



**FANCOURT**  
— SOUTH AFRICA —

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## **RESIDENTIAL SALE AGREEMENT (RESALE)**

entered into between

**THE SELLER WHOSE DETAIL APPEAR IN THE INFORMATION SCHEDULE**

(the "**Seller**")

and

**THE PURCHASER WHOSE DETAILS APPEAR IN THE INFORMATION SCHEDULE**

(the "**Purchaser**")

# INFORMATION SCHEDULE

1.

## Seller's Details

Full Name

Identity No./ Date of Birth/Registration No.

Seller's Address (*domicilium citandi et executandi* address)

Telephone Nos.

Work:

Home:

Mobile:

E-mail

Marital Status

*Unmarried/married in COP/married out COP**Other (specify\_\_\_\_\_)**(\*complete whichever is applicable)*

If married in COP, full name and Identity No. of spouse

Authorised Signatory (if Seller a juristic person)

Full Names

Address

Telephone Nos.

Work:

Mobile:

	Seller's bank account details (or such other account as is nominated by the Seller in writing from time to time)		Account Name:  Bank:  Account Number:  Branch Code:  Reference:	
	VAT No.			
2.	<b>Purchaser's Details</b>			
	Full Name			
	Identity No./ Date of Birth/Registration No.			
	Purchaser's Physical Address ( <i>domicilium citandi et executandi</i> address)			
	Telephone Nos.		Work:	
			Home:	
			Mobile:	
	E-mail			
Marital Status	<i>Unmarried/married in COP/married out COP</i>  <i>Other (specify _____)</i>  <i>(*complete whichever is applicable)</i>			
	If married in COP, full name and identity No. of spouse			
	Full names			

	Authorised Signatory (if Purchaser a juristic person)	Address		
		Telephone Nos.	Work:	
			Mobile	
		Resolution	<i>*complete Annexure E (Authorising Resolution)</i>	
	Income Tax No.			
3.	<b>Purchase Price</b> (*excluding/including VAT) <i>*delete as applicable</i>		R	
	Deposit		R	
			Payable on or before: _____ 201____	
	Balance of Purchase Price due on Transfer		R	
	Guarantee Date for balance Purchase Price		_____ days after date of acceptance by the Seller / _____ days after Mortgage Loan approval ( <i>*complete whichever is applicable</i> )	
4.	<b>Property Description</b>			
	Street Address			
	Erf No.			
	Estimated Extent		_____ m <sup>2</sup> in extent	
	Estimated Monthly Rates and Taxes (excluding availability and consumption charges)		R	
	Estimated Monthly FMHA Levies		As set out in Annexure F	
	Property Type ( <i>tick as applicable</i> )	Vacant Land	Existing Dwelling	

5.	<b>Occupation</b>	
	Occupation Date	
	Occupational Rental	R_____ per month, <i>pro rata</i> from the Occupation Date until Transfer Date
6.	<b>Anticipated Transfer Date</b>	
7.	<b>Mortgage Loan</b>	
	Date for loan approval	
	Loan amount required	R_____
8.	<b>Agent's Details</b>	
	Agency Name	
	VAT No.	
	Contact Name	
	Mobile No.	
9.	<b>Commission</b>	_____% (VAT exclusive) of the Purchase Price, being R_____ (VAT exclusive)
10.	<b>Surety Details (where applicable)</b>	
	Full Name	
	Identity No./Date of Birth	
	Surety's Address ( <i>domicilium citandi et executandi</i> address)	
11.	<b>Seller's Conveyancers</b>	

	Firm's Name		
	Contact Person		
	Contact No:	Email:	
	Trust Bank Account Details	Account Name: Bank: Account Number: Branch Code: Reference: Erf number	
12.	<b>Reason for purchasing (*select as applicable)</b>		
	Primary Residence	Investment Residence	Other
13.	<b>Special Condition/s / Condition/s Precedent (and Fulfilment Date/s)</b>		
14.	<b>Offer Expiry Date and Time</b>	____/____/____17	____h____
15.	<b>List of Annexures forming part of this agreement</b>		
	Annexure A	Recordal of Additional Representations made i.t.o. the CPA (if applicable)	
	Annexure B	Architectural Guidelines	
	Annexure C	Rules	
	Annexure D	Fancourt Country Club Model and Membership Application Form	
	Annexure E	Purchaser's Authorising Resolution (if a juristic entity)	
	Annexure F	FMHA Levies	

## CONSUMER PROTECTION ACT NOTICE

### (Only applicable if the Seller is a supplier in terms of the Act)

- A. In complying with the Consumer Protection Act, terms of the agreement that purport to limit the Seller's risk or liability, constitute an assumption of risk or liability on the part of the Purchaser, obligate the Purchaser to indemnify the Seller or any other party, or purport to be an acknowledgment of fact by the Purchaser, have been printed **in bold** in order to ensure that the Purchaser is aware of the contents thereof.
- B. It is further recommended that:
- B.1 the Purchaser carefully reads the agreement (and its annexures), and completes **Annexure A** to record any representations made by the Seller or the Agent concerning material facts which the Purchaser relied on in deciding to purchase the Property and to conclude this agreement and that are not contained in this agreement; and
  - B.2 the Purchaser consults a suitably qualified person to assist the Purchaser in the interpretation and conclusion of this agreement; and
  - B.3 the Purchaser advises the Seller in writing of any information furnished to the Purchaser in a manner or form which the Purchaser deems not to be plain and understandable language.

**I HEREBY DECLARE THAT I HAVE READ AND UNDERSTAND THE IMPORTANT NOTICES SET OUT ABOVE**

**For THE PURCHASER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**For THE PURCHASER'S SPOUSE (if married in community of property)**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

## 1. DEFINITIONS

In this agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins (that is, cognate expressions) shall have corresponding meanings:

- 1.1. **"agreement"** means this written agreement, together with all annexures;
- 1.2. **"Agent"** means the Seller's estate agent, described more fully in item 8 of the Information Schedule;
- 1.3. **"Architectural Guidelines"** means the prevailing architectural design guidelines, rules and regulations, from time to time applicable to any construction within Fancourt and on the Property, a copy of current guidelines being attached as **Annexure B**, and which may be amended from time to time by the FMHA;
- 1.4. **"Business Day"** means a day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa;
- 1.5. **"Conditions Precedent"** means the condition(s) precedent set out in clause 3;
- 1.6. **"Developer"** means Plattner Golf Proprietary Limited (Registration No. 1994/002617/07) or its nominee(s) or assign(s) or successor(s)- in- title;
- 1.7. **"Fancourt"** means the Fancourt development situate at George;
- 1.8. **"Fancourt Country Club"** means the country club including social, sports, recreational, golf club facilities and amenities, situate at Fancourt;
- 1.9. **"Fancourt Family Membership"** means the membership of Fancourt Country Club entitling the member, the spouse and all dependent children to use the facilities and amenities of Fancourt Country Club;
- 1.10. **"FMHA"** means the Fancourt Master Home Owners Association NPC (Registration No. 1991/005224/08), a non-profit company, duly registered as such in accordance with the laws of South Africa;
- 1.11. **"Information Schedule"** means the information schedule appearing at the beginning of this agreement;
- 1.12. **"MOI"** means of the memorandum of incorporation of the FMHA, including any rules made thereunder, from time to time, a copy of the current MOI being available at the offices of the FMHA for the Purchaser to view;

- 1.13. **"Occupation Date"** means the anticipated occupation date specified in item 5 of the Information Schedule, read with and subject to clause 6.4;
- 1.14. **"Prime Rate"** means the prime rate of interest (nominal annual compounded monthly) charged by the Standard Bank of South Africa Limited on overdraft to first class corporate borrowers in the private sector on an unsecured basis from time to time, determined on the first day of each month and debited monthly in arrears. In the event of dispute between the parties as to such rate, a certificate by any manager of the said bank, whose appointment need not be proved, shall be final and binding on the parties;
- 1.15. **"Property"** means a property situate within Fancourt, being the subject matter of this Agreement, and described more fully in item 4 of the Information Schedule;
- 1.16. **"Purchase Price"** means the purchase price recorded in item 3 of the Information Schedule;
- 1.17. **"Purchaser"** the party/ies identified as such and described more fully in item 2 of the Information Schedule;
- 1.18. **"Rules"** means the house rules applicable to the Property, as amended from time to time, the current rules being attached to this agreement as **Annexure C**;
- 1.19. **"Seller"** means the party identified as such on the cover page and described more fully in item 1 of the Information Schedule
- 1.20. **"Seller's Conveyancers"** means the attorneys appointed by the Seller to attend to registration of Transfer into the name of the Purchaser, as described in item 11 of the Information Schedule;
- 1.21. **"Signature Date"** means the date of signature of this agreement by the last party signing this agreement in time; and
- 1.22. **"Transfer"** means registration of transfer of the Property into the name of the Purchaser in the Deeds Office;
- 1.23. **"Transfer Date"** means the date of registration of Transfer of the Property into the name of the Purchaser, which shall take place as soon as possible (i) after the Signature Date, (ii) after fulfilment of the Conditions Precedent (if applicable) and (iii) as close as possible to the anticipated transfer date recorded in item 6 of the Information Schedule;
- 1.24. **"VAT"** means value-added tax as levied from time to time in terms of the Value-Added Tax Act No. 89 of 1991.

## 2. **SALE**

The Seller hereby sells to the Purchaser, who hereby purchases, the Property and on the terms and conditions set out in this agreement.

### 3. CONDITIONS PRECEDENT

- 3.1. If the mortgage loan section in item 7 of the Information Schedule is completed, then:
  - 3.1.1. this agreement is subject to the condition precedent that the Purchaser is granted a mortgage loan, for the amount specified in item 7 of the Information Schedule, by a financial institution;
  - 3.1.2. the loan shall be approved by the later of the date specified in item 7 of the Information Schedule or such extended period as the Seller in its sole discretion may notify the Purchaser in writing. The loan shall be unconditional subject only to (i) such conditions as may be reasonably imposed by the mortgagee, (ii) such conditions as may be reasonably approved by the Seller, (iii) Transfer of the Property to the Purchaser and (iv) the registration of an appropriate mortgage bond over the Property;
  - 3.1.3. this condition precedent shall be deemed to have been fulfilled upon the written advice given by the lender to the Seller, or to the Agent or to the Purchaser, that it has made an offer of the loan to the Purchaser which offer has been accepted by the Purchaser. The Purchaser warrants that he has sufficient income to qualify for the loan amount specified in item 7 of the Information Schedule.
- 3.2. Read with clause 13.1.1, this agreement is further subject to the condition precedent that the Purchaser be accepted by the Developer as a member of the Fancourt Country Club prior to the Transfer Date. Whether or not he is accepted is entirely in the discretion of the Developer.
- 3.3. If item 13 of the Information Schedule contains further condition(s) precedent, same shall be fulfilled by the date/s specified in item 12 of the Information Schedule.
- 3.4. The parties shall use their respective best endeavours to procure the fulfilment of the condition(s) precedent for which they are responsible and undertake to sign all documentation and do all things as reasonably necessary for this purpose.
- 3.5. The condition(s) precedent may only be waived by both parties in writing at any time before expiry of the relevant stated dates.
- 3.6. Unless the condition(s) precedent are fulfilled or waived, as the case may be, by the stated dates or such later date/s as may be agreed between the parties in writing, this agreement shall be of no force and effect, the parties shall be restored, as near as possible, to the position in which they would have been had this agreement not been entered into and any deposit paid (with any interest accrued thereon), shall forthwith be repaid in full to the Purchaser.

#### 4. PURCHASE PRICE

- 4.1. The Purchaser shall pay the Purchase Price, without deduction or set-off, free of bank charges, as follows:
  - 4.1.1. a deposit in the amount recorded in item 3 of the Information Schedule payable by the date specified, to the Seller's Conveyancers, in trust, to be invested by them with a registered financial institution; and
  - 4.1.2. the balance of the Purchase Price in the amount recorded in item 3 of the Information Schedule on the Transfer Date.
- 4.2. The Seller's attorneys are instructed in accordance with Section 86(4) of the Legal Practice Act 28 of 2014 to invest such amount with a financial institution on the basis that:
  - 4.2.1. the amount is invested in an interest-bearing account;
  - 4.2.2. the interest-bearing account contains a reference to Section 86(4) of the Legal Practice Act 28 of 2014; and
  - 4.2.3. the interest which accrues on such investment is to be for the benefit of the Purchaser and will be paid to the Purchaser on registration of transfer of the Property into the name of the Purchaser and the purchase price to be paid to the Seller on date of registration subject to the provisions as contained in Section 86(4) of the Legal Practice Act 28 of 2014.
- 4.3. The Purchaser shall by no later than the date specified in item 3 of the Information Schedule deliver to the Seller's Conveyancers a guarantee by a registered financial institution, in a form reasonably acceptable to the Seller's Conveyancers, to make the payment of the balance of the Purchase Price on the Transfer Date against registration of Transfer.
- 4.4. The Purchaser will be required to comply with the Financial Intelligence Centre Act No. 38 of 2001 and consequently:
  - 4.4.1. acknowledges that the deposit payable by the Purchaser cannot be invested and accordingly, interest cannot accrue thereon, until such time as the said requirements have been met; and
  - 4.4.2. **hereby renounces any claim for interest, where the claim arises from the Seller's Conveyancers being unable to invest the deposit (or any other monies) as a result of the Purchaser not having properly complied with the said requirements.**
- 4.5. **The Purchaser shall not be entitled for whatever reason to withhold, set off or retain any amounts owing by the Purchaser to the Seller nor shall the Purchaser be entitled**

**to withhold or abate payment of any amount due to the Seller in terms of this agreement by reason of any breach of the Seller's obligations or for any other reason whatsoever.**

## 5. TRANSFER

- 5.1. Transfer of the Property shall be registered by the Seller's Conveyancers on or as soon as is reasonably possible after the anticipated Transfer Date specified in item 6 of the Information Schedule. **The Purchaser shall have no claim against the Seller whatsoever if Transfer is delayed for whatever reason, or if Transfer is not effected on the anticipated Transfer Date recorded in item 6 of the Information Schedule, and the Purchaser shall be obliged to take and shall accept Transfer when it is tendered.**
- 5.2. Transfer shall not be passed to the Purchaser until such time as the total Purchase Price and other amounts (including Transfer and/or bond costs) due by the Purchaser have been paid in full, and/or payment thereof has been secured to the satisfaction of the Seller's Conveyancers and the bond registration attorneys.
- 5.3. The Purchaser shall within 5 days of request by the Seller's Conveyancers:
  - 5.3.1. pay all costs of Transfer, costs of all necessary affidavits, bank charges and all other costs and disbursements incurred in order to comply with this agreement and all requirements of law relating to the Transfer of the Property together with VAT in respect of such costs;
  - 5.3.2. pay transfer duty and/or VAT, as applicable, calculated on the Purchase Price;
  - 5.3.3. pay an estimate of the assessment rates, taxes, FMHA levies and other proprietary charges, for which the Purchaser will be liable in respect of the period from the Transfer Date to the end of the current rating/financial year;
  - 5.3.4. sign all preliminary Transfer documents; and
  - 5.3.5. if applicable, do all things and sign all documents required to ensure that the Purchaser's mortgage bond documentation and all ancillary documentation is satisfactorily and timeously signed and completed.
- 5.4. The Purchaser is liable for all Transfer and bond registration costs.
- 5.5. The Purchaser and Seller irrevocably authorise any director/partner of the Seller's Conveyancers to sign any declaration required by the South African Revenue Services for the purposes of applying for a transfer duty receipt or exemption and/or claiming any refunds.
- 5.6. **If the Transfer Date is delayed for any reason attributable to or occasioned by the Purchaser, then the Purchaser shall pay to the Seller, monthly in advance, interest on the full Purchase Price at a rate of 2% above the Prime Rate for the period of the delay. The Seller's Conveyancer's decision as to whether or not there is a delay, and as to**

**whether or not such delay is attributable to or occasioned by the Purchaser, and the calculation of interest, shall be final and binding on the parties.**

## **6. POSSESSION, OCCUPATION & RISK**

- 6.1. Possession and vacant occupation of the Property shall be given by the Seller and taken by the Purchaser on the Occupation Date. Should the Purchaser take occupation of the Property prior to the Transfer Date:
  - 6.1.1. the Purchaser shall, from the Occupation Date, until the Transfer Date, pay to the Seller the occupational interest specified in item 5 of the Information Schedule monthly in advance, or a *pro rata* share for a portion of a month, whether or not the Purchaser has taken physical possession of the Property. Failure to pay the occupational interest shall be deemed to be a material breach of this agreement;
  - 6.1.2. no tenancy shall be created by the Purchaser taking occupation prior to the Transfer Date and the Purchaser's right of occupation shall terminate on cancellation of this agreement for whatever reason; and
  - 6.1.3. the Purchaser shall not be entitled to make any alterations or additions or undertake any building works or renovation to the Property prior to the Transfer Date without the Seller's and the FMHA's prior written consent. **If this agreement is terminated for whatever reason, the Seller shall not be liable to reimburse the Purchaser for any expenditure he incurs on the Property.**
- 6.2. The Purchaser shall not be given, nor shall the Seller be obliged to give, occupation until (i) all costs of Transfer and the deposit recorded in item 3 of the Information Schedule have been paid, (ii) the guarantee referred to in clause 4.3 has been delivered, (iii) all necessary bond and Transfer documents have been signed to the satisfaction of the Seller's Conveyancers, (iv) all bond and Transfer costs have been paid by the Purchaser and (v) the Purchaser is not in breach of any of the provisions of this agreement.
- 6.3. **The failure on the part of the Purchaser to take physical occupation (whether personally or by an agent) on the Occupation Date when tendered by the Seller shall not affect the date of occupation, which shall be the Occupation Date as defined.**
- 6.4. **Should the Seller, for whatever reason, not be able to give occupation of the Property to the Purchaser on the anticipated Occupation Date, the Purchaser shall accept occupation of the Property on a subsequent date upon which the Seller notifies the Purchaser that the Property is ready for occupation and such date will be deemed for all purposes to be the Occupation Date. It shall not be necessary for the Seller to give to the Purchaser any formal notice of a delayed Occupation Date and the Purchaser undertakes to accept a written notice given by the Seller for this purpose.**

6.5. **The Purchaser will have no claim whatsoever against the Seller, should the Seller for whatever reason fail to give occupation on the anticipated Occupation Date recorded in item 5 of the Information Schedule or as recorded in the clause 6.4 notice.**

6.6. From the Occupation Date until the Transfer Date, the Purchaser shall:

6.6.1. not sell, let, or in any other manner dispose of or part with the Property or any of its rights thereto without the Seller's prior written consent. In granting consent, which the Seller is not obliged to do, the Seller shall be entitled to impose such reasonable conditions as it deems necessary;

6.6.2. permit the Seller or its agent at all reasonable times to enter and inspect the Property, provided the Purchaser has been given prior notice; and

6.6.3. be responsible for all municipal consumption charges, including the costs of electricity and water consumed in the Property.

6.7. From the Occupation Date until the Transfer Date, and for all periods thereafter, the Purchaser shall:

6.7.1. maintain the Property in a good and sound condition;

6.7.2. not erect any building nor make any alterations or additions whatsoever to the Property and/or to any boundary walls and fences without the prior written consent of the Seller and the FMHA, which consent shall not be unreasonably withheld; and

6.7.3. not undertake any planting, landscaping or gardening activities on the Property which will, in the opinion of the FMHA detract from or adversely affect the harmonious nature and overall design of Fancourt.

6.8. If this agreement is cancelled or lapses prior to the Transfer Date, the Purchaser shall immediately vacate the Property.

## 7. **RISK**

On the Occupation Date, all risk and benefit in and to the Property shall pass from the Seller to the Purchaser and the Property shall thereafter remain solely at the risk and be for the profit and/or loss of the Purchaser, provided that the Purchaser is only liable for the payment of all levies, rates, taxes and municipal charges levied against the Property from the Transfer Date. Prepayments made by either party for any period subsequent to the Transfer Date shall be adjusted proportionately.

## 8. **SELLER'S WARRANTIES**

The Seller hereby warrants and undertakes to and in favour of the Purchaser, unless stipulated to the contrary in the particular warranty, as at the Signature Date and the Transfer Date, that:

- 8.1. the Property will be beneficially owned by the Seller;
- 8.2. the Property will, as at the Signature Date not be let or subject to occupation or to any right of occupation by any third party whatsoever, in terms of any agreement concluded with the Seller;
- 8.3. no agreements will have been entered into by the Seller whereby any restrictive conditions or servitudes or other real rights will attach to the Property or in terms of which any person will be entitled to obtain any real or other rights to the Property;
- 8.4. no person will have any right or option (including any right of first refusal) to purchase the Property or any part thereof in terms of any agreement concluded with the Seller;
- 8.5. no personal or other servitudes or rights will have been granted to any person in respect of the Property other than those disclosed or referred to in the current title deeds of the Property and in this agreement;
- 8.6. the Property will comply in every respect with all government, provincial and local authority requirements affecting it or relating to it and with the requirements in its title deeds;
- 8.7. the Seller will not have been called upon by any government, provincial, local or other competent authority to make any alterations, repairs or additions to the Property;
- 8.8. the Seller will not have received any notice that any part of the Property is required for road widening or other schemes nor will the Seller have received any other onerous notices from the local authorities;
- 8.9. the Seller will not be aware of any defect in the title to or the Seller's right of ownership in and to the Property;
- 8.10. the zoning of the Property and/or any portion of the Property will be such as to permit a single residential dwelling to be erected thereon;
- 8.11. all dwellings and improvements on the Property have been constructed in accordance with the Architectural Guidelines applicable at the time of construction and in accordance with validly approved and up-to-date plans, and comply fully with the Architectural Guidelines;
- 8.12. no notice will have been received by the Seller of the intention of any authority to expropriate the Property or any portion of the Property, and the Seller will not be aware of any intention to expropriate the Property or any portion of the Property by any such authority; and
- 8.13. save and except for any of those which may be set forth in the current and/or prior title deeds relating to the Property, the Seller will not be aware of any servitudes over the Property, save for the usual and normal servitudes in favour of local authorities and the FMHA.

9. **VOETSTOOTS**

- 9.1. The Property is sold *voetstoots*. The Seller gives no warranties, express or implied, as to patent or latent defects relating to the Property, save as expressly set out in clause 8.
- 9.2. The Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the Property and no warranties are given by the Seller in respect of the boundaries of the Property, nor is the Seller required to point out the boundaries, nor is the Seller liable for the cost of locating same.
- 9.3. This sale is subject to all such conditions, encumbrances, restrictions and servitudes as are mentioned and/or referred to in the title deeds of the Property and to all such other conditions and servitudes which may be applicable.
- 9.4. If the Property has been erroneously described in this agreement, the intention of the parties is to describe the Property as set out in the title deed of the Property.

10. **PURCHASER'S ACKNOWLEDGMENTS**

10.1. **The Purchaser acknowledges and agrees that:**

- 10.1.1. **he has satisfied himself as to the condition of the Property, acknowledges that he is aware that the Property is situate in an agricultural environment with several neighbouring livestock farms, an abattoir and a sewage plant, and the like, in the vicinity and he is aware that he may accordingly experience related odours from time to time;**
- 10.1.2. **in terms of applicable legislation, the Developer and the FMHA are obliged to remove all alien vegetation situate within Fancourt and that the removal of such vegetation may affect the Purchaser's privacy and views from the Property;**
- 10.1.3. **the proximity of the Property to the Fancourt Golf Course carries with it the possibility of damage to the Property and injury to the Purchaser, his guests, employees and other occupants of the Property as a result of wayward golf shots.**
- 10.1.4. **the view currently enjoyed from the Property may be affected by ongoing development within Fancourt, and within the vicinity of Fancourt, and/or the erection of any buildings and dwellings in the vicinity of the Property and/or Fancourt; and**

**he shall have no claim or right of any action whatsoever against the Seller, the Developer or the FMHA arising from any inconvenience, damage or injury suffered by**

him, any impact on or impairment of the view from the Property, or any derogation from the value thereof, resulting from or related to any of the foregoing.

**10.2. The Purchaser further:**

- 10.2.1. warrants that he is not currently (and will, at least until after Transfer not be) in default of any income or other tax law obligations to SARS which will serve to delay the obtaining of transfer duty receipt or exemption certificates from SARS or cause any financial institution granting any loan finance (if applicable) to the Purchaser, to withdraw the aforesaid finance offered;
- 10.2.2. **acknowledges and confirms that he has been provided sufficient opportunity to consider the terms of this agreement and that the agreement was concluded as a result of a process of negotiation between the parties;**
- 10.2.3. **acknowledges that all artistic, architectural, photographic and other visual presentation material used by the Seller or its agents in marketing and selling the Property have been prepared, distributed and shown as advertising material only, that the Seller shall not be bound thereby and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, that no representation is thereby made by the Seller, and that the parties shall be bound by the terms contained in this agreement only;**
- 10.2.4. **acknowledges that he is fully aware of possible future development by the Developer within Fancourt and that he shall not have any claim against the Seller or the Developer arising out of such future development nor shall he in any way be entitled to interfere with or hinder the future development of the Fancourt township;**
- 10.2.5. he shall:
  - 10.2.5.1. only be entitled to effect improvements and/or alterations to the Property in accordance with the Architectural Guidelines and in accordance with the plans and specification approved by the FMHA and the local authority;
  - 10.2.5.2. should he be purchasing vacant land, or a partially completed dwelling, be obliged to commence works and the construction of the dwelling on the Property within 1 year of the date on which the Seller took transfer of the Property and he shall be obliged to complete practical completion thereof by no later than 12 months from the date of commencement of the works;

**10.2.5.3. Should the Purchaser breach the provisions of this clause 10.2.5 he may be liable for fines (which he hereby undertakes to pay on demand) imposed by the FMHA.**

10.3. The Purchaser is aware that once he commences construction, he is required to continue with construction without interruption in terms of provisions of the MOI and the Rules, failing which he will be subject to the latter's sanctions and/or penalties and/or fines as imposed by them.

## **11. THE FMHA AND FANCOURT COUNTRY CLUB**

11.1. The Purchaser shall become a member of the FMHA on Transfer and shall be bound by the MOI, the Rules and the Architectural Guidelines from the Transfer Date. **The Purchaser warrants that he is familiar with and fully acquainted with the MOI, the Rules and the Architectural Guidelines and agrees to abide by the provisions thereof from the Transfer Date.**

11.2. The Purchaser hereby indemnifies the Seller against any claim by the FMHA in respect of levies for the period from the Transfer Date.

11.3. Should the Purchaser sell the Property the Purchaser will ensure that his purchaser is made fully aware of the existence of the FMHA and the fact that such successor purchaser will automatically become a member of the FMHA on transfer of the Property to him.

11.4. **No improvement of any nature may be effected to the Property without the prior written approval of the FMHA, on the basis set out in the MOI, and if applicable, the Rules, and in accordance with the Architectural Guidelines.**

11.5. It is recorded and agreed that:

11.5.1. the Purchaser, upon becoming the registered owner of the Property and a member of the Fancourt Country Club, shall have a right of access to the recreational/sporting facilities and amenities of the Fancourt Country Club, for so long as he remains the registered owner of the Property and provided that his membership of the Fancourt Country Club is current;

11.5.2. the private roads forming part of any erf which has been subdivided and which are adjacent to residential erven on which construction of dwellings is taking place, will be transferred to the FMHA;

11.5.3. the Purchase Price includes the price of the right of use of the facilities and amenities of the Fancourt Country Club, i.e. a Fancourt Family Membership. The expression "Family" means the registered owner, his/her spouse and their children under the age of 25 at the commencement of the relevant membership

year. This right of use is not transferable other than upon the sale of the Property and then only provided that:

- 11.5.3.1. the new purchaser has first been approved as a member of the Fancourt Country Club; and
- 11.5.3.2. the then prevailing administration fee is paid to the Developer;
- 11.5.4. the following services, among others, are supplied by the FMHA and the cost of such services is covered by the monthly levy payable to the FMHA in accordance with the MOI:
  - 11.5.4.1. maintenance of sidewalks, roads, verges and other common areas;
  - 11.5.4.2. security;
  - 11.5.4.3. refuse removal;
  - 11.5.4.4. water and electricity supplied to common areas;
  - 11.5.4.5. administration of the FMHA; and
  - 11.5.4.6. landscaping of common areas;
- 11.5.5. the following services can be arranged by the FMHA through third party suppliers at the expense of the Purchaser by agreement between the Purchaser and the FMHA:
  - 11.5.5.1. garden maintenance of the Property; and
  - 11.5.5.2. maintenance of the exterior of the any dwelling and all boundary walls and other structures.

## 12. **LEVIES**

- 12.1. In terms of the MOI, the FMHA is entitled to impose levies upon its members for the purpose of meeting the expenses of Fancourt and for the purposes set out in the MOI.
- 12.2. The Purchaser shall from the Transfer Date be liable for all levies raised by the FMHA in respect of the Property. Despite anything to the contrary in this agreement, any special levies levied by the FMHA after the Signature Date, shall be for the account of and payable by the Purchaser.
- 12.3. The estimated FMHA levies are set out in item 4 of the Information Schedule.
- 12.4. The levies are payable (*pro rata* in respect of any portion of a month) monthly in advance on the first day of each and every month.

### 13. SPECIAL CONDITIONS

#### 13.1. The Purchaser acknowledges and agrees that:

- 13.1.1. he will submit an application for membership to the Fancourt Country Club (attached to this agreement as **Annexure D**) simultaneously with his signing this agreement;
- 13.1.2. upon the Transfer Date, he will become a member of the FMHA and he is obliged to remain a member for so long as he remains the registered owner of the Property;
- 13.1.3. he may not sell the Property without the prior written consent of the FMHA, which will not be unreasonably delayed provided all amounts owing by the Purchaser to the FMHA have been paid in full, or are satisfactorily secured;
- 13.1.4. the membership referred to in clause 13.1.1 ("**FCC Membership**") will remain attached to the Property at all times and may not be sold, transferred, ceded or otherwise dealt with separately from the Property;
- 13.1.5. for so long as the Purchaser remains an owner of the Property the FCC Membership may not be resigned or made dormant;
- 13.1.6. he is aware that when he disposes of the Property, or portion thereof, or disposes of shares in a company, member's interest in a close corporation or beneficial interest in a trust which owns the Property, he is obliged to use a sale agreement substantially in the form of the Developer's standard resale agreement. If a form of agreement is used which does not contain all the terms and conditions which, in the opinion of the FMHA, are relevant, the FMHA shall be entitled to withhold its consent to the transfer the Property until such time as an appropriate addendum has been signed by the parties to the agreement of sale;
- 13.1.7. he is bound by and shall adhere to the prevailing Architectural Guidelines and shall ensure, if engaging an architect that the architect is aware of the Purchaser's obligation in this regard, and that the architect agrees to abide strictly to the Architectural Guidelines;
- 13.1.8. the current version of the Architectural Guidelines is attached as **Annexure B**, and insofar as these may be amended from time to time, his obligations in clause 13.1.1 apply to the Architectural Guidelines as amended from time to time;
- 13.1.9. any third party to whom the Purchaser may wish to sell the Property (or shares in a company, member's interest in a close corporation or beneficial interest in a trust which owns the Property) must first be accepted as a member of the FMHA and the Fancourt Country Club, and that the Developer and Seller cannot be held

liable in any way if that third party is not accepted as a member of the Fancourt Country Club; and

- 13.1.10. as a member of the Fancourt Country Club, he shall, with effect from the Transfer Date, be obliged to pay the annual dues, fees and charges for the use of the Fancourt Country Club's facilities and amenities as and when they fall due each year.

13.2. The Purchaser undertakes:

- 13.2.1. and is obliged to remain a member of the FMHA for so long as he remains the registered owner of the Property and is obliged to abide by the MOI and Rules; and
- 13.2.2. to ensure that the provisions of this clause 13 are contained in any subsequent agreement of sale of the Property, or in the event of the Property being owned by a company, close corporation or trust, in any agreement of sale in terms of which his shares, member's interest or beneficial interest are sold.

13.3. The Purchaser acknowledges that the following conditions are contained or may be inserted in the title deed of the Property, substantially in the form set out below, namely:

- 13.3.1. *the Property hereby transferred shall not be sold or alienated (which term shall not include "mortgaged") in any manner or transferred without the written consent of the FMHA, (which consent shall not be unreasonably withheld), of which the transferee and each of its successors in title shall be obliged to be a member for so long as he is the registered owner of the Property;*
- 13.3.2. *no improvements of any nature whatsoever shall be erected on the Property, nor shall any exterior alterations, renovations or extensions to any building/s or other structures erected or to be erected on the Property, be made without the prior written approval of the FMHA, which consent shall not be unreasonably withheld;*
- 13.3.3. *the owner of the Property shall further, upon 30 days' notice in writing prior to the commencement of any work, without compensation, be obliged to allow gas mains, electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewerage and drainage, including stormwater of any other erf or erven to be conveyed across the Property in such manner and in such position as the relevant local authority or the Developer or the FMHA may reasonably require from time to time and surface installations such as mini-substations, meter kiosks and service pillars to be erected in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Property at any reasonable time for the purpose of*

*constructing, altering, removing or inspecting any works connected with the above;*

13.3.4. *the owner of the Property shall, without compensation, be obliged to receive such material or permit such excavation on the Property as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to differences between the level of the street as finally constructed and the Property, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Developer and/or the FMHA and/or the relevant local authority;*

13.3.5. *the Property hereby transferred may not be subdivided;*

13.3.6. *the owner and its successors in title of the Property hereby transferred shall not in any way alienate (which term shall not include "mortgage") the Property unless they shall first, in writing, have offered it for sale to the Developer who, for a period of 14 days calculated from the date of receipt of the offer, shall have the right to purchase the Property upon the terms and conditions offered to it and shall have the further rights set out in the MOI.*

13.4. Notwithstanding any provision to the contrary in the MOI, if the Purchaser at any time decides to sell his Property, or shares, member's interest or beneficial interest, the Purchaser shall be obliged to appoint a FMHA approved agent with a sole mandate for a period of 90 days to sell the Property. Such appointment shall be upon the FMHA approved agent's usual terms and conditions and shall include a provision for payment of commission to the FMHA approved agent at the rate prescribed in the then current guideline of the Institute of Estate Agents (or its successors in office). If the Property or shares, member's interest or beneficial interest, is not sold within the aforesaid 90-day period or such extended period as may be agreed between the Purchaser and the FMHA in writing, the Purchaser shall be entitled to appoint another estate agent to sell the Property.

13.5. If the Purchaser then appoints another estate agent to sell the Property, shares, member's interest or beneficial interest, it shall be the sole responsibility of the Purchaser to instruct such agent fully in regard to the operation of Fancourt and the requirements of the FMHA. The FMHA and/or the Seller and/or the Developer and/or their agents shall not be under any obligation to furnish documentation and/or information to such other agents.

#### 14. **STATUTORY CERTIFICATES**

The Seller, at its cost, shall furnish the Purchaser with the following certificates on or before the Transfer Date:

- 14.1. an Electrical Compliance Certificate as contemplated in Article 3 of the Regulation 2920 promulgated in terms of the Machinery and Occupational Safety Act, Act 6 of 1983, in respect of any electrical installation;
- 14.2. Certificate of Conformity in respect of such installation as is required by Section 17(3) of Government Notice R734 of 15 July 2009, Government Gazette 32395 (pertaining to any gas installations), if applicable;
- 14.3. an entomologist's certificate certifying that the Property is free from infestation by wood-infesting beetles (which entomologist shall be approved by the Department of Entomology).

15. **FIXTURES**

The Purchase Price includes all fixtures and fittings of a permanent nature, which the Seller warrants are owned by the Seller.

16. **CONSUMER PROTECTION ACT**

**The parties expressly warrant that they have familiarised themselves with the provisions of the Consumer Protection Act No. 68 of 2008 and further undertake to comply with same as far as is applicable to this agreement.**

17. **STIPULATION FOR THE BENEFIT OF THE FMHA, THE AGENT AND THE DEVELOPER**

Any conditions in this agreement which are expressed as being for the benefit of the FMHA and/or the Agent and/or the Developer shall constitute a *stipulatio alteri* (contract in favour of a third party) in favour of the FMHA and/or the Agent and/or the Developer, as the case may be, which is capable of acceptance by them at any time.

18. **BREACH**

- 18.1. If either party breaches any provision of this agreement and remains in breach for 10 days after written notice to such party requiring that party to rectify that breach, or if either party repudiates this agreement ("**Defaulting Party**"), the other party ("**Aggrieved Party**") shall be entitled at the Aggrieved Party's election to:

- 18.1.1. sue for the immediate specific performance of any or all of the Defaulting Party's obligations under this agreement whether or not any such obligation is then due; or

- 18.1.2. (either as an alternative to a claim for specific performance or upon the abandonment of such a claim) cancel this agreement. Written notice of such cancellation shall be given by the Aggrieved Party to the Defaulting Party and the cancellation shall take effect on the giving of such notice.

- 18.2. In the event of the Seller cancelling this agreement in terms of clause 18.1:

- 18.2.1. all amounts paid by or on behalf of the Purchaser in terms of this agreement, including amounts paid to third parties, shall be forfeited to the Seller, unless the Seller elects to claim damages in lieu of such forfeiture, in which latter event:
  - 18.2.1.1. the Seller shall be entitled to hold such amounts pending determination of the amount of the damages by agreement, order of court, or otherwise;
  - 18.2.1.2. if the damages as determined are greater or less than the amounts held by the Seller, the difference shall be paid to the party entitled to the difference, by the other party;
- 18.2.2. the Purchaser shall forthwith vacate the Property and shall procure that the Property is vacated by any persons who occupy it through the Purchaser's title or by his permission, and the Property shall be redelivered in the same good order and condition as at the Occupation Date; and
- 18.2.3. the Purchaser shall not be entitled to claim any compensation in respect of any improvements and additions made to the Property.
- 18.3. The Defaulting Party agrees that, in the event of the Aggrieved Party instructing his attorneys and/or taking legal proceedings against the Defaulting Party pursuant to a default by the Defaulting Party, then the Defaulting Party shall pay all legal costs plus VAT incurred by the Aggrieved Party in connection therewith as between attorney and own client, including collection commission laid down at the tariff rate applicable.
- 18.4. **The Purchaser acknowledges and agrees that:**
  - 18.4.1. his failure to timeously take all steps and sign all documents that may be necessary to comply with all the requirements of the bank or financial institution, to finalise the registration of the mortgage bond and the payment of the proceeds of the mortgage loan; and/or**
  - 18.4.2. a withdrawal of the mortgage loan approval as contemplated in clause 3.1 as a result of an act or omission by the Purchaser; and/or**
  - 18.4.3. expiry of the guarantee referred to in clause 4.3 at any time prior to transfer,**

**shall constitute a breach by him of this agreement in which event the provisions of this clause 18 shall apply.**
- 18.5. The Seller's remedies in terms of this clause are without prejudice to any other remedies to which the Seller may be entitled in law.

## 19. DISPUTE RESOLUTION

- 19.1. Save as is otherwise provided in this agreement, in the event of a dispute arising out of or in connection with this agreement or the breach, termination or invalidity thereof, the parties shall use their best efforts to settle the dispute by mediation.
- 19.2. Upon written notice from any party to the other (the "**Dispute Notice**") the dispute shall be referred to a suitably qualified independent mediator, whose identity shall be agreed between the parties in writing, within 7 days of receipt of the Dispute Notice, and failing agreement as aforesaid, to a suitably qualified independent mediator appointed by the President for the time being of the Cape Law Society (or its successor body in the Western Cape). The mediator shall be an Africa Centre for Dispute Settlement accredited mediator.
- 19.3. The mediation shall be held at a venue in George. The parties shall agree on the mediation procedure and failing agreement within 14 days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then, the mediation shall take place in accordance with the United Nations Commission on International Trade Law Model Conciliation Rules in force at the time of the dispute.
- 19.4. If for any reason, including lack of co-operation by the parties, a dispute is not settled by mediation within 30 days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then the dispute shall be settled by arbitration in accordance with the following provisions:
  - 19.4.1. the arbitrator shall, if the dispute is agreed in writing by the parties to be:
    - 19.4.1.1. primarily an accounting matter, be an independent practising accountant of not less than 10 years' standing as such;
    - 19.4.1.2. primarily a legal matter, be an attorney of not less than 10 years' standing as such or a practising senior counsel;
    - 19.4.1.3. any other matter, be a suitably qualified independent person,

agreed upon in writing by the parties; provided that if the parties do not, within 14 days of the elapse of the 30-day period contemplated in clause 19.4, agree in writing as to the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Registrar of the Arbitration Foundation of Southern Africa upon request by any party to make such appointment;
  - 19.4.2. the arbitration shall be held at a venue in George and shall be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa;

19.4.3. immediately after the arbitrator has been appointed, any party shall be entitled to call upon the arbitrator to fix a date and place when and where to meet with the arbitrator to settle the manner in which the arbitration proceedings will be held;

19.4.4. subject to clause 19.1, any order or award that may be made by the arbitrator:

19.4.4.1. shall be final and binding;

19.4.4.2. shall be carried into effect; and

19.4.4.3. may be made an order of any competent court.

19.5. Nothing in this clause 19 shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction.

## 20. **CESSION**

20.1. The Purchaser shall not be entitled to cede any of his rights in terms of this agreement without the prior written consent of the Seller.

20.2. The Seller shall be entitled to cede its rights and delegate its obligations in terms of this agreement without the consent of the Purchaser.

## 21. **JOINT AND SEVERAL LIABILITY**

If this agreement is signed by more than one person as Purchaser, the obligations and liabilities of all the said signatories shall be joint and several.

## 22. **COMPANY TO BE FORMED**

22.1. If the Purchaser is a company to be formed, the signatory for the Purchaser shall be personally liable for all of the obligations of the Purchaser as if he had contracted in his personal capacity if:

22.1.1. the company in respect whereof he acts as trustee is not incorporated within 30 days of the Signature Date by such signatory; and

22.1.2. the company having been incorporated fails to adopt and ratify unconditionally this transaction without modification within 7 days of date of incorporation.

22.2. Upon timeous formation of the said company and due and timeous ratification and adoption of this transaction the said signatory shall become liable to the Seller as surety for and co-principal debtor with the company for its obligations as Purchaser in terms of this agreement under renunciation of the benefits of excussion and division.

## 23. NOMINATION CLAUSE

23.1. The Purchaser shall be entitled to nominate a company, close corporation or trust as the Purchaser under this agreement provided that within 14 days after the Signature Date the Purchaser:

23.1.1. nominates such company, close corporation or trust by notice in writing delivered to the Seller; and

23.1.2. the company, close corporation or trust concerned, duly accepts such nomination in writing and agrees in writing to be bound by the provisions of this agreement.

23.2. Until such time as the provisions of clause 23.1 has been complied with, the Purchaser shall possess all the rights and shall be liable for the fulfilment of all of the obligations of the Purchaser in terms of this agreement.

23.3. In the event of the Purchaser duly nominating any person, company, close corporation or trust as the Purchaser under this agreement, then the Purchaser (by its signature hereto) hereby:

23.3.1. binds himself as surety and co-principal debtor jointly and severally to the Seller for the due and proper fulfilment of all of the obligations of and for the punctual payment of all sums which are or may become due by such person, company, close corporation or trust in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof;

23.3.2. renounces the benefits of excussion, division and cession of action, the full meaning and effect whereof the Purchaser knows and understands; and

23.4. **Unless the nomination is made within 24 hours of the Signature Date, the Purchaser may be liable to the South African Revenue Services for double Transfer Duty calculated on the Purchase Price. Accordingly, the Purchaser shall be liable for any additional costs, including Transfer Duty, which may arise as a result of the nomination.**

## 24. NOTICES AND DOMICILE

24.1. For the purposes of the giving of notices and the serving of legal process in terms of this agreement, each of the parties chooses as their respective addresses, the addresses specified in the Information Schedule ("**Domicile**").

24.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.

24.3. Any party may by notice to any other party change the physical address chosen as his Domicile vis-à-vis that party to another physical address where postal delivery occurs in the Republic of South Africa or his postal address or e-mail address, provided that the change

shall become effective vis-à-vis that addressee on the 7<sup>th</sup> business day from the receipt of the notice by the addressee.

24.4. Any notice to a party:

24.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to him at an address chosen as his Domicile to which post is delivered shall be deemed to have been received on the 7<sup>th</sup> business day after posting (unless the contrary is proved);

24.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as his Domicile shall be deemed to have been received on the day of delivery; or

24.4.3. sent by e-mail to his chosen e-mail address shall be deemed to have been received on the date of despatch (unless the contrary is proved).

24.5. Despite the provisions of this clause 24, a written notice or communication actually received by a party shall be an adequate written notice or communication to notwithstanding that it was not sent to or delivered at his chosen Domicile.

25. **PURCHASER A JURISTIC PERSON**

Should the Purchaser be a company, close corporation or trust the authorised signatory described in item 2 of the Information Schedule warrants that he is duly authorised to enter into this agreement on behalf of the company, close corporation or trust.

26. **SURETY**

**The signatory described in clause 25 and the surety described in in item 9 of the Information Schedule, each binds themselves, jointly and severally, as surety and co-principal debtor in favour of the Seller for due and proper performance by the Purchaser of all of his obligations in terms of this agreement (including any amounts which may become owing arising out of any breach of this agreement) and renounce the benefits of excussion, division, cession of action and *de duobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the signatory and surety acknowledges he knows and understands.**

27. **WARRANTIES BY THE PARTIES**

The parties warrant in favour of each other that:

27.1. they the legal capacity and all necessary approvals required to empower and authorise them to enter into this agreement and that such approvals pre-date the date of signature of this agreement by both parties; and

- 27.2. they are not aware of the existence of any fact or circumstance that may impair their ability to comply with all of their obligations in terms of this agreement;

28. **AGENTS COMMISSION**

- 28.1. The Purchaser warrants that he was introduced to the Seller and to the Property by the Agent, and by no other person or agent, and indemnifies the Seller accordingly.
- 28.2. The Seller shall be liable for and shall pay commission to the Agent in the amount specified in item 9 of the Information Schedule ("**Commission**"). The Commission shall be deemed to have been earned upon the conclusion of a valid and binding agreement of sale between the parties and shall be payable by the Seller to the Agent on the Transfer Date against registration of Transfer of the Property to the Purchaser or on the date of cancellation of this agreement by mutual consent between the Seller and the Purchaser. The Seller hereby irrevocably authorises the Seller's Conveyancers to pay the Commission to the Agent from the Purchase Price on the Transfer Date.
- 28.3. If this agreement is cancelled by reason of the Purchaser's default, the Purchaser agrees to pay the Commission to the Agent, being the amount which would have been paid by the Seller to the Agent had this agreement not been cancelled. In this event, the Commission shall, as far as possible, be deducted from the deposit (plus any accrued interest) paid by the Purchaser. The Purchaser shall be liable for any shortfall in the difference between the deposit (plus any accrued interest) paid and the Commission due, to the extent applicable, and shall pay such difference on demand by the Seller's Conveyancers or the Agent.
- 28.4. If this agreement is cancelled by reason of the Seller's default, then the Seller agrees that he will nevertheless remain liable for the payment of the commission due to the Agent and shall immediately on demand pay such commission to the Agent.

29. **FMHA ADMINISTRATION FEE AND DEVELOPER FEE**

- 29.1. The Seller hereby acknowledges that pursuant to the provisions of the MOI, he is obliged, and hereby agrees to pay to the FMHA an amount equivalent to 1% of the Purchase Price (plus VAT), which amount shall be due and payable on the Transfer Date. The Seller hereby irrevocably instructs and authorises the Seller's Conveyancers to deduct said administration fee from the Purchase Price and pay same to the FMHA on the Transfer Date.
- 29.2. The Seller hereby agrees to pay to the Developer an administration fee R1100 (plus VAT). The Seller hereby irrevocably instructs and authorises the Seller's Conveyancers to deduct said administration fee from the Purchase Price and pay same to the Developer on the Transfer Date.
- 29.3. Insofar as any amounts are due by the Seller to the FMHA and/or to the Developer by the Seller in respect of FMHA levies, FCC Membership fees and levies, or for any other reason,

then the Seller hereby authorises the Conveyancer to pay same to the FMHA and/or the Developer, as the case may be, from the Purchase Price.

### 30. CO-OPERATION

Each of the parties hereby undertakes to:

- 30.1. sign and/or execute all such documents (and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney and transfer duty declarations);
- 30.2. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 30.3. pass, and to procure the passing of all such resolutions of directors or shareholders of any company, or members of any close corporation, or trustees of any trust, as the case may be,

to the extent that the same may lie within the power of such party and may be required to give effect to the import or intent of this agreement, and any contract concluded pursuant to the provisions of this agreement.

### 31. GENERAL PROVISIONS

#### 31.1. Continued Marketing

If this agreement is subject to the fulfilment of Conditions Precedent, then:

- 31.1.1. the Purchaser acknowledges that the Seller will be entitled to continue to market the Property and accept offers in respect of the Property;
- 31.1.2. should the Seller at any time prior to fulfilment (or waiver, as the case may be) of the Conditions Precedent receive another *bona fide* offer which it in its sole discretion wishes to accept then it shall notify the Purchaser thereof, in writing, of its intention to accept such offer (a copy of such offer shall simultaneously be shown to the Purchaser) and the Purchaser shall have 72 hours from receipt of such notification (excluding Saturdays, Sundays and public holidays) within which to waive, in writing, all of the Conditions Precedent and to furnish the Seller with the guarantee referred to clause 4.3, whereupon this agreement will become final and binding. Should the Purchaser fail to so waive and fail to furnish the guarantee then the Seller shall be entitled, but not obliged, in its sole discretion, to resile from this agreement, on written notice to the Purchaser, in which case the deposit will be repaid to the Purchaser together with interest accrued thereon.

#### 31.2. Governing Law & Jurisdiction

31.2.1. This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

31.2.2. The Purchaser hereby consents in terms of section 45 of the Magistrate's Court Act 32 of 1944, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction over his person under section 28 of that Act, notwithstanding that any action or proceeding arising out of this agreement would otherwise be beyond the jurisdiction of such court. The Seller shall, however, have the right to institute action in any other court of competent jurisdiction.

### 31.3. General

31.3.1. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.

31.3.2. This document contains the entire agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

31.3.3. No indulgence, leniency or extension of time which any party (the "**grantor**") may grant or show to any other party, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

31.3.4. To the extent permissible by law no party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

31.3.5. The Purchaser and the Seller warrant that all material terms of this agreement have adequately been explained to them prior to signature of this agreement.

### 31.4. Interpretation

In this agreement and all annexures and schedules, unless specifically provided otherwise:

31.4.1. any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning;

31.4.2. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include created entities (corporate or unincorporate) and the state and vice versa;

- 31.4.3. references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 31.4.4. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment;
- 31.4.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of this agreement;
- 31.4.6. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day;
- 31.4.7. if figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;
- 31.4.8. clause headings in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;
- 31.4.9. schedules or annexures to this agreement form part of this agreement and expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own conflicting definitions;
- 31.4.10. if any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in clause 1;
- 31.4.11. the expiration or termination of this agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 31.4.12. **the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;**
- 31.4.13. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;

- 31.4.14. the words "other" and "otherwise" shall not be construed eiusdem generis with any preceding words if a wider construction is possible;
- 31.4.15. any reference in this agreement to a party shall include a reference to that party's assigns expressly permitted under this agreement and, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be; and
- 31.4.16. references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.

## 32. **OFFER**

- 32.1. The Purchaser's signature to this agreement constitutes an offer and this offer is irrevocable and open for the period recorded in item 13 of the Information Schedule whereafter it expires. It is specifically recorded that the production of a counter offer by the Seller to whom this offer is made shall not be deemed to be a refusal of this offer and the offer shall accordingly remain irrevocable until expiry of the period stated above.
- 32.2. The Seller undertakes to send a copy of this agreement signed by him evidencing acceptance of the offer contained herein to the Agent as soon as reasonably possible after his signature, but the Seller's failure to do so timeously shall not invalidate this offer or the Seller's acceptance thereof.

## 33. **COUNTERPARTS**

This agreement may be signed in one or more counterparts all of which shall be considered one and the same agreement and shall become effective when a counterpart has been signed by each of the parties.

SIGNED by the parties on the following dates and at the following places respectively:

**For THE SELLER**

Signature: \_\_\_\_\_  
 who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**For THE PURCHASER**

Signature: \_\_\_\_\_  
 who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**For THE PURCHASER' SPOUSE (if married in community of property)**

Signature: \_\_\_\_\_  
 who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**For THE SURETY**

Signature: \_\_\_\_\_  
 who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

By its signature to this agreement, the Agent accepts the benefits given to it

**For THE AGENT**

Signature: \_\_\_\_\_  
 who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

## Annexure A – Recordal of Additional Representations made in terms of the Consumer Protection Act

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

For **THE SELLER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

For **THE PURCHASER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**For THE PURCHASER'S SPOUSE** (if married in community of property)

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place:

**Annexure B – Architectural Guidelines**

**Annexure C – Rules**

**Annexure D – Fancourt Country Club Membership Application Form**

## Annexure E – Purchaser's Resolution

### WRITTEN RESOLUTIONS BY THE

\*DIRECTORS OF \_\_\_\_\_ PROPRIETARY LIMITED (Registration No. \_\_\_\_\_) (the "Company")

\*MEMBERS OF \_\_\_\_\_ CC (Registration No. \_\_\_\_\_) (the "CC")

\* TRUSTEES FOR THE TIME BEING OF THE \_\_\_\_\_ TRUST (Master's Reference No. [INSERT]) (the "Trust")

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(\*delete whichever is not applicable)

### WHEREAS:

The \*Company/\*CC/\*Trust has entered, or is about to enter into, a written agreement titled "Residential Sale Agreement", a copy of which has been furnished to the \*Board of Directors/\*Members/\*Trustees in terms of which, *inter alia*, the \*Company/\*CC/\*Trust wishes to purchase Erf \_\_\_\_\_, situate at Fancourt, George, South Africa (the "**Property**"), owned by Plattner Golf Proprietary Limited (Registration No.1994/002617/07) (the "**Seller**") for a purchase price of R \_\_\_\_\_ (the "**Purchase Price**") on the terms and conditions set out in the Agreement of Sale.

### RESOLVED THAT:

1. The \*Company/\*CC/\*Trust make an offer to purchase the Property from the Seller for the Purchase Price, on the terms and conditions contemplated in the Residential Sale Agreement, which terms and conditions be and are hereby approved.
2. The \*Company/\*CC/\*Trust be and is hereby authorised to enter into and conclude the Residential Sale Agreement and all related documents (each a "**related document**") which may be necessary for or incidental to the implementation of the Residential Sale Agreement, the terms and conditions of which shall be binding on the \*Company/\*CC/\*Trust.
3. \_\_\_\_\_ (insert name of \*Director/\*Member/\*Trustee) or any other \*Director/\*Member/\*Trustee of the \*Company/\*CC/\*Trust, acting jointly or alone, be and is hereby authorised to:
  - 3.1 agree to the final terms of, sign and enter into the Residential Sale Agreement and the related documents, as well as negotiate and agree to any amendment, variation, novation or restatement thereof; and

3.2 generally, do all things, sign all documents, perform all acts, take all actions and do all things on behalf of the \*Company/\*CC/\*Trust which may be required in order to give effect to and implement the resolution set out above,

and all actions already taken in this regard are hereby ratified and approved.

\*Director/\*Member/\*

\*Trustee signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\*Director/\*Member/\*

\*Trustee signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\*Director/\*Member/\*

\*Trustee signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

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

Date: \_\_\_\_\_

Place: \_\_\_\_\_

**Annexure F - FMHA Levies and applicable rates**