



# LEOBERG

## Auctioneers & Properties

CK 98/55392/23 BTW/VAT 4520199961

### LA van den Berg

(B.Jur, et ART LLB)

National Diploma

Real Estate :

Property Valuation

### JC Eksteen

Afslaer / Auctioneer

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Fidelity Fund No.: FFC13445/2023

**SINCE / SEDERT  
1998**

## CONDITIONS OF SALE OF IMMOVABLE PROPERTY

**(which becomes a valid deed of sale on acceptance hereof by the SELLER)**

Whereby LEON ANDRÉ VAN DEN BERG of  
LEOBERG AUCTIONEERS & PROPERTIES CC  
REGISTRATION NUMBER: CK98/55392/23  
of 30 OR TAMBO STREET, MIDDELBURG, 1050

(the "AUCTIONEER")

Duly instructed by

**LEON ANDRÉ VAN DEN BERG**

**IDENTITY NUMBER:** [REDACTED]

of the firm

**LEON VAN DEN BERG INC.**

**30 OR TAMBO STREET, MIDDELBURG, 1050**

**OFFICE: 013 243 1074**

**MOBILE: 0836261873**

**EMAIL: [litigation@lvdbinc.co.za](mailto:litigation@lvdbinc.co.za)**

The duly appointed Receiver and Liquidator in the joint estate of  
**MMADIPHISHO ENGELINA MKWANAZI, ID: [REDACTED]**

And

**JAMES THULANI MKWANAZI, ID: [REDACTED]**

**under Middelburg Regional Court Case Number: MRCD 411/2018**

(the "SELLERS")

hereby offer for sale by public auction the following immovable PROPERTY:

**ERF: 4838 MHLUZI EXT 2**

**MUNICIPALITY: STEVE TSHWETE LOCAL MUNICIPALITY**

**REGISTRATION DIVISION: MPUMALANGA JS**

**EXTENT: 310m<sup>2</sup>**

**TITLE DEED:** [REDACTED]

**ADDRES: 4838 PHINDANI STREET, RIVERSIDE, EXT. 2, MHLUZI**

together with all the improvements thereon, subject to the following conditions:

## **1. INTERPRETATION**

1.1 Any reference to:

1.1.1 One gender includes the other gender.

1.1.2 Natural persons include juristic persons and *vice versa*.

1.1.3 Singular includes the plural and vice versa.

1.2 And any other references shall mutatis mutandis apply.

## **2. PROCEDURE**

2.1 The AUCTIONEER has the sole right to regulate the bidding procedure and in the event of any dispute between the bidders the decision of the AUCTIONEER shall be final and binding.

2.2 Subject to the provisions of clause 3.3, the PROPERTY shall be sold to the highest bidder and every bid shall constitute an offer to purchase the PROPERTY for the amount of the bid and no bid may be withdrawn prior to the expiry of the confirmation period during which the bid will be open for acceptance by the SELLER.

2.3 Should the AUCTIONEER commit any error he shall be entitled to correct such error.

### **3. SIGNATURE, ACCEPTANCE AND CONFIRMATION**

- 3.1 These conditions shall be signed by the highest bidder (the PURCHASER) on request of the AUCTIONEER.
- 3.2 If this offer is concluded with more than one PURCHASER, the liability of such PURCHASERS shall be joint and several in solidum.
- 3.3 The PURCHASER'S offer shall be open for acceptance by the SELLER for a period of 7 (seven) days after date of the auction, till 12h00 on 20 October 2023 and may be accepted by the SELLER at any time prior to the expiry of the mentioned confirmation period ("DATE OF ACCEPTANCE"). Acceptance of the offer will be confirmed by the AUCTIONEER to the PURCHASER.
- 3.4 The SELLER reserves the right to decline the offer and will be under no obligation to accept the offer, without any obligation to furnish any reason for his decision.

### **4. PURCHASE PRICE**

The PURCHASE PRICE, exclusive of Value Added Tax (VAT) if applicable, will be payable by the PURCHASER as follows:

- 4.1 A cash deposit of 20% (twenty percent) of the PURCHASE PRICE to the AUCTIONEER on the acceptance of the offer, alternatively as agreed to in writing; and
- 4.2 The balance of the purchase price shall be paid upon registration of transfer of the PROPERTY in the name of the PURCHASER, and pending registration of transfer, shall be secured by means of a suitable guarantee issued by a Financial Institution acceptable to the SELLER. The said guarantee shall be delivered to the conveyancer appointed in terms of clause 7 ("CONVEYANCER") within 30 (thirty) days from the DATE OF ACCEPTANCE, which guarantee shall be payable free of exchange.

4.3 The PURCHASER hereby instructs and authorises the CONVEYANCER to invest, in terms of Section 78 (2A) of the Attorneys Act No. 53 of 1979 (as amended), any monies paid by him or on his behalf in terms of this Offer (Agreement), in an interest-bearing account, interest so accrued for the benefit of the PURCHASER.

The PURCHASER acknowledges that he is aware that the CONVEYANCER will only be in a position to give effect to this mandate once he, the PURCHASER, has furnished the CONVEYANCER with documents, to be requested by the CONVEYANCER, in terms of the Financial Intelligence Centre Act, 2001.

4.4 The deposit shall be non-refundable, except in the instance where the sale is not accepted by the SELLER in which event all monies paid by the PURCHASER to the SELLER in terms hereof shall be refunded to the PURCHASER within 5 (five) days by the AUCTIONEER.

4.5 The PURCHASER shall pay 2% Buyers Commission plus VAT on the purchase price on the fall of the hammer.

## **5. COSTS OF TRANSFER**

5.1 The PURCHASER shall be liable, in addition to the PURCHASE PRICE, for all costs of registration of Transfer of the PROPERTY including but not limited to: (if applicable) transfer duty, revenue stamps, mortgage loan costs, attorneys' fees, deeds office registration fees, such proportion of the assessment rates levied by the Local Authority as may be due, or such proportion of charges and levies as may be due to a Home Owners Association or Body Cororate, which amounts shall be paid immediately upon demand by the CONVEYANCER, to the CONVEYANCER, and the conveyancing shall only commence after such costs have been paid by the PURCHASER.

- 5.2 The PURCHASER shall furthermore, in addition to the PURCHASE PRICE, be responsible for the payment of Value Added Tax (VAT) should the above SELLER be a registered VAT vendor, regardless of whether he was aware of this fact on date of signature hereof by himself.
- 5.3 The SELLER shall be responsible for the payment of ALL outstanding and arrear rates, taxes and levies (if applicable) on the PROPERTY.

## **6. OCCUPATION AND OCCUPATIONAL INTEREST**

- 6.1 Occupation of the property shall be given to the Purchaser by the Seller on date of registration from which date, in addition to the provisions of paragraph 5.3, the PURCHASER shall be liable for all municipal rates, taxes, consumption charges, insurance premiums and/or fees and levies payable on the PROPERTY, and from which date the PROPERTY shall be the sole risk, profit or loss of the PURCHASER. Should the SELLER have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof pro rate to the period of repayment, ALTERNATIVELY on such date before registration as the Seller may confirm in writing and the Property shall then be at the sole risk of the Purchaser in respect of all profit and loss relating to the Property and PURCHASER shall then be liable for all municipal rates, taxes, consumption charges, insurance premiums and/or fees and levies payable on the PROPERTY.
- 6.2 The Purchaser shall not be entitled to effect any structural changes to the Property before registration of transfer without the prior written consent of the Seller, which consent shall be within the sole discretion of the Seller, who shall be obliged to vacate the property if this agreement is cancelled for whatever reason, and it is recorded that no lease is created by the aforementioned provisions.
- 6.3 If the PROPERTY is leased, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provisions or the Common Law.

6.4 The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession. The SELLER does not guarantee vacant occupation of the PROPERTY.

6.5 The SELLER hereby notifies the PURCHASER that there is an existing lease contract with a tenant and the “huur gaat voor loop” rule applies in these circumstances.

## **7. TRANSFER**

Transfer shall be effected by a transfer attorney as elected by the SELLER.

## **8. VOETSTOOTS**

8.1 The PROPERTY is purchased and sold Voetstoots and the SELLER shall not be liable for any defects, patent, latent or otherwise in the PROPERTY nor for any damage occasioned to or suffered by the PURCHASER by reason of such defect. The PURCHASER admits having inspected the PROPERTY to his satisfaction and that no express or implied representations, guarantees or warranties of any nature were made or given by the SELLER or his AGENT regarding the condition, quality or any other characteristics of the PROPERTY or any of the improvements thereon or accessories thereof.

8.2 The PROPERTY is sold as described in the existing title deed or deeds thereof and subject to all conditions and servitudes (if any) attached thereto or mentioned or referred to in the said title deed(s). The SELLER shall not be liable for any deficiency in extent, which may be revealed on any re-survey, nor shall the SELLER benefit by any surplus in extent.

8.3 The SELLER shall not be required to indicate to the PURCHASER the position of the beacons or pegs upon the PROPERTY and/or boundaries thereof, nor shall the SELLER be liable for the costs of locating same.

## 9. NOMINEE

The PURCHASER shall be entitled, by notice in writing to the SELLER, to nominate a nominee in his place as PURCHASER, upon the following terms and conditions:

9.1 The aforesaid notice shall be handed to the SELLER by no later than close of business on the DATE OF ACCEPTANCE;

9.2 The notice shall set out the name and address of the nominee so nominated as PURCHASER.

9.3 The notice shall be accompanied by the nominee's written acknowledgement that:

9.3.1 It is Fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and

9.3.2 It is bound by the provisions of this agreement as the PURCHASER.

9.4 Should the PURCHASER nominate a nominee in terms of this clause, then:-

9.4.1 All references to the PURCHASER in this agreement shall be deemed to be a reference to its nominee; and

9.4.2 The 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 PURCHASER'S obligations under this agreement, including damages, and renounces the benefits of division and excussion.

## **10. DOMICILIUM**

10.1 The PURCHASER selects as his/her domicilium citandi et executandi for all purposes hereunder the address set out in "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" attached hereto.

Any notice dispatched to the PURCHASER by prepaid registered post or facsimile to the party's said domicilium citandi et executandi shall be deemed to have been received by such a party 7 (SEVEN) days from date of dispatch thereof.

## **11. PROHIBITION**

The PURCHASER shall not, prior to the date of registration of the transfer, be entitled to sell the PROPERTY or to cede, assign or make over his rights in terms hereof, or to give notice of cancellation of an existing lease, without the prior written consent of the SELLER.

## **12. JURISDICTION**

12.1 For the purpose of resolving any dispute which may exist or occur between the parties hereto, the parties consent to the jurisdiction of the Magistrate's Court or any other court with jurisdiction or a court otherwise competent with jurisdiction over the person of the parties in that each of them resides, carries on business, or is employed within its area of jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrates' Court Act 32 of 1944 or any amendment thereof provided that the SELLER shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's Court.

12.2 In the event of the SELLER instructing its Attorneys to institute any proceedings against the PURCHASER for payment of the PURCHASE PRICE, interest and other monies due by the PURCHASER hereunder or for the performance by the PURCHASER of any of the



terms and conditions herein, then the PURCHASER agrees that he shall be liable for and shall pay any such legal costs on the scale as between the Attorney and Own Client.

### **13. BREACH**

In the event of the PURCHASER being in breach of any of the terms or conditions contained herein, and remain in default for 7 (seven) days after dispatch of a written notice by registered post or by facsimile or by e-mail, requiring him to remedy such breach, the SELLER shall be entitled to, and without prejudice to any other rights available at law to:-

- 13.1 claim immediate payment of any amount due by the PURCHASER; and/or
- 13.2 declare the full balance of the PURCHASE PRICE and interest payable forwith and claim recovery thereof; and/or
- 13.3 cancel the agreement without any further notice, and retain all amounts paid by the PURCHASER as “Rouwkoop” and the PURCHASER hereby authorises any third party holding such monies to pay the same to the SELLER; and/or
- 13.4 terminate this agreement and claim damages from the PURCHASER, which damages shall include, but not be limited to, the costs and expenses of advertising and selling the PROPERTY to a third party.

### **14. AUCTIONEER'S COMMISSION**

The SELLER is liable to pay the Seller's commission as agreed between the AUCTIONEER and SELLER and other costs in terms of a Mandate, which amount will be due and payable on DATE OF CONFIRMATION from the deposit mentioned in Clause 4.1. In the event of the sale being cancelled by the SELLER due to the failure of the PURCHASER to comply with his obligations in terms of this Conditions of Sale, the PURCHASER will be liable for the payment of the Seller's – and Buyer's commission as well as squandered costs.

## **15. VARIATION**

This agreement constitutes the whole and only agreement between the SELLER and the PURCHASER and no alterations or variations of this agreement shall be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised agents.

Any representations, warranties or undertakings made or given by the SELLER or its agents other than those contained herein shall be of no force or effect whatsoever.

## **16. PERSONAL SURETYSHIP JOINT AND SEVERAL LIABILITY ON BEHALF OF PURCHASER**

The representative of the PURCHASER, by his signature hereto, hereby interposes and binds himself in favor of the SELLER, jointly and severally as surety for and co-principal debtor *in solidum* with the PURCHASER for the due and timeous performance by it of all of its obligations as the PURCHASER in terms of this Agreement and hereby renounces the benefit of excursion and division.

If this Agreement is concluded with more than one PURCHASER, the liability of such PURCHASERS to the SELLER shall be joint and several *in solidum*.

## **17. MARITAL STATUS OF PURCHASER**

The PURCHASER warrants that his marital status is as set forth in the "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" annexed hereto and, further that the information contained in such schedule is true and correct in each and every respect.

## **18. WAIVER**

Notwithstanding any express or implied provisions of this Offer to the contrary, any latitude or extension of time which may be allowed by the SELLER in respect of any matter or thing that the PURCHASER is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the SELLER'S rights at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

## **19. COMPLIANCE CERTIFICATES**

- 19.1 The Purchaser confirms that there is no obligation on the Seller to provide an electrical, gas, water, entomologist, electric fence system certificate of compliance or occupation certificate or any other certificate that may be required. The Purchaser will on his own cost obtain any such certificates from date of possession or registration, whichever date is first.
- 19.2 The Spatial Planning and Land Use Act, 2013 (SPLUMA) has regulated that each Municipality has to publish Municipal By-Laws to provide for implementation of the provisions of SPLUMA. The onus will be on the Seller to rectify either the zoning or the approval of the building plans at the relevant Local Municipality.
- 19.3 Any costs incurred by the rectification of the zoning and/or approval of building plans and/or approval of additional building plans will be for the account of the Seller.
- 21.4 It is recorded that the Seller shall be responsible for payment of any prescribed fees to obtain a SPLUMA Certificate from the Local Municipality.

## **20. FIRST RIGHT OF REFUSAL**

- 20.1 If the SELLER does not accept the PURCHASER'S offer during the CONFIRMATION PERIOD because it has received a higher offer from a third party, the PURCHASER shall be entitled to increase the PURCHASER'S offer during the CONFIRMATION PERIOD in order to match the third party's offer.
- 20.2 Any further offers being made within the CONFIRMATION PERIOD must be made in writing and only to Leoberg Auctioneers before 12h00 on 20 October 2023 and will be subject to these Conditions.
- 20.3 Every such offer shall be submitted to the highest bidder, who will have the first right to equal the offer. A person that made a higher offer is not allowed to make a second offer.

**THE PROPERTY WAS PUT UP FOR SALE BY PUBLIC AUCTION ON**

**THE 6TH DAY OF SEPTEMBER 2023**

The offer hereby made by the Purchaser is the amount of R \_\_\_\_\_  
( \_\_\_\_\_ )

(EXCLUDING VALUE ADDED TAX)

TO:

MR/MRS/MS \_\_\_\_\_

IDENTITY NO \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

Refer to "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" for full details of PURCHASER.

OR TO:

COMPANY/CLOSE CORPORATION/TRUST/OTHER:

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

IDENTITY / REGISTRATION NO: \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

REGISTERED ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE DETAILS: Business: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Mobile: \_\_\_\_\_

As chosen domicilium citandit et executandi

Herein represented by \_\_\_\_\_

Identity Number: \_\_\_\_\_

who warrants that he/she is duly authorised by resolution of the members/directors of the entity to act on its behalf, and who hereby binds himself as surety and co-principal debtor in solidum for and on behalf of the PURCHASER to and in favour of the SELLER and the AUCTIONEER under the terms and conditions contained in this Offer, and who further binds himself to due performance hereunder and for all amounts that may be due under this Offer, including damages, arising from whatever cause, and waive the benefits of division and excussion.

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_ 2023.

AS WITNESSES:

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

2. \_\_\_\_\_  
CONSENTING SPOUSE

\_\_\_\_\_  
AUCTIONEER (duly authorised)

**ACCEPTANCE AND CONFIRMATION**

Accepted by me this \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.

AS WITNESSES:

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

\_\_\_\_\_

SELLER

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

**INFORMATION FOR CONVEYANCER AND ADMINISTRATION**

**PURCHASER**

SURNAME \_\_\_\_\_

FIRST NAMES \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_

(State whether UNMARRIED / MARRIED IN COMMUNITY OF PROPERTY / MARRIED BY ANTENUPTIAL CONTRACT / MARRIED IN A COUNTRY OTHER THAN RSA)

DATE OF MARRIAGE \_\_\_\_\_

COUNTRY OF MARRIAGE \_\_\_\_\_

IDENTITY NUMBER \_\_\_\_\_

TEEPHONE NUMBER (H) \_\_\_\_\_

(W) \_\_\_\_\_

(FAX) \_\_\_\_\_

(CELL) \_\_\_\_\_

(EMAIL) \_\_\_\_\_

ADDRESS (P O BOX) \_\_\_\_\_

(PHYSICAL) \_\_\_\_\_

(FUTURE) \_\_\_\_\_

INCOME TAX NUMBERS \_\_\_\_\_

**SPOUSE/CO-PURCHASER**

SURNAME \_\_\_\_\_

FIRST NAMES \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_

(State whether UNMARRIED / MARRIED IN COMMUNITY OF PROPERTY / MARRIED BY ANTENUPTIAL CONTRACT / MARRIED IN A COUNTRY OTHER THAN RSA)

DATE OF MARRIAGE \_\_\_\_\_

COUNTRY OF MARRIAGE \_\_\_\_\_

IDENTITY NUMBER \_\_\_\_\_

TEEPHONE NUMBER (H) \_\_\_\_\_

(W) \_\_\_\_\_

(FAX) \_\_\_\_\_

(CELL) \_\_\_\_\_

(EMAIL) \_\_\_\_\_

ADDRESS (P O BOX) \_\_\_\_\_

(PHYSICAL) \_\_\_\_\_

(FUTURE) \_\_\_\_\_

INCOME TAX NUMBERS \_\_\_\_\_