

AGREEMENT OF SALE

(WESTCAPE VILLAS)

CAPE TOWN COMMUNITY HOUSING COMPANY (PTY) LTD

(Registration Number 1998/022050/07)

(NCR Registration Number NCRCP4887)

of

VESTA HOUSE, THE FORUM, NORTHBANK LANE CENTURY CITY 7441

(hereinafter referred to as 'the SELLER')

a n d

Name _____

Identity Number _____

Income Tax No _____

Married in community of property to each other / Married out of community of property /

Married by Muslim rites / Unmarried (delete whichever is not applicable)

Presently residing at ('Residence at date of signature hereof'):

Tel (h) _____ (w) _____

Tel (cell) _____ Fax / Email _____

And

Name _____

Identity Number _____

Income Tax No _____

Married in community of property to each other / Married out of community of property /

Married by Muslim rites / Unmarried (delete whichever is not applicable)

Presently residing at ('Residence at date of signature hereof'):

Tel (h) _____ (w) _____

Tel (cell) _____ Fax / Email _____

(Hereinafter referred to as 'the PURCHASER/S')

1. INTERPRETATION

In this Agreement, unless the context indicates otherwise, the following expressions shall have the meanings assigned to them hereunder

1.1 THE PROPERTY

1.1.1 **ERF** _____

MEASURING: _____ SQUARE METERS

SITUATE AT (STREET ADDRESS):

As depicted on annexures "A" and "B" attached hereto.

1.1.2 **UNIT TYPE** _____

As depicted on annexure "A"

1.1.3 **SPECIFICATIONS** As per annexure "C"

1.2 THE CONVEYANCER

The transferring and bond attorneys appointed by the Seller, namely:

**A. Parker & Associates
Suite G06, Rostra House
The Forum
Northbank Lane
Century City
7441**

1.3 THE SELLER'S AGENTS

The Seller's appointed estate agents herein shall be _____ (the 'Agent').

2. SALE AND PURCHASE

Subject to the hereinafter mentioned terms and conditions, the Seller hereby sells to the Purchaser who hereby purchases the above Property.

3. PURCHASE PRICE AND GUARANTEES

3.1 The Purchase Price is R_____

(words)_____RANDS

Which is payable as follows:-

3.1.1 **DEPOSIT:** a deposit of R_____ is to be paid to A Parker & Associates, within **3** working days of Purchaser/s signature hereof.

3.1.2 **MORTGAGE BOND:** the Purchaser/s shall be required to obtain a mortgage bond of R_____ (see clause 14 hereof).

3.1.3 **CASH BALANCE:** R_____.

3.1.4 In the event of a **cash sale or cash balance**, the Purchaser shall, within **7** working days of Purchasers/s' signature hereof, pay the full purchase price or balance due, to the Conveyancer or lodge with the Conveyancer an unconditional and irrevocable guarantee which shall:

3.1.4.1 be issued by an Institution or Institutions as referred to in clause 13.1, the terms and conditions of which shall be acceptable to the Seller (or the Conveyancer on his behalf); and

3.1.4.2 secure payment of the said balance to the Seller and/or his nominee/s on registration of transfer of the Property into the name of the Purchaser/s and registration of a mortgage bond, if applicable.

3.2 The Purchaser/s acknowledges that, subject to the fulfillment of any suspensive conditions of the agreement, he/she is financially able to fulfill his/her obligations herein.

4. ACKNOWLEDGEMENTS BY PURCHASER

4.1 The Purchaser/s acknowledges:

4.1.1 and warrants that he/she has inspected the Property and acquainted himself/herself with the nature, condition, beacons, extent and locality of the Property and **annexures "A" to "C"** hereto; and

4.1.2 that he/she will have no claim whatsoever against the Seller for any deficiency in the size of the Property which may be revealed on any re-survey nor shall the Seller benefit from any possible excess; and

4.1.3 that he/she has been fully informed as to all materials being used in the construction of the dwelling on the Property, especially regarding the walling system.

4.2 The Purchaser/s shall not have any claim of any nature against the Seller for any loss, damage or injury which the Purchaser/s or his/her agents may directly or indirectly suffer arising out of any cause either wholly or partly beyond the Seller's control or arising out of any act or omission by any other purchaser in the development.

4.3 The Property is sold:

4.3.1 subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Property or any town planning scheme applicable thereto.

4.4 The Purchaser/s acknowledges that the meaning and consequence of the clauses of this Agreement have been explained to them.

- 4.5 If there is more than one Purchaser they will be held jointly and severally liable for all the obligations in terms hereof.

5. **POSSESSION, RISK AND OWNERSHIP**

With effect from the date of occupation or registration of transfer, whichever occurs earlier, as the case may be, all the benefits and risks of ownership of the Property shall pass to the Purchaser/s; and the Purchaser/s shall be liable for all rates and taxes levied thereon; and the Purchaser/s shall similarly become liable for and refund to the Seller of any rates and taxes advanced by the Seller in respect of any period after the said date.

6. **OCCUPATION AND OCCUPATIONAL INTEREST**

- 6.1 Occupation of the Property shall be given by the Seller to the Purchaser/s:

6.1.1 on date of registration of transfer; or

6.1.2 earlier, by special written agreement between the Seller and Purchaser/s; or

6.1.3 within 14 calendar days of the Seller calling upon the Purchaser/s, in writing, to take occupation. In the event that the Purchaser/s fail to take occupation when called upon to do so by the Seller in accordance with the provisions of this clause 6.1.3, such failure to take occupation shall be deemed to be a material breach of this agreement.

- 6.2 In the event that occupation occurs prior to date of registration of transfer, for whatever reason, monthly occupational interest equal to 1% of the purchase price, calculated pro rata, will be paid by the Purchaser/s to the Conveyancer, the first payment being due 24 hours prior to occupation, and thereafter monthly on or before the first day of every month.

7. TRANSFER

- 7.1 Registration of transfer shall take place as soon as possible after fulfillment of all suspensive conditions.
- 7.2 The (*indicate Seller or Purchaser*) _____ shall be liable to pay all transfer costs and bond registration costs (excluding banks' initiation and assessment fees) in connection with the transfer of the Property into the name of the Purchaser/s, including conveyancing fees, vat and local authority clearance fees.
- 7.3 The Purchaser/s shall be liable to pay for any bond initiation and assessment fees charged by the bank.
- 7.4 The Seller and the Purchaser/s undertake immediately upon being requested to do so to sign all documents required to be signed in connection with the transfer and bonds to be registered in terms of this Agreement.
- 7.5 Transfer of the Property shall be affected by the Conveyancer within a reasonable time after the Purchaser/s has complied with all suspensive conditions herein.

8. BREACH

- 8.1 Should the Purchaser/s fail to fulfil any of the Purchaser/s' obligations under this agreement and fail to comply with these obligations within 5 (five) working days after a letter has been handed to the Purchaser/s, has been sent by way of facsimile or has been sent by registered post to the Purchaser/s at the Purchaser/s' chosen address informing the Purchaser of his/her failure and calling upon him/her to fulfil the obligation in question within a period of 5 (five) working days, then the Seller shall be entitled, without prejudice to any other rights the Seller may have in law:
- 8.1.1 to claim immediate payment of all amounts owing under this agreement, which amounts shall be deemed to become due and payable forthwith; or
- 8.1.2 to terminate this agreement, obtain immediate repossession of the Property and to eject the Purchaser/s there from; and

- 8.1.3 to retain as "rouwkoop" and/or as liquidated damages, all amounts paid by the Purchaser/s under this agreement; or
- 8.1.4 to recover an amount equivalent to 10% (ten per cent) of the Purchase Price, together with an amount equal to any agent's commission which may be payable to or have been paid by the Seller, and Conveyancer's wasted costs; or
- 8.1.5 to recover from the Purchaser/s the actual damages sustained by the Seller by reason of the Purchaser/s' default, and to retain all amounts paid by the Purchaser/s pending the determination of such damages.
- 8.2 If the Seller elects to institute action for the balance of the Purchase Price or any other monies which may be owing, including the taking of a judgment against the Purchaser/s, it shall not thereby be debarred from cancelling this agreement if the judgment is not satisfied within 30 (thirty) days of it being granted.
- 8.3 If the agreement is cancelled as provided for above, the Purchaser/s and all persons claiming a right to occupation through the Purchaser/s, shall forthwith be obliged to vacate the Property and to deliver it to the Seller in the same order and condition in which he received it. In this regard, it is hereby specifically recorded, that no lease or other right of occupation in favour of the Purchaser/s shall be created or come into existence by virtue of this agreement.
- 8.4 If however, the Purchaser/s dispute the Seller's right to terminate this agreement, then pending the determination of such dispute, the Purchaser/s shall be obliged to continue to pay all amounts payable by him/her in terms of this agreement on the due dates and the Seller shall be entitled to accept such payments without prejudice to its rights of cancellation as aforesaid. If such dispute is decided in favour of the Seller, then such amounts so received by the Seller after cancellation as aforesaid shall be deemed to have been paid to the Seller prior to cancellation.
- 8.5 It is specifically recorded that should any breach by the Purchaser/s occur at a time critical to the registration procedure, the Seller shall be entitled to require the Purchaser/s to remedy such breach within

a period of 24 (twenty four) hours and not within the 7 (seven) day period as provided for above.

9. **PURCHASER/S ADDRESS AT WHICH NOTICES OR LEGAL PROCEEDINGS MAY DELIVERED OR SERVED**

9.1 The Parties choose the following addresses at which address all notices and legal process in relation to this Agreement or any action arising here from may be effectually delivered and served:

9.1.1 the Seller: the address as reflected on the face of this Agreement.

9.1.2 the Purchaser/s:

9.1.2.1 prior to the date of occupation of the Property the address of the Purchaser/s shall be the 'Residence at date of signature' hereof, as reflected on the face of this Agreement;

9.1.2.2 after date of occupation of the Property the address of the Purchaser/s shall be the street address of the Property as described in clause 1.1.1 above.

9.2 Any notice given by one of the parties to the other ("the addressee") which:

9.2.1 is delivered by hand to the addressee's address shall be presumed until the contrary is proved to have been received by the addressee on the date of delivery; or

9.2.2 is posted by prepaid registered post from an address with the Republic of South Africa to the addressee at the addressee's address shall be presumed until the contrary is proved to have been received by the addressee on the fifth day after the date of posting.

9.2.3 is forwarded by facsimile transmission, receipt is presumed 24 hours after it has being transmitted.

9.3 Either party shall be entitled, on written notice to the other, to change their chosen address.

9.4 It is specifically recorded that the Purchaser/s consents to the delivery of any notices or process by means of or via telegram or registered mail.

10. CESSION

The Purchaser/s is not entitled, without the written consent of the Seller, to sell, cede and make over any of his/her rights in terms of this Agreement prior to the date of registration of the property. Notwithstanding anything to the contrary contained herein; in the event that the Purchaser/s accepts another offer on the Property in contravention of this clause 10, the Seller may immediately, within its sole and exclusive discretion, deem such action by the Purchaser/s as a breach not capable of being remedied and cancel forthwith.

11. GENERAL

11.1 The parties undertake to do all such things as may be necessary, incidental or conducive to the implementation of the terms, conditions and import of this Agreement.

11.2 No variation of the terms and conditions of this Agreement or any consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.

11.3 No indulgence which either party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have risen in the past or which might arise in the future.

12. ESTATE AGENT'S COMMISSION

12.1 Commission in the amount of 5% of the total Purchase Price, exclusive of Vat, shall be paid by the Seller's Conveyancer to the relevant Agent, within 48 hours of date of registration of transfer of the Property.

12.2 The aforementioned commission will be earned upon the signature of this Agreement by both the Purchaser and the Seller and the fulfillment or waiver, as the case may be, of all suspensive

conditions contained herein; save that commission shall not be payable to the Agent in the event of a consensual cancellation between the Purchaser/s and the Seller, or termination of this Agreement at the instance of the Seller, for whatever reason.

- 12.3 The Purchaser/s shall be liable to the Agent for any commissions due to the Agent in the event of the termination of this agreement as a result of a default on behalf of the Purchaser/s. The Agent shall however require the written consent of the Seller before commencing any action for the recovery of commission from the Purchaser/s.

13. SUSPENSIVE CONDITIONS

This Agreement is subject to the following condition(s):

- 13.1 The Purchaser/s (through the Seller's nominated mortgage originator on behalf of the Purchaser/s) obtains **final approval**, within **15 working days from date of Seller's signature (which period may be extended by the Seller)** hereof of a mortgage loan, of not less than:

R _____, (_____ RAND),

to be registered over the Property at such rate of interest and on such conditions as are stipulated by the Institution to which application for the loan is made.

- 13.2 This suspensive condition shall be deemed to have been fulfilled even is such loan is approved subject to the Purchaser's spouse interposing them self as surety for and co-principal debtor in solidum with the Purchaser for the fulfillment of all the Purchaser's obligations under the loan.

- 13.3 This Agreement shall operate irrevocably and in rem suam as a power of attorney in favour of the Seller granting the Seller power to apply for a mortgage bond on behalf of the Purchaser/s for the loan contemplated herein. The Purchaser/s hereby undertakes to timeously do all such things and to sign all such documents as may be necessary and/or requisite in order to apply for and procure the approval of the said loan from a bank, building society or the financial institution and to furnish written proof to the Seller of the granting or refusal thereof. A mortgage originator, appointed by the Seller shall contact the Purchaser/s to obtain the necessary information required for the loan application and to this end, the

Purchaser/s irrevocably agrees to use the bond originator appointed by the Seller to procure the mortgage finance required herein.

- 13.4 In the event that the mortgage originator has exhausted all means of obtaining the applicable final bond on behalf of the Purchaser/s, the Purchaser/s will have 7 working days from date of being notified in writing of such failure, to provide a guarantee or the cash balance of the Purchase Price to the Conveyancer, failing which the offer shall automatically lapse.

14. SIGNATURE & PURCHASER/S' RIGHT OF TERMINATION

- 14.1 It is recorded that this document is intended to be signed firstly by the Purchaser/s and thereafter by the Seller.
- 14.2 If the Property constitutes land as defined in the Alienation of Land Act 68 of 1981 as amended by the Alienation Act No 103 of 1998 ("the Act") for which purpose land includes, and whether or not registrable, used or intended to be used mainly for residential purposes;
- 14.3 the Purchase Price of the Property or the price offered for the property by the Purchaser/s does not exceed R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND) or such higher amount as the Minister of Industries, Commerce and Tourism may prescribe in order to counter the effect of inflation; or
- 14.4 the Purchaser/s is not a trust or person other than a natural person; or
- 14.5 the Purchaser/s has not purchased the land at a publicly advertised auction; the Seller and Purchaser/s have not previously entered into a Deed of Alienation of the Property on substantially the same terms and those herein contained; or
- 14.6 the Purchaser/s has not reserved the right in terms of this Agreement to nominate or appoint any other person to take over the rights and obligations of the Purchaser/s as stipulated herein; or the Purchaser/s have not exercised an option in respect of the Property which was open for exercise for a period of at least 5 (five) business days;

then the Purchaser/s shall be entitled to cancel this Agreement, or the offer constituted by his/her signature hereto, as the case may be, within 5 (five) working days after the signature date by written notice delivered to the Seller or its agent.

15. SPECIAL CONDITIONS

15.1 Should there be any delay in effecting transfer by reason of any default attributable to the Purchaser/s; the Purchaser/s shall pay to the Seller interest on the balance of the Purchase Price, at the ruling prime rate plus 2% percent per annum for the period of the delay.

15.2 In the event of this Agreement being cancelled as contemplated in clause 14, this Agreement will automatically lapse, and become null and void. In such event, the deposit paid and any interest accrued thereon, will be refunded to the Purchaser within 48 hours of such cancellation.

15.3 The Purchaser/s warrant that he/she/they will not until transfer of the Property be in default of any income or other tax law obligations to the South African Revenue Services which will serve to delay the obtaining of a transfer duty receipt / exemption or serve to cause the financial institution granting finance to withdraw the finance offered.

16. ELECTRICAL CERTIFICATE

The Seller shall, at its cost, have all electrical installations on the property inspected and certified in terms of the Occupational Health & Safety Act No 85 of 1933 and arrange, at its own cost, where necessary, for the repair or replacement thereof, prior to transfer, in order to obtain such certificate.

17. LEGAL COSTS

In the event of legal action being instituted by the Seller against the Purchaser/s in pursuance of this Agreement, the Purchaser/s will be liable for all legal costs incurred by the Seller, calculated on an Attorney and own client scale, and including 10 % collection commission.

18. DEFECTS

- 18.1 The Seller shall remedy all patent defects in the Property (for which the Seller is liable) reported within 6 (six) months of occupation in writing to the Seller.
- 18.2 The Seller shall remedy any latent structural defects other than those referred to in clause 18.4, manifest on the Property within 5 (five) years from the date of completion of construction of the house or the Occupation Date whichever is the earlier and provided that the Seller has received the Purchaser's written notification thereof within that period.
- 18.3 The Seller shall remedy all leaks in the roof of the Property which appear within one year of the date of construction or the Occupation Date whichever is the earlier provided that the Seller has received written notice by the Purchaser hereof within that period.
- 18.4 The Seller shall remedy such latent, patent and roof defects as are contemplated in clauses 18.1, 18.2 and 18.3 above, at its own cost and expense within the periods referred to in this clause from the date of completion of the construction or the Occupation Date, whichever is the earlier, provided that such repairs are not due to negligent and/or willful and/or malicious damage to the Property resulting from the Purchaser's conduct.
- 18.5 The Purchaser may not affect any repairs to the Property, intended for the account of the Seller, without the written consent of the Seller first being obtained.

19. DIRECT MARKETING

Notwithstanding any other provision contained in this Agreement, and only to the extent that this Agreement is concluded as result of direct marketing as that term is defined in section 1 of the Consumer Protection Act 68 of 2008, the Purchaser/s shall be entitled to terminate this agreement on written notice to the Seller without penalty or charge, within in 5 (five) business days of the later of the date on which this Agreement was concluded or the Property being delivered to the Purchaser/s, provided always that the Seller shall be entitled to charge the Purchaser a reasonable amount for use of the Property during the time it was in the possession of the Purchaser and an amount for the necessary restoration costs to render the Property fit for re-sale.

Signed at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

PURCHASER

2. _____

**Consent of spouse if married in
community of property**

Signed at _____ on this _____ day of _____ 20__

AS WITNESSES:

1. _____

**DULY AUTHORISED
REPRESENTATIVE
OF THE SELLER**

2. _____