

**LYNWOOD ESTATE**

**AGREEMENT OF SALE OF IMMOVABLE PROPERTY**

by and between

**WESTERN OASIS PROPERTY DEVELOPMENT PTY LTD**

Registration Number 2000/019584/07

Hereinafter referred to as the seller, and the purchaser, as described in the following schedule:

Full names of Purchaser/s	
Id No/s	
Residential Address	
Postal Address	
Business Address	
Home Tel No Business Tel No Cell No Fax No Email address	
Erf No Extent in m <sup>2</sup> Street address	

Purchase Price (VAT included)	R
Deposit	R
Balance	R
Interest Rate	Prime overdraft lending rate of Standard Bank
Occupation Date	On transfer
Estimated Transfer Date	
Mortgage Bond	
Amount	R
Approval Date	

(hereinafter referred to as "the Schedule").

**WHEREAS** the seller is the developer of certain land (hereinafter referred to as "the development") indicated on a Plan annexed hereto marked "A", and the purchaser is desirous of purchasing a serviced erf in the development;

**NOW THEREFORE** the seller hereby sells to the purchaser who hereby purchases from the seller the unimproved erf indicated on the Schedule and Annexure "A" (hereinafter called "the property") at the purchase price and upon the terms and conditions set out in the Schedule and as follows:

**1 THE PURCHASE PRICE AND PAYMENT THEREOF**

The purchase price payable by the purchaser to the seller is as set out in the Schedule and shall be secured by:

- 1.1 A cash deposit as stipulated in the Schedule is payable on the signing hereof which amount shall be deposited with Attorneys HUTCHINSON DU PLESSIS ROBIN & STOLOFF (hereinafter referred to as "the attorneys") who shall hold it in an interest-bearing bank account of their choice containing a reference to Section 78(2A) of the Attorneys Act 1979, Act No 53 of 1979 pending transfer when the deposit shall be paid to the seller or to its order and the interest accruing on the deposit shall be paid to the purchaser; and
- 1.2 The balance of the purchase price is payable in cash against registration of transfer. The purchaser shall guarantee such payment to the satisfaction of the attorneys within 14 (fourteen) days after having been requested by them to do so, provided that all suspensive and/or resolute conditions have been met.
- 1.3 In the event of the purchaser failing to guarantee payment of the balance of the purchase price, or to pay any amounts due under this Agreement timeously or at all, or should the registration of transfer be delayed as a result of the purchaser failing to comply with any of the conditions of this Agreement of Sale, he/she/it shall become liable to pay to the seller interest on the purchase price at the interest

rate stated in the Schedule for the period of such delay, and the attorneys shall be the sole arbiter of the period of such delay.

1.4 The purchase price stated in the Schedule includes Value-Added Tax.

**2 POSSESSION**

Beneficial possession of the property shall be given by the seller and taken by the purchaser on the date of transfer. Should transfer be delayed due to any act or omission of the purchaser, the purchaser shall be obliged to take possession of the property on the occupation date as stated in the Schedule, or, if the property is not transferable on such date, on the subsequent date upon which it becomes transferable.

**3 OCCUPATIONAL INTEREST**

Only in the event of possession being passed before the date of registration of transfer in terms of the foregoing clause, the purchaser shall pay occupational interest at the rate specified in the Schedule on the balance of the purchase price, from the occupation date until the date of payment of the full balance of the purchase price, which interest shall be payable to the seller monthly in advance at such place as may be stipulated by the seller or the attorneys.

**4 RISK**

The property shall be at the sole risk of the purchaser as from the date of possession.

**5 LEVIES, RATES AND TAXES**

5.1 The purchaser shall be responsible for payment of a pro rata share of rates and taxes in respect of the property as from the date of possession.

5.2 The purchaser shall, as from the date of possession become responsible for payment of such levies to the Home Owners' Association of the development, as may be determined by such association. Should the date of possession precede the transfer date, such payments shall be regarded as payment in lieu of levies in order to defray the costs of the Home Owners' Association in respect of the property.

5.3 Levies mentioned in clause 5.2 shall be determined and collected in accordance with the provisions of the constitution of the Home Owners' Association, in order to defray the common expenses of the Association.

**6 TRANSFER**

6.1 Transfer of the property shall be passed by the attorneys as near as possible to the Estimated Transfer Date provided that the purchaser has complied with all the purchaser's obligations in terms hereof. The purchaser understands that the date of registration of transfer is dependent upon the conditions relating to approval of the development.

6.2 All normal costs of transfer shall be payable by the purchaser to the attorneys, upon their request.

- 6.3 In the event of the developer deciding not to proceed with the development or in the event of it becoming impossible, for whatever other reason in the unfettered discretion of the seller, to give transfer of the property, the seller shall be entitled to unilaterally cancel this Agreement of Sale and shall notify the purchaser in writing accordingly, and the purchaser shall be refunded all amounts already paid, together with any interest earned on the investment of such moneys. In the event of the purchaser already having taken possession, no refunds shall be made in respect of occupational interest or rates and taxes paid by the purchaser. Save as aforesaid, the parties shall then not have any further claims against each other and upon receipt of the said notice, the purchaser shall immediately vacate the property.

**7 SALES COMMISSION**

Any estate agent's commission payable in respect of this transaction, shall be payable by the seller.

**8 CONDITIONS OF TITLE AND OTHER SPECIAL CONDITIONS**

- 8.1 The property shall, prior to registration of transfer, be fully serviced with water, electricity, and sewage, but shall otherwise be unimproved.
- 8.2 The property is sold voetstoots, as it stands, and the seller shall not be responsible for any defects in the property either patent or latent.
- 8.3 It is confirmed by the parties that no representations have been made regarding the property which are not contained in this Agreement.
- 8.4 No amendment to this Agreement shall have any effect unless made in writing and signed by both parties.
- 8.5 The property is sold as described in the seller's title deed and subject to all conditions and servitudes attaching to the property, and in particular a condition imposing a restriction upon alienation, subject to the written consent of the Home Owners' Association, as referred to hereinafter.
- 8.6 The seller shall not be liable for any deficiency in the extent of the property of 10% or less which may be revealed upon survey or resurvey and does not desire to benefit from any excess.
- 8.7 From the date of signature hereof until expiry of a period of 12 months reckoned from the date on which the property is transferred to the purchaser, the purchaser may not sell, lease, or otherwise alienate the property or rights in the property, or cede his or her rights under this Agreement, without the prior written consent of the seller, and then only through an agent to be nominated by the seller, which agent shall be deemed to be the effective cause of the sale and entitled to an agreed commission of 6% of the purchase price plus VAT. Such alienation shall furthermore only be effected by means of a deed of sale, substantially similar to this Agreement, of which the terms and conditions have been approved in writing by the seller.

The conclusion of such deed of alienation or lease shall not in any manner relieve the purchaser from his obligations to the seller hereunder, and he or she shall remain bound to perform hereunder in the event of any breach or non-compliance by the third party.

As security for the due and punctual performance by the purchaser of all his/her/its obligations under this Agreement, the purchaser hereby cedes *in securitatem debiti* to the seller all the purchaser's rights in terms of any agreement of alienation or lease referred to in this clause. Without detracting from the generality of the powers derived from this cession, the seller is expressly authorised to demand, collect, and receive payment of all rentals and other payments due in terms of such other contract directly from such third party. This cession shall not detract from the other rights and remedies available to the seller in terms hereof.

**9 HOME OWNERS' ASSOCIATION**

9.1 The purchaser acknowledges that, upon registration of transfer, he/she/it will automatically become a member of a Home Owners' Association, of which all registered owners of erven in the development shall be members. Such Home Owners' Association shall automatically be established upon transfer of the first erf in the development to a person other than the seller.

9.2 The seller retains authority, and the purchaser hereby grants full power of attorney to the seller, to negotiate on behalf of owners in the development, and to reach agreements with local and other authorities, for which purpose the purchaser hereby grants and the seller retains an irrevocable authority to enter into appropriate agreements and to make suitable amendments to the constitution of the Home Owners' Association, until such time as the seller calls the first general meeting of the Home Owners' Association, which shall not occur later than 12 months after establishment thereof.

9.3 Ownership of the property shall be subject to the provisions of the constitution of the Home Owners' Association.

9.4 The title deed of the property shall contain a condition of title whereby the property may not be transferred without the written consent of the Home Owners' Association, which consent shall be granted provided that relevant conditions of the constitution of the Home Owners' Association have been complied with.

9.5 The purchaser acknowledges that, in terms of the constitution of the Home Owners' Association, certain conduct rules will be established and that all owners, occupiers and persons visiting the development shall at all times be subject to its authority.

9.6 The purchaser further acknowledges that by virtue of the constitution of the Home Owners' Association certain architectural guidelines will be established and that all owners shall at all times be subject to its authority.

**10 IMPROVEMENTS TO PROPERTY, ARCHITECTURAL DESIGN AND BUILDING RULES**

10.1 The purchaser shall, within a period of four (4) years from the date of transfer, be obliged to complete the building of a dwelling house and outbuildings on the property, strictly in accordance with –

10.1.1 the building plans, specifications and schedule of finishes which have been submitted to and approved by the Home Owners' Association and local authority as contemplated in clause 10.2.1;

10.1.2 the architectural design and building rules; and

- 10.1.3 the constitution of the Home Owners' Association.
- 10.2 The purchaser agrees and undertakes:
  - 10.2.1 to submit the building plans, specifications and schedule of finishes to –
    - 10.2.1.1 the Home Owners' Association for its written approval in accordance with the architectural design and building rules; and
    - 10.2.1.2 the local or other relevant authority for its approval;
  - 10.2.2 to enter into a written contract with an accredited and registered building contractor within a period of three and a half (3½) years from the date of transfer, for the erection and completion of the dwelling house and outbuildings. Such written contract shall include an obligation by the building contractor to comply strictly with the approved building plans, specifications and schedule of finishes, and the building rules, and shall be made available to the seller for inspection on request;
  - 10.2.3 not to commence with any work whatsoever on the property until such time as the approvals contemplated in clause 10.2.1 have been obtained;
  - 10.2.4 subject to clause 10.2.3 to commence building not later than six (6) months prior to the expiry of the four (4) year period as contemplated in clause 10.1.
- 10.3 Should the purchaser fail to comply with any of the provisions of this clause 10 then, in that event, the seller shall in its discretion be entitled, for a period of six (6) months from the 4th anniversary of the registration of transfer, to purchase the property from the purchaser at the lesser of the same purchase price paid by the purchaser in terms of this Agreement, or the market value of the property as determined by a valuer appointed by the President of the Institute of Land Valuers of South Africa for this purpose. Should the seller elect to purchase the property, the purchaser shall be liable for all costs, including VAT or transfer duty payable in effecting registration of transfer of the property into the name of the seller. The seller's rights in terms of this sub-clause 10.3 shall be without prejudice and in addition to its rights against the purchaser in terms of clause 12 hereof, and its right to enforce compliance with the provisions of this Agreement through an interdict or other apposite means.
- 10.4 The purchaser acknowledges that:
  - 10.4.1 he/she/it has been given sight of and understands the provisions of the architectural design and building rules and the building contract rules which are in force as at the date of signature of this Agreement by the purchaser; and
  - 10.4.2 the architectural design and building rules and the building contract rules are filed and will remain filed at the seller's address.

## 11 **MORTGAGE BOND**

If so indicated in the Schedule, this sale is subject to a resolutive condition that a mortgage bond must be approved on or before the date and at the amount stated in the Schedule, to enable the purchaser to purchase the property, in absence of which either party may cancel this Agreement by giving notice to such effect to the other. In the latter instance, all moneys already paid over must be returned and the parties shall have no further obligations to each other.

**12 DEFAULT BY PURCHASER**

In the event of the purchaser failing to fulfil on due date any of the terms and conditions of this Agreement, the seller may:

- 12.1 cancel the sale forthwith by registered letter despatched to the purchaser, in which event the purchaser shall forfeit all moneys paid by him/her/it to the seller or the attorneys; or
- 12.2 claim immediate payment of the balance of the purchase price and the fulfilment of all the terms and conditions hereof,  
  
without prejudice to the seller's other common law remedies or its right to claim damages.

**13 JURISDICTION AND DOMICILIUM**

- 13.1 The purchaser consents to the jurisdiction of any Magistrate's Court having jurisdiction over his/her/its person. However, the seller may in his discretion institute proceedings in any competent Court.
- 13.2 The purchaser chooses as his/her/its *domicilium citandi et executandi* for delivery to him/her/it of all notices and documents relating hereto or to any action arising from this Agreement, the residential address mentioned in the Schedule.

**14 WARRANTIES AND UNDERTAKINGS**

- 14.1 If there is more than one purchaser, their liability hereunder shall be joint and several.
- 14.2 Where the signatory to this Agreement does not sign in a personal capacity:
  - 14.2.1 He/she warrants due authorisation to represent the party ("the represented party") which he/she purports to represent and binds himself/herself as surety and co-principal debtor with the represented party for the due performance by it of all its obligations in terms hereof, and agrees to sign all documents and to bind himself/herself as surety for and co-principal debtor with the represented party as far as it may be required by any proposed mortgagee/s so as to enable fulfilment of any conditions in this Agreement.
  - 14.2.2 If it transpires that the signatory was not so duly authorised, then this Agreement shall be deemed to be an Agreement of Sale with the signatory in his/her personal capacity and not to the represented party. The balance of the terms and conditions shall remain the same.
  - 14.2.3 The signatory chooses the address stipulated on page 1 of this Agreement as his/her *domicilium citandi et executandi*.
- 14.3 The parties agree that this Agreement shall in all respects, including the interpretation and implementation thereof, be subject to the laws of the Republic of South Africa and consent to the exclusive jurisdiction of the South African courts.
- 14.4 Both parties, by their signature hereto, warrant that their tax affairs with the South African Revenue Service (SARS) are in order and up to date or, in the event of

this not being the case, that agreement has been reached and that the necessary arrangements have been made with SARS in respect thereof.

14.5 No latitude, extension of time or indulgence granted by either party to the other shall be construed as prejudicing such party's right to insist on the strict and punctual compliance by the other party with the terms of this Agreement.

14.6 The purchaser acknowledges that this Agreement has been drawn up in the language of the purchaser's choice.

15 **DIRECT MARKETING AND COOLING-OFF PERIOD**

The purchaser, in the event of having concluded this Agreement as a result of Direct Marketing as defined in the provisions of the Consumer Protection Act No 68 of 2008, confirms that the purchaser has been informed of his rights as provided in Section 16 read with Section 20(2)(a) of the aforementioned Act, to rescind a transaction, without reasonable penalty, within five (5) business days after the sale was concluded or this Agreement was signed.

16 **FICA**

The seller and purchase undertake immediately upon being requested to do so to provide the attorneys and the financial institution granting a mortgage bond with the necessary documentation to comply with the Financial Intelligence Centre Act requirements and such other documentation as may be required to enable the attorneys to effect registration of transfer or ensure registration of cancellation (as the case may be) of the relevant mortgage bond/s.

17 **GENERAL**

17.1 This Agreement constitutes the sole record of the agreement between the parties in relation to the subject-matter hereof. Neither party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the parties in respect of the subject-matter hereof.

17.2 The signature by either party of a counterpart of this Agreement shall be as effective as if that party had signed the same document as the other party.

18 **SPECIAL CONDITIONS**



SIGNED BY THE PURCHASER AT .....

ON .....

AS WITNESS:

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

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

\_\_\_\_\_  
PURCHASER

SIGNED BY THE SELLER AT .....

ON .....

AS WITNESS:

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

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

\_\_\_\_\_  
SELLER

ACCEPTED:

\_\_\_\_\_  
CHAS EVERITT INTERNATIONAL  
PROPERTY GROUP (ESTATE  
AGENT)