

PLACE OF AUCTION: Online
DATE OF AUCTION: 27 January 2021
TIME OF AUCTION: 09H00-12H00

**NRE AUCTIONEERS (PTY) LTD
162 ZASTRON STREET, WESTDENE, BLOEMFONTEIN
(051) 405 9910**

**Duly represented by Hennie Gouws
(the "AUCTIONEER")**

duly instructed by
**FIRST NATIONAL BANK, BLOEMFONTEIN,
Duly represented by Elrich Mark Cameron by virtue of a Power of Attorney**

(the "SELLER")

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

TITLE DEED DESCRIPTION: RE of Farm 114 MAHEMSPRUIT Reg Div: WELKOM RD FREESTATE
TITLE DEED NUMBER: T14307/2016
STREET ADDRESS / KNOWN AS: Mahemspruit, Welkom
IN EXTENT: 158.7939ha

together with all improvements thereon (the "**PROPERTY**") on the following terms and conditions:



1. AUCTION PROCEDURE

1.1 HIGHEST ACCEPTED BIDDER SHALL BE THE PURCHASER

The highest accepted bidder will be considered the Purchaser. In the event of a dispute arising between any two or more bidders, the Auctioneer shall have the right to indicate the Purchaser or to declare the sale to be of no force or effect and to resell the property and the Auctioneer's decision in this regard shall be final and binding on all parties. If the Auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties but may be rectified. The Purchaser shall as soon as possible after the sale, and immediately upon being requested to do so by the Auctioneer, sign these conditions.

1.2 HIGHER OFFER

Should the Seller or his agent receive a higher offer before the auction or confirmation of the sales price, from an interested Buyer(s), then

1.2.1 the seller and his agents, and the seller binds himself thereto, must make the higher offer public to the highest bidder at the auction, immediately after receipt of the bid, and the highest bidder must be given the opportunity to increase his bid, which right he must exercise not later than 24 (Twenty-four) hours after being informed thereof;

1.2.2 Should the highest bidder's bid be equal or higher than the bid of the interested Buyer (s), then the highest bid at the auction is the one that Seller must consider; and

1.2.3 an interested Buyer (s) who make (s) a higher bid after the auction, will not be able to make further bids, should the highest bidder equal the said bid

1.2.4 There is a 7 (seven) day period for higher offers, which will expire on the 03 February 2021 at 13h00.

1.3. The rules of auction 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. The auction will commence at the published time and will not be delayed allowing any specific person or more persons to take part in the auction.

1.5. Registration to bid at the auction:

1.5.1. Anyone that intends to bid at the auction must register his or her identity on the bidder's record **prior to the commencement of the auction** and such registration must meet the requirements of FICA (Financial Intelligence Centre Act, 2001) in respect of the establishment and verification of identity of the person and the person must sign the registration entry.

1.5.2. A person who attends the auction to **bid on behalf of another person (i.e. on behalf of a company)** must produce a letter of authority that expressly authorizes him or her to bid on behalf of that person. Where a person is bidding on behalf of a company the letter of authority must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorizing him or her to bid on behalf of the company.

1.6. The bidder's record and the vendor roll will be made available for inspection during normal business hours without the charge of a fee. The bidders' record will also be available for inspection at the auction.

- 1.7. NRE Auctioneers has a trust account. All 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 payable to NRE Auctioneers.
- 1.8. The conduct of the auction is subject to the control of the auctioneer who has the sole right to regulate the bidding procedure.
- 1.9. Every prospective bidder must read the Rules of Auction and must not bid unless he or she has done so.
- 1.10. Every bid shall constitute an offer to purchase the property for the amount bid upon the terms and conditions contained herein, which the seller or the auctioneer may accept or reject in their absolute discretion. The seller shall be entitled, in its absolute discretion, to withdraw the property from sale prior to acceptance by the seller.
- 1.11. If no bid equals or exceeds the reserve price, the property may be withdrawn from the auction. The seller shall be entitled to instruct the auctioneer to accept any lower bid.
- 1.12. In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding.
- 1.13. Any error by the auctioneer shall be entitled to be corrected by him.
- 1.14. No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period that is provided for in the Rules of Auction, during which time the offer shall be open for acceptance by the seller or his agent and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.
- 1.15. The highest bidder ("the purchaser") shall sign the Rules of Auction immediately on the fall of the hammer.

2. ACCEPTANCE AND CONFIRMATION

- 2.1. The **PURCHASER'S** offer shall remain open for acceptance by the **SELLER** or by the **AUCTIONEER** on behalf of the **SELLER**, until 17H00 on the **10 February 2021 ("14-day confirmation period")**. The **PURCHASER** and the **AUCTIONEER** acknowledge and agree that this provision is inserted and intended for the benefit of the **SELLER**.
- 2.2. The **PURCHASER'S** offer shall be deemed to have been accepted only when the **SELLER** or the **AUCTIONEER**, whichever may be applicable, has signed these Rules of Auction on behalf of the **SELLER** in the space provided at the end thereof.
- 2.3. Should the **SELLER** reject the **PURCHASER's** offer, the **AUCTIONEER** will repay any deposit and commission paid to it in terms of this agreement.
- 2.4. The **SELLER** shall notify the **PURCHASER** in writing of either its acceptance or its rejection of the **PURCHASER's** offer.
- 2.5. In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.

3. PURCHASE PRICE

The Purchase Price of the **PROPERTY**, plus Value-Added Tax ("VAT") if applicable, shall be paid as follows:

- 3.1 A deposit of **10% (TEN percent)** of the Purchase Price to the **AUCTIONEER** by the **PURCHASER** immediately on the fall of the hammer.
- 3.2 The balance of the Purchase Price shall be paid in cash and secured, to the satisfaction of the **SELLER's** Attorneys, by a written guarantee from a registered financial institution, payable free of exchange, against registration of transfer of the **PROPERTY** into the **PURCHASER's** name. The **PURCHASER** may elect to secure the balance of the Purchase Price by payment in cash to the **SELLER's** Attorneys, who shall hold same in trust, pending registration of transfer into the name of the **PURCHASER**. The aforesaid guarantee shall be presented and/or cash shall be payable by the **PURCHASER** to the **SELLER's** Attorneys within 21 (twenty-one) days from date of acceptance of the offer.

4. VALUE-ADDED TAX

- 4.1 The Purchase Price is exclusive of VAT.
- 4.2 In the event of VAT being payable on the Purchase Price as a result of the sale, such VAT shall be paid by the **PURCHASER** to the **SELLER'S** Attorneys immediately on demand thereof.

5 AUCTIONEER'S COMMISSION

- 5.1 **The PURCHASER shall be liable for and pay, in addition to the amounts payable in terms of clauses 3.1 and 3.2, AUCTIONEER's commission of 5% (FIVE percent) of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon the signing of acceptance of the PURCHASER's offer in terms hereof by the SELLER.**
- 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.

6 RATES AND TAXES

- 6.1 The **SELLER** shall be liable for all rates and taxes and other Municipal charges levied on the **PROPERTY** for the period PRIOR to registration of transfer and the **PURCHASER** shall be liable for all rates and taxes and other Municipal charges levied thereafter.
- 6.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates and taxes and services paid in advance by the **SELLER** for the period after registration of transfer, which refund shall be paid upon registration of transfer.

7 TRANSFER AND COSTS OF TRANSFER

- 7.1 Transfer shall not be passed to the **PURCHASER**, notwithstanding anything to the contrary herein contained, until such time as the total Purchase Price and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment thereof has been secured as herein provided.
- 7.2 Transfer of the **PROPERTY** shall be passed, by the seller's attorneys, as soon as possible after date of acceptance, providing the **PURCHASER** has complied with the provisions of the aforementioned sub-clause.
- 7.3 The **PURCHASER** hereby specifically authorises and agrees to Jacques van der Vyver preparing and completing the necessary forms with 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 to the **SELLER's** Attorneys on behalf of the **PURCHASER** signing and submitting such form to SARS for which preparation, completion, signature and submission this Agreement shall be sufficient authority.
- 7.4 Transfer of the **PROPERTY** shall be effected by Kramer Weihmann en Joubert, and all expenses of and incidental to the preparation and registration of transfer, the conveyancing fees, disbursements and VAT (if applicable), in respect of such transfer, shall be borne by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond to finance the Purchase Price herein, including any disbursement levied by the financial institution approving the finance.
- 7.5 The **PURCHASER** acknowledges and accordingly undertakes to comply with all the FICA requirements as set out in **Annexure "1"** annexed hereto within 7 (seven) 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 the **SELLER's** Attorneys to fulfil their obligations in terms of FICA.

8 **POSSESSION AND RISK**

- 8.1 Possession of the **PROPERTY** shall only be given by the **SELLER** and taken by the **PURCHASER** on registration of transfer, provided that clauses 3.1 and 3.2 above have been complied with, from which date all risks and benefits of ownership in respect of the **PROPERTY** shall pass to the **PURCHASER**.
- 8.2 Should the **PURCHASER** take and the **SELLER** allow possession of the **PROPERTY** prior to registration of transfer, the **PURCHASER** shall at its own expense insure the **PROPERTY** and improvements 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 such period.
- 8.3 Upon the **PURCHASER** taking possession of the **PROPERTY** and pending transfer, the following further provisions shall apply –
- 8.3.1 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**, which consent shall not be unreasonably withheld;
- 8.3.2 the **PURCHASER** shall be responsible for and pay all costs of electricity and water consumed in the **PROPERTY**.

9 **OCCUPATIONAL INTEREST**

Should the **PURCHASER** take possession of the **PROPERTY** prior to registration of transfer, the **PURCHASER** shall pay occupational interest to the **SELLER**, calculated at 12% per annum, on the balance of the purchase price, in advance on the first day of every month, from date of possession until date of transfer, both days inclusive, payable directly to the **SELLER**'s Attorney (reduced *pro rata* for any period less than a month).

10 **REPAIRS AND IMPROVEMENTS**

- 10.1 Prior to registration of transfer, the **PURCHASER** shall not be entitled to affect any alterations to the **PROPERTY** without the prior written consent of the **SELLER**.
- 10.2 The **SELLER** shall not be obliged to compensate the **PURCHASER** for any authorised alteration effected in the event of the sale being cancelled.
- 10.3 The **PURCHASER** shall be liable for any damages suffered by the **SELLER** as a result of any alterations effected by the **PURCHASER**, not authorised by the **SELLER**.

11 VOETSTOOTS, EXTENT AND REPRESENTATIONS

- 11.1 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** unless requested do so by the **PURCHASER** or unless the **SELLER** and/or **AUCTIONEER** had knowledge of any material deficiencies in the extent.
- 11.2 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** and that is not contained in this Agreement.
- 11.3 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.
- 11.4 Annexure 2 hereto sets out information pertaining to the **PROPERTY** which is specifically brought to the attention of the **PURCHASER**.

12 BREACH

- 12.1 If one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Aggrieved Party shall be entitled to give the Defaulting Party 7 (seven) days’ notice in writing to remedy 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 the it may have in law, including the right to claim damages:
- 12.1.1 to cancel this Agreement and upon cancellation: -
- 12.1.1.1 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 *roukoop* or as a genuine pre-estimate of damage suffered by the **SELLER**, and furthermore the **PURCHASER** shall not be entitled to compensation from the **SELLER** for any improvements of whatsoever nature it may have caused on the **PROPERTY**, whether with or without the **SELLER**’s consent. The parties specifically agree that the **AUCTIONEER** shall be entitled, but not obliged, to immediately resubmit the **PROPERTY** for auction; and
- (OR)
- 12.1.2 to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.
- 12.2 Upon cancellation of this Agreement for whatever reason, the **PURCHASER** hereby undertakes to 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 by his permission. Occupation shall be re-delivered in the same good condition as at the date of possession. Occupancy of the **PROPERTY** by the **PURCHASER** or persons on the authority of the **PURCHASER** shall not create a tenancy either in terms of any statutory provision or common law.

13 LEGAL COSTS

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

14 ADDRESS / DOMICILIUM

14.1 The **PURCHASER** and the **SELLER** hereby choose their respective addresses / *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 address recorded below his signature hereunder. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth 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.

14.2 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.

14.3 The terms of "writing" shall include communications by email or facsimile.

15 ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE

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

15.2 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.

16 MAGISTRATES' COURT JURISDICTION

The Parties hereto 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. Notwithstanding the aforementioned, this shall not preclude either Party from approaching the High Court of South Africa for any relief sought. This Agreement shall further be governed in terms of the law of the Republic of South Africa.

17 GENERAL CLAUSES

- 17.1 These Rules of Auction constitute the whole agreement between the Parties as to the subject matter hereof and no agreement, representation or warranty between the Parties other than those set out herein are binding on the Parties.
- 17.2 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 a written document signed by all Parties.
- 17.3 No variation or alteration or cancellation of these Rules of Auction or any of the terms hereof, shall be of any force or effect, unless in writing and signed by the Parties hereto.
- 17.4 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*.
- 17.5 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 bound hereto.
- 17.6 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

THE PROPERTY WAS PUT UP FOR SALE BY PUBLIC AUCTION ON THE 21 DAY OF MAY 2020.

And sold for the amount of

(words) _____

(PLUS, VALUE ADDED TAX IF APPLICABLE)

I, THE PURCHASER, HEREBY CONFIRM THAT THE FULL EXTENT OF MY OBLIGATIONS AND RIGHTS HEREIN HAVE BEEN EXPLAINED TO ME AND THAT I HAVE BEEN GIVEN AN OPPORTUNITY TO MAKE THE NECESSARY ENQUIRIES IN RESPECT OF THE PROPERTY AND ALL MATERIAL ASPECTS RELATED TO THIS PROPERTY AND SALE AND THAT I UNDERSTAND THE EFFECT OF THIS AGREEMENT.

SIGNED BY THE PURCHASER AT _____ ON THE ____ DAY OF _____

AS WITNESS:

1. _____

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

AS WITNESS:

1. _____

NRE AUCTIONEERS (PTY) LTD duly authorised (**hereby accepts all the rights conferred upon it in terms of this Agreement**)

ACCEPTANCE AND CONFIRMATION

SIGNED BY THE SELLER AT _____ ON THE ____ DAY OF _____

AS WITNESSES:

1. _____

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

DEED OF SURETYSHIP

I / We the undersigned, _____

ID NUMBER: _____

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 favor of the **SELLER** and the **AUCTIONEER** for all the obligations of the **PURCHASER** under the Rules of Auction a foregoing and in particular for all amounts of money that may be due, including damages, from whatsoever cause arising under renunciation of the benefits of division and exclusion. **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.** I/We do accept *domicilium et executandi* at the address hereinafter set out.

THUS, DONE AND SIGNED at _____ this _____ day of _____

AS WITNESSES:

1. _____
_____ **SURETY**

2. _____
_____ **SELLER**

SURETY ADDRESS: _____

Tel No: _____

(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:

Companies:

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

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

(ANNEXURE 2): DEFECTS

- Property in need of repair and maintenance