

- 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):**
(inclusive of Value Added Tax at the rate of 14%, if applicable)
Deposit (R):
(refer to Clause 4.1.1)
Balance (R):
(refer to Clause 4.1.2)
- 1.5 SELLER'S ATTORNEYS
.....
Cheques shall be made payable in favour of:
.....
- 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 DEVELOPER MOUNT ROYAL GOLF AND COUNTRY ESTATE (PROPRIETARY) LIMITED (Registration Number 2005/000961/07) its successors in title or assigns.
- 1.11 PRIME RATE Prime bank overdraft lending rate charged from time to time by ABSA Bank Limited to its corporate clients.
- 1.12 DATE OF TRANSFER The date of registration of transfer 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.
- 1.13 ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES The development guidelines and building conduct rules of MOUNT ROYAL.
- 1.14 MOUNT ROYAL AGENT The Developer.
Telephone (W): 022 482 8811; Fax: 022 482 8822; Cell: 072 934 9561.

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 hereto, 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

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.)

BENEFITS ACCEPTED ON BEHALF OF:

1. THE MOUNT ROYAL AGENTS:

THE MANDATED AGENTS (if applicable):

THE ASSOCIATION:

THE DEVELOPER:

SECTION B

TERMS AND CONDITIONS

Clause 4	Purchase Price and Method of Payment thereof
Clause 5	Condition Precedent and Termination by 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 and 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	Joint and Several Liability
Clause 21	Whole Contract
Clause 22	Variation and Cancellation
Clause 23	Singular, Plural, Gender
Clause 24	Execution
Clause 25	Unenforceable Clause
Clause 26	Indulgence
Clause 27	Resale
Clause 28	Agents' Commission
Clause 29	Governing Law
Clause 30	Stipulatio alteri

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 (VAT) if applicable, 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 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 In the event where registration of transfer of the PROPERTY in the name of the PURCHASER takes place within 90 (ninety) days after date of this agreement, the interest earned on the investment in terms of Clause 4.1.1, shall be for the benefit of the PURCHASER. If registration of transfer takes place more than 90 (ninety) days after date of this agreement, such interest shall be for the benefit of the SELLER.

5. CONDITION PRECEDENT AND TERMINATION BY 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 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 DEVELOPER and on the DEVELOPER'S internet website, namely 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 from the DEVELOPER, the DEVELOPER 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 PURCHASER 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 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
 - 6.3.2 the ASSOCIATION'S prior written consent, which consent will not unreasonably be withheld; and
 - 6.3.3 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;
 - 6.3.4 having furnished the ASSOCIATION with his identity number and contact details;
 - 6.3.5 having submitted to the ASSOCIATION an irrevocable written acknowledgement and undertaking by the proposed transferee (to be accepted by the ASSOCIATION) that 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
- 6.4 Every OWNER shall automatically be and become and shall remain a member of the ASSOCIATION and be bound by its Constitution as so long as the PURCHASER is a registered OWNER.
- 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 person who purchased the PROPERTY in the first instance from the DEVELOPER and will be completed within 12

(twelve) months from such commencement, unless the SELLER and the ASSOCIATION 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 expiry of the prescribed period to purchase 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 19 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 ASSOCIATION, 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 DEVELOPER shall have a pre-emptive right to purchase the PROPERTY from the PURCHASER at the price offered by the third party, but without the DEVELOPER having to pay a deposit.
- 7.5 If either the ASSOCIATION or the DEVELOPER exercises its rights in terms of clause 7.2 or clause 7.4, as the case may be, before the other, the latter'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 will be 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.

9. POSSESSION, RATES, AND LEVIES

- 9.1 The PURCHASER shall take possession and occupation of the PROPERTY on date of transfer from which date all risk in and benefit of the PROPERTY shall pass to the PURCHASER. The PURCHASER shall be liable as from the date of transfer for all rates and taxes, all fees, levies and/or special levies and any other charges whatsoever levied upon the PROPERTY directly by the Government, Local Authority, the ASSOCIATION, or other competent authority, and a portion of charges (if any) levied on the ASSOCIATION 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 PAYMENTS

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.

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 earthworks 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, the DEVELOPER, and the ASSOCIATION shall not be liable for any defect, latent or otherwise.
- 12.2 The SELLER, the DEVELOPER, and the ASSOCIATION shall not profit by any excess nor shall they 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, the DEVELOPER, and the ASSOCIATION for loss, damage, or otherwise attributable to any such deficiency.
- 12.3 The SELLER, the DEVELOPER, and the ASSOCIATION 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 they 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 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.
- 12.5 The SELLER, the DEVELOPER, 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. 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.
- 12.6 The SELLER, the DEVELOPER, 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.

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

- 13.1 The DEVELOPER 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 –

- 13.4.1 qualifies in terms of the ARCHITECTURAL GUIDE AND BUILDING CONDUCT RULES, to erect any improvements on the PROPERTY; and
- 13.4.2 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 DEVELOPER 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 DEVELOPER 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 DEVELOPER at its sole discretion may determine. The DEVELOPER 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.

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, 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 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 In the event of a breach by the PURCHASER of any of the terms and conditions imposed in this agreement for the benefit of the DEVELOPER and/or the ASSOCIATION, the DEVELOPER and/or the ASSOCIATION as the case may be, shall have the right to impose such reasonable fines and/or penalty levies as it in its discretion may deem necessary to secure fulfilment of all such terms and conditions of which the PURCHASER may be in breach, without prejudice to their other legal rights and remedies, including the right to claim damages.
- 16.3 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.
- 16.4 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.
- 16.5 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 authorized to sign this agreement on its behalf;
 - 17.1.2 the company, close corporation, or trust is lawfully entitled to acquire and take transfer of the PROPERTY; and
 - 17.1.3 all conditions have been complied with in order to make this agreement binding to the company, close corporation or trust; and
 - 17.1.4 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 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 signatory 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, if posted, be deemed to have been duly delivered 7 (seven) 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. 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.

21. 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 contract by any warranty or representation not contained herein.

22. 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.

23. SINGULAR, PLURAL, GENDER

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

24. 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.

25. UNENFORCEABLE CLAUSE

If any Clause or Term of this agreement should be invalid, unenforceable, or illegal, then the remaining 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.

26. 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.

27. RESALE

- 27.1 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 DEVELOPER to the first purchaser) of erven in MOUNT ROYAL without the assistance of the MOUNT ROYAL AGENT. The PURCHASER, shall however, be entitled to instruct agents of his choice 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.
- 27.2 The PURCHASER retains the right to market the PROPERTY personally without making use of the services of any estate agent.

28. AGENTS' COMMISSION

- 28.1 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 a sale being concluded with a PURCHASER introduced by the MANDATED AGENTS the commission will be shared and the MANDATED AGENTS will receive 60% (sixty percent) and the MOUNT ROYAL AGENTS 40% (forty percent) of the commission, or as otherwise agreed in writing by the MANDATED AGENTS and the MOUNT ROYAL AGENTS;
- 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 MOUNT ROYAL AGENTS and the MANDATED 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 transfer.
- 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 MOUNT ROYAL AGENTS or the MANDATED AGENTS, as the case may be together with VAT thereon if applicable, on demand by the latter.
- 28.4 The PURCHASER warrants that the MANDATED AGENTS (refer to Clause 1.15) and/or the MOUNT ROYAL AGENTS (refer to Clause 1.14 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. 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.

30. STIPULATIO ALTERI

The conditions contained in this Agreement for the benefit of the ASSOCIATION and/or the DEVELOPER and/or the MANDATED AGENTS and/or the MOUNT ROYAL AGENT constitute a *stipulatio alteri* which they may accept at any time.