



## **CONTRACT OF SALE**

**entered into by and between**

**BUSINESS VENTURE INVESTMENTS NO 1268  
PROPRIETARY LIMITED**

**and**

---

**in respect of the purchase and sale  
of a Section in the sectional title scheme known as**

**EMBERTON MEADOWS**

## 1 THE SCHEDULE

---

### 1.1 THE SELLER

Name: Business Venture Investments 1268  
Proprietary Limited

Registration number: 2007/030341/07

Physical Address: c/o Lester Hall, Fletcher Inc., 44 Old Main  
Road, Kloof, 3610

Postal Address: c/o Lester Hall, Fletcher Inc., Private Bag  
X7016, Hillcrest, 3650

Telephone number: 0861 2777 27

Facsimile: 086 595 7030

Email: [saf@lesterhall.co.za](mailto:saf@lesterhall.co.za)

---

### 1.2 THE PURCHASER

Name:.....

Identity Number/Registration Number:.....

VAT Registration Number (for company): .....

Marital Status (for individual): .....

Physical address: .....

Postal address: .....

Telephone number: .....

Cellular number: .....

E-mail: .....

---

### 1.3 THE PROPERTY

The Unit consisting of Section No. \_\_\_\_\_ in extent \_\_\_\_\_ square metres in the buildings known as Emberton Meadows together with:

---

- 1.3.1 an undivided share in the common property of the land and buildings as shown and more fully described on the said Sectional Plan apportioned to the said Section, in accordance with the participation quota of the Section as specified on the schedule annexed to the Sectional Plan.
- 1.3.2 the right and privilege to the exclusive use and occupation, free from the payment of rent of any specified portions of the common property specifically allocated to the said Section by virtue of the Rules.
- 

**1.4 THE PURCHASE PRICE**

The Purchase Price of the Property is the sum of: R \_\_\_\_\_  
inclusive of VAT

---

**1.5 PAYMENT OF PURCHASE PRICE: (delete what is not applicable)**

1.5.1 DEPOSIT is the sum of: R \_\_\_\_\_  
It is payable within \_\_\_\_ days of the Seller's signature of the Contract of Sale.

1.5.2 FURTHER DEPOSIT/GUARANTEE NO.1 in the amount of: R \_\_\_\_\_  
It is payable to the Conveyancer's trust account within \_\_\_\_\_ days of the Seller's signature of the Contract of Sale. In the case of a guarantee(s) being issued, it is to be made payable on Date of Transfer and secured by delivery thereof to the within \_\_\_\_\_ days of the Seller's signature of the Contract of Sale. The guarantee(s) shall be irrevocable, unconditional and issued by a financial institution in the form acceptable to the Conveyancers.

1.5.3 LOAN/GUARANTEE(S) NO. 2 in the amount of: R \_\_\_\_\_  
It is payable on the Date of Transfer and is to be provided for by the raising of a loan from a financial institution and shall be secured by guarantee(s) issued by such financial institution in the form acceptable to the Conveyancers. The guarantee(s) shall be delivered to the Conveyancers within 30 (thirty) days of fulfillment of clause 2.1 of the Conditions of Sale.

1.5.4 PRIOR SALE/GUARANTEE(S) NO 3 of: R \_\_\_\_\_  
It is payable to the Conveyancer's Trust Account. In the case of a guarantee(s) being issued it is to be made payable to the Conveyancer's Trust Account on the date of registration of the Purchaser's property so sold. The guarantee(s) shall be delivered to the Conveyancers within 14 (fourteen) days after the fulfilment of the conditions of clause 2.2.1 of the Conditions of Sale. The guarantee(s) shall be irrevocable, unconditional and issued by a financial institution in the form acceptable to the Conveyancers.

---

**1.6 OCCUPATION DATE**

Subject to the terms and conditions set out in Clause 5 hereof,

the date of occupation is: \_\_\_\_\_

**1.7 OCCUPATIONAL RENTAL**

R \_\_\_\_\_

**1.8 THE MONTHLY LEVY PAYABLE TO:**

1.8.1 The Body Corporate R \_\_\_\_\_

1.8.2 The Association R \_\_\_\_\_

**1.9 THE ESTATE AGENT:**

1.9.1 The estate agent \_\_\_\_\_

1.9.2 The estate agency appointed by the Seller, namely \_\_\_\_\_

1.9.3 The Commission payable by the Seller (inclusive of VAT) \_\_\_\_\_ %

**1.10 THE CONVEYANCERS**

Lester Hall, Fletcher Inc. (Sally Fletcher) 44 Old Main Road, Kloof, 3610 Private Bag X7016, Hillcrest, 3650 Tel: 0861 2777 27 Email: <a href="mailto:saf@lesterhall.co.za">saf@lesterhall.co.za</a>	Van Onselen Attorneys (David van Onselen) Unit 17B Canford Park, 53 Anthony Road Durban North, 4051 Tel: 0829084971 Email: <a href="mailto:david@voattorneys.co.za">david@voattorneys.co.za</a>
Lester Hall, Fletcher Inc. Trust Account Bank: Nedbank Account Number: 1339 378027 Branch: Pinetown Branch Code: 133926 Ref: Emberton Meadows: Section No:	Van Onselen Attorneys Trust Account Bank: Standard Bank Account Number: 251165612 Branch: Durban North Branch Code: 042826 Ref: Emberton Meadows: Section No:

Initial

1.11 **THE PURCHASER'S PROPERTY (PRIOR SALE):** \_\_\_\_\_

---

1.12 **CLUBHOUSE**

1.12.1	ENTRANCE FEE	R250.00
1.12.2.	MONTHLY SUBSCRIPTION	R100.00

---

1.13 **LEVY STABILISATION FUND CONTRIBUTION** R5 000,00

---

**2 SALE**

Subject to and in accordance with the provisions hereof and the Conditions of Sale annexed hereto as Annexure "A", the Seller sells to the Purchaser who purchases the Property described in clause 1.3 above.

**3 PAYMENT OF PURCHASE PRICE**

- 3.1 The deposit referred to in clause 1.5.1 above shall be paid to the Conveyancers within the prescribed time frame stipulated in said clause. Such payments shall be invested by the Conveyancers in an interest-bearing account on behalf of the Purchaser until the Date of Transfer whereupon the Conveyancers shall release the capital to the Seller and all accrued interest earned in respect of such deposits, less 5% of the interest accrued which is payable to the Legal Practitioners' Fidelity Fund in terms of Section 86(5)(b) of the Act and the Conveyancer's usual fee, to the Purchaser.
- 3.2 The Purchaser hereby authorises the Conveyancers to invest such monies with Investec Corporate Cash Manager in terms of section 86(4) of the Legal Practice Act.
- 3.3 The Purchaser acknowledges that:
- 3.3.1 the Conveyancers are designated as an "accountable institution" in terms of the Financial Intelligence Centre Act No. 46 of 2001 ("FICA");
- 3.3.2 certain obligations are placed on the Conveyancers in terms of FICA and the Prevention of Organised Crime Act No. 21 of 1998 ("POCA") and the Regulations promulgated in terms thereof;
- 3.3.3 the Conveyancers are not able to invest any amounts paid into trust with them on the Purchaser's behalf until such time as the Purchaser has complied with the requirements of FICA and has signed the necessary investment mandate, both of which the Purchaser undertakes to do as soon as possible after request therefor by the Conveyancers.
- 3.4 The Purchaser shall secure the due payment of the amounts referred to in clauses 1.5.2, 1.5.3 and 1.5.4 above by furnishing the Conveyancers with a guarantee(s) from a registered South African commercial bank, in a form and on terms acceptable to the Conveyancers for such amount. Such guarantee(s) shall be furnished by the Purchaser within the prescribed time frames stipulated in clauses 1.5.2, 1.5.3 and 1.5.4, provided that if the Purchaser requires a loan for the amount stated in 1.5.3 above or intends securing a portion of the purchase price by prior sale in
-

the amount stated in 1.5.4, such guarantee(s) shall also not be called for until the loan has been granted or the property conclusively sold in accordance with the conditions precedent contained in clauses 2.1 and 2.2 respectively of the Conditions of Sale. The aforesaid guarantee(s) shall be payable on the Date of Transfer.

- 3.5 Alternatively, the Purchaser shall be entitled to pay the amount referred to in 1.5.3 or 1.5.4 above to the Conveyancers in cash, which amount shall be invested by the Conveyancers in accordance with the provisions of clause 3.1 above.
- 3.6 The Purchaser shall pay the amount referred to in 1.12.1 and 1.13. above to the Conveyancers within 7 (seven) days of request for such payment by the Conveyancers. Such payment shall be invested by the Conveyancers in their interest-bearing account in terms of section 86(4) of the Legal Practice Act, all interest to accrue for the benefit of the Purchaser until the Date of Transfer, whereupon the Conveyancers shall pay the entire capital sum to the Association and all accrued interest, less 5% of the interest accrued which is payable to the Legal Practitioners' Fidelity Fund in terms of Section 86(5)(b) of the Act and their usual fee, to the Purchaser.
- 3.7 Notwithstanding anything to the contrary herein contained, inasmuch as the total Purchase Price is a Value Added Tax ("VAT") inclusive price determined at the current rate of 15% (fifteen percent) then, in the event of the rate at which VAT is chargeable being amended after the Date of Signature hereof by the Purchaser, but in circumstances in which the amended rate will apply to this transaction, then the purchase price shall be adjusted accordingly, the intention being that the Seller shall receive and retain the same net purchase price after payment of VAT regardless of the rate at which VAT is payable.
- 3.8 Unless otherwise provided, all payments hereunder shall be made without set-off, deduction or demand to the Seller at the offices of the Conveyancers. All bank charges incurred by the Conveyancers in connection with this transaction, shall be for the account of the Purchaser.

#### **4 MEMBERSHIP OF EMBERTON ESTATE HOMEOWNERS ASSOCIATION (RF) NPC**

By virtue of the purchase of the Property, the Purchaser shall be obliged to become a member of the Association within the meaning of and subject to the conditions set out in the Association's Memorandum of Incorporation and undertakes that he and all persons deriving use of the Estate 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 of Incorporation including the obligation to pay a monthly levy to the Association, the amount of which is to be determined, from time to time, by the directors of the Association. In no way detracting from the generality of the aforesaid, the Purchaser undertakes to sign the Association's Application and do whatever else may be required in order for the Purchaser to become a member of the Association. If there is any conflict between what is set out above and the final provisions of the Association's Memorandum, the latter shall prevail and the Seller shall not incur any liability, of any nature whatsoever, in this regard.

#### **5 CONSUMER PROTECTION ACT (delete whichever is not applicable)**

The Purchaser, who is a Juristic Person, warrants to the Seller that its asset value or annual turnover, at the Date of Signature and the Date of Transfer, shall equal or exceed the threshold determined by the Minister in terms of section 6 of the CPA (namely, R2,000,000.00 (two million rand)) and, as a consequence, the sale of the Property to the Purchaser in terms of this Contract, is exempt from the provisions of the CPA (save for the provisions of section 60 and 61 of the CPA). It is recorded that the aforesaid warranty is material to the Seller in entering into this Contract of Sale. The Purchaser undertakes, within 7 (seven) days of being requested to do so by the Seller, to furnish the Seller with its last audited financial accounts, and such other financial information in

respect to the Purchaser as the Seller may reasonably require, in order to confirm that the Purchaser's asset value and/or turnover is as warranted.

OR

In terms of Section 49 of the CPA, the Purchaser's attention is drawn to the following clauses in this Contract that purport to either limit the risk or liability of the Seller, or constitute an assumption of risk or liability by the Purchaser, or an indemnification of the Seller or an acknowledgement of any fact: -

- Contract of Sale clauses 2; 3.2; 3.4; 4 and 5
- Annexure "A" Conditions of Sale clauses 2; 3.1; 4.3; 6; 7; 8; 9; 10; 11; 12; 13; 25, 26 and 27

The Seller has made every effort to incorporate the Purchaser's consumer rights, as provided for in the CPA, into this Contract. In the event that any provision in this Contract is found to contravene the CPA, the parties agree that such provision shall be severed from this Contract and be treated as if it were not part of this Contract.

## OFFER AND ACCEPTANCE

The Purchaser acknowledges that this offer shall not be capable of being withdrawn and shall remain open for acceptance by the Seller for a period of 21 (twenty-one) days after the Date of Signature of the Purchaser.

DATED at ..... this ..... day of ..... 201\_\_

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Seller who warrants that he/ she is duly  
authorized hereto

DATED at ..... this ..... day of ..... 201\_\_

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Purchaser: Who acknowledges that he /she  
is acquainted with and understands the  
contents of the Contract and that all the  
annexures referred to in this Contract were  
attached hereto when he/ she signed same

\_\_\_\_\_  
Purchaser's spouse, where applicable

DATED at ..... this ..... day of ..... 201\_\_

\_\_\_\_\_  
AGENT: Who accepts any benefits conferred  
in terms of the Contract.



## GUARANTOR

This portion to be signed by member/director/trustee in the event of the Purchaser being a close corporation/company/trust.

(Full names) \_\_\_\_\_

of \_\_\_\_\_

(Full address and telephone number)

hereby consents to the conclusion of this Contract and guarantees and binds himself 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 to the Seller pursuant to this Contract, under renunciation of the benefits of excussion and division with the meaning and effect of which benefits and the renunciation thereof he acknowledges himself to be acquainted. No variation or amendment or novation of this Contract shall prejudice the suretyship obligations hereby undertaken by the aforesaid guarantor, the object being that he shall remain liable at all times as surety and co-principal debtor, even if this Contract is varied or amended or novated and even if the aforesaid Purchaser is granted an indulgence by the Seller.

Signed by the Guarantor at .....on this.....day of.....201\_\_

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_

GUARANTOR

## Annexure "A"

### CONDITIONS OF SALE

#### 1 **DEFINITIONS:**

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

- 1.1 "Act 8/2011" means the Sectional Titles Schemes Management Act No. 8 of 2011 as amended, and any regulations in force thereunder from time to time;
- 1.2 "Association" means Emberton Owners Association (RF) NPC;
- 1.3 "Body Corporate" means the controlling body of the Scheme established in terms of Act 8/2011;
- 1.4 "Conveyancers" means the Conveyancers described in clause 1.9 of the Contract of Sale;
- 1.5 "Contract" means this Contract of Sale and any annexures referred to herein and/or annexed hereto.
- 1.6 "CPA" means the Consumer Protection Act No 68 of 2008, as amended, and regulations made in terms of the Act;
- 1.7 "Clubhouse" means the Emberton Estate clubhouse, a private sports and recreational centre owned by the Association and operated by it or its agent;
- 1.8 "Date of Signature" means the date of signature of this Contract by the last signing of the Seller or Purchaser;
- 1.9 "Date of Transfer" means the date of registration of transfer of the Property into the name of the Purchaser in the Deeds Registry in Pietermaritzburg;
- 1.10 "Date of Occupation" means the date specified in clause 1.6 of the Contract of Sale.
- 1.11 "Days" means ordinary calendar days, including Saturdays, Sundays and public holidays;
- 1.12 "Developer" means the Seller, its successors in title or assigns;
- 1.13 "Estate" means Emberton Estate, comprising several sectional title development schemes which are to be laid out on portions of the immovable property comprising the Remainder of Erf 739 Gillitts;
- 1.14 "Estate Agent" means the Seller's agent described in clause 1.8 of the Contract of Sale;
- 1.15 "Juristic Person, means a partnership, association, trust, body corporate, company, close corporation or other legal or juristic person;
- 1.16 "Property" means the Unit described in clause 1.3 of the Contract of Sale.
- 1.17 "Purchaser" means the party referred to in clause 1.2 of the Contract, his successors in title and assigns;
- 1.18 "Rules" means the rules of the Association and the Body Corporate. The Body Corporate Management and Conduct Rules means:-
  - 1.18.1 the Management Rules referred to in Act 8/2011 supplemented by Additional Management Rules as contained in Annexure "E1"; and
  - 1.18.2 the Substituted and Additional Conduct Rules as are contained in Annexure "E2";
- 1.19 "Scheme" means the sectional title scheme known as Emberton Meadows;

- 1.20 "Section" means the section comprised in and forming part of the Unit as referred to in clause 1.3 of the Contract of Sale;
- 1.21 "Seller" means the party referred to in clause 1.1 of the Contract of Sale;
- 1.22 "Unit" means the property as referred to in clause 1.3 of the Contract of Sale;
- 1.23 words importing a gender shall include all genders and the singular shall include the plural and vice versa;
- 1.24 words or expressions defined in the Acts shall have the same meanings in this Contract;
- 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 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 of the Purchaser's obligations in terms of this Contract;
- 1.27 if a number is reflected in numerals and words, the words shall prevail in the event of any conflict between the two; and
- 1.28 where a number of days are prescribed, they shall consist of all days (i.e. including Saturday, Sunday and Public Holidays) and shall exclude the first day and include the last day;
- 1.29 reference to a natural person shall include a Juristic Person and vice versa;
- 1.30 the expiration or termination of this Contract shall not affect those provisions of this Contract which expressly provide that they will operate after any such expiration or termination or, which out of necessity must continue to have effect after such expiration, notwithstanding the fact that the paragraphs do not expressly provide this;
- 1.31 this Contract shall be binding on and enforceable by the administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectually as if they had signed this Contract in the first instance and reference to any party shall be deemed to include such party's administrators, trustees, successors in title, successors in office, assigns or liquidators, as the case may be;
- 1.32 this Contract incorporates annexures by reference, which annexures shall have the same force and effect as the provisions set out in the body of this Contract. The various documents forming part of this Contract are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Contract will prevail.

## **2 SUSPENSIVE CONDITIONS**

### **2.1 Mortgage Bond**

- 2.1.1 If this Contract reflects a mortgage bond in clause 1.5.3 of the Contract of Sale, then this Contract is subject to and conditional upon the Purchaser obtaining a loan for the amount set out in clause 1.5.3 of the Contract of Sale from a recognized financial institution and the Seller receiving a copy of the written approval of such loan by the aforesaid financial institution within 30 (thirty) days from the Date of Signature of the Contract by the Seller or within such further period of time that the Seller, entirely in its own discretion may grant to the Purchaser in writing.
- 2.1.2 Written approval of a loan for the amount set out in clause 1.5.3 of the Contract of Sale which contains a condition requiring the cancellation of a mortgage bond registered over

another property or the sale of another property, shall not be regarded a copy of written approval from a financial institution as referred to and required in Clause 2.1.1 above.

2.1.3 The Purchaser warrants that:

2.1.3.1 he is aware of the financial requirements of financial institutions relating to the mortgage loan that is to be applied for and undertakes to the best of his ability to immediately provide and sign, upon request by the relevant financial institution concerned, all information and documentation which may be required by it in order to apply for and approve his loan application;

2.1.3.2 there are no existing judgements noted against his name which would preclude any financial institution from approving his loan application.

2.2 Sale of Property (delete where not applicable)

2.2.1 Purchase Price to come from the sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.10 of the Contract of Sale, which sale is not subject to any suspensive conditions.

**OR**

2.2.1 Purchase Price to come from the conditional sale of the Purchaser's property already sold

The Purchaser warrants that he has sold his existing property as provided for in clause 1.10 of the Contract of Sale, subject however to certain suspensive conditions which shall be required to be fulfilled within \_\_\_\_\_ days after the Date of Signature of this Contract by the Purchaser. If the sale of the Purchaser's existing property is dependent on prior transfers then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

**OR**

2.2.1 Sale subject to the Sale of the Purchaser's Property

This sale is conditional upon the sale of the Purchaser's property as provided for in clause 1.10 of the Contract of Sale, which the Purchaser undertakes to actively market and to ensure the fulfilment of all suspensive conditions contained in that sale Contract within \_\_\_\_\_ days after the Date of Signature by the Purchaser of this Contract. If the sale of the Purchaser's existing property is dependent on prior transfers then the suspensive conditions relating to the sale of the Purchaser's existing property shall only be deemed to have been fulfilled when such prior transfers have been registered.

2.2.2 This Contract is also subject to the Purchaser's conveyancers effecting registration of transfer of the existing property within 60 (sixty) days of the sale becoming a conclusive sale.

2.2.3 In the event of the Seller receiving any other written offer which is not subject to the sale of another property from a bona fide third party, before the sale of the Purchaser's existing property becomes conclusive, which offer the Seller wishes to accept, the Seller shall by written notice advise the Purchaser of such offer and the Purchaser shall within 48 (forty eight) hours of receipt of such notice waive the suspensive conditions in this clause in writing to the Conveyancers, failing which, the Seller shall be entitled to accept the offer from the new Purchaser in which event this offer shall fall away and be of no further force

or effect.

- 2.3 It is recorded that the suspensive conditions contained in 2.1 and/or 2.2 are inserted for the benefit of the Purchaser.
- 2.4 The Purchaser may elect to waive compliance with either one or both suspensive conditions by giving written notice to the Seller within the time period afforded to the Purchaser as referred to in 2.1 and 2.2 above.
- 2.5 Upon delivery of such notice of waiver, the suspensive condition/s shall be deemed to have been fulfilled and this Contract shall be of full force and effect.
- 2.6 Should the suspensive conditions referred to in 2.1 and/or 2.2 not be fulfilled within the prescribed time periods aforesaid and the period for fulfilment thereof not be extended in writing by the parties, then the Contract, shall lapse and in that event the parties shall be obliged to restore each other to the status quo ante as at the Date of Signature.

### **3 OCCUPATION AND POSSESSION**

- 3.1 The Purchaser shall take occupation and possession of the Property from the Date of Occupation stipulated in clause 1.6 of the Contract of Sale, from which date the risk in the Property shall pass to the Purchaser and from which date the Purchaser shall be liable for the payment of all rates, Body Corporate and Homeowners Association levies, Clubhouse levy and other outgoings attributable to the Property.
- 3.2 From Date of Occupation until the Date of Transfer (both days inclusive), the Purchaser shall pay to the Seller monthly occupational rental as stipulated in clause 1.7 of the Contract of Sale. Such occupational rental shall be payable monthly in advance on the 1st (first) day of each and every month. In the event of transfer being registered during the course of a month in respect of which the full occupational rental has been paid, the Purchaser shall be entitled to a pro rata refund of such resultant overpayment. The Purchaser shall be obliged to vacate the property upon cancellation of the sale for any reason whatsoever, it being agreed that no tenancy was or shall be created by any such prior occupation.
- 3.3 The Purchaser undertakes, in the event of this Contract being cancelled or lapsing for any reason whatsoever to restore the Property to the same good order and condition in which it was at the Date of Occupation. In either event, the Purchaser shall not be entitled to any compensation for any improvements of whatever nature he may have effected to the Property while in occupation thereof. Should the Seller remain in occupation after the occupation date, or should the property be registered in the name of the Purchaser prior to the date of occupation, the Seller shall be similarly liable to the Purchaser for occupational interest.
- 3.4 Notwithstanding anything contained herein, the Purchaser shall not be entitled to occupation of the Section until such time as he has made or secured all payments in terms of the purchase price, costs and all other amounts for which he is liable in terms of this Agreement, and signed all such documentation and supplied all such information as to enable the Conveyancers to effect transfer of the Property without delay.

### **4 AGENT'S COMMISSION**

- 4.1 The Purchaser warrants that he was introduced to the Property by the Estate Agent referred to in clause 1.8.1 of the Contract of Sale who, it is recorded, was the effective cause of the sale in terms of this Contract. The Seller shall pay a selling commission to the agency referred to in clause 1.8.2 of the Contract of Sale in the amount referred to in clause 1.8.3 of the Contract of Sale. The aforesaid commission shall be deemed to have been earned and shall be payable on

the Date of Transfer.

- 4.2 In such circumstances, the Purchaser warrants that:
- 4.2.1 the Estate Agent was the sole effective cause of the sale,
- 4.2.2 he was not introduced to the Property and/or this Contract, by any agent other than the Estate Agent named in the Contract of Sale as aforesaid; and
- 4.2.3 no commission shall become payable by the Seller to any agent other than the Estate Agent named in the Contract of Sale as aforesaid.
- 4.3 The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against/suffered by the Seller arising out of breach of any of the foregoing warranties.
- 4.4 Should this sale be cancelled by the Seller as a result of any failure by the Purchaser to carry out his obligations in terms of this Contract, or should the Purchaser resale from this Contract for any reason whatsoever, then the Purchaser shall be liable for the payment of agents commission and the Seller shall have no liability whatsoever for the payment thereof.

## **5 TRANSFER**

- 5.1 Transfer of the Property shall be attended to by the Conveyancers referred to in clause 1.9 of the Contract of Sale.
- 5.2 The Purchaser shall immediately upon request by the Conveyancers do all such things and furnish them with all necessary information and documentation, and sign all such documentation as is required to prepare for and effect registration of transfer into the name of the Purchaser.
- 5.3 All conveyancing fees and disbursements incidental to the preparation and registration of transfer to and bonds by the Purchaser, and a pro rata share of the rates and levies, shall be paid by the Purchaser to the Conveyancers immediately upon request.
- 5.4 The Purchaser acknowledges that:
- 5.4.1 he is aware that in order for the sale to proceed a tax clearance is required from SARS. The Purchaser warrants that all income tax and all VAT obligations are current and undertakes to the best of his ability immediately to provide upon request by SARS, all information, other documentation which may be required by them in order to enable them to issue a tax clearance certificate and to facilitate prompt issue of the transfer duty exemption receipt;
- 5.4.2 a valid query by SARS regarding the Purchaser's tax affairs;
- 5.4.3 failure to comply with the request by the Conveyancers to furnish information or documentation required by them or to sign conveyancing documents, or to pay conveyancing costs upon request; shall constitute a breach by the Purchaser of his obligations and shall entitle the Seller to give notice in terms of Clauses 10 and/or 11 hereof;
- 5.4.4 he shall not be entitled to transfer of the Property until the whole of the purchase price, costs, interest and other charges have been paid or secured to the Conveyancers' satisfaction;
- 5.4.5 upon registration of transfer, an adjustment in respect of the parties' liability in respect of occupational interest, levies and other charges relating to the Property, shall be made by the Conveyancers.

## **6 PROPERTY SOLD VOETSTOOTS ('AS IT STANDS')**

Save as is provided for herein and save as provided in the CPA, if applicable, the Purchaser agrees and acknowledges that:

- 6.1 The property is purchased absolutely as it stands and without any warranties, express or implied, meaning that the Seller does not take any responsibility to repair any defects or accept liability otherwise for defects that are obvious on inspection of the property ("patent defects") or defects which are hidden ("latent defects") nor for any damage occasioned to or suffered by the Purchaser by reason of such defects, unless it is proven in a court of law by the Purchaser that the seller knew of such defects and willfully misrepresented the truth to the Purchaser and all servitudes and conditions to which the property may be subject whether contained in the Title Deeds or otherwise. The Seller and the Purchaser acknowledge the Disclosure Annexure to this Agreement and accept the content thereof as a true reflection of the property as it stands on the date of signing of the Agreement.
- 6.2 The Seller warrants that the Property was enrolled with the National Home Builders Registration Council as contemplated in the Housing Consumer Protection Measures Act, No. 95 of 1998 and hereby provides the warranties as required of it in terms of sections 13(2)(a) and 13(2)(b) of the aforesaid Act 95 of 1998.
- 6.3 The Purchaser warrants that he has acquainted himself with the Sectional Plan and has identified the Property purchased by reference to the Plan.
- 6.4 The terms on which the property is let (if applicable) have been disclosed to the Purchaser, he is fully aware of the position relating to existing tenancies and he has been informed of the tenants' statutory rights (if any). The lease agreement (if applicable) is annexed hereto marked Annexure "L".
- 6.5 The Purchaser expressly acknowledges having been advised that the Developer holds a reservation right in terms of Section 25 of the Act entitling the Developer to the right to extend the Scheme in phases.

## **7 PURCHASER'S ACKNOWLEDGMENTS**

- 7.1 The Purchaser will be bound in relation to the occupancy of the property, and in relation to the use of recreational facilities and the common property, by the Management and Conduct Rules applicable to the Sectional Title Scheme. The Purchaser acknowledges that he has perused the said Rules and has fully acquainted himself with the contents thereof. Any breach by the Purchaser of the Rules prior to registration of transfer, shall constitute a breach of this entire agreement in which event the Seller may avail himself of the provisions of Clause 11 hereof.
- 7.2 Pending transfer the Purchaser shall not be entitled to let or otherwise part with occupation of the Section, except upon the express prior written permission of the Seller and on condition that any such letting and/or parting with occupation shall in no way release the Purchaser from any of the Purchaser's obligations to the Seller hereunder or in terms of the Rules that may be enforceable from time to time.
- 7.3 The Purchaser acknowledges 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 the Body Corporate, by reason of any such inconvenience.
- 7.4 In no way detracting from the generality of any other provision of this Contract it is recorded that the design and layout of the Estate may vary as the Estate is developed and the Developer shall in no way be bound to its current plans for the design and layout of the Estate.

- 7.5 The Developer shall endeavour to procure the installation of the necessary infrastructure required in order to provide permanent connectivity to the Property for internet browsing and email access as well as a DSTV signal which installation may not be completed until erection of all buildings in the estate. It is further recorded that the Association shall then enter into an agreement with the party who shall install and operate the aforesaid infrastructure in respect of the rental of such infrastructure. Such infrastructure rental shall be compulsory for all members of the Association and shall be collected by the Association as part of its monthly levy payable to it.

## **8 LEVY STABILIZATION FUND**

The amount payable by the Purchaser towards the Levy Stabilization Fund established in terms of the Association's Memorandum of Incorporation is stipulated in clause 1.12 of the Contract of Sale.

## **9 EMBERTON ESTATE CLUBHOUSE**

- 9.1 The Purchaser shall be obliged to become and remain a member of the Clubhouse for the duration of the Purchaser's ownership of the Property. Membership of the Clubhouse shall entitle the Purchaser and his invitees to utilize the facilities of the Clubhouse, subject to the Association's rules and regulations and the payment of the relevant fees. Where the Purchaser is a syndicate or partnership of respective co-owners, each such co-owner shall be required to become a member of the Clubhouse. Where the Purchaser is an artificial person (such as a close corporation, company or trust) these conditions of membership will apply in respect of each individual nominee of the Purchaser.
- 9.2 The Purchaser shall make payment of the non-refundable entrance fee as referred to in clause 1.11.1 of the Contract of Sale. It is recorded that every subsequent owner of the Property shall be required to pay an entrance fee to the Clubhouse as laid down by the Association from time to time.
- 9.3 The Purchaser shall commence payment of the monthly subscription as determined in clause 1.11.2 of the Contract of Sale on the Date of Occupation, which shall be incorporated into the monthly levy payable to the Association.
- 9.4 The aforesaid subscription may be escalated by the Association annually, in its sole and absolute discretion, provided that such escalation shall not exceed 10% or the rate (expressed as a percentage) by which the consumer price index for all categories and for the whole of the Republic of South Africa, shall have escalated (on a year on year and not on an average basis) over the preceding calendar year, whichever is the greater.

## **10 BREACH**

10.1 If the Purchaser:

- 10.1.1 fails to pay any amount in terms of this Contract, or commits any breach of the remaining conditions of this Contract or of the Association's Memorandum of Incorporation or of the Rules, and should the Purchaser fail to remedy such breach within 7 (seven) days of receipt of a written notice calling on him to remedy such breach, or
- 10.1.2 commits a repetition of such breach within a period of two months after having been warned by the Seller to desist therefrom,

the Seller shall be entitled, without prejudice to any other rights which it may have at law or in terms hereof and at the Seller's election to –

- 10.1.2.1 cancel this Contract, and retake possession of the Property, in which event, should the



Seller so elect, it may recover any damages however incurred as a result of such cancellation (including any loss and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the Seller or the Conveyancers (including any amount held in trust by the Conveyancers or any interest thereon) may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller (it being recorded that damages that the Seller may suffer in this regard may include, inter alia, lost interest, agents commission and other professional fees incurred, holding costs incurred in respect of the Property, including but in no way limited to, rates and levies payable in respect of the Property, and should the Property subsequently be resold for a lower purchase price than that referred to in this Contract, the difference in such purchase prices); or

- 10.1.2.2 claim immediate performance by the Purchaser of all his obligations in terms of this Contract whether or not the due date for the performance shall otherwise have arrived.
- 10.2 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.
- 10.3 If this Contract is cancelled as hereinbefore provided, the Purchaser and all persons claiming a right of occupation through the Purchaser shall forthwith be obliged to vacate the Property and to deliver it to the Seller. It is specifically recorded in this regard that no lease or other similar right of occupation in favour of the Purchaser shall be created or come into existence by virtue of this Contract. 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.
- 10.4 In the event of the Seller cancelling the sale as contemplated in the above clauses, any and all improvements made to the Property shall belong to and vest in the Seller, without any obligation on the part of the Seller to compensate the Purchaser therefore.

## **11 MORA AND ARREAR INTEREST**

- 11.1 In the event of the Purchaser failing to comply with any of his obligations or any terms or conditions of this Contract on due date or in the event of there being any delay in connection with the registration of transfer for which the Purchaser is responsible, the Purchaser hereby undertakes to automatically pay interest on the full purchase price at the prime overdraft rate charged from time to time by ABSA Bank plus 2%, calculated for the date upon which the obligation in question fell due for performance up to the date upon which it was actually performed, or for the period of any delay in registration of transfer which results therefrom, which period shall be determined solely by the Conveyancers. The Purchaser shall be obliged to pay such penalty interest to the Conveyancers before registration of transfer. A certificate signed by the conveyancers confirming the amount of such interest shall be conclusive proof of the amount owing by the Purchaser to the Seller.
- 11.2 For the purpose of this clause the Purchaser shall be deemed to be responsible for any delay in the registration of transfer which is caused inter alia by failure on the part of any financial institution from which he obtains mortgage finance or any bond registration conveyancers nominated by such financial institution to procure the issue of guarantees as contemplated in this Contract and

to lodge documents in the Office of the Registrar of Deeds when called upon to do so by the Conveyancers.

- 11.3 Furthermore, the Purchaser shall automatically, and without notice, be liable for interest on any amounts in arrear at the prime overdraft rate charged from time to time by ABSA Bank, which interest shall be calculated from the date upon which such amount became due to date of payment, both says inclusive.

## **12 DOMICILIUM**

- 12.1 The Parties chose as their respective *domicillia citandi et executandi* (the address nominated by the Parties where notices may be sent) the physical, postal address and/or email address stated in the Contract of Sale.
- 12.2 Either party shall be entitled to change the domicilium address by giving written notice thereof to the other which may be delivered by hand, by facsimile, by email or by prepaid registered post.
- 12.3 Any notice which is given by either party to the other party's domicilium address, being the physical, postal, email address or facsimile number stated in the Contract of Sale, shall be deemed to have been duly given:
- 12.3.1 if hand delivered; on the day on which hand delivery takes place, either by handing such notice to the party concerned or by placing/affixing it in a prominent place at the party's domicilium;
- 12.3.2 if posted by pre-paid registered post; on the fourth day following the date of posting of such notice;
- 12.3.3 where sent by facsimile or email to the stated facsimile number or email address in this Contract of Sale; on the day on which the facsimile or email is actually sent which date shall be established by reference to the aforesaid machine's activity report used to send such notice.
- 12.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by either party shall be an adequate written notice to it notwithstanding that it was not sent or delivered to its chosen *domicilium citandi et executandi*.

## **13 JURISDICTION AND COSTS**

- 13.1 The parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of Magistrate 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.
- 13.2 Notwithstanding anything to the contrary herein contained either party hereto shall have the right at its sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction.
- 13.3 All legal costs incurred either party in consequence of any default of the provisions of this Contract by the other, shall be payable by the defaulting party on demand to the maximum amount permitted by law and shall include collection charges, the cost incurred by the aggrieved party in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the aggrieved party in relation to, in terms of or arising out of this Contract in respect of any legal proceedings arising out of this Contract.

#### **14 RATES CLEARANCE CERTIFICATE**

- 14.1 The Seller shall from date of signature hereof do all things necessary to facilitate the obtaining of a Rates Clearance Certificate, including attending on the relevant Municipality to ensure that all additions to the property (including those additions that may have been carried out by previous owners) have been approved and passed. In the event that there are additions which have not been approved, the Seller shall bear all costs associated with the drawing, submission, approval and passing of plans by the Municipality.
- 14.2 The Seller hereby indemnifies the Purchaser against any liability for local authority/electricity debts incurred prior to registration of transfer. Should a claim for such a debt arise after registration of transfer, the Seller hereby undertakes to pay this debt on demand to the Purchaser.

#### **15 ELECTRICAL CERTIFICATE**

The Seller shall at the Seller's own expense furnish a certificate of compliance from an accredited person in respect of all electrical installations in the Property in accordance with the requirements of the Electrical Installation Regulations made under the Occupational, Health and Safety Act No. 85 of 1983. Such certificate shall be delivered to the Purchaser prior to the Date of Occupation.

#### **16 ENTOMOLOGIST'S CERTIFICATE**

Notwithstanding the provisions of Clause 3, the Seller shall procure prior to transfer, at his expense, a report or certificate issued by a properly qualified and government approved person to the effect that there is no evidence of timber-destroying insects, or creatures of any damage in respect of the buildings upon the property caused thereby. Should there be evidence of any such infestation, the Seller shall, at his expense, cause such infestation to be eradicated within 21 (Twenty One) days of being advised thereof, to enable such a report or certificate to be issued.

#### **17 GAS INSTALLATION – CERTIFICATE OF CONFORMITY (Delete if not applicable)**

- 17.1 The Seller shall at the Seller's own expense, procure a certificate of conformity confirming that any gas installations on the property, whether indoors or outdoors, comply with Regulation 17(3) of the Pressure Equipment Regulations as published in Government No. 32395 under Government Notice R734 of 15 July 2009. The Seller shall ensure that such certificate is lodged with the Conveyancers prior to the date of occupation or registration of transfer, whichever occurs first.
- 17.2 The parties agree that the Certificate of Conformity certifies that any gas installation on the property complies with the safety standards as determined by the relevant legislation and is not to be regarded as a general guarantee covering all aspects of any gas installation present on the property. The Purchaser shall have no further claims against the seller with regard to any gas installation on the property.

#### **18 ALIEN AND INVASIVE SPECIES**

- 18.1 The Seller hereby records that to the Seller's best knowledge and belief there are no Listed Invasive Species mentioned in terms of the Regulations to the National Environmental Management: Biodiversity Act 10 of 2004 upon the Property. It is however recorded that as the Seller is not sufficiently qualified to identify such Species that the Purchaser accepts the risk inherent in purchasing the Property with any Listed Invasive Species which might be thereon.
- 18.2 The purchaser acknowledges that he has acquainted himself with the extent and nature of the property and accepts the property as such, including the vegetation on the property.

## **19 TRUSTEE FOR A COMPANY TO BE FORMED**

19.1 In the event of the signatory to this Contract having concluded this Contract in his capacity as a Trustee for a company to be formed (which signatory is hereinafter in this paragraph 19 referred to as the "Signatory"), then the Signatory by his signature hereto warrants that the said company:

19.1.1 will be formed;

19.1.2 will ratify and adopt the terms and conditions of the Contract; and

19.1.3 will provide the Seller with written proof thereof;

all within a period of 30 days from the date of signature of this Contract by the Signatory.

19.2 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.

19.3 If the terms and conditions of Clause 20.1 above are not fulfilled then the Signatory will by his signature to this Contract be deemed ipso facto to have concluded the Contract in his personal capacity as Purchaser.

## **20 JOINT AND SEVERAL LIABILITY**

Should this Contract be signed by more than one person as Purchaser the obligations of all the signatories shall be joint and several in solidum.

## **21 COOLING OFF PERIOD**

The attention of the parties is drawn to the provisions of Section 29A of The Alienation of Land Act No. 68 of 1981 (as amended) in terms of which it is provided that, inter alia, where either:

The Purchaser is a natural person;

The property is not agricultural land which is used or intended to be used mainly for commercial farming purposes;

The purchase price does not exceed the sum of R250 000, 00;

The property is used or intended to be used mainly for residential purposes;

The Purchaser (or an agent acting on the Purchaser's written authority) may revoke the Purchaser's offer or terminate this agreement within 5 (Five) days after the date of the Purchaser's signature hereto by written notice delivered to the Seller within that period.

## **22 SELLER'S WARRANTY REGARDING RESIDENTIAL STATUS**

22.1 The Seller warrants that the Seller is a resident/non-resident of the Republic of South Africa as defined in The Income Tax Act. The Seller and Purchaser acknowledge that they are aware that in the event of the Seller not being a South African resident as defined in the Act, then the Purchaser is obliged by law to withhold a percentage of the purchase price in circumstances where the purchase price is in excess of R2million, namely:

22.1.1 5% if the Seller is a natural person;

22.1.2 7.5% if the Seller is a Company or Close Corporation;

22.1.3 10% if the Seller is a Trust

and to pay such percentage to the South African Revenue Services within 14 (Fourteen) days after the date of transfer.

22.2 Should the Seller indeed be a non-resident, the parties hereby irrevocably instruct and authorise the conveyancers attending to the transfer of the property, to withhold the required percentage of the purchase price from the sale proceeds and to pay same to SARS on the Purchaser's behalf within 14 (Fourteen) days of transfer of ownership have been registered.

22.3 Furthermore, and notwithstanding that the Seller may have warranted that the Seller is a resident of South Africa, should further information come to light prior to date of transfer disproving the correctness of such warranty, or should the conveyancer have a reasonable suspicion that the Seller is indeed a non-resident, the parties agree that the conveyancer shall withhold the required percentage and pay it over to SARS within 14 (Fourteen) days of registration of transfer.

**23 WAIVER**

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 at any time and without notice, to require strict and punctual compliance with each and every provision or term hereof.

**24 CONSUMER PROTECTION ACT**

24.1 The provisions of this Contract shall be read in conjunction with the provisions of the CPA in so far as they are applicable, and insofar as the provisions of this Contract are inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail. It is recorded that if the Purchaser is a juristic entity as defined in the CPA and the Purchaser's turnover is greater than or equal to the CPA threshold then the CPA does not apply to this Contract.

24.2 The Purchaser acknowledges that he understands the English language and considers himself fluent therein, alternatively that he has been offered to services of an interpreter.

24.3 The Purchaser acknowledges that he has had an opportunity to carefully read and consider the provisions of this Contract and that he has been free to secure independent legal advice in respect of the provisions of same. In addition, the Purchaser acknowledges that the Seller undertook that the Seller or the Conveyancers, would explain any provisions of the Contract which the Purchaser may not have understood fully and, to the extent that the Purchaser made the Seller aware of any provisions of this Contract he did not understand, such provisions were fully explained to the Purchaser.

**25 INDEMNITY**

The Seller does not warrant any information given in respect of the Property, whether this information is given prior to or subsequent 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 in good faith by the Seller or the agent to the Purchaser in respect of the Property, or contained in any marketing material, 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 in good faith (save for the information specifically warranted in this Contract).

## **26 ANNEXURES**

26.1 The Purchaser acknowledges that the following annexures also form an integral part of the Conditions of Sale and form annexures to this Contract.

- “D” - Disclosure Annexure
- “E1” - Additional Management Rules for Emberton Meadows Body Corporate
- “E2” - Substituted and Additional Conduct Rules for Emberton Meadows Body Corporate
- “L” - Lease Agreement, if applicable

26.2 The Purchaser acknowledges that the following annexures form an integral part of the Conditions of Sale and should be viewed on the Emberton Estate website ([www.emberton.co.za](http://www.emberton.co.za)):

- ESTATE PLAN
- MEMORANDUM OF INCORPORATION
- RULES AND REGULATIONS
- DEVELOPMENT AND ARCHITECTURAL CONTROLS
- ENVIRONMENTAL MANAGEMENT PLAN
- LEVY BREAKDOWN

The Purchaser is deemed to have read these annexures and accepted the contents thereof.

## **27 ENTIRE 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 (including, but in no way limited to, any artist’s impression of the Scheme, 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. Any mutual Contract between the Purchaser and the Seller to cancel, alter or add to this Contract shall not be binding and shall be of no force or effect unless reduced to writing and signed by the parties hereto, or by their agents acting on their written instructions.