



**AGREEMENT AND CONDITIONS OF SALE
IN RESPECT OF
IMMOVABLE PROPERTY**

In which **VAN'S AUCTIONEERS** (herein referred to as the **AUCTIONEER**) on instructions from the mandated representative

(hereafter referred to as the **SELLER**), to sell on behalf of the seller, by tender on **the 30th of June 2021 at 12h00** the under mentioned property (herein after the **PROPERTY**) known as:

**PORTION 227 OF FARM ZWARTKOP 356, REGISTRATION DIVISION JR PROVINCE
GAUTENG, BETTER KNOWN AS LERIBA HOTEL**

Measuring: **4, 0126 ha**

Held by deed of transfer number: **T44017/1996**

in favour of: **LERIBA TRUST
REGISTRATION NUMBER: IT2970/1996**

And

VARIOUS MOVABLE ASSETS AS PER ANNEXURE "A"

in favour of: **LERIBA HOTEL CC
REGISTRATION NUMBER: 1996/011252/23 AND
CHAPTERS RESTAURANT CC
REGISTRATION NUMBER: 2002/057951/23**

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.

1.2 In the event of this contract not arising from a tender but as a private treaty, then all references to –

1.2.1 **AUCTIONEER** shall be deemed to refer to as the **AGENT**.

1.2.2 **AUCTIONEER'S** commission shall be deemed to refer to as **agent's** commission.

1.2.3 Bid shall be deemed to refer to purchase price; and

all the other clauses shall be applicable as if incorporated in the agreement.

1.3 If these Conditions of Sale should arise from a public auction, it will incorporate the Rules of Auction which are available at www.vansauctions.co.za as well as at the offices of Van's Auctioneers Gauteng, 36 Gemsbok Street Koedoespoort Industrial, Pretoria.

2. RESERVE PRICE AND CONFIRMATION

2.1 The property will be sold, to the tenderer (herein referred to as the **PURCHASER**) but subject to confirmation by the **SELLER**, which confirmation may be given or refused by the **SELLER** without furnishing reasons therefore. This document constitutes an Offer to Purchase (**Offer**) by the **PURCHASER**, and the **PURCHASER** is unconditionally and irrevocably bound to this Offer for **14 calendar days from 30 June 2021** (the calculation of which excludes 30 June 2021) and the Offer is open for Acceptance by the **SELLER** at any time during this period. The onus will rest upon the **PURCHASER** to establish whether his Offer was confirmed, or not. Upon signature hereof by the **SELLER**, this document shall constitute an agreement ("**Agreement**"). The date on which this Offer is accepted and this document is signed by the **SELLER** shall hereinafter be referred to as the "**Signature date**".

2.2 The submission of offers closes on **30 June 2021 at 12:00**, when all offers will be opened for consideration.

2.3 The **SELLER** reserves the right to extend the confirmation period within reason.

2.4 If this Agreement is not confirmed, it shall be regarded as null and void and be of no force and effect, and all payments made by the **PURCHASER**, including commission, will be refunded without delay.

2.5 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.

2.6 The **AUCTIONEER** or his agent is entitled to tender up to the reserve price on behalf of the **SELLER**, but shall not be entitled to make an offer equal to or exceeding the reserve price.

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 make an Offer 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 tenderer acts without the abovementioned power of attorney and the said remedies are not involved against the **PURCHASER** the tenderer 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 an Offer made, the **AUCTIONEER** will have the discretion to put the property up for sale 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 tender, auction or private treaty.
- 4.3 Should the **AUCTIONEER** have any reason to believe that a **PURCHASER** is not able to pay the deposit or the purchase price, he is entitled to refuse an Offer from such a **PURCHASER**, or accept it provisionally, until he is satisfied that the **PURCHASER** is able to pay aforesaid amount. Should an Offer be rejected under these circumstances, the property may immediately be put up for sale 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.

6. CONVEYANCER

- 6.1 The **SELLER** shall appoint the "**CONVEYANCER**" to effect registration of transfer of the Property into the name of the **PURCHASER**, and the **PURCHASER** will be responsible for payment of all costs of transfer, which costs shall be payable upon demand by the conveyancer.

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 The **PURCHASER** should refrain from tendering 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 tenderer 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

(.....)

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

9.2 **10%** of the full purchase price as a deposit is immediately payable together with the Offer to Purchase to the **AUCTIONEER**, in bank guaranteed cheque or electronic transfer by the **PURCHASER** or as requested by the **AUCTIONEER on or before 30 June 2021 before 12:00, and must reflect in the AUCTIONEER'S account.** 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 **12%** per annum 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 78(2A) of the Attorneys Act, 1979 (Act 53 of 1979) 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 **5%** 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.
- 10.4 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** (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**.
- 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 **PURCHASER** 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 tender, auction or private treaty, at the **PURCHASER'S** 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 tender, 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 damages.

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 whatever 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 with the provisions of this Clause 17.

18. MATRIMONIAL PROPERTY ACT

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 effected, 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:
.....
.....
.....

Surety 2:
.....
.....
.....

As witnesses: 1. 2.

SELLER:

NAME: **GRANT CHITTENDEN IN HIS CAPACITY AS BUSINESS RESCUE PRACTITIONER OF LERIBA HOTEL CC, REGISTRATION NUMBER: 1996/011252/23 AND CHAPTERS RESTAURANT CC, REGISTRATION NUMBER: 2002/057951/23 AND MANDATED REPRESENTATIVE OF LERIBA TRUST, REGISTRATION NUMBER: IT2970/1996**

FIRM: **CREDIBLE PRACTITIONERS**

POSTAL ADDRESS: **P.O. BOX** _____

TELEPHONE NO: _____

FAX NO: _____

.....
AS WITNESS

.....
ACCEPTANCE AND
CONFIRMATION BY SELLER
G CHITTENDEN

DATE

PLACE

AUCTIONEER

Van's Auctioneers

PO Box 12374

Hatfield

0028

36 Gemsbok Street, Koedoespoort Industrial, Pretoria

Telephone: 086 111 8267

Fax no: 086 112 8267

.....
AS WITNESS

.....
ON BEHALF OF AUCTIONEER
(DULY AUTHORISED THERETO)

DATE

PLACE

CALCULATION OF FIRST PAYMENT:

10% of purchase price as deposit
5% of the purchase price as commission
15% VAT on the commission alone
Total payment

= R
= R
= R
= R _____