

**MOGALE CITY MALL (PTY) LTD (IN LIQUIDATION)**  
**("the Company")**

**MASTER'S REFERENCE NUMBER : T4280/10**

**REPORT OF THE JOINT LIQUIDATORS LIEBENBERG DAWID RYK VAN DER MERWE, ELMARIE BOOYSE AND DIMAKATSO ARNOLD MICHAEL MOHASOA, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973 AS AMENDED TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS, MEMBERS & CONTRIBUTORIES TO BE HELD BEFORE THE MASTER OF THE HIGH COURT, PRETORIA ON 16 MAY 2011 AT 10H00**

**ORDER OF THE COURT AND MEETINGS**

Nature of Liquidation	COURT APPLICATION
Date of liquidation	4 MAY 2010
Date of provisional Order	N/A
Date of Final Order	2 SEPTEMBER 2010
Provisional appointees	LDR VAN DER MERWE, OM POWELL, E BOOYSE AND DAM MOHASOA
Date of 1 <sup>st</sup> meeting of creditors	11 APRIL 2011
Final appointees	LDR VAN DER MERWE, E BOOYSE AND DAM MOHASOA

**GENERAL AND STATUTORY INFORMATION**

**Registrar of Companies**

- 1 According to the Registrar of Companies the company was incorporated under registration number 2005/042393/07.
- 2 The company was formerly known as Blue Nightingale trading 608 (Pty) Ltd.

**Registered Address**

- 3 The registered address of the company is Office Unit S1 (South Block), Groenkloof Forum, Office Park, George Storrar Drive, Groenkloof, Pretoria

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**Directors**

4 It appears from my investigations the following persons consented to serve as directors:

4.1 SC Theodosiou;

4.2 RJ Blane;

4.3 E Posthumus;

4.4 D Theodosiou;

4.5 A Theodosiou;

**Share Capital**

5 The authorised share capital of the company is R1000 divided into 1000 ordinary shares par value shares of R1 each.

6 The issued share capital of the company is 200 ordinary par value shares of R1 each.

7 It appears from information on hand that the shareholding as at the date of liquidation was as follows:

7.1 Absa Bank Ltd 30%;

7.2 Smokey Mountain Trading 512 (Pty) Ltd 70%

**Business of the Company**

8 The main business of the company was property owning and development.

**Auditors**

9 The auditors of the company are ISG Integrated who also acted as Company Secretary.

**STATEMENT OF AFFAIRS**

10 We have not been placed in possession of a Statement of Affairs as required in terms of Section 363 of the Companies Act No 61 of 1973 as amended.



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**SECTION 402(a)**

**FINANCIAL STATEMENT OF ASSETS AND LIABILITIES**

11 The following represents the assets and liabilities of the company at date of liquidation. Unless otherwise stated, these figures only represent estimates of the assets and liabilities and will change depending on the amounts of realisation of unsold assets and claims submitted for proof.

**ASSETS**

<b>IMMOVABLE PROPERTY</b>	<b>NOTES</b>	<b>AMOUNT</b>	<b>AMOUNT</b>
Portion 65 of Farm Van Wyks Restant 182Q	<b>(a)</b>		
Portion 37 of Farm Van Wyks Restant 182Q			
Remaining Ext of Portion 2 of the Farm Wyks Restant 182Q			
Portion 38 of Farm Van Wyks Restant 182Q			
Portion 36 of Farm Van Wyks Restant 182Q			
Remaining Ext of Portion 4 of the Farm Wyks Restant 182Q			
Remaining Ext of Portion 55 of the Farm Wyks Restant 182Q			27,000,000.00
<b>MOVABLE ASSETS</b>			
NONE			
<b>TOTAL ASSETS</b>			<b>27,000,000.00</b>
<b>LIABILITIES</b>			
<b><u>Secured</u></b>			
Imperial Bank (Mortgage bond over Portion 2)		5,468,560.60	
<b><u>Preferent Creditors</u></b>			
Receiver of Revenue		UNKNOWN	
Salaries		NONE	
<b><u>Concurrent Creditors</u></b>			
Trade Creditors		82,659,429.43	
<b>TOTAL LIABILITIES</b>		<b>88,127,990.03</b>	
<b>DEFICIT</b>			<b>61,127,990.03</b>

**NOTES**

The statement of assets and liabilities must be read in conjunction with the following notes:

(a) the value ascribed to the immovable properties were established from a formal valuation obtained by the liquidators and based on a forced sale scenario.

*These figures do not take into account any costs of administration and are subject to change and/or modification.*

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**SECTION 402 (b)**

**CAUSES OF THE COMPANY'S FAILURE**

- 12 The company had no source of income but for the loans it obtained to acquire the properties. Over time it was simply unable to meet its obligations to creditors as and when they became due.

**SECTION 402(c)**

**REPORT TO THE MASTER IN TERMS OF SECTION 400(2) OF THE COMPANIES ACT**

- 13 It is not our intention at this stage to submit a report to the Master of the High Court. However, we are still investigating this aspect and if necessary, a detailed report will be submitted to the Master in due course.

**SECTION 402(d)**

**PERSONAL LIABILITIES OF DIRECTORS OR OFFICERS**

- 14 At this stage it is not known whether the former director or officer of the company can be held personally liable for the debts of the company. A report will be submitted, should it become necessary.

**SECTION 402 (e)**

**LEGAL PROCEEDINGS**

- 15 We have no knowledge of any legal proceedings pending by or against the company.

**SECTION 402(f)**

**ENQUIRY**

- 16 The liquidators do not intend to hold an enquiry at present. Creditors will be informed if the liquidators decide to proceed with an enquiry into the affairs of the company.

**SECTION 402(g)**

**BOOKS AND RECORDS**

- 17 We have taken control of the books and records found at the offices of the auditors of the company.

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**SECTION 402 (h)**

**PROGRESS AND PROSPECTS OF WINDING UP**

18 The joint liquidators have not disposed of any of the assets of the company as yet.

**ESTIMATED DIVIDEND**

19 There is no danger of a contribution and creditors are requested to lodge their claims as soon as possible.

**SECTION 402(i)**

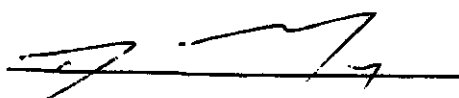
**MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS**

20 Such directions as required of creditors are contained in the draft resolutions numbers 1 – 13 which is submitted for consideration and adoption by the creditors at the second meeting of creditors in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the company in liquidation to continue.

**LEASES**

21 The liquidators are not aware of any lease agreements having been entered into.

SIGNED at ROODEPOORT on this 3<sup>rd</sup> day of MAY 2011



**LDR VAN DER MERWE**

\_\_\_\_\_  
**E BOOYSE**

\_\_\_\_\_  
**DAM MOHASOA**

**JOINT LIQUIDATORS**

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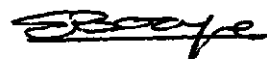
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**LDR VAN DER MERWE**



**E BOOYSE**

\_\_\_\_\_  
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**JOINT LIQUIDATORS**

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS HELD BEFORE THE MASTER OF THE HIGH COURT, PRETORIA, ON 16 MAY 2011 at 10H00**

**RESOLVED THAT:**

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidator"), as submitted be received and adopted and all his actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature heretobefore taken by the Provisional Liquidator and/or Liquidator be and are hereby confirmed, ratified and approved.
- 3 The Liquidator be granted the authority and is vested with all the powers mentioned in Section 386(4)(a) – (i) of the Companies Act No 61 of 1973, as amended, such powers to be exercised at his sole and absolute discretion.
- 4 The Liquidator be and is hereby authorised in his sole and absolute discretion to:
  - 4.1 Take legal advice on any question of law affecting the administration and distribution of the company;
  - 4.2 Institute or defend on behalf of the company any action or other legal proceedings of a civil nature for the recovery of monies due to the company or otherwise and subject to the provisions of any law relating to criminal procedure, institute any criminal proceedings;
  - 4.3 Hold any enquiry into the affairs of the company and/or any matter relating thereto;
  - 4.4 Investigate and institute legal proceedings for the recovery of any voidable or undue preferences, voidable dispositions of property or any other impeachable transactions of whatsoever nature and to abandon same at any time;

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- 4.5 Write up the books of the company as may be required, and if necessary, to produce a balance sheet, audited or not, as at the date of liquidation, either for the purpose of investigating the affairs of the company, establishing the claims of creditors, or any other purpose.
- 5 The Liquidator be and is hereby authorised in his sole and absolute discretion to employ and engage the services of attorneys and/or counsel (senior and/or junior) and/or accountants and/or bookkeepers and/or any employee of the insolvent and/or recording agents and/or any other person who in the sole discretion of the Liquidator may be of assistance in the winding-up of the company in relation to any matter referred to in 4 above and further to pay all the costs thereof of whatsoever nature out of the estate as costs incurred in the liquidation.
- 6 The Liquidator be and is hereby authorised to collection any debts due to the company and for the purpose thereof to sell or compound or compromise any of these debts for such sum and upon such terms and conditions as he in his sole discretion may deem fit, and to accept any part of the debt in settlement thereof, and to grant an extension of time for the payment of any such debt, and to abandon any debt which he in his sole discretion may deem to be irrecoverable.
- 7 The Liquidator be and is hereby authorised to dispose of any movable and immovable property of the company, whether in his possession or under his control now or to come into his possession or under his control in the future by public auction, private treaty or public tender upon such terms and conditions as he in his sole and absolute discretion shall determine and to abandon any such assets for which he can find no purchaser or abandon them to a secured creditor at the value placed thereon by such creditor or at such value as is agreed upon by the Liquidator and the creditor if such creditor's claim is secured by such assets and to sign all such documents as may be necessary to give effect to such disposition.
- 8 The Liquidator be and is hereby authorised and empowered in his sole discretion to compromise and admit any claim against the company of whatsoever nature and howsoever arising and whether disputed or not and whether actual, contingent, prospective, conditional, unconditional, assessed, unassessed, liquidated or unliquidated as a liquidated claim in terms of Section 78(3) of the Insolvency



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Act No 24 of 1936 as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended, at such amount as may be agreed upon by the Liquidator, provided that proof thereof has been tendered at a meeting of creditors.

- 9 The Liquidator be and is hereby authorised to make application for the destruction of books and records of the estate six months after the confirmation of the Final Liquidation and Distribution Account.
- 10 The Liquidator be and is hereby authorised to perform any act or exercise any power for which he is not expressly required by the Companies Act No 61 of 1973, as amended, to obtain the leave of the Court.
- 11 The Liquidator be and is hereby authorised to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company.
- 12 The Liquidator be and is hereby authorised to carry on or discontinue any part of the business of the company insofar as may be necessary for the beneficial winding-up thereof.
- 13 The Liquidator be and is hereby authorised to exercise *mutatis mutandis* the powers conferred upon a Liquidator by Section 35 (uncompleted acquisition of immovable property before liquidation) and 37 (effect of liquidation upon a lease) of the Insolvency Act No 24 of 1936, as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended.
- 14 The further administration of the affairs of the company be left entirely in the hands and at the discretion of the Liquidator.

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**q-q. CREDITORS**