

## OFFER TO PURCHASE



## AVIANTO LUXURY ESTATE

By and between

**HEILA MAGDALENA O'DELL trading as HMDLL CONSTRUCTION**  
(Hereinafter referred to as the "the Seller")

of \_\_\_\_\_  
(which address the Seller selects as its domicilium citandi et executandi for all purposes including notices arising herefrom)

And

Name of purchaser: \_\_\_\_\_

Identity number / Registration Number \_\_\_\_\_

Marital status \_\_\_\_\_

being duly authorised hereto by \_\_\_\_\_

by resolution of close corporation, company or trust  
(Hereinafter referred to as "the Purchaser")

of \_\_\_\_\_  
(which address the Purchaser selects as its domicilium citandi et executandi for all purposes including notices arising herefrom)

hereby offer to purchase -

ERF \_\_\_\_\_ BARTLETT EXTENSION 82

also known as No. \_\_\_\_\_ AVIANTO LUXURY ESTATE  
(Hereinafter referred to as "the Property")

On the following terms and conditions :

### 1. VOETSTOOTS

The Property is sold subject to all conditions and servitudes mentioned or referred to in the Title Deed thereof and to all such other conditions and servitudes which may exist in regard thereto and in the condition and to the extent such as it now lies "voetstoots". If the Property has been erroneously described herein, such error shall not be binding on the Seller but shall conform with the description as set out in the Title Deed and the parties agree to the rectification hereof to conform to their intention.



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**2. PURCHASE PRICE**

The Purchase price is R \_\_\_\_\_ inclusive of VALUE ADDED TAX) which amount is payable as follows:

2.1 Deposit of R \_\_\_\_\_ is payable to the Conveyancing Attorneys, Hammond Pole Inc., on signature hereof, on signature hereof, which amount will be invested in an interest bearing account, interest to accrue to the Purchaser on registration and the account will contain a reference to Section 86 (4) of the Legal Practice Act 28 of 2014. on the basis that the amount is invested in an interest-bearing account, which account contains a reference to Section 86 (4) of the Legal Practice Act 28 of 2014, the interest which accrues on such investment is to be for the benefit of the Purchaser; the capital sum of the investment (less any costs relating to the opening and administration of the interest-bearing account) shall be released to the Seller against registration of transfer of the property into the name of the Purchaser and would be subject to the provisions of Section 86 (4) of the Legal Practice Act 28 of 2014 which provides for 5% of the interest accrued on money in terms of the investment to be paid over to the Fidelity Fund and to vest in the Fund.

2.2 The balance of the purchase price in the sum R \_\_\_\_\_ in cash 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 or the Seller's nominee/s to be delivered to the Seller's nominee/s within \_\_\_\_\_ days from date of bond approval.

**3. RISK**

All benefits and risks in the Property shall pass to the Purchaser on registration of transfer of the Property into the name of the Purchaser from which date the Purchaser shall be liable inter alia for all rates and taxes levied on the Property. Any prepayments made for any period subsequent to registration of transfer shall be refunded proportionately in accordance with the above.

**4. OCCUPATION**

Occupation of the Property shall be given to the Purchaser on registration of transfer and the parties agree that the current lease agreement between the Seller and Purchaser, being the current tenant, would terminate upon date of registration.

**5. TRANSFER AND PAYMENT OF COSTS**

5.1 Transfer of the Property shall be effected by the Seller's Conveyancers ("the Conveyancers"), Messrs HAMMOND & POLE INC (REF: MR ANDREW GERHARD) within a reasonable time after the Purchaser has complied with the provisions of Clause 2, delivered guarantees, and signed all transfer documents and paid all costs of transfer including transfer duty and other costs incidental thereto.

5.2 The seller will be liable for the payment of the VAT (value added tax) payable on the purchase price.



**5.3 The purchaser will be liable for :**

- 5.3.1 payment of transfer registration costs and disbursements.
- 5.3.2 payment of bond registration costs, financial institutions' initiation, valuation and administrative fees.
- 5.3.3 a payment equal to two months provisional levy to the Association for services to be provided payable to the Conveyancer prior to transfer. It is recorded that at the date of signature herof the levy amounts to R\_\_\_\_\_ per month.
- 5.3.4 Payment of water meter and connection deposit in the amount of R\_\_\_\_\_ with respect the property.
- 5.3.5 Payment of electricity meter and connection deposit in the amount of R\_\_\_\_\_ with respect the property.

5.4 The Purchaser shall upon demand by the conveyancers make such payment of amounts due in terms of clause 5.3 above and sign all transfer documents.

**6. AGENTS COMMISSION (\*delete clause 6.1 or 6.2)**

6.1 The Seller and Purchaser hereby warrant that they were not introduced to one another by an Estate Agent and according no Estate Agents commission is payable.

6.2 The parties hereto acknowledge that \_\_\_\_\_ of \_\_\_\_\_ was the sole effective cause of this sale and are therefore entitled to payment of commission in the amount of R\_\_\_\_\_ inclusive of VAT. The parties hereto further acknowledge that the commission shall be deemed to have been earned on acceptance of this Agreement and the Conveyancers are authorised by the Purchaser to pay the Agent's commission from the deposit held, provided that all the suspensive conditions in terms of the Agreement of Sale have been fulfilled to the satisfaction of the Conveyancer.

**7. BREACH**

7.1 If the Purchaser commits a breach of any of the terms of this agreement and fails to remedy same within 7 (seven) days of dispatch of a letter per pre-paid registered post, or of delivery thereof by hand, calling for same to be remedied, the Seller shall have the right to :

- 7.1.1 cancel the agreement and, retain the deposit as rouwkoop or penalty or as liquidated damages in respect of the prejudice suffered by the Seller; or
- 7.1.2 cancel the agreement and claim damages in which event the Seller shall be entitled to retain the deposit and set it off against any damages proved by the Seller to have been suffered on the basis that if the damages are less than the deposit the excess shall be refunded to the Purchaser, without prejudice to any other rights available to him/her/it in terms of this contract or any Law;

7.2 In the event of the Seller instructing attorneys to render legal services to enforce the Seller's rights arising from a failure by the Purchaser to comply with any obligation hereunder, the Purchaser shall be liable for all costs calculated on the scale as between attorney and client incurred by the Seller to such attorneys, whether legal proceedings are commenced or not.

**8. LIABILITY**

8.1 In the event of there being more than one Purchaser liability shall be joint and several.



8.2 The parties warrant that all written consents requires by the Matrimonial Property Act 88/1984 in respect of this sale or any matter arising from or in terms hereof have been or will be given.

**9. WARRANTIES OR REPRESENTATIONS**

9.1 This agreement constitutes the entire contract between the parties. The Purchaser has not, in making this offer, relied on any warranty or representation not contained herein.

9.2 No latitude or extension of time or other indulgence which may be granted by the Seller to the Purchaser for the performance by the Purchaser of any obligation in terms hereof shall prejudice the Seller's right to require strict and punctual compliance with any provisions hereof.

9.3 No agreement to cancel, alter or add to this agreement shall be of any force or effect unless signed by both Seller and the Purchaser.

**10. ELECTRICAL CERTIFICATE OF COMPLIANCE**

10.1 Notwithstanding the voetstoets provision contained in Clause 1, the Seller, at his/her sole expense and within 10 (TEN) days of the expiry period required for the granting of the loan or, if no such loan contemplated, within 10 (TEN) days of the conclusion of the contract, procure the issue of a Certificate of Compliance in terms of Government Regulation No. 2920 of 1992 issued by an accredited person who is registered with The Electrical Contracting Board of South Africa, certifying that the electrical installation of the property is in accordance with SABS 0142, or is reasonably safe.

10.2 Should the installation which requires rectification prior to the issue of such certificate, the Seller shall be obliged, at his/her sole cost and expense, within 21 (TWENTY ONE) days of receipt of such report and recommendation, to contact with an electrical contractor or other qualified person to carry out the repairs as recommended so as to enable the accredited person to issue the aforesaid certificate.

**11. GAS CERTIFICATE OF COMPLIANCE**

11.1 A Certificate of Conformity (COC), also known as a gas compliance certificate, is required by law for all permanent liquid gas installations in your house and must be obtained from an authorised person or an approved inspection authority, which confirms that it is safe according to the applicable standards. Examples of gas installations that require this certificate include gas fire places or gas hobs, as well as gas hot water systems, etc. There is no set period for the validity of the COC, but according to the Pressure Equipment Regulations of 2009 an authorised person shall issue a COC after a gas installation, modification, or alteration of the installation and where there is a change of user or ownership. There is thus a duty on a homeowner to acquire a COC when the gas appliance is installed, changed or altered and when the property is sold. So whenever the property is sold a new certificate must be obtained, regardless of how old the existing one may be.

11.2 The responsibility for obtaining this certificate falls to the Seller, unless the parties contractually agree that the Purchaser will obtain the certificate. Importantly, though, you cannot waive this requirement or contract to obtain it, as non-compliance is a criminal offence.

**11. BOND FINANCES**

11.1 This sale is subject to the condition that the Purchaser is able by no later than \_\_\_\_\_ to raise a loan upon the security of a first mortgage bond to be passed over the Property for R\_\_\_\_\_ at prevailing bank terms and conditions.



- 11.2 The Purchaser undertakes timeously to take all steps and to sign all documents and do all such things that may be necessary to procure the loan and to comply with the requirements of the lender.
- 11.3 If the purchaser fails to comply with this condition for any reason, then without prejudice to any other right which the seller may have at law, the seller or his agent shall be entitled to complete such application, the agent and/or the seller is hereby authorised irrevocably and in *rem suam* on behalf of the purchaser to sign all and any necessary documents or applications to a financial institution in respect of the application for the loan.
- 11.4 The Purchaser warrants that any person whose suretyship is required for the loan by the lender will execute such suretyship. In the event of the loan not being approved by the date referred to above, the period for the raising thereof shall be extended automatically for a further 15 (FIFTEEN) days.
- 11.5 The Purchaser warrants that he/she/it has sufficient income for the requirements for the proposed mortgage for the approval of the said loan, and that as far as he/she/it is aware no factors exist which might prevent the granting of the loan.

**12. GENERAL / LEGISLATION AND CONSUMER PROTECTION ACT**

- 12.1 This agreement represents the entire agreement between the parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect as expressly included herein. No variation of or addition to or consensual cancellation of this agreement and no waiver by the seller of any of its rights hereunder shall be of any force or effect unless reduced in writing and signed by or on behalf of the parties.
- 12.2 If this agreement is signed by more than one person as purchaser the obligations of all the signatories shall be joint and several. If this agreement is not signed by all the persons named as purchasers, this agreement shall nonetheless be and shall remain binding on the purchasers who have signed this agreement.
- 12.3 It is recorded that the seller is a "producer" as defined in the CONSUMER PROTECTION ACT 2008 (No. 68 of 2008) and that the property is sold as an "implied warranty of quality" as provided for in Section 56 of the Act being a warranty that the property complies with the requirements and standards contemplated in Section 55 of the Act which Sections provided that the purchaser has a right to receive the property on the basis that:
- 12.3.1 It will be reasonably suitable for the purpose of which it is generally intended;
- 12.3.2 It is of good quality, in good working order and free of any defects;
- 12.3.3 It will be usable and durable for the reasonable period of time, having regard to the use to which the property would normally be put and to all the surrounding circumstances of its supply except to the extent that the buildings have been altered after having the left the control of the seller.
- 12.4 The purchaser confirms that his transaction is not a result of direct marketing by the seller. The purchaser does accordingly not have the right to invoke the provisions of Section 6 of the CONSUMER PROTECTION ACT 2008 (No. 68 of 2008), to have the agreement rescinded in terms of this section.

**13. SPECIAL CONDITIONS**

**13.1 Home Owners Association**

- 13.1.1 The seller has established a Home Owners Association (Association) known as AVIANTO LUXURY ESTATE HOME ASSOCIATION NPC for the purpose of:



13.1.1.1 The control and maintenance of areas of common concern in the development.

13.1.1.2 The enforcement of rules regulating the architectural theme and aesthetic requirements of the development.

13.1.1.3 Levying charges upon its members in order to achieve its objective. The purchaser will be obliged and hereby undertakes to subscribe to membership to such association upon demand and upon such terms as the seller may direct and agrees to sign all such documents and do all such things as may be necessary in order to fulfil his obligation in terms hereof.

13.1.2 The purchaser further acknowledges that:

13.1.2.1 Neither the purchaser nor the purchaser's successors in title shall have the right to take transfer of the property without first having become a member of the Association.

13.1.2.2 Neither the purchaser nor the purchaser's successors in title shall have the right to transfer the property to any other party unless all amounts due and payable to the relevant Association have been paid in full and the Association has issued a clearance certificate to that effect.

13.1.2.3 The seller shall be entitled to cause conditions to be inserted into the title deed of the property in order to give effect to the aforesaid provisions and to enforce same against the purchaser and any successor in title.

**13.2 Architectural theme and aesthetics**

The seller has determined an architectural theme and aesthetic design parameters for the development and the purchaser and the purchaser's successors in title shall not be entitled to alter or make additions to the improvements on the property in contravention of such theme and parameters without the written approval of the association.

**13.3 Marketing and on-sale of property**

In the event that the purchaser resell the property or selling a controlling interest in the purchaser within a period of 24 (twenty four months) after the conclusion of this agreement, or before all the erven at Bartlett Extension 82 have been developed, whichever is later, the purchaser shall pay a 1% commission inclusive of VAT at 15% to the Homeowners Association stated I clause 13.1 above.

13.4 Further conditions (\* delete if not applicable):

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|--|--|
|  |  |
|  |  |
|  |  |

SIGNED BY THE PURCHASER AT \_\_\_\_\_ ON \_\_\_\_\_

AS WITNESSES:

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

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

\_\_\_\_\_  
PURCHASER



ACCEPTED BY THE SELLER AT \_\_\_\_\_ ON \_\_\_\_\_

AS WITNESSES:

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

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

SELLER

ACCEPTED BY THE AGENT AT \_\_\_\_\_ ON \_\_\_\_\_

AS WITNESSES:

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

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

AGENT



**PARTICULARS OF PURCHASER/S**

| <b>PURCHASER 1</b>  |   |
|---|---|
| SURNAME   |   |
| TITLE   | MR / MRS / MS / DR / PROF<br><i>* Delete if not applicable</i>  |
| FIRST NAMES   |   |
| IDENTITY NUMBER   |   |
| MARITAL STATUS  | <ul style="list-style-type: none"> <li>• UNMARRIED</li> <li>• MARRIED IN COMMUNITY OF PROPERTY</li> <li>• MARRIED OUT OF COMMUNITY OF PROPERTY</li> <li>• MARRIED ACCORDING TO THE LAWS OF .....</li> </ul> <i>* Delete if not applicable</i> |
| RESIDENTIAL ADDRESS   |   |
| POSTAL ADDRESS  |   |
| E-MAIL ADDRESS  |   |
| TELEPHONE NUMBER – WORK   |   |
| FAX NUMBER<br>(if completed Hammond Pole Attorneys are authorised to fax correspondence to this number) |   |
| TELEPHONE NUMBER – HOME   |   |
| CELLULAR NUMBER   |   |
| <b>PURCHASER 2</b>  |   |
| SURNAME   |   |
| TITLE   | MR / MRS / MS / DR / PROF<br><i>* Delete if not applicable</i>  |
| FIRST NAMES   |   |
| IDENTITY NUMBER   |   |
| MARITAL STATUS  | <ul style="list-style-type: none"> <li>• UNMARRIED</li> <li>• MARRIED IN COMMUNITY OF PROPERTY</li> <li>• MARRIED OUT OF COMMUNITY OF PROPERTY</li> <li>• MARRIED ACCORDING TO THE LAWS OF .....</li> </ul> <i>* Delete if not applicable</i> |
| RESIDENTIAL ADDRESS   |   |
| POSTAL ADDRESS  |   |
| E-MAIL ADDRESS  |   |
| TELEPHONE NUMBER – WORK   |   |
| FAX NUMBER<br>(if completed Hammond Pole Attorneys are authorised to fax correspondence to this number) |   |
| TELEPHONE NUMBER – HOME   |   |
| CELLULAR NUMBER   |   |



**ANNEXURE – LOCALITY PLAN**  
General Plan SG Number A2501/2008