



**RULES OF AUCTION**

and

**CONDITIONS OF SALE FOR RESIDENTIAL PROPERTY**

PLACE OF AUCTION: ON SITE  
DATE OF AUCTION: FRIDAY 29 MARCH 2019  
TIME OF AUCTION: 11:00

**BKB EIENDOMME (PTY) LIMITED**  
100 Cecilia Street, Cecilia Square, Paarl  
(021) 872 6533

Duly represented by: **WILLIE VAN RENSBURG**  
(the "AUCTIONEER")

duly instructed by

**EXCLUSIVE ACCESS TRADING 209 (PTY) LTD**  
(REGISTRATION NO: 2005/023590/07)  
(the "SELLER")

hereby offers for sale by public auction the following immovable **PROPERTY**:

**TITLE DEED DESCRIPTION: ERF 1372, JACOBSBAAI**

**STREET ADDRESS / KNOWN AS: STRANDLOPER STREET, JACOBSBAAI**

**IN EXTENT: 678 m<sup>2</sup>**

together with all improvements thereon (the "**PROPERTY**") on the following terms and conditions:

1. **AUCTION PROCEDURE**

- 1.1. The sale by auction is subject to a reserve price.
- 1.2. The auctioneer or his agent shall be entitled to bid up to the reserve price on behalf of the owner, but shall not be entitled to make a bid equal to or exceeding the reserve price.
- 1.3. The rules of auction comply with section 45 of the Consumer Protection Act, Act 68 of 2008 ("the Act") and with the Consumer Protection Act Regulations ("the Regulations") that have

been published in terms thereof in Government Gazette No. 34180 on 1 April 2011 (Volume 550) and any amendments thereto from time to time.

- 1.4. Section 45 subsection (2) of the Act provides that: *“When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.”*
- 1.5. The auction will commence at the published time and will not be delayed to allow any specific person or more persons to take part in the auction.
- 1.6. Registration to bid at the auction:
  - 1.6.1. Anyone that intends to bid at the auction must register his or her identity on the bidder’s record **prior to the commencement of the auction** and such registration must meet the requirements of FICA (Financial Intelligence Centre Act, 2001) in respect of the establishment and verification of identity of the person and the person must sign the registration entry.
  - 1.6.2. A person who attends the auction to **bid on behalf of another person (i.e. on behalf of a company)** must produce a letter of authority that expressly authorises him or her to bid on behalf of that person and that person and the person bidding on his or her behalf must meet the requirements set out in clause 1.6.1 above. Where a person is bidding on behalf of a company the letter of authority must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to bid on behalf of the company.
- 1.7. The bidder’s record and the vendor roll will be made available for inspection at the offices of BKB Eiendomme during normal business hours without the charge of a fee. The bidders’ record will also be available for inspection at the auction.
- 1.8. All money due to the seller in terms of the Rules of Auction will be paid into the trust account of the transfer attorney for the benefit of the seller, minus any commission payable to BKB Eiendomme.
- 1.9. The auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of property by the seller.
- 1.10. The total cost of advertising and conducting the auction of the property is **R 13 670.00** which costs are broken down as follows:
  - 1.10.1. Advertising costs;
  - 1.10.2. Brochure and marketing material;
  - 1.10.3. Auction venue costs;
  - 1.10.4. Photography.
- 1.11. The conduct of the auction is subject to the control of the auctioneer who has the sole right to regulate the bidding procedure.
- 1.12. The sale shall be by the rise and the property shall be sold to the highest bidder subject to the the Rules of Auction.

- 1.13. Every prospective bidder must read the Rules of Auction and must not bid unless he or she has done so.
- 1.14. Every bid shall constitute an offer to purchase the property for the amount bid upon the terms and conditions contained herein, which the seller or the auctioneer may accept or reject in their absolute discretion. The seller shall be entitled, in its absolute discretion, to withdraw the property from sale prior to acceptance by the seller.
- 1.15. If no bid equals or exceeds the reserve price, the property may be withdrawn from the auction. The seller shall be entitled to instruct the auctioneer to accept any lower bid.
- 1.16. In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding.
- 1.17. Any error by the auctioneer shall be entitled to be corrected by him.
- 1.18. No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period that is provided for in the Rules of Auction, during which time the offer shall be open for acceptance by the seller or his agent and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.
- 1.19. The highest bidder ("the purchaser") shall sign the Rules of Auction immediately on the fall of the hammer.
- 1.20. This offer will be subject to the Master of the High Court's consent.

## 2. **ACCEPTANCE AND CONFIRMATION**

- 2.1. The **PURCHASER'S** offer shall remain open for acceptance by the **SELLER** or by the **AUCTIONEER** on behalf of the **SELLER**, until **12H00** on the **5th day of APRIL 2019**. The **PURCHASER** and the **AUCTIONEER** acknowledge and agree that this provision are inserted and intended for the benefit of the **SELLER**.
- 2.2. The **PURCHASER'S** offer shall be deemed to have been accepted only when the **SELLER** or the **AUCTIONEER**, whichever may be applicable, has signed these Rules of Auction on behalf of the **SELLER** in the space provided at the end thereof and the **SELLER** shall not be required to notify the **PURCHASER** of the acceptance of its offer prior to expiry of the confirmation period.
- 2.3. Should the **SELLER** reject the **PURCHASER's** offer, the **AUCTIONEER** will repay to the **PURCHASER** any deposit and commission paid to it in terms of this agreement.
- 2.4. The **SELLER** shall notify the **PURCHASER** in writing of either its acceptance or its rejection of the **PURCHASER's** offer immediately upon receipt of written request therefore from the **PURCHASER**, which request shall not be made before the last day of the Confirmation Period.

- 2.5. In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.

### 3. **PURCHASE PRICE**

The Purchase Price of the **PROPERTY**, Value-Added Tax ("VAT") included, shall be paid as follows:

- 3.1 A deposit of **5% (five per cent)** of the Purchase Price to the **AUCTIONEER** by the **PURCHASER** immediately on the fall of the hammer, which amount the **PURCHASER** hereby authorises and instructs the **AUCTIONEER** to pay over to the **SELLER's** Attorneys against registration of transfer of the **PROPERTY** into the **PURCHASER's** name in terms hereof.
- 3.2 The **PURCHASER's** signature hereto shall constitute the **PURCHASER's** written consent to authorise the **AUCTIONEER** to invest all amounts paid on account of the Purchase Price in an interest bearing account with a bank of the **AUCTIONEER's** choice. The interest shall accrue to the Estate Agency Affairs Fidelity Fund in terms of section 32 (2) (c) of the Estate Agency Affairs Act unless the parties agree otherwise in writing.
- 3.3 The balance of the Purchase Price shall be paid in cash and secured, to the satisfaction of the **SELLER's** Attorneys, by a written guarantee from a registered financial institution, payable free of exchange, against registration of transfer of the **PROPERTY** into the **PURCHASER's** name. The **PURCHASER** may elect to secure the balance of the Purchase Price by payment in cash to the **SELLER's** Attorneys, who shall hold same in trust, pending registration of transfer into the name of the **PURCHASER**. The aforesaid guarantee shall be presented and/or cash shall be payable by the **PURCHASER** to the **SELLER's** Attorneys within 30 (thirty) days from receipt of a written request to that effect from the **SELLER's** attorneys.
- 3.4 All monies due by the **PURCHASER** in terms of this Agreement, and unpaid on due date, shall bear interest at the rate of 2% (two per centum) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive).
- 3.5 Any payment made by the **PURCHASER** in terms of this Agreement shall be allocated first to the payment of **AUCTIONEER's** Commission when due and subject to the provisions contained in clause 5 hereof, then interest and thereafter to the payment of any other monies due in terms hereof.

### 4. **VALUE-ADDED TAX**

- 4.1 The Purchase Price is inclusive of VAT.

### 5. **AUCTIONEER'S COMMISSION**

- 5.1 The **PURCHASER** shall be liable for and pay, in addition to the amounts payable in terms of clauses 3.1 and 3.3, **AUCTIONEER's** commission of **7% (seven per cent)** of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon the signing of acceptance of the **PURCHASER's** offer in terms hereof by the **SELLER**.

- 5.2 The **PURCHASER** shall pay the full amount of **AUCTIONEER**'s commission into the trust account of the **AUCTIONEER** immediately on the fall of the hammer, but this amount shall remain the property of the **PURCHASER** and shall be retained in trust by the **AUCTIONEER** for the benefit of the **PURCHASER** pending acceptance by the **SELLER** of the **PURCHASER**'s offer or until the **SELLER** either rejects the offer or until expiry of the confirmation period.
- 5.3 If commission is not paid by the **PURCHASER** to the **AUCTIONEER** in terms hereof for any reason whatsoever, the **SELLER** hereby instructs his attorneys to pay the commission or balance thereof, whichever may be applicable, to the **AUCTIONEER** as a first draw from the proceeds of this sale, against registration of transfer of the **PROPERTY** into the name of the **PURCHASER**.
- 5.4 The **PURCHASER** shall be liable to pay to the **AUCTIONEER**, upon demand, a fee equal to any bank charges that the **AUCTIONEER** may become liable for upon payment of the **AUCTIONEER**'s commission into the **AUCTIONEER**'s chosen bank account.
- 5.5 The provisions of this clause 5 are inserted and intended for the benefit of the **AUCTIONEER** who by his signature hereto, accepts such benefit.

## 6 **RATES AND TAXES**

- 6.1 The **SELLER** shall be liable for all rates and taxes and other Municipal charges levied on the **PROPERTY** for the period prior to registration of transfer and the **PURCHASER** shall be liable for all rates and taxes and other Municipal charges levied thereafter.
- 6.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates and taxes and services paid in advance by the **SELLER** for the period after registration of transfer, which refund shall be paid upon registration of transfer.

## 7 **SELLER RESIDENCY AND WITHHOLDING TAX**

It is recorded that the **SELLER**, **AUCTIONEER** and **PURCHASER** are aware of an obligation on the part of the **PURCHASER** to withhold part of the Purchase Price from the **SELLER**, if he is a non-resident and pay such withheld portion to the South African Revenue Services (hereinafter referred to as "SARS") in terms of Section 35A of the Income Tax Act, (hereinafter referred to as the "Act") and in that regard:

- 7.1 The **SELLER** warrants that **they are RESIDENTS** of the Republic of South Africa;
- 7.2 The **SELLER** hereby indemnifies and holds harmless both the **AUCTIONEER** and the **SELLER'S** Attorneys attending to the transfer of the **PROPERTY** hereby sold, against any claim howsoever arising by virtue of them having acted in terms of the Act, on information supplied by the **SELLER**, or from any other source and the **SELLER** further waives any right of recourse he may have against the said **SELLER'S** Attorneys and/or **AUCTIONEER**, in respect of any action or omission by them in terms of the Act, on information supplied to them by the **SELLER**, or any other source;

- 7.3 In the event that the **SELLER** has warranted that he is a resident and information leads the **AUCTIONEER** or the **SELLER'S** Attorneys to suspect that the **SELLER** is a non-resident, the **AUCTIONEER** or **SELLER'S** Attorneys may by written notice call upon the **SELLER** to obtain a directive from SARS within 30 (thirty) days as to his resident status, failing which the provision of clause 8.4.1 below shall apply.
- 7.4 In the event that SARS, furnishes a directive, wherein the **SELLER** is regarded as a non-resident for income tax purposes:
- 7.4.1 The **PURCHASER** hereby irrevocably instructs the **SELLER's** Attorneys upon registration of transfer to withhold the prescribed percentage of the Purchase Price and to pay such monies to SARS within 14 (fourteen) days of registration of transfer.
- 7.4.2 Notwithstanding the provision of 8.4.1 above, the **SELLER** shall be entitled to obtain a directive from the SARS for the non-withholding or a reduced withholding, of tax, which directive shall be delivered to the **SELLER's** Attorneys within 21 (twenty one) days of the date of acceptance of this agreement, failing which the **SELLER** shall be bound by such withholding percentage as determined by the Income Tax Act.

## 8 TRANSFER AND COSTS OF TRANSFER

- 8.1 Transfer shall not be passed to the **PURCHASER**, notwithstanding anything to the contrary herein contained, until such time as the total Purchase Price and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment thereof has been secured as herein provided.
- 8.2 Transfer of the **PROPERTY** shall be passed, by the **SELLER's** Attorneys, as soon as possible after date of acceptance, providing the **PURCHASER** has complied with the provisions of the aforementioned sub-clause.
- 8.3 The **PURCHASER** hereby specifically authorises and agrees to the **SELLER's** Attorneys preparing and completing from information provided by the **PURCHASER** herein, a transfer duty form required by SARS for the clearance of the **PROPERTY** for transfer; and specifically authorises and agrees to the **SELLER's** Attorneys on behalf of the **PURCHASER** signing and submitting such form to SARS for which preparation, completion, signature and submission this Agreement shall be sufficient authority.
- 8.4 Transfer of the **PROPERTY** shall be effected by the **SELLER's** Attorneys and all expenses of and incidental to the preparation and registration of transfer, the conveyancing fees, disbursements and VAT (if applicable), in respect of such transfer, shall be borne by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond to finance the Purchase Price herein, including any disbursement levied by the financial institution approving the finance.
- 8.5 In the event of the **PURCHASER** failing to comply within 7 (seven) days of being requested by the **SELLER's** Attorneys, to furnish them with signed documents or documentation of whatever nature necessary for effecting transfer, or where applicable to ensure that the mortgage bond documentation or ancillary documentation is satisfactorily completed or in the

event of the registration of transfer being delayed as a consequence of a default on part of the **PURCHASER** (and the widest possible interpretation shall be used in respect of the terms hereof), then *ipso facto* on the 8<sup>th</sup> (eighth) day after such request, the **PURCHASER** shall pay to the **SELLER** penalty interest, at the rate of 2% (two per centum) above prime, per month calculated on the balance of the purchase price from the said 8<sup>th</sup> (eighth) day until the date of transfer, (both days inclusive).

8.6 The **PURCHASER** acknowledges and accordingly undertakes to comply with all the FICA requirements as set out in **Annexure "1"** annexed hereto within 7 (seven) days from date of acceptance of this Agreement by the **SELLER** and to supply the **SELLER's** Attorneys all information and documentation required by the **SELLER's** Attorneys to enable the **SELLER's** Attorneys to fulfil their obligations in terms of FICA.

## 9 **POSSESSION AND RISK**

9.1 Possession of the **PROPERTY** shall only be given by the **SELLER** and taken by the **PURCHASER** on registration of transfer, provided that clauses 3.1 and 3.3 above have been complied with, from which date all risks and benefits of ownership in respect of the **PROPERTY** shall pass to the **PURCHASER**.

9.2 Should the **PURCHASER** take and the **SELLER** allow possession of the **PROPERTY** prior to registration of transfer, the **PURCHASER** shall at its own expense insure the **PROPERTY** and improvements thereon for the full replacement value thereof from date of possession, against risk of loss or damage by any cause with an insurer acceptable to the **SELLER**. The **SELLER's** interest in the **PROPERTY** shall be endorsed against such policy for such period.

9.3 Upon the **PURCHASER** taking possession of the **PROPERTY** and pending transfer, the following further provisions shall apply –

9.3.1 the **PURCHASER** shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the **PROPERTY** or his rights of occupation thereof, except with the written consent of the **SELLER**, which consent shall not be unreasonably withheld;

9.3.2 the **PURCHASER** shall be responsible for and pay all costs of electricity and water consumed in the **PROPERTY**.

## 10 **REPAIRS AND IMPROVEMENTS**

10.1 Prior to registration of transfer, the **PURCHASER** shall not be entitled to effect any alterations to the **PROPERTY** without the prior written consent of the **SELLER**.

10.2 The **SELLER** shall not be obliged to compensate the **PURCHASER** for any authorised alteration effected in the event of the sale being cancelled.

10.3 The **PURCHASER** shall be liable for any damages suffered by the **SELLER** as a result of any alterations effected by the **PURCHASER**, not authorised by the **SELLER**.

## 11 VOETSTOOTS, EXTENT AND REPRESENTATIONS

- 11.1 The **PROPERTY** is sold “*voetstoots*” and subject to the terms and conditions and servitudes mentioned or referred to in the current and/or prior Title Deeds and to the conditions of establishment of the Township in which it is situated and to the zoning applied to it under any Town Planning Scheme. The **SELLER** shall not profit by any excess nor shall it be answerable for any deficiency in the extent thereof. Neither the **SELLER** nor the **AUCTIONEER** shall be responsible for pointing out to the **PURCHASER** any surveyor’s pegs or beacons in respect of the **PROPERTY** **unless requested do so by the PURCHASER or unless the SELLER and/or AUCTIONEER had knowledge of any material deficiencies in the extent.**
- 11.2 The **PURCHASER** acknowledges that he has not been induced into entering into this Agreement by any express or implied information, statement, advertisement or representation made or given any warranties in respect of the **PROPERTY** or anything relating thereto, by the **AUCTIONEER** or any other person, or by or on behalf of the **SELLER** and that is not contained in this Agreement.
- 11.3 The **PURCHASER** acknowledges that he has fully acquainted himself with the **PROPERTY** that he has purchased alternatively that he/she has elected to purchase the **PROPERTY** without fully acquainting him/herself therewith.
- 11.4 Annexure 2 hereto sets out information pertaining to the **PROPERTY** which is specifically brought to the attention of the **PURCHASER**.

## 12 BREACH

- 12.1 If one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Aggrieved Party shall be entitled to give the Defaulting Party 7 (seven) days notice in writing to remedy such breach or failure (unless such breach or failure occurs after the transfer documents have been lodged in the Deeds Office for registration, in which case the 7 (seven) day period may, at the election of the Aggrieved Party be reduced to 48 (forty eight) hours). If the defaulting party fails to comply with such notice then the innocent party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the it may have in law, including the right to claim damages:

12.1.1 to cancel this Agreement and upon cancellation: -

12.1.1.1 if the defaulting party is the **PURCHASER** the **SELLER** shall be entitled to retain all amounts paid by the **PURCHASER**, excluding **AUCTIONEER**’s commission, as *rouwkoop* or as a genuine pre-estimate of damage suffered by the **SELLER**, and furthermore the **PURCHASER** shall not be entitled to compensation from the **SELLER** for any improvements of whatsoever nature it may have caused on the **PROPERTY**, whether with or without the **SELLER**’s consent. The parties specifically agree that the **AUCTIONEER** shall be entitled, but not obliged, to immediately resubmit the **PROPERTY** for auction; and

12.1.1.2 if the defaulting party is the **SELLER** the **PURCHASER** shall be entitled to a full refund of all money paid in terms hereof to the **SELLER** and to the



**AUCTIONEER** and to claim any other damages from the **SELLER** that it may have suffered as a result of the **SELLER's** default;

**(OR)**

- 12.1.2 to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.
- 12.2 Upon cancellation of this Agreement for whatever reason, the **PURCHASER** hereby undertakes to forthwith vacate the **PROPERTY** and to procure that the **PROPERTY** shall be vacated by any persons who occupy the **PROPERTY** through the **PURCHASER's** title or by his permission. Occupation shall be re-delivered in the same good condition as at the date of possession.
- 12.3 Occupancy of the **PROPERTY** by the **PURCHASER** or persons on the authority of the **PURCHASER** shall not create a tenancy either in terms of any statutory provision or at common law.
- 12.4 Notwithstanding what is contained herein, should the **PURCHASER** pay any amount as required under these Rules of Auction, the parties record and agree that the **AUCTIONEER** shall be entitled to first deduct from any such money paid under these Rules of Auction, **the value of its commission and any direct costs** incurred and recover any shortfall thereon from the **PURCHASER**.
- 12.5 It is recorded further that the deduction by the **AUCTIONEER** of commission due to it under the sale does not absolve the **PURCHASER** from any and all other obligations arising from these Rules of Auction.

13 **LEGAL COSTS**

The Defaulting Party shall be liable for all legal costs incurred by the Aggrieved Party, the **AUCTIONEER** and his Agent / Attorneys in enforcing the terms of this agreement, on an Attorney and own client scale, including collection commission.

14 **ADDRESS / DOMICILIUM**

- 14.1 The **PURCHASER** and the **SELLER** hereby choose their respective addresses / *domicilium citandi et executandi* for all purposes in respect of these Rules of Auction, including all notices and Court process to be delivered in terms hereof, the address recorded below his signature hereunder. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth day after posting; any notice delivered by hand shall be deemed to have been received on the day of delivery; any notice sent by telefax or electronically transmitted by email, shall be deemed to have been received on the first business day after date of despatch thereof.
- 14.2 Notwithstanding anything to the contrary herein contained, any written notice or communication actually received by a Party to this Agreement shall be deemed to be adequate written notice or communication to him notwithstanding that it was not sent or delivered at the chosen address / *domicilium citandi et executandi* or transmitted to such Party's telefax number and/or email address as stipulated herein.

14.3 The terms of "writing" shall include communications by email or facsimile.

15 **JOINT AND SEVERAL LIABILITY**

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

16 **SECTION 112 OF THE COMPANIES ACT**

16.1 It is recorded that the **SELLER** and the **PURCHASER** are aware of the provisions of Section 112 of the Companies Act 71 of 2008 (as amended) ("Section 112"), namely that if the **SELLER** is a company and if the **PROPERTY** constitutes either all or the greater part of the assets or the undertaking of the **SELLER**, then the directors of the **SELLER** shall not have the power, save by a special resolution of the shareholders of the **SELLER**, to dispose of the **PROPERTY**.

16.2 Accordingly, the **SELLER** warrants that the provisions of Section 112 are not applicable to the sale of the **PROPERTY**.

16.3 If Section 112 is applicable to the sale of the **PROPERTY** and if the directors of the **SELLER** have not already been granted the necessary authority in terms of Section 112 to dispose of the **PROPERTY**, then within 45 (forty five) days of the acceptance date the **SELLER** shall procure that its shareholders pass a special resolution ratifying the sale of the **PROPERTY**.

17 **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:

17.1 the aforesaid notice shall be handed to the **SELLER** by not later than 24h00 on the same day as the acceptance date by the **SELLER**;

17.2 the notice shall set out the name and address of the nominee so nominated as **PURCHASER**;

17.3 the notice shall be accompanied by the nominee's written acknowledgement:

17.3.1 that it is fully aware of all the terms and conditions of these Rules of Auction as if fully set out in such written acknowledgement; and

17.3.2 that it is bound by the provisions of these Rules of Auction as the **PURCHASER**;

17.4 should the **PURCHASER** nominate a nominee in terms of this clause, then:

17.4.1 all reference to the **PURCHASER** in this agreement shall be deemed to be a reference to its nominee; and

17.4.2 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 *excussio*.

18 **COMPANY TO BE FORMED**

18.1 In the event of the PURCHASER signing this agreement in his capacity as agent for a company to be formed and the PURCHASER fails within 20 (twenty) days from date of acceptance and confirmation of this agreement to register such company having as one of its objects the ratification and adoption of this agreement, or such company fails to adopt or ratify this agreement within 15 (fifteen) days after date of its incorporation, then in such an event the PURCHASER shall be deemed as from the date thereof to have entered into this agreement in his personal capacity and to have acquired all the rights and obligations of the PURCHASER under this agreement.

18.2 In the event of such company being registered and duly adopting or ratifying this agreement, or the nomination effected, then the PURCHASER by his signature hereunder, shall be deemed to bind himself to the SELLER as surety and co-principal debtor *in solidum* with such company for the due performance by it as PURCHASER of the terms, conditions and obligations arising out of this agreement.

19 **COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS**

19.1 Should the PURCHASER be a company, close corporation, association or trust, the person signing this agreement on behalf of such PURCHASER, by his signature hereto interposes and binds himself as surety for and co-principal debtor with the PURCHASER for the due and proper discharge of all its obligations arising from this agreement.

19.2 If any individual purport to be representing another person including a company, close corporation, association or trust, and signs these Rules of Auction on that basis, that individual shall by signing this agreement on behalf of such other person be held personally liable for the due and proper discharge of all the PURCHASER'S obligations in terms of these Rules of Auction and that individual shall be deemed to be the PURCHASER where such other person does not exist at the time of signing these Rules of Auction by that individual. This provision does not apply to instances contemplated in clause 20.

20 **DISPUTE RESOLUTION: MEDIATION THEN ARBITRATION**

20.1 Should any dispute, disagreement or claim arise between the parties, which include the AUCTIONEER, ("the dispute") concerning this agreement then the parties shall, notwithstanding anything to the contrary contained herein, have the right to:

20.1.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa ("AFSA"), upon such terms as agreed between the parties and the secretariat of AFSA; and

- 20.1.2 failing agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the parties shall refer the dispute to arbitration as provided below.
- 20.2 Failing agreement as referred to above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of the AFSA by an Arbitrator or Arbitrators appointed by the AFSA.
- 20.3 Unless otherwise agreed in writing by all the parties, any such mediation or arbitration shall be held in Cape Town, South Africa.
- 20.4 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court at the instance of any of the parties to the dispute. The parties hereby exclude all rights of appeal, which might otherwise be conferred upon them by law.
- 20.5 The parties agree to keep the arbitration (including the subject matter of the arbitration and the evidence heard during the arbitration) confidential and not to disclose it to anyone except for purposes of obtaining an order of court as contemplated herein.
- 20.6 The provisions herein constitute an irrevocable consent by each party to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions. Such provisions are further severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

## 21 **MAGISTRATES' COURT JURISDICTION**

The Parties hereto consent to the jurisdiction of the Magistrates' Court in terms of Section 45 read with Section 28 of the Magistrates' Court Act of 1944 as amended. Notwithstanding the aforementioned, this shall not preclude either Party from approaching the High Court of South Africa for any relief sought. This Agreement shall further be governed in terms of the law of the Republic of South Africa.

## 22 **GENERAL CLAUSES**

- 22.1 These Rules of Auction constitute the whole agreement between the Parties as to the subject matter hereof and no agreement, representation or warranty between the Parties other than those set out herein are binding on the Parties.
- 22.2 No extension of time, waiver, indulgence or suspension of any of the provisions of this agreement, which any Party hereto may have given, shall be binding unless recorded in a written document signed by all Parties.
- 22.3 No variation or alteration or cancellation of these Rules of Auction or any of the terms hereof, shall be of any force or effect, unless in writing and signed by the Parties hereto.
- 22.4 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and words importing persons shall include partnerships and bodies corporate, and *vice versa*.
- 22.5 The Parties signing this document confirm that they have read and understood all of the terms and conditions contained herein and agree that they are bound hereto.

22.6 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

**23 THE RULES OF THE HOME OWNERS ASSOCIATION**

23.1 The **PURCHASER** acknowledges that the **PROPERTY** is situated in a development which is subject to the rules and regulations of the Tooth Rock Home Owners Association.

23.2 The **PURCHASER** confirms and acknowledges that he has read and familiarised himself with the architectural guidelines as well as the constitution of the Tooth Rock Home Owners Association and that he will obey the rules of the said association.

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

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

And sold by the rise for the amount of

R \_\_\_\_\_

(words) \_\_\_\_\_

\_\_\_\_\_  
(VALUE ADDED TAX INCLUDED)

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

\_\_\_\_\_  
(hereinafter referred to as the "**PURCHASER**")

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

ENTITY ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE DETAILS: (landline) \_\_\_\_\_

(Fax) \_\_\_\_\_

(Email) \_\_\_\_\_

(Cell) \_\_\_\_\_

TO:

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

(hereinafter referred to as the "PURCHASER")

IDENTITY NO.: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

TELEPHONE DETAILS: (home) \_\_\_\_\_

(Work) \_\_\_\_\_

(Fax) \_\_\_\_\_

(Email) \_\_\_\_\_

(Cell) \_\_\_\_\_

MARITAL STATUS \_\_\_\_\_ (In/Out of Community of PROPERTY)

SPOUSE'S NAME \_\_\_\_\_

SPOUSE'S ID NO \_\_\_\_\_

*I, THE PURCHASER, HEREBY CONFIRM THAT THE FULL EXTENT OF MY OBLIGATIONS AND RIGHTS HEREIN HAVE BEEN EXPLAINED TO ME AND THAT I HAVE BEEN GIVEN AN OPPORTUNITY TO MAKE THE NECESSARY ENQUIRIES IN RESPECT OF THE PROPERTY AND ALL MATERIAL ASPECTS RELATED TO THIS PROPERTY AND SALE AND THAT I UNDERSTAND THE EFFECT OF THIS AGREEMENT.*

SIGNED BY THE PURCHASER AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_

AS WITNESS:

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

\_\_\_\_\_

**PURCHASER** (and where applicable, the signatory binding himself as surety and co-principal debtor *in solidum*)

AS WITNESS:

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

\_\_\_\_\_

**BKB EIENDOMME (PTY) LTD** duly authorised (BKB Eiendomme hereby accepts all the rights conferred upon it in terms of this Agreement)

**ACCEPTANCE AND CONFIRMATION**

**SIGNED BY THE SELLER AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_**

AS WITNESSES:

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

\_\_\_\_\_  
**SELLER** (and where applicable the  
**SELLER** is duly authorised)

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

**SELLER'S ADDRESS:**

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

**I hereby certify that the auction rules to the best of my knowledge meet the requirements of Regulation 21**

\_\_\_\_\_  
**Auctioneer**

**AUCTIONEER FULL NAME/S:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CONTACT NUMBER:** \_\_\_\_\_

**DEED OF SURETYSHIP**

I / We the undersigned,

ID NUMBER: \_\_\_\_\_

do hereby interpose and bind myself / ourselves as surety and co-principal debtor/s in solidum for and on behalf of the **PURCHASER** to and in favour of the **SELLER** and the **AUCTIONEER** for all the obligations of the **PURCHASER** under the Rules of Auction 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 division and excussion. **I/We do further acknowledge that I/we are fully aware of all the terms and conditions of the Rules of Auction as if 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 \_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_  
\_\_\_\_\_ **SURETY**

2. \_\_\_\_\_  
\_\_\_\_\_ **SELLER**

\_\_\_\_\_  
**BKB EIENDOMME (PTY) LTD** duly authorised

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**

.....  
**MEMBER**

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

.....

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

---

**RESOLVED THAT:**

2. 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**

.....  
**DIRECTOR**

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

.....

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

---

**RESOLVED THAT:**

3. 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**

.....  
**TRUSTEE**

(ANNEXURE 1)

FICA REQUIREMENTS: Natural Persons

- [1] South African identity document (foreigners: passport);
  - [2] Utility bill addressed to your residential address less than 3 months (accounts for mobile phones are not acceptable);
  - [3] South African Income Tax reference number.
- 
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- [4] (Confirmation marital status, i.e. unmarried or married.)
- 
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If Married

- [5] Marriage certificate.
    - If IN community of property (no antenuptial contract)
  - [6] S.A. identity document (foreigner: passport) of your SPOUSE.
    - If OUT of community of property (by Antenuptial Contract ("ANC"))
  - [7] Page 1 (and page 2 if necessary) reflecting the registered number and names of both parties.
    - If your Marriage is governed by the Laws of another country/state
  - [8] S.A. identity document (foreigner: passport) of your SPOUSE;
  - [9] Name of the country/state governing your marriage, i.e. the country where the husband was living at the time of the marriage with the intention of staying there permanently.
- 
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FICA REQUIREMENTS: Entities

- Person acting on behalf of the Entity must comply with paragraphs 1 to 4 above.
- All directors / members / trustees must also comply with paragraphs 1 to 4 above

PLUS THE FOLLOWING:

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Companies:

- [1] CM1.
  - [2] CM22.
- 
- 

Close Corporations:

- [1] CK1;
  - [2] and, if applicable, CK2.
- 
- 

Trusts:

- [1] Letters of Authority / Master's Certificate;
  - [2] Trust Deed and all amendments thereto.
  - [3] **Resolution to approve the purchase (and loan application, if applicable) taken before the Agreement of Sale was signed.** (The only exception is where it is a cash transaction and all the Trustees have signed the Agreement of Sale.)
- 
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- Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course.
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- 

- FICA requirements for Other Entities, if applicable, will be supplied to such Purchasers.

(ANNEXURE 2)

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