

**RE-SALE AGREEMENT**

**LOVEMORE HEIGHTS ESTATE**

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ERF NO.

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1.

**SCHEDULE**

**SELLER**

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**SELLER REGISTERED FOR VAT YES/NO  
IF YES VAT NO.**

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**SELLER'S ADDRESS  
(Domicilium Citandi et  
executandi)**

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**TELEPHONE NO. (H)**

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**TELEPHONE NO. (W)**

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**CELLPHONE NO.**

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**FAX NO.**

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**E-MAIL ADDRESS**

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**PURCHASER**

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**IDENTITY NUMBER**

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**PURCHASER**

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**IDENTITY NUMBER**

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**MARITAL STATUS**

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**PURCHASER'S ADDRESS  
(Domicilium citandi et  
executandi)**

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**POSTAL ADDRESS**

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**TELEPHONE (W):**

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**TELEPHONE (H):**

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**CELLPHONE NO.**

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**FAX NO.**

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**E-MAIL ADDRESS**

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**PURCHASE PRICE** (Excl. VAT) \_\_\_\_\_

1. **Deposit - amount (10% of purchase price)**

2. **Payment Date of deposit**

\_\_\_\_\_ seven (7) days after date of last signature hereto

1. **Balance of purchase price-amount**

\_\_\_\_\_

**AGENT'S COMMISSION**

**Name of Agent :** \_\_\_\_\_

**Commission :** \_\_\_\_\_

Payable against registration of transfer

**DEVELOPER'S COMMISSION**

\_\_\_\_\_ Payable against registration of transfer

**The Property**

Erf \_\_\_\_\_, Theescombe, situate in the Nelson Mandela Metropolitan Municipality, Division of Port Elizabeth, Eastern Cape Province, depicted on Annexure "A"

In Extent: \_\_\_\_\_

**MORTGAGE BOND REQUIRED (inc. building costs)**

\_\_\_\_\_

**MORTGAGE BOND APPROVAL DATE**

\_\_\_\_\_

**SELLER'S ATTORNEY**

\_\_\_\_\_

**AGENT**

The Developer \_\_\_\_\_

**HOME OWNERS ASSN. LEVY**

An amount to be determined in accordance with the provisions of clause 17 of the Lovemore Heights Estate Home Owners Association Constitution

**ANNEXURES:**

**Annexure A**

Layout Plan

**Annexure B**

Lovemore Heights Estate Homeowners Association Constitution

**Annexure C**

Building Contract

**Annexure D**

Lovemore Heights Estate Design Manual

AGREEMENT OF SALE entered into between the Seller and the Purchaser as set out in the Covering Schedule.

2. **INTRODUCTION**

2.1 The Seller is the owner of the Property which is situated within a Hybrid Housing Development Scheme known as Lovemore Heights Estate and as such, the Purchaser will be obliged to become a member of the HOA and comply with the rules of the HOA while exercising his rights of ownership and comply with the provisions of this Deed of Sale and annexures.

2.2 The sale is subject to certain suspensive conditions as set out more fully in this agreement, some of which may have been complied with when this Deed of Sale is signed.

3. **DEFINITIONS AND INTERPRETATION**

3.1 "The Property" shall mean the erf number reflected on the covering schedule and depicted on Annexure "A".

3.2 "The Scheme" shall mean the Hybrid Housing Scheme to be known as Lovemore Heights Estate.

3.3 "Home Owners Association" shall mean the Lovemore Heights Estate Home Owners Association formed for the owners of property in the scheme in terms of Annexure "B".

3.4 "Plan Approval Committee" shall mean the Developer, any professional person appointed by him and a Member of the Home Owners Association.

3.5 "Attorney" shall mean the Seller's Attorney.

- 3.6 "Building Contract" shall mean the contract entered into between the Purchaser and his Contractor.
- 3.7 "Building Contractor" shall mean a Contractor approved by the *Developer* in terms of paragraph 14 hereof.
- 3.8 "Design Manual" shall mean the design manual for buildings as depicted on Annexure "D".
- 3.9 "Transfer Date" shall mean the date of registration of transfer of the property in the name of the Purchaser.
- 3.10 "Agent" shall mean the Developer.
- 3.11 "Development" shall mean the development of Lovemore Heights Estate by the Developer.
- 3.12 "Developer" shall mean Lovemore Heights (Proprietary) Limited.
- 3.13 "Erven" shall mean the erven as described in the schedule and depicted on Annexure "A".
- 3.14 "HOA" shall mean the Lovemore Heights Estate Home Owners Association.
- 3.15 "Purchase Price" shall mean the amount as indicated in the Schedule.
- 3.16 "Purchaser" shall mean the purchaser as described in the Schedule.
- 3.17 "Schedule" shall mean the information as depicted on page one (1) and the top of page two (2) hereof.
- 3.18 "The Originator" is P A Better Bond.

3.19 "Original Agreement" means the Deed of Sale in respect of the property when it was sold by the Developer for the first time to a Purchaser.

3.20 Any expression which denotes:

3.20.1 any gender shall include the other gender;

3.20.2 a natural person shall include an artificial person or vice versa;

3.20.3 the singular shall include the plural and vice versa.

4. **SALE**

The Seller hereby sells to the Purchaser, who hereby purchases the property.

5. **PURCHASE PRICE**

The purchase price in respect of the property set out in the covering schedule shall be payable as follows:

5.1 A deposit as specified in the covering schedule payable to the Seller's Attorney's Trust Account, within seven (7) days of last signature hereof to be held in terms of Section 26 of the Alienation of Land Act, 69 of 1981.

5.2 The deposit referred to in paragraph 5.1 will only be refunded in the event of breach of a material term of this contract by the Seller.

5.3 The Purchaser hereby authorizes the Seller's Attorney to invest the deposit and any other monies paid in terms of this agreement in a Nedbank Corporate Saver interest bearing account in terms of Section 78(2)(A) of the Attorneys Act and any interest thereon shall accrue for the benefit of the Purchaser.

5.4 The Purchaser acknowledges that his deposit will be declared forfeit to the Seller in the event of cancellation of the agreement due to breach by

the Purchaser of any terms of this agreement giving cause for cancellation of the agreement.

- 5.5 The balance as specified in the covering schedule and Value Added Tax on the purchase price if applicable is to be paid in cash free of exchange at Port Elizabeth upon registration of transfer of the property into the name of the Purchaser, for payment of which sum the Purchaser shall on demand provide the Seller's Conveyancers, with bank or other guarantees acceptable to the Seller and payable upon registration of transfer, provided that such guarantees shall not be demanded until fulfillment or waiver of all suspensive conditions.

6. **TRANSFER AND COSTS**

- 6.1 Transfer of the property shall be effected by the Attorney as soon as possible after the Purchaser has complied with the conditions of this Agreement relating to the payment of the purchase price and rates, and all suspensive conditions have been fulfilled.
- 6.2 The Purchaser shall be liable for all expenses, fees and disbursements required for registration of transfer and shall pay such amount to the Attorney and sign all transfer and bond documents within seven (7) days of being requested to do so.
- 6.3 The purchase price excludes V.A.T. Should the Seller be a VAT Vendor for the purpose of this transaction then in addition to the purchase price payable by the Purchaser, the Purchaser will be liable to pay V.A.T. thereon at the rate of 14% or any applicable rate, which payment must be guaranteed or paid as provided for in clause 5.5.
- 6.4 In addition to the transfer costs, the Purchaser shall pay:
- 6.4.1 R1,000.00 towards the Design Controller's fees in respect of services rendered in carrying out his duties in terms of the provisions of this agreement and any annexures hereto;

- 6.4.2 R2,000.00 to cover the amount referred to in clause 10 of Annexure "D", which relates to the verge deposit and deposit for the purpose of clearing and keeping undeveloped erven neat and tidy;
- 6.4.3 an administration fee of R350.00 to the Seller's Attorney for amounts paid to it by the Purchaser in cash for the balance of the purchase price and/or building costs to cover attendances relating to payment of draws and the like as envisaged in terms of clause three (3) of Annexure "C", save that the reference to Boqwana Loon & Connellan in clause 3.4 thereof shall be a reference to the Attorney and reference to Nedbank Corporate Saver shall be a reference to Nedbank, Standard Bank, First National Bank or ABSA Bank.
- 6.5 The amounts referred to in 6.4.1 and 6.4.2. shall be refunded to the Purchaser should the Purchaser sell the property before completing the building works thereon and any interest which may have accrued on such payments shall be for the benefit of the Purchaser.
- 6.6 The Purchaser shall be required to pay the costs of registering any mortgage bond and the normal costs charged by any bank for inspection and administration costs in respect of bonds approved by it, which amount shall be payable on demand.

## **7. POSSESSION, RISK AND RATES**

- 7.1 Possession of the property shall be given to the Purchaser on the date of registration of transfer.



7.2 From the date of registration, the Purchaser shall be liable for a pro rata share of all rates and levies and shall be entitled to all rentals and other income accruing to the property and from that date the property shall be at the Purchaser's sole risk. The Seller shall be entitled to any rebate recoverable on rates and levies.

8. **VOETSTOOTS**

The property is sold "voetstoots" as it now stands and without any warranty of whatsoever kind or nature and the Seller is not responsible for the composition, condition, manner of construction or nature of any installation on the property, and nor does he hold himself responsible for the size or dimensions of the property. The property is further subject to any servitudes encroachments and other conditions affecting same, inclusive of those referred to in the Seller's Title Deeds or contained in any Town Planning Scheme, State or Local Authority regulations or enactments affecting the property. Any error in description of the property shall neither annul the sale, nor entitle either party to compensation on account thereof.

9. **MORTGAGE BOND**

9.1 In the event of the Purchaser being required to finance the purchase price of the property and any buildings to be erected thereon by obtaining a loan from a bank or other recognized financial institution against security of a mortgage bond, then the Purchaser shall be required to utilize the services of P.A. Better Bond, Mortgage Originators for this purpose. The Purchaser shall however be permitted to insist that the Originator wherever possible try and obtain the best possible Homeloan product and rate from an institution of the Purchaser's choice. P.A. Better Bond will not be involved in originating a bond from a non-recognized bank or financial institution.

9.2 This sale is conditional upon P.A. Better Bonds being able to raise on behalf of the Purchaser a loan against security of a First Mortgage bond, to cover shortfall in respect of the purchase price of the property and the

building price if applicable in respect of the house to be erected on the property. The bond shall be granted on the security of the property hereby sold for an amount not less than the amount reflected on the covering schedule upon such terms and conditions applicable to Banks or other Financial Institution Bonds. Such Mortgage bond shall be approved in principle by a financial institution acceptable to the Seller, within seven (7) days of last signature date hereof and final approval within twenty one (21) days of the last signature date hereof or such extended period as the Seller in his sole discretion may allow.

- 9.3 In the event of the bond not being approved as aforesaid this sale shall lapse and be of no force or effect.
- 9.4 The approval of a loan against security of the property as provided for in clause 9.2 is a condition for the benefit of the Purchaser which can be waived by him by giving notice of such waiver to the Seller at his chosen domicilium citandi et executandi in writing within 15 days of the date of signing hereof.

## 10. **ALIENATION BY PURCHASER**

- 10.1 The Purchaser shall be entitled to alienate the erf prior to registration of transfer of the erf into the name of the Purchaser provided that the prospective new Purchaser complies with the Developer's requirements for resale of an erf and utilizes the Developer's standard approved Re-Sale Agreement.
- 10.2 The Purchaser or his successors in title shall only be permitted to sell this erf to any third party by utilising the services of the Developer for such re-sale as provided for in clause 5.1.5 of Annexure "B". The re-sale of any erf shall be in terms of a Deed of Sale supplied by the Developer and no amendments thereto shall be made without the prior consent of the Developer being obtained.

- 10.3 The erf shall not be consolidated with an adjoining erf without the prior written consent of the Developer as provided for in clause 5.1.6 of Annexure "B", and then only after obtaining any other consent required by the Nelson Mandela Metropolitan Municipality and complying with the Nelson Mandela Metropolitan Municipality's requirements for approval of the consolidation.
- 10.4 The Seller shall pay agent's commission to the Developer at the rate of 5% plus VAT on the purchase price in respect of any sale of the erf. Should the Seller introduce the Purchaser, the agent's commission payable to the Developer shall be 2.5% plus VAT.
- 10.5 Should the Purchaser wish to resell the erf, he may only place advertising boards within the boundaries of his erf and then only with the permission of the Home Owner's Association.
- 10.6 The Purchaser shall advise the Developer of his intention to re-sell the erf and the asking sale price in respect thereof.
- 10.7 The erf shall not be subdivided.

11. **CONSTRUCTION PERIOD**

- 11.1 Should the Seller not have erected a dwelling house, the construction of which complies with the provisions of Annexure "D" within five (5) years of the date of registration of the transfer of the erf from the Developer to the original Purchaser then the provisions of Clause 13 shall apply.
- 11.2 The Plan Approval Committee shall have the sole discretion to determine when the Seller or his successors in title have complied with the obligations in terms of clause 11.1 above.

12 **APPROVAL OF PLANS**

- 12.1 Prior to the commencement of construction, the Purchaser shall submit to

the Seller for onward transmission to the Plan Approval Committee appointed by the Home Owners Association Constitution for its written approval:

- 12.1.1 Plans for the erection of the house, or alterations and related structures, which shall include fences, walls, decks, patios, garages, car ports, gazebos, pergolas, paving, swimming pool and a tennis court, if applicable;
- 12.2 The plans shall comply with the specifications prescribed in Annexure "D" and the Plan Approval Committee's decision on any plan submitted to it shall be binding upon the Seller and the Purchaser;
- 12.3 The purchaser acknowledges that Annexure "D" contains provisions which may restrict the design criteria of the house he intends to erect on the property and agrees to these provisions.
- 12.4 Should the Developer so elect, the Home Owners Association shall have the right to determine and amend the design and construction requirements applicable to the development as contained in Annexure "D".
- 12.5 The Plan Approval Committee shall be entitled to withhold approval of any plans subject to compliance with such modifications or amendments as it might direct.
- 12.6 The Purchaser acknowledges that should it commence building work before a plan has been approved by the Municipality and the Planning Approval Committee, such building work shall be regarded as a material breach of contract entitling the Seller to claim cancellation of this agreement notwithstanding any other rights it may have.

13. **PRE-EMPTION RIGHT IN FAVOUR OF THE DEVELOPER**

In the event that the Purchaser fails to complete the construction of a house on the erf within the time period of five (5) years from the date upon which the property was transferred and registered from the Developer into the name of the first Purchaser thereof then:

- 13.1 The Developer may purchase the erf from the Purchaser should it so elect, for a purchase price equivalent to the purchase price paid to the Developer on the first transfer of this erf to the original Purchaser less any Value Added Tax included in such original purchase price.
- 13.2 Should the Developer exercise its pre-emptive right then the transfer shall be passed to the Developer by the Developer's attorneys upon tender to the Purchaser of payment of the original purchase price excluding Value Added Tax that was included in the original purchase price thereof.
- 13.3 If the Developer exercises its pre-emptive right then the Purchaser shall pay the Developer agent's commission of 4% plus VAT on such purchase price.
- 13.4 The Purchaser shall not be entitled to any compensation for a house or part thereof erected on the erf, if the building works have not been completed within a period of 90 days after expiration of the period within which the building work should have been completed as provided for in clause 11.1 hereof;
- 13.5 The Purchaser shall vacate the erf upon notice from the Developer to do so provided that the Developer has tendered payment of the purchase price;
- 13.6 The Purchaser shall be obliged to sign all transfer documents upon demand and its failure to do so shall entitle the Seller or his Agent to sign such documentation on behalf of the Purchaser.

14. **APPROVED CONTRACTORS**

- 14.1 The Developer shall approve a list of Building Contractors from time to time as provided for in clause 5.1.7 of Annexure "B", to carry out any building work required by the Purchaser and the Purchaser may mandate any one of the contractors on the list to construct or alter any house and related structures to be erected on the erf.
- 14.2 Should the Purchaser wish to utilise the services of a contractor who is not approved as contemplated in paragraph 14.1, above, then the contractor can apply to be added to the list and the decision of the Developer shall be final and binding in this regard.
- 14.3 The Purchaser shall not authorize his appointed contractor to undertake any construction on the erf unless his contractor has concluded a building contract with the Purchaser and has lodged a copy thereof with the Developer, which shall substantially comply with the form of contract annexed hereto marked Annexure "C".

15 **HOME OWNERS ASSOCIATION**

A condition will be endorsed on the Title Deed of Property and will apply to every residential erf in the scheme. The endorsement shall read substantially in accordance with the following clauses:

"15.1 The registered owner or his successors in title shall:

15.1.1. Upon transfer of the property and until he ceases to be an owner of the property, be obliged to be a member of the Home Owners Association;

15.1.2. Adhere to the constitution made by the Home Owners Association;

15.1.3. Only transfer the property hereby transferred should the prospective Transferee agree:

15.1.3.1. to become a member of the Home Owners Association;

15.1.3.2. to adhere to the constitution made by the Home Owners Association;

15.1.3.3. to pay or make provision for the owner to pay to the satisfaction of the Home Owners Association any monies due to it by the owner.

16 **COOLING OFF PERIOD**

16.1 The Purchaser is in terms of Section 29A of the Alienation of Land Act, 68 of 1981 (called "the Act") entitled to revoke this offer or terminate this agreement within five (5) days after signature of this agreement by him, by written notice delivered to the Seller (or his agent) at the Seller's domicilium citandi et executandi as set forth in the Schedule of this agreement within that period.

16.2 This written notice referred to in clause 18.1 shall be effective only if it:

16.2.1 is signed by the Purchaser or his agent acting on his written authority;

16.2.2 identifies the agreement that is being revoked or terminated; and

16.2.3 is unconditional.

16.3 If the offer is revoked or agreement is terminated as contemplated in clause 18.1, every person who received any amount from the Purchaser in terms hereof, shall refund the full amount of such payment to the Purchaser within ten (10) days of the date on which the notice referred to in clause 18.1 was delivered to the Seller or his agent.

16.4 The Purchaser shall not be entitled to terminate this agreement or revoke the offer (as the case may be) in terms of the provisions of clause 18.1, if:

16.4.1 the withinmentioned property falls within the definition of "agricultural land" as defined by the Act;

16.4.2 the purchase price in respect of the property exceeds R250,000.00;

16.4.3 the Purchaser is a trust or a person other than a natural person;

16.4.4 the Purchaser has purchased the property at a public advertised auction; or

16.4.5 the Purchaser has reserved the right in terms of this agreement to nominate or appoint another person to take over the rights and obligations of the Purchaser as set out herein.

## 17 **GENERAL**

17.1 The Purchaser agrees that, at the election of the Seller, the Port Elizabeth Magistrate's Court shall have jurisdiction over any proceedings arising out of this Agreement.

17.2 No extension of time, concession or other indulgence which may be afforded by the Seller to the Purchaser shall be deemed to affect, prejudice or derogate from the Seller's rights in terms hereof.

17.3 The Purchaser acknowledges that this Agreement constitutes the sole basis of the contract between himself and the Seller, and that he has not been induced to enter in this Agreement by any representations or warranties other than contained herein, nor have any such representations been made by the Seller, his Agent or anyone else on his behalf.



17.4 The Purchaser acknowledges that no variation or novation of the terms of this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

18 **INCORPORATION OF ANNEXURES IN AGREEMENT**

All annexures referred to in this Deed of Sale form part of this Deed of Sale as if specifically incorporated therein and in the event of the provisions of any annexure referred to conflicting with the terms and conditions of this Deed of Sale, then the provisions of the Deed of Sale shall apply.

19. **DOMICILIUM**

19.1. The Seller and the Purchaser hereby choose domicilium citandi et executandi for all purposes of this agreement whether in respect of Court process, notices or other communications at the physical address or facsimile number indicated on page 1 of this agreement.

19.2. Any notice to be given by either party to the other shall be in writing but it shall be competent to give such notice by facsimile transmission.

19.3. Notices shall be deemed to be delivered on the date of the signed receipt of delivery, if delivered by hand or on the fourth day after the date of posting, if sent by pre-paid courier mail within South Africa, to the domicilium aforesaid, or if successfully transmitted by facsimile, be deemed to have been received by the addressee on the first date after the day of dispatch.

20. **BREACH OF CONTRACT**

20.1. In the event of the Purchaser failing to carry out any of the terms and conditions of this Agreement and failing to rectify such fault after having been given seven (7) days to do so, the Seller shall, at its option, be entitled:

20.1.1. to sue the Purchaser for specific performance of the terms and conditions of this Agreement; or alternatively

20.1.2. to cancel this Agreement, by written notice posted to the Purchaser which shall be deemed to have reached the Purchaser 5 (five) days after it has been posted, and to claim from the Purchaser payment of such damages as the Seller may suffer as a result of the Purchaser's default and the consequent cancellation. The Seller shall be entitled to apply any monies paid in terms of this Agreement in reduction or in satisfaction of such damages and the Purchaser shall not be entitled to repayment of any portion of such monies until such time as the said damages shall have been assessed, and upon cancellation the Seller shall be entitled to immediate possession of the property together with all improvements thereon.

20.2. In the event of the Seller failing to pass transfer of the property to the Purchaser or failing to carry out any of the terms and conditions of the agreement and failing to remedy such default after being given seven (7) days to do so, the Purchaser shall, at its option, be entitled:

20.2.1. to sue the Seller for specific performance of the terms and conditions of this Agreement; or alternatively

20.2.2. to cancel this Agreement, by written notice posted to the Seller which shall be deemed to have reached the Seller 5 (five) days after it has been posted, and to claim from the Seller payment of such damages as the Purchaser may suffer as a result of the Seller's default and the consequent cancellation.

21. **OFFER OF ACCEPTANCE**

When this document is signed by the Purchaser it shall constitute an offer by the Purchaser to the Seller which shall be open for acceptance and is irrevocable until 12 noon on \_\_\_\_\_, and upon acceptance by the Seller

signing this Deed it shall immediately constitute a Deed of Sale upon the terms and conditions set out herein.

22. **RATIFICATION CLAUSE**

Prior to fulfillment of the suspensive condition/s contained in Clause

The Seller retains the right to continue marketing the property which is the subject of this Agreement, and in the event of the Seller receiving a more favourable offer from a third party (the Seller in his sole discretion will decide whether or not the other offer is a more favourable offer) he shall notify the Purchaser in writing, furnishing the Purchaser with a copy of such written offer and giving the Purchaser 72 hours' notice, excluding Saturdays, Sundays and Public Holidays, to waive the suspensive condition/s referred to above and if the Purchaser fails to give the Seller written notice of such waiver within the 72 hour period, the Seller shall be entitled to cancel this Agreement forthwith and accept such other offer.

23. **SALE OF PURCHASER'S PROPERTY**

26.1. The operation of the whole of this Agreement is suspended until the Purchaser's Property has been sold within \_\_\_\_\_ days of the last date of signature hereof for an amount not less than R\_\_\_\_\_.

26.2. Should such suspensive condition not be fulfilled (or waived) this Agreement, save for the provisions of Paragraph 23 shall become null and void.

26.3. It is within the contemplation of the Parties that the Purchase Price shall be paid from the proceeds of sale of the Purchaser's Property and that the transfer thereof shall be registered prior to or simultaneously with the Property hereby sold.

SIGNED BY THE PARTIES AT THE PLACES AND ON THE DATES  
AS SET OUT BELOW

PLACE \_\_\_\_\_

SELLER

DATE \_\_\_\_\_

SPOUSE (If married in Community of  
Property the spouse is to co-sign)

WITNESS \_\_\_\_\_

PLACE \_\_\_\_\_

DATE \_\_\_\_\_

PURCHASER

WITNESS \_\_\_\_\_

SPOUSE (if married In Community of  
Property the spouse is to co-sign)