



**TERMS AND CONDITIONS OF SALE OF  
IMMOVABLE PROPERTY BY PUBLIC AUCTION  
(INCORPORATING A SURETYSHIP)**

**Place of auction: Farm Rietvlei 101, Dundee**

**Date of auction: 29 June 2022**

**Time of auction: 11:00**

**PARK VILLAGE AUCTIONS CENTRAL (PTY) LTD  
C/O R64 AND VALENCIA RD, WATERBRON,  
BLOEMFONTEIN 9301  
(The "Auctioneer")**

Mandated on behalf of and duly instructed by:

**GERT HOLTZHAUZEN IN HIS CAPACITY AS  
BUSINESS RESCUE PRACTITIONER c/o  
STURNS STRATEGIC TURNAROUND SOLUTIONS**

**SIPHO KITHANDILE INVESTMENT PROPERTIES CC  
COMPANY REGISTRATION NUMBER: 2008/135891/23  
(hereinafter referred to as the "Seller")**

intends to and hereby offers for sale by public auction to the prospective **Purchasers** the **property**, more fully described as:

**PORTION 1 (REMAINING EXTENT) OF THE FARM RIETVLEI 101  
TITLE DEED NUMBER: T48928/2008  
REGISTRATION DIVISION: GT, ENDUMENI MUNICIPALITY  
KWAZULU NATAL  
(“The Property”)**

measurement: **431.4716 HA (FOUR HUNDRED AND THIRTY-ONE HECTARES)** in extent.

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The **Auctioneer** undertakes in terms of what is herein set out and its mandate and authority granted to it by the **Seller**, to sell the aforementioned **property** by public auction on behalf of the **Seller**, to the **Purchaser** on the following terms and conditions and according to the published Rules of Auction:

## 1. AUCTION PROCEDURE

- 1.1 The terms and conditions of this agreement incorporate the Rules of Auction which is available on the website at [www.opiplaas.co.za](http://www.opiplaas.co.za) and are available from the **Auctioneer's** offices on **051 430 2300**. The Rules will also be available at the auction.
- 1.2 The **Auctioneer** shall have the sole and exclusive control and the right to regulate any bidding as it may arise, which rights include the authority to correct any error made by him, whether by commission or omission.
- 1.3 Should the **Auctioneer** have any reason to believe that a **Purchaser** is not able to pay the deposit or the **purchase price**, he is entitled to refuse an Offer from such a **Purchaser**, or accept it provisionally, until he is satisfied that the **Purchaser** is able to pay the aforesaid amount. Should an offer be rejected under these circumstances, the **property** can immediately be put up for sale again.
- 1.4 The highest bidder, whose bid is accepted by the **Auctioneer** upon the fall of the hammer, shall subject to acceptance of his bid by the **Seller**, become the **Purchaser**. Should any dispute arise, the **Auctioneer's** decision and determination concerning the same shall be final and binding upon the parties.
- 1.5 The **Auctioneer** may, if so mandated by the **Seller**, forthwith at any time after the fall of the hammer, specifically and unequivocally accept on behalf of the **Seller** the highest bid from the highest bidder and so cause a firm agreement to come into being between the **Seller** and the **Purchaser**, on the basis that the **property** has been sold to the **Purchaser** on the terms and conditions contained herein.
- 1.6 The parties undertake as soon as possible to sign and complete all documents required to give effect hereto as required by the **Auctioneer** and / or the transferring attorney ("the conveyancer") appointed by the **Seller**.
- 1.7 The **Auctioneer** on behalf of the **Seller**, the **Seller** or either's representative may bid at the auction on behalf of the **Seller** up to the reserve price, if any.

## 2. DEFINITIONS

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

- 2.1 "**Auctioneer**" shall mean:

Agency: **Park Village Auctions Central (Pty) Ltd**

Auctioneer: **Nicolas Petrus Maree**

Physical Address: **c/o R64 & Valencia Road, Waterbron, Bloemfontein, 9301**

Tel No: **051 430 2300**

Mobile No: **082 625 4455**

Fax No: **086 519 5965**

E-Mail: [bloem3@parkvillage.co.za](mailto:bloem3@parkvillage.co.za)

Postal Address: **P O Box 26805, Langenhoven Park, 9300**

VAT No: **4510255989**

Fidelity Fund Reg No: **F144289**

2.2 **"date of acceptance"** shall mean the **signature date** of this agreement by the **Seller**;

2.3 **"delivery date"** shall mean the date when the **Purchaser** delivers the guarantees as referred to in clause 4.3, alternatively, on the date upon which the full **purchase price** is paid by the **Purchaser**;

2.4 **"Liquidator"** shall mean the Provisional Trustee / Provisional Liquidator / Trustee / Liquidator, whichever applies in the above-mentioned Liquidation Estate he Provisional Trustee / Provisional Liquidator/ Trustee/ Liquidator, whichever applies in the above-mentioned Liquidation Estate;

2.5 **"property"** shall mean:

Erf Description: **Portion 1 (Remaining Extent) Of the Farm Rietvlei 101**

Local Municipality: **Endumeni Municipality**

In Extent of: **431.4716 HA (Four Hundred and Thirty-One Hectares)** in extent.

Held under Title Deed: **T48928/2008**

2.6 **"Purchaser"** shall mean:

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

Registration/ ID no: \_\_\_\_\_

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

Income Tax / VAT No: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
Postal Address: \_\_\_\_\_  
Tel No: \_\_\_\_\_  
Mobile No: \_\_\_\_\_  
Fax No: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

2.7 “signature date” shall mean the date on which this agreement has been signed by the **Purchaser**;

2.8 “**Seller**” shall mean:

Name: Gert Holtzhausen

in his capacity as Business Rescue Practitioner of:

**Sipho Kithandile Investments Properties CC**

Master’s Reference: **N/A**

Income Tax / VAT No: **9229342176**

Physical Address: **c/o R64 & Valencia Road, Waterbron, Bloemfontein, 9301**

Postal Address: **P O Box 26805, Langenhoven Park, 9300**

Tel No: **051 430 2300**

Mobile No: **082 625 4455**

Fax No: **086 519 5965**

E-Mail: [bloem3@parkvillage.co.za](mailto:bloem3@parkvillage.co.za)

2.9 In this agreement, unless the context otherwise requires:

2.9.1 The masculine gender includes the feminine gender and *vice versa*;

2.9.2 one gender shall include the other;

- 2.9.3 the singular includes the plural and *vice versa*.
- 2.10 It is recorded that:
- 2.10.1 the **Seller** has agreed to sell the **property** to the **Purchaser** upon certain terms and conditions;
- 2.10.2 the parties wish to record the terms of such agreement.
- 2.11 Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of this agreement.

### 3. **AUCTION**

- 3.1 The **property** will be sold to the highest bidder subject to confirmation by the **Seller** within the **confirmation period** as per clause 31.1 of this agreement. The highest bidder will be bound by his bid for the duration of the **confirmation period** or until same is either accepted or rejected by the **Seller**. If the **Seller** chooses not to accept the highest bid, he shall be / not be [*delete whichever is not applicable*] obligated to provide reasons for such rejection.
- 3.2 The **Auctioneer** is entitled at his sole discretion to refuse any bid without having to give reasons for such refusal. Should there be a dispute between bidders or between any bidder and the **Auctioneer** the **property** will immediately be re-auctioned.
- 3.3 In the event of any error being made by the **Auctioneer** during the auctioning of the **property** such error shall not be binding on either the **Seller** or **Auctioneer**.
- 3.4 Neither the **Seller** nor the **Auctioneer** shall be responsible for the accuracy of any statement made in any advertisement or notice of sale of the **property** relating to its situation, extent, improvements thereon or other detail and no compensation shall be claimable in respect of any error so made. The **Purchaser** or its representative(s), when bidding at the auction or otherwise, shall be deemed to have acquainted and validated for themselves all relevant aspects of the **property** whether advertised or not.
- 3.5 The **property** is thus provisionally sold to the highest bidder subject to the Rules and Terms & Conditions of Auction as well as the terms and conditions as set out in this agreement.

#### 4. **PURCHASE PRICE**

- 4.1 The **purchase price** of the **property** (being the highest bid at the auction or subsequent improved offer) is R\_\_\_\_\_
- \_\_\_\_\_,
- excluding value added tax, ("**purchase price**"). The **purchase price** is payable as set out hereunder.
- 4.2 A deposit equal to **15% (fifteen percent)** of the **purchase price** is payable by the **Purchaser** to the **Auctioneer** on signature hereof by the **Purchaser**, which amount will be held by the **Auctioneer** in trust (in a non-interest-bearing trust account) pending acceptance of the bid by the **Seller**. Thereafter, the **Auctioneer** shall pay over to the **Seller** or the **Seller's** conveyancer (at the election of the **Seller** or the **Auctioneer**) the said deposit amount ("**trust amount**"), after deducting agreed costs, disbursements and expenses.
- 4.3 The balance of the **purchase price** will be paid over by the **Purchaser** to the **Seller** or the **Seller's** conveyancer (again at the election of the **Seller** or the **Auctioneer**) within **60 (sixty)** calendar days of acceptance of this agreement by the **Seller**, or shall be secured by a bank guarantee, or guarantees, as required by and on terms acceptable to the **Seller** and the conveyancer within the same **60 (sixty)** calendar days aforesaid from date of acceptance of this agreement, which guarantees shall be payable against registration of transfer of the **property** into the name of the **Purchaser**.
- 4.4 The **Purchaser** hereby authorises the **Auctioneer**, upon written acceptance of this agreement by the **Seller**, to pay over the **trust amount** to either the **Seller** or the **Seller's** conveyancer (as nominated by the **Seller** or its Agent) and the conveyancer to utilise such portion of the **trust amount** as may be required for the purpose of obtaining clearance figures. The **Seller** and the **Purchaser** hereby irrevocably instruct and authorise the recipient to invest the **trust amount** in an interest-bearing trust account, such as contemplated in terms of Section 86(4) of the Legal Practise Act No 28 of 2014 where the interest accrues for the benefit of the **Seller**.

#### 5. **SALE OF A PROPERTY AS PART OF A GOING CONCERN**

- 5.1 ~~The **Seller** and the **Purchaser** hereby agree that:~~
- 5.1.1 ~~should the **property** be an enterprise or part of an enterprise which is capable of separate operation as defined in Section 1 of the Value Added Tax Act, Act 89 of 1991 ("**VAT Act**"); and~~
- 5.1.2 ~~such enterprise is being disposed of (in terms of this agreement and by the prior advises of the **Auctioneer**) as a "going concern" within the meaning of Section 11(1)(e)(i) of the **VAT Act**; and~~
- 5.1.3 ~~such enterprise is, on the **signature date**, and will, on the transfer date, be "an income earning activity" within the meaning of Section 11(1)(e)(i)(aa) of the **VAT Act**; and~~

5.1.4 ~~the **property** together with all assets necessary for the carrying on of the enterprise will be transferred to the **Purchaser** on the transfer date, and the **purchase price** shall be inclusive of Value-Added Tax ("**VAT**") as defined in the **VAT Act**, at the rate of zero percent. Notwithstanding the foregoing, should **VAT**, for whatever reason, be levied upon this transaction (or any portion hereof) at a rate higher than zero percent, such **VAT** shall be paid by the **Purchaser** against delivery to it by the **Seller** of an original tax invoice in respect thereof and shall be calculated on the basis that the **purchase price** is exclusive of **VAT**.~~

5.2 ~~The **Seller** warrants to the **Purchaser** that, as at the time of supply of the enterprise to the **Purchaser** (as defined in section 9(1) of the **VAT Act**) it shall be registered as a **VAT** vendor, as defined in the **VAT Act**.~~

5.3 ~~The **Purchaser** warrants to the **Seller** that, as at the time of supply of the enterprise to the **Purchaser** (as defined in section 9(1) of the **VAT Act**) it shall be registered as a **VAT** vendor, as defined in the **VAT Act**.~~

## 6. ACCEPTANCE

6.1 This document constitutes an Offer to Purchase by the **Purchaser**, which is subject to written acceptance by the **Seller** within **14 (Fourteen)** business days ("**offer period**") from date hereof and shall remain irrevocable and open for acceptance by the **Seller** at any time during the **offer period**. For the sake of clarity, the **Purchaser's** offer is open for acceptance until 17h00 on the **14<sup>th</sup> (fourteenth)** business day after the signature hereof by the **Purchaser**, the counting of the **14 (fourteen)** business days to commence on the **1<sup>st</sup> (first)** calendar day after **signature date** hereof and shall endure until 17h00 on the **14<sup>th</sup> (Fourteenth)** business day thereafter.

6.2 During the **offer period**, the **Seller** or the **Auctioneer** may continue to market the **property** in the normal course of business as they may deem fit and in consequence of same, they may take in further and better written Offers to Purchase from prospective **Purchasers**, to be submitted for the **Seller's** consideration.

6.3 The **Auctioneer** shall advise the **Purchaser** in writing of any higher written offer ("**competing offer**") which is received from any third party during the **offer period**. The **Purchaser** shall, for a period of **24 (twenty-four)** hours, ("**option period**"), after transmission of the written advice of the **competing offer** by the **Auctioneer** as aforesaid, have the option to increase the **purchase price** offered by him in terms of this agreement to an amount equal to the **purchase price** of the **competing offer**, but subject otherwise to all other terms and conditions of this agreement.

6.4 If the **Purchaser** wishes to exercise the option to match the **competing offer** during the **option period**, the **Purchaser** must do so in writing in clear and unambiguous terms, which notice must be delivered to the **Auctioneer** before the expiry of the **24 (twenty-four)** hour **option period**. This written notice must either be hand-delivered to the business premises of the **Auctioneer** and a receipt signed in respect thereof, or may be e-mailed or faxed to the **Auctioneer** at the indicated e-mail address or fax number, provided that in such an instance the

**Purchaser** must telephonically confirm receipt of the said e-mail or fax at the business premises of the **Auctioneer**, as the onus rests upon the **Purchaser** to confirm receipt of the said notice by the **Auctioneer**.

- 6.5 If the **Purchaser** fails to exercise the option during the **option period**, the **Seller** shall be entitled, but not obliged, to accept the **competing offer**. Should the **Seller** however elect not to accept the **competing offer**, the offer contained in this agreement shall remain irrevocable and of full force and effect and open for acceptance by the **Seller** until the lapse of the **offer period** as set-out above.
- 6.6 Should the **Purchaser** exercise the option within the **option period** and match the **competing offer**, the **purchase price** in terms of this agreement shall be the increased amount. The **Seller** shall be entitled until the lapse of the **offer period** to accept this agreement at any increased purchase price. This option process is a continuation of the original process and any sale thus concluded shall be a sale by auction.
- 6.7 The date of sale of the **property** shall, for purposes of this agreement, be deemed to be the date of written acceptance of this offer, or the increased offer, by the **Seller**. The **Auctioneer** will at the sole discretion of the **Auctioneer** thereafter notify the **Purchaser** in writing of such acceptance by pre-paid registered post, by hand delivery, by e-mail or fax transmission.
- 6.8 Should the **Seller** not accept the **Purchaser's** offer, the **Auctioneer** shall immediately repay to the **Purchaser** any deposit plus buyer's commission and **VAT** thereon paid by him (including any amount paid in terms of clause 4.3).
- 6.9 The **Seller** reserves the right to decline the **Purchaser's** offer. The **Seller** shall have no obligation to accept the offer and shall not be obliged to furnish a reason for the rejecting of an offer. If the **Seller** rejects the **Purchaser's** offer, the **Seller** shall be entitled to accept any other offer that may be received in respect of the **property**.
- 6.10 In the event of the **Seller** requiring the consent of the Master of the High Court to effect transfer, then transfer of the **property** will be subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process. If such consent is refused or not obtained for whatever reason within a reasonable period (solely within the discretion of the **Seller**), then this offer will be voidable at the instance of the **Seller** and neither party shall have a claim against the other arising herefrom and both will reasonably be restored to their prior position.

## **7. AUCTIONEER'S COMMISSION AND ENTITLEMENT**

- 7.1 The **Purchaser** shall in addition to the **purchase price** of the **property**, pay the **Auctioneer's** commission at the rate of **6% (six percent)** plus **VAT**, calculated on the **purchase price** of the **property**.
- 7.2 It is specifically agreed that the commission is earned and will be immediately payable to the **Auctioneer**. The commission shall be paid by the **Purchaser** simultaneously with the deposit set-out in Clause 2.2 above and shall be in addition to the said deposit.
- 7.3 The parties agree that payment of any portion of the **purchase price** and the



commission (even if made in separate payments) is deemed to be one indivisible transaction and payment of all amounts due under this agreement is required in order for the **Purchaser** to discharge its payment obligations arising from this agreement.

- 7.4 The **Seller** and the **Purchaser** acknowledge that the **Auctioneer**, is the sole effective cause of the sale of the **property** to the **Purchaser**.

## 8. RISK, CONTROL & INSURANCE

- 8.1 The sole risk and control and benefit in and to the **property** shall, unless otherwise agreed in writing and signed by both parties, pass to the **Purchaser** on the date of the written acceptance of the offer by the **Seller** and from that date, the **Purchaser** shall be liable for all imposts levied on the **property**, inclusive of and without limiting the generality hereof, all municipal rates and taxes, licences and other official and/or municipal and consumable charges.
- 8.2 Neither the **Seller** nor the **Auctioneer** shall be liable to the **Purchaser** for any damage or loss suffered, or inconvenience experienced by the **Purchaser** caused by any pests, insects or vermin, irrespective of when the damage, loss or inconvenience were caused.
- 8.3 From the date upon which the sole risk vests in the **Purchaser**, the **Purchaser** shall at his own expense insure the **property** and all improvements thereon against all general risks, losses or damages from any cause whatsoever including public liability.
- 8.4 The **Purchaser** shall inform the insurer and/or the underwriter of the **Seller's** insurable interest in and to the **property** and shall insist that the **Seller's** interest is recorded in the insurance policy or schedule. The **Seller's** interest shall persist until date of registration of transfer in the Deeds Office of the **property** into the **Purchaser's** name.
- 8.5 Should an event occur which gives rise to a claim covered by the terms of the insurance policy, then the **Purchaser** shall immediately commence the correct procedure to lodge a claim against the insurer arising from this policy.
- 8.6 The parties acknowledge that the happening of an insurable event shall not in any manner detract from the validity of this agreement, nor shall it be a cause for the delay of the transfer of the **property** or frustrate full consummation of this agreement in any manner.
- 8.7 The **Purchaser** shall remain fully liable to indemnify the **Seller** against any and all losses in and upon the **property**, notwithstanding the above requirements and notwithstanding whether or not the **Purchaser** complied with same, it being recorded that the above does not detract from or negate the **Purchaser's** liability towards the **Seller** in any form or manner in respect of any losses or damages suffered by the **Seller** arising herefrom, the intention being to always restore the **Seller** to its pre-event condition, either by the insurer through the policy or the **Purchaser** itself, or a combination of them.

## 9. OCCUPATION

- 9.1 The date of occupation for purposes of this agreement, **registration of transfer of the property into the purchaser's name.**
- 9.2 This date therefore does not refer to the actual date of the **Purchaser** moving into the **property** or receiving the keys thereto. The **Seller** cannot give any warranty or guarantee that the **Purchaser** will obtain vacant occupation of the **property** on that date, and the **Purchaser** shall have no claim of whatsoever nature against the **Seller** should vacant occupation not be obtained on the said date or at all.
- 9.3 From the date of occupation of the **property** and pending transfer, the **Purchaser** shall not sell, let or in any other manner dispose of, or alienate or encumber (whether temporarily or otherwise) the **property** or cede and assign any of its rights or obligations relating to the occupation thereof, except with the express written consent of the **Seller**.
- 9.4 The **Purchaser** shall pay occupational interest on or before the **1<sup>st</sup> (first)** day of each and every month directly to the conveyancer, at the rate of **12% (twelve percent)** per annum (pro-rated monthly) calculated on the reduced balance of the **purchase price** remaining after the deposit and any additional amounts paid by the **Purchaser** towards the **purchase price** have been deducted, the intention of the parties being that the larger the deposit amount paid by the **Purchaser** towards the **purchase price**, the less occupational interest will be paid by the **Purchaser**. Should the **Purchaser** so elect, it may deposit the full purchase price with the conveyancer, in which event there shall be no occupational interest payable. Occupational interest commences from the date of occupation up to and including the date of registration of transfer, paid monthly in advance without any deduction or set-off. In the event that the purchaser deposits the balance of the **purchase price** with the conveyancer, the conveyancer shall invest the relevant amount with a registered bank pending transfer, the interest thereon to accrue to the Seller.
- 9.5 The **Seller** will within reason assist the **Purchaser** at the **Purchaser's** expense, as may be reasonably necessary and/or required by law, to assist the **Purchaser** in obtaining vacant occupation of the **property**, but without the **Seller** obtaining any liability to pay for or effect any eviction itself, or obtaining any liability in respect of an unsuccessful eviction, or in respect of any damages suffered whatsoever by the **Purchaser** as a result hereof.
- 9.6 If the **property** is leased, this agreement is entered into subject to the rights of the tenants under any existing lease agreement or law, as well as under the Rental Housing Act if applicable and from the date of occupation the **Purchaser** accepts all pre-existing obligations and liabilities arising from any lease agreement with any tenants, notwithstanding any omission by either the **Seller** or **Auctioneer** to point out such obligations or liabilities.

## 10. DELIVERY

- 10.1 Delivery 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 when the **Purchaser** delivers the guarantees as referred to in clause 4.3 or on the date upon which the full **purchase price** is paid by the purchaser ("**delivery date**"). From the **date of acceptance**, the **Purchaser** shall be liable for all municipal rates, taxes, consumption charges, insurance premiums and/or fees and levies payable

in 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.

- 10.2 The risk in and to the **property** shall pass to the **Purchaser** on **written acceptance**. Despite the aforesaid, ownership of the **property** shall only pass to the **Purchaser** upon registration of the **property** in the **Purchaser's** name.
- 10.3 The **Purchaser** shall not be entitled to make any alteration 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 claim whatsoever against the **Seller** arising out of any alterations or additions made to the **property** by the **Purchaser**.
- 10.4 If the **property** is leased, this **agreement** is entered into subject to the rights of the tenant under any existing Lease Agreement, statutory provisions or the Common Law.
- 10.5 **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**.
- 10.6 The offer is binding upon acceptance thereof by the **Seller**, irrespective of the purchaser having been informed of such acceptance or not.

## 11. CONDITION OF PROPERTY

- 11.1 The **Seller** and the **Auctioneer** point out to the **Purchaser** that the immovable property sold herewith contains improvements and structures which could possibly have been constructed some time ago and will accordingly not have the same characteristics as a newly constructed building.
- 11.2 The **Purchaser** therefore acknowledges and accepts that the condition of the improvements will not be equivalent to that of a newly constructed building and that due to the effluxion of time or as a result of wear and tear, certain latent (concealed and not known to the **Seller** or **Auctioneer**), and also patent (obvious and apparent upon inspection) defects will have developed in the **property** or its accessories, fixtures and fittings, particularly with regards to the condition of the roof, roof trusses, ceiling, electrical-, plumbing- and sewerage reticulations, walls, glazing, windows and skylight fittings, floors, fixtures and fittings, gates, pool or pond motors, garden installations and similar items.
- 11.3 The **Purchaser** agrees to have particular regard to potential problems including but not limited to roof leaks, rising damp, patently broken fixtures and fittings and appurtenances, possible swimming pool and pond leaks, possible broken electrical- and water installations such as swimming pool motors and pumps, irrigation systems, pond reticulations, electric gate motors, electrical garage doors, alarm systems, defective electric fencing and alarm systems and the like.
- 11.4 By its signature hereto, the **Purchaser** therefore accepts the condition of the **property** as it is and to the extent as it now lies and furthermore acknowledges

that neither the **Seller** nor the **Auctioneer** hold themselves out to be experts in immovable property and that their failure to specifically point out each and every defect in the **property** cannot be ascribed to any misrepresentation on their part.

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.

- 11.5 Neither the **Seller** nor the **Auctioneer** are therefore liable to the **Purchaser** for any defects, shortcomings, missing keys or movables, lost fixtures and fittings or any flaw otherwise in and to the **property**, nor for any damages suffered by the **Purchaser** by reason of such defects.
- 11.6 The **Purchaser** agrees to inspect the **property** to its satisfaction and accepts that neither the **Seller** nor the **Auctioneer** provide any guarantees or warranties, or make any representations concerning the nature of the **property** or regarding the condition or quality of the **property** or any of the improvements thereon, nor regarding any of the accessories thereto or in regard to any of the zoning or other town planning matters.
- 11.7 The **property** is therefore sold in the condition as it lies, which include all the conditions and the servitudes currently registered against the **property** and evidenced in the existing title deed thereto. Neither the **Seller** nor the **Auctioneer** are therefore accountable or liable for any deficiency in the extent of the **property** and the **Purchaser** agrees that it has fully acquainted itself with the situation, nature, condition, beacons, extent and locality of the **property** as well as all conditions of title and servitudes prior to entering into this agreement and accepts that neither the **Seller** nor the **Auctioneer** give any warranties in respect thereof and will therefore not accept any liability in respect thereof.
- 11.8 The **Purchaser** acknowledges that the **Seller** and the **Auctioneer** provided it with the opportunity to fully acquaint itself with the aforementioned clauses or the condition and status of the **property**, and that neither of them accepts any liability to the **Purchaser** in respect of same.
- 11.9 The **Purchaser** therefore willingly enters into this transaction, being fully aware of the condition of the **property** and improvements and without having been induced or influenced to enter into same by any warranties or representations or statements made or information given by either the **Seller** or the **Auctioneer** prior to the signature hereof, other than as set out in this agreement.

## 12. RATES AND TAXES

The **Purchaser** will be responsible for all imposts on the **property**, inclusive of and without limiting the generality thereof, all municipal rates and taxes, arear municipal rates and taxes, levies, availability charges due on the **property** up to **date of acceptance**. The **Purchaser** will be responsible for the payment of these costs from the **date of acceptance** to the date of transfer of the **property** into his name.

### 13. TRANSFER, VAT AND COSTS THEREOF

- 13.1 The **Purchaser** and the **Seller** hereby undertake to sign all documents and fulfil all obligations as contained herein in order to give effect to this agreement and the completion thereof both timeously and in full on the basis that time is of the essence to effect registration of transfer of the **property** into the **Purchaser's** name. Transfer of the **property** will be effected by the conveyancer within a reasonable time after the **Purchaser** has complied with the terms and conditions of this agreement and paid to the conveyancer Transfer Duty or **VAT** whichever is applicable, costs of transfer, transfer fees, disbursements and any other amounts due hereunder or required in the transfer process.
- 13.2 If the South African Revenue Services, ("**SARS**"), regard this sale as a **VAT** transaction, then the **Purchaser** shall, in addition to the **purchase price**, pay the **Seller** the amount of **VAT** calculated at the standard rate, it being specifically recorded that the **purchase price** excludes **VAT**. Such payment shall be made or secured at the time the balance of the **purchase price** is paid or secured in terms of 4.2 and 4.3 above.
- 13.3 The **Purchaser** and/or the individuals signing this document and acting in a representative capacity, warrant that their tax affairs with **SARS** are in order and up to date or, in the event of this not being the case, that agreement has been reached and that the necessary arrangements have been made with **SARS** in respect thereof.
- 13.4 The **Seller** shall, (after registration of transfer of the **property**), furnish notice to the Local Authority and/or Eskom terminating any consumer agreements in respect of the supply of water, electricity or other services to the **property**. The **Seller** shall under no circumstances be liable for any loss or damage whatsoever arising as a result of the **Seller** terminating any consumer supply agreements after the registration of transfer.
- 13.5 The **Purchaser** shall forthwith after date of transfer; substitute himself with respect to the deposits and/or guarantees in respect of the **property** paid to the local authority and/or Eskom by the **Seller**, if any. The **Purchaser** shall notify the **Seller** that such substitution has been effected and the **Seller** shall be responsible for obtaining the return of any guarantees or refunds of any deposits from the local authority and/or Eskom.

### 14. FINANCIAL INTELLIGENCE CENTRE ACT ("FICA")

- 14.1 The **Seller** and the **Purchaser** acknowledge that the **Auctioneer** and conveyancer are designated "accountable institutions" in terms of **FICA**.
- 14.2 The **Seller** and the **Purchaser** hereby agree to comply with all the **FICA** requirements of the **Auctioneer** and the conveyancer and to supply the **Auctioneer** and the conveyancer with all their respective **FICA** documents, (as set out in annexure "**A**" hereto), within **3 (three)** days of demand made therefore.
- 14.3 The **Seller** and the **Purchaser** hereby acknowledge that the conveyancer is not permitted in terms of **FICA** to invest and administer any deposits, or any other monies paid in terms of this agreement, unless the **Seller** and the **Purchaser** have

provided the conveyancer with the documentation and information the conveyancer requires in terms of **FICA**.

- 14.4 The **Seller** and the **Purchaser** hereby agree that neither the **Auctioneer** nor the conveyancer shall be liable for any loss or damage suffered by either of them, as a result of either **Seller** or the **Purchaser** failing to comply with the provisions of this clause 13.

#### 15. **INTEREST ENTITLEMENT**

In the event that any payment or obligation is not paid in full on the due date, interest will be payable by the defaulting party thereon and calculated at the prime overdraft rate, as determined by the main bankers of the **Auctioneer**, plus **2% (two percent)** per annum calculated from the date of default until the date that the default is remedied, both days being included.

#### 16. **COMPANY TO BE FORMED**

- 16.1 In the event of the **Purchaser** signing this offer in a capacity as agent for a Company to be formed, and the **Purchaser** fails within **20 (twenty)** days from date of acceptance of this offer, to register the Company having as one of its objects the ratification and adoption of this agreement, or such Company, if formed fails to adopt or ratify this agreement within **7 (seven)** days after the date of its incorporation, then, and in such event, the **Purchaser** shall be deemed, as from the date of acceptance hereof, to have entered into this agreement in his personal capacity, and to have acquired and accepted all the rights and obligations of the **Purchaser** under this agreement, subject to the condition that all parties may in writing agree otherwise.
- 16.2 In the event of such Company being registered and duly adopting or ratifying this agreement, the said **Purchaser**, the signatory to this agreement or of the Deed of Suretyship, (being Schedule 1 hereto), shall be deemed to be bound to the **Seller** as surety and co-principal debtor *in solidum* with such Company for the due performance by it as the replacement **Purchaser** of all the terms, conditions and other obligations arising from this agreement, subject to the terms and conditions as set out in the Deed of Suretyship. (See schedule 1).

#### 17. **ASSOCIATIONS OR TRUSTS**

If any person purports to represent another person, association or a trust and sign this agreement in that capacity, then the individual so signing shall be **personally liable** to procure the signatures 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 within **2 (two)** weeks from **signature date** hereof, then and in that event, such person signing 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.

## 18. AGENT / NOMINEE AND PROHIBITION ON FURTHER SALE

- 18.1 Where the **Purchaser** is acting as an agent or nominee for a principal, the **Purchaser** shall be entitled, by notice in writing to that effect addressed to the **Seller** or **Auctioneer**, to nominate its principal in its place as **Purchaser**, upon the following terms and conditions:
- 18.1.1 notice of such nomination shall be handed to the **Seller** or the **Auctioneer** by not later than close of business on the day of acceptance of this offer by the **Seller**, accompanied by a copy of the agreement, *inter alia*, so appointing the **Purchaser** as agent or nominee;
- 18.1.2 the notice shall set out the name and address of the nominee so nominated as **Purchaser**;
- 18.1.3 the notice shall be accompanied by the principal's written acknowledgement:
- 18.1.3.1 that it is fully aware of all the terms and conditions of this agreement as well as the rules of auction as fully set out in such written acknowledgement; and
- 18.1.3.2 that it is bound by the provisions of this agreement and the rules of auction as the **Purchaser**;
- 18.2 Should the **Purchaser** nominate a nominee in terms of this clause, then:
- 18.2.1 all reference to the **Purchaser** in this agreement shall be deemed to be a reference to its nominee; and
- 18.2.2 the **Purchaser**, by its signature hereto, hereby interposes and binds itself jointly and severally as **surety** and **co-principal debtor in solidum** to the **Seller** and the **Auctioneer** for all the obligations of the nominee in terms of this agreement, including damages and losses and consequential damages as may arise.
- 18.3 Should the **Purchaser** fail to nominate a principal by close of business on the date of acceptance by the **Seller**, then it shall be bound to perform all his obligations as **Purchaser** in terms of this agreement.
- 18.4 Other than set out above in respect of nominee agreements, the **Purchaser** shall not without the express written consent of the **Seller** on-sell the **property**, or alienate, cede and/or assign any of its rights and responsibilities under this agreement to any third party prior to registration of transfer of the **property** into its name. Any transaction entered into by the **Purchaser** in contradiction of this prohibition may be ignored as *pro non scripto* by the **Seller**.

## 19. CANCELLATION

- 19.1 Should the **Purchaser** fail to comply with any of the terms or conditions of this agreement within **7 (seven)** days of dispatch of written demand, the **Seller** and/or the **Auctioneer** shall, (on behalf of the **Seller** and acting on the written instructions of the **Seller**), on such breach, be entitled without further written notice to either:

19.1.1 cancel this agreement, take occupation of the **property** and have the **property** resold by auction or private treaty, in its sole discretion. The **Purchaser** shall then be liable for all costs of such re-sale, any deficiency in price which results therefrom and other damages and losses including consequential damages as may arise. All payments made by the **Purchaser** to the **Seller** and/or the **Auctioneer** pursuant to this agreement shall be forfeited by the **Purchaser** in favour of the **Auctioneer** and the **Seller** respectively, or, alternatively, be regarded as liquidated, pre-estimated damages and/or losses suffered by them; or

19.1.2 hold the **Purchaser** bound by this agreement and to claim forthwith payment of the entire purchase price and other benefits and entitlements and any other losses and damages caused as a result of such breach;

and, in either instance, hold the **Purchaser** liable in terms of the agreement to pay all commissions, **VAT** and charges and expenses as incurred and contemplated in this agreement.

19.2 The **Purchaser** will be liable for all legal costs incurred by the **Seller** and/or the **Auctioneer** arising out of a breach of this agreement, on the attorney and own client scale of costs, including the collection costs relating to the payment of the **purchase price** and/or commission, as the case may be.

## 20. REPAIRS AND IMPROVEMENTS AND VACATION ON CANCELLATION

20.1 The **Purchaser** will not be entitled to effect any alterations to the **property** without the prior written consent of the **Seller**. The **Seller** shall not be obliged to compensate the **Purchaser** for any alterations or improvements effected to the **property**, whether same were authorised or not, in the event of this transaction being cancelled.

20.2 The **Purchaser** shall not have a builder's lien, improvement lien or creditor's lien over the **property** or any portion thereof, regardless of whether any building works were effected with the **Seller's** consent or not.

20.3 The **Purchaser** shall be liable to the **Seller** upon cancellation for any damages suffered by the **Seller** as a result of any unauthorised alterations, demolition or improvements effected by the **Purchaser** to the immovable property.

20.4 The **Purchaser** and/or any persons occupying the **property** through or under the authority of the **Purchaser** shall be obliged to immediately vacate the **property** upon cancellation of this agreement for any reason whatsoever, it being agreed that no tenancy shall be created by any occupation of the **Purchaser** or any one through him, prior to registration of transfer. Should the **Seller** take any steps to procure vacant possession of the **property** in such an instance, the **Purchaser** shall be liable for all costs, fees and expenses incurred by the **Seller** pertaining to same.



## 21. ELECTRICAL / GAS / PLUMBING COMPLIANCE CERTIFICATES

- 21.1 The **Seller** shall not be liable to provide any Certificates of Compliance in regard to any of the electrical, electric fences, gas or plumbing installations in and to the **property** in terms of any relevant legislation, regulations or ordinances, including but not limited to the Electrical Installation Regulations of the Occupational Health and Safety Act No 85 of 1993, the Pressure Equipment Regulations of 2009, or the Water By-Law of the City of Cape Town 2010. The **Purchaser** shall be obliged to obtain such certificate/s at its own cost including the cost of any work required to any installation before such Certificate of Compliance can be issued.
- 21.2 Should an Entomologist's Certificate be required by any person or institution, the **Purchaser** shall, at its own expense obtain such certificate, and neither the **Seller** nor the **Auctioneer** shall be liable for any costs relating to such certificate being obtained.

## 22. FIXTURES AND FITTINGS:

- 22.1 The **property** is sold together with any buildings or other improvements thereon and to the extent as it lies. Upon the same terms and conditions ventilated in clause 9 above, (which terms are incorporated herein by reference, but appropriately adapted to what is pertinently described herein), neither the **Seller** nor the **Auctioneer** assume any liability in respect of the condition, usability, serviceability or possible state of disrepair of any of the buildings or improvements thereon, nor in respect of any of the fixtures and fittings therein, including stoves and whatever assets are sold in terms of this agreement, all of it in the condition as it currently lies.
- 22.2 Neither the **Seller** nor the **Auctioneer** will therefore be liable for any claims of whatsoever nature made by the **Purchaser** should the aforesaid improvements or fixtures and fittings either become unaccounted for or are not in the same condition upon the date of occupation as it might have been on the **signature date** hereof.
- 22.3 The parties record that **not all assets upon the property are included in the sale agreement** and that all cranes, gantries, cold rooms, spray booths, compressors, generators and production line equipment are specifically excluded from the sale and remain the **property** of the **Seller**, unless otherwise agreed upon in writing.

## 23. MAGISTRATE'S COURT JURISDICTION

For the purposes of all or any proceedings arising out of this agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court and the Regional Court, otherwise having jurisdiction under Section 28 of the Magistrates' Court Act 32 of 1944, as amended; notwithstanding that the proceedings would otherwise be beyond the monetary jurisdiction of the Magistrate's or Regional Court. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Courts, pursuant to the Magistrates' Court Act of 1944, as amended. Notwithstanding the foregoing, this shall not preclude either party from approaching the High Court of South Africa for any relief sought.

## 24. **JOINT AND SEVERAL LIABILITY**

Should there be more than one **Purchaser**, all **Purchasers** shall all be individually, jointly and severally liable for all the obligations in terms hereof, as well as for the payment of all obligations and benefits assumed hereunder and for complying with all the terms and conditions of this agreement of whatever nature.

## 25. **COSTS**

In the event of a breach of this agreement, the defaulting party shall be liable for all legal costs incurred by the **Seller** or **Auctioneer** in enforcing any of their rights arising herefrom, on an attorney and client scale, including collection commission.

## 26. **WHOLE AGREEMENT (NO AMENDMENT)**

- 26.1 This agreement constitutes the whole agreement between the parties relating to the subject matter hereof.
- 26.2 No amendment of this agreement or any provision or term of the agreement, or any other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension or consensual cancellation of any of the provisions or terms of this agreement or of any agreement or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by the relevant parties. Any such extension, waiver, relaxation, suspension or the like which is so provided or made will be strictly construed as relating strictly to the matter in respect whereof it was made or provided.
- 26.3 No extension of time, or waiver, or relaxation of any of the provisions or terms of this agreement or any agreement or other document issued or executed pursuant to, or in terms of this agreement, will operate as an estoppel against the **Seller** and/or the **Auctioneer** in respect of any rights under this agreement, nor shall it operate so as to preclude the **Seller** and/or the **Auctioneer** thereafter from exercising any rights strictly in accordance with this agreement.
- 26.4 This agreement may be executed by the parties in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same agreement. This agreement may also be executed by any one of the parties signing an original and telefaxing the original for signature to another party. Signature of a faxed copy shall be deemed to be the signature of an original.

## 27. **INTERPRETATION**

- 27.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only, and shall not be used in the interpretation of, nor modification or amplification of the terms of this agreement or any clause thereof. Unless the contrary intention appears, words importing:-
- 27.1.1 any one gender includes the other gender;

- 27.1.2 singular includes the plural and *vice versa*; and
- 27.1.3 any reference to persons includes natural persons, corporate or unincorporated entities and the state and for purposes of this agreement, also refers to trusts as represented by their trustees.
- 27.2 In the event that the **Purchaser** is a consumer, this agreement will be read subject to the Consumer Protection Act, 68 of 2008 and should any clause or time period referred to in the clauses be in conflict with any of the rights of the **Purchaser** in terms of the Act, then such a clause or time period shall be substituted with any rights afforded by the Act to such **Purchaser**.

## 28. **DOMICILIUM ADDRESS FOR ALL NOTICES**

- 28.1 The **Purchaser** hereby chooses as service address (*domicilium citandi et executandi*) for all purposes under this agreement, whether in respect of Court process, notices or other documents or communications of whatever nature, the addresses as set in out in clause 2 above.
- 28.2 The **Seller** hereby chooses as its service address (*domicilium citandi et executandi*) for all purposes under this agreement, whether in respect of Court process, notices or other documents or communications of whatever nature, the address care of the **Auctioneer** as set out in clause 2 above.
- 28.3 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it will be competent to give notice by e-mail or fax.
- 28.4 Any notice by any party:
- 28.4.1 delivered by hand to a person apparently not less than **16 (sixteen)** years of age and apparently residing or employed there during ordinary business hours at the physical address chosen as the other party's *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; and
- 28.4.2 sent by e-mail or fax to the other party's chosen e-mail address or fax number stipulated above, and shall be deemed to have been received on the date of transmission thereof (unless the contrary is proven).
- 28.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by the **Purchaser** shall be an adequate written notice or communication to the **Purchaser** notwithstanding that it was not sent or delivered to the other party's *domicilium citandi et executandi*.

## 29. **MATRIMONIAL PROPERTY ACT CONSEQUENCES**

To the extent necessary, the **Purchaser** hereby warrants that all written consents required by the Matrimonial **property** Act No 88 of 1984 in respect of this agreement or any matters arising therefrom or in terms hereof have been duly given.

### 30. **SEVERABILITY**

Should any clause herein be ruled to be unenforceable, the offending clause shall be severed from this agreement and the residual clauses shall survive and remain fully binding on the **Purchaser** and **Seller**.

### 31. **APPROVAL FOR CERTAIN FUNDAMENTAL TRANSACTIONS (THIS CLAUSE IS NOT APPLICABLE TO INSOLVENT SELLERS)**

31.1 The parties declare that they are aware of the provisions of Section 112 of the Companies Act, which states that if the **Seller** is a company and the **property** constitutes either the whole or the greater part of the undertaking of the **Seller**, then the shareholders of the **Seller** need to approve this transaction by way of a special resolution.

31.2 Accordingly, the **Seller** declares that the provisions of Section 112 are / are not [*delete whichever is not applicable*] applicable to the sale of this **property**.

31.3 If Section 112 is applicable to the sale of this property and the special resolution has not yet been obtained from the shareholders as described in Section 112 of the Companies Act, then the Directors of the **Seller** warrant that they will procure the said special resolution within **14 (fourteen)** days from date of acceptance of this agreement, specifically mentioning therein that the shareholders ratify this sale of the **property**.

### 32. **SPECIAL CONDITIONS**

32.1 This agreement is subject to the Acceptance by the **Creditor / Seller**, withing a period of **14 (Fourteen) days** ("**confirmation period**"). The **Seller** warrants that he/she/they have the necessary powers to either accept or reject this offer.

32.2 Should the **Seller** not accept the sale, within the time period stipulated in clause 31.1, this document is deemed *pro non scripto*.

32.3 The **Creditor / Seller** further reserves the right to accept any other offer that may be received, during the **confirmation period** in respect of this **property**.

32.4 The **Seller** and the **Purchaser**, including the **Auctioneer** (if applicable) agree that in the event the **arrear** rates and taxes, levies and or electricity or any other statutory liability in this regard, exceeds the **purchase price**, this agreement shall become *null and void* and all monies paid by any **party** shall be refunded.

32.5 This agreement is conditional to the **Purchaser** applying for membership of the **company** and accepts becoming a voting member and accepting his/her/its obligations towards the **company** as a voting member as are contained in the Memorandum of Incorporation and Rules and Regulations of the **company**.

32.6 The **Purchaser** shall so become a member as contemplated in clause 31.5 even in the absence of the **Purchaser** having completed a membership application form with the **company**, by virtue of entering into this agreement.

- 32.7 It is hereby agreed that **all arrear** Municipal costs required to obtain a Clearance Certificate to enable Transfer to proceed, will be paid for by the **PURCHASER**. This includes, and is not limited to, Rates and Taxes, Water, Electricity, Sewerage, Levies, arrear interest and, should the account have been handed over for legal assistance, any outstanding legal fees thereon.
- 32.8 It is hereby agreed that the **seller** does not guarantee **vacant occupation** and that it is the **responsibility** of the **purchaser** to evict the tenant.
- 32.9 In the case of **breach of contract / non-performance** by the buyer the payable deposit set out in clause 4.2 becomes **non-refundable**.
- 32.10 **Transferring attorneys** will be appointed by the Sellers.
- 32.11 Occupation can be given to the perspective buyer on the date of acceptance, subject to the condition that the 15 % Deposit, Auctioneers Commission is paid and guarantees within 60 days be delivered. Failure of which the buyer agrees unconditionally to immediately vacate the property. In the event that the buyer has begun preparing or planting the arable lands, such work will be forfeited to the seller and occupation will be taken at the risk of the buyer, no set off in any form will apply in favour of the purchaser.

**DECLARATION BY AUCTIONEER:**

I, the undersigned, \_\_\_\_\_, being the **Auctioneer** who conducted the auction, hereby certify that the Rules of Auction are, to best of my knowledge and belief, according to the requirements of Regulation 21 of the Consumer Protection Act, Act 68 of 2008.

I, the undersigned, \_\_\_\_\_, being the **Purchaser**, \_\_\_\_\_ (full names)

Identity Number \_\_\_\_\_, hereby offer to purchase the **property** from the **Seller** for the **purchase price** recorded in this agreement, being R\_\_\_\_\_ (\_\_\_\_\_ Rand) excluding **VAT**.

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022**.

**As witnesses:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**PURCHASER**  
(Duly authorised)

\_\_\_\_\_  
**Signature of Purchaser's Spouse**  
(If applicable)

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022**.

**As witnesses:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**AUCTIONEER**  
(Duly authorised and who accepts  
all benefits hereby conferred)

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022**.

**As witnesses:**

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**SELLER**  
(who signs personally or warrants  
authority to sign this agreement)

**Annexure "A"****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:

- Marriage certificate
- If IN community of property (no ante-nuptial contract)
  - S.A. identity document (foreigner: passport) of your SPOUSE
- If OUT of community of property (by Antenuptial Contract ("ANC"))
  - 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
  - S.A. identity document (foreigner: passport) of your SPOUSE;
  - Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.

**FICA REQUIREMENTS: Entities (Companies / CCs / Trusts)**

- 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:

1. Companies:
    - CM1
    - CM22
  2. Close Corporations:
    - CK1
    - CK2, if applicable
  3. Trusts:
    - Letters of Authority / Master's Certificate;
    - Trust Deed and all amendments thereto.
    - Resolution to approve the purchase (and loan application, if applicable) taken before the Agreement of Sale was signed. (The only exception is where it is a cash transaction and all the Trustees have signed the Agreement of Sale.)
- Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course.
  - FICA requirements for Other Entities, if applicable, will be supplied to such Purchasers.



## DEED OF SURETYSHIP

I/We, the undersigned, \_\_\_\_\_  
 (Identity number/s: \_\_\_\_\_)  
 of the address/es: \_\_\_\_\_

(hereinafter referred to as the “**Surety/ies**”), by my/our signature/s hereto, hereby bind myself/ourselves in terms of this Deed of Suretyship, to and in favour of the **Seller** (as defined) for payment of the **debts** by the **Purchaser** (as defined) to the **Seller**, arising from the **Rules of Auction and Conditions of Sale** and in this Deed of Suretyship.

### 1. INTERPRETATION AND DEFINITIONS

In this **agreement**, the following words and phrases will, unless the contrary intention appears, have the following meanings:

- 1.1 “**agreement**” means the deed of suretyship embodied in this document, as amended from time to time in accordance with its terms;
- 1.2 “**auction**” means the auction to be held on **19 August 2021 at 11:00**, of the **properties**, governed by the **Rules of Auction and Conditions of Sale**;
- 1.3 “**business day**” means a day, other than a Saturday, a Sunday or a public holiday, on which banks are open for business in the Republic of South Africa;
- 1.4 “**business rescue**” means proceedings to facilitate the rehabilitation of a company that is financially distressed as contemplated in Chapter 6 of the **Companies Act**;
- 1.5 “**Companies Act**” means the **Companies Act** No. 71 of 2008, as amended;
- 1.6 “**confirmation date**” means the date upon which the **Seller** shall have confirmed the sale of the immovable properties;
- 1.7 “**debts**” means without limiting its meaning, all obligations, debts, including every claim, indebtedness, liability or other commitment, direct or indirect, of any nature (including but not limited to liability for the repayment of any capital amount and interest thereon and any costs, charges and expenses and liability to pay damages as a result of a breach or repudiation and any other obligations), which the **Seller** has against the **Purchaser** arising from and under the Rules of Auction and Conditions of Sale of immovable property, and/or, documents referred to therein;
- 1.8 “**parties**” means the **Surety**, the **Seller** and the **Purchaser** and “**party**” means any one of them;
- 1.9 “**Rules of Auction and Conditions of Sale**” means the Rules and Conditions governing the sale of the immovable properties at the **auction** at the instance of the **Seller**, which are inextricably bound to this Deed of Suretyship;
- 1.10 “**signature date**” means the date of signature of this **agreement** of Suretyship, contemporaneously with the signature of the Conditions of Sale of immovable **property/ies**.

## 2. **SURETYSHIP**

- 2.1 The **Surety/ies**, by its/their signature hereto, bind/s itself/themselves jointly and severally and *in solidum*, with the **Purchaser**, the one paying the other to be absolved, as surety/ies for and co-principal Purchaser/s for the proper and timeous payment and performance of all the **debts** incurred at the **auction**, and/or, at any time owed to the **Seller** by the **Purchaser**, the **Surety/ies** renouncing the benefits of excussion, division and no value received.
- 2.2 The **Surety/ies** shall be, and remain bound to the **Rules of Auction and Conditions of Sale** and this **agreement**, which shall at all times be fully and immediately enforceable, until the **Surety/ies** are released from their obligations in terms of this **agreement** in accordance with clause 2.10.
- 2.3 Any admission or acknowledgement of indebtedness by the **Purchaser**, or the liquidators, trustees, curators, executors, business rescue practitioners or other legal representatives of the **Purchaser** shall be binding on the **Surety/ies** and shall have the same effect in all respects if made by the **Surety/ies**.
- 2.4 Should the **Purchaser** fail to discharge timeously any debt owed to the **Seller** or be placed in liquidation (whether provisional or final and whether voluntary or compulsory) or placed under **business rescue**, the **Seller** shall be entitled to require immediate performance by the **Surety/ies** in respect of all **debts** owed to the **Seller** by the **Purchaser**, whether the due date for such performance has arrived or not.
- 2.5 If the **Purchaser** is placed under winding-up (whether provisional or final) or placed under **business rescue**, the **Surety/ies**' liability hereunder shall not be affected in any way. Without limiting the generality thereof, this **agreement** shall continue to guarantee payment of the full extent of any indebtedness of whatsoever nature due to the **Seller** in terms of the **Rules of Auction and Conditions of Sale**.
- 2.6 Should the **Surety/ies** resist any claim arising out of this **agreement** on the grounds that:
- 2.6.1 there is no cause (i.e. reason or basis) for the **Seller's** claim (i.e. *non causa debiti*); or
- 2.6.2 errors have been made in calculating the amount claimed (i.e. *errore calculi*); or
- 2.6.3 in the case of monies lent, no money, or less than has been claimed, has been advanced (i.e. *non numeratae pecuniae*); or
- 2.6.4 no value has been received, then
- the onus of proving that ground or those grounds shall be on the **Surety/ies**.
- 2.7 The **Surety/ies** renounce all the benefits of excussion, division and cession of actions, the meaning and effect of which they declare they understand.

- 2.8 The **Surety/ies** undertake not to take any proceedings, or to prove any claim, against the **Purchaser** or any co-surety or co-principal Purchaser (including against their respective estates), whether for any amounts the **Surety/ies** may be called upon to pay under the **Rules of Auction and Conditions of Sale** and/or this **agreement** or otherwise, until all amounts (including interest and costs) due by the **Purchaser** to the **Seller** in terms thereof, have been fully discharged and until the **Surety/ies** have discharged all their obligations to the **Seller** in full under the **Rules of Auction and Conditions of Sale** and/or this **agreement**.
- 2.9 The **Surety/ies** waive any right to be, or, to apply to be joined in any proceedings taken by the **Seller** against the **Purchaser** or any co-surety or co-principal Purchaser.
- 2.10 The **Surety/ies** shall be released from all their obligations arising under and in terms of this **agreement**:
- 2.10.1 on the date that all amounts payable to the **Seller** in terms of the **Rules of Auction and Conditions of Sale** and/or this **agreement** are paid in full; or
- 2.10.2 on the date that the **Seller** notifies the **Surety/ies**, in writing, that the **Surety/ies** have fully and finally discharged all of the **debts** owing by the **Purchaser** to the **Seller** under and in terms of the **Rules of Auction and Condition of Sale** and this **agreement**.
- 2.11 Despite release (whether under the preceding sub-clause or otherwise):
- 2.11.1 the **Surety/ies** shall remain liable for all **debts** existing at the date of release (including any variation or novation of those **debts** which may subsequently be agreed on between the **Seller** and the **Purchaser** and the **Surety/ies** on which may take effect by operation of law or otherwise);
- 2.11.2 if any payment or other performance which has had the effect of reducing or discharging the **Surety/ies'** liability under this **agreement** is wholly or partly set aside, or refunded by agreement, after the **Surety/ies'** release, the **Surety/ies'** liability for the indebtedness reduced or discharged by the payment or other performance shall revive;
- 2.11.3 likewise, if any security held by the **Seller** at the date of the release is wholly or partly set aside, or released by agreement, after that date, the **Surety/ies** shall be liable for any loss (other than consequential, special or indirect losses) suffered by the **Seller** arising from that fact.
- 2.12 The **Surety/ies** shall not be released from liability under the **Rules of Auction and Conditions of Sale** and this **agreement** in any circumstances whatsoever other than those stated in clause 2.10.
- 2.13 Any judgment and/or any arbitration award (whether formal or informal) granted in the **Seller's** favour against the **Purchaser** shall, despite the fact that the **Surety/ies** may not have been joined in the proceedings giving rise to the judgment or arbitration award, preclude the **Seller** from being entitled to institute proceedings against the **Surety/ies** to dispute the merits of the claim in respect of which the judgment or award has been granted.

- 2.14 A certificate signed by any director or manager of the **Seller** whose appointment and authority need not be proved shall, in the absence of manifest error, be *prima facie* proof until the contrary is proved of:
- 2.14.1 the identity and amount of the **debts** then owing by the **Surety/ies** (or any of them) and/or the **Purchaser** under and in terms of the **Rules of Auction and Conditions of Sale** and this **agreement**;
- 2.14.2 the due date for performance of the **debts**; and
- 2.14.3 the fact that the **debts** have not been performed or otherwise discharged.
- 2.15 Any payments made by the **Surety/ies** to the **Seller** shall:
- 2.15.1 be made on written demand by the **Seller** in immediately available funds free and clear of, and without any withholding, deduction or set-off whatsoever; and
- 2.15.2 in respect of each payment, be identified by the **Surety/ies** in such manner as may be required to enable the **Seller** to link such payments to specific claims made under this **agreement**.
- 2.16 The **Seller** may, on written notice to the **Purchaser** and the **Surety/ies**, cede all or any part of its right and/or delegate all or any part of their obligations under **Rules of Auction and Conditions of Sale** and this **agreement** to a third party provided that the respective rights under the **Rules of Auction and Conditions of Sale** and this **agreement** are simultaneously assigned by the **Seller** to the same third party, in which event the third party shall be deemed to have been substituted for the **Seller** thereunder, (or any part thereof). In particular the **Rules of Auction and Condition of Sale** and this **agreement** shall operate as security for all indebtedness from time to time owed by the **Purchaser** to the third party thereunder (or the relevant part thereof, as the case may be). The **Surety/ies** consent to the splitting of claims which may result from any such assignment.
- 2.17 The **Surety/ies** shall not be entitled to cede and/or delegate any of their rights under this **agreement** without the prior written consent of the **Seller**.
- 2.18 For the purposes of this **agreement**, including the giving of notices and serving of legal process, the **parties** choose *domicilium citandi et executandi* ("*domicilium*") at the addresses set out opposite their names on the first page hereof.
- 2.19 Any part may at any time change that **party's** *domicilium* by notice in writing to the other **parties** to another address, provided that the new *domicilium* consists of, or includes a physical address at which process can be served.
- 2.20 Any notice given in connection with this **agreement** shall:
- 2.20.1 be delivered by hand; or
- 2.20.2 be sent per fax (if the *domicilium* includes a fax number) to the *domicilium* chosen by the **party** concerned.

- 2.21 A notice given as set out above shall be deemed to have been duly given:
- 2.21.1 if delivered on the date of delivery; or
- 2.21.2 if sent by fax, on the **business day** that the fax is transmitted (so long as the transmitting machine prints a report reflecting that the transmission has been successful), except that any fax transmitted after 16h30 shall be deemed to have been received on the following **business day**.
- 2.22 This clause shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this clause.
- 2.23 Any notice in terms of or in connection with this **agreement** shall be valid and effective only if in writing and if received or deemed to be received by the addressee in terms of this **agreement**.
- 2.24 Any communication required to be in writing in terms of this **agreement** shall only be valid if either written or printed in a paper-based form. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002 in this regard are expressly excluded from this **agreement**.
- 2.25 No indulgence granted by a **party** to the other **party** shall constitute a waiver of any of that **party's** rights under this **agreement**; accordingly, that **party** shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other **party** which may have arisen in the past or which may arise in the future.
- 2.26 This **agreement** contains all the express provisions agreed on by the **parties** with regard to the subject matter of the agreement and the **parties** waive the right to rely on any alleged express provision not contained in this **agreement**.
- 2.27 A party may not rely on any representation which allegedly induced that **party** to enter into this **agreement**, unless the representation is recorded in this **agreement**.
- 2.28 No contract varying, adding to, deleting from or cancelling this **agreement**, and no waiver of any right under this **agreement**, will be effective unless reduced to writing and signed by or on behalf of the **parties**.
- 2.29 This **agreement** shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 2.30 A **party** shall be entitled to institute action in any division of the High Court of South Africa having jurisdiction, and the other **party** irrevocably consents to the non-exclusive jurisdiction of any such court.
- 2.31 This **agreement** may be executed in any number of counterparts by the **parties** to this **agreement** and once each **party** to this **agreement** has signed a counterpart, each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument. Any such counterpart may be a facsimile transmission copy thereof.

- 2.32 If any of the provisions of this **agreement** becomes invalid, illegal or unenforceable for any reason, the validity, legality and enforceability of the remaining provisions of this **agreement** shall not be impaired or affected in any way by such invalidity, illegality or unenforceability.
- 2.33 All costs and expenses, including legal fees on an attorney and own client scale, incurred by any **party** arising out of breach of any of the provisions of this **agreement** by any other **party**, shall be borne by the **party** in breach.
- 2.34 This **agreement** shall apply to, cover and secure the **Seller**, its successors in title, orders and assigns.
- 2.35 The **Surety/ies** acknowledge that this **agreement** was complete in all essential respects (including in particular, the **Seller's** name, the **Surety/ies'** names and the name of the **Purchaser**) at the **signature date**.

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022**.

**As witnesses:**

- 1. \_\_\_\_\_ **SURETY**
- 2. \_\_\_\_\_

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022**.

**As witnesses:**

- 1. \_\_\_\_\_ **SURETY**
- 2. \_\_\_\_\_

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022.**

**As witnesses:**

1. \_\_\_\_\_ **SELLER**

2. \_\_\_\_\_

**SIGNED** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ **2022.**

**As witnesses:**

1. \_\_\_\_\_ **PURCHASER**

2. \_\_\_\_\_