

**ANNEXURE G**

**GARDENS DESIGN AGREEMENT**

ENTERED INTO

BY AND BETWEEN

CARIBBEAN BEACH CLUB HOME OWNERS ASSOCIATION

Incorporated under Section 21

Registration number 1996/009972/08

And

\_\_\_\_\_

Registration number: \_\_\_\_\_

(hereinafter referred to as “ \_\_\_\_\_ ”)

And

(hereinafter referred to as “the RESIDENT” )

ID number:

**Whereas** one of the objectives of the CBC is to establish, develop and maintain the golf course in a way that would enhance the value of the properties on the estate and

**Whereas** all residents, in terms of the Constitution of the CBC Homeowners Association, are members of the CBC and as such, the rules of the Golf Club pertaining to the golf course are applicable to all residents,

**Whereas** CBC recognises the need to protect the various indigenous areas through proper control of existing and new parkland areas that are developed on the golf course; and

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The RESIDENT confirms that at the date of signing hereof his/her/its garden development on the golf course was inspected by CBC and that CBC has approved such garden to be in accordance with the design character of the golf course, being a parkland-style golf course

with indigenous / environmental areas for the protection of small animals, insects and birds to promote diversity and natural habitat.

Or

The RESIDENT wishes to develop a garden outside his/her/its property's boundaries which must be pre-approved by CBC to be in accordance with the design character of the golf course, being a parkland-style golf course with indigenous / environmental areas for the protection of small animals, insects and birds to promote diversity and natural habitat.

2. The RESIDENT undertakes not to either expand his/her/its garden or to develop or plant new or additional gardens or trees or to erect any structure of whatever nature on the golf course or in the open areas adjacent to the golf course not forming part of his/her/its property without the specific written approval of CBC.
3. The RESIDENT acknowledges that he/she/it is obliged to submit a detailed and comprehensive application for the development and/or expansion of his/her/its garden outside his/her/its property boundaries or any new / additional gardens outside his/her/its property boundaries or structures of whatever nature prior to commencement of such works to the Club Manager of the CBC St James Club, which plan must conform to CBC's golf course development and maintenance plan.
4. The Club Manager of the CBC St James Club has the right and authority to deal with any such application in the following manner and must do so within 21 (twenty one) days of receipt of such an application:
  - 4.1. To grant the application and proposals contains therein either in part or in total;
  - 4.2. To refuse the application and proposals contained therein either in part or in total;
  - 4.3. To grant the application subject to such reasonable terms and conditions that he/she may impose upon the applicant;
  - 4.4. To request a more detailed application or further facts and information that he/she, in his/her discretion, requires to enable him/her to properly consider the application;
  - 4.5. To obtain advice from a qualified third party to assist and advise him/her with regard to any aspect pertaining to the application to enable him/her to reach a proper decision on the same.
5. CBC to develop a new garden outside his/her boundaries or to expand the RESIDENT's existing garden and/or to plant trees or plant grass or erect any structure of whatever nature on the golf course or in the open areas adjacent to the golf course not forming part of the RESIDENT's property, the right and ownership of such development remains with CBC.
6. Any development referred to the above will be done strictly in accordance with the design character of the golf course, as mentioned in paragraph 1 above, and CBC's golf course development and maintenance plan. The RESIDENT will assume full responsibility for the proper maintenance and adequate watering of the garden.

7. Should the RESIDENT, however, fail to fulfil his/her/its obligations in this regard, CBC will be entitled to furnish 7 (seven) day's written notice to the RESIDENT to fulfill his/her obligations in this regard, failing which, CBC will be entitle to withdraw its approval for the garden. The garden will then be rehabilitated to its original condition prior to the development thereof at the RESIDENT'S expense. CBC will furthermore be entitled to withdraw its approval without furnishing notice to the RESIDENT should the RESIDENT, on a regular basis after such initial notice having been furnished, persist with his/her/its failure to fulfil his/her/its obligations in terms hereof.
8. In the event that a RESIDENT develops gardens, plants trees or grass, or erects a structure of whatever nature on the golf course or in the open areas adjacent to the golf course that do not form part of the property, without the specific written approval of CBC or to the extent that CBC deems the development not to be in compliance with either the design character of the golf course (as mentioned in paragraph I) or the application was approved and conditions to which the development was made subject, CBC will have the following rights of recourse:
  - 8.1.1 The RESIDENT must, within 20 (twenty) days of receiving written notice from CBC, remedy the development in accordance with CBC's specifications.
  - 8.1.2 If the development has not been remedied within the stipulated 20 (twenty) days, CBC will be entitled without prejudice to any of its other rights or remedies available to it by law, to rehabilitate and/or remove the development and return the same in accordance to within the design character of the golf course as mentioned in paragraph I above, the reasonable costs of which would be for the RESIDENT's account and the RESIDENT will have no right of recourse in this regard.
9. Should approval be granted to a RESIDENT to develop or further develop and expand the RESIDENT's garden outside his/her/its property boundaries or plant trees, grass or erect any structure of whatever nature on the golf course or in the open areas adjacent to the golf course not forming part of the property, such development shall, under no circumstances, exceed a 5m radius from the boundary line of the RESIDENT's erf or a shorter radius which is appropriate under the prevailing circumstances and for which specific approval was granted after consideration of all relevant facts.
10. In the event that the RESIDENT is dissatisfied with the Club Manager's decisions or actions as provided for in this agreement, the RESIDENT may declare a dispute within 14 (fourteen) days of being notified in writing of such a decision.
  - 10.1. Shall be referred to the Board of Directors of CBC for adjudication. The RESIDENT and the Club Manager shall, within 14 (fourteen) days of a dispute being declared, furnish the Board of Directors with written submissions as they deem necessary for consideration. The Directors shall consider such written submissions received and may request further information and documentation from the parties as they deem necessary to properly consider the matter. The Directors will make a final decision after 30 (thirty) days from the

date of receipt Of such written submissions and/or further information and documentation where applicable.

- 10.2. In the event that the RESIDENT is dissatisfied with the Board of Director's decision, he/she/it may approach a competent court to take the decision under review within 30 (thirty) days of receiving notice of such decision, failing which, the Board Director's decision shall be final and binding upon the parties.
11. If legal action has to be instituted in terms of this agreement by CBC for provisions contained in this agreement, the RESIDENT shall bear and pay all legal costs incurred by CBC on a scale similar to between attorney and own client.
12. The parties hereby appoint, as their domicilia citandi et executandi, for purposes of giving notice and/or serving processes, the address mentioned in clause 11.1 and 11.2 below. Either of the parties hereto shall be entitled to change their domicilia to another address within South Africa by written notice delivered or sent by prepaid registered post.

12.1 CBC

Physical address: \_\_\_\_\_

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

12.2 THE RESIDENT

Physical address: \_\_\_\_\_

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

13. Any notice, demand or either communication properly addressed by either party to the other party at the latter's domicilium in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 7th business day following the date of posting thereof. This provision shall not be constructed as precluding the utilisation of other means and methods (including facsimile) for the transmission or delivery of notices, demands and other communications, but no presumption of delivery shall arise if any such other means or methods are used.
14. The provisions of this agreement do not affect the rights and obligations if the parties in terms of the existing Memorandum, the Articles and the and the Rules and Regulations of CBC.

15. This document constitutes the entire agreement on gardens on the golf course between parties and no amendment, deletion or substitution of the agreement, including this clause, shall be valid unless reduced to writing and signed by all parties concerned.
16. No postponement, concession, extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or cause action by CBC against the RESIDENT in any respect under this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement, and CBC against said RESIDENT on the said cause of action which will by such grant be interrupted from prescription, pending the outcome of the dispute between parties.

THUS DONE and SIGNED at PRETORIA on this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

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

AS WITNESSES

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

THUS DONE and SIGNED at PRETORIA on this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

1. \_\_\_\_\_ FOR AND ON BEHALF

OF CBC (who warrants that he is duly authorised to do so)

AS WITNESSES

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

THUS DONE and SIGNED at PRETORIA on this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

1. \_\_\_\_\_ FOR AND ON BEHALF OF CBC HOMEOWNERS  
ASSOCIATION

(who warrants that it is duly authorised for him to do so)

AS WITNESSES

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