

**AGREEMENT OF SALE**

**“DIGTEBY ESTATE”**

**SCHEDULE OF PARTICULARS**

**1 SELLER**

1.1 Full name: \_\_\_\_\_

1.2 ID number/registration number: \_\_\_\_\_

1.3 Marital status (if the Purchaser is a natural person, married status whether with or without antenuptial contract):

\_\_\_\_\_

1.4 If the Purchaser is a company, close corporation or a trust, the full names of the representative signatory:

\_\_\_\_\_

1.5 Business address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.6 Residential address: \_\_\_\_\_

\_\_\_\_\_

1.7 Postal address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1.8 E-Mail: \_\_\_\_\_

1.9 Telephone number: \_\_\_\_\_

1.10 Mobile number: \_\_\_\_\_

1.11 Facsimile number: \_\_\_\_\_

## 2 THE PURCHASER

2.1 Full name: \_\_\_\_\_

2.2 ID number/registration number: \_\_\_\_\_

2.3 Marital status (if the Purchaser is a natural person, married status whether with or without antenuptial contract):

\_\_\_\_\_

2.4 If the Purchaser is a company, close corporation or a trust, the full names of the representative signatory:

\_\_\_\_\_

2.5 Business address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.6 Residential address: \_\_\_\_\_

\_\_\_\_\_

2.7 Postal address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.8 E-Mail: \_\_\_\_\_

2.9 Telephone number: \_\_\_\_\_

2.10 Mobile number: \_\_\_\_\_

2.11 Facsimile number: \_\_\_\_\_

**3 THE PROPERTY**

Erf No. \_\_\_\_\_ Vlotenburg, measuring \_\_\_\_\_ square metres,

**4 PURCHASE PRICE**

Total price:

R \_\_\_\_\_ ( \_\_\_\_\_  
\_\_\_\_\_ )

(*words*).

**5 DEPOSIT**

Amount:

R \_\_\_\_\_ ( \_\_\_\_\_  
\_\_\_\_\_ ) (*words*),

payable within 7 (seven) days after the signature date.

(The deposit shall be equal to 10% (ten percent) of the amount recorded in 2 above)

**6 BOND**

Amount required:

R \_\_\_\_\_ ( \_\_\_\_\_  
\_\_\_\_\_ ) (*words*).

(If no amount is specified it shall be deemed that a bond is not required and the provisions of the agreement of sale relating to bond finance shall then not apply)

## **7 AGENT**

- 7.1 Name: Pam Golding Properties
- 7.2 Address: Corner of Dorp- and Bird Street,  
Stellenbosch, 7600
- 7.3 Telephone number: (021) 887 1017

(If no name, address and telephone number is recorded or if any completed name of any agent should be deleted, it shall be deemed that no agent was the effective cause of the sale and the provisions of clause 14 of the agreement of sale shall not apply).

## **8 CONVEYANCERS**

- 8.1 Name of firm:
- 8.2 Business address:
- 8.3 Postal address:
- 8.4 Telephone number:
- 8.5 Facsimile number:
- 8.6 Name of contact person:
- 8.7 Trust account details:

## 1 INTERPRETATION

1.1 In this agreement unless the context otherwise requires –

1.1.1 “**the/this agreement**” means the agreement contained in this document which incorporates the schedule and all annexures attached hereto;

1.1.2 “**agent**” means the agent identified in item 7 of the schedule;

1.1.3 “**architectural guidelines**” means the architectural guidelines prepared for the development, a printed copy of which is available to the purchaser and which guidelines are also publicly available for consideration on the following website address, namely [www.digtebystate.co.za](http://www.digtebystate.co.za);

1.1.4 “**the Association**” means the Home Owners’ Association to be established for the development as contemplated in this agreement;

1.1.5 “**business day**” means any day which is not a Saturday, Sunday or South African public holiday;

1.1.6 “**conditions of subdivision**” means the conditions of rezoning and subdivision imposed or as may be imposed by the competent authorities when approving the rezoning and subdivision of Remainder Farm 1307 Stellenbosch;

1.1.7 “**conveyancers**” means the attorneys identified in item 8 of the schedule;

1.1.8 “**date of transfer**” means the date upon which the property is registered in the name of the purchaser in the Cape Town Deeds Registry;

- 1.1.9            “**developer**” means Digteby Trust, no. IT 3793/2006;
- 1.1.10           “**development**” means the development on the Remainder Farm 1307 Stellenbosch which will take place substantially in accordance with the site development plan and which will be known as “Digteby Estate”;
- 1.1.11           “**parties**” means the seller and the purchaser;
- 1.1.12           “**prime rate**” means the publicly quoted annual rate of interest from time to time levied by Nedbank Limited on the unsecured overdrawn current accounts of its most favoured private sector corporate customers, as certified by any manager of that bank (whose authority and/or appointment and/or qualification it shall not be necessary to prove);
- 1.1.13           “**property**” means the property identified in the schedule and which is shown on the site development plan and the erf diagram attached hereto marked Annexure “B”;
- 1.1.14           “**purchase price**” means the purchase price stipulated in item 4 of the schedule;
- 1.1.15           “**purchaser**” means the party identified in item 2 of the schedule;
- 1.1.16           “**Remainder Farm 1307 Stellenbosch**” means the Remainder of Farm No. 1307 Stellenbosch, situate in the Municipality and division of Stellenbosch [in extent 11,516 (eleven comma five one six) hectares];
- 1.1.17           “**schedule**” means the schedule of particulars comprising the first four pages of this agreement and which forms part of this agreement;
- 1.1.18           “**seller**” means the party identified in item 1 of the schedule;

- 1.1.19            “**signature date**” means the date upon which this agreement is signed by the party who signs same last in time;
- 1.1.20            “**site development plan**” means the plan depicting the proposed development of Remainder Farm 1307 Stellenbosch which is attached hereto marked Annexure “A”;
- 1.1.21            “**suspensive conditions**” means the suspensive conditions referred to in clause 3 of this agreement;
- 1.1.22            “**VAT**” means Value Added Tax payable in terms of the VAT Act;
- 1.1.23            “**VAT Act**” means the Value Added Tax Act, No. 89 of 1991 as amended.
- 1.2                Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include feminine and words importing persons shall include partnerships, bodies corporate, trusts and close corporation.
- 1.3                If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.4                The headnotes 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.
- 1.5                Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.6 Schedules or annexures to this agreement shall be deemed to be incorporated in and form part of this agreement.

1.7 If any period is referred to in this agreement by reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day.

## **2 SALE**

The seller hereby sells and the purchaser hereby purchases the property, subject to the terms and conditions contained in this agreement.

## **3 SUSPENSIVE CONDITIONS**

3.1 Save for the provisions of clauses 1, 2, this clause 3 and clauses 16 to 23 (both inclusive), this agreement is subject to the fulfilment of the following suspensive condition, namely that, if applicable, the purchaser obtains a loan from a bank or other financial institution in the sum stipulated in the schedule (or such lesser amount as the purchaser may agree to accept) against the security of a first mortgage bond over the property.

3.2 If the suspensive condition provided for in clause 3.1 is not fulfilled within 21 (twenty one) days after the signature date or within such extended period as the seller in its sole discretion may allow, which extension shall not exceed a further 90 (ninety) days, then and in such event either party shall be entitled to resile from this agreement by giving written notice to such effect to the other party.

3.3 Should either party exercise its right to resile from this agreement under the circumstances as contemplated in clause 3.1, the parties shall each be

restored as near as may be possible to the position each would have been in had this agreement not been entered into at all.

- 3.4 The purchaser shall take all steps reasonably necessary to procure the timeous fulfilment of the suspensive condition.

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

- 4.1 The purchase price shall be paid by the purchaser to the seller as follows –

4.1.1 a deposit in the sum stipulated in item 5 of the schedule shall be paid within the period as stated in the said item of the schedule; and

4.1.2 the balance against transfer.

- 4.2 The purchaser, within 10 (ten) business days of being called upon by the conveyancers to do so, shall deliver to the seller and/or the conveyancers a guarantee or guarantees by a bank or other financial institution reasonably acceptable to the seller for payment of the purchase price in accordance with the provisions of this agreement. Such guarantee shall be expressed to be payable against written notification from the conveyancers of cancellation of all existing mortgages over the property, registration of transfer and registration of the mortgage bond (if any) referred to in clause 3.1 of the standard terms and conditions and shall not be subject to any other conditions.

- 4.3 The deposit referred to in clause 4.1.1 above, as well as any other payments which the purchaser may make to the conveyancers in terms of this agreement, shall be held in trust by the conveyancers and shall be paid to the seller against transfer. The conveyancers are hereby irrevocably authorised to invest such deposit in an interest bearing account with a bank or other

financial institution of their choice. The conveyancer shall be entitled to debit against the interest an administration fee in respect of any funds so received and invested in accordance with the guidelines of the Law Society of the Cape. All interest earned on funds so invested by the conveyancer shall accrue to the purchaser.

- 4.4 All amounts payable by the purchaser in terms of this agreement shall be paid to the conveyancers free of exchange or commission and without deduction or set-off, in cash or by means of a bank guaranteed cheque or cheque drawn by a South African registered commercial bank.

## **5 VOETSTOOTS, TITLE CONDITIONS AND CONDITIONS OF APPROVAL**

- 5.1 The property is sold voetstoots and the seller gives no warranties with regard thereto, whether express or implied.
- 5.2 The seller shall not be responsible for pointing out or indicating the position of any surveyor's beacons or pegs in respect of the property.
- 5.3 The property is sold subject to all such conditions as are mentioned and/or referred to in the title deed/s relating to the property and to such conditions as may have been or may hereafter be imposed by the competent authorities when approving the rezoning and subdivision of Remainder Farm 1307 Stellenbosch.
- 5.4 The purchaser acknowledges and agrees that he has satisfied himself as to the condition of the property and it is accordingly agreed that the seller shall not be required to level the property or carry out any earthworks or landscaping in respect thereof.

5.5 The seller gives no warranties and makes no representations as to the suitability of the soil conditions on the property for the erection by the purchaser of his residence thereon.

## **6 POSSESSION**

6.1 Possession of the property shall be given to and taken by the purchaser on date of transfer.

6.2 All risk and benefit in the property shall pass to the purchaser on date of transfer.

6.3 The purchaser shall on demand refund to the seller an amount equal to all rates and taxes or other proprietary charges and/or levies pre-paid by the seller in relation to the property for a period beyond the date of transfer.

6.4 The purchaser acknowledges that after the taking occupation of the property, building operations may be in progress on the development and that the purchaser may suffer inconvenience, noise and dust as a result thereof. The purchaser shall have no claims against the seller arising from any such inconvenience, noise or dust.

## **7 TRANSFER**

7.1 Transfer shall be effected by the conveyancers as soon as reasonably possible after the fulfilment of the suspensive condition, if applicable. If this agreement is not subject to any suspensive condition, transfer shall be effected by the conveyancers as soon as reasonably possible after the signature date.

7.2 The purchaser shall be responsible for, and shall within 5 (five) business days of being called upon by the conveyancers to do so –

7.2.1 pay to the conveyancers the transfer fees incidental to the transfer of the property, determined in terms of the recommended tariff of the Law Society of the Cape, together with all disbursements and deeds office fees; and

7.2.2 furnish the conveyancers with such information and sign such documents as may be reasonably required by the conveyancers for purposes of transfer.

7.3 In the event that the purchaser should fail to comply with its obligations in terms of clause 7.2 and this should result in a delay in the transfer of the property being registered in the name of the purchaser, the purchaser shall be obliged to pay to the seller interest on the purchase price at prime rate plus 2% (two percent) for the period of such delay. The determination of the period of such delay by the conveyancers shall be final and binding on the parties.

7.4 The purchaser shall have no claims against the seller for any loss or damage suffered by the purchaser arising out of any delay in transfer, nor shall any such delay effect the purchaser's liability for payment of any interest in terms of this agreement.

## **8 VLOTTENBURG UPGRADING SCHEME**

8.1 It is recorded that the designated area situate in the north-eastern corner of the development, as shown on the site development plan, does not form part of the development.

8.2 The land referred to in clause 8.1 has been transferred to the Municipality of Stellenbosch who will undertake a housing development on the said land.

## **9 HOME OWNERS' ASSOCIATION**

9.1 A Home Owners Association shall be established for the development in terms of Section 29 of Land Use Planning Ordinance (Cape Ordinance No. 15 of 1985), as amended, for the benefit of all owners of erven in the development and to control and other maintain roads, services and amenities within the development.

9.2 The constitution of the Home Owners Association shall be substantially in accordance with the draft constitution of which a printed copy has been made available to the purchaser and which is also publicly available on the website [www.digtebystate.co.za](http://www.digtebystate.co.za).

9.3 The purchaser shall be and remain a member of the Association for as long as he is the registered owner of the property and shall –

9.3.1 be responsible for and pay promptly on due date all levies and other charges as may be payable to the Association in accordance with its memorandum and articles of association;

9.3.2 comply with (and procure that all other occupants of the property comply with) the terms of the Constitution of the Association, as well as any house or conduct rules which may be adopted by the Association from time to time.

9.4 Upon registration of transfer of the property in the name of the purchaser a title deed condition shall be registered against the title of the property in terms of which the property shall not be transferred without the written

consent of the Association in accordance with the provisions of its constitution.

## **10 BUILDING REQUIREMENTS**

- 10.1 No building or structure may be erected on the property and/or the external appearance (including the colour) of any existing or future building or structure may not be changed unless the architectural design plans and specifications (including materials) of such building or structure conform to the provisions of the architectural guidelines, as determined and approved by the Association in its sole discretion.
- 10.2 All building and structures shall be built in a good and proper workmanlike manner and strictly in accordance with the plans and specifications approved in accordance with clause 10.1 above.
- 10.3 The property and all improvements thereon shall be kept and maintained in a neat and tidy condition to the satisfaction of the Association.
- 10.4 The purchaser and/or his successors in title shall, within a period of 36 (thirty six) months after the date of the first registration of transfer of the property from the developer to the purchaser (or such later date as the Association may direct in writing), complete building operations in respect of a dwelling house on the property (the plans and specifications of which shall have been approved in terms of clause 10.1 above).
- 10.5 If the purchaser fails to comply with the provisions of this clause 10.4, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this agreement or in terms of its constitution and/or at law and at its election, to impose a penalty levy upon the purchaser, equal to 5 (five) times the ordinary levy imposed on owners of erven within the

development. Such penalty levy shall be payable monthly, for as long as the purchaser is in default of the provisions of this clause.

## **11 LIMITATION OF USE ON PROPERTY**

The property may be used solely for residential purposes. Without limiting the generality of the foregoing no auction, business or profession may be conducted from the property without the prior written consent of the developer or, once established, the Association.

## **12 AGENTS**

12.1 The purchaser warrants to and in favour of the seller that the purchaser was introduced to the seller and the property by the agent.

12.2 The seller shall be responsible for payment of the commission in the amount of R\_\_\_\_\_ (inclusive/exclusive of VAT) of the agent, which commission shall be deemed to have become due and payable upon the successful implementation of this transaction.

12.3 The purchaser indemnifies the seller against any claims from any third parties for commission arising from a breach by the purchaser of its warranty contained in clause 12.1.

## **13 MORTGAGE BOND APPLICATION**

13.1 In the event that the purchaser should have indicated on the schedule that this agreement is to be subject to the purchaser being successful in obtaining approval for a loan from a bank or other recognised financial institution, then:

13.1.1 the purchaser shall promptly furnish such information and sign such application forms and other documentation as may be reasonably required by any financial institution for purposes of considering an application for a loan. The purchaser hereby irrevocably authorises the agent to apply for the required loan on his behalf, provided that nothing done or omitted to be done by the agent shall limit or detract from the purchaser's obligations in terms of this clause;

13.1.2 the suspensive condition contained in clause 3.1 shall be deemed to have been fulfilled if a bank or other financial institution notifies the seller and/or the purchaser and/or the agent in writing that it is prepared to grant the required loan to the purchaser on the same terms and conditions as are generally applied by such bank or financial institution;

13.1.3 if the purchaser is a company, close corporation, trust or other legal entity (other than a natural person) and the loan is granted subject to the condition that the directors and/or shareholders and/or members and/or trustees (as the case may be), or if the purchaser is a married person and the loan is granted subject to the condition that the purchaser's spouse binds him/herself as surety for and co-principal debtor with the purchaser arising from or in connection with such loan, then such loan shall be deemed to have been unconditionally granted.

## **14 OFFER TO PURCHASE**

14.1 This agreement, once signed by the purchaser, shall constitute an offer to purchase made by the purchaser to the seller which shall be open for acceptance by the seller within 7 (seven) days of date of signature by the purchaser.

14.2 The acceptance by the seller of the purchaser's offer to purchase may be communicated by the seller to the purchaser or the agent telephonically or in writing. Notification by the seller to the agent of such acceptance shall constitute notification to the purchaser.

**15 FURTHER APPLICATION FOR REZONING AND SUBDIVISION:**

15.1 The Purchaser acknowledges that the developer has procured the approval from the relevant authorities in order for them to pass transfer of erven 40 – 49 indicated on the site development plan, as initially contemplated.

15.2 The purchaser shall fully disclose the contents of this clause 15 to all successors in title.

**16 SURETYSHIP**

If the purchaser is a trustee, close corporation, company or other legal entity other than a natural person, the person signing this agreement binds himself in his personal capacity and under renunciation of the exceptions of excussion and division as surety for and co-principal debtor with the purchaser to the seller for the due performance by the purchaser of all of its obligations arising from or in connection with this agreement.

**17 JOINT AND SEVERAL LIABILITY**

If the purchaser comprises more than 1 (one) person (whether natural or juristic) their liability in terms of this agreement shall be joint as well as several.

## **18 VAT**

- 18.1 The parties record that the seller is not a VAT-vendor for purposes of this transaction and accordingly this transaction is subject to the payment of transfer duty by the purchaser.
- 18.2 Notwithstanding the provisions of clause 18.1, should VAT be or become payable in respect of this transaction the purchaser shall forthwith on demand pay to the seller an amount equal to the VAT so payable.

## **19 BREACH**

- 19.1 If either party commits a breach of any of the provisions of this agreement and fails to remedy such breach within 7 (seven) days (or if the breach in question is not capable of being remedied within 7 (seven) days, within such extended period as the defaulting party may prove to be reasonable in the circumstances) of receipt of a written notice calling upon it to do so, then the innocent party shall be entitled, without prejudice to any other rights which it may have in law or in terms hereof to –
- 19.1.1 cancel this agreement and claim such damages as it may have sustained and (in the event of a breach by the purchaser) retain all amounts paid by the purchaser on account of the purchase price as “rouwkoop” or as a genuine pre-estimate of liquidated damages provided that all costs, including costs of transfer and legal costs, shall be for the account of the purchaser; or

- 19.1.2 cancel this agreement and claim such damages as it may have sustained and, in the event of a breach by the purchaser, retain all amounts paid by the purchaser on account of the purchase price until such damages have been established by agreement or order of court or otherwise; or
- 19.1.3 claim specific performance.
- 19.2 In addition and without prejudice to the remedies provided in clause 19.1 above, any amount which is not paid by the purchaser promptly on due date, shall, automatically and without notice, bear interest at a rate which is two percentage points higher than the prime rate. Such interest shall be calculated from the due date for payment or performance, as the case may be, up to and including the date of receipt of payment.
- 19.3 All payments made by the purchaser shall be allocated firstly to the payment of interest, secondly to the payment of any monies due in terms of this agreement and finally, to the reduction of the purchase price.

## **20 DOMICILIUM**

- 20.1 The parties choose as their respective *domicilium citandi et executandi* for all purposes of this agreement, including the giving of any notice and/or the service of any process, their respective addresses set out in the schedule.
- 20.2 Any notice or process shall be deemed to have been received, unless the contrary is proved –
- 20.2.1 on the date of delivery thereof if delivered by hand to the *domicilium citandi et executandi* of the purchaser; or

20.2.2 7 (seven) days after the date of posting thereof if posted by prepaid registered post to the *domicilium citandi et executandi*;

20.2.3 on the date of transmission thereof if transmitted by telefax or electronic mail to the telefax number or e-mail address of the purchaser as may be completed in the schedule.

## **21 JURISDICTION AND COSTS**

21.1 In the event of any action or application arising out of this agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's jurisdiction, this clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended. Notwithstanding anything to the contrary herein contained, the seller shall have the right of the seller's sole option and discretion to institute proceedings in any other court which may otherwise have jurisdiction.

21.2 In the event of it becoming necessary for the seller to take any action against the purchaser arising from a breach by the purchaser of its obligations under this agreement, the purchaser shall pay the seller all attendant costs and expenses incurred by the seller as between attorney and client.

## **22 CONTRACT FOR BENEFIT OF THIRD PARTY**

Any terms and conditions imposed in this agreement for the benefit of the Association and/or the developer, can be accepted by the Association and/or the developer at any time.

## **23 SOLE CONTRACT**

- 23.1 The parties acknowledge that this agreement constitutes the sole basis of the contract between themselves and that neither has been induced to enter into this agreement by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein.
- 23.2 This agreement shall not be cancelled nor shall the terms and conditions hereof be varied unless such cancellation or variation is reduced to writing and is signed by the parties.

THUS DONE AND SIGNED AT

ON

2008

AS WITNESSES:

1. \_\_\_\_\_

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

\_\_\_\_\_

**Signature of seller**

THUS DONE AND SIGNED AT

ON

2008

AS WITNESSES:

1. \_\_\_\_\_

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

\_\_\_\_\_

**Signature of purchaser**

**ANNEXURE A**

**SITE DEVELOPMENT PLAN**

**ANNEXURE B**

**ERF DIAGRAM**