



LE PARC

RESIDENTIAL
ESTATE

— *paarl* —

AGREEMENT OF SALE

leparc.co.za



DEED OF SALE
LE PARC RESIDENTIAL ESTATE

entered into by and between

LE PARC RESIDENTIAL ESTATE PROPRIETARY LIMITED
(REGISTRATION NUMBER: 2000/013425/07)

(herein represented by _____
and being duly authorised hereto)

("the Seller")

and

whose full particulars appear in the Schedule, forming an integral part of this Agreement

("the Purchaser")

SCHEDULE

A	<u>SELLER</u>	
	Full Name	LE PARC RESIDENTIAL ESTATE (PTY) LTD
	Registration No.	2000/013425/07
	Physical Address	Bovenland, Pieter Hugo Str, Paarl, 7646
	Telephone No.	021 876 8013
	Telefax No.	-
	E-mail Address	info@leparc.co.za
B	<u>PURCHASER</u>	
	Full Name(s)	
	ID/ Registration No(s)	
	Physical Address	
	Marital Status	
	In/out of community	
	Telephone No.	
	Mobile phone No.	
	Telefax No.	
	E-mail Address	
C	<u>PROPERTY</u>	
C1	Description	Erf No. _____, measuring approximately _____ square metres as indicated in the

		development plan attached to the Agreement and marked Annexure A (“ the Erf ”) together with the Building to be constructed on the Erf in accordance with the Building Plans and the Finishing Schedule (“ the Property ”).
C2	Options for extra building work	Extra works as per Annexure D
C2	Options for finishing	<input type="checkbox"/> Option 1. <input type="checkbox"/> Option 2 Chosen option will form Annexure C to the Agreement.
D	<u>ESTIMATED OCCUPATION DATE</u>	As per and subject to Clause 6 of the Agreement
E	<u>TOTAL PURCHASE PRICE</u> <u>(E = E1 + E2 + E3)</u>	R _____ ,00 _____ _____ Rand (Inclusive of VAT).
E1	5 % Deposit payable (within 7 days of the Signature Date)	R _____
E2	Amount of Mortgage Bond required (Note: The amount may be adjusted as per of clause 4.2)	R _____
E3	Balance of the Purchase Price (to be adjusted if bond amount is adjusted as per clause 4.4)	R _____
F	<u>ESTIMATED TRANSFER DATE</u>	
G	<u>ESTIMATED MONTHLY LEVY PAYABLE BY PURCHASER</u>	
H	<u>SELLING AGENT</u>	

SUMMARY OF ANNEXURES

Annexure A	Development Plan indicating Erven
Annexure B	Building Plans/Dwelling Layout
Annexure C	Finishing Schedule & Specifications
Annexure D	Extras

AGREEMENT

The Schedule, Standard Terms and Conditions and Annexures to the Standard Terms and Conditions shall form the agreement between the Seller and the Purchaser.

PLEASE TAKE NOTE THAT:

- A. The Agreement is subject to the provisions of the Consumer Protection Act No. 68 of 2008 in the event of the Purchaser being a (i) natural person or (ii) a juristic person whose annual turnover and asset value (after allowance for depreciation) at the time of conclusion of this Agreement is less than R2 000 000,00.**
- B. The Consumer Protection Act, No. 68 of 2008, grants *inter alia* the following rights to a consumer:**
- (i) information must be furnished in plain and understandable language;**
 - (ii) marketing must be done in a manner that is not misleading, false or deceptive;**
 - (iii) representations made concerning material facts must not be false, misleading or deceptive.**
- C. It is recommended that:**
- (i) the Purchaser carefully reads the Agreement (and all its Annexures) to record any representations made by the Seller or its agent concerning material facts which the Purchaser relied on in deciding to purchase the Property and to conclude this Agreement if such representations are not contained in the Agreement; and**
 - (ii) the Purchaser consults a suitably qualified person to assist the Purchaser in the interpretation and conclusion of the Agreement; and**
 - (iii) the Purchaser advises the Seller in writing of any information furnished to the Purchaser in a manner or form which the Purchaser deems not to be plain and understandable language, since the Purchaser's failure to adhere to the aforesaid recommendations may result in the Purchaser incurring liabilities and obligations not contemplated and/or which may be used against the Purchaser when any dispute between the Seller and Purchaser needs to be resolved.**

SIGNED AT _____ on this _____ day of _____ 2019.

For and on behalf of the **SELLER**, who warrants
that he is duly authorised thereto

SIGNED AT _____ on this _____ day of _____ 2019.

For and on behalf of the **PURCHASER**, who warrants
that he is duly authorised thereto (if applicable)

For and on behalf of the **2ND PURCHASER/
1ST PURCHASER'S SPOUSE** (if applicable)

STANDARD TERMS AND CONDITIONS OF SALE OF IMMOVABLE PROPERTY

1 DEFINITIONS AND INTERPRETATION

- 1.1 The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause thereof. Unless a contrary intention clearly appears, words importing:
- 1.1.1 any one gender includes the other genders;
 - 1.1.2 the singular includes the plural and *vice versa*; and
 - 1.1.3 natural persons include created entities (corporate or non-corporate) and the state and vice versa.
- 1.2 In this Agreement, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.2.1 “**Agreement**” means this standard terms and conditions contained in this document together with any and all annexures hereto and including the Schedule;
 - 1.2.2 “**Architect**” means the architects as appointed by the Seller from time to time;
 - 1.2.3 “**Building**” means the building to be constructed on the Erf in accordance with the Building Plans and the specifications as set out in Finishing Schedule;
 - 1.2.4 “**Building Plans**” means the drawings/building plans which is attached hereto and marked **Annexure B**, which shall be deemed to be the drawings/building plans selected and approved by the Parties for the purposes of this Agreement and the execution of the Works;
 - 1.2.5 “**Business Day**” means a day which is not a Saturday, Sunday or official public holiday in the RSA;
 - 1.2.6 “**Conveyancers**” means the conveyancers as appointed by the Seller from time to time;

- 1.2.7 “**Constitution**” means the constitution of the MHOA from time to time, including but not limited to all annexures thereto and any and all conduct rules and regulations promulgated thereunder from time to time;
- 1.2.8 “**CPA**” means the Consumer Protection Act, No. 68 of 2008, as amended from time to time;
- 1.2.9 “**Defect**” means a non-material imperfection in the Property or a component/portion thereof rendering it not less acceptable than persons generally would be reasonably entitled to expect in the circumstances, but does not include any component/portion of the Property suffering from a failure, is a hazard or unsafe, as defined in the CPA;
- 1.2.10 “**Erf**” means the erf as described in clause C of the Schedule;
- 1.2.11 “**the Estate**” means the Le Parc Residential Estate to be formed by a subdivision of and development of Erf 35936 Paarl, in the Drakenstein Municipality, Paarl Division, Western Cape Province and held by Deed of Transfer No. T15607/2016 (“**the Land**”) into erven, which erven are to be sold by freehold title and/or one or more of such erven to be used for the opening of sectional title register/s relating to structures constructed thereupon and in respect of which structures sections and exclusive use areas are to be sold;
- 1.2.12 “**the Final List**” means a list signed and dated by the Purchaser enumerating any items in the Property requiring repair by the Seller constituting any Defect or Material Defect and which did not exist or were not known at the time the Initial List was compiled by the Purchaser;
- 1.2.13 “**Finishing Schedule**” means the schedule of detailed specification of all finishing and materials in respect of the Building, which schedule is attached hereto and marked **Annexure C** and shall comprise the standard specifications and finishes which will be supplied by the Seller as part of the execution of the Works in terms of the Agreement;
- 1.2.14 “**Initial List**” means a list signed and dated by the Purchaser enumerating all items in and on the Property as at the date thereof constituting Defects or Material Defects and requiring repair by the Seller;
- 1.2.15 “**Land Surveyor**” means the land surveyor as appointed by the Seller from time to time;

- 1.2.16 **“Material Defect”** means a material imperfection in the Property or a component thereof rendering it less acceptable than persons generally would be reasonably entitled to expect in the circumstances;
- 1.2.17 **“MHOA”** means the Le Parc Residential Estate Masters Home Owner’s Association to be created in terms of Section 29 of the Land Use Planning Ordinance, 1985 (Ord 15 of 1985);
- 1.2.18 **“Parties”** mean the signatories to this Agreement and **“Party”** means either one of the Parties, as the context may determine;
- 1.2.19 **“Practical Completion”** means the date that the relevant authority has issued an occupation certificate for the Property;
- 1.2.20 **“Prime Rate”** means the publicly quoted basic rate of interest per annum from time to time (as certified by any officer of Rand Merchant Bank Limited, a division of FirstRand Bank Limited (Registration Number 1929/001225/06) Limited whose appointment and authority it shall not be necessary to prove) at which the said bank lends monies in South African Rand on unsecured overdraft to first class corporate borrowers in general on the basis of such interest being compounded monthly in arrear and calculated on a 365 day year factor, irrespective of whether or not the year is a leap year (and which said rate of interest is sometimes referred to as the prime commercial overdraft rate of interest);
- 1.2.21 **“Property”** means the Property described as such in clause C of the Schedule;
- 1.2.22 **“Purchaser”** means the purchaser/s described as such in clause B of the Schedule;
- 1.2.23 **“Purchase Price”** means the purchase price as appears in clause E of the Schedule;
- 1.2.24 **“RSA”** means the Republic of South Africa;
- 1.2.25 **“Seller’s Contractor”** means the building contractor appointed by the Seller in order to execute the Works in terms of this Agreement;
- 1.2.26 **“Schedule”** means the schedule of information as set out on page 2 and 3 of this document;

- 1.2.27 “**Signature Date**” means the date on which this Agreement is signed by the Party signing it last in time;
- 1.2.28 “**Transfer Date**” means the date of registration of transfer of ownership of the Property in the name of the Purchaser by the Conveyancers, which is scheduled for as soon as possible after Practical Completion;
- 1.2.29 “**VAT**” means value-added tax payable in terms of the VAT Act, No 89 of 1991, or any statutory re-enactment or amendment thereof from time to time;
- 1.2.30 “**Works**” means the construction of the Building and related infrastructure on the Erf as set out in the Building Plans and the Finishing Schedule and which works is to be executed in terms of this Agreement by the Seller’s Contractor.
- 1.3 In this Agreement:
- 1.3.1 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.3.2 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it was a substantive provision in the body of the Agreement;
- 1.3.3 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day;
- 1.3.4 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.3.5 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;
- 1.3.6 the expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that it will operate after any such

expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that such clauses do not expressly provide therefor;

- 1.3.7 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.3.8 any reference in this Agreement to a Party shall include that Party's successor in title or assign and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.3.9 the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.3.10 the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible;
- 1.3.11 the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.

2 **SALE**

The Seller hereby sells the Property to the Purchaser who purchases the Property at the Purchase Price and on the terms and conditions described in this Agreement.

3 **PAYMENT OF PURCHASE PRICE**

- 3.1 The Purchase Price is payable by the Purchaser to the Seller as follows:
 - 3.1.1 a deposit of 5% (five percent) within 7 (seven) days of the Signature Date, to the Conveyancers, which deposit is to be invested by the Conveyancers in an interest-bearing account in terms of Section 78(2A) of Act No. 53 of 1979 for the benefit of the Purchaser until the Transfer Date and which interest is to be paid to the Purchaser on the Transfer Date; and
 - 3.1.2 the balance of the Purchase Price against transfer of the Property to the Purchaser on the Transfer Date.

- 3.2 The Purchaser shall furnish the Conveyancers within 21 (twenty one) days on being requested to do so (which request may only be made after the fulfilment of the suspensive condition contained in clause 4), with a guarantee for the balance of the Purchase Price, drawn in favour of the Conveyancers or such third party as the Conveyancers may nominate in writing which, save for providing for payment against the tendering of transfer of the Property in the name of the Purchaser, shall be unconditional and shall be on terms acceptable to the Seller. The guarantee shall be issued by a registered South African Bank or other financial institution approved of by the Seller in its absolute discretion. Withdrawal by a guarantor as aforesaid, for any reason whatsoever, shall constitute a breach by the Purchaser of his obligations to deliver a guarantee in terms of this clause and in respect of which breach the Seller shall not be required to give notice in terms of clause 19. The remedies as provided for in clause 19 shall in such instance be immediately available to the Seller.
- 3.3 The Purchaser shall be released from its obligation to provide a guarantee as referred to in clause 3.2 above by making payment of the balance of the Purchase Price into the trust account of the Conveyancers on or before the 21st (twenty first) day after the Signature Date upon the express condition that under such circumstance the payment is to remain in trust with the Conveyancers until date of registration of transfer and that they are authorised in writing to issued payment guarantees in favour of the Seller or its order.
- 3.4 The Purchaser acknowledges and accordingly undertakes to comply with all the requirements as further set out hereunder and to furnish all information and documentation required by the Conveyancers to enable the Conveyancers to fulfil their obligations in terms of the undermentioned acts, and that:
- 3.4.1 the Conveyancers are designated as an “accountable institution” in terms of the Financial Intelligence Centre Act No. 38 of 2001 (“FICA”);
- 3.4.2 certain obligations are placed on the Conveyancers in terms of FICA and the Prevention of Organised Crime Act No. 21 of 1998 (“POCA”);
- 3.4.3 the Conveyancers shall not be obliged to invest and administer any deposits or any other monies paid by the Purchaser or distribute any monies to the Seller in terms of this Agreement unless the Purchaser has provided the Conveyancers with the documents that they require and the Conveyancers shall not be held liable for any loss of interest as a result of the Purchaser’s failure to comply herewith. The Conveyancers are, subject to the aforementioned, hereby

irrevocably authorised to invest any cash amount received from the Purchaser in terms of this Agreement in an interest bearing account in terms of Section 78(2A) of Act No. 53 of 1979 for the benefit of the Purchaser until the Transfer Date, which interest is to be paid to the Purchaser on the Transfer Date, less the reasonable costs of the conveyancer to manage and administer such funds, which fee shall not exceed 1% percent per annum on the capital invested.

3.5 All payments due by the Purchaser to the Seller in terms of this clause 3, not made on the due date, shall bear interest at Prime Rate.

4 **CONDITION PRECEDENT – MORTGAGE BOND**

4.1 In the event of it being indicated in clause E2 of the Schedule that a mortgage bond is required, then this Agreement shall be subject to the following suspensive condition, namely:

4.1.1 the mortgage bond should be approved in principle in writing by a recognised financial institution, upon its usual terms and conditions, in the amount referred to in clause E2 of the Schedule, or such lower amount as accepted by the Purchaser as contemplated in clause 4.2 below, by no later than 30 (thirty) days from the Signature Date. The said 30 (thirty) day period will automatically be extended by a further 7 (seven) days unless the Seller determines that the said 7 (seven) day period shall not automatically be extended and has notified the Purchaser in writing of its determination prior to the lapsing of the said 30 (thirty) day period.

4.2 The suspensive condition in clause 4.1.1 above will be deemed to be fulfilled on the date upon which the financial institution provides the Purchaser with a quotation for a loan in the amount as provided for in clause E2 of the Schedule, or a quotation for such lower amount as accepted by the Purchaser in writing, by his signature to such quotation.

4.3 In the event that the condition in clause 4.1 is not fulfilled this Agreement shall be of no force or effect and neither Party shall have any claim against the other, except that the Seller shall procure the refund to the Purchaser of the deposits referred to in clause 3.1.1 with accrued interest (if any).

4.4 In the event of fulfilment of the condition in 4.1 in terms of a mortgage bond for an amount lower than the amount as set out in clause E2 being accepted by the

Purchaser, as envisaged herein, the balance of the Purchase Price due and payable, shall automatically be adjusted accordingly.

5 SUSPENSIVE CONDITIONS IN FAVOUR OF THE SELLER

- 5.1 This Agreement is subject thereto that:
- 5.1.1 the Seller obtains the necessary approval and consents from all relevant authorities for the subdivision and development of the Land, in order to give effect to this Agreement;
- 5.1.2 the relevant authorities approve the Building Plans in respect of the Building/s and providing all consents and approvals necessary to enable the Seller to commence with the Works;
- 5.2 The conditions imposed herein are imposed in favour of the Seller and solely for its benefit and the Seller may waive reliance upon all or any of the aforesaid conditions by communicating such waiver to the Purchaser in writing at any stage on or before the date provided for the fulfilment thereof.
- 5.3 In the event that any of the aforesaid conditions are not fulfilled within a reasonable time, as determined by the Seller, this Agreement will lapse and be of no further force of effect. The Seller will in such an event cause the repayment of the deposit and any other amounts paid by the Purchaser in terms of this Agreement to be repaid to the Purchaser and the Parties will, except for the aforesaid, have no further claims against each other.

6 POSSESSION, OCCUPATION AND RISK

- 6.1 Possession of the Property shall be given to and taken by the Purchaser as from Practical Completion subject to the following conditions.
- 6.2 All benefit and risk in and to the Property will only transfer to the Purchaser on the Transfer Date.
- 6.3 In the event that Possession of the Property happens prior to the Transfer Date, the Purchaser shall be liable towards the Seller for occupational rental calculated at a rate of 0,5% of the Purchase Price per month, payable monthly in advance to the Seller, irrespective of whether physical occupation has taken place, or not.
- 6.4 It is specifically recorded notwithstanding the terms of clause 6.1 above that actual physical occupation of the Property shall not be available to the Purchaser, unless he

or she has complied with all suspensive conditions of this Agreement, signed all the documentation relevant to the transfer of the Property, delivered any and all necessary guarantees in order to secure the Purchase Price (or balance thereof) and paid the deposit as well as all costs for which he or she may be liable in order to transfer the Property.

7 BUILDING PLANS AND SPECIFICATIONS

7.1 The Works shall be executed by the Seller's Contractor substantially in accordance with the Building Plans and the Finishing Schedule.

7.2 Notwithstanding the aforesaid, the Seller shall be entitled to:

7.2.1 vary any of the details set out in the Annexures hereto; and

7.2.2 substitute items of similar standard and quality for any specified item referred to in the Finishing Schedule and to vary the Building Plans;

should the Architect consider it reasonably necessary for technical, practical and/or aesthetic reasons.

7.3 **The Purchaser herewith specifically confirms and agrees to purchase the Property on the basis that non-material amendments to the Estate and the Property and substitution of items and details in the Annexure to this Agreement may be effected and the Property may eventually only be constructed substantially in accordance with the Building Plans and the Finishing Schedule.**

7.4 The Purchaser acknowledges that the final sub divisional diagram of the Land as it relates to the Property may not yet have been approved at the time of signature of this Deed of Sale and that the exact boundaries and the final Erf number of the Erf shall be those shown on the final approved sub divisional diagram. If required, a certificate of extent will be issued to the Purchaser by the Conveyancers once the diagram or general plan has been approved.

7.5 The Purchaser shall not be entitled to claim any damages, cancellation of this Agreement or any reduction in the Purchase Price by reason of any minor alteration to the number, size and location of any Erf. The Purchaser undertakes to accept transfer of the Property as it may be re-defined and re-numbered in the sub divisional plan approved by the relevant local authority and the Surveyor General.

7.6 The Land Surveyor shall have the sole decision upon whether or not a deviation referred to in clause 7.5 above is minor and his decision shall be final and binding on the Parties.

8 DEFECTS

8.1 The Purchaser shall compile and furnish the Seller with the Initial List within 14 (fourteen) days after Practical Completion. The Purchaser shall not later than 60 (sixty) days after Practical Completion deliver to the Seller the Final List.

8.2 The Seller shall attend to the items listed in the Initial List and the Final List within a reasonable time after receipt of the said lists.

8.3 In the event of the Purchaser being a person entitled to protection of the CPA:

8.3.1 The Seller shall advise the Purchaser in writing when repairs to items on the Initial List and the Final List have, in the Seller's opinion, been duly effected.

8.3.2 The Purchaser shall within a period of 10 (ten) Business Days after receipt of the Seller's advice referred to in clause 8.3.1, be entitled to dispute any item that has, in the Purchaser's opinion, not been duly repaired by giving written notice thereof, to the Seller within the said 10 (ten) Business Days period. **In the event of the Purchaser failing to deliver the written notice to the Seller within the said 10 (ten) Business Days period, or to list a specific item in his notice, it shall be deemed that the Seller has duly effected the repairs to the Defects listed in the Initial List and the Final List to the satisfaction of the Purchaser and the Purchaser shall not have no further claim against the Seller in respect of such items.**

8.4 In the event of the Purchaser being a person not entitled to protection of the CPA, the Seller shall furnish the Purchaser with a certificate issued by the Architect that the repairs to items on the Initial List and the Final List have in its opinion been duly effected. Upon issuance of the certificate by the Architect the Purchaser shall have no further claims in respect of the Defects and/or Material Defects listed in the Initial List and the Final List.

9 RATES AND TAXES

The Seller shall be liable for all rates and taxes and other municipal charges levied, as well as any levies due and payable to the MHOA, on the Property for the period prior to

the Transfer Date and the Purchaser shall be liable for all rates and taxes and other local municipal charges levied, as well as any levies due and payable to the MHOA, thereafter.

10 VOETSTOOTS

10.1 Subject only to the provisions hereunder set out, the Property is sold *voetstoots* and the Purchaser agrees to accept it in the condition as at the Signature Date. The Seller, however, subject to the terms of this Agreement, gives the following undertakings:

10.1.1 The Seller undertakes that the Property will be improved substantially in accordance with the Building Plans and the Finishing Schedule and the Purchaser accepts same;

10.1.2 The Seller shall rectify such items as reasonably required in the Initial List and the Final List.

10.2 The Purchaser further acknowledges that no warranties or representations of whatsoever nature by or on behalf of the Seller have been made except as are recorded in this Agreement.

11 COSTS

11.1 The Seller is liable and shall pay on demand by the Conveyancers and prior to the Transfer Date any and all conveyancing fees (at a tariff as agreed with the Conveyancer) and all other costs necessary in order to comply with any authorities' requirements, surveyors and civil and electrical services (as may be required by the local authority in respect of the development in which the Property is situated) as well as other related costs in order to give effect to this Agreement. Should the Purchaser obtain a mortgage bond in order to finance this transaction, the Purchaser shall be liable for the costs associated with registration of the mortgage bond. The Purchaser shall be responsible for payment of any costs, initiation fees or the like charged by the financial institution providing the mortgage bond, which cost it undertakes to pay of secure prior to lodgement of transfer documentation in the Deeds Office.

11.2 All costs, charges and expenses of every nature whatever which may be incurred by any Party enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale as between attorney and own client and collection commission irrespective of whether any action has been

instituted, shall be recoverable from the Party against which such rights are successfully enforced.

12 TRANSFER

Transfer of the Property shall be effected by the Conveyancers as soon as possible after Practical Completion has been achieved as stipulated in clause F of the Schedule. **The anticipated Transfer Date is an estimate only and depends on the progress of the Works. The said date may be postponed by the Seller to allow for *inter alia* delays in construction. If transfer of the Property is given at a date later than anticipated in the Agreement the Purchaser shall not be able to claim such damages from the Seller.**

13 BUILDING WORK IN PROGRESS

The Property is sold as part of a larger development and the Purchaser hereby acknowledges and confirms its acceptance and understanding that:

- 13.1 building activities in the vicinity of the Property will continue after the Transfer Date until all the properties in the development have been sold and houses erected thereon;
- 13.2 access to the development will be granted to the Seller's Contractors and various other subcontractors and specialists during such building activities;
- 13.3 noise, dust and nuisance from such building activities will in some cases be unavoidable;
- 13.4 although the Seller hereby undertakes to apply, and to procure that the Seller's Contractor, reasonable and appropriate steps, *inter alia* by appointing security guards to monitor the building sites and adjacent properties, **no guarantee about the safety or security of persons and the Property can or will be offered by the Seller and the Purchaser must always be prudent and shall in first instance be liable to ensure safety and security in and around the Property.**

14 COMMISSION

- 14.1 The Parties record that the Selling Agent described in clause H of the Schedule was the effective cause of this transaction.

- 14.2 The Seller shall pay the brokerage to the said agent in accordance with the terms and conditions of the mandate granted to the agent by the Seller.
- 14.3 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 14.1 above and indemnifies the Seller against any claim for commission arising from any breach of this warranty.

15 HOME OWNERS ASSOCIATION

- 15.1 The Purchaser is purchasing a Property forming part of the Estate and is aware that it is a private estate with private internal services. **The Purchaser becomes a member of the MHOA on registration of the Property into the Purchasers' name and is aware that the MHOA is in terms of its Constitution entitled to charge a levy for the upkeep and maintenance of the property of the MHOA as well as the services provided/contracted by the MHOA.**
- 15.2 As from the Transfer Date, the Purchaser shall become liable to pay the levies to MHOA.
- 15.3 It is estimated that the levy payable in terms of clause 15.1 will approximately be equal to the amount described in item G of the Schedule.
- 15.4 The levies will be payable monthly in advance on the 1st first day of the month, save for the first month after the Transfer Date, in which instance the Purchaser will pay for 2 (Two) months, one of which will be an advance payment. The Purchaser, furthermore, confirms being aware that in terms of the Constitution of the MHOA he will not be allowed to transfer ownership of the Property to a third party at any time unless all levies, penalties or any amount due and owing to the MHOA in terms of such Constitution has been paid or duly secured.
- 15.5 **The Purchaser further confirms that he or she is aware of the contents of the Constitution, although it might be amended by the Seller as per the requirements of the local authority, undertakes to abide thereto. A draft copy of the Constitution is available on request by the Selling Agent referred to in clause H of the Schedule or the Estate website www.leparc.co.za**
- 15.6 **The Purchaser shall not be entitled to alienate, assign, cede or make over its rights under this Agreement, prior to the Transfer Date without the prior written**

consent of the Seller and/or its successor in title and/or the MHOA, as the case may be and unless the transferee of the Property agrees in writing to observe and be bound by the terms and conditions of this Agreement. The Seller however may without prior notice to and consent of the Purchaser sell, assign, cede or make over its rights in terms of this Agreement.

- 15.7 In accordance with clause 16 of the Constitution of the MHOA, the Purchaser shall not be allowed to sell or otherwise alienate the Property, for a period of 2 (two) years from the Transfer Date, unless the Property is a “Distressed Sale” or his or her “Primary Residence”, as are defined in the Constitution, to any third party without the written approval of the trustees of the MHOA who may in their sole discretion allow such alienation upon written application from the Purchaser. In the context of this clause the prohibition on alienation does not extend to the registration of a mortgage bond over the Property.
- 15.8 The trustees of the MHOA will, when considering an application by the Purchaser in terms of clause 15.7, be entitled to grant their consent to such sale subject to the payment by the owner of the property of an exit levy payable upon registration of transfer thereof, should the proposed selling price of the Property be less than a valuation acquired by the Trustees, which exit levy is to be equal to 50% (Fifty Percent) of the difference between such valuation and the selling price, less commission payable on such sale.
- 15.9 The Purchaser acknowledges that the rights of the MHOA as contained in this condition will be registered against the Title Deed of the Property on the Transfer Date in a format as determined by the Conveyancer.

16 ELECTRICAL COMPLIANCE CERTIFICATE

- 16.1 The Seller shall prior to the Transfer Date procure that the electrical installation on the Property be examined by a registered Person as defined in the Electrical Installation Regulations (2009) (“**Regulations**”) promulgated under the Occupational Health and Safety Act No 85 of 1993 for purposes of the issue of a certificate of compliance (as defined in the Regulations) by such a registered Person in accordance with regulation 7(1) of the Regulations.
- 16.2 The Seller shall procure that prior to the Transfer Date the Purchaser be furnished with such a certificate of compliance.

- 16.3 Should any work be required to be done to the electrical installation on the Property before such a certificate of compliance can be issued, such work shall be done at the expense of the Seller prior to the Transfer Date.
- 16.4 The Seller will on delivery of such a certificate of compliance to the Purchaser have fully complied fully with all its obligations in terms of or arising from this clause 16 and accordingly the Seller shall after the delivery of such a certificate of compliance have no further liability of whatsoever nature arising from the provisions of this clause 16. In particular it is recorded that the Seller does not guarantee that any aspect of such a certificate of compliance is or will be correct.

17 **GAS CERTIFICATE**

The Seller shall, at its expense, deliver to the Purchaser, on or before the Transfer Date, a certificate of conformity issued by an authorised person as defined in the Pressure Equipment Regulations 2009 made by the Minister of Labour under Section 43 of the Occupational Health and Safety Act 85 of 1993, to the effect that the gas installation on the Property, if any, conforms to the required health and safety standard. The Seller undertakes not to alter, install or remove the gas installation after issue of the said certificate. Insofar as the authorised person appointed by the Seller to provide such certificate, requires corrective work to be carried out as a precondition to the issue of such certificate, the Seller will procure such work is undertaken out at the Seller's cost and expense.

18 **OCCUPATION CERTIFICATE AND NHBRC ENROLEMENT**

The Seller shall procure that on the Transfer Date the Purchaser be furnished with the original occupancy certificate issued by the Drakenstein Municipality as well as the original NHBRC enrolment certificate of the Property.

19 **BREACH**

- 19.1 Should the Purchaser fail to fulfil any of the Purchaser's obligations under this Agreement and fail to comply with its obligations within 14 (fourteen) days after being informed of his failure and called upon to fulfil the obligation in question within such period of 7 (seven) days, then the Seller shall be entitled, without prejudice to any other rights the Seller may have in law: -
- 19.1.1 to claim immediate payment of all amounts owing under this Agreement, which amounts shall all be deemed to become due and payable forthwith, or

- 19.1.2 to cancel this Agreement, obtain immediate repossession of the Property and to eject the Purchaser therefrom and to recover from the Purchaser the actual damages sustained by the Seller by reason of the Purchaser's default
- 19.2 **In any such event provided for in terms of clause 19.1 any amounts paid by the Purchaser shall accrue to the Seller as damages without prejudice to the right of the Seller to claim further damages or to such other remedies it may have in law.**
- 19.3 If the Seller elects to institute action for the balance of the Purchase Price or any other monies which may be owing, including the taking of a judgment against the Purchaser, it shall not thereby be prevented from cancelling this Agreement if the judgment is not satisfied within 30 (thirty) days of it being granted.
- 19.4 If the Agreement is cancelled, the Purchaser and all persons claiming a right to occupation through the Purchaser shall forthwith be obliged to vacate the Property and to deliver the Property to the Seller.
- 19.5 If, however, the Purchaser disputes the Seller's right to cancel this Agreement, then pending the determination of such dispute, the Purchaser shall be obliged to continue to pay all amounts payable by it in terms of this Agreement on the due dates thereof and the Seller shall be entitled to accept such payments without prejudice to its rights of cancellation as aforesaid.
- 19.6 Any payments due by the Purchaser to the Seller in terms hereof, not made on due date, shall bear interest at the Prime Rate.
- 19.7 In the event of the Seller committing any breach of this Agreement, the Purchaser or his agent shall likewise notify the Seller of such breach and require him to remedy such breach within 14 (fourteen) days of such notice, failing which the Purchaser shall *mutatis mutandis* have the same remedies as the Seller as set out in clauses 19.1.1 and 19.1.2 above.

20 **DOMICILIUM AND NOTICES**

- 20.1 The Parties choose their *domicilium citandi et executandi* ("**domicilium**") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum, the serving of any process, the addresses and emails as set out in the Schedule.

- 20.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its domicilium to any other physical address (not being a post office box or *poste restante*) within the Republic of South Africa and to vary its email domicilium to any other email address and same shall be binding on the Seller and the Purchaser. Such party shall further determine which of the Parties will be liable for his fees for determining the dispute.
- 20.3 Any notice given or payment made by either Party to the other ("addressee") which is:
- 20.3.1 delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery;
- 20.3.2 posted by prepaid registered post to the addressee's postal domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the 7th (seventh) day after the date of posting.
- 20.4 Any notice given by either Party to the other which is successfully transmitted by email to the addressee's email domicilium for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission/delivery thereof.
- 20.5 This clause 20 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause 20.
- 20.6 Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

21 **CAPACITY OF PURCHASER**

In the event of the Purchaser being a Close Corporation, Company, Trust or other legal entity then the signatory for and on behalf of the Purchaser by virtue of his/her signature to this Agreement binds himself/herself *in solidum* as surety and co-principal debtor to and in favour of the Seller for all the obligations of the Purchaser arising from or associated with this Agreement waiving the benefits of *excussion*, and *division*.

22 **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties other than those set out herein are binding on the Parties.

23 **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

24 **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

25 **S.A. LAW**

The construction, validity and performance of this Agreement shall be governed in all respects by the laws of the Republic of South Africa.

26 **JURISDICTION**

The Parties consent to the jurisdiction of the Magistrate's Court notwithstanding the fact that the cause of action, claim or value of the matter in dispute might ordinarily exceed the jurisdiction of the Magistrate's Court.

27 **EXECUTION**

This Agreement:

- 27.1 may be executed in separate counterparts, none of which need contain the signatures of the Parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement;

27.2 shall be valid and binding upon the Parties, notwithstanding that one or more of the Parties may sign a facsimile copy thereof and whether or not such facsimile copy contains the signature of the other Party.

28 SEVERABILITY

Each provision in this Agreement is severable, the one from the other, and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by a competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.

29 JOINT AND SEVERAL LIABILITY

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

30 CONSUMER PROTECTION ACT

30.1 **The Purchaser confirms that it has considered in detail all of the clauses of this agreement in terms whereof he, amongst other things, agreed to limit the liability of the Seller or any other person or has acknowledged any fact. The Parties further acknowledge that none of the terms of this Agreement should be construed as an acknowledgement that the CPA applies to this transaction in circumstances where the CPA would not have been applicable to this transaction.**

30.2 **In so far as section 16 of the CPA applies to the provisions of this Agreement and in so far as this sale has resulted from direct marketing by the Seller or its agents, the Purchaser has the right to cancel this Agreement without reason or penalty by written notice within 5 (five) Business Days after the Signature Date, or within 5 (five) Business Days after the Transfer Date. Should the Purchaser exercise its rights in terms of section 16 of the CPA –**

30.2.1 **The Purchaser shall return the Property, together with vacant occupation, to the Seller within 10 (ten) Business Days of the Signature Date or Transfer Date (whichever is applicable) in the same condition in which it was given to the Purchaser. The return of the property shall be at the Purchaser's risk and expense and shall include all costs of transfer (such as transfer duty or Vat, conveyancing fees and other costs associated with returning ownership of the Property);**

- 30.2.2 **The Purchaser shall be liable to the Seller for any expenses necessary to restore and repair damages to the Property; and**
- 30.2.3 **The Seller shall return all payments made by the Purchaser in account of the Purchase Price within 15 (fifteen) Business Days from the date on which the Purchaser return the Property as contemplated herein, provided that the Seller may deduct from the aforesaid payments such amounts as the Seller deems necessary for restoration and repair referred to in clause 30.2.2.**
- 30.3 **If and to the extent applicable, and for the purposes of the CPA the Purchaser and the signatory on its behalf (where applicable), after due consideration, by his signature of this Agreement acknowledge and agree that –**
- 30.3.1 **he has entered into this Agreement freely and voluntarily and that no circumstances exist for his alleging either now or at any future time that he was at a disadvantage in agreeing to the terms and conditions contained herein or was in anything other than an equal bargaining position with the Seller agreeing to such terms and conditions as are contained herein;**
- 30.3.2 **he has done his own investigations whether to enter into this Agreement or not without any undue influence, pressure, duress, harassment or unfair tactics from the Seller;**
- 30.3.3 **he understands the content, significance and import of this Agreement without undue effort, having regard to –**
- 30.3.3.1 **the context, comprehensiveness and consistency of the Agreement;**
- 30.3.3.2 **the organisation, form and style of the Agreement;**
- 30.3.3.3 **the vocabulary, usage and sentence structure of the Agreement; and**
- 30.3.3.4 **the use of any illustrations, examples, headings or other aids to reading and understanding.**

ANNEXURE A – DEVELOPMENT PLAN INDICATING THE ERF

ANNEXURE B – BUILDING PLANS

ANNEXURE C – FINISHING SCHEDULE

EXTRA WORKS

DESCRIPTION OF EXTRAS:

1. The Seller shall not be obliged to at any time or stage to agree to the extras, omissions, variations or changes of any nature to the Works (“**Extra’s**”) as annexed hereto and signed on behalf of the parties (of applicable). Any such Extra’s shall be in the Seller’s sole discretion and shall be binding on the Parties only if the Seller has confirmed in writing that it will attend to such Extra’s.
2. Notwithstanding the provisions of clause 1 above, and in the event of the Seller agreeing to the execution of the Extra’s, then and in such event:
 - ii. the Seller shall procure that the Seller’s Contractor shall not proceed with any Extra’s until such time that this Agreement is no longer subject to suspensive conditions that needs to be fulfilled by the Purchaser;
 - iii. payment of the Extra’s is to be made by the Purchaser to the Seller in full and in advance and accepted by the Seller, or if the Seller has elected in its sole discretion to proceed with the Extra’s on the basis that it will recover the costs thereof from the Purchaser thereafter, then the Purchaser shall be obliged to pay the Seller on demand, all costs incurred by the Seller in respect of such Extra’s. The due date for the payment in respect of Extra’s shall be deemed the date on which the work in respect of the Extra’s commence, and interest shall accrue until date of payment on amounts owing at the Prime Rate. A certificate signed by the Architect shall be *prima facie* proof of the date of commencement of the work in respect of the Extra’s;
 - iv. in the event of the payment for the work in respect of the Extra’s not being paid and the Seller having selected to proceed with the work in respect of the Extra’s, the Seller shall be entitled to withhold occupation of the Property until payment of the work for such Extra’s plus interest thereon is received;
 - v. should the completion of the work in respect of the Extra’s result in any delays whatsoever, including but not limited to delay in the Practical Completion of the Property, then the Purchaser undertakes to bear all and any loss or damage suffered by the Seller.