

CONDITIONS OF SALE

**UNIT 23, SS/ SANHALL PARK
KIRSTY CLOSE
BALLITO COMMERCIAL AREA
BALLITOVILLE
KWAZULU NATAL**

**CONDITIONS OF SALE
ON REGISTRATION**

In terms of which

IAN WYLES AUCTIONEERS

of Level 3 | Unit 5 | Edstan Business Park
2 Ibhubesi Rd, Riverhorse Valley
Durban
4001

(hereinafter called the "Auctioneer")

MANDATED ON BEHALF OF AND DULY INSTRUCTED BY THE ATTORNEYS FOR:

SAN BALLITO PROPERTY INV CC REG.NO: 200621167523 TITLE DEED: ST47154/2008

(hereinafter called the "Seller")

**INTENDS TO OFFER FOR SALE BY PUBLIC AUCTION TO PROSPECTIVE PURCHASERS CERTAIN FIXED IMMOVABLE
PROPERTY MORE FULLY DESCRIBED AS:**

SECT 23 OF PLAN 610/2008, KNOWN AS SANHALL PARK, SITUATED AT PTN 1, ERF 3243 BALLITOVILLE, KWADUKUZA
KWAZULU NATAL

IN EXTENT:

138 M²

SITUATED AT:

UNIT 23 SANHALL PARK, BALLITO, KWAZULU NATAL

(hereinafter called the "Property")

IAN WYLES AUCTIONEERS undertakes in terms of what is herein set out and its mandate and authority granted to it by the seller, to sell the aforementioned property by Public Auction on behalf of the Seller to the Purchaser on the following terms and conditions and according to the published Rules of Auction.

1. AUCTION PROCEDURE

The sale is subject to the Rules of Auction as displayed and available on our Website: www.ianwyles.co.za

- 1.1 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.
- 1.2 Section 45 Subsection (2) of the Act provides that : 'When goods are put for sale by auction lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction'.
- 1.3 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.
- 1.4 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 authorizes him or her to bid on behalf of that person. 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 authorizing him or her to bid on behalf of the company.
- 1.5 The bidder's record and the vendor roll will be made available for inspection at the offices of Ian Wyles Auctioneers 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 Ian Wyles Auctioneers 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 Ian Wyles Auctioneers.
- 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 Purchaser shall upon the fall of the hammer sign these Conditions of Sale.

2. PURCHASE PRICE

Payment of the purchase price shall be as follows:

- 2.1 A deposit of **5% (FIVE PERCENT)** of the Purchase Price shall be payable to the Auctioneer on the signing of these Conditions of Sale by the Purchaser or R50 000.00 whichever is greater.

(in words)

The Purchaser shall pay the Auctioneer's commission at the rate of **10% (TEN PERCENT)** plus VAT, calculated on the purchase price of the Property:

(in words)

which amounts will be held in Trust pending acceptance by the Seller.

- 2.2 It is specifically agreed that the commission is earned and payable immediately to the Auctioneer on confirmation of the sale. All other agreed expenses and disbursements payable by the Seller will be deducted by the Auctioneer from any funds paid to it by the Purchaser and standing to the credit of the Seller.

The deposit shall be payable to the Auctioneer immediately of the signing of these Conditions by the Purchaser. The Purchaser shall not be entitled to interest on the deposit.

The Purchaser shall pay the Sellers or the Sellers conveyancer the balance of the purchase price R..... within 45 days of confirmation of the sale or furnish the Seller within the aforesaid period, with a Bank, Building Society or other guarantee acceptable to the Seller for the balance of the purchase price free of exchange at Durban on the date of registration of transfer of the property into the Purchaser's name.

- 2.3 The Purchaser hereby authorises the Auctioneer, upon acceptance of this agreement by the Seller to pay over to the Seller or its conveyancers the balance of the deposit less disbursements, if any.

3. ACCEPTANCE

- 3.1 This document constitutes an Offer to Purchase by the Purchaser, which is subject to written acceptance by the Seller within **14 (FOURTEEN)** calendar days (hereinafter referred to as "the offer period") from date hereof and shall remain irrevocable and open for written acceptance by the Seller at any time during the offer period. For the sake of clarity, the Purchaser's offer is open for acceptance until 17h00 on the **14th (FOURTEENTH)** calendar day after the signature hereof by the Purchaser, the counting of the **14 (FOURTEEN)** calendar days to commence on the **1st (first)** calendar day after date of signature hereof and shall endure until **17h00, 10 MARCH 2021** being the **14th (FOURTEENTH)** calendar day thereafter.

- 3.2 During the offer period, the Seller or the Auctioneer may continue to market the property in the normal course of business as they may deem fit and in consequence of same, they may take in one further and better written Offer to Purchaser from a prospective Purchaser, to be submitted for the Seller's consideration.
- 3.3 The Auctioneer shall advise the Purchaser in writing (which may either be by telefax or by electronic mail) of any higher written offer (hereinafter referred to as "a competing offer") which is received from any third party during the offer period. The Purchaser shall, for a period of 24 (twenty-four) hours (hereinafter referred to as "the option period") after transmission of the written advice of the competing offer by the Auctioneer as aforesaid, have the option to increase the purchase price offered by him in terms of this agreement to an amount equal to the purchase price of the competing offer, but subject otherwise to all other terms and conditions of this agreement.
- 3.4 If the Purchaser wishes to exercise the option to match the competing offer during the option period, the Purchaser must do so in writing in clear and unambiguous terms, which notice must be delivered to the Auctioneer before the expiry of the 24 (twenty-four) hour option period. This written notice must either be hand delivered to the business premises of the Auctioneer and a receipt signed in respect thereof, or may be emailed/ telefaxed to the Auctioneer at the indicated email/telefax numbers, provided that in such an instance the Purchaser must telephonically confirm receipt of the said email/telefax at the business premises of the Auctioneer, as the onus rests upon the Purchaser to confirm receipt of the said notice by the Auctioneer.
- 3.5 If the Purchaser fails to exercise the option during the option period, the Seller shall be entitled, but not obliged, to accept the competing offer. Should the Seller however elect not to accept the competing offer, the offer contained in this agreement shall remain irrevocable and of full force and effect and open for acceptance by the Seller until the lapse of the offer period as set-out above.
- 3.6 Should the Purchaser exercise the option within the option period and match the competing offer, the purchase price in terms of this agreement shall be the increased amount. The Seller shall be entitled until the lapse of the offer period to accept this agreement at any increased purchase price. This option process is a continuation of the original process and any sale thus concluded shall be a sale by auction.
- 3.7 The date of sale of the property shall, for purposes of this agreement, be deemed to be the date of written acceptance of this offer, or the increased offer, by the Seller. The Auctioneer will at the sole discretion of the Auctioneer thereafter notify the Purchaser in writing of such acceptance by pre-paid registered post, by hand delivery, by e-mail transmission or facsimile transmission.
- 3.8 Should the Seller not accept the Purchaser's offer, the Auctioneer shall immediately repay to the Purchaser any deposit paid by him (including any amount paid in terms of clause 2.1).
- 3.9 In the event of this agreement requiring the consent of the Master of the High Court in terms of any law or the consent of the Local Authority/ Municipality/ Homeowners Association to pass transfer, then this agreement is subject to such consent being obtained in writing as soon as possible and in the normal course of the conveyancing process. If such consent is refused or not obtained for whatever reason, then this offer will lapse and neither party shall have a claim against the other arising herefrom.
- In addition, consent to transfer is required to be obtained from the Seaward Homeowners Association.

4. POSSESSION

Subject to the Purchaser having complied with all the obligations incumbent on him, possession of the property shall be given to the Purchaser **ON REGISTRATION** by the Seller, from which date the Purchaser is entitled to the rental, if any, and is liable for payment of any rates, taxes, stand licences, insurance and other like charges, with respect to the property. From the date of **REGISTRATION** all benefits and risks of ownership in respect of the property shall pass to the Purchaser and the Purchaser shall insure the property and the improvements thereon for its full replacement value against risk of loss or damage by fire.

Any rates and taxes and other imposts paid out subsequent to the said date of possession by the Seller shall be refunded by the Purchaser proportionally in accordance with the above.

5. OCCUPATION

5.1 Occupation shall be given to the Purchaser on **REGISTRATION** of the property into the Purchaser's name. The Seller, however, gives no warranty that the Purchaser will obtain actual occupation of the property on the date provided and the Purchaser shall have no claim of whatsoever nature against the Seller should actual occupation not be obtained on the date of possession of the property.

5.2 The Seller will within reason assist the Purchaser at the Purchaser's expense, as may be reasonably necessary and/or required by law, to assist the Purchaser in obtaining vacant occupation of the property, but without the Seller obtaining any liability to pay for or effect any eviction itself, or obtaining any liability in respect of an unsuccessful eviction, or in respect of any damages suffered whatsoever by the Purchaser as a result hereof.

6. EXISTING TENANCIES (IF APPLICABLE)

6.1 The property is sold with vacant occupation.

6.2 The Purchaser shall be bound by the terms and conditions of all existing leases, of which he acknowledges he is fully apprised.

7. "VOETSTOOTS"

The Property is sold "*voetstoots*" to the extent such as it now lies without any warranty or guarantee whatsoever, neither will the Seller or the Agent be responsible for any latent or patent defects.

The sale is subject to the conditions and servitudes as specified in the existing Title Deed and to all such other conditions as may exist in respect thereof with which the Purchaser has acquainted himself. The Seller is not answerable for any deficiency in the extent of the property and does not profit by any eventual excess thereof. In the event of the description and area of the property herein being different from that in the Title Deed concerned, the description and area in such Title Deed shall be considered and incorporated herein.

The Purchaser furthermore acknowledges that he has acquainted himself with the situation, nature, conditions, beacons, extent and locality of the property and the seller and/or Agent shall be entirely free from all liability in respect thereof.

Whenever appropriate in this Agreement and unless the context otherwise requires, words signifying the singular number shall include the plural and words importing the masculine gender shall include the feminine

gender.

The Purchaser acknowledges that he/she is aware that the property sold is tenanted and that the occupant may have made improvements to the property sold.

8. WARRANTY

The purchaser hereby warrants that the procedures pertaining to the auction, inter alia:

- 8.1 The registration of the bidders;
- 8.2 The reading of the Conditions of Sale;
- 8.3 The commencement of the bidding;
- 8.4 The bidding, and
- 8.5 The due signature and completion of the Conditions of Sale by the purchaser were conducted in a lawful and proper manner without any irregularity of any nature whatsoever.

9. ENTIRE AGREEMENT

Any latitude or extension of time allowed by the Seller to the Purchaser shall not, under any circumstances, be deemed to be a waiver of the Seller's rights hereunder. No conditions, stipulates, warrants or representation whatsoever other than those expressly provided for herein have been made by the Seller and/or Agent and this Agreement to purchase shall, upon confirmation hereof, constitute the entire contract between the parties.

Any variations, alteration or additions to this agreement shall not be of any force or affect or legal validity unless reduced to writing and signed by the Seller and the Purchaser.

10. TRANSFER

The Purchaser shall be liable for all transfer costs including transfer duty fees and other costs incidental thereto. Transfer shall be effected by the **Seller's Conveyancer**, within reasonable time after the Purchaser has complied with the terms of Clause 2.2 hereof and after the Purchaser has paid all the costs referred to in this paragraph to the Seller's conveyancers which costs shall be payable on demand. The Purchaser and the Seller undertake to sign all documents necessary to effect transfer of the property on demand and the Seller shall have the right to cancel this contract should the Purchaser unnecessarily delay transfer of the property.

11. COMPANY TO BE FORMED

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 30 days from date of this Agreement to register a Company having as one of its objects the adoption or ratification of this Agreement or such Company fails to adopt or ratify this Agreement within **14 (FOURTEEN)** days after the date of its incorporation, then in either of such events the said Purchaser shall be deemed as from the date hereof to have entered into this Agreement in his personal capacity and as principal and to have acquired and to have assumed the rights and obligations of the Purchaser under this Agreement. In the event of such Company being registered and duly adopting or ratifying this Agreement, then the said Purchaser by his signature hereunder shall be deemed to bind himself and binds himself to the Seller as surety and co-principal debtor in solidum with such Company for the due performance by it as the Purchaser of all the terms and conditions of this Agreement.

12. CANCELLATION

- 12.1 Should the Purchaser fail to comply with any of the terms or conditions of this agreement within 7 (seven) days of dispatch of written demand, the Seller and/or the Agent on behalf of the Seller (acting on the written instructions of the Seller) shall, on such breach, be entitled without further written notice to either:
- 12.1.1 cancel this agreement, take occupation of the property and have the property resold by auction or private treaty, in its sole discretion. The Purchaser shall then be liable for all costs of such re-sale, any deficiency in price which results therefrom, advertising costs and other damages and losses including consequential damages as may arise. All payments made by the Purchaser to the Seller and/or the Agent pursuant to this agreement shall be forfeited by the Purchaser in favour of the Agent and the Seller respectively, or alternatively be regarded as liquidated, pre-estimated damages and/or losses suffered by them;
 - 12.1.2 hold the Purchaser bound by this agreement and to claim forthwith payment of the entire purchase price and other benefits and entitlements and any other costs, losses and damages caused as a result of such breach; and
 - 12.1.3 hold the Purchaser liable in terms of the agreement to pay all commissions, VAT and charges, expenses and costs as incurred or as contemplated in this agreement.
- 12.2 The Purchaser will be liable for all legal costs incurred by the Seller and/or the Agent arising out of its breach of this agreement, on the attorney and own client scale of costs, including the collection costs relating to the payment of the purchase price and/or commission, as the case may be.

13. REPAIRS, IMPROVEMENTS AND ALTERATIONS

Should the Purchaser make any alterations or improvements to the property, then, unless otherwise agreed in writing by the parties, the Purchaser shall not be entitled to any refund or compensation in respect of the same in the event of this sale being cancelled in terms of Clause 11, unless such repairs, improvements and/or alterations relate to necessary expenditure incurred by the Purchaser, with or without the authority of the Seller, in regard to the preservation of the land or any improvement thereon. In the event the cancellation of the Agreement, as aforesaid, the Purchaser hereby waives any lien he may have over the property for such improvements and grants the Seller an irrevocable power of attorney and authority to enter upon and take possession of the property.

14. ENTOMOLOGIST'S CERTIFICATE (IF APPLICABLE)

If on the date of the sale there are any buildings included in the Property, then notwithstanding anything herein before contained, the Purchaser shall, at his own expense and within **14 (FOURTEEN)** days after the date of the sale or fulfilment 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 cryptotermis brevis, beetles, termites, borers or white ants. If the Purchaser is unable to furnish the said

certificate within the said period because there is such sign of such infestation the Purchaser shall, at his own

expense and within **45 (FORTY FIVE)** days after the date of the sale, cause such infestation to be eradicated and furnish to the conveyancer a certificate by a Government approved Entomologist that such infestation has been eradicated.

15. ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE (IF APPLICABLE)

15.1 The Purchaser hereby undertakes to furnish the Seller's Attorneys, prior to occupation or transfer by the Purchaser, whichever is the earlier, with either:

15.1.1 An electrical installation certificate or part of an electrical installation certificate or a Certificate of Compliance in respect of the Property, in terms of the Electrical Installation Regulations of 1992 under the Machinery and Occupational Health and Safety Act (Act No. 6 of 1983, as amended), issued by an electrical contractor who is registered in terms of the Regulations, or

15.1.2 An Electrical Certificate of Compliance is not applicable to the electrical installation in that such installation existed prior to 23 October 1992 and there has not been any change in the ownership of these premises after 1 March 1994, and nor has there been any amendment and/or alteration to the electrical installation, as regulated by Regulation 7(1).

15.2 All costs incurred in obtaining such a certificate, including costs of any repairs or replacements required in order for the certificate to be issued, shall be borne by the Purchaser.

16. ELECTRIC FENCE SYSTEM CERTIFICATE OF COMPLIANCE (IF APPLICABLE)

16.1 The **PURCHASER** will be responsible for a certificate of Compliance for any electric fence system on the property as referred to in Regulation 12(4) of Electrical Machinery Regulations, 2011 to the Occupational Health and Safety Act of 1993, to the effect that the installation is safe.

16.2 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.

17. GAS COMPLIANCE CERTIFICATE (IF APPLICABLE)

The **PURCHASER** shall, at its expense, deliver 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 Purchaser to provide such Certificate requires corrective work to be carried out as a precondition to the issue of such Certificate, the **PURCHASER** will procure such work is carried out at the **PURCHASER'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.

18. FIXTURES AND FITTINGS

The property is sold together with any buildings or other improvements thereon, and, in the event of there being such buildings and other improvements, any stoves, anthracite heaters, electric fittings, venetian blinds therein, pumps, engines, fences, trees and shrubs, and fittings thereto shall be deemed to be included in this sale. The Seller shall, however, not be liable for any claims or whatsoever nature by the Purchaser should the aforesaid improvements, fixtures and fittings on date of possession not be on the property or not be in the same condition as on date of the auction.

18.1 The auction does not include any movable assets.

19. MAGISTRATES COURT JURISDICTION

19.1 For the purpose of all the proceedings hereunder the parties consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 29 of the Magistrate's Court Act of 1944 as amended notwithstanding that such proceedings are otherwise beyond such jurisdiction. This Clause shall be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to Section 45 of the Magistrate's Court Act of 1944 as amended.

19.2 Notwithstanding 19.1, the Seller shall have the right at the Seller's sole option and discretion to institute proceedings in any other competent Court which has jurisdiction.

20. JOINT AND SEVERAL LIABILITY

20.1 Should there be more than one Purchaser, the Purchasers shall be liable jointly and severally and in solidum for the payment of all the monies hereunder and for the carrying out of all the terms of this Contract.

20.2. Should the consent of the Master of The Supreme Court be required for confirmation of the sale and should such confirmation not be obtained this "Deed of Sale" will be considered null and void.

21. COSTS

In the event of a breach of this agreement, the defaulting party shall be liable for all legal costs incurred by the Auctioneer in enforcing its rights arising herefrom, on an attorney and client scale, including collection commission.

22. 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:

22.1 the aforesaid notice shall be handed to the Seller by not later than close of business on the acceptance date;

22.1.1 the notice shall set out the name and address of the Nominee so nominated as Purchaser,

22.1.2 the notice shall be accompanied by the Nominee's written acknowledgement;

(a) That it is fully aware of all the terms and conditions of this agreement as if fully set out in such written acknowledgement; and

(b) that it is bound by the provisions of this agreement as the purchaser;

22.2 should the Purchaser nominate a nominee in terms of this clause, then:

22.2.1 all reference to the Purchaser in this agreement shall be deemed to be a reference to its Nominee; and

22.2.2 the Purchaser by his signature hereto, hereby interposes and binds himself as surety and co-principal debtor in solidum, for and on behalf of all the obligations of the aforesaid nominee as Purchaser, to and in favour of the Seller, for all the Purchaser's obligations under this agreement, including damages, and renounces the benefits of division and excussion.

23. VALUE ADDED TAX

23.1 Sale Subject to VAT at the Applicable Rate

23.1.1 It is recorded that the Purchase Price is exclusive of VAT and the Purchaser is therefore liable to pay VAT, over and above the Purchase Price;

23.1.2 In the event that the Purchaser claims that VAT is not payable, he shall:

23.1.2.1 Initially pay over the VAT to the Seller or Conveyancers;

23.1.2.2 Within 7 days from the Due Date, the Purchaser shall furnish the Seller/Conveyancers with a ruling from the South African Revenue Services (SARS) confirming that VAT is not payable and such ruling shall be acceptable to the Seller/Conveyancers, in the absence of a conflicting ruling from SARS, in which event a final ruling must be obtained by a Senior Commissioner of SARS.

23.1.2.3 The Purchaser shall thereafter be entitled to a refund of the VAT portion from the Seller/Conveyancers within 7 (seven) days of acceptance by the Seller/Conveyancers of the ruling, in the event that the VAT portion was paid, as envisaged in Clause 23.1.2.1 above;

24. DOMICILIUM

The Purchaser hereby chooses as service address (domicilium citandi et executandi) for all purposes arising out of this Agreement at:

Postal Address :	Telephone (B):
.....	Telephone (H):
Physical Address :	Fax No. :
.....	Cellular No. :
.....	Email:

DECLARATION BY AUCTIONEER:

I, the undersigned _____, being the **Auctioneer** who conducted the auction, hereby certify that the Rules of Auction are, to best of my knowledge and belief, according to the requirements of Regulation 21 of the Consumer Protection Act, Act 68 of 2008.

I, the undersigned, _____,
(full names)

being the **Purchaser** with Identity Number: _____
hereby offer to purchase the property from the Seller for the Purchase Price recorded in this agreement, being:

R _____ (purchase price) **excluding value added tax** (if applicable)

(amount in words)

Being the highest bid at the auction or subsequent improved offer (refer clause 3.0)

SIGNED at _____ on this the _____ day of _____ 2021

As witnesses:

1. _____

PURCHASER
(Duly authorized)

2. _____

Signature of Purchaser's Spouse
(If applicable)

SIGNED at _____ on this the _____ day of _____ 2021

As witnesses:

1. _____

2. _____

AUCTIONEER
(Duly authorised and who accepts
all benefits hereby conferred)

SIGNED at _____ on this the _____ day of _____ 2021

As witness:

1. _____

2. _____

SELLER
(who signs personally or warrants
authority)

NOMINATION AGREEMENT

I, _____

(Original Purchaser's full names)

HEREBY NOMINATE

(Nominated Purchaser's full names)

IDENTITY NUMBER / REGISTRATION NUMBER: _____

As Purchaser of the following property situated at:

Erf Number: _____ Township: _____

In terms of agreement of sale entered into between:

(Original Purchaser)

and _____ dated _____ 2021

(Seller)

Signed at _____ on this _____ day of _____ 2021

Signature: _____

As Witness: _____

I, _____ (nominated Purchaser) hereby
acknowledge being assigned as the nominated party by the Seller.

Signature: _____

As Witness: _____