

**DEED OF SALE
(BY PRIVATE TREATY)**

Made and entered into by and between:

Hereafter referred to as the "**SELLER**"

and

Hereafter referred to as the "**PURCHASER**"

Whereby the **SELLER** agrees to sell the immovable **PROPERTY** (as indicated in clause 1.3 hereunder) together with the improvements thereon to the **PURCHASER**, who purchases from the **SELLER** on the terms and conditions as set out in this agreement.

Whereby it is agreed as follows:-

1. DEFINITIONS

In this agreement unless inconsistent **with** the context, the following expressions shall have the meanings set forth against them, namely:-

1.1. The "**SELLER**" shall mean

Name: _____

In his/ their capacity as duly appointed liquidator / trustee of the insolvent estate of:

Name: _____
Master's Reference: _____
Income tax/VAT: _____
Physical Address: _____
Postal Address: _____
Tel no: _____
Fax no: _____
Email: _____

1.2. The "**PURCHASER**" shall mean

Name: _____
Registration/ ID no: _____
Marital Status: _____
Income tax/VAT: _____
Physical Address: _____
Postal Address: _____
Tel no: _____
Fax no: _____
Email: _____

1.3. The " **PROPERTY**" shall mean

Erf description: _____
Known as _____
In extent of: _____ Held under Title Deed No: _____

1.4. If applicable, the " **AGENT**" shall mean

Agency: _____ Agent: _____
Tel no: _____ Email: _____
Mobile: _____ Fax no: _____
Fidelity Fund Certificate Registration no: _____
VAT No: _____

1.5. The " **TRUSTEE**" shall mean

The Provisional Trustee/ Provisional Liquidator/ Trustee/ Liquidator, whichever applies in the above mentioned Insolvent Estate

1.6. The " **DATE OF ACCEPTANCE**" shall mean

The date of signature of this agreement by the **SELLER**.

1.7. The " **SIGNATURE DATE**" shall mean

The date of signature of this agreement by the **PURCHASER**.

1.8. In this agreement, unless the context otherwise requires:

- 1.8.1. The masculine gender includes the feminine gender and vice versa;
- 1.8.2. Both masculine and feminine genders include the neuter and vice versa;
- 1.8.3. The singular includes the plural and vice versa.

1.9. It is recorded that:

- 1.9.1. The **SELLER** has agreed to sell the **PROPERTY** to the **PURCHASER** upon certain terms and conditions;
- 1.9.2. The parties wish to record the terms of such agreement.

1.10 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of the agreement

2. SALE

The **SELLER** hereby sells the **PROPERTY** to the **PURCHASER**, subject to the conditions set out herein and as prescribed by the Insolvency Act, Act 24 of 1936 (as amended), who purchases from the **SELLER**.

3. PURCHASE PRICE

The purchase price is the sum of R _____ (_____)

Exclusive of Value Added Tax ("VAT") (if applicable), which shall be paid to the **SELLER** upon registration of transfer and which shall be secured, pending registration of transfer, in the following manner:



- 3.1. All offers must be accompanied with a deposit, which deposit is to be held by the trustee in his estate account for the benefit of the seller, and shall become non-refundable once the offer has been accepted by the trustee/s. The deposit is calculated as below:

20% (Twenty percent) of the purchase price if the purchase price is less than or equal to R100 000.00 (One Hundred Thousand Rand);

15% (Fifteen percent) of the purchase price if the purchase price is more than R100 000.00 (One Hundred Thousand Rand) and less than or equal to R200 000.00 (Two Hundred Thousand Rand);

10% (Ten percent) of the purchase price if the purchase price is more than R 200 000.00 (Two Hundred Thousand Rand).

The deposit shall be non-refundable, except in the instance where the sale is not accepted by the **SELLER** in which event all monies paid by the **PURCHASER** to the **SELLER** in terms hereof shall be refunded to the **PURCHASER**.

In the event of the **PURCHASER** not furnishing the **CONVEYANCER** with the guarantee within the stipulated time period alternatively within such extended time period as the parties may agree to in writing, then and in such event this Agreement/Offer shall lapse and the deposit shall remain non-refundable

- 3.2. The balance of the purchase price shall be paid upon registration of transfer of the **PROPERTY** in the name of the **PURCHASER**, and pending registration of transfer, shall be secured by means of a suitable guarantee issued by a Financial Institution acceptable to the **SELLER**. The said guarantee shall be delivered to the **CONVEYANCER** appointed in terms of clause 6 ("**CONVEYANCER**") within 30 days from the **DATE OF ACCEPTANCE**, which guarantee shall be payable free of exchange.
- 3.3. The **PURCHASER** hereby instructs and authorises the **CONVEYANCER** to invest, in terms of Section 78 (2A) of the Attorneys Act, Act 53 of 1979 (as amended), any monies paid by him or on his behalf in terms of this Offer (Agreement), in an interest bearing account, interest so accrued for the benefit of the Insolvent Estate.
- 3.4. The **PURCHASER** acknowledges that he is aware that the **CONVEYANCER** will only be in a position to give effect to this mandate once he, the parties have furnished the **CONVEYANCER** with documents, to be requested by the **CONVEYANCER**, in terms of the Financial Intelligence Centre Act, Act 2001.
- 3.5. In the event of the **PURCHASER** unreasonably delaying with any of the abovementioned duties, the **PURCHASER** will pay interest on the **balance** of the purchase price from date that the **PURCHASER** was required to perform in terms of the demand to the date of registration of transfer calculated at **12% (twelve per centum) per annum**, both days inclusive. Payment of the interest will be effected to the **CONVEYANCER**. Should the purchaser so elect, he/she may deposit the balance of purchase price with the Conveyancer within 72 hours of acceptance, in which event there shall be no interest payable by the purchaser

4. **COSTS OF TRANSFER**

- 4.1. The **PURCHASER** shall be liable, in addition to the Purchase Price, for all costs of registration of Transfer of the **PROPERTY** including but not limited to: (if applicable) transfer duty, revenue stamps, mortgage loan costs, attorneys fees, deeds office registration fees, such proportion of the assessment rates levied by the Local Authority as may be due, or such proportion of charges and levies as may be due to a Home Owners Association or Body Corporate (all from the **DATE OF ACCEPTANCE** of this offer until date of registration of Transfer), which amounts shall be paid immediately upon demand by the **CONVEYANCER**, to the **CONVEYANCER**, and the conveyancing shall only commence after such costs have been paid by the **PURCHASER**.
- 4.2. The **PURCHASER** shall furthermore, in addition to the **PURCHASE PRICE**, be responsible for the payment of VAT should the above insolvent be a registered VAT vendor, regardless of whether he was aware of this fact on date of signature hereof by himself.

5. **TRANSFER**

- 5.1. Transfer shall be effected by the **CONVEYANCER** nominated by the **SELLER** and shall be given to and taken by the **PURCHASER** after the **PURCHASER** has complied with clauses 3, 4 and 5 hereof.
- 5.2. The **PURCHASER** shall sign all documents necessary to effect transfer of the **PROPERTY** into the name of the **PURCHASER** immediately upon request by the **CONVEYANCER**.

6. **OCCUPATION**

- 6.1. Occupation will be given on date of registration of transfer.
- 6.2. From the date of occupation, the **PURCHASER** shall be liable for all levies, municipal rates, **taxes, consumption charges, insurance premiums and/ or fees and levies payable in the respect** of the **PROPERTY**. Should the **SELLER** have made any payment of such a nature for a period after the date of occupation, he shall be entitled to a refund thereof *pro rata* to the period of prepayment.
- 6.3. The risk in and to the **PROPERTY** shall pass to the **PURCHASER** upon the date of occupation, or the date of registration of transfer, whichever shall occur first. Despite the aforesaid, ownership in and to the **PROPERTY** shall only pass to the **PURCHASER** upon registration of the **PROPERTY** in the **PURCHASER'S** name.
- 6.4. The **PURCHASER** shall not be entitled to make any alterations or additions to the **PROPERTY** before the date of registration of transfer. The **PURCHASER** shall be obliged, in the event of the cancellation or lapse of this agreement, to forthwith vacate the **PROPERTY** and restore it to the **SELLER** in the same condition as when the **PURCHASER** took possession. The **PURCHASER** will have no claims whatsoever against the **SELLER** arising out of any alterations or additions made to the **PROPERTY** by the **PURCHASER**.
- 6.5. If the **PROPERTY** is leased, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provision or the Common Law.
- 6.6. Should the **PURCHASER** choose to take occupation prior to registration, which is the sole discretion of the **SELLER**, such consent can be given to the **PURCHASER** subject to receipt of guarantees as requested in clause 3.2 by the **SELLER'S** attorney as well as all transfer costs and then only by written consent from the **SELLER**. Monthly occupational rental will be calculated at 1% of the purchase price.

7. CONDITION OF THE PROPERTY

- 7.1. The **SELLER** discloses to the **PURCHASER** that the **PROPERTY** is not new, is part of an **insolvent estate and is sold on a "voetstoots" basis in an "as is" condition**. The **PURCHASER** acknowledges the aforesaid condition of the **PROPERTY** and accepts the **PROPERTY** in that condition, Accordingly, the **PURCHASER** shall have no claim against the **SELLER** in respect of the condition of the **PROPERTY**, which condition may include, without limitation that the **PROPERTY** is not suitable for the purpose for which it is generally intended or that the **PROPERTY** is not of good quality, in good working order and/ or free of any defects.
- 7.2. The **PURCHASER** acknowledges that he is aware that the **SELLER** is not a "user" as defined in the OCCUPATIONAL HEALTH AND SAFETY ACT 88 NOF 1993. The **PURCHASER** acknowledges that there is no current Electrical Compliance Certificate issued for the **PROPERTY**.
- 7.3. The **PURCHASER** acknowledges that the **PURCHASER** has conducted an inspection of the **PROPERTY** and that the **PURCHASER** has entered into this agreement on the basis of such inspection. Accordingly, the **PURCHASER** agrees that the **PROPERTY** is suitable for the **PURCHASER'S** purposes, of good quality, free of defects, usable and durable, compliant with the standards or requirements of any legislation or public regulation.
- 7.4. The **PURCHASER** acknowledges that this agreement is not concluded as a result of direct marketing practices by the **SELLER**.
- 7.5. In the event that the Consumer Protection Act, 2008, does not apply to this agreement, the provisions of clauses 7.1 and 7.2 shall not apply. Instead, the following provisions shall apply:
- 7.5.1. The **PROPERTY** is purchased and sold "voetstoots" and the **SELLER** shall not be liable for any defects, patent, latent or otherwise in the **PROPERTY** nor for any damage occasioned to or suffered by the **PURCHASER** by reason of such defect;
- 7.5.2. The **PURCHASER** admits having inspected the **PROPERTY** to his satisfaction and that no express or implied representations, guarantees or warranties of any nature were made or given by the **SELLER** regarding the condition, quality or any other characteristics of the **PROPERTY** or any of the Improvements thereon or accessories thereof; and
- 7.5.3. The **PURCHASER** agrees that the **SELLER** does not make any warranties or **representations, whether express or implied, regarding vacant occupation and possession**.
- 7.6. The **PROPERTY** is sold as described in the existing title deed or deeds thereof and subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the said title deed(s) or prior deed(s). The **SELLER** shall not be liable for any deficiency in extent, which may be revealed on any re-survey, nor shall the **SELLER** benefit by any surplus extent
- 7.7. The **SELLER** shall not be required to indicate to the **PURCHASER** the position of the beacons or pegs upon the **PROPERTY** and/or boundaries thereof, nor shall the **SELLER** be liable for the costs of locating same.

7.8. In the event that the **PURCHASER** requires a copy of the approved building plans related to the **PROPERTY**, then the **SELLER** undertakes to provide a mandate authorizing the **PURCHASER** to uplift a copy from the relevant municipality department.

8. **NOMINEE**

The **PURCHASER** shall be entitled, by notice in writing to the **SELLER**, to nominate a duly authorized nominee in his place as **PURCHASER**, upon the following terms and conditions:

8.1. The aforesaid notice shall be handed to the **SELLER** by no later than close of business on the **DATE OF ACCEPTANCE**:

8.1.1. the notice shall set out the same name and address of the nominee so nominated as the **PURCHASER**;

8.1.2. the notice shall be accompanied by the nominee's written acknowledgement that:

8.1.2.1. It is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and

8.1.2.2. It is bound by the provisions of this agreement as the **PURCHASER**;

8.2. Should the **PURCHASER** nominate a nominee in terms of this clause, then:

8.2.1. all references to the **PURCHASER** in this agreement shall be deemed to be a reference to its nominee; and

8.2.2. the **PURCHASER** by his signature hereto, hereby interposes and binds himself as surety and co-principal debtor *in solidum*, for and on behalf of all obligations of the aforesaid nominee as **PURCHASER**, to and in favour of the **SELLER**, for all the **PURCHASER'S** obligations under this agreement, including damages, and renounces **the benefits of division and excussion**.

9. **DOMICILIUM**

9.1. The **SELLER** and **PURCHASER** select as their respective *domicilia citandi et executandi* for all purposes hereunder the address set out in Clause 1.

9.2. Any notices in terms of this Agreement shall be deemed to be received:

9.2.1. if dispatched by registered post, 7 (seven) days from date of dispatch;

9.2.2. if transmitted by fax or delivered by hand, 1(one) business day from date of dispatch

10. **PROHIBITION**

The **PURCHASER** shall not, prior to the date of registration of the transfer, be entitled to sell the **PROPERTY** or to cede, assign or make over his rights in terms hereof, or to give notice of cancellation of an existing lease, without the prior written consent of the **SELLER**.

11. JURISDICTION

For the purpose of resolving any disputes which exist or occur between the parties hereto, the **parties consent to the jurisdiction of the magistrate's court or any other court with jurisdiction** or a court otherwise competent and with jurisdiction over the person of the parties in that each of **them resides, carries on business, or is employed within its area of jurisdiction, notwithstanding** that such proceedings are otherwise beyond 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, Act 32 of 1944 or any amendment thereof provided that the **SELLER** shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's court.

12. BREACH

In the event of the **PURCHASER** being in breach of any of the terms or conditions contained herein, and remain in default for 7 (seven) days after dispatch of a written notice by registered post or by facsimile requiring him to remedy such breach, the **SELLER** shall be entitled to, and without prejudice to any other rights available at law:

- 12.1. claim immediate payment of any amount due by the **PURCHASER**: and/or
- 12.2. declare the full balance of the purchase price and interest payable forthwith and claim recovery thereof: and/or
- 12.3. cancel the agreement, and retain all amounts paid by the **PURCHASER** as "Rouwkoop" and the **PURCHASER** hereby authorises any third party holding such monies to pay the same to the **SELLER**, and/or
- 12.4 terminate this agreement and claim damages from the **PURCHASER**, which damages shall include, but not limited to, the costs and expenses of advertising and selling the **PROPERTY** to a third party.

In the event of the **SELLER** instructing its Attorneys to institute any proceedings against the **PURCHASER** for payment of the purchase price, interest and other monies due by the **PURCHASER** hereunder or for the performance by the **PURCHASER** of any of the terms and conditions herein, then the **PURCHASER** agrees that he shall be liable for and shall pay any such legal costs on the scale as between the Attorney and own client.

13. COMMISSION

Where an agent has in terms of a valid mandate, marketed and facilitated the sale of the property, the following shall apply:

- 13.1. Commission calculated at 5% (five *per centum*) of the purchase price plus VAT (if applicable), will be earned, due and payable by the **SELLER** to the **AGENT** against **REGISTRATION** of transfer of the **PROPERTY** into the name of the **PURCHASER**, and the **CONVEYANCER** is hereby authorized to effect such payment out of the funds that become available to the **SELLER** out of the purchase consideration. It is further recorded that no bridging of **AGENT'S** commission and/ or any part thereof shall be permitted. No commission will be earned, due and payable should this agreement be cancelled and where transfer does not proceed to registration, irrespective of the reasons thereof.

13.2 The **AGENT** warrants that he did not contravene sections 29, 40 or 41 of the Consumer Protection Act, Act 68 of 2008 and furthermore indemnifies the **SELLER** in this respect against any claim(s) by the **PURCHASER**

14. VARIATION

This agreement constitutes the whole and only agreement between the **SELLER** and the **PURCHASER** and no alteration or variation of this agreement shall be of any force or effect unless reduced to writing and signed by the **PARTIES** hereto or their duly authorized **AGENTS**. Any representation, warranties or undertakings made or given by the **SELLER** or its **AGENTS** other than those contained herein shall be of no force or effect whatsoever.

15. PERSONAL SURETYSHIP JOINT AND SEVERAL LIABILITY ON BEHALF OF THE PURCHASER

The representative of the **PURCHASER**, by his signature hereto, hereby interposes and binds himself in favor of the **SELLER**, jointly and severally as surety for and co-principal debtor *in solidum* with the **PURCHASER** for the due and timeous performance by it of all of its obligations as the **PURCHASER** in terms of this Agreement and hereby renounces the benefit of excursion and division. If this Agreement is concluded with more than one **PURCHASER**, the liability of such **PURCHASERS** to the **SELLER** shall be joint and several *in solidum*.

16. MARITAL STATUS OF PURCHASER

The **PURCHASER** warrants that his marital status is as set forth in the schedule annexed hereto and, further that the information contained in such schedule is true and correct in each and every respect.

17. WAIVER

Notwithstanding any express or implied provisions of this Agreement of Sale to the contrary, and latitude or extension of time which may be allowed by the **SELLER** in respect of any matter or thing that the **PURCHASER** is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the **SELLER'S** rights at any time, and without notice, to require strict and punctual compliance with each and every provision of term hereof.

18. CERTIFICATES TO BE OBTAINED

The **PURCHASER** shall at his own cost obtain:

18.1. A certificate of compliance with Government Regulations No. 2920/1992 to the effect that the electrical installation on the property complies with SASS 0142, or is reasonably safe;

18.2. A certificate to the effect that the improvements on the property are free from infestation by **timber destroying insects, if specifically required by a financial institution;**

18.3. Or any such certificate as may be required by law and applicable to the subject property.



19. RATES AND TAXES

- 19.1. The **SELLER** will be responsible for the payment of the clearance figures in terms of s 118 of the Municipal Systems Act 32 of 2000 and all levies until date of registration or occupation whichever comes first.
- 19.2. The **PURCHASER** will be responsible for the payment of these costs from date of occupation to date of transfer of the property into his name.
- 19.3. The **PURCHASER** herewith indemnifies the **SELLER** in totality, and waives any claim of any nature against the **SELLER** in respect of:
- 19.3.1. any remainder of any portion of municipal rates and taxes, water, electricity and sanitation charges, basic assessment rates, levies including special levies and penalties, interest and legal charges due and payable to a Local Authority(municipality), Home Owners Association or Body Corporate;
- 19.3.2. for any period not covered by and paid against registration of transfer of the property into the name of the **PURCHASER** in terms of any clearance certificate issued by such a Local Authority (municipality), Home Owners Association or Body Corporate.

20. SPECIAL CONDITIONS

- 20.1. This agreement is subject to the approval of the sale by the Master of the High Court in terms of Section 18(3) and/or Section 80(*bis*) of the Insolvency Act 24 of 1936. If such approval is not applicable, then subject to the Acceptance of the Agreement by the **TRUSTEE** upon the adoption of the Resolution authorizing him to do so at the Second Meeting of Creditors of the mentioned Insolvent Estate.
- 20.2. Should the **SELLER** not accept the sale, this document is deemed *pro non scripta* (as if not written).
- 20.3. If the sale is accepted by the Master of High Court, the **TRUSTEE** reserves the right to decline the offer, and will be under no obligation to accept such offer. No reason for this decision needs to be supplied, and the **TRUSTEE** further reserves the right to accept any other offer that may be received in respect of this **PROPERTY**.
- 20.4. The **PARTIES**, including the **AGENT** (if applicable) agree that in the event the arrear rates and taxes, levies and or electricity or any other statutory liability in this regard exceeds the purchase price, this agreement shall become *null and void* and all monies paid by any **PARTY** shall be refunded.
- 20.5. By signing this agreement, the **PURCHASER** consent that this offer shall be deemed to be an irrevocable offer open for acceptance by the **SELLER** for 30 (thirty) calendar days from **SIGNATURE DATE**.

THUS DONE AND SIGNED by the **PURCHASER** at _____ on the _____ day
of _____ 20_____

WITNESS

PURCHASER

THUS DONE AND SIGNED by the **SELLER** at _____ on the _____ day
of _____ 20_____

WITNESS

SELLER

**EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS/ DIRECTORS/
TRUSTEES**

NAME OF CLOSE CORPORATION/ COMPANY/ TRUST:

REGISTRATION NUMBER: _____

MEETING HELD AT _____ ON _____ DAY OF _____ 20_____

IT IS RESOLVED THAT:

1. The CLOSE CORPORATION/ COMPANY/ TRUST buys the following immovable PROPERTY:

Erf description: _____
Known as _____
In extent of: _____ Held under Title Deed No: _____

FROM the insolvent estate of: _____

FOR R _____ (_____)

PLUS VAT (IF APPLICABLE)

2. That _____ in his capacity as member/ director/ trustee be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution.

Certified a true copy,

MEMBER/ DIRECTOR/ TRUSTEE



FICA REQUIREMENTS:

Natural Persons

- [1] South African identity document (foreigners: passport);
- [2] Utility bill addressed to your residential address less than 3 months (accounts for mobile phones are not acceptable);
- [3] South African Income Tax reference number.

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- [4] (Confirmation marital status, i.e. unmarried or married.)

If Married

- [5] Marriage certificate.
 - If IN community of property (no antenuptial contract)
- [6] S.A. identity document (foreigner: passport) of your SPOUSE.
 - If OUT of community of property {by Antenuptial Contract ("ANC")}
- [7] Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties.
 - If your Marriage is governed by the Laws of another country/state
- [8] S.A. identity document (foreigner: passport) of your SPOUSE;
- [9] Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.

FICA REQUIREMENTS: Entities

Person acting on behalf of the Entity must comply with paragraphs 1 to 4 above. All directors / members / trustees must also comply with paragraphs 1 to 4 above

PLUS THE FOLLOWING:

Companies

- [1] CM1.
- [2] CM22.

Close Corporations:

- [1] CK1;
- [2] and, if applicable, CK2.

Trusts:

- [1] Letters of Authority / Master's Certificate; [2] Trust Deed and all amendments thereto.
- [3] Resolution to approve the purchase (and loan application, if applicable) taken before the Agreement of Sale was signed. (The only exception is where it is a cash transaction and all the Trustees have signed the Agreement of Sale.)

Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course. FICA requirements for Other Entities, if applicable, will be supplied to such Purchasers

