or adoption unless -
- 16.1.3.1 the company's memorandum on the date of the company's incorporation contains as one of its objects the ratification or adoption of this Agreement;
- 16.1.3.2 the company in fact ratifies or adopts this Agreement within 7 (seven) days after its incorporation; and
- 16.1.3.3 the Trustee delivers to the Seller within 7 (seven) days of the ratification by the company of this Agreement, a copy of the company's memorandum, articles of association and the company's resolution evidencing the
- 16.1.4 ratification or adoption, all duly certified as true copies by the managing director of the company.
- 16.1.4.1 If a close corporation is formed for the purpose of ratifying or adopting this Agreement, then the Seller shall not be bound by the ratification or adoption unless -
- 16.1.4.2 all the members of the corporation have given their written consent to such ratification or adoption within 7 (seven) days after incorporation of such close corporation; and
- 16.1.5 the Trustee delivers, within 7 (seven) days of the ratification by the corporation of this Agreement, to the Seller a copy of the close corporation's founding statement together with a copy of the written consent of all its members to the ratification or adoption of this Agreement, both duly certified as true copies by an authorised member of the corporation.
- 16.1.6 If neither the company nor the close corporation is incorporated, or once incorporated, fails to ratify this Agreement in the manner envisaged in 16.1.3 or 16.1.4, then the Trustee shall be personally bound by and liable for, all the obligations and entitled to all the rights, in terms of this Agreement.
- 16.1.6 Until such time as the company or close corporation becomes the Purchaser in terms hereof, the Seller shall be entitled to regard the Trustee as the Purchaser and shall be entitled to exercise all or any of the Seller's rights against the Trustee personally.

16.1.7	If the company or close corporation, is formed, incorporated or registered, obtains a certificate to commence business and ratifies and adopts this Agreement within the time periods referred to in 16.1.3 and 16.1.4, then the Trustee, by his signature hereto, binds himself in favour of the Seller as surety and co-principal debtor with the company or close corporation, as the case may be, under the renunciation of the benefits of excussion and division for the due and punctual performance by the company or close corporation, as the case may be, of all its obligations arising out of this Agreement or any cancellation thereof.	16.2.4	If there is any dispute as to the amount of the Prime Rate, the certificate furnished in writing by any manager of the Seller's principal bankers, whose appointment, designation and authority as such, it shall not be necessary to prove, shall be <i>prime facie</i> proof of the amount of the Prime Rate.
		16.3	<p>Warranty of Authority</p> <p>Each Party warrants to the other Party/ies that it has the power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.</p>
16.2	Payment and Interest	16.4	Implementation and Good Faith
16.2.1	All payments in terms of or arising out of this Agreement shall be made free of commission and all other deductions to the Party entitled thereto.	16.4.1	The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give, or conducive to the giving of, effect to the terms, conditions and import of this Agreement.
16.2.2	No Party shall have the right to defer, adjust or withhold any payment due to the other/s in terms of or arising out of this Agreement or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.	16.4.2	The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement. This implies, without limiting the generality of the foregoing, that they -
16.2.3	Save to the extent otherwise provided all amounts due by one Party to the other/s (including damages) in terms of or arising out of this Agreement shall, unless paid on due date, bear interest from the due date to date of payment. Such interest shall be -	16.4.2.1	will at all times during the term of this Agreement act reasonably, honestly and in good faith;
16.2.3.1	calculated at the Prime Rate; and	16.4.2.2	will perform their obligations arising from this Agreement diligently and with reasonable care; and
16.2.3.2	capitalised Monthly in arrear on the balance due.	16.4.2.3	make full disclosure to each other of any matter

	that may affect the execution of this Agreement.	16.9	Whole Agreement
16.5	Independent Advice Each of the Parties acknowledge that such Party has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that such Party has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each of the Parties acknowledge that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.		This Agreement constitutes the sole record between the Parties as to the subject-matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written between the Parties in respect of the subject matter hereof.
16.6	Further Assurances The Parties agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes and the implementation of this Agreement.	16.10	Variation No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.
16.7	Jurisdiction The Purchaser consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against the Purchaser, provided that the Seller shall be entitled to bring proceedings in the High Court of South Africa where such proceedings would, but for the foregoing consent, fall outside the jurisdiction of the Magistrate's Court.	16.11	Relaxation No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from, this Agreement or <i>estop</i> such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
16.8	Assignment		
16.8.1	The Purchaser shall not assign any of its rights or delegate any of its obligations under this Agreement without the express prior written consent of the Seller as provided for in 9.	16.12	VAT If VAT in respect of the Purchase Price is increased or decreased by the relevant authority then the Purchase Price shall be adjusted accordingly and any additional VAT shall be paid by the Purchaser, the intention being that the Seller shall receive the same net amount after payment of VAT, regardless of the rate at which it is applicable.
16.8.2	The Seller's rights under this Agreement are freely assignable and may be ceded without the consent of the Purchaser.		

16.13 **Counterparts**

This Agreement may be executed in any number of counterparts, which counterparts shall together constitute one document.

16.14 **Costs**

16.14.1 Each Party shall bear and pay its own costs of and incidental to the negotiation, drafting, preparation, execution and implementation this Agreement and the appendices to it.

16.14.2 All costs, including attorney and own client costs, incurred by a Party, arising out of the breach of any provisions of this Agreement by the other Party, shall be borne by the Party in breach.

Signed at..... on this the day of 200....

Duly Authorised For: **THE SELLER**
Name:
Designation:

Signed at..... on this the day of 200....

Duly Authorised For: **THE PURCHASER**
Name:
Designation:

CONSENT BY SPOUSE/SURETY/GUARANTOR OF PURCHASER¹

I, the undersigned, do hereby furnish my formal consent to the conclusion of this Agreement and guarantee and bind myself 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 of the conditions and obligations undertaken by the Purchaser to the Seller pursuant to this Agreement, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof I acknowledge myself to be fully acquainted.

Signed at..... on this the day of 200....

Duly Authorised For:
Name:
Designation:

¹ This portion is to be signed by the spouse/legal guardian/member/director/trustee in the event of the Purchaser being a person married in community of property, minor, close corporation/company/trust.

Signed at..... on this the day of 200....

For: **THE AGENT**, which by its signature hereto hereby accepts the benefits conferred upon it in terms of this Agreement.

Duly Authorised

Name:

Designation:

APPENDIX A

**RESOLUTION BY THE BOARD OF DIRECTORS OF SANDPIPER NATURE RESERVE
(PROPRIETARY) LIMITED**

APPENDIX A

EXTRACT OF A RESOLUTION OF THE BOARD OF DIRECTORS OF SANDPIPER NATURE RESERVE (PROPRIETARY) LIMITED (the "**Company**") PASSED AT
ON

RESOLVED :

- 1 THAT the Company enters into an agreement with the Purchaser substantially upon the terms and conditions of the agreement submitted to and approved by the board of directors of the company.

RESOLVED FURTHER :

- 2 THAT Mr Steffen Schneier or Mr Dennis Finch in his capacity as a director of the Company, be and is hereby authorised and empowered to -
 - 2.1 negotiate the final terms and conditions of the agreement referred to in the preceding resolution;
 - 2.2 sign the said agreement and all other deeds or documents which may be necessary for the implementation of the abovementioned agreement; and
 - 2.3 generally do and procure the doing of everything that may be necessary for the implementation of the abovementioned agreement,

and any agreement, deeds or documents signed by the said Mr Steffen Schneier or Mr Dennis Finch acting under authority of this and the preceding resolution, shall conclusively be deemed to be the agreement, deeds and documents authorised by this and the preceding resolution.

CERTIFIED A TRUE COPY

CHAIRMAN OF THE MEETING

APPENDIX 1

ARCHITECTURAL DESIGN MANUAL

APPENDIX 2

BUILDING CONTRACT

CONDITIONS OF SUBDIVISION

RECORD OF DECISION

APPENDIX 5

AGREEMENT OF SERVITUDE

APPENDIX 6

SITE DEVELOPMENT PLAN OF THE PROPERTY
