

AGREEMENT OF SALE OF IMMOVABLE PROPERTY BY PUBLIC AUCTION

RULES OF AUCTION (AS PER SECTION 21 (2)(a) OF THE CONSUMER PROTECTION ACT REGULATIONS) - CLAUSE 13 BELOW (WHICH COMPLIES WITH SECTION 45 OF THE ACT AND THE REGULATIONS)

DATE OF AUCTION:

PLACE WHERE THE AUCTION WILL BE HELD:

TIME OF THE AUCTION: 12 Noon

1. Definitions:

- 1.1. The following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them respectively -
- 1.1.1. "The Auctioneer" shall mean: **Realty Arena cc.**
 - 1.1.2. "The Seller" shall mean: **Master Resort (Pty) Ltd Reg No. 89/07056/07 ,herein represented by Peter Snyman.**
 - 1.1.3. "The Purchaser" shall mean: the person to whom the property is knocked down and sold by the Auctioneer and who actually bids for the property
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- 1.1.4. "The Property" shall mean: **Ptn 26 & 27, Farm 343 Welgevonden, Reg Div: KR LIMPOPO known as Bothania Hills, together with all fixtures, fittings and furniture.**
- 1.2. Clause headings are inserted for convenience and shall not be used in the interpretation.
- 1.3. Unless the context clearly indicates a contrary intention or expression the singular includes the plural and vice versa and any gender includes the other genders.

2. Sale

The Seller sells to the Purchaser who purchases the Property together with all buildings and erections and fixed improvements thereon on the below-mentioned terms and conditions.

3. **Purchase Price**

3.1. The purchase price is the sum of: R _____
(_____) excluding Vat At a 0% Rate which shall be paid
as follows -

3.1.1. a deposit of 10% (Ten percentum) of the purchase price to the conveyancing attorney upon the Purchaser's signature hereof by way of a bank guaranteed cheque.

3.1.2. the balance of the purchase price shall be secured by a bank guarantee/s approved by the Seller's conveyancers expressed to be payable at Johannesburg against registration of transfer of the property to the Purchaser, which guarantee/s shall be furnished no later than 30 (thirty) days from date of signature hereof by the Purchaser.

4. **Possession and occupation**

4.1. Possession and occupation of the property, subject to the rights of any existing tenant/s of which the purchaser declares himself to be aware, shall be given to the Purchaser upon registration of transfer thereof in the name of the Purchaser from which date the property shall be at the sole risk, profit and loss of the Purchaser who shall be liable for all rates and taxes and other imposts levied thereon and entitled to all rentals accruing there from. The Purchaser shall refund to the Seller a proportional share of any payments made by the Seller in advance of the date of possession in respect of assessment rates, sanitary fees and other charges.

4.2. Should it be agreed by the parties hereto in writing that occupation of the property shall be given to and taken by the Purchaser prior to registration of transfer, the Purchaser shall in consideration thereof pay to the Seller, monthly in advance occupational rental of 10% (Ten percentum) per annum of the balance of the purchase price as determined in terms of clause 3.1.2 until the date of transfer.

5. **Commission**

On signature of this agreement by the purchaser, the Purchaser shall pay the Auctioneer commission of 10% (ten percentum), of the purchase price, which commission shall be deemed to be earned by the Auctioneer and payable to him upon confirmation of the Sale.

6. **Voetstoots**

6.1. The property is sold:-

6.1.1. in its present condition, "voetstoots" without liability on the part of the Seller for -

6.1.1.1. any defects, latent or patent, in the property, or

6.1.1.2. any damages suffered by the Purchaser by reason of such defects;

- 6.1.2. without any warranties of any nature, either express or implied, other than any set out in this agreement;
- 6.1.3. subject to -
 - 6.1.3.1. all conditions and servitudes set out or referred to in the current or prior title deeds,
 - 6.1.3.2. all other conditions servitudes and/or encroachments which may exist in regard to the property.
- 6.2. The Purchaser acknowledges that, to the extent the Purchaser has deemed necessary, the Purchaser-
 - 6.2.1. has inspected the property;
 - 6.2.2. is acquainted with the nature, condition, extent and locality of the property and with the position of the beacons in respect of the property, which beacons the Sellers shall not be obliged to point out to the Purchaser;
 - 6.2.3. has examined the title deeds in respect of the property and any township conditions and town planning scheme applicable to the property.
- 6.3. The Seller shall not be liable for any deficiency in the extent of the property, which may be revealed on any resurvey of the property, nor shall the Seller benefit by any excess.
- 6.4. The Purchaser acknowledges that he is fully aware of the Town Planning Regulations relating to the property.

7 **Breach**

- 7.1 Should the Purchaser fail to comply with any terms and conditions of this Agreement and remain in default for a period of 7 (seven) days after despatch of written notice per registered post, or telefax, or hand delivery, requiring such default to be remedied, the Seller shall be entitled (without prejudice to any other rights he may have at law), to sue for the immediate specific performance of any or all of the Purchaser's obligations under this agreement whether or not any such obligation is then due or to cancel this Agreement forthwith and to receive or retain as "rouwkoop" or as a genuine pre-estimate of damages or on account of any pending determination by a Court of the actual damages sustained, the balance of the deposit and any other monies paid by the Purchaser after deduction of the commission payable to the Auctioneer in terms of Clause 5 herein.
- 7.2 Notwithstanding the foregoing, if the Purchaser fails to pay the deposit and or provide the guarantee referred to in Clause 3 above, then the Seller shall be entitled without prejudice to its rights to immediately cancel the agreement without having to give prior notice to the Purchaser.

8 **Jurisdiction**

The Seller shall be entitled to institute any proceedings against the Purchaser arising out of or in connection with this Agreement in any Magistrates' Court having jurisdiction.

9 **Domicilium**

For all purposes under this agreement the Purchaser selects the address:

as his domicilium citandi et executandi to which address all notices or other documents in relation to those presents may be sent and which all processes may be served.

10 **Relaxation**

No relaxation or indulgence which the Seller may show to the Purchaser shall in any way prejudice the Seller's rights hereunder and, in particular, no acceptance by the Seller of any payment after due date (whether on one or more occasions) shall preclude or stop the Seller from exercising any rights enjoyed by him hereunder. Unless otherwise stated by the Seller in writing, the receipt by the Seller or his agents of any payment shall in no way whatsoever prejudice or operate as a waiver, withdrawal or abandonment of any cancellation or right to cancellation effected or acquired prior to such receipt.

11 **Transfer**

All costs of transfer, transfer duty, if applicable, and matters incidental thereto shall be paid by the Purchaser. Transfer shall be passed by the Seller's attorneys after the Purchaser has complied with the terms hereof and the Purchaser undertakes to sign all documents and make payment of all costs as aforesaid immediately the Purchaser is called upon to do so by the Seller's attorney.

12 **Identity of Purchaser**

12.1 Where the expression "the Purchaser" relates to more than one person, the obligation of such persons under this agreement shall be joint and several.

12.2 Insofar as the Purchaser is acting as an Agent, or a Trustee for a Company/Close Corporation formed or to be formed, the Purchaser undertakes that the Company/Close Corporation will be registered within a period of 30 (thirty) days from the date of confirmation of the sale and that upon incorporation it will ratify and adopt this Agreement. The purchaser hereby agrees by his signature hereunder to be personally bound as surety and co-principal debtor in solidum and under express renunciation of the benefits of excussion and division. In the event of the Company/Close Corporation not being incorporated as aforesaid, or having been incorporated, failing to adopt and ratify this Agreement, then in such event and notwithstanding anything to the contrary herein contained, the Purchaser by his signature hereunder will be personally liable for the fulfilment of all obligations to the Seller.

13 **Rules of auction**

- 13.1 The purchaser records that he shall be bound by announcements made by the Auctioneer at the commencement of and during the sale whether or not he is present at the time such announcements are made.
- 13.2 Should the Purchaser fail to sign this Agreement immediately after the property shall have been knocked down to him, when requested to do so, the Auctioneer may without prejudice to any other remedies available to him, declare the sale cancelled and again put up the property for auction.
- 13.3 If the highest bidder to whom the property is knocked down is acting on behalf of a principal he shall on signature of this Agreement declare the name and address of his principal to the Auctioneer and furnish to the Auctioneer his written authorisation so to act.
- 13.4 The conduct and control of the auction shall be executed entirely by the Auctioneer, who will regulate advances of bidding.
- 13.5 The Auctioneer alone shall have the right at any stage of the auction of determining the last bidder.
- 13.6 The Auctioneer shall have the right to discontinue and recommence the auction.
- 13.7 The Auctioneer may reject or refuse to accept any bid including the highest bid without assigning any reason therefore, and he may withdraw the property for sale either before or after it has been put up for auction. Any refusal or withdrawal by the Auctioneer shall be deemed to be a refusal or withdrawal by the Seller.
- 13.8 The Auctioneer or his agent shall be entitled to bid for the property on behalf of the Seller.
- 13.9 Should any dispute, disagreement or claim arise between bidders at the Auction, the parties shall submit the dispute for resolution by the Auctioneer whose decision shall be final and binding on the parties.
- 13.10 Each bid shall be a binding offer and will be irrevocable until such time that the property is knocked down which shall however be subject to confirmation by the Seller within 4 days (four days) of the auction ("the confirmation period") on the basis that –
 - 13.10.1 Should the sale of the property be confirmed by the Seller the Auctioneer shall inform the Purchaser thereof personally or at his chosen domicilium within the confirmation period, failing which the property shall be deemed not to have been sold.
 - 13.10.2 During the confirmation period :-
 - 13.10.2.1.1 the Purchaser shall not be entitled to withdraw his bid;
 - 13.10.2.1.2 should the Auctioneer receive a higher offer which is acceptable to the Seller, within the confirmation period from any person, the Purchaser shall be entitled to equal such higher offer, for confirmation by the Seller failing which the property shall be deemed not to have been sold to the Purchaser.

- 13.11 In the event that the property shall consist of several lots the Auctioneer may offer the property in the first instance in one lot or in several lots as he may determine at the sale; or withdraw the property or any lot at any time before it has been actually knocked down.
- 13.12 As the Auctioneer is acting as agent for the Seller, the Purchaser shall not have any claim against the Auctioneer howsoever arising and whether the Seller's name is disclosed or not.
- 13.13 The Auctioneer shall be under no financial liability in respect of any matters arising out of the auction or particulars of sale or in the conditions of sale.
- 13.14 The Purchaser shall have no claim against the Auctioneer in respect of any damage or claim suffered by or made against the Purchaser by reason of the Purchaser entering into the contract to purchase or to acquire any other interest in the property.
- 13.15 The Seller shall at its cost obtain an Electrical Compliance Certificate in terms of the requirements of the Machinery and Occupational Safety Act as amended.
- 13.16 It is hereby agreed between the parties hereto that this Agreement constitutes the entire agreement between the parties hereto for the Sale and Purchase of the property and that it may only be varied or modified in writing and signed by the parties and that no representation warranty or statement whether written or oral or implied hereto made by or on behalf of one party to the other shall be capable of being treated as forming any part of this Agreement or as an inducement by the Seller to the Purchaser to enter into this Agreement.
- 13.17 The Purchaser undertakes to provide the prescribed documents and information as required in terms of the Financial Institutions Control Act (FICA) to the Sellers Attorney upon demand.
- 13.18 The parties hereto record their acceptance of the conditions governing the rights and duties recorded in this agreement.
- 13.19 The property is presently being utilized as a going concern: The Seller and the Purchaser are registered VAT vendors in terms of the VAT act.
- 13.19.1** The assets which are necessary for the carrying on of the business are disposed of by the Seller to the Purchaser in terms of this agreement.
- 13.19.2** By virtue of the provisions of this clause, the parties intend that the sale of the business in terms of this agreement will be zero rated VAT transaction in terms of Section 11(1)(e) of the VAT act.
- 13.19.3** In the event that the sale referred to in this agreement is subject to VAT at any rate other than zero the Purchaser shall be liable for the payment of any and all VAT.
- 13.19.4** The purchase price referred to in this agreement is exclusive of VAT.

SIGNED by or on behalf of the PURCHASER on this the _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

PURCHASER
(DULY AUTHORISED)

SIGNED at _____ on this the _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

AUCTIONEER

I/We hereby confirm and accept the sale.

SIGNED at _____ on this the _____ day of _____ 20__

AS WITNESSES:

1. _____

2. _____

SELLER

PURCHASER DETAILS

FIRST NAME: _____

SURNAME: _____

ID / PASSPORT NO: _____

GENDER: **F / M**

PHYSICAL ADDRESS: _____

POSTAL ADDRESS: _____

EMPLOYMENT DETAILS: _____

EMAIL ADDRESS: _____

TELEPHONE NUMBERS:

Office) _____

Home) _____

Cellular) _____

SELLER DETAILS

FIRST NAME:

SURNAME:

ID / PASSPORT NO:

GENDER:

F / M

PHYSICAL ADDRESS:

POSTAL ADDRESS:

EMPLOYMENT DETAILS:

EMAIL ADDRESS:

TELEPHONE NUMBERS:

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