

**OFFER TO PURCHASE IMMOVABLE PROPERTY  
& CONDITIONS OF SALE APPLICABLE TO BOTH  
(TRADITIONAL/PHYSICAL) AUCTIONS AND  
VIRTUAL/ELECTRONIC AUCTIONS**

**SCHEDULE**

AUCTION DATE & VENUE (where applicable), alternatively: DEDICATED INTERNET LINK:		
SELLER NAME:		
SELLER IDENTITY/REGISTRATION NO.		
FULL NAME & ID NO OF PERSON SIGNING ON SELLER'S BEHALF		ID NO:
TYPE OF SIGNATURE	TO BE ADVISED	
CAPACITY OF PERSON SIGNING ON SELLER'S BEHALF	DIRECTOR/MEMBER/TRUSTEE/AUTHORISED AGENT <i>(Delete as applicable)</i>	
SELLER'S DOMICILIUM	Physical:  Tel:  Fax:  E-mail:	
PURCHASER NAME:		
PURCHASER IDENTITY/REGISTRATION No.		
FULL NAME & ID NO OF PERSON SIGNING ON PURCHASER'S BEHALF		ID NO:
TYPE OF SIGNATURE	TO BE ADVISED	
CAPACITY OF PERSON SIGNING ON PURCHASER'S BEHALF	DIRECTOR/MEMBER/TRUSTEE/AUTHORISED AGENT <i>(Delete as applicable)</i>	
PURCHASER'S DOMICILIUM	Physical:  Tel:  Fax:  E-mail:	

PROPERTY DESCRIPTION:	
CONVEYANCERS	Name: Contact Person: Tel: E-mail:
PURCHASE PRICE (HIGHEST BID)	R (  Rand, plus VAT, if applicable)
DEPOSIT (5% OF PURCHASE PRICE)	R (  Rand)
COMMISSION (10% OF PURCHASE PRICE)	R (  Rand)
VAT ON COMMISSION	R (  Rand)
TOTAL AMOUNT PAYABLE BY PURCHASER ON AUCTION DATE	R (  Rand)
BALANCE OF PURCHASE PRICE	R (  Rand)

In the event that my offer is not accepted by the Seller, please refund my deposit into the following account: -

**NOTE: DETAILS BELOW NEED TO BE THE SAME ACCOUNT DETAILS THAT THE MONEY CAME FROM AS PER THE ANTI MONEY LAUNDERING ACT**

Account Name: \_\_\_\_\_

Bank: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch: \_\_\_\_\_

Branch Code: \_\_\_\_\_

Bidder's cellphone number: \_\_\_\_\_

\_\_\_\_\_  
Name (Purchaser)

\_\_\_\_\_  
Signature (Purchaser)

\_\_\_\_\_  
Witness (High Street Staff Member Only)

\_\_\_\_\_  
Name (High Street Staff Member Only)

Date: \_\_\_\_\_

**PURCHASER'S STATUTORY DETAILS REQUIRED IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001 (FICA): -**

**Statutory Details**

Nature of Business:  
*(eg. Legal, Medical, etc.)* \_\_\_\_\_

Form of Business:  
*(tick appropriate box)*

Listed Public Company  Private Company  Close Corporation

Unlisted Public Company  Partnership  Sole Partnership

Trust

Income Tax No:

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VAT Reg No:

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*(Attach a copy of a SARS document for income tax and VAT bearing the number and name of the company)*

Names of Directors, Partners, Members or Trustees:

*(managing director and one other Executive director as they appear On the company's letterhead)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Physical Address / Domicilium Address:

*(Attach a copy of notice of the registered Office and postal address – CM22 bearing The stamp of the Registrar of Companies And signed by the Company Secretary)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 1. **DEFINITIONS**

In this Agreement, unless the context requires otherwise, the words and expressions set out below shall have the meanings assigned:

- 1.1 **“Acceptance Date”** means the date upon which the Seller formally accepts the offer, being no later than five business days from date of signature of this Offer to Purchase by the Purchaser, subject to clause 23;
- 1.2 **“the / this Agreement”** means the Offer to Purchase, once countersigned and thereby accepted by the Seller, as well as any schedules, annexures and/or addenda hereto;
- 1.3 **“Auction Date”** means the relevant date of the auction of the Property by the Auctioneer;
- 1.4 **“Auctioneer”** means The High Street Auction Company, registration number 2010/019027/07;
- 1.5 **“Auctioneer’s Trust Account”** means The High Street. Auction Company, First National Bank, Melrose Arch Branch, Branch Code 254 405, Account No 6228-6710-770;
- 1.6 **“Balance of the Purchase Price”** means an amount equal to the Purchase Price less the Deposit;
- 1.7 **“Business Day”** means all days excluding a Saturday, Sunday and Public Holiday;
- 1.8 **“the Commission”** means the Auctioneer’s Commission on the sale, as recorded in the Schedule, plus VAT;
- 1.9 **“the Conveyancers”** means the conveyancing attorneys nominated by the Seller to attend to registration of transfer of the Property into the name of the Purchaser, as recorded in the Schedule;
- 1.10 **“the Deposit”** means the deposit defined as such in the Schedule, being 5% of the Purchase Price;
- 1.11 **“Offer to Purchase”** means this offer to purchase prior to it being accepted by the Seller by way of countersignature;
- 1.12 **“the Property”** means the immovable property defined in the Schedule;
- 1.13 **“the Purchaser”** means the Purchaser defined as such in the Schedule;
- 1.14 **“Purchase Price”** means the purchase price defined in the Schedule as such, which purchase price shall exclude VAT, if applicable;
- 1.15 **“the Schedule”** means the Schedule reflected on the cover page of This Agreement, in which is recorded various information relating to the sale of the Property by the Seller to the Purchaser;

- 1.16 **“the Seller”** means the Seller defined as such in the Schedule;
- 1.17 **“the Signature Date”** means the date of signature of this Agreement by the party signing last in time.
- 1.18 **“the Transfer Date”** means the date of registration of the Property into the name of the Purchaser in the relevant Deeds Registry;

## **2. OFFER TO PURCHASE & PAYMENT OF PURCHASE PRICE**

- 2.1.1 The Purchaser, being the highest bidder for the Property at the auction, hereby offers to purchase the Property from the Seller for the Purchase Price, and on the terms and conditions contained in this Agreement.
- 2.1.2. The successful Purchaser shall immediately after the fall of the hammer complete and exchange the necessary documents by such means as may be prescribed by the Auctioneer, be it by way of the execution of documents in the traditional manner in the case of a Traditional / Physical auction, alternatively, in the case of a Virtual / Online auction, by way of electronic means, as directed by the Auctioneer, having regard to the prevailing circumstances and applicable law. The Seller will respond in the same manner.
- 2.2 The Purchaser shall pay the Purchase Price as follows:
- 2.2.1 On the Auction Date, the Purchaser shall pay an amount equal to the Deposit and the Commission plus VAT, as recorded in the Schedule, into the Auctioneer's Trust account, by way of direct electronic funds transfer. In the event that a cash deposit is made, the Depositor will be liable for the bank charges relating to that transaction.
- 2.2.2 The Balance of the Purchase Price, plus VAT on the full Purchase Price (if applicable), shall be secured by the Purchaser, within thirty (30) business days of the Acceptance Date, delivering to the Seller or the Conveyancers a bank guarantee/s reasonably acceptable to the Seller, and in such amount/s and in favour of such party/ies as required by the Seller or the Conveyancers, which guarantee/s shall be expressed to be payable on registration of transfer of the Property to the Purchaser. Alternatively, the Purchaser shall be entitled to pay such amount to the Conveyancers who will invest the funds in an interest bearing account in terms of Section 86(4) of the Legal Practice Act, No. 28 of 2014 as soon as the Purchaser has complied with the Conveyancers' FICA procedures, interest to accrue for the Purchaser's benefit, until the Transfer Date.
- 2.3 The Seller will have until the Acceptance Date within which to confirm the bid and accept this offer to purchase. If the sale is not confirmed by the Seller, or by a duly authorised representative of the Auctioneer on the Seller's behalf, by way of countersignature of this Offer to Purchase by the Acceptance Date, then the offer and the bid will expire and the Purchaser's Deposit and Commission shall be refunded, excluding any interest thereon. The Purchaser shall not be entitled to withdraw or revoke the bid or this Offer to Purchase within such five business day period. Once this Offer to Purchase has been countersigned by the Seller or its authorized representative, then this Offer to Purchase will become a binding sale agreement between the Seller and the Purchaser.

### 3. COMMISSION

The Purchaser understands and agrees that it is also liable to pay the Commission in addition to the Purchase Price, amounting to ten percent (10%) of the Purchase Price, plus VAT, which Commission is payable upon signature of this offer to purchase by the Purchaser to the Auctioneer as recorded at clause 2.2.1. The Auctioneer will hold the Commission in the Auctioneer's Trust Account until acceptance of this Offer to Purchase by the Seller. Immediately upon such confirmation and acceptance by the Seller, the Commission shall be deemed to have been earned by and shall be payable to the Auctioneer, and the Auctioneer may then take its Commission. The Seller and the Purchaser also understand that the Auctioneer shall be entitled to deduct its Commission as a first charge from the Deposit as soon as the Seller has accepted this Offer to Purchase.

### 4. REGISTRATION OF TRANSFER OF THE PROPERTY INTO THE PURCHASER'S NAME

4.1 Registration of transfer of the Property into the Purchaser's name shall be attended to by the Conveyancers:

4.1.1 at the Purchaser's expense, and the Purchaser shall sign all the transfer documentation and pay all transfer registration fees and all transfer costs including, but not restricted to, transfer duty or value added tax (as applicable) on the Purchase Price, as well as a contribution to rates / levies prepaid by the Seller as notified by the Conveyancers, within 5 (five) business days of being requested by the Conveyancers to do so;

4.1.2 after the Purchaser has paid the Deposit as well as Commission and secured or paid the Balance of the Purchase Price in accordance with clause 2, and signed all necessary transfer documents.

### 5. RATES / LEVIES

5.1 The Seller is liable for and must pay all rates / levies that may be due in respect of the Property up to the Transfer Date as well as estimated figures for rates and/or levies as stipulated by the relevant municipalities/body corporates. The Purchaser is liable for and must pay all rates / levies that may be due in respect of the Property with effect from the Transfer Date.

5.2 The Seller hereby indemnifies the Purchaser against any claims that may be made by the relevant municipalities/body corporates in respect of arrear rates / levies as at the Transfer Date as further contemplated in Clause 21 of this Agreement.

5.3 The Seller understands and accepts that it is the practice of municipalities and certain body corporates to require the Seller to pay the full amount required in order to obtain a rates and levy clearance certificate in respect of the properties falling within its control, and to then refund the Seller after registration of transfer. The Seller will accordingly be liable to pay the full amount required to obtain a rates and levy clearance certificate.

5.4 Any indication of the rates and/or levies payable in respect of the Property that is given by the Seller or the Auctioneer is only an approximation based on recent figures obtained in respect of the Property, and accordingly neither the Seller nor the Auctioneer warrant the actual amounts of the rates / levies applicable to the Property.

- 5.5 The parties agree, so as to allow for the orderly transfer of the rates, water and electricity accounts in respect of the Property, as follows:
- 5.5.1 the Seller will notify the relevant municipality, or any other relevant authority, prior to vacating the Property and request them to take final readings and terminate the electricity and water service in the Seller's name upon registration of transfer into the name of the Purchaser.
- 5.5.2 the Conveyancers will, upon registration of transfer, inform the relevant municipality that the Property has been transferred into the Purchaser's name and the date of such transfer; and
- 5.5.3 the Purchaser shall, immediately upon registration of transfer of the Property into its name, attend at the offices of the relevant municipality or any other relevant authority, and will pay the required deposit/s and open rates, water and electricity consumption accounts in its name.

## **6. POSSESSION AND OCCUPATION**

- 6.1 Possession and occupation of the Property, subject to any leases in place over the Property as at the Auction Date, will be given to the Purchaser on the Transfer Date, from which date all risk of profit and loss in and to the Property will pass to the Purchaser, including the rights and obligations in terms of any leases. Should the Purchaser wish to take earlier occupation of the Property, and the Seller be agreeable thereto, then the provisions of the Occupation Annexure to this Agreement must be completed and signed by Purchaser and Seller.
- 6.2 If the date of occupation does not coincide with the Transfer Date, for whatever reason, then the party enjoying occupation of the Property whilst it is registered in the name of the other party shall, in consideration thereof and for the period of such occupation, pay to the other party the Occupational Interest, monthly in advance from the date of occupation. No tenancy shall be created by the Purchaser taking occupation prior to the Transfer Date and the Purchaser shall vacate the Property on cancellation of the sale whatever the reason therefore. If transfer is effected other than at the end of a month, the Occupational Interest shall be pro-rated for the portion of the month up to and including the Transfer Date. If occupation of the property is given to the Purchaser before the Transfer Date, the Purchaser shall not be entitled to make any alterations or additions to the Property prior to the Transfer Date without the written consent of the Seller first being obtained.

## **7. INTEREST FOR LATE PAYMENT**

- 7.1 Should the Purchaser be late in making payment of any amount in terms of this Agreement, then the Purchaser shall be charged interest at a rate of three percent (3%) per annum above the prime lending rate as charged from time to time by First National Bank, which interest shall be calculated on the amount which was paid late and any other amount which may remain outstanding and which is due. Interest shall be calculated as from the date on which the amount became payable to date of payment.
- 7.2 Should the Purchaser breach any of its other obligations in terms of this Agreement, then the Purchaser shall become liable to pay the Seller interest on the full Purchase Price at a rate of three percent (3%) above the prime lending rate as charged from time to time by First National Bank calculated for the entire period for which the breach prevails.



7.3 Any interest payable by the Purchaser in terms of the clauses 7.1 and/or 7.2 above will be payable by the Purchaser immediately on demand, and the Purchaser also authorizes the deduction of any such amounts from any interest that has accrued on any amount held on the Purchaser's behalf in terms of this Agreement, and the payment thereof to the Seller.

## 8. VOETSTOOTS

8.1.1 **The Purchaser acknowledges and understands that, as it is buying the Property on auction, the provisions of Section 55 of the Consumer Protection Act (Act No. 68 of 2008) are not applicable to this transaction, and the Purchaser is accordingly offering to purchase the Property *voetstoots* and in the condition that it lies as at the Auction Date, as described in the current title deed of the Property and subject to all existing servitudes and conditions of title, without any warranties or representations by the Seller or the Auctioneer as to the state or condition of the Property, whether the Property is free of any defects and/or whether the Property is fit for any specific intended purpose.**

8.1.2 The Purchaser acknowledges that it was afforded a reasonable period of time and opportunity to inspect the Property prior to the commencement of the auction as contemplated in terms of Regulation 28(5)b of the CPA, which inspection the Auctioneer was obliged to provide the Purchaser either electronically or in the traditional manner (physical inspection), pursuant to the applicable laws in place at such time.

8.2. Neither the Seller nor the Auctioneer shall be liable for any defects in the Property whether latent or otherwise, nor for any damage caused by such defects.

8.3 The Purchaser acknowledges that it had reasonable opportunity to inspect Property, its nature, condition, extent and locality prior to the auction if it chose to do so.

8.4 Neither the Seller nor the Auctioneer shall be liable for any deficiency in the size of the Property which may be revealed on any re-survey of the Property nor shall the Seller benefit by any excess as a result of such re-survey.

## 9. ZERO RATING (IF APPLICABLE)

9.1 If the Seller is a VAT vendor and the Property is sold as a going concern or part of an enterprise which is capable of separate operation, then the Seller and the Purchaser agree that –

9.1.1 the Property is sold to the Purchaser as a going concern and will be an income earning enterprise on the Transfer Date;

9.1.2 all the assets necessary to enable the Purchaser to carry on the business enterprise will also be transferred to the Purchaser on the Transfer Date;

9.1.3 the Seller is a VAT vendor as defined in the Value Added Tax Act 1991, and the Purchaser is also such a VAT vendor and/or will be registered as such as at the date of submission to the South African Revenue Service ("SARS") for a transfer duty receipt and as at the Transfer Date;

9.1.4 this sale is therefore a zero rated taxable supply in terms of Section 11 (1) (e) of the Value Added Tax Act 1991.

- 9.2 If the SARS rules are amended, resulting in this sale no longer qualifying to be VAT-Zero rated, then the Purchaser must pay value added tax at the standard rate calculated on the Purchase Price within five (5) business days of receipt of written request from the Seller or the Conveyancers and against the issue to the Purchaser by the Seller of a VAT invoice for the Purchase Price plus VAT.
- 9.3 In the event that the Property is sold as a going leasing concern or enterprise, then:
- 9.3.1 the provisions of the Adjustment Account Annexure to this Agreement with respect to the preparation of an adjustment account by the Seller shall be applicable; and
- 9.3.2 the Seller hereby declares and warrants in favour of the Purchaser that:
- 9.3.2.1 the leasing concern/enterprise has no employees and that accordingly the provisions of Section 197 of the Labour Relations Act 66 of 1995 (“the LRA”) will have no application to the transfer of the leasing concern/enterprise from the Seller to the Purchaser. The Seller indemnifies and holds the Purchaser harmless against any and all claims and/or recourse by any employees consequent upon a breach of said warranty, and assumes sole liability for any and all amounts that might be payable to any employees of the leasing concern/enterprise in terms of section 197 of the LRA;
- 9.3.2.2 as at the Signature Date, all of the leases are valid, binding and of full force and effect and, unless otherwise disclosed to the Purchaser in writing, none of the tenants are in arrear or otherwise in breach of any of the leases, and there is no litigation pending or anticipated in respect of any of the leases.
- 9.4 Notwithstanding anything contained in clauses 9.1, 9.2 and 9.3 above, the parties acknowledge that the decision as to whether this transfer will be subject to a VAT-Zero rating shall remain with SARS which shall have complete discretion in this regard.
- 10. SIGNATORY ACTING ON BEHALF OF COMPANY, CLOSE CORPORATION OR TRUST, OR ACTING AS TRUSTEE/NOMINEE**
- 10.1 If the person signing this Offer to Purchase is signing on behalf of a company, close corporation or trust, then he/she warrants that he/she has the necessary authority to represent and bind such entity to this offer to purchase, and shall by no later than the Acceptance Date deliver to the Auctioneer a duly completed resolution signed by all the directors/members/trustees, as applicable, in which such authority is verified. Should the signatory not in fact have such authority, then he/she shall personally be bound as Purchaser.**
- 10.2 If the person signing this offer to purchase as Purchaser is acting as a trustee or agent for a company to be formed or registered, the signatory so signing shall be personally bound as Purchaser if, within three (3) calendar months of confirmation of the sale by the Seller, such company –**
- 10.2.1 has not been formed, incorporated or registered at the Companies and Intellectual Property Commission; or**
- 10.2.2 has not formally ratified this Agreement.**
- 10.3 If the person signing this Offer to Purchase is acting as an agent for a company or close corporation to be formed and notwithstanding that within three (3) calendar months of acceptance of this Offer by the Seller the company or close corporation–

10.3.1 has been formed, incorporated or registered at the Companies and Intellectual Property Commission; and

10.3.2 has ratified this Agreement.

The signatory of this Offer to Purchase nonetheless binds himself in favour of the Seller as surety and co-principal debtor jointly and severally together with the relevant company or close corporation for the due and punctual performance by such company of all its obligations arising out of this Agreement or any cancellation thereof.

**10.4 If the Purchaser signs this offer to purchase as an agent on behalf of another party, he must simultaneously with signature of this offer to purchase disclose the name of his principal for whom he acts and provide written proof of his authority, otherwise the signatory will be personally bound as Purchaser for all purposes.**

**10.5 If the person signing this offer to purchase is acting on behalf of a nominee, then the signatory must nominate the actual Purchaser and the nominated Purchaser must accept and confirm the agreement in writing by no later than the Acceptance Date, otherwise the signatory shall be personally bound as Purchaser for all purposes. If the signatory does so nominate another Purchaser, and the nominated Purchaser accepts and ratifies the agreement, then the signatory to this agreement shall be bound together with the nominated Purchaser as surety and co-principal debtor in favour of the Seller for the full and punctual performance by the nominated Purchaser of all its obligations in terms of this agreement.**

## **11. TENANTS**

11.1 Should the Property be occupied by tenants or persons other than the Seller, the Purchaser acknowledges that the Property is occupied by such tenants/occupiers and having acquainted himself with the terms and conditions of any such leases or rights of occupancy, as the case may be, and the Purchaser will be bound to honour any such leases or rights of occupancy. Should the Seller wish to vary the terms of any such lease subsequent to the acceptance date, the Seller shall be obliged to first obtain the prior written approval of the Purchaser in regard thereto, failing which the Seller shall not be entitled to vary the terms of such lease. With effect from the Transfer Date, the Seller cedes and assigns all its rights and obligations with respect to such leases to the Purchaser, subject to the provisions of the adjustment account referred to in clause 9.3 above. Should it be necessary to evict any such tenants/occupiers from the Property, then the Purchaser accepts the responsibility of all such eviction proceedings and all associated costs.

11.2 Neither the Seller nor the Auctioneer give any warranties whatsoever with regard to any leases in place in respect of the Property and/or the lessee/s in respect of such leases, and the Purchaser accepts such leases and lessees as such with effect from the Acceptance Date. The Seller shall not be liable for any breach by such lessee/s and/or termination of the lease/s after the Acceptance Date, unless such breach or termination was reasonably anticipated by the Seller as at the Acceptance Date and the Seller failed to impart such knowledge to the Purchaser, and provided further that the onus shall at all times rest on the Purchaser to prove this should he allege it to be the case.

11.3 All deposits paid by the tenant in terms of the leases shall be dealt with in accordance with the adjustment account set out in the Adjustment Account Annexure provided that if at any time before the Transfer Date any tenant fails to comply with its obligations in terms of the leases and/or there are amounts owing to the Seller by the tenant in terms of the leases, the Seller shall be entitled to appropriate such deposit towards payment of the outstanding amount owing to the Seller.

- 11.4 All payments received from the tenant in terms of the leases after the Transfer Date shall in the first instance be appropriated towards any amounts owing by the tenant in terms of the leases prior to the Transfer Date and thereafter towards amounts owing to the Purchaser by the tenant for the period after the Transfer Date.
- 11.5 Should the Seller wish to conclude a lease agreement with a third party subsequent to the Acceptance Date, the Seller shall first obtain the written approval of the Purchaser. The rental, the term of the lease as well as all other terms applicable to the lease to be concluded shall first be agreed in writing between the Seller and the Purchaser prior to the Seller being entitled to conclude such a lease agreement. Once the property has been transferred to the Purchaser, the Purchaser shall assume all the obligations of the lessor in respect of such lease agreement.

## 12. BREACH

- 12.1 Should the Purchaser fail to pay the Deposit or the Commission by due date in accordance with clause 2.2.1, or breach any of its other obligations in terms of this Agreement and fail to remedy such breach within five (5) business days after receipt (or deemed receipt) of written notice calling upon the Purchaser to remedy the breach, then the Seller shall be entitled, without prejudice to any other remedies available to it, to either –
- 12.1.1 cancel the Agreement forthwith by way of written notice and retain all amounts paid by the Purchaser, as well as any interest accrued thereon, as security for damages suffered by the Seller as a consequence of the breach, to be offset against actual damages claimed and ultimately awarded in the Seller's favour; or
- 12.1.2 cancel the Agreement forthwith by way of written notice and retain all amounts paid by the Purchaser, as well as any interest accrued thereon, either as rouwkoop or as agreed pre-estimated liquidated damages; or
- 12.1.3 enforce specific performance of the Purchaser's obligations and also to claim for and recover all damages suffered as a consequence of the Purchaser's breach of contract.
- 12.2 Should the Seller breach any of its obligations in terms of this Agreement and fail to remedy such breach within five (5) business days after receipt (or deemed receipt) of written notice calling upon the Seller to remedy the breach, then the Purchaser shall be entitled, without prejudice to any other remedies available to it, to either –
- 12.2.1 cancel the Agreement by way of written notice; or
- 12.2.2 enforce specific performance of the Seller's obligations, and in either instance to claim for and recover all damages suffered as a consequence of the Seller's breach of contract.
- 12.3 It is specifically agreed by both the Seller and the Purchaser that, in the event of cancellation of the Agreement due to a breach by the Purchaser, then the Auctioneer's claim for Commission shall be a first charge against the Deposit and/or any other monies that may be payable to the Seller.
- 12.4 If the sale is cancelled by either the Seller or Purchaser, or by mutual consent or any reason whatsoever, the Auctioneer's Commission shall nonetheless be due and payable to the Auctioneer, and if already paid, will not be refundable.
- 12.5 If the sale is cancelled due to the Seller's breach, the Seller shall then be liable for payment of the Auctioneer's Commission, which Commission shall be due and payable by the Seller immediately upon such cancellation.

12.6 If the Purchaser fails to pay the Commission due to the Auctioneer in terms of clause 2.2.1 above, then the Auctioneer will be entitled to recover such amount directly from the Purchaser, irrespective of whether or not the sale is cancelled by the Seller.

12.7 All legal costs as between attorney and his own client, charges and disbursements and fees of a like nature including VAT, incurred by any party in enforcing any of the provisions of this Agreement, or any claim hereunder, shall be for the account of the unsuccessful party and be payable on demand, whether Court or arbitration proceedings have been instituted or not.

### **13. ELECTRICAL, ELECTRIC FENCE, GAS, PLUMBING COMPLIANCE & BEETLE CERTIFICATES**

13.1 The Seller must at its cost obtain:

13.1.1 a valid Certificate of Compliance in respect of the electrical installation situated on the Property as contemplated in Occupational Health and Safety Act 1993: Electrical Installation Regulations (Government Notice R242 dated 6<sup>th</sup> March 2009).

13.1.2 if required by the relevant local authority/municipality within which the Property is situated, a valid Certificate of Compliance in respect of the plumbing installation situated on the Property; and

13.1.3 where the Property is situated in a coastal region, a beetle certificate certifying that all the accessible timbers of the Property have been inspected by a South African Pest Control Association - registered inspector and been found free of infestation by wood-destroying beetles, termites and fungi. Where infestation is found, the recommendations made by the inspector shall be carried out in full, in terms of the Fertilizers, Far-Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 and/or SANS Codes 0124 and 0204. Upon receipt of a Certificate of Clearance issued by the said Inspector to the Seller, to the effect that there is no apparent infestation on first inspection, or that any infestation which had been reported has been dealt with as set out above, the Seller shall have fairly discharged all responsibility in the matter and the Purchaser shall have no further claim against the Seller, and deliver such certificate/s to the Purchaser within 20 business days of the Acceptance Date, and in any event before the Conveyancers lodge the transfer documents in the relevant Deeds Registry for registration.

13.1.4 The Seller shall at the Seller's expense provide the Purchaser with an Electric Fence System Certificate of Compliance ("the certificate") prior to the date of transfer. Such certificate shall be issued by a registered electric fence installer in accordance with the provisions of Regulations 12(4) and 13(1) of the Electrical Machinery Regulations, 2011 and confirm that the electric fence system is deemed to be reasonably safe when properly used. Should corrective work be required prior to the issue of the certificate, the work shall be carried out at the expense of the Seller. Such Certificate shall not predate the Agreement of Sale by more than 2 (two) years.

13.1.5 The Seller shall, at its expense, deliver to the Purchaser, on or before the transfer or occupation date, whichever is the earlier, a Certificate of Conformity issued by an authorised person as defined in the Pressure Equipment Regulations 2009 made by the Minister of Labour under section 43 of the Occupational Health and Safety Act 85 of 1993, to the effect that the gas installation on the property conforms to the required health and safety standard. The Seller undertakes not to alter, install or remove the gas installation after issue of the said Certificate. In so far as the authorised person appointed by the Seller to provide such Certificate requires corrective work to be carried out

as a pre-condition to the issue of such Certificate, the Seller will procure such work is carried out at the Seller's cost and expense.

- 13.2 In the event that the Seller delivers a compliance certificate pertaining to electrical compliance, the electric fence and/or gas compliance, the Seller warrants that the said certificate was not issued more than 2 years prior to the date of registration of transfer into the name of the Purchaser and that there have been no additions or alterations to the electrical installation at the Property since the issue of such certificate.
- 13.3 If the Seller fails to provide the certificate/s as required above, then the Purchaser will be entitled, but will not be obligated, to appoint an accredited electrician/plumber to issue such a certificate/s at the Purchaser's cost, in which event:
- 13.3.1 the Seller shall allow the Purchaser's nominated electrician/plumber access to the Property and permit him to inspect the electrical/plumbing installation for purposes of preparing the electrical/plumbing compliance certificate, and, if necessary, for purposes of attending to any necessary remedial work in order to make the electrical/plumbing installation compliant; and
- 13.3.2 the Purchaser may then offset the reasonable cost of remedying the electrical/plumbing installation (if required) and acquiring such certificate against the Purchase Price.

#### **14. NOTICES**

- 14.1 The parties choose the fax numbers, postal, physical and e-mail addresses specified in the Schedule as their respective addresses to which the other party may deliver any notices required in terms of this agreement, and also nominate such physical address for the service of any Court process.
- 14.2 If a party sends a notice to the other party relating to any matter arising from this Agreement, such notice shall be deemed to have been received by the other party -
- 14.2.1 on the fifth day after date of posting if sent by prepaid registered post to a party's postal address; or
- 14.2.2 on the date of delivery if delivered to the physical address by hand; or
- 14.2.3 on the date of successful facsimile transmission to the chosen fax number; or
- 14.2.4 on the day of successful e-mail transmission to the chosen e-mail address, provided that a successful delivery report is obtained for such notice.
- 14.3 Despite the above regarding delivery of notices, if a party sends a notice to the other party and such notice actually comes to such other party's attention despite the fact that it was not sent to one of the addresses provided, then that shall still be considered to be a valid notice.

#### **15. SPECIAL CONDITIONS**

Any additional or special conditions or provisions are to be included by way of an annexure to this agreement, which must be signed by both the Seller and the Purchaser.

#### **16. FICA AND CUSTOMER ACCEPTANCE SCREENING**

The parties will provide all necessary documentation and information in terms of the Financial Intelligence Centre Act, (the "FICA Documents") to the Conveyancers and Auctioneer immediately upon request.



**17. DISPUTES**

- 17.1 If any dispute arises between the parties relating to this Agreement and/or its conclusion or validity or enforceability, including any dispute between the Auctioneer and the Purchaser and/or or the Seller pertaining to the Auctioneer's entitlement to claim its commission from either party, such dispute will be resolved by way of arbitration before a single arbitrator, appointed in terms of the provisions of this clause. Any party/ies (including the Auctioneer) shall be entitled to notify the other party/ies of its intention to refer such dispute to arbitration ("the Arbitration Notice").
- 17.2 Should the parties to the dispute not agree on an arbitrator within five business days of delivery of the Arbitration Notice, the arbitrator will then be appointed, at the written request of any party to the dispute (which request must be copied to the other party/ies), by the Chairman for the time being of the Arbitration Foundation of Southern Africa or his nominee.
- 17.3 Unless otherwise expressly agreed by the party/ies in writing:
- 17.3.1 the arbitration will be held in Sandton, Republic of South Africa and shall be conducted in terms of the Standard Procedure Rules for commercial arbitrations of the Arbitration Foundation of Southern Africa;
- 17.3.2 the arbitration will be held as quickly as possible, but the time periods provided for in Section 23(a) of the Arbitration Act 42 of 1965 (as amended) ("the Arbitration Act") will not apply;
- 17.3.3 the Arbitrator will be entitled to determine his own jurisdiction and will be entitled on his own to raise matters just as if the dispute were being heard before a Judge in the High Court of South Africa;
- 17.3.4 until the Arbitrator makes his award, each party/ies will have to contribute towards the Arbitrator's fees and charges equally;
- 17.3.5 the award of the Arbitrator will be final and binding and not subject to appeal and may be made an order of any competent Court.
- 17.4. Subject to the other provisions of this clause, the arbitration shall otherwise be held in accordance with the provisions of the Arbitration Act.

**18. ADVERTISING COSTS**

The Purchaser and the Seller agree that any outstanding amount payable by the Seller to the Auctioneer in respect of advertising costs will be deducted from the Deposit on acceptance of this agreement by the Seller. This amount will be repaid to the Purchaser by the Seller, in the event of this agreement being cancelled as a result of a Breach thereof by the Seller.

**19. NON-RESIDENT WITHHOLDING TAX (ONLY FOR SALES OVER R2 MILLION)**

- 19.1 The parties understand that in terms of Section 35A of the Income Tax Act ("the Act"), the Purchaser is required by law to withhold a portion of the purchase price from the Seller, if the Seller is not a resident of the Republic of South Africa ("a Resident") and the sale price exceeds R2 000 000, 00 (two million Rand), and to pay such withheld amount to the SARS. In such case:

- 19.1.1 The Seller hereby warrants that it is / is not (delete as applicable) a Resident;
- 19.1.2 The Seller hereby indemnifies and holds the Purchaser, the Auctioneer and the Conveyancers harmless against any and all claims that may arise against any of them as a result of their having relied on the Seller's warranty of residency, and hereby waives any claims or rights of recourse against the Purchaser, Auctioneer and/or the Conveyancers as a result;
- 19.1.3 If the Seller warrants that he is a Resident, the Conveyancers may require the Seller to provide a SARS directive within 30 days confirming such residential status, failing which it will be deemed that the Seller is a non-Resident, and the provisions of clause 19.1.4 will then apply;
- 19.1.4 If the Seller is a non-Resident, or is deemed as such as per clause 19.1.3, then:
- 19.1.4.1 the Seller and the Purchaser hereby irrevocably authorize and instruct the Conveyancers to withhold the prescribed percentage of the purchase price and to pay such funds to SARS within the prescribed number of days of withholding of such funds, in accordance with Section 35A of the Act;
- 19.1.4.2 the Purchaser will sign all documentation required by the Act for submission with such payment;
- 19.1.4.3 despite the provisions of clause 19.1.4.1, the Seller shall be entitled to obtain a directive from the SARS and deliver it to the Conveyancers at any time prior to registration of transfer, in which event the Conveyancers will act and pay in accordance with such directive.

## 20. COUNTER-OFFER

- 20.1 In the event that the Seller does not accept the highest bid, being the Purchase Price offered by the Purchaser in terms of this Offer to Purchaser, by the Acceptance Date but counters with a higher offer which is accepted by the Purchaser by way of amendment and initialing of the Purchase Price by the parties in terms of this Offer to Purchaser, then:
- 20.1.1 this Agreement shall no longer constitute a sale agreement pursuant to an auction sale, but shall instead constitute a private treaty sale;
- 20.1.2 Clause 8 shall be deemed to be replaced by the following clause:
- "8. THE CONSUMER PROTECTION ACT, No. 68 OF 2008 ("the CPA")**
- 8.1 If the Purchaser is a "Consumer" and the Seller is a "Supplier" as defined in the CPA, then the following terms shall additionally apply:**
- 8.1.1 if the Purchaser was introduced to the Property by way of direct marketing (that is, approached directly, either in person or by mail, e-mail or SMS), then the Purchaser may withdraw from this agreement within 5 business days of acceptance by the Seller by giving written notice to the Seller to such effect;**
- 8.1.2 the Purchaser acknowledges that it has had the opportunity to inspect the Property prior to submitting its offer to purchase to the Seller;**



- 8.1.3** the Purchaser acknowledges that is has read and understood the terms of this offer to purchase before it signed the document, and that if it did not understand any of the terms that it was entitled to ask the Seller to explain any such terms before signing this offer to purchase.
- 8.2** **If the Purchaser is not a “Consumer” and/or the Seller is not a “Supplier” as defined in the CPA, then the following terms shall additionally apply:**
- 8.2.1** the Property is sold *voetstoots* and in the condition as it lies as at the date of signature by the Purchaser, as it is described in the current title deed of the Property and subject to all existing servitudes and conditions of title, without any warranties or representations by the Seller or the Agent as to the state or condition of the Property, whether the Property is free of any defects and/or whether the Property is fit for any specific intended purpose;
- 8.2.2** the Purchaser has not, in making this offer, relied on any warranty or representation not contained herein;
- 8.2.3** neither the Seller nor the Auctioneer shall be liable for any defects in the Property whether latent or otherwise, nor for any damage caused by such defects; and
- 8.2.4** neither the Seller nor the Auctioneer shall be liable for any deficiency in the size of the Property which may be revealed on any re-survey of the Property nor shall the Seller benefit by any excess as a result of such re-survey.”
- 20.1.3 By law, in the case of a private treaty sale, a Purchaser has the right to revoke an offer or terminate a deed of alienation in transactions of R250 000 or less within 5 (five) days of signature by providing a fully detailed and signed written notice – as detailed in Section 29A of the Alienation of Land Act.

## **21. GENERAL**

- 21.1 This Agreement is the whole agreement between the parties. No other terms, conditions, stipulations, undertakings, representations or warranties shall be of any force or effect other than expressly included herein. No variation of, addition to, mutual cancellation or amendment of this Agreement and no waiver by either party of any of its rights hereunder shall be of any force or effect unless recorded in writing and signed by the Seller and the Purchaser or their duly authorized agents.
- 21.2. If this Agreement is signed by more than one person jointly as Purchaser, then all such signatories shall be jointly and separately bound by the terms of this Agreement. If this Agreement is not signed by all the persons named as purchasers, this Agreement shall nevertheless remain binding on the purchasers who have signed this Agreement.
- 21.3 If any Purchaser is married in community of property, his or her spouse's signature of this Agreement, or such spouse's written confirmation and authorization is required, and in such case such a Purchaser warrants that he/she will obtain his/her spouse's signature of this Agreement, or that his/her spouse will provide such written confirmation and authorization upon request.

- 21.4 No extension of time or other indulgence granted by any party to the other in respect of enforcing the other party's obligations hereunder will in any way be seen to be a waiver by such party of its rights or otherwise affect that party's rights in terms of this Agreement.
- 21.5 The sale of the Property includes all fixtures and fittings of a permanent nature, but unless specifically provided for by way of addendum or annexure to this Agreement, this sale shall not include the sale of any movable items.
- 21.6 Any party signing this Agreement on behalf of another person, entity or trust warrants that he is duly authorized by such person, entity or trust (as applicable) to conclude this Agreement on such person/entity/trust's behalf and to bind them to this Agreement. Should this not be the case, then the signatory shall be personally bound to this Agreement.
- 21.7 The Purchaser and Seller agree that all advertising boards and sold boards relating to the Property are the sole property of the Auctioneer and that the Auctioneer may leave such boards on the Property for a period of two (2) months after the Transfer Date.
- 21.8 If the Purchaser makes any payments by way of cash deposit or credit card, then the Purchaser will be liable for the bank charges incurred as a consequence of such method of payment (currently 5.9% for credit card payments), which amounts must be paid by the Purchaser on request.
- 21.9 If required, the Seller warrants to the Purchaser that, by the date of confirmation and acceptance of the sale, a special resolution of the shareholders/members of the Seller authorising the Seller to enter into and give effect to this Agreement and thereby dispose of the Property in accordance with the Section 112 read with Section 115 of the Companies Act 71 of 2008 ("the Act"), will have been passed by the requisite majority of the shareholders/members of the Seller and that such special resolution will then be duly registered with the Companies and Intellectual Property Commission, if required by the Act.
- 21.10 If any provision or clause of this Agreement is in contravention of any act or other law and is unenforceable as a consequence, then the parties agree that such provision or clause may be removed from the balance of the Agreement and that the balance of the Agreement will remain binding and enforceable (if this is possible).
- 21.11 Each of the parties hereto consents, for the purpose of all or any legal or other proceedings arising out of or in connection with this Agreement to the non-exclusive jurisdiction of the South Gauteng High Court of South Africa.
- 21.12 in the event that the auction proceeded by way of electronic/virtual means, the Parties acknowledge that the auction has been conducted in accordance with Regulation 30 to the CPA and agree that the auction meets all the requirements of auction sales duly amended so as to apply to a virtual/electronic platform to wit:
- 21.12.1 The relevant platform has been available to anyone over the age of 18 years;
- 21.12.2 The platform provides industry level standards of security for electronic transactions;
- 21.12.3 The platform provides for easy access to all records prescribed in the Regulations in a generally used or accepted medium or format;

**22. ARREAR MUNICIPAL CHARGES**

The Seller hereby warrants in favour of the Purchaser that:

- 22.1 on the issue of a Certificate by the Municipality in terms of Section 118(1) of the Local Government; Municipal Systems Act, Act 32 of 2000 ("the Act") all amounts owing by the Seller to the Municipality in respect of the Property will have been paid; alternatively
- 22.2 the Conveyancer attending to the registration of the Property to the Purchaser has been and hereby is irrevocably instructed by the Seller to pay from the proceeds of the sale of the Property by the Seller to the Purchaser, all amounts owing by the Seller to the Municipality in respect of the Property as contemplated in Section 118(3) of the Act, howsoever such amounts may have arisen; and
- 22.3 generally, the Seller hereby indemnifies the Purchaser and holds the Purchaser harmless against any claim/s against the Purchaser by the Municipality for payment of any amount in respect of the Property arising prior to the date of registration of transfer of the Property into the name of the Purchaser, alternatively, prior to possession passing from the Seller to the Purchaser, whichever the earlier.

**23. APPROVAL BY EXECUTOR / LIQUIDATOR**

Should the property be sold by the Executor of a deceased estate or by the Trustee of an insolvent estate, or Liquidator of an insolvent company or an insolvent close corporation, or by a business rescue practitioner then the definition of Acceptance Date shall be automatically varied to allow the Seller fourteen (14) business days from date of signature of this offer to purchase by the Purchaser to accept the offer.

**24. INTERPRETATION**

- 24.1 In this Agreement, unless the context requires otherwise:
- 24.1.1 words importing any one gender shall include the other gender;
- 24.1.2 the singular shall include the plural, and *vice versa*;
- 24.1.3 a reference to natural persons shall include created entities (corporate or otherwise) and *vice versa*;
- 24.1.4 headings have been inserted for convenience only and shall not be used for, nor assist or affect its interpretation.
- 24.2 The definitions clause forms an integral part of this Agreement, and shall, where appropriate, confer substantive rights and obligations on the parties to this Agreement.
- 24.3 The signature by either party of a counterpart of this Agreement shall be as effective as if that party had signed the same document as the other party, the counterparts shall together constitute one Agreement.

Signed by the Purchaser at \_\_\_\_\_ on

The \_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
For: **PURCHASER**

2. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**PRINT NAME**

Signed by the Purchaser at \_\_\_\_\_ on

The \_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
For: **PURCHASER**

In the event that the Purchaser signs this Offer to Purchase is acting as an Agent for a company or close corporation to be formed, then the Purchaser nonetheless binds himself in favour of the Seller as surety and co-principal debtor jointly and severally together with the relevant company or close corporation for the due and punctual performance by such company or close corporation of all its obligations arising out of this Agreement or any cancellation thereof in terms of clause 10.3

2. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**PRINT NAME**

Signed by the Auctioneer at \_\_\_\_\_ on

The \_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
For: **AUCTIONEER**

2. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**PRINT NAME**

Confirmed and accepted by the Seller at \_\_\_\_\_ on

The \_\_\_\_ day of \_\_\_\_\_ 20\_\_

AS WITNESSES:

1. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
For: **SELLER**

2. \_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINT NAME**

\_\_\_\_\_  
**PRINT NAME**

**OCCUPATION ANNEXURE****1. OCCUPATION**

1.1 On condition that the Purchaser has:

1.1.1 paid the deposit;

1.1.2 paid or delivered guarantees securing the balance of the Purchase Price;

1.1.3 signed all transfer and other documents required and paid all transfer costs;

1.1.4 complied with all its other obligations recorded herein; and

1.1.5 paid the first month's occupational interest (or pro rate portion thereof, depending on the occupation date), as recorded below, then the Seller shall afford the Purchaser occupation of the Property on \_\_\_\_\_ ("the Occupation Date"), with effect from which date the Purchaser shall be liable to the Seller monthly occupational interest of R\_\_\_\_\_ (\_\_\_\_\_ Rand), which shall be paid by the Purchaser monthly in advance on or before the 1<sup>st</sup> day of each month up and until registration of transfer.

1.1.6 The Purchaser shall be responsible for payment for all utilities, save for Rates and Taxes, which shall be borne by the Seller until date of transfer. In the event of occupation by the Purchaser prior to transfer, the amount due in respect of utilities shall be payable on a pro rata basis by the Purchaser for the period of such occupation. The Purchaser shall make payment in respect of such utilities upon presentation of an account or statement by the conveyancing attorneys, alternatively hereby authorises any amount not paid in this regard to be deducted from any interest accrued in the Purchasers favour on any amounts paid under this agreement.

1.2 Should the Purchaser take occupation prior to the Transfer Date, then, with effect from date of occupation:

1.2.1 the Purchaser shall keep and maintain the Property in good and proper state of repair and condition to the satisfaction of the Seller. The Purchaser agrees and undertakes to do all necessary repairs and maintenance work to the satisfaction of the Seller and if the Purchaser fails to do so, the Seller may take all necessary steps to repair or maintain the Property in good state of repair and condition, the cost of which shall be paid by the Purchaser prior to lodgement of the transfer for registration, subject to the Seller having given the Purchaser not less than 7 (seven) days' notice of his intention to take the necessary steps and to demand a refund of such amounts expended together with interest thereon at the rate of interest as prescribed in this Agreement;

1.2.2 the Purchaser shall not make any structural alterations or additions to any improvements upon the Property without the Seller's prior written consent, which shall not be unreasonably withheld. Should the Purchaser be permitted

to make any alterations or improvements to the Property, then, unless otherwise agreed in writing by the parties, the Purchaser shall not be entitled to any refund or compensation in respect of same in the event of this sale being cancelled unless: -

- 1.2.2.1 same relates to necessary expenditure incurred by the Purchaser with or without the authority of the owner or Seller of the property in regard to the preservation of the Property or any improvements thereon; or
- 1.2.2.2 same relates to any improvement which enhances the market value of the Property which was effected by the Purchaser on the Property with the express or implied consent of the Seller;
- 1.2.3 until registration of transfer, the Seller and/or its duly authorised agent/representative shall be entitled to inspect the Property at all reasonable times;
- 1.2.4 notwithstanding anything to the contrary herein contained, in the event of the Agreement being cancelled for any reason whatsoever, the Purchaser and all persons occupying the Property through or under him shall vacate the Property forthwith, it being agreed and recorded that no rights of occupation/tenancy have been granted to the Purchaser in terms of the Agreement and no form of tenancy was concluded in terms hereof;
- 1.2.5 the Purchaser shall, at its own expense, insure the Property and improvements thereon for the full replacement value thereof from date of occupation until date of registration of transfer against risk of loss or damage 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. In the event that the Purchaser does not or is unable to take out such a policy of insurance, then the Purchaser shall be liable for all the Seller's premiums for such a policy until the Transfer Date, which amounts shall be paid by the Purchaser prior to the Transfer Date, and which the Purchaser authorises to be deducted from any interest accrued in his favour on any amounts paid under this agreement.
- 1.3 In the event that the Property is let to a tenant/s as at the date of sale, then in such event:
- 1.3.1 the Purchaser acknowledges that the Property is sold subject to the relevant lease/s ("the Lease") and the tenant's rights of occupancy. Insofar as such lease is a residential lease, the Purchaser declares that it is fully aware of the protection afforded to residential tenants and under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act of 1998 and any other laws which protects the tenant's rights.
- 1.3.2 with effect from the Transfer Date, the Seller cedes and/or assigns to the Purchaser all the Seller's obligations and rights, title and interest in and to the Lease and to all rentals and other revenue payable by the tenant and all rights of action which the Seller may have against the tenant for the recovery of such rentals and other payments due, and for ejectment together with all rights relating thereto.

1.3.3 the Purchaser accepts the Lease and the tenant voetstoots as at the signature date, and also accepts all risk of the Lease being cancelled, whether by the tenant or by the Seller due to the conduct of the tenant, with effect from date of acceptance of this Agreement by the Seller.

Dated at \_\_\_\_\_ this the \_\_\_\_\_ day \_\_\_\_\_  
20\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Seller



## ADJUSTMENT ACCOUNT ANNEXURE

### 1. ADJUSTMENT ACCOUNT

- 1.1 For purposes of this annexure:
- 1.1.1 “Business” means the Property and the going leasing concern conducted thereon;
- 1.1.2 “Deposits” means all deposits held in terms of the Leases, including guarantees of any form;
- 1.1.3 “Leases” means the leases in place over the Property as at the Transfer Date;

and all other definitions shall bear their assigned definitions as per the main agreement.

- 1.2 The Seller shall at its expense prepare an Adjustment Account in respect of the Business (including the Property and affairs of the Property) as at the Transfer Date and deliver such Adjustment Account to the Purchaser not later than **30 (thirty)** business days of receipt by the Seller from the Purchaser of written confirmation that it has substituted all deposits and/or guarantees in respect of the Property paid to the municipality and/or Eskom/City Power by the Seller and it has opened its own accounts in respect of water, electricity and other services in respect of the Property with such municipality and/or Eskom/City Power, and the Purchaser furnishing acceptable proof of such activated accounts to the Seller.
- 1.3 Payment of any monies due to any party in terms of the Adjustment Account shall not constitute part of the Purchase Price of the Business (including the Property) and shall be effected separately from the payment of such Purchase Price.
- 1.4 The Adjustment Account shall reflect in respect of the Business:
- 1.4.1 as at the Transfer Date, as credits to the Seller:
- 1.4.1.1 all rentals and other income due and payable under the Leases prior to the Transfer Date and collected after the Transfer Date;
- 1.4.1.2 all amounts in respect of municipal service fees, surcharges on fees, property rates, municipal tax and other municipal charges,

including levies and duties on charges for electricity and water, pre-paid for any period after the Transfer Date in respect of the Property; and

1.4.1.3 the amount of any levies, including special levies pre-paid for any period after the Transfer Date (if applicable);

1.4.2 as at the Transfer Date, as debits to the Seller:

1.4.2.1 all amounts in respect of municipal service fees, surcharges on fees, property rates, municipal taxes and other municipal charges, including levies and duties on charges for electricity and water for any period before the Transfer Date, not paid as at that date;

1.4.2.2 the amount of any levies, including special levies, for any period before the Transfer Date not paid at that date (if applicable);

1.4.2.3 subject to the provisions of clause 11.3, the Deposits, excluding interest (unless the Leases prescribe that the interest accrues for the benefit of the tenant, then together with such accrued interest) and excluding the value of arrear indebtedness of the tenant to the Seller arising prior to the Transfer Date and in respect of which indebtedness the Seller is legally entitled to apply such deposit;

1.4.2.4 all rentals and other income pre-paid to the Seller for the periods after the Transfer Date;

1.4.2.5 any other expenses incurred after the Transfer Date, which are in respect of periods prior to the Transfer Date, or which should reasonably be apportioned to a period prior to the Transfer Date on a pro-rata basis;

1.4.3 as at the Transfer Date, as debits to the Purchaser:

1.4.3.1 all amounts or municipal service fees, surcharges on fees, property rates, municipal taxes and other municipal charges, including levies and duties on charges for electricity and water, pre-paid by the Seller in respect of the respective Property after the Transfer Date;

1.4.3.2 the amount of any levies, including special levies pre-paid for any period after the Transfer Date, paid by the Seller in respect of the Property (if applicable);

- 1.4.3.3 any other expenses reasonably incurred by the Seller in carrying out its obligations prepaid by the Seller in respect of the Business for the period after the Transfer Date, including insurance premiums;
- 1.4.4 as at the Transfer Date, as credits to the Purchaser, all rentals and other income paid to the Seller for the period from the Transfer Date in respect of the Property, subject to any adjustment for input and output VAT, it being agreed by the Parties that the Seller shall be entitled to off-set any municipal credits that the relevant municipality has not yet released to the Seller. All such credits will be withheld from any amount payable to the Purchaser until such credits are paid over to the Seller by the municipality concerned.
- 1.5 Any amount payable by any party to another party in terms of the Adjustment Account, shall be paid within 10 (ten) business days of the date of receipt of the Adjustment Account.
- 1.6 If the Parties are unable to reach agreement regarding the calculation of the amount to be paid by either party to the other in terms of the Adjustment Account, then either party may by notice in writing to the other refer the dispute to an independent auditor agreed upon between the Parties, or failing agreement, appointed by the Chairperson for the time being of the South African Institute of Chartered Accountants, who shall make a determination as soon as possible after such referral and whose determination (including any order as to costs) shall be final and binding (in the absence of manifest error) on the Parties.

**RESOLUTION OF THE MEMBERS  
 OF \_\_\_\_\_ CC  
 (REGISTRATION NUMBER \_\_\_\_\_)  
 ("the CC")  
 HELD AT :  
 ON :**

**RESOLVED:**

1. THAT the CC bids on auction to buy and signs and submits an offer to the registered owner to purchase the following property, being:  
 \_\_\_\_\_  
 ("the Property")  
 for a price of R \_\_\_\_\_  
 ( \_\_\_\_\_ )  
 plus VAT (if applicable).
  
2. THAT \_\_\_\_\_  
 be and is authorised to bid for the Property on such auction up to such price, and to sign the auctioneer's standard form offer to purchase, as well as any and all other documentation, including powers of attorney, required to give effect to the transaction, for and on behalf of the CC.
  
3. THAT all acts done by the above person consistent with the above authority be and are hereby ratified and confirmed by the CC.

**TO BE SIGNED BY EVERY MEMBER**

\_\_\_\_\_  
**MEMBER**  
 Full Name: \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**MEMBER**  
 Full Name: \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**MEMBER**  
 Full Name: \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**MEMBER**  
 Full Name: \_\_\_\_\_

\_\_\_\_\_  
**DATE**

**RESOLUTION OF THE DIRECTORS**

OF \_\_\_\_\_ (PTY) LTD

(REGISTRATION NUMBER \_\_\_\_\_)

("the Company")

HELD AT :

ON :

**RESOLVED:**

1. THAT the Company bids on auction to buy and signs and submits an offer to the registered owner to purchase the following property, being:  
 \_\_\_\_\_  
 ("the Property")  
 for a price of R \_\_\_\_\_  
 ( \_\_\_\_\_ )  
 plus VAT (if applicable).
  
2. THAT \_\_\_\_\_  
 be and is authorised to bid for the Property on such auction up to such price, and to sign the auctioneer's standard form offer to purchase, as well as any and all other documentation, including powers of attorney, required to give effect to the transaction, for and on behalf of the Company.
  
3. THAT all acts done by the above person consistent with the above authority be and are hereby ratified and confirmed by the Company.

**TO BE SIGNED BY EVERY DIRECTOR**

\_\_\_\_\_  
**DIRECTOR**  
**Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DIRECTOR**  
**Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DIRECTOR**  
**Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**DATE**

**RESOLUTION OF THE TRUSTEES  
 OF THE \_\_\_\_\_ TRUST  
 (TRUST NUMBER \_\_\_\_\_ )  
 ("the Trust")  
 HELD AT :  
 ON :**

**RESOLVED:**

1. THAT the Trust bids on auction to buy and signs and submits an offer to the registered owner to purchase the following property, being:  
 \_\_\_\_\_  
 ("the Property")  
 for a price of R \_\_\_\_\_  
 ( \_\_\_\_\_ )  
 plus VAT (if applicable).
  
2. THAT \_\_\_\_\_  
 be and is authorised to bid for the Property on such auction up to such price, and to sign the auctioneer's standard form offer to purchase, as well as any and all other documentation, including powers of attorney, required to give effect to the transaction, for and on behalf of the Trust.
  
3. THAT all acts done by the above person consistent with the above authority be and are hereby ratified and confirmed by the Trust.

**TO BE SIGNED BY EVERY TRUSTEE**

\_\_\_\_\_  
**Trustee** **DATE** \_\_\_\_\_  
**Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**Trustee** **DATE** \_\_\_\_\_  
**Full Name:** \_\_\_\_\_

\_\_\_\_\_  
**Trustee** **DATE** \_\_\_\_\_  
**Full Name:** \_\_\_\_\_