



AGREEMENT OF SALE

BEFORE THE OPENING OF A TOWNSHIP REGISTER

between

CORPORATE AONE TRADE AND INVEST 8 (PROPRIETARY) LIMITED
Registration Number. 2008/005234/07
("the Seller")

and

("the Purchaser")

Phase	:	_____
Erf No.	:	_____
House Type	:	_____
Agent	:	_____
Agent's Contact No.	:	_____

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1. PARTIES

1.1. SELLER

1.1.1. Name: Corporate Aone Trade and Invest 8 (Pty) Ltd
Registration Number: 2008/005234/07

1.1.2. Business address: MSP Chambers
4 Howick Slot
Tyger Falls
Bellville
7530

1.1.3. Postal address:
PO Box 1879
Bellville
7535

1.2. PURCHASER

The Purchaser means the Party as more fully described in Annexure A.

2. INTERPRETATION

In this Agreement:

- 2.1. unless the context clearly indicates otherwise, words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others or such genders, and words importing persons shall include bodies corporate, and vice versa in each instance;
- 2.2. expressions with reference to writing shall be construed as including reference to printing, lithography, photography and other modes of representing or reproducing words in visible form;
- 2.3. when any number of Days is prescribed, the same shall be reckoned exclusively of the first and inclusively of the last Day unless the last Day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last Day shall be the next succeeding Day which is not a Saturday, Sunday or public holiday;
- 2.4. where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;
- 2.5. if any provision of this Agreement is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remaining provisions of this Agreement;
- 2.6. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, then, notwithstanding that it is only in the definition Clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 2.7. the Annexures to this Agreement are deemed to be incorporated in and form part of the Agreement.
- 2.8. In this Agreement the following terms and conditions shall, unless inconsistent with the context, bear the meanings stated hereunder and cognate terms and expressions shall bear corresponding meanings:

- 2.8.1. Agent: means the Agent referred to in Clause 4.7 of this Agreement;
- 2.8.2. Agreement: means this Agreement together with all the Annexures thereto;
- 2.8.3. Architect/Project Manager: means the Architect or Project Manager appointed by the Seller from time to time;
- 2.8.4. Architectural Guidelines: means the Architectural Guidelines means the Architectural Guidelines available on the Website or per request from the Agent;
- 2.8.5. ARC: means the Architectural Review Committee as provided for in the Constitution of the BMHOA;
- 2.8.6. Balance of the Purchase Price: means the Purchase Price described in Clause 4.1 of this Agreement less the Deposit described in Clause 4.2 of this Agreement;
- 2.8.7. BEM: means the Buyers Education Manuel explaining the Home buying process;
- 2.8.8. BMHOA: means the Belladonna Estate Master Home Owners Association as provided for in Clause 20 of this Agreement as well as the Constitution;
- 2.8.9. Bond Broker: means the Bond Broker referred to in Clause 4.10 of this Agreement;
- 2.8.10. Building Agreement: means the Building Agreement to be concluded between the Parties on the Signature Date, providing for the construction of a dwelling on the Property by the Seller;
- 2.8.11. Building Industry Rate: means the official Building Industry Rate of the Master's Home Builders Association, from time to time;
- 2.8.12. Business Day: means any Day except a Saturday, Sunday or officially proclaimed public holiday;
- 2.8.13. Conduct Rules: means the Conduct Rules of the BMHOA, as such being applicable on the Sub-Association, available on the Website or per request from the Agent;
- 2.8.14. Constitution: means the Constitutions to be approved by the Local Authority for the BMHOA and the Sub-Home Owners Associations, as the case may be, available on the Website or per request from the Agent;

- 2.8.15. Deposit: means the Deposit described in Clause 4.2 of this Agreement;
- 2.8.16. Development: means the residential development to be established on the Parent Property and which is to be known as Belladonna Estate;
- 2.8.17. Development Period means (a) the transfer of the last saleable Erf in the Development or (b) the date when the Seller notifies the Sub-Home Owners Association that it waives its rights herein conferred upon it; whichever is the earliest;
- 2.8.18. EMP: means the Environmental Management Plan available on the Website or per request from the Agent;
- 2.8.19. Erf: means the Erf as described in Clause 3.1 of this Agreement;
- 2.8.20. FICA: means the Financial Intelligence Centre Act no.38 of 2001 as amended;
- 2.8.21. General Plan: means the General Plan to be approved by the Surveyor General;
- 2.8.22. Interest: means the Prime Overdraft Rate;
- 2.8.23. Levies: means the Levies that will be payable by the Purchaser to the Sub-Home Owners Association, which Sub-Home Owners Association will be responsible for payment of the pro-rata Levies to the BMHOA;
- 2.8.24. Local Authority: means the Local Authority having jurisdiction over the Erf, being at present the City of Cape Town, and shall include any body that may be its successor in such capacity;
- 2.8.25. LUPO: means the Land Use Planning Ordinance No. 15 of 1985, as amended, and includes any superseding legislation or sub-ordinate legislation;
- 2.8.26. Managing Agent: means the Managing Agent appointed by the Seller;
- 2.8.27. Master Home Owners Association: means the Belladonna Estate Master Home Owners Association established for the Development in terms of Section 29 of the Land Use Planning Ordinance, 15 of 1985 and which Association has a Constitution which to be approved by the Local Authority;

- 2.8.28. NCA: means the National Credit Act, No 34/2005;
- 2.8.29. Occupation Date: means the Completion Date as referred to in the Building Agreement;
- 2.8.30. Occupational Interest: means the amount payable by the Purchaser to the Seller calculated from the Occupation Date to the Transfer Date;
- 2.8.31. Parent Property: means Erven 17974 and 17975, Blue Downs, including a provisional Sub-divided portion of it known as Erf 29644, Blue Downs, Stellenbosch RD, Western Cape Province;
- 2.8.32. Parties: means the Seller and the Purchaser;
- 2.8.33. Prime Overdraft Rate: means the rate of Interest per annum which is equal to Absa Bank Limited publicly quoted Prime Overdraft Rate of Interest per annum charged by the said bank on overdrawn current accounts of its most favourite clients from time to time. (In the event of a dispute as to the Prime Overdraft Rate, the rate shall be certified by any manager of any branch of the said bank, whose certificate will act as prima facie proof of the overdraft rate);
- 2.8.34. Public Open Space: means the land that comprises the Parent Property that does not form part of an Erf and that as designated as such on the General Plan;
- 2.8.35. Property: means the Erf;
- 2.8.36. Purchase Price: means the Purchase Price described in Clause 4.1 of this Agreement;
- 2.8.37. Purchaser: means the Purchaser referred to in Clause 1.2;
- 2.8.38. Restriction Date: means 3 (Three) years after the Transfer Date;
- 2.8.39. SARS: means the South African Revenue Services;
- 2.8.40. SDP: means the provisional Sub-Division Plan to be approved by the Local Authority;
- 2.8.41. Seller: means the Seller as described in Clause 1.1 of this Agreement;
- 2.8.42. Signatory: means the person who signs this Agreement for the benefit of a Company or Close Corporation to be formed or as Trustee for a Company not yet incorporated or as Trustee for a Close Corporation not yet incorporated;

- 2.8.43. Signature Date: means the date on which the Seller signs the Agreement;
- 2.8.44. Sub-Home Owners Association: means the Sub-Home Owners Associations to be established by the Seller in respect of each phase of the of the development of the Parent Property, which Sub-Home Owners Association will be subject to its Constitution, the Constitution of the BMHOA as well as the Conduct Rules, established for the Development in terms of Section 29 of the Land Use Planning Ordinance, 15 of 1985 and which Sub-Home Owners Association will have a Constitution to be approved by the Local Authority;
- 2.8.45. Township Register: means the Township Register to be opened in the Cape Town Deeds Registry in terms of Section 46 of the Deed Registries Act;
- 2.8.46. Transferring Attorneys: means Mostert & Bosman Attorneys, MSP Chambers, 4 Howick Slot, Tyger Falls, Bellville, att: Pieter Goosen , Tel no: 021 914 3322. Bank Account details: Mostert & Bosman Trust account, ABSA, Account No: 404 910 5047, Branch Code 632005, Reference No: (erf number) Bella (Clients Surname);
- 2.8.47. Transfer Date: means the date of registration of transfer of the Erf in favour of the Purchaser;
- 2.8.48. VAT: means Value Added Tax payable in terms of the VAT Act;
- 2.8.49. VAT Act: means The Value Added Act No 89 of 1991;
- 2.8.50. Website: means the Website of the Development available on the internet at the following website address: www.belladonnaestate.co.za.

3. **DESCRIPTION OF ERF**

- 3.1. Erf No _____, as indicated on Annexure B, in the development known as Belladonna Estate, Western Cape Province;

In Extent: _____square metres;

Erf number and extent subject to variation as provided for in this Agreement.

4. SUMMARY OF PRINCIPAL TERMS

The principal terms and conditions of this Agreement comprise the following:

- 4.1. Total Purchase Price (incl. 14% VAT): R_____;
- 4.2. Deposit: R_____;
- 4.3. Date on which Deposit is payable 7 (Seven) days after the Signature Date;
- 4.4. Loan Amount: R_____
- 4.5. Date that loan must be granted by: within 30 (Thirty) days of Signature Date or such extended period as the Seller may allow;
- 4.6. Date of occupation: means the Completion Date in terms of the Building Agreement;
- 4.7. Agent: MSP Developments (Pty) Ltd
Registration Number: 2001/019488/07;
- 4.7.1. Sub Agent: _____
_____;
- 4.8. Estimated levy per month: which includes the levy payable to the Sub-Home Owners Association, will be approximately R150.00 per month;
- 4.9. Initiation Fee means the Initiation Fee due and payable to the bank or other financial institution approving the loan referred to in Clause 8 of this Agreement, which amount will be debited by the bank against the account of the Purchaser;
- 4.10. Bond Broker I-Mortgage (Pty) Ltd
Registration Number: 2005/002512/07
Ref: Hugo Vermeulen
Tel Nr.: 021 914 6703; or

PA Betterbond (Pty) Ltd
Registration Number: 1996/016233/07
Ref: BA Frank
Tel Nr.: 084 312 6797

- 4.11. Start date of Development: means the date of fulfillment of all the conditions precedent to this Agreement or alternatively the date of waiver of the benefits thereof by the Seller or the Purchaser;
- 4.12. Final Start Date means the actual start date of the construction of the building on the Erf, in terms of the Building Agreement, to be determined by the Seller in its sole discretion.

5. **RECORDAL**

- 5.1. The Seller wishes to develop the Parent Property by rezoning it from commercial use to general and single residential use, by subdividing, by renaming of the roads and obtain the Environmental Authorization.
- 5.2. The Seller will procure the approval of the SDP and General Plan.
- 5.3. The Seller wishes to sell the Property before the opening of the Township Register.
- 5.4. The General Plan has not yet been drawn nor registered and accordingly the exact and final boundaries and extent of the Property will only be reflected on the completed and approved General Plan.

6. **SALE**

- 6.1. The Seller sells to the Purchaser who hereby purchases the Property on the terms and conditions set out in this Agreement and which is indicated on the SDP and will be finally described on the General Plan.
- 6.2. The Purchaser acknowledges having read this Agreement and Annexures and the contents of which are fully understood and agreed upon by the Purchaser.
- 6.3. The Purchaser hereby confirms that:
- 6.3.1. he has seen the Erf and inspected the Works, and
- 6.3.2. he is aware that a copy of the BEM is available from his agent or on the website.

7. **PURCHASE PRICE**

- 7.1. The Purchase Price payable by the Purchaser to the Seller for the Property shall be the amount described in Clause 4.1 of this Agreement, which amount is inclusive of Value Added Tax and which amount is payable as follows:

- 7.1.1. the Purchaser shall pay the Deposit in cash, on the date set in Clause 4.3 of this Agreement to the Transferring Attorneys, which Deposit will be held in trust by the Transferring Attorneys to be invested by them in terms of section 78(2A) of the Attorneys Act, until the date of fulfillment of all the conditions precedent to this Agreement or the approval of the General Plan by the Surveyor-General, whichever event occurs last, upon which events the Deposit will become non-refundable and the Transferring Attorneys is hereby irrevocably authorized by the Purchaser to release the Deposit to the Seller, for its own benefit and account. The interest of the above, less the amount in respect of management and/or administration fees payable by the bank to the Transferring Attorneys, will accrue to the Seller. The Purchaser acknowledges that the Transferring Attorneys will not be able to invest the Deposit unless the Purchaser has furnished the Transferring Attorneys with all the FICA documentation and information required by the Transferring Attorneys to open an investment account, as may be applicable on the Purchaser as per:
- 7.1.1.1. and the Purchaser agrees to grant the Transferring Attorneys full co-operation and disclosure to comply with the FICA requirements and the Attorneys Act, which documentation must be supplied by the Purchaser to the Transferring Attorneys or before the Signature Date, and
- 7.1.1.2. payment confirmation which must clearly state the reference number, Erf Number and contact details of the Purchaser concerned. The Purchaser shall not be entitled to any interest on the Deposit until the documentation has been provided to the Transferring Attorneys and proof of receipt thereof was acknowledged by the Transferring Attorneys, and
- 7.1.2. the Purchaser shall within 14 (fourteen) days after fulfillment of the condition precedent referred to in Clause 8 of this Agreement, or, if this Agreement is not subject to the condition precedent referred to in Clause 8, within 30 (Thirty) days after the Signature Date, furnish the Transferring Attorneys with a guarantee issued in favour of the Transferring Attorneys for the Balance of the Purchase Price in favour of the Seller or a payee nominated by the Transferring Attorneys. The guarantee is to be issued by a bank in the form as prescribed in Annexure E and must be payable against registration of transfer of the Property into the name of the Purchaser.
- 7.2. Where this Agreement is subject to the condition precedent referred to in Clause 8.1 the payment in terms of the guarantee may be subject to the registration of a mortgage bond over the Property in favour of the issuer of the guarantee for an amount not exceeding the amount of the loan reflected in Clause 4.4 of this Agreement.
- 7.3. All monies due by the Purchaser in terms of this Agreement, and unpaid on the due date, shall bear interest at Prime Overdraft Rate for the first 3 (Three) months after the due date for payment thereof, and interest at the Prime Overdraft Rate plus 2 (Two) percent for any period exceeding the initial 3 (three) month period, calculated from the due date to the actual date of payment thereof.
- 7.4. All or any payments to be effected hereunder shall be effected by the Purchaser to the Transferring Attorneys free of exchange at Cape Town and without deduction or set off.
- 7.5. In the event that the VAT rate in effect on the Signature Date is at any time after the Signature Date increased or reduced in such a manner that the VAT payable on the supply of the Property is increased or reduced, the Purchase Price will be either increased or reduced as the case may be, to reflect the actual VAT payable on the supply of the Property by the Seller to the Purchaser in terms of this Agreement.

- 7.6. The Purchaser shall not be entitled to withhold, delay or abate any payments, nor to deduct from or set off against payment of any amounts due to the Seller in terms of this Agreement any amounts owed or allegedly owed by the Seller to the Purchaser from whatsoever cause arising.
- 7.7. If the Start Date, as referred to in Clause 4.11 of this Agreement, be delayed for any reason beyond the control of the Seller, for a period longer than 90 (Ninety) days after the Start Date, then and in that instance, the Purchase Price will increase by Building Industry Rate calculated pro rata from the Start Date until the Final Start Date to be determined by the Seller as referred to in Clause 4.11 of this Agreement.
- 7.8. The Parties agree that the amount of the escalation of the Purchase Price in terms of Clause 7.7, shall be payable by the Purchaser to the Seller on the Transfer Date and the Purchaser undertakes to provide the Seller with additional guarantees, to those issued in terms of Clause 7.1.2, within 30 (Thirty) days after the Seller has notified the Purchaser in writing of the final amount of the escalation in the Purchase Price, alternatively, the amount will be payable by the Purchaser to the Seller on terms and conditions to be agreed between the Parties, in writing, within the abovementioned time period.
- 7.9. In the event of a dispute between the Parties in respect of the amount of the escalation in the Purchase Price, the amount shall be confirmed by virtue of a certificate issued by the Architect within 30 (Thirty) days after the Seller has notified the Purchaser in writing of the final amount of the escalation in the Purchase Price, which certificate shall be valid and binding between the Parties.

8. CONDITION PRECEDENT – LOAN

- 8.1. In the event of an amount having been inserted in Clause 4.4 of this Agreement, this Agreement is subject to the condition precedent that the Purchaser is granted a loan within the period specified in Clause 4.5 of this Agreement from a bank or financial institution in the amount specified in Clause 4.4 of this Agreement on the terms that the aforesaid bank or financial institution normally approves mortgage loans for the purchase of Single Residential Erven.
- 8.2. In the event of the aforesaid condition not being fulfilled within the abovementioned time frame, there shall be an automatic extension of such time period of such further period as the Seller in its sole discretion deem appropriate unless and until the Seller, by written notice to the Purchaser, advise that there shall be no further extension of the time period set out above and notifies the Purchaser of the cancellation of this Agreement with immediate effect.
- 8.3. The condition set out in Clause 8.1 above will be deemed fulfilled once the aforesaid bank or financial institution to which application has been made for the loan has issued a quotation in terms of Section 92(2) of the National Credit Act to the effect that the application has been approved notwithstanding the fact that such an approval is granted subject to the fulfillment of a condition or conditions or subject to the reservation of the right by such a bank or other financial institution to, at any time prior to payment of the proceeds of the loan to the Purchaser, withdraw such approval.
- 8.4. The Purchaser irrevocably authorizes the Bond Broker as its sole agent to submit a mortgage bond application on the Purchaser's behalf to any financial institution and agrees and undertakes to sign all necessary documents and to supply the Bond Broker with any information and/or document which is/are required for this purpose. The Purchaser hereby grants the Bond Broker power of attorney in rem suam to apply for the mortgage bond on the Purchaser's behalf and warrants that the information so provided shall be true, accurate and correct.

- 8.5. The Purchaser shall not make application for the bond referred to in this Clause 8 to any person other than the Bond Broker without the prior written consent of the Seller.
- 8.6. The Purchaser shall appoint the Transferring Attorneys to attend to the registration of the mortgage bond in respect of the abovementioned loan.
- 8.7. It is recorded that this condition precedent is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this condition by communicating such waiver to the Seller in writing at any time before the expiry of the abovementioned time limit. Notwithstanding anything to the contrary set out in this Agreement, any such written notice given by registered post or e-mail given to the Seller will be deemed to have been received by the Seller 3 (three) days after it was posted or sent. In the event the waiver by the Purchaser as aforesaid, this Agreement will not lapse despite the fact that the Purchaser was not successful in the fulfillment of the abovementioned condition.
- 8.8. In the event that this Agreement is not subject to the condition precedent in Clause 8.1 and the Purchaser thereafter requests the Seller to allow him to register a mortgage bond in favour of a bank or financial institution over the Property against registration of transfer of the Property in his name and the Seller agrees thereto, and such registration causes any delay of whatsoever nature in the process of registration of transfer of the Property in favour of the Purchaser, the Purchaser will be liable to compensate the Seller for any loss or damage suffered by the Seller as a result of any delay to the registration procedure caused by such application or the preparation and registration of such bond. A certificate of the Transferring Attorney certifying the period of the delay in the registration procedure thus occasioned shall be prima facie proof of the period of such delay. It is recorded that such damages shall include Interest on the Purchase Price at the Prime Overdraft Rate plus 2 (Two) % on the Purchase Price of the Property for the period of the delay in transfer as well as any further damages which may be proven including the delay of any other simultaneous registrations.
- 8.9. In the event of the Purchaser failing to supply the necessary information to make the application in terms of Clause 8.4 or to sign all the documents required to effect such loan application, then in that instance the Purchaser will be in breach of Agreement as is provided for in Clause 29 of this Agreement and the Parties furthermore agree, that should the Purchaser fail to comply with the abovementioned terms and conditions within 4 (Four) days after the signature date of this Agreement by the Purchaser, the Purchaser shall forfeit the Deposit in favour of the Seller and the Seller will furthermore be entitled to claim damages from the Purchaser and to exercise all its rights available to the Seller in law.
- 8.10. The parties agree that should the abovementioned condition precedent not be fulfilled or waived timeously, then in that instance this Agreement will become null and void, be of no further force or effect and the parties will be reinstated in the status quo ante this Agreement.
- 8.11. Should the loan as referred to in Clause 8.1 be approved for a lesser amount as is indicated in Clause 4.4 of this Agreement and such amount approved is not less than 80 (Eighty) % of the Purchase Price, then and in that instance the Purchaser hereby accepts such lesser amount and, on approval of such lesser amount, this condition precedent will be deemed to be fulfilled.
- 8.12. In the event of the Purchaser, after acceptance of the bond by the Purchaser, breach the terms and conditions of this Agreement or does not proceed with the bond registration on the Transfer Date, and the Bond Broker receives an account from the bank or financial institution whose bond was not taken up by the Purchaser, then and in that instance, the Purchaser will be liable for the payment of such account and costs, on demand.

- 8.13. The Seller is hereby irrevocably authorized by the Purchaser to obtain additional funding on behalf of the Purchaser in respect of any shortfall between the Purchase Price and the approved Loan Amount.
- 8.14. The Purchaser undertakes to supply the Seller with guarantees in respect of the balance of the Purchase Price payable on the Transfer Date as provided for in Clause 7.1.2 of this Agreement.
- 8.15. The Seller or its appointees will, at any time after the Signature Date, be allowed to approach the Purchaser with proposals referring to Short Term Insurance and Long Terms Insurance Policies.
- 8.16. The Purchaser acknowledges that it is aware of the lending criteria of the banks or financial institutions with regard to the Loan Amount and the Purchaser warrants that the income of the Purchaser is sufficient to meet these criteria.

9. **VAT**

Except for the Purchase Price, or where expressly set out to the contrary, all other amounts payable by the Purchaser are described as excluding VAT and the Purchaser shall where applicable pay such amounts plus VAT calculated at the rate then applicable, to the Seller or any other party to whom such payment is due.

10. **CANCELLATION**

- 10.1. Should the Seller prior to the fulfillment of the condition precedent as referred to in Clause 8 of this Agreement, receive another offer which it, in its sole discretion, wishes to accept, then the Seller shall be obliged to notify the Purchaser of its intention in writing. The Purchaser shall then have 48 (Forty Eight) hours after the sending of such notification, to waive in writing the benefit of the condition precedent as referred to in Clause 8 of this Agreement, thereby binding himself unconditionally and declaring himself financially able to fulfill all its obligations provided for in this Agreement, failing which this Agreement shall lapse, be of no further force or effect and where after the Parties will be re-instated in the status quo ante this Agreement.
- 10.2. In the event of this Agreement lapsing by reason of the condition in Clause 10.1, the Seller will:
 - 10.2.1. immediately instruct the Transferring Attorneys to repay the Deposit plus interest earned thereon to the Purchaser; and
 - 10.2.2. neither the Seller nor the Purchaser will have any claim for damages or for any other amount or any other claim whatsoever against the other party arising from this Agreement.

11. **TRANSFER AND TRANSFER COSTS**

- 11.1. Provided the Purchaser has complied with all his obligations as set out in this Agreement and in particular has paid the Deposit, delivered the guarantee referred to in Clause 7.1.2 above and paid Interest and Levies and any other amounts owing in terms of this Agreement, registration of transfer of the Property shall be given by the Seller and taken by the Purchaser as close as possible to the Completion Date.

- 11.2. In the event that registration of transfer of the Property and/or, where applicable, registration of a mortgage bond, is delayed or frustrated by any act or omission of the Purchaser, the Purchaser shall pay to the Seller Interest which shall be equivalent to Interest on the Purchase Price at the Prime Overdraft Rate plus 2 (Two) percent from the date on which the transfer would, but for such delay, otherwise have been registered up to the date of actual registration of transfer. For this purpose the assessment of the Transferring Attorneys of the date on which transfer of the Property would, but for the delay, have been registered will be binding on all Parties to this Agreement. Any attempt by the Purchaser to delay or frustrate the registration of transfer or, where applicable, the mortgage bond, shall be deemed a breach of Agreement.
- 11.3. The Seller shall be liable for and shall on demand pay to the Transferring Attorneys any transfer fees plus VAT that may be payable by reason of this Agreement having been entered into in respect of the registration of transfer of the Property to the Purchaser. In the event that the Purchaser has to register a mortgage bond over the Property the Seller shall pay all costs in respect of the registration of such a mortgage bond, excluding the Initiation Fee as referred to in Clause 4.9 of this Agreement, which fee will be for the account of the Purchaser, subject to the following conditions:
- 11.3.1 the mortgage bond is granted by ABSA Bank Ltd, Firststrand Bank Ltd, Nedcor Bank Ltd or Standard Bank Ltd as the Purchaser's financial institution of choice, and
 - 11.3.2 the registration of the mortgage bond is effected by the Transferring Attorneys, and
 - 11.3.3 the mortgage bond was procured by the Bond Broker, failing to do so, all transfer and bond registration fees will be for the account of the Purchaser.
- 11.4. The Parties irrevocably authorizes the Transferring Attorneys to sign all necessary declarations and applications on their behalf to enable them to obtain the necessary transfer duty exemptions as well as the opening of the Township Register for the Development in the Deeds Office Cape Town.

12. CO-OPERATION TO EXPEDITE TRANSFER

- 12.1. The Purchaser will sign all documents necessary to effect transfer of the Property and return same and all other documents, resolutions, certificates and payment of the transfer costs and fees as determined by the Transferring Attorneys to the Transferring Attorneys within 2 (Two) Days after having been requested to do so.
- 12.2. The Parties agree that should the Purchaser fail to deliver any of the aforesaid duly signed documents plus any of the other documents, resolutions, certificates referred to above, the Purchaser will be in breach of the Agreement and the Seller will be entitled to act in terms of Clause 29 of this Agreement.
- 12.3. The Purchaser acknowledges and accepts that the Purchaser has bought Property in a development where a development Mortgage Bond is likely to have been utilized by the Seller; and thus transfer to the Purchaser will be simultaneous with transfers to other Purchasers necessitated by the Property sold having to be released from the operation of the Mortgage Bond. Accordingly the Purchaser acknowledges and accepts that lodgment of the Purchaser's transfer documents at the Deeds Office shall be entirely in the discretion of the Transferring Attorneys and the Purchaser's obligations to pay Occupational Interest, as the case may be, shall remain, and be unaffected by any delay occasioned by the above.

13. EXTENT, ONEROUS CONDITIONS AND WARRANTIES

- 13.1. The Property is sold on the basis that the extent of the Property is as set out in Clause 3.1 of this Agreement. This extent is a provisional one. It is recorded that the aforesaid extent might change when the Property are finally measured and depicted on the General Plan. The Seller shall have no claim for any additional consideration should the extent of the Property as finally surveyed be more than the aforesaid extent.
- 13.2. The Purchaser will have no claim against the Seller if the final extent determined as aforesaid is less than the extent described in Clause 3.1 above, provided that if the extent of the Property as depicted on the General Plan is more than ten percent (10%) less than the extent described in Clause 3.1 above, the Purchaser Price will be reduced by the Seller which reduction will be calculated in rate per square metre based on the Purchase Price and the extent of the Property referred to in Clause 3.1 of this Agreement.
- 13.3. Moreover the Property is sold subject to all conditions and servitudes attached thereto and all the provisions of, or conditions that may have been imposed by any competent authority during the approval of the subdivision of the Parent Property. The Purchaser acknowledges that he carries the obligation to satisfy himself by personal inspection, or by means of independent sources of information, concerning any burdens or servitudes to which the Property may be subject, and also concerning all advantages and disadvantages attached to the Property and hereby agrees that the Seller shall not be liable to him in respect of any failure by the Seller or his Agent to inform him of any such qualities.
- 13.4. Save as specifically set out in this Agreement the Seller or the Agent has made no representations and given no warranties in respect of the Property.
- 13.5. The Purchaser shall not have any claim of whatsoever nature against the Seller in respect of any defect or alleged defects in the Property or in respect of anything relating thereto, whether patent or latent.
- 13.6. The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of the Seller, unless same is expressly and specifically recorded in this Agreement. The Purchaser hereby waives in favour of the Seller any rights whatsoever which he otherwise may have obtained against the Seller as result of any such information, statement or representation given or made by or on behalf of the Seller which is not so expressly and specifically recorded. It is recorded that all artistic, architectural, photographic and in any way visual presentation material including but not limited to models, brochures and pamphlets and the show unit used by the Seller or its Agents in the marketing and selling of the Property hereby purchased and sold, have been prepared and distributed as advertising material only; and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby; and that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only.
- 13.7. The Property may be used only for residential purposes. The Seller shall be entitled, without being obliged, to register these conditions as title deed restrictions in favour of the Seller or its nominee.
- 13.8. The Purchaser acknowledges that the layout of the erven with the cadastral in the Development is subject to final determination.

- 13.9. The Seller reserve the right to change the development configuration and layout of the Development from that as is shown on the SDP. The Seller is entitled, any time before the Transfer Date, to change the layout and/or position of the Property to an erf of a similar purchase price and extent and after, but not subject to, consultation with the Purchaser. The Transferring Attorneys are hereby irrevocably authorized by both Parties to sign this Agreement, any addendum thereto and any other documents necessary to reduce such amendment to writing.
- 13.10. The Purchaser acknowledges that the General Plan has not been approved by the Surveyor General and accordingly the exact and final boundaries and areas of the Property and other subdivisions as reflected on the SDP may differ from that as depicted therein.
- 13.11. The Purchaser acknowledges that the Seller envisaged affecting certain reasonable earthworks, including but not limited to, landfilling on the subdivided erven. The Purchaser shall have no claim whatsoever against the Seller, nor shall the Purchaser be entitled to any deduction in the Purchase Price or interest thereon by reason of any such reasonable earthworks.
- 13.12. The Seller shall be entitled to change the numbering of the Property should the number on the Drawings differ from the approved General Plan. Should the developer change the number in terms of this Clause, the Purchaser shall sign all such documents as may be required by the Seller in order to legalise this Agreement. The Parties irrevocably authorizes the Transferring Attorneys to sign all necessary documentation, declarations and applications on their behalf to give effect to these amendment, including an addendum to the Agreement of Sale.
- 13.13 The Purchaser acknowledges that he is aware that the view currently enjoyed and/or the projected view from the Erf hereby sold, may be affected by the Development and/or construction of any further buildings on the Development or any adjacent plot/development in the vicinity of the Parent Property. The Purchaser accordingly acknowledges and agrees that the Purchaser shall have no claim or right of action whatsoever against the Seller arising from such impact on or impairment of the view from the Erf, or any derogation form the value thereof, as a result of any such ongoing development or further buildings.

14. VOETSTOOTS

- 14.1. The Seller have made no representation since given no warranties in respect of the Property of the Development or in respect of anything relating thereto and this sale is according "voetstoots" and the Seller, other than as provided for herein, shall not be liable for any defects in the Property or Development or in respect of anything relating thereto, whether patent or latent.
- 14.2. The Purchaser shall accept transfer of the Property subject to all conditions and servitudes benefiting or burdening the Property, whether existing or hereinafter imposed by any competent authority or by the Seller. The Seller record that the only servitudes envisaged to be registered in the Development are services servitudes allowing gas mains, electricity, telephone and television cables and/or wires and main and/or other water pipes and the sewerage and drainage, including storm water and surface installation such as mini substations, meter kiosks and service pillars, which will fall within the building lines of the Property.

15. POSSESSION

- 15.1. The Seller records that the date of possession is the Occupation Date or the Transfer Date, whichever is the earlier.

- 15.2. Provided the Purchaser has complied with all his obligations in terms of this Agreement, including, without limiting the generality of the foregoing, payment of the Deposit and due delivery of a valid guarantee for the Balance of the Purchase Price, occupation of the Property shall be given by the Seller and taken by the Purchaser on the Occupation Date.
- 15.3. The right to rent the Property passes to the Purchaser on the Transfer Date, subject to the terms and conditions as provided for in the Building Agreement referred to in Clause 33.3 of this Agreement.
- 15.4. The Purchaser shall not be entitled to make any alterations or modifications of any nature to the Property between the Occupation Date and the Transfer Date.
- 15.5. Occupational Interest payable by the Purchaser:
 - 15.5.1. In the event that registration of transfer of the Property takes place after the Occupation Date, whether or not occupation has actually been given to and taken by the Purchaser, the Purchaser shall pay to the Seller monthly in advance Occupational Interest:
 - 15.5.1.1 Occupational Interest payments for subsequent months, if any, shall be made by the Purchaser in advance on the first Day of such subsequent months;
 - 15.5.1.2 the Purchaser shall on transfer be refunded a pro rata share of any Occupational Interest that has been paid in advance in respect of the period after the Transfer Date.
 - 15.5.1.3 should the Purchase Price be paid in cash to the Transferring Attorneys, the Purchaser will be entitled to mandate the Transferring Attorneys to release the full amount of the Purchase Price to the Seller to use for its own benefit and account, in which instance, no Occupational Interest will be payable as is provided for in this Clause as from date of payment of the Purchase Price by the Transferring Attorneys to the Seller.
 - 15.5.1.4 the Purchaser is liable for the payment of all rates and taxes due to the Local Authority calculated from the date of approval of the Building Plans by the Local Authority, as more fully provided for in the Building Agreement, which amount will be payable to the Seller on demand.
- 15.6. The Purchaser acknowledges that on the Occupation Date construction of parts of the municipal services and other dwellings or improvements may not yet have been completed. The Purchaser accordingly hereby agrees that he will not by reason of the fact that any of the abovementioned services, dwellings or improvements has not been fully completed as aforesaid have any claim against the Seller, its Contractors and/or employees or as a result or in respect of any nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising, nor in respect of public liability; nor shall the Purchaser for any of the aforementioned reasons, be entitled to withhold performance of any obligation, or payment of any amount owing by him in terms of this Agreement. In particular the Purchaser waives his right to raise the defense that he is entitled to withhold performance by reason of the Seller allegedly not having fully performed his obligations (exceptio non adimpleti contractus) against any claim by the Seller for payment of money or performance of an obligation by the Purchaser.

- 15.7. If at any time after the Occupation Date and prior to the Transfer Date any damage is done to the Property, the Purchaser shall, without detracting from his rights to claim such damages as can be proven, not be entitled to refuse to accept transfer nor to deduct from or purport to set off against any Balance of the Purchase Price remaining payable against the registration of transfer of the Property, any amount of alleged damages that he may have suffered.

16. CAPACITY OF PURCHASER

This Agreement is, in regard to the capacity of the Purchaser, subject to the provisions of Annexure C.

17. WITHHOLDING OF PAYMENTS

If any work of whatsoever nature is still required to be done to the Development or any part of the Property on the date of the transfer thereof is tendered to the Purchaser, the Purchaser shall not be entitled to withhold, set off or retain any amounts owing by the Purchaser to the Seller, nor shall the Purchaser be entitled to withhold or abate payment of any amount due to the Seller in terms of this Agreement by reason of any breach or alleged breach of the Seller's obligations hereunder.

18. NON-LIABILITY

Notwithstanding anything to the contrary herein contained, the Seller shall not be responsible for any loss or damage which the Purchaser may suffer by any act or omission whatsoever nor neglect on the part of the Seller, its servants, employees or agents, nor shall the Seller be responsible for any loss or damage of any description whether the Property or person which the Purchaser or any other person may suffer by reason of the buildings or services installed at the Development at any time falling into a defective state or by reason of any construction conducted by the Seller on the Property or any portion thereof. The Purchaser shall not be entitled for any of the aforesaid reasons or for any other reason whatsoever to withhold payment of any money due to the Seller in terms hereof.

19. CONDITIONS APPLICABLE PENDING TRANSFER

The following conditions will apply to the Purchaser from the Occupation Date up to the Transfer Date:

- 19.1. The provisions of the Constitution and the Conduct Rules insofar as they cast any duty upon the owner or occupier of an Erf, shall bind the Purchaser who will fully comply therewith;
- 19.2. The Purchaser may not make any additions to the Property;
- 19.3. The Purchaser shall not be entitled to subdivide the Property for the purpose of selling, donating or in any other manner alienating or disposing of the Purchaser's rights of occupancy or any portion thereof to any other person.
- 19.4. The Purchaser may not let the Property prior to the Transfer Date.

20. HOME OWNERS ASSOCIATION

- 20.1. The Purchaser acknowledges that on the transfer of the Property into his name, he will become a member of the BMHOA as well as the Sub-Home Owners Association and become obliged to comply with all the obligations imposed upon him by the Constitution and the Conduct Rules.
- 20.2. Furthermore the Purchaser grants the Seller or its nominee an irrevocable power of attorney in rem suam (operative from the time the Purchaser becomes the registered owner of the Property) to attend the first meeting of the BMHOA and the Sub-Home Owners Association, and on behalf of and to the exclusion of the Purchaser to vote at the meeting for the adoption of the Constitution tabled at such meeting, amended as it may be at the meeting.
- 20.3. It is recorded that the BMHOA and the Sub-Home Owners Association will be established for the benefit of all owners of erven within the Development and to control and maintain the common areas, amenities and landscaping within the Development, approved the Architectural Guidelines in terms of which any building will be erected and furthermore to regulate the general conduct of matters of common interest to the owners of erven within the Development, as provided for in the Constitution and the Conduct Rules.
- 20.4. The Purchaser takes notice that the Constitution must still be approved by the Local Authority. The Purchaser shall be bound to the final approved Constitution.
- 20.5. The Purchaser and his/her/its successors in title shall be obliged to become a member of the BMHOA and the Sub-Home Owners Association against transfer of the Property and will be liable for the payment of Levies.
- 20.6. The Seller shall on registration of transfer of the Property to the Purchaser, register a title deed condition against the Property, in terms of which the Property shall not be transferred without the written consent of the BMHOA and the Sub-Home Owners Association in terms of its Constitution. It is further recorded that the Purchaser and his/her/its successors in title will be bound by the Architectural Guidelines to this Development, which Architectural Guideline shall be substantially in accordance with the Architectural Guidelines attached to the Constitution. The Purchaser agrees that any buildings erected on the Property (including any improvements thereto) shall conform to the Architectural Guidelines and shall be subject to the ARC. The Purchaser takes note the Architectural Guidelines must still be approved by the Local Authority and are subject to change. The Purchaser shall be bound to the final approved Architectural Guidelines.
- 20.7. It is recorded that the Sub-Home Owners Association will as such become a member of the BMHOA and will be represented on the BMHOA by the Chairman of the Trustees of the Sub-Home Owners Association. The BMHOA will have a minimum of 10 (Ten) Trustees and the Chairman must be a Community Leader who will be chosen by the Seller but will not be a member of either Associations.

21. LEVIES

- 21.1. The BMHOA and the Sub-Home Owners Association shall perform all the duties assigned to it in terms of the Constitution and/or the Conduct Rules, which will include, but not be limited to:
 - 21.1.1. to maintain the Public Open Space and to keep it in the state of good and serviceable repair;
 - 21.1.2. keep in a state of good and serviceable repair and maintain the plant, machinery, fixtures and fittings used in connection with the Public Open Space;

- 21.2. The Purchaser shall be liable for the payment of levies to the Sub-Home Owners Association as from the Transfer Date.
- 21.3. It is estimated that the monthly levy payable to the Sub-Home Owners Association will be approximately equal to the amount described in Clause 4.8 of this Agreement. The levies will be payable monthly in advance on the 1st day of each and every calendar month, save for the first month after the Transfer date in which instance the Levies must be paid for a period of 2 (Two) months in advance.

22. DEBIT ORDER AND QUANTUM OF LEVIES

- 22.1. The Purchaser will sign a debit order authority to allow the Seller or the Sub-Home Owners Association or its Managing Agent to collect the interim levy or Levies directly from an operating bank account.
- 22.2. The amount set out in Clause 4.8 are estimates and the Seller will not be liable for damages or in any other way to the Purchaser if the Levies determined by the Seller or the Levies as determined by the Sub-Home Owners Association exceed the estimated amounts reflected in the aforesaid Clause.

23. MANAGING AGENT

- 23.1. The Seller shall be entitled to appoint the first Managing Agent for a period of 2 (Two) years following the termination of the Development Period, with effect from the establishment of the BMHOA and/or the Sub-Home Owners Association, which appointment shall be valid and binding.
- 23.2. The Purchaser gives the Seller the irrevocable power and authority to make this appointment, and authorizes the Seller to exercise all of the Purchaser's voting rights in this regard in order to give effect to this provision.

24. CONSENTS AND WAIVERS ON BEHALF OF THE HOME OWNERS ASSOCIATION

- 24.1. The Purchaser acknowledges that until all the erven forming part of the Development has been developed, the Seller shall be entitled, as authorized agent of the BMHOA, to approve all building plans, the General Plan and SDP on behalf of the BMHOA and the Sub-Home Owners Association for new buildings to be constructed on properties forming part of the Development.
- 24.2. The Purchaser further hereby authorizes the Seller to sign, as agent of the BMHOA or the Sub-Home Owners Association, any such waivers as may be required by the Financial Institutions who will register mortgage bonds over the properties forming part of the Development.

25. NATIONAL CREDIT ACT AND OUTSTANDING TAXES

In the event that this Agreement is subject to the National Credit Act, Act 34 of 2005, then the Purchaser warrants that:

- 25.1. Once the bond as referred to in Clause 8 is approved and the pre-agreement and quotation is accepted, the Purchaser shall not do anything that may cause the Purchaser to become over-indebted in terms of the National Credit Act or cause the bank to withdraw the bond.

- 25.2. The Purchaser shall not do anything between the date of acceptance of the pre-agreement and quotation, and registration of the bond, which may cause the Purchaser's financial position to deteriorate.
- 25.3. At the time of the Signature Date, the Purchaser is not:
- 25.3.1. over-indebted; and/or
 - 25.3.2. subject to debt review; and/or
 - 25.3.3. subject to an administration order.
- 25.4. The Purchaser does not and will not be, on the Signature Date and until the Transfer Date, in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of transfer duty receipts or exemption certificates from the South African Revenue Services or not do anything or omit to do anything that will or can cause such a delay.

26. BROKERAGE

- 26.1. Commission in the amount agreed to between the Seller and the Agent shall be payable by the Seller to the Agent on the Transfer Date.
- 26.2. The said commission will be earned by the Agent upon signature of this Agreement by both the Purchaser and the Seller and the fulfillment (or waiver, as the case may be) of all conditions precedent contained herein.
- 26.3. Notwithstanding anything to the contrary contained in this Agreement, should this Agreement be cancelled as a result of the Purchaser failing to comply with his/her obligations herein, then the Purchaser hereby assumes the Seller's obligations to pay the commission due to the Agent, together with VAT thereon. The Seller hereby cedes to the agent in securitatem debiti such portion of the Seller's claim against the Purchaser as constitutes the Brokerage plus VAT thereon due to the Agent.
- 26.4. The Purchaser warrants that it was not introduced to the Property, or this Agreement, by any Agent other than the Selling Agent/s named in Clause 4.7 of this Agreement. The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Seller arising out of a breach of any of the foregoing warranty.

27. RESALE OF PROPERTY PENDING TRANSFER

- 27.1 The Purchaser may not sell or alienate the Property or any component thereof, within a period of 3 (Three) years after the Transfer Date, to any Party or any related entity of the Purchaser.
- 27.2 This condition will be registered by the Seller against the Title Deed of the Property on the Transfer Date.

28. RIGHT OF CESSION

The Seller shall be entitled to cede at any time any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be contended to be necessary, the Purchaser consents thereto. The Purchaser may not cede or delegate any of its rights and obligations in terms of or arising from this Agreement.

29. BREACH

29.1. Should the Purchaser fail on the due date for payment of any amount due by it under this Agreement to make such payment, or fail to comply with any of his other obligations in terms of this Agreement before or on the date stipulated therefore or breach this Agreement in any other way and fail to remedy such breach or to comply with his obligations within 7 (Seven) days after having received a written notice from the Seller to remedy such breach or to comply with such obligations, the Seller shall have the right at any time, without prejudice to any other powers or rights which he may have by law or by virtue of this Agreement:

29.1.1. to sue for or obtain payment of the full amount of the Purchase Price and any other amounts outstanding at the date of such breach of this Agreement, notwithstanding anything to the contrary herein contained and to eject the Purchaser from the Property and to regain vacant occupation thereof; or

29.1.2. to cancel this Agreement by giving the Purchaser written notice of such cancellation, and in that event the Purchaser shall be obliged, if the Purchaser has already obtained possession of the Property, to vacate the Property immediately and place the Seller in possession thereof; and

29.1.2.1. the Purchaser shall forfeit to the Seller the Deposit and any other amount or amounts which have already been paid by him to the Transferring Attorneys or to the Seller as rouwkoop or

29.1.2.2. to claim damages from the Purchaser in which event the Seller shall be entitled to retain the Deposit and any amount or amounts already paid to it or to the Transferring Attorneys, and to set them off against the Seller's damages in due course.

29.2. Where the Purchaser has in terms of Clause 29.1.2.1 above forfeited the Deposit and other amounts in favour of the Seller or the Seller has become entitled to retain the Deposit and other amounts paid to the Transferring Attorneys, the Transferring Attorneys will be obliged to on demand from the Seller, pay such amounts to the Seller.

29.3. Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement which will include Levies and Interest on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever. Failure to pay any of the aforesaid amounts will constitute a material breach of this Agreement.

29.4. Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate the Property on demand and to procure that the Property shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the Occupation Date.

29.5. The Purchaser shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the Seller in successfully enforcing the provisions of this Agreement or to act against the Purchaser in terms of this Clause 29. The Seller will pay all legal and other costs, including costs on the attorney and client scale, incurred by the Purchaser in successfully enforcing the provisions of this Agreement. It is specifically recorded that should any breach by the Purchaser occur at a time critical to the registration procedure the Seller shall be entitled to require the Purchaser to remedy such breach within a period of 24 (Twenty Four) hours, and not within the 7 (Seven) day period provided for in Clause 29.1.

30. PURCHASER'S RIGHT OF TERMINATION

30.1. If:

30.1.1. the Purchase Price is less than R250 000,00, and

30.1.2. the Purchaser is a natural person, then and in that instance Section 29A of the Alienation of Land Act 68 of 1981 applies to this Agreement and accordingly the Purchaser has the right to revoke this offer or terminate this Agreement by written notice to be delivered to the Seller, on or before midnight on the 5th day after signature of this Agreement by the Purchaser.

30.2. The abovementioned notice must:

30.2.1. be signed by the Purchaser or his representative, and

30.2.2. refer to this offer or Agreement as the offer or Agreement that is being revoked or terminated as the case may be, and

30.2.3. be unconditional.

31. NOTICE AND DOMICILIA

31.1. The Parties choose their addresses as set out on in Clause 1.1.2 of this Agreement and Annexure A to serve as domicilium citandi et executandi for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.

31.2. Any notice given in terms of the Agreement which is:

31.2.1. delivered by hand during normal business hours to the Seller's or Purchaser's domicilium address shall be deemed to have been received by the Seller or Purchaser at the time of delivery;

31.2.2. posted by prepaid registered post to the Seller's or Purchaser's domicilium address shall be deemed to have been received by the Seller or Purchaser on the 7th day after the day of its posting.

31.2.3. Communicated by facsimile or e-mail, shall be deemed to have been received by the Seller or Purchaser on received confirmation of the successful transmission thereof.

31.3. Where, in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

32. GENERAL

32.1. The Parties undertake to do all such things that may be necessary, incidental or conducive to the implementation of the terms, conditions and import of the Agreement.

32.2. The Agreement constitutes the sole and entire Agreement between the Parties and no warranties, representations, guarantees or other terms and conditions of whatsoever nature not contained or recorded herein shall be of any force or effect. The Purchaser acknowledges that it has been free to secure independent legal advice as to the nature and effect of all the provisions of this Agreement. The Purchaser acknowledges that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with the transaction contemplated in this Agreement.

32.3. No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representative.

32.4. No indulgence which either party ("the Grantor") may grant to the other ("the Grantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

32.5. The Purchaser warrants that all consents required in terms of the Matrimonial Property Act No. 88 of 1984 have been obtained.

32.6. The Purchaser may not prior to transfer of the Property into his name, encumber or cede to any person his rights in terms of the Agreement.

32.7. Should any provision of the Agreement be contrary to any statutory provision or common law, the Agreement will not be void but any such contrary provisions will be regarded as pro non scripto to the extent that such act, statute or common law is thereby contravened.

32.8. Should the Agreement be signed by more than one Purchaser, the Purchasers shall be jointly and severally liable to comply with all the obligations of the Purchaser as set out in this Agreement. Should the Signatories to this Agreement as Purchaser be married in community of property and file for divorce prior to the Transfer Date, both Signatories to hereby agree to be jointly and severally liable to comply with the obligations of the Purchaser as set out in this Agreement and irrevocably undertakes to sign all documents and pay all amounts and fulfill all there obligations in terms if this Agreement punctually.

32.9. The Purchaser irrevocably consents to all approvals obtained or to be obtained by the Seller as referred to in Clause 5.1 of this Agreement.

33. CONDITIONS PRECEDENT IN FAVOUR OF THE SELLER

33.1. APPROVALS REQUIRED

- 33.1.1. Insofar the Development of the Parent Property is concerned, this Agreement is subject to the fulfillment of the condition precedent in that, within 6 (Six) months after the Signature Date or such extended period as the Seller may determine in its own discretion, the Seller obtains all the statutory approvals from the relevant authorities necessary to undertake the envisaged Development of the Parent Property, including but not limited to, an amendment to the current sub-division and rezoning of certain portions of the Parent property in terms of LUPO.
- 33.1.2. In the event of the aforesaid condition not being fulfilled within the abovementioned time frame, there shall be an automatic extension of such time period for a further period as the Seller in its sole discretion deem appropriate unless and until the Seller, by written notice to the Purchaser, advise that there shall be no further extension of the time periods set out above and notifies the Purchaser of the cancellation of this Agreement.
- 33.1.3. In the event of such cancellation the Seller will cause the Deposit to be refunded and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

33.2. MINIMUM SALES

- 33.2.1. It is recorded that the Development will comprise of Residential Erven. This Agreement is made subject to the Seller selling Residential Erven in the Development to a value of at least 80% of the aggregate value of all Residential Erven in the development as per the Seller's list price for Residential Erven at the time that marketing commenced. For purposes of this Clause "sell" will mean the coming into existence of a deed of sale between the Seller and the Purchaser, which is not subject to the condition precedent referred to in Clause 8 above, or in respect of which such condition precedent, if imposed, has been fulfilled.
- 33.2.2. The time period for the fulfillment of this condition, will be determined by the Seller in its own discretion, unless and until the Seller, by written notice to the Purchaser, advise that there shall be no further extension of the time periods set out above and notifies the Purchaser of the cancellation of this Agreement.
- 33.2.3. In the event of such cancellation the Seller will cause the Deposit to be refunded and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

33.3. BUILDING AGREEMENT

- 33.3.1. This Agreement is subject to the condition precedent that MSP Developments (Pty) Ltd and the Purchaser must enter into a Building Agreement in respect of the construction of a dwelling on the Property on the Signature Date, which Building Agreement must in writing and signed by the abovementioned parties.

- 33.3.2. In the event of the aforesaid condition not being fulfilled within the abovementioned time frame, there shall be an automatic extension of such time period, for a further period as the Seller in its sole discretion deem appropriate, unless and until the Seller, by written notice to the Purchaser, advise that there shall be no further extension of the time periods set out above and notifies the Purchaser of the cancellation of this Agreement.
- 33.3.3. In the event of such cancellation the Seller will cause the Deposit to be refunded and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

33.4. TOWNSHIP REGISTER

- 33.4.1. This Agreement is subject to the condition precedent in that the Seller must be able to obtain approval of the General Plan by the Surveyor – General as well as the opening of the Township Register in the Cape Town Deeds Registry on or before the Transfer Date.
- 33.4.2. In the event of the aforesaid condition not being fulfilled within the abovementioned time frame, there shall be an automatic extension of such time period, for a further period as the Seller in its sole discretion deem appropriate, unless and until the Seller, by written notice to the Purchaser, advise that there shall be no further extension of the time periods set out above and notifies the Purchaser of the cancellation of this Agreement.
- 33.4.3. In the event of such cancellation the Seller will cause the Deposit to be refunded and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

34. OFFER

The offer to the Seller constituted by the Purchaser having signed this Agreement shall be irrevocable and may not be withdrawn except by written notice sent to the Seller by registered post, which, in any event, may not be given prior to the expiry of a period of 30 (Thirty) days from the date of signature by the Purchaser.



SIGNED by the Parties hereto on the dates and places hereinafter set forth.

BY THE SELLER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____
_____ SELLER

BY THE PURCHASER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____ PURCHASER(1) PURCHASER(2)

If Purchaser is a Company, Close Corporation or Trust:

Name of Signatory:

Designation of Signatory:

Declaration

The person who signs this Agreement declares himself to be fully aware of the suretyships, guarantees and indemnities.

Annexure A

INFORMATION OF THE PURCHASER

Name: _____

Identity/Registration no:
(or passport number) _____

Date of birth: _____

Postal address: _____

Residential address: _____

Telephone/Fax No: (home) _____

(business) _____

(fax) _____

(cell) _____

(e-mail) _____

Marital Status of Purchaser: MARRIED / NOT MARRIED
(if natural person)

If married:
State community of Property: OUT / IN / MUSLIM RIGHTS/CUSTOMARY LAW

Name of Spouse: _____

Identity/Passport no: _____

Marriage governed by
the Laws of: _____

If Purchaser is a Company,
Close Corporation or Trust,
Specify details of:

Name: _____

Capacity: _____

Resolution attached: YES / NO

FICA documents attached: YES/NO

Annexure B

SDP

Annexure C

- CAPACITY OF PURCHASER

- 1.1 Should the Signatory sign this Agreement for the benefit of a Company or Close Corporation or other legal person to be incorporated or formed, he shall be personally liable as Purchaser for the proper performance of all the terms and conditions of the Agreement, if the said Company or Close Corporation or Trust or other legal person is not incorporated or formed and does not adopt and ratify unconditionally the terms and conditions of the Agreement within 90 (ninety) Days after the date of which the Seller has signed this Agreement.
- 1.2 Should the Signatory sign this Agreement as Trustee for a Company not yet incorporated or as Trustee for a Close Corporation not yet formed, he shall be personally liable as Purchaser for the proper performance of all the terms and conditions of the Agreement if the said Company or Close Corporation is not incorporated or formed and does not in terms of the provisions of the Companies Act No 61 of 1973 or in terms of the Close Corporations Act No 69 of 1984 adopt and ratify unconditionally the terms and conditions of the Agreement within 90 (ninety) Days after the date on which the Seller signs this Agreement.
- 1.3 In the event of the said Company or Close Corporation or Trust or other legal person being duly incorporated or formed and adopting and ratifying the Agreement in terms of 1.1 and 1.2 above, then the Signatory by his signature hereto, hereby interposes and binds himself in favour of the Seller as surety for and co-principal debtor in solidum with such Company or Close Corporation or Trustees of the Trust or other legal Person for the due and timeous performance by it of all its obligations as Purchaser in terms of the Agreement. The Signatory furthermore guarantees that such Company or Close Corporation or Trustees of the Trusts or other legal person will comply with all its obligations as Purchaser in terms of this Agreement and furthermore indemnifies the Seller against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such Company or Close Corporation or Trustees of a Trust or other legal person. The Signatory hereby renounces all benefits arising from the following legal exceptions and privileges:

non causa debiti – the right of the surety to require that the creditor must prove that there was a legal cause underlying the debt;

de errore calculi – the right of the surety to require that the creditor must prove that there was no error in calculation of the debt owed to him by the debtor;

revision of accounts – the right of the surety to require that the creditor must prove that the accounts need not be debated;

no value received – the right of the surety to require that the creditor must prove that the debtor had received value from the creditor;

beneficium de duobus vel pluribus reis debendi – the right of the surety to require that the creditor should have recourse against one or more other persons liable for the same debt jointly with the surety and not to proceed against the surety alone;

beneficium divisionis – the right of the surety, where there is more than one surety for the debtor's obligations, to require that the creditor must not sue the surety for the full amount owing under the suretyship but only for a pro rata share of the debt;

beneficium cedendarum actionum – the right of the surety to require that before the creditor sues him, the creditor must first cede his right of action against the debtor to the surety;

or any other exceptions which might legally be taken by him against any claims made against him in his capacity as a surety as aforesaid, with the force and meaning whereof the said Signatory declares himself to be fully acquainted.

- 2.1 In the event that a Company or Close Corporation or Trust or other legal person is the Purchaser, the person who signs this Agreement on behalf of such Company or Close Corporation or Trust or other legal person by his signature thereto interposes and binds himself in favour of the Seller as surety for and co-principal debtor in solidum with such Company or Close Corporation or Trustees of a Trust or other legal person for the due and timeous performance by it of all its obligations as Purchaser in terms of the Agreement and furthermore by his signature hereto guarantees that the Purchaser exists, and that it has the power and capacity to enter into this Agreement and that the Purchaser will comply with all the terms of this Agreement and furthermore indemnifies the Seller against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such a Company or Close Corporation or Trustees of a Trust or other legal person.
- 2.2 The person referred to in Clause 2.1 who signs this Agreement also hereby renounces all benefits arising from the legal exceptions and privileges referred to in 1.3 above which might legally be taken by him against any claims made against him in his capacity as a surety and co-principal debtor as aforesaid, with the force and meaning whereof the said person declares himself to be fully acquainted.
3. In the event that a Company or Close Corporation or Trust or other legal person is the Purchaser, the person who signs this Agreement guarantees that he is duly authorized to sign this Agreement on behalf of such a Company or Close Corporation or Trust or other legal person and by his signature hereto indemnifies the Seller against any damages that it may suffer in the event that the Agreement may become unenforceable in view of the fact that he was not authorized to sign the Agreement on behalf of such a Company or Close Corporation or Trust or other legal person.
- 4.1 In the event that the Purchaser is described as "X or nominee", (X being the name and surname of a person) (X is hereafter in Clause 4 referred to as "the Principal Purchaser"), the Principal Purchaser will be personally liable for all the obligations of the Purchaser in terms of this Agreement if he does not in writing nominate a nominee to be the Purchaser and such nominee does not accept such nomination within 24 (twenty four) hours of the date that the Seller has signed the Agreement.
- 4.2 Should the Principal Purchaser validly nominate a nominee in terms of the provisions of this Clause 4, then:
- 4.2.1 all references to the Purchaser in this Agreement shall be deemed to be a reference to such nominee, provided that there shall be no further right of nomination;
- 4.2.2 the Principal Purchaser by his signature hereto interposes and binds himself in favour of the Seller as surety for and co-principal debtor in solidum with such nominee for the due and timeous performance by it of all its obligations as Purchaser in terms of this Agreement and the Principal Purchaser by his signature hereto guarantees that such a nominee will comply with all its obligations as set out in this Agreement and furthermore the Principal Purchaser indemnifies the Seller against any damages that it may suffer as a result of the breach of any of the terms of this Agreement by such a nominee;
- 4.2.3 the Principal Purchaser also hereby renounces all benefits arising from the legal exceptions referred to in 1.3 above which might legally be taken by him against any claims made against him in his capacity as surety as aforesaid, with the force and meaning whereof the said Principal Purchaser declares himself to be fully acquainted.
- 4.3 The Principal Purchaser hereby acknowledges that upon such nomination, transfer duty or additional VAT or legal fees plus VAT on legal fees may become payable on the transfer of the Property into the name of the nominee and undertakes, immediately on demand from the Transferring Attorneys to make payment of such additional fees plus VAT thereon and transfer duty or VAT to the Transferring Attorneys.

Annexure D

FICA REQUIREMENTS

The following documents must be furnished to comply with the *Financial Intelligence Centre Act, Act No 38 of 2001*, namely:

INDIVIDUALS / PARTNERSHIPS

1. a certified copy of page 1 of the Purchaser's Identity document, Marriage Certificate, Antenuptial Contract or Divorce order (if applicable) or, if married in community of property, also a certified copy of the Identity document of the Purchaser's spouse;
2. a certified copy of a Utility Bill addressed to the Purchaser's residential address (not postal address), or alternatively a Sworn Affidavit that the Purchaser currently reside at the said address;
3. a certified copy of a document issued by SARS reflecting the Purchaser's Income Tax number;
4. a cancelled cheque or particulars of the Purchaser's Bank account certified by his Bankers.

Documents which can be used for verification (not older than 3 months):

Bank statement / Rental agreement / Municipal account / Bond account statement / Telkom account / SARS return or IRP5 / Insurance policy / Salary advice / Motor license / Correspondence by body corporate of sectional title scheme

CLOSE CORPORATIONS / COMPANIES / TRUSTS

1. certified copies of the latest:

CLOSE CORPORATION (CC)

Certificate of Incorporation and Founding Statement, both of which must have the Registrar of Close Corporation's stamp and be signed by a member;

COMPANY

Certificate of Incorporation (CM1), Notice of Registered Office and Postal Address (CM22), both bearing the Registrar of Company's stamp and be signed by the Secretary of the company;

TRUSTS

Trust Deed or other founding document and Master's Letter of Authority;

1. A certified copy of all **members'/directors'/trustees'** Identity documents, Marriage certificates, Antenuptial contracts or Divorce orders (if applicable) or if married in community of property, a certified copy of the Identity document of such **member's/director's/trustee's** spouse;
2. A certified copy of a Utility Bill addressed to the **CC's / company's / trust's** physical business address (not postal address), or alternatively a Sworn Affidavit that the said address is currently the **CC's / company's / trust's** physical business address;
3. A certified copy of a document issued by SARS reflecting the **CC's / company's / trust's** Income Tax number;
4. A cancelled cheque or particulars of the **CC's / company's / trust's** Bank account certified by the **CC's / company's / trust's** Bankers;
5. A certified copy of the resolution in terms of which the property was purchased.

Annexure E

SPECIMAN BANK GUARANTEE

Payable via Interbank
Transfer [EFT] only

Guarantee no
Date

The guarantee expiry date:

To:

Bank name :
Account name :
Account number :

Dear Sir / Madam

We hereby advise that we hold at your disposal the undermentioned sum which will become payable to you subject to the terms and conditions of payment stipulated below.

Amount payable: R _____
and no interest on R _____ calculated from _____ to date of payment,
both days inclusive. The amount payable shall under no circumstances exceed R _____

For the credit of

Account name :
Account number :
Account type :
Branch code :

Terms and conditions of payment

Receipt by us of advice from _____ that the following transaction have
been duly registered simultaneously:

Registrations:

- 1.
- 2.
- 3.

We reserve the right to cancel or withdraw from this guarantee at any time prior to the registration of any of the abovementioned transactions by giving you written notice to such effect, whereupon the said sum will no longer be held at your disposal.

This guarantee must be returned to us against payment being effected by us in terms hereof, or upon its expiration or receipt by you of our aforesaid written notice of cancellation or withdrawal.

Upon the termination of this guarantee by payment, expiry, cancellation, withdrawal or otherwise this guarantee shall become null and void whether returned to the bank or not and any advice, claim or statement received after its termination, shall be ineffective.

This guarantee is neither negotiable nor transferable and shall expire at close of our business on
