

HOPEWELL CONSERVATION ESTATE

Agreement of Sale

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Agreement of Sale

between

HOPEWELL CONSERVATION PROPRIETARY LIMITED
REGISTRATION NUMBER 2008/022884/07
(herein represented by)

BRIAN CORRIGAN duly authorized

Address: C/O RUSHMERE NOACH INC
5 ASCOT OFFICE PARK
CONYNGHAM ROAD
6001
Telephone No: 041-399 6700

("the SELLER")

and the PURCHASER described in Annexure A to this Agreement

("the PURCHASER")

PREAMBLE

The SELLER is in the process of developing a Residential Estate to be known as Hopewell Conservation Estate on Portion 3 of the Farm Number 719, situated in the Nelson Mandela Bay Metropolitan Municipality, District of Uitenhage, Province of the Eastern Cape (**"the PARENT PROPERTY"**).

1. GENERAL

- 1.1. Wherever possible, defined terms are shown in CAPITAL LETTERS
- 1.2. The paragraph headings are for indexing purposes only
- 1.3. The signatories on behalf of the parties warrant their authority to sign

2. PROPERTY

The background to this Agreement is the following:

The PURCHASER has decided to purchase the property described in Annexure A, which is unimproved land (**"the PROPERTY"**).

3. SALE

The SELLER sells to the PURCHASER the PROPERTY on the following terms and conditions.

4. VENDOR FOR VAT

The SELLER is a Vendor under the Value Added Tax Act and the purchase price set out in Annexure A is inclusive of Value Added Tax.

5. PURCHASE PRICE

- 5.1. The purchase price for the PROPERTY is set out in Annexure A hereto, and shall be paid as follows:
- (a) The deposit mentioned in Annexure "A" to the SELLER's Attorneys to be held in trust until registration of transfer when the deposit shall be paid to the SELLER.
 - (b) The deposit must be paid on or before the date set out in Annexure "A".
 - (c) The SELLER's Attorneys are irrevocably authorized to invest the deposit in an interest bearing account. The interest shall be paid to the PURCHASER after registration of transfer.
 - (d) The balance of the purchase price must be paid when transfer of the PROPERTY to the PURCHASER takes place.
- 5.2. The PURCHASER must furnish a Bank guarantee(s) to the SELLER's Attorneys for payment.
- 5.3. The guarantee(s) must be paid in Port Elizabeth on registration of transfer of the PROPERTY into the name of the PURCHASER.
- 5.4. More than one guarantee may be requested.
- 5.5. The guarantee(s) must be delivered within seven (7) days of a request to do so
- 5.6. The SELLER's Attorneys may grant an extension of this period.
- 5.7. The PURCHASER must pay the costs of the guarantee(s).
- 5.8. The payment of the guarantee may not be dependent upon the transfer of another property. The SELLER's Attorneys may waive this requirement.

6. POSSESSION AND OCCUPATION

Possession and vacant occupation shall be given by the SELLER to the PURCHASER on registration of transfer from which date the said property shall be held by the PURCHASER for his benefit and shall be at his risk and expense and from which date the PURCHASER shall be obliged to pay rates and taxes and any other charges levied on the said property.

7. TRANSFER

- 7.1. Transfer of the PROPERTY in the name of the PURCHASER shall be registered as soon as possible, after fulfillment of all suspensive conditions contained in this agreement.
- 7.2. Transfer shall be effected by the SELLER's Attorneys, RUSHMERE NOACH INCORPORATED, 5 Ascot Office Park, Greenacres, Port Elizabeth.
- 7.3. The SELLER authorizes the Attorneys to collect the purchase price and pay all disbursements which may be necessary to discharge the SELLER's obligations at the date of registration of transfer.

8. COSTS

The PURCHASER shall be liable for the costs of registration of transfer (plus VAT thereon) of the said property into the PURCHASER's name, as well as for the costs of registration of any Mortgage Bond and shall make arrangements for the payment of such costs which are satisfactory to the SELLER's conveyancers when called upon to do so by the said conveyancers and further shall make arrangements satisfactory to the said conveyancers when called upon to do so for payment of the PURCHASER's pro rata share of the rates and taxes for the current year payable in respect of the said property and all other charges levied as provided for herein.

9. RATES

The annual rates on the PROPERTY shall be apportioned between the SELLER and the PURCHASER having regard to the date of possession.

10. VOETSTOOTS

It is recorded that, the property is sold voetstoots and in the condition in which it is now and the SELLER makes no warranty in respect thereof, whether expressed or implied, and further the property is sold subject to the conditions contained in the SELLER's Title Deed and any condition imposed by any competent authority when approving the subdivision of the property and in accordance with the diagram relating thereto and the SELLER shall not be liable to the PURCHASER for any deficiency in the extent of the property which may be found upon measurement thereof and in like manner the PURCHASER shall be entitled to the benefit of any excess in the extent of the property.

The PURCHASER acknowledges that he has not been induced to enter into this sale by any representations whatever made by or on behalf of the SELLER.

11. ENTIRE CONTRACT

11.1. This agreement constitutes the entire contract between the parties. No other conditions, stipulations, warranties or representations are binding on the parties.

11.2. This agreement shall not be amended or amplified in any way except in writing and signed by the parties.

12. DEFAULT

12.1. If the PURCHASER fails within seven (7) days of the giving of a written notice to carry out any of the terms and conditions of this agreement, the SELLER may sue the PURCHASER for specific performance, or alternatively cancel this sale without prejudice to any other rights the SELLER may have in law.

12.2. The cancellation shall be by written notice.

12.3. If this agreement is cancelled the SELLER may recover from the PURCHASER any loss as a result of the breach of contract and the SELLER may retain all payments made by the PURCHASER as *rouwkoop*.

- 12.4. If the PURCHASER is in default and in occupation of the PROPERTY, the SELLER may take immediate possession of the PROPERTY.
- 12.5. Any latitude or extension of time which may be allowed for any payment or any matter which the PURCHASER is obliged to perform or observe shall not be deemed to be a waiver of any right to require strict compliance with every provision of this agreement.
- 12.6. The SELLER shall be entitled to recover from the PURCHASER all costs taxed as between Attorney and Client on the High Court scale plus Value Added Tax, irrespective of whether a Summons is issued, due to the neglect or default in complying with this agreement.

13. MORTGAGE

- 13.1. Only in the event of the PURCHASER completing the Bond clause in Annexure A hereto, it shall be a suspensive condition of this agreement that the PURCHASER shall, within 30 (THIRTY) days of signature of this Agreement, obtain approval to the granting of a loan from a Bank or a Financial Institution upon the usual terms and conditions and at the prevailing rate of interest upon security of a Mortgage Bond to be registered against the PROPERTY for a sum of not less than the amount set out in Annexure "A", without any requirement for collateral security or suretyship (except a suretyship of a spouse or shareholders in a Company or members of a Close Corporation).
- 13.2. A loan shall be deemed to be approved notwithstanding that the lender reserves the right to withdraw from the loan unilaterally.
- 13.3. If such loan is approved by the date and in the manner set out above, this agreement shall become of full force and effect but otherwise shall lapse.
- 13.4. The PURCHASER undertakes to do all in the PURCHASER's power to obtain the approval to a loan and thereafter to sign any necessary documents and to comply with all the conditions of the loan. If the failure to obtain the loan is due to the neglect or default of the PURCHASER then this Deed of Sale shall at the option of the SELLER be binding on the PURCHASER. Any refusal by the PURCHASER to comply with any condition of the loan, shall be deemed to be a default by the PURCHASER.
- 13.5. The PURCHASER shall be deemed to have complied with the provisions of this paragraph if, by the stated date, the PURCHASER or the PURCHASER's Agent furnishes to the SELLER's Attorneys or the SELLER's Agent written confirmation of this from the lender.

14. EXTENSION OF TIME

- 14.1. The SELLER reserves the right to extend any time period by which the PURCHASER is bound to perform any obligation in terms of this agreement.

- 14.2. Such extension shall not be binding on the SELLER unless given in writing by the SELLER's Attorneys on behalf of the SELLER.

15. SIGNATURE OF COPIES

- 15.1. This agreement shall also be binding if each party has signed a separate copy.
- 15.2. A telefaxed or e-mailed copy shall constitute proof of signature.

16. DOMICILIUM

The parties choose their domicilium citandi et executandi (i.e. the addresses for service of notices, summonses etc) for all purposes of this agreement as follows:

- 16.1. The SELLER at:
RUSHMERE NOACH INCORPORATED
5 Ascot Office Park, Greenacres, Port Elizabeth
- 16.2. The PURCHASER at the address set out in Annexure "A".
- 16.3. Either party may nominate an address in substitution for an address set out above by giving the other party twenty-one (21) days' written notice.
- 16.4. Any notice shall be given by delivery by hand to the hand delivery address or by posting by registered post to the postal address provided that a letter transmitted by telefax to the recipient's telefax number shall be deemed to have been properly delivered by post.
- 16.5. Any notice or letter posted to the postal address shall be deemed to have been received five (5) days after the date of posting unless the contrary is proved.
- 16.6. Delivery or service may also take place by a method accepted for the service of a High Court or Magistrate's Court summons.

17. COMMISSION

The SELLER will be liable to pay estate agent's commission to the Estate Agent set out in Annexure "A" as a result of this transaction. The PURCHASER warrants that he was not introduced to the property by any other estate agent, and indemnifies the SELLER against any commission claim which may be instituted by any other estate agent.

18. SURETYSHIP

- 18.1 If the PURCHASER is a registered company, close corporation or trust, the person who signed this Agreement on behalf of such company, close corporation or trust :-
- 18.1.1 warrants that he is duly authorised to act on behalf of such company, close corporation or trust;
- 18.1.2 and by virtue of his signature hereto, hereby interposes and binds himself in favour of the SELLER as surety for and co-principal debtor in solidum with such company, close corporation or trust for the due and timeous

performance by it of all its obligations as PURCHASER in terms of this Agreement.

19. DISPUTES

- 19.1 Save in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to –
- 19.1.1 the interpretation of; or
 - 19.1.2 the carrying into effect of; or
 - 19.1.3 the rights and obligations of any Party arising from; or
 - 19.1.4 the termination or purported termination of or arising from the termination of; or
 - 19.1.5 the rectification or proposed rectification of
- this Agreement, or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration to be conducted at Port Elizabeth, Republic of South Africa, in accordance with the Rules of the Arbitration Foundation of South Africa ("**AFSA**") and by an arbitrator or arbitrators to be agreed in writing by the parties to the dispute and, failing agreement, who shall be appointed by the Chairman for the time being of the Eastern Cape Society of Advocates (Port Elizabeth Branch). There shall be a single right of appeal on the merits in respect of final awards as provided for in Article 22.1 of the aforesaid Rules, save that the appeal arbitrator shall be a Senior Counsel to be agreed in writing by the Parties, and failing agreement, who shall be appointed by the Chairman for the time being of the Eastern Cape Society of Advocates (Port Elizabeth Branch).
- 19.2 This clause constitutes an irrevocable consent by each of the Parties hereto, to any proceedings in terms hereof, and none of the Parties will be entitled to withdraw therefrom or to claim at any such proceedings that he shall not be bound by this clause.
- 19.3 This clause is severable from the rest of this Agreement and will remain in effect even if this Agreement is terminated, lapses or is declared invalid for any reason.
- 19.4 The Parties to an arbitration in terms of clause 24 shall be obliged to use all reasonable efforts to expedite the arbitration (and all appeals or reviews that may arise out of or in connection with such) and to procure its conclusion as soon as reasonably possible after it has been requested.

20. HOME OWNERS ASSOCIATION & ARCHITECTURAL GUIDELINES

- 20.1 The Property is sold subject to the following conditions now newly imposed by and in favour of the SELLER and its successors-in-title as being binding upon the PURCHASER and its successors-in-title and which conditions shall be incorporated in the PURCHASER's Title Deed:-
- 20.1.1 "The Property shall not be transferred without the written consent of the HOPEWELL CONSERVATION ESTATE HOMEOWNERS ASSOCIATION ("the ASSOCIATION") of which the PURCHASER and his successors-in-title shall be a member.
- 20.1.2 The ASSOCIATION shall not be entitled to withhold its consent in the event that a prospective PURCHASER:-
- 20.1.2.1 Has agreed to become a member of the ASSOCIATION;
- 20.1.2.2 Has agreed to abide by the provisions of the said ASSOCIATION, and any decisions made by the said ASSOCIATION, the rules made in terms thereof from time to time, the Architectural Guidelines which form part of the rules and any Agreement referred to therein.
- 20.1.2.3 Has paid or made provision to the satisfaction of the ASSOCIATION for the payment of any monies due to it by the registered owner of the property hereby transferred.
- 20.1.3 In the event of the PURCHASER or its successors in title selling or otherwise alienating the PROPERTY to a third party, Clause 20.1 and 20.2 shall be contained in the Agreement of Sale between the PURCHASER and the third party.
- 20.1.4 A copy of the HOPEWELL CONSERVATION ESTATE HOMEOWNERS ASSOCIATION constitution is annexed hereto marked Annexure "B".
- 20.1.5 The PURCHASER will automatically become a member of the HOPEWELL CONSERVATION ESTATE HOMEOWNERS ASSOCIATION on registration of transfer of the Property into his name, and hereby agrees to abide by the provisions of the said Association, and any decisions made by the said Association, the rules made in terms thereof from time to time, the Architectural Guidelines which form part of the rules, and any Agreement referred to therein.
- 20.1.6 The PURCHASER shall furthermore ensure that its invitees and guests abide by the provisions of the said Association, any decisions made by the said Association and the rules made in terms thereof from time to time.
- 20.2 All buildings and alterations to existing buildings shall be erected in accordance with the Architectural Guidelines annexed hereto marked Annexure "C". These guidelines may not be deviated from without the written consent of the Architect appointed by the Developer from time to time.

21. AMENDMENT OF DRAFT GENERAL PLANS

The SELLER hereby reserves the right to make amendments to the draft General Plan in order to

- (a) further subdivide the Parent Property; and / or
- (b) comply with any conditions of subdivision which may be imposed by the Local Authority; and / or
- (c) ensure the viability of the Development and for any other reason as may be reasonably necessary.

22. SUBDIVISION AND DEVELOPMENT OF PARENT PROPERTY

22.1 The PURCHASER will not be entitled to object to the further subdivision and/or development of the Parent Property or of Portion 6 of the Farm 719, situated in the Nelson Mandela Bay Metropolitan Municipality, District of Uitenhage, Province of the Eastern Cape, provided that such further subdivision and/or development is consistent with the General Plan approved by the relevant authorities for that part of the Parent Property, and shall furthermore not be entitled to object to any such new development.

22.2 The SELLER shall be entitled to register this clause, in a form acceptable to the relevant Registrar of Deeds, against the title deeds of the PURCHASER's property on registration of transfer, should it in its sole discretion elect to do so.

23. SERVITUDES

The SELLER as owner of the Parent Property and of Portions 2 and 5 of the Farm 719, Nelson Mandela Bay Metropolitan Municipality, Division of Uitenhage, Province of the Eastern Cape, hereby grants the PURCHASER a Servitude of Right of Way as well as for the passage of all necessary services, including water, electricity, storm water and telephone ducting, over the aforesaid properties, on a route to be surveyed by the SELLER, and on a route to be agreed upon pending survey thereof.

24. SUSPENSIVE CONDITIONS

It is a suspensive condition of this agreement that the SELLER completes the installation of electricity services to the property within 12 months of signature hereof, failing which this agreement will lapse and be of no further force and effect.

SIGNED BY THE SELLER AT

ON

AS WITNESSES:

1. _____

2. _____

for SELLER
who warrants his authority

SIGNED BY THE PURCHASER AT

AS WITNESSES:

1. _____

2. _____

for PURCHASER
who warrants his authority

Annexure "A"

PROPERTY	
Proposed Erf Number/Portion Number	

FINANCES	
Purchase Price	
Incl. VAT	
Deposit – Minimum 10%	
Date Deposit due	On Signature of Agreement by PURCHASER
Bond amount required within 30 days	

DETAILS OF PURCHASER	
Full name	
Identity No.	
Marital status (Married/Out of c.o.p/In c.o.p/Unmarried/Foreing marriage)	
Spouse's full name	
Identity No.	
Physical address	
Telephone No.	
Cell No.	

DETAILS OF ESTATE AGENT	
Full name	
Identity No.	