

NOTARIAL PRACTICE / NOTARIËLE PRAKTYK

20 JUNE / JUNIE 2018

ANSWERS / ANTWOORDE

PLEASE NOTE THAT THE GUIDELINE ANSWERS TO PREVIOUS PAPERS MAY NOT BE A CORRECT REFLECTION OF THE LAW AND/OR PRACTICE AT THE MOMENT OF READING.

NOTE TO EXAMINER: *This guideline records the views of the drafters. There may be justifiable variations in practice which are brought out in the answers. When this happens the examiner should apply his discretion in marking the answer.*

QUESTION 1

[12]

1.1

Protocol No. 289/2018

**NOTARIAL DEED OF CESSION OF RIGHT
TO EXCLUSIVE USE AREA**

[In terms of Section 27(3) of the Sectional Titles Act No. 95 of 1986]

BE IT HEREBY MADE KNOWN

THAT on this the 18 day of May 2018 before me

KRISH NAIDOO

of Amanzimtoti in the Province of KWAZULU-NATAL, a duly admitted and sworn Notary Public, and in the presence of the undersigned witnesses, there appeared

DAWN LOVELL

she being duly authorised hereto by:

1. **SAM JONES and CELIA VAN WYK**
in their capacities as Trustees, and duly authorized by a unanimous resolution of members of the BODY CORPORATE of the GREENSTONE Sectional Scheme No. 692/2012
By virtue of a Special Power of Attorney signed at Amanzimtoti on 12 May 2018

(herein referred to as the CEDENT)

2. **BYRON BROWN**

Identity Number: 740608 5051 08 6

married out of community of property

By virtue of a Special Power of Attorney signed at Amanzimtoti on 15 May 2018

(herein referred to as the **CESSIONARY**)

which said Powers of Attorney and copy of Resolution have been exhibited to me and are filed in my Protocol with the Minute hereof.

AND THE APPEARER DECLARED THAT:-

WHEREAS the Cedent, has in accordance with the provisions of Section 27(2) of the Sectional Titles Act No. 95 of 1986, as amended, by unanimous resolution of its members caused certain exclusive use areas to be delineated on the Sectional Plan hereinafter referred to;

AND WHEREAS the Cedent did on the 30 March 2018 confer upon the Cessionary as Owner of Section 9 in the Sectional Scheme GREENSTONE depicted on the said Sectional Plan, the right to the exclusive use area hereinafter more fully described;

NOW THEREFORE the Appearer on behalf of the Cedent hereby cedes in terms of Section 27(3) of the Sectional Titles Act, 95 of 1986 to

BYRON BROWN

Identity Number: 740608 5051 08 6

married out of community of property

his Heirs, Executors, Administrators or Assigns

An exclusive use area described as PARKING BAY PB9 measuring 25 (TWENTY FIVE) square metres, being as such part of the common property, comprising the land and the scheme known as GREENSTONE in respect of the land and building or buildings situate at Amanzimtoti, in the Ethekwini Municipality Area as shown and more fully described on Sectional Plan Number SS 692/2012, which exclusive use area is depicted on Sheet 9 of the said Sectional Plan

Held under Certificate of Real Right No SK 211/2018

NO consideration shall be payable by one party to the other in respect of the grant of the aforesaid right, the value of the right declared to be the sum of TEN THOUSAND RAND (R10 000.00).

This deed shall be registered at the Deeds Registry Pietermaritzburg. The Cedent shall bear all the costs of and incidental to its negotiation, preparation, execution and registration, including any transfer duty, as well as the costs of and incidental to the delineation of the said Parking Bay.

AND the Appearer on behalf of the Cessionary accepts the benefits of the aforesaid cession.

THUS DONE AND EXECUTED at AMANZIMTOTI on the day, month and year aforesaid, in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____ q.q. CEDENT
2. _____ q.q. CESSIONARY

QUOD ATTESTOR

NOTARY PUBLIC

- 1.2 (8)
- (1) - Documents to be lodged:
- a) Notarial Cession of Exclusive Use Area
 - b) Transfer Duty Receipt /Exemption Certificate
 - c) Rates Clearance Certificate
- (2) - Documents retained in the Protocol
- a) Copy of Notarial Cession of Exclusive Use Area – Minute
 - b) Special Powers of Attorney
 - c) Certified copy resolution of Body Corporate (4)

QUESTION 2 [20]

- 2.1 Protocol no. /2006

COLLATERAL NOTARIAL BOND

BE IT HEREBY MADE KNOWN

THAT on JULY 2017, before me, PIET PRETORIUS, Notary duly sworn and admitted as such, residing and practicing at Cape Town in the Province of the Western Cape and in the presence of the undersigned witnesses, personally came and appeared

1. Abraham Adams
Identity Number 690717 5135 08 3
Married to Carmelita Adams, which marriage is governed by the laws of Spain, and duly assisted by her

And

2. Barry Petersen
Identity Number 861205 5789 08 7
Married out of community of property

**Together carrying on business in partnership as A & B Builders
(hereinafter referred to as the "mortgagor")**

The mortgagor declared that

1. **Abraham Adams** resides at 23 Church Street, Woodstock, Western Cape Province and **Barry Petersen** resides at 16 Short Street, Bloemfontein
2. The partnership carries on business as building contractors at 12 Loop Street, Cape Town, 45 Monica Cwele Street, Pietermaritzburg and 100 William Nicol Drive Sandton, Johannesburg.

WHEREAS the said mortgagor is truly and lawfully indebted and held and firmly bound to and on behalf of

BARODA BANK LIMITED

Registration Number 2004/035689/06

(hereinafter referred to as the "mortgagee")

Its successors in title or assigns

In the sum of R1 000 000.00 (One Million Rand) arising from and being in respect of credit facilities granted by the mortgagee to the mortgagor as security for which indebtedness Mortgage Bond B1359/2017 (hereinafter called the Principal Bond) was registered in the Deeds Registry at Cape Town on 16 January 2017 over the immovable property thereby especially hypothecated.

AND WHEREAS the mortgagee requires the indebtedness of the mortgagor under the principal bond to be further secured by the hypothecation of the undermentioned movable assets as collateral security for the said credit facilities;

NOW THEREFORE the mortgagor, renouncing all benefits from the legal exceptions *non numeratae pecuniae*, *non causa debitorum errore calculi*, revision of accounts and no value received (to the extent not prohibited by the national Credit Act 34 of 2005) and *de duobus vel pluribus reis debendi*, with the full force and effect of which he declared to be fully acquainted with and all other exceptions which could or might be taken to the mortgagee's claim for payment of the amount or any part thereof secured hereunder, did by these presents declare and acknowledge to be held and firmly bound to and in favour of the mortgagee, its successors in title or assigns in the aforesaid sum of R1 000 000.00 (One Million Rand) together with the sum of R100 000.00 (One Hundred Thousand Rand) as a preferent charge for costs and other charges, as more fully set out in the principal bond, and as collateral security for the due and proper repayment of the aforesaid sums with interest on the said capital sum and for the due and proper fulfilment of all the terms and conditions mentioned or referred to in the principal bond.

AND as security therefore, the mortgagor declared to bind specially the movable assets:

1. 2002 5-ton Volvo truck; registration number BCP123FS, engine number 4578, chassis number 951753
2. 2003 5-ton Isuzu truck; registration number CKJ158FS, engine number 7894, chassis number 357946

AND as further security the mortgagor declared to bind all building material and all other movable property of every description and wherever situate and whether in possession,

reversion, expectancy or contingency, submitting them all and the choice thereof to constraint and execution as the law directs.

AND the mortgagor declared that this Collateral Notarial Bond is subject to all the terms and condition set out in the Principal Bond as duly and as effectually as if the same were inserted herein and to the special condition that upon payment and discharge of all obligations under the Principal Bond this Collateral Notarial Bond will be null and void but shall otherwise be and remain full force and effect.

Signed at Cape Town on the said date and in the presence of the undersigned witnesses.

As witnesses to all signatures

1. _____

Abraham Adams

2. _____

Carmelita Adams

Barry Petersen

QUOD ATTESTOR

NOTARY PUBLIC

(15)

2.2 The bond must be registered in the deeds registries where the debtor resides and carries on business. The bond must be lodged in the following deeds registries:

- Cape Town
- Pietermaritzburg
- Johannesburg

(3)

2.3 The bond must be registered within the following time periods:

- Within three months of the date of execution of the bond, and
- In the second deeds registry, within an additional period of one month, and
- In each successive deeds registry within a further period of one month

(2)

QUESTION 3

[15]

Protocol No. _____

ANTENUPTIAL CONTRACT

Be it hereby made known

THAT on this ^h day of JULY 2017 before me PIET PRETORIUS, Notary, duly sworn and admitted, practicing as such at Cape Town in the Province of the Western Cape and in the presence of the undermentioned witnesses, personally came and appeared:

1. DEAN MARTIN
Identity number 601021 5080 087
Unmarried ("the husband")

and

2. MARY SMITH
Identity number 560506 0066 001
Unmarried ("the wife")

1. And the appearers declared that whereas a marriage has been agreed upon and is intended to be solemnised between them, they have agreed and now contract with each other as follows:

- 1.1 That there shall be no community of property between them.

- 1.2 That there shall be no community of profit or loss between them.

2. That the marriage shall be subject to the accrual system in terms of the provisions of Chapter 1 of the Matrimonial Property Act 88 of 1984, save for the following modification thereof:

- 2.1 The said accrual system shall not operate on termination of the intended marriage if either appearer should then be an unrehabilitated insolvent or the estate of either appearer should then in fact be insolvent, provided that the provisions of this sub-clause shall only come into operation if the claim or proceeds thereof in terms of the accrual system by such an insolvent appearer is capable of attachment by his or her creditors.

3. In determining the accrual of the estate of either appearer at the dissolution of the intended marriage, whether by death or divorce, there shall be specifically included therein all the right, title, interest and benefits to which either appearer is now or will become entitled to prior to dissolution of the marriage, whether by way of income or capital received or to be received by or accrued to him or her from a third party as a beneficiary in terms of any inheritance, legacy or donation howsoever created or to be created included in terms of any will, inter vivos trust or mortis causa trust created or that may be created for his or her benefit, as well as any other asset or assets which either party may acquire by virtue of his or her possession or former possession of such inheritance, legacy, donation and/or other benefits from such trust.

4. The appearers record that, in accordance with the provisions of Section 6 of the Matrimonial Property Act 88 of 1984 they intend to declare the net values of their respective estates at the commencement of the marriage within six months of the intended marriage in a notarially attested statement.

5. That the assets of the appearers or either of them, which are listed hereunder and all liabilities presently associated therewith, or any other asset acquired by such party by virtue of his possession or former possession of such asset shall be excluded from the operation of such party's accrual and estate at either the commencement or the dissolution of the marriage.

- 5.1 The assets of DEAN MARTIN so to be excluded are Nil.

5.2 The assets of **MARY SMITH** so to be excluded are:

5.2.1 ERF 924 Summerstrand, in the Nelson Mandela Municipality,
Division Port Elizabeth, Province of the Western Cape,
IN EXTENT 2000 (TWO THOUSAND) Square Metres,

AND

5.2.2 Any benefit derived by **MARY SMITH** as a beneficiary in terms of the Smith Family Trust IT234/1990 created by the late Emma Smith.

THUS DONE AND EXECUTED at CAPE TOWN, PROVINCE OF THE Western Cape, on the day, month and year aforewritten in the presence of the undersigned witnesses.

As witnesses:

1. _____ THE HUSBAND
2. _____ THE WIFE

QUOD ATTESTOR

NOTARY

The clause that Mary Smith unconditionally and irrevocably undertakes to adopt Dean Martin's Jewish faith cannot be inserted in the Antenuptial Contract as it is against public policy and ineffective.

QUESTION 4

[14]

4.1

NOTARIAL DEED OF CESSION OF USUFRUCT

BE IT HEREBY MADE KNOWN

THAT on _____ 2017

Before me Christiaan Kruger, Notary Public by lawful authority duly admitted and sworn residing and practising at BLOEMFONTEIN, FREE STATE PROVINCE and in the presence of the subscribing witnesses, personally came and appeared:

1. SHANA PILLAY in her capacity as EXECUTRIX in the estate of the late HARRY STYLES, ESTATE NUMBER 4952/2016
Acting under and by virtue of the letter of executorship no 4952/2016, issued to her by the Master of the High Court Bloemfontein on the 31 of March 2016
(hereinafter referred to as the GRANTOR)

AND

2. PINK STYLES
ID
WIDOW/UNMARRIED

HEREINAFTER referred to as the USUFRUCTURY

AND THE APPEARER DECLARED THAT:

WHEREAS HARRY STYLES died on the 2 January 2015;

AND WHEREAS, prior to his demise on the 2nd JANUARY 2015 HARRY STYLES donated a usufruct over the hereinafter mentioned property to his wife PINK STYLES, which said donation was duly accepted by the said PINK STYLES on the 19th of September 2014. AND WHEREAS the usufruct was not ceded by the deceased to this wife before his demise; AND WHEREAS the said PINK STYLES now requires the usufruct to be registered in her name;

NOW THEREFORE the Appearer in his capacity aforesaid hereby cedes and assigns a usufruct for a period of six years from date of death of the late Harry Styles, in favour of

PINK STYLES
ID
WIDOW/UNMARRIED

In respect of the following property, namely

THE FARM ONE DIRECTION 627, DISTRICT BLOEMFONTEIN
FREE STATE PROVINCE
EXTENT: 5900.00 (FIVE THOUSAND NINE HUNDRED) HECTARES
HELD BY DEED OF TRANSFER NO T200/2012

SUBJECT TO THE FOLLOWING CONDITIONS:

- A) The right of usufruct is excluded from any present or future marriage in community of property.
- B) This deed will be registered in the Bloemfontein Deeds Registry.
- C) No consideration is to be paid by either party for this Usufruct and the nominal value thereof is R1000.00 (one thousand rand)
- D) The cost of the drafting and registration of this notarial deed will be borne by the deceased estate Harry Styles

THUS DONE AND SIGNED ON THE DAY MONTH AND YEAR FIRST AFORE WRITTEN IN THE PRESENCE OF THE SUBSCRIBING WITNESSES

AS WITNESSES:

1. _____

S PILLAY

2. _____

P STYLES

NOTARY PUBLIC

(8)

4.2.1 **Personal servitude:** Personal servitudes vest and grant a specified right over a (servient) tenement, regardless of the personal identity of the owner of the servient tenement at any given time, in favour of a specific beneficiary, in personal capacity and irrespective of her owning any property. Personal servitudes bind the successors in title of the servient tenement but are not transferable by the holder thereof. It may vest in a natural person (in which case it will automatically lapse upon the death of that person), or a legal entity (in which case it will automatically lapse after 100 years).

(3)

4.2.2 **Praedial servitudes** are characterised by the fact that they vest, and thus grant some use over one (servient) tenement in favour of the owner of another (dominant) tenement, regardless of the personal identity of either of the owners of the two tenements at any given time. The successors in title of both the servient and dominant tenements are bound by the restriction and/or benefit thereof.

(3)

Both personal and praedial servitudes are real rights, capable of registration against the title deed of the servient tenement, and may be enforced against any third party.

QUESTION 5

[6]

6A Registration of servitudes

(1) Subject to the provisions of the Water Act, 1956 (Act 54 of 1956), a servitude in respect of agricultural land, except-

(a) a right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;

(aA) a servitude which is supplementary to a servitude referred to in paragraph (a), and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude;

[Para. (aA) inserted by s. 3 of Act 18 of 1981.]

(b) a usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property, shall not be registered by a Registrar of Deeds without the written consent of the Minister.

QUESTION 6

[5]

6.1 It is invalid. In terms of Section 8 of Removal or Modification of Restriction Act 94 of 1965 vesting is limited to the third successive beneficiary.

(1)

6.2.1 Postnuptial Registration of Antenuptial Contracts [2]

(in terms of Section 88 of Act 47 of 1937)

This is a registration of an Antenuptial Contract, executed prior to the marriage of the Parties, after the lapse of the requisite time period for registration (3/6 months) with the requisite order of the High Court.

(2)

6.2.2 Registration of a Post Nuptial Contract [2]

Registration of a Post Nuptial Contract entered into by the Parties who have made application to the High Court in terms of Section 21 of the Matrimonial Property Act 1984 to change their matrimonial property regime and such order has been granted.

(2)

The concept of a so-called "independent trustee" found traction in the matter of *Land and Agricultural Bank of South Africa v Parker and Others* 2005 (2) SA 77 (SCA). In this matter the court stated the following: 'The debasement of the trust form evidenced in this and other cases, and the consequent breaches of trust this entails, suggest that the Master should in carrying out his statutory functions ensure that an adequate separation of control from enjoyment is maintained in every trust. This can be achieved by insisting on the appointment of an independent outsider as trustee to every trust in which (a) the trustees are all beneficiaries and (b) the beneficiaries are all related to one another'. The independent outsider should be 'someone who with proper realisation of the responsibilities of trusteeship accepts office in order to ensure that the trust functions properly, that the provisions of the trust deed are observed, and that the conduct of trustees who lack a sufficiently independent interest in the observance of substantive and procedural requirements arising from the trust deed can be scrutinised and checked. Such an outsider will not accept office without being aware that failure to observe these duties may risk action for breach of trust. The courts will themselves in appropriate cases ensure that the trust form is not abused'.

Although there is still no legal requirement for the office of an independent trustee, the Chief Master has on 06 March 2017 issued a directive determining that The Master must consider appointing an independent trustee where the trust is registered for the first time with the Master and it emerges from the trust deed that the trust is a "family business trust".

A family business trust is for purposes of the directive defined as a trust with the following combined characteristics:

- (a) the trustees have the power to contract with independent third parties, thereby creating trust creditors; and
 - (b) the trustees are all beneficiaries; and
 - (c) the beneficiaries are all related to one another.
- Interestingly there is no requirement for the trust to conduct business.

According to the Master, an independent trustee:

- (a) Must be an independent outsider with proper realization of the responsibilities of trusteeship, and who accepts office in order to ensure that the trust functions properly and that the provisions of the trust deed are observed. Such independent outsider does not have to be a professional person such as an attorney or accountant.
- (b) May be a professional accountant, admitted attorney, an advocate who is affiliated to the relevant professional body or association, trust companies, boards of executors or fiduciary practitioners who are members of FISA and may even be chosen from the ranks of business associates;
- (c) Has no family relation or connection, blood or other to any of the existing or proposed trustees, beneficiaries or founder of the trust,
- (d) Must be competent to scrutinize and check the conduct of the other appointed trustees who lack a sufficiently independent interest in the observance of substantive and procedural requirements arising from the trust instrument.

- (e) Has no reason for concluding or approving transactions that may prove to be invalid, because he or she would be knowledgeable about the law of trusts;
- (f) Would not have any interest in the trust property as a beneficiary;
- (g) Is not disqualified by the Trust Property Control Act, 1988 from acting as a trustee; and
- (h) Has knowledge and experience of the business field in which the trust operates.
- (i) Should be a person who will not accept office without being aware that failure to observe the duties of an independent trustee may risk action for breach of trust.

The Master may in certain circumstances dispense with the appointment of an independent trustee and make use of one of the following alternatives:

- (a) Decide to forego the appointment of the independent trustee after receiving representations from the founder showing good cause to dispense with the appointment of an independent trustee;
- (b) Request security; or
- (c) Request that financial statements be audited annually and that the auditor be instructed to inform the Master when potential harm to creditors is likely.

Apart from their common law duty of independence, Section 9 of the Trust Property Control Act 57 of 1988 (the Act) establishes a high standard of care for trustees, because they are dealing with trust funds for the benefit of a third party. Trustees must give effect to the trust instrument, and must always act to the advantage of the beneficiaries, including decisions regarding investing in specific assets or products, managing the income stream from the trust, as well as the timing and manner in which assets are distributed and payments are made.

The seriousness of these duties is amply illustrated in a matter that served before the Port Elizabeth Commercial Crimes Court in 2016, where the two (independent) trustees of the Bethelsdorp Development Trust were found guilty of defrauding the trust of about R8 million as they had failed to use the donated funds of the trust in accordance with the provisions and spirit of the trust deed, although they had not benefited personally from the misappropriated money. (See also *Rees and Others v Harris and Others* (A5070/10) [2011] ZAGPJHC 237; 2012 (1) SA 583 (GSJ) (10 November 2011) –

"...where the trustees of a trust clearly do not treat the trust as a separate entity, and where special circumstances exist to show that there has been an abuse of the trust entity by a trustee, the veneer must be pierced. It follows that if a legitimately established trust is used or misused in an improper fashion by its trustees to perpetrate deceit, and/or fraud, the natural person behind the trust veneer must be held personally liable. In these circumstances, if it is demonstrated that a trustee who has de facto control of trust assets effectively acquired and owned such assets for his own benefit only, such assets can in appropriate circumstances be considered to be those of the said trustee.")

Keeping in mind that it is expected of a trustee to always exercise an impartial and independent discretion in all matters, the role of the independent trustee would, *inter alia*, be

to emphasize this and ensure that the trust is not perceived as either a sham trust or the alter ego of the founder-trustee. An independent trustee should therefore not be appointed in name only. In the *Morrell* (unreported) case, the judge found that an interaction could be established between the independent trustee and his co-trustee (who incidentally was also the founder) and the court held that, given the evidence, the possible inference was that the independent trustee allowed the founder to treat the trust assets as his personal property. As such, SARS may rely on this judgment to regard the trust's assets as the property of the founder for capital gains tax and estate duty purposes (see *Pringle v Pringle* (H36/2006, 18754/2007) [2009] ZAWCHC 207 (27 March 2009)).

All trustees (independent or not) are charged with the responsibility to ensure that the trust functions properly to the greatest benefit of the beneficiaries. These responsibilities include, but are not limited to:

1. Ensuring compliance with the provisions of the trust deed;
2. Ensuring compliance with all statutory requirements;
3. Conducting of proper trustee meetings;
4. Recording of proper minutes of all meetings and decisions by the trustees;
5. Proper maintenance and safekeeping of minute books.

It is clear that a person who is appointed as an independent trustee must have the necessary experience and expertise to properly execute these duties as well as to add value to the trust. In many cases, the trustees who are not independent do not have sufficient knowledge of and experience in the proper administration of trusts. Furthermore, they might also lack expertise in utilising the vehicle of the trust in order to maximise the benefit for the beneficiaries. This expertise includes negotiating and entering into business contracts, holistic tax and succession planning, and ensuring the optimal growth of the trust assets. It is in the best interest of the trust that this person also has sufficient knowledge of the impact of statutory requirements, such as compliance with relevant tax law and the effect of changes in legislation on the trust. All trustees assume significant responsibility when accepting an appointment as a trustee and careful consideration must be given before accepting such an appointment. Any breach of fiduciary duties by any trustee, including the independent trustee, will result in significant exposure for the trustees. Furthermore, any action taken by the trustees on behalf of the trust while the proper number of trustees is not appointed by the Master of High Court will be null and void.

QUESTION 8

[8]

PROTOCOL NO _____

NOTARIAL DEED OF SERVITUDE

KNOW ALL MEN WHOM IT MAY CONCERN:

THAT on the _____ day of _____
before me

JUSTIN OTARY

Notary, by lawful authority, duly admitted and sworn, residing and practicing at PRETORIA and in the presence of the subscribing witnesses, personally came and appeared-

ELAINE MINNAAR

In her capacity as duly authorised agent by virtue of a Special Power of Attorney signed at PRETORIA on
and granted to her by -

PRIZA TINTSWALO MANTSENA

in her capacity as ACTING GROUP HEAD: GROUP LEGAL AND SECRETARIAL SERVICES
of the CITY OF TSHWANE METROPOLITAN MUNICIPALITY
hereby sub-delegated in terms of Resolution taken by the Council of the CITY OF TSHWANE METROPOLITAN MUNICIPALITY dated 26 January 2012

(hereinafter referred to as "the COUNCIL")

which Power of Attorney and Resolution have this day been exhibited to me, the Notary. And now remain filed in my Protocol;

AND THE APPEARER DECLARED THAT:

WHEREAS the COUNCIL is the REGISTERED OWNER of:

REMAINDER OF THE FARM ATTERIDGEVILLE 607,
REGISTRATION DIVISION J.R.,
PROVINCE GAUTENG;

MEASURING: 2634 (TWO THOUSAND SIX HUNDRED AND THIRTY FOUR) Square Metres;

HELD by Deed of Transfer T. 69319/1987

(herein referred to as the PROPERTY);

AND WHEREAS the COUNCIL has approved the Rezoning of Erf 16251 and 16250 Atteridgeville Extension 45, which properties lie adjacent to the PROPERTY;

AND WHEREAS Gauteng Department of Public Transport, Roads and Works requires splays over the PROPERTY to allow for ease of access to Erf 16251 and 16250 Atteridgeville Extension 45,;

AND WHEREAS the COUNCIL has agreed that the following servitude in favour of the General Public be registered over the PROPERTY;

AND WHEREAS in order to secure the rights which the COUNCIL has agreed to grant to the general public, it is necessary to incorporate the grant thereof in a notarial deed and to cause the title of the PROPERTY to be endorsed with the servitude of right of way and access;

NOW THEREFORE THE APPEARER DECLARED AS FOLLOWS:

1. The COUNCIL and its successors in title or assigns hereby give and grant to and in favour of the General Public a servitude of right of way and access over the PROPERTY as indicated by the figure A B C A representing 549 square meters as will more fully appear from Servitude Diagram S.G. 881/2017 attached hereto.
2. The costs of drawing and registration of this deed, including the cost of the necessary diagrams and plans, shall be paid for by the Council.
3. The COUNCIL shall allow for a road to be constructed over the servitude area, but shall not be responsible for the maintenance of the said road, which shall be dealt with in terms of the Council approval referred to above.
4. The value of the servitude amounts to R114.00 (VAT inclusive) for purpose of Transfer Duty.

THUS DONE AND EXECUTED AT PRETORIA on the day, month and year aforementioned in the presence of the undersigned witnesses.

AS WITNESSES:

1. _____
2. _____

QUOD ATTESTOR
NOTARY

LAW SOCIETY
OF SOUTH AFRICA

TOTAL: [100]