



*Auctioneers, Valuers and Appraisers - Established 1964*

# Michael James Organisation

**CAPE TOWN – JOHANNESBURG – PORT ELIZABETH**

## **RULES OF AUCTION**

**AND**

## **CONDITIONS OF SALE FOR IMMOVABLE PROPERTY**

<b>DATE OF AUCTION</b>	
<b>TIME OF AUCTION</b>	
<b>PLACE OF AUCTION</b>	

Upon which **Winelands Auction Gallery (Pty) Ltd** trading as:

**Michael James Organisation (Registration no: 1992/006196/07)**

Of

63 Victoria Street, Somerset West, 7130  
(021 851 7007 / 041 487 3957)

and acting on behalf of:

**SPARTAN SME FINANCE (PTY) LIMITED**

Registration No: (1995/007383/07)

In terms of a **POWER OF ATTORNEY**

on behalf of the **SELLERS**

**DROIDAH HOMECRAFT CENTER NECA CC**

Registration No: (2008/140160/23)

and represented by **CASSIM CHOTHIA**

intend to offer for sale by Public Auction certain PROPERTY being:-

**ERF 1780, PORTION OF 1658, 70 KARMIN DRIVE, SOUTH FORK, SOUTH END,  
EASTERN CAPE**

<b>ERF NUMBER</b>	1780
<b>IN EXTENT</b>	406 SQUARE METERS
<b>TITLE DEED NUMBER</b>	T52414/2009CTN
<b>REGISTRATION DIVISION</b>	EASTERN CAPE

# **CONDITIONS OF SALE & RULES OF AUCTION**

## **OF IMMOVABLE PROPERTY**

Whereby

**WINELANDS AUCTION GALLERY (PTY) LTD**  
**T/A MICHAEL JAMES ORGANISATION (Registration no: 1992/006196/07)**

(the “**AUCTIONEER**”)

duly instructed by

**SPARTAN SME FINANCE (PTY) LIMITED**  
Registration No: (1995/007383/07)

In terms of a **POWER OF ATTORNEY**

on behalf of the **SELLERS**

**DROIDAH HOMECRAFT CENTER NECA CC**  
Registration No: (2008/140160/23)

and represented by **CASSIM CHOTHIA**

intend to offer for sale by Public Auction certain **PROPERTY** being:-

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<b>REGISTRATION DIVISION</b>	EASTERN CAPE

(“the **PROPERTY**”)

together with all the improvements thereon, subject to the following conditions:

### **1. INTERPRETATION**

1.1 Any reference to:

1.1.1 One gender includes the other gender.

1.1.2 Natural persons include juristic persons and *vice versa*.

1.1.3 Singular includes the plural and *vice versa*.

1.2 And any other references shall *mutatis mutandis* apply.

## **2 PROCEDURE**

2.1 The AUCTIONEER has the sole right to regulate the bidding procedure and in the event of any dispute between the bidders the decision of the AUCTIONEER shall be final and binding.

2.2 Subject to the provisions of clause 3.3, the PROPERTY shall be sold to the highest bidder and every bid shall constitute an offer to purchase the PROPERTY for the amount of the bid and no bid may be withdrawn prior to the expiry of the confirmation period during which the bid will be open for acceptance by the SELLER.

2.3 Should the AUCTIONEER commit any error he shall be entitled to correct such error.

2.4 This sale by Auction is subject to a reserve price.

## **3 SIGNATURE, ACCEPTANCE AND CONFIRMATION**

3.1 These conditions shall be signed by the highest bidder (the PURCHASER) on request by the AUCTIONEER.

3.2 If this offer is concluded with more than one PURCHASER, the liability of such PURCHASERS shall be jointly and severally *in solidum*.

3.3 The PURCHASER'S offer shall be open for acceptance by the SELLER for a period of **14 (fourteen)** days after date of the auction ("THE CONFIRMATION PERIOD") and may be accepted by the SELLER at any time prior to the expiry of the mentioned confirmation

period (“DATE OF ACCEPTANCE”). Acceptance of the offer will be confirmed by the AUCTIONEER to the PURCHASER in writing.

- 3.4 The SELLER reserves the right to extend THE CONFIRMATION PERIOD within reason by a further 14 (fourteen) days. The notice of extension shall be given in writing by the AUCTIONEER to the PURCHASER.
- 3.5 The SELLER reserves the right to decline the PURCHASER’S offer. The SELLER shall have no obligation to accept the offer and shall not be obliged to furnish a reason for the rejecting of an offer. If the SELLER rejects the PURCHASER’S offer, the SELLER shall be entitled to accept any other offer that may be received in respect of the PROPERTY.
- 3.6 During THE CONFIRMATION PERIOD the offer made by the PURCHASER shall be irrevocable.
- 3.7 The AUCTIONEER shall be entitled to receive offers on the PROPERTY during THE CONFIRMATION PERIOD which offers shall be deemed to have been made on precisely the same terms and conditions as are contained in these conditions of sale.
- 3.8 The PURCHASER shall have the opportunity to match any such offer (“THE OPTION”) within 24 hours of such offer being communicated in writing to him by the AUCTIONEER or SELLER. The PURCHASER shall be entitled to offer such increased offer only once to the SELLER and on acceptance by the SELLER and confirmation by Spartan SME Finance (Pty) Ltd (as the bondholder) the sale becomes final.
- 3.9 If the PURCHASER fails to exercise THE OPTION during THE CONFIRMATION PERIOD, the SELLER shall be entitled, but not obliged, to accept the competing offer. Should the SELLER however elect not to accept the competing offer, the offer contained in this agreement shall remain irrevocable and of full force and effect and open for acceptance by the SELLER until the lapse of THE CONFIRMATION PERIOD as set-out above.
- 3.10 Should the PURCHASER exercise THE OPTION within THE

CONFIRMATION PERIOD and match the competing offer, the purchase price in terms of this agreement shall be the increased amount. The SELLER shall be entitled until the lapse of the acceptance period to accept this agreement at any increased purchase price. This option process is a continuation of the original process and any sale thus concluded shall be on precisely the same terms and conditions as are contained in these conditions of sale.

- 3.11 If the AUCTIONEER, in his discretion, believes that it is necessary to extend THE CONFIRMATION PERIOD for the purpose of informing the PURCHASER of the increased offer and receiving the PURCHASER's response, THE CONFIRMATION PERIOD may be extended by the AUCTIONEER by no more than 48 hours with the consent of the SELLER.

#### **4 PURCHASE PRICE**

The PURCHASE PRICE, exclusive of **Value Added Tax (if applicable)** will be payable by the PURCHASER as follows:

- 4.1 A cash **deposit of 10% (ten per centum)** of the PURCHASE PRICE to the AUCTIONEER immediately on the fall of the hammer, which the PURCHASER hereby authorises the AUCTIONEER to pay over to the SELLER on date of confirmation or acceptance of this offer by the SELLER;
- 4.2 The balance of the purchase price shall be paid upon registration of transfer of the PROPERTY in the name of the PURCHASER, and pending registration of transfer, shall be secured by means of a suitable guarantee issued by a Financial Institution acceptable to the SELLER. The said guarantee shall be delivered to the appointed CONVEYANCER ("CONVEYANCER") within 30 (thirty) days from the DATE OF ACCEPTANCE, which guarantee shall be payable free of exchange.
- 4.3 The PURCHASER hereby instructs and authorises the CONVEYANCER to invest, in terms of Section 86(4) of the Legal Practice Act, 28 of 2014 (as amended from time to time), any monies paid by him or on his behalf in terms of this Offer (Agreement), in an interest-bearing account for the

PURCHASER'S benefit.

The PURCHASER acknowledges that he is aware that the CONVEYANCER will only be in a position to give effect to this mandate once he, the PURCHASER, has furnished the CONVEYANCER with documents, to be requested by the CONVEYANCER, in terms of the Financial Intelligence Centre Act, 2001.

- 4.4 In the alternative to clause 4.2 above, the PURCHASER has the right to pay the full balance of the purchase price on the acceptance date to the SELLER / CONVEYANCER.

On payment of the full balance of the purchase price the interest provided for in clause 7 shall fall away subject to the condition that the full purchase price shall be invested on behalf of the SELLER, in terms of section 86(4) of the Legal Practice Act, 28 of 2014 (as amended from time to time), by the CONVEYANCER in an interest-bearing account for the SELLER's benefit and payment thereof to the SELLER on transfer. The SELLER hereby instructs the CONVEYANCER accordingly.

- 4.5 The deposit shall be non-refundable, except in the instance where the sale is not accepted by the SELLER in which .

## **5 TRANSFER DUTY / VAT**

- 5.1 VAT or transfer duty, as applicable, shall be paid in addition to the purchase price;

- 5.2 If the property is sold as an income generating going concern at a nil VAT rating, the parties declare and agree as follows:

- 5.2.1 The SELLER warrants that it is a VAT vendor as at the Signature Date and will be a vendor as at the Effective Date, being the time of supply, as contemplated in the Act;

- 5.2.2 The PURCHASER warrants that it will be a VAT vendor as at the Effective Date, being the time of supply, as contemplated in the Act and undertakes to

furnish the SELLER's conveyancers with a copy of its registration certificate for value-added tax purposes;

5.2.3 The SELLER and the PURCHASER have agreed that the purchase price of the Enterprise is inclusive of value-added tax at the rate of zero per cent;

5.2.4 The property is sold as an income generating running concern;

5.2.5 It is recorded that the concern will on the Signature Date, the Effective date and on the Registration date be an income generating enterprise and will be transferred as such inclusive of all improvements on the property;

5.3 If the South African Revenue Services rules that this transaction does not qualify for a zero rating, the PURCHASER will be responsible for the payment of the VAT on the purchase price. It shall be paid in addition to the purchase price and be paid by the PURCHASER to the SELLER'S Attorneys as and when requested. A VAT invoice shall be issued within 7 (seven) days after date of registration of transfer.

## **6 COSTS OF TRANSFER**

6.1 The PURCHASER shall be liable, in addition to the Purchase Price and VAT (if applicable), for all costs of registration of Transfer of the PROPERTY including but not limited to: (if applicable) transfer duty, revenue stamps, mortgage loan costs, attorneys' fees, deeds office registration fees, such proportion of the assessment rates levied by the Local Authority as may be due, or such proportion of charges and levies as may be due to a Home Owners Association or Body Corporate (all from DATE OF ACCEPTANCE of this offer until date of registration of Transfer), which amounts shall be paid immediately upon demand by the CONVEYANCER, to the CONVEYANCER, and the conveyancing shall only commence after such costs have been paid by the PURCHASER.

6.2 The PURCHASER shall furthermore, in addition to the PURCHASE PRICE, be responsible for the payment of **Value Added Tax (if applicable)** should the SELLER be a registered VAT vendor, regardless of whether he was aware of

this fact on date of signature hereof by himself. The PURCHASER shall make payment of the aforesaid VAT immediately upon demand by the CONVEYANCER, to the CONVEYANCER, and the conveyancing shall only commence after such costs have been paid by the PURCHASER.

## **7 INTEREST**

If the full purchase price has not been paid to the CONVEYANCER before occupation, the PURCHASER will pay interest on the balance of the purchase price from DATE OF ACCEPTANCE to date of registration of transfer calculated at the publicly quoted variable rate of interest, compounded monthly, at which the SELLER's bankers (being The Standard Bank of South Africa) charge, plus five percentage points, both days inclusive. The interest will be payable monthly in advance before or on the first day of each and every month, the first payment to be made on the first day of the month following the DATE OF ACCEPTANCE. Payment of the interest will be effected to the CONVEYANCER.

## **8 OVERDUE INTEREST**

- 8.1 Any amount falling due for payment by the PURCHASER to the SELLER in terms of or pursuant to this agreement including any amount which may be payable by way of damages, shall bear interest at the publicly quoted variable rate of interest, compounded monthly, at which the SELLER'S bankers (being The Standard Bank of South Africa) charge, plus five percentage points.
- 8.2 Interest shall be calculated from the due date for payment or, in the case of an amount payable by way of damages, from the date upon which those damages are sustained.
- 8.3 A certificate under the hand of any manager of The Standard Bank of South Africa (whose capacity need not be proved) shall be prima facie evidence of the prime rate.

## 9 TRANSFER

Transfer shall be effected by a Conveyancer appointed by the SELLER.

## 10 POSSESSION

- 10.1 Possession of the PROPERTY will be given to the PURCHASER and the PURCHASER shall be obliged to take possession thereof, on **DATE OF REGISTRATION OF TRANSFER, unless otherwise agreed between the Parties in writing,** from which date the PURCHASER shall be liable for interest on the balance of the purchase price (unless the full purchase price has been paid to the Conveyancer), all municipal rates and taxes, consumption charges, insurance premiums and/or fees and levies payable on the PROPERTY, and from which date the PROPERTY shall be the sole risk, profit or loss of the PURCHASER. Should the SELLER have made any payment of such a nature for a period after the date of possession, he shall be entitled to a refund thereof *pro rata* to the period of prepayment.
- 10.2 The PURCHASER shall not be entitled to make any alterations or additions to the PROPERTY before the date of registration of transfer.
- 10.3 The PURCHASER shall be obliged, in the event of the cancellation or lapse of this agreement, whereby the PURCHASER has taken occupation prior to the date of registration of transfer, to forthwith vacate the PROPERTY and restore it to the SELLER in the same condition as when the PURCHASER took possession.
- 10.4 The PURCHASER will have no claims whatsoever against the SELLER arising out of any alterations or additions made to the PROPERTY by the PURCHASER and waive any retentions or liens of whatsoever nature in respect hereof, regardless whether the improvements were effected with or without the consent of the SELLER.
- 10.5 If the PROPERTY is leased, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provisions

or the Common Law.

10.6 **The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession. The SELLER does not guarantee vacant occupation of the PROPERTY. Should any eviction orders be required to be effected the PURCHASER undertakes to obtain an eviction at his own cost.**

10.7 If the property is a farm, from date of occupation until date of delivery of guarantees, the PURCHASER shall not be entitled to cultivate, plough, reap, harvest, or commence any activities without the SELLERS prior written consent. Whether consent is granted or not, and in the event that the transfer does not proceed for any reason, the PURCHASER shall not be entitled to compensation or a retention on the property and must vacate the property on demand.

## **11 VOETSTOOTS**

11.1 The PROPERTY is purchased and sold Voetstoots and the SELLER shall not be liable for any defects, patent, latent or otherwise in the PROPERTY nor for any damage occasioned to or suffered by the PURCHASER by reason of such defect.

11.2 The PURCHASER admits having inspected the PROPERTY to his satisfaction and that no express or implied representations, guarantees or warranties of any nature were made or given by the SELLER or his AGENT or AUCTIONEER regarding the condition, quality or any other characteristics of the PROPERTY or any of the improvements thereon or accessories thereof.

11.3 THE PURCHASER may appoint a property practitioner or other specialist to perform an inspection, should THE PURCHASER require same, at the expense of THE PURCHASER.

11.4 The PROPERTY is sold as described in the existing title deed or deeds thereof

and subject to all conditions and servitudes (if any) attaching thereto or mentioned or referred to in the said title deed(s) or prior deed(s). The SELLER shall not be liable for any deficiency in extent, which may be revealed on any re-survey, and shall not be liable for encroachment on or by the PROPERTY of any kind nor shall the SELLER benefit by any surplus in extent.

11.5 The SELLER shall not be required to indicate to the PURCHASER the position of the beacons or pegs upon the PROPERTY and/or boundaries thereof, nor shall the SELLER be liable for the costs of locating same.

11.6 The PURCHASER declares itself to be perfectly acquainted with the nature, zoning, extent, beacons, boundaries, location, servitudes, leases and title deed conditions of the PROPERTY. The PURCHASER acknowledges that neither the SELLER nor the AGENT shall be liable to provide any building plans or related certificates or to arrange the connection of the electricity and water services or any other services related to the PROPERTY.

11.7 The PURCHASER shall have no right of retention and waives such a right over the PROPERTY arising from any cause whatsoever.

11.8 Neither the SELLER, nor the AUCTIONEER, nor the secured creditor, nor their agents made any representations to the PURCHASER in respect of any aspect to induce the PURCHASER to conclude this agreement .

11.9 The PURCHASER acknowledges and agrees that –

11.9.1 it has inspected the PROPERTY, is satisfied therewith and purchases the PROPERTY “voetstoots” without warranties express or implied;

11.9.2 the PROPERTY is sold subject to all conditions of title, servitudes, and third party rights, including leases; and

11.9.3 it has acquainted itself with all terms and conditions.

11.10 The SELLER shall not –

11.10.1. be liable for any defects, latent or otherwise in relation to the PROPERTY or for any damage occasioned by such defects;

11.10.2. be liable for any deficiency in the extent of the PROPERTY; and

11.10.3. benefit from any excess in the extent of the PROPERTY.

11.11 The SELLER and the AUCTIONEER give no warranties, representations or undertakings in relation to, and shall accordingly be free from all liability in respect of –

11.11.1. the accuracy or veracity of any statement made in any advertisement or notice of sale of the PROPERTY;

11.11.2. any of the terms and conditions contained in the title deeds of the PROPERTY whether relating to its physical condition, improvements, quality, extent, burdens, servitudes or any other information whatever;

11.11.3. any expropriation proceedings or intended expropriation proceedings in respect of the PROPERTY;

11.11.4. the accuracy or veracity of the quantum of the Transfer Costs and/or rates and taxes and/or any other charges and/or imposts and/or other amounts due and/or payable in respect of the Property to any local authority or other third party, whether such amounts were obtained by the SELLER and/or the AUCTIONEER from the local authority before or after the Auction and notified to the PURCHASER.

11.12 For the avoidance of doubt, the PURCHASER shall be solely responsible to inspect and verify any statements made and/or documents given to the PURCHASER by the SELLER and/or the AUCTIONEER in relation to the PROPERTY whether pursuant to the Auction or otherwise including, without limitation, any terms and/or conditions of ownership and/or rights of occupation in and to the PROPERTY in terms of its title deeds or otherwise.

## **12 DAMAGE TO OR DESTRUCTION OF PROPERTY**

If at any time prior to the transfer date the buildings or any portion of the buildings on the Property are damaged or destroyed then –

- 12.1 the SELLER and the PURCHASER shall not, unless they agree thereto in writing, be entitled to resile from this agreement and they shall proceed with the sale in terms hereof.
- 12.2 the PURCHASER shall have no claim of whatever nature and however arising against the SELLER as a consequence of such damage or destruction.
- 12.3 on the transfer date the SELLER shall cede to the PURCHASER the right to the proceeds of all insurance policies in respect of the buildings which have been damaged or destroyed.

## **13 NOMINEE**

The PURCHASER shall be entitled, by means of a power of attorney specific to the transaction, to nominate an agent in his place as PURCHASER, upon the following terms and conditions:

- 13.1 the power of attorney shall be handed to the SELLER by no later than close of business on the DATE OF ACCEPTANCE.
- 13.2 the power of attorney shall set out the name and address of the appointed agent so nominated as PURCHASER.
- 13.3 the power of attorney shall be accompanied by the agent's written acknowledgement:
  - 13.3.1 that it is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and
  - 13.3.2 that it is bound by the provisions of this agreement as the PURCHASER.
- 13.4 Should the PURCHASER nominate an agent in terms of this clause, then:

13.4.1 all references to the PURCHASER in this agreement shall be deemed to be a reference to its agent; and

13.4.2 the PURCHASER by his signature hereto, hereby interposes and binds himself as surety and co-principal debtor *in solidum*, for and on behalf of all the obligations of the aforesaid nominee as PURCHASER, to and in favour of the SELLER, for all the PURCHASER'S obligations under this agreement, including damages, and renounces the benefits of excussion and division.

#### **14 DOMICILIUM**

14.1 The PURCHASER selects as his/her *domicilium citandi et executandi* for all purposes hereunder the address set out in "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" attached hereto.

14.2 Any notice dispatched to the PURCHASER by prepaid registered post or electronic mail to the party's said *domicilium citandi et executandi* shall be deemed to have been received by such a party 7 (SEVEN) days from date of dispatch thereof.

#### **15 PROHIBITION TO SELL OR CEDE**

The PURCHASER shall not, prior to the date of registration of the transfer, be entitled to sell the PROPERTY or to cede, assign or make over his rights in terms hereof, or to give notice of cancellation of an existing lease, without the prior written consent of the SELLER.

#### **16 JURISDICTION**

16.1 For the purpose of resolving any dispute which may exist or occur between the parties hereto, the parties consent to the jurisdiction of the Magistrate's Court or any other court with jurisdiction or a court otherwise competent with jurisdiction over the person of the parties in that each of them resides, carries

on business, or is employed within its area of jurisdiction, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said court pursuant to Section 45 of the Magistrates' Court Act 32 of 1944 or any amendment thereof provided that the SELLER shall have the right at his sole option and discretion to institute proceedings in any other competent court in respect of any claim which, but for the foregoing, would exceed the jurisdiction of the Magistrate's Court.

- 16.2 In the event of the SELLER instructing its Attorneys to institute any proceedings against the PURCHASER for payment of the purchase price, interest and other monies due by the PURCHASER hereunder or for the performance by the PURCHASER of any of the terms and conditions herein, then the PURCHASER agrees that he shall be liable for and shall pay any such legal costs on the scale as between the Attorney and Own Client.

## **17 BREACH**

In the event of the PURCHASER being in breach of any of the terms or conditions contained herein, and remain in default for 7 (seven) days after dispatch of a written notice by registered post or by electronic mail requiring him to remedy such breach, the SELLER shall be entitled to, and without prejudice to any other rights available at law:

- 17.1 claim immediate payment of any amount due by the PURCHASER; and/or
- 17.2 declare the full balance of the purchase price and interest payable forthwith and claim recovery thereof; and/or.
- 17.3 cancel the agreement without any further notice, and retain all amounts paid by the PURCHASER as "Rouwkoop" and the PURCHASER hereby authorises any third party holding such monies to pay the same to the SELLER, and/or.
- 17.4 terminate this agreement and claim damages from the PURCHASER, which damages shall include, but not be limited to, the costs and expenses of

advertising and selling the PROPERTY to a third party.

## **18 AUCTIONEER'S COMMISSION**

- 18.1 The AUCTIONEER shall be a registered Full Status Property Practitioner and holds a Fidelity Fund Certificate issued by the Property Practitioners Regulatory Authority in terms of the Property Practitioner's Act, Act 22 of 2019 and its Regulations. The AUCTIONEER hereby warrants the validity of his/her/its Fidelity Fund certificate as at the date of signature of this Agreement and the date of the auction.
- 18.2 Commission calculated at **6% (six percentum)** of the gross purchase price of the property (excluding VAT), will be due and payable by the PURCHASER to the AUCTIONEER on confirmation of the sale. The Commission Agreement attached constitutes a separate enforceable agreement between the AUCTIONEER and the PURCHASER with no recourse against the SELLER.
- 18.3 If any stipulation of this agreement conflicts with the Property Practitioner's Act, Act 22 of 2019 or its Regulations, the terms/stipulations shall be severable from this agreement and the terms of the Property Practitioner's Act, Act 22 of 2019 and its Regulations shall be applicable.

## **19 VACATING THE PROPERTY**

The PURCHASER and any other person occupying the property upon date of cancellation of this agreement or it becoming void or voidable for any reason whatsoever shall be obliged to immediately vacate the PROPERTY upon written request to the PURCHASER's domicilium citandi. Any right of occupation is a direct consequence of this agreement and shall in no manner be interpreted as an agreement of lease.

## **20 VARIATION**

- 20.1 This agreement constitutes the whole and only agreement between the SELLER and the PURCHASER and no alteration or variation of this agreement shall be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised agents.

20.2 Any representations, warranties or undertakings made or given by the SELLER or its agents other than those contained herein shall be of no force or effect whatsoever.

**21 PERSONAL SURETYSHIP JOINT AND SEVERAL LIABILITY ON BEHALF OF PURCHASER**

21.1 The representative of the PURCHASER, by his signature hereto, hereby interposes and binds himself in favour of the SELLER, jointly and severally as surety for and co-principal debtor *in solidum* with the PURCHASER for the due and timeous performance by it of all its obligations as PURCHASER in terms of this Agreement and hereby renounces the benefits of excussion and division.

21.2 If this Agreement is concluded with more than one PURCHASER, the liability of such PURCHASER to the SELLER shall be joint and several *in solidum*.

**14. MARITAL STATUS OF PURCHASER**

The PURCHASER warrants that his marital status is as set forth in the "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" annexed hereto and, further that the information contained in such schedule is true and correct in each and every respect.

**15. WAIVER**

Notwithstanding any express or implied provisions of this Offer to the contrary, any latitude or extension of time which may be allowed by the SELLER in respect of any matter or thing that the PURCHASER is bound to perform or observe in terms hereof, shall not under any circumstances be deemed to be a waiver of the SELLER'S rights at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

## **16. CERTIFICATES TO BE OBTAINED**

The PURCHASER undertakes and accepts the responsibility to obtain and furnish the SELLER with a certificate at his own costs of:

- 16.1 A certificate of compliance with the requirements of the Occupational Health and Safety Act, Act 85 of 1993 and/or Electrical Installation Regulations, No. R242 of 6 March 2009 to the effect that the electrical installation on the property complies with SABS 0142 or any amended requirements, or is reasonably safe, including any electrical fences;
- 16.2 A certificate to the effect that the improvements on the PROPERTY are free from infestation by timber destroying insects, if specifically required by a financial institution;
- 16.3 A certificate of the occupation of the PROPERTY (if applicable).
- 16.4 A certificate of the occupation of the property (if applicable);
- 16.5 A NHBRC Certificate (if applicable);
- 16.6 Building plans if required by the PURCHASER or his financiers;
- 16.7 Any further or additional documentation for effective registration of transfer or occupation of the property.

## **21. HOME OWNERS ASSOCIATION / BODY CORPORATE CONDUCT AND MANAGEMENT RULES**

- 22.1 The PURCHASER acknowledges that he is aware of the Rules and Constitution of the Home Owners Association / Body Corporate Conduct and Management Rules. The SELLER will be responsible for the payment of all arrear levies, rates and taxes due on the PROPERTY until the DATE OF ACCEPTANCE. From DATE OF ACCEPTANCE, all levies, rates and taxes due on the PROPERTY will be for the account of The PURCHASER.

22.2 The PURCHASER furthermore acknowledges that upon transfer of the PROPERTY into his name he will become a member of the Home Owners Association / Body Corporate established for the PROPERTY.

22.3 The PURCHASER binds himself and his successors in title to the terms, conditions and obligations imposed on the PURCHASER in terms of the constitution of the Home Owners Association / Body Corporate Conduct and Management Rules.

### **23. SPECIAL CONDITIONS**

23.1 If applicable, this agreement is subject to the approval of the sale or powers to be granted:

(a) by the Court; or

(b) by the Master of the High Court in terms of Section 18(3) and/or Section 80 (bis) of the Insolvency Act 24 of 1936; or Section 386 of the Companies Act 65 of 1973 read with Item 9 of Schedule 5 of the Companies Act 71 of 2008; or

(c) subject to the Acceptance of the Agreement by the TRUSTEE/LIQUIDATOR upon the adoption of the Resolutions authorising him to do so.

23.2 This offer is further subject to approval by the BONDHOLDER and SELLER within 14 (fourteen) days from date of auction.

23.3 Should the SELLER not confirm the sale this offer will lapse and this document and bid shall be deemed to be *pro non scripto*.

**24. ELECTRICAL CERTIFICATE**

The PURCHASER shall, at its own costs obtain a valid electrical certificate of compliance as envisaged by the Occupational Health and Safety Act No. 85 of 1993 and Government Regulation R242 of 6 March 2009 and SABS 0142 or any subsequent replacement Regulations and PURCHASER shall be liable for whatever expenses or costs which may be involved in obtaining same including reparation costs to be effected in respect of the installation. PURCHASER shall deliver the said certificate of compliance to the conveyancers after date of occupation by the PURCHASER and/or on date of transfer, whichever occurs first. The SELLER and the PURCHASER warrants that they will not make any alterations to the electrical installation after the issue of the certificate of compliance.

**25. GAS INSTALLATION - CERTIFICATE OF CONFORMITY**

In the event of there being a gas installation in the PROPERTY the SELLER shall at its cost be obliged to obtain a Certificate of Conformity in respect of such an installation as is required by Section 17(3) of Government Notice R734 of 15 July 2009 stipulated in The Government Gazette 32395. The SELLER and its Agents shall have reasonable access to the PROPERTY prior to the Transfer Date for the purposes of obtaining such Certificate and for carrying out such repairs as may be necessary. Should any repairs be necessary they will be for the cost and account of the.

**26. SECURITY OF TENURE**

The PURCHASER acknowledges that it is acquainted with the provisions of the Extension of Security of Tenure Act No. 62 of 1997 and the factual position regarding the occupants of the PROPERTY. The PURCHASER also acknowledges that it is aware that the provisions of the said Act are binding on the PURCHASER as successor in title of the SELLER and the PROPERTY is sold subject to the said provisions and any alleged occupancy rights.

## **27. RESTITUTION OF LAND RIGHTS**

- 27.1 The PROPERTY is sold subject to the provisions of the Restitution of Land Rights Act No. 22 of 1994.
- 27.2 The sale is subject to any land claim registered in terms of the Restitution of Land Rights Act 1998 on the relevant PROPERTY. In the event that a claim has been noted against the PROPERTY by the Land Claims Commissioner, the SELLER shall give 30 (thirty) days' notice to the Land Claims Commissioner in respect of this sale agreement.
- 27.3 The SELLER does not warrant or guarantee that there is no land claim against the PROPERTY and the PURCHASER purchases the PROPERTY subject to any land claims being instituted or to be instituted in terms of the restitution of Land Rights Act 1998.

## **28. APPLICABLE LEGISLATION**

The PROPERTY is sold subject to the right of any:

- 28.1 Labourer who has the right of cultivating or grazing or the right to occupy and to use, in terms of the provisions of the Land Reform (Labour Tenants) Act, 3 of 1996.
- 28.2 Any existing informal rights in respect of business, occupation, habitation, residence, permission for occupation, use or entry to the PROPERTY or occupied the PROPERTY already before 31 December 1992 (i.e. more than 5 (Five) years, in terms of the Interim Protection of Informal Land Rights Act, 31 of 1996.
- 28.3 Any rights of occupants of the PROPERTY, including elderly persons, children, handicapped persons and households of which a woman is the head in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 19 of 1998.
- 28.4 Any occupancy rights in terms of the Extension of Security of Tenure Act No.

62 of 1997.

## **29. WATER RIGHTS (IF ANY)**

The sale of the PROPERTY includes any registered and/or unregistered water rights attached to the PROPERTY (if applicable). The SELLER shall be obliged to make payment of all arrear levies in respect of water rights imposed by the authorities until date of transfer on condition that the water rights are registered and validated by the Department of Water Affairs on date of the sale. The PURCHASER shall be obliged at its own costs, to obtain transfer of the water rights and/or registration thereof. Registration of the water rights and/or transfer thereof shall only be effected after the transfer of the immovable PROPERTY into the name of the PURCHASER.

## **30. ESKOM POWER (IF APPLICABLE)**

- 30.1 The SELLER undertakes to obtain final Eskom electricity readings and make payment of all outstanding electricity due to Eskom as of date of transfer of the relevant PROPERTY. The PURCHASER shall be entitled to transfer the electricity account to the PURCHASER's benefit only after transfer of the PROPERTY has been registered in the Deeds Office in the name of the PURCHASER.
- 30.2 Unless specifically guaranteed separately in this sale agreement, the SELLER does not warrant the supply of electricity by Eskom and/or the registration of any water rights in respect of the PROPERTY.

## **31. RATES AND TAXES**

- 31.1 The SELLER shall be obliged to make payment of all rates and taxes and any statutory levies payable in respect of the PROPERTY in terms of Section 118(1) of the Municipal Systems Act, 32 of 2000 and shall for the account of the SELLER supply a clearance certificate to effect registration of transfer into the name of the PURCHASER;
- 31.2 Each party shall on demand furnish or ensure the furnishing of all documents,

records and verifications required by anyone in regard to the Financial Intelligence Centre Act No. 38 of 2001 relating to this contract the parties or the execution thereof;

31.3 The PURCHASER shall be liable for payment of any unpaid debt charged against the property by the Council in terms of Section 118(3) of the Municipal System Act, 32 of 2000, including all amounts due in terms of a lien held by the City Council which debt may be owing after registration of transfer of the PROPERTY into the PURCHASER's name and that the continued supply of municipal services to the PROPERTY may be affected while the debt remains outstanding.

## 32. **TRANSFER DUTY OR VAT**

32.1 If the SELLER is a VAT vendor for the purposes of this transaction, VAT will be payable. PURCHASER shall be liable for VAT.

32.2 If the SELLER is NOT a VAT vendor for the purposes of this transaction, TRANSFER DUTY will be payable. PURCHASER is liable for the payment of Transfer Duty.

## 33. **TRANSACTIONS EXEMPTED FROM VAT**

33.1 Section 12 of the VAT Act, 89 of 1991 (as amended from time to time) lists 4 types of PROPERTY transactions that are exempt from VAT:

33.1.1 The sale of a share, or a member's interest in a company or close corporation that owns residential PROPERTY does not constitute a supply of fixed PROPERTY (type of goods) for VAT purposes, but the supply of an "equity security". The sale of share block shares which relate to residences are also VAT exempt.

33.1.2 PROPERTY that has previously been *leased for residential purposes*, and which PROPERTY is now being sold. VAT is not levied on the rent charged by a lessor to a lessee for the supply of a dwelling under a lease agreement,

irrespective of whether the lessor is a VAT vendor. When such PROPERTY is sold, such supply will be exempt from VAT.

33.1.3 When any “*right of occupation*” as defined in section 1 of the Housing Development Schemes for Retired Persons Act 65 of 1988 is supplied, such sale and re-sale of the right of occupation is exempt from VAT.

33.1.4 The supply of land, together with any improvements thereto, where such land *is situated outside of the Republic of South Africa* and such supply is made by way of sale or letting.

#### 34. ZERO-RATED TRANSACTIONS

34.1 If a transaction is not VAT exempt, VAT is payable.

34.2 “Zero-rated” means that VAT is payable on the transaction, but at the rate of 0% and not the standard rate of 15%.

34.3 The difference between “zero-rating” and “VAT exempt”.

34.3.1 If a transaction is *VAT exempt*, it falls outside of the “VAT net” altogether. Transfer duty is payable on the transaction.

34.3.2 If a transaction is *zero-rated*, it falls within the “VAT net” and all the provisions relating to VAT apply to the transaction, including the provision that the PURCHASER can still claim input tax credits in respect of the PROPERTY concerned.

34.4 **Requirements** for applying the zero-rate:

Where an enterprise (or part of an enterprise which is capable of separate operation) is sold to a *registered VAT vendor* as a *going concern*, the sale is subject to VAT at the zero-rate.

34.4.1 The *zero-rate* will only be applicable if:

- (a) the SELLER is a VAT vendor,
- (b) the PURCHASER is a VAT vendor,
- (c) the parties must specifically agree in writing:
  - that the enterprise is sold as a going concern;
  - when the agreement is concluded, that the enterprise will be an income-earning activity on date of transfer thereof;
  - the consideration for the supply includes VAT at the zero- rate.

#### 34.5 **Zero-rated Clause**

The parties place on record that:

34.5.1 The PROPERTY is sold as a going concern, being

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34.5.2 The concern will, on the date of transfer to the PURCHASER thereof be an income generating enterprise.

34.5.3 The consideration nfor the supply includes VAT at the zero rate.

34.5.4 The SELLER is a registered VAT vendor, with VAT registration number \_\_

34.5.5 The PURCHASER is s registered VAT vendor, with VAT registration number

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\*\* If the South African Revenue Service (SARS) rules that this transaction does not qualify for a zero-rating, the PURCHASER will be responsible for the payment of VAT and any penalties thereon, in addition to the purchase price.

34.6 \_\_\_\_\_(auctioneer/director/employee) hereby warrants the validity of his/her Fidelity Fund Certificate as at the date of signature of this agreement.

### 35. **ANNEXURES**

The information sheets in respect of the SELLER, the PURCHASER, the AUCTIONEER'S COMMISSION and the IMMOVABLE PROPERTY CONDITION REPORT shall be annexures and attached to this Agreement. All information supplied therein is hereby warranted as correct and duly

authorized. The sheets shall form an integrated part of this Agreement.

THE PROPERTY WAS PUT UP FOR SALE BY PUBLIC AUCTION ON THE

\_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

and sold by the rise for the amount of R \_\_\_\_\_ ( \_\_\_\_\_ )

(EXCLUDING VALUE ADDED TAX)

TO:

MR/MRS/MS \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

Refer to "INFORMATION FOR CONVEYANCER AND ADMINISTRATION" for full details of PURCHASER.

OR

TO:

COMPANY/CLOSE CORPORATION/TRUST/OTHER: \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

ENTITY REGISTRATION NO: \_\_\_\_\_

REGISTERED ADDRESS: \_\_\_\_\_

TELEPHONE DETAILS: Business: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Cell: \_\_\_\_\_

as chosen *domicilium citandi et executandi*

herein represented by \_\_\_\_\_

Identity Number: \_\_\_\_\_

who hereby warrants that he is duly authorised by resolution of the members/directors of the entity to act on its behalf, and who hereby binds himself as surety and co-principal debtor in solidum for and on behalf of the PURCHASER to and in favour of the SELLER and the AUCTIONEER under the terms and conditions contained in this Offer, and who further binds himself to due performance

hereunder and for all amounts that may be due under this Offer, including damages, arising from whatever cause, and waive the benefits of division and excussion.

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

**AS WITNESSES:**

1. \_\_\_\_\_ PURCHASER

2. \_\_\_\_\_ PURCHASER

\_\_\_\_\_  
AUCTIONEER (duly authorised)

**ACCEPTANCE AND CONFIRMATION**

Accepted by me this \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

**AS WITNESSES:**

1. \_\_\_\_\_ SELLER

2. \_\_\_\_\_ SELLER  
SELLER'S ADDRESS

**INFORMATION FOR CONVEYANCER AND ADMINISTRATION  
PURCHASER SPOUSE / CO-PURCHASER**

SURNAME \_\_\_\_\_

FIRST NAMES \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_  
(State whether Unmarried, Married in Community of PROPERTY, Married by Antenuptial Contract, Married in a country other than South Africa)

DATE OF MARRIAGE \_\_\_\_\_

COUNTRY OF MARRIAGE \_\_\_\_\_

IDENTITY NUMBER \_\_\_\_\_

TELEPHONE NUMBER (H) \_\_\_\_\_

(W) \_\_\_\_\_

(FAX) \_\_\_\_\_

(CELL) \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

FUTURE ADDRESS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

INCOME TAX NUMBERS \_\_\_\_\_

**ACCOUNTING**  
**ERF 1780, SOUTH FORK, SOUTH END**

<b>PURCHASE PRICE (EXCLUSIVE OF VAT)</b>		<b>R</b>
<b>10% DEPOSIT</b>	<b>R</b>	
<b>10% AUCTIONEERS COMMISSION</b>	<b>R</b>	
<b>15% VAT</b>	<b>R</b>	
<b>CONDITIONS OF SALE</b>	<b>R1,000.00</b>	
<b>VAT ON COS</b>	<b>R 150.00</b>	
<b>TOTAL MONIES DUE</b>	<b>R</b>	

**BANKING DETAILS AS FOLLOWS:**

**PROPERTY TRUST ACCOUNT  
ACCOUNT NUMBER: 405 334 2542  
BRANCH CODE: 632 005  
WINELANDS AUCTION GALLERY (PTY) LTD  
ABSA BANK SOMERSET WEST**

Please email proof of payment to [samantha@michaeljames.co.za](mailto:samantha@michaeljames.co.za)



*Auctioneers, Valuers and Appraisers - Established 1964*

# **Michael James Organisation**

**CAPE TOWN – JOHANNESBURG – PORT ELIZABETH**

## **FICA DOCUMENTS REQUIRED**

### **FOR**

## **DIFFERENT ENTITIES & TRANSACTIONS**

### **INDIVIDUALS**

1. Copy of ID document (SA Citizens) / Passport (foreign nationals)
2. Proof of residential address (not older than 3 months)
3. Copy of SARS document confirming income tax number
4. Bank account confirmation letter (not older than 3 months)

### **TRUST**

1. Copy of the Trust Deed
2. Copy of Letter (s) of Authority
3. Copy of SARS document confirming income tax / VAT registration number for trust
4. Resolution signed by all trustees nominating the authorised signatory / representative
5. Bank account confirmation letter of trust (not older than 3 months)
6. For the authorised signatory / representative, each trustee, beneficiary and founder of the trust, the following is required:
  - Copy of ID document
  - Proof of residential address (not older than 3 months)
7. Proof of source of funds. Download list of acceptable proof of source of funds

## **COMPANY**

1. Company CIPC registration documents
2. Proof of business address (not older than 3 months), if different from registered address
3. Copy of SARS document confirming income tax / VAT registration number for company
4. Resolution on company letterhead signed by all directors nominating authorised signatory / representative
5. Bank account confirmation letter of company (not older than 3 months)
6. For the authorised signatory / representative and/or CEO, each director and each person or corporation with a shareholding of 25% or more in the company, the following is required:
  - Copy of ID document
  - Proof of residential address (not older than 3 months)
7. Register of Shareholders / written statement from the entity showing ownership and control structure of the company (shareholding diagram)
8. Proof of source of funds. Download list of acceptable proof of source of funds

## **CLOSE CORPORATION**

1. Copy of Founding Statement (CK1)
2. Certificate of Incorporation (if applicable, CK2 for any amendments to the Founding Statement)
3. Proof of business address, if different from registered address (not older than 3 months)
4. Copy of SARS document confirming income tax / VAT registration number for the CC
5. Resolution on the CC letterhead signed by all the members nominating one signatory / representative
6. Bank account confirmation letter of the CC (not older than 3 months)
7. For the authorised signatory / representative and each member of the CC, the following is required:
  - Copy of ID document
  - Proof of residential address (not older than 3 months)

8. Proof of source of funds. Download list of acceptable proof of source of funds

### **PARTNERSHIP**

1. Copy of Partnership Agreement
2. Proof of business address (not older than 3 months)
3. Resolution signed by all the partners nominating authorised signatory / representative
4. Copy of SARS document confirming income tax / VAT registration number for the Partnership
5. Bank account confirmation letter of the Partnership (not older than 3 months)
6. For the authorised signatory / representative and each partner, the following is required:
  - Copy of ID document
  - Proof of residential address (not older than 3 months)
7. Proof of source of funds. Download list of acceptable proof of source of funds

### **UNINCORPORATED ENTITIES (e.g. CLUBS, CHURCHES)**

1. Copy of document confirming list of all individuals who exercise control over the entity (constitution or similar document)
2. Resolution signed by all individuals who exercise control over the entity nominating authorised signatory / representative
3. Proof of physical address for the entity (not older than 3 months)
4. Copy of SARS document confirming income tax / VAT registration number for the entity
5. Bank account confirmation letter of entity (not older than 3 months)
6. For the authorised signatory / representative and member or partner, the following is required:
  - Copy of ID document
  - Proof of residential address (not older than 3 months)
7. Proof of source of funds. Download list of acceptable proof of source of funds

## **NON-RESIDENT INDIVIDUAL**

1. Copy of foreign ID document / Passport

2. Proof of residential address (not older than 3 months)

Should you not have proof of residential address in your name, you may provide a declaration by a third party confirming that you share a residential address with them.

Provide the third party's proof of ID document and proof of residential address (not older than 3 months)

Download and complete the Joint Residential Address Declaration

3. Document confirming tax registration number

4. Bank account confirmation letter confirming foreign bank details

For **investment products** (i.e. retirement annuity, equity linked living annuity, voluntary investment plan, tax free investment plan & endowment), payment shall not be effected to non-resident bank accounts

Should you wish to confirm alternative arrangements, please contact your service provider

For **stockbroking products** (i.e. local shares, off shore shares and ETP's), payments to non-resident bank accounts shall be accommodated

5. Proof of source of funds. Download list of acceptable proof of source of funds

## **NON-RESIDENT COMPANY**

1. Copy of foreign company registration documents

2. Proof of business address, if different from registered address (not older than 3 months)

3. Document confirming tax registration number for the company

4. Resolution on the company letter head signed by all directors nominating one signatory / representative

5. Bank account confirmation letter confirming foreign bank account details (not older than 3 months)

6. For the authorised signatory / representative and/or CEO, each director and each person or corporation with a shareholding of 25% or more in the company, the following is required:

7. Copy of ID document / Passport

8. Proof of residential address (not older than 3 months)
9. Register of Shareholders / written statement from the entity showing ownership and control structure of the company (shareholding diagram)
10. Proof of source of funds. Download list of acceptable proof of source of funds