



Auctioneers, Valuers and Appraisers - Established 1964

**Michael James Organisation**

**CAPE TOWN – JOHANNESBURG – PORT ELIZABETH**

## **CONDITIONS OF SALE OF PROPERTY**

### **(AUCTIONS)**

whereby

### **MICHAEL JAMES ORGANISATION**

(the "AUCTIONEER")

duly instructed by

### **J KRYNAUW & K VAN DER WESTHUIZEN**

In the matter of:

### **INSOLVENT ESTATE G F JOESTE MASTER'S REFERENCE NUMBER: C283/2023**

("the SELLER")

hereby offers for sale by public auction the immovable PROPERTIES as set out in Schedule "A" annexed hereto.

("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, 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bidder and every bid shall constitute an offer to purchase the property for the amount of the bid and no bid may be withdrawn prior to the expiry of the confirmation period during which the bid will be open for acceptance by the SELLER.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.

## 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 and confirmation by the SELLER for a period of 14 (fourteen) days after date of the auction, 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 after due notice has been given to the PURCHASER in writing on condition that it may not be extended for more than another 14 (fourteen) days. Any longer extension must be agreed in writing between the parties. 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.

## 4. PURCHASE PRICE

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

- 4.1 **A cash deposit of 10% (ten percentum) 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 CONVEYANCER 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 authorizes the CONVEYANCER to invest, in terms of Section 86(4) of the Legal Practice Act, Act 28 of 2014 (as amended), 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 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 for the interest benefit of the SELLER, in terms of Section 86(4) of the Legal Practice Act, Act 28 of 2014 (as amended), 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 or confirmed by the SELLER in which event all monies paid by the PURCHASER to the SELLER in terms hereof shall be refunded to the PURCHASER.

## 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 a 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 (VAT) 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 10% (ten *percentum*) per annum, 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. **TRANSFER**

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

9. **POSSESSION**

9.1. Possession of the PROPERTY will be given to the PURCHASER and the PURCHASER shall be obliged to take possession thereof, on **DATE OF ACCEPTANCE** 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, consumption charges, insurance premiums and/or fees and any 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.

9.2. The PURCHASER shall not be entitled to make any alterations or additions to the PROPERTY before the date of registration of transfer.

9.3. The PURCHASER shall be obliged, in the event of the cancellation or lapse of this agreement, to forthwith vacate the PROPERTY and restore it to the SELLER in the same condition as when the PURCHASER took possession.

9.4. 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.

- 9.5. If the PROPERTY is leased, the PROPERTY is sold with the lease, this Agreement is entered into and subject to the rights of the tenant under any existing Lease Agreement, statutory provisions or the Common Law.
- 9.6. The PURCHASER agrees that the SELLER does not make any warranties or representations, whether express or implied, regarding vacant occupation and possession. The property is hereby sold free of any leases which arose subsequent to any bonds be registered over the property or any claims preferent to the lease.
- 9.7. 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 vacate the property on demand.

## 10. **VOETSTOOTS**

- 10.1. 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. 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.
- 10.2. 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, nor shall the SELLER benefit by any surplus in extent.
- 10.3. The SELLER shall not be required to indicate to the PURCHASER the position of the beacons or pegs upon the PROPERTY and/or boundaries thereon, nor shall the SELLER be liable for the costs of locating same.

## 11. **NOMINEE**

The PURCHASER shall be entitled, by notice in writing to the SELLER, to nominate a nominee in his place as PURCHASER, upon the following terms and conditions:

- 11.1. the aforesaid notice shall be handed to the SELLER by no later than close of business on the DATE OF ACCEPTANCE;
- 11.2. the notice shall set out the name and address of the nominee so nominated as PURCHASER:
- 11.3. the notice shall be accompanied by the nominee's written acknowledgement:
  - 11.3.1. that it is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and

11.3.2. that it is bound by the provisions of this agreement as the PURCHASER;

11.4. Should the PURCHASER nominate a nominee in terms of this clause, then:

11.4.1. all references to the PURCHASER in this agreement shall be deemed to be a reference to its nominee; and

11.4.2. 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 division and excussion.

## 12. **DOMICILIUM**

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

12.2. Any notice dispatched to the PURCHASER by prepaid registered post or facsimile 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.

## 13. **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.

## 14. **JURISDICTION**

14.1. 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.

14.2. 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.

## 15. **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 facsimile requiring him to remedy such breach, the SELLER shall be entitled to, and without prejudice to any other rights available at law:

- 15.1. claim immediate payment of any amount due by the PURCHASER; and/or
- 15.2. declare the full balance of the purchase price and interest payable forthwith and claim recovery thereof; and/or
- 15.3. 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 to the AUCTIONEER, as applicable, and/or
- 15.4. 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.

16. **AUCTIONEER'S COMMISSION**

- 16.1. 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.
- 16.2. **Commission calculated at 6% (capped to R1,200,000.00) (plus VAT)** 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 amount shall be paid on the date of the auction and shall be due and payable and paid 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;
- 16.3. 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.

17. **VARIATION**

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.

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.

18. **PERSONAL SURETYSHIP JOINT AND SEVERAL LIABILITY ON BEHALF OF PURCHASER**

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 and excussion of and division.

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*.

**19. 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.

**20. 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.

**21. 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:

- 21.1. 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;
- 21.2. 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;
- 21.3. A certificate of the occupation of the property (if applicable);
- 21.4. A NHBRC Certificate (if applicable);
- 21.5. Building plans if required by the PURCHASER or his financiers;
- 21.6. Any further or additional documentation for effective registration of transfer or occupation of the property.

**22. FIRST RIGHT OF REFUSAL**

- 22.1. If the SELLER does not accept the PURCHASER'S offer during the CONFIRMATION PERIOD because it has received a higher offer from a third party, the PURCHASER shall be entitled to increase the PURCHASER'S offer during the CONFIRMATION PERIOD in order to match the third party's offer, on condition that the PURCHASER shall be approached only once with any higher offer
- 22.2. Any further offers being made prior to confirmation of the sale agreement shall be made within 10 (ten) days after date of the auction and will be subject to these terms and conditions. The submissions of further offers will close 10 (ten) days after date of the auction and no further offers may be considered by the SELLER or the AUCTIONEER. The SELLER however reserve the right to confirm the sale at any time after the sale in which event all of the offers or submissions shall lapse and be *pro non scripto*;

22.3. Any such offers of which the purchase price has been confirmed by the SELLER as acceptable for confirmation purposes, shall be submitted to the highest auction bidder, who will have the first right of refusal to equal and match the offer within 24 (twenty four) hours after submission thereof and to be accepted in writing by the successful bidder and PURCHASER at the auction, in which event the sale shall immediately become final.

22.4. The above additional offers are subject thereto that an improved offer can only be submitted to the successful PURCHASER at the auction for only one event. Once such an improved offer has been submitted to the successful bidder at the auction for consideration, it shall be deemed that the offers have closed and that no further offers may be considered whatsoever.

**23. ESKOM POWER (IF APPLICABLE)**

23.1 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;

23.2 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;

**24. RATES AND TAXES**

24.1 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;

24.2 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;

24.3 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.

**25. 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.

26. **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 Seller.

27. **SECURITY OF TENURE**

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.

28. **RESTITUTION OF LAND RIGHTS**

28.1 The property is sold subject to the provisions of the Restitution of Land Rights Act No. 22 of 1994.

28.2 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;

28.3 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;

29. **APPLICABLE LEGISLATION**

The property is sold subject to the right of any:

29.1 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;

29.2 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;

29.3 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;

29.4 Any occupancy rights in terms of the Extension of Security of Tenure Act No. 62 of 1997.

30. **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;

**31. SPECIAL CONDITIONS**

31.1. 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.

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

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

**32. 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

\_\_\_\_\_ 2023 and sold for the amount of

R\_\_\_\_\_ )  
(EXCLUDING VALUE ADDED TAX AND **EXCLUDING** COMMISSION IN THE AMOUNT OF  
R\_\_\_\_\_ PLUS VAT)

**TO:**

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

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

MARRIED/UNMARRIED: \_\_\_\_\_

IN COMMUNITY OF PROPERTY/OUT OF COMMUNITY OF PROPERTY: \_\_\_\_\_

(hereinafter referred to as the "PURCHASER")

Refer to "INFORMATION SHEETS " 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 waives the benefits of division and excussion.

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.

**AS WITNESSES:**

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

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

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

**ACCEPTANCE AND CONFIRMATION**

ACCEPTED BY ME ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023.

**AS WITNESSES:**

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

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

**ATTACHMENTS:**

- **SCHEDULE "A"**
- **INFORMATION SHEET – SELLER**
- **INFORMATION SHEET – PURCHASER**
- **IMMOVABLE PROPERTY CONDITION REPORT**
- **AUCTIONEER COMMISSION AGREEMENT**

# CONDITIONS OF SALE OF IMMOVABLE PROPERTY SCHEDULE "A"

The following immovable property was put up for sale by Public Auction on \_\_\_\_\_ 2023 and sold for the amount of R\_\_\_\_\_ (\_\_\_\_\_)

(Excluding Value Added Tax)

**DESCRIPTION: ERF 19964, BRACKENFELL (2 BERK STREET, BRACKENFELL)**

**TITLE DEED NO: T23320/2008**

**IN EXTENT: 568 SQUARE METERS IN EXTENT**

## INFORMATION SHEET

### SELLER (PRIVATE)

FULL NAMES & SURNAME	
IDENTITY NUMBER	
MARITAL STATUS	SINGLE / MARRIED
IF MARRIED	IN COMMUNITY OF PROPERTY: <b>YES</b>
SPOUSE FULL NAMES:	
SPOUSE IDENTITY NUMBER:	
	OUT OF COMMUNITY OF PROPERTY: <b>YES</b>
INCOME TAX NUMBER	
VAT NUMBER	
CELLPHONE NUMBER	
WORK NUMBER	
E-MAIL ADDRESS	
CURRENT RESIDENTIAL ADDRESS	
CURRENT POSTAL ADDRESS	
EXISTING BOND HOLDER	NAME:
	ACCOUNT NUMBER:
	BRANCH:
RATES & TAXES ACCOUNT NUMBER	
MANAGING AGENT (IF APPLICABLE FOR LEVIES)	

**INFORMATION SHEET**

**PURCHASER (PRIVATE)**

FULL NAMES & SURNAME	
IDENTITY NUMBER	
MARITAL STATUS	SINGLE/MARRIED
IF MARRIED	IN COMMUNITY OF PROPERTY: <b>YES</b>
SPOUSE FULL NAMES:	
SPOUSE IDENTITY NUMBER:	
	OUT OF COMMUNITY OF PROPERTY: <b>YES</b>
INCOME TAX NUMBER	
VAT NUMBER	
CELLPHONE NUMBER	
WORK NUMBER	
E-MAIL ADDRESS	
CURRENT RESIDENTIAL ADDRESS	
CURRENT POSTAL ADDRESS	

**INFORMATION SHEET**

**SELLER (COMPANY)**

COMPANY NAME	
REGISTRATION NUMBER	
DIRECTORS FULL NAMES, SURNAMES & IDENTITY NUMBERS	
COPY OF RESOLUTION	
INCOME TAX NUMBER	
VAT NUMBER	
CONTACT NUMBERS	
E-MAIL ADDRESS	
REGISTERED ADDRESS	
REGISTERED POSTAL ADDRESS	
EXISTING BOND HOLDER	NAME:
	ACCOUNT NUMBER:
	BRANCH:
RATES & TAXES ACCOUNT NUMBER	
MANAGING AGENT (IF APPLICABLE FOR LEVIES)	

**INFORMATION SHEET**

**PURCHASER (COMPANY)**

COMPANY NAME	
REGISTRATION NUMBER	
DIRECTORS FULL NAMES, SURNAMES & IDENTITY NUMBERS	
COPY OF RESOLUTION	
INCOME TAX NUMBER	
VAT NUMBER	
CONTACT NUMBERS	
E-MAIL ADDRESS	
REGISTERED ADDRESS	
REGISTERED POSTAL ADDRESS	

## INFORMATION SHEET

### SELLER (TRUST)

TRUST NAME	
REGISTRATION NUMBER	
TRUSTEES FULL NAMES, SURNAMES & IDENTITY NUMBERS	
COPY OF LETTER OF AUTHORITY	
INCOME TAX NUMBER	
VAT NUMBER	
CONTACT NUMBERS	
E-MAIL ADDRESS	
REGISTERED ADDRESS	
REGISTERED POSTAL ADDRESS	
EXISTING BOND HOLDER	NAME:
	ACCOUNT NUMBER:
	BRANCH:
RATES & TAXES ACCOUNT NUMBER	
MANAGING AGENT (IF APPLICABLE FOR LEVIES)	

**INFORMATION SHEET**

**PURCHASER (TRUST)**

TRUSTEES FULL NAMES, SURNAMES & IDENTITY NUMBERS	
COPY OF LETTER OF AUTHORITY	
INCOME TAX NUMBER	
VAT NUMBER	
CONTACT NUMBERS	
E-MAIL ADDRESS	
REGISTERED ADDRESS	
REGISTERED POSTAL ADDRESS	

## IMMOVABLE PROPERTY CONDITION REPORT

### 1. **Disclaimer**

This condition report concerns the immovable property situated at ***[2 Berk Street, Brackenfell, Erf 19964 Brackenfell, Title Deed Number T23320/2008]*** (the "Property"). This report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

### 2. **Definitions**

In this form –

- 2.1. "to be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and
- 2.2. "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

### 3. **Disclosure of information**

The owner of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information

contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

4. **Provision of additional information**

The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable". Should the owner have responded to any of the statements with a "yes", the owner shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

5. **Statements in connection with Property**

	YES	NO	N/A
I am aware of the defects in the roof			
I am aware of the defects in the electrical systems			
I am aware of the defects in the plumbing system, including in the swimming pool (if any)			
I am aware of the defects in the heating and air conditioning systems, including the air filters and humidifiers			
I am aware of the septic or other sanitary disposal systems			
I am aware of any defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include, but are not limited to, flooding, dampness or wet walls and unsafe concentrations of mould or defects in drain tiling or sump pumps			
I am aware of structural defects in the Property			



the owner signs this report.

7. **Certification by person supplying information**

If a person other than the owner of the property provides the required information that person must certify that he/she is duly authorised by the owner to supply the information and that he/she has supplied the correct information on which the owner relied for the purposes of this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

8. **Notice regarding advice or inspections**

Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

9. **Buyer's acknowledgement**

- The prospective buyer acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and noncompliance aspects concerning, the property.
  
- The prospective buyer acknowledges receipt of a copy of this statement.

10. **Signatures**

Signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ **2023.**

Signature of owner \_\_\_\_\_

Signature of purchaser \_\_\_\_\_

Signature of property practitioner \_\_\_\_\_

# **ADDENDUM TO AGREEMENT**

## **AUCTIONEER COMMISSION AGREEMENT (PAYABLE BY PURCHASER)**

made and entered into between

---

**(THE AUCTIONEER)**

and

---

**(THE PURCHASER)**

1. The Auctioneer conducted the sale of the property by the Purchaser to purchase the Seller's property.
2. On conclusion and signature of the Conditions of Sale between the Auctioneer and the Purchaser, the Purchaser and Seller admits:
  - 2.1 That the Auctioneer sold the property by close of the bid to the Purchaser;
  - 2.2 That the Auctioneer is the effective cause of the sale;
  - 2.3 That the Auctioneer is entitled to Auctioneer's commission;
  - 2.4 That the Auctioneer's commission is payable by the Purchaser in addition to the purchase price.
3. The parties hereby agree that Auctioneer's commission in an amount of R\_\_\_\_\_ plus VAT, is payable against fulfilment of all Suspensive Conditions (if any) and confirmation of the sale by the Seller/Bond Holder.
4. The commission is deemed to be earned on the date of fulfilment of all Suspensive Conditions (if any) and confirmation of the Sale Agreement.

5. The Purchaser hereby authorizes the Auctioneer to pay the commission plus the VAT from the proceeds of the deposit directly to the Auctioneer and the balance of the deposit to the Conveyancers.

**DISCLOSURE:**

6. The Purchaser admits and declares that the financial implications and payment of the Auctioneer's commission has been fully explained to him/her prior to signature of this Commission Agreement.

Thus done, signed and accepted at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

As Witnesses:

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

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

\_\_\_\_\_  
**PURCHASER**

Thus done, signed and accepted at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

As Witnesses:

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

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

\_\_\_\_\_  
**AUCTIONEER**