

AGREEMENT OF SALE

entered into by and between

THE MOUNTAINSIDE INVESTMENT TRUST
(Master's Reference No. IT759/2008)
(**"the Seller"**)

and

(Registration/Identity No. _____)
(**"the Purchaser"**)

MP W
ATTORNEYS | NOTARIES & CONVEYANCERS
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WHEREBY IT IS AGREED AS FOLLOWS:

1. **INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:-

1.1 words importing:-

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and vice versa; and

1.1.3 natural persons include created entities (corporate or unincorporated) and the state and vice versa;

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:-

1.2.1 “**the Act**” means the Sectional Titles Act No 95 of 1986 and any amendment thereof and includes the regulations promulgated thereunder from time to time;

1.2.2 “**the Architect**” means a suitably qualified architect as appointed by the Seller from time to time;

1.2.3 “**the Agreement**” means this document and all annexures hereto;

1.2.4 “**the Attorneys**” means Maurice Phillips|Wisenberg, 20th Floor, 2 Long Street, Cape Town (Ref: L Hersch);

- 1.2.5 “**the Body Corporate**” means the controlling body as contemplated in terms of section 36 of the Act;
- 1.2.6 “**the Buildings**” means the buildings to be constructed on the Property substantially in accordance with the Drawings which will comprise the Sectional Title Scheme;
- 1.2.7 “**Business Day**” means any day other than a Sunday, Saturday or Public Holiday;
- 1.2.8 “**the Common Property**” means such parts of the Property which do not form part of a Section, including Buildings and parking as depicted on the Sectional Plan;
- 1.2.9 “**the Completion Date**” means the date upon which the Unit is sufficiently complete for beneficial use as certified by the Architect;
- 1.2.10 “**Deposit Advantage**” means the entity providing an insurance backed deposit guarantee product to consumers;
- 1.2.11 “**Development Period**” means the period from commencement of construction of the buildings to the Completion Date of all the units;
- 1.2.12 “**the Drawings**” means the drawings and the design specifications, all of which are available from the Seller upon request;
- 1.2.13 “**the Engineer**” means a suitably qualified engineer as appointed from time to time by the Seller in respect of the Sectional Title Scheme;

- 1.2.14 **“Income Warranty Period”** means 2 (two) years from the Completion Date in respect of Participating Units sold directly by the Seller;
- 1.2.15 **“the Managing Agent”** means a managing agent appointed to control, manage and administer the Common Property and the Rental Pool Scheme;
- 1.2.16 **“the Owner”** means the registered owner of a Unit;
- 1.2.17 **“Participating Unit”** means a Unit which forms part of the Rental Pool Scheme;
- 1.2.18 **“the Prime Rate”** means the prime overdraft rate charged from time to time by the Company's bank to its corporate customers in the ordinary course of business on an unsecured basis, calculated daily and compounded monthly in arrear, as determined by any general manager of such bank or his delegee, whose authority it shall not be necessary to prove;
- 1.2.19 **“the Property”** means Erf 31206, Paarl (Drakenstein Municipality) in extent 1,9105 hectares;
- 1.2.20 **“the Purchaser”** means _____
(Registration/Identity No. _____);
- 1.2.21 **“the Register”** means the sectional title register in respect of the Property and the building to be opened in terms of the Act;
- 1.2.22 **“the Rental Pool Scheme Rules”** means the Rental Pool Scheme Rules enclosed hereto marked **“Annexure “A”**;
- 1.2.23 **“the Section”** means the proposed section in the Sectional Title Scheme comprising of specific storage facilities as described in the **Annexure “B”**

read together with the Sectional Plan depicting the Subject Matter of this sale;

1.2.24 “**the Sectional Plan**” means the sectional plan as will be approved by the Surveyor General and registered by the Registrar of Deeds for the Sectional Title Scheme;

1.2.25 “**the Sectional Title Scheme**” means the sectional title scheme to be registered on the Property;

1.2.26 “**the Sectional Title Scheme Rules**” means the management and conduct rules prescribed by the Act and as may be amended from time to time by the Seller or by the Body Corporate and any other rules as are formulated from time to time by the Seller, Body Corporate or Managing Agent;

1.2.27 “**the Seller**” means The Mountainside Investment Trust (Master’s Reference No. IT 759/2008) or its successors in title;

1.2.28 “**Subject Matter**” means the Unit;

1.2.29 “**the Unit**” means the Section together with its undivided share in Common Property apportioned to the Section in accordance with its participation quota determined in terms of Section 32(1) of the Act.

1.3 when any number of days is prescribed in this Agreement, same 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 next succeeding Business Day; and

1.4 unless otherwise provided the words and expressions defined in the Act shall have the meanings therein defined.

2. **PREAMBLE**

WHEREAS

- 2.1. The Seller is the owner of Erf 31206, Paarl, (Drakenstein Municipality) in extent 1,9105 hectares.
- 2.2. The Seller intends establishing a Sectional Title development on the Property comprising of a storage facility and parking bays.
- 2.3. The Seller has agreed to sell and the Purchaser has agreed to purchase the sectional title Unit in the proposed Sectional Title Scheme and the parties wish to record their agreement in writing.

3. **SALE**

The Seller sells to the Purchaser who hereby purchases the Subject Matter as more fully described in **Annexure “B”** read with the Drawings and as finally described on the Sectional Plan read with the Register.

4. **ACKNOWLEDGEMENTS BY PURCHASER**

The Purchaser acknowledges and agrees that:-

- 4.1. the Sectional Plan has not been approved and that accordingly the exact and final boundaries and areas of the Sections will be those shown on the Sectional Plan as finally approved;
- 4.2. the Register will be opened as soon as is reasonably possible and transfer of a Unit and shall take place on the Completion Date or as soon as possible thereafter;

- 4.3. the Section forming part of the Subject Matter being sold in this Agreement is not capable of subdivision;
- 4.4. the area depicted on the Sectional Plan which forms part of the Common Property where parking is located is subject to existing Property restrictions and conditions;
- 4.5. he has read and approved the Drawings and that he will be obliged to accept delivery of the Unit:-
 - 4.5.1. completed substantially in accordance with the Drawings; and
 - 4.5.2. as finally depicted and delineated on the Sectional Plan;
- 4.6. he will be bound by the Management and Conduct rules prescribed by the Act, or as amended by the Seller or Body Corporate and any other rules imposed by the Seller, Body Corporate or Managing Agent from time to time;
- 4.7. it is the intention of the Seller that the Sectional Title Scheme operate as a storage facility rental enterprise and to this end the Seller has retained parts of the storage facilities within the Sectional Title Scheme in order to provide the necessary facilities for the operation of such rental enterprise. The Seller will place these areas at the disposal of the Managing Agent so as to enable the Managing Agent to contract with the Managing Agent for the operation of the rental enterprise;
- 4.8. the Seller, in conjunction with the Managing Agent and thereafter as soon as the Body Corporate is formed, the Body Corporate shall determine the levies payable from time to time in accordance with the provisions of Section 37(1)(c) of the Act;
- 4.9. the Seller shall, in terms of the Sectional Title Scheme Rules, appoint the Managing Agent for a period of 1 (one) year and as soon as the Body Corporate is established it shall elect to extend the appointment of the existing Managing Agent or appoint a new Managing Agent.

5. **PURCHASE PRICE AND PAYMENT**

5.1 The purchase price payable by the Purchaser to the Seller in respect of the sale of the Subject Matter is the amount of R_____ (_____ rands) plus VAT;

5.2 The purchase price shall be payable as follows:-

5.2.1 The Purchaser shall pay a deposit of 10 % (ten per cent) of the purchase price to the Seller's Attorneys simultaneously with the signing hereof by the Purchaser. The deposit shall be invested by the Seller's Attorneys in the name of the Purchaser in terms of Section 78(2A) of the Attorneys Act No. 53 of 1979 with interest to accrue to the Purchaser until registration of transfer when the capital shall be paid to the Seller. Alternatively, the Seller shall accept confirmation from Deposit Advantage of its approval of a deposit guarantee of 10% (ten percent) of the purchase price pursuant to an application by the Purchaser as sufficient compliance with the Deposit requirements contained this Agreement.

5.2.2 The balance of the Purchase Price is payable on registration of the transfer of the Unit into the name of the Purchaser.

5.2.3 The Purchaser shall within 30 (thirty) days of signing this Agreement, furnish the Attorneys with a bank or other guarantee acceptable to the Seller, for the due payment of the balance of the purchase price provided that such request shall not be made by the appointed Attorneys of the Seller prior to the fulfillment of the last suspensive conditions contained herein.

5.3 All or any payments to be effected hereunder, shall be effected by the Purchaser to the Attorneys appointed by the Seller free of exchange at Cape Town and without deduction or set off and into the following account:-

Account Name - _____
 Bank - _____
 Branch Code - _____
 Account No. - _____
 Ref - _____.

5.4 All monies due by the Purchaser in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 2% (two per centum) above the Prime Rate, calculated from the due date of payment to the actual date of payment thereof.

5.5 Each payment made by the Purchaser shall be allocated first to the payment of interest and then to the payment of any other monies due in terms hereof and thereafter to the reduction of the purchase price.

5.6 If any work of whatsoever nature is still required to be done to the Unit or any part of the Property on the date that transfer thereof is tendered to the Purchaser, the Purchaser shall not be entitled to withhold or abate payment of any amount due to the Seller in terms of this Agreement by reason of any breach or alleged breach of the Sellers obligations hereunder.

6. **MORTGAGE BOND**

6.1 This sale is subject to the Purchaser (or the Seller on the Purchaser’s behalf) by no later than _____ raising a loan on security of a mortgage bond over the _____ Property for R_____ (_____) on such terms and conditions as are customarily imposed by mortgage lending financial institutions. The Purchaser warrants that it qualifies for such loan and knows of no factors which might prevent a financial institution from issuing a loan quotation. This

condition shall be deemed to have been fulfilled on the date upon which the mortgage lender issues a written loan quotation.

- 6.2 The provisions of clause 6.1 are inserted for the benefit of the Purchaser whom may waive the condition expressly or by conduct.

7. **LOAN FINANCE**

- 7.1. In the event of the Purchaser requiring a mortgage loan to finance the acquisition of the Unit, this sale shall be subject to the condition precedent that the Purchaser obtains approval in principle from a recognised financial institution for such a loan. The Purchaser undertakes to use his best endeavours to ensure that the loan referred to is granted timeously and undertakes to sign all such documentation and to co-operate with the Seller fully in order to ensure that the said loan is approved. This condition shall be deemed to have been fulfilled upon the Purchaser obtaining approval in principle from a financial institution for a loan as herein contemplated.
- 7.2. The provisions of clause 7.1 above shall have been fulfilled upon a bank or other financial institution notifying the Seller and/or the Purchaser and/or the agent in writing that it has granted the required loan, notwithstanding that such loan is granted subject to the fulfilment of any conditions pertaining thereto.
- 7.3. In the event that the condition precedent is not fulfilled within the time period provided for in clause 6.1 above, the Seller may in its sole discretion and in writing extend this period for 14 (fourteen) days at a time.
- 7.4. The application for the mortgage loan by the Purchaser shall at the Seller's discretion be submitted to the relevant financial institution through the Seller or through agents appointed by the Seller and that whilst the Seller will do anything reasonably possible to assist the Purchaser to obtain the mortgage loan, it shall at all times remain the Purchaser's obligation to obtain the loan and any act on the part of the Seller (or its agents) in this respect will not render the Seller liable to the Purchaser in any manner

whatsoever for any actual or contingent losses which the Purchaser may sustain in the event of the required loan not being granted.

7.5. Notwithstanding anything to the contrary contained herein, this Agreement shall operate irrevocably and *in rem suam* as a power of attorney in favour of the Seller or its agents, which shall have the power to apply for a loan from a recognised financial institution on behalf of the Purchaser.

7.6. If:-

7.6.1. the Purchaser is a Company, Close Corporation, Trust or other legal entity (other than a natural person) and the loan is granted subject to the condition that the directors and/ or trustees (as the case may be) bind themselves as surety, or if

7.6.2. the Purchaser is a married woman and the loan is granted subject to the condition that the Purchaser's spouse bind himself as surety,

then such directors and/or shareholders and/or members and/or spouse and/or trustees shall bind themselves as sureties and co-principal debtors with the Purchaser in any matter arising from or in connection with such loan. Such loan shall then be deemed to have been unconditionally granted. The Purchaser undertakes to procure that such directors and/or shareholders and/or members and/or trustees and/or spouse shall bind themselves as sureties and co-principal debtors as aforesaid.

8. **TRANSFER**

8.1. Transfer of the Unit shall be passed and given by the Attorneys and taken on the anticipated Completion Date or as soon as possible thereafter, notwithstanding that certain parts of the Sectional Title Scheme or parts constituting improvements on the Common Property may not have been completed.

8.2. The Purchaser shall sign all transfer and bond documents necessary to give effect to this Agreement at the offices of the Attorneys within 5 (five) days of being called upon to do so.

9. **POSSESSION**

9.1. Possession of the Unit shall be given and taken on the date of registration of transfer, on which date, all risk and benefit in the Unit shall pass to the Purchaser.

9.2. The Seller shall not be responsible for any loss, damage or inconvenience suffered by the Purchaser by reason of any building operations which may be conducted in respect of the Property after the possession date.

10. **VOETSTOOTS**

10.1. Save as specifically set out in this Agreement, the Seller has made no representations and given no warranties in respect of the Unit or the Buildings or in respect of anything relating thereto and this sale is accordingly “voetstoots” and the Seller shall not be liable for any defects in the Subject Matter or in respect of anything relating thereto whether patent or latent.

10.2. The Purchaser shall accept transfer of the Unit subject to all conditions and servitudes benefiting or burdening the Unit and Property whether existing or hereafter imposed by any competent authority or by the Seller.

11. **VARIATIONS OF SPECIFICATIONS**

11.1. The Buildings and the Unit shall be built substantially in accordance with the Drawings, provided that the Seller shall be entitled to:-

11.1.1. substitute items of a similar standard and quality for any specified item referred to in the annexed Drawings (and accompanying design specifications);

- 11.1.2. vary the Sectional Plans for the Buildings should the Seller consider the same reasonably necessary for technical or aesthetic reasons; and
- 11.1.3. change the area or layout of the Section, save only that the area of the Section shall not vary by more than 5% (five percent) of the estimated area.
- 11.2. In the event of there being any dispute between the parties as to the nature of the variations referred to in clause 11.1.2, the dispute shall be referred for determination to the Architect and his decision shall be final and binding on the parties.
- 11.3. Neither the Purchaser nor any person or firm employed by him shall carry out any work on or to the Unit prior to registration of transfer.

12. **UNDERTAKINGS AND WARRANTIES BY THE SELLER**

The Seller undertakes and warrants that:-

- 12.1. it shall take all reasonable steps necessary to procure that the Completion Date will take place by the date specified in the Schedule, or as soon as reasonable possible thereafter;
- 12.2. the Sectional Plan and the opening of the Register in terms of the Act are registered as soon as is reasonably possible and practicable after the Completion Date;
- 12.3. should the Buildings included in the Unit sold not be erected or completed at the time of the sale, it will, subject to clause 10.1, construct and complete the Unit substantially in accordance with the Drawings;
- 12.4. it will, within a reasonable time, remedy any patent defect in the Section which may be notified to the Seller in writing within 30(thirty) days of the date of possession and the Seller will have no further liability in respect of defects which were apparent as at the date of possession;
- 12.5. it will, within a reasonable time, remedy any material latent defects in the Section which manifest themselves within 3 (three) months after the date of possession,

provided that the Purchaser shall be deemed to have accepted the Section in the condition in which same were at the date of possession;

- 12.6. the expression “material defect” means those defects the existence of which are recorded in writing as requiring to be remedied or repaired and which the Architect determines as being material. The Architect shall determine whether such defects recorded in writing are “material defects” and his determination shall be final and binding upon parties;
- 12.7. all warranties and undertakings given by the Seller to the Purchaser in terms of this Agreement are personal to the Purchaser who cannot cede, assign or make over his rights thereto;
- 12.8. for the purposes of notifying the Seller of any defects as aforesaid, the Purchaser may in his sole discretion and at his own costs appoint an independent professional or any other person to, on his behalf prepare and submit a list of defects to the Seller for attention.

13. **CONDITIONS APPLICABLE PENDING TRANSFER**

- 13.1. Prior to transfer the following conditions shall apply to the Purchaser:-
 - 13.1.1. save insofar as may be inconsistent with the provisions of this Agreement, the provisions of Section 44 (1) of the Act shall apply;
 - 13.1.2. the provisions of the Sectional Title Scheme Rules insofar as they cast any duty upon the owner or occupier of a Unit, shall bind the Purchaser and be enforceable by the Seller;
 - 13.1.3. the Purchaser may not make any alterations or additions to the Unit without the prior written consent of the Seller;

13.1.4. the Purchaser shall not sell or in any other manner dispose of or part with (whether temporarily or otherwise) the Unit, except with the written consent of the Seller, which consent shall not be unreasonably withheld;

13.1.5. the Purchaser shall not let the Unit or any part thereof.

13.2. The Seller or the appointed Managing Agent shall, pending the establishment of the Body Corporate:-

13.2.1. insure the Buildings and all improvements, fixtures and fittings in or upon the Property to the full replacement value thereof against such risks as the Seller may decide;

13.2.2. maintain the Common Property and keep it in state of good and serviceable repair and in a neat, tidy and sanitary condition;

13.2.3. administer the Property and make all payments in respect of rates, taxes and other imposts, electricity and water consumed upon the Common Property and all other charges in connection with the Property and the Buildings.

14. **INSPECTION OF UNIT**

The Seller and/or the Seller's duly authorised agent shall be entitled to inspect the Unit.

15. **LEVIES**

The Purchaser shall be liable from the date of possession for payment of levies as contemplated in the Act and/or decided by the Body Corporate. Such levies shall be payable monthly in advance to the Body Corporate. If the date of possession does not fall on the first day of a month, then the levy payable shall be pro-rated for that month.

16. **THE BODY CORPORATE**

- 16.1. The Seller and the Purchaser hereby agree that the Seller shall appoint the Managing Agent as the managing agent of the Body Corporate and it is agreed that the Managing Agent shall be assigned all the functions and powers of the Body Corporate as set out in Sections 37 and 38 of the Act.
- 16.2. The Seller, in conjunction with the Managing Agent shall determine the levies payable from time to time in accordance with the provisions of Section 37(1)(c) of the Act.
- 16.3. A Managing Agent is appointed for an initial period of 1 (one) year and thereafter such appointment shall automatically renewed from year to year unless the Body Corporate notifies the Managing Agent to the contrary: provided that notice of termination of the contract may be given by the trustees of the Body Corporate in accordance with a resolution taken at a trustee meeting or an ordinary resolution taken at a general meeting.
- 16.4. Each Section is entitled to appoint one trustee as provided in Section 39 of the Act.

17. **BROKERAGE**

- 17.1. The Seller shall, if applicable, pay brokerage to the marketing broker.
- 17.2. If the Purchaser fails to carry out his obligations in terms of this Agreement, the broker shall have the right to recover the said brokerage from the Purchaser.
- 17.3. The Purchaser warrants that the said marketing broker is the only broker who introduced him to the Unit and to the Seller.
- 17.4. The Purchaser hereby indemnifies and holds the Seller free and harmless against any claim which may be made by any other marketing broker or estate agent in respect of any brokerage arising out of the sale of the Unit, where such broker or agent claims to

have introduced the Purchaser to the Unit and/ or to the Seller in connection with this transaction.

18. **RIGHT OF CESSION**

The Seller shall be entitled to cede any of its rights and delegate any of its obligations in terms of this Agreement, and, to the extent that it may be necessary, the Purchaser consents thereto.

19. **JOINT PURCHASERS**

Insofar as there may be more than one Purchaser of this Agreement, the liability of each of such Purchasers shall be joint and several and in solidum.

20. **WITHHOLDING PAYMENTS**

If any work of whatsoever nature is still required to be done to the Unit or any other part of the Property on the date that transfer thereof is tendered to the Purchaser, the Purchaser shall not be entitled to withhold, set off or retain any amounts owing by the Purchaser to the Seller nor shall the Purchaser be entitled to withhold or abate payment of any amount due to the Seller in terms of this Agreement by reason of any breach or alleged breach of the Seller's obligations hereunder.

21. **VIABILITY**

This Agreement is further subject to the suspensive condition that the Seller obtains from all competent authorities such approvals as may be required for the implementation of the development. In the event of the required approvals not being obtained this Agreement shall lapse and be of no further force or effect. Should this Agreement lapse for reasons as aforesaid, the Seller shall refund to the Purchaser all amounts paid on account of the purchase price together with interest accrued.

22. **RIGHT TO EXTEND**

The Purchaser acknowledges that the Seller is entitled to extend Sections situated on the Property, including at its sole discretion to further develop and/or extend parts of the Property according to plans which are inter alia subject to environmental impact assessment approval.

The Purchaser acknowledges that the Seller, when applying for the opening of the Sectional Title Register will reserve to itself, in terms of Section 25 of the Act, the right to complete and extend the Sectional Title Scheme. The Purchaser further acknowledges that the Seller hereby reserves to itself the right to consolidate, subdivide or extend any section in the Sectional Title Scheme either prior to or after the registration of the Sectional Plan and the Purchaser agrees to grant his consent thereto inasmuch that it should be required. The Purchaser further agrees that the Seller when exercising the right to extend, has the right to deviate from the plans as are to be filed at the Deeds Registry in terms hereof, provided that such deviation shall not adversely affect the value of the Property hereby sold.

23. **COMPANY/CLOSE CORPORATION TO BE FORMED**

In the event of the Purchaser being a Company or a Close Corporation to be formed, the signatory for the Purchaser shall be personally liable for all obligations of the Purchaser as though he contracted in his personal capacity if:-

- 23.1. the company or close corporation (as the case may be) in respect whereof he acts as trustee is not incorporated within 21 (twenty one) days of date of signature hereof by such signatory; and
- 23.2. the company or close corporation having been incorporated, fails to adopt and ratify unconditionally this transaction without modification within 7(seven) days of date of incorporation.

24. **NON – LIABILITY**

Notwithstanding anything to the contrary herein contained, the Seller shall not be responsible for any loss or damage which the Purchaser may suffer by any act or omission whatsoever or neglect on the part of the Seller, its servants, employees or agents, nor shall the Seller be responsible for any loss or damage of any description whether to the Property or person which the Purchaser or any other person may suffer by reason of the Buildings or Unit at any time falling into a defective state or by reason of any construction conducted by the Seller on the Property or any portion hereof. The Purchaser shall not for any reason be entitled to withhold payment of any monies due to the Seller in terms hereof.

25. **STORAGE FACILITY SCHEME, RENTAL POOL AND MANAGING AGENT**

- 25.1. The Purchaser undertakes and agrees to place the Unit hereby sold at the disposal of the Seller and the Managing Agent and undertakes to comply and adhere to the Rental Pool Scheme Rules, a copy of which is annexed hereto marked **Annexure “A”**.
- 25.2. The Purchaser acknowledges and agrees that despite ownership of the Unit, the use thereof shall be governed by the terms of the Rental Pool Scheme Rules. The Purchaser further acknowledges that despite being a member of the Body Corporate of the Sectional Title Scheme, he shall be obliged to support decisions relating to the operation, improvement, expansion and extension of the Rental Pool Scheme and hereby undertakes to sign any document required by the Body Corporate or Managing Agent to implement such decision.
- 25.3. The terms and conditions of this Agreement shall *mutatis mutandis* apply to the Rental Pool Scheme Rules.

26. **INCOME WARRANTY**

The Seller guarantees that each Participating Unit shall during the Income Warranty Period receive a rental income equal to:-

- 26.1. 9% (nine percent) per annum of the Purchase Price in respect of the first year calculated from the Commencement Date; and
- 26.2. escalating at 6% (six percent) per annum in relation to the second year.

27. **ADVERTISING ON THE COMMON PROPERTY**

- 27.1. The Seller or its agents shall be entitled at any time(s) to erect such signage, flagpoles, messages or any other form of advertising on the Common Property and/or the building as may be legally permissible solely for the purpose of selling and/or letting the Unit in the Sectional Title Scheme provided that it does not inconvenience the owners of other Units in the Sectional Title Scheme.
- 27.2. The Purchaser shall not be entitled to display any “For Sale” and/ or “To Let” signs on the Buildings or on the Common Property or outside the Property without the written consent of the Seller and/ or the Body Corporate of Sectional Title Scheme once established.
- 27.3. The Seller shall be entitled, when applying for the opening of the Sectional Title Register to add to and/or amend the management rules and the conduct rules (prescribed by legislation in terms of the Act) by inserting the provisions of clauses 31.1 and 31.2 in the Sectional Title Scheme Rules.

28. **SURETYSHIP**

28.1. If the signatory on behalf of the Purchaser is not the Purchaser, then such signatory by his signature hereto, hereby:-

28.1.1. binds himself as surety and co-principal debtor jointly and severally to the Seller for the due and proper fulfillment of all the obligations of, and for the punctual payment of all sums of money which are or may become due by the Purchaser in terms of, or in connection with or arising in any way whatsoever out of this Agreement or any amendment or cancellation thereof;

28.1.2. renounces the benefits of excussion, division and cession of action, the full meaning and effect whereof he acknowledges that he knows and understands.

28.2. Should the Seller cede, assign and transfer its rights and delegate its obligations to a third party, then the Purchaser or the party who has bound himself/itself as surety and co-principal debtor in favour of the Seller, agrees to be bound as surety and co-principal debtor in favour of the third party to whom the Seller has transferred its rights and delegated its obligations.

28.3. Should the Seller so require, the Purchaser shall procure the signature of a suretyship in a form and by a third party acceptable to the Seller, guaranteeing the obligations of the Purchaser in terms of this Agreement. Such suretyships, properly completed and signed shall be delivered to the attorneys within 5 (five) working days of demand therefore.

29. **RIGHT OF FIRST REFUSAL**

The Purchaser hereby irrevocably grants the Seller the right of first refusal should the Purchaser decide to sell the Unit. Should the Purchaser obtain a written offer to purchase, the

Seller shall have 72 (seventy two) hours during which to meet or beat the written offer. Should the Seller decline to meet or beat the written offer, then the sale of the Unit may proceed as per the written offer, but subject to the terms and conditions herein.

30. **FICA**

The Purchaser acknowledges that he is aware of the provisions of the Financial Intelligence Centre Act and by acquiring property and mortgage finance that the Attorneys would have to comply with the appropriate provisions of the Act. The Purchaser accordingly agrees to grant the Attorneys full co-operation and disclosure in order that they may meet their obligation in this regard.

31. **OFFER**

This document, once signed by the Purchaser, shall be regarded as an offer to purchase made by the Purchaser and shall be irrevocable and open for acceptance by the Seller for a period of 14 (fourteen) days calculated from date of signature hereof by the purchaser.

32. **DEFAULT**

32.1. If the Purchaser commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Seller shall be entitled to give the Purchaser 7 (seven) days notice in writing to remedy such breach or failure, and if the Purchaser fails to comply with such notice then the Seller shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies, which it may have in law, including the right to claim damages:-

32.1.1. to cancel this Agreement, in which event the Purchaser shall forfeit all monies paid to the Seller or the Attorneys in terms hereof; or

32.1.2. to claim immediate performance and/or payment of all the Purchaser's obligations in terms hereof.

- 32.2. Should the Purchaser dispute the Seller's right to cancel this Agreement, then pending the determination of that dispute, the Purchaser shall be obliged to continue payment of all amounts payable by him in terms of this Agreement on the due dates thereof and the Seller shall be entitled to recover and accept those payments without prejudice to the Seller's claim for cancellation of this Agreement or any other rights of the Seller whatsoever.
- 32.3. Upon cancellation of this Agreement for any reason whatsoever, the Purchaser hereby undertakes to vacate forthwith the Unit and to procure that the Unit shall be vacated by all persons who occupy it through the Purchaser's title or by his permission. Occupation shall be redelivered in the same good order and condition as at the date of possession.

33. **NOTICES AND DOMICILIA**

- 33.1. The parties choose *domicilium citandi et executandi* ("domicilium") for the purposes of giving any notice, the serving of any process and for any other purpose arising from this Agreement as follows:-

33.1.1. the Seller at Prescient House, Otto Close, Westlake Business Park,
Westlake, 7945
Fax No.: 021-700 3700;

33.1.2. the Purchaser at _____

Fax No. _____.

- 33.2. Each of the parties shall be entitled from time to time by written notice to the other to vary its domicilium to any other address within the Republic of South Africa, which is not a post office box or poste restante.

33.3. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

33.4. Any notice given and any payment made by one party to the other ("the addressee") which:-

33.4.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;

33.4.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the seventh day after the date of posting;

33.4.3. is given by telefax, shall be deemed (in the absence of proof to the contrary) to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours of the receiving instrument and within 48 (forty-eight) hours of transmission where it is transmitted outside those business hours.

34. **ARBITRATION**

34.1. In the event of any dispute arising at any time between any of the Parties in regard to:-

34.1.1. any matter arising out of
or

34.1.2. the interpretation of
or

34.1.3. the termination of

or

34.1.4. any matter arising out of the termination of the Agreement, shall be submitted to and decided by arbitration.

34.2.

34.2.1. The arbitration referred to in clause 34.1 above shall be held at Cape Town under the control of the Arbitration Foundation of Southern Africa, Western Cape ("AFSA") and in accordance with its Rules, unless the Parties otherwise agree.

34.2.2. In the event that AFSA is no longer in existence at the time the dispute has arisen or should AFSA not be prepared to have the dispute adjudicated under its control, then the provisions of clause 34.3 below will apply.

34.3. The arbitration referred to in clause 34.1 above shall be held:-

34.3.1. at Cape Town;

34.3.2. in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedure (e.g. there shall not be any pleadings or discovery) or the strict rules of evidence;

34.3.3. immediately and with a view to it being completed within 21 (twenty one) business days after it is demanded;

34.3.4. otherwise (but subject to the provisions of clauses 34.3.1, 34.3.2 and 34.3.3 above) under the provisions of the Arbitration Act No. 42 of 1965 (as amended from time to time).

34.4. The arbitrator shall be, if the question in issue is:-

- 34.4.1. primarily an accounting matter, an independent Accountant;
 - 34.4.2. primarily a legal matter, a practising Senior Counsel of not less than 5 (five) years standing as such;
 - 34.4.3. any other matter, an independent person agreed upon between the Parties to the dispute and, failing agreement, a person appointed by the President for the time being of the Cape Law Society.
- 34.5. If agreement cannot be reached within 7 (seven) days after the arbitration has been demanded as to whether the question in issue falls under clauses 34.4.1, 34.4.2 or 34.4.3 above, then a practising Senior Counsel of not less than 5 (five) years standing as such agreed upon between the Parties to the dispute and, failing agreement, appointed by the President for the time being of the Cape Law Society, shall, as soon as possible thereafter and on a written statement or statements of the facts given to him by the Parties to the dispute or their lawful representatives, determine whether the question in issue falls under clauses 34.4.1, 34.4.2 or 34.4.3 above so that an arbitrator can be appointed in terms thereof and the arbitration can be held and concluded, if possible, within the prescribed 21 (twenty one) business days aforesaid.
- 34.6. The arbitrator shall decide upon the matters submitted to him according to the laws of the Republic of South Africa.
- 34.7. The Parties to the dispute irrevocably agree that the decision in such arbitration proceedings :-
- 34.7.1. shall be binding on the Parties to that dispute;
 - 34.7.2. shall be carried into effect;

34.7.3. may be made an Order of Court of competent jurisdiction.

34.8. This clause 34 is separable from the remainder of the Agreement and will accordingly remain effective between the Parties to any dispute notwithstanding that the Agreement or any part thereof may be terminated or cancelled.

35. **GENERAL**

35.1. The terms of this Agreement form the sole contractual relationship between the parties hereto and no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the parties hereto.

35.2. No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or novation of this Agreement.

35.3. Each of the parties hereby undertakes to sign and/or execute all such documents (and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney, transfer duty declarations) immediately upon request by the Attorneys.

35.4. No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all parties to this Agreement or their duly authorised representatives.

35.5. This document contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

36. **ZERO RATING**

- 36.1. The Parties warrant to one another that they are or shall on the Transfer Date both be Vendors within the meaning of the Value Added Tax Act (“the VAT Act”).
- 36.2. In compliance with the requirements of Interpretation Note 31 as issued by SARS 31 March 2005, the Purchaser agrees to supply on or before the Transfer Date proof of registration as a VAT vendor by way of provision of a VAT 301 certificate to the Seller.
- 36.3. The Seller and the Purchaser record and agree that:-
- 36.3.1. the Subject Matter constitutes an enterprise which is capable of separate operation;
- 36.3.2. the Subject Matter is disposed of as part of a going concern;
- 36.3.3. the Subject Matter will be an income-earning activity and will remain active and operating until its transfer to new ownership and that all the assets which are necessary for carrying on the enterprise are disposed of by the Seller to the Purchaser.
- 36.4. On the date of registration of transfer the Purchaser will be able to and will continue with the said enterprise.
- 36.5. By reason of the provisions of Section 11(1)(e) of the VAT Act this transaction is subject to the payment of V.A.T at a rate of zero percent and the consideration payable by the Purchaser in respect of the purchase price is inclusive of VAT at zero-rate.
- 36.6. If, notwithstanding the provisions of this clause, VAT becomes payable by the Seller in respect of this transaction at a rate other than 0 % then the Purchaser shall pay to the Seller an amount equal to the VAT, interest and penalties (if applicable) so payable

forthwith on demand against delivery by the Seller to the Purchaser of the documentation required in terms of the VAT Act to permit the Purchaser to claim a deduction in respect of such VAT in terms of Section 16(3) of the VAT Act.

37. **COSTS**

- 37.1. The Purchaser shall on written request from the Attorneys pay all costs of transfer, including transfer duty or VAT, whichever is applicable, costs of all necessary affidavits and all other costs which incurred in order to comply with statutes, regulations or other enactments relating to the passing of transfer of the Unit including the advance levy payment.
- 37.2. The costs as referred to in clause 37.1 shall be payable to the Attorneys upon request.
- 37.3. The Seller shall, in its sole discretion, have the right to make payment on behalf of the Purchaser of all or part of aforementioned costs. Any such payments made by the Seller shall be refunded to the Seller on demand together with interest thereon calculated from date of payment thereof by the Seller until date of receipt of payment from the Purchaser calculated at the Prime Rate from time to time.

Signed and dated at _____ this _____ day of _____ 2010.

AS WITNESSES:

1. _____

For:
**THE MOUNTAINSIDE INVESTMENT
TRUST**

2. _____

Trustee, who by affixing his signature
warrants his authority to do so

Signed and dated at _____ this _____ day of _____ 2010.

AS WITNESSES:

1. _____

2. _____

PURCHASER

If the Purchaser is married, then his/ her spouse must sign below.

PURCHASER'S SPOUSE

I _____, the spouse of the Purchaser, to whom I am married in community
of property do hereby consent to my said spouse concluding this Agreement.

CONSENT OF SURETYSHIP

I _____, being married in community of property to _____
_____ (the signatory of this Agreement of Sale), do hereby consent in terms of section
15(2) of the Matrimonial Property Act, 1984, as amended, to my said spouse binding himself/herself
as surety for the obligations referred to in and under the provisions of this Agreement.

Signed at _____ on this ____ day of _____ 2010.

AS WITNESSES:

- 1. _____ _____
SPOUSE
- 2. _____

who assists the Purchaser in this Agreement as far as needs be and by his/her signature hereto binds
him/her as surety and co-principal debtor in favour of the Seller for the due fulfilment of all the
obligations of the Purchaser hereunder.

Signed and dated at _____ this ____ day of _____ 2010.

- 1. _____ For:
- 2. _____ _____
PURCHASER, who by affixing his
signature warrants his authority to do so

ANNEXURE "A" – RENTAL POOL SCHEME RULES

ANNEXURE "B"**1. THE SECTION**

Section No. :

Estimated Floor areas:

Number of Storage facilities comprising the Section:

2. THE SELLER

2.1. Name: The Mountainside Investment Trust
IT 759/2008

2.2. Address: Prescient House
Otto Close
Westlake Business Park
Westlake
7945

2.3. Postal Address: Prescient House
Otto Close
Westlake Business Park
Westlake
7945

2.4. Email: mark@prescient.co.za
davec@prescient.co.za

2.5. Facsimile number: 021 700 3700

3. THE PURCHASER

3.1. Full name: _____

3.2. Identity / registration number: _____

3.3. Full name of spouse (if applicable): _____

3.4. Identity number of spouse (if applicable): _____

3.5. Marital status: *unmarried

*married in community of property

*married out of community of property

*married, the marriage being governed by the laws of

_____ (insert name of country if not South Africa)
 (*delete whichever not applicable)

- 3.6. Business address: _____

- 3.7. Residential address: _____

- 3.8. Postal address: _____

- 3.9. Email: _____
- 3.10. Telephone number:
 Home: _____ Work: _____
- 3.11. Facsimile number: _____
- 3.12. Occupation: _____
- 3.13. Name of contact person if the Purchaser is a juristic person:

4. **SELLER'S ATTORNEYS**

Name of firm:	Maurice Phillips Wisenberg
Business Address:	20 th Floor 2 Long Street Cape Town, 8001
Postal Address:	PO BOX 522, Cape Town, 8000
Telephone number:	021 419 7115
International number:	(+2721) 419 7115
Facsimile number:	021 419 7049
International Facsimile number:	(+2721) 419 7049
E-Mail:	leonard@mpw.co.za
Name of contact person:	Leonard Hersch
Banking details:	Standard Bank
Branch:	Thibault Square
Branch code:	02 09 09
Account number:	07 08 2 66 77.