

**WRITTEN OFFER TO PURCHASE, MADE BY THE HIGHEST BIDDER
ON THE PUBLIC AUCTION HELD ON 31 MARCH 2021 TO THE
SELLERS LISTED BELOW, WHICH, IF ACCEPTED BY SUCH
SELLERS IN WRITING, WILL BECOME THE FULL AND FINAL
MEMORANDUM OF AGREEMENT OF SALE**
(hereinafter referred to as "the Agreement")

entered into by and between

(and the representative thereof as stipulated in paragraph 12.1 below,
where applicable and/or his nominee)

herein represented by:

(Identity Number: _____)
(who warrants that he is duly authorised hereto)
(and whose personal liability in terms of paragraph
12.1 below also will apply to any situation where a
nominee has been nominated)
hereinafter referred to as "**the PURCHASER**") and

1. KLEIN KAROO HOTELS (PTY) LTD

Registration Number: 1999/025519/07

VAT Registration Number: 4030208146

(as the registered owner of Erf 194, Barrydale (situated at 30 Van Riebeeck
Street, Barrydale) as well as the two liquor licences sold herewith)

2. KAROO ART HOTEL (PTY) LTD

Registration Number: 2016/226543/07

VAT Registration Number: 4400186523

(as the owner of the assets of the Karoo Art Hotel as defined in paragraph
2.8 below)

3. THE NEL FAMILY TRUST

(IT Number: 2005/1999)

(as the owner of the movable assets being furniture and equipment etc.)

AND with the above 3 SELLERS herein represented by:

Theo Johannes Nel (Identity Number: 590912 5050 08 5)

(who warrants that he is duly authorised hereto)

(hereinafter referred to as "**the SELLERS**"),

(the PURCHASER and SELLERS are hereinafter collectively referred to as the
"PARTIES" where necessary)

in respect of the sale of the going concern business known as

KAROO ART HOTEL, BARRYDALE, consisting of:

1. Erf 194, Barrydale as well as the hotel liquor liquor license and the recently
acquired off-sales liquor licence, registered in the name of Klein Karoo
Hotels (Pty) Ltd;
2. All the movable assets being the furniture and equipment etc. as listed in
Annexure "B", which movables are the property of the Nel Family Trust; and
3. The other assets of Karoo Art Hotel (Pty) Ltd, as set out in **Annexure "C"**
hereto

(hereinafter referred to as "the BUSINESS")

26.03.2021 (18h15)

1. INTRODUCTION

1.1 The prospective PURCHASER herein is the person on whom the highest bid had been awarded at the public auction held by Auction One for the sale of the subject matter of the sale herein as defined below, on WEDNESDAY 31 MARCH 2021.

1.2 In so being awarded as the highest bidder at the auction, such PURCHASER obtains the right to, as prospective PURCHASER, make this written Offer to Purchase to the SELLERS as defined below.

1.3 The SELLERS have a free and unfettered discretion to accept and/or refuse this written Offer and they have to exercise their election in this regard in writing within 7 (Seven) calendar days from date of signature hereof being the auction date 31 March 2021.

1.4 Should the SELLERS not before midnight of the expire date namely 7 April 2021 accept this written Offer in writing by counter-signing each and every page and signing at the end thereof, the written Offer will lapse and be of no further force and effect.

2. DEFINITIONS AND INTERPRETATION

2.1 "Agreement" shall mean this Agreement.

2.2 "BUSINESS" shall mean the BUSINESS carried on by the SELLERS under the name and style of Karoo Art Hotel, Barrydale, in whose name these assets are registered and/or who owns these assets and includes:

- 2.2.1 The immovable property being Erf 194, Barrydale as sold by Klein Karoo Hotels (Pty) Ltd, together with the hotel liquor licence and the off-sales liquor licence;;
- 2.2.2 All the movable assets thereof, as defined in paragraph 2.7 below, and as set out in **Annexure "B"** hereto, as sold by the Nel Family Trust;
- 2.2.3 The goodwill of the business and other business assets as listed in paragraph 2.8 below, belonging to and as sold by Karoo Art Hotel (Pty) Ltd;

It is recorded that the above BUSINESS and the assets thereof as specified above, are sold as a whole, indivisible, and where failure of sale of the one part would not leave any other part valid and binding.

- 2.3 The BUSINESS is sold free of all liabilities of the BUSINESS up to the date of occupation of the BUSINESS and the SELLERS shall be liable for and pay all such liabilities;
- 2.4 "Goodwill" shall mean the goodwill attached to the BUSINESS, as to the date of possession of the BUSINESS, including but not limited to, all the rights of Karoo Art Hotel (Pty) Ltd to the trading name Karoo Art Hotel and all intangible rights pertaining directly or indirectly to the BUSINESS;
- 2.5 "Effective date" shall mean the date of registration of transfer in the Deeds Office, Cape Town of Erf 194, Barrydale into the name of the

PURCHASER or such other date as agreed upon between the Parties in writing;

2.6 “Date of occupation” shall mean the date of registration of transfer of the immovable property sold into the name of the buyer in the Deeds Office, Cape Town.

2.7 “Movable Assets” shall mean:

2.7.1 All movable assets belonging to the SELLERS, as set out in Annexures "B" and "C" hereto as present at the hotel premises at the moment of signature of this Deed of Sale, **excluding:**

2.7.1.1 All such personal belongings and effects of the Nel Family Trust and Tracy Goosen, not sold with the hotel, as per **Annexure “A”** attached hereto, also containing photographs for identification. ;

2.7.1.2 All art and artwork displayed in the hotel, as such either belongs to the Nel Family Trust; alternatively to private owners and/or the artists themselves, and are merely displayed on consignment in the hotel. It is recorded that most of the displaying artists would wish to continue so to display their art in the hotel with the new owners. Also, the Nel Family Trust would be keen to leave some of its art behind, on display, on consignment but this is an aspect that the new owners, upon this Offer to Purchase being

formally accepted and becoming a Deed of Sale, have to negotiate with such artists and/or owners of art.

2.7.2 The movable assets sold by Karoo Art Hotel (Pty) Ltd are listed on the inventory attached hereto marked **Annexure "C"**. The movable assets sold by the Nel Family Trust are listed on the inventory attached hereto marked **Annexure "B"**;

2.7.3 All fixtures and fittings on the hotel premises that are being sold.

2.8 "the assets of Karoo Art Hotel (Pty) Ltd" shall mean:

2.8.1 The trade name thereof;

2.8.2 The goodwill attached thereto;

2.8.3 All transferrable trade licences;

2.8.4 All stock-in-trade, as on the Effective Date;

2.8.5 All rights to the name Karoo Art Hotel, Barrydale enjoyed by the SELLERS to trade as such;

2.8.6 All policies, procedures, manuals and marketing material pertaining to the BUSINESS that was compiled by the SELLERS;

2.8.7 The website and domain right and email addresses ;

2.8.8 All intellectual property associated with the BUSINESS.

- 2.8.9 All other assets of whatever nature belonging or appertaining to the BUSINESS as at the date of signature of this Agreement;
- 2.8.10 All signage billboards of the hotel on display in and outside Barrydale.
- 2.9 "Premises" shall mean the BUSINESS premises located at Karoo Art Hotel, 30 Van Riebeeck Street, Barrydale, Klein Karoo, Western Cape Province;
- 2.10 This Agreement constitutes the entire contract between the Parties with regard to the matters dealt with in this Agreement and no representations, terms, conditions or warranties not contained in this Agreement shall be binding on the Parties;
- 2.11 No Agreement varying, adding to, deleting from or cancelling this Agreement shall be effective unless reduced to writing and signed by both Parties;
- 2.12 No indulgence granted by the SELLERS shall constitute a waiver of any of their rights under this Agreement; accordingly, they shall not be precluded, as a consequence of having granted such an indulgence, from exercising any rights against the PURCHASER which may have arisen in the past or which may arise in the future;
- 2.13 In this Agreement, unless inconsistent with the context:
- 2.13.1 words referring to one gender shall include a reference to the other genders;

2.13.2 words importing the singular shall include the plural and vice versa;

2.13.3 words referring to natural persons shall include juristic persons and *vice versa*.

3. PURCHASE PRICE

3.1 The purchase price offered amounts to the amount upon which the bid had been awarded to the prospective PURCHASER listed hereinabove, R () (VAT exclusive) for the Karoo Art Hotel business, as a going concern, including the immovable property being Erf 194, Barrydale and the two liquor licences; and including all movable assets on the hotel property as contained in the inventories attached hereto as Annexure "B": Movable Assets sold by the Nel Family Trust and Annexure "C": Movable Assets sold by Karoo Art Hotel.

3.2 The purchase price of R () (VAT exclusive) will be allocated as follows:

3.2.1 The immovable property being Erf 194, Barrydale: R () as well as the hotel liquor licence and the off-sale liquor licence (as sold by the Seller Klein Karoo Hotels (Pty) Ltd);

3.2.2 The movable assets as set out in Annexure "B" hereto: R850 000.00 (Eight Hundred and Fifty Thousand Rand) (as sold by the Seller the Nel Family Trust);

3.2.3 The goodwill of the business and such other assets as defined in paragraph 2.8 hereinabove as the assets of Karoo Art Hotel (Pty) Ltd and as set out in **Annexure "C"** hereto: R50 000.00 (Fifty Thousand Rand) (as sold by the Seller Karoo Art Hotel (Pty) Ltd).

3.3 Payment Terms to the SELLERS in the following manner:

3.3.1 Payment of a 10% deposit on the full Purchase Price immediately upon signature hereof;

3.3.2 The balance of the Purchase Price will be paid in cash upon the date of registration of transfer of Erf 194, Barrydale into the name of the PURCHASER, unless the Parties come to a different agreement hereinafter, in writing, signed by all Parties involved, transferring the movable assets earlier than the transfer of the immovable assets, if the Parties agree for the PURCHASER to take possession of the BUSINESS and movables before the date of registration of transfer of the immovables.

3.3.3 The PURCHASER will, within 14 (Fourteen) calendar days from date of signature hereof, provide the SELLERS' transferring

conveyancers with a written guarantee issued in the standard format by a financial institution in South Africa, guaranteeing the payment of the balance of the purchase price against registration of transfer, which guarantee shall be framed in the usual format used by the said conveyancers and be to their reasonable satisfaction; **Alternatively** the PURCHASER will within 14 (Fourteen) calendar days from signature hereof pay the balance of the purchase price over to the transferring conveyancers nominated herein, together with written authority for them to invest such balance purchase price in an interest bearing account at a financial institution as nominated by the PURCHASER for interest to accrue for the benefit of the PURCHASER, up and until date of registration of transfer.

3.3.4 It is recorded that the hotel and the bar will have no stock in trade at the date of taking of occupation and that there is therefore no additional stock-take or payment required for that.

3.3.5 All payments shall be made, free of exchange and bank charges, in Cape Town.

4. **TRANSFER, OCCUPATION, OWNERSHIP, POSSESSION & RISK:**

4.1 Unless where otherwise agreed, in writing, and signed by all the parties hereto, occupation of the BUSINESS will occur on the date of registration of transfer of the immovable property sold in terms hereof, into the name of the purchaser, in the Deeds Office, Cape Town, against payment of the purchase price of

R () by EFT for the movable assets as described above and in Annexures "B" and "C". All payments due herein should be paid into the trust bank account of the transferring conveyancers nominated by the SELLERS, namely Chris Fick & Associates Attorneys (4th Floor, Waalburg Building, 28 Wale Street, Cape Town, Tel (021) 424-3937), which trust bank account details are as follows:

Name of Account: Chris Fick & Associates Trust Account
 Bank: First National Bank
 Branch: Adderley Street, Cape Town
 Branch Code: 201409
 Account No: 62004881935
 Account Type: Commercial Attorneys Trust
 Reference: Chris Fick/Karoo Art Hotel
 E-mail proof of payment to:
chris@chrisfick.co.za and theo@karooarthotel.co.za and
peter.bruil@pamgolding.co.za

- 4.2 **Occupation of the Immovable Property** as owners thereof shall be given to the PURCHASER on the Effective Date, being the date upon which registration of transfer of Erf 194, Barrydale is affected in the Deeds Office in the name of the PURCHASER.
- 4.3 Possession and ownership of all the other assets sold will simultaneously pass to the PURCHASER against transfer of the immovable property as aforesaid.
- 4.4 The sale is an indivisible sale of the BUSINESS as a going concern as a whole.
- 4.5 Transfer shall be effected by the Seller's attorneys and the Purchaser shall be obliged to sign all necessary documents when called upon to

do so to enable transfer to be effected. Failure to sign such documents or to comply with any other obligations in terms of the Deed of Sale within five (5) days from written demand to do so, shall constitute breach of contract on the part of the Purchaser.

- 4.6 The Purchaser shall be liable for payment of a pro rata share of the rates and taxes due on the property and any other charges as may be levied by the Local Authorities calculated from date of registration of transfer.
- 4.7 The parties record that the effective control in respect of the Liquor Licence referred to herein, may only become effective as from the date upon which the said licences/rights are transferred to the Purchaser. The parties however record that during this period the aforesaid portions of the business purchased shall be operated for the benefit of the Purchaser with the assistance of the Seller. The Seller undertakes to provide any assistance that may be required in this regard.
- 4.8 All licences, with specific reference to the Liquor Licence, and permits required for the conduct of the business are in force and the Seller is not aware of any facts which may lead to the revocation or withdrawal of any of the licences. The Purchaser hereby undertakes to do all things that may be required to arrange for the transfer of the aforesaid licences into the name of the Purchaser, or is Nominee, and the Seller undertakes to sign any documentation that may be required for the transfer of the aforesaid licences. The Purchaser or its nominee shall further be appointed the responsible person in terms of the Liquor Act to operate the liquor licence in the name of the Seller as from the

Effective Date to the date of transfer of the liquor licence. The Purchaser warrants, by signature of this Agreement, that it has acquainted itself with the terms and conditions that relate to the aforesaid licences.

- 4.9 The Seller indemnifies the Purchaser and holds the Purchaser harmless against any claim by any third party in respect of any liability relating to or arising out of the business and/or the business assets, the cause of action of which arose prior to the Effective Date. Should any such claim be made against the business or the business assets, the Seller will be obliged immediately to settle or defend such claim together with all costs connected therewith.

5. COMPLIANCE WITH SECTION 34 OF THE INSOLVENCY ACT

- 5.1 The PARTIES agree that the SELLERS' conveyancing attorneys will, on behalf of the PURCHASER, do the necessary to ensure the prompt and immediate publication of these advertisements as soon as possible after the successful finalisation of the PURCHASERS' due diligence rights. The Parties agree that the statutory requirements of Section 34 of the Insolvency Act, 1934 will be complied with immediately upon successful completion of the due diligence by the PURCHASER.
- 5.2 The PURCHASER shall, through the conveyancing attorneys performing this function on their behalf, within 14 (Fourteen) days after signature of this Agreement provide the SELLERS with proof that advertisements of the sale, in the manner contemplated by Section 34

of the Insolvency Act, have in fact been published or it shall waive compliance with this condition, in writing.

5.3 The Seller indemnifies the Purchaser against any loss or damage which the Purchaser may suffer as a result of notice of the transfer of the business not being advertised.

5.4 The Seller undertakes to satisfy the claim of any creditor, whose claim arose from the conduct of the business by the Seller prior to the Effective Date, which may institute an action subsequent to the Effective Date, alternatively to oppose such action instituted in the name of the Purchaser in the event of such opposition being unsuccessful to meet the claim of such creditor, including costs and interest. In support of this warranty, the Seller indemnifies the Purchaser in respect of any and all such claims inclusive of interest and costs which the Purchaser may be called upon to pay to prevent attachment of the assets sold hereunder in an instance where the cause of action arose prior to the Effective Date.

6. **VALUE ADDED TAX**

The Parties warrant and agree that:

6.1 As at the date of occupation of the business as well as at the effective date all Parties will be registered as vendors under the VAT Act; and

6.2 The PURCHASER agrees to provide the SELLERS, by the effective date, with a copy of the Purchaser's Notice of Registration for VAT; and

6.3 The BUSINESS comprises an "enterprise" as defined in Section 1 of the VAT Act, and

- 6.4 The enterprise is being disposed of (in terms of this Agreement) as a “going concern” within the meaning of Section 11 (e)(i) of the VAT Act; and
- 6.5 The enterprise is now, and will be on the date of possession as well as on the effective date, an “income earning activity” within the meaning of Section 11(e)(aa) of the VAT Act; and
- 6.6 The assets which are necessary for carrying on the enterprise are being disposed of by the SELLERS to the PURCHASER in terms of this Agreement; and
- 6.7 It is recorded that the purchase price specified in clause 3 above, has been calculated and specified on the basis that the sale of the BUSINESS falls to be charged with VAT at the rate of 00% in terms of Section 11(1)(e) of the VAT Act; and
- 6.8 The Parties acknowledge that if the sale does not fall within the provisions of such section, certain components forming the subject matter of the sale will fall to be charged with VAT at the rate in force as at the effective date; and
- 6.9 The Parties accordingly agree that in such event, and in order to comply with the provisions of Section 67 of the VAT Act, the purchase price and the allocations thereof as set out in clause 3 above, shall be increased by the rate of VAT applicable on the effective date on each vatable component of the assets comprising the BUSINESS and the purchase price shall be deemed to have been varied accordingly; and

6.10 Therefore, should SARS not accept this sale of the BUSINESS as a zero rate, then the PURCHASER will be responsible for paying VAT to SARS; and

6.11 Accordingly, this Agreement shall be deemed to constitute a valid tax invoice for the items set out in clause 3 above for the purpose of VAT.

7. BREACH & REMEDIES

7.1 Failure to fulfil any condition contained in this Agreement by either Party within the time specified will constitute a breach.

7.2 In the event of such a breach the aggrieved Party shall give the other Party written notice to remedy the breach within 10 (Ten) business days. Such notice period shall commence upon service of such notice on the other Party.

7.3 If the breach by the PURCHASER is related to the payment and/or guarantees of the purchase price, then the SELLERS will, subject to clause 8.2, be entitled to cancel this Agreement with immediate effect; and institute a claim for all damages suffered.

7.4 Should the Purchaser fail to perform all or any of the terms and conditions of this agreement and fail to remedy such omission or breach within ten (10) days of the posting of a letter by pre-paid registered post to the Purchaser at the *domicilium citandi et executandi* chosen by the Purchaser, the Seller shall have the right to, without prejudice to the Seller's other legal rights and/or remedies including the right to claim damages, either;

7.4.1 To cancel the sale and have the property put up again for sale by auction or private treaty, in which event the Purchaser shall be liable for:

7.4.1.1 Any shortfall between the purchase price obtained on such resale and the purchase price under this sale plus the costs referred to in paragraphs 7 and 9.

7.4.1.2 All costs of resale; and

7.4.1.3 All Government dues and other charges referred to in these Conditions of Sale in respect of this sale; or

7.4.2 to cancel the sale and to retain all monies paid by the Purchaser as Roukoop; or

7.4.3 to hold the Purchaser bound by his purchase and to claim forthwith the payment of the whole of the purchase price and all other amounts due by him hereunder and the fulfilment of all terms and conditions hereof.

8. **DISPUTE RESOLUTION**

8.1 If any dispute should arise between the Parties out of or in relation to or in connection with this Agreement, or the interpretation thereof, or any breach thereof, or its termination, both while in force and/or after its termination, the Party claiming such dispute shall forthwith advise the other Party in writing thereof. Within 5 (Five) business days of receipt of such notice, the respective Parties' most senior representatives shall

meet (either in person or via Zoom/Microsoft Teams) and negotiate in good faith in order to resolve the dispute.

- 8.2 Should the Parties fail to resolve such dispute within 5 (Five) business days of their meeting or such longer period as the Parties may agree to in writing, either Party may refer the dispute to a suitably qualified and accredited mediator for **mediation**.
- 8.3 The Party referring the dispute to mediation shall, within 5 (Five) business days of such referral submit to the other Party in writing the names of 3 (three) duly qualified mediators proposed by it to act as mediator and request the other Party to agree to the appointment of any one of them in writing within 5 (Five) business days of receipt of such notice.
- 8.4 In the event of the Parties being unable to agree on the appointment of a mediator, the Parties shall, within 5 (Five) business days after the date of receipt of the notice, referred to in the clause hereinabove, submit the dispute to The Association Of Independent Mediators ("AIM") for administered mediation by one mediator, upon the terms set out by AIM.
- 8.5 The Parties agree and undertake to comply with all timeframes and procedural directives set out by the appointed mediator.
- 8.6 Should the parties not be able to settle the disputes in mediation within 10 (Ten) days of the commencement of mediation, the parties agree to resolve their disputes by **arbitration**, in terms of the shortened rules of AFSA ,to a single arbitrator agreed to between the parties, who shall be

a retired judge or a senior counsel at the Cape Bar. If the parties cannot agree to a particular arbitrator, the Chair of the Cape Bar will be requested to appoint a suitable arbitrator expeditiously. The decision of the arbitrator shall be final and binding on the parties and no party shall have any right of appeal.

- 8.7 Nothing herein contained shall disallow either Party to follow any alternative route towards resolving the dispute after the procedure detailed in this clause 8 has been finalised or to make application for an interdict or urgent relief in appropriate circumstances.
- 8.8 The Parties hereby irrevocably consent to the proceedings as set out in this Dispute Resolution clause.
- 8.9 Each of the Parties will contribute 50% in advance for the cost of the mediation and/or arbitration. Should a Party fail to make its contribution within 3 (Three) days after same having been so demanded by the Arbitrator, such arbitration proceedings can proceed but the non-paying Party will be disbarred from participating therein until its financial contribution has been made. Any failure by any party to make the financial contribution for mediation will have the effect of mediation falling away immediately and for the matter to be immediately referred for arbitration.
- 8.10 The Purchaser consents to the Seller instituting action in the Magistrate's Court to whose jurisdiction the Seller submits.

9. REPRESENTATIONS & DECLARATIONS

9.1 The PARTIES agree that the full purchase price is the purchase price for the agreed net asset value of the assets of the BUSINESS. This sale is *voetstoots* and the PURCHASER confirms that no representations have been made by the SELLERS in regard to the BUSINESS and/or the property and/or the performance of the BUSINESS or any of the assets other than recorded herein.

9.2 The SELLERS hereby warrant that fixtures and fittings present on the hotel premises, **except:**

9.2.1 Some items in room 13, being the Magpie room- which belongs to Magpie, who decorates the room, and

9.2.2 Certain fridges sponsored by and belonging to SA Breweries and /or Coca-Cola;

9.2.3 The immovable assets listed in Annexure "A" hereto, are the property of the SELLERS, have been fully paid for and is not subject to any pledge, hire purchase agreement, suspensive sale agreement, hypothec or any other encumbrances whatsoever.

9.3 The PURCHASER undertake to provide the SELLERS, through AuctionOne, all the information pertaining to the PURCHASER it may reasonable require herein, such as its VAT registration documentation; its company registration documentation; it's annual financial statements for the last two financial years and the management reports over the

last 12 months; and copies of the share certificates of the SELLER. Should any shareholder in the SELLER be a corporate entity, the same financial information, including share certificates, in such corporate shareholder, would also be required. This will pertain equally to any nominee nominated by the present PURCHASER within 7 (Seven) days after signature of the document to step into its shoes on condition that all such financial information that are listed above and which the SELLERS may reasonably require be furnished to them and that the SELLERS in writing approve of the substituted nominated company before any such nomination may take effect.

- 9.4 The PARTIES hereby further agree that any figures, by virtue of its previous trading records, occupation figures etc. in whatsoever respect and communicated to the PURCHASER, have not been causally connected to the PURCHASER'S decision to buy the property and that no material representations had been made in that regard. It is recorded that the going concern business is sold at net asset value.
- 9.5 The SELLERS have not and will not at the effective date, have granted any option or pre-emptive right to any other party for the sale of the BUSINESS.
- 9.6 The SELLERS warrant that the assets of the BUSINESS are fully insured against loss or damage by fire and theft and are adequately insured against public liability. No insurance will be cancelled prior to the date of possession in case of the movables, and the effective date being the date of registration of transfer pertaining to the Immovable

Property, without the prior written consent of the PURCHASER. The PURCHASER will however as from date of registration of transfer of the immovable property into the name of the Purchaser, ensure that he/it insures the movable and immovable assets purchased herein.

- 9.7 The SELLERS warrant that, as at the effective date and for a minimum period of 90 (Ninety) days after the effective date of this Agreement, all trade and liquor licenses will be in full force and effect and no grounds will exist for cancellation of these licences. If the liquor licences have to be renewed for 2021 by the SELLERS before the Effective Date, the renewal costs thereof will be refunded to the SELLERS by the PURCHASER.
- 9.8 The PURCHASER warrants that he has disclosed all personal information regarding himself, which is reasonably likely to be material to the purchase of the BUSINESS, to the SELLERS.
- 9.9 The Parties jointly undertake to do all such things, perform all such acts, take all such steps and procure the doing of all such things, as may be necessary to give effect to the terms and conditions of this Agreement.
- 9.10 The said property is sold as to the extent such as it lies at present and neither the Seller nor the Purchaser shall have any claim against each other for any over or under measurement.
- 9.11 The property is sold as per the existing Title Deeds, subject to the terms and conditions contained therein and any conditions imposed or to be imposed by the Regional or Local Authorities. The said property is sold

“voetstoots” as it now stands and in this regard the Purchaser hereby acknowledges having inspected the Property. Any electrical wiring or other certificate required shall be the sole responsibility of the Purchaser.

9.12 The Purchaser hereby acknowledges to be fully acquainted with any Town Planning Scheme, zoning regulations, boundaries, beacons and any other laws and regulations relative to the property and neither the Seller nor the Auctioneers give any warranty whatsoever that the premises are fit for the purpose required by the Purchaser.

10. **EXISTING / PAST EMPLOYEES**

10.1 As at the Effective Date, the Seller shall not employ any employees, and the Seller shall accept full responsibility for all costs and obligations associated with the retrenchment of the last eight employees of the Business by such date.

10.2 The Karoo Art Hotel (Pty) Ltd as Seller, who employed all the staff (except for Klein Karoo Hotels (Pty) Ltd, who employed Clarence Jonas the maintenance manager) hereby records that the hotel business had been closed for the whole COVID-19 lockdown and was briefly opened in a part of November the rest of December 2020 and was locked-down again for most of January 2021 during the alcohol sales ban and the curfew limitation. The SELLERS have reopened the hotel recently.

10.3 All the staff have been retrenched.

- 10.4 The SELLERS confirm that they have retained to the present day staff members on a casual basis and that there are no staff members that the PURCHASER would be compelled to take over in terms of labour legislation.
- 10.5 The SELLERS undertake to give reference and guidance to the PURCHASER on which management and staff members that are available for re-appointment would be good appointees. It would then be up to the PURCHASERS to appoint new staff. It is recorded that, at this stage, all crucial cornerstone staff for the BUSINESS are, indeed, available to be so appointed, subject to negotiations on their salaries and employment contracts.
- 10.6 The SELLERS hereby indemnify the PURCHASER against any loss or liability occasioned at the instance of any employee/s, the cause of action of which arose prior to the effective date; and/or any debts or obligations that the SELLERS still may have towards any of its erstwhile employees.

11. NOTICES AND DOMICILIA

- 11.1 Each Party chooses *domicilium citandi et executandi* (“*domicilium*”) for the purpose of giving any notice, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in clause 11.5 hereof.

- 11.2 Each of the Parties shall be entitled from time to time, by written notice to the other Party to vary its *domicilium* to any other address in the Republic of South Africa which is not a post box or a *poste restante*.
- 11.3 Any notice given and any payment made by a Party to any other Party (“the addressee”) which is delivered by hand and/or by e-mail at the addressee’s *domicilium* for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery.
- 11.4 Where, in terms of this Agreement any communication is required to be in writing, the term “writing” shall include communications by e-mail or by hand. Communications by e-mail, shall unless the contrary is proved by the addressee, be deemed to have been received by the addressee six hours after the time of transmission.
- 11.5 The Parties have provided the following personal & contact details and addresses at which they choose *domicilium citandi et executandi*:

11.5.1.1 PURCHASER:

Full Names:
ID Number:
Residential Address:
Work Address:
Postal Address:
Telephone:
E-mail:

11.5.2 SELLERS

Full Names: Theo Johannes Nel, on behalf of:
Karoo Art Hotel (Pty) Ltd; and
Klein-Karoo Hotels (Pty) Ltd; and
The Nel Family Trust.

ID Number: 590912 5050 08 5.

Residential Address: 10 Gardenia Avenue
Devil's Peak
Cape Town
8001

Work Address: Floor 6, Advocates' Chambers
56 Keerom Street
Cape Town
8001

Postal Address: P O Box 2801, Cape Town, 8000.

Telephone: (021) 423-3023 (work) and 072 116 6881 (cell).

E-mail: theo@karooarthotel.co.za and
tracy@karooarthotel.co.za
theonel@capebar.co.za

12. GENERAL

- 12.1 Notwithstanding that any Party representing the PURCHASER may be acting as a representative Director of a Company, he shall remain personally bound by his signature hereto, together with the Company concerned, even if no resolution has been passed by the Company to ratify this Agreement; alternatively, personally bound hereto on his own. This also applies to the situation where the PURCHASER has nominated a nominee to take transfer: In such an instance, the party representing the PURCHASER will be personally liable, together with both the initial company it represented, as well as with the nominated end-purchaser.

- 12.2 The cost of applying for and all other incidental costs with regard to the necessary trade licences shall be paid by the PURCHASER. The PURCHASER will refund to the SELLERS the *pro rata* costs of the liquor licences as from date of purchase to 31 December 2021 within 7 (Seven) days from the Effective Date.
- 12.3 The cost of advertising in terms of the Insolvency Act shall be paid for by the PURCHASER.
- 12.4 Each Party shall be responsible for their own costs in relation to negotiating and preparing this Agreement.
- 12.5 The Parties undertake generally, to work in the closest cooperation and with the utmost good faith with each other in regard to all matters relating to and giving effect to the provisions of this Agreement.
- 12.6 The PURCHASER acknowledges that the art displayed for sale in the hotel, are owned not by the SELLERS or by the hotel or by art gallery, but by the individual owner(s) of the specific art pieces and are merely on display at the hotel premises for sale on a “consignment basis”. Such art therefore does not form part of the subject of the sale. The business of the art gallery is however included in the purchase price and as such sold to the PURCHASER.
- 12.7 There are some personal items and fixtures on the hotel premises that belong to the Nel Family Trust and/or Tracy Goosen personally and that does not form part of the subject of the sale. These items are identified in **Annexure “A”** and will be removed from the premises by not later

than the Effective Date, or on a later date as may be agreed between the parties. The SELLERS might be willing to leave some of their personal art behind, in the art gallery, to be sold on consignment, but this will be separately agreed to between the parties in writing.

13. **CONFIDENTIALITY**

13.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs or in respect of the BUSINESS, which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them (the "Receiving Party"), may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.

13.2 The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised employees or third Parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.

13.3 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or the transaction embodied in this Agreement shall be made or

issued by or on behalf of any Party without the prior written agreement of all the Parties.

14.15. MOTOR VEHICLE EXCLUDED

It is recorded that the Toyota bakkie being used by the hotel, and displaying the hotel logo, does not belong to any of the SELLERS and are not included in this sale of the hotel agreement.

16. PRE-PAID FUTURE RESERVATIONS

The SELLERS periodically receive pre-payment for future reservations in the hotel. The SELLERS will, as of date of registration of transfer, provide the PURCHASER with a list of such pre-paid reservations. The Seller shall prepare a Schedule of such deposits held and undertakes to make payment of such deposits held to the Purchaser on the Effective Date.

17. BROKERAGE / AUCTIONEER'S COMMISSION

17.1 The Purchaser shall be liable to pay commission on the Purchase Price (VAT exclusive) to Highest Bid (Pty) Ltd t/a AUCTION ONE, Garden Route, 125 Meed Street, George, (contact details 084-556-6166 / greg@auctionone.co.za) plus the advertising costs and contract fee which shall be deemed to have been earned upon written acceptance of this offer by the Seller.

18. FACILITIES

- 18.1 The Purchaser shall be entitled to use all existing telephone numbers, fax numbers and P O Box numbers pertaining to the Business with effect from the Effective Date.
- 18.2 The Purchaser shall make application to the relevant authorities for the transfer of all subscriptions pertaining to the aforementioned facilities. All costs incidental thereto shall be for the account of the Purchaser.
- 18.3 The Purchaser shall pay all deposits required in respect of the aforementioned facilities and the Seller shall be entitled to a refund of all deposits paid by it on account of such facilities

SIGNED at _____ on this 31st day of MARCH 2021.

OFFEROR:
PROSPECTIVE PURCHASER

SIGNED at BARRYDALE on this _____ day of _____ 2021.

Sellers
1. Klein Karoo Hotels (Pty) Ltd
2. Karoo Art Hotel (Pty) Ltd
3. Nel Family Trust
(all the above Sellers herein duly represented by their authorised representative Theo Nel)

SIGNED at _____ on this 31st day of MARCH 2021.

FOR AUCTIONONE AUCTIONEERS
Who hereby accepts the benefits of this Agreement.

END

27.03.2021 (15h15)