

CONTRACT OF SALE : DURBAN POINT DEVELOPMENT : PORTION

entered into by :

DURBAN POINT DEVELOPMENT COMPANY (PTY) LTD
Registration No. 2001/020065/07
("the SELLER")

No. 5 Escombe Terrace, Point Waterfront, Durban, 4001

and

Name
.....
(the "PURCHASER")

Postal Address
.....

Physical Address

Tel. No (Home) (Business)

Facsimile No. (Cell Phone)

E-Mail Address.....

Identity No./Registration No.

Marital Status (if the PURCHASER is an individual)

1 SCHEDULE

1.1 Property Description :

1.1.1

1.1.2

1.1.3

1.1.4

1.1.5

as depicted on the sub-divisional diagram (or draft sub-divisional diagram, as the case may be) attached hereto marked "SD", the locality of which PROPERTY is depicted on the PLAN.

1.2 PRIMARY BULK square metres

1.3 PURCHASED BULK square metres

1.4 purchase price per BULK square metre R.....

1.5 Nett Purchase Price R.....

1.6 Value Added Tax on the Nett Purchase Price R.....

1.7 Total Consideration R.....

1.8 Less deposit to be paid on R.....

1.9 Balance R.....

(to be paid in cash on DATE OF TRANSFER)

- 1.10 DATE OF OCCUPATION
- 1.11 Agent
- 1.12 Land Use Category
- 1.13 ADDITIONAL BULK
- 1.14 Maximum permissible BULK in respect of
the PROPERTY in terms of the TOWN
PLANNING SCHEME
- 1.15 Occupational Rental (per month, exclusive
of Value Added Tax)
- 1.16 Period from the DATE OF TRANSFER within
which the construction of buildings, as
contemplated in Clause 7.2 of the
CONDITIONS OF SALE, is to be
commenced
- 1.17 Period from the DATE OF TRANSFER within
which the construction of buildings, as
contemplated in Clause 7.2 of the
CONDITIONS OF SALE, is to be completed
- 1.18 The income tax number of the
PURCHASER (only required if the
PURCHASER is investing funds with the
CONVEYANCERS)

2 SALE

Subject to and in accordance with the provisions hereof and the CONDITIONS OF SALE annexed hereto as Annexure "A", the SELLER sells and the PURCHASER purchases the PROPERTY for the price specified in 1.7 above.

3 PREPAYMENTS AND GUARANTEES

- 3.1 The amount referred to in 1.8 of the CONTRACT OF SALE shall be paid in cash to the CONVEYANCERS. Such payment shall be placed by the CONVEYANCERS in their Nedbank Corporate Saver Account, all interest to accrue for the benefit of the PURCHASER until the DATE OF TRANSFER whereupon the CONVEYANCERS shall release the capital to the SELLER and all accrued interest, less their usual commission, to the PURCHASER.
- 3.2 The PURCHASER shall secure the due payment of the amount referred to in 1.9 of the CONTRACT OF SALE by furnishing the SELLER with a guarantee from a registered commercial bank, in a form and on terms acceptable to the SELLER, for such amount. The guarantee is to be expressed payable on the DATE OF TRANSFER.

3.3 The guarantee referred to in 3.2 shall be furnished by the PURCHASER within 7 (SEVEN) days after request therefor by the CONVEYANCERS provided that no such request may be made until 30 (THIRTY) days prior to the date on which the CONVEYANCERS reasonably believe that they will be in a position to lodge the transfer documents for registration with the Deeds Registry. Alternatively the PURCHASER shall be entitled to pay the amount referred to in 3.2 above in cash, which amount shall be dealt with mutatis mutandis as provided for in 3.1 above.

3.4 It is recorded that the Total Consideration referred to in paragraph 1.7 of the CONTRACT OF SALE is inclusive of Value Added Tax at the current rate of 14 (FOURTEEN) Percent. The parties agree that should there be any change in the rate of Value Added Tax applicable "at the time of supply", as determined in accordance with the Value Added Tax Act 89 of 1991, the purchase price shall be amended to take into account the adjustment in the Value Added Tax rate.

4 **ADDITIONAL BULK PURCHASE**

4.1 It is recorded that the nett purchase price of the PROPERTY, excluding Value Added Tax, has been calculated by multiplying the PURCHASED BULK by the purchase price per BULK square metre referred to in 1.4 of the CONTRACT OF SALE.

4.2 It is recorded that the PURCHASER may, by agreement with the SELLER, be able to purchase the ADDITIONAL BULK as specified in 1.13 above and, subject to availability, further BULK in respect of the buildings to be erected on the PROPERTY. Any such purchase shall, however, be subject to agreement being reached at the relevant time between the PURCHASER and the SELLER, which agreement must be in writing and be signed by both parties. (The purpose of this sub-clause is to notify the PURCHASER of the possibility of acquiring further BULK in respect of the PROPERTY and does not constitute an option to purchase same)

5 **MEMBERSHIP OF THE DURBAN POINT WATERFRONT MANAGEMENT ASSOCIATION**

By virtue of its ownership of the PROPERTY, the PURCHASER shall become a member of the ASSOCIATION within the meaning of and subject to the conditions set out in the ASSOCIATION'S memorandum and articles of association and undertakes that he and all persons deriving use of the PROPERTY or any part thereof through him will, from the DATE OF OCCUPATION, duly comply with all the obligations imposed upon members under the ASSOCIATION'S memorandum and articles of association and rules (if any) from time to time.

6 SIGNATORIES

6.1 Signed by the Purchaser at on this day of
..... 2004

AS WITNESS:

.....

Name of Signatory

.....
The signatory warranting by his signature that he is duly authorised hereto and confirming that he is acquainted with and understands the contents of this contract and that all the annexures referred to in this contract are attached.

This portion to be signed by spouse / legal guardian / member / director/ trustee in the event of the PURCHASER being a spouse married in community of property / minor / close corporation / company / trust (as the case may be).

I,
(Full names)

of

.....
(Full address)

hereby consent to the conclusion of this CONTRACT and guarantee and bind myself as surety for and co-principal debtor in solidum with the PURCHASER to the SELLER for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the PURCHASER in favour of the SELLER pursuant to this CONTRACT, under renunciation of the benefits of excussion and division, with the meaning and effect of which I acknowledge myself to be acquainted. No variation or amendment or novation of the CONTRACT OF SALE shall prejudice the suretyship obligation hereby undertaken, the object being that I shall, at all times, be liable as surety and co-principal debtor even if the CONTRACT OF SALE is varied or amended or novated and even if the PURCHASER is granted an indulgence by the SELLER.

Signed by the guarantor at on this day of
..... 2004

AS WITNESSES :

1.

2.

Guarantor

6.2 Signed by the SELLER at on this day of
..... 2004

AS WITNESS:

**For : Durban Point Development Company
(Pty) Ltd**

.....

Name of Signatory :

.....
The signatory warranting by his signature that
he is duly authorised hereto.

ANNEXURE "A"

CONDITIONS OF SALE

1 DEFINITIONS AND INTERPRETATION

For the purposes of the CONTRACT OF SALE and the CONDITIONS OF SALE, unless the context indicates to the contrary -

- 1.1 "ADDITIONAL BULK" means the number of BULK square metres referred to in 1.13 of the CONTRACT, being that further BULK that the PURCHASER may, by agreement with the SELLER, purchase (over and above the PURCHASED BULK) from the SELLER in terms of paragraph 4.2 of the CONTRACT OF SALE;
- 1.2 "ARCHITECTURAL CONTROLS" means the architectural controls applicable to the POINT PRECINCT and the PROPERTY, which controls are provided for in the DEVELOPMENT MANUAL;
- 1.3 "ASSOCIATION" means The Durban Point Waterfront Management Association (Association incorporated under Section 21) Reg. No. 1998/001781/08;
- 1.4 "BULK" means Bulk as contemplated in the TOWN PLANNING SCHEME;
- 1.5 "this CONTRACT" means the CONTRACT OF SALE and all Annexures thereto;
- 1.6 "CONTRACT OF SALE" means the contract of sale to which these conditions of sale are Annexure "A";
- 1.7 "CONDITIONS OF SALE" means these conditions of sale;
- 1.8 "CONVEYANCERS" means the conveyancers nominated by the SELLER to attend to the transfer of the PROPERTY in terms of this CONTRACT;
- 1.9 "COVERAGE" means the maximum area of the PROPERTY that may be covered by buildings in terms of the TOWN PLANNING SCHEME and the ARCHITECTURAL CONTROLS;
- 1.10 "DATE OF OCCUPATION" means the date specified in 1.10 of the CONTRACT OF SALE;
- 1.11 "DATE OF TRANSFER" means the date of registration of transfer of the PROPERTY into the name of the PURCHASER;
- 1.12 "DESIGN REVIEW COMMITTEE" means the Design Review Committee of the ASSOCIATION;
- 1.13 "DEVELOPMENT MANUAL" means the Durban Point Development Manual which deals with various architectural controls, layout issues, building requirements and restrictions and similar matters, a current copy of which is attached hereto as Annexure "DM", as amended and added to from time to time;
- 1.14 "PRIMARY BULK" means the number of BULK square metres referred to in 1.2 of the CONTRACT, being the minimum number of square metres of BULK the PURCHASER must utilise in the development of the PROPERTY in terms of the TOWN PLANNING SCHEME;
- 1.15 "PLAN" means the locality plan(s) attached hereto as Annexure "P";

- 1.16 "POINT PRECINCT" means all of the land which is acquired by the SELLER for the purposes of the "Point Development Project" as more fully described and provided for in the Point Development Framework Plan as presented to the eThekweni Municipality, the approximate boundaries and extent of which are indicated on the PLAN, it being recorded that the PROPERTY falls within the POINT PRECINCT;
- 1.17 "PROPERTY" means the immovable property(ies) referred to in 1.1 of the CONTRACT OF SALE;
- 1.18 "PURCHASED BULK" means the number of square metres of BULK referred to in paragraph 1.3 of the CONTRACT, being the BULK purchased from the SELLER by the PURCHASER in respect of the PROPERTY in terms of this CONTRACT;
- 1.19 "PURCHASER" means the purchaser in terms of this CONTRACT designated as such in the introductory section of the CONTRACT OF SALE and its successors in title or assigns in the case of a company, close corporation or other legal persona and its successors in title, heirs, administrators or executors in the case of a natural person;
- 1.20 "RULES" means the rules referred to in 10 of these CONDITIONS OF SALE;
- 1.21 "SELLER" means Durban Point Development Company (Proprietary) Limited, Registration Number 2001/020065/07 and its successors in title or assigns;
- 1.22 "ORDINANCE" means the Durban Extended Powers Ordinance No. 18 of 1976 (Natal) as amended from time to time (or, if applicable, any legislation enacted to replace such Ordinance);
- 1.23 "TOWN PLANNING SCHEME" means Special Zone 91: Point Waterfront and the Durban Town Planning Scheme in the course of preparation;
- 1.24 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.25 clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 1.26 if the PURCHASER consists of more than one person, such persons shall be jointly and severally liable *in solidum* for all their obligations in terms of this CONTRACT;
- 1.27 if any provision of this CONTRACT is unenforceable for any reason whatever, such provision shall be deemed to be separate and severable from this CONTRACT, without in any way affecting the validity of the remaining provisions of this CONTRACT;
- 1.28 no indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this CONTRACT shall prejudice the SELLER'S rights under this CONTRACT in any manner whatsoever, or be regarded as a waiver of the SELLER'S rights in terms of this CONTRACT, or be construed to act as an estoppel against the SELLER to otherwise strictly enforce compliance with the PURCHASER'S obligations in terms of this CONTRACT.

2 VOETSTOOTS

- 2.1 The PROPERTY is sold and purchased voetstoots, absolutely as it stands, with all its defects (if any) whether patent or latent. Furthermore the PURCHASER acknowledges that the SELLER through its contractors may be constructing roads

and canals, laying services and landscaping within the POINT PRECINCT and on the PROPERTY and agrees that the PROPERTY will be transferred to him as it then is.

2.2 The PROPERTY is sold subject to all conditions and servitudes contained in the existing title deeds and any conditions and servitudes that may be imposed by the local or any other authority in approving the PROPERTY as a separate subdivision.

2.3 The PURCHASER acknowledges that he has satisfied himself as to the nature, locality and extent of the PROPERTY and the SELLER shall not be liable for any deficiency in the extent thereof nor shall he benefit by any surplus.

3 ZONING AND USE OF PROPERTY

3.1 The PURCHASER acknowledges that the zoning rights applicable in respect of the PROPERTY are as provided for in the TOWN PLANNING SCHEME and it shall be incumbent upon the PURCHASER to acquaint itself fully and to satisfy itself in regard to the use to which the PROPERTY can be put having regard to the zoning thereof. In as much as the PROPERTY may have zoning rights which facilitate the mixed use of the PROPERTY (for example, a mixture of commercial and residential components), the actual use or configuration of uses which the PURCHASER chooses in respect of the PROPERTY will impact on the PURCHASER's obligation to provide the requisite parking for the PROPERTY. The SELLER undertakes to provide such information as may be reasonably required of it by the PURCHASER in order to help the PURCHASER with its planning relating to the use of the PROPERTY. The PURCHASER accepts, however, that the PURCHASER shall remain fully responsible for due and proper compliance of all of the applicable provisions of the TOWN PLANNING SCHEME insofar as they relate to the PROPERTY.

3.2 It is recorded that there are a number of listed buildings in the POINT PRECINCT and it shall be the responsibility of the PURCHASER to ascertain whether any building on the PROPERTY is a listed building. If the PROPERTY does have a listed building located on it, the PURCHASER shall, notwithstanding anything to the contrary contained in this sale agreement, be responsible for complying with all applicable laws and regulations pertaining thereto. If it transpires that, because of the need to comply with the laws related to a listed building on the PROPERTY, the PURCHASER is unable to fully utilise the PURCHASED BULK, the PURCHASER shall be entitled to negotiate with the SELLER to sell-back to the SELLER the unutilisable portion of the PURCHASED BULK and the SELLER shall, provided that it is able to sell-on the unusable BULK, negotiate in good faith with a view to buying-back such unusable BULK; provided always, however, that the SELLER shall not be obliged to buy-back the unusable BULK at a price greater than the price which was paid to it by the PURCHASER.

3.3 Without derogating from the other provisions of this Sale Agreement, the PURCHASER shall develop the PROPERTY in accordance with the "Usage Allocation Schedule" which is attached hereto marked "UAS" and no variations thereto shall be permitted without the prior written consent of the SELLER, whose consent shall not be unreasonably withheld.

4 POSSESSION, RISK AND SPECIAL RATES SUBSIDY

4.1 The PURCHASER shall take possession of the PROPERTY from the DATE OF OCCUPATION from which date the risk in and to the PROPERTY shall pass to the PURCHASER, from which date the PURCHASER shall, subject to the provisions of clause 4.2 below, be liable for the payment of all rates, levies and other outgoings

attributable to the PROPERTY.

- 4.2 It is recorded that in appropriate cases, the SELLER may, in its discretion, provide buyers with a special rates subsidy, to be dealt with by way of an addendum to this sale agreement. The extent that such special rates subsidy is not applied in favour of the PURCHASER or the PROPERTY, the PURCHASER shall have no claim against the SELLER in regard thereto, the PURCHASER acknowledging that a rates subsidy is unusual and that the granting of such subsidy to other parties within the POINT PRECINCT will not be regarded as discriminatory, unfair or objectionable.
- 4.3 The PURCHASER shall be liable to pay the SELLER occupational rental monthly in advance on the 1st day of each and every month from the DATE OF OCCUPATION to the DATE OF TRANSFER (both days inclusive) at the rate stated in 1.15 of the CONTRACT OF SALE. In addition, the PURCHASER shall be liable for Value Added Tax at the prescribed rate in respect of the occupational rental and also for payment of the levy as provided for in Clause 6 of the CONDITIONS OF SALE from the DATE OF OCCUPATION.
- 4.4 Notwithstanding anything to the contrary herein or elsewhere stated, the PURCHASER shall not be entitled to commence any building operations on the PROPERTY until such time as the total purchase price has been secured as provided for in this CONTRACT and the CONTRACT is otherwise unconditional.
- 4.5 The PURCHASER undertakes in the event of this CONTRACT being cancelled for any reason whatsoever to restore the PROPERTY to the same good order and condition in which it was at the time the PURCHASER took possession, to the reasonable satisfaction of the SELLER.
- 4.6 In the event of this CONTRACT being cancelled or lapsing for any reason whatsoever, the PURCHASER shall not be entitled to any compensation for any improvements that the PURCHASER may have made to the PROPERTY while in occupation thereof.

5 RIGHTS AND OBLIGATIONS IN RESPECT OF OCCUPATION

- 5.1 The PURCHASER acknowledges that on the DATE OF OCCUPATION the development of the POINT PRECINCT may be incomplete and that he and every person claiming occupation and use through him may suffer inconvenience from building operations and from noise and dust resulting therefrom and the PURCHASER shall have no claim whatsoever against the SELLER or its contractors by reason of any such inconvenience. Notwithstanding the foregoing the SELLER undertakes to use its reasonable endeavours to keep the noise, disturbance and inconvenience to reasonably acceptable levels in the circumstances.
- 5.2 From the DATE OF OCCUPATION the PURCHASER –
- 5.2.1 shall be entitled to beneficial occupation of the PROPERTY as if he was the owner thereof, and the PROPERTY shall be used only for those purposes permitted in terms of the ARCHITECTURAL CONTROLS, subject to compliance with the RULES and Memorandum and Articles of the ASSOCIATION. (See also 3.2 above.)
- 5.2.2 waives all claims against the SELLER for any loss or damage to property or any injury to person which the PURCHASER may sustain in or about the PROPERTY, or on any other part of the POINT PRECINCT, and indemnifies the SELLER against any such claim that may be made against the SELLER by tenants, nominees, invitees or any other persons who occupy or enter upon the PROPERTY, for any loss or damage to property or injury to person suffered in or about the PROPERTY, howsoever such loss or damage to property or injury to person may be caused save for any claims for

loss or damage arising out of the wilful act or omission by the SELLER, its Directors, Officers, Employees or Agents.

6 LEVY AND OTHER CHARGES

- 6.1 The PURCHASER accepts liability with effect from the DATE OF OCCUPATION for payment of a monthly levy in respect of those items and amounts payable in terms of the Articles of Association of the ASSOCIATION.
- 6.2 The PURCHASER agrees that he shall have no right to reclaim from the ASSOCIATION any amount lawfully due to and paid to the ASSOCIATION by way of a monthly levy referred to in the CONTRACT OF SALE.
- 6.3 It is recorded that the levies payable to the ASSOCIATION will generally be determined pro rata to the permissible BULK relating to each member's property. The PURCHASER acknowledges that Durban Marine Theme Park (Pty) Limited (being the current owner of the Durban Marine Theme Park property), and its successors in title from time to time will be a member of the ASSOCIATION. The PURCHASER further acknowledges that, due to the fact that the Durban Marine Theme Park is unlikely to utilise the full amount of the BULK that is allocated to that property, the owner the Durban Marine Theme Park property (from time to time) may be given a special dispensation by way of a reduced levy payable to the ASSOCIATION.

7 ARCHITECTURAL CONTROLS AND IMPROVEMENTS TO PROPERTY

- 7.1 In order to maintain high standards and with a view to facilitating an attractive development within the POINT PRECINCT all purchasers of Lots within the POINT PRECINCT shall be required to adhere to the DEVELOPMENT MANUAL and the ARCHITECTURAL CONTROLS applicable to their property (unless otherwise agreed in writing by the SELLER, the object being that the SELLER will only agree to deviations in cases which, in its view, are exceptional and warrant such deviation). Accordingly, and subject to the above, any improvements to the PROPERTY shall be in accordance with the DEVELOPMENT MANUAL (and, in particular, the ARCHITECTURAL CONTROLS as provided for therein) and the TOWN PLANNING SCHEME.
- 7.2 The PURCHASER shall within the period specified in 1.16 of the CONTRACT OF SALE have commenced the construction of a building on the PROPERTY and will have completed such construction of a building, having a BULK not less than the PRIMARY BULK, by the end of the period referred to in 1.17 of the CONTRACT OF SALE.
- 7.3 Should the PURCHASER not have commenced construction or completed construction of a building as aforesaid, within the stipulated period, then in that event, the PURCHASER shall be obliged to offer to sell the PROPERTY to the SELLER at the same price paid by the PURCHASER in terms of this CONTRACT, which offer the SELLER shall be required to accept within 10 (TEN) days of receiving such written offer from the PURCHASER failing which the PURCHASER shall be free to sell the PROPERTY to any other party subject to it complying with the conditions of this CONTRACT, the conditions of title of the PROPERTY and any conditions imposed by the ASSOCIATION. Should the SELLER purchase the PROPERTY the PURCHASER shall be liable for all costs, including any VAT or transfer duty, payable in effecting registration of transfer of the PROPERTY into the name of the SELLER. Until such time as the PURCHASER has erected on the PROPERTY the buildings as contemplated herein the PURCHASER shall not be entitled to alienate or transfer the

PROPERTY or any portion thereof without the written consent of the SELLER first being had and obtained.

- 7.4 In the event of the SELLER exercising its rights of acquisition as stated in clause 7.3 of the CONDITIONS OF SALE, the PURCHASER, by his signature hereto, hereby irrevocably nominates, constitutes and appoints the SELLER, with power of substitution, to be the PURCHASER'S lawful attorney and agent in his name, place and stead to sign any offer, deed of sale and all necessary transfer documentation required for the purposes of the reacquisition of the PROPERTY by the SELLER, and generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectually for all intents and purposes, as the PURCHASER might or could do if personally present and acting herein, hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever the said attorney and agent shall lawfully do or cause to be done, by virtue of these presents.
- 7.5 Notwithstanding anything to the contrary herein or elsewhere contained, any building or other structure to be erected on the PROPERTY or any alterations or extensions to be effected to any existing building or structure on the PROPERTY shall be erected strictly in accordance with building plans which have been submitted to and approved of in writing by the DESIGN REVIEW COMMITTEE and the local and/or any other competent authority and no work whatsoever shall commence on the PROPERTY until such time as the relevant approvals have been obtained. The decision of the DESIGN REVIEW COMMITTEE in approving or not approving such building plans shall be final and binding on the PURCHASER.
- 7.6 No development of the PROPERTY shall exceed the PURCHASED BULK referred to in paragraph 1.3 of the CONTRACT OF SALE, together with any further BULK acquired in terms of paragraph 4.2 of the CONTRACT OF SALE. The PURCHASER acknowledges that the PROPERTY will be transferred to it subject to a condition in the Title Deed to the effect that no development of the PROPERTY shall exceed the PURCHASED BULK as aforesaid. In the event of the PURCHASER purchasing any further BULK from the SELLER, as provided for in paragraph 4.2 of the CONTRACT OF SALE, then in that event, the SELLER shall consent to any amendment of the Title Deed as may be required in order to permit the development accordingly. Any costs in this regard shall be for the account of the PURCHASER.
- 7.7 No development of the PROPERTY shall be less than the PRIMARY BULK provided always, however, that in the event that it is not feasible to utilise at least the PRIMARY BULK in respect of the PROPERTY due to the existence on the PROPERTY of a listed building and in consequence of the constraints flowing therefrom the PURCHASER shall, as an exception to the general rule expressed herein be entitled to utilise less than the PRIMARY BULK in respect of the PROPERTY (see also clause 3.2 above).
- 7.8 Save in accordance with the provisions of the DEVELOPMENT MANUAL, the PURCHASER shall not be entitled to enclose the PROPERTY by means of a fence, wall or any other similar structure.
- 7.9 Vehicular access to the PROPERTY shall be limited to that provided in the ARCHITECTURAL CONTROLS.
- 7.10 All construction and related work on the PROPERTY shall be carried out in such a way as to comply with the construction controls contained in the DEVELOPMENT MANUAL. The PURCHASER agrees that it shall not be entitled, nor shall it authorise any other person, to commence any construction and related work on the PROPERTY until such time as the deposit required in terms of the construction controls has been paid to the SELLER. The PURCHASER agrees further that the SELLER'S Project Director shall at the SELLER'S cost be entitled to oversee and enforce the implementation of the construction controls.

7.11 These Conditions shall be registered in favour of the ASSOCIATION and the SELLER against the title deeds of the PROPERTY in such form as the SELLER may require and the Registrar of Deeds may permit.

7.12 Any material breach by the PURCHASER of the terms and conditions of the DEVELOPMENT MANUAL, ARCHITECTURAL CONTROLS or the TOWN PLANNING SCHEME shall be deemed to be a material breach of the terms and conditions of this CONTRACT.

8 MUNICIPAL SERVICES

The PURCHASER acknowledges that should the local authority or any other service provider not have the means, or be unwilling, or agree to delegate the obligation to the ASSOCIATION, to maintain or provide municipal services within the POINT PRECINCT, the ASSOCIATION may, if the ASSOCIATION in its sole discretion deems it appropriate, take over the responsibility for providing and maintaining such services and/or enhanced services.

9 MAINTENANCE OF THE PROPERTY

The PURCHASER shall at all times ensure that the PROPERTY is kept in a neat and tidy condition to the reasonable satisfaction of the SELLER and the ASSOCIATION. (This undertaking shall, to the extent that it confers on the ASSOCIATION a benefit, be deemed to be a stipulation for the benefit of the ASSOCIATION which stipulation shall be irrevocable and which shall be capable of acceptance at any time by the ASSOCIATION.)

10 RULES

10.1 The PURCHASER acknowledges that, subject to the provisions of this CONTRACT and the DEVELOPMENT MANUAL, the directors of the ASSOCIATION shall be entitled at all times to lay down rules in regard to -

10.1.1 the preservation of the natural environment,

10.1.2 vegetation and flora and fauna in the POINT PRECINCT,

10.1.3 the placing of movable objects upon or outside the buildings included in the POINT PRECINCT, including the power to remove any such objects,

10.1.4 the storing of flammable and other harmful substances,

10.1.5 the conduct of any persons within the POINT PRECINCT and the prevention of nuisance of any nature to any owner of immovable property in the POINT PRECINCT,

10.1.6 the use of land within the POINT PRECINCT,

10.1.7 the use of roads, pathways, canals and open spaces;

10.1.8 the imposition of fines and other penalties to be paid by members of the ASSOCIATION,

10.1.9 the management, administration and control of the common areas and open spaces;

- 10.1.10 the Design Guidelines for the erection of all buildings and other structures, including service connections to buildings;
- 10.1.11 the Design Guidelines for the establishment, installation and maintenance of gardens, both public and private;
- 10.1.12 the use by owners and their tenants of buildings and other structures and the upkeep, aesthetics and maintenance of such buildings;
- 10.1.13 the use of adjoining sidewalks, road frontages and parking areas;
- 10.1.14 any other matter which the ASSOCIATION from time to time considers appropriate and in the best interests of its members,

and the PURCHASER undertakes and shall be obliged, with effect from the DATE OF OCCUPATION, to abide by such rules as if he was the owner of the PROPERTY and to ensure that all tenants, nominees, invitees and other persons who occupy or enter upon the PROPERTY and its surrounds by virtue of the PURCHASER'S rights thereto, do likewise.

- 10.2 The PURCHASER shall be obliged to bring the RULES to the attention of any tenant prior to such tenant taking possession of the PROPERTY or any portion thereof.

11 TRANSFER

- 11.1 Once the PROPERTY is registrable and this contract has been signed by both parties, the CONVEYANCERS shall pass transfer of the PROPERTY to the PURCHASER as soon as is reasonably practicable in the circumstances, provided the PURCHASER has secured the payment of the purchase price and has paid the transfer costs and any occupational rental and/or levies or other charges due prior to transfer, or has secured payment of same to the reasonable satisfaction of the SELLER.
- 11.2 The PURCHASER shall, within 7 (SEVEN) days of being called upon to do so by the CONVEYANCERS -
 - 11.2.1 pay to the CONVEYANCERS all costs of and incidental to the passing of transfer of the PROPERTY to the PURCHASER, including stamp duty, bond costs, bank charges and all conveyancing fees and disbursements;
 - 11.2.2 furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the CONVEYANCERS to pass transfer of the PROPERTY;
- 11.3 The PURCHASER acknowledges that it is not possible to register transfer of the PROPERTY into the name of the PURCHASER until such time as a Certificate has been issued under the provisions of Section 148 of the ORDINANCE in respect of the PROPERTY. The SELLER shall use its best endeavours to expedite the issuing of the said Certificate.
- 11.4 No liability of any nature whatsoever shall attach to the SELLER arising out of any delays in effecting transfer of the PROPERTY to the PURCHASER.
- 11.5 The PURCHASER shall be obliged to accept transfer of the PROPERTY subject, *inter alia*, to -
 - 11.5.1 the conditions, reservations and servitudes which burden the PROPERTY and which

may arise pursuant to the Conditions of Establishment relating to the creation of the PROPERTY as a separate sub-division;

- 11.5.2 any change in the description of the PROPERTY (the present Erf or Lot No. as shown on is subject to change by the Surveyor General who may designate an alternate number to the Erf);
- 11.5.3 a condition registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be sold or transferred without the written consent of the ASSOCIATION first being had and obtained, it being recorded, however, that the ASSOCIATION will grant its consent if the transferee binds himself to become and, for the duration of his ownership of the PROPERTY, to remain a member of the ASSOCIATION and to comply with the Rules of the ASSOCIATION relating to its members including rules pertaining to the use of standard sale agreements for properties forming part of the POINT PRECINCT and including the rule that a seller of property in the POINT PRECINCT will pay a 1% (ONE PERCENT) commission (that is 1% of the selling price of the property) to the SELLER (the intention being that the said commission will be deducted from the commission which would otherwise have been payable to an agent for the sale of the relevant property);
- 11.5.4 the conditions in favour of the SELLER and the ASSOCIATION as set out in this CONTRACT OF SALE;
- 11.5.5 any applicable condition of establishment.
- 11.6 It is recorded that a portion of the PROPERTY was acquired by the SELLER from eThekweni Municipality subject to certain servitudes and conditions which may, accordingly, carry forward and apply to a portion of the PROPERTY which is the subject of this sale. The relevant provisions from the sale agreement between the eThekweni Municipality and the SELLER are as follows :-
- 11.6.1 a 3 (THREE) metre storm water servitude as reflected on survey diagram SG2120/1996 and a 2 (TWO) metre electrical cable and substation servitude as reflected on survey diagram SG2119/1996 are to be registered over the property acquired by the SELLER from eThekweni Municipality;
- 11.6.2 eThekweni Municipality reserved, in perpetuity, the right, without being required to pay compensation therefor, to erect, lay, maintain, use and remove standards, lines, cables, pipes and the like under, on and over the property for the purposes of conveying electric current, water, drainage, sewerage and the like;
- 11.6.3 the existing ground levels over the surfaces which are the subject of the servitude referred to in 11.6.2 above are not to be altered in any way nor shall any buildings or structures be erected over or in close proximity to these services without the prior written approval of the Director (Waste, Water Management); City Engineer and/or Executive Director (electricity);
- 11.6.4 any damage caused to existing services, or any future services to be laid within the general servitude areas, shall be rectified by the Municipality at the landowners' cost;
- 11.6.5 the Municipality or its authorised officials shall have unrestricted access to the servitude areas at all times.
- 11.7 It is further recorded that numerous Telkom services exist in respect of the PROPERTY and the PURCHASER shall liaise with the Regional Director, Telkom : KwaZulu-Natal to determine his requirements in this regard.

- 12.1 The PURCHASER acknowledges that he is aware of the intended future development of the POINT PRECINCT by the SELLER. Such development is intended to involve the establishment of high quality business and commercial premises and residential dwellings on various portions of the POINT PRECINCT and so designed as to facilitate the establishment of the POINT PRECINCT as an upmarket, attractive and aspirational development. The PURCHASER undertakes that he will, at all times, co-operate with the SELLER in an endeavour to facilitate the success of the said development. Also in this respect, the PURCHASER undertakes that he shall not unreasonably interfere with any such proposed development nor unreasonably lodge any objection with any competent authority in respect of any such development. In particular, but without derogating from the generality of the foregoing, the PURCHASER agrees that he will not object to any application made by or on behalf of the SELLER, its nominee or agent for special usage consent, licences for shopping, commercial or filling station rights, rezoning, removal of conditions of title under the Removal of Restrictive Conditions Act or by way of any application to Court or to any local or other competent authority in respect of any PROPERTY within the POINT PRECINCT. In no way detracting from the generality of the aforesaid the PURCHASER specifically acknowledges that owners of land surrounding the PROPERTY will be erecting buildings and other structures on surrounding land which may block or otherwise interfere with the views from the PROPERTY. The PURCHASER agrees he shall have no right to object to the construction of any building or other structure on land in the POINT PRECINCT on the basis that such building or other structure blocks or otherwise interferes with the views from the PROPERTY, nor will he have any claim for any alleged diminution in the value of the PROPERTY arising out of any interference with the views from the PROPERTY by reason of the construction of any such building or structure.
- 12.2 The PURCHASER acknowledges that no buildings or alterations or extensions to existing buildings or any other structures may be erected on the PROPERTY other than in accordance with plans approved by the ASSOCIATION acting through the DESIGN REVIEW COMMITTEE. Furthermore the PURCHASER agrees that he will have no claim whatsoever, arising out of whatever cause, against the ASSOCIATION, any members of the DESIGN REVIEW COMMITTEE or the SELLER for any loss suffered by reason of the DESIGN REVIEW COMMITTEE refusing to approve or delay the approval of any plans submitted by the PURCHASER save where the PURCHASER can prove male fides on the part of the DESIGN REVIEW COMMITTEE or where the decision was not made in accordance with the ASSOCIATION'S Articles of Association as read with the DEVELOPMENT MANUAL and the ARCHITECTURAL CONTROLS. The PURCHASER further acknowledges that the requirements for parking have been provided for in the terms applicable, under the TOWN PLANNING SCHEME to the PROPERTY.
- 12.3 The PURCHASER shall not be entitled to sell or otherwise transfer ownership of the PROPERTY unless it is a suspensive condition of such sale or other transfer that the transferee, in a manner acceptable to the ASSOCIATION, agrees to become a member, is admitted as a member of the ASSOCIATION and undertakes to remain a member for as long as he is the owner of the PROPERTY.
- 12.4 The PURCHASER shall not be entitled to make application to rezone the PROPERTY or to change its use from that specified in the TOWN PLANNING SCHEME without the prior written consent of the SELLER.
- 12.5 The PURCHASER acknowledges he is familiar with the zoning of the PROPERTY and the TOWN PLANNING SCHEME and in particular the SELLER'S BULK rights in terms thereof.

13 AGENT'S COMMISSION

- 13.1 The SELLER shall pay a selling commission to the agent referred to in 1.11 in accordance with the mandate given by the SELLER to the agent.
- 13.2 In the event of the PURCHASER not having completed clause 1.11 of the CONTRACT OF SALE by inserting the name of an agent, the PURCHASER warrants that no agent was responsible for introducing him to the PROPERTY and further warrants that no agent will have any claim against the SELLER for agent's commission arising out of this transaction. The PURCHASER indemnifies and holds harmless the SELLER against any loss, damage or expense sustained, suffered or incurred by the SELLER arising out of any breach of the foregoing warranty.

14 DEFAULT

- 14.1 If the PURCHASER –
- 14.1.1 fails to pay any amount in terms of this CONTRACT, or
- 14.1.2 commits any breach of the remaining conditions of this CONTRACT or of the ASSOCIATION'S articles of association or of the RULES, and should the PURCHASER fail to remedy such breach within 7 (SEVEN) days of the date of delivery, if delivered by hand, or receipt if posted by prepaid registered post, of a written notice calling on him to remedy such breach, or
- 14.1.3 commits a repetition of such breach within a period of six months after having been warned in writing by the SELLER to desist therefrom,
- the SELLER shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof and at the SELLER'S election to -
- 14.1.4 cancel this CONTRACT, and retake possession of the PROPERTY, in which event all amounts paid to the SELLER or to the CONVEYANCERS (including any amount paid in trust and any interest that may have accrued thereon) shall be forfeited to and retained by the SELLER as *rouwkoop*; alternatively if the SELLER so elects he may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the SELLER or the CONVEYANCERS as aforesaid shall not be forfeited as *rouwkoop* but may be retained by the SELLER by way of set off or partial set off against the damages claimed by the SELLER;
- 14.1.5 claim immediate performance by the PURCHASER of all his obligations in terms of this CONTRACT whether or not the due date for the performance shall otherwise have arrived and claims such damages as it may have suffered in consequence of the PURCHASER's breach.
- 14.2 For the purposes of this CONTRACT any act or omission on the part of any tenant, nominee or other person who occupies the PROPERTY, or invitee of the PURCHASER who goes upon the PROPERTY shall be deemed to be an act or omission of the PURCHASER.
- 14.3 Notwithstanding the foregoing, should the SELLER exercise any of his rights in terms hereof and should the PURCHASER dispute the SELLER'S right to do so, then pending the determination of that dispute, the PURCHASER shall continue to pay all amounts payable in terms of this CONTRACT on the due date thereof, and to comply with all the terms hereof, and the SELLER shall be entitled to recover and accept such payments and/or other performance without prejudice to the SELLER'S

claim to have exercised its rights in terms hereof, and in the event of the SELLER succeeding in such dispute, the SELLER shall be entitled to retain such amounts received in the interim as payment for the occupational rights exercised and/or enjoyed by the PURCHASER in the interim.

15 JURISDICTION AND COSTS

- 15.1 In the event of any action or application arising out of this CONTRACT, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of the Magistrate's Court Act of 1944, as amended, notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction. This clause shall constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.
- 15.2 Notwithstanding anything to the contrary herein contained the SELLER shall, without prejudicing itself on the issue of costs, have the right at its sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction.
- 15.3 In the event of it becoming necessary for the SELLER to take action against the PURCHASER as contemplated herein, the PURCHASER agrees to pay the SELLER all the attendant costs and expenses incurred by the SELLER as between attorney and client.

16 SOLE CONTRACT

The PURCHASER acknowledges that this CONTRACT constitutes the sole basis of the contract between himself and the SELLER, and that he has not been induced to enter into such contract by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specially dealt with herein. No agreement to cancel this CONTRACT or to vary the terms and conditions thereof shall be of any force or effect unless reduced to writing and signed by the parties or their agents, duly authorised in writing.

17 DOMICILIUM

- 17.1 The parties choose as their domicilia citandi et executandi for all purposes under this CONTRACT, whether in respect of court processes, notices or other documents or communications of whatsoever nature their respective physical addresses referred to in the heading of this CONTRACT OF SALE.
- 17.2 Any notice or communication required or permitted to be given in terms of this CONTRACT shall be valid and effective only if in writing.
- 17.3 Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-à-vis that party to another physical address in the Republic of South Africa, provided that the change shall become effective vis-à-vis that address on the 7th business day from the deemed receipt of the notice by the addressee.
- 17.4 Any notice to a party:-

- 17.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved); or
- 17.4.2 delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
- 17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen *domicilium citandi et executandi*.

18 COSTS

The SELLER shall bear its own costs in connection with the preparation and execution of this CONTRACT.

19 CESSION

The PURCHASER shall not sell, assign, cede or dispose of the PURCHASER'S rights under this CONTRACT without the prior written consent of the SELLER.

20 SECURITY SERVICES

The ASSOCIATION shall in accordance with the provisions of its Articles of Association, and any direction given by members in general meeting from time to time, provide security services within the POINT PRECINCT. The PURCHASER agrees that no liability shall rest upon the SELLER or the ASSOCIATION for any failure or inefficiency of any of the security services in the POINT PRECINCT, irrespective of the cause thereof, or for any consequential damage the PURCHASER may suffer by reason of such failure or insufficiency.

21 ARREARS

- 21.1 Any amounts in arrear in terms of this CONTRACT shall bear interest at the rate equal to 2 (TWO) PERCENTAGE points above the minimum overdraft rate from time to time published by the Standard Bank of South Africa Limited as being its minimum overdraft rate to its prime customers in the private sector, which interest shall be reckoned from the due date until the date of payment, both days inclusive.
- 21.2 A certificate by any branch manager of the said bank as to such minimum overdraft rate from time to time shall be prima facie proof of such rate.

22 MORA INTEREST

In the event of there being any delay in connection with the registration of transfer for which the PURCHASER is responsible, the PURCHASER agrees, in addition to any other payment due by the PURCHASER in terms hereof, to pay interest on the full purchase price at the prime overdraft rate charged by the Standard Bank of South Africa Limited from time to time calculated from the date the PURCHASER is notified in writing by the SELLER (or the SELLER's agent) as being in mora, to the date upon which the PURCHASER has ceased to be in mora, both days inclusive. (A certificate by any branch manager of the said bank as to such prime overdraft rate shall be prima facie proof of such rate).

23 **BEACONS**

The PURCHASER acknowledges that at the date of signing this CONTRACT the beacons establishing the boundaries of the PROPERTY may not be in place. The SELLER or its agent shall at the written request of the PURCHASER point out the beacons to the PURCHASER once they are in place whereafter the SELLER shall have no further obligation to the PURCHASER to either point out, or establish any beacons in relation to the boundaries of the PROPERTY.

24 **CLAIMS TO THE PROPERTY**

The SELLER warrants that it is not aware of any pending or threatened claims in terms of the Restitution of Land Act 22 of 1994 in respect of the PROPERTY.

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

25.1 In the event of the signatory to this CONTRACT on behalf of the PURCHASER having concluded this CONTRACT in his capacity as a Trustee for a company to be formed (which signatory is hereinafter in paragraphs 25.1, 25.2 and 25.3 referred to as the "SIGNATORY"), then:

25.1.1 the SIGNATORY by his signature hereto warrants that the said company:

25.1.1.1 will be formed;

25.1.1.2 will ratify and adopt the terms and conditions of the CONTRACT OF SALE; and

25.1.1.3 will provide the SELLER with written proof thereof;

all within a period of 30 days from the date of signature of this CONTRACT OF SALE by the SIGNATORY;

25.2 the SIGNATORY, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the SELLER for the due and punctual performance of such company's obligations to the SELLER in terms of this CONTRACT OF SALE;

25.3 if the terms and conditions of Clause 25.1 above are not fulfilled then the SIGNATORY will by his signature to this CONTRACT OF SALE be deemed ipso facto to have concluded the CONTRACT OF SALE in his personal capacity as PURCHASER;

25.4 In the event of the signatory to this CONTRACT on behalf of the PURCHASER having concluded this CONTRACT in his capacity as a trustee for a close corporation to be formed (which signatory is hereinafter in paragraphs 25.4, 25.5 and 25.6 referred to as the "SIGNATORY"), then:

25.4.1 the SIGNATORY by his signature hereto warrants that the close corporation;

25.4.1.1 will be formed;

25.4.1.2 will ratify and adopt the terms and conditions of this CONTRACT OF SALE;

25.4.1.3 will provide the SELLER with written proof thereof;

all within a period of 30 days from the date of signature of this CONTRACT OF SALE by the PURCHASER;

25.5 the SIGNATORY in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the close corporation to be formed by him in favour of the SELLER for the due and punctual performance of the close corporation's obligations to the SELLER in terms of the CONTRACT OF SALE;

25.6 if the terms and conditions of 25.4.1 above are not fulfilled then the SIGNATORY by his signature to this CONTRACT OF SALE shall be deemed ipso facto to have concluded the CONTRACT OF SALE in his personal capacity as PURCHASER.

26 **INDEMNITY**

26.1 The SELLER does not warrant any information given in respect of the PROPERTY, whether this information is given prior to or subsequent to the signing of this CONTRACT, save for the information in respect of the PROPERTY specifically warranted in this CONTRACT. 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 or its agent to the PURCHASER, his agent or his nominee in respect of the PROPERTY and the PURCHASER hereby indemnifies the SELLER and holds it harmless against and in respect of any injury, loss or damage however caused which the PURCHASER may suffer as a result of any inaccuracies in any information given by the SELLER or its agent (save for the information specifically warranted in this CONTRACT).

26.2 In no way detracting from the generality of 26.1 above, it is specifically recorded that the SELLER does not warrant the accuracy of any geotechnic reports or any other information given on sub soil conditions on the POINT PRECINCT by the SELLER to the PURCHASER whether such information is given prior to or subsequent to the signing of this CONTRACT. The PURCHASER hereby indemnifies the SELLER and holds it harmless against and in respect of any injury, loss or damage however caused to the PURCHASER as a result of any inaccuracies in any geotechnic reports or any information in respect of sub soil conditions that the SELLER may at any time give to the PURCHASER.

27 **CONSOLIDATION OR SUB-DIVISION***

27.1 Save as provided for in paragraph 28.2 of the CONDITIONS OF SALE below, the PROPERTY shall not be subdivided nor consolidated with any adjoining property without the prior written consent of the ASSOCIATION, which consent the

ASSOCIATION may in its sole and absolute discretion grant or refuse.

- *27.2 In the event of the PROPERTY consisting of more than 1 (ONE) Erf, such PROPERTY shall be consolidated, at the SELLER'S cost, simultaneous with the registration of transfer of the PROPERTY into the PURCHASER'S name.

***Delete if not applicable**

28 **ELECTRIC SUB-STATION SERVITUDE**

The PROPERTY shall be subject to a electric sub-station servitude, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked Annexure "SD", in favour of the eThekwin Municipality.

***Delete if not applicable**

29 **ELECTRIC CABLE SERVITUDE***

The PROPERTY shall be subject to an electric cable servitude, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked Annexure "SD" in favour of the eThekwin Municipality.

***Delete if not applicable**

30 **WATER PIPELINE SERVITUDE***

The PROPERTY shall be subject to a water pipeline servitude in favour of the eThekwin Municipality, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked Annexure "SD".

***Delete if not applicable**

31 **SEWER AND DRAIN SERVITUDE***

The PROPERTY shall be subject to a sewer and drain servitude as shown on the sub-divisional diagram attached hereto marked "SD" in favour of the relevant local authority and/or other service providers.

***Delete if not applicable**

32 **COMMUNICATION AND SECURITY SERVITUDE**

The PROPERTY is sold subject to a communication and security servitude in favour of the ASSOCIATION which shall grant the ASSOCIATION, *inter alia*, all such rights as the ASSOCIATION may require in order to install and maintain an electronic surveillance security and data communications system in the POINT PRECINCT (including the PROPERTY). The aforesaid servitude shall also grant the ASSOCIATION the right to lay cables generally, to transmit data through such cables and the right to enter upon the PROPERTY to maintain same.

33 **PROHIBITION ON THE USE OF PROPERTY***

Notwithstanding anything contained herein, in the TOWN PLANNING SCHEME or elsewhere, the PROPERTY shall under no circumstances whatsoever be used as a petrol filling station.

***Delete if not applicable**

34 **ROAD SERVITUDE***

The PROPERTY shall be subject to a road servitude in favour of eThekweni Municipality, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked Annexure "SD". It is recorded that the aforesaid servitude shall be maintained by the eThekweni Municipality at its cost.

***Delete if not applicable**

35 **ARCADE SERVITUDE***

The PROPERTY shall be subject to an arcade servitude in favour of the ASSOCIATION the position of which is shown on the (draft) sub-divisional diagram attached hereto marked "SD". The aforesaid servitude, shall be maintained by the ASSOCIATION at its cost, and shall entitle the ASSOCIATION'S members, subject to any rules and restrictions imposed by the ASSOCIATION, to use the area covered by the aforesaid arcade servitude for the purposes of a pedestrian right of way. The PURCHASER shall, not, save with the prior written consent of the ASSOCIATION, which the ASSOCIATION may in its sole and absolute discretion grant or refuse, in any way hinder pedestrian access over the area covered by the aforesaid servitude but shall be entitled to build over the aforesaid servitude and enclose same one storey up from the ground level.

***Delete if not applicable**

36 **THOROUGHFARE SERVITUDE***

The PROPERTY shall be subject to a thoroughfare servitude the position which is shown on the (draft) sub-divisional diagram attached hereto marked "SD". The aforesaid servitude shall be maintained by the ASSOCIATION at its cost and shall entitle the ASSOCIATION'S members, subject to such rules and restrictions as the ASSOCIATION may lay down, to vehicle and pedestrian access over the area covered by the aforesaid servitude.

***Delete if not applicable**

37 NON-USER SERVITUDE*

37.1 The PROPERTY shall be subject to a non-user servitude in favour of the ASSOCIATION the position of which is shown on the draft sub-divisional diagram which is Annexure "SD" hereto.

37.2 The PURCHASER shall not be entitled to use the area covered by the aforesaid non-user servitude for any purpose whatsoever save with the prior written consent of the ASSOCIATION which consent the ASSOCIATION may in its sole and absolute discretion grant or refuse.

37.3 ASSOCIATION shall be entitled to:

37.3.1 stage events on the area covered by the aforesaid non-user servitude and grant permission to third parties to hold events in this area;

37.3.2 licensed vendors (subject to the relevant bye-laws) to operate on the area covered by the aforesaid non-user servitude;

37.3.3 to allow members of the public pedestrian access across the area covered by the aforesaid non-user servitude;

37.3.4 charge third parties, for its own account, for the right to use or operate the area covered by the non-user servitude as contemplated in paragraphs 36.1 and 36.2 above.

37.4 The ASSOCIATION shall be entitled to pave and landscape the area covered by the aforesaid non-user servitude at its cost.

***Delete if not applicable**

38 RIGHTS OF WAY SERVITUDE*

The PROPERTY shall be subject to a right of way servitude, the position which is shown on the (draft) servitude diagram which is Annexure "SD" hereto, in favour of both the ASSOCIATION and Portions

***Delete if not applicable**

39 TEMPORARY VEHICULAR ACCESS SERVITUDE*

The PROPERTY shall be subject to a temporary vehicular access servitude in favour of the ASSOCIATION, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked "SD". The ASSOCIATION shall maintain the aforesaid servitude at its cost.

40 GENERAL SERVICES SERVITUDE*

The PROPERTY shall be subject to a general services servitude in favour of the eThekweni Municipality, the position of which is shown on the (draft) sub-divisional diagram attached hereto marked "SD". Such servitude shall allow the eThekweni

Municipality, in perpetuity, the right without being required to pay compensation therefor, to erect, lay, maintain, use and remove standards, lines, cables, pipes and the like under, on and over the said land for the purposes of conveying electric current, water, drainage, sewage and the like and the owner agrees not to obstruct or interfere with any standards, lines, cables, pipes and the like or to erect any building or other permanent structures within 1 (ONE) metre of any such standards, lines, cables, pipes and the like without the prior written consent of the eThekweni Municipality provided that any damages done during the process of erecting, laying, maintaining, using or removing such standards, lines, cables and pipes and the likes shall be made good by the eThekweni Municipality. The owner agrees that the eThekweni Municipality by itself, or others, may enter upon the said property at all reasonable times for the purposes of enforcing the rights reserved and the obligations accepted in this clause.

***Delete if not applicable (please note that a special clause in this regard is required for Portion 25)**

41 TELECOMMUNICATIONS ROOM SERVITUDE*

41.1 The PROPERTY shall be subject to a telecommunications room servitude in favour of the ASSOCIATION, entitling the ASSOCIATION, *inter alia*, to erect, maintain and service a telecommunications room on the PROPERTY.

41.2 Although the position of the aforesaid telecommunications room and its design shall be decided by the DESIGN REVIEW COMMITTEE in consultation with the owner of the PROPERTY, the final decision in this regard shall be in the sole discretion of the DESIGN REVIEW COMMITTEE.

41.3 The aforesaid servitude shall grant the ASSOCIATION and any service provider(s) or other parties, nominated by the ASSOCIATION, all such rights as may be required in order to erect, maintain and operate the telecommunications room. These rights shall include, but shall in no way be limited to, the right to have 24 (TWENTY FOUR) hour vehicular and pedestrian access to the telecommunications room and the rights to lay and maintain all electric and other cables across the PROPERTY to the telecommunications room that may be required in order to properly operate the aforesaid telecommunications room.

***Delete if not applicable**

42 IRREVOCABLE OFFER TO PURCHASE UNREGISTERED SUB-DIVISION*

42.1 It is recorded that the PROPERTY is at present an un-registered sub-division and accordingly, in terms of Section 144(1)(ii), the SELLER is not entitled to dispose of the PROPERTY until it is created as a sub-division nor shall transfer of the PROPERTY take place until a Certificate in terms of Section 148 of the ORDINANCE has been issued.

42.2 The SELLER shall be responsible for procuring as quickly as is reasonably practical the framing of the requisite subdivisional diagram/General Plan for the PROPERTY and the granting of all such consents as may be requisite in order to render the PROPERTY registrable as a separate sub-division. All costs in respect of and incidental to the application in this regard, fulfilment of any conditions of establishment pertaining to the creation of the PROPERTY as a separate sub-division and the payment of any endowment and the like shall be for the sole account of the SELLER.

42.3 The signature of the PURCHASER in 6.1 above shall constitute this document the subject of an irrevocable offer by the PURCHASER to purchase the PROPERTY on the terms set out herein, which offer shall be capable of acceptance by the SELLER signing this agreement and giving written notification thereof to the PURCHASER.

42.4 If the PURCHASER's irrevocable offer (see 42.3 above) has not been accepted within 12 months from the date of signature of this CONTRACT by the PURCHASER, then in that event, and notwithstanding the provisions of 42.3 above, the PURCHASER shall be entitled to revoke its offer (provided that it does so before the offer is accepted by the SELLER) by way of written notice to the SELLER.

***Delete if not applicable**

43 **DEMOLITION**

43.1 The PURCHASER shall not demolish/alter any protected/listed buildings on the PROPERTY without obtaining the prior consent of the KwaZulu-Natal Heritage Council (AmafaKwaZulu-Natal) where necessary.

44 **SIGNATURE BY PURCHASER**

This CONTRACT OF SALE will be of no force and effect unless signed by the PURCHASER by no later than _____.

45 **SPECIAL TERMS/CONDITIONS**

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LIST OF ANNEXURES

- | | | | |
|---|----------------|---|--|
| 1 | Annexure "A" | – | CONDITIONS OF SALE |
| 2 | Annexure "DM" | – | POINT PRECINCT DEVELOPMENT MANUAL |
| 3 | Annexure "P" | – | THE LOCALITY PLAN |
| 4 | Annexure "SD" | – | SUB-DIVISIONAL DIAGRAM (OR AS THE CASE MAY BE, DRAFT SUB-DIVISIONAL DIAGRAM) |
| 5 | Annexure "UAS" | – | USAGE ALLOCATION SCHEDULE |