



ATTORNEYS

## DEED OF SALE - RESIDENTIAL

This Memorandum of Agreement is made and entered into by and between:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter referred to as “the Seller”)

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter referred to as “the Purchaser”)

The Seller hereby sells to the Purchaser who hereby purchases:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(description of property)*

Also known as \_\_\_\_\_

*(street address)*

together with all improvements thereon, (hereinafter referred to as “the property”)

SUBJECT to the following terms and conditions:

### **1 PURCHASE PRICE**

The purchase price is the amount of R\_\_\_\_\_ (\_\_\_\_\_ RAND).

### **2 DEPOSIT**

The deposit is the amount of R\_\_\_\_\_ (\_\_\_\_\_ RAND).

The deposit is payable:

\*2.1 on acceptance of this offer

\*2.2 on or before \_\_\_\_\_ (*date*)

\*2.3 from the proceeds of the sale of the Purchaser's property, which payment shall be secured by bank guarantee or financial undertaking acceptable to the Seller's Conveyancer, no later than \_\_\_\_\_ days after the sale of the Purchaser's property becomes unconditional, in favour of the Seller and payable on registration of transfer

The deposit is payable by the Purchaser to the Seller's Conveyancer, and will be invested in an interest-bearing trust account, for the Purchaser's benefit, in accordance with the provisions of Section 86(4) of the Legal Practice Act (Act 28 of 2014).

### **3 BALANCE PURCHASE PRICE**

The balance of the purchase price shall be paid:

\*3.1 in cash against registration of transfer, which shall be secured by a bank guarantee or financial undertaking acceptable to the Seller's Conveyancer, in favour of the Seller by no later than \_\_\_\_\_ (*date*) and payable on registration of transfer

\*3.2 from the proceeds of the sale of the Purchaser's property, in cash against registration of transfer, which shall be secured by a bank guarantee or financial undertaking acceptable to the Seller's Conveyancer in favour of the Seller and payable on registration of transfer, which guarantee shall be furnished no later than 7 days after the sale of the Purchaser's property becomes unconditional, or within such reasonable extended period as the Seller might allow.

#### **4 TRANSFER**

Transfer shall be affected by the Seller's Conveyancers

\*4.1 as soon as possible

\*4.2 as close to date of possession as possible

\*4.3 on or about \_\_\_\_\_ (date)

*\*delete whichever is not applicable and initial deletion*

#### **5 POSSESSION DATE**

Possession and vacant occupation of the property will be given to the Purchaser and the Purchaser shall be obliged to take possession thereof, on \_\_\_\_\_ (date) from which date the Purchaser shall be liable for all municipal rates and taxes, levies, water and/or fees payable on the property, and from which date the property shall be the sole risk, profit or loss of the Purchaser. Should the Seller have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof pro rata to the period of prepayment. If occupation of the property is taken by the Purchaser before registration of transfer, the Purchaser undertakes not to make any changes or additions to the property until date of registration of transfer. If this agreement is cancelled or lapses, the Purchaser must immediately leave the property and hand it back to the Seller in the same condition as it was when the Purchaser took occupation. The Purchaser will have no claim against the Seller arising out of any changes or additions made to the property by the Purchaser.

**6 COMPENSATION FOR EARLY OCCUPATION**

If transfer is not registered into the name of the Purchaser before date of possession, or, if the parties agree on a date of occupation other than the date of possession stipulated above, then the purchaser shall be obliged and bound to pay the Seller compensation for occupation of the property in the amount of R\_\_\_\_\_ (\_\_\_\_\_RAND) per month, in advance, pro-rata directly to the Seller until transfer is registered. Should the Seller retain occupation of the property after date of transfer, the Seller shall pay the purchaser the aforementioned sum under the same terms and conditions.

**7 VOETSTOOTS**

The property is sold voetstoots and the Seller shall not be liable for any defects, patent (obvious flaws) or latent (hidden / undisclosed) or otherwise in the property or for any damage occasioned to or suffered by the Purchaser by reason of such defect. The Purchaser admits having inspected the property to his satisfaction and that no guarantees or warranties of any nature were made by the Seller or his agent regarding the condition or quality of the property or any of the improvements thereon or accessories thereof.

**8 DOMICILIUM**

All notices intended for either party shall be sent to the following address which he selects as his *domicilium citandi et executandi* and any such notices shall be deemed to have been duly delivered 5 (five) days from date of sending.

Purchaser:

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Seller:

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## **9 JURISDICTION**

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

## **10 BREACH**

Should the Purchaser fail to make any payments provided for herein, or otherwise commit a breach of any of the conditions hereof, and remain in default for 7 (SEVEN) days after dispatch of a written notice requiring him to make such payment or to remedy any other breach, the Seller shall be entitled to, and without prejudice to any other rights available at law:

- 10.1 claim immediate payment of the entire balance outstanding although not otherwise due by the Purchaser under this Deed of Sale; or
- 10.2 cancel this Deed of Sale and retain all amounts paid by the Purchaser as *roukoop* or a genuine pre-estimate of damage suffered by the Seller, and furthermore the Purchaser shall not be entitled to compensation from the Seller for any improvements of whatsoever nature he may have caused on the property, whether with or without the Seller's consent; and
- 10.3 claim payment of the arrear instalments due under this Deed of Sale, which will be regarded as a portion of the pre-estimated damage.
- 10.4 Alternative to the above, the Seller shall be entitled to cancel this Deed of Sale and to recover any damage that he may have suffered as a result of the breach of the Purchaser, from the Purchaser.

10.5 For the above instances, a written notice shall be either one of the following: Fax, email, normal post or registered post.

The purchaser herewith supplies additional contact details for this specific instance:

**Fax Nr:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Postal Address:** \_\_\_\_\_

## 11. COSTS

The Purchaser shall be liable for all transfer costs, transfer duty as well as the cost of this Deed of Sale and transfer of the property into the name of the Purchaser by the Conveyancers of the Seller namely **ESI ATTORNEYS** (021-9435111), and such costs shall be payable on demand.

## 12. AGENT'S COMMISSION AND SOLD BOARD

12.1 The parties are in agreement that \_\_\_\_\_  
(*agent*) is the effective cause of the sale.

12.2 Agent's commission in the amount of R\_\_\_\_\_ (\_\_\_\_\_ RAND)  
\*including / excluding VAT shall be paid by the Seller against registration of transfer of the property into the name of the Purchaser and the transferring attorneys are hereby authorised to effect such payment out of the funds that become available to the Seller out of the purchase consideration.

12.3 If the Deed of Sale is cancelled as a result of breach of contract committed by the Purchaser, the estate agent shall be entitled to recover such commission from the Purchaser.

12.4 Both the Seller and the Purchaser agree to allow the agent to display on the property a "sold" board facing the road 90 days after the fulfillment of all suspensive conditions herein.

**13. INSURANCE**

The Seller shall be obliged to insure the property for the full replacement value thereof and to maintain such insurance up to and including the date of transfer thereof into the name of the Purchaser. Should any incident occur which may give rise to a claim under the policy of insurance, the Seller shall on request file a claim with the insurer, and shall cede the proceeds of the claim to the Purchaser, who shall at all times be entitled to the recovery thereof. Should this Deed of Sale be cancelled for any reason whatsoever, the cession of any claim, or the right to recover any payment under the policy of insurance shall lapse *pari passu*.

**14 SUSPENSIVE CONDITION – BOND APPROVAL**

The parties agree that this Deed of Sale shall be subject to the purchaser obtaining a loan from a bank payable against the registration of a first bond over the property for the amount of R\_\_\_\_\_ (\_\_\_\_\_RAND) within a period of \_\_\_\_\_ days from date hereof. Should the purchaser not obtain a loan within this period, this Deed of Sale shall lapse and no duty to take transfer of the property shall rest upon the Purchaser. To this end the Purchaser hereby authorises the Seller and the estate agent to make application in his name at any financial institution to obtain such a loan. The purchaser undertake to immediately upon signature of this agreement take all necessary steps to make application and submit all required documents to obtain a mortgage bond. The purchaser and seller can by mutual agreement extent the period granted above.

**15 FIXTURES & FITTINGS**

The parties agree that the following items are part of the property hereby sold:

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## **16 ELECTRICITY: CERTIFICATE OF COMPLIANCE**

The Seller shall, prior to registration of transfer, furnish the Purchaser with a valid Electrical Certificate of Compliance [as prescribed by law] covering the property which certificate shall as at the date of registration of transfer of the property to the Purchaser not be older than two years. All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the Seller. The Seller furthermore warrants to the Purchaser that no addition or alteration to the electrical installations on the property has been effected since the issue of such certificate.

Upon the Seller furnishing the Purchaser with the said Electrical Certificate of Compliance, the Purchaser shall have no claim whatsoever against the Seller and no further liability in this regard shall rest upon the Seller.

## **17 BEETLE INSPECTION**

The Seller shall arrange, at his/her own expense, for:

- 17.1 inspection by a duly qualified expert, of the accessible portions of the residential premises on the Property, but specifically excluding any free-standing structures not constituting residential premises (any wendy houses, garden sheds, car ports, fences and similar structures), for infestation by either *hulotrupes bajulus* or *oxypleuris nodieri* beetles and,
- 17.2 treatment and/or replacement of timbers so infested, in accordance with the recommendations contained in the expert's report, prior to occupation By the Purchaser, or Transfer, whichever is earlier. The said certificate must not be older than 6 (six) months.

## **18 CERTIFICATE OF CONFORMITY FOR GAS APPLIANCES**

- 18.1 The Seller shall, prior to registration of transfer, furnish the Conveyancers with a valid Certificate of Conformity applicable to all gas appliances / system on the property (i.e gas stove; gas geyser or built in gas braai etc) as prescribed in Regulation 17(3) of the



Occupational Health and Safety Act.

18.2 The certificate will be issued by an authorised person registered as such with the Liquefied Petroleum Gas Safety Association of Southern Africa (LPGAS).

18.3 All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the Seller. The Seller furthermore warrants to the Purchaser that no addition or alteration to the gas installations on the property has been effected since the issue of such certificate. Upon the Seller furnishing the Purchaser with the said Certificate of Conformity, the Purchaser shall have no claim whatsoever Against the Seller and no further liability in this regard shall rest upon the Seller.

## **19 PLUMBING CERTIFICATE FOR PROPERTIES WITHIN THE CITY OF CAPE TOWN MUNICIPALITY**

In terms of clause 14(1) of the City of Cape Town's Water By-law the Seller must, before transfer, submit a certificate from an accredited plumber certifying that:

- (a) the water installation conforms to the national Building Regulations and this By-law;
- (b) there are no defects
- (c) the water meter registers; and
- (d) there is no discharge of stormwater into the sewer system.

## **20 ELECTRICAL FENCING COMPLIANCE CERTIFICATE**

In the event of there being an electric fence system on or around the property and which relates to the property the Seller shall, prior to registration of transfer of the property, be obliged at the Seller's own cost and expense, to deliver to the Conveyancer a valid electric fence system certificate as contemplated in "Regulation 12 of the Electrical Machinery Regulations made in terms of the Occupational Health and Safety Act."

## **21 NATIONAL ENVIRONMENTAL ACT**

The Seller hereby records that to the Seller's best knowledge and belief there are no Listed Invasive Species mentioned in terms of the Regulations to the National Environmental Management: Biodiversity Act 10 of 2004 upon the Property. It is however recorded that as the Seller is not sufficiently qualified to identify such Species that the Purchaser accepts the risk inherent in purchasing the Property with any Listed Invasive Species which might be thereon."

## **22 VALUE ADDED TAX**

22.1 It is recorded that the purchase price is inclusive / exclusive of any VAT that may be payable.

\*22.2 Both parties hereby warrant that they are registered as vendors in terms of Section 23 of the Value Added Tax Act No. 89 of 1991 ("the Act"). The parties record that:-

22.2.1 The business together with the assets and the stock-in-trade constitutes an enterprise as the term is defined in the Act, and the supply of the enterprise as contemplated herein is that of a going concern chargeable with value-added tax ("VAT") at zero rate in terms of Section 11 (1)(e) of the Act.

22.2.2 The enterprise shall be an income-earning activity on the effective date, it being recorded that all of the assets which are necessary for the carrying on of such enterprise are hereby simultaneously being disposed of by the Seller to the Purchaser.

\*22.3. In the event of Vat being levied at a rate other than zero, the VAT so payable shall be paid by the Purchaser to the Seller on demand, provided that the Seller furnishes the Purchaser with a VAT invoice as contemplated in the Act to enable the Purchaser to claim an input credit in respect of the VAT so paid.

**23 INCOME TAX**

\*23.1 The Seller warrants he/she is a resident of the Republic of South Africa; or,

\*23.2 The Seller declares that he/she is not a resident of the Republic of South Africa

23.3 It is recorded that should a Seller not be a resident as contemplated Section 35A of the Income Tax Act No 58 of 1962 and sell a property for a purchase price exceeding R2million, the Purchaser is required to withhold from such Seller a prescribed portion of the purchase price (the withheld amount) and to pay such withheld amount on transfer to the South African Revenue Services (SARS) on account of any Capital Gains Tax payable by the Seller in respect of the sale. Currently the withheld amount of the purchase price payable to SARS is 5% where the Seller is a natural person, 7.5% where the Seller is a company and 10% where the Seller is a trust.

23.4 The Seller and Purchaser hereby irrevocably authorise and instruct the Conveyancers to deduct any withholding tax due from the full purchase price paid by the Purchaser and to pay such withheld amount to SARS on transfer of the property.

23.5 The Seller and Purchaser hereby warrant that all returns and payments, which may be due to SARS, are in order and settled to date. Alternatively the parties warrant that all outstanding tax returns and payments due to SARS will be settled forthwith so as not to delay the transfer of the property.

**24 SALE OF PROPERTY AND 72 HOUR CLAUSE**

24.1 This sale is subject to the sale of the Purchaser's property, being:

\_\_\_\_\_

\_\_\_\_\_

for the amount of R \_\_\_\_\_ (\_\_\_\_\_ RAND)  
or such lesser acceptable amount, within \_\_\_\_\_ days of acceptance, or within such reasonable extended period as the Seller may allow. The Purchaser hereby confirms that

he has appointed \_\_\_\_\_ (*agency*), in terms of a signed mandate as his sole agent, to market the Purchaser's property for this period.

24.2 The Seller may continue to market the property until such time as this suspensive condition relating to the sale of the other property has been fulfilled. Should the Seller, during this time, received another acceptable unconditional offer ("the competing offer") to purchase the property, he/she will have the right to call upon the Purchaser by notice in writing, to waive all suspensive conditions to which this offer is subject, thereby making this sale unconditional, within three days, excluding weekends and public holidays, of the date when such notice is delivered to the Purchaser, or such extended period as the Seller in his/her sole discretion may allow ("the waiver period"). Such notice shall include a copy of the competing offer. If the Purchaser fails to waive his/her rights in writing within the waiver period, the Seller shall be entitled, but not obliged, to accept the competing offer, upon which this sale shall lapse and be nul and void.

**25 OTHER SPECIAL CONDITIONS**

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**26 RIGHT TO REVOKE**

In the event of the Purchaser being a natural person who has not reserved the right to appoint a nominee and where the property herein purchased is a residential property at a price of R250,000.00 or less, the attention of the Purchaser is drawn to the Purchaser's rights in terms of Section 29A of the Alienation of Land Act 68 of 1981 (as amended) to revoke this offer or terminate any sale agreement concluded as a result of this offer by written notice delivered to the Seller or the Seller's agent within a period of 5 (five) days calculated from and including the day after signature hereof by the Purchaser but excluding Saturdays, Sundays and Public Holidays.

**27 SEVERABILITY**

Each of the provisions of this agreement shall be considered as separate terms and conditions and

in the event that this agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.

## **28 CONSUMER PROTECTION ACT**

The Seller herein warrants that he is an ordinary Seller who does not sell property in the ordinary course of business. The Consumer Protection Act therefore does not apply to the sale of this property.

## **29 MUNICIPAL ACCOUNT**

The Seller hereby warrants and confirms that he will settle all amounts due and/or payable to the relevant municipal authority which arose prior to registration of transfer of the property. The Conveyancer attending to transfer of the property will certify in writing to the Purchaser that payment has been made to the relevant municipal authority before transfer.

Should the Seller, for any reason, fail to effect payment of all outstanding costs owed to the relevant municipal authority before transfer the Seller indemnifies the Purchaser for any liability he may incur due to the his non-payment and/or non-compliance with the obligations imposed on him.

## **30 EXPIRATION**

The acceptance hereof by the Seller must be agreed upon before midnight on \_\_\_\_\_(date), and until then is irrevocable by the Purchaser. The Purchaser hereby nominates \_\_\_\_\_ as his agent for the purpose of receiving and accepting notification of acceptance of this offer.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_

1. **Witness** \_\_\_\_\_  
\_\_\_\_\_  
**Signature of Seller**

2. **Witness** \_\_\_\_\_  
\_\_\_\_\_  
**Signature of Seller**

SIGNED at \_\_\_\_\_ on \_\_\_\_\_

1. **Witness** \_\_\_\_\_  
\_\_\_\_\_  
**Signature of Purchaser**

2. **Witness** \_\_\_\_\_  
\_\_\_\_\_  
**Signature of Purchaser**



ATTORNEYS

Seller's Information		
Full Names		
ID Numbers		
Work Numbers		
Cell Numbers		
E-mail address		
Address		
Income Tax		

<b>Numbers</b>				
<b>Marital Status</b>	Married In Community	Married Out of Community	Unmarried	Married Muslim rites
<b>Existing Bond Account Number</b>				
<b>Body Corporate</b>				

<b>Purchaser's Information</b>				
<b>Full Names</b>				
<b>ID Numbers</b>				
<b>Work Numbers</b>				
<b>Cell Numbers</b>				
<b>E-mail address</b>				
<b>Address</b>				
<b>Income Tax Numbers</b>				
<b>Marital Status</b>	Married In Community	Married Out of Community	Unmarried	Married Muslim rites