



# **OFFER TO PURCHASE** **PORT ZIMBALI ESTATE**

**First sale of a Stand from the Developer**



**OFFER TO PURCHASE**  
**PORT ZIMBALI ESTATE**  
**First sale of a stand from the Developer**

I/We, \_\_\_\_\_,

(Identity number(s): \_\_\_\_\_)  
(hereinafter referred to as the PURCHASER),

of: \_\_\_\_\_  
\_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

Cell No: \_\_\_\_\_ E-mail: \_\_\_\_\_

which address we hereby select as our domicilium citandi et executandi for all purposes including notices hereunder, hereby offer to purchase from:

**Viking Pony Properties 37 (Pty) Ltd**  
Reg. No.: 2000/010934/07  
(Hereinafter referred to as the 'SELLER')

of: 217 Emerald Avenue, Lyttelton Manor X3, Centurion.

Tel No.: 012 644 1411  
E-mail: [allan@bridgeroute.co.za](mailto:allan@bridgeroute.co.za)

which address is hereby selected as the SELLER'S domicilium citandi et executandi for all purposes including notices hereunder the PROPERTY described as

erf \_\_\_\_\_, Port Zimbali, Registration Division FU, Province of KwaZulu Natal, with the dwelling and improvements thereon (hereinafter referred to as the "PROPERTY"),

with street address: \_\_\_\_\_  
Port Zimbali Estate; Old M4 Main Road; Ballito

measuring \_\_\_\_\_ square meters in extent for an  
amount of R \_\_\_\_\_ ( \_\_\_\_\_

\_\_\_\_\_ Rand) inclusive of Value Added  
Tax (hereinafter referred to as the "PURCHASE PRICE").

The offer is subject to all terms and conditions and servitudes mentioned, or referred to, in the current and/or prior Title Deeds of the PROPERTY and to all such other conditions and servitudes which may exist in regard thereto and which may be imposed by the Local Authority and further upon the conditions depicted in the CONDITIONS OF SALE as attached to this OFFER TO PURCHASE.



In the event of the PURCHASER requiring a loan from a financial institution: -

a. The amount of the aforesaid loan is: R \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

b. The date by which the aforesaid loan is to be granted is 30 (thirty) days from date of signature of this AGREEMENT by the SELLER. The PURCHASER agrees to provide the SELLER with written evidence from a financial institution by this date, failing which, in the discretion of the SELLER, this item of this AGREEMENT may be regarded by the SELLER as not being fulfilled.

A complete list of the amounts for which members are liable on a monthly basis (i.e. levies and landscape maintenance costs) are described in a document named Levies, Fees, Charges and Recoveries, which is available on the website of the ASSOCIATION ([www.pze.co.za](http://www.pze.co.za)). These amounts remain subject to annual and/or special revision, as the case might be, by the members of the ASSOCIATION in terms of the provisions of the MOI of the ASSOCIATION without notice to the PURCHASER.

Amount payable by the PURCHASER toward the Levy Stabilisation Fund of the ASSOCIATION established in terms of the MOI and the RULES of the ASSOCIATION is R30,000.00 (thirty thousand Rand) – this is a once-off non-refundable contribution.

The AGENT that negotiated this AGREEMENT is: \_\_\_\_\_.  
The commission payable to the AGENT is comprehensively dealt with in paragraph 9 of the Conditions of Sale attached to this AGREEMENT.

Signed by the PURCHASER at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
Witness

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
PURCHASER

Signed by the SELLER at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
SELLER



# CONDITIONS OF SALE

## 1. METHOD OF PAYMENT OF PURCHASE PRICE

1.1 An initial deposit in cash of 10% of the PURCHASE PRICE is to be deposited with the CONVEYANCERS by the PURCHASER either within 7 (seven) days in the event that the PURCHASER does not require a loan from a financial institution or within 14 (fourteen) days in the event that the PURCHASER does require a loan from a financial institution of signature of this AGREEMENT by the SELLER and held by the CONVEYANCERS subject to the provisions of clause 2 hereunder. This amount is to be invested in an interest-bearing account in terms of Section 78 of the Attorneys Act, the interest being for the benefit of the PURCHASER. Upon fulfilment of the provisions of clause 2 and provided the PROPERTY is transferable, the deposit shall continue to be held by the CONVEYANCERS pending the transfer of the PROPERTY to the PURCHASER. If the provisions of clause 2 are not fulfilled, the deposit, together with any interest earned thereon, will be paid to the PURCHASER. If the provisions of clause 2 are fulfilled, the deposit will automatically become non-refundable and will be deemed as being liquidated damages in the event of cancellation of this AGREEMENT by the PURCHASER or in the event of the PURCHASER not fulfilling its other obligations in terms of this AGREEMENT.

1.2 The balance of the PURCHASE PRICE shall be payable in cash, free of exchange at Pretoria on registration of transfer of the PROPERTY into the name of the PURCHASER; to be secured by bankers or other approved guarantees in favour of the SELLER, to be delivered to the CONVEYANCERS as follows:

1.2.1 within 30 (thirty) days of the granting of the loan referred to in of the AGREEMENT. The PURCHASER shall forward to the CONVEYANCERS a copy of the approval in principle of the aforesaid loan from the financial institution at least 14 days before the above guarantee is to be delivered to the CONVEYANCERS; or

1.2.2 within 21 (twenty-one) days of the date of signature of this AGREEMENT in the event that no loan is required.

## 2. SUSPENSIVE CONDITIONS

If the PURCHASER requires a loan for an amount stated in the OFFER TO PURCHASE, the PURCHASER undertakes forthwith to apply for the said loan and if such loan is not granted by the date stated in the OFFER TO PURCHASE, or such later date as the SELLER may agree to in writing, the sale as hereby embodied shall be regarded as not having come into existence and this AGREEMENT shall be of no force and effect.

## 3. ACKNOWLEDGEMENTS

3.1 The PROPERTY is sold and purchased voetstoots, absolutely as it stands, with all its defects (if any) whether patent or latent, including soil and environmental conditions.

3.2 The PROPERTY is sold subject to all conditions and servitudes contained in the existing title deeds and any conditions of servitudes that may be imposed by the local or any other authority in approving the PROPERTY as a separate subdivision.



- 3.3 This PROPERTY is specifically subject to the terms and conditions imposed by the PORT ZIMBALI TOWN PLANNING SCHEME and the terms and conditions imposed by the ASSOCIATION in terms of its MOI and RULES, both as amended from time to time.
- 3.4 The PURCHASER acknowledges that he has satisfied himself as to the nature, locality and extent of the PROPERTY and the SELLER shall not be liable for any deficiency in the extent thereof nor shall it benefit by any surplus. Neither the SELLER nor the DEVELOPER shall be required to indicate the position of any of the beacons or pegs on the PROPERTY.
- 3.5 The SELLER has not made any false or untrue representations. The SELLER has furthermore made no further representations than those contained in this AGREEMENT.
- 3.6 The PURCHASER declares that they have been granted a fair opportunity to inspect the PROPERTY which they have done to their satisfaction, that the AGREEMENT and specifically this Clause has been explained to him and declares that neither the SELLER nor the Estate Agent has made any representations regarding the condition of the PROPERTY which are not contained in this AGREEMENT.

#### **4. POSSESSION**

- 4.1 The PURCHASER shall be entitled to vacant possession of the PROPERTY from the DATE OF TRANSFER of the PROPERTY from which date:
- 4.1.1 the risk and benefit in and to the PROPERTY shall pass to the PURCHASER;
- 4.1.2 the liability to pay all rates, water and sewer rates, electricity, landscaping costs, refuse removal levy, taxes, insurances, Association levies, Community Schemes Ombud Service levy, other municipal charges and other outgoings arising from the PROPERTY shall pass to the PURCHASER;
- 4.2 Should the SELLER have pre-paid any such charges described in item 4.1.2 beyond the DATE OF TRANSFER, the PURCHASER shall on demand refund any such amounts paid beyond this date to the SELLER.

#### **5. RIGHTS AND OBLIGATIONS IN RESPECT OF POSSESSION**

- 5.1 From the DATE OF TRANSFER the PURCHASER shall be liable for the payment of all services provided to the PROPERTY in the form of rates, water and sewer rates, electricity, landscaping costs, refuse removal levy, taxes, insurances, ASSOCIATION levies, Community Schemes Ombud Service levy, other municipal charges and other outgoings arising from the PROPERTY and any deposits payable in connection with the supply of any such services.
- 5.2 It is recorded that property rates and taxes, electricity and refuse removal is metered, recorded, provided and/or charged out by the LOCAL COUNCIL and that these items do not form part of the ASSOCIATION'S levy charge. Similarly, the PURCHASER is liable for insurance costs, as it does not form part of the ASSOCIATION'S levy charge.



## 6. **LEVY AND OTHER CHARGES**

- 6.1 The PURCHASER accepts liability with effect from the DATE OF TRANSFER for payment of a monthly levy and other related charges in respect of those items and amounts payable in terms of the MOI and RULES of the ASSOCIATION.
- 6.2 It is recorded that the ASSOCIATION bills and collects amounts due from its members, on a monthly basis, which amounts include the monthly ASSOCIATION levy, monthly ASSOCIATION special levy (if applicable), monthly ASSOCIATION extra levy (if applicable), Community Schemes Ombud Service levy, landscaping maintenance costs and water and sewer charges. The ASSOCIATION meters/records the latter from the water meter on the PROPERTY and bills the relevant member for its consumption thereof.
- 6.3 The PURCHASER agrees that he shall have no right to reclaim from the ASSOCIATION any amount paid to the ASSOCIATION by way of a monthly levy, special levy or contribution to the Levy Stabilisation Fund referred to in the AGREEMENT save as provided herein.
- 6.4 The PURCHASER acknowledges that he is aware that the electrical connection fee will be for his account.

## 7. **ARCHITECTURAL AND LANDSCAPE CONTROLS AND IMPROVEMENTS TO PROPERTY**

- 7.1 In order to maintain high standards and with a view to ensuring an attractive and harmonious development, all PURCHASERS of Erven within the ESTATE shall be required to adhere to the architectural and landscaping controls applicable to that particular PROPERTY as formulated by the ASSOCIATION in its MOI and RULES.
- 7.2 The PURCHASER undertakes to comply with these controls in developing and maintaining the PROPERTY, it being recorded that the PROPERTY, as on date of this OFFER TO PURCHASE, is an undeveloped vacant stand. The PURCHASER is obliged to have basic landscape maintenance done to the PROPERTY, in the process ensuring that such PROPERTY is kept neat, free from litter, debris and foreign objects, and free from alien growth and vegetation. Field grasses must not be removed. The Eucalyptus trees found on the PROPERTY is exempt from requiring removal for as long as building activities have not commenced on the property.
- 7.3 It is recorded that other properties within the ESTATE may currently have garden and/or swimming pool (if applicable) fencing that does not meet the standards subsequently laid down and set by the Directors of the ASSOCIATION. It is also recorded that on other properties within the estate, air-conditioning units (if applicable) may have been incorrectly installed in contradiction to rules subsequently laid down and set by the Directors of the ASSOCIATION. In regard to both the mentioned instances, the PURCHASER is advised, and where applicable, the PURCHASER hereby accepts the advises to be binding on him, as follows:
- 7.3.1 Where applicable, once the current fencing not meeting the subject standards needs to be replaced, the fencing approved and prescribed by the ASSOCIATION will be utilised by such affected property owner. The PURCHASER will however utilise the approved and prescribed fencing from the outset, if applicable.



7.3.2 The PURCHASER will ensure that the ASSOCIATION approves any air-conditioning installation prior to commencement of installation.

## 8. TRANSFER

8.1 When the PROPERTY is registerable, the CONVEYANCERS shall pass transfer of the PROPERTY to the PURCHASER as soon as is reasonably practicable in the circumstances, provided the PURCHASER has complied with all its obligations under this AGREEMENT.

8.2 The PURCHASER shall, within 7 (SEVEN) days of being called upon to do so by the CONVEYANCERS –

8.2.1 pay to the CONVEYANCERS all costs of and incidental to the passing of transfer of the PROPERTY to the PURCHASER, including any stamp duty, transfer duty (if applicable), bond costs, bank charges and all conveyancing fees and disbursements; and

8.2.2 furnish all such information, sign all such documents and pay all such amounts that may be necessary or required to enable the CONVEYANCERS to pass transfer of the PROPERTY.

8.3 No liability of any nature whatsoever shall attach to the SELLER arising out of any delays in effecting transfer of the PROPERTY to the PURCHASER.

8.4 The PURCHASER shall be obliged to accept transfer of the PROPERTY, inter alia, subject to –

8.4.1 the conditions, reservations and servitudes which burden the PROPERTY;

8.4.2 any change in the description of the PROPERTY;

8.4.3 a condition registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the ASSOCIATION first being had and obtained (it being recorded that the ASSOCIATION shall be entitled, at its absolute discretion, to refuse its written consent until such time as the provisions of its MOI and its RULES are complied with and no party to this AGREEMENT shall have any claim for damages arising out of the ASSOCIATION'S refusal to give such written consent);

8.4.4 a condition registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the DEVELOPER first being obtained.

8.5 In the event that the PURCHASER fails to meet any of their obligations hereto, the Conveyancers shall be entitled to request payment of wasted costs from the PURCHASER, and on behalf of the Agent, claim Agent's Commission, as the Agent's Commission is deemed to have been earned upon fulfilment of the suspensive conditions.

8.6 The PURCHASER hereby confirms that they are aware of the fact that penalty interest on Transfer Duty is payable to the South African Revenue Services after the lapsing of a period of 6 (SIX) months after the date of signature hereof.



## 9. AGENT'S COMMISSION

- 9.1 In the event of this AGREEMENT being cancelled due to default by the PURCHASER, the PURCHASER shall be liable to immediately pay the commission as described in this paragraph 9 to the AGENT.
- 9.2 The PURCHASER warrants that the AGENT referred to in the AGREEMENT introduced him to the PROPERTY, if applicable. The PURCHASER hereby indemnifies the SELLER against any claim of any nature raised by a third party claiming to be the effective cause of this sale of the PROPERTY by the SELLER to the PURCHASER.
- 9.3 The SELLER shall pay a selling commission in the amount of R \_\_\_\_\_  
( \_\_\_\_\_  
\_\_\_\_\_ - words)  
(inclusive of Value Added Tax) to the AGENT when the amount is due and payable.
- 9.4 The selling commission shall be due to the AGENT by the SELLER on transfer of the PROPERTY into the name of the PURCHASER. The SELLER undertakes to pay the selling commission and hereby irrevocably instructs the Conveyancer to pay the amount due to the AGENT, but only once the AGENT has provided the SELLER with a legally binding VALUE ADDED TAX INVOICE pertaining to the subject property transaction.

## 10. DEFAULT

- 10.1 Should any party (the "defaulting party") commit a breach of any of the provisions of this AGREEMENT then the party which is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (SEVEN) days of receipt hereof, subject to any other provisions of this AGREEMENT to the contrary, the aggrieved party shall be entitled to cancel this AGREEMENT or to claim specific performance, in either event without prejudice the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in terms of this AGREEMENT, common law or statute.
- 10.2 In the event of the PURCHASER cancelling this AGREEMENT as aforesaid any amount or amounts paid to the SELLER or the CONVEYANCERS (including any amount paid in trust and any interest that may have accrued thereon) shall be forfeited to and retained by the SELLER as rouwkoop; alternatively, if the SELLER so elects, he may recover any damages howsoever incurred as a result of such cancellation (including any losses and expenses on a re-sale, whether by public auction or private treaty), in which case the amount or amounts paid to the SELLER or the CONVEYANCERS as aforesaid (including any amount paid in trust and any interest that may have accrued thereon) will not be forfeited as rouwkoop but may be retained by the SELLER by way of set off or partial set off against the damages claimed by the SELLER.
- 10.3 Notwithstanding the foregoing, should the SELLER exercise any of his rights in terms hereof and should the PURCHASER dispute the SELLER'S right to do so, then pending the determination of that dispute, the PURCHASER shall continue to pay all amounts payable in terms of this AGREEMENT on the due date thereof, and to comply with all the terms hereof, and the SELLER shall be entitled to recover and accept such payments and/or other performance without prejudice to the SELLER'S claim to have exercised rights in terms hereof, and in the event of the SELLER succeeding in such dispute, the SELLER shall be entitled to retain such amounts received in the interim as



payment for the occupational rights exercised and/or enjoyed by the PURCHASER in the interim.

- 10.4 For all purposes of this AGREEMENT any act or omission on the part of any tenant, nominee or other person who occupies the PROPERTY by virtue of the PURCHASER'S rights hereunder, shall be deemed to be an act or omission of the PURCHASER.
- 10.5 Further, in the event of the AGREEMENT lapsing or being cancelled due to the breach of the PURCHASER, the PURCHASER shall not be entitled to any compensation for any improvements of whatever nature he may have been effected to the PROPERTY while in occupation thereof.

## **11. JURISDICTION AND COSTS**

- 11.1 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.
- 11.2 Notwithstanding anything to the contrary herein contained the SELLER shall have the right at the SELLER'S sole option and discretion to institute proceedings in any other court, which might otherwise have jurisdiction.
- 11.3 In the event of it becoming necessary for the SELLER to take any action against the PURCHASER as contemplated herein, the PURCHASER agrees to pay to the SELLER all the attendant costs and expenses incurred by the SELLER as between attorney and client.

## **12. SOLE OFFER TO PURCHASE**

- 12.1 The PURCHASER acknowledges that this AGREEMENT constitutes the sole basis of the AGREEMENT between himself and the SELLER, and that he has not been induced to enter into such AGREEMENT by any representations or warranties (whether contained in any letter, brochure, advertising material or otherwise) other than those contained herein and he shall be deemed to have satisfied himself in regard to all other relevant matters of whatsoever nature not specially dealt with herein.
- 12.2 No agreement to cancel this AGREEMENT or to vary the terms and conditions shall be of any force and effect unless reduced to writing and signed by the parties or their agents duly authorized in writing.

## **13. MEMBERSHIP OF THE PORT ZIMBALI ESTATE HOME OWNERS' ASSOCIATION (NPC)**

- 13.1 It is placed on record that a non-profit company was incorporated in terms of the provisions of the Companies Act, 71 of 2008, for the purpose of advancing the interests and well-being of the owners of the erven in the TOWNSHIP and is known as the Port Zimbali Estate Home Owners' Association (NPC) (hereinafter also referred to as the "HOA").



- 13.2 By virtue of the purchase of the PROPERTY by the PURCHASER, the PURCHASER or his nominee (as the case may be) shall be obliged to become a member of the ASSOCIATION within the meaning of and subject to the conditions set out in the ASSOCIATION'S MOI and RULES and undertakes that he and all persons deriving use of the ESTATE or any part thereof through him will, from the DATE OF TRANSFER duly comply with all the obligations imposed upon members under the ASSOCIATION'S MOI and RULES including the obligation to pay a monthly levy to the ASSOCIATION, the amount of which is to be determined, from time to time, by the directors of the ASSOCIATION.
- 13.3 The objectives of the HOA are contained in the MOI and RULES of the ASSOCIATION. In order to enable the HOA to fulfil the functions for which it is established, the PURCHASER hereby acknowledges that by signature of this Deed of Sale, he/she shall be deemed to have applied for membership of the HOA, in which temporary membership will be granted to the PURCHASER on acceptance of this AGREEMENT by the SELLER. Permanent membership will be granted automatically on registration of transfer into the name of the PURCHASER. Only permanent members shall have the right to vote at meetings of the HOA. The PURCHASER shall be deemed to be a member of the HOA for these purposes, notwithstanding the fact that transfer has not yet been taken by him.
- 13.4 On registration of transfer and occupation of the PROPERTY by the PURCHASER, the PURCHASER shall:
- 13.4.1 become, and whilst he is the registered owner of the PROPERTY, remain a member of the HOA;
- 13.4.2 conform to and comply with the MOI and RULES of the ASSOCIATION formulated from time to time by the directors of the HOA in accordance with the powers vested in them in the MOI and RULES of the HOA mentioned in 13.1 above;
- 13.4.3 whilst he is a member of the HOA and with effect from date of registration of the PROPERTY into his name pay all fees, levies or amounts charged by the HOA;
- 13.4.4 irrevocably authorize the SELLER to do all such things as may be necessary to enrol him as a member of the HOA with effect of date of registration of transfer;
- 13.4.5 remain a member until he ceases to be the registered owner of the PROPERTY;
- 13.4.6 not be entitled to transfer the PROPERTY unless and until he has received a certificate from the HOA stating that all amounts owing by the PURCHASER to the HOA have been paid and that all conditions set by the HOA are met;
- 13.4.7 the conditions of this clause, if registerable in the above form or in some other modified form, shall be registered as a condition of title of the PROPERTY and the PURCHASER undertakes to sign any documents that may be required for that purpose;
- 13.4.8 agree that the address of the PROPERTY herein purchased be their chosen domicilia citandi et executandi for all purposes of notification in the future, relevant to the HOA, whether in respect of court processes, notices or other documents or communications of whatsoever nature.
- 13.5 It is specifically agreed that the TOWNSHIP owner (the DEVELOPER/SELLER) shall not pay levies in respect of unsold stands.



- 13.6 The levy charged by the HOA shall be for the purposes of maintenance of all internal roads, services, boundary wall, gate mechanism, gardens, rates and taxes on land owned by the HOA, salaries of maintenance personnel, the purchase of maintenance equipment and any other charges the directors of the HOA deem necessary to fulfil the objectives of the HOA.
- 13.7 The MOI and RULES of the HOA is not included in this AGREEMENT. The PURCHASER however confirms that he has been placed in possession of the MOI and RULES as the current and reigning MOI and RULES are available for public inspection on the website of the HOA at [www.pze.co.za](http://www.pze.co.za), and by virtue of him signing this AGREEMENT the PURCHASER acknowledges its understanding of its contents and accepts its contents as binding on him. It will come into force on the DATE OF TRANSFER of the PROPERTY into the name of the PURCHASER.

Confirmation of possession, acknowledgement and understanding:

\_\_\_\_\_  
Signature: PURCHASER

\_\_\_\_\_  
Signature: WITNESS

- 13.8 The PURCHASER specifically acknowledges and accepts the stipulations and conditions in respect of time constraints/prescriptions to start and complete building operations and the application of extra levies should building operations fall outside such time constraints/prescriptions, firstly as contained in the MOI and RULES of the HOA and secondly as implemented and managed by the directors of the ASSOCIATION.

#### 14. **DOMICILIA AND NOTICES**

- 14.1 The parties choose as their domicilia citandi et executandi for all purposes under this AGREEMENT, whether in respect of court processes, notices or other documents or communications of whatsoever nature, their address as set out in the heading to this AGREEMENT.
- 14.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.
- 14.3 Any party may by notice to any other party change the physical address chosen as its domicilium citandi et executandi vis-à-vis that party to another physical address in the Republic of South Africa or its e-mail address, provided that the change shall become effective vis-à-vis that address on the 7<sup>th</sup> business day from the deemed receipt of the notice by the addressee.
- 14.4 Any notice to a party:-
- 14.4.1 delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 14.4.2 sent by e-mail to its chosen e-mail address shall be deemed to have been received on the date of dispatch (unless the contrary is proved).



14.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be adequate written notice or communication to it notwithstanding that it was not sent to or delivered to its chosen domicilium citandi et executandi.

## 15. **ARREARS**

15.1 Any amounts in arrear in terms of this OFFER TO PURCHASE shall bear interest at the rate equal to 6% percentage points above the minimum overdraft rate from time to time published by Absa Bank Limited as being its minimum overdraft rate to its prime customers in the private sector, which interest shall be calculated and capitalised every 30 days from the date that such amount becomes due until the date of payment, both days inclusive.

15.2 The prime rates published on the website of Absa Bank Limited from time to time shall be prima facie proof of such rate.

## 16. **MORA INTEREST**

16.1 In the event of there being any delay in connection with the registration of transfer for which the PURCHASER is responsible, the PURCHASER agrees to pay interest on the full purchase price at the rate equal to 6% percentage points above the minimum overdraft rate from time to time published by Absa Bank Limited as being its minimum overdraft rate to its prime customers in the private sector calculated from the date the PURCHASERS is notified in writing by the SELLER (or the SELLER'S agent) as being in mora, to the date upon which the PURCHASER has ceased to be in mora, both days inclusive.

16.2 The following delays are hereby specifically recorded.

16.2.1 The delay in the transfer of the PROPERTY as a result of the guarantees provided as contemplated in paragraph 1.2 of these CONDITIONS of SALE not being payable for reasons for which the SELLER is not responsible.

16.2.2 The delay in the issue of a clearance certificate to be issued by the South African Revenue Service in the name of the PURCHASER and the SELLER and which is required to effect the transfer of the PROPERTY into the name of PURCHASER.

16.2.3 The delay by the PURCHASER as a result of not providing the necessary documentation to the CONVEYANCERS or the financial institution granting a loan described in paragraph 2, if applicable, when requested to do so, so as to comply with Financial Intelligence Centre Act requirements.

16.3 The prime rates published on the website of Absa Bank Limited from time to time shall be prima facie proof of such rate.

## 17. **TRUSTEE FOR A COMPANY, TRUST OR CLOSE CORPORATION TO BE FORMED**

17.1 In the event of the PURCHASER having concluded this AGREEMENT in his capacity as a Trustee for a company or a trust or a close corporation to be formed then:



- 17.1.1 the PURCHASER by his signature hereto warrants that the said company or trust or close corporation:
- 17.1.1.1 will be formed;
  - 17.1.1.2 will ratify and adopt the terms and conditions of the AGREEMENT; and
  - 17.1.1.3 will provide the SELLER with written proof; all within a period of 30 days from the date of signature of this AGREEMENT by the PURCHASER;
- 17.1.2 the PURCHASER, in his personal capacity hereby under renunciation of the benefits of excussion and division with the full meaning and effect of which he declares himself to be fully acquainted, binds himself and agrees to bind himself as surety and co-principal debtor in solidum with the company to be formed by him in favour of the SELLER for the due and punctual performance of such company's obligations to the SELLER in terms of this AGREEMENT. No variation or amendment or novation of the AGREEMENT shall prejudice the suretyship obligations hereby undertaken by the PURCHASER, the object being that the PURCHASER will at all times be liable as surety and co-principal debtor even if the AGREEMENT is varied or amended or novated and even if the aforesaid company is granted an indulgence by the SELLER.
- 17.2 If the terms and conditions of Clause 17.1.1 above are not fulfilled then the PURCHASER will by his signature to this AGREEMENT be deemed ipso facto to have concluded the AGREEMENT in his personal capacity as PURCHASER.

## **18. ALIENATION OF LAND ACT**

- 18.1 In terms of Section 29 (A) of the Alienation of Land Act 68 of 1981 (as amended) (hereinafter referred as the ACT), the PURCHASER or prospective PURCHASER of land may, within five (5) days of signature by him or her, or by his or her agent acting on his or her written authority, of an AGREEMENT land or a Deed of Alienation in respect of land, revoke the offer or terminate the Deed of Alienation as the case may be by written notice delivered to the SELLER or his or her agent within that period.
- 18.2 It is recorded that the aforesaid provision of the Alienation of Land Act is not applicable to the sale of the PROPERTY by the SELLER to the PURCHASER in terms of this AGREEMENT as:
- 18.2.1 the purchase price of the PROPERTY exceeds R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND) (Section 29 (5) (a) of the ACT); and
  - 18.2.2 the PURCHASER reserves the right to nominate or appoint another person to take over the rights and obligations of the PURCHASER as stipulated in the AGREEMENT (Section 29 (a)(5)(e) of the ACT).

## **19. INDEMNITY**

- 19.1 The SELLER does not warrant any information given in respect of the PROPERTY whether this information is given prior to or subsequent to the signing of this AGREEMENT, save for the information in respect of the PROPERTY specifically warranted in this AGREEMENT. Neither the SELLER nor the DEVELOPER shall be liable for any claim of any nature whatsoever that may arise due to any inaccuracies in information given by the SELLER to the PURCHASER, his agent or his nominee in respect of the PROPERTY and the PURCHASER hereby indemnifies the SELLER and



DEVELOPER and holds them harmless against and in respect of any injury, loss or damage however caused which the PURCHASER may suffer as a result of any inaccuracies in any information given by the SELLER (save for the information specifically warranted in this AGREEMENT ).

- 19.2 In no way detracting from the generality of 19.1 above it is specifically recorded that the SELLER does not warrant the accuracy of any geo-technical reports or any other information given on sub soil conditions on the ESTATE by the SELLER to the PURCHASER whether such information is given prior to or subsequent to the signing of this AGREEMENT. The PURCHASER hereby indemnifies the SELLER and holds it harmless against and in respect of any injury, loss or damage however caused to the PURCHASER as a result of any inaccuracies in any geo-technical reports or any information in respect of sub soil conditions that the SELLER may at any time give to the PURCHASER.
- 19.3 Neither the SELLER nor the ASSOCIATION nor the DEVELOPER shall be responsible for any loss or damage which the PURCHASER, his servant, employees, agents or invitees may suffer, arising out of the use of the PROPERTY or the ESTATE, and the PURCHASER hereby indemnifies either the SELLER or the ASSOCIATION or the DEVELOPER against any claim arising from the foregoing.

## 20. RE-SALE OF PROPERTY

- 20.1 In the event of the PURCHASER selling the PROPERTY to a third party, the PURCHASER must ensure that all the conditions as stipulated in the PORT ZIMBALI TOWN PLANNING SCHEME and MOI and RULES of the ASSOCIATION are adhered to. A copy of a deed of sale in which all these conditions are addressed is available from the HOA and must be used for any future selling transaction between the PURCHASER and a future buyer.
- 20.2 The deed of sale must include a condition registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the ASSOCIATION first being had and obtained (it being recorded that the ASSOCIATION shall be entitled, at its absolute discretion, to refuse its written consent until such time as the provisions of its MOI and its RULES are complied with and no party to this AGREEMENT shall have any claim for damages arising out of the ASSOCIATION'S refusal to give such written consent).
- 20.3 The deed of sale must include a condition registered against the title deed to the PROPERTY to the effect that the PROPERTY or any portion thereof or interest therein shall not be alienated, leased or transferred without the written consent of the DEVELOPER first being obtained.

## 21. DEFINITIONS AND INTERPRETATION

- 21.1 For the purposes of the AGREEMENT and the CONDITONS OF SALE, unless the context indicates to the contrary –
- 21.1.1 "AGREEMENT" means the OFFER TO PURCHASE, these Conditions of Sale **and** the MOI of the ASSOCIATION;
- 21.1.2 "ARCHITECT" means the consultant and principal agent appointed by the DEVELOPER and representing the PURCHASER in his professional capacity;



- 21.1.3 "ASSOCIATION" means Port Zimbali Estate Home Owners' Association (NPC) (Registration. Number: 2006/008435/08) of 217 Emerald Avenue, Lyttelton Manor, Centurion. Postal address: P.O. Box 8307, Centurion, 0046. Telephone (012) 644-1411, Fax (086) 647-4644, E-mail: [finserv@hoa.co.za](mailto:finserv@hoa.co.za). Managing Agent: Financial Services Providers (Pty) Ltd;
- 21.1.4 "CONVEYANCERS" means Haasbroek and Boezaart Inc. HB Forum, 13 Stamvrug Street; Val de Grace; Pretoria. PO Box 74224; Lynnwood Ridge; 0040. Telephone (012) 481-3555, Fax (086) 673-2395, E-mail: [ellisr@hblaw.co.za](mailto:ellisr@hblaw.co.za) Contact: Ms R. Ellis;
- 21.1.5 "CONVEYANCER'S TRUST BANKING ACCOUNT" means Haasbroek and Boezaart Inc. Trust Account; Standard Bank; van der Walt Street, Pretoria branch; branch code 010145; account number 011851252;
- 21.1.6 "DATE OF TRANSFER" means the date of registration of transfer of the PROPERTY into the name of the PURCHASER or the PURCHASER'S nominee (as referred to in paragraph 4 of the CONDITIONS OF SALE), as the case may be;
- 21.1.7 "DEVELOPER" means Viking Pony Properties 37 (Pty) Ltd (Registration. Number: 2000/010934/07) of 217 Emerald Avenue, Lyttelton Manor, Centurion. Postal address: P.O. Box 8307, Centurion, 0046. Telephone (012) 644-1411, Fax (086) 647-4644, E-mail: [allan@pze.co.za](mailto:allan@pze.co.za) Contact: Mr. A.T. Jevon;
- 21.1.8 "ESTATE" means the erven collectively described as PORT ZIMBALI ESTATE;
- 21.1.9 "ESTATE MANAGEMENT" means the agents or representatives of the ASSOCIATION, who regulate and enforce the affairs of the ASSOCIATION;
- 21.1.10 "HOA" means the ASSOCIATION;
- 21.1.11 "LOCAL COUNCIL" means the Kwa-Dukuza Local Municipality;
- 21.1.12 "MOI" means the Memorandum of Incorporation of the ASSOCIATION, which includes the RULES of the ASSOCIATION;
- 21.1.13 "OFFER TO PURCHASE" means the OFFER TO PURCHASE to which these CONDITIONS OF SALE are attached;
- 21.1.14 "PROPERTY" means the immovable PROPERTY referred to in the AGREEMENT;
- 21.1.15 "PURCHASER" means the PURCHASER in terms of the AGREEMENT;
- 21.1.16 "RULES" means the RULES of the ASSOCIATION which form an integral part of the MOI of the ASSOCIATION;
- 21.1.17 "SELLER" means the SELLER in terms of the AGREEMENT;
- 21.1.18 "TOWNSHIP" means the ESTATE;
- 21.2 Clause headings are inserted purely for convenience and shall not be relevant in interpreting the contents of the clauses to which they relate;
- 21.3 Words importing a gender shall include all genders and the singular shall include the plural and vice versa;



- 21.4 If the PURCHASER consists of more than one person, such persons shall be jointly and severally liable in solidum for all their obligations in terms of this AGREEMENT;
- 21.5 If any provision of this AGREEMENT is unenforceable for any reason whatsoever, such provision shall be deemed to be separate and severable from this AGREEMENT, without in any way affecting the validity of the remaining provisions of this AGREEMENT;
- 21.6 When any number of days is prescribed in this AGREEMENT the intention is for such days to be calendar days and the number of days so prescribed shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 21.7 No indulgence or relaxation which the SELLER may allow to the PURCHASER in regard to the carrying out of the PURCHASER'S obligations in terms of or pursuant to this AGREEMENT shall prejudice the SELLER'S rights under this AGREEMENT in any manner whatsoever or be regarded as a waiver of the SELLER'S rights in terms of this AGREEMENT or be construed to act as an estoppel against the SELLER to otherwise strictly enforce compliance of the PURCHASER'S obligations in terms of this AGREEMENT.

**22. PROPERTY EXCLUSIONS**

It is recorded that should there be temporary shade netting enclosures on one or more of the boundaries of the PROPERTY on the date of signature of this AGREEMENT, that the PURCHASER acknowledges, agrees and accepts that such temporary shade netting enclosures is and remains the PROPERTY of the DEVELOPER and that the DEVELOPER may in its sole discretion remove and/or replace such temporary shade netting as and when it suits the DEVELOPER at no cost to the PURCHASER. The DEVELOPER is and will be under no obligation to replace or newly/freshly install temporary shade netting on the PROPERTY.

**23. ADDITIONAL CONDITIONS**

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**24. 96 HOUR CLAUSE**

- 24.1 Should the SELLER on or before the date on which the granting of a loan by a financial institution to the PURCHASER, if applicable, receive another acceptable offer ("the competing offer") to purchase the PROPERTY, the SELLER will have the right to call upon the PURCHASER by notice in writing, to waive the benefits of all suspensive conditions to this AGREEMENT, thereby making this AGREEMENT unconditional, within 96 hours excluding public holidays and weekends, of the date and time when such



notice is delivered to the PURCHASER. If the PURCHASER fails to confirm that he intends to proceed with the purchase of the PROPERTY in terms of this AGREEMENT within the said 96 hours and without the suspensive condition(s), the SELLER shall be entitled, but not obliged to accept the competing offer, upon which this AGREEMENT shall lapse and be null and void.

- 24.2 Should the SELLER not accept the competing offer then the PURCHASER shall still be bound to this AGREEMENT. The Despatch Theory will be applicable for any notice in terms of this paragraph 26 and paragraphs 10 and/or 14, calling for notice period(s), will not be applicable.

## 25. **INDEPENDENT ADVICE**

Each of the Parties to this AGREEMENT hereby acknowledges and agrees that:

- 25.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all the provisions of this AGREEMENT and that it has either taken such independent advice, or has dispensed with the necessity of doing so; and
- 25.2 all of the provisions of this AGREEMENT and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Parties' intentions.

## 26. **SIGNATURES**

- 26.1 This AGREEMENT is signed by the Parties on the dates and at the places indicated above their respective names.
- 26.2 This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall be taken together and deemed to be one instrument.
- 26.3 The persons signing this AGREEMENT in a representative capacity warrants their authority to do so.
- 26.4 It is recorded that this document is intended to be signed firstly by the PURCHASER and thereafter by the SELLER.
- 26.5 The PURCHASER acknowledge that their signature hereto constitutes an offer by them to purchase the PROPERTY on the terms and conditions set out herein, which offer shall remain irrevocable and available for acceptance by the SELLER until

\_\_\_\_\_ (hour) on \_\_\_\_\_ (date).

## 27. **THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, NO 10 OF 2004 ("the Act")**

- 27.1 The Alien and Invasive Species Regulations ("the Regulations") under the Act are applicable.



- 27.2 Regulation 29 (3) of the Regulations stipulates that the SELLER has to the best of his knowledge make full and complete disclosure to the PURCHASER in writing of the presence of listed invasive species on the PROPERTY as defined in the Act and Regulations before signing this AGREEMENT. The SELLER's signature to this AGREEMENT constitutes the SELLER's disclosure to the PURCHASER that no listed invasive species as defined in the Act and Regulations can be found on the PROPERTY. Should Eucalyptus trees be found on the PROPERTY, such trees are exempt from the subject disclosure, as these trees may not be removed prior to building activities commencing on the property.
- 27.3 The PURCHASER, by signing this AGREEMENT, confirms that he has acquainted himself with the nature of the Property, including the plants and vegetation found on the Property.

## 28. GENERAL

- 28.1 This AGREEMENT correctly refers the intention of the PARTIES and constitutes the entire AGREEMENT between them. No other terms, conditions, stipulations, undertakings, representations, or warranties shall be of any force or effect, save as is expressly included herein.
- 28.2 No variation of, addition or consensual cancellation or novation of this AGREEMENT and no waiver by the SELLER of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by both the SELLER and the PURCHASER or their duly authorised agents.
- 28.3 The PARTIES hereto undertake to do all such things, sign all documents and take all such steps as may be necessary, incidental or conducive to the implementation of the terms, conditions and import of this AGREEMENT.
- 28.4 If more than one person signs this AGREEMENT as the PURCHASER, the obligations of all the signatories shall be joint and several. If this AGREEMENT is not signed by all the persons named as the PURCHASER, this AGREEMENT nonetheless shall at the sole option of the SELLER be and remain binding on the person(s) who has/have signed this AGREEMENT as PURCHASER.
- 28.5 No latitude, extension of time or other indulgence which may be given or allowed by the SELLER to the PURCHASER in respect of any payment provided for in this AGREEMENT or the performance of any other obligation hereunder shall under any circumstances be considered to be implied consent of the SELLER or operate as a waiver or novation of, or otherwise affect any of the SELLER'S rights in terms of or arising from this AGREEMENT, or stop the SELLER from enforcing, at any time without notice, strict and punctual performance with each and every provision or term hereof.
- 28.6 Words importing the one gender includes the other gender, the singular includes the plural and *vice versa*, unnatural persons include created entities (incorporated or not incorporated) and *vice versa*.

