PROPOSED BUSINESS RESCUE PLAN

PUBLISHED TO THE AFFECTED PERSONS OF

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

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&
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ON

2 OCTOBER 2023

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1. DEFINITIONS

1.1. "**Acquittance**" means a document executed by a creditor in terms of which that creditor advises the Business Rescue Practitioner/s that such creditor will not look to the Business or the Business Rescue Practitioner/s for any payment of benefit under the Business Rescue Plan, to the extent of the amount stated in the acquittance;

1.1. "**Act**" means the Companies Act 71 of 2008 as amended;

1.2. "**Affected Persons**" means affected persons as defined in Section 128 (1) of the Act and in relation to the Company means a shareholder, a creditor and the employees of the Company;

1.3. "**Assets**" means all assets of the Business as reflected in the books of account of the Business as at the commencement date;

1.4. "**Auction Value**" means an estimate of the realisable value of the Business assets on a public auction where a sale is concluded on a forced sale, upon the fall of the hammer, to the highest cash bidder during an auction which was reasonably well advertised and attended by members of the public;

1.5. "**BRP/s**" means David Masterton and Pat Pattinson as defined in Regulation 126 to the Act;

1.6. "**BR360 C**" means Business Rescue 360 Cape (Pty) Ltd which contracts David Masterton and Pat Pattinson as the Business Rescue Practitioner/s of the business;

1.7. "**Business Rescue**" means the proceedings in terms of Chapter 6 of the Act and as defined in Section 128 (1)(b);

1.8. "**Business Rescue Plan**" means this document which is a business rescue plan prepared in terms of Section 150 of the Act and published by the Business Rescue Practitioner/s on the 2nd of October 2023.

1.9. "**Claims**" means secured, preferent or concurrent claims as envisaged in the Insolvency Act, against the Business, 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 Business 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 Business, whether or not such claims are proved;

1.10. “**Creditor/s**” means all legal entities, including natural persons, having secured, preferent and/or concurrent claims against the Business as at the commencement date as envisaged in the Insolvency Act;

1.11. “**Concurrent Creditors**” means creditors having concurrent claims as envisaged in the Insolvency Act;

1.12. “**The Business**” means African Capital Property Portfolio (Pty) Ltd (in business rescue), a business duly incorporated in terms of the Laws of South Africa under registration number 2006 / 024468 / 07;

1.13. “**Commencement Date**” means 31 March 2023 being the date upon which the resolution to voluntarily begin with business rescue proceedings was filed with the Commission;

1.14. “**Commission**” means the Companies and Intellectual Property Commission of South Africa which is a division of the Department of Trade and Industry and is responsible for the register of companies in South Africa;

1.15. “**Disputed Claim**” means a claim that was submitted, but not approved by the practitioner/s. These claims will be confirmed or amended prior to distribution and are dealt with in terms of the included dispute resolution mechanism in this plan.

1.16. “**Factoring**” means that a creditor consents to accept a full and final settlement of its outstanding historic debts to an amount less than offered in the plan, but paid immediately upon acceptance between the Business and the Creditor;

1.17. “**Historic Debt**” means the debt owed by the Business as at the date of filing;

1.18. “**Independent Creditors**” means all Creditors having Claims against the Business other than creditors related to the Business and its subsidiaries and/or directors;

1.19. “**Insolvency Act**” means the Insolvency Act 24 of 1936 as amended;

1.20. “**Legal Moratorium**” means the moratorium granted by section 133 of the Act in terms of which no legal action against the Business can be commenced;

1.21. “**Moratorium period**” means the period after the publication of the business rescue plan during which the Business proposes to make no payments towards the historic debts;

1.22. “**PCF**” means Post Commencement Financing provided by a financier to the Company as envisaged in terms of section 135 of the Act;

1.23. “**Power of Attorney**” means the legal document that is received by a person to obtain the authority to act for another person in legal or financial matters, in the specified format provided by the BRP/S;

1.24. “**Preferent Creditors**” means creditors having preferent claims as envisaged in terms of the Insolvency Act;

1.25. “**Proceedings**” means business rescue proceedings as provided for in Chapter 6 of the Act;

1.26. “**Proof of Claim**” means the full and total claim of a Creditor against the Business, in the specified format provided by the BRP/S subject to the final approval by the BRP/S;

1.27. “**Related Parties**” means, as provided in Section 2 of the Act, all persons and/or companies and/or legal entities related either directly or indirectly to the Business as at the Commencement Date;

1.28. “**Secured Creditors**” means creditors having secured claims as envisaged in the Insolvency Act;

1.29. **“Statutory Obligations**” means, the legally mandated duties and responsibilities that directors must fulfill in their role as custodians of the company. These obligations are designed to promote good corporate governance, transparency, accountability, and the protection of the interests of the company, its shareholders, employees, and creditors. These obligations include, but are not limited to, any and all submissions to SARS, provident funds, bargaining councils and other statutory bodies;

1.30. “**Substantial Implementation**” means in terms of section 132(2)(c)(ii) of the Act, the notice that is to be filed by the BRP/S confirming that a Business Rescue Plan has been implemented;

1.31. “**The Final date**” means the date upon the last payment in respect of the adopted Business Rescue Plan at a meeting envisaged in terms of section 152 of the Act is made;

1.32. “**The Meeting**” means the meeting convened in terms of section 151 (1) of the Act;

2. EXECUTIVE SUMMARY

2.1. The Business, known as African Capital Property Portfolio (Hereinafter referred to as "African Capital" or "The Business") is a property-owning company that owns the property at 328 Kent Avenue, Randburg, Johannesburg, and rents portions of the building to suitable tenants through various rental agents. The building has 10 areas available over 5 floors with a total of 4 278 square meters of rental space, with a potential rental income of R 299 460.00 p/m.

2.1.1. This property is the only operation of the business, and it has no further income generating activities.

2.1.2. The business was established in 2006 and is currently owned by the various shareholders - Abelusi Consortium (Pty) Ltd [96%] and Menziwa Trust [4%].

2.2. The Business became financially distressed and had no other option but to file for business rescue in terms of the Act[1] on 31 March 2023.

2.3. The Business then timeously notified all the affected persons known to the practitioner/s of the business rescue proceedings as per the Act.[2]

2.4. The BRP/S received their notice of appointment on 3 April 2023.

2.5. Based on the information received from the Business, the BRP/S concluded that the business is in fact financially distressed and that a reasonable prospect of a successful Business Rescue does exist, especially when considering the second part of the definition of a rescue and have prepared this proposed business rescue plan for consideration by the creditors of the business.

2.6. It was thus concluded in terms of the Act[3] as read with the judgment of *Carrol vs Michael Carrol* that a better outcome than immediate and traditional liquidation is possible and will be sought.

[1] Section 129 of the Companies Act 71 of 2008.
[2] Section 129 (3)(a).
[3] Section 128 (1)(b)(iii).

2.6.1. The assets belonging to the business will be sold on a public platform, for the benefit of the creditors. The business will not cease trading in its entirety and at the end of the rescue process, the business will be handed back to the directors and shareholders to continue trading, alternatively for its final winding up.

2.6.1.1. Please note Annexure D for the list of assets to be auctioned.

2.6.2. The processes set out in this proposed business rescue plan will provide a substantially better outcome for all parties when compared to immediate and traditional liquidation.

2.6.2.1. It will be a faster, more manageable, and more economically viable process.

2.7. The BRP/S convened and presided over a first meeting of creditors and staff on 21 April 2023.[4]

2.8. The affected persons will now have the opportunity to peruse the Proposed Business Rescue Plan before voting on it no later than **the 10th of October 2023**.

2.9. The details pertaining to this vote will be sent out in a Circular shortly.

2.10. Please use the time provided to address any questions, queries and suggested amendments to the Business Rescue Practitioner/s, via email, before the meeting to vote on this plan. This will allow the Business Rescue Practitioner/s the time needed to consider any suggestions.

2.11. Further please note that unfortunately no further proof of claims can be accepted by the Business Rescue Practitioner/s as ample time and opportunity was provided and these claims form the basis of determining the voting rights of the affected persons.

2.12. This plan makes provision for full and final settlement to creditors from proceeds generated as a result of the sale of business assets, and as such there will be no further funds available for any claims not contained in this proposed plan. There will be no form of recourse from any creditor that is not included in this proposed Business Rescue Plan.

[4] Section 147 (1).

2.13. The Practitioner/s cannot accept liability for any late claims and/or post-business rescue debt and/or any other matters that arise after the vote on this plan.

2.14. It is important to note that the person representing the creditor during the meeting to vote needs to be the appointed public officer or the appointed proxy of the creditor.

2.14.1. If a creditor appoints a proxy, then the proxy needs to be in possession of a Power of Attorney document and mandated to ensure they can vote on the proposed business rescue plan and be in a position to apply their own minds during the meeting, considering discussions and amendments that might take place during the meeting.

2.14.2. If you have not received a Power of Attorney document to complete, please contact the Business Rescue Practitioner/s.

2.15. The Business Rescue Practitioner/s are confident that this Proposed Business Rescue Plan will result in a far better outcome than that of an immediate and traditional liquidation but accept no liability for the outcome of the auction and eventualities after the adoption of the plan.

2.16. Calculations and projections provided are based on information provided by the owners, management, accounting statements and the affected persons.

2.17. Due to the limitations in law, the practitioner/s did not have the time nor the funds or the *locus standi* to perform a full investigation, due diligence or confirmation audit on the information received nor to employ third parties to verify and scrutinise same.

2.18. This Proposed Business Rescue Plan does not provide for the continuation of the business in its current format, and therefore limited financial information will be provided.

2.19. The Business is not being sold as a going concern, instead, the business is simply selling its assets on a public platform, and the entity will be returned to the shareholders for continued trading or the closure of the business.

2.20. The costs relating to the business rescue proceedings will be settled from the available proceeds in full prior to any distributions. These costs can be settled from any funds that become available during the rescue process at any time as and when these fees become due.

2.20.1. These costs include but are not limited to practitioner's fees and contingencies, short-term insurance, auctioneers and or brokers fees and expenses, accounting and other continued statutory obligations such as the full VAT due to SARS resulting from the auction.

2.21. The practitioner/s will file for substantial implementation as soon as is practicable after the proposed business rescue plan has been adopted, and the following milestones achieved:

2.21.1. The successful completion of the auction of the immovable property, and the funds paid into a third-party trust account for disbursements.

2.21.2. The completion of the distribution calculations once the asset has been sold.

2.21.3. The payment of service providers resulting from the business rescue process.

3. SALIENT FEATURES

The salient features of this Proposed Business Rescue Plan are set out as follows:

3.1. PART A – BACKGROUND OF THE COMPANY[5]

3.1.1. The Business, known as African Capital Property Portfolio (Hereinafter referred to as "African Capital" or "The Business") is a company that is a property-owning company that owns the property at 328 Kent Avenue, Randburg, Johannesburg, and lets the building to suitable tenants through various rental agents. The building has 10 areas available over 5 floors with a total of 4 278 square meters of rental space, with a potential rental income of R 299 460.00 p/m.

3.1.2. This property is the only operation of the business, and it has no further income generating activities.

3.1.3. The business was established in 2006 and is currently owned by the various shareholders - Abelusi Consortium (Pty) Ltd [96%] and Menziwa Trust [4%].

3.1.4. Per the Act[6]; the assets of the Business are as per the attached Annexure D containing a List of Material Assets.

3.1.5. Per the Act[7]; The liability of the business is based on the proof of claims received from 6 creditors (totaling 7 claims) and totals about R22 534 929.40. A list of creditors with their respective claims is attached as Annexure B.

3.1.5.1. These claims are then broken down into the following Classes:

Secured Claims	:	1 Claim	for about R 16 775 023.57
Concurrent Claims	:	4 Claims	for about R 4 009 472.67
Disputed Concurrent Claims	:	2 Claims	for about R 1 750 433.16

[5] Section 150 (2) of the Companies Act.
[6] Section 150(2)(a)(i).
[7] Section 150(2)(a)(ii).

3.1.5.2. It must be noted that the proof of claims submitted to the Business Rescue Practitioner/s does not automatically assure the Creditor that they will receive this amount as discrepancies might be found when comparing the amount in the books of the Business to the proof of claim received.

3.1.5.3. Please further note that this plan refers to the fact that no legal fees, interest, collection fees or any cost other than the capital amounts can be provided for on the historic debts due to creditors. Only the capital amounts due will be considered in the dividend calculation if such debt is not specifically provided for in this proposed Business Rescue Plan.

3.1.6. It is evident that should the business be placed into traditional liquidation; the costs thereof will result in a situation where the income from liquidation proceedings would be substantially less than what is being proposed to all creditors in terms this plan – Creditors may well be liable for a cost contribution in such a scenario should they prove a claim against the business.

3.1.7. The Business Rescue Practitioner/s thus remain of the opinion that this proposed business rescue plan provides for a much better return to all the affected parties than could materialise in an immediate and traditional liquidation.

3.1.8. The probable dividend in Liquidation compared to the Business Rescue dividend is as stated below:

Creditor Class		**Liquidation**		**Business Rescue**
Secured	:	45.4 cents in the rand	:	55.8 cents in the rand
Preferent (in liquidation) and PCF (in Business Rescue)	:	0 cents in the rand (For SARS) 0 cents in the rand (For Staff)	:	0 cents in the rand
Concurrent Claims	:	0 cents in the rand	:	0 cents in the rand

*Please note that these values are estimates made in good faith and based on information received from the business, the valuations on the assets, asset lists received, and a very brief explanation and rough calculations is included in Annexure H (Very abbreviated LND account).

* Note further that the practitioners cannot guarantee the outcome of the auction to be held and thus the estimations made above are on a reasonable belief of what could potentially be expected from said auction.

3.1.9. Below is a complete list of the holders of the Company's issued securities.[8]

Name		Issued Securities
Abelusi Consortium (Pty) Ltd	:	96%
Menziwa Trust	:	4%

3.1.10. Attached as Annexure F[9] is a copy of the written fee agreement of the practitioner/s as approved by the business and the directors.

3.1.10.1. With the adoption of this proposed business rescue plan, it will be considered that creditors have approved this fee agreement.

3.1.11. No creditor has made any representations to the Business Rescue Practitioner/s and this business rescue plan includes no informal proposal made by a creditor.[10]

[8] Section 150(2)(a)(iv).
[9] Section 150(2)(a)(v).
[10] Section 150(2)(a)(vi).

3.2. PART B – PROPOSAL BY THE PRACTITIONER/S[11]

3.2.1. This Proposed Business Rescue Plan does not make provision for a specific moratorium period[12] to be granted, payments will be made to the creditors of the business as soon as the funds are made available, after the sale of the asset; and the business rescue costs settled, in terms of this proposed business rescue plan.

3.2.2. It is proposed that the immovable property that belongs to the business will be auctioned within 15 business days business days from the adoption of this proposed business rescue plan.

3.2.3. All offers received will be Subject to Confirmation (STC) by the Bank.

3.2.4. The immovable property available for sale is described in detail in terms of Annexure D, it does however hold an approximate market value of R 18.2m as provided in the desktop valuation supplied by the auctioneer. The forced sale value however is substantially less and is estimated to be around R10.9m – again, as confirmed in the attached Annexure D.

3.2.5. Although the order and preference of payments is addressed later in this plan, it is important to note the following regarding the funds that will become available because of the sale of this property.

3.2.5.1. The funds will be used in accordance with the Companies Act:

3.2.5.2. The settling of the business rescue costs, which as referred to includes the likes of fees, contingencies, statutory obligations (including but not limited to SARS), third party costs and insurance incurred during the business rescue process.

3.2.5.3. Thereafter the settling of the Bank's exposure in so far as is possible with the remaining income generated from the auction, in terms of the commercial property finance agreement which is secured over the property.

3.2.5.4. It is unfortunately highly unlikely that any funds would be available to settle any

[11] Section 150 (2).
[12] Section 150(2)(b)(i).

concurrent creditor as the secured creditor, being Standard Bank in this matter, is owed R16 775 023.57 (as at the commencement date) with only the R10.9mil being expected from the sale of the asset – less costs of the auction and business rescue costs.

3.2.5.5. Should some funds, however, be available to settle remaining creditors, all remaining creditors will be considered as concurrent and settled in proportion to their claims.

3.2.6. Should the property not be sold at the public auction it will be dealt with as follows:

3.2.6.1. The asset will be surrendered/abandoned to those parties holding such assets as security for its debts, subject to the auctioneer's valuation, and they shall forthwith take such steps as is necessary to further reduce their exposure in terms thereof.

3.2.6.2. They shall also be deemed to take control and the risk therein at the conclusion of the auction unless specific arrangements have been made with the practitioner/s in writing to the contrary.

3.2.7. The offer in terms of this plan and the payment that is to be made to all creditors shall be in full and final settlement of such debt and all creditors shall by adoption of the Proposed Business Rescue Plan accede to the discharge of the whole of the debt in terms of the Act.[13]

[13] Section 154(1).

3.2.8. Dispute Resolution Mechanism:

3.2.8.1. Based on the unique circumstances of this business rescue it is impossible to consider all disputes raised by creditors and this proposed business rescue plan provides that all debt owed by the business be reduced to the provisions of this plan.

3.2.8.1.1. Respective creditors cannot dispute their debt due as no funds would be available for such disputes and the only recourse to creditors would be to approach the court to have the business rescue process terminated.

3.2.8.1.2. Alternatively, should the plan be adopted, creditors would have the right to approach the court to have the vote set aside.

3.2.8.2. This must however be done within 5 working days from the adoption of the proposed business rescue plan and notice must be formally provided to the practitioner in this regard to prevent the plan from being implemented.

3.2.8.3. The implication of the abovementioned is that the creditors shall have no further right of recourse and shall not be entitled to enforce the debt, or any balance thereof owed by the business immediately before the beginning of the Business Rescue Process as the Business Rescue Plan does not provide for the institution of any further action. An extract from the Act is given below for ease of reference:

Section 154: Discharge of debts and claims

"A Business Rescue Plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

If a Business Rescue Plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the Company immediately before the beginning of the Business Rescue Process, except to the extent provided for in the Business Rescue Plan."

3.2.9. The order of payment of claims and costs for this business rescue will follow the parameters as set out in Section 134 and 135 of the Act[14] and is summarised as follows:

[14] Section 150(2)(b)(v).

3.2.10. First - The fees and expenses still due to the practitioners in terms of Section 143 of the Act[15] will be paid in terms of Section 135 of the Act.[16] These expenses will include all costs to facilitate the business rescue process including but not limited to the accounting costs, broker fees, short-term insurance, banking fees and statutory obligations as defined in the definitions to this rescue plan.

3.2.11. The practitioners' fees are per the annexed agreement.

3.2.11.1. The practitioners have agreed to include their fees, (not expenses) with the fees of any salaries due. This is not a requirement in law, but the practitioners are subordinating their fees to the benefit of the affected parties.

3.2.12. The practitioners have also incurred various expenses in the completion of the business rescue process to date. These expenses are as follows:

3.2.12.1. BR Expenses as per section 143 and to be paid in terms of Section 135 totaling R75 521.43 (+ VAT where applicable) and is broken down as follows:

3.2.12.1.1. Travel Uniglobe (flights) = R8 662.88
3.2.12.1.2. City Lodge Accommodation = R3 300
3.2.12.1.3. City Lodge = R1 100
3.2.12.1.4. Hertz car rental = R1 746.19
3.2.12.1.5. Pronet Travel flights = R1 089.75
3.2.12.1.6. Hertz car rental = R821.59
3.2.12.1.7. Travel Uniglobe (flights) = R4 925.52
3.2.12.1.8. Pronet Travel flights = R2 875.50
3.2.12.1.9. Leppard and Associates for PI Cover R18 000 (inc. VAT) once off.
3.2.12.1.10. PE – Paralegal for Business Rescue Administration = R21 000.
3.2.12.1.11. Legal costs for approximately R12 000 (+VAT).

[15] Section 143.
[16] Section 135 (3

3.2.13. Second - All creditors, including but not limited to staff, sub-contractors and or suppliers who have assisted the business with the completion of the ongoing trading of the business will be settled next from proceeds if available, for any of the work done or goods supplied to complete this work completed post business rescue commencement.

3.2.14. It is important to note that disbursement to creditors in this category can only be made with the consent of the secured creditor, or from surplus funds from the sale of the property.

3.2.14.1. The practitioners have agreed to allocate their fees to this category of creditors and will be paid in proportion to the rest of the creditors in this category, if at all.

3.2.14.2. The practitioners are currently owed R129 000 (Excluding VAT) in addition to the 2% contingency on the sale of the immovable asset.

3.2.14.2.1. The outstanding fee above is for both practitioners at R 21 500 (+VAT) per month. R21 500 (+VAT) for both practitioners, not per practitioner.

3.2.14.2.2. The practitioners have not been paid since the commencement of the business rescue and therefore the calculation of the above fee is at the R 21 500 (+VAT) amount for a period of 6 months (April 2023 to September 2023).

3.2.14.2.3. Further included in this category of creditors is the proposed salary of the director for the period after the commencement of the business rescue process.

3.2.14.2.4. In the spirit of co-operation, the director has also agreed to a salary cut reducing their post business rescue remuneration to R 68 520.14 before deductions resulting in an approximate 41% salary cut.

3.2.14.2.4.1. The net salary of the director has thus been reduced to a net monthly salary, for post business rescue months to R 50 000 per month.

3.2.15. **Third** – any party that provided post-commencement finance will be repaid their respective loans, but no interest or fees will be paid.

3.2.15.1. No post-commencement finance due at the time of publication.

3.2.16. Fourth – Secured Creditor: the only secured creditor is Standard Bank. Standard Bank has provided a Commercial Property Finance Agreement Facility (the facility was at the time of commencement, due in the amount of R16 775 023.57).

3.2.16.1. Further to the above, Standard Bank holds valid securities for their debt in the form of a bond over the immovable asset, and valid securities over the asset it financed.

3.2.16.1.1. The practitioners recognize the security, and this plan makes provision for the settlement of the indebtedness to Standard Bank in so far as is possible from the sale of the asset over which they hold the security.

3.2.16.1.2. It is envisaged that Standard Bank will be the only creditor receiving any funds from the auction proceeds, for all intents and purposes this is in line with what would have been received during a traditional liquidation, but with the benefit to creditors being reduced time and cost of the liquidation proceedings.

3.2.17. Fifth – SARS will receive any of the post-business rescue funds that are due to them in terms of the ordinary course of business before any concurrent creditors, but after business rescue fees and costs, and potential staff dues.

3.2.17.1. SARS will further receive the full VAT on the asset sold during the auction without any compromise should it be due to SARS.

3.2.17.2. All remaining debt due to SARS will also be considered concurrent debt and paid in proportion with the rest of the concurrent creditors.

3.2.17.3. It must be noted that as a result of the VDP Process that additional funds may become due to SARS after the adoption and conclusion of the proposed business rescue plan and these funds, together with any VAT claw back amounts will remain due and payable by the business without any compromise as these indebtedness does not form part of the business rescue process.

3.2.18. Sixth – The staff of the business: the staff remuneration due to them prior to the filing of business rescue will be paid in terms of Section 144(2) of the Companies Act, and thus as a “preferred unsecured creditor”.

3.2.19. The only staff member with a claim is the director of the business who's claim for pre business rescue remuneration will thus be paid before any concurrent creditors, from funds available, if any.

3.2.19.1. It was agreed that on the approval of creditors, by voting to adopt this proposed business rescue plan, that Mr. Jacques van der Heyden would be entitled to receive a 5% fee on the gross sale value of the property sold, on condition that he introduces the successful bidder to the practitioner and the auctioneers, prior to the commencement of bidding.

3.2.19.2. Irrespective of the above, the practitioners are in no way opposed to the director approaching the secured creditors to solicit additional remuneration for his valued assistance in the process as per his proof of claim provided.

3.2.20. Seventh – The Concurrent Creditors will share in the remaining funds from the sale of the asset of the business should there be any excess after the bank has been settled.

3.2.20.1. It is impossible to predict the outcome of the auction and as such no formal dividend can be calculated/provided.

3.2.20.2. Although the Business Rescue Practitioners are confident that this Business Rescue Plan will result in a far better outcome than that of an immediate and traditional liquidation, they accept no liability for the outcome of the auction and eventualities after the adoption of the plan.

3.2.21. The main benefits of adopting this business rescue plan are:[17]

3.2.21.1. There is no risk of a cost contribution in business rescue and creditors cannot be held liable to fund any part of the business rescue process should they lodge their claims.

[17] Section 150(2)(b)(vi).

3.2.21.2. The business rescue process will allow for disbursement to creditors much faster than would be possible in a traditional liquidation because;

3.2.21.3. The process is not subject to the cumbersome supervision of the Master of the High Court and provisions of the Companies Act and Insolvency Act relating to meetings of creditors, submissions and approvals of accounts and advertising thereof.

3.2.21.4. This proposed business rescue plan removes the attorney's fees associated with a liquidation and removes the costs of a liquidator and the Masters Fees.

3.3. PART C – ASSUMPTIONS AND CONDITIONS USED[18]

3.3.1. This Business Rescue Plan is based on the following assumptions. [19]

3.3.1.1. Firstly, based on the assumption that all the creditors have submitted their claims or are satisfied that the amounts contained in Annexure B are correct.

1.1.1.1.1. The Business Rescue Practitioner/s have contacted all the affected persons, known to them, that might have a claim against the Business via email and/or telephone.

1.1.1.1.2. The Business Rescue Practitioner/s have provided the creditors with ample time and opportunity to supply their proof of claims.

1.1.1.2. This Proposed Business Rescue Plan is based on the assumption that no liquidation proceedings have commenced against the business prior to the filing for Business Rescue.

1.1.1.3. It is further assumed that the business is in fact a legally registered business and is registered with the Commission as "in business" or alternatively "in business rescue".

1.1.1.4. While the Business Rescue Practitioner/s have taken every effort to secure the most reliable and accurate information, this plan is based on the information received from the relevant parties and although the Business Rescue Practitioner/s have endeavored to confirm its accuracy, the funds and time allotted to them during Business Rescue Proceedings in addition to the limitations in law did not allow for a full due diligence or confirmation audit to be performed.

1.1.1.4.1. This proposed business rescue plan is thus prepared based on the assumption that the information provided is accurate. The Business Rescue Practitioner/s and their associates make no representation as to its accuracy

[18] Section 150 (2).
[19] Section 150(2)(c)(i).

and cannot be held liable for any eventualities arising from the use of the information provided.

1.1.1.5. Irrespective of these assumptions, this proposed business rescue plan will be binding on all creditors should a successful vote on the plan be achieved in terms of the Companies Act.[20]

3.3.1.2. This Business Rescue Plan is based on the following conditions that need to be satisfied for it to be fully operational.[21]

3.3.1.2.1. The First condition is that a successful vote in favour of the Proposed Business Rescue Plan needs to take place in terms of the Act[22] for the plan to come into operation.

3.3.1.2.2. The second Condition is that no contracts, agreements or commitments have been entered into during the business rescue proceedings without the Business Rescue Practitioner's express consent and signature to any documentation during the business rescue proceedings.

3.3.1.2.2.1. This has the result that any such agreements are void and cannot be entertained or honoured by the business in terms of The Companies Act.[23]

3.3.1.2.3. The third condition is that a full freeze on all directors' loan accounts with the Business is put into place. Repayments of the members debit loan accounts (monies owed by the members to the business) will be actively pursued by the practitioner/s for the benefit of the creditors.

3.3.1.2.3.1. All credit loan accounts will be frozen, and no director/shareholder will receive any repayment on these loans until such time as all creditors have been paid in terms of this proposed business rescue plan.

[20] Section 152 and Eravin Construction Matter.
[21] Section 150(2)(c)(i).
[22] Section 151 and 152.
[23] Section 137(4).

3.3.1.2.4. The fourth condition relates to SARS obligations by the business - The business rescue practitioners have submitted a VDP that relates to historical debt and acknowledge that the outcome of this process may result in future debt due by the business that cannot be subject to a compromise in this business rescue process.

3.3.1.2.4.1. It is further evident that no funds would be available to SARS for any debt, nor would there have been in a liquidation scenario, but SARS retains the right to approach the court to have the business rescue process nullified and or to approach the court to have the vote set aside should they believe the vote on the plan is unjust.

3.3.1.2.5. The fifth condition is that after the date of adoption of this Plan, the rights of all creditors against the Company shall be confined to the right to claim payment in terms of this plan.

3.3.1.2.6. The sixth condition is that any compromise contemplated in this business rescue plan is conditional upon the company fully meeting its obligations to creditors as set out in this business rescue plan. In the event of any breach by the company of its obligations to creditors in terms of the business rescue plan, the practitioners reserve the right to provide the creditors with a new or amended business rescue plan for consideration.

3.3.1.2.7. The seventh condition is that no directors, shareholder or surety will be permitted to claim against the business for any claims against them as a result of any compromise reached in this proposed business rescue plan.

3.3.1.3. These conditions will allow the BRP/S sufficient leverage while they implement the proposed business rescue plan to ensure a successful winding down of the business.

3.3.2. Once the following has been completed the plan will be considered as having been fully implemented:[24]

[24] Section 150(2)(c)(i).

3.3.2.1. a successful vote on this proposed plan has been achieved and that disbursement to creditors is limited to the extent as allowed for in this proposed business rescue plan and no creditor will be permitted to pursue any remaining debt due by the business or sureties, other than as provided for in this business rescue plan.

3.3.2.2. the successful completion of the auction and or sale of immovable asset, and the funds paid into a third-party trust account for disbursements.

3.3.2.3. the completion of the distribution calculations once the asset has been sold.

3.3.3. The BRP/S will, at this point and at their sole discretion, file a Notice of Substantial Implementation of the Business Rescue Plan in accordance with the Act.[25]

3.3.4. It is proposed that the Company will not continue trading in its current format after the implementation of this BR Plan[26] and therefore the projected income statement is not required.

3.3.5. The business is not being sold in its entirety, rather the assets of the business will be sold, and the business returned to the shareholders for its continued trading or final winding up.

[25] Section 132(2)(c)(ii).
[26] Section 150(2)(c)(iii).

4. MEETING TO DETERMINE THE FUTURE OF THE COMPANY[27]

4.1. This Proposed Business Rescue Plan is published to the affected persons on the 2nd of October 2023 and a meeting to vote has been scheduled to take place on the 10th of October 2023, a circular will follow with details of the meeting to vote.

4.2. Should you not be in a position to attend the meeting you may appoint a proxy to vote on your behalf and the practitioner/s will accept such nominations.

5. CONSIDERATION OF THE BUSINESS RESCUE PLAN[28]

5.1. Two votes will take place during this meeting as per the Act;[29]

5.2. The first vote will be to determine if the affected persons wish to adjourn the meeting and have the Business Rescue Practitioner/s make amendments to the Proposed Business Rescue Plan.

5.3. The second vote will be to determine if the Proposed Business Rescue Plan will be approved and implemented subject to the rest of the conditions set out in the Act.[30]

5.4. This plan does not make provision to alter the rights of any class of holders of securities, thus a third vote by the holders of securities is not required.

6. QUALIFICATION OF BUSINESS RESCUE

6.1. Business Rescue is a process introduced by Chapter 6 of the Companies Act of 2008 and the aim of it is clearly stated in the Act.[31]

6.2. The first part of the definition of Business Rescue states that it is a process designed at rehabilitating financially distressed Businesses.

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[27] Section 151.
[28] Section 152.
[29] Section 152 (1).
[30] Section 152.
[31] Section 128 (1)(b).

6.3. The second part of the definition is that if a turnaround of the Business is not possible that the Business Rescue Process must provide a better return to creditors and shareholders than what would be realised through the immediate and traditional liquidation of the Business.

6.3.1. This is further confirmed in the matter of *Carroll v Michael Carroll CC* (2018/22808) [2019] ZAGPPHC 74 (15 March 2019)) Re: Section 141(2) does not apply if a better return is received by creditors compared to the dividend to be received by creditors upon immediate liquidation.

6.4. This is done via the temporary supervision of the Business by a Business Rescue Practitioner or practitioners, where these practitioners must determine the exact financial position of the Business and prepare a Business Rescue Plan which the creditors will vote on.

6.5. In order for a Business to qualify for Business Rescue some conditions must exist as per the Act.[32]

6.6. The first condition is that the Business must be financially distressed as defined in the Act.[33]

6.7. The second condition is that the Business Rescue Practitioners must believe that a reasonable prospect of a rescue exists as defined in the Act.[34]

6.8. Based on the initial investigation of the Business by the Business Rescue Practitioners, from the information provided to them, it was determined that the Business qualifies for both conditions as required by the Act.

6.9. The Business was indeed financially distressed as it could not pay all its expenses as and when they became due.

6.10. The Practitioners were at the time of the first creditors' meeting of the view, based on the information provided to them at that time, that a reasonable prospect of a successful rehabilitation of the business did exist.

[32] Section 129 (1).
[33] Section 129 (1)(a).
[34] Section 129 (1)(b).

6.11. Based on subsequent information and events, outside of the control of the business rescue practitioners, that was not disclosed to the practitioner at the onset of the process, the practitioner/s are no longer of the view that the business can be rehabilitated in the ordinary sense, but that a better outcome could be provided to the affected persons than that which they would receive in the immediate and traditional liquidation of the business.

7. OVERVIEW OF THE BUSINESS RESCUE PROCESS

7.1. The Business commenced Business Rescue Proceedings in terms of the Act[35] by virtue of passing a resolution stating that it is in financial distress and therefore needed to file for Business Rescue.

7.2. The process of business rescue as contained in Chapter 6 of the Companies Act was duly followed with the following milestones achieved:

Action	**Date**
Business Rescue Resolution passed	31 March 2023
Resolution adopted by CIPC	3 April 2023
Business Rescue Practitioners Appointed	3 April 2023
Business Rescue notice submitted to affected persons	11 April 2023
First meeting of Creditors and Staff	21 April 2023
Second meeting of Creditors	19 May 2023
Third meeting of Creditors	23 June 2023
Fourth meeting of Creditors	24 July 2023
Fifth meeting of Creditors	8 August 2023
Business Rescue Plan published	2 October 2023
Vote on the proposed business rescue plan	10 October 2023

[35] Section 129.

8. INVESTIGATION OF THE AFFAIRS OF THE COMPANY

8.1. The business rescue practitioner/s did investigate the affairs of the business as per the Act.[36]

8.2. Subsequent to this investigation the business rescue practitioner/s concluded that:

8.2.1. The practitioner/s still believe there to be a reasonable prospect to provide a better return to the affected persons than in a liquidation.

8.2.2. The company remains in financial distress and the business rescue process must continue.

8.2.3. Due to the limitations of the law, the practitioner/s did not have the investigative powers, time or funds to investigate all potential aspects of non-compliance, however, the practitioners are duty-bound to state the following:

8.3. Annual Financial Statements (AFS)

8.3.1. AFS were not submitted for the periods of 2019 until 2023. A quote was received to complete the AFS but due to the fact that there were insufficient funds to have these AFS prepared and submitted the practitioners could not investigate the true financial state of the business.

8.3.2. Specific mention must here be made of the contravention of not submitting financials to the CIPC and the annual Tax Returns to SARS.

8.3.3. The submission of these returns will remain the responsibility of the directors and forms part of the reasoning as to why the business will not be closed as part of the business rescue process.

8.3.3.1. Should any claims be due to SARS or to the business from SARS, this will be post the business rescue process and will not form part of the business rescue as the funds will be due on the assessment date and not when it was supposed to have been submitted.

[36] Section 141.

8.4. Value Added Tax (VAT)

8.4.1. Incorrect VAT submissions were submitted to the South African Revenue Service (SARS) for the VAT periods **January 2021 to January 2022**. This has caused a snowball effect to all subsequent VAT submissions.

8.4.1.1. The business rescue partitioners were not informed about this but discovered this during their investigation into the business.

8.4.2. Corrective measures have been taken in terms of Section 141(2)(c) of the Companies Act by submitting a VDP (Voluntary Disclosure Programme) with SARS and the practitioners thereby consider the matter duly reported to SARS.

8.4.3. The VDP process has not been completed and the outcome thereof may result in further debts and or actions against the business or its directors and or the Public Officer of the business at the time of these incorrect submissions.

8.4.4. This business rescue plan provides for no protection from claims resulting from this VDP process as the outcome will naturally be after the conclusion of the business rescue process.

8.4.5. Communications from SARS were directed to the director of the business who in turn shared this with the practitioners on the 26th of September 2023.

8.4.5.1. Unfortunately, SARS has requested certain commitments from the business and thus the business rescue practitioners that are simply not possible.

8.4.5.2. These include but are not limited to:

8.4.5.3. "kindly confirm that payment will be made on the outstanding amount in accordance with the due date of payment in a potential VDP agreement to be drafted"

8.4.5.3.1. This is naturally not possible as the only asset of the business, which is also its only income-generating asset is the immovable asset that will be sold for the benefit of the secured creditor, and it is highly unlikely that any funds will be available for any other creditor.

8.4.6. The unfortunate reality here is that SARS will not receive any funds from the sale of the asset as the security held by Standard Bank will not allow for any disbursement to concurrent or post-business rescue costs and or claims.

8.5. **CCI Claim (Deposit)**

8.5.1. A claim was received from a previous tenant regarding an ongoing dispute relating to their deposit. The BRP's requested information from the various parties.

8.5.1.1. A dispute resolution process was commenced by the practitioners but could not be concluded.

8.5.1.1.1. The practitioners informed the relevant parties that this matter would need to be pursued post-business rescue and as such this claim, and possible payment thereof, is excluded from the business rescue process in terms of Section 154(2) of the Companies Act and the tenant may pursue this matter post business rescue.

8.5.2. Again, based on the limitation of the powers provided to a business rescue practitioner to investigate these matters, and the fact that the practitioners have not been provided with all the requested information in this regard, the practitioners were not able to fully investigate the matter and thus consider the above matters concluded for the purpose of the business rescue plan, but this plan makes provision that either party may pursue their respective claims post substantial implementation.

8.6. **Delay in concluding the process.**

8.6.1. Although not required, the practitioners would like to provide the reasoning behind the delay in concluding the business rescue process and providing this proposed business rescue plan.

8.6.2. A meeting in this regard was held on the 8th of August 2023 and the minutes of this meeting are available in Circular 12 that can be downloaded from the practitioner's website https://pattinson.biz/document-library

8.6.3. The practitioners acknowledge that in their original communication with creditors, they stated that a proposed business rescue process should be concluded within three months.

8.6.4. This was however based on the information at hand and unfortunately the information and circumstances continued to change beyond the control of the practitioners.

8.6.5. Comments have been made that the practitioners have delayed this process to secure additional remuneration or that they have made additional agreements with the bank and or the auctioneers.

8.6.5.1. The practitioners reject this statement outright and formally state that the only remuneration they will receive is so included in this proposed business rescue plan.

8.6.6. A summary of the reasoning for the delay is :

8.6.6.1. The practitioners received management accounts for the business but were not initially informed that the Annual Financial Statements (AFS) were not submitted.

8.6.6.2. The practitioners were not informed that the VAT returns were submitted incorrectly and had to address this via a VDP process once discovered.

8.6.6.2.1. Feedback was only received from SARS, via the director, in this matter on or about the 21st of September 2023.

8.6.6.2.2. The practitioners contacted SARS in this regard and at the time of publishing this proposed plan have not yet had any response from SARS.

8.6.6.3. The practitioners attempted to resolve the matter pertaining to a rental deposit paid but were unable to conclude the process.

8.6.6.4. This together with some lesser concerning matters have delayed the process well beyond the abilities of the practitioners.

8.6.6.5. In terms of Section 141 of the Companies Act, the practitioners are obliged to investigate, correct and/or report any matters presented to them, or discovered by them.

8.6.6.6. In terms of Section 150 (2) The practitioners must further include all the information reasonably required, in the proposed business rescue plan, to the creditors to apply their minds as to either vote for or against the proposed business rescue plan.

8.6.7. This has been a daunting task and has resulted in the delays.

8.7. This proposed Business Rescue Plan is published to the creditors of the Company without prejudice by the Business Rescue Practitioner/s and their associates.

9. VOTING ON THE PLAN

9.1. The first vote

9.1.1. This vote will be to determine whether the creditors wish for the Business Rescue Practitioner/s to end the meeting, amend this Business Rescue Plan and then present an amended plan at a follow-up meeting.

9.1.2. The Business Rescue Practitioner/s request that these amendments are received before the meeting so as to include these in the discussions of the voting meeting with the creditors.

9.2. The second vote

9.2.1. This vote will be to determine whether the creditors accept or reject the Proposed Business Rescue Plan.

10. ANNEXURES TO THE BUSINESS RESCUE PLAN

10.1. The following annexures are attached to this Proposed Business Rescue Plan:

Annexure A:	Outcome of 1st Creditors Meetings
Annexure B:	List of Creditors of the Business
Annexure C:	Company Registration Documents
Annexure D:	Material list of Assets of the Business
Annexure E:	Certificate of the Business Rescue Practitioners
Annexure F:	Written Fee Agreement (Proposal)
Annexure G:	Disclaimer
Annexure H:	Rough Calculation Liquidation and Distribution Account
Annexure I:	Business Rescue Returns for comparative purposes

We thank you for your time offered to determine the future of this Business Rescue process for **African Capital Property Portfolio (Pty) Ltd.**

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure A : Outcome of 1st Creditors Meeting

26 April 2023

CIRCULAR 03

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE 1ST MEETING OF CREDITORS

The business rescue practitioners wish to advise all the affected parties the outcome of the 1st meeting of creditors of African Capital Property Portfolio (Pty) Ltd (Herein after referred to as "The Business") - held on 21st of April 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting.

CONDITIONS FOR BUSINESS RESCUE

The practitioner explained the process of filing for business rescue and why a business would consider business rescue and the conditions of filing for business rescue.

1. **The first question - Is the Company Financially distressed?**
   YES

1.1. Based on information at hand, yes, the business cannot pay its debts as and when they become due and payable, therefore it is clear that the business is in financial distress in terms of Section 128(1)(f) of the Companies Act and has filed for Business Rescue in terms of Section 129 of the Companies Act.

1.2. Had the director decided not to file for business rescue, he would be compelled in terms of Section 129(7) of the Act to deliver a formal written notice to every affected person detailing:

1.2.1. That the business is in financial distress.

1.2.2. The reasons for the financial distress.

1.2.3. The reasons for the company's decision to not file for business rescue.

2. **Second Question - Does a reasonable prospect of a rescue exist?** **YES**

2.1. Based on the information provided to the practitioners to date.

2.1.1. At minimum a better outcome than traditional liquidation will be sought.

2.2. The practitioners believe that there is a reasonable prospect of success as will be discussed.

2.2.1. Further, should a rehabilitation of the business not be possible, the practitioners will be required to at very least seek a better outcome for the affected persons than that which they would receive in an immediate and traditional liquidation. As in terms of Section 128(1)(b)(ii) of the Companies Act and the judgment of Carrol v Michael Carrol.

REASONS FOR THE FINANCIAL DISTRESS:

1. Tennant unable to pay rent during Covid
2. Tennant failed to honor rental agreement – expired 31 December 2021
3. Significant damage to building – repairs required
4. Currently tenanted at about 30% - covers operating costs only
   4.1. Excluding bond or directors' salary

Important Dates

Board Resolution Submitted	:	31 March 2023, (133 Protection date)
Practitioners Appointed	:	12 April 2023
1st Meeting of Creditors	:	21April 2023

FORMING A COMMITTEE

1. The Business Rescue Practitioners advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.

   1.1. The attendees voted against this proposal.

   1.1.1. The business rescue practitioners will thus interact with all the creditors of the business directly.

REQUEST FOR AN EXTENSION

1. The plan is currently due to be published on the 19th of May 2023 – not having given consideration to the *dies non days* in terms of upcoming public holidays.

2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 19th of May 2023 so that we can provide further feedback to the creditors and request further extensions should it be necessary. Should this not be granted, the plan will be due on the 2nd of June 2023.

3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 19th of May 2023 where a further update will be given, and further extensions be requested should it be necessary.

PROOF OF CLAIMS

1. The practitioner confirmed that Jaco Durandt has sent out the proof of claim forms and these proof of claim forms must be completed and returned to Jaco Durandt on the prescribed document. Same is also available – along with all other documentation relating to the business rescue – on the website of the practitioner at https://pattinson.biz/ under the "Business Rescue" tab at the top right of the page.

CLAIMS HAVE BEEN RECEIVED FROM THE FOLLOWING CREDITORS:

Should your name not be on the list below, this means that a claim has not been received by the practitioners and you should please submit one soonest, on the prescribed form as mentioned above.

CCI SA (Durban)

D360 Johannesburg

KNS Electrical & Data Solutions

QUESTIONS / COMMENTS

1. More a point of clarification, the purpose of the proposed meeting of the 19th of May 2023 was queried, and Mr Pattinson explained that although not a legal requirement, BR360 prefers to have regular meetings with the creditors to properly keep everyone informed of their findings and investigations at regular intervals. This allows the practitioners to adequately provide feedback to all of the affected persons.
2. As another point of clarity, it was made clear that the potential sale of the property out of the business, would have a nett effect better than what could be expected in a liquidation. This point of clarity was made as a result of a question posed as to why the business is not just liquidating in the first place.

Kind Regards

Quinton Pattinson
patp@businessrescue360.co.za
082 749 6462

David Masterton
davidm@businessrescue360.co.za
082 569 3813

Jaco Durandt (assistant)
jacod@businessrescue360.co.za
076 773 4595

African Capital Property Portfolio (Pty) Ltd

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Annexure B : List of Creditors of the Business

It must be noted that the proof of claims submitted to the Business Rescue Practitioners does not automatically assure the creditor that they will receive this amount as discrepancies might be found when comparing the amount in the books of the business to the proof of claims received.

Due to the limitations in law, the practitioners did not have the time nor the funds or the *locus standi* to perform a full investigation, due diligence or confirmation audit on the information received nor to employ third parties to verify and scrutinize same.

Please further note that this plan refers to the fact that no legal fees, interest, collection fees or any cost other than the capital amounts can be provided for on the historic debts due to creditors. Only the capital amounts due will be considered in the dividend calculation if such debt is not specifically provided for in this proposed Business Rescue Plan.

Africa Capital Property Portfolio (Pty) Ltd			FINANCE SHEET				
Nr	**Creditor**	**Acronym**	**Capital Amount**	**Interest & Admin Fees**	**Legal Fees**	**Amount Due**	**% Voting Interest**
1	CCI SA (Durban)	D-CC	R 689 798,00			R 689 798,00	3,06%
2	D360 Johannesburg	CC	R 76 206,31	R 12 169,65		R 88 375,96	0,39%
3	KNS Electrical & Data Solutions	D-CC	R 1 060 635,16		R 28 019,50	R 1 088 654,66	4,82%
4	Standard Back - Acc Number: 469068 Commercial Property Finance Agreement	SC	R 16 775 023,57			R 16 775 023,57	74,31%
5	Z Sisulu Trust	CC	R 2 663 000,00			R 2 663 000,00	11,80%
6	Jacques Van Der Heyde - Pre Rescue	CC	R 461 915,04			R 461 915,04	2,05%
7	Jacques Van Der Heyde - Post Rescue	CC	R 808 351,32			R 808 351,32	3,58%
TOTAL		**7**	**R 22 534 929,40**	**R 12 169,65**	**R 28 019,50**	**R 22 575 118,55**	**100,00%**

SUMMARY BY CREDITOR ACRONYM		Count	Capital Amount	Interest & Admin Fees	Legal Fees	Amount Due	%
SC	Secured Creditors	1	R 16 775 023,57	R -	R -	R 16 775 023,57	74,31%
CC	Concurrent Creditors	4	R 4 009 472,67	R 12 169,65	R -	R 4 021 642,32	17,81%
PC	Post Commencement Finance	-	R -	R -	R -	R -	0,00%
D-SC	Disputed Secured Creditors	-	R -	R -	R -	R -	0,00%
D-CC	Disputed Concurrent Creditors	2	R 1 750 433,16	R -	R 28 019,50	R 1 778 452,66	7,88%
D-PC	Disputed Post Commencement Finance	-	R -	R -	R -	R -	0,00%
TOTAL		**7**	**R 22 534 929,40**	**R 12 169,65**	**R 28 019,50**	**R 22 575 118,55**	**100,00%**

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure C : Company Registration Documents (CoR123.1)

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
REPUBLIC OF SOUTH AFRICA

Date:	**03/04/2023**
Customer name:	**JACO DURANDT**
Customer code:	**JA2976**
E-mail address:	**JACO@PE-PARALEGAL.CO.ZA**
Rereference Number:	**60000705065**

The Commission has received a form CoR123.1 Notice to Commence Business Rescue Proceedings in terms of section 129 or court order commencing business rescue proceedings in terms of section 131 of the Companies Act, 71 of 2008, dated 31/03/2023 for:

Company / Close Corporation Name:	**AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD**
Registration Number:	**2006/024468/07**
Company / Close Corporation Status:	**BUSINESS RESCUE**

The application was duly registered on 03/04/2023 and the effective date of commencement of business rescue proceedings is recorded as 31/03/2023.

Yours sincerely,

Commissioner: CIPC

Document issued by the Commissioner of Companies And Intellectual Property Commission on Monday, 03 April 2023 at 11:04

Certificate of Confirmation

Registration Number: **2006/024468/07**

Enterprise Name: **AFRICAN CAPITAL PROPERTY PORTFOLIO**

ENTERPRISE INFORMATION

Registration number:	**2006/024468/07**
Enterprise Name:	**AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD**
Registration Date:	**07/08/2006**
Business Start:	**07/08/2006**
Enterprise Type:	**PRIVATE COMPANY**
Enterprise Status:	**BUSINESS RESCUE**
Financial Year End:	**MARCH**
Main business/Main object	**ACQUISITION AND OWNERSHIP OF INVESTMENT PROPERTIES, DIRECT PROPERTY INVESTMENT AND ALLIED ACTIVITIES**
Tax number:	**9497819152**

Addresses:

Postal Address	Address Of Registered Office
P O BOX 44343 **CLAREMONT** **3362** **7735**	**THE TERRACES** **AFRASIA HOUSE BLOCK F** **STEENBERG OFFICE PARK** **3362** **7945**

Company Records Location:

Registration Number: **2006/024468/07**

Enterprise Name: **AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD**

AUDITORS

Name

Postal Address

ACTIVE MEMBERS / DIRECTORS

Full Name	Director Type	ID Number	Appoint. Date	Cellphone Number	Address
VAN DER HEYDEN JACQUES BERNARD	DIRECTOR	6710195214083	31/10/2006	0825663997	Postal:P O BOX 44343, CLAREMONT, CLAREMONT,3362, 7735 Residential Address: 6 MONTAGUE ROAD,BERGVLIET, BERGVLIET,3362, 7945

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure D : Material list of Assets of the Business

PROPERTY VALUE ASSESSMENT

Randburg Office Block

“328 Kent Avenue”

GLA – 4 278m^2

328 Kent Avenue l Ferndale, Randburg
Erf 835 Ferndale

WH Auctioneers Properties (PTY) Ltd
578 16th Road, Randjespark, Midrand
Tel: 0115745700

www.whauctions.com

Contact for further info:

Joshua Pelkowitz
Cell: 072 536 5482
Email: joshuap@wh.co.za
(Property Practitioner – Certificate Number 2023332288)

1. INSTRUCTION TO WH AUCTIONEERS PROPERTIES

Att: Pat and Jacques,

WH Properties have been requested to provide a Market Value and Forced Sale for Erf 835 Ferndale.

WH representatives viewed the property on Friday 12 May 2023.

This document provides a comprehensive appraisal of the property based on our expertise with similar properties.

Summary: In our opinion, the fair value for the property is as follows:

Market Value Rounded = R18 200 000

Forced Sale Value = R10 920 000

We look forward to providing you with the best service.

Faithfully

WH Auctioneers Properties

Joshua Pelkowitz
(Managing Executive - Properties)

2. GENERAL

Property Address: 328 Kent Avenue, Ferndale, Randburg

Erf & Suburb & City: Erf 835 Ferndale, Randburg Gauteng

3. TITLE DEED INFORMATION

Deeds Office: Pretoria

Title Deed No. T151741/2007

Erf Size: 4 044m^2

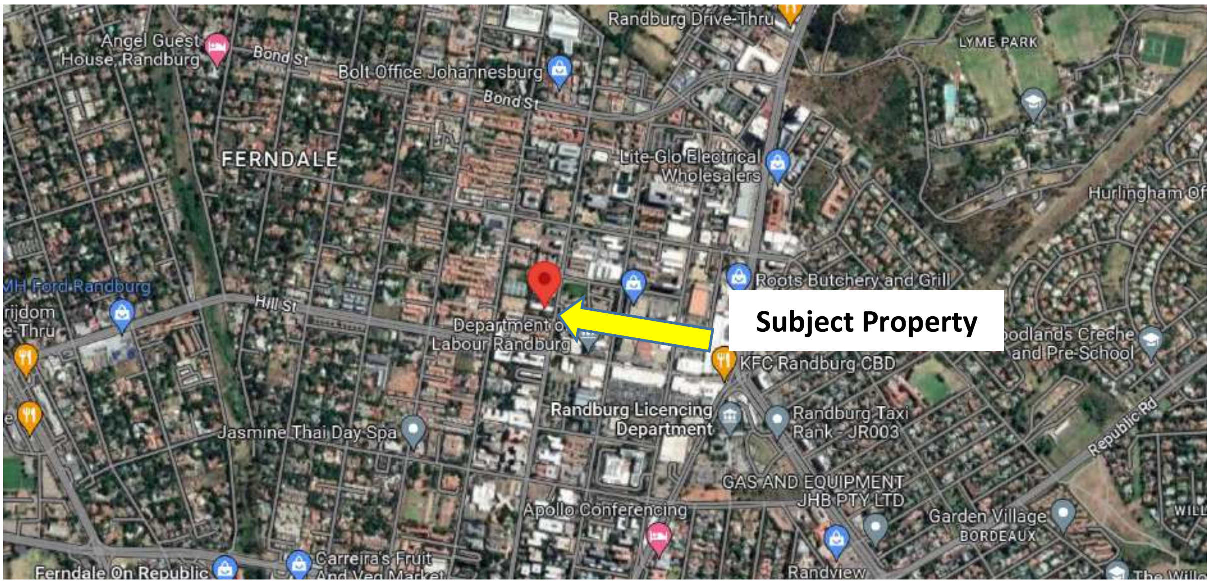
Zoning: Special (for offices / flats) *awaiting copy of zoning certificate*

Height: 6 Storeys

Coverage: 60%

4. LOCALITY

Ferndale is a suburb of the city of Randburg, Johannesburg. It is a well-established, predominantly residential node, with a large commercial hub comprising, offices, and blocks of flats. The area is known for call centres and telecommunication companies as well as various head offices and government bodies. The subject property is located directly adjacent the SARS office. Many of the office buildings in the area have been converted into residential apartment blocks.



5. DESCRIPTION OF IMPROVEMENTS

The subject property consists of a 5-storey B-grade commercial office block (ground plus 4) which measures approximately 4 278m^2 GLA (Gross Lettable Area). The building has historically been tenanted by call centres, and was purpose fitted for the call centre industry. The property is currently, predominantly vacant, with only half the ground floor, full 1st floor and half the 2nd floor occupied. The balance of the building is vacant.

The property consists of a main reception area, numerous offices, boardrooms, as well as open plan office space. Ablutions on each floor as well as on the staircase landings, server rooms, kitchens, canteens and strong rooms. There are 2 lifts. There is also a basement area which was historically staff accommodation but is being used as storage as well as the main electrical DB room. There is also an old redundant generator in the basement. There is also additional storage on the 5th floor near the lift rom/roof section.

The building is fully airconditioned with a full aircon plant located in the parking area – the plant was not operating on the inspection date. Condition of the plant is unknown.

Condition

General condition of the building is fair. There is quite a lot of maintenance and upkeep required. There are numerous missing celling boards, and loose hanging wires. The electrical installation at the main DB requires attention with 3 large, exposed cables. There are also signs of historic leaks on the 4th floor. These leaks are apparently still unfixed (per the facilities manager). Unknown condition of the aircon plant, however it appears to require repairs.

Parking, Site Access and Security

There is onsite parking comprising both open bays and carports (96 bays). There are also 2 main entrance/exit gates along Kent Avenue, allowing free flow of vehicles around the building. There is 24/hr on-site security and the entire property is walled/fenced.

Power supply & water supply

Electricity and water are supplied by the council. There is also a large on-site generator with 700Kva supply.

Accommodation & Areas	Approximate Lettable Area/Bays	Approximate Gross Building Area
Offices	4 278 m²	4 926 m²
Basement Utility Areas	0 m²	194 m²
Total	**4 278 m²**	**5 120 m²**
Ground Floor Covered	1 682 m²	

<u>Disclaimer</u>
A structural survey of the buildings has not been undertaken and will not form part of this report. All structural and maintenance information are as per information provided by the owners upon visiting the site. Neither the Seller nor the Auctioneer warrant the availability of any buildings plans and the property is not being sold subject to the provision or registration of such plans and this will be the responsibility of the Purchaser if required by the local authority. Neither the Seller nor the Auctioneer/Agent warrant vacant occupation of the Property.

6. SITE LAYOUT

7. FINANCIAL INFORMATION

The building has historically been tenanted by call centres, and was purpose fitted for the call centre industry. The property is currently predominantly vacant, with only half the ground floor, full 1st floor and half the 2nd floor occupied. The balance of the building is vacant. Therefore, the potential income will be based on a combination of current income and assumptions based on current market related comparables.

Current tenancy:

Tenant 1 – Innovative Corporate Strategies (Pty) Ltd
- 1 year lease expiring end March 2024
- GLA 222m^2
- Monthly Rental: R80/m^2 plus 2 Parking bays at R350 per bay

Tenant 2 – Moneyshop Co Za (Pty) Ltd
- 3 year lease expiring end September 2025
- GLA 1005m^2
- Monthly Rental: R80/m^2 plus 12 Parking bays at R200 per bay

Current rentals on the market in Ferndale can be seen below:

Based on the above, average asking rentals for similar office space is **ranging between R75/m^2 and R85/m^2**. Based on the age and condition of the subject property we have opted for a lower rental assumption to ensure "lettability" and a reasonable through rate of **R70/m^2** for the balance of the vacant pace in the building. Market related rental for parking bays is roughly R250/bay. Of the 4 278m^2 of lettable space, currently 1 227m^2 are occupied, leaving 3 051m^2 vacant.

Rates applied to the subject properties

Approximate Total Gross Lettable Area (GLA)	4 278m^2
Expense Ratio (Market average)	28%
Vacancy factor	9%
Market related rental for vacancy	R70/m^2
Parking Rental	R250/bay

Estimated Income Schedule

Income	
Office Rental Occupied (1 227m^2 X R80/sqm X 12)	R1 177 920
Office Rental Vacant (3 051m^2 X R70/sqm X 12)	R2 562 840
Parking Rental Occupied	R37 200
Parking Rental Vacant (82 XR250/bay X 12)	R246 000
9% Vacancy Factor	R362 156
Total Gross Annual Rental	**R3 661 804**
Expenses	
(Approx. 28% of GI)	R1 025 305
Total Annual Expenses	**R1 025 305**
Potential Net Annual Income	**R2 636 499**

Potential Net Annual Income – R2 636 499

8. OPINION OF VALUE

During the evaluation process, there are three main method of valuations which can be used to assess the value of a property namely the:

- The Income Approach
- The Cost Approach
- The Comparable Sales Method

For any property valuation one must assess a property based on size, finish, age, condition, location etc. When valuing residential property, the most commonly used method of valuation is the **Comparable Sales Method.**

This method of valuation is based on the premise of comparing the subject property to similar properties which have recently sold in the specific area, as well as properties which are currently on the market.

In order to arrive at the most accurate value, one compares the subject property to sales of similar properties in the area as well as properties currently on the market. Due to the fact that not all properties are identical, adjustments must be made where necessary. For example, the price of property with a swimming pool will have to be adjusted when being compared to a property without a swimming pool.

When valuing a property which generates an income, be it a shopping center, office block or even a bachelor flat which is being rented, the most commonly used method of valuation is the **Income Approach**, whereby a property is valued based on the income which it produces. The value of the property is determined by dividing the Net Annual Income generated by the prevailing Capitalization Rates in a particular area. The capitalization rate can be described as the yield/rate of return which a property investor can expect to generate from an investment.

Value = Net Annual Income/Capitalization Rate

For this property the **income method** will be used.

Although we appreciate the intrinsic value of the property, the current market conditions make it difficult to accurately determine the true selling price for a property. Further facts impacting values and cap rates include:

- Knock on effects following Covid-19
- Current state of disaster with Loadshedding
- Recent grey listing
- Downgrade to junk status
- Recent interest rates Hike to 11.25% prime lending rate with a potential additional 50 BP increase

Based on this we believe a Cap Rate of **14.5%** to be fair for commercial space in the current market.

The value of the property will be derived capitalising the net income, utilising a market related cap rate of **14.5%** (based on current economic situation).

Income Based Valuation			
Income Capitalisation		Calculation	Total
Net Operating Income			**R2 636 499**
Value (NOI /CAP Rate)		**Cap Rate @ 14.5%**	R18 182 752

Rounded Value – R18 200 000

Alternative Value Scenario

Based on the trend in the local vicinity of converting old office blocks into residential apartment blocks, we usually apply a secondary value scenario to cater for purchasers who would consider this option.

Purchasers looking to acquire and convert 2nd hand office space into residential blocks usually work on a rate/m^2 of GLA for value purposes. This rate usually ranges between R1 500/m^2 and R3 000/m^2.

Rate/m^2 for conversion			
		Calculation	Value
GLA 4 278m^2		Rate at R1 500/m^2	R6 417 000
GLA 4 278m^2		Rate at R3 000/m^2	R12 834 000

9. CONCLUSION

It must be noted that market value and **SELLING** price are two very different things, and the likelihood of the properties selling for the above-mentioned value is not guaranteed. With the current negative market trends, rising interest rates and lack of basic services in South Africa property prices are unfortunately being negatively affected. Based on the above comparable sales, the above value falls within current market range. In our opinion, a fair value will be:

Rounded Market Value = R18 200 000

The term "forced sale" is often used in circumstances where a seller is under compulsion to sell and that, as a consequence, a proper marketing period is not possible, and buyers may not be able to undertake adequate due diligence. The definition of the term "***Forced Sale Value***" as laid down by the International Valuation Standards Committee is: "The amount that may reasonably be received from the sale of a property within a time frame too short to meet the marketing time frame required by the *Market Value* definition. It might involve an unwilling seller and a buyer or buyers who buy with knowledge of the disadvantage of the seller.

As a rule of thumb, we as auctioneers err on the side of caution when assigning values and generally apply a forced sale factor of 50% to 75% of market value. For the purpose of our report we have applied a 60% forced sale factor.

Rounded Forced Value = R10 920 000

10. SITE PHOTOGRAPHS






11. MAINTENANCE CONCERNS

12. MUNICIPAL ACCOUNTS

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JoburgConnect@joburg.org.za

PO Box 5000
Johannesburg 2000

COPY TAX INVOICE

VAT NO. : CITY OF JOHANNESBURG - 4760117194 VAT NO. : PIKITUP - 4790191292
VAT NO. : JOHANNESBURG WATER - 4270191077 VAT NO. : CITY POWER - 4710191182

AFRICAN CAPITAL PROP
PO Box 5184
TYGERVALLEY
7536

Date	2023/05/03
Statement for	May 2023
Physical Address	328 KENT AVENUE
Stand No./Portion	00000835 - 00000 - 00
Township	FERNDALE

Stand Size	Number of Dwellings	Valuation Date	Portion	Municipal Valuation	Region
4015 m2	1		U1	Market Value R 0.00	Region B WARD 102

Invoice Number : 118005370864
Client VAT Number : 4720235896
Group :
Next Reading Date :
Deposit Paid : R 0.00

Account Number 330286573 (PIN Code:393425)

Previous Account Balance	29,671.77
Sub Total	29,671.77
Interest on Arrears	204.77
Current Charges (Excl. VAT)	9,233.04
VAT @ 15%	1,384.96
Total Due	40,494.54
Due Date	2023/05/10

90 Days+	60 Days	30 Days	Current	Instalment Plan	Total Outstanding
8,124.74	10,801.73	10,745.30	10,822.77	0.00	40,494.54

Account Number 330286573		
PIKITUP Refuse **VAT No. 4790191292**	**Amount**	**Sub Total**
Refuse removal: 20-bin @ R 418.45 X 1 (Billing Period 2023/05) City cleaning levy VAT: 15.00% (Total Amount: 9,052.00)	8,369.00 683.00 1,357.80	**10,409.80**
City of Johannesburg Sundry Charges **VAT No. 4760117194**		
Surcharge on business services, excluding property rates VAT: 15.00% (Total Amount: 181.04)	181.04 27.16	**208.20**
Current Charges (Incl. VAT)		**10,618.00**

Tel : (011) 375 5555
Fax : (011) 358 3408/9

E-mail :
JoburgConnect@joburg.org.za

PO Box 5000
Johannesburg 2000

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COPY TAX INVOICE

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VAT NO. : JOHANNESBURG WATER - 4270191077 VAT NO. : CITY POWER - 4710191182

AFRICAN CAPITAL PROP PORTFOLIO LTD
PO Box 5184
FERNDALE
7536

Date	2023/05/03
Statement for	May 2023
Physical Address	328 KENT AVENUE
Stand No./Portion	00000835 - 00000 - 00
Township	FERNDALE

Stand Size	Number of Dwellings	Valuation Date	Portion	Municipal Valuation	Region
4015 m2	1	2018/07/01	U1	Market Value R 20,750,000.00	Region B WARD 102

Invoice Number	: 28005712697	Group :	Next Reading Date	:
Client VAT Number	: 9999999999		Deposit Paid	: R 7,998.00

Account Number 403636092 (PIN Code:769606)

Previous Account Balance	42,476.51
Sub Total	42,476.51
Interest on Arrears	242.14
Current Charges (Excl. VAT)	49,898.58
VAT @ 15%	1,896.03
Total Due	94,513.26
Due Date	2023/05/10

90 Days+	60 Days	30 Days	Current	Instalment Plan	Total Outstanding
0.00	0.00	42,476.51	52,036.75	0.00	94,513.26

Account Number 403636092		
Johannesburg Water Water & Sanitation **VAT No. 4270191077**	**Amount**	**Sub Total**
(Reading period = 2023/03/04 to 2023/04/04 = 32 days) Meter: CJWA314; Register: 1; Multiply factor: 1; Start reading: 23,603.000; End reading: 23,734.604; Difference: 131.604; Consumption: 131.604; Units: KL; Type: Estimated Readings. Daily average consumption 4.113 KL Charges for 131.604 KL are based on a sliding scale for a 32 day period Step 1 131.604 KL @ R 52.710 (Billing Period 2023/05) Demand Management Levy Charges for 131.604 KL are based on a sliding scale for a 32 day period Sewer monthly charge based on Water 131.604 units (Billing Period 2023/05) VAT: 15.00% (Total Amount: 12,397.76)	6,936.87 274.36 5,186.53 1,859.66	14,257.42
City of Johannesburg Property Rates **VAT No. 4760117194**		
Category of Property: Property Rates Business R 20,750,000.00 X R 0.0215470 / 12 (Billing Period 2023/05) VAT: 0 %	37,258.35 0.00	37,258.35
City of Johannesburg Sundry Charges **VAT No. 4760117194**		
Surcharge on business services, excluding property rates VAT: 15.00% (Total Amount: 242.47)	242.47 36.37	278.84
Current Charges (Incl. VAT)		**51,794.61**

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Johannesburg 2000

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COPY TAX INVOICE

VAT NO. : CITY OF JOHANNESBURG - 4760117194
VAT NO. : JOHANNESBURG WATER - 4270191077
VAT NO. : PIKITUP - 4790191292
VAT NO. : CITY POWER - 4710191182

AFRICAN CAPITAL PROPERTY (LTD)
PO Box 5184
TYGER VALLEY
7536

Date	2023/05/03
Statement for	May 2023
Physical Address	328 KENT AVENUE
Stand No./Portion	00000835 - 00000 - 00
Township	FERNDALE

Stand Size	Number of Dwellings	Valuation Date	Portion	Municipal Valuation	Region
4015 m2	1		U1	Market Value R 0.00	Region B WARD 102

Invoice Number : 40005625724
Client VAT Number : 9999999999
Group :
Next Reading Date :
Deposit Paid : R 40,000.00

Account Number 221426213 (PIN Code:826182)

Previous Account Balance	42,667.78
Sub Total	42,667.78
Interest on Arrears	223.69
Current Charges (Excl. VAT)	36,745.72
VAT @ 15%	5,511.86

90 Days+	60 Days	30 Days	Current	Instalment Plan	Total Outstanding
0.00	2,129.73	40,538.05	42,481.27	0.00	85,149.05

Total Due	85,149.05
Due Date	2023/05/10

Account Number 221426213

City Power Electricity VAT No. 4710191182	Amount	Sub Total
(Reading period = 2023/04/01 to 2023/04/30 = 30 days)		
Meter: 55089243; Register: 1; Multiply factor: 1; Start reading: 7,298,600.000; End reading: 7,306,096.000; Difference: 7,496.000; Consumption: 7,496.000; Units: kWh; Type: Actual Readings.		
Meter: 55089243; Register: 2; Multiply factor: 1; Start reading: 667,284.000; End reading: 667,881.000; Difference: 597.000; Consumption: 597.000; Units: kVArh; Type: Actual Readings.		
Daily average consumption 19.900 kVArh		
Daily average consumption 249.867 kWh		
Charges for 597.000 kVArh are based on a non-sliding scale for a 30 day period		
Charges for 7,496.000 kWh are based on a non-sliding scale for a 30 day period		
Energy charge 7,496.000 kWh @ R 1.8532 (Billing Period 2023/05)	13,891.59	
Reactive energy charge 597.000 kVArh @ R 0.0000	0.00	
Network Surcharge kWh	449.76	
Demand charge Energy charge 70.000 kVA @ R 276.90	19,383.00	
Service charge	2,309.69	
VAT: 15.00% (Total Amount: 36,034.04)	5,405.11	**41,439.15**
City of Johannesburg Sundry Charges **VAT No. 4760117194**		
Surcharge on business services, excluding property rates	711.68	
VAT: 15.00% (Total Amount: 711.68)	106.75	**818.43**

Current Charges (Incl. VAT)	**42,257.58**

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure E : Certificate of the Business Rescue Practitioners

02 October 2023

BUSINESS RESCUE CERTIFICATE

In terms of Chapter 6 of the Companies Act, No 71 of 2008

for

African Capital Property Portfolio (Pty) Ltd

With Reg nr: 2006 / 024468 / 07

Herewith we, the undersigned appointed Business Rescue Practitioners for the abovementioned company, certify the following with regards to the proposed Business Rescue Plan as published to the affected persons on 2nd of October 2023:

1. Any and all actual information provided in the plan appears to be accurate, complete, and up to date.

2. The financial statement projections are estimates made in good faith on the basis of factual information and assumptions provided by the directors, staff or external service providers of the company, and as set out in the statements. Omitted in terms of the plan.

3. Due to the limitations in law, the practitioners did however not have the time nor the funds to perform a full due diligence, confirmation audit on the information received, nor employ third parties to verify and update any outstanding annual financial statements and accompanying tax returns.

Quinton Pattinson
patp@businessrescue360.co.za
082 749 6462

David Masterton
davidm@businessrescue360.co.za
082 569 3813

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure F : Written Fee Agreement

PROPOSAL MADE BY:

Business Rescue 360 (PTY) LTD t/a BR360

2021 / 534306 / 07

(duly represented by David Masterton and Quinton Pattinson)
(hereinafter referred to as the "Consultancy")

AND

Business Trading Name	: African Capital Property Portfolio
Business Registered Name	: African Capital Property Portfolio (Pty) Ltd
Business Registration No	: 2006 / 024468 / 07
Contact	: Jacques Van Der Heyden
Email Address	: Jacques@africap.co.za

(duly represented by Jacques Van Der Heyden)
(hereinafter, referred to as ""the Client"*)*

WHEREAS The Client wishes to enter into a professional working agreement with ***BR360***, and

WHEREAS ***BR360*** accepts this request based on the terms as set out in this proposal, and

The parties hereby agree as follows:

PROJECT SCOPE AND FEES

Herewith the proposal of the terms and objectives of our engagement and the nature and limitations of the services that BR360 will provide.

BR360 proposes to perform the following services as requested by the client and report to the client the outcomes resulting from our work. The client upon signature hereof will have agreed to accept the terms as set out for this project by BR360.

PROJECT PURPOSE

To submit the business to voluntary business rescue proceedings in order to facilitate the rehabilitation of the business by providing for the temporary supervision of the business and the development and implementation of a business rescue plan to restructure the affairs and liabilities of the business in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or alternatively provide for a better return to the affected parties than would result from the immediate and traditional liquidation of the business.

PROJECT DESIRED OUTCOME

The desired outcome is the successful implementation of a business rescue process, achieving the goals as set out in the definition of business rescue contained in section 128(1)(b)(i) to (iii) of the Companies Act (the Act).

Where "Business Rescue" means the proceedings as set out in Chapter 6 of (the Act) to facilitate the rehabilitation of the company that is financially distressed.

PROJECT COSTING

BR360 proposes the following fee structure for the completion of the abovementioned project.

The terms of which are as follows:

The Business Rescue Practitioners have agreed to be paid a joint retainer of R21 500 (Excl VAT) per month for the duration of the business rescue process. – this is in an attempt to keep the operating costs of the business to a minimum during the continuation of the business rescue process.

Further to the above, the following expenses will be covered by the business as and when required:

1	Professional Indemnity Cover	TBC	To be quoted once business is in rescue (Note that the BRP's make no profit on this PI Cover amount – the funds will be paid by the business directly to the broker).
2	Business Rescue administration fee	R3500/month	Administrative services relating to the business rescue process including filing for rescue, communication with creditors, meeting admin (setting meeting, attendance, minutes and outcomes) and any other administrative duties relating to the BR process.

Contingencies:

In terms of the Companies Act Section 143(2), the consultancy will be entitled to contingencies, the consultancy hereby proposes the following:

1. Although the business and the consultancy may reach an agreement in relation to terms for payments and fee structures, it is a requirement in terms of the Companies Act, that the agreed to fees must be approved by creditors at a meeting called for that purpose.

2. Should the business rescue process conclude in the property of the business being tenanted and not sold, the below success fees will be applicable (points 2(a) and (b)):

    a. The Business Rescue Practitioners will be entitled to receive a success fee equal to R50 000 (fifty thousand rand) excl VAT on the adoption of the proposed business rescue plan.

    b. The Business Rescue Practitioners will be entitled to receive a success fee equal to R50 000 (fifty thousand rand) excl as soon as they file for substantial implementation of the business rescue process.

3. Should the business rescue process conclude in the property of the business being sold and not tenanted, the below success fees will be applicable (points 3(a) –(d)):

    a. The Business Rescue Practitioners will be entitled to receive a 2% dividend on the gross sale price on all immovable assets sold as part of the Business Rescue of the Company. Agent/s who assisted with the sale will be entitled to their own commission as in the ordinary course of business and this will need to be settled by the business or from the sale price.

    b. The Business Rescue Practitioners will be entitled to receive a 3% dividend on the gross sale price on all movable assets sold as part of the Business Rescue of the Company. Agent/s and or auctioneers who assisted with the sale will be entitled to their own commission as in the ordinary course of business and this will need to be settled by the business or from the sale price.

    c. Should the business be sold as a going concern and or the shares or members' interest or part thereof be disposed of the Business Rescue Practitioners shall be entitled to a commission of 5% on the gross sale price of the sale. Agent/s who assisted with the sale will be entitled to their own commission as in the ordinary course of business and this will need to be settled by the business or from the sale price.

    d. The Business Rescue Practitioners shall be entitled to 5% of any post commencement finance that is raised for the business during the business rescue process or thereafter. Agent/s who assisted with the raising of this PCF will be entitled to their own commission (if applicable) as in the ordinary course of business and this will need to be settled by the business or from the sale price.

LIQUIDATION DEPOSIT

The consultancy requires a liquidation deposit to be paid into the trust account of an attorney. This deposit is required to cover the costs should the company have to enter liquidation proceedings for whatever reason. Confirmation of such liquidation deposit is required before commencement of the business rescue proceedings. Should confirmation of this fund transfer not be possible, the consultancy hereby requests that the business and its directors approach an attorney and get written confirmation that their attorney will be willing to do the liquidation on a contingency basis.

AGREEMENT OF TERMS

1. This fee agreement must be read with the terms and conditions as set out in the letter of engagement, memorandum of agreement and any other agreement that may be concluded between the client and the consultancy.

2. All third party and sub-contractor's fees are for the account of the client.

3. Penalty interest equal to the maximum Mora Interest allowed as per the Prescribed Rate of Interest Act (Act No. 55 of 1975) will be levied on all outstanding invoices.

4. The client shall within five (5) working days of receipt of invoices raise any queries it may have in respect of such invoices, whereafter the amounts reflected will be accepted as correct and the client will be barred from raising any further queries.

5. All attorney's debt collectors' costs will also be recovered from the client on the attorney-and-client scale or on the official tariffs applicable to registered debt collectors. This is inclusive of the collection commission costs of the debt collector at a rate of no more than 15% on the full amount outstanding.

6. The client will place all the equipment, not yet secured with any other party of the business, as security and all invoices raised will be considered as secured on this basis.

7. The solvency or insolvency of the client shall have no effect upon the terms of payment of these fees. Reliance will be placed on the security over the assets as per point 6 above and should it not be possible to attach any such items, a deposit will be required to commence work and to secure fees at the onset of the project.

8. The client will be responsible for the payment of the costs relating to the professional indemnity cover for the appointed business rescue practitioner/s. It is a requirement in law that practitioners obtain professional indemnity cover for each individual rescue appointment.

   a. It is a requirement of our Professional Indemnity Insurance that we limit our liability in regard to professional engagement services provided, to a maximum of two times fees billed for a specific project or matter. The client and BR360, therefore agree and accept that BR360's liability in respect of professional engagements, shall be limited in this way.

9. The submission and payment of any statutory obligations remains the responsibility of the directors/shareholders of the company.

[signature]	J.B.VAN DER HEYDEN	30.03.2023	CAPE TOWN
Signature	**Name**	**Date**	**Signed at**

By signing this document, the client confirms that this letter and the contents herein have been brought to their attention, and that the signatories have been duly authorized by the relevant parties to sign this letter on their behalf and the signature confirm the accuracy of the information provided and that BR360 may use this information for invoicing, referencing and marketing purposes.

It should be noted that Jacques Van der Heyden does not assume any personal liabity or suretyship for any expenses incurred as a consequence of the aforementioned services provided by BR360.

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure G : Disclaimer

DISCLAIMER

All the affected parties' attention is specifically drawn to the disclaimer provisions set out hereunder:

1. The business rescue practitioners have compiled this proposed business rescue plan[1] based on the information provided to them by, *inter alia* the directors, creditors and third parties which information the business rescue practitioners will endeavour to confirm its accuracy.

2. The BRPs have relied on the information provided and accepted all documents delivered to them as being authentic and a true reflection of the business, its property and its financial situation.

3. However, as a result of the limitations in law and availability of funds and time, the practitioners have not carried out a full confirmation audit of the company's documents as provided, nor have the practitioners had adequate time and/or opportunity to independently verify all the information provided.

[1] Section 150 of the Companies Act 71 of 2008.

a. This does not deter from the fact that the practitioners present the information as contained in the proposed business rescue plan as 'reasonable' and 'fair'. Where estimates are made,[2] these are estimates only, but are made in good faith[3] and the practitioners acknowledge that the affected persons must be able to adequately apply their minds when considering the proposed rescue plan and to determine whether or not to vote in favour of the adoption of such plan.[4]

b. The business rescue practitioners have taken all reasonable and necessary steps to verify information and data provided to them within the time constraints and resources available to them and the company as provided for in the Act.[5]

c. Business rescue is inherently a public affair and the BRPs have a duty to disclose to any affected persons sufficient and accurate information for such affected person and/or creditor to make an informed decision as to the affairs of the company and to vote on the plan. This implies that certain trade secrets, client data and other information will inevitably be made available to affected persons.[6]

4. The BRPs have, where relevant, engaged expert third party professionals such as legal advisors, accountants, valuators and financial advisors and have relied on such professional opinions in compiling this proposed business rescue plan.

5. The BRPs do not express an opinion outside of their expertise and where relevant, such opinions are informed by advice received from the relevant professional.

   a. Any such statement of opinions expressed by the BRPs are so given in good faith and based on the information the BRPs believe to be true and correct.

---

[2] Where forecasts - specifically financial forecasts - are made, they are based on the data made available to the BRPs and in good faith.
[3] Section 150 (4) (b) of the Act.
[4] Section 150 (2) of the Companies Act 71 of 2008.
[5] Chapter 6 of the Companies Act.
[6] The Protection of Personal Information (POPI) Act, as an essential data protection legislation, acknowledges the need for businesses to safeguard personal information and trade secrets. In compliance with the Act's requirements, balanced with the Companies Act requirements, certain elements of personal information or proprietary knowledge may be included within the business rescue plan to ensure its validity and efficacy.

6. The BRPs do not accept any responsibility, in any way whatsoever, to any party in respect of any errors that may be the result of incorrect information that was provided to them and used in this proposed business rescue plan.

7. All affected parties are advised to obtain independent legal opinion in respect of the content of this plan. Should they require such opinions, the BRPs cannot advise an affected person, as such action may be deemed to be prejudicial.

    a. Nothing contained in this proposed business rescue plan shall be deemed to constitute legal 'advice'. Although reference is made to the Companies Act and various other forms of legislation, the BRPs hereby confirm that they are not attorneys and the opinions given and statements made are simply their understanding of the law and such statements/opinions are given without prejudice.

8. The Act[7] compels the BRPs to investigate the affairs of the company, however the BRPs do not have powers like that of a liquidator to subpoena witnesses and interrogate them. The investigations into the affairs of the company are based on the information provided and the documents made available to the BRPs, by those willing to provide such information.

9. All notifications made to affected parties and particularly the creditors, are based on the information provided to the BRPs by the directors and as extracted from the accounting records made available to the BRPs. The BRPs have taken all reasonable and necessary steps to determine who are affected persons and given such persons due notice.

10. The BRPs have contacted all the affected persons, known to them, that might have a claim against the business via email and/or telephone.

11. This proposed business rescue plan will be binding on all creditors should a successful vote on the plan be achieved in terms of the Act.[8]

[7] Section 141 of the Companies Act 71 of 2008.
[8] Section 152 of the Companies Act 71 of 2008.

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure H : Abbreviated LND

DRAFT – ABBREVIATED LIQUIDATION AND DISTRIBUTION ACCOUNT FOR AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD (IN BUSINESS RESCUE)

Registration number: 2006/024468/07

Note:

This is only a proposed account for the business, actual values may differ dependent on amounts received at auction and fluctuations in Section 89 costs.

Encumbered Asset Account: Proceeds of the immovable asset sold in favour of Standard Bank under a Commercial Property Finance Agreement Acc number: 469 068

Description	VAT	Payments	Receipts
Receipts			
Immovable asset sold Value– determined by the forced sale value per the valuation done in Annexure D	R1 421 739.13		R10 900 000
Section 89 Costs			
Pro-rata Masters Fee R1 000 for first R150 000 Thereafter R275 for each complete R5 000. (This will reach the prescribed maximum in this case) ->		R275 000	
Pro-rata Bond Costs	R5 217.39	R40 000	
Liquidators Fee (3% immovable assets)	R48 090.33	R368 692.50	
Advertising Costs (Liquidation + Liquidator)	R8 478.26	R65 000	
Auctioneers Commission	R142 173.91	R1 090 000	
Auctioneers Advertising Cost	R4 565.22	R35 000	
Proportional Legal Fees (cost of liquidation)	R6 521.74	R50 000	
Municipal Expenses: R121 169/m (6 Months for conclusion of liquidation process)	R94 827.91	R727 014	
Building Expenses R62 665 Security, Maintenance of lifts, Insurance etc (6 Months for conclusion of liquidation process)	R49 042.17	R375 990	
Liquidators commission on the continued trade of the business and income generated while the auction is pending (6 Months for conclusion of liquidation process) +- R140 000 / pm @6% comm	R6 573.91	R50 400	
Practitioner's Fees	R19 350	R129 000	
Business Rescue Administration Services rendered by PE – Paralegal	R2 739.13	R21 000	
PI Cover reimbursement	R2 347.83	R18 000	
Rescue expenses, including travel, vehicle rental, hotels etc. per Sec 143 of the Act	R3 198.45	R24 521.43	
Total available for Distribution:	**R7 630 382.07**		
Total due to Standard Bank (SC):	**R16 775 023.57**		
Proposed Dividend:	**+- 45.4 cents in the rand**		
Surplus:	**N/A**		
Shortfall:	**R9 144 641.50**		

African Capital Property Portfolio (Pty) Ltd

Registration nr: 2006 / 024468 / 07

Annexure I : Business Rescue Returns for Comparative Purposes

DRAFT – BUSINESS RESCUE RETURNSFOR AFRICAN CAPITAL PROPERTY PORTFOLIO (PTY) LTD (IN BUSINESS RESCUE) FOR COMPARATIVE PURPOSES

Registration number:
2006 / 024468 / 07

PROCEEDS OF THE IMMOVABLE ASSET SOLD IN FAVOUR OF STANDARD BANK UNDER A COMMERCIAL PROPERTY FINANCE AGREEMENT ACC NUMBER: 469 068

Description	**VAT**	**Payments**	**Receipts**
Receipts			
Immovable asset sold_Value determined by the forced sale value per the valuation done in Annexure D	R1 421 739.13		R10 900 000
–			
Business Rescue Costs			
Auctioneers Commission	R142 173.91	R1 090 000	
Auctioneers Advertising Cost	R4 565.22	R35 000	
Practitioner's Fees	R19 350	R129 000	
Practitioner's Commission (2%)	R28 434.78	R218 000	
Business Rescue Administration Services rendered by PE – Paralegal	R2 739.13	R21 000	
PI Cover reimbursement	R2 347.83	R18 000	
Rescue expenses, including travel, vehicle rental, hotels etc. per Sec 143 of the Act	R3 198.45	R24 521.43	
Total available for Distribution:	**R9 364 478.57**		
Total due to Standard Bank (SC):	**R16 775 023.57**		
Proposed Dividend:	**+- 55.8 cents in the rand**		
Surplus:	**N/A**		
Shortfall:	**R7 410 545**		