

AGREEMENT OF SALE



CLUVER
MARKOTTER

SCHEDULE OF PARTICULARS

1 SELLER

- 1.1 Name: THE TRUSTEES FOR THE TIME BEING OF THE LA ROCHE TRUST;
- 1.2 Registration number: IT1427/2016(C);
- 1.3 Physical Address: 3rd Floor, Old College Building, Church Street, Stellenbosch, 7600;
- 1.4 Postal Address: P.O. Box 662, Stellenbosch, 7599;
- 1.5 Telephone number: (021) 886 4084; and
- 1.6 Facsimile number: _____.

2 THE PURCHASER

2.1 Purchaser 1:

- 2.1.1 Full names: _____
- 2.1.2 Identity/Registration number: _____
- 2.1.3 Marital Status: _____
- 2.1.4 If the Purchaser is a company, close corporation or a trust, the full names of the representative signatory:

- 2.1.5 Physical address: _____

- 2.1.6 Postal address: _____

- 2.1.7 E-Mail: _____
- 2.1.8 Telephone number: _____
- 2.1.9 Mobile number: _____
- 2.1.10 Facsimile number: _____;
- 2.2 **Purchaser 2** (if applicable):
- 2.2.1 Full names: _____
- 2.2.2 Identity/Registration number: _____
Marital status: _____

2.2.3 If the Purchaser is a company, close corporation or a trust, the full names of the representative signatory:

2.2.4 Physical address: _____

2.2.5 Postal address: _____

2.2.6 E-Mail: _____

2.2.7 Telephone number: _____

2.2.8 Mobile number: _____

2.2.9 Facsimile number: _____

3 THE PROPERTY

Erf _____, measuring approximately _____ square metres, being a subdivision of Erf 16422 Stellenbosch, in the Municipality and Division STELLENBOSCH, Province of the WESTERN CAPE and being as depicted on the General Plan (as hereinafter defined).

4 PURCHASE PRICE

Total price: R _____ (_____
_____ Rand) (inclusive of Value Added Tax).

5 DEPOSIT

Amount: R _____ (_____
_____ Rand), payable within 7 (seven) days after the
signature date.

(The deposit amount shall be equal to 40% (forty percent) of the purchase price recorded in item 4 above).

6 BOND

Amount required: _____

(If no amount is specified it shall be deemed that a bond is not required and the provisions of the agreement of sale relating to bond finance shall then not apply)

7 CONVEYANCERS

7.1	Name of firm:	Cluver Markotter Inc.
7.2	Business address:	Cluver Markotter Building, Mill Street, Stellenbosch, 7600
7.3	Postal address:	PO Box 12, Stellenbosch, 7599
7.4	Telephone number:	(021) 808 5604; International + (2721) 808 5604
7.5	Facsimile number:	(021) 886 5420; International + (2721) 886 5420
7.6	Contact persons:	Mr Arend de Waal/Ms Marzane Bruwer

CONSUMER PROTECTION ACT NOTICE

In light thereof that the Property is sold in the ordinary course of the Seller's business, this Agreement shall be subject to the Consumer Protection Act 68 of 2008 (hereinafter referred to as the "Consumer Protection Act") in the event that:

- A. the Purchaser is a natural person; or
- B. the Purchaser is a juristic person (a company, close corporation, trust or partnership) with an annual turnover or asset value of less than R2 000 000.00 as determined at the signature date.

Certain parts of this Agreement have been printed in bold in order to specifically draw the attention of the Purchaser thereto, as required in terms of the Consumer Protection Act. These highlighted parts either:

- A. limits the risk or liability of the Seller or any other person;
- B. constitutes an assumption of risk or liability by the Purchaser;
- C. imposes an obligation on the Purchaser to indemnify the Seller or any other person for some cause; and/or
- D. is an acknowledgement of a fact by the Purchaser.

The Purchaser must ensure that, before signing this Agreement, he/she/it understands the terms and conditions of this Agreement. The Purchaser can request an explanation of these terms if he/she/it is unclear and the Purchaser must not sign this Agreement until any uncertain or unclear terms have been explained to the Purchaser's satisfaction.

1 INTERPRETATION

1.1. In this agreement unless the context otherwise requires:

1.1.1. "**the/this agreement**" means the agreement contained in this document which incorporates the schedule and all annexures attached hereto;

1.1.2. "**the building manual**" means the Architectural and Landscape Design Framework as compiled by Dennis Moss Partnership for the development, a copy of which is available on the website www.laroche.co.za;

1.1.3. "**the Association**" means the Home Owners' Association which has established for the development, as contemplated in this agreement;

1.1.4. "**business day**" means any day which is not a Saturday, Sunday or South African public holiday;

1.1.5. "**conditions of subdivision**" means the conditions of rezoning and subdivision which has been imposed by the competent authorities when approving the rezoning and subdivision of the development area in accordance with the General Plan;

1.1.6. "**conveyancers**" means Cluver Markotter Inc. of Cluver Markotter Building, Mill Street, Stellenbosch;

1.1.7. "**date of transfer**" means the date upon which the property is registered in the name of the purchaser in the Cape Town Deeds Registry;

1.1.8. "**development**" means the residential development to be undertaken by the seller on the development area, known as "*La Roche*";

1.1.9. "**the development area**" means:

Erf 16422 Stellenbosch, in the Municipality and Division of STELLENBOSCH, Province of the WESTERN CAPE

Held by Deed of Transfer Number T61551/2016,

but excluding Erf 16739 Stellenbosch, which will be transferred by the Seller in due course, as contemplated in clause 15.2;

1.1.10. "**General Plan**" means the draft general plan depicting the development on the development area, which is attached hereto marked Annexure "A";

1.1.11. "**parties**" means the seller and the purchaser/s;

1.1.12. "**prime rate**" means the publicly quoted annual rate of interest from time to time levied by ABSA Bank Limited on the unsecured overdrawn current accounts of its most favoured private sector corporate customers, as certified by any manager of that bank (whose authority and/or appointment and/or qualification it shall not be necessary to prove);

1.1.13. "**property**" means the property identified in the schedule and which is shown on the General Plan;

1.1.14. "**purchase price**" means the purchase price stipulated in item 4 of the schedule;

1.1.15. "**purchaser**" means the party or parties identified in item 2 of the schedule;

1.1.16. "**sales levy**" means the levy as set out in clause 11 of this agreement;

- 1.1.17. "schedule" means the schedule of particulars comprising pages 2 to 5 of this agreement and which forms part of this agreement;
- 1.1.18. "seller" means the Trustees for the time being of the La Roche Trust, Registration number IT1427/2016(C);
- 1.1.19. "signature date" means the date upon which this agreement is signed by the party who signs same last in time;
- 1.1.20. "suspensive condition" means the suspensive condition referred to in clause 5 of this agreement;
- 1.1.21. "transfer" means registration of transfer of the property into the name of the purchaser;
- 1.1.22. "VAT" means Value Added Tax payable in terms of the VAT Act; and
- 1.1.23. "VAT Act" means the Value Added Tax Act, No. 89 of 1991 as amended.
- 1.2. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and words importing persons shall include partnerships, bodies corporate, trusts and close corporation.
- 1.3. The head notes to the paragraphs to this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.5. If any period is referred to in this agreement by reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

2 RECORDAL

- 2.1. The seller has obtained approvals from the competent authorities for the rezoning and subdivision of the development area in accordance with the General Plan.
- 2.2. The seller has agreed to sell to the purchaser who has agreed to purchase the property.

3 SALE

The seller hereby sells and the purchaser hereby purchases the property, subject to the terms and conditions contained in this agreement.

4 PURCHASE PRICE AND PAYMENT

- 4.1 The purchase price shall be paid by the purchaser to the seller as follows:
- 4.1.1 a deposit in the sum stipulated in item 5 of the schedule shall be paid by way of electronic transfer of funds into the trust account of the conveyancers, within the period as stated in item 5 of the schedule; and
- 4.1.2 the balance against transfer.
- 4.2 **The purchaser shall within 10 (ten) business days of being called upon by the conveyancers to do so, which request will not be made prior to fulfilment of the suspensive condition contained in clause 5.1 (if applicable), deliver to the seller and/or the conveyancers a guarantee or guarantees by a South African bank or other South African financial institution reasonably acceptable to the seller for payment of the purchase price in accordance with the provisions of this agreement. Such guarantee**

or guarantees shall be expressed to be payable against written notification from the conveyancers of cancellation of all existing mortgages over the property, registration of transfer and registration of the mortgage bond (if any) referred to in clause 5.1 and shall not be subject to any other conditions. The seller shall be entitled to nominate the beneficiary of the guarantee or guarantees and shall notify the purchaser in writing of the details of the beneficiary of the guarantee or guarantees and the terms and conditions acceptable to the seller. In the alternative, the balance of the purchase price shall be paid into the trust account of the conveyancers on or before the date upon which the guarantees are due.

- 4.3 The purchaser hereby grants his/her/its consent that the conveyancers may invest any funds paid into the conveyancers' trust account in respect of the purchase price, in an interest-bearing trust account at a reasonable, competitive interest rate in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014 ("the LPA") on behalf of, and for credit of the purchaser. The conveyancers shall be entitled to debit against the interest an administration fee in respect of any funds so received and invested. The purchaser acknowledges that the conveyancers will only be able to invest the funds as aforesaid upon receipt of the documentation that will be requested from him/her/it in order to comply with the terms of the Financial Intelligence Centre Act, No. 38 of 2001. The purchaser is aware that, with effect from 1 March 2019, 5% (five percent) of the interest accrued on the investment made in terms of this clause 4.3 will automatically be paid monthly to the Legal Practitioners' Fidelity Fund in terms of Section 86(5) of the LPA.
- 4.4 All amounts payable by the purchaser in terms of this agreement shall be paid to the conveyancers free of exchange or commission and without deduction or set-off, in cash or by means of a bank guaranteed cheque or cheque drawn by a South African registered commercial bank.

5 SUSPENSIVE CONDITION

- 5.1 This agreement is subject to the fulfilment of the suspensive condition that, if applicable, the purchaser obtains a loan from a South African bank or other South African financial institution, which is reasonably acceptable to the seller, on terms acceptable to the seller in the sum stipulated in the schedule (or such lesser amount as the purchaser may agree to accept) against the security of a first mortgage bond over the property.
- 5.2 If the suspensive condition provided for in clause 5.1 is not fulfilled within 20 (twenty) business days after the signature date, or within such extended period as the seller in its sole discretion may allow, which extension shall not exceed a further 20 (twenty) business days, then and in such event this agreement shall terminate and shall be of no further force and effect. In such event the parties shall be restored as near as may be possible to the position each would have been in if this agreement not been entered into at all.
- 5.3 The purchaser shall, on or prior to the date referred to in clause 5.2 above, provide the conveyancers with written confirmation by the said bank or financial institution of the final approval of the loan. The loan referred to in clause 5.1 shall be deemed to have been obtained when the bank or financial institution provides the purchaser with a quotation and offer a secured loan in terms of the provisions of the National Credit Act, No. 34 of 2005, irrespective of whether such quotation and offer has been signed and accepted by the purchaser.
- 5.4 The suspensive condition recorded in clause 5.1 is incorporated herein for the sole benefit of the purchaser who shall be entitled to waive the benefit thereof in writing at any time prior to the date stipulated for the fulfilment thereof. In the event of the purchaser electing to waive the benefit of the suspensive condition, the suspensive condition shall be deemed to have been fulfilled.
- 5.5 The purchaser shall take all steps reasonably necessary to procure the timeous fulfilment of the suspensive condition.
- 5.6 All costs relating to the registration of the mortgage bond shall be borne by the Purchaser.

6 TITLE CONDITIONS AND CONDITIONS OF PROPERTY

- 6.1 The parties specifically record, as contemplated in Section 55(6) of the Consumer Protection Act, that the purchaser has been expressly informed:
- 6.1.1 that earthworks to create building platforms, potentially affecting ground conditions for construction purposes, have been carried out on the property;
 - 6.1.2 that excavation work was done along the southern- and western boundaries of the development area and that Löffelstein block walling was installed in these areas, which may encroach on the buildable area of properties in these areas; and
 - 6.1.3 that the boundary wall which encloses the development encroaches on Erven 16772 – 16783 and Erven 16785 – 16792 on the General Plan
- and that detailed information of such works and/or encroachment has been made available to the purchaser.
- 6.2 The purchaser accordingly:
- 6.2.1 expressly accepts that the property is purchased in its current condition;
 - 6.2.2 acknowledges that he has familiarised himself with the works conducted on the property, as set out in clause 6.1, in order to determine the implications this may have on the planned construction work on the property; and
 - 6.2.3 acknowledges that the seller will not be required to carry out any further earthworks and/or landscaping in respect of the property.
- 6.3 The seller shall not be responsible for pointing out or indicating the position of any surveyor's beacons or pegs in respect of the property.
- 6.4 The property is sold subject to:
- 6.4.1 all such conditions as are mentioned and/or referred to in the title deed/s relating to the property; and
 - 6.4.2 such conditions as may have been or may hereafter be imposed by the competent authorities upon approval of the rezoning and subdivision of the development land, which conditions have been made available to the purchaser.
- 6.5 Erven 16744 – 16749; 16793; 16814; 16817 – 16827; 16829 – 16831; 16833; 16842 -16843; 16845; 16847 – 16851 on the General Plan are furthermore sold subject to a stormwater- & sewer pipeline servitude, which servitude is indicated on the General Plan. This servitude will be notarially registered at the seller's cost over the property, simultaneously with transfer, in favour of the Association, who will become the registered owner of the private open spaces as contemplated in clause 15.1.
- 6.6 If upon the final survey of the property the extent of the property is found to be greater than the extent as set out in the schedule and/or depicted on the General Plan, the purchaser shall not be liable for any excess. Conversely, if the extent thereof is found to be less than the extent as set out in the schedule and/or depicted on the General Plan, the seller shall not be liable for any shortfall. The provisions of this clause are subject thereto that if the final, surveyed extent of the property is less than 95% (ninety five percent) of the provisional extent recorded in the schedule, the purchaser, entirely within his election and within 7 (seven) days of being notified thereof, shall be entitled to resile from this agreement by giving written notice to such effect to the seller. Should the purchaser exercise this right to resile, the provisions of clause 5.2 shall *mutatis mutandis* apply.

7 POSSESSION

- 7.1 Possession of the property shall be given to and taken by the purchaser on date of transfer.
- 7.2 **All risk and benefit in the property shall pass to the purchaser on date of transfer.**
- 7.3 **The purchaser shall be responsible for and shall pay all rates & taxes, Home Owners' Association levies and other expenses relating to the property from transfer.**
- 7.4 **The purchaser shall on demand refund to the seller an amount equal to all rates & taxes and Home Owners' Association levies, if applicable, and other proprietary charges and/or levies pre-paid by the seller in relation to the property for a period beyond the date of transfer.**
- 7.5 **The purchaser acknowledges that after taking transfer of the property and until the development has been completed, building operations may be in progress on any portion of the development and that the purchaser may suffer inconvenience, noise and dust as a result thereof. The purchaser shall have no claims against the seller arising from any such inconvenience, noise or dust.**

8 TRANSFER

- 8.1 Transfer of the property shall be effected by the conveyancers as soon as reasonably possible after the fulfilment of the suspensive condition.
- 8.2 **The purchaser shall be responsible for, and shall within 5 (five) business days of being called upon by the conveyancers to do so:**
- 8.2.1 **pay to the conveyancers the transfer fees incidental to the transfer of the property, determined in accordance with the recommended guidelines of the Cape Law Society, together with all disbursements and deeds office fees; and**
- 8.2.2 **furnish the conveyancers with such information and sign such documents as may be reasonably required by the conveyancers for purposes of transfer, which shall include the documentation required by the conveyancers to register the servitude as contemplated in clause 6.5.**
- 8.3 **In the event of the purchaser failing to comply with its obligations in terms of clause 8.2 and if this should result in a delay in the transfer of the property being registered in the name of the purchaser, the purchaser shall be obliged to pay to the seller interest on the purchase price at prime rate plus 2% (two percent) for the period of such delay. The determination of the period of such delay by the conveyancers shall be final and binding on the parties.**
- 8.4 **The purchaser shall have no claims against the seller for any loss or damage suffered by the purchaser arising out of any delay in transfer.**

9 FACILITIES ESTABLISHED BY SELLER

- 9.1 The seller has established the following facilities within the development:
- 9.1.1 enclosure of the development by a fence and/or wall with electric security;
- 9.1.2 an entrance gate feature;
- 9.1.3 a dam; and
- 9.1.4 a booster pump station.
- 9.2 In addition to the facilities to be provided by the seller as aforesaid, the seller has undertaken the landscaping of all private open spaces in the development area.

10 HOME OWNERS' ASSOCIATION

- 10.1 A Home Owners' Association has been established for the development as envisaged in Section 29 of the Stellenbosch Municipality Land Use Planning By-Law, as promulgated in the Provincial Gazette Extraordinary No. 7512 on 20 October 2015.
- 10.2 The property is sold subject to the terms and conditions of the Constitution of the Association, which is available on the website www.laroche.co.za.
- 10.3 The Constitution of the Association took effect on the date of registration of transfer of the first property indicated on the General Plan from the seller into the name of the purchaser thereof.
- 10.4 The purchaser shall be and remain a member of the Association for as long as he is the registered owner of the property and shall:
- 10.4.1 be responsible for and pay promptly on due date all levies and other charges as may be payable to the Association in accordance with its Constitution; and
- 10.4.2 comply with (and procure that all other occupants of the property comply with) the terms of the Constitution of the Association, as well as any house or conduct rules which may be adopted by the Association from time to time.
- 10.5 Upon registration of transfer of the property in the name of the purchaser a title deed condition shall be registered against the title of the property, reading as follows:

SUBJECT to the following condition imposed by the Transferor, The Trustees for the time being of La Roche Trust, Registration Number IT1427/2016(C), for the benefit of the LA ROCHE HOME OWNERS' ASSOCIATION", established in terms of Section 29 of the Stellenbosch Municipality Land Use Planning By-Law, as promulgated in the Provincial Gazette Extraordinary No. 7512 dated 20 October 2015, namely:

"This property may not be transferred without the consent in writing of the LA ROCHE HOME OWNERS' ASSOCIATION.

The registered owner of the property from time to time is automatically a member of the LA ROCHE HOME OWNERS' ASSOCIATION and will remain a member for the duration of his ownership."

11 SALES LEVY

- 11.1 Every owner of a property within the development, or where a property is owned by more than one registered owner, all the registered owners of the property jointly and severally, shall be liable to pay to the Association a special levy ("the sales levy") in respect of any transaction as dealt with in clause 11 of the Constitution of the Association.
- 11.2 This sales levy shall:
- 11.2.1 be imposed upon the owners for purposes of accumulating a capital reserve fund for the Association which will primarily be used to meet the capital expenditure requirements (including necessary expenditure in relation to the maintenance of capital infrastructure); and
- 11.2.2 be payable to the Association upon registration of transfer.
- 11.3 The obligation to pay this sales levy, having accrued prior to transfer, shall be without prejudice to the Association's right to recover the sales levy (and interest thereon) after transfer. The purchaser acknowledges that the Association will be entitled to withhold its consent to the transfer of the property if payment of the sales levy has not been paid or guaranteed to its satisfaction.

- 11.4 **No sales levy shall be payable by the developer in respect of property transferred by the developer to third parties. In the event that the developer should transfer any property to another entity controlled by it or its shareholders, no sales levy shall be payable in respect of any subsequent alienation by the entity concerned to a third party.**

12 BUILDING REQUIREMENTS

- 12.1 **Approval of building plans in respect of any building or structure to be erected on the property shall be sought in accordance with the procedure as set out in the building manual.**
- 12.2 All buildings and structures shall be erected in a good and proper workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with clause 12.1 above.
- 12.3 The purchaser undertakes to employ local building contractors and construction workers as far as reasonably feasible to undertake building works in respect of the property.
- 12.4 **The property and all improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.**

13 BUILDING OPERATIONS

- 13.1 **The purchaser and/or his successors in title shall, within a period of 48 (forty eight) months after the date of the first registration of transfer of the property from the seller to the purchaser (or such later date as the Association may direct in writing), commence building operations in respect of a dwelling on the property, provided that the plans and specifications thereof shall have been approved in terms of clause 12 above.**
- 13.2 **Any building operations which commence within the above mentioned 48 (forty eight) month period, or on any later date subject to clause 13.4, must be completed within 12 (twelve) months calculated from the date of commencement (“the construction period”). For the avoidance of doubt, the purchaser acknowledges that the dwelling on the property has to be completed at expiry of the construction period.**
- 13.3 **For purposes of interpretation of this clause 13, “commencement” means the date upon which the digging of the foundations of the dwelling to be constructed commences and “completed” means that the Local Authority has issued an occupation certificate in respect of the dwelling on the property.**
- 13.4 **If the purchaser and/or his successors in title fail to comply with the provisions of clause 13.1, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this agreement or in terms of its constitution or at law and at its election, to impose a penalty levy upon the purchaser, equal to 3 (three) times the ordinary levy imposed on owners of erven within the development. Such penalty levy shall be payable monthly, for as long as the purchaser is in default of the provisions of clause 13.1.**
- 13.5 **If the purchaser and/or his successors in title fail to comply with the provisions of clause 13.2, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this agreement or in terms of its constitution or at law and at its election, to impose a penalty levy upon the purchaser, equal to 1.5 (one and a half) times the ordinary levy imposed on owners of erven within the development. Such penalty levy shall be payable monthly, for as long as the purchaser is in default of the provisions of clause 13.2, without limiting the Association’s right to impose penalty levies in terms of clause 13.4.**
- 13.6 **The reason for the imposition of these penalty levies is to motivate owners to commence and complete building works on their properties as soon as possible after they have taken transfer thereof in order to establish a community of completed dwellings and also to complete the building works, once it has commenced, within a reasonable period. The purchaser agrees that the above motivation and the increased penalty levies are fair and reasonable.**

14 LIMITATION OF USE ON PROPERTY

The property shall be used solely for residential purposes. Without limiting the generality of the foregoing, no guest house, Airbnb/similar enterprise, business or profession may be conducted from the property without the prior written consent of the seller or, once established, the Association.

15 TRANSFER OF PRIVATE OPEN SPACES

15.1 The seller has transferred all the private open spaces indicated on the General Plan, excluding the property referred to in clause 15.2 below, into the name of the Association.

15.2 **The purchaser acknowledges that the seller reserves the right to rezone Erf 16739 (situated outside of the boundary fence of the development), which is indicated as a private open space on the General Plan, for residential purposes in due course and to transfer this property. The purchaser hereby irrevocably undertakes not to oppose this rezoning and to also contractually bind his successors in title to this undertaking.**

16 DAM AND PRIVATE OPEN SPACES

16.1 The seller does not warrant that the water in the dam on the development area shall remain at a certain level throughout the year.

16.2 The Association will be responsible for the future management and maintenance of all private open spaces in the development, excluding the property referred to in clause 15.2 above, and can in due course impose rules for the use of these areas.

17 MORTGAGE BOND APPLICATION

17.1 Should the purchaser have indicated on the schedule that this agreement is subject to him being successful in obtaining approval for a loan from a bank or other recognised financial institution, then:

17.1.1 **the purchaser shall promptly furnish such information and sign such application forms and other documentation as may be reasonably required by the financial institution concerned for purposes of considering the application for a loan; and**

17.1.2 **if the purchaser is a company, close corporation, trust or other legal entity (other than a natural person) and the loan is granted subject to the condition that the directors and/or shareholders and/or members and/or trustees (as the case may be), or if the purchaser is a married person and the loan is granted subject to the condition that the purchaser's spouse binds himself/herself as surety for and co-principal debtor with the purchaser arising from or in connection with such loan, then such loan shall be deemed to have been obtained and the suspensive condition fulfilled.**

18 CESSION OF RIGHTS

The seller shall be entitled to cede and assign all its development rights and obligations in respect of the development and under this agreement to a third party.

19 SURETYSHIP

19.1 **In the event of the signatory to this agreement signing on behalf of a company, trust or close corporation, he hereby binds himself in favour of the seller as surety and co-principal debtor *in solidum*, for the proper and timeous fulfillment of all the terms and conditions of this agreement by the purchaser for and on whose behalf he has entered into this agreement. The purchaser waives the benefit of the**

exceptions *non numeratae pecuniae* and *beneficium divisionis*, the nature and extent of which he acknowledges to be familiar with.

- 19.2 The liabilities which might be forthcoming from this suretyship shall endure and remain in existence even if the seller cancels the agreement in terms of the cancellation clause.
- 19.3 The signatory signing on behalf of a company, a close corporation or a trust hereby warrants that he is duly authorised by the purchaser to sign as such and that all internal requirements pertaining to such authorisation has been complied with.

20 JOINT AND SEVERAL LIABILITY

If the purchaser comprises more than 1 (one) person (whether natural or juristic) their liability in terms of this agreement shall be joint as well as several.

21 COMPANIES, CLOSE CORPORATIONS AND TRUSTS

- 21.1 If the person signing this agreement as purchaser is acting for and on behalf of a company, close corporation or trust which is already duly formed and legally entitled to trade, then the signatory hereto warrants in respect of the company, close corporation or trust that he is duly authorized to sign this agreement on its behalf and that it is in existence and duly registered with the relevant statutory authority.
- 21.2 If the purchaser is acting for a company to be formed, then, as is provided for in Section 21 of the Companies Act, No.71 of 2008, in the event of the said company not being formed, or if formed, not ratifying and adopting this Agreement within the requisite three months from formation, the purchaser shall in his personal capacity be the Purchaser hereunder and shall be bound by all the terms and obligations of this Agreement. Should the company be duly formed and accordingly adopts and ratifies this Agreement, then the signatory hereto binds himself as surety and co-principal debtor, jointly and severally with the company for the fulfillment of all the terms and conditions of this Agreement.

22 FICA

- 22.1 The purchaser acknowledges that he/she/it is aware of the following:
- 22.1.1 the provisions of the Financial Intelligence Centre Act, Number 38 of 2001 (hereinafter the "FIC Act"); and
- 22.1.2 by acquiring property and mortgage finance, the conveyancers are obliged to comply with the appropriate provisions of the FIC Act.
- 22.2 The purchaser accordingly agrees to grant the conveyancers and attorneys attending to the registration of a mortgage bond on their behalf, full co-operation and disclosure in order for them to meet their obligations as set out in this clause 22.

23 VAT

The parties record that:

- 23.1 the seller is a vendor and that this transaction is subject to the payment of VAT by the seller, which is included in the purchase price; and
- 23.2 in the event that the prevailing rate of VAT should change prior to the implementation of this agreement, the purchase price shall be adjusted accordingly.

24 BREACH

- 24.1 If either party commits a breach of any of the provisions of this agreement ("the guilty party") and fails to remedy such breach within 7 (seven) days (or if the breach in question is not capable of being remedied within 7 (seven) days, within such extended period as may be reasonable in the seller's opinion) of receipt or deemed receipt of a written notice calling upon it to do so, the other party ("the innocent party") shall be entitled, without prejudice to any other rights which it may have in law or in terms hereof, to:
 - 24.1.1 in the event of a breach by the purchaser, cancel this agreement and become entitled to all amounts paid by the purchaser on account of the purchase price, including the deposit stipulated in item 5 of the schedule, as "rouwkoop" or as a genuine pre-estimate of liquidated damages; or
 - 24.1.2 cancel this agreement and claim such damages from the guilty party as it may have sustained and, in the event of a breach by the purchaser, become entitled to retain all amounts paid by the purchaser on account of the purchase price, including the deposit stipulated in item 5 of the schedule, until such damages have been established by agreement or order of court or otherwise; or
 - 24.1.3 claim specific performance from the guilty party.
- 24.2 In addition and without prejudice to the remedies provided in clause 24.1 above, any amount which is not paid by the purchaser promptly on due date shall automatically and without notice, bear interest at a rate which is two percentage points higher than the prime rate. Such interest shall be calculated from the due date for payment or performance, as the case may be, up to and including the date of receipt of payment.
- 24.3 All payments made by the purchaser shall be allocated firstly to the payment of interest, secondly to the payment of any monies (other than the purchase price) due in terms of this agreement and finally, to the reduction of the purchase price.

25 DOMICILIUM

- 25.1 The parties choose as their respective *domicilia citandi et executandi* for all purposes of this agreement, including the service of any legal process, their respective addresses set out in the schedule.
- 25.2 Any notice by the seller to the purchaser shall be deemed to have been received:
 - 25.2.1 on the date of delivery thereof if delivered by hand to the *domicilium citandi et executandi* of the purchaser;
 - 25.2.2 7 (seven) days after the date of posting thereof, if posted by prepaid registered post to the *domicilium citandi et executandi*, unless the contrary is proved; or

- 25.2.3 on the date of transmission thereof if transmitted by telefax or e-mail during normal business hours to the telefax number or email address of the purchaser as set forth in the schedule, unless the contrary is proved.

26 JURISDICTION AND COSTS

- 26.1 The Purchaser consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of all proceedings connected with this agreement, notwithstanding that the value of the matter in dispute might exceed the Court's jurisdiction. Notwithstanding the foregoing, the parties shall be entitled to institute all or any proceeding against any party connected with this Agreement in any Division of the High Court of South Africa having jurisdiction.
- 26.2 In the event of it becoming necessary for the seller to take any action against the purchaser arising from a breach by the purchaser of its obligations under this agreement, the purchaser shall pay the seller all attendant legal costs and expenses incurred by the seller as between attorney and client.

27 CONTRACT FOR BENEFIT OF THE ASSOCIATION

The Association shall at any time after its establishment be entitled to accept the benefit of any terms and conditions imposed in its favour in terms of this agreement.

28 SOLE CONTRACT

- 28.1 The parties acknowledge that this agreement constitutes the sole basis of the contract between themselves and that neither has been induced to enter into this agreement by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein.
- 28.2 This agreement shall not be cancelled nor shall the terms and conditions hereof be varied unless such cancellation or variation is reduced to writing and is signed by the parties.

29 INDEPENDENT ADVICE

The Purchaser hereby acknowledges that –

- 29.1 **he/she/it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this agreement and that he/she/it has either taken such independent advice or has dispensed with the necessity of doing so; and**
- 29.2 **all of the provisions of this agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the parties' intentions.**

30 OFFER TO PURCHASE

- 30.1 **This agreement, once signed by the purchaser, shall constitute an irrevocable offer to purchase made by the purchaser to the seller which shall be open for acceptance by the seller within 10 (ten) business days of date of signature by the purchaser.**
- 30.2 **The acceptance by the seller of the purchaser's offer to purchase may be communicated by the seller to the purchaser telephonically or in writing.**

THUS DONE AND SIGNED AT _____ ON _____ 20__
AS WITNESSES:

1. _____

2. _____

Signature of SELLER

THUS DONE AND SIGNED AT _____ ON _____ 20__
AS WITNESSES:

1. _____

2. _____

Signature of PURCHASER 1

**Signature of purchaser's
wife/husband**
(if married in community in property)

THUS DONE AND SIGNED AT _____ ON _____ 20__
AS WITNESSES:

1. _____

2. _____

Signature of PURCHASER 2

**Signature of purchaser's
wife/husband**
(if married in community in property)

THUS DONE AND SIGNED AT _____ ON _____ 20__
AS WITNESSES:

1. _____

2. _____

**As SURETY AND CO-PRINCIPAL DEBTOR in terms of clause 19 of
this Agreement**

**ANNEXURE A
GENERAL PLAN**