IN THE [INSERT NAME OF HIGH COURT] HIGH COURT

HELD AT [INSERT SEAT OF HIGH COURT]

CASE NUMBER:

In the matter between:

[INSERT NAME OF EXECUTION CREDITOR] **Plaintiff**

and

[INSERT NAME OF EXECUTION DEBTOR] **Defendant**

CONDITIONS OF SALE IN EXECUTION
OF IMMOVABLE PROPERTY

DESCRIPTION OF PROPERTY AND PARTICULARS OF SALE

The property which, on this the.....at,……
……..…will be put up to auction on the ..... day of ……..20……consists of:

CERTAIN:

SITUATED AT:

REGISTRATION

DIVISION: MEASURING:

AS HELD BY THE DEFENDANT UNDER DEED OF TRANSFER NUMBER T.....

THE PROPERTY IS ZONED:

THE SALE SHALL BE SUBJECT TO THE FOLLOWING CONDITIONS:-

1. **THE SALE**

1.1. The sale is conducted in accordance with the provisions of Rule 46 of the Uniform Rules of the High Court, as amended, as well as the provisions of the Consumer Protection Act, no 68 of 2008, the

Regulations promulgated thereunder and the "Rules of Auction", where applicable. These provisions may be viewed at www.acts.co.za (the Act) and www.info.gov.za (the Regulations).

1.2. The headings to the clauses are for the purposes of convenience and reference only, and shall not be used in the interpretation of, nor modify, nor amplify the conditions of this sale nor any clause. In these conditions, unless a contrary intention clearly appears, words importing any one gender shall include the other two genders, the singular includes the plural and vice versa, and natural persons include created entities (corporate or otherwise) and vice versa. Any reference to days shall mean business days.

1.3. The property shall be sold by the sheriff to the highest bidder subject to such reserve price, if any, as may be stipulated by a preferent creditor or local authority in terms of Court Rule 46(5)(a).

2. **MANNER OF SALE**

2.1. The sale shall be for South African Rands and no bid of less than R1000.00 (one thousand Rand) in value above the preceding bid will be accepted.

2.2. The execution creditor shall be entitled to cancel the sale at any stage before the auction has commenced. The execution creditor shall be entitled to bid at the auction.

2.3. If any dispute arises about any bid, the property may, at the discretion of the Sheriff, immediately again be put up for auction.

2.4 If the Sheriff makes any mistake in selling, such mistake shall not be binding on any of the parties, but shall be rectified immediately.

2.5 If the Sheriff suspects that a bidder is unable to pay either the deposit or the balance of the purchase price, he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately again be put up for auction.

3. OBLIGATIONS OF PURCHASER AFTER AUCTION

3.1 The purchaser shall, as soon as possible after the Sheriff announces the completion of the sale by the fall of the hammer, or in any other customary manner, immediately on being requested by the Sheriff sign these conditions of sale.

3.2 If the purchaser has bought as an agent for a principal then the sale will also be subject to the following conditions:

3.2.1 The principal's address as furnished by the purchaser shall be the address as chosen by the principal as his/her address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted by virtue hereof (domicilium citandi et executandi).

3.2.2 If the principal is not in existence at the time of the auction the purchaser shall be the contracting party.

3.3 In the event of the purchaser being a Company, Close Corporation or a Trust, a Trustee/Trustees, or any person acting in a representative capacity, then the person signing these conditions of sale shall be deemed to have bound himself/herself/themselves as surety(ies) and co-principal debtor(s) for all the obligations of the purchaser (and, if applicable, jointly and severally with any other persons signing these conditions of sale on behalf of the purchaser), such surety(ies) hereby renouncing the benefits of excussion and division, no value received and errors in calculation, the effect of which he/she/they acknowledges himself/ herself/ themselves to be aware.

3.4 The purchaser shall not be entitled to nominate a third party to obtain transfer of the property in his/her/its stead. This clause may not be overruled by adding the words *"or nominee"* or similar wording to the signature of the purchaser or anywhere else.

3.5 If the Purchaser is married in community of property such Purchaser shall furnish the Sheriff with the written consent of the other spouse, as required in terms of Section 15(1)(g) of the Matrimonial Property Act 88 of 1984, within 48 hours of the signature of the conditions of sale.

3.6 the purchaser shall on demand sign all necessary transfer and ancillary documents with the transferring attorneys.

4 CONDITIONS OF PAYMENT

4.1 The purchaser shall on completion of the sale, pay a deposit of 10% of the purchase price immediately on demand by the sheriff.

4.2 Payment shall be made in cash, by bank guaranteed cheque or by way of an electronic transfer, provided that satisfactory proof of payment is furnished immediately on demand to the sheriff.

4.3 Should the purchaser fail to pay the deposit and the sheriff's commission on completion of the sale, then the sale shall be null and void and the Sheriff may immediately put the property up for auction again.

4.4 The balance of the purchase price shall be paid to the Sheriff against transfer and shall be secured by a bank guarantee, to be approved by the execution creditor's attorney, which shall be furnished to the Sheriff within 21 days after the date of sale. Should the purchaser fail to furnish the sheriff with a bank guarantee within 21 days after the date of sale, the sheriff may in his/her sole discretion grant the purchaser a 5 day extension within which to provide the required bank guarantee. Should the Purchaser fail to furnish the sheriff with a bank guarantee, which is approved by the execution creditor's attorney, within the required time, the sale may be cancelled.

4.5 The deposit will be deposited immediately by the sheriff into a trust account held in terms of Section 22 of the Sheriffs Act 90 of 1986.

4.6 If the transfer of the property is not registered within 1 month after the date of the sale, the purchaser shall be liable for payment of interest at the rate of ____% [INSERT RATE AS PER MORTGAGE LOAN AGREEMENT] Nominal Annual Compounded Daily to the execution creditor, and to any other bondholder at the rate due to them, on the respective amounts of the award in the plan of distribution, as from the expiration of 1 (one) month after the sale to date of transfer.

4.7 The purchaser shall be responsible for payment of all costs and charges necessary to effect transfer, including but not limited to conveyancing costs, transfer duty or VAT attracted by the sale and any Deeds Registration Office levies. The purchaser shall further be responsible for payment, within 7 days after been requested to do so by the appointed conveyancer:

4.7.1 of all amounts required by the Municipality for the issue of a clearance certificate in terms of section 118(1) of the Local Government Municipal Systems Act, No.32 of 2000, to the effect that all amounts due in connection with immovable property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid; and

4.7.2 of all levies due to a Body Corporate in terms of section 37 of the Sectional Title Act, No.95 of 1986 or Home Owners Association.

4.8 The purchaser is hereby informed of the following charges:

4.8.1 Arrear rates and taxes, estimated at R ……;

4.8.2 Arrears charges payable in terms of the Sectional Titles Act, Act 95 of 1996, estimated at R ……..;

The Sheriff and the Purchaser note that the amount set forth in this clause are a reasonable estimate only. Neither the Sheriff nor the execution creditor warrant the accuracy of this estimate.

The Purchaser shall not be able to avoid its obligations hereunder, nor will it have any claims against the Sheriff or the execution creditor, arising out of the fact that the arrear rates and taxes and arrear charges payable in terms of the Sectional Titles Act no. 95 of 1986 are greater than the estimated charges set forth herein. The actual amounts owing in respect of arrear rates and taxes or arrears charges payable in terms of the Sectional Titles Act, 95 of 1996 must be paid by the Purchaser within 7 days after being requested to do so by the attorney attending to the transfer.

4.9 The Purchaser shall, immediately on demand by the sheriff, pay the Sheriff's commission as follows:

4.9.1 6% on the first R30 000.00 of the proceeds of the sale, and

4.9.2 3.5% on the balance thereof,

subject to a maximum commission of R 10 777.00 in total plus VAT and a minimum of R 542.00 plus VAT.

4.10 If the purchaser pays the whole purchase price and complies with conditions 4.1, 4.7, 4.8, and 4.9, within 21 days from the date of sale any claim for interest shall lapse, otherwise transfer shall be passed only after the purchaser has complied with the provisions of conditions 4.1, 4.4, 4.7, 4.8 and 4.9 hereof.

4.11 In the event that the purchaser being the execution creditor who is also a consumer exempted in terms of Section 5(2)(b) from the provisions of the Consumer Protection Act, 68 of 2008, the execution creditor shall be required to pay the commission set out in the clause 4.9, without demand, within 7 days.

Such execution creditor shall not be required to make any deposit nor furnish a guarantee as provided for in terms of 4.1 and 4.4, except insofar as the purchase price may exceed the total amount as set out in the warrant of execution. The difference between the purchase price and the total amount as set out in the warrant of execution, plus interest as provided for in 4.6, is to be paid or secured to the sheriff within 21 days from the date of sale, without demand. Such execution creditor shall at the date of registration of transfer provide the sheriff with satisfactory proof that the defendant's account has been credited accordingly.

5. COMPLIANCE CERTIFICATES

5.1 The purchaser shall at his/her own cost obtain a valid electrical installations certificate of compliance and test report, in the prescribed format, as provided for in the Electrical Installation Regulations, 2009, issued in terms of the Occupational Health and Safety Act, 1993. The purchaser agrees that this undertaking relieves the Sheriff and the execution creditor from any duty that may be imposed upon either or both of them in terms of Section 10 of the Occupational Health and Safety Act, 1993. The purchaser accordingly agrees that there is no obligation on the Sheriff or execution creditor to furnish the said electrical installations certificate of compliance and test report.

5.2 The purchaser agrees that there is no obligation on the Sheriff or the execution creditor to furnish an Entomologist's certificate.

5.3 If applicable, the purchaser shall at his/her/its own cost obtain a valid gas installation and plumbing certificate of compliance and test report.

6. RISK AND OCCUPATION

6.1. The property shall be at the risk and profit of the purchaser after the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit.

6.2 The purchaser shall be liable to keep insured all buildings standing on the property sold for the full value of same from the fall of the hammer and the signing of the conditions of sale and payment of the initial deposit to the date of transfer. Failing which the sheriff may effect the insurance at the purchaser's expense.

6.3 The execution creditor and the Sheriff give no warranty that the purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is unoccupied and any proceedings to evict the occupier(s) shall be undertaken by the purchaser at his/her/its own cost and expense.

6.4 The property is sold as represented by the Title Deeds and diagram and the Sheriff is not liable for any deficiency that may be found to exist. The property is sold as it stands (voetstoots) and without warranty or representation and also subject to all servitudes and conditions specified in the Deed of Transfer, including any real rights reserved in favour of a developer or body corporate in terms of Section 25 of the Sectional Titles Act, No. 95 of 1986. Notwithstanding anything to the contrary hereinbefore contained, the property is sold free from any title conditions pertaining to the reservation of personal servitudes in favour of third parties and in respect of which servitudes preference has been waived by the holder thereof in favour of the execution creditor.

6.5 The Sheriff and the execution creditor shall not be obliged to point out any boundaries, beacons or pegs in respect of the property hereby sold.

7. SALE SUBJECT TO EXISTING RIGHTS

Where the Property is subject to a lease agreement the following conditions apply:

7.1 Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:

7.1.1 if that lease was concluded before the execution creditor's mortgage bond was registered, then the property shall be sold subject to such tenancy;

7.1.2 if the lease was concluded after the execution creditor's mortgage bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the execution creditor as reflected on the Warrant of execution plus interest as per Writ, then the property shall be offered immediately thereafter free of the lease.

7.2 Notwithstanding any of these provisions, the purchaser shall be solely responsible for ejecting any person or other occupier claiming occupation, including a tenant, at the purchaser's cost. No obligation to do so shall vest in the Sheriff and/or the execution creditor.

7.3 The property is furthermore sold subject to any lien or liens in respect thereof.

8. BREACH OF AGREEMENT

8.1. If the purchaser fails to carry out any of his obligations under these Conditions of Sale, the sale may be cancelled by a Judge summarily on the report of the Sheriff after due notice to the purchaser, and the property may again be put up for sale; and the purchaser shall be responsible for any loss sustained by reason of his default, which loss may, on the application of any aggrieved creditor whose name appears on the Sheriff's distribution account, be recovered from him under judgment of the Judge pronounced summarily on a written report by the Sheriff, after such purchaser shall have received notice in writing that such report will be laid before the Judge for such purpose; and if he is already in possession of the property, the Sheriff may, on 7 days' notice, apply to a Judge for an order ejecting him or any person claiming to hold under him there from.

8.2 In the event of the sale being cancelled as aforesaid the deposit shall be retained by the Sheriff in trust for such period that is stipulated in the judgment in terms of Rule 46(11) or if no such period is stipulated therein then until such time that the property has been sold to a third party and the execution creditor's damages have been quantified and judgment has been granted in respect thereof.

9. ADDRESS FOR LEGAL PROCEEDINGS

The purchaser chooses the address set out in Annexure "A" hereunder as his/her/its address for the service of all forms, notices and documents in respect of any legal proceedings which may be instituted following from this sale or its cancellation (*domicilium citandi et executandi)*. In the event of the purchaser failing to choose a *domicilium citandi et executandi* hereunder, the property which is the subject matter of the sale will be deemed to be the purchaser's *domicilium citandi et executandi.*

10. **CONFIRMATION OF THE PURCHASER**

The Sheriff and Purchaser confirm that the property is sold:

☐ with lease

☐ without lease

for an amount of:

R……

(……)

Which amount excludes the amounts referred to in clause 4.6 (if applicable), 4.7, 4.8 & 4.9 and accepts all further terms and conditions as set out herein, which acceptance is confirmed by his signature below.

11. **JOINT AND SEVERAL LIABILITY**

In the event of there being more than one purchaser, they will be jointly and severally liable in terms hereof.

12. **TRANSFERRING CONVEYANCER**

The execution creditor shall be entitled to appoint the conveyancer to attend to the transfer of the property. The conveyancer's details are as follows:

12.1 Name: _____

12.2 Name of Firm: _____

12.3 Tel: _____

I, the undersigned, Sheriff of _____hereby certify that today the _____day of _____ 20_____ and as advertised, the aforementioned property was sold for R…….
to ……...

_____

SHERIFF

I, the undersigned, _____ on this _____day of _____ 20_____ do hereby bind myself as the purchaser of the aforementioned property on the conditions of sale as contained herein

_____

PURCHASER

If married in community of property, married according to Muslim rights, married in terms of customary law in a monogamous marriage, or married in terms of customary law as from 15 November 2000 then both spouses are to sign.

(and where applicable in terms of these conditions of sale as surety and co-principal debtor)

(and where applicable on behalf of the below mentioned Principal being duly authorised in terms of a power of attorney / mandate which is attached hereto as Annexure B)

FULL NAME OF PRINCIPAL AS PER POWER OF ATTORNEY:

PHYSICAL ADDRESS OF PRINCIPAL:

ANNEXURE "A"

Purchaser's details:

1. Full names:…….

2. Spouse's Full Names: ……..

3. Married/Divorced/Widowed/Single: ……

4. If married – Date: ……..

   By Antenuptial Contract / Married in Community of Property

5. Where married: …….

   (husband's *domicilium citandi et executandi* at the time of the marriage)

6. Identity number: ……

7. Physical address (*domicilium citandi et executandi*): …….

   ……..

8. Postal address: ……..

   ……

9. Telephone numbers:

   Home: ……..……..Work:……

   Telefax (if any) …… Cell Number:……..……

ANNEXURE "B"

POWER OF ATTORNEY