

**EYE OF AFRICA GOLF AND RESIDENTIAL ESATE**

**AGREEMENT OF SALE OF VACANT LAND**

**TRANSACTION SCHEDULE**

**1 PARTIES**

**1.1 Seller**

EYE OF AFRICA DEVELOPMENTS PROPRIETARY LIMITED

Registration Number: 2005/021292/07

Address: 33 Cayman Road, Alewynspoort, 1872

herein represented by Mr David Nagle and/or Mr Mark McGovern

**1.2 Purchaser**

**1.2.1 Individual**

1.2.1.1 Full Names: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Identity Number: \_\_\_\_\_

Income Tax Number: \_\_\_\_\_

Marital status and marriage regime: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Current physical address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone Number:

(h) \_\_\_\_\_ (c) \_\_\_\_\_ (w) \_\_\_\_\_ (f) \_\_\_\_\_

Nationality: \_\_\_\_\_

1.2.1.2 Full Names: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Income Tax Number: \_\_\_\_\_  
Marital status and marriage regime: \_\_\_\_\_  
  
Postal Address: \_\_\_\_\_  
Current physical address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Telephone Number:  
(h) \_\_\_\_\_ (c) \_\_\_\_\_ (w) \_\_\_\_\_ (f) \_\_\_\_\_  
Nationality: \_\_\_\_\_

1.2.2 **Company / Close Corporation / Trust**

Full Names: \_\_\_\_\_  
Registration Number / Master's Reference Number: \_\_\_\_\_  
Authorised Signatory: \_\_\_\_\_  
Postal Address: \_\_\_\_\_  
Address of Registered Office: \_\_\_\_\_  
Current physical address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Telephone Number: (w) \_\_\_\_\_ (f) \_\_\_\_\_ (c) \_\_\_\_\_

The Parties agrees as follows:

## 2 LAND

The Land means the following:

Erf No \_\_\_\_\_ in the Eye of Africa Estate Extension 1 Township,  
measuring: \_\_\_\_\_

As depicted on the general plan SG Number 5452/2007, a copy of which is available on request.

## 3 SUMMARY OF PRINCIPAL TERMS

The principal terms and conditions of the sale of the Land comprise the following:

3.1 Purchase Price: R \_\_\_\_\_ ( \_\_\_\_\_ )  
\_\_\_\_\_ ) including VAT.

3.2 A deposit equivalent to 10% (ten per cent) of the Purchase Price, R \_\_\_\_\_  
( \_\_\_\_\_ )  
is payable within 7 (seven) days of the date of signature of the Purchaser to the  
Conveyancer's Trust Bank Account set out below -

The Standard Bank of South Africa Limited;  
Account Name: Glyn Marais Inc. Trust Account;  
Account Number: 000 348775;  
Branch: Johannesburg;  
Branch Code: 00 02 05;  
Payment Reference: Stand Number

or such other bank account nominated by the Conveyancers from time to time in writing.

3.3 The payment of the Purchase Price, the related financial elements and important dates pertaining to the sale of the Land are set out as follows:

3.3.1 Balance of Purchase Price: R\_\_\_\_\_ ( \_\_\_\_\_ )  
\_\_\_\_\_ )

3.3.2 Loan Amount: R\_\_\_\_\_ ( \_\_\_\_\_ )  
\_\_\_\_\_ )

3.3.3 Date to obtain Loan: 45 (forty five) days from the Date of Signature.

3.3.4 Date to deliver Guarantees: The date referred to in 5.2.2.2 of the Agreement.

#### 4 **MARKETING**

4.1 The Purchaser, for the purposes of the Purchaser's right in terms of section 16 of the Consumer Protection Act as set out in 13.14, records that the Purchaser was firstly introduced to the Land as result of the following -

newspaper advertisement;

recommendation by another person than the Seller or Estate Agent;

the Purchaser approached the Seller or Estate Agent first;

the Seller or Estate Agent approached the Purchaser first via post, email, sms or

personally;

*(mark which is applicable)*

This Transaction Schedule forms an integral part of the Agreement.

**SALE OF VACANT LAND AGREEMENT**

Between

**EYE OF AFRICA DEVELOPMENTS PROPRIETARY LIMITED**

And

**THE PURCHASER**

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## **APPENDICES**

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- A. RESOLUTION OF THE BOARD OF DIRECTORS OF THE SELLER
  - 1. ARCHITECTURAL GUIDELINES
  - 2. ESTATE RULES
  - 3. MEMORANDUM OF INCORPORATION



## **SALE OF VACANT LAND AGREEMENT**

This Agreement is made and entered into between:

- (1) **Eye of Africa Developments Proprietary Limited** (Registration Number 2005/021292/07); and
- (2) the **Purchaser**.

### **1 RECORDALS**

- A. The Seller is the Estate owner and the registered owner of the Land.
- B. The Purchaser intends to purchase the Land and to construct a house on the Land.
- C. The Parties enter into this Agreement to agree the terms of the sale of the Land from the Seller to the Purchaser, the terms upon which the Purchaser is entitled to enjoy ownership of the Land, including the Purchaser's right and obligation to construct the proposed house on the Land and matters ancillary and incidental thereto.

### **2 DEFINITIONS AND INTERPRETATION**

#### **2.1 Definitions**

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

- 2.1.1 **"Agreement"** means the agreement set out in this document, the Transaction Schedule and all the appendices to this Agreement;
- 2.1.2 **"Architectural Guidelines"** means the architectural, landscaping and design guidelines determined by the Home Owners Association from time to time, a

copy of Revision 5 (five) of the guidelines dated October 2013 is attached to this Agreement marked as **Appendix 1**;

2.1.3 "**Architectural Review Committee**" means the committee appointed by the Board from time to time to ensure that the Building Plans submitted to the Home Owners Association comply with the Architectural Guidelines;

2.1.4 "**Attorneys Act**" means the Attorneys Act No 53 of 1979, as amended from time to time;

2.1.5 "**Balance of the Purchase Price**" means the amount set out in item 3.3.1 of the Transaction Schedule being the Purchase Price less the Deposit;

2.1.6 "**Board**" means the members of the board of directors of the Home Owners Association;

2.1.7 "**Building Plans**" means the building, landscaping and construction plans, specifications, site plans and architectural plans for the construction of a new house submitted by the Purchaser in accordance with the provisions of the Architectural Guidelines;

2.1.8 "**Business Day**" means any day of the week excluding Saturdays, Sundays and any recognised public holiday in the Republic of South Africa and "**Business Days**" means more than one Business Day;

2.1.9 "**Companies Act**" means the Companies Act No 71 of 2008, as amended from time to time;

2.1.10 "**Consumer Protection Act**" means the Consumer Protection Act No 68 of 2008, as amended from time to time;

2.1.11 "**Conveyancers**" means attorneys Glyn & Marais Inc of 2<sup>nd</sup> Floor, The Place, 1 Sandton Drive, Sandton, Tel: (011) 286-3700, Fax: (011) 286-3900;

- 2.1.12 "Date of Signature" means the date on which this Agreement is signed by the Party signing last in time;
- 2.1.13 "Date of Transfer" means the date on which Transfer takes place;
- 2.1.14 "Deeds Office" means the office of the Registrar of Deeds at Johannesburg;
- 2.1.15 "Deposit" means the amount/s payable by the Purchaser in terms of 5.2.1 of the Agreement at the times and in the amounts set out in item 3.2 of the Transaction Schedule;
- 2.1.16 "Estate" means the residential and golf estate situate on Eye of Africa Township Extension 1, comprising of residential erven, streets, open spaces, golf course and other specific use erven, of which the Land forms part, as depicted on the General Plan S.G No 5452/2007 of the township, a copy of which is available on request;
- 2.1.17 "Estate Agent" means **Kent Gush Properties (Registration Number 2008/025230/07)**, or such other estate agent as appointed by the Seller from time to time;
- 2.1.18 "Estate Rules" means the Estate Rules of the Home Owners Association as amended from time to time, a copy of Revision 9 (nine) dated 26 September 2007 is attached to this Agreement marked as **Appendix 2**;
- 2.1.19 "**Home Owners Association**" means a non-profit company known as the Eye of Africa Home Owners Association NPC with Registration Number 2007/030516/08, which has been incorporated to promote and enforce standards for community living so that the residents of the Estate may derive the maximum collective benefit therefrom and to maintain aesthetic standard to enhance property values in the Estate;

- 2.1.20            "**Housing Consumers Protection Measures Act**" means the Housing Consumers Protection Measures Act No 95 of 1998, as amended from time to time;
- 2.1.21            "**Land**" means the residential erf in the Estate as described in item 2 of the Transaction Schedule;
- 2.1.22            "**Levies**" means the monthly subscription levied by the Board to defray the costs of managing and administering the Home Owners Association;
- 2.1.23            "**Loan**" means the loan required by the Purchaser to fund the Balance of the Purchase Price as contemplated in 3.1.1 or a part thereof as contemplated in 3.1.2 of the Agreement, which may be secured by a first mortgage bond to be registered over the Land in the Deeds Office;
- 2.1.24            "**Loan Amount**" means the amount of the Loan set out in item 3.3.2 of the Transaction Schedule;
- 2.1.25            "**Loan Grant Date**" means the date by which the Loan is to be granted by the bank or financial institution concerned as set out in item 3.3.3 of the Transaction Schedule;
- 2.1.26            "**Local Authority**" means the Midvaal Local Municipality or such other relevant municipality contemplated in section 151 of the Constitution of the Republic of South Africa Act, 1996, exercising jurisdiction over the area in which the Land is situated;
- 2.1.27            "**Memorandum of Incorporation**" means the Memorandum and Articles of Association of the Home Owners Association as amended from time to time, a copy of which is attached to this Agreement marked as **Appendix 3**;

- 2.1.28            **"Month"** means –
- 2.1.28.1            in reference to a number of months, from a specific date, a period commencing on that date to the same date of any subsequent Month; and
- 2.1.28.2            in any other context, a Month of the calendar, that is, one of the 12 (twelve) Months of the calendar;
- and **"Monthly"** shall have a corresponding meaning;
- 2.1.29            **"NHBRC"** means the National Homebuilders Registration Council established under the Housing Consumers Protection Measures Act;
- 2.1.30            **"Parties"** means the Purchaser and the Seller and **"Party"** means any one of them as the context may indicate;
- 2.1.31            **"Prime Rate"** means the nominal annual, compounded Monthly in arrear, rate of interest from time to time publicly quoted as such by the Standard Bank of South Africa Limited, calculated on a 365 (three hundred and sixty five) day factor irrespective of whether or not the year is a leap year;
- 2.1.32            **"Project Period"** means the period from Date of Signature until the date that the Seller notifies the Home Owners Association that it has ceased the development of the Estate of which the Land forms part;
- 2.1.33            **"Purchase Price"** means the Purchase Price for the Land set out in item 3.1 of the Transaction Schedule;
- 2.1.34            **"Purchaser"** means the Purchaser described as such in item 1.2 of the Transaction Schedule;
- 2.1.35            **"SARS"** means the South African Revenue Service;

- 2.1.36            "**Sectional Titles Act**" means the Sectional Titles Act No 95 of 1986, as amended from time to time;
- 2.1.37            "**Seller**" means Eye of Africa Developments Proprietary Limited (Registration Number 2005/021292/07) a company duly registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa, herein represented by Mr David Nagle and/or Mr Mark McGovern, in their capacity as directors of the Seller, they having been duly authorised by a resolution of the board of directors of the Seller, a copy of which is attached to this Agreement as **Appendix A**;
- 2.1.38            "**Surviving Provisions**" means the provisions which come into force and effect on the Date of Signature and bind the Parties, namely the provisions of 1, 2, 3, 11, 12 and 13;
- 2.1.39            "**Suspensive Conditions**" means the Suspensive Conditions referred to in 3 of the Agreement and "**Suspensive Condition**" means one of the Suspensive Conditions as the context may indicate;
- 2.1.40            "**Transaction Schedule**" means the schedule appearing on the face of this Agreement, setting out the principal details and terms of the sale of the Land;
- 2.1.41            "**Transfer**" means registration of transfer of ownership of the Land in the Deeds Office into the name of the Purchaser;
- 2.1.42            "**VAT**" means Value-added Tax payable in terms of the VAT Act; and
- 2.1.43            "**VAT Act**" means the Value-added Tax Act No 89 of 1991, as amended from time to time.

## 2.2 Interpretation

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

2.2.1.1 any reference to the singular includes the plural and *vice versa*;

2.2.1.2 any reference to natural persons includes legal persons and *vice versa*;  
and

2.2.1.3 any reference to a gender includes the other genders.

2.2.2 Where appropriate, meanings ascribed to defined words and expressions in 2.1, shall impose substantive obligations on the Parties.

2.2.3 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

2.2.4 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meanings assigned to such words and expressions in that sub-clause.

2.2.5 Where this Agreement requires a Party to use "**Reasonable Endeavours**" in relation to an act or omission, that Party shall do all such things as are necessary or desirable so as to achieve that act or to omit taking an action, unless the Parties agree that it is not reasonable to take the action or to omit taking an action.

2.2.6 The use of the word "**including**" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generic* shall not be applied in the interpretation of such general wording and/or such specific example or examples.

- 2.2.7 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
- 2.2.8 The Transaction Schedule and all the appendices to this Agreement shall form an integral part of this Agreement.
- 2.2.9 Any reference to an enactment is to that enactment as at the Date of Signature and as amended or re-enacted from time to time.
- 2.2.10 This Agreement shall be binding on and enforceable by the Parties, their respective successors in title, heirs, executors, administrators, assigns, trustees or liquidators as fully and effectually as if they had signed this Agreement in the first instance and reference to any Parties shall include each Party's successors in title, heirs executors, administrators, assigns, trustees or liquidators, as the case may be.
- 2.2.11 When any number of days or other period is prescribed in this Agreement, it shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the immediately succeeding Business Day.
- 2.2.12 The rule of interpretation that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract shall not apply.

### 2.3 **Consumer Protection Act**

- 2.3.1 **The Seller in selling the Land to the Purchaser in terms of this Agreement is acting in the ordinary course of its business. If the Purchaser is a natural person, or a legal entity with an annual turnover or asset value of less than R2,000,000.00 (two million rand) at the time of entering into this Agreement, then the Consumer Protection Act will apply to this Agreement.**



Where the Consumer Protection Act is applicable to this Agreement, the clauses in question are in bold print and the impact of the clause in question is brought to the attention of the Purchaser. The Purchaser is then called upon to initial next to the applicable clause to acknowledge and agree that the Purchaser is aware of the provisions of the clause in question and agrees to be bound thereby

2.3.2 Notification is hereby given to the Purchaser in terms of section 49 of the Consumer Protection Act of the provisions of **3.1.3.1, 3.1.3.2, 3.1.3.3, 3.1.3.4, 3.4.1.2, 7.1.5, 8, 9.1.1, 9.1.4.3, 9.1.10, 9.1.17, 9.3, 9.4.3, 9.4.4, 9.4.5, 9.4.6, 9.4.7, 9.7, 9.11, 11.2, 11.3, 11.4, 13.3.2 and 13.13** of this Agreement because these clauses -

2.3.2.1 **limit the risk or liability of the Seller;**

2.3.2.2 **constitute an assumption of risk or liability by the Purchaser;**

2.3.2.3 **impose an obligation on the Purchaser to indemnify the Seller;**

2.3.2.4 **constitute an acknowledgement of fact by the Purchaser;**

2.3.2.5 **are of an unusual character or nature; and/or**

2.3.2.6 **are such that the Purchaser could not reasonably be expected to be aware or notice;**

which clauses are highlighted in bold print and contain an explanatory note of the fact, nature and effect of the provision in question. The Purchaser is given notice to read these provisions and if necessary obtain legal advice in order for the Purchaser to be aware of the full meaning, effect and consequences of such clauses before the Purchaser signs this Agreement. The Purchaser by initialling at

**the place provided therefore, next to the clause in question agrees to the clause in question.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 2.3 hereby acknowledges having read and understood the provisions of 2.3.]**

.....  
**Purchaser**

### **3 SUSPENSIVE CONDITIONS**

#### **3.1 Granting of Loan**

3.1.1 This Agreement is subject to the fulfilment or waiver, as the case may be, of the Suspensive Condition, that by no later than 17h00 on the Loan Grant Date, the Purchaser obtains a loan from a registered bank in an amount equal to the Balance of the Purchase Price or for a lesser amount with the Seller's consent in terms of 3.1.2, for the purpose of purchasing the Land on terms and conditions usually imposed by registered banks when granting loans in the private sector for the acquisition of residential land, and if needs be, the construction of a home on such Land, secured by means of first mortgage bond evidenced by a letter of grant signed by the bank granting the loan.

3.1.2 The Purchaser is entitled, on written notice to the Seller, to accept a final grant of the loan in an amount less than the Balance of the Purchase Price, provided that the Purchaser –

3.1.2.1 notifies the Seller in writing of the grant of the loan in an amount less than the amount of the Balance of the Purchase Price prior to the expiry of the Loan Grant Date and obtains the Seller's consent thereto subject to the Purchaser complying with 3.1.2.2; and

3.1.2.2 deliver bankers or other financial institution guarantee/s to the Conveyancers within 30 (thirty) days of the written notice in 3.1.2.1, in an amount equal to the difference between the Balance of the Purchase Price and the amount of the loan granted by the bank concerned, as accepted by the Seller in terms of this 3.1.2.1.

3.1.3 The Purchaser -

3.1.3.1 **warrants that the Purchaser's financial position is such that having regard to the criteria or requirements usually applied by the bank when granting loans in the private sector to be secured by the registration of mortgage bonds over residential erven in the ordinary course of business, the Purchaser's application for the Loan will not be refused;**

3.1.3.2 undertakes to take all necessary steps to ensure that the Loan is granted and agrees to comply with all the requirements stipulated by the registered bank pursuant to the granting of the Loan. **The Purchaser acknowledges and agrees that if the Purchaser fails to take such steps in order to obtain fulfilment of the Suspensive Condition, or fails to comply with or accept any condition reasonably imposed by the bank, then the Purchaser shall be in breach of this Agreement, and by that fact alone the Suspensive Condition may be deemed to have been fulfilled whereupon the Seller will be entitled to the remedies set out in 11 of this Agreement without prejudice to its rights to invoke the provisions of 3.4.1.2;**

3.1.3.3 **warrants that the Purchaser has the legal capacity and the financial ability to enter into this Agreement, to fund and to pay the Purchase Price, to lawfully complete and sign all documents necessary to apply**

for the Loan, to register a mortgage bond against the title deed of the Land and to take Transfer without undue delay; and

3.1.3.4 undertakes to pay the costs of and incidental to the registration of the first mortgage bond plus VAT, including the conveyancing fees in accordance with conveyancing tariff set by the Law Society of the Northern Provinces and the relevant bank's initiation fees, and any other costs or duties payable of a similar nature, in respect of the registration of the first mortgage bond against the title deed of the Land.

[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 3.1.3.3 hereby acknowledges having read and understood the provisions of 3.1.3.1, 3.1.3.2, 3.1.3.3 and 3.1.3.4.]

.....  
Purchaser

## 3.2 Time Limit for Fulfilment of Suspensive Condition

3.2.1 The Purchaser shall use its Reasonable Endeavours to procure that the Suspensive Condition is fulfilled as soon as practicable and in any event on or before the Loan Grant Date or the extended date contemplated in 3.2.2 and 3.2.3.

3.2.2 If the Suspensive Condition is not fulfilled by the Loan Grant Date, then the Loan Grant Date is automatically extended for a further period of 15 (fifteen) days, which latter date shall then be regarded as the "**Extended Loan Grant Date**".

3.2.3 If the Suspensive Condition has not been fulfilled on or before the Extended Loan Grant Date, then the Parties may agree in writing to further extend the

Extended Loan Grant Date to a date or dates extending beyond the Extended Loan Grant Date (the "**Further Extended Loan Grant Date**").

### 3.3 **Waiver of Suspensive Condition**

3.3.1 The Suspensive Condition is inserted for the sole benefit of the Purchaser.

3.3.2 Notwithstanding 3.1.2, the Purchaser is entitled by written notice to the Seller to be received by the Seller before the Loan Grant Date or the Extended Loan Grant Date or the Further Extended Loan Grant Date, whichever is applicable, to waive compliance with the Suspensive Condition, whereupon the Suspensive Condition shall be deemed to have been fulfilled.

### 3.4 **Lapsing of Agreement**

3.4.1 If the Suspensive Condition has not been fulfilled or waived on or before the Loan Grant Date, the Extended Loan Grant Date or Further Extended Loan Grant Date, as the case may be, then-

3.4.1.1 this Agreement, other than the Surviving Provisions, shall lapse and be of no further force or effect; and

3.4.1.2 **no Party shall have any claim against the other Party by reason of the lapsing of this Agreement, except for breach of the provisions of 3.1.2 and the Surviving Provisions and to the extent that this Agreement may have been partially implemented, the Parties shall, be restored to their respective positions in which they were prior to the Date of Signature.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 3.4.1.2 hereby acknowledges having read and understood the provisions of 3.4.1.2.]**

.....  
**Purchaser**

### 3.5 **Surviving Provisions**

Notwithstanding the provisions of 3.1, the Surviving Provisions shall come into force and effect on the Date of Signature and shall bind the Parties. The remainder of this Agreement shall come into force and effect on the fulfilment or waiver, as the case may be, of the Suspensive Condition.

## 4 **SALE AND PURCHASE OF THE LAND**

The Seller hereby sells to the Purchaser, who hereby purchases, the Land in accordance with the provisions of this Agreement.

## 5 **PURCHASE PRICE, PAYMENT AND RELATED PROVISIONS**

### 5.1 **Purchase Price**

The Purchase Price is the amount set out in item 3.1 of the Transaction Schedule.

### 5.2 **Payment of Purchase Price**

The Purchase Price shall be paid in accordance with the provisions of this 5.2.

#### 5.2.1 **The Deposit –**

5.2.1.1 The Deposit shall be paid in cash to the Conveyancers, who are hereby instructed and authorised to invest the Deposit in an interest bearing call account in terms of section 78(2A) of the Attorneys Act ("**the Account**") for the benefit of the Purchaser, pending the Date of Transfer. The Account shall be in the name of the Conveyancers but shall be identified with the Purchaser's name and contain a suitable reference to section 78(2A) of the Attorneys Act. Interest whilst earned

in the Account shall accrue for the benefit of the Purchaser and the Conveyancers are hereby instructed and authorised to pay such interest to the Purchaser as soon as possible after the Date of Transfer, less the Conveyancers professional fee for administering the Account in an amount of 0,05% of the amount of the interest accrued whilst the Deposit was invested as aforementioned.

## 5.2.2 **Payment of the Balance of the Purchase Price**

5.2.2.1 On the Date of Transfer, the Purchaser shall pay the Balance of the Purchase Price in cash to the Seller, without deduction or set off whatsoever.

5.2.2.2 As security for payment of the Balance of the Purchase Price, the Purchaser shall deliver bankers or other financial institution guarantee/s in an amount equal to the Balance of the Purchase Price to the Conveyancers within 14 (fourteen) days of the receipt of written notice from the Conveyancers calling upon the Purchaser to deliver such guarantee/s.

5.2.2.3 The guarantee/s referred to in 5.2.2.2 must be expressed to be immediately payable to the Seller on written notification of the Conveyancers and in a form reasonably acceptable to the Seller.

## 6 **PASSING OF OWNERSHIP, POSSESSION, OCCUPATION, RISK AND BENEFIT**

6.1 From the Date of Transfer, -

6.1.1 ownership, occupation, possession and all the other benefits of ownership attaching to the Land shall pass to the Purchaser;

6.1.2 the sole risk, loss or profit in and to the Land shall pass to the Purchaser; and

6.1.3 the Purchaser shall be liable for payment of the levies referred to in 9.1.14.

6.2 The Purchaser shall refund to the Seller all amounts paid by the Seller in respect of Levies and any other charges, municipal rates and taxes, electricity and water charges for any period after the Date of Transfer.

## **7 TRANSFER AND RELATED PROVISIONS**

### **7.1 Transfer**

7.1.1 Transfer will be effected by the Conveyancers -

7.1.1.1 as soon as possible after the –

7.1.1.1.1 Deposit has been paid in terms of 5.2.1;

7.1.1.1.2 Balance of the Purchase Price has been secured in terms of 5.2.2;  
and

7.1.1.1.3 Purchaser has paid the costs of Transfer in terms of 7.1.2.

7.1.1.2 simultaneously with the registration in the Deeds Office of -

7.1.1.2.1 the cancellation of all existing mortgage bonds registered against  
the title deeds of the Land, if any; and

7.1.1.2.2 a first mortgage bond passed by the Purchaser over the Land in  
favour of the mortgagee concerned, if applicable.

7.1.2 On the Date of Transfer the costs of and incidental to the Transfer plus VAT, including the conveyancing fees in accordance with conveyancing tariff set by the Law Society of the Northern Provinces, together with VAT payable thereon as at the Date of Transfer, and any other costs or duties payable of a



similar nature, in respect of the Transfer, shall be paid by the Purchaser to the Conveyancer. No transfer duty is payable as the Seller is a registered VAT vendor for purposes of this transaction.

7.1.3 The Seller and the Purchaser hereby undertake in favour of each other –

7.1.3.1 within 7 (seven) Business Days after being required by the Conveyancers to do so, to complete and/or sign all documents necessary to effect Transfer; and

7.1.3.2 to take all steps, pay all such amounts and do and procure the doing of all such things as are reasonable in the circumstances so as to place the Conveyancers in a position to effect Transfer without unnecessary delay or hindrance.

7.1.4 Any amounts paid by the Seller, in respect of the Land, for any period after the Date of Transfer, including amounts paid by the Seller to the Local Authority in order to obtain a rates clearance certificate to effect Transfer, shall, if received by the Purchaser or credited to the Purchaser's account held with the Local Authority be immediately refunded by the Purchaser to the Seller.

7.1.5 If Transfer is delayed as a result of the Purchaser’s negligence or wilful default, then the Purchaser shall pay to the Seller monthly in advance, interest on the Purchase Price at the Prime Rate plus 2% (two percent) calculated thereon from the date upon which Transfer would have taken place had it not been for the Purchaser’s default until the Date of Transfer (both dates inclusive). The date upon which Transfer would have taken place shall be determined by the Conveyancers acting as experts in accordance with the provisions of 7.

[Note: The Purchaser by the Purchaser’s initials at the place provided therefore at the foot of this 7.1.5 hereby acknowledges having read and understood the provisions of 7.1.5.]

.....  
Purchaser

**8 LIMITATION OF LIABILITY**

8.1 The Land is sold -

8.1.1 without any warranties expressed or implied;

8.1.2 subject to -

8.1.2.1 all the conditions, burdens, encumbrances and servitudes referred to in the title deeds of the Land;

8.1.2.2 all such other conditions, burdens, encumbrances and servitudes which may exist in regard thereto;

8.1.2.3 Estate Rules; and

8.1.2.4 Architectural Guidelines.

**8.2 The Purchaser is deemed to be acquainted with -**

**8.2.1 the nature, condition, beacons, extent and locality of the Land;**

**8.2.2 all conditions, burdens, encumbrances and servitudes which may exist in regard thereto**

**and the Seller and their agent/s being entirely free from all liability in respect thereof.**

**8.3 The Purchaser confirms that the Purchaser has carefully inspected the Land and hereby expressly agrees to accept the Land in the condition as it stands.**

**8.4 The Seller is not liable to the Purchaser, nor shall the Purchaser be liable to the Seller, if the extent of the Land is found to differ from that stated in the title deeds to the Land and the Seller shall not be required by the Purchaser to point out the beacons, pegs, boundaries or boundary marks of the Land to the Purchaser.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 8 hereby acknowledges having read and understood the provisions of 8.]**

**.....  
Purchaser**

## **9 PURCHASER'S OBLIGATIONS AND ACKNOWLEDGEMENTS**

### **9.1 Home Owners Association**

**9.1.1 The Purchaser acknowledges and agrees that it is the Seller's aim to provide a high standard of development within the Estate. The Purchaser acknowledges and agrees that the Seller has established the Home Owners Association, whose members will all be registered owners of land in the**

**Estate and accordingly, the provision of the Memorandum of Incorporation, the Estate Rules and the Architectural Guidelines shall pertain to the Land and be binding on the Purchaser.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.1.1 hereby acknowledges having read and understood the provisions of 9.1.1.]**

.....  
**Purchaser**

9.1.2 The objectives of the Home Owners Association are contained in the Memorandum of Incorporation. In order to fulfil the functions for which the Home Owners Association was established, the Purchaser will become a member of the Home Owners Association and be bound by the Memorandum of Incorporation, Estate Rules and the Architectural Guidelines in accordance with the provisions of this Agreement.

9.1.3 On the Date of Transfer, the Purchaser shall become and shall remain a member of the Home Owners Association, until the Purchaser ceases to be the registered owner of the Land.

9.1.4 **The Purchaser shall -**

9.1.4.1 abide by and adhere to the Memorandum of Incorporation, the Estate Rules and the Architectural Guidelines;

9.1.4.2 pay the amounts levied by the Home Owners Association in terms of the Memorandum of Incorporation. The Levy shall become payable on the Date of Transfer;

9.1.4.3 perform all the obligations laid out in the Memorandum of Incorporation, Estate Rules and Architectural Guidelines. **Should the Home Owners Association request the Purchaser at any time to rectify any breach, the Purchaser acknowledges and agrees that the Home Owners Association will be entitled to rectify such breach on the Purchaser's behalf and claim such costs incurred in respect thereof from the Purchaser and also to issue any fine as the Home Owners Association may deem proper in any circumstances which costs and/or fine will be paid by the Purchaser within 7 (seven) days of being notified thereof.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.1.4.3 hereby acknowledges having read and understood the provisions of 9.1.4.3.]**

.....  
**Purchaser**

9.1.5 The Seller shall be entitled to procure that in addition to all other conditions of title referred to above or imposed by the Local Authority, the following conditions of title be inserted in the deed of transfer of the Land in terms of which the Purchaser takes title to the Land -

9.1.5.1 Every owner of the erf, or any subdivision thereof, or any interest therein, or any unit as defined in terms of the Sectional Title Act, shall become and remain a Member of the Home Owners Association and be subject to its constitution until he/she ceases to be an owner as aforesaid. Neither the erf, nor any subdivision thereof, any interest therein, nor shall any unit thereon be transferred to any person who has not bound himself to the satisfaction of such Home Owners Association to become a member of the Home Owners Association.

- 9.1.5.2 The owner of the erf or any subdivision thereof, or any interest therein, or any unit as defined in the Sectional Titles Act shall not be entitled to transfer such erf, subdivision thereof, interest therein or unit thereon without a Clearance Certificate from the Home Owners Association stating that provisions of the Memorandum and Articles of Association of the Home Owners Association, Estate Rules and Architectural Guidelines have all been complied with, and that all monies due to the Home Owners Association has been paid.
- 9.1.5.3 The term 'Home Owners Association' in the aforesaid conditions of title shall mean the Eye of Africa Home Owners Association NPC with registration Number 2007/030516/08.
- 9.1.5.4 The owner of the erf or any successors in title is obliged to commence building operations of the main house and outbuildings within 24 (twenty four) months from the date of first registration of the erf and to complete such construction within 36 (thirty six) months after date of first registration of the erf.
- 9.1.5.5 The owner of the erf or any successor in title undertakes to at all times comply with the Memorandum and Articles of Association, the Estate Rules and Architectural Guidelines laid down by the Home Owner Association from time to time.
- 9.1.6 The Purchaser hereby undertakes to sign all such documents and to do all things necessary as the Seller may reasonably require for the purpose of imposing the aforementioned conditions on the title deeds of the Land.
- 9.1.7 The Seller shall remain and retain membership in the Home Owners Association in respect of the unsold erven in the Estate i.e. (one membership per unsold erf and per unsold sectional title unit) provided that the Seller

shall during the Project Period, in addition have one vote for each erf and each sectional title unit which has been sold or transferred into the name of third parties.

9.1.8 Notwithstanding the Seller retaining ownership of the unsold erven, as described in 9.1.7, the Seller shall at no stage pay or become liable for the payment of any fees, charges or membership levies otherwise payable to the Home Owners Association.

9.1.9 As and when the Seller no longer owns any erven or sectional title units in the Estate, the Seller shall resign from being a member of the Home Owners Association.

9.1.10 **The Purchaser acknowledges and agrees that the Purchaser has been advised that the Home Owners' Association will acquire from the Seller certain erven which will be utilized for private open spaces, roads for the purpose of erecting a gate/guard house and controlling entrances for ingress and egress and any other purposes as stipulated from time to and time and that the Home Owners Association shall be and remain responsible for all costs relating to such erven and areas including but not limited to the upkeep, payment of municipal charges levied against such erven and areas, the maintenance thereof and the care of the fauna and flora, including the appointment of staff and/or security services to be provided, without exception.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.1.10 hereby acknowledges having read and understood the provisions of 9.1.10.]**

.....  
**Purchaser**

- 9.1.11 If the Purchaser is by law prohibited from becoming a member of the Home Owners Association, the Purchaser shall, irrespective of such prohibition in all its aspects comply with, conform and act according to the rules of the Home Owners Association as if being a formal member thereof.
- 9.1.12 The Purchaser or any successor in title, shall be allowed to consolidate stands, on the conditions that -
- 9.1.12.1 the approvals of the Home Owners Association and the Local Authority are obtained;
- 9.1.12.2 the full Levy calculated from time to time is paid on each of such erven; and
- 9.1.12.3 all conditions relating to building periods will be applicable (and time periods will be calculated) from the date of transfer of the first of such erven.
- 9.1.13 With regards the compulsory membership of the Home Owners Association, the Purchaser shall -
- 9.1.13.1 conform to and comply with the Memorandum of Incorporation;
- 9.1.13.2 conform to and comply with the Estate Rules;
- 9.1.13.3 conform to and comply with the Architectural Guidelines;
- 9.1.13.4 not sell the Land to any person unless a provision is incorporated in such agreement of sale that the new purchaser of the Land acknowledges that such new purchaser is aware of the Home Owners Association and that such new purchaser shall be obliged, on receiving transfer of the Land, to become and be a compulsory member of the Home Owners Association and be subject to all the obligations, rules



and the Memorandum of Incorporation of the Home Owners Association required from each member.

9.1.14 As from the Date of Transfer the Purchaser is be liable for payment to the Home Owners Association of a monthly Levy as determined by the Home Owners Association through its Board and which Levy shall be utilised, inter alia towards payment of -

9.1.14.1 security;

9.1.14.2 taxes, as well as other municipal charges and levies on assets of the Home Owners Association;

9.1.14.3 maintenance and upkeep of assets, including security systems, guard houses, golf course and the perimeter wall;

9.1.14.4 transportation;

9.1.14.5 payments for maintaining the common property forming part of the Estate;

9.1.14.6 payment of a monthly social membership to the Eye of Africa Golf Club;

9.1.14.7 fees and levies payable to the body controlling the hiking, game control and nature reserve in the Estate;

9.1.14.8 administration fees;

9.1.14.9 electricity and water consumed in respect of common areas of the Estate;

9.1.14.10 the operation of the security fences, wall and entrances;

9.1.14.11 the employment of security personnel;

9.1.14.12 such other purposes as the Memorandum of Incorporation may prescribe;

The monthly amount levied from the owners of erven and sectional title units in the Estate is intended to cover all expenses of the Home Owners Association and to create a sustainable provision fund. The Levy charged for each erf and each sectional title unit shall be the same notwithstanding the size and/or value of such erf or sectional title unit

9.1.15 The Purchaser's attention is drawn to the fact that the Estate Rules and Architectural Guidelines of the Home Owners Association contain directives and/or restrictions which pertain to the architecture which may be applied in the design and/or appearance of buildings to be erected in the Estate and for landscaping. The Purchaser accepts the restrictions and is obliged to ensure that buildings erected by the Purchaser and garden laid by the Purchaser comply with the said directives.

9.1.16 In order to ensure compliance with this provision, the Purchaser's Building Plans has to be approved in writing by the Architectural Review Committee before building work commences and the Home Owners Association and/or the Architectural Review Committee is entitled to inspect the building work at all times.

9.1.17 **The Memorandum of Incorporation forms an integral part of this Agreement and the Purchaser confirms that the Purchaser has read the Memorandum of Incorporation, understands it and is bound by the conditions thereof.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.1.7 hereby acknowledges having read and understood the provisions of 9.1.7.]**

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**Purchaser**

**9.2 Connection Fees**

The Purchaser is obliged to pay all amounts (plus VAT thereon) which are or may become payable in order to procure the connection of the house, and improvements to be erected on the Land to the services such as, but not limited to water, electricity, sewerage, telephone and the like supplied by the Local Authority or any other authority at the nearest supply point to the Land. In spite of the foregoing, the Seller is obliged at its expense to supply the relevant service at one of the boundaries of the Land.

**9.3 Inconvenience**

**The Purchaser acknowledges and agrees that on taking possession and occupation of the Land, the buildings and facilities on the adjacent or nearby erven in the Estate, may be incomplete and that the Purchaser and other occupants of the Land may consequently suffer inconvenience from building operations and from noise and dust resulting therefrom. The Purchaser shall have no claim whatsoever against the Seller by reason of any such inconvenience.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.3 hereby acknowledges having read and understood the provisions of 9.3.]**

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**Purchaser**

#### 9.4 **Development of the Estate**

- 9.4.1 It is the Seller's intention from time to time to erect and complete buildings and facilities, including but not limited to a golf course, social club house and other buildings and facilities on the Estate.
- 9.4.2 The Seller may acquire other properties adjacent to the Estate which may be incorporated in the development of the Estate as future phases or conservation areas which phases, and/or properties and/or conservation areas will be included in the Estate.
- 9.4.3 The Purchaser acknowledges and agrees that the Land forms part of a phase of development of the Estate as a whole. **The Purchaser acknowledges and agrees that the Seller will be entitled to erect and demolish walls and electric fences and take all other actions which it may deem necessary in order to extend the phased development from time to time.**
- 9.4.4 **The Seller may amend the layout, and/or add to or subtract from the number of erven in the Estate in the Seller's absolute and sole discretion from time to time. The Seller may similarly amend, amongst other, the golf corridors, social and sports areas, park areas, facilities and amenities in his absolute and sole discretion**
- 9.4.5 **The Purchaser acknowledges and agrees that on the Date of Transfer, the golf course, club house and social club house facilities will be incomplete.**
- 9.4.6 **The Purchaser hereby confirms and warrants that the Purchaser has not relied on any promises or statements, warranties or representations, express or implied that the golf course, clubhouse and social club house facilities will have been completed at the Date of Transfer or shortly thereafter**

9.4.7            **The Purchaser has no claim whatsoever against the Seller as a result of the clubhouse and social club house facilities not being completed at the time of completion of the golf course.**

**[Note: The Purchaser by the Purchaser’s initials at the place provided therefore at the foot of this 9.4.7 hereby acknowledges having read and understood the provisions of 9.4.3, 9.4.4, 9.4.5, 9.4.6 and 9.4.7.]**

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**Purchaser**

9.5            **Municipal Levies**

As from the Date of Transfer the Purchaser will become liable for payment of municipal rates and taxes and all other amounts which may be levied directly on owners by the Local Authority or any other competent authority in respect of the Land; provided that if Transfer is delayed due to the Purchaser's fault, the Purchaser's liability to pay such amounts shall arise on the date on which the Transfer would have been registered but for the delay caused by the Purchaser. The Purchaser shall pay the municipal rates and taxes and levies directly to the Local Authority or other authority imposing the levy. Should any new levy or form of taxation be imposed in respect of the Land by the Local Authority or any other competent authority after the Date of Signature, the Purchaser shall likewise be liable for the payment thereof from the Date of Transfer, which payment will be made direct to the relevant local or other authority. The Purchaser shall be liable for payment of any VAT which may be levied in respect of any of the such amounts which the Purchaser is liable to pay.

9.6            **Condition of Land**

As from the Date of Transfer, the Purchaser is obliged at the Purchaser's own expense to keep the Land neat and free of rubbish and excessive weeds and similar

vegetation. The Seller may enforce this obligation against the Purchaser. The Purchaser will be liable at its own expense to remove any building rubble or similar material which may at any time be dumped on the Land. Furthermore, from the Date of Transfer the Purchaser is obliged at the Purchaser's own expense to comply with all provisions of the Local Authority which relate to the condition and neatness of the Land, whether such provision exist now or may be imposed hereafter. The Purchaser may not affect any improvements to or alter the nature of the Land prior to Transfer. The building site shall at all times be kept clean and tidy.

## **9.7 Damage from golf course**

**9.7.1 The Purchaser acknowledges and agrees that a golf course forms part of the Estate. The Purchaser accordingly acknowledges and agrees that it is possible that golf balls from the golf course may cause damage to any improvements situated in the Estate, or on the common property, or to any buildings erected on the Land and/or may cause injury to any persons.**

**9.7.2 The Purchaser accordingly hereby indemnifies the Seller against all claims for damages to persons or property which may arise as a result of any person using the golf course or related activities and hereby waives any claim which the Purchaser may now or in the future have against the Seller in respect of any such claims.**

**9.7.3 The Purchaser acknowledges and agrees that inconvenience may be caused due to tournaments, associated marketing events and/or any related activities in the Estate which may render the golf course unavailable and accordingly hereby indemnifies the Seller against all claims which may arise as a result of such tournaments, associated marketing related events and/or any related activities and any inconvenience suffered by the Purchaser as a result of such tournaments, associated marketing events**

and/or related activities and hereby waives any claim which the Purchaser may now or in the future have against the Seller in respect of such claims.

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 9.7.3 hereby acknowledges having read and understood the provisions of 9.7.1, 9.7.2 and 9.7.3.]**

.....

**Purchaser**

**9.8 Resale of Land**

The Purchaser shall not sell the Land unless such sale is in terms of a written contract containing the terms and conditions stipulated by the Seller and which will be in the same format and contain the same terms as this Agreement.

**9.9 Building activities**

9.9.1 The Purchaser shall, within a period of 24 (twenty four) months after the Date of Transfer, be obliged to commence with the building of the house which is to be the main dwelling on the Land strictly in accordance with -

9.9.1.1 Building Plans, which have been submitted to and approved by the Architectural Review Committee in accordance with the provisions of 9.9.2.1;

9.9.1.2 Architectural Guidelines;

9.9.1.3 Estate Rules; and

9.9.1.4 The relevant provisions of the Memorandum of Incorporation.

- 9.9.2 The Purchaser shall -
- 9.9.2.1 submit the Building Plans, specifications and finishes, and site development plan in the first instance, as well as the fee determined from time to time, to the Architectural Review Committee for its written approval in accordance with the Architectural Guidelines, and thereafter the Local Authority or any other competent authority for its approval;
- 9.9.2.2 not commence with any work or building whatsoever on the Land until such time as the approval contemplated in 9.9.2.1 have been obtained; and
- 9.9.2.3 procure the completion of such house within a period of 36 (thirty six) months after the Date of Transfer.
- 9.9.3 The Purchaser shall pay a building deposit to the Home Owners Association before the commencement of building operations in an amount as determined by the Board from time to time as cover for any damage that may be caused to the property of the Home Owners Association by the Purchaser, the Purchaser's family, employees, contractors, visitors, agents or any other person whatsoever. The deposit shall be refunded to the Purchaser upon completion of building operations to the satisfaction of the Home Owners Association, on condition that all the Purchaser's obligations towards the Home Owners Association have been discharged in full.
- 9.9.4 If the Purchaser fails to comply with the provisions of 9.9, then in addition to the Levies and other amounts payable to the Homeowners Association, the Purchaser shall pay to the Home Owners Association an amount equal to double the Levies for each month which elapses between the date 3 (three) years after the Date of Transfer to the date of compliance with clause 9.9 by



the Purchaser. This will increase to three times the Levies after 1 (one) year of non-compliance and thereafter the multiplying factor will increase with one for every completed year of non-compliance.

9.9.5 The Purchaser shall pay the fees as set out in the Architectural Guidelines, before the commencement of any building operations on the Land. These fees can be amended by the Home Owners Association from time to time.

9.9.6 The above conditions may be included in the title conditions of the Land.

9.9.7 Construction on the Land shall comply with the Housing Consumers Protection Measures Act and such conditions as the NHBRC imposes in respect of the Land or construction thereon.

9.9.8 The Purchaser must ensure that the building contractor to be used by the Purchaser to erect the building on the Land is registered as home builder and enrolls the house with the NHBRC in accordance with the provisions of the Housing Consumers Protections Measures Act.

9.9.9 The Purchaser shall appoint a structural engineer to oversee and ensure the structural integrity of the house during and after the completion of the construction of the house. Construction undertaken by the Purchaser is at the sole risk and responsibility of the Purchaser. The Purchaser hereby waives any claim of whatsoever nature in respect of damage suffered by the Purchaser relating from the soil conditions of the Land. The Purchaser acknowledges and agrees that the Purchaser has no claim against the Seller and has no entitlement to institute any claim against the Seller in respect of the soil conditions on the Land.

9.10 **Social Membership**

Each Purchaser shall automatically from the Date of Transfer receive social membership and the right to use the social club house facilities.

9.11 **Indemnity for installation of infrastructural services**

The Purchaser hereby indemnifies the Seller against any damages caused to the Land due to the installation of the infrastructural services, including but not limited to, construction of roads, curb stones, sewerage works, electricity, water provision and storm water drainage and the Purchaser accepts that the activities during the installation of services may give rise to a certain degree of damage to the land and/or vegetation, even if any infrastructural services are not placed or conducted directly over or under the Land being sold.

[Note: The Purchaser by the Purchaser’s initials at the place provided therefore at the foot of this 9.11 hereby acknowledges having read and understood the provisions of 9.11.]

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**Purchaser**

10 **AGENT’S COMMISSION**

10.1 The Estate Agent is the effective cause of the sale of the Land. The Seller is liable for the payment of the Estate Agent's commission.

10.2 The Estate Agent's commission is deemed to have been earned by the Estate Agent upon the fulfilment of all the Suspensive Conditions, but is payable together with VAT to the Estate Agent as soon as possible after the Date of Transfer.

10.3 Should this Agreement be cancelled as a result of the Purchaser's breach or as a result of the Seller releasing the Purchaser of the Purchaser's obligations under this Agreement, the Seller or the Estate Agent is entitled to claim payment of the commission from the Purchaser.

10.4 Save as set out in 10.1, the Parties agree that they were not introduced to each other or to the Land by any person who is entitled to claim commission or any like remuneration on or in connection with such introduction in circumstances which could give rise to a claim for estate agent's commission or other commission against one or both of the Parties.

## 11 BREACH

11.1 Should the Purchaser commit any breach of the terms of this Agreement, all of which are deemed to be material, and persist in such breach for more than 14 (fourteen) days after the Seller has given a written notice to the Purchaser requiring him to remedy such breach, the Seller shall be entitled, without prejudice to any other rights available to the Seller at law —

11.1.1.1 to claim specific performance by way of immediate payment of the full Balance of The Purchase Price then unpaid, together with interest and all other monies then outstanding under this Agreement; or

11.1.1.2 to cancel this Agreement and retain all amounts paid by the Purchaser as a genuine pre-estimate of liquidated damages and to recover arrear payments up to the date of cancellation; or

11.1.1.3 cancel this Agreement and claim and recover from the Purchaser such damages as the Seller may have suffered, in which event the Seller shall be entitled to retain payments made by the Purchaser prior to cancellation until the actual amount of damages has been determined

by a court and thereupon, to set off such damages against the aforesaid sums retained.

11.2 In the event of cancellation of this Agreement before Transfer the Purchaser shall immediately vacate the Land and restore possession and occupation thereof to the Seller, and the Purchaser shall not have any claim against the Seller for any improvements that the Purchaser may have effected to the Land, notwithstanding the fact that the Seller may have consented to the possession and/or occupation of the Land or to the erection of such improvements.

11.3 The Purchaser shall be liable for and pay on demand all legal costs, on the attorney and client scale, incurred by the Seller in any legal proceedings instituted by the Seller against the Purchaser as a result of or arising from a breach of this Agreement.

11.4 Should the Purchaser dispute the Seller's right to terminate or cancel this Agreement, then, pending the termination of such dispute, the Purchaser shall be obliged to continue to effect payment of all monies payable by him in terms hereof on the due dates thereof and the Seller shall be entitled to recover and accept such payments without prejudice to its rights.

[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 11.4 hereby acknowledges having read and understood the provisions of 11.2, 11.3 and 11.4.]

.....  
Purchaser

## 12 DOMICILIUM AND NOTICES

12.1 The Parties choose as their *domicilium citandi et executandi* their respective addresses set out in this 12 for all purposes arising out of or in connection with this

Agreement at which addresses all the processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

12.2 For the purpose of this Agreement the Parties' respective addresses shall be -

12.2.1 as regards the Purchaser at the address set out in item 1.2.1 or 1.2.2, as the case may be, of the Transaction Schedule; and

12.2.2 as regards the Seller at the address set out in item 1.1 of the Transaction Schedule,

or at such other address in the Republic of South Africa, not being a post office box or *poste restante*, of which the party concerned may notify the others in writing.

12.3 Any notice given in terms of this Agreement shall be in writing and shall if delivered by -

12.3.1 hand be deemed to have been duly received by the addressee on the date of delivery;

12.3.2 recognised international courier service be deemed to have been received by the addressee on the 1<sup>st</sup> (first) Business Day following the date of such delivery by the courier service concerned; and

12.3.3 telefax or email be deemed to have been received by the addressee on the 1<sup>st</sup> (first) Business Day following the date of transmission of such telefax or email.

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

## 13 MISCELLANEOUS

### 13.1 Company To Be Formed

13.1.1 If the person who signs this Agreement for the Purchaser does so acting as a trustee or agent for a company (for the purposes of this 13.1, the "Trustee") to be formed, then the provisions of this 13.1 shall apply.

13.1.2 The company on behalf of which the Trustee is acting shall be incorporated by not later than 30 (thirty) days after the Date of Signature.

13.1.3 If within 3 (three) Months after the Date of Signature, the company has neither ratified nor rejected this Agreement, then the company will be regarded as having ratified this Agreement.

13.1.4 To the extent that the company ratifies the Agreement, the –

13.1.4.1 Agreement is enforceable against the company as if the company had been a party to the Agreement when it was made; and

13.1.4.2 liability of the person who entered into this Agreement on behalf of the company is discharged.

13.1.5 If the company is not incorporated or after being incorporated rejects any part of the Agreement, then the Trustee shall be bound by and be liable for all the obligations of the Purchaser, in terms of this Agreement.

### 13.2 VAT

The Purchase Price is inclusive of VAT at the applicable standard rate. In the event that the applicable VAT rate changes at any time prior to Transfer, the Seller is entitled to adjust the Purchase Price accordingly by giving the Purchaser written notice to that effect.

13.3 **Warranty of Authority and the Purchaser’s tax affairs**

13.3.1 Each Party warrants to the other Party that it has power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly authorised by all necessary actions of its directors/members/trustees and constitutes valid and binding obligations on it in accordance with the terms of this Agreement.

13.3.2 **The Purchaser warrants that all the Purchaser’s income tax, VAT returns and the Purchaser’s other tax returns have been timeously submitted to the Commissioner: SARS, that all tax payments due by the Purchaser have been submitted to SARS and that the Purchaser has no reason to believe that the Transfer will be delayed as a result of the Purchaser’s tax affairs not being in order. The Purchaser acknowledges and agrees that if Transfer is delayed as a result of the Purchaser’s tax affairs not being in order, then this delay will constitute a breach of a material term of this Agreement thereby entitling the Seller to invoke the remedies set out in 11.**

**[Note: The Purchaser by the Purchaser’s initials at the place provided therefore at the foot of this 13.3.2 hereby acknowledges having read and understood the provisions of 13.4.2.]**

.....  
**Purchaser**

13.4 **Payment and Interest**

13.4.1 All payments in terms of or arising out of this Agreement shall be made free of bank exchange, commission and all other deductions to the Party entitled thereto.

13.4.2 No Party shall have the right to defer, adjust or withhold any payment due to the other/s in terms of or arising out of this Agreement or to obtain deferment of judgment for such amount or any execution of such judgment by reason of any set-off or counterclaim of whatsoever nature or howsoever arising.

13.4.3 Save to the extent otherwise provided, all amounts due by one Party to the other/s (including damages) in terms of or arising out of this Agreement shall, unless paid on due date, bear interest from the due date to date of payment. Such interest shall be -

13.4.3.1 calculated at the Prime Rate; and

13.4.3.2 capitalised Monthly in arrear on the balance due.

13.4.4 If there is any dispute as to the amount of the Prime Rate, the certificate furnished in writing by any manager of the Standard Bank of South Africa Limited, whose appointment, designation and authority as such, it shall not be necessary to prove, shall be *prima facie*, proof of the amount of the Prime Rate.

### 13.5 **Independent Advice**

13.5.1 Each of the Parties acknowledge that –

13.5.1.1 they have been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that they have either taken such independent legal advice or dispensed with the necessity of doing so; and

13.5.1.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part



of the overall intention of the Parties in connection with this Agreement.

**13.6 Further Assurances**

The Parties agree to perform any further acts and to execute and deliver any further documents which may be necessary or appropriate to carry out the purposes and the implementation of this Agreement.

**13.7 Relationship of the Parties**

The relationship of the Parties, *inter se*, shall be governed by the terms of this Agreement and nothing contained herein shall be deemed to constitute a partnership, joint venture or the like between them nor to constitute one Party the agent of the other for any purpose. No Party shall by reason of the actions of the other Party incur any personal liability as a co-partner to any third Party and no Party shall be entitled to authorise, to represent or hold out to any third Party that the relationship between the Parties is that of a partnership, joint venture or the like as aforesaid.

**13.8 Whole Agreement**

This Agreement constitutes the whole agreement between the Parties as to the subject-matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

**13.9 Variation**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

**13.10 Time is of the essence**

Time is of the essence for the performance by the Parties of their respective obligations owed to each other in terms of this Agreement.

**13.11 Relaxation**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to any other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

**13.12 Joint Purchasers**

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

**13.13 Matrimonial Property**

**The Purchaser warrants to the Seller that all consents required in terms of the Matrimonial Property Act No 88 of 1994 have been given, if applicable.**

**[Note: The Purchaser by the Purchaser's initials at the place provided therefore at the foot of this 13.13 hereby acknowledges having read and understood the provisions of 13.14.]**

.....  
**Purchaser**

**13.14 Purchaser's right in terms of section 16 of the Consumer Protection Act**

13.14.1 This 13.14 is applicable only if the Purchaser is a natural person or a legal entity with an annual turnover or asset value of less than R2,000,000.00 (two million rand).

13.14.2 If this Agreement is entered into between the Parties as a result of the direct marketing to the Purchaser by the Seller or Estate Agent, the Purchaser will be entitled to cancel this Agreement within 5 (five) Business Days after the Date of Signature or within 5 (five) Business Days after Date of Transfer.

13.14.3 If the Purchaser elects to exercise its right in terms of this 13.14, then the Purchaser must -

13.14.3.1 inform the Seller in writing within 5 (five) days of the date in 13.14.2 that the Purchaser is cancelling this Agreement; and

13.14.3.2 return the Land within 10 (ten) Business Days after the Date of Transfer and in the same condition as the Land was given to the Purchaser. The return of the Land will be done at the Purchaser's own risk and cost, and will include transfer fees including, but not limited to transfer duty, VAT, conveyancing fees.

13.14.4 If the Land is returned to the Seller as provided for above, the Purchaser will be liable to the Seller for all and any costs that must be incurred to rectify any damage caused to the Land.

13.14.5 If and when 13.14.3 has been complied with, the Seller shall return all payments made by the Purchaser to the Seller within 15 (fifteen) Business Days, provided that the Seller is entitled to set-off any amounts that may be necessary for costs for remedial work as provided for in 13.14.4.

13.15 **Costs**

13.15.1 Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement and the appendices to it.

13.15.2 All legal costs, which will include attorney and own client costs, incurred by one Party arising out of the breach of any provisions of the Agreement by the other Party shall be borne by the Party in breach.

Signed at.....on this the .....day of ..... 20.....

\_\_\_\_\_ For: **EYE OF AFRICA DEVELOPMENTS  
PROPRIETARY LIMITED**

Duly Authorised

Name: .....

Designation: .....

Signed at.....on this the .....day of ..... 20.....

\_\_\_\_\_ For: **PURCHASER**

Duly Authorised

Name: .....

Designation: .....

Signed at.....on this the .....day of ..... 20.....

\_\_\_\_\_ For: **PURCHASER**  
Duly Authorised

Name: .....

Designation: .....

Signed at.....on this the .....day of ..... 20.....

\_\_\_\_\_ For: **THE AGENT**  
Duly Authorised

Name: .....

Designation: .....

**APPENDIX A**

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**EXTRACT OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF EYE OF AFRICA  
DEVELOPMENTS PROPRIETARY LIMITED**

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**APPENDIX A**

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EXTRACT OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF EYE OF AFRICA DEVELOPMENTS PROPRIETARY LIMITED (the **Company**) PASSED AT .....ON .....20.....

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**RESOLVED:**

- 1 THAT the Company enters into an agreement of sale of vacant land upon the terms and conditions of the agreement submitted to and approved by the board of directors of the Company.

**RESOLVED FURTHER:**

- 1.1 THAT Mr David Nagle and/or Mr Mark McGovern acting in their capacity as directors of the Company, be and are hereby authorised and empowered to -
- 1.2 negotiate the final terms and conditions of the agreement referred to in the preceding resolution;
- 1.3 sign the said agreement and all other deeds or documents which may be necessary for the implementation of the abovementioned agreement; and
- 1.4 generally do and procure the doing of everything that may be necessary for the implementation of the abovementioned agreement,

and any agreement, deeds or documents signed by the said Mr David Nagle and/or Mr Mark McGovern acting under authority of this and the preceding resolution, shall conclusively be deemed to be the agreement, deeds and documents authorised by this and the preceding resolution.

CERTIFIED A TRUE COPY

\_\_\_\_\_  
**CHAIRMAN OF THE MEETING**



**APPENDIX 1**

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**ARCHITECTURAL GUIDELINES**

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**APPENDIX 2**

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**ESTATE RULES**

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**APPENDIX 3**

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**MEMORANDUM OF INCORPORATION**

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