

DEED OF SALE (INSOLVENT ESTATES) BY PRIVATE TREATY

Made and entered into by and between:

I/E:

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

AND

.....
Hereinafter referred to as the "**PURCHASER**"

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

Whereby it is agreed as follows:-

1. DEFINITIONS

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

1.1 The "**SELLER**" shall mean

Name:
.....
.....

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

.....

Master's Reference: T.....

Income tax/ VAT:

Physical Address:

Postal Address:

Tel no:

Fax no:

Email:

1.2 The "**PURCHASER**" shall mean

Name:

Registration/ ID no:

Marital Status:

Income tax/ VAT:

Physical Address:

Postal Address:

Tel no:

Fax no:

Email:

1.3 The **PROPERTY** shall mean

Erf:

.....

Known as:

.....

Local Municipality:

In extent of approximately :

Held under Title Deed No:

1.4 The **AGENT** shall mean an estate agent, auctioneer or an attorney with a valid Fidelity fund certificate.

Agency: **BARCO Auctioneers (Pty) Ltd**.....Agent: **Wesley Barnard 0403667**.....

Tel No: **010 125 0322**.....Email: wesley@barcoauctioneers.co.za

Mobile: **082 823 3361**.....Fax No: **N/A**.....

Fidelity Fund Certificate Registration:

NO: **F109333**.....Vat No: **4310228319**.....

1.5 The **TRUSTEE** shall mean

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

1.6 The **DATE OF ACCEPTANCE** shall mean

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

1.7 The **SIGNATURE DATE** shall mean

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

1.8 In this agreement, unless the context otherwise requires:

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

1.9 It is recorded that:

1.9.1 The **SELLER** has agreed to sell the **PROPERTY** to the **PURCHASER** upon certain terms and conditions;

1.9.2 The parties wish to record the terms of such agreement.

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

2. **SALE**

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

3. **PURCHASE PRICE**

The purchase price is the sum of R

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

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

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

3.2 The balance of the purchase price shall be paid upon registration of transfer of the **PROPERTY** in the name of the **PURCHASER**, and pending registration of transfer, shall be secured by means of a suitable guarantee issued by a Financial Institution acceptable to the **SELLER**. The said guarantee shall be delivered to the **CONVEYANCER** appointed in terms of clause 6 ("**CONVEYANCER**") within **30 (thirty) days** from the **DATE OF ACCEPTANCE**, which guarantee shall be payable free of exchange.

3.3 The **SELLER** and **PURCHASER** hereby irrevocably instruct and authorize the recipient to invest the trust amount in an interest bearing trust account such as contemplated in terms of Section 78 (2A) of the Attorneys Act 1979 (Act number 53 of 1979) where the interest accrues for the benefit of the **SELLER**

3.4 The **PURCHASER** acknowledges that he is aware that the **CONVEYANCER** will only be in a position to give effect to this mandate once he, the **PURCHASER** has furnished the **CONVEYANCER** with documents, to be requested by the **CONVEYANCER**, in terms of the Financial Intelligence Centre Act, 2001.

4. **COSTS OF TRANSFER**

4.1 The **PURCHASER** shall be liable, in addition to the Purchase Price, for **all costs of registration** of Transfer of the **PROPERTY** including but not limited to: (if applicable) transfer duty, revenue stamps, mortgage loan costs, attorneys fees, deeds office registration fees, such proportion of the assessment rates (rates and taxes, water, electricity, sanitation and all other charges) levied by the Local Authority and due and payable to obtain a clearance certificate, or such charges and levies as may be due to a Home Owners Association or Body Corporate, due and payable and to obtain a clearance certificate, (all from date of acceptance of this offer until date of registration of transfer), which amounts shall be paid immediately upon demand by the **CONVEYANCER**, to the **CONVEYANCER**, and the conveyancing shall only commence after such costs have been paid by the **PURCHASER**.

4.2 The **PURCHASER** shall furthermore, in addition to the **PURCHASE PRICE**, be responsible for the payment of **VAT** should the above insolvent be a registered **VAT** vendor, regardless of whether he was aware of this fact on date of signature hereof by himself.

5. **INTEREST**

The **PURCHASER** will pay **interest** on the **balance** of the purchase price from **DATE OF ACCEPTANCE** to date of registration of transfer calculated at **12% (twelve per centum) per annum**, both days inclusive. The interest will be payable monthly in advance before or on the first day of each and every month, the first payment to be made on the first day of the month following the **DATE OF ACCEPTANCE**. Payment of the interest will be effected to the **CONVEYANCER**. Should the purchaser so elect, he/she may deposit the balance of purchase price with the Conveyancer within 72 hours of acceptance, in which event there shall be no interest payable by the purchaser. No interest will be payable by the **PURCHASER** on vacant stands.

6. **TRANSFER**

6.1 Transfer shall be effected by the **CONVEYANCER** nominated by the **SELLER** and shall be given to and taken by the **PURCHASER** after the **PURCHASER** has complied with clauses 3, 4 and 5 hereof.

6.2 The **PURCHASER** shall sign all documents necessary to effect transfer of the **PROPERTY** into the name of the **PURCHASER** immediately upon request by the **CONVEYANCER**.

7. **DELIVERY, OCCUPATION & RISK**

7.1 **Delivery, Occupation and risk of the PROPERTY will be deemed to be given to the PURCHASER and the PURCHASER shall be obliged to take delivery thereof on the date of Acceptance.** From the **DELIVERY DATE**, the **PURCHASER** shall be liable for all municipal rates, taxes, consumption charges, insurance premiums and/ or fees and levies payable in the respect of the **PROPERTY**. Should the **SELLER** have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof *pro rata* to the period of prepayment.

7.2 The **risk** in and to the **PROPERTY** shall pass to the **PURCHASER** upon the **DELIVERY DATE**. Despite the aforesaid, ownership in and to the **PROPERTY** shall only pass to the **PURCHASER** upon registration of the **PROPERTY** in the **PURCHASER'S** name.

7.3 The **PURCHASER** shall not be entitled to make any **alterations or additions** to the **PROPERTY** before the date of registration of transfer. The **PURCHASER** shall be obliged, in the event of the cancellation or lapse of this agreement, to forthwith vacate the **PROPERTY** and restore it to the **SELLER** in the same condition as when the **PURCHASER** took possession. The **PURCHASER** will have no claims whatsoever against the **SELLER** arising out of any alterations or additions made to the **PROPERTY** by the **PURCHASER**.

7.4 If the **PROPERTY** is **leased**, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provision or the Common Law. **NO VACANT OCCUPATION GUARANTEED.**

7.5 Date of Delivery does **not** refer to the actual date of the Purchaser moving into the property or receiving the keys thereto. The Seller does not guarantee that he will provide the purchaser with keys to the property.

7.6 The offer is binding upon acceptance thereof by the seller, irrespective of the purchaser having been informed of such acceptance or not.

8. **CONDITION OF THE PROPERTY**

8.1 The **SELLER** discloses to the **PURCHASER** that the **PROPERTY** is not new, is part of an insolvent estate and is sold on a as is condition. The **PURCHASER** acknowledges the aforesaid condition of the **PROPERTY** and accepts the **PROPERTY** in that condition. Accordingly, the **PURCHASER** shall have no claim against the **SELLER** in respect of the condition of the

PROPERTY, which condition may include, without limitation that the **PROPERTY** is not suitable for the purpose for which it is generally intended or that the **PROPERTY** is not of good quality, in good working order and/ or free of any defects.

- 8.2 The **PURCHASER** acknowledges that the **PURCHASER** has conducted an inspection of the **PROPERTY** and that the **PURCHASER** has entered into this agreement on the basis of such inspection. Accordingly, the **PURCHASER warrants** that the **PROPERTY** is suitable for the **PURCHASER'S** purposes, usable and durable, compliant with the standards or requirements of any legislation or public regulation.

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

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

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

8.4.1 The **PROPERTY** is purchased and sold "voetstoots" and the **SELLER** shall not be liable for any defects, patent, latent or otherwise in the **PROPERTY** nor for any damage occasioned to or suffered by the **PURCHASER** by reason of such defect;

8.4.2 The **PURCHASER** admits having inspected the **PROPERTY** to his satisfaction and that no express or implied representations, guarantees or warranties of any nature were made or given by the **SELLER** or the **AGENT** regarding the condition, quality or any other characteristics of the **PROPERTY** or any of the improvements thereon or accessories thereof; and

- 8.5 The **PURCHASER** agrees that the **SELLER** does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession. The Purchaser shall have no claim of whatsoever nature against the Seller should vacant occupation and possession not be obtained on date of acceptance and/or thereafter.

- 8.6 The **PROPERTY** is sold as described in the existing title deed or deeds thereof and subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the said title deed(s) or prior deed(s). The **SELLER** shall not be liable for any deficiency in extent, which may be revealed on any re-survey, nor shall the **SELLER** benefit by any surplus extent.

- 8.7 The **SELLER** shall not be required to indicate to the **PURCHASER** the position of the beacons or pegs upon the **PROPERTY** and/or boundaries thereof, nor shall the **SELLER** be liable for the costs of locating same.

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

9. **NOMINEE**

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

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

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

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

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

9.2 That it is bound by the provisions of this agreement as the **PURCHASER**. Should the **PURCHASER** nominate a nominee in terms of this clause, then:

9.2.1 All references to the **PURCHASER** in this agreement shall be deemed to be a reference to its nominee: and

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

10. DOMICILIUM

10.1 The **SELLER** and **PURCHASER** select as their respective *domicilia citandi et executandi* for all purposes hereunder the address set out in Clause 1.1 & 1.2.

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

11. PROHIBITION

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



12. JURISDICTION

12.1 For the purpose of resolving any disputes which exist or occur between the parties hereto, the parties consent to the jurisdiction of the magistrate's court or any other court with jurisdiction or a court otherwise competent and with jurisdiction over the person of the parties in that each of them resides, carries on business, or is employed within its area of jurisdiction, notwithstanding that such proceedings are otherwise beyond jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrate's Court Act, Act 32 of 1944 or any amendment thereof provided that the **SELLER** shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's court.

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

13. BREACH

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

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

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

13.3 cancel the agreement without any further notice, and retain all amounts paid by the **PURCHASER** as "Rouwkoop" and the **PURCHASER** hereby authorizes any third party holding such monies to pay the same to the **SELLER**, and/or



13.4 terminate this agreement and claim damages from the **PURCHASER**, which damages shall

include, but not limited to, the costs and expenses of advertising and selling the **PROPERTY** to a third party.

14. COMMISSION

14.1 Commission calculated at% (words).....of the purchase price plus VAT (if applicable), will be due and payable by the **SELLER** to the **AGENT** against registration of transfer of the **PROPERTY** into the name of the **PURCHASER**,

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

15. VARIATION

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

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

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

17. MARITAL STATUS OF PURCHASER

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

18. WAIVER

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

19. CERTIFICATES TO BE OBTAINED

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

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



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

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

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

20. RATES, TAXES AND LEVIES

The **SELLER** will be responsible for all imposts levied on the property, inclusive of and without limiting the generality hereof, all assessment rates (Rates and taxes, electricity, sanitation and all other charges), levies, availability charges due on the property to the local authority, Home Owners Association or Body Corporate up to **DATE OF ACCEPTANCE**, subject to the provisions of the Insolvency Act, 24 of 1936, prevailing case law and other relevant legislations. The **PURCHASER** will be responsible for the payment of these costs from date of acceptance to date of transfer of property into his name.



20.1 The **PURCHASER** herewith indemnifies the **SELLER**, its AGENT and BONDHOLDER (Secure Creditor) in totality, and waive any claim of any nature against the **SELLER** in respect of:

20.1.1 Any remainder of any portion of municipal rates and taxes, water electricity and sanitation charges, basic assessment rates, levies including special levies and penalties, interest and legal charges due and payable to the local Authority (Municipality), Home Owners Association or Body Corporate.

20.1.2 for any period not covered by the paid against registration of transfer of the property into the name of PURCHASER in terms of any clearance certificate issued by such a Local Authority (municipality), Home Owners Association or Body Corporate.



21. HOMEOWNERS ASSOCIATION AND RULES

21.1 The PURCHASER acknowledges that he is aware of the Rules and Conditions of the Home Owners Association.

21.2 The PURCHASER further acknowledges that upon transfer of the PROPERTY in his name, he will become a member of the Home Owners Association established for the property.

21.3 The PURCHASER binds himself and his successors in title to the terms, conditions and obligations imposed on the PURCHASER in terms of the constitution of the Home Owners Association.

22. SPECIAL CONDITIONS

22.1 This agreement is subject to the approval of the sale by the Master of the High Court in terms of Section 18(3) and/or Section 80(bis) of the Insolvency Act 24 of 1936. If such approval is not applicable, then subject to the Acceptance of the Agreement by the **TRUSTEE** upon the adoption of the Resolution authorizing him to do so at the Meeting of Creditors of the mentioned Insolvent Estate.



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

22.3 If the sale is accepted by the Master of High Court, the **TRUSTEE** reserves the right to decline the offer and will be under no obligation to accept such offer. No reason for this decision needs to be supplied, and the **TRUSTEE** further reserves the right to accept any other offer that may be received in respect of this **PROPERTY**.

22.4 The **Seller** and the **Purchaser**, including the **AGENT** (if applicable) agree that in the event the **arrear** rates and taxes and/or levies and/or HOA levies and/or electricity and/or water and/or any other statutory liability and/or builders penalties and/or Section 89 Costs and/or any other expenses into this estate, **exceeds the purchase price**, this agreement shall become *null and void* and all monies paid by any **PARTY** shall be refunded.

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

.....
WITNESS

.....
PURCHASER 1

.....
PURCHASER 2

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

.....
WITNESS

.....
SELLER/S

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

.....
WITNESS

.....
AGENT

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

NAME OF CLOSE CORPORATION/ COMPANY/ TRUST:

.....

REGISTRATION NUMBER:

MEETING HELD AT ON DAY OF 20

IT IS RESOLVED THAT:

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

Erf description:

Known as:

Local Municipality:

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

FROM the insolvent estate of:

FOR R (words)

.....

PLUS VAT (IF APPLICABLE).

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

Certified a true copy,

.....

MEMBER/ DIRECTOR/ TRUSTEE

FICA REQUIREMENTS:

Natural Persons

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

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

If Married

- [5] Marriage certificate.

- If IN community of property (no antenuptial contract)

- [6] S.A. identity document (foreigner: passport) of your SPOUSE.

- If OUT of community of property (by Antenuptial Contract ("ANC"))

- [7] Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties.

- If your Marriage is governed by the Laws of another country/state

- [8] S.A. identity document (foreigner: passport) of your SPOUSE;
 [9] Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.
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FICA REQUIREMENTS: Entities

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

PLUS THE FOLLOWING:

Companies:

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

Close Corporations:

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

Trusts:

- [1] Letters of Authority / Master's Certificate; [2] Trust Deed and all amendments thereto.
 [3] **Resolution to approve the purchase (and loan application, if applicable) taken before the Agreement of Sale was signed.** (The only exception is where it is a cash transaction and all the Trustees have signed the Agreement of Sale.)
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Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course.

FICA requirements for Other Entities, if applicable, will be supplied to such Purchasers.