

# **MEMORANDUM OF AGREEMENT**

between

**HESSEQUA MUNICIPALITY**

and

**VIVREN PROPERTIES PTY LTD**

and

**PREEKSTOEL BEACH LIFESTYLE ESTATE**

**RESIDENTS' ASSOCIATION**

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**ANNEXURES**

**ANNEXURE "A": ENVIRONMENTAL AUTHORISATION DATED 06 FEBRAURY 2018**

**ANNEXURE "B" COPY OF GENERAL PLAN 2345/2022**

## 1 PARTIES

1.1 The Parties to this Agreement are –

1.1.1 Hessequa Municipality;

1.1.2 Vivren Properties Pty Ltd;

1.1.3 The Trustees for the time being of the Preekstoel Beach Lifestyle Estate Residents Association, herein represented by the Developer, being Vivren Properties Pty Ltd;

1.2 The Parties agree as set out below.

## 2 INTERPRETATION

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

2.1.1 **"Agreement"** means this agreement;

2.1.2 **"Attorneys"** means, Fairbridges Wertheim Becker, reference, A Heiberg;

2.1.3 **"Developer"** means Vivren Properties Proprietary Limited, registration number 2011/008459/07, a limited liability private company duly incorporated in accordance with the Company Laws of the Republic of South Africa;

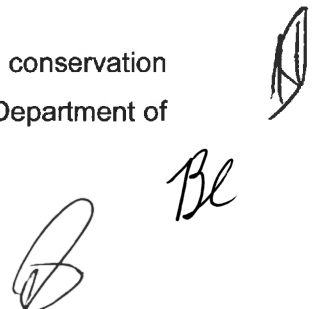
2.1.4 **"Development"** means the development to be undertaken by the Developer on the Development Property as set out on General Plan 2345/2022 and attached hereto as Annexure B;

2.1.5 **"Development Property"** means Erf 2343 Still Bay East;

2.1.6 **"Developer Trustee"** means a Trustee appointed by the Developer;

2.1.7 **"Environmental Authorisation"** means the notification of decision for environmental authorisation dated 06 February 2018 and issued to the Developer in respect of the Development, in terms of the National Environmental Management Act, attached hereto as Annexure A;

2.1.8 **"Environmental Management Plan"** means the environmental conservation maintenance management plan approved by the Western Cape Department of

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Environmental Affairs and/or the Municipality requiring *inter alia* alien (plant) management and maintenance of the Dunes;

- 2.1.9 **"Hessequa"** means the Hessequa Municipality established in terms of section 12 of the Local Government: Municipal Structures Act, No. 117 of 1998;
- 2.1.10 **"HOA"** means the Preekstoel Beach Lifestyle Residents' Association;
- 2.1.11 **"Signature Date"** means the date of signature of this Agreement by the Party last signing.
- 2.1.12 **"The Property"** means Erf 2341 Still Bay East;

### 3 INTRODUCTION

- 3.1 Whereas as part of the Development approval Vivren was to transfer the Property (Erf 2341 Still Bay East) and another Erf to Hessequa in exchange for other property on which the Development was to be constructed;
- 3.2 And whereas the transfer of the Property to Hessequa was finalised on the 13<sup>th</sup> December 2022;
- 3.3 And whereas condition 21 of the Environmental Authorisation (set out below) imposes certain obligations on Vivren, as the holder of the said Environmental Authorisation, to be carried out on the Property, which is not owned or controlled by Vivren;

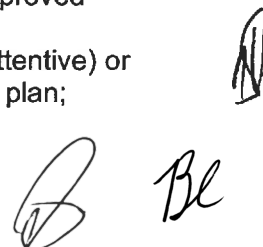
#### **Condition 21:**

The holder must, prior to the activities commencing on site, register the following legally binding provisions or obligations on the land between the development setback line and the high water mark of the sea (i.e. private and public open space) to limit the use of the proposed open space area for a conservation use.

Such provisions must as a minimum be a —

21.1. "Non-User Conservation Servitude" The holder is required to register, in favour of the Hessequa Municipality and the Home Owners Association, a conservation servitude over the identified land which requires protection from development in perpetuity and in order to secure the conservation of the site. The conditions of the conservation servitude must *inter alia* address the following measures —

- (a) No earthworks or any form of development is permitted within the area, except if environmental authorisation is granted and in accordance with an approved conservation management plan;
- (b) No landscaping; encroachment by gardens (albeit deliberate or inattentive) or planting except for rehabilitation in terms of an approved management plan;
- (c) No collection or damaging of fauna and flora;

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- (d) No vehicles of any type are permitted, unless ORV permit has been issued by the competent authority for the purpose thereof;
- (e) Access points and access control.

3.4 Now therefore in order to comply with the said condition 21 the Parties wish to record in writing their agreement regarding their respective rights and obligations regarding the Property going forward.

#### 4 RESTATEMENT OF RIGHTS AND OBLIGATIONS REGARDING CONDITION 21

By unanimous consent the Parties agree as follows;

- 4.1 As the Property is now zoned Public Open Space III, it is zoned for nature conservation and hence the first part of condition 21 has been met.
- 4.2 The Parties hereby undertake to ensure in perpetuity that no future development will be allowed on the Property and they undertake to ensure that conservation is secured on the Property.
- 4.3 In fulfilling their obligations as set out in 4.2 above, the Parties agree and undertake that;
  - 4.3.1. No earthworks or any form of development is permitted on the Property, except if environmental authorisation is granted and in accordance with an approved conservation management plan;
  - 4.3.2 No landscaping; encroachment by gardens (albeit deliberate or inattentive) or planting except for rehabilitation in terms of an approved management plan shall occur on the Property;
  - 4.3.3 No collection or damaging of fauna and flora on the Property shall be permitted;
  - 4.3.4 No vehicles of any type are permitted on the Property, unless an ORV permit has been issued by the competent authority for the purpose thereof;
  - 4.3.5 The Parties shall control and manage access points and access control to the Property as required by legislation.
- 4.4 From the Signature Date, Vivren and the HOA agree to be responsible for the day-to-day management and implementation of the Environmental Management Plan in respect of the Property, including the costs thereof and more specifically for the rehabilitation, maintenance and management of the of Dunes on the Property.
- 4.5 Vivren and the HOA hereby indemnify Hessequa from any claim that may be lodged against it in respect of the non-fulfilment of any portion of the Environmental Management Plan relating to the Property.

Handwritten signatures of Vivren and Hessequa. The signature 'Vivren' is on the left, and 'Hessequa' is on the right, with a large 'B' or 'H' mark above it.

4.6 Hessequa hereby gives Vivren and the HOA unrestricted access to the Property in order that they can carry out their responsibilities in implementing the Environmental Management Plan.

4.7 Once the HOA has been established and the Developer no longer holds an interest in the Development, the Developer shall cede and assign all its rights and delegate all its obligations in terms of this Agreement to the HOA, who shall, from that date be solely responsible to fulfil the responsibilities and the duties imposed on the Developer and the HOA in terms of this Agreement.

## **5 GENERAL**

### **5.1 Whole Agreement**

5.1.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.




5.1.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

### **5.2 Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

### **5.3 No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this

Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

#### 5.4 **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

#### 5.5 **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

#### 5.6 **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

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**5.7 No Assignment**

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, save as otherwise provided herein.

**6 COSTS**

If applicable, Vivren will bear and pay the legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

**7 SIGNATURE**

- 7.1 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 7.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 7.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 7.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.





SIGNED at Riversdale on 20 June 2023

For and on behalf of  
**Hessequa Municipality**



Signature

HS VISSER

Name of Signatory

Director : Development Planning

Designation of Signatory

SIGNED at Riversdale on 20 June 2023

For and on behalf of  
**Vivren Properties Pty Ltd**



Signature

Bruce Ladegaard

Name of Signatory

Director

Designation of Signatory

SIGNED at Cape Town on 22 June 2023

For and on behalf of  
**THE HOA**



Signature

T van der Walt

Name of Signatory

Trustee

Designation of Signatory