

AGREEMENT OF SALE

STONECREST

**SCHEDULE
STONECREST**

1. PARTIES

1.1 SELLER

STONECREST DEVELOPMENT CC

(Regno:)

Address:

1.2 PURCHASER

Name :

Identity Number :

Marital Status :

and

Name :

Identity Number :

Marital Status :

Name :

Identity Number :

Marital Status :

and

Name :

Identity Number :

Marital Status :

Present Address :

Postal Address :

Telephone Number :

Cell Number :

Fax Number :

E-mail :

2. **ERVEN**

The following proposed erven as depicted on the drawings attached hereto:

Erf Porterville, situated in the Bergrivier Municipality

In extent: m²

Held by Deed of Transfer to be registered

3. **TOTAL PURCHASE PRICE OF ERVEN**

R..... (.....)

payable as follows:

3.1 **DEPOSIT**

10% (TEN PERCENT) of the purchase price payable on signature hereof by the PURCHASER.

3.2 The balance of the purchase price on registration of transfer.

4. **MORTGAGE BOND**

4.1 Amount of bond R..... (.....)

4.2 To be approved within 21 (TWENTY ONE) days from date of offer.

5. **ESTIMATED MONTHLY LEVIES**

To be determined.

SIGNED at on this day of

.....

PURCHASER

(who warrants, if this agreement is executed by him/her as representative of agent that he/she is duly authorized hereto) assisted by SPOUSE as far as needs be.

SIGNED at on this day of

.....

SELLER

WHEREAS the SELLER is the registered owner of the immovable property known as ERVEN 2449 – 2453 and 2455 - 2461, PORTERVILLE and whereas the property will be subdivided into erven (hereinafter referred to as the “PROPERTY”)

AND WHEREAS the SELLER intends establishing a development on the PROPERTY;

AND WHEREAS the SELLER has agreed to sell and the PURCHASER has agreed to purchase an erf in this development;

NOW THEREFORE the parties wish to record their agreement in writing:

1 **INTEPRETATION**

In this Agreement, unless inconsistent with the context:

- | | | |
|-----|-----------------------|---|
| 1.1 | “the Attorney” | means Du Plessis & Hofmeyr Inc, 36 St James Street, SOMERSET WEST – Tel: (021) 851 4124 |
| 1.2 | “Business Day” | means any day other than a Saturday, Sunday or Public Holiday; |
| 1.3 | “the Occupation Date” | means the day upon which the PURCHASER takes possession and occupation of the PROPERTY; |
| 1.4 | “the Prime Rate” | Means a rate in interest per annum which is equal to Absa Bank published minimum leading rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favored corporate clients in the private sector from time to time. (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding on the parties); |
| 1.5 | “the Property” | means the immovable property as referred to in the preamble to this Agreement; |
| 1.6 | “the Purchaser” | means the purchaser as set forth in the Schedule; |

- 1.7 “the Rules” means the home owners association rules as indicated in the constitution as may be amended from time to time by the home owners association;
- 1.8 “the Schedule” means the covering Schedule, being the first and second pages of this Agreement;
- 1.9 “the Seller” means STONECREST DEVELOPMENT CC;
- 1.10 Words and expressions defined in the Act shall have the meanings therein defined;
- 1.11 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include partnerships and bodies corporate and vice versa;
- 1.12 Reference to the Agreement means this Agreement and all annexures hereto;
- 1.13 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate;

2. **SALE**

The SELLER sells to the PURCHASER who hereby purchases:

Such erf/erven as indicated in the Schedule

3. **PURCHASE PRICE AND PAYMENT**

- 3.1 The purchase price shall be the amount specified in the Schedule, payable as follows:
- 3.1.1 a deposit in the amount specified in the Schedule, payable in cash, upon signature hereof by the PURCHASER. The deposit paid in terms of this clause shall be invested by the Attorneys on call at a commercial bank or building society on behalf of and for the benefit of the PURCHASER pending registration.
- In the event that the suspensive conditions herein are not met, the deposit together with the interest minus a nominal administration fee, shall be released to the PURCHASER;
- 3.1.2 the balance of the purchase price in cash on date of registration.
- 3.2 The PURCHASER shall within 7 (SEVEN) days of receipt of a written request therefore by the Attorneys furnish the Attorneys with a bank or building society or other guarantee acceptable to the SELLER, for the due payment of the balance of the purchase price.

Such request shall not be made prior to fulfillment of the suspensive conditions regarding loan finance;

- 3.3 Notwithstanding the provisions of 3.2 the SELLER shall have the right, at any time after execution of this Agreement, to request the PURCHASER to furnish, within 7 (SEVEN) days of such request, proof to the satisfaction of the SELLER confirming the PURCHASER'S financial ability to fulfill his obligations in terms of this Agreement;
- 3.4 All monies payable to the PURCHASER in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 4% (FOUR PERCENT) above the Prime Rate, calculated from the due date of payment to the actual date of payment thereof;
- 3.5 All or any payments to be effected hereunder shall be effected by the PURCHASER to the SELLER to the Attorneys free of exchange at Cape Town and without deduction or set off in the following bank account:

Du Plessis & Hofmeyr Inc
Bank: First National Bank
Account Number: 620 3275 4542
Branch Code: 250 655

4. **LOAN FINANCE**

- 4.1 In the event of the PURCHASER requiring bond finance for the acquisition of the PROPERTY, the sale shall be subject to the condition precedent that the PURCHASER is granted a loan by a recognized financial institution in the amount and by the date as specified in the Schedule, on the institution's usual terms and conditions relating to such loans.

The PURCHASER undertakes to use his best endeavors to ensure that the loan referred to is granted timeously and undertakes to sign all such documentation and to co-operate with the SELLER fully in order to ensure that the said loan is approved. This condition shall be deemed to have been fulfilled upon the PURCHASER obtaining approval in principle from a financial institution as contemplated for a loan as herein envisaged.

- 4.2 The PURCHASER gives herewith to the SELLER or any agent of the SELLER and to the Attorney or any agent of the Attorney a mandate to apply at any financial institution for the necessary bond financing.

It shall at all times remain the PURCHASER'S obligation to obtain the required bond and any act on the part of the SELLER (or its agent) or the Attorney (or its agent) in this respect will not render the SELLER liable to the PURCHASER in any manner whatsoever for any actual or contingent losses which the PURCHASER may sustain in the event of the required bond not being granted.

In the event that the PURCHASER uses his own bank for the financing of the transaction, he will be obliged to instruct the bank to appoint the attorneys as set out in the schedule hereto to attend to the registration of the bond;

- 4.3 The PURCHASER undertakes to ensure and procure that the financial institution from which the PURCHASER obtains the loan instructs the Attorney or such other attorneys as the SELLER may appoint to attend to the registration of such bond. The PURCHASER will provide the first opportunity to obtain loan finance;

5. **TRANSFER**

5.1 Transfer of the erf shall be passed by the Attorneys and taken as soon as is reasonably possible;

5.2 The PURCHASER shall sign all documents necessary to give effect hereto at the offices of the Attorneys within 5 (FIVE) days of being called upon to do so.

6. **POSSESSION AND OCCUPATION**

6.1 Possession and occupation of the PROPERTY shall be given and taken by the PURCHASER on the Registration Date, on which date, all risk and benefit in the PROPERTY shall pass to the PURCHASER;

7. **VOETSTOOTS**

7.1 Save as specially set out in this Agreement, the Seller has made no representations and given no warranties in respect of the Erf or in respect of anything relating thereto and this sale is accordingly “voetstoots” and the SELLER shall not be liable for any defects or in respect of anything relating thereto whether patent or latent;

7.2 The PURCHASER shall accept transfer of the Erf subject to all conditions and servitudes benefiting or burdening the PROPERTY whether existing or hereafter imposed by any competent authority or by the SELLER;

8. **ACKNOWLEDGEMENT BY PURCHASER**

The PURCHASER acknowledges that:

If upon a resurvey or remeasurement, the area of the PROPERTY is found not to correspond with that set out in the Title Deed, the SELLER shall not be liable for any default nor claim compensation for any surplus.

9. **UNDERTAKINGS AND WARRANTIES BY THE SELLER**

The SELLER undertakes and warrants that he shall take all reasonable steps necessary to procure the consolidation of the erven as well as obtaining the necessary approvals.

10. **MUNICIPAL RATES AND TAXES**

The PURCHASER shall be liable for the payment of *pro rata* rates and taxes of the PROPERTY from date of registration.

11. **DEFAULT**

11.1 If the PURCHASER commits a breach of this Agreement 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 or failure and if the PURCHASER fails to comply with such notice except for the provisions of *clause 3.2*

and 3.3 where no such notice shall be given, then the SELLER shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies, which it may have in law, including the right to claim damages:

- 11.1.1 to cancel this Agreement, in which event the PURCHASER shall forfeit all monies paid to the SELLER or the Attorneys in terms hereof; or
 - 11.1.2 to claim immediate performance and/or payment of all the PURCHASER'S obligations in terms hereof.
- 11.2 Should the PURCHASER dispute the SELLER'S right to cancel this Agreement, then pending the determination of this dispute, the PURCHASER shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the SELLER shall be entitled to recover and accept those payments without prejudice to the SELLER'S claim for cancellation of this Agreement or any other rights of the SELLER whatsoever:
- 11.3 Upon cancellation of this Agreement for any reason whatsoever, the PURCHASER hereby undertakes to vacate forthwith the property 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 date of possession;
- 11.4 Should this Agreement be cancelled as a result of the PURCHASER failing to comply with his/her obligations herein, then the PURCHASER hereby assumes the SELLER'S obligations to pay the commission due to the Agent for this Agreement as well as the commission due for the building agreement together with Value Added Tax thereon. Should an order be granted for the interim or final liquidation of the SELLER, the PURCHASER likewise is hereby obliged to assume the SELLER'S obligation to pay commission due to the agent in the event of the Development being continued by the liquidator and the PURCHASER shall be entitled to set off this amount of commission against the purchase price of the unit owing to the SELLER.

12. **COSTS**

- 12.1 The SELLER shall be liable for the Attorney's fees relating to all registration costs to register transfer as well as VAT thereon. The PURCHASER shall pay the Attorneys fees relating to bond costs, if applicable;
- 12.2 The costs as referred to in 2.1 shall be payable to the Attorneys upon request;
- 12.3 The SELLER shall, in its entire discretion, have the right to make payment on behalf of the PURCHASER of all or part of the aforementioned costs. Any such payments made by the SELLER shall be refunded to the SELLER on demand together with interest thereon calculated from date of payment thereof by the SELLER until date of receipt of payment from the PURCHASER at the rate as stipulated in 3.4.

13. **GENERAL**

- 13.1 The terms of this Agreement form the sole contractual relationship between the parties hereto and no variation of this Agreement shall effect the terms hereof unless such variation shall be reduced to writing under the hands of the parties hereto;

13.2 No extension of time or indulgence granted by either party shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or no novation of this Agreement;

13.3 Each of the parties hereby undertakes to sign and/or execute all such documents and without limiting the generality of the foregoing which shall include the execution of the necessary Power of Attorney, Transfer Duty Declarations and bond documents.

14. **NOTICES AND DOMICILIA**

14.1 Each of the parties chooses *domicilium citandi et executandi* (“*domicilium*”) for the purpose of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in the Schedule;

14.2 Each of the parties shall be entitled from time to time, by written notice to the others to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante;

1.4.3 Any notice given posted by prepaid registered post from any address within the Republic of South Africa to the addressee’s *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.

15. **RIGHT OF CESSION**

The SELLER shall be entitled to cede any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be necessary, the PURCHASER consents thereto.

16. **MAGISTRATE’S COURT JURISDICTION**

The parties hereby consent in terms of *Section 45* of the *Magistrate’s Court Act 1944* to the jurisdiction of any Magistrate’s Court having jurisdiction over their respective person under *Section 28* of the *Magistrate’s Court Act*, notwithstanding that any action or proceeding arising out of this Agreement would otherwise be beyond the jurisdiction of such Court, provided that the SELLER shall have the right to institute proceedings in any other court of competent jurisdiction.

17. **JOINT AND SEVERAL LIABILITY**

17.1 Should the PURCHASER be a company, close corporation, trust or association of persons, then the person/s signing this Agreement on behalf of the PURCHASER (by his/their signature/s hereto) hereby bind himself or herself as surety and co-principal debtor jointly and severally to the SELLER for the due and proper fulfillment of all obligations of, or in connection with, or arising in any way whatsoever out of this Agreement or any amendment or cancellation thereof, under renunciation of the benefits of excursion and division. The person signing this document guarantee that he/she has the authority to sign the document;

17.2 Should the PURCHASER be more than one person, then the persons comprising the PURCHASER shall be jointly and severally liable to the SELLER for the due and proper fulfillment of all the obligations of, and the punctual payment of all amounts 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. Insofar as there may be more than one PURCHASER of this Agreement, the liability of each of such PURCHASERS shall be joint and several and in *solidum*.

18. **NON-LIABILITY**

Notwithstanding anything to the contrary herein contained, the SELLER shall not be responsible for any loss or damage which the PURCHASER may suffer by any act or omission whatsoever nor neglect on the part of the SELLER, its servants, employees or agents which the PURCHASER or any other person may suffer by reason of the Buildings at any time falling into a defective state or by reason of any construction conducted by the SELLER on the PROPERTY or any portion thereof. The PURCHASER shall not be entitled for any of the said reasons or for any other reason whatsoever to withhold payment of any monies due to the SELLER in terms hereof.

19. **SPECIAL CONDITIONS**

19.1 This Agreement is subject thereto that the SELLER sells 60% (SIXTY PERCENT) of the erven in the development to ensure the viability of the development. In the event that not enough erven are sold, the SELLER shall notify the PURCHASER in writing by no later than 30 APRIL 2008 whereafter the Agreement shall lapse and have no force and effect;

19.2 The PURCHASER acknowledges that he/she is aware thereof that the subdivision and rezoning approvals of the development are subject to certain conditions. In the event of such conditions not being fulfilled by the SELLER, the Agreement shall lapse and have no force and effect;

19.3 The PURCHASER agrees to accept the PROPERTY subject to the terms and conditions imposed by the Municipality and agreed to be bound thereby.

20. **HOME OWNERS ASSOCIATION**

The PURCHASER acknowledges that he/she becomes a member of the Home Owners Association with signing of this Agreement and agrees to be bound by the rules and regulations of the constitution.

21. **BUILDING CONTRACT**

This contract is subject thereto that the PURCHASER signs a building contract with a registered builder, approved by the SELLER and on the prescribed document.

22. **BROKERAGE**

22.1 Brokerage calculated in terms of the mandate signed by the SELLER, shall be due by the SELLER to DPT PROPERTIES NO 4 CC trading as SEEFF SWARTLAND upon

signature hereof or if there are any suspensive conditions, once the suspensive conditions have been fulfilled;

- 22.2 SEEFF'S entitlement to such commission is unconditional once due and shall be payable upon transfer of the property or, where this Agreement is breached by the SELLER, or consensually cancelled, immediately upon such breach or such cancellation.

The SELLER undertakes to pay the brokerage and hereby irrevocably authorizes the Attorneys, on transfer, to deduct the brokerage plus VAT thereon from any amount it may be holding in trust, or if there is no such amount held or if the proceeds thereof are insufficient to meet the full brokerage plus VAT, than the SELLER hereby irrevocably instructs the Attorneys to pay the amount, or the balance of the amount due, as the case may be, to SEEFF as a first draw against the proceeds of the sale.

23. **CONTINUED MARKETING**

The SELLER may continue to market the PROPERTY until such time as all suspensive conditions, with regards to the PURCHASER, contained herein has/have been fulfilled.

Should the SELLER, during this time, receive another acceptable unconditional offer ("the competing offer") to purchase the PROPERTY, he/she will have the right to call upon the PURCHASER by notice in writing, to waive all suspensive conditions to which this offer is subject, hereby making this sale unconditional, within 3 (THREE) days (excluding weekends and public holidays) of the date when such notice is delivered to the PURCHASER, or such extended period as the SELLER in his/her sole discretion may allow ("the waiver period").

If the PURCHASER fails to waive his/her rights in writing within the waiver period, the SELLER shall be entitled, but not obliged, to accept the competing offer, upon which this sale shall lapse and be null and void.

Should the SELLER elect to not accept the competing offer this Agreement shall remain in full force and effect.

24. **RESALE OF THE UNITS**

The PURCHASER shall not be entitled to sell and transfer the unit until the registration of transfer to the PURCHASER in terms of this Agreement. Until registration, the PURCHASER shall not appoint or engage any estate agent or other person to market, advertise and/or sell the unit, other than the agent appointed by the SELLER to market from time to time.

25. **OFFER**

This Agreement, once signed by the PURCHASER shall be regarded as an offer by the PURCHASER and shall be irrevocable and open for acceptance by the SELLER

within a period of 21 (TWENTY ONE) days from date of signature by the PURCHASER and shall not be capable of being withdrawn by him during the said period.

SIGNED at on this day of

AS WITNESSES

1. _____ SELLER

2.

SIGNED at on this day of

AS WITNESSES

1. _____ PURCHASER

2. _____ PURCHASER