

**CLARA ANNA**

**FONTEIN**

**AGREEMENT OF SALE**

between

**CLARA ANNA FONTEIN JOINT VENTURE**

comprising of the parties set out in paragraph 1 of the Covering Schedule

("the Seller")

and

-----  
being the party/ies whose details are set out in paragraph 2 of the Covering Schedule  
("the Purchaser")

**Clara Anna Fontein –Plot Sale**

Erf Number: \_\_\_\_\_

## COVERING SCHEDULE

<b>1. PARTIES</b>	
<b>1.1 Seller:</b>	Uitkamp Ontwikkelings Proprietary Limited (Registration No. 2006/030252/07) and Rabie Property Group Proprietary Limited (Registration No. 2006/012251/07), trading as the Clara Anna Fontein Joint Venture
Address:	Suite G18 The Colosseum, Century Boulevard, Century City, 7441
Telephone No. :	021 – 550 7000
Fax No. :	021 – 550 7002
<b>1.2 Purchaser/s:</b>	
Company <input type="checkbox"/> Close Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Natural Person <input type="checkbox"/>  <i>(Tick whichever applies)</i>	
Name of Purchaser's Representative in case of legal entities :	
Registration / IT / Identity No. / Date of Birth of Purchaser:	
Purchaser's Income Tax No. :	
Registered / Residential Address:	----- ----- -----
Postal Address:	----- ----- -----
Marital Status (if natural person) :	Single <input type="checkbox"/> In community of property <input type="checkbox"/> Out of community of property <input type="checkbox"/> Married by Muslim rites <input type="checkbox"/> Laws of another country <input type="checkbox"/>  <i>(Tick whichever applies)</i>  If in community of property - full name and ID No of spouse:- -----

Telephone No:	(Home)	
	(Work)	
	(Cell)	
Telefax:		
E-mail Address:		
<b>2. PROPERTY DESCRIPTION</b>		
Erf No. _____ of Portion 18 of the Farm Uitkamp No. 189 Durbanville, Cape Town being the portion identified on the plan of subdivision annexed hereto as Annexure measuring approximately _____ m2 in extent		
<b>3. PURCHASE PRICE OF THE PROPERTY</b>		
3.1	Purchase Price (inclusive of VAT)	R
3.2	Reservation fee paid	R
3.3	Balance of 10% deposit payable within 48 hours after signature by the Purchaser:	R
3.4	Additional 20% deposit payable within 60 days after signature by the Purchaser:	R
3.5	Balance of Purchase Price:	R
<b>4.</b>	<b>ESTIMATED TRANSFER DATE</b>	May / June 2016 subject to the provisions of clause 6.1
<b>5.</b>	<b>POSSESSION DATE</b>	<b>On transfer</b>
<b>6.</b>	<b>ESTIMATED CLARA ANNA FONTEIN PROPERTY OWNERS ASSOCIATION LEVY</b>	<b>R1 980</b>
<b>7.</b>	<b>ANNUAL RATES AND SERVICES</b>	to be levied by the Local Authority
<b>8. CONVEYANCERS</b>		

Name of Attorneys:	Low and Coetzee Attorneys 35 Main Road Durbanville 7550 Attn: Yolandi Hortnagel  Tel: +27 (0) 21 976 3180 Fax: +27 (0) 21 976 4288
<b>9. TRUST ACCOUNT DETAILS</b>	
	Low and Coetzee Attorneys Trust Account ABSA Bank Tyger Manor Branch Code: 632005 Account number: 141 016 0931  Ref: CAF No. _____ ( <i>insert erf number of property</i> ) Surname
<b>11. SALES AGENT</b>	
11.1 Name:	Low and Coetzee Properties
11.2 Contact No.:	021 – 976 3180

## RECORDAL

- (a) The Seller is or will be the registered owner of the land to be known as Portion 18 of the Farm Uitkamp No. 189 situated at Durbanville, Cape Town (“the land”).
- (b) The Seller intends to develop a development to be known as Clara Anna Fontein on the land comprising of single residential erven, group housing erven, sectional title units, a retirement village, a school, an estate management facility, a clubhouse, a gym, private open spaces and private and public roads.
- (c) The Seller has agreed to sell and the Purchaser has agreed to purchase the property described in the covering schedule subject to the fulfilment of the conditions precedent recorded in this agreement.

## NOW THEN IT IS AGREED AS FOLLOWS :-

### 1. INTERPRETATION

- 1.1 In this agreement, unless the context otherwise indicates:
  - 1.1.1 “approve” means final approval by the relevant competent authorities (and where an appeal has been lodged against an approval, such approval shall become final upon the determination of such appeal) and the term “approval” shall have the corresponding meaning;
  - 1.1.2 “the Conveyancers” means the attorneys referred to in paragraph 8 of the covering schedule;
  - 1.1.3 “the covering schedule” means the covering schedule set out on pages 2 to 4 of this agreement which shall be deemed to be incorporated in this agreement and shall be an integral part thereof;
  - 1.1.4 “design manual” means the design manual to control all aspects of architectural design and landscaping of all residential erven within the development, as amended from time to time in terms of the property owners constitution or as required by the City or the Seller during the development period, a copy of the current draft of which is available for inspection at the offices of the Seller;
  - 1.1.5 “the development” means the development to be established on Portion 18 of the Farm Uitkamp No. 189 situated at Durbanville, Cape Town to be known as Clara Anna Fontein as shown in Annexure A hereto and “scheme” shall have the same meaning;
  - 1.1.6 “the development period” means the period up to the date that all the erven and/or sectional title units and/or life rights (applicable in respect of the retirement village) have been transferred from the Seller to third parties and all erven have been improved by the erection of buildings thereon, including all such additional areas(s) as may be incorporated in further phases into the development or until the date when the Seller, at its sole discretion, notifies the POA in writing that the development period has ceased, whichever occurs first;
  - 1.1.7 “FICA” means the Financial Intelligence Centre Act, Act 38 of 2001;
  - 1.1.8 “the land” means the land on which the development is situated being Portion 18 of the Farm Uitkamp No. 189 situated at Durbanville, Cape Town;

- 1.1.9 “the land surveyors” mean David Hellig & Abrahamse or such other land surveyors as may be appointed by the Seller for the purposes of this agreement;
- 1.1.10 “landscape master plan” means the landscape plan, as amended from time to time in terms of the property owners constitution or as required by the City or the Seller during the development period, a copy of the current draft of which is available for inspection at the offices of the Seller;
- 1.1.11 “life right” means any life rights granted in respect of the retirement village intended to be established within the development;
- 1.1.12 “operational environmental management plan” means the operational environmental management plan which will be approved by the local authority in due course and issued to the POA by the Seller;
- 1.1.13 “the POA” means the property owners association established for the Clara Anna Fontein development in terms of section 29 of the Land Use Ordinance 1985 or any statutory re-enactment or amendment thereof, and the word “association” will have the same meaning;
- 1.1.14 “the possession date” means the date of registration of transfer of the property unless an earlier date is specified in paragraph 5 of the covering schedule;
- 1.1.15 “the prime rate” means the basic prime rate of interest applicable at the time as determined by Nedbank Limited;
- 1.1.16 “the property” means the property sold to the Purchaser in terms of this agreement as specified in paragraph 2 of the covering schedule and identified as such on the proposed plan of subdivision annexed hereto (marked “A”);
- 1.1.17 “the property owners constitution” or “the constitution” means the constitution of the property owners association as amended from time to time in accordance with the requirements of the Seller or the local authority a copy of the current draft of which is available for inspection at the offices of the Seller;
- 1.1.18 “the proposed plan of subdivision” means the proposed plan of subdivision of the land annexed hereto (marked “A”) depicting the proposed subdivision thereof;
- 1.1.19 “the Purchaser” means the party/ies described in paragraph 1.2 of the covering schedule;
- 1.1.20 “the Seller” means the party described in paragraph 1.1 of the covering schedule;
- 1.1.21 “the transfer date” means the date of registration of transfer of the property into the name of the Purchaser;
- 1.1.22 “VAT” means value-added tax at the current rate of 14% (fourteen percent) in terms of the Value Added Tax Act No 89 of 1991 or any statutory re-enactment or amendment thereof and includes any regulations made thereunder from time to time.
- 1.2 The headnotes to the paragraphs in this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

- 1.3 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*.
- 1.4 If any provision in the covering schedule, the preamble and/or this clause 1 is a substantive provision conferring rights or imposing obligations on any party, then notwithstanding that such provision is contained in the covering schedule, the preamble and/or this clause 1 (as the case may be) effect shall be given thereto as if such provision was a substantive provision in the body of this agreement.
- 1.5 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.6 In the event that the last date for the performance of any obligation or the exercise of any right in terms of this Agreement falls on a day which is not a business day, then the relevant last date for performance of any obligation or the exercise of any right in terms of this Agreement shall be the immediately succeeding Business Day.
- 1.7 When any number of days or other period is prescribed, such number of days or other period shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the immediately succeeding Business Day.
- 1.8 The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.10 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 1.11 Where this Agreement requires a Party to use "Best Endeavours" in relation to an action or omission, that Party shall do all such things as are reasonably necessary or desirable so as to achieve that action or omission and, to the extent that the action or omission is frustrated, hindered or otherwise difficult to attain, the Parties shall, to the extent that it is commercially reasonable to do so, consult and co-operate with each other and continue to take action so as to achieve that action or omission, provided that any actions or omissions required to be undertaken shall not be such as to result in a breach of fiduciary duty or contravention of any law.
- 1.12 The words "material" and "materially" means, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person will in the matter concerned attach importance to the event, condition, circumstance, effect, or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in this Agreement.
- 1.13 The use of the word "including" followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *iusdem generis* rule (which is a rule of

interpretation that when a list of two or more specific descriptors is followed by a more general descriptor, the otherwise wide meaning of the general descriptors must be restricted) shall not be applied in the interpretation of such general wording and/or such specific example or examples.

- 1.14 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

## **2. SUSPENSIVE CONDITION**

- 2.1 Save for the provisions of this clause 2 and clauses 3, 4, 5, 9, and clauses 16 to 31 (all inclusive) which shall be of immediate force and effect, this agreement is subject to the conditions precedent that :-

2.1.1 all competent authorities approve the subdivision of the land comprising the development substantially in accordance with the subdivisions as depicted on the proposed plan of subdivision contained as Annexure "A" hereto; and

2.1.2 the Seller achieves sufficient pre-sales, the number of which is to be determined at the Seller's sole discretion, before the development can commence.

- 2.2 In the event that the conditions precedent recorded in 2.1 are not fulfilled on or before 28<sup>th</sup> of February 2016 or within such extended period as the Seller in its sole discretion may determine by written notice thereof to the Purchaser, either party shall be entitled to give written notice to the other party advising that should the outstanding condition precedent not be fulfilled within 7 (seven) days of date of receipt by the addressee of such notice, the party giving such notice will resile from this agreement.

- 2.3 Should either party exercise its rights to resile from this agreement in accordance with the provisions of clause 2.2 of this agreement, save for the provisions of the clauses referred to in clause 2.1 above, this agreement shall be cancelled and be of no further force or effect in which event neither party shall have any claim against the other save that the Purchaser shall be entitled to be refunded the deposit and any other funds paid in anticipation of taking transfer of the property together with interest earned thereon.

- 2.4 The Seller shall use their best endeavours to procure the timeous fulfillment of the conditions precedent.

## **3. SALE OF THE PROPERTY**

The Seller hereby sells and the Purchaser hereby purchases the property, subject to and upon the terms and conditions contained in this agreement.

## **4. PURCHASE PRICE AND PAYMENT**

- 4.1 The purchase price of the property shall be the amount stated in paragraph 3.1 of the covering schedule regardless of the final extent of the property as reflected in the plan of subdivision to be approved by the Surveyor-General, subject to clause 9 below.

- 4.2 The Purchaser has paid the reservation fee provided for in paragraph 3.2 of the covering schedule and shall pay the Conveyancers:-

4.2.1 the deposit stated in paragraph 3.3 of the covering schedule within 48 (fourty eight) hours after signature of this agreement by the Purchaser; and



- 4.2.2 the deposit stated in paragraph 3.4 of the covering schedule within 60 (sixty) days after signature of this agreement by the Purchaser;

which deposits shall be paid in cash or by delivery of a bank cheque drawn in favour of and delivered to the Conveyancers who shall invest the funds on call in an interest bearing account with such interest accruing to the Purchaser and for which investment the provisions of this clause shall constitute authority to the Conveyancers for such investment as contemplated by the provisions of Section 78(2A) of the Attorneys Act. The Purchaser hereby agrees to pay an administrative fee levied by the Conveyancers.

- 4.3 The Purchaser shall pay the Seller the purchase price against registration of transfer of the property to the Purchaser.
- 4.4 The deposit and any additional funds paid by the Purchaser shall only be invested for the benefit of the Purchaser as from the date of compliance by the Purchaser with the requirements of FICA. The Purchaser acknowledges that:-
- 4.4.1 it is the responsibility of the Purchaser to ascertain, from the Conveyancers, what documentation the Conveyancers require for the purposes of complying with FICA;
- 4.4.2 the Conveyancers are obliged on request to furnish the Purchaser with details of the documentation which they require for the purposes of complying with FICA;
- 4.4.3 the Conveyancers shall not invest such funds for the Purchasers benefit until such time as the necessary FICA documentation has been provided to the Conveyancers.
- 4.5 The Purchaser shall by no later than the 1<sup>st</sup> of March 2016 furnish the Seller with :-
- 4.5.1 payment or an irrevocable guarantee issued by a registered commercial bank for the due payment of the balance of the purchase price in terms of clause 3.5 of the covering schedule against registration of transfer of the property to the Purchaser which guarantee shall be in the form of the specimen guarantee annexed hereto (marked "B"); or
- 4.5.2 a bond approval from a recognised commercial bank, the terms and conditions whereof are to be to the Seller's approval.
- 4.6 All amounts payable by the Purchaser in terms of this agreement shall be paid to the Conveyancers free of bank charges or commission at Cape Town and without deduction or set off.

## **5. SET-OFF**

- 5.1 The Purchaser may not apply set-off of any of its obligations to the Seller contained in this Agreement unless:-
- 5.1.1 The Seller is in breach of this Agreement; and
- 5.1.2 The Purchaser has first given the Seller 7 days' prior notice of the Purchaser's intention to apply set-off which notice must:-
- 5.1.2.1 be delivered to the Seller, care of the Conveyancers;

5.1.2.2 state the amount which the Purchaser wishes to set-off;

5.1.2.3 state the nature and cause of the indebtedness against which the Purchaser wishes to apply set-off.

5.2 If the Purchaser invokes the right contemplated in clause 5.1, the Seller may, by written notice to the Purchaser, elect to resile from the Agreement, in which event both parties' rights to claim damages are fully reserved.

## 6. TRANSFER OF THE PROPERTY

6.1 Transfer of the property shall be passed by the Conveyancers and shall be given and taken upon or as soon as is reasonably possible after the fulfilment of the last of the suspensive conditions contained in clause 2.1 above subject to the provisions of clause 6.3 below. **In the event that the transfer date can occur sooner than the date mentioned in clause 4 of the covering schedule, the Purchaser shall be obliged to take such earlier transfer of the property on written notice thereof by the Seller to the Purchaser.**

6.2 The Purchaser shall upon request by the Conveyancers pay all costs of transfer (plus VAT on such costs), costs of all necessary affidavits and all other costs which have to be incurred in order to comply with the statutes or other enactments or regulations relating to the passing of transfer of the property together with all costs and charges associated with the registration of the Purchasers mortgage bond over the property (if any).

6.3 The Purchaser acknowledges that transfer of the property cannot be passed by the Seller until all of the services and roads in the development have been completed to the satisfaction of the competent authorities or the appropriate guarantees have been provided in respect thereof or the Seller has made such other arrangements in respect of the installation of such services as may be acceptable to the competent authority.

6.4 The Purchaser agrees that any delays in registration of transfer shall not give rise to any rights by the Purchaser to cancel this agreement, or to damages or otherwise, and the sale shall continue to be of full force and effect notwithstanding any delay in registration of transfer provided that only in the event that transfer is delayed for more than 12 months after the estimated transfer date contained in paragraph 4 of the covering schedule, the Purchaser shall be entitled to cancel this agreement by notice in writing to the Seller provided that such delay is not in any way attributable to any default or delay on the part of the Purchaser.

6.5 Should the Purchaser terminate this agreement pursuant to clause 6.4 above, then the Purchaser shall have no claim of whatsoever nature against the Seller, save for repayment of the deposit plus accrued interest thereon.

6.6 Should the Purchaser in any way delay the transfer of the property, then without prejudice to any other rights or remedies of the Seller in terms of this agreement, the Purchaser shall pay to the Seller interest at the prime rate plus 3% (three per cent) on the purchase price of the property calculated from the date on which the Conveyancers certify that transfer ought reasonably to have been registered but for such delay, until the date of registration of transfer (both dates inclusive).

## 7. POSSESSION AND RISK

7.1 The Seller shall give the Purchaser possession of the property on the possession date reflected in paragraph 5 of the covering schedule.

- 7.2 All risk and benefit in the property shall be passed to the Purchaser on the possession date.
- 7.3 The Purchaser shall not, prior to transfer, effect any improvements to the property and under no circumstances shall the Seller be liable to compensate the Purchaser for any improvements to the property, whether made with or without the Seller's consent.

## **8. PROPRIETARY CHARGES**

- 8.1 The Purchaser shall be liable for a *pro rata* share of rates, taxes, levies and other proprietary charges payable in respect of the property with effect from the possession date.
- 8.2 The Purchaser shall pay the Conveyancers the amounts payable in terms of clause 8.1 within 7 days after the date of despatch of written notice to the Purchaser requesting payment thereof.
- 8.3 The Seller shall at its cost install the bulk sewerage, water and electrical reticulation required to service the property.
- 8.4 The Purchaser shall pay all connection fees payable to the local authority or to any other person in respect of the connection of all sewerage, water and electrical reticulation, data communications and other services to the property.

## **9. EXTENT AND TITLE CONDITIONS**

- 9.1 The property is sold subject to all conditions and servitudes referred to in the current or prior title deeds or hereinafter imposed in the conditions of subdivision of the development issued by the local authority in approving the subdivision and rezoning of Portion 18 of the Farm Uitkamp No. 189 Durbanville, or any portions thereof.
- 9.2 The Purchaser acknowledges that the proposed plan of subdivision has not been approved by the competent authorities and accordingly the exact and final boundaries and area of the property as reflected in the proposed plan of subdivision may differ from that as depicted therein.
- 9.3 The Seller gives no warranties in respect of the boundaries and renounces all claims to any excess and will not be answerable to any deficiency in the final surveyed extent of the property, subject to the provisions of clause 9.4 below.
- 9.4 Should the final extent of the property as reflected in the plan of subdivision approved by the Surveyor-General be :-
- 9.4.1 less than or equal to 5% different from the estimated extent of the property stated in paragraph 2 of the covering schedule, neither party shall have any claim against the other it being recorded that in these circumstances, the Purchaser shall benefit from any increase in the extent; or the Purchaser shall abide by any decrease in the extent;
- 9.4.2 more than 5% different from the estimated extent stated in paragraph 2 of the covering schedule, then the Purchaser shall be entitled to give the Seller written notice to adjust the purchase price on a pro rata basis by no later than 7 days after signature by the Purchaser of the transfer documents which record the final extent of the property.

## 10. CLARA ANNA FONTEIN PROPERTY OWNERS ASSOCIATION

- 10.1 It is recorded that a property owners association ("POA") will be established in terms of the provisions of section 29 of the Land Use Planning Ordinance, 15 of 1985, to promote the communal interests of all owners of property within the development and to control and maintain the perimeter wall / fencing around the development, security, internal roads, internal services, the running costs of street lighting and amenities, development facilities, entrance facilities and access control points and enforcing compliance with the :-
- 10.1.1 property owners association constitution;
  - 10.1.2 operational environmental management plan as approved by the local authority and issued to the POA by the Seller;
  - 10.1.3 design manual relating to standards and guidelines for the architectural design of buildings and other provisions relating thereto which shall be subject to such changes as may be approved by the relevant authority and issued to the POA by the Seller; and
  - 10.1.4 landscape master plan relating to standards and guidelines relating to the landscaping to be planted within the development issued to the POA by the Seller;
- all of which shall be binding on the Purchaser as a member of the POA and which shall be subject to such changes as may be required by the Seller, the POA and / or the local authority from time to time.
- 10.2 The Purchaser shall become a member of the POA against transfer of the property to the Purchaser and shall remain a member and bound by the constitution of the POA for as long as the Purchaser is the registered owner thereof.
- 10.3 The Seller shall ensure that the Conveyancers register a title deed condition against the property in terms of which ownership of the property may not be transferred save with the prior written consent of the POA, which consent will not be unreasonably withheld.
- 10.4 The first Annual General Meeting of the POA shall be called once 80% of the erven within the development have been transferred to purchasers thereof.
- 10.5 Until the appointment of the first trustees of the POA, the Seller shall assume the responsibilities of the POA, subject to the provisions of the constitution.
- 10.6 Should the Purchaser sell the property the Purchaser will ensure that his purchaser is made fully aware of the existence of the POA and the fact that such successor purchaser will automatically become a member of the POA.
- 10.7 No improvement of any nature may be effected on the property without the prior written approval of the POA, and any building plans in respect of any improvement to be erected on the erf shall be subject to the prior written approval of the POA. Such approval will be required without limitation to all external finishes including materials and colours for all walls, roofs and windows and landscaping.
- 10.8 The owner of the property shall not make any application for the rezoning, consolidation or sub-division of his erf without the prior written consent of the POA and, during the development period, of the Seller as developer.

- 10.9 The above conditions are for the benefit of the POA and the Seller as the case may be and constitute a *stipulatio alteri* which either of them may accept at any time.
- 10.10 With effect from the date of creation of the POA, in the event of a conflict between any of the provisions of this Agreement of Sale and a similar provision of the constitution, the provisions of the constitution shall prevail.
- 10.11 The Purchaser acknowledges that the documents referred to in clause 10.1 above may not yet be finalised and approved by the relevant authorities at the date of signature hereof or may not be available at the date of signature of this agreement and as such the Seller reserves the right to make any changes that are deemed necessary or appropriate in the sole discretion of the Seller. Copies of such of the above documents as are approved and in existence as at the date of signature will be available for the Purchaser's inspection at the Seller's office. The Purchaser acknowledges that the Purchaser as a member of the POA will be bound by the contents of the above documents. As and when additional documents are executed or finalised in regard to the matters referred to above, the same will likewise be available for the Purchaser's inspection at the Seller's office, and the Purchaser acknowledges that it will be incumbent on the Purchaser to inspect the same, and that the Purchaser will be bound thereby. Furthermore, the Purchaser acknowledges that the Seller's interpretation of any of the provisions of all of such documentation shall prevail and shall be binding on the Purchaser should a dispute arise as to the interpretation of any such provisions.

## 11. LEVIES

- 11.1 The Purchaser acknowledges that he shall be liable for the payment of levies for the POA with effect from the date of transfer, the estimated levy being as per paragraph 6 of the covering schedule.
- 11.2 The Purchaser shall be obliged to furnish the POA with a debit order drawn on the Purchaser's bank in respect of payment of all levies as contemplated in clause 11.1 above.
- 11.3 For the duration of the development period, the Seller shall not be liable for the payment of levies in respect of any unsold erven or undeveloped land arising from the subdivision of the land. The Seller shall, however, pay the difference between the actual expenses incurred by the POA in accordance with the provisions of the constitution (excluding any provisions for a reserve fund), and the aggregate of the levies payable jointly by the members who are registered owners of erven, including any other income received by the POA (e.g. penalties). For the avoidance of any doubt it is recorded that in determining the aggregate of individual levies payable by members who are registered owners from time to time for the purposes of this clause 11.2, the aggregate shall include all levies payable by such members, irrespective of whether or not such levies have actually been paid by those members.
- 11.4 Pending the determination of the actual amount of such levies, the Purchaser shall from the transfer date pay on account of such levies an amount as shall be certified by the Seller or the Conveyancers as being their bona fide estimate of such monthly levies. Upon the determination of the actual monthly levies so payable any amount underpaid or overpaid shall forthwith be paid or reimbursed by one party to the other.
- 11.5 Such levies shall be paid to the Seller or its appointed agent and thereafter (once established) to the POA, monthly in advance on the first day of each and every calendar month commencing from the transfer date provided that if the transfer date falls on any day other than the first day of a calendar

month, then the Purchaser shall be obliged to pay a pro rata share of the levies due for the calendar month on which the transfer date occurs.

## **12. CAPITAL CONTRIBUTION LEVY**

Where a registered owner wishes to alienate or transfer any erf, sectional title unit or life right owned in the development, or in the event that the said erf, sectional title unit or life right is owned by a company or close corporation or trust, should the shareholder(s) or member(s) or trustee(s) or beneficiaries wish to alienate all their shares or membership interest or other interest in such entity the relevant owner shall not be entitled to do so unless he pays to the POA a capital contribution levy which levy shall be calculated as follows: 0.5% (nought comma five per centum) of the selling price in respect of the sale of a property or interest in a legal entity in which the property is held, whether the owner is an individual, a joint owner, Corporate, Company, Close Corporation or Trust, this levy shall be paid by the owner prior to transfer or secured for payment on transfer.

## **13. BUILDING ON THE PROPERTY**

- 13.1 The Purchaser undertakes that the erection of a dwelling will commence within 5 years after the date of registration of transfer of the property from the Seller to the first purchaser thereof, and will be completed within 12 months from such commencement. Completion shall have occurred only upon the issue of a completion certificate by the POA which shall only be issued after the lodgement with the POA of a copy of the occupancy certificate issued by the local authority and after the POA's representative is satisfied that the buildings and landscaping on the property comply with the design manual and the landscape master plan respectively.
- 13.2 The Purchaser acknowledges that the provisions of the constitution of the POA will provide for trustees of the POA to impose sanctions or penalties on owners who fail to commence or complete construction of a dwelling within the time limits prescribed above which penalties will be calculated at staggered rates in accordance with the provisions of the constitution from the date of first transfer of the relevant property from the Seller to the first purchaser thereof until the date of issue by the POA of a completion certificate as envisaged in clause 13.1 above.
- 13.3 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.
- 13.4 It is recorded that the Seller has conducted or will conduct bulk earthworks on certain erven in the development. A general soils report for the township will be available for inspection at the Seller's office. It is recommended that the Purchaser should have the soil conditions and the underground water conditions (if any) 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.
- 13.5 The Seller accepts 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 and/or drainage measures required on the Purchaser's property in connection with the erection of any improvements thereon.
- 13.6 Plans and specifications for all improvements on the property shall be prepared in accordance with the design manual, the operational environmental management plan and the landscape master plan and shall include all such details as the POA may require, and shall be subject to the written approval of the POA prior to the commencement of the building work.

The POA shall have absolute discretion in approving or refusing to approve such plans and specifications.

- 13.7 The Seller and the POA reserve the right to nominate an architect or a panel of architects and/or designers from time to time and to require that the plans for any improvements to be erected on properties within the development are prepared by a member of such panel.
- 13.8 The Purchaser may select such building, landscaping and other contractors of the Purchaser's choice as are accredited by the POA to erect any improvements and landscaping on the property, on condition that the contractor signs the necessary documentation required by the POA to regulate the conduct of the building and landscaping activities on the property. The Purchaser undertakes to ensure that the relevant contractor complies with the rules prescribed by the POA in respect hereof.

#### **14. CONSENTS AND WAIVERS ON BEHALF OF THE POA**

- 14.1 The Purchaser acknowledges that until the establishment of the POA and appointment of the relevant persons to inspect building plans on behalf of the POA, the Seller shall be entitled to approve all building plans for new houses to be constructed on properties forming part of the development.
- 14.2 The Purchaser further hereby authorises the Seller to sign, as agent of the POA any such waivers as may be required by the financial institutions who will register mortgage bonds over properties forming part of the development.

#### **15. SCHEME REGULATIONS**

- 15.1 The property is sold furthermore subject to, *inter alia*, the following provisions imposed by the City of Cape Town in respect of the development on the land, viz:
- 15.1.1 The person who at any time is the owner of any land unit directly involved in the subdivision shall be required, without compensation –
- 15.1.1.1 to allow gas mains, electricity, telephone and television cables and/or wires, main and/or other water pipes and foul sewers and stormwater pipes, ditches and channels of any other land unit or units to be conveyed across the land unit concerned, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the Council, in such manner and position as may from time to time be reasonably required; this shall include the right of access to and the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above, and
- 15.1.1.2 to receive such material or permit such excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he elects to build retaining walls to the satisfaction of an within a period to be determined by the Council.
- 15.1.2 Solid waste will be collected by the City of Cape Town which accepts no liability for wear and tear on the road in the

development or any theft or accidental damage to any equipment, roads or any other feature in the development and the City may require to be indemnified against all damages or losses which may occur as a result of the City collecting refuse within the boundaries of the development.

- 15.2 If so required by the relevant authority, the conditions quoted in clause 15.1 shall be registered against the title deed of the property.

## **16. BUILDING ACTIVITIES, PHASING OF SERVICES AND FURTHER SUBDIVISION AND REZONING**

16.1 The Purchaser acknowledges that the building/s and the other structures and/or improvements, including infrastructure and roads in the development may be incomplete and that the Purchaser may suffer inconvenience from building operations, noise, dust and other nuisance factors. The Purchaser shall not be entitled by reason of any the foregoing to claim damages from any person or institute interdict proceedings nor shall the Seller be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of such building operations.

16.2 The Purchaser further acknowledges that the Seller may elect to install the services, structures, security, access control points and landscaping to the Clara Anna Fontein development in phases, which may occur after transfer of the property to the Purchaser, and should the Seller elect to do so, this will not give rise to any claim by the Purchaser against the Seller.

16.3 The Purchaser acknowledges that the Seller may require to subdivide or rezone any of the erven not designated as public or private open spaces in the development in which case the Purchaser agrees and undertakes not to object against any such subdivision and/or rezoning.

## **17. MARKETING AND RESALE OF THE PROPERTY PRIOR TO TRANSFER**

The Purchaser shall not be entitled to market or resell the property prior to the date of registration of transfer of the Property in the name of the Purchaser.

## **18. ADVERTISING ON THE COMMON PROPERTY**

18.1 The Seller shall be entitled to erect such signage, flagpoles, messages or any other form of notices or advertising on the land as may be legally permissible solely for the purposes of selling and/or letting properties in the development, provided that it does not inconvenience the owners/occupants in the development.

18.2 Other than as provided in clause 18.1 above, Purchasers and owners of properties within the development shall not be entitled to display any "For Sale" and/or "To Let" signs on the property or outside the property and the Seller or the POA shall be entitled to remove or require the removal of any such signs placed within the development.

## **19. MANAGING AGENT**

19.1 The Seller shall be entitled to appoint the managing agent for the development during the development period, which appointment shall be valid and binding on the members for a period of 3 (three) years following the termination of the development period.



- 19.2 The Purchaser hereby grants the Seller the irrevocable power and authority to appoint the managing agent of the development in accordance with clause 19.1 above.

## **20. VIEWS**

- 20.1 The Purchaser acknowledges and agrees that the projected view from the property may be affected by the ongoing development of the land and/or the erection of any further building/s at Clara Anna Fontein and/or on the land and/or in the vicinity of the property.
- 20.2 The Purchaser acknowledges and agrees that the Purchaser shall have no claim or right of any action whatsoever against the Seller arising from any such impact on or impairment of the view from the property, or any derogation from the value thereof, as a result of any such ongoing development and/or erecting of further building/s.

## **21. BROKERAGE**

- 21.1 The parties record that the agent named in paragraph 11 of the covering schedule was the effective cause of this transaction.
- 21.2 The Seller shall pay the brokerage to the said agent in accordance with the terms of the mandate granted to the agent by the Seller against registration of transfer.
- 21.3 The Purchaser warrants and undertakes to the Seller that neither the Seller nor the property was introduced to the Purchaser by any party other than the agent referred to in clause 21.1 above and indemnifies the Seller against any claim for commission arising from any breach of this warranty.

## **22. BREACH BY PURCHASER**

- 22.1 If the Purchaser commits a breach of this agreement and/or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser 7 (seven) days notice in writing to remedy such breach and/or failure and if the Purchaser fails to comply with such notice, then the Seller shall forthwith be entitled (but not obliged) without prejudice to any other rights or remedies which the Seller may have in law, including the right to claim damages:
- 22.1.1 to cancel this agreement (in which event the Purchaser shall forfeit all monies paid to the Seller, its attorneys or its agent(s) in terms of this agreement); or
- 22.1.2 to claim immediate performance and/or payment of all the obligations of the Purchaser in terms of this agreement, including payment of unpaid balance of the purchase price.
- 22.2 Notwithstanding the provisions of clause 22.1 above, in the event that the Purchaser commits a breach after the necessary transfer documents have been lodged in the deeds office for registration, the notice period specified in the relevant clause may, at the election of the Seller, be reduced to 24 (twenty four) hours.
- 22.3 Should the Seller take steps against the Purchaser pursuant to a breach by the Purchaser of this agreement, then without prejudice to any other rights which the Seller may have, the Seller shall be entitled to recover from the Purchaser all legal costs incurred by it including attorney/client charges, tracing fees and such collection commission as the Seller is obliged to pay to its attorneys.

- 22.4 Without prejudice to all or any of the rights of the Seller in terms of this agreement, should the Purchaser fail to pay any amount due by the Purchaser in terms of this agreement on due date, then the Purchaser shall pay the Seller interest thereon at the prime rate calculated from the due date for payment until the actual date of payment, both dates inclusive.
- 22.5 Should the Seller cancel this agreement and the Purchaser dispute the right to do so then pending the determination of that dispute:
- 22.5.1 the Purchaser shall continue to pay on due date all amounts payable by the Purchaser in terms of this agreement and to perform all its obligations in terms hereof;
- 22.5.2 the Seller shall be entitled to recover and accept such payments and/or performance in terms of this agreement;
- 22.5.3 the acceptance by the Seller of such payments and/or performance shall be without prejudice to and shall not in any manner whatever affect the claim of the Seller to cancellation of this agreement or any other claim of whatsoever nature;
- 22.5.4 should the dispute between the Seller and the Purchaser be determined in favour of the Seller, then the payments made to the Seller in terms of clause 22.5.1 shall be regarded as damages paid by the Purchaser on account of the loss sustained by the Seller as a result of its cancellation.

## **23. JURISDICTION**

For the purpose of all or any proceedings hereunder the parties hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction over the person of the defendant in terms of section 28 of the Magistrate's Court Act of 1944, as amended, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the court pursuant to section 45 of the Magistrate's Court Act, provided nevertheless that the Seller shall have the right at its sole option and discretion to institute proceedings in any other court of competent jurisdiction.

## **24. NOMINATION CLAUSE**

- 24.1 The Purchaser shall be entitled to nominate a company, close corporation or trust as the Purchaser under this agreement provided that within 14 days after signature of this agreement by the Purchaser:
- 24.1.1 the Purchaser nominates such company, close corporation or trust by notice in writing delivered to the Seller;
- 24.1.2 the company, close corporation or trust concerned, duly accepts such nomination in writing and agrees in writing to be bound by the provisions of this agreement.
- 24.2 Until such time as the provisions of clauses 24.1.1 and 24.1.2 have been complied with, the Purchaser shall possess all the rights and shall be liable for the fulfilment of all of the obligations of the Purchaser in terms of this agreement.
- 24.3 In the event of the Purchaser duly nominating any company, close corporation or trust as the Purchaser under this agreement, then the Purchaser (by its signature hereto) hereby:

- 24.3.1 binds himself as surety and co-principal debtor jointly and severally to the Seller for the due and proper fulfilment of all of the obligations of and for the punctual payment of all sums which are or may become due by such company, close corporation or trust in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof;
- 24.3.2 renounces the benefits of excussion, division and cession of action the full meaning and effect whereof the Purchaser knows and understands.

## **25. SURETYSHIP BY SIGNATORY AND JOINT AND SEVERAL LIABILITY**

- 25.1 If the signatory on behalf of the Purchaser and/or the signatory named in paragraph 1.2 of the covering schedule is not the Purchaser, then such signatory (by his or her signature hereto) hereby:
  - 25.1.1 binds himself as surety and co-principal debtor jointly and severally to the Seller for due and proper fulfilment of all the obligations of, and for the punctual payment of all sums which are or may become due by the Purchaser in terms of, or in connection with or arising in any way whatsoever out of this agreement or any amendment or cancellation thereof;
  - 25.1.2 renounces the benefits of excussion, division and cession of action, the full meaning and effect whereof he/she knows and understands.
- 25.2 Should there be more than one Purchaser, the Purchasers shall be liable jointly and severally and *in solidum* for the payments of all moneys and for the carrying out of all the terms and conditions of this Agreement of Sale.

## **26. ACKNOWLEDGEMENT AND WARRANTY BY PURCHASER**

- 26.1 The Purchaser warrants that the Purchaser is not currently (and will, at least until after Transfer not be) in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of transfer duty receipt or exemption certificates from the South African Revenue Service or cause any financial institution granting any loan finance (if applicable) to the Purchaser, to withdraw the aforesaid Finance offered.
- 26.2 The Purchaser acknowledges having been provided sufficient opportunity to consider the terms of this agreement and that the agreement was concluded as a result of a process of negotiation between the parties.

## **27. CO-OPERATION**

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

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

- 27.2 The Purchaser undertakes to sign all necessary transfer documents and to pay all costs of transfer within 7 days of the date of despatch of written notice from the Conveyancers to do so.

## 28. NOTICES AND DOMICILIA

- 28.1 Each of the parties chooses *domicilium citandi et executandi* (“*domicilium*”) for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this agreement at their respective addresses or email addresses or telefax numbers set forth in the covering schedule.
- 28.2 Each of the parties shall be entitled from time to time, by written notice to the other to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 28.3 Any notice given and any payment made by a party to any of the others (“the addressee”) which:
- 28.3.1 is delivered by hand during the normal business hours of the addressee at the addressee’s *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 28.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee’s *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.
- 28.4 Where, in terms of this agreement any communication is required to be in writing, the term “writing” shall include communications by email and/or facsimile. Communications by email and/or facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

## 29. GENERAL PROVISIONS

- 29.1 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.
- 29.2 This document contains the entire agreement between the parties and no party shall be bound by any undertakings, representations, warranties, promises or the like not recorded in this agreement.
- 29.3 No indulgence, leniency or extension of time which any party may grant or show to any other party, shall in any way prejudice or preclude the party granting or showing such indulgence, leniency or extension of time from exercising any of its rights in the future.

## 30. VALUE-ADDED TAX

- 30.1 Unless the context of the clause concerned clearly indicates that the amount concerned is inclusive of VAT, all amounts provided for in this agreement shall be exclusive of VAT.

30.2 All or any VAT payable by the Purchaser in terms of this agreement arising from the supply of any goods and/or services (as defined in the Value-Added Tax Act No 89 of 1991 or any statutory re-enactment or modification thereof) by the Seller to the Purchaser in terms of this agreement shall become due for payment and shall be paid by the Purchaser forthwith upon presentation of the relevant invoice by the Seller to the Purchaser.

30.3 Any dispute which may arise between the Seller and the Purchaser as to the liability for and/or payment of VAT or the amount thereof in terms of clause 30.2 shall be referred to the auditors of the Seller for the time being for decision and their decision shall be final and binding as between the parties and carried into effect.

### 31. IRREVOCABLE OFFER

By his signature hereto, this document constitutes an offer by the Purchaser which is irrevocable by the Purchaser for a period of 30 days after date of signature of this agreement by the Purchaser.

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ .

**AS WITNESSES:**

for and on behalf of:  
**the Purchaser**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
Purchaser or his/her/its duly authorised agent who warrants that he/she is duly authorised hereto

I, the undersigned, being the spouse of the Purchaser, do hereby consent to this transaction as far as needs be in terms of the Matrimonial Property Act 1984.

\_\_\_\_\_  
Spouse of the Purchaser

SIGNED at CAPE TOWN on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ .

**AS WITNESSES:**

for and on behalf of:  
**the Seller**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
Authorised signatory, who warrants that he/she is duly authorised hereto

**ANNEXURES****No DESCRIPTION OF ANNEXURES**

A Proposed Plan of Subdivision

B Specimen Bank Guarantee

**PROPOSED PLAN OF SUBDIVISION**

[to be annexed]

**SPECIMEN BANK GUARANTEE**

Date:

Louw and Coetzee Attorneys  
35 Main Road  
Durbanville  
7550  
Attn: Francois Louw

Dear Sirs

**SALE OF PORTION NO. *[insert number]* CLARA ANNA FONTEIN, DURBANVILLE**

We refer to the written agreement of sale in terms of which you have sold to *[full names of the purchaser]* ("the purchaser") the property described as Portion Number *[insert number]* Clara Anna Fontein, Durbanville ("the property").

We hereby undertake to pay you the sum of R \_\_\_\_\_*[balance of the purchase price, inclusive of Vat]* upon receipt of written confirmation from Louw and Coetzee Attorneys that the property has been registered in the name of the purchaser or its nominee in the deeds office.

We hereby bind ourselves as surety and co-principal debtor jointly and severally to you for the punctual payment of all sums which are or may become due by the purchaser in terms of, or in connection with or arising in any way whatsoever out of the said agreement of sale, or any amendment or cancellation thereof, under renunciation of the benefits of excussion, division or cession of action.

Notwithstanding anything to the contrary herein contained or implied, our total liability under this guarantee shall be limited to the sum of R*[state balance of the purchase price, inclusive of Vat]*.

This guarantee is neither negotiable nor transferable and shall be surrendered to us against payment of the said amount.

For and on behalf of

***[NAME OF THE BANK]***

***[AUTHORISED SIGNATORY]***