

## SWORN STATEMENT

I, the undersigned

Jacques van der Heyden  
With ID No: 671019 5214 083

do hereby declare as follows:

### INTRODUCTION

1. I am an adult male residing at 21 Honeyguide Lane, Steenberg Estate, Tokai, 7945, Cape Town.
2. The facts contained in this affidavit fall within my personal knowledge and I confirm the contents hereof to be true and correct.
3. I am duly authorised to dispose of this affidavit on behalf of African Capital Property Portfolio (Pty) Ltd with registration number 2006 / 534306 / 07 (hereinafter referred to as the Company).
4. I make this affidavit in terms of Section 129 of the Companies Act, 71 of 2008 as amended from time to time (hereinafter referred to as the Act).
5. I am the sole director of the business and act in my capacity as managing director of the business.

### RESOLUTION TO COMMENCE WITH BUSINESS RESCUE

6. On the 31<sup>st</sup> of March 2023, the directors passed a resolution in terms of section 129 (1) of the Act to commence with business rescue proceedings.
7. This affidavit deals with the relevant facts upon which the resolution is founded.

### FINANCIAL DISTRESS

8. The company is financially distressed due to the fact that it is reasonably unlikely that it will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months.
9. The COVID-19 pandemic played a major role in the financial distress of the company as the only income generating asset of the company is a commercial property.
10. The property had a single tenant whose lease expiry date was 31 December 2021.
11. After the commencement of COVID-19 Level 5 Lockdown during March 2020, the single tenant was unable to operate their call centre business and informed me that they were unable to pay their monthly rental.



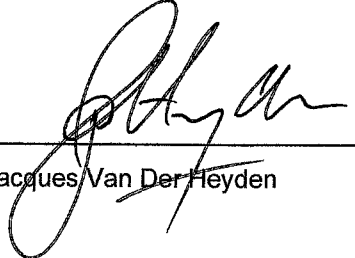
12. Standard Bank, which advanced a mortgage loan to the Company, provided a moratorium on mortgage repayments for several months during 2020 but did not extend the loan term, which resulted in monthly mortgage payments increasing by 44% to circa. R354k.
13. The single tenant did not occupy the property after the COVID-19 pandemic commenced, even though they had a lease agreement that only expired on 31 December 2021, and refused to pay rental. This situation resulted in High Court litigation.
14. The Company had to pay for significant repairs to the property after extensive theft and vandalism took place during the COVID period whilst the property was unoccupied.
15. The Company continued to pay the significantly higher Standard Bank loan instalments with the assistance of shareholder loans and the bank's loan account was not in arrears as of May 2022 whereafter it was not possible to continue paying the mortgage loan because the property had been vacant and did not generate any revenue for several months.
16. I have been working on re-tenanting the property in a very challenging market. The property is a B-Grade Office in Randburg, Johannesburg, and vacancy levels are very high in the area.
17. The property is currently 30% occupied.
18. The Company is unable to pay the Managing Director, who is the sole employee in the company, a salary and is unable to service the Standard Bank mortgage loan or shareholder loans.
19. Standard Bank has threatened to commence liquidation proceedings if their loan arrears is not settled immediately.
20. It is clear from the above and as a result, largely of things outside of the director's control, that the business is in financial distress and cannot service all of its debts as and when they are due.

#### **REASONABLE PROSPECT OF BUSINESS RESCUE**

21. The business can restructure its affairs and business operations to allow for a more profitable business. Various safeguards will also be put in place that protect the income of the business against future, uncertain events.
22. I am of the opinion that if the management and the business rescue practitioners are afforded time to restructure its affairs, business and liabilities and implement plans to increase revenue and decrease its costs, the Company has a reasonable prospect of being rescued.
23. Alternatively, the business rescue process will provide a better outcome than immediate and traditional liquidation in terms of Section 128(b)(iii) of the Companies Act by undergoing a structured winding down process.

A handwritten signature in black ink, appearing to be 'JH' with a flourish underneath.

THUS, DONE AND MADE ON THE 31<sup>st</sup> DAY OF MARCH 2023.

  
\_\_\_\_\_  
Jacques Van Der Heyden

I certify that the Deponent has acknowledged that he/she knows and understands the contents of this Affidavit, has no objection in taking the prescribed oath and regards the oath as binding on his/her conscience, which was signed and sworn to before me at CAPE TOWN on the 31<sup>st</sup> day of MARCH 2023, (the regulations contained in the Government Gazette No R1258 dated 21<sup>st</sup> of July 1972 as amended by Government notice No 1648 dated 19<sup>th</sup> August 1977 having been complied with).

  
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COMMISSIONER OF OATHS

**Megen Janine Appolis**  
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