



**TRIPLE POINT ESTATES**

**PLOT ONLY**

[PORTIONS OF ERF ..... TRIPLE POINT TOWNSHIP]

**THIS IS AN AGREEMENT BETWEEN:**

**NAME (NATURAL OR JURISTIC PERSON):** .....

.....

**IDENTITY/REGISTRATION NO:** .....

**STREET ADDRESS:** .....

**POSTAL ADDRESS:** .....

**TELEPHONE NO.:** .....

**TELEFAX NO.:** .....

**MARITAL STATUS:** .....

**Spouse's full names:** .....

**Spouse's Identity Number:** .....

**E-MAIL:** .....

(the "purchaser")

**A N D**



**LAVENDER VALLEY DEVELOPMENTS (PTY) LTD**

(No. ....)

**STREET ADDRESS:** .....  
**POSTAL ADDRESS:** .....  
**TELEPHONE NO.:** .....  
**TELEFAX NO.:** .....

(the "seller")

**IN WHICH THEY AGREE AS FOLLOWS:**

**1. DEFINITIONS**

Unless the context clearly indicates otherwise, the following words, names or expressions shall have the following meanings in this document:

1.1 The "seller" is the party defined as such above.

1.2 The "purchaser" is the party defined as such above.

1.3.1 The "town" or "township" :

1.3.1.1 is the Triple Point Township, which is currently being developed on erven 5710 and 5719 Beacon Bay and the remainder of portion 52 (a portion of portion 73) of farm 817 Buffalo City Municipality (farm 817/52 Beacon Bay) which are consolidated and a general plan is registered over the consolidated property. The seller made application in terms of Ordinance No 15 of 1985 for the establishment of the township on the said land and the local authority has indicated that the proposed township will be known as TRIPLE POINT.

1.3.1.2 is indicated on the layout plan of the township which is available for viewing at



the seller's office (called the "**layout plan**");

1.3.1.3 in its proposed form consists of 35 erven numbered from 6667 to 6701 (both included) as shown in their present proposed form on the said layout plan which is available for inspection in the seller's office.

1.4.1 The "**erf**" is ERF NO. .... in the township.

1.4.2 The "**land**" is that portion of the property which on the attached sketchplan is shown as Erf ..... and which will measure approximately ..... square metres. It is recorded that the portion hereby sold does not yet exist as a separate registerable property and that a subdivisional diagram in respect of the property hereby sold is in the process of being prepared and approved.

1.5.1 the "**buildings**" is a reference to the buildings which may be erected on the land, materially in accordance with the building plans defined below and which are situated as shown on the site plan which forms part of the building plan.

\* 1.6.1 the "**building plan**" is the building plan prepared for the seller by Imbono FJA Architects, ....., which building plan is annexed to this agreement, being a plan chosen by the Purchaser from a selection of available plans, each page of which building plan has been signed by the parties for identification purposes.

\* 1.6.2 the "**specification**" is a document prepared for the seller by Imbono FJA Architects, ....., which document indicates the materials to be used in erecting the buildings. The document is annexed to the agreement, a copy of which has been retained by each of the parties, each page of which specification has been signed by the parties for identification purposes.

1.7 The "**complex**" is a reference to the entire development on the properties referred to in 1.3.1 and which will comprise a Hotel site, a Retail section consisting of Commercial and Office accommodation, Townhouse complex and the Triple Point Township on which the erf is

situated.

1.8 the "**levy contribution**" contemplated in 9.1 is an estimated amount, estimated as at the date of this agreement, on which date it amounts to R.....,00 (..... Rand).

1.9.1 The "**local authority**" is the Buffalo City Municipality.

1.9.2 The "**director**" is the term used as a convenient reference to the Chief Executive Officer, Department of Development Planning and Local Government, EASTERN CAPE Province.

1.10 The "**Ordinance**" is Ordinance No.15 of 1985 (as amended from time to time).

1.11 The "**Registrar of Deeds**" is the Registrar of Deeds, King William's Town and the "**Deeds Office**" is the Deeds Office in respect of which the said Registrar of Deeds has jurisdiction.

1.12 The "**conditions of establishment**" are the draft conditions relating to the establishment of the proposed township which were issued by the local authority read together with the services agreement to be concluded between the seller and local authority and for purposes of this agreement, they include all amendments and/or additions and/or variations to the said conditions which may still be made by the director or the local authority after the said dates.

The "**purchase price**" is R..... (.....) which amount includes Value Added Tax ("VAT"). It is recorded that the purchase price comprises:

1.14.1.1 The Purchase price of the land which is .....(.....) which amounts includes Value Added Tax ("VAT").

1.14.2 The "**deposit**" is the sum of R50 000.00 (Fifty Thousand Rand) which includes VAT.

1.15.1 The "**loan amount**" is the sum of R..... (.....).



- 1.15.2 The **"loan date"** is 30 (Thirty ) days after the date of this agreement.
- 1.16 The **"guarantee date"** is 7 (seven) days after the loan date.
- 1.17.1 The **"estate agent"** is .....
- 1.17.2 The party responsible for payment of agents' commission is The Seller
- 1.18 The **"seller's conveyancers"** shall mean Hutton & Cook, Sutton Square, Queens Road, King William's Town.
- 1.19 **"Transfer"** means registration of transfer of the property in the purchaser's name.
- 1.20.1 The **"initial Triple Point HOA levy"** (see clause 28.5.4) is R.....  
(.....)  
per month.
- 1.20.2 The **"initial LOCALISED HOA levy"** (see clause 28.6) is R.....  
(.....)  
per month.
- 1.21 The **"Home Owners Association"** means Triple Point Home Owners Association.
- 1.22 The **"Localised Home Owners Association "** means the Triple Point Localized Home Owners Association.

2. **RECORDAL**

It is recorded (and where appropriate agreed between the parties) that:

2.1 ).

2.6 When the purchaser occupies the building, building work on other buildings on the erf may still be underway and of necessity such building work will cause a degree of nuisance and inconvenience to the purchaser by way of dust, noise, the presence of labourers and machinery and such matters. The purchaser is obliged to accept occupation of the building in spite thereof and will have no claim for damages or any other relief against the seller by virtue thereof.



2.7 Any definition contained in clause 1 which is capable or part of which is capable of being a substantive provision, is hereby incorporated into this agreement as a substantive binding provision.

### 3. **PURCHASE AND SALE – IMPROVEMENT OF LAND**

#### 3.1 **Sale**

The seller hereby sells the land to the purchaser, who purchases it, subject to:

- 3.1.1 the title conditions applicable to it;
- 3.1.2 the conditions of establishment of the township (even if amended after the date of this agreement);
- 3.1.3 the provisions of the relevant Town Planning Scheme;
- 3.1.4 any conditions to be imposed by the local authority in its consent to subdivide the erf; and
- 3.1.5 the provisions contained or referred to in this document, which include provisions relating to all properties situated in the township.

This document will be signed by or on behalf of the Purchaser or its Trustee or other Representative before it is signed on behalf of the Seller, and hence this document shall constitute an offer to the Seller to purchase the property at the price and subject to the other terms and conditions set out in this document and the Purchaser or its Trustee or other Representative hereby agrees that this offer shall be irrevocable and remain open for acceptance by the Seller for a period of 4 (four) months from the date of signature hereof by or on behalf of the Purchaser.

As soon as the Seller shall have signed this document a binding agreement of purchase and sale shall come into being between the Seller and the Purchaser in spite of the fact that the Seller may not have communicated that fact of such signature and/or acceptance to the



Purchaser. No notice to the Purchaser of the Seller's acceptance of the offer is required to bring about the agreement.

### 3.2 **Improvement**

3.2.1 The Purchaser may only enter into a building contract with either Weyer Construction or Trinity Builder to effect any improvements whatsoever to the property. Any such improvement shall be in accordance with the building plan and specification defined in clause 1 above, using good quality materials and labour and to do so as soon as is reasonably possible?? In the event of a dispute as to whether or not the building has been completed to that standard or has been completed within a reasonable period of time, the dispute will be determined in the unfettered discretion of the seller's architect who in determining the dispute will act as an expert and not an arbitrator, will not be bound by procedural law or the law of evidence, but only by the rules of natural justice and whose decision will be final and binding on the parties. It is recorded for the sake of clarity that the aforesaid architect, in determining whether the building has been completed as soon as is reasonably possible, is directed to take cognisance of factors such as inclement weather, strikes, lack of materials and any other factors beyond the reasonable control of the seller which cause a delay in the completion of the buildings.

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

4.1 The purchase price of the land, being the amount of ..... (.....)as reflected in 1.14.1.1. shall be payable as follows:

- 4.1.1 The deposit reflected in 1.14.2 shall be paid on the date of signature of this agreement to the conveyancers, who will bank it in their trust account until the date of transfer of the land and then pay it to the seller. The parties hereby consent that the deposit may be held in an interest bearing trust account opened in terms of Section 78 (2A) of the Attorneys Act and that the interest will accrue for the benefit of the purchaser. The interest will be paid to the purchaser on transfer.
- 4.1.2 The balance of the purchase price shall be paid on the date of transfer (see 1.19), for which balance the purchaser shall by not later than the guarantee date (see 1.16) furnish the seller or its nominee with one or more (but not more than two) approved bank guarantees, made out in favour of such party/parties as the seller or its nominee may nominate for such amount/s as the seller may indicate and which guarantee/s shall be expressed to be payable upon transfer of the land into the purchaser's name. If by the guarantee date the seller or the conveyancers shall not have requested the purchaser to furnish any particular guarantee/s, the purchaser is obliged to furnish a single guarantee for the purchase price made out in favour of the seller.

5. **PURCHASER'S LOAN**

- 5.1 This agreement shall be of immediate effect, once accepted and signed by the Seller but will resolve automatically and immediately should the purchaser fail by not later than the loan date (see 1.15.2) to procure a loan for the loan amount (see 1.15.1) from a bank or other financial institution against security of a first mortgage bond to be registered over the land and improvements.
- 5.2 The purchaser is obliged to apply for the loan by not later than 7 (seven) days after the date of signature of this agreement by the purchaser and shall immediately upon the seller's request furnish adequate written evidence to the seller of the fact that such application has been made. The purchaser authorises the financial institution to which



application for the loan is made to undertake such investigations as to the credit worthiness of the purchaser as it deems necessary.

5.3 This agreement is subject to the further suspensive condition that the loan contemplated in 5.1 and 5.2 shall be approved in principle by the relevant bank or other financial institution by not later than 30 (thirty) days after the date of signature of this agreement by the purchaser or after the loan date referred to in 5.1, whichever is the earlier. The loan will be deemed to have been approved in principle if the relevant bank or other financial institution has furnished a written statement that it will finally approve the loan.

5.4 Should the purchaser fail to apply for the loan as contemplated in 5.1, 5.2 and 5.3 within the periods of time contemplated in those paragraphs, then apart from any other remedy which the seller may have, the seller will be entitled to apply for such loan on behalf of the purchaser and to sign the necessary application document/s on behalf of the purchaser and take all other steps which may be required in this regard.

## 6. **INTEREST - LATE PAYMENT - DELAY IN TRANSFER**

6.1 Without prejudice to, but in addition to any other rights which the seller then may have, the seller will be entitled to payment of interest by the purchaser on all amounts due in terms of this agreement, but which are in arrear. Such interest will be calculated at a rate equal to the publicly quoted prime rate of interest charged from time to time by ABSA Bank Limited on unsecured overdrafts to its most favoured customers, plus 2% (two percent). A certificate signed by any manager of any branch of the said bank will be prima facie evidence of the said interest rate and the person purporting to issue the certificate will not have to prove his office as such. It is not the purpose of this clause to give the purchaser a right to postpone any payment.

6.2 Should the transfer be delayed by the purchaser's fault, then without prejudice to the



seller's other rights, the seller will be entitled to payment of interest on the unpaid portion of the purchase price (that is on the portion not actually paid to the seller, whether it be held in trust or not) at the rate stipulated in 6.1 for the period of the delay. It is not the purpose of this clause to give the purchaser a right to delay the transfer.

7. **OCCUPATION AND POSSESSION**

9. **LEVIES – OTHER PAYMENTS**

9.1 **Levies payable direct to local authority**

As from the date of transfer the purchaser will become liable for payment of municipal rates and taxes and all other amounts which may be levied directly on owners by the local or any other competent authority in respect of the property; provided that if the transfer is delayed due to the purchaser's fault, the purchaser's liability to pay the said amounts shall arise on the date on which the transfer would have been registered but for the delay caused by the purchaser. The purchaser shall pay the said levies directly to the local or other authority making the levy. Should any new levy or form of taxation be imposed in respect of the property by the local authority or any other competent authority after the date of this agreement, the purchaser shall likewise be liable for the payment thereof from the transfer date, which payment will be made direct to the relevant local or other authority. The purchaser shall be liable for payment of any Value Added Tax which may be levied in respect of any of the said amounts which the purchaser is liable to pay.

9.2 **Levies payable to Triple Point Home Owners' Association ('TRIPLE POINT HOA')**

As from the date of transfer the purchaser shall be liable for payment to the TRIPLE POINT HOA of a monthly levy as determined by the TRIPLE POINT HOA through its board of



Trustees (which, for the first year after proclamation of the proposed township, shall not in any month exceed the initial monthly levy defined in 1.20.1) and which levy shall be utilised, inter alia, towards payment of

- (i) electricity and water consumed in respect of common areas;
- (ii) the operation of the security fences, wall and entrances;
- (iii) maintenance and reparation and replacement of and payment of rates and taxes in respect of property belonging to the TRIPLE POINT HOA, such as the erf/erven on which the entrance/s are situated and the improvements on it/them;
- (iv) maintenance, reparation and replacement of the security walls / fences and the employment of security personnel;
- (v) and for such other purposes as the constitution of the TRIPLE POINT HOA may prescribe;

The monthly amount levied from all purchasers is intended to cover all expenses of the TRIPLE POINT HOA and to create a reasonable provision fund and each purchaser's share is calculated as set out in the TRIPLE POINT HOA rules monthly.

The TRIPLE POINT HOA shall establish a levy fund from which funds expenses referred to in 9.4.9.5 and other incidental expenses shall be paid.

**9.3 Levies payable to LOCALISED HOA (see clause 28.6)**

In addition to the levy payable to the TRIPLE POINT HOA, as referred to in 9.2 above, the purchaser will be liable for payment of a levy to the home owners' association which is established and referred to in clause 28.6 below. The nature and extent of the levy and its manner of payment are dealt with in clause 28.6 below.

9.5 **Rubbish removal and rates and taxes** - The levies contemplated in 9.3 (which are payable to the LOCALISED HOA) will include the amounts payable for rubbish removal services and for rates and taxes, both levied in connection with the Erf and the purchaser's proportional liability will be based on the participation quota of the section defined in 9.3.

10. **SERVICE CONNECTION FEES**

The purchaser is obliged to pay all amounts (plus Value Added Tax thereon) which are or may become payable in order to procure the connection of the improvements to be erected on the property to the services (such as, but not limited to water, electricity, sewerage, telephone and the like) supplied by the local or any other authority at the nearest supply point to the property. In spite of the foregoing, the seller is obliged at its expense to supply the relevant service at one of the boundaries of the property hereby sold.

11. **LOCAL AUTHORITY'S REQUIREMENTS RELATING TO SERVICES**

The purchaser is obliged at his own expense to comply with all provisions imposed by the local or any other competent authority with regard to the provision of any services to the property.

12. **VOETSTOOTS**

12.1 The seller records that it has successfully completed the geotechnical/geophysical investigations into the subterranean conditions of the land on which the township is being developed (including a dolomite stability investigation) and has complied with the comments and/or recommendations made in this regard by the Council for Geoscience. In spite of this, the seller records that ongoing geotechnical and/or geophysical investigations are being done with regard to the land on which the property hereby sold is situated by the seller's geotechnical and/or geophysical engineers and/or geologists. Such further investigations may result in further information becoming available which



may result in the property hereby sold being reclassified as regards its geotechnical nature. Hence, the seller does not warrant that the present geophysical/geotechnical classification of the property hereby sold will not change as a result of the further testing. If as a result of any such change in the geophysical/geotechnical classification of the property the precautionary measures referred to in 12.1 become more onerous and/or expensive, the purchaser will be liable to bear the additional expense and will not by virtue thereof be entitled to cancel this agreement or claim any amount of money from the seller or claim any other remedy from the seller. In spite of the foregoing, it is, however, agreed that if as a result of the gathering of the further information referred to above in this clause it transpires that the property hereby sold cannot be used for the erection thereon of a dwelling house and usual outbuildings, (to the extent – as regards coverage and floor area ratio – indicated in the architectural guidelines and the townplanning scheme which will become applicable upon proclamation of the township) then either of the seller or the purchaser will be entitled to cancel this agreement by written notice to the other of them in which event the parties will mutually restore unto each other everything performed in terms of this agreement but apart from such restoration neither party will have any claim of whatsoever nature against the other by virtue of the conclusion of this agreement or its cancellation.

12.1.1 The seller records that by virtue of the provisions of the Housing Consumers Protection Measures Act No. 95 of 1998 the National Home Builders Registration Council (“NHBRC”) has been established and that before any dwelling house or similar structure may be erected on the property, the NHBRC must issue a written consent thereto. The NHBRC might impose preconditions for the erection of such buildings or other structures on the property and the purchaser undertakes to comply at his expense with all such preconditions imposed by the NHBRC.

12.1.2 The seller reiterates that the Council for Geoscience, which Council must first approve the geophysical conditions of the property before the NHBRC issues an

approval for the erection of buildings on it, has already been consulted with regard to the geophysical/ geotechnical conditions of the property and has approved the township land for development into a township. Upon the purchaser's request the seller will furnish a copy of such approval to the purchaser.

12.1.3 The seller is obliged at its expense to carry out any further tests which may be prescribed or required by the Council for Geoscience and/or the NHBRC in order for the NHBRC to enrol the property for purposes of the construction of a dwelling house and other structures on it, but should such further tests be required, the seller will be entitled rather to cancel this agreement in which event the parties will mutually restore to each other everything performed in terms of the agreement and have no further claims against one another.

12.3 The onus of proving that it is not possible to use the property for purposes of the erection of a dwelling house and usual outbuildings as contemplated in 12.1 shall rest on the purchaser and should the purchaser rid itself of this onus, then the right to cancel the agreement referred to in 12.1 above shall arise and the purchaser shall not have any further claim (whether founded in contract or delict) against the seller.

12.4 Subject to the foregoing provisions of this clause 12, the property is sold voetstoots and the seller shall not be liable for any latent defects in or relating to it or for any loss caused directly or indirectly by such defects.

### **13 . POSITION AND EXTENT OF PROPERTY**

13.1 The seller records that the shape and/or position and/or extent of the property as indicated on the layout plan may change after the date of this agreement should this be required by the director, the local authority or the surveyor general or due to requirements of the Council for Geoscience, the NHBRC or any other body with authority

in regard to the layout of the erven in this specific township.

- 13.2 Should the shape and/or position and/or extent of the property be changed after the date of this agreement, as contemplated in 13.1, the purchaser will not be entitled to cancel this agreement or to claim a reduction in the purchase price or any damages from the seller, but will be obliged to take transfer of the property in its changed shape and/or with its changed extent and/or in its changed position; provided that if such change amounts to an increase or decrease of more than 7% (seven percent) in the extent of the property or in the length of any boundary line thereof as depicted on the layout plan defined in clause 1 above, the purchaser may cancel this agreement by written notice to the seller by not later than 14 (fourteen) days after the increase or decrease should reasonably have come to his attention, but will not be entitled to claim any damages or other amount from the seller.

#### 14. **CONDITION OF PROPERTY**

- 14.1.1 The property is sold in its present condition provided the seller will not be liable for any change in the property's condition which may occur or be caused after the date of this agreement, whether due to normal wear and tear or to erosion, climatic conditions or otherwise.
- 14.1.2 The parties agree that the seller will not be liable for any damage caused to the property due to the installation of the normal infrastructural services such as roads, kerb stones, sewerage works, electricity, water provisions, storm water drainage and the like. The purchaser accepts that the said activities will give rise to a certain degree of damage to the land and vegetation even if any infrastructural service is not placed or conducted directly over or under the property hereby sold.
- 14.2 As from the date of transfer, the purchaser is obliged at his own expense to keep the property neat and free of rubbish and excessive weeds and similar vegetation. The seller



may enforce this obligation against the purchaser. The purchaser will be liable at its own expense to remove any building rubble or similar material which may at any time (after the date of transfer) be dumped on the property. Furthermore, from the date of transfer the purchaser is obliged at his own expense to comply with all provisions of the local or any other competent authority which relate to the condition or neatness of the property, whether such provisions exist now or may be imposed hereafter. The purchaser may not effect any improvements to or alter the nature of the property prior to transfer.

15. **SURVEYOR'S PEGS**

The purchaser acknowledges and agrees that once the seller has pointed out the surveyor's pegs which constitute the corners of the property to the purchaser, the seller will not be liable to do so again.

16. **NO IMPROVEMENTS PRIOR TO TRANSFER**

Prior to the date of transfer the purchaser shall not, without the seller's prior written consent, be entitled to erect any further buildings or other structures on the property whether or not such buildings or other structures are of a permanent nature, nor will the purchaser be entitled to dig foundations or otherwise prepare the property for building. The seller will not be entitled to unreasonably withhold its consent to such a request by the purchaser but in granting any consent reasonably sought, will be entitled to grant it subject to such reasonable provisions as the seller may in its discretion deem fit.

17. **COMPLETION OF INSTALLATION OF TOWNSHIP SERVICES**

The seller is obliged to use its best endeavours to have the installation of services completed to the satisfaction of the local authority within a reasonable time, but the seller does not warrant or represent that the said installation will be completed by any date. The purchaser will not at any time



be entitled to cancel this agreement or to claim a reduction in the purchase price of the property or to claim damages by virtue of the fact that the installation of services has not been completed in a reasonable time.

18. **PROHIBITION AGAINST ALIENATION PRIOR TO TRANSFER**

Before the date of transfer the purchaser is not entitled without the seller's prior written consent to sell, donate, exchange or in any other manner to alienate or to burden the property. The seller is not entitled to unreasonably withhold its consent to any such alienation or burdening, but should the seller consent thereto, the purchaser shall remain bound to every provision of this agreement. Furthermore, the seller will be entitled to grant the said consent subject to such reasonable conditions as it in its discretion may deem fit.

19. **TRANSFER**

19.1 The seller's conveyancers will attend to the registration of transfer of ownership of the property in the purchaser's name. Subject to 19.2, the said registration will be attended to as soon as the full purchase price has been paid or a bankers' guarantee has been furnished for the purchase price (or balance thereof) and the transfer costs and all other amounts due by the purchaser in terms of this agreement, have been paid.

19.2 The seller records that ownership of the property cannot be registered in the purchaser's name before a township register has been opened in the Deeds Office and the township has thereafter been proclaimed as an approved township and a reasonable period of time has expired thereafter.

19.3 By not later than 7 (seven) days after being requested to do so by the seller's attorneys the purchaser is obliged to call at the office of the seller's attorneys to sign all documents required to effect registration of transfer of ownership of the property in his name.



20. **DELAY IN PROCLAMATION OF TOWNSHIP**

21. **COSTS**

The purchaser is liable for payment of the costs of and related to the registration of transfer of ownership of the property in his name. The purchaser is obliged to pay the said costs by not later than 7 (seven) days after being requested to do so by the seller's attorneys, [provided the purchaser will not be obliged to pay the costs earlier than one month before the date on which the seller's attorneys expect the opening of the township register in the Deeds Office]. The levy due to the Home Owners Association in respect of the first month after transfer shall be included in the costs collected by the transferring attorneys.

22. **SELLER'S RIGHT OF ACCESS**

The seller and/or its authorised agent/s and/or contractors shall at all times have the right to enter upon the property for the purpose of inspection and to conduct such work and to make such excavations and to temporarily deposit such material as the seller may determine or require for all purposes in connection with the installation of services or otherwise.

23. **AGENTS' COMMISSION**

23.1 The seller records that agents' commission is payable by it by virtue of this transaction. The seller is liable for payment of the said agents' commission.

23.2 Should this agreement be cancelled due to the purchaser's breach of any provision hereof, the estate agent will be entitled, but not obliged, to claim the commission from the purchaser.

23.3 For purposes of this clause 23 the abovementioned estate agent is enjoined as a party to the agreement by its signature of this document.



## 24. **GENERAL**

### 24.1 **Whole agreement**

This document contains the whole agreement between the parties and there are no prior or parallel agreements between them.

### 24.2 **Warranties and/or Representations**

No warranty has been given or representation made by or on behalf of the seller which induced the purchaser to enter into this agreement. It is specifically agreed that no representation made by any estate agent in respect of the property or any other aspect of this agreement will be binding on the seller.

### 24.3 **Writing**

No alteration, addition, deletion or consensual cancellation of or to this agreement (including this clause) nor the waiver of any right will be of any force unless reduced to writing and signed by the seller and the purchaser.

### 24.4 **Indulgence**

No indulgence granted by the seller in respect of the performance by the purchaser of any obligation undertaken in terms of this agreement will novate the agreement or prejudice the seller's rights in any manner.

### 24.5 **Domicilia and notices**

24.5.1 The parties respectively elect:

24.5.1.1 the street addresses appearing under their names on the first page of this document as their respective domicilia citandi et executandi;

24.5.1.2 the postal addresses appearing under their names on the first page of this document for purposes of notices and correspondence given in terms of this agreement.

24.5.2 Any notice given by prepaid registered mail to the purchaser care of his postal address elected in 24.5.1.2 above will be deemed to have been received by the purchaser and its contents to have come to the purchaser's notice on the 7th (seventh) day after the date on which it is posted in the Republic of South Africa or on the date upon which the notice is successfully transmitted to the purchaser's chosen telefax number, provided such telefax is transmitted between the hours 08h00 and 17h00, Mondays to Fridays (both included). The provisions of the previous sentence do not preclude a party from giving notice to the other party in any other way. Furthermore, any notice to a party contained in a correctly addressed envelope and which is delivered by hand to a responsible person during ordinary business hours at the address such party has chosen as his physical address, shall be deemed to have been received by the addressee and the contents thereof to have come to the addressee's notice upon such delivery.

24.5.3 A party is entitled to amend its chosen street address or postal address by giving written notice of the amendment to the other party, which notice shall be delivered or sent by prepaid registered post to the other party and will become binding on the other party upon receipt thereof.

24.6 **Breach**

Should the purchaser fail to comply punctually with any provision of this agreement, whether it be a material provision or not, the seller will be entitled to notify the purchaser in writing by prepaid registered mail addressed to the purchaser's address chosen in 24.5.1.2 or by letter handed or transmitted by telefax to the purchaser of the failure and make demand to the purchaser to rectify the failure within 7 (seven) days from the date on which the letter is handed or telefaxed to the purchaser or is posted by prepaid registered mail (as the case may be) and inform the purchaser of the steps the seller intends taking if



the breach is not rectified and should the purchaser fail to remedy the breach by the said date, the seller will then be entitled without prejudice to any other rights which it may have and without further notice or process:

- 24.6.1 to cancel this agreement and to claim damages from the purchaser and in such event the seller will be entitled to retain all amounts already paid by the purchaser in terms of this agreement as pre-estimated, liquidated damages or alternatively, to claim its actual damages from the purchaser in which latter event the seller will be entitled to retain all amounts already paid by the purchaser until its damages have been quantified and then to set off its damages against the said payments;  
or alternatively
- 24.6.2 to claim specific performance by the purchaser of all its obligations in terms of this agreement including the payment by the purchaser of the full outstanding balance of the purchase price in spite of the fact that the said balance of the purchase price may, but for this provision, not yet be due. In addition the seller will be entitled to claim damages from the purchaser.

24.7 **Personal liability of signatory**

- 24.7.1 If the purchaser is to be a company or close corporation still to be incorporated or is concluded as a stipulatio alterii for a trust to be formed, the person signing this document on behalf of the company or close corporation to be incorporated or trust to be formed, hereby warrants in his personal capacity that the company, close corporation or trust will timeously be properly incorporated or formed and will timeously take the necessary steps to make this agreement binding on it. Without prejudice to the seller's other rights, if transfer is delayed by the said signatory not undertaking the said steps timeously the interest contemplated in

6.1 will become payable by the purchaser for the period of the delay. Should the said warranty be breached, then without prejudice to the seller's other rights, the person signing this document on behalf of the said company, close corporation or trust will be personally obliged to carry out each and every obligation imposed upon the purchaser in this document.

24.7.2 In an endeavour to ensure the timeous incorporation/formation of the company, close corporation or trust, the signatory on behalf of the yet to be formed company, close corporation or trust is obliged to lodge the necessary documentation with the Registrar of Companies or Close Corporations or the Master of the High Court within 14 (fourteen) days of the date of this agreement. Formation of the company, close corporation or trust by later than 21 (twenty one) days after proclamation of the township or the date of this agreement, whichever is the later date, will be deemed to be not timeous and will amount to a breach of this provision giving rise to the liability of the purchaser to pay the interest as well as the personal liability contemplated in clause 24.7.1.

24.7.3 If the purchaser exists at the date of this agreement but is not a natural person or if the purchaser is a company, close corporation or trust which is still to be formed as contemplated in 24.7.1, then in both events the person signing this document on behalf of the purchaser hereby under renunciation of the benefits of the legal exceptions of excussion and division binds himself unto the Seller as surety for and co-principal debtor with the purchaser for the due and punctual performance by the purchaser of each and every obligation undertaken in terms of this agreement and furthermore warrants that he is properly authorised to bind the purchaser to this agreement.

## 25. **BOREHOLES**



Neither the purchaser nor any successor in title to the property will be entitled to drill a borehole on the property or otherwise extract subterranean water. This clause may be registered against the title deed of the property.

26. **COOLING OFF CLAUSE**

In the event of Section 29A on the Alienation of Land Act 68 of 1981 applying to this offer, then notwithstanding any other provision in this offer, the purchaser has the right to revoke this offer or terminate it by written notice to be delivered to the seller, or its agent within 5 (five) days after signature by the purchaser of this document. Such notice will have no effect unless it is signed by the purchaser or his agent acting on his written authority.

27. **SEVERABILITY**

Every paragraph and every clause contained in this document is severable from every other paragraph and/or clause and should any paragraph or clause (or part hereof) be void or voidable it will be regarded as pro non scripto and the rest of the agreement will remain of force.

28. **NATURE OF TOWNSHIP - CERTAIN ERVEN AFFECTED**

28.1 **Use rights**

The seller draws the attention of the purchaser to the draft Conditions of Establishment of the township defined in clause 1 above in which the use rights which will attach to the erven in the proposed township are described. The purchaser acknowledges that he has read the said conditions [in support of which acknowledgement the purchaser has signed the seller's copy thereof, which copy is in the seller's possession].

28.2 **Security walls / Fences / Entrances**



28.2.1 It is the seller's intention to develop the entire complex as one security township and to this end the seller intends erecting security walls and/or fences around the entire complex as set out in 1.7 and limiting the entrance to and exit from the complex at which points manual or electronic controls will be installed. The precise specifications of the security walls and/or fences and of the gates and electronic controls will be in the seller's discretion, but the seller records that they will be of a high standard and will accord with the norm at similar security estates in Buffalo City Municipality.

28.2.2 The seller reserves the right to increase the number of entrances/exits to the township/s or to relocate the entrances/exits of the township/s to other positions than those referred to in the conditions of establishment and/or shown on any brochure or on the layout plan or model of the township/s. The purchaser will not be entitled to cancel this agreement by virtue thereof or to claim damages or a reduction in the purchase price.

28.3 **Streets and Services**

The streets, parks or services in the proposed townships will vest in the local authority in terms of Ordinance 15 of 1985.

28.4 **Home Owners' Association ( the "Triple Point HOA" )**

28.4.1 The Triple Point HOA will be created as a Body Corporate in terms of the provisions of Section 29 of the Land Use Planning Ordinance, 15 of 1985.

28.4.2 Each owner of an erf in the township will become a member of the TRIPLE POINT HOA upon transfer of the erf into the owner's name. The purchaser hereby agrees to become such a member when the property hereby sold is registered in the purchaser's name.



28.4.3 Rules and Regulation (the code of conduct) have been prepared for the TRIPLE POINT HOA which will be binding on the association and its members. It will otherwise be conducted and controlled in terms of its constitution and code of conduct. It is recorded that copies of the TRIPLE POINT HOA's intended code of conduct is available and is attached hereto as annexure.....for purposes of identification. The Purchaser by his initialling of such code of conduct accepts and binds himself to such code of conduct.

The Triple Point HOA is entitled to add to, detract from or otherwise amend the said rules between the date of this agreement and the date of transfer even before any erf in the township has yet been transferred. All such additions and amendments will be binding on the purchaser.

28.4.4 As from the date of transfer the purchaser shall be liable for payment to the TRIPLE POINT HOA of a monthly levy as determined by the TRIPLE POINT HOA through its board of Trustees (which shall not in any month exceed the initial monthly levy defined in 1.20.1 for the first year after proclamation of the proposed township) and which levy shall be utilised, inter alia, towards payment of

- (i) electricity and water consumed in respect of common areas;
- (ii) the operation of the security fences, wall and entrances;
- (iii) maintenance and reparation and replacement of and payment of rates and taxes in respect of property belonging to the TRIPLE POINT HOA, such as the erf/erven on which the entrance/s are situated and the improvements on it/them;
- (iv) maintenance, reparation and replacement of the security walls / fences and the employment of security personnel;
- (v) management of accounts, investments and capital



- (vi) and for such other purposes as the constitution of the TRIPLE POINT HOA may prescribe;

The monthly amount levied from all purchasers is intended to cover all expenses of the TRIPLE POINT HOA and to create a reasonable provision fund and each purchaser's share is calculated as set out in the TRIPLE POINT HOA rules monthly.

28.4.5 The purchaser shall remain a member of the TRIPLE POINT HOA and be bound by its rules and regulations for as long as he remains the registered owner of the property.

28.4.6 The purchaser is not entitled to sell the property unless he shall in the written agreement of sale informed the new purchaser of the existence of the TRIPLE POINT HOA and furnished the new purchaser with a copy of the rules and regulations of the TRIPLE POINT HOA and shall procure in writing from the new purchaser an undertaking to be bound to the said rules and regulations from the date of transfer of the property in his name. No party who purchases the property from the purchaser without complying with the provision of the previous sentence will have any right to be present in the township or on the property purchased and the TRIPLE POINT HOA will be entitled to prevent such party from attempting to exercise any rights in respect of the property or from being present in the township. In order, inter alia, to enforce the foregoing provision, it is agreed that the purchaser shall require the prior written consent of the TRIPLE POINT HOA to sell or otherwise alienate and to transfer the property, but that the consent will not be unreasonably withheld. The consent may be withheld unless the aforesaid written undertaking by the intending purchaser is first obtained and furnished to the seller. See also clause 29 in this regard.



28.5 **Localised Home Owners' Association ("LOCALISED HOA")**

28.5.1 The purchaser is aware of the fact that the property hereby sold forms part of residential, commercial and hotel development which in 1.7 of this agreement above is defined as the "complex" and is hereinafter referred to as such. As the erf forms part of the Triple Point Estate Township, the Township, naturally, is also included in the said complex.

28.5.2 The complex will be governed by a home owners' association which will be created as a Body Corporate in terms of the provisions of section 29 of the Land use Planning Act, 15/1985 herein referred to as the "THE LOCALIZED HOA". THE LOCALIZED HOA will function in terms of its constitution and the rules and regulations issued by the Management committee in respect of the complex. The committee has an unfettered discretion in this regard and may issue such rules as they in their unfettered discretion deem necessary or merely convenient for the proper governance of the owners of properties in the complex. The rules may pertain to the controlling of entrance to and exit from the complex, the utilisation of roadways in the complex, the perimeter walling or fencing of the complex, internal fencing or walling of individual portions of the erf in the complex, the aesthetic appearance of all buildings, walls and other structures in the complex, neatness of portions of the erf in the complex, the control of sound in the complex (including music, lawnmowers and any other source of sound and/or noise) and generally such other matters as the committee in its unfettered discretion deem advisable or appropriate and in the interest of owners of portions of the erf and hence, of the complex.

28.5.3 The purchaser is obliged to pay a levy to the LOCALISED HOA, which levy will be collected by the LOCALISED HOA in order to fund its activities. The amount of the



levy will be determined from time to time by the members of the LOCALISED HOA in general meeting.

28.5.4 The seller is entitled to procure the registration of a title condition in the title deed of the property hereby sold to ensure that the relevant provisions of this clause 28 are made binding upon the purchaser's successors in title to the land. The title condition will be in such format as the seller reasonably determines and it will be registered in addition to the other title conditions provided for elsewhere in this agreement. The title condition will inter alia, provide that the committee of the LOCALISED HOA must issue a clearance certificate in order for the land to be transferred. The committee will be entitled to withhold such clearance certificate for so long as any amount levied by the LOCALISED HOA is due and payable by the owner of the relevant erf, whether that amount is due in respect of the monthly levy, a fine imposed on the owner or howsoever else. The title condition/s shall furthermore provide that every owner of the land shall automatically upon transfer of the land into his name become and remain a member of the LOCALISED HOA and be subject to its constitution until he ceases to be an owner and that neither the land or any subdivision thereof, nor any unit thereon shall be transferred to any person who has not bound himself in writing and otherwise to the satisfaction of the LOCALISED HOA to become a member of the LOCALISED HOA.

28.5.5 The purchaser is aware of the fact that because the property is included in the Triple Point Estate Township, it is also purchased subject to all the provisions of the TRIPLE POINT HOA referred to in clause 28.6 above.

28.6 **Conditions incorporated in title deed**



28.6.1 The property is sold subject to the following provisions which may be embodied as provisions in the title deed of the property in such form as may be required by the Registrar of Deeds:

- (i) The owner of the property or any sub-division thereof or any interest therein shall not be entitled to transfer it without the prior written consent of the TRIPLE POINT HOA, which consent shall not be unreasonably withheld.
- (ii) The owner of the property or any sub-division thereof or of interest therein shall automatically upon transfer of the property into his name become and shall remain a member of the TRIPLE POINT HOA and the Localised HOA and be subject to such constitutions until he ceases to be an owner as aforesaid. Neither the erf nor any sub-division shall be transferred to any person who has not bound himself in writing and otherwise to the satisfaction of the TRIPLE POINT HOA and the LOCALISED HOA to become a member of the TRIPLE POINT HOA and the LOCALISED HOA

28.6.2 The owner of the property records and agrees that the seller will be the sole and exclusive supplier to the TRIPLE POINT complex of which the property forms part ,of;

28.6.2.1 The electricity and water supply and services

28.6.2.2 Broad band cable networks for internet and other services

28.6.2.3 All gardening services to the complex both for private usage and for Body Corporate purposes

28.6.3 The seller is entitled to register any other conditions of or referred to in this agreement as a condition of title against the title deed of the property sold if it is reasonably necessary for the protection of any right or interest of the TRIPLE POINT HOA or of the seller.



## 28.7 **Boundary wall/s / fences**

28.7.1 Each erf situated on any boundary of the township will be made subject to the seller's right (which will be ceded to the TRIPLE POINT HOA) to have the boundary wall and/or fence of the township erected on the erf. The erection thereof will be done in such a way as to ensure the minimum encroachment onto the erf, but the specification and dimensions of the wall or fence are in the discretion of the seller, provided the height and width thereof is reasonable, bearing in mind the security purpose thereof. The seller and/or the TRIPLE POINT HOA is/are entitled at all times to enter upon the relevant erven in the township on which the security wall and/or fences is/are erected in order to maintain and/or repair and/or replace such wall and/or fence or to inspect it. To the extent that it may be necessary for the LOCALISED HOA to form any of the abovementioned functions with regard to a boundary wall or fence erected on the erf, the provisions of this clause are applicable, mutatis mutandis, in respect of the LOCALISED HOA as well.

28.7.2 The seller is responsible for erecting fences around the pasture erven and along the migration routes linking the pasture erven to one another, but the TRIPLE POINT HOA shall be obliged to maintain and/or replace such fences in accordance with the same specifications as to material and quantity thereof as those used by the seller in erecting the original fences.

## 28.8 **Architectural provisions**

The purchaser's attention is drawn to the fact that the rules and regulations of the TRIPLE POINT HOA and of the LOCALISED HOA specifically contain directives and/or restrictions which pertain to the architecture which may be applied in the design and/or appearance of buildings to be erected in the township. The purchaser accepts the restrictions and is



obliged to ensure that buildings erected in the township. The parties record that buildings to be erected in terms of the building plan and specifications (1.5.1, 1.6.1 and 1.6.2) conform to such directives and or restrictions. . In order to ensure compliance with this provision, the purchaser's further building plan/s have to be approved in writing by the TRIPLE POINT HOA and the LOCALISED HOA before building work commences and the said two associations are entitled to inspect the building work at all times. The said directives are attached hereto.

29. **ALIENATION OF PROPERTY - ERECTION OF IMPROVEMENTS**

29.1 The property is sold subject to the following conditions imposed and enforceable by the seller and which may be incorporated in the property's title deed in a form acceptable to the Registrar of Deeds. The seller is entitled to cede its right to enforce the said conditions to any party, including the TRIPLE POINT HOA, without prior notice to the purchaser or the purchaser's successor/s in title to the property. References to the purchaser in the following conditions are references also to the purchaser's successors in title to the property.

29.1.1 The purchaser shall not be entitled to sell, donate, exchange or in any other way alienate the property without the prior written consent of the seller or its nominee, or the TRIPLE POINT HOA once this has been formed

29.1.2 The provisions of this clause 29 shall be made binding on any party who intends taking transfer of the property and proof thereof shall be furnished to the seller (or its successor to these rights). The transfer of the property by the purchaser to the next transferee shall not take place unless and until the seller (or its successor to these rights) shall have issued a certificate to the Registrar of Deeds that all amounts due to the TRIPLE POINT HOA by the purchaser (as transferor) have been paid and that the intended transferee has bound himself in writing to the



provisions of this clause 29.

29.2 As soon as the TRIPLE POINT HOA comes into being, the seller will be deemed automatically to have ceded its rights in terms of 29.1 to the TRIPLE POINT HOA. The purchaser hereby authorises the seller to act on behalf of the purchaser as a member of the TRIPLE POINT HOA in accepting the said cession.

30. **RESALE OF THE PROPERTY**

30.1 Before the date of transfer the Purchaser is not entitled without the Seller's prior written consent to sell, donate, exchange or in any other manner to alienate or to burden the property. The Seller is not entitled to unreasonably withhold its consent to such alienation or burdening, but should the Seller consent thereto, the Purchaser shall remain bound to every provision of this agreement. Furthermore the Seller will be entitled to grant the consent subject to such reasonable conditions as it in its discretion may deem fit.

30.2 During the development period, the Purchaser shall not appoint or engage any estate agent or other person to market, advertise and/or sell the property other than the agent appointed by the Seller to market the development from time to time.

30.3 The Purchaser shall both before and after registration of transfer in his name and before and after the formation of the TRIPLE POINT HOA be required to utilize the Seller's Agent as the marketing agent when wishing to dispose of the subject matter.

31. **SUSPENSIVE CONDITIONS**

This agreement is subject to the following suspensive conditions, namely:

31.1 That the seller by not later than 3 (three) months from the date of signature of this document by the purchaser, decides in its unfettered discretion that the development of the township is financially feasible according to the seller's standards and judgement.

31.2 The seller deciding that it is financially and otherwise able to fulfil the conditions of





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

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**PURCHASER**