

**IN THE HIGH COURT OF SOUTH AFRICA**  
**FREE STATE DIVISION, BLOEMFONTEIN**

In the matter between:

**CASE NO.: 1140/2019**

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK  
OF SOUTH AFRICA**

Applicant/Respondent

and

**THE COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION**

First Respondent

**THE MINISTER OF AGRICULTURE, FORESTRY AND  
FISHERIES**

Second Respondent

**THE MINISTER OF THE DEPARTMENT OF  
PUBLIC WORKS**

Third Respondent

**THE MINISTER OF THE DEPARTMENT OF FINANCE  
(NATIONAL TREASURY)**

Fourth Respondent

**JACOBUS PETRUS JOHANNES DU PLOOY**

Fifth Respondent/  
First Applicant

(I.D.: 690418 5152 086)

**SUNFOX 64 CC**  
(REG. NO.: 2004/024149/23)

Sixth Respondent/  
Second Applicant

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**CONDITIONS OF SALE IN EXECUTION**

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In which **NRE AUCTIONEERS** (herein referred to as the **AUCTIONEER**) in conjunction with the **SHERIFF**, are instructed by

**THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA  
(THE EXECUTION CREDITOR) – IN TERMS OF A COURT ORDER**

**UNDER CASE NUMBER: 1140/2019, DATED 09 MAY 2019**

(hereafter referred to as the **SELLER**),

to sell on behalf of the seller, by public auction or by private treaty the under mentioned property (herein after the **PROPERTY**) known as:

1. **THE FARM VENTERSVLAKTE 720, DISTRICT FAURESMITH, FREE STATE PROVINCE, HELD BY THE DEED OF TRANSFER T13414/2017;**
2. **REMAINING EXTENT OF THE FARM VLAKLEEGTE 647, DISTRICT FAURESMITH, FREE STATE PROVINCE, HELD BY DEED OF TRANSFER T13414/2017;**
3. **REMAINING EXTENT OF THE FARM STIKJE 293, DISTRICT FAURESMITH, FREE STATE PROVINCE, HELD BY DEED OF TRANSFER T13414/2017;**
4. **REMAINING EXTENT OF THE FARM VERWACHTING 920, DISTRICT BOSHOF, FREE STATE PROVINCE, HELD BY DEED OF TRANSFER T13414/2017;**
5. **FARM VLAKLEEGTE 647, DISTRICT FAURESMITH, FREE STATE PROVINCE, HELD BY DEED OF TRANSFER T13414/2017.**

**SUBJECT TO THE FOLLOWING CONDITIONS:**

#### **1. INTERPRETATION AND INTRODUCTION**

1.1. Any reference to –

- 1.1.1. The one gender shall include the other gender.
- 1.1.2. Natural persons shall include legal persons and vice versa.
- 1.1.3. The singular shall include the plural and vice versa.
- 1.1.4. References to the Executor, Trustee or Liquidator shall include the Provisional Trustee or Provisional Liquidator.
- 1.1.5. In the event of this contract not arising from a public auction but as a private treaty, then all references to –

- a. **AUCTIONEER** shall be deemed to refer to as the AGENT.
  - b. **AUCTIONEER'S** commission shall be deemed to refer to as agent's commission.
  - c. Bid shall be deemed to refer to purchase price; and all the other clauses shall be applicable as if incorporated in the agreement.
  - d.
- 2.1 The **AUCTIONEER** shall advise the **PURCHASER** of the highest accepted offer as contemplated above. The **PURCHASER** shall have the option to, within a period of 24 (twenty four) hours after being so notified (excluding weekends and public holidays), increase his offer in writing in terms of this agreement to an amount equal to the Purchase Price of such higher accepted offer. If the **PURCHASER** elects to exercise this right, the **PURCHASER** shall amend his original Offer to Purchase or complete and sign a new Offer to Purchase reflecting such higher offer, and shall supplement the deposit and auctioneer's commission required by Paragraph 9.2 below accordingly.
- 2.2 It is specifically recorded that the bids of both the highest bidder and the under bidder (the second highest bid) will stand and be regarded as legally binding for consideration and acceptance by the Seller(s). The decision regarding acceptance of any offer shall be entirely at the discretion of the Seller(s).
- 2.3 Both these bidders shall sign the Conditions of Sale for their respective bids immediately after closure of the auction. Both bidders will also be required to make payment of the deposit and commission (plus VAT, if applicable) as provided for elsewhere in the Conditions of Sale. If the highest bidder does not perform his or her duties as provided for in the Conditions of Sale and the Rules of Auction then the bid of the under bidder shall be regarded as the auction offer.
- 2.4 In the event of this agreement requiring the consent of the Master of the High Court in terms of any law or the consent of the Local Authority/Municipality to pass transfer, then this agreement is subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process.

### 3. SIGNATURE

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

### 4. DISPUTES

- 4.1. In the event of a dispute arising in regards to a bid made, the **AUCTIONEER** will have the discretion to put the property up for auction again and his decision will be final. Should the **AUCTIONEER** and/or the **SELLER** commit any error in respect of the sale of the property, such error shall not be binding upon the parties and shall be rectified.

- 4.2. Should the **PURCHASER** fail to conclude the transaction in all facets, the **AUCTIONEER** will be entitled to resell the property by auction or private treaty.
- 4.3. Should the **AUCTIONEER** have any reason to believe that a bidder is not able to pay the deposit or the purchase price, he is entitled to refuse a bid from such a bidder, or accept it provisionally, until he is satisfied that the bidder is able to pay aforesaid amount. Should a bid be rejected under these circumstances, the property may immediately be put up on auction again.

## 5. TAXES AND LEVIES

- 5.1. The **PURCHASER** shall be liable for payment of all duties, levies and taxes, calculated as from the date of possession and/or occupation (whichever occurs first), but shall not be held liable for any arrears.
- 5.2. The **SELLER** and the **PURCHASER**, including the **AGENT** (if applicable) agree that in the event the arrear rates and taxes, levies and or electricity or any other Statutory liability in this regard, exceeds the purchase price, this agreement shall become null and void and all monies paid by any **PARTY** shall be refunded.

## 6. CONVEYANCER

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

## 7. LEASE

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

## 8. VOETSTOOTS

- 8.1. The property is sold **VOETSTOOTS**, and neither the **AUCTIONEER** nor the **SELLER** gives any guarantee as to the extent, patent or latent defects, the nature, quality or legality of improvements, or the legality of any activities practised thereon, and will not be held liable for any damages arising from same. The property is sold subject to all conditions, servitudes, current or forthcoming land claims, legal or illegal occupants and/or expropriation applicable to the property and evidenced in the existing Title Deed of the specific property.
- 8.2. The **AUCTIONEER** and/or **SELLER** is not obliged to point out any beacons or boundaries, and any description or information, whether by way of advertising, brochures or verbal communication is done in good faith and the **PURCHASER** acknowledges that he was not induced into this contract by any explicit or implied representations.
- 8.3. It is agreed by the **PURCHASER** that neither the **SELLER** nor the **AUCTIONEER** purport to be experts with regards to defects in immovable property, and consequently that their failure to specifically point out a specific defect cannot be seen as any form of misrepresentation.
- 8.4. The **PURCHASER** acknowledges that the subject property sold herewith is not a newly constructed dwelling and that the condition of the property may not be the same as that of such newly constructed building. Consequently, certain patent and latent defects may have developed, particularly but not limited to the condition of the roof and roof trusses, ceilings, electrical-, plumbing- and sewerage reticulation, walls, windows and skylight fittings, floors, fixtures and fittings, gates, pool and pond electrical components, garden installations and all other similar appurtenances.

8.5. BIDDERS should refrain from either bidding at the auction or making an offer for the property if they have not familiarised themselves with all of the clauses of this Conditions of Sale and the condition and status of the property, and neither the SELLER nor the AUCTIONEER accepts any liability towards the PURCHASER in this regard. It is therefore acknowledged that if a BIDDER becomes the PURCHASER in this agreement he/she has not been induced or influenced to enter into this agreement by any warranties or representations or statements made or information given by either the SELLER(S) or the AUCTIONEER.

**9. PURCHASE PRICE AND MEANS OF PAYMENT**

9.1. The purchase price of the property is R  
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(.....  
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..... )

Excluding VAT (if applicable) and is payable by the **PURCHASER** as follows:-

9.2. 10% of the full purchase price as a deposit to the **AUCTIONEER**, in bank guaranteed cheque or electronic transfer immediately after the auction and upon signature hereof by the **PURCHASER** or as requested by the **AUCTIONEER**. The **SELLER(S)** and the **PURCHASER** authorises the **AUCTIONEER**, upon Acceptance of this Offer by **the SELLER(S)**, to pay the remainder of the deposit after deduction of expenses and fees, to the conveyancer's trust account for the benefit of the Seller.

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

- 9.4. The balance of the purchase price shall be paid or secured by means of a guarantee acceptable to the **SELLER**, within 30 (thirty) days from date of confirmation, payable upon registration of transfer.
- 9.5. The **SELLER(S)** and the **PURCHASER** hereby irrevocably instruct and authorize the Conveyancer to invest any amounts received by the Conveyancer in an Interest bearing account in terms of Section 86(4) of the Legal Practice Act, 2014 (Act no. 28 of 2014) for the benefit of the **SELLER**.
- 9.6. The **PURCHASER** shall be responsible for payment of Bank costs.

## **10. AUCTIONEERS' COMMISSION**

- 10.1. The parties hereby agree that the **AUCTIONEER** is the effective cause of this transaction and that he is entitled to auctioneers' commission at confirmation.
- 10.2. The **PURCHASER** will be liable for auctioneers' commission of 6% of the purchase price (exclusive of VAT), which is not included in the purchase price, payable simultaneously with the deposit and shall be in addition to the said deposit.
- 10.3. The party responsible for non-compliance of this agreement will be responsible for payment of the total auctioneers' commission.

## **11. VALUE ADDED TAX / TRANSFER DUTIES**

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

## **12. POSSESSION, OCCUPATION, INSURANCE AND OWNERSHIP**



- 12.1. Possession and/or occupation will be given and taken subject to any existing lease agreements, leasing, tenancy or legal or illegal occupation, on date of registration of the transfer of the property in the Deeds office (or as agreed upon in writing between the parties,) from which date the sole risk, profit or loss of the property shall rest upon the **PURCHASER**. The **SELLER** and the **AUCTIONEER** do not guarantee vacant occupation.
- 12.2. The **PURCHASER** shall be obliged to insure the property comprehensively as from date of possession and/or occupation (whichever occurs first) failing which, the **SELLER** may insure it on the **PURCHASER'S** expense.

### 13. NON COMPLIANCE AND / OR BREACH

- 13.1. Should the **BIDDER** fail to, or refuse to sign the conditions of sale, or to pay the deposit or purchase price on request of the **AUCTIONEER** as described above, the property can, at the **AUCTIONEERS'** discretion, be sold by virtue of a new auction or private treaty, at the **BIDDERS** risk, who will be held responsible for any shortages and/or costs involved therein. Any increase in price will be to the benefit of the **SELLER**.
- 13.2. Should the **PURCHASER** violate any condition of this agreement and neglect to comply to a written notice by fax or by hand or by prepaid registered post from the **SELLER** or **AUCTIONEER** or the Seller's Conveyancer to rectify such breach within 7 (seven) days, the **SELLER** will be entitled to, without prejudice to any other rights:
- 13.2.1. Demand specific performance of the agreement with or without damages;
- OR
- 13.2.2. Cancel the agreement, take possession of the property, evict all occupants from the property and claim damages which will

include any damages or costs involved in the resale of the property, either by public auction or private treaty.

- 13.3. In the event of cancellation of this agreement the **PURCHASER** shall forfeit all monies paid, including commission paid in terms of this agreement to the **SELLER** and/or the **AUCTIONEER** as liquidated

#### **14. JURISDICTION AND ADDRESS FOR DELIVERY OF DOCUMENTS**

- 14.1. The parties hereto agree to the jurisdiction of the Lower Court in respect of any lawsuit rising from this agreement, or at the discretion of the **SELLER**, to the jurisdiction of the North Gauteng High Court Pretoria or South Gauteng High Court Johannesburg, and the parties choose the addresses as indicated herein as their domicilium citandi et executandi (address where they will receive all letters and processes) for the purposes of delivery of all notices and documents.

#### **15. SUBMISSION OF CERTIFICATES**

- 15.1. The **PURCHASER** confirms that he will, at his own cost, obtain an electrical installation certificate and/or the necessary certificates to the effect that the buildings on the property are free from timber destroying insects, or gas or any other certificates of whatsoever nature that may be required.

#### **16. IMPROVEMENTS**

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

necessary, useful or luxurious improvements and/or alterations on or to the property.

## **17. FINANCIAL INTELLIGENCE CENTRE ACT (“FICA”)**

- 17.1. It is acknowledged that the Conveyancer is designated as an “accountable institution” in terms of FICA.
- 17.2. Both the **SELLER(S)** and the **PURCHASER** agree to comply with all the FICA requirements of the **AUCTIONEER** and the Conveyancer and to supply the **AUCTIONEER** and the Conveyancer with all their respective FICA requirements within three days after demand therefore is made.
- 17.3. The **SELLER(S)** and the **PURCHASER** acknowledge that FICA prohibits the Conveyancer to invest and administer any deposits or any other monies paid in terms of this agreement, unless the **SELLER(S)** and the **PURCHASER** have provided the documentation and information as required by FICA legislation.
- 17.4. It is hereby agreed by both the **SELLER(S)** and the **PURCHASER** that neither the **AUCTIONEER** nor the Conveyancer shall be liable for any loss or damage suffered by either of them, as a result of either the **SELLER(S)** or the **PURCHASER** failing to comply with the provisions of this Clause 17.

## **18. MATRIMONIAL PROPERTY ACT**

- 18.1. To the extent that it is necessary, the **PURCHASER** hereby warrants that all written consents as required by the Matrimonial Property Act, No. 88 of 1984 in respect of this agreement or any matters arising therefrom or in terms hereof have been duly given as required.

**19. AMENDMENTS AND ADDITIONS**

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

**20. WAIVER AND CONCESSIONS**

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

**21. SPECIAL CONDITIONS**

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

**PURCHASER**

NAME:

.....  
.....  
.....

IDENTITY/REGISTRATION

NUMBER:

.....

POSTAL

ADDRESS:

.....  
.....  
.....

PHYSICAL

ADDRESS:

.....  
.....  
.....

TELEPHONE

NO:

.....

(W)

FAX

NO:

.....

..... (H) CELL NO: .....

E-MAIL

ADDRESS:

.....  
.....

AS WITNESS

PURCHASER

DATE

PLACE

**MARITAL STATUS OF PURCHASER**

**\*\* Delete which is not applicable**

STATUS: \*\* Unmarried / married / divorced

IF MARRIED: \*\* In community / Ante nuptial contract

IF MARRIED IN COMMUNITY OF PROPERTY, THEN:

Full name of spouse:

.....  
.....

Identity number:

.....

..... AS WITNESS SPOUSE .....

\_\_\_\_\_  
DATE PLACE

**SURETYSHIP**

I/WE, the undersigned, do hereby bind myself /ourselves jointly and severally as surety/ties in solidum and co-principal debtor/s with the **PURCHASER** and the bidder who have signed this Agreement of Sale, for the due performance by the **PURCHASER** and such bidder, for all his obligations in terms of this Agreement of Sale, and I / we do hereby specifically waive all benefits of the legal exceptions known as beneficia ordinis seu excussionis et divisionis, in other words the benefit of division and excussion, the meaning and effect of which I / we are fully acquainted with.

My /our liability in terms hereof shall not be affected, prejudiced or vitiated by any concession or accommodation which may be made by the **SELLER** or his successor in title to the said **PURCHASER** or bidder, and I / we are not entitled to receive any prior notice in this regard.

Signed at on this ..... day of .....

Signature: .....

Surety 1

Surety 2

Full names and addresses of surety/ties:

Surety 1: .....

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.....  
.....  
.....

Surety 2: .....

.....  
.....  
.....  
.....

As witnesses: 1. .... 2. ....

**SELLER 1:**

**NAME: THE LAND AND AGRICULTURAL DEVELOPMENT BANK OF SOUTH AFRICA (THE EXECUTION CREDITOR) – IN TERMS OF A COURT ORDER UNDER CASE NUMBER: 1140/2019 DATED 09 MAY 2019 ON BEHALF OF SUNFOX 64 CC (REG. NO.: 2004/024149/23)**

FIRM: \_\_\_\_\_

POSTAL ADDRESS: \_\_\_\_\_

TELEPHONE NO: FAX NO:

.....  
AS WITNESS

ACCEPTANCE AND  
CONFIRMATION BY SELLER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PLACE





**SHERIFF**

**SHERIFF THEUNISSEN**

44 Andries Pretorius Street, Theunissen

Tel: 057-733-0019

.....  
AS WITNESS

ON BEHALF OF SHERIFF  
(DULY AUTHORISED THERETO)

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DATE

PLACE