

IN THE PUBLIC AUCTION OF:

MICHAEL MOGAMPISI MUTONGA

Born 28 July 1958

UNMARRIED

and

JAMES LEBOGANG MUTONGA

Born 10 July 1973

UNMARRIED

Of

P.O. Box 644 Omaruru

Tel: 081 445 2189

Email: mmmutonga58@gmail.com

(hereinafter referred to as the “**Seller**”)

And

NAMBIA AGRICULTURAL DISTRIBUTORS CC

Registration number CC/2008/1910

Trading as **NAMAGRI CC**

(herein represented by **ALEX MCDONALD**, him being duly authorized thereto

Of PO Box 80266 Olympia Windhoek

Email: alex@namagri.com

(hereinafter referred to as the “**AUCTIONEER/AGENT**”)

CONDITIONS OF SALE

The property which is offered for sale and which will be put up to auction on the **11TH NOVEMBER 2023** consists of:

CERTAIN	ERF NO 324 Unit 6, Acacia, Dorado Park
SITUATE	Registration division "K" Khomas Region
MEASURING	61 (Sixty one) Square Metres
HELD	by Deed of Transfer No. T 20/1993(6)
SUBJECT	to the conditions contained therein and together with all fixed improvements thereon

The sale shall be subject to the following conditions:

1. THE ESTATE AGENCY / AUCTIONEERS

The property will be put up for auction and sold by **NAMIBIA AGRICULTURAL DISTRIBUTORS CC**, Registration Number: **CC/2008/1910**, who has been appointed by the Seller as Auctioneer.

2. THE RESERVE PRICE AND ACCEPTANCE PERIOD

2.1 The Estate Agency/ Auctioneers may sell the Property at or above the reserve price being **N\$ 600 000.00 (SIX HUNDRED THOUSAND NAMIBIA DOLLARS)** as agreed upon between the Seller and the Auctioneer.

2.2 If the reserve price is not reached, or if there is no reserve price, the Auctioneer is authorized to sell the property to the Highest Bidder, provided the Seller has confirmed acceptance of the price offered by the Highest Bidder in writing within **24 (TWENTY FOUR)** hours from the date of sale, failing which the property shall be deemed not to be sold, subject however to the conditions of 2.4 hereof. Any acceptance and confirmation by the Seller of the price offered shall be communicated in writing to the Purchaser within **7 (seven)** days after receipt thereof by the Auctioneer.

2.3 For purposes hereof, the offer made by the Highest Bidder shall be kept and remain open for acceptance and confirmation by the Seller for the aforesaid period of **24 (TWENTY FOUR)** hours and such Bidder shall not be entitled to withdraw such offer prior to the expiry of such period.

2.4 In the event of the Seller receiving another offer from any Bona Fide Third Party within the aforesaid period of **24 (TWENTY FOUR)** hours and prior to his

acceptance and confirmation of the offer by the Highest Bidder, at a price and upon conditions more favorable to the Seller and which the Seller is prepared to accept, the Auctioneer shall notify the Highest Bidder in writing of the amount and the terms and conditions of such offer which offer shall be delivered to the Highest Bidder either by hand or faxed at the facsimile address furnished to the Auctioneer whereupon the Highest Bidder shall have the option to purchase the property at the same price and upon the same terms and conditions as the offer by the Bona Fide Third Party to be exercised by him in writing within **24 (TWENTY FOUR)** hours after receipt of such offer.

- 2.5 Any notice given by the Auctioneer to the Highest Bidder in terms hereof to the address furnished to the Auctioneer shall be deemed to have been received by him on date of delivery by hand or on the day following the date it has successfully been faxed to the facsimile address of the Purchaser.
- 2.6. If any dispute arises about any bid or the Auctioneer makes any mistake in selling, such mistake shall not be binding on any of the parties, but may be rectified. If the Auctioneer suspects that a bidder is unable to pay either the deposit referred to in condition 6 or the balance of the purchase price he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of a bid under such circumstances, the property may immediately be again put up for auction.

3. DEPOSITS AND COMMISSIONS

3.1 The Purchaser shall pay a deposit of **10% (ten per cent)** of the purchase price in cash to the Estate Agency / Auctioneers for credit the Seller on the date of the sale immediately after the auction, and the balance against transfer to be secured by a bank or any other financial institution's guarantee, to be approved by the Seller's legal Practitioners and to be furnished to the aforesaid within **21 (twenty one)** days after the date of sale. Should the guarantee not be rendered in accordance herewith the Seller shall be entitled to cancel the agreement forthwith and the property will be put up for auction again. In the event of such cancellation the deposit paid shall be forfeited to the Seller.

3.2 The deposit will be kept in an interest bearing trust account by the Legal Practitioners appointed by the Seller for the benefit of the Purchaser.

3.3 The Purchaser shall on the date of sale, over and above the amount offered as purchase price pay Auctioneer's charges and commission calculated at **5%** of the purchase price (VAT excluded).

3.4 If the Purchaser fails to carry out any of his obligations under the conditions of sale, the sale may be cancelled summarily by the Seller on the report of the Auctioneer after due notice to the Purchaser, and the property may again be put up for sale.

The Purchaser shall in the event of such cancellation forfeit any deposit paid as well as any Auctioneers commission paid. Should the Seller as a consequence of the Purchaser's breach suffer damages in excess of the forfeited deposit the Purchaser shall be liable to the Seller for such excess. If the Purchaser is already in possession of the property, the Seller may, on **7 (seven)** days' notice, apply to a competent court for an order ejecting the Purchaser or any person claiming to hold under him therefrom.

3.5 It is, however, expressly agreed hereby that in the event of this Agreement being cancelled by mutual agreement between the Seller and the Purchaser or due to the neglect or failure of the Seller, then the Seller will immediately become liable for the payment of the aforesaid charges and commission to **NAMIBIA AGRICULTURAL DISTRIBUTORS CC.**

3.6 If the reserve price is reached and the Seller fails to confirm acceptance of the purchase price offered by the highest Bidder within **24 (TWENTY FOUR)** hours and failing to sign these Conditions of sale, it shall be deemed that the Auctioneer fulfilled his mandate and in which event the Seller will immediately become liable for the payment of the aforesaid charges and commission to **NAMIBIA AGRICULTURAL DISTRIBUTORS CC.**

3.7 The sale shall be in Namibian Dollars and no bid in any other currency shall be accepted.

4 PAYMENT OF VAT

4.1. Any amount offered in terms hereof shall be exclusive of VAT and if any VAT is or becomes payable as a result of this sale, the Purchaser shall be liable for payment of such VAT and hereby indemnifies the Seller accordingly.

4.2 The Seller hereby confirms that he/she is in fact NOT registered for VAT.

5 OCCUPATION

5.3 The Purchaser shall not be entitled to take occupation and possession of the property before registration of the property in the purchaser's name.

6 TRANSFER

6.1. The Purchaser shall, as soon as possible after the sale at the auction and immediately on being requested by the Auctioneer, sign these conditions of sale, and if he has purchased in his capacity as a Representative, state the name of his principal.

6.2 A Purchaser who purchases as Nominee on behalf of a Third Party shall within **7 (seven)** days from date of sale hereof furnish the name and particulars of such third Party to the Auctioneer or the Sellers' Legal Practitioners, failing which such Nominee shall be bound by all the conditions herein set out.

6.3. The Purchaser shall be obliged to take transfer forthwith and as soon as possible after being requested thereto by the Legal Practitioners and against payment of the full purchase price and after compliance of all the conditions contained herein in which 6 case any claim for occupational interest shall lapse. Transfer shall otherwise be

passed only after the Purchaser has complied with the provisions of conditions 3.1 and 3.3 hereof.

6.4. The Seller has nominated the legal Practitioners **Ellis Shilengudwa Incorporated 1st floor The Steps Building, C/O Grove & Chasie Streets, P.O Box 3300, Windhoek Namibia** attend to the transfer. Any transfer duties, costs of transfer including the costs and fees of the Legal Practitioners, stamp duty on the Deed of Transfer and all Mortgage Bond registration costs and fees (if any) and any other costs necessary to effect transfer, which payment of transfer costs and fees shall be paid immediately upon request by the Legal Practitioners.

7 VOETSTOOTS

7.1 The property is sold together with all improvements VOETSTOOTS and as represented in the Title Deed and diagram and the Seller or the Auctioneer do not hold themselves liable for any deficiency that may be found to exist and renounces all excess. The property is further also sold subject to all servitudes and conditions specified in the Deed of Transfer or which may be imposed upon any subsequent subdivision.

8 BREACH

8.1 In the event of the Purchaser failing to fulfill on due date any of the terms and conditions of this conditions of Sale, the Seller or the agent shall have the right either;

8.1.1 To cancel the sale by registered letter addressed to the Purchaser, in which event the Purchaser shall forfeit all monies paid to the Seller or his Agent in terms hereof, without prejudice to the Seller's other legal rights and remedies and the right to claim damages. This amount shall be retained to the Seller as "Rouwkoop".

OR

8.1.2 To claim payment of the full purchase price and the fulfillment of all terms and conditions hereof.

9 NO WARRANTIES

The parties hereby acknowledge that there are no further undertakings or agreements between each other, that no warranties have been given by or on behalf of any party and that no representations have been made by or on behalf of any party, either in writing or verbal, except as contained in these conditions of Sale, and that the terms of these Conditions of Sale constitute the whole agreement between the Seller and the Purchaser and that no variation, alteration, modification or suspension of any of the terms of this contract shall be of any force or effect unless reduced to writing and signed by the Seller and the Purchaser.

10 GENERAL PROVISIONS

10.1 This document constitutes the entire agreement between the parties, and no additions to or variation of these Conditions of Sale shall be of any force or effect unless recorded in writing and signed by or on behalf of the parties.

10.2 The parties acknowledge that they understand and agree to the contents hereof and that the meaning and consequences of the material provisions of these Conditions of Sale is clear to them.

10.3 Neither the Seller nor the Agency / Auctioneers on the Sellers' behalf warrants the correctness of any advertisements relating to the Property, nor the size or extent of the property.

10.4 The Seller shall pay all rates and taxes (including Land Tax) until date of registration of transfer of the property into the name of the Purchaser and the Purchaser undertakes to refund to the Seller any amount of rates and taxes pro rata, which may be paid in advance on the date of registration of transfer of the property into the name of the Purchaser.

10.5 The property will be registered in the names of the sellers simultaneously with that of the Purchaser. No prohibition exists for the transfer of the property into the names of the seller.

Signed by the SELLER

ATON THISDAY OF2023.

(SELLER)..... (SELLER).....

.....

(AUCTIONEER)

In the presence of the undersigned witnesses:

AS WITNESSES

1

2

I certify hereby that today at _____, the ___ day of _____ 2023
in my presence the hereinbefore-mentioned property was sold for

N\$ _____

(exclusive of any V.A.T. and Auctioneers charges and commission)

to _____
(full name of purchaser)

and a 10% (ten percent) deposit of N\$ _____ was paid

I, the undersigned _____

Identity Number or Date of Birth _____

Married Yes/No _____

If yes, in community of property or with antenuptial contract _____

(Please note that if married in community of property, both parties must sign)

P.O. Box _____

Telephone (h) _____ (o) _____

Facsimile _____

residing at _____

in the district of _____ do hereby bind myself
as the Purchaser of the hereinbefore-mentioned property in accordance with the Bid
made by me and to pay the deposit and the balance of the purchase price including
any V.A.T. and Auctioneers charges and commission and to comply with all the terms
and conditions stated hereinbefore immediately when requested thereto.

AS WITNESSES

1
.....
(PURCHASER)

2