

## **Balwin Properties Limited**

### **TERMS AND CONDITIONS**

#### **1. INTRODUCTION**

This document contains the Terms and Conditions under which the Purchaser ("**the User**") may make use of the website <https://www.balwin.co.za/> ("**the Website**"), for the purpose of reserving and/or purchasing an Apartment at any of the Developments listed under clause 2.5 hereunder. The User hereby acknowledges that they have read, understood, and accepted, without reserve, these Terms and Conditions, as modified from time to time by us, by accessing, browsing, and using the Website.

#### **2. DEFINITIONS**

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- 2.1. **Apartment** means the section to be developed at the Development, as shown on the Site Plan on the initial home page of the Development.
- 2.2. **Balwin Properties Limited ("Balwin")** means the developer of the Apartments to be sold at the Development, with registration number 2003/028851/06.
- 2.3. **Conveyancer** means the respective attorneys as stated in the agreement of sale, which shall be responsible for, including but not limited to; the receipt of the Deposit in respect of the reservation of an Apartment, the transfer of the Apartment and/or the registration of the Apartment.
- 2.4. **Deposit** means the respective amount payable to the Conveyancer in respect of reserving an Apartment.
- 2.5. **Development** means including without limitation, any one of the following developments, listed below, which Balwin is in the process of developing and/or constructing and/or making available to the User, for the purpose of allowing the User to purchase an Apartment:
  - 2.5.1. Munyaka;
  - 2.5.2. De Zicht;
  - 2.5.3. De Aan Zicht;
  - 2.5.4. Izinga Eco Estate;
  - 2.5.5. Kikuyu;
  - 2.5.6. Greenpark;
  - 2.5.7. The Reid;
  - 2.5.8. Amsterdam;
  - 2.5.9. The Blyde;
  - 2.5.10. The Polofields;

#### **JOHANNESBURG**

Tel: +27 11 450 2818  
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Block 1, Townsend Office Park,  
No 1 Townsend Avenue, Bedfordview

#### **CAPE TOWN**

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Die Boord, 7613  
Paardevelei Rising, First Floor  
12 Gardner Williams Avenue,  
Paardevelei, Somerset West, 7130

#### **KWAZULU NATAL**

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- 2.5.11. The Huntsman;
- 2.5.12. Paardevlei Lifestyle Estate;
- 2.5.13. Ballito Hills;
- 2.5.14. Greenlee;
- 2.5.15. Fynbos;
- 2.5.16. Thaba Eco Village;
- 2.5.17. Greenbay;
- 2.5.18. Greencreek;
- 2.5.19. Mooikloof Eco Estate; and
- 2.5.20. Wedgewood.

2.6. **Personal Information** means information relating to you or any other living person or existing legal entity, including but not limited to –

- information relating to the race, gender, sex, pregnancy, marital status, national, ethnic, or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- information relating to the education or the medical, financial, criminal or employment history of the person;
- any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person;
- correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person, provided that such information is not in the public domain in the same or in a different format or held by a public body and publicly accessible.

2.7. **Processing of Information** means the automated or manual activity of collecting, recording, organising, storing, updating, distributing, and removing or deleting personal information.

2.8. **Services** means the service offered by Balwin under the Website which, *inter alia*, allows the User to purchase an Apartment at the Development, by (i) making payment of the Deposit which payment shall reserve the Apartment for the User and (ii) signing the sale agreement in respect of the Apartment.

2.9. **User** means any/all individuals and/or entities accessing and/or making use of the Website.

### 3. **GENERAL**

3.1. Balwin will at all times endeavour to ensure that the content provided on the Website is accurate, true and correct.

3.2. Balwin will endeavour to offer the User a secure and reliable service.

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- 3.3. By using the Website, the User confirms their acceptance to be bound by the terms and conditions as stated herein as well as the Privacy Disclaimer and Cookies Notice.
- 3.4. The User acknowledges that Balwin reserves the right to amend these terms and conditions, including the Privacy Disclaimer, at any time. The User is responsible for ensuring that they visit this page periodically to review the terms and conditions, to which they are bound.
- 3.5. Terms of Use:
  - 3.5.1. The User acknowledges that the use of the Website is for the purposes of reserving and/or purchasing an Apartment at the Development. The reservation of an Apartment via the Website is not conclusive of a valid sale agreement between Balwin and the User.
  - 3.5.2. The User is responsible for ensuring that the proper procedure is followed in respect of signing a valid sale agreement with Balwin for the selected respective Apartment.
  - 3.5.3. The User must follow the process as set out below in order to secure the Apartment and finalise the sale agreement:
    - 3.5.3.1. The User must make payment of the Deposit, as stated on the Website;
    - 3.5.3.2. As soon as the User makes payment of the Deposit and checks out of the reservation platform, Balwin will confirm that the Apartment has been reserved for the User. Following the reservation of the Apartment, Balwin will send the User an email containing a link that will direct the User to an online sales platform where the User will complete their details in relation to the respective Apartment, and complete and sign a sale agreement.
    - 3.5.3.3. The User must sign a sale agreement with Balwin in respect of the Apartment within seven (7) days of the Deposit being paid in order to purchase the Apartment and finalise the sale thereof. In the event that the User fails to complete a valid sale agreement with Balwin within seven (7) days of the Deposit being paid, the Deposit shall be forfeited by the User. In the event that the Deposit is forfeited by the User, the reservation of the Apartment will be cancelled, the Apartment will no longer be reserved for the User and Balwin will allow other Users to reserve the Apartment.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

- 4.1. All content, trademarks and/or data contained on the Website, including but not limited to; software, databases, text, graphics, icons, hyperlinks, private information, logos and designs are the property of, or licensed to Balwin.
- 4.2. The User hereby warrants and agrees to the following by accessing the Website:
  - 4.2.1. Not to copy or replicate any software, any part of any content or service or use any software and/or content which is available on the Website;
  - 4.2.2. The User's right to access the Website does not give them any rights in respect of any intellectual property, content, trademarks, copyrights, registered designs, patents, domain names, know-how, trade secrets or rights of Balwin or any of Balwin's service/content providers; and
  - 4.2.3. Not to decompile, reverse-engineer, disassemble or use the information in any manner whatsoever.

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## 5. PERSONAL INFORMATION

- 5.1. The User acknowledges that while making use of the Website, the User may be required to insert certain personal and/or private information about themselves on the Website.
- 5.2. The User hereby consents and agrees to the Processing of Information by Balwin for legitimate and business-related purposes as contemplated in the Protection of Personal Information Act No. 4 of 2013. The User acknowledges that his/her personal information will be stored electronically in a centralised database and will be accessible to Balwin's subsidiary companies and/or associates and/or affiliates and/or service providers for legitimate and business-related purposes only.
- 5.3. Balwin may use this information to provide the User with marketing information regarding Balwin's products, services and/or events from time-to-time in the future.
- 5.4. The User may request in writing that Balwin cease sending such marketing information and/or request that their personal information be removed from Balwin's database or mailing list at any time.
- 5.5. Balwin will not disclose any personal information of the User apart from what is provided for in this clause. Notwithstanding the above, Balwin may be required to disclose the User's personal information in instances where it is required by law.

## 6. COOKIES

When you access the Website, Balwin may send one or more cookies (small text files containing a string of alphanumeric characters) to your computer to collect certain usage information. Balwin use session cookies (which disappear after you close your browser) and persistent cookies (which remain after you close your browser which can be removed manually) and may be used by your browser on subsequent visits to the Website. Balwin use information gathered by cookies to improve the Website. (Kindly refer to Balwin's Cookie Notice.)

## 7. ELECTRONIC COMMUNICATION AND RECORDS

- 7.1. When you visit the Website or send e-mails to Balwin, you accept that Balwin may communicate with you electronically. All records that you send may be stored electronically and with third parties, although these third parties are bound by the strictest levels of confidentiality. These electronic records shall be proof of the records unless you can prove otherwise.
- 7.2. Any electronic communication (for example, an e-mail or SMS) sent to you will be regarded to have been received by you upon being sent by Balwin. This includes but is not limited to mobile push notifications.
- 7.3. If you are a registered user of the Website, you may receive communications from Balwin via e-mail. If you do not want to receive e-mails from Balwin, you may change the way you receive your communication on the Website, or you can phone our contact centre.
- 7.4. Balwin takes all reasonable steps to protect your personal information and maintain confidentiality, including the use of encryption technology. However, Balwin cannot guarantee the security or integrity of any information you transmit online, and you agree that you do this at your own risk.
- 7.5. You agree that all agreements, notices, disclosures, and other communications that Balwin provide to you electronically meet any legal requirement that the communications be in writing.

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## 8. **DISCLAIMER**

- 8.1. The Website is designed to act as a tool in assisting the User, with regard to reserving and/or purchasing an Apartment at the Development. The use of the Website involves the reservation as well as the purchase of an Apartment, the reservation of the Apartment is not considered to be a valid and binding sale agreement between the User and Balwin. By making a reservation on the Website, the User warrants that they fully understand that they are not entering into an agreement of sale for the purchase of the Apartment.
- 8.2. The User hereby acknowledges that by clicking on the link provided to the User by Balwin via email, and completing its details on the online sale platform, that sale agreement will be considered to be valid and legally binding once signed by Balwin's respective representative.
- 8.3. The User acknowledges that Balwin will not be held liable and/or responsible in the event of any errors, and/or omissions contained in the online generated sale agreement, prior to signature thereof by Balwin's representative.
- 8.4. Whilst Balwin has taken reasonable measures to ensure the integrity of the Website and its contents, no warranty, whether express or implied, is given that the Website will operate error-free or that any files, downloads, or applications available via the Website are free of viruses, trojans, bombs, time-locks or any other data, code or harmful mechanisms which has the ability to corrupt or affect the operation of your system.
- 8.5. In no event shall Balwin, and/or any third-party contributors of material to the Website be liable for any costs, expenses, losses and damages of any nature arising out of or in any way connected with the User's use of the Website, their inability to use the Website and/or the operational failure of the Website, and whether or not such costs, expenses, losses and damages are based on contract, delict, strict liability or otherwise.
- 8.6. The User hereby acknowledges that the use of the Services offered by Balwin on the Website shall not be considered as Direct Marketing, for the purposes of the Consumer Protection Act, No. 68 of 2008.

## 9. **SECURITY**

- 9.1. Users are prohibited from violating or attempting to violate the security of the Website, including, but without limitation:
  - 9.1.1. accessing data not intended for such user or logging into a server or account which the User is not authorised to access;
  - 9.1.2. attempting to interfere with the Services by means of submitting a virus to the Website;
  - 9.1.3. sending unsolicited emails, including promotions and/or advertising of products or services on behalf of Balwin;
  - 9.1.4. deleting or revising any material posted by Balwin on the Website;
  - 9.1.5. using any device, software, or routine to interfere or attempt to interfere with the proper working of this Website or any activity being conducted on this site.
  - 9.1.6. Violations of system or network security may result in civil or criminal liability. Balwin will investigate occurrences, which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations.

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- 9.1.7. Users may not use the Website in order to transmit or distribute information:
  - 9.1.7.1. in violation of any applicable law or regulation;
  - 9.1.7.2. in a manner that will infringe the copyright, trademark, trade secret or other intellectual property rights of others or violate the privacy, publicity, or other personal rights of others;
  - 9.1.7.3. that is defamatory, obscene, threatening, abusive or hateful.
- 9.1.8. The following is prohibited with respect to the Website:
  - 9.1.8.1. Using any robot, spider, other automatic device, or manual process to monitor or copy any part of the Website;
  - 9.1.8.2. Using any device, software or routine or the like to interfere or attempt to interfere with the proper working of the Website.
  - 9.1.8.3. Taking any action that imposes an unreasonable or disproportionately large load on the Website infrastructure;
  - 9.1.8.4. Copying, reproducing, altering, modifying, creating derivative works, or publicly displaying any content from the Website without Balwin's prior written permission;
  - 9.1.8.5. Reverse assembling or otherwise attempting to discover any source code relating to the Website or any tool therein, except to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; and
  - 9.1.8.6. Attempting to access any area of the Website to which access is not authorised.

## **10. SEVERABILITY**

- 10.1. The terms and conditions constitute the entire agreement between Balwin and the User in respect of reserving and/or purchasing an Apartment at the Development. Any failure by Balwin to exercise or enforce any right or provision of these terms and conditions shall in no way constitute a waiver of such right or provision.
- 10.2. In the event that any term or condition is not fully enforceable or valid for any reason, such term(s) and/or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall not be affected by such unenforceability or invalidity and shall remain enforceable and applicable.

## **11. APPLICABLE LAW**

- 11.1. This Website is hosted, controlled, and managed within in the Republic of South Africa, and therefore South African law shall govern the use or inability to use this Website, or any other matter related to this Website.
- 11.2. The terms and conditions, including any cause of action arising wherefrom, will in all respects be governed by and construed under the laws of South Africa.

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## 12. BREACH

Should the User fail to adhere to any of the terms and conditions set out in this agreement, Balwin may in its sole discretion make a decision to terminate this agreement and recover all and any costs related to such termination and or terminate, without notice, your access to the Website.

## 13. DISPUTES

The User hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in respect of any dispute arising from or in connection with the terms and conditions as stated herein.

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