

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-104348**

In the matter between:

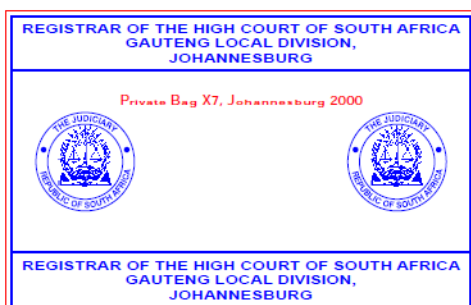
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:14:46 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:



**Registrar of High Court , Gauteng
Local Division, Johannesburg**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: _____

In the matter between:

CHRISTOPHER RAYMOND REY N.O. (cited herein in his capacity as the business rescue practitioner of Wild Goose Trading and Services 39 CC)

Applicant

and

CITY OF JOBURG PROPERTY COMPANY (PTY) LTD

First Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent



NOTICE OF MOTION

TAKE NOTICE THAT on **TUESDAY, 1 OCTOBER** at **10h00** or so soon thereafter as counsel may be heard, application will be made to this Honourable Court for an order in the following terms:

- 1 Dispensing with the forms and procedures provided for in the Uniform Rules of Court and hearing this matter as one of urgency in terms of Rule 6(12)(a).

- 2 That the first respondent be directed to consent to the cession and assignment by Wild Goose Trading and Services 39 CC ("**Wild Goose**") (represented by the applicant, in his capacity as its duly appointed business rescue practitioner) to Pageview Holdings (Pty) Ltd of the right, title and interest in

and to Notarial Deed of Lease Number K.1350/2000L concluded between the second respondent's predecessor as lessor and Wild Goose as lessee in respect of the immovable property described as Erf 1010 and 1011 Melville Extension 3 Township, Registration Division IR, Province of Gauteng.

3 That the consent referred to in prayer 2 above be granted by no later than the close of business 2 October 2024.

4 That the first respondent be held liable for the costs of this application on the scale as between attorney and client.



5 In the alternative to the relief sought in 4, and only in the event that the second respondent opposes the application, that the first and second respondents be liable for the costs of this application on the scale as between attorney and client on a joint and several basis.

6 Further and/or alternative relief.

TAKE NOTICE FURTHER THAT:

7 If the respondent intends opposing the relief sought, it must:

7.1 State that intention by notice to be delivered to the applicant's attorney at the undermentioned address and/or by e-mail to **belinda.scriba@cdhlegal.com**, **katekani.mashamba@cdhlegal.com**, and **luke.kleinsmidt@cdhlegal.com** and to the Registrar of this Honourable

Court on or before **12H00** on **TUESDAY, 17 SEPTEMBER 2023;**

7.2 In the notice referred to in paragraph 6.1 above, appoint an address in terms of Rule 6(5)(b) at which the respondent will accept notice and service of all documents in these proceedings; and

7.3 Deliver its opposing affidavit (if any) no later than 12h00 on FRIDAY, 20 SEPTEMBER 2023 to the applicant's attorney at the undermentioned address and/or by e-mail to belinda.scriba@cdhlegal.com, katekani.mashamba@cdhlegal.com and Luke.Kleinsmidt@cdhlegal.com and the Registrar of this Honourable Court.



TAKE NOTICE FURTHER THAT the accompanying affidavit of **CHRISTOPHER RAYMOND REY** and the annexures thereto will be used in support thereof.

TAKE NOTICE FURTHER THAT the applicant has appointed the offices of Cliffe Dekker Hofmeyr Inc at the undermentioned address as its attorneys of record and at which address it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that the applicant hereby furnishes the following information as required by Rule 6(5)(b):

Applicant's attorneys' business address:	1 Protea Place, Sandown, Sandton, Gauteng.
Applicant's business address:	Corner of Rudo Nell & Struwig Roads, Jet Park, Boksburg, Gauteng.
Applicant's attorneys' postal address:	Private Bag X40, Benmore, 2010.
Applicant's postal address:	PO Box 8400, Elandsfontein, 1406

Electronic mail address:

belinda.scriba@cdhlegal.com
katekani.mashamba@cdhlegal.com
luke.kleinsmidt@cdhlegal.com

DATED at SANDTON on this the 13th day of **SEPTEMBER 2024.**



CLIFFE DEKKER HOFMEYR INC.

Applicant's Attorneys

1 Protea Place

Sandown

Sandton

Gauteng

Tel: (011) 562 1061 / 021 405 6139

Email: **belinda.scriba@cdhlegal.com /**

katekani.mashamba@cdhlegal.com

luke.kleinsmidt@cdhlegal.com

Ref: T Fletcher / B Scriba / 02074805

TO:

**THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
JOHANNESBURG**

AND TO:

CITY OF JOBURG PROPERTY COMPANY (PTY) LTD

Third Floor, Forum 1

Braam Park

33 Hoofd Street

Braamfontein

Johannesburg



AND TO:

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Metropolitan Centre

First Floor Council Chamber Wing

158 Civic Boulevard

Braamfontein

Johannesburg

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CASE NO: **2024-104348**

In the matter between:

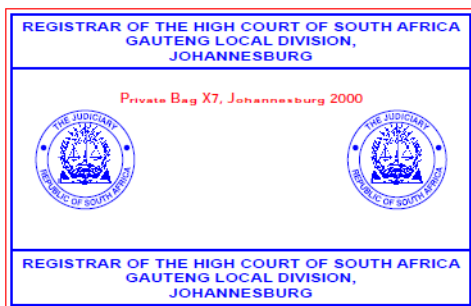
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

Founding Affidavit

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:24:13 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO:

In the matter between:

CHRISTOPHER RAYMOND REY N.O. (cited herein in
his capacity as the business rescue practitioner of Wild
Goose Trading and Services 39 CC)

Applicant



and

**CITY OF JOBURG PROPERTY COMPANY (PTY)
LTD**

First Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**


Second Respondent

FOUNDING AFFIDAVIT

I, undersigned,

CHRISTOPHER RAYMOND REY

do hereby make oath and say that:

1. I am an adult male, of full legal capacity, and the duly appointed business rescue practitioner of Wild Goose Trading and Services 39 CC ("**Wild Goose**"), having my principal place of employment at Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, Gauteng.
2. The facts herein contained are within my personal knowledge, **unless** otherwise stated or apparent from the context, and are, to the best of my knowledge, both true and correct and I can and do swear positively thereto. 
3. I am duly authorised to institute these proceedings by virtue of my appointment as the business rescue practitioner of Wild Goose. A copy of confirmation of my appointment from the Companies and Intellectual Property Commission ("**CIPC**") is attached hereto marked "**FA1**".
4. Insofar as I may rely upon the advice of my legal representatives, I accept such advice to be true and correct.

THE PARTIES

5. I am the applicant herein, acting in my capacity as the duly appointed business rescue practitioner of Wild Goose.
6. The first respondent is the **CITY OF JOBURG PROPERTY COMPANY (PTY) LTD** ("**JPC**"), bearing registration number 2000/01747/07, a



company duly registered and incorporated in accordance with the prevailing company laws of the Republic of South Africa, having its principal place of business at 3rd Floor Forum 1, Braam Park, 33 Hoofd Street, Braamfontein, Johannesburg.

7. JPC is a wholly-owned municipal entity of the City of Johannesburg Metropolitan Municipality, which was established to develop and manage properties owned by the municipality, and it has a custodial responsibility towards the municipality to ensure the appropriate control and management of the properties.



8. The second respondent is the **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY** ("COJ"), a municipality duly incorporated and formed as such, having its principal place of business at 158 Civic Boulevard, Braamfontein, Johannesburg.
9. COJ has been cited herein inasmuch as it may have an interest in the relief sought herein. No substantive relief, including an order as to costs, is sought as against COJ, save in the event of it opposing the relief sought.
10. In terms of a Special Power of Attorney ("**the SPOA**") registered in the Deeds Office, Johannesburg on 20 September 2002, JPC was appointed and nominated by COJ as its rightful and lawful delegate and agent to, *inter alia*, grant consent to lessees to sublet or part with possession of land or buildings owned or hired from COJ or to cede or assign their leases,

subject to such conditions as may be considered necessary to protect see COJ's interests. The SPOA will be dealt with in more detail below.

THIS APPLICATION

11. This is an application in terms of which I seek an order directing JPC to consent to the cession and assignment by Wild Goose (represented by me) to Pageview Holdings (Pty) Ltd ("**Pageview**") of the right, title and interest in and to Notarial Deed of Lease Number K.1350/2000L ("**the notarial lease**") concluded between the COJ's predecessor as lessor and Wild Goose as lessee in respect of the immovable property described as Erf 1010 and 1011 Melville Extension 3, Registration Division IR, Province of Gauteng ("**the property**").
12. Insofar as the property description is concerned, this honourable court would have noticed that the in the notarial lease the property is described as Portion 402 (of 190) of the farm Braamfontein 53 IR and not as Erf 1010 and 1011 Melville extension 3. This is because Melville Extension 3 township (consisting of Erven 1011 and 1011) was registered (in the Pretoria deeds office) against the farm title deed. The resultant township was transferred, from the Pretoria Deeds office to the Johannesburg Deeds Office, and the property then became known as Erf 1010 Melville Extension 3 and Erf 1011 Melville Extension 3. This is confirmed by John Webber, who is an admitted conveyancer and a director of my attorneys of record ("**CDH**").



[Handwritten signature]

13. This application has become necessary after my attorneys (CDH) and I have tried, in vain, to assure representatives of JPC, that they are empowered, in terms of the SPOA, to consent to the cession of the notarial lease to Pageview. Nevertheless, JPC has refused to consent to the cession of Wild Goose's rights under the notarial lease. As explained below, JPC's refusal to consent to the cession of Wild Goose's rights under the notarial lease to Pageview will, inevitably, result in the liquidation of Wild Goose, which will prejudice a number of interested parties.



BACKGROUND

14. COJ, is the registered owner of the property.
15. On or about 19 April 2000, the Northern Metropolitan Substructure of the Greater Johannesburg Transitional Metropolitan Council (**the Transitional Metropolitan Council**) (which is COJ's predecessor in title) leased the property to JRAD Investments (Pty) Ltd (**JRAD**) in terms of the notarial lease. The material express terms of the notarial lease are, *inter alia*, as follows:
- 15.1 the lease would come into operation upon the signing thereof and would continue and endure for a period of 25 years reckoned from the date upon which the notarial lease became unconditional;

- 15.2 JRAD had the option to extend the lease period for a further 25 years subject to certain conditions;
- 15.3 during the currency of the lease, JRAD was entitled to sub-let the premises or any portion thereof or to cede or assign the notarial lease to any other person or organisation, including an associated company of JRAD, provided, *inter alia*, that:



- 15.3.1 JRAD shall apply, in writing, to the Transitional Metropolitan Council, and the consent in writing of the transitional Metropolitan Council shall first be obtained, which consent shall not be unreasonably withheld; and
- 15.3.2 the terms and conditions of any such sub-lease, cession or assignment shall be subject to the written consent of the Transitional Metropolitan Council, which consent shall not be unreasonably withheld.

16. A copy of the notarial lease is attached hereto marked "FA2".
17. Following a restructuring, the Transitional Metropolitan Council became the City of Johannesburg Metropolitan Municipality.
18. On or about 20 March 2006 COJ and JRAD entered into an addendum to the notarial lease. The terms of this addendum are not relevant for the present purposes and, therefore, a copy thereof is not annexed hereto.

19. On or about 29 July 2014, JPC, representing COJ consented to the cession and assignment of JRAD's right, title and interest in and to the notarial lease, from JRAD, to Wild Goose.
20. A copy of the written consent necessary to cede JRAD's rights under the notarial lease is attached hereto marked "FA3".
21. Having regard to the written consent, I emphasise that the consent to the cession and assignment of the notarial lease was given by a representative of JPC, representing COJ, and duly authorised thereto in terms of a resolution and a power of attorney, granted to JPC, by COJ, and filed at the Johannesburg deeds office under reference PA716/2022.
22. The power of attorney referred to in the consent of 29 July 2014 is the SPOA referenced above.
23. A copy of the SPOA is attached hereto marked "FA4".
24. In terms of clause 3.4 of the SPOA, read together with the preamble thereto, JPC was authorised to sign and execute on COJ's behalf, and in its stead, and place on behalf of Council, to grant consent to lessees to sub-let or part with possession of Council owned land or buildings hired from the Council or to cede or assign the leases, subject to such conditions as may be considered necessary to protect the Council's interests. (My emphasis)



25. On or about 12 January 2015, a tripartite agreement was entered into between COJ, Wild Goose and Nedbank Limited ("**Nedbank**") ("**the tripartite agreement**").
26. The tripartite agreement was concluded for the purpose of protecting Nedbank's security rights under a mortgage bond.
27. The provisions of the tripartite agreement are not relevant for the present purposes, as the provisions thereof have not been engaged. However, as will appear more fully from what is set out below, representatives of the JPC have, in correspondence exchanged between the parties referred to the provisions thereof, and seem to believe that this agreement is relevant. With respect, I will demonstrate below that the tripartite agreement finds no application in the circumstances.
28. Accordingly, a copy of the tripartite agreement is attached hereto marked "**FA5**".
29. On 21 February 2023, Wild Goose's attorney notified JPC, on behalf of COJ, that it wished to renew the notarial lease for a further 25-year period, and it requested JPC, on behalf of COJ, to grant such an extension. A copy of the written notification of 21 February 2023 is attached hereto marked "**FA6**".
30. On or about 12 July 2023, and pursuant to the request for an extension of



the notarial lease dated 21 February 2023, a second addendum to the notarial lease was entered into between Wild Goose and COJ, the latter being duly represented thereto by JPC.

31. A copy of the second addendum to the notarial lease is attached hereto marked "FA7".
32. In terms of the second addendum to the notarial lease, the lease was extended for a further 25 years, effective from 19 April 2025, meaning that the notarial lease would terminate on 19 April 2050.
33. The notarial lease was extended on the same terms and conditions as contained in the "*Main Agreement*", which is a reference to the terms and conditions as contained notarial lease which was registered in 2000.
34. On or about 21 June 2023, the Spar Group Limited ("**Spar**") was granted an order in terms of which it was authorised to perfect upon General Notarial Bonds ("**the GNB's**") registered in its favour over Wild Goose's movable property ("**the perfection order**"). A copy of the perfection order is attached hereto marked "**FA8**".
35. On 19 September 2023, an order was granted, by this honourable court, placing Wild Goose into business rescue. A copy of the order is attached hereto marked "**FA9**".
36. I am the duly appointed business rescue practitioner of Wild Goose.



37. In compliance with my obligations under the companies act 71 of 2008 (“**the companies act**”), I presented a business rescue plan to the affected persons of Wild Goose, and the business rescue plan was duly adopted on or about 29 November 2023.
38. I am sensitive to rendering these papers unnecessarily prolix, but the terms of the adopted business rescue plan are relevant to ~~these~~ proceedings. Accordingly, I attach hereto marked “**FA10**”, a copy of the adopted business rescue plan.
39. Central to the success of the adopted business rescue plan is the sale of Wild Goose’s rights under the notarial lease, as extended on 12 July 2023.
40. I pause to highlight that it is the cession of Wild Goose’s rights under the notarial lease, and more specifically whether JPC may consent to this cession on behalf of COJ, which constitutes the issue to be determined in this application.
41. Despite my best efforts I was only able to secure a purchaser for Wild Goose's rights under the notarial lease through an auction sale on 22 May 2024.
42. I engaged the services of Broll Auctions and Sales Pty Ltd (“**Broll**”) to conduct an auction of Wild Goose's rights under the notarial lease (as extended).



43. To this extent, Broll prepared written rules of auction and conditions of sale, relating to the sale of Wild Goose's rights, title and interest in and to the notarial lease. A copy of these rules and conditions are attached hereto marked "FA11".
44. Broll duly arranged an auction for the sale of Wild Goose's rights under the notarial lease to take place on 22 May 2024.
45. In anticipation of the auction sale, CDH engaged with JPC asking for it to support the sale of Wild Goose's rights under the notarial lease at the auction on behalf of COJ. To avoid undue prolixity, I do not attach hereto all of the correspondence exchanged between CDH and the JPC in this regard, save for the initial email of 20 March 2024, in order to illustrate to this court the extent of attempts to engage with JPC to secure the required consent. A copy of the 20 March 2024 email is annexed hereto, marked "FA12".
46. JPC's consent to the cession of Wild Goose's rights under the notarial lease was not forthcoming. However, Broll continued with the auction sale scheduled for 22 May 2024.
47. At the auction of 22 May 2024, the property was sold to Pageview for a purchase consideration of R19,250,000.00. In addition, Pageview was obliged (and agreed) to make payment of an amount of approximately R5,600,000.00 to COJ in respect of rates, levies taxes and other municipal



charges levied upon the property in terms of section 118(3) of the Local Government Municipal Systems Act 32 of 2000.

48. Therefore, the total consideration payable by Pageview in respect of the acquisition of Wild Goose's rights under the notarial lease is in the vicinity of R25,000,000.00.

49. A copy of the signed conditions of sale ("**the conditions of sale**") are attached hereto marked "**FA13**".



50. For the present purposes, the material express provisions of the conditions of sale are as follows:

50.1 the purchase price for wild Goose's leasehold right, plus Value Added Tax (if applicable) was R19,250,000.00 (*vide* clause 2);

50.2 a deposit equal to 5% of the purchase price was payable to Broll immediately on the fall of the hammer (*vide* clause 2.1);

50.3 the cession of Wild Goose's rights under the notarial lease would not occur without the written consent of COJ, which consent must be obtained within 30 days of the auction, failing which the agreement would terminate (*vide* clause 2.5); and

50.4 Pageview would be liable for all rates, levies, taxes and other municipal charges levied on the property for the period up to the

registration of the cession and also for rates, levies, taxes and other municipal charges thereafter. It was estimated that the amount due to COJ was R5,600,000.00 (*vide* clause 6).

51. Pursuant to the conclusion of the conditions of sale, CDH, on my behalf, continued to engage with JPC in order to obtain their consent (on behalf of COJ) to the cession of Wild Goose's rights under the notarial lease.



52. Again, in order to avoid undue prolixity, I do not attach hereto all of the correspondence exchanged between CDH and the JPC regarding the cession of the leasehold right, as a consideration of this correspondence will take the determination of the issue herein no further.

53. JPC's consent to the cession of the leasehold right was not forthcoming. As a result, the sale agreement with Pageview terminated as the conditions of sale were not fulfilled. However, in a bid to safeguard the rights of affected persons in the business rescue of Wild Goose, I managed to secure, between myself (as Wild Goose's business rescue practitioner) and Pageview, the reinstatement of the sale of Wild Goose's rights under the notarial lease.

54. Therefore, on 21 August 2024, a written agreement reinstating the sale agreement of 22 May 2024 was entered into between myself, Broll and Pageview ("**the reinstatement agreement**"). A copy of the reinstatement

agreement is attached hereto marked "FA14".

55. The import of the reinstatement agreement is that JPC's consent to the cession of Wild Goose's rights under notarial lease must be obtained before 3 October 2024, failing which the sale of Wild Goose's rights under the notarial lease will fail.
56. After the conclusion of the reinstatement agreement CDH once again set about trying to obtain JPC's consent (on behalf of COJ) to the cession of Wild Goose's rights under the notarial lease.
57. There have been a number of exchanges between CDH and JPC relative to the latter granting its consent to the cession of Wild Goose's rights under the notarial lease. The upshot of these exchanges is that the representatives of JPC are adamant (despite many attempts of persuasion) that JPC does not have the necessary authority to consent to the cession of Wild Goose's rights under the notarial lease, and that COJ must provide such consent, alternatively, it must expressly authorise JPC to consent to the cession of Wild Goose's rights.
58. With respect, the representatives of JPC are incorrect in their assessment. JPC is entitled, in terms of the SPOA, to consent to the cession of Wild Goose's rights under the notarial lease to Pageview.



59. In order to avoid undue prolixity, I have not attached all of this correspondence hereto. Hereinbelow I will deal with the last two letters exchanged between CDH and JPC, as these two letters summarise the positions adopted by the respective parties.

THE ISSUE

60. I seek an order directing JPC to consent to the cession of Wild Goose's rights under the notarial lease, and the issue for determination herein is whether JPC has the authority to provide this consent.



61. Two letters exchanged between CDH (on my behalf) and JPC define the issue. Herein I will deal only with the relevant portions of these letters.

62. On 29 August 2024 (and pursuant to the exchange of much correspondence with JPC), CDH addressed a letter of demand to JPC, in which the position relating to JPC's authority to consent to the cession of Wild Goose's rights under the notarial lease was summarised. A copy of this letter (excluding its attachments) is attached hereto marked "FA15".

63. The letter of 29 August 2024 contained the following important recordals:

63.1 that Wild Goose's cession of its rights under the notarial lease, subject to consent of COJ, was provided for in clause 8.9 of the notarial lease (*vide* paragraph 2.5 of the letter);

63.2 that COJ's consent to Wild Goose's cession of its rights under the notarial lease may not be unreasonably withheld in terms of clause 8.98 thereof (*vide* paragraph 2.6 of the letter);

63.3 that JPC's delay in providing its consent to the cession of Wild Goose's rights caused the sale agreement with Pageview to expire (*vide* paragraph 2.13 of the letter);



63.4 that the sale agreement with Pageview had been reinstated and that in terms of the reinstatement agreement JPC's consent to the cession of wild Goose's rights was required by no later than 3 October 2024 (*vide* paragraphs 2.14 and 2.15 of the letter);

63.5 that should JPC cause further delay by failing to provide its consent to the cession, this failure has the potential of jeopardising the sale to Pageview, which sale includes a substantial payment to COJ (being a reference to the estimated R5,600,000.00 due to COJ under the agreement with Pageview) and the injection of R19,250,000.00 into rescuing the business of wild Goose (*vide* paragraph 2.19 of the letter);

63.6 that if the reinstated sale agreement with Pageview was to fail, it is highly likely that wild Goose's business rescue will be converted into a liquidation which is not in the best interests of any of the interested parties, including COJ (*vide* paragraph 2.20 of the

letter);

63.7 that, given the delay in obtaining JPC's consent to the cession of the notarial lease, I had requested that JPC be placed on notice in respect of their (and COJ's) breach of the notarial lease agreement (as amended and extended) (*vide* paragraph 4 of the letter).



64. The letter of 29 August 2024, concluded with a demand to the effect that

JPC remedy its breach of the notarial lease, by granting its consent to the cession of Wild Goose's rights thereunder, by no later than the close of business 9 September 2024, failing which my rights to approach this honourable court for the necessary relief were reserved (*vide* paragraph 4 of the letter).

65. On 29 August 2024, JPC responded to CDH's letter of the same date, as well as CDH's earlier letter of 19 August 2024. Copy of this letter is attached hereto marked "FA16".

66. The relevant portions of JPC's letter of August 24 are as follows:

66.1 JPC asserted that there is nothing in the SPOA "*which authorizes (sic) JPC to approve or support sale (sic) of the CoJ Lease Agreement at auction. The POA does not deal with auctions, at all*" (*vide* paragraph 7 of the letter);

66.2 JPC contended that it is not “*an agent*” of COJ and that even if it was COJ’s agent (which it is not), it “*has no authority to and could not have supported the sale of the lease. It would need council authority or permission from a delegated authority within the CoJ, to do so. The JPC POA (being a reference to the SPOA) does not contain, authority for such support by JPC. The CoJ, if it so minded would then communicate its position to JPC*” (*vide* paragraph 11 of the letter); and

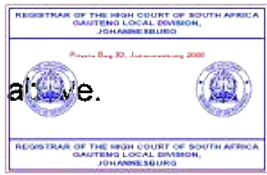


66.3 on several occasions, in the letter, JPC asserted that it has no authority to represent COJ in a transaction involving the sale of the notarial lease, and that it has no authority to consent to a cession of such a lease agreement (*vide*, for example, paragraphs 12, 13, 17 and 28 of the letter).

67. With respect, I say that it is self-evident that if JPC is incorrect in its conclusion to the effect that it is not authorised to represent COJ and consent to the cession of Wild Goose’s rights under the notarial lease, then I am entitled to the relief which I seek.

68. Below I deal, briefly, with the provisions of the notarial lease read together with the SPOA.

THE NOTARIAL LEASE AND THE SPECIAL POWER OF ATTORNEY

69. Whether or not JPC has the requisite authority to consent to the cession of Wild Goose's rights under the notarial lease as a matter of the interpretation of the notarial lease (together amendments and extensions thereto) and the SPOA.
70. The relevant provisions of the notarial lease have been dealt with  above.
71. It is apparent from clause 8.9.1 of the notarial lease that Wild Goose is entitled to cede or assign its rights thereunder, provided that COJ's consent to such a cession is first obtained. COJ was not entitled to unreasonably withhold such consent.
72. In terms of clause 3.4 of the SPOA, read together with the preamble thereto, JPC was authorised to sign and execute on COJ's behalf, and in its stead, and place on behalf of Council, to grant consent to lessees to sub-let or part with possession of Council owned land or buildings hired from the Council or to cede or assign the leases, subject to such conditions as may be considered necessary to protect the Council's interests. (My emphasis)
73. The matter is as simple as that, JPC is self-evidently authorised to consent to the cession of Wild Goose's rights under the notarial lease as they have been requested to do on numerous occasions.



74. Significantly, JPC telephonically confirmed to John Webber of CDH on 26 July 2024 that JPC is not opposed to the cession of Wild Goose is rights under the notarial lease *per se*. In refusing to consent to the cession of Wild Goose's rights, it is relying solely on a purported lack of authority to do so on behalf of COJ.
75. In seeking the relief which I do, I seek nothing more than **specific** performance of the notarial lease.



BUSINESS RESCUE VERSUS LIQUIDATION

76. The relief which I seek herein is necessary to finalise Wild Goose's business rescue.
77. The finalisation of Wild Goose's business rescue is in the best interests of all affected parties, including (perhaps ironically) COJ. However, if COJ's consent to the cession of Wild Goose's rights under the notarial lease is not obtained, possibly before the expiry of the term of the reinstatement agreement, I will have no alternative but to convert Wild Goose's business rescue proceedings into liquidation proceedings. This aspect is briefly canvassed below under the heading "*urgency*".
78. I attach hereto marked "**FA17**" and "**FA18**", respectively, copies of calculations extracted from the business rescue plan, depicting the scenario in the event of the business rescue proceedings being finalised

and the scenario should the business rescue proceedings be converted into a liquidation. The expected dividend at the time of publishing this plan, for concurrent creditors, in the event of the business rescue proceedings being finalised is anticipated to be in the vicinity of 50 cents in the rand. In contrast, it is anticipated that should the business rescue proceedings be converted into a liquidation, concurrent creditors will receive a dividend of approximately 13 cents in the rand.



79. In addition, a shopping centre has been constructed upon the property (which is the subject matter of the notarial lease) and there are 24 shops trading thereat. I am unsure of the employment capacity of each of the stores, but they obviously employ a fair number of staff members collectively. I do know that the Spar store alone employs 86 people.
80. Should the sale to Pageview fall away, it is unlikely that another sale will be secured within the next six months to a year, especially if I have no choice but to convert the rescue to a liquidation. In those circumstances, I anticipate the possibility that all of the stores will close and the employees concerned will lose their jobs.
81. The current sale envisages that a payment of R5,600,000.00 be made to COJ in terms of section 118 of the Municipal Systems Act 32 of 2000 ("**municipal act**"). Should the with Pageview fall away or be indefinitely delayed, liquidation shall follow and then there is no guarantee that another purchaser will be found and COJ may end up without any section

118 payment and yet another empty building they have to manage and keep safe from potential hijacking.

82. All of the negative consequences of the liquidation of Wild Goose can be avoided by COJ, represented by JPC, consenting to the cession of Wild Goose's rights under the notarial lease.

URGENCY



83. One of my core responsibilities as business rescue practitioner is to ensure the successful implementation of the business rescue plan, and thereby hopefully ensuring job security and a positive net contribution to the economy.
84. The key implementation point in the plan was to secure the sale of the rights under the notarial lease. Without security the sale of the rights under the notarial lease I cannot substantively implement the plan and, as stated above, will have to convert the business rescue to a liquidation.
85. I also do not have the requisite cash-flow to continue to run the business rescue indefinitely. This was not envisaged when the plan was drafted, published and approved. To date, because I have been unable to secure the proceeds from the sale of rights under the notarial lease, I have already had to secure R1,945,557.73 post commencement finance ("PCF") from the Spar Group and Nedbank Limited in order to pay COJ

monthly in order to secure access to water and electricity. I cannot continue doing this indefinitely due to JPC's unwillingness to provide its consent. Continuously trying to secure PCF on a monthly basis, under these circumstances, is detrimental to the business rescue and most affected parties.

86. Furthermore, I am unable to secure future lease agreements with tenants because tenants do not wish to enter into long-term agreements without knowing that the future of the shopping centre is secured.



87. Lastly, should JPC continue to unreasonably withhold their consent, there is no guarantee that Pageview shall agree to reinstate the sale agreement after 3 October 2024. The sale will therefore fall away, which will have all the negative knock-on effects referred to above.
88. Even in circumstances where Pageview would consider a further reinstatement, I reiterate that I cannot continue with the business rescue indefinitely, especially without the funding from the sale.
89. Each month that goes by places the prospects of liquidation more at the forefront. The only thing stalling a successful business rescue is the consent the JPC is able but unwilling to provide.

CONCLUSION

90. In all the circumstances, I submit that this application is urgent, as

contemplated by the rules of court, and that I have made out a case for the relief which I seek.

91. Insofar as the allegations contained herein relate to him, I annex hereto the confirmatory affidavit of John Webber.

WHEREFORE I pray for an order in terms of the notice of application to which this affidavit is attached.



DEPONENT

SIGNED and SWORN at *Rodepoort* before me on this the 13th day of **SEPTEMBER 2024**, the Deponent having acknowledged that she knows and understands the contents of this affidavit which was deposed to in accordance with the regulations governing the administration of oaths as more fully set out in Government Notice R1258 of the 21st July 1972, as amended by Government Notice 1648 dated the 19th August 1977.

COMMISSIONER OF OATHS

SHAUN DAVID LOURENS

Kommissaris van Ede / Commissioner of Oaths
Praktiserende Prokureur / Practising Attorney R.S.A
Unit C9 Clearview Office Park, 77 Wilhelmina Avenue
Allensnek, Rodepoort
Tel: 011 675 2881 / Faks/Fax 011 675 2899
Email: shaun@ottokrause.co.za

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-104348**

In the matter between:

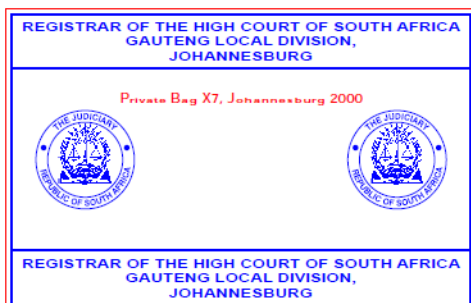
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

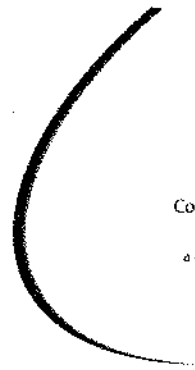
Annexure 01

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:46:04 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division, Johannesburg**



Companies and Intellectual Property Commission
a member of the dti group

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION REPUBLIC OF SOUTH AFRICA

Date of Issue: 27/09/2023
Our Reference: 60000783487
Customer Code: AAIDSX
Email Address: CREY@BDO.CO.ZA



This hereby confirms that your notice of application dated 27/09/2023 for business rescue practitioner(s) was successful.

Company Number: 2008/019170/23
Company Name: WILD GOOSE TRADING AND SERVICES 39 CC
Company Status: BUSINESS RESCUE

Business Rescue Practitioner(s)

Name	Classification	Action	Date
Christopher Raymond Rey	Experienced Practitioner	Appoint	19/09/2023

Yours truly

Commissioner: CIPC

the dti Campus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria | P O Box 429, Pretoria, 0001
Call Centre: 086 100 2472
Email: rvoller@cipc.co.za / Website: www.cipc.co.za



2008/019170/23



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1 of 1

"FA2"

RESOLUTION OF THE DIRECTORS OF
JRAD INVESTMENTS (PROPRIETARY) LIMITED
 (Registration number: 1998/016920/07)
 ("the Company")

HELD AT GERMISTON ON 31 March 2006

RESOLVED THAT:

JRAD INVESTMENTS (PROPRIETARY) LIMITED (as Lessee) enter into an Addendum to the Notarial Deed of Lease executed on 19 April 2000 in respect of Portion 402 of the Farm Braamfontein 53-IR, now known as erf 1010 and 1011 Melville Extension 3 and the Agreement of Lease ("the Encroachment lease agreement") dated 23 September 2003 in respect of a portion of Main Road reserve adjacent to Erven 1010 and 1011, Melville Extension 3 with the CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY (as Lessor).



RESOLVED FURTHER:

That PANAYOTA KARPODINIS in her capacity as Managing Director of the Company be and is hereby authorised and empowered to represent the Company in regard to the aforesaid and sign all and any documents and do all such acts and things as may be necessary in order to give effect to the above.

COSMAS CAVALEROS
DIRECTOR

CERTIFIED A TRUE COPY OF THE ORIGINAL

13/06

ALIDA J.J.A. BRANDT ATTORNEY
 2 Van der Stel Street, Alberanie, Alberton
 Area of Appointment: REPUBLIC OF SOUTH AFRICA
 Practising Attorney Admitted in terms of Admission of Attorneys Act No. 53 of 1979

OFFICIAL
STAMP DUTY
R95-00

ALC 402362346
Unit 1045
LN 2519

REGISTERED FOR TRANSFER 19 05 2000
REGISTERED THIS
W. White
Registrar van Aktes
Registrar of Deeds

BC 010915/04
GEKANSLEER
CANCELLED
REGISTRAR OF DEEDS
2000-03-19

POOL

MIO: 10110290
LTD: 5000222

VERBIND
MORTGAGED

vir 16 000 000,00
for R

19/5/2000

Akteskantoor
Deeds Office
19 05 2000
Registrar

ORIGINAL HEREOF BEARS STAMPS
TO THE VALUE OF R33 600,14 DULY
CANCELLED IN TERMS OF LAW

NOTARY PUBLIC

KRAGTENS ARTIKEL 16A VAN WET NO 55 VAN 1997 IS DIE
IN TERMS OF SECTION 16A OF ACT NO 55 OF 1997 THE
GESERTIFISEERDE AFSKRIFTE VAN DIE OORSPRONGELIKE
CERTIFIED COPY HEREOF TREGS WAT DIE OORSPRONGELIKE
AKTESKANTOOR VAN JOHANNESBURG DEELS OF HELESTEN
JOHANNESBURG IS DEEMD TO BE THE AUTHORITY
SIE DUPLIKAAT TE WEE. DUPLICATE.

ASST. REGISTRAR VAN AKTES
ASST. REGISTRAR OF DEEDS



Protocol No. 26/2000

NOTARIAL DEED OF LEASE

IN JOHANNESBURG, BEHEERD
BY GERHARDUS STEPHANUS MINNAAR

BE IT HEREBY MADE KNOWN:

K 2499/2000 L

JAB K 1350/2000

THAT on this 17th day of April in the year TWO THOUSAND (2000) and at RANDBURG
and in the presence of the undersigned witnesses, personally came and appeared before
me, MELANIE DE WET, Notary Public, by lawful authority duly sworn and admitted and
practising at RANDBURG, Province of GAUTENG,

JOHANNES GERHARDUS STEPHANUS MINNAAR

Vir wetslike outerskryfing oop
For further instructions add.....

as duly authorised agent of

KAREN BESTER in her capacity as Executive Officer: Legal Services of the

**NORTHERN METROPOLITAN SUBSTRUCTURE OF THE GREATER JOHANNESBURG
TRANSITIONAL METROPOLITAN COUNCIL**

(hereinafter referred to as the "NMLC"),

duly authorised hereto by virtue of a resolution dated 28 October 1997
and appearer being duly authorised by virtue of a Power of Attorney signed at RANDBURG
on 19 APRIL 2000



which Power of Attorney and certified copy of which Resolution have been exhibited to me
and now remain filed in my protocol.

AND also appeared

JOHANNES GERHARDUS STEPHANUS MINNAAR

as duly authorised agent of -

JRAD INVESTMENTS (PROPRIETARY) LIMITED

No. J98/16920/07

(hereinafter referred to as the "Lessee"),

by **KIM SHEENA COOPER**

duly authorised hereto by virtue of a Resolution dated 14 APRIL 2000

the appearer being duly authorised by virtue of a Power of Attorney signed at *RANDBURG*
on *14 APRIL 2000*

which Power of Attorney and certified copy of which Resolution have been exhibited to me
and now remain filed in my protocol.

AND THE APPEARER DECLARED THAT:

WHEREAS the NMLC is in terms of Certificate of Registered Title T about to be registered
the owner of

Portion 402 (a portion of Portion 190) of the farm BRAAMFONTEIN 53 Registration Division
I.R. measuring 9 907 (NINE THOUSAND NINE HUNDRED AND SEVEN) square metres on
which property together with certain other properties the NMLC has developed a swimming
pool complex, known as the "Melville Swimming Pool" for the benefit of the citizens of the
NMLC;



AND WHEREAS the NMLC has, in terms of the Resolution A1032 dated 29 October 1998
resolved to let Portion 402 (a portion of Portion 190) of the farm BRAAMFONTEIN 53
Registration Division I.R. measuring 9 907 (NINE THOUSAND NINE HUNDRED AND
SEVEN) square metres to the Lessee for the purpose of erecting and operating thereon a
development as indicated in the said resolution, subject to the terms and conditions as set
out hereinafter and the Lessee has agreed to accept such terms and conditions.

NOW THEREFORE it is agreed as follows:

1. INTERPRETATION

1.1 In this lease unless the context indicates otherwise:

1.1.1 "the property" means Portion 402 (a portion of Portion 190) of the
farm BRAAMFONTEIN 53 Registration Division I.R., measuring 9 907
(NINE THOUSAND NINE HUNDRED AND SEVEN) square metres.

1.1.2 "the building" means the building to be constructed on the property in
accordance with the provisions, requirements and approval of the
NMLC, and includes, where the context so allows, all permanent
improvements on the property;

1.1.3 "facilities" means any facilities to be constructed by the Lessee;

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- 1.1.4 "the premises" means the property together with the building erected thereupon;
- 1.1.5 "year" means a period of 12 consecutive months, and "yearly" has a corresponding meaning;
- 1.1.6 "building plans" shall mean the plans, relating to the construction of the building;
- 1.1.7 references to notices, statements and other communications by or from the NMLC include notices by or from the NMLC's agent;
- 1.1.8 expressions in the singular also denote the plural, and vice versa;
- 1.1.9 words and phrases denoting natural persons refer also to juristic person, and vice versa;
- 1.1.10 pronouns of any gender include the corresponding pronouns of the other genders;
- 1.1.11 "month" means a calendar month;
- 1.1.12 "the parties" means the parties to this lease and party means one of them.
- 1.1.13 "VAT" means value added tax.



- 1.2 Any provision of this lease imposing a restraint, prohibition or restriction on the Lessee shall be so construed that the Lessee is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the premises or any part thereof through, under, by arrangement with, or at the invitation of, the Lessee, including (without limiting the generality of this provision) its associates and the directors, members, officers, employees, agents, customers and invitees of the Lessee or its associates.
- 1.3 Clause headings appear in this lease for purposes of reference only and shall not influence the proper interpretation of the subject matter.

- 1.4 This lease shall be interpreted and applied in accordance with South African Law.

2 CONDITIONS PRECEDENT

- 2.1 The parties record that the following conditions precedent are to be fulfilled prior to the coming into operation of this agreement.

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- 2.1.1 The NMLC shall advertise this Agreement as is required by Section 79(18) of Ordinance 17 of 1939 as amended; and
- 2.1.2 The proclamation of the approved Township as contemplated in Clause 7.1 hereof; and
- 2.1.3 The approval of a loan to the Lessee by a bank or other financial institution of sufficient monies to complete the proposed development, against security of a bond to be passed over the lease, which loan approval must be granted within 60 days of the proclamation of the Township as an approved township.
- 2.1.4 The procurement by the Lessee of all necessary consent to the demolition/removal/alteration of any structures on the leased property which may, by virtue of the actions of the National Monuments Council, impede or frustrate the Lessee in its endeavours to develop the property as proposed.



3 THE LEASED PROPERTY

The NMLC hereby lets to the Lessee, which hereby hires the property together with the facilities to be erected thereupon in terms of this lease.

4 DURATION

- 4.1 This lease shall come into operation upon the signing hereof and shall continue and endure for a period of 25 (TWENTY FIVE) years reckoned from the date that the lease becomes unconditional, due regard being had to the provisions of clause 2 herein which date is hereinafter referred to as the "effective date" subject to the conditions of clause 4.2.
- 4.2 The Lessee shall have the option to extend the period of the lease referred to in clause 2.1 for a further period of 25 (TWENTY FIVE) years subject to the following:
- 4.2.1 The Lessee undertakes to furnish the NMLC in writing of the Lessee's intention to renew this lease as provided for in clauses 4.2 at least 180 days prior to the expiry of the 25 year period referred to in clause 4.1
- 4.2.2 if the option is exercised then the rental payable by the Lessee to the NMLC during such extended 25 year period shall be subject to the same terms and conditions as that applicable in respect of the initial twenty five year period of this Agreement.
- 4.2.3 If the Lessee wishes to withdraw the exercise of the option after same has been exercised, it may do so by written notice given to that effect to the NMLC at least 60 (SIXTY) days prior to the expiry of the 25 (TWENTY FIVE) year period.

5 RENT

- 5.1 The Lessee shall pay to the NMLC without deduction or demand rental in respect of the leased property in the amount of R3 000,00 (THREE THOUSAND RAND) plus VAT thereon if applicable per month payable monthly in advance from the effective date at the office of the NMLC's Treasurer as stipulated from time to time.
- 5.2 The said rental in respect of the leased property shall escalate annually at 12 % (TWELVE PERCENT) over the initial twenty five year duration of the lease and said escalation shall be applicable over any further period over which this lease is renewed as provided for in 4.2
- 5.3 The NMLC shall be entitled to charge interest on any amount payable in accordance with clause 5.1 and which is overdue at the rate of 1 % per month from the date that the payment is due until date of final payment.
- 5.4 The rent payable in respect of the option period, if exercised, shall be determined in terms of clause 5.2 above.



6 RATES, MUNICIPAL CHARGES AND VAT

- 6.1 As from the effective date the Lessee shall be liable for the payment of assessment rates and any other municipal charges in respect of the leased property together with any VAT that may be payable in respect thereof.
- 6.2 The Lessee shall pay interest on any overdue rates at the applicable rate from time to time as determined in accordance with Section 50(A) of the Local Government Ordinance (Transvaal) No. 17 of 1938 and reckoned from the due date of payment of such amount to the actual date of payment thereof.

7. FACILITIES TO BE ERECTED

7.1 The Lessee shall, at its own cost, apply for the establishment of a Township on the leased property and, should said application be successful on exhaustion of the full legal process as set out in the Town Planning and Townships Ordinance 15 of 1986, the Lessee shall, at its own cost, develop the leased property in accordance with the following:

7.1.1 The conditions of establishment of the Township;

7.1.2 A Site Development Plan ("SDP"), substantially in accordance with the development proposal as referred to in 7.1.3 below, lodged with and approved by the relevant person or body of the NMLC;

- 7.1.3 The proposal approved by the NMLC in terms of Resolution No. A 1032 of 29 October 1998 and, furthermore, to the satisfaction of the Strategic Executives Technical Services; Finance; and Planning and Urbanisation of the NMLC.
- 7.2 The Lessee shall, furthermore, comply with the National Building Regulations together with the NMLC's Town Planning Scheme, by-laws and all other applicable legislation.
- 7.3 The Lessee shall ensure that the construction of the facilities permitted in terms of the said SDP shall be substantially in accordance with the approved building plans.
- 7.4 The Lessee shall commence building operations within 90 (ninety) days from the date of the final promulgation in the appropriate Gazette of the approved township; or the date of the approval of the building plans by the NMLC, whichever occurs latest, or such later date as the parties may agree in writing. Provided that such building operations once commenced with shall not be ceased for a continuous period of more than 7 (seven) days (for reasons other than an act of God or vis major or by reason of any inclement weather or by reason of political riot, civil commotion, local combination of workmen, strike or lock-out affecting any of the trades employed in the construction of the facilities or by other reason beyond the control of the Lessee, including but not limited to the annual building industry holidays) without the approval of the Strategic Executive Planning and Urbanisation of the NMLC first being obtained, which approval shall not be unreasonably withheld.
- 7.5 The periods of the permitted delays in terms of clause 7.4 hereof shall be certified by an architect appointed by the Lessee and such certificate shall be prima facie proof thereof.
- 7.6 The Lessee shall pay all architects and other professional fees associated with the construction of the facilities to be erected on the leased property and who have been appointed by the Lessee.
- 7.7 The Lessee shall submit any material change in the building plans to the NMLC for approval.
- 7.8 The leased property and all structures and buildings erected thereon by the Lessee together with all improvements thereon will, on the expiration or termination of this lease, vest in and will remain the property of the NMLC free of compensation by the NMLC to the Lessee and shall not be removed or demolished by the Lessee upon termination of this lease either by cancellation of the effluxion of time.



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- 7.9 The Lessee hereby indemnifies and holds harmless the NMLC in respect of any claim which the Lessee or any other third party may have should the application for the establishment of a township on the leased property not be approved by either the Tribunal of the NMLC or by an Appeal body.
- 7.10 The Lessee shall bear the costs of all service connections required for the development proposed for the leased property.

8. LESSEE'S RIGHTS AND OBLIGATIONS

The Lessee-

8.1 ACKNOWLEDGEMENT

acknowledges itself to be fully acquainted with the locality and full details of the property.

8.2 USE

- 8.2.1 Shall use the property only for the purposes specified in the conditions of approval of the approved township, the approved SDP and the applicable town planning scheme. The Lessee shall not be permitted to utilise the leased property in any other manner whatsoever without the prior written consent of the NMLC being obtained.
- 8.2.2 Shall be liable for all costs arising out of or incidental to the establishment of the Township as envisaged in clause 7 and the development including, but not limited to contributions to services and the reasonable upgrading of services and/or roads as required by the S.E: Technical Services.
- 8.2.3 Shall be bound and obliged, at its own expense, to maintain the property in a clean and sanitary state and in good order and condition (fair wear and tear excepted). Such maintenance shall include, inter alia, maintenance, repair and replacement as necessary, painting and decorating and ensuring that the buildings remain structurally sound. Should the Lessee fail to do so the NMLC may do so at the Lessee's expense, due and reasonable notice having been afforded to the Lessee by way of hand delivered notice.
- 8.2.4 Shall comply with all sanitary and/or other by-laws effecting the leased property and shall take all steps to keep and maintain the swimming pool and filtration plant and chlorinating equipment together with all plumbing, sanitary and sewerage equipment, connections, pipes and drains of the premises in good working order and condition, and shall at all times purge, cleanse, scour and keep



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and maintain in good sanitary condition all such drains and other sanitary arrangements including wash basins, sanitary fittings and urinals.

- 8.2.5 Shall not cause or permit to be caused by obstruction the blockage of sewerage pipes, water pipes or drains in the property and shall remove and repair at its cost any obstruction or any blockage of any such sewerage or water pipes or drains.
- 8.2.6 Is entitled, with the NMLC's prior written consent, to carry out building alterations and extensions after the initial construction of the improvements by the Lessee provided that same do not exceed the rights granted in terms of the establishment of the Township and, provided further that same are in compliance with amended building plans.
- 8.2.7 The NMLC shall not be obliged to compensate the Lessee for any of the work performed in terms of clause 8.2.6.
- 8.2.8 Has the right to demolish the whole or part of any existing building on the leased property for the purposes of the development except that a swimming pool substantially similar to that in existence thereon shall be retained.
- 8.2.9 Shall for the duration of the lease period and any period in respect of which this lease is extended, except for a period when unsafe to do so as a consequence of the commencement of building operations, make the swimming pool facilities available to the members of the public subject to the following conditions:
- 8.2.9.1 Adult members of the public (persons over the age of 16 years) shall be subject to the same conditions and tariffs as are applicable at other Council-owned swimming pools; and
- 8.2.9.2 Children (persons under the age of 16 years) and those professional coaches, teachers or instructors of various aquatic activities with whom an agreement exists with the Lessee will enjoy free access to the pool and use of the pool facilities.
- 8.2.9.3 The swimming pool shall accommodate a water sports academy where underprivileged persons in the area, according to the demand but not exceeding 40 (forty) persons per month, shall be coached in the skills of swimming.
- 8.2.10 The hours of operation of the aquatic activities at the complex should be a minimum of that which is applicable at the other revenue collecting swimming pools under the jurisdiction of the NMLC.
- 8.2.11 The Lessee shall, subject to the approval of the town planning rights install solar heated panels or an alternative heating mechanism to the



satisfaction of the SE: Planning and Urbanisation so as to keep the swimming pool heated for as long a period in the year as the said panels or alternative heating mechanism are able properly to operate.

- 8.2.12 The water in the main and toddlers' pools shall conform to standards acceptable for swimming and shall at all times be crystal clear, free from floating debris, free from objects and debris lying on the bottom and the sides and bottoms thereof shall be free of algae.
- 8.2.13 Officials from the NMLC, in their capacity as such and acting within the course and scope of their employment with the NMLC, shall have access to the aquatic facilities free of charge and at any time in order to obtain water samples for the purposes of bacterial analysis, a copy of the result of which will be forwarded to the Lessee without undue delay after having become available to the NMLC.
- 8.2.14 The Lessee shall ensure that at least one qualified lifesaver who is in possession of a valid bronze medal in lifesaving and a valid general first aid certificate is on duty at all times during the hours of operation of the aquatic activities to supervise aquatic activities and in order to exercise vigilance during these activities.
- 8.2.15 A resuscitator suitable to revive persons rescued from the water and a gas mask suitable for use in the event of chlorine gas leaks shall be available and in good working order at the swimming pool at all times. This equipment shall be checked for correct operation at least once per week in accordance with the respective manufacturer's recommendations and be serviced at least once per annum.
- 8.2.16 All apparatus, equipment and safety procedures at the development must conform and be in accordance with conditions as contained in the Occupational Health and Safety Act of 1993.
- 8.2.17 The Lessee undertakes to pay an amount of R360 000,00 (THREE HUNDRED AND SIXTY THOUSAND RAND) into a dedicated account to be held at a reputable financial institution and managed by one designated representative from each of the Lessee, the NMLC and the Local Residents' Associations or grouping of Residents' Associations or any successor in Title thereto as the NMLC shall consider to be representative of the local community, which amount is to be utilised for community upliftment in the area should the rights be granted in terms of the development proposal. The said amount will be payable by way of monthly instalments in the sum of R10 000,00 (TEN THOUSAND RAND) payable as from the date that the development on the leased property is complete and the Lessee may fully occupy same in accordance with a final occupancy certificate issued by the NMLC.
- 8.2.18 A certificate by the architect of the Lessee shall be submitted to the NMLC in which it is recorded the precise date on which the building



construction on the leased property is complete, which certificate shall serve as prima facie proof of the said date of completion.

- 8.2.19 The Lessee shall make 300 m² available, free of charge, for purposes of a public library. Should the NMLC require additional floor area, up to a maximum of an additional 400 m², then such additional floor area shall be subject to such charges as agreed to with the Lessee.
- 8.2.20 The Lessee agrees to make provision for an area within the public library as a training centre for numeracy and literacy courses and study groups to be focused on the illiterate adults in the area.
- 8.2.21 The Lessee also agrees to provide to the NMLC, free of compensation, a portion of the leased property sufficient to accommodate 15 (fifteen) parking bays for a period not exceeding 2 (two) years as from the date of commencement of this lease.
- 8.2.22 Should the NMLC decide prior to the commencement of the two year period mentioned in clause 9.2.21 or at any stage during the duration thereof that the said parking bays are no longer required then the Lessee and the NMLC hereby agree that a letter handed to the Lessee in which this clause is cancelled will serve as a written variation of this Agreement.



8.3 INSURANCE

- 8.3.1 Shall insure the premises for the interest and benefit of the NMLC and the Lessee and keep same insured for the replacement value of the building (and increase the amount of such insurance from time to time as may be necessary) against risk of damage by fire, riot, strike, civil commotion, political unrest, malicious damage and explosion, hail, snow, wind, rain, flood, overflowing of guttering and down pipes or bursting or overflowing of municipal or other water supply main, articles dropped from aircraft and aerial devices, bursting or overflowing of water tanks, apparatus or pipes as well as impact by road vehicles.
- 8.3.2 In addition to 8.3.1 above, the Lessee shall take out and maintain in force a Property Owners Public Liability Policy in respect of the premises in the minimum amount of R10 000 000,00 (TEN MILLION RAND) which amount is to be adjusted from time to time, in accordance with the normal standards applicable to this form of insurance in the Republic of South Africa from time to time, and shall submit proof of the NMLC of its having done so should this be requested. Such insurance shall be for the benefit of the NMLC and the Lessee and so noted on the policy.

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8.6 LAWS AND BY-LAWS

Shall not contravene or permit the contravention of any Laws, by-laws, regulations or requirements of any competent authority, relevant to the conduct of the Lessee's business through its occupation of the premises.

8.7 NUISANCE

8.7.1 Shall ensure that the activities on the premises are not an unlawful nuisance or hindrance to the NMLC or to the owners and occupiers of neighbouring properties and shall abide by the provisions of the NMLC's Noise Abatement By-Laws or any subsequent legislation in substitution thereof at all times.

8.7.2 Without derogating from the generality of the foregoing the Lessee shall not permit or allow on the property.

8.7.2.1 Live music after midnight;

8.7.2.2 The external electrical amplification of music after midnight;

8.7.2.3 The operation or existence of any dedicated public house, bar, tavern or cocktail bar;

8.7.2.4 Any totalisator agency.



8.8 MANAGEMENT

8.8.1 Shall, subject to the functions of the NMLC as empowered by the relevant legislation in respect of authorised local authorities and this Agreement, enjoy the exclusive right of management, control and supervision of the leased property.

8.8.2 Shall appoint a manager on and in respect of the leased property for the purposes of daily management, control and supervision.

8.8.3 All advertising on the leased property shall be to the satisfaction of the NMLC and shall be in compliance with any applicable legislation in terms of size, illumination, materials and location. However, the actual trading name/s are at the discretion of the Lessee.

8.9 CESSION, SUB-LETTING AND ASSIGNMENT

8.9.1 During the currency of this lease, the Lessee shall be entitled to sub-let the premises or any portion thereof, or cede or assign this agreement to any other person or organisation, including an associated Company of the Lessee provided that:

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8.9.1.1 the Lessee shall apply in writing to the NMLC and the consent in writing of the NMLC shall first be obtained which consent shall not be unreasonably withheld.

8.9.1.2 the terms and conditions of any such sub-lease, cession or assignment shall be subject to the written consent of the NMLC, which consent shall not be unreasonably withheld, and the Bondholder referred to in clause 17 shall be advised accordingly.

8.9.1.3 any damage caused to the premises by any sub-lessee, cessionary or assignee or by any persons shall be remedied by the Lessee at its sole expense within a reasonable period after such damage has come to the notice of the Lessee.

8.9.1.4 save as provided in this clause the Lessee shall not sub-let or transfer any portion of the premises, or cede or assign this lease.



8.9.2 The NMLC hereby grants its consent to the sublease of any portions of the leased property or structures erected or to be erected thereon to the sub-lessees intended to be accommodated on the leased property for business or commercial purposes subject to the provisions of clauses 8.9.1.3 and 8.9.1.4.

8.10 SUB-CONTRACTORS

warrants unto the Lessor that all subcontractors to be employed by the Lessee shall have knowledge of the contents of this agreement. The terms hereof shall take precedence over any term in conflict herewith contained in any other agreement.

9 EXCLUSION OF LIABILITY AND INDEMNITY

9.1 The Lessee hereby indemnifies and holds harmless the NMLC, its agents, employees and successors in title in respect of all loss, costs, damages and claims whatsoever incurred by the NMLC in respect of all loss, costs, damages and claims made against the NMLC by and sub-lessee, cessionary or assignee in their capacity as such or any third parties, whether lawfully or unlawfully on the property as also in respect of all legal costs, on the attorney and client scale, or other expenses incurred by the NMLC in examining, resisting or settling any such claims, except for any claim which

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may arise out of any breach of contract by the NMLC and/or the fault or negligence of the NMLC, its servants, employees or its agents;

9.2 The NMLC as lessor under this lease agreement shall under no circumstances be or become liable either to compensate the Lessee or any other person for damages to person, property or any other damages whatsoever sustained either directly or indirectly as a result of:

9.2.1 the condition or state of repair at any time of the leased property or any part thereof;

9.2.2 any failure or suspension of or any interruption in the supply of water, electricity, gas, air-conditioning, heating or any other amenity or service to the leased property or any part thereof, whatever the cause;

9.2.3 any interruption of or interference with the enjoyment or beneficial occupation of the leased property caused by any building operations or other works elsewhere on or about the leased property, whether by the NMLC or anybody else.

9.3 The Lessee may not withhold or delay any payment due to the NMLC or offset against such payment due to the NMLC any monies owing by the NMLC to the Lessee by reason directly or indirectly of:

9.3.1 a breach by the NMLC of any of its obligations under this lease;

9.3.2 any act or omission by the NMLC or any agent or servant of or contractor to the NMLC, whether or not negligent, willfully wrongful, or otherwise actionable at law and including (without limiting the generality of the foregoing) any act or omission of any cleaner, maintenance person, handyman, artisan, labourer, workman, watchman, guard or caretaker;

9.3.3 the condition or state of repair at any time of the leased property or part thereof;

9.3.4 any failure or suspension of or any interruption in the supply of water, electricity, gas, air-conditioning, heating or any other amenity or service to the leased property or any part thereof, whatever the cause.



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9.3.5 any interruption of or interference with the enjoyment or beneficial occupation of the leased property caused by any building operations or other works elsewhere on or about the leased property whether by the NMLC or anybody else.

9.4 The Lessee shall ensure that the activities on the premises are not an unlawful nuisance or hindrance to the NMLC or to the owners and occupiers of neighbouring properties, shall abide by the provisions of the NMLC's Noise Abatement By-Laws or any subsequent legislation in substitution thereof at all times and shall indemnify the NMLC against all loss or expense which the NMLC may suffer as a result of such activities.

10 RIGHTS AND OBLIGATIONS OF THE NMLC

10.1 The NMLC shall be entitled, after reasonable notice:-

10.1.1. at all reasonable times during the currency of this lease, to, enter onto the premises for the purposes of inspection thereof and to ensure that the Lessee is carrying out its obligations aforesaid;

10.1.2 to introduce any builder or workman to the premises for the purposes of the execution of any work, the performance of which is necessitated by any obligation imposed upon, or right granted to the NMLC by this lease or by common law, due regard being had to the business operations of the Lessee and all and any sub-lessees.



11 INDULGENCE

Any indulgence or relaxation in respect of any of the terms and conditions of this lease, unless reduced to writing and signed by and behalf of the parties thereto, which the NMLC may grant to the Lessee shall be without prejudice to the rights of the NMLC in terms of this lease and may be withdrawn at any time.

12 WHOLE AGREEMENT

This lease constitutes the entire agreement between the parties and:-

12.1 no representation or warranty by the NMLC or the Lessee (or its agents, if any), whether made prior or subsequent to the signing of this Lease, shall be binding on the parties unless contained in this Lease and signed by both parties;

12.2 no waiver or abandonment by the NMLC or the Lessee of any of its rights in terms hereof shall be binding on the parties, unless such waiver or abandonment is in writing and signed by the NMLC and the Lessee.

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13. TERMINATION

13.1 The NMLC shall be entitled to terminate this agreement in any of the following events:

13.1.1 if the Lessee commits a breach of any material term of this agreement and remains in such breach for a period of 60 (SIXTY) days after the receipt, from the NMLC, of a notice to the Lessee by registered post or hand delivery specifying the nature of such breach; provided that if the breach is of such a nature that it cannot reasonably be remedied within 60 (SIXTY) days, the Lessee shall be afforded a reasonable time, as agreed upon by the NMLC and Lessee, to remedy such breach; or

13.1.2 if the Lessee is placed in liquidation, either provisionally or otherwise or

13.1.3 if the Lessee contravenes any law, ordinance or by-law relevant to the conduct of its business on the premises and fails to desist from such contravention within a period of 60 (sixty) days from the posting by registered post of a notice by the NMLC or other government or provincial authority calling upon it to desist from such contravention;

13.1.4 if the Lessee so consistently breaches any material term of this lease (whether by non-payment of rent on due date or by non-compliance with its terms) in the circumstances where the NMLC has already given the Lessee notice of breach under 13.1.1 hereof and the Lessee nonetheless thereafter, and within not more than one year, commits the same breach such as to justify the NMLC in holding the Lessee's conduct as inconsistent with an intention or an ability to carry out the terms and conditions of this lease.

13.2 In the event of the NMLC terminating this lease on the grounds as set out in Clause 13.1 it shall have the right immediately to enter upon and take possession of the premises and eject the Lessee and its agents and/or any other persons or parties occupying the leased property in terms of clause 8.9 therefrom notwithstanding any claim the NMLC may have for damages arising as a result of such breach and termination.

13.3 No compensation for any improvements of whatsoever nature shall be payable by the NMLC to the Lessee should the NMLC terminate this agreement on the grounds set out in Clause 13.1 hereof or if the lease shall terminate by effluxion of time.

13.4 The Lessee shall have the right, without prejudice to other rights and remedies which may be available, to terminate this agreement:-

13.4.1 if the NMLC remains in breach of the material provisions hereof for a period of 60 (SIXTY) days (or such longer period as may reasonably



be required in the particular circumstances to remedy the breach), after the receipt by the NMLC by registered post or hand delivery of a notice specifying the nature of such breach and calling upon the NMLC to rectify the same;

13.5 If the lease is terminated by the NMLC other than in accordance with the provisions of this lease then the Lessee may claim damages to which it may be entitled.

13.6 All disputes or differences whatsoever which shall at any time hereafter arise between the parties, whether during the continuance in effect of this agreement or upon or after its discharge or determination, concerning any clause of this agreement or the construction or effect thereof or otherwise or as to any other matter in any way connected therewith or arising therefrom shall be referred to a single arbitrator to be agreed upon by the parties hereto or in default of agreement to an independent arbitrator in accordance with and subject to the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force.

13.7 Upon every and any such reference the arbitrator shall have the power to take the opinion of such Counsel as he may think fit upon any question of law that may arise and in his discretion to adopt any opinion so taken and to obtain the assistance of any other expert as he may think fit and to act upon any statement of expert assistance thus obtained.



14. DESTRUCTION OF THE PREMISES

If the premises are destroyed partially or totally, the Lessee shall be obliged to rebuild or repair the premises within a reasonable time and at its own cost. The proceeds received by the bondholder, or in the absence thereof, the NMLC from any insurance policy referred to in Clause 8.3 will be made available to the Lessee by way of progress payments certified by the quantity surveyor appointed by the Lessee, to the reasonable satisfaction of the NMLC, to oversee the construction, in the event that the proceeds of the said insurance policy are insufficient to cover the costs of rebuilding or repairing the premises then the Lessee shall be liable for any shortfall. In the event that there is a surplus in the proceeds after payment of all costs relating to the rebuilding and repair of the premises then the NMLC shall be liable to pay over any such surplus to the Lessee within 15 (fifteen) days of the completion of the repairs to the satisfaction of the NMLC's Strategic Executive: Planning & Urbanisation.

15 SEVERABILITY

In the event that any of the provisions of this agreement are found to be invalid, unlawful or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.

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16. TOWNSHIP ESTABLISHMENT AND SURVEY

- 16.1 The Lessee has been authorised in terms of the appropriate Power of Attorney granted to it by the NMLC to appoint a town planner to apply for the establishment of a township on the property. The Lessee shall, at its own costs appoint a surveyor to complete the necessary diagram in respect of the leased property.
- 16.2 The Lessee shall bear the costs relating to the appointment of a land surveyor and town planner in accordance with Clause 16.1 above.

17. BOND REGISTRATION

- 17.1 The Lessee shall be entitled, with the consent of the Council, which consent shall not be unreasonably withheld, to use this Agreement of Lease as security to raise finance from a reputable registered financial institution (the Bond Holder) for the erection of the facilities.
- 17.2 Any notices of whatsoever nature given by the NMLC in terms of this Lease shall simultaneously be given to the Bondholder at the address given by the Bondholder to the NMLC from time to time.
- 17.3 Notwithstanding anything to the contrary contained in this Lease the NMLC shall not be entitled to cancel this Lease unless, prior to such cancellation:
 - 17.3.1 the NMLC has given the Bondholder 60 (sixty) days prior written notice of its intention to cancel, such notice to give detailed particulars of the breach by the Lessee entitling the NMLC to cancel, and
 - 17.3.2 the Bondholder has failed to remedy such breach within the said 60 (sixty) day period or such further period as may be agreed to between the Bondholder and the NMLC on the Lessee's behalf and the Bondholder has failed to give notice in terms of clause 17.4.
 - 17.3.3 the NMLC shall be obliged to substitute the Bondholder or the Bondholder's nominee, which nominee shall be subject to the reasonable approval by the NMLC in the place and stead of the Lessee under this Lease, provided that the Bondholder shall have given the NMLC written notice of such substitution, such notice to be given at any time which is both after the Bondholder has been given a notice in terms of sub-clause 17.3.1 and before cancellation of the Lease pursuant to the last mentioned notice. The Bondholder shall provide the NMLC with any details of its nominee nominated in terms of this clause which are reasonably required by the NMLC.
- 17.4 In the event that the Lessee is in breach of its obligations under the mortgage bond referred to in 17.1, the NMLC shall be obliged to substitute the Bondholder or the Bondholder's nominee referred to in 17.3.3 or any third party acquiring the Lease at a sale in execution or otherwise, in the



place and stead of the Lessee under this Lease, provided that the Bondholder shall have given the NMLC written notice of such substitution. The Bondholder shall provide the NMLC with any details of its nominee nominated in terms of this clause which are reasonably required by the NMLC.

17.5 The terms and conditions of any Mortgage Bond to be registered over this Lease shall be subject to the approval of the NMLC prior to registration thereof which approval shall not be unreasonably withheld.

18 SPECIAL CONDITIONS PERTAINING TO BONDHOLDER

18.1 The NMLC shall provide any bondholder with written confirmation that should the Lessee default in terms of this lease, the bondholder will be duly notified by the NMLC of any action to be taken by it, at least 60 (sixty) days prior thereto, in order to enable the bondholder to have the option to remedy the default.



18.2 The Lessee, if deemed necessary, shall apply to the NMLC in writing and the consent of the NMLC in writing shall first be obtained in respect of the cession or assignment of the Notarial Deed of Lease to effect additional security for the repayment of a loan and interest owing thereon to any bondholder. Such consent shall not be unreasonably withheld by the NMLC.

18.3 The NMLC will provide in writing to any bondholder over the property the following:

18.3.1 Confirmation that it has taken note of any bondholders interest over the aforesaid lease and has no objection thereto;

18.3.2 They will allow the Lessee to mortgage their rights, title and interest in and to the said Lease;

18.3.3 They will not unreasonably withhold their consent to an assignment of the lease pursuant to a sale in execution.

19 GENERAL

The Lessee shall be liable for collection commission and for all legal costs on the attorney and client scale incurred by the NMLC resulting from any breach of this lease by the Lessee.

20. DOMICILIA AND NOTICES

20.1 The parties choose as their domicilia citandi et executandi the following addresses:

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THE NMLC c/o THE EXECUTIVE OFFICER: LEGAL SERVICES
2ND FLOOR : CIVIC CENTRE/MUNICIPAL OFFICE
CNR HENDRIK VERWOERD DRIVE/JAN SMUTS
AVENUE
RANDBURG

THE LESSEE 31 ST SWITHINS AVENUE
AUCKLAND PARK

20.2 Save where any notice must be delivered by hand in terms of the provisions of this Agreement, any notice served in terms of the provisions of this Agreement, may be sent by prepaid registered post addressed to the other party's domicilium citandi et executandi and shall be deemed to be received by such party, on expiry of the tenth day after the date on which such notice had been mailed unless the contrary is proved.

20.3 Either party may change its chosen domicilium by written notice to the other party with effect from the date of deemed receipt by the other party of such notice.

20.4 Actual receipt shall be regarded as good receipt for the purposes of this clause.



DATED AT RANDBURG on this 19th day of APRIL 2000.

AS WITNESSES:

1. [Signature]

2. [Signature]

[Signature]
for and on behalf of the NMLC

DATED AT RANDBURG on this 19th day of APRIL 2000.

AS WITNESSES:

2. [Signature]

2. [Signature]

[Signature]
for and on behalf of the LESSEE

QUOD ATTESTOR

NOTARY PUBLIC

[Signature]

[Handwritten initials]



a world class African city

City of Joburg Property Company SOC Ltd.

1st Floor
Forum 2
Braam Park
33 Hoofd Street
Braamfontein
2017

P.O. Box 31566
Braamfontein
2017

Tel +27(0) 10 219 9000
Fax +27(0) 10 219 9400
www.jhbproperty.co.za

Our Ref: Erven 1010 & 1011 Melville X 3
Your Ref: Carroll Harrison

19 August 2014

Carroll Harrison
Green Day Properties

Dear Carroll



CONSENT TO CESSION OF NOTARIAL DEED OF LEASE: MELVILLE BOULEVARD

Please find enclosed the signed Consent to Cession of the Notarial Deed of Lease entered into between the COJ and JRAD Investment (Pty) Ltd in respect of Melville Boulevard situated on Erven 1010 and 1011 Melville Township.

Kindly let me have a copy of the document once registered in the Deeds Office so that we can update our records.

Kind regards

SAKKIE VENTER
ASSISTANT MANAGER: PROPERTY MANAGEMENT (REGIONS B & C)
CITY OF JOBURG PROPERTY
COMPANY (PTY) LTD
Tel: (010) 219-9000 Ext. 9137
E-mail: sventer@jhbproperty.co.za



Non-Executive Directors: A. Mabizela (Chairperson), N. Rau,
Prof A. Nevhutanda, T. Hickman, J. Mabaso, S. Childs,
Dr. D. Sekhukhune
Executive Director: Heleen Botes (Managing Director)
Company Secretary: V. Morgan
City of Joburg Property Company SOC Ltd
Registration Number: 2000/017147/07

PREPARED BY ME

CONVEYANCER
ROGER STANLEY GREEN

CONSENT

I, the undersigned FANIS SARDIANOS in my capacity as Executive Manager :
Property Management of the City of Joburg Property Company (SOC) Limited,
registration number 2000/017147/07 representing the City of Johannesburg
Metropolitan Municipality duly authorized thereto in terms of a resolution and the said
CITY OF JOBURG PROPERTY COMPANY SOC LIMITED duly authorized hereto by a
Power of Attorney granted by the CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY at Johannesburg and filed at Johannesburg Deeds Office under
PA716/2002



Do hereby consent to the cession and assignment by JRAD Investment Proprietary
Limited, registration number 1998/016920/07 to WILD GOOSE TRADING 39 CC,
registration number 2008/019170/23 of the right, title and interest in and to Notarial
Deed of Lease Number K.1350/2000L concluded between the City of Johannesburg
Metropolitan Municipality as Lessor and JRAD Investments Proprietary Limited,
registration number 1998/016920/07 as Lessee in respect of the property described as:

Erf 1010 and 1011 Melville Extension 3, Registration Division I.R., Province of
Gauteng

In Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres
and described in the Notarial Lease as Portion 402 (a Portion of Portion 190)
of the Farm Braamfontein 53

which Notarial Lease was amended by an unregistered addendum to the Notarial
Lease concluded on the 24th August 2006.

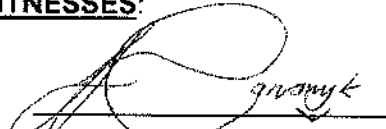
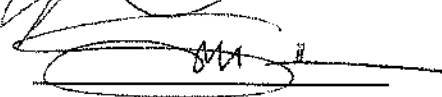
ID 589144

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I undertake to sign a Power of Attorney to which will be annexed a Notarial Deed of Cession and Assignment of the Notarial Lease as amended and which will embody a consent by the City of Johannesburg Metropolitan Municipality.

DATED AT JOHANNESBURG THIS 29 DAY OF JULY 2014

AS WITNESSES:

1.  _____
2.  _____

 _____



"A"

"FA4"

STAMP DUTY
 SEEKING R.
 CAR.
 NAT. 9500
 FILED
 HOUSE R. REGISTERED

ADDIE & FRIDERYSON
164
 TEL 403-6171

GEREGISTREER
 REGISTERED
 REGISTRATEUR
 20 SEP 2002

Handwritten initials

Prepared by me

Handwritten signature

Conveyancer
C. S. VAN NIEKERK

SPECIAL POWER OF ATTORNEY
GENERAL POWER OF ATTORNEY

PR 000000716-2002
JOHANNESBURG



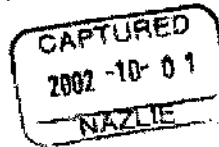
I, the undersigned **PASCAL PAUL MOLOI** in my capacity as City Manager of

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
("the Council")

Established in terms of Section 12(1) read with Section 14(2) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) under Provincial Gazette Extraordinary, Notice 676C of 2000, acting in terms of Council Resolution passed on 12 April 2001 and 28 June 2001.

Hereby nominate and appoint

CITY OF JOBURG PROPERTY COMPANY
(PROPRIETARY) LIMITED
 Registration number 2000/D17147/07,
 ("JPC")



represented by the Executive Director for the time being, Leila Jane McKenna or her successors-in-office or any person lawfully appointed to act in the aforesaid capacity, or any one or more of such Signing Officers as may be designated by the Board of Directors from time to time,

as my rightful and lawful delegate and agent, to sign and execute on my behalf and in my stead and place on behalf of the Council, the following: -

INTERKOPTE NAGESIEN
 INTERKOPTE GECHEK
 DATUM
 DATE 13/9/2002

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1. Alienation of Property

- 1.1 to approve, negotiate and finalise the sale of immovable properties registered in the name of the Council valued at or below R500 000-00 (FIVE HUNDRED THOUSAND RAND), and in terms of Section 79(18) of the Local Government Ordinance 1939 (No.17 of 1939) transfer these properties including the signing of all related documentation to give effect to the sale of the said properties;
- 1.2 to recommend to the Council, immovable properties registered in its name for sale, valued above R500 000-00 (FIVE HUNDRED THOUSAND RAND), as well as the reserve price and the process of disposal and to negotiate and finalise the sale of these properties after approval from the Council, and in terms of Section 79(18) of the Local Government Ordinance 1939 (No.17 of 1939) transfer these properties including signing of all related documentation to give effect to the sale of the property;
- 1.3 to cancel the sale of immovable property where the purchaser is in breach of the JPC Board Resolution, Council Resolution or the agreement of sale;
- 1.4 to make applications for the rezoning of immovable properties registered in the name of the Council, if and when required, in order to give effect to any of the powers contained in this power of attorney or Service Delivery Agreement;
- 1.5 to sign any application regarding the cancellation of endorsements of expropriation in terms of Section 31 and Section 32 of the Deeds Registries Act, 1937 (Act 47 of 1937); and
- 1.6 to represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Receiver of Revenue, in order to give effect to a Resolution relating to the transfer of land which was sold, donated or otherwise alienated by the Council.



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2. Acquisition of Property

- 2.1 To acquire immovable properties on the request of the Council and any of the Council's Utilities, Agencies or Companies, and in terms of Section 79(24) of the Local Government Ordinance 1939 (No.17 of 1939) to transfer these properties into the name of the Council, including the signing of all related documentation to give effect to the acquisition;
- 2.2 to finalise transactions pertaining to immovable property expropriated by the Council and to take any action necessary to procure registration in the Deeds Registry in terms of Section 31 and Section 32 the Deeds Registration Act, 1937 (Act 47 of 1937), including the signing of all related documentation to give effect to the expropriation; and
- 2.3 to represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Receiver of Revenue, in order to give effect to a Resolution relating to the transfer of land which was purchased, donated, expropriated, vested by statute or otherwise acquired by the Council.



3. Lease Agreement

- 3.1 To enter into lease agreements of immovable property on behalf of the Council in terms of Section 79(18) of the Local Government Ordinance 1939 (No.17 of 1939), where the lease value is at or above market valuation and where initial rental income is below R100 000-00 (ONE HUNDRED THOUSAND RAND) per month or a term not exceeding of 50 years (excluding rates and assessment charges and VAT);
- 3.2 to enter into lease agreements with rights being granted for capital improvements to the capital amount of R10 000 000-00 (TEN MILLION RAND);

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- 3.3 to give notice of termination of the lease, sub-lease or other right of occupation of any land or premises hired by or from the Council in accordance with the terms of the relevant agreement of occupation or lease;
- 3.4 to grant consent to lessees to sub-let or part with possession of Council owned land or buildings hired from the Council or to cede or assign their leases, subject to such conditions as may be considered necessary to protect the Council's interests;
- 3.5 to give prior written consent to a lessee for additions and/or alterations to the facilities and/or property which are hired from the Council in terms of a lease agreement, as well as permission for the installation of telephones; and
- 3.6 to represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Receiver of Revenue, in order to give effect to a Resolution relating to the lease of immovable property.



4. Servitude

- 4.1 To acquire servitudes or rights in immovable property on request of the Council, or any of the Council's Utilities, Agencies or Companies, in terms of Section 79(24) of the Local Government Ordinance 1939 (No.17 of 1939) and to transfer these servitudes or rights into the name of the Council, including the signing of all related documentation to give effect to the acquisition and Council Resolution;
- 4.2 to cancel in consultation with the relevant Utility, Agency or Company servitudes for municipal purposes which are registered in favour of the Council, with or without payment of compensation to the Council and subject to the condition that all costs involved and resulting from the cancellation, be borne by the owner of the property on which the servitude is registered. Furthermore, signing the necessary documentation to procure the cancellation in the Deeds Registry;

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- 4.3 to grant or amend a servitude or right in a immovable property in consultation with the Executive Director : Urban Planning, signing the necessary Agreement and special power of attorney in terms of which authority is granted to a Notary Public to sign and execute the notarial deed in terms of the Deeds Registries Act, 1937 (act 47 of 1937) as amended;
- 4.4 to finalise transactions pertaining to servitudes or real rights in immovable property expropriated by the Council and to take any action necessary to procure registration in the Deeds Registry in terms of Section 31 and Section 32 the Deeds Registration Act, 1937 (Act 47 of 1937), including the signing of all related documentation to give effect to the expropriation; and
- 4.5 to represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Receiver of Revenue, in order to give effect to a Resolution relating to the registration, cession, amendment or cancellation of a servitude or other real right.



5. Notarial Tie Agreement

- 5.1 To grant and sign a Notarial Tie Agreement and a special power of attorney in terms which authority is granted to a Notary Public to sign and execute the notarial deed in terms of Section 64 of the Deeds Registries Act, 1937 (act 47 of 1937) as amended; and
- 5.2 to approve in consultation with the Executive Director : Urban Planning an application to cancel a notarial tie agreement subject to the following conditions:
- (a) any existing building must not encroach onto the building line(s) and the erf boundaries applicable to the individual properties; or
 - (b) if the properties are vacant, any building plan that has been submitted to and/or approved by the Council has to be withdrawn/cancelled prior to the approval of the cancellation;
 - (c) all costs resulting from the registration of the cancellation, have to be borne by the owner/applicant; and

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- (d) proof of registration of the cancellation has to be submitted to the Council for record purposes.

6. Encroachment Agreement

- 6.1 To cancel any encroachment agreement where the land is required by the Council or where the lessee is in breach of the agreement, signing of all related documentation to give effect to the cancellation; and
- 6.2 to grant or amend a right of encroachment over a servitude or immovable property registered in the name of the Council, in consultation with the Executive Director : Urban Planning, signing all related documentation to give effect to the encroachment agreement.



7. Applying for the Issuing of Certificates of Registered or Consolidated Title of Council Property

To apply for the issue to the Council of certificates of consolidated title and/or registered title whenever it is necessary to do so in order to give effect in a Deeds Registry to any resolution, signing all related documentation to give effect to the said resolution as required by the Deeds Registries Act, 1937 (Act 47 of 1937).

8. Granting consent to transfer and to delete condition of title

- 8.1 To grant consent to transfer where the Council's consent is required before transfer can be registered;
- 8.2 to grant consent for the deletion of conditions of title irrespective whether such consent is required before transfer can be registered or not; and
- 8.3 to grant consent for the transfer of immovable property originally sold by the Council, including consent for the deletion of conditions of title which were imposed to ensure compliance with the Council's original conditions of sale.

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[Handwritten signature]

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9. Removal of restrictive conditions of title where the Council is the township owner

To approve and sign powers of attorney and draft notarial deeds of cancellation of restrictive conditions of title where the Council is the township owner, subject to the approval of the Executive Director: Urban Planning.

10. Breach of Agreement

To institute or defend any proceedings in any competent Court of Law arising out of the breaches of any agreement of sale or lease or for the recovery of any damages arising therefrom whether by the tenant, purchaser or third parties or to take such steps as allowed for in the agreement being breached.



11. Exchange of properties

11.1 To approve the exchange of Council owned immovable properties for private properties where the valuations are the same or the payment of the difference in valuation where they are not the same; and to take any action necessary to procure registration in the Deeds Registry in terms of the provisions of the Deeds Registration Act, 1937 (Act 47 of 1937), including the signing of all related documentation to give effect to the exchange; provided the value of the respective properties to be exchanged shall not exceed R500 000-00 (FIVE HUNDRED THOUSAND RAND); and

11.2 to represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Receiver of Revenue, in order to give effect to a Resolution relating to the exchange of land.

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12. Enter into agreements with Spoornet

- 12.1 To approve and execute addenda to the Consolidated Rights agreement dated 9 February 1912 between Spoornet and the Council for the inclusion of new or additional works under that agreement and the payment of rentals and maintenance charges in connection with such works, or the alteration of existing addenda or the discontinuance of any works no longer required;
- 12.2 to make application for the renewal of any private siding agreement between the Council and Spoornet and to execute all necessary documents in connection with such renewals and to execute any substitution of Plan's Agreements in connection with such private sidings; and
- 12.3 to approve applications for Third Party Rights to or over the Council's private railway sidings, and to enter into agreements for the use of private sidings or siding extensions by third parties.



13. Use Agreements

- 13.1 To enter into a use agreement in the best interest and on behalf of the Council with a third party in terms of which that third party is granted the use of immovable property registered in the name of the Council, at the will and discretion of the Council and subject to such terms and conditions it may impose; and
- 13.2 to cancel use agreements in accordance with the terms of the relevant agreement.

14. Park and Road closures

14.1 Temporary Closures

To, on behalf of the Council and in terms of the provisions of Section 66 of the Local Government Ordinance, 1939 (No.17 of 1939), in consultation with

Executive Director : Urban Planning and the Johannesburg Roads Agency (Pty) Ltd and any other relevant Directorates, Utilities, Agencies or Companies.

- (I) temporarily close a park;
- (II) temporarily close a street/thoroughfare for any particular class of traffic, procession or gathering; or
- (III) temporarily close a street/thoroughfare for all traffic.

14.2 Permanent closures

To represent the Council in the Deeds Registry Office, signing all powers of attorney, certificates, applications, notices, affidavits, declarations, consents and any other document required by the Deeds Registry or the Surveyor General, in order to give effect to a Council Resolution relating to the permanent closure of immovable property owned by the Council.

15. Notice for installation of services and approval of claims for damages

15.1 When so required by any Utility, Agency or Company entrusted by the Council with the exercise of powers conferred by Section 84 or Section 134 of the Local Government Ordinance, 1939 (No. 17 of 1939) as amended, to give the notices provided for in the said paragraphs of the said sections and having given such notice to settle claims for compensation for damage done in the exercise of the said powers, and to appoint arbitrators or umpires and take all such other steps as may be required for the settlement of any such claim by arbitration; and

15.2 to approve claims for damages resulting from the installation of municipal services over private properties, as contemplated in Section 84(1) and 134(b) of the Local Government Ordinance, 1939 (No.17 of 1939) as amended, provided that sufficient funds for the payment of the claim are provided in the budget of the Utilities, Agencies or Companies concerned and that a specified claim is lodged by the claimant within the prescribed period of 30 days after completion of construction work, provided that the claim does not exceed R100 000-00 (ONE HUNDRED THOUSAND RAND).



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16. Surface Right Permits

- 16.1 To grant consent, subject to such conditions as may be necessary to protect the Council's interests, to the issue by the Mining Commissioner of any surface right title which affects any mining title, surface right permit or other right of occupation in favour of or held by the Council where its rights are not adversely affected and no claim for compensation arises; and
- 16.2 To accept and to make applications to the Mining Commissioner for the granting, cancellation or modification of any surface right permit or any other right or permission required by the Council under the provisions of the Mining Titles Registration Act, 1937, or for the release of any property of the Council from the provision of those Acts.

17. Extension of time to erect a building

To delete a condition imposed on a purchaser of Council property whereby the purchaser is required to build a building thereon within a particular period, and the power to extend such period by a period not exceeding one year after the expiry of the date referred to in the conditions of sale.

18. Mineral Rights

- 18.1 To sign powers of attorney in terms of which authority is granted to attorneys/conveyancers to register any lease or sub-lease of any rights to minerals in land and any cession of such lease or sub-lease and to take any action necessary to procure registration in the Deeds Registry in terms of Section 77 of the Deed Registries Act, 1937 (Act 47 of 1937);
- 18.2 To sign powers of attorney in terms of which authority is granted to attorneys/conveyancers to register or cancel any rights to minerals, prospecting contracts and other rights in immovable property and to take any action necessary to procure registration in the Deeds Registry in terms of the provisions of the Deed Registries Act, 1937 (Act 47 of 1937); and



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[Handwritten signature]

18.3 to sign powers of attorney in terms of which authority is granted to a Notary Public to sign and execute Notarial deeds or cession of mineral rights in terms of Section 77 of the Deed Registries Act, 1937 (Act 47 of 1937).

19. Attorneys

To sign and execute powers of attorney in terms of which authority is granted to attorneys, notaries or conveyancers to appear before the Registrar of Deeds and to sign all or any documentation required by the Deeds Office to give effect to the powers contained herein and generally to do whatsoever shall be requisite to give effect to the powers contained herein.

AND generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite, as fully and effectively, for all intents and purposes, as we might or could do if personally present and acting therein; hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever our said Delegate and Agent shall lawfully do or cause to be done, by virtue of these presents.



GIVEN under my hand at JOHANNESBURG on this 19 day of JUNE 2002, in the presence of the undersigned witnesses.

[Signature]
CITY MANAGER

AS WITNESSES:

1. *[Signature]*

2. *[Signature]*

[Signature]

[Signature]

TRI-PARTITE AGREEMENT

PRIVATE WEALTH
SINCE 1834

entered into between

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

(Established under Notice 6766/2000 published in Provincial Gazette Extra-Ordinary, dated 1 October 2000)

Herein represented by the City of Joburg Property Company (SOC) Limited (Registration Number 2000/017147/07) duly authorized hereto by virtue of a Special Power of Attorney granted by the CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY at Johannesburg, and filed in the Johannesburg Deeds Registry under PA716/2002

of 1st floor : Forum II, Braampark Office Park

33 Hoofd Street

Braamfontein

(the "Lessor")

and

**WILD GOOSE TRADING AND SERVICES 39 CC**

(Registration no: 2008/019170/23)

of 516 Ontdakkers Road, Florida

Johannesburg

(the "Lessee")

(pursuant to the Notarial Deed of Cession)

NEDBANK LIMITED

(Registration No: 1951/000009/06)

of Clocktower, V&A Waterfront, Cape Town

(the "Bank")

1. DEFINITIONS

1.1 Unless the context clearly indicates a contrary intention, the following terms shall have the following meanings

- "Agreement" means this agreement between the Parties as set out in this document;
- "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- "Cession" means the cession by the Lessee in favour of the Bank as detailed in clause 4;
- "JRAD" means JRAD Investments (Pty) Limited, registration number 1998/016920/07;
- "Lease" means the notarial deed of lease signed on 17 April 2000 entered into between the Lessor and JRAD in respect of the Property;

- "Mortgage Bond"** means the first continuing covering mortgage bond over the Lease to be registered by the Lessee in favour of the Bank as security for the obligations of the Lessee to the Bank under a loan agreement concluded or to be concluded between the Bank and the Lessee;
- "Notarial Deed Of Cession"** means the Notarial Deed of Cession and Assignment executed between JRAD, the Lessor and the Lessee on
- "Option"** means the option accorded to the Bank by the Lessor in terms of 4.1 of this Agreement;
- "Parties"** means the Bank, the Lessor and the Lessee together and **"Party"** means any one of the Parties;
- "Prime Rate"** means the prime overdraft rate of interest charged by Nedbank Limited from time to time, which is Nedbank Limited's publicly quoted prime lending rate;
- "Property"** means the immovable property described as Erven 1010 and 1011 Melville Ext 3 (referred to in the Lease as Portion 402 (a portion of Portion 190) of the farm Braamfontein 53



1.2. Interpretation

- 1.2.1. In this Agreement, unless clearly inconsistent with or otherwise indicated by the context,
- 1.2.1.1 any reference to the singular includes the plural and *vice versa*;
- 1.2.1.2 any reference to natural persons includes legal persons and *vice versa*;
- 1.2.1.3 any reference to a gender includes the other genders.
- 1.2.2 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.2.3 In the interpretation of this Agreement, the *contra proferentem* rule of interpretation shall not apply (this Agreement being the product of negotiations between the Parties), nor shall this Agreement be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 1.2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, then, notwithstanding that it is only in 1.1 above, effect shall be given to it as if it were a substantive provision in the body of this Agreement.
- 1.2.5 Where any term is defined within the context of any particular clause or sub-clause, the term so defined shall, unless it appears clearly from such clause or sub-clause that such term has limited application to the relevant clause or sub-clause only, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in 1.1 above.
- 1.2.6 Where the date for performance of any obligation under this Agreement falls on a date which is not a Business Day, the performance shall be rendered on the immediately succeeding Business Day.
- 1.2.7 This Agreement shall be governed by and construed and interpreted in accordance with the law of South Africa.

2. INTRODUCTION

- 2.1. The Lessor and the Lessee have concluded the Lease.
- 2.2. The Bank has agreed to advance a loan to the Lessee against the registration of the Mortgage Bond.
- 2.3. The Parties have agreed to conclude this Agreement for the purpose of protecting the security rights of the Bank under the Mortgage Bond.

3. TERMINATION OF THE LEASE

3.1. Notwithstanding the provisions of the Lease, the Lessor and the Lessee shall not terminate or cancel the Lease whether as a result of a default by the Lessor or the Lessee or otherwise, other than by operation of law and other than as provided for in terms of this Agreement, without the prior written consent of the Bank, which consent shall be unreasonably withheld.



3.2. To the extent that the Lessee has failed to make payment of any amount due and payable under the Lease or fails to comply with any other obligation it has under the Lease or any other breach has occurred (any such event, a "Default"), the Bank will be in its discretion entitled, but not obliged, to make such payment or to procure that any such obligation is performed on behalf of the Lessee and immediately to recover from the Lessee any amount so paid or any cost thereby incurred by the Bank in effecting such performance on behalf of the Lessee, together with interest thereon calculated at the Prime Rate from the date of payment or the date on which the Bank incurs such cost to the date of payment to the Bank by the Lessee.

3.3. If the Bank exercises its right to render performance on behalf of the Lessee, the Lessor shall be obliged to accept such performance as if such performance had been rendered by the Lessee under the Lease.

3.4. The Lessor shall not be entitled to cancel the Lease following a Default by the Lessee unless:

3.4.1. the Lessor has given the Bank and the Lessee written notice of the Default, whether or not the Lessor is obliged to give notice of such default to the Lessee in terms of the Lease (the "Notice"); and

3.4.2. a reasonable period of time, being not less than 30 (thirty) days, has elapsed since the later of:

3.4.2.1 the date of the Bank's receipt of the Notice or

3.4.2.2 the expiry of the period stated in the Notice within which the Lessee is obliged to remedy its default,

(the "Final Performance Date"); and

3.4.2.3 the Bank has failed to accept the Cession within the time period stipulated in clause 4 below; and

3.4.3. neither the Lessee nor the Bank, on behalf of the Lessee, has remedied the Default.

3.5. Any purported cancellation or termination of the Lease by either the Lessor or the Lessee which is contrary to the provisions of this clause 3 shall have no force or effect whatsoever.

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4. CESSION

4.1 In the event that neither the Lessee nor the Bank on behalf of the Lessee remedies the Default by the Final Performance Date the Lessee shall automatically by operation of this provision, cede, assign and make over all of its right, title and interest in and to the Lease in favour of the Bank, its successors in title or assigns, in respect of which the Lessor hereby consents.

4.2 In order to give effect to the Cession the Bank shall be obliged to accept the Cession by signature of the annexure to this Agreement marked "Acceptance of Cession" and furnish such document to both the Lessee and the Lessor within a period of 30 (thirty) days from the Final Performance Date. Failure by the Bank to sign the Acceptance of Cession as aforesaid will result in the Lessor becoming entitled to terminate the Lease by virtue of the provisions of clause 3 above.

4.3 In the event that the Bank accepts the Cession the Bank shall at any time thereafter be entitled and with the written consent of the Lessor which consent shall not be unreasonably withheld or delayed to cede, assign and make over all of its rights under the Cession in favour of any third party (the "Third Party Cession").



4.4 In granting its consent to the Third Party Cession the Lessor will *inter alia* take into consideration:

4.4.1. the ability of the third party or nominee to meet its obligations in terms of the Lease; and

4.4.2. the nature of the business which the third party proposes to conduct on the Property.

4.5. If the Lessee has concluded any sub-lease/s in respect of the Property with any third party tenants, the Lessee shall be deemed to have ceded all its rights and delegated all of its obligations under such sub-leases to the Bank as at the date on which the Bank accept the Cession or gives effect to the Third Party Cession The Lessee undertakes to ensure that the terms and conditions of such sub-leases permit the cession and delegation contemplated in this clause 4.5.

6. NOTARIAL EXECUTION AND REGISTRATION

6.1. The Bank shall, as soon as is reasonably possible after acceptance of the Cession or conclusion of the Third Party Cession cause the Cession or Third Party Cession, as the case may be, to be reduced to writing and notarially executed and registered against the title deeds of the Property.

7. INSOLVENCY

7.1. Should the right, title and interest of the Lessee in and to the Lease be sold in execution of the judgment of a court, whether at the instance of the Bank or any other party, the Lessor shall, if so required by the Bank, consent to the cession and delegation of the Lessee's right, title and interest in and to the Lease to the purchaser at such sale.

7.2. Should the Lessee be sequestrated or placed in liquidation, whether provisionally or finally, the Lessor shall, if so required by the Bank, consent to the cession and delegation of the Lessee's entire right, title and interest in and to the Lease to any party nominated for this purpose by the trustee or liquidator, as the case may be.

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8. DEFAULT

- 8.1. Should any Party ("Defaulting Party") commit a breach of any of the provisions of this Agreement, one of the non-defaulting Parties ("Aggrieved Parties") shall be obliged to give the Defaulting Party no less than 5 (five) Business Days' written notice to remedy the breach. Any such notice given by one of the Aggrieved Parties shall be copied to the other Aggrieved Party.
- 8.2. If the Defaulting Party fails to comply with the notice referred to in 8.1, then the aggrieved Parties, or any one of them, shall be entitled to claim immediate payment and/or specific performance by the Defaulting Party of all the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Parties' rights to claim damages.
- 8.3. The remedies referred to in 8.2 are without prejudice to such other rights as the Aggrieved Parties, or any one of them, may have at law, provided always that, notwithstanding anything to the contrary contained in this Agreement, the Aggrieved Parties shall not be entitled to cancel this Agreement for any breach by the Defaulting Party.
- 8.4. The Aggrieved Parties shall be entitled to recover all fees, costs and other expenses that the Aggrieved Parties may pay or incur in terms of this Agreement by enforcing their rights under this clause 8, including without limitation legal costs on the attorney and client scale, which will be payable upon receipt by the Defaulting Party of written demand from the Aggrieved Parties or any one of the Aggrieved Parties.



9. DURATION AND TERMINATION

Notwithstanding the date(s) on which this Agreement is signed by the Parties, this Agreement will come into effect on the date of registration of the Mortgage Bond and will terminate automatically on cancellation of the Mortgage Bond, following which this Agreement will be of no further force or effect whatsoever. To the extent that this is required, the Lessor hereby consents to the registration of the Mortgage Bond.

10. NOTICES AND DOMICILA

- 10.1. The Parties choose as their respective *domicilia citandi et executandi* ("domicilium") their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement, at which addresses all the processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served on or delivered to the Parties.
- 10.2. For purposes of this Agreement, the Parties' respective domicilium addresses are
 - 10.2.1. **The Lessor** c/o City of Joburg Property Company
 1st floor : Forum II, Braampark Office Park
 33 Hoofd Street
 Braamfontein

Facsimile: 010 219 9400

Attention: The Chief Executive Officer

10.1.2. **The Bank** Nedbank Building
Clocktower Precinct
V&A Waterfront
Cape Town

Attention: Head of Legal Services

10.1.3. **The Lessee** 516 Ontdekkers Road,
Florida
Johannesburg

Facsimile:

Attention:



or any such other physical address in South Africa, not being a post office box or poste restante, of which the Party concerned may notify the other Parties in writing.

10.3. Any notice given in terms of this Agreement must be in writing and shall:

10.3.1. if delivered by hand, be deemed to have been received by the addressee on the date of delivery;

10.3.2. if sent by facsimile, be deemed to have been received by the addressee on the first Business Day after its dispatch.

10.4. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party, provided that any provision that requires any notice to be in writing shall be complied with only if such notice is in a written paper based form and the provisions of the Electronic Communications and Transactions Act 25 of 2002 shall not apply.

11. **MISCELLANEOUS**

11.1. **Independent Advice**

Each Party acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or chosen not to do so. Further, each Party acknowledges that all of the provisions of this Agreement and the restrictions which it contains are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

11.2. **Whole Agreement**

This Agreement constitutes the whole agreement between the Parties as to its subject matter and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

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11.3. Variation

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

11.4. Relaxation

No latitude, extension of time or other indulgence which may be given or allowed by any Party to any other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect, any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

11.5. Severability

The agreements and undertakings of the Parties contained in this Agreement shall each be construed as an agreement and undertaking independent of any other provision of this Agreement. The Parties hereby expressly agree that it is not the intention of any Party to violate any public policy, statutory or common law and that if any sentence, paragraph, clause or combination thereof is in violation of the law of the Republic of South Africa, such sentence, paragraph, clause or combination thereof shall be void in the jurisdiction where it is unlawful, and the remainder of such clause and this Agreement shall remain binding on the Parties. The Parties further acknowledge that it is their intention that the provisions of this Agreement be binding only to the extent that they may be lawful under existing South African law, and in the event that any provision hereof is determined to be overly broad or unenforceable, the Parties agree to the modification of such provisions to the minimum extent required to make them valid and enforceable.



11.6. Costs

Each Party shall bear its own costs and expenses relating to the negotiation, preparation and execution of this Agreement.

11.7. Counterparts

This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

SIGNED AT	<i>Johannesburg</i>	ON THE	<i>19</i>	DAY OF	<i>November</i>	<i>20</i>	<i>14</i>
For THE LESSOR	<i>[Signature]</i>						
NAME	<i>Fanis Sardugas</i>	CAPACITY	<i>Executive Manager</i>				
WITNESSES							
NAME	<i>Elizabeth Gnasnyk</i>	SIGNATURE	<i>[Signature]</i>				
NAME	<i>Mathibede Mallaola</i>	SIGNATURE	<i>[Signature]</i>				

[Handwritten signatures and initials]

SIGNED AT	Johannesburg	ON THE	20	DAY OF	November	20	14
For THE LESSEE							
NAME	Adriaan Ledwikus Bal			CAPACITY	Member		
WITNESSES							
NAME	Adele van Wyk ID No. 759718 0098882 Kommissaris van Ede / Commissioner of Oaths Praktiserende Prokureur, Notaris & Aktevervaardiger Practising Attorney, Notary & Conveyancer The Valleyway 33 The Valley Road Johannesburg, Johannesburg			SIGNATURE			
NAME				SIGNATURE			

SIGNED AT	CAPE TOWN	ON THE	12 th	DAY OF	JANUARY	20	15
For THE BANK							
NAME	MICHELLE CAROLUSEN			CAPACITY	DRAFTER		
WITNESSES							
NAME	Regane Geushen			SIGNATURE			
NAME	Samantha Dodd			SIGNATURE			



ANNEXURE – FORM OF ACCEPTANCE OF CESSION

entered into between

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

(Established under Notice 6766/2000 published in Provincial Gazette Extra-Ordinary, dated 1 October 2000)

Herein represented by the City of Joburg Property Company (SOC) Limited (Registration Number 2000/017147/07) duly authorized hereto by virtue of a Special Power of Attorney granted by the CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY at Johannesburg, and filed in the Johannesburg Deeds Registry under PA716/2002

of 1st floor : Forum II, Braampark Office Park

33 Hoofd Street

Braamfontein

(the "Lessor")

and



WILD GOOSE TRADING AND SERVICES 39 CC

(Registration no: 2008/019170/23)

of 516 Ontdekkers Road, Florida

Johannesburg

(the "Lessee")

NEDBANK LIMITED

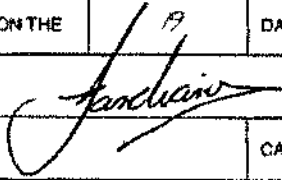

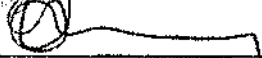
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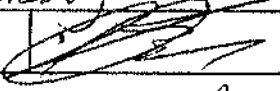
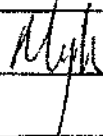
of Clocktower, V&A Waterfront, Cape Town

(the "Cessionary")

Unless otherwise defined all capitalised terms used herein shall bear the meaning ascribed to them in the Tri-Partite Agreement entered into between the Lessor, the Lessee and the Cessionary on [insert date] (the "Agreement")



1. In terms of the Agreement the Cessionary is entitled to accept cession and assignment by the Lessee of all right, title and interest in and to the Lease.
2. The Cessionary accepts the cession in clause 4 of the Agreement which the Lessor acknowledges by its signature hereto.
3. It is specifically recorded that the Lessor has in terms of the Agreement given its consent to the Cession and the signature of the Lessor hereto is not required to give effect to this Acceptance of Cession.

SIGNED AT	Johannesburg	ON THE	19	DAY OF	November	20	14
For THE LESSOR							
NAME	Faris Gardianos	CAPACITY	Executive Manager				
WITNESSES							
NAME	Elizabeth Ganswyk	SIGNATURE					
NAME	Mattibete Malhaela	SIGNATURE					

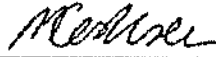
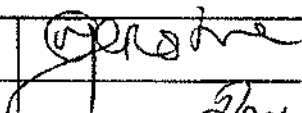
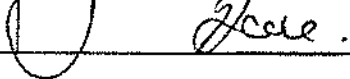
SIGNED AT	Johannesburg	ON THE	20	DAY OF	November	20	14
For THE LESSEE							
NAME	Adriaan Lodewikus Boo	CAPACITY	Member				
WITNESSES							
Adrie van Wyk ID N° 750719 0094082 Kommissaris van Ede / Commissioner of Oaths Praktiserende Prokureur, Notaris & Aktevervaardiger Practising Attorney, Notary & Conveyancer The Valleyweg 33 The Valley Road Westcliff, Johannesburg							
NAME			SIGNATURE				
NAME			SIGNATURE				

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Practising Attorney, Notary & Conveyancer

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG

SIGNED AT	CAPE TOWN	ON THE	12 th	DAY OF	JANUARY	20	15
For THE CESSIONARY							
NAME	MICHELLE CAROLUSEN MICHELLE CAROLUSEN	CAPACITY	DRAFTER				
WITNESSES							
NAME	Rejane Genström	SIGNATURE					
NAME	Samantha Dooke	SIGNATURE					



COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-104348**

In the matter between:

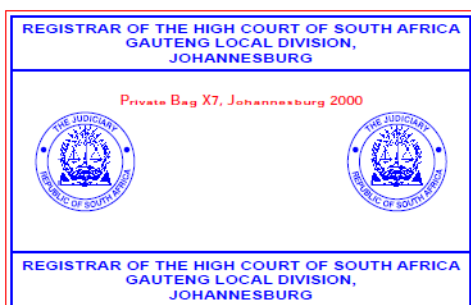
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

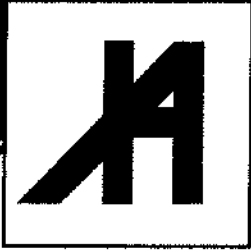
Annexure 02

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:47:06 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**



**HIGGS
ATTORNEYS**

"FA6"

To: JPC Portfolio Management
 Attention: Jane Moatshe
 From: Higgs Attorneys Inc. – Charlie Higgs
 Date: 21 February 2023
 Email: JMoatshe@jhbproperty.co.za
 Number of pages: 2



Subject: CITY OF JOBURG PROPERTY COMPANY (SOC) LIMITED // WILD GOOSE TRADING 39 CC
 EXERCISE OF OPTION TO RENEW NOTARIAL DEED OF LEASE

Dear Madam,

1. Please be advised that we act as attorneys of record for Wild Goose Trading 39 CC, hereinafter referred to as our client.
2. It is our instruction that on or about 19 April 2000 JRAD Investments (Pty) Ltd and the Northern Metropolitan Substructure of the Greater Johannesburg Transitional Metropolitan Council entered into a Notarial Deed of Lease. A copy thereof is attached hereto marked as annexure "A".
3. The pertinent provisions of the Notarial Deed of Lease, pertinent to this letter, is repeated herein for ease of reference:

"4.1 The lease shall come into operation upon the signing hereof and shall continue and endure for a period of 25 (twenty five) years reckoned from the date that the lease becomes unconditional, due



Tel: +27 (0) 10 590 6251
 Fax: +27 (0) 86 775 0207
 Email: info@higgsattorneys.co.za
 Web: www.higgsattorneys.co.za

258 Smilt Street,
 Fairland, Randburg
 20170
 P.O. Box 215, Randpark Ridge
 Johannesburg
 2156

Charlie Higgs
 Chantelle Bensch
 Directors

regard being had to the provisions of clause 2 herein which date is hereinafter referred to as the "effective date" subject to the conditions of clause 4.2.

4.2 The Lessee shall have the option to extend the period of the lease referred to in clause 2.1 for a further period of 25 (twenty five) years subject to the following:

4.2.1 The Lessee undertakes to furnish the NMLC in writing of the Lessee's intention to renew this lease as provided for in clauses 4.2 at least 180 days prior to the expiry of the 25 year period referred to in clause 4.1."

4. Thereafter and on the 24th of August 2006 the City of Johannesburg Metropolitan Municipality and JRAD Investments (Pty) Ltd entered into an addendum to the Lease Agreement, which did not have any effect on the aforementioned provisions. A copy of the addendum is attached hereto marked as annexure "B".
5. On or about 29 July 2014 the City of Joburg Property Company SOC Ltd signed a consent to cession of notarial deed of lease in terms of which the aforementioned Notarial Deed of Lease was ceded to client, being Wild Goose Trading 39 CC. A copy of the consent to cession is attached hereto marked as annexure "C".
6. The Notarial Deed of Lease expires on 18 April 2025 and the last date to notify the COJ Property Company SOC Ltd of client's intention to renew is on 18 August 2024.
7. It is our instruction that client wishes to renew the Notarial Deed of Lease for a further 25 years and we have been instructed to request from you, to grant such extension and provide our offices with guidance in respect thereof to formalise and effect the renewal.
8. We take cognisance of the fact that the initial period only expires in 2025 and client is amenable to renew the extension period for another period of 25 years calculated from 2023.



We look forward to hearing from you.

A handwritten signature in black ink, appearing to be 'C. Higgs'.

HIGGS ATTORNEYS INC.

Per: C Higgs

A handwritten signature in black ink, consisting of a large, stylized initial 'H' followed by a vertical line.

"FA7"

Second Addendum to Lease Agreement

Entered into between

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
(Established under Notice 6766 of 2000 published in
Provincial Gazette Extraordinary, dated 1 October 2000)

Represented herein by the CITY OF JOBURG PROPERTY COMPANY (SOC) LTD ("JPC"), registration
number 2000/017147/07, under and by virtue of a special power of attorney dated 19 June 2002,

And the JPC herein represented by Helen Botes in her capacity as CHIEF EXECUTIVE OFFICER of
JPC, duly authorized thereto



(referred to hereunder as "the Lessor")

and

WILD GOOSTE TRADING 39 CC

Registration Number:

a close corporation duly incorporated in accordance with the laws of South Africa represented herein
by Adriaan Ledwicks Ed..... in his capacity as Member, he being duly
authorized by resolution of the Lessee and who by his signature hereto warrants that he is duly
authorized to sign this Agreement on behalf of the Lessee

(referred to hereunder as "the Lessee")

1. INTERPRETATION

- 1.1. In this agreement, unless inconsistent with or otherwise indicated by the context:
- 1.1.1 "the/this Addendum" means the agreement set out in this document together with all of its annexures;
- 1.1.2 "Effective Date" means the date on which this Addendum is signed by the last signing party;

2. RECORDAL

- 2.1. On or about 19 April 2000 the Lessor and JRAD INVESTMENTS (Pty) Ltd Registration Number 1998/016920/07 ("JRAD") entered into a Notarial Deed of Lease registered at the Deeds Office under K2499/200L in terms of which the Lessor let the Property to JRAD for a period of 25 (twenty five) years for the purposes of construction of FACILITIES and the operation thereof ("The Main Agreement").
- 2.2. The Main Agreement was followed by Addendum to Lease Agreement dated 24 August 2006 in terms of which the Parties amended certain clauses of the Main Agreement.
- 2.3. On 29 July 2014 the Lessor consented to the cession and assignment of the Main Agreement in terms of which the Main Agreement was ceded to the Lessee.
- 2.4. In terms of clause 4.2 of the Main Agreement, the Lessee may extend the period of lease referred to in clause 4.1, for a further period of 25 (twenty five) years subject to the Lessee furnishing the Lessor in writing the Lessee's intention to renew the lease at least within 180 days prior to the expiry of the 25 year period referred to in clause 4.1.
- 2.5. The Main Agreement expires on 18 April 2025 and the last day to notify the Lessor of the Lessee's intention to renew is 18 August 2024.
- 2.6. On 21 February 2023, and in accordance with the provisions of clause 4.2 of the Main Agreement, the Lessee wrote to the JPC stating its intention to extend the period of the Main Agreement for a further period of 25 years, effective from 19 April 2025 and terminating on 19 April 2050, on the same terms and conditions as contained in the Main Agreement. Thus the Lessee duly exercised its right referred to in clause 4.2 of the Main Agreement.



Handwritten signatures and initials, including a large signature, 'B', 'J.M.M.', and other illegible marks.

2.7. The purpose of this Addendum is to record the extension of the Main Agreement as contemplated above.

2.8. Now therefore the Parties agree in the manner set out below.

3. PERIOD EXTENSION OF THE MAIN AGREEMENT

3.1 The period of the Main Agreement is hereby extended for a further period of 25 (Twenty Five) years, effective from 19 April 2025 and terminating on 19 April 2050, on the same terms and conditions as contained in the Main Agreement.

4. GENERAL

4.1. This Addendum shall come into effect on the Effective Date.

4.2. Save as set out in this Addendum, the remaining provisions of the Main Agreement shall continue in full force and effect in accordance with their terms.

4.3. In the interpretation of this Addendum and/or the Main Agreement, the *contra proferentem* rule of interpretation shall not apply (this Addendum and/or the Main Agreement being the products of negotiations between the Parties), nor shall this Addendum and/or the Main Agreement be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Addendum and/or the Main Agreement.



Handwritten signatures and initials, including a large signature, the number '3', and the name 'Jimm'.

Signed in Bramfontein on 12 July 2023

As witnesses:
1. [Signature] [Signature]

for and on behalf of the LESSOR
who warrants that he/she is duly authorised thereto

2. _____

Signed in Johannesburg on 26th June 2023

As witnesses:
1. [Signature]
2. [Signature]

[Signature]

for and on behalf LESSEE
who warrants that he is duly authorised thereto



[Handwritten Signature]



IN THE HIGH COURT OF SOUTH AFRICA

"FA8"

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO.: 2023-055252

On this the 21st day of June 2023 before the Honourable Acting Justice Bokako

In the matter between:

THE SPAR GROUP LIMITED

Applicant

and

WILD GOOSE TRADING AND SERVICES

39 CC T/A SPAR AND TOPS MELLVILLE

Respondent

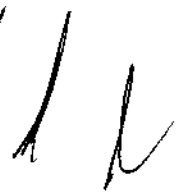
2023-05-23

DRAFT ORDER



HAVING read the documents filed on record, having heard counsel and having considered the matter, the following order is granted:

1. The forms and procedures provided for in the Uniform Rules of Court are dispensed with and this matter is heard as one of urgency in terms of Rule 6(12)(a);
2. The applicant is authorised for the purposes of perfecting its security in terms of the General Notarial Covering Bond Number BN 033646/08 and the General Notarial Covering Bond Number BN 000020550/2015, and the Sheriff of this Honourable Court is authorised to execute the terms and conditions of the order, to enter upon the respondent's premises or any



other place where any of the respondent's movable property, corporeal or incorporeal, ("**the movable property**") is situated and:

- 2.1. take possession of and retain all or any of the movable property belonging to the respondent and to retain such possession for so long as the applicant may deem fit and/or to sell and dispose thereof or any portion thereof in such manner and on such terms as the applicant may decide and to convey valid title to the purchaser/s or transferee/s and to collect in all monies due to the respondent in respect thereof;
- 2.2. carry on the business of the respondent relating to the movable property in the name of and at the expense of the respondent and for that purpose to purchase goods and do whatever else the applicant deems necessary;
- 2.3. operate and draw on the banking account of the respondent and to instruct that all funds in such accounts or which may be paid into such accounts, be paid to the applicant or not be withdrawn therefrom or to the order of the respondent;
- 2.4. sign or subscribe on behalf of the respondent to all applications or agreements for transfer of licences, quotas, permits, registration certificates and the like which relate to the movable property and to effect the cession and delegation of the rights and/or obligations of the respondent as lessee or lessor under any lease to which the respondent is a party;



2023-09-23

- 2.5. take proceedings at law in the name of either the respondent or the applicant as the applicant thinks fit for the recovery of any debts due to the respondent;
 - 2.6. sign and complete all forms, declarations, agreements and the like as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be of any of the movable property;
 - 2.7. have the movable property excused by legal process; and
 - 2.8. take possession of and realise by public auction or by private treaty or otherwise, all or any of the movable property.
3. The costs of this application shall be paid by the respondent on the scale as between attorney and client.



BY ORDER OF THE COURT


COURT REGISTRAR

2023-08-23



'X' E FA9
M05-389
17/09/2023
@ 10h14

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER:2023/091398

MATTER NO: 19
ON TUESDAY, 19 SEPTEMBER 2023
BEFORE THE HONOURABLE JUDGE MOOSA
VIA VIDEOCONFERENCE

In the matter between:

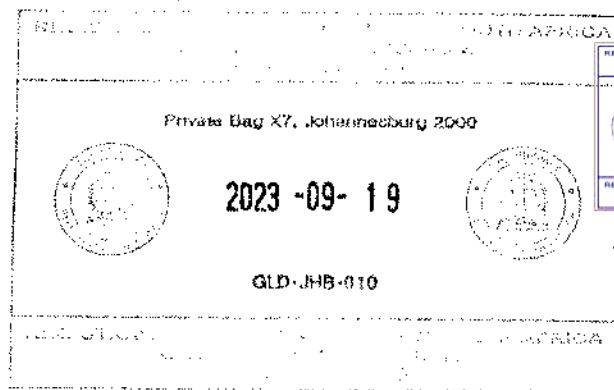
THE SPAR GROUP LIMITED

And

WILD GOOSE TRADING AND SERVICES 39 CC T/A
SPAR AND TOPS MELVILLE

COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION

ALL AFFECTED PARTIES



Applicant

First Respondent

Second Respondent

Third Respondent

This order is made an order of court by the Judge whose name is reflected herein, duly stamped by the registrar of the Court, and is submitted electronically to the Parties/their legal representatives by email. This order is further uploaded to the electronic file of this matter on case lines by the Judge or his secretary. The date of this order is deemed to be Tuesday, 19 September 2023.

COURT ORDER

05-31 APONYA T.
[Signature]

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19/09/2023
E 10/14

HAVING READ THE DOCUMENTS FILED OF RECORD, HEARD COUNSEL, AND HAVING CONSIDERED THIS MATTER, THE FOLLOWING ORDER IS MADE:

IT IS ORDERED THAT:

1. The forms and service provided for in the rules are dispensed with and this matter is heard as one of urgency in terms of rule 6(12) of the uniform rules of court.
2. Wild Goose Trading is placed under supervision and allowed to commence business rescue proceedings in respect thereof.
3. Mr Christopher Raymond Rey of BDO South Africa Incorporated is appointed as the business rescue practitioner ("the BRP") in terms of section 131(5) of the companies act.
4. The costs of this application shall be costs in the business rescue, save in the event that any respondent opposes this application, in which event any respondent which opposes the relief sought in this application be ordered to pay the costs of this application.

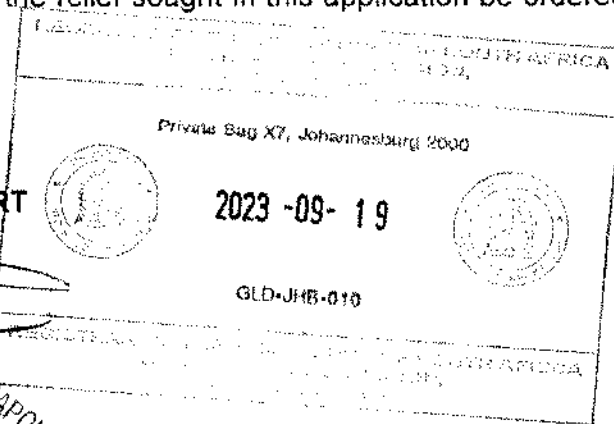


BY ORDER OF COURT

Handwritten signature of Registrar

REGISTRAR

Handwritten: MAPONYA T.



FOR THE APPLICANT:

Adv D Van Niekerk Tel: 011 535 1800 Cell: 082 886 8307 E-mail: dvn@law.co.za

Cliffe Dekker Hofmeyr Incorporated Tel: 011 562 1061 E-mail: lin.fletcher@cdhlegal.com

05-4

Handwritten signature

**ADOPTED BUSINESS RESCUE PLAN****Prepared and Published to Affected Persons of:****Wild Goose Trading and Services 39 CC****T/A Spar and Tops Melville****Registration Number (2008/019170/23)****In terms of Section 152 of the Companies Act No.
71 of 2008 on 29 November 2023**

Unit B5, Clearview Office Park
77 Wilhelmina Avenue,
Constantia Kloof, Roodepoort, 1724

Tel: +27 11 991 5500
www.bdo.co.za



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These documents are important and require your immediate attention.

Circular

To all Creditors, the Shareholders and other Affected Persons relating to the publication of a proposed business rescue plan in the matter of:

Wild Goose Trading and Services 39 CC T/A Spar and Tops Melville

Registration Number: 2008/019170/08 ("The Corporation")

- This document is a Circular to *Creditors*, the *Shareholders* and other *Affected Persons* relating to a proposed *Business Rescue Plan* prepared in terms of Section 150 of the Companies Act, Act No. 71 of 2008, as amended ("the Companies Act") and incorporates:
 - Important dates, times and venue schedule, stipulating the dates, times and venue of the *Meeting*;
 - All relevant and statutory information, required in terms of the provisions of Section 150 of *the Act*; and
 - Proxy forms for *Creditors*, the *Shareholders* and *Affected Persons*.
- If you are in any doubt as to the Action you should take, please consult your legal, or any other professional advisor immediately.
- If you are unable to attend the *Meeting* to be held on the date, at the time and at the venue stipulated in the Important Dates, Time and Venue schedule of this Circular in respect of the *Meetings* pertaining to *the Corporation*, please complete and return the proxy being the page immediately after this Circular in accordance with the instructions contained therein, to BDO Business Restructuring , Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, or e-mail same to businessrescuejhb@bdo.co.za to be received no later than the dates and times stipulated in the Important Dates, Times and Venue schedule of this Circular.





Notice of Meeting

Meeting convened in terms of Section 151 (and read with Section 152) of the Companies Act ("The Meeting").

Notice is hereby given in terms of Section 150 of the Companies Act of the *Meeting* which is being convened by the *Business Rescue Practitioner, C R Rey ("the BRP")*, for **Wednesday 29 November 2023 at 12:00 pm** to be held by way of a virtual meeting room on Microsoft Teams, for purposes of considering and, if deemed fit, approving with or without modification, the proposed *Business Rescue Plan* published by the *BRP*.

Important Dates, Times, And Venue

The Meeting:

12pm on

Wednesday 29 November 2023



Last day to lodge form of proxy for *The Meeting*:

12pm on

Tuesday 28 November 2023

Notes:

If a form of proxy is not received by the time and date shown above, it may be handed to the chairman of the *Meeting* by no later than 1 hour before the commencement of the *Meeting*,

These dates, times and venues are subject to change. Any such change will be published to all *Affected Persons*.



Form of Proxy

Wild Goose Trading and Services 39 CC

Registration Number: 2008/019170/23

For use by the Creditors at a meeting convened in terms of Section 151 of the Companies Act No. 71 of 2008 (As Amended) by way of a virtual meeting room on Microsoft Teams, on Wednesday 29 November 2023 at 12pm (*"the Meeting"*).

I/We _____ being a secured/preferent/
concurrent creditor of *the Corporation* for the sum of R _____
(_____ Rand) do hereby appoint (see note 1)

1. _____; or failing him/her
2. _____; or failing him/her
3. the Chairman of the meeting;



as my/our proxy to act for me/us and on my/our behalf at the meeting which will be held for the purpose of voting for the adjournment of the meeting if necessary and for considering and, if deemed fit, agreeing and voting, with or without modification:

Business Rescue Plan (Indicate with an X)	
For the proposed Business Plan: <i>(with or without modification)</i>	<input type="checkbox"/>
Against the proposed Business Plan:	<input type="checkbox"/>

BRP's Remuneration (Indicate with an X)	
For the remuneration Proposal	<input type="checkbox"/>
Against the remuneration Proposal	<input type="checkbox"/>

SIGNED at _____ on this _____ day of _____ 2023.

SIGNATURE

Assisted by me (where applicable)

NOTES

1. A creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without delating "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. Form of proxy must be lodged at to BDO Business Restructuring, Unit B5 Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, or email same to businessrescue@hb@bdo.co.za, to be received by not later than 24 hours prior to the meetings. In addition, forms of proxy may be handed to the Chairman of the meeting by not later than 1 hour before the meeting is due to commence.
3. The completion and lodging of this form of proxy will not preclude the relevant creditor from attending the meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such creditor wish to do so.



Agenda for the Meeting

The agenda for *the Meeting* is as follows: -

1. To introduce the *Business Rescue Plan* for consideration by the *Creditors*;
2. To inform the *Meeting* whether the *BRP* continues to believe that there is a reasonable prospect of the *Corporation* being rescued;
3. Provide an opportunity for the *Employees'* representative to address the *Meeting*;
4. Invite discussion, and entertain and conduct a vote, on any motion to: -
 - 4.1. Amend the proposed *Business Rescue Plan*, in any manner moved and seconded by holders of *Creditors'* voting interests, and to the satisfaction of the *BRP*;
 - 4.2. Direct the *BRP* to adjourn the *Meeting* in order to revise the *Business Rescue Plan* for further consideration.
5. Call for a vote for preliminary approval, by *Creditors*, of the proposed *Business Rescue Plan*, as amended, if applicable;



Conclusion of *the Meeting*: -

Immediately upon the closure of the *Meeting*:

1. Conduct a separate vote as contemplated in section 143(3) of *the Act*, regarding the remuneration proposal as set out in the *Business Rescue Plan*.



1. Introduction

- 1.1. This document contains the terms and conditions of a proposed *Business Rescue Plan* for the *Corporation* which, if agreed to by the requisite statutory majority of *Creditors*, will become final and binding on the *Corporation*, its *Creditors* and the *Members* upon the fulfilment of the conditions precedent referred in this *BR Plan*.
- 1.2. For ease of reference, this *BR Plan* is divided into the following sections:
- Introduction, Definitions Interpretation and Qualifications;
 - **Part A** - Background, prepared in terms of section 150(2)(a) of *the Act*;
 - **Part B** - Proposals prepared in terms of section 150(2)(b) of *the Act*;
 - **Part C** - Assumptions and conditions prepared in terms of section 150(2)(c) of *the Act*;
 - **Part D** - Administrative provisions;
 - **Annexures "A" - "F"**
 - *Business Rescue Practitioner Certificate*.
- 1.3. This introduction, the various parts of the *BR Plan* and its annexures all constitute one document to be read together. It contains the substantive terms and conditions of the proposed *Business Rescue Plan* prepared by the *BRP*.
- 1.4. Business rescue is aimed at facilitating the rehabilitation of corporations that are financially distressed by providing for:
- 1.4.1. the temporary supervision of a *corporation*, and the management of its affairs, business and property;
- 1.4.2. a temporary *moratorium* on the rights of claimants against a corporation or in respect of property in its possession; and
- 1.4.3. the development and implementation, if approved, of a plan that balances the interests of all relevant stakeholders, to rescue a *corporation* by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the corporation continuing in existence on a solvent basis, *alternatively*, and in the event that it is not possible for a corporation to so continue in existence on a solvent basis that would result in a better return for its *Creditors* or *Shareholders* than would result from the immediate liquidation of such corporation.
- 1.5. There is a reasonable prospect to develop and implement a plan for the *Corporation* to upon its acceptance continue in existence on a solvent basis, but this will a reorganization of the financial affairs of the *Corporation* and a consequential arrangement between the *Corporation* and its *Creditors* regarding its liabilities.



2. Definitions and Abbreviations

- 2.1. "The Act" means the Companies Act No. 71 of 2008;
- 2.2. "Adoption Date" means the date upon which the *BR Plan* is adopted in accordance with section 152(2) of *the Act*;
- 2.3. "Affected Persons" means *Affected Persons* as defined in Section 128(1) of *the Act* and in relation to the *Corporation* means a *Shareholder*, creditor, registered trade union and employee of *the Corporation*;
- 2.4. "Arbitrator" means the person appointed in terms of the provisions of this *BR Plan* in order to adjudicate a review of a decision of the *BRP* relating to the *Claims of Creditors*;
- 2.5. "Auction Value" means a valuation expertly compiled by a Sworn Appraiser or Valuator of *Assets*, whether movable or immovable, of what such *Assets* will realise, if being sold by public auction, to the highest cash bidder, at a public auction, which was well advertised and attended by members of the public under liquidation circumstances;
- 2.6. "Assets" means all the *Assets of the Corporation* of whatsoever nature, including but not limited to, Immovable, Movable and Intangible *Assets*;



- 2.7. "Business Day" means any calendar day excluding Saturdays, Sundays and proclaimed public holidays within South Africa;
- 2.8. "Business Rescue Practitioner" or "BRP" means, *Rey*, duly appointed by order of Court, ratified by Creditors to the Corporation as Business Rescue Practitioner and certified in terms of Section 138 of the Act by the Commission, being an Experienced Business Rescue Practitioner as defined in Regulation 126 of the Act, as evidenced by the attached Annexure¹, being the BRP License Certificate issued by the CIPC;
- 2.9. "Business Rescue Plan" or "BR Plan" means this document which is a Business Rescue Plan prepared in terms of Section 150 of the Act published by the BRP on the Publication Date and effective from the Commencement Date;
- 2.10. "Claims" means secured, preferent or concurrent Claims as envisaged in the Insolvency Act, against the Corporation, the cause of action in respect of which arose, prior to or on the Commencement Date, of whatsoever nature and from whatsoever cause, including Claims, arising from contract or delict, actual and contingent, prospective, conditional and unconditional, liquidated and unliquidated, assessed and unassessed and whether or not due for payment of performance, specific or otherwise, and including all Claims arising out of any agreements entered into by the Corporation on or prior to the Commencement Date, all such Claims to be determined, calculated and admitted as secured, preferent or concurrent in accordance with the same ranking, as envisaged in the Insolvency Act, that attached to them upon the issue of a winding up order in respect of the Corporation, whether or not such Claims are proved and in no way derogating from the generality of the foregoing, shall further include all Claims for Tax (in the broadest possible sense in which such term is utilised) of whatsoever nature and howsoever arising and levies and penalties and interest of whatsoever nature, (and whether assessed or not) provided that notwithstanding anything to the contrary elsewhere contained, all Claims shall, for the purpose of this Business Rescue Plan, be treated as if the Corporation had been liquidated on the Commencement Date, irrespective of whether returns for Value added Tax, Pay as you Earn or Income Tax have been submitted on the Commencement Date or not;
- 2.11. "The Corporation", means Wild Goose Trading and Services 39 CC, a close corporation duly incorporated in terms of the Laws of South Africa, under Registration number 2008/019170/23 and currently subject to Proceedings
- 2.12. "Creditors" means all legal entities, including natural persons, having secured, preferent and/or concurrent or Contingent Claims against the Corporation as at the Commencement Date, as envisaged in the Insolvency Act;
- 2.13. "Concurrent Creditors" means those Creditors having concurrent Claims against the Corporation as envisaged in the Insolvency Act;
- 2.14. "Commencement Date" means 19 September 2023, being the date upon which the resolution to voluntarily begin with Proceedings was filed with the CIPC as provided for in the regulations to the Act, in respect of the Corporation;
- 2.15. "CIPC" means The Companies and Intellectual Property Commission;
- 2.16. "Day/s" means calendar day/s. When any number of Days is referred to in the BR Plan, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.17. "Debtor/s" shall mean all Claims of whatsoever nature and howsoever arising, the origin, cause of action or agreement in respect whereof arose or was concluded before or after the Commencement Date that the Corporation has against third parties/ entities;
- 2.18. "Disputed Claims" means those Claims which were as at the Commencement Date and remain, as at the Publication Date, disputed by the Corporation; or which the BRP rejected as not being due and payable by the Corporation during Proceedings;
- 2.19. "Effective Date" means the first day after this Business Rescue Plan has been adopted at a meeting as envisaged in terms of Section 152 of the Act;
- 2.20. "FNB" means First National Bank, a division of First Rand Bank Limited, an authorised financial services and registered credit provider;
- 2.21. "GNB" means the general notarial covering bonds registered in favour of SPAR limited, with covering bond numbers BN 033646/08 and BN 020550/2015, respectively;



¹ Annexure A



- 2.22. "Head Lease" means the written agreement of lease, entered into on 12 November 2014, in terms of which SPAR Limited rented from the Corporation the SPAR, for an initial period of 10 years following the date of registration the transfer of the Immovable Property into the Corporations name;
- 2.23. "Immovable Property" means the leasehold property and rental business owned by the Corporation with ERF number 1010 & 1011 Melville Extension 3, 23 Main Road, the Boulevard, Melville;
- 2.24. "Independent Creditors" means all Creditors other than Creditors related to the Corporation and its subsidiaries and/or members having Claims against the Corporation as at the Commencement Date, as envisaged in the Act;
- 2.25. "Independent Valuation Reports" means valuation reports prepared by Jorge Frederico c/o Asset Auctions (Pty) Ltd, being professional valuers and appraisers, who valued the Assets of the Corporation after the Commencement Date and available from the BRP upon written request;
- 2.26. "Insolvency Act" means the Insolvency Act No 24 of 1936;
- 2.27. "Market Value" means a valuation expertly compiled by a sworn appraiser or valuator of Assets, whether movable or immovable, of what such Assets will realise, if being sold in the open market;
- 2.28. "The Meeting" means the meeting in respect of the Corporation convened in terms of Section 151(1) of the Act, in order to determine the future of the Corporation;
- 2.29. "Members" means Gert Cornelius Du Plessis and Adriaan Lodewikus Bal, both being major male businessmen and the members of the Corporation, each holding fifty percent of the members voting interest in the Corporation.
- 2.30. "Nedbank" means Nedbank Limited, a public corporation with limited liability duly incorporated in accordance with the laws of the Republic of South Africa, with shares listed on the securities exchange operated by the JSE Limited and which is a licensed financial services provider with Registration Number 1951/000009/06;
- 2.31. "Net Proceeds" means the remaining proceeds from the sale of the Immovable Property and /or the SPAR, after payment of all legal, tax and other expenses, payment of all statutory costs required for the transfer of the Immovable Property to the purchaser thereof, and any agents commission or business rescue fees applicable to the transaction/s, if any;
- 2.32. "Post Commencement Finance" or "PCF" means post-commencement funding as contemplated in section 135 of the Act;
- 2.33. "PCF Creditors" means those payments as contemplated in section 135 of the Act and which are due to Creditors in respect of liabilities incurred after the Commencement Date and still due and payable to such Creditors as at the Publication Date;
- 2.34. "Perfection Order" means the perfection order granted on 21 June 2023 in favour of SPAR Limited;
- 2.35. "Preferent Creditors" means Creditors having preferent Claims against the Corporation as envisaged in terms of the Insolvency Act;
- 2.36. "Proceedings" means Business Rescue Proceedings as provided for in Chapter 6 of the Act;
- 2.37. "Publication Date" means the date of publication of the proposed Business Rescue Plan, being 17 November 2023;
- 2.38. "Rey" means Christopher Raymond Rey, LLB, physical address: Unit B5, Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort, telephone (011) 991 5500 and, e-mail crey@bdo.co.za;
- 2.39. "SARS" means The South African Revenue Service;
- 2.40. "Secured Creditors" means Creditors having secured Claims as envisaged in the Insolvency Act;
- 2.41. "SPAR" means the SPAR and TOPS at SPAR business, operated by the Corporation, under a suite of agreements with SPAR Limited;
- 2.42. "SPAR Limited" means the SPAR Group Limited, a corporation duly incorporated in terms of the Laws of South Africa;
- 2.43. "Sub Lease" means the written agreement of sublease, entered into on or about 17 June 2015, in terms of which SPAR Limited let the SPAR to the Corporation, on the same terms relating to and applied in the Head Lease,
- 2.44. "Substantial Implementation" means the date upon which the BRP files with the CIPC a notice as required in terms of the Act². The BRP shall file for Substantial Implementation upon all payments being made, as provided for in this BR Plan;



² Section 132 (2) (c)(ii)



- 2.45. "Suspended Obligations" means the obligations of *the Corporation* that have been suspended from the *Commencement Date* to the *Final Date*, as provided for in terms of *the Act*;
- 2.46. "Tax" includes, *inter alia*, tax as defined under the Tax Administration Act, 28 of 2011 and without limitation all forms of taxation and other levies and charges payable to Governmental Authorities, including but not limited to income tax, value added tax, capital gains tax, donations tax, customs duty, stamp duty, securities transfer tax and any royalty, fee, contribution or other duty or levy and any penalties or interest on any of the foregoing and any taxation arising from any assessments and/or the reopening of any assessments of *the Corporation* for any period prior to the *Commencement Date*;
- 2.47. "Trade Creditors" means the *Creditors of the Corporation*;
- 2.48. "VAT" shall mean value added tax as levied in terms of the VAT Act;
- 2.49. "VAT Act" shall mean the Value-Added Tax Act, 89 of 1991, as amended;
- 2.50. "Wesbank" means *Wesbank*, a division of FirstRand Bank Limited, an authorised financial services and registered credit providers, with registration number 1929/001225/06.

3. Interpretations

- 3.1. Any reference in this *BR Plan* to:
- 3.1.1. the singular shall include the plural and *vice versa*;
- 3.1.2. any one gender shall include the others;
- 3.1.3. a natural person shall include an artificial person and *vice versa*;
- 3.1.4. a section or sections of the *Insolvency Act* is a reference to such sections as read with chapter XIV of the Companies Act of 1973 Act (the Old Companies Act) and item 9 of schedule 5 of *the Act*;
- 3.1.5. a section or sections hereinafter is a reference to sections of *the Act*, unless indicated otherwise.
- 3.2. If any definition contains a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it was a substantive provision in the body of the *BR Plan*.
- 3.3. Any reference to a statute, regulation or any legislation shall be a reference to such statute, regulation or other legislation at the *Commencement Date* and as amended or substituted from time to time.
- 3.4. Where any term is defined within a particular clause then that term shall bear the meaning ascribed to it in that clause wherever it is used in the *BR Plan*.



4. Qualifications to this Business Rescue Plan

- 4.1. This *Business Rescue Plan* is published in compliance with the provisions of *the Act* within the time constraints provided for in terms of *the Act*. This document is provided solely for the information of *Affected Persons* to the *Proceedings*.
- 4.2. *Affected Persons* are advised to seek independent legal advice in order to consider the proposal as presented.



- 4.3. This *Business Rescue Plan* is based upon information provided to the *BRP*, since the commencement of *Proceedings*, by the *Corporation*, its management, *Affected Persons* and third parties.
- 4.4. In compiling this *Business Rescue Plan* the *BRP* accepted and relied on representations and the authenticity of documents provided to him. Should it become necessary to make representations and documents referred to herein admissible for Court purposes, the authors of the representations and documents would have to confirm these in the relevant Court processes should it become necessary.
- 4.5. Since his appointment, the *BRP* has undertaken investigations into the affairs of the *Corporation* pursuant to his statutory obligations. His investigations have been limited due to the time constraints placed on him by the *Act* and the scope of the *BRP's* statutory duties. There may therefore be certain issues that may require additional investigation for a final conclusion or determination to be formed. Whilst the *BRP* has set out his conclusions in this *BR Plan* arising from the investigations conducted to date, please note that a liquidator (if appointed) may undertake further detailed investigations into the affairs of the *Corporation*.
- 4.6. The statements and opinions expressed in this *BR Plan* are given in good faith and in the belief that such statements and opinions are not false or misleading. Should any new information become available between the *Publication Date* and the date of any subsequent meetings or reports the *BRP* reserves his right to alter any conclusions reached on the basis of that new information.
- 4.7. In preparing this *BR Plan* and in formulating the proposals contained therein the *BRP* has made the necessary forecasts with respect to asset realisations and the total value of *Claims of Creditors*. These forecasts and estimates may change as *Assets* are realised and *Creditors* prove their *Claims* against the *Corporation*. Whilst this *BR Plan* estimates the likely outcomes for *Affected Persons*, the forecasts are by their very nature uncertain, and the ultimate outcome may therefor differ from the forecast contained in the *Business Rescue Plan*.
- 4.8. The *BRP* reserves the right, should it come to his attention that material information has been withheld or additional information is brought to his attention, to amend this *BR Plan*.
- 4.9. For your convenience, this document may have been made available to you in electronic, as well as hard copy format. Multiple copies and versions of this document may, therefore, exist in different media. Only the final hard copy should be regarded as definitive.



5. Confidentiality

- 5.1. This *Business Rescue Plan* is confidential to the *Affected Persons* of the *Corporation* and prepared solely for the purpose(s) set out in the *Act*. No person may refer to or use the names of the *BRP* or the *Business Rescue Plan* for any other purpose, disclose or refer to them in any prospectus or other document, or make them available or communicate them to any other party.
- 5.2. No other party is entitled to rely on the *Business Rescue Plan* for any purpose whatsoever and the *BRP* accepts no duty of care or liability to any other party who is shown or gains access to this *Business Rescue Plan*.
- 5.3. All of the information contained in this *Business Rescue Plan* is of a confidential and/or proprietary nature to the *Corporation* in whatever form, and without limiting the generality



thereof and shall include any of the following information, documentation, data and/or material in any form (including oral, written, electronic or visual form) disclosed or communicated by *the Corporation* and/or any of its affiliates in connection with or arising out of the Business Rescue Plan or meetings of *Creditors*:

- 5.3.1. technical, scientific, commercial, financial, operational or market information, or trade secrets in relation to the Business of *the Corporation*;
- 5.3.2. agreements to which *the Corporation* and/or its affiliates are a party;
- 5.3.3. operating know-how, processes, statistics, business methods, business plans, asset lists and models (whether of a financial nature or otherwise) and techniques used by *the Corporation* and/or its affiliates in the conduct of *the Corporation*;
- 5.3.4. copyright, patents, trademarks, service marks, design rights (whether registered or unregistered), database rights, proprietary information rights and all other similar rights and applications for such rights as may exist anywhere in the world in relation to *the Corporation*;
- 5.3.5. knowledge of details and particulars in regard to *the Corporation* and/or its affiliates' suppliers, contractors, business associates and customers;
- 5.3.6. *the Corporation* and/or its Affiliates' method/s and statistics of conducting its business;
- 5.3.7. the contractual arrangements and commitments between *the Corporation* and/or its affiliates and their suppliers and customers; and
- 5.3.8. any other matter or information which relates to the business in respect of which information is not readily available to the general public;
- 5.4. All confidential and/or proprietary information disclosed by *the Corporation* and/or its affiliates or which otherwise comes to the knowledge of *Affected Persons* in terms of the provision of this Business Rescue Plan or any meeting of *Creditors*, is acknowledged by *Affected Persons*:
 - 5.4.1. to be proprietary to *the Corporation* and/or its Affiliates; and
 - 5.4.2. not to confer any rights of whatsoever nature in the disclosure of such confidential and/or proprietary information on *Affected Persons*.
- 5.5. *Affected Persons* irrevocably and unconditionally agree and undertake:
 - 5.5.1. to treat and safeguard the confidential and/or proprietary information as strictly private, secret and confidential;
 - 5.5.2. not to use or permit the use of the confidential and/or proprietary information for any purpose other than purposes of the *Business Rescue Plan* and, in particular, not to use or permit the use of the confidential and/or proprietary information, whether directly or indirectly, to obtain a commercial, trading, investment, financial or other advantage over *the Corporation* and/or its affiliates or otherwise use it to the detriment of *the Corporation* and/or its affiliates;





- 5.5.3. except as permitted by this *Business Rescue Plan*, not to disclose or divulge, directly or indirectly, the confidential and/or proprietary information in any manner to any third party for any reason or purpose whatsoever without the prior written consent of the *BRP*, which consent may be granted or withheld in the sole and absolute discretion of the *BRP*;
- 5.5.4. not to copy or reproduce the confidential and/or proprietary information by any means without the prior written consent of the *BRP*, it being recorded that any copies of the *Business Rescue Plan* shall be and remain the property of the *Corporation*; and
- 5.5.5. To keep all confidential and/or proprietary information safely and securely and to take all such steps as may be reasonably necessary to protect it against theft, damage, loss, unauthorised access (including access by electronic means) and to prevent confidential and/or proprietary information from falling into the hands of unauthorised third parties.



A handwritten signature in black ink, consisting of a stylized, cursive script.



PART A

6. Background, Historical Events and Group Structure³

The Act requires the *Business Rescue Plan* to contain certain background information, which is in compliance with *the Act*, recorded herein below:

6.1. Background and Historical Events

6.1.1. According to the founding papers filed by *SPAR Limited*, being the applicant creditor in the *Proceedings of the Corporation*, the *Corporation's* principal business is that of a property owning entity and its operations include two distinctive business units:

6.1.1.1. A rental business in relation to the *Immovable Property*; and

6.1.1.2. The operator of the *SPAR*, at the *Immovable Property*.

6.1.2. *The Corporation's* registered address is at 516 Ontdekkers Road, Florida, Johannesburg, Gauteng and principal place of business is at the Boulevard, corner of main road and 4th Avenue, Melville, Johannesburg.

6.1.3. *The Corporation* is the leaseholder of the *Immovable Property* situated at the Boulevard, corner of main road and 4th Avenue, Melville, Johannesburg.

6.1.4. *The Corporation* historically operated the *SPAR*, up and until *SPAR Limited* perfected its *GNB*, as is dealt with more fully herein below.



6.2. Group structure

6.2.1. *The Corporations* members interest is held by the *Members*.

6.3. Corporation information (as at the *Commencement Date*)

Members	Gert Cornelius Du Plessis & Adriaan Lodewikus Bal
Auditors	J N Meyer
Financial Year End	28 February
Registered Address	516 Ontdekkers Road, Florida, Johannesburg, Gauteng
Principle Address	The Boulevard, corner of main road and 4 th Avenue, Melville, Johannesburg.

6.3.1. The last audited financial statements prepared in respect of *the Corporation* are for the period ending 28 February 2022.

6.3.2. The *BRP* has however, post the *Commencement Date*, received management accounts from the auditors of the *Corporation*, up and until the 31st of August 2023.

³ Section 150(2)(a)



6.4. Reasons for and factors influencing *the Corporation's* financial distress

A combination of factors and events during the years preceding the commencement of *Proceedings*, all contributed to *the Corporation's* financial distress. The main reasons and factors that have influenced the financial distress of *the Corporation* are, *inter alia*, the following:

- 6.4.1. Prior to the perfection of the *GNB* by *SPAR Limited*, Adriaan Lodewikus Bal, of the members of the *Corporation*, ran the business affairs of the *SPAR* and Mr Gert Cornelius Du Plessis, being the other member of the *Corporation*, ran the business affairs of the *Immovable Property*.
- 6.4.2. According to the papers filed by *SPAR Limited* in the application for the *Proceedings* and as at 9 September 2023, the *Corporation* was indebted to *SPAR Limited*, in an amount of R15 225 223,87. The *Corporation* was unable to settle the indebtedness to *SPAR Limited*, in accordance with the standard terms of trade with *SPAR Limited*.
- 6.4.3. The inability of the *Corporation* to settle the indebtedness to *SPAR Limited* appears to be accounted for in the loss-making nature of the *SPAR* business in the *Corporation*, despite the *Immovable Property* generating income from its rental business.
- 6.4.4. On 21 June 2023, *SPAR limited* launched an urgent application for the perfection of the *GNB*, which order was duly granted by the High Court, Johannesburg.
- 6.4.5. In terms of the *Perfection Order*, *SPAR limited* were entitled to, *inter alia*, take possession of and retain all or any of the movable property, corporeal or incorporeal, belonging to the *Corporation* and to retain such possession for so long as *SPAR limited* may deem fit and/or to sell and dispose thereof or any portion thereof in such manner and on such terms as *SPAR Limited* may decide and to convey valid title to the purchasers or transferees and to collect in all monies due to the *Corporation* in respect thereof.
- 6.4.6. *SPAR limited* were further entitled in terms of the *Perfection Order* to carry on the business of the *Corporation* relating to the movable *Assets* in the name of and at the expense of the *Corporation* and for that purposes to purchase goods and do whatever else *SPAR Limited* deemed necessary.
- 6.4.7. Accordingly, and on 23rd of July 2023, when *SPAR Limited* executed the *Perfection Order*, the *Corporation* no longer had possession of the *SPAR* and consequently any revenue generated from the business operations of the *SPAR* was no longer for the benefit of the *Corporation*.
- 6.4.8. In addition to *SPAR Limited* providing the *Corporation* with goods on credit, *SPAR limited* also lets the *SPAR* from the *Corporation* in terms of the *Head Lease*. In turn the *Corporation* entered into the *Sublease*, on the same terms relating to the *Head Lease*, in order to ensure that the *Corporation* would be obliged to pay *SPAR limited* in terms of the *Head Lease*.
- 6.4.9. When the *Corporation* fell into arrears with *SPAR Limited* in terms of the credit provided to the *Corporation*, *SPAR Limited* elected, in terms of their contractual rights to do so, to apply set off of the rental due by *SPAR Limited* to the *Corporation* in lieu of the debt to *SPAR Limited* by the *Corporation*. The loss of this rental income further impacted the revenue of the *Corporation* and in turn the financial distress of the *Corporation*, at no fault of *SPAR Limited*.





- 6.4.10. The *Corporation* has also been unable to service its obligations to the City of Johannesburg, with a substantial outstanding account due, owing and payable to the council as at the *Commencement Date*. The arrears with the City of Johannesburg resulted in the water being disconnected to the *Immovable Property* prior to the commencement of *Proceedings*.
- 6.4.11. The business relationship between the *Members of Corporation* has also broken down irretrievably, prior to the commencement of *Proceedings*.
- 6.4.12. These events collectively adversely affected *the Corporation's* financial position and despite *the Corporation* having *Assets* and such *Assets* being income generating from the leases that *the Corporation* has entered into, *the Corporation* experienced acute cash flow shortages and a loss of R4 713 202.00 for the financial year up and until 28 February 2022, with further losses in the following financial year ending 28 February 2023, in an amount of R2 191 705.00.

6.5. **Commencement of Business Rescue *Proceedings* and Important Dates:**

Court Appoints Interim Practitioner	19 September 2023
Effective date of business rescue proceedings	19 September 2023
Publish notice to <i>Affected Persons</i> of Business Rescue <i>Proceedings</i>	27 September 2023
Publish notice to <i>Affected Persons</i> of BRP's appointment	27 September 2023
First meeting of <i>Creditors</i> held on	4 October 2023
First meeting of Employees held on	4 October 2023



- 6.5.1. The *BRP* convened and presided over the first meeting of *Creditors*, which was convened on the 4th of October 2023. At the first meeting of *Creditors*, the *Creditors of the Corporation* elected not to form a *Creditors' committee*.
- 6.5.2. The *BRP's* interim appointment was duly ratified by the requisite majority of *Creditors* at the first meeting of *Creditors*.
- 6.5.3. The *BRP* convened and presided over the first meeting of *Employees*, which was convened on the 4th of October 2023. At the first meeting of *Employees*, the *Employees of the Corporation* elected to form an *Employees committee*.
- 6.5.4. The *Creditors*, holding the majority voting interest, have as is required in terms of *the Act*⁴, consented to the postponement of the publication of this *BR Plan*, finally to the *Publication Date*.
- 6.5.5. The minutes and a full transcript of the first meeting of *Creditors* is available from the *BRP*, having already been circulated to all known *Affected Persons*.
- 6.6. **Status of *the Corporation* at the *Commencement Date*:**
- 6.6.1. Prior to *Commencement Date* and as at the *Publication Date*, *the Corporation's* trading activities were under pressure and despite efforts to restructure a portion of the debt of *the Corporation* through various interactions with one of the *Members* and *Nedbank*, the *Members* were unable to do so due to a lack of information supplied to *Nedbank*, and were further

⁴ Section 150 (5)(b)



unable to secure the necessary funding from its *Members*, or a third party, in order to restructure its affairs.

- 6.6.2. As was articulated in the founding papers placing *the Corporation* in business rescue, *the Corporation* was as at the *Commencement Date* and remains as at the *Publication Date* financially distressed, as defined in *the Act*.⁵

6.7. **Initial Actions during *Business Rescue Proceedings*:**

- 6.7.1. Initially the *BRP* focused his attention on understanding *the Corporation's* financial affairs and investing the historical trading activities of *the Corporation*, which included meetings with the major *Creditors* of *the Corporation*.

- 6.7.2. The *BRP* identified the cash flow shortages in the business as an urgent matter to attend to and the *BRP* took control of the limited cash in the business together with understanding the status of the *Assets* of *the Corporation*.

- 6.7.3. The *BRP* commissioned *Independent Valuation Reports* into the *Assets* of *the Corporation*.

- 6.7.4. The *BRP* has had various detailed engagements with the managing agents of *the Immovable Property* and the *BRP* continues to work closely with the managing agents in order to ensure the effective management of the *Immovable Property* during *Proceedings*.

- 6.7.5. The *BRP* has had various detailed engagements with *Nedbank*, *SPAR Limited*, *Wesbank*, *FNB*, *City of Johannesburg* and the *BRP* continues to work closely with the major *Creditors* of the *Corporation* seeking the solution to the restructuring of the affairs of the *Corporation*.

- 6.7.6. The *BRP* met on an *ad hoc* basis with the management of *the Corporation* and the *Corporation's* auditors in order to ensure effective and expeditious management of the affairs of the business, whilst under business rescue.

6.8. **Further aspects dealt with during *Proceedings*:**

- 6.8.1. During *Proceedings*, the *BRP*, in addition to what is stated above, *inter alia*, attended to negotiations with *Creditors* of *the Corporation* including extensive negotiations and meetings with the *Secured Creditors*, being *Nedbank* and *SPAR Limited*, regarding their respective *Claims* and the restructuring options for *the Corporation*.

- 6.8.2. The *BRP* engaged the services of various professionals to assist with *Tax* compliance, valuation of *Assets* and the compiling of up-to-date management accounts.

- 6.8.3. The *BRP* investigated the affairs and trade dealings of *the Corporation* that occurred prior to the *Commencement Date* and should the *BRP's* investigations ultimately result in any evidence of reportable offenses, the *BRP* shall refer such findings to the relevant authority, as is required of him in terms of the relevant provisions of *the Act*.⁶

6.9. **Proposals to restructure the affairs of *the Corporation*:**

- 6.9.1. The *BRP* explored and considered various restructuring options for *the Corporation*.

⁵ Section 128 (1) (f)

⁶ Section 141



- 6.9.2. Prior to *Proceedings* and as at the *Commencement Date* the *Members* have been unable to recapitalise *the Corporation* and/or to take an equity partner and as such the *BRP* has been duty bound to explore alternative restructuring options.
- 6.9.3. The *BRP* identified three possible restructuring options for *the Corporation*:
- 6.9.3.1. A restructuring through the existing *Members of the Corporation* or through a third-party offeror, that would entail an arrangement and compromise with all of the *Creditors of the Corporation* and a full a final settlement of the current indebtedness of *the Corporation* to its post commencement, secured, preferent and *Concurrent Creditors*; or
- 6.9.3.2. A sale of the members interest of *the Corporation* to a third party, the proceeds of such sale being applied as a full and final settlement of the current indebtedness of *the Corporation* to its Post Commencement, Secured, Preferent and *Concurrent Creditors*;
- 6.9.3.3. A structured repayment process to *Creditors*, over a period of time, in full and final settlement of the current indebtedness of *the Corporation* to its Post Commencement, Secured, Preferent and *Concurrent Creditors*, by realising a portion or all of the *Assets of the Corporation*, into the open market.
- 6.9.3.4. The *BRP* has further assessed the possibility of combining one or more of the above-mentioned restructuring mechanisms, as detailed herein above, in order to maximise the ultimate value to *Creditors*.
- 6.9.3.5. Throughout *Proceedings*, the *BRP* critically assessed the financial position of *the Corporation*, and a restructuring of *the Corporations* affairs that would entail an arrangement and compromise with *Creditors*, appeared, on face value, to be a practical mechanism to either return *the Corporation* to solvency during *Proceedings* or alternatively would ensure a better return for *Creditors* than would have resulted from the immediate liquidation of *the Corporation*.



7. Assets of the Corporation and Security Held⁷

- 7.1. A list of the moveable *Assets of the Corporation*, at the *Commencement Date*, is attached hereto⁸, as is required and in order to assess the financial position of *the Corporation*. The *BRP* is however of the opinion that the list of moveable *Assets* received from the auditors of the *Corporation* is outdated and may require further revision.
- 7.2. **Immovable and Movable Property:**
- 7.2.1. *The Corporation* owns the *Immovable Property* and the records of *the Corporation* reflect such *Assets* at a book value of R33 420 000.00 with further improvements to the *Immovable Property* to a book value of R3 168 288.00, for solar panels installed on the *Immovable Property*.
- 7.2.2. The *Immovable Property* is encumbered and is reflected in the deeds register to be subject to a first mortgage bond registered in favour of *Nedbank*.

⁷ Section 150(2)(a)(i)

⁸ Annexure B



- 7.2.3. The BRP had the *Immovable Properties* formally valued and the *Independent Valuation Reports* determined the value of the *Immovable Property*, on a forced sale, to be R33 000 000.00 and further determined the market value of the *Immovable Property* to be R42 500 000.00.
- 7.2.4. In addition, the *Corporation* entered into various leases for the *Immovable Property* and the rental income from the *Immovable Property* is ceded to *Nedbank*.
- 7.2.5. The record of the *Corporation* reflects movable *Assets* with a total book value of R5 540 051,00. The major portion of the movable *Assets* is accounted for as alterations to the *Immovable Property*, in the amount of R3 595 755.00. Improvements to the *Immovable Property* are not movable *Assets* and the BRP accordingly did not commission independent valuation reports into the movable *Assets* of the *Corporation*, due to the value and nature of such *Assets*, the costs associated with such valuation reports and the offer made to the *Creditors* in this *Business Rescue Plan*.
- 7.2.6. The movable *Assets* of the *Corporation* are subject to the security of *SPAR limited* in terms of the *Perfection Order*.
- 7.2.6.1. **Debtors or amounts owing to the Corporation**
- 7.2.6.1.1. The records of the *Corporation* reflect a total amount of R5 320 043.00 as owing to the *Corporation* from *Debtors* being the outstanding amounts due to the *Corporation* by tenants of the *Immovable Property*. The BRP has received an up-to-date *Debtors* report, as at the *Publication Date*, which reflects an amount of R5 866 965,64 as owing to *Corporation*. This total amount includes an amount of R4 834 198.00 as owing to the *Corporation* by *SPAR Limited*, which has been set off against its *Claim* against the *Corporation*, in terms of *SPAR Limited's* contractual right to do so.
- 7.2.6.2. **Inventories**
- 7.2.6.2.1. The records of the *Corporation* reflect inventories in an amount of R5 707 438.00.
- 7.2.6.2.2. The inventory of the *Corporation* is in fact the stock in trade situated at the *SPAR* and is subject to the security of *SPAR Limited* in terms of the *Perfection Order*.
- 7.2.6.2.3. The BRP did not commission independent valuation reports into the inventory of the *Corporation*, due to the value and nature of such *Assets*, the fungibility of such *Assets*, the costs associated with such valuation reports and the offer made to the *Creditors* in this *Business Rescue Plan*.
- 7.2.6.3. **Cash and Cash Equivalents**
- 7.2.6.3.1. As at the *Commencement Date*, the *Corporation* held no cash or cash equivalents, in its banking accounts and as at the *Publication Date*, an amount of R164 573.01.
- 7.2.6.3.2. The records of the *Corporation* reflect deposits in an amount of R57 399.00, however such deposits have not been traced by the BRP in any banking accounts of the *Corporation*.
- 7.2.6.3.3. The cash held by the *Corporation*, as at the *Publication Date*, accounts for the net cash position after rental income received and the costs incurred during *Proceedings*,





including the disbursement costs associated with the various professionals utilised during *Proceedings*.

8. Creditors of the Corporation⁹

- 8.1. A detailed list of the *Creditors of the Corporation* as verified by the *Corporation* and incorporating the *Claims* received and accepted by the *BRP* from *Creditors*, as at the *Commencement Date*, is annexed hereto¹⁰.
- 8.2. The amounts reflect the amounts owing to *Creditors* as at the *Commencement Date*. These amounts represent the voting interest of each *Creditor* for purposes of voting at *The Meeting*, unless otherwise stated in this *BR Plan*. These amounts will also, subject to the provisions contained in this Business Rescue Plan in respect of the submission of late *Claims*, be used to distribute monies to *Creditors* in terms hereof and will bear no interest as from the *Commencement Date*.



8.3. Secured Creditors

8.3.1. Nedbank:

- 8.3.1.1. *The Corporation's* records reflect *Nedbank* as having security over certain of the *Assets* of the *Corporation* for the indebtedness of the *Corporation* to *Nedbank*.
- 8.3.1.2. The *Claim* of *Nedbank* is secured by way of a first ranking mortgage bond and a general cession incorporating a cession of all income and lease proceeds in relation to the *Immovable Property*.
- 8.3.1.3. *Nedbank* has further secured limited sureties from both *Members* for the obligations of the *Corporation* to *Nedbank*. These sureties are limited to an amount of R 22 500 000.00 for each member.
- 8.3.1.4. *Nedbank's Claim* against the *Corporation*, as at the *Commencement Date*, amounts to a total of R10 367 022.80.

8.3.2. SPAR Limited

- 8.3.2.1. *The Corporation's* records reflect *SPAR Limited* as having security over certain of the *Assets* of the *Corporation* for the indebtedness of the *Corporation* to *SPAR Limited*.
- 8.3.2.2. The *Claim* of *SPAR Limited* is secured by way of the *GNB*, as per the *Perfection Order* obtain by *SPAR Limited*, and the execution thereof. *SPAR Limited* are currently in possession of the movable *Assets* of the *Corporation* and the value of *SPAR Limited's* security is an amount of R12 500 000.00 in terms of the *GNB*.
- 8.3.2.3. *SPAR Limited's Claim* against the *Corporation*, as at the *Publication Date*, amounts to a total of R14 293 216,75.

⁹ Section 150(2)a)(ii)

¹⁰ Annexure C



8.4. Preferent Creditors¹¹

8.4.1. Employees:

8.4.1.1. As at *Commencement Date*, the Corporation employed 86 Employees.

8.4.1.2. No amount is due to the Employees of the Corporation, as at the *Commencement Date*, with SPAR Limited having assumed the payments to the Employees of the Corporation, pursuant to the *Perfection Order*.

8.4.1.3. The Corporation was subject to various CCMA proceedings prior to the *Commencement Date of Proceedings* and the BRP is working, in conjunction with SPAR Limited and the labour advisors SPAR Limited to either settle, review, oppose or comply with such CCMA matters or awards, on a case-by-case basis.

8.4.1.4. To the extent that any Employee has a Claim pursuant to any CCMA awards, the Claim/s will be dealt with in terms of the provisions of this *Business Rescue Plan* and the order of preference to apply to such Claim/s, as is dealt with more fully hereinbelow.



8.4.1.5. For purposes of this proposal and the requirements of the Act, the BRPs have calculated the Claims of the Employees of the Corporation which would constitute *Preferent Claims* against the Corporation, in terms of the provisions of the *Insolvency Act*, in the event that the Corporation were to be liquidated, as at the *Commencement Date*. The balance of their Claims being considered as *Concurrent Claims* against the Corporation.

8.4.1.6. Those portions of the Claims of Employees that would constitute *Preferent Claims*¹² in the event of the liquidation of the Corporation amount to R1 260 670.76, with the balance of their Claims that would rank as *Concurrent Claims*, in an amount of R695 227.59. The amount due to each individual Employee is not specified to address confidentiality concerns.

8.4.2. SARS

8.4.2.1. According to the records of the Corporation, as at the *Commencement Date*, SARS filed an initial Claim and such Claim reflected that the Corporation is indebted to SARS in an amount of R281 971,01 in lieu of VAT, PAYE, UIF and SDL together with penalties and interest.

8.4.2.2. The BRP instructed management of the Corporation to attend to and to ensure that all returns are been filed with SARS. As at the *Publication Date*, the revised Claim of SARS is in an amount of R9 793 154.00, with the returns that have been filed during *Proceedings* by the auditors of the Corporation.

8.4.2.3. The BRP confirms that the Corporation shall ensure that all future tax obligations (including the filing of returns and payment of outstanding taxes) will be met until *Proceedings* have been terminated in terms of the Act. Any deviation from this undertaking shall constitute a material breach of the provisions of this *Business Rescue Plan* and proceedings will in such

¹¹ Preferences in accordance with the laws of Insolvency, if The Corporation were to be liquidated as at the *Commencement Date*

¹² Section 98A of the *Insolvency Act* and its regulations



instance be deemed to have terminated. The full original *Claims* outstanding to *Creditors*, or the remainder of such *Claims* shall be payable.

- 8.4.2.4. Any VAT liability arising as a result of a compromise of debts in terms of this *Business Rescue Plan*, is not subject to compromise and is payable in full. The practitioner confirms that provision for any VAT liability triggered in terms of section 22 of the VAT Act have been accounted for by the *Corporation*.
- 8.4.2.5. Any assessed loss will be subject to and dealt with in accordance with the provisions of the tax laws of South Africa and will be forfeited in proportion to the debt compromise effected by the *Business Rescue Plan*. Such reduction shall be without prejudice to any rights that the taxpayer may have in terms of in terms of the Tax Administration Act.

8.5. **FNB and Wesbank**

- 8.5.1. The *BRP* has received a *Claim* from *FNB* in an amount of R2 719 717,87 in lieu of a short term direct facility with *FNB*.
- 8.5.2. *FNB* has further secured unlimited sureties from Madeleine Bal and Adriaan Lodewikus Bal, the latter being one of the *Members* of the *Corporation*, for the obligations of the *Corporation* to *FNB*.
- 8.5.3. The *Corporation* entered into certain instalment sale agreements with *WesBank*, however the records of the *Corporation* do not reflect such *Assets* in the books of account.
- 8.5.4. The instalment sale agreements were for a VW Polo 1.0 TSI Comfortline and an Audi SQ5 Quattro Tiptronic. The *BRP* has elected to relinquish both *Assets* to *Wesbank*, as the *Corporation* is not able to service the monthly instalments on the vehicles.
- 8.5.5. As at the *Commencement Date*, the *Corporation* is indebted to *Wesbank* in an amount of R204 335.41, with a current arrears amount of R12 857.70, regarding the VW Polo 1.0 TSI Comfortline and the *Corporation* is further indebted to *Wesbank* in an amount of R1 801 741.86, with a current arrears amount of R68 539,57, regarding the Audi SQ5 Quattro Tiptronic. Accordingly, and as at the *Commencement Date*, the *Corporation* is indebted to *Wesbank* in a total amount of R2 006 077,27.
- 8.5.6. The *Corporations* indebtedness to *Wesbank* shall reduce commensurate to the value that the vehicles will be sold for, on public auction, by *Wesbank*. *Wesbank* shall accordingly have the right to submit a revised *Concurrent Claim* during *Proceedings* once such revised *Concurrent Claim* has been quantified by *Wesbank*.

8.6. **City of Johannesburg**

- 8.6.1. According to the records of the *Corporation*, as at the *Commencement Date*, the *Corporation* is indebted to the City of Johannesburg in an amount of R10 690 011.00.
- 8.6.2. The *BRP* has entered into negotiations with City of Johannesburg regarding a repayment arrangement, which has not been finalised, as at the *Publication Date*.





8.7. Concurrent Creditors

- 8.7.1. All other verified *Claims of Creditors* against the *Corporation*, not specifically dealt with in this *BR Plan*, are regarded as *Concurrent Claims* as is provided for in terms of the laws of Insolvency.
- 8.7.2. As at the *Publication Date*, the *BRP* received and verified *Claims* from *Concurrent Creditors*, not specifically dealt with in this *BR Plan*, at a value as they would have been as at the *Commencement Date*, amounting to R455 335.33.

8.8. PCF and PCF Creditors

- 8.8.1. The *BRP* has not obtained any *PCF* funding from the *Members* of the *Corporation*.
- 8.8.2. The post business rescue costs incurred and paid for from the receipt of *Debtors* by the *Corporation*, have been incurred with the consent of the *Secured Creditor*, being *Netbank*. Should the *BRP* be required to obtain any *PCF*, post the *Publication Date*, the *BRP* reserved the right to do so and to deal with such *PCF Claim/s* in terms of this *BR Plan*.



8.9. Non-Independent Creditors¹³

- 8.9.1. The records of the *Corporation* reflect the *Members* loans to the *Corporation* by the *Members* in a total amount of R9 971 198.00.
- 8.9.2. The *BRP* has received a *Claim* from Mr. Adriaan Lodewikus Bal, being a *Member* of the *Corporation*, in an amount of R17 585 584,00. This *Claim* amount differs from the records of the *Corporation* and the *BRP* shall require further time to assess such *Claim*. To the extent that such *Claim* is not admitted by the *BRP*, after the *Adoption Date*, such *Claim* shall be dealt with in terms of the *Disputed Claims* mechanism provided for in this *BR Plan*.
- 8.9.3. The *BRP* has not, as at the *Publication Date*, received a *Claim* from Mr. Gert Cornelius Du Plessis, being a *Member* of the *Corporation*.
- 8.9.4. The *BRP* has determined the *Claims*, if any, of the *Members* as *Non-Independent Creditors* in terms of the *Act*¹⁴ and for purposes of these *Proceedings* and the *Meetings* convened to consider this *BR Plan* and to determine the future of the *Corporation*¹⁵.
- 8.9.5. The distribution of the relevant notices to such *Non-independent Creditors*, in terms of the *Act*, has been complied with by the *BRP*, and the *Members* have accepted their respective *Claims* to be non-independent in nature. The *Claims* and corresponding voting interest of both *Members*, if any, are in any event ceded to *SPAR Limited*, in terms of its security and surety documentation.
- 8.9.6. All other *Creditors* are regarded as independent in terms of the *Act*.¹⁶

¹³ Section 128(g)

¹⁴ Section 145 (5)(a)

¹⁵ Section 128(g)(ii) read with Section 145(5)

¹⁶ Section 145(5) (a)



8.10. Probable Dividends to *Creditors*: Liquidation Scenario as at the *Commencement Date*

8.10.1. In the event of the liquidation of a corporation, it is the appointed liquidators' duty to realise the *Assets* of the liquidated estate for the benefit of all *Creditors* as soon as possible.

8.10.2. In compliance with *the Act*¹⁷, and in order to calculate the expected liquidation dividend that *Creditors*, in various classes, may expect to receive in the event of the liquidation of *the Corporation*, the *BRP* has prepared what he deems to be the probable dividends that *Creditors* would have received had *the Corporation* been liquidated as at the *Commencement Date*. This calculation is attached hereto.¹⁸

8.10.3. This assessment by the *BRP* utilises the fair values of the *Assets of the Corporation*, as well as the expected expenses that would be incurred by an appointed liquidator, in order to calculate the probable dividend that *Creditors*, in their various classes, may have expected to receive had *the Corporation* been liquidated as at the *Commencement Date*.

8.10.4. The calculation of the probable dividend that *Creditors* would conceivably have received, in their respective classes, applying the above-mentioned principles, had *the Corporation* been liquidated as at the *Commencement Date*, is set out in the attached annexure¹⁹.



8.10.5. In attending to this calculation, the *BRP* made the following assumptions regarding the realisation of the *Assets* in the event of the liquidation of *the Corporation*:

8.10.5.1. The *Assets of the Corporation* would have been sold by the appointed Liquidator, by public auction, at the expected *Auction Value* (forced sale) and the *BRP* has relied on the *Independent Valuation Reports* obtained for the *Assets* and where *Independent Valuation Reports* have not been obtained, the *BRP* has made the necessary assumptions on the liquidation value of such *Assets*;

8.10.5.2. By its very nature the collection of outstanding *Debtors* related to insolvency of a *Corporation* is notoriously difficult and the collection of outstanding *Debtors* are seldom possible. Considering the nature of the *Assets*, a liquidator would realise only a fraction of the value attributed to these *Assets* than if they were to be sold in the open market and given time to properly negotiate the sale of these *Assets*.

8.10.6. The estimated liquidation dividends that would accrue, to the different classes of *Creditors*, had *the Corporation* been liquidated as at the *Commencement Date* is summarised below, representing an extract of the *BRP's* calculation²⁰ determination:

8.10.6.1. **The Secured Creditor-**

8.10.6.1.1. **Nedbank**

8.10.6.1.1.1. *Nedbank* would have expected to receive an anticipated secured dividend of R10 367 022.80 or approximately 100 cents in the Rand, were *the Corporation* to have been liquidated as at the *Commencement Date*.

¹⁷ Section 150(2)(a)(iii)

¹⁸ Annexure D

¹⁹ Annexure D

²⁰ Annexure D



8.10.6.1.2. **SPAR Limited**

8.10.6.1.2.1. SPAR would have expected to receive an anticipated secured dividend of R3 671 632.83 or approximately 26 cents in the Rand, were the Corporation to have been liquidated as at the Commencement Date.

8.10.6.2. **Preferent Creditors:**

8.10.6.2.1. Employees could have expected to receive full payment of the preferent portion of their Claims in the amount R 1 260 670,76.

8.10.6.2.2. SARS would have received a preferent dividend of R9 793 154.40, were the Corporation to have been liquidated as at the Commencement Date.

8.10.6.3. **Concurrent Creditors:**

8.10.6.3.1. Concurrent Creditors could have expected to receive a concurrent dividend of R4 902 717.70 or approximately 14 cents in the Rand, had the Corporation been liquidated, as at the Commencement Date.



9. **Holder/s of the Corporation's Issued Securities²¹**

- 9.1. According to the records of the Corporation and as at the Commencement Date, the members interest of the Corporation is held by the Members equally.
- 9.2. No other members interest has been issued and the Members declared that no members interest was promised to any third parties and that there are no outstanding members interest to be issued. In view of the Corporations present financial position, the members interest of the Corporation has no commercial value at this stage.
- 9.3. The Business Rescue Plan does not envisage a change in the members interest of the Corporation.

10. **BRP's Remuneration or Agreement Concerning BRP's Remuneration²²**

- 10.1. For purposes of determining the BRP's hourly remuneration, the Corporation has been classified in terms of the regulations to the Act as "a medium sized corporation".
- 10.2. The BRP has to date been remunerated in terms of the provisions of the Act and regulations based on the actual time spent on the matter. The disbursements relating to consultants employed and legal fees expended by the BRP and other sundry disbursements have also been paid by the Corporation, in terms of the Act.
- 10.3. As is provided for in the Act²³ the BRP proposes, as part of this BR Plan, a success fee arrangement with the Corporation, which fee is payable by the Corporation during Proceedings, as provided for in the proposal, upon the arrival of specific events.

²¹ Section 150(2)(a)(iv)

²² Section 150(2)(a)(v)

²³ Section 143 (2) read with regulation 128(2)



- 10.4. Accordingly, it is proposed that the *BRP* will, subsequent to the *Adoption Date*, continue to be remunerated based on actual time spent on the matter, but will be entitled to additional success fees as proposed in this *Business Rescue Plan*.
- 10.5. Accordingly, the *BRP* therefore proposes an agreement as contemplated in *the Act*, in respect of the remuneration subsequent to the *Adoption Date* of the *BR Plan* as recorded in the attached annexure²⁴, subject to the requisite majority of *Creditors* ratifying such proposal at *The Meeting* as envisaged in *the Act*.

11. Informal Proposal²⁵

- 11.1. This *BR Plan* was prepared after extensive engagement and consultations, as referred to above, with *Affected Persons* and contains certain proposals informally made by *Affected Persons*.



²⁴ Annexure E

²⁵ Section 150(2)(a)(vi)



PART B - PROPOSAL²⁶

12. Duration of Moratorium²⁷

- 12.1. It is proposed that the moratorium²⁸ be extended until the filing of a notice of *Substantial Implementation*, by the *BRP*.

13. Proposed Conversion of Debt to Members Interest²⁹

- 13.1. This Business Rescue Plan does not propose the conversion of debt for any of the members interest of *the Corporation*.

14. Extent to which the Corporation is to be Released from its Debts³⁰

- 14.1. *This Business Rescue Plan* does not propose that *the Corporation* is released from the payment of any of its debts but rather provides for an arrangement and compromise between *the Corporation* and its *Creditors* in settlement of the *Claims* of all *Creditors*.



15. Ongoing Role of the Corporation³¹

- 15.1. The **Primary Objective** of this *BR Plan* is to enter into an arrangement and compromise with *Creditors* in order to facilitate the successful restructuring of the affairs of *the Corporation*;
- 15.2. The **Secondary Objective** of this *BR Plan* is for *the Corporation* to return to solvency, having come to an arrangement and compromise regarding the *Claims* of *Creditors* and having sold all of the *Assets* of *the Corporation*.

16. Treatment of Existing Contracts³²

- 16.1. As at the *Commencement Date*, *the Corporation* had limited trading activities. As such none of the terms of any agreements were suspended or cancelled by the *BRP* during *Proceedings*.

17. Property of the Corporation to be made available to pay Creditors³³

- 17.1 This *BR Plan* is premised on an on structured repayment process to *Creditors*, over a period of time, by realising all of the *Assets* of *the Corporation*, into the open market. It is accordingly proposed that *the Corporation* will divest itself of all its *Assets*, which divestiture may be out of the ordinary course of the business of *the Corporation*.

²⁶ Section 150(2)(b)

²⁷ Section 150(2)(b)(i)

²⁸ Section 133 of the Act

²⁹ Section 150(2)(b)(ii) of The Act

³⁰ Section 150(2)(b)(ii)

³¹ Section 150(2)(b)(iii)

³² Section 150(2)(b)(iii)

³³ Section 150(2)(b)(iv)



BRP to their chosen conveyancing attorneys to be utilised for any offers accepted by *the Corporation*, the *BRP* and *Nedbank*.

- 19.5. The *Claim* of *Nedbank* is secured by way of *inter alia*, a first ranking mortgage bond, a general cession incorporating a cession of all income and lease proceeds and accordingly *Nedbank* have security over the lease proceeds and income derived from the lease agreements entered into between *the Corporation* and the various tenants in question.
- 19.6. As part and parcel of the proposed arrangement with *Nedbank*, *the Corporation* shall continue to utilise the net income from the collection of rentals from tenants to meet its ongoing monthly financial and statutory obligations in lieu of the *Immovable Property* and monthly business rescue expenses of *the Corporation*, but shall be required to service interest on *Nedbank's Secured Claim*, in an amount of R81 000.00 per month, payable monthly in advance, from the *Adoption Date* to the date of payment in full of *Nedbank's Secured Claim*.
- 19.7. The *BRP* and *the Corporation* shall continue to provide up to date financial information to *Nedbank*, on a monthly basis, pertaining to the financial position of *the Corporation* and the collection of the *Debtors* subject to *Nedbank's* security. The *BRP* shall further account to *Nedbank*, on a monthly basis, after any applicable capital expenses or *ad hoc* costs, from the net proceeds of the collection of *Debtors*, and any surplus will then be payable to *Nedbank*, month and in advance.



20. Proposed Arrangement with *Spar Limited*

- 20.1. Prior to the *Perfection Order*, *the Corporation* operated the *SPAR* in terms of the suite of agreements with *SPAR Limited*, including the *Head Lease* and the *Sublease*.
- 20.2. The *BRP* has obtained an *Independent Valuation Report* for the *SPAR* and the *Independent Valuation Report* for the *SPAR* is available from the *BRP*, upon request and upon the signature of a non-disclosure agreement with the *BRP* and the *Corporation*, in order to preserve the potential value of the *Assets* in the open market.
- 20.3. *SPAR Limited* are currently in possession of the movable *Assets* of the *Corporation* in terms of the execution of the *Perfection Order*, and accordingly have the rights and obligations as set forth in the *Perfection Order*, which provides for, *inter alia*, the sale of the movable *Assets* of the *Corporation*.
- 20.4. Accordingly, and in line with the provisions of the *Perfection Order*, it is proposed that *the Corporation*, under the auspices of the *BRP*, enter into an arrangement with *SPAR Limited*, premised on the sale of the *SPAR*, as one indivisible sale transaction of the *SPAR* to a purchaser and for the *Net Proceeds* of the sale of the *SPAR* to be distributed to *SPAR Limited*, in terms of its *Secured Claim*, with the balance of *SPAR Limited's Claim*, if any, ranking and to be dealt with as a *Concurrent Claim* in terms of this *Business Rescue Plan*.
- 20.5. All offers received for the sale of the *SPAR* shall be shared and discussed with *SPAR Limited* and *SPAR Limited's* written acceptance of an offer shall be required prior to acceptance of any offer by the *BRP* and *the Corporation*. *SPAR Limited* shall further retain the right to extend or renegotiated the suite of agreements between the *Corporation* and *SPAR Limited*, including the *Head Lease* and the *Sublease* with the *Corporation*, or any purchaser of the *Immovable Property* at its sole and absolute discretion.



- 20.6. The *BRP* and *SPAR Limited* shall continue to provide up to date financial information between the parties, on a monthly basis, pertaining to the financial position of the *SPAR* and *Assets* subject to *SPAR Limited's* security.

21. Proposed Arrangement and Compromise with Concurrent Creditors

- 21.1. As at the *Publication Date* the *BRP* received and verified *Claims* from *Concurrent Creditors* amounting to a total of R13 865 064.00.
- 21.2. Not Included in the total amount of *Concurrent Creditor Claims* received by the *BRP*, are the *Claims* of *non-Independent Creditors* of the *Corporation*, as such *Claims* still require verification, as is dealt with more fully herein above.
- 21.3. To *SARS*, payment to the full extent of its *Claim*.
- 21.4. To all other *Concurrent Creditors*, excluding the subordinated *Claims* of the *non-Independent Creditors*, payment of an anticipated, but not guaranteed, amount of 70 cents in the **Rand, in full** and final settlement of such *Claims* against the *Corporation*.
- 21.5. The compromise contemplated in this *Business Rescue Plan* is conditional upon the *Corporation* fully meeting its obligations to *Creditors* as set out in this *Business Rescue Plan*. In the event of any breach by the *Corporation* of its obligations to *Creditors* in terms of the *Business Rescue Plan*, or in the event the *Corporation* is placed in liquidation, the full balance due to *Creditors* in terms of their *Claims* against the *Company*, shall become due, owing and payable by the *Corporation* to the *Creditors*.



22. The Order of Preference to Apply

Subject to the terms of this Business Rescue Plan, the *BRP* shall pay, in the following manner and order of preference:

- 22.1. To the *BRP*, for payment of all fees, other than any applicable success fee, business rescue administration expenses, charges outstanding prior to the adoption of the *Business Rescue Plan* and all fees and administrative charges incurred; thereafter
- 22.2. To any and all legal and related expenses; thereafter
- 22.3. To the *Secured Creditor Nedbank*, payment in proportion to its *Secured Claim* against the *Corporation*, as provided for in this *BR Plan*; thereafter
- 22.4. To the *Secured Creditor SPAR Limited*, payment in proportion to its *Secured Claim* against the *Corporation*, as provided for in this *BR Plan*; thereafter
- 22.5. To the *BRP* for any success fees;
- 22.6. To all *PCF* providers, payment of funds provided to *The Corporation* after the *Commencement Date* (if any).



- 22.7. To the *Preferent Creditors*, payment in proportion to the *Claims of Employees* (if any) and SARS; thereafter
- 22.8. To all *Concurrent Creditors*, payment in proportion to their *Claims* against the *Corporation*, as provided for in this *BR Plan*.

23. Impact on Employees and Proposed Management Structure

- 23.1. The *Corporation* has 86 *Employees* as at the *Commencement Date* and 86 *Employees* as at the *Publication Date*. This *Business Rescue Plan* does not envisage that a consultative process in terms of the *LRA* shall be commence with *Employees* of the *Corporation*, however, should such a consultative process be required, the *BRP* shall retain the right to proceed with such consultative process after the *Adoption Date*. This *BR Plan* does not envisage a change in the number of *Employees*, other than in the ordinary course of business.

24. Benefits of Adopting the Business Rescue Plan Compared to Benefits to Creditors in Liquidation³⁷



- 24.1. For the *members*: - the *Members* shall, after the *Substantial Implementation* of this *BR Plan*, have returned the *Corporation* to solvency, having sold its *Assets*, and having settled all its liabilities.
- 24.2. For *Nedbank*: - The opportunity to realise the *Assets* subject to its security, at a market related value and an anticipated payment in full of its *Claim*;
- 24.3. For *SPAR Limited*: - The opportunity to realise the *Assets* subject to its security, at a market related value and for the continued operation of the *SPAR* under its suite of agreements, by a purchaser of the *SPAR*;
- 24.4. *Concurrent Creditors*: - *Creditors* shall receive payment from in an anticipated amount of 50 cents in the *Rand*, where they would otherwise in the liquidation of the *Corporation* have received an anticipated payment 16 cents in the *Rand*.

25. Effect on Members Interest³⁸

- 25.1. The *BR Plan* does not envisage an effect on the *Members* of the *Corporation*.

³⁷ Section 150(2)(b)(vi)

³⁸ Section 150(2)(b)(vii)



PART C- ASSUMPTIONS AND CONDITIONS³⁹

26. Special Conditions to be Satisfied⁴⁰

26.1. The following are the conditions which must be satisfied for the *BR Plan* to come into operation:

26.1.1. The adoption of the *BR Plan* by the *Creditors* having the majority voting interest as defined in the *Act*.

27. Circumstances in which the Business Rescue will end⁴¹

27.1. It is proposed that the *Business Rescue Proceedings* will end once The *BRP* files his notice of *Substantial Implementation*.

27.2. The conditions which must be satisfied for *Substantial Implementation* are:

27.2.1. The *Substantial Implementation* of any and all obligations created by the adoption of this *BR Plan*.

27.2.2. Payments to *Creditors*, as is provided for in this *BR Plan*.

27.3. In the event that sale of business agreement/s have not been concluded for either the *SPAR* and/or the *Immovable Property*, within a period of six months from the *Adoption Date*, then this *BR Plan* will be deemed to have failed and the *BRP* shall be duty bound to seek the liquidation of the *Corporation* forthwith, unless both *Nedbank* and *SPAR Limited* allow for an extension of the six month period, in writing, to the *BRP*.

28. Effects of the Proposed Business Rescue Plan on the number of Employees

28.1. The *Corporation* has 86 *Employees* as at the *Publication Date* all of whom will remain employed by the *Corporation*, in the short to medium term.

29. Projected Balance Sheet and Detailed Statement of Income and Expenses for the Ensuing Three Year Period⁴²

29.1. The *Act* does not require the *Business Rescue Plan* to include a detailed balance sheet and income statement if a structured wind down is envisaged in the *Business Rescue Plan*.



³⁹ Section 150(2)(c)

⁴⁰ Section 150(2)(c)(i)

⁴¹ Section 150(2)(c)(iii) of the Act

⁴² Section 150(2)(c) (iv) of the Act



PART D - ADMINISTRATIVE PROVISIONS

30. Proof of Claims Procedure

- 30.1. The attached list⁴³ represents the *Claims of Creditors* submitted and adjudicated and accepted by the *BRP* as at the *Publication Date* and the values reflected constitute the voting interest of such *Creditor/s* for purposes of voting at *The Meeting*.
- 30.2. Any *Creditor* not reflected on the attached list, or who disagrees with the value so reflected against that *Creditor* is required, in order to participate in any distribution in terms of this *BR Plan* to submit its *Claim* as provided for herein below.
- 30.3. No *Creditor* will share in the distribution under the *BR Plan* unless the *Creditors' Claim* is either reflected in Annexure C hereto (and then only for the amount reflected) or to the extent that the *Creditor* has, subsequent to the *Publication Date*, proven a *Claim* against the *Corporation* as contemplated herein.



30.4. Proof of Creditors' Claims after the Publication Date

- 30.4.1. *Creditors* who wish to submit a claim after the *Publication Date*, either because they do not appear on the attached list or disagree with the value so reflected, must lodge their *Claims* with the *BRP* (marked for the attention of Christopher Rey) at BDO Business Restructuring, Unit B5 Clearview Office Park, 77 Wilhelmina Avenue, Constantia Kloof, Roodepoort or to e-mail address: businessrescue@bdo.co.za (in portable document format), within a period of 30 (thirty) *Days* after the *Adoption Date*.
- 30.4.2. All *Claims* so submitted shall be proved to the satisfaction of the *BRP* as if they were officers presiding at meetings for the proof of *Claims* within the meaning of Section 44 of the *Insolvency Act*, supported by affidavits which are to contain such information and are to be accompanied by such supporting documents as are required for the proof of *Claims* in accordance with the aforesaid statutory provision. The *BRP* shall, within a period of 60 *Days* after the *Adoption Date*, admit or reject the *Claim* and inform the *Creditor* in writing of their decision in this regard.
- 30.4.3. The *BRP's* decision shall be subject to review in terms of the provisions of the Dispute Resolution mechanism herein below. The appointed *Arbitrator* shall review the *BRP's* decision upon receipt of an application of any person having an interest in the *Corporation* and affected thereby, provided that any such review *Proceedings* shall be brought within 15 (fifteen) *Days* of receipt of advice of that decision in writing from the *BRP*, acting in that capacity. Should an affected person fail to make such an application, he shall be deemed to have waived his right to dispute such decision and shall thereafter be debarred from bringing such review *Proceedings*.
- ### 30.5. Conditional Claims
- 30.5.1. Any *Creditor* may prove a conditional *Claim* in terms of the procedures provided for above. If the condition, to which any *Claim* is subject to, has been fulfilled, before the final distribution under the *BR Plan*, the *BRP* shall admit the *Claim* as if it had been unconditional.

⁴³ Annexure C



- 30.5.2. If a distribution has been allocated to a conditional *Claim*, the *BRP* shall deposit the amount of that distribution in a special account with a registered commercial bank and shall pay over the amount so distributed, together with any interest thereon, to the *Creditor* when the condition has been fulfilled. If the condition is not fulfilled, then the amount so distributed plus the interest thereon shall be distributed amongst the other *Creditors* on a pro rata basis. If, in the opinion of the *BRP*, the cost of making the distribution will be disproportionate to the value of the portions which *Creditors* will receive, then the *Business Rescue Practitioner* shall retain such amount plus interest thereon for the benefit of the *Corporation*.

31. Creditors Voting at the Meeting

- 31.1. Only *Creditors* who reflected in Annexure C hereto shall be regarded by the *Business Rescue Practitioner* as *Creditors*, for the amounts for which they so appear, to be *Creditors* for the purpose of voting at the *Meeting*.
- 31.2. *Creditors* who allege that they have *Claims* for amounts which differ from or do not appear in Annexure C hereto, are required to submit their *Claims* to the *BRP* as contemplated above⁴⁴ hereof to the satisfaction of the *BRP* who shall admit or reject the *Claim* for purposes of voting at the *Meeting*.
- 31.3. For such *Claims* to be considered for voting, *Creditors* must deliver *Claims*, as provided for above, to the *BRP* not less than 48 hours before the commencement of the *Meeting*. *Claims* not delivered timeously shall not be considered for proof at the *Meeting*, unless the *BRP* is of the opinion that a *Creditor* was unable to deliver the *Claim* documents through no fault on its part.



32. Late Claims

- 32.1. *Creditors* who have received proper notice of:
- 32.1.1. the publication of the *Business Rescue Plan*;
 - 32.1.2. the terms of the *Business Rescue Plan*; or
 - 32.1.3. the *Meeting*; or
 - 32.1.4. adoption of the *Business Rescue Plan*, and who has been furnished, together with notification of the adoption of the *Business Rescue Plan*, with a copy of the *BR Plan* and who fail to submit their *Claims* as provided for, shall be deemed to have abandoned their *Claims* free of consideration.
- 32.2. A *Creditor*, other than a *Creditor* as envisaged above, ('the Late Creditor') not having been given notice of:
- 32.2.1. the *Business Rescue Plan*; or
 - 32.2.2. the terms of the *Business Rescue Plan*; or
 - 32.2.3. the *Meeting*; or

⁴⁴ Paragraph 33.4



- 32.2.4. the adoption of the *Business Rescue Plan*, and not having had his attention directed to the contents of the *BR Plan*, shall be entitled to prove its *Claim* in the manner stipulated in above within 30 (thirty) *Days* after receiving proper notice of the matters referred to above, failing which he shall be deemed to have abandoned his *Claim*.
- 32.3. If the *Claim* of the *Late Creditor* is proved after the distribution by the *BRP* of the funds available for distribution in terms of the *BR Plan* or if the funds the *BRP* will have on hand are not sufficient to pay the *Late Creditor* an equalising distribution, such *Late Creditor* shall have the right to recover the amount he would have been entitled to have received, had he proved a *Claim* timeously, on a pro rata basis, from all the *Creditors* ('the *Overpaid Creditors*') who receive payment of distributions under the *Business Rescue Plan* prior to the receipt of the *Claim* of the *Late Creditor*, to the extent to which the amounts distributed to the *Overpaid Creditors* exceed the amounts which should have been paid to them had the *Claim* of the *Late Creditor* been proved timeously.
- 32.4. A certificate under the hand of the *BRP* as to the amount so refundable by any *Overpaid Creditor* shall be *prima facie* proof in any *Proceedings* instituted against any *Overpaid Creditor* for recovery thereof.



33. Disputed Claims

- 33.1. As at the *Commencement Date* and during *Proceedings*, the *Corporation* may have received various *Claims* purported to emanate either from contractual disputes or *Claims* for damages allegedly suffered and to the extent that the *BRP* has rejected these *Claims*, the *Corporation* and the *BRP* disputes these *Claims* as liabilities against the *Corporation*.
- 33.2. To the extent that these disputed liabilities are for purposes of this *BR Plan* referred to and dealt with in this *BR Plan* it is done so for the sake of disclosure and in doing so neither the *Corporation* nor the *BRP* admit such liabilities and hereby specifically record its continued dispute with regard to these *Claims* against the *Corporation*.
- 33.3. Upon the adoption of this *BR Plan* such *Claims* previously disputed and the rights of the *Corporation* to dispute such *Claims* remain unaffected by this *BR Plan*, except to the extent that in the event that such *Disputed Claims* either become settled between the parties or determined or finally liquidated in any appropriate legal forum, then such agreed or liquidated *Claims* will be subject to the provisions of this *Business Rescue Plan* and such *Creditors* would then be entitled to payments from the *Corporation* equal to those of the other *Concurrent Creditors* of the *Corporation*.

34. Dispute Resolution Mechanism

- 34.1. Any dispute of whatsoever nature relating to either:
- 34.1.1. the acceptance or rejection of any *Claim* whether in whole or in part or the value or the ranking of any *Claim* or the recognition of any security or preference, lien or hypothec attaching to such *Claim*; or
- 34.1.2. *Claims* which are not reflected in the records of the *Corporation* and are not in the *Business Rescue Plan*; or



- 34.1.3. any act or omission by the *BRP* affecting the rights or legal interests of any *Affected Person*; or
- 34.1.4. the proper interpretation or implementation of any provision in the *BR Plan*, shall be submitted for final determination in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure G, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

35. Domicilium and Notices

- 35.1. Each *Creditor* is hereby deemed to have chosen *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at the e-mail address stated by that *Creditor* in his proof of claim form, or, in the event of any *Creditor* not having lodged a proof of claim form, then at the *Creditor's* last recorded e-mail address with the *Corporation*.
- 35.2. *Rey* has chosen his *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at e-mail address: crey@bdo.co.za.
- 35.3. The *Corporation* has chosen its *domicilium citandi et executandi* for all purposes arising out of or in connection with the Plan at the e-mail address of the *BRP*.
- 35.4. Notices dispatched by the *BRP* in accordance with the *BR Plan* shall rebuttably be deemed to have been received by the addressee reflected on such notices on the *Business Day* after dispatch or transmission thereof by electronic mail or to the addressee's *domicilium citandi*.



36. General Provisions

- 36.1. *Affected Persons* who vote against this *BR Plan* are referred to the provisions of the *Act*⁴⁵ in terms of which any *Affected Person* or combination of *Affected Persons* may make a binding offer to purchase the voting interest of one or more persons who opposed the adoption of the *BR Plan*, at a value independently and expertly, on the request of the *BRP*, to be a fair and reasonable estimate of the return to that person if the business was to be liquidated.
- 36.2. The *BRP* will retain all powers, as provided for in the *Act*, up to *Substantial Implementation*.
- 36.3. In the event of the failure of any condition precedent, alternatively in the event that an unforeseen factual circumstance arises, which prohibits the implementation of this *BR Plan*, the *BRP* reserves the right to be able to provide notice of a further meeting of *Creditors*, and to reconvene the *Creditors* meeting.⁴⁶
- 36.4. Provided that any amendment will not be prejudicial to any of the *Affected Persons*, the *BRP* shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this *BR Plan*, provided that at all times the *BRP* acts reasonably. The amendment will be deemed to take effect on the date of written notice of the amendment to all *Affected Persons*.
- 36.5. It is specifically recorded that the provisions of paragraph 35.4 shall *mutatis mutandis* apply to the extension or reduction of any timeframes by the *BRP*.

⁴⁵ Section 153(1)(b)(iii) of the Act

⁴⁶ Section 151 of the Act



CERTIFICATE

I the undersigned,

Christopher Raymond Rey

hereby certify that the information provided herein is accurate and projections provided herein are made on the basis of good faith based on factual information.

SIGNED AT JOHANNESBURG ON THIS THE 29th DAY OF NOVEMBER 2023

CHRISTOPHER REY



* *Original Document signed by BRP*

A handwritten signature in black ink, appearing to be 'CR' or similar initials, written in a cursive style.



COMPANIES AND INTELLECTUAL PROPERTY COMMISSION REPUBLIC OF SOUTH AFRICA

Form CoR 126.2

About this Certificate

- The certificate is issued in terms of section 138 of the Companies Act, 2008, and Regulation 126 of the Companies Regulations, 2011.

Contacting the Commission

The Companies and Intellectual Property
Commission of South Africa

Postal Address
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

LICENSE CERTIFICATE

Date Received: **12/09/2022**

Valid from **12/09/2022 to 12/09/2025**

Name of Applicant: **CHRISTOPHER RAYMOND REY**

Identity Number: **8502045165088**



The above named person, a member of **The South African Restructuring and Insolvency Practitioners Association NPC** an accredited body by the Commission has been licensed in terms of section 138 of the Companies Act, 2008, to serve as a business rescue practitioner.

The Licensee has

- Satisfied the Commission that it has actively engaged in business turnaround practice before the effective date of the Act, or as a business rescue practitioner in terms of the Act, for a combined period of at least 5 years
- Experienced Practitioner

Commissioner: CIPC

The Companies and Intellectual Property Commission of South Africa
P.O Box 429, Pretoria, 0001, Republic of South Africa
Docex 256, Pretoria
Contact centre 086 100 2472
www.cipc.co.za



60000174134

Wild Goose Trading and Services 39 CC (In Business Rescue)

Asset Register

Qty	Description
Outside (Back of Despatch & Receiving Area:	
1	Stationery Circon Generator ± 270 KVA
1	6in Steel Container
1	Silo (Flour) ± 35 1
1	6m Container on wheels (blue & white)
3	Galvanized magazine display stands (outside)
3	Galvanized square trolleys 1.5 in high
Despatch/Receiving Area:	
1	Digital meat scale
1	Cadac 3 burner stainless steel braai
1	Galvanized display stand
1	Webrok Duomatic vacuum/washing machine
1	21m x 3 Tie heavy duty shewing
1	6in x 2 Tie heavy dully shelving
1	216m3 (8m x 3m x 12m) Built-in Fridge
1	1.5m x 1.5m counter desk
Stockroom:	
1	L-shape desk
1	Chair
Bakery:	
6	Bread trolleys
2	4 Tier stock trolleys
6	Stainless steel tables with splashback
2	1.2m Stainless steel tables with splashback
1	Me Adam Prover
1	Me Adam bread moulder
1	Me Adam heavy duty mixer
1	Bread divider (cutter)
1	Fortuna roll cutter
1	Pastry sheeter
1	Bread rolls cutter
1	Bums cutter
1	Me Adam double door Prover
1	Me Adam bread oven
1	Double stainless steel zmfc
Bakery Storeroom:	
1	7m x 3 Tier heavy duty shelving
1	3m x 3 Tier heavy duty shelving
Vegetable Packing Area:	
2	Anvil shrink wrapper
1	Scrubo floor washing machine
1	2m * 3m x 3 Tier heavy duty shelving
1	08m3 (4m x 9m x 3m) Walk-In display Fridges with 5 Glass Doors
Butchers:	
1	Double stainless steel sink
6	Stainless steel prep tables
1	Talsa heavy duty saugage maker
1	Heavy duty mince maker
1	Meat tenderiser
1	Oklo Band Saw
1	Crown National Biltong drier 2m3
1	Compact vacuum packer
1	Komet vacuum packer
1	1.3m Powder coated shelving
Supermarket:	
1	33m3 Display feeezer (Ice, Veggies, Fish & Ice Cream) with 1.3 Glass Doors
1	1.5m Display dairy fridges
2	9m x 7 Tier Double sided shelving with 1m end shelving
3	13m x 7 Tier Double sided shelving with 2 x 1m end shelving
4	16m x 7 Tie double sided shelving with 2 x 1m end shelving



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- 1 8m Wood 5 aluminium display shelves
- 1 26m Display Dairy fridge (dairy products & fruit juices)
- Supermarket Bakery:**
- 3 4m Wooden bread display tables
- 1 6m Semi oval confectionary display table
- 1 5m x 4 Tier wooden bread display racks
- 12 n x 2.5m Wooden confectionary display counter, semi oval
- 8 3 Tier Bread & Bread cll display shelves
- 2 4m Cake display fridge
- 1 3m x 4 Tier wooden Egg rack
- 1 1.5m Charcoal stand

Supermarket Food Section:

- 1 22m Oval cheese & cold meat fridges with pastry & display counter
- 2 Slicers
- 2 2m Under-counter bar fridge
- 1 Anvil shrink wrapper
- 1 Digital scale
- 1 50cm x 1.5m x 5 Tier biltong rack
- 1 Salad carousel
- 1 2m x 4m Wooden display table
- 1 2m x 2m Wooden display table
- 7 Wooden vegetable tables with shelving

Supermarket Take Away Section:

- 1 4m Bain-Marie Counter
- 1 Anvil shrink wrapper
- 1 Digital electronic scale
- 1 Chip Warmer
- 1 Me Adam Pizza Oven
- 1 Electronic chicken rotisserie
- 1 Industrial toaster
- 1 Rational steam oven
- 1 Pie Warmer
- 2 2 Door under-counter fridges
- 1 Samsung microwave
- 2 Vulcan chip fryers
- 1 Vulcan 3-burner cooker griller
- 1 Fuchswa fridge
- 1 General & Electric fridge
- 1 3 Burner cooker
- 1 2 Burner cooker
- 1 1,5m Stainless steel Prep table
- 1 Double stainless steel sink with prep surface
- 1 Single stainless steel sink
- 1 4 Tier crockery rack
- 1 7m x 1m Powder coated shelving
- 1 Spice rack
- 2 1 m x 6 Tier galvanized racks
- 4 4m Extractor canopies with duckling
- 1 3m Serving counter
- 1 4 Tier confectionery display stand
- 4 Check-Out counters with tills and posiflex systems
- 8 1 x 5 Tier magazine rack
- 1 3 in Wooden card & CD display stand
- Newspaper display stands
- 1 Wooden display racks & cabinet (cigarettes)
- 100 Trolleys

Managers Offices:

- 2 PC's with Flat screen
- 1 CCTV System
- 1 Desk
- 1 Chair
- 1 UPS
- 1 OKI System
- 1 HP All in One Printer /fax machine



Second Office:

- 2 Desks
- 1 OKI Printer
- 1 Safe
- 1 Bar fridge

TOPS - Spar - Melville:

- 3 Wooden Check-out counters with Tills and Scanners
- 1 4m Cigarette display stand
- 2 4m x 4 Tier double sided display shelves
- 2 5m x 4 Tier double sided display shelves
- 1 2in x 2.2m Display walk-in fridge with 12 doors
- 1 1m x 5 Tier Wooden display shelves

Managers Offices (TOPS):

- 1 Cherrywood Boardroom table, 8 seater
- 1 L-shape desk
- 1 Stationery cabinet
- 10 Leather chairs
- 1 Highback swivel chair
- 1 Lowback upholstered swivel chair
- 1 HP All in One Printer / fax machine
- 1 PC
- 1 PC with server
- 2 Flat screens (PC)
- 1 Selotek Hi-Fi



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**Wild Goose Trading and Services 39 CC (In Business Rescue)
List of Claims**

Claim No.	Creditor	Claim Amount	Amount Verified by Company
1	South African Revenue Service	R9 793 154.40	R9 793 154.40
2	Compensation Fund	R455 335.33	R455 335.33
3	The Spar Group Ltd	R14 293 216.75	R14 293 216.75
4	Nedbank Limited	R10 367 022.80	R10 367 022.80
5	Adriaan Lodewikus Bal	R17 585 584.00	R0.00
6	Firststrandbank Limited	R2 719 717.87	R2 719 717.87
7	City of Johannesburg	R10 690 011.00	R10 690 011.00
Total Claims		R65 904 042.15	R47 318 458.15



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Annexure D

Wild Goose Trading and Services 39 CC (In Business Rescue)
Liquidation Scenario as at Commencement Date

Description	Book Values	Liquidation Values
ASSETS		
Investment Property	33 420 000.00	33 000 000.00
Moveable Assets	1 922 494.00	768 997.60
Goodwill	3 829 955.00	-
Trade and other receivables	1 032 766.71	619 660.03
Deposits	57 399.00	-
Wesbank Vehicles (not reflected in records of Corporation)	1 500 000.00	900 000.00
Cash at hand	-	-
Inventories	5 707 438.00	2 282 975.20
TOTAL	47 470 052.71	37 571 632.83
EXPENSES		
Liquidator's Fees	-	1 460 663.28
Master's Fees	-	275 000.00
Legal fees and accounting	-	500 000.00
Bond of Security	-	432 073.76
Auctioneer's commission	-	3 708 697.28
Advertising Costs	-	300 000.00
TOTAL	-	6 676 434.34
Nett Proceeds	-	30 895 198.49
DISTRIBUTION		
	Claim	
Secured Creditors	24 660 239.55	14 938 655.63
Nedbank	10 367 022.80	10 367 022.80
Wesbank ISA	2 006 077.27	900 000.00
SPAR Limited	14 293 216.75	3 671 632.83
Proceeds available for Pref Creditors	-	15 956 542.86
Preferent Creditors	-	11 053 825.16
Employee Pref Claims	-	1 260 670.76
SARS Claim (Still to be finally Quantified)	-	9 793 154.40
Proceeds available for concurrent creditors	-	4 902 717.70
Concurrent Creditors	35 521 663.98	35 521 663.98
Trade Payables	455 335.33	455 335.33
Related Party Loans	9 233 711.00	9 233 711.00
Shortfall on Spar Limited Secured Claim	10 621 583.92	10 621 583.92
City of Johannesburg	10 690 011.00	10 690 011.00
Wesbank Concurrent Claim	1 106 077.27	1 106 077.27
FNB Facility	2 719 717.87	2 719 717.87
Employee Concurrent Claims	695 227.59	695 227.59
Cents in the Rand	-	13.80



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Tel: +27 011 991 5500
www.bdo.co.za

Unit B5, Clearview Office Park
77 Wilhelmina Ave,
Constantia Kloof,
Roodepoort, 1724

To The Corporation and its Creditors

Per E-mail

Date: 17 November 2023

Our Ref: CRR/DVM/2023.11.17

Your Ref: Wild Goose Trading and Services 39 (Pty) Ltd

Dear Sir/Madam

Wild Goose Trading and Services 39 CC (In Business Rescue) ("The Corporation") // Remuneration of the Business Rescue Practitioner



1. The *Corporation* commenced *Business Rescue Proceedings* on 19 September 2023. Our C R Rey is the duly appointed Business Rescue practitioner ("**BRP**") for the *Corporation*.
2. This document is a proposal to creditors as contemplated and provided for in terms of the provisions of section 143(2) as read with Regulation 128(2) of the Companies Act ("**the Act**")
3. In terms of the provisions of the *Act*, the regulations thereto and the letter of engagement with the *Corporation*, the *BRP* would be entitled to be remunerated at a rate of R1500.00 per hour for the time spent by him in discharging his duties. These regulations were published in 2011 and the hourly rate has neither been increased nor adjusted to provide for annual inflation.
4. The *BRP* has been remunerated for his services and has been reimbursed for his disbursement expenses incurred as provided for in the above-mentioned Regulations, since the commencement of *Proceedings* and it is proposed that the *BRP* will, subsequent to the adoption of the proposed business rescue plan ("**BR Plan**"), be remunerated as provided for in this fee proposal, until the termination of *Proceedings*.
5. On 17 November 2023, the *BRP* published the *BR Plan* in terms of which a compromise and arrangement is proposed to *Creditors*.

BDO Business Restructuring (Pty) Ltd
Registration number: 2002/025164/07
VAT number: 4610217830

Chief Executive Officer: LD Mokoena

A full list of all corporation directors is available on www.bdo.co.za

BDO Business Restructuring (Pty) Ltd, a South African company, is an affiliated corporation of BDO South Africa Inc., a South African company, which in turn is a member of BDO International Limited, a UK corporation limited by guarantee, and forms part of the international BDO network of independent member firms. BDO is the brand name for the BDO network and for each of the BDO Member Firms.



6. The *BRP* proposes an agreement regarding the fees of the *BRP*, in terms of the *BR Plan*, on the following basis:
 - 6.1. The *BRPs* hourly rate remain at the statutory rate of R1500.00 per hour, from the adoption of the *BR Plan* onwards, for the time spent by him in discharging his duties.
 - 6.2. An outcome-based incentive of 5% (Plus VAT) of the gross amount of any Asset/s realised, or Debtors collected, as provided for in the business rescue plan, and that payment of these success fees shall be made prior to the filing of the relevant Substantial Implementation Notice.

Yours faithfully

Christopher Rey
Business Rescue Practitioner



Wild Goose Trading and Services 39 CC (In Business Rescue)
Business Rescue Scenario as at Publication Date

Description	Book Values	Business Rescue Values
ASSETS		
Investment Property	33 420 000.00	42 500 000.00
Moveable Assets	1 922 494.00	1 153 496.40
Goodwill	3 829 955.00	-
Trade and other receivables	1 032 766.71	774 575.03
Deposits	57 399.00	-
Wesbank Vehicles (not reflected in records of Corporation)	1 500 000.00	900 000.00
Cash at hand	-	-
Inventories	5 707 438.00	3 424 462.80
TOTAL	47 470 052.71	48 752 534.23
EXPENSES		
Business Rescue Fees (inc Vat)		2 443 750.00
Legal fees and accounting		500 000.00
Agents commission (if applicable) (Inc Vat)		2 443 750.00
Advertising Costs		300 000.00
TOTAL		5 687 500.00
Nett Proceeds		43 065 034.23
DISTRIBUTION		
	Claim	
Secured Creditors	26 666 316.82	16 619 557.03
Nedbank	10 367 022.80	10 367 022.80
SPAR Limited	14 293 216.75	5 352 534.23
Wesbank Secured	2 006 077.27	900 000.00
Proceeds available for Pref Creditors		26 445 477.20
Preferent Creditors		9 793 154.40
Employee Pref Claims		-
SARS Claim		9 793 154.40
Proceeds available for concurrent creditors		16 652 322.80
Concurrent Creditors	33 145 534.99	33 145 534.99
Trade Payables	455 335.33	455 335.33
Related Party Loans	9 233 711.00	9 233 711.00
Shorfall on Spar Limited Secured Claim	8 940 682.52	8 940 682.52
City of Johannesburg	10 690 011.00	10 690 011.00
FNB Facility	2 719 717.87	2 719 717.87
Wesbank Concurrent Claim (to be finally quantified)	1 106 077.27	1 106 077.27
Cents in the Rand		50.24



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**THE AFSA-SARIPA RULES FOR THE RESOLUTION OF
DISPUTES IN BUSINESS RESCUE PROCEEDINGS**

1. THE RULES: STATUS AND PURPOSE

- 1.1 These Rules have been established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) for the purpose of resolving disputes arising in connection with business rescue proceedings.
- 1.2 AFSA and SARIPA share joint oversight over the administering Secretariat and the Panel of Arbitrators identified in these Rules and may jointly supplement or amend these Rules from time to time as circumstances dictate.
- 1.3 Such joint oversight is exercised through the AFSA-SARIPA Business Rescue Division within the AFSA corporate structure.



2. SUPERVISION OF THE AFSA SECRETARIAT

- 2.1 The AFSA-SAPIRA Secretariat is the administering authority appointed by the AFSA Business Rescue Division to supervise and administer the resolution of disputes under these Rules.
- 2.2 Parties to any dispute undertake to co-operate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat quickly and constructively.
- 2.3 The address of the AFSA Secretariat is c/o AFSA at 1st Floor, Grindrod Tower, 8A Protea Place, Sandown, or PO Box 653007, Benmore, 2010, Telephone no. (011) 320-0600, Docex 143, Randburg.
- 2.4 All communication with the AFSA Secretariat may be effected by email or online.
- 2.5 Any communications between the parties and the arbitrator should take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of these Rules.

3. INITIATING DISPUTE RESOLUTION

- 3.1 Any party to a dispute (the claimant) shall initiate the dispute resolution procedure by submitting the REQUEST FOR ARBITRATION in the form set out in Appendix A accompanied by payment of the claimant's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand).

- 3.2 The claimant must simultaneously transmit a copy of the REQUEST FOR ARBITRATION to the Business Rescue Practitioner and to any other party against whom the claimant also seeks any relief or order.

4. INTERRUPTION OF PRESCRIPTION

- 4.1 The simultaneous transmission of the REQUEST FOR ARBITRATION in proper form to the Secretariat and to the BRP and any other person against whom any relief or order is sought shall interrupt the running of prescription subject to 4.3 below.
- 4.2 The date of interruption shall be the date of receipt by AFSA of the REQUEST FOR ARBITRATION but subject to 4.3 below.
- 4.3 Prescription shall only be interrupted in this manner if the AFSA Secretariat accepts the REQUEST FOR ARBITRATION and the claimant thereafter prosecutes the claim to finalisation under these Rules without falling into default.



5. ACCEPTANCE OR REJECTION OF THE REQUEST FOR ARBITRATION

- 5.1 The Secretariat, if satisfied:

5.1.1 that the REQUEST FOR ARBITRATION has been completed in proper form and that payment of the claimant's share of its management and administration fee has been made; and

5.1.2 that the dispute falls within the terms of the reference to arbitration contained in the Business Rescue Plan,

shall accept the REQUEST FOR ARBITRATION and must notify the parties that it has referred the matter to arbitration and that the steps set out in the rest of the Rules will follow.

- 5.2 If the REQUEST FOR ARBITRATION does not comply with the requirements of 5.1 above the Secretariat will refuse the request to arbitrate in which case if the deficiency can be rectified, and is rectified, the REQUEST FOR ARBITRATION may be re-submitted.

6. RESPONSE BY THE BRP

Within ten business days from the date of receipt by the BRP, the BRP shall simultaneously transmit to the claimant, the Secretariat and any implicated person the BRP's response to Appendix A to the REQUEST FOR ARBITRATION, such response to be marked Appendix B and in which:

- 6.1 the BRP must either confirm as accurate or otherwise correct the information set out in paragraphs 1 – 4 and 6 of Appendix A;

- 6.2 the BRP must answer the claimant's claim as set out in paragraph 5 of Appendix A by way of a brief written statement indicating which statements made in support of the claim in paragraph 5 of Appendix A are admitted and which parts are denied, and why they are denied, further showing clearly and concisely the reasons and contentions which are relied upon to refute the claimant's claim;
- 6.3 Appendix B shall be accompanied by payment of the BRP's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand) plus VAT.

7. RESPONSE BY ANY OTHER IMPLICATED PARTY AND COUNTERCLAIMS

- 7.1 The provisions of Rule 6 will separately apply to any party against whom any claimant seeks an order whether separately from or in addition to any relief sought against the BRP.
- 7.2 In the event that the BRP or other implicated party seeks relief against the claimant for any reason the grounds for such reciprocal claim shall also be concisely set out together with such relief as is sought.



8. MEDIATION

Should both parties agree, or should the AFSA Secretariat so direct, the dispute will first be referred to mediation for a quick and amicable resolution. In such an instance the Secretariat will make the necessary arrangements for the mediation and will appoint the mediator. The Secretariat will issue directions as to the process to be followed.

9. SELECTING THE ARBITRATOR

- 9.1 Unless the parties have notified the Secretariat within four business days of the claimant transmitting the REQUEST FOR ARBITRATION that they have selected a particular arbitrator on the approved Panel of Arbitrators the Secretariat will select an arbitrator from the Panel.
- 9.2 The arbitrator, whether selected by the parties or by the Secretariat, must confirm that he or she is not conflicted in any way and is able to deal with the matter without delay and has signed the AFSA Code of Conduct for Arbitrators.

10. OBJECTION TO ARBITRATOR'S APPOINTMENT, RECUSAL AND REPLACEMENT

- 10.1 In the event that any party has a substantive objection to the appointment of a particular arbitrator or to the conduct of the arbitrator thereafter that party must inform the Secretariat within three days following notification of the appointment or following it first becoming aware of the conduct which is the subject of complaint. The Secretariat

will rule on the merits of the objection and either set aside the arbitrator's appointment or confirm same and its decision is final.

10.2 An arbitrator shall recuse himself or herself when, due to physical, mental, or other disability, he or she becomes incapable properly to perform his or her duties, and in circumstances which would require a judicial officer to recuse himself or herself.

10.3 The Secretariat shall be entitled, after a written or oral hearing (as directed by the Secretariat) of the parties and the arbitrator, to terminate the appointment of an arbitrator on the grounds that he or she has become disqualified from acting or continuing to act in terms of these Rules, or his or her inability or refusal to act, or that he or she has failed timeously and effectively to perform any of his or her functions as arbitrator.

10.4 Where the position of arbitrator falls vacant for any reason, the Secretariat will appoint a substitute arbitrator who shall have the power to act in the arbitration and make an award as if originally appointed and the substitute arbitrator may proceed on the evidence recorded in the proceedings before his or her appointment or may make re-call for further examination the person/s who gave such evidence.



11. SECRETARIAT'S NOTIFICATION TO THE ARBITRATOR

11.1 The Secretariat must immediately notify the arbitrator of his or her appointment, confirm and approve the fees chargeable by the arbitrator and transmit to the arbitrator Appendix A and Appendix B for the immediate attention of the arbitrator.

11.2 The Secretariat must arrange an initial meeting between the arbitrator and the parties as quickly as possible following the arbitrator's appointment.

12. THE INITIAL MEETING AND TIMETABLE

12.1 The purpose of the initial meeting is to allow the arbitrator after consultation with the parties to decide whether the fair and expeditious determination of the dispute:

12.1.1 requires further elaboration of the claim or the response and, if so, in what respects;

12.1.2 requires the production of books or documents and if so which books or documents must be produced;

12.1.3 permits the submission of evidence and contentions upon which the parties rely in written form and without the need for oral presentation.

12.2 In determining the procedure for the determination of the dispute the arbitrator:

12.2.1 must draw up a timetable for the progress of the matter to finalisation and notify the Secretariat of the timetable;

12.2.2 must give priority to the need for the expedited determination of the dispute and to a cost-effective process; and

12.2.3 if the substance of the proceedings involves a review of any decision, act or ruling of the Business Rescue Practitioner then the proceedings should be conducted by way of written evidence and submissions save for oral argument;

12.2.4 in choosing the appropriate procedure to be followed the arbitrator must be satisfied that each party will (barring default) enjoy a fair and equal opportunity to present its case.



13. PAYMENT OF THE ARBITRATOR'S FEES AND CHARGES

13.1 The fees and charges of the arbitrator will be paid by the Secretariat to the arbitrator and it is the obligation of the parties to pre-pay the Secretariat the invoiced amount of such fees and charges on demand.

13.2 In the event of the failure by any party to pre-pay such amount the provisions of Rule 13 will apply to the defaulting party and the other party or parties will, in the interim, be called upon to pay the deficit.

14. ARBITRATOR'S POWERS IN THE EVENT OF DEFAULT

Should any party to the proceedings:

14.1 fail to pay the Secretariat's management and administration fee; or

14.2 fail to pay the amount invoiced for that party's share of the arbitrator's fees and charges; or

14.3 fail to comply with the provisions of these Rules notwithstanding prior warning by the Secretariat or by the arbitrator; or

14.4 fail to carry out the terms of any ruling or directive of the arbitrator or the Secretariat; or

14.5 is guilty of delaying conduct so as to give rise to a substantial risk of serious prejudice to the other party or parties,

then:

- 14.6 where a party is in default due to failure to pay its share of any management and administration fee or arbitrator's fee when requested by the Secretariat that party will lose the right to participate in the arbitration process and the proceedings will continue to their conclusion in the absence of such party unless the arbitrator orders otherwise in the special circumstances of the case; and
- 14.7 where the default is of any other sort as itemised above the arbitrator can either:
- 14.7.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out above; or
- 14.7.2 warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.



15. GENERAL POWERS OF THE ARBITRATOR

- 15.1 The arbitrator shall have the widest discretion and powers allowed by law to ensure the just, expeditious, economical, and final determination of all the disputes raised in the proceedings, including the matter of costs.
- 15.2 Without detracting from the generality of the foregoing, the arbitrator shall have the powers:
- 15.2.1 to rule on his or her own jurisdiction;
- 15.2.2 to admit claims or any security or preference whether recognised under the Business Plan or not and to review and set aside a ruling of the Business Rescue Practitioner in regard to the admission or rejection of claims including the power to admit a rejected or partially rejected claim or any security or preference;
- 15.2.3 to deal with cases of default in accordance with the powers conferred upon the arbitrator in terms of these Rules;
- 15.2.4 to make any ruling or give any direction mentioned in these Rules or as he or she otherwise considers necessary or advisable for the just, expeditious, economical and final determination of all the disputes raised on the pleadings, including the matter of costs;
- 15.2.5 to extend before or after their expiry, or abbreviate any time limits provided for in these Rules or by his or her rulings or directions;

15.2.6 to order any party who is a claimant, or claimant under a counterclaim, to furnish security for costs in respect of his claim or counterclaim;

15.2.7 to allow (but only with their express written consent) other parties to be joined in the arbitration proceedings, and to make an award on all issues submitted by all parties, including parties so joined;

15.2.8 to make an order as to costs and

15.2.9 to make any settlement agreement concluded between the BRP, claimant and any other party to the arbitration proceedings, an award which will have the same effect as an award made at the conclusion of the arbitration proceedings.



16. INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the arbitrator to grant such interlocutory order or give the required temporary relief and the arbitrator shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an arbitrator then, and then only, should the parties refer such matter to an appropriate Court.

17. THE AWARD

17.1 The arbitrator must give his/her award within thirty days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariats permits an extension of that time.

17.2 The arbitrator's award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.

17.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

18. NON-LIABILITY OF AFSA-SARIPA DIVISION, THE SECRETARIAT AND THE ARBITRATOR

The AFSA-SARIPA Division and its Secretariat shall not be liable to any party for any act or omission relating to an arbitration conducted under its aegis, and shall have no liability or responsibility towards the parties or to any arbitrator in respect of any arbitration commenced under the aegis of the AFSA-SARIPA

Division but not completed according to these Rules. An arbitrator appointed by the AFSA-SARIPA Division shall not be liable for any act or omission relating to an arbitration in which he or she was the arbitrator, except in the case of deliberate misconduct.



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APPENDIX A

REQUEST FOR ARBITRATION IN TERMS OF THE RULES FOR THE RESOLUTION OF DISPUTES IN BUSINESS RESCUE PROCEEDINGS



The Registrar for Business Rescue Disputes,
AFSA Secretariat,
First floor, Grindrod Tower
8A Protea Place
Sandton

PO Box 653007 Benmore 2010
Docex 143 Randburg

Dear Madam,

On behalf of the undermentioned claimant/s, I request that the Secretariat accept this REQUEST FOR ARBITRATION under the Rules applicable to Business Rescue Disputes.

Herewith the necessary information:

1.a Name of Claimant/s

.....
.....

b Description (ie natural person; company; cc, etc.)

.....

c Address

.....
.....

d Telephone No

.....

e E-mail address:

.....

2.a Name of Company in Business Rescue and registration number:
.....
.....

b Name of Business Rescue Practitioner

c Address of Business Rescue Practitioner:
.....
.....



d Telephone No.

e E-mail address:

f Name and address of contact person on behalf of claimant:

4. The company in Business Rescue:

(Delete (i) or (ii) if inapplicable)

(i) has adopted a business rescue plan which refers disputes for resolution under the AFSA-SARIPA Rules; or

(ii) has not adopted a business rescue plan but the parties have themselves agreed in writing (copy attached) to subject their disputes to the AFSA-SARIPA Rules.

5. I attach a statement marked "X" which briefly sets out the nature of the dispute which has arisen and the relevant facts and contentions on which the Claimant relies for the relief which it claims. (Where the dispute arises from a written decision or ruling of the BRP same should be attached).

6. The parties to the dispute:

(Delete (i) or (ii) if inapplicable)

- (i) have agreed on the choice of arbitrator from the AFSA/SARIPA Panel being
- (ii) have not agreed on the arbitrator and the Secretariat is requested to make such appointment with immediate effect.

7. Administration and Management Fee

I attach proof of payment of the Claimant's share of the management and administration fee due under the Rules in the amount of R15 000.00 (Fifteen thousand Rand) plus VAT.

8. The Claimant does/does not wish to incorporate the AFSA appeal procedure.¹



Signature of Claimant/s representative

DATE:

¹ Unless both parties agree to the appeal procedure the award of the arbitrator will be final and binding.

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-104348**

In the matter between:

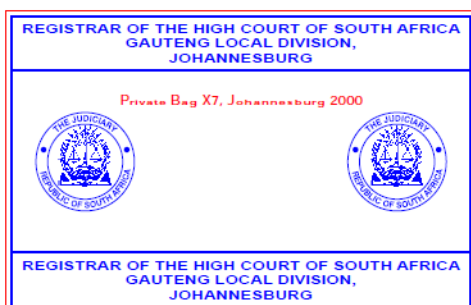
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

Annexure 03

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:49:46 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

Rules of Auction and Conditions of Sale



IMMOVABLE PROPERTY

DATE OF AUCTION :
TIME OF AUCTION : 12pm
PLACE OF AUCTION : **The Wanderers Club,**
21 North Street, Illovo, Johannesburg
AUCTION HOUSE : Broll Auctions and Sales (Pty) Ltd
(Registration Number 2014/250826/07)
14 Fort Street, Illovo, Sandton
Contact number: 087 700 8290
Email: charrison@broll.com



hereby offers for sale by public auction all of the **lessee's rights, title and interest in and to a notarial deed of lease** registered under K1350/2000L (as amended by notarial Deed K721/2015L) between the Seller (as lessee pursuant to Deed of Cession of Lease K722/2015L) and CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR")

Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng
in Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.
(the "**Leasehold Rights**")

RULES OF AUCTION

- 1.1. **Each prospective bidder must read these Rules of Auction together with the attached Conditions of Sale Agreement and must not bid unless he or she has done so.**

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1.2. The sale by auction is subject to confirmation of acceptance by the SELLER's appointed business rescue practitioner and bondholder, which confirmation shall be given in writing within 5 business days of the auction.

1.3. If the SELLER's bondholder does not confirm its acceptance of the selling price (or any other conditions which may be stipulated by the PURCHASER), then the agreement shall be of no force or effect.

1.4. 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.



1.5. Section 45 subsection (2) of the Act provides that: "*When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.*"

1.6. The auction will commence at the published time and will not be delayed to allow any specific person or more persons in general to take part in the auction.

1.7. Registration to bid at the auction:

1.7.1 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**. 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.

1.7.2A 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

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expressly authorises him or her to bid on behalf of that person and the person bidding on his or her behalf must meet the requirements set out in clause 1.7.1 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.

- 1.8 The bidder's record and the vendor roll will be made available for inspection at the offices of Broll Auctions and Sales (Pty) Ltd during normal business hours without the charge of a fee. The bidders' record will also be available for inspection at the auction.



- 1.9 Broll Auctions and Sales (Pty) Ltd 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.

- 1.10 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.

- 1.11 The total cost of advertising and conducting the auction of the property is **R45,000.00** which costs are for the account of the Auctioneer and broken down as follows:

- 1.11.1 Advertising costs;
- 1.11.2 Brochure and marketing material;
- 1.11.3 Auction venue costs;
- 1.11.4 Photography.

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1.12 The conduct of the auction is subject to the control of the auctioneer who has the sole right to regulate the bidding procedure.

1.13 The sale shall be by the rise and the Leasehold Right(s) shall be sold to the highest bidder subject to the Rules of Auction.

1.14 Every bid shall constitute an offer to purchase the Leasehold Right(s) for the amount bid upon the terms and conditions contained in the Conditions of Sale which the seller 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.



1.15 If no bid equals or exceeds the reserve price, the Leasehold Right(s) may be withdrawn from the auction. The seller shall be entitled to instruct the auctioneer to accept any lower bid.

1.16 In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding.

1.17 Any error by the auctioneer shall be entitled to be corrected by him.

1.18 No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period that is provided for in the Conditions of Sale, during which time the offer shall be open for acceptance by the seller and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.

1.19 The highest bidder ("the purchaser") shall sign the Conditions of Sale immediately on the fall of the hammer.

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a vertical line and a small flourish.



I the AUCTIONEER do hereby certify that, to the best of my knowledge, these Rules of Auction meet the requirements of regulation 21 of the Consumer Protection Act Regulations as published in Government Gazette No. 34180 of 1 April 2011.



AUCTIONEER (duly authorised)

DATE



Duly instructed by

**WILD GOOSE TRADING AND SERVICES 39 CC (IN BUSINESS RESCUE) / THE
BOULEVARD AND SPAR MELVILLE
(the "SELLER")**



and

**BROLL AUCTIONS AND SALES (PTY) LIMITED
Registration Number 2014/250826/07
Duly represented by: Ismail Hendricks
(the "AUCTIONEER")**

hereby offers for sale by public auction all of the **lessee's rights, title and interest in and to a notarial deed of lease** registered under **K1350/2000L** (as amended by notarial deed K721/2015L) and between the Seller (as lessee by virtue of Deed of Cession of Lease K722/2015L) and **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR")**

in respect of

Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng

in Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.

and all improvements of a permanent nature (the "**Leasehold Right(s)**") on these terms and conditions:

A handwritten signature in black ink, appearing to be the name "Ismail Hendricks".



1. ACCEPTANCE AND CONFIRMATION

1.1. The **PURCHASER'S** offer shall remain open for acceptance by the **SELLER** until 17H00 on the ___ day of _____ **2024** ("confirmation period").
The **PURCHASER** and the **AUCTIONEER** acknowledge and agree that this provision constitutes a stipulation for the benefit of the **SELLER**.

1.2. The **PURCHASER'S** offer shall be deemed to have been accepted only when the **SELLER** has signed these Conditions of Sale in the schedule provided at the end of this agreement and the **SELLER** shall not be required to notify the **PURCHASER** of the acceptance of its offer prior to expiry of the confirmation period.



1.3. 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.

1.4. In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.

2. SALE CONSIDERATION

The Purchase Price of the **Leasehold Right(s)**, plus Value-Added Tax ("VAT") if same is applicable

R _____

must paid as follows :



- 2.1 A deposit equal to **5% (five per cent)** of the Purchase Price payable to the **AUCTIONEER** by the **PURCHASER** immediately on the fall of the hammer, which amount the **PURCHASER** hereby authorises the **AUCTIONEER** to pay over to the **SELLER'S** Attorneys;
- 2.2 The deposit paid in terms of this clause will be invested by the **SELLER'S** Attorneys on call at a commercial bank on behalf of and the interest for the benefit of the **PURCHASER**. The **PURCHASER'S** signature hereto shall constitute the **PURCHASER'S** written consent in terms of Section () of the Legal Practice Act, authorising the **SELLER'S** Attorneys to invest all amounts paid on account of the Purchase Price in an interest bearing account with a bank of the **SELLER'S** Attorneys choice. No monies shall be invested without compliance of clause 7.6 of this agreement.
- 2.3 The balance of the Purchase Price shall, within 45 business days from acceptance and signature hereof, be paid in cash or secured, to the satisfaction of the **SELLER'S** Attorneys, by a written guarantee, on terms acceptable to the **SELLER**, from a registered South African Bank and shall be, payable free of exchange, deduction or set off, against registration of the cession of the **Leasehold Right(s)** by the **SELLER** to the **PURCHASER**("Cession").
- 2.4 The **PURCHASER** shall be liable for a penalty fee calculated at 2% (two per cent) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive) on any amounts not paid when due.
- 2.5 Each payment made by the **PURCHASER** in terms of this Agreement shall be allocated first to the payment of **AUCTIONEER'S** Commission, then



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interest and thereafter to the payment of any other monies due in terms hereof.

The **SELLER'S** Attorneys shall mean the conveyancers to be appointed by the **SELLER** to effect cession and assignment of the **Leasehold Right(s)** into the name of the **PURCHASER** (the "Cession").

3. VALUE ADDED TAX AND TRANSFER DUTY



3.1 It is recorded that if VAT is applicable to this transaction and all provisions of Section 11(1)(e) of the Value Added Tax Act (the "Act") are complied with it is the intention of the parties that this transaction be a zero rated transaction in terms of Section 11 (1) (e) of Act and it is agreed that the purchase price is inclusive of VAT at a rate of zero percent.

3.1.1 It is recorded that the supply of the **Leasehold Right(s)** shall be 'zero rated' in terms of Section 11 (1) (e) of the Act as:

3.1.2 The **PROPERTY** constitutes an enterprise as defined in the Act and is sold as a going concern that will on the date of Cession be an income earning activity capable of separate operation, and;

3.1.3 The assets and all other aspects of the business that are necessary for carrying on the enterprise, including all existing sublease agreements pertaining to the Erven 1010 & 1011 Melville ext 3, are being disposed of to the **PURCHASER** in terms of this Agreement.

3.1.4 The **PURCHASER** and the **SELLER** are registered as Vat



Vendors as at the date of acceptance of this agreement by the SELLER and the date of registration of the Cession, and shall provide the SELLER'S attorneys with a copy of its VAT registration certificates (VAT103) within seven days of demand.

- 3.2 If for any reason VAT is payable on this sale 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 and such VAT will be added to the Purchase Price and payable on registration of Cession and shall be secured as provided for in clause 2.3 above.



- 3.3 In the event that the sale is not subject to VAT, and that Transfer Duty is payable, the **PURCHASER** shall pay the applicable transfer duty, in addition to the Purchase Price, to the **SELLER'S** Attorneys within seven days of demand.

4. **AUCTIONEER'S COMMISSION**

- 4.1. The **PURCHASER** shall be liable for and pay, in addition to the amounts payable in terms of clauses 2.1 and 2.3, **AUCTIONEER'S** commission of **6% (six per cent)** of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon the fall of the hammer or upon the signing of this agreement by the **PURCHASER**, whichever happens first.
- 4.2. 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

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SELLER of the **PURCHASER's** offer or until the **SELLER** either rejects the offer or until expiry of the confirmation period.

4.3. Where the **PURCHASER** fails, refuses or neglects to pay commission to the **AUCTIONEER** for any reason whatsoever, the **SELLER** hereby irrevocably instructs his attorneys to pay the commission or balance thereof to the **AUCTIONEER** as a first draw from the proceeds of this sale, against registration of the Cession.

4.4. The **PURCHASER** shall be liable to pay any bank charges associated with the payment of the **AUCTIONEER's** commission into the **AUCTIONEER's** chosen bank account.

4.5. The provisions of this clause 4 are for the benefit of the **AUCTIONEER** who accepts such benefit.



5. OCCUPATIONAL INTEREST

The **PURCHASER** shall only take possession and occupation of **ERVEN 1010 & 1011 MELVILLE EXT 3** on registration of the Cession unless the parties have agreed otherwise in writing in which case occupational rent shall be payable at a rate to be agreed in writing by the parties.

6. RATES AND TAXES

6.1 The **PURCHASER** shall be liable for all rates, levies, taxes and other Municipal charges levied on **ERVEN 1010 & 1011 MELVILLE EXT 3** in terms of s118(3) of the Local Government Municipal Systems Act, Act 32 of 2000 for the period up to registration of the Cession and also for rates,

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levies, taxes and other Municipal charges thereafter. The **SELLER** shall remain liable for any further charges (other than the s118(3) charges) due to the Local Authority.

6.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates, taxes and other Municipal charges paid in advance by the **SELLER** for the period after registration of the Cession (if any), which refund shall be paid on registration of the Cession.



If this agreement is cancelled or purportedly cancelled the **PURCHASER** shall be liable for payment of **AUCTIONEER'S** commission as contemplated herein.

7. SELLER RESIDENCY AND WITHHOLDING TAX

It is recorded that the parties 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:

- 7.1. The **SELLER** warrants either that he is / is not a **RESIDENT** of the Republic of South Africa; (delete whichever is not applicable)
- 7.2. The **SELLER** hereby indemnifies and holds harmless both the **AUCTIONEER** and the **SELLER'S** Attorneys from any claim arising as a result of them having acted in terms of the Act, on information supplied by the **SELLER**, or from any other source and the **SELLER** waives all 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;



7.3. Where the **SELLER** has warranted that he is a resident and information leads the **AUCTIONEER** or the **SELLER'S** Attorneys to suspect that the **SELLER** is a non-resident, the **AUCTIONEER** or **SELLER'S** Attorneys may by written notice call upon the **SELLER** to obtain a directive from SARS within 30 (thirty) days as to his resident status, failing which the provision of clause 8.4.1 below shall apply.

7.4. In the event that SARS, furnishes a directive, wherein the **SELLER** is regarded as a non-resident for income tax purposes:



7.4.1. The **PURCHASER** hereby irrevocably instructs the **SELLER'S** Attorneys upon registration of the Cession to withhold the prescribed percentage of the Purchase Price and to pay such monies to SARS within 14 (fourteen) days of registration of the Cession.

7.4.2. Notwithstanding the provision of 8.4.1 above, the **SELLER** shall be entitled to obtain a directive from the SARS for the non-withholding or a reduced withholding, of tax, which directive to be delivered to the **SELLER'S** Attorneys within 21 (twenty one) days of the date of acceptance of this agreement, failing which the **SELLER** shall be bound by such withholding percentage as determined by the Income Tax Act.

8. COSTS OF THE CESSION

8.1. Until such time as the total Purchase Price and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment has been secured to the satisfaction of the **SELLER**,

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Cession of the **Leasehold Right(s)** to the **PURCHASER** shall not be registered at the Office of the Registrar of Deeds.

- 8.2. Cession of the **Leasehold Right(s)** to the **PURCHASER** shall be registered at the Office of the Registrar of Deeds, by the **SELLER's** Attorneys, as soon as reasonably possible after acceptance, providing the **PURCHASER** has complied with all of his obligations.



- 8.3. The **SELLER's** Attorneys shall attend to registration of the Cession after all expenses of and incidental to the preparation and registration of the Cession, the conveyancing fees, disbursements and VAT (if applicable), in respect of such Cession, are paid in full by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond required to finance the Purchase Price herein.
- 8.4. In the event of the **PURCHASER** failing to comply within 7 (seven) business days of request by the **SELLER's** Attorneys, to furnish them with signed documents or documentation of whatever nature necessary for effecting the Cession, or where applicable to ensure that the mortgage bond documentation or ancillary documentation is satisfactorily completed or in the event of the registration of the Cession being delayed as a consequence of a default on the part of the **PURCHASER** (and the widest possible interpretation shall be used in respect of the terms hereof), then on the 8th (eighth) day after such request, the **PURCHASER** shall pay to the **SELLER** a penalty fee , at the rate of 2% (two per cent) above prime, per month calculated on the balance of the purchase price from the said 8th (eighth) day until the date of registration of the Cession and payment, (both days inclusive).

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- 8.5. The **PURCHASER** undertakes to comply with all the FICA requirements as set out in **Annexure "1"** or as is reasonably required in the opinion of the **SELLER's** Attorneys within 7 (seven) business 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 them to comply with the FICA requirements.



9. RISK AND POSSESSION

- 9.1 Possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** shall only pass to the **PURCHASER** upon registration of the Cession and not before, provided that clauses 3.1 and 3.3 above have been complied with, from which date all risks and benefits of ownership of the **Leasehold Right(s)** shall pass to the **PURCHASER**.
- 9.2 Should the **PURCHASER** take and the **SELLER** allow possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** prior to registration of the Cession (which agreement must be reduced to writing and signed by the parties), the **PURCHASER** shall at its own cost insure **ERVEN 1010 & 1011 MELVILLE EXT 3** and improvements (permanent or otherwise) 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 that period.
- 9.3 Upon the **PURCHASER** taking possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** and pending the Cession, the following additional provisions shall be applicable –

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9.3.1 the **PURCHASER** shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the **Leasehold Right(s)** or his rights of occupation thereof, except with the written consent of the **SELLER**;

9.3.2 the **PURCHASER** shall be responsible for and pay all rates and taxes and costs of electricity and water consumed in or at **ERVEN 1010 & 1011 MELVILLE EXT 3**.



10. ADJUSTMENT ACCOUNT AND DEPOSITS

10.1. All income derived from **ERVEN 1010 & 1011 MELVILLE EXT 3**, arrear rental and unpaid cost recoveries and expenses incurred and any amounts due in respect of any administration Agreement in respect of **ERVEN 1010 & 1011 MELVILLE EXT 3** up to the date of registration of the Cession shall be for the benefit and account of the **SELLER**. Within 45 (forty five) business days after the date of registration of the Cession, the **SELLER** shall prepare, at the cost of the **SELLER**, an adjustment account in respect of the deposits held and income and expenditure of the **Leasehold Right(s)** and/or **ERVEN 1010 & 1011 MELLVILLE EXT 3** up to the date of registration of the Cession and the **PURCHASER** and the **SELLER** shall pay or receive as the case may be, such amount as may be reflected in such account within 3 (three) business days thereof.

10.2. Notwithstanding the delay in respect of the preparation of the adjustment account, the **SELLER** shall be obliged within 14 (fourteen) days of the date of registration of the Cession, to account and pay over to the **PURCHASER**, the gross rental and cost recoveries received by it in respect of the month during which the registration of the Cession

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occurred, pro-rated, unless expenses incurred are anticipated by the **SELLER**, in respect of the period subsequent to the date of registration of the Cession and to which rental and cost recoveries the **PURCHASER** would be entitled, provided, to the extent that any tenant may not have, as at the date of registration of the Cession, paid the rental and cost recoveries in respect of the month in which the registration of the Cession occurs, the **SELLER** will not be liable for any such shortfall, provided that any rental and cost recoveries received by the **PURCHASER** after the date of registration of the Cession but pertaining to the period prior to the date of registration of the Cession shall immediately be paid over to the **SELLER** in respect thereof (in the event of there being any amounts outstanding to the **SELLER** on the date of registration of the Cession, all amounts received by the **PURCHASER** from the tenants on or soon after the date of registration of the Cession shall be deemed to be payment for the period prior to registration of the Cession unless specified otherwise by the tenant).



11. EXISTING TENANCIES and LEASES

- 11.1 Once the Attorneys confirm in writing to the Seller that all the suspensive conditons contained herein have been fulfilled and the guarantees required to secure the purchase price have been provided, the Seller shall not renew any Leases or enter into negotiations concerning the Leases or any new leases without consulting the Purchaser.
- 11.2 Once the foregoing conditions have been fulfilled, the Seller shall refer any enquiries from future lessees to the Purchaser who shall be entitled to request the Seller to enter into a lease with such lessee at the risk of the Purchaser and subject to the Purchaser being liable for the payment of brokers commission or any tenant installation costs.

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- 11.3 On or after the Date of Cession the Seller shall, where possible, cede its rights under any rental or other guarantees or suretyships or similar undertakings relating to Leases to the Purchaser it being noted that certain guarantees are not necessarily capable of cession to the Purchaser.
- 11.4 The **Leasehold Right(s)** are sold subject to all existing tenancies.
- 11.5 The **PURCHASER** shall be bound by the terms and conditions of all existing subleases, of which he acknowledges he is fully apprised. The **SELLER**, from registration of Cession, cedes, makes over and assigns all its rights and obligations in and to the subleases to the **PURCHASER** who accepts such cession and assignment.
- 11.6 If any tenant is in arrears with rental due to the **SELLER** in respect of the leases, the **SELLER** shall be entitled, but not obliged, to proceed with or take :-
- 11.6.1 any legal action or other proceedings against such tenant;
and
- 11.6.2 a civil judgment against the tenant and/or evict the tenant from the leased premises concerned;
- 11.6.3 enforce any of its rights in terms of the leases.
- 11.7 If the **SELLER** wishes to either renew the leases or enter into new leases, it shall be entitled to do so, provided that it obtains written approval from the **PURCHASER**.
- 11.8 In the event that the **SELLER**, after complying with the provisions of clause 11.8, enters into a new sublease agreement in respect of the **ERVEN 1010 & 1011 MELLVILLE EXT 3** and/or buildings or renews



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the existing subleases, the **PURCHASER** shall be liable for the pro-rata commissions and tenant installation costs related thereto for the period of such leases or renewal beyond the date of Cession.

11.9 All deposit/s paid by tenants in terms of the leases, shall be dealt with in accordance with the Adjustment Account referred to in clause 10, provided that if at any time before the date of Cession, any tenant fails to comply with its obligations in terms of the lease and/or there are any amounts owing to the **SELLER** by any tenant in terms of the subleases, the **SELLER** shall be entitled to appropriate such deposit towards payment of the outstanding amount owing to the **SELLER**.



11.10 All payments received from tenants in terms of the leases after the date of Cession shall in the first instance be appropriated towards any amounts owing by the tenants to the **SELLER** in terms of the leases prior to the date of Cession and thereafter towards amounts owing to the **PURCHASER** by the tenants for the period after the date of Cession.

12. ALTERATIONS, ADDITIONS, REPAIRS OR IMPROVEMENTS

12.1. Prior to registration of the Cession, the **PURCHASER** may not effect any alterations, additions, repairs or improvements to the **ERVEN 1010 & 1011 MELVILLE EXT 3** without the prior written consent of the **SELLER**.

12.2. The **SELLER** need not compensate the **PURCHASER** for any authorised alterations, additions, repairs or improvements effected if the sale is cancelled for any reason whatsoever.

12.3. The **PURCHASER** shall be liable for any and all damages suffered by the **SELLER** as a result of any alterations, additions, repairs or improvements effected by the **PURCHASER**, not authorised by the



SELLER, including but not limited to restoring the property to the condition it was in prior to such alterations, additions, repairs or improvements.

13. VOETSTOOTS, WARRANTIES AND REPRESENTATIONS

- 13.1. The **ENTERPRISE** is sold "voetstoets" and the Seller gives no warranty with regard thereto and/or **ERVEN 1010 & 1011 MELVILLE EXT 3**, whether expressed or implied. The Property is sold subject to the terms and conditions as mentioned in **Notarial Deed of Lease K1350/2000** (as amended by K721/2015L) read together with the notarial deed of cession and assignment K722/2015L, and the Purchaser acknowledges that **ERVEN 1010 & 1011 MELVILLE EXT 3** will be leased to the Purchaser "voetstoets", and is subject to the terms and conditions and servitudes 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 **ERVEN 1010 & 1011 MELVILLE EXT 3**.



- 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 Leasehold Right(s), **ERVEN 1010 & 1011 MELVILLE EXT 3** or anything relating thereto, by the **AUCTIONEER** or any other person, or by or on behalf of the **SELLER** if same is not recorded in this Agreement.



The **PURCHASER** acknowledges that he has fully acquainted himself with the Leasehold Right(s) that he has purchased and rights acquired in respect of the use and occupation of **ERVEN 1010 & 1011 MELVILLE EXT 3** alternatively that he/she has elected to purchase the **PROPERTY** without fully acquainting him/herself with the Property and **ERVEN 1010 & 1011 MELVILLE EXT 3**.

14. BREACH OF CONTRACT



14.1. Where one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Innocent Party shall be entitled to give the Defaulting Party 7 (seven) business days' notice in writing to rectify such breach or failure (unless such breach or failure occurs after the Cession 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 the it may have in law, including the right to claim damages:

14.1.1. to cancel this Agreement and upon such 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



14.1.1.2. if the defaulting party is the **SELLER** the **PURCHASER** shall be entitled to claim a full refund of all money paid in terms of this agreement from the **SELLER** (but not from the Auctioneer) that it has paid arising from the **SELLER's** default;

(ALTERNATIVELY)

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



- 14.2. On cancellation of this Agreement for any reason, the **PURCHASER** hereby undertakes to forthwith vacate **ERVEN 1010 & 1011 MELVILLE EXT 3** and to procure that **ERVEN 1010 & 1011 MELVILLE EXT 3** shall be vacated by any persons who occupy **E ERVEN 1010 & 1011 MELVILLE EXT 3** through the **PURCHASER's** title or under his permission. Occupation shall be re-delivered in the same good condition as at the date of occupation.
- 14.3. No tenancy or rights in connection therewith shall be deemed to have been created either in terms of any statute or at common law.
- 14.4. Where the **PURCHASER** pays any amount as required under these Rules of Auction, the parties record and agree that the **AUCTIONEER** shall be entitled to deduct its commission as a first charge against such monies and then the Auctioneer may recover any shortfall from the **PURCHASER**.

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14.5. The deduction by the **AUCTIONEER** of its commission or other costs due to it will not constitute a release of **PURCHASER** from any other obligations arising from these Rules of Auction.

15. LEGAL COSTS

The Defaulting Party shall be liable for all legal costs incurred by the Innocent Party, the **AUCTIONEER** and their Agents / Attorneys incurred in enforcing this agreement, on an Attorney and own client scale, including collection commission.



16. DOMICILIUM CITANDI ET EXECUTANDI – ADDRESS FOR SERVICE OF DOCUMENTS

16.1. The **PURCHASER** and the **SELLER** hereby select as their chosen *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 addresses recorded in this agreement. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth business 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.

16.2. 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

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/ domicilium citandi et executandi or transmitted to such Party's telefax number and/or email address as stipulated herein.

- 16.3. Any notices or communications required to be sent by either party to the other may be sent using email or fax.

17. JOINT AND SEVERAL LIABILITY



Where there is more than one **PURCHASER**, the liability of all such **PURCHASERS** to the **SELLER** and to the **AUCTIONEER** shall be joint and several *in solidum*.

18. SECTIONS 112 and 115 OF THE COMPANIES ACT – SPECIAL RESOLUTION

- 18.1. The **SELLER** and the **PURCHASER** are aware of the provisions of Sections 112 and 115 of the Companies Act 71 of 2008 (as amended) (“Section 112 and 115”), namely that if the **SELLER** is a company and if the **Leasehold Right(s)** 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 sell the **Leasehold Right(s)**.
- 18.2. Accordingly, the **SELLER** warrants that the provisions of Sections 112 and 115 are / are not (delete as appropriate) applicable to the sale of the **Leasehold Right(s)**.
- 18.3. If Sections 112 and 115 are applicable to the sale of the **Leasehold Right(s)** and if the directors of the **SELLER** have not already been

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granted the necessary authority in terms of Sections 112 and 115 to dispose of the **Leasehold Right(s)**, then within 45 (forty five) business days of the acceptance date the **SELLER** shall procure that its shareholders pass a special resolution ratifying the sale of the **Leasehold Right(s)**.

- 18.4. In addition to what has been stated above and if the transaction requires an amendment to the **SELLER's** memorandum of incorporation in order to give effect to such transaction, then in such event the **SELLER** shall take those steps necessary in order amend the **SELLER's** memorandum of incorporation and the **SELLER** warrants that the rights of any minority shareholders will have been dealt with and protected.



19. **NOMINEE**

The **PURCHASER** shall be entitled, by notice in writing to the **SELLER** or to the **SELLER's** Attorney, to nominate a nominee in his place as **PURCHASER**, but only on the following terms and conditions:

- 19.1 the nomination shall be delivered to the **SELLER** by not later than 24h00 on the same day as the acceptance by the **SELLER**;
- 19.2 the notice shall clearly set forth the name and address of the nominee so nominated as **PURCHASER**;
- 19.3 the notice shall be accompanied by the nominee's written acknowledgement and acceptance of the nomination, including a confirmation by the nominee:

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- 19.3.1 that it is fully aware of all of the terms and conditions of these Rules of Auction as if fully set out in such written acknowledgement; and
- 19.3.2 that it undertakes to irrevocably be bound by the provisions of these Rules of Auction as the **PURCHASER**;
- 19.4 should the **PURCHASER** nominate a nominee in terms of this clause, then:



- 19.4.1 any reference to the **PURCHASER** in this agreement shall be deemed to be a reference to its nominee; and
- 19.4.2 the original **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 nominated **PURCHASER'S** obligations under this agreement, including but not limited to damages, and renounces the benefits of division and *excussion*.

20. COMPANY TO BE FORMED

20.1 Where the **PURCHASER** signs 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 the 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.

- 20.2 In the event of such company being registered and duly adopting or ratifying this agreement, or the nomination effected, **then the person signing this document on behalf of the PURCHASER by his signature hereunder, shall be deemed to bind himself to the SELLER 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.**



21. COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS

- 21.1 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 of its obligations arising from this agreement.
- 21.2 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 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 20.

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22. **ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE**

There shall be no obligation on the **SELLER** to provide the **PURCHASER** with an electrical compliance certificate for **ERVEN 1010 & 1011 MELVILLE EXT 3**.

23. **DISPUTE RESOLUTION: MEDIATION THEN ARBITRATION**



23.1 Should any dispute, disagreement or claim arise between the parties, including a dispute between both or one of the parties and the **AUCTIONEER**, (“**the dispute**”) in connection with this agreement then the parties shall, notwithstanding anything to the contrary contained herein, have the right, but not be obliged to:

23.1.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa (“**AFSA**”), upon such terms as agreed between the parties and the secretariat of AFSA; and

23.1.2 failing agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the parties shall refer the dispute to final arbitration as provided below.

23.2 Unless otherwise agreed in writing by all the parties, any such mediation or arbitration shall be held in Sandton, Johannesburg, South Africa.

23.3 The decision of the arbitrator shall be final and binding on the parties and may at the election of any party be made an order of the court. The parties agree that the arbitrators decision shall be final and

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binding on them and hereby waive any right to an appeal they might otherwise have enjoyed.

- 23.4 Once invoked, the parties shall not be entitled to withdraw from the arbitration process unless by written agreement between them.

24. **MAGISTRATES' COURT JURISDICTION**



The Parties consent to the jurisdiction of the Magistrates' Court in terms of Section 45 read with Section 28 of the Magistrates' Court Act of 1944 as amended. Nothing contained herein shall preclude a party from approaching a relevant division of the High Court should they deem it necessary.

25. **GENERAL CLAUSES**

- 25.1 This document constitutes the whole agreement between the Parties and no agreement, representation or warranty not contained herein shall be binding on the Parties.
- 25.2 This agreement shall be governed by the Laws of the Republic of South Africa.
- 25.3 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 writing and signed by all the Parties.
- 25.4 No variation, alteration or cancellation of this agreement (including this clause) shall be binding unless reduced to writing and signed by the Parties or their authorised representatives.

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25.5 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*.

25.6 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 and shall remain bound hereto.



25.7 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

26 **SALE**

Until the Date of Cession, the Purchaser may not sell, cede or assign the Purchasers rights under this agreement to any third party nor may the Purchaser sell the rights in the **Leasehold Right(s)** or the Enterprise without the prior written consent of the Seller.

THIS PROPERTY CAME UNDER THE HAMMER ON THE:

_____ DAY OF _____

And was knocked down for the sum of:

R _____

(words)

(PLUS VALUE ADDED TAX IF APPLICABLE)



TO:
COMPANY/ CLOSE CORPORATION/ TRUST/ OTHER

(hereinafter referred to as the "PURCHASER")
REGISTRATION



NO.:

ADDRESS:

CONTACT DETAILS:(Landline) _____
(Email) _____
(Mobile) _____

OR TO:
MR/MRS/MS

(hereinafter referred to as the "PURCHASER")
IDENTITY OR PASSPORT NO.:

PHYSICAL ADDRESS:

TELEPHONE DETAILS: (home) _____
(Work) _____
(Email) _____

Final RULES OF AUCTION – v1



(Mobile) _____
MARITAL STATUS _____ (In/Out of Community of
PROPERTY)
SPOUSE'S NAME _____
SPOUSE'S ID NO _____

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 solidium*)

AS WITNESS:

1. _____
BROLL AUCTIONS AND SALES CORPORATE (PTY) LTD he being duly authorised (Accepting all of the rights available in terms of this Agreement)

ACCEPTANCE AND CONFIRMATION

SIGNED BY THE SELLER AT _____ ON THE
_____ DAY OF _____

AS WITNESSES:

1. _____

Final RULES OF AUCTION – v1



SELLER (and where applicable the
SELLER is duly authorised)

2. _____

SELLER'S ADDRESS:





DEED OF SURETYSHIP

I / We the undersigned, _____
(INSERT FULL NAMES AS PER ID BOOK)

ID NUMBER: _____ with
chosen address (as *domicilium* at: (INSERT FULL PHYSICAL ADDRESS –
NOT P BOX _____

do hereby interpose and bind myself / ourselves as surety and co-principal debtors
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** (none excepted)
under the Rules of Auction hereinbefore and in particular for any and 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 as if fully set out herein.**



THUS DONE AND SIGNED at _____ this _____ day
of _____

AS WITNESSES:

1. _____
SURETY

2. _____
SELLER

**BROLL AUCTIONS AND SALES
(PTY) LTD** duly authorised



RESOLUTION - CLOSE CORPORATION

EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF

.....

HELD AT ON

RESOLVED THAT:



- The CLOSE CORPORATION BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

from _____

for R _____

- 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.

Certified a true copy,

.....
MEMBER

.....
MEMBER

.....
MEMBER

.....
MEMBER



RESOLUTION - COMPANY

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

.....
HELD AT ON



RESOLVED THAT:

1. The Company BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

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.

Certified a true copy,

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR



RESOLUTION - TRUST

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

.....

HELD AT ON

RESOLVED THAT:

1. The Trust purchases all of the lessee's rights, title and interest in and a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over



from _____

for R _____

3. 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.

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:



Company (private and unlisted public)

- [1] Certificate of Incorporation (CM1); and
- [2] Certificate of change of name of company (CM9) (if applicable); and
- [3] Notice of Registered Office and Postal Address (CM22); and
- [4] Contents of Register of Directors, Auditors and Officers (CM29); and
- [5] Proof of business address of the Company e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [6] Identification document(s) of the person(s) managing the Company e.g. ID book*;
and
- [7] Written confirmation of the residential address and contact particulars of the person(s) managing the Company; and
- [8] Resolution specifying who is authorised to act on behalf of the Company as well as
written confirmation of the company's shareholding; and
- [9] Identification document(s) of the person(s) authorised to act on behalf of the Company e.g. ID book*; and
- [10] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Company; and



Close Corporations (CC):

- [1] Founding Statement and Certificate of Incorporation (CK1); and
- [2] Amended Founding Statement (CK2) (if applicable); and
- [3] Proof of business address of the Close Corporation e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [4] Identification document(s) of the member(s) of the Close Corporation e.g. ID book*;
and
- [5] Written confirmation of the residential address and contact particulars of the member(s) of the Close Corporation reflecting the name and residential address;
and
- [6] Resolution specifying who is authorised to act on behalf of the Close Corporation;
and



- [7] Identification document(s) of the person(s) authorised to act on behalf of the Close Corporation e.g. ID book*; and
- [8] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Close Corporation.

Trusts:

- [1] Letters of Authority signed by the Master of the High Court; and
- [2] Trust deed or other founding document; and
- [3] Resolution specifying who is authorised to act on behalf of the Trust; and
- [4] Identification document(s) of the person(s) authorised to act on behalf of the Trust e.g. ID book*; and
- [5] Written confirmation of residential address and contact particulars of the person(s) authorised to act on behalf of the Trust; and
- [6] Identification documents of all the trustees and beneficiaries e.g. ID book*; and
- [7] Written confirmation of the residential address and contact particulars of all the trustees and beneficiaries; and
- [8] Identification document of the founder of the Trust e.g. ID book*; and
- [9] Written confirmation of the residential address and contact particulars of the founder of the Trust (if not deceased).



"FA12"

From: John Webber
To: Sizeka Tshabalala (STshabalala@jhbproperty.co.za)
Subject: Sale of Leasehold Rights at auction [FID-02070719-14]
Date: Wednesday, 20 March 2024 10:56:00
Attachments: image001.png
 COS - RULES OF AUCTION - WILD GOOSE - MELVILLE - Final (19.3.2024).pdf

Dear Sizeka

- 1 We act for the business rescue practitioner of WILD GOOSE TRADING AND SERVICES 39 CC ("Wild Goose").
- 2 Wild Goose is the registered lessee of Erven 1010 and 1011 Melville Extension 3 (the "Property") pursuant to the deed of cession and assignment of lease K722/2015L by which the lease of the Property was ceded to Wild Goose. The Property was initially leased by the COJ to JRAD Investments (Pty) Limited in terms of K1350/2000L registered in the Johannesburg Deeds Office. JPC consented to the cession of the lease by JRAD to Wild Goose.
- 3 The BRP now wants to take the disposal of the lease of the Property to auction. We attach hereto a copy of the final conditions of auction for your information.
- 4 We look forward to receiving your confirmation that the JPC as agent of the COJ will support the sale of the Lease and be party to the subsequent deed of cession and assignment of the lease to the purchaser.

Yours faithfully

John Webber

Director - Real Estate
 Cliffe Dekker Hofmeyr Inc
 Reg No: 2008/018923/21
 1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196
 Tel. +27 011 562 1444 Mobile. +27 063 407 1444 Fax. +27 11 562 1644
John.Webber@cdhlegal.com | www.cliffedekkerhofmeyr.com



PLEASE NOTE that Cliffe Dekker Hofmeyr is now a listed beneficiary on ABSA, FNB, Nedbank, and Standard Bank's online banking platforms and that no banking details will therefore appear in any of our quotations, pro forma accounts or final statements of account. Should you not bank with any of the above banks please contact us to request our details which will only be provided via secure means either in person or via password-protected or encrypted electronic correspondence.

Cliffe Dekker Hofmeyr. The legal partner for your business.

Please consider the environment before printing this email.

BEWARE OF CYBERCRIME:

Bank Details - Please be aware that there is a significant risk posed by cyber fraud, specifically relating to email accounts and bank account details. We are concerned that you may be misled by fraudsters using our identity on fraudulent email messages. PLEASE NOTE THAT OUR BANK ACCOUNT DETAILS WILL NOT CHANGE DURING THE COURSE OF A TRANSACTION AND WE WILL NOT CHANGE OUR BANK DETAILS VIA EMAIL. You should always independently confirm bank account details and transfer instructions with us in person or via a telephone call to a trusted and verified phone number. Please be aware that a phishing email may contain a fraudulent phone number so never call the number indicated in such an email. We will not accept responsibility if you transfer money into an incorrect account.

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Rules of Auction and Conditions of Sale



IMMOVABLE PROPERTY

DATE OF AUCTION :
TIME OF AUCTION : 12pm
PLACE OF AUCTION : **The Wanderers Club,**
21 North Street, Illovo, Johannesburg
AUCTION HOUSE : Broll Auctions and Sales (Pty) Ltd
 (Registration Number 2014/250826/07)
 14 Fort Street, Illovo, Sandton
 Contact number: 087 700 8290
 Email: charrison@broll.com



hereby offers for sale by public auction all of the **lessee's rights, title and interest in and to a notarial deed of lease** registered under K1350/2000L (as amended by notarial Deed K721/2015L) between the Seller (as lessee pursuant to Deed of Cession of Lease K722/2015L) and CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR")

Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng

in Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.

(the "**Leasehold Rights**")

RULES OF AUCTION

- 1.1. **Each prospective bidder must read these Rules of Auction together with the attached Conditions of Sale Agreement and must not bid unless he or she has done so.**

A handwritten signature in black ink, consisting of several fluid, overlapping strokes.



1.2. The sale by auction is subject to confirmation of acceptance by the SELLER's appointed business rescue practitioner and bondholder, which confirmation shall be given in writing within 5 business days of the auction.

1.3. If the SELLER's bondholder does not confirm its acceptance of the selling price (or any other conditions which may be stipulated by the PURCHASER), then the agreement shall be of no force or effect.

1.4. The rules of auction comply with section 45 of the Consumer Protection Act 68 of 2008 ("the Act") and with the Consumer Protection Act Regulations ("the Regulations") that have been published in terms thereof.



1.5. Section 45 subsection (2) of the Act provides that: "*When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.*"

1.6. The auction will commence at the published time and will not be delayed to allow any specific person or more persons in general to take part in the auction.

1.7. Registration to bid at the auction:

1.7.1 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**. 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.

1.7.2A 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

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a smaller, less distinct mark.



expressly authorises him or her to bid on behalf of that person and the person bidding on his or her behalf must meet the requirements set out in clause 1.7.1 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.

- 1.8 The bidder's record and the vendor roll will be made available for inspection at the offices of Broll Auctions and Sales (Pty) Ltd during normal business hours without the charge of a fee. The bidders' record will also be available for inspection at the auction.



- 1.9 Broll Auctions and Sales (Pty) Ltd 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.

- 1.10 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.

- 1.11 The total cost of advertising and conducting the auction of the property is **R45,000.00** which costs are for the account of the Auctioneer and broken down as follows:

- 1.11.1 Advertising costs;
- 1.11.2 Brochure and marketing material;
- 1.11.3 Auction venue costs;
- 1.11.4 Photography.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized name or set of initials.



1.12 The conduct of the auction is subject to the control of the auctioneer who has the sole right to regulate the bidding procedure.

1.13 The sale shall be by the rise and the Leasehold Right(s) shall be sold to the highest bidder subject to the Rules of Auction.

1.14 Every bid shall constitute an offer to purchase the Leasehold Right(s) for the amount bid upon the terms and conditions contained in the Conditions of Sale, which the seller 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.



1.15 If no bid equals or exceeds the reserve price, the Leasehold Right(s) may be withdrawn from the auction. The seller shall be entitled to instruct the auctioneer to accept any lower bid.

1.16 In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding.

1.17 Any error by the auctioneer shall be entitled to be corrected by him.

1.18 No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period that is provided for in the Conditions of Sale, during which time the offer shall be open for acceptance by the seller and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.

1.19 The highest bidder ("the purchaser") shall sign the Conditions of Sale immediately on the fall of the hammer.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a smaller, less distinct signature.

Final RULES OF AUCTION – v1



I the AUCTIONEER do hereby certify that, to the best of my knowledge, these Rules of Auction meet the requirements of regulation 21 of the Consumer Protection Act Regulations as published in Government Gazette No. 34180 of 1 April 2011.



AUCTIONEER (duly authorised)

DATE



Duly instructed by

**WILD GOOSE TRADING AND SERVICES 39 CC (IN BUSINESS RESCUE) / THE
BOULEVARD AND SPAR MELVILLE
(the "SELLER")**



and

**BROLL AUCTIONS AND SALES (PTY) LIMITED
Registration Number 2014/250826/07
Duly represented by: Ismail Hendricks
(the "AUCTIONEER")**

hereby offers for sale by public auction all of the **lessee's rights, title and interest in and to a notarial deed of lease** registered under **K1350/2000L** (as amended by notarial deed K721/2015L) and between the Seller (as lessee by virtue of Deed of Cession of Lease K722/2015L) and **CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR")**

in respect of

Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng

in Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.

and all improvements of a permanent nature (the "**Leasehold Right(s)**") on these terms and conditions:



1. ACCEPTANCE AND CONFIRMATION

1.1. The **PURCHASER'S** offer shall remain open for acceptance by the **SELLER** until 17H00 on the ___ day of _____ **2024** ("confirmation period"). The **PURCHASER** and the **AUCTIONEER** acknowledge and agree that this provision constitutes a stipulation for the benefit of the **SELLER**.

1.2. The **PURCHASER'S** offer shall be deemed to have been accepted only when the **SELLER** has signed these Conditions of Sale in the space provided at the end of this agreement and the **SELLER** shall not be required to notify the **PURCHASER** of the acceptance of its offer prior to expiry of the confirmation period.



1.3. 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.

1.4. In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.

2. SALE CONSIDERATION

The Purchase Price of the **Leasehold Right(s)**, plus Value-Added Tax ("VAT") if same is applicable

R _____

must paid as follows :



- 2.1 A deposit equal to **5% (five per cent)** of the Purchase Price payable to the **AUCTIONEER** by the **PURCHASER** immediately on the fall of the hammer, which amount the **PURCHASER** hereby authorises the **AUCTIONEER** to pay over to the **SELLER'S** Attorneys;
- 2.2 The deposit paid in terms of this clause will be invested by the **SELLER'S** Attorneys on call at a commercial bank on behalf of and the interest for the benefit of the **PURCHASER**. The **PURCHASER'S** signature hereto shall constitute the **PURCHASER'S** written consent in terms of Section (4) of the Legal Practice Act, authorising the **SELLER'S** Attorneys to invest all amounts paid on account of the Purchase Price in an interest bearing account with a bank of the **SELLER'S** Attorneys choice. No monies shall be invested without compliance of clause 7.6 of this agreement.
- 2.3 The balance of the Purchase Price shall, within 45 business days from acceptance and signature hereof, be paid in cash or secured, to the satisfaction of the **SELLER'S** Attorneys, by a written guarantee, on terms acceptable to the **SELLER**, from a registered South African Bank and shall be, payable free of exchange, deduction or set off, against registration of the cession of the **Leasehold Right(s)** by the **SELLER** to the **PURCHASER**("Cession").
- 2.4 The **PURCHASER** shall be liable for a penalty fee calculated at 2% (two per cent) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive) on any amounts not paid when due.
- 2.5 Each payment made by the **PURCHASER** in terms of this Agreement shall be allocated first to the payment of **AUCTIONEER'S** Commission, then



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interest and thereafter to the payment of any other monies due in terms hereof.

The **SELLER'S** Attorneys shall mean the conveyancers to be appointed by the **SELLER** to effect cession and assignment of the **Leasehold Right(s)** into the name of the **PURCHASER** (the "**Cession**").

3. VALUE ADDED TAX AND TRANSFER DUTY



3.1 It is recorded that if VAT is applicable to this transaction and all provisions of Section 11(1)(e) of the Value Added Tax Act (the "Act") are complied with it is the intention of the parties that this transaction be a zero rated transaction in terms of Section 11 (1) (e) of Act and it is agreed that the purchase price is inclusive of VAT at a rate of zero percent.

3.1.1 It is recorded that the supply of the **Leasehold Right(s)** shall be 'zero rated' in terms of Section 11 (1) (e) of the Act as:

3.1.2 The **PROPERTY** constitutes an enterprise as defined in the Act and is sold as a going concern that will on the date of Cession be an income earning activity capable of separate operation, and;

3.1.3 The assets and all other aspects of the business that are necessary for carrying on the enterprise, including all existing sublease agreements pertaining to the Erven 1010 & 1011 Melville ext 3, are being disposed of to the **PURCHASER** in terms of this Agreement.

3.1.4 The **PURCHASER** and the **SELLER** are registered as Vat



Vendors as at the date of acceptance of this agreement by the SELLER and the date of registration of the Cession, and shall provide the SELLER'S attorneys with a copy of its VAT registration certificates (VAT103) within seven days of demand.

- 3.2 If for any reason VAT is payable on this sale 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 and such VAT will be added to the Purchase Price and payable on registration of Cession and shall be secured as provided for in clause 2.3 above.



- 3.3 In the event that the sale is not subject to VAT, and that Transfer Duty is payable, the **PURCHASER** shall pay the applicable transfer duty, in addition to the Purchase Price, to the **SELLER's** Attorneys within seven days of demand.

4. AUCTIONEER'S COMMISSION

- 4.1. The **PURCHASER** shall be liable for and pay, in addition to the amounts payable in terms of clauses 2.1 and 2.3, **AUCTIONEER'S** commission of **6% (six per cent)** of the Purchase Price, plus VAT thereon, which commission shall be deemed to have been earned and is payable immediately upon the fall of the hammer or upon the signing of this agreement by the **PURCHASER**, whichever happens first.
- 4.2. 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.

4.3. Where the **PURCHASER** fails, refuses or neglects to pay commission to the **AUCTIONEER** for any reason whatsoever, the **SELLER** hereby irrevocably instructs his attorneys to pay the commission or balance thereof to the **AUCTIONEER** as a first draw from the proceeds of this sale, against registration of the Cession.

4.4. The **PURCHASER** shall be liable to pay any bank charges associated with the payment of the **AUCTIONEER's** commission into the **AUCTIONEER's** chosen bank account.

4.5. The provisions of this clause 4 are for the benefit of the **AUCTIONEER** who accepts such benefit.



5. OCCUPATIONAL INTEREST

The **PURCHASER** shall only take possession and occupation of **ERVEN 1010 & 1011 MELVILLE EXT 3** on registration of the Cession unless the parties have agreed otherwise in writing in which case occupational rent shall be payable at a rate to be agreed in writing by the parties.

6. RATES AND TAXES

6.1 The **PURCHASER** shall be liable for all rates, levies, taxes and other Municipal charges levied on **ERVEN 1010 & 1011 MELVILLE EXT 3** in terms of s118(3) of the Local Government Municipal Systems Act, Act 32 of 2000 for the period up to registration of the Cession and also for rates,

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levies, taxes and other Municipal charges thereafter. The **SELLER** shall remain liable for any further charges (other than the s118(3) charges) due to the Local Authority.

6.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates, taxes and other Municipal charges paid in advance by the **SELLER** for the period after registration of the Cession (if any), which refund shall be paid on registration of the Cession.



If this agreement is cancelled or purportedly cancelled the **PURCHASER** shall be liable for payment of **AUCTIONEER'S** commission as contemplated herein.

7. SELLER RESIDENCY AND WITHHOLDING TAX

It is recorded that the parties 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:

- 7.1. The **SELLER** warrants either that he is / is not a **RESIDENT** of the Republic of South Africa; (delete whichever is not applicable)
- 7.2. The **SELLER** hereby indemnifies and holds harmless both the **AUCTIONEER** and the **SELLER'S** Attorneys from any claim arising as a result of them having acted in terms of the Act, on information supplied by the **SELLER**, or from any other source and the **SELLER** waives all 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;



7.3. Where the **SELLER** has warranted that he is a resident and information leads the **AUCTIONEER** or the **SELLER'S** Attorneys to suspect that the **SELLER** is a non-resident, the **AUCTIONEER** or **SELLER'S** Attorneys may by written notice call upon the **SELLER** to obtain a directive from SARS within 30 (thirty) days as to his resident status, failing which the provision of clause 8.4.1 below shall apply.

7.4. In the event that SARS, furnishes a directive, wherein the **SELLER** is regarded as a non-resident for income tax purposes:



7.4.1. The **PURCHASER** hereby irrevocably instructs the **SELLER'S** Attorneys upon registration of the Cession to withhold the prescribed percentage of the Purchase Price and to pay such monies to SARS within 14 (fourteen) days of registration of the Cession.

7.4.2. Notwithstanding the provision of 8.4.1 above, the **SELLER** shall be entitled to obtain a directive from the SARS for the non-withholding or a reduced withholding, of tax, which directive to be delivered to the **SELLER'S** Attorneys within 21 (twenty one) days of the date of acceptance of this agreement, failing which the **SELLER** shall be bound by such withholding percentage as determined by the Income Tax Act.

8. COSTS OF THE CESSION

8.1. Until such time as the total Purchase Price and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment has been secured to the satisfaction of the **SELLER**,



Cession of the **Leasehold Right(s)** to the **PURCHASER** shall not be registered at the Office of the Registrar of Deeds.

- 8.2. Cession of the **Leasehold Right(s)** to the **PURCHASER** shall be registered at the Office of the Registrar of Deeds, by the **SELLER's** Attorneys, as soon as reasonably possible after acceptance, providing the **PURCHASER** has complied with all of his obligations.



- 8.3. The **SELLER's** Attorneys shall attend to registration of the Cession after all expenses of and incidental to the preparation and registration of the Cession, the conveyancing fees, disbursements and VAT (if applicable), in respect of such Cession, are paid in full by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond required to finance the Purchase Price herein.
- 8.4. In the event of the **PURCHASER** failing to comply within 7 (seven) business days of request by the **SELLER's** Attorneys, to furnish them with signed documents or documentation of whatever nature necessary for effecting the Cession, or where applicable to ensure that the mortgage bond documentation or ancillary documentation is satisfactorily completed or in the event of the registration of the Cession being delayed as a consequence of a default on the part of the **PURCHASER** (and the widest possible interpretation shall be used in respect of the terms hereof), then on the 8th (eighth) day after such request, the **PURCHASER** shall pay to the **SELLER** a penalty fee, at the rate of 2% (two per cent) above prime, per month calculated on the balance of the purchase price from the said 8th (eighth) day until the date of registration of the Cession and payment, (both days inclusive).

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- 8.5. The **PURCHASER** undertakes to comply with all the FICA requirements as set out in **Annexure "1"** or as is reasonably required in the opinion of the **SELLER's** Attorneys within 7 (seven) business 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 them to comply with the **FICA** requirements.



9. RISK AND POSSESSION

- 9.1 Possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** shall only pass to the **PURCHASER** upon registration of the Cession and not before, provided that clauses 3.1 and 3.3 above have been complied with, from which date all risks and benefits of ownership of the **Leasehold Right(s)** shall pass to the **PURCHASER**.
- 9.2 Should the **PURCHASER** take and the **SELLER** allow possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** prior to registration of the Cession (which agreement must be reduced to writing and signed by the parties), the **PURCHASER** shall at its own cost insure **ERVEN 1010 & 1011 MELVILLE EXT 3** and improvements (permanent or otherwise) 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 that period.
- 9.3 Upon the **PURCHASER** taking possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** and pending the Cession, the following additional provisions shall be applicable –



9.3.1 the **PURCHASER** shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the **Leasehold Right(s)** or his rights of occupation thereof, except with the written consent of the **SELLER**;

9.3.2 the **PURCHASER** shall be responsible for and pay all rates and taxes and costs of electricity and water consumed in or at **ERVEN 1010 & 1011 MELVILLE EXT 3**.



10. ADJUSTMENT ACCOUNT AND DEPOSITS

10.1. All income derived from **ERVEN 1010 & 1011 MELVILLE EXT 3**, arrear rental and unpaid cost recoveries and expenses incurred and any amounts due in respect of any administration Agreement in respect of **ERVEN 1010 & 1011 MELVILLE EXT 3** up to the date of registration of the Cession shall be for the benefit and account of the **SELLER**. Within 45 (forty five) business days after the date of registration of the Cession, the **SELLER** shall prepare, at the cost of the **SELLER**, an adjustment account in respect of the deposits held and income and expenditure of the **Leasehold Right(s)** and/or **ERVEN 1010 & 1011 MELVILLE EXT 3** up to the date of registration of the Cession and the **PURCHASER** and the **SELLER** shall pay or receive as the case may be, such amount as may be reflected in such account within 3 (three) business days thereof.

10.2. Notwithstanding the delay in respect of the preparation of the adjustment account, the **SELLER** shall be obliged within 14 (fourteen) days of the date of registration of the Cession, to account and pay over to the **PURCHASER**, the gross rental and cost recoveries received by it in respect of the month during which the registration of the Cession



occurred, pro-rated, unless expenses incurred are anticipated by the **SELLER**, in respect of the period subsequent to the date of registration of the Cession and to which rental and cost recoveries the **PURCHASER** would be entitled, provided, to the extent that any tenant may not have, as at the date of registration of the Cession, paid the rental and cost recoveries in respect of the month in which the registration of the Cession occurs, the **SELLER** will not be liable for any such shortfall, provided that any rental and cost recoveries received by the **PURCHASER** after the date of registration of the Cession but pertaining to the period prior to the date of registration of the Cession, shall immediately be paid over to the **SELLER** in respect thereof (in the event of there being any amounts outstanding to the **SELLER** on the date of registration of the Cession, all amounts received by the **PURCHASER** from the tenants on or soon after the date of registration of the Cession shall be deemed to be payment for the period prior to registration of the Cession unless specified otherwise by the tenant).



11. EXISTING TENANCIES and LEASES

- 11.1 Once the Attorneys confirm in writing to the Seller that all the suspensive conditions contained herein have been fulfilled and the guarantees required to secure the purchase price have been provided, the Seller shall not renew any Leases or enter into negotiations concerning the Leases or any new leases without consulting the Purchaser.
- 11.2 Once the foregoing conditions have been fulfilled, the Seller shall refer any enquiries from future lessees to the Purchaser who shall be entitled to request the Seller to enter into a lease with such lessee at the risk of the Purchaser and subject to the Purchaser being liable for the payment of brokers commission or any tenant installation costs.



- 11.3 On or after the Date of Cession the Seller shall, where possible, cede its rights under any rental or other guarantees or suretyships or similar undertakings relating to Leases to the Purchaser it being noted that certain guarantees are not necessarily capable of cession to the Purchaser.
- 11.4 The **Leasehold Right(s)** are sold subject to all existing tenancies.
- 11.5 The **PURCHASER** shall be bound by the terms and conditions of all existing subleases, of which he acknowledges he is fully apprised. The **SELLER**, from registration of Cession, cedes, makes over and assigns all its rights and obligations in and to the subleases to the **PURCHASER** who accepts such cession and assignment.
- 11.6 If any tenant is in arrears with rental due to the **SELLER** in respect of the leases, the **SELLER** shall be entitled, but not obliged, to proceed with or take :-
- 11.6.1 any legal action or other proceedings against such tenant;
and
- 11.6.2 a civil judgment against the tenant and/or evict the tenant from the leased premises concerned;
- 11.6.3 enforce any of its rights in terms of the leases.
- 11.7 If the **SELLER** wishes to either renew the leases or enter into new leases, it shall be entitled to do so, provided that it obtains written approval from the **PURCHASER**.
- 11.8 In the event that the **SELLER**, after complying with the provisions of clause 11.8, enters into a new sublease agreement in respect of the **ERVEN 1010 & 1011 MELLVILLE EXT 3** and/or buildings or renews





the existing subleases, the **PURCHASER** shall be liable for the pro-rata commissions and tenant installation costs related thereto for the period of such leases or renewal beyond the date of Cession.

- 11.9 All deposit/s paid by tenants in terms of the leases, shall be dealt with in accordance with the Adjustment Account referred to in clause 10, provided that if at any time before the date of Cession, any tenant fails to comply with its obligations in terms of the lease and/or there are any amounts owing to the **SELLER** by any tenant in terms of the subleases, the **SELLER** shall be entitled to appropriate such deposit towards payment of the outstanding amount owing to the **SELLER**.



- 11.10 All payments received from tenants in terms of the leases after the date of Cession shall in the first instance be appropriated towards any amounts owing by the tenants to the **SELLER** in terms of the leases prior to the date of Cession and thereafter towards amounts owing to the **PURCHASER** by the tenants for the period after the date of Cession.

12. ALTERATIONS, ADDITIONS, REPAIRS OR IMPROVEMENTS

- 12.1. Prior to registration of the Cession, the **PURCHASER** may not effect any alterations, additions, repairs or improvements to the **ERVEN 1010 & 1011 MELVILLE EXT 3** without the prior written consent of the **SELLER**.
- 12.2. The **SELLER** need not compensate the **PURCHASER** for any authorised alterations, additions, repairs or improvements effected if the sale is cancelled for any reason whatsoever.
- 12.3. The **PURCHASER** shall be liable for any and all damages suffered by the **SELLER** as a result of any alterations, additions, repairs or improvements effected by the **PURCHASER**, not authorised by the



SELLER, including but not limited to restoring the property to the condition it was in prior to such alterations, additions, repairs or improvements.

13. VOETSTOOTS, WARRANTIES AND REPRESENTATIONS

- 13.1. The **ENTERPRISE** is sold "voetstoets" and the Seller gives no warranty with regard thereto and/or **ERVEN 1010 & 1011 MELVILLE EXT 3**, whether expressed or implied. The Property is sold subject to the terms and conditions as mentioned in **Notarial Deed of Lease K1350/2000L** (as amended by K721/2015L) read together with the notarial deed of cession and assignment K722/2015L, and the Purchaser acknowledges that **ERVEN 1010 & 1011 MELVILLE EXT 3** will be leased to the Purchaser "voetstoets", and is subject to the terms and conditions and servitudes 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 **ERVEN 1010 & 1011 MELVILLE EXT 3**.



- 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 Leasehold Right(s), **ERVEN 1010 & 1011 MELVILLE EXT 3** or anything relating thereto, by the **AUCTIONEER** or any other person, or by or on behalf of the **SELLER** if same is not recorded in this Agreement.



The **PURCHASER** acknowledges that he has fully acquainted himself with the Leasehold Right(s) that he has purchased and rights acquired in respect of the use and occupation of **ERVEN 1010 & 1011 MELVILLE EXT 3** alternatively that he/she has elected to purchase the **PROPERTY** without fully acquainting him/herself with the Property and **ERVEN 1010 & 1011 MELVILLE EXT 3**.

14. BREACH OF CONTRACT



14.1. Where one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Innocent Party shall be entitled to give the Defaulting Party 7 (seven) business days' notice in writing to rectify such breach or failure (unless such breach or failure occurs after the Cession 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 the it may have in law, including the right to claim damages:

14.1.1. to cancel this Agreement and upon such 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



14.1.1.2. if the defaulting party is the **SELLER** the **PURCHASER** shall be entitled to claim a full refund of all money paid in terms of this agreement from the **SELLER** (but not from the Auctioneer) that it has paid arising from the **SELLER's** default;

(ALTERNATIVELY)

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



- 14.2. On cancellation of this Agreement for any reason, the **PURCHASER** hereby undertakes to forthwith vacate **ERVEN 1010 & 1011 MELVILLE EXT 3** and to procure that **ERVEN 1010 & 1011 MELVILLE EXT 3** shall be vacated by any persons who occupy **ERVEN 1010 & 1011 MELVILLE EXT 3** through the **PURCHASER's** title or under his permission. Occupation shall be re-delivered in the same good condition as at the date of occupation.
- 14.3. No tenancy or rights in connection therewith shall be deemed to have been created either in terms of any statute or at common law.
- 14.4. Where the **PURCHASER** pays any amount as required under these Rules of Auction, the parties record and agree that the **AUCTIONEER** shall be entitled to deduct its commission as a first charge against such monies and then the Auctioneer may recover any shortfall from the **PURCHASER**.



14.5. The deduction by the **AUCTIONEER** of its commission or other costs due to it will not constitute a release of **PURCHASER** from any other obligations arising from these Rules of Auction.

15. LEGAL COSTS

The Defaulting Party shall be liable for all legal costs incurred by the Innocent Party, the **AUCTIONEER** and their Agents / Attorneys incurred in enforcing this agreement, on an Attorney and own client scale, including collection commission.



16. DOMICILIUM CITANDI ET EXECUTANDI – ADDRESS FOR SERVICE OF DOCUMENTS

16.1. The **PURCHASER** and the **SELLER** hereby select as their chosen *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 addresses recorded in this agreement. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth business 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.

16.2. 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.

- 16.3. Any notices or communications required to be sent by either party to the other may be sent using email or fax.

17. JOINT AND SEVERAL LIABILITY



Where there is more than one **PURCHASER**, the liability of all such **PURCHASERS** to the **SELLER** and to the **AUCTIONEER** shall be joint and several *in solidum*.

18. SECTIONS 112 and 115 OF THE COMPANIES ACT – SPECIAL RESOLUTION

- 18.1. The **SELLER** and the **PURCHASER** are aware of the provisions of Sections 112 and 115 of the Companies Act 71 of 2008 (as amended) ("Section 112 and 115"), namely that if the **SELLER** is a company and if the **Leasehold Right(s)** 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 sell the **Leasehold Right(s)**.
- 18.2. Accordingly, the **SELLER** warrants that the provisions of Sections 112 and 115 are / are not (delete as appropriate) applicable to the sale of the **Leasehold Right(s)**.
- 18.3. If Sections 112 and 115 are applicable to the sale of the **Leasehold Right(s)** and if the directors of the **SELLER** have not already been

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granted the necessary authority in terms of Sections 112 and 115 to dispose of the **Leasehold Right(s)**, then within 45 (forty five) business days of the acceptance date the **SELLER** shall procure that its shareholders pass a special resolution ratifying the sale of the **Leasehold Right(s)**.

- 18.4. In addition to what has been stated above and if the transaction requires an amendment to the **SELLER's** memorandum of incorporation in order to give effect to such transaction, then in such event the **SELLER** shall take those steps necessary in order amend the **SELLER's** memorandum of incorporation and the **SELLER** warrants that the rights of any minority shareholders will have been dealt with and protected.



19. NOMINEE

The **PURCHASER** shall be entitled, by notice in writing to the **SELLER** or to the **SELLER's** Attorney, to nominate a nominee in his place as **PURCHASER**, but only on the following terms and conditions:

- 19.1 the nomination shall be delivered to the **SELLER** by not later than 24h00 on the same day as the acceptance by the **SELLER**;
- 19.2 the notice shall clearly set forth the name and address of the nominee so nominated as **PURCHASER**;
- 19.3 the notice shall be accompanied by the nominee's written acknowledgement and acceptance of the nomination, including a confirmation by the nominee:

A handwritten signature in black ink, consisting of a stylized, cursive 'M' followed by a vertical line.



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

19.3.2 that it undertakes to irrevocably be bound by the provisions of these Rules of Auction as the **PURCHASER**;

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



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

19.4.2 the original **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 nominated **PURCHASER'S** obligations under this agreement, including but not limited to damages, and renounces the benefits of division and *excussion*.

20. COMPANY TO BE FORMED

20.1 Where the **PURCHASER** signs 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 the 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.

20.2 In the event of such company being registered and duly adopting or ratifying this agreement, or the nomination effected, **then the person signing this document on behalf of the PURCHASER by his signature hereunder, shall be deemed to bind himself to the SELLER 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.**



21. COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS

21.1 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 of its obligations arising from this agreement.

21.2 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 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 20.

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22. ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE

There shall be no obligation on the **SELLER** to provide the **PURCHASER** with an electrical compliance certificate for **ERVEN 1010 & 1011 MELVILLE EXT 3**.

23. DISPUTE RESOLUTION: MEDIATION THEN ARBITRATION



23.1 Should any dispute, disagreement or claim arise between the parties, including a dispute between both or one of the parties and the **AUCTIONEER**, (“the dispute”) in connection with this agreement then the parties shall, notwithstanding anything to the contrary contained herein, have the right, but not be obliged to:

23.1.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa (“**AFSA**”), upon such terms as agreed between the parties and the secretariat of AFSA; and

23.1.2 failing agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the parties shall refer the dispute to final arbitration as provided below.

23.2 Unless otherwise agreed in writing by all the parties, any such mediation or arbitration shall be held in Sandton, Johannesburg, South Africa.

23.3 The decision of the arbitrator shall be final and binding on the parties and may at the election of any party be made an order of the court. The parties agree that the arbitrators decision shall be final and



binding on them and hereby waive any right to an appeal they might otherwise have enjoyed.

- 23.4 Once invoked, the parties shall not be entitled to withdraw from the arbitration process unless by written agreement between them.

24. **MAGISTRATES' COURT JURISDICTION**



The Parties consent to the jurisdiction of the Magistrates' Court in terms of Section 45 read with Section 28 of the Magistrates' Court Act of 1944 as amended. Nothing contained herein shall preclude a party from approaching a relevant division of the High Court should they deem it necessary.

25. **GENERAL CLAUSES**

- 25.1 This document constitutes the whole agreement between the Parties and no agreement, representation or warranty not contained herein shall be binding on the Parties.
- 25.2 This agreement shall be governed by the Laws of the Republic of South Africa.
- 25.3 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 writing and signed by all the Parties.
- 25.4 No variation, alteration or cancellation of this agreement (including this clause) shall be binding unless reduced to writing and signed by the Parties or their authorised representatives.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.



25.5 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*.

25.6 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 and shall remain bound hereto.



25.7 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.

26 **SALE**

Until the Date of Cession, the Purchaser may not sell, cede or assign the Purchasers rights under this agreement to any third party nor may the Purchaser sell the rights in the **Leasehold Right(s)** or the Enterprise without the prior written consent of the Seller.

THIS PROPERTY CAME UNDER THE HAMMER ON THE:

_____ DAY OF _____

And was knocked down for the sum of:

R _____

(words)

(PLUS VALUE ADDED TAX IF APPLICABLE)



TO:
COMPANY/ CLOSE CORPORATION/ TRUST/ OTHER

(hereinafter referred to as the "PURCHASER")
REGISTRATION



NO.:

ADDRESS:

CONTACT DETAILS:(Landline) _____
(Email) _____
(Mobile) _____

OR TO:
MR/MRS/MS

(hereinafter referred to as the "PURCHASER")
IDENTITY OR PASSPORT NO.:

PHYSICAL ADDRESS:

TELEPHONE DETAILS: (home) _____
(Work) _____
(Email) _____

Final RULES OF AUCTION - v1



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

SPOUSE'S NAME _____

SPOUSE'S ID NO _____

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 solidium*)

AS WITNESS:

1. _____

BROLL AUCTIONS AND SALES CORPORATE (PTY) LTD he being duly authorised (Accepting all of the rights available in terms of this Agreement)

ACCEPTANCE AND CONFIRMATION

SIGNED BY THE SELLER AT _____ ON THE
_____ DAY OF _____

AS WITNESSES:

1. _____

Final RULES OF AUCTION – v1



SELLER (and where applicable the
SELLER is duly authorised)
SELLER'S ADDRESS:

2. _____



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DEED OF SURETYSHIP

I / We the undersigned, _____
(INSERT FULL NAMES AS PER ID BOOK)

ID NUMBER: _____ with
chosen address (as *domicilium* at: (INSERT FULL PHYSICAL ADDRESS –
NOT P BOX _____

do hereby interpose and bind myself / ourselves as surety and co-principal debtors
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** (none excepted)
under the Rules of Auction hereinbefore and in particular for any and 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 as if fully set out herein.**



THUS DONE AND SIGNED at _____ this _____ day
of _____

AS WITNESSES:

1. _____
SURETY

2. _____
SELLER

BROLL AUCTIONS AND SALES
(PTY) LTD duly authorised



RESOLUTION - CLOSE CORPORATION

EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF

.....

HELD ATON

RESOLVED THAT:



- The CLOSE CORPORATION BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

from _____

for R _____

- 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.

Certified a true copy,

.....
MEMBER

.....
MEMBER

.....
MEMBER

.....
MEMBER



RESOLUTION - COMPANY

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

.....

HELD ATON



RESOLVED THAT:

1. The Company BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

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.

Certified a true copy,

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

Final RULES OF AUCTION – v1



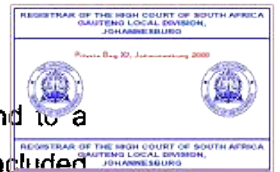
RESOLUTION - TRUST

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

.....

HELD ATON

RESOLVED THAT:



1. The Trust purchases all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

from _____

for R _____

3. 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.

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:

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Company (private and unlisted public)

- [1] Certificate of Incorporation (CM1); and
- [2] Certificate of change of name of company (CM9) (if applicable); and
- [3] Notice of Registered Office and Postal Address (CM22); and
- [4] Contents of Register of Directors, Auditors and Officers (CM29); and
- [5] Proof of business address of the Company e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [6] Identification document(s) of the person(s) managing the Company e.g. ID book* and
- [7] Written confirmation of the residential address and contact particulars of the person(s) managing the Company; and
- [8] Resolution specifying who is authorised to act on behalf of the Company as well as written confirmation of the company's shareholding; and
- [9] Identification document(s) of the person(s) authorised to act on behalf of the Company e.g. ID book*; and
- [10] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Company; and



Close Corporations (CC):

- [1] Founding Statement and Certificate of Incorporation (CK1); and
- [2] Amended Founding Statement (CK2) (if applicable); and
- [3] Proof of business address of the Close Corporation e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [4] Identification document(s) of the member(s) of the Close Corporation e.g. ID book*;
and
- [5] Written confirmation of the residential address and contact particulars of the member(s) of the Close Corporation reflecting the name and residential address;
and
- [6] Resolution specifying who is authorised to act on behalf of the Close Corporation;
and



- [7] Identification document(s) of the person(s) authorised to act on behalf of the Close Corporation e.g. ID book*; and
- [8] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Close Corporation.

Trusts:

- [1] Letters of Authority signed by the Master of the High Court; and
- [2] Trust deed or other founding document; and
- [3] Resolution specifying who is authorised to act on behalf of the Trust; and
- [4] Identification document(s) of the person(s) authorised to act on behalf of the Trust e.g. ID book*; and
- [5] Written confirmation of residential address and contact particulars of the person(s) authorised to act on behalf of the Trust; and
- [6] Identification documents of all the trustees and beneficiaries e.g. ID book*; and
- [7] Written confirmation of the residential address and contact particulars of all the trustees and beneficiaries; and
- [8] Identification document of the founder of the Trust e.g. ID book*; and
- [9] Written confirmation of the residential address and contact particulars of the founder of the Trust (if not deceased).



A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a vertical line and a small flourish at the bottom.

"FA13"

Final - RULES OF AUCTION -

Rules of Auction and Conditions of Sale



IMMOVABLE PROPERTY

DATE OF AUCTION : 22 ND MAY 2024
TIME OF AUCTION : 12pm
PLACE OF AUCTION : The Wanderers Club,
 21 North Street, Illovo, Johannesburg
AUCTION HOUSE : Broll Auctions and Sales (Pty) Ltd
 (Registration Number 2014/250826/07)
 14 Fort Street, Illovo, Sandton
 Contact number: 087 700 8290
 Email: charrison@broll.com



hereby offers for sale by public auction all of the lessee's rights, title and interest in and to a notarial deed of lease registered under K1350/2000L (as amended by notarial Deed K721/2015L) between the Seller (as lessee pursuant to Deed of Cession of Lease K722/2015L) and CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR")

Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng

**In Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.
 (the "Leasehold Rights")**

RULES OF AUCTION

1.1. Each prospective bidder must read these Rules of Auction together with the attached Conditions of Sale Agreement and must not bid unless he or she has done so.



- 1.2. The sale by auction is subject to confirmation of acceptance by the SELLER's appointed business rescue practitioner and bondholder, which confirmation shall be given in writing within 5 business days of the auction.
- 1.3. If the SELLER's bondholder does not confirm its acceptance of the selling price (or any other conditions which may be stipulated by the PURCHASER), then the agreement shall be of no force or effect.
- 1.4. The rules of auction comply with section 45 of the Consumer Protection Act 68 of 2008 ("the Act") and with the Consumer Protection Act Regulations ("the Regulations") that have been published in terms thereof.
- 1.5. Section 45 subsection (2) of the Act provides that: *"When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction."*
- 1.6. The auction will commence at the published time and will not be delayed to allow any specific person or more persons in general to take part in the auction.
- 1.7. Registration to bid at the auction:
 - 1.7.1 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. 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.
 - 1.7.2 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



Final RULES OF AUCTION-v1



expressly authorises him or her to bid on behalf of that person and the person bidding on his or her behalf must meet the requirements set out in clause 1.7.1 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.

1.8 The bidder's record and the vendor roll will be made available for inspection at the offices of Broll Auctions and Sales (Pty) Ltd during normal business hours without the charge of a fee. The bidders' record will also be available for inspection at the auction.



1.9 Broll Auctions and Sales (Pty) Ltd 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.

1.10 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.

1.11 The total cost of advertising and conducting the auction of the property is **R45,000.00** which costs are for the account of the Auctioneer and broken down as follows:

- 1.11.1 Advertising costs;
- 1.11.2 Brochure and marketing material;
- 1.11.3 Auction venue costs;
- 1.11.4 Photography.

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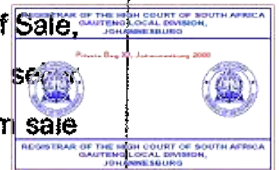


Final RULES OF AUCTION – v1

1.12 The conduct of the auction is subject to the control of the auctioneer who has the sole right to regulate the bidding procedure.

1.13 The sale shall be by the rise and the Leasehold Right(s) shall be sold to the highest bidder subject to the Rules of Auction.

1.14 Every bid shall constitute an offer to purchase the Leasehold Right(s) for the amount bid upon the terms and conditions contained in the Conditions of Sale, which the seller 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.



1.15 If no bid equals or exceeds the reserve price, the Leasehold Right(s) may be withdrawn from the auction. The seller shall be entitled to instruct the auctioneer to accept any lower bid.

1.16 In the event of any dispute between the bidders, the decision of the auctioneer shall be final and binding.

1.17 Any error by the auctioneer shall be entitled to be corrected by him.

1.18 No bid may be withdrawn after the fall of the hammer until the expiry of the confirmation period that is provided for in the Conditions of Sale, during which time the offer shall be open for acceptance by the seller and if the offer is accepted, the sale shall be deemed to be a sale by auction for purposes of the Act.

1.19 The highest bidder ("the purchaser") shall sign the Conditions of Sale immediately on the fall of the hammer.

Fh&f RULES OF AUCTION – v1



I the AUCTIONEER do hereby certify that, to the best of my knowledge, these Rules of Auction meet the requirements of regulation 21 of the Consumer Protection Act Regulations as published in Government Gazette No. 34180 of 1 April 2011.

AUCTIONEER (duly authorised)

22ND MAY 2024
DATE



Final RULES OF AUCTION – v1



Duly instructed by

**WILD GOOSE TRADING AND SERVICES 39 CC (IN BUSINESS RESCUE) / THE
BOULEVARD AND SPAR MELVILLE
(the "SELLER")**

and

**BROLL AUCTIONS AND SALES (PTY) LIMITED
Registration Number 2014/250826/07
Duly represented by: Ismail Hendricks
(the "AUCTIONEER")**



hereby offers for sale by public auction all of the lessee's rights, title and interest in and to a notarial deed of lease registered under K1350/2000L (as amended by notarial deed K721/2015L) and between the Seller (as lessee by virtue of Deed of Cession of Lease K722/2015L) and CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY ("LESSOR") in respect of

**Erven 1010 and 1011 Melville Extension 3, Registration Division I.R., Province Of Gauteng
in Extent: 9907 (Nine Thousand Nine Hundred and Seven) square metres and described in the Notarial Lease as Portion 402 (a Portion of Portion 190) of the Farm Braamfontein 53.**

and all improvements of a permanent nature (the "Leasehold Right(s)") on these terms and conditions:



1. ACCEPTANCE AND CONFIRMATION

1.1. The PURCHASER'S offer shall remain open for acceptance by the SELLER until 17H00 on the 30TH day of MAY 2024 ("confirmation period"). The PURCHASER and the AUCTIONEER acknowledge and agree that this provision constitutes a stipulation for the benefit of the SELLER.

1.2. The PURCHASER'S offer shall be deemed to have been accepted only when the SELLER has signed these Conditions of Sale in the space provided at the end of this agreement and the SELLER shall not be required to notify the PURCHASER of the acceptance of its offer prior to expiry of the confirmation period.



1.3. 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.

1.4. In the event of the sale requiring the consent of any statutory authority or any court of law, then this sale is subject to the granting of such consent.

2. SALE CONSIDERATION

The Purchase Price of the Leasehold Right(s), plus Value-Added Tax ("VAT") if same is applicable

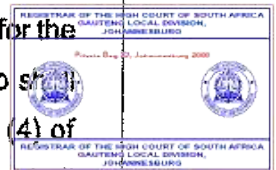
R 19 250 000 - (NINETEEN MILLION, TWO HUNDRED AND FIFTY THOUSAND RAND)

must paid as follows :



2.1 A deposit equal to 5% (five per cent) of the Purchase Price payable to the AUCTIONEER by the PURCHASER immediately on the fall of the hammer, which amount the PURCHASER hereby authorises the AUCTIONEER to pay over to the SELLER'S Attorneys;

2.2 The deposit paid in terms of this clause will be invested by the SELLER'S Attorneys on call at a commercial bank on behalf of and the interest for the benefit of the PURCHASER. The PURCHASER'S signature hereto shall constitute the PURCHASER'S written consent in terms of Section (4) of the Legal Practice Act, authorising the SELLER'S Attorneys to invest all amounts paid on account of the Purchase Price in an interest bearing account with a bank of the SELLER'S Attorneys choice. No monies shall be invested without compliance of clause 7.6 of this agreement.



60 [Handwritten initials]

2.3 The balance of the Purchase Price shall, within 45 business days from acceptance and signature hereof, be paid in cash or secured, to the satisfaction of the SELLER's Attorneys, by a written guarantee, on terms acceptable to the SELLER, from a registered South African Bank and shall be, payable free of exchange, deduction or set off, against registration of the cession of the Leasehold Right(s) by the SELLER to the PURCHASER("Cession").

2.4 The PURCHASER shall be liable for a penalty fee calculated at 2% (two per cent) above the Prime Rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive) on any amounts not paid when due.

[Handwritten signatures and initials]



2.5 The Cession from the **SELLER** to the **PURCHASER** shall not occur without the written consent of the **LESSOR**, which consent shall be obtained within 30 (thirty) days of the auction, failing which, this Agreement shall terminate.

2.6 In the event of a termination in terms of clause 2.5 above, the **PURCHASER** shall be entitled to claim a refund of ~~a portion of the~~ ^{Total} Purchase Price which has been paid to the **SELLER**, Agent or Conveyancer, as the case may be, which Purchase Price refund shall be paid into a bank account nominated by the **PURCHASER** within ~~(thirty)~~ ⁵⁰ days of the termination date of the Agreement.



2.7 Each payment made by the **PURCHASER** in terms of this Agreement shall be allocated first to the payment of **AUCTIONEER'S** Commission, then interest and thereafter to the payment of any other monies due in terms hereof.

The **SELLER'S** Attorneys shall mean the conveyancers to be appointed by the **SELLER** to effect cession and assignment of the Leasehold Right(s) into the name of the **PURCHASER** (the "Cession").

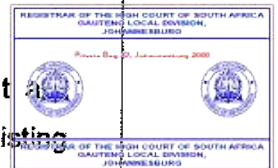
3. VALUE ADDED TAX AND TRANSFER DUTY

3.1 It is recorded that if VAT is applicable to this transaction and all provisions of Section 11(1)(e) of the Value Added Tax Act (the "Act") are complied with it is the intention of the parties that this transaction be a zero rated transaction in terms of Section 11 (1) (e) of Act and it is agreed that the purchase price is inclusive of VAT at a rate of zero percent.

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- 3.1.1 It is recorded that the supply of the **Leasehold Right(s)** shall be 'zero rated' in terms of Section 11 (1) (e) of the Act as:
- 3.1.2 The **PROPERTY** constitutes an enterprise as defined in the Act and is sold as a going concern that will on the date of Cession be an income earning activity capable of separate operation, and;
- 3.1.3 The assets and all other aspects of the business that are necessary for carrying on the enterprise, including all existing sublease agreements pertaining to the Erven 1010 & 1011 Mellville ext 3, are being disposed of to the **PURCHASER** in terms of this Agreement.
- 3.1.4 The **PURCHASER** and the **SELLER** are registered as Vat Vendors as at the date of acceptance of this agreement by the **SELLER** and the date of registration of the Cession, and shall provide the **SELLER'S** attorneys with a copy of its VAT registration certificates (VAT103) within seven days of demand.
- 3.2 If for any reason VAT is payable on this sale 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 and such VAT will be added to the Purchase Price and payable on registration of Cession and shall be secured as provided for in clause 2.3 above.
- 3.3 In the event that the sale is not subject to VAT, and that Transfer Duty is payable, the **PURCHASER** shall pay the applicable transfer duty, in addition to the Purchase Price, to the **SELLER's** Attorneys within seven days of demand.



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4. AUCTIONEER'S COMMISSION

Timing of payment to be mutually agreed between purchaser and Broll.

Es/O

4.1. The **PURCHASER** shall be liable for and pay, in addition to the amounts payable in terms of clauses 2.1 and 2.3, **AUCTIONEER'S** commission of **6% (six per cent)** of the Purchase Price, plus VAT thereon, which commission, shall be deemed to have been earned and is payable immediately upon the fall of the hammer or upon the signing of this agreement by the **PURCHASER**, whichever happens first.



4.2. 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.

4.3. Where the **PURCHASER** fails, refuses or neglects to pay commission to the **AUCTIONEER** for any reason whatsoever, the **SELLER** hereby irrevocably instructs his attorneys to pay the commission or balance thereof to the **AUCTIONEER** as a first draw from the proceeds of this sale, against registration of the Cession.

4.4. The **PURCHASER** shall be liable to pay any bank charges associated with the payment of the **AUCTIONEER'S** commission into the **AUCTIONEER'S** chosen bank account.

4.5. The provisions of this clause 4 are for the benefit of the **AUCTIONEER** who accepts such benefit.

Es/O
[Handwritten signature]



Final RULES OF AUCTION - v1

5. OCCUPATIONAL INTEREST

The **PURCHASER** shall only take possession and occupation of **ERVEN 1010 & 1011 MELVILLE EXT 3** on registration of the Cession unless the parties have agreed otherwise in writing in which case occupational rent shall be payable at a rate to be agreed in writing by the parties.

6. RATES AND TAXES

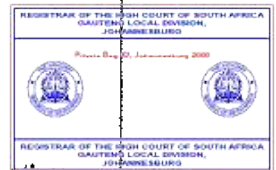
6.1 The **PURCHASER** shall be liable for all rates, levies, taxes and other Municipal charges levied on **ERVEN 1010 & 1011 MELVILLE EXT 3** in terms of s118(3) of the Local Government Municipal Systems Act, Act 32 of 2000 for the period up to registration of the Cession and also for rates, levies, taxes and other Municipal charges thereafter. The **SELLER** shall remain liable for any further charges (other than the s118(3) charges) due to the Local Authority. *[NB: Estimated at R5.6m]* *By [Signature]*

6.2 The **PURCHASER** shall refund to the **SELLER** a pro rata share of all rates, taxes and other Municipal charges paid in advance by the **SELLER** for the period after registration of the Cession (if any), which refund shall be paid on registration of the Cession.

If this agreement is cancelled or purportedly cancelled the **PURCHASER** shall be liable for payment of **AUCTIONEER'S** commission as contemplated herein.

7. SELLER RESIDENCY AND WITHHOLDING TAX

It is recorded that the parties 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



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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:

- 7.1. The **SELLER** warrants either that he is / is not a **RESIDENT** of the Republic of South Africa; (delete whichever is not applicable)
- 7.2. The **SELLER** hereby indemnifies and holds harmless both the **AUCTIONEER** and the **SELLER'S** Attorneys from any claim arising as a result of them having acted in terms of the Act, on information supplied by the **SELLER**, or from any other source and the **SELLER** waives all 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;
- 7.3. Where the **SELLER** has warranted that he is a resident and information leads the **AUCTIONEER** or the **SELLER'S** Attorneys to suspect that the **SELLER** is a non-resident, the **AUCTIONEER** or **SELLER'S** Attorneys may by written notice call upon the **SELLER** to obtain a directive from SARS within 30 (thirty) days as to his resident status, failing which the provision of clause 8.4.1 below shall apply.
- 7.4. In the event that SARS, furnishes a directive, wherein the **SELLER** is regarded as a non-resident for income tax purposes:
 - 7.4.1. The **PURCHASER** hereby irrevocably instructs the **SELLER's** Attorneys upon registration of the Cession to withhold the prescribed percentage of the Purchase Price and to pay such monies to SARS within 14 (fourteen) days of registration of the Cession.





7.4.2: Notwithstanding the provision of 8.4.1 above, the **SELLER** shall be entitled to obtain a directive from the SARS for the non-withholding or a reduced withholding, of tax, which directive to be delivered to the **SELLER's** Attorneys within 21 (twenty one) days of the date of acceptance of this agreement, failing which the **SELLER** shall be bound by such withholding percentage as determined by the Income Tax Act.



8. COSTS OF THE CESSION

8.1. Until such time as the total Purchase Price and all other amounts, for which the **PURCHASER** may be liable in terms hereof, have been paid and/or payment has been secured to the satisfaction of the **SELLER**, Cession of the **Leasehold Right(s)** to the **PURCHASER** shall not be registered at the Office of the Registrar of Deeds.

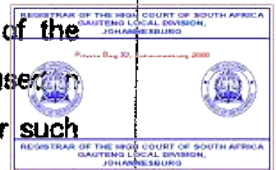
8.2. Cession of the **Leasehold Right(s)** to the **PURCHASER** shall be registered at the Office of the Registrar of Deeds, by the **SELLER's** Attorneys, as soon as reasonably possible after acceptance, providing the **PURCHASER** has complied with all of his obligations.

8.3. The **SELLER's** Attorneys shall attend to registration of the Cession after all expenses of and incidental to the preparation and registration of the Cession, the conveyancing fees, disbursements and VAT (if applicable), in respect of such Cession, are paid in full by the **PURCHASER** including all expenses and legal costs incidental to the preparation and registration of any mortgage bond required to finance the Purchase Price herein.

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8.4. In the event of the **PURCHASER** failing to comply within 7 (seven) business days of request by the **SELLER's** Attorneys, to furnish them with signed documents or documentation of whatever nature necessary for effecting the Cession, or where applicable to ensure that the mortgage bond documentation or ancillary documentation is satisfactorily completed or in the event of the registration of the Cession being delayed as a consequence of a default on the part of the **PURCHASER** (and the widest possible interpretation shall be used in respect of the terms hereof), then on the 8th (eighth) day after such request, the **PURCHASER** shall pay to the **SELLER** a penalty fee, at the rate of 2% (two per cent) above prime, per month calculated on the balance of the purchase price from the said 8th (eighth) day until the date of registration of the Cession and payment, (both days inclusive).



8.5. The **PURCHASER** undertakes to comply with all the FICA requirements as set out in **Annexure "1"** or as is reasonably required in the opinion of the **SELLER's** Attorneys within 7 (seven) business 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 them to comply with the FICA requirements.

9. RISK AND POSSESSION

9.1 Possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** shall only pass to the **PURCHASER** upon registration of the Cession and not before, provided that clauses 3.1 and 3.3 above have been complied with, from which date all risks and benefits of ownership of the **Leasehold Right(s)** shall pass to the **PURCHASER**.



9.2 Should the **PURCHASER** take and the **SELLER** allow possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** prior to registration of the Cession (which agreement must be reduced to writing and signed by the parties), the **PURCHASER** shall at its own cost insure **ERVEN 1010 & 1011 MELVILLE EXT 3** and improvements (permanent or otherwise) 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 that period.



9.3 Upon the **PURCHASER** taking possession of **ERVEN 1010 & 1011 MELVILLE EXT 3** and pending the Cession, the following additional provisions shall be applicable –

9.3.1 the **PURCHASER** shall not sell, let or in any other manner dispose of or part with (whether temporarily or otherwise) the **Leasehold Right(s)** or his rights of occupation thereof, except with the written consent of the **SELLER**;

9.3.2 the **PURCHASER** shall be responsible for and pay all rates and taxes and costs of electricity and water consumed in or at **ERVEN 1010 & 1011 MELVILLE EXT 3**.

10. ADJUSTMENT ACCOUNT AND DEPOSITS

10.1. All income derived from **ERVEN 1010 & 1011 MELVILLE EXT 3**, arrear rental and unpaid cost recoveries and expenses incurred and any amounts due in respect of any administration Agreement in respect of **ERVEN 1010 & 1011 MELVILLE EXT 3** up to the date of registration of the Cession shall be for the benefit and account of the **SELLER**. Within 45 (forty five) business days after the date of registration of the



Cession, the **SELLER** shall prepare, at the cost of the **SELLER**, an adjustment account in respect of the deposits held and income and expenditure of the **Leasehold Right(s)** and/or **ERVEN 1010 & 1011 MELLVILLE EXT 3** up to the date of registration of the Cession and the **PURCHASER** and the **SELLER** shall pay or receive as the case may be, such amount as may be reflected in such account within 3 (three) business days thereof.

10.2. Notwithstanding the delay in respect of the preparation of ~~an~~ adjustment account, the **SELLER** shall be obliged within 14 (fourteen) days of the date of registration of the Cession, to account and pay over to the **PURCHASER**, the gross rental and cost recoveries received by it in respect of the month during which the registration of the Cession occurred, pro-rated, unless expenses incurred are anticipated by the **SELLER**, in respect of the period subsequent to the date of registration of the Cession and to which rental and cost recoveries the **PURCHASER** would be entitled, provided, to the extent that any tenant may not have, as at the date of registration of the Cession, paid the rental and cost recoveries in respect of the month in which the registration of the Cession occurs, the **SELLER** will not be liable for any such shortfall, provided that any rental and cost recoveries received by the **PURCHASER** after the date of registration of the Cession but pertaining to the period prior to the date of registration of the Cession, shall immediately be paid over to the **SELLER** in respect thereof ~~(in the event of there being any amounts outstanding to the **SELLER** on the date of registration of the Cession, all amounts received by the **PURCHASER** from the tenants on or soon after the date of registration of the Cession shall be deemed to be payment for the period prior to registration of the Cession unless specified otherwise by the tenant).~~



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11. EXISTING TENANCIES and LEASES

Upon acceptance of this offer...

11.1 ~~Once the Attorneys confirm in writing to the Seller that all the suspensive conditions contained herein have been fulfilled and the guarantees required to secure the purchase price have been provided, the Seller shall not renew any Leases or enter into negotiations concerning the Leases or any new leases without consulting the Purchaser.~~ *(NB: This is due to + purchaser needing to have all leases after cession so we need to be involved)*



11.2 Once the foregoing conditions have been fulfilled, the Seller shall refer any enquiries from future lessees to the Purchaser who shall be entitled to request the Seller to enter into a lease with such lessee at the risk of the Purchaser and subject to the Purchaser being liable for the payment of brokers commission or any tenant installation costs.

11.3 On or after the Date of Cession the Seller shall, where possible, cede its rights under any rental or other guarantees or suretyships or similar undertakings relating to Leases to the Purchaser it being noted that certain guarantees are not necessarily capable of cession to the Purchaser.

11.4 The **Leasehold Right(s)** are sold subject to all existing tenancies.

11.5 The **PURCHASER** shall be bound by the terms and conditions of all existing subleases, of which he acknowledges he is fully apprised. The **SELLER**, from registration of Cession, cedes, makes over and assigns all its rights and obligations in and to the subleases to the **PURCHASER** who accepts such cession and assignment.

Once we have received and reviewed all such documents and he is fully apprised/satisfied thereof.

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[Handwritten signatures]



11.6 If any tenant is in arrears with rental due to the **SELLER** in respect of the leases, the **SELLER** shall be entitled, but not obliged, to proceed with or take :-

11.6.1 any legal action or other proceedings against such tenant; and

11.6.2 a civil judgment against the tenant and/or evict the tenant from the leased premises concerned;

11.6.3 enforce any of its rights in terms of the leases.

11.7 If the **SELLER** wishes to either renew the leases or enter into new leases, it shall be entitled to do so, provided that it obtains written approval from the **PURCHASER**.



11.8 In the event that the **SELLER**, after complying with the provisions of clause 11.8, enters into a new sublease agreement in respect of the **ERVEN 1010 & 1011 MELLVILLE EXT 3** and/or buildings or renews the existing subleases, the **PURCHASER** shall be liable for the pro-rata commissions and tenant installation costs related thereto for the period of such leases or renewal beyond the date of Cession.

11.9 All deposit/s paid by tenants in terms of the leases, shall be dealt with in accordance with the Adjustment Account referred to in clause 10, provided that if at any time before the date of Cession, any tenant fails to comply with its obligations in terms of the lease and/or there are any amounts owing to the **SELLER** by any tenant in terms of the subleases, the **SELLER** shall be entitled to appropriate such deposit towards payment of the outstanding amount owing to the **SELLER**.

By Q
(NEW)
W.S.O



Final RULES OF AUCTION – v1

11.10 All payments received from tenants in terms of the leases after the date of Cession shall in the first instance be appropriated towards any amounts owing by the tenants to the **SELLER** in terms of the leases prior to the date of Cession and thereafter towards amounts owing to the **PURCHASER** by the tenants for the period after the date of Cession.

[Handwritten initials]

12. ALTERATIONS, ADDITIONS, REPAIRS OR IMPROVEMENTS



12.1. Prior to registration of the Cession, the **PURCHASER** may not effect any alterations, additions, repairs or improvements to the **ERVEN 1010 & 1011 MELVILLE EXT 3** without the prior written consent of the **SELLER**.

12.2. The **SELLER** need not compensate the **PURCHASER** for any authorised alterations, additions, repairs or improvements effected if the sale is cancelled for any reason whatsoever.

12.3. The **PURCHASER** shall be liable for any and all damages suffered by the **SELLER** as a result of any alterations, additions, repairs or improvements effected by the **PURCHASER**, not authorised by the **SELLER**, including but not limited to restoring the property to the condition it was in prior to such alterations, additions, repairs or improvements.

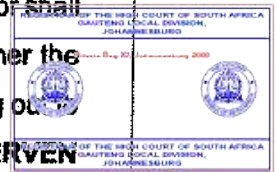
13. VOETSTOOTS, WARRANTIES AND REPRESENTATIONS

13.1. The **ENTERPRISE** is sold "voetstoots" and the Seller gives no warranty with regard thereto and/or **ERVEN 1010 & 1011 MELVILLE EXT 3**, whether expressed or implied. The Property is sold subject to the terms and conditions as mentioned in **Notarial Deed of Lease K1350/2000L** (as amended by K721/2015L) read together with the notarial deed of

[Handwritten signatures]



cession and assignment K722/2015L, and the Purchaser acknowledges that **ERVEN 1010 & 1011 MELVILLE EXT 3** will be leased to the Purchaser "voetstoets", and is subject to the terms and conditions and servitudes 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 **ERVEN 1010 & 1011 MELVILLE EXT 3**.



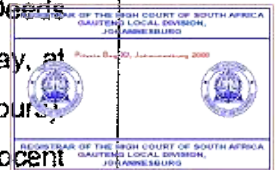
13.2. The PURCHASER acknowledges that he has not been induced into entering into this Agreement by any express or implied information, statement, advertisement or representation made or given any warranties in respect of the Leasehold Right(s), ERVEN 1010 & 1011 MELVILLE EXT 3 or anything relating thereto, by the AUCTIONEER or any other person, or by or on behalf of the SELLER if same is not recorded in this Agreement.

The PURCHASER acknowledges that he has fully acquainted himself with the Leasehold Right(s) that he has purchased and rights acquired in respect of the use and occupation of ERVEN 1010 & 1011 MELVILLE EXT 3 alternatively that he/she has elected to purchase the PROPERTY without fully acquainting him/herself with the Property and ERVEN 1010 & 1011 MELVILLE EXT 3.



14. BREACH OF CONTRACT

14.1: Where one of the Parties commits a breach of this Agreement or fails to comply with any of the provisions hereof, then the Innocent Party shall be entitled to give the Defaulting Party 7 (seven) business days' notice in writing to rectify such breach or failure (unless such breach or failure occurs after the Cession 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 the it may have in law, including the right to claim damages:



14.1.1. to cancel this Agreement and upon such 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

14.1.1.2. if the defaulting party is the **SELLER** the **PURCHASER** shall be entitled to claim a full refund of all money paid in terms of this agreement from the **SELLER** (~~but not from the Auctioneer~~) that it has paid arising from the **SELLER's** default;

(ALTERNATIVELY)



- 14.1.2. to claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.
- 14.2. On cancellation of this Agreement for any reason, the **PURCHASER** hereby undertakes to forthwith vacate **ERVEN 1010 & 1011 MELVILLE EXT 3** and to procure that **ERVEN 1010 & 1011 MELVILLE EXT 3** shall be vacated by any persons who occupy **ERVEN 1010 & 1011 MELVILLE EXT 3** through the **PURCHASER'S** title or under his permission. Occupation shall be re-delivered in the same good condition as at the date of occupation.
- 14.3. No tenancy or rights in connection therewith shall be deemed to have been created either in terms of any statute or at common law.
- 14.4. Where the **PURCHASER** pays any amount as required under these Rules of Auction, the parties record and agree that the **AUCTIONEER** shall be entitled to deduct its commission as a first charge against such monies and then the Auctioneer may recover any shortfall from the **PURCHASER**.
- 14.5. The deduction by the **AUCTIONEER** of its commission or other costs due to it will not constitute a release of **PURCHASER** from any other obligations arising from these Rules of Auction.



15. LEGAL COSTS

The Defaulting Party shall be liable for all legal costs incurred by the Innocent Party, the **AUCTIONEER** and their Agents / Attorneys incurred in enforcing this agreement, on an Attorney and own client scale, including collection commission.

A handwritten signature in black ink, appearing to be 'D. W. ...' followed by a stylized flourish.



16. DOMICILIUM CITANDI ET EXECUTANDI – ADDRESS FOR SERVICE OF DOCUMENTS

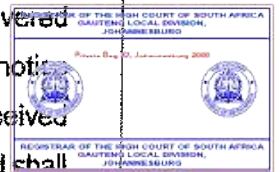
16.1. The **PURCHASER** and the **SELLER** hereby select as their chosen *domicilium citandi et executandi* for all purposes in respect of these Rules of Auction, including all notices and Court process to be delivered in terms hereof, the addresses recorded in this agreement. Any notice sent by pre-paid registered post shall be deemed to have been received on the fifth business 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.

16.2. 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.

16.3. Any notices or communications required to be sent by either party to the other may be sent using email or fax.

17. JOINT AND SEVERAL LIABILITY

Where there is more than one **PURCHASER**, the liability of all such **PURCHASERS** to the **SELLER** and to the **AUCTIONEER** shall be joint and several *in solidum*.



[Handwritten signature]



18. SECTIONS 112 and 115 OF THE COMPANIES ACT – SPECIAL RESOLUTION

- 18.1. The **SELLER** and the **PURCHASER** are aware of the provisions of Sections 112 and 115 of the Companies Act 71 of 2008 (as amended) ("Section 112 and 115"), namely that if the **SELLER** is a company and if the **Leasehold Right(s)** 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 sell the **Leasehold Right(s)**.
- 18.2. Accordingly, the **SELLER** warrants that the provisions of Sections 112 and 115 are / are not (delete as appropriate) applicable to the sale of the **Leasehold Right(s)**.
- 18.3. If Sections 112 and 115 are applicable to the sale of the **Leasehold Right(s)** and if the directors of the **SELLER** have not already been granted the necessary authority in terms of Sections 112 and 115 to dispose of the **Leasehold Right(s)**, then within 45 (forty five) business days of the acceptance date the **SELLER** shall procure that its shareholders pass a special resolution ratifying the sale of the **Leasehold Right(s)**.
- 18.4. In addition to what has been stated above and if the transaction requires an amendment to the **SELLER's** memorandum of incorporation in order to give effect to such transaction, then in such event the **SELLER** shall take those steps necessary in order amend the **SELLER's** memorandum of incorporation and the **SELLER** warrants that the rights of any minority shareholders will have been dealt with and protected.



A handwritten signature in black ink, appearing to be 'G. M.' or similar, written over a vertical line.



19. **NOMINEE**

The **PURCHASER** shall be entitled, by notice in writing to the **SELLER** or to the **SELLER's** Attorney, to nominate a nominee in his place as **PURCHASER**, but only on the following terms and conditions:

19.1 the nomination shall be delivered to the **SELLER** by not later than 24h00 on the same day as the acceptance by the **SELLER**;

19.2 the notice shall clearly set forth the name and address of the nominee to be nominated as **PURCHASER**;

19.3 the notice shall be accompanied by the nominee's written acknowledgement and acceptance of the nomination, including a confirmation by the nominee:

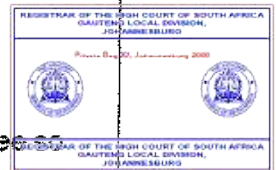
19.3.1 that it is fully aware of all of the terms and conditions of these Rules of Auction as if fully set out in such written acknowledgement; and

19.3.2 that it undertakes to irrevocably be bound by the provisions of these Rules of Auction as the **PURCHASER**;

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

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

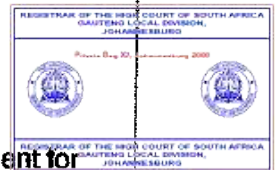
19.4.2 the original **PURCHASER** by his signature hereto, hereby interposes and binds himself as surety and co-





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 nominated PURCHASER'S obligations under this agreement, including but not limited to damages, and renounces the benefits of division and *excussion*.

20. COMPANY TO BE FORMED



20.1 Where the PURCHASER signs 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 the 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.

20.2 In the event of such company being registered and duly adopting or ratifying this agreement, or the nomination effected, then the person signing this document on behalf of the PURCHASER by his signature hereunder, shall be deemed to bind himself to the SELLER 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.

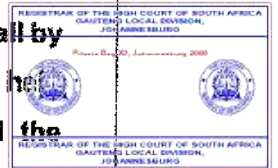
21. COMPANIES, CLOSE CORPORATIONS, ASSOCIATIONS OR TRUSTS

21.1 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 of its obligations arising from this agreement.

21.2 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 be 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 20.



22. ELECTRICAL INSTALLATION CERTIFICATE OF COMPLIANCE

There shall be no obligation on the SELLER to provide the PURCHASER with an electrical compliance certificate for ERVEN 1010 & 1011 MELVILLE EXT 3.

23. DISPUTE RESOLUTION: MEDIATION THEN ARBITRATION

23.1 Should any dispute, disagreement or claim arise between the parties, including a dispute between both or one of the parties and the AUCTIONEER, ("the dispute") in connection with this agreement then the parties shall, notwithstanding anything to the contrary contained herein, have the right, but not be obliged to:



23.1.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa ("AFSA"), upon such terms as agreed between the parties and the secretariat of AFSA; and

23.1.2 falling agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the parties shall refer the dispute to final arbitration as provided below.

23.2 Unless otherwise agreed in writing by all the parties, any mediation or arbitration shall be held in Sandton, Johannesburg South Africa.



23.3 The decision of the arbitrator shall be final and binding on the parties and may at the election of any party be made an order of the court. The parties agree that the arbitrators decision shall be final and binding on them and hereby waive any right to an appeal they might otherwise have enjoyed.

23.4 Once evoked, the parties shall not be entitled to withdraw from the arbitration process unless by written agreement between them.

24. MAGISTRATES' COURT JURISDICTION

The Parties consent to the jurisdiction of the Magistrates' Court in terms of Section 45 read with Section 28 of the Magistrates' Court Act of 1944 as amended. Nothing contained herein shall preclude a party from approaching a relevant division of the High Court should they deem it necessary.



25. **GENERAL CLAUSES**

25.1 This document constitutes the whole agreement between the Parties and no agreement, representation or warranty not contained herein shall be binding on the Parties.

25.2 This agreement shall be governed by the Laws of the Republic of South Africa.

25.3 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 writing and signed by all the Parties.

25.4 No variation, alteration or cancellation of this agreement (including this clause) shall be binding unless reduced to writing and signed by the Parties or their authorised representatives.

25.5 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.

25.6 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 and shall remain bound hereto.

25.7 The **SELLER** and the **PURCHASER** warrant that they are duly authorised to sign these Rules of Auction.



[Handwritten signatures]



26 SALE

Until the Date of Cession, the Purchaser may not sell, cede or assign the Purchasers rights under this agreement to any third party nor may the Purchaser sell the rights in the Leasehold Right(s) or the Enterprise without the prior written consent of the Seller.

THIS PROPERTY CAME UNDER THE HAMMER ON THE:

22nd DAY OF MAY 2024

And was knocked down for the sum of:

R 19 250 000 - 00

(words)

NINETEEN MILLION, TWO HUNDRED AND FIFTY

THOUSAND RAND

(PLUS VALUE ADDED TAX IF APPLICABLE)



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ADDITIONAL CLAUSES *CS*

- It is noted that the indicative time to complete the business rescue process is approximately 3 months from date of acceptance.
- All information relevant to the deal, including but not limited to the Centre, the tenants, leases, etc will be available immediately upon acceptance of the offer.

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Final RULES OF AUCTION - v1

TO:
COMPANY/ CLOSE CORPORATION/ TRUST/ OTHER
SPV TO BE FORMED

(hereinafter referred to as the "PURCHASER")

REGISTRATION NO.:

ADDRESS:
26 MURFIELD ROAD
EMMARENTIA



CONTACT DETAILS:(Landline)
(Email) irshaad.yusuf@gmail.com
(Mobile) 083 626 3291

OR TO:
MR/MRS/MS

(hereinafter referred to as the "PURCHASER")

IDENTITY OR PASSPORT NO.:

PHYSICAL ADDRESS:

TELEPHONE DETAILS: (home _____
(Work) _____
(Email) _____
(Mobile) _____

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

SPOUSE'S NAME _____

SPOUSE'S ID NO _____

Final RULES OF AUCTION -v1



SIGNED BY THE PURCHASER AT EMMALENTIA ON THE 22ND DAY OF May 2024

AS WITNESS:

1.

[Signature]

PURCHASER (and where applicable, the signatory binding himself as surety and principal debtor *in solidum*)



AS WITNESS:

1.

[Signature]
BROLL AUCTIONS AND SALES CORPORATE (PTY) LTD he being duly authorised (Accepting all of the rights available 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:

[Handwritten initials]





RESOLUTION - CLOSE CORPORATION

EXTRACT FROM THE MINUTES OF A MEETING OF THE MEMBERS OF

HELD AT ON

RESOLVED THAT:



- The CLOSE CORPORATION BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

from _____

for R _____

- 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.

Certified a true copy,

MEMBER

MEMBER

MEMBER

MEMBER



RESOLUTION - COMPANY

EXTRACT FROM THE MINUTES OF A MEETING OF THE DIRECTORS OF

HELD ATON

RESOLVED THAT:



1. The Company BUYS all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

_____ 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.

Certified a true copy,

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR



RESOLUTION - TRUST

EXTRACT FROM THE MINUTES OF A MEETING OF THE TRUSTEES OF

.....

HELD ATON

RESOLVED THAT:



1. The Trust purchases all of the lessee's rights, title and interest in and to a notarial deed of lease registered under _____ and concluded between _____ (as lessee) and _____, Registration Number. _____ (as lessor) over

from _____

for R _____

3. 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.

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:



Company (private and unlisted public)

- [1] Certificate of Incorporation (CM1); and
- [2] Certificate of change of name of company (CM9) (if applicable); and
- [3] Notice of Registered Office and Postal Address (CM22); and
- [4] Contents of Register of Directors, Auditors and Officers (CM29); and
- [5] Proof of business address of the Company e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [6] Identification document(s) of the person(s) managing the Company e.g. ID book*;
and
- [7] Written confirmation of the residential address and contact particulars of the person(s) managing the Company; and
- [8] Resolution specifying who is authorised to act on behalf of the Company as well as
written confirmation of the company's shareholding; and
- [9] Identification document(s) of the person(s) authorised to act on behalf of the Company e.g. ID book*; and
- [10] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Company; and



Close Corporations (CC):

- [1] Founding Statement and Certificate of Incorporation (CK1); and
- [2] Amended Founding Statement (CK2) (if applicable); and
- [3] Proof of business address of the Close Corporation e.g. utility bill (not older than 3 months) reflecting the name and business address; and
- [4] Identification document(s) of the member(s) of the Close Corporation e.g. ID book*;
and
- [5] Written confirmation of the residential address and contact particulars of the member(s) of the Close Corporation reflecting the name and residential address;
and
- [6] Resolution specifying who is authorised to act on behalf of the Close Corporation;
and

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- [7] Identification document(s) of the person(s) authorised to act on behalf of the Close Corporation e.g. ID book*; and
- [8] Written confirmation of the residential address and contact particulars of the person(s) authorised to act on behalf of the Close Corporation.

Trusts:

- [1] Letters of Authority signed by the Master of the High Court; and
- [2] Trust deed or other founding document; and
- [3] Resolution specifying who is authorised to act on behalf of the Trust; and
- [4] Identification document(s) of the person(s) authorised to act on behalf of the Trust e.g. ID book*; and
- [5] Written confirmation of residential address and contact particulars of the person(s) authorised to act on behalf of the Trust; and
- [6] Identification documents of all the trustees and beneficiaries e.g. ID book*; and
- [7] Written confirmation of the residential address and contact particulars of all the trustees and beneficiaries; and
- [8] Identification document of the founder of the Trust e.g. ID book*; and
- [9] Written confirmation of the residential address and contact particulars of the founder of the Trust (if not deceased).



COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-104348**

In the matter between:

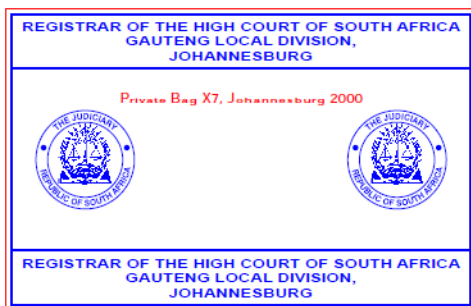
Plaintiff / Applicant / Appellant

and

City of Joburg Property Company (Pty) Ltd Defendant / Respondent

Annexure 04

NOTE: This document was filed electronically by the Registrar on 13/9/2024 at 11:52:26 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

"FA14"

REINSTATEMENT AGREEMENT IN RESPECT OF A SALE OF LEASEHOLD AGREEMENT



between

**BROLL AUCTIONS AND SALES PROPRIETARY LIMITED
REGISTRATION NUMBER 2014/250826/07**

on behalf of

WILD GOOSE TRADING AND SERVICES 39 CC (IN BUSINESS RESCUE)

And

**PAGEVIEW HOLDINGS (PTY) LTD
REGISTRATION NUMBER 2020/106272/07
REPRESENTED BY MR IRSHAAD YUSUF**

CR
CDH
CLIFFE DEKKER HOFMEYER 

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3 INTRODUCTION 4
4 REVIVAL OF PRINCIPAL AGREEMENT 4
5 AMENDMENT OF PRINCIPAL AGREEMENT 4
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Annexure A: Initial Agreement



CLIFFE DEKKER HOFMANN

1 PARTIES

1.1 The Parties to this Agreement are –

1.1.1 Wild Goose Trading and Services 39 CC (In Business Rescue)

1.1.2 Broll Auctions and Sales Proprietary Limited with Registration Number 2014/250826/07;
and

1.1.3 Pageview Holdings (Pty) Ltd represented by Mr Mohammed Irshaad Yusuf.

1.2 The Parties agree as set out below.

2 INTERPRETATION

In this Agreement –

2.1 "Auctioneers" means Broll Auctions and Sales Proprietary Limited with Registration Number 2014/250826/07, a company registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;



2.2 "Agreement" means this reinstatement agreement;

2.3 "Parties" means the parties to this Agreement;

2.4 "Principal Agreement" means the Sale Agreement concluded between the Parties on 22 May 2024 in terms of which the Seller sold to the Purchaser its leasehold rights in and to the Property, on the terms and conditions set out therein;

2.5 "Property" means the leasehold rights in and to Erven 1010 and 1011 Mellville Extension 3 Township, Registration Division IR, Province of Gauteng as described in the registered Notarial Lease K1350/2000L as Portion 402 (a portion of portion 190) of the Farm Braamfontein 53, measuring of 9907 (Nine Thousand Nine Hundred and Seven) square metres, held by virtue of Notarial Deed of Cession and Assignment of Lease K722/2015L;

2.6 "Purchaser" means Pageview Holdings (Pty) Ltd, Registration Number 2020/106272/07 a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, represented by Mohammed Irshaad Yusuf;

2.7 "Seller" means Wild Goose Trading and Services 39 CC, Registration Number 2008/019170/23, a close corporation registered and incorporated with limited liability in accordance with the company laws of the Republic of South Africa;

2.8 words and phrases defined in the Principal Agreement or in the annexures to the Principal Agreement will bear the same meanings herein.

3 INTRODUCTION

3.1 It is recorded that —

CLIFFE DEKKER HOFMEYR

3 INTRODUCTION

- 3.1 It is recorded that —
- 3.1.1 the Parties entered into the Principal Agreement;
- 3.1.2 the Principal Agreement was subject to the fulfilment of certain Conditions Precedent;
- 3.1.3 as a result of the non-fulfilment of certain of the Conditions Precedent contained in the Principal Agreement, the Principal Agreement lapsed and is of no further force or effect; and
- 3.1.4 the Parties wish to revive the Principal Agreement in accordance with the terms and conditions stipulated in 4 here below.
- 3.2 The Parties accordingly agree as set out herein.



4 REVIVAL OF PRINCIPAL AGREEMENT

By way of unanimous consent, the Parties hereby conclude a reinstatement agreement, mutatis mutandis on the terms and conditions set out in the Principal Agreement, with effect from the date upon which the Principal Agreement was signed by the Party signing last in time.

5 AMENDMENT OF PRINCIPAL AGREEMENT

- 5.1 Clause 2.1 of the Principal Agreement is amended as follows:
- "A deposit equal to 5% (Five Per Cent) of the purchase price will be payable into the trust account of the Auctioneers within 7 (Seven) business days from date of receipt of the consent from the JPC."
- 5.2 Clause 2.3 of the Principal Agreement is amended as follows:
- "The balance of the purchase price shall within 90 (Ninety) business days of signature of the Principal Agreement, be paid in cash or secured, to satisfaction of satisfaction of the transferring/Seller's attorneys, by a written guarantee, on terms acceptable to the Seller, from a registered South African Bank and shall be, payable free of exchange, deduction or set off, against registration of the cession of the Leasehold Right(s) by the Seller to the Purchaser ("Cession"). The Parties are able to extend the aforementioned period by mutual consent in writing
- 5.3 Clause 2.5 of the Principal Agreement is amended as follows:
- "The cession from the Seller to the Purchaser shall not occur without the consent of the Lessor, which consent shall be obtained within 30 (Thirty) business days from signature of this Agreement. The Parties are able to extend the aforementioned period by mutual consent in writing."

6 **WHOLE AGREEMENT**

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated herein shall be binding on the Parties.

7 **SIGNATURE**

7.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

7.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

7.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

7.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.



SIGNED at ITIKVO on 21 AUGUST 2024

For and on behalf of **BROLL AUCTIONS AND SALES PROPRIETARY LIMITED**

[Signature]
Signature
CARROLL HARRISON

Name of Signatory
REGIONAL HEAD
Designation of Signatory

[Signature]
CR
[Signature]
CLIFFE DEKKER HOFMEER

SIGNED at Roodepoort on 21 August 2024
WILD GOOSE TRADING AND SERVICES 39 CC (IN BUSINESS RESCUE)

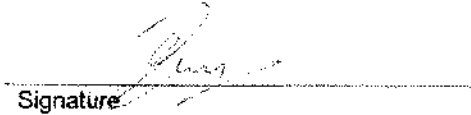


Signature
Chris Rey

Name of Signatory
BRP

Designation of Signatory

SIGNED at Emmarentia on 21 August
MOHAMMED IRSHAAD YUSUF ON BEHALF OF PAGEVIEW HOLDINGS (PTY) LTD



Signature

Mohammed Irshaad Yusuf
Name of Signatory

Director
Designation of Signatory

CLIFFE DEKKER HOFMEER



"FA15"

CLIFFE DEKKER HOFMEYR

 INCORPORATING
KIETI LAW LLP, KENYA

 11 Buitengracht Street Cape Town 8001
 PO Box 695 Cape Town 8000
 South Africa
 Dx 5 Cape Town

 T +27 (0)21 481 6300
 F +27 (0)21 481 6388
 E ctn@cdhlegal.com
 W cliffedekkerhofmeyr.com

Also at Johannesburg, Nairobi and Stellenbosch

City of Johannesburg Property Company SOC Ltd
 OBO City of Johannesburg Metropolitan Municipality

 Our Reference
 Account Number
 Your Reference
 Direct Line
 Direct Telefax
 Direct Email
 Date

 Belinda Scriba
 02063465
 021 405 6139
 belinda.scriba@cdhlegal.com
 29 August 2024

Attention: Tshupo Motakata
 By Email: TMokataka@jhbproperty.co.za

Dear Sir/Madam

**WILD GOOSE TRADING 39 CC t/a MELVILLE SPAR (under business rescue supervision) ("Wild Goose") / CITY OF JOHANNESBURG
 CONSENT REQUIRED IN TERMS OF THE NOTORIAL DEED OF LEASE (K2499/2000)**

- 1 We refer to the above matter and previous correspondences between our respective offices since March 2024.
- 2 We confirm that:
 - 2.1 we represent Wild Goose;
 - 2.2 a notarial deed of lease was concluded on 19 April 2000. This deed of lease was amended on two occasions, the first being 24 August 2006 and the second on 12 July 2023. The deed of lease, inclusive of its addendums, shall be referred to as the "**Lease Agreement**";
 - 2.3 the parties to the Lease Agreement include the City of Johannesburg Metropolitan Municipality ("**City**"), duly represented by the City of Joburg Property Company (SOC) Ltd ("**JPC**") and Wild Goose;
 - 2.4 the Lease Agreement pertains to a leasehold provided by the City to Wild Goose until 2050 (the second addendum to the Lease Agreement);

CHAIRPERSON TS Fletcher **CHIEF EXECUTIVE OFFICER** B Williams **CHIEF FINANCIAL OFFICER** ES Burger

DIRECTORS: JOHANNESBURG I Abdullah K Anderson JA Aukema G Barkhuizen-Barbosa R Beeman E Bester A Bezuidenhout TE Brincker JJ Brink B Brown A Cachalia V Chaplin CWJ Charter CJ Daniel A de Wet N Dhana DV Durand C Dutilleul P Erasmus JJ Faris TS Fletcher F Gattoo MZ Gattoo L Granville TC Gray N Harduth I Hayes E Hewitt AJ Hofmeyr Q Honey WH Jacobs R Kelly M Khumalo J King Y Kleitman AM le Grange FE Leppan CJ Lewis HJ Louw N Mabheba-Millo LT Mabidikane II Mahomed N Mahomed S Makara V Manko K Mantengu C McKinlay B Meyer J Meyer R Moodley A Moolman MG Mphahudi C Murray P Nkuna H Parak A Patel DB Pinnock C Rumsey M Serfontein TP Smil L Smith S Spamer T Suliman T Tosen R Valayathum M van der Westhuizen JG Webber ER West JG Whittle DA Wilken B Williams A Young

DIRECTORS: CAPE TOWN TN Baker TJ Brewis MR Collins A de Lange JHB de Lange S Franks AJ Gilliam J Gillmer AJ Hannie PB Hesseling S Immelman JAD Jorge A Kariem D Kruger B Mangale RE Marcus SI Meyer Y Mkefa W Murray GH Pienaar L Rhooie MB Rodgers BJ Scriba DM Thompson A Van Niekerk CW Williams

EXECUTIVE CONSULTANTS: RD Barendse M Chenia FT Newham V Ramsaroop AG Reid

CONSULTANTS: A Abercrombie S Dickson JMA Evenhuis JH Jacobs EJ Kingdon T van Schalkwyk C Wambua*

COUNSEL: N Amardien J Ewang NK Fletcher SM Kelly A Pienaar TZ Rapuleng CA Wood

SENIOR ASSOCIATES: AF Ackermann S Allen *HO Amondo O Brink AJ Carstens KC Chimedza V Connolly S Hariram L Kara *RS Kashero-Ondego H Khote NM Khumalo *D Kiragu S Kruger L Lobola JA Loser KL Mashamba L Masuku R May K Middleton V Moodley L Moosa MN Mhembu *BI Muchiri *CW Mugenyu *AM Mutie *D Mwangi D Naidoo C Oates MK Phashe K Pillay MA Ramanyimi E Roos J Ross KKA Seieka T Sentle Z Shaik J Smith C Stievenart L van Schalkwyk BC Wits - Hewinson GMN Xaba C Yang TM York

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: GC Badenhorst ES Burger JA Cassette AB Hoek TC Jangara R Mouton B Williams

KIETI LAW LLP PARTNERS: NAIROBI S Ndolo*⁵ D Odhiambo* S Otanga* SN Situma* N Wagacha* AM Kanyi* MAW Mbugua* L Owuor* L Onyango*

⁵British *Dutch *Kenyan

Cliffe Dekker Hofmeyr Inc. Reg No 2008/018923/21

29 August 2024

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- 2.5 the material terms of the Lease Agreement include, but are not limited, to the right for Wild Goose to cede the leasehold provided that they *inter alia* obtain the necessary consent from the City to transfer the lease (clause 8.9 of the original Lease Agreement);
- 2.6 the consent referred to in paragraph 2.5 above may not be unreasonably withheld by the City (clause 8.9 of the original Lease Agreement);
- 2.7 our letter of 19 August 2024 sets out in detail the authority given by JPC to provide the aforesaid consent referred to in paragraph 2.5 above on behalf of the City. We have enclosed a copy of this correspondence for your ease of reference;
- 2.8 on 19 September 2023 Wild Goose was placed under business rescue supervision by the Gauteng High Court;
- 2.9 in terms of the approved business rescue plan the business rescue practitioners ("**BRPs**") were mandated to sell Wild Goose's leasehold rights under the Lease Agreement;
- 2.10 the City and JPC have at all relevant times been made privy to the business rescue process and the business rescue plan. The City is in fact listed as a concurrent creditor in the said plan;
- 2.11 in order to fulfil their mandate to sell the leasehold rights the BRPs have since at least 20 March 2024, through our offices, been attempting to obtain the consent to transfer the leasehold rights;
- 2.12 on 22 May 2024 the BRPs secured a purchaser (being Pageview Holdings (Pty) Limited ("**Pageview**") for the leasehold rights via an auction sale. The sale agreement concluded with Pageview was obviously made subject to the consent required from JPC in terms of the Lease Agreement;
- 2.13 the delay in obtaining JPC's consent caused the sale agreement with Pageview to expire;
- 2.14 fortunately, the BRPs have managed to negotiate a reinstatement of that agreement with Pageview. A copy of this reinstatement agreement is enclosed with this letter;
- 2.15 however, this reinstatement agreement requires that the BRPs obtain the JPC consent by no later than 3 October 2024;
- 2.16 on 5 August 2024 JPC has indicated that they are comfortable with providing their consent for the leasehold transfer, however, for various reasons do not consider themselves authorised to officially provide this consent. In other words, but for JPC being of the view that the City needs to provide the necessary consent in the circumstances JPC would otherwise consent to the transaction;
- 2.17 we have dealt extensively, in our 19 August 2024 letter, as to why the reasons provided by JPC for withholding the consent are based on incorrect assumptions. There is therefore no reason, given JPC's willingness to approve the sale, to withhold formal consent to the transaction;
- 2.18 given the above, there now seems to be no further impediments as to why JPC cannot provide its required consent to the leasehold transfer to Pageview, and withholding it at this juncture is, with respect, unreasonable;
- 2.19 should JPC continue to further delay providing its consent it has the potential of jeopardising the sale to Pageview, which sale includes a substantial payment to the City (in terms of section 118 of the Local Government Municipal Systems Act 32 of 2000) as well as a sale proceeds injection of R19,250,000.00 into rescuing the business of Wild Goose; and
- 2.20 if the sale does fall away it is highly likely that the BRPs will have to convert the business rescue into a liquidation. This is obviously not in the best interests of any of the parties involved in the rescue, including the City.
- 3 Given the delay in obtaining JPC's consent to date our client has requested that we place JPC on notice in respect of their current breach of the Lease Agreement (and placing the City in breach) in unreasonably withholding their consent to the leasehold transfer to Pageview.
- 4 JPC is requested to remedy this breach by no later than close of **9 September 2024**, failing which Wild Goose will have to consider the further options open to it in seeking to rescue the transaction with Pageview including,



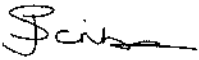
29 August 2024

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but not limited to, approaching the court for the necessary relief. Furthermore, should the transaction fail as a result of consent being unreasonably withheld, then Wild Goose is entitled to hold the City and JPC liable for the loss suffered by it in the loss of the sale. This loss would be, at the very least, R19,250,000.00.

- 5 We trust that JPC has no desire to expose itself or the City to either further litigation and/or a potential liability of R19,200,000.00, and that JPC shall urgently deal with this matter and, failing any good reason to the contrary, provide its official consent to the transfer of the leasehold to Pageview
- 6 We await your urgent response.
- 7 Our client's rights remain strictly reserved.

Yours faithfully



BELINDA SCRIBA
CLIFFE DEKKER HOFMEYR INC



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3rd Floor
Forum 1
Braam Park
33 Hoofd Street
Braamfontein
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PO Box 31565
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Fax +27(0) 10 219 9400

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CLIFFE DEKKER HOFMEYR INC
JHB REAL ESTATE
1 PROTEA PLACE SANDTON
JOHANNESBURG

Attention: Lungelo Mkhize/Ceciley Oates/John Webber

29 August 2024

Dear Sirs



**RE: "WILD GOOSE TRADING 39 CC t/a MELVILLE SPAR (under business rescue supervision) ("Wild Goose") / CITY OF JOHANNESBURG
CONSENT REQUIRED IN TERMS OF THE NOTARIAL DEED OF LEASE (K2499/2000")**

1. We refer to the aforementioned matter and your letters of 29 August 2024 and 19 August 2024.
2. This is no attempt to deal with all allegations, raised in your letters under reply. We reserve our rights to do so, at a later stage, should it become necessary.
3. We have taken notice of the BRP plan. It is, however, not clear how the JPC and CoJ, "have been made privy" to the Business Rescue process and Business Rescue plan. Apart from noting that, the CoJ and BRP had negotiations; that these related to a payment arrangement, JPC, has no further information, regarding same.
4. Our view is simply that, the negotiations the CoJ, may or might not have had, apropos "payment arrangement" are one thing. The Notarial lease Agreement and its sale, are another. As CDH is aware, the CoJ and Wild Goose, concluded a Notarial Lease Agreement. They, together with Nedbank, further concluded another agreement, namely, a tri-partite agreement. Neither the Notarial Lease Agreement nor the tri-partite agreement, contemplated business



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Forum 1
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33 Hoofd Street
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rescue. CDH conceded that the tri-partite agreement, omitted to anticipate Business rescue. This, it said was, "an oversight".

5. Prior to considering cession of the Notarial Lease Agreement and consent thereto, there is the question of sale of the Notarial Lease Agreement. As indicated, neither agreements in place, provided for business rescue. They, also did not provide, for sale of the Notarial Lease Agreement.
6. In reply to our question previously, CDH indicated that, the sale at auction, is not "*in execution of the judgment of a court*", as contemplated in clause 7.1 of the Tripartite Agreement. The sale was also not, a result of an execution, of any other Council-approved Agreement or process, either. Nor was it a culmination of compliance with the provisions of section 79 (18) (a) and (b) of the Local Government Ordinance. That, is the process the CoJ followed, to obtain the initial authority, from its council to conclude, the Notarial Lease Agreement. That initial authority did not entail authority, for CoJ, to approve or support sale of the Lease Agreement.
7. There is nothing in the JPC POA, which authorizes JPC, to approve or support sale of the CoJ Lease Agreement at auction. The POA does not deal with auctions, at all.
8. On 20 March 2024, CDH informed the JPC of the lease Sale. CDH said that, "*the BRP now wants to take the disposal of the lease of the property to auction*". CDH attached "*a copy of the final conditions of action for your information*". JPC was just being informed.
9. Then CDH told the JPC, "*we look forward to receiving your confirmation that the JPC, as agent of the CoJ, will support the sale of the Lease and party to the subsequent deed of cession and assignment of the lease to the purchaser*". It has never been clarified, on what



¹CoJ appears to have been listed as a concurrent creditor. This want by the BRP to take the lease to auction, does not appear to have included the CoJ or JPC, as Lessor in the Lease Agreement or JPC as the supposed "Agent" of the CoJ.



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Nonobikoyise Tim | Sivuyiswe Gwebani | Thapelo Mashamaite |
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basis did CDH decide to, "look forward to receiving, your confirmation that the JPC, as agent of the CoJ will support the sale".

10. This appears to have been based on an assumption. An assumption that JPC, had some authority to support the sale. Only because JPC is seen, as an agent of the CoJ. The assumption is incorrect. It had been taken, as a foregone conclusion that, JPC will support the sale. It was thought, a JPC official, just merely had to "confirm" the JPC support. We think this to be respectfully, incorrect.



11. As indicated before, the JPC is not "an agent" of the CoJ. Even if it was (which is not), the JPC has no authority to and could not have supported the sale of the lease. It would need council authority or permission from a delegated authority within the CoJ, to do so. The JPC POA does not contain, authority for such support by JPC. The CoJ, if it so minded, would then, communicate its position to JPC.

12. As indicated previously and in this letter, the tripartite agreement and the Notarial lease agreement, do not confer such rights upon the JPC. These are the only legal instruments, both parties have had, to regulate their relationship. The agreements do not oblige, the JPC to provide any such support. Nor do they impose, an obligation on the CoJ, to consent to a sale of its lease Agreement with Wild Goose, to any person. Wild Goose voluntarily chose business rescue. We deny that JPC or CoJ, is in breach of the Notarial Lease Agreement.

13. Contrary to the assertion, stated at paragraph 2.17, of CDH letter of 29 August 2024, the JPC does not hold, any authority to approve, the sale of the Notarial Lease Agreement. It is incorrect to state that, JPC is willing to approve the sale. No such willingness has been demonstrated by the JPC. The JPC is not possessed of the requisite authority to do so. The JPC has no authority, to approve a sale at auction, of a CoJ Lease Agreement. Nor does it have authority to support a sale of a lease Agreement, CoJ entered into with any person. Even



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the JPC POA, referred to in your letter of 19 August 2024, supports our view. Paragraph 1.2 reads:-

"to recommend to the council, immovable properties registered in its name for sale, valued above R 500 000-00 (five hundred thousand), as well as the reserve price and the process of disposal and to negotiate and finalise the sale of these properties after approval from council, and in terms of section 79 (18) of the Local Government Ordinance, 1939 (no.17 of 1939) transfer these properties including signing of all related documentation to give effect to the sale of the property".



14. The lease agreement, as *the* property, in this case, is not. The Seller is Wild Goose. Not the CoJ. The JPC appears to have been a bystander. The CoJ, was listed, as a concurrent creditor. This listing centred on another matter.
15. The foregoing paragraphs are not assumptions. They are facts. They are correct.
16. As for the consent to the cession or the JPC being party thereto, our letter of 5 August 2024, contains no intimation, that the JPC is *"comfortable with providing their consent for the leasehold transfer"*.
17. In our telecon with CDH in August 2024, we made it clear that, we are of the view that, we must approach the CoJ for permission. CDH indicated that the Business Rescue process, is developing law. CDH indicated that, it may obtain a legal opinion. But also indicated that, it may consider litigation. Our response was that, we would deal with same, if/when it arrived. Yet in one of the letters CDH, appeared to agree to allow the JPC time, to obtain the requisite authority.



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18. We have stressed that, both the Notarial Lease Agreement and the tri-partite Agreement, do not deal with Business rescue. The tri-partite agreement was expressly concluded to protect the security of the bank². Clause 4.4, in the appropriate circumstances, was designed to afford the CoJ the opportunity to exercise the consent contemplated therein, by considering the issues referred to, at paragraph 4.4.1 and 4.4.2. In our telecon with CDH, in August 2024, we indicated that we are obliged to act, in the best interests of the CoJ. The considerations set out, in these paragraphs 4.4.1 and 4.4.2, would allow the CoJ, to at least act, toward that objective. We are mindful that these provisions may not have any application to the business rescue process. These would unfold in circumstances, in which the Bank exercised step-in-rights. The situation is instead business rescue and sale of lease agreement.



19. Much has been about paragraphs 8.9.1 and 8.9.1.1 of the Notarial Lease Agreement. For the reasons set hereinabove and our previous correspondence, we have already indicated that, we do not believe that, the JPC has the requisite authority, to consent to the cession, to the purchaser of the Lease Agreement³.

20. To amplify this point, we do not dispute that the JPC, serves the CoJ, as contemplated in the POA. Our point is that, its ability to do so, is clearly constrained. This is informed by a council resolution, in each case.

21. We have already indicated that:-

21.1 a council resolution did not trigger the sale of the notarial lease agreement.

21.2 that the sale was not in execution of a judgement of a court, as contemplated in the tripartite Agreement;

² Paragraph 2.3 thereof.

³ The JPC has taken note of the name of the entity in the reinstatement agreement, which has now been shared with JPC.



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Tshepang Thatefo | Yolisa Ngxabazi | Moeketsi Rabedisa |

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Forum 1
Braam Park
33 Hoofd Street
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- 21.3 the sale was triggered by Wild Goose, to attempt to rescue the company;
- 22. Other than the final conditions of auction, shared with JPC for information, the JPC has had no further information on the sale.

23. For the first time, we have now learned that:-



- 23.1 there was a principal agreement between Wild Goose and purchaser;
- 23.2 that the principal agreement had lapsed due to non-fulfilment of certain conditions by the purchaser;
- 23.3 that the Wild Goose and purchaser agreed to revive the principal agreement; the parties signed the revival agreement on 21 August 2024.
- 23.4 a deposit equal to 5% of the purchaser price will be payable into the trust account of the Auctioneers within 7 business days from date of receipt of consent from the JPC.

24. A copy of the final conditions of auction, shared with JPC had indicated that 5% of the deposit shall be payable on the fall of the gavel.

25. The JPC is expected to consent, to a cession and assignment of a lease. This being a lease, which has been sold, in the circumstances described above. In other words, as a result of processes, which the CoJ resolution and Agreements do not make provision for.

26. The JPC is not a party to the reinstatement agreement. That, notwithstanding, there is a clause therein requiring a consent from JPC.



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27. As indicated above, the JPC, for the reasons stated above, shall not be able to provide, such a consent, without authorization by the CoJ.

28. The JPC has no authority to represent CoJ, in a transaction involving sale of a CoJ notarial Lease Agreement. It has no authority to consent to cession of such a lease agreement. Whether this is akin to a normal transaction or not. We are of the view that, JPC has no such authority.



29. Clause 8.9.1.1 of the Lease Agreement, provides that, the Lessee shall apply in writing to the NMLC and the consent in writing of the NMLC, shall first be obtained, which consent shall not be unreasonably withheld.

30. In our view, the sale of the Notarial lease agreement was not contemplated in the resolution of council. That was the resolution taken in terms of section 79 (18) of the LGO. The resolution gave effect to the Notarial Agreement. Even if the JPC could be said to be agent of CoJ, in terms of the POA. It is not authorized by any known Council process, to consent to the cession. Not, even both the Lease Agreement and the tripartite agreement, contain such authority. The sale of the Lease Agreement followed one process (not contained in the lease agreement itself), then its transfer to a purchase then follows, a different process (consent procedure contained in the very lease agreement to be transferred).

31. In our understanding of paragraph 3.4 of the LGO, this power should flow from council authority. The authority of council is referred to at paragraph 3.1 of the LGO. Paragraph 3.4 reads:

to grant consent to lessees to sub-let or part with possession of council owned land or buildings hired from the Council or to cede or assign their leases, subject to such conditions, as maybe considered necessary to protect Council's interests.



Non-Executive Directors: Simon Mtho (Chairperson)
Betycourt Tefo | Puluvelo Ratshikhopa | Sandy Collophen | Mxolisi Zondo |
Ntombikayise Tini | Sivuyisiwe Gwebani | Thapelo Mashamaite |
Tshepang Thutelo | Yolisa Ngxabazi | Moeketsi Kabadila |

Executive Directors: Helen Boles (Chief Executive Officer)
Imraan Bhanjee (Acting Chief Financial Officer)

Company Secretary: Guntse Dlamini
City of Joburg Property Company SOC Ltd.
Registration Number: 2000/017147/07



a world class African city

City of Joburg Property Company SOC Ltd.

3rd Floor
Forum 1
Braam Park
33 Hoofd Street
Braamfontein
2017

PO Box 31565
Braamfontein
2017

Tel +27(0) 10 219 9000
Fax +27(0) 10 219 9400

www.jhbproperty.co.za

32. The conditions necessary to protect Council's interests may only be established with the involvement of council itself. They cannot be determined by the JPC. Council will have to provide such conditions, even if that is, to the JPC. The JPC cannot grant such consent without the CoJ.

33. For the reasons stated in this letter, the JPC/CoJ is not in breach of the Lease Agreement.



Your sincerely

Tshapo Mokataka
Tshapo Mokataka
City of Joburg Property Company

Non-Executive Directors: Simon Mthba (Chairperson)
Bettycourt Tefo | Futshetsi Ratshikhopha | Sandy Collopan | Mxolisi Zondo |
Ntombikayise Tini | Sivuyisiwe Gwobani | Thapelo Mashamale |
Tshepang Thalele | Yolisa Ngxabazi | Moeketsi Rabadila |

Executive Directors: Helen Botsu (Chief Executive Officer)
Imraan Bhanjee (Acting Chief Financial Officer)

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"FA17"

Wild Goose Trading and Services 39 CC (In Business Rescue)
Business Rescue Scenario as at Publication Date

Description	Book Values	Business Rescue Values
ASSETS		
Investment Property	33 420 000.00	42 500 000.00
Moveable Assets	1 922 494.00	1 153 496.40
Goodwill	3 829 955.00	-
Trade and other receivables	1 032 766.71	774 575.03
Deposits	57 399.00	-
Wesbank Vehicles (not reflected in records of Corporation)	1 500 000.00	900 000.00
Cash at hand	-	-
Inventories	5 707 438.00	3 424 462.80
TOTAL	47 470 052.71	48 752 534.23
EXPENSES		
Business Rescue Fees (inc Vat)		2 443 750.00
Legal fees and accounting		500 000.00
Agents commission (if applicable) (Inc Vat)		2 443 750.00
Advertising Costs		300 000.00
TOTAL		5 687 500.00
Nett Proceeds		43 065 034.23
DISTRIBUTION		
	Claim	
Secured Creditors	26 666 316.82	16 619 557.03
Nedbank	10 367 022.80	10 367 022.80
SPAR Limited	14 293 216.75	5 352 534.23
Wesbank Secured	2 006 077.27	900 000.00
Proceeds available for Pref Creditors		26 445 477.20
Preferent Creditors		9 793 154.40
Employee Pref Claims		
SARS Claim		9 793 154.40
Proceeds available for concurrent creditors		16 652 322.80
Concurrent Creditors	33 145 534.99	33 145 534.99
Trade Payables	455 335.33	455 335.33
Related Party Loans	9 233 711.00	9 233 711.00
Shorfall on Spar Limited Secured Claim	8 940 682.52	8 940 682.52
City of Johannesburg	10 690 011.00	10 690 011.00
FNB Facility	2 719 717.87	2 719 717.87
Wesbank Concurrent Claim (to be finally quantified)	1 106 077.27	1 106 077.27
Cents in the Rand		50.24



"FA18"

Wild Goose Trading and Services 39 CC (In Business Rescue)
Liquidation Scenario as at Commencement Date

Description	Book Values	Liquidation Values
ASSETS		
Investment Property	33 420 000.00	33 000 000.00
Moveable Assets	1 922 494.00	768 997.60
Goodwill	3 829 955.00	-
Trade and other receivables	1 032 766.71	619 660.03
Deposits	57 399.00	-
Wesbank Vehicles (not reflected in records of Corporation)	1 500 000.00	900 000.00
Cash at hand	-	-
Inventories	5 707 438.00	2 282 975.20
TOTAL	47 470 052.71	37 571 632.83
EXPENSES		
Liquidator's Fees		1 460 663.28
Master's Fees		275 000.00
Legal fees and accounting		900 000.00
Bond of Security		432 073.78
Auctioneer's commission		3 708 697.28
Advertising Costs		300 000.00
TOTAL		6 676 434.34
Nett Proceeds		30 895 198.49
DISTRIBUTION		
	Claim	
Secured Creditors	24 660 239.55	14 938 655.63
Nedbank	10 367 022.80	10 367 022.80
Wesbank ISA	2 006 077.27	900 000.00
SPAR Limited	14 293 216.75	3 671 632.83
Proceeds available for Pref Creditors		15 956 542.86
Preferent Creditors		11 053 825.16
Employee Pref Claims		1 260 670.76
SARS Claim (Still to be finally Quantified)		9 793 154.40
Proceeds available for concurrent creditors		4 902 717.70
Concurrent Creditors	35 521 663.98	35 521 663.98
Trade Payables	455 335.33	455 335.33
Related Party Loans	9 233 711.00	9 233 711.00
Shorfall on Spar Limited Secured Claim	10 621 583.92	10 621 583.92
City of Johannesburg	10 690 011.00	10 690 011.00
Wesbank Concurrent Claim	1 106 077.27	1 106 077.27
FNB Facility	2 719 717.87	2 719 717.87
Employee Concurrent Claims	695 227.59	695 227.59
Cents in the Rand		13.80

