

## APPENDIX 12: DRAFT SERVICE LEVEL AGREEMENT

# **INFRASTRUCTURE SERVICING REPORT**

## **RESIDENTIAL DEVELOPMENT ERF 61 LINCOLN MEADE**

In adjudicating this application in terms of the Spatial Planning and Land Use Management Act (SPLUMA) the Municipality requires that the Developer provide an Infrastructure Servicing Report which will eventually result in a signed Service Agreement between the Municipality and the Developer. This servicing report which follows is laid out in the form of a draft Services Agreement and contains all the infrastructure details of the roles and responsibilities that each party of the Agreement will be obligated to, if the SPLUMA application is approved by the Municipality.

It is a requirement that all service providers both internal to the Municipality and external as well (such as ESKOM) are consulted as to the specific Clauses in the draft Agreement which follows, and that all comments, alterations, deletions and additions have been made to the satisfaction of both parties to this Agreement. The signatures contained in this report are confirmation that all service providers have agreed to the conditions particular to their service as contained in the draft Agreement below.

<u>MUNICIPAL SERVICE PROVIDER</u>	<u>NAME OF REPRESENTATIVE</u>	<u>SIGNATURE</u>
ROADS		
STORMWATER		
WATER		
SANITATION		
ELECTRICITY		
REFUSE COLLECTION		
ENVIRONMENTAL ASPECTS		

Both parties have agreed that should further alterations to this draft Agreement be deemed necessary after the SPLUMA application and consultation process has been completed, then these alterations will be made, thus forming a Final Services Agreement which will then be signed by both parties.

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018, in the presence of the undersigned witnesses:

**AS WITNESSES:**

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

2. \_\_\_\_\_

for and on behalf of the DEVELOPER

**SERVICES AGREEMENT**  
**FOR**  
**RESIDENTIAL DEVELOPMENT**  
**ERF 61 LINCOLN MEADE**

**ENTERED INTO BETWEEN**

**THE MSUNDUZI MUNICIPALITY**

represented herein by \_\_\_\_\_ in his/her capacity as the Acting / Municipal Manager, he/she being duly authorised hereto by virtue of resolutions of the Council, a certified copy of which is annexed hereto as Schedule 1  
(the "MUNICIPALITY")

and

**PERSON DRIVE TRADING (PTY) LTD**

Registration No. \_\_\_\_\_

herein represented by **BRUCE CAMPBELL**, in his capacity as trustee, he being duly authorized hereto by virtue of a resolution of the Trust, a certified copy of which is annexed hereto as Schedule 2

(the "DEVELOPER")

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## APPENDIX

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## 1. DEFINITIONS

### 1.1. For the purposes of this agreement –

- 1.1.1 “Act” shall mean the Spatial Planning and Land Use Management Act, No. 16 of 2013.
- 1.1.2 “Body Corporate” shall mean that legal entity which is identified by a particular name, comprising every person who becomes an owner of a residential unit in the Development, and that acts as an entity for the control, administration and management of the common property for the benefit of all owners, and according to the rules as contemplated by the Sectional Titles Act, No. 95 of 1986 as amended.
- 1.1.3 “Property Owner’s Association” shall mean an association to be established to own, manage and maintain certain communal owned Erven, infrastructure and facilities within the Development, and shall be an association registered as a company (which for the avoidance of doubt may be a Section 21, association not for gain, or similar) in terms of the Companies Act No 61 of 1973, as amended, or at the discretion of the MUNICIPALITY, a Close Corporation registered in terms of the Close Corporation Act No 69 of 1984, membership of which shall be exclusive to and compulsory for the Owners of the Erven in the Development, inclusive of the DEVELOPER as owner of any unsold Erven, for as long as they own property within the Development.
- 1.1.4 “Bulk Services” shall mean all primary water, sewerage, refuse, electricity and storm water services, as well as the road network and any system external to the PROPERTY, to which the internal services are to be linked.

- 1.1.5 “DAEARD” means the Department of Agriculture, Environment Affairs and Rural Development.
- 1.1.6 “Development” shall mean the development of the Residential Development and associated infrastructure on the PROPERTY.
- 1.1.7 “DWS” means the Department of Water and Sanitation.
- 1.1.8 “erf” shall mean an erf forming part of the PROPERTY and which has been developed in terms of the Conditions of Establishment issued as part of the judgement in terms of the Act and this Services Agreement; and “erven” bears a concomitant meaning.
- 1.1.9 “Internal Services” shall mean all services within the boundary of the PROPERTY that are necessary for the establishment of the Development in accordance with the level of services agreed between the parties hereto.
- 1.1.10 “KZNDOT” means Kwazulu-Natal Department of Transport.
- 1.1.11 “link services” shall mean all new services necessary to link the internal services to the bulk services.
- 1.1.12 “MUNICIPALITY” shall mean the Msunduzi Municipality.

- 1.1.13 “National Building Regulations” shall mean the National Building Regulations and Building Standards Act No 103/1977.
- 1.1.14 “Private” in relation to services shall mean internal services such as, but not limited to, the internal sewerage reticulation, roads, water, stormwater pipes and all stormwater attenuation structures that will be constructed by the DEVELOPER in accordance with this Agreement, transferred to the Property Owner’s Association, and owned and maintained by that Association in perpetuity.
- 1.1.15 “Registered Professional” shall mean a person who is a registered professional in terms of the Engineering Professions Act, Act 46 of 2000, and who possesses cognitive competency in the particular branch of engineering applicable to the particular service under design/construction.
- 1.1.16 “PROPERTY” shall mean Erf 61, 55 Grimthorpe Avenue, Lincoln Meade, measuring approximately 1,8580 hectares in extent.
- 1.1.17 “Public” in relation to services shall mean internal services such as, but not limited to, roads, stormwater drainage, water, sanitation, and electrical reticulation that will be constructed by the DEVELOPER in accordance with this Agreement, transferred to the MUNICIPALITY after the required 12 month maintenance period, and thereafter maintained in perpetuity by the MUNICIPALITY.
- 1.1.18 “Red Book” shall mean the Guidelines for Human Settlement Planning and Design compiled by the CSIR in 2000, as amended.



## **2. INTRODUCTION**

- 2.1** Person Drive Trading (Pty) Ltd owns Erf 61 Lincoln Meade, measuring approximately 1,8580 hectares (“the PROPERTY”), which is to be subdivided as indicated on the annexed Layout Plan marked Schedule 3, which Plan and notes thereon form part of this Agreement.
- 2.2** The DEVELOPER intends making application in terms of the Act to establish a residential development on the PROPERTY.
- 2.3** The Development entails:
- 2.3.1 24 Residential sites
  - 2.3.2 Internal sewer reticulation
  - 2.3.3 Internal water reticulation
  - 2.3.4 Internal stormwater reticulation
  - 2.3.5 Internal roads
  - 2.3.6 Stormwater attenuation ponds and swales
- 2.4** Prior to the opening of the township register and transfer of erven, certain conditions relating to the planning, development and maintenance of the PROPERTY will be imposed in terms of the Conditions of Establishment and Title, which must be complied with prior to transfer.
- 2.5** The MUNICIPALITY and the DEVELOPER are desirous that the provision of services will be provided to the satisfaction of both parties.
- 2.6** The parties agree that the development of the PROPERTY is subject to the conditions contained in this Agreement, and all applicable law.

- 2.7** The Development consists of engineering services, but none will be handed over to the MUNICIPALITY for maintenance, as it will be owned and maintained by the Property Owner's Association / Body Corporate.

However, the Private internal sewerage, water and road reticulation systems, and all the stormwater attenuation structures for dealing with stormwater on the PROPERTY shall be regarded as Private services, constructed by the DEVELOPER that will be owned, maintained and managed by the DEVELOPER/Property Owner's Association / Body Corporate in perpetuity.

- 2.8** All services in terms of this Agreement and in respect of this Development, whether bulk, link or internal services, shall be designed, constructed and maintained in such a way as to comply with this Agreement and all applicable legislation, including, but not limited to, the requirements of the National Environmental Management Act, No. 107 of 1998, the Record of Decision issued by DAEARD, and the Environmental Management Plans approved in respect of this Development.

### **3. DESIGN AND APPROVAL OF SERVICES**

#### **3.1. BULK AND LINK SERVICES**

- 3.1.1. All bulk and link services shall be designed, and the construction thereof supervised by a Registered Professional.
- 3.1.2. The DEVELOPER shall, at its own cost, appoint such Registered Professional, provided that such appointment shall be approved in writing beforehand by the MUNICIPALITY, and which approval shall not be unreasonably withheld.
- 3.1.3. The Registered Professional as appointed by the DEVELOPER shall ensure that the work is completed as per the approved design and specification and certify all the work accordingly at the cost of

the DEVELOPER. Such approved designs and specifications shall form part of, and be incorporated into, this Agreement.

- 3.1.4. Design drawings, design specifications and other information as required by each Service Department must be clearly marked “for construction purposes” and forwarded to the relevant Service Department or Service Authority for approval prior to construction.
- 3.1.5. The design and installation of these services shall comply with the requirements and standards as specified herein and with any other National Statutory Regulation or South African National Standard (SANS) that may be applicable.
- 3.1.6. The Roads and Stormwater services shall comply with the standards and specifications as set in the relevant guidelines obtainable from the Roads, Transportation and Public Works Sub-Unit of the MUNICIPALITY.
- 3.1.7. The Water and Sanitation services shall comply with the standards and specifications as set out in the “Msunduzi Municipality Water & Sanitation Design Guidelines”.

### **3.2. INTERNAL SERVICES**

- 3.2.1. All Internal Services shall be designed, and the construction thereof supervised, by a Registered Professional appointed by the DEVELOPER and at the DEVELOPER’s cost. The Registered Professional shall be approved beforehand by the MUNICIPALITY, which approval shall not be unreasonably withheld.
- 3.2.2. The Internal Services shall be designed and constructed as per the requirements for the Bulk and Link Services, and the provisions of Clauses 3.1.1 – 3.1.7 shall apply *mutatis mutandis*.

- 3.2.3. The installation of the services shall comply with the standards as set out herein and with any other National Statutory Regulation or South African National Standard (SANS) that may be applicable. The Registered Professional, as appointed by the DEVELOPER shall ensure that the work is completed as per the approved design and specification and certify all the work accordingly.
- 3.2.4. In respect of the management and disposal of stormwater from the Development, any attenuation measures required shall be provided and funded by the DEVELOPER and shall be owned, managed and maintained by the Property Owners' Association / Body Corporate in perpetuity.

#### **4. LAND LEGAL [CONDITIONS OF ESTABLISHMENT AND TOWN PLANNING CONTROLS]**

- 4.1. The layout plan attached in Schedule 3 shows the PROPERTY. Any phasing proposal must be submitted to the MUNICIPALITY along with the first design drawings submitted. Each phase, planned and constructed, must be self-sufficient and independent in respect of the services infrastructure of any subsequent phases.
- 4.2. The DEVELOPER shall, at its expense, establish the Property Owners Association / Body Corporate, with perpetual succession, to administer and maintain the said common property and deal with other matters pertaining to the Development which is of common interest to its members. The affairs of such Property Owners Association / Body Corporate shall be regulated by the rules as contemplated by the Sectional Titles Act, No. 95 of 1986.
- 4.3. Any common property shall be registered in the name of the Property Owners Association / Body Corporate.

- 4.4.** The DEVELOPER shall, at its own expense, obtain all development rights, permissions and consents that may be required for the Development and shall, where necessary, cause all deeds, servitudes and the like that may be required to be registered in the Deeds Office, whether in favour of the MUNICIPALITY, any other Services Authority or the Property Owners Association / Body Corporate.
- 4.5.** The Property Owners Association / Body Corporate shall be responsible, in perpetuity, for the maintenance of the common property in a clean, tidy and serviceable condition, to the satisfaction of the MUNICIPALITY and shall take all steps necessary to ensure that no parts of such common property shall become a public place for which the MUNICIPALITY may be required to accept responsibility.
- 4.6.** The Property Owners Association / Body Corporate shall be responsible for all dealings with the MUNICIPALITY in regard the rendering of municipal services to the Development.
- 4.7.** The DEVELOPER shall ensure that all Public municipal services which cross over/ traverse individual erven shall be covered by servitudes registered in favour of the MUNICIPALITY.
- 4.8.** The DEVELOPER shall undertake the Development in accordance with;
- 4.8.1. The terms and conditions of the Environmental Authorisation issued by DAEARD;
  - 4.8.2. The provisions of the approved Stormwater Management Plan;
  - 4.8.3. The provisions of the Environmental Management Plan prepared in accordance with the requirements of the Environmental Authorisation referred to in 4.8.1 above; and
  - 4.8.4. This Agreement.

## **5. BULK SERVICES**

### **5.1. GENERAL**

- 5.1.1. In accordance with the MUNICIPALITY's "User Pays" policy, and subject to any funding received by the MUNICIPALITY from any other external source, it is expressly recorded and agreed that the DEVELOPER shall be responsible for, and hereby indemnifies the MUNICIPALITY against incurring the costs of the design, approval and construction of all bulk services required for this Development, which shall comply with the standards as set out in this Agreement.

### **5.2. BULK ROADS**

- 5.2.1. The DEVELOPER undertakes to construct the two access entrances off Grimthorpe Avenue in accordance with the recommendation of the Transportation Department of the MUNICIPALITY.
- 5.2.2. The DEVELOPER shall be responsible, at its own cost for the design and construction of the upgrade of the two access entrances, referred to in 5.2.1 as determined by the MUNICIPALITY.

### **5.3. BULK STORMWATER MANAGEMENT**

- 5.3.1. The DEVELOPER undertakes to manage all stormwater runoff from the PROPERTY in such a way as to minimise the impact on existing external riverine systems and in this regard to implement the following measures;

- 5.3.1.1. engineering designs will ensure that the numerous sub-catchments are not materially altered and will continue to drain into the existing defined watercourses; and
- 5.3.1.2. ensure maximum retention of stormwater run-off in both road and landscaped structures to permit controlled discharge into the existing catchments.
- 5.3.2. The DEVELOPER shall, at its own cost, be required to appoint a Registered Professional to undertake the design and supervision of the abovementioned stormwater management system to the satisfaction of the MUNICIPALITY's Roads, Transportation and Public Works Sub-Unit as well as its Environmental Sub-Unit.

#### **5.4. BULK WATER**

- 5.4.1. The MUNICIPALITY confirms that there is a Bulk water supply to serve the Development. The following specific requirements shall apply in this regard :
  - 5.4.1.1. The MUNICIPALITY has determined that a connection can be provided from the existing water reticulation along Grimthorpe Avenue;
  - 5.4.1.2. The DEVELOPER shall, at its own cost, design (to the approval of the MUNICIPALITY), and construct the link watermain from the Development to the bulk watermain of the MUNICIPALITY.
  - 5.4.1.3. The DEVELOPER shall apply to the MUNICIPALITY for the connection of the link watermain into the bulk watermain along Grimthorpe Avenue, which the MUNICIPALITY will do at the cost of the DEVELOPER.

5.4.1.4. The MUNICIPALITY undertakes to provide the bulk connection within 30 days after receiving payment for the bulk water connection.

5.4.2. A Bulk water meter shall be installed by the MUNICIPALITY at the boundary of the Development at the take off point from the Bulk Supply.

## **5.5. BULK SEWERAGE**

5.5.1. The DEVELOPER has agreed with the MUNICIPALITY's Sewerage Unit to tie into the existing sewer reticulation.

5.5.2. The MUNICIPALITY shall be responsible for the connection of the new sewer reticulation into the municipal system, at the cost of the DEVELOPER.

5.5.3. The MUNICIPALITY undertakes to complete the sewer connection with 30 days after receiving payment from the DEVELOPER.

## **5.6. BULK ELECTRICITY**

5.6.1. The MUNICIPALITY's Electricity Unit has determined that the necessary electricity supply can be made available to the Development.

5.6.2. The DEVELOPER shall negotiate with MUNICIPALITY's Electricity Unit regarding the costs of providing the electrical connection to the boundary of the PROPERTY.

## **5.7. REFUSE COLLECTION AND FIRE SERVICES**

5.7.1. The MUNICIPALITY agrees, subject to the normal charges, to provide all refuse collection and fire services to the Development in accordance with its ordinary practice and its Bylaws. In the event



that the DEVELOPER requires more frequent or additional services in that regard, the parties agree to negotiate for an increased level of service against suitable remuneration to the MUNICIPALITY.

The refuse collection will apply to domestic and commercial refuse and (if relevant) garden refuse, but will exclude builder's rubble, as well as any hazardous waste.

## **6. LINK SERVICES**

### **6.1. ROADS AND STORMWATER DRAINAGE**

6.1.1. The DEVELOPER, at its own cost, shall be responsible for the design and construction of any properly surfaced link road/s with associated adequate stormwater drainage system/s that is/are required to link the bulk road network system to the internal road network system, in accordance with Clause 3.1 above.

### **6.2. WATER**

6.2.1. The DEVELOPER shall be responsible for the design and construction cost of any water supply pipeline (excluding that of the actual connection pipe and bulk meter) that may be required to link the Development to the municipal water reticulation system in accordance with 3.1 above. On payment of the prescribed fee, the MUNICIPALITY will carry out the actual connection work within 30 days.

### **6.3. SEWERAGE**

6.3.1. The DEVELOPER shall be responsible for the design and construction cost of any sewer pipeline (excluding that of the actual connection pipe) that may be required to link the Development to the municipal sewerage reticulation system in accordance with 3.1

above. On payment of the prescribed fee, the MUNICIPALITY will carry out the actual connection work within 30 days.

#### **6.4. ELECTRICITY**

6.4.1. The DEVELOPER shall liaise with the MUNICIPALITY's Electricity Unit to link the bulk electricity supply to the internal electrical reticulation system.

### **7. INTERNAL SERVICES**

#### **7.1. GENERAL**

7.1.1. The Internal Services comprise of Private Services that are to be constructed by the DEVELOPER, at its own costs, to Municipal standards. The Private Services are to be designed and constructed by the DEVELOPER's Registered Professional to an appropriate operational level in order to cater for the anticipated sewage and stormwater volumes for a twenty year serviceable design life. Notwithstanding the provisions of 7.2 to 7.6 below, the MUNICIPALITY shall be entitled to contribute towards the cost of upgrading the internal infrastructure in order to provide increased capacity to meet the MUNICIPALITY's requirements, and in that event the DEVELOPER shall be obliged to construct such upgraded infrastructure, provided that the DEVELOPER's Development programme is not adversely affected.

#### **7.2. INTERNAL ROADS**

7.2.1. All private internal roads shall be built by the DEVELOPER at its own cost, in accordance with Clause 3.2 above.

#### **7.3. INTERNAL STORMWATER DRAINAGE**

- 7.3.1. The DEVELOPER shall be responsible for the construction of an adequate Private Stormwater management system within the Development. The Stormwater management system is to be designed by a Registered Professional in accordance with the provisions of Clauses 3.2 and 5.3 above, and shall incorporate Private on-site attenuation measures which shall be maintained by the DEVELOPER and the Property Owners Association / Body Corporate in perpetuity.

#### **7.4. INTERNAL WATER RETICULATION**

- 7.4.1. The DEVELOPER shall be responsible, at its own cost, for the provision of the Private internal water reticulation required to supply each erf, including individual water meters, within the Development with an adequate supply of water, in terms of both flow and pressure, for both normal daily consumption as well as for fire fighting requirements, in accordance with the provisions of Clause 3.2 above and 7.8.1 below.

#### **7.5. INTERNAL SEWERAGE RETICULATION**

- 7.5.1. The DEVELOPER shall be responsible, at its own cost, for the provision and construction of all Private internal sewerage reticulation serving each erf within the Development in accordance with Clause 3.2 above, including the connection of each erf onto the private sewer system.

#### **7.6. INTERNAL ELECTRICITY RETICULATION**

- 7.6.1. The DEVELOPER shall be responsible, at its own cost, for the provision of the internal electricity reticulation required to supply each erf within the Development with an adequate electricity

supply, in accordance with the provisions of Clause 3.2 above, including the connection of each erf.

## **7.7. INTERNAL STREET LIGHTING**

7.7.1. The DEVELOPER, at his cost, shall install street lighting, as required.

## **7.8. FIRE SERVICES**

7.8.1. The DEVELOPER shall, at its own cost, provide fire fighting infrastructure and equipment on the Private internal water reticulation network within the Private Roads, as well as on each erf, all to the specification and satisfaction of the Municipality's Fire Services Unit.

7.8.2. The fire fighting infrastructure and equipment on each erf are to be maintained by the Property Owners' Association / Body Corporate.

## **8. MAINTENANCE OF INTERNAL SERVICES**

### **8.1. ROADS**

8.1.1. The Property Owners Association / Body Corporate shall be responsible for the operation and maintenance of the private roads after the expiration of the 12 month defects liability period.

### **8.2. STORMWATER DRAINAGE**

- 8.2.1. The Property Owners Association / Body Corporate shall be responsible for the operation and maintenance of the private storm water reticulation and swales / attenuation ponds after the expiration of the 12 month defects liability period.

### **8.3. WATER**

- 8.3.1. The Property Owners Association / Body Corporate shall be responsible for the operation and maintenance of the private water reticulation after the expiration of the 12 month defects liability period.

### **8.4. ELECTRICITY AND STREET LIGHTING**

- 8.4.1. The DEVELOPER shall negotiate with the MUNICIPALITY for the maintenance of electricity reticulation within the Development.

### **8.5. CONSERVATION AND WETLAND AREAS**

- 8.5.1. The Property Owners Association / Body Corporate shall be responsible for the management and maintenance of any conservation, rehabilitated wetland areas and common property within the Development.

### **8.6. FIRE SERVICES**

- 8.6.1. The maintenance of the fire fighting infrastructure and equipment within the Private internal roads shall be the responsibility of the Property Owners Association / Body Corporate and those within the individual erven shall be the responsibility of the individual owner.

## **9. ENVIRONMENTAL REQUIREMENTS**

- 9.1.1. All requirements of the Record of Decision (RoD) issued by DAEARD must be strictly adhered to by the DEVELOPER, including future tenants, Developers and/or land owners.
- 9.1.2. All requirements of the Environmental Management Plan (EMPr) must be implemented by the DEVELOPER, under supervision of the ECO during the pre-construction, construction and post-construction phases of the development.
- 9.1.3. An independent Environmental Compliance Officer (ECO) must be appointed to monitor compliance with the Construction Phase of the EMPr. The ECO is required to submit copies of Environmental Audit Reports to the Environment Unit of the MUNICIPALITY.
- 9.1.4. The DEVELOPER is required to implement the Operational Phase EMP in consultation with the Environment Unit of the MUNICIPALITY.
- 9.1.5. The Property Owners Association / Body Corporate shall manage and maintain the green open spaces including wetland areas and associated buffers.

## **10. BUILDING PLANS**

- 10.1.** Building Plans must be submitted and approved by the MUNICIPALITY in terms of the National Building Regulations prior to any building work commencing on site.

## **11. INDEMNITY**

- 11.1.** The DEVELOPER, or where applicable, the Property Owners Association / Body Corporate, hereby indemnifies the MUNICIPALITY against any damage to internal roads which may be caused by any Municipal or municipal Contractors' vehicles entering the PROPERTY for

purposes relating to the provision, inspection, maintenance or repair of Municipal services.

**11.2.** Notwithstanding any clauses to the contrary, the DEVELOPER guarantees that the Development shall take place in accordance with this Agreement and all applicable standards, guidelines or legislation which applicable standards, guidelines or legislation are incorporated into and form part of this agreement. The DEVELOPER accordingly indemnifies and holds the MUNICIPALITY, its employees, contractors or agents harmless against any claims or damages, whether in contract, *delict* or other *causa*, whether arising from or related to its direct or indirect non-compliance with this clause and whether or not instituted or suffered by the DEVELOPER or any other third party.

**11.3.** It is expressly recorded that the Development takes place at the sole risk of the DEVELOPER. The MUNICIPALITY does not make any representations regarding its geotechnical, economical, legal or technical viability, sustainability or suitability. The MUNICIPALITY shall not be liable for any misrepresentation made by its employees, contractors or agents, whether such misrepresentation was made negligently or not. Where the MUNICIPALITY will be responsible for the granting of any statutory consent necessary for the Development, it shall consider the granting of such consent strictly on merit and subject to all due processes.

## **12. SECURITY FOR PERFORMANCE AND INSURANCE**

**12.1.** The DEVELOPER undertakes not to do anything that would potentially lead to or in fact constitute a failure to comply with or a contravention of the Act. Without detracting from the generality of this obligation, the DEVELOPER shall not do anything to facilitate, promote or affect the registration of ownership of land in the Development contrary to the

requirements of the Act. The DEVELOPER accordingly indemnifies the MUNICIPALITY against any claims that may arise from or be attributed to a breach of this clause and any costs that the MUNICIPALITY may reasonably incur to enforce compliance with this clause.

**12.2.** Should the DEVELOPER;

12.2.1. Allow a judgement to be taken against it and allow same to remain unsatisfied for a period of 14 (fourteen) days thereafter; and/or

12.2.2. attempt to sell, alienate, hypothecate, mortgage or pledge any of its assets without the prior written consent of the MUNICIPALITY, save and except in the ordinary course of business; and/or

12.2.3. cause or allow a situation to arise wherein the MUNICIPALITY in its sole discretion considers its position in any way prejudiced or threatened either now or at any time in the future, then and in any such event, the MUNICIPALITY shall, without prejudice to any other rights which it may have at law and which rights are strictly reserved, be entitled to cancel this agreement in which case the DEVELOPER shall have no further claims against the MUNICIPALITY.

12.2.4. The DEVELOPER shall at its own cost contract for and take out such insurances as may be necessary to sufficiently protect and safeguard its own and the MUNICIPALITY's interests. Such insurances shall be subject to the written approval of the Chief Financial Officer (Acting) of the MUNICIPALITY.



### **13. BREACH**

**13.1.** In the event of any party breaching any of its obligations under this agreement and failing to remedy such breach within a period of 21 days from receipt of written notice from the aggrieved party calling upon it to do so, the aggrieved party shall, without prejudice to any of its rights, be entitled to claim specific performance, or by giving written notice to the defaulting party, to cancel this agreement and, in either event, to claim such damages as it may thereby have suffered.

### **14. DOMICILIA**

**14.1.** For the purposes of this agreement the parties choose their respective domicilium *citandi et executandi* as follows –

THE MUNICIPALITY – 333 Church Street, Pietermaritzburg, 3201

THE DEVELOPER – PO Box 525, Pietermaritzburg, 3200

### **15. CESSION/TRANSFER OF RIGHTS AND OBLIGATIONS**

The DEVELOPER may not cede or transfer any rights or obligations on the same terms of this agreement to a third party, save with the prior written consent of the MUNICIPALITY.

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018, in the presence of the undersigned witnesses:

AS WITNESSES:

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

2. \_\_\_\_\_

\_\_\_\_\_

for and on behalf of the MUNICIPALITY

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018, in the presence of the undersigned witnesses:

AS WITNESSES:

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

2. \_\_\_\_\_

\_\_\_\_\_

for and on behalf of the DEVELOPER

**SCHEDULE 1**

**RESOLUTION BY THE MSUNDUZI MUNICIPALITY**

**DRAFT**

**SCHEDULE 2**

**RESOLUTION BY THE DEVELOPER**

DRAFT

**SCHEDULE 3**

**LAYOUT PLAN**

DRAFT