

# The Reeds at Balgowan™:

## SALE AGREEMENT



*Between*

**TUSCAN MOOD 1083 CC**  
CK 2002/041495/23

Represented herein by **DONOVAN NEALE-MAY** duly authorised thereto c/o 9 Vredehof Business Centre, 179 Kloof Street, Gardens.

(hereinafter referred to as "the SELLER")

*And*

.....  
(hereinafter referred to as "the PURCHASER")

### PREAMBLE

The SELLER is the registered owner of Portion 69 of the Farm Boschoek in the Kwazulu Natal Province on which property the SELLER is developing a residential estate known as **THE REEDS AT BALGOWAN**.

The SELLER wishes to sell erven in this development which the PURCHASER wishes to purchase on the following terms and conditions:

#### 1. SALE

The SELLER hereby sells to the PURCHASER who agrees to purchase the erf listed in Information sheet on Essential Terms attached hereto as Schedule 1 (hereinafter referred to as "the PROPERTY").

#### 2. PURCHASE PRICE

The purchase price of the ERF shall be the sum set forth in Schedule 1.

#### 3. PAYMENT OF PURCHASE PRICE

3.1 The purchase price shall be payable as follows:

3.1.1 A deposit of 10% within 3 (three) days of signature hereof directly to the Seller's conveyancers's trust account which is called Plougmann Inc Trust Account, and held at **Absa Bank, branch code 312109, Account number 01363530016, swift code ZAJJ**.

3.1.2 The balance of the PURCHASE PRICE on registration of transfer.

3.2 Within 15 (FIFTEEN) days of being called upon to do so by the SELLER'S conveyancers the PURCHASER shall furnish the said conveyancers with an irrevocable and unconditional (save for clause 11 below) Bank or Building Society guarantee acceptable to the conveyancers for the due payment of all amounts payable in terms of clause 3.1 above plus Value Added Tax on the PURCHASE PRICE. Such guarantee shall be payable against the registration of transfer in the name of the PURCHASER and shall be payable free of commission at Cape Town, without deduction or set-off.



- 3.3 All amounts payable by the PURCHASER in terms of this agreement shall be paid to the SELLER'S conveyancers free of exchange or commission and without deductions or set-off in cash or by means of a bank guaranteed cheque or cheque drawn by a South African registered commercial bank.
- 3.4 All amounts paid on account of the PURCHASE PRICE shall, pending the registration of the PROPERTY, be held in an interest bearing trust account in terms of Section 78(2) of the Attorneys Act, 1979 by the SELLER'S conveyancers interest to accrue to the PURCHASER.

#### 4. POSSESSION AND RISK

- 4.1 Possession and occupation shall be given to the PURCHASER on registration of transfer.
- 4.2 Risk will pass to the PURCHASER on date of transfer from which date he will be liable for all rates and taxes, levies, electricity, water as well as other charges relating to the property.

#### 5. TRANSFER

- 5.1 Transfer shall be passed by the SELLER'S conveyancers Plougmann Incorporated of 9 Vredehof Business Centre, 179 Kloof Street, Cape Town (Telephone number 0027-21-4238115 and fax number 0027-21-4247755), email : conveyancing@plougmann.co.za as soon as possible after signature hereof.
- 5.2 The PURCHASER shall sign all documents necessary to give effect to this agreement within 7 (SEVEN) days of being called upon to do so.
- 5.3 The PURCHASER shall, upon request by the SELLER'S conveyancers, pay all costs of transfer (including VAT on such costs), Value Added Tax and all other costs which have to be incurred in order to comply with statutes or other enactments or regulations relating to the passing of transfer of the PROPERTY.

#### 6. "VOETSTOOTS"

The PURCHASER acknowledges that he has inspected the PROPERTY and that he purchases same "voetstoots".

- 6.2 The sale is subject to the conditions set out in the existing title deed of the property. In the event of the description or area of the property herein referred to being different from that set out in the title deed concerned, the description and area in such title deed shall be deemed to have been set out herein.

#### 7. HOME OWNER'S ASSOCIATION

- 7.1 The PURCHASER declares that he is aware of and hereby accepts that the hereinmentioned PROPERTY is subject to the following title condition imposed for the benefit of all owners in the development to control and maintain roads, services and amenities within the development:

*"The PROPERTY hereby transferred shall not be registered into the name of any person, before provision has been made that such person becomes a member of The Reeds Home Owner's Association"*



7.2 The PURCHASER accepts that on registration of transfer he will become a member of the said Association and remain a member until he no longer is the registered owner of the PROPERTY. The PURCHASER hereby acknowledges and accepts the proposed Constitution and Regulations of The Reeds Home Owner's Association attached hereto marked Schedule 2.

## 8. ARCHITECTURAL GUIDELINES / BUILDING

- 8.1 The dwelling house must be in accordance with the plans and specifications as set out in the Design guidelines (annexed hereto marked Schedule 3) read with Schedule 2. Until such time as the Home Owner's Association is established, the PURCHASER'S plans must be approved by the SELLER whose consent will not be unreasonably withheld provided the plans comply with the Design guidelines.
- 8.2 The PURCHASER acknowledges that he is aware that he may necessarily suffer a certain amount of inconvenience from building operations as a result of the construction of surrounding buildings in the development and for this reason the construction on the PROPERTY must commence within 2 (two) years of registration of transfer and be completed within a further 1 (one) year of commencement of building operations.
- 8.3 Should the PURCHASER fail to comply with the provisions of clause 8.2, the SELLER (or the Home Owners Association as the case may be) shall be entitled to give the PURCHASER 120 (one hundred and twenty) days notice in writing to commence the erection of the dwelling house and if the PURCHASER fails to comply with such notice the SELLER shall forthwith be entitled (but not obliged) to repurchase the PROPERTY from the PURCHASER at the same price at which the PROPERTY is sold to the PURCHASER in terms of this Agreement.
- 8.4 Should the SELLER elect not to exercise its rights in terms of clause 8.3 above, the PURCHASER will be obliged to pay monthly levies multiplied by 5 until such dwelling house is completed.

## 9. LEVIES

- 9.1 In terms of the Constitution of the Home Owners Association the members are required to pay levies to meet the expenses of the Association, including the costs of maintaining the services and all other amenities within the development. An estimate of the initial levy in respect of the PROPERTY prior to the formation of the Home Owner's Association will be the amount as set out in Schedule 1 hereto which amount may be adjusted at the first meeting of the Homeowner's Association.
- 9.2 Such levies shall be paid after transfer, monthly in advance, on the first day of every calendar month, provided that if the date of transfer falls on any other day, the PURCHASER shall be liable to pay a pro rata share of the levies due for the calendar month in which transfer occurs to the Home Owner's Association or their duly appointed managing agents.
- 9.3 The PURCHASER shall pay an amount of R25 000,00 (TWENTY FIVE THOUSAND RAND) to the Home Owner's Association against registration of transfer in the name of the PURCHASER as a credit to the PURCHASER'S account with such Association, the said amount to be in respect of the levy fund to be established by the Home Owner's Association and which sum the SELLER will procure from all the purchasers of all other erven in the development when they take transfer.



## 10. BREACH

- 10.1 If the PURCHASER commits a breach of this agreement and fails to pay any amount due to the SELLER or the SELLER'S conveyancers, then the SELLER shall forthwith be entitled (but not obliged) without prejudice to any other rights or remedies which they may have in law, including the right to claim damages:
- 10.1.1 to cancel this agreement, in which event the PURCHASER shall forfeit all monies paid to the SELLER or its agents in terms hereof as liquidated damages; or
  - 10.1.2 to claim immediate performance and/or payment of all the PURCHASER'S obligations in terms hereof.
- 10.2 If the PURCHASER disputes the SELLER'S right to cancel and/or remains in occupation of the ERF after date of cancellation or purported cancellation, the PURCHASER shall continue to pay interest, rates and other charges as herein provided in consideration for continuing to occupy the ERF.
- 10.3 In the event of the SELLER instituting legal proceedings against the PURCHASER as a result of the PURCHASER'S breach of the agreement, the SELLER shall be entitled to recover from the PURCHASER costs on the basis of attorney and own client.
- 10.4 Should there be a delay in registration of transfer for which the PURCHASER is responsible, the PURCHASER shall, in addition to the amounts payable in terms of the PURCHASE PRICE, pay interest at 2% above the prime overdraft rate charged by Absa Bank Ltd calculated from the date upon which the PURCHASER is notified in writing by the conveyancers that it is in mora to the date upon which the PURCHASER ceases to be in mora on the full outstanding purchase price. A certificate signed by the manager of any branch of the said bank shall be sufficient proof of the said prime rate charged from time to time.

## 11. JURISDICTION

The PURCHASER hereby consents in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) or any legislation passed in substitution thereof to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28(1) of the said Act in any action instituted by the SELLER arising out of this agreement. Notwithstanding anything herein contained, the DEVELOPER shall be entitled to institute any action against the PURCHASER arising out of this agreement in any Court having jurisdiction.

## 12. MORTGAGE BOND

- 12.1 This agreement is subject to the PURCHASER obtaining a bond in principle from a Bank or Building Society on its usual terms relating to residential ERF in the amount as specified in Schedule 1 hereto within 21 (TWENTY ONE) days of the date of signature hereof or within such extended period as the SELLER in its sole discretion may determine, failing which this agreement will be null and void.
- 12.2 Notwithstanding anything to the contrary herein contained, the SELLER in its sole and absolute discretion, may in the event of the full amount of the bond or other finance applied for by the PURCHASER not being granted, by notice in writing to the PURCHASER:



- 12.2.1 reduce the purchase price by the amount equal to the difference between the amount of the mortgage bond or other finance applied for and the amount actually granted; or
- 12.2.2 arrange and/or grant a second mortgage bond or loan to the PURCHASER for the difference between the amount of the first mortgage bond obtained and the mortgage bond required in terms hereof, upon the same terms and conditions as are contained in the bond referred to in 12.1, save and except that the capital and interest shall be repaid in 24 (TWENTY FOUR) equal monthly instalments.

### 13. RIGHT TO RESILE

Notwithstanding anything to the contrary contained in this agreement, if the ERF is not capable of being transferred to the Purchaser by 30 June 2009 by virtue of delays, then the SELLER shall be entitled to resile from this agreement by written notice to the PURCHASER within 14 (fourteen) days of expiry of the aforesaid period. In such event the SELLER shall refund to the PURCHASER the capital amounts paid by him/her in terms of this agreement together with all interest as may have accrued on that amount in the interest bearing account referred to in clause 3.1.1 above.

### 14. GENERAL

- 14.1 The terms of this agreement form the sole contractual relationship between the parties hereto and no variation of this agreement shall affect the terms hereof unless such variation shall be reduced to writing and signed by the parties hereto.
- 14.2 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement.
- 14.3 If there is more than one PURCHASER in terms of this agreement, then the liability of each of the PURCHASERS shall be joint and several.
- 14.4 In the event of the person signing on behalf of the PURCHASER which is a legal entity, such signatory hereby binds himself jointly and severally to the SELLER for the fulfilment of such PURCHASER'S obligations in terms hereof.
- 14.5 The PURCHASER acknowledges that he shall have no claim of whatsoever nature against the SELLER, save for the transfer of the ERF, and hereby indemnifies the SELLER against any other claim, of whatsoever nature, whether arising out of this agreement or otherwise.
- 14.6 The SELLER is not bound by and is not responsible for any representations made other than those set out in this Agreement.
- 14.7 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include females, and words importing persons shall include partnership and bodies corporate, and vice versa.



**15. NOTICES AND DOMICILIA**

15.1 The parties hereby choose domicilium citandi et executandi under this agreement at the following addresses:

15.1.1 The SELLER at the address set forth on the first page of this agreement;

15.1.2 The PURCHASER at the address set forth in Schedule 1 hereto.

15.2 Any notice to any party shall be addressed to it at its domicilium aforesaid and either sent by prepaid registered post or delivered by hand. In the case of any notice:

15.2.1 sent by prepaid registered post, it shall be deemed to have been received, unless the contrary is proved, on the 3rd (THIRD) business day after posting;

15.2.2 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided that such date is a business day or otherwise on the next following business day.

**16. NO WITHHOLDING PAYMENTS**

The PURCHASER shall not be entitled to withhold, delay or abate payment of any amounts due to the SELLER in terms of this agreement by reason of any breach or alleged breach of the SELLER'S obligations hereunder.

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Signed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 2008.

AS WITNESSES:

1. \_\_\_\_\_  
2. \_\_\_\_\_ **THE PURCHASER**

Signed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 2008.

AS WITNESSES:

1. \_\_\_\_\_ FOR: \_\_\_\_\_  
2. \_\_\_\_\_ **THE SELLER**