



**MOUNT ROYAL**  
GOLF & COUNTRY ESTATE

# Agreement of Sale

Vacant Plot Phase I – 24 August 2011 Edition

## SECTION A

### 1. INTERPRETATION

**In this agreement, unless the context otherwise indicates, the following words and phrases shall have the meanings set out hereunder:**

- 1.1 SELLER**                    **MOUNT ROYAL GOLF AND COUNTRY ESTATE (PROPRIETARY) LIMITED (Registration Number 2005/000961/07) duly incorporated in terms of the laws of the Republic of South Africa or its nominee, of: c/o DU PLESSIS & MOSTERT, Veritas Building, 13 Piet Retief Street, Malmesbury 7300; PO Box 5, Malmesbury 7299; Tel No 022-482 1101; Fax No 022-482 1248; e-mail address: eddie@dupmos.co.za**
  
- 1.2 PURCHASER**            1. .... (Afr/Eng)  
  
**Identity Number/Registration Number:** .....  
  
2. ....  
  
**Identity Number/Registration Number:** .....  
  
**Residential Address/Domicilium:** .....  
.....  
  
**Postal Address:** .....  
  
**Telephone (H):**.....    **(W):** .....  
  
**Fax:** .....    **Cell:** .....  
  
**E-mail Address:** .....  
  
**Married In/Out of Community of Property to :** .....  
  
**Spouse’s Identity Number:** .....
  
- 1.3 PROPERTY**            **Certain vacant land being Erf Number ..... Malmesbury situated within the boundaries of the development known as Mount Royal Golf and Country Estate, in the Swartland Municipality, Division Malmesbury, Province of the Western Cape, measuring ..... square metres.**
  
- 1.4 PURCHASE PRICE**            **Total PURCHASE PRICE: (R): ..... (including Value Added Tax (VAT) at the rate of 14%)**
  
- 1.4.1**                    **Deposit (R): ..... (refer to Clause 4.1.1)**
  
- 1.4.2**                    **Retained in Trust (R): ..... (refer to Clause 3.1, 3.2 & 4.2)**
  
- 1.4.3**                    **Balance (R): ..... (refer to Clause 4.1.2)**

- 1.5 SELLER'S ATTORNEYS** Du Plessis & Mostert of Veritas Building, 13 Piet Retief Street, Malmesbury 7300;  
PO Box 5, Malmesbury 7299, Tel. No. 022-4821101, Fax No. 022-4821248,  
email address: eddie@dupmos.co.za or marius@dupmos.co.za  
(ALL CHEQUES TO BE MADE PAYABLE IN FAVOUR OF Du Plessis & Mostert Trust Account No 4041000194 at Absa Bank Limited, Malmesbury, branch code: 334307).
- 1.6 MINIMUM BOND AMOUNT** R ..... (in terms of Section B, Clause 5).
- 1.7 ASSOCIATION** The Home Owners Association of MOUNT ROYAL formed to promote the communal interests of the OWNERS and residents in MOUNT ROYAL substantially in accordance with the constitution of the Mount Royal Home Owners Association.
- 1.8 MOUNT ROYAL** The MOUNT ROYAL GOLF AND COUNTRY ESTATE, a golf and residential estate established on subdivisions of Erf 10014 Malmesbury.
- 1.9 OWNER(S)** The registered owner(s) of the PROPERTY, or any subdivision thereof, or any sectional title unit erected thereon, or of any interest therein or thereto.
- 1.10 PRIME RATE** Prime bank overdraft lending rate charged from time to time by Absa Bank Limited to its corporate clients.
- 1.11 DATE OF TRANSFER** The date of registration of the PROPERTY in the name of the PURCHASER which will take place as soon as possible after fulfilment of all the suspensive conditions herein contained.
- 1.12 ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES** The development guidelines and building conduct rules of MOUNT ROYAL.
- 1.13 MOUNT ROYAL AGENTS** The nominee of the SELLER.
- 1.14 MANDATED AGENTS** The AGENTS that are the effective cause of this agreement of sale, namely:
- Name of AGENTS: .....
- Street Address: .....
- Postal Address: .....
- Contact Person: .....

Telephone (H):..... (W): .....

Fax: ..... Cell: .....

E-mail Address: .....

1.15 DEVELOPER The SELLER, its successor in title or assigns

1.16 PARTIES The SELLER and the PURCHASER.

**2. IRREVOCABLE OFFER AND SALE**

Signature of this agreement by the PURCHASER constitutes an offer to purchase the PROPERTY from the SELLER, which offer shall be irrevocable until 15h00 on ..... after which it will be of no effect.

Against signature of this agreement by the SELLER, the SELLER hereby sells and the PURCHASER hereby purchases the PROPERTY on the terms and conditions set out in this Agreement subject to the condition precedent contained in Clause 5 and Clause 3.

The PURCHASER hereby acknowledges that he has read this agreement and is fully conversant with the terms and conditions thereof.

**3. SPECIAL CONDITIONS**

3.1 The Parties expressly agree that the SELLER shall be responsible for payment to the Building Contractor of a portion of the cost of erecting the dwelling house described in the Building Contract hereto attached as an annexure.

3.2 The portion of the cost of erecting the dwelling house for which the SELLER shall be responsible shall be the same amount as the amount specified in Clause 4.1.2 (Retained in Trust), which amount shall be deemed to include V.A.T. if applicable, and shall be disbursed to the Building Contractor by the SELLER'S ATTORNEYS or by the financial institution providing the mortgage loan for the payment of the PURCHASE PRICE of the PROPERTY and/or the mortgage loan for the payment of the building of the dwelling house on the PROPERTY.

3.3 The payment/s payable by the SELLER in terms of 3.2 shall be made against presentation of a copy of a tax invoice issued by the Building Contractor to the Seller, and

3..3.1 In the case where the disbursement of the payment is made by the financial institution, such institution being satisfied that the payment is in accordance with actual progress in the building works, or

3.3.2 In the case where the disbursement of the payment is made by the SELLER'S ATTORNEYS, written confirmation by the PURCHASER that the PURCHASER is satisfied that such payment is in accordance with actual progress made in the building works.

3.3 This agreement is further subject to the suspensive condition that the PURCHASER enters into a building contract with a Building Contractor approved by MOUNT ROYAL for the erection of a dwelling house on the PROPERTY, which signed building contract will be attached hereto as an annexure simultaneous with the signing of this agreement.

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**Signed at .....** on this ..... day of ..... 20 .....

**AS WITNESSES:**

**(1)** .....

**(2)** .....

**PURCHASER/S:**

**Full Names of Person signing on behalf of Company, Close Corporation, or Trust:**

.....

**Identity Number of Person signing on behalf of Company, Close Corporation, or Trust:**

.....  
.....

**(If signing on behalf of a company, close corporation, or trust, the signatory warrants that he is duly authorized to sign this agreement.)**

**By adding his signature hereunder the Purchaser confirms that he is able to gain reasonable access to the MOUNT ROYAL internet website for the purposes of scrutinizing the documentation referred to in Clause 6.2.2.**

.....

**Signed at .....** on this ..... day of ..... 20 .....

**AS WITNESSES:**

**(1)** .....

**(2)** .....

**SELLER/S**

**BENEFITS ACCEPTED ON BEHALF OF:**

**1. MOUNT ROYAL AGENTS:**.....

.....

**2. THE MANDATED AGENTS (if applicable):**.....

.....

**3. THE ASSOCIATION: .....**

.....

# SECTION B

## TERMS AND CONDITIONS

- Clause 4 Purchase Price and Method of Payment thereof
- Clause 5 Conditions Precedent and Cancellation by Seller or Purchaser
- Clause 6 Mount Royal Home Owners Association
- Clause 7 Obligation to Build
- Clause 8 The Golf Course
- Clause 9 Possession, Rates, and Levies
- Clause 10 Interest payment
- Clause 11 Place for Payments
- Clause 12 Voetstoots Sale
- Clause 13 Architectural Guide, Building Conduct Rules, and Improvements on the Property
- Clause 14 Building Operations
- Clause 15 Transfer, Transfer Costs and Bond Registration Costs
- Clause 16 Default by the Purchaser
- Clause 17 Company, Close Corporation, or Trust Already Formed
- Clause 18 Sale to Trustee
- Clause 19 Domicilium and Notices
- Clause 20 Arbitration
- Clause 21 Joint and Several Liability
- Clause 22 Whole Contract
- Clause 23 Variation and Cancellation
- Clause 24 Singular and Plural
- Clause 25 Execution
- Clause 26 Unenforceable Clause
- Clause 27 Indulgence
- Clause 28 Agents' Commission
- Clause 29 Resale
- Clause 30 Exclusion of Liability
- Clause 31 Governing Law

## 4. PURCHASE PRICE AND METHOD OF PAYMENT THEREOF

- 4.1 The PURCHASER shall pay the PURCHASE PRICE of the PROPERTY inclusive of Value Added Tax, free of bank exchange, to the SELLER'S ATTORNEYS, as follows:
  - 4.1.1 The full deposit referred to in Clause 1.4 in cash within 30 (thirty) days of signature of this agreement by the PURCHASER which amount shall be invested in trust in accordance with the provisions of Section 78(2)(A) of Act 53 of 1979, with Absa Bank Limited, until date of registration of transfer of the PROPERTY in the name of the PURCHASER, on which date it shall be paid to the SELLER;
  - 4.1.2 The balance of the PURCHASE PRICE referred to in Clause 1.4.3 in the following manner:
    - 4.1.2.1 The PURCHASER shall within 10 (ten) days of having been notified by the SELLER'S ATTORNEYS of the fulfilment of the suspensive conditions, furnish the SELLER'S ATTORNEYS with a bank guarantee or undertaking acceptable to the SELLER for the balance of the PURCHASE PRICE referred to in Clause 1.4, which guarantee or undertaking shall be made payable on DATE OF TRANSFER, but should the guarantee or undertaking not be delivered on due date –
    - 4.1.2.2 in cash by the PURCHASER on demand by the SELLER'S ATTORNEYS before date of transfer.
- 4.2 The amount "Retained in Trust" referred to in Clause 1.4.2 in the following manner:
  - 4.2.1 To be paid together with the balance of the PURCHASE PRICE in the manner set out in Clause 4.1.2, and to be held in trust by the SELLER'S ATTORNEYS to guarantee

- performance of the SELLER'S responsibility in terms of Clause 3.1 and 3.2, or
- 4.2.2 if applicable, retained by the financial institution providing the mortgage loan for the payment of the PURCHASE PRICE of the PROPERTY, and to be disbursed against progress in the building of the dwelling house in accordance with the SELLER'S obligations in terms of Clause 3.1 and 3.2.
- 4.3 The interest earned on the investment in terms of Clause 4.1.1, and Clause 4.2.1, if applicable, shall be for the benefit of the PURCHASER.

## **5. CONDITIONS PRECEDENT AND CANCELLATION BY SELLER OR PURCHASER**

- 5.1 This agreement shall be subject to the suspensive condition that in the event where a bond amount is stipulated in Clause 1.6 above, the obtaining by the PURCHASER of a loan secured by a mortgage bond over the PROPERTY for the MINIMUM BOND AMOUNT from a financial institution within 21 (twenty one) days after the PURCHASER has signed this agreement of sale or within such extended period as the SELLER may allow. The PURCHASER shall be obliged to take all such steps as may be necessary for the obtaining of the aforementioned loan within the period stated above.
- 5.2 Notwithstanding anything to the contrary herein contained, the PURCHASER shall have the right to terminate this agreement within 21 (twenty one) days after having signed it, or such extended period the SELLER may allow in writing, if he is not prepared to accept the provisions of this agreement or the essential documents mentioned in Clause 6.2.2 as being binding upon him, by delivering an unconditional written notice to the SELLER, properly signed by the PURCHASER or his agent acting on his written authority.
- 5.3 In the event of the non-fulfilment of the suspensive condition contained in Clause 5.1 or the termination of this Agreement in terms of Clause 5.2, the SELLER shall refund to the PURCHASER the deposit paid in terms of Clause 4.1.1 and any further amounts paid by the PURCHASER on account of the PURCHASE PRICE, together with interest accrued thereon and the PARTIES reciprocally acknowledge that they shall have no further claim, the one against the other arising herefrom.

## **6. MOUNT ROYAL HOME OWNERS ASSOCIATION**

- 6.1 It is recorded that the ASSOCIATION was established as an Association not for profit to promote the communal interests of members of the ASSOCIATION.
- 6.2 The PURCHASER acknowledges and agrees that:
- 6.2.1 should the PURCHASER transfer the PROPERTY, the PURCHASER will ensure that the transferee is made fully aware of the existence of the ASSOCIATION and the fact that such subsequent transferee will automatically on transfer become a member of the ASSOCIATION;
- 6.2.2 his attention has been drawn to the fact that there exist or shall exist a number of important and related agreements and documents in connection with the ASSOCIATION, which *inter alia* deal with the control and administration of MOUNT ROYAL, all of which will be binding upon the PURCHASER as a member of the ASSOCIATION. The constitution of the ASSOCIATION, the ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES, have already been received by the PURCHASER and/or will be available for the PURCHASER'S inspection at the sales office of the SELLER and on the SELLER'S internet website, namely [www.MountRoyalEstate.co.za](http://www.MountRoyalEstate.co.za), and the PURCHASER acknowledges that it will be incumbent on him to inspect the same, and the PURCHASER will be bound thereby;
- 6.2.3 until the registration of transfer of the last saleable Erf within the final phase of MOUNT ROYAL the SELLER shall have the right to effect changes to the constitution of the ASSOCIATION and ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES should he, in his sole discretion, deem such changes to be an improvement.
- 6.3 The following conditions will be binding on the PURCHASER and if possible inserted in the title deed to the PROPERTY in the following form or in such other form as may be acceptable to the Registrar of Deeds, all of which are imposed as conditions in favour of the ASSOCIATION:
- 6.3.1 the OWNER shall not be entitled to transfer the PROPERTY, or any subdivision or consolidation thereof, or any unit or any interest therein, without:
- 6.3.1.1 first having submitted a copy of the signed agreement of sale to the ASSOCIATION for inspection so that the latter can ensure that the relevant terms and conditions of this Agreement and the constitution of the ASSOCIATION are contained in such agreement; and
- 6.3.1.2 the ASSOCIATION'S prior written consent, which consent will not unreasonably be withheld; and

- 6.3.1.3** the ASSOCIATION having confirmed in writing that all amounts due to it by the OWNER shall have been paid and all obligations to the ASSOCIATION shall have been met;
- 6.3.1.4** without having furnished the ASSOCIATION with his identity number and contact details;
- 6.3.1.5** having submitted to the ASSOCIATION an irrevocable written acknowledgement and undertaking by the proposed transferee (to be accepted by the ASSOCIATION) that
- 6.3.1.5.1** upon registration of transfer of the Erf into his name, he shall *ipso facto* become a member of the ASSOCIATION, subject to all the rights, obligations, and duties of a Member and that the provisions of this clause 6 as well as the provisions of clauses 7, 13 and 14 shall *mutatis mutandis* be binding upon him; and that
- 6.3.1.5.2** every OWNER shall automatically be and become and shall remain a member of the ASSOCIATION and be bound by its constitution for so long as the PURCHASER is a registered OWNER.
- 6.4** The above conditions are for the benefit of the ASSOCIATION and constitute a *stipulatio alteri* which it may accept at any time.
- 6.5** The PURCHASER acknowledges that the prices of the properties at MOUNT ROYAL will affect the nature, quality, and standard of the development and the PURCHASER hereby gives an undertaking to the ASSOCIATION not to sell or offer the PROPERTY for sale without a dwelling house at a price lower than the price for similar properties offered for sale by the DEVELOPER of MOUNT ROYAL from time to time.
- 6.6** It is hereby further recorded that it is part of the social ethos of MOUNT ROYAL to maintain a dynamic policy of good neighbourliness with surrounding communities, irrespective of class, race, or the politics of the day. The MOUNT ROYAL Treasury Fund was established by the ASSOCIATION to empower the ASSOCIATION for this purpose. Consequently it is a condition of this agreement of sale and it will also be a prerequisite for the granting by the ASSOCIATION of its consent to the sale in terms of Clause 6.3.2 in the event of a sale of the PROPERTY that the seller of the PROPERTY shall pay to the ASSOCIATION on demand after the sale of the PROPERTY, either an amount equal to 2% (two percent) of the selling price of the PROPERTY or the difference between the selling price of the PROPERTY and the purchase price thereof by the person selling the PROPERTY, whichever amount is the lower. This amount will be paid by the ASSOCIATION to the MOUNT ROYAL Treasury Fund for the aforesaid purposes.

## **7 OBLIGATION TO BUILD**

- 7.1** The PURCHASER undertakes that the erection of a dwelling house on the PROPERTY will commence within 2 (two) years of the date of registration of transfer of the PROPERTY in the name of the PURCHASER and will be completed within 12 (twelve) months from such commencement, unless the SELLER and the PURCHASER agree upon another commencement date and/or completion date. The dwelling house shall be regarded as being completed upon the issue of an occupational certificate by the local authority and the ASSOCIATION or its nominee whereafter the PURCHASER shall be entitled to take occupation of the improvements on the PROPERTY.
- 7.2** Should the PURCHASER fail or neglect to erect and complete a dwelling house on the PROPERTY within the periods stipulated in Clause 7.1, the ASSOCIATION shall have the right at any time after the expiry of the prescribed period, to repurchase the PROPERTY from the PURCHASER on the following terms and conditions:
- 7.2.1** the ASSOCIATION shall exercise its right by written notice to the PURCHASER'S chosen domicilium in terms of Clause 20 hereof;
- 7.2.2** should there be no improvements on the PROPERTY, the purchase price shall be an amount equal to the purchase price at which the PURCHASER acquired the PROPERTY;
- 7.2.3** should the PROPERTY have been improved, the purchase price shall be an amount equal to the purchase price at which the PURCHASER acquired the PROPERTY plus the cost to the PURCHASER of the improvements or the value of the improvements as they stand, whichever is the lower, less the costs of transferring the PROPERTY to the ASSOCIATION. The cost or the value of the improvements shall be determined by a quantity surveyor appointed by the SELLER, whose decision shall be final and binding on the ASSOCIATION and the PURCHASER and who, in arriving at such decision, shall have acted as an expert and not an arbitrator.
- 7.3** Should the ASSOCIATION exercise its rights in terms of Clause 7.2:
- 7.3.1** The purchase price will be paid to the PURCHASER on registration of transfer of the PROPERTY to the ASSOCIATION;

- 7.3.2 Transfer of the PROPERTY shall be registered by the ASSOCIATION'S ATTORNEYS as soon as possible after the ASSOCIATION has exercised its rights in terms of Clause 7.2;
- 7.3.3 All risk, benefit and occupation of the PROPERTY will, in this case, be given to the ASSOCIATION on transfer of the PROPERTY to it. All rates, taxes, levies, and other expenses on the PROPERTY shall be borne and paid by the PURCHASER until the transfer of the PROPERTY to the ASSOCIATION;
- 7.3.4 The PURCHASER agrees to do all such things as may be necessary or incidental or conducive for the implementation of the terms, conditions, and import of this Clause 7.3. The PURCHASER hereby irrevocably and *in rem suam* appoints the ASSOCIATION with power of substitution as its attorney and agent on its behalf, to sign all documents and do all things necessary to give effect to this Clause 7.
- 7.4 Should the PURCHASER sell the PROPERTY before the erection of a dwelling house thereon in terms of Clause 7.1, the SELLER shall have a pre-emptive right to purchase the PROPERTY from the PURCHASER at the price offered by the third PARTY, but without the SELLER having to pay a deposit.
- 7.5 Should the SELLER choose not to exercise its rights in terms hereof, the PURCHASER acknowledges that the ASSOCIATION nevertheless has the right to demand performance by the PURCHASER of its obligations in terms of Clause 7.1. If either the ASSOCIATION or the SELLER exercises its rights in terms of clause 7.2 or Clause 7.4, as the case may be before the other, the other's rights in terms of this clause 7 will terminate immediately.

## **8 THE GOLF COURSE**

It is hereby recorded that the golf course component of MOUNT ROYAL is under the jurisdiction of the Malmesbury Golf Club, and that the Golf Club and the ASSOCIATION, although committed to each other's interests, are nevertheless financially and legally autonomous. It is further recorded that the members of the ASSOCIATION are encouraged by the latter to become members of the Malmesbury Golf Club and exercise the rights attending to such membership, including voting rights and eligibility for bearing office. The SELLER shall procure that the PURCHASER will, as member of the ASSOCIATION, receive a credit in the books of the ASSOCIATION equal to one year's membership fees of the Malmesbury Golf Club for one person.

## **9 POSSESSION, RATES, AND LEVIES**

- 9.1 The PURCHASER shall take possession and occupation of the PROPERTY on the date of registration of transfer from which date all risk in and benefit of the PROPERTY shall pass to the PURCHASER. The PURCHASER shall be liable for all rates and taxes and any other charges whatsoever levied upon the PROPERTY directly by the Government, Local Authority, or other competent authority and a portion of any charges levied on MOUNT ROYAL by such authority, the latter being payable by the PURCHASER in the form of levies to the ASSOCIATION, from the date of transfer for as long as he is the OWNER of the PROPERTY. The PURCHASER shall refund to the SELLER all rates and taxes and other charges paid in advance for any period after the date of registration of transfer.
- 9.2 The PURCHASER shall be liable for all fees, levies, and/or special levies raised and for charges in respect of the PROPERTY as imposed by the ASSOCIATION as from the first day of the month following the DATE OF TRANSFER.
- 9.3 Should the PURCHASER take occupation of the PROPERTY before the DATE OF TRANSFER, no tenancy shall thereby be created and under no circumstances will the PURCHASER acquire any lien or be entitled to any compensation for any improvements effected to the PROPERTY. Should this agreement of sale terminate for whatsoever reason prior to transfer, the PURCHASER shall be obliged to vacate the PROPERTY immediately.

## **10 INTEREST PAYMENT**

Without prejudice to the SELLER'S other rights and remedies (refer to Clause 16) and in the event of a breach of this agreement by the PURCHASER, penalty interest shall be payable by the PURCHASER to the SELLER at 5% (five percent) above the PRIME RATE on the balance of the PURCHASE PRICE during the period in which the PURCHASER is in breach of this agreement. Such penalty interest shall accrue from the date of breach until the date on which the breach is remedied, or until the date of cancellation of this Agreement, as the case may be, both days inclusive, and shall be paid by the PURCHASER to the SELLER'S ATTORNEYS on demand by the latter, prior to transfer of the PROPERTY.

## **11 PLACE FOR PAYMENTS**

Unless otherwise provided herein, all payments on account of the PURCHASE PRICE, including interest, rates, taxes, and other charges provided for in terms of this agreement shall be made by the PURCHASER to the SELLER'S ATTORNEYS free of all bank costs or other deductions at the SELLER'S ATTORNEYS or at such other address in the Republic of South Africa as the SELLER may from time to time direct in writing.

## **12 VOETSTOOTS SALE**

- 12.1** The PROPERTY is sold voetstoots, in the condition and extent as determined at the time of sale, subject to necessary earth works for installation of civil and electrical services, and further subject to all restrictions, conditions, and servitudes, whether or not referred to in the current or prior title deeds, in the conditions of establishment, rezoning, or subdivision of MOUNT ROYAL, and the SELLER shall not be liable for any defect, latent or otherwise.
- 12.2** The SELLER shall not profit by any excess nor shall the SELLER be answerable for any deficiency in the area of the PROPERTY that may be revealed on any survey, and no claim shall lie against the SELLER for loss, damage, or otherwise attributable to any such deficiency.
- 12.3** 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 nor shall the SELLER be liable for the costs of locating same. The PURCHASER acknowledges that he has acquainted himself with the nature, condition, approximate position of beacons, extent, and locality of the PROPERTY and that he has inspected the layout plan of MOUNT ROYAL of which the PROPERTY forms part.
- 12.4** It is recorded that the SELLER has need to conduct bulk earthworks to install services to erven in MOUNT ROYAL. The SELLER and the ASSOCIATION accept no liability whatsoever for loss or damage of whatever nature directly or indirectly arising from or caused by subsidences or faults in the PROPERTY or in the vicinity of the PROPERTY or caused by the aforesaid bulk earthworks.
- 12.5** It is recommended that the PURCHASER should have the soil conditions on the PROPERTY independently appraised in order to obtain the most efficient and appropriate foundation design for any proposed structure on the PURCHASER'S PROPERTY.
- 12.6** The SELLER and the ASSOCIATION shall furthermore not be responsible for any loss, damage, or injury howsoever arising, to any property or any person whatsoever on the golf course or any portion of or facility in MOUNT ROYAL (also refer to Clause 31).
- 12.7** The PURCHASER shall be responsible for the cost of any special foundation measures required on the PROPERTY in connection with the erection of any improvements thereon.

## **13 ARCHITECTURAL GUIDE, BUILDING CONDUCT RULES, AND IMPROVEMENTS ON THE PROPERTY**

- 13.1** The SELLER and the ASSOCIATION reserve to themselves the right to nominate a Project Architect or a panel of Project Architects and/or designers from time to time and to require that the plans for any improvements to be erected on the PROPERTY are prepared by a member of the panel to ensure that the special character and quality of MOUNT ROYAL is maintained.
- 13.2** The PURCHASER warrants that he accepts the authority of the ASSOCIATION or its appointee as final regarding any problem whatsoever with the building being erected on the PROPERTY and undertakes to execute immediately any reasonable order by the ASSOCIATION or its appointee.
- 13.3** The PURCHASER undertakes to repair to the satisfaction of the ASSOCIATION any damage that he or his agents or contractors may cause to the common property of MOUNT ROYAL in the course of the building works.
- 13.4** The PURCHASER may select a building contractor of his own choice provided that such building contractor undertakes in writing that he will be subject to all the provisions of the ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES, to regulate the conduct of the building activities on the PROPERTY. The PURCHASER undertakes to ensure that the contractor complies with the ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES.
- 13.5** No signage shall be erected on the PROPERTY or MOUNT ROYAL apart from those provided for in the ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES.

## **14 BUILDING OPERATIONS**

- 14.1** The PURCHASER acknowledges that MOUNT ROYAL is not fully developed yet. It is recorded that the SELLER has need to conduct bulk earthworks to install services to erven

in MOUNT ROYAL. Building operations will take place upon, adjacent to, or on neighbouring subdivisions or stands and that the said bulk earthworks and building operations may cause the PURCHASER certain inconvenience. The PURCHASER agrees that he shall have no claim against the SELLER and/or the ASSOCIATION, arising out of such building operations.

- 14.2 It is hereby recorded that the DEVELOPER has reserved and shall have the right to develop portions of the land in MOUNT ROYAL for group housing and/or in terms of the Sectional Titles Act No 95 of 1986 and shall also have the right to register real rights of extension in terms of Section 25 of the Sectional Titles Act. The DEVELOPER shall also have the right to sell portions of the land of MOUNT ROYAL by way of syndication. The PURCHASER hereby confirms that he has no objection to the exercise of the above rights by the DEVELOPER.
- 14.3 The PURCHASER acknowledges that the DEVELOPER will carry out the development in phases. As far as may be necessary this Clause constitutes an irrevocable consent by the PURCHASER to the proposed development (including the extension of the existing golf course) in such phases as the SELLER in its sole discretion may determine. The SELLER shall be given free access over the PROPERTY to carry out the development of the various phases.
- 14.4 Should the relevant Local Authority require registration of any servitude over the PROPERTY or impose any conditions which may affect the PROPERTY when approving the development of any phase, the PURCHASER shall permit and hereby consents to registration of such servitude or allow imposition of such condition.
- 14.5 The PURCHASER shall be responsible for the cost of water and electricity meters on the PROPERTY and installation thereof and shall also pay any required water and electricity deposits and/or connection fees.

## **15 TRANSFER, TRANSFER COSTS AND BOND REGISTRATION COSTS**

- 15.1 Transfer shall be effected by the SELLER'S ATTORNEYS as soon as possible after all the suspensive conditions contained in this agreement shall have been fulfilled.
- 15.2 The PURCHASER shall within 10 (ten) days of receipt of a request by the SELLER'S ATTORNEYS –
- 15.2.1 pay all rates, taxes, levies, costs of transfer, bond registration costs (if applicable) and transfer duty (if applicable); and
- 15.2.2 furnish the SELLER'S ATTORNEYS with all such documents and information which they may require for purposes of preparing the transfer documents; and or
- 15.2.3 sign all transfer documents and bond documents.
- 15.3 In order to ensure that registration of transfer is not unduly delayed, it is a condition of this agreement of sale that the SELLER'S ATTORNEYS shall attend to the registration of the bond of the PURCHASER and the SELLER shall procure that a discount of 30% (thirty percent) on the standard bond registration fees will be granted by the SELLER'S ATTORNEYS.

## **16 DEFAULT BY THE PURCHASER**

- 16.1 Should the PURCHASER'S estate be provisionally or finally sequestrated or liquidated as insolvent or placed under judicial management prior to transfer of the PROPERTY to the PURCHASER or should the PURCHASER fail to pay any amount on due date or commit a breach of any of the other terms and conditions of this agreement and remain in default for 7 (seven) days (unless such breach occurs at a time critical to the registration procedure in which case the 7 (seven) day period may at the election of the SELLER be reduced to 48 (forty eight) hours after receipt of a written notice requiring payment and/or delivery of the guarantee(s) or undertaking(s) and/or requiring such breach to be remedied), the SELLER shall be entitled without prejudice to any other rights of the SELLER in law or in terms of this agreement including the right to claim interest in terms of Clauses 4.3 and 10 above to:
- 16.1.1 claim immediate payment of the PURCHASE PRICE or the balance of the PURCHASE PRICE as the case may be, together with all interest and other moneys which may then be outstanding, all of which shall immediately become due and payable, together with any damages suffered by the SELLER in consequence of the PURCHASER'S default;
- 16.1.2 cancel this agreement without further notice in which event the PURCHASER shall automatically forfeit and the SELLER shall be entitled by way of rouwkoop and/or rental and/or a genuine pre-estimate of damages for breach of contract, to retain all moneys then having been paid by the PURCHASER under this agreement; or
- 16.1.3 cancel this agreement without further notice and to claim damages, if any, in lieu of or in addition to such forfeiture, in which event the SELLER shall be entitled to retain any moneys paid by the PURCHASER pending determination of the amount of the damages by agreement, by order of court, or otherwise.
- 16.2 Should this agreement be cancelled in terms of Clauses 16.1.2 or 16.1.3, the PURCHASER

shall forthwith give up possession of and vacate the PROPERTY and shall cease to have any rights under this agreement, and the SELLER shall immediately be entitled to resell the PROPERTY.

- 16.3 The PURCHASER shall be liable for all and any costs, including attorney and own client costs, collection commission or tracing agents fees, incurred by the SELLER arising out of or in connection with any breach by the PURCHASER of any of the provisions of this agreement or any other matter relating to this agreement.
- 16.4 A certificate signed by the SELLER'S ATTORNEYS shall be *prima facie* proof of the period in respect of which penalty interest will be payable in terms of Clause 10.

## 17 COMPANY, CLOSE CORPORATION, OR TRUST ALREADY FORMED

- 17.1 If this agreement is signed by a person (hereinafter referred to as "the Signatory") acting or purporting to act for and on behalf of an existing company, close corporation, or trust as PURCHASER, the Signatory hereby warrants that:
- 17.1.1 the company, close corporation, or trust as the case may be, is in existence and that the Signatory is duly authorised to sign this agreement on its behalf;
- 17.1.2 that the company, close corporation, or trust is lawfully entitled to acquire and take transfer of the PROPERTY; and
- 17.1.3 that all conditions have been complied with in order to make this agreement binding to the company, close corporation, or trust; and
- 17.1.4 that the company, close corporation, or trust will duly and punctually comply with all its obligations in terms of this agreement.
- 17.2 The Signatory shall by his signature be bound in favour of the SELLER as surety and co-principal debtor *in solidum*, under renunciation of the benefits of division, excussion, and cession of action, for the due and proper performance by the said company or close corporation or trust of all the obligations of the PURCHASER under and pursuant to:
- 17.2.1 this agreement; or
- 17.2.2 any cancellation pursuant to this agreement; or
- 17.2.3 Section 35 of the Insolvency Act, No 24 of 1936, as amended, pursuant to the abandonment by a liquidator or cancellation by a court of this agreement, in the event of the said company, close corporation, or trust being wound up.

## 18 SALE TO TRUSTEE

Should the PURCHASER sign this agreement as Trustee for a company or close corporation to be registered or on behalf of another person or should the PURCHASER nominate another person as purchaser in his place, then he shall be personally liable as PURCHASER for the proper performance of all the terms and conditions of this agreement, if the said company or close corporation is not registered within 30 (thirty) days of date of this agreement or such extended period as the SELLER may allow, and/or does not adopt and/or ratify unconditionally the terms and conditions of this agreement or if such company or close corporation is for any reason whatsoever not bound or cannot be bound as PURCHASER under this agreement for any other reason whatsoever or if his nominee cannot be bound as PURCHASER under this agreement or as a result of any defect in his mandate in the event where he signs this agreement on behalf of another person. Furthermore, upon adoption and ratification of this agreement by any company or close corporation as aforesaid, the PURCHASER shall *ipso facto* be liable as a surety *in solidum* and co-principal debtor to the SELLER for the prompt and proper performance by the company or close corporation of each and every of its obligations arising out of the acceptance and ratification of this agreement, under renunciation of the *beneficia ordinis seu excussionis et divisionis* and the PURCHASER acknowledges hereby that he is fully conversant with the meaning and effect of the said benefits and his renunciation thereof.

## 19. DOMICILIUM AND NOTICES

- 19.1 For the purposes of this agreement, including the giving of notice and the serving of legal process, the PARTIES hereby choose their respective *domicilium citandi et executandi* (hereinafter referred to as the "domicilium") at the addresses stipulated on page 1 of this agreement.
- 19.2 A PARTY may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served or any notice given.
- 19.3 All notices shall be in writing and sent by registered post or delivered by hand or sent by telefax to the domicilium chosen by the PARTY concerned, and shall be deemed to have been duly delivered 7 (seven) calendar days after the day on which such notice was posted. If delivered by hand the notice shall be deemed to have been delivered on the date of

delivery. If sent by telefax the notice shall be deemed to have been received on the same day of transmission.

## **20 ARBITRATION**

- 20.1** Any dispute arising out of this agreement or the interpretation thereof, both while in force and after its termination, shall be submitted to and determined by arbitration. Such arbitration shall be held in Cape Town.
- 20.2** There shall be one arbitrator who shall be appointed by agreement between the PARTIES, but failing agreement between them within a period of 14 (fourteen) calendar days after the arbitration has been demanded, either of the PARTIES shall be entitled to request the chairman for the time being of the Cape Bar Council to make the appointment and, in making his appointment, to have regard to the nature of the dispute.
- 20.3** The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act, 1965, as amended, or re-enacted in some other form from time to time.
- 20.4** The arbitrator shall be obliged to give reasons for any decision made by him in the course of arbitration.
- 20.5** The decision of the arbitrator shall be final and binding on the PARTIES and may be made an order of any court of competent jurisdiction. Each of the PARTIES hereby submits itself to the jurisdiction of the Cape Provincial Division of the High Court of South Africa should the other PARTY wish to make the arbitrator's decision an order of that Court.
- 20.6** The provisions of this Clause 20 shall not derogate from any PARTY's right to seek urgent relief from any court of competent jurisdiction pending the referral to and outcome of arbitration.

## **21 JOINT AND SEVERAL LIABILITY**

Should there be more than one PURCHASER, the PURCHASERS shall be liable jointly and severally and *in solidum* for the payments of all moneys hereunder and for the compliance with all the terms of this agreement.

## **22 WHOLE CONTRACT**

This agreement constitutes the entire contract between the PARTIES, and the PARTIES shall not be bound by any representations, terms, conditions, or warranties not contained in this agreement. The PURCHASER warrants that the PURCHASER was not induced into entering into this agreement by any warranty or representation not contained herein.

## **23 VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from, or cancelling this agreement shall be effective unless reduced to writing and signed by or on behalf of both PARTIES.

## **24 SINGULAR, PLURAL, GENDER**

Any reference in this agreement to the singular shall include the plural and *vice versa*, and any reference to one gender shall include the other gender.

## **25 EXECUTION**

The PARTIES hereby undertake to perform all such acts and to sign all such documents as may be required to give effect to the import or intent of this agreement.

## **26 UNENFORCEABLE CLAUSE**

If any Clause or term of this agreement should be invalid, unenforceable, or illegal then the remaining Clauses and Terms of this agreement shall be deemed to be severable therefrom and shall continue in full force and effect, unless such invalidity, unenforceability, or illegality goes to the root of this agreement.

## **27 INDULGENCE**

No extension of time or indulgence by either PARTY to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such PARTY in any respect under this agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this agreement.

## **28 AGENTS' COMMISSION**

**It is hereby recorded that:**

- 28.1.1** the MOUNT ROYAL AGENTS are the preferred agents at MOUNT ROYAL because of their specialized knowledge of MOUNT ROYAL, its vision, ethos, and workings;
- 28.1.2** the SELLER is nevertheless allowed to instruct other agents of its choice (the MANDATED AGENTS) to sell erven in MOUNT ROYAL provided the instruction is in writing and the MANDATED AGENTS are duly assisted by the MOUNT ROYAL AGENTS;
- 28.1.3** in the event of an agreement of sale being concluded with a PURCHASER introduced by the MANDATED AGENTS the commission earned will be shared and the MANDATED AGENTS will receive 60% (sixty percent) and the MOUNT ROYAL AGENTS 40% (forty percent) of the commission, unless the MANDATED AGENTS and the SELLER agree otherwise in writing;
- 28.1.4** if the MOUNT ROYAL AGENTS are the effective cause of the sale, they will be regarded, for purposes of payment of commission, as both the MANDATED AGENTS and the MOUNT ROYAL AGENTS.
- 28.2** The SELLER shall be liable for the payment of commission at the rate specified in the written mandate mentioned in Clause 28.1.2 on date of registration of transfer of the PROPERTY in the name of the PURCHASER.
- 28.3** Should this agreement be cancelled as a result of the PURCHASER failing to comply with his obligations herein, then the PURCHASER hereby assumes the SELLER'S obligations to pay the commission due to the MANDATED AGENTS together with VAT thereon if applicable and interest in terms of Clause 10.1.
- 28.4** The PURCHASER warrants that the MANDATED AGENTS (refer to Clause 1.14) and/or the MOUNT ROYAL AGENTS (refer to Clause 1.13 as the case may be) was/were the effective cause of the sale of the PROPERTY and hereby indemnifies the SELLER against any claims any other estate agent may make on the basis of effective cause.

## **29 RESALE**

- 29.1** Until 80% (eighty percent) of all the erven in MOUNT ROYAL have been improved with habitable dwellings, no agents shall be allowed to engage in the resale (i.e. all sales other than the original sale by the SELLER to the first purchaser) of erven in MOUNT ROYAL without the assistance of the MOUNT ROYAL AGENTS. The PURCHASER, shall however, be entitled to instruct agents of his choice (the MANDATED AGENTS) to sell the PROPERTY, but in such an event the provisions of Clauses 28.1.3 and 28.1.4 shall *mutatis mutandis* be applicable. The PURCHASER acknowledges that this measure is necessary to maintain and safeguard the standard and accuracy of information conveyed to prospective new entrants to MOUNT ROYAL.
- 29.2** The PURCHASER retains the right to market the PROPERTY personally without making use of the services of any estate agent.
- 29.3** Whether the PURCHASER markets the PROPERTY with or without the services of an estate agent, the PURCHASER shall be bound by his undertaking contained in Clause 6.5 hereof.

## **30 EXCLUSION OF LIABILITY**

The PURCHASER indemnifies the SELLER and the ASSOCIATION against any action which may be brought against the SELLER or the ASSOCIATION by any person that may suffer loss or injury on entering MOUNT ROYAL, whether it be himself or another who enters MOUNT ROYAL as a personal or business associate of the PURCHASER.

## **31 GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa, without giving effect to principles of conflict of law.