

AGREEMENT GRANTING A SOLE AND EXCLUSIVE MANDATE TO SELL IMMOVABLE PROPERTY

1. PARTIES

1.1. _____ (Director/Member/Trustee) on behalf of _____ (Seller), Registration / Identity No: _____ of (Property address / Erf) _____.

1.2. (Agent Name) _____ on behalf of Swindon Property Services (Pty) Ltd / Swindon Property Gauteng (Pty) Ltd (Agent) of (relevant Swindon office address) _____.

2. INTRODUCTION

2.1. The property to be sold is Erf / Section _____, in the township of (Cape Town / Durban / Johannesburg) and situated at (Property address) _____, with Extent of _____m², as held in terms of Title Deed Number _____, together with all buildings and erections thereon and all fixtures and fittings of a permanent nature pertaining thereto (“the property”).

2.2. The seller is prepared to sell the property on the following material terms: -

2.2.1. Included in the sale of the property are the following fixtures and items of equipment, namely _____, _____,

together with all valid and binding leases. (if applicable)

2.2.2. The Net Reserve Price shall be the sum of R _____ (_____Rand), plus VAT, if applicable or such lesser amount as the Seller may be prepared to accept and is payable against registration of transfer.

2.2.3. The Reserve Price in terms of clause 2.2.2 above shall exclude Auctioneer’s commission of 5% (Five Percent) of the Net Reserve Price plus VAT thereon but shall include the Seller’s portion of the Auctioneer’s commission of 2% (Two Percent), of the Net Reserve Price plus Vat thereon;

INITIAL

A.Dewey | M. te Vaarwerk | M. van Schoor for Swindon Property Services (Pty) Ltd: 2014/110213/07
A.Dewey | H. Hardy for Swindon Property Gauteng (Pty) Ltd: 2015/42309/07

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2nd Floor 2SIX2, 262 Florida Rd,
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An International Associate of Savills



- 2.2.3.1.** The Purchaser will be liable for Auctioneer's commission of 5% (Five Percent) of the Purchase Price plus VAT thereon over and above the bid or hammer price;
- 2.2.3.2.** The Seller will be liable for Auctioneer's commission of 2% (Two Percent) of the Net Purchase Price plus VAT thereon, this will be recovered from the Deposit of 5% (Five Percent) as paid by the Purchaser.
- 2.2.3.3.** The said commission shall be deemed to have been earned upon the signature of the Conditions of Sale (for sales by auction) or the Auctioneer's standard Agreement of Sale (for sales by private treaty) by both the Seller and the Purchaser and is payable upon acceptance by the Seller.
- 2.2.4.** Possession of the Property is to be given to the Purchaser on date of registration of transfer or such other date as may be mutually agreed upon in writing.
All benefits and risks of ownership of the Property shall pass to the Purchaser on registration of transfer, unless otherwise agreed in writing.

3. GRANT OF MANDATE

- 3.1.** The Seller hereby grants to the Agent for the period of 90 (Ninety) business days commencing from the date of signature hereof and terminating at 4 p.m. 90 (Ninety) business days following signature by the Seller ("the mandate period") a sole and exclusive mandate to offer the Property for sale by Auction or by Private Treaty, substantially in accordance with the Swindon Property Services Terms and Conditions of Sale (the "Rules of Auction") or Swindon Property Services Agreement of Sale, which the Seller hereby declares himself to be fully acquainted with. A copy of the Conditions of Sale which is available on the Auctioneer's website at www.swindon.co.za
- 3.2.** In the event of the Auction date being postponed, the above mandate will be extended for a period of 30 (Thirty) business days after the date of the last agreed Auction date, whichever is the later.
- 3.3.** Upon expiry of the mandate period or a valid sale of the Property being concluded, whichever occurs first, this Agreement will automatically lapse and subject to 7 hereunder be of no further force of effect whatsoever.

4. WARRANTIES

- 4.1.** The signatory warrants that he is duly authorized in the capacity recorded herein, to dispose of the property in accordance with the mandate hereby given, or to confirm or reject any offers received on the Property.
- 4.2.** Declaration by the Seller in terms of Regulation 27 of the Consumer Protection Act. The Seller warrants and declares that he / she / it is the owner or rightful holder of the Property, with the right to sell the same.
- 4.3.** The Seller warrants that:
 - 4.3.1.** No third-party land claims exist on the Property.
- 4.4.** The signatory and the Seller each indemnify the Auctioneer or its employees or representatives from any claim, loss, liability or damages arising from breach of these warranties.



5. AUCTION SALES

- 5.1. In the event that the Property is put up for sale by the Agent by way of public auction then in such event:
- 5.1.1. the Agent shall market the Property as one of its auction lots for a forthcoming auction;
 - 5.1.2. the Agent shall endeavor to secure bid/s equal to or in excess of the Reserve Price at the auction;
 - 5.1.3. should the highest bid obtained at the auction not meet the Reserve Price, then such bid shall be referred to the Seller for acceptance by the Seller, in the Seller's discretion, within 24 (Twenty-Four) hours ("the confirmation period"), or any other period agreed to in writing between the Seller and the Agent;
 - 5.1.5. should the highest bid obtained at the auction meet or exceed the Reserve Price, then the Agent shall be entitled to indicate to the participants that such Reserve Price has been reached and that
 - 5.1.6. the Property will be sold on the fall of the hammer or closing of the respective lot. In such an event;
 - 5.1.6.1. the Seller shall be deemed to have sold the Property to such highest bidder for the amount so bid upon the fall of the hammer or closing of the lot;
 - 5.1.6.2. the Seller hereby appoints the Agent as the Seller's duly authorized agent *in rem suam* to sell the Property on the Seller's behalf; and
 - 5.1.6.3. the Seller shall countersign the Auction Sale Agreement, as signed by the highest bidder, within 5 (Five) business days of the auction date, and should the Seller fail or refuse to do so, then the Agent shall be entitled (but not obliged) to sign such agreement on the Seller's behalf.
 - 5.1.7. the Agent shall be entitled to start the bidding at an opening bid price, at its sole discretion.

6. ESTATE AGENTS OBLIGATIONS

The Agent hereby undertakes: -

- 6.1. to use his best endeavours to find a Purchaser who is willing and able, both legally and financially, to purchase the Property from the Seller on the terms stated above. Without in any way derogating from the generality of the foregoing, the Agent undertakes, at his sole cost and expense, to: -
- 6.1.1. advertise the Property for sale on their website, signage and other forms of media the agent deems fit; and
 - 6.1.2. communicate with the Seller at regular intervals during the mandate period to advise him of progress concerning the sale of the Property, such communications to be in writing at the Seller's written request, and
 - 6.1.3. furnish the Seller with all written offers made to purchase the Property forthwith upon such offers being received by the Agent.



7. SELLER'S OBLIGATIONS

The Seller undertakes that: -

- 7.1. he will not, during the mandate period, appoint or allow any other estate agent to sell or endeavour to sell the Property nor will he or any other party on his behalf sell or endeavour to sell the Property; and
- 7.2. he will not do anything which might prevent, frustrate or hinder the Agent from effecting a sale of the Property in terms hereof. For the purposes hereof, prevent, frustrate or hinder; shall, without in any way limiting the generality thereof, include:
 - 7.2.1. a refusal by the Seller to accept a bona fide written offer submitted to him by the Agent during the mandate period to purchase the Property on terms stated herein, and
 - 7.2.2. the Seller's withdrawal of the Property from the market prior to the termination of the mandate period; and
 - 7.2.3. a refusal to co-operate with the Agent in the latter endeavours to sell the Property, more particularly: -
 - 7.2.3.1. by denying him permission, subject to Local Authority By- Laws, to erect "For Sale" or "On Auction" boards on the Property (these boards are to be placed in a position acceptable to the seller) or removing such boards without good cause; or
 - 7.2.3.2. by denying him access to the Property at reasonable times for the purpose of showing it to potential purchasers; (the seller must be given adequate notice of a visit) and
- 7.3. he will pay to the Auctioneer the full Auctioneers commission of 7% (Seven Percent) in accordance with clause 2.2.3 above related to the purchase price at which the property is sold in event that such sale occurs:
 - 7.3.1. within 6 (Six) months after the termination of this Agreement (whether by effluxion of time or otherwise) to a person who was, during the mandate period, introduced to him or the Property by the Agent or any third party whatsoever as a potential purchaser thereof or who was a registered bidder for the property; Or
 - 7.3.2. after the expiry of a period of 6 (Six) months after such termination and the Agent was the effective cause of such sale; Or
 - 7.3.3. if he commits a breach of any of the provisions of 7.1 or 7.2 above, he will pay to the Agent as a genuine pre-estimate of the damages that the Agent will sustain as a result of the breach the amount of the full Auctioneer's commission of 7% (Seven Percent) plus Vat commission referred to in 2.2.3 above.



8. ACKNOWLEDGEMENTS BY SELLER

- 8.1.** The Seller acknowledges that he is not entitled to unilaterally withdraw from or terminate this agreement prior to the expiry of the mandate period, unless he can show that there exists good cause arising out of circumstances beyond his control for such withdrawal or termination; and
- 8.2.** Notwithstanding anything to the contrary contained in this Clause 6, the Seller acknowledges that he will not be entitled in any circumstances whatsoever to such a withdrawal or termination after the Agent has submitted to him a bona fide written offer obtained by the Agent during the mandate period to purchase the Property on terms stated herein.
- 8.3.** Should the Reserve Price as referred to in 2.2.2 above be achieved at Auction or by means of Private Treaty, Swindon Property Services is irrevocably authorized to immediately confirm the sale of the Property on behalf of the Seller. Furthermore, the Agent will endeavor to do all things necessary to confirm a legal and binding contract of sale.
- 8.4.** The Seller hereby appoints Swindon Property Services to bid on their behalf equal to the value of the Reserve Price.
- 8.5.** Section 45 of the Consumer Protection Act (68 of 2008) provides that when an auction is conducted that:
- 8.5.1.** “Notice must be given in advance that a sale by auction is subject to:
- 8.5.1.1.** A reserved or upset price; or
- 8.5.1.2.** A right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.
- 8.5.2.** Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer:
- a. The owner or auctioneer must not bid or employ any person to bid at the sale;
- b. The auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a).
- 8.5.2.1.** The consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.”



THUS, DONE AND SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES STATED HEREUNDER:

DATED at _____ on this _____ day of _____ 20_____.

AS WITNESSES

For and on behalf of

1. _____

2. _____

SELLER

Who warrants that he/she is duly authorised.

DATED at _____ on this _____ day of _____ 20_____.

AS WITNESSES

For and on behalf of

1. _____

2. _____

AGENT

Who warrants that he/she is duly authorised.