

**HAWAAN HOME OWNERS ASSOCIATION**  
**AGREEMENT OF SALE**

**SCHEDULE**

**A. SELLER**

Address :

**B. PURCHASER**

Address :

(N.B. Insert Identity document numbers, Registration Number if legal entity, fax numbers, e-mail addresses as well as contact telephone numbers)

**C. PROPERTY PURCHASED**

**D. PURCHASE PRICE (Please specify if vat inclusive)**

R \_\_\_\_\_

**METHOD OF PAYMENT OF PURCHASE PRICE**

- \* A deposit of 10 % of the purchase price in the sum of R \_\_\_\_\_ payable within 7 (seven) days of date of this agreement (refer to clause 2)
- \* By proceeds from bond R \_\_\_\_\_ (refer to clause 3)
- \* By balance of R \_\_\_\_\_ (refer to clause 2.2 and Clause 27)

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**E. DATE OF POSSESSION AND OCCUPATION :**

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**F. CURRENT MONTHLY LEVIES TO HAWAAN HOME OWNERS ASSOCIATION  
(STANDARDISED MONTHLY LEVY)**

R \_\_\_\_\_ (HOA Levy Amount in words) \_\_\_\_\_

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R \_\_\_\_\_ (Conservation Trust Levy Amount in words) \_\_\_\_\_

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**G. NAME OF SELLING AGENT: \_\_\_\_\_****AGENCY:** \_\_\_\_\_ (refer to clause 27)**H. OCCUPATIONAL INTEREST:** R \_\_\_\_\_ per month**I. CONVEYANCER:** \_\_\_\_\_

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**J. ADMINISTRATION FEE:** R1 500.00 or such sum as determined by the Hawaan Home Owners Association and for the time being in force.**K. LEVY STABILIZATION FUND:** R35 000.00 or such sum applicable for the time being prevailing.**L. SPECIAL CONDITIONS AGREED BETWEEN THE PARTIES:**

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## TERMS AND CONDITIONS OF SALE

### **PREAMBLE**

#### **WHEREAS:**

The SELLER is the registered owner of the immovable property and has agreed to sell same to the PURCHASER who wishes to purchase the Property subject to the following terms and conditions:-

### 1

#### **DEFINITIONS:**

The following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them respectively, namely:

<b>1.1</b>	<b>"The SELLER"</b>	the party referred to in paragraph A of the Schedule;
<b>1.2</b>	<b>"The PURCHASER"</b>	the party referred to in paragraph B of the Schedule;
<b>1.3</b>	<b>"The Schedule"</b>	the Schedule preceding the terms and conditions of sale and which is deemed to be part of this Agreement;
<b>1.4</b>	<b>"The Property"</b>	the immovable property referred to in paragraph C of the Schedule;
<b>1.5</b>	<b>"The Layout Plan"</b>	the Plan annexed hereto marked "A" identifying the Property; (Only applies to vacant land)
<b>1.6</b>	<b>"The Site Development Plan"</b>	the Plan showing the building to be erected on the Property annexed hereto marked "B" (Only applies to vacant land);
<b>1.7</b>	<b>"Footprint Area"</b>	the speckled area shown on the Plan annexed hereto marked "B" (Only applies to vacant land);
<b>1.8</b>	<b>"The Home Owners Association"</b>	The Association established by the Developer for the control and management of the properties within the Hawaan Forest Estate;
<b>1.9</b>	<b>"The Transfer Date"</b>	the date of registration of transfer of the Property into the name of the PURCHASER;
<b>1.10</b>	<b>"The SELLER's Conveyancers"</b>	the attorneys chosen by the seller to attend to the transfer of the Property, whose details appear at paragraph I of the Schedule.
<b>1.11</b>	<b>"The Architects"</b>	Dean Jay, Kevin Lloyd or Patrick Ferguson
<b>1.12</b>	<b>"The Horticulturist"</b>	Geoff Nichols Horticulturist
<b>1.13</b>	<b>"The Developer"</b>	Hawaan Investments (Pty) Ltd / Reg No 2001/000257/07
<b>1.14</b>	<b>"Building Period"</b>	Time from commencement of building construction until the Local Authority issues a completion certificate.

**1.15 "The Agency"**

The Seller's Estate Agents, the details whereof appear at Paragraph G of the Schedule

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**PAYMENT OF PURCHASE PRICE**

The purchase price shall be secured as follows:-

- 2.1** The deposit shown in paragraph D of the Schedule shall be paid into the Conveyancer's Trust Account, within 7 days of the parties signing this agreement.
- 2.2** The balance of the purchase price reflected in paragraph D of the Schedule shall be paid to the SELLER against registration of transfer of the Property to the PURCHASER. The PURCHASER shall deliver to the conveyancers a bank, building society or other guarantee acceptable to the SELLER within 14 (FOURTEEN) days after receiving written notice from the SELLER or the SELLER's conveyancers requiring him to do so.
- 2.3** Any amount paid by the PURCHASER in terms of this paragraph shall be invested by the SELLER's conveyancers in an interest-bearing account and all interest earned thereon until registration of transfer shall accrue for the benefit of the PURCHASER and thereafter the SELLER.

3

**LOAN**

- 3.1** This Agreement is subject to the suspensive condition that the PURCHASER obtains a loan for the sum of R\_\_\_\_\_ . The PURCHASER undertakes to forthwith apply for the said loan and if same is not granted in principle within a period of 14 (Fourteen) days of the date of signature of this Agreement, then this contract shall be deemed to be at an end and of no further force and effect. A letter issued from such institution advising that the loan has been approved of "in principle" shall be deemed to be sufficient compliance with this condition and the SELLER shall be entitled to rely on same as conclusive proof that the loan has in fact been granted to the PURCHASER.
- 3.2** The PURCHASER warrants that he is fully aware and understands the customary requirements of banks regarding eligibility based on income, credit rating and other qualifications and hereby warrants that he is eligible for the loan required and that it is a material term of this Agreement that he provide the relevant bank with all documentation required. Failure by the PURCHASER to do so shall constitute a material breach of this Agreement and shall have the effect of this clause being deemed to have been fulfilled.
- 3.3** In the event of the PURCHASER being in breach of the warranty contained in clause 3.2 above, the PURCHASER shall be liable for any amounts which the SELLER may be entitled to claim from the PURCHASER in terms of this Agreement.

**ADMINISTRATION FEE**

The Purchaser shall pay the administration fee shown in J of the schedule to the Home Owners Association, upon lodgement of this Agreement with the Home Owners Association for approval. Such fee shall not be refunded if the Home Owners Association declines to approve the Sale, or if the sale does not proceed for any reason, including the non-fulfilment of suspensive conditions.

**ACKNOWLEDGEMENTS BY PURCHASER**

The PURCHASER acknowledges that:-

- 5.1 he has acquainted himself with the layout of the Hawaan Forest Estate and building plans for the entire development;
- 5.2 he/she accepts the Property subject to the servitudes, other real rights and conditions, if any burdening or benefiting the land:-
  - 5.2.1 in terms of the SELLER's Title Deeds and/or any prior deed/s in particular with regard to the original Sale Agreement dated \_\_\_\_\_ between HAWAAN HOME OWNERS ASSOCIATION and \_\_\_\_\_;
  - 5.2.2 imposed by the Developer, the local authority and/or the Minister of Local Government and Housing as conditions of Title;
  - 5.2.3 in terms of the Memorandum of Incorporation and Conduct Rules of the Home Owners' Association;
  - 5.2.4 imposed by the Development Tribunal of KwaZulu-Natal when approving the development of the Property in terms of the Development Facilitation Act No. 67 of 1995;
- 5.3 he/she is aware that no dwelling or house on the property shall be occupied by the PURCHASER prior to the connection of all essential services to the dwelling as required in terms of the conditions of approval of the layout of the Hawaan Forest Estate.
- 5.4 he/she is aware that in respect of all erven along the forest edge within Phases 1 to 4, the purchasers thereof shall only be entitled to erect a single storey structure on those properties notwithstanding the provisions contained in Table D of the Conditions of Establishment dated 15th January 2004. The PURCHASER acknowledges that he is also aware of the height restrictions set out in the Building Design Planning Guide. The PURCHASER shall further ensure that all agreements of sale with any successor-in-title shall contain as a special condition an acknowledgement by the successor-in-title of the aforesaid height restriction.
- 5.5 (a) if he re-sells the property in the future, the PURCHASER shall be obliged to utilise the sale agreement and other documents prescribed by the Home Owners Association at the time, which are printed on watermarked paper and can be obtained from the said Association's office.  
  
(b) such re-sale by the PURCHASER shall be subject to the following suspensive conditions:-
  - (i) that the Association approves the sale; and
  - (ii) that the transferee becomes a member of the Home Owners Association.

(c) acceptance of such membership shall be at the sole discretion of the Home Owners Association. Should the Home Owners Association decline the transferee's application for membership for whatever reason, then such a sale shall lapse and be of no further effect.

(d) the Association shall be entitled to demand compliance with any notices served on the PURCHASER prior to the registration of any transfer of the Property to a third party and/or payment of outstanding levies or charges prior to such consent to re-sell being issued by the Association.

- 5.6** the property shall be used for residential purposes only and for no other purpose whatsoever save with the written consent of the Association and the Local Authority or other Authority whose permission maybe required.
- 5.7** the maximum number of buildings on the property or on any consolidated property shall not exceed one, without the consent of the Association.

**6**

#### **LEVY STABILIZATION FUND**

The PURCHASER shall, on or before registration of transfer pay the Home Owners Association the sum referred to in K of the schedule, towards the Levy Stabilization Fund, which amount is non-refundable. This is used for future capital expenditure for enhancement, improvements or preservation of the Estate.

**7**

#### **POSSESSION**

Unless agreed to in writing as provided in Paragraph E of the Schedule, the PURCHASER shall be entitled to possession and occupation of the property on the transfer date. From such date:-

- 7.1** All benefits and risks shall pass to the PURCHASER who shall also be liable for all and any levies relating to the Property, as well as all insurances and rates, taxes and other charges levied in respect thereof. The PURCHASER shall ascertain the respective amounts from the Home Owners Association.
- 7.2** The PURCHASER shall refund to the SELLER the proportionate share of any levies, rates, taxes and other charges paid by the SELLER in respect of any period after the said date.
- 7.3** In the event of a pro-rata refund being due to either party the parties hereby irrevocably authorise the appointed conveyancer to deduct such refund from the balance of any money on hand and to pay such refund to the respective party.

**8**

#### **OCCUPATION**

In the event that the registration date and date of occupation does not coincide, then the PURCHASER shall pay occupational rental of R\_\_\_\_\_ per month to the SELLER, in advance, on the \_\_\_\_\_ day of each month (reduced pro rata for any portion of a month).

**9**

**TRANSFER OF THE PROPERTY**

- 9.1** Transfer of the Property shall be affected by the SELLER's Conveyancers set out in the Schedule and shall be proceeded with as soon as reasonably possible after:-
- 9.1.1** the PURCHASER has furnished the required guarantees;
- 9.1.2** the PURCHASER has paid the costs referred to in clause 10 hereof which he shall be obliged to do upon request by the SELLER's conveyancers; and
- 9.1.3** signature by the PURCHASER of all necessary documents and the provision by the PURCHASER of all necessary information for the purposes of transfer, which the PURCHASER shall be obliged to do within 7 (SEVEN) days after being called upon in writing so to do so by the said conveyancers.

**10**

**COSTS**

All expenses incidental to the preparation and registration of transfer of the Property including Value Added Tax and the costs of registration of any bond shall be borne by the PURCHASER. The PURCHASER shall pay to the SELLER's conveyancers a sum sufficient to cover the estimated costs of transfer and of any bond together with Value Added Tax thereon and the proportion of levies for which the PURCHASER may be liable upon request by the said conveyancers to make such payment.

**11**

**VOETSTOOTS**

- 11.1** The PURCHASER acknowledges that the Property is sold "voetstoots" as it stands without any warranties express or implied and the SELLER shall not be liable for any defects whether patent or latent nor for any damage occasioned to or suffered by the PURCHASER by reason of such defects. The PURCHASER shall be deemed to have made himself acquainted with the nature, condition, extent and locality of the Property, the Rules and Memorandum of Incorporation of the Home Owners Association and all other relevant documents the SELLER being entirely free from all liability in respect thereof and by the PURCHASER's signature hereto he/she agrees that the Property purchased has been inspected and physically identified as to its whereabouts.
- 11.2** The Property is sold:
- 11.2.1** subject to and in accordance with the layout Plan and the Site Development Plan of the Estate where the Property is vacant land;
- 11.2.2** subject to and with the benefit of the servitudes for support and essential services referred to in part VI of the Act;
- 11.2.3** subject to all servitudes and conditions of title contained in title deeds of the property and those conditions imposed by the Developer, the Local Authority and/or the Minister in approving the Developers application in terms of the Development Facilitation Act No. 67 of 1995;
- 11.2.4** subject to the acknowledgements made by the PURCHASER in terms of Clause 5 hereof;

Initials Here

**11.3** The SELLER and/or the DEVELOPER and/or the Home Owners Association shall not under any circumstances be liable, at any time prior to or after transfer of the Property, for any indirect or consequential damages of any nature which the PURCHASER may suffer at any time through no fault of theirs and/or for whatsoever reason, nor shall it be liable for any defects caused by or related to the soil or geological condition of the Property. In addition, the

SELLER and/or DEVELOPER and/or Home Owners Association shall not be liable for any defects / damage caused to the Property arising out of vis major or causes fortuitus or any other cause either wholly or partly outside their control. The SELLER and/or DEVELOPER do not warrant the accuracy of any geotechnical, soil or other reports given in respect of the Property and the SELLER and/or DEVELOPER shall not be liable to the PURCHASER for any loss or damage suffered as a result of any inaccuracies in such information.

**11.4** The PURCHASER acknowledges that on the transfer date the buildings being erected on other properties within the Hawaan Forest Estate and other sections may be incomplete and that occupants must necessarily suffer inconvenience from building operations and, inter alia, from noise and dust resulting therefrom, and from any other cause whatsoever, and that the PURCHASER will have no claim whatsoever against the SELLER and/or the DEVELOPER and/or the Home Owners Association by reason of any inconvenience whatsoever.

**11.5** The SELLER does not warrant any information given in respect of the Property, whether such information is given prior to or subsequent to the signature of this Agreement save for such information in respect of the Property specifically warranted in terms of this Agreement. The SELLER shall not be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given by the SELLER (save for information specifically warranted in terms of this Agreement).

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### **TRUSTEE FOR A COMPANY OR CLOSE CORPORATION TO BE FORMED**

In the event of the PURCHASER purchasing the Property as trustee for a company or close corporation or trust to be formed the PURCHASER:

**12.1** undertakes to effect registration of a company or close corporation or trust, the Memorandum or Founding Statement or Trust Deed of which shall contain as one of its objects the adoption and ratification of this Agreement; and

**12.2** undertakes to obtain adoption and ratification of this Agreement by the company or close corporation within 7 (seven) days after registration; and

**12.3** guarantees as surety and co-principal debtor in solidum, and under renunciation of the benefits of excision and division, the due and faithful observance by the company or close corporation or trust of all the terms, conditions and stipulations of this Agreement and the payment of any claims flowing from breach of contract; and

**12.4** undertakes that in the event of registration of the company or close corporation not being effected within 60 (SIXTY) days of the date of signature of this Agreement by the PURCHASER, or should the company or close corporation, when registered, fail to adopt and ratify the terms hereof, then the PURCHASER in his personal capacity will take transfer of the Property and take over the purchase of the said Property and pay the purchase price as if this Agreement was made in his personal capacity.

**12.5** The authorised signatory of the Company, CC or Trust that is already formed at date of signing hereof or that may be formed in terms of the preceding paragraphs, shall accept sole

responsibility and be personally liable for all notices, demands or invoices which may be served by the Association for obligations of such legal entity to the Association.

**13**

### **SIGNATURE ON BEHALF OF COMPANY OR CLOSE CORPORATION**

In the event of this Agreement being signed as PURCHASER by a person purporting to act for and on behalf of a company ,trust or close corporation (other than a company ,trust or close corporation to be formed) such person warrants that he is duly authorised to sign this Agreement and shall by his signature hereto bind himself in favour of the SELLER and the ASSOCIATION as surety and co-principal debtor under the renunciation of the benefits of excision, division and cession of actions, for the due performance of all the obligations of the said company ,trust or close corporation in terms of or arising out of this Agreement or any cancellation thereof.

**14**

### **SUBDIVISION OF PROPERTY AND FUTURE DEVELOPMENT WITHIN THE ESTATE**

The PURCHASER acknowledges that he/she is aware of the intended future development of property within the Hawaan Forest Estate and will have no claim against the SELLER, DEVELOPER or Homeowners Association if he/she suffers any inconvenience or nuisance in connection with the development process.

**15**

### **BREACH**

- 15.1** If the PURCHASER commits a breach of any of the terms and conditions hereof and fails to remedy such breach within 10 (TEN) days after receipt of written notice from the SELLER or its agent, requiring such breach to be remedied, then without prejudice to any other of its rights in law, the SELLER shall be entitled to:
  - 15.1.1** cancel this sale and retain as roukoop any amount paid by the PURCHASER in terms hereof on account of the purchase price or otherwise; and/or;
  - 15.1.2** claim immediate specific performance of all the PURCHASER's obligations in terms of this Agreement, whether or not such performance is then due, and to claim and recover from the PURCHASER any damages which the SELLER may have suffered by reason of such breach.
- 15.2** If any amount payable by the PURCHASER is not paid on the due date therefor, the PURCHASER shall pay interest on the amount outstanding from the due date for payment thereof until it is paid, at the prime annual overdraft rate charged by Investec Bank Limited from time to time plus 3%.
- 15.3** If, in the opinion of the SELLER's conveyancers, the PURCHASER is delaying the registration of transfer in any way whatsoever, then the PURCHASER shall pay interest on the full purchase price at the prime overdraft rate charged by Investec Bank Limited from time to time plus 3%, from the date on which the PURCHASER receives a notice from the SELLER's conveyancers placing him in mora and calling upon him to remedy the cause of the delay until the date on which the PURCHASER, in its sole opinion of the SELLER's conveyancers, has complied with the said conveyancers' notice.
- 15.4** In regard to clauses 15.2 and 15.3 above, a certificate by any branch manager of the said bank as to such prime overdraft rate from time to time shall be *prima facie* proof of such rate.

Initials Here

- 15.5** The amounts payable by the PURCHASER in terms of clauses 15.2 and 15.3 above shall be paid by the PURCHASER in addition to any other amount that may be due by the PURCHASER in terms of this Agreement.

**16****HOME OWNERS ASSOCIATION**

- 16.1** The PURCHASER acknowledges that:

**16.1.1** the Property forms part of an exclusive township to which access by members of the general public is denied and the whole of which is controlled by the Home Owners Association for the benefit of all owners of erven in the estate;

**16.1.2** the SELLER has furnished the PURCHASER with a copy of the Memorandum of Incorporation, Conduct Rules of the Home Owners Association and the DFA Ruling which the PURCHASER acknowledges having read and understood;

**16.1.3** the PURCHASER acknowledges and accepts that, upon registration of transfer of the Property into his/her name, he/she shall become a member of the Home Owners Association and shall be obliged to pay levies to the Home Owners Association as provided for in its Memorandum of Incorporation and Conduct Rules, the current monthly amount of which is set out in paragraph F of the Schedule, which amount is varied from time to time by the Association;

**16.1.4** it shall be one of the conditions of title as well as a condition contained in the aforementioned Memorandum of Incorporation and Conduct Rules that neither the Property nor any interest therein may be disposed of in any manner whatsoever, particularly but without affecting the generality of the foregoing by sale, donation, exchange, bequest, lease or servitude without the prior written consent of the Home Owners Association. It is specifically recorded that the Home Owners Association shall be entitled, in its sole discretion, to refuse its written consent until such time as the provisions of its Memorandum of Incorporation and Rules have been complied with.

**16.2** The PURCHASER undertakes to abide by and be bound by the Memorandum of Incorporation and Conduct Rules that may be framed by the Home Owners Association from time to time. The PURCHASER acknowledges that the Association shall be entitled at any time to reasonably establish rules in regard to, inter alia:

**16.2.1** the preservation of the natural environment;

**16.2.2** vegetation, flora and fauna in the estate;

**16.2.3** the conduct of persons within the estate and the prevention of nuisance to any owner of immovable property in the estate;

**16.2.4** the use of land within the estate;

**16.2.5** the use of roads and open spaces within the estate;

**16.2.6** the imposition of fines and other penalties against members of the Association who transgress the rules;

**16.2.7** the conduct of builders and other contractors employed by members on the Estate, as well as the payments of building levies and fines by him;

**16.2.8** any other matter which it deems appropriate from time to time.

**16.3** The Purchaser undertakes to complete and sign the membership application form, as set out in Annexure "A", to this Agreement, simultaneously with signature of this Agreement

**17**

**DEVELOPMENT GUIDELINES, ENVIRONMENTAL PRINCIPLES, ARCHITECTURAL CONTROLS AND RESTRICTIONS ON RIGHT OF OWNERSHIP**

The PURCHASER acknowledges and confirms that:

**17.1** He/she has fully acquainted himself/herself with the Memorandum of Incorporation, Conduct Rules of the Home Owners Association, and also the Building Design Planning Guide;

**17.2** He/she shall be obliged to adhere to the development guidelines and environmental principles as laid down by the Home Owners Association from time to time;

**17.3** By his/her signature hereto he/she hereby applies for membership of Home Owners Association, acceptance of which application shall be denoted by the signature of this agreement by the Home Owners Association;

**17.4** No building on the Property shall be entitled to exceed the number of storeys in height reflected on the Site Development Plan or the maximum heights referred to in the Building Design Planning Guide;

**17.5** No further building or alterations whatsoever to the Property or the building thereon once erected shall be undertaken by the PURCHASER without the prior written consent of the Association;

**17.6** Every erf shall have a Site Development Plan, Landscaping Plan, Stormwater Management Plan and Building Plan prepared for it by the Developer and approved by the eThekini Municipality prior to any construction on the erf and development on the erf shall be in accordance with such plans. Approval of any alterations by the PURCHASER to the abovementioned plans shall be obtained from the eThekini Municipality with the provision that no building plan may be submitted unless revised Site Development and Landscaping Plans have been reviewed and accepted, in writing, by the Home Owners Association and provided that the Building Plan has been recommended in writing for approval by the Home Owners Association;

**17.7** He/she shall also bound by the height restrictions imposed by the Architect and the Estate rules and planting restrictions imposed by the Association.

**17.8** Once the building to be erected on the Property is complete, the Developer shall at its expense plant the cadastral boundaries of the Property in accordance with the landscaping plan prepared by the horticulturist and architect;

**17.9** The PURCHASER shall at his own expense use the services of the horticulturist to initially landscape the Property in accordance with the landscaping plan referred to in 17.6 above.

**17.10** There shall be no further subdivision of the Property.

Initials Here

- 17.11** He/she shall be obliged to commence building construction of a dwelling on the Property in accordance with the approved building plan within NINE (9) months from date of registration of transfer to him/her. The building shall be completed within EIGHTEEN (18) months of the date of such commencement of building construction, unless the Home Owners Association agrees in writing to an extension of this period.
- 17.12** Notwithstanding anything to the contrary herein or elsewhere contained any dwelling or other structure to be erected on the Property shall be erected strictly in accordance with building plans which have been submitted to and approved in writing by the Home Owners Association and the local or any other competent authority and no work whatsoever shall commence on the Property until such time as the relevant approvals have been obtained.
- 17.13** In erecting such dwelling, the Purchaser shall be obliged to utilise the services of the Architects in the preparation and approval of the Building Plans and under such agreement and service as offered and agreed by the Architects, full details of which may be obtained from the Selling Agent, the Seller or Architects. The Purchaser acknowledges that in signing this agreement, he is fully aware of his obligations and terms of these Agreements. It is recorded that the Purchaser may utilise the services of any other Architect in respect of the preparation of the internal configuration and layout and the finishes relating to the internal parts of the building and for the supervision of the construction work.
- 17.14** Any building or other structure to be erected on the Property shall be constructed by a contractor selected from a panel of contractors nominated by the Association. Should the PURCHASER wish to utilise the services of an alternative contractor he shall only be entitled to do so if such contractor has first been approved in writing by the Association after application is made to it. The application procedure and supporting documents are as prescribed by the Association. The Association may in its sole discretion accept or refuse the application.
- 17.15** Any building to be erected on the Property shall be within the footprint area as shown on the Site Development Plan or such amended footprint area as approved by the Association.
- 17.16** He/she shall ensure that any architect, contractor, sub-contractor and any other persons whatsoever involved in the construction of the building on the Property shall abide by the rules of the Association from time to time.
- 17.17** The Architects and/or Association shall inspect any building works and shall be entitled to condemn any work which in its opinion is sub-standard or materially conflicts with the Estate Rules pertaining to building, in which event the PURCHASER shall ensure that his contractor shall remedy such sub-standard or non-compliant work to a standard acceptable to the Architect and/or Association, as the case may be.

**WAIVER OF SELLER'S RIGHTS**

No latitude or extension of time which may be allowed by the SELLER 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 under any circumstances be deemed to be a waiver of the SELLER's rights. The SELLER may at any time and without notice, require strict and punctual compliance with each and every provision or term hereof.

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**ENTIRE CONTRACT**

This Agreement shall constitute the entire contract between the parties and the PURCHASER confirms that no warranties, representations or conditions not contained herein shall be binding upon the SELLER or the Association or affect the validity or the terms hereof, unless recorded in writing and signed by both parties hereto.

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**DOMICILIUM**

- 20.1** The parties choose *domicilium citandi et executandi* and for purposes of any notice in terms of this Agreement, their addresses as set out in paragraph's A and B of the Schedule.
- 20.2** The PURCHASER also elects the address set out in paragraph B of the Schedule as his/her *domicilium citandi* for the service of any notice or legal process by the Association.
- 20.3** Any notice given to any party at his aforesaid *domicilium* address shall be considered to have been duly served if delivered by hand thereat, posted to such *domicilium* by prepaid registered post or transmitted by facsimile. A notice dispatched to the *domicilium* by prepaid registered post shall be deemed to have been received on the fourth day following the date of posting thereof, if delivered by hand on the day of delivery thereof and if sent by facsimile on the date of dispatch.
- 20.4** Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen *domicilium citandi et executandi*.
- 20.5** Any party shall be entitled to change his aforesaid *domicilium* on giving not less than 30 (THIRTY) days prior written notice to the other party of his intention to do so.

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**JURISDICTION AND COSTS**

- 21.1** The parties hereby consent in terms of Section 45 of the Magistrates Court Act No. 32 of 1944, as amended to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any legal proceedings arising out of this Agreement. The SELLER and the PURCHASER shall, however, have the right to institute proceedings in any other competent court.
- 21.2** The PURCHASER agrees that in the event of the SELLER instructing its attorneys to institute action against him as a result of his failure to fulfil any of his obligations in terms of this agreement, the PURCHASER shall pay all legal costs plus Value Added Tax thereon incurred by the SELLER on the scale of attorney and own client.

Initials Here

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**GENERAL**

- 22.1** The provisions of this Agreement shall be binding on the heirs, executors, successors-in-title, mortgagees, cessionaries and assigns (in the case of the PURCHASER, only permitted assigns) of the parties.
- 22.2** In the event of this Agreement being signed by more than one person as PURCHASER such persons shall be jointly and severally liable under this Agreement.
- 22.3** Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of this Agreement.
- 22.4** Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.

23

**OFFER AND ACCEPTANCE**

Once this agreement has been signed and delivered to the SELLER it shall constitute an offer to purchase the Property and such offer shall not be capable of being withdrawn and shall remain open for acceptance by the SELLER signing same within 10 (TEN) days after the date of signature hereof by the PURCHASER.

24

**ALIENATION OF LAND ACT**

It is recorded that the provisions of the Alienation of Land Act are not applicable where the purchase price of the property exceeds R250,000.00 or where the PURCHASER is a Trust, Company or Close Corporation.

25

**BORER AND ELECTRICAL COMPLIANCE CERTIFICATES**

Where the property purchased is not vacant land:-

- 25.1** The SELLER shall, at his/her cost, obtain a certificate from a Government approved Entomologist certifying that the property has been inspected and found to be free of timber destroying termites and/or insects. If there is any infestation, the SELLER shall have the property treated and the certificate issued before the date of registration of transfer.
- 25.2** The SELLER shall, at his cost furnish a certificate of compliance from an accredited person certifying that all electrical works and installations are compliant with the relevant legislation and by-laws. If any works are required before the certificate is issued, the SELLER shall ensure completion thereof at his cost to enable the certificate to be issued by date of registration.

Initials Here

**SALE OF PURCHASER'S PROPERTY**

The PURCHASER records that the balance of the purchase price as referred to in item D of the Schedule is to be secured from the sale and registration of transfer of the PURCHASER's property situate at \_\_\_\_\_ within 90 days from the date of signature of this agreement.

- 26.1** The PURCHASER may waive compliance of the above condition and secure sufficient finances prior to the expiry of the 90-day period and provide the guarantees in accordance with the conveyancers' instructions so as to facilitate registration in terms of the agreement.
- 26.2** Should the PURCHASER fail to fulfil the Conditions set out in 26.1 above then this agreement shall lapse and be of no further force and effect.
- 26.3** If the agreement lapses for this reason then the PURCHASER shall be liable to refund to the SELLER the administration fee of R1 500.00, paid to the Home Owners Association.
- 26.4** During the above 90-day period, the SELLER shall continue marketing the property pending receipt of written confirmation from the PURCHASER of compliance with either 27.1 or 27.2 above.
- 26.5** Should the SELLER receive an alternate offer, then the SELLER shall give the PURCHASER 7 (seven) days written notice to confirm that the PURCHASER has arranged her finances so as to be able to provide the conveyancer with acceptable guarantees to secure the balance of the purchase price and to be in a position to take transfer in terms of the agreement. Should the PURCHASER fail to provide this confirmation then this agreement shall lapse.

**COMMISSION**

- 27.1** The SELLER shall pay commission at the rate of \_\_\_\_\_ %, calculated on the purchase price, payable to the Agency. The commission shall be earned upon fulfilment of the conditions referred to herein and payable not later than one day after registration of transfer. The SELLER furthermore irrevocably authorises the payment of the commission to the Agency, by whomsoever shall have control of the purchase price. However, should the PURCHASER fail to carry out his obligations herein, the Agency shall have the right to, but not be obliged to, recover its commission from the PURCHASER. In the event of the Agency having to institute action against either party to give effect to the benefit created herein in its favour, then the Agency will be entitled to claim legal costs on an attorney and own client basis.
- 27.2** The SELLER warrants that he has notified the estate agent that 15 % of the Estate Agent's commission thereon shall be deducted from the Agent's commission under this Agreement and shall be paid to the Home Owners Association as an administration sale fee. The SELLER authorises the conveyancer to deduct the amount from the sale proceeds and pay same to the Home Owners Association immediately after registration.
- 27.3** Should the Seller not utilise the services of an estate agent in effecting this sale, then the Seller shall be liable for the administrative sale fee of 0.5 % of the purchase price, which amount the Seller authorises the conveyancer to deduct from the sale proceeds on registration of transfer and pay same to the Home Owners Association immediately after registration.

**STIPULATIO ALTER 1**

By signing this agreement, the Home Owners Association:-

- 28.1** accepts those provisions of this agreement which constitute stipulations in its favour;
- 28.2** accepts the PURCHASER's application for membership of the Home Owners Association; and
- 28.3** consents to the sale of the Property on the terms contained herein.
- 28.4** It is recorded that the HOA by its signature does not accept special conditions set out in this sale agreement and we confirm that any/all parties will have to comply with all the control documentation and guidelines prescribed by the Home Owners Association.

SIGNED by the PURCHASER at \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**AS WITNESSES:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

PURCHASER who acknowledges that he accepts the terms and conditions of this contract and that all annexures are attached

SIGNED by the SELLER at \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**AS WITNESSES:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

SELLER

SIGNED by the HOME OWNERS ASSOCIATION at  
\_\_\_\_\_ on this \_\_\_\_\_ day of  
\_\_\_\_\_ 20\_\_\_\_.

**AS WITNESSES:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

Duly authorised signatory on behalf of The Home Owners Association

Initials Here

**ANNEXURE "A"****APPLICATION FOR MEMBERSHIP OF HAWAAN HOME OWNERS ASSOCIATION**

I/We (Full names)

The Purchaser/s of the Property described as

Do hereby:-

- a) Apply for membership of the Hawaan Forest Estate Home Owners Association with effect from the date of transfer of the abovementioned property into my/our name/s.
- b) Agree to pay, upon request by the Conveyancers, prior to date of transfer, the following amounts:-
  - i) The prescribed membership fee of the Association, which is currently R100.00;
  - ii) The Levy Stabilisation fund fee, which is currently R10, 000.00; and
  - iii) Levies due, in advance, on the first day of each month after transfer is registered.
- c) Agree to be bound by the terms and conditions of the aforesaid Association's Constitution, Conduct Rules, DFA Ruling, the Builders' Protocol, the Architectural Design Principles and Guidelines, and the Environmental Management Plan and to sign same when called upon to do so by the Conveyancers.
- d) Nominate as my/our *domicilium citandi et executandi* for the purpose of serving legal process upon us, the following physical/street address (which may be changed by giving prior written notice to the Association at any time):-

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- e) Nominate as my/our address for the service of all Association notices, including meeting notices, the following address:-

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

(and I consent to receiving such notices by way of email); or

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

- f) Acknowledges, in terms of 11.4 that buildings within the Hawaan Forest Estate may be incomplete that could cause an inconvenience to me from building operations and, inter alia, from noise and dust resulting therefrom and that I will have no claim whatsoever against the Home Owners Association.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.  
  

Signature/authorized signatory of Purchaser: \_\_\_\_\_

**Application for membership of the Association is accepted/declined by the Association on  
the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.**

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**Estate Manager  
(on behalf of the Association)**

Initials Here

**ANNEXURE "B"****ACKNOWLEDGEMENT OF RECEIPT OF A COPY OF THE ESTATE CONDUCT RULES,  
MEMORANDUM OF INCORPORATION & DFA RULING**

Plot Number: \_\_\_\_\_

Street Address: \_\_\_\_\_

Sale Agreement Number: \_\_\_\_\_

I/we \_\_\_\_\_

hereby confirm that I/We have received a copy of the Resale Agreement for Plot \_\_\_\_\_ together with the following documentation:-

1. Memorandum of Incorporation (MOI);
2. Conduct Rules;
3. Building Design Plan Guidelines;
4. Building Design Plan Definitions;

And I/we undertake to abide by all these Rules.

PURCHASER SIGNATURE

NAME &amp; SURNAME

DATE

AGENT SIGNATURE

NAME &amp; SURNAME

DATE

ESTATE MANAGER SIGNATURE

DATE

**ANNEXURE "C"****NEW OWNER INFORMATION**

In order to ensure our files are current, we would appreciate you taking a few moments to complete this form and either email or fax it back to us. Please be as thorough as possible. **If you provide an email address, this will become our primary means of contacting you.**

Full Name & Surname:	
Plot No.:	
Street Address:	
Cell Phone Number:	
Home Number:	
Work Number:	
Fax Number:	
Postal Address:	
Email Address:	<p><i>(Please make sure and add our email address as an approved sender so our emails do not get sent to your "Junk" mail.)</i></p>

**Estate Agent Info**

Estate Agent Name:	
Contact Person:	
Cell Phone Number:	
Work Number:	
Email Address:	