



**AGREEMENT AND CONDITIONS OF SALE
IN RESPECT OF
IMMOVABLE PROPERTY**

In which **VAN'S AUCTIONEERS** (herein referred to as the **AUCTIONEER**) on instructions from the

JOINT TRUSTEES OF INSOLVENT ESTATE LATE: THEMBA SIMON MAZIBUKO, ID NUMBER: 760622 5568 085

reference number: **T0196/11**

(hereafter referred to as the **SELLER**), to sell on behalf of the seller, by public auction the under mentioned property/ies (herein after the **PROPERTY/IES**) known as:

ERF 2384 AND 2385 KENSINGTON REGISTRATION DIVISION IR GAUTENG BETTER KNOWN AS 68 AND 185 ERNEST ROAD, KENSINGTON

Measuring: **495 m² and 495 m²**

Held by deed of transfer number: **T16225/2008**

in favour of: **THEMBA SIMON MAZIBUKO, ID NUMBER: 760622 5568 085**

Subject to the following conditions:

1. INTERPRETATION

1.1 Any reference to –

- 1.1.1 The one gender shall include the other gender.
- 1.1.2 Natural persons shall include legal persons and vice versa.
- 1.1.3 The singular shall include the plural and vice versa.
- 1.1.4 References to the Executor, Trustee or Liquidator shall include the Provisional Trustee or Provisional Liquidator.

1.2 In the event of this contract not arising from a public auction but as a private treaty, then all references to –

- 1.2.1 **AUCTIONEER** shall be deemed to refer to as the **AGENT**.
- 1.2.2 **AUCTIONEER'S** commission shall be deemed to refer to as **agent's** commission.
- 1.2.3 Bid shall be deemed to refer to purchase price.

1.3 And any other alteration shall be applicable mutatis mutandis.

2. RESERVE PRICE AND CONFIRMATION

- 2.1 The property will be sold without reserve, to the highest bidder (herein referred to as the **PURCHASER**) but subject to confirmation by the **SELLER**, which confirmation can be withheld by the **SELLER** without furnishing reasons therefore. The **PURCHASER** is unconditionally and irrevocably bound to his bid for **14 days**, excluding date of signing hereof and the onus will rest upon the **PURCHASER** to establish whether his bid was confirmed, or not.
- 2.2 The **SELLER** reserves the right to extend the confirmation period within reason.
- 2.3 If this contract is not confirmed, it shall be regarded as *ab initio* null and void, and all payments made by the **PURCHASER**, including commission, will be refunded without delay.
- 2.4 On receipt of a higher offer prior to confirmation or registration (**whichever occurs first**), such offer should be made to the **AUCTIONEER**, subject to the same terms and conditions, but the original bidder at the auction shall have the right to equal such offers which offer will be preferent to any other offers.
- 2.5 The **AUCTIONEER** or his agent is entitled to bid up to the reserve price on behalf of the **SELLER**, but shall not be entitled to make a bid equal to or exceeding the reserve price.

3. SIGNATURE

- 3.1 The **PURCHASER** shall sign this agreement when called upon to do so by the **AUCTIONEER**
- 3.2 Should the **PURCHASER** be married in community of property or bid on behalf of a third party, he guarantees that the necessary power of attorney to legally bind the joint estate and/or the third party has been obtained and that the transaction shall be concluded in all its facets. The said power of attorney must be submitted on request.
- 3.3 The person signing this contract will nevertheless be held personally liable for the fulfilment of all the terms hereof, even though he acts on behalf of a principal or spouse.
- 3.4 If the **BIDDER** acts without the abovementioned power of attorney and the said remedies are not involved against the **PURCHASER** the **BIDDER** will be liable for Delictual Damages.
- 3.5 Should the **PURCHASER** be a company, close corporation or trust, the person signing this agreement on behalf of such **PURCHASER**, by his signature hereto interposes and binds himself as surety for and co-principal debtor with the **PURCHASER** for the due and proper discharge of all its obligations arising from this agreement.

4. DISPUTES

- 4.1 In the event of a dispute arising in regards to a bid made, the **AUCTIONEER** will have the discretion to put the property up for auction again and his decision will be final. Should the **AUCTIONEER** and/or the **SELLER** commit any error in respect of the sale of the property, such error shall not be binding upon the parties and shall be rectified.
- 4.2 Should the **PURCHASER** fail to conclude the transaction in all facets, the **AUCTIONEER** will be entitled to resell the property by auction or private treaty.
- 4.3 Should the **AUCTIONEER** have any reason to believe that a bidder is not able to pay the deposit or the purchase price, he is entitled to refuse a bid from such a bidder, or accept it provisionally, until he is satisfied that the bidder is able to pay aforesaid amount. Should a bid be rejected under these circumstances, the property can immediately be put up on auction again.

5. TAXES AND LEVIES

- 5.1 The **PURCHASER** shall be liable for payment of all duties, levies and taxes, calculated as from the date of possession and/or occupation (whichever occurs first), but shall not be held liable for any arrears.

6. CONVEYANCER

- 6.1 The **SELLER** shall appoint a conveyancer to effect of transfer, and the **PURCHASER** will be responsible for payment of all costs of transfer, which costs shall be payable upon demand.

7. LEASE

- 7.1 The property is sold free of any lease agreements.

8. VOETSTOOTS

- 8.1 The property is sold **VOETSTOOTS**, and neither the **AUCTIONEER** nor the **SELLER** gives no guarantee as to the extent, patent or latent defects, the nature, quality or legality of improvements, or the legality of any activities practised thereon, and will not be held liable for any damages arising from same. The property is sold subject to all conditions, servitudes, current or forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the property.

8.2 The **AUCTIONEER** and/or **SELLER** is not obliged to point out any beacons or boundaries, and any description or information, whether by way of advertising, brochures or verbal communication is done in good faith and the **PURCHASER** acknowledges that he was not induced into this contract by any explicit or implied representations.

9. PURCHASE PRICE AND MEANS OF PAYMENT

9.1 The purchase price of the property is R

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9.2 **10%** of the full purchase price as a deposit, in cash or bank guaranteed cheque upon signature hereof or as requested by the **AUCTIONEER**, which deposit, after confirmation and deduction of auctioneer's commission, expenses and fees, will be paid over to the trust account.

9.3 The **PURCHASER** shall be liable for payment of interest calculated at **1%** per month on the balance of the purchase price from date of possession **and/or occupation (whichever occurs first)** to date of registration of transfer which interest shall be deemed as occupational rent. The **SELLER** may demand that interest be paid monthly in advance.

9.4 The balance of the purchase price shall be paid or secured by means of a guarantee acceptable to the **SELLER**, within 45 (forty five) days from date of confirmation, payable upon registration of transfer.

9.5 The **PURCHASER** shall be responsible for payment of Bank costs.

10. AUCTIONEERS' COMMISSION

10.1 The parties hereby agree that the **AUCTIONEER** is the effective cause of this transaction and that he is entitled to auctioneers' commission at confirmation.

10.2 The **SELLER** will be liable for auctioneers' commission of **5%** of the purchase price (exclusive of VAT.)

10.3 The party responsible for non-compliance of this agreement will be responsible for payment of the total auctioneers' commission.

11. VALUE ADDED TAX / TRANSFER DUTIES

11.1 The **PURCHASER** shall upon registration of transfer be liable for payment of **VAT** which is not included in the purchase price, or Transfer Duties, whichever is applicable.

12. POSSESSION, OCCUPATION, INSURANCE AND OWNERSHIP

- 12.1 Possession and/or occupation will be given and taken subject to any existing lease agreements, leasing, tenancy or legal or illegal occupation, on date of confirmation or as agreed upon in writing between the parties, from which date the sole risk, profit or loss of the property shall rest upon the **PURCHASER**.
- 12.2 The **PURCHASER** shall be obliged to insure the property comprehensively as from date of possession and/or occupation (whichever occurs first) failing which, the **SELLER** may insure it on the **PURCHASER'S** expense.

13. NON COMPLIANCE AND / OR BREACH

- 13.1 Should the **BIDDER** fail to, or refuse to sign the conditions of sale, or to pay the deposit or purchase price on request of the **AUCTIONEER** as described above, the property can, at the **AUCTIONEERS'** discretion, be sold *de novo* by virtue of a auction or private treaty, at the **BIDDERS** risk, who will be held responsible for any shortages and/or costs involved therein. Any increase in price will be to the benefit of the **SELLER**.
- 13.2 Should the **PURCHASER** violate any condition of this agreement and neglect to comply to a written notice from the **SELLER** or **AUCTIONEER** to rectify such breach within 7 (seven) days, the **SELLER** will be entitled to, without prejudice to any other rights:
- 13.2.1 Demand specific performance of the agreement with or without damages;
OR
- 13.2.2 Cancel the agreement, take possession of the property, evict all occupants from the property and claim damages which will include any damages or costs involved in the resale of the property, either by public auction or private treaty.
- 13.3 In the event of cancellation of this agreement the **PURCHASER** shall forfeit all monies paid, including commission paid in terms of this agreement to the **SELLER** and/or the **AUCTIONEER** as liquidated damages.

14. JURISDICTION AND DOMICILIA

- 14.1 The parties hereto agree to the jurisdiction of the Lower Court in respect of any lawsuit rising from this agreement, or at the discretion of the **SELLER**, to the jurisdiction of the Supreme Court of South Africa, Transvaal Provincial Division, and the parties choose the addresses as indicated herein as their *domicilium citandi et executandi*.

15. SUBMISSION OF CERTIFICATES

15.1 The **PURCHASER** confirms that he will, at his own cost, obtain an electrical installation certificate and/or the necessary certificates to the effect that the buildings on the property are free from timber destroying insects, (if required).

16. IMPROVEMENTS

16.1 Prior to registration of transfer the **PURCHASER** will not be entitled to sublet, or make any improvements and/or alterations to or on the property without the written consent of the **SELLER**. In the event of cancellation of this agreement, for what ever reason, the **PURCHASER** herewith waives any claim of any nature which he may have for necessary, useful or luxurious improvements and/or alterations on or to the property.

17. AMENDMENTS AND ADDITIONS

17.1 The terms and conditions of this agreement shall constitute the sole agreement between the parties concerned and no variation or amendment thereto shall be binding unless agreed upon in writing and signed by the **SELLER** and **PURCHASER**.

18. WAIVER AND CONCESSIONS

18.1 Any waiver or concession made or allowed by the **SELLER** shall not constitute a waiver of his rights in terms of this agreement; and the **SELLER** shall at all times be entitled to enforce strict compliance hereof.

19. SPECIAL CONDITIONS

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THUS DONE AND SIGNED ON THE DATES AND AT THE PLACES AS STATED BELOW:

PURCHASER

NAME:

.....

IDENTITY NUMBER:

POSTAL ADDRESS:

.....

PHYSICAL ADDRESS:

.....

.....

TELEPHONE NO:(W)FAX NO:

.....(H) CELL NO:

E-MAIL ADDRESS:

.....

AS WITNESS

.....

PURCHASER

DATE

PLACE

MARITAL STATUS OF PURCHASER

**** Delete which is not applicable**

STATUS: ** Unmarried / married / divorced

IF MARRIED: ** In community / Ante nuptial contract

IF MARRIED IN COMMUNITY OF PROPERTY, THEN:

Full name of spouse:

Identity number:

.....

AS WITNESS

.....

SPOUSE

DATE

PLACE

SELLER 1

NAME: C MURRAY IN HIS CAPACITY AS JOINT TRUSTEE OF INSOLVENT
ESTATE: THEMBA SIMON MAZIBUKO, ID NUMBER: 760622 5568 085

FIRM: SECHABA TRUST

POSTAL ADDRESS: P.O. BOX 11889, THE TRAMSHED, 0126

TELEPHONE NO: 012 430 3970

FAX NO: 086 681 7623

.....
AS WITNESS

.....
ACCEPTANCE AND
CONFIRMATION BY SELLER
C MURRAY

DATE

PLACE

SELLER 2

NAME: F LANGFORD IN HIS CAPACITY AS JOINT TRUSTEE OF INSOLVENT
ESTATE: THEMBA SIMON MAZIBUKO, ID NUMBER: 760622 5568 085

FIRM: LCM TRUSTEES

POSTAL ADDRESS: P.O. BOX 11343, HATFIELD, 0028

TELEPHONE NO: 012 460 2365

FAX NO: 012 460 2347

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AS WITNESS

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ACCEPTANCE AND
CONFIRMATION BY SELLER
F LANGFORD

DATE

PLACE

AUCTIONEER

Van's Auctioneers

PO Box 12374

Hatfield

0028

1006 Duncan street , Brooklyn Pretoria

Telephone: 086 111 8267

Fax no: 086 112 8267

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AS WITNESS

.....
ON BEHALF OF AUCTIONEER
(DULY AUTHORISED THERETO)

DATE

PLACE

CALCULATION OF FIRST PAYMENT:

10% of purchase price as deposit

Total payment

= R

= R _____