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## The Devon Industrial Property Close Corporation

Master's Reference number: T2836/2018

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REPORT SUBMITTED BY THE LIQUIDATORS IN TERMS OF SECTION 79 OF THE CLOSE CORPORATIONS ACT NO. 69 OF 1984, AS AMENDED, TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS AND CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE, DELMAS, ON 1 MARCH 2019 AT 09H00.

Nature of Liquidation	Court Application in the High Court of South Africa (Gauteng Division, Pretoria)
Date of court order	27 November 2018
Final Appointees	LDR van der Merwe, JZH Muller and WM Magagane
Final Certificate of Appointment	18 January 2019

### GENERAL AND STATUTORY INFORMATION

#### Registrar of Companies

The Close Corporation was duly registered with the Registrar of Companies under their reference number 1996/016888/23.

#### Registered Address

The registered address of the Close Corporation was at Mareu Building, 5 Samuel Road, Delmas, 2210.

#### Members

It appears from our investigations the following persons were members:

- Sherine Jansen - 700531 0111 08 5
- Burton Ngambi Mhlanga (Deceased) - 651231 576 308 4

#### Business of the Close Corporation

The Close Corporation's main business was as an investment property Close Corporation which hold investment properties.

#### Auditors

The Auditors at date of liquidation would appear to have been Fungai Frankie Zinoro CA (SA).

WE NOW REPORT IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT:

SECTION 79(a)

Financial Statement of Assets and Liabilities

We did not receive the Statement of Affairs (Annexure CM100) from the erstwhile members. According to information available to us from the notice of motion, the following would appear to represent the financial position of the Close Corporation as at the date of liquidation:

ASSETS	Notes		
<u>Encumbered Assets</u>			
Erven 44, 214 and 215 Lorentzville	1		R3, 200, 000-00
<u>Unencumbered Assets</u>			
NONE			R0-00
<u>LIABILITIES</u>			
<u>Secured Creditors</u>			
Tuhf Limited		R5 278 982-42	
<u>Preferent Creditors</u>			
SARS		R63 917-13	
<u>Concurrent Creditors</u>		R4, 158, 307-99	
Sub Total		R9, 507, 207-54	R3, 200, 000-00
Surplus/Deficit			R6, 601, 207-54
TOTAL		R9, 507, 207-54	R9, 507, 207-54

NOTES:

1. The value of the immovable property is according to a sworn valuation that was obtained. The immovable property has not been sold.
2. The above figures are subject to adjustment and verification. The figures stipulated are according to the notice of motion.
3. We have received the claim from the secured creditors.

SECTION 79(b)

Causes of the Close Corporation's failure

According to the notice of motion the principle cause of the Close Corporation's failure is attributable to the following:

- The Corporation was placed in Business Rescue 3 September 2018. The Business Rescue Practitioner discontinued the Business Rescue on 12 October 2018. The income of the Corporation was primarily from the rental of the 27 units in the building. The cash flow decreased when the Corporation was placed in Business Rescue and there were attempts to “hijack” the building. The rental income was not sufficient to pay the monthly running costs, i.e. the municipal costs as well as the mortgage bond. The municipality disconnected services as they had not received payment since December 2016. There was no prospect of rescuing the business and an application was filed for liquidation.

#### SECTION 79(c)

##### Report under Section 400(2) of the Companies' Act Read with Section 66 of the Close Corporation's Act

Should any contraventions come to our attention an additional report will be submitted to the Master of the High Court in regard to such contraventions.

#### SECTION 79(d)

##### Personal liabilities of Members or Officers

At this stage we are unable to comment on whether the former Member/s or Officer/s of the Close Corporation can be held personally liable for the debts of the Close Corporation. A report will be submitted, should it become necessary.

#### SECTION 79(e)

##### Legal Proceedings

As far as we are aware there are no legal proceedings pending by or against the Close Corporation.

#### SECTION 79(f)

##### Further Enquiry

The Liquidators do not intend to hold an Enquiry at present. Creditors will be informed if the Liquidators decides to proceed with an Enquiry into the affairs of the Close Corporation.

#### SECTION 79(g)

##### Books and Records

The books and records relating to the affairs of the Close Corporation have not been handed to us.

#### SECTION 79(h)

##### Progress and Prospects of Liquidation

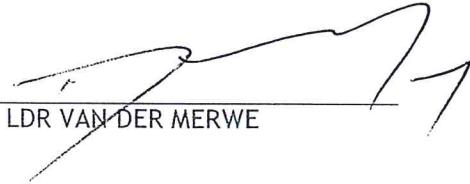
1. The sale of the immovable property.
2. The lodging of the First and Final Liquidation, Distribution and Contribution Account.
3. At this stage it seems that only the secured creditors will receive a dividend.

SECTION 79(i)

Matters requiring further directions of Creditors and Contributories

Such directions as we desire, and sanction of the actions taken by the Provisional Liquidators and Liquidators to date, are contained in the Resolutions to be submitted for consideration and adoption, are attached hereto.

DATED AT ROODEPOORT ON THIS 8<sup>th</sup> DAY OF FEBRUARY 2019.



LDR VAN DER MERWE

JZH MULLER

WM MAGAGANE

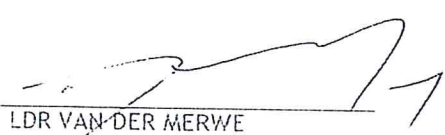
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SECTION 79(i)

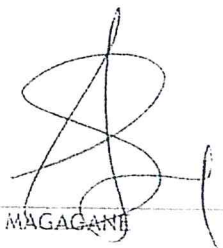
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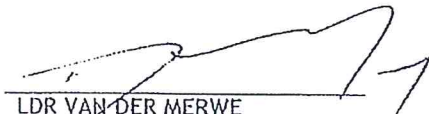


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### RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS HELD BEFORE THE MAGISTRATE DELMAS, ON 1 MARCH 2019, AT 09H00.

#### 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 hereto before 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 Close Corporation;
  - 4.2 Institute or defend on behalf of the Close Corporation any action or other legal proceedings of a civil nature for the recovery of monies due to the Close Corporation 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 Close Corporation 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;
  - 4.5 Write up the books of the Close Corporation 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 Close Corporation, 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 Close Corporation 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 Close Corporation 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 Close Corporation, 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 Close Corporation 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 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 Close Corporation or any claim or demand by or upon the Close Corporation.
- 12 The Liquidator be and is hereby authorised to carry on or discontinue any part of the business of the Close Corporation 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 Close Corporation be left entirely in the hands and at the discretion of the Liquidator.
- 15 That the sale of the movable assets by Public Auction be and are hereby ratified.

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q.q. CREDITORS

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q.q. MEMBERS

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PRESIDING OFFICER