

CONFIDENTIALITY AGREEMENT

Between

Theo Swart Business Brokers CC

A Close Corporation with registration number 1996/014054/23, incorporated in accordance with the company laws of South Africa

(Hereinafter referred to as "The Broker")

And

.....

(Hereinafter referred to as "The Purchaser")

1 INTRODUCTION

- 1.1 The Parties record that they are in discussions around acquiring the business of a petrol and diesel filling/service station conducted by Petroleum Affairs CC as a going concern which includes the fixtures, the goodwill attached to the business and the trading name _____ under which the business is conducted initiatives (“the Project”).
- 1.2 As part of this process the Parties have or will disclose certain information which is proprietary and confidential to them.
- 1.3 The Parties agree to treat such discussions with absolute confidence and not to divulge the content of such discussions save to the limit and extent as may be provided for in this agreement until such time as the Parties agree otherwise in writing.
- 1.4 The Parties agree that all information relating to the Project is of a sensitive and/or confidential nature.
- 1.5 The Parties are prepared to disclose the confidential information in respect of the Project to each other, provided that they agree to protect the confidentiality thereof.
- 1.6 The Parties accordingly wish to enter into this confidentiality agreement upon the terms and conditions as set out below.

2 CONFIDENTIALITY UNDERTAKING

- 2.1 The Parties hereby undertake to keep confidential and not to publish, disclose or to otherwise reveal in any way whatsoever nor make commercial use of any activity data, marketing information, geological information, formulae, specifications, photographs, computer programs, methods, costs of operation, financial statements, financial projections, feasibility studies or any other information of any kind whatsoever disclosed by the Parties to each other, orally, in writing, or by any other means, regarding its evaluation of the confidential information (“the Confidential Information”).
- 2.2 The Confidential Information provided by the Parties to each other in terms of this agreement, whether in documentary or electronic form, shall not be copied, used or reproduced. Neither shall the Parties permit the copying, usage or reproduction in any circumstances, save with the express written permission of the other.
- 2.3 The Parties undertake not to use the Confidential Information for any purpose other than for the Project, and, without derogating from the generality of this clause, will

not seek to gain any commercial advantage from the Confidential Information disclosed to them, unless expressly agreed in writing by the Parties.

- 2.4 The Parties undertake at all times to keep all Confidential Information and, without limitation, all other material relating to the Confidential Information, in a safe place.
- 2.5 The provisions of this agreement regarding the Confidential Information shall not apply in respect of information which -
 - 2.5.1 is within the public domain at the commencement of this agreement;
 - 2.5.2 subsequently becomes, lawfully and independently, part of the public domain through no fault of either Party to whom Confidential Information has been disclosed;
 - 2.5.3 either Party can show was, or shall have been, in its possession prior to the disclosure thereof in terms of this agreement;
 - 2.5.4 either Party receives from a third party, who has no confidential commitment to either of the Parties;
 - 2.5.5 either Party receives written approval from the other authorizing such disclosure or use;
 - 2.5.6 is required by law, provided that if the either Party, its advisers or employees (or is reasonably likely that any of them shall) become legally compelled to disclose, prompt notice of such fact shall be given by the Party so compelled, so that the other Party may seek an appropriate remedy to prevent such disclosure or waive compliance with the provision of this agreement and the Party so compelled shall fully co operate with the other Party, should the other party elect to challenge the validity of such requirement.
- 2.6 Neither Party shall be entitled to make any public announcement or public disclosure in regard to this agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed.
- 2.7 Either Party shall, upon demand or upon termination of this agreement, return the Confidential Information to other Party within 7 (seven) days.
- 2.8 The Parties agree that the disclosure or unauthorized use of the Confidential Information would be harmful to them, and they shall be entitled to enforce the confidentiality, non-disclosure and/or non-use provisions of this agreement by means of an interdict, specific performance or other equitable relief.

- 2.9 Each Party acknowledge that it will be liable to the other for any breach of this agreement by it members, officers, employees, representatives or agents and indemnifies the other against all and any direct loss and/or damage, liability or expense whatsoever (which shall include legal costs on an attorney and own client scale), which either Party may directly suffer or incur as a result of or which may be attributable to:
- 2.9.1 any intentional or negligent disclosure of the Confidential Information to any unauthorized party whomsoever or whatsoever by either Party, its members, officers, employees, representatives or agents; or
 - 2.9.2 any unauthorized use of the Confidential Information by either Party, its members, officers, employees, representatives or agents, or by any authorized or unauthorized party who acquired the Confidential Information through the either Party, its members, officers, employees, representatives or agents.
- 2.10 Specific information disclosed by either Party to the other shall not be deemed to come under the exceptions referred to in clause 2.6 above merely because it is embraced by more general information which, is or becomes public knowledge, or was in the prior possession, of either Party.

3 OWNERSHIP OF CONFIDENTIAL INFORMATION

- 3.1 Each Party shall retain ownership of all its Confidential Information as furnished in terms of this agreement, which shall be deemed to be lent by each Party to the other only for the aforesaid purpose.
- 3.2 Nothing contained in this agreement or in any disclosures hereunder made by either Party to the other, shall be construed to grant to either Party any license or other rights in or to the Confidential Information so disclosed or any patent(s) which have been or may hereafter be issued with respect to same.

4 **APPLICABLE LAW**

The laws of the Republic of South Africa shall govern the construction, validity and performance of this agreement.

5 **DOMICILIUM CITANDI ET EXECUTANDI**

5.1 The Parties choose the following addresses as their respective *domicilia citandi et executandi* and for the purposes of addressing all written notices, consents, applications or other communication flowing from this agreement –

In the case of Theo Swart Business Brokers CC
52 Dann Road
Aston Manor
Kempton Park
Tel: 082 446 9372
Email: swartte@gmail.com

In the case of _____
Address: _____

Tel: _____
Email: _____

5.2 Any notice -

5.2.1 if sent by prepaid registered post shall be deemed to have been received within 14 (fourteen) days after posting;

5.2.2 if delivered by hand shall be deemed to have been duly received by the addressee on the 1st (first) business day after the date of delivery;

5.2.3 if transmitted by Email shall be deemed to have been received by the addressee 1 (one) business day after dispatch.

6 **GOOD FAITH**

The Parties agree that they enter into this agreement on the basis of trust and record that they will observe good faith in contracting and dealing with each other and implementing the provisions hereof. This implies, inter alia, that:

6.1 the Parties will at all times during the currency of the Agreement act reasonably and in good faith; and

6.2 the parties will perform their obligations arising from this agreement diligently and with reasonable care.

7 COMMENCEMENT DATE AND DURATION

7.1 This Agreement shall commence on the date of last signature of the Agreement and shall endure, subject to clause 7.2, until the earlier of the following:

7.1.1 _____ or

7.1.2 Upon 7 (seven) days written notice from either Party to the other Party.

7.2 The provisions regarding the Confidential Information as contained in this Agreement shall apply from the date of last signature hereof and shall remain to be of full force and effect for a period of 2 (two) years from the date of termination hereof.

8 GENERAL

8.1 This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof. No warranties, representations, stipulations or conditions, other than as recorded herein, shall be binding on the Parties.

8.2 No alteration, variation or consensual cancellation of any of the terms or conditions of this agreement shall be of any force or effect unless such alteration, variation or cancellation is recorded in writing and signed by the Parties.

8.3 No latitude, indulgence, consent or forbearance of any similar act by either of the Parties in enforcing any provision of this agreement shall constitute a variation or novation of this agreement or waiver of or an estoppel in respect of the terms of this agreement.

8.4 Confidential information made available in the course of negotiations will not constitute an offer or invitation to purchase or to proceed with a project, nor will such documents or the information contained therein form the basis of any contract.

8.5 Neither Theo Swart Business Brokers CC nor its officers accept responsibility for or make any representations, express or implied with respect to the accuracy or completeness of the information or data contained in any such documents or any oral communications until such information or data is set out in a written agreement.

Dated at	on this the	day of	2016
As witnesses:	for :	Theo Swart Business Brokers CC	
1.			
2.	who warrants that he/she is duly authorised thereto		
	NAME :		
	CAPACITY :		

Dated at	on this the	day of	2013
As witnesses:	for :		
1.			
2.	who warrants that he/she is duly authorized thereto		
	NAME :		
	CAPACITY :		