

Agreement of Sale – Check List

Completion Requirements:

A	Front page	Complete details	
B	The Schedule	Complete details	2 to 5
C	Full Signature	Signatures in Full	6
D	Standard Terms & Conditions	Complete details	7, 9 and 15
E	Other Terms & Conditions	Complete, if applicable	15
F	Annexures	List Annexures included, if applicable	

Signing Requirements:

A	Sign in Full		6
B	Initials required at the following “fill in” clauses only:		
	Clause 1.2		7
	Clause 5.1		9
	Clause 7.1		9
	Clause 22		15
	Clause 23		15
C	Initial required at every amendment or change		
D	Initial required on every annexure page		
E	Initial every page at the bottom as indicated		

AGREEMENT OF SALE

ENTERED INTO BY AND BETWEEN

hereinafter referred to as "the Seller"

AND

hereinafter referred to as "the Purchaser"

CONTENTS

The Schedule	Pages 2 – 5
Standard Terms and Conditions	Pages 7 – 15

It is hereby recorded that the Seller and the Purchaser mentioned in the Schedule hereby enter into an Agreement of Sale for the sale of the Property described in the Schedule for the total Purchase Price recorded in the Schedule and on the terms set forth in the Schedule and Standard Terms and Conditions hereto and read together with any Annexures hereto.

THE SCHEDULE

A. SELLER'S DETAILS

FULL NAME/S: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION		
IDENTITY or REGISTRATION NUMBER: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION		
NAME OF DULY AUTHORISED REPRESENTATIVE (IF A COMPANY / TRUST / CLOSE CORPORATION OR BY VIRTUE OF A POWER OF ATTORNEY)		
MARITAL STATUS (if applicable)		
DETAILS OF SPOUSE (if married in community of property or by the laws of another country) Full Names Identity No. or Date of Birth		
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)		
POSTAL ADDRESS		
TEL & FAX NO's.	Tel	Fax (domicilium)
E-MAIL ADDRESS (domicilium)		
<p>THE SELLER DECARES THAT HE IS SELLING THIS PROPERTY IN THE ORDINARY COURSE OF HIS BUSINESS (in which case the provisions of the Consumer Protection Act 68 of 2008 apply to the SELLERS' disclosures herein)</p> <p>THE SELLER DECLARES THAT HE IS NOT SELLING THIS PROPERTY IN THE ORDINARY COURSE OF HIS BUSINESS (Delete whichever is not applicable)</p>		

INITIAL

B. PURCHASER'S DETAILS

FULL NAME/S: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION		
IDENTITY or REGISTRATION NUMBER: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION		
NAME OF DULY AUTHORISED REPRESENTATIVE (IF A COMPANY / TRUST / CLOSE CORPORATION OR BY VIRTUE OF A POWER OF ATTORNEY)		
MARITAL STATUS (if applicable)		
DETAILS OF SPOUSE (if married in community of property or by the laws of another country) Full Names Identity No. or Date of Birth		
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)		
POSTAL ADDRESS		
TEL & FAX NO's.	Tel	Fax (domicilium)
E-MAIL ADDRESS (domicilium)		

C. PROPERTY

ERF _____ / PORTION NO. _____ STONEHURST MOUNTAIN ESTATE, TOKAI, CAPE TOWN,
 APPROXIMATELY _____ m² IN EXTENT, HELD BY DEED OF TRANSFER NO. T _____
 ALSO KNOWN AS _____

(Include Physical Address)

(hereinafter referred to as "the Property")

D. PURCHASE PRICE

PURCHASE PRICE (Exclusive VAT)	R
PLUS VAT (If Applicable)	R
TOTAL PURCHASE PRICE	R
LESS: DEPOSIT	R
BALANCE OF PURCHASE PRICE (Payable on date of registration of transfer)	R

E. MORTGAGE BOND (Refer CLAUSE 4)

Will the Purchaser require a mortgage bond over the Property? YES NO

Are any other assets or immovable property to be used as security or to be mortgaged in order to facilitate and support this transaction? YES NO

Please identify these assets or immovable property:

If the answer is "YES" to either of the above, then the mortgage bond(s) required shall be granted for an amount NOT less than the Purchase Price / the balance of the Purchase Price / _____% of the Purchase Price / an amount of R _____ (_____ Rand) (*DELETE WHICHEVER IS NOT APPLICABLE*).

IN THE EVENT THAT THIS PARAGRAPH E IS NOT COMPLETED THEN IT IS AGREED THAT THIS AGREEMENT WILL NOT BE SUBJECT TO MORTGAGE FINANCE AND WILL CONSTITUTE A CASH OFFER BY THE PURCHASER

INITIAL

F. SURETY'S DETAILS (WHERE APPLICABLE) – (Refer CLAUSE 18 & 19 where applicable)

FULL NAME/S: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION	
IDENTITY or REGISTRATION NUMBER: INDIVIDUAL / TRUST / COMPANY / CLOSE CORPORATION	
MARITAL STATUS (if applicable)	
DETAILS OF SURETY'S SPOUSE Full Names Identity No. or Date of Birth	
BUSINESS OR RESIDENTIAL STREET ADDRESS IN RSA (DOMICILIUM)	

G. SELLING AGENT

NAME / COMPANY: CSHELL 166 (Pty) Ltd. trading as STONEHURST PROPERTIES (Reg. No. 2005/035877/07), of: SALES OFFICE STONEHURST MOUNTAIN ESTATE WESTLAKE DRIVE TOKAI, CAPE TOWN		
TEL & FAX NO's.	Tel +27 086-110-6229	Fax +27 086-684-9730
AMOUNT / PERCENTAGE OF COMMISSION DUE:	_____, plus VAT thereon.	

H. REFERRING AGENT

NAME / COMPANY:		
TEL & FAX NO's.	Tel	Fax
AMOUNT / PERCENTAGE OF COMMISSION DUE:	_____% (_____ PERCENT) of the SELLING AGENT commission referred to in item G of the Schedule to this Agreement, plus VAT thereon.	

SIGNED AT THIS DAY OF 2011
AS WITNESSES

1. _____

As **Seller**, the signatory warrants his/her authority hereto

SIGNED AT THIS DAY OF 2011
AS WITNESSES

1. _____

as **Purchaser**, the signatory warrants his/her authority hereto

SIGNED AT THIS DAY OF 2011
AS WITNESSES

1. _____

as **Purchaser's spouse**, if married in community of property OR if the marriage is governed by the laws of another country

SIGNED AT THIS DAY OF 2011
AS WITNESSES

1. _____

as **Surety**

SIGNED AT THIS DAY OF 2011
AS WITNESSES

1. _____

as **Surety's spouse**, if married in community of property OR if the marriage is governed by the laws of another country

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

For the purpose of this Agreement, unless the context indicates otherwise:

- 1.1 "Agreement" or "this Agreement" means and includes the Schedule, Standard Terms and Conditions and any Annexure(s) hereto.
- 1.2 "Attorneys" mean _____
 Contact Name: _____ Fax No. _____
- 1.3 "Prime Rate" means a rate of interest per annum which is equal to FirstRand Bank Ltd. t/a RMB Private Bank's published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private section 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 of any branch of the said bank, whose decision shall be final and binding on the parties).
- 1.4 "the Property" means the Property as more fully described in item C of the Schedule.
- 1.5 "the Purchase Price" means the purchase price stipulated in item D of the Schedule.
- 1.6 "the Purchaser" means the Purchaser described in item B of the Schedule and includes his successors-in-title, heirs, executors, trustees or assigns.
- 1.7 "the Schedule" means pages 2 - 5 of this Agreement.
- 1.8 "the Seller" means the Seller described in item A of the Schedule, and includes its successors-in-title.
- 1.9 "the Signature Date" means the date on which the last signing Party signs this Agreement.
- 1.10 "the Standard Terms and Conditions" means pages 7 - 15 of this Agreement.
- 1.11 "Surety/ies" means the persons more fully described in item F of the Schedule.
- 1.12 "the Transfer Date" and / or "Transfer" means the date on which registration of transfer of the Property is effected to the Purchaser.
- 1.13 Unless the context indicates otherwise, words in this Agreement importing any one gender shall include the other, and words importing the singular shall include the plural and vice versa.
- 1.14 The headnotes to the clauses in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.15 The provisions of the Recordal, Schedule and Annexure(s) to this Agreement shall be deemed to be incorporated in and form part of this Agreement.
- 1.16 The Purchaser and Seller confirm that they choose English as the language of this Agreement.
- 1.17 If any provision of this Agreement is in conflict or inconsistent with law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Agreement.
- 1.18 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.

1.19 When any number of days is prescribed in this Agreement such days shall exclude a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa and the same shall further be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day will be the next succeeding day which is not a Saturday, Sunday or public holiday.

2. **SALE**

The Seller sells to the Purchaser who purchases from the Seller the Property at the Purchase Price.

3. **PURCHASE PRICE AND PAYMENT**

3.1 The Purchase Price is payable as follows:

3.1.1 the deposit reflected in item D of the Schedule shall be paid in cash or by a bank cheque to the Attorneys within 5 (five) days of Signature Date; and

3.1.2 the deposit paid in terms of clause 3.1.1 will be invested by the Attorneys on call, the Purchaser hereby irrevocably authorising the Attorneys to invest such deposit in terms of section 78(2A) of the Attorneys Act, interest to accrue for the benefit of the Purchaser, for release to the Seller on Transfer (subject to the provisions of clause 12), less any administration fee levied by the Attorneys in respect thereof; and

3.1.3 the balance of the Purchase Price in cash against Transfer.

3.2 The Purchaser shall, at its own cost, and within **21 (twenty one) days** of fulfillment or waiver of the condition precedent contained in clause 4 of this Agreement (if applicable), or, within **21 (twenty one) days** of the Signature Date (if this is a cash deal), furnish the Attorneys with an irrevocable and unconditional bank guarantee acceptable to the Attorneys, for the due payment of the balance of the Purchase Price. Alternatively, the Purchaser may pay such balance to the Attorneys, to be held in their trust account as provided for in Clause 3.1.2, pending Transfer.

3.3 In the event of the percentage of VAT at any time prior to transfer being amended from the current rate of 14% (fourteen percentage points), then the VAT payable in respect of the Purchase Price, if any, shall be adjusted upwards or downwards, as the case may be.

3.4 All monies due by the Purchaser in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 2% (two percentage points) above the Prime Rate, calculated from the due date of payment to the actual date of payment thereof.

3.5 All or any payments to be effected hereunder shall be effected by the Purchaser to the Attorneys free of exchange at Cape Town and without deduction or set off.

4. **MORTGAGE BOND**

4.1 If item E of the Schedule is answered in the affirmative, then this sale is subject to the condition precedent that the Purchaser is granted a loan by a South African Bank or other credit provider, registered as such in terms of the National Credit Act, 34 of 2005, "the NCA", in the amount specified in item E of the Schedule. This condition will be deemed to have been fulfilled on the issue to the Purchaser by a registered credit provider of a written quotation and a written pre-agreement statement as contemplated in section 92 of the NCA, within 21 (twenty-one) days of signature hereof by the Seller (or within such extended period as the Seller and Purchaser may agree to in writing, prior to the expiry of the said 21 (twenty one) day period), whether or not such quotation or pre-agreement statement is accepted by the Purchaser. The Purchaser undertakes to use his best endeavours to ensure that the loan referred to in this 4.1 is granted timeously and to cooperate with the Seller fully in order

to ensure that the condition is fulfilled. The Purchaser acknowledges that the grant of the mortgage loan is subject to costs and charges levied in terms of the NCA.

- 4.2 Notwithstanding anything to the contrary contained in this clause 4, the Purchaser hereby irrevocably appoints the Selling Agent as his agent to apply or facilitate on his behalf to a bank or other financial institution for the loan contemplated in item E of the Schedule and the Purchaser undertakes to furnish to the Selling Agent with all such information as may be necessary or requisite for the purposes thereof.
- 4.3 Should the Purchaser waive the requirement of mortgage finance or accept mortgage finance for a lesser amount, within the period mentioned in clause 4.1 above, then the Purchaser shall provide the Seller with a guarantee or payment as contemplated in clause 3.2 of this Agreement, for the amount due in respect of the full balance of the Purchase Price.
- 4.4 In the event that the condition precedent in clause 4.1 is not fulfilled within the time period as provided for, this Agreement shall lapse and be of no further force or effect and the Attorney shall refund to the Purchaser the deposit paid in terms of clause 3.1.1, together with accrued interest thereon, less the Attorneys administration fee referred to in clause 3.1.2 upon the lapsing as aforesaid.
- 4.5 In the event that item E of the Schedule has not been completed then it is agreed that the Purchaser does not require mortgage finance for the balance of the Purchase Price and the Purchaser will be obliged to furnish the Seller with a guarantee or payment of any balance of the Purchase Price, as contemplated in clause 3.2 of this Agreement.

5. OCCUPATION, POSSESSION AND RISK

- 5.1 Subject to compliance with the terms of this Agreement in all respects, the Purchaser shall be given possession and vacant occupation of the Property on _____ / **Transfer** * (the "Occupation Date") from which date all risk, profit and loss in and to the Property will pass to the Purchaser (* delete whichever is not applicable).
- 5.2 If applicable, the Seller shall be obliged to insure the Property up to the Occupation Date, on which date all risk and benefit in the Property shall pass to the Purchaser, who shall make the necessary arrangements to insure the Property.
- 5.3 All rates, water, electricity and any other municipal charges as well as levies (including any special levies) due to the Stonehurst Mountain Estate Homeowners Association, incurred in respect of the Property up to the Occupation Date shall be for the account of the Seller and thereafter shall be for the account of the Purchaser.

6. OCCUPATIONAL RENTAL

- 6.1 In the event that the Transfer does not coincide with the Occupation Date (i.e. should the Seller agree to grant the Purchaser vacant occupation of the Property prior to Transfer), then the Purchaser shall pay an occupational rental of 0.50% (ONE HALF OF A PERCENT) of the Purchase Price, subject to clause 7.4, per month, pro rated to the number of days, from which the Purchaser occupies the Property to Transfer. The occupational rental shall be due and payable to the Attorneys, monthly in advance.
- 6.2 Occupation of the property as aforesaid shall not constitute a tenancy by the Purchaser or those occupying the Property through him.

7. TRANSFER

- 7.1 Transfer shall be effected by the Attorneys on _____ or so soon as reasonable thereafter.

- 7.2 Transfer shall not be passed to the Purchaser, notwithstanding anything to the contrary herein contained, until such time as the Purchase Price and all other amounts for which the Purchaser may be liable in terms hereof have been paid, and/or payment thereof has been secured as provided in this Agreement.
- 7.3 The Purchaser shall sign all documents necessary to give effect to Transfer within 5 (five) days of being called upon to do so. The Seller and Purchaser shall both ensure that their tax affairs are up to date and in order with SARS to ensure that there is no delay in the registration of transfer.
- 7.4 In the event that Transfer is delayed by any act or omission of the Purchaser, then the Purchaser shall pay to the Seller an increased occupational rental equivalent to interest at 2% (two percentage points) above the Prime Rate on the Purchase Price from the day on which Transfer would, but for such delay, otherwise have been registered to the date of actual Transfer rental will replace the occupation rental stipulated in this clause 6. For this purpose the Attorneys assessment of the date on which transfer would otherwise have been registered shall be final and binding on the Purchaser.

8. COSTS

- 8.1 The Purchaser will be liable for payment of VAT or transfer duty, as the case may be, on the Purchase Price and all attorneys fees pertaining to the costs of transfer and bond registration including VAT thereon, which costs and charges will be paid by the Purchaser immediately upon request therefore. In the event of the Purchaser requesting amendments to this Agreement and, the Seller agreeing thereto, the Purchaser shall be solely liable for the Attorneys fees and charges for attending to such amendments and, shall pay such fees and charges immediately upon demand therefore.
- 8.2 The Purchaser shall not be entitled for whatever reason to withhold, set off or retain any amounts owing by the Purchaser to the Seller in terms of this Agreement.

9. VOETSTOOTS

- 9.1 Save as specifically set out in this Agreement, the Seller has made no representations and given no warranties in respect of the Property or in respect of anything relating thereto and this sale is accordingly "voetstoots" and the Seller, shall not be liable for any defects in the Property or in respect of anything relating thereto, whether patent or latent.
- 9.2 If upon the measurement of the Property the extent of the Property is found to be greater than the extent as set out in item C of the Schedule, the Purchaser shall not be liable for any excess. Conversely, if the extent thereof is found to be less than the extent reflected then the Seller shall not be liable for any shortfall.
- 9.3 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.
- 9.4 The Purchaser shall accept transfer of the Property subject to all conditions and servitudes benefiting or burdening the Property whether existing or hereafter imposed by any competent authority.
- 9.5 Notwithstanding anything to the contrary contained in this Agreement, it is recorded that any site / erf / development / plan diagram that may be attached hereto is for the purposes of identifying the Property only and in no way is indicative of the existing contour lines or improvements of or to the Property. It is noted that any attached site / erf diagram was framed in January 2006 and contours may well have changed since such date and as such the Seller therefore gives no representations or warranties in this regard. It is accordingly up to the Purchaser, at his own cost, to establish the correct contour lines as at the date of this sale, should he wish to do so.
- 9.6 "(Property is sold voetstoots, as is at the date of signature hereof), together with all buildings and all fixtures and fittings (the PROPERTY) and subject to the conditions and servitudes contained in the title deeds of the PROPERTY, as the property stands on the date this agreement is concluded with all visible and invisible defects applicable to such property and of which the SELLER is aware at the time of this sale being concluded

after having been advised by "estate agency" of the extent of disclosure required relating to lawfulness of, characteristics of and amenities to the property.

10. **STONEHURST MOUNTAIN ESTATE OWNERS ASSOCIATION**

By his signature to this Agreement, the Purchaser hereby acknowledges that:

- 10.1 he will automatically become a member of the Stonehurst Mountain Estate Owners Association (the "Association") on Transfer;
- 10.2 he will be bound by the provisions of the Constitution of the Association (a copy of which he has been given by the Selling Agent);
- 10.3 he shall remain a member of the Association until he ceases to be the owner of the Property; and
- 10.4 he has familiarized himself with the terms of the Constitution of the Association, especially any provision(s) regarding the construction and design of a dwelling to the property in terms of architectural design guidelines, building commencement and completion time periods, associated penalties and so on; and
- 10.5 he has familiarized himself with the terms of the Constitution of the Association, especially the provision regarding the payment of a 0,5% levy on the purchase price to the Association in terms of clause 7.11.3.2 of the Constitution, should the Purchaser not use Stonehurst Properties to sell the within property, at any time in the future.

11. **CERTIFICATES OF COMPLIANCE**

11.1 **BEETLE INFESTATION**

The Seller shall provide the Purchaser, by delivery to the Attorneys, by no later than the date of transfer, with a Certificate of Clearance which:

- 11.1.1 is prepared by a contractor who or which is a member of the South African Pest Control Association and accredited in terms of Act 36 of 1947 and all or any other applicable laws or regulations which pertain to infestation of visible and accessible portions of the property (excluding "wendy houses" and/or "picket fences"); and
- 11.1.2 is paid for by the Seller who/which shall be responsible for the cost of any remedial work required by the contractor in consideration for the issue of the certificate contemplated; and
- 11.1.3 does not pre-date the date of acceptance hereof by more than 90 (ninety) days.

11.2 **ELECTRICAL CERTIFICATE OF COMPLIANCE**

The Seller shall provide the Purchaser, by delivery to the Attorneys, by no later than the date of transfer, with an Electrical Compliance Certificate issued in terms of Government Regulation No. 2920 of 1992 and all or any other applicable law or regulation, insofar as the accredited electrician appointed by the Seller to provide such certificate requires remedial or rectification electrical work to be carried out as a precondition to the issue of such certificate the Seller will procure that such work is carried out and will do so at the Sellers cost and expense. The certificate shall not pre-date the date of acceptance hereof by more than 180 (one hundred and eighty) days.

11.3 **CERTIFICATE OF COMPLIANCE: PLUMBING**

The Seller shall, at its expense, submit a Certificate by an accredited Plumber to the City of Cape Town municipality, certifying that the water supply to the property conforms with the requirements stipulated in section 14 of the City of Cape Town: Water By-Law, 2010., i.e. that (a) the water installation conforms to the national building regulations; (b) there are no defects which can cause water to run to waste; (c) the water meter registers; and (d) there is no discharge of storm water into the sewer system. Such certificate shall be obtained and submitted to the municipality before registration of transfer. The Seller undertakes, in addition, to furnish the Purchaser with a copy of the certificate before registration of transfer.

INITIAL

11.4 CERTIFICATE OF COMPLIANCE: GAS INSTALLATIONS

The Seller shall, at its expense, deliver to the Purchaser, on or before the transfer or occupation date, whichever is the earlier, a Certificate of Conformity issued by an authorised person as defined in the Pressure Equipment Regulations 2009 made by the Minister of Labour under section 43 of the Occupational Health and Safety Act 85 of 1993, to the effect that the gas installation on the property conforms to the required health and safety standard.

The Seller undertakes not to alter, install or remove the gas installation after issue of the said Certificate. In so far as the authorised person appointed by the Seller to provide such Certificate requires corrective work to be carried out as a precondition to the issue of such Certificate, the Seller will procure such work is carried out at the Seller's cost and expense.

Existing Certificates shall not pre-date the date of acceptance of the Agreement of Sale by more than 2(two) years.

12. SELLING AGENTS COMMISSION

Subject to item H of the schedule to this Agreement:

12.1 The Purchaser warrants that the Selling Agent reflected in item G of the Schedule is the sole and effective cause of this Agreement. The Purchaser further warrants that the Property and / or the Seller were not introduced to the Purchaser by any person or entity other than the Selling Agent and hereby indemnifies the Seller and / or Selling Agent and holds him harmless against any other claim for agent's commission that may be made by any other agent arising out of this transaction.

12.2 The Seller shall be liable to pay commission to the Selling Agent and irrevocably instructs the Attorneys to pay over the agent's commission directly to the Selling Agent on transfer, or; upon breach of the Agreement, or upon mutual consent by the parties to cancel this Agreement, as set out herein. The brokerage as agreed to herein between the Seller and the Selling Agent, shall be payable as a first charge from the deposit referred to in item D of the Schedule, upon registration of transfer, or; where this Agreement is breached by the Seller or Purchaser, immediately upon such breach or, immediately upon mutual cancellation of the Agreement. The Seller hereby cedes to the Selling Agent in securitatem debiti such portion of the Seller's claim against the Purchaser as constitutes the brokerage plus VAT thereon to the Selling Agent.

I the Seller, understand that I am liable to pay the Selling Agent's commission as set out in clause 12..2 above, even if the provisions of this agreement is breached or if the purchaser and I agree to cancel this agreement.

12.3 If the Purchaser fails to carry out his obligations in terms of this Agreement, the Selling Agent shall have the right to recover the said commission from the Purchaser by way of liquidated damages without prejudice to the Selling Agent's rights against the Seller in terms of this Agreement or otherwise. Any legal costs incurred by the Selling Agent in enforcing its right to brokerage against the Seller and/or the Purchaser, shall be paid by the

I, the Purchaser, understand that should I fail to fulfil my obligations in terms of this agreement, I shall be liable to pay the amount of the commission to the Selling Agent and that this would constitute the damages that they suffered as a result of my failure to perform my obligations

_____.

13. SURETYSHIP

The Surety by his signature hereto, renouncing the benefits of excussion and division, the meaning of which he declares himself to be fully acquainted with, hereby binds himself jointly and severally and in solidum, to the Seller and its successors-in-title, cessionaries or assigns, as surety for and co-principal debtor with the Purchaser for the due and punctual payment and performance by the Purchaser of all debts and obligations (including but not limited to damages) of whatsoever nature and howsoever arising from this Agreement including any amendment to thereto, which the Purchaser may now or in the future owe to the Seller – (all of which debts and obligations are hereinafter referred to as "the obligations"). As part of his liability in terms hereof, the Surety binds himself as aforesaid to pay the amount of all charges and expenses of whatsoever nature including, but without derogating from the generality of the aforesaid, attorney and own client legal costs (reckoned on the recommended non litigious tariff of the Law Society of the Cape of Good Hope or its successors) and collection commission under this Agreement as well as the Surety obligations hereunder.

14. **BREACH**

14.1 If either party fails to make any payment on due date or commits any other breach of this agreement ("the defaulting party"), the other party ("the other party") shall be entitled, without prejudice to any other rights which it may have at law, at the other party's option, either –

14.1.1 to claim immediate specific performance of the defaulting party's obligations, including payment of the full balance of the purchase price (if applicable); or

14.1.2 to cancel this agreement, and where applicable, resume immediate possession and occupation of the property and either retain all payments, after payment of the brokerage to the Selling Agent, whether by way of the balance of the deposit, interest or otherwise made by the defaulting party (to either the Conveyancer and/or the Selling Agent), as being the amount which the parties record will be compensation for the damages suffered by the other party and the Selling Agent as a result of the defaulting party's breach of contract, or; alternatively and in lieu of such penalty, and at the other party's sole discretion, claim all damages (after immediate payment of the brokerage to the Selling Agent) suffered by reason of the defaulting party's breach of contract, with the right to retain any payments made under this agreement (after payment of the brokerage as aforesaid), until the amount of the damages (after payment of the brokerage as aforesaid) has been determined and to apply such payments towards satisfaction of the amount of such damages when quantified.

14.2 Before exercising its rights under clause 14.1 the other party shall first give the defaulting party written notice informing him of the failure in question and making demand to the defaulting party to carry out the obligation in question within 7 (seven) days.

15. **NOTICES AND DOMICILIA**

15.1 The parties to the Agreement choose the addresses set out in item A and item B of the Schedule as their respective domicilia citandi et executandi for all purposes arising herein and as their respective addresses for the service of any notices required to be served upon them hereunder.

15.2 Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give such notice by telefax.

15.3 Either party may by notice to the other change the physical address chosen as its/his domicilium, or may advise a telefax number or change the telefax number; provided that such change(s) shall only become effective on the sixth business day after the date of receipt, or deemed date of receipt, of such notice by the addressee.

15.4 Any notice to a party shall -

15.4.1 If sent by pre-paid registered post, be deemed to have been received on the fourth (4th) business day after posting unless the contrary is proved.

15.4.2 If delivered by hand, shall be deemed to have been received on the day of delivery or on the next business day if the day of delivery is not a business day.

15.4.3 If sent by telefax or electronic mail, shall be deemed to have been received on the date of dispatch or on the next business day if the time of dispatch is not on a business day unless the contrary shall otherwise be proved.

15.5 Notwithstanding anything to the contrary herein contained, any written notice or communication actually received by a party to this Agreement shall be an adequate written notice or communication to it/him notwithstanding that it was not sent to or delivered at the chosen domicilium citandi et executandi or transmitted to such party's telefax number as stipulated herein.

16. JURISDICTION

16.1 The Purchaser hereby consents in terms of section 45 of the Magistrate's Court's Act, No 32 of 1944, as amended, to the jurisdiction of any Magistrates' Court having jurisdiction over its 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.

16.2 The Purchaser agrees that, in the event of the Seller instructing its attorneys and/or taking legal proceedings against the Purchaser pursuant to a failure by the Purchaser to fulfill any of his obligations in terms hereof, then the Purchaser shall pay all legal costs plus VAT incurred by the Seller in connection therewith as between attorney and own client, including collection commission laid down at the tariff rate applicable.

17. JOINT AND SEVERAL LIABILITY

Should this Agreement be signed by more than 1 (one) person as Purchaser the obligations and liability of all the said signatories shall be joint and several.

18. TRUSTEE FOR A COMPANY or CLOSE CORPORATION TO BE FORMED

If this Agreement is entered into by the signatory for the Purchaser in his capacity as trustee for a company or close corporation to be formed, then:

18.1 the said signatory, by his signature hereto, hereby binds himself in favour of the Seller as surety and co-principal debtor, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company or close corporation in terms of or arising out of this Agreement or any cancellation hereof; and

18.2 without prejudice to the provisions of clause 18.1, in the event of such company or close corporation not being formed within 60 (sixty) days after the date of signature of this Agreement by the Purchaser, and/or failing to ratify and make the provisions of this Agreement binding upon itself, and/or failing within 7 (seven) days to deliver to the Attorneys the originals or notarially certified copies of its certificate of incorporation, memorandum and articles of association, certificate to commence business and all necessary resolutions of shareholders and/or directors in respect of this sale, in the case of a company, or of its founding statement, any applicable association agreement (or ratification and adoption of this sale, in the case of a close corporation), then and in any such event, the said signatory shall be personally liable in terms hereof as if he had been contracted in his own personal capacity.

19. COMPANY/CLOSE CORPORATION/TRUST

If this Agreement is signed as Purchaser by a person purporting to act for and on behalf of a company, close corporation or trust (other than a company or close corporation not yet formed), he shall be deemed to warrant that he is duly authorised so to sign this Agreement and shall by his signature hereto bind himself in favour of the Seller as surety and co-principal

