

# **DEED OF SALE**

**(Klein Paternoster Group housing development)**

MEMORANDUM OF AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

**ANKER TRUST**

**REG NO: IT 1381/2004**

Herein represented by André Cornelius Kleynhans (ID No 610604 5018 081), being duly authorised thereto

(herein after referred to as "the SELLER")

Address:

P O Box 133, Paternoster, 7381

Telephone: 083 480 4930

Fax: 022 752 2144

E-mail: paternoster@absamail.co.za

AND

Full name and description of PURCHASER:

.....

Identity Number:

.....

Marital status:

.....

(In or Out of Community)

If CC/Com/Trust:

.....

(State full name of representative)

CC/Com/Trust No:

.....

(Hereinafter referred to as "the PURCHASER")

Address: .....

Telephone: Home: ..... Office: .....

Fax: .....

E-mail: .....

Drafted by:

**PP Smit Attorneys**

**Mainroad Jacobsbay**

**Tel no: 022 715 3330**

**Fax no: 022 715 3221**

WITNESS TO:

The SELLER hereby sells and the PURCHASER hereby purchases from the SELLER the undermentioned properties (hereinafter referred to as "the PROPERTY").

On the following terms and conditions:

**1. THE PROPERTY**

Erf..... and.....Paternoster, situated in the area of the Saldanha Bay Municipality, Division Malmesbury, Province Western Cape as indicated on annexure "K1" hereto and signed by the parties for identification purposes.

SIZE (Erf.....):.....square meters (Main house area)

SIZE (Erf.....):.....square meters (Garage area)

**2. PURCHASE PRICE AND METHOD OF PAYMENT**

The purchase price of both PROPERTIES payable by the PURCHASER to the SELLER, is the sum of R..... which includes VAT @ 14%, estate agent's commission and municipal capital contribution.

Which said purchase price shall be payable free of costs as follows:

2.1 Deposit of .....being 10% of the purchase price payable on date of signature hereof by the PURCHASER to be held on trust by the SELLER's attorneys.

2.2 The balance of the purchase price on date of registration.

The PURCHASER undertakes to deliver to the SELLER or his Attorney within twenty one (21) days from the date of such request, an irrevocable Bank guarantee in favour of the SELLER or his nominee, for payment of the purchase price plus interest, if any.

The PURCHASER hereby authorizes the SELLER's Attorneys to pay the said deposit into an interest bearing account in the name of the Attorneys for his account. The interest thus accrued shall be paid to the PURCHASER on registration of transfer. In the event of this sale being cancelled, the deposit shall be paid to the person entitled thereto in terms of this agreement and the interest shall likewise be paid to the person entitled thereto.

**3. ADJOINING CONDITIONS**

The property mentioned in stipulation 1 above is respectively destined for a main house and garage.

The properties may not be sold separately and a clause will be to that effect included in the title deed conditions of both properties.

4. **INTEREST**

The SELLER'S attorneys will give notice to the PURCHASER as soon as the SELLER is ready to effect transfer. Registration in the name of the PURCHASER must then take place within fifty (50) calendar days after such notice. If registration does not take place within the said period due to any negligence or delay on the part of the PURCHASER or his financiers, direct or indirect, the PURCHASER will be liable for interest calculated on the purchase price at a rate of 16% per annum for the period that exceeds the fifty (50) day period. In the event of the PURCHASER taking possession of the PROPERTY before registration of transfer thereof in his name, the PURCHASER undertakes to:

- 4.1 pay interest aforesaid monthly in advance to the SELLER until date of registration of transfer in the name of the PURCHASER, at such place as the SELLER may appoint in writing;
- 4.2 cause or effect no structural alterations or additions to the PROPERTY without the prior written consent of the SELLER first being had and obtained;
- 4.3 give the SELLER or his successor in title, immediate possession and occupation of the PROPERTY, in the event of the cancellation of his agreement for any reason whatsoever.

5. **POSSESSION**

Possession of the PROPERTY shall be given by the SELLER and taken by the PURCHASER on the day of completion of the building as stipulated in the Building Agreement attach hereto as "annexure K3".

6. **OCCUPATION**

Occupation of the PROPERTY shall be given to the PURCHASER on the date of possession.

7. **TRANSFER**

Registration of transfer of the PROPERTY shall be effected by PP Smit Attorneys, Main Road, Jacobsbaai (Tel 022 715 3330), but only after the guarantee referred to in paragraph 2 supra has been furnished and the amounts stipulated in paragraphs 8 and 9 infra, have been paid by the PURCHASER.

8. **RATES AND TAXES**

The PURCHASER shall be liable for payment of all rates and taxes levied on the PROPERTY as from the date of registration, and shall refund the SELLER in this respect, for all monies paid by him in advance.

9. **TRANSFER COSTS**

The PURCHASER shall pay on demand, all costs incurred to effect registration of transfer of the PROPERTY on his name.

10. **CANCELLATION CLAUSE**

In the event of the PURCHASER failing to comply on due date with any of the terms and conditions of this Agreement, the SELLER or his Attorney shall have the right to:

- 10.1 claim compliance with all the terms and conditions hereof and claim payment of all amounts still due and payable by the PURCHASER in terms of this Agreement; or
- 10.2 cancel this Agreement by registered notice given to the PURCHASER, in which event the SELLER shall be entitled to retain all payments already made by the PURCHASER as "roukoop", or to claim damages from the PURCHASER as a result of his breach of contract.

11. **GENERAL CONDITIONS**

- 11.1 The PROPERTY is sold as described in the SELLER's Title Deed(s), subject to all conditions and servitude attaching to the PROPERTY or mentioned or referred to in the said Title Deed(s). The PURCHASER agrees to accept title as held by the SELLER who shall not be liable for any deficiency in the extent of the PROPERTY which may be found on a re-survey, nor does the SELLER desire to benefit by any excess which may be found. The SELLER shall not be obliged to point out to the PURCHASER the beacons of the PROPERTY and does not guarantee the existence of such beacons.
- 11.2 The SELLER does not give any express or implied warranty whatsoever in regard to the PROPERTY or any aspect thereof.
- 11.3 The PROPERTY is sold "voetstoots" as it now stands, and the SELLER shall not be responsible for any latent or patent defects to which the PROPERTY may be subject.
- 11.4 The PURCHASER hereby acknowledges that he has not been persuaded to enter into this Agreement by reason of any express or implied notification, statement, representation, act or omission made by or on behalf of the SELLER, unless same has been expressly set forth herein.
- 11.5 It is hereby agreed that this Agreement shall constitute the entire Agreement between the SELLER and the PURCHASER, and that no amendment, addition or deletion in respect thereof shall be of any legal force and effect, unless such amendment, addition or deletion has been made in writing and signed by both parties hereto.

- 11.6 Any concession, admission or condonation made by the SELLER to the PURCHASER in regard to any of the terms and conditions of this Agreement, shall be entirely without prejudice to the SELLER's rights in terms hereof, and shall in no regard be construed as a waiver by the SELLER of his rights in terms hereof.
- 11.7 The SELLER and the PURCHASER herewith choose "domicilium citandi et executandi" at their respective addresses set out here above, where all notices and/or process originating from this Agreement, shall be served.
- 11.8 The SELLER is entitled in his exclusive discretion to institute any action relating to this agreement in a Magistrate's Court which has jurisdiction by virtue of Section 28 of the Magistrate's Court Act No 32 of 1944, notwithstanding the fact the said action would have been outside the said jurisdiction by virtue of Section 29 of the said Act. The PURCHASER hereby gives his written consent as required by Section 45 of the said Act to grant jurisdiction to the said Court.

**12. BUILDING DIRECTIVES**

It is hereby confirmed that the requirements to be complied with by the PURCHASER as far as all improvements on the PROPERTY is concerned, and the procedure to be followed to obtain the necessary approvals, are contained in the Building Agreement annexed hereto as "Annexure K3".

**13. PROPERTY OWNERS ASSOCIATION**

This transaction is further subject to the following conditions which shall be included as a condition of the title in the PURCHASER'S Deed of Transfer, namely:

“Subject to the following conditions imposed by Anker Trust Reg no: IT1381/2004 and in favour of the Klein Paternoster Property Owners Association, namely:

The title holder will on date of registration of transfer in his name become a member of the Klein Paternoster Property Owners Association and will deem himself bound by rules of the association's constitution as applicable from time to time.”

It is hereby confirmed that the constitution of the Klein Paternoster Property Owners Association is annexed hereto as “Annexure K2” and will be signed by the PURCHASER as proof of his acceptance thereof.

**14. CAPITAL CONTRIBUTIONS**

The SELLER shall be obliged to pay such capital contribution as the Local Authority requires in respect of the above PROPERTY for water, electricity and sewage.

15. **CAPACITY OF PURCHASER**

In the event of the PURCHASER signing this agreement as trustee for a company or close corporation in the course of formation or as agent for his principal, he, by affixing his signature hereto, shall be held personally bound as PURCHASER, if the company or close corporation is not formed, or if formed, fails to ratify this agreement within 60 (sixty) days from date of this agreement, or if he fails to state the name and address of his principal or if his mandate proves to be defective.

In the event of the PURCHASER signing the agreement on behalf of an existing company or close corporation or as trustee for a company of close corporation in

the course of formation, he shall, in his personal capacity, be bound as surety and co-principal debtor to the SELLER for the due compliance by the said company or close corporation of all the terms and conditions of this agreement renouncing and waiving the benefits of excussion, division, cession of action, non causa debiti and errore calculi, the full force and effect he declares himself to be fully acquainted with.

16. **AGENT’S COMMISSION**

16.1 The **SELLER** is responsible for payment of agent's commission to Jevlek Pty Ltd t/a Chas Everitt (herein after referred to as “the agent”) in a sum and amount agreed upon.

16.2 The **PURCHASER** hereby declares that the Estate Agent, mentioned in this paragraph, was the effective cause of sale. If any person can prove that they were the effective cause of the sale, then the **PURCHASER** hereby indemnifies the **SELLER** against such claim(s) plus all costs in connection therewith.

17. **SPECIAL CONDITIONS**

18. **BOND APPLICATION**

It is a suspensive condition of this agreement that the PURCHASER shall provide the SELLER's Attorney on or before..... (or within such further period as granted by the seller in his sole discretion) with written confirmation, that his bond application for a loan of at least R .....has been granted;

The PURCHASER must in the attempt of a bond application make use of the SELLERS nominated bond originator namely “I Qualify” tel no: 714 3147 / 714 3649

or fax no: 086 658 1019, PO Box 493 Saldanha 7395 with reference Cobus Krige.

The PURCHASER will be obliged to, on the request of the bond originator, supply all information and documentation to enable the bond originator to do the bond application as quick as possible. If the PURCHASER fails to do so the SELLER has the right to claim specific performance or cancel the agreement as stipulated in clause 10 above.

**19. BUILDING AGREEMENT**

Attached to this agreement as “annexure K3” is a Building agreement closed between the SELLER and PURCHASER or the latter’s nominee.

It is a condition of this agreement that the PURCHASER or his nominee has to conclude a contract for the building on both sites, that building will start within 7 months after registration of the properties in the PURCHASERS name (or in within such a further period granted by the SELLER in his sole discretion) and that the PURCHASER keep strictly to the terms of the building agreement.

**20. RIGHT OF TERMINATION OF AGREEMENT OR REVOCATION OF OFFER**

In terms of the provisions of Section 29A of the Alienation of Land Act (Act no 68 of 1983, as amended) and subject to the other provisions of the said Act, and if the purchase price is less than R250 000,00 (TWO HUNDRED AND FIFTY THOUSAND RAND) and the parties have not previously entered into a Deed of Alienation in respect of the property on substantially the same terms as contained herein, and the PURCHASER -

- (a) is a natural person; and
- (b) has not reserved the right to nominate or appoint another person to take over his rights and obligations in terms of this agreement;

the PURCHASER shall be entitled to terminate this agreement or revoke the offer within a period of 5 (FIVE) DAYS after signature by him by delivering a written notice to that effect to the SELLER or his AGENT within that period. The period of 5 (FIVE) days shall be calculated with the exclusion of the day on which the PURCHASER signed the agreement and of any Saturday, Sunday or public holiday.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_  
\_\_\_\_\_ **SELLER**

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**AS WITNESSES:**

1. \_\_\_\_\_  
\_\_\_\_\_ **PURCHASER**

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

