



**RULES OF AUCTION and SALE CONDITIONS**

**VENUE** : **THE HOUGHTON GOLF CLUB  
CNR GRANT & OSBORN ROAD  
LOWER HOUGHTON**

**DATE & TIME** : **THURSDAY, 21 FEBRUARY 2019 @ 12H00**

**AUCOR CORPORATE (PTY) LIMITED T/A AUCOR PROPERTY  
UPPER FLOOR, 105 CENTRAL STREET, HOUGHTON  
(011) 033 6600**

**REPRESENTED BY: PIETER GELDENHUYS  
(the "AUCTIONEER")**

instructed by

**DULY APPOINTED AS EXECUTOR JEFFREY IRVINE AFRIAT WITH  
IDENTITY NO. 7612025262085  
ON BEHALF OF  
ESTATE LATE NORMA FRANCES SPENCER WITH MASTERS REF: 024856/2018  
(the "SELLER")**

hereby offers for sale by public auction the following immovable **PROPERTY**:

**TITLE DEED DESCRIPTION** : **PORTION 4 OF ERF 7, NORWOOD**

**PHYSICAL ADDRESS** : **25 IVY ROAD, NORWOOD**

**MEASURING** : **496M<sup>2</sup>**

including any lease agreements of force and effect and all improvements of a permanent nature (the "**PROPERTY**") on these terms and conditions:

**1. AUCTION PROCESS**

1.1 The sale by public auction is subject to a reserve price.

- 1.2 The auctioneer and/or his agent shall be entitled to bid on behalf of the Seller or owner to an amount which is less than the reserve price.
- 1.3 These auction rules comply with section 45 of the Consumer Protection Act, Act 68 of 2008 (“the Act”) and with the Consumer Protection Act Regulations (“the Regulations”) that have been published in terms thereof in Government Gazette No. 34180 on 1 April 2011 (Volume 550) and any amendments thereto from time to time.
- 1.4 Section 45(2) of the Act provides that: *“When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.”*
- 1.5 The auction will start at the published time and will not be delayed to allow participation by any specific persons.
- 1.6 Only properly registered bidders may participate:
  - 1.6.1 Anyone intending to bid at the auction must register their identity on the bidder’s record **prior to the commencement of the auction**. Such registration must meet the requirements of FICA (Financial Intelligence Centre Act, 2001) and that person must sign the registration entry.
  - 1.6.2 A person who attends the auction to **bid on behalf of another person (i.e. on behalf of a company)** must be properly authorised to do so. You will be required to satisfy the Auctioneer that you are properly authorised. This will include a letter of authority on the letterhead of the authoriser and must be accompanied by a certified copy of the resolution authorising you to bid on behalf of a company.
- 1.7 The bidder’s record and the vendor roll will be made available for inspection at the offices of Aucor Property during ordinary business hours at no cost. The bidders’ record will also be available for inspection at the auction.
- 1.8 Aucor holds a trust account. Any money due to the seller in terms of the Rules of Auction will be paid into this trust account for the benefit of the seller, minus any commission or costs payable to Aucor.
- 1.9 The reason for the auction will be announced unless it is a normal and voluntary sale. The cost of conducting the auction is R50 000.00 plus VAT and this cost includes: Advertising; Brochures, packs and marketing material; Venue hire costs; Photographs.

- 1.10 The auctioneer will control the auction and bidding process.
- 1.11 The sale will be by the rise and the property will be sold to the highest bidder and subject to the Rules of Auction.
- 1.12 You as the bidder must read the Rules of Auction properly and should not bid unless you have done so and understand these rules properly.
- 1.13 Every bid amounts to an offer to purchase the property for that amount bid and, on the terms, and conditions referred to herein. No bid has to be accepted by the seller and same can be rejected whether by the auctioneer or the seller for any reason whatsoever. The seller may also remove the property from the sale at any time before he has accepted a bid or an offer.
- 1.14 If there are no bids to equal or exceed the reserve price, the property can be withdrawn from the auction, although the seller is allowed to instruct the auctioneer to accept any bid even if lower than the reserve.
- 1.15 Where there is a dispute between bidders, the auctioneer shall have the final say.
- 1.16 The auctioneer is entitled to correct any error he might make.
- 1.17 No bid may be withdrawn from the fall of the hammer until the expiry of the confirmation period. During this time the bid/offer shall remain open for acceptance by the seller or his agent and once the offer is accepted, the sale is deemed to be a sale by auction for purposes of the Act.
- 1.18 The highest bidder ("the purchaser") must sign the Rules of Auction immediately on the fall of the hammer.

## 2. **CONFIRMATION AND ACCEPTANCE**

- 2.1. The **PURCHASER** hereby agrees that his bid/offer shall remain available for acceptance by the **SELLER** or by the **AUCTIONEER** as agent for the **SELLER**, until 18H00 on the **25<sup>th</sup> day of February 2019** ("confirmation period"). The **PURCHASER** and **AUCOR** record and agree that this clause stands for the benefit of the **SELLER**.
- 2.2. Acceptance of the **PURCHASER's** offer occurs once these rules of auction are signed and accepted by the **SELLER** or the **AUCTIONEER**.

The **SELLER** is not required to notify the **PURCHASER** that he has accepted the offer before close of the confirmation period.

- 2.3. If the **PURCHASER'S** offer is not accepted, the **PURCHASER** shall be refunded its deposit and commission within a reasonable time.
- 2.4. Where the sale must be confirmed by a statutory authority or court of law, then the sale is subject to such consent.

### 3. **SALE CONSIDERATION**

The Purchase Price of the **PROPERTY**, plus Value-Added Tax ("VAT") or Transfer Duty (whichever is applicable), must be paid as follows:

- 3.1 A deposit equal to 5% (five per cent) of the Purchase Price payable to the **AUCTIONEER** by the **PURCHASER** immediately after the fall of the hammer, which amount the **PURCHASER** authorises and instructs the **AUCTIONEER** to pay to the **SELLER'S** Attorneys less amounts due by either the **PURCHASER** or **SELLER** to AUCOR;
- 3.2 The **PURCHASER'S** signature of this agreement evidences his written consent for the **AUCTIONEER / SELLER'S ATTORNEYS** to invest any amounts paid in respect of the Purchase Price in an interest-bearing account with a bank of the **AUCTIONEER / SELLER'S ATTORNEYS** choice. The interest shall accrue to the Estate Agency Affairs Fidelity Fund or Law Society Fidelity Fund as the case might be.
- 3.3 The balance of the Purchase Price shall, within 45 (forty five) business days from acceptance and signature hereof, be paid in cash or secured, to the satisfaction of the **SELLER'S** Attorneys, by a written guarantee, on terms acceptable to the **SELLER**, from a registered South African Bank and shall be, payable free of exchange, deduction or set off, against registration of transfer of the **PROPERTY** into the **PURCHASER'S** name.
- 3.4 The **PURCHASER** shall be liable for interest at 2% (two per cent) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive) on any amounts not paid when due.
- 3.5 All payments made by the **PURCHASER** may be appropriated first to any Auctioneers commission then and there outstanding.

#### 4. **ZERO RATING OF VALUE-ADDED TAX IF APPLICABLE**

- 4.1 It is recorded that, **if applicable**, it is the intention of the parties that this transaction be a zero-rated transaction in terms of Section 11 (1) (e) of the Value-Added Tax Act (the "Act") and it is agreed that the purchase price is exclusive of VAT at a rate of zero percent.
- 4.2 It is recorded that:
- 4.2.1 The **PROPERTY** constitutes an enterprise as defined in the Act and is sold as a going concern that will on the date of transfer be an income earning activity capable of separate operation, and the supply of the **PROPERTY** shall be 'zero rated' in terms of Section 11 (1) (e) of the Act;
- 4.2.2 The assets and all other aspects of the business that are necessary for carrying on the enterprise, including all existing lease agreements pertaining to the property and any deposits of tenants, are being disposed of to the **PURCHASER** in terms of this Agreement.
- 4.3 The **SELLER** and **PURCHASER** respectively warrant, **if applicable**, to the other that they will, with effect from the date of conclusion of this Agreement or such other date allowed in law, be registered as vendors in terms of the Act. The **PURCHASER** undertakes to provide the **SELLER**'s attorneys with a copy of its VAT Registration Certificate (form VAT 103) at least 21 (twenty-one) days before the anticipated Transfer Date and the **PURCHASER** warrants that it has applied for VAT registration before the date of conclusion of this Agreement.
- 4.4 Nothing contained in this clause 4 and its sub-clauses is intended to constitute a warranty that the transaction will be Zero Rated.
- 4.5 **Where for any reason VAT is payable on this sale at a higher rate other than at the zero rate, then the PURCHASER undertakes that it will be liable for payment of any such VAT or additional VAT and such VAT will be added to the Purchase Price and payable by the PURCHASER on demand therefore by the SELLERS ATTORNEYS.**

#### 5 **AUCTIONEER'S COMMISSION**

- 5.1 **The PURCHASER is liable for and shall pay, in addition to the amounts payable in terms of clauses 3.1 and 3.3, AUCTIONEER's commission of 10% (ten per cent) of the Purchase Price, plus VAT thereon, which commission is agreed to have been earned and is**

**payable immediately upon the signing of acceptance of the PURCHASER's offer in terms hereof by the SELLER or his Agent.**

- 5.2 The **PURCHASER** shall pay the full amount of **AUCTIONEER's** commission into the trust account of the **AUCTIONEER** immediately on the fall of the hammer, but this amount shall remain the property of the **PURCHASER** and shall be retained in trust by the **AUCTIONEER** for the benefit of the **PURCHASER** pending acceptance by the **SELLER** of the **PURCHASER's** offer or until the **SELLER** either rejects the offer or until expiry of the confirmation period.
- 5.3 Where the **PURCHASER** fails, refuses or neglects to pay commission to the **AUCTIONEER** for any reason whatsoever, the **SELLER** hereby irrevocably instructs his attorneys to pay the commission or balance thereof to the **AUCTIONEER** as a first draw from the proceeds of this sale, against registration of transfer of the **PROPERTY** into the name of the **PURCHASER**.
- 5.4 The **PURCHASER** shall be liable to pay any bank charges associated with the payment of the **AUCTIONEER's** commission into the **AUCTIONEER's** chosen bank account.
- 5.5 The provisions of this clause 5 are for the benefit of the **AUCTIONEER** who accepts such benefit.

## **6 OCCUPATIONAL INTEREST**

The **PURCHASER** shall only take possession and occupation of the **PROPERTY** on registration of transfer unless the **SELLER** and **PURCHASER** have agreed otherwise in writing in which case occupational rent shall be payable at a rate to be agreed in writing by the **SELLER** and **PURCHASER**.

## **7 RATES AND TAXES**

- 7.1 The **SELLER** shall be liable for and pay on demand by the Conveyancer, all rates, levies, taxes and other Municipal charges levied on the **PROPERTY** for the period up to registration of transfer, including any clearance figures whether in advance or not and whether disputed by the **SELLER** or not and the **PURCHASER** shall be liable for rates, levies, taxes and other Municipal charges thereafter.
- 7.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates, taxes and other Municipal charges paid in advance by the **SELLER** for the period after registration of transfer, which refund shall be paid on registration of transfer.

## 8 SELLER RESIDENCY AND WITHHOLDING TAX

It is recorded that the parties are aware of an obligation on the part of the **PURCHASER** to withhold part of the Purchase Price from the **SELLER**, if he is a non-resident and pay such withheld portion to the South African Revenue Services (hereinafter referred to as "SARS") in terms of Section 35A of the Income Tax Act, (hereinafter referred to as the "Act") and in that regard:

- 8.1 The **SELLER** warrants either that he is / is not a RESIDENT of the Republic of South Africa; (delete whichever is not applicable)
- 8.2 The **SELLER** hereby indemnifies and holds harmless both the **AUCTIONEER** and the **SELLER'S** Attorneys from any claim arising as a result of them having acted in terms of the Act, on information supplied by the **SELLER**, or from any other source and the **SELLER** waives all right of recourse he may have against the said **SELLER'S** Attorneys and/or **AUCTIONEER**, in respect of any action or omission by them in terms of the Act;
- 8.3 Where the **SELLER** has warranted that he is a resident and information leads the **AUCTIONEER** or the **SELLER'S** Attorneys to suspect that the **SELLER** is a non-resident, the **AUCTIONEER** or **SELLER'S** Attorneys may by written notice call upon the **SELLER** to obtain a directive from SARS within 30 (thirty) days as to his resident status, failing which the provision of clause 8.4.1 below shall apply.
- 8.4 In the event that SARS, furnishes a directive, wherein the **SELLER** is regarded as a non-resident for income tax purposes:
  - 8.4.1 The **PURCHASER** hereby irrevocably instructs the **SELLER'S** Attorneys upon registration of transfer to withhold the prescribed percentage of the Purchase Price and to pay such monies to SARS within 14 (fourteen) days of registration of transfer.
  - 8.4.2 Notwithstanding the provision of 8.4.1 above, the **SELLER** shall be entitled to obtain a directive from the SARS for the non-withholding or a reduced withholding, of tax, which directive to be delivered to the **SELLER'S** Attorneys within 21 (twenty one) days of the date of acceptance of this agreement, failing which the **SELLER** shall be bound by such withholding percentage as determined by the Income Tax Act.

## 9 COSTS OF TRANSFER

- 9.1 The **PURCHASER** shall be liable for either VAT (if applicable) or Transfer Duty (if applicable) in respect of the sale contemplated herein and until such time as the total Purchase Price plus VAT (if applicable) or Transfer Duty (if applicable) and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment has been secured to the satisfaction of the **SELLER**, transfer of the property shall not be passed to the **PURCHASER**.
- 9.2 Transfer of the **PROPERTY** shall be passed, by the **SELLER's** Attorneys, as soon as reasonably possible after acceptance, providing the **PURCHASER** has complied with all of his obligations.
- 9.3 The **PURCHASER** specifically authorises and agrees that the **SELLER's** Attorneys may attend to preparing and completing from information provided by the **PURCHASER** herein, a transfer duty form required by SARS for the clearance of the **PROPERTY** for transfer; and specifically authorises and agrees that the **SELLER's** Attorneys may on behalf of the **PURCHASER** sign and submit such forms to SARS for which preparation, completion, signature and submission this Agreement shall constitute the required authority.
- 9.4 The **SELLER's** Attorneys shall attend to transfer after all expenses of and incidental to the preparation and registration of transfer, transfer duty if applicable, the conveyancing fees, disbursements and VAT (if applicable), in respect of such transfer, are paid in full by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond required to finance the Purchase Price herein.
- 9.5 In the event of the **PURCHASER** failing to comply within 7 (seven) business days of request by the **SELLER's** Attorneys, to furnish them with signed documents or documentation of whatever nature necessary for effecting transfer, or where applicable to ensure that the mortgage bond documentation or ancillary documentation is satisfactorily completed or in the event of the registration of transfer being delayed as a consequence of a default on part of the **PURCHASER** (and the widest possible interpretation shall be used in respect of the terms hereof), then on the 8<sup>th</sup> (eighth) day after such request, the **PURCHASER** shall pay to the **SELLER** penalty interest, at the rate of 2% (two per cent) above prime, per month calculated on the balance of the purchase price from the said 8<sup>th</sup> (eighth) day until the date of transfer and payment, (both days inclusive).



- 9.6 The **PURCHASER** undertakes to comply with all the FICA requirements as set out in **Annexure "1"** or as is reasonably required in the opinion of the **SELLER's** Attorneys within 7 (seven) business days from date of acceptance of this Agreement by the **SELLER** and to supply the **SELLER's** Attorneys all information and documentation required by the **SELLER's** Attorneys to enable them to comply with the FICA requirements.

## 10 **RISK AND POSSESSION**

- 10.1 Possession of the **PROPERTY** shall only pass to the **PURCHASER** upon registration of transfer and not before, provided that clauses 3.1 and 3.3 above have been complied with, from which date all risks and benefits of ownership of the **PROPERTY** shall pass to the **PURCHASER**.
- 10.2 Should the **PURCHASER** take and the **SELLER** allow possession of the **PROPERTY** prior to registration of transfer (which agreement must be reduced to writing and signed by the parties), the **PURCHASER** shall at its own cost insure the **PROPERTY** and improvements (permanent or otherwise) thereon for the full replacement value thereof from date of possession, against risk of loss or damage by any cause with an insurer acceptable to the **SELLER**. The **SELLER's** interest in the **PROPERTY** shall be endorsed against such policy for that period.
- 10.3 Upon the **PURCHASER** taking possession of the **PROPERTY** and pending transfer, the following additional provisions shall be applicable –
- 10.3.1 the **PURCHASER** shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the **PROPERTY** or his rights of occupation thereof, except with the written consent of the **SELLER**;
- 10.3.2 the **PURCHASER** shall be responsible for and pay all rates and taxes and costs of electricity and water consumed in or at the **PROPERTY**.
- 10.4 Any arrangements entered into between the **PURCHASER** and the **SELLER** shall not visit on the **AUCTIONEER** any liability whatsoever, the **AUCTIONEER** not being a party to any such arrangements.

## 11 **EXISTING TENANCIES**

- 11.1 If the **PROPERTY** is currently being let to tenant/s other than the **PURCHASER** then same is hereby sold subject to all such existing tenancies, the Purchaser being bound by such tenancies as though he stepped into the shoes of the original Landlord.

- 11.2 The **PURCHASER** shall be bound by the terms and conditions of all existing leases, of **which he acknowledges he is fully apprised alternatively which he has elected to accept and abide by.**
- 11.3 The **SELLER** undertakes not to terminate any agreement or conclude any new lease agreements in respect of any portion of the **PROPERTY** from date of signature hereof by both parties unless the **PURCHASER** has consented thereto in writing.

## 12 **ADJUSTMENT ACCOUNT AND DEPOSITS**

- 12.1 All income derived from the Property, arrear rental and unpaid cost recoveries and expenses incurred and any amounts due in respect of any administration Agreement in respect of the Property up to the transfer date shall be for the benefit and account of the **SELLER**. Within 21 (twenty-one) business days after the transfer date, the **SELLER** shall prepare, at the cost of the **SELLER**, an adjustment account in respect of the deposits held and income and expenditure of the Property up to the transfer date and the **PURCHASER** and the **SELLER** shall pay or receive as the case may be, such amount as may be reflected in such account within 3 (three) business days thereof.
- 12.2 Notwithstanding the delay in respect of the preparation of the adjustment account, the **SELLER** shall be obliged within 14 (fourteen) days of the transfer date, to account and pay over to the **PURCHASER**, the gross rental and cost recoveries received by it in respect of the month during which the transfer date occurred, pro-rated, unless expenses incurred are anticipated by the **SELLER**, in respect of the period subsequent to the transfer date and to which rental and cost recoveries the **PURCHASER** would be entitled, provided, to the extent that any tenant may not have, as at the transfer date, paid the rental and cost recoveries in respect of the month in which the transfer date occurs, the **SELLER** will not be liable for any such shortfall, provided that any rental and cost recoveries received by the **PURCHASER** after transfer date but pertaining to the period prior to the transfer date, shall immediately be paid over to the **SELLER** in respect thereof (in the event of there being any amounts outstanding to the **SELLER** on the transfer date, all amounts received by the **PURCHASER** from the tenants on or soon after the transfer date shall be deemed to be payment for the period prior to transfer unless specified otherwise by the tenant).

### 13 ALTERATIONS, ADDITIONS, REPAIRS OR IMPROVEMENTS

- 13.1 Prior to transfer, the **PURCHASER** may not effect any alterations, additions, repairs or improvements to the **PROPERTY** without the prior written consent of the **SELLER**.
- 13.2 The **SELLER** need not compensate the **PURCHASER** for any authorised alterations, additions, repairs or improvements effected if the sale is cancelled for any reason whatsoever.
- 13.3 The **PURCHASER** shall be liable for any and all damages suffered by the **SELLER** as a result of any alterations, additions, repairs or improvements effected by the **PURCHASER**, not authorised by the **SELLER**, including but not limited to restoring the property to the condition it was in prior to such alterations, additions, repairs or improvements.

### 14 VOETSTOOTS, WARRANTIES AND REPRESENTATIONS

- 14.1 The **PROPERTY** is sold “voetstoots” and subject to the terms and conditions and servitudes mentioned or referred to in the current and/or prior Title Deeds and to the conditions of establishment of the Township in which it is situated and to the zoning applied to it under any Town Planning Scheme. The **SELLER** shall not profit by any excess nor shall it be answerable for any deficiency in the extent thereof. Neither the **SELLER** nor the **AUCTIONEER** shall be responsible for pointing out to the **PURCHASER** any surveyor's pegs or beacons in respect of the **PROPERTY**.
- 14.2 **The PURCHASER acknowledges that he has not been induced into entering into this Agreement by any express or implied information, statement, advertisement or representation made or given any warranties in respect of the PROPERTY or anything relating thereto, by the AUCTIONEER or any other person, or by or on behalf of the SELLER if same is not recorded in this Agreement.**
- 14.3 **The PURCHASER acknowledges that he has fully acquainted himself with the PROPERTY that he has purchased alternatively that he/she has elected to purchase the PROPERTY without fully acquainting him/herself therewith in which case he carries all the risk in this regard.**
- 14.4 **Annexure 2 (if applicable) hereto sets out information pertaining to the PROPERTY which is specifically brought to the attention of the PURCHASER.**

## 15 **BREACH OF CONTRACT**

15.1 Where one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Innocent Party shall be entitled to give the Defaulting Party 7 (seven) business days' notice in writing to rectify such breach or failure (unless such breach or failure occurs after the transfer documents have been lodged in the Deeds Office for registration, in which case the 7 (seven) day period may, at the election of the Aggrieved Party be reduced to 48 (forty eight) hours). If the defaulting party fails to comply with such notice then the innocent party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which it may have in law, including the right to claim damages:

15.1.1 to cancel this Agreement and upon such cancellation: -

15.1.1.1 if the defaulting party is the **PURCHASER** the **SELLER** shall be entitled to retain all amounts paid by the **PURCHASER**, excluding **AUCTIONEER's** commission, as *rouwkoop* or as a genuine pre-estimate of damage suffered by the **SELLER**; and

15.1.1.2 if the defaulting party is the **SELLER** the **PURCHASER** shall be entitled to claim a full refund of all money paid in terms of this agreement from the **SELLER** that it has paid and arising from the **SELLER's** default;

### **(ALTERNATIVELY)**

15.1.2 to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.

15.2 On cancellation of this Agreement for any reason, the **PURCHASER** hereby undertakes to forthwith vacate the **PROPERTY** and to procure that the **PROPERTY** shall be vacated by any persons who occupy the **PROPERTY** through the **PURCHASER's** title or under his permission. Occupation shall be re-delivered in the same good condition as at the date of occupation.

15.3 No tenancy or rights in connection therewith shall be deemed to have been created either in terms of any statute or at common law.

15.4 Where the **PURCHASER** pays any amount as required under these Rules of Auction, the parties record and agree that the **AUCTIONEER** shall be entitled to deduct its commission as a first charge against such monies and then the Auctioneer may recover any shortfall from the **PURCHASER**.

15.5 The deduction by the **AUCTIONEER** of its commission or other costs due to it will not constitute a release of **PURCHASER** from any other obligations arising from these Rules of Auction.

## 16 **LEGAL COSTS**

The Defaulting Party shall be liable for all legal costs incurred by the Innocent Party, the **AUCTIONEER** and their Agents / Attorneys incurred in enforcing this agreement, on an Attorney and own client scale, including collection commission.

## 17 **DOMICILIUM CITANDI ET EXECUTANDI – ADDRESS FOR SERVICE OF DOCUMENTS**

17.1 The **PURCHASER** and the **SELLER** hereby select as their chosen *domicilium citandi et executandi* for all purposes in respect of these Rules of Auction, including all notices and Court process to be delivered in terms hereof, the addresses recorded below their respective signatures hereunder. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth business day after posting; any notice delivered by hand shall be deemed to have been received on the day of delivery; any notice sent by telefax or electronically transmitted by email, shall be deemed to have been received on the first business day after date of despatch thereof.

17.2 Notwithstanding anything to the contrary herein contained, any written notice or communication actually received by a Party to this Agreement shall be deemed to be adequate written notice or communication to him notwithstanding that it was not sent or delivered at the chosen address / *domicilium citandi et executandi* or transmitted to such Party's telefax number and/or email address as stipulated herein.

17.3 Any notices or communications required to be sent by either party to the other may be sent using email or fax.

## 18 **JOINT AND SEVERAL LIABILITY**

Where there is more than one **PURCHASER**, the liability of all such **PURCHASERS** to the **SELLER** and to the **AUCTIONEER** shall be joint and several *in solidum*.

## 19 SECTIONS 112 and 115 OF THE COMPANIES ACT – SPECIAL RESOLUTION

- 19.1 The **SELLER** and the **PURCHASER** are aware of the provisions of Sections 112 and 115 of the Companies Act 71 of 2008 (as amended) ("Section 112 and 115"), namely that if the **SELLER** is a company and if the **PROPERTY** constitutes either all or the greater part of the assets or the undertaking of the **SELLER**, then the directors of the **SELLER** shall not have the power, save by a special resolution of the shareholders of the **SELLER**, to sell the **PROPERTY**.
- 19.2 Accordingly, the **SELLER** warrants that the provisions of Sections 112 and 115 are / are not (delete as appropriate) applicable to the sale of the **PROPERTY**.
- 19.3 If Sections 112 and 115 are applicable to the sale of the **PROPERTY** and if the directors of the **SELLER** have not already been granted the necessary authority in terms of Sections 112 and 115 to dispose of the **PROPERTY**, then within 45 (forty-five) business days of the acceptance date the **SELLER** shall procure that its shareholders pass a special resolution ratifying the sale of the **PROPERTY**.
- 19.4 In addition to what has been stated above and if the transaction requires an amendment to the **SELLER's** memorandum of incorporation in order to give effect to such transaction, then in such event the **SELLER** shall take those steps necessary in order amend the **SELLER's** memorandum of incorporation and the **SELLER** warrants that the rights of any minority shareholders will have been dealt with and protected.

## 20 NOMINEE

The **PURCHASER** shall be entitled, by notice in writing to the **SELLER** or to the **SELLER's** Attorney, to nominate a nominee in his place as **PURCHASER**, but only on the following terms and conditions:

- 20.1 the nomination shall be delivered to the **SELLER** by not later than 24h00 on the same day as the acceptance by the **SELLER**;
- 20.2 the notice shall clearly set forth the name and address of the nominee so nominated as **PURCHASER**;
- 20.3 the notice shall be accompanied by the nominee's written acknowledgement and acceptance of the nomination, including a confirmation by the nominee:

20.3.1 that it is fully aware of all of the terms and conditions of these Rules of Auction as if fully set out in such written acknowledgement; and

20.3.2 that it undertakes to irrevocably be bound by the provisions of these Rules of Auction as the **PURCHASER**;

20.4 should the **PURCHASER** nominate a nominee in terms of this clause, then:

20.4.1 any reference to the **PURCHASER** in this agreement shall be deemed to be a reference to its nominee; and

**20.4.2 the original PURCHASER by his signature hereto, hereby interposes and binds himself as surety and co-principal debtor in solidum, for and on behalf of all the obligations of the aforesaid nominee as PURCHASER, to and in favour of the SELLER, for all the nominated PURCHASER'S obligations under this agreement, including but not limited to damages, and renounces the benefits of division and excussion.**

## 21 COMPANY TO BE FORMED

21.1 As provided for in Section 21 of the Companies Act 71 of 2008 (as amended from time to time) and where the **PURCHASER** signs this agreement in his capacity as agent for a company to be formed and the **PURCHASER** fails within 30 (thirty) days from date of acceptance and confirmation of this agreement to register such company having as one of its objects the ratification and adoption of this agreement, or such company fails to adopt or ratify this agreement within 90 (ninety) days after the date of its incorporation, then in such an event the **PURCHASER** shall be deemed as from the date thereof to have entered into this agreement in his personal capacity and to have acquired all the rights and obligations of the **PURCHASER** under this agreement.

21.2 In the event of such company being registered and duly adopting or ratifying this agreement, or the nomination effected, **then the person signing this document on behalf of the PURCHASER by his signature hereunder, shall be deemed to bind himself to the SELLER as surety and co-principal debtor in solidum with such company for the due performance by it as PURCHASER of the terms, conditions and obligations arising out of this agreement.**

## 22 COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS

**22.1 Should the PURCHASER be a company, close corporation, association 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 of its obligations arising from this agreement.**

**22.2 If any individual purports to be representing another person including a company, close corporation, association or trust, and signs these Rules of Auction on that basis, that individual shall by signing this agreement on behalf of such other person be held personally liable for the due and proper discharge of all the PURCHASER's obligations in terms of these Rules of Auction and that individual shall be deemed to be the PURCHASER where such other person does not exist at the time of signing these Rules of Auction by that individual. This provision does not apply to instances contemplated in clause 20.**

## 23 ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE

23.1 The **SELLER** hereby undertakes to provide the **SELLER's** Attorneys, prior to possession or transfer by the **PURCHASER**, whichever is the earlier, with a Certificate of Compliance in respect of the **PROPERTY** as required by the Electrical Installation Regulations of 2009 promulgated under the Occupational Health and Safety Act (Act No. 85 of 1993, as amended from time to time). The certificate shall be issued by an electrical contractor registered in terms of the Regulations. The costs associated with obtaining such a certificate, including the costs of any repairs or replacements required in order for the certificate to be issued, shall be borne and paid for by the **SELLER**.

23.1.1 Once the **SELLER** has furnished the **SELLER's** Attorneys with such certificate, the **PURCHASER** shall have no claim whatsoever against the **SELLER** in respect of the electrical installation and the **SELLER** shall have no further liability in this regard.

23.2 The **SELLER** confirms that, as at date of transfer there will have been no addition or alteration to the electrical installations existing on the **PROPERTY** subsequent to the issue of such certificate. In the event that there has been any addition and/or alteration, the **SELLER** shall be obliged to obtain a Certificate of Compliance for at least the addition or alteration.



23.3 An Electrical Certificate of Compliance issued not more 2 (two) years prior to the date of this Agreement of Sale shall be valid and effective for the purposes of this clause 23.

23.4 The provisions of this clause 23 shall apply mutatis mutandis to any other certificates required to be provided by the **SELLER** (at its/his cost) in terms of any **applicable** Legislation and specifically to any gas and plumbing installation present on the property and in accordance with the Pressure Equipment Regulations 2009 made by the Minister of Labour under section 43 of the Occupational Health and Safety Act 85 of 1993.

#### 24 **SECTIONAL TITLE – IF APPLICABLE**

24.1 In the event that the property sold in terms hereof forms part of a sectional scheme, then the **PURCHASER** acknowledges that the Sectional Title Scheme of the PROPERTY is subject to the rules and regulations of the Body Corporate, which has been established in terms of the Sectional Titles Scheme as well as to the provisions of the Sectional Titles Act No. 95 of 1986.

24.2 The **PURCHASER** has read and familiarised himself with the rules and regulations of the Body Corporate and undertakes to sign all documents and do all things necessary in order for him to become and remain a member of the Body Corporate for as long as he is the owner of the section purchased in terms of this agreement.

24.3 Where relevant it is recorded that the developer has secured and reserved for himself a real right of extension in respect of the property and that the **PURCHASER** purchases this property accepting the developer's real right of extension.

#### 25 **MAGISTRATES' COURT JURISDICTION**

The Parties consent to the jurisdiction of the Magistrates' Court in terms of Section 45 read with Section 28 of the Magistrates' Court Act of 1944 as amended. Nothing contained herein shall preclude a party from approaching a relevant division of the High Court should they deem it necessary.

#### 26 **GENERAL CLAUSES**

26.1 This document constitutes the whole agreement between the Parties and no agreement, representation or warranty not contained herein shall be binding on the Parties.

26.2 This agreement shall be governed by the Laws of the Republic of South Africa.

26.3 No extension of time, waiver, indulgence or suspension of any of the provisions of this agreement, which any Party hereto may have given, shall be binding unless recorded in writing and signed by all the Parties.

26.4 No variation, alteration or cancellation of this agreement (including this clause) shall be binding unless reduced to writing and signed by the Parties or their authorised representatives.

26.5 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and words importing persons shall include partnerships and bodies corporate, and vice versa.

26.6 The Parties signing this document confirm that they have read and understood all of the terms and conditions contained herein and agree that they are and shall remain bound hereto.

26.7 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

**THIS PROPERTY CAME UNDER THE HAMMER ON THE:**

\_\_\_\_\_ DAY OF \_\_\_\_\_

And was knocked down for the sum of:

R \_\_\_\_\_

(words) \_\_\_\_\_

\_\_\_\_\_  
(PLUS VALUE ADDED TAX IF APPLICABLE)



**SIGNED BY THE PURCHASER AT \_\_\_\_\_ ON THE \_\_\_\_\_  
DAY OF \_\_\_\_\_ 2019**

AS WITNESS:

1. \_\_\_\_\_

\_\_\_\_\_  
**PURCHASER (and where applicable, the signatory binding himself as surety and co-principal debtor *in solidum*)**

AS WITNESS:

2. \_\_\_\_\_

\_\_\_\_\_  
**AUCOR CORPORATE (PTY) LTD** he being duly authorised **(Accepting all of the rights available in terms of this Agreement)**

**ACCEPTANCE AND CONFIRMATION**

**SIGNED BY THE SELLER AT \_\_\_\_\_ ON THE \_\_\_\_\_  
DAY OF \_\_\_\_\_ 2019**

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_  
**SELLER** (and where applicable the **SELLER** is duly authorised)

2. \_\_\_\_\_

**SELLER'S ADDRESS:**

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

**I hereby certify that the Rules of auction to the best of my knowledge meet the requirements of Regulation 21**

**AUCTIONEER FULL NAME/S: PIETER GELDENHUYS  
ADDRESS: 105 CENTRAL STREET, HOIGHTON  
CONTACT NUMBER: (011) 033 6600**

**DRAFT**

**DEED OF SURETYSHIP**

I / We the undersigned,

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

(INSERT FULL NAMES AS PER ID)

ID NUMBER: \_\_\_\_\_

with chosen address (as domicilium at: (INSERT FULL PHYSICAL ADDRESS – NOT PO BOX

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

do hereby interpose and bind myself / ourselves as surety and co-principal debtor/s in solidum for and on behalf of the **PURCHASER** to and in favour of the **SELLER** and the **AUCTIONEER** for all the obligations of the **PURCHASER** (none excepted) under the Rules of Auction hereinbefore and in particular for any and all amounts of money that may be due, including damages, from whatsoever cause arising under renunciation of the benefits of division and excussion. **I/We do further acknowledge that I/we are fully aware of all the terms and conditions of the Rules of Auction as if fully set out herein.**

THUS DONE AND SIGNED at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_ 2019

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_

**SURETY**

2. \_\_\_\_\_

\_\_\_\_\_

**SELLER**

\_\_\_\_\_

**AUCOR CORPORATE (PTY) LTD** duly  
authorised

RESOLUTION - CLOSE CORPORATION  
EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF

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HELD AT \_\_\_\_\_ ON \_\_\_\_\_

---

**RESOLVED THAT:**

1. The CLOSE CORPORATION BUYS the following PROPERTY  
Portion 4 of Erf 7 Norwood, City of Johannesburg  
  
from Estate Late Norma Frances Spencer with  
Masters Ref: 024856/2018  
  
for R \_\_\_\_\_
2. That \_\_\_\_\_ in his  
capacity as Member be and is hereby authorised to execute and  
sign all documents necessary to give effect to the above resolution.

Certified a true copy,

---

**MEMBER**

---

**MEMBER**

RESOLUTION - COMPANY  
EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

\_\_\_\_\_

\_\_\_\_\_

HELD AT \_\_\_\_\_ ON \_\_\_\_\_

**RESOLVED THAT:**

1. The COMPANY BUYS the following PROPERTY  
Portion 4 of Erf 7 Norwood, City of Johannesburg  
from Estate Late Norma Frances Spencer with  
Masters Ref: 024856/2018  
for R \_\_\_\_\_
2. That \_\_\_\_\_ in his  
capacity as Director be and is hereby authorised to execute and  
sign all documents necessary to give effect to the above resolution.

Certified a true copy,

\_\_\_\_\_  
**DIRECTOR**

\_\_\_\_\_  
**DIRECTOR**



RESOLUTION - TRUST

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

\_\_\_\_\_

\_\_\_\_\_

HELD AT \_\_\_\_\_ ON \_\_\_\_\_

**RESOLVED THAT:**

1. The TRUST BUYS the following PROPERTY

Portion 4 of Erf 7 Norwood, City of Johannesburg

from Estate Late Norma Frances Spencer with  
Masters Ref: 024856/2018

for R \_\_\_\_\_

2. That \_\_\_\_\_ in his  
capacity as Trustee be and is hereby authorised to execute and  
sign all documents necessary to give effect to the above resolution.

Certified a true copy,

\_\_\_\_\_  
**TRUSTEE**

\_\_\_\_\_  
**TRUSTEE**

**(ANNEXURE 1)**

FICA REQUIREMENTS: Natural Persons

- [1] South African identity document (foreigners: passport);
- [2] Utility bill addressed to your residential address less than 3 months (accounts for mobile phones are not acceptable);
- [3] South African Income Tax reference number.

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- [4] (Confirmation marital status, i.e. unmarried or married.)

If Married

- [5] Marriage certificate.
  - If IN community of property (no antenuptial contract)
- [6] S.A. identity document (foreigner: passport) of your SPOUSE.
  - If OUT of community of property (by Antenuptial Contract ("ANC"))
- [7] Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties.
  - If your Marriage is governed by the Laws of another country/state
- [8] S.A. identity document (foreigner: passport) of your SPOUSE;
- [9] Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.

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FICA REQUIREMENTS: Entities

- Person acting on behalf of the Entity must comply with paragraphs 1 to 4 above.
- All directors / members / trustees must also comply with paragraphs 1 to 4 above

**PLUS THE FOLLOWING:**

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Companies:

- [1] CM1.
- [2] CM22.

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Close Corporations:

- [1] CK1;
  - [2] and, if applicable, CK2.
- 
-

Trusts:

- [1] Letters of Authority / Master's Certificate;
  - [2] Trust Deed and all amendments thereto.
  - [3] **Resolution to approve the purchase (and loan application, if applicable) taken before the Agreement of Sale was signed.** (The only exception is where it is a cash transaction and all the Trustees have signed the Agreement of Sale.)
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- Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course.
- 
- 

- FICA requirements for Other Entities, if applicable, will be supplied to such Purchasers.

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**(ANNEXURE 2)**

If applicable

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