

**RULES OF AUCTION**

And

**CONDITIONS OF SALE**

**PLACE OF AUCTION:** Virtual, Electronic or Online Auction / <https://auctions.swindon.co.za>  
**DATE OF AUCTION:** To be announced for each Online Auction  
**TIME OF AUCTION:** To be announced for each Online Auction

**SWINDON PROPERTY SERVICES (PTY) LTD: 2014/110213/07****80 Strand Street, Cape Town, 8001****(021) 422 0778****("the "Auctioneer")****Duly represented by: Ryan Swart**



Duly instructed by

---



**(the "Seller")**

**A. Dewey | M. te Vaarwerk | M. van Schoor for Swindon Property Services (Pty) Ltd: 2014/110213/07**  
**A. Dewey | H. Hardy for Swindon Property Gauteng (Pty) Ltd: 2015/42309/07**



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INITIAL



An International  
Associate of Savills



**PROPERTY DETAILS (the “PROPERTY”)**

**STREET ADDRESS / KNOWN AS:** \_\_\_\_\_

**TITLE DEED DESCRIPTION :** \_\_\_\_\_

**TITLE DEED NO.:** \_\_\_\_\_

**EXTENT:** \_\_\_\_\_

**SALE OF A LETTING ENTERPRISE:**

<b>1.</b>	<b>YES</b>		<b>2.</b>	<b>NO</b>	
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The above immovable Property is hereby offered for sale by Public auction together with all existing lease agreements pertaining thereto as well as all improvements thereon, on the following terms and conditions:

*[remainder of Agreement follows]*



## SCHEDULE

### 1. PURCHASE PRICE

<p>Purchase Price:</p> <p><i>(where box 2 in 7 of the Schedule is ticked, Transfer Duty as opposed to VAT shall be payable by the Purchaser in terms of this Agreement)</i></p>	<p>The purchase price is the amount of R _____ (VAT inclusive/exclusive) <i>[delete which is not applicable or delete both in the event that the Seller is not a VAT vendor as indicated in box 2 of 7 of the Schedule]</i> <b>("Purchase Price")</b> ( _____ ) Being the sum of –</p> <p>a. The deposit amount comprising of _____% of the Purchase Price (<b>"Cash Deposit"</b>) R _____ ( _____ ).</p> <p>The Cash Deposit shall be paid within _____ days from the Signature Date;</p> <p>The balance of the Purchase Price, being the Purchase Price less any Cash Deposit, shall be secured in accordance with clause 6.2.2 within 30 (Thirty) days of Signature Date</p>
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### 2. TRANSFER

Date of Transfer:	Transfer of the Property shall take place as soon as possible or as close as possible to _____ day of _____ 20_____, subject to the Terms and Conditions of Sale.
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### 3. OCCUPATIONAL INTEREST

Occupational Interest per month (if applicable):	R _____ plus VAT (if applicable) ( _____ ).
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#### 4. CONVEYANCERS

Conveyancer as appointed by the Seller shall be	
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#### 5. EXPIRY (“Confirmation Period”)

Expiry:	a. The first signature to this Agreement shall constitute an irrevocable offer, which cannot be withdrawn, and shall remain available for acceptance until _____ on _____ 20_____. b. Should the Seller not accept the offer within the time period stipulated in a above, the offer shall lapse and be of no further force and effect.
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#### 6. ARBITRATION

Any arbitration to be held in terms of clause 25 of this Agreement, shall be held at:

City:	
Province:	

#### 7. VAT REGISTRATION STATUS OF SELLER

At the Signature Date of this Agreement, the Seller is a registered VAT vendor in terms of the Value-Added Tax Act No. 89 of 1991 (tick - (✓) appropriate box):

1.	YES		2.	NO	
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## TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION AND PRELIMINARY

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 modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:
- 1.1.1 **"Auction"** means any auction sale at which the Property is offered for sale by the Auctioneer;
  - 1.1.2 **"Auctioneer"** means the party referred to as such on the covering page of this Agreement;
  - 1.1.3 **"Agreement"** means the terms and conditions contained in this document headed '*Terms and Conditions of Sale*', together with the documents headed '*Rules of Auction*', '*Conditions of Sale*' and '*Schedule*' to which this document is attached, and includes the annexures (all as may be amended from time to time);
  - 1.1.4 **"Business Day(s)"** means any day(s) other than a Sunday, Saturday or public holiday as recognized in the Republic of South Africa;
  - 1.1.5 **"Cash Deposit"** means the amount referred to as such in 1(a) of the Schedule;
  - 1.1.6 **"Conditions of Sale"** means the Auctioneer's standard Conditions of Sale, a copy of which is available on the Auctioneer's website at [www.swindon.co.za](http://www.swindon.co.za), and as amended or substituted from time to time;
  - 1.1.7 **"Contracts"** means, to the extent that this Agreement constitutes a sale of Letting Enterprise, all of the agreements entered into by the Seller in carrying on the business of the Letting Enterprise on the Property, other than the Leases, including (without limitation) agreements in relation to security, cleaning, and the like, as at the Transfer Date;
  - 1.1.8 **"Conveyancers"** means the attorneys referred to as such in 4 of the Schedule;
  - 1.1.9 **"Fixed Assets"** means, to the extent that this Agreement constitutes the sale of a Letting Enterprise, all of the fixed assets owned by the Seller which form part of the Letting Enterprise as at the Transfer Date (nothing excluded), save for the items set forth in **Annexure "A"**;
  - 1.1.10 **"Fixtures and Fittings"** means all fixtures and fittings, save for those that have been expressly excluded as set out in Annexure "A", of a permanent nature and includes, without limiting the generality of the foregoing, all fitted carpets, light fittings, curtain rods and rails, pelmets, fitted and/or integrated appliances, television aerials, fitted wall units and shelving, bar counter and stools, sprinkler and irrigation systems, security and alarm systems, electrified fencing, electronic gates and doors and all remote control units pertaining thereto, all of which the Seller warrants are fully paid for and owned by the Seller;



- 1.1.11 "**Leases**" means, to the extent that this agreement constitutes a sale of Letting Enterprise, all of the lease agreements in respect of the premises situated on the Property, forming part of the Letting Enterprise as at the Transfer Date;
- 1.1.12 "**Letting Enterprise**" means, to the extent that the property being sold is by nature that of a letting enterprise as stipulated under Property Details in Page 2 of this Agreement, as carried on by the Seller and sold as a going concern in respect of the Property and includes:
- 1.1.12.1 the Property and all improvements effected thereto prior to the Transfer Date;
  - 1.1.12.2 all right, title and interest of the Seller in and to the Leases;
  - 1.1.12.3 the goodwill appertaining to the Letting Enterprise; and
  - 1.1.12.4 the Fixed Assets,
- and excluding any liabilities arising from or in connection with the Letting Enterprise which arose prior to the Transfer Date;
- 1.1.13 "**Parties**" means the Seller and Purchaser to this Agreement collectively and "**Party**" means any one of them where the context so indicates;
- 1.1.14 "**Prime Rate**" means interest at a variable rate equal to the publicly quoted prime rate (nominal annual compounded monthly in arrears) from time to time of the Standard Bank of South Africa Limited or its successor/s ("**Standard Bank**") and in the event of a dispute, the certificate of any manager or sub-manager of any branch of Standard Bank, whose appointment and authority need not be proved, as to such rate shall be final and binding on the Parties;
- 1.1.15 "**Property**" means the property as described under Property Details in Page 2 of this Agreement;
- 1.1.16 "**Purchase Price**" means the amount referred to as such in 1 of the Schedule;
- 1.1.17 "**Purchaser**" means the party described as such on Page 32 or Page 33 of this Agreement; (as the case may be)
- 1.1.18 "**Schedule**" means the document headed '*Schedule*' to which this document is attached;
- 1.1.19 "**Seller**" means the Party described as such on the covering page of this Agreement;
- 1.1.20 "**Signature Date**" means the date of signature by the Party last signing this Agreement, provided that all Parties have signed this Agreement;
- 1.1.21 "**Transfer**" means registration of transfer in the relevant Deeds Registry of the Property from the Seller into the name of the Purchaser;



- 1.1.22 "**Transfer Date**" means, subject to the fulfilment or waiver (as the case may be) of all of the applicable Suspensive Conditions, the date which shall be no later than the date referred to in 2 of the Schedule;
- 1.1.23 "**Transfer Duty**" means transfer duty as contemplated in the Transfer Duty Act;
- 1.1.24 "**Transfer Duty Act**" means the Transfer Duty Act No. 40 of 1949, as amended from time to time;
- 1.1.25 "**VAT**" means value-added tax as contemplated in the VAT Act; and
- 1.1.26 "**VAT Act**" means the Value-Added Tax Act No. 89 of 1991, as amended from time to time.
- 1.1.27 "**CPA**" means the Consumer Protection Act, No. 68 of 2008, as amended or substituted from time to time;
- 1.2 Any reference in this Agreement to:
- 1.2.1 "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- 1.2.2 "**days**" shall be construed as calendar days;
- 1.2.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" shall have a corresponding meaning;
- 1.2.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 1.2.5 "**public holiday**" means a public holiday contemplated in the Public Holidays Act, No 36 of 1994.
- 1.3 Words importing the singular include the plural and *vice versa*, and natural persons include created entities (corporate or unincorporated) and the state and *vice versa*.
- 1.4 The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.





- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.7 The head notes to the clauses to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.10 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding Business Day.
- 1.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.12 The expiration or termination of this Agreement shall not affect such provisions of this Agreement which, out of necessity, must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 2. INTRODUCTION

- 2.1 The Seller is the registered owner of the Property.
- 2.2 To the extent that this Agreement constitutes the sale of a Letting Enterprise, the Seller operates the Letting Enterprise from the Property as a going concern. The premises on the Property is leased to tenants in terms of the Leases.
- 2.3 The Purchaser has offered to purchase the Property/Letting Enterprise (as the case may be) and the Seller has agreed to sell to the Purchaser the Property/Letting Enterprise (as the case may be) with effect from the Transfer Date.
- 2.4 This Agreement will be deemed to constitute the sale of a Letting Enterprise where the relevant confirmation of such is made under Property Details as contained in Page 2 of this Agreement;
- 2.5 Accordingly, the Parties have agreed to enter into this Agreement to give effect to the foregoing and matters incidental thereto.

## 3. AUCTION PROCEDURE

- 3.1 The **AUCTIONEER** at all times acts as Auctioneer for an on behalf of the **SELLER** of the **PROPERTY**.



- 3.2 The auction shall be on the rise and the **PROPERTY** shall be sold to the highest bidder, subject to these Rules of Auction.
- 3.3 These Rules of Auction comply with Section 45 of the Consumer Protection Act 68 of 2008 and the Regulations thereto ("the CPA") including where applicable, the conducting of an auction by means of an electronic medium or platform.
- 3.4 The **PROPERTY** is sold subject to a reserve price.
- 3.5 The **AUCTIONEER** is authorized to bid on behalf of the **SELLER** up to the reserve price.
- 3.6 Any person who intends to bid at the auction must register prior to the commencement of the auction as contemplated in Regulation 26(2) and 30(2) of the CPA, by providing his / her full names, contact information, identification number or passport number if no identification number is available, physical address.
- 3.7 Any person who intends to bid on another person's behalf will be required to confirm that they have the relevant authority and provide details of the person or entity on whose behalf they intend bidding. Furthermore, the bidder shall verify his / her details in accordance with the requirements of the Financial Intelligence Centre Act.
- 3.8 A prospective bidder must not bid unless he / she has read and accepted the Rules of Auction. Each bid shall be taken as proof that the bidder has made himself / herself acquainted with the aforementioned Rules of Auction and each bid received shall constitute a binding offer to Purchase the **PROPERTY** by the bidder for the amount bid, which the **SELLER** or the **AUCTIONEER** may accept or reject in their absolute discretion.
- 3.9 The bidders record and vendors roll are available for inspection free from charge at the Head Office of the **AUCTIONEER** during normal business hours.
- 3.10 In the event that the auction is for any purpose other than that of a voluntary disposal of goods, the **AUCTIONEER** shall stipulate the reason for the auction.
- 3.11 The **AUCTIONEER** has the right to regulate the bidding at its sole discretion.
- 3.12 The **SELLER** and the **AUCTIONEER** are entitled in their absolute discretion to withdraw the **PROPERTY** from the sale.
- 3.13 If no bid equals or exceeds the reserve price, then the **PROPERTY** may be withdrawn from the sale. The **SELLER** shall however be entitled to instruct the **AUCTIONEER** to accept any lower bid deemed satisfactory.
- 3.14 In the event of a dispute amongst bidders, the decision of the **AUCTIONEER** shall be final and binding.
- 3.15 Any error made by the **AUCTIONEER** shall be entitled to be corrected by him.
- 3.16 No bid may be withdrawn after the bidding or lot has closed and shall furthermore remain open for acceptance by the **SELLER** or **AUCTIONEER** until expiry of the confirmation period provided for in the Rules of Auction. If such offer is accepted by the **SELLER** or **AUCTIONEER**, the sale shall be deemed to be a sale by auction for the purposes of the CPA.



- 3.17 The bidder acknowledges that in the event of him / her being the highest bidder, that he will be obliged to sign the **AUCTIONEER**'s Agreement of Sale / Conditions of Sale within 24 hours of the auction closing, which agreement the bidder acknowledges to have acquainted himself / herself with prior to placing any bid on the auction.
- 3.18 The **AUCTIONEER** may require execution of documents to be performed by means of electronic signature and / or contemporaneous remote view together with the exchange of documents to be performed by electronic means such as scanning or emailing.
- 3.19 The Auctioneer is authorized to sign the Conditions of Sale on behalf of the bidder.
- 3.20 The bidder acknowledges that it was afforded a reasonable period of time and opportunity to inspect the **PROPERTY** prior to the commencement of the auction as contemplated in terms of Regulation 28(5)b of the CPA, which inspection the **AUCTIONEER** was obliged to provide to the bidder either virtually, electronically or by means of physical inspection, pursuant to the applicable laws at such time.
- 3.21 The bidder further agrees that he / she has viewed the **PROPERTY** and that he / she has ascertained the state of the **PROPERTY**, pursuant to having been provided with a complete tour (whether virtually / electronically and / or by way of physical inspection), and is satisfied that he / she has exercised his / her right to inspect the **PROPERTY** prior to the commencement of the auction.

#### 4. ACCEPTANCE AND CONFIRMATION PERIOD

- 4.1 The **PURCHASER**'s offer shall remain open for acceptance by the **SELLER** or the **AUCTIONEER** on behalf of the **SELLER** until 17:00 pm on the \_\_\_\_\_ day of \_\_\_\_\_ 2020 ("confirmation period"). The **PURCHASER** acknowledges that this provision is intended for the benefit of the **SELLER**.
- 4.2 The **PURCHASER**'s offer as presented to the **SELLER** shall only be deemed to have been accepted when the **SELLER** or the **AUCTIONEER**, whichever the case may be, has signed the Rules of Auction in the allotted space as provided in this agreement. The **SELLER** shall not be required to notify the **PURCHASER** of the acceptance of the offer prior to the expiry of the confirmation period.
- 4.3 Should the **PURCHASER**'s offer be rejected by the **SELLER**, the **AUCTIONEER** will refund to the **PURCHASER** any deposit and commission paid in terms of this agreement.
- 4.4 In the event of the sale requiring the consent of any statutory body or any court of law, then this sale shall be subject to the granting of such consent.

#### 5. THE SALE

- 5.1 To the extent that this Agreement constitutes the sale of a Letting Enterprise:-



- 5.1.1 the Seller sells the Property or the Letting Enterprise to the Purchaser, which hereby purchases the Letting Enterprise as a going concern, on the terms and subject to the conditions stipulated herein; and
- 5.1.2 the sale of the Letting Enterprise shall take effect on the Transfer Date of the Property, from which date all risk in and benefit to the Letting Enterprise shall pass to the Purchaser.
- 5.2 To the extent that this Agreement does not constitute a sale of a Letting Enterprise, but only a sale of Property:-
  - 5.2.1 the Seller sells the Property to the Purchaser, which hereby purchases the Property, on the terms and subject to the conditions stipulated herein; and
  - 5.2.2 the sale of the Property shall take effect on the Transfer Date of the Property, from which date all risk in and benefit to the Property shall pass to the Purchaser.

## 6. PURCHASE PRICE AND PAYMENT

- 6.1 The Purchase Price shall be allocated in total to the Letting Enterprise/Property (as the case may be).
- 6.2 The Purchase Price of the **PROPERTY**, plus Value-Added Tax ("VAT") if applicable, shall be paid by the Purchaser as follows:
  - 6.2.1 a Cash Deposit of 5% (Five Percent) will be paid by the Purchaser to the **AUCTIONEER** immediately upon request by the **AUCTIONEER**, upon acceptance of the **PURCHASER's** offer by the **SELLER**. Such deposit the **PURCHASER** hereby authorizes and instructs the **AUCTIONEER** to pay over to the **SELLER's** Conveyancers to be held in trust by the Conveyancers pending Transfer of the Property into the name of the Purchaser. The Conveyancers are hereby instructed by the Purchaser to invest the Cash Deposit with a bank of the conveyancers choice on the basis that:
    - 6.2.1.1 the Cash Deposit is invested in an interest-bearing account;
    - 6.2.1.2 the interest-bearing account contains a reference to section 84 of the Legal Practice Act, no. 740 of 2014 ("**Legal Practice Act**");
    - 6.2.1.3 the interest which accrues on such investment is to be for the benefit of the Purchaser and, save as otherwise provided for in this Agreement, will be paid, after deducting the Conveyancers' professional fee for administering the investment and any portion of the interest which must be paid to the Legal Practitioners Fidelity Fund in terms of the Legal Practice Act, to the Purchaser on Transfer of the Property into the name of the Purchaser; and
    - 6.2.1.4 the Purchaser will be required to comply with the Financial Intelligence Centre Act, No 38 of 2001 ("**FICA**") and consequently:



- 6.2.1.4.1 acknowledges that the Cash Deposit cannot be invested and accordingly, interest cannot accrue thereon, until such time as those requirements have been met; and
  - 6.2.1.4.2 renounces any claim for interest where the claim arises from the Conveyancers being unable to invest the Cash Deposit as a result of the Purchaser not having properly complied with FICA; and
- 6.2.2 within 30 (Thirty) days from receipt of written request by the **SELLER's** Attorneys, and taking into account the Cash Deposit already paid, the Purchaser shall deliver to the Conveyancers the following irrevocable bank guarantees issued by a registered South African commercial bank, viz:
- 6.2.2.1 a guarantee in favour of the bondholder of the Property, to the extent that there is an existing bond, for payment of the amount/s payable by the Seller to such bondholder/s upon cancellation of its bond against the Property, payable upon the written confirmation of the Conveyancers of the registration of transfer of the Property into the name of the Purchaser, the cancellation of the existing bond, to the extent that there is an existing bond over the Property and the registration of a new bond over the Property in favour of the Purchaser's bondholder, to the extent that the Purchaser requires a bond registered over the Property; and
  - 6.2.2.2 a guarantee in favour of the Seller, or its respective nominee/s, for payment of the balance of the Purchase Price of the Property, payable upon the written confirmation of the Conveyancers of the registration of transfer of the Property into the name of the Purchaser, the cancellation of the existing bond over the Property, to the extent that there is an existing bond over the Property, and the registration of a new bond over the Property in favour of the Purchaser's bondholder,

which guarantees shall be subject only to, or conditional only upon, registration of transfer of the Property into the name of the Purchaser, the cancellation of the existing bond over the Property, to the extent that there is an existing bond, and the registration of a new bond over the Property in favour of the Purchaser's bondholder, to the extent that the Purchaser requires a bond registered over the Property.

- 6.3 The Purchase Price shall be paid to the Seller on the Transfer Date.
- 6.4 In the event that any payment due and owing by the Purchaser to the Seller is not paid on the due date then, and in such instance, interest shall accrue to any such amount at the Prime Rate, calculated from the due date for such payment to date of actual payment, both dates inclusive.
- 6.5 Any payment made by the **PURCHASER** in respect to this agreement shall first be allocated to the payment of the commission as due to the **AUCTIONEER** subject to the provisions of clause 7 of this agreement, then interest and thereafter to the payment of any other monies that may be due in terms hereof.



- 6.6 All or any payments to be made in terms of this Agreement shall be made by the Purchaser to the Conveyancers, free of exchange and without deduction or set-off of any nature whatsoever.

## 7. AUCTIONEERS COMMISSION

- 7.1 The **PURCHASER** shall be liable for and pay, in addition to the amounts due in terms of clause 6.2.1 and 6.2.2, the **AUCTIONEER's** commission of 5% (Five Percent) of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon signature of acceptance of the **PURCHASER's** offer by the **SELLER**.
- 7.2 The **PURCHASER** shall pay the **AUCTIONEER's** commission into the trust account of the **AUCTIONEER** immediately upon conclusion of the auction, this amount shall remain the property of the **PURCHASER** and shall be retained in trust by the **AUCTIONEER** for the benefit of the **PURCHASER** pending acceptance by the **SELLER** of the **PURCHASER's** offer or until such time as the **SELLER** either rejects the offer or until the expiry of the confirmation period.
- 7.3 In the event of commission, or part thereof, not being paid by the **PURCHASER** to the **AUCTIONEER** for any reason whatsoever, the **SELLER** hereby instructs his attorneys to pay the commission or balance thereof, whichever may be applicable, to the **AUCTIONEER** as a first draw from the proceeds of the sale, against registration of transfer of the **PROPERTY** into the name of the **PURCHASER**.
- 7.4 The **SELLER** shall be liable and pay the **AUCTIONEER's** commission of 2% (Two Percent) of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned on acceptance of this agreement and is payable upon transfer by the Sellers appointed Conveyancer. The conveyancer undertakes to make this payment upon transfer and shall not proceed to transfer unless this payment can be paid.
- 7.5 This clause is expressed to be for the benefit of a third party (being the **AUCTIONEER**), and such provision shall constitute a *stipulatio alteri* (contract for the benefit of the Agent) and shall be capable of express or implied acceptance at any time, either in writing or orally or tacitly by the Agent who may then enforce the relevant provisions of this Agreement as though he/she/it was a signatory hereto.

## 8. TRANSFER

- 8.1 Transfer of the Property to the Purchaser shall be passed by the Conveyancers and shall be given and taken on the Transfer Date and against payment of the Purchase Price.
- 8.2 The Purchaser shall on written request from the Conveyancers pay all costs of Transfer, together with VAT in respect of such costs, with the Conveyancers' costs being such costs levied in accordance with the conveyancing tariff.
- 8.3 In the event that box 2 in 7 of the Schedule has been ticked, and the Seller is not a registered VAT vendor as at the Signature Date of this Agreement, the Purchaser shall similarly on



written request from the Conveyancers pay all such Transfer Duty which may be due in terms of this Agreement.

- 8.4 The Purchaser and Seller shall sign all preliminary transfer documents forthwith on request by the Conveyancers.

## **9. POSSESSION AND OCCUPATION**

- 9.1 Subject to clause 10 below, occupation of the Property, subject to the Leases in the event that this Agreement constitutes a sale of Letting Enterprise, shall be given to the Purchaser on the Transfer Date. The Purchaser shall be liable for all rates, taxes and other imposts leviable in respect of the Property from the Transfer Date, save for where the Purchaser takes early occupation as contemplated in clause 10 below, in which case the Purchaser shall be liable for rates and taxes and utility charges from date of occupation.
- 9.2 Possession of the Property, subject to the Leases in the event that this Agreement constitutes a sale of Letting Enterprise, shall be given to the Purchaser on the Transfer Date, from which date the Property shall be at the sole risk and profit of the Purchaser.

## **10. OCCUPATIONAL INTEREST**

In the event that occupation of the Property is given to the Purchaser prior to the Transfer Date –

- 10.1 the Purchaser will pay to the Seller in consideration of such prior occupation, occupational rental in the amount set out in 3 of the Schedule, payable monthly in advance, from the date of occupation to the Transfer Date, both days inclusive;
- 10.2 the Purchaser will keep all buildings, fences and other improvements on the Property in good order, repair and condition to the satisfaction of the Seller and should the Purchaser fail to do so, the Seller will be entitled to have effected any repairs the Seller deems necessary to maintain the Property in good order, repair and condition, and to recover the cost thereof from the Purchaser on written demand, without prejudice to any other rights the Seller may have;
- 10.3 the Purchaser will not make any alterations or additions to any buildings or improvements on the Property before Transfer without the Seller's prior written consent and will submit to the Seller for prior approval plans of any proposed buildings, alterations or improvements. It is a condition of any approval the Seller may give in respect of such plans that the Purchaser procures, before building operations are commenced, a waiver by the contractor of any lien to which such contractor might otherwise become entitled;
- 10.4 the Seller or the Seller's duly authorised agent is entitled to inspect the Property at all reasonable times; and
- 10.5 the Purchaser will be obliged to vacate the Property upon termination of this Agreement for any reason whatsoever, it being agreed that no tenancy is created by such prior occupation.



## 11. EXTENT AND TITLE DEED CONDITIONS

- 11.1 The Seller renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the Property.
- 11.2 Save as is expressly recorded in this Agreement, the Seller makes no warranties or representation of whatsoever nature to the Purchaser in respect of the Property or the Letting Enterprise (including the Property), as the case may be, and the Letting Enterprise (including the Property) or the Property, as the case may be, is sold *voetstoots* subject to the conditions of title contained or referred to in the Seller's title deed/s.

## 12. ASSIGNMENT OF THE LEASES

To the extent that this Agreement constitutes the sale of a Letting Enterprise, and pursuant to the sale in clause 5 above and to the extent required, the Seller hereby:

- 12.1 cedes its right, title and interest in and to the Leases to the Purchaser with effect from the Transfer Date; and
- 12.2 assigns and delegates to the Purchaser all its obligations and liabilities under the Leases arising on or after the Transfer Date,

and the Purchaser hereby accepts such cession, assignment and delegation, with effect from the Transfer Date.

## 13. ADJUSTMENT ACCOUNT

To the extent that this Agreement constitutes the sale of a Letting Enterprise:-

- 13.1 the Seller shall prepare as soon as possible (but not later than 30 Business Days after the Transfer Date) an adjustment account in respect the Letting Enterprise as at close of business on the Transfer Date providing for the Parties' entitlements and liabilities under this Agreement, which adjustment account shall, *inter alia* reflect (without double counting):

13.1.1 as credits to the Seller:

- 13.1.1.1 all rates, insurance premiums, licenses and other expenses prepaid by the Seller for any period after the Transfer Date, the benefit of which will be enjoyed by the Purchaser by virtue of its ownership of the Letting Enterprise (save for such amounts as shall be reimbursed by the local authority directly to the Seller);
- 13.1.1.2 any rental in respect of the Leases received after the Transfer Date, which relates to a period prior to the Transfer Date;
- 13.1.1.3 an amount equal to the total amount (if any) held on behalf of the Seller in respect of deposits for electricity, water and like charges; and





- 13.1.1.4 any prepayments made by the Seller in respect of the Letting Enterprise which relates to the period after the Transfer Date;
- 13.1.2 as debits to the Seller:
  - 13.1.2.1 an amount equal to all rates, insurance premiums, licenses and other expenses payable by the Seller in respect of any period prior to the Transfer Date, which are outstanding as at the Transfer Date;
  - 13.1.2.2 any rental in respect of the Leases received prior to the Transfer Date, relating to a period after the Transfer Date; and
  - 13.1.2.3 the amount of any rentals and other amounts, including deposits in terms of the Leases, paid by the tenant prior to the Transfer Date in respect of any period after the Transfer Date that are not paid over to the Purchaser pursuant to the provisions of clause 16.1.2 below; and
- 13.2 the amount payable by the Seller to the Purchaser, if a net debit balance arises pursuant to the preparation of the adjustment account, or by the Purchaser to the Seller, if a net credit balance arises pursuant to the preparation of the adjustment account, as the case may be, shall be discharged within 3 Business Days of delivery by the Seller to the Purchaser of the adjustment account as aforesaid, by payment in cash.

#### **14. INTERIM MANAGEMENT OF THE LETTING ENTERPRISE**

- 14.1 To the extent that this Agreement constitutes the sale of a Letting Enterprise, the Seller warrants in favour of the Purchaser that during the period from the Signature Date to the Transfer Date, the Seller has not and shall not engage in, agree to, perform or undertake any of the following acts or matters, except as may be approved in advance in writing by the Purchaser (which approval shall not be unreasonably withheld or delayed):
  - 14.1.1 the conduct of the business of the Letting Enterprise other than in the ordinary and normal course of such business;
  - 14.1.2 the undertaking of any business activity outside the scope of the business of the Letting Enterprise;
  - 14.1.3 the amendment, alteration, cancellation, novation, waiver of any rights or granting of any indulgences or otherwise of the Leases;
  - 14.1.4 the lease of the whole or any portion of the Property or allowing any sub-lease thereof;
  - 14.1.5 the entering into of any transaction which:
    - 14.1.5.1 may prejudice the long-term sustainability and growth of the business of the Letting Enterprise; and/or
    - 14.1.5.2 involves a departure from the normal, ordinary and regular trading styles and practices of the Seller; and/or



- 14.1.5.3 may materially prejudice the continued goodwill of the Letting Enterprise; and/or
  - 14.1.5.4 reduces the scope of the business of the Letting Enterprise;
  - 14.1.6 the conclusion of any contract outside the ordinary course of the business of the Letting Enterprise;
  - 14.1.7 the conclusion of any contract in the ordinary course of the Seller's business, or the business of the Letting Enterprise, that could negatively affect the rights of the Purchaser; and
  - 14.1.8 an agreement or commitment to do any of the foregoing.
- 14.2 The Seller agrees to give the Purchaser, its agents and prospective tenants of the Purchaser reasonable access to the Letting Enterprise pending Transfer and the Parties shall communicate with one another in good faith in this regard.

## 15. VAT

- 15.1 To the extent that this Agreement constitutes the sale of a Letting Enterprise, and the Seller is a registered VAT vendor as indicated in box 1 of 7 of the Schedule:-
- 15.1.1 the Parties agree that:
    - 15.1.1.1 the Letting Enterprise conducted by the Seller on the Property constitutes an "enterprise" as that term is defined in section 1 of the VAT Act and is disposed of as a going concern and for the purposes of section 11(1)(e) of the VAT Act;
    - 15.1.1.2 the Letting Enterprise will be an income-earning activity on the Transfer Date and that the assets which are necessary for carrying on such business have been disposed of by the Seller to the Purchaser in terms of this Agreement; and
    - 15.1.1.3 the Purchase Price for the supply of the enterprise as contemplated herein is inclusive of VAT at the rate of 0% (zero per cent);
  - 15.1.2 the Seller and Purchaser warrant that they are and at the relevant time shall be:
    - 15.1.2.1 a vendor, as that term is defined in section 1 of the VAT Act; and
    - 15.1.2.2 registered as such in terms of section 23 of the VAT Act;
  - 15.1.3 notwithstanding the provisions of clause 15.1.1.3 in the event of VAT being levied in respect of such supply at a rate other than 0% (zero per cent), the Seller shall be entitled to recover such VAT from the Purchaser, being the Purchase Price plus VAT thereon; and
  - 15.1.4 the amount recoverable pursuant to clause 15.1.3, shall be paid by the Purchaser to the Seller by not later than the 5<sup>th</sup> Business Day following delivery by the Seller to the



Purchaser of the documentation required in terms of the VAT Act to permit the Purchaser to claim a deduction in respect of such VAT in terms of section 16(3) of the VAT Act.

15.2 To the extent that this Agreement does not constitute the sale of a Letting Enterprise, and the Seller is a registered VAT vendor as indicated in box 1 of 7 of the Schedule:-

15.2.1 it is recorded that –

15.2.1.1 the Seller is a vendor and that the sale of the Property in terms of this Agreement constitutes a taxable supply as contemplated in the VAT Act, and that VAT is payable in respect thereof;

15.2.1.2 the purchase price of the Property is exclusive of VAT and the Purchaser shall pay such VAT as may be payable to the Seller on registration of transfer of the Property into the name of the Purchaser and

15.3 as security for the payment of such VAT, the Purchaser shall within the time period specified in clause 6.2.2 above, furnish the Conveyancers with a bank guarantee in accordance with the provisions of clause 6 above, which provisions apply mutatis mutandis.

## 16. DELIVERY

To the extent that this Agreement constitutes the sale of a Letting Enterprise:-

16.1 the Seller shall:-

16.1.1 to the extent that the same is within the Seller's possession, deliver to the Purchaser on the Transfer Date:

16.1.1.1 the original Leases;

16.1.1.2 the originals of all documents constituting or relating to any security for the performance of the obligations of the tenant in terms of the Leases, if any; and

16.1.1.3 all plans and drawings in respect of the Property, drainage, water reticulation systems, storm water disposal systems, fire protection systems, electrical layout and consulting structural engineering drawings (if any) which are in the possession or under the control of the Seller;

16.1.2 10 Business Days after the Transfer Date, pay to the Purchaser all deposits and other amounts held by the Seller from tenants in terms of the Leases. For the avoidance of doubt, the Seller shall not be entitled to utilise any portion of any deposit paid by tenants under the Leases to set-off against any amount owing by any tenant under any of the Leases to the Seller prior to the Transfer Date, and the deposits shall be disregarded for the purposes of computing the amounts payable under the adjustment account to the extent paid over to the Purchaser pursuant to the provisions of this clause; and



- 16.2 the Purchaser hereby indemnifies the Seller against any claims by any tenant under the Leases for repayment of the deposits or any other amounts paid by the Seller to the Purchaser in terms of clause 16.1.2 above.

## 17. SECTION 34 NOTICES

To the extent that this Agreement constitutes the sale of Letting Enterprise, the Parties record and agree that the transaction contemplated in this Agreement shall not be advertised as contemplated in section 34 of the Insolvency Act, 1936.

## 18. CONTRACTS

To the extent that this Agreement constitutes the sale of Letting Enterprise,

- 18.1 the Contracts shall be taken over by the Purchaser with effect from the Transfer Date on the following basis:
- 18.1.1 the Parties shall use their reasonable endeavours to obtain the consent of the other Parties to the substitution of the Purchaser for the Seller as a party to the Contracts where such consent is necessary;
  - 18.1.2 where the other Party to any of the Contracts consents to the substitution of the Purchasers for the Seller, then the Seller shall cede all its rights and delegate all its obligations under the Contract to the Purchaser and the Purchaser shall accept those rights and assume those obligations;
  - 18.1.3 where the other Party to any of the Contracts does not consent to the substitution of the Purchaser for the Seller, then the Seller shall remain a party to those contracts and the Purchaser shall diligently exercise all the Seller's rights and carry out all the Seller's obligations under those Contracts in accordance with the provisions of those Contracts; and
- 18.2 the Purchaser hereby indemnifies the Seller against any claim which may be made against the Seller under any of the Contracts provided that such claim is not attributable to an act or omission of the Seller or does not arise on or before the Transfer Date.

## 19. WARRANTIES

### Warranties of authority

- 19.1 Each of the Parties hereby warrants to and in favour of the others that (and to the extent applicable to such Party):
- 19.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into and perform all its obligations under this Agreement;



- 19.1.2 this Agreement constitutes an agreement valid and binding on him/her/it and enforceable against him/her/it in accordance with its terms;
- 19.1.3 the execution of this Agreement and the performance of his/her/its obligations hereunder does not and shall not:
- 19.1.3.1 contravene any law or regulation to which that Party is subject;
  - 19.1.3.2 contravene any provision of that Party's constitutional documents; or
  - 19.1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

In respect of the Letting Enterprise (to the extent that this Agreement constitutes the sale of a Letting Enterprise)

- 19.2 The Seller hereby gives the following warranties, representations, undertakings to and in favour of the Purchaser (which are given by the Seller as at the Signature Date and the Transfer Date, unless the context indicates clearly to the contrary):
- 19.2.1 the Letting Enterprise is the sole and exclusive property of the Seller and will be delivered to the Purchaser free of all liens, charges and other encumbrances of any nature whatsoever, save as otherwise provided in this Agreement;
  - 19.2.2 the relevant licences appertaining to the Letting Enterprise (if any) will be of full force and effect and no loss thereof has been intimated or threatened;
  - 19.2.3 as at the Transfer Date, none of the Fixed Assets shall be subject to any mortgage, debenture, notarial bond, pledge, cession, lien or other encumbrance, save for any assets held under the Contracts and specifically disclosed by the Seller to the Purchaser as such, with reference to this clause;
  - 19.2.4 the Seller has made all payments due in respect of municipal and/or other assessment rates, taxes and other imposts of whatsoever nature in respect of the Property, including all levies payable to the Body Corporate, and of all charges in respect of water, sewerage, gas and electricity supplied to or consumed on the Property;
  - 19.2.5 no person will have any right (including any option or right of first refusal) to purchase the Letting Enterprise or any part thereof;
  - 19.2.6 the Property is not subject to any pre-emptive rights or any other conditions restricting the sale and/or transfer and/or alienation of the Property;
  - 19.2.7 the Seller will, as at the Transfer Date, be the registered owner of the Property and will be able to pass transfer thereof to the Purchaser without undue delay;
  - 19.2.8 as far as the Seller is aware, no claim lies in respect of the Property in terms of the Restitution of Land Rights Act, 1994;
  - 19.2.9 no persons have any right to occupy any part of the Property by lease or otherwise, save for the tenants under the Leases;



- 19.2.10 the Leases are valid, binding and enforceable in accordance with their terms and as at the Signature Date and the Transfer Date none of them will have been cancelled or terminated, nor has any cancellation or termination of any of the Leases been threatened or intimated as at the Signature Date;
- 19.2.11 the Leases were entered into in the ordinary and normal course of the Letting Enterprise;
- 19.2.12 save as is contained in the title deed/s of the Property, the Property is not subject to any unregistered servitudes or unregistered rights;
- 19.2.13 to the best of the Seller's knowledge and belief the Letting Enterprise will not be the subject of any judicial order, decree or attachment of any kind and nor will it be the subject matter of any legal or arbitration proceedings;
- 19.2.14 none of the buildings on the Property will be subject to any demolition order and all such buildings and additions thereto shall have been constructed in accordance with approved building plans by the local Municipality and other governing body having authority and being required to consent such building plans;
- 19.2.15 the Letting Enterprise has no employees in their service and no person has any claim against the Letting Enterprise arising from any employment relationship;
- 19.2.16 it is not aware of any facts or circumstances which may give rise to any change in the present zoning of the Property or any neighbouring properties;
- 19.2.17 as at the Signature Date, the Seller is not aware of any facts, matters or circumstances which may give rise to any expropriation of the Property;
- 19.2.18 as at the Signature Date, the Property complies in every respect with all government, provincial and local authority requirements affecting it or relating to it and with the requirements of the deed of transfer of the Property and the Seller has not been called upon and is not under any obligation to make any alterations, repairs or additions to the Property;
- 19.2.19 the Property and buildings thereon have been constructed in accordance with approved building plans;
- 19.2.20 the Seller is not in breach of any of its obligations under the Leases;
- 19.2.21 as at the Signature Date, no tenant under the Leases is in breach of any of its obligations under the Lease concerned as at Signature Date;
- 19.2.22 the Property has not been provisionally or finally declared as a national monument under the National Monument Act, 28 of 1969;
- 19.2.23 the Seller shall not be bound by any contracts whatsoever in respect of the Property, save for those Contracts stipulated in clause 18 above;
- 19.2.24 the Seller has not received any notice that any part of the Property is required for road widening or other schemes nor has the Seller received any other onerous notices from the municipality or other authorities;



- 19.2.25 the buildings and erections on the Property comply with all relevant laws and regulations, and do not encroach on any neighbouring Property;
  - 19.2.26 the Property is in good order and condition and operational on the basis that the Purchaser shall be entitled to have the same use and enjoyment of the Property as that which the Seller had prior to the Transfer Date;
  - 19.2.27 no person has been called upon by any competent authority and the Seller is not under any obligation to make any alterations, repairs or additions to the Property and the Seller is not aware of any facts or circumstances which are likely to give rise to any such obligations;
  - 19.2.28 the Seller has not received any notice that any part of the Property is required for a town-planning scheme or other schemes, nor any other onerous notices of the local authority or other authority;
  - 19.2.29 the Seller is not aware of any patent defects in the Property which have not been disclosed in writing to the Purchaser;
  - 19.2.30 the Seller is not in breach of its contractual or statutory obligations in respect of the Property and/or Letting Enterprise;
  - 19.2.31 no environment threats or hazards exist or are likely to exist in or on the Property;
  - 19.2.32 there are no and have been no complaints, claims, investigations or disputes regarding the use of the Property, noise generated on the Property or the release of any fumes, substances or articles from the Property;
  - 19.2.33 any, to the extent applicable, and all information and documentation (including financial information) furnished to the Purchaser during its due diligence investigation shall be true and accurate;
- 19.3 The Seller hereby gives the following warranties, representations, undertakings to and in favour of the Purchaser between the Signature Date and the Transfer Date (unless the context indicates clearly to the contrary):
- 19.3.1 the Letting Enterprise has complied and will continue to comply with all statutory requirements in connection with the administration of their affairs, including, but not limited to, all legislation and regulations in respect of all forms of taxation;
  - 19.3.2 neither the Property nor any portions thereof will be sold, encumbered, alienated or otherwise disposed of;
  - 19.3.3 the Seller shall not do or permit anything to be done which would materially impair the value of the Property;
  - 19.3.4 the Seller shall not have made any material alterations to the Property without the prior written consent of the Purchaser;
  - 19.3.5 the Seller shall have maintained the Property in the condition they exist as at the Signature Date;



19.3.6 all Fixtures and Fittings on the Property are and will continue to be in good working order, fair wear and tear excepted; have been properly maintained and are capable of carrying out the functions for which they are intended; and

19.3.7 the Seller shall have provided to the Purchaser all documents and information in the possession of the Seller relevant to the Letting Enterprise including the Property.

19.4 Save for the warranties contained in this Agreement, the Seller gives no warranties and makes no representations in respect of the Property or Letting Enterprise, as the case may be, whether express or implied, as to patent or latent defects, and relating thereto, and the Purchaser purchases the Property or Letting Enterprise, as the case may be, “voetstoots” (as is).

## **20. ELECTRICAL COMPLIANCE CERTIFICATE**

20.1 The Parties hereby agree that prior to registration of Transfer the Seller shall, at its own expense, have the electrical installations (including electric fences) at the Property inspected and shall thereafter furnish the Purchaser with a certificate of compliance, issued by an Inspector duly registered, confirming that the electrical installations in the Property / Letting Enterprise complies with the provisions of Regulation 7 of the Occupational Health and Safety Act 85 of 1993, as published in the Government Gazette No. 242 of 2009.

20.2 If any fault or defect is detected after an examination by the said inspector, the Seller undertakes to have those defective parts of the electrical installation replaced at its expense.

20.3 Upon furnishing the certificate of electrical compliance and replacement of the defective parts (repairs) as required by the inspector (if any) as contemplated in clause 20.2 above, the Seller shall not be liable for repairing any other electrical faults or defects which arise after the issuing of the electrical certificate of compliance. The Purchaser shall have no claim whatsoever against the Seller relating to the said electrical installations following the Seller having furnished the Purchaser with a certificate of electrical compliance and having attended to any repairs required by the said inspector (if any) and no further liability or obligations in this regard shall rest upon the Seller.

## **21. BEETLE INSPECTION**

21.1 Prior to registration of transfer the accessible portions of the property shall be inspected at the Seller's expense by a SAPCA registered pest control company inspector, certifying that there are no active timber destroying insects in the timber components of the Property and that the buildings have been inspected for infestation by drywood termites, wood beetles, white ants and European long horn house borer. Should there be evidence of such infestation or damage by any of the aforesaid pests, the Seller shall at his expense, have the buildings treated and rendered free from apparent infestation prior to transfer. This certificate to be delivered to the Purchaser prior to transfer.





## 22. PLUMBING COMPLIANCE

- 22.1 This clause 23 will only be applicable to **PROPERTY** situated within the jurisdiction of the City of Cape Town.
- 22.2 The **SELLER** shall, at its expense, submit a Certificate issued by an accredited Plumber to the City of Cape Town municipality, certifying that the water supply to the **PROPERTY** conforms with the requirements as stipulated in section 14 of the City of Cape Town: Water By-Law, 2010, namely that;
- 22.2.1 The water installation conforms to the national building regulations;
- 22.2.2 There are no defects which can cause water to run to waste;
- 22.2.3 The water meter registers;
- 22.2.4 There is no discharge of storm water into the sewer system.
- 22.3 Such Certificates shall be obtained and submitted to the municipality before registration of transfer.
- 22.4 The **SELLER** undertakes in addition to 23.3 above, to furnish the **PURCHASER** with a copy of the certificates obtained prior to registration of transfer.

## 23. CONFIDENTIALITY

- 23.1 The terms of this Agreement shall at all times be and remain confidential to the Parties and no Party shall be entitled to make any public announcement of any of the aspects of this Agreement save with the consent in writing of all the Parties to this Agreement or as may be required by law or regulation.
- 23.2 In the case of a release, announcement or document which is required to be given, made or published by law or under the rules of any applicable authority, the Party liable to give, make or publish the same shall forthwith give to the others notice and a copy thereof.
- 23.3 The obligations undertaken by the Parties under this provision shall endure notwithstanding termination of this Agreement, or notwithstanding the failure of any suspensive condition of this Agreement.

## 24. BREACH

- 24.1 If either Party (the "**Defaulting Party**"):
- 24.1.1 fails to pay any amount due by the Defaulting Party in terms of this Agreement on due date and remains in default for more than 5 Business Days after being requested in writing to pay such amount by the other Party (the "**Aggrieved Party**"); or



24.1.2 commits any other breach of this Agreement and/or fails to comply with any of the other provisions hereof, and fails to remedy such breach or failure within 10 Business Days after receipt of notice in writing to do so by the Aggrieved Party,

then and in any such event, the Aggrieved Party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the Aggrieved Party may have in law, including the right to claim damages:

24.1.3 to cancel this Agreement, in the event that the breach is material and goes to the root of the Agreement and the Aggrieved Party cannot be adequately compensated by payment of a monetary amount in the case of any breach of any warranty, representation or undertaking, provided that:

24.1.3.1 the failure by the Purchaser to pay any amount due by the Purchaser in terms of this Agreement on due date shall be deemed to be a breach that is both material and goes to the root of the Agreement;

24.1.3.2 cancellation shall not be a remedy available to either Party after the Transfer Date provided that the Purchaser has paid the Purchase Price to the Seller in full; or

24.1.4 to claim immediate performance and/or payment of its obligations in terms hereof.

24.2 Without limiting the rights of the Seller in terms of clause 24.1.3 above (should it be the Aggrieved Party and the Purchaser be the Defaulting Party), upon cancellation of this Agreement by the Seller, the Seller shall be entitled:

24.2.1 to retain the deposit paid in terms of clause 6.2.1 above, either as rouwkoop or by way of a penalty or as agreed liquidated damages, or as a payment in respect of the prejudice herewith agreed by the Parties that will be suffered by the Seller as a result of the Purchaser's breach; or

24.2.2 to recover such damages as the Seller may be able to prove the Seller has sustained in lieu of the amount provided for in clause 24.2.1, in which event the Seller will be entitled to retain the deposit referred to in clause 6.2.1 above in trust until the actual amount of damages has been determined by a court or arbitration, and thereupon set off such damages against the amounts in trust.

24.3 Should the Aggrieved Party institute action against the Defaulting Party pursuant to a breach by the Defaulting Party of this Agreement, then without prejudice to any other rights which the Aggrieved Party may have in terms of this Agreement or at law, the Aggrieved Party shall be entitled to recover all legal costs incurred by the Aggrieved Party, including attorney and own client charges and collection commission.

24.4 Without prejudice to all or any of the rights of the Aggrieved Party, should the Defaulting Party fail to pay any amount which may become due by the Defaulting Party to the Aggrieved Party on due date, then the Defaulting Party shall pay to the Aggrieved Party interest thereon at the Prime Rate calculated from the due date for payment of such amount until the actual date of payment thereof, both dates inclusive.



## 25. ARBITRATION

- 25.1 Should any dispute arise between the Parties to this Agreement in regard to:
- 25.1.1 the interpretation of; or
  - 25.1.2 the carrying into effect of; or
  - 25.1.3 any of the Parties rights and obligations in terms of this Agreement; or
  - 25.1.4 the termination of or arising from the termination of; or
  - 25.1.5 the rectification of this Agreement,
- then the dispute shall, at the request of either of the Parties, be submitted to and decided by arbitration.
- 25.2 The arbitration shall be held:
- 25.2.1 at the place stipulated in 6 of the Schedule;
  - 25.2.2 with only the Parties and their representatives present thereat; and
  - 25.2.3 otherwise in terms of the Arbitration Act No. 42 of 1965, it being the intention of that the arbitration shall, where possible, be held and concluded within 21 Business Days after it has been demanded.
- 25.3 The arbitrator shall be, if the matter in dispute is principally:
- 25.3.1 a legal matter, an independent practising attorney specialising in commercial and company law of no less than 20 years standing or a practising senior counsel (advocate);
  - 25.3.2 an accounting matter, an independent practising chartered accountant of not less than 20 years standing; or
  - 25.3.3 any other matter, an independent person agreed to between the Parties.
- 25.4 Should the Parties fail to agree on an arbitrator within 14 days after the arbitration has been demanded then the arbitrator shall be nominated by the Chairman for the time being of the Advocates Bar Council of the City in which the arbitration is held at the request of the either Party.
- 25.5 Should the Parties fail to agree whether dispute is of a legal, accounting or other nature within 7 days after the arbitration has been demanded then it shall be considered a matter as referred to in clause 25.3.1 hereof.
- 25.6 The arbitrator shall have the fullest and freest discretion with regard to the proceedings and his award shall be final and binding on the Parties to the dispute and not subject to any further dispute, appeal or review. Furthermore, the arbitrator:



- 25.6.1 may dispense wholly, or in part, with formal submissions or pleadings;
- 25.6.2 shall determine the applicable procedure;
- 25.6.3 shall not be bound by strict rules or evidence;
- 25.6.4 shall take into account the practicality or otherwise of ordering the continuance of illegal relationship between the Parties; and
- 25.6.5 shall include such order as to costs as he deems just and the Parties shall be entitled to have the award made an order of any court of competent jurisdiction.
- 25.7 Anything herein contained or implied shall not preclude any Party from applying to Court for a temporary interdict or other relief of an urgent and temporary nature, pending the decision or award of the Arbitrator hereunder.
- 25.8 The provisions of this clause 25 are severable from the rest of this Agreement and remain in effect despite the termination or invalidity for any reason of this Agreement or any part thereof.
- 25.9 Subject to the preceding provisions of this clause 25, the Parties hereby consent to the jurisdiction of the relevant High Court of South Africa having jurisdiction.

## 26. NOTICES AND DOMICILIA

- 26.1 Each of the Parties hereby chooses domicilium citandi et executandi ("**domicilium**") for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature.
- 26.2 Any Party may, by delivery of written notice to the other Parties, change the physical address chosen as his/her/its domicilium to another physical address in the Republic of South Africa which is not a post office box or poste restante or change its email address, provided that the change shall be effective on the 5th Business Day from delivery of the written notice to the other Parties.
- 26.3 Any notice delivered to any Party (the "**addressee**") shall be delivered by hand or communicated by email (and by no other means) on a Business Day. In the case of any notice which:
- 26.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery; or
- 26.3.2 is sent during the normal business hours of the addressee by email to his/her/its chosen e-mail address stipulated in clause 26.1 above shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 26.4 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if delivered in the manner as set forth in clause 26.3 above.



- 26.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be adequate written notice or communication to him/her/it notwithstanding that it was not sent to or delivered at its chosen domicile.

## **27. CO-OPERATION**

Each of the Parties hereby undertakes to:

- 27.1 sign and/or execute all such documents upon the request of the Conveyancers and without limiting the generality of the foregoing, same shall include the execution of the necessary power of attorney and VAT/transfer duty declarations;
- 27.2 upon the request of the Conveyancers forthwith furnish all such documents and information relating to that Party as required in terms of the Financial Intelligence Centre Act, 2001 (as amended);
- 27.3 do and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and
- 27.4 pass and to procure the passing of all such resolutions of directors or shareholders of any company or, as the case may be, resolution of trustees of any trust, to the extent that the same may lie within such Party's power and may be required to give effect to the import or intent of this Agreement, or any contract concluded pursuant to the provisions of this Agreement.

## **28. INDEPENDENT ADVICE**

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

- 28.1 He/she/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 he/she/it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 28.2 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.

## **29. GENERAL**

- 29.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 29.2 This Agreement is personal to the Parties. Accordingly and save as is expressly provided for in this Agreement, no Party may cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties.



- 29.3 No variation of, addition to, consensual cancellation of or waiver of provision, term or any right arising in terms of this Agreement shall be of any force or effect unless it is reduced to writing and signed by the Parties or their duly authorized representative.
- 29.4 This document contains the entire agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 29.5 No relaxation, indulgence or extension of time granted by any Party (the “Grantor”) to the other Party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of this Agreement or estop the Grantor from enforcing strict and punctual compliance with the terms of this Agreement.
- 29.6 This Agreement will be binding upon the Parties hereto, their estates, administrators, executors, successors-in-title or permitted assigns.
- 29.7 This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth in this Agreement.
- 29.8 Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction shall, with respect to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *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.
- 29.9 Signature:
- 29.9.1 This Agreement may be executed in a number of counterparts and by the same Parties in different counterparts, but shall only be deemed to have been concluded when each Party has executed at least one counterpart;
- 29.9.2 Each counterpart, when executed, shall be an original, but all counterparts together constitute the same document; and
- 29.9.3 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have his/her/its signature of this Agreement verified by a witness.

*[signature pages follow]*



**IN THE EVENT OF THE PURCHASER BEING A COMPANY / TRUST / CC:**

TO: \_\_\_\_\_

COMPANY / CLOSE CORPORATION / TRUST / OTHER \_\_\_\_\_

(hereinafter referred to as the "**PURCHASER**")

ENTITY REGISTRATION NO.: \_\_\_\_\_

ENTITY ADDRESS: \_\_\_\_\_

TELEPHONE DETAILS: (Landline No.) \_\_\_\_\_

(Fax No.) \_\_\_\_\_

(Email) \_\_\_\_\_

(Cellphone No.) \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_ (In / Out of Community Property)

SPOUSE NAME \_\_\_\_\_

SPOUSE'S IDENTITY NO. \_\_\_\_\_



**IN THE EVENT OF THE PURCHASER BEING A NATURAL PERSON:**

TO: \_\_\_\_\_

MR / MRS / MS \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

IDENTITY NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE DETAILS: (Home No.) \_\_\_\_\_

(Work No.) \_\_\_\_\_

(Fax No.) \_\_\_\_\_

(Email) \_\_\_\_\_

(Cellphone No.) \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_ (In / Out of Community Property)

SPOUSE NAME \_\_\_\_\_

SPOUSE'S IDENTITY NO. \_\_\_\_\_





SIGNED BY THE **PURCHASER** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_.

**AS WITNESSES**

For and on behalf of

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

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

\_\_\_\_\_

**PURCHASER**

Who warrants that he/she is duly authorised.

**AS WITNESSES**

For and on behalf of

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

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

\_\_\_\_\_

**AUCTIONEER**

Who warrants that he/she is duly authorised.



SIGNED BY THE **SELLER** at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_\_.

**AS WITNESSES**

For and on behalf of

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

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

\_\_\_\_\_  
**SELLER**

Who warrants that he/she is duly authorised.

**SELLER'S ADDRESS:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**ANNEXURE "A"**

***[SCHEDULE OF FIXED ASSETS EXCLUDED]***