



RULES OF AUCTION and SALE CONDITIONS

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

DATE & TIME : **TUESDAY, 16th AUGUST 2022 @ 11H00**

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

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

instructed by

**CAPITAL PROPFUND 2 PROPRIETARY LIMITED
Registration No. 2013/230191/07
VAT Registration No. 4020265015
(the "SELLER")**

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

TITLE DEED DESCRIPTION : **ERF 260, JET PARK
EXTENSION 1 TOWNSHIP
REGISTRATION DIVISION IR
PROVINCE OF GAUTENG**

PHYSICAL ADDRESS : **10 COVORA STREET, JET PARK**

EXTENT : **1.6165 HECTARES**

TITLE DEED : **T17622/2014**

including any lease agreements of force and effect and all improvements of a permanent nature (the "**PROPERTY**"), excluding any fixtures, fittings and assets and such other assets owned by the **SELLER** that do not form part of the sale or

which are the property of the tenant/s under the lease/s, or any ex-tenants, as the case may be 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 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.
- 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 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 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**, until 18H00 on the **26th day of August 2022** ("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**. 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**, inclusive of VAT at 0% (zero per cent), subject to the provisions of clause 4, 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, immediately after the date of acceptance.
- 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. In respect of investments by the **AUCTIONEER**, the interest shall accrue to the Property Practitioners Regulatory Authority or Law Society Fidelity Fund as the case might be. In respect of investments by the **SELLER's** Attorneys, the interest shall accrue to the benefit of the **PURCHASER** subject to the provisions of clause 15.
- 3.3 The balance of the Purchase Price plus VAT shall, within **30 (thirty) calendar days** from acceptance and signature hereof by the **SELLER**, be paid in cash or secured, to the satisfaction of the **SELLER** and the **SELLER's** Attorneys, by a written unconditional and irrevocable guarantee, on terms acceptable to the **SELLER**, from a registered South African Bank acceptable to the Seller 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 and/or guarantee/s not issued when due.

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 inclusive of VAT at a rate of 0% (zero per cent).
- 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 and excluding any fixtures, fittings and any assets and such other assets owned by the **SELLER** and/or the tenant/s under the lease/s that do not form part of the sale pertaining to the **PROPERTY** and any deposits of tenants, subject to the provisions of clauses 11.6 and 11.7, 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, 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 the same time as delivery of the guarantee/s referred to in clause 3.3 above, and in this regard the **PURCHASER** warrants that it has applied for VAT registration before the date of conclusion of this Agreement.
- 4.4 **Notwithstanding what is stated in this clause 4, where for any reason whatsoever VAT is payable on this sale at a higher rate other than at the zero rate and at any time, then the PURCHASER undertakes that it will be liable for payment of any such VAT or additional VAT, penalties and interest thereon, and such VAT will be added to the Purchase Price and payable by the PURCHASER on demand therefore by the SELLER's 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**.
- 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 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.
- 5.4 The provisions of this clause 5 are for the benefit of the **AUCTIONEER** who accepts such benefit.

6 OCCUPATIONAL RENT

Subject to tenancies, if any, the **PURCHASER** shall only take possession and occupation of the **PROPERTY** on registration of transfer unless the parties have agreed otherwise, in writing, in which case occupational rent shall be payable by the **PURCHASER** to the **SELLER** at a rate to be agreed, in writing, by the parties and subject further to any other terms and conditions as may be imposed by the **SELLER**.

7 RATES AND TAXES

- 7.1 The **SELLER** shall be liable for all rates, taxes and other Municipal charges levied on the **PROPERTY** for the period up to registration of transfer and the **PURCHASER** shall be liable for rates, taxes and other Municipal charges thereafter.

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 secured by payment to the **SELLER'S** Attorneys prior to transfer and paid to the **SELLER** on registration of transfer.

- 7.2 The **SELLER'S** Attorneys shall, upon registration of transfer, inform the relevant municipality that the **PROPERTY** has been transferred into the **PURCHASER'S** name and the date of such transfer.
- 7.3 The **PURCHASER** shall, immediately upon registration of transfer of the **PROPERTY** into its name, attend at the offices of the relevant municipality or any other relevant authority and/or Eskom, and will pay the required deposit/s and open rates, water and electricity consumption accounts in its name. The **PURCHASER** shall ensure that all the relevant meters and services in respect of the **PROPERTY** are linked and billed to its new activated municipal accounts and further undertakes to notify the **SELLER** that such payments have been provided to the local authority and/or Eskom and to furnish the **SELLER** with written proof of the payments and copies of all the activated rates and municipal accounts.

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"). The **SELLER** warrants that it is a RESIDENT of the Republic of South Africa.

9 **COSTS OF TRANSFER**

- 9.1 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 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/its 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**.
- 9.5 In the event of the **PURCHASER** failing to comply within 7 (seven) 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 8th (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 8th (eighth) day until the date of transfer and payment, (both days inclusive). The **PURCHASER** acknowledges that the obtaining of loan funding and/or a mortgage bond, if applicable, is not a condition to the sale as contemplated herein.
- 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) 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 From the acceptance date hereof until the date of transfer, the **SELLER** shall be entitled to conduct any business relating to the **PROPERTY** without recourse to the **PURCHASER**.
- 10.2 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**.
- 10.3 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.

- 10.4 Upon the **PURCHASER** taking possession of the **PROPERTY** and pending transfer, the following additional provisions shall be applicable –
- 10.5 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**;
- 10.6 the **PURCHASER** shall be responsible for and pay all rates and taxes and costs of electricity and water consumed in or at the **PROPERTY**; and
- 10.7 subject further to any other terms and conditions as may be imposed by the **SELLER**.

11 **TENANCIES**

- 11.1 The **PROPERTY** is currently being let to tenant/s other than the **PURCHASER** and is being sold subject to all existing tenancies.
- 11.2 The **PURCHASER** shall be bound by the terms and conditions of all leases, of which he acknowledges he is fully and unconditionally appraised, alternatively which he has elected to accept and abide by.
- 11.3 The **SELLER**, from registration of transfer, cedes, makes over and assigns all its rights and obligations in and to the leases to the **PURCHASER** who accepts such cession and assignment.
- 11.4 If any tenant is in arrears with rental due to the **SELLER** in respect of the leases, the **SELLER** shall be entitled to proceed with or take :-
 - 11.4.1 any legal action or other proceedings against such tenant; and
 - 11.4.2 a civil judgment against the tenant and/or evict the tenant from the leased premises concerned; and
 - 11.4.3 enforce any of its rights in terms of the leases.
- 11.5 If the **SELLER** wishes to either amend any leases, renew the leases or enter into new leases, it shall be entitled to do so, provided that it provides written notification to the **PURCHASER** thereof.

- 11.6 In the event that the **SELLER**, after complying with the provisions of clause 11.5, enters into a new lease agreement in respect of the **PROPERTY** and/or buildings or renews the existing leases, the **PURCHASER** shall be liable for the pro-rata commissions and tenant installation costs related thereto for the period of such leases or renewal beyond the date of transfer.
- 11.7 All deposit/s paid by tenants in terms of the leases, shall be dealt with in accordance with the Adjustment Account referred to in clause 11, provided that if at any time before the date of transfer, any tenant fails to comply with its obligations in terms of the lease and/or there are any amounts owing to the **SELLER** by any tenant in terms of the leases, the **SELLER** shall be entitled to appropriate such deposit towards payment of the outstanding amount owing to the **SELLER**.
- 11.8 All payments received from tenants in terms of the leases after the date of transfer shall in the first instance be appropriated towards any amounts owing by the tenants to the **SELLER** in terms of the leases prior to the date of transfer and thereafter towards amounts owing to the **PURCHASER** by the tenants for the period after the date of transfer.

12 **ADJUSTMENT ACCOUNT AND DEPOSITS**

- 12.1. The **SELLER** shall at its expense prepare an Adjustment Account in respect of the **PROPERTY** as at the date of transfer and deliver such Adjustment Account to the **PURCHASER** not later than 45 (forty five) days of receipt by the **SELLER** from the **PURCHASER** of written proof, acceptable to the **SELLER**, of the activated accounts in accordance with the provisions of clause 7.3.
- 12.2. Payment of any monies due to any party in terms of the Adjustment Account shall not constitute part of the Purchase Price and shall be effected, free of interest, separately from the payment of such Purchase Price.
- 12.3. The Adjustment Account shall reflect:
- 12.3.1. as at the date of transfer, as credits to the **SELLER**:
- 12.3.1.1. if applicable, all rentals and other income due and payable to the **SELLER** prior to the date of transfer and collected after the date of transfer;

- 12.3.1.2. all amounts of municipal service fees, surcharges on fees, property rates, municipal tax and other municipal charges, including levies and duties on charges for electricity and water, pre-paid for any period after the date of transfer in respect of the **PROPERTY**; and
- 12.3.1.3. the amounts of levies, including special levies pre-paid for any period after the date of transfer (if applicable);

12.3.2.as at the date of transfer, as debits to the **SELLER**:

- 12.3.2.1. all amounts of municipal service fees, surcharges on fees, property rates, municipal taxes and other municipal charges, including levies and duties on charges for electricity and water for any period before the date of transfer, not paid as at that date;
- 12.3.2.2. the amount of levies, including special levies, for any period before the date of transfer not paid at that date (if applicable);
- 12.3.2.3. subject to the provisions of clause 11.7 and 11.8, tenants' deposits, if any, excluding interest and excluding the value of arrear indebtedness of the tenant to the **SELLER** arising prior to the date of transfer and in respect of which indebtedness the **SELLER** is legally entitled to apply such deposit;
- 12.2.2.4. if applicable, all rentals and other income pre-paid to the **SELLER** for the periods after the date of transfer;
- 12.3.2.5. any other expenses incurred after the date of transfer, which are in respect of periods prior to the date of transfer, or which should reasonably apportion to a period prior to the date of transfer on a pro-rata basis;
- 12.3.2.6 all costs, expenses and charges arising out of service and maintenance agreements, if any, incurred prior to the date of transfer, which are in respect of periods prior to the date of transfer, or which should reasonably apportion

to a period prior to the date of transfer on a pro-rata basis; and

- 12.3.2.7 the **SELLER's** proportionate share of any management fees, cost and the like payable to the **SELLER'S** property management company for any period before the date of transfer;

12.3.3.as at the date of transfer, as debits to the **PURCHASER:**

- 12.3.3.1. all amounts or municipal service fees, surcharges on fees, property rates, municipal taxes and other municipal charges, including levies and duties on charges for electricity and water, pre-paid by the **SELLER** in respect of the **PROPERTY** after the date of transfer;
- 12.3.3.2. the amounts of any levies, including special levies pre-paid for any period after the date of transfer, paid by the **SELLER** in respect of the **PROPERTY** (if applicable);
- 12.3.3.3. any other expenses reasonably incurred by the **SELLER** in carrying out its obligations prepaid by the **SELLER** in respect of the period after Transfer, including insurance premiums;
- 12.3.3.4 all costs, expenses and charges arising out of service and maintenance agreements, if any, incurred after the date of transfer, which are in respect of periods after the date of transfer, or which should reasonably apportion to a period after the date of transfer on a pro-rata basis; and
- 12.3.3.5 the **PURCHASER's** proportionate share of any management fees, cost and the like payable to the **SELLER'S** property management company for the period from the date of transfer until finalisation of the Adjustment Account.

it being agreed by the Parties that:

12.3.5 should transfer of the services and opening of the **PURCHASER's** new rates and municipal accounts be

delayed after the date of transfer, for any reason whatsoever, and the relevant municipality (and/or other service/utility providers) bill the **SELLER** for any rates, utilities, consumption charges or municipal charges or the like payable by the **PURCHASER** for the period between the date of transfer and the date on which the **PURCHASER's** accounts are opened, activated and billed, such amount/s shall be reflected as a credit for the benefit of the **SELLER** in the Adjustment Account;

12.3.6 the parties shall co-operate with each other and the relevant municipality (and/or other service/utility providers) in ensuring that such municipality (and/or other service/utility providers) credits any payments made to the correct party's account, and correctly makes any subsequent adjustments as may later become necessary; and

12.3.7 the **SELLER** shall be entitled to off-set any municipal credits that the relevant municipality has not yet released to the **SELLER**. All such credits will be withheld from any amount payable to the **PURCHASER** until such credits are paid over to the **SELLER** by the municipality concerned.

12.4. Any amount payable by any party to another party in terms of the Adjustment Account, shall be paid, free of interest, within 14 (fourteen) days of the date of receipt of the Adjustment Account.

12.5 In the event that the Adjustment Account has been finalised, and at any period thereafter, the relevant municipality (and/or other service/utility providers):

12.5.1 bill the **SELLER** for any additional amounts separate to the amounts accounted for in the Adjustment Account owing by the **PURCHASER**, the **PURCHASER** undertakes to make payment of such amount to the **SELLER** within 7 (seven) days of request thereof;

12.5.2 make payment to the **PURCHASER** or credits the **PURCHASER's** accounts with amounts due and payable to the **SELLER**, the **PURCHASER** undertakes to refund such amounts to the **SELLER** within 7 (seven) days of receipt by the **PURCHASER** thereof.

12.6. If the Parties are unable to reach agreement regarding the calculation of the amount to be paid by either party to the other in terms of the Adjustment Account or the amounts referred to in clause 12.5, then either party may by notice in writing to the other

refer the dispute to an independent accountant agreed upon between the Parties, or failing agreement, appointed by the Chairperson for the time being of the South African Institute of Chartered Accountants, who shall make a determination as soon as possible after such referral and whose determination (including any order as to costs) shall be final and binding (in the absence of manifest error) on the Parties.

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.
- 13.4 If, at any time prior to transfer, the **PROPERTY** or any portion thereof are destroyed, the **SELLER** undertakes to cede, against transfer of the **PROPERTY** and payment of the Purchase Price any insurance proceeds received in respect of any such destruction.
- 13.5 The **SELLER** shall insure the **PROPERTY** against the risk to which they are ordinarily subject until the date of transfer. The **PURCHASER** shall insure the **PROPERTY** with effect from the date of transfer.

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 **Notwithstanding anything to the contrary contained elsewhere in this Agreement, the PURCHASER confirms and agrees that he has, prior to the date of signature:**
- 14.3.1 **fully inspected, acquainted and unconditionally satisfied himself in respect of the condition of the building/s on the PROPERTY that it has purchased, including but not limited to the state of repair of such building, the roof, sub-structure, extent, nature and the construction thereof, and any other matters relating thereto alternatively that he/she has elected to purchase the PROPERTY without fully acquainting him/herself therewith;**
- 14.3.2 inspected, acquainted and unconditionally satisfied itself with all aspects of the letting enterprise including but not limited to all lease agreements service and maintenance agreements and all agreements or contracts relating to the **PROPERTY.**

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) 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:
- 15.2 to cancel this Agreement and upon such cancellation: -
- 15.2.1 if the defaulting party is the **PURCHASER** the **SELLER** shall be entitled to retain all amounts paid by the **PURCHASER** including accrued interest, as *rouwkoop* or as a genuine pre-estimate of damage suffered by the **SELLER**; and

(ALTERNATIVELY)

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

15.3 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, or as may be required by the **SELLER**.

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

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 delivered by hand shall be deemed to have been received on the day of delivery; any notice sent by 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 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 except for documents relating to legal processes.

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 not applicable to the sale of the **PROPERTY**.

20 **COMPANY TO BE FORMED**

20.1 Where the **PURCHASER** signs this Agreement in his capacity as agent for a company to be formed and the **PURCHASER** fails within 14 (fourteen) 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 7 (seven) 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.

20.2 In the event of such company being registered and duly adopting or ratifying this Agreement, **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.**

21 **COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS**

21.1 **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.

- 21.2 **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.**

22 ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE

- 22.1 There shall be no obligation on the **SELLER** to provide the **PURCHASER** with an Electrical Compliance Certificate for the **PROPERTY**.
- 22.2 The **SELLER** shall provide the **PURCHASER** with electrical certificates of compliance for the **PROPERTY** that are currently in its possession, if any, prior to the date of transfer.
- 22.3 It is specifically recorded and agreed that, notwithstanding the provisions of clause 22.2, there shall be no obligation on the part of the **SELLER** and the **PURCHASER** shall have no claims against the **SELLER** relating to the electrical installations on the **PROPERTY**.
- 22.4 Furthermore, to the extent that it is applicable in respect of the **PROPERTY**, it is specifically recorded and agreed between the parties that the **SELLER** will not provide the **PURCHASER** with any gas certificates, electric fence certificate or such other certificates as may be required in respect of the **PROPERTY**. The **PURCHASER** at its expense, shall be responsible for procuring and obtaining all certificates as contemplated herein including Electrical Compliance Certificate/s, and should any works and/or repairs need to be effected in order to obtain such certificates, such works and/or repairs shall be undertaken by the **PURCHASER** and the costs thereof shall be the sole responsibility of the **PURCHASER**.

23 DISPUTE RESOLUTION: MEDIATION THEN ARBITRATION

23.1 **Should any dispute, disagreement or claim arise between the parties, including a dispute between both or one of the parties and the AUCTIONEER, ("the dispute") in connection with this Agreement then the parties shall, notwithstanding anything to the contrary contained herein, have the right, but not be obliged to:**

23.1.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa ("AFSA"), upon such terms as agreed between the parties and the secretariat of AFSA; and

23.1.2 failing agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the parties shall refer the dispute to final arbitration as provided below.

23.2 Unless otherwise agreed in writing by all the parties, any such mediation or arbitration shall be held in Sandton, Johannesburg, South Africa.

23.3 The decision of the arbitrator shall be final and binding on the parties and may at the election of any party be made an order of the court. The parties agree that the arbitrators decision shall be final and binding on them and hereby waive any right to an appeal they might otherwise have enjoyed.

23.4 Once invoked, the parties shall not be entitled to withdraw from the arbitration process unless by written agreement between them.

24 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.

25 GENERAL CLAUSES

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

25.2 This Agreement shall be governed by the Laws of the Republic of South Africa.

- 25.3 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.
- 25.4 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.
- 25.5 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.
- 25.6 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.
- 25.7 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.
- 25.8 "**SELLER's Attorneys**" shall mean the conveyancers to be appointed by the **SELLER** to effect transfer of the **PROPERTY** into the name of the **PURCHASER**, being:

Lordes Batista Attorneys
Contact: Lordes Batista
Telephone: (011) 486-4563
Email: lordesbatista@telkomsa.net

or such other conveyancers appointed by the **SELLER**, from time to time.

26 **INSOLVENCY ACT NOTICE**

The Parties agree that the sale as contemplated herein shall not be advertised in terms of Section 34 of the Insolvency At, No. 24 of 1936, as amended from time to time.

27 PROTECTION OF PERSONAL INFORMATION

- 27.1 The parties record and agree that they will at all times uphold and comply with the spirit and intention of the provisions of the Protection of Personal Information Act No. 4 of 2013 (POPI) and any regulations promulgated pursuant thereto in dealing with any personal information connected to this agreement and the transaction envisaged herein.
- 27.2 From time to time the obligations contained in the Consumer Protection Act will require the disclosure of certain personal information which could conflict with the obligations on the POPI Act.
- 27.3 The parties recognise that a conflict of laws can arise and undertake to comply insofar as it is reasonably possible with the provisions of both Acts in connection with this agreement.

28 CONFIDENTIALITY

- 28.1 None of the Parties, shall issue any press releases or any other public document and make any public statement in each case relating to, connected with or arising out of the transaction as contemplated in this agreement, without obtaining the prior approval of the other party to the contents thereof and the manner of its presentation and publication, provided that such approval shall not unreasonably be withheld or delayed.
- 28.2 To the extent that any party which is a company listed on any stock exchange is required, in order to satisfy its obligations of such stock exchange or otherwise in law, to give, make or publish any press releases, announcement or document, such party shall be entitled to do so, provided that it:-
- 28.2.1 gives the other Party as much advance warning thereof as is reasonable in the circumstances, together with drafts or a copy thereof as soon as it is at liberty to do so; and
 - 28.2.2 gives the other Party a copy thereof prior to the publication of any such press releases.
- 28.3 The Purchaser will not be entitled to direct access to the tenant or prospective tenant/s of the Property or to the Property without prior written approval from the Seller and should any queries arise relating

to any tenant or prospective tenant/s and/or any Lease/s, such queries are to be channeled through to the Seller.

28.4 In good faith, the Purchaser shall not use any information obtained from the Seller for undue benefit and/or that may prejudice the Seller.

28.5 The Purchaser undertakes to procure that its confidentiality undertaking contained herein is extended to, including but not limited, all its staff, representatives and/or agents and/or attorneys and/or bankers or the like to whom information is disclosed pursuant to the building/s and/or the Property and/or the tenant/s and/or the lease/s.

28.6 The Seller reserves the right to institute a claim for any related damages suffered, should any of the terms as contemplated in terms of this clause 28 not be adhered to by the Purchaser.

28.7 All terms as contemplated herein will remain in force into perpetuity, unless otherwise agreed in writing between the Parties.

THE PROPERTY CAME UNDER THE HAMMER ON THE:

16th DAY OF AUGUST 2022

And was knocked down for the sum of:

R_____

(words) _____

PLUS VALUE ADDED TAX in the amount of:

R_____

(words) _____

totalling:

R_____

(words) _____

TO:

COMPANY/ CLOSE CORPORATION/ TRUST/ OTHER _____

(hereinafter referred to as the "**PURCHASER**")

REGISTRATION NO.: _____

ADDRESS: _____

CONTACT DETAILS: (Landline) _____

(Fax) _____

(Email) _____

(Mobile) _____

.....

OR TO:

MR/MRS/MS _____

(hereinafter referred to as the "**PURCHASER**")

IDENTITY OR PASSPORT NO.: _____

PHYSICAL ADDRESS: _____

TELEPHONE DETAILS: (home) _____

(Work) _____

(Fax) _____

(Email) _____

(Mobile) _____

MARITAL STATUS _____ (In/Out of Community of PROPERTY)

SPOUSE'S NAME _____

SPOUSE'S ID NO _____

AS THE PURCHASER, I CONFIRM THAT I HAVE READ THESE TERMS AND CONDITIONS AND THAT I FULLY UNDERSTAND EACH CLAUSE. I HAVE HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE AND I HAVE PROPERLY INSPECTED THE PROPERTY AND ITS IMPROVEMENTS AND I AM SATISFIED THEREWITH.

SIGNED BY THE PURCHASER AT _____ ON THE 16th DAY OF AUGUST 2022

WITNESS:

1. _____

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

AS WITNESS:

1. _____

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 2022

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

AUCTIONEER FULL NAME: - Pieter Geldenhuys
ADDRESS: Upper Floor, 105 Central Street, Houghton
CONTACT NUMBER: 011 0336600

DRAFT

DEED OF SURETYSHIP

I / We the undersigned, _____

(INSERT FULL NAMES AS PER ID BOOK)

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 16th day of August 2022

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

.....

HELD ATON

RESOLVED THAT:

1. The CLOSE CORPORATION BUYS and takes transfer of the following **PROPERTY:**

Erf 260, Jet Park Extension 1Township
Registration Division IR
Province of Gauteng
Measuring 1,6165ha (One Comma Six One Six Five Hectares)

From

Capital Propfund 2 (Pty) Ltd
(Registration Number 2013/230191/07)

For:

R _____

(words) _____

PLUS VALUE ADDED TAX in the amount of:

R _____

(words) _____

totalling:

R _____

(words) _____

2. That in his capacity as
Member or any other Member of the Close Corporation be and is

hereby authorised to execute and sign all documents necessary to give effect to the above resolution, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
MEMBER

.....
MEMBER

TO BE SIGNED BY EACH AND EVERY MEMBER OF THE CLOSE CORPORATION

RESOLUTION - COMPANY

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

.....

.....

HELD ATON

RESOLVED THAT:

1. The Company BUYS and takes transfer of the following PROPERTY

Erf 260, Jet Park Extension 1 Township
Registration Division IR
Province of Gauteng
Measuring 1,6165ha (One Comma Six One Six Five Hectares)

From

Capital Propfund 2 (Pty) Ltd
(Registration Number 2013/230191/07)

For:

R _____

(words) _____

PLUS VALUE ADDED TAX in the amount of:

R _____

(words) _____

totalling:

R _____

(words) _____

2. That in his capacity as Director or any other director of the Company be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
DIRECTOR

.....
DIRECTOR

TO BE SIGNED BY EACH AND EVERY DIRECTOR OF THE COMPANY.

RESOLUTION - TRUST

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES FOR THE TIME
BEING OF

.....

HELD ATON

RESOLVED THAT:

1. The Trust purchases the following PROPERTY

Erf 260, Jet Park Extension 1Township

Registration Division IR

Province of Gauteng

Measuring 1,6165ha (One Comma Six One Six Five Hectares)

From

Capital Propfund 2 (Pty) Ltd

(Registration Number 2013/230191/07

For:

R_____

(words) _____

PLUS VALUE ADDED TAX in the amount of:

R_____

(words) _____

totalling:

R_____

(words) _____

2. That in his capacity as Trustee of the Trust or any other trustee of the Trust be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
TRUSTEE

.....
TRUSTEE

TO BE SIGNED BY EACH AND EVERY TRUSTEE OF THE TRUST.

(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.
-
-

- [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.
-
-

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.)

-
- 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.

DRAFT