

AGREEMENT OF SALE AND PURCHASE

FOR IMPROVED/UNIMPROVED RESIDENTIAL PROPERTY

THE SCHEDULE

A. **THE SELLER:** _____

B. **THE PURCHASER:** _____

C. **THE PROPERTY SOLD:** situated at _____

D. **PURCHASE PRICE AND METHOD OF PAYMENT:**

The purchase price, namely R_____ (_____)
_____)

shall be paid in accordance with the following provisions:

***DEPOSIT**

(a) R_____ (_____)
_____)
within _____ days of date of signature.

***FURTHER DEPOSIT**

(b) R_____ (_____)
_____)
within _____ days of date of signature.

*delete
whichever
clause is
inapplicable

***PROCEEDS FROM PRIOR SALE**

(c) R_____ (_____)
_____)
in terms of clause 24 hereof.

***LOAN**

(d) R_____ (_____)
_____)
(being the balance) to be paid or secured by guarantee in terms of clause 16 hereof.

(e) All payments on account of the purchase price shall be paid in trust to the CONVEYANCER who shall hold the same on behalf of the PURCHASER and the SELLER shall be entitled to receive the same immediately upon transfer.

(f) The PURCHASER authorises the CONVEYANCER in terms of Section 78(2A) of the Attorneys Act No.53/1979 to invest any such monies held in trust with any deposit taking institution in an interest bearing account pending transfer. All interest accruing thereon shall be for the sole benefit of the PURCHASER and shall be paid to him on transfer.

E. **THE OCCUPATION DATE:** _____

F. **THE MONTHLY OCCUPATIONAL INTEREST:** R _____ (_____)

G. **THE EFFECTIVE DATE** (date loan required to be granted) _____

H. **THE PURCHASER'S DOMICILIUM ADDRESS:** _____

and shall be the address of the Property after occupation date.

Telefax: No. _____ **e-mail:** _____

I. **THE SELLER'S DOMICILIUM ADDRESS :** _____

Telefax. No.: _____ **e-mail:** _____

J. **GUARANTEE:** means a written guarantee or undertaking by a bank on the usual terms of such bank acceptable to the CONVEYANCER in terms whereof an amount of money is expressed to be payable to the SELLER or his nominee upon transfer.

THE CONVEYANCER : AMC HUNTER INC 66 LILIAN NGOYI ROAD DURBAN

K. **TRANSFER:** means registration of transfer of the Property into the name of the PURCHASER.

THE AGREEMENT

THE PURCHASER AND THE SELLER AGREE AS FOLLOWS:

1. **SALE:**
The PURCHASER hereby purchases from the SELLER who sells the Property for the purchase price, upon and subject to the terms contained in this Agreement.
2. **SCHEDULE:**
This Agreement includes the SCHEDULE.
3. **GENERAL:**
 - 3.1 The words and expressions contemplated in the SCHEDULE shall have the meanings assigned to them therein, unless otherwise required or indicated by the context of this Agreement.
 - 3.2 In this Agreement; words importing the singular shall where necessary include the plural and vice versa; words denoting any one gender shall where applicable include reference to the other gender.
 - 3.3 In the event of there being more than one SELLER or more than one PURCHASER they shall be deemed to be bound jointly and severally for their respective obligations in terms of this Agreement and unless otherwise stated the PURCHASERS shall be deemed to purchase the Property in equal and undivided shares.
4. **POSSESSION AND THE PASSING OF RISK AND BENEFIT IN AND TO THE PROPERTY:**

The SELLER shall give possession of the Property to the PURCHASER on the date of registration of transfer of the Property, from which date:

- 4.1 the Purchaser shall assume full responsibility for the property;
- 4.2 all risks in and to the Property shall pass to the PURCHASER;
- 4.3 the PURCHASER shall be liable for all rates, taxes, insurances, and other outgoings in respect of the Property and shall likewise be entitled to all income and other benefits from the property, regardless of the date of occupation..

5. OCCUPATION:

- 5.1 Occupation of the Property shall be given by the SELLER to the PURCHASER on the occupation date as appears on the Schedule. The PURCHASER shall pay to the SELLER the occupational interest, no later than the first day of each calendar month from the occupation date until date of transfer provided that such occupational interest shall be proportionately reduced in respect of any uncompleted calendar month.
- 5.2 Should the SELLER remain in occupation after the date of registration of transfer of the Property, the SELLER shall similarly be liable to the PURCHASER for occupational interest and the provisions of sub-clause 5.1 above shall, likewise apply.
- 5.3 Nothing in this Agreement shall be construed to create a lease agreement.

6. DELAY IN TRANSFER – PENALTY PROVISION:

In the event of there being any delay in connection with the registration of transfer for which either the PURCHASER or the SELLER is responsible, the PURCHASER or SELLER responsible for such delay, undertakes to pay a penalty which shall be the equivalent of interest on the purchase price calculated at the rate of 15 % (Fifteen Percent) per annum, calculated from the date that the PURCHASER or SELLER has been notified in writing by the SELLER or PURCHASER as being in breach, to the date upon which the PURCHASER or SELLER has ceased to be in breach.

7. TRANSFER:

- 7.1 The PURCHASER shall not be entitled to take transfer unless he has paid or secured by guarantee the full purchase price and all other amounts payable by him in terms of this Agreement.
- 7.2 The PURCHASER shall be liable for all costs in relation to transfer including transfer duty, conveyancer's fees, value added tax thereon and other charges in relation thereto or the registration of any bond required by him. Such costs shall be paid by means of EFT transfer or by other means acceptable to the CONVEYANCER upon request by the CONVEYANCERS.

Should part of the proceeds come from another sales transaction in terms of clauses D (c) and 24 hereof, the PURCHASER confirms that he has all necessary transfer costs available to the CONVEYANCER and these costs will not be required from the proceeds of his prior sales transaction.

8. DEFAULT – PURCHASER:

- 8.1 In the event of any of the amounts in the purchase price, occupational rent, transfer or bond costs and/or other charges remaining unpaid or in the event of any obligations for which the PURCHASER is liable herein remaining unfulfilled for a period of seven (7) days after the date of receipt of a written notice addressed to the PURCHASER by or on behalf of the SELLER, calling upon the PURCHASER to make such payment and/or to fulfil such obligations, the SELLER shall have the option of either enforcing the terms of the Agreement or of cancelling the Agreement and re-entering into possession of the Property without further notice to the PURCHASER.
- 8.2 In the event of the SELLER cancelling the Agreement and retaking possession of the Property, as a result of any default by the PURCHASER, all improvements made to the

Property shall become the property of the SELLER without compensation to the PURCHASER and any payment made on account of the purchase price and/or interest shall be forfeited by the PURCHASER to the SELLER as “rouwkoop” or a penalty or as a genuine pre-estimate of liquidation damages, without prejudice to the SELLER’S rights to recover any damages howsoever incurred as the result of such cancellation.

The PURCHASER understands that he may approach the Court to reduce such “rouwkoop” or penalty payment in the event that such amount is substantially more than the actual financial loss suffered by the SELLER by virtue of his default.

9. DEFAULT – SELLER:

In the event that the SELLER is in default of any of his obligations arising from this Agreement, and remain in default for a period of seven (7) days of receipt of a written notice addressed to the SELLER by or on behalf of the PURCHASER, calling upon the SELLER to fulfil such obligations, then in such event the PURCHASER may elect to either enforce this Agreement, or cancel same, without prejudice to any other rights he may have.

10. IMPROVEMENTS:

Pending transfer, the PURCHASER shall not be entitled to make any improvements to the Property nor alterations to any existing improvements thereon without the prior written consent of the SELLER and should this Agreement be cancelled for any reason whatsoever, the PURCHASER shall have no claim against the SELLER for any compensation in respect of any such improvements whether made with or without the SELLER’S consent.

11. DOMICILIUM:

The PURCHASER’S and SELLER’S addresses as referred to in the SCHEDULE herein shall for all purposes under this Agreement be their domicilium citandi et executandi. Any notices posted to either party, shall if posted by pre-paid registered post, be deemed to have been received by either party ninety-six (96) hours after the time of posting or on the day upon which it was served by hand at the domicilium address, or upon transmission when notice has been given by e-mail or facsimile transmission.

12. SELLER’S RIGHTS:

The PURCHASER acknowledges that no indulgence, extension of time or any failure on the part of the SELLER to exercise his rights in terms hereof shall constitute a waiver of any of the SELLER’S rights in terms hereof.

13. WHOLE CONTRACT:

This Agreement constitutes the entire contract between the SELLER and the PURCHASER and any acts, representations, announcements, statements, warranties, guarantees or conditions not recorded herein shall be of no force or effect whatsoever, the PURCHASER acknowledging that neither the SELLER nor any person acting on his behalf has made any representations, announcements, statements or warranties inducing the conclusion of this Agreement.

14. FINANCIAL INSTITUTION:

14.1 The loan referred to in Clause D (d) is to be paid on registration of transfer and is to be provided by the raising of a Bank loan on first mortgage on security of the Property for the amount of R_____. This entire Agreement is subject to the condition that the PURCHASER is able to arrange such loan.

14.2 The PURCHASER will cooperate fully with the Bank, or in the event where the PURCHASER has chosen to make use of the services of a mortgage originator, the mortgage originator, and provide the Bank, or mortgage originator with salary advices necessary from their employer and where self-employed, the current financial statements of their company, close corporation, partnership or sole proprietorship as the case may be, or any other documents or information as may be required for the Bank to assess or satisfy the qualification criteria as laid down by the Bank.

- 14.3 This condition will be fulfilled on receipt of written advice from the Bank to the PURCHASER or Mortgage Originator that the bond has been granted, or on receipt of a quotation or pre-agreement by the Bank that the Bank is prepared to grant a loan to the Purchaser.
- 14.4 The PURCHASER understands that he is under a legal obligation to apply for a bond for the amount required, and to co-operate fully with the Bank and/or Mortgage Originator in order to secure such bond. The PURCHASER further understands that should he fail to co-operate and the bond is either not approved in time, or is declined because of a failure on his part to co-operate, he may still be bound to the agreement as the suspensive conditions may be considered as having been fictionally fulfilled by a court of law.
- 14.5 Should such loan not be granted in principle, OR should the quote not be issued, (whichever is applicable) by the EFFECTIVE DATE this Agreement shall be automatically cancelled and be of no further force and effect. It is agreed and recorded herein that the aforesaid condition has been inserted for the benefit of the PURCHASER and can be waived by the PURCHASER should he choose to do so.

15. ENTOMOLOGIST'S CERTIFICATE:

Notwithstanding the provisions of clause 7 hereof, the SELLER shall procure prior to transfer at the SELLER'S expense, a report or certificate issued by a properly qualified and Government approved person to the effect that there is no evidence of active infestation by timber destroying insects or creatures (excluding Ambrosia and Ernobius Mollis which are considered harmless). Should there be evidence of any such infestation, the SELLER shall at his expense cause such infestation to be eradicated within twenty-one (21) days of being advised thereof to enable such report or certificate to be issued.

16. ELECTRICAL INSTALLATION COMPLIANCE CERTIFICATE:

16.1 Notwithstanding voetstoots clause 7 the SELLER shall deliver at his expense, to the CONVEYANCERS, a Certificate of Compliance in terms of Government Regulation No.2920 of 1992, issued by an accredited person who is registered with the Electrical Contracting Board of South Africa, certifying that the electrical installation of the premises is in accordance with SABS 0142, or is reasonably safe. Should the aforesaid accredited person report that there is a fault or defect in the electrical installation, the SELLER shall be obligated, at his expense within twenty one (21) days of receipt of such report and recommendations, to contract with an electrical contractor or any other qualified person to carry out the repairs as recommended so as to enable the accredited person to issue the Certificate aforesaid.

16.2 If the Certificate of Compliance referred to in sub-clause 16.1 pre-dates the date of this offer, then the SELLER warrants that the said Certificate is valid in respect of all the electrical installations of the Property.

17. NOMINEE:

Should this offer be signed with a nominee as an alternative PURCHASER the signatory hereof holds himself personally liable under this Agreement in the event that, for any reason whatever, the nominee fails to perform in terms of this Agreement.

18. PURCHASER A COMPANY, CLOSE CORPORATION OR TRUST:

In the event of the PURCHASER acting in the capacity of an Agent or Trustee for a Company or Close Corporation to be formed, or on behalf of the Trustees of a Trust to be formed the PURCHASER shall be personally liable should the Purchasing Company, Close Corporation or Trust not be formed within thirty (30) days of the date hereof, or if when it is formed it does not ratify this Agreement within seven (7) days. In addition, the said PURCHASER shall be deemed to

have guaranteed the obligations of the Company, Close Corporation or Trust to be formed in terms of this Agreement, as surety and co-principal debtor.

19. ACCEPTANCE PERIOD:

Any offer, or counter offer/s as the case may be, constituted by this document, shall remain open for acceptance until _____ 20____, whereafter such offer / counter offer/s shall lapse and not be capable of acceptance thereafter.

20. FIXTURES AND FITTINGS:

The Property is sold inclusive of all fixtures and fittings of a permanent nature; which the SELLER warrants to be his exclusive property and fully paid for. These, together with the following moveables, which are specially included, are sold voetstoots:

- i) all fixed light fittings, ceiling fans, chandeliers;
- ii) all keys and remotes to doors, garage/s, cupboards, outbuildings and safe/s (if applicable);
- iii) the stove / eye-level oven / hob / extractor fan ;
- iv) pool cleaning equipment, including automatic pool cleaner, which the SELLER warrants to be in good working order;
- v) all fitted carpets, fitted cupboards, shelves;
- vi) curtain rods, rings, rails, pelmets and blinds;
- vii) _____

21. FURTHER TERMS OF THE AGREEMENT:

Proceeds from prior sale (no agreement in place)

The operation of this Agreement is subject also to the fulfilment of the further condition/s as indicated hereunder:

*21.1 That within _____ days after acceptance of this Agreement the PURCHASER sells his property known as _____

_____ and this condition will be deemed to have been fulfilled upon receipt by the CONVEYANCERS of written confirmation by the PURCHASER that a binding sale has been concluded which either does not contain any suspensive conditions, or in respect of which all suspensive conditions are fulfilled, within the aforesaid period, failing which this Agreement for the purchase of the Property (as defined in clause C of the SCHEDULE) shall be of no force and effect.

*delete whichever clause is inapplicable

Proceeds from prior sale (agreement signed by parties)

*21.2 That the PURCHASER confirms that he has entered into an Agreement of sale for his property, known as _____

_____ *without any suspensive conditions relating thereto/with the following suspensive conditions relating thereto which must be fulfilled by the _____ day of _____ 20 ____.

Record suspensive conditions hereunder:

- i) _____
- ii) _____
- iii) _____

*delete whichever clause is inapplicable

*21.3 That the SELLER acknowledges the PURCHASER requires funds of R_____ from the proceeds of the sale contemplated in clause 21.1 or (if applicable) clause 21.2, in order to pay a like sum on account of the purchase price, and the PURCHASER undertakes

to procure a guarantee on demand by the CONVEYANCER for such amount prior to registration of transfer of the Property hereby purchased and sold.

***22. PURCHASER'S RIGHT OF REVOCATION: (NOT APPLICABLE IF THE PURCHASE PRICE EXCEEDS R250,000)**

*delete if inapplicable

The PURCHASER is, in terms of Section 29A of the Alienation Act 1981, as amended, entitled within five (5) days after signature hereof by the PURCHASER, to revoke this offer or, in the event of the offer having being accepted by the SELLER, terminate his deed of alienation by delivering to the SELLER written notice to that effect in the manner prescribed in the said Act. The period of five (5) days shall be calculated with the exclusion of the day upon which the offer or deed of alienation was signed by the PURCHASER, and of any Saturday, Sunday or public holiday.

23. TERMS SEPARATE AND SEVERABLE

Notwithstanding anything to the contrary herein contained, or implied by law each and every term and condition shall be deemed to be separate and severable from the other terms hereof.

24. FURTHER TERMS OF THE AGREEMENT: (where applicable)

THUS DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES STATED HEREUNDER.

DATE: _____ **PLACE:** _____ **TIME:** _____

AS WITNESSES:

- 1. _____ _____ SELLER
- 2. _____ _____ SELLER'S SPOUSE

THUS DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES STATED HEREUNDER.

DATE: _____ **PLACE:** _____ **TIME:** _____

AS WITNESSES:

- 1. _____ _____ PURCHASER
- 2. _____ _____ PURCHASER'S SPOUSE