



AGREEMENT OF SALE

IN RESPECT OF PORTION _____ OF THE FARM

WAGENBIETJIESHOEK 991, JT

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AGREEMENT OF SALE:

BY AND BETWEEN

AUTUMN STAR TRADING 630 (PTY) LTD

Registration number: 2005/032966/07

(hereinafter referred to as the SELLER)

AND

THE PURCHASER

Being the person or entity described as such and whose full and further particulars are as set out in section B of the schedule hereto.

THE PARTIES AGREE AS FOLLOWS:

The Purchaser hereby purchases from the Seller who sells the property, being a portion OF THE FARM **WAGENBIETJIESHOEK 991**, REGISTRATION DIVISION JT, PROVINCE MPUMALANGA, as more fully depicted on the site development plan and described in section C of the schedule hereto situated in the development known as **WAGENBIETJIESHOEK** subject to the following terms and conditions:

1. PURCHASE PRICE

- 1.1 The Purchase Price for the property is the amount as stated in section C of the schedule hereto, which amount has been calculated inclusive of VAT;
- 1.2 The parties agree that should transfer of the property not have been passed to the PURCHASER within 60 days from date of the opening of the subdivision register with the Registrar of Deeds or within 90 days of the date of this agreement (whichever is the later date) the PURCHASER shall be liable for the payment of interest on the purchase price calculated at the rate of 2% per month from such date, *pro rata* to date of payment, should such delay be attributable to an act or omission of the PURCHASER.



- 1.3 The purchase price has been calculated including VAT @ 14%. Should the rate payable for VAT and the SELLER'S liability in this regard be amended during the currency of this agreement, the purchase price will be increased or reduced accordingly.

2. PAYMENT OF PURCHASE PRICE

The purchase price will be payable to the SELLER by the PURCHASER as follows:

- 2.1 The PURCHASER shall within 7 days from date of signature by the PURCHASER of this agreement pay a deposit equal to 10% of the purchase price, but to a maximum of R150 000,00 to the SELLER'S Conveyancers.
- 2.2 The deposit will be invested in an interest bearing trust account for the benefit of the PURCHASER and held in trust in terms of Section 78(2A) of the Attorneys' Act No 53 of 1979 until date of transfer of the property into the name of the PURCHASER, when the capital shall be paid to the SELLER and the interest be credited to the PURCHASER. The PURCHASER shall not apply set-off between the said interest and the balance of the purchase price, and shall be solely responsible for any costs of the investment.
- 2.3 The balance of the purchase price shall be payable in cash free of bank charges on registration of the property in the name of the PURCHASER, which payment shall be guaranteed by way of an acceptable bank or other guarantee to be furnished to the SELLER within 30 days after being requested in writing to do so by the SELLER'S attorneys. The guarantee shall be made out in favour of the SELLER or such other party or parties as may be nominated by the SELLER in writing.
- 2.4 Failure by the PURCHASER to deliver guarantees as provided for in 2.3, shall be deemed a delay as referred to in 1.2 of this agreement, which would entitle the SELLER to interest as stipulated in the said clause, notwithstanding any other rights which the SELLER may have as a result of such failure.



3. **RATES AND TAXES**

The PURCHASER shall be liable for payment of all rates and taxes relating to the property and due to the State, Municipality or any other authority from a date 60 days from opening of the subdivision register, or date of transfer, whichever date is the earlier. On transfer the PURCHASER will reimburse the SELLER for any advance payments made by the SELLER.

4. **DOMICILIUM CITANDI ET EXECUTANDI**

All notices to be given by any of the parties to the other in pursuance of this agreement, shall be given by prepaid post to the postal address or telefax to the fax address or hand delivered to such party's *domicilium citandi et executandi* as indicated in the preamble provided that:

- 4.1 Any written notice sent by registered post to the PURCHASER at his postal address as mentioned above shall be deemed to have been received and be deemed to have come to the PURCHASER'S notice on the 5TH day after date of postage.
- 4.2 Any notice given by fax shall be deemed to have been received on the date of transmission.
- 4.3 Either party is entitled to by way of registered post addressed to the other's postal address change his chosen postal address or *domicilium citandi et executandi*.

5. **JURISDICTION**

The parties hereby agree to the jurisdiction of the Magistrate's Court for any action arising from this agreement, notwithstanding whether the action falls outside the jurisdiction of the Magistrate's Court. The signing of this agreement by the PURCHASER constitutes written acceptance as contemplated in Section 45 of the Magistrate's Court Act No 32 of 1944, as amended. The SELLER may nevertheless at his own discretion institute action in any other court having jurisdiction.



6. BREACH

Should the PURCHASER fail to punctually comply with any of the terms or provisions of this agreement and remain in default 7 days after receipt of notice from the SELLER to rectify such breach the SELLER shall be entitled to:

- 6.1 Claim the outstanding purchase price together with interest and all other outstanding amounts from the PURCHASER or to claim specific compliance of any other obligation; or
- 6.2 Immediately cancel the agreement; and
 - 6.2.1 claim any damages which the SELLER has suffered as a result of the breach by the PURCHASER; or
 - 6.2.2 retain all payments already made by the PURCHASER to the SELLER as rouwkoop or alternatively as liquidated damages as a result of the breach of contract. The parties hereby agree that any amount so retained as damages will represent the fair and reasonable damages suffered by the SELLER.

7. OCCUPATION AND POSSESSION

- 7.1 The PURCHASER shall be entitled to occupy and possess the property from and including date of registration of transfer or earlier as agreed upon in writing from which date all benefits and risks of ownership in respect of the property shall pass to the PURCHASER.
- 7.2 From the date upon which the PURCHASER takes possession and occupation of the property the PURCHASER shall be liable for the payment of all rates, taxes, imposts or other municipal charges and the Home Owners Association levies, levied thereon. Payment of these costs shall be effected to the Conveyancers immediately upon request by the SELLER or the Conveyancers to do so. Should the SELLER have made any payment of such a nature for a period after the date of possession and occupation, he shall be entitled to a refund thereof pro rata to the period of prepayment.



- 7.3 Should the PURCHASER take occupation before the date of transfer no tenancy shall be created thereby and under no circumstances will the PURCHASER acquire any lien or be entitled to any compensation for any improvements effected to the PROPERTY. Should this sale terminate for whatever reason prior to transfer, the PURCHASER shall be obliged to vacate the property immediately.

8. TRANSFER AND COSTS

- 8.1 The PURCHASER is liable for payment of all costs relating to the transfer of the property payable to the attorneys VFV MSELEKU of CORPORATE PLACE, 39 SELATI STREET, ASHLEA GARDENS, PRETORIA. Should the Purchaser require a mortgage bond to be registered against the property, this will be for the account of the Purchaser.
- 8.2 The PURCHASER shall sign all documents relating to the transfer of the property upon request.
- 8.3 The PURCHASER shall pay to the Conveyancers a reasonable fee for attending to the investment of the deposit with a financial institution (clause 2.2) and the calling up thereof.
- 8.4 Transfer shall be effected as soon as all transfer documents have been signed and all costs paid, and the purchase price has been fully paid or guaranteed.
- 8.5 The Purchaser shall not be entitled to cede or assign its rights in terms of this agreement to any third party prior to transfer or nominate any other party to act as purchaser in his place or stead, but shall be obliged to take transfer in his own name.
- 8.6 Transfer of the property shall be passed by the SELLER'S conveyancer and shall be given and taken as soon as is reasonably possible after the transfer of the property can be registered in the Deeds Office and the PURCHASER has otherwise complied with all his obligations in terms of this agreement, but not before the installation of services (that is water, electricity, sewerage and roads) by the SELLER to the estate in accordance with the establishment conditions, has been completed to the satisfaction of the relevant authorities.



9. VOETSTOOTS

- 9.1 The property is sold voetstoots as it is and subject to all servitudes and conditions which apply in the Title Deed and further subject to the conditions of establishment, the conditions as set out in the applicable authority's consent to subdivision and/or township establishment, the Record of Decision as issued by the Department of Environmental Affairs and the applicable approved general plan of the township.
- 9.2 The extent of the property as set out in the site development plan is approximate and the final extent of the property will be as shown in the general plan approved by the Surveyor-General, by which the parties agree to be bound, provided there is no material change in area or boundaries of the property. A deviation of more than 10% in size would be considered to be material and would entitle either party to claim a pro rata adjustment to the purchase price. The PURCHASER acknowledges that the erf number of the property may change on the final approval of the general plan and agrees to be bound by such numbering change.
- 9.3 Except as set out above the SELLER renounces all claims to any excess and will not be answerable for any deficiency in the declared extent of the property and no warranties are given in respect of the boundaries of the property.
- 9.4 The property is sold subject to all conditions as are or will be mentioned and/or referred to in the title deed(s) relating to the property and to such conditions as are or may hereafter be imposed by any relevant authority, including the conditions imposed in respect of the rezoning and/or subdivision of the land of which the property forms part. In particular, the property shall be subject to the statement of conditions, as amended, approved in respect of the estate pursuant to the application for rights made in terms of the Development Facilitation Act.
- 9.5 The property is sold furthermore subject to the provisions of the development plan and the architectural guidelines. The PURCHASER acknowledges that he has acquainted himself with this and agrees to be bound thereby.
- 9.6 The PURCHASER acknowledges and agrees that he has satisfied himself as to the condition of the property and it is agreed that the SELLER shall not be required to level the property or carry out any earthworks, landscaping or stump removal in respect thereof.



- 9.7 The property is not the subject of a separate title deed on the date hereof. The earliest date on which the property can be registered in the name of the PURCHASER is as soon as is reasonable and practical after the date on which the SELLER has complied with all the conditions of rezoning and subdivision imposed by the relevant authorities in respect of the estate, including either the installation of all necessary services or guarantee for the installation of such services to the satisfaction of the local authority has been submitted.
- 9.8 The property will be situated substantially as shown on the site development plan and has either been pointed out on site to the PURCHASER or its agent by or on behalf of the SELLER or has been identified by the PURCHASER or its agent on the said plan.
- 9.9 The PURCHASER has inspected the site development plan and declares himself to be fully acquainted with and accepts all relevant particulars relating to the property and the estate as shown on the said plan as well as the situation, extent and soil condition thereof.
- 9.10 The SELLER shall commence with the installation of services, the construction of roads and other infrastructure and compliance with the other conditions imposed by the relevant authorities as soon as is reasonable and practical.
- 9.11 The SELLER shall provide the following:
- 9.11.1 Prepared access routes, the nature and extent of which will be determined by the SELLER in its sole discretion;
 - 9.11.2 Common amenities such as a gate house and game /fence;
 - 9.11.3 On completion of the development, a club house with bar and ablution facilities, swimming pool, small deli / shop, chapel / hall, stables for horses and trout dams.

The PURCHASER furthermore acknowledges that he fully appreciates and understands that these facilities shall be for the common use of owners. These facilities shall comply with the requirements and standards of the Local Authority.

- 9.12 The PURCHASER shall make no improvements or other alterations whatsoever to the property prior to the registration of the transfer without written permission from the SELLER.



- 9.13 Except as set out herein, the Seller shall have no obligation to point out to the PURCHASER the beacons of the property to the Purchaser, apart from providing the Purchaser with a copy of the registered general plan of subdivision, indicating the co-ordinates of the property.
- 9.14 It is recorded that the SELLER will be providing infrastructural services in the development and that the property hereby sold may be damaged as a result thereof. The PURCHASER shall not be entitled to cancel this agreement or to claim a reduction in the purchase price or damages as a result thereof, or as a result of normal wear and tear from date of this agreement to date of transfer.
- 9.15 The PURCHASER acknowledges that, although the SELLER undertakes to take all reasonable steps to conserve all trees presently on the property, the removal or damage of some trees may be unavoidable for the purposes of construction and installation of infrastructural services.
- 9.16 The SELLER will transfer the game and cattle on the common property to the HOA simultaneously with the transfer of the common property in the name of the HOA.

10. SERVICUTES AND RESTRICTIONS

- 10.1 The property is sold subject to such restrictions as may be/are imposed by any competent authority in respect of the rezoning and/or subdivision of the estate, including restrictions in regard to height, coverage, setback and disturbance area.
- 10.2 The SELLER shall be entitled to register such servitudes over the property as may be necessary for the purposes of the installation and maintenance of services including the following servitude which shall be required of the PURCHASER, without payment of compensation:
- 10.2.1 to allow electricity, telephone and television cables and/or wires, main and/or other waste pipes and sewers and storm water pipes, ditches and channels of any other property or properties to be conveyed across the property, and surface installation such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the SELLER and/or Wagenbietjieshoek HOA or any other competent authority, in such



manner and position as may from time to time be reasonably required; this shall include the right of access to the property at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above; and

- 10.2.2 to receive such material or permit such excavation on the property as may be required to allow use of the full width of an abutting road between the level of the road as finally constructed and the level of the property, unless the owner elects to build retaining walls to the satisfaction of and within a period to be determined by the said Authority and/or HOA
- 10.3 The PURCHASER further acknowledges that the estate will be subject to servitudes of right of way in favour of neighbouring properties and, in certain cases, the general public and agrees to be bound thereby.
- 10.4 The Purchaser acknowledges that, notwithstanding the fact that the whole of the property shall be transferred to the Purchaser, he shall only be entitled to disturb and use a development pocket being a radius of 20 meters from the development peg erected on the property. All buildings, outbuildings, gardens and other structures and disturbances may only be constructed within this development pocket. The Seller shall upon approval of the general plan of subdivision provide the Purchaser with a copy of the general plan as well as the co-ordinates of the development peg
- 10.5 The PURCHASER acknowledges that pipes and cables may be led through his property and agrees thereto provided such cables and pipes do not adversely affect the amenity of the property or the right of the PURCHASER to construct any improvements on the disturbance area on the property in accordance with the development plan.
- 10.6 Since Wagenbietjieshoek is a conservation area, the PURCHASER agrees to keep the garden as natural as possible. The garden area may not exceed an area of more than 40% of the area of all improvements. The erf will not be fenced and will stay as natural as possible.



11. GENERAL

- 11.1 If the PURCHASER is acting as a trustee for a company or close corporation, (*legal persona*) to be formed then, in the event of the said *legal persona* not being formed and ratifying and adopting this agreement within 60 days of the date of this agreement then the signatory in his personal capacity shall be the PURCHASER and shall be bound by all the terms and conditions of this agreement. If a *legal persona* is formed and duly adopts and ratifies this agreement as aforesaid then the signatory by virtue of this signature hereto binds himself as surety and co-principal debtor jointly and severally with the *legal persona* for the fulfillment of all the terms and conditions of this agreement.
- 11.2 In the event of there being more than one PURCHASER for the same property, such PURCHASERS are jointly and severally and *in solidum* liable to the SELLER for due and proper compliance with all obligations hereunder.
- 11.3 Should the SELLER instruct its attorneys to take any steps against the PURCHASER to enforce any of the SELLER'S rights in terms of this agreement or to claim payment of any monies payable in terms hereof, the PURCHASER shall be liable for payment of all tracing fees, collection fees and other legal costs on the scale of attorney and client even if an action is not instituted through a court.
- 11.4 Should the signatory be acting on behalf of a principal (whether disclosed or undisclosed or existing or still to be formed) the provisions of Clause 10.1 shall *mutatis mutandis* apply and the signatory be bound to the SELLER as surety and co-principal debtor, jointly and severally with the signatory's principal.
- 11.5 Any latitude granted in respect of the performance of any obligation or extension of time or condonation of the PURCHASER'S non-performance of any term or obligation in terms hereof shall not constitute a novation or the waiver of any rights by the SELLER in terms of this agreement.
- 11.6 The Purchaser shall not be entitled to subdivide the property, nor to sink any boreholes thereon without the written consent of the Seller, the HOA and the local authority.



12. IRREVOCABLE OFFER

Should the PURCHASER or its trustee or other representative sign this agreement before the SELLER, the PURCHASER thereby makes an offer to the SELLER to purchase the property at the given price and subject to the terms and conditions set out in the agreement and agrees that this offer is irrevocable and available for acceptance by the SELLER for a period of 14 days after the date from which the SELLER is entitled to proceed with the transaction in terms of the provisions of the Development Facilitation Act, Act 67 of 1995.

13. ACCEPTANCE OF OFFER TO PURCHASE

This offer to purchase will be legal and binding as soon as the SELLER or his representative has signed same and no notice to the PURCHASER of such acceptance will be necessary.

14. COMPLETE AGREEMENT

This agreement constitutes the entire agreement between the parties and no provisions, warranties or representations (whether made by any Agent of the SELLER or not) which do not appear in this agreement and no alteration or consensual cancellation of this agreement will be binding on the parties unless reduced to writing and signed by both parties.

15. LANGUAGE

The PURCHASER confirms that his chosen language for this agreement is English. Die KOPER erken dat hy Engels gekies het as die taal van hierdie ooreenkoms.

16. FURTHER CONDITIONS

16.1 HOME OWNERS' ASSOCIATION



- 16.1.1 The PURCHASER confirms that on registration of the property into his name he shall automatically become a member of The Wagenbietjieshoek Home Owners Association (incorporated in terms of Section 21), Registration number: 2008/009436/08 (referred to in this agreement as the HOA) subject to the Memorandum and Articles, Statutes, Constitution and Rules of the HOA.
- 16.1.2 The PURCHASER confirms being aware of the provisions of the Memorandum and Articles, Statutes, Constitution and Rules of the HOA, a copy of the which is available for inspection with the SELLER;
- 16.1.3 The PURCHASER shall remain a member of the HOA and bound to its provisions for as long as he remains the registered owner of the property.
- 16.1.4 Should the PURCHASER sell the property he will be obliged to inform the new PURCHASER of the HOA and the new PURCHASER'S obligations in terms of its provisions, and to sell the property subject to the Memorandum and Articles, Statutes, Constitution and Rules of the HOA.
- 16.1.5 As from the date of this agreement the PURCHASER shall require the prior written consent of the HOA to sell the property which consent will not be unreasonably withheld.
- 16.1.6 Prior written consent from the HOA is required for any improvements or alterations to be erected on the property. Building plans for such improvements must be submitted and approved by the HOA before the commencement of any work. A copy of the HOA'S architectural guidelines is available for inspection with the SELLER; the PURCHASER confirms being aware of the provisions thereof.
- 16.1.7 The property is sold subject to the following provisions, which provisions will be taken up in the Title Deed of the property:



- 16.1.7.1 The owner of the property or any interest therein, shall not be entitled to transfer it without the prior written consent of the HOA which consent shall not be unreasonably withheld;
- 16.1.7.2 The owner of the property or of any interest therein, shall automatically become and remain a member of the HOA and be subject to its Constitution until he ceases to be an owner as aforesaid. Neither the Erf nor any sub-division thereof nor any unit thereon shall be transferred to any person who has not bound himself in writing and otherwise to the satisfaction of the HOA to become a member of the HOA.
- 16.1.8 As from the date of transfer the PURCHASER shall be liable for payment to the HOA of a levy of R1 200 per month and thereafter such levy as may be decided from time to time by the HOA at a General Meeting
- 16.1.9 The levy shall be utilized entirely towards maintenance of the property belonging to the HOA, security matters and for such other purposes as the constitution of the HOA may prescribe and to which members agree
- 16.1.10 Such levy shall not include rates and taxes in respect of the property for which the PURCHASER shall remain separately liable as provided for in clause 3 hereof.
- 16.1.11 The SELLER undertakes to, until the 31 December 2010 or the date of the first AGM of the HOA, make good any shortfall of funds required by the HOA for its purposes, but shall until such date have no further financial obligations towards the HOA. At the said AGM the HOA will then determine its future levies.
- 16.1.12 The SELLER shall as part of this development erect a clubhouse and other communal facilities. These facilities shall be transferred to the HOA upon completion thereof and maintained and administered by the HOA for the benefit of its members.



16.1.13 The HOA shall become the registered owner of all open areas on the remainder of the farm subject to a lease agreement in respect of farming activities being conducted thereon

16.1.14 The Seller shall remain a member of the HOA, notwithstanding the fact that it may have sold and transferred all properties in the development to other parties

16.1.15 The SELLER undertakes that it will, as soon as is reasonably able to do so, transfer the common property comprised in the estate to the HOA at no cost. With effect from the date of transfer, the common property shall be at the sole risk of the HOA.

16.2 CONSTRUCTION WORK AND INSTALLATION OF SERVICES

16.2.1 The PURCHASER hereby confirms that the development is not yet fully developed and that inconvenience may be experienced due to construction work and installation of services on the properties. The PURCHASER shall have no claim against the SELLER as a result of such inconvenience.

16.2.2 It is recorded that the SELLER will use its best endeavours to install the infrastructural services within 6(six) months from the date of fulfillment of the suspensive condition referred to in Clause 22.

16.3 CONSTRUCTION OF DWELLING

16.3.1 Any dwelling erected on the property shall be constructed, strictly in accordance with the architectural and aesthetic guidelines of the HOA, and in the style and specifications as indicated in such guidelines. In this regard the PURCHASER acknowledges being aware thereof that the development consists of seven "villages", each with a specific architectural theme, and of the theme that will apply to the property hereby purchased.

16.3.2 The purchaser shall complete such building works within a period of 12 months from date of commencement of construction.



16.3.3 Should the purchaser fail to comply with the provisions of 16.3.2 above the purchaser shall be obliged to, until date of fulfillment of the conditions of 16.3.2, pay a monthly penalty to the HOA equal to twice the levy prescribed by the HOA in terms of 16.1.8 at the time.

16.3.4 The PURCHASER acknowledges that in terms of the local authority approvals, title deed restrictions and the development plan, there are planning controls, architectural controls, landscaping requirements, environmental guidelines and other requirements relating to the development of the estate by which the PURCHASER and his successor-in-title shall be bound.

16.3.5 The PURCHASER agrees that all building work shall be undertaken subject to and in accordance with the National Building Regulations.

16.3.6 The PURCHASER will be allowed to use his own architect and contractor for the design and construction of the improvements on the property. Such design and construction will be subject to the approval and control process of the HOA whose decision shall be final.

17. RESTRICTION ON ALIENATION

17.1 The PURCHASER shall not sell, alienate or otherwise dispose of the erf or any interest therein prior to the earlier of the first anniversary of the transfer date or the date upon which the SELLER disposes of the last of the erven owned by it in the estate, without the SELLER'S prior written permission.

17.2 It is further recorded and agreed that should the PURCHASER be a:

17.2.1 company, the alienation by a shareholder of any of his shares in the PURCHASER, including his beneficial ownership thereof; or

17.2.2 close corporation, the alienation by a member of any percentage of his member's interest in the PURCHASER; or



17.2.3 trust, the alienation by a beneficiary of any of his beneficial interest in the PURCHASER; shall be deemed to be an alienation of the property for purposes of clause 17.1 .

17.3 The property may not be sold, transferred, leased or otherwise alienated or disposed of to any person other than in accordance with the provisions contained in this agreement.

18. CESSION

18.1 The PURCHASER shall not cede, transfer, alienate or otherwise dispose of any of his rights under this agreement without prior written consent of the SELLER.

18.2 The SELLER shall be entitled at all times to cede and delegate its rights and obligations in terms of this agreement and the PURCHASER hereby consents to such cession and delegation.

19. AGENT'S COMMISSION

19.1 The SELLER shall be responsible for payment of any agent's commission in respect of the sale;

19.2 Should however this agreement be terminated as a result of an act or omission of the PURCHASER (ie breach of contract) the SELLER shall be entitled to utilize the deposit referred to in 2.1 as payment or part-payment of such commission.

20. COOLING OFF PERIOD

This agreement is not subject to the provisions of Section 29A of the Alienation of Land Act 68 of 1981 and the PURCHASER has no right to withdraw from this Agreement.



21. SPECIAL CONDITIONS

22. SUSPENSIVE CONDITIONS

This agreement is subject to the condition that the PURCHASER (or the SELLER or the Agent on the PURCHASER'S behalf) obtains approval by not later than 30 (THIRTY) days from date of this offer of a loan by an institution of not less than R_____ (_____ RAND) upon security of a first mortgage bond over the property at such rates of interest and on such conditions as are stipulated by the financial institution. This condition shall be deemed to have been fulfilled upon the financial institution having issued a quotation (loan offer) to the PURCHASER in terms of the National Credit Act, 34 of 2005. Upon submission by the PURCHASER after expiry of the period mentioned, of written proof, that he was unable to obtain the said loan, this agreement shall lapse and be of no further effect.

THUS DONE AND SIGNED AT _____ ON THIS THE _____
DAY OF _____ 20_____

AS WITNESSES:

1. _____

2. _____

PURCHASER



THUS DONE AND SIGNED AT _____ ON THIS THE _____
DAY OF _____ 20____

AS WITNESSES:

1. _____

2. _____

SELLER

