

Annexure A

**OFFER WHICH WILL, ON ACCEPTANCE THEREOF, BECOME A SALE OF PROPERTY
AGREEMENT**
("Conditions of Sale")

in regard to the immovable property referred to in the Schedule attached to this agreement

between

THE SELLER

and

THE PURCHASER



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SCHEDULE

1. **Purchaser:** Full names/description: _____

_____;
Identity number/ Registration number: _____;
Marital status Purchaser (if individual): single* / married / in*/ out of* community of property (delete whichever is not applicable), who will not be allowed to be changed to any other person or entity after acceptance of this offer;
Represented by (if not a natural person) (complete full names and identity number of representative): _____
_____ who also binds himself as surety for obligations of the Purchaser (a copy of necessary resolution authorising representative must be attached)
Marital status (surety): single* / married / in community of property* / ANC* (delete whichever is not applicable)
Postal Address: _____;
Physical Address: _____;
Telephone No. (Home): _____(Work): _____ (Cellular): _____;
Fax No. _____ E-mail Address: _____;
2. **Property Description:**
Ptn 12 Farm 492 SALOMOSRUS Reg Div: BULTFONTEIN RD FREESTATE
Extent: 87.3663 Ha with crops
3. **Purchase Price** (exclusive of VAT): R _____;
4. **Deposit:** An amount equal to 10% (Ten Percent) of the Purchase Price payable to the Auctioneer immediately on the fall of the hammer in the auction in terms of which the Property is sold. Which amount the Purchaser hereby authorises and instructs the Auctioneer to pay over to the Conveyancers against registration of transfer of the Property into the name of the Purchaser;
5. **Date of Occupation:** Date of the delivery of an unconditional guarantee issued by a South African financial institution;

6. **Seller:** Elrich Ruwayne Smith in his capacity as duly authorised Trustee/Liquidator in the Insolvent Estate of **Petrus Daniël Botha ID: 7809105008087**, acting by virtue of a Letter of appointment no: **B133/2020**, duly issued by the Master of the High Court

Postal Address: PO BOX 12012, BRANDHOF, 9324

Email: rsmith@symok.co.za

Physical Address: Symington De Kok, 169B NELSON MANDELA DRIVE, WESTDENE,
BLOEMFONTEIN

Telephone No. (Work): 0515056692

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement: -

1.1.1 clause headings are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify nor amplify any of the provisions of this Agreement;

1.1.2 the Parties shall, wherever necessary or appropriate, be referred to by their defined designations as in 1.2 below;

1.1.3 a reference to:-

1.1.3.1 any particular gender shall include the other two genders;

1.1.3.2 the singular shall include the plural and *vice versa*;

1.1.3.3 a natural person shall include corporate or unincorporated created entities and *vice versa*;

1.1.4 where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day;

1.1.5 where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in the Republic of South Africa, the Parties shall be deemed to have intending such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday;

1.1.6 where an expression has been defined (whether in 1.2 below or elsewhere in this Agreement) and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of this Agreement;

1.1.7 if figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two;

1.1.8 words and/or expressions defined in any particular clause in the body of this Annexure "1" shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement;

1.1.9 the *contra proferentem* rule shall not apply and accordingly, none of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision;

1.1.10 a reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or re-enacted from time to time thereafter;

- 1.1.11 the expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination;
- 1.1.12 any communication which is required to be "in writing" shall include a communication which is written or produced by any substitute for writing and shall include facsimile or electronic mail;
- 1.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate words and expressions shall bear corresponding meanings:
- 1.2.1 "**this Agreement**" – the sale of property agreement contained in this document read with the Schedule to which this document forms Annexure "1", as well as the Rules of Auction to which this document forms Annexure "A";
- 1.2.2 "**the Auctioneer**" – NRE Auctioneers (Pty) Ltd, Registration number: 2017/040646/07, of 162 Zastron Street, Bloemfontein, Westdene, Bloemfontein
- 1.2.3 "**Conveyancers**" – the Conveyancers namely:
Name of Attorneys Firm: Symington De Kok
Address: 169B NELSON MANDELA DRIVE, WESTDENE, BLOEMFONTEIN
Email: twolmarans@symok.co.za
Contact person: Theuns Wolmarans
Telephone number: 051-5056609
who are hereby instructed to attend to the registration of transfer of the Property into the name of the Purchaser;
- 1.2.4 "**Date of Occupation**" – The date provided for in clause 5 of the Schedule to which this document forms Annexure "1";
- 1.2.5 "**the Deposit**" - the amount provided for in clause 4 of the Schedule to which this document forms Annexure "1" payable by the Purchaser to the Seller in terms of clause 5 of this Annexure "A";
- 1.2.6 "**Fica**" – the Financial Intelligence Centre Act, 2001 (Act 38 of 2001);
- 1.2.7 "**Homeowners' Association**" – the Homeowners' Association that is applicable if the Property is situated in a secured estate or any other estate where there is a Homeowners' Association applicable;

- 1.2.8 "**Property**" – the Property as describe in clause 2 of the Schedule to which this document forms Annexure "1";
- 1.2.9 "**Parties**" – collectively the Purchaser and the Seller, and "Party" shall mean either of them as the context requires;
- 1.2.10 "**Prime Rate**" – the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty-five) day year irrespective of whether or not the year is a leap year, from time to time published by Absa Bank Limited as being its prime overdraft rate, as certified by any manager of that bank whose appointment and designation it will not be necessary to prove;
- 1.2.11 "**Purchase Price**" – the purchase price of the Property in the amount provided for in clause 3 of the Schedule to which this document forms Annexure "1" payable by the Purchaser to the Seller in terms of clause 4 of this Annexure "1";
- 1.2.12 "**the Purchaser**" – the purchaser as more fully described in clause 1 of the Schedule to which this document forms Annexure "1" and on whom the hammer fell during the Auction and in terms of the Rules of Auction to which this agreement forms Annexure "A";
- 1.2.13 "**Levies and Rates**" – the levies payable to the Body Corporate of the Sectional Title Scheme, the assessment Rates payable on the Property and includes any other charges payable by the owner of the Property to the local authority (such as, but not limited to, refuse removal charges or sanitary fees), but not charges for water or electricity;
- 1.2.14 "**Seller**" – the Seller as more fully described in clause 6 of the Schedule to which this document forms Annexure "1";
- 1.2.15 "**Signature Date**" – the date of signature of this Agreement by the last signing of its signatories;
- 1.2.16 "**Transfer Date**" – the date being the date of registration of transfer of the Property into the name of the Purchaser;
- 1.2.17 "**VAT**" means Value Added Tax and VAT Act means the Value-added Tax Act 89 of 1991(as amended);
- 1.2.18 "**Warranties**" – the warranties and representations set out in this Agreement.

2. INTRODUCTION

The Purchaser wishes to acquire from the Seller the Property upon the terms set out herein.

3. ACCEPTANCE OF OFFER

3.1 This agreement constitutes and offer by the Purchaser and shall remain open for acceptance by the Seller or by the Auctioneer on behalf of the Seller, for a period of 7 (Seven) business day confirmation period after the date of auction and the fall of the hammer (“the confirmation period”). The Purchaser and the Auctioneer acknowledge and agree that this provision is inserted and intended for the benefit of the seller. The offer shall remain irrevocable and open for acceptance by the Seller at any time during the confirmation period.

3.2 The Auctioneer shall inform the purchaser of any higher written offer which is received from a third party during the confirmation period. The Purchaser shall for a period of 24 (twenty-four) hours after having received such notice, have the right to increase the purchase price offered by him to equal the subsequent higher offer, but subject otherwise to all other terms and conditions of the Conditions of Sale. Should the Seller elect to sell the Property for a higher amount and the Purchaser agrees to match the higher offer, then the Seller shall be obliged to accept the said increased offer of the Purchaser.

3.3 The purchaser’s offer shall be deemed to have been accepted only when the Seller or the Auctioneer, whichever may be applicable, has signed this agreement on behalf of the Seller in the space provided at the end of this agreement.

3.4 Should the Seller reject the purchaser’s offer, the Auctioneer will repay any deposit and commission paid to it in terms of this rules of auction or conditions of sale.

3.5 In the event of the sale requiring the consent of any statutory authority or any court of law, then the sale flowing from the auction is subject to the granting of such consent.

3.6 Should the Seller or Auctioneer, as the case may be, accepts the Purchaser’s offer then this agreement will constitute the Conditions of Sale as referred to in the Rules of Auction, to which this agreement forms Annexure “A”, whereby the Seller sells to the Purchaser who hereby purchases the Property on the following terms and conditions:

4. PURCHASE PRICE

The Purchase Price is the amount provided for in clause 3 of the Schedule to which this document forms Annexure "1".

5. METHOD OF PAYMENT

The Purchase Price shall be payable by the Purchaser to the Seller as follows:

- 5.1 the Deposit shall be paid to the Auctioneer immediately on the fall of the hammer in the auction to which this condition of sale relates, by way of electronic transfer of immediately available and freely transferable funds to the trust account of the Auctioneer (Account number: 62759242060 with FNB bank branch Code: 230234), free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa. The Purchaser hereby irrevocable authorises and instructs the Auctioneer to pay over to the Conveyancers the Deposit on date of transfer of the Property in the name of the Purchaser;
- 5.2 the balance of the Purchase Price (being the Purchase Price minus the Deposit) on date of registration of transfer of the Property into the name of the Purchaser. As security for due payment of the said amount, the Purchaser shall cause a guarantee or guarantees, on terms and conditions approved of by the Seller to be issued by a registered commercial bank approved of by the Seller in favour of the Seller or his nominees. The Purchaser shall be liable for the costs of the issuing of the guarantee(s) and the said guarantees shall be delivered to the Seller within 21 (twenty-one) days after the date of acceptance of the Purchaser's offer;
- 5.3 the Purchaser may elect to secure the balance of the Purchase Price by electronic transfer of immediately available and freely transferable funds to the trust account of Conveyancer, within 14 (fourteen) days after the date of acceptance of the Purchaser's offer.
- 5.4 Any amount that must be paid to the Conveyancers in terms of this agreement must be paid by way of electronic transfer of immediately available and freely transferable funds to the trust account of the Conveyancers, free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa. Such deposit shall, as soon as the Purchaser shall have signed the required authorities and shall have provided all documents and information required in order to comply with Fica, be placed by the Conveyancers in an interest bearing account in terms of s86 (4) of the Legal Practice Act 28 of 2014 with all interest* to accrue for the benefit of the Purchaser until the Transfer Date whereupon the Conveyancers shall release the capital to the Seller and all accrued interest less their usual commission, to the Purchaser.

*(the Purchaser's attention is drawn to the provisions of Section 86(5)(b) of the Legal Practice Act 28 of 2014 in terms of which 5% (five percent) of the interest accrued must be paid over to and vests in the Attorneys Fidelity Fund).

6. **VALUE ADDED TAX**

- 6.1 The Purchase Price is exclusive of VAT.
- 6.2 In the event of VAT being payable on the Purchase Price as a result of the sale, such VAT shall be paid by the Purchaser to the Conveyancers immediately on demand thereof.

7. **POSSESSION AND OCCUPATION**

- 7.1 The Purchaser shall be placed in possession and occupation of the Property on the Date of the delivery of a unconditional guarantee issued by a South African financial institution from which date the Property will be at the sole risk, profit or loss of the Purchaser. The Seller, however, gives no 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.
- 7.2 If the date of occupation and possession does not coincide with the date of registration of transfer, the party enjoying occupation and possession whilst the property is registered in the name of the other party, shall, in consideration thereof and for the period of such possession and occupation, pay to the other party occupational interest calculated on the Purchase Price at a rate equal to the Prime Rate payable monthly in advance.

Such occupational interest shall be payable monthly in advance to the Conveyancers directly. Occupational interest shall be adjusted for any period of less than one month, the final adjustment to be made on the Transfer Date.

- 7.3 This clause 7 of this Annexure "1" read together with such other clauses of this Annexure "1" as might be applicable and specifically with inclusion of clause 22 of this Annexure "1", shall be regarded as an independent divisible agreement and notwithstanding any contradictory term elsewhere contained in this agreement, the Seller shall, without prejudice to any of its other rights in terms of this Agreement, be entitled without notice to the Purchaser, take steps in order to enforce the terms of this clause 7 of this Annexure "1" and/or the collection of any amounts due in terms of this clause.

8. **LEVIES AND RATES**

- 8.1 It is recorded that section 118 of the Local Government: Municipal Systems Act 32 of 2000 provides that the registrar of deeds may not register the transfer of property except on production to that registrar of deeds of a prescribed certificate issued by the municipality or municipalities in which that property is situated; and which certifies that all amounts that

became due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.

- 8.2 The Purchaser shall be obliged to, on demand by the Conveyancers, pay to the Conveyancers the amounts required by the Municipality to be paid prior to the issuing of the 'prescribed certificate' contemplated in clause 8.1 and the Conveyancers shall, on receipt of the relevant amount, forthwith pay the relevant amounts to the Municipality and arrange for the issuing of the 'prescribed certificate' contemplated in clause 8.1.
- 8.3 The amount paid by the Purchaser in terms of clause 8.2 shall be an amount paid in advance to a date after the Transfer Date and the Conveyancers shall provide reasonable assistance to the Purchaser in, after the Transfer Date, applying for a refund of the amount paid in advance. It is, however, recorded that the Conveyancers can do no more than request repayment and should the Municipality refuse or delay payment of the refund the Purchaser shall be obliged to pay all costs of any action instituted in order to obtain the refund.
- 8.4 The Purchaser will pay all levies payable to the Body Corporate to enable them to issue the necessary certificate that all monies due have been paid. The Conveyancers will apply to the Body Corporate or managing agent, as the case may be, for the aforesaid certificate and the Purchaser will promptly pay the said amount necessary to issue the certificate, to the Conveyancers.

9. **CONVEYANCERS**

The Conveyancers are instructed to cause transfer to be registered as soon as possible after the Purchaser has provided guarantees for payment of the full purchase price and has paid the transfer costs.

10. **COSTS**

- 10.1 It is recorded that the Purchase Price excludes all costs of and incidental to the passing of transfer of the Property to the Purchaser including all conveyancing fees and disbursements.
- 10.2 The Purchaser shall, immediately on written demand by the Conveyancers, provide the Conveyancers with all information and documents required in order to comply with Fica, sign all such documents that may be necessary or required to enable the Conveyancers to pass transfer of the Property and pay the costs of and incidental the registration as contemplated in clause 10.1.

11. **DATE OF TRANSFER**

Transfer will be affected as soon as possible after the Purchaser has complied with all its obligations in terms of this Agreement.

12. **CONDITIONS OF TITLE**

12.1 The Property is sold subject to all conditions, restrictions and servitudes (if any) attaching thereto or mentioned, or referred to in the relevant Title Deed, or prior Deeds. 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 possible surplus.

12.2 The Purchaser acknowledges and warrants that he has not been induced into entering into this Agreement by any express or implied information, statement, advertisement or representation made or given any warranties in respect of the Property or anything relating thereto, by the Auctioneer or any other person, or by or on behalf of the Seller and that is not contained in this Agreement.

12.3 The Purchaser acknowledges that he has fully acquainted himself with the Property that he has purchased alternatively that he elected to purchase the Property without fully acquainting himself therewith.

13. **MANAGEMENT AND CONDUCT RULES (if applicable)**

13.1 It is recorded that the standard Management Rules and Conduct Rules are the rules which are prescribed by the Regulations promulgated by the Sectional Titles Act, 95 of 1986 or the Sectional Titles Schemes Management Act, 8 of 2011 whichever is applicable and may be amended from time to time.

13.2 The purchase will on date of transfer become a member of the Body Corporate of the Sectional Title Scheme and will be bound by the rules as set out in clause 13.1

14. **CONDITIONS AND SERVITUDES**

The Purchaser shall be obliged to accept transfer of the Property subject to the conditions, reservations and servitudes which burden the land on which the Property is situated.

15. JURISDICTION AND COSTS

- 15.1 In the event of any action or application arising out of this agreement, the parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under section 28 of the Magistrate's Court Act of 1944, as amended. Notwithstanding that such proceedings are otherwise beyond the said court's 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 of 1944, as amended;
- 15.2 Notwithstanding anything to the contrary herein contained, the any party shall have the right at that party's sole option and discretion to institute proceedings in any other court which might otherwise have jurisdiction;
- 15.3 In the event of it becoming necessary for a Party (the "Aggrieved Party") to take any action against the other Party (the "Defaulting Party") as contemplated herein the Defaulting Party agrees to pay to the Aggrieved Party all the attendant costs and expenses incurred by the Aggrieved Party, on a scale as between attorney and own client.

16. DOMICILIA AND NOTICES

- 16.1 The Purchaser chooses as its *domicilium citandi et executandi* the addresses mentioned or referred to in clause 1 of the Schedule to which this document forms Annexure "1" and the Seller chooses as its *domicilium citandi et executandi* the address mentioned or referred to in clause 1.2.14 of this Annexure "1", provided that such domicilium of either Party may be changed by written notice from such Party to the other Party with effect from the date of receipt or deemed receipt by the latter of such notice.
- 16.2 Any notice, acceptance, demand or other communication by either party faxed to the other party's fax number as indicated above or sent by electronic mail to the other party's e-mail address as indicated above or delivered by hand to the other party at the latter's physical address shall be deemed to have been received by the latter on the day of either the faxing, electronic transmission or delivery (as the case may be) thereof. This provision shall not be construed as precluding the utilisation of other means and methods for the transmission or delivery of notices, acceptances, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

17. RIGHT TO EXTEND (if applicable)

It is recorded that a right to extend the scheme has been reserved in terms of subsection 25 (1) of the Sectional Titles Act 95 of 1986 by the erection of further units and exclusive use areas on the basis as provided for in the documents referred to in subsection 25 (2) of the Act which are filed in the relevant deeds registry.

18. AUCTIONEER'S COMMISSION

18.1 The Purchaser shall be liable for and pay, in addition to the purchase price and transfer costs, Auctioneer's commission of 5% (Five percent) of the Purchase Price, plus VAT, which commission shall be deemed to have been earned immediately upon the signing of acceptance of the Purchaser's offer in terms hereof by the Seller or Auctioneer authorised by the Seller.

18.2 The Auctioneer pay the full amount of the Auctioneer's commission into the trust account of the Auctioneer immediately on the fall of the hammer in the auction to which this agreement pertains. The commission amount shall be retained in the trust account of the Auctioneer for the benefit of the Purchaser pending the acceptance by the Seller or the Auctioneer if authorised by the Seller of the Purchaser's offer or until the Seller either rejects the offer or until expiry of the confirmation period.

19. ELECTRICAL COMPLIANCE

19.1 It is recorded that in terms of the Regulation 7(1) of the regulations ("the Regulations") promulgated under the Occupational Health and Safety Act No 85 of 1993 and published in Government Gazette No.31975 dated 9 March 2009 that came into effect on 1 May 2009 every user of an electrical installation that have been changed since 23 October 1992 is obliged to have a valid Certificate of Compliance in the prescribed format (Annexure 1 to the Regulations).

19.2 In terms of Regulation 7(5) the Seller may not allow change in ownership if the Certificate of Compliance is older than two years.

19.3 The parties acknowledge that the said Certificate of Compliance is not issued for the electrical installation on the property.

19.4 The responsibility to obtain and be in possession of a Certificate of Compliance is passed herewith to the Purchaser, who will obtain a valid Certificate of Compliance and, if applicable, a test report in respect of the electrical installation on the property, in terms of the Electrical

Installation Regulations of 2009 under the Machinery and Occupational Health and Safety Act, no 85 of 1993 (as amended).

19.5 All costs incurred in obtaining such a certificate and test report, including costs of any repairs or replacements required in order for the certificate to be issued, shall be borne by the Purchaser.

19.6 The parties place on record that there is no duty on the Conveyancing Attorneys to obtain the compliance certificate and that the Purchaser will arrange for the necessary certificate as envisaged in this clause.

20. **INTEREST ON DELAYS**

Should the Purchaser, by any act or omission, delay the registration of transfer into his name the Purchaser shall, for the period of such delay, become liable for the payment of mora interest to the Seller at a rate equal to the Prime Rate.

21. **CONSUMER PROTECTION ACT 68 OF 2008**

21.1 The Seller warrants that he is not a 'supplier' as defined in section 1 of Consumer Protection Act no. 68/2008 ("**the CPA**") and that this Agreement is not governed by the CPA.

21.2 The Parties acknowledge that the Agent has introduced the Parties to each other and has provided them with a 'service' as defined in section 1 of the CPA in giving advice primarily intended to facilitate the conclusion of this Agreement and the subsequent transfer of the Property into the name of the Purchaser. The Agent is thus a 'supplier' as defined in section 1 of the CPA in relation to the provision of the said service and acknowledges that it is, in terms of the CPA, obliged to provide honest and just advice regarding the terms and conditions on which the Property is sold. The Agent is, however, not the supplier of the Property and is not responsible for the condition of the Property.

21.3 The Purchaser acknowledges that:

21.3.1 neither the Seller nor the Agent has made any representations regarding the condition of the Property except for those contained in this Agreement;

21.3.2 he has been granted a fair opportunity to inspect the Property, which he has done to his satisfaction and he accordingly purchases the Property voetstoots as it stands; the

21.3.3 he understands the impact of this Agreement and, more in particular, this clause 21.

22. **BREACH**

- 22.1 Should any party (the "defaulting party") commit a breach of any of the provisions of this agreement, then the party which is not in breach (the "aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with that notice within 7 (seven) days of receipt thereof, subject to any other provisions of this agreement to the contrary, the aggrieved party shall be entitled to cancel this agreement or to claim specific performance, in either event without prejudice to the aggrieved party's right to claim damages. A foregoing is without prejudice to such other rights as the aggrieved party may have in terms of this agreement, common law or statute;
- 22.2 In the event of the Seller cancelling this agreement in terms of the provisions of clause 22.1, any amount or amounts paid to the Seller or the Conveyancers (including any amount paid in trust) shall be forfeited to and retained by the Seller as rouwkoop; alternatively, if the Seller so elects, he may recover any damages howsoever incurred as a result of such cancellation (including any losses and expenses on a resale, whether by public auction or private treaty), in which case the amount or amounts paid to the Seller or the Conveyancers as aforesaid (including any amount paid in trust) will not be forfeited as rouwkoop but may be retained by the Seller by way of set off or partial set off against the damages claimed by the Seller;
- 22.3 Notwithstanding the a foregoing, should the Seller exercise any of his rights in terms hereof and should the Purchaser dispute the Seller's right to do so, then pending the determination of that dispute, the Purchaser shall continue to pay all amounts payable in terms of this agreement on the due date thereof and to comply with all the terms hereof, and the Seller shall be entitled to recover and accept such payments and/or other performance without prejudice to the Seller's claim to have exercised rights in terms hereof, and in the event of the Seller succeeding in such dispute, the Seller shall be entitled to retain such amounts received in the interim as payment for the occupational rights exercised and/or enjoyed by the Purchaser in the interim.

23. **SARS**

- 23.1 In this clause 23 of this Annexure "A" a reference to:
- 23.1.1 "taxpayer" shall include the purchaser and any trustee, member, shareholder, partner, office-bearer or representative of the purchaser;
- 23.1.2 "tax liability" shall mean any liability of the taxpayer in terms of any tax law including, but not limited to, the lodging of tax returns and the payment of taxes owing to the fiscus;

- 23.1.3 "SARS" shall mean a reference to the South African Revenue Services;
- 23.1.4 "transfer duty receipt" shall include a reference to a transfer duty exemption certificate issued by SARS for the purpose of registration of transfer of the property into the name of the purchaser.
- 23.2 Should SARS refuse or delay the issuing of a transfer duty receipt as a result of the alleged non-compliance by a taxpayer of any tax liability, regardless of whether the action of SARS is legally justifiable or not, the purchaser shall, over and above any occupational rent or interest for which he may be liable in terms of this agreement, also, for the period of the refusal or delay by SARS, become liable for the payment of interest to the seller which interest shall be calculated on the full purchase price at a rate equal to the Prime Rate.
- 23.3 The contents of this clause 23 of this Annexure "A" will not in any way affect or curtail the rights of the seller which he would otherwise have in terms of this agreement.

24. **ALIEN AND INVASIVE SPECIES**

In terms of the National Environmental Management: Biodiversity Act 2004 (Act no. 10 of 2004) and the Alien and Invasive Species Regulations, 2014 ("the Alien Plants Legislation"), the Seller declares that to the best of his knowledge there are no Invasive Alien Species as per the National register of alien and listed invasive species, present on the Property but the Purchaser acknowledges that he has acquainted himself with the extent and nature of the property and accepts the property as such, including the vegetation on the property and, in as far as there may be Invasive Alien Species, the Purchaser acknowledges that he understands that he must apply for a permit with regards all Category 2 Alien Invasive Species in his own name in terms of the Alien Plants Legislation once the property has been transferred to his name.

25. **GAS INSTALLATION (if applicable)**

The Purchaser will at his own costs be liable for the issue of a Certificate of Compliance by an accredited person in terms of the relevant gas installation laws and any works required to meet compliance.

26. **HOMEOWNERS ASSOCIATION**

- 26.1 The Purchaser acknowledges that he shall be obliged to become a member of the Home Owners' Association (**if any**) and shall be bound by the Memorandum of Incorporation of the Home Owners' Association (which may, subject to the ring fencing provisions therein contained, from time to time be amended by a special resolution of the members thereof) and the rules from time to time laid down by the Home Owners' Association.
- 26.2 The Purchaser undertakes that he and all persons deriving use of the Property or any part thereof through him will, from the Date of Occupation, duly comply with all the obligations imposed upon members under the Home Owners' Association's Memorandum of Incorporation including, but not limited to the obligation to pay a monthly levy to the Home Owners' Association, the amount of which is to be determined, from time to time, by the directors of the Home Owners' Association.
- 26.3 The Property shall be transferred to the Purchaser subject to a title condition to the effect that the Purchaser shall not be entitled to sell or otherwise transfer ownership of the Property unless it is a suspensive condition of such sale or other transfer that the transferee, in a manner acceptable to the Home Owners' Association, agrees to become a member and is admitted as a member of the Home Owners' Association.

27. **PURCHASER'S RIGHT TO TERMINATE THE AGREEMENT**

- 27.1 The parties record that the Purchaser has the right, in terms of the provisions of Section 29A(1) of the Alienation of Land Act (Act 68/81) ("**the Alienation of Land Act**"), to terminate this contract by written notice to that effect delivered to the Seller, provided:
- 27.2 the said notice is given within 5 (five) days after signature of this Agreement by the Purchaser, which 5 (five) day period shall be calculated in the way provided for in Section 29A(2) of the Alienation of Land Act.
- 27.3 the said notice shall comply with the requirements set out in Section 29A(3) of the Alienation of Land Act;
- 27.4 that the purchase price is R250 000.00 (two hundred and fifty thousand Rand) or less and the Purchaser is a natural person.

28. **SURETYSHIP**

Any person who signs this agreement on behalf of the Purchaser do hereby bind himself as surety and co-principal debtor in solidum for and on behalf of the Purchaser to and in favour of the Seller and the Auctioneer for all the obligations of the Purchaser under this agreement and in particular for all amounts of money that may be due, including damages, from whatsoever cause arising under the renunciation of the benefits of division and exclusion. The said person declare that he fully understands this suretyship and waiver of benefits.

29. **ELECTRIC FENCE CERTIFICATE (if applicable)**

If the property has an electric fence system,

29.1 then the Purchaser will be liable at his cost to issue a Certificate of Compliance for the electric fence system on the property as referred to in regulation 12(4) of the Electrical Machinery Regulations, 2011 to the Occupational Health and Safety Act of 1993, to the effect that the installation complies with the provisions of Regulation 13(1) and that the installation is safe. The SELLER further warrants that he has not modified or altered the installation and is not aware of any modification or alteration having been effected since the issue of the Certificate;

Or

29.2 then the SELLER warrants that the electric fence system was installed before the 1st October 2012 and that he has not modified or altered the installation and is not aware of any modification or alteration having been effected since the installation thereof. The PURCHASER will be obliged, after the date of registration of the property in his name to obtain the Certificate of Compliance referred to in clause 29.1.

30. **AGENT OR NOMINEE**

30.1 Where the Purchaser is acting as an agent or nominee for a Principal, the Purchaser will be entitled, by notice in writing to that effect addressed to the Seller, to nominate his Principal in his place as Purchaser, upon the following terms and conditions:

30.1.1 notice of such nomination shall be handed to the Seller 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;

30.1.2 the notice shall set out the name and address of the nominee so nominated as Purchaser;

30.1.3 the notice shall be accompanied by the Principal's written acknowledgement:

30.1.3.1 that it is fully aware of all the terms and conditions of this Agreement as if fully set out in such written acknowledgement; and

30.1.3.2 that he is bound by the provisions of this Agreement as the Purchaser;

30.2 should the Purchaser nominate a Principal in terms of this clause, then:

30.2.1 all reference to the Purchaser in this Agreement shall be deemed to be a reference to its Principal; and

30.2.2 the Purchaser by his signature hereto, hereby interposes and binds himself jointly and severally as surety and co-principal debtor in solidum to the Seller and the Auctioneer for all the obligations of the Principal in terms of this Agreement, including damages and losses and consequential damages as may arise.

30.3 Should the Purchaser fail to nominate a Principal by close of business on the date of acceptance by the Seller, then he shall be bound to perform all his obligations as Purchaser in terms of this Agreement.

31. **INSOLVENCY ACT**

31.1 If this sale is before the second meeting of creditors then the Trustee in the insolvent estate warrants that he shall recommend the sale to the Master of the High Court in order for the Conveyancers to obtain the necessary consent by the Master in terms of section 80 *bis* of the Insolvency Act, Act 24 of 1936. This agreement will lapse and be of no effect if the Master of the relevant High Court do not consent to the sale within 30 days after the acceptance of the offer.

31.2 If this sale is after the second meeting of creditors, then the Trustee in the insolvent estate warrants that this sale is in accordance with the directions of the creditors.

32. **OPERATION**

The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.

33. **INDEPENDENT ADVICE**

Each of the Parties to this Agreement hereby acknowledges and agrees that –

- 33.1 it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 33.2 all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.

34. **WHOLE AGREEMENT**

This Agreement cancels and supersedes all previous agreements between the Seller and any one or more of the other parties and constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

35. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

36. **RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

37. **SEVERABILITY**

Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as if it had never been written (*pro non scripto*) and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

38. **EXECUTION**

This Agreement:

38.1 may be executed in separate counterparts, none of which need contain the signatures of all of the Parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement;

38.2 shall be valid and binding upon the Parties thereto, notwithstanding that one or more of the Parties may sign a facsimile copy thereof and whether or not such facsimile copy contains the signature of any other Party.

THUS, DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES SET OUT HEREUNDER:

Purchaser

Date:
Place:

Seller

Date:
Place:

Auctioneer

Date:
Place:

