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PO Box 1637, George, 6530
 Saffier Crescent
 Tamsui Industria
 George, 6530

CONDITIONS OF SALE

in terms of which

VAN RENSBURGS AUCTIONS (PTY) LTD

of 7 Saffier Crescent, Tamsui Industria, GEORGE

acting on behalf of

1. PETER MICHAELIDES, identity number 7410045131087 in his capacity as Executor in the Estate of the Late DANIEL ANDREW SMART, identity number 5207085650089 acting under Letters of Executorship Number 023623/2022 issued by the Master of the High Court Cape Town on 12 November 2022 at Cape Town on 12/11/2022

and

2. CHERYL LAURA SMART, identity number 501201 0008 084, Widow, in her capacity as surviving spouse of the Late DANIEL ANDREW SMART to whom she was married in community of property

[hereinafter referred to as the SELLERS]

intends to offer by PUBLIC AUCTION

THE REMAINDER OF PORTION 39 (A PORTION OF PORTION 23) OF THE FARM EASTBROOK NUMBER 83
 IN THE MUNICIPALITY AND DIVISION OF KNYSNA
 PROVINCE OF THE WESTERN

IN EXTENT 6,6012 (SIX COMMA SIX ZERO ONE TWO) HECTARES

HELD BY DEED OF TRANSFER NUMBER T26465/2019

[hereinafter referred to as the PROPERTY]

SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. SALE

- 1.1 The sale shall be by the rise.
- 1.2 The SELLERS reserve the right of declining to sell to any bidder.

2. PURCHASE PRICE

The purchase price shall be paid in the following manner:

- 2.1 On signature hereof, a cash deposit of 10% (TEN PERCENT) of the PURCHASE PRICE to the Auctioneer immediately on the fall of the hammer;
- 2.2 The balance of the PURCHASE PRICE shall be paid upon registration of the transfer of the PROPERTY in the name of the PURCHASER, and pending registration of the transfer, shall be secured by means of a suitable guarantee issued by a registered financial institution acceptable to the SELLERS. The said guarantee shall be delivered to the Conveyancer, Foley-Nel Attorneys & Conveyancers within 30 (thirty) days from DATE OF ACCEPTANCE, which guarantee shall be payable free of exchange.
- 2.3 The PURCHASER hereby instructs and authorises the Conveyancer, Foley-Nel Attorneys & Conveyancers, to invest, in terms of Section 86(4) of the Legal Practice 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, interest so accrued for the benefit of the PURCHASER.
The purchaser acknowledges that he/she/it is aware that the Conveyancer will only be able to give effect to this mandate, once the PURCHASER, has furnished the Conveyancer with the documents, as requested by the Conveyancer, in terms of the Financial Intelligence Act, 2001.

3. SURETY

The PURCHASER shall be obliged, if required, to produce a surety or sureties to the satisfaction of the SELLERS and the said surety or sureties shall bind themselves with the PURCHASER in solidum for the due and timeous performance by the PURCHASER of all his/her/its obligations in terms of this Agreement, under the express renunciation of the *beneficia ordinis sue excussionis et divisionis*, which means that the full Purchase Price can be claimed directly from the Surety without first exhausting the legal remedies against the PURCHASER.

4. RESALE

Without prejudice to the SELLERS rights to enforce compliance of their obligations by the PURCHASER or the highest bidder should the highest bidder neglect or refuse to sign the Conditions of Sale on the request of the auctioneer, or fail to produce one or more sureties to the satisfaction of the SELLERS, or to deposit the purchase money in the manner hereinbefore mentioned, the property may be put up for sale again at the request of the SELLERS at the expense and risk of the defaulter and the deficiency, if any, which may arise on such second sale, together with all expenses attending the same, shall be made good by such defaulter, but any increase in price shall belong to the SELLERS.

5. TRANSFER

- 5.1 Upon payment of the purchase price, interest and costs in the manner hereinbefore mentioned, the transfer of this property shall be effected according to the Law and usage of this Province, the State, however, reserving its rights.
- 5.2 All conveyancing work in connection with the transfer of this property shall be effected by the SELLERS' attorneys, FOLEY-NEL ATTORNEYS & CONVEYANCERS, P.O. Box 407, Knysna, 6570, 3 Trotter Street Knysna, 6571
Tele: 044 382 3994
Fax: 086 731 7620
E-Mail: colleen@foleynel.co.za

6. OBLIGATIONS OF THE PARTIES

- 6.1 The **PURCHASER** shall be bound, on request, to pay:
- 6.1.1 All costs in respect of the registration of the transfer of the PROPERTY, shall be paid immediately upon demand by the Conveyancer, and the conveyancing shall commence after such costs have been paid by the PURCHASER.
- 6.1.2 Auctioneer's Commission calculated at **6% (SIX PER CENTUM)** of the Purchase price plus VAT thereon, will be due and payable by the PURCHASER to Van Rensburgs Auctions immediately on the fall of the hammer.
- 6.1.3 A certificate of compliance with Government Regulations No 2920/1992 to the effect that the electrical installation on the PROPERTY complies with SABS0142, or is reasonably safe;
- 6.2 The **SELLERS** shall be bound, on request, to pay
- 6.2.1 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 reckoned until date of registration of the Transfer.
- 6.2.2 In the event of there being a gas installation on the PROPERTY, such as built-in gas fires, gas stoves and hot water systems or the like, a Certificate of Conformity ("COC") in respect of such an installation as required by Government Notice R734 of 15 July 2009, Government Gazette 32395, framed under Act 85 of 1993.
- 6.2.3 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 or the PURCHASER.

7. **RECTIFICATION**

Should the Auctioneer commit any mistake at the sale, such mistake shall not be binding upon the SELLERS or the PURCHASER but shall be rectified immediately.

8. **VOETSTOOTS**

8.1 The property is sold 'voetstoots' and as described in the existing Title Deed(s) without any warranties, either expressed or implied, irrespective of anything contained in any advertisement or other notice of the sale, and is subject to all conditions, servitudes and restrictions contained or referred to therein. Neither Van Rensburg Auctioneers, nor the SELLERS give any guarantee as to the extent, patent or latent defects, quality or legality of improvements or the legality of any activities practised thereon and will not be held liable for any damages arising from same.

8.2 The PURCHASER admits having inspected the PROPERTY to his/her/its satisfaction and that no guarantees or warranties of any nature were made by the SELLERS or his Agent regarding the condition or quality of the PROPERTY or any of the improvements thereon.

8.3 The PURCHASER shall have no claim whatsoever against the SELLERS for any deficiency in extent, which may be revealed or discovered upon any resurveying thereof, nor shall the SELLERS benefit from any possible excess. Neither Van Rensburg Auctioneers nor the SELLERS shall be obligated to point out any beacons to the PURCHASER.

9. **POSSESSION**

9.1 Possession and vacant occupation of the PROPERTY shall be given on **REGISTRATION OF TRANSFER** by the SELLERS to the PURCHASER in the same condition as the PROPERTY is on date of the auction. Immediately upon possession, the property shall be and remain at the sole risk, loss or profit of the PURCHASER as security for which the PURCHASER and surety or sureties bind their persons and property according to Law. The PURCHASER shall insure the property against such risks as the SELLER may require and cede the policy to the SELLERS, should POSSESSION occur before REGISTRATION OF TRANSFER.

9.2 A dwelling on the PROPERTY is leased on a month-to-month basis; this Agreement is entered into and subject to the rights of the tenant under the existing Lease Agreement, statutory provisions or the Common Law.

10. BREACH

If one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, the Aggrieved Party shall be entitled to give the Defaulting Party 7 (seven) days' notice 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 PURCHASER is the Defaulting Party and fails to comply with such notice, the SELLER shall be entitled at any time, without prejudice to any other powers which he may have by Law or by virtue of this agreement to:

- 10.1 obtain payment of the full amount of the purchase price outstanding at the date of such breach of contract, together with interest thereon as aforesaid, notwithstanding anything to the contrary herein contained; or
- 10.2 cancel this Agreement by giving the PURCHASER notice of such cancellation and in that event the PURCHASER shall be obliged, if the PURCHASER has already obtained possession of the property, to vacate the property immediately and to place the SELLERS in possession thereof; and
 - 10.2.1 the PURCHASER shall forfeit the amount/s which have already been paid by him to the SELLERS or their appointed CONVEYANCER;
 - 10.2.2 the PURCHASER shall be obliged to pay any amount/s in arrear immediately to the SELLERS or their appointed CONVEYANCER;
 - 10.2.3 the PURCHASER shall not be entitled to any compensation whatsoever in respect of any improvements effected to the property or any buildings or other erections thereon, and the PURCHASER hereby waives in favour of the SELLERS any right of retention to which he might be entitled in respect thereof;

provided that the SELLERS may waive the benefits of the terms of paragraphs 10.2.1 and 10.2.2 above and shall be entitled to claim damages only, in which event the SELLERS shall be entitled to retain any amount/s already paid, and to set them off against the SELLERS' damages in due course.

11. OFFERS AND ACCEPTANCE

- 11.1 The highest bidder is held bound by his bid until 12 noon on 6 FEBRUARY 2025.
- 11.2 Higher offers may be submitted to the Auctioneer until 12 noon on 30 JANUARY 2025 and such Offeror will be bound by his bid until 12 noon on 6 FEBRUARY 2025.

- 11.3 The highest bidder may not cede, transfer or make over in whatsoever manner his right to match any higher offers received after the auction.
- 11.4 It is hereby placed on record that the SELLERS may, at their absolute discretion, accept the offer at any stage after the auction, even before 12 noon on 6 FEBRUARY 2025.
- 11.5 Should the highest bid aforesaid not be accepted by the SELLERS the SELLERS shall be obliged to repay to the PURCHASER all amounts which he has paid by virtue of this Deed.
- 11.6 All offers after the fall of the hammer with a higher purchase price and before confirmation by the SELLERS, will be submitted to the AUCTIONEERS. The highest bidder at the auction shall have the right of first refusal during the confirmation period. No offers shall be considered by the SELLERS if not presented through the AUCTIONEERS.
- 11.7 The PURCHASER hereby acknowledges that he/she has not been influenced into entering into this agreement by any express or implied information, statement or representation made by or on behalf of the SELLERS. The PURCHASER does hereby waive in favour of the SELLERS and any representative of the SELLERS any rights whatsoever which he may otherwise have obtained against the SELLERS as a result of any information, statement of representation made by or on behalf of the SELLERS.

12. NOMINEES AND REPRESENTATIVES

- 12.1 Should a bidder sign this Deed as Trustee for a company formed or to be formed as PURCHASER or on behalf of another person as PURCHASER, such bidder shall be personally liable as PURCHASER for the proper performance of all the terms and conditions of this agreement, if the said company is not registered and does not adopt and/or ratify unconditionally the terms and conditions of this agreement within two months of the date of signature hereof, or if such company formed or to be formed is for any reason whatever not bound or cannot be bound as PURCHASER under this agreement or if his principal is not bound as PURCHASER under this agreement as a result of any defect in his mandate or for any other reason whatever. Furthermore, upon adoption and ratification of this agreement by any company as aforesaid, the said Trustee shall *ipso facto* be liable as a surety in solidum and co-principal debtor to the SELLERS for the prompt and proper performance by the company of each and every of its obligations arising out of the *beneficia ordinis seu excussionis et divisionis*, and the said Trustee acknowledges hereby that he is fully conversant with the meaning and effect of the said benefits and his renunciation thereof.
- 12.2 The person who signs this Deed of Sale, acting on behalf of some

other person shall disclose the name and address of the principle for whom he acts immediately (the same day) upon acceptance by the auctioneer of his offer.

13. CONSENT AND APPROVALS

13.1 Should the consent of the Master of the High Court or of any Court or any Government, Provincial, Local or other Authority whatever be required before transfer of the aforesaid property or any portion thereof can be registered in the name of the PURCHASER, this agreement is subject to such consent being obtained and it shall fall away and be regarded as cancelled if such consent cannot be obtained.

13.2 Should any necessary consent as aforesaid not be obtained, the SELLERS shall be obliged to repay to the PURCHASER all amounts which he has paid by virtue of this Deed and the PURCHASER shall be obliged to restore the property to the SELLERS, but the parties shall have no further claim against each other as a result thereof.

14. SPECIAL CONDITIONS

The SELLERS confirm to and in favour of the Purchaser that –

- 14.1 to the best of the SELLERS knowledge no environmental laws have been contravened on the PROPERTY;
- 14.2 the SELLERS confirm that they are unaware of any person who may have any right or entitlement over the PROPERTY under or in terms of the Restitution of Land Rights Act No 22 of 1994, Land reform (Labour Tenants) Act 3 of 1996, and Extension of Security of Tenure Act 3 of 1997;
- 14.3 approved Municipal plan no 10/85 dated 15/1/85 was received from the Knysna Municipality in respect of dwelling which is rented out; should the PURCHASER require plans for any other structures on the PROPERTY, the costs will be borne by the PURCHASER.

15. PROTECTION OF PERSONAL INFORMATION ACT (POPIA)

The parties hereby give their consent to the Conveyancing Attorneys who will attend to the registration of the transfer of the PROPERTY, to obtain and process their personal information to the extent that such processing is necessary to comply with an obligation imposed by law and to carry out all actions for the conclusion or performance of the Agreement in accordance with the provisions of the Protection of Personal Information Act, Act 4 of 2013.

16. VARIATION

This agreement constitutes the whole and only agreement between the

SELLERS and the PURCHASER and no alteration or variation of this agreement shall be of any force and effect unless reduced to writing and signed by all parties hereto or their duly authorised agents.

THE CONDITIONS HEREIN CONTAINED HAVE BEEN PUBLICLY READ. THE PROPERTY ABOVEMENTIONED WAS PUT UP FOR SALE BY PUBLIC AUCTION on the 23RD DAY OF JANUARY 2025.

AND SOLD BY THE RISE TO

NAME

REG NO IF ENTITY

ADDRESS

EMAIL

CELL

For the sum of R.....
[.....
.....].

AS WITNESSES:

1.
_____ **AUCTIONEER**

2.
_____ **PURCHASER**

ACCEPTED BY SELLERS at KNYSNA on day of 2025.

AS WITNESSES:

1
_____ **P MICHAELIDES as Executor**

2
_____ **C L SMART**

SURETYSHIP

I/WE, the undersigned, do hereby bind myself/ourselves jointly and severally as surety/sureties *in solidum* and co-principal debtor/s with the abovesaid PURCHASER being

.....

.....
the PURCHASER/BIDDER/NOMINEE (HEREINAFTER CALLED PURCHASER)
who signed the Conditions of Sale in respect of
SELLERS:

PROPERTY: REM PORTION 39 OF FARM EASTBROOK NO 83, KNYSNA RD

DATED: at

.....

for the due performance by the PURCHASER of all his/her obligations in terms of this Agreement of Sale and I/we do hereby specifically waive all benefit of the legal exceptions known as *beneficia seu excussionis et divisionis* i.e. the benefit of the division and excussion and knowledge myself/ourselves to be fully acquainted with the meaning and effect thereof.

My/Our liability in terms hereof shall not be affected, prejudiced or vitiated by any concession or accommodation which may be made by the SELLER or his successor in title to the said PURCHASER and I/we do not have to be notified of any such concession.

Signed at on this day of JANUARY 2025.

FULL NAME of SURETY

SIGNATURE OF SURETY

.....

.....

.....

ID SURETY

.....

PHYSICAL ADDRESS

**Chosen address above as domicilium
citandi et executandi for service of documents**

EMAIL:

CELL NO:

ACCEPTANCE OF ABOVE SAID SURETYSHIP(S)

**ACCEPTED BY US AT KNYSNA on this day of
.....2025.**

AS WITNESSES:

1.

P MICHAELIDES as Executor

2.

CL SMART