

**CONFIDENTIAL**

# **SUPPLEMENTARY AGENDA NO. 2**

## **Council Meeting**

**THURSDAY, 28 OCTOBER 2021**

at

**19:00**



**MUNICIPALITY OF SWAKOPMUND**

# INDEX

ITEM NO	SUBJECT	REF NO	PAGE
11.1.27	Resubmitted: Amendment To Lease Conditions: Mr Quinton Liebenberg	19.03.08; 13/3/12; E1/3	109

11.1.27 **RESUBMITTED: AMENDMENT TO LEASE CONDITIONS:  
MR QUINTON LIEBENBERG**  
(C/M 2021/10/28 - 19.03.08; 13/3/12; E1/3)

Ordinary Management Committee Meeting of 14 October 2021, Addendum 10.2 page 04 refers.

**A. The following item was submitted to the Management Committee for consideration:**

1. **Introduction**

The purpose of this submission is to discuss an application by The Lighthouse Group dated **10 February 2021** and **28 September 2021** to consider amending lease conditions approved for the renewal of their lease period by Council on **28 November 2019** under item 11.1.29.

Attached:

<b>Annexure "A"</b>	:	<i>Letter dated 10 February 2021 from The Lighthouse Group</i>
<b>Annexure "B"</b>	:	<i>Letter dated 28 September 2021 from The Lighthouse Group</i>
<b>Annexure "C"</b>	:	<i>Council's decision passed on 28 November 2019 under item 11.1.29</i>
<b>Annexure "D"</b>	:	<i>Site Plan</i>
<b>Annexure "E"</b>	:	<i>Valuation Certificate</i>
<b>Annexure "F"</b>	:	<i>The current lease agreement</i>
<b>Annexure "G"</b>	:	<i>Summary of the Various Government Gazette imposing restrictions on the sale of liquor</i>

On **14 October 2021** after discussing this item, the Management Committee passed the following resolution under item 10.2:

That the General Manager: Finance and the General Manager: Corporate Services and HC attends to the following:

- *Determine the period of closure and waive rental for that period.*
- *Reduce the lease amount by 15% as from 1 November 2021*

Attached as **Annexure "G"** is a summary of the official Government Gazettes imposing various levels of restrictions on the sale of liquor which made operations completely unviable due to overhead / running costs.

The Lighthouse Restaurant was not operational for the period from 28 March 2020 until 09 May 2021 (completely closed for 14 months) since based on their business model they were not able to open on less than 30% of their clientele and operations.

2. **Background**

On **28 November 2019** Council approved the extension of the lease period for a further 9 years 11 months, commencing on 01 March 2020 and lapsing on 31 January 2029. The lessee was informed of the Council decision per letter dated **02 December 2019** and expressed dissatisfaction with some of the lease conditions.

The following year (2020) the world was dumped in turmoil with the Covid-19 pandemic and the processes for the renewal of the lease period were held in abeyance. Various businesses had to lockdown for statutory



periods. On **10 February 2021** The Lighthouse Group submitted a formal letter addressing their concerns/issues regarding lease conditions for the additional lease period.

Seeing that consensus was not yet reached, the renewed period was not published yet, neither could approval be obtained from the Ministry of Urban & Rural Development (publication process must first be finalized). The lease transaction is currently continuing on the previous basis.

### 3. Discussion of Concerns Raised by the Lessee

The issues raised by the lessee are set-out below:

#### 3.1 First Option to Renew the Lease be Added to the Contract

Based on the financial investment of construction, extension, restructuring and maintaining the building, the lessee requests Council to consider a condition to the lease agreement that they have the right to renew the lease period upon expiry on 31 January 2029 for a further period of 9 years 11 months.

##### Comments:

A similar condition was rejected for Waves Leisure Consortium CC by Council on **23 November 2020**. The difference being that Waves Leisure Consortium CC has a lease period of 30 years, which period is 3 x the lease period of The Lighthouse Group.

The addition of such clause grants a first right of refusal which can hamper Council's development plans at the time. A 9 year 11 months lease period is a limited time to recover expenses of the upgrade and upkeep of the building. In terms of the current lease conditions the lessee will have to apply for the renewal of the lease period prior to the lapsing date which will be considered on merit at the time (31 January 2029).

It is however proposed, that Mr Q Liebenberg of The Lighthouse Group be granted a first option to renew the lease for a further 9 years 11 months upon expiry of the lease period on 31 January 2029.

#### 3.2 Amended Rental Amount (Reduction)

On **28 November 2019** Council approved the rental for the facility as follows based on the increased value of the building:

(c) That the lease amount be  $N\$25.92/m^2$  per month  $\times 749m^2 = N\$19\ 414.08 + N\$2\ 912.11$  (15% VAT) =  $N\$22\ 326.19$ , with an annual escalation of 10% starting 1 July of every following year.

The lessee regards the amended rental as market related and requests a fixed rental of **N\$5 000.00 / month**. It is also mentioned that the value of the structure is donated to Council upon expiry of the lease period will increase (appreciate) overtime and therefore they urge Council to consider a lower lease tariff.

##### Comments:

The rental rate approved for the previous lease period was determined by Council on **29 May 2008** under item 11.1.16:



- (iii) That the lease be determined for the land ( $\pm 256\text{m}^2$ ) only and not for the structures at N\$8.20/m<sup>2</sup> (excluding 15% VAT) escalating annually at 10% on 1 July, in view of the donation to Council.

The lease period commenced at **01 April 2010** for a period of 9 years 11 months at a rental amount of N\$9.92/m<sup>2</sup> x 749m<sup>2</sup> = N\$ 7 430.08 plus 15% VAT in the amount of N\$1 114.51 = N\$ 8 544.59. Taking into account the annual 5% escalations the rental amount at the expiry of the lease period on 28 February 2020 was N\$25.72/m<sup>2</sup> = N\$ 19 271.71 plus 15% VAT in the amount of N\$2 890.75 which amounted to a monthly rental of N\$22 162.47.

Therefore, the rental for the new lease period approved on **28 November 2019** was merely an increase calculated from the expiry of the previous lease period, it was not adjusted to a new rental tariff. The lease amount of N\$25.92/m<sup>2</sup> compares favourably with the lease tariff Council charges for outside-seating which is currently at N\$49.58/m<sup>2</sup> at the Museum Café, as well as with other commercial leases.

The restaurant is situated in a prime area, is an asset to the area, is very popular amongst locals and visitors and no complaints have been received to date. In conclusion, it is proposed not to reduce the rental, but as set-out under 3.4 rather consider a Covid-19 relief for Council's lessees in general.

In this regard the Management Committee on **14 October 2021** resolved to grant Mr Q Liebenberg with regard to the Lighthouse Restaurant the following exemptions:

- waiving the rental for the duration of the closure of the establishment; and
- reduce the lease amount by 15% as from 01 November 2021

### 3.3 Value of the Building being Donated to Council

Covered under point 3.2 above.

### 3.4 Rental Relief for Covid-19 Period

The lessee requests relief / amnesty for the Covid-19 pandemic periods. Apart from the statutory lockdown periods set-out below, various businesses could not trade normally as they were affected by international travel restrictions and restrictions on the sale of alcohol for extended periods which adversely affected their earning / income capacity.

For ease of reference, below is a list of the statutorily required lockdown periods which affected trade, especially in the tourism and recreation industries:

- 28 March until 04 May
- 09 June until 22 June
- 01 until 10 August 2020
- 17 June until 31 July 2021

It is also mentioned in their letter dated **27 September 2021** that they were charged for municipal services although they did not operate, such as refuse removal.

Comments:

In general all Council's lessees were granted relief by not having annual rental escalations for the 2020/21 financial year and in future have annual escalations of 7% instead of 10%.

Taking into consideration the decisions Council passed on **30 September 2021** under items 11.1.7 (Adel's Creation) and 11.1.27 (Searock Investments CC), it is proposed that the Finance Department determines the percentage of income generated from all lease transactions overall and determine relief that can be granted in general to all lessees. For example, a percentage reduction for a fixed period which Council will be able to accommodate.

In this regard the Management Committee on **14 October 2021** resolved to grant Mr Q Liebenberg with regard to the Lighthouse Restaurant the following exemptions:

- waiving the rental for the duration of the closure of the establishment; and
- reduce the lease amount by 15% as from 01 November 2021

The Lighthouse Restaurant was accordingly not operational for the period from 28 March 2020 until 09 May 2021 (completely closed for 14 months).

Attached as **Annexure "G"** is a summary of the official Government Gazettes imposing various levels of restrictions on the sale of liquor which made operations unviable due to overhead / running costs.

3.5 Permitted Trading Hours

Council restricted the operating hours until 22:00 seeing that there are hotel guests staying overnight at the Strand Hotel establishment. To date not complaints were received based on noise pollution. The lessee states that their liquor licence allows trade until 02:00 am and request that Council abolish the 22:00 curfew.

Comments:

As the venue is a restaurant similar to other restaurants in the adjacent building it is proposed to allow trading hours as per their liquor licence until 02:00.



B. After the matter was considered, the following was:-

**RECOMMENDED:**

(a) That the Council takes note of the various issues raised by Mr Q Liebenberg of The Lighthouse Group in his letters dated 10 February 2021 and 28 September 2021 in respect of the renewal of the lease period for the Strand Café.

(b) That the following be approved:

(i) First Option to Renew the Lease Upon Expiry of the Lease Period

*Taking into account the huge financial investment made in expanding, renovating and maintaining the building and the limited lease period of 9 years 11 months to recoup the investment, Council allows a first option to renew the lease period for a further 9 years 11 months upon expiry of the current lease on 31 January 2029.*

(ii) Amended Rental Amount (Reduction)

*That Council provides a 15% discount on the rental amount as from 1 November 2021 in view of the investment which will become Council's asset upon termination of the lease.*

(iii) Value of the Building being Donated to Council

*This point relates to the rental and is covered under point (b) (ii) above.*

(iv) Rental Relief for Covid-19 Period

*That Council waives the rental for the period that the venue was closed ie 14 months and that Finance Department determines the relief that can be granted to all similar lessees.*

(v) Permitted Trading Hours

*That the lessee be allowed to trade until 02:00 in terms of their liquor licence.*

*Point (d) (iii) of Council's resolution passed on 28 November 2019 under item 11.1.28 be changed:*

(d) *That the lease be subject to the standard conditions and the following:*

(iii) *That the lessee not operates later than 22:00*

(c) That Mr Quinton Liebenberg t/a The Lighthouse Group t/a Strand Café be requested to accept the above conditions in addition to those approved by Council on 28 November 2018 under item 11.1.28; whereafter the statutory process for the renewal be commenced with.

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**ANNEXURE "A"**

30



10 February 2021

Ref no: /133/1/12, E1/3 Re Block 1 Swakopmund  
 The CEO  
 Mr. A. Benjamin  
 Municipality of Swakopmund  
 P O Box 53  
 Swakopmund, 13001



Dear Sir

**RENEWAL OF LEASE OF STRAND CAFÉ (NOW LIGHTHOUSE RESTAURANT) SITUATED ON  
 REMAINDER OF BLOCK 1 SWAKOPMUND) AND CONDITIONS THEREOF**

Thank you to you and the relevant council officials for your valuable time and for affording us the opportunity to discuss the points in question, pertaining to the renewal of the lease of Strand Café and other matters. We are extremely grateful for the consideration of our requests and for the open discussion.

Please accept my apology for the delay in submitting this, we have just returned from Epupa where we were working with Mr. Will Smith and the National Geographic crew for the past 2 weeks.

The points we would like to put forward for further consideration are:

1. A first option to renew the lease be added to the contract
  2. The new rental amount and rental reduction
  3. The value of the building and donation to the Municipality
  4. Rental relief for COVID-19 period (when we were prevented from trading and the subsequent restrictions: which had a huge impact on our income.)
  5. The permitted trading hours.
1. **Option to renew:** Due to the large financial commitment of the constructing the building which will be donated to council in due course, we would like to have the opportunity to renew the lease for a further 9 years and 11 months in order to make the most out of our





investment into this joint venture. Please consider adding and option to renew for this period, we would be extremely grateful.

2. **Rental amount and annual escalation:** In the original agreement, the rental was worked out on the initial building **and** with the 10% annual escalation. The amount has increased to an amount that could be considered to be a standard market related rental. However, The Lighthouse Group built the original building, has renovated and extended the building increasing its value exponentially and is responsible for its maintenance and upkeep. These factors are all not normally part of a rental agreement and we request that the rental be adjusted to take this in to consideration. The most recent valuation had the building valued at N\$ 5 300 000.00 and this should increase exponentially over the coming years.

If you take the latest value of the building (N\$ 5 300 000.00) and you divide it up into 9 years 11 months this translates in to the Lighthouse Group paying **N\$ 44 537.82** per month plus our current rental of **N\$ 22 326.19**, which means our monthly payment could be seen as **N\$ 66 864.00** per month **excluding** the maintenance of the building.

We would like to propose a **fixed rental** of N\$ 5 000.00 per month for the new term of 9 years a and 11 months which would amount to N\$ 595 000.00 PLUS the value of the building which will be donated.

3. **The donation of the building to the Municipality of Swakopmund:** Once the lease period comes to an end and an option to renew (if granted) is not exercised, or the lease contract is breached, the building will become the property of the Municipality of Swakopmund (as per the original agreement conditions). The value of the building is expected to grow during the lease period and we ask that this increase in value be considered when calculating a fair rental for the premises.
4. **COVID-19 Rental relief:** We humbly request that due to COVID- 19 lockdown and all the subsequent restrictions (some of which are STILL in place) that you would consider our request for rental relief for the period from March 2020 to February 2021. Lighthouse Restaurant and all our other venues were affected by COVID-19 prior to Namibia's lockdown



as Europe and America had already implemented lockdowns, restricting travel and hence impacting on our income. When Namibia enforced a hard lock down we were given no other choice but to close our doors temporarily and retrench all our staff. We have yet to reopen due to the impact of COVID-19 on all our businesses, but plan to do so in the coming weeks. Any relief form of would be appreciated.

5. **Trading Hours:** One of the clauses in the new lease agreements prevents us from trading beyond 10pm. The original agreement did not have such a clause and as we are a restaurant with a valid liquor license until 2am, we would like to have this clause removed to allow us to continue within the parameters set as per our liquor license.

Yours sincerely,

Quinton Liebenberg

**081 128 2412**



**ANNEXURE "B"**

28 September 2021

**Ref no: /133/1/12, E1/3 Re Block 1 Swakopmund****(and other matters)****The CEO****Mr. A. Benjamin****Municipality of Swakopmund****P O Box 53****Swakopmund****13001**

Dear Sir

**RENEWAL OF LEASE OF STRAND CAFÉ (NOW LIGHTHOUSE RESTAURANT) SITUATED ON  
REMAINDER OF BLOCK 1 SWAKOPMUND) AND CONDITIONS THEREOF AND REQUEST FOR  
AMNESTY/REDUCTION IN FEES AND PAYMENT PLAN**

With the situation pertaining to COVID-19 constantly in flux, after our meeting on 22 January 2021 where we were afforded the opportunity to discuss the matters listed below (copied from previous correspondence), we have had no further discussion or resolution. We would like to finalize the conditions of the contract and once all parties agree, we would like to sign the new contract.

We also would like to address the outstanding monies owed to the Municipality.

During this period we have written and proposed payments plans on more than one occasion for the outstanding accounts as well as sent requests for you to consider amnesty for certain accounts such as municipal services that were not made use of due to forced closure (such as refuse removal) and a humble request for a reduction or discount in rentals and other fees, and as yet, we have not received a suggested payment plan or a reply regarding reductions/discounts.

We are fully aware that the Municipality has also suffered a huge loss in revenue and we would be grateful for any assistance.

We have been a partner of the Municipality for over 20 years and our payment record will show that prior to COVID 19, we had a clean payment record. As with most Swakopmund businesses, being in the tourism and restaurant industry we have been incredibly hard hit.



Over the years we have been a leader in the industry and have tried to give back to the community and provide venues that boost the tourism in the town and of which the community can be proud. We have also catered to the needs of the locals and have always made them feel as if they are part of our success.

We have used ALL our reserves to try and keep our doors open and with the upsurge in patrons since the recent relaxing of restrictions we hope to be able to stay open and continue our legacy.

Hat in hand, we come to you and ask for your assistance to try and help us to get back into the black and continue on for another 20 years or more.

Pertaining to the renewal of the lease:

**Copied (with amendments) from previous request:**

The points we would like further consideration are:

1. An option to renew be added to the contract
  2. The rental amount and rental escalation
  3. The donation of the building to the Municipality
  4. Rental relief for COVID-19 period (when we were prevented from trading and the subsequent restrictions: which had a huge impact on our income.)
  5. The permitted trading hours.
1. **Option to renew:** Due to the large financial commitment of the constructing the building which will be donated to council in due course, we would like to have the opportunity to renew the lease for a further 9 years and 11 months in order to make the most out of our investment into this joint venture. Please consider adding an option to renew for this period, we would be extremely grateful.
  2. **Rental amount and annual escalation:** In the original agreement, the rental was worked out on the initial building and with the 10% annual escalation. The amount has increased to an amount that could be considered to be a standard market related rental. However, The Lighthouse Group built the original building, has renovated and extended the building increasing its value exponentially and is responsible for its maintenance and upkeep. These factors are all not normally part of a rental agreement and we request that the rental be adjusted to take this in to consideration. The most recent valuation had the building valued at N\$ 5 300 000.00.





If you take the latest value (N\$ 5 300 000.00) and you divide it up into 9 years 11 months it would work out to a payment of N\$ 44 537.82 per month. Our current rental is N\$ 22 326.19 which means our monthly payment could be seen as N\$ 66 864.00 per month excluding the maintenance of the building.

We would like to propose:

3. **The donation of the building to the Municipality of Swakopmund:** Once the lease period comes to an end and an option to renew (if granted) is not exercised, or the lease contract is breached, the building will become the property of the Municipality of Swakopmund (as per the original agreement conditions). The value of the building is expected to grow during the lease period and we ask that this increase in value be considered when calculating a fair rental for the premises. (perhaps we could also look at the rental during the COVID period while the agreement has been under review and calculate a reduced back dated rental bearing in mind the above and the fact that the new building has been open since late 2017).
4. **COVID-19 Rental relief:** We humbly request that due to COVID- 19 lockdown and all the subsequent restrictions (some of which are STILL in place) that you would consider our request for rental relief for the period from March 2020 to February 2021. (\* due to the continued restrictions up to and including August due to the third wave the request now extends to August 2021) Lighthouse Restaurant and all our other venues were affected by COVID-19 prior to Namibia's lockdown as Europe and America had already implemented lockdowns, restricting travel and hence impacting on our income. When Namibia enforced a hard lockdown we were given no other choice but to close our doors temporarily and retrench all our staff. We have yet to reopen due to the impact of COVID-19 on all our businesses, but plan to do so in the coming weeks. Any relief form of would be appreciated. (update: we opened and closed again due to restrictions, we are now only – since mid-September \_ open during regular trading hours)
5. **Trading Hours:** One of the clauses in the new lease agreements prevents us from trading beyond 10pm. The original agreement did not have such a clause and as we are a restaurant with a valid liquor license until 2am, we would like to have this clause amended or removed to allow us to continue within the parameters set by the liquor license.



In summary, this has been an incredibly trying period and I have never before been prevented from trading and therefore rendered useless and unable to prevent impending disaster. I have always worked hard and taken risks in order to grow. Never in my wildest dreams did I ever envisage a situation like what we have been through.

We really appreciate your consideration and understanding, we have faith that we will continue to work together with the vision to make Swakopmund the tourism hub it once was and grow it to its massive potential.

Yours sincerely,



Quinton Liebenberg

**081 128 2412**



**ANNEXURE "C"**

11.1.29

**APPLICATION FOR EXTENSION OF LEASE PERIOD: MR QUINTON LIEBENBERG T/A THE LIGHTHOUSE GROUP T/A THE LIGHTHOUSE PUB & RESTAURANT (PREVIOUS NAME - QUINTON LIEBENBERG T/A THE LIGHTHOUSE GROUP T/A STRAND CAFÉ)**  
(C/M 2019/11/28 - 19/03/08, 13/3/12, E 1/3)

CO: P

**RESOLVED:**

- (a) That the application by the Mr Quinton Liebenberg trading as the Lighthouse Group trading as the Lighthouse Pub & Restaurant to renew the lease period for:

*A certain undivided portion of land, measuring 749m<sup>2</sup>, located on a portion of Portion B of the Town and Townlands of Swakopmund, Swakopmund, situated adjacent to Erf 4743, Swakopmund*

a further 9 years and 11 months be approved.

- (b) That the lease be for a period from 01 March 2020 to 31 January 2029.

- (c) That the lease amount be N\$25.92/m<sup>2</sup> per month x 749m<sup>2</sup> = N\$19 414.08 + N\$2 912.11 (15% VAT) = N\$22 326.19, with an annual escalation of 10% starting 1 July of every following year.

- (d) That the lease be subject to the standard conditions and the following:

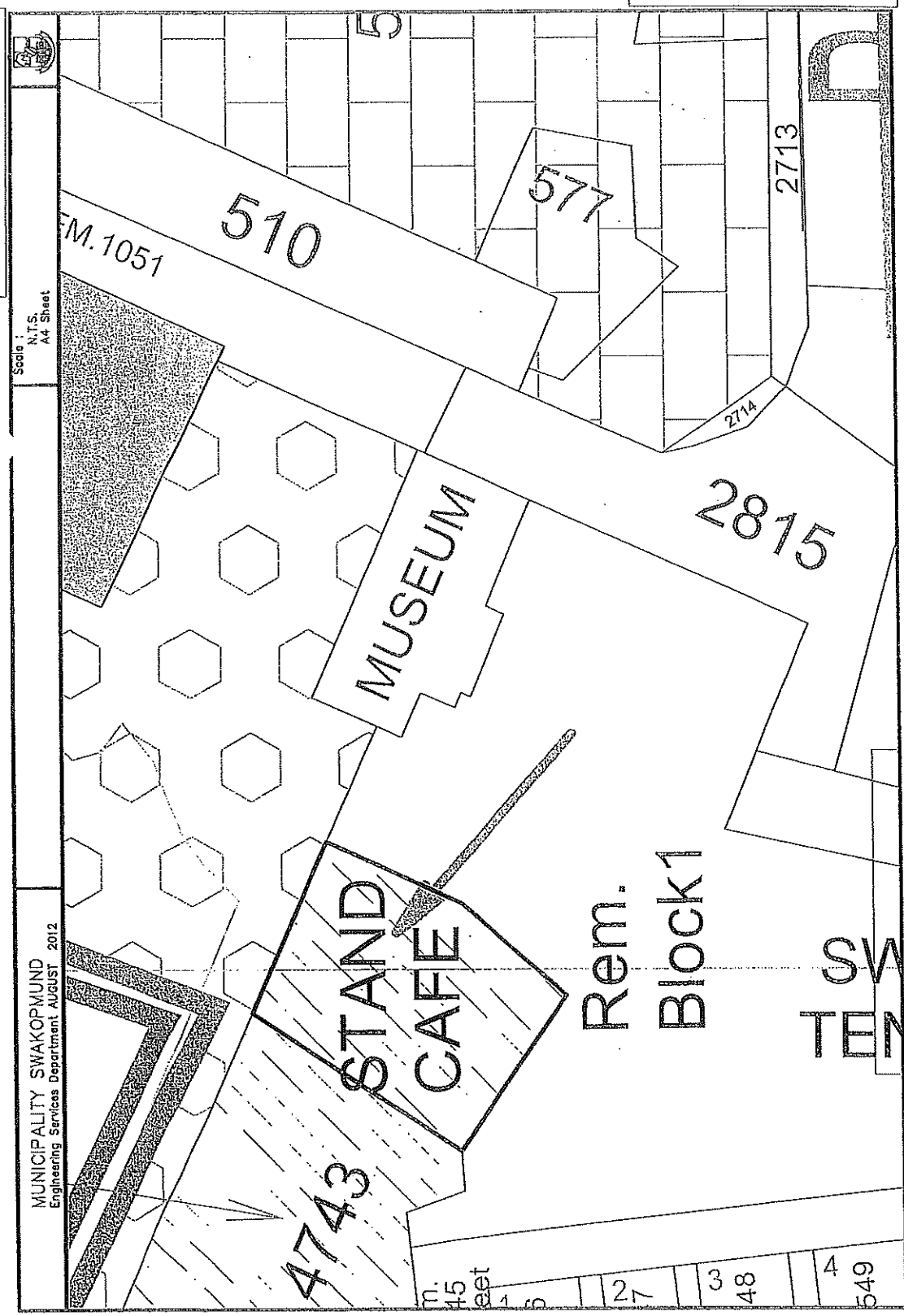
- (i) *That a deposit equal to 1 months lease be paid in advance by the applicant.*
- (ii) *That a notice of termination period of 1 year for both parties be applicable.*
- (iii) *That the lessee not operates later than 22:00.*
- (iv) *That the LESSEE shall be permitted to sell food and liquor at the café subject to the conditions contained in the applicable license required by the LESSOR and subject to the applicable Health Regulations.*
- (v) *That the LESSEE is responsible to keep and maintain the LEASED PROPERTY in a proper condition and to maintain and deliver the same at the termination of this lease in good order and condition, reasonable wear and tear that the LESSOR shall determine, excluded.*
- (vi) *That during any maintenance work at / to the LEASED PROPERTY, Council takes no responsibility for any loss or damage incurred by the LESSEE arising from such maintenance work or delays in connection with such works.*
- (vii) *That no improvement or changes, or any other work on the LEASED PROPERTY may be done by the LESSEE without the written permission of the LESSOR first had and obtained.*

- (viii) *That no sub-letting is permitted to cede or assign this agreement or any portion thereof, nor shall it be allowed to sublet in any manner any portion of the PROPERTY, without the written consent of the LESSOR first being had and obtained.*
  - (ix) *That the LESSOR or his duly authorized representative, shall at all reasonable time have the right to enter the PROPERTY for the purpose of carrying out an inspection and to ensure that all applicable regulations and by-laws are being adhered to by the LESSEE.*
  - (x) *That the LESSEE shall indemnify and keep indemnified the LESSOR during the full period of this agreement against possible claims, which may arise from the use of the PROPERTY by the LESSEE.*
  - (e) That all costs involved (inclusive of advertising cost) be for the lessee's account.
  - (f) That should the lessee cease operating or terminates the lease, the permanent structures be donated to Council as per clause 4 of the lease agreement, without any compensation to the lessee.
  - (g) That Council reserves the right to terminate the lease if valid objections from the public are received.
  - (h) That upon acceptance of the lease conditions, the lease be advertised in terms of Section 63 of the Local Authorities Act 1992 (Act 23 of 1992) as amended.
  - (i) That ministerial approval be obtained in terms of Section 30 (1)(t) of the Local Authorities Act. 23 of 1992.
  - (j) That point (ii) of the Council resolution passed on 29 May 2008, item 11.1.16 be applicable (Donation).
  - (k) That point (iii) of the Council resolution passed on 29 May 2008, item 11.1.16 be applicable (escalation of lease land only and not the structure).
  - (l) That the latest valuation in the amount of N\$5 300 000.00 be recorded under clause 4 of the lease agreement.
  - (m) That the project be evaluated 2 years before the expiry of the lease period.
-









Scale 1:  
N.T.S.  
A4 Sheet

MUNICIPALITY SWAKOPMUND  
Engineering Services Department AUGUST 2012

SW  
TEN



**Valuation Report**

Erf 4743  
Swakopmund



ESTIMATED MARKET VALUE	N\$ 5 300 000.00
ESTIMATED INSURANCE VALUE	N\$ 6 995 000.00
FORCED SALE VALUE	N\$ 3 975 000.00
DATE OF VALUATION	13 December 2018

**VALUERS TRUST**

Hanlie Lofty-Eaton  
Professional/Sworn Appraiser  
National Diploma Property Valuations (Technikon SA)  
E-mail: [hanlielofty@gmail.com](mailto:hanlielofty@gmail.com)  
P O Box 2204, Swakopmund, Namibia  
081 124 2066



**ANNEXURE "F"**

**MEMORANDUM OF AGREEMENT**

2

**AGREEMENT OF LEASE**

MEMORANDUM OF AGREEMENT entered into by and between:

**THE MUNICIPAL COUNCIL OF SWAKOPMUND**  
(hereinafter referred to as the LESSOR)

Herein represented by

**ECKART ULRICH WILHELM DEMASIUS**

AND

**MARCO PETER CLIFF SWARTS**

(in their respective capacities as CHIEF EXECUTIVE OFFICER and  
GENERAL MANAGER: CORPORATE SERVICES)

acting by virtue of the authority granted in terms of section 31 A (a) of the Local Authorities  
Act, 1992 (Act 23 of 1992) as amended.

(hereinafter referred to as the "LESSOR")

and

**Quinton Liebenberg**  
**t/a The Lighthouse Group**  
**t/a Strand Café**  
**P O Box 7001**  
**Swakopmund**

(hereinafter referred to as the LESSEE)

**WHEREAS** The LESSOR is the owner of a certain undivided portion of land of 749m<sup>2</sup>, a portion of Portion B of the Town and Townlands of Swakopmund, Swakopmund, situated adjacent to erf 4743 Swakopmund (as indicated on the attached map and approved building plans and marked Annexure "A" and "B") hereinafter referred to as the "LEASED PROPERTY".

**AND WHEREAS** The LESSEE requires the use of the LEASED PROPERTY for the purpose of developing and operating a café.

**AND WHEREAS** The LESSOR granted permission that the LEASED PROPERTY be leased to the LESSEE.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**SUBJECT MATTERS**

The LESSOR hereby lets to the LESSEE and the LESSEE hereby hires from the LESSOR the LEASED PROPERTY for the purpose of developing and operating a Café.

**THE LEASE IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

**1. DURATION**

The lease shall be for a period of 9 (nine) years and 11 (eleven) months commencing on 1 April 2010, subject to each party having the right to terminate the lease by giving 12 (twelve) months notice in writing.

**2. RENTAL**

The rental shall amount to the sum of N\$ 8 538.60 per month (Eight Thousand Five Hundred and Thirty Eight Namibian Dollars and Sixty Cents), calculated as N\$9.92 + N\$1.48 (15% VAT) x 749m<sup>2</sup> = N\$8 538.60, subject to an annual escalation of 10% during July and payable in advance on / before the 7<sup>th</sup> day of each month by the LESSEE to the LESSOR free of bank commission at the Municipal Offices, Swakopmund.



4

3.7.3 The LESSEE shall be obliged at its expense to insure, during the currency of this lease and to keep insured, and with an insurer acceptable to the LESSOR all plate glass windows in the premises, against breakage thereof as a consequence of every risk in respect of which insurance may be obtainable from such insurer.

3.7.4 Should any claim under such insurance be repudiated by the said insurer as a consequence of any act or omission by the LESSEE, which repudiation would not have occurred but for such act or omission, the LESSEE shall be obliged at its expense and on demand by the LESSOR, to replace any plate glass window in respect of such claim made.

3.7.5 The LESSEE shall, whenever called upon by the LESSOR to do so, produce proof of having duly paid all premiums payable in respect of the insurance referred to in (b) above and of the fact that the said insurance is in full force and effect.

4. DONATION

It is hereby recorded that the LESSEE has erected certain improvements consisting of a main building of 224m<sup>2</sup> and a wooden deck of 525m<sup>2</sup> as per the approved plans attached as Annexure "A" and "B" to the value of N\$3 862 500.00 as per attached valuation certificate Annexure "C" and as more fully described therein (hereinafter "THE IMPROVEMENTS") with the consent of the LESSOR on the LEASED PROPERTY.

The LESSEE hereby ceases any and all rights, lien or interest that it may have to the IMPROVEMENTS, waiving any claim it may have in law for enrichment in regard to the value of the IMPROVEMENTS and agrees to sign a deed of donation making over the value of such IMPROVEMENTS to the LESSOR, should it be required to do so, in return for the right to use and enjoy the IMPROVEMENTS at the minimal rental of N\$11.40 per metre square, per month for the term of 9 years and 11 months subject to clause 1 *supra*.

3

3. LESSEE'S RESPONSIBILITY

The LESSEE shall:

3.1 Maintain the LEASED PROPERTY in a good and proper order and condition to the entire satisfaction of the LESSOR.

3.2 Keep the LEASED PROPERTY clean, neat and tidy.

3.3 Make no improvements, changes or any other work on the LEASED PROPERTY without first obtaining the written permission of the LESSOR.

3.4 Pay to the LESSOR charges including water and sanitary fees and other charges as may customarily and legally be required to be paid by owners and or occupiers of the LEASED PROPERTY in the Municipal area of Swakopmund.

3.5 Not be allowed to use loudspeakers or any other address system to advertise his business nor is he allowed to make announcements from the LEASED PROPERTY or attract the public's attention or advertise out loud his business.

3.6 May, in consultation with the Engineering Services Department of the LESSOR, erect advertisement signs and notice boards on the LEASED PROPERTY.

3.7 INSURANCE

3.7.1 The LESSEE shall ensure the content of the LEASED PROPERTY is adequately insured and shall not cause any act or bring any materials onto the LEASED PROPERTY which may void the LESSOR'S insurance.

3.7.2 During the currency of this lease the LESSEE shall not do, or cause to allow to be done, anything which shall or might have the effect of vitiating the fire insurance now or hereafter effected by the LESSOR on the LEASED PROPERTY or of increasing the premiums payable in respect thereof. Should such premium be increased as a consequence of any act or omission by the LESSEE, the amount of the increase shall be paid by the LESSEE to the LESSOR on demand.

5

6. PROHIBITION OF SUB-LETTING

The LESSEE shall not be allowed to cede or assign this agreement or any portion thereof, nor shall it be allowed to sublet in any manner any portion of the LEASED PROPERTY without the written consent of the LESSOR first being had and obtained.

6. SPECIAL CONDITIONS

6.1 It is recorded that the LEASED PROPERTY is situated in a prime tourism area and becomes severely congested during the traditional Namibian holiday season namely December and January as well as Easter weekends. The LESSEE undertakes to assist the LESSOR in its efforts to provide a safe and secure environment and more specifically to not contribute to the congestion in the area by placing obstacles in the walkways or causing customers to queue in the walkways.

6.2 Accordingly all security rules and regulations or requirements of the Municipal Council must be adhered to at all times.

7. LESSOR'S RIGHT TO ACCESS

The LESSOR or its duly authorised representative shall at all times have the right to enter the LEASED PROPERTY for the purpose of carrying out an inspection and to ensure that all applicable regulations and by-laws are being adhered to by the LESSEE, which regulations and by-laws are presently in force or any such future regulations.

8. INDEMNITY

The LESSEE shall unconditionally indemnify the LESSOR against all and any claims in respect of damage to property and / or bodily injury to / or loss of life of people that may arise from the utilisation of the LEASED PROPERTY by the LESSEE.

6

9. DEFAULT

In the event of the breaking of any of the conditions of this agreement, the aforesaid lease may be cancelled at the entire discretion of the LESSOR by giving 30 (thirty) days notice in writing to the LESSEE and the LESSEE shall restore the LEASED PROPERTY to a proper condition at his own cost and the satisfaction of the LESSOR within 30 (thirty) days from date of such notification.

10. TERMINATION

In the event of termination of this agreement, in terms of any clause of this agreement, the LESSEE shall have no claim for compensation in respect of any improvements effected on the LEASED PROPERTY.

11. LESSOR'S RIGHTS AND DUTIES

11.1 In the event of the LESSEE failing to pay the rental, or any portion thereof on the due date, or in the event of the LESSEE breaching or permitting the breach of any one or more of the other provisions of this lease, the LESSOR shall be entitled to cancellation of this lease and to immediate repossession of the LEASED PROPERTY.

Provided that -

11.1.1 the entitlement to cancel shall be exercised either by posting a registered letter to the LESSEE or by delivery either at the LEASED PROPERTY or to the LESSEE personally a letter notifying the LESSEE of such cancellation; and the cancellation shall be effective immediately upon the posting or delivery (as the case may be) of the letter;

11.1.2 subject to the provisions of Clause 11.1.3, the LESSOR shall not cancel on the grounds of the LESSEE'S breach of the provisions regarding payment of rental on the due date, without first having given 10 (ten) days' notice in writing calling upon the LESSEE to rectify such breach or to cause the rectification of such breach (as the case may be) and the LESSEE failing to comply with the notice;



7

11.1.3 should the LESSEE breach the same term or provision twice in any cycle of 12 months, the LESSEE shall not be afforded any period of grace within which to rectify such breach and the LESSOR shall be entitled to forthwith cancel the lease;

11.1.4 in the event of the LESSOR cancelling and the LESSEE remaining in occupation of the premises, the LESSEE shall continue to pay an amount equivalent to the monthly rental in advance on or before the seventh day of each calendar month until the LESSEE vacates and acceptance of this amount by the LESSOR shall not affect the LESSOR'S right to cancel whether the amounts are accepted as rental or as damages for holding over;

11.1.5 cancellation shall not affect any right of the LESSOR to payment of damages for breach of contract or arrears rental or any other amounts owing to the LESSOR by the LESSEE.

11.2 in the event of the LESSEE failing to pay the monthly rental or any portion thereof on due date, the LESSEE shall become liable, whether or not the LESSOR cancels this agreement as set out in the preceding sub-clauses, to pay interest on the unpaid amount at 2% (two percent) above the then prevailing average bank prime lending rate per annum, from the first day of the rental having become due and payable to date of payment thereof.

11.3 in the event of the LESSEE falling in breach of his obligations under this lease to pay the rental, or any portion thereof, on due date or contravening, or permitting the contravention of, any one or more of the other provisions of this lease, and the LESSOR incurring legal expenses in connection therewith, the LESSOR shall be entitled to recover the full amount of the legal expenses, on a scale as between attorney and own client from the LESSEE, whether or not legal proceedings are instituted against the LESSEE for recovery of the rental or ejectment or damages for breach of contract.

11.4 Should this agreement be cancelled in terms of the provisions of Clause 9 hereof, the LESSOR shall have the right to retain any monies or any part thereof paid by the LESSEE in terms of this agreement in consideration of the LESSEE'S occupancy of the land.

8

12. LESSOR'S LIABILITY

12.1 The LESSOR shall not be responsible for any loss or damage sustained to the stock, books, documents, inventory, movables or any other property of the LESSEE or the contents of the LEASED PROPERTY hereby leased through rain, wind or hail storms, action of the sea, lightning or fire or civil commotion, strikes, enemies of the State, or through any other cause whatsoever.

12.2 In the case of partial destruction of whatsoever nature to the premises hereby leased, except through the negligence of the LESSEE, the LESSEE shall pay a reduced rental for the said period and in proportion to the partial destruction sustained to the LEASED PROPERTY until such time as the LEASED PROPERTY has been fully repaired.

12.3 In the case of total destruction of the LEASED PROPERTY this lease agreement shall immediately terminate, unless the LESSOR chooses to rebuild the premises, in which case this Agreement shall remain in force but the LESSEE shall not be liable for rental payments until the LEASED PROPERTY has been properly repaired.

12.4 The LESSOR shall under no circumstances be liable for any damage of whatever nature in his capacity as LESSOR and / or owner of the LEASED PROPERTY, sustained by the LESSEE and / or his servants, agents, clients, customers or employees from whatever cause arising.

13. DOMICILIUM

For the purpose hereof and for any other notice which may be required to be delivered to or served on the LESSEE in terms hereof, the LESSEE chooses the following address as domicilium et executandi:

Erf 4743, Swakopmund

OR

Erf 537, Swakopmund  
c/o Francois Street & Daniel Tjongarero Avenue

10

THIS DEED AND SIGNED at SWAKOPMUND this 10th day of APRIL 2010 in the presence of the subscribing witnesses.

AS WITNESSES ON BEHALF OF THE LESSEE:

1. [Signature]
2. [Signature]
LESSEE

9

or such address of which the LESSEE shall inform the LESSOR by registered mail at P O Box 83, Swakopmund and such notice shall be considered duly served if properly addressed, stamped and posted to the aforementioned address which shall be the LESSOR'S domicilium citandi et executandi.

P O Box 7001
Swakopmund
081 128 2412

14. JURISDICTION

The parties hereby consent to the jurisdiction of the Magistrates Court for the district of Swakopmund in respect of any claim which may arise from or as a result of the provisions of this agreement in terms of the stipulations of Section 45 of Act 32 of 1944 (Magistrate's Courts Act), as amended notwithstanding the fact that the said Magistrates Court, otherwise possibly might have no jurisdiction over such claim, on the distinct understanding that it will nevertheless be in the LESSOR'S exclusive discretion to decide whether any claim or dispute will be referred to the High Court of Namibia for adjudication.

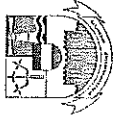
THIS DEED AND SIGNED at SWAKOPMUND this 10th day of APRIL 2010 in the presence of the subscribing witnesses.

AS WITNESSES ON BEHALF OF THE LESSOR:

1. [Signature]
GM: CORPORATE SERVICES
2. [Signature]
CHIEF EXECUTIVE OFFICER

[Handwritten mark]

[Handwritten mark]



# MUNICIPALITY OF SWAKOPMUND

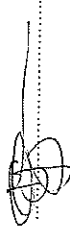

## CERTIFICATE OF INDEMNITY

I/We .....  
 In my/ our capacity/ capacities as .....  
 of .....

hereby unconditionally indemnify the COUNCIL OF THE MUNICIPALITY OF SWAKOPMUND against all and any claims in respect of damage to property and/ or bodily injury to/ loss of life of people that may arise from the utilization of the Municipal property during the use of Municipal facilities by myself or any participants or people making use of any commodities which are linked to this Public Area.

THUS signed at Swakopmund this 17<sup>th</sup> day of April.....2010.

### AS WITNESSES

1.  .....
2.  .....

.....  
 on behalf of The Lighthouse Group

