



## STUDENT RESIDENCE FIXED TERM CONTRACT WESTWOOD ESTATE: SHARED ACCOMMODATION

Between:

**SPENCER-GORE DEVELOPMENTS (PTY) LTD Registration No 1996/012796/07 /**

**WESTWOOD JOINT VENTURE TRUST Registration No IT341/2012/PMB**

hereinafter represented by **LANCE GORE / JOAN WINGATE-PEARSE**, they being duly authorised hereto by a resolution of Directors / Trustees

(the "OWNER")

of

Postal Address: P.O. Box 803 Umhlanga Rocks, 4320

Physical Address 12 Grace Avenue, Westville, 3630

and

**Name:** \_\_\_\_\_

**Identity No** \_\_\_\_\_ (the "OCCUPANT")

**Name:** \_\_\_\_\_

**Identity No** \_\_\_\_\_ (the "GUARDIAN")

Postal Address: \_\_\_\_\_ Code \_\_\_\_\_

Physical Address \_\_\_\_\_

Tel: \_\_\_\_\_ (Student) \_\_\_\_\_ (Guardian)

Email: \_\_\_\_\_ (Student) Email: \_\_\_\_\_ (Guardian)

(the "OCCUPANT")



## SCHEDULE

1.2 DWELLING: Means a 5-bedroom or 8-bedroom dwelling of which the PREMISES form part.  
\*Shared Room, \*Single Room, \*Studio within the DWELLING

*(delete if not applicable)*

1.3 LODGE NAME and BEDROOM NO: \_\_\_\_\_

1.4 PERIOD: This Contract shall commence on 1 February 2019 and shall, subject to the provisions hereof, continue for a period of 11 calendar months terminating on the 31 December 2019

1.5 MONTHLY FEE: R..... (See Payment Policy – Annexure “A”)

1.6 DEPOSIT R.....

## 2 INTERPRETATION

2.1 In this contract, unless otherwise indicated by the context:

2.1.1 “ACT” means the housing Consumers Protection Act of 1998 Registration number 2007/029481/08

2.1.2 “ASSOCIATION” means the Westwood Estate Homeowners’ Association (RF) NPC (Registration No. 2007/029481/08);

2.1.3 “BEDROOM” means the bedroom allocated to the OCCUPANT in the PREMISES, which bedroom is referred to in 1.3 of the SCHEDULE;

2.1.4 “CO-OCCUPANTS” means the other persons who shall share occupation of the PREMISES with the OCCUPANT, which occupants shall be selected by the OWNER in its sole and absolute discretion subject to the provisions of this Contract and subject to a maximum of 10 (TEN) persons in a 5 (FIVE) five-bedroom DWELLING and 16 (SIXTEEN) persons in an 8 (EIGHT) bedroom DWELLING;

2.1.5 “DATE OF SIGNATURE” means the date of signature of this Contract by the last signing of the OCCUPANT or the OWNER;

2.1.6 “ESTATE” means the Westwood Estate, which has been laid out on an immovable property described as Erf 3 Garden Park No 15308, and all subdivisions thereof;



- 2.1.7 "GUARANTOR" means the party who signs as guarantor at the end of this Contract and who is standing surety, in favour of the OWNER, for the obligations of the OCCUPANT in terms of this contract.
- 2.1.8 "PREMISES" means contracted premises referred to in paragraph 1.3 of the SCHEDULE;
- 2.1.9 "RULES" means the rules of both the ASSOCIATION and the House Rules of the PREMISES (a copy of which is attached hereto marked Annexure "B");
- 2.1.10 "SCHEDULE" means the schedule set out in paragraph 1 of the Contract;
- 2.1.11 "MOVABLES" means the furniture, fittings, kitchen utensils and other items listed in Annexure "C" hereto;
- 2.1.12 The respective parties are designated as set out in brackets after their respective names in the heading to this contract;
- 2.1.13 Clause headings in this contract are for convenience only and shall not be taken into account in the interpretation hereof;
- 2.1.14 In this Contract shall be interpreted and applied according to the South African laws;
- 2.1.15 In this Contract, words importing a particular gender shall be deemed to include the other genders, words importing natural persons shall be deemed to include corporate bodies and associations of persons, and words importing the singular shall be deemed to include the plural, and *vice versa*.
- 2.1.16 Any reference to any statute, legislation or regulations shall be deemed to include any lawful amendments thereto or re-enactments thereof;
- 2.1.17 Where a number of days are prescribed, they shall consist of all days (i.e. including Saturday, Sunday and Public Holidays) and shall exclude the first day and include the last day;
- 2.1.18 Where an expression has been defined and such definition contains a provision conferring rights or imposing obligations on any party, effect shall be given to that provision as if it were a substantive provision contained in the body of this Contract;
- 2.1.19 If a number is referred to in numerals and words, the words shall prevail in the event of any conflict between the two;
- 2.1.20 In interpreting this Contract, no provision shall be construed in a limiting fashion or in accordance with Eiusdem Generis Rule (i.e. a specific provision on any particular issue in this Contract shall not be deemed to be detracting from, or limiting, a general provision in this Contract on the same issue);
- 2.1.21 If any provision of this Contract is unenforceable for any reason whatsoever, such provision shall be deemed to be separate and severable from this Contract, without in any way effecting the validity of the remaining provisions of this Contract;



- 2.1.22 This Contract shall be governed by and construed according to the Laws of the Republic of South Africa;
- 2.1.23 The expiration or termination of this Contract shall not affect those provisions of this Contract which expressly provide that they will operate after any such expiration or termination or, which out of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the paragraphs do not expressly provide this;
- 2.1.24 To the extent that the Contract is signed on a date which results in the use of any tense being inappropriate, the Contract shall be read in the appropriate tense;
- 2.1.25 A fully executed facsimile or email copy of this Contract shall be accepted as an original and this Contract may be signed in counterparts and will be effective as such, each of which will be deemed an original and all of which together shall constitute one and the same Contract as at the date of signature of the party last signing one of the counterparts;
- 2.1.26 This Contract shall be binding on and enforceable by the administrators, trustees, successors in title, successors in office, assigns or liquidators of the parties as fully and effectually as if they had signed this Contract in the first instance and reference to any party shall be deemed to include such party's administrators, trustees, successors in title, successors in office, assigns or liquidators, as the case may be;
- 2.1.27 This Contract incorporates the annexures (if any), which annexures shall have the same force and effect as the provisions set out in the body of this Contract. The various documents forming part of this Contract are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in the main body of the Contract will prevail.

### 3. RECORDAL

It is recorded that:

- 3.1 The DWELLING consists of a 5 (FIVE) bedroom dwelling, maximum of 10 (TEN) persons OR an 8 (EIGHT) bedroom dwelling maximum of 16 (SIXTEEN) persons which has been fully fitted and furnished by the OWNER with the items listed in Annexure "C" hereto;
- 3.2 The OWNER will give occupation of the PREMISES individually to a maximum of 10 (TEN) persons in a 5 (FIVE) bedroom DWELLING or 16 (SIXTEEN) persons in an 8 (EIGHT) bedroom DWELLING who shall jointly occupy the PREMISES with 1 (ONE) or 2 (TWO) persons occupying each of the bedrooms.
- 3.3 The OWNER has agreed to let the OCCUPANT hire, the PREMISES on the aforesaid basis and on the terms and conditions set out hereunder.

### 4 CONTRACT

- 4.1 The OWNER lets to the OCCUPANT who takes on hire the PREMISES.



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5 **PERIOD**

The period of this contract shall be as per paragraph 1.4 of the SCHEDULE.

6 **MONTHLY FEE**

6.1 The monthly fee recorded in 1.5 of the SCHEDULE shall be paid **monthly in advance by the first day of each and every month** by the OCCUPANT to the OWNER, without deduction, demand or set-off, in the manner prescribed in paragraph 6.2 below. **PLEASE SEE ANNEXURE "A" - PAYMENT POLICY which is applicable to this contract.**

\*6.2 The OCCUPANT shall make payment by means of Electronic Funds Transfer (EFT) into the OWNER'S bank account, the details of which are as follows, namely:

Bank	ABSA
Account Holder	Property Payment Solutions (Pty) LTD
Branch	Corporate and Investment Banking
Account Number	4085417363
Branch Code	632005
Swift Code	ABSAZAJJ
Payment Reference:	Student Name and Surname 2019 (Example: <b>Zuzi Shandu 2019</b> )

or such other bank account as the OWNER may, from time to time, nominate in writing to the OCCUPANT.

\*6.3 The \*OCCUPANT/GUARANTOR shall be required to pay the aforesaid monthly fee by way of a Debit Order from an account with a registered South African commercial bank. In this regard, the \*OCCUPANT/GUARANTOR shall complete and sign the Debit Order attached hereto marked Annexure "D".

**\*Delete that which is not applicable**

7 **WITHHOLDING OF PAYMENTS**

The OCCUPANT shall not be entitled to withhold or delay payment of any amounts due to the OWNER in terms of this Contract and the OCCUPANT hereby abandons all or any rights of set-off.



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## 8 CANCELLATION POLICY

### 8.1 PRIOR TO OCCUPATION

8.1.1 If the OCCUPANT cancels due to institution rejection for study prior to occupation a rejection letter from the institution or university on the institution's letterhead will need to be provided as proof thereof. The Administration fee paid by the OCCUPANT will not be refunded. The deposit will be refunded only if a rejection letter from the institution is provided. A change of mind or personal circumstance is not considered grounds for cancellation.

8.1.2 If the OCCUPANT elects to cancel without providing a rejection letter from the institute of study, the Administration fee and deposit paid by the OCCUPANT will not be refunded.

### 8.2 CANCELLATION POLICY AFTER OCCUPATION

8.2.1 If the OCCUPANT cancels after having taken occupation the administration fee and deposit will not be refunded. In addition, the OWNER shall be entitled to claim a reasonable penalty of no less than 3 (THREE) calendar month's accommodation fee over and above the administration fee and deposit.

## 9 USE OF THE PREMISES

9.1 The OCCUPANT shall use the PREMISES solely and exclusively as a private dwelling and for no other purposes whatsoever.

9.2 The OCCUPANT shall have use of the BEDROOM together with 1 (ONE) other person of the same gender, selected by the OWNER in its sole and absolute discretion.

9.3 The OWNER reserves the right, at any time or for any reason, to select an alternative PREMISES for the OCCUPANT in its sole and absolute discretion.

9.4 The OCCUPANT shall have use of the balance of the DWELLING (excluding the bedrooms), together with the CO-OCCUPANTS. The OCCUPANT undertakes in using the PREMISES to do in accordance with the provisions of this Contract (and, in particular, the House Rules of the PREMISES attached hereto marked Annexure "B").

9.5 The OCCUPANT shall ensure that any visitor of the OCCUPANT, if permitted to the PREMISES, in no way inconveniences, troubles or interferes with the CO-OCCUPANTS or their property and complies with the RULES in every respect. The owner reserves the right to restrict or refuse entry to any visitor, or to all visitors, at his sole discretion and at any time without notice.



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## 10 OBLIGATIONS OF THE OCCUPANT

- 10.1 The OCCUPANT and the OWNER shall jointly, before the OCCUPANT moves into the PREMISES, inspect the PREMISES to ascertain the existence, or not, of any defects or damages therein. The OWNER may, at his election, rectify such defects or damages (if any) failing which such defects or damages shall be reduced to writing and signed by both the OWNER and the OCCUPANT and be annexed to this contract as contemplated in Section 5(7) of the ACT. It is recorded that the inspection referred to is required and is to be carried out in terms of Section 5(3)(e) of the ACT.
- 10.2 Shall, save for the defects listed in 10.1 above (if any) jointly with the CO-OCCUPANTS, keep the PREMISES in good, secure, clean and thoroughly habitable order and condition to the satisfaction of the OWNER and, on termination of this contract, shall restore the PREMISES to the OWNER in the same good order and condition as that in which they were at the commencement of this contract, fair wear and tear only excepted.
- 10.3 Shall not cede or assign this contract nor sub-let nor permit anyone else (other than the CO-OCCUPANTS) to occupy the PREMISES or any part thereof.
- 10.4 Shall not, alter or make any alterations to the PREMISES of any nature whatsoever.
- 10.5 Shall not drive screws or nails into fixtures, fittings, ceilings, walls, doors or floors of the PREMISES nor deface the same.
- 10.6 Shall not erect any antenna on the roof or walls of the property nor allow any such antenna to protrude from any window of the DWELLING.
- 10.7 Shall not fix or install fixtures or fittings such as blinds, sun shades, lighting equipment, air conditioning equipment or fitted fans. The OCCUPANT shall furthermore not be allowed to remove such items already installed in the DWELLING.
- 10.8 Shall hang washing, clothing and carpets only in the area specifically designated therefore on the PREMISES.
- 10.9 Shall not be entitled to hold any auction sale, meetings or other public gatherings or the like, on the PREMISES;
- 10.10 Shall not do nor permit to be done anything upon the PREMISES, which shall be a breach of the Law including any Statute, Ordinance or Municipal or other by-law affecting the PREMISES.
- 10.11 Shall responsible for making of bed, cleaning of bedroom and maintaining in clean order allocated bedroom and shall keep the common areas clean and tidy by cooking cleanly and hygienically and washing pots, pans, crockery and cutlery immediately after use.
- 10.12 Without derogating from the generality of the provisions of 10.11, shall:-



- 10.12.1 Comply with all sanitary by-laws affecting the PREMISES, and shall jointly with the CO-OCCUPANTS, keep and maintain all plumbing, sanitary and sewerage equipment and connections in good working order and condition;
- 10.12.2 Keep and maintain in good order and condition all locks, keys fasteners and conveniences, windowpanes, plate glass, electrical and mechanical installations, doors, partitions, flooring, plastering and finishings of all descriptions;
- 10.12.3 Not bring onto the PREMISES any timber or other material, which is infested with any wood boring or destroying or other insect pest of any kind. In the event of the OCCUPANT being in breach of this clause, the OWNER shall be entitled, in addition to, and without prejudice to, any other rights hereunder or at law, to call upon the OCCUPANT forthwith to cause the PREMISES and improvements on the PREMISES to be fumigated and treated for such insect infestation to the satisfaction of any authority on pest control approved by the OWNER, and to restore any part of the PREMISES which may have been infested or damaged.
- 10.12.4 Not permit the storage of any article on the PREMISES, which may result in the insurance premiums in respect of any insurance of the PREMISES being increased;
- 10.12.5 Not permit anything to be done which may result in any insurance policy held by the OWNER for the time being in respect of the PREMISES being rendered void or voidable.
- 10.13 Undertakes and shall be obliged, with effect from the date of commencement of the contract, to abide by RULES, which the OCCUPANT acknowledges he has read and understood. The OCCUPANT shall ensure that his visitors to the PREMISES, in every respect, comply with the provisions of this contract and the RULES and any damage caused to the PREMISES or the ESTATE, by any of the OCCUPANT'S visitors, shall be deemed to be the actions of the OCCUPANT for the purposes of this Contract;
- 10.14 Shall not allow any animals, reptiles, fish or other pets on the PREMISES and;
- 10.15 Shall inform the OWNER in writing immediately the OCCUPANT becomes aware that she is pregnant and in such instances this contract shall terminate at the end of the calendar month in which the OCCUPANT is five months pregnant (the OCCUPANT acknowledging and agreeing that the accommodation provided in terms of the contract, and in particular, in light of the fact that the BEDROOM is to be shared with another person, is not suitable for a person in an advanced stage of pregnancy).

## 11 OWNER'S RIGHTS AND OBLIGATIONS

The OWNER

- 11.1 And his agents shall be entitled to enter upon the PREMISES at all reasonable times for the purpose of inspecting the PREMISES or showing the PREMISES to any prospective OCCUPANT.





11.2 And his workmen, caretaker or agents shall be entitled, at all reasonable times, to enter into or upon the PREMISES to do and carry on any work that may be required to be done to the PREMISES and to make improvements thereto without hindrance or interference on the part of the OCCUPANT, and the OCCUPANT shall not be entitled to claim any reduction or remission of monthly fee by reason of the exercise by the OWNER of his rights hereunder.

11.3 Shall keep and maintain the exterior of the PREMISES in good order and condition; shall have the PREMISES serviced twice a week (which service shall consist of only sweeping of the common living room floors, cleaning of windows and bathrooms and emptying of bins, however, which shall specifically exclude the washing of dishes and the making of beds).

## 12 **DESTRUCTION OR DAMAGE TO PREMISES**

12.1 Should the PREMISES be destroyed or damaged, through no fault of the OCCUPANT, to any extent which renders the PREMISES substantially untenable, either party shall have the right within 14 (fourteen) days of the occurrence of the event causing such destruction or damage to declare this Contract cancelled, in which event the OCCUPANT shall have no claim of whatever nature against the OWNER as a result of such destruction, damage, cancellation or termination.

12.2 Should a dispute arise between the OWNER and the OCCUPANT in respect of any matter arising out of 12.1 including any dispute as to any interpretation or application of 12.1, then such dispute shall be settled by the OWNER's attorney or architect, acting as an expert and not as an arbitrator, whose decision shall be final and binding on both parties.

## 13 **BREACH**

Should the OCCUPANT fail to make payment of any amount due in terms of this Contract or commit any breach of any of the terms and conditions of this Contract and fail to remedy such breach within 7 (seven) days of the posting of written notice to do so, the OWNER shall have the right to cancel this Contract forthwith without notice to the OCCUPANT and without prejudice to the OWNER's claim for the arrear fee, damages or otherwise and further without prejudice to the OWNER's rights to enforce specific performance or fulfilment of any of the terms and conditions of this Contract which may have been breached by the OCCUPANT or otherwise and the OWNER shall have the right to take whatever action may be necessary for the immediate ejection of the OCCUPANT from the said PREMISES, without prejudice to the OWNER's rights to claim any monthly fee already due and such further damages as the OWNER may sustain or may have sustained by the reason of the OCCUPANT's breach of the terms and conditions of the contract, including any legal charges or whatever nature in connection therewith.



## 14 **HOLDING OVER**

In the event of the OWNER cancelling this contract and the OCCUPANT disputing the OWNER's right to do so and remaining in occupation of the PREMISES, the OCCUPANT shall, pending the determination of such dispute by litigation or otherwise, continue to pay to the OWNER an amount equivalent to the monthly fee and other sums payable hereunder on the date or dates on which such sums would have been due but for the cancellation, and the OWNER shall be entitled to accept and recover such payments. The acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect the OWNER's cancellation. Should the dispute be determined in favour of the OWNER, the payments made and received in terms of this clause shall be deemed to be amounts paid by the OCCUPANT on account of damages suffered by the OWNER by reason of the cancellation of the contract and/or unlawful holding over by the OCCUPANT.

## 15 **DOMICILIUM**

15.1 Any notice to be given by either party to the other in terms of or for the purposes of this Contract shall be in writing and shall be delivered or sent by prepaid registered post and addressed:-

15.1.1 To the OCCUPANT at the PREMISES

15.1.2 To the OWNER at the address referred to at the heading of this Contract or such other address as the OWNER may from time to time notify the OCCUPANT in writing which addresses the OCCUPANT and the OWNER choose as their respective domicilia citandi et executandi.

15.2 Any notice or communication required or permitted to be given in terms of this Contract shall be valid and effective only if in writing.

15.3 Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis a vis that party to another physical address in the Republic of South Africa, provided that the change shall become effective vis a vis that address on the 7<sup>th</sup> business day from the deemed receipt of the notice by the addressee.

15.4 Any notice to a party.

15.4.1 Sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have been received on the 7<sup>th</sup> business day after posting (unless the contrary is proved); or

15.4.2 Delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.



- 15.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen domicilium citandi et executandi.
- 16 **DEPOSIT**
- 16.1 The OCCUPANT shall, on signing hereof, pay the deposit stipulated in clause 1.5 of the SCHEDULE to the OWNER. The OWNER shall have right to apply the whole or any portion of the deposit towards payment of any liability of whatsoever nature for which the OCCUPANT is responsible. If the whole or any portion of the deposit is so applied, the OWNER shall notify the OCCUPANT in writing and the OCCUPANT shall immediately reinstate the deposit to its original amount.
- 16.2 The deposit shall be invested by the OWNER in an interest-bearing account with a financial institution and the OWNER shall, subject to the proviso set out hereunder, pay the OCCUPANT interest at the rate applicable to such account which interest shall not be less than the rate applicable to a savings account with a financial institution. The OCCUPANT may, during the period of the contract, request the OWNER to provide him with written proof in respect of interest accrued on such deposit.
- 16.3 At the expiration of the contract, the OWNER and the OCCUPANT shall arrange a joint inspection of the PREMISES at a mutually convenient time to take place within a period of three days prior to the expiration, with a view to ascertaining if there was or is any damage caused to the PREMISES during the OCCUPANT's occupation thereof.
- 16.4 At the expiration of the contract, the OWNER may apply such deposit and interest towards the payment of all amounts for which the OCCUPANT is liable under this contract, including, but not being limited to, the reasonable cost of repairing damage to the PREMISES during the contract period and the cost of replacing lost keys. The balance of the deposit and interest, if any, shall then be refunded to the OCCUPANT by the OWNER by not later than thirty days of expiration of contract.
- 16.5 The relevant receipts which indicate the costs which the OWNER incurred, as contemplated in 16.4 above, shall be available to the OCCUPANT for inspection on request, as proof of such costs incurred by the OWNER.
- 16.6 Should no amounts be due and owing to the OWNER in terms of the contract, the deposit, together with accrued interest in respect thereof, shall be refunded by the OWNER to the OCCUPANT, without any deduction or set off, within thirty days after expiration of the contract.
- 16.7 Should the OWNER elect not to inspect the PREMISES in the presence of the OCCUPANT, as contemplated in paragraph 16.3 hereof, is deemed to be an acknowledgement by the OWNER that the PREMISES is in a good state of repair, and the OWNER will have no further claim against the OCCUPANT who must then be refunded the full deposit, together with interest by the OWNER within fourteen days of expiration.



- 16.8 Should the OCCUPANT fail to respond to the OWNER's request for an inspection, as contemplated in 16.3 above, the OWNER shall, on expiration of the contract, inspect the PREMISES within seven days from such expiration in order to assess any damages or loss which occurred during the tenancy. The OWNER may in such circumstances, without detracting from any other right or remedy, deduct from the OCCUPANT's deposit and interest, the reasonable costs of repairing damage to the PREMISES and the costs of replacing lost keys and the like. The balance of the deposit and interest, if any, after deduction of the amount contemplated herein, shall then be refunded to the OCCUPANT by the OWNER not later than twenty-one days after expiration of the contract. The relevant receipts, which indicate the costs, which the OWNER incurred, as contemplated herein, shall be available to the OCCUPANT for inspection as proof of such costs incurred by the OWNER.
- 16.9 For the purposes of this clause 16, should the OCCUPANT vacate the PREMISES before the expiration of the contract, without notice to the OWNER, the contract shall be deemed to have expired on the date the OWNER established that the OCCUPANT has vacated the PREMISES but in such event, the OWNER shall retain all his rights arising from the OCCUPANT's breach of the contract.

## 17 **DISCLAIMER OF RESPONSIBILITY**

Notwithstanding anything to the contrary in this Contract contained:

- 17.1 The OWNER shall not under any circumstances be liable for any damage to or loss of any property to whomsoever it may belong which is upon the PREMISES or any injury to any person who might at any time be upon the PREMISES and the OCCUPANT hereby accepts responsibility for and indemnifies the OWNER and her employees or agents against any claim by any person in respect of any such damage, loss or injury.
- 17.2 The OCCUPANT hereby acknowledges that the OCCUPANT shall not under any circumstances have any claim or right of action whatsoever against the OWNER for damages, loss or otherwise, nor be entitled to withhold or defer payment of the fee by reason of the PREMISES being in defective condition or falling into disrepair.

## 18 **RATES, TAXES AND LEVIES**

The OWNER shall be responsible for the payment of rates in respect of the PREMISES to the eThekweni Municipality and the payment of the levy to the ASSOCIATION, for the duration of this contract.



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## 19 UTILITIES

- 19.1 It is recorded that the water supply and electricity supply to the PREMISES, (which is operated on a card system), shall be for the account of the OWNER provided that the use of same by the OCCUPANT and the CO-OCCUPANTS is reasonable (and the OWNER reserves the right to charge the OCCUPANT and the CO-OCCUPANTS equally, for any use of electricity and water in respect of the PREMISES, which the OWNER believes is excessive and unreasonable. By way of an example, if the use is higher than the combined average of all the houses and if this is due to the OCCUPANT AND CO-OCCUPANTS, such use will be deemed to be excessive and unreasonable).
- 19.2 The OWNER shall be liable for payment of any charges in respect of the PREMISES made by the eThekweni Municipality for the removal of refuse and waste and for the cost of water consumed in respect of the PREMISES.
- 19.3 Notwithstanding the aforesaid, the OCCUPANT shall ensure that his water and electricity usage on the PREMISES is at all times reasonable and does not become excessive.

## 20 MEMBERSHIP OF WESTWOOD ESTATE HOMEOWNERS ASSOCIATION (RF) NPC

It is hereby recorded that the OWNER is a member of the ASSOCIATION within the meaning of and subject to the conditions set out in the ASSOCIATION's Memorandum of Incorporation and the OCCUPANT and all persons deriving use of the ESTATE or any part thereof through him will, from the date of commencement of this contract, duly comply with all the obligations imposed upon members under the ASSOCIATION's memorandum of Incorporation.

## 21 WHOLE CONTRACT

- 21.1 This Contract constitutes the entire contract between the parties and the OCCUPANT acknowledges that the OCCUPANT has not relied upon any verbal representations or warranties made or given to the OCCUPANT by the OWNER or any of her agents, save insofar as such warranties or representations are set out herein.
- 21.2 No amendment, additions to, variation or consensual cancellation of this Contract shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

## 22 INDULGENCES

It is agreed that any indulgences shown, extension given or right waived whether relating to the payment of the monthly fee or any other matter or thing hereunder shall in no way operate as an estoppel against the OWNER, or in any way limit their rights hereunder or modify or alter the same,



and the OWNER shall be entitled at any time to exercise her rights hereunder as though no indulgence was shown, extension given or right waived.

## 23 COSTS

- 23.1 Each party shall bear its own costs incurred in connection with the preparation of this contract.
- 23.2 The OCCUPANT shall pay to the OWNER interest on any overdue amount, including, but in no way limited to overdue monthly fee, at a rate of 5 (FIVE PERCENTAGE POINTS) above the prime overdraft rate as quoted by the Standard Bank of South Africa Limited, from time to time, calculated from the due date of payment of such amount to the actual date of payment thereof, both days inclusive.
- 23.3 If the OCCUPANT should breach any terms of this Contract and the OWNER consults an attorney in regard thereto, all costs (including collection commission) of such attorney, on the attorney and own client scale, shall be refunded to the OWNER by the OCCUPANT irrespective of whether or not an action is instituted, or an application made.

## 24 CONSUMER PROTECTION ACT

Should the OCCUPANT have a right to cancel this contract, in terms of Section 14(2)(b)(i)(BB) of the Consumer Protection Act 68 of 2008 (hereinafter referred to as "the CPA"), and should the OCCUPANT exercise such right to cancel the contract prior to the expiry of same as envisaged in paragraph 1.3 of the SCHEDULE, then in that event, the OCCUPANT shall:

- 24.1 Be liable for all amounts due by the OCCUPANT to the OWNER, in terms of this contract, up to the date of such cancellation, which amount shall be paid by the OCCUPANT to the OWNER, without deduction set off to demand, on the date that the OCCUPANT so cancels the contract as aforesaid and
- 24.2 In addition, be liable to pay the OWNER a cancellation penalty (as envisaged in section 14(3)(b)(i) of the CPA), in an amount equal to the loss actually and reasonably incurred by the OWNER as a consequence of the aforesaid early cancellation of the contract by the OCCUPANT, provided that the OWNER shall make every reasonable effort to mitigate and minimise such loss (including, but in no way limited to, utilising its best endeavours to re-let the PREMISES as soon as possible in the circumstances). In no way detracting from the generality of the aforesaid, the loss suffered by the OWNER, shall include, inter alia,
- 24.3 An amount equal to the difference between the monthly fee( and other amounts) the OWNER was entitled to receive terms of the contract, had the OCCUPANT not cancelled same aforesaid, from the date of such cancellation by the OCCUPANT to the date of the expiry of the contract in terms of paragraph 1.3 of the SCHEDULE (hereinafter referred to as the "Effective Period") and the amount



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of monthly fee and such other amounts, actually received by the OWNER during the Effective Period. It is recorded that the aforesaid amount will include, inter alia, the following, namely:

- 24.3.1 The monthly fee for the period that the PREMISES remain vacant during the effective period;
- 24.3.2 Should the OWNER re-hire the PREMISES for a monthly fee lower than that referred to in paragraph 1.4 of the SCHEDULE, the difference between such monthly fees for the Effective Period and;
- 24.3.3 Other amounts that the OWNER is entitled to receive payment of in terms of this contract (e.g. levies, rates and municipal charges in respect of the PREMISES), which he is unable to recover and;
- 24.4 All wasted costs reasonably incurred by the OWNER in re-letting the PREMISES to a third party (which costs will include, inter alia, the costs of drafting and executing a new Contract, letting agents commission, costs of repainting and cleaning the PREMISES);
- 24.5 Interest on the aforesaid amounts from the date that such amounts became payable or were incurred by the owner until the amount in question is refunded by the OCCUPANT to the OWNER (both days inclusive) at a rate equal to the rate referred to in paragraph 23.2.

## 25. **PROTECTION OF RIGHTS**

- 25.1 If the OCCUPANT fails to comply with any obligations imposed upon it by this Contract, the OWNER shall, without prejudice to any other rights it may have, be entitled, but not obliged, to effect such compliance at the expense of the OCCUPANT and to recover the costs and expense of doing so from the OCCUPANT.
- 25.2 The OCCUPANT shall have no claim against the OWNER in defence of any claim by the OWNER arising out of any act or admission on the part of the OWNER connected with effecting or attempting to effect such compliance or, even if the OWNER has undertaken to effect such compliance, the OWNER failing to do so properly or at all.



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SIGNED by the OWNER at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES**

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

**WITNESS**

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

**WITNESS**

\_\_\_\_\_

**OWNER**

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SIGNED by the OCCUPANT at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**AS WITNESSES**

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

**WITNESS**

\_\_\_\_\_

**GUARDIAN**

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

**WITNESS**

\_\_\_\_\_

**OCCUPANT**





## GUARANTEE AND SURETYSHIP

.....  
(Full names)

of .....

(Full address)

hereby consent to the conclusion of this Contract and guarantee and bind myself as surety for and co-principal debtor in solidum with the OCCUPANT to the OWNER for the due and punctual fulfilment and discharge of all the conditions and obligations undertaken by the OCCUPANT to the OWNER pursuant to this Contract. I expressly renounce the benefits of the exceptions, revisions of accounts, no value received, and, where applicable, **de duobus vel pluribus reis debendi**, (i.e. the right of a co-debtor to claim that all the other co-debtors be joined in any action, each for her/his proportionate share of the debt in question), **ordinis seu excussionis** (i.e. that co-principal debtors shall first be excused) and **beneficium divisionis** i.e. (that there shall be a division of the debt between co-principal debtors), and I acknowledge I am fully acquainted with the contents of these exceptions and the effects of the renunciation thereof. No variation or amendment or novation of the Contract shall prejudice the suretyship obligation hereby undertaken, the object being that I shall, at all times, be liable as surety and co-principal debtor even if the Contract is varied or amended or novated and even if the OCCUPANT is granted an indulgence by the OWNER.

Signed by the GUARANTOR at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Guarantor

### AS WITNESSES :

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

Name:.....

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

Name: .....



## SCHEDULE OF ANNEXURES

ANNEXURE "A"	PAYMENT POLICY
ANNEXURE "B"	HOUSE RULES
ANNEXURE "C"	LIST OF MOVABLES
ANNEXURE "D"	DEBIT ORDER FORM