

AGREEMENT OF SALE
Entered into and Between

Tarsius Agtien (Pty) Ltd

Registration Number: 1998/005242/07
("Seller")

And

("Purchaser")

Erf No: _____

Agent: _____

PARTICULARS

1. PARTIES			
1.1. Seller:	Tarsius Agtien (Pty) Ltd Registration No : 1998/005242/07		
Address:	Postnet Suite No. 35, Private Bag X18, Rondebosch, 7701		
1.2.1 Purchaser (full names):			
Identity No. / Registration No. / Date of Birth:			
Purchaser's Income Tax No.:			
Representative's full names (if signing on behalf of a legal entity) :			
Residential Address (street address):			
Postal Address:			
Marital Status:	Single		Married
(How married?)	In community of property		
	Out of community of property without accrual		
	Out of community of property with accrual		
	Foreign marriage		
If foreign marriage, governed by the laws of:	(Country)		
Married by Customary Law:			
1.2.2 Full names of Spouse:			
Identity No. / Date of Birth:			
Telephone No:	(Home)		
	(Work)		
	(Cell)		
Fax:			
E-mail Address:			

1.2.3 Purchaser (full names):			
Identity No. / Registration No. / Date of Birth:			
Purchaser's Income Tax No.:			
Representative's full names (if signing on behalf of a legal entity) :			
Residential Address (street address):			
Postal Address:			
Marital Status:	Single		Married
(How married?)	In community of property		
	Out of community of property without accrual		

	Out of community of property with accrual	
	Foreign marriage	
If foreign marriage, governed by the laws of:	(Country)	
Married by Customary Law:		
1.2.4 Full names of Spouse:		
Identity No. / Date of Birth:		
Telephone No:	(Home)	
	(Work)	
	(Cell)	
Fax:		
E-mail Address:		
2. PROPERTY		
2.1.	Unit number as per attached plan	
2.2.	Erf number	
	Extent of Erf	m ²
3. PURCHASE PRICE		
3.1.	Purchase Price of Erf (Inclusive of VAT)	R
3.2.	Building (Contract Price) (Inclusive of VAT)	R
3.3.	Total Purchase Price (Inclusive of VAT)	R
3.4.	Deposit	R
3.5.	Balance on Transfer Date (Total 3.3 - deposit 3.4)	R
3.5.1.	Loan Amount	R
3.6.	Date for payment of the Deposit	14 (Fourteen) days after the Signature Date
3.7.	Date Loan must be granted by	Within 30 (Thirty) days after the Signature Date
4.	Estimated transfer date (Occupation Date)	
5.	Occupational Rental	
6. TRANSFERRING ATTORNEYS		
	Name of Attorney:	Strauss Daly Incorporated, Unit 13 Canal Edge One, Tyger Waterfront, Bellville (021 – 914 8233) Bank Account details: Bank: Standard Bank of SA Limited Branch: Tyger Manor Branch code: 050410 Account number: 071 899 146 Reference: Atlantic Waves/erf no./purchaser's surname
7. ESTATE AGENT		
7.1.	Company:	
	Agent:	
	Telephone number:	
	E-mail:	
7.2.	Agents' Commission	% of the Purchase Price
7.3.	Commission amount due	R (incl VAT, if the Agent is registered)

1. PARTIES

1.1. SELLER

The Seller means the Party as more fully described in Clause 1.1 of the Particulars.

1.2. PURCHASER

The Purchaser means the Party as more fully described in Clause 1.2.1 of the Particulars.

2. INTERPRETATION

In this Agreement:

2.1. Unless the context clearly indicates otherwise, words importing the singular shall include the plural, words importing the masculine, feminine or neuter shall include the others or such genders, and words importing persons shall include bodies corporate, and vice versa in each instance;

2.2. Expressions with reference to writing shall be construed as including reference to printing, lithography, and other modes of representing or reproducing words in visible form;

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

2.4. Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail;

2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any person, then, notwithstanding that it is only in the definition Clause of this Agreement, effect shall be given to it as if it were a substantive provision in the body of this Agreement.

2.6. All annexures to this Agreement are deemed to be incorporated in and form part of the Agreement.

2.7. In this Agreement the following terms and conditions shall, unless inconsistent with the context, bear the meanings stated hereunder and cognate terms and expressions shall bear corresponding meanings:

- 2.7.1 Building Agreement: means the Building Agreement to be concluded between the Parties on the Signature Date, providing for the construction of a dwelling on the Property;
- 2.7.2 Business Day: means any Day except a Saturday, Sunday or Officially proclaimed public holiday;
- 2.7.3 CPA means the Consumer Protection Act, No 68/2008, as amended;
- 2.7.4 Development: means the residential development known as "Atlantic Waves";
- 2.7.5 Direct Marketing: means to approach a person, either in person or by mail or electronic communication for the direct or indirect purpose of promoting or offering to supply, the Property to that person;
- 2.7.6 FICA: means the Financial Intelligence Centre Act No. 38 of 2001, as amended;
- 2.7.7 HOA: means the Home Owners Association as referred to in Clause 13 of the Agreement;
- 2.7.8 Initiation Fee: means the Initiation Fee due and payable by the

Purchaser to the bank or other financial institution approving the loan referred to in Clause 9.3 of this Agreement;

- 2.7.9 NCA: means the National Credit Act, No 34/2005, as amended;
- 2.7.10 Occupation Date: means the estimated Transfer Date referred to in Clause 4 of the Particulars;
- 2.7.11 Parent Property: means Erf 578 Laaiplek, Bergriver Municipality, Western Cape Province;
- 2.7.12 Prime Overdraft Rate: means the rate of interest per annum, which is equal to Nedbank's Limited publicly quoted Prime Overdraft Rate;
- 2.7.13 SARS: means the South African Revenue Services;
- 2.7.14 SDP: means the Site Development Plan, approved by the Local Authority;
- 2.7.15 Signature Date: means the date of the last signature to this Agreement;
- 2.7.16 Signatory: means the person who signs this Agreement for the benefit of a Company, Close Corporation, Trust or other legal person formed or as Trustee for a Company not yet incorporated;
- 2.7.17 VAT: means Value Added Tax payable in terms of the VAT Act;

3 RECORDAL

- 3.1 The Seller has developed the Parent Property and wishes to sell the subdivided erven.
- 3.2 The Seller has procured the approval of the SDP and the General Plan, the latter being approved by the Surveyor General.

4 SALE

The Seller sells to the Purchaser who hereby purchases -

- 4.1 the Property and the buildings ("the Buildings") which the Seller has erected or intends to erect on the Property, upon the terms and conditions as more fully set out herein ("the Agreement").
- 4.2 The Property is more fully described on the SDP and the General Plan.
- 4.3 The Purchaser hereby confirms that he has inspected the Property, or, the Seller, or the Agent, made sufficient documentation available to him to positively identify the Property.
- 4.4 In the event of the Buildings not having been erected on the Property by the date on which this agreement is concluded, the Seller shall cause the construction of the Buildings in accordance with Drawing No: ("the Plan") and the specification of materials and finishes ("Annexure A") ("Specification of Materials and Finishes"), the *National Building Regulations* and the *Standards and Guidelines of the National Home Builders Registration Council*, applicable as at the date of conclusion of this Agreement, to the extent that such *Standards and Guidelines* may apply to the Buildings.
- 4.5 The Seller shall be entitled to vary the Plans and/or Specifications of Finishes for the Buildings to such extent as may, in the Seller's opinion, be reasonably necessary to:
 - 4.5.1 Meet any requirements of any competent authority;
 - 4.5.2 Meet any special impediments such as water, sewer or electrical lines either above or underground, or any rock or other soil condition;

- 4.5.3 Give effect to any changes in materials, finishes or fittings (including without limitation the colours and aesthetics of the Buildings) which the Seller considers to be appropriate or which may not be readily available at the time due to shortage in supply of such materials, finishes or fittings, without however detracting from the quality of the Buildings and/or the Property; or
- 4.5.4 To comply with building guidelines; or
- 4.5.5 To comply with any other legal or relevant requirement which may be applicable to the Property or the Buildings,
- provided that the area of the Buildings shall not be 10 (ten) per cent more than, nor 10 (ten) per cent less than, the anticipated area/s shown on the Plan.
- 4.6 In the event that the Plans and/or Specifications of Finishes for the Buildings are to be varied more or less than 10 percent of the anticipated area/s shown on the plan in accordance with 4.5 above, then and in such event the parties shall have the right to accept an adjustment to the Purchase Price by an amount equal to R _____ per sqm which the area of the Buildings vary more or less than 10 percent, alternatively, should either or both of the parties elect not to accept such adjustment of the purchase price, then this agreement shall lapse, be of no further force or effect and all obligations and rights between the parties shall immediately extinguish.
- 4.7 The Purchaser shall be entitled to choose certain of the specifications and finishes to the Buildings, subject to certain allowances to the cost of such finishes, as set out in Annexure A. Any chosen items or finishes which exceeds the cost of such allowances, will be for the Purchasers account and be payable to the Seller prior to registration of transfer. In the event that the cost of any chosen items are less than the amounts indicated in the Allowances, the Purchaser shall be entitled to allocated such excess allowance to any of the other items specified in Annexure A, alternatively she shall be entitled to a refund of such excess, payable by the seller to the Purchaser prior to registration of transfer.
- 4.8 In the event of the Purchaser failing to notify the Seller in writing of such selection within 30 (thirty) days after the date of signature of this Agreement by the Purchaser, then the Purchaser shall be deemed for all purposes to have selected the standard finishes usually used by the Seller in respect of the relevant items.

5 PURCHASE PRICE

- 5.1 The Purchase Price payable by the Purchaser to the Seller for the Property shall be the amount described in Clause 3.1 of the Particulars which amount is payable as follows:
- 5.1.1. the Purchaser shall pay the Deposit in cash, if applicable, on the date set in Clause 3.6 of the Particulars, to the Transferring Attorneys, which Deposit will be held in trust by the Transferring Attorneys to be invested by them in terms of section 78(2A) of the Attorneys Act, until the transfer date. The interest of the above, less an administration fee of 1 (One) % per year in respect of management and/or administration fees payable by the bank to the Transferring Attorneys, will accrue to the Purchaser. The Transferring Attorneys will not be able to invest the Deposit unless the Purchaser has furnished the Transferring Attorneys with:
- 5.1.1.1. All the FICA documentation and information required by the Transferring Attorneys to open an investment account, as may be applicable on the Purchaser and the Purchaser agrees to grant the Transferring Attorneys full co-operation and disclosure to comply with the FICA requirements and the Attorneys Act, which documentation must be supplied by the Purchaser to the Transferring Attorneys or before the Signature Date, and
- 5.1.1.2 Payment confirmation which must clearly state the reference number, Erf Number and contact details of the Purchaser concerned. The Purchaser shall not be entitled to any interest on the Deposit until the documentation has been provided to the Transferring Attorneys and proof of receipt thereof was acknowledged by the Transferring Attorneys, and
- 5.1.2. The Purchaser shall within 14 (fourteen) days after fulfillment of the suspensive condition referred to in Clause 6.1 of this Agreement, or, if this Agreement is not subject to such a suspensive condition, within 30 (Thirty) days after the Signature Date, furnish the Transferring Attorneys with a guarantee issued in favour of the Transferring Attorneys for the Purchase Price or balance Purchase Price (as the case may be), for credit of the Seller or a payee nominated by the Transferring Attorneys. The guarantee is to be issued by a bank in an acceptable form to the Seller and must be payable against registration of transfer of the Property into the name of the Purchaser, or the Purchaser may elect to pay such amount in cash in which instance the amount must be paid to the Transferring Attorneys, which amount must be invested by them, subject to the terms and conditions provided for in Clause 5.1.1 above.

5.2 All monies due by the Purchaser in terms of this Agreement, and unpaid on the Due Date, shall bear interest at Prime Overdraft Rate plus 2 (Two) %, calculated from the Due Date to the actual date of payment thereof.

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

6 **SUSPENSIVE CONDITION: LOAN FINANCE**

6.1 In the event of an amount having been inserted in Clause 3.5.1 of the Particulars, this Agreement is subject to the suspensive condition that the Purchaser is granted a loan within the period specified in Clause 3.7 of the Particulars from a bank or financial institution in the amount specified in Clause 3.5.1 of the Particulars on the terms that the aforesaid bank or financial institution normally approves mortgage loans for the purchase of single residential erven.

6.2 The condition set out in Clause 6.1 above will be deemed fulfilled once the aforesaid bank or financial institution to which application has been made for the loan has issued a quotation in terms of Section 92(2) of the National Credit Act to the effect that the application has been approved notwithstanding the fact that such an approval is granted subject to the fulfillment of a condition or conditions or subject to the reservation of the right by such a bank or other financial institution to, at any time prior to payment of the proceeds of the loan to the Purchaser, withdraw such approval.

6.3 If the loan is approved for an amount less than the amount stipulated in Clause 3.5.1 of the Particulars and the Purchaser accepts such lower amount in writing by his signature to the quotation as referred to in Clause 6.1 above, this condition will be deemed to be fulfilled.

6.4 It is recorded that the abovementioned suspensive condition is inserted solely for the benefit of the Purchaser. The Purchaser may waive the benefit of this condition by communicating such waiver to the Seller in writing at any time before the expiry of the abovementioned time limit. In the event of a waiver by the Purchaser as aforesaid, this Agreement will not lapse despite the fact that the Purchaser was not successful in the fulfilment of the abovementioned condition.

6.5 The parties agree that should the abovementioned suspensive condition not be fulfilled or waived timeously, then in that instance this Agreement will lapse, be of no further force or effect and the parties will be restored in the position that they were in when they entered into this Agreement.

7 **VAT**

All amounts payable by the Purchaser are described as including VAT.

8 **REFUND DEPOSIT**

In the event that the Purchaser has timeously applied for the loan referred to in Clause 6.1 above and the loan application was declined the Seller will forthwith instruct the Transferring Attorneys to repay the Deposit plus interest earned thereon to the Purchaser, less their administration fee as indicated on 5.1.1 above.

9 **TRANSFER AND TRANSFER COSTS**

9.1 Provided the Purchaser has complied with all his obligations as set out in this Agreement and in particular has paid the Deposit, if applicable, delivered the guarantee referred to in Clause 5.1.2 above and paid Interim Rates and Taxes and Levies and any other amounts owing in terms of this Agreement, registration of transfer of the Property shall be given by the Seller and taken by the Purchaser as close as possible to the Transfer Date. In the event that the Seller anticipates that the actual Transfer Date will be considerably later than the date referred to in clause 4 of the Particulars, it shall give notice to the Purchaser, at least 30 (Thirty) days prior to the Transfer Date, of the new expected Transfer Date. The Purchaser shall have no claim against the Seller for damages or for compensation of any other nature by reason of the Transfer Date having been amended.

9.2 In the event that registration of transfer of the Property and/or, where applicable, registration of a mortgage bond, is delayed or frustrated by any act or omission of the Purchaser, the Purchaser shall pay to the Seller interest calculated at the Prime Overdraft Rate plus 2 (Two)% calculated on the Purchase Price from the date on which the transfer would, but for such delay, otherwise have been registered up to the Transfer

Date. The Lender will determine whether the registration of the mortgage bond is delayed or frustrated by any act or omission of the Purchaser

- 9.3 The Seller shall be liable for the payment of the transfer fees and, if the Purchaser has to register a mortgage bond over the Property, the bond costs in respect of the registration of such a mortgage bond, excluding the Initiation Fee as referred to in Clause 2.7.8 of this Agreement, on the express condition that:
- 9.3.1 the mortgage bond is granted by ABSA Bank Ltd, Firstrand Bank Ltd, Nedcor Bank Ltd or Standard Bank Ltd as the Purchaser's financial institution of choice, and
- 9.3.2 the registration of the mortgage bond is effected by the Transferring Attorneys.
- 9.4 If the event that the mortgage bond is not granted by the financial institutions indicated in 9.3.1 above and the registration of the mortgage bond is not effected by the Transferring Attorneys as required in 9.3.2 above, then all transfer and bond registration fees, as referred to in Clause 9.3 above, shall be payable by the Purchaser in full and immediately upon demand by the Transferring Attorneys.
- 9.5 The Seller shall pay the connection fees to the Local Authority in respect of water and sewer and the Purchaser shall be liable to refund the Seller for any deposits paid in order to obtain such connections, which will be paid to the Seller on demand, prior to registration of transfer.
- 9.6 The Purchaser shall not be entitled to delay transfer or withhold any monies by virtue of the fact that improvements of any of the erven comprising the Development are not fully completed on the date that transfer is tendered to him.
- 9.7 The Parties irrevocably authorize the Transferring Attorneys to sign all necessary declarations and applications on their behalf to enable them to obtain the necessary transfer duty exemptions as well as the opening of the Township Register for the Development in the Cape Town Deeds Registry.

10 CO-OPERATION TO EXPEDITE TRANSFER

The Purchaser will sign all documents necessary to effect transfer of the Property and return same and all other documents, resolutions, certificates and payment of the transfer costs and fees as determined by the Transferring Attorneys, to the Transferring Attorneys within 5 (Five) Business Days after having been requested to do so.

11 WARRANTIES & VOETSTOOTS

- 11.1 The Property is sold subject to all conditions and servitudes pertaining thereto, imposed by the Local Authority.
- 11.2 The Purchaser acknowledges that he has not been influenced into entering into this Agreement by any express or implied information, statement or representation given or made by or on behalf of the Seller, and that fixtures, fittings, furniture or extras displayed by the Seller in the show house, does not form part of the improvements on or to the Property, unless same is expressly and specifically recorded in this Agreement. The Purchaser hereby waives in favour of the Seller any rights whatsoever which he otherwise may have obtained against the Seller as result of any such information, statement or representation given or made by or on behalf of the Seller which is not so expressly and specifically recorded. It is recorded that all artistic, architectural, photographic and in any way visual presentation material including but not limited to models, brochures and pamphlets and the show unit used by the Seller or its Agents in the marketing and selling of the house(s) hereby purchased and sold, have been prepared and distributed as advertising material only; and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby; and that no representation is thereby made by the Seller, and that the Parties shall be bound by the terms contained in this Agreement only.
- 11.3 The Purchaser acknowledges that he is aware that the view currently enjoyed and/or the projected view from the Property hereby sold, may be affected by the development of the scheme and/or the construction of any further buildings on the land or any adjacent plot/development in the vicinity of the Property. The Purchaser accordingly acknowledges and agrees that the Purchaser shall have no claim or right of action whatsoever against the Seller arising from 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 or further buildings, provide that it does not negatively affect the value of the Property.

- 11.4 All undertakings and commitments given by the Seller to the Purchaser in terms of this Agreement are personal to the Purchaser who shall not be entitled to cede, assign or make over its rights thereto.
- 11.5 The Seller may effect reasonable earthworks or land-filling on the Property.
- 11.6 The Seller hereby:
- 11.6.1 Furnishes to the Purchaser in respect of the Buildings the Standard Home Builders Warranty prescribed by the National Home Builders Registration Council, which warranty is incorporated herein and shall form an integral part of this Agreement; and
- 11.6.2 Warrants to the Purchaser that it will rectify any:
- 11.6.2.1 Material non-compliance with, or material deviation from, the Plan and/or the Specification of Materials and Finishes in respect of the Buildings and/or any material deficiency related to workmanship and materials in respect of the Buildings provided that the Purchaser notifies the Seller in writing of such non-compliance, deviation or deficiency within a period of 6 months (as required by the Consumer Protection Act 68 of 2008 ("the CPA)) after the Occupation Date;
- 11.6.2.2 Roof leaks in the Buildings provided that the Purchaser notifies the Seller in writing of such roof leaks within a period of 12 (twelve) months after the Occupation Date;
- 11.6.3 Failing such timeous notification in writing by the Purchaser to the Seller as required in terms of 4.1.2 above and, except:
- 11.6.3.1 to any extent provided in terms of the Standard Home Builders Warranty referred to in 11.1; and
- 11.6.3.2 should this agreement be subject to the provisions of the CPA, to the extent provided in terms thereof;
- the Purchaser shall have no further claim against the Seller in this regard and the Purchaser shall be deemed to have accepted the Property in a fit and proper condition and be deemed to have acknowledged that the Seller has fully complied with its obligations as set out in the aforesaid Clause and the purchase of the Property will become "voetstoots".
- 11.7 The Seller, other than as provided for herein, shall not be liable for any defects in the Property or in respect of anything relating thereto, whether patent or latent after expiry of the period as referred to in Clause 11.6.2.
- 11.8 The Seller shall not be liable for any defects in the Property in respect of normal wear and tear or any defects or damages caused by the conduct of the Purchaser, whether wilfully or by his negligence.
- 11.9 The Purchaser shall be obliged to give the Seller, its Agents and Contractors all access reasonably required to remedy the patent or latent defects that are required to be remedied in terms of Clause 11.6.2.
- 11.10 It is recorded that the Seller appointed **INKATHI CONSTRUCTION (Pty) Ltd** Registration Number: 2007/002513/07 to the building of the top structure and it is further recorded that;
- 11.10.1 **INKATHI CONSTRUCTION (Pty) Ltd** is registered with the NHBC under Master Registration Number 1-144615004;
- 11.10.2 **INKATHI CONSTRUCTION (Pty) Ltd** has undertaken to comply with its obligations as required by the legislation and regulations governing the NHBC as a statutory body by the Housing Consumers Protection Act of 1998.

12 POSSESSION AND OCCUPATION

- 12.1 The date of possession and occupation will be the Transfer Date.
- 12.2 In the event that the Purchaser takes occupation prior to the Transfer date the Purchaser shall be obliged to pay a pro-rata portion of the Occupational Rental referred to in Clause 5. of the Particulars, to the Seller in advance.

- 12.3 The Purchaser acknowledges that on the Transfer Date construction of parts of the Development may not yet have been completed. The Purchaser accordingly hereby acknowledges that he might be subjected to nuisance, noise and other inconvenience from whatsoever cause arising and howsoever arising.
- 12.4 The risk in respect of the Property will pass to the Purchaser on date of occupation, from which date the Purchaser will be liable for, Home Owners Association levies, rates and taxes, and service charges, as levied by the relevant Local Authorities in respect of the Property as from date of possession.
- 12.5 The Purchaser will be liable to insure the property against all risks normally covered by a property owner's policy with an insurance company as from the date of occupation.

13 ARBITRATION

- 14.1 In the event of any dispute arising between the Purchaser and the Seller pursuant to the construction of the dwelling, such dispute will be referred to arbitration for final adjudication by an arbiter appointed by the Chair Person of the South African Council of Architects.
- 14.2 The arbitration process will be conducted as per the Arbitration Act, No 42 of 1965, on condition that the arbiter will be at liberty to determine the process in his sole discretion, and in terms of which the dispute will be resolved as expeditiously and as cost effective as reasonably possible.

15 NATIONAL CREDIT ACT AND OUTSTANDING TAXES

In the event that this Agreement is subject to the National Credit Act, Act 34 of 2005, then the Purchaser warrants that:

- 15.1 Once the bond as referred to in Clause 6 is approved and the pre-agreement and quotation is accepted, the Purchaser shall not do anything that may cause the Purchaser to become over-indebted in terms of the National Credit Act or cause the bank to withdraw the bond.
- 15.2 The Purchaser shall not do anything between the date of acceptance of the pre-agreement and quotation, and registration of the bond, which may cause the Purchaser's financial position to deteriorate.
- 15.3
- 15.3.1 At the time of the Signature Date, the Purchaser is not:
- 15.3.2 over-indebted; and/or
- 15.3.3 subject to debt review; and/or
- 15.3.4 subject to an administration order.
- 15.4 The Purchaser does not and will not be, on the Signature Date and until the Transfer Date, 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 receipts or exemption certificates from the South African Revenue Services or not do anything or omit to do anything that will or can cause such a delay.

16 CAPACITY OF PURCHASER

- 16.1 If more than one Purchaser signs this Agreement, the Purchasers will be jointly and severally liable for the due performance of the terms and conditions of this Agreement.
- 16.2 If this agreement is signed by a person purporting to act for and on behalf of the Purchaser which is a company, close corporation or trust, he shall be deemed to warrant that he is duly authorized to sign this agreement and shall, by his signature hereto, bind himself in favour of the Seller as surety and co-principal debtor under renunciation of the benefits of division, excussion and cession of action for the due performance of all the obligations of the said company, close corporation or trust in terms of or arising out of this agreement of any cancellation hereof.
- 16.2 In the event that the Purchaser signed on behalf of a company to be founded and should the company not be founded within 30 (Thirty) days after the Signature Date, or if the company is founded, but does not ratify this Agreement, or if the company does not comply with the terms and conditions of this Agreement, then in that instance the Signatory will be liable to perform all terms and conditions of this Agreement in his personal capacity.

- 16.3 If this Agreement is entered into by the signatory for the Purchaser in his capacity as trustee for a company to be formed, then:
- 16.3.1 The said signatory, by his signature hereto, hereby binds himself in favour of the Seller as surety and co-principal debtor, under renunciation of the benefits of division, excussion and cession of action, for the due performance of all the obligations of the said company in terms of or arising out of this agreement or any cancellation hereof; and
- 16.3.2 Without prejudice to the provisions of 16.3.1, in the event of such company not being formed within 30 (Thirty) days after the date of signature of this agreement and/or failing within 3 months as per section 21 of the Companies Act 71 of 2008 after incorporation to ratify and make the provisions of this Agreement binding upon itself, and/or failing within the said 3 month period to deliver to the Transferring Attorneys the originals or certified copies of the company documentation, including all necessary resolutions of shareholders and/or directors in respect of this sale, then and in any such event, the said signatory shall be personally liable in terms hereof as if he had contracted in his own personal capacity.

17 ESTATE AGENT'S COMMISSION

- 17.1 The Estate Agent will earn Commission equal to amount as set out more fully in clause 7.3 of the Particulars and the said Commission shall be payable by the Seller to the Agent on the Transfer Date.
- 17.2 The said commission will be deemed to be earned by the Agent upon signature of this Agreement by both the Purchaser and the Seller and the fulfillment (or waiver, as the case may be) of all conditions precedent contained herein.
- 17.3 If this Agreement is cancelled as a result of a breach by either one of the Parties, the defaulting party will be liable for the payment of the Agent's commission.
- 17.4 The Purchaser warrants that it was not introduced to the Property, or this Agreement, by any Agent other than the Selling Agent/s stipulated in this Agreement. The Purchaser accordingly indemnifies the Seller and holds it harmless against all costs, charges, claims, demands, expenses, loss and damage which may be made against or suffered by the Seller arising out of a breach of this warranty.

18 BREACH

- 18.1 If any party commits a breach of any of the provisions of this Agreement and fails to remedy such breach within 30 (thirty) days, or in the instance of any financial obligation or a breach in terms of Clause 10 of this Agreement, within 7 (seven) days after receipt of written notice from the other party calling upon it to remedy such breach, then the innocent party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and or at Law to:
- 18.1.1 Cancel this Agreement and claim such damages as it may have sustained from the defaulting party, or;
- 18.1.2 Claim immediate performance by the defaulting party of all its obligations in terms of this Agreement whether or not the due date for performance shall otherwise have arrived and claim such damages as it may have sustained from the defaulting party;
- 18.2 The Seller may retain any cash payments made by the Purchaser prior to cancellation as liquidated damages, without prejudice to any other right that the Seller may have.
- 18.3 Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate the Property forthwith, and to procure that the Property shall be vacated by any persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the Occupation Date.
- 18.4 The defaulting party shall pay all legal and other costs, including costs on the attorney and client scale, incurred by the innocent party in successfully enforcing the provisions of this Agreement.
- 18.5 It is specifically recorded that should any breach by the Purchaser occur at a time critical to the registration procedure, the Seller shall be entitled to require the Purchaser to remedy such breach within a period of 24 (Twenty Four) hours, and not within the 7 (Seven) days or 30 (Thirty) days period provided for in clause 19.1 above.

19 NOTICE AND ADDRESS FOR SERVICE OF LEGAL DOCUMENTS

- 19.1 The Parties choose their addresses as set out on in Clause 1 of the Particulars of this Agreement above to serve as their addresses for service and delivery of legal documents for all purposes of the Agreement, which includes the giving of notice and the serving of documents or process.
- 19.2 Any notice given in terms of the Agreement which is:
 - 19.2.1 delivered by hand during normal business hours to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser at the time of delivery;
 - 19.2.2 posted by prepaid registered post to the Seller's or Purchaser's address for service and delivery of legal documents shall be deemed to have been received by the Seller or Purchaser on the 7th day after the day of its posting.
 - 19.2.3 communicated by facsimile or e-mail, shall be deemed to have been received by the Seller or Purchaser on received confirmation of the successful transmission thereof.
- 19.3 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by telex, facsimile or e-mail. Communications by telex, facsimile or e-mail shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee on the day of transmission provided that transmission occurred during business hours.

20 GENERAL

- 20.1 The Parties undertake to do all such things that may be necessary, incidental or conducive to the implementation of the terms, conditions and import of the Agreement.
- 20.2 The Agreement constitutes the sole and entire Agreement between the Parties and no other terms and conditions of whatsoever nature not contained or recorded herein, shall be of any force or effect.
- 20.3 No variation of the terms and conditions of this Agreement or any purported consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representative.
- 20.4 No indulgence which either party may grant to the other shall constitute a waiver of any of his rights and shall not thereby be precluded from exercising any of his rights which may have arisen in the past or which might arise in the future.
- 20.5 The Purchaser warrants that all consents required in terms of the Matrimonial Property Act No. 88 of 1984 have been obtained.
- 20.6 Each and any provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of the Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding Agreement to be constituted) is found by any Court of competent jurisdiction to be invalid and or unenforceable then, notwithstanding such invalidity and or unenforceability, the remaining provisions of this Agreement shall be and remain of full force effect.

21 HOME OWNERS' ASSOCIATION

- 21.1 The Purchaser acknowledges that the ATLANTIC WAVES HOME OWNERS' ASSOCIATION was established in terms of *Section 29 of Ordinance 15 of 1985, so as to, inter alia*, regulate access control and the general conduct of matters of common interest to the owners of properties within the development.
- 21.2 The Purchaser and his/her successors in title or assigns shall be bound to become and remain a member of the ATLANTIC WAVES HOME OWNERS' ASSOCIATION and shall be bound to its constitution. The Purchaser acknowledges that he has also acquainted himself with the terms and conditions of the Constitution and will not in any manner whatsoever allow for the Property to be transferred or ceded without his/her successors in title or assigns becoming a member of the ATLANTIC WAVES HOME OWNERS' ASSOCIATION and the latter consenting to such transfer or cession in writing.
- 21.3 The Purchaser acknowledges that the undermentioned condition will be registered as a title deed condition, namely:

The owner and his successors-in-title shall be members of the ATLANTIC WAVES HOME OWNERS' ASSOCIATION established in terms of Section 29 of Ordinance 15 of 1985 and shall at all times be subject to the Constitution of the Homeowners' Association and the Rules thereof and the property shall not be alienated without the prior written consent of the ATLANTIC WAVES HOME OWNERS' ASSOCIATION.

21.4 The Purchaser shall be bound to the building and design guidelines with regards to the erection of any improvements to the property and acknowledges that he has acquainted himself with the building and design guidelines. The Purchaser acknowledges that the building and design guidelines shall place a restriction on his right to erect improvements on his property and accepts these restrictions as reasonable in as much as it protects and enhances the value of his property.

22. **COOLING-OFF IN TERMS OF THE CPA**

If the Property was introduced to the Purchaser by means of Direct Marketing, then and in that instance the Purchaser may rescind this Agreement without reason or penalty, by giving written notice, or another recorded manner and form, to the Seller, within 5 (Five) Business Days after the Signature Date.

23 **CONFIRMATION BY THE PURCHASER IN TERMS OF THE CPA**

The Purchaser confirms that:

- a. he has read this Agreement and understands the contents thereof YES / NO
- b. that the Property was not introduced to him by means of Direct Marketing YES / NO
- c. that he is aware and understands his right to the cooling-off period after Direct Marketing YES / NO
- d. the Purchaser is a juristic person (Company, Close Corporation, Trust, Partnership, etc.) YES / NO
- e. if the answer in clause d above is yes, it's annual turnover or asset value is more than R2 000 000.00 (Two Million Rand), as on the Signature Date (not applicable if Purchaser is a natural person) YES / NO
- f. he has purchased and will use the Property only for residential purposes. YES / NO

24. **OFFER**

The offer to the Seller constituted by the Purchaser having signed this Agreement shall be irrevocable and may not be withdrawn except by written notice sent to the Seller by registered post, which, in any event, may not be given prior to the expiry of a period of 30 (Thirty) Business Days from the date of signature by the Purchaser.

SIGNED by the Parties hereto on the dates and places hereinafter set forth.

BY THE SELLER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____

_____ pp SELLER

BY THE PURCHASER

At _____ on the _____ Day of _____ 20__

AS WITNESSES:

1. _____

2. _____

PURCHASER(1)

PURCHASER(2)

PURCHASER PERSONAL DETAILS

Surname: _____

Full Names: _____

Identity Number: _____

Marital status (Out/,In/,Unmarried) _____

Spouse's Full Names: _____

Identity Number: _____

Country (and State if USA Citizen)
of domicile of husband at the time of the marriage: _____

Town: _____

Date of Marriage: _____

Telephone Number (W): _____

Telephone Number (H): _____

Cell Number: _____

Fax Number: _____

E-Mail Address: _____

Present Address: _____

Postal Address: _____

Forwarding Address _____

Forwarding Postal address: _____

Employer _____

Address and Tel No _____

Name of Relative not staying with you _____

Address and Tel No _____

Income Tax Number: _____

1. PLEASE ATTACH A CLEAR COPY OF THE IDENTITY DOCUMENT
2. PROOF OF RESIDENCE eg COPY OF MUNICIPAL ACCOUNT