

THE AVENUES
ERF NO:

RESIDENTIAL
VILLAGE

SALE AGREEMENT

between

HILTON DEVCO PROPRIETARY LIMITED

Registration Number 2012/083047/07

("Seller")

and

("Purchaser")

and

("Co-Purchaser – if married in community of property")

CoxYeats

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SCHEDULE

A.	Erf Number		Hilton
B.	Address		
C.	Extent of Erf		square metres
D.	Purchase Price (incl Vat)	R	
E.	Payment	(a) Reservation Fee	R
		(b) Deposit	R
		(c) Further Deposit	R
		(d) Guarantee	R
F.	Loan	R	
G.	Purchaser's Address	(a) Physical Address	
		(b) Email Address	
		(c) Cell No.	
H.	Marital Status of Purchaser, if applicable		
I.	Estimated Monthly Residential Association Levy		
J.	LSF Contribution		
K.	Full Name of Agent		
L.	Conveyancer's Trust Account Details	Cox Yeats Trust Account, Standard Bank Kingsmead Branch, Branch Code : 040026, Account No. 050113682, Ref: Name and Property number	
M.	Purchaser's Bank Account Details	Account Name :	
		Bank:	
		Branch Code:	
		Account Number:	

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1. **Definitions**

- 1.1 Reference to the plural includes the singular and vice versa, unless inconsistent with the context.
- 1.2 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.4 If any period is referred to in this agreement by way of reference to a number of Days, the Days shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or public holiday, in which case the last Day shall be the next succeeding Day which is not a Saturday, Sunday or public holiday.
- 1.5 In this agreement, unless inconsistent with the context, the following expressions shall have the meanings set forth against them:
- (a) "Agent" means the selling agent referred to in **K** of the Schedule, appointed by the Seller to market and sell the properties in the Development on behalf of the Seller.
 - (b) "Application Form" means the Residential Association application form which is referred to in the List.
 - (c) "Associations" means the Master Association and the Residential Association.
 - (d) "Association Rules" means any rules prescribed by the Master Association and the Residential Association from time to time in terms of the Master MOI and the Residential MOI, the current draft of which is included in the List.
 - (e) "Buildings" means the residential buildings to be erected on the Property.
 - (f) "By-Laws" means the uMngeni Spatial Planning and Land Use Management By-Laws No. 4 of 2016.
 - (g) "Business Day" means any Day other than a Saturday, Sunday or public holiday.
 - (h) "Conditions of Approval" means the amended conditions of approval imposed by the Umgungundlovu Joint Municipal Planning Tribunal in terms of the By-Laws relating to the Land, which is included in the List.
 - (i) "Conveyancers" means Cox Yeats Attorneys (reference R Westley) 8th Floor, Ncondo Chambers, 45 Vuna Close, Umhlanga Ridge, e-mail: rwestley@coxyeats.co.za, Telephone 031-5368500.
 - (j) "Conveyancer's Trust Account" means the bank account referred to in **L** of the Schedule.
 - (k) "Council" means the KwaZulu-Natal Legal Practice Council.

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- (l) "CPA" means the Consumer Protection Act No. 68 of 2008.
- (m) "Day" means a calendar day and includes a Saturday, a Sunday and a public holiday.
- (n) "Developer" means the Seller and includes the Seller's successors in title or assigns.
- (o) "Development" means the residential township, forming part of the Estate, established by the Developer on the Residential Land.
- (p) "Development Manual" means the design guidelines, the landscaping guidelines and the security procedures for the Estate; which are all included in the List.
- (q) "Direct Marketing" means the Seller or the Agent first approached the Purchaser either in person, by ordinary mail or by electronic communication such as via an sms or e-mail with an offer to sell the Property.
- (r) "District Municipality" means the Umgungundlovu District Municipality.
- (s) "EMP" means the Environmental Management Plan applicable to the Development, which is included in the List.
- (t) "Estate" means The Avenues Estate.
- (u) "FICA" means the Financial Intelligence Centre Act No. 38 of 2001.
- (v) "Fidelity Fund Certificate" means a fidelity fund certificate in terms of section 47(1) of the PPA.
- (w) "Investment Account" means a separate trust investment account opened in the name of the Purchaser with an Investment Bank, in terms of Section 86 of the LP Act.
- (x) "Investment Bank" means Investec Bank Limited or Nedbank Limited or Standard Bank Limited or FirstRand Bank Limited.
- (y) "Land" means the immovable property described as:

Erf 1676 Hilton, Registration Division FT, Province of KwaZulu-Natal, in extent 23,3766 (Twenty Three comma Three Seven Six Six) hectares.
- (z) "Land Surveyor" means the land surveyor to be appointed by the Seller.
- (aa) "List" means the list of documents set out in Annexure "A" hereto, which will be delivered to the Purchaser.
- (bb) "Loan" means a bank loan for the sum referred to in F of the Schedule required by the Purchaser to purchase the Property.
- (cc) "LP Act" means the Legal Practice Act, 28 of 2014.
- (dd) "LSF" means the Levy Stabilisation Fund established by the Residential Association.

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- (ee) "LSF Contribution" means the sum, as determined by the Residential Association from time to time in accordance with the Residential MOI, which a purchaser of an erf or unit in the Development is required to pay to the Residential Association on the date the erf or unit is transferred to the purchaser.
- (ff) "Managing Agent" means the managing agent to be appointed initially by the Developer and thereafter by the Residential Association.
- (gg) "Master Association" means The Avenues Estate Management Association (RF) NPC. Registration Number 2020/706811/08.
- (hh) "Master MOI" means the Memorandum of Incorporation of the Master Association, which is included in the List.
- (ii) "Municipality" means the uMngeni Municipality.
- (jj) "Nemba" means the National Environmental Management : Bio-Diversity Act No. 10 of 2004 and includes the regulations promulgated thereunder.
- (kk) "Parties" means the parties to this agreement and "Party" means one of the Parties.
- (ll) "POPI Act" means Protection of Personal Information Act No. 4 of 2013.
- (mm) "PPA" means the Property Practitioners Act, 2019.
- (nn) PPA Schedule means the schedule annexed hereto as Annexure C.
- (oo) "Property" means the Erf recorded in **A** of the Schedule being a subdivision of the Residential Land, the extent of which is reflected in **C** of the Schedule and which is depicted on the Site Plan, situated at the address which is reflected in **B** of the Schedule.
- (pp) "Purchaser" includes the Purchaser's heirs, executors, trustees or assigns and successors in title and includes a Co-Purchaser.
- (qq) "Residential Association" means The Avenues Estate Residential Home Owners Association (RF) NPC, Registration Number 2020/708420/08.
- (rr) "Residential Association Levy" means the monthly levy payable to the Residential Association in terms of the Residential MOI, the current levy being the amount referred to in **I** of the Schedule.
- (ss) "Residential Association Managing Agent" means the managing agent in respect of the Residential Association to be appointed initially by the Developer and thereafter by the Residential Association.
- (tt) "Residential Land" means:
 - (i) Portion 10 of Erf 1676 Hilton, Registration Division FT, Province of KwaZulu-Natal, in extent 9,1402 (Nine comma One Four Zero Two) hectares;

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(ii) Portion 11 of Erf 1676 Hilton, Registration Division FT, Province of KwaZulu-Natal, in extent 4,7205 (Four COMMA Seven Two Zero Five) hectares.

(uu) "Residential MOI" means the MOI of the Residential Association, which is included in the List.

(vv) "SARS" means the South African Revenue Services.

(ww) "Schedule" means the schedule to which this agreement is annexed.

(xx) "Schedule of Annexures" means the schedule annexed to this agreement as **Annexure B** which will be delivered to the Purchaser.

(yy) "Seller" means Hilton Devco Proprietary Limited, Registration Number Registration Number 2012/083047/07, its successors in title or assigns.

(zz) "Signature Date" means the last date of signature hereto by one of the parties.

(aaa) "Site Plan" means the plan which depicts the subdivisions comprising the Development and which is included in the Schedule of Annexures.

(bbb) "Subdivision" means one of the subdivisions in the Development.

(ccc) "Transfer Date" means the date upon which transfer of the Property into the name of the Purchaser is registered in the Deeds Office.

(ddd) "Utility Company" means the third party utility company contracted by the Developer, or by the Developer's successor in title as the recipient of the bulk electricity supply from Eskom.

(eee) "Vat" means Value Added Tax in accordance with the provisions of the Value Added Tax Act of 1991.

1.6 Words importing the masculine gender shall incorporate the feminine and neuter genders and vice versa.

2. **Recordal**

2.1 The Developer is undertaking the Development depicted on the Site Plan.

2.2 The Purchaser wishes to purchase the Property from the Seller upon the terms and conditions contained herein.

3. **Sale**

The Seller hereby sells to the Purchaser who hereby purchases the Property.

4. **Purchase Price**

4.1 The purchase price of the Property, inclusive of Vat, is the sum referred to in **D** of the Schedule, which sum shall be payable in cash on the Transfer Date and which sum shall be secured pending the Transfer Date in the following manner:

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- (a) The non-refundable reservation fee referred to in **E(a)** of the Schedule shall be payable to the Conveyancers Trust Account on the Signature Date to be held in trust by the Conveyancers who are authorised to invest the reservation fee in an Investment Account, the interest to accrue to the Purchaser, less the nominal fee charged by the Conveyancers, subject to clause 6.8;
- (b) The deposit referred to in **E(b)** of the Schedule shall be payable to the Conveyancers Trust Account within 7 (seven) Days of the Signature Date to be held in trust by the Conveyancers who are authorised to invest the deposit in an Investment Account, the interest to accrue to the Purchaser, less the nominal fee charged by the Conveyancers;
- (c) The further deposit referred to in **E(c)** of the Schedule shall be payable to the Conveyancers Trust Account within 30 (thirty) Days of the Signature Date to be held in trust by the Conveyancers who are authorised to invest the deposit in an Investment Account, the interest to accrue to the Purchaser, less the nominal fee charged by the Conveyancers;
- (d) A Bank guarantee for the sum referred to in **E(d)** of the Schedule, drawn in a manner acceptable to the Conveyancers and expressed to be payable on the Transfer Date, which guarantee shall be delivered to the Conveyancers within 14 (fourteen) Days of request being made therefor by the Conveyancers, which request shall not be made before the grant to the Purchaser of the Loan, if applicable;

4.2 All payments are to be made in South African currency and free of bank charges and other expenses.

4.3 **The Purchaser acknowledges that payment of the reservation fee referred to in clause 4.1(a) is a condition precedent and should payment not be received by the Conveyancers within 3 (three) Days of the Signature Date, or within such extended period as may be determined by the Seller in its sole discretion, the Seller shall be entitled to declare this agreement to be null and void and of no further force or effect.**

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4.4 Should the Vat increase above 15% then the purchase price shall be increased accordingly.

5. **Investment Mandate**

5.1 The Purchaser hereby confirms that the Conveyancers are authorised to invest the money or moneys deposited with the Conveyancers into an Investment Account.

5.2 The investment is subject to the payment or payments made to the Conveyancers being unconditionally credited to the Conveyancers Trust Account and not being reversed.

5.3 Subject to clause 6.8, the investment shall be on a temporary basis pending the Transfer Date or the earlier termination of this transaction. The Conveyancers shall have exclusive control of the moneys in the Investment Account and shall, upon completion or termination of the transaction, account to the Purchaser for the interest earned less the cost of administering the investment which amounts to approximately 6% of the interest earned plus Vat and less a deduction of 5% of the interest to the Council as prescribed in terms of the LP Act. Any refund of moneys to the Purchaser will include the accrued interest thereon.

5.4 **The Purchaser acknowledges, as required by the Council, that while the funds are so invested, the funds are not protected against a possible liquidation of the Bank.**

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5.5 **The Purchaser further acknowledges that the Conveyancers are not able to place the funds into an Investment Account until the Purchaser has provided the Conveyancers with all the prescribed FICA documents applicable to the Purchaser, details of which will be set out in the FICA documents schedule annexed hereto. If requested by the Conveyancers, the Purchaser undertakes to sign the declaration required in terms of the Foreign Account Tax Compliance Act ("FATCA").**

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5.6 Should the funds invested in an Investment Account be required by the Conveyancers to procure the issue of a guarantee by the Bank in favour of a third party, the Purchaser expressly consents to the issue of a guarantee by the Bank against a pledge of the invested funds to secure payment by the Purchaser of the purchase price due to the Seller and to the Seller's bondholder, payment to be effected on the Date of Transfer. The Purchaser hereby pledges and cedes the Purchaser's right title and interest in and to the funds to the Bank.

6. **Loan**

6.1 This sale is conditional upon the Purchaser obtaining the Loan within 30 (thirty) Days of the Signature Date and the Purchaser furnishing to the Seller within the 30 (thirty) Day period, or within such extended period as the Seller, in its sole discretion, may in writing determine, a copy of the letter of grant issued by the bank together with all annexures thereto, all of the terms of which are to be acceptable to the Seller.

6.2 **The Purchaser undertakes forthwith to apply for the Loan and to use the Purchaser's best endeavours to procure the Loan.**

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6.3 **The Purchaser shall be obliged to accept a Loan procured by the Seller or the Agent on behalf of the Purchaser, provided the Loan is granted upon terms and conditions not more onerous than those stipulated for by banks which grant residential loans against the security of the registration of a first mortgage bond against the title deeds of a Property.**

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6.4 Should the Purchaser fail to obtain the Loan within the aforesaid period, or within such extended period as may be agreed to by the Seller, in its sole discretion, the Seller shall be entitled to send a written notice to the Purchaser declaring this agreement to be null and void and of no further force or effect.

6.5 Should a Loan be granted to the Purchaser for a sum less than the sum recorded in F of the Schedule, the Purchaser shall be entitled to accept the Loan provided the Purchaser forthwith makes payment into the Conveyancer's Trust Account of a sum equal to the difference between the amount of the Loan granted to the Purchaser and the purchase price.

6.6 The Parties shall endeavour to procure that the preparation and registration of the mortgage bond to secure the Loan is attended to by the Conveyancers or their nominee. The Purchaser is aware of and understands its rights in terms of section 58 of the PPA not to be obliged or encouraged by the Seller or the Agent to pay for services of a service provider nominated by the Seller. **To the extent that the Purchaser may have been encouraged by the Seller or the Agent to make use of the services of the Conveyancers, they do so by agreement and such appointment does not constitute an arrangement as contemplated in section 58 of the PPA. The Purchaser therefore confirms that they agree to make payment of the transfer fees and bond registration fees associated with the transfer and understands that section 58 of the PPA has no application in respect of such fees.**

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6.7 Should the Loan granted to the Purchaser be equal to 100% of the purchase price, the Conveyancers nonetheless shall continue to hold the reservation fee and any deposits in trust until the Transfer Date.

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6.8 **Should the Purchaser fail to raise the Loan and the Seller declares this agreement to be null and void and of no further force or effect, as contemplated in clause 6.4, the Conveyancers shall pay the reservation fee to the Seller and shall pay to the Purchaser, any interest earned thereon, less an administration fee of R1 000,00 (One Thousand Rand) exclusive of Vat to cover the costs incurred by the Conveyancers in opening a file and opening and closing an Investment Account on behalf of the Purchaser. The interest shall be refunded into the Purchaser's bank account reflected in M of the Schedule.**

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7. **Possession and Occupation**

7.1 The Purchaser shall be entitled to possession and occupation of the Property from the Transfer Date from which date:-

- (a) all risk and profit or loss in the Property shall pass to the Purchaser;
- (b) the Purchaser shall be entitled to any income earned from the Property;
- (c) the Purchaser shall be liable for and shall pay the Residential Association Levy, the monthly rates due to the Municipality or the District Municipality, utility charges and all other expenses pertaining to the Property.

7.2 **The Purchaser authorises the Seller to sign all agreements as may lawfully be required by the Municipality and/or any other party for the supply of electricity, water and sewage to the Property. The Purchaser shall be liable for all costs incurred in the connection of the electricity and water supply and the installation of any water and electricity meters.**

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7.3 **The Purchaser acknowledges that:**

- (a) **the electricity supply to the Estate is by means of a bulk supply in terms of a bulk supply agreement concluded between the Developer and Eskom, which supply is charged by Eskom at the Miniflex Interval tariff rate;**
- (b) **the Developer has contracted a Utility Company to manage the installation, connection and purchase of electricity on the Estate via the metered supply system operated on the Estate;**
- (c) **the Purchaser, and its successor in title as owner of the Property, will be required to contract with the Utility Company for the installation, connection and purchase of electricity in respect of the Property and will be billed directly by the Utility Company.**

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7.4 **The Purchaser further acknowledges that, on the Transfer Date, the Development may be incomplete and the Purchaser, and every person claiming occupation and use of the Property through the Purchaser, may suffer inconvenience from building operations and from noise and dust resulting therefrom. The Purchaser shall have no claim whatsoever against the Seller or the Associations by reason of such inconvenience.**

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7.5 **The Purchaser waives all claims against the Seller or the Associations for any loss or damage to property or any injury to person which the Purchaser may sustain on or about the Land or on any portion of the Property and indemnifies the Seller and the Associations against any claim that may be made against the Seller or the Associations by any tenant, nominee, invitee or any other person who occupies or has access to the Property or goes onto the Residential Land or**

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the Property by virtue of the Purchaser's right thereto, for any loss or damage to property or injury to persons which may be suffered in or about the Property, the Land or any part of the Property howsoever such loss or damage to Property or injury to person may be caused.

8. **Alien and Invasive Species**

The Seller does not hold a permit issued in terms of Nemba and is not aware of any alien and invasive species on the Property. As the Seller is not an expert on such species and as the Property is sold voetstoots the Seller accepts no liability whatsoever for any alien and invasive species which might be on the Property. The Purchaser shall make the Purchaser's own enquiries in this regard.

9. **Sale Voetstoots**

9.1 Save as provided for herein and subject to the CPA and to the disclosures made in the PPA Schedule, the Property is sold and purchased voetstoots which means that the Property is sold and will be delivered as it stands subject to all servitudes and conditions contained in the title deeds, the amended Conditions of Approval or otherwise or conditions of title the Premier, the Municipality, the District Municipality, the Department of Transport or any other authority may impose on the Land or on the Development and subject to the Master MOI, the Residential MOI and the Associations Rules.

9.2 **The Purchaser acknowledges being fully acquainted with the Property, its locality, nature, extent, boundaries and beacons, the Purchaser not having relied upon any representations or warranties whatsoever. In particular the Purchaser acknowledges that the Seller has not given any warranty that it has conducted any geotechnical or tachymetric surveys in respect of the Property and it shall be the responsibility of the Purchaser to undertake such surveys should the Purchaser require them.**

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9.3 **The Purchaser acknowledges that the roads, common areas and common facilities in the Development may not have been completed by the Transfer Date.**

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9.4 **The Purchaser acknowledges that some of the Subdivisions are subject to a non-user servitude as depicted on the Site Plan and which could include the Property.**

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9.5 **The Purchaser agrees and undertakes not to object to any future town planning application/s which may be made by the Seller in respect of any portion of the Land not comprising the Residential Land.**

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9.6 **The Purchaser acknowledges having being provided with and having seen all the documents recorded on the List and the Schedule of Annexures and the Purchaser acknowledges that the documents are all deemed to be incorporated into this Sale Agreement. In particular, the Purchaser acknowledges that, in terms of the Rules:**

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- (a) Construction of the Buildings must commence within eighteen (18) months of the Transfer Date;
- (b) the Buildings must be completed within thirty (30) months from the Transfer Date;
- (c) Commencement of construction is deemed to be from the date of site handover for construction;
- (d) Completion of construction is deemed to be complete once the occupation certificate for the completed building on the Property is issued by the relevant authority;

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- (e) A penalty of three (3) times the monthly Residential Association Levy will be imposed until completion, which is payable monthly.

10. **Roads and Servitudes**

The roads and other public areas depicted on the Site Plan will be transferred to the Residential Association subject to the registration of servitudes in favour of the Master Association, the District Municipality where applicable and in favour of owners of erven with the Development.

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11. **Associations**

11.1 **The Purchaser shall be obliged to become a member of the Residential Association and the Purchaser undertakes to sign the application forms of the Residential Association. The Purchaser shall be bound by and shall comply with the Master MOI and the Residential MOI and the Associations Rules.**

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11.2 **The Purchaser acknowledges that the Residential Association is responsible for the maintenance of the roads and services in the Development. All the other roads and services on the Estate will be maintained by the Master Association.**

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11.3 With effect from the Transfer Date, the Purchaser shall be liable to pay the Residential Association Levy to the Residential Association.

11.4 The voting rights of the members of the Master Association shall be determined in accordance with the provisions of the Master MOI and of the Residential Association shall be determined in accordance with the provisions of the Residential MOI.

11.5 **The Purchaser further acknowledges that the title deeds of the Property will contain a condition that the Property may not be sold, disposed of or transferred without the prior written consent of both the Associations, which consent shall not unreasonably be withheld provided that:-**

- (a) **the Residential Association Levy and other amounts owing to the Associations for the Property have been paid in full;**
- (b) **the Purchaser becomes a member of the Residential Association and undertakes to remain a member for so long as the Purchaser owns the Property;**
- (c) **the Purchaser undertakes in writing to abide by and to comply with all of the provisions of the MOI's and the Associations Rules;**
- (d) **all other requirements of the Associations are fulfilled.**

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11.6 **The Purchaser acknowledges that the Seller will appoint the Managing Agent.**

12. **LSF**

12.1 **The Purchaser acknowledges that:**

- (a) **An LSF has been set up by the Residential Association, which is a capital fund separate from the yearly levy operating accounts and is, in terms of the Residential MOI, to be**

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utilised for the purpose of meeting any extraordinary expenditure or expenditure of a capital nature.

- (b) **All members of the Residential Association are obliged to pay the LSF Contribution to the Residential Association on the date they take transfer of their erf or unit.**

12.2 **The Purchaser hereby agrees and undertakes to pay the LSF Contribution, in addition to the purchase price into the LSF on the Transfer Date. The Purchaser shall pay the aforesaid LSF Contribution to the Conveyancers within 14 (fourteen) Days of request by the Conveyancers to enable the Conveyancers to pay the LSF Contribution into the LSF on behalf of the Purchaser on the Transfer Date.**

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12.3 Upon the transfer of the Property from the Purchaser to a successor in title, the successor in title shall likewise be obliged to pay the LSF Contribution applicable at the time into the LSF on the date of transfer of the Property to the successor in title. This obligation shall be binding upon all successors in title. **The Purchaser acknowledges that, upon the transfer of the Property from the Purchaser to a successor in title, the Purchaser shall not be entitled to a refund of the LSF contribution paid by the Purchaser when the Purchaser took transfer of the Property.**

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13. **Development Manual**

13.1 To maintain high standards and ensure an attractive and harmonious Development, all building plans of buildings erected in the Development, including subsequent additions and alterations, shall conform with the Development Manual and are to be submitted to and approved by the Master Association.

13.2 Notwithstanding anything to the contrary herein or elsewhere contained, buildings shall be erected strictly in accordance with building plans submitted to and approved in writing by the Associations and the Municipality. No work shall be commenced until the relevant approvals have been obtained.

14. **Letting**

To ensure that any lessee of the Property is made aware of and complies with the Association Rules, the Purchaser agrees that a lease of any portion of the Property shall be reduced to writing, be signed by the parties and shall comply with the Master Association's requirements which shall include, but shall not be limited to, an explanation of the Association Rules and an undertaking by the lessee to comply with the Association Rules.

15. **Transfer**

15.1 **The Purchaser acknowledges that by virtue of the Property being comprised within the Development, the need to ensure that the Seller's conditions applicable to the Development need to be imposed and enforced, it is in the best interest of the Seller and the Purchaser that the Conveyancers attend to the registration of transfer of the Property. As a term of the Agreement freely agreed to by the Purchaser, who has the right to agree freely and is not forced to enter into the Agreement, that the Purchaser elects to agree with the Seller to make use of the services of the Conveyancers. Such agreement does not constitute an arrangement as contemplated in section 58 of the PPA. The same applies in respect of any bond attorney appointed. The Purchaser therefore confirms that it agrees to make payment of the transfer fees and bond registration fees associated with the transfer and the registration of any mortgage bond and understands that section 58 of the PPA finds no application to such fees.**

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15.2 **The Purchaser undertakes on request to sign the transfer documents and to pay the pro forma**

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conveyancing account of the Conveyancers upon rendition thereof. No transfer duty is payable by the Purchaser.

15.3 **The Purchaser furthermore undertakes forthwith to sign the mortgage bond documents when called upon to do so by the attorneys attending to the registration of the mortgage bond and to pay the pro forma conveyancing account of such attorneys, upon rendition thereof.** The conveyancing fees will be determined in accordance with the fee scale recommended by the Law Society of South Africa.

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15.4 **The Purchaser undertakes, on request, to supply the Conveyancers, or the Agent for and on behalf of the Conveyancers, with all necessary information and all applicable documents referred to in the FICA document schedule annexed to this agreement.** The Purchaser shall furnish copies of such documents to the attorneys attending to the registration of any mortgage bond over the Property.

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15.5 **The Purchaser warrants that the income tax returns the Purchaser is obliged to submit to SARS have been duly submitted and all income tax due to SARS has been paid.** Should SARS withhold the issue of a transfer duty exemption receipt because the Purchaser's affairs are not in order, that occurrence shall amount to a breach of the terms of this agreement. Should the sale be cancelled pursuant to such breach, the Purchaser shall be liable for and shall pay all wasted costs incurred in the preparation of transfer and mortgage bond documents.

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15.6 The Conveyancers owe a duty of care to both the Seller and the Purchaser and will use their best endeavours to protect the interests of both. However, the Conveyancers are also the Seller's attorneys. If a dispute arises between the Seller and the Purchaser, the Seller's attorneys, if requested by the Seller, will act for the Seller against the Purchaser. In such event the Purchaser should seek independent advice.

15.7 **The Purchaser acknowledges that, if the Property is an unregistered subdivision of the Land, the Property cannot be transferred until the subdivision of the Land to create the Property is approved.**

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16. **Security**

The Purchaser agrees that no liability shall rest upon the Seller, the Developer or the Associations for any failure or insufficiency of any of the security facilities included in the Development, irrespective of the cause thereof, other than gross negligence or wilful deceit, or for any consequential damages the Purchaser may suffer by reason of such failure or insufficiency.

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17. **Agent**

This Agreement was concluded with the assistance of the Agent. The Parties acknowledge that the Conveyancers are only entitled to pay commission to the Agent if the Agent provides the Conveyancers with a tax invoice for the commission together with a Fidelity Fund Certificate in respect of the Agent that is valid on the Signature Date and the Transfer Date.

18. **Association Rules**

18.1 **The Purchaser acknowledges that the Directors of the Associations have made the Association Rules and they shall be entitled to amend the Association Rules from time to time in regard to any matter the Associations consider appropriate.**

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18.2 **The Purchaser undertakes and shall be obliged, with effect from the Transfer Date, to abide by the Association Rules and to ensure that all tenants, nominees, invitees and other persons who occupy the Property and/or go upon the Land or enter the Estate by virtue of the Purchaser's rights thereto, do likewise.**

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19. **Sale or Assignment**

Until the Transfer Date, the Purchaser shall not be entitled to sell the Property or to sell, cede or assign the Purchaser's rights under this agreement to any third party, without the prior written consent of the Seller, which consent will be subject to the Seller approving the terms of the subsequent sale agreement and to the subsequent purchaser agreeing to be bound to the Seller in the same manner as provided for in this Agreement. If required by the Seller, a condition to this effect shall be inserted in the title deeds of the Property. The Purchaser undertakes to use the standard re-sale agreement prepared by the Conveyancers.

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20. **Dispute Resolution**

Should any dispute arise between the Seller and the Purchaser, either party may refer the dispute to the National Consumer Commission or to any other tribunal or court as provided for in the CPA or the matter may be referred to an alternative dispute resolution agent for investigation and resolution.

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21. **Breach**

21.1 Should the Purchaser breach any of the terms and conditions of this Agreement or fail to make any payment on due date and remain in breach after having received 7 (seven) Days written notice to remedy such breach, the Seller shall be entitled either:

- (a) to declare the full balance of the purchase price to be at once due, owing and payable; or
- (b) to cancel the sale.

21.2 Should the Seller cancel this sale as aforesaid, the Seller shall be entitled to retake possession and occupation of the Property and in addition, the Seller shall be entitled either:

- (a) **to declare all monies paid by the Purchaser to the Seller or to the Conveyancers, including interest earned thereon, to be forfeited to the Seller (in which event the Purchaser hereby irrevocably and in rem suam authorises the Conveyancers to pay such monies to the Seller) and to recover all arrear instalments and other amounts outstanding; or**
- (b) to claim such damages as the Seller may have suffered, to resell the Property and to appropriate the proceeds thereof to the claim of the Seller.

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21.3 Should the Seller instruct an attorney to take any action against the Purchaser arising from any breach of the Purchaser's obligations in terms of this agreement, the Purchaser shall be liable for and shall pay all such attorney's fees, including collection charges, as between attorney and own client.

21.4 Any latitude or extension of time which may be allowed by the Seller to the Purchaser shall not be deemed to be a waiver of the Seller's rights hereunder.

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22. **Notices and Domicilia**

22.1 Any notice, consent, approval or other communication in connection with this Agreement must be in writing and in English.

22.2 A notice must be sent to a Party at one of the following addresses:

(a) Seller:

(i) Physical address: 5th Floor, JT Ross House, Lion Match Park, 892 Umgeni Road, Durban, 4000.

(ii) Email address: legalrsa@jtrossgroup.com.

(b) Purchaser: the addresses referred to in **G** of the Schedule.

22.3 A Party may by written notice to the other Parties change its chosen address, provided that:

(a) the change will become effective on the 10th Business Day after the receipt of the notice by the addressee; and

(b) the physical address must be an address in the Republic of South Africa.

22.4 Unless the contrary is proved, any notice will:

(a) if delivered by hand be deemed to have been received by the addressee on the date of delivery; or

(b) if sent by email, be deemed to have been received once the email enters an information system outside the control of the Party sending it.

22.5 Notwithstanding anything to the contrary in this clause, a written notice or communication actually received by a Party will be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered at its chosen address.

22.6 Each Party chooses its physical address set out in clause 22.2, as changed from time to time, as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement may be delivered.

23. **Jurisdiction**

The parties hereby consent in terms of Section 45 of the Magistrates' Court Act of 1944 to any legal proceedings being instituted in the Magistrates' Court of any district having jurisdiction in respect of the Purchaser by virtue of the provisions of Section 28 (1) of the said Act. Notwithstanding such consent, the Seller shall have the option of instituting proceedings against the Purchaser in the High Court of South Africa.

24. **Delay in Transfer**

Should transfer of the Property be delayed through any act of or omission on the part of the Purchaser the Seller shall be entitled to send the Purchaser a letter requiring the Purchaser to pay penalty interest on the purchase

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price from the date of issue of the letter until the date upon which the Purchaser ceases to be *in mora*. The interest will be calculated at 2% above the prime rate of interest levied by Investec Bank Limited from time to time.

25. **Suretyship**

Should the Purchaser be a Trust, Company or Close Corporation, the signatory by his/her signature hereof agrees and undertakes in his/her personal capacity to be bound jointly and severally as surety for and co-principal debtor with the Purchaser for the due and proper fulfilment of each and every term, condition and provision of this Agreement. Such signatory hereby waives the benefits of excussion and division.

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26. **Joint and Several**

Should there be more than one Purchaser or a co-Purchaser, the obligations of the Purchasers in terms of this agreement shall be joint and several. The term Purchaser includes a Co-Purchaser.

27. **Language**

The Purchaser acknowledges being fluent in and understanding the English language.

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28. **Severability**

This agreement endeavours to incorporate the Purchaser's consumer rights as provided for in the CPA. Should any clause in this agreement be found to be unenforceable, illegal or void it shall be severed from this agreement as being of no force or effect while the remaining terms of this agreement shall continue to be of full force and effect.

29. **Cooling Off Period**

29.1 **If this agreement is entered into as a result of Direct Marketing, the Purchaser may within 5 (five) Business Days of the Signature Date cancel this agreement by giving written notice thereof to the Seller. Thereafter neither the Seller nor the Purchaser shall have any further claim against the other.**

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29.2 The Purchaser records that the Purchaser was introduced to the Development by Direct Marketing

or (*delete whichever is not applicable*)

The Purchaser records that the Purchaser was not introduced to the Development by Direct Marketing but instead learnt of the Development through an agent, an advertisement or upon the recommendation of a third party.

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30. **Authority**

The signatories to this agreement warrant that they are duly authorised to sign this agreement on behalf of the Seller and the Purchaser respectively.

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31. **Mutual Support**

31.1 The Parties must use their best endeavours to give effect to this Agreement.

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31.2 If a Party requires the consent of another Party in order to obtain any licence, consent or approval, the other Party will give that assistance provided that it is reimbursed with the reasonable costs of providing that assistance.

32. **POPI Act**

The Purchaser:

- 32.1 **acknowledges that the Seller, the Conveyancers and the Associations will collect the Purchaser's personal information, including but not limited to name(s), identity numbers, registration numbers, birth dates, email addresses, physical addresses, telephonic numbers, geographic locations and other correspondences which may be private and/or confidential;**
- 32.2 **acknowledges that the Seller and the Associations will use the personal information for the purposes of use in all matters pertaining to the Purchaser as a resident in the Estate;**
- 32.3 **acknowledges that the Conveyancers will use the Purchaser's personal information for the purposes of effecting transfer of the Property to the Purchaser;**
- 32.4 **consents to the Seller, the Conveyancers and the Associations processing the Purchaser's personal information, including but not limited to collecting, recording, organising, disseminating and making the personal information available for the uses set out in clauses 32.1 and 32.2;**
- 32.5 **consents to the Seller, the Conveyancers and the Associations collecting the Purchaser's aforementioned personal information directly from the Purchaser and from any other source;**
- 32.6 **consents to the Seller, the Conveyancers and the Associations retaining records of the Purchaser's aforementioned personal information for so long as they, in their sole discretion, deem it necessary to do so;**
- 32.7 **accepts the contents of this consent as adequate notification of the collection and processing of the Purchaser's aforementioned personal information by the Seller, the Conveyancers and the Associations;**
- 32.8 **consents to the aforementioned parties failing to provide full notification in terms of Section 18 of the POPI Act which consent is permitted in terms of Section 18(4) of the POPI Act.**

33. **General**

- 33.1 This Agreement is governed by and must be interpreted and construed in accordance with the laws of the Republic of South Africa.
- 33.2 This Agreement contains the entire agreement between the Parties in regard to its subject matter.
- 33.3 A Party will not be bound by any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this Agreement, whether it induced the contract or whether it was negligent or not, or both.

- 33.4 A variation, amendment or consensual cancellation of this Agreement or any of its terms will not be binding or have any force and effect unless it is recorded in writing and signed by the Parties.
- 33.5 Any indulgence by a Party to another Party, or failure strictly to enforce the terms of this Agreement, must not be construed as a waiver or be capable of founding an estoppel.
- 33.6 If any part of this Agreement is for any reason whatsoever, including a decision by any court, any legislation or any other requirement having the force of law, declared or becomes unenforceable, invalid or illegal, the Parties must negotiate and effect an amendment of this Agreement such that it is lawful and enforceable, retaining its essential terms or, failing such agreement between the Parties, as far as possible this Agreement must be interpreted so as to exclude the offending provision but retain the essential terms of this Agreement.
- 33.7 Each Party confirms that it is acting as principal in its own right and not as agent for any other person or for any other Party.
- 33.8 The Parties acknowledge that they have been free to secure independent legal, tax and other advice as to the nature and effect of all the terms of this Agreement and that they have either taken such independent legal and other advice or dispensed with the necessity of doing so.

34. **Counterparts**

This Agreement may be executed in counterparts, each of which when executed and delivered will constitute an original, but all of which together will constitute the same agreement.

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Signed by the Seller at _____ on _____.

For and on behalf of
Hilton Devco Proprietary Limited

Capacity:
Who warrants authority

Signed by the Purchaser at _____ on _____.

For and on behalf of

Name:
Capacity:
Who warrants authority

Name:
Capacity:
Who warrants authority

Signed by the Surety at _____ on _____.

For and on behalf of

Name:
Capacity:
Who warrants authority

We hereby accept the benefits conferred upon us in terms of this agreement.

RESIDENTIAL ASSOCIATION

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DOCUMENTS SCHEDULE - THE FINANCIAL INTELLIGENCE CENTRE ACT

1. NATURAL PERSON
 - (a) Copy of identity document.
 - (b) Copy of marriage certificate and Ante-Nuptial contract, if applicable.
 - (c) Copy of document reflecting residential address, such as electricity or water account or any other account addressed to residential address.
 - (d) Copy of a document issued by the South African Revenue Service on which income tax number is recorded.
 - (e) Details of nationality if not a South African citizen.

2. COMPANY
 - A. Old Company Forms
 - (a) a copy of the Certificate of Incorporation (CM1);
 - (b) certificate of change of name (CM9);
 - (c) a copy of the Notice of Registered Office and Postal Address (CM22);
 - (d) a copy of the Form CM29 (Register of Directors);
 - B. New Company Forms
 - (a) notice of incorporation (COR14.1 together with annexures A and D thereto);
 - (b) registration certificate (COR14.3);
 - (c) any amendment to the company information (COR14.3 or COR15.2)
 - (d) amendment to company information (COR21.1);
 - (e) certificate of director amendments (COR39).
 - C. Remaining Documents
 - (a) Full names of the Shareholders of company.
 - (b) Document depicting trade name and operating address of the company, such as a utility bill, Telkom account or bank statement.
 - (c) Copy of identity document of the manager and all authorised representatives of the company (the directors) and all individuals who hold 25% or more of the voting rights in the company (the shareholders) and advice as to the nationality of each.
 - (d) Copy of VAT Registration Certificate.
 - (e) Copy of document issued by the South African Revenue Service on which the company income tax number is recorded.
 - (f) Residential addresses of the manager and of the individuals who hold more than 25% of the voting rights i.e. the Directors and Shareholders.
 - (g) If a company or close corporation holds 25% or more of the voting rights, then similar information concerning the company as set out above including information on shareholders and directors or a copy of the Founding Statement if it is a close corporation and addresses of the local office and head office of the company or close corporation.

3. CLOSE CORPORATION
 - (a) Copy of Founding Statement (CK1) and any Amended Founding Statement (CK2).
 - (b) Document containing trade name and operating address of the close corporation, such as a utility bill, Telkom account or bank statement;
 - (c) Copy of identity document for each member of the close corporation and all authorised representatives and advice as to the nationality of each.
 - (d) Copy of VAT Registration Certificate.
 - (e) Copy of document issued by the South African Revenue Service on which the close corporation income tax number is recorded.

4. TRUST
 - (a) Copy of Deed of Trust.
 - (b) Copy of Letters of Authority issued by the Master of the High Court.
 - (c) Copies of identity documents in respect of founder of the trust, each trustee and each beneficiary who can be determined.
 - (d) Nationality and residential addresses of the foregoing persons.
 - (e) Copy of document issued by the South African Revenue Service on which the income tax number of the trust is recorded.
 - (f) Copy of the VAT Registration Certificate (if any).
 - (g) Copy of the death certificate if the founder of the trust has died.
 - (h) If a trustee or beneficiary is a legal person, copy of the founding document and the addresses of the registered office and local office of the legal person.

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ANNEXURE A
LIST OF DOCUMENTS

1. Development Manual
2. Environmental Management Plan
3. Master MOI
4. Residential MOI
5. Association Rules (which include the Residential Association rules and the Master Association rules)
6. Residential Association Application Form
7. Conditions of Approval

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ANNEXURE B
SCHEDULE OF ANNEXURES

A. Site Plan

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ANNEXURE C
IMMOVABLE PROPERTY CONDITION REPORT

1. Disclaimer

1.1 This condition report concerns the immovable property situated at:

(the "Property").

1.2 This report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

2. Definitions

In this form:

2.1 "to be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and

2.2 "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

3. Disclosure of information

The owner of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

4. Provision of additional information

The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable". Should the owner have responded to any of the statements with a "yes", the owner shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

5. Statements in connection with Property

Defects	Yes	No	N/A
I am aware of the defects in the roof			
I am aware of the defects in the electrical systems			
I am aware of the defects in the plumbing system, including in the swimming pool (if any)			

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7. Owner's Certification

The owner hereby certifies that the information provided in this report is, to the best of the owner's knowledge and belief, true and correct as at the date when the owner signs this report.

8. Certification by person supplying information

If a person other than the owner of the property provides the required information that person must certify that he/she is duly authorised by the owner to supply the information and that he/she has supplied the correct information on which the owner relied for the purposes of this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

9. Notice regarding advice or inspections

Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

10. Buyer's acknowledgement

10.1 The prospective buyer acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and noncompliant aspects concerning, the Property.

10.2 The prospective buyer acknowledges receipt of a copy of this statement

11. Signatures

Signed by the Seller at _____ on _____.

Signed by the Purchaser at _____ on _____.

Signed by the Property Practitioner at _____ on _____.

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