

# GOWRIE FARM

## PHASE 2 AGREEMENT OF SALE 2 FEBRUARY 2024

between:

**1. KWA JABU TRUST**

Reg No IT 364/2005/PMB

**2. GF HOLDINGS (PTY) LTD**

Reg No 2022/599338/07

("the seller" or "the developer" as the case may be)

Postal address:

PO Box 600  
Pietermaritzburg  
3200

*Domicilium:*

Gowrie Farm Lodge and Clubhouse  
Main Road R103, Nottingham Road, 3280

Telephone:

(033) 355 3100

e-Mail:

gowriefarm@venns.co.za

and

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Full Name of Purchaser

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Identity Number or Registration Number No / Reg No.

("the purchaser")

If married delete that which is inappropriate:

Married in Community of Property/ Married Out of Community of Property/ Married i.t.o Laws of a Foreign Country

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Postal address:

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*Domicilium:*

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Telephone:

(h) \_\_\_\_\_ (b) \_\_\_\_\_

Telefax:

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e-mail:

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Cell:

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in respect of: Erf ..... Nottingham Road, Registration Division FT,  
 Province of KwaZulu-Natal, in extent ..... square metres; ("**the property**"),  
 situate within Phase 2 of Gowrie Farm Golf and Country Estate, Nottingham Road, and as shown on the plan attached hereto ("**the plan**").

**1. Purchase and sale**

The seller hereby sells to the purchaser who purchases the property:

for the sum of: ..... R .....

plus, VAT of:..... R .....

Total purchase price inclusive of VAT:..... R .....

No transfer duty shall be payable by the purchaser in respect of this sale.

The purchaser requires a mortgage bond of R..... (See Clause 31 hereof)

**2. Payment of purchase price**

The purchase price shall be secured by the purchaser as follows:

2.1. The purchaser shall lodge a deposit of R.....(10%) with Venns Attorneys, 30 Montrose Park Boulevard Victoria Country Club Estate, Pietermaritzburg ("**the conveyancers**") within 7 days of the purchaser signing this agreement, which sum shall be retained by the conveyancers in trust in an interest-bearing account upon their standard terms applicable to corporate saver accounts with interest accruing to the purchaser pending transfer. Payments to the conveyancers shall be made in cash or by cheque, or alternatively by direct deposit to the following account:

<b>Name:</b>	Venn Nemeth & Hart Trust Clearing Account
<b>Bank:</b>	Standard Bank of South Africa Limited
<b>Branch:</b>	Longmarket Street, Pietermaritzburg
<b>Branch code:</b>	05 75 25 00
<b>Acc No.:</b>	05 22 44 326
<b>Ref:</b>	Gowrie Farm Phase 2: Erf.....

2.2. The balance of the purchase price shall be paid by the purchaser to the Conveyancers within 30 days of signing of this agreement. Any such cash paid by the purchaser shall be held by the conveyancers in accordance with the provisions of 2.1 above.

2.3. The total purchase price (including VAT) shall be paid by the conveyancers to the seller upon registration of transfer of the property into the name of the purchaser. Any interest accruing to the purchaser shall be paid to the purchaser on the same date.

- 2.4. If any amount or guarantee is not timeously paid or lodged by the purchaser, interest shall accrue for the benefit of the seller on such amount from the due date until the date of payment or lodgement. Interest shall be calculated at the prime overdraft rate of the Standard Bank and compounded monthly in arrears.
- 2.5. In order to effect transfer of the property, the Conveyancer shall be required to lodge, inter alia, a Transfer Duty Receipt issued by the South African Revenue Services. Should SARS refuse to issue a Transfer Duty Receipt in respect of the sale of the property in terms of this contract, due to the fact that the Purchaser is in arrears with any payments to SARS or has otherwise not complied with any tax laws, then the Purchaser shall be deemed to be in breach of this contract of sale and the Seller shall be entitled to cancel this contract, should the Purchaser not rectify such breach within 7 (seven) days of receipt of a notice from the Seller calling upon him to remedy such breach

Further, should there be any delay in the issue of the aforesaid Transfer Duty Receipt for the aforesaid reasons, then the Purchaser shall be deemed to be delaying the registration of transfer which shall mean that the Purchaser is in mora and the Purchaser shall pay interest to the Seller for the delays. Interest shall be at the prime overdraft rate of Standard Bank.

### **3. Gowrie Farm Golf and Country Estate**

- 3.1. The developer has developed the 1<sup>st</sup> phase of the development known as Gowrie Farm ("**the estate**") and as shown on General Plan No. 976/2006
- 3.2. The first phase of the development included:
  - 3.2.1. a 12-hole golf course
  - 3.2.2. a golf clubhouse facility and 11-bedroom guest lodge
  - 3.2.3. 125 residential sites
  - 3.2.4. homeowner's amenities, which include an indoor swimming pool and tennis court.
  - 3.2.5. the right for homeowners to use the existing dams for fly-fishing and the right to traverse the farm on foot or horse.
  - 3.2.6. an operating farm
- 3.3. Owners of properties in the second phase shall have the same rights at Gowrie Farm to use the facilities as those in the first phase.
- 3.4. The developer has received approval to develop the 2<sup>nd</sup> phase at Gowrie Farm. This phase will include the extension of the golf course to an 18-hole golf course and 29 residential properties. Three of the residential properties are to be located in the vicinity of Diary Road and Cottage Road while the remaining 26 properties will be located in the vicinity of the extension to the golf course. The properties are as shown on the plan.

- 3.5. In terms of the present approval dated 13 November 2020 access to the 2<sup>nd</sup> phase is to be obtained from the gate opposite Rawdon's Hotel. The Gowrie Farm HOA and the developer have made application to the Department of Economic, Tourism and Environmental Affairs (DEDTEA) requesting that they agree to change this access so as to allow access to phase 2 via the clubhouse gate.
- 3.6. The building code as it applies to the 1<sup>st</sup> phase will be applicable to the 3 properties to be known as Portions 5, 6 and 7 of Erf 1065 Nottingham Road. The houses shall however be single storey and no lofts are allowed.
- 3.7. The building code for the 2<sup>nd</sup> phase is to be amended so as to limit the height of the properties to single storey. In the case of Erven 1352, 1353 and 1354 the coverage shall be 600 m<sup>2</sup> while on the remaining properties the coverage will be 480 m<sup>2</sup>.
- 3.8. Included in the estate are 54 sites for workers cottages. These are on the main road between Fordoun and Nottingham Road. The developer and the HOA are in the process of removing these properties from the estate. They shall be placed in a separate project to be known as "The Hamlet of Gowrie". A separate Homeowners Association will manage the affairs of the Hamlet.

#### **4. Purchaser's acknowledgements**

The purchaser acknowledges that:

- 4.1. the property is part of the Gowrie Farm Golf and Country Estate, and that the purchaser is fully acquainted with the development, the position of the property and its extent and locality.
- 4.2. the developer has built a twelve-hole golf course on the estate.
  - 4.2.1. the golf course belongs to the developer and is responsible for its maintenance and upkeep.
  - 4.2.2. all homeowners are members of the Gowrie Farm Homeowners Association No. 2006/020641/08 (**the HOA**), and the Gowrie Farm Golf Club (**the Golf Club**), and as such are entitled to access to the golf course, subject to the terms and conditions laid down by the developer, or its successors in title.
- 4.3. Phase 2 of the estate was approved by the Department of Economic Development, Tourism and Environmental Affairs of the Province of Kwa Zulu Natal on 13<sup>th</sup> November 2020 and by the Umgungundlovu Planning Tribunal on 22 February 2022 which approvals allowed for the following:
  - 4.3.1. 29 residential sites as shown on the plan
  - 4.3.2. Expansion of the clubhouse from 1 250m<sup>2</sup> to 2 000 m<sup>2</sup> to allow the Lodge to be increased from 11 to 16 rooms.
  - 4.3.3. 9 self-catering units on proposed erven 1355 and 1357 as shown on the plan.

- 4.3.4. The construction of a day spa
- 4.3.5. 12 lockup garages for the use by homeowners and/ or the developer
- 4.3.6. Extension of the golf course to 18 holes.
- 4.4. The part of the estate which does not fall within the residential erven, or the golf course constitutes a lease area (Gowrie Farm) which is presently leased to Sparcle Trust.
- 4.5. Erf 331 Nottingham Road, in extent 9 986 square metres belongs to the Gowrie Farm Homeowners Association (**the "HOA"**). There is an indoor swimming pool and tennis on the property, which is the property of the HOA. The owners of the residential properties in phase 2 shall be entitled to all the rights of the existing homeowners and thus shall be entitled to utilise these facilities.
- 4.6. The estate is managed by the HOA, save that the HOA may not at any time interfere with the farming operations which may take place on the farm, the purchaser hereby acknowledging the terms of clause 6 and 7 below.
- 4.7. a servitude shall be registered over the properties in phase 2 Gowrie Farm, in favour of the 29 residential erven, which shall give to the homeowner the right to traverse Gowrie Farm on foot or horseback and shall grant a right of way over all farm roads, whether by foot, horseback, bicycle, car or light delivery vehicle (bakkie).
- The estate roads shall be those roads which were black topped at the time when the golf course was opened (December 2007). These roads are commonly known as Old Tom Morris Lane, Clubhouse Road, Gowrie Avenue, Merion Road, Hillside Road, Charles Smythe and John King Crescent, Dairy Road, Little Cottage Road, Little Crescent, Waterford Road and Glengowrie Avenue.
- 4.8. the homeowners shall be entitled to fly-fish on all dams on the estate subject to such fishing regulations as may be imposed by the HOA. Stocking of the dams shall be the responsibility of the HOA. The dams do however form part of the farm and belong to the developer.
- 4.9. the HOA shall be responsible for the maintenance of all common amenities built on the HOA's property.
- 4.10. notwithstanding the conditions of this agreement and in addition to the architectural controls referred to in clause 18 below, the developer may impose special conditions relating to the properties in phase 2.

## **5. Short term rentals**

- 5.1. Phase 2 is made up of 29 residential properties.
- 5.2. In the case of the properties known as Portions 5, 6 and 7 of Erf 1065 Nottingham Road, Short Term Rentals (STR's) are allowed with express written consent of the HOA and then subject to such rules and conditions as the HOA shall make from time to time.

5.3. In the case of Erven 1329 to 1345 and 1350 to 1354 Nottingham Road no Short-Term Rental are allowed without the express written consent of the developer, which consent will not be given nor considered unless the HOA has first given consent.

5.4. For the purpose of this agreement a Short-Term Rental will be a rental which is less than 60 days but more than 7 days. No rentals of less than 7 days will be allowed.

#### 5.5. Management of Short-Term Rentals

5.5.1. If consent is granted then the Short-Term Rentals shall be operated by the management of the Lodge, who shall be entitled to an administration fee of 15% of the income.

5.5.2. The Lodge owner shall take bookings, receive deposits and rentals, and allocate deposits and rentals to the owners on a monthly basis after the deduction of the administration fee. The property owner shall not be entitled to rent the property without the involvement of the Lodge owner.

#### 5.6. Access and Amenities

In the event of any short-term rentals been allowed in phase 2 then access:

5.6.1. Shall only be allowed through the Clubhouse gate, or such gates as may be operational on the Main Road R103.

5.6.2. Short Term Rental guests may not use the amenities of the HOA and may only traverse over the property known as Portion 4 of Erf 1065 Nottingham Road, the golf course property and the land allocated to Phase 2.

5.6.3. Short-Term Rental guests shall be limited to 8 persons at any one time, save in the event of the guests being 2 families, in which case an owner may obtain prior written consent from the Lodge management to allow 10 people on the condition that the majority of the people are children under the age of 21 years.

5.6.4. The Umngeni Town Planning Scheme provides that the Phase 2 properties may provide living accommodation for a single family and that should Short-Term Rental tenants comprise more than a single family then the owner of the property shall nominate one of the families as the tenant and the remaining family or families shall be regarded as guests of such family.

### 6. Lease of Gowrie Farm

As mentioned above Gowrie Farm has been leased by the developer to Sparcle Trust ("**the farmer**") and the lease includes the following conditions:

6.1. the land may only be used for the purposes of farming cattle, sheep, horses and game and for the planting of crops.

6.2. the farmer shall allow homeowners to traverse Gowrie Farm on foot or on horseback. Homeowners may in addition cycle or drive vehicles on farm roads;

- 6.3. the farmer shall maintain all farm roads in reasonable farm road condition at his expense;
- 6.4. the farmer shall maintain all farm fences. Those fences around residential houses shall be maintained by the individual homeowners.
- 6.5. the grassland areas shall be maintained in accordance with the management plan for the estate.
- 6.6. The HOA, developer and the farmer presently allow members of the HOA to cycle on the farm subject to the member signing an indemnity and subject also to the farmer and developer being entitled to cancel this right upon written notice to the HOA.

## **7. Non-Interference in the farming operation**

The purchaser acknowledges that Gowrie Farm is a working farm and that there are hazards associated with farming. It is a condition of the initial approval of the Development Tribunal that each purchaser acknowledge the following statement:

"Commercial agricultural ventures employ technologies and methodologies which carry an element of risk. Farm machinery can be dangerous if not handled by trained personnel, and there may be potential health risks associated with pesticides, dust, smoke, even when reasonable precautions are taken. In addition, certain farm activities may be noisy, or take place at irregular hours. Persons buying into the estate should be made aware that they are to live in a farm environment which will not be modified for residents' comfort or convenience."

## **8. Membership of Gowrie Farm Golf Club**

- 8.1. Each homeowner is obliged to become and remain a homeowner member of the Golf Club, this includes all homeowners in Phase 2 for so long as they are homeowners at Gowrie Farm. A homeowner member shall be the registered owner of the property and shall include the spouse and children of the homeowner under the age of 26. In the case of the owner being a company, close corporation, trust or other legal entity, the owner's nominee shall be the homeowner member and shall include the spouse and children of the owner's nominee who are under the age of 26. A condition of title to this effect shall be registered in the title deeds of the property.
- 8.2. Where more than one person jointly owns a property, the second or additional co-owner/s shall be additional members of the Golf Club. The spouse or children under the age of 26 of such additional members may also be included in such membership. Additional members shall be limited to not more than 9 per property and the subscription for each additional member shall be half the annual subscription payable by a homeowner member. The annual subscription, as at 1<sup>st</sup> March 2022 is the sum of R15 300.00 which includes free golf.

- 8.3. Apart from homeowner members and additional members there shall be members of Golf Club who do not own property in the Estate. The number of non-homeowner members shall be limited to the number of non-homeowner members who pay annual subscriptions equal to 200 ordinary members.
- 8.4. When the golf course is extended to an 18-hole golf course, the number of non-homeowner members may be increased to so many members as will generate subscription income equivalent to 300 ordinary members.

## **9. The Club House**

The Club House, Pro-Shop and Lodge belong to the developer, who is responsible for the operation of the Club House, Pro-Shop and Lodge. The purchaser acknowledges that permission has been granted to include up to sixteen rooms in the clubhouse complex. In addition, the seller shall be entitled to build a spa and nine self-catering units in the second phase.

## **10. Extension to the golf course**

- 10.1. The agreement of sale between the initial buyers at Gowrie Farm and the developer provided that the developer, once it had obtained the necessary consents, would build the 7 holes, but would not be entitled to receive the profit from the sale of the properties until the 7 holes are built. Funds generated from the sale of the properties will therefore be held in trust by the developer's attorneys and only released for the purpose of building and paying for the services to the 29 properties and the golf course.
- 10.2. It is a condition of this agreement that the developer need not commence building the extension to the golf course, nor the services to the 29 properties in phase 2 until such time as 12 properties in phase 2 have been sold. The developer may at its discretion however start sooner should it choose to do so.
- 10.3. Selling will commence during July 2022 and the developer shall inform the buyers of properties in phase 2 when the 12 properties sales have taken place.
- 10.4. The present approval of DEDTEA provides that access to 26 of the phase 2 properties is to be obtained from the R103 opposite to the gate to Rawdons Hotel. The HOA and the developer have made application to DEDTEA to have the access changed so as to allow access from the Clubhouse gate. The income from the sale of 2 of the 29 properties is to be set aside for the purpose of building a bridge over the wetland. If consent is not granted by DEDTEA, then the funds from the 2 properties shall be for the benefit of the HOA.

## **11. Stables and horses**

- 11.1. The initial intention of the developer was that the homeowners would be entitled to build sixteen stables on the farm. The HOA has decided that it is not in their interest to build the stables and accordingly no stables will be built on the Estate.
- 11.2. The MOI of the HOA is to be amended to reflect this decision about the stables.

## **12. Workers Cottages**

- 12.1. It is in the interests of Estate that these properties be removed from the Estate to a separate project or alternatively be treated as a separate project, and the HOA and the developer are in the process of finalising the administrative arrangements for the "workers cottages" which will either have a separate Homeowners Association or specific provisions relating to the workers cottages, with them having no voting rights or say over the remainder of the estate. The HOA shall however have representation on any Board operating or managing the affairs of "The Hamlet at Gowrie". "The Hamlet at Gowrie" will include Portion 1 of Erf 333 Nottingham Road and all the subdivisions- thereof and the Rem of Erf 333 Nottingham Road.
- 12.2. The subdivisions of Portion 1 of Erf 333 Nottingham Road and the Remainder of Erf 333 Nottingham Road shall have no right to traverse the Estate, nor shall they have an automatic right to become members of the Golf Club. They shall however have the right to make application to the Golf Club to join as ordinary members and subject to the terms and conditions of the constitution of the Golf Club.
- 12.3. In the event of a separate Homeowners Association been set up for The Hamlet at Gowrie then the HOA shall be entitled to nominate a director to the Board of this Homeowners Association.

## **13. Management of the estate**

- 13.1. The purchaser, together with all other homeowners, shall be obliged to be a member of the HOA and shall remain so for as long as the purchaser owns the property. Any successor in title shall also be obliged to be a member of the HOA. The title deeds of the property shall contain a condition to this effect.
- 13.2. The HOA shall manage the Estate, on behalf of the homeowners. This includes management of the security, the maintenance of any common areas, the maintenance and upkeep of the estate roads and all services.
- 13.3. The management and HOA shall however not interfere with the farming operation conducted on the farm nor the management and/or operation of the golf course and clubhouse.
- 13.4. The Memorandum of Incorporation of the HOA shall provide that during the development period, the developer shall be entitled to control the majority of the votes in the HOA and shall be entitled to nominate the majority of the board of directors of the HOA.

13.5. The purchaser shall be bound by the provisions of the Memorandum of Incorporation of the HOA and such other rules and regulations as the directors of the HOA may from time to time lay down.

#### **14. Levies**

14.1. All homeowners shall pay a levy to the HOA. Electricity and water consumption and the rates levied by the uMngeni Municipality, shall be paid individually by homeowners and shall not be covered by the HOA levy.

14.2. The levy as at 1 July 2022 is R3 536 per month. The HOA shall have the power to adjust the levies as circumstances require. Levies shall be payable by each residential site to which all services have been provided and which sites have been transferred from the developer and registered in the Deeds Office.

14.3. No levies shall be payable by the developer in respect of undeveloped or unregistered properties.

#### **15. Pets**

15.1. The purchaser acknowledges that dogs shall not be allowed on the estate, save with the express consent of the HOA. From 1 July 2022 no cats shall be allowed on the estate save for those that have been granted permission by the HOA. The HOA shall not grant permission to any further homeowners to allow them to keep cats on the farm. In regard to caged birds and other such pets, only those specifically permitted by the HOA and the farmer, shall be allowed.

15.2. Caged birds, small birds, which remain indoors (such as budgies) shall generally be allowed. Larger birds, which are likely to cause a nuisance to neighbours, shall generally not be allowed.

15.3. If any pet causes a nuisance to other residents, then permission to keep such pet on the estate may be withdrawn. The HOA shall also be entitled to impose any rules, which they consider necessary regarding the keeping of pets on the estate.

#### **16. Stabilisation fund**

16.1. Upon the sale and transfer of the property from the purchaser to a successor in title, the purchaser, who will then be the seller, shall be required to pay to the stabilisation fund an amount equal to 1% of the sale price of the property if it is undeveloped and an amount equal to 0,5% of the selling price of the property if it has been developed. The conveyancers attending to such transfer shall be required to deduct the amount from the sale proceeds and to pay it direct to the HOA.

16.2. The fund shall be used to maintain or upgrade such capital assets as the directors of the HOA may decide from time to time.

## **17. Building on the property**

- 17.1. Once the purchaser commences construction of a dwelling, the building operations shall be continuous and such dwelling shall be completed within 12 months from the date of commencement. If the purchaser does not complete the dwelling within the 12-month period, the purchaser shall be required to pay a penalty to the Gowrie Farm Homeowners' Association. The amount will be equal to a second levy.
- 17.2. In the case of properties in Phase 2 the owner shall commence building the house on the property within 5 years of the date of registration of transfer of the property from the developer to the first buyer. In the event of building not commencing within the 5-year period then penalties shall accrue. The penalties shall be that the levy due to the Homeowners Association shall be double until such time as building commences.
- 17.3. All houses built on the property shall do so in accordance with the provisions of the Environmental Authorisation which specifically states that an Environmental Control Officer (ECO) must be appointed for the building of each house and that the ECO shall do a minimum of 3 audits and on completion of the house do a close out audit reporting that the overall environmental compliance of the construction has been undertaken.
- 17.4. The purchaser hereby agrees to comply with the Environmental Authorisation and any directions which the Department of Environmental Affairs might issue.

## **18. Architectural controls**

- 18.1. The purchaser acknowledges and agrees that phase 2 is made up of three properties which are situated in what is presently referred to as the first phase, these being Portions 5, 6 and 7 of Erf 1065 Nottingham Road and the balance being Erven 1329 to 1354 Nottingham Road.
- 18.2. The 3 properties being Portions 5, 6 and 7 of Erf 1065 shall be built in accordance with the present architectural guidelines. The houses on the above properties shall be single storey and the following guidelines shall apply, namely:
- 18.3. the maximum coverage of any house on the above three properties shall be the same as is allowed in terms of the present building guidelines, which is 480 m<sup>2</sup>, inclusive of 50m<sup>2</sup> of veranda.
- 18.4. before building may commence on the property, the plans shall be approved by the Building Committee and the uMngeni Municipality.
- 18.5. any dispute relating to the provisions or application of the Architectural Guidelines shall be decided by the Building Committee whose decision shall be final and binding on the purchaser;
- 18.6. all gardens and landscaping on the property shall accord with the environmental management plan prepared by the developer;

- 18.7. the Building Committee shall charge a submission fee for the scrutiny of plans, which amount shall be paid to the HOA upon lodgement of the plans for approval. The above amounts are subject to change from time to time;
- 18.8. only architects approved by the developer shall be entitled to design houses on the estate.
- 18.9. In the case of the properties known as Erven 1329 to 1354 Nottingham Road, that portion of Phase 2 which is located in the vicinity of the extension to the golf course, they shall be encouraged to build houses with a modern design. The houses shall follow the guidelines of Gowrie Farm. The variance from the code shall be that the pitch of the roof shall not exceed 30°. Houses shall be encouraged to be fragmented and may not be more than single storey and no lofts shall be allowed.
- 18.10. In the case of properties on Erven 1344, 1345 and 1346 Nottingham Road, the coverage shall be increased to 600m<sup>2</sup>, again no loft spaces shall be allowed on these houses. Red face brick, a selected charcoal face brick and an iron shall be allowed as materials to be used on the exterior of the houses in addition to those material presently in use.
- 18.11. The houses which are not face brick shall be painted a colour approved by the Architectural Review Committee, which colour scheme shall be different from the colour scheme applicable in the existing first phase at Gowrie Farm.

## **19. Services to Phase 2**

- 19.1. The purchaser shall be responsible for the installation of septic tanks and soak-aways which shall be built in accordance with the specifications of the developer's engineer. If soak-aways have to be built outside the boundaries of a residential site, the purchaser shall bear the cost of connecting the site to the soak-away and the position shall be fixed by the developer's engineer. In the event of the soakaway not been built on the property then a servitude shall be registered in favour of the property.
- 19.2. The estate roads are those with chip and spray and are the responsibility of the HOA to maintain, while the farm roads shall be the responsibility of the farmer.
- 19.3. The roads in phase 2 shall not all be tarred and shall be gravel farm roads, with the base being built to the same specifications as the existing roads on the estate. In certain cases where the developer feels it is appropriate the roads shall have a chip and spray surface, the same as that which has been used in phase 1.
- 19.4. **Electricity**
- 19.4.1. It is hereby recorded that each site has been allocated a maximum of 50 AMP single phase of supply of electricity.
- 19.4.2. Metering will be via Eskom.

19.4.3. In addition to the electricity connection each dwelling will be required to install a solar system capable of supplying a minimum of 10 KVA and the power storage must have the capacity to hold a minimum of 8 hours electricity consumption.

19.4.4. In the event of the electricity supply for the dwelling been in excess of 50 AMP then the cost of strengthening the system to make provision for the additional load will be for the account of the property owner and the solar requirement must then be increased to a minimum of 60% of the required supply.

#### **19.5. Water Harvesting**

It is a condition of the Environmental Authorisation and the Environmental Management Plan that when the property is developed the owner of the property is obliged to install rainwater harvesting tanks to be used for the flushing of toilets, gardening and washing of vehicles.

#### **20. Occupation and risk**

20.1. Occupation of the property shall be given to the purchaser upon registration of transfer of the property into the name of the purchaser. The purchaser shall be liable for the payment of levies to the HOA and rates to the municipality from the date of registration of transfer.

20.2. The purchaser shall be entitled to all benefits deriving from ownership of the property with effect from the date of occupation.

#### **21. Transfer**

21.1. The properties known as Portions 5, 6 and 7 of Erf 1065 Nottingham Road shall be transferred as soon as the necessary certificates have been issued by the engineers as the services are readily available to these three properties. In the case of the remaining properties in phase 2 transfer shall only proceed once all services have been completed and the necessary certificates have been issued by the engineers, DEDTEA and the municipality.

21.2. The transfer of the property into the name of the purchaser shall be registered by the developer's conveyancers, Venns Attorneys, as soon as possible after the installation of services to the property. The purchaser hereby undertakes to sign all documents and pay all conveyancing fees and disbursements within 10 days of being called upon to do so by the conveyancers.

21.3. In the event of the purchaser not providing the necessary information or signing documents or paying conveyancing fees and disbursements within the said 10-day period, then interest shall accrue on the full purchase at the prime overdraft rate of the Standard Bank of South Africa Limited from the date on which the purchaser was to have complied with his/her obligations in terms of this clause until the date when the purchaser provides the necessary information or, alternatively, signs the documents or, alternatively, pays the conveyancing fees and disbursements, whichever the case may be. The said interest shall be paid by the

conveyancers to the seller upon registration of transfer of the property into the name of the purchaser.

## **22. Servitudes**

The property shall be transferred by the conveyancers to the purchaser subject to such servitudes and conditions as may apply and subject to such conditions as may have been imposed by the Development Tribunal and the Municipal Planning Tribunal. The purchaser accepts the property subject to any such servitudes and conditions.

## **23. Agents and agent's commission**

- 23.1. The purchaser warrants that the purchaser was introduced to the property by the agent signing this contract ("the agent") and that the agent is the effective cause of this sale.
- 23.2. Agents commission shall be payable upon transfer of the property from the seller to the purchaser and is subject to the terms of the agreement between the developer and the agent.
- 23.3. If the sale is cancelled through a fault of the purchaser, then the agent shall have no claim against the seller but shall be entitled to recover commission from the purchaser.

## **24. Re-sale of properties**

- 24.1. It is agreed that should the purchaser wish to re-sell the property during the development period; the purchaser shall be obliged to grant a sole mandate to the developer for a period of 90 days. The developer shall then grant the mandate to one or all of the approved agents nominated by the purchaser.
- 24.2. Until all the properties in phase 2 have been sold by the developer only agents approved by the developer shall be entitled to sell properties in the 2<sup>nd</sup> phase of the development. Thereafter, only agents approved by the HOA shall be entitled to sell properties on the estate.

## **25. Breach**

- 25.1. If either party fails to carry out any of its obligations under this agreement and remains in default for a period of 10 days after receiving written notice of such breach, then the aggrieved party shall be entitled to enforce this agreement or to declare it cancelled, and in either event, to claim such damages as have been suffered.
- 25.2. If the aggrieved party is the seller, the seller shall be entitled, upon cancellation, to recover possession of the property and to re-sell it, either by public auction or private treaty, at the expense of the purchaser. Any amounts paid by the purchaser to the conveyancers shall be paid by the conveyancers to the seller as *rouw koop* or damages, or as a payment towards the damages suffered by the seller as a result of the cancellation. Payment shall be made immediately the sale has been cancelled by the seller.

25.3. Upon re-sale, any loss suffered by the seller shall constitute damages payable by the purchaser and any surplus arising from the re-sale shall be forfeited to the seller.

25.4. It is agreed between the parties that should the seller cancel this agreement due to the purchaser's default, then the seller shall be entitled to retain the deposit as a minimum of damages, which amount the seller shall be entitled to deduct from any amounts paid by the purchaser.

## **26. Notices**

26.1. The parties choose their *domicilia citandi et executandi* at the addresses set out on the first page of this agreement.

26.2. Notices delivered by hand shall be deemed to have been received on the date of delivery.

26.3. Notices sent by post shall be sent by pre-paid registered post and shall be deemed to have been received on the 4<sup>th</sup> business day following the date of posting.

26.4. Emailed notices shall be deemed to have been received 48 hours after transmission.

## **27. Waiver**

No indulgences granted by a party shall constitute a waiver of any of that party's rights under this agreement.

## **28. Trusts, companies and close corporations**

In the event of the signatory to this agreement signing in the capacity as trustee for a company or close corporation to be formed, then such signatory personally agrees that the company or close corporation shall be lodged with the Registrar of Companies within 60 days of the signature of this agreement by the purchaser, and the signatory shall procure that the company or close corporation ratifies this agreement within 14 days of incorporation, failing which the property shall be transferred into the name of the signatory of this agreement.

## **29. Surety**

If the purchaser under this agreement is a trust, company or close corporation, or if the purchaser signs in the capacity of a trustee for a company or close corporation to be formed, then the signatory of this agreement agrees to be personally bound as surety and co-principal debtor with the purchaser for all the purchaser's obligations under the agreement.

### **30. Financial Intelligence Centre Act**

The purchaser and seller hereby agree to comply with all the terms and conditions of the Financial Intelligence Centre Act ("FICA") and to furnish the conveyancers with such documentation as they may require satisfying themselves that the terms of FICA are complied with.

### **31. Mortgage bond**

- 31.1. In the event of the purchaser requiring a mortgage bond for the amount referred to in clause 1. above, then this agreement is subject to the purchaser obtaining a loan from a financial institution, which condition will be deemed to have been fulfilled upon a financial institution lodging a letter, acceptable to the conveyancers, confirming that a mortgage bond has been granted to the purchaser upon the normal terms and conditions applicable to home loans. Such letter or guarantee shall be lodged within 60 days of the purchaser signing this agreement.
- 31.2. The seller shall be entitled to extend the said 60-day period by a further period of up to 60 days at its sole discretion and the purchaser hereby authorises the seller and/or the agent to assist in the obtaining of the mortgage bond. The purchaser hereby agrees to supply such information as may be required by the financial institution to enable the financial institution to consider the purchaser's application.
- 31.3. In the event of the purchaser not providing the necessary information to the financial institution within 10 days of being called upon to do so by the financial institution, the agent or, alternatively by the bond originator handling the application on behalf of the purchaser, and the mortgage bond not being granted on due date then the seller shall be entitled to cancel this agreement and retain the 10% deposit paid in accordance with the provisions of clause 2.1 above.
- 31.4. The seller shall be entitled to grant to the purchaser a mortgage bond for the balance of the purchase price on the normal terms and conditions applicable to home loans granted by the Standard Bank of South Africa Limited should the purchaser not be able to obtain a loan from a financial institution. Should the seller elect to grant such mortgage bond then the seller shall notify the purchaser in writing and the suspensive condition referred to above shall be deemed to have been fulfilled.
- 31.5. Should the seller agree to grant the mortgage bond referred to above, then a first mortgage bond shall be registered in favour of the seller simultaneously with the registration of transfer of the property into the name of the purchaser, which mortgage bond shall be prepared by the conveyancers, the cost of which shall be borne by the purchaser.

**32. Warranties and Representations**

The purchaser hereby acknowledges that the seller / developer gives no warranties or undertakings, save for those included in this agreement, and any representations given by the agent that are not included in this agreement shall not be binding on the seller / developer.

**33. Whole agreement**

33.1. This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

33.2. No agreement varying, adding to, deleting from or cancelling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

**SIGNED BY THE PURCHASER** at ..... on this ..... day of ..... 20.....

As witness:

.....  
.....  
**Purchaser**

*To be signed by the purchaser's spouse in the event of the purchaser being married IN community of property*

I, ..... as spouse of the purchaser, hereby consent to the above purchase and assume personal liability.

As witness:

.....  
.....  
**Purchaser's spouse**

**SIGNED ON BEHALF OF THE SELLER / DEVELOPER** at ..... on this

..... day of ..... 20.....

As witness:

.....  
.....  
for: **Seller / Developer - duly authorised**

I, the undersigned hereby accept the benefits conferred under this agreement.

.....  
**The agent**