



+27 11 467 1211



charmaine@ryansrealty.co.za



68 Albatross Drive, Fourways, JHB

Registered with the PPRA



**RYANS**  
REALTY

By Investors For Investors

## OFFER TO PURCHASE AND CONDITIONS OF AUCTION RELATING TO THE SALE OF IMMOVABLE PROPERTY THROUGH RYANS REALTY

(hereinafter referred to as "the Auctioneer")

The Auctioneer being duly authorised by \_\_\_\_\_ (hereinafter referred to as "the Seller") has been instructed to sell the Property defined below upon the terms and conditions set out herein.

1. In this agreement, unless otherwise indicated in the contract, the following expressions shall have the meanings assigned to them hereunder:

1.1 "the Acceptance Date": The date on which the Seller accepts this offer or confirms the sale which shall not be later than 5 (five) days from the date of signature of these terms and conditions by the Purchaser.

1.2 "the Auction Date": The date of the auction of the Property by the Auctioneer.

1.3 "the Auctioneer": **Private Property Wesrand Pty Ltd T/A RYANS REALTY registration number 2006/008432/07.**

1.4 "the Conveyancer": The Conveyancing Attorneys nominated by the Seller to attend to the registration of transfer of the Property into the name of the Purchaser being:-

\_\_\_\_\_

1.5 "the Purchaser": \_\_\_\_\_

1.6 "the Property"

ERF / UNIT NUMBER: \_\_\_\_\_

IN THE TOWNSHIP OF: \_\_\_\_\_

BEING (Street address): \_\_\_\_\_

1.7 "the Seller": \_\_\_\_\_

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- 1.8 The singular shall include the plural and the plural shall include the singular.
- 1.9 "CPA": means the Consumer Protection Act, Number 68 of 2008, as amended or replaced from time to time
- 1.10 The "Auctioneers commission": means the amount payable to **Private Property Wesrand Pty Ltd T/A RYANS REALTY** plus VAT thereon.
- 2 The Auctioneer being duly authorised by the Seller, has been instructed to sell the Property upon the terms and conditions set out herein.
- 3 Every bid shall constitute an Offer to Purchase the Property at the amount bidden. The sale is subject to the control of the Auctioneer who has the sole right to regulate the amount which is required to advance a bid.
- 4 Unless expressly stated otherwise, every sale shall be a sale with reserve and subject to confirmation by the Seller or the Auctioneer. The highest bidder at any sale shall be the person indicated by the Auctioneer by the fall of the hammer or by such other means as the Auctioneer may select.
- 5 In the case of a sale without reserve, a sale shall be concluded immediately upon the Auctioneer accepting the highest bid which shall be accepted by the Auctioneer by the fall of the hammer or in such other manner as the Auctioneer in his sole discretion determines.
- 6 Should any dispute arise as to which bid is in fact the highest bid, the Auctioneer shall in his sole and absolute discretion declare which bid will be accepted or alternatively cancel such bids and continue with the auction of the Property.
- 7 Should the Auctioneer commit any error in conducting the auction, such error shall not be binding on the Seller or the Auctioneer. Such error shall be rectified at the option of the Auctioneer. The Auctioneer shall not under any circumstances be obliged to accept the highest bid in respect of any sale in respect of which an error has been made.
- 8 The Auctioneer may refuse any bid without giving any reason for such refusal and may withdraw the Property from the auction at any time prior to the conclusion of the sale thereof, in which event neither he nor the Seller shall be liable in damages, for any cause whatsoever, to any person by reason of the sale not being proceeded with, whether it has been advertised to take place on a specific date or not.
- 9 The bidder's offer shall be open for acceptance by the Seller until the close of business on the Acceptance Date ("confirmation period"). During this time the Purchaser may not withdraw such offer or bid. The Purchaser shall, continue to perform all the obligations imposed upon the Purchaser during this period. Should the Seller not accept the offer, or should the suspensive condition a set out in clause 10 below not be fulfilled, all amounts paid by the Purchaser in terms of this agreement including any amounts paid to the Auctioneer in respect of any deposit or commission shall immediately be refunded by the Auctioneer to the Purchaser.
- 10 In the event that the Seller confirms the sale but the consent of any statutory authority or court of law is required, this sale will be subject to such consent, which consent shall be obtained as soon as possible.
- 11 The Seller may accept such Offer to Purchase upon the terms and conditions contained herein at any time

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Initials

prior to the Acceptance Date. During this time the Purchaser may not withdraw such offer or bid. The Purchaser shall, continue to perform all the obligations imposed upon the Purchaser during this period. Should the Seller not accept the offer, or should the suspensive condition a set out in clause 10 above not be fulfilled, all amounts paid by the Purchaser in terms of this agreement including any amounts paid to the Auctioneer in respect of any deposit or commission shall immediately be refunded by the Auctioneer to the Purchaser.

- 12 The sale shall, if applicable, be subject to the rules of the body corporate/homeowners association which rules the Purchaser declares himself to be fully acquainted with.
- 13 The Auctioneers commission shall be calculated at 10% of the purchase price (plus VAT) and shall be payable by the Purchaser to the Auctioneer in addition to the Purchase Price. The aforesaid commission is payable as a first charge against any deposit payable in terms of this Agreement, as the aforesaid commission shall be deemed to have been earned and payable on the signature hereof. Should this Agreement be cancelled as a result of breach or non-performance by the Purchaser of any of his obligations in terms hereof, the Auctioneer shall be entitled to claim such commission directly from the Purchaser. Should this Agreement be cancelled or not be proceeded as a result of a breach or non-compliance by the Seller of any of his obligations in terms hereof or as a result of an Agreement between the Seller and the Purchaser, the Seller shall be liable to pay such commission to the Auctioneer on demand.
- 14 Any bidder who intends to bid on behalf of another must produce a letter of authority that complies with Regulation 26(3) of the Consumer Protection Act which states that such letter must expressly authorize such bidder to do so and that both the principal and the bidder must submit documentation in support and verification of their identities in terms of the Financial Intelligence Centre Act. The bidder must sign a bidders record containing such details.
- 15 The bidders records and vendors roll required to be kept in terms of the Consumer Protection Act shall be available for inspection free of charge during normal working hours at the offices of Ryans Realty.
- 16 The cost of the auction are as follows:

Cost of advertising	R _____
Cost of the event and conducting an auction	R _____
TOTAL COST	R _____
19. The rules have not been amended after the initial publication.

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**AUCTIONEER (Full Name)**


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 **AUCTIONEER (Signature)**


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**AUCTIONEER (Physical address)**


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## ANNEXURE "A"

### 1. SALE AND PURCHASE

1.1 The Purchaser (being the person referred to as the Purchaser in the Conditions of Auction to which this annexure is annexed), being the highest bidder for the Property (being the property referred to as the Property in the Conditions of Auction to which this annexure is annexed) at the auction, hereby offers to purchase the Property from the Seller (being the person referred to as the Seller in the Conditions of Auction to which this annexure is annexed) for the purchase price as set out in clause 2 below, and on the terms and conditions contained in this Agreement and the Conditions of Auction to which this agreement is attached.

1.2 The Seller will have until the Acceptance Date within which to confirm the bid and accept this offer.

### 2. PURCHASE PRICE AND AUCTIONEERS COMMISSION

The purchase price plus Auctioneers commission is R \_\_\_\_\_  
( \_\_\_\_\_ ), which amount is made up as follows:

- Purchase price R \_\_\_\_\_ ( \_\_\_\_\_ )
- Auctioneers commission R \_\_\_\_\_ ( \_\_\_\_\_ )

The purchase price plus Auctioneers commission is payable as follows:

2.1 On the Auction Date, the Purchaser shall pay a deposit of 10% of the purchase price plus VAT into the Auctioneer's Trust account, by way of direct electronic funds transfer. The Purchaser acknowledges that the 10% will be utilized to the pay the commission set out in clause 13 of the condition of auction, which commission is payable to the Auctioneer upon signature of this Offer to Purchase by the Purchaser. The Purchaser further acknowledges that in the event that any non-performance by the Purchaser of any of his obligations in terms of clause 13 of the condition of auction, the Auctioneer shall be entitled to claim such commission directly from the Purchaser and the 10 percent mentioned herein shall be forfeited for the said 10% commission.

2.2 The Purchaser shall pay a deposit of 5% of the Purchase Price payable to the AUCTIONEER by the Purchaser immediately on the fall of the hammer, which amount the Purchaser instruct the Auctioneer to pay over to the Seller's Attorneys (which deposit shall be utilized towards the purchase price ).

2.3 The balance shall be paid to the Seller against registration of transfer of the Property into the name of the Purchaser which amount shall be secured by way of a deposit into the Conveyancer's trust account or by way of a bank guarantee being deliver to the Conveyancers within 60 (sixty) days of acceptance of this agreement by the Seller. Such bank guarantee shall not be subject to any terms and conditions other than the transfer of the Property into the name of the Purchaser and the

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Initials

cancellation of any existing bonds presently registered over the Property or the release of the Property from such mortgage bonds.

- 2.4 In the event of payment being made in cash, same shall be held in trust by the Conveyancers pending registration of transfer of the Property into the name of the Purchaser. The Purchaser acknowledges that such monies will only be invested in an interest-bearing account by the Conveyancers if specific instructions are given to the Conveyancers by the Purchaser to do so, all necessary FICA documents have been received by the Conveyancers from the Purchaser and the Purchaser has signed the Conveyancer's investment form.
- 2.5 The Purchaser acknowledges that the Purchaser is liable to pay the commission set out in clause 13 of the condition of auction which commission is payable to the Auctioneer upon signature of this Offer to Purchase by the Purchaser. Such monies will be held in the Auctioneer's trust account until acceptance of the Offer to Purchase by the Seller where after it shall immediately be deemed to be earned and payable to the Auctioneer. The parties agree that the Auctioneer shall be entitled to deduct its commission as a first charge from any monies paid by the Purchaser to the Seller as soon as the Seller has accepted this Offer to Purchase.

### 3. **ACKNOWLEDGEMENTS BY PURCHASER**

- 3.1 The Purchaser acknowledges that he has acquainted himself with the nature, condition, beacons, extent and locality of the Property; and
- 3.2 **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.**

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- 3.3 The parties agree that the Purchaser will have no claim whatsoever against the Seller for any deficiency in the size of the Property which may be revealed on any re-survey nor shall the Seller benefit from any possible excess. If the Property has been erroneously described herein such mistake or error shall not be binding on the Seller but the description of the Property as set out in the title deed shall apply and the parties agree to rectification herein to reflect the true intentions of the parties.

### 4. **TRANSFER**

- 4.1 Transfer of the Property shall be effected by the Seller's conveyancers within a reasonable time after

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Initials

the Purchaser has complied with the Purchaser's obligations in terms of this agreement and after fulfilment of any suspensive conditions (if any) of this agreement.

- 4.2 The Purchaser shall on demand pay all expenses of and incidental to the registration of transfer of the Property into the name of the Purchaser, including but not limited to the transfer duty, transfer costs and a reasonable estimate made by the Conveyancer of the Purchaser's ultimate pro rata share of rates and taxes.
- 4.3 In the event of this agreement being cancelled as a result of a breach of any of the terms of this agreement by either the Purchaser or the Seller, the party in breach shall be liable for and pay on demand to the Conveyancer all fees and disbursements reasonably incurred by the Conveyancer as at the date of cancellation.
- 4.4 The Seller and the Purchaser undertake immediately upon being requested to do so to sign all documents required to be signed in connection with the transfer, the cancellation of all bonds at present registered over the Property and the registration of any bonds to be registered in terms of this Agreement.
- 4.5 The Seller and the Purchaser undertake immediately upon being requested to do so to provide the Seller's conveyancers and/or the financial institution/s granting and/or cancelling the bond with the necessary documentation to comply with the FICA (Financial Intelligence Centre Act) requirements or such other documentation as may be required to enable the Conveyancer to effect registration or transfer.
- 4.6 As a result of the South African Revenue Services (SARS) doing risk analysis on both the transferor and the transferee on all Property transactions both the Seller and the Purchaser warrant to each other and the Auctioneer that all tax issues (whether personal or otherwise) including but not limited to tax returns and tax payments are current and up to date. The party in breach of this warranty ("the defaulting party") will be liable for all costs incurred and damages suffered by the other party ("the aggrieved party") as a result of a breach of this warranty. The aggrieved party shall also be entitled to place the defaulting party on terms and thereafter cancel the agreement if this warranty is breached. These remedies are in addition to all rights which the parties have in terms of this agreement or in Law.

## 5. **POSSESSION, RISK & OWNERSHIP**

Possession of the Property shall be given to the Purchaser on registration of transfer from which date all benefits and risks of ownership in respect of the Property shall pass to the Purchaser including the right to any rentals payable (subject to the provisions of clause 16 below) and the liability for any rates and taxes, levies, sundry charges and other imposts levied thereupon. Any rentals received (subject to the provisions of clause 16 below), rates and taxes, levies, sundry charges and other imposts paid out prior to the said date of possession for any period subsequent thereto shall be refunded proportionally. The Seller shall not be responsible for insuring any of the improvements established on the Property by the Purchaser nor accept any responsibility therefore after the date of occupation or the date of transfer. The Seller and the Purchaser

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Initials

shall pay to the Conveyancers on request the relevant amounts estimated by the Conveyancers for which they are each liable in terms of this clause, and the Conveyancers will then make the necessary adjustments and refunds upon registration of transfer.

**6. RATES / LEVIES / TAXES AND OTHER IMPOSTS**

- 6.1 The Seller hereby indemnifies the Purchaser against any claims that may be made by any third party including but not limited to the local authority, the body corporate, the home owners association and/or the managing agents in respect of arrear rates, taxes, water and electricity, sanitation charges, levies and any other impost as at the date of registration of the Property into the name of the Purchaser.
- 6.2 The Seller understands and accepts that it is the practice of the local municipality and certain other municipalities to require the Seller to pay the full amount required in order to obtain a rates clearance certificate in respect of properties falling within its area, and to then refund the Seller after registration of transfer, and the Seller will accordingly be liable to pay the full amount required for a rates clearance certificate in such cases.
- 6.3 Any indication of the rates, taxes, sanitation charges, levies and other imposts 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 such rates, taxes, sanitation charges, levies or imposts applicable to the Property.
- 6.4 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:
- 6.4.1 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;
- 6.4.2 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
- 6.4.3 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 all the relevant consumption accounts and other accounts with the local authority in its name.

**7. OCCUPATION, TENANCY AND RENTAL**

- 7.1 The Seller and all other occupants of the Property shall be bound and obliged to vacate the Property

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Initials

on or before the date of transfer of the Property into the name of the Purchaser at 12:00 from which date the Purchaser shall be entitled and obliged to occupy the Property.

- 7.2 If the Purchaser takes occupation before transfer he shall pay directly to the Seller R\_\_\_\_\_ (\_\_\_\_\_ Rands) as occupational interest monthly in advance from date of occupation to date of transfer. If transfer is registered before the Purchaser takes occupation the Seller shall pay directly to the Purchaser on the same basis from date of transfer to date of such occupation.
- 7.3 The Purchaser shall be liable for all amounts in respect of water, electricity and refuse charges in respect of the Property from date of occupation to date of registration of the Property into the name of the Purchaser.
- 7.4 Should the Seller vacate the Property before the occupation date, he shall be obliged to continue to maintain the garden and swimming pool (including swimming pool equipment) (if any) and all other buildings or erections on the Property in good order and condition.
- 7.5 Should the Purchaser not take physical occupation of the Property on the occupation date, he shall nevertheless be liable to maintain the garden and swimming pool (including all swimming pool equipment) (if any) and all other buildings or erections on the Property in good order and condition until he does take physical occupation.
- 7.6 Furthermore, should the garden or swimming pool (including swimming pool equipment) or any buildings or erections on the Property be damaged or vandalised or burgled, the Purchaser shall from the occupation date be liable for all loss or damage arising therefrom notwithstanding the fact that risk in the Property passes upon the registration of transfer.
- 7.7 If occupation is given to the Purchaser before the date of registration:-
- 7.7.1 the Purchaser shall not be entitled to make any alterations to the Property without the prior written consent of the Seller, which consent shall be at the Seller's sole and absolute discretion. Should alterations be made to the Property with or without the Seller's written consent and this agreement is cancelled, the Seller may either:-
- 7.7.1.1 require the Purchaser to remove such alterations and restore the Property to its original condition at the Purchaser's cost; or
- 7.7.1.2 to retain all improvements and alterations made to the Property in which event the Purchaser shall have no claim whatsoever against the Seller for such alterations and additions made by the Purchaser.
- 7.7.2 the Purchaser shall be obliged to vacate the Property upon cancellation of the sale for any reason whatsoever it being agreed that no tenancy whatsoever shall be created by any prior occupation.

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Initials



8. **FIXTURES AND FITTINGS**

The Property is sold inclusive of all existing fixtures and fittings of a permanent nature which the Seller warrants are his exclusive Property and fully paid for including but not limited to : all existing garden, trees, shrubs, plants, curtain rails, rods, pelmets, fitted carpets, the light fittings, stove and/or oven, tennis court net, anthracite/oil/gas heater, fire place grate/blower, fitted kitchen storage units, awnings, post box, \*burglar alarm system, doorbell/knocker the television aerial and accessories (if applicable), pool filter, pump and all cleaning equipment including automatic pool cleaner (whether fixed or movable, if applicable), swimming pool equipment.

\* Delete if not applicable

9. **LATITUDE OF EXTENSION OF TIME, WARRANTIES VARIATIONS**

9.1 Any latitude or extension of time which may be allowed by the Seller to the Purchaser in respect of any payment provided for herein, or any matter or thing which the Purchaser is bound to perform or observe in terms hereof shall not in any circumstances be deemed to be a waiver of the Seller's rights at any time, to require strict and punctual compliance with each and every provision or term hereof.

9.2 This document shall constitute the entire contract between the Seller and the Purchaser. The Seller shall not be bound by any other terms or conditions, promises or statements, warranties or representations, express or implied made by the Seller or the Auctioneer or any of its employees, or any other person purporting to act for and on behalf of the Seller. No variation, amendment or consensual cancellation shall be of any force or effect unless reduced to writing and signed by the parties hereto.

10. **DOMICILIUM AND JURISDICTION**

10.1 The parties hereby select as their domicilium citandi et executandi (being the chosen address that the parties each choose as the address where summonses, applications, warrants of executions, other legal documents and processes, notices or other documents in terms of the agreement will be served on them) the addresses set out below:-

The Purchaser: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Seller: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

it being agreed that all notices despatched in the Republic of South Africa by prepaid registered post to the domicilium selected shall be deemed to have been received 7 (seven) days from the date of posting thereof. Either party may from time to time change its domicilium by delivery of written

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 Initials

notice to the other party to that effect.

- 10.2 For the purpose of all or any proceedings resulting herefrom, the parties consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended, notwithstanding that such proceedings are beyond this jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon said Court pursuant to Section 45 of the Magistrate's Court Act of 1944, as amended.

11. **BREACH**

- 11.1 In the event of either party failing to pay any of the amounts referred to in this agreement on due date or breaching any of the terms and conditions hereof and persisting in such failure or breach for a period of 7 (seven) days after dispatch of written notice from the aggrieved party calling upon the defaulting party to make such payment or remedy such breach, the aggrieved party shall be entitled at his/her sole discretion and without prejudice to any of his/her other rights in law, either to:-

11.1.1 claim specific performance of the terms of this Agreement; or

11.1.2 cancel this Agreement forthwith and without further notice claim and recover damages from the defaulting party in which event the monies which have been paid to the Conveyancers (less any amounts due to the Auctioneer who shall be paid such amounts) shall be retained in trust by the Conveyancers pending the determination of such damages; or

11.1.3 cancel this Agreement and retain all amounts (less any amounts due to the Auctioneer who shall be paid such amounts) paid to the Conveyancers or the Seller as rouwkoop.

- 11.2 If the agreement is cancelled as a result of a breach on the part of the Purchaser, the Purchaser shall remain liable to pay the commission due to the Auctioneer who may retain all monies which have been paid to the Auctioneer as part payment of such Commission.

- 11.3 Should the sale be cancelled due to any failure on the part of the Seller, the Seller shall be liable to pay the Auctioneers commission.

- 11.4 If the sale is cancelled by a mutual agreement between the Seller and the Purchaser or if there has been a breach by both the Seller and the Purchaser, then the Auctioneer shall be entitled to claim the commission due in terms of this agreement from both the Purchaser and the Seller who shall be jointly and severally liable to the Auctioneer in respect of such commission.

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Initials

**12. CAPACITY OF PARTIES**

- 12.1 Should the signatory sign this agreement as trustee or agent for a company or trust or other juristic person to be formed, the signatory shall be deemed to be personally liable in terms of this agreement should the company, or trust or juristic person not be incorporated or formed or not ratify and adopt this agreement within 30 (thirty) days of the date of signature hereof. Upon formation or incorporation or ratification as aforesaid, the signatory by his signature hereto binds himself as surety for and co-principal debtor in solidum with the company, trust or juristic person to the Seller and the Auctioneer for the due and punctual performance by the company or trust or juristic person of its obligations arising out of this agreement.
- 12.2 If any of the parties to this agreement is a company or close corporation or trust or other juristic person or entity, the person who signs the agreement in the name of such company or close corporation warrants that the company or close corporation or trust or other juristic person or entity is registered in terms of the applicable legislation and binds himself as surety and co-principal debtor with such company or close corporation or trust or other juristic person or entity in favour of the Seller or the Purchaser (as the case may be) and the Auctioneer for all the obligations of such company or close corporation or trust or juristic person or other entity in terms of this agreement of sale. Such person shall be personally liable as Purchaser or Seller (as the case may be) in terms of this agreement if such company or close corporation or trust or juristic person or other entity legally does not exist, or for whatever reason is not bound to this agreement or fails to comply with the provisions hereof.
- 12.3 In the event of there being more than one purchaser any obligations of the Purchasers shall be joint and several.
- 12.4 In the event of there being more than one seller any obligations of the Sellers shall be joint and several.

**13. ASSOCIATION OR TRUSTS**

If any person purports to represent another person, association or trust and signs this agreement in that capacity, then the individual so signing shall be personally liable to procure the signature of the other relevant individuals mandated to sign documents and agreements of this nature, in terms of that association's constitution or the trust's Deed of Trust. If the other designated persons either do not exist at the time of signing this document or if their signatures are not procured by the individual signing this agreement, the and in that event, such person shall be **personally liable** and bound by the terms hereof and shall in all respects be considered to be the Purchaser in terms of this agreement.

**14. ELECTRICAL CERTIFICATE OF COMPLIANCE**

The Seller shall obtain at his cost the required Certificate of Compliance as mentioned in Regulation 3, issued by a qualified electrician, promulgated in terms of the Occupational Health and Safety Act 1983 (Act No 6 of 1983) and deliver the said Certificate of Compliance to the Purchaser. If the electrical installation on the premises is faulty, the Seller shall at his cost repair the electrical installation in order to deliver the required

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Initials

Certificate of Compliance to the Purchaser on or before the date of occupation referred to in clause 8 above, or the date of registration of transfer of the Property into the Purchaser's name, whichever date is the earlier. The Seller undertakes not to make any alterations to the electrical installation of the Property after the issue of the certificate.

15. **VAT**

If this is a VAT transaction and both the Seller and the Purchaser are VAT vendors and if the Property is sold as a going concern or part of an enterprise which is capable of separate operation, the parties agree that:

- 15.1 The Property is sold to the Purchaser as a going concern and will be an income earning enterprise at the date of transfer of the Property into the name of the Purchaser.
- 15.2 All assets necessary to enable the Purchaser to carry on the business enterprise will be transferred to the Purchaser on the date of transfer of the Property into the name of the Purchaser;
- 15.3 If for any reason the transaction is not zero rated the Purchaser shall be liable to pay the value added tax at the standard rate calculated on the purchase price within five business days of a receipt of written notice from the Seller or the Conveyancers;
- 15.4 If the property or business is sold as a going concern, the Seller warrants to the Purchaser that the business has no employees and accordingly the provisions of Section 197 of the Labour Relations Act 66 of 1995 does not apply. The Seller indemnifies and holds the Purchaser harmless against any or all claims by any employees consequent upon a breach of such warranty.

16. **LEASES**

- 16.1 If the Property is leased, the Purchaser acknowledges that the property is occupied by lessees and that he has acquainted himself with the terms and conditions of the lease or right of occupancy as the case may be and is bound to honour such leases or rights of occupancy. From the date that the Property is transferred into the name of the Purchaser, the Purchaser will automatically be substituted as the Lessor in terms of such lease agreements;
- 16.2 Neither the Seller nor the Auctioneer give any warranties with regard to the leases in respect of the Property and/or the lessees and the Purchaser accepts such leases and lessees with effect from the Acceptance Date. The Seller shall not be liable for any breach by such Lessees and/or the termination of the leases after the Acceptance Date;
- 16.3 All payments received from the lessees in terms of any leases after the Property has been transferred into the name of the Purchaser shall first be utilized to pay any amounts owing by the Lessee which arose prior to the date of transfer of the Property into the name of the Lessee and thereafter be payable to the Purchaser;
- 16.4 All deposits paid by the Lessee shall be transferred by the Seller to the Purchaser on the date of transfer of the Property into the name of the Purchaser.

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Initials

**17. ADVERTISING**

The Purchaser acknowledges that all artistic, architectural, photographic and in any way visual presentation material including but not limited to models, brochures and pamphlets, used by the Seller or the Auctioneer in the marketing and selling of the Property hereby purchased and sold, have been prepared and distributed as advertised material only; and that the Seller shall in no way be bound and the Purchaser shall have no claim in respect of any information stated therein or impression conveyed thereby, and that no representation is thereby made by the Seller or the Auctioneer, and that the parties shall be bound by the terms and conditions contained in this agreement only.

**18. MATRIMONIAL PROPERTY ACT 88 OF 1984**

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

**19. CERTIFICATE OF CONFORMITY IN RESPECT OF GAS INSTALLATIONS**

The Seller shall ensure that all the equipment and gas installations in the Property comply with Regulation R734 issued in terms of the Occupational Health and Safety Act 1993 and shall within 15 (fifteen) days after acceptance of this offer, in terms of Regulation 6(2)(e) provide the Purchaser with a valid Certificate of Conformity issued by an authorised person in respect of the gas system.

**20. ELECTRICAL FENCE CERTIFICATE**

The Seller shall obtain at his cost the required Electric Fence System Certificate as mentioned in Regulation 12 of the Electrical Machinery Regulations, 2011 promulgated in terms of the Occupational Health and Safety Act 1983 (Act No 6 of 1983) in respect of the electric fence system and deliver the said Electric Fence System Certificate to the Purchaser within 15 days of acceptance of this offer by the Seller. If the electric fence system on the premises is faulty, the Seller shall at his cost repair the electrical fence system in order to deliver the required Electric Fence System Certificate to the Purchaser. The Seller undertakes not to make any alterations to the electrical fence system after the issue of the certificate. If the certificate has not been delivered within the period referred to above, the Purchaser shall be entitled but not obliged to obtain an Electric Fence System Certificate in respect of such system at his own costs and the Conveyancer is hereby irrevocably instructed to pay to the Purchaser from the proceeds of the sale, on the date of registration of transfer of the Property into the name of the Purchaser, the costs incurred by the Purchaser of obtaining such Electric Fence System Certificate (including the costs of effecting any rectifications or repairs to enable the relevant party to issue such certificate).

**21. BEETLE CERTIFICATE ONLY APPLICABLE IN KZN**

The parties agree that, prior to Registration of transfer, the seller shall, at his/her expense, have all the accessible timbers of the property inspected by a SAPCA - registered Inspector for the infestation by Wood-destroying beetles, termites and fungi and a written report with recommendations shall be given to the Seller. Where infestation is found, the recommendations made shall be carried out in full, in terms of Act

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Initials

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.

## 22. **NOMINEE**

The Purchaser shall be entitled, by notice in writing to that effect addressed to the Seller, to nominate a nominee in his place as Purchaser, upon the following terms and conditions:-

- 22.1 the aforesaid notice shall reach the Seller by not later than 24 (twenty four) hours after the date of acceptance of the Offer by the Seller;
- 22.2 the notice shall set out the name and address of the nominee so nominated by the Purchaser;
- 22.3 the notice shall be accompanied by the nominee's written acknowledgement:-
  - 22.3.1 that it is fully aware of all the terms and conditions of these Conditions of Sale as if fully set out in such written acknowledgement; and
  - 22.3.2 that it is bound by the provisions of these Conditions of Sale as the Purchaser.
- 22.4 Should the Purchaser nominate a nominee in terms of this Clause, then:-
  - 22.4.1 all reference to the Purchaser in these Conditions of Sale shall be deemed to be a reference to its nominee; and
  - 22.4.2 the Purchaser by its signature hereto, hereby interposes and binds himself as surety and co-principal debtor in solidum, for and on behalf of all the obligations of the aforesaid nominee as Purchaser, to and in favour of the Seller, for all the Purchaser's obligations under these Conditions of Sale, including damages, under renunciation of the benefits of division and excursion.
- 22.5 Should the Purchaser fail to nominate as nominee in terms of this Clause, then he shall be bound to perform all his obligations as Purchaser in terms hereof.
- 22.6 The Purchaser, at its own expense, shall insure the Property and improvements thereon for the full replacement value thereof from date of possession until date of resignation 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.

## 23. **COUNTER-OFFER**

In the event that the Seller does not accept the highest bid, being the Purchase Price initially offered by the Purchaser in terms of this Offer to Purchase, but counters with a higher offer which is accepted by the

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Initials

Purchaser by way of amendment and initialing of the Purchase Price by the parties in terms of this Offer to Purchase, then:

23.1 this Agreement shall no longer constitute a sale agreement pursuant to an auction sale, but shall instead constitute a private treaty sale;

23.2 Clause 3.2 shall be deemed to be replaced by the following clause:

**“3.2.1 If the Purchaser is a “Consumer” and the Seller is a “Supplier” as defined in the CPA, then the following terms shall additionally apply:**

**3.2.1.1 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;**

**3.2.1.2 the Purchaser acknowledges that it has had the opportunity to inspect the Property prior to submitting its offer to purchase to the Seller;**

**3.2.1.3 the Purchaser acknowledges that it 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.**

**3.2.2 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:**

**3.2.2.1 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;**

**3.2.2.2 the Purchaser has not, in making this offer, relied on any warranty or representation not contained herein;**

**3.2.2.3 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**

**3.2.2.4 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.”**

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Initials

24. **RESIDENCE**

\*The Seller hereby warrants that he/she is a resident of the Republic of South Africa; or

\*The Seller is a non-resident of the Republic of South Africa. The Seller accordingly hereby irrevocably authorizes and instructs the conveyancers to deduct the applicable withholding tax from the purchase price on behalf of the Purchaser if the purchase price is R2 000 000.00 or more and to pay the same to the Receiver of Revenue within 14 (fourteen) days after date of registration of transfer of the Property into the name of the Purchaser.

\* Delete whichever clause is not applicable.

25. **ADVERTISING COSTS**

The Purchaser and the Seller agree that any amounts payable by the Seller to the Auctioneer in respect of advertising costs will be paid over by the Conveyancers on behalf of the Seller to the Auctioneer on the date of transfer of the Property into the name of the Purchaser. The parties accordingly irrevocably instruct the Conveyancers to effect payment of such amounts to the Auctioneer.

26. **WARRANTY**

The signatories hereto warrant that they are duly authorized to sign this agreement on behalf of the PURCHASER/SELLER and further warrant that they will immediately issue to the agent the necessary resolution authorizing their signatures hereto.

Thus DONE and SIGNED by the PURCHASER at \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ hs \_\_\_\_\_ (AM/PM)

\_\_\_\_\_  
PURCHASER (Full Name)

\_\_\_\_\_  
 PURCHASER (Signature)

(Who warrants that he/she is duly authorized and that he has read the provisions of clauses 12, 13 and 26 and is bound by the conditions thereof)

\_\_\_\_\_  
PURCHASER (Full Name)

\_\_\_\_\_  
 PURCHASER (Signature)

(Who warrants that he/she is duly authorized and that he has read the provisions of clauses 12, 13 and 26 and is bound by the conditions thereof)

\_\_\_\_\_  
 As Witness


\_\_\_\_\_  
Initials



Thus DONE and SIGNED by the SELLER at \_\_\_\_\_


On this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ hs \_\_\_\_\_ (AM/PM)

\_\_\_\_\_  
**SELLER (Full Name)**

\_\_\_\_\_  
 **SELLER (Signature)**

(Who warrants that he/she is duly authorized and that he has read the provisions of clauses 12, 13 and 26 and is bound by the conditions thereof)

\_\_\_\_\_  
**SELLER (Full Name)**

\_\_\_\_\_  
 **SELLER (Signature)**

(Who warrants that he/she is duly authorized and that he has read the provisions of clauses 12, 13 and 26 and is bound by the conditions thereof)

\_\_\_\_\_  
 **As Witness**

**THE CONDITIONS OF THIS AGREEMENT ARE HEREBY ACCEPTED BY THE AUCTIONEER STIPULATI ALTERI**

\_\_\_\_\_  
**AUCTIONEER (Full Name)**

(Who warrants that he/she is duly authorised)

\_\_\_\_\_  
 **AUCTIONEER (Signature)**

\_\_\_\_\_  
Initials

**THE FINANCIAL INTELLIGENCE CENTRE ACT**  
**ACT No 38 of 2001**  
**RECORD OF PRESCRIBED PURCHASER PARTICULARS**

Full Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Income Tax/VAT reference number: \_\_\_\_\_ (Copy)

Employer: \_\_\_\_\_

Telephone No's: \_\_\_\_\_ (h) \_\_\_\_\_ (b)

Cell: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Identity/Registration No: \_\_\_\_\_ (Copy of ID required)

Marital Status: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Personal Bank Account Details

Name of Bank: \_\_\_\_\_

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

Account Holder: \_\_\_\_\_

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

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

Manner of Verification of Bank Details: \_\_\_\_\_ (Bank Stat.)

**I/We the Purchaser/s declare these particulars to be true & correct.**\_\_\_\_\_  
**PURCHASER (Full Name)**\_\_\_\_\_  
 **PURCHASER (Signature)**\_\_\_\_\_  
**PURCHASER (Full Name)**\_\_\_\_\_  
 **PURCHASER (Signature)**\_\_\_\_\_  
Initials