

**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 liquidator/ trustee of the insolvent estate of:

.....

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:

.....

Local Municipality:

.....

In extent of:

Held under Title Deed No:

1.4 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 A cash deposit of 10% (ten per centum) of the PURCHASE PRICE shall be paid within 48 (forty eight) hours from DATE OF ACCEPTANCE, by the PURCHASER, into the account of the Insolvent Estate, managed by the TRUSTEE, for the benefit of the SELLER. Notwithstanding this the SELLER may direct into which trust account the deposit should be paid. The PURCHASER consents to the SELLER utilizing the deposit to pay the outstanding levies, rates and taxes and any other expenses relating to the transfer of the property.

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.

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 PURCHASER, has furnished the CONVEYANCER with documents, to be requested by the CONVEYANCER, in terms of the Financial Intelligence Centre Act, Act 2001.

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. INTEREST

The PURCHASER will pay interest on the balance of the purchase price from DATE OF ACCEPTANCE to date of registration of transfer calculated at 12% (twelve *per centum*) per annum, both days inclusive. The interest will be payable monthly in advance before or on the first day of each and every month, the first payment to be made on the first day of the month following the DATE OF ACCEPTANCE. Payment of the interest will be effected to the CONVEYANCER.

6. TRANSFER

6.1 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.

6.2 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.

7. OCCUPATION, RISK AND POSSESSION

7.1 Occupation will be taken by the PURCHASER on date of registration of transfer although the SELLER does not guarantee vacant occupation legal or illegal.

7.2 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.

7.3 Should the PURCHASER take and the SELLER allow possession of the PROPERTY prior to registration of transfer, the PURCHASER shall at his own expense insure the PROPERTY and improvements thereon for the full replacement value thereof from date of possession, against risk of loss or damages by any cause with an insurer acceptable to the SELLER. The SELLER's interest in the PROPERTY shall be endorsed against such policy for such period.

7.4 Upon the PURCHASER taking possession of the PROPERTY and pending transfer, the following further provisions shall apply:-

7.4.1 the PURCHASER shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the PROPERTY of his rights of occupation thereof, except with the written consent of the SELLER;

7.4.2 the PURCHASER shall be responsible for and pay all levies, municipal rates, taxes, consumption charges due on the property from date of occupation until date of registration of transfer.

7.5 The risk in and to the PROPERTY shall pass to the PURCHASER upon the date of occupation. 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.

7.6 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.

7.7 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.

8. CONDITION OF THE PROPERTY

8.1 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.

8.2 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 warrants 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 and that the PURCHASER can take vacant possession of the PROPERTY. The aforesaid warranties are material provisions of this agreement and the SELLER has entered into this agreement on the strength of those warranties. If the PURCHASER breaches any of the aforesaid warranties, the SELLER shall be entitled to terminate this agreement, without prejudice to its rights in terms of this agreement or at law.

8.3 The PURCHASER acknowledges that this agreement is not concluded as a result of direct marketing practices by the SELLER.

8.4 In the event that the Consumer Protection Act, 2008, does not apply to this agreement, the provisions of clauses 8.1 and 8.2 shall not apply. Instead, the following provisions shall apply:

8.4.1 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;

8.4.2 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 or his AGENT regarding the condition, quality or any other characteristics of the PROPERTY or any of the improvements thereon or accessories thereof; and

8.4.3 The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession.

8.5 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.

8.6 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.

8.7 The PURCHASER acknowledges that neither the SELLER nor the AGENT shall be liable to provide any building plans or related certificates or to arrange the connection of the electricity and water services.

9. NOMINEE

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

9.1 The aforesaid notice shall be handed to the SELLER by no later than close of business on the DATE OF ACCEPTANCE;

9.1.1 the notice shall set out the same name and address of the nominee so nominated as PURCHASER:

9.1.2 the notice shall be accompanied by the nominee's written acknowledgement:

9.1.2.1 That it is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and

9.1.2.2 That it is bound by the provisions of this agreement as the PURCHASER;

9.2 Should the PURCHASER nominate a nominee in terms of this clause, then:

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

9.2.2 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.

10. DOMICILIUM

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

10.2 Any notice dispatched to the SELLER or PURCHASER by prepaid registered post or facsimile to the PARTIES' said *domicilium citandi et executandi* shall be deemed to have been received by such a party 7 (SEVEN) days from date of dispatch thereof.

11. 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.

12. JURISTICIION

12.1 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.

12.2 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. 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:

**13.1 claim immediate payment of any amount due by the PURCHASER;
and/or**

13.2 declare the full balance of the purchase price and interest payable forthwith and claim recovery thereof; and/or

13.3 cancel the agreement without any further notice, 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

13.4 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.

14. COMMISSION

14.1 Commission calculated at% (.....) of the purchase price plus VAT (if applicable), will be 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 authorised 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.

14.2 The Parties agree that only the SELLER will pay agents commission if applicable and not the PURCHASER.

14.3 The AGENT (if applicable) 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.

IF NOT AGENT:-

14.4 The parties place on record that no agent was the effective cause of the sale and that the PURCHASER and/ or the SELLER shall have no liability whatsoever to pay commission in any form.

14.5 The PURCHASER indemnifies and holds the SELLER harmless against any claim for agent’s commission and Value Added Tax thereon made against the SELLER by any person as well as all losses damages, costs and expenses incurred by the SELLER in respect of or resulting from such claim.

15. 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 authorised 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.

16. 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 surely 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*.

17. 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.

18. 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.

19. CERTIFICATES TO BE OBTAINED

The PURCHASER shall at his own cost obtain:

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

19.2 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;

19.3 A certificate of the occupation of the property (if applicable);

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

20. RATES AND TAXES

20.1 The SELLER will be responsible for the payment of all arrear levies, municipal rates, taxes, consumption charges due on the property until registration of transfer.

20.2 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.

21. SPECIAL CONDITIONS

21.1 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.

21.2 Should the SELLER not accept the sale, this document is deemed *pro non scripto*.

21.3 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.

21.4 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.

21.5 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) 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

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

.....
WITNESS

.....
AGENT (IF APPLICABLE)

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

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:

.....

Local Municipality:

.....

In extent of **Held under Title Deed No:**

FROM the insolvent estate of:

.....

FOR R **(words)**

.....

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.

.....

MEMBER(S)/ DIRECTOR(S)/ TRUSTEE(S)

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.
-

- [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.)
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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.