

AGREEMENT OF SALE

Entered into by and between:

EYE OF AFRICA DEVELOPMENTS (PTY) LTD

and

.....

1. DEFINITIONS

In this agreement unless inconsistent with the context:-

1.1. The words and phrases herein defined shall bear the meanings respectively herein assigned to them namely:

1.1.1. **SELLER** - Eye of Africa Developments (Pty) Ltd

Registration number 2005/021292/07

Full Physical Address

.....
.....

1.1.2. **PURCHASER** –

Full names

Full Physical Address

.....
.....

Postal Address

.....

Telephone Nos

(h).....(w).....

(cell) E-mail

Identity No / Company registration number / Close Corporation registration number /

Trust number

.....

Marital Status Marital Regime (eg ANC/COP)

.....

Date Married

Income Tax number

Full Name of Spouse

.....

Identity No

.....

1.1.3. TOWN/TOWNSHIP:-

1.1.3.1. The Township known as Eye of Africa Extension 1 Township.

1.1.3.2. As indicated in its proposed form on the general plan of the TOWNSHIP which is available for viewing at the SELLER'S office (called the "general plan");

1.1.4. **PROPERTY** Erf no _____ in the Eye of Africa Extension 1 Township.

1.1.5. **PURCHASE PRICE** - the amount to be paid by the PURCHASER to the SELLER namely R.....(.....) inclusive of VAT.

1.1.6. **TRANSFERRING ATTORNEYS** - Dykes, van Heerden of 19 Ontdekkers Road, Breananda Tel 279 5000

1.1.7. **ESTATE AGENT** – Mackrell Realty cc and/or any other Estate Agent appointed by the SELLER from time to time.

1.1.8. **MORTGAGE FINANCE** - a loan of not less than R
(.....)
) to be granted by a bank or similar financial institution for the purpose of paying the PURCHASE PRICE to be secured by a first mortgage bond over the PROPERTY which loan shall be granted within 45 (forty five) days of signature of this agreement by the PURCHASER (which deadline may be extended by the SELLER at the SELLER'S sole option for a period of 15 days). The SELLER need not give notice to the purchaser of any such extension.

1.1.9. **PAYMENT SCHEDULE** – an initial deposit of 10% of the PURCHASE PRICE in cash on signature of this agreement and a further deposit of R.....
(.....) to be paid within 30 (thirty) days of signature of this agreement to the TRANSFERRING ATTORNEYS which deposits will be held by them in trust pending registration of transfer of the PROPERTY. The balance of the PURCHASE PRICE of R.....
(.....) is to be secured by the PURCHASER in the form of bank guarantees approved by the TRANSFERRING ATTORNEYS which guarantees shall be made payable for the balance of the PURCHASE PRICE on transfer of the PROPERTY which guarantees are to be furnished to the TRANSFERRING ATTORNEYS within 30 (thirty) days of the granting of the MORTGAGE FINANCE referred to in Clause 1.1.8 and if no MORTGAGE FINANCE is required, within 30 (thirty) days of signature of this agreement by the PURCHASER. The parties hereby authorise attorneys Dykes, van Heerden to invest the monies in an interest bearing account which interest shall

accrue for the benefit of the PURCHASER. Signature of this document by the PURCHASER constitutes the necessary authority to the SELLER'S TRANSFERRING ATTORNEYS to invest the amount of the deposit with an A1 Financial institution at a preferential rate to be negotiated by the TRANSFERRING ATTORNEYS, the terms of which shall be provided to the PURCHASER within a reasonable period after the date of signature of this document by the PURCHASER.

1.1.10. **OCCUPATION DATE** – the date of transfer of the PROPERTY into the name of the PURCHASER.

1.1.11. **FINANCIER** - the financial institution financing the purchase of the PROPERTY by way of providing the MORTGAGE FINANCE.

1.1.12. **THE PROJECT PERIOD** – The period from date of signature of this agreement by both parties until the date that the SELLER notifies the Home Owners Association referred to in paragraph 22 below that it has ceased the development of the land of which this PROPERTY forms a part.

1.1.13. **THE DIRECTORS** – The Directors of the Homeowners Association referred to in paragraph 22 below.

1.1.14. **SOCIAL MEMBERSHIP** –The right to use the Social Club House and Social Club House facilities.

1.1.15. **PRIVATE OPEN SPACES** – Those portions of the DEVELOPMENT which belong to the Homeowners Association referred to in paragraph 22 below.

1.1.16. **DEVELOPMENT** – The development known as the Eye of Africa situated on the TOWNSHIP, any extensions to the TOWNSHIP and any properties which the SELLER may in the future add as extensions to the DEVELOPMENT.

1.2. Words importing the singular shall include the plural and vice versa.

1.3. Words referring to any one gender shall include the other two genders.

1.4. If any provision in a definition is a substantive provision imposing rights or obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

2. **SALE AND PURCHASE**

The SELLER hereby sells to the PURCHASER, who hereby purchases the PROPERTY having been duly introduced to one another, and the PURCHASER to the PROPERTY by the ESTATE AGENT.

3. **PAYMENT OF PURCHASE PRICE**

The PURCHASE PRICE is payable as per the PAYMENT SCHEDULE as set out in paragraph

1.1.9 above.

4. **ACKNOWLEDGEMENTS BY PURCHASER**

The PURCHASER acknowledges that :-

4.1 he has acquainted himself with the nature, condition, beacons, extent and locality of the PROPERTY; and

4.2 the PROPERTY is sold :-

4.2.1 **to the extent as it now lies without any warranties whether express or implied and the SELLER shall not be liable for any defects whether latent or otherwise in the PROPERTY nor for damages suffered by the PURCHASER by reason of such defects;** and

Purchaser to initial at this clause

4.2.2 subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the PROPERTY or any town planning scheme applicable thereto.

5 **TRANSFER**

5.1 Transfer of the PROPERTY shall be effected by the SELLER'S TRANSFERRING ATTORNEYS within a reasonable time after the fulfilment of the suspensive conditions of this agreement.

5.2 The PURCHASER shall on demand pay all expenses of and incidental to the registration of transfer of the PROPERTY into the name of the PURCHASER and for the bond registration costs. There is no transfer duty payable as the SELLER is registered for Value Added Tax (VAT) purposes.

5.3 The SELLER and the PURCHASER undertake immediately upon being requested to do so to sign all documents required to be signed in connection with the transfer, the cancellation of all bonds at present registered over the PROPERTY and the registration of any bonds to be registered in terms of this Agreement.

5.4 The parties hereto agree that notwithstanding anything else contained in this agreement, if the PROPERTY is one of the erven which is situated under the existing Eskom servitude, transfer of the PROPERTY will not take place until such stage as the existing Eskom servitude has been cancelled so that the PROPERTY is no longer situated within such servitude.

6 **POSSESSION, RISK & OWNERSHIP**

Possession of the PROPERTY shall be given to the PURCHASER on registration of transfer from which date all benefits and risks of ownership in respect of the PROPERTY shall pass to the PURCHASER including the right to any rentals payable and the liability for any rates and taxes and other imposts levied thereupon. Any rentals received, or rates and taxes and other imposts paid out prior to the said date of possession for any period subsequent thereto shall be refunded

proportionally.

7 LATITUDE OF EXTENSION OF TIME, WARRANTIES AND VARIATIONS

- 7.1 Any latitude or extension of time which may be allowed by the SELLER to the PURCHASER in respect of any payment provided for herein, or any matter or thing which the PURCHASER is bound to perform or observe in terms hereof shall not in any circumstances be deemed to be a waiver of the SELLER'S rights at any time, to require strict and punctual compliance with each and every provision or term hereof.
- 7.2 This document shall constitute the entire contract between the SELLER and the PURCHASER. The SELLER shall not be bound by any other terms or conditions, promises or statements, warranties or representations, express or implied made by the SELLER or any other person purporting to act for and on behalf of the SELLER. No variation or consensual cancellation shall be of any force or effect unless reduced to writing and signed by the parties hereto.

8 DOMICILIUM AND JURISDICTION

- 8.1 The parties hereby select as their domicilium citandi et executandi the addresses set out by them in clause 1 above, it being agreed that all notices despatched in the Republic of South Africa by prepaid registered post to the domicilium selected shall be deemed to have been received 7 (seven) days from the date of posting thereof. Either party may from time to time change its domicilium by delivery of written notice to the other party to that effect.
- 8.2 For the purpose of all or any proceedings resulting herefrom, the parties 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 beyond this jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon said Court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.

9 TITLE CONDITIONS

- 9.1 The PROPERTY is sold subject to all the conditions of title, restrictions and servitudes set out and/or referred to in the title deeds of the land as well as any other conditions, restrictions and/or servitudes that may apply to or exist in respect of the PROPERTY whether at the date of signing of this agreement or in future. Without derogating from the generality of the aforesaid, the PROPERTY is also subject to all such conditions, restrictions and/or servitudes that had been or may in future be imposed in terms of a Town Planning Scheme applicable to the PROPERTY and/or which has been imposed or may in future be lawfully imposed by the DEVELOPER, the administrator, the relevant local council or any other competent authority having jurisdiction in respect of the PROPERTY. Should the PROPERTY be incorrectly numbered in this contract, such error shall not be binding on the parties but the description of the PROPERTY as set out in the registered title deeds shall be applicable and in such event the SELLER shall be entitled to rectify such error in writing by giving notice to the PURCHASER to that effect and to which rectification the PURCHASER hereby irrevocably consents.

- 9.2 The PURCHASER hereby warrants that he has acquainted himself with the conditions that have been imposed by the relevant local authority or any other competent authority or by the DEVELOPER and that he has also acquainted himself with the existence, nature and extent of any conditions, servitudes or restrictions that may burden or affect the PROPERTY whether directly or indirectly and that he is further aware that certain other conditions, restrictions or servitudes may also be imposed by any of the aforesaid parties (and he hereby consents to such conditions, restrictions and servitudes).
- 9.3 The Record of Decision and the Environmental Management Plan form an integral part of this agreement. The PURCHASER acknowledges that a copy of such documents have been made available to the PURCHASER. The PURCHASER confirms that he has read the Record of Decision and the Environmental Management Plan, understands it and is bound by the conditions thereof. The PURCHASER further acknowledges that the aforementioned documents and the site development plan have been explained to him and that a copy of both documents are available for him to review at any time at the Eye of Africa Sales Office.

10 **SUSPENSIVE CONDITIONS**

10.1 This agreement is subject to the following suspensive conditions namely:-

10.1.1 The SELLER obtaining a Section 82 Certificate in terms of the Town Planning and Townships Ordinance (15 of 1986) in respect of that portion of the TOWNSHIP on which the PROPERTY is situated within 24 (twenty four) months from date of signature of this agreement by the SELLER.

10.1.2 Approval of bond

This agreement is subject to the PURCHASER obtaining the MORTGAGE FINANCE.

Failure on the part of

- (a) the PURCHASER to sign any application for a bond or any other document/s necessary to procure granting or registration of such bond, and to furnish relevant information or to pay the costs of or incidental to registration of any bond; or
- (b) any person nominated to sign a Deed or Deeds of Suretyship as contemplated above to sign such Deed or Deeds of suretyship or to furnish relevant information upon demand by the SELLER, or any prospective Bondholder,

shall constitute a breach hereof by the PURCHASER within the meaning of Clause 13 hereof or alternatively shall, at the option of the SELLER, entitle the SELLER to regard this clause 10.1.2 as having been duly fulfilled.

11 **COMMISSION**

11.1 The PURCHASER warrants that he was introduced to the PROPERTY through the ESTATE AGENT and that no other party introduced him to the PROPERTY or was the effective cause of the sale.

11.2 Should the transfer of the PROPERTY not be effected due to a breach by the PURCHASER of any condition of this agreement which resulted in the sale being cancelled, the ESTATE AGENT shall be entitled to claim the commission from the PURCHASER.

12 **APPLICATION FOR FINANCE**

The PURCHASER warrants that his income and assets and liabilities meet the criteria imposed by the recognised financial institutions for a loan in the amount of the MORTGAGE FINANCE.

13 **BREACH**

13.1 The PURCHASER waives all rights to claim set off, which shall not apply, or to withhold or defer any payment pending determination of any claim which the PURCHASER may have against the SELLER or for any other reason.

13.2 Should any amount be due for payment and not be paid on due date or should the PURCHASER breach the agreement in any way whatsoever, then, and in addition to any other remedies conferred upon the SELLER, in law or in terms of this agreement the SELLER shall be entitled to;

13.2.1 Cancel this agreement and resume possession of the PROPERTY and recover from the PURCHASER all damages it may have suffered by reason of such default and retain all amounts paid by the PURCHASER pending the determination of the actual damages sustained by the SELLER; or

13.2.2 Cancel the agreement and resume possession of the PROPERTY and retain all amounts paid by the PURCHASER in terms of this agreement as rouwkoop or a genuine pre-estimate of damages which amount the parties hereto agree is fair and reasonable in the circumstances; or

13.2.3 Claim specific performance.

14 **WAIVER OF CONDITIONS AND LAPSE OF AGREEMENT**

The PURCHASER may, at any time prior to the fulfilment of any suspensive condition contained in this agreement advise the SELLER in writing that he waives the benefit of such condition, in which event this Agreement will no longer be subject to such condition.

15 **CAPACITY OF PARTIES**

15.1 Should the person signing this agreement sign the same as a trustee for a Company or Close Corporation to be formed (the "legal entity"), then such person:

15.1.1 Shall procure that the legal entity is formed within 14 (fourteen) days of signature of this agreement and further shall ensure that the legal entity adopts and ratifies this agreement as required by relevant legislation;

15.1.2 Binds himself as surety for and co-principal debtor in solidum with the legal entity in favour of the SELLER for the due and punctual performance by the legal entity for its obligations in terms of this agreement once such legal entity is formed;

15.1.3 Shall accept liability in terms of this agreement in his personal capacity if the legal entity is not formed or does not act in terms of the provision of clause 15.1.1 above.

15.2 In the event of there being more than one PURCHASER any obligations of the PURCHASERS shall be joint and several.

15.3 Any person signing this agreement on behalf of an existing Trust, Close Corporation or Company hereby binds himself as surety and co-principal debtor with such Trust, Close Corporation or Company in favour of the SELLER.

16 **INCONVENIENCE**

The PURCHASER acknowledges that on taking possession and occupation of the PROPERTY, the buildings and facilities on the adjacent or nearby stands comprising the TOWNSHIP and the estate, particularly the PRIVATE OPEN SPACES, the gatehouses and the security fences may be incomplete and that occupants of the PROPERTY may consequently suffer inconvenience from building operations and from noise and dust resulting therefrom and that the PURCHASER shall have no claim whatsoever against the SELLER by reason of any such inconvenience

Purchaser
to initial at
this clause

17 **ESTATE RULES**

The PURCHASER acknowledges that on becoming the registered owner of the PROPERTY he shall be bound by the Estate Rules which are attached hereto marked **Annexure "B"**.

18 **LEVIES PAYABLE DIRECT TO LOCAL AUTHORITY**

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 or any other competent authority in respect of the PROPERTY; provided that if the transfer is delayed due to the PURCHASER'S fault, the PURCHASER'S liability to pay the said 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 said levies directly to the local or other authority imposing the levy. Should any new levy or form of taxation be imposed in respect of the PROPERTY by the local authority or any other competent authority after the date of this agreement, the PURCHASER shall likewise be liable for the payment thereof from the transfer date, 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 said amounts which the PURCHASER is liable to pay.

19 **CONDITION OF THE PROPERTY**

As from the date of transfer, the PURCHASER is obliged at his own expense to keep the PROPERTY 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 PROPERTY. Furthermore, from the date of transfer the PURCHASER is obliged at his own expense to comply with all provisions of the local and other competent authorities which relate to the condition and neatness of the PROPERTY, whether such provision exist now or may be imposed hereafter. The PURCHASER may not effect any improvements to or alter the nature of the PROPERTY prior to transfer. The building site shall at all times be kept clean and tidy.

20. **DAMAGE FROM GOLF COURSE**

The PURCHASER acknowledges that a golf course forms part of the DEVELOPMENT. The PURCHASER accordingly acknowledges that it is possible that golf balls from the golf course may cause damage to any improvements situated in such DEVELOPMENT or on the common property and/or may cause injury to any persons. 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. The PURCHASER further acknowledges that inconvenience may be caused due to tournaments, associated marketing events and/or any related activities in the DEVELOPMENT which may *inter alia* render the 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.

Purchaser to initial at this clause

21. **NO IMPROVEMENTS PRIOR TO TRANSFER**

Prior to the date of transfer the PURCHASER shall not, without the SELLER'S prior written consent, be entitled to erect any building or other structure on the PROPERTY whether or not such building or other structure is of a permanent nature, nor will the PURCHASER be entitled to dig foundations or otherwise prepare the PROPERTY for building.

22. **HOMEOWNERS' ASSOCIATION**

22.1 It is an express condition of this agreement that:-

22.1.1 The PURCHASER on becoming the registered owner of the PROPERTY, or a sub-division or consolidation thereof, or the holder of any surface right herein, or the owner of any sectional title unit or member of a shareblock scheme on the PROPERTY shall become and shall remain a member of the EYE OF AFRICA HOMEOWNERS ASSOCIATION (a Section 21 Company), Registration Number

2007/030516/08 ("the Home Owners Association") or such name as the Registrar of Companies may approve and be subject to its Memorandum and Articles of Association, until he ceases to be such registered owner.

22.1.2 The PURCHASER acknowledges that in addition to the conditions referred to above or imposed by the local authority, it may be required that any one or more of the following conditions are inserted in the Deed of Transfer of the PROPERTY to be registered in the PURCHASER'S name:-

A "Every owner of the erf or sectional title unit shall become and remain a member of the Home Owners' Association and be subject to the Home Owners' Association's Memorandum and Articles of Association, until he/she ceases to be an owner of an erf or sectional title unit. Neither the erf or sectional title unit or any interest therein shall be transferred to any person who has not bound him/herself to the satisfaction of the Home Owners Association to become a member of the Home Owners' Association."

"The owner of the erf or sectional title unit or any person having an interest therein shall not be entitled to dispose or transfer the erf, sectional title unit or any interest therein without consent from the Home Owners' Association that the provisions of the Memorandum and Articles of Association of the Home Owners' Association have been complied with. The term 'Home Owners' Association' in the aforesaid condition of title shall mean the Eye of Africa Homeowners' Association or any such name approved by the Registrar of Companies, being a Section 21 Company."

B "(a) Immediately on becoming the registered owner of the property, the owner will automatically become a member of EYE OF AFRICA HOMEOWNERS ASSOCIATION (an Association Incorporated under Section 21) and will be bound by the Memorandum and Articles of Association of the Association.

(b) For as long as the owner is the registered owner of the property he will remain a member of the Association and be bound by its Memorandum and Articles of Association;

(c) The owner of the erf, or any subdivision thereof, or of any unit erected thereon shall not be entitled to transfer the erf, or any portion thereof, or any unit, without the prior written confirmation of the Association that all amounts due to the Association by the owner have been paid.

(d) The owner of the erf shall not alter the access of the erf without the prior written consent of the Association.

(e) In the abovementioned conditions the expression "EYE OF AFRICA HOMEOWNERS ASSOCIATION" shall mean "EYE OF AFRICA HOMEOWNERS ASSOCIATION (Association incorporated under Section 21) (No 2007/030516/08)."

- 22.1.3 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 PROPERTY.
- 22.2 The SELLER shall remain and retain membership in the Home Owners Association in the number of memberships representing the unsold stands in the TOWNSHIP i.e. (one membership per unsold stand/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.
- 22.3 Notwithstanding the SELLER retaining ownership of the unsold stands, as described in 22.2, 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.
- 22.4 As and when the SELLER no longer owns any erven or sectional title units, the SELLER shall resign from being a member of the Home Owners Association.
- 22.5 The PURCHASER acknowledges that he/she 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 time and that the Home Owners Association shall be and remain responsible for all costs relating to the same including but not limited to the upkeep, payment of municipal charges levied against such properties, 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.
- 22.6 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.
- 22.7 With regards the compulsory membership of the Home Owners Association, the PURCHASER specifically agrees:-
- 22.7.1 To conform to and comply with the Memorandum and Articles of Association of the Home Owners Association;
- 22.7.2 Not to sell the PROPERTY to any person unless a provision is incorporated in such agreement of sale that the new purchaser of the PROPERTY acknowledges that he/she is aware of the Home Owners Association and that such purchaser shall be obliged, on receiving transfer of the PROPERTY, to become and be a compulsory member of the Home Owners Association and be subject to all the obligations, rules and the Memorandum and Articles of Association of the Home Owners Association required from each member.
- 22.8 As from the date of transfer the PURCHASER shall be liable for payment to the Home Owners Association of a monthly levy as determined by the Home Owners

Association through its board of Directors and which levy shall be utilised, inter alia towards payment of:-

- 22.8.1 Security;
- 22.8.2 rates and taxes, as well as other municipal charges and levies on assets of the Home Owners Association;
- 22.8.3 maintenance and upkeep of assets, including security systems, guard houses, golf course and the perimeter wall;
- 22.8.4 transportation;
- 22.8.5 payments to be made to the maintenance company which will be formed for the purposes of maintaining the common property;
- 22.8.6 payment of a monthly social membership to the Eye of Africa Golf Club.
- 22.8.7 Fees and levies payable to the body controlling the hiking, game control and nature reserve which are close to the PROPERTY and which form part of the greater Eye of Africa Development.
- 22.8.8 Administration fees.
- 22.8.9 Electricity and water consumed in respect of common areas;
- 22.8.10 The operation of the security fences, wall and entrances;
- 22.8.11 The employment of security personnel;
- 22.8.12 Such other purposes as the Memorandum and Articles of Association of the Home Owners Association may prescribe;

The monthly amount levied from all purchasers is intended to cover all expenses of the Home Owners Association and to create a reasonable 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.

- 22.9 The PURCHASER'S attention is drawn to the fact that the rules and regulations 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 TOWNSHIP and for landscaping. The PURCHASER accepts the restrictions and is obliged to ensure that buildings erected by him and garden laid by him comply with the said directives. In order to ensure compliance with this provision, the PURCHASER'S building plan has to be approved in writing by the Home Owners Association before building work commences and the Home Owners Association is entitled to inspect the building work at all times. In addition, the PURCHASER shall only be entitled to use a builder which has been approved by the Home Owners Association.

22.10 The Memorandum and Articles of Association of the Home Owners Association (which Articles of Association of the Home Owners Association are annexed hereto marked **Annexure "A"**) forms an integral part of this agreement and the PURCHASER confirms that he has read the Memorandum and Articles of Association, understands it and is bound by the conditions thereof.

22.11 Until such time as the Home Owners Association has been properly established, the levy shall be determined by the SELLER in its sole discretion, on condition that the levy fund will be operated on a non-profit basis, making provision for (including but not limited to) the administration of the Home Owners Association and the TOWNSHIP, security and other expenses relating to the maintenance of the TOWNSHIP, the payment of any amount levied by any competent authority and in general for such purposes as referred to in the Memorandum and Articles of Association.

22.12 The parties agree that until such time as the Home Owners Association has been properly established and operational, its functions will be carried out by the SELLER including the approval of the building plans and building contractors as set out in paragraph 22.9 above.

23 **NHBRC LEVIES**

The SELLER records that by virtue of the provisions of the Housing Consumers Protection Measures Act No. 95 of 1998 the National Home Builders Registration Council ("NHBRC") has been established and that before any dwelling house or similar structure may be erected on the PROPERTY, the NHBRC must issue a written consent thereto. The NHBRC might impose preconditions for the erection of such buildings or other structures on the PROPERTY and the PURCHASER undertakes to comply at his expense with all such preconditions imposed by the NHBRC.

24 **DAMAGES CAUSED BY INSTALLATION OF INFRASTRUCTURAL SERVICES**

The parties agree that the SELLER shall not be liable for any damages caused to the PROPERTY 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 PROPERTY being sold.

Purchaser to initial at this clause _____
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25 **PROHIBITION AGAINST ALIENATION PRIOR TO TRANSFER**

25.1 Before the date of transfer the PURCHASER is not entitled without the SELLER'S prior written consent to sell, donate, exchange or in any other manner to alienate or to burden the PROPERTY. Should the SELLER consent thereto, the PURCHASER shall remain bound to every provision of this agreement. Furthermore, the SELLER will be entitled to grant the said consent subject to such conditions as it in its discretion may deem fit.

25.2 In the foregoing it is agreed that until all the stands and sectional title units have been sold by the SELLER (and the sales are no longer subject to suspensive or resolutive conditions) the PURCHASER shall be obliged to re-sell the PROPERTY using the agency services of the ESTATE AGENT defined in 1.1.7 and the PURCHASER agrees (as a stipulatio alteri in favour of the said agent, which the ESTATE AGENT may accept at any time) to pay agents' commission to the said agent in the said disposal calculated at 5% (five percent) plus VAT of the price at which the PURCHASER re-sells the PROPERTY and to utilise the SELLER'S TRANSFERRING ATTORNEYS for any resale. The foregoing provisions of this clause apply equally if the PURCHASER nominates another purchaser to be the purchaser in terms of this agreement. The foregoing provisions of this clause shall apply whether or not the PURCHASER actually utilises the agency services of the said ESTATE AGENT.

26 **ALIENATION OF PROPERTY – ERECTION OF IMPROVEMENTS**

26.1 The PROPERTY is sold subject to the conditions imposed and enforceable by the SELLER which may be incorporated in the PROPERTY'S title deed in a form acceptable to the Registrar of Deeds. The SELLER is entitled to cede its rights to enforce the said conditions to any party, including the Home Owners Association, without prior notice to the PURCHASER or the PURCHASER'S successors in title to the PROPERTY.

26.2 The PURCHASER shall pay a deposit before the commencement of building operations in an amount as determined by the DIRECTORS from time to time as cover for any damage that may be caused to the property of the Home Owners Association by the PURCHASER, his 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 his obligations towards the Home Owners Association have been discharged in full.

26.3 The PURCHASER shall within a period of 24 (twenty four) months after the date of the first transfer of the PROPERTY from the SELLER, commence building the dwelling on the PROPERTY and shall complete such dwelling within a period of 36 (thirty six) months after the date of the first transfer of the PROPERTY from the SELLER. This will be the date from which such periods will be calculated irrespective of whether the PROPERTY has been transferred subsequently. If the PURCHASER fails to comply with these provisions the SELLER shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to:-

26.3.1 re-purchase the PROPERTY from the PURCHASER for an amount equal to the original PURCHASE PRICE paid by the PURCHASER in terms of the Deed of Sale (inclusive of VAT); or

26.3.2 sell the PROPERTY to any third party for an amount of not less than the original PURCHASE PRICE paid by the PURCHASER in terms of this Deed of Sale.

provided that the SELLER shall be entitled to extend the period of 24 (twenty four) months and the period of 36 (thirty six) months referred to above by further periods not exceeding 5 (five) years in total should the SELLER elect to do so. In the event that the

SELLER decides to exercise such right from time to time, it will not be necessary to give notice to the PURCHASER that such right has been exercised.

- 26.4 The PURCHASER hereby irrevocably and *in rem suam* appoints the SELLER as his duly authorised agent for purposes of such sale, provided that all costs of transfer shall be for the account of the PURCHASER in either case.
- 26.5 Notwithstanding the provisions of clause 26.3 the PURCHASER shall pay to the Home Owners Association an amount equal to double the normal levy per month for each month which elapses between the date 3 years from the date of the first transfer of the erf to the date of compliance with clause 26.3 by the PURCHASER. This will increase to three times the normal levy after one year of non-compliance and thereafter the multiplying factor will increase with one for every completed year of non-compliance. (i.e. after two years of non-compliance, the PURCHASER or his successors in title shall pay 4 (four) times the levy, after three years 5 (five) times etc.)
- 26.6 The PURCHASER shall conform to the prescription of the Architectural Guidelines in connection with the erection of a builder's board.
- 26.7 The PURCHASER shall pay the fees as set out in the Architectural Guidelines, before the commencement of any building operations on his erf. These fees can be amended by the Home Owners Association from time to time.
- 26.8 The PURCHASER shall be entitled to resell or transfer the PROPERTY without complying with the provisions of clause 26.3 above on condition that he obtains the written consent of the SELLER, which consent shall not be unreasonably withheld, and further on condition that the PURCHASER has inserted in his purchase agreement with the third party provisions similar to the provisions referred to in this clause and such other conditions as the SELLER may impose.
- 26.9 The parties agree that the above conditions may be included in the title conditions of the PROPERTY.
- 26.10 The provisions of clause 26 shall be made binding on any party who intends taking transfer of the PROPERTY and proof thereof shall be furnished to the SELLER (or its successor in these rights). The transfer of the PROPERTY by the PURCHASER to the next transferee shall not take place unless and until the SELLER (or its successor to these rights) shall have issued a certificate to the Registrar of Deeds that all amounts due to the Home Owners Association by the PURCHASER (or transferor) have been paid and that the intended transferee has bound himself in writing to the provisions of this clause 26.

27 **PRIVACY**

The PURCHASER undertakes not to object to any buildings built by other owners on the land of which this PROPERTY forms a part, the PURCHASER acknowledging that the PURCHASER has perused the site development plan and is aware of the fact that other buildings will be built on the adjoining erven.

28 SIGNATURE

- 28.1 This document will be signed by or on behalf of the PURCHASER or its Director or other representative before it is signed on behalf of the SELLER, and hence this document shall constitute an offer to the SELLER by the PURCHASER to buy the PROPERTY at the price and subject to the other terms and conditions set out in this document and the PURCHASER or its Director or other representative hereby agrees that this offer shall be irrevocable and remain open for acceptance by the SELLER for a period of 90 (ninety) days from the date of signature hereof by or on behalf of the PURCHASER.
- 28.2 The parties agree that the receipt of this document by the SELLER or its representative, duly signed by or on behalf of the PURCHASER, shall constitute acceptance of the PURCHASER'S said undertaking not to retract this offer for the said period of time and that no further communication by the SELLER to the PURCHASER is necessary for the acceptance of the PURCHASER'S said offer not to retract the offer to purchase.
- 28.3 As soon as the SELLER shall have signed this document a binding agreement of purchase and sale shall come into being between the SELLER and the PURCHASER in spite of the fact that the SELLER may not have communicated the fact of such signature and/or acceptance to the PURCHASER. No notice to the PURCHASER of the SELLER'S acceptance of the offer is required to bring about the agreement.
- 28.4 If the SELLER accepts the PURCHASER'S offer described in 28.3, the sale which will come into being will be subject to:-
- 28.4.1 The provisions contained or referred to in this document;
- 28.4.2 The proclaimed Conditions of Establishment issued in respect of the TOWNSHIP;
- 28.4.3 The conditions of title contained in the title deed/s of the TOWNSHIP land, duly amended in terms of any relevant provision of the conditions of establishment or still to be amended at the instance of the director or the local authority or the registrar of deeds and/or the SELLER.
- 28.5 To ensure that the PURCHASER is made aware of the fact that the SELLER has accepted the offer, the SELLER shall use its best endeavours to despatch a notice to the PURCHASER (as contemplated in the relevant provisions of this agreement relating to notices) of such acceptance of the PURCHASER'S offer and of the date on which it took place. The contract will remain in full force and effect even if no such notice is given.

29 COOLING OFF

If the PURCHASE PRICE is less than R250 000,00, the parties attention is drawn to the fact that Section 29A of the Alienation of Land Act 68 of 1981 applies to this agreement, if the PURCHASER is a natural person. Under such circumstances, notwithstanding any other clause in this contract, the PURCHASER has the right to revoke this offer or terminate this agreement by written notice to be delivered to the SELLER, within 5 (five) days after signature by the

PURCHASER of this document. The PURCHASER'S attention is drawn to the fact that such notice will be of no force or effect unless it is:-

- i) signed by the PURCHASER or his or her agent acting on his/her authority; and
- ii) refers to this offer or agreement as the offer or agreement that is being revoked or terminated as the case may be; and
- iii) is unconditional.

30 **MUNICIPAL CONNECTION**

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 improvements to be erected on the PROPERTY to the services (such as, but not limited to water, electricity, sewerage, telephone and the like) supplied by the local or any other authority at the nearest supply point to the PROPERTY. In spite of the foregoing, the SELLER is obliged at its expense to supply the relevant service at one of the boundaries of the PROPERTY hereby sold.

31 **LOCAL AUTHORITY'S REQUIREMENTS RELATING TO SERVICES**

The PURCHASER is obliged at his own expense to comply with all provisions imposed by the local or any other competent authority with regard to the provision of any services to the PROPERTY.

32 **CONTRACT TO BE USED BY THE PURCHASER**

The PURCHASER specifically agrees that it shall not sell the PROPERTY unless such sale is in terms of a written contract containing the terms and conditions stipulated by the SELLER and which will be substantially in the same format and contain the same terms as the standard Agreement of Sale used by the SELLER in the Eye of Africa Development and which will in particular confer all rights which have been conferred upon the SELLER in terms of this agreement in favour of the SELLER in relation to such purchaser of the PROPERTY.

33 **SOCIAL MEMBERSHIP**

Each PURCHASER shall automatically receive SOCIAL MEMBERSHIP.

34 **BUILDING PLANS**

34.1 The building plans of all improvement to PROPERTY shall be in accordance with and comply with the architectural guidelines attached hereto, marked **Annexure "C"**.

34.2 All building plans shall be approved in accordance with the provisions of the Memorandum and Articles of Association of the Home Owners Association annexed hereto marked "B" and the architectural guidelines annexed hereto marked **Annexure "C"**.

34.3 Any building construction on the PROPERTY shall be undertaken by a contractor approved by the SELLER (and after the PROJECT PERIOD the Home Owner's Association) from time to time, on condition that the PURCHASER may use a different building contractor

with the written consent of the SELLER (and after the PROJECT PERIOD the Home Owner's Association), which consent may be withheld in the SELLER'S (and after the PROJECT PERIOD the Home Owner's Association's) sole discretion.

34.4 No building operations may proceed unless:-

34.4.1 The PROPERTY has been transferred into the name of the PURCHASER or the SELLER has given permission to the PURCHASER to commence such building operations.

34.4.2 The building plans have been approved by the SELLER (and after the Project Period, the Home Owners Association) and the Local Authority at the cost of the PURCHASER.

34.5 The parties agree that any or all of the above conditions may be included in the title conditions of the PROPERTY.

34.6 The garden situated on the properties shall be laid out in accordance with the landscaping zoning plan attached hereto, marked **Annexure "D"**.

35 ADMINISTRATION FEE

If the PURCHASER does not obtain the MORTGAGE FINANCE timeously or, if any other suspensive condition is not fulfilled due to any fault on the part of the PURCHASER, the PURCHASER agrees that the SELLER shall retain the sum of R15 000,00 as an administration fee, notwithstanding the non-fulfilment of any of the suspensive conditions. If there is any breach on the part of the PURCHASER, the remedies set out in this clause are in addition to and not instead of any remedies which the SELLER has in terms of the contract or law or otherwise.

Purchaser
to initial at
this clause

36 GENERAL

The SELLER shall under no circumstances be liable for any consequential loss or damage.

37 STATUS OF THE SELLER

37.1 During the PROJECT PERIOD the PURCHASER shall not prevent or hinder in any way the SELLER from:-

37.1.1 gaining access to and egress from the DEVELOPMENT.

37.1.2 continuing its building and/or construction operations at the DEVELOPMENT.

37.1.3 marketing and selling any Erven or sectional title units.

37.1.4 generally carrying on its business operations,

provided that the provisions of clause 37.1.1 shall not be interpreted as allowing the seller access onto any of the Erven or Units already transferred to the PURCHASER unless 48 hours prior written notice has been given to the PURCHASER, unless such access is required to conduct its normal building operations or to inspect work in progress. The SELLER shall make good any subsequent damage to plants, property or improvements thereon. The PURCHASER shall not be entitled to refuse the SELLER immediate access if the required notice has been given.

- 37.2 The SELLER has the right and shall be entitled to build and establish on the DEVELOPMENT any amenities and facilities as it in its sole discretion deems fit. The SELLER has the right to subdivide from the DEVELOPMENT the sites for such aforesaid amenities and facilities as separate erven and shall be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the DEVELOPMENT.
- 37.3 The SELLER has the right in its sole discretion, to establish and locate the amenities and facilities referred to in 37.2 on any portion of the DEVELOPMENT, save on such Erven that have already been sold to owners other than the SELLER, with the approval of the Local Authority.
- 37.4 The SELLER shall also be entitled, in the SELLER's sole discretion, as and when the SELLER chooses to do so, to rezone to residential and/or commercial and/or hotel and/or business and/or special or any other zoning that the SELLER chooses, those erven which have not been sold as at the date of signature hereof by the SELLER and that portion of land marked on the site development plan as future development property and/or sub-divide in whichever manner the SELLER chooses any of the same, to change the land use on the general plans relating to such erven and to register whatever servitudes are certified as being necessary or desirable by the townplanner appointed by the SELLER in such positions as such townplanner certifies as being appropriate. The PURCHASER hereby irrevocably consents to the aforesaid and irrevocably grants a Power of Attorney to the SELLER to enable the SELLER to attend to the same whenever the SELLER deems it necessary to do so. In addition the SELLER shall be entitled to amend the boundaries of the common area provided that such amendment does not increase or decrease the common areas by more than 10%. In addition the SELLER shall be entitled in its sole discretion to permit the owner/s of erven situated near a cul de sac to fence off the road portion around such cul de sac and to utilize such road portion for the private use of the owner/s of such erven. The SELLER shall also be entitled to add new erven and sections to the DEVELOPMENT and to add new phases onto the DEVELOPMENT by the addition of land which does not at present form part of the DEVELOPMENT and/or to constitute such land as extensions of the township on which this DEVELOPMENT is situated. The PURCHASER acknowledges that such extensions may be connected to the DEVELOPMENT through internal road connections and that certain services and security arrangements may be shared with these extensions including but not limited to the right of usage of and access to the DEVELOPMENT amenities and golf course. In the event that such extensions have their own homeowners associations, the SELLER shall be entitled to conclude agreements between such homeowners associations and the EYE OF AFRICA HOMEOWNERS ASSOCIATION (the Home Owners Association

referred to in clause 22.1.1 above) regarding the relationship between such homeowners associations and the EYE OF AFRICA HOMEOWNERS ASSOCIATION (the Home Owners Association referred to in clause 22.1.1 above) and the contributions to be paid to the EYE OF AFRICA HOMEOWNERS ASSOCIATION (the Home Owners Association referred to in clause 22.1.1 above) by such homeowners associations, on terms to be decided by the SELLER. The PURCHASER hereby irrevocably consents to all of the foregoing and hereby irrevocably grants the SELLER Power of Attorney to enable the SELLER to attend to the same and to sign any documentation on behalf of the PURCHASER to give effect to the provisions of this clause.

- 37.5 The PURCHASER specifically agrees not to make any objection, submission, appeal or claim or bring any proceedings in relation to any development application made by the SELLER in respect of the DEVELOPMENT or do anything else which would, or omit to do anything else which by that omission would, prevent the SELLER from completing the DEVELOPMENT or selling erven within the DEVELOPMENT.

38 GOLF COURSE AND AMENITIES

- 38.1 The PURCHASER acknowledges that the golf course, social club house and social club house facilities form part of the DEVELOPMENT.
- 38.2 The PURCHASER acknowledges that on the OCCUPATION DATE and/or the date of registration of transfer of the PROPERTY the golf course, club house and social club house facilities may be incomplete.
- 38.3 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 be completed at the OCCUPATION DATE and/or the date of registration of transfer of the PROPERTY.
- 38.4 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 clubhouse and social club house facilities will be completed at the time of completion of the golf course. It is recorded that the SELLER will use its best endeavours to complete the clubhouse and social club house facilities at the time of completion of the golf course.
- 38.5 The PURCHASER will have no claim whatsoever against the SELLER as a result of the golf course not being completed on the OCCUPATION DATE and/or the date of registration of transfer and/or as a result of the clubhouse and social club house facilities not being completed at the time of completion of the golf course.

39 FICA REQUIREMENTS

The SELLER and the PURCHASER undertake immediately upon being requested to do so to provide the TRANSFERRING ATTORNEYS and/or the financial institution/s granting and/or cancelling the bond with the necessary documentation to comply with the FICA (Financial Intelligence Centre Act) requirements or such other documentation as may be required to enable the Conveyancer to effect registration or transfer.

40 **SARS REQUIREMENTS**

As a result of the South African Revenue Services (SARS) doing risk analysis on both the transferor and the transferee on all property transactions the PURCHASER warrants to the SELLER that all tax issues (whether personal or otherwise) including but not limited to tax returns and tax payments are current and up to date. Should the PURCHASER be in breach of this warranty, the PURCHASER will be liable for all costs incurred and damages suffered by the SELLER as a result of a breach of this warranty. The SELLER shall also be entitled to place the PURCHASER on terms and thereafter cancel the agreement if this warranty is breached. These remedies are in addition to all rights which the SELLER has in terms of this agreement or in Law.

41 **MATRIMONIAL PROPERTY ACT 88 OF 1984**

The PURCHASER warrants that all written consents required by the Matrimonial Property Act 88 of 1984 in respect of this agreement or any matter arising from or in terms hereof have or will be given.

42. **INDEMNITY**

The PURCHASER hereby indemnifies the SELLER against all claims of whatsoever nature which may arise out of any injury to any person or any damage to any property in or on the PROPERTY or by virtue of any defects in the dwelling situated on the PROPERTY and all other claims relating in any way whatsoever to the dwelling on the PROPERTY and hereby waives all claims which it may have against the SELLER at any time arising out of the use of the dwelling on the PROPERTY or any access to or use of the PROPERTY. In addition, the PURCHASER hereby indemnifies the SELLER against all claims of whatsoever nature which may arise out of or as a result of the dwelling not being constructed.

Purchaser to initial at this clause _____
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43 **PURCHASER'S RIGHT TO COOL OFF AFTER DIRECT MARKETING IN TERMS OF THE CONSUMER PROTECTION ACT**

The Purchaser's attention is drawn to the provisions of clause 16 of the Consumer Protection Act in terms of which the Purchaser may rescind this transaction without any reason or penalty by notice to the Seller in writing or another recorded manner and form within 5 (five) business days after this contract was concluded if this agreement resulted from any direct marketing. This remedy is in addition to and not in substitution for any right to rescind this agreement which may otherwise exist in law between the Seller and the Purchaser.

44. **CONSUMER PROTECTION ACT**

44.1 Insofar as the Consumer Protection Act governs this agreement and/or the relationship between the parties, it is specifically agreed that in the event of any clause or sub-clause herein not being permitted in terms of the Consumer Protection Act, such clause or sub-clause shall be severed from this agreement and be treated as if it were not a part of this agreement. All provisions which automatically apply to an agreement of this nature in terms of the Consumer Protection Act are automatically incorporated herein.

44.2 Insofar as the Consumer Protection Act ("CPA") governs this agreement, the parties attention is drawn to the fact that Section 55(2) provides that, except to the extent contemplated in subsection (6), every consumer has a right to receive goods that:-

- (a) Are reasonably suitable for the purposes for which they are generally intended;
- (b) Are of good quality, in good working order and free of any defects;
- (c) Will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply;
- (d) Comply with any applicable standards set out under the Standards Act 1993 (Act No. 29 of 1993), or any other public regulation.

44.3 Section 55(6) of the CPA provides that subsection (2)(a) and (b) do not apply to a transaction if the consumer:-

- (a) Has been expressly informed that the particular goods were offered in a specific condition; and
- (b) Has expressly agreed to accept the goods in their condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

44.4 **The Purchaser confirms that he/she has carefully inspected the Property and hereby expressly agrees to accept the Property in the condition as it stands.**

Purchaser to initial at this clause

THUS DONE AND SIGNED AT.....ON THIS THE.....DAY OF.....20.....

AS WITNESSES

- 1.....
- 2.....

PURCHASER
 (Who warrants that he has read the contents of clause 15 of this agreement)

THUS DONE AND SIGNED AT.....ON THIS THE.....DAY OF.....20.....

AS WITNESSES

SELLER

1.....

2.....

The agent hereby accepts the benefits which are conferred upon it in terms of this agreement.

**THUS DONE AND SIGNED AT.....ON THIS THE.....DAY
OF.....20.....**

AGENT