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**ABELA PROPERTY INVESTMENTS (PTY) LIMITED (IN BUSINESS RESCUE)**

**Registration no: 2001/017161/07**

***("the Company")***

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**BUSINESS RESCUE PLAN OF THE COMPANY**

**in terms of section 150 of the Companies Act, No. 71 of 2008 (*the Companies Act*)**

**27 August 2013**

***("the Plan")***

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**Prepared by:**

**Trevor Philip Glaum of Sanek Trust Recovery Services (Pty) Ltd: in his capacity as Business Rescue Practitioner of the Company (*"the Practitioner"*)**

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**DISCLAIMER BY THE PRACTITIONER**

The Plan is formulated on information from the books and records of the Company and after consultation with the relevant persons including the directors and management of the Company, the creditors and other affected persons, and it therefore should be noted that:

- The Practitioner has not carried out an audit of the Company's books and records, nor has he had adequate opportunity to verify all of the information provided by the Company.
- The statements and opinions given in the Plan are given in good faith and in the belief that such statements and opinions are not false or misleading. The Practitioner reserves the right to alter any conclusions reached on the basis of changes in the information or any additional information which may become available between the date of the Plan and the date of any subsequent meetings or reports.
- Neither the Practitioner, nor any member or employee of or professional engaged by the Practitioner, undertakes responsibility in any way whatsoever to any person in respect of any errors in this report arising from incorrect information provided.
- In considering the options available to creditors and members of the Company and formulating recommendations, the Practitioner has made the necessary forecasts and estimates with respect to the proposal contained in the Plan. These forecasts and estimates may change as the Plan is implemented and the quantum of creditors' claims is finalised. While the forecasts and estimates are the result of the Practitioner's best assessment in the circumstances, it should be noted that the ultimate deficiency and thus the distribution or outcome for creditors and members could differ from the information provided in the Plan.

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## **PART A: BACKGROUND**

### **1. The Purpose of Business Rescue Proceedings**

- 1.1. "Business Rescue" is defined in section 128(1)(b)(i) of Chapter 6 of the Companies Act as:

*'[P]roceedings to facilitate the rehabilitation of a company that is financially distressed by providing for:*

- (i) the temporary supervision of the company, and of the management of its affairs, business and property;*
- (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and*
- (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company".*

### **2. The Role of a Business Rescue Practitioner**

- 2.1. The statutory powers and duties of the Practitioner include the following:

- 2.1.1. The Practitioner has full management control over the Company in substitution for its board of directors and pre-existing management;

- 2.1.2. The Practitioner may delegate any of his powers or functions to a director or manager of the Company;
- 2.1.3. The Practitioner may remove from office any person who forms part of the pre-existing management of the Company or appoint a person as part of the management of the Company whether to fill a vacancy or not;
- 2.1.4. The Practitioner must investigate the affairs, business, property and financial situation of the Company in order to ascertain whether there is a reasonable prospect of rescuing the Company such that it is likely to continue its existence on a solvent basis: if so, the Practitioner is responsible for developing a business rescue plan to be considered by affected persons. If this is not possible, the Practitioner must develop a business rescue plan that results in a better return for the Company's creditors or shareholders than would result from the immediate liquidation of the Company.
- 2.1.5. The Practitioner thereafter implements the business rescue plan if it has been adopted in accordance with Part D of chapter 6 of the Companies Act.

3. **Application placing the Company in Business Rescue and the appointment of the Practitioner**

- 3.1. The Company was placed under supervision in terms of section 131(7) of the Companies Act on 26 February 2013 by order of the Western Cape High Court ("**the Business Rescue Order**") pursuant to an application by Investec Bank Limited ("**Investec**"). Investec originally applied for the liquidation of the Company: after making such application, Investec and representatives of the Company held discussions, and, notwithstanding that the directors of the Company objected to the business rescue as well as the liquidation of the

Company, it was decided not to litigate and that it was therefore in the best interests of all stakeholders that the court be requested to exercise its discretion in terms of section 131(7) and make an order placing the Company in Business Rescue. The Business Rescue of the Company accordingly commenced on 26 February 2013.

- 3.2. The Practitioner was appointed the interim business rescue practitioner by the Court in terms of the Business Rescue Order as required by the Companies Act. The appointment of the Practitioner was ratified unanimously by creditors at the first meeting of creditors on 11 March 2013.

#### 4. **Background to the Company**

- 4.1. The Company's registered address and principal place of business is at Louis Group Building, 2 Boundary Road, Century City, Cape Town.
- 4.2. The Company is the registered and beneficial owner of erven 160464 and 51224, Cape Town, commonly referred to as Belvedere Square, situated at the corner of Keurboom and Belvedere Roads, Claremont (**"the Property"**).
- 4.3. The Company carried on business as the developer of the Property, a shopping and office complex, and conducts a rental enterprise, letting out the various shops and office premises of the Property.
- 4.4. The directors of the Company are Alan Louis and Louis Jacobus Cloete (**"the Directors"**).
- 4.5. The major shareholders of the Company are Louis Group (SA) (Pty) Ltd (**"LGSA"**), Louis Group International Land Securities (Pty) Ltd, the Nakos Family Trust and Dawn Heather Fiebigler who among them hold more than 50% of the Company's issued securities. A complete list of the members and the number of shares held by each of them is set out in **Annexure A**.



- 4.6. The Property was acquired in 2003 for the sum of R9.75 million and was sold in 2013 for R41.25 million (as will be set out below).
- 4.7. The Louis Group of companies comprises companies and trusts both in South Africa ("**the Louis Group**") and offshore.
- 4.8. The affairs of the entities in the Louis Group including the Company are intertwined through *inter alia* related-party shareholdings and inter-company loan accounts. In South Africa, there are more than 45 entities in the group. Of these, four other companies are in Business Rescue (and were placed in Business Rescue on 26 February 2013 in terms of the Business Rescue Order), namely, LGSA, LGI Properties Rose (Pty) Ltd ("**Properties Rose**"), Louis Group Hotels (SA) (Pty) Ltd ("**Hotels**") and LG Securities (Pty) Ltd ("**LG Securities**").
- 4.9. LGSA, a registered money-lender, loaned funds from its principal bankers being Investec and the Standard Bank of South Africa Limited ("**Standard Bank**"). LGSA then on-lent those funds to a number of companies (some of which are its subsidiaries), trusts and third party entities, such as the Company itself (collectively these subsidiaries, trusts and third party entities will be referred to as "**the Associated Entities**"). The Associated Entities in turn own property over which surety mortgage bonds and general notarial bonds were registered in favour of, in the main, Investec and Standard Bank. The Company signed a co-principal debtor and suretyship agreement in favour of Investec for the debts of LGSA. Investec secured that suretyship indebtedness by registering a mortgage bond over the Property. As additional security, a number of the Associated Entities including the Company furnished cessions of rentals to the banks (in the Company's case to Investec).

## 5. **Events leading to the Financial Distress of the Company**

- 5.1. Over the past few years purchasers were sourced for the properties owned by a number of the Associated Entities such that those properties were realised and LGSA's exposure to its bankers was subsequently reduced. These efforts were unfortunately increasingly difficult due to the slump in the property market and the nature of the remaining assets (being properties more difficult to sell than those initially realised).
- 5.2. As the banks were requesting more capital reductions and the loan facilities had expired, LGSA's loan agreements with its bankers were restructured from time to time. LGSA was nevertheless finding it increasingly difficult to repay the large capital reductions required.
- 5.3. In terms of the acceleration clauses contained in the loan agreements the full amount of LGSA's debts are due and payable.
- 5.4. Investec accordingly called on the Company to pay its co-principal and suretyship debt to Investec for the debts of LGSA, and, as set out above, this ultimately led to the Company being placed in Business Rescue.

## 6. **Financial Distress**

- 6.1. "**Financially Distressed**" is defined in terms of section 128(1)(f) of the Companies Act as "*(i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or (ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months*".
- 6.2. It is evident that the Company is financially distressed within the meaning of the Companies Act, the Company being unable to pay its due and payable debts.

- 6.3. The adoption of the Plan by the Company's creditors in terms of Part D of chapter 6 of the Companies Act will mean that the Company has sold the Property, together with the rental enterprise conducted thereon. After transfer has been registered, the *substratum* of the Company will have disappeared and there will be no further business for it to carry on.
- 6.4. Furthermore, after registration of transfer of the Property, the payment by the Company of its co-principal and suretyship debt to Investec, its secured creditor, will mean that a loan account debt owed by LGSA to the Company will increase by the amount paid by the Company to Investec (this is in terms of the Company's right of recourse against LGSA for paying a portion of LGSA's debt to Investec). On transfer of the Property and payment to Investec, the Practitioner estimates that this loan account debt owed by LGSA to the Company will be in the region of R24 – R28 million, making the Company a substantial concurrent creditor of LGSA (hereafter "**the LGSA loan account debt**"). After transfer of the Property, the LGSA loan account debt will be the Company's only remaining asset.
- 6.5. As stated above, LGSA is in business rescue. It is not known at this stage what dividend (if any) will accrue to LGSA's concurrent creditors in terms of a business rescue plan duly adopted in terms of chapter 6 of the Companies Act. Once the Company in due course receives a dividend (if any) for payment of the LGSA loan account debt in terms of an LGSA business rescue plan (or in terms of the liquidation of LGSA, should its Business Rescue fail), the practitioner will *pro rata* distribute same to members.
- 6.6. The Practitioner will thereafter apply to de-register the Company.
- 6.7. Once the business rescue proceedings are finalised, the Company will therefore no longer continue in existence. However the Business Rescue will result in a better return for the Company's creditors and

shareholders than would result from the immediate liquidation of the Company. In this regard, and as will be more fully set out below, the sale price achieved for the Property is substantially greater than the forced sale valuation of the Property obtained by me.

6.8. It is envisaged that the successful implementation of the Plan will result in the payment of all amounts due to the Company's creditors, both secured and unsecured, and the full repayment of post-commencement finance ("PCF") received by the Company from Investec after the commencement of the business rescue on 26 February 2013.

6.9. Achieving a better return for the Company's creditors and shareholders than would result from the immediate liquidation of the company is accordance with the aims of Business Rescue as set out in section 128(1)(b)(i) of the Companies Act.

7. **Funding of the Company since the Commencement of Business Rescue – PCF**

7.1. The Company has received PCF from Investec in a total amount of R1 025 047.16.

7.2. PCF is repaid in the order in which it is incurred – this is in accordance with section 135(3)(b) of the Companies Act.

7.3. To the extent that any PCF has not been repaid at the time of any section 151 – 153 meeting or adjournment thereof where voting occurs on the Plan or any amended plan, then the PCF creditor/s will have additional voting rights to the extent of the unpaid PCF.

7.4. To the extent that the Company is placed in liquidation and the PCF has not been repaid, then the position is as set out in section 135 of the Companies Act, namely that:

- 7.4.1. The Practitioner's remuneration, expenses and the costs of the business rescue proceedings will be paid first, as well as the costs of the liquidation;
- 7.4.2. Secured creditors, including PCF-providers who hold security therefor, will be paid on realisation of their security;
- 7.4.3. Remuneration or expenses or any other amount owing to employees of the company which became due and payable to the employees during the business rescue proceedings will be regarded as PCF, save that it will have preference over the other, non-employee PCF; and
- 7.4.4. The PCF will have preference over all unsecured claims against the Company and will be repaid in the order in which it was incurred.

8. **The Material Assets of the Company when Business Rescue began – Section 150(2)(a)(i)**

- 8.1. The material assets of the company as at the date of the commencement of the Business Rescue are as follows:

<b>Assets:</b>	<b>Total</b>
The Property (note a)	R26 000 000
The LGSA loan account debt (note b)	R423 966.31
Sundry debtors (note c)	R42 704.70
<b>TOTAL ASSETS:</b>	<b>R26 466 671.01</b>

**Note (a):**

The Property is reflected at a forced sale value in the amount of R26 million in terms of a valuation obtained from Natalie Ginsberg Property Valuations dated

7 March 2013. A covering mortgage bond [B097989/07] was registered over the Property on 18 October 2007 in favour of Investec in the amount of R21 million plus finance charges and an additional amount of R4.2 million ("**the mortgage bond**"). Investec is accordingly a secured creditor of the Company as defined in terms of the Insolvency Act, no. 24 of 1936 (as amended) ("**the Insolvency Act**").

**Note (b):**

The LGSA loan account debt is reflected in the books and records of the Company as at 28 February 2013 in a net amount of R423 966.31. This asset is unencumbered.

**Note (c):**

Sundry debtors are reflected in the books and records of the company in the net amount of R42 704.70, after writing down the irrecoverable debtors. It is estimated that R98 264.89 of the debtors are irrecoverable. The debtors' book is unencumbered and has since been recovered.

9. **List of Creditors when Business Rescue began – Section 150(2)(a)(ii)**

- 9.1. Complete lists of the creditors of the Company at the date of the commencement of the Business Rescue are set out in **Annexures B, C and D**, together with the claim of the secured creditor, Investec.
- 9.2. **Annexure B** contains a complete list of the preferent and concurrent creditors of the Company in terms of the laws of insolvency.
- 9.3. In the middle of Annexure B reference is made to "*Creditors Control*" creditors. A full list of these concurrent creditors is set out in **Annexure C**.
- 9.4. In the middle of Annexure B reference is also made to "*Deposit Charged*" creditors. These are the tenants of the Property who paid

deposits to the Company, whom the Company must still repay their deposits. A full list of these creditors is set out in **Annexure D**.

- 9.5. In terms of the laws of insolvency, the creditors fall to be paid in the following order of preference:

**Secured Creditors:**

Investec: R22 388 301.37      The capital amount and finance charges secured in terms of the mortgage bond as at 20 June 2013, plus further interest to date of payment.

Investec: R4 021 207.00 as      A hedging agreement at 26 February entered into on 18 2013      August 2008, secured as a future debt in terms of the mortgage bond.

- 9.5.1. The Practitioner has obtained senior counsel's opinion that the hedging agreement of the Capital Markets division of Investec may indeed be secured as a future debt in terms of the "*additional amount*" secured by the mortgage bond, that is, the "*additional amount*" explicitly includes payment of *inter alia* future debts. However the validity of the hedging agreement itself has been placed in dispute by Alan Louis, a director of the company. Alan Louis is therefore seeking legal opinion from senior counsel on the validity of the hedging agreement. Should the hedging agreement be valid, the full extent of Investec's secured claim in a total amount of R27 431 604.26 including interest up to 15 December

2013, will be paid to it on transfer of the Property. Should the hedging agreement be found to be invalid, R23 410 397.26 will be paid to Investec as its secured claim including interest up to 15 December 2013. For ease of reference, these two scenarios, based on whether the hedging agreement is valid or not, will be referred to as **"the R27.5 million Investec scenario"** and **"the R23.5 million Investec scenario"** respectively.

- 9.5.2. It is stated in the paragraph above that interest will be paid up to 15 December 2013: this is the estimated date of distribution of the proceeds following registration of transfer of the Property. Should the proceeds be distributed before that date, then a lesser amount of interest will be paid to creditors entitled to receive interest on their claims as at that earlier date. Should the distribution be made after 15 December 2013, then further interest to the date of distribution will have to be paid to creditors entitled to receive interest on their claims.
- 9.5.3. These two scenarios – an approximately R27.5 million secured dividend to be paid to Investec from the proceeds of the sale of the Property versus an approximately R23.5 million secured dividend to Investec from the proceeds of the sale of the Property, followed by distributions (if any) in respect of the LGSA loan account debt – are set out in **Annexures G1 and G2** and **Annexures H1 and H2** (these are the final annexures to the Plan, setting out in full the possible distribution scenarios under the Plan and are therefore dealt with more fully below, after the possible liquidation scenarios).



**Preferent creditors:**

- 9.5.4. SARS is owed the amounts of R553 550.01 (outstanding income tax) and R50 241.62 (outstanding VAT).
- 9.5.5. SARS is not a preferent creditor in terms of the laws of business rescue.
- 9.5.6. The Company has no employees.

**Concurrent Creditors:**

- 9.5.7. Apart from SARS, the other creditors listed on Annexures B, C and D are all concurrent (unsecured) creditors.
- 9.6. All creditors are independent creditors as contemplated in section 128(1)(g) of the Companies Act, except the members in respect of their loan account claims.
  - 9.7. Creditors whose claims are not recorded in the books and records of the Company and who have failed to apply to prove their claims by lodgement thereof with the Practitioner before the end of the three week inspection periods of the respective distribution accounts in terms of the Plan (described in more detail below), will be deemed to have abandoned their right to participate in any distribution made in terms of those respective distribution accounts and the Plan.
  - 9.8. A complete list of the creditors who have proved their claims against the Company is set out in **Annexure E**.
10. **Probable Dividend on Liquidation – Section 150(2)(a)(iii)**
- 10.1. Had the Company been liquidated at the commencement of the Business Rescue, the liabilities of the Company and the assets available for distribution to creditors on the various possible liquidation scenarios are set out in **Annexures F1, F2, F3 and F4**.

- 10.2. In this regard, **Annexure F1** shows the probable dividend to creditors and members in a liquidation scenario where the hedging agreement is valid but the LGSA loan account debt is not recoverable and the Company receives no dividend for it. As is evident from annexure F1, the Company's only realisable asset is the Property. It is reflected as being realised in the amount of R26 million per the forced sale valuation. After the costs of realising the Property and the liquidation costs have been paid, Investec, the secured creditor, would receive a dividend of R24 179 811.99. Concurrent creditors and members would receive no dividend at all. This is in contrast to the business rescue scenario (explained below) set out in **Annexure G1**. Annexure G1 shows the probable dividend to creditors and members in a business rescue scenario where the hedging agreement is valid but the LGSA loan account debt is not recoverable and the Company receives no dividend for it. In this event, in business rescue, Investec, the secured creditor, receives a dividend of R27 431 604.26. Furthermore concurrent creditors are paid in full and all members receive a dividend: non-Louis group members receiving a net dividend (after the deduction of a withholding dividends tax) in the amount of R3 525 774.66. The reason for the difference in the scenarios is that the Property has been realised in business rescue at its full market value in the amount of R41 250 000.
- 10.3. **Annexure F2** shows the probable dividend to creditors and members in a liquidation scenario where the hedging agreement is valid and the LGSA loan account debt is fully recoverable, the Company receiving a dividend of 100c in the Rand. On this scenario, Investec, the secured creditor, would receive a dividend of R24 192 902.76. Concurrent creditors would be paid in full including with interest (those concurrent creditors entitled to same). An amount of R17 265 218.20 would be available for distribution to members. This is in contrast to the business rescue scenario (explained below) set out in **Annexure H1**. Annexure H1 shows the probable dividend to creditors and members

in a business rescue scenario where the hedging agreement is valid and the LGSA loan account debt is fully recoverable, the Company receiving a dividend of 100c in the Rand. In this event, in business rescue, Investec, the secured creditor, receives a dividend of R27 431 604.26. Furthermore concurrent creditors are paid in full and all members receive a dividend: non-Louis group members receiving a net dividend (after the deduction of a withholding dividends tax) in the amount of R16 215 732.94.

- 10.4. **Annexure F3** shows the probable dividend to creditors and members in a liquidation scenario where the hedging agreement is invalid and the LGSA loan account debt is not recoverable and the Company receives no dividend for it. In this event, as is evident from annexure F3, the Company's only realisable asset is the Property, reflected in the forced sale amount of R26 million. After the costs of realising the Property and the liquidation costs have been paid, Investec, the secured creditor, would receive a dividend of R23 410 397.26. Concurrent creditors would receive a small dividend paid out of a free residue amount of R687 512.73. This is in contrast to the business rescue scenario (explained below) set out in **Annexure G2**. Annexure G2 shows the probable dividend to creditors and members in a business rescue scenario where the hedging agreement is invalid and the LGSA loan account debt is not recoverable and the Company receives no dividend for it. In this event, in business rescue, Investec, the secured creditor, receives a dividend of R23 410 397.26. Furthermore concurrent creditors are paid in full and all members receive a dividend: non-Louis group members receiving a net dividend (after the deduction of a withholding dividends tax) in the amount of R5 342 079.38.
- 10.5. **Annexure F4** shows the probable dividend to creditors and members in a liquidation scenario where the hedging agreement is invalid and the LGSA loan account debt is fully recoverable, the Company

receiving a dividend of 100c in the Rand. On this scenario, Investec, the secured creditor, would receive a dividend of R23 410 397.26. Concurrent creditors would be paid in full including with interest (those concurrent creditors entitled to same). An amount of R14 484 934.30 would be available for distribution to members. This is in contrast to the business rescue scenario (explained below) set out in **Annexure H2**. Annexure H2 shows the probable dividend to creditors and members in a business rescue scenario where the hedging agreement is invalid and the LGSA loan account debt is fully recoverable, the Company receiving a dividend of 100c in the Rand. In this event, in business rescue, Investec, the secured creditor, receives a dividend of R23 410 397.26. Furthermore concurrent creditors are paid in full and all members receive a dividend: non-Louis group members receiving a net dividend (after the deduction of a withholding dividends tax) in the amount of R16 215 732.94.

- 10.6. The assets and liabilities reflected on Annexures B, C, D, E, F1, F2, F3 and F4 are mostly at the date of the commencement of the Business Rescue (26 February 2013). At the date of the Plan, the aforesaid liabilities and assets available for distribution to creditors remain materially the same. Accordingly the liquidation scenarios (were they to occur at either date), are substantially inferior to the business rescue scenarios. Where the LGSA loan account debt is not realised for any value, preferent and concurrent creditors would at best receive a small dividend in a liquidation scenario.
- 10.7. Rentals accruing from the lease of the Property after liquidation would be included in the encumbered asset account of Investec and would be paid to Investec as part of its secured award in respect of its cession of rentals (and accordingly three months of rentals have been included in all the Annexures F in the amount of R1 170 000). In Business Rescue, Investec has itself been collecting the rentals

directly in terms of its cession of rentals and accordingly rental income is not reflected in the Business Rescue scenarios.

11. **List of Holders of the Company's Issued Securities – Section 150(2)(a)(iv)**

11.1. The holders of the Company's securities are as set out in **Annexure A**.

12. **Agreement Concerning the Practitioner's Remuneration – Section 150(2)(a)(v)**

12.1. The Practitioner has been remunerated in accordance with the tariff prescribed by the Companies Act and its regulations.

13. **Proposal made informally by a Creditor – Section 150(2)(a)(vi)**

13.1. Investec, the major creditor, has been consulted during the preparation of the Plan, and its views have been considered in its preparation.

13.2. No proposal has however been made informally by a creditor of the Company.

**PART B: PROPOSALS**

14. **The Proposal**

14.1. The proposal on which the Plan is based entails the sale and transfer of the Property and the realisation of the LGSA loan account debt ("the Proposal"). Once distributions have been made to creditors and members as a result of the achievement of these two objectives, the Company will have no more business, assets or liabilities and the Practitioner will then file a notice of substantial implementation of this Plan in terms of section 152(8) of the Companies Act and thereafter apply for the de-registration of the Company. With the filing of the

notice of substantial implementation, the Business Rescue will terminate in terms of section 132(2)(c)(ii). This date will be referred to as the **"implementation date"**.

- 14.2. The Property (together with the rental enterprise conducted thereon) has been sold by private treaty to Crystal Capital Investments (Pty) Ltd (registration no: 2007/023465/07) (**"the buyer"**) on 14 May 2013 (**"the sale agreement"**). The Property was not sold in a forced sale scenario and the Practitioner is satisfied that the full market value of the Property has been achieved. Furthermore the cost of the Practitioner is lower than would have been the tariff paid to a liquidator of the Company.
- 14.3. These factors have benefitted all creditors of the Company who have achieved a better return from the Business Rescue than would have resulted from the immediate liquidation of the Company.
- 14.4. It is anticipated that all creditors will be paid in full.
- 14.5. On the R27.5 million Investec scenario, it is anticipated that the members of the Company (other than the Louis Group related members in respect of whose dividends no dividend tax is payable) will receive a net dividend (after the deduction of a withholding dividends tax) in the total amount of R3 525 774.66 after transfer of the Property, which dividend will be distributed to them *pro rata*. This excludes any dividend for the realisation of the LGSA loan account debt.
- 14.6. On the R23.5 million Investec scenario, it is anticipated that the members of the Company (other than the Louis Group related members in respect of whose dividends no dividend tax is payable) will receive a net dividend (after the deduction of a withholding dividends tax) in the amount of R5 342 079.38 after transfer of the Property, which dividend will be distributed to them *pro rata*. This

excludes any dividend for the realisation of the LGSA loan account debt.

14.7. The aforesaid figures deriving from the R27.5 million Investec scenario are set out in **Annexure G1**.

14.8. The aforesaid figures deriving from the R23.5 million Investec scenario are set out in **Annexure G2**.

14.9. It must be noted that the dividend (if any) that will be received by members on the realisation of the LGSA loan account debt is unknown at this stage. Accordingly the scenarios set out in **Annexures G1 and G2** do not include a distribution in respect of the LGSA loan account debt.

14.10. The terms of the Proposal are more fully set out hereunder:

14.10.1. The material terms of the sale agreement are as follows:

14.10.2. The Company has agreed to sell the Property and the property-letting enterprise conducted thereon to the buyer as a going concern with effect from transfer, together with the rights, titles and interests in and to the leases of the tenants on the Property, but excluding any liabilities or obligations of the Company prior to transfer.

14.10.3. The purchase price is in the amount of R41 250 000 with VAT zero-rated as the Property and enterprise has been bought as a going concern.

14.10.4. A R4 million cash deposit was paid by the buyer.

14.10.5. The sale was subject to a number of conditions precedent, including that the buyer obtains written approval of mortgage finance from a recognised bank or financial institution for an amount of no less than R20 625 000 to serve as payment

toward the purchase price. The buyer has obtained such approval. The balance of the purchase price will be paid in cash on registration of transfer. The buyer has furnished the Company with a suitable guarantee in this regard from a recognised commercial bank.

- 14.10.6. A further condition precedent was that the buyer provides the Company with written notification that it is satisfied with the findings of a due diligence conducted by it. The buyer has so notified the Company.
- 14.10.7. There is a single outstanding condition precedent, namely, that within no longer than 120 days after the signature date (14 May 2013) of the sale agreement, a business rescue plan in respect of the Company must be approved at a meeting of creditors as contemplated in sections 151 to 153 of the Companies Act. In other words, the approval of the Plan by creditors at a meeting convened in terms of section 152 or 153 of the Companies Act will be the fulfilment of the final outstanding condition precedent to the sale agreement and the sale of the Property will thereafter be able to proceed to registration of transfer.
- 14.10.8. As set out above, all the creditors of the Company (the secured creditor, Investec, and the concurrent and preferent creditors, as well as the PCF-provider) will be paid in full after transfer. It is anticipated that members will also receive a dividend.
- 14.10.9. Within four weeks after registration of transfer of the Property, the Practitioner will draw a distribution account reflecting payment to the creditors and members of the Company. Notice will be given to the creditors and members that the distribution account is available for inspection for a



period of three weeks, provided that should any creditor or member, for any reason whatsoever, not receive such notice it will not entitle that creditor or member to object to or in any way invalidate the distribution account or any distribution made pursuant to that account. Any creditor or member timeously objecting to the distribution account within the three week period in which it is available for inspection, must lodge such objection in writing with the Practitioner before the expiry of the aforesaid three weeks, failing which the distribution account will be deemed to be accepted by all interested parties. The Practitioner will rule on any objection so lodged with him and will give the objector notice in writing of his ruling. Within four weeks of the distribution account being accepted by the Practitioner as final (any and all objections lodged timeously therein having been ruled on by him), the Practitioner will make a distribution to creditors and members in terms thereof. If, as a result of a valid objection to the distribution account, the Practitioner needs to amend and re-draw the distribution account, the Practitioner will draw that amended account on the terms set out in this paragraph.

14.10.10. The Company, as co-principal debtor and surety to Investec for the claims of LGSA, will – on payment to Investec in settlement of the mortgage bond – obtain a right of recourse against LGSA, thereby substantially increasing the LGSA loan account debt owed to it.

14.10.11. In this regard, the Practitioner estimates that on the R27.5 million Investec scenario (i.e. Investec has to be paid out for its valid hedging agreement secured in terms of the mortgage bond), the LGSA loan account debt will be in the

amount of R28 094 927.32 after transfer of the Property and payment to Investec (see **Annexure H1**).

14.10.12. The Practitioner estimates that on the R23.5 million Investec scenario (i.e. Investec is not paid out for the hedging agreement because it has been found to be invalid), the LGSA loan account debt will be in the amount of R24 073 720.32 after transfer of the Property and payment to Investec (see **Annexure H2**).

14.10.13. The LGSA loan account debt will then be the Company's only remaining asset.

14.10.14. It will be realised when a business rescue plan is adopted by LGSA in terms of Part D of chapter 6 of the Companies Act. Alternatively, should the business rescue of LGSA fail and LGSA be placed in liquidation, then the LGSA loan account debt will be realised on payment of a dividend/s (if any) by the liquidators of LGSA.

14.10.15. Were a dividend in this regard to be received by the Company in the amount of 100c in the Rand, then the members of the Company would receive payment as set out in **Annexures H1** and **H2** (*"Louis Group loan fully recoverable in time"*). It must be noted however that the Practitioner has no way of knowing at this stage what dividend – if any – will accrue to the Company on payment of the LGSA loan account debt. A dividend of 100 c in the Rand is probably unlikely. The figures set out on **Annexures H1** and **H2** are included by way of example only.

14.10.16. On the R27.5 million Investec scenario, in terms of **Annexure H1** (full recovery of the LGSA loan account debt), it is anticipated that the members of the Company (other

than the Louis Group related members in respect of whose dividends no dividend tax is payable) will receive a net dividend (after the deduction of a withholding dividends tax) in the total amount of R16 215 732.94, which dividend will be distributed to them *pro rata*. This distribution includes the dividend received by members after transfer of the Property.

14.10.17. On the R23.5 million Investec scenario, in terms of **Annexure H2** (full recovery of the LGSA loan account debt), it is anticipated that the members of the Company (other than the Louis Group related members in respect of whose dividends no dividend tax is payable) will receive a net dividend (after the deduction of a withholding dividends tax) in the total amount of R16 215 732.94, which dividend will be distributed to them *pro rata*. This distribution includes the dividend received by members after transfer of the Property.

14.10.18. It will be noted that on both scenarios, the distribution made to members as set out in annexures H1 and H2, is in the identical amount of R16 215 732.94. The reason for this is as follows: where the hedging agreement is valid and Investec is paid in terms of the R27.5 million scenario, then the Company's right of recourse claim against LGSA is proportionally higher by an amount of approximately R4 million i.e. the Company pays Investec R4 million more than where the hedging agreement is invalid, but, at the same time, it claims back R4 million more from LGSA. Thus where there is a full recovery on the LGSA loan account debt of 100c in the Rand, there is a net effect of zero in respect of payment to the Company on the LGSA loan account debt. The reverse is likewise true: where the hedging agreement is invalid and Investec is paid in terms of the R23.5 million scenario, then the Company's right of recourse claim against

LGSA is proportionally lower by an amount of approximately R4 million and it claims back R4 million less from LGSA resulting in the same net effect of zero.

- 14.10.19. The Practitioner will distribute any dividend received from LGSA (whether in a business rescue or liquidation scenario) for the LGSA loan account debt as follows: the Practitioner will within four weeks of receipt of that dividend draw a distribution account reflecting payment to the members of the Company *pro rata*. Notice will be given to the members that the distribution account is available for inspection for a period of three weeks, provided that should any member, for any reason whatsoever, not receive such notice that will not entitle that member or any creditor to object to or in any way invalidate the distribution account or any distribution made pursuant to that account. Any member or creditor timeously objecting to the distribution account within the three week period in which it is available for inspection, must lodge such objection in writing with the Practitioner before the expiry of the aforesaid three weeks, failing which the distribution account will be deemed to be accepted by all interested parties. The Practitioner will rule on any objection so lodged with him and will give the objector notice in writing of his ruling. Within four weeks of the distribution account being accepted by the Practitioner as final (any and all objections lodged timeously therein having been ruled on by him), the Practitioner will make a distribution to members and creditors (if any) in terms thereof. If, as a result of a valid objection to the distribution account, the Practitioner needs to amend and re-draw the distribution account, the Practitioner will draw that amended account on the terms set out in this paragraph.

- 14.10.20. The Proposal envisages that the amount of any and all invoices of creditors which may have become due and payable after the commencement of the Business Rescue will be paid in full. The Plan does not entail any waiver or compromise of unpaid debts and claims owed by the Company to its creditors after the commencement of the Business Rescue, even though the Plan is implemented in accordance with its terms and conditions (section 154(1) of the Companies Act);
- 14.10.21. Regarding the discharge of debts and claims owed by the Company to creditors immediately before the beginning of the Business Rescue, the Plan contemplates that all creditors will be paid in full and accordingly the question as to whether the Plan affects the rights of creditors to enforce such debts and claims except to the extent provided for in the Plan is not applicable (section 154(2) of the Companies Act);
- 14.10.22. As stated above, once the Property and the LGSA loan account debt have both been realised and the proceeds thereof have been distributed to creditors and members, the Company will have no more business, assets or liabilities and the Practitioner will then file a notice of substantial implementation and apply to de-register it. With the filing of the notice of substantial implementation, the Business Rescue will terminate. This is the implementation date.
- 14.11. Alan Louis, a director of the Company, on behalf of the Louis Group International Foundation Trust ("**the Trust**") has undertaken in an email to the Practitioner dated 26 August 2013 that the Trust will underwrite all members of the Company to the extent of the

dividend each would have received in respect of a full recovery on the LGSA loan account debt (i.e. in the event that there is a shortfall on this recovery in due course). In other words, Alan Louis has written in his email that members of the Company will receive from the Trust the return set out in **Annexures H1 and H2** (per the figures being updated as at date of distribution). It must be noted that this undertaking is not an undertaking of the Practitioner who accepts no liability or claims whatsoever in respect thereof. Alan Louis's undertaking comprises his email of 26 August 2013 (a copy of which is **annexure I**), which undertaking Alan Louis requested that the Practitioner insert in the Plan.

15. **The Nature and Duration of the Moratorium on Claims – Section 150(2)(b)(i)**

- 15.1. The commencement of the Business Rescue effected a moratorium on legal proceedings against the Company in terms of section 133 of the Companies Act. This means that creditors are not able to take enforcement action against the Company for their claims while the Company is in business rescue and while section 133 still has effect.
- 15.2. The moratorium will remain in place until either (a) the implementation date, or (b) the Plan fails (as set out more fully below) and the Company is placed in liquidation, or (c) section 133 no longer has effect. If the Plan fails (as set out more fully below) and the Company is not placed in liquidation and instead the Business Rescue continues, then the moratorium will likewise remain in effect.

16. **Release from Payment of Debts and Conversion of Debt to Equity – Section 150(2)(b)(ii)**

16.1. The Company will not be released from payment of its debts – all creditors will be paid in full, including members' loan accounts.

16.2. There will be no debt to equity conversion.

16.3. All PCF will be repaid.

17. **Ongoing Role of the Company and the Treatment of Existing Agreements – Section 150(2)(b)(iii)**

17.1. In terms of the sale agreement, the Property and the rental enterprise, including the existing leases, have been sold as a going concern. Accordingly on transfer the Property together with the rental enterprise and the leases will be transferred to the buyer as a single indivisible sale.

17.2. Any other contracts in the name of the Company will be cancelled by the Practitioner in due course (none of these are material).

18. **Property available for Payment of Creditors' Claims – Section 150(2)(b)(iv)**

18.1. The Property has been sold to the buyer as set out herein, save for the condition precedent that the Plan be approved by creditors in terms of Part D of chapter 6 of the Companies Act. The proceeds from the sale will be used to pay creditors in full including Investec, the secured creditor, in whose favour the mortgage bond is registered.

18.2. The leases have been ceded to the buyer in terms of the sale agreement as one indivisible transaction.

18.3. If any dividend is received by the Company in respect of the LGSA loan account debt as a result of payment of a dividend by a business

rescue practitioner or liquidator of LGSA, such dividend will be distributed to the members as set out above.

19. **Proposed Order of Payment on Adoption of the Plan – Section 150(2)(b)(v)**

19.1. Investec, as the secured creditor in whose favour the mortgage bond is registered, will be paid following registration of transfer; whereas all other creditors and members will be paid in terms of the distribution account as described above.

19.2. Members may later receive a further dividend as set out in paragraph 18.3 above.

19.3. All PCF will be repaid following registration of transfer.

20. **Benefits of the Business Rescue as opposed to Liquidation – Section 150(2)(b)(vi)**

20.1. As is evident from the Plan (and Annexures F), on liquidation of the Company where no realisation is made on the LGSA loan account debt, concurrent and preferent creditors would at best receive a minimal dividend (if any). In terms of the Plan, concurrent creditors (which includes preferent creditors in terms of the insolvency laws) are paid in full. Even where a realisation of 100c in the Rand is made in respect of the LGSA loan account debt, all creditors and members achieve substantially better returns in business rescue than in liquidation.

20.2. The costs of the Practitioner will be substantially lower than the tariff paid to a liquidator on realisation of the Property.



21. **Effect of the Plan on the Holders of each Class of the Company's Issued Securities – Section 150(2)(b)(vii)**

21.1. The rights of the Company's security-holders will not be affected as a result of the adoption of the Plan.

**PART C: ASSUMPTIONS AND CONDITIONS**

22. **Conditions to be satisfied for the Plan to come into operation and to be fully implemented – Sections 150(2)(c)(i)(aa) & (bb)**

22.1. The Plan must be adopted in terms of Part D of chapter 6 of the Companies Act, this being the only outstanding condition precedent in terms of the sale agreement.

22.2. The sale of the Property must then proceed to registration of transfer.

22.3. A dividend (if any) must be paid to the Company on the LGSA loan account debt either by way of the adoption of a business rescue plan in respect of LGSA or as a result of the liquidation of LGSA.

23. **The Effect of the Plan on the Employees of the Company – Section 150(2)(c)(ii)**

23.1. The Company has no employees.

24. **The Circumstances in which the Plan will end – Section 150(2)(c)(iii)**

24.1. The Plan and indeed the Business Rescue will end on the implementation date.

24.2. As set out above, as soon as the Property has been transferred to the buyer and the LGSA loan account debt has been realised by the payment of a dividend (if any) in respect thereof by either the business rescue practitioner or the liquidator of LGSA, the Company

will have no more business, assets or liabilities and the Practitioner will then file a notice of substantial implementation of the Plan in terms of section 152(8) of the Companies Act and apply for the de-registration of the Company. With the filing of the notice of substantial implementation, the Business Rescue will terminate in terms of section 132(2)(c)(ii) of the Companies Act.

24.3. Alternatively, the Plan will end if the Business Rescue fails, as set out more fully below.

25. **The Projected Balance Sheet and Income Statements of the Company – Section 150(2)(c)(iv)**

25.1. The Plan does not include a projected balance sheet or statement of income and expenses for the ensuing three years in that these are not applicable to the Company and therefore no purpose will be served in attempting to draw up same.

25.2. In this regard and as has been set out herein:

25.2.1. On registration of transfer of the Property, the Property together with the rental enterprise and the leases, will be transferred to the buyer and the Company will thereafter have no further business to conduct nor any income stream or material expenses. It is anticipated that transfer should occur within two months of the adoption of the Plan in terms of Part D of chapter 6 of the Companies Act;

25.2.2. The Company's only asset after transfer of the Property will be the LGSA loan account debt. The realisation thereof will occur either with the successful business rescue of LGSA or with the liquidation of LGSA. The Practitioner has no way of knowing at this stage whether any dividend at all will accrue to the Company for the LGSA loan account debt, or, even if such a dividend is paid to the Company, the Practitioner has

no way of quantifying what the amount of such dividend will be.

**26. Failure of the Plan**

26.1. The Plan fails if, for any reason, the sale agreement is cancelled and the Property is not transferred to the buyer in terms thereof.

26.2. Upon the failure of the Plan as aforesaid:

26.2.1. Either the Practitioner will forthwith apply to court for an order terminating the Business Rescue and placing the Company in liquidation; or

26.2.2. the Business Rescue will continue; in which event the Practitioner will remain vested with his statutory rights, duties and obligations as contemplated in chapter 6 of the Companies Act and the Practitioner will attempt to realise the Property for the best possible value with the intention of drafting a new business rescue plan and placing such new plan before creditors for their consideration as soon as possible.

26.2.3. Whether the Company will be placed in liquidation or whether the Business Rescue will continue will depend on the discretion of the Practitioner, whose decision in this regard will be reasonably exercised in consultation with all stakeholders.

**27. The Annexures to the Plan**

27.1. Annexures A – I hereto are an integral part of the Plan.

27.2. In the event of a conflict or inconsistency between the provisions of the main body of the Plan and the annexures, the provisions of the main body of the Plan will prevail.

**28. Amendments to the Plan**

28.1. Should there be a need to amend this Plan at any time after its adoption, the Practitioner will be entitled to make such amendments in consultation with the Creditors' Committee. Any amendments to the Plan will be voted on by the creditors at a special creditors' meeting for such purpose, which meeting will be convened by the Practitioner. The voting procedure for such amendments and the determination thereof will be carried out in accordance with the relevant provisions of chapter 6 of the Companies Act.

**CERTIFICATE BY THE PRACTITIONER**

1. I, Trevor Philip Glaum, hereby certify to the best of my knowledge and belief that:
  - 1.1. The information provided herein is as accurate, complete and up-to-date as reasonably possible;
  - 1.2. The projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein;
  - 1.3. In preparing the Plan I have not undertaken an audit of the information provided to me, although, where practical, I have endeavoured to satisfy myself of the accuracy of such information.



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**TREVOR PHILIP GLAUM**

**Business Rescue Practitioner**

**Date: 27 August 2013**