

AGREEMENT OF PURCHASE AND SALE OF IMMOVABLE PROPERTY

1. PARTIES

1.1 CUF PROPERTIES (PTY) LTD

REGISTRATION NUMBER: 2007/032311/07

("Seller")

of Unit 5, 1st Floor, Kingfisher Office Park 2, Kingfisher Crescent, Meyersdal, Alberton

Tel No: 010 001 5198

1.2

("Purchaser(s)")

1.2.1 Full Names:

1.2.2 Identity Number:

1.2.3 Full Names:

1.2.4 Identity Number:

1.2.5 Marital Status

1.2.6 Address (Street)

1.2.7 Postal address

1.2.8 Email address

1.2.9 Tel no: (W) (H)

(Fax) (CELL)

2. INTERPRETATION

In this Agreement, unless the context indicates otherwise, the following expressions shall have the meanings assigned to them hereunder:

ORDINARY

* 2.1 **THE PROPERTY**

ERF: **IN THE TOWNSHIP KNOWN AS:**

..... **MEASURING:**

STREET ADDRESS (if applicable):

together with all buildings and erections thereon and all fixtures and fittings of a permanent nature pertaining thereto;

OR

SECTIONAL TITLE UNIT:

* 2.2 **THE PROPERTY**

A Sectional Title Unit no in the Scheme known as:
situated at:
together with exclusive use areaor garage / carport number.....
(if applicable) together with an undivided share in the common property.
(*DELETE WHICH IS NOT APPLICABLE)

2.3 **THE CONVEYANCER**

the transferring attorneys appointed by the Seller, namely
VAN STADEN & BOOYSEN INCORPORATED
of: **NO 4 IBIS PLACE, MEYERSDAL EXT 21 ALBERTON**
TEL 0118675723 (Refer Mr/Ms) MR JACQUES VAN STADEN

3. SALE AND PURCHASE

Subject to the hereinafter mentioned terms and conditions, the Seller hereby sells to the Purchaser who hereby purchases the Property.

4. PURCHASE PRICE AND GUARANTEES

4.1 The purchase price is R _____ . (_____
_____ **RAND**)

INCLUSIVE OF VAT and is payable as follows:

4.1.1 Immediately on signature of this agreement, the Purchaser shall make payment of R 2000.00 (Two Thousand Rand) into the trust account of Van Staden & Booyesen Attorneys, Standard Bank, Account No:000042129, Branch Code: 000205, Ref _____. This payment is in lieu of administration costs involved in the preparation and acceptance process pertaining to this offer. The payment is non-refundable and should the Purchaser cancel the agreement after the fulfilment of the suspensive condition as set out in 4.2 of the agreement and / or after payment of the initial payment as per clause 4.1.2 of this agreement and / or in the event of the financial Institution withdrawing from the bond due to non-compliance or non-performance or any other reason, such deposit shall be forfeited to the Seller. Failure to pay the said deposit within the stipulated period will result in this agreement to automatically lapse. Should the transaction however proceed in accordance with the provisions of this agreement, the payment will be set off against the purchase price referred to in clause 4.1 above.

4.1.2 Immediately on signature of this agreement, or within _____ days after the Seller has signed this Agreement, the Purchaser shall make an initial payment in the amount of R_____ (_____ **RAND**) into the trust account of Van Staden & Booysen Attorneys, Standard Bank, Account No 000042129, Branch code:000205 Ref _____, who shall immediately thereafter invest same in an interest bearing trust account opened by the Conveyancing Attorneys, the interest accruing to the Purchaser, and to be paid after deduction of professional fees and costs for administering the investment. Signature of this document by the Purchaser constitutes the necessary authority to the Conveyancing Attorney to invest the amount of the deposit with a financial institution at a rate to be negotiated by the Conveyancing Attorney. The funds to be invested in terms of Section 78(2A) of the Attorneys Act (Act no 53 of 1979).

4.1.3 The balance of the purchase price of R _____ (_____ **RAND**) shall be paid to the Seller as set out in clause 4.2.3 on transfer of the Property into the name of the Purchaser and shall be secured as follows:

4.2 **BOND**

4.2.1 In the event that the Purchaser requires a mortgage bond or alternative finance to finance the purchase price of the property, all applications for such finance to the bank(s) must be completed within 3 (three) days after signing of this agreement. The Purchaser undertakes to complete the necessary application forms for the obtaining of the aforesaid loan and undertakes further, that in the event of the loan being granted to him, to accept the loan, notwithstanding the fact that the terms and conditions on which such loan are granted may have changed between the date of signing of this agreement and the date of granting of such loan. Should:

4.2.1.1 The Purchaser fail to make the said application; or

4.2.1.2 The Purchaser fail to accept the said loan within seven (7) days of the granting thereof; or

4.2.1.3 The loan not be granted due to any act or omission by the Purchaser; or

4.2.1.4 The loan be granted but withdrawn before registration due to any act or omission by the Purchaser;

the suspensive condition aforesaid shall be deemed to have been fulfilled at the choice of the Seller.

4.2.2 The Purchaser shall obtain approval of a bond or alternative finance, by not later than **SIXTY (60) days** after Signature of this agreement by an institution of not less than

R_____ (_____ **Rand**) upon the security of a first mortgage bond to be registered over the Property (or unsecured loan as the case may be), at such rates of interest and on such conditions, in the reasonable discretion of the Purchaser. **Failure to obtain this approval will cause this agreement to lapse automatically unless an extension is granted by the Seller in writing.**

- 4.2.3 The Purchaser shall within **THIRTY (30)** days after fulfilment (or waiver in terms of clause 12.1 as the case may be) of all suspensive conditions contained in this Agreement lodge with the Conveyancer a guarantee or guarantees which shall:
- 4.2.3.1 be issued by a Financial Institution, the terms and conditions of which shall be acceptable to the Seller (or the Conveyancer on his behalf); and
 - 4.2.3.2 secure additional payment of the said balance to the Seller and/or his nominee/s on registration of transfer of the Property into the name of the Purchaser and registration of a mortgage bond, if applicable.

5. ACKNOWLEDGEMENTS BY PURCHASER

The Purchaser acknowledges that:-

- 5.1 He has inspected the property, and the Purchaser is satisfied with the property as is, and with the condition thereof. The Seller offers the Property in it's current condition and the Purchaser, accepts the Property in it's current condition and the Purchaser binds himself and declares that he will not be entitled to institute any action arising from this Agreement against the Seller, or his Agent, for any defect (whether latent or patent) in the property or any improvements thereon, or as a result of any representation made or guarantees given by the Seller or his Agent in respect of the Property.
- 5.2 The Purchaser declares they had the opportunity to obtain a property inspection report on the defects of the property prior to signature of this agreement. The Purchaser accepts the condition of the property as per the property inspection report attached as annexure "A" hereto as the comprehensive list of defects and the condition of the property.
- 5.3 He has acquainted himself with the nature, condition, beacons, extent and locality of the Property; and
- 5.4 He will have no claim whatsoever against the Seller for any deficiency in the size of the Property which may be revealed on any re-survey nor shall the Seller benefit from any possible excess; and
- 5.5 The Seller has disclosed to the Purchaser the existence of a lease with a third party and/or illegal occupant in respect of the property, where applicable in respect of the Property, and notwithstanding that the Property is sold subject to the lease and/or the occupation of an illegal occupant; the Seller shall use its best endeavors to cancel any such lease and/or give vacant occupation prior to transfer of the Property which is, however, not guaranteed.
- 5.6 The Purchaser hereby indemnifies the Seller against all loss, damage, costs and expense which the Seller may sustain or incur as a result of the failure of the removal of the occupants or lessee from the Property as the case may be.
- 5.7 the property is sold :-
 - 5.7.1 to the extent as it now lies, voetstoots, without any warranties whether express or implied and the Seller shall not be liable for any defects whether latent or otherwise in the property nor for any damages suffered by the Purchaser by reason of such defects. The Purchaser acknowledges that the Seller has disclosed to the Purchaser, and the Purchaser accepts that vacant occupation of the Property is not guaranteed and the Purchaser by his signature hereto expressly accepts the Property subject to such disclosure.
 - 5.7.2 subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Property or any town planning scheme applicable thereto.

- 5.7.3 if the Purchaser has been living in the Property prior to this agreement being concluded with the Seller and has knowingly acted in a manner consistent with accepting the Property, its fixtures or fittings in its present condition, then the Purchaser shall be deemed to have accepted the Property, its fixtures or fittings in their conditions as the date of the agreement.

6. RISK AND OWNERSHIP

With effect from the date of registration of transfer:-

- 6.1. all the benefits and risks of ownership of the Property shall pass to the Purchaser; and
- 6.2 the Purchaser shall be entitled to the rents (if any) payable in respect of the Property and shall be liable for all rates and taxes and other imposts levied thereon; and
- 6.3 the Seller shall become liable for and forthwith refund to the Purchaser the rents (if any) paid in respect of any period after the said date and the Purchaser shall similarly become liable for and forthwith refund to the Seller any rates and taxes and other imposts paid by the Seller in respect of any period after the said date.

7. OCCUPATION AND OCCUPATIONAL INTEREST

- 7.1 Occupation of the Property shall be given by the Seller to the Purchaser on registration or a date to be agreed between the parties in writing on which date the Purchaser shall take occupation thereof.
- 7.2 Subject to clause 7.3 hereunder, if the date of occupation does not coincide with the date of registration of transfer the Purchaser enjoying occupation of the Property while it is registered in the name of the other party, shall in consideration of such occupation and for the period of such occupation, pay to the other party occupational interest of R_____ (_____ **Rand**) per month in advance payable to Van Staden & Booyesen Inc. Trust account Standard Bank, Acc no. 000042129, ACB 000205, Ref. _____. The Estate Agent may be required to attend to the collection of such occupational interest.
- 7.3 If occupation of the Property is given to the Purchaser prior to registration of transfer the Purchaser shall not be entitled to make any alterations or additions to the Property before the date of registration of transfer. The Purchaser shall be obliged in the event of the cancellation or lapse of this Agreement to forthwith vacate the Property and restore it to the Seller in the same condition as when the Purchaser took occupation, it being acknowledged that no tenancy shall be created by the Purchaser taking occupation prior to registration of transfer and that the Purchaser will have no claims whatsoever against the Seller arising out of any alterations or additions made to the Property by the Purchaser.
- 7.4 All occupational interest shall be payable monthly in advance, provided that the Purchaser shall be entitled to a refund of a proportionate share of the payment in respect of the month in which the Property is registered into his name and calculated from the date of such registration.
- 7.5 In the event of clause 7.3 above, the Purchaser will be liable for occupational interest until such time as he has vacated the property.
- 7.6 The Purchaser's attention is drawn to the fact that the Seller doesn't warrant vacant occupation.

- 7.7 For the purposes of this agreement, the Purchaser shall be deemed to have taken delivery of the Property, its fixtures and fittings from the transfer date or from the date of occupation of the property by the Purchaser, as more fully described in clause 7.1, whichever occurs first.

8. TRANSFER

- 8.1.1 The Seller/Purchaser undertake to pay for all the costs plus VAT relating to the registration of the transfer of the property into the name of the purchaser.
- 8.1.2 The Seller/Purchaser also undertake to pay for all the costs plus VAT relating to the registration of the Mortgage Bond over the property.
- 8.2 The Seller and the Purchaser undertake immediately upon being requested to do so to sign all documents required to be signed in connection with the transfer, the cancellation of all bonds at present registered over the Property and the registration of any bonds to be registered in terms of this Agreement.
- 8.3 Transfer of the Property shall be affected by the Conveyancer within a reasonable time after the Purchaser has complied with the provisions as set out above.
- 8.4 The SELLER warrants that it is a vendor for the purpose of the Value Added Tax Act, 1991 (as amended) and, accordingly, that the PURCHASE PRICE includes value added tax at a rate of 14%.
- 8.5 If more than one Purchaser are parties to this agreement, then such Purchasers shall jointly, severally and in solidum be liable for the due performance of the respective parties' obligations in terms of this agreement and the parties hereby renounce all benefits arising from the legal exceptions "*de doubus vel pluribus reis debendi*."

9. BREACH

- 9.1 In the event of the Seller and/or Purchaser committing a breach in any way, the breach clause would be applicable. This would include:-
- 9.1.1 the Seller and/or Purchaser failing to comply with any of the conditions set out in this agreement above and persist in such failure for a period of 7 (seven) days after dispatch of the written notice from either party calling upon him to remedy such breach;
- 9.1.2 the Purchaser failing to pay the initial payment referred to in clause 4.1.1 above and persisting in such failure for a period of 7 (seven) calendar days after dispatch of a written notice from the Seller calling upon him to make such payment;
- 9.1.3 either one of the parties ("the defaulting party") committing a breach of any of the other terms of this Agreement and failing to remedy such breach within a period of 7 (SEVEN) days after dispatch of a written notice from the other party ("the aggrieved party") calling upon the defaulting party to remedy the breach complained of, then the aggrieved party (which includes the Seller for the purposes of (9.1.1) above) shall be entitled at his sole discretion and without prejudice to any of his other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, claim and recover damages from the defaulting party.

9.2 In the event that the defaulting party is:-

9.2.1 the Purchaser, the Seller will be entitled immediately upon cancellation of this Agreement to receive payment of the commission out of the initial payment as set out above. The balance (if any) of the initial payment, together with all the interest that has accrued thereon, shall be forfeited and paid to the Seller as rouwkoop subject, however, to any remedies in that regard which are available to the Purchaser in law.

9.2.2 the Purchaser, the Seller shall immediately upon cancellation of this Agreement receive from the Conveyancer the initial payment made by the Purchaser in terms of clause 4.1.1 above, together with all the interest that has accrued thereon.

9.3 Should there be a dispute as to the determination of the defaulting party, the Conveyancer shall retain in trust the initial payment under his control until such dispute is resolved either by agreement between the Purchaser and the Seller or by order of a competent Court.

10. DOMICILE AND NOTICE

10.1 Each party chooses as his domicilium citandi et executandi his address as set out in 1 above, at which address all notices and legal process in relation to this Agreement or any action arising therefrom may be effectually delivered and served.

10.2 Any notice given by one of the parties to the other ("the addressee") which:

10.2.1 is delivered by hand to the addressee's domicilium citandi et executandi shall be presumed until the contrary is proved to have been received by the addressee on the date of delivery; or

10.2.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium citandi et executandi shall be presumed until the contrary is proved to have been received by the addressee on the 3rd day after the date of posting.

10.3 Either party shall be entitled, on written notice to the other, to change the address of his domicilium citandi et executandi.

11. GENERAL

11.1 The parties undertake to do all such things as may be necessary, incidental or conducive to the implementation of the terms, conditions and disport of this Agreement.

11.2 This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms and conditions of whatsoever nature not contained or recorded herein shall be of any force or effect.

11.3 No variation of the terms and conditions of this Agreement or any consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

11.4 No indulgence which either party ("the grantor") may grant to the other ("the grantee") shall constitute a waiver of any of the rights of the grantor who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future or unless reduced to writing and signed by both parties.

- 11.5 The Seller and the Purchaser warrant to each other that all consents required in terms of the Matrimonial Property Act No. 88 of 1984 have been duly furnished.
- 11.6 If this agreement is entered into by the signatory as Trustee or for a Company or Close Corporation to be formed, or already formed, or on behalf of himself or his nominee, then in that instance the signatory shall in his personal capacity be liable for the due fulfilment of all the obligations of such party in terms of this agreement; if
- 11.7 The Close Corporation or Company to be formed is not formed before or on the earliest of the dates on which payment of the purchase price it to be made or guarantee(s) to secure payment hereof is to be delivered in terms of this agreement, then the signatory hereto shall in its personal capacity be liable to do so; or
- 11.8 The Close Corporation or Company formed, but does not ratify, adopt and accept this agreement, then the signatory hereto shall in its personal capacity be liable to do so; or
- 11.9 The Close corporation or Company ratifies, adopts and accepts this agreement, but does not perform timeously in terms hereof, then the signatory in its personal capacity shall be obligated to proceed with the transaction, then the signatory hereto shall in its personal capacity be liable to do so;
- 11.10 **Cooling Off Period** - The Purchaser/s attention is drawn to the rights conferred upon him by virtue of Section 29(A)(1) of the Alienation of Land Act, No 68 of 1981, as amended, which is subject to Section 29(A)(5), in terms of which he may revoke/terminate this offer to purchase/deed of alienation by written notice to the Seller within five (5) day period excluding date of signature of this agreement and excluding any Saturday, Sunday or Public holiday, after signature hereof, and to have any amount already paid by him in terms hereof refunded in the event of such termination. **THIS CLAUSE IS NOT APPLIABLE SHOULD THE PURCHASE PRICE EXCEED R250 000.00.**

12. WAIVER OF CONDITIONS AND LAPSE OF AGREEMENT

- 12.1 The Purchaser may, at any time prior to the fulfilment of any suspensive condition contained in this Agreement, advise the Seller in writing that he waives the benefit of such condition, in which event this Agreement will no longer be subject to such condition.
- 12.2 Should any suspensive condition contained in this Agreement not be timeously fulfilled, the entire Agreement shall automatically lapse and be of no further force or effect. In such event all amounts paid by the Purchaser (excluding the occupational interest as set out above) shall be refunded to him together with any interest that has accrued thereon.

13. THE ESTATE AGENT

NAME:
of (address)
Tel. No..... Fax no Cell no
(Refer Mr/Ms)

The Seller shall be liable for the Agent's commission of R_____ inclusive of VAT which commission is deemed to be earned on registration of the transfer and will only be paid upon receipt of an invoice reflecting the amount due to the agent.

Notwithstanding anything to the contrary contained in this agreement of sale, it is hereby irrevocably agreed between the Seller and the Agent that the Agent would only be entitled to payment of his commission, once the transaction's suspensive conditions have been completed. More specifically the suspensive conditions include that the bond be granted and the transfer be registered and secondly that the occupant was able to take occupation of the property, irrespective that it is a specific term of the agreement that the Seller does not warrant vacant occupation of the property.

14. SIGNATURE

- 14.1 It is recorded that this document is intended to be signed firstly by the Purchaser and thereafter by the Seller.
- 14.2 The Purchaser acknowledges that his signature hereto constitutes an offer by him to purchase the Property on the terms and conditions set out herein, which offer shall remain irrevocable for a period of 7 (seven) days from date of signature by the Purchaser for acceptance by the Seller at any time prior thereto.
- 14.3 This Agreement shall be duly concluded upon timeous signature by the Seller and its validity will in no way be dependent upon the fact that such signature not being communicated to the Purchaser.

15. CERTIFICATE OF ELECTRICAL COMPLIANCE AND OTHER

- 15.1. The Seller / Purchaser shall be responsible for obtaining, at his costs, an Electrical Certificate of Compliance in terms of Government Regulation No 2920 of 1992, as incorporated in the Occupational health and Safety Act No 6 of 1983.
- 15.2. Any other certificate required by any legislation or authority shall be obtained by the purchaser at his own costs and in his own time

16. CLAIMS AND LIMITATIONS OF CLAIMS

- 16.1 Subject to provisions set out above and the limitation of liability contained herein, should the Purchaser allege that the property or its fixtures and fittings therein failed, were unsafe or defective on the delivery date, the Purchaser shall have a period of 6 (six) months from the delivery date to notify the Seller thereof. Notwithstanding the aforesaid, to the extent that the Purchaser has used, misused, changed, altered or in any way tampered with the property its fixtures and fittings therein during the 6 (six) month period concerned, the Seller shall not be liable to the extent of any such alleged claim of the Purchaser and the Purchaser hereby indemnifies the Seller accordingly.
- 16.2 To the extent that the Seller repairs any failed, unsafe, or defective portion of the property, appurtenances, fixtures or fittings in the time period referred to herein the Purchaser shall, within 3 (three) months of the date of such repair, notify the Seller if the failed, unsafe or defective item has not been remedied, and failing such notice within such time, the Seller shall not be liable in respect of any such alleged claim of the Purchaser and the Purchaser hereby indemnifies the Seller accordingly.
- 16.3 Notwithstanding the aforesaid, the Seller shall have no liability or obligation to the Purchaser with respect to the property its fixtures and fittings therein which have been subjected to abuse, misuse, improper use, improper testing, negligence accident, alteration, tampering or faulty repair by the Purchaser or any agent appointed by the Purchaser.
- 16.4 The Seller shall not be liable for damage caused by the Property and its fixtures or fittings, to the Purchaser as a consequence of the Property and its fixtures or fittings being unsafe or defective or hazardous in any way.
- 16.5 It is unreasonable to expect the Seller to have discovered the unsafe characteristic in the Property, appurtenance, fixture or fitting failure, defect or hazard having regard to the Seller's role in marketing the Property to the Purchaser.
- 16.6 The Seller shall not be responsible for any latent defects in respect of the building except where the action in respect of the latent defect is instituted within a period of 3 (three) months from date of taking occupation thereof.

17. RESALE

17.1 The PURCHASER shall at no time be entitled to re-sell the property prior to him taking transfer thereof, without the SELLER'S written permission first being obtained and such permission shall be granted on the proviso that Van Staden & Booysen Inc. attend to the registration of such resale transfer.

17.2 **If the Seller agree to the re-sale of the property the purchaser will be required to:**

17.2.1 Pay a **non-refundable deposit of 5% of the purchase price** as recorded in clause 4.1.2

17.2.2 The purchaser will also be responsible to secure vacant occupation of the property.

18. ACKNOWLEDGEMENTS AND REPRESENTATIONS

18.1 The Purchaser hereby acknowledges that the estate agent explained the contents of the Agreement to the satisfaction of the purchaser and that all of the relevant aspects pertaining to the house have been disclosed.

18.2 Subject to any legislative prohibition in respect of which this exclusion of liability will be treated as if it were not part of this agreement, the Seller shall not be liable to the Purchaser under any circumstances whatsoever for any damages, including, without limitation, loss of profit or other special damages or any indirect or consequential damages arising out of any breach by it or any of its obligations under this agreement, or any act of negligence or mistaken omission on the part of the Seller and/or its employees.

19. THE CONSUMER PROTECTION ACT

19.1 The Seller has in the drafting of their Agreement used its best endeavors to ensure compliance with all applicable Laws, including without limitation, the Consumer Protection Act No 68 or 2008 ("the CPA"). However, to the extent that this Agreement may require further amendment in order to comply with the CPA, the Purchaser by its signature hereto agrees to such amendment which the Seller will set out in a schedule to this Agreement.

19.2 The aforesaid amendments will be effective from the date of notice of amendment from the Seller to the Purchaser.

20. SPECIAL CONDITIONS

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

DATE :

PLACE :.....

.....

WITNESS

.....

PURCHASER

.....

SPOUSE / CO-PURCHASER

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

DATE :

PLACE: **MEYERSDAL.**

.....

WITNESS

.....

SELLER

(OR DULY AUTHORISED REPRESENTATIVE/FOR
AND ON BEHALF OF **CUF PROPERTIES (PTY) LTD**)

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

DATE :

PLACE :.....

.....

WITNESS

.....

ESTATE AGENT

(OR DULY AUTHORISED REPRESENTATIVE)