



**Michael James Organisation**

Winelands Auction Gallery (Pty) Ltd  
t/a Michael James Organisation

REG. NO. 1992/006196/07

• DIRECTOR

• OFFICER

• CLERK

• PROPERTY CONSULTANT

# **RULES OF AUCTION**

**AND**

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

**Date of Auction** \_\_\_\_\_

**Time of Auction** \_\_\_\_\_

**Place of Auction** \_\_\_\_\_

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

**Michael James Organisation**

Of

63 Victoria Street, Somerset West, 7130  
(021 851 7007 / 021 421 7007)

and acting on behalf of:

**THE JOINT TRUSTEES**  
**R PIETERS & G L PARIS**

In the matter of:

**INSOLVENT ESTATE M VAN DER WESTHUIZEN**  
**MASTER'S REFERENCE NUMBER: C1063/2010**

**&**

**THE JOINT TRUSTEES**  
**R PIETERS & I S H PARKER**

In the matter of:

**INSOLVENT ESTATE M H VAN DER WESTHUIZEN**  
**MASTER'S REFERENCE NUMBER: C1064/2010**

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

**No. 48 14<sup>TH</sup> AVENUE, BROADLANDS VILLAGE, BROADWAY STREET,  
STRAND**

**MORE FULLY DESCRIBED AS**

**ERF NUMBER 32926, STRAND**  
**MEASURING 226 SQUARE METERS IN EXTENT**  
**TITLE DEED NUMBER: T101674/2006**

PHYSICAL ADDRESS  
63 VICTORIA STREET  
SOMERSET WEST  
7130

POSTAL ADDRESS  
P.O. BOX 269  
SOMERSET WEST  
7129

TELEPHONE  
(021) 851-7007

FACSIMILE  
(021) 851-6724

DIRECTOR  
M. R. James (Chairman)  
A. R. James  
S. L. James  
C. J. Olliver

EMAIL  
info@michaeljames.co.za

WEBSITE  
www.michaeljames.co.za

## **RULES OF AUCTION AND CONDITIONS OF SALE**

### **1. INTERPRETATION**

- 1.1 In this agreement, unless the context requires a contrary interpretation any reference to:
- 1.1.1 the singular shall include the plural, and vice versa;
  - 1.1.2 the masculine gender shall include the feminine gender, and vice versa;
  - 1.1.3 a natural person shall include a juristic person, and vice versa.
- 1.2 The clause headings are for reference purposes only and shall not be used in the interpretation hereof.

### **2. ACKNOWLEDGEMENTS BY PURCHASER**

- 2.1 The Purchaser acknowledges that the conditions of sale of the Michael James Organisation ("the Auctioneer") which were read out in public are applicable to the purchase of the property set out herein and that those conditions are binding upon the Purchaser as if the same were repeated herein with the understanding that nothing contained herein could prejudice any obligations which he may have arising from a separate Purchaser's agreement concluded with the Auctioneer.
- 2.2 The Purchaser acknowledges that the property mentioned herein is the property that he purchased and that he is satisfied in all respects with the condition and quality thereof and that it is suitable for the purpose for which he purchased it.

### **3. SALE OF PROPERTY**

- 3.1 Every sale shall be subject to the control of the Auctioneer who shall have full rights to regulate the advance in the bidding. Every bid shall constitute an offer to purchase the property for sale at the amount bid.
- 3.2 The sale shall be by the rise, and in any event the Seller reserves the right to sell to the highest or any bidder.
- 3.3 The Auctioneer shall have the right to refuse or accept any bid without being obliged to give any reason for such decision.
- 3.4 The Auctioneer shall have the right to declare the sale to be of no force and effect and resell the property in question. If the Auctioneer makes any mistake in selling or otherwise, it shall not be binding but shall, if practicable, be rectified as soon as possible and the Auctioneer shall not on any grounds whatsoever (whether contractual, delictual or otherwise) be responsible therefore or for any loss or damage (consequential or otherwise) suffered as a result thereof or for the fulfillment of these Conditions of Sale.
- 3.5 If the Auctioneer suspects that a bidder is unable to pay either the deposit referred to in clause 4.1 or the balance of the purchase price, he may refuse to accept the bid of such bidder, or accept it provisionally until the bidder shall have satisfied him that he is in a position to pay both such amounts. On the refusal of the bid under such circumstances, the property may immediately be put up for auction again.



3.6 If any dispute arises between bidders or between any bidder/s and the Auctioneer, the decision of the Auctioneer shall be final and binding.

3.7 At the conclusion of the Auction, the Purchaser shall forthwith sign these Conditions of Sale or when called upon to do so by the Auctioneer.

#### 4. PAYMENT OF PURCHASE PRICE

4.1 The Purchaser shall pay a **deposit of ten percent** of the purchase price in cash on the day of the sale to the Michael James Organisation for the account of the Seller. The balance of the purchase price shall be paid in cash on date of registration of the property into the name of the Purchaser and payment thereof shall be secured as provided for in terms of clause 5.

4.2 The Purchaser shall be liable for payment of **interest to the Seller at the rate of 11.0 percent per annum** calculated on the balance of the Purchase price from date of possession until date of registration of transfer.

4.3 The Purchaser shall be liable on request to pay:

4.3.1 the cost of transfer, including Transfer Duty

4.3.2 all other costs incurred in order to comply with any status or other enactments or regulations relating to the passing of transfer, including survey fees if any, any road construction charges and unpaid drainage loans which may be due and all incidental charges.

4.3.3 Should Valued-Added Tax be applicable to this transaction, then the purchaser undertakes to pay, on demand, in addition to the Purchase Price, the amount levied in respect of Value-Added Tax.

4.3.4 the costs of these Conditions of Sale amounting to R1,000.00 (One Thousand Rand) plus V.A.T thereon at the present rate of 14% (fourteen percent), on the signing hereof.

4.4 The Purchaser shall pay the **Auctioneer's commission amounting to 6% (six percent) plus V.A.T thereon**, on the signing hereof.

#### 5. SECURITY FOR PAYMENT

If required by the Seller, whether at the time of the sale or at any time thereafter, the Purchaser shall immediately provide a surety or sureties or bank guarantee or other securities in each case to the Seller's satisfaction for due payment of the balance of the purchase price.

#### 6. POSSESSION

6.1 **Possession and occupation shall be given on confirmation of sale** subject to existing tenancies and occupancies immediately upon signature hereof, provided that the deposit referred to in clause 4.1 above and all required in terms of this Agreement has been paid. On confirmation of possession all risk and benefit in the property shall pass to the Purchaser. **The purchaser acknowledges that the seller will not guarantee vacant occupation of the property to the purchaser.**

6.2 The Purchaser shall be liable for a pro rata share of all rates, taxes and other proprietary charges payable in respect of the property, calculated from the date of possession, and which shall be payable immediately upon receipt of written notice thereof.



**7. TRANSFER**

On due payment of the purchase price and costs aforesaid, transfer shall be given in due form by the Seller's attorney and shall be accepted by the Purchaser forthwith.

**8. "VOETSTOOTS"**

8.1 The property is sold as it now stands "voetstoots" and subject to all the terms and conditions and servitudes mentioned or referred to in the Title Deeds of the property and subject to all other conditions and servitudes which may exist in regard thereto.

8.2 The registered owner shall not profit by any excess, nor will he be answerable for any deficiency in the extent of the Property or for any encroachment of whatsoever nature.

8.3 The Seller gives no warranties, express or implied, as to latent or patent defects. No conditions, stipulations, warranties, undertakings or representations whatsoever, express or implied, other than those included herein shall be deemed to have been given or made or form part of the these Conditions of Sale. The Conditions of Sale constitute the entire agreement between the Seller and the Purchaser and any variation must be contained in writing and signed by both parties.

8.4 The Purchaser acknowledges that he has thoroughly inspected and examined the property and all its fixtures and fittings.

8.5 Notwithstanding the foregoing, the Purchaser shall be deemed, prior to the sale, to have made himself fully acquainted with the property and with all its defects, whether latent or patent, and to have purchased subject thereto. The Auctioneer shall not be personally liable in consequence of any representation made by him or before the sale nor shall he be personally liable for breach of any warranty given by him, whether in regard to his authority to sell the property in question or in regard to the quantity, quality or condition of the property in question.

**9. BREACH BY PURCHASER**

9.1 If the Purchaser fails for any reason to sign these Conditions of Sale as required in terms hereof, or fails to provide forthwith the security as required in terms hereof or if the Purchaser fails to fulfill any of the terms and conditions hereof, the Seller shall have the right without prejudice to the Seller's other legal rights and/or remedies, including the right to claim damages, either:-

9.1.1 to cancel the sale and have the property put up again for sale by Public Auction or Private Treaty, in which event the Purchaser shall be liable for:

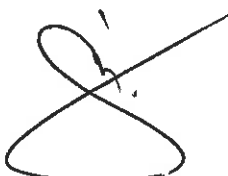
9.1.1.1 any shortfall between the purchase price obtained on such resale and the purchase price under this sale

9.1.1.2 all costs of such resale; and

9.1.1.3 all Government dues and Auctioneer's commission and other charges referred to in clause 4 of these Conditions of Sale in respect of this sale; or

9.1.2 to cancel the sale and to retain all monies paid by the Purchaser; or

9.1.3 to hold the Purchaser bound by his purchase and to claim forthwith the payment of the whole of the purchase price and all other amounts due by him hereunder and the fulfillment of all terms and conditions hereof.



**10. APPROVAL BY MASTER**

If the sale requires the approval of the Master of the High Court, it is subject thereto, and if he declines and fails for any reason to approve the sale or if the Seller is unable to perform any of its obligations hereunder by reason of any refusal by any lawful authority to approve any subdivisions or diagrams or to register the transfer for any lawful reason, then the Seller shall be entitled to cancel the sale and shall thereupon return to the Purchaser the sums paid on account of the purchase price or otherwise, in terms of these Conditions of Sale, upon such refund being made, neither party shall have any claims of any nature whatsoever against the other by reason of such cancellation.

**11. SUSPENSIVE CONDITIONS**

The sale is subject to confirmation by the **JOINT TRUSTEES** to the Auctioneer by no later than 12h00 **21 days from date of auction.**

**12. JURISTIC PERSON**

12.1 If the Purchaser is a Trustee for a company or close corporation to be formed, the following conditions shall apply:-

12.1.1 If the company or close corporation is not registered within 4 weeks from the date of these Conditions of Sale; and/or

12.1.2 If, having been timeously registered, such company or close corporation does not ratify and adopt the purchase within 7 days after its registration; and/or

12.1.3 If such company or close corporation commits a breach of any term or condition of these Conditions of Sale, then in any such event the person who purports to act as Trustee for any such company or close corporation shall be personally liable as Purchaser.

12.2 Notwithstanding the provisions of any other terms contained herein, in the event that the signatory signs these conditions as agent or on behalf of a partnership, company, close corporation, trust, any other juristic person or natural person, then the signatory binds himself to the auctioneer and the Seller as surety and co-principal debtor of the auctioneer and the Seller with the Purchaser in solidium for the due fulfillment of the conditions hereof and for payment of the purchase price and any other amount due as mentioned in these conditions, on demand. The signatory waives and renounces any right to claim on accounting from the auctioneer or the Seller, any benefits which the signatory as surety is entitled to in law, without detracting from the generality of the foregoing, including the benefits of excussion, division, cession of action, de duobus vel pluribus reis debendi, and the signatory acknowledges that he knows and understands the meaning and full force and effect of such benefits.

**13. RIGHTS OF REFUSAL**

All offers after the fall of the hammer, with a higher purchase price and before confirmation by the seller, will be made to the Auctioneer. The highest bidder at the auction will have the right of refusal during the confirmation period. No offers will be considered by the Seller if not presented through the Auctioneer.

A handwritten signature in black ink, consisting of a large, stylized loop with a horizontal line extending to the right.

14. **BEETLE INFESTATION**

The Purchaser shall, at his expense prior to the registration of transfer, cause the accessible portion of the dwelling on the property to be inspected by a government approved entomologist for infestation by notifiable beetle. In the event of infestation by notifiable beetle being found, the Purchaser shall, prior to registration of transfer, cause the infested timbers to be removed and replaced with new pre-treated timbers at his expense, whereupon his liability in respect of beetle infestation shall cease.

15. **ELECTRICAL CERTIFICATE OF COMPLIANCE**

The purchaser undertakes at his expense and prior to transfer to deliver to the transferring attorneys, a certificate of compliance issued by a qualified electrician in terms of the Regulations promulgated under Act 85 of 1993, as amended, in respect of the property.

The purchaser warrants that as at date of occupation, there will have been no additions or alteration to the electrical installations existing on the property subsequent to the issue of such certificates.

An existing electrical compliance certificate issued not more than 6 (six) months prior to the date of the Agreement of Sale shall be valid and effective for the purposes on this clause.


16. **GAS COMPLIANCE CERTIFICATE**

The **SELLER** shall, at its expense, deliver to the **PURCHASER**, on or before the transfer or occupation date, whichever is the earlier, a Certificate of Conformity issued by an authorized person as defined in the Pressure Equipment Regulations 2009 made by the Minister of Labour under section 43 of the Occupational Health and Safety Act 85 of 1993, to the effect that the gas installation on the property conforms to the required health and safety standard. The **SELLER** undertakes not to alter, install or remove the gas installation after issue of the said Certificate. In so far as the authorised person appointed by the **SELLER** to provide such Certificate requires corrective work to be carried out as a precondition to the issue of such Certificate, the **SELLER** will procure such work is carried out at the **SELLER's** cost and expense. Existing Certificates shall not pre-date the date of acceptance of the Agreement of Sale by more than 2 (two) years.

17. **PLUMBING COMPLIANCE**

(Applicable only to property situated within the jurisdiction of the City of Cape Town)

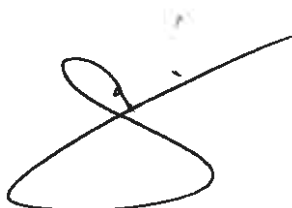
The **SELLER** shall, at its expense, submit a Certificate by an accredited Plumber to the City of Cape Town municipality, certifying that the water supply to the property conforms with the requirements stipulated in section 14 of the City of Cape Town: Water By-Law, 2010., i.e. that (a) the water installation conforms to the national building regulations; (b) there are no defects which can cause water to run to waste; (c) the water meter registers; and (d) there is no discharge of storm water into the sewer system. Such certificate shall be obtained and submitted to the municipality before registration of transfer. The **SELLER** undertakes, in addition, to furnish the **PURCHASER** with a copy of the certificate before registration of transfer.



## 18. FINAL PROVISIONS

The parties agree that this memorandum embodies the entire agreement between them and confirm that:-

- 18.1 none of the terms and conditions of this agreement are capable of being waived, amended, added to or deleted, unless such waiver, amendment, addition or deletion is reduced to writing and is signed by the parties;
- 18.2 no representations or warranties have been made by any of them, save as are expressly contained in this Agreement;
- 18.3 the parties undertake to do all such things, perform all such actions and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement;
- 18.4 the clause headings in this Agreement are for reference purposes only and shall not be used for the purposes of interpreting this Agreement;
- 18.5 no indulgence granted by a party shall constitute a waiver or abandonment of any of that party's rights under this agreement: accordingly, that party shall not be precluded as a consequence of having granted that indulgence, from exercising any rights against the other party which may have arisen in the past or which may arise in the future.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

**19. DESCRIPTION OF PARTIES AND NOTICES**

The conditions herein contained, having been first publicly read, the Property was put up for sale by public auction **at STRAND** and sold to

..... (Purchaser)  
sold by the rise for the amount of

**R**.....  
**(PLUS VALUE ADDED TAX IF APPLICABLE)**

(words) .....

on the ..... 2012

FULL NAMES OF PURCHASER .....

ID NO OF PURCHASER .....

ADDRESS .....

which address the purchaser chooses as domicilium citandi et executandi for the purposes of giving any notice, the service of any legal process and for any other purposes arising out of this agreement:

TELEPHONE (H) ..... (W) ..... (F) .....

(C) ..... (E) .....

SIGNATURE OF PURCHASER .....

WITNESS (FULL NAME) .....

ADDRESS .....

**ACCEPTANCE AND CONFIRMATION**

SIGNATURE OF SELLER .....

WHO CONFIRMS THIS SALE ON ..... DAY OF ..... 2012

ADDRESS OF SELLER .....

TELEPHONE NUMBER OF SELLER .....

AUCTIONEER .....

ADDRESS OF AUCTIONEER .....

TELEPHONE NUMBER OF AUCTIONEER .....



**DEED OF SURETYSHIP**

I / We the undersigned,

\_\_\_\_\_  
(FULL NAMES & ID NUMBER)

do hereby interpose and bind myself / ourselves as surety and co-principal debtor/s in solidum for and on behalf of the foregoing **PURCHASER** to and in favour of the foregoing **SELLER** and the **AUCTIONEER** for all the obligations of the **PURCHASER** under the Rules of Auction and Conditions of Sale foregoing and in particular for all amounts of money that may be due, including damages, from whatsoever cause arising under renunciation of the benefits of divisions and excussion. **I/We do further acknowledge that we are fully aware of all the terms and conditions of the Conditions of Sale and Rules of Auction as is fully set out herein.** I/We do accept domicilium et executandi at the address hereinafter set out.

THUS DONE AND SIGNED at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 2012.

**AS WITNESSES:**

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

2. \_\_\_\_\_ SURETY : \_\_\_\_\_

SELLER: \_\_\_\_\_

MICHAEL JAMES ORGANISATION: \_\_\_\_\_

SURETY ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TEL NO.: \_\_\_\_\_



**EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF**

.....

HELD AT .....ON .....

---

**RESOLVED THAT:**

1. The **CLOSE CORPORATION BUYS** the following **PROPERTY**

.....

From .....

for R .....

2. That ..... in his capacity as Member be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution.

Certified a true copy,

.....

**MEMBER**



**EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF**

.....

HELD AT .....ON .....

---

**RESOLVED THAT:**

1. The **COMPANY BUYS** the following **PROPERTY**

.....


From .....

for R .....

2. That ..... in his capacity as Director be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution.

Certified a true copy,

.....  
**DIRECTOR**



**EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF**

.....

HELD AT .....ON .....

---

**RESOLVED THAT:**

1. The **TRUST BUYS** the following **PROPERTY**

.....

From .....

for R .....

2. That ..... in his capacity as Trustee be and is hereby authorised to execute and sign all documents necessary to give effect to the above resolution.

Certified a true copy,

.....  
**TRUSTEE**

