

August 14, 2019



# OFFER TO PURCHASE

(which upon acceptance becomes an agreement of sale)

**FREEHOLD ERF**

**in PONTAC PARC**

made and entered into by and between

**PAARL PROPERTY DEVELOPMENTS PTY LIMITED**  
**REGISTRATION NUMBER: 2017/ 269912/07**

(the "**Seller**")

and

**THE PURCHASER**

whose details appear in the Information Schedule

(the "**Purchaser**")

<b>INFORMATION SCHEDULE</b>				
<b>1.</b>	<b>Seller's Details</b>			
	Full Name		PAARL PROPERTY DEVELOPMENTS PTY LIMITED	
	Registration No.		2017/ 269912/07	
	Seller's Address ( <i>domicilium citandi et executandi</i> address)		1 Richeford Circle Ridgeside Office Park Umhlanga 4319	
	Office No.		031 536 8004	
	E-mail		<a href="mailto:Sean@collinsprop.co.za">Sean@collinsprop.co.za</a>	
	Authorised Signatory	Full names	SH Meekers or KA Searle	
		Address	1 Richeford Circle Ridgeside Office Park Umhlanga 4319	
		Telephone Nos.	Work: 031 536 8004	
	VAT No.		4510229125	
<b>2.</b>	<b>Purchaser's Details</b>			
	Purchaser Type <i>(*tick as applicable)</i>	Individual	Company	
		Close Corporation	Trust	
	Full Name/s			
	Identity No./ Date of Birth/Registration No.			
	Purchaser's Address ( <i>domicilium citandi et executandi</i> address)			
	Telephone Nos.	Work:		
		Home:		
		Mobile:		
	E-mail			
	Marital Status (if an individual)	<i>Unmarried/married in COP/married out COP</i>		
		<i>Other (specify _____)</i> <i>(*select/complete whichever is applicable)</i>		
	If married in COP, name and Identity No. of spouse			
Authorised Signatory (if Purchaser a juristic person)	Address			
	Telephone Nos.	Work:		
		Home:		
Mobile:				
Purchaser's VAT/Income Tax No.				

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3.	<b>Purchase Price</b>	
	Total Purchase Price	<b>R 19,522,000.00 + VAT at 15% = R 22,450,300.00</b>
	Deposit: minimum 10%	<b>R</b> Payable in cash within seven (7) days of Signature Date
	Balance of Purchase Price payable on Transfer	<b>R</b>
	Guarantee Date for balance Purchase Price	Within 21 (twenty one) days of request by Seller's conveyancers which request shall not be made before fulfilment of the conditions precedent contained in clause 4
4.	<b>Property Description</b>	
	Proposed Erf No. <b>20</b> being a Portion of Portion 10, a Portion of the Farm Van Wyks Rivier No 787, in the Drakenstein Municipality, Division of Paarl being the erf identified on the subdivision/site development plans annexed hereto marked as "A"	
	Estimated Monthly Property Owners' Association Levies (excluding rates)	R 11,235.00
5.	<b>Occupation</b>	<b>On Transfer</b>
6.	<b>Transfer Date (anticipated)</b>	
7.	<b>Mortgage Loan</b>	
	Date for loan approval	30 (thirty) days from Signature Date with any extensions at the Seller's discretion
	Loan amount required	R
8.	<b>Estate Agent's Details</b>	
	Agency Name	
	VAT No.	
	Contact Name	
	Mobile No.	
9.	<b>Commission</b>	3,5% (VAT exclusive) of the Purchase Price, being R 683,270.00 (VAT exclusive)
10.	<b>Surety Details</b>	
	Full Name	
	Identity No./Date of Birth	
	Surety's Address ( <i>domicilium citandi et executandi</i> address)	

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11.	<b>Seller's Conveyancers</b>	
	Firm's Name	Strauss Daly Attorneys 13 <sup>th</sup> Floor, Touchstone House, 7 Bree Street, Cape Town
	Contact Person	Shelley Feldman
	Contact No. and Email	(021) 410 2200 <a href="mailto:sfeldman@straussdaly.co.za">sfeldman@straussdaly.co.za</a>
	Trust Account Details	Account Holder: STRAUSS DALY INC Bank: STANDARD BANK Account No. 070 404 356 Branch Code: 020 909 Branch Name: THIBAULT SQUARE Swift Code: SBZAZAJJ Reference: Erf 20 Pontac/(Surname)
12.	<b>Principal Agent</b>	Lazercor Developments (Pty) Ltd
13.	<b>Offer Expiry Date and Time (21 days after purchaser signature)</b>	____ / ____ / ____ 19      ____ H ____
14.	<b>List of Annexures forming part of this agreement</b>	
	Annexure A	Subdivision Plan
	Annexure B	Site Development Plan
	Annexure C	Design Manual including Landscape Master Plan
	Annexure D	Property Owners Association Constitution and Conduct Rules ("POA")
	Annexure E	Suretyship

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**CONSUMER PROTECTION ACT NOTICE**

- In complying with the Consumer Protection Act, No. 68 of 2008, terms of the agreement that purport to limit the Seller's risk or liability, constitute an assumption of risk or liability on the part of the Purchaser, obligate the Purchaser to indemnify the Seller or any other party, or purport to be an acknowledgment of fact by the Purchaser, have been printed in bold in order to ensure that the Purchaser is aware of the contents thereof.
- It is further recommended that:
  - the Purchaser carefully reads this agreement (and its Annexures);
  - the Purchaser consults a suitably qualified person to assist the Purchaser in the interpretation and conclusion of this agreement; and
  - the Purchaser advises the Seller in writing of any information furnished to the Purchaser in a manner or form which the Purchaser deems not to be plain and understandable language.

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The Purchaser hereby offers to purchase the Property from the Seller on the terms set out in the Information Schedule and as set out in the terms and conditions below. Upon acceptance of this offer by the Seller, this shall become a binding agreement of sale.

**1. INTRODUCTION****PREAMBLE:****WHEREAS:**

- (a) The Seller intends to subdivide and develop Portion 10, a Portion of the Farm Van Wyks Rivier No 787, in the Drakenstein Municipality, Division of Paarl (hereinafter referred to as "the Land").
- (b) The Drakenstein Municipality has approved the subdivision of the Land into individual erven in accordance with the subdivision plan annexed hereto marked Annexure "A", subject to certain conditions.
- (c) The Seller will service the Land with sewerage, water supply, electricity and stormwater drainage, as indicated on the Site Development Plan marked "B".
- (d) The Development will be a business and light industrial park incorporating offices, light industry, commercial and industrial components with the ownership of all roads, internal services, open spaces and waterbodies vesting in the POA, except for electrical services which will vest in the Drakenstein Municipality.
- (e) A Property Owners Association to promote the communal interests of the owners in the Development with compulsory membership will be established.
- (f) The Seller has agreed to sell and the Purchaser has agreed to purchase the Property as specified in Item 4 of the Schedule as shown on the subdivision plan annexed hereto (hereinafter referred to as "the Property").

**2. DEFINITIONS**

In this agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins (that is, cognate expressions) shall have corresponding meanings:

- 2.1. **"agreement"** means this sale agreement, including all annexures, addenda, or written amendments;

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- 2.1. "**Anticipated Transfer Date**" means the date specified in item 6 of the Information Schedule;
- 2.2. "**Approvals**" means the final approval by the relevant competent authorities (and where an appeal has been lodged against an approval, such approval shall become final upon the determination of such appeal);
- 2.3. "**Association**" means Pontac Parc Property Owners Association;
- 2.4. "**Best Endeavours**" means as being a more onerous obligation than "reasonable endeavours" and shall include doing everything known to be usual, necessary and proper for ensuring the expeditious success of the endeavour while prioritising the interest of the person to whom the obligation is owed. It does not imply that a party should put itself in a commercially detrimental position, but it does, however, include that everything that can be done should be done. All courses of action must be pursued which have the greatest chance of achieving the contracted results;
- 2.5. "**Business Day**" means a day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa;
- 2.6. "**Common Property**" means such parts of the Development that do not form part of a Land Unit, private roads and private open spaces, and as more fully described in the Constitution;
- 2.7. "**Constitution**" means the Association's constitution, including all rules made thereunder, a copy of the which is attached as Annexure "D";
- 2.8. "**Consumer Protection Act**" means the Consumer Protection Act 68 of 2008;
- 2.9. "**Conditions Precedent**" means as set out in clause 4;
- 2.10. "**Conveyancers**" means as described in item 11 of the Information Schedule;
- 2.11. "**Development**" means the proposed development known as Pontac Parc, as more fully shown on the Site Development Plan;
- 2.12. "**Development Approvals**" means approval of the Development from the Local Authority and Provincial Government if applicable;
- 2.13. "**Design Manual**" means the architectural design manual controlling and detailing all aspects of architectural design and landscaping of all erven within the Development, as amended from time to time in terms of the Constitution or as required by the Local Authority or the Seller;
- 2.14. "**Estate Agent**" means as described in item 8 of the Information Schedule;
- 2.15. "**Information Schedule**" means the covering schedule appearing at the start of this agreement;
- 2.16. "**Land**" means the land being Portion 10, a Portion of the Farm Van Wyks Rivier No 787, in the Drakenstein Municipality, Division of Paarl, on which the development will be undertaken;
- 2.17. "**Landscaping Plan**" means the landscaping plan, as amended from time to time in terms of the Constitution, which is attached to the Constitution; or as required by the Local Authority or the Seller;
- 2.18. "**Land Unit**" means a piece of land registered or capable of being registered in a deeds registry;
- 2.19. "**Local Authority**" means the Drakenstein Municipality, and any other authority having jurisdiction over the Development;
- 2.20. "**Levies**" means the monthly levies raised by Association in terms of the Constitution, the estimated levies being as set out in item 4 of the Information Schedule;
- 2.21. "**Occupation Date**" means the date of Transfer;
- 2.22. "**Plans**" means the draft subdivision plans to be registered simultaneously with the transfer;
- 2.23. "**Purchase Price**" means the purchase price of the Property as recorded in item 3 of the Information Schedule;

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- 2.24. **"Prime Rate"** means the rate of interest per annum which is equal to Investec Bank Limited's published prime lending rate of interest per annum compounded monthly in arrear, charged by the said bank on the unsecured overdraft current accounts from time to time. In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager, whose appointment it will not be necessary to prove, of any branch of the said bank, whose certificate shall be prima facie proof thereof;
- 2.25. **"Principal Agent"** means as described in item 12 of the Information Schedule, or such other Principle Agent appointed from time to time by the Seller, in its discretion, who has full authority and obligation to act in terms of this agreement on behalf of the Seller;
- 2.26. **"Property"** means the subdivided portion as described in item 4 of the Information Schedule, which forms the subject matter of this agreement;
- 2.27. **"Seller"** means as described in the Information Schedule, being the developer of the Development, and its successors-in-title;
- 2.28. **"Site Development Plan"** means the draft plan depicting the Development, including the subdivision of all erven thereon, including the Property, attached as Annexure "B";
- 2.29. **"Signature Date"** means the date upon which this agreement is signed by the party who signs same last in time;
- 2.30. **"Transfer"** means registration of transfer of the Property into the name of the Purchaser in the Deeds Office;
- 2.31. **"Transfer Date"** means the date of Transfer; and
- 2.32. **"VAT"** means value-added tax from time to time in terms of the Value Added Tax Act No. 89 of 1991.

### 3. SALE

The Purchaser hereby offers to purchase from the Seller the Property, which upon acceptance, the Seller agrees to sell on the terms and conditions set out in this agreement.

### 4. CONDITIONS PRECEDENT

- 4.1. This agreement, save for this clause 4 which is immediately applicable, is subject to the fulfilment of the following conditions precedent, namely that:

**4.1.1. if this agreement is subject to the condition precedent that the Purchaser is granted a mortgage loan, for the amount specified in item 7 of the Information Schedule by a financial institution:**

**4.1.1.1. the mortgage loan shall be approved by the later of the date specified in item 7 of the Information Schedule or such extended period as the Seller in its sole discretion may notify the Purchaser in writing; the loan shall be unconditional subject to (i) such conditions as may be reasonably imposed by the mortgagee, (ii) such conditions as may be reasonably approved by the Seller, (iii) Transfer of the Property to the Purchaser and (iv) registration of an appropriate mortgage bond over the Property;**

**4.1.1.2. this condition precedent shall be deemed to have been fulfilled upon the written advice given by the lender to the Seller, or to the Estate Agent or to the Purchaser that it has made an offer of a mortgage loan to the Purchaser which offer has been accepted by the Purchaser. The Purchaser warrants that he has sufficient income to qualify for the mortgage loan amount specified in item 7 of the Information Schedule;**

**4.1.1.3. in the event that this Agreement is subject to the National Credit Act 34 of 2005, the Purchaser warrant that:**

**4.1.1.3.1 Once the Mortgage bond is approved and the pre-agreement statement and quotation is accepted, the Purchaser shall not do anything that may causes the Purchaser to become**

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over-indebted in terms of the National Credit Act or cause the bank to withdraw the Mortgage bond approval.

4.1.1.32 The Purchaser shall not do anything between the date of acceptance of the pre-agreement statement and quotation and the registration of the Mortgage bond which may cause the Purchaser’s financial situation to deteriorate.

4.1.1.33 At the time of signature of this Agreement, the Purchaser is not:

(1) over-indebted and/or

(2) subject to debt review and/or

(3) subject to an administration order.

4.1.2. by no later than 1 April 2020, or within such extended period as the Seller in its sole discretion may notify the Purchaser in writing, that the Seller achieves sufficient sales of Land Units within the Development so as to satisfy the Seller in its sole discretion that the Development is commercially viability; and

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4.1.3. by no later than 1 April 2020, or within such extended period as the Seller in its sole discretion may notify the Purchaser in writing, that it has secured a loan from a financial institution to fund the Development; and

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4.1.4. by no later than 1 April 2020, or within such extended period as the Seller in its sole discretion may notify the Purchaser in writing, that the Seller has obtained Development Approval.

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4.2. The parties shall use their respective Best Endeavours, where it is within their respective power and control to do so, to procure the fulfilment of the conditions precedent and undertake to sign all documentation and do all things as reasonably necessary for this purpose.

4.3. Where a condition precedent is imposed for the benefit of a party, that condition precedent may be waived by him in a written notice to that effect given to the other party at any time before expiry of the relevant stated dates.

4.4. Unless the condition/s precedent are fulfilled or waived, as the case may be, by the stated dates or such later date/s as may be notified by the Seller, in writing, this agreement shall be of no force and effect, in which case the parties shall be restored, as near as possible, to the position in which they would have been had this agreement not been entered into and any deposit paid (with any interest accrued thereon), shall forthwith be repaid in full to the Purchaser.

5. PURCHASE PRICE

5.1. The Purchaser shall pay the Purchase Price, without deduction or set-off, free of bank charges, in South African currency, as follows:

5.1.1. a deposit in the amount recorded in item 3 of the Information Schedule payable by the date specified, to the Conveyancers, in trust, to be invested by them with a registered financial institution. Should the Purchaser fail to timeously pay the deposit, the Seller shall be

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immediately entitled to cancel this agreement by giving written notice to the Purchaser (costs caused by the cancellation being for the Purchaser's account);

5.1.2. the balance of the Purchase Price in the amount recorded in item 3 of the Information Schedule on the Transfer Date.

5.2. The provisions of clause 5.1 shall constitute authority given by the Purchaser to the Conveyancers in terms of section 78(2A) of the Attorneys Act 53 of 1997, to invest any amounts paid on account of the Purchase Price.

5.3. Interest earned from the investment of the Purchase Price shall accrue to the Purchaser and the capital shall be paid to the Seller on the Transfer Date.

5.4. The Purchaser shall within 21 (twenty one) days of the Conveyancers request issue a guarantee by a registered financial institution, in a form reasonably acceptable to the Seller's Conveyancers, to make the payment of the balance of the Purchase Price on the Transfer Date against registration of transfer of the Property to the Purchaser.

**5.5. The Purchaser will be required to comply with the Financial Intelligence Centre Act No. 38 of 2001 and consequently:**

**5.5.1. acknowledges that deposit payable by the Purchaser cannot be invested and accordingly, interest cannot accrue thereon, until such time as the said requirements have been met; and**

**5.5.2. hereby renounces any claim for interest, where the claim arises from the Seller's Conveyancers being unable to invest the deposit (or any other monies) as a result of the Purchaser not having properly complied with the said requirements.**

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**6. POSSESSION AND OCCUPATIONAL INTEREST**

6.1. Possession and vacant occupation of the Property shall be given by the Seller and taken by the Purchaser on Transfer.

6.2. Until the Transfer Date, the Purchaser shall:

6.2.1. not sell, let, or in any other manner dispose of or part with the Property or any of its rights thereto without the Seller's prior written consent. If granting consent, which the Seller is not obliged to do, the Seller shall be entitled to impose such reasonable conditions as it deems necessary; or

6.2.2. not do or permit to be done any act, matter or thing as a result of which any insurance policy held by the Seller in respect of the Property is rendered void or voidable or as a result of which any premiums are increased; and

6.2.3. be responsible for all costs of electricity and water consumed;

6.2.4. be bound by the Constitution and all rules of the Association and be liable for the payment of levies with effect from the possession date as if he were a member thereof.

**7. TRANSFER**

7.1. Transfer of the Property shall be registered by the Conveyancers on or as soon as is reasonably possible after the Anticipated Transfer Date subject and entitled to:-

7.1.1. such conditions or servitudes as are mentioned or referred to in the current title deeds to the land; and

7.1.2. the conditions of subdivision (if applicable), to the extent that they are (in the sole discretion

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of the Conveyancers) capable of registration; and

- 7.1.3. the conditions contained in this agreement to the extent that they are (in the sole discretion of the Conveyancers) capable of registration.
- 7.2. The Seller shall not be liable in any manner if Transfer is delayed for whatever reason, and the Purchaser shall be obliged to take Transfer when it is tendered.
- 7.3. Transfer shall not be passed to the Purchaser until such time as the total Purchase Price and other amounts (including costs) due by the Purchaser have been paid in full, and/or payment thereof has been secured to the satisfaction of the Seller's Conveyancers.
- 7.4. The Purchaser shall within 14 (fourteen) days of request by the Conveyancers:
  - 7.4.1. pay all costs of Transfer, costs of all necessary affidavits, bank charges and all other costs and disbursements incurred in order to comply with this agreement and all requirements of law relating to the transfer of the Property together with VAT in respect of such costs;
  - 7.4.2. pay transfer duty and/or VAT, as applicable, calculated on the Purchase Price;
  - 7.4.3. sign all preliminary transfer documents; and
  - 7.4.4. if applicable, do all things and sign all documents required to ensure that the Purchaser's mortgage bond documentation and all ancillary documentation is satisfactorily and timeously signed and completed.
- 7.5. The Purchaser is liable for all bond registration and transfer costs.
- 7.6. It is recorded that in order to effect transfer of the Property, the Conveyancers shall be required to lodge, *inter alia*, a Transfer Duty Exemption Certificate, issued by SARS with the Deeds Registry. It is further recorded that SARS have adopted a policy of not issuing this certificate if any party to the transaction is in arrears with the payment of any amounts SARS believes is due to it, or otherwise not being in compliance with applicable tax laws. Should SARS refuse to issue a Transfer Duty Exemption Certificate in respect of the sale of the Property, in terms of this agreement, due to the fact that the Purchaser is in arrears with any payments to SARS or has otherwise not complied with any applicable tax laws, then in the event, the Purchaser shall be deemed to be in material breach of this agreement entitling the Seller to the remedies in terms of clause 9. Further, should there be any delay in the issue of the aforesaid Transfer Duty Exemption Certificate by SARS for any reason attributable to the Purchaser, then in that event, the Purchaser shall be deemed to be delaying the registration of transfer which shall entitle the Seller to claim mora interest from the Purchaser as contemplated in clause 7.7.
- 7.7. **If the Transfer Date is delayed for any reason attributable to or occasioned by the Purchaser, then the Purchaser shall pay to the Seller, monthly in advance, interest on the full Purchase Price at a rate of 2% (two percent) above the Prime Rate for the period of the delay. The Conveyancers' decision as to whether or not there is a delay, and as to whether or not such delay is attributable to or occasioned by the Purchaser, and the calculation of interest, shall be final and binding on the parties.**

**8. ACKNOWLEDGEMENTS BY PURCHASER**

The Purchaser acknowledges that:

- 8.1. the Property will form part of the Development and that the Purchaser has satisfied itself regarding the Constitution, the design manual, all rules, regulations, conditions and servitudes of whatever nature pertaining to the sale, ownership and use of the Property, and agrees to be bound thereby from the Occupation Date;
- 8.2. **the Subdivision Plans have not yet been finally prepared or Approved, and that accordingly the exact and final boundaries and areas of the Property will be those shown on the Plans as finally Approved;**

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8.3. **he undertakes to accept transfer of the Property as may be redefined and re-numbered in the Site Development Plan as finally approved by the Local Authority and the Surveyor-General;**

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8.4. **he shall have no claims against the Seller for any delays in occupation or Transfer occasioned by any delay in obtaining the necessary Approvals for the Plans and/or for the Development;**

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8.5. **transfer to the Purchaser of the Property may, in the discretion of the Seller, be simultaneous with transfers to other purchasers in the Development. Accordingly, lodgement of the Purchaser's transfer documents at the deeds office shall be entirely in the discretion of the Conveyancers and the Purchaser's obligation to pay occupational interest as provided for in clause 6.4.1 shall remain and be unaffected by any delay occasioned by the above;**

8.6. **all artistic, architectural, photographic and other visual presentation material including brochures and pamphlets, used by the Seller or its agents in marketing and selling the Property have been prepared, distributed and shown as advertising material only, that the Seller shall not be bound thereby and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, that no representation is thereby made by the Seller, and that the parties shall be bound by the terms contained in this agreement only;**

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8.7. **he shall in no manner whatsoever interfere, including the giving of directions and instructions, with the contractors and/or sub-contractors employed by the Seller;**

8.8. **the Seller shall at its costs install the bulk sewerage, water and electrical reticulation, road network required to service the Property;**

8.9. **the Seller may be required to subdivide and/or rezone and/or consolidate any of the Land in which case the Purchaser agrees and undertakes not to object against any such subdivision and/or rezoning and/or consolidation;**

8.10. **warrants that the Purchaser is not currently (and will, at least until after Transfer not be) in default of any income or other tax law obligations to SARS which will serve to delay the obtaining of transfer duty receipt or exemption certificates from SARS or cause any financial institution granting any loan finance (if applicable) to the Purchaser, to withdraw the aforesaid finance offered; and**

8.11. **he has been provided sufficient opportunity to consider the terms of this agreement and that the agreement was concluded as a result of a process of negotiation between the parties.**

8.12. **there will be a self-contained sewerage system independent of the Local Authority to provide sewer to the Property, which will be maintained by the HOA.**

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**9. UNDERTAKINGS AND WARRANTIES BY THE SELLER**

9.1. **The Seller undertakes that it will take all reasonable steps necessary to complete the Development substantially in accordance with the Site Development Plan by the Date of Transfer;**

9.2. **All undertakings hereby given to the Purchaser are personal to the Purchaser and cannot be alienated by it in any way.**

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**10. RISK AND PROPRIETARY CHARGES**

10.1. On Transfer, all risk and benefit in and to the Property shall pass from the Seller to the Purchaser and the Property shall thereafter remain solely at the risk and be for the profit and/or loss of the Purchaser, and from which date the Purchaser shall be liable, amongst other things, for the payment of all Levies, rates, taxes, service charges and municipal charges levied against the Property.

**11. VOETSTOOTS AND CONDITIONS OF SALE**

11.1. **The Seller has made no representations and given no warranties in respect of the Property or the Development, in respect of latent or patent defects, or in respect of anything relating thereto, other than as contained in this agreement, and save for the aforesaid warranties, the Property is accordingly sold voetstoots, in the condition in which it stands.**

11.2. **The Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the Property and no warranties are given by the Seller in respect of the boundaries of the Property, nor is the Seller required to point out the boundaries, nor is the Seller liable for the cost of locating same.**

11.3. **This sale is subject to all such conditions, encumbrances, restrictions and servitudes as are mentioned and/or referred to in the title deeds of the Property and to all such other conditions and servitudes which may be applicable, and to such conditions as are or may hereafter be imposed by any relevant authority.**

11.4. **The Purchaser acknowledges and agrees that it has satisfied itself as to the condition of the property and it is agreed that the Seller shall not be required to level the property or to carry out any earthworks or landscaping in respect hereof, and/or any soil tests.**

11.5. **If the Property has been erroneously described in this agreement, the intention of the parties is to describe the Property as set out in the title deed of the Property.**

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**12. PROPERTY OWNERS' ASSOCIATION**

12.1. It is recorded that the Pontac Parc Property Owners Association (hereinafter referred to as the "POA") will be established for the benefit of all owners of erven and to control and maintain roads, services and amenities within the Development, and further as a condition of the planning approval granted by the Drakenstein Municipality.

12.2. The Purchaser shall become a member of the POA against transfer of the property into the name of the Purchaser in the Deeds Office and will remain a member for as long as the Purchaser is the registered owner thereof.

12.3. The Purchaser acknowledges that the draft constitution and draft rules of the POA, the draft design manual and the building development parameters have not yet been approved and are subject to change.

12.4. The Purchaser acknowledges furthermore that it is aware that:

12.4.1. in terms of the constitution and the rules of the POA, there are standards and guidelines for the design of buildings and no person shall be entitled to construct any building or other structure on the property until the plans and specifications relating thereto have been approved in terms of the constitution of the POA;

12.4.2. in terms of the constitution of the POA, the members of the association are required to pay levies to meet the expenses of the association, including the costs of maintaining the roads, services and other amenities and provisions of an environmental management plan;

12.4.3. in terms of the development control and design manual, there are planning controls, architectural controls, landscaping requirements, environmental guidelines and other requirements relating to the legal development control guidelines for the township;

12.4.4. The POA is responsible for the management and implementation of the environmental

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guidelines applicable to the Development;

- 12.5. The Seller shall cause the Conveyancers to register a title deed condition against the Property in terms of which ownership of the Property may not be transferred save with the prior written consent of the Association, in accordance with the requirements of the Constitution.
- 12.6. The first Annual General Meeting of the Association shall be called once 60% of the Land Units have been transferred to purchasers thereof.
- 12.7. Until the appointment of the first committee members of the Association, the Seller shall assume the responsibilities of the Association, subject to the provisions of the Constitution.
- 12.8. Should the Purchaser sell the Property the Purchaser will ensure that his purchaser is made fully aware of the existence of the Association and the fact that such successor purchaser will automatically become a member of the Association on transfer of the Property to him.
- 12.9. After establishment of the Association, no improvement of any nature may be effected to the Property without the prior written approval of the Association, and on the basis set out in the Constitution.
- 12.10. The Purchaser shall not make any application for the rezoning, consolidation or sub-division of the Property without the prior written consent of the Association and, during the Development Period, of the Seller.
- 12.11. With effect from the date of establishment of the Association, if there is a conflict between any of the provisions of this agreement and a similar provision of the Constitution, the provisions of the Constitution shall prevail.

**13. RESTRICTION AGAINST ALIENATION**

- 13.1. The property may not be sold, transferred, leased or otherwise alienated or disposed of to any person without written approval of the Association (which approval shall not be unreasonably withheld) unless:-
  - 13.1.1. that person has agreed in writing to remain a member of the Association for so long as he is the registered owner of the property; and
  - 13.1.2. the Association has certified in writing that:-
    - 13.1.2.1. the provisions of 13.1 above have been complied with; and
    - 13.1.2.2. levies for the period until the end of the month of the date of the certificate in question have been paid or secured to the satisfaction of the Association;
    - 13.1.2.3. transfer is effected before the expiry of the period transferred to in 13.1.2.2;
  - 13.1.3. Notwithstanding the provisions of 13.1 above, registration of transfer of the property to any person *ipso facto* constitutes that person as a member of the Association.

**14. BUILDING REQUIREMENTS IN TERMS OF DESIGN MANUAL**

- 14.1. In order to maintain high standards and to ensure an attractive and harmonious development, no building or structure may be erected on the property unless the architectural design, plans and specifications (including materials) of such building or structure have been approved by the Association or the architect nominated by it in accordance with the provisions of the Constitution. The Association shall be entitled to charge a reasonable fee for the inspection of any plans and/or specifications submitted to it for approval, whether or not approval is granted. An appropriate initial fee shall be R 1 000.00 (One Thousand Rand) per application and may be adjusted from time to time by the Association.
- 14.2. All buildings and structures shall be built in a good and proper and workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with 9.1 above.
- 14.3. The property and all improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.

Seller initial here

Buyer initial here

Witness initial here

**15. LEVIES**

- 15.1. In terms of the Constitution, the Association may impose Levies upon its members for the purpose of meeting the expenses of the Association.
- 15.2. The Purchaser acknowledges that he shall be liable for the payment of Levies with effect from the Date of Transfer, the estimated levy being as per item 4 of the Information Schedule.
- 15.3. The Purchaser shall be obliged to furnish the Association with a debit order drawn on the Purchaser's bank in respect of payment of all levies as contemplated in clause 15.1 above.
- 15.4. For the duration of the Development Period, the Seller will not be liable for Levies of any unsold Land Units or undeveloped land arising from the subdivision of the Land in terms of the Constitution.
- 15.5. Pending the determination of the actual amount of such Levies, the Purchaser shall from the Occupation Date pay on account of such Levies an amount as shall be certified by the Seller or the Conveyancers as being their *bona fide* estimate of such monthly Levies.
- 15.6. Levies shall be paid to the Seller or its appointed agent and thereafter (once established) to the Association, monthly in advance on the first day of each and every calendar month commencing from the Date of Transfer.

**16. CONSUMER PROTECTION ACT**

**The parties expressly warrant that they have familiarised themselves with the provisions of the Consumer Protection Act No. 68 of 2008 and further undertake to comply with same as far as is applicable to this agreement.**

Seller initial here

Buyer initial here

Witness initial here

**17. MANAGING AGENT AND ESTATE MANAGER**

- 17.1. The Seller shall be entitled to appoint the Managing Agent and estate manager for the Development during the Development Period, which appointment shall be valid and binding on the members of the Association for a period of 3 years following the termination of the Development Period.
- 17.2. The Purchaser grants the Seller the irrevocable power and authority to appoint the Managing Agent for the Development for a period of 5 years.

**18. STIPULATION FOR THE BENEFIT OF THE ASSOCIATION**

Any conditions in this agreement which are expressed as being for the benefit of the Association and shall constitute a *stipulatio alteri* in favour of the Association which it may accept at any time.

**19. BREACH**

19.1. If either party breaches any provision of this agreement and remains in breach for 10 days after written notice to such party requiring that party to rectify that breach, or if either party repudiates this agreement ("**Defaulting Party**"), the other party ("**Aggrieved Party**") shall be entitled at the Aggrieved Party's election to:

19.1.1. sue for the immediate specific performance of any or all of the Defaulting Party's obligations under this agreement whether or not any such obligation is then due; or

19.1.2. (either as an alternative to a claim for specific performance or upon the abandonment of such a claim) cancel this agreement. Written notice of such cancellation shall be given by the Aggrieved Party to the Defaulting Party and the cancellation shall take effect on the giving of such notice.

19.2. In the event of the Seller cancelling this agreement in terms of clause 19.1.2:

19.2.1. all amounts paid by or on behalf of the Purchaser in terms of this agreement, including

Seller initial here

Buyer initial here

Witness initial here

amounts paid to third parties, shall be forfeited to the Seller, unless the Seller elects to claim damages in lieu of such forfeiture, in which latter event:

19.2.1.1. the Seller shall be entitled to hold such amounts pending determination of the amount of the damages by agreement, order of court, or otherwise;

19.2.1.2. if the damages as determined are greater or less than the amounts held by the Seller, the difference shall be paid to the party entitled to the difference, by the other party;

19.2.2. the Purchaser shall not be entitled to claim any compensation in respect of any improvements and additions made to the Property.

19.3. The Defaulting Party agrees that, in the event of the Aggrieved Party instructing his attorneys and/or taking legal proceedings against the Defaulting Party pursuant to a default by the Defaulting Party, then the Defaulting Party shall pay all legal costs plus VAT incurred by the Aggrieved Party in connection therewith as between attorney and own client, including collection commission laid down at the tariff rate applicable.

19.4. The Seller's remedies in terms of this clause are without prejudice to any other remedies to which the Seller may be entitled in law.

**20. DISPUTE RESOLUTION**

20.1. In the event of a dispute arising out of or in connection with this agreement or the breach, termination or invalidity thereof, then the dispute shall be settled by arbitration in accordance with the provisions of this clause 20.

20.2. Upon written notice from any party to the other (the "Dispute Notice") the dispute shall be referred to a suitably qualified independent arbitrator. The arbitrator shall, if the dispute is agreed in writing by the parties to be:

20.2.1. primarily an accounting matter, be an independent practicing accountant of not less than 10 (ten) years' standing as such;

20.2.2. primarily a legal matter, be an attorney of not less than 10 (ten) years' standing as such or a practicing senior counsel;

20.2.3. any other matter, be a suitably qualified independent person,

agreed upon in writing by the parties; provided that if the parties do not, within 14 days of the Dispute Notice agree in writing as to the identity of the arbitrator, the arbitrator shall, irrespective of the nature of the dispute, be appointed by the Registrar of the Arbitration Foundation of Southern Africa upon request by any party to make such appointment;

**21. CESSION**

21.1. The Purchaser shall not be entitled to cede any of his rights in terms of this agreement without the prior written consent of the Seller.

21.2. The Seller shall be entitled to cede its rights and delegate its obligations in terms of this agreement without the consent of the Purchaser.

**22. JOINT AND SEVERAL LIABILITY**

If this agreement is signed by more than one person as Purchaser, the obligations and liabilities of all the said signatories shall be joint and several.

**23. NOTICES AND DOMICILE**

23.1. For the purposes of the giving of notices and the serving of legal process in terms of this agreement, each of the parties chooses as their respective addresses, the addresses specified in the Information Schedule ("**Domicile**").

Seller initial here

Buyer initial here

Witness initial here

- 23.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.
- 23.3. Any notice to a party:
  - 23.3.1. sent by prepaid registered post in a correctly addressed envelope to him at an address chosen as his Domicile to which post is delivered shall be deemed to have been received on the 7<sup>th</sup> business day after posting (unless the contrary is proved);
  - 23.3.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as his Domicile shall be deemed to have been received on the day of delivery; or
  - 23.3.3. sent by e-mail to his chosen e-mail address shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 23.4. Despite the provisions of this clause 23, a written notice or communication actually received by a party shall be an adequate written notice or communication notwithstanding that it was not sent to or delivered at his chosen Domicile.

**24. INDEMNITY**

- 24.1. Notwithstanding anything to the contrary in this agreement, the Seller shall not be responsible for any loss or damage to property or any injury to or death of any person being sustained in or about the Property or the Land which the Purchaser or any third party may suffer arising from any act or omission whatsoever or neglect on the part of the Seller, its servants, employees or agents.
- 24.2. The Purchaser or any other person shall not be entitled for any of the said reasons in clause 24.1 or for any other reason whatsoever, to withhold payment of any monies due to the Seller in terms hereof, and the Purchaser hereby indemnifies the Seller accordingly.

**25. PURCHASER A JURISTIC PERSON**

Should the Purchaser be a company, close corporation or trust the authorised signatory described in item 2 of the Information Schedule warrants that he is duly authorised to enter into this agreement on behalf of the company, close corporation or trust.

**26. SURETY**

The Surety described in item 10 of the Information Schedule, hereby binds himself as surety and co-principal debtor in favour of the Seller for due and proper performance by the Purchaser of all of his obligations in terms of this agreement (including any amounts which may become owing arising out of any breach of this agreement) and hereby renounces the benefits of excussion, division, cession of action and *de duobus vel pluribus reis debendi* the meaning and full force and effects of such benefits the Surety acknowledges he knows and understands.

**27. WARRANTIES BY THE PARTIES**

The parties warrant in favour of each other that:

- 27.1. they have legal capacity and all necessary approvals required to empower and authorise them to enter into this agreement and that such approvals pre-date the date of signature of this agreement by both parties; and
- 27.2. they are not aware of the existence of any fact or circumstance that may impair their ability to comply with all of their obligations in terms of this agreement;

**28. AGENTS COMMISSION**

- 28.1. The Purchaser warrants that he was introduced to the Seller and to the Property by the Estate Agent, and by no other person or agent, and indemnifies the Seller accordingly.
- 28.2. The Seller shall be liable for and shall pay Commission to the Estate Agent in the amount specified in

Seller initial here

Buyer initial here

Witness initial here



item 9 of the Information Schedule. The Commission shall be deemed to have been earned upon acceptance of the offer by the Seller and after fulfilment or waiver, as the case may be, of any conditions precedent, and shall be payable by the Seller to the Estate Agent on the Transfer Date against registration of transfer of the Property to the Purchaser. The Seller hereby irrevocably authorises the Seller's Conveyancers to pay the Commission to the Estate Agent from the Purchase Price on the Transfer Date.

- 28.3. If this agreement is cancelled by reason of the Purchaser's default, the Seller shall have no obligation to the Estate Agent in respect of commission and hereby cedes and assigns to the Estate Agent, any right to claim commission owing from the Purchaser which arises from such cancellation.

## 29. CO-OPERATION

Each of the parties hereby undertakes to:

- 29.1. sign and/or execute all such documents (and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney and transfer duty declarations);
- 29.2. do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 29.3. pass, and to procure the passing of all such resolutions of directors or shareholders of any company, or members of any close corporation, or trustees of any trust, as the case may be,

to the extent that the same may lie within the power of such party and may be required to give effect to the import or intent of this agreement, and any contract concluded pursuant to the provisions of this agreement.

## 30. GENERAL PROVISIONS

### 30.1. Governing Law & Jurisdiction

- 30.1.1. This agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 30.1.2. The Purchaser hereby consents in terms of section 45 of the Magistrate's Court Act 32 of 1944, as amended, to the jurisdiction of any Magistrate's Court having jurisdiction over his person under section 28 of that Act, notwithstanding that any action or proceeding arising out of this agreement would otherwise be beyond the jurisdiction of such court. The Seller shall, however, have the right to institute action in any other court of competent jurisdiction

### 30.2. General

- 30.2.1. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.
- 30.2.2. This document contains the entire agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 30.2.3. No indulgence, leniency or extension of time which any party ("the grantor") may grant or show to any other party, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 30.2.4. To the extent permissible by law no party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 30.2.5. The Purchaser and the Seller warrant that all material terms of this agreement have adequately been explained to them prior to signature of this agreement.

### 30.3. Interpretation

In this agreement and all annexures and schedules, unless specifically provided otherwise:

Seller initial here	Buyer initial here	Witness initial here
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- 30.3.1. any reference to "writing" includes electronic communication as defined in the Electronic Communications and Transactions Act, 2002 and "written" shall have a corresponding meaning;
- 30.3.2. words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include created entities (corporate or unincorporated) and the state and vice versa;
- 30.3.3. references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 30.3.4. when any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day;
- 30.3.5. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 30.3.6. any reference in this agreement to a party shall include a reference to that party's assigns expressly permitted under this agreement and, if such party is liquidated or sequestered, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 30.3.7. references to any amount shall means that amount exclusive of VAT, unless the amount expressly includes VAT. All or any VAT payable by the Purchaser in terms of this agreement shall become due for payment and shall be paid by the Purchaser forthwith upon presentation of the relevant invoice by the Seller to the Purchaser. Any dispute which may arise between the Seller and the Purchaser as to the liability for and/or payment of VAT or the amount thereof in terms of this agreement shall be referred to the auditors of the Seller for decision and their decision shall be final and binding between the parties and carried into effect

**31. OFFER**

- 31.1. The Purchaser's signature to this agreement constitutes an offer and this offer is irrevocable and open for a period of 7 (seven) days after the date of signature by the Purchaser, whereafter it expires. It is specifically recorded that the production of a counter offer by the Seller to whom this offer is made shall not be deemed to be a refusal of this offer and the offer shall accordingly remain irrevocable until expiry of the period stated above.
- 31.2. The Seller undertakes to send a copy of this agreement signed by him evidencing acceptance of the offer contained herein to the Agency as soon as reasonably possible after his signature, but the Seller's failure to do so timeously shall not invalidate this offer.

**32. COUNTERPARTS**

This agreement may be signed in one or more counterparts all of which shall be considered one and the same agreement and shall become effective when a counterpart has been signed by each of the parties.

SIGNED by the parties on the following dates and at the following places respectively:

**For THE SELLER**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_ Witness Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Witness Name: \_\_\_\_\_

Place: \_\_\_\_\_ Witness Identity Number: \_\_\_\_\_

**For THE PURCHASER**

Seller initial here

Buyer initial here

Witness initial here

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_ Witness Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Witness Name: \_\_\_\_\_

Place: \_\_\_\_\_ Witness Identity Number: \_\_\_\_\_

**For THE SURETY**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_ Witness Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Witness Name: \_\_\_\_\_

Place: \_\_\_\_\_ Witness Identity Number: \_\_\_\_\_

By its signature to this agreement, the Estate Agent accepts the benefits given to it

**For THE AGENT**

Signature: \_\_\_\_\_  
who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Seller initial  
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Buyer initial  
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Witness initial  
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Annexure A – Subdivision Plan

Seller initial  
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Buyer initial  
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Witness initial  
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Annexure B – Site Development Plan

Seller initial  
here

Buyer initial  
here

Witness initial  
here

Annexure C – Design Manual including Landscaping Plan

Seller initial  
here

Buyer initial  
here

Witness initial  
here

Annexure D – POA

Seller initial  
here

Buyer initial  
here

Witness initial  
here

Annexure E – Suretyship

Seller initial  
here

Buyer initial  
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Witness initial  
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