

RULES OF AUCTION

And

CONDITIONS OF SALE

PLACE OF AUCTION: THE MOUNT EDGECOMBE COUNTRY CLUB, GATE 2, 1 GOLF COURSE DRIVE,
MOUNT EDGECOMBE
DATE OF AUCTION: 16 MARCH 2023
TIME OF AUCTION: 11H00

IN2ASSETS PROPERTIES (PTY) LTD
Registration Number 2001/018431/07
Unit 503, 5th Floor, Strauss Daly Place, 41 Richefond Circle, Ridgeside Office Park, Umhlanga Ridge
(031) 574 7600
(the "AUCTIONEER")
Duly represented by: Andrew Miller

duly instructed by

(the "SELLER")

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

TITLE DEED DESCRIPTION: THE REMAINDER OF PORTION 3 OF ERF 2255 DURBAN
TITLE DEED: T17507/2013
IN EXTENT: 1 015 m²
STREET ADDRESS / KNOWN AS: 15-17 SILVERTON ROAD, MUSGRAVE

And all improvements thereon as well as Movable Assets (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. Registration to bid at the auction:
 - 1.4.1. 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.
 - 1.4.2. 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 1.4.1 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.
 - 1.4.3. In the event that the letter of authority referred to in clause 1.4.2. above is not produced as contemplated above and / or is not valid, then the bidder shall be deemed to be the **PURCHASER** in his private capacity, and will be responsible in his personal capacity in accordance with the Rules of Auction & Conditions of Sale.
 - 1.4.4. Where the bidder signs the Rules of Auction & Conditions of Sale and / or is the successful bidder on any lot (s) in a representative capacity, the bidder hereby binds himself as surety and co – principal debtor for all the obligations of the concern that he represents.
- 1.5. The bidder's record and the vendor roll will be made available for inspection at the offices of the **AUCTIONEER** during normal business hours without the charge of a fee. The bidder's record will also be available for inspection at the auction.
- 1.6. The **AUCTIONEER** has a trust account. All money due to the **SELLER** in terms of the Rules of Auction will be paid into this trust account for the benefit of the **SELLER**, minus any commission payable to **AUCTIONEER**.
- 1.7. 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**.

- 1.8. The conduct of the auction is subject to the control of the **AUCTIONEER** who has the sole right to regulate the bidding procedure.
- 1.9. The sale shall be by the rise and the **PROPERTY** shall be sold to the highest bidder subject to the Rules of Auction. All bids are being made in South African Rand.
- 1.10. Every prospective bidder must read the Rules of Auction and must not bid unless he or she has done so.
- 1.11. 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**.
- 1.12. 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.
- 1.13. In the event of any dispute between the bidders, the decision of the **AUCTIONEER** shall be final and binding.
- 1.14. Any error by the **AUCTIONEER** shall be entitled to be corrected by him.
- 1.15. 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.
- 1.16. The highest bidder ("the **PURCHASER**") shall sign the Rules of Auction immediately on the fall of the hammer.
- 1.17. Guide Price: In the event of the **AUCTIONEER** issuing any guidance as to price of any Property, Bidders should be aware that:
 - 1.17.1. any guide price may have varied upwards or downwards by the date on which any contract is formed;
 - 1.17.2. guide prices, and estimates as to current or future open market rental for the whole or part of the Property, are not a substitute for detailed professional advice as to value;
 - 1.17.3. guide prices are not to be taken as an indication of any Reserve;
 - 1.17.4. The **AUCTIONEER** shall not be deemed as having undertaken any sort of valuation, formal or otherwise under any circumstances;
 - 1.17.5. Bidders shall place no reliance on any guide price or view as to current or future open market rental for the whole or part of the Property which may be issued by the **AUCTIONEER**.

- 1.18. Each Bidder acknowledges section 45(3) of the Consumer Protection Act but furthermore, acknowledges the requirement thereof would not suit an electronic medium or platform in the form of the sales process. However, a Bid will lapse as an offer after the expiry of the confirmation period should it not have been super ceded, accepted or a sale not occurred as below reserve. No Bid may be withdrawn after acceptance.
- 1.19. The contract is formed immediately upon the auction ending by the **AUCTIONEER** accepting the winning Bid. When a Property is sold at auction, a "SOLD" message will appear beneath the onscreen bidding history and a message will be displayed onscreen to the winning Bidder announcing the Bidder's offer has been accepted. Thereafter if it is an online bid, the successful Bidder will be sent an email to further confirm the formation of the contract of sale on the terms contained in these Rules of Auction & the Conditions of Sale, and stipulate where the payment of the Deposit by the Bidder in accordance therewith.
- 1.19.1. If the successful Bidder is an online Bidder, he consents to an electronic signature unique to the successful Bidder's Bid being added to the Recordal; and
- 1.19.2. Unsuccessful Bidders will see on screen that they have not been successful and this will be confirmed by email and their Initial Deposits (if any) will be repaid without interest.

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 **17H00** on the **17th** day of **March 2023** ("confirmation period"). The **PURCHASER** and the **AUCTIONEER** acknowledge and agree that this provision is 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, The Master of the High Court, 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**, plus Value-Added Tax ("VAT") if applicable, 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; in Trust pending Registration of Transfer.
- 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 secured to the satisfaction of the **SELLER's** Attorneys, by a written guarantee from a Bank or 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 45 (Forty-Five) days from receipt of a written request to that effect from the **SELLER's** attorneys.
- 3.4 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 **SELLER** is a VAT Vendor.
- 4.2 The Purchase Price is inclusive of VAT, but at a Zero Rate, in terms of clause 4.3 below.
- 4.3 It is recorded that it is the intention of the Parties (not a warranty by the **SELLER**) that this transaction may be a "zero rated" transaction in terms of Section 11 (1) (e) of the Value-Added Tax Act (the "Act") as per clause 4.4 below and it is agreed that the Purchase Price will be inclusive of VAT at a rate of 0% (zero per centum) only in the event of the Receiver of Revenue accepting the transaction as a Zero Rated transaction in the absence whereof the Purchase Price will be exclusive of VAT at a rate of 15% (fifteen per cent) which VAT will be payable as per clause 4.7 below.
- 4.4 It is recorded that:

4.4.1 The **PROPERTY** constitute an accommodation establishment as defined in the Act and is sold as a going concern that will on the date of transfer of the **PROPERTY** into the name of the **PURCHASER** be an income earning activity capable of separate operation, and the supply of the **PROPERTY** shall be "zero rated" in terms of Section 11 (1) (e) of the Act;

4.4.2 The assets (excluding any assets and/or any fixtures and fittings which are the property of any tenant/s) and all other aspects of the business that are necessary for carrying on the enterprise, including all lease agreement/s pertaining to the **PROPERTY** are being disposed of to the **PURCHASER** in terms of this Agreement.

4.5 The **SELLER** and **PURCHASER** respectively warrant to the other that they will, with effect from the date of conclusion of this Agreement, be registered as vendors in terms of the Act.

4.6 Notwithstanding what is stated in this clause 4, if the **PURCHASER** has not within 7 (seven) days from the date of acceptance hereof by the **SELLER**, delivered to the **SELLER's** Attorneys its VAT Registration Certificate (Form V103) and such other documents as may be required by the **SELLER's** Attorneys and/or the South African Revenue Services ("SARS") for the obtaining of SARS' clearance in respect of the sale, the sale shall be deemed not to be "zero rated" as provided for in this clause 4, and VAT shall be levied on the Purchase Price at the rate of 15% (fifteen per centum), which amount shall be payable by the **PURCHASER** to the **SELLER** against receipt of a valid tax invoice duly completed in accordance with the Act and secured by the **PURCHASER** delivering to the **SELLER's** Attorneys at the same time as delivery of the guarantee/s referred to in clause 3.3 above, an unconditional and irrevocable bank guarantee/s, or payment in cash, as stated in the said clause 3.3 above. The **PURCHASER** specifically authorizes and agrees to the **SELLER's** Attorneys preparing and submitting such documents to SARS immediately after the conclusion of this Agreement.

4.7 If for any reason VAT is payable on this sale or any part thereof for any reason at any time at a rate other than at the "zero rate", then the **PURCHASER** agrees and undertakes that it will be liable for payment of any such VAT or additional VAT together with any interest and penalties thereon to the **SELLER** and such VAT will be added to the Purchase Price and payable on registration of transfer of the **PROPERTY** into the name of the **PURCHASER** and shall be secured as provided for in clauses 3.3 and 4.6 above to the satisfaction of the **SELLER** and the **SELLER's** Attorneys.

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 10% (ten 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 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 **OCCUPATIONAL RENT / INTEREST**

Should the **PURCHASER** not take possession and occupation of the **PROPERTY** on date of Registration of Transfer as per clause 10.1 below and take earlier possession of the **PROPERTY** as per pre-agreed written agreement with the **SELLER**, the **PURCHASER** shall pay occupational rent to the **SELLER**, calculated at 12% (Twelve Percent) per annum on the balance of the purchase price, payable in advance on the first day of every month, from date of possession until date of transfer, both days inclusive, payable directly to the **SELLER's** Attorney (reduced *pro rata* for any period less than a month).

7 **RATES AND TAXES**

- 7.1 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.
- 7.2 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.

8 **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:

- 8.1 The **SELLER** warrants that it is a RESIDENT of the Republic of South Africa;
- 8.2 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.

9 TRANSFER AND COSTS OF TRANSFER

- 9.1 Transfer of the **PROPERTY** shall be passed, by the **SELLER's** Attorneys, as soon as possible after date of acceptance, provided the **PURCHASER** has paid or secured all amounts payable in terms hereof.
- 9.2 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, transfer duty and/or VAT (whatever is 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 which will all be payable to the Transferring Attorneys immediately on demand thereof.
- 9.3 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.

10 POSSESSION AND RISK

- 10.1 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**.
- 10.2 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.
- 10.3 Upon the **PURCHASER** taking possession of the **PROPERTY** and pending transfer, the following further provisions shall apply –
- 10.3.1 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;
- 10.3.2 the **PURCHASER** shall be responsible for and pay all costs of electricity and water consumed in the **PROPERTY**.

11 EXISTING TENANCIES

- 11.1 The **PROPERTY** is sold without any existing leases.

11.2 Neither the **SELLER** nor the **AUCTIONEER** guarantee any vacant occupation.

11.3 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 **REPAIRS AND IMPROVEMENTS**

12.1. 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**.

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

12.3. 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**.

13. **VOETSTOOTS, EXTENT AND REPRESENTATIONS**

13.1. The **PROPERTY** is sold “voetstoets” and subject to the terms and conditions, servitudes (if any), expropriations (if any) and encroachments (if any) 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. The **PURCHASER** acknowledges herewith that he has fully acquainted himself with the availability and legality of an occupation certificate issued in respect of the improvements on the **PROPERTY** (if any) as well as the building plans and any deviations that may be applicable between the building plans and the improvements on the **PROPERTY** itself. The **PURCHASER** acknowledges that he will have no claims against the **SELLER** or the **AUCTIONEER** in respect hereof unless the **SELLER** and / or **AUCTIONEER** had knowledge of any such discrepancies, occupational certificate and or building plans that should have been disclosed to the **PURCHASER**.

13.2. 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.

13.3. 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.

13.4. Annexure 2 hereto sets out information pertaining to the **PROPERTY** which is specifically brought to the attention of the **PURCHASER**.

14. **BREACH**

14.1. 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 it may have in law, including the right to claim damages:

14.1.1. to cancel this Agreement and upon cancellation: -

14.1.1.1. 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

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

(OR)

14.1.2. to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.

14.2. 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.

14.3. 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.

14.4. 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**.

14.5. 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.

15 MORA CLAUSE

15.1 In the event of there being any delay in the registration of transfer caused by the **PURCHASER**, the **PURCHASER** agrees to pay interest on the total purchase price at 2% (Two Percent) above the prime overdraft rate charged by any of the Registered South African Banks from time to time calculated from the date the **PURCHASER** is notified in writing by the **SELLER** (or the **SELLER's** agents) as being in mora, to the date upon which the **PURCHASER** has ceased to be in mora, both days inclusive.

15.2 A certificate by any Branch Manager of any of the aforementioned Banks as to such prime overdraft rate from time to time shall be *prima facie* proof of such rate.

16 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.

17 ADDRESS / DOMICILIUM

17.1 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.

17.2 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.

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

18 **JOINT AND SEVERAL LIABILITY**

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

19 **SECTION 112 OF THE COMPANIES ACT**

19.1 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**.

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

19.3 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**.

20 **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:

20.1 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**;

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

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

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

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

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

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

20.4.2 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** and/or **AUCTIONEER**, for all the **PURCHASER's** obligations under this agreement, including damages, and renounces the benefits of division and *excussion*.

21 **COMPANY TO BE FORMED**

- 21.1 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.
- 21.2 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 and/or AUCTIONEER 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.**

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

- 22.1 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.
- 22.2 If any individual purports 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 shall 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 21.

23 **ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE**

- 23.1 The **SELLER** hereby undertakes to furnish the **SELLER's** Attorneys, prior to registration of transfer, with a Certificate of Compliance in respect of the **PROPERTY**, in terms of the Electrical Installation Regulations of 2009 under the Occupational Health and Safety Act (Act No. 85 of 1993, as amended), and in the event of an Electric Fence System installed on the **PROPERTY** as referred to in Regulation 12 (4) of the Electrical Machinery Regulations, 2011, a Certificate of safety thereof, issued by an electrical contractor who is registered in terms of the Regulations. All costs incurred in obtaining such certificates,

including costs of any repairs or replacements required in order for the certificates to be issued, shall be borne by the **SELLER**.

23.1.1 Upon the **SELLER** furnishing the **SELLER's** Attorneys with such certificates, the **PURCHASER** shall have no claim whatsoever against the **SELLER** in respect of electrical installations and no further liability in this regard shall rest upon the **SELLER**.

23.2 The **SELLER** warrants that, as at date of transfer, there will have been no addition or alteration to the electrical installations existing on the **PROPERTY** subsequent to the issue of such certificate. In the event that there has been any addition and/or alteration, the **SELLER** shall be obliged to obtain a Certificate of Compliance for at least the addition or alteration.

23.3 An Electrical Certificate of Compliance issued not more 2 (two) years prior to the date of this Agreement of Sale shall be valid and effective for the purposes of this clause 23.

24 **GAS COMPLIANCE CERTIFICATE**

The **SELLER** shall, at its expense, deliver to the **PURCHASER**, on or before the transfer, a Certificate of Conformity issued by an authorised 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.

25 **ENTOMOLOGIST CERTIFICATE**

If on the date of the sale there are any buildings included in the **PROPERTY**, then notwithstanding anything herein before contained, the **SELLER** shall, at his own expense and within 14 (**fourteen**) days after the date of the sale or fulfillment of all precedent conditions, whichever is the later, cause all the said buildings to be inspected by a Government approved Entomologist and furnish to the conveyancer a certificate by the said Entomologist that such inspection disclosed no visible sign of active infestation of the said buildings by cryptoterms brevis, beetles, termites, borers or white ants. If the **SELLER** is unable to furnish the said certificate within the said period because there is such sign of any such infestation the **SELLER** shall, at his own expense prior to registration of transfer, cause such infestation to be eradicated and furnish to the conveyancer a certificate by a Government approved Entomologist that such infestation has been eradicated.

26 DISPUTE RESOLUTION AND ARBITRATION

26.1 In the event of any dispute or difference arising between the parties with regard to:

26.1.1 The un-conditionality of; or the interpretation of; or the carrying into effect of; or any of the parties rights and obligations arising from; or the termination or purported termination of or arising from the termination of; or the rectification or proposed rectification of this Agreement; or out of or pursuant to this Agreement, the parties shall forthwith attempt to settle such dispute or difference and failing such settlement within a period of 5 (five) business days, then such dispute or difference **MAY** be submitted to an arbitration in accordance with the rules of AFSA or its successors, subject to the provision set out below;

26.2 The arbitrator shall be a suitably experienced and qualified senior advocate of not less than ten (10) years standing, alternatively a retired Judge.

26.3 The Parties shall use their respective reasonable commercial endeavors to reach agreement as to the appointment of the arbitrator.

26.4 In the event that agreement cannot be reached within five (5) Business Days after the arbitration has been demanded, as to the appointment of the arbitrator, then the arbitrator shall be appointed in accordance with the procedure set out hereunder:

26.4.1 the claimant shall nominate five (5) potential arbitrators within five (5) Business Days of the expiry of the period referred to in clause 26.4 in writing. The defendant shall be entitled to accept the nomination of one (1) of the five (5) arbitrators. The defendant shall communicate its acceptance of one (1) nominated arbitrator within five (5) Business Days thereafter. That arbitrator shall be the duly appointed arbitrator. Should that arbitrator refuse or fail to accept the appointment, then the process shall be repeated with the remaining four (4) arbitrators until an arbitrator acceptable to the defendant accepts the appointment;

26.4.2 should the claimant fail to nominate five (5) arbitrators or the defendant fail to accept one (1) nomination as envisaged in clause 26.4.1, then either party shall have the right to request the Chairman of the Kwa-Zulu Natal Bar Counsel to appoint an arbitrator. The appointment by the Chairman of the Kwa-Zulu Natal Bar Counsel shall be final and binding on the Parties.

26.5 The arbitration proceedings:

26.5.1 shall be governed in accordance with the rules regulating the conduct of proceedings in the High Court of South Africa;

26.5.2 shall be subject to the application of the law of evidence;

26.5.3 shall take place in Durban.

26.6 The Parties shall use their best endeavors to complete the arbitration proceedings within a period of ninety (90) days of the appointment of the arbitrator.

- 26.7 The arbitrator's decision will be final and binding, save for manifest error, unless the Parties otherwise agree in writing.
- 26.8 The arbitrator's decision may, at the instance of any of the disputing parties, be made an order of any court of competent jurisdiction.
- 26.9 The proceedings in the arbitration shall, as far as practicable, take place in private and be kept confidential.
- 26.10 The arbitration clause is intended to give the parties an option to arbitrate any dispute but nothing herein contained shall prevent any of the disputing parties, especially the **AUCTIONEER** in respect of a claim for commission, from proceeding in a court of competent jurisdiction should they elect not to submit the matter to arbitration.

27 **GENERAL CLAUSES**

- 27.1 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.
- 27.2 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.
- 27.3 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.
- 27.4 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*.
- 27.5 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.
- 27.6 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

28 **SECTION 34 OF THE INSOLVENCY ACT, NO. 24 OF 1936**

- 28.1 The parties agree that the sale of the business will not be advertised in terms of Section 34 of the Insolvency Act, No. 24 of 1936 ("**the Insolvency Act**") and the **SELLER** indemnifies the **PURCHASER** and/or the **AUCTIONEER** and agrees to hold the **PURCHASER** and/or **AUCTIONEER** harmless against all claims, costs, liabilities, losses and damages which the **PURCHASER** may incur or suffer as a result of the failure to advertise the sale.

28.2 Should the parties agree that the sale of the business be advertised in terms of Section 34 of the Insolvency Act, No. 24 of 1936 after the Auction or by direction of any Financial Institution funding the Purchase Price of the **PROPERTY**, the **SELLER** authorises the Conveyancers to place the advertisement in terms of Section 34 of the Insolvency Act at the cost of the **SELLER**. To this extent the parties acknowledge that the transfer of the **PROPERTY** is required to take place no earlier than the 30 and no later than the 60 days following placement of the last advertisement as required to be placed in terms of section 34 of the Insolvency Act, No 24 of 1936, and that the parties undertake to co-operate accordingly to facilitate the transfer within such prescribed period.

29 **PROTECTION OF PERSONAL INFORMATION**

The parties record and agree that they will at all times uphold and comply with the spirit and intention of the provisions of the Protection of Personal Information Act No. 4 of 2013, as amended from time to time ("**POPI Act**") and any regulations promulgated pursuant thereto in dealing with any personal information connected to this agreement and the transaction envisaged herein.

30 **MOVABLES**

30.1 It is agreed that the movables each separately include all such right, title and interest which the **SELLER** may have and which are capable of transfer.

30.2 The **SELLER** guarantees that all movables sold in terms hereof are unencumbered and unhypothecated and that he is legally entitled to sell such assets.

30.3 The **SELLER** will provide the **PURCHASER** with a complete inventory of all movable assets included in this sale within 7 (seven) days from date of acceptance of this offer.

31 **ELECTRIC FENCE SYSTEM CERTIFICATE OF COMPLIANCE**

The **PURCHASER** will deliver to the **SELLER**, prior to registration of Transfer, a Certificate of Compliance for any electric fence system on the property as referred to in Regulation 12(4) of the Electrical Machinery Regulations, 2011, to the Occupational Health and Safety Act of 1993, to the effect that the installation complies with the provisions of Regulation 13(1) and that the installation is safe. The **SELLER** further warrants that he has not modified or altered the installation and is not aware of any modification or alteration having been effected since the issue of the Certificate. All expenses incurred in meeting the criteria for the issue of such Certificate, including the Certificate itself, shall be borne by the **PURCHASER**.

32 **BUILDING PLANS**

It should be noted that the reception office at the rear of the **PROPERTY** is not reflected on the building plans. Further to the above deviation the approved building plans reflects a residential dwelling however the **PROPERTY** has been converted to operate as a hotel with multiple rooms. There are no plans that reflects the current internal layout. The

PURCHASER acknowledges herewith that he has fully acquainted himself with the improvements on the **PROPERTY** as well as the building plans and any deviations that may be applicable between the building plans and the improvements on the **PROPERTY** itself.

All costs pertaining to the updating and approval of the building plans will be for the Purchasers account. The **PURCHASER** acknowledges that he will have no claims against the **SELLER** or the **AUCTIONEER** in respect hereof.

DRAFT

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) _____

(PLUS VALUE ADDED TAX IF APPLICABLE)

DRAFT

IN THE EVENT OF THE PURCHASER BEING A COMPANY / TRUST / CC:

TO: _____

COMPANY/ CLOSE CORPORATION/ TRUST/ OTHER _____

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

ENTITY REGISTRATION NO.: _____

ENTITY ADDRESS: _____

TELEPHONE DETAILS: (landline) _____

(Fax) _____

(Email) _____

(Cell) _____

MARITAL STATUS _____ (In/Out of Community of PROPERTY)

SPOUSE'S NAME _____

SPOUSE'S ID NO _____

IN THE EVENT OF THE PURCHASER BEING A NATURAL PERSON:

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. _____

IN2ASSETS PROPERTIES (PTY) LTD
 duly authorised who hereby accept 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: Andrew Ronald Miller

ADDRESS: Unit 503, 5th Floor, Strauss Daly Place, 41 Richefond Circle, Ridgeside Office Park, Umhlanga Ridge

CONTACT NUMBER: 031 574 7600

DRAFT

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 & Conditions of Sales 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

IN2ASSETS PROPERTIES (PTY) LTD

duly authorised

SURETY ADDRESS: _____

Tel No: _____

EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF

.....

HELD ATON

IT IS 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, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
MEMBER

.....
MEMBER

.....
MEMBER

.....
MEMBER

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

.....

HELD ATON

IT IS 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, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

.....

HELD ATON

IT IS 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, thus ratifying and confirming all such things done and documentation already signed as if duly and properly authorised at the time of execution thereof.

Certified a true copy,

.....
TRUSTEE

.....
TRUSTEE

.....
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.

- [4] (Confirmation marital status, i.e. unmarried or married.)

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.

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:**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.)

- Detailed FICA requirements for Entities, will be supplied to such Purchasers, in due course.

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