

## **AGREEMENT OF RESERVATION OF FIXED PROPERTY.**

### **A. AGREEMENT**

1. The Seller (which is more fully described hereinafter) will become the registered owner of the property described as PORTION 167 (OF 10) OF THE FARM HILTON NO. 12304, REGISTRATION DIVISION FT, PROVINCE OF KWAZULU NATAL, IN EXTENT 42,7139 (FORTY-TWO COMMA SEVEN ONE THREE NINE) Hectares on receipt of consent to Subdivide Portion 10 of the farm Hilton No. 12304.
2. The Seller has, simultaneously with the application to subdivide Portion 10 (of 3) of the Farm Hilton No. 12304, made application to the Umngeni Municipality for permission in terms of the Spatial Land Use Management Act, Act 16 of 2013, (SPLUMA) to further subdivide the aforesaid Portion 167 (of 10) of The Farm Hilton No. 12304 and to establish the township to be known as The Dairy at Hilton.
3. The Purchaser (who is more fully described hereinafter) wishes to reserve the right to purchase a property in The Dairy at Hilton, which property is more fully set out in Clause 3 of the Schedule of Particulars, subject to the terms and conditions set out in this agreement.
4. The Purchaser is aware Gwens Stream Estates has not complied with the conditions of approval issued by the Umngeni Municipality in terms of the SPLUMA Application. Prior to the issue of the Certificate in terms of Section 53 of SPLUMA confirming compliance the aforesaid property is not registerable as contemplated in Section 1 of the Alienation of Land Act and cannot be transferred to Purchaser until the certificate in terms of Section 53 confirming compliance is issued.
5. The Purchaser may at any time prior to the issue of the aforesaid Certificate in terms of Section 53 of SPLUMA withdraw from this agreement and be entitled to a refund of the deposit paid to the Conveyancers in terms of Clause 5.2 of the Schedule of Particulars.

6. Once the Certificate in terms of Section 53 of SPLUMA has been issued this agreement shall become binding as an agreement of Purchase and Sale between both parties.

## B. SCHEDULE OF PARTICULARS

### 1. THE SELLER:

#### 1.1. GWENS STREAM ESTATES (PTY) LTD

- 1.2. Registration Number            2008/021315/07
- 1.3. Represented by:                Iain Douglas McMillan, who is duly authorized by a resolution  
of the Directors
- 1.4. Physical address                Hilton College Hilton 3245.
- 1.5. Postal Address                 Private Bag X6001, Hilton 3245
- 1.6. Telephone Number            079 514 4537
- 1.7. E-Mail Address                 idmcm@hiltoncollege.com
- 1.8. Registered for VAT             YES
- 1.9. VAT Registration Number    4870253699

### 2. THE PURCHASER:

- 2.1.
- 2.2.
- 2.3. Physical address
- 2.4. Postal Address
- 2.5. Telephone Number
- 2.6. E-Mail Address
- 2.7. Registered for VAT
- 2.8. VAT Registration Number

### 3. THE PROPERTY

\_\_\_\_\_, Registration Division FT, Province of KwaZulu Natal,  
in extent \_\_\_\_\_ Square Metres.



#### **4. PURCHASE PRICE**

4.1. Basic Price:

4.2. VALUE ADDD TAX:

4.3. TOTAL:

#### **5. PAYMENT OF THE PURCHASE PRICE**

5.1. The purchase price shall be paid by the Purchaser to the Seller in full, without deduction or demand, on the transfer date.

5.2. A deposit of R10 000,00 (Ten Thousand Rand) will be paid to the Conveyancers within 10 (ten) days of the signature of this agreement by the Purchaser.

5.3. A further deposit of 10% of the full purchase price will be paid within 7 days of the purchaser being informed by the Seller that the aforesaid Certificate in terms of Section 53 of SPLUMA has been issued by the Municipality.

5.4. The balance of the purchase price shall be paid in cash or secured by a guarantee from a recognised financial institution, in a form acceptable to the Conveyancers. Such guarantee is to be payable free of exchange at Pietermaritzburg on written confirmation from the Conveyancers that the transfer of the property into the name of the Purchaser has been registered in the Deeds Registry, Pietermaritzburg. The aforesaid guarantee or cash payment shall be furnished by the Purchaser within 30 days of the Seller advising the Purchaser that the Certificate in terms of Section 53 of the SPLUMA has been received by the Seller from the Umngeni Municipality.

5.5. This agreement shall constitute an authority for an investment by the Conveyancers of any cash paid to them in an interest-bearing account in terms Section 86(4) of the Legal Practice Act (Act No 28 of 2014)

#### **6. CONVEYANCERS**

TOMLINSON MNGUNI JAMES INC

12 Montrose Park Boulevard, VCC Business Park, Montrose, Pietermaritzburg



## C. STANDARD TERMS

### 1. RISK

The risk in respect of the property shall pass to the Purchaser on transfer of the property to the Purchaser.

### 2. OCCUPATION

Occupation of the property shall be given to the Purchaser on the date of transfer of the property into the name of the purchaser.

### 3. RATES

3.1. The Purchaser shall be liable for the rates, taxes and other charges in respect of the property from the date of transfer of the property to the Purchaser, those accruing to the property up to the date of transfer being for the account of the Seller.

3.2. The Purchaser shall on receipt of their account pay to the Conveyancers attending to the transfer their estimate of the Purchaser's share of the rates, taxes and other charges payable for a clearance certificate from the local authority for the purpose of the transfer, and the amount may be paid to the local authority for this purpose.

3.3. On transfer of the property to the Purchaser, the final amount payable by the Purchaser shall be calculated and any difference between the final amount and the estimate shall be payable to the party entitled to the difference by the other party.

### 4. SPECIAL CONDITIONS APPLICABLE TO THE DAIRY AT HILTON

#### 4.1. DEVELOPMENT

4.1.1. Access to The Dairy at Hilton will be restricted to residents, their guests, lessees and members of their families and such other persons as the Seller or The Directors of the

Home Owners Association or the house rules applicable to The Dairy at Hilton shall permit.

- 4.1.2. The conditions of establishment issued by the Umngeni Municipality will require the Seller to establish one or more Home Owners Associations, for the purposes of managing the activities within overall development and the individual villages within the development and to maintain compliance with the house rules, building code and other similar matters applicable to the property and other properties in The Dairy at Hilton. The draft Memoranda of Incorporation ("MOI") and the initial house rules applicable to the Development ("the Rules") are available for the Purchaser to inspect at the Seller's offices. The Purchaser confirms that the Purchaser accepts and is bound by the terms and conditions of the MOI and the rules. The Purchaser acknowledges that the Seller may amend these documents from time to time and the Seller undertakes to advise the Purchaser of any such changes.
- 4.1.3. The Purchaser shall be obliged to become a member of the Home Owners Association and shall remain a member for as long as the Purchaser remains a registered owner of or the representative of a legal entity which is the registered owner of a property in The Dairy at Hilton.
- 4.1.4. This condition shall be incorporated in the Title Deed of the property.
- 4.1.5. To protect the rights of the Hiltonian Society which are enshrined in the MOI the property shall not be alienated transferred, leased or disposed of in any way without the written consent of the Home Owners Association. The Home Owners Association may refuse to consent to the sale of a property within three (3) years of the date of the purchase from the Seller.
- 4.1.6. The Purchaser agrees that all negotiations, legal or quasi legal dealings or actions with or against any neighbour of The Dairy at Hilton, shall be conducted by the Home Owner's Association and, insofar as may be necessary in law, the Purchaser cedes and assigns any personal rights which the Purchaser may have in regard to such dealings and negotiations to the Home Owners' Association.

4.1.7. The building code applicable to the property and all other properties in The Dairy at Hilton is available for inspection at the Seller's offices. The code consists of architectural guidelines and specifications. The Purchaser agrees and accepts that no building shall be built on the property unless it complies with the building code and the Home Owners Association is vested with the power to enforce the building code.

4.1.8. The terms of conditions of the MOI, the rules and the building code shall be applicable to all sales in The Dairy at Hilton with the effect that each and every owner of properties in The Dairy at Hilton shall be bound to comply with the conditions and shall not be entitled to sell the property as a whole or an undivided share therein without binding the Purchaser of the property or the undivided share to the terms and conditions.

#### 4.2. RESIDENTIAL DEVELOPMENT

The Dairy at Hilton is a residential estate, and no business shall be conducted on any property.

#### 4.3. BUILDING

4.3.1. The Purchaser acknowledges that the Home Owners Association has the right to control the building code in The Dairy at Hilton.

4.3.2. The Purchaser shall prior to commencing building operations submit plans prepared by an architect approved by the Home Owners Association which plans shall comply with the building code.

4.3.3. The Purchaser accepts that it is the Purchaser's obligation to inform anyone to whom the Purchaser sells the property of the terms and conditions of the foregoing paragraph.

4.3.4. Any building on the property shall be constructed by the building contractors approved by the Home Owners Association. The Purchaser accepts and agrees that

this condition is reasonable for the preservation of the integrity of The Dairy at Hilton and the Hilton College Estate.

4.3.5. The Purchaser shall:

4.3.5.1. Within 24 months of the date on which the property is transferred into his name, commence building on the property.

4.3.5.2. Complete the building within 12 months of the date on which the building operations commence.

4.3.5.3. In the event of the Purchaser failing to comply with either Clause 4.3.5.1 or Clause 4.3.5.2 the Body Corporate may be liable for a penalty as determined by the Home Owners Association

4.4. LEVIES

The Purchaser shall be liable for and shall pay the monthly levies charged by the Home Owners' Association on and from the 1st day of the month following the month in which transfer is registered.

4.5. LEVY STABILISATION FUND

4.5.1. The Developer shall upon transfer of the first transfer in The Dairy at Hilton establish a levy stabilization fund which fund is to be controlled by the Seller during the Development phase and thereafter by the Home Owners Association and utilised for capital and other necessary expenditure.

4.5.2. On sale of the property, the Purchaser and all subsequent purchasers shall pay an amount equal to 1% of the purchase price but not exceeding a maximum of R25 000,00 (Twenty Five Thousand Rand) to the Conveyancers which amount will be paid into the levy stabilization fund.

#### 4.6. PHASED DEVELOPMENT

The Purchaser acknowledges that the property may be developed in phases at the sole discretion of the developer. The developer may incorporate additional land in The Dairy at Hilton.

#### 5. CONDITIONS OF TITLE AND OTHER CONDITIONS

The Purchaser purchases the property subject to all the terms and conditions contained in the title deed to the parent property and subject to all the terms and conditions imposed on the property in terms of the Municipality's consent and the conditions imposed in terms of SPLUMA.

#### 6. COSTS

The Purchaser shall be liable for and shall, on receipt their account, pay to the Conveyancers attending to the transfer -

6.1. The legal costs of and incidental to the transfer of the property to the Purchaser, excluding any costs in connection with the cancellation of existing bonds and of any other rights which require to be cancelled to enable the property to be transferred to the Purchaser, the amendment or replacement of the Seller's title deed or the withdrawal of judicial attachments, interdicts, caveats or other bars to transfer, which costs shall be borne by the Seller;

6.2. The Purchaser shall also be liable for any costs, including attorney and client costs and collection commission, incurred by the Seller arising out of or in connection with any breach by the Purchaser of any of the provisions of this Agreement.



## 7. TRANSFER

7.1. Transfer of the property to the Purchaser shall be effected by the Conveyancers as soon after the Purchaser has secured the purchase price as set out in Clause 5.3 of the Schedule of Conditions.

7.2. Each party shall, within 7 (SEVEN) days of being called upon to do so by the Conveyancers attending to the transfer, sign all documents required to be signed and furnish all documents required to be furnished by that party to enable transfer of the property to be given to the Purchaser.

## 8. SERVICE CONNECTIONS

The cost of connecting the property to the electricity, water and sewer bulk service connection point to the boundary of the property shall be for the account of the Seller.

## 9. AGENTS COMMISSION

The parties record that any commission due to an Estate Agent officially appointed by the Seller will be paid by the Seller.

## 10. "VOETSTOOTS" SALE – WARRANTIES

The property is sold -

10.1. In its present condition, "voetstoots", without liability on the part of the Seller for -

10.1.1. any defects, latent or patent, in the property; or

10.1.2. any damages suffered by the Purchaser by reason of such defects;

10.2. Without any warranties of any nature, either express or implied, other than any set out in this Agreement;



10.3. Subject to -

10.3.1. all conditions and servitudes set out or referred to in the current or prior title deeds;

10.3.2. All other conditions and servitudes which may exist in regard to the property.

10.4. The Purchaser acknowledges that, to the extent the Purchaser deems necessary, the Purchaser -

10.4.1. Has inspected the property;

10.4.2. Is acquainted with the nature, condition, extent and locality of the property and with the position of the beacons in respect of the property, which beacons the Seller shall not be obliged to point out to the Purchaser;

10.4.3. The Seller shall not be liable for any deficiency in the extent of the property which may be revealed on any resurvey of the property, nor shall the Seller benefit by any excess.

10.5. The Seller warrants that neither the property nor any portion of the property has been expropriated and that the Seller is not aware of any circumstances which are likely to give rise to such an expropriation.

10.6. The Seller warrants that the property and the improvements on the property comply with all laws which apply to the property and the improvements.

## 11. BREACH

11.1. If either party breaches any provision of this Agreement and remains in breach for 14 (FOURTEEN) days after written notice to such party requiring that party to rectify that breach (except that no notice need be given if the breach is the non-payment of the

deposit), or if either party repudiates this Agreement, the other party shall be entitled at that party's option -

11.2. To sue for the immediate specific performance of any or all the defaulting party's obligations under this Agreement, whether or not any such obligation is then due; or

11.3. Either as an alternative to a claim for specific performance or upon the abandonment of such a claim to cancel this Agreement. Written notice of such cancellation shall be given to the defaulting party and the cancellation shall take effect on the giving of such notice.

11.4. In the event of the Seller cancelling this Agreement in terms of the preceding sub-clause -

11.4.1. the Seller shall be entitled to hold any amounts paid by the Purchaser in terms of his agreement pending determination of the amount of the damages by agreement, order of court, or otherwise;

11.4.2. if the damages as determined are greater or less than the amounts held by the Seller, the difference shall be paid to the party entitled to the difference by the other party;

11.4.3. If any interest has accrued on any amount which is subject to the provisions of this clause, the interest shall likewise be subject to such provisions;

11.4.4. The Purchaser's rights in respect of all amounts paid by or on behalf of the Purchaser in terms of this Agreement, including amounts paid to third parties, are ceded to the Seller as security;

11.5. The Seller's remedies in terms of this clause are without prejudice to any other remedies to which the Seller may be entitled in law.

## 12. ADDRESSES AND NOTICES

- 12.1. The Parties chose as their chosen domicilium citandi et executandi the address set out in the Schedule of Particulars above.
- 12.2. Any Notice shall be deemed to have been received unless the contrary has been proved:
- 12.3. If sent by prepaid registered post on the seventh business day following the date of posting thereof.
- 12.4. If served by e-mail in shall be deemed:
- 12.4.1. To have been sent by the originator when it enters an information system outside the control of the originator.
- 12.4.2. To have been received by the addressee when the complete data message enters an information system designed for that purpose by the addressee and is capable of being retrieved and processed by the addressee.
- 12.5. If delivered by hand, on the date of such physical delivery.

## 13. ENTIRE CONTRACT

This Agreement constitutes the entire contract between the parties regarding 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.

## 14. VARIATION AND CANCELLATION

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.



15. INDULGENCES

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this Agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

16. INTERPRETATION

In this Agreement, unless inconsistent with the context –

- 16.1. Words referring to one gender shall include a reference to the other genders;
- 16.2. Words importing the singular shall include the plural and vice versa;
- 16.3. Words referring to natural persons shall include companies and vice versa.

SIGNED by the Seller at Hilton on the

AS WITNESSES:

1. \_\_\_\_\_

2.

SIGNED by the Purchaser at \_\_\_\_\_ on the

AS WITNESSES:

1. \_\_\_\_\_

2.

