

CONDITIONS OF SALE

1 DEFINITIONS AND INTERPRETATION

For the purposes of the Agreement and the CONDITIONS OF SALE unless the context indicates to the contrary –

- 1.1 "ACT" means the Sectional Titles Act No. 95 of 1986 (as amended) and any regulations in force thereunder;
- 1.2 "AGREEMENT" means this Agreement to which these CONDITIONS OF SALE are **Annexure A**, and all other Annexures thereto;
- 1.3 "ASSOCIATION" means The Ridge, Zimbali Lakes Owners Association;
- 1.4 "CONDITIONS OF SALE" means these conditions of sale;
- 1.5 "CONVEYANCERS" means Tim du Toit & Company Incorporated;
- 1.6 "COMMON PROPERTY" shall mean all those portions of the SCHEMES including but not limited to any walls, foundations, roofing, lifts, stairwells, corridors, walkways, external spaces and gardens, common parking spaces, or any part thereof which do not form part of any UNIT and which have not been allocated for the exclusive use of any UNIT and are capable of, and intended for, the use, enjoyment, benefit and utility in common by all Owners of UNITS in the SCHEME;
- 1.7 "CPA" means the Consumer Protection Act No. 68 of 2008;
- 1.8 "COVERING SCHEDULE" means the COVERING SCHEDULE on page 2 of the AGREEMENT, recording the details of the parties, the description of the PROPERTY, the purchase price thereof and ancillary information;
- 1.9 "DATE OF TRANSFER" means the date of registration of the transfer of the PROPERTY to the PURCHASER in the Deeds Registry;
- 1.10 "DATE OF POSSESSION" means the DATE OF TRANSFER;
- 1.11 "DATE OF SIGNATURE" means the DATE OF SIGNATURE hereof by the last signing of the SELLER or the PURCHASER;
- 1.12 "DEVELOPER" means the SELLER;
- 1.13 "PURCHASER" means the purchaser in terms of this AGREEMENT;
- 1.14 "JURISTIC PERSON" means a partnership, association, trust, body corporate, company, close corporation or other legal or juristic person;
- 1.15 "NHBRC" means the National Home Builders' Registration Council;
- 1.16 "PROPERTY" means the PROPERTY purchased by the PURCHASER as set out in paragraph 2 of the COVERING SCHEDULE;
- 1.17 "PUD SITE" means a Planned Unit Development SUB-DIVISION IN THE RIDGE;
- 1.18 "RESORT" means the properties over which the ZLR has jurisdiction;
- 1.19 "RESORT GUIDES" means The Architectural Guidelines, the Landscaping Guide and the Sustainability Guidelines of the RESORT;
- 1.20 "RULES" means the Governing Rules as defined in the ZLR CONSTITUTION or the Conduct Rules, if any, of the ASSOCIATION;
- 1.21 "SCHEME" means any sectional title SCHEME to be erected on any PUD SITE IN THE RIDGE, comprising all buildings to be constructed on such PUD SITE;
- 1.22 "SR SITE" means a single residential SUB-DIVISION IN THE RIDGE;
- 1.23 "SUB-DIVISION" means any portion of freehold property IN THE RIDGE, capable of separate, individual, legal ownership.;
- 1.24 "SUB-DIVISION PLAN" means the proposed plan of sub-division which is **Annexure "B"** to the CONDITIONS OF SALE consisting of a location plan and situation of a SR SITE or PUD SITE IN THE RIDGE;
- 1.25 "SECTION" means a proposed SECTION in a SCHEME to be developed on a PUD SITE, as defined in the ACT;
- 1.26 "UNIT" means a UNIT to be established in terms of the ACT, and comprising the SECTION and an undivided share in the COMMON PROPERTY in the SCHEME apportioned to the SECTION in accordance with the participation quota to be specified in a schedule to be endorsed on the sectional plan;
- 1.27 "THE RIDGE" means the node within the RESORT managed by the ASSOCIATION, comprised of SR SITES and PUD SITES, on which will be developed SCHEMES and residential dwellings;
- 1.28 "RIDGE CONSTITUTION" means the Constitution of the ASSOCIATION;
- 1.29 "ZLR" means Zimbali Lakes Resort Management Association;
- 1.30 "ZLR CONSTITUTION" means the Constitution of the ZLR;
- 1.31 "ZLSC" means the Zimbali Lakes Sports Club;
- 1.32 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.33 words or expressions defined in the ACT shall have the same meanings in this AGREEMENT unless this AGREEMENT specifies to the contrary;
- 1.34 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 1.35 if the PURCHASER consists of more than one person, such persons shall be jointly and severally liable in solidum for all their obligations in terms of this AGREEMENT;
- 1.36 no indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this AGREEMENT shall prejudice the SELLER'S rights under this AGREEMENT in any manner whatsoever, or be regarded as a waiver of the SELLER'S rights in terms of this AGREEMENT, or be construed to act as an estoppel against the SELLER to otherwise strictly enforce compliance of the PURCHASER'S obligations in terms of this AGREEMENT;
- 1.37 if any provision of this AGREEMENT is unenforceable for any reason whatever, such provision shall be deemed to be separate and severable from this AGREEMENT, without in any way affecting the validity of the remaining provisions of this AGREEMENT;
- 1.38 no indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this AGREEMENT shall prejudice the SELLER'S rights under this AGREEMENT in any manner whatsoever, or be regarded as a waiver of the SELLER'S rights in terms of this AGREEMENT, or be construed to act as an estoppel against the SELLER to otherwise strictly enforce compliance with the PURCHASER'S obligations in terms of this AGREEMENT;
- 1.39 in interpreting this AGREEMENT, no provision shall be construed in a limiting fashion or in accordance with the *Eiusdem Generis* Rule (i.e. a specific provision of this AGREEMENT on any particular issue, shall not be deemed in any way to detract from any general provision in respect to the same issue);
- 1.40 the rule of construction that this AGREEMENT shall be interpreted against the Party responsible for the drafting of thereof, shall not apply;
- 1.41 the provisions of this AGREEMENT, shall be read in conjunction with the provisions of the ACT, and insofar as the provisions of this AGREEMENT are inconsistent with the provisions of the ACT, the provisions of the ACT shall prevail;
- 1.42 reference to a natural person shall include a JURISTIC PERSON and vice versa;
- 1.43 any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;
- 1.44 where a number of days are prescribed, they shall consist of all days (i.e. including Saturday, Sunday and Public Holidays) and shall exclude the first day and include the last day;
- 1.45 where an expression has been defined and such definition contains a provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in the body of this AGREEMENT;
- 1.46 if a number is referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 1.47 this AGREEMENT shall be governed by and construed according to the Laws of the Republic of South Africa;
- 1.48 the expiration or termination of this AGREEMENT shall not affect those provisions of this AGREEMENT which expressly provide that they will operate after any such expiration or termination or, which out of necessity must continue to have effect after such expiration, notwithstanding the fact that the paragraphs do not expressly provide this;
- 1.49 to the extent that the AGREEMENT is signed on a date which results in the use of any tense being inappropriate, the AGREEMENT shall be read in the appropriate tense;
- 1.50 a fully executed scanned and emailed copy of this AGREEMENT shall be accepted as an original and this AGREEMENT may be signed in counterparts and will be effective as such, each of which will be deemed an original and all of which together shall constitute one and the same AGREEMENT as at the DATE OF SIGNATURE of the party last signing as one of the counterparts;
- 1.51 this AGREEMENT shall be binding on and enforceable by the administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectually as if they had signed this AGREEMENT in the first instance and reference to any party shall be deemed to include such party's administrators, trustees, successors in title, successors in office, assigns or liquidators, as the case may be;
- 1.52 this AGREEMENT incorporates the annexures (if any), which annexures shall have the same force and effect as the provisions set out in the body of this AGREEMENT. The various documents forming part of this AGREEMENT are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the AGREEMENT will prevail.
- 1.53 the provisions of this AGREEMENT shall be read in conjunction with the provisions of the CPA and insofar as the provisions of the AGREEMENT are inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail.

2 LOAN FROM FINANCIAL INSTITUTION

- 2.1 This AGREEMENT is subject to and conditional upon the PURCHASER obtaining a formal loan quotation from a South African commercial bank for the amount stated in 3.4 of the COVERING SCHEDULE and the SELLER receiving a copy of the written approval of such loan by the aforesaid commercial bank, both by no later than 7 (seven) days of receipt of written notice therefore from the SELLER, provided the SELLER shall not give any such notice prior to 30 (thirty) days following the fulfilment of the condition precedent in 9 of the AGREEMENT. Should the aforesaid loan not be granted within such period or should the SELLER not receive a copy of the written approval by the aforesaid commercial bank of such loan by the date within such period, then and in that event, this AGREEMENT shall lapse and be of no further force and effect between the parties. Should the loan be approved for an amount lower than that reflected in 3.4 of the COVERING SCHEDULE, the PURCHASER shall have the option, to be exercised within 7(seven) days following the partial approval of the loan, either to pay to the CONVEYANCERS the difference between the amount actually approved and the loan amount applied for, as provided for in clause 3.5 of the AGREEMENT OF SALE, or to allow this AGREEMENT to lapse. In the event of the AGREEMENT lapsing as contemplated above, the SELLER shall forthwith repay or procure the repayment of all amounts paid by the PURCHASER in respect of the purchase consideration of the PROPERTY. It is recorded that this clause has been inserted for the benefit of both the SELLER and the PURCHASER.
- 2.2 The PURCHASER shall make application to a South African commercial bank for the aforesaid loan as soon as possible after the DATE OF SIGNATURE, and undertakes, in good faith, to do whatever else may be reasonably required in order to ensure the aforesaid loan is granted timeously. The PURCHASER warrants that he qualifies financially for the grant of the loan.

- 2.3 Should the PURCHASER require a loan to fund the payment of the purchase price, or a portion thereof, as contemplated in Clause 2.1 above, the PURCHASER shall be obliged to make application through a bond originator appointed by the SELLER. It is recorded however that the PURCHASER shall not be limited to the bond originator in making such application for the loan and may make other applications if it so requires. The PURCHASER shall not be obliged to accept any loan granted through its application to the bond originator provided it had made its own application to another institution in terms of clause 2.1 and such application had been successful. It is recorded that either the SELLER or the SELLER'S agent may be paid an introductory commission in respect of any loan arranged by such bond originator.
- 3 DEVELOPMENT OF PROPERTY**
- 3.1 As soon as reasonably possible after the DATE OF TRANSFER, but no later than 60 (sixty months) thereafter, the PURCHASER shall commence construction of a residential dwelling on the PROPERTY.
- 3.2 The PURCHASER shall be obliged to complete such construction and development of the residential dwelling within 18 (eighteen) months following the date upon which construction commenced.
- 3.3 In the event that the PURCHASER fails to commence construction within the period provided for in 3.1 above or to complete construction within the period provided for in 3.2 above, as the case may be, the SELLER shall be entitled to-
- 3.3.1 repurchase the PROPERTY from the PURCHASER for an amount equal to the original purchase price paid by the PURCHASER in terms of this AGREEMENT OF SALE (inclusive of VAT); or
- 3.3.2 sell the PROPERTY to any third party for an amount not less than the original purchase price paid by the PURCHASER in terms of the said AGREEMENT OF SALE. The PURCHASER hereby irrevocably and *inrem suam* appoints the SELLER as his duly authorised agent for purposes of such sale.
- 3.4 The development of the residential dwelling will at all times be subject to the title conditions imposed in clause 5 of the AGREEMENT OF SALE, to ensure-
- 3.4.1 a consistent design language for THE RIDGE through the use of the prescribed RESORT GUIDES;
- 3.4.2 the protection of the interests of the SELLER, the ZLR, the ZLSC and the ASSOCIATION.
- 3.5 The PURCHASER acknowledges that on completion of the residential dwelling to be developed on the PROPERTY the RESORT may be incomplete and that he may suffer inconvenience from building operations and from noise and dust resulting therefrom and the PURCHASER shall have no claim whatsoever against the SELLER, the ASSOCIATION or the ZLR by reason of any such inconvenience.
- 4 SALE**
- 3.1 The SELLER hereby sells the PROPERTY to the PURCHASER who hereby purchases the PROPERTY on the terms and conditions contained herein.
- 5 VOETSTOOTS**
- 5.1 Save as provided in the AGREEMENT, the PURCHASER purchases the PROPERTY voetstoots and shall have no claim against the SELLER in respect of any defects whether latent or patent in the PROPERTY.
- 5.2 The PROPERTY is sold subject to all conditions and servitudes contained in the existing title deeds or on any general plan/s or plans of sub-division prepared or to be prepared in respect of THE RIDGE or otherwise recorded or to be recorded against the title deed of the PROPERTY at the Deeds Registry.
- 5.3 The PROPERTY is sold subject to the SELLER'S right to impose such further right of way, road, encroachment or engineering services servitudes as may in the SELLER'S discretion be required for the development of the RESORT or THE RIDGE, or any component thereof.
- 5.4 The PURCHASER acknowledges that he has satisfied himself as to the nature, locality and extent of the PROPERTY and the development opportunities that it represents, and the SELLER shall not be liable for any deficiency in the extent thereof nor shall it benefit by any surplus.
- 5.5 The PURCHASER shall have no claim of any nature against the SELLER for any loss, damage or injury which the PURCHASER may directly or indirectly suffer by reason of any latent or patent defects in the PROPERTY, or arising out of a Force Majeure Event or any other cause either wholly or partly beyond the SELLER'S control.
- 5.6 Notwithstanding anything contained herein or elsewhere, and in no way detracting from the generality to the aforesaid, it is specifically recorded that the SELLER shall not be liable for damages arising from defects or faults in any residential dwelling/s to be developed on the PROPERTY caused by surface water, storm water, rain water or geological disturbances.
- 6 LEVY AND OTHER CHARGES**
- 6.1 The PURCHASER shall, from the DATE OF TRANSFER, accept liability for payment of the monthly levy referred to in the RIDGE CONSTITUTION, to be calculated as provided for therein. The PURCHASER shall be obliged to effect payment of such levy by means of debit order.
- 6.2 For the purposes of 6.1, the expenses of administration shall include all disbursements of whatsoever nature which the SELLER shall in its discretion deem necessary and/or desirable for the preservation of THE RIDGE and its amenities, including without limitation all costs of maintenance of the communal property, the payment of rates and any other charges levied by any governmental or local authority, insurance of the buildings in THE RIDGE against fire and any other insurances which the SELLER may deem it prudent to effect and the payment of wages to any servant which the SELLER may reasonably decide to employ for the purpose of maintaining the communal property.
- 6.3 The PURCHASER shall pay a Lakes Stabilisation Levy (as defined in the ZLR CONSTITUTION) when the PROPERTY or a component thereof is transferred to the second owner/s thereof. Such second owner/s may be the purchasers of a completed residential dwelling on the PROPERTY developed by the PURCHASER, or such second owner/s may have acquired the PROPERTY in an undeveloped state from the first owner thereof.
- 6.4 The PURCHASER agrees that he shall have no right to reclaim from the ZLR or the ASSOCIATION or the SELLER any amount paid by way of a contribution, monthly levy or special levy, save as provided herein.
- 7 TRANSFER**
- 7.1 The CONVEYANCERS shall pass transfer of the PROPERTY to the PURCHASER as soon as is reasonably practicable in the circumstances, provided the PURCHASER has complied with all his obligations under this AGREEMENT. **If transfer becomes possible prior to the anticipated date of transfer recorded in the COVERING SCHEDULE, the PURCHASER shall be obliged to accept such earlier transfer date.**
- 7.2 The PURCHASER shall, within 7 (seven) days of being called upon to do so by the CONVEYANCERS –
- 7.2.1 pay to the CONVEYANCERS all costs of and incidental to the passing of transfer of the PROPERTY to the PURCHASER, including transfer duty, VAT (if applicable), bond costs, bank charges and all conveyancing fees and disbursements and;
- 7.2.2 furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the CONVEYANCERS to pass transfer of the PROPERTY;
- 7.3 No liability of any nature whatsoever shall attach to the SELLER, ZLR or the ASSOCIATION arising out of any delays in effecting transfer of the PROPERTY to the PURCHASER.
- 7.4 The PURCHASER shall be obliged to accept transfer of the PROPERTY, *inter alia*, subject to –
- 7.4.1 the conditions, reservations and servitudes which burden the PROPERTY;
- 7.4.2 any change in the description or numbering of the PROPERTY;
- 7.4.3 the conditions of title referred to in clause 5 of the AGREEMENT;
- 7.4.4 a condition registered in favour of the DEVELOPER against the title deed to the PROPERTY to the effect that the PROPERTY or any part thereof shall not be used for the purposes of a Share Block Scheme under the provisions of the Share Blocks Control Act, Act No. 59/1980, a Time Share Scheme under the provisions of the Property Time-Sharing Control Act 75/1983, a "practical ownership scheme" or any similar such schemes without the prior written consent of the SELLER except in circumstances where the SELLER conducts such a scheme in respect of a UNIT erected on the RESORT;
- 7.5 It is recorded that in order to effect transfer of the PROPERTY, the CONVEYANCERS shall be required to lodge, *inter alia*, a Transfer Duty Exemption Certificate, issued by the South African Revenue Services (hereinafter in this paragraph referred to as "SARS") with the Deeds Registry. It is further recorded that SARS have adopted a policy of not issuing the aforesaid certificate in the event of any party to the transaction in questions being in arrears with the payment of any amounts SARS believes is due to it or otherwise not being in compliance with Tax Laws. Should SARS refuse to issue a Transfer Duty Exemption Certificate in respect of the sale of the PROPERTY, in terms of this AGREEMENT, due to the fact that the PURCHASER is in arrears with any payments to SARS or has otherwise not complied with any Tax Laws, then in that event, the PURCHASER shall be deemed to be in breach of this AGREEMENT and the SELLER shall be entitled to cancel this AGREEMENT should the PURCHASER not rectify such breach within 7 (seven) days of receipt of a notice from the SELLER calling upon him to remedy such breach (as contemplated in the CONDITIONS OF SALE). Further, should there be any delay in the issue of the aforesaid Transfer Duty Exemption Certificate by SARS for either of the aforesaid reasons, then in that event, the PURCHASER shall be deemed to be delaying the registration of transfer which shall entitle the SELLER to claim *mora* interest from the PURCHASER as contemplated herein below.
- 8 GOVERNING RULES**
- The PURCHASER acknowledges that the Trustees of ZLR and the ASSOCIATION shall be entitled at all times to, *inter alia*, lay down RULES in regard to –
- 8.1 the preservation of the natural environment;
- 8.2 vegetation and flora and fauna in the RESORT;
- 8.3 the use and allocation of private parking areas for owners of immovable property in the RESORT and their guests;
- 8.4 the right to keep any animal, reptile or bird;
- 8.5 the use of recreation and entertainment in respect of common areas and amenities and facilities;
- 8.6 the placing of movable objects upon or outside the buildings included in the RESORT, including the power to remove any such objects;
- 8.7 the storing of flammable and other harmful substances;
- 8.8 the conduct of any persons within the RESORT and the prevention of nuisance of any nature to any owner of immovable property in the RESORT;
- 8.9 the use of common land within the RESORT;
- 8.10 the use of any property by co-owners where same is owned in undivided shares by more than one person;
- 8.11 the use of roads, pathways and open spaces;
- 8.12 the imposition of fines and other penalties to be paid by members of the ASSOCIATION, and
- 8.13 generally in regard to any other matter which the ZLR or ASSOCIATION from time to time considers appropriate, and the PURCHASER undertakes and shall be obliged, with effect from the DATE OF TRANSFER, to abide by such RULES and to ensure that all contractors, nominees, invitees and other persons who go upon the RESORT by virtue of the PURCHASER'S rights thereto, do likewise.

9 MARKETING FEE AND AGENT'S COMMISSION

- 9.1 The PURCHASER warrants that it was introduced to the PROPERTY by an estate agent appointed or mandated by the agency referred to in paragraph 9 of the COVERING SCHEDULE who, it is recorded, was the effective cause of the sale in terms of this AGREEMENT.
- 9.2 The PURCHASER warrants that no agency or agent, other than those referred to in the CONDITIONS OF SALE above, was responsible for introducing him to the PROPERTY and further warrants that no other agent or agency will have any claim against the SELLER for agent's commission arising out of this transaction. The PURCHASER indemnifies and holds harmless the SELLER against any loss, damage or expense sustained, suffered or incurred by the SELLER arising out of any breach of the foregoing warranty.

10 DEFAULT

- 10.1 If the PURCHASER:
- 10.1.1 fails to pay any amount in terms of this AGREEMENT, or commits any breach of the remaining conditions of this AGREEMENT and should the PURCHASER fail to remedy such breach within 10 (ten) days of the date of delivery, if delivered by hand, or receipt if posted by prepaid registered post, of a written notice calling on him to remedy such breach, or
- 10.1.2 commits a repetition of such breach within a period of two months after having been warned by the SELLER to desist therefrom, the SELLER shall be entitled, without prejudice to any other rights, which it may have at law or in terms hereof and at the SELLER'S election to –
- 10.1.2.1 cancel this AGREEMENT, and retake possession of the PROPERTY, and should the SELLER so elect it may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), in which event the amount or amounts paid to the SELLER or the CONVEYANCERS (including any amount held in trust by the CONVEYANCERS and any interest thereon) may be retained by the SELLER as liquidated damages (*rouwkoop*) or towards the payment of any damages sustained by the SELLER (if being recorded that the damages that the SELLER may suffer in this regard may include, *inter alia*, loss of interest, agents commission, marketing fees and other professional fees incurred, holding costs incurred in respect of the PROPERTY, including, but in no way limited to, rates and levies payable in respect of the PROPERTY, and should the PROPERTY subsequently be resold for a lower purchase price than that referred to in this AGREEMENT, the difference in such purchase prices) or
- 10.1.2.2 claim immediate performance by the PURCHASER of all his obligations in terms of this AGREEMENT whether or not the due date for the performance shall otherwise have arrived.
- 10.2 Notwithstanding the foregoing, should the SELLER exercise any of his rights in terms hereof and should the PURCHASER dispute the SELLER'S right to do so, then pending the determination of that dispute, the PURCHASER shall continue to pay all amounts payable in terms of this AGREEMENT on the due date thereof, and to comply with all the terms hereof, and the SELLER shall be entitled to recover and accept such payments and/or other performance without prejudice to the SELLER'S claim to have exercised its rights in terms hereof, and in the event of the SELLER succeeding in such dispute, the SELLER shall be entitled to retain such amounts received in the interim as payment for the occupational rights, if any, exercised and/or enjoyed by the PURCHASER in the interim.
- 10.3 For all purposes of this AGREEMENT any act or omission on the part of any representative, nominee or other person who occupies the PROPERTY, or invitee of the PURCHASER, or of such nominee or other person who goes upon the PROPERTY shall be deemed to be an act or omission of the PURCHASER.
- 10.4 Should the SELLER, commit a breach of any of the provisions of this AGREEMENT, then the PURCHASER shall be entitled to give the SELLER written notice to remedy the breach. If the SELLER fails to comply with that notice within 14 (fourteen) days of receipt thereof, subject to any other provisions of this AGREEMENT to the contrary, the PURCHASER shall be entitled to cancel this AGREEMENT or to claim specific performance, in either event without prejudice to the PURCHASER'S right to claim damages. The aforesaid is without prejudice to any other rights the PURCHASER may have in terms of this AGREEMENT, common law or statute.

11 JURISDICTION AND COSTS

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

12 SOLE AGREEMENT

- 12.1 The PURCHASER acknowledges that this AGREEMENT constitutes the sole basis of the AGREEMENT between himself and the SELLER, and that he has not been induced to enter into such AGREEMENT by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specially dealt with herein. The PURCHASER confirms that, to the extent that any representations or warranties in respect of the PROPERTY were made to the PURCHASER, prior to the signature of this AGREEMENT, such representations and/or warranties shall not be binding on the SELLER. Any agreement between the PURCHASER and the SELLER to cancel, alter or add to this AGREEMENT shall not be binding and shall be of no force or effect unless reduced to writing and signed by the parties hereto, or by their agents acting on their written instructions.

13 PURCHASER'S ACKNOWLEDGMENTS

- 13.1 The PURCHASER acknowledges that he is aware of the intended future development of the RESORT by the DEVELOPER, which development will consist of upmarket residential dwellings, golf course(s), hotels, commercial properties, private and publicly accessible recreational areas, water body and sports club. It is intended for the development to be aesthetically pleasing and to have a harmonious style which blends with the environment. The PURCHASER hereby undertakes that he will, at all times, co-operate with the DEVELOPER in an endeavour to facilitate the success of the said development. Also in this respect, the PURCHASER undertakes that he shall not unreasonably interfere with any such proposed development nor lodge an objection with any competent authority in respect of any such development. In particular, but without derogating from the generality of the foregoing, the PURCHASER agrees that he will not object to any application made by or on behalf of the DEVELOPER, its nominee or agent for special usage consent, licences for shopping, commercial, filling station rights, rezoning, removal of conditions of title under the Removal of Restrictive Conditions Act or by way of an application to Court or to any local or other competent authority in respect of any property within the RESORT. Again in no way detracting from the generality of the aforesaid, the PURCHASER specifically acknowledges that owners of land surrounding the PROPERTY will be erecting buildings and other structures on surrounding land which may block or otherwise interfere with the views from the PROPERTY. The PURCHASER agrees he shall have no right to object to the construction of any building or other structure on any land within the RESORT on the basis that such building or other structure blocks or otherwise interferes with the views from the PROPERTY, nor will he have any claim for any alleged diminution in value of the PROPERTY arising out of any interference with the views from the PROPERTY by reason of the construction of any such building or structure.
- 13.2 The PURCHASER acknowledges that:
- 13.2.1 for reasons of security on the RESORT and due to the nature of the proposed development of the RESORT and the various matters about which any proposed purchaser should become aware when buying into the RESORT, if the PURCHASER wishes to dispose of the PROPERTY or any share therein or any subdivision thereof, he shall, to the extent that he requires the services of an estate agent in regard to such disposal, do so in accordance with this clause;
- 13.2.2 this clause is inserted for the benefit of the DEVELOPER, who shall be entitled to enforce its terms by law;
- 13.2.3 any owner who acquires the PROPERTY, and who thereafter wishes to dispose of the PROPERTY, shall –
- 13.2.3.1 to the extent that he requires the services of an estate agent, do so exclusively through an estate agent accredited by the DEVELOPER; and
- 13.2.3.2 whether or not he utilises the services of an estate agent, include a clause in any document pursuant to which he disposes of the PROPERTY on the same terms precisely as this clause so that any future owner shall, to the extent that such owner requires the service of an estate agent in regard to the disposal of the PROPERTY, be required to appoint only an estate agent accredited by the DEVELOPER.
- 13.3 The PURCHASER further acknowledges that in the event of the PURCHASER being an artificial person, such as a close corporation, company or trust, and in the event of the member, director, shareholder, trustee or beneficiary of the PURCHASER (as the case may be) wishing to dispose of the member's interest, shares or beneficial interest in the PURCHASER (as the case may be), the PURCHASER shall procure that such party shall, to the extent that such party requires the services of an estate agent in regard to such disposal, comply with the provisions of paragraph 13.2 of the CONDITIONS OF SALE which shall apply, *mutatis mutandis*.
- 13.4 When selling the PROPERTY, the PURCHASER shall utilise such documentation (including the standard Sale Agreement), prescribed by the DEVELOPER.
- 13.5 The PURCHASER shall not be entitled to sell or otherwise transfer ownership of the PROPERTY, unless it is a suspensive condition of such sale or other transfer that –
- 13.5.1 the transferee, in a manner acceptable to the ASSOCIATION, agrees to become a member and is admitted as a member of the ASSOCIATION;
- 13.5.2 the transferee and, in the event of the transferee being an artificial person, its nominee(s), being accepted as a Silver Member of the Zimbali Lakes Sports Club.
- 13.6 Notwithstanding the provisions of clause 10, in the event of a breach of this clause 13, the DEVELOPER shall be entitled in its absolute discretion to refuse its written approval as required to the sale and transfer of the PROPERTY until the provisions of this clause 13 are complied with and no party to this AGREEMENT shall have any claim for damages arising out of the DEVELOPER'S refusal to give such written approval.
- 13.7 In order to protect the DEVELOPER'S, the ZLR'S and the ASSOCIATION'S rights in this regard, the PROPERTY shall be owned by the PURCHASER, subject to a condition in the Title Deeds to the PROPERTY to the effect that the PROPERTY, or any portion thereof or interest therein shall not be alienated or otherwise transferred without the prior written consent of the ZLR, the ASSOCIATION or the DEVELOPER first being had and obtained, which consent the ZLR, the ASSOCIATION and the DEVELOPER shall grant as provided for in clause 5 of the AGREEMENT.
- 13.8 In order to maintain high standards and with a view to ensuring attractive and harmonious development within the RESORT, all owners of immovable property within the RESORT shall be required to adhere to the architectural, landscaping and sustainability controls contained in the RESORT GUIDES and applicable to their particular property as formulated by ZLR and/or the ASSOCIATION. Any dwelling or other structure to be erected on the PROPERTY, or any alteration or extension to any existing

- dwelling or other structure on the PROPERTY once developed, shall be done strictly in accordance with the building plans that have been submitted to and approved in writing by the ZLR and the local or any other competent authority and no work whatsoever shall commence until such time as the relevant approval has been obtained.
- 13.9 The PURCHASER agrees to accept any changes to the provisions of this paragraph 13 of the CONDITIONS OF SALE, in respect of the accreditation of estate agents and payment of agents commission, as may in future be agreed to between the DEVELOPER and the ASSOCIATION (which amendments shall be considered binding on the PURCHASER).
- 13.10 The PURCHASER acknowledges that it understands the English language and considers itself fluent therein.
- 13.11 The PURCHASER acknowledges that it has had an opportunity to carefully read and consider the provisions of this AGREEMENT and that it has been free to secure independent legal advice in respect of the provisions of same. In addition, the PURCHASER acknowledges that the SELLER undertook that the SELLER or the CONVEYANCERS would explain any provisions of the AGREEMENT which the PURCHASER may not have understood fully and, to the extent that the PURCHASER made the SELLER aware of any provisions of this AGREEMENT it did not understand, such provisions were fully explained to the PURCHASER.
- 14 RESALE**
- 14.1 Resale and Assignment
- 14.1.1 The PURCHASER may not resell the PROPERTY prior to registration of transfer except with the prior written consent of the SELLER who shall charge a fee in respect of such resale for documentation, vetting of the new purchaser, obtaining legal advice, administration fee etc. in an amount of 2% (two percent) of the resale price.
- 14.1.2 Any sale, assignment, disposition or transfer of the PROPERTY or any part thereof shall be on the SELLER'S Standard Resale Agreement in respect of THE RIDGE.
- 14.2 It is recorded that the obligation to pay the Lakes Stabilisation Levy shall be binding on all successive owners of the PROPERTY and the BENEFICIAL INTEREST (in other words, any future transfer of the PROPERTY or the BENEFICIAL INTEREST will trigger the payment of the aforesaid consideration to ZLR and the PURCHASER undertakes to include a clause in any document pursuant to which the PROPERTY or BENEFICIAL INTEREST is disposed of, on the same terms and conditions as this clause, so that any future owner of the PROPERTY and BENEFICIAL INTEREST shall be liable to make payment of the aforesaid amount to ZLR, in perpetuity.
- 14.3 The provisions of clauses 14.1, 14.2 and 14.3 shall apply to any resale/transfer of the PROPERTY or BENEFICIAL INTEREST and the PURCHASER and its successors in title shall incorporate those clauses in any such sale or transfer document. The SELLER or any of its associated/subsidiary companies shall not be liable to pay the amount set out in 14.2 in respect of any sales of its immovable property in the RESORT.
- 14.4 Notwithstanding the provisions of clause 9, in the event of a breach of this clause 14, the ZLR shall be entitled in its absolute discretion to refuse its written approval which is required to the sale and transfer of the PROPERTY until the provisions of this clause 14 are complied with and neither the PURCHASER nor the buyer of the PROPERTY from the PURCHASER, nor any subsequent seller or purchaser, shall have any claim for damages against the ZLR arising out of the ZLR refusal to give such written approval.
- 15 ZIMBALI FACILITIES MANAGEMENT COMPANY (ZFM)**
- 15.1 It is recorded that the Zimbali Facilities Management Company (ZFM) shall be established under such name as the Commission for Intellectual Property and Companies may approve, which Company will supply to the entire RESORT various utilities and services such as electricity and water (to the extent that it is able to lawfully acquire and supply such services) building maintenance, landscaping, housekeeping and house servicing facility, and all or any similar services and supply same to the members of the various Associations forming part of ZLR and render a charge therefore. In addition the ZFM will install and own fibre optic cable throughout the RESORT and will own and maintain same and charge end users for such products. The SELLER or an associate company of the SELLER will be the shareholder of the ZFM.
- 15.2 The PROPERTY is sold subject to a communication servitude in favour of the ZFM for the purpose of entering upon the land and installing communication infrastructure equipment and fibre optic cable and other requisite cabling.
- 15.3 To enable the ZFM to carry out its functions it is anticipated that the SELLER will lease or transfer the maintenance buildings, store rooms and associated buildings to the ZFM to enable it to properly carry out its functions.
- 16 SALE CONDITIONAL UPON MEMBERSHIP**
- 16.1 The PURCHASER shall be obliged to become at least a Silver Member of the Zimbali Lakes Sports Club, being a commercial facility owned and managed by the SELLER. The PURCHASER shall pay the club joining fee in force from time to time together with the annual subscription levied from time to time.
- 16.2 The PURCHASER shall be obliged to accept the PROPERTY subject to a condition registered against the title deed of the PROPERTY to the effect that the PROPERTY, shall not be alienated, mortgaged or otherwise dealt with without the prior written consent of the Zimbali Lakes Sports Club first being had and obtained, provided that the Zimbali Lakes Sports Club shall grant the aforesaid consent in the event of the Transferor having complied with all its obligations to the Zimbali Lakes Sports Club (and in no way detracting from the generality of the aforesaid, the Transferor having paid all amounts due to the aforesaid Club) and the transferee undertaking to become at least a Silver Member of the aforesaid Club.
- 17 DOMICILIUM**
- 17.1 The Parties chooses as their *domicilia citandi et executandi* and as the address at which notices may be delivered to either of them by the other, the addresses set out in the COVERING SCHEDULE to the AGREEMENT.
- 17.2 Any notice :
- 17.2.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to the relevant postal address set out in the AGREEMENT shall be deemed to have been received on the 5th day after posting (unless the contrary is proved); or
- 17.2.2 delivered by hand to a responsible person during ordinary business hours at its physical address shall be deemed to have been received on the date of delivery; or
- 17.2.3 transmitted by email to the relevant email address set out in the AGREEMENT, shall be deemed to have been received upon date of successful transmission;
- 17.3 Notwithstanding anything to the contrary contained herein, a written notice or communication actually received by the PURCHASER shall be an adequate written notice or communication to it, notwithstanding that it was not sent or delivered to its chosen *domicilium citandi et executandi*.
- 18 INDEMNITY**
- 18.1 The SELLER does not warrant any information given in respect of the PROPERTY, whether this information is given prior to or subsequent to the signing of this AGREEMENT, save for the information in respect of the PROPERTY specifically warranted in this AGREEMENT. The SELLER shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given by the SELLER to the PURCHASER or his agent in respect of the PROPERTY and the PURCHASER hereby indemnifies the SELLER and holds it harmless against and in respect of any injury, loss or damage however caused which the PURCHASER may suffer as a result of any inaccuracies in any information given by the SELLER (save for the information specifically warranted in this AGREEMENT).
- 18.2 In no way detracting from the generality of 18.1 above it is specifically recorded that the SELLER does not warrant the accuracy of any geotechnical reports or any other information given on sub soil conditions on the RESORT by the SELLER or its representatives (whether sales, marketing or otherwise) to the PURCHASER whether such information is given prior to or subsequent to the signing of this AGREEMENT. The PURCHASER hereby indemnifies the SELLER and holds itself harmless against and in respect of any injury, loss or damage however caused to the PURCHASER as a result of any inaccuracies in any geotechnical reports or any information in respect of sub soil conditions that the SELLER may at any time have given to the PURCHASER.
- 19 COSTS**
- 19.1 The SELLER shall bear its own costs in connection with the preparation and execution of this AGREEMENT.
- 20 CESSION OF PURCHASER'S RIGHTS**
- 20.1 The PURCHASER shall not sell, assign, cede or dispose of the PURCHASER'S rights under this AGREEMENT.
- 21 ARREARS**
- 21.1 Any amounts in arrear in terms of this AGREEMENT shall bear interest at the prime overdraft rate charged by Nedbank Limited from time to time, which interest shall be calculated monthly in advance from the date that such amount became due to the date of payment, both days inclusive.
- 21.2 A certificate by any manager of the said bank as to such prime overdraft rate, from time to time, shall be prima facie proof of such rate.
- 22 MORA INTEREST**
- 22.1 In the event of there being any delay in connection with the DATE OF TRANSFER for which the PURCHASER is responsible, the PURCHASER agrees, in addition to any other payments due in terms of this AGREEMENT, to pay interest on the full (VAT inclusive) Purchase Price of the PROPERTY at the prime overdraft rate charged by Nedbank Limited from time to time calculated from the date the PURCHASER is notified in writing by the SELLER (or the SELLER'S agent) as being in mora, to the date upon which the PURCHASER has ceased to be in mora, both days inclusive.
- 22.2 A certificate by any manager of the said bank as to such prime overdraft rate from time to time shall be prima facie proof of such rate.
- 23 TRUSTEE FOR A COMPANY TO BE FORMED**
- 23.1 In the event of the signatory to this AGREEMENT, on behalf of the PURCHASER, having concluded this AGREEMENT in his capacity as a Trustee for a company to be formed (which signatory is hereinafter in paragraph 23.1.1 referred to as the "SIGNATORY"), then:
- 23.1.1 the SIGNATORY by his signature hereto warrants that the said company:
- 23.1.1.1 will be formed;
- 23.1.1.2 will ratify and adopt the terms and conditions of the AGREEMENT; and
- 23.1.1.3 will provide the SELLER with written proof thereof; all within a period of 30 (thirty) days from the DATE OF SIGNATURE of this AGREEMENT by the SIGNATORY;
- 23.2 **The SIGNATORY, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the SELLER for the due and punctual performance of such company's obligations to the SELLER in terms of this AGREEMENT.**

- 23.3 If the terms and conditions of Clause 23.1 above are not fulfilled then the SIGNATORY will by his signature to this AGREEMENT be deemed ipso facto to have concluded the AGREEMENT in his personal capacity as purchaser.
- 24 ZIMBALI LAKES DEVELOPMENT AND ZIMBALI LAKES SPORTS CLUB**
- 24.1 The PURCHASER acknowledges that it is aware of the intended future development of the Zimbali Lakes Sports Club (ZLSC) and related facilities by the DEVELOPER. Such development is intended to involve, the establishment of, inter alia, an 18 (eighteen) hole golf course, tennis courts, bowls lawns, gym, equestrian facilities, soccer/rugby field, cricket nets, squash courts, archery, cycling trails, walking trails and other sporting activities, commercial and hospitality facilities, public and privately accessible areas so designed as to facilitate an aesthetic and harmonious blending within the environment and the hosting of corporate, local, national and international events. No obligation rests on the DEVELOPER to provide all of the said facilities and neither is the above to be regarded as a comprehensive list of activities. The PURCHASER undertakes that he will at all times co-operate with the DEVELOPER in an endeavour to facilitate the success of the said developments, tournaments, events and competitions. Also in this respect, the PURCHASER undertakes that he will not interfere with any proposed developments or lodge any objection with any competent authority in respect of any developments or events. In particular, without detracting from the generality of the aforesaid, the PURCHASER agrees that it will not object to any application made by and on behalf of the DEVELOPER, its nominees or its agent for special usage consent, licenses for sporting, shopping, commercial rights, zoning applications, or removal of restrictive conditions applications.
- 24.2 It is recorded that the Zimbali Lakes Sports Club is a private facility and that no subscriber shall have any proprietary or voting rights in the ZLSC and shall not be entitled to partake in the management of the ZLSC. Further, admission to the ZLSC shall be in the sole and absolute discretion of the DEVELOPER. In no way detracting from the generality of the aforesaid, it is specifically recorded that persons, who are not owners of immovable property on the RESORT, may become subscribers, at the DEVELOPER'S discretion. All members of each owners association within the ZLR shall be obliged to join the ZLSC and pay a Joining Fee in respect of its class of membership as determined by the Proprietor of the ZLSC.
- 25 IFA AGREEMENTS**
- 25.1 "IFA Agreements" shall mean those agreements entered into between the SELLER and/or its affiliated companies, and members of the IFA group of companies in relation to the IFA developments including "THE RIDGE, ZIMBALI LAKES" or "ZIMBALI", from time to time.
- 25.2 The PURCHASER acknowledges and agrees that:
- 25.2.1 the branding of any part of THE RIDGE, ZIMBALI LAKES (and all components thereof) as a "IFA" Resort (including the use of the names "IFA" or "THE RIDGE, ZIMBALI LAKES" or "ZIMBALI", "ZIMBALI LAKES" and all associated names, logos, slogans, products, and signage), all of which are collectively referred to as "the Marks", are subject to the terms of the IFA Agreements;
- 25.2.2 The IFA Agreements include all domain names with the words "THE RIDGE, ZIMBALI LAKES" or "ZIMBALI" therein in any configuration or extension. The PURCHASER or any parties related to the PURCHASER specifically agree that they will not use any such domain name without the consent of the SELLER. The PURCHASER undertakes to enforce this provision against its related parties.
- 25.2.3 pursuant to the IFA Agreements, the rights of the SELLER (and thereafter, the SELLER'S nominee) to use the Marks are subject to certain terms and conditions, and may be terminated or restricted in certain circumstances; and
- 25.2.4 for the avoidance of doubt, the SELLER (and thereafter, the SELLER'S nominee or) hereby reserves the right to (i) cease to use any Marks which it has previously used, or adopt any Marks which it has not previously used, and/or (ii) change the name and branding of the "THE RIDGE, ZIMBALI LAKES" or "ZIMBALI" (and all components thereof) without liability, and without obtaining the consent of the PURCHASER, and the PURCHASER shall provide the Seller with all reasonable assistance in doing so. The SELLER makes no guarantee or warranty relating to (i) the use of the Marks in connection with the RESORT (or any part thereof), or (ii) the branding of the said RESORT (or any part thereof) as a "IFA" Resort. The PURCHASER agrees and acknowledges that any change in the Marks or branding of all or any part of the RESORT shall not constitute the basis of a claim by the PURCHASER that the SELLER is in default under this Agreement, or any other agreement in place between the PURCHASER and any or all of those entities from time to time; and
- 25.3 The PURCHASER shall immediately, if so instructed by the SELLER (or thereafter the SELLER'S nominee), cease absolutely to use the names "IFA" or any other of the Marks in connection with the PROPERTY for any purpose whatsoever. For the avoidance of doubt, the PURCHASER shall not be entitled to use the Marks for any reason without the prior written consent of the SELLER.
- 25.4 The "THE RIDGE, ZIMBALI LAKES" or "ZIMBALI" and all components thereof shall form part of a world class resort, and shall be managed by the SELLER or its nominee in accordance with international standards applicable to similar resorts being not less than the standards prescribed by the IFA Agreements. In terms of the relevant Management Agreements the rights and duties of the SELLER (or its nominee) will be capable of being ceded and assigned either, in whole or in part, to third parties.

LIST OF ANNEXURES

- ANNEXURE A** CONDITIONS OF SALE
- ANNEXURE B** PLAN OF SUB-DIVISION
- ANNEXURE C** ZLSC APPLICATION FORM
- ANNEXURE D** AUTHORITY TO INVEST