



PROPOSED BUSINESS RESCUE PLAN

GERARDO TRADING CC

(UNDER SUPERVISION)

(REGISTRATION NUMBER: 2000/058226/23)

**IN TERMS OF SECTION 150 OF THE COMPANIES ACT 71
OF 2008**

Prepared by:

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Published by:

GERARDO TRADING CC (Under Supervision)

CORPORATE AND ADVISORY DETAILS

Close Corporation

Gerardo Trading CC (in Business Rescue)

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1. DISCLAIMER

- 1.1. This Business Rescue Plan ('Plan'), together with its annexures and all documents brought into existence prior to and after its adoption by Creditors and, if applicable, the Shareholder(s), is published in accordance with the provisions of Section 150.
- 1.2. This Plan is published in accordance with legal, industry specialist, and financial advice provided by the Advisors.
- 1.3. The information set out in this Plan has been compiled by the BRP, in conjunction with the Advisors, with reliance on information provided to them by Management, Director(s), Affected Persons and Relevant Stakeholders.
- 1.4. Whilst every effort has been made by the BRP, in conjunction with the Advisors, to ensure the accuracy of the information contained in this Plan, the Advisors and BRP can give no warranties in this regard.
- 1.5. Creditors are encouraged to seek their own legal and financial advice. The BRP, in conjunction with the Advisors, are not purporting to act as advisors to the Creditors, Shareholder(s) and any other Affected Persons or Relevant Stakeholders.
- 1.6. This document is important and requires the immediate attention of all Affected Persons. If any Affected Person is in any doubt as to the impact of this Plan or the effect it will have on its implementation, and the action it should take, such Affected Person should consult its own independent professional advisors.
- 1.7. Each Affected Person and relevant stakeholder are responsible for assessing the merits of this Plan with respect to its Claim or shareholding in the Close Corporation.
- 1.8. Nothing contained in this Plan must be construed by Affected Persons, the Close Corporation, Management, Shareholder(s), Director(s) or Relevant Stakeholders as constituting tax, accounting or legal advice to any Affected Person or relevant stakeholder, the Close Corporation, Management or Director, and the Advisors or the BRP does not make any representations in respect thereof, other than as expressly stated in this Plan. In particular, the BRP does not warrant that any Creditor or Shareholder(s) will accept any compromise contemplated in this Plan despite the adoption of this Plan.
- 1.9. This document contains the terms and conditions of a Plan for the Close Corporation which, if adopted by the requisite statutory majority of Creditors and, if required the Shareholder(s), shall, upon fulfilment of the conditions of implementation as set out in this document, become binding on the Close Corporation, its Creditors, Shareholder(s), and all other Affected Persons.
- 1.10. Business Rescue is aimed at facilitating the rehabilitation of companies that are financially distressed by providing for the development and implementation, if

approved, of a plan to rescue a Close Corporation by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the Close Corporation continuing in existence on a solvent basis, alternatively, in the event that it is not possible for a Close Corporation to so continue in existence on a solvent basis, that would result in a better return for its creditors or shareholder(s) than would result from the immediate liquidation of such Close Corporation.

- 1.11. This Plan is aimed at achieving the objectives of Business Rescue. In simple terms, and without derogating or simplifying the essence of the Plan as contained in this document, the proposals put forward in this Plan seek to rescue the Close Corporation by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the Close Corporation continuing in existence on a solvent basis.
- 1.12. The BRP believes that this Plan shall, upon its implementation, achieve a better return for Creditors, and better outcome for other Affected Persons and relevant stakeholders, than would result from the immediate liquidation of the Close Corporation.
- 1.13. The Close Corporation's Management, Director(s), and the BRP, with all Advisors, exercised due care and diligence around all information provided and included in this Plan.
- 1.14. The BRP shall not be responsible for any acts taken (or omissions arising from) any Affected Person's reliance on this Plan.
- 1.15. Once this Plan is adopted, it shall be binding on the Close Corporation, Creditors, Shareholder(s), Director(s), and other Affected Persons, whether or not any of them were present at a meeting convened in terms of the Companies Act, and voted in favour of its adoption or, in the case of Creditors, have proven their Claims against the Close Corporation.
- 1.16. This Plan and all its annexures are strictly private and confidential and may not be distributed to any person or persons other than the intended recipient(s), without the express written permission of the Close Corporation or its BRP. It is based on the current operational and financial status of the Close Corporation and its potential to recover from its current distressed position.
- 1.17. Comments made in this Plan are, wherever possible, based on published information. Where published information was not available, the comments are based on an analysis of available data, which may or may not reflect the true state of affairs. The operational and financial studies have been conducted based on internal available sources of information provided by the Close Corporation and supported by data collected through various sources. The BRP has not conducted primary research, and as such has not

independently verified the accuracy/completeness, or the reasonableness of the information provided. Accordingly, any possible inaccuracies and omissions of information available and/or provided may affect the final deliverable.

- 1.18. It is emphasized that the approach and the procedures applied by the BRP during the collection and collation of related information does not constitute an audit, legal opinion or a review carried out in accordance with generally accepted legal advice and/or auditing principles. The BRP does not express an audit, legal or a review opinion. The Plan consists of information and explanations provided to the BRP by Management and Director(s). The BRP has relied on data and information provided by the Close Corporation and Affected Persons.
- 1.19. Affected Persons and Relevant Stakeholders are obliged to inform the BRP of any further information, not addressed in this Plan, which may need to be investigated relating to the Close Corporation's affairs, business, property, and financial situation.
- 1.20. Affected persons and Relevant Stakeholders should furthermore refer evidence which they may have of dealings of the Close Corporation, before the business rescue proceedings began, which may be deemed as voidable transactions; reckless trading; fraud or a contravention of any law; or the failure of the Close Corporation or any director to perform any material obligation relating to the Close Corporation to the BRP. If affected persons or relevant stakeholders are aware of any other information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the Plan, they should inform the BRP accordingly.

2. DEFINITIONS

In this Business Rescue Plan, unless the context requires otherwise:

Adoption Date means the date upon which this Business Rescue Plan is approved in accordance with Section 152(2) and Section 152(3)(c)(ii) of the Companies Act or, if rejected as contemplated in Section 152(3)(a) or 152(3)(c)(ii)(bb), the date on which a court sets aside the result of the vote by holders of voting interests of Creditors and/or the Shareholder(s), as the case may be, on the grounds that it was inappropriate;

Advisors means any advisors appointed and consulted from time to time in the Business Rescue by the BRP;

Affected Person or Affected Persons shall bear the meaning given to the term in Section 128(1)(a) of the Companies Act and, in relation to the Close Corporation, means the Shareholders, Creditors, Employees of the Close Corporation and any registered trade union representing the Employees;

Business Rescue Practitioner or BRP means the joint business rescue practitioners of the Close Corporation, and based on the context jointly or severally refers to Thomas George Nell N.O. and Tania Maria Lopes N.O., appointed on 19 June 2023 in terms of Section 129(3);

Business means the business owned, operated, and carried on by the Close Corporation;

Business Day means any day other than a Saturday, Sunday or official public holiday and Business Days has a corresponding meaning. This definition further includes the term "day";

Business Rescue means the proceedings under chapter 6 of the Companies Act to facilitate the rehabilitation of the Close Corporation as set out and contemplated in Section 128(1)(b);

Business Rescue Costs means the remuneration, expenses and disbursements of the BRP (including, without limitation, any and all legal costs and expenses incurred by the BRP in the Business Rescue) as well as all other claims arising out of the costs and expenses of the Business Rescue, including without limitation the legal costs and other costs of the Advisors, up to the Substantial Implementation Date, as referred to in Section 143(5) read with Section 135(3) and any other relevant provisions and regulations in the Companies Act;

Business Rescue Plan/Plan means this document together with all its annexures, as amended or revised from time to time, prepared, and published by the BRP for consideration and adoption by Creditors in accordance with Section 150;

Claims means any and all claims, right, title and interest of whatsoever nature and howsoever arising against the Close Corporation, including a Secured, Preferent or Concurrent Claim as envisaged in terms of the Insolvency Act:

The origin, cause of action or agreement in respect whereof arose or was concluded before the Substantial Implementation Date (and including each claim contemplated in this Business Rescue Plan); and

Includes, without in any way derogating from the generality of the foregoing an actual, contingent, prospective, conditional or unconditional, liquidated or unliquidated, assessed or unassessed claim, whether due or yet to fall due for payment or performance, including any claim the origin of which arose from statute, regulation or other legislation or arising out of any contract and/or delict and/or agreement entered into before or after the Commencement Date and cancelled thereafter and, in no way derogating from the generality of the foregoing, shall include any Claim for Tax or Taxation; the VAT Clawback Claim; and all such claims to be determined, calculated and admitted by the BRP as Secured, Preferent or Concurrent Claims in accordance with the same ranking as envisaged in terms of the Insolvency Act including any Disputed Claims if adjudicated in favor of the Creditor, but excludes any claims that are PCF or Business Rescue Costs;

CIPC means the Companies and Intellectual Property Commission, established in terms of Section 185 of the Companies Act;

Commencement Date means 14 June 2023, being the date upon which the Business Rescue commenced in accordance with Section 129(1) read with Section 132(1)(a)(i);

Companies Act means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;

Close Corporation/GERARDO refers to Gerardo Trading Close Corporation, duly incorporated and registered in terms of the Close Corporations Act No 69 of 1984, with registration number 2000/058226/23, under business rescue supervision in accordance with chapter 6 of the Companies Act, conducted by the BRP;

Concurrent Claims mean any Claim of a creditor at the Commencement Date which is unsecured and enjoys no security or statutory preference in accordance with the Insolvency Act, including claims in respect of suretyships and/or guarantees executed by the Close Corporation and

Concurrent Creditor has the corresponding meaning;

Creditors means all persons, including legal entities and natural persons, who are Secured, Preferent and Concurrent Creditors, having Claims accepted as such by the BRP as at the

Commencement Date and for the period of the Business Rescue as envisaged in terms of the Insolvency Act, but not a Creditor with an Undetermined and/or Disputed Claim or claims that can be regarded as a PCF Claim or as Business Rescue Costs, with the order of priority and distribution waterfall (order of preference) of the Creditors in this Business Rescue to be determined and dealt with under chapter 6 of the Companies Act;

Director(s) means the directors of the Close Corporation as at the Commencement Date;

Disputed Claims means any and all Claims which may have been lodged by Creditors with the BRP and whose Claims have been rejected either in whole or in part by the BRP and which Claims shall be determined in favor of or against such Creditors in terms of the dispute resolution procedure contained in this Plan;

Dispute Resolution Mechanism means the dispute resolution mechanism set out in this Plan;

Distribution means the payments to be made to Creditors, to discharge their Claims, in accordance with the terms and conditions of this Business Rescue Plan, thereafter, losing the right to enforce the Claim or any part of it, except to the extent provided for in this Business Rescue Plan;

Employees means all persons employed by the Close Corporation as at the Commencement Date and who remain employed at the Adoption Date;

Encumbrance means any claim, charge, mortgage, lien, burden, option, pledge, security, withholding, retention of title, right of pre-emption, right of first refusal or other third-party rights and/or claims and/or restrictions on the free transferability or security interest or an agreement, arrangement, or obligation to create any of the foregoing;

Final Claims Date means the final date for the submission of Claims, being two business days before the Section 151 meeting to determine the future of the Close Corporation, or such longer period as allowed by the BRP;

Insolvency Act means the Insolvency Act 24 of 1936 (as amended);

Late Claims means Claims submitted by any Creditor after the expiry of the Final Claims Date;

Notice of Meeting means the notice of meeting to all Affected Persons as contemplated in terms of Section 151(2);

Parties means the BRP, and all Affected Persons and **Party** means, as the context requires, any one of them;

PCF means post-commencement finance obtained by the Close Corporation, as authorized by the BRP in terms of Section 135, after the Commencement Date;

Publication Date means the date on which this Business Rescue Plan is published in terms of Section 150(5) read with Sections 151, 152 and 153;

Published Plan means this Business Rescue Plan to be published by the BRP for consideration and possible adoption at meetings of Creditors and Shareholder(s), to be held, in terms of Section 151, on a date to be fixed by the BRP;

Prescription means the definition and associated provisions in terms of the Prescription Act 68 of 1969 (as amended);

Relevant Stakeholder means a person referred to in Section 7(k) of the Companies Act, 2008, and who for purposes of this Plan is regarded as having a material interest in the Close Corporation.

RSA means the Republic of South Africa;

SARS means the South African Revenue Service;

Secured Claim means any Claim (other than a Disputed and/or Undetermined Claim) which would be secured in accordance with the Insolvency Act and "**Secured Creditors**" has the corresponding meaning;

Substantial Implementation Date means the date upon which the BRP files with the CIPC, a notice of substantial implementation of the Business Rescue Plan, whereupon the Business Rescue proceedings will terminate;

Tax/Taxation means levies payable to government authorities, normal taxation, capital gains tax, value-added tax, donations tax, customs duty, securities transfer tax, all Pay-As-You-Earn taxation (PAYE) not paid over, all other forms of taxation, other than deferred tax, any taxation arising from new assessments of taxation and/or the reopening of any income tax assessments of the Close Corporation for any period prior to the Commencement Date and any penalties or interest on any of the foregoing

Undetermined Claims means any and all Claims which may have been lodged by Creditors with the BRP and whose Claims are wholly or in part not capable of quantification and/or classification in accordance with the provisions of chapter 6 of the Companies Act, and which claims may be determined in terms of the dispute resolution procedure contained in this Plan or, if applicable

another forum with the requisite jurisdiction, or may be allowed by the Business Rescue Practitioner based on legal advice;

Unenforceable means that all Claims will, upon the adoption and implementation of the Business Rescue Plan, will become unenforceable against the Close Corporation as envisaged in section 154, and/or as read with section 152.

VAT means the value-added tax levied in terms of the VAT Act;

VAT Act means the Value-Added Tax Act, No. 89 of 1991, as amended;

VAT Clawback Claim means the claim of SARS to claw-back VAT arising at any time prior to or after the Commencement Date from an input claimed by the Close Corporation, in terms of section 22 of the VAT Act, in relation to the concurrent trade claims as set out in this Plan; and

Vis Major means any circumstances beyond the reasonable control of the BRP and/or the Close Corporation, and includes but is not limited to an act of nature or public enemy, fire, explosion, earthquake, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, industrial action, blockade, embargo, sanctions, epidemics, pandemics, act of any government or other authority, compliance with government orders, demands or regulations, as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication;

(ALL OTHER DEFINITIONS AS PER NATIONAL LEGISLATION)

3. INTERPRETATION

Any reference in this Business Rescue Plan to:

- Law means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law.
- Person means any natural or juristic person, firm, Close Corporation, corporation, government, state, agency or organ of a state, association, trust, or partnership (whether or not having separate legal personality).
- Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- The headings do not govern or affect the interpretation of this Plan.
- If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Plan.
- Unless the context indicates otherwise an expression which denotes any gender includes the other; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- Any number of days prescribed in this Plan excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.
- Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- The words “including” and “in particular” are without limitation.
- Any reference to legislation is to that legislation as at the Commencement Date, as amended or replaced from time to time.
- Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented, or replaced from time to time.
- A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- A time of day is reference to South African standard time.
- The rule of interpretation that, in the event of ambiguity, the Plan must be interpreted against the party responsible for the drafting of the Plan does not apply.
- Any capitalized reference to a statutory provision in this Plan shall, unless expressly stated otherwise, be a reference to the provisions in the Companies Act.
- Any reference to a section or provision of the Insolvency Act shall be a reference to such section read with chapter 14 of the Companies Act, 61 of 1973 (as amended) and item 9 of schedule 5 of the Companies Act.

- Words or terms that are capitalized and not otherwise defined in the definition section of this Business Rescue Plan (excluding capitalized words or terms used for the purpose of tables) shall bear the meaning assigned to them in the Companies Act.
- Interpretation and conduct in terms of this Plan will be subject to Sections 5 (General Interpretation of the Act) and 158 (Remedies to Promote the Purpose of the Act) of the Companies Act, 2008.

4. OUTLINE OF THE BUSINESS RESCUE PROCEEDINGS AND PLAN

4.1. BACKGROUND OF GERARDO TRADING CC:

4.1.1. Gerardo Trading is the owner of the brands, BodiCare & BodiCafé. The close corporation was established in 1989, in Johannesburg, South Africa, with only a handful of employees and distributed health and lifestyle products.

4.1.2. Today, 30 years later, Gerardo Trading, along with 90 employees, are proud manufacturers and distributors of a wide and ever-growing range of health and lifestyle products.

4.1.3. Ranges include herbal supplements and whole-foods products, which are manufactured and packed at a FSSC 22 000 certified, quality-assured factory.

4.1.4. BodiCare range: BodiCare was the first of the two brands to be established with only a few products to start off with. Molasses, a nutritious super-food, was the original inspiration for the range of supplements that are presently packed, manufactured and distributed under the BodiCare brand name. The current BodiCare range includes: Molasses, Stametta, Detox Fiber and Stametta Tea, to name only a few brand favorites. BodiCare products are available at a number of wholesalers, retailers and health shops, country-wide.

4.1.5. BodiCafé the newest brand, consists of a range of whole-foods including vegan, gluten-free & vegetarian-friendly options. The ranges listed can be purchased at a number of wholesalers, retailers & health shops.

4.1.6. Gerardo's uncompromising objective is to produce and distribute only the most nutritious, and as far as is possible, the least processed food and lifestyle products that will benefit the health and happiness of all our clients, because we believe clients deserve the BodiCare & BodiCafé Better Lifestyle.

4.1.7. Considering the above the members of the Close Corporation on 13 June 2023, in terms of the provisions of Section 129 of the Act, resolved to place GERARDO into business rescue and appointed Thomas George Nell and Tania Maria Lopes as the joint business rescue practitioners of the Close Corporation, in terms of the provisions of Section 128(1)(b)(i) - (iii) of the Act:

“...facilitate the rehabilitation of a company that is financially distressed by providing for—

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

4.2. BEGINNING OF BUSINESS RESCUE PROCEEDINGS

The members of Gerardo Trading CC (under supervision) resolved that the Close Corporation voluntarily begin business rescue proceedings and be placed under supervision, as it had reasonable grounds to believe that the Close Corporation was financially distressed and that there appears to be a reasonable prospect of rescuing the Close Corporation, as defined in Section 128(1)(b)(iii) of the Act.

The CoR123.1 *Notice of Beginning of Business Rescue Proceedings* was duly filed with the CIPC on 14 June 2023 (see **Annexure “A1”**).

The CoR123.2 *Notice of Appointment of Business Rescue Practitioner* was duly filed with the CIPC and senior business rescue practitioner Thomas George Nell, and business rescue practitioner Tania Maria Lopes, were duly appointed as the joint Business Rescue Practitioners of Gerardo effective 19 June 2023 (see **Annexure “A2”**).

For ease of reference a copy of the *SWORN STATEMENT IN SUPPORT OF A NOTICE BEGINNING BUSINESS RESCUE PROCEEDINGS* is attached hereto as **Annexure “A3”**

4.3. REASONS FOR FINANCIAL DISTRESS

The reasons for the Close Corporation's financial distress include, amongst others:

- 4.3.1 A very unusually large number of high increases in costs from all suppliers for raw materials and packaging. We were informed that these unprecedented increases were because of the war in Ukraine and also fuel prices and the aftermath impact of the global covid pandemic on the economy and consumers.
- 4.3.2 Shortages from suppliers of raw materials and packaging due to supply chain and cash flow issues resulting in us having to source from significantly more expensive suppliers
- 4.3.3 Very high and ever-increasing interest rates
- 4.3.4 Loadshedding costs a big contributing factor to operating expenses

4.4. STATUTORY TIMEFRAME

| NO. | SECTION OF THE ACT | DESCRIPTION | DATE |
|------------|---------------------------|--|-------------|
| 1. | Section 129(1) | Resolution was taken to commence Business Rescue Proceedings and appoint TG Nell and TM Lopes as the Business Rescue Practitioners | 13/06/2023 |
| 2. | Section 132(1)(a) | Effective date of beginning of Business Rescue Proceedings | 14/06/2023 |
| 3. | Section 129(3)(b) | Appointment of TG Nell and TM Lopes as the Business Rescue Practitioners confirmed by CIPC | 19/06/2023 |
| 4. | Section 129(3)(a) | Statutory notice to Affected Persons: Commencement of Business Rescue Proceedings | 19/06/2023 |
| 5. | Section 129(4)(b) | Statutory notice to affected persons: Notice of appointment of BRPS | 23/06/2023 |
| 6. | Section 133 | Statutory Letter to Affected Persons: General Moratorium on Legal Proceedings | 23/06/2023 |
| 7. | Section 136(2) | Statutory Letter to Affected Persons: Suspension of Obligations | 23/06/2023 |
| 8. | Section 148 | Employees And Employees' Representatives Meeting | 29/06/2023 |
| 9. | Section 147 | First Creditors Meeting | 29/06/2023 |
| 10. | Section 150 | Initial proposed publication date of Business Rescue Plan | 21/07/2023 |
| 11. | Section 150 | Extended publication date of Business Rescue Plan | 31/08/2023 |
| 12. | Section 150 | Extended publication date of Business Rescue Plan | 03/10/2023 |
| 13. | Section 150 | Extended publication date of Business Rescue Plan | 31/10/2023 |
| 14. | Section 151 | Proposed date of second creditors meeting to determine the future of the Close Corporation | 05/12/2023 |

4.5. REASONABLE PROSPECT OF RESCUING GERARDO TRADING CC

In terms of the provisions of Section 141(1) of the Act the BRP must “*as soon as practicable after being appointed...investigate the company's affairs, business, property, and financial situation, and after having done so, consider whether there is any reasonable prospect of the company being rescued.*”

4.5.1. The Supreme Court of Appeal in *Oakdene Square Properties (Pty) Ltd and Others V Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) considered the meaning of ‘reasonable prospect’ in section 131(4)(a) of the Act and held that it was less than a ‘reasonable probability’ but more than a prima facie case or arguable possibility, and that the prospect had to be based on reasonable grounds, with speculative suggestions in this regard being insufficient.

4.5.2. Based on the above and the investigations thus far conducted (which investigations remain ongoing) the BRP has concluded that there is a reasonable prospect of rescuing the Close Corporation. In doing so the BRP inter alia considered the projected return to creditors if the Close Corporation is to be immediately liquidated versus the projected dividend to creditors, shareholders, and relevant stakeholders in the event that this Plan, as may be amended, is adopted, and substantially implemented, which considerations amongst others include that:

4.5.3. Based thereon that the principles relating to the division of income in liquidation is the value or income derived from the sale of assets of the Close Corporation once sold, the distribution of these proceeds in terms of the so-called waterfall of payments to legally proven creditors, which in the experience of the BRP could take anywhere from 12-18 months to be realized, could result therein that lower ranked creditors do not receive a dividend.

4.5.4. The provisions of this Plan will constitute a sale of Equity Investment scenario, in terms of which the income derived from the sale, as well as income derived from sales in the normal course of business and paid in terms of a payment plan will in full and final settlement of the claims of the legally proven creditors, be divided in terms of the provisions of the Plan, the Act, the common law, and other relevant principles.

4.5.5. The implementation of this proposed course of action is aimed at rescuing the Close Corporation by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likelihood of the continuing in existence on a solvent basis, by providing a better return for the Close Corporation’s creditors or shareholders than would result from its immediate liquidation.

4.6. CLASSIFICATION, TREATMENT, AND INVESTIGATION OF CLAIMS

In principle there are three different classes of creditors: secured, statutory preferent, and concurrent. Creditor claims were assessed with specific reference to the merits and quantum, classification, and status of the respective claims.

| Creditor: | Class: |
|---|---------------|
| FNB Working Capital Facility | Secured |
| FNB Contingent Claim | Secured |
| Wesbank Asset Based Finance | Secured |
| FNB Credit Card | Secured |
| Pollen Finance | Concurrent |
| Adams & Adams | Concurrent |
| AGT Foods Africa (Pty) Ltd (Grains, Legumes Etc) | Concurrent |
| Advanced Flexibles (Pty) Ltd | Concurrent |
| Afrihost (Pty) Ltd | Concurrent |
| Agrimol Trading (Pty) Ltd | Concurrent |
| Akhalwaya & Sons | Concurrent |
| Alman's Dried Fruit & Nuts | Concurrent |
| Anchor Technical Tapes | Concurrent |
| Avis Fleet Services | Concurrent |
| Bidvest Laundry Group (First For Garment Rental) | Concurrent |
| Bottle-It cc | Concurrent |
| Brother Bees Honey | Concurrent |
| Bragan Chemicals | Concurrent |
| Bureau Veritas SA | Concurrent |
| Smart Office Connexion | Concurrent |
| Carbocraft | Concurrent |
| Corp Secure CC | Concurrent |
| Chep Equipment | Concurrent |
| Chicory SA (Pty) Ltd | Concurrent |
| City Of Joburg Water | Concurrent |
| Petrow Food Ingredients (Pty) Ltd | Concurrent |
| Claredon Hardware | Concurrent |
| The Cleaning Co (Pty) Ltd | Concurrent |
| Comfort Loos (Pty) Ltd | Concurrent |
| Conac Investments | Concurrent |
| City Power Johannesburg (Pty) Ltd | Concurrent |
| Credit Guarantee | Concurrent |
| Crossmill Chemicals Cc | Concurrent |
| De Allende Enterprises Electrical & Maintenance Specialists | Concurrent |
| Dowry Complete Security Solutions | Concurrent |
| Elite Star Trading 56 Pty Ltd | Concurrent |
| Entecom Safer Food - Smarter Business | Concurrent |

| | |
|--|------------|
| Eola Trust | Concurrent |
| Orchem (Pty) Ltd - South Africa | Concurrent |
| Gavic Express | Concurrent |
| HERO Supermarket | Concurrent |
| Universal Labels | Concurrent |
| Interwaste Environment Solutions | Concurrent |
| Illovo Sugar (South Africa) (Pty) Ltd | Concurrent |
| Instant Trading Co (Pty) Ltd T/A Cecil Vinegar Works | Concurrent |
| Interflex Print Group | Concurrent |
| Independent Packaging & Print Group C.C | Concurrent |
| Intertown Transport | Concurrent |
| Kayo Fine Chemicals | Concurrent |
| Kirsch Pharma S.A (Pty) Ltd | Concurrent |
| Kwikspace Modular Building (Pty) Ltd | Concurrent |
| Laboratory And Biological Services | Concurrent |
| Lesedi Print & Packaging Cc | Concurrent |
| Liquid Telecommunications South Africa | Concurrent |
| Mezmerize Construction - Chris Pyoos | Concurrent |
| MG Henning Packaging T/A Plasmar Pack | Concurrent |
| MM Fire, Safety & Supply | Concurrent |
| MMS CA (SA) Inc | Concurrent |
| Molapo Quyn Outsourcing (Pty) Ltd | Concurrent |
| Moringa Initiative Ltd | Concurrent |
| M.P And Cleaning Services | Concurrent |
| Multisnack Nut Importers & Traders | Concurrent |
| Mumbai Spices (Pty) Ltd | Concurrent |
| Mweb Business | Concurrent |
| Mzansi Pest Control, Hygiene & Cleaning (Pty) Ltd | Concurrent |
| Nautilus Chemicals (Pty) Ltd | Concurrent |
| Nick Plumbing & Leak Detection | Concurrent |
| NOHS Consultants (Pty) Ltd | Concurrent |
| On Shelf Pharma (Pty) Ltd | Concurrent |
| Packway International S.A. Cc | Concurrent |
| Packaging Centre (Midrand) (Pty) Ltd | Concurrent |
| Packaging World | Concurrent |
| Parkhomes Modular Units | Concurrent |
| Pharma Germania | Concurrent |
| Piper Pumps (Pty) Ltd | Concurrent |
| Plastic Accent Pty Ltd | Concurrent |
| Plastilon Packaging Centurion (Pty) Ltd | Concurrent |
| Polyoak Packaging | Concurrent |
| The Pouch Shop | Concurrent |
| Print A Label | Concurrent |
| Proactive Packaging | Concurrent |
| Fidelity Cash Solutions (Pty) Ltd | Concurrent |

| | |
|-------------------------------------|------------|
| Relianz Foods (Pty) Limited | Concurrent |
| Rugani Juice (Pty) Ltd | Concurrent |
| Russco Distributors SA (Pty) Ltd | Concurrent |
| Saltpur | Concurrent |
| Savannah Fine Chemicals | Concurrent |
| Scales 4 U (Pty) Ltd T/A Scalerite | Concurrent |
| Seal Retail Solutions Cc | Concurrent |
| Shaft Packaging | Concurrent |
| Sunny Packs Manufacturing (Pty) Ltd | Concurrent |
| Sogeplast (Pty) Ltd | Concurrent |
| Sprint Packaging | Concurrent |
| Stor-Age Brackenfell - Silverpark | Concurrent |
| Excellerate Services (Pty) Ltd | Concurrent |
| Super Tape | Concurrent |
| Techno Alimenti | Concurrent |
| Telkom S.A. Ltd / Service Provider | Concurrent |
| Telkom S.A. Ltd Main | Concurrent |
| Telkom Mobile | Concurrent |
| Total South Africa (Pty) Ltd | Concurrent |
| Total Swaziland (Pty) Ltd | Concurrent |
| New Age Plastics Cc | Concurrent |
| VIVIAN'S ALIGNMENT CENTRE | Concurrent |
| Vodacom | Concurrent |
| Brenntag | Concurrent |
| SARS - VAT | Concurrent |
| SARS - PAYE, SDL, UIF | Concurrent |
| Compensation Commission | Concurrent |

4.6.1. **Secured creditors:**

First National Bank:

A Facility agreement (AT/01/GERARDO/2021) was signed between First National Bank, and Gerardo Trading CC. This debt is secured by the following:

4.6.1.1. A cross suretyship in the amount of R20 000 000.00 (Twenty million Rand) for the joint and several obligations of the entities listed below towards the Bank:

- a. Gerardo Trading CC, Reg No. 2000/058226/23
- b. St Leger Trust IT 5500/05 (T)

4.6.1.2. An unlimited suretyship given by Lance L G S Abrahams in favour of the Bank for any and/or all obligations of Gerardo Trading CC now and/or in future towards the Bank.

- a. Supported by cession and pledge limited to R1 000 000.00. (One million Rand)
- 4.6.1.3. A First general covering bond in favour of the Bank by Gerardo Trading CC in the amount of R7 200 000.00 (Seven million two hundred thousand Rand), over Portion 29 of ERF 104 Industria West Township Gauteng, together with a cession of short term insurance for an adequate amount of cover over the said property and noting the Bank's interest with the insurer.
- 4.6.1.4. A First General covering bond in favour of the Bank by St Ledger Trust in an amount of R8,640,000.00 (eight million six hundred and forty thousand Rand) over ERF 419, Extension 10, Robertville Gauteng. (This security is substantiated below)
- 4.6.1.5. Cession to the Bank by Lance L G S Abrahams (the loan creditor/cedent) of its loan account held in St Ledger Trust.

For ease of reference, find the summary of the full relevant securities as claimed in favour of First National Bank, attached hereto as **Annexure "G"**.

Wesbank:

Wesbank contracts and agreements supported by the asset per item. The claim is described in the business rescue scenario.

4.6.2. **Statutory preferent creditors:**

4.6.2.1. **BRP remuneration, expenses, and disbursements**

- 4.6.2.1.1. A copy of the fee agreement concluded between the BRP, and the Close Corporation is attached hereto as **Annexure "B"**.

4.6.2.2. **Employees**

Taking into account that (according to Statistic South Africa's Quarterly Labour Force Survey for Q2/2023) South Africa's expanded unemployment rate is calculated to be 32,6%, the need for the employment opportunities provided by Gerardo becomes readily apparent.

Taking the above into account, as well that according to another Statistics South Africa report one worker in South Africa, directly or indirectly supports 3 dependents, Gerardo's approximately 90 employees in effect support 270 souls.

As such the direct employment opportunities provided by Gerardo is one of the primary considerations that the Business Rescue Practitioner constantly evaluated during the formulation of the proposed Business Rescue Plan.

4.6.3. **Concurrent creditors:**

4.6.3.1. **South African Revenue Service**

SARS informed the business rescue practitioners of a claim in these proceedings in respect of the Close Corporation's pre-business rescue tax obligations for a total amount of R 627 719.99 The treatment of ongoing tax obligations is more fully described in the paragraph South African Revenue Service Clauses: below.

4.6.3.2. A Creditor who has a Disputed Claim, contingent Claim, prospective Claim, damages or unliquidated Claim will be required to quantify such claim prior to the Section 151 meeting or as per the dispute resolution below. In the event that a contingent claim which arose prior to the business rescue proceedings is proven after the adoption of the plan, same shall be incorporated as a concurrent creditor in this plan and be paid as per the provisions of this plan.

4.6.3.3. The concurrent claims as per the records of the Close Corporation and claims received, are proven and will for purposes of this Plan be ranked as concurrent creditor claims. Should any amount be disputed by a third party, creditor or relevant stake holder, the BRP reserves the right to amend such proven claim.

4.6.4. **Related Party:**

There exists a Related entity loan in the management accounts of the Close Corporation as reported by management. These amounts should be certified by executive management and the close corporation's external auditors annually, in

the ordinary course of business. The following inter-entity loans (reflected as assets) were made to The Saint Leger Trust. This loan account will be settled by the first payment in terms of the Letter of Intent discussed below, should the transaction materialize.

- The Saint Leger Trust R 13 826 340.00

4.6.5. Shareholder Loans:

According to the 31 March 2022 financial statements, there exists a member's loan to LLGSL R 1, 109,292.00 (one million, one hundred and nine thousand two hundred and ninety-two rands). This loan will be deemed settled by the current member of the close corporation in terms of the proceeds received should Option A materialise.

4.7. LIQUIDATION SCENARIO OF GERARDO TRADING CC (UNDER SUPERVISION)

| Liquidation Scenario | | | |
|--|--------------------|-------------|-------------------------------|
| | | | <u>Liquidation value</u> |
| Assets | | | |
| Cash & Cash Equivalents | | | -- |
| Immoveable property | Forced sales value | | R 7 000 000 |
| Inventories | | | R 886 500 |
| Plant&Equipment and machinery | | | R 825 000 |
| Work in progress | | | |
| Debtors | | | R 1 068 595 |
| VAT | | | R 223 239 |
| Gross Liquidation Proceeds | | | R 9 556 856 |
| Liquidation Costs | | | R 1 750 000 |
| Less: 'Administration Fees | | | |
| Storage | | | |
| Legal Fees | | | R 150 000,00 |
| Insurance | | | R 1 080 000,00 |
| Security | | | R 360 000,00 |
| Advertising | | | R 60 000,00 |
| other | | | R 100 000,00 |
| Liquidation Fees | | | R 1 368 893 |
| Fees | | | |
| Cash | 1% | | R 0 |
| Immovable property | 3% | | R 210 000 |
| Debtors | 3% | | R 32 058 |
| Moveable Assets | 10% | | R 171 150 |
| Work in progress | 10% | | R 0 |
| Auctioneer fees | 10% | | R 955 686 |
| | | | Distributable Dividend |
| Net Liquidation Proceeds (Post Wind-Down) | | | R 6 437 962 |
| Less: "Secured" Creditors | | R 6 746 352 | Secured R 0,95 |
| Remaining Value | | | R 0 |
| Less: Preferent Creditors | | R 1 115 984 | Preferent R 0,00 |
| Remaining Value | | | R 0 |
| Less: Concurrent Creditors | | R 6 701 445 | Concurrent R 0,00 |
| Residual Equity Value | | | |

Assumptions:

- 1) The creditors reflecting herein are correct
- 2) The author of this document reserves the right to amend the information should it be necessary
- 3) The value of the immovable property is based on the Valuation named Annexure "I"
- 4) The liquidation costs and liquidation fees are correct.

4.8. OPTIONS CONSIDERED BY THE BRP

- 4.8.1. In an effort to find a pragmatic solution that would meet the objectives of business rescue that would in accordance with the provisions of Section 7(k) of the Act “*provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders*” the BRP considered the following courses of action:
- 4.8.2. To consult with all relevant role players in an attempt to find common ground on which an acceptable business rescue plan could be developed.
- 4.8.3. Trade-Out Scenario / or Sell-Out Scenario.
- 4.8.4. The income generating capability.
- 4.8.5. The immediate liquidation of the entity.
- 4.8.6. Sale of portion or whole of the company

4.9. THE PROPOSED BUSINESS RESCUE PLAN

Given the above-mentioned, the BRP proposes the following;

- 4.9.1. As **Option “A”**, the Business Rescue Practitioners will proceed to sell the business of the Closed Corporation as a going concern with or without the immovable property included in such sale by way of private treaty which transaction must be finalized before the end of February 2024, or such longer period as agreed to by the majority of the creditors voting interest (a further period will be allowed for the transfer of the property and registration in the deeds office, if applicable). Such a transaction as envisaged in Option “A” should be seen as a sellout scenario and the income so derived from the sale shall be distributed amongst the creditors in terms of the preference as set out in the Business Rescue Legislation. Creditors will be required to vote on any transaction/agreement should the transaction not provide for 100 Cents in the Rand as dividend. This will be voted by the majority of the creditors voting interest.
- 4.9.2. No rights of First National Bank in regard to sureties and cross-entity sureties will be affected by this Business Rescue plan and First National Bank will have the full right of recourse in regard to the sureties.

- 4.9.3. The BRPS are authorized to convert the CC into a company in terms of the general accepted processes, should they be advised accordingly and that it be necessary to implement this transaction and as part of the business rescue plan.
- 4.9.4. **Option “B”** - Auction: The Business Rescue Practitioners shall be authorized to within 30 business days (after the last business day of February 2024), or such longer period as may be agreed upon by the holders of the majority of the creditors voting interest, arrange a public auction to sell the movable and immovable property of the entity, in the manner referred to above to the highest bidder/offeror, should Option A not materialize.
- 4.9.5. Installments due to Wesbank will be kept up to date until the transaction, as mentioned above are concluded.
- 4.9.6. The projected business rescue scenario for Option A is further attached hereto as **Annexure “H1”** and Option B as **Annexure “H2”**
- 4.10. **DISTRIBUTION OF PROCEEDS**
- 4.10.1. Affected persons must note that the claims of creditors reflected in **Annexure “H”** relate to claims that the BRP is currently aware of. The claims as accepted by the BRP (which are continually reviewed) will be accepted for voting purposes in terms of Section 152 of the Act. Affected persons must note that the extent and composition of the claims so received may be subject to change in the event that further claims are received and/or brought to the attention of the BRP.
- 4.10.2. The BRP is authorized to make payment of an advance dividend to any creditor, subject thereto that such a creditor indemnifies the BRP against all and any claims for payment arising from a non-confirmed account. Should such payment take place, the BRP will automatically be indemnified by the creditor for the amount equal to the payment of such advanced dividend, such indemnification being ratified by the adoptance of this business rescue plan (or as amended).

4.10.3. The payment of the creditors' claims will be done according to the order of preference as provided for in the common law with reference to creditors, Section 135 of the Act, and relevant case law. The payments will be attended to as set out in the business rescue scenario, prepared on the assumption that the proposed business plan is adopted in terms of Section 150(2)(c)(iv)(bb) and Section 150(3)(a) and (b) of the Act.

4.10.4. The distribution of proceeds to accepted creditors will, *mutatis mutandis* be based on the provisions of the approved Plan and the sequence of preferences in the law pertaining to business rescue, per the provisions of Section 135 of the Act as set out hereafter:

135(1) To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment becomes due and payable by a company to an employee during the company's business rescue proceedings, but is not paid to the employee—

*(a) the money is regarded to be post-commencement financing; and
(b) will be paid in the order of preference set out in subsection (3)(a).*

(2) During its business rescue proceedings, the company may obtain financing other than as contemplated in subsection (1), and any such financing—

*(a) may be secured to the lender by utilising any asset of the company to the extent that it is not otherwise encumbered; and
(b) will be paid in the order of preference set out in subsection (3)(b).*

(3) After payment of the practitioner's remuneration and costs referred to in section 143, and other claims arising out of the costs of the business rescue proceedings, all claims contemplated—

(a) in subsection (1) will be treated equally, but will have preference over—

(i) all claims contemplated in subsection (2), irrespective whether or not they are secured; and

(ii) all unsecured claims against the company; or

(b) in subsection (2) will have preference in the order in which they were incurred over all unsecured claims against the company.

(4) *If business rescue proceedings are superseded by a liquidation order, the preference conferred in terms of this section will remain in force, except to the extent of any claims arising out of the costs of liquidation.*

4.11. CONCLUSION

4.11.1. In conclusion, creditors will be expected to vote on:

4.11.2. The approval of the proposed business rescue plan, or an amended Plan.

4.11.3. Alternatively, authorizing the BRP to prepare and publish a revised Plan on the condition that the creditors holding the majority of the voting interest vote in favour of the publication of such a revised Plan, and that the BRP at that stage still believes that there is a reasonable prospect of rescuing Gerardo Trading CC.

4.11.4. Creditors are sensitised thereto that if the BRP concludes that there is no longer a reasonable prospect of rescuing the Company, he must act in terms of Section 141(2)(a) of the Act as set out hereafter:

“141(2) If, at any time during business rescue proceedings, the practitioner concludes that—

(a) there is no reasonable prospect for the company to be rescued, the practitioner must—

(i) so inform the court, the company, and all affected persons in the prescribed manner; and

(ii) apply to the court for an order discontinuing the business rescue proceedings and placing the company into liquidation;”

4.11.5. The information provided in this document is provided in good faith in an attempt to, amongst other aspects, calculate the effect and possible dividend to legally proven creditors in relation to the transaction(s) and/or agreement that are herewith tabled for consideration and other proposals and calculations. **Affected persons should not construe this as legal or financial advice and should consult their own independent advisors/specialists for such advice.**

5. FURTHER STATUTORY REQUIRED INFORMATION IN ACCORDANCE WITH SECTION 150 OF THE ACT

5.1. CLOSE CORPORATION PARTICULARS

| | |
|-----------------------------|---|
| <u>Name:</u> | <i>Gerardo Trading CC (Under Supervision)</i> |
| <u>Registration number:</u> | <i>2000/058226/23</i> |
| <u>Registered address:</u> | <i>11 Blumberg Street, Industria West, Johannesburg, 2093</i> |
| <u>Members:</u> | <i>The Saint Leger Trust</i> |

5.2. COMMENCEMENT OF BUSINESS RESCUE PROCEEDINGS

- 5.2.1. The commencement of the business rescue proceedings is as set out in the Outline of the Business Rescue Proceedings and Plan section of this document.
- 5.2.2. Thomas George Nell and Tania Maria Lopes were appointed as the joint Business Rescue Practitioners of GERARDO on 19 June 2023 as set out in the form CoR123.2 document and appointment confirmation, a copy of which is annexed hereto as **Annexure "A2"**.
- 5.2.3. As at the effective date of commencement of the business rescue proceedings (14 June 2023) the Closed Corporation had a public interest score of 101 and is categorized as a medium entity in terms of the CIPC guidelines read with Regulation 26(2) of the Act, as is evidenced by the calculation hereafter.

Business Rescue Proceedings - PI Score Information

| PI Score | Note: Provide a value for each, 0 or blank not allowed | PI Score Result |
|------------------------------------|--|------------------|
| Average Number of Employees: | 94 | Date: 2023/06/14 |
| Third Party Liability of Company: | 1000000.00 | Total: 101 |
| Turnover: | 5400000.00 | |
| Total Number of Shareholders: | 1 | |
| NPC Total Members (incl indirect): | 0 | |

5.3. THE PHILOSOPHICAL APPROACH EMPLOYED BY THE BRP

- 5.3.1. The approach followed by the BRP is to collect and analyse available information, to interpret, understand and appreciate the rights, position, and predicament that creditors, employees, shareholders, directors, relevant stakeholders, and the Close Corporation may find themselves in.
- 5.3.2. The BRP aims to provide a logical and sensible explanation of the position and options that are available to the affected persons. This is in accordance with the aim of business rescue, as set out in Section 7(k) of the Act, which *"...provides for the efficient rescue and recovery of financially distressed Companies, in a manner that balances the rights and interests of all relevant stakeholders."*

5.4. ACTIONS TAKEN BY THE BRP

- 5.4.1. Since appointment the BRP, amongst other activities, attended to meetings with management (Financial Affairs) and creditors, conducted investigations, consulted with, and obtained advice from advisors, including business consultants, auditors, and the legal fraternity.
- 5.4.2. Consulted with potential investors to explore the potential of selling the Close Corporation in part or in whole.
- 5.4.3. Assisted Members and management with procedures to minimize the likelihood of further disintegration.

5.5. SECTION 147 AND 148 MEETINGS

- 5.5.1. The First meeting of employees' representatives in terms of Section 148 of the Act was facilitated by Tania Maria Lopes and Zander Insel and took place at the Premises of Gerardo Trading. Facilitated by Thomas George Nell and Tania Maria Lopes, the First meeting of creditors in terms of Section 147 of the Act took place on 29 July 2023 via the Microsoft Teams platform. A copy of the meeting minutes is available on request.

6. STATUTORY REQUIRED BACKGROUND INFORMATION

The following Plan and report have been compiled in terms of Section 150 of the Companies Act 71 of 2008 and is based on the investigations made into the Close Corporation's affairs, business, property, and financial situation, which forms the basis for considering whether there is any reasonable prospect of the Close Corporation being rescued.

Section 150(2):

"The business rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and must be divided into three Parts, as follows:"

7. PART A: BACKGROUND

7.1. ASSETS

Section 150(2)(a)(i)

"a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the business rescue proceedings began"

- 7.1.1. Assets is defined in **Annexure "C"** attached hereto.
- 7.1.2. Affected persons are directed to the provisions of Section 134(3) of the Act as set out hereafter. Insofar as necessary it is confirmed that these provisions will be adhered to and complied with prior to the conclusion of any transaction in respect of an asset over which another person has any security or title interest.

"134(3) If, during a company's business rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must—

(a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest; and

(b) promptly—

(i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that

other person; or
(ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.”

7.2. CREDITORS

Section 150(2)(a)(ii)

“a complete list of the creditors of the company when the business rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;”

- 7.2.1. Attached hereto as **Annexure “D”** is a list of creditors (as per claims submitted to the BRP, alternatively identified as per the financial records of the Company) and their claim amounts.
- 7.2.2. The claims which are reflected as “Proven” under the heading “*CLAIM STATUS*” set out in **Annexure “H1”** and **Annexure “H2”** will constitute the voting weight of these claims in terms of Section 152 of the Act. Creditors are advised that these amounts have been utilized in the calculation of the projected dividends set out in the Plan. In the event that further claims are received and/or brought to the attention of the BRP, the eventual voting interest and treatment of the creditor may change.
- 7.2.3. It is recorded that creditors have been provided with the opportunity to submit claims prior to the publication of this Plan and are requested to continue to do so.
- 7.2.4. On receipt and acceptance of such claim(s) by the BRP, such claim(s) will be considered and if valid, will form part of the adopted Business Rescue Plan.
- 7.2.5. For the benefit of yet unproved creditors a copy of the claim form is attached hereto as **Annexure “E”**. The completed claim form(s) and supporting/source documents must via return e-mail be sent to admin@sgturnaround.co.za
- 7.2.6. All creditors must verify the outstanding amounts recorded in this Plan. Should a creditor’s records reflect a different amount, or another affected person disputes any claim against the Company, such creditor or affected

person should object to it, at least 2 (two) business days prior to the meeting in terms of Section 151 of the Act, subsequent to which the BRP must make a ruling to either accept or reject the objection.

7.2.7. The BRP is authorized to settle, admit, dispute, reject or otherwise deal with, classify, or reach a decision in respect of any creditor's claim. The BRP is further authorized to institute any legal proceedings to give effect to the objectives and implementation of the proposed Business Rescue Plan.

7.2.8. DISPUTE RESOLUTION PROCEDURE: REJECTED/DISPUTED CLAIMS AND OBJECTIONS RELATED THERETO

7.2.8.1. A dispute which arises in regard to:

7.2.8.1.1. the interpretation of; or

7.2.8.1.2. the amendment of; or

7.2.8.1.3. the implementation of; or

7.2.8.1.4. the BRP's assessment of Claim and/or the BRP's determination of the recognized quantum of a Claim for purposes of; or

7.2.8.1.5. any of the BRP's or Affected Persons' rights and obligations arising from this Business Rescue Plan, or out of, or pursuant to this Business Rescue Plan (other than where an interdict is sought, or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.

7.2.8.2. The arbitration shall be held:

7.2.8.2.1. with only the parties and their legal representatives present.

7.2.8.2.2. before a single arbitrator only; and

7.2.8.2.3. at Pretoria, South Africa.

7.2.8.3. It is the intention that the arbitration shall, where possible, be held and concluded within 25 Business Days after it has been demanded. The parties to the dispute shall use their best endeavours to procure the expeditious completion of the arbitration.

7.2.8.4. The arbitration shall be subject to, and shall be held in accordance with, the expedited rules of the Arbitration Foundation of South Africa (AFSA).

7.2.8.5. The arbitrator shall be if the matter in dispute is principally:

- 7.2.8.5.1. a legal matter, an impartial practicing advocate with commercial law experience of not less than 15 years' standing, or an impartial practicing attorney of not less than 15 years' standing.
- 7.2.8.5.2. an accounting matter, an impartial practicing-chartered accountant of not less than 15 years' standing.
- 7.2.8.6. If the parties to the dispute fail, within 5 (five) business days after the arbitration has been demanded, to agree whether the dispute is of a legal or accounting nature, it shall be considered to be of a legal nature.
- 7.2.8.7. If the parties to the dispute fail to agree on the arbitrator within 5 (five) business days after the arbitration has been demanded, the arbitrator shall be appointed, at the request of either of the parties to the dispute, by the AFSA Secretariate.
- 7.2.8.8. It is specifically noted that the Secured Creditor maintains the right to approach the courts directly and will not be bound to these dispute resolution clauses.
- 7.2.9. Any provision in this Plan, which is or may become illegal, invalid, or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Business Rescue Plan, without invalidating the remaining provisions thereof or affecting the validity or enforceability of such provision.

7.3. LIQUIDATION DIVIDEND

Section 150(2)(a)(iii)

"the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;"

- 7.3.1. In terms of Section 150(2)(b)(vi) of the Act, the BRP must report on the benefits of adopting the Plan as opposed to the benefits that would be received by creditors if the Close Corporation were placed in liquidation.

7.3.2. Upon the liquidation of the Close Corporation, it is the appointed liquidator(s) duty to realize the assets for the benefit of creditors as soon as possible. In compliance with the Act, and to calculate the expected liquidation dividend which creditors in various classes may expect to receive in the event of the liquidation of the Close Corporation affected persons are the liquidation scenario as illustrated above. As set out there in the BRP considered the expected value of all the assets, as well as the expected expenses that would be incurred by an appointed liquidator, to calculate the probable dividend that would accrue to creditors in their various classes in the event that Gerardo is liquidated.

7.4. HOLDERS OF THE COMPANY'S ISSUED SECURITIES

Section 150(2)(a)(iv)

"a complete list of the holders of the company's issued securities;"

7.4.1. Prior to the commencement of business rescue proceedings, the members' interest in the Close Corporation is reflected as follows:

| NAME | INTEREST |
|--------------------------|-------------|
| <i>Saint Leger Trust</i> | 100% |
| TOTAL | 100% |

7.5. PRACTITIONER REMUNERATION AND FURTHER REMUNERATION

Section 150(2)(a)(v)

"...a copy of the written agreement concerning the practitioner's remuneration;"

7.5.1. A copy of the written agreement and proposal for further remuneration entered into by and between GERARDO and the BRP in regard to the practitioners' remuneration and further remuneration is attached hereto as **Annexure "B"**.

7.5.2. Creditors are sensitized thereto that they must consider the fee agreement, and the proposal for further remuneration of the said agreement which states that *"Should the hourly tariff of the Business Rescue Practitioner*

exceed the statutory prescribed fee, the difference between the fee in this agreement and the statutory prescribed fee will be deemed as further remuneration as contemplated in Section 143(2) of the Act.”, which will apply retrospectively on adoption of the Plan.

7.5.3. In the event that Option A has been successful and all creditors received 100 cents in the rand as a dividend payout, the Business Rescue Practitioners will be entitled to further remuneration in the form of a success fee of 1.5%, exclusive of VAT respectively, calculated based on the total Purchase price of the Close Corporation member’s interest / sale as a going concern with or without the immovable property. This fee will be payable to the Business Rescue Practitioners, on or before the date of filing of Substantial Implementation of the adopted Business Rescue Plan with CIPC. Should Option A not be successful and all creditors does not receive a 100 cents in the rand payout, the further remuneration as mentioned in this paragraph will not be applicable.

7.5.4. The Section 151 meeting and Section 143(3) meeting will take place simultaneously with reference to this point. The adoption of the Business Rescue Plan will also mean that the fee agreement and proposal for further remuneration has been considered and approved in terms of Section 143(3) and other relevant sections of the Act.

7.6. PROPOSALS MADE INFORMALLY BY A CREDITOR

Section 150(2)(a)(vi)

“...a statement whether the business rescue plan includes a proposal made informally by a creditor of the company”

7.6.1. The Plan does not include any proposals made informally by a creditor of the Close Corporation.

8. PART B: PROPOSALS

8.1. NATURE AND DURATION OF MORATORIUM

Section 150(2)(b)(i)

“the nature and duration of any moratorium for which the business rescue plan makes provision;”

- 8.1.1. An automatic general moratorium on legal proceedings against GERARDO as contemplated in Section 133 of the Companies Act 71 of 2008 applies until the final implementation of the approved Plan and payment plan (36 months). This moratorium must be read with Section 154 of the Act and other relevant sections as referred to in Chapter 6 of the Act.
- 8.1.2. It is envisaged that the Business Rescue Practitioners will terminate the business rescue proceedings and file for the substantial implementation upon the payment of final dividend to creditors. This remains the full discretion of the Business Rescue Practitioners subsequent to analyzing the financial position of the Closed Corporation.

8.2. EXTENT TO WHICH THE CLOSE CORPORATION IS TO BE RELEASED

Section 150(2)(b)(ii):

“the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;”

- 8.2.1. The extent to which the Close Corporation is to be released from the payment of its debts is addressed in the Outline of the Business Rescue Proceedings and Plan section of this document.
- 8.2.2. No debt will be converted to equity.

8.3. THE ONGOING ROLE OF THE CLOSE CORPORATION

Section 150(2)(b)(iii)

“the ongoing role of the company, and the treatment of any existing agreements;”

8.3.1. The ongoing role of the Close Corporation and the treatment of existing agreements is addressed in the Outline of the Business Rescue Proceedings and Plan section of this document.

8.3.2. It is envisaged that the company shall continue trade for the ensuing future, in a solvent manner.

8.4. THE PROPERTY OF THE CLOSE CORPORATION THAT IS TO BE AVAILABLE TO PAY CREDITORS

Section 150(2)(b)(iv)

“the property of the company that is to be available to pay creditors’ claims in terms of the business rescue plan;”

8.4.1. The property of the Close Corporation that is to be available to pay creditors is addressed in the Outline of the Business Rescue Proceedings and Plan section of this document.

8.5. THE ORDER OF PREFERENCE

Section 150(2)(b)(v)

“the order of preference in which the proceeds of property will be applied to pay creditors if the business rescue plan is adopted;”

8.5.1. The order of preference is addressed in the Outline of the Business Rescue Proceedings and Plan section of this document.

8.6. THE BENEFITS OF ADOPTING THE BUSINESS RESCUE PLAN

Section 150(2)(b)(vi)

“the benefits of adopting the business rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation;”

8.6.1. As evidenced by the projections set out in the business rescue scenario above, the benefits of adopting the proposed Plan outweigh the benefits that will be attained by creditors if the Close Corporation is formally placed in liquidation. Aside from the increase in the probable dividend to creditors if the Plan is adopted, further anticipated benefits include:

- ❖ Concurrent Creditors will in all likelihood receive R 0 cents in the case of a liquidation.
- ❖ Preservation of downstream employment opportunities.
- ❖ Assets will retain value, and subsidiaries will be placed in a position to generate income for the benefit of Gerardo Trading CC and the creditors as defined in this Plan;
- ❖ Bar the obvious increase in the anticipated dividend to creditors, creditors will receive such dividend payments far quicker than any possible anticipated liquidation dividend, which in the experience of the Business Rescue Practitioner, could take up to eighteen months to occur.

8.7. THE EFFECT THAT THE BUSINESS RESCUE PLAN WILL HAVE ON ISSUED SECURITIES

Section 150(2)(b)(vii)

"...the effect that the business rescue plan will have on the holders of each class of the company's issued securities."

- 8.7.1. No effect is anticipated in this regard, except to the extent contemplated in this Plan.

9. PART C: ASSUMPTIONS AND CONDITIONS

9.1. Assumptions and preconditions and terms of this Plan

Section 150(2)(c)(i)(aa) and (bb)

"a statement of the conditions that must be satisfied, if any, for the business rescue plan to-

(aa) come into operation; and

(bb) be fully implemented"

- 9.1.1. In compliance with this section of the Act it is stated that the following conditions will need to be fulfilled to the extent that:

- 9.1.1.1. Adoption of this Plan, alternatively an amended Plan.

- 9.1.1.2. Execution and compliance with the provisions of the relevant terms, which form the underlying basis of the Plan.
- 9.1.1.3. The BRP is specifically authorized and mandated to give effect to the provisions of the adopted Business Rescue Plan.
- 9.1.1.4. Any aspect relating to VAT, which may arise as a result of the approval of the Plan (as may be amended) must be addressed to the satisfaction of the Close Corporation and the BRP.
- 9.1.1.5. The VAT clawback, if any, to be settled with SARS, as set out in Section 22.
- 9.1.1.6. The VAT clawback portion of SARS's clawback claim is not deemed to be a tax liability post commencement of the business rescue proceedings.
- 9.1.1.7. The BRP has the authority to negotiate and settle any claims and is authorized, based on a just and equitable determination, to pay dividends to a creditor that has not submitted a claim. In addition, hereto the BRP is authorized to negotiate and settle any legal dispute after obtaining legal advice in relation thereto.
- 9.1.1.8. Yet unproven claims must be proven on the same basis as in terms of the Law of Insolvency.
- 9.1.1.9. This Plan is published under the precondition that all amounts reflected are published for the purpose of calculating dividends and the like. It is published without prejudice to GERARDO or its sureties regarding the correctness of the reflected amounts. The actual amounts will form part of the payment scheme and must not be seen as being an admission of the merits or quantum of a claim by a creditor against the Close Corporation.
- 9.1.1.10. If the Close Corporation is, in whole or in part, prevented from implementing this Business Rescue Plan as a result of Vis Major, the BRP and/or Close Corporation's failure to implement this Business Rescue Plan will not be deemed to be a breach of the Business Rescue Plan, nor will it subject either of them to any liability to the Creditors and/or other Affected Persons.

- 9.1.1.11. Until such time as GERARDO has fully met all of its obligations to creditors the Close Corporation will:
- 9.1.1.11.1. Not declare any dividend to its Member(s);
- 9.1.1.11.2. Notify creditors upon the granting of any bonus, incentive, salary increase, or other benefit provided to it by any person that is a member (or who is related to such person);
- 9.1.1.11.3. Not increase the salaries and other benefits payable to any persons that are members of the Close Corporation (or persons related to such persons) by more than the percentage increase in the Consumer Price Index for the previous year.
- 9.1.1.12. Should the BRP elect to make payment of an advance dividend to a creditor, such creditor, must indemnify the BRP for purposes of repayment of such dividend.
- 9.1.1.13. Should GERARDO be liquidated during the period of implementation of the Plan, the full outstanding amount(s) due to creditors, as reflected in the books of the Close Corporation, will be the amount(s) capable of being claimed by creditors, less any amounts already paid in respect of the specific claim(s). By necessary implication this will exclude any claims from any creditor that has already been paid the full amount due to it in terms of this Plan. Should GERARDO be liquidated, creditors will be entitled to institute their full uncompromised claim(s) against the Close Corporation in liquidation.
- 9.1.1.14. Disputed claims are subject to the process as set out herein above.
- 9.1.1.15. Creditors are sensitized thereto that they should take into account the provisions of Section 154(1) of the Act which provide that 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.”*
- 9.1.1.16. If this Plan, as may have been amended, is not successfully implemented, the BRP is authorized to prepare and publish a revised Plan on the condition that the creditors holding the majority of the

voting interest vote in favour of the publication of such a revised Plan and that the BRP at that stage still believes that there is a reasonable prospect of rescuing GERARDO.

9.1.2. Pursuant to the provisions of Section 150(1) of the Act and after consultation with affected persons and the member(s) of the Close Corporation, this Plan will be submitted for consideration and possible adoption at a meeting held in terms of Section 151 of the Act.

9.1.3. Further particulars regarding the aforesaid meeting will be circulated in due course.

9.2. Impact of this Plan on employees

Section 150(2)(c)(ii)

“the effect, if any, that the business rescue plan contemplates on the number of employees, and their terms and conditions of employment;”

9.2.1 None for the purpose of Option A of this plan. Given the continued financial distress that Gerardo finds itself in and the further provisions of this plan, retrenchments may take place, and affected persons are assured that, if this process comes to pass, it will be conducted in a transparent fashion in accordance and compliance with all relevant labour and ancillary legislation.

9.3. Circumstances under which the Business Rescue Plan will end

Section 150(2)(c)(iii)

“...the circumstances in which the business rescue plan will end;”

9.3.1. As per the provisions as set out in this business rescue plan;

9.3.2. As per the relevant sections referred to in the Act.

9.4. Projected Cash Flow Statement and balance sheet

Section 150 (2)(c)(iv)(aa) and (bb)

“...a projected-

(aa) balance sheet for the company; and

(bb) statement of income and expenses for the ensuing three years, prepared on the assumption that the proposed business plan is adopted”

Section 150 (3)(a) and (b)

“The projected balance sheet and statement required by subsection (2)(c)(iv)-

(a) must include a notice of any material assumptions on which the projections are based and

(b) may include alternative projections based on varying assumptions and contingencies.”

**PROJECTED STATEMENTS OF COMPREHENSIVE INCOME
SHOULD OPTION A AND ASSUMPTIONS MATERIALISE**

| | Feb-24 | Feb'25 | Feb'26 |
|-----------------------------------|------------|--------|--------|
| INCOME STATEMENT | | N/A | N/A |
| Turn over | 35 500 000 | - | - |
| Cost of Sales | 14 200 000 | - | - |
| Gross Profit | 21 300 000 | - | - |
| Expenses | 22 000 000 | - | - |
| Net Operating Income | (700 000) | - | - |
| Interest Expense | - | - | - |
| Net Profit Before Tax Taxation | (700 000) | - | - |
| Net Profit After Tax | (700 000) | - | - |

Gerardo Trading CC
 Projected Balance Sheet Should Option A
 materialise

| BALANCE SHEET | Nov'23 | Feb-24 | Feb-26 |
|---------------------------------------|-------------------|---------------|---------------|
| | | N/A | N/A |
| <u>ASSETS</u> | | | |
| Fixed Assets | 14 953 500 | - | - |
| Debtors | 1 068 594 | - | - |
| Loan St Leger Trust | 13 826 340 | - | - |
| Bank | | - | - |
| TOTAL ASSETS | 29 848 434 | - | - |
| <u>LIABILITIES</u> | | | |
| Instalment Sale Agreements | 1 500 000 | | |
| Trade Creditors | 300 000 | - | - |
| Pre Rescue Creditors | 9 000 000 | - | - |
| Shareholder loans | 1 109 292 | - | - |
| Overdraft | 5 000 000 | - | - |
| Tax | | | |
| Overdraft | - | - | - |
| TOTAL LIABILITIES | 16 909 292 | - | - |
| <u>EQUITY</u> | | | |
| Share Capital | 100 | - | - |
| Non-Distributable Reserve | | | |
| Retained Income (Loss) | 12 939 042 | - | - |
| TOTAL EQUITY | 12 939 142 | - | - |
| TOTAL EQUITY & LIABILITIES | 29 848 434 | - | - |

9.5. South African Revenue Service Clauses:

9.5.1. DEFAULT CLAUSE

Any compromise contemplated in this business rescue plan is conditional upon the Close Corporation fully meeting its obligations to creditors as set out in this business rescue plan. In the event of any breach by the Close Corporation of its obligations to SARS in terms of the business rescue plan and such breach is not rectified in terms of the provisions of this plan, or in the event the Close Corporation is placed in liquidation, the full balance due to SARS in terms of their original claim against the Close Corporation shall immediately become due, owing and payable by the Close Corporation to SARS.

9.5.2. CONTINUING TAX OBLIGATIONS:

The Close Corporation undertakes that the Close Corporation shall ensure that all future tax obligations (including the filing of returns and payment of outstanding taxes) will be met until proceedings have been terminated on any ground listed in terms of section 132 of the Companies Act of 2008.

9.5.3. VAT CLAWBACK CLAUSE:

VAT liability arising as a result of a compromise of debts in terms of this plan is not subject to compromise and is payable in full. The Close Corporation warrant that provision for any VAT liability triggered in terms of section 22 of the VAT Act 89 of 1991 has been made in the plan subject to the provisions Section 133(3) of the Act.

9.5.4. ASSESSED LOSS FORFEITURE:

Any assessed loss will be subject to and dealt with in accordance with the provisions of the tax laws of South Africa and will be forfeited in proportion to the debt compromise effected by the business rescue plan. Such a reduction shall be without prejudice to any rights that the taxpayer may have in terms of the Tax Administration Act.

10. VOTING IN TERMS OF THIS BUSINESS RESCUE PLAN AS REFERRED TO IN SECTION 152 OF THE ACT AND OTHER RELEVANT SECTIONS

- 10.1. The voting interests of a creditor will be calculated based on the creditor's accepted or proven claim amount, or as per the figure reflected in this Plan, being the claim amount owed to the creditor. Should any affected person or creditor have a valid objection or comment to the figures as reflected in this proposed Plan, same should be furnished to the office of the BRP at Tania@sgturnaround.co.za at the latest, 2 (two) business days prior to the commencement of the Section 151 meeting.
- 10.2. The tally of the votes cast during the meeting to determine the future of GERARDO will be based on the total value of votes which have been cast (present and voting) as defined in the Act and includes proxy votes.
- 10.3. The value of the vote is for voting purposes only and is calculated in good faith. Should there be a dispute regarding the merits and/or the quantum of a claim that arises at a later stage, all rights of the Close Corporation are reserved to contest the claim upon which the vote was calculated.

11. GENERAL PROVISIONS

- 11.1. Affected persons who vote against the Plan are referred to the provisions of the Section 153(1)(b)(ii) of the Act in terms of which any affected person or combination of affected persons may make a binding offer to purchase the voting interest of one or more persons who opposed the adoption of the Plan, at a value independently and expertly determined (on the request of the Business Rescue Practitioner) to be a fair and reasonable estimate of the return to that person if the business was to be liquidated. Creditors are furthermore sensitized to acquaint themselves with the provisions of Section 153 of the Act, which deals with the failure to adopt a business rescue plan.
- 11.2. The BRP will retain all powers, as provided for in the Act, until the date of substantial implementation of the Plan.

12. PUBLICATION OF PROPOSED BUSINESS RESCUE PLAN

Section 150(5)(a) and (b)

“The business rescue plan must be published by the company within 25 business days after the date on which the practitioner was appointed, or such longer time as may be allowed by-

(a) the court, on application by the company; or

(b) the holders of a majority of the creditors’ voting interests.”

It is noted that the creditors that hold the majority of the creditors’ voting interests have consented to the extension of the publication of the proposed Business Rescue Plan as referred to in Section 150(5)(b) of the Act quoted above.

The BRP herewith reserves the right to amend any provision and/or clause contained in this Plan, before the adoption of this Plan, subject to the provisions of the Act, and that when implementing and interpreting this Plan, the provisions of Section 7(k) of the Act will apply as well as Section 5 “*General Interpretation of the Act*”, and Section 158 of the Act, which provides:

“Remedies to promote purpose of Act – When determining a matter brought before it in terms of this Act, or making an order contemplated in this Act –

(a) a court must develop the common law as necessary to improve the realization and enjoyment of rights established by this Act; and

(b) the Commission, the Panel, the Companies Tribunal or a court –

(i) must promote the spirit, purpose and objects of this Act; and

(ii) if any provision of this Act, or other document in terms of this Act, read in its context, can be reasonably construed to have more than one meaning, must prefer the meaning that best promotes the spirit and purpose of this Act, and will best improve the realisation and enjoyment of rights.”

It is furthermore recorded that, should it become necessary prior to the Section 151 meeting, further amendments to the Plan will be recorded and sent to all affected parties.

Copies of the license certificates of the joint Business Rescue Practitioners are attached hereto as **Annexures “F”**.

13. CERTIFICATE BY BUSINESS RESCUE PRACTITIONERS

Section 150(4)(a) and (b)

"A proposed business rescue plan must conclude with a certificate by the practitioner stating that any-

(a) actual information provided appears to be accurate, complete, and up to date;

and

(b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement."

We, the undersigned, Thomas George Nell (ID Number: 600819 5111 08 0) and Tania Maria Lopes (ID Number: 8802050073080) being the appointed joint Business Rescue Practitioners of Gerardo Trading CC, confirm and certify that the actual information provided and obtained from the director(s), consultants, management, and creditors appears to be accurate, complete, and up to date. Where reliance is placed on projections, such projections and estimates are made in good faith on the basis of factual information and assumptions as set out in the statement.




Electronically signed by:

THOMAS GEORGE NELL

SENIOR JOINT BUSINESS RESCUE PRACTITIONER

GERARDO TRADING CC (UNDER SUPERVISION)



Electronically signed by:

TANIA MARIA LOPES

JOINT BUSINESS RESCUE PRACTITIONER

GERARDO TRADING CC (UNDER SUPERVISION)