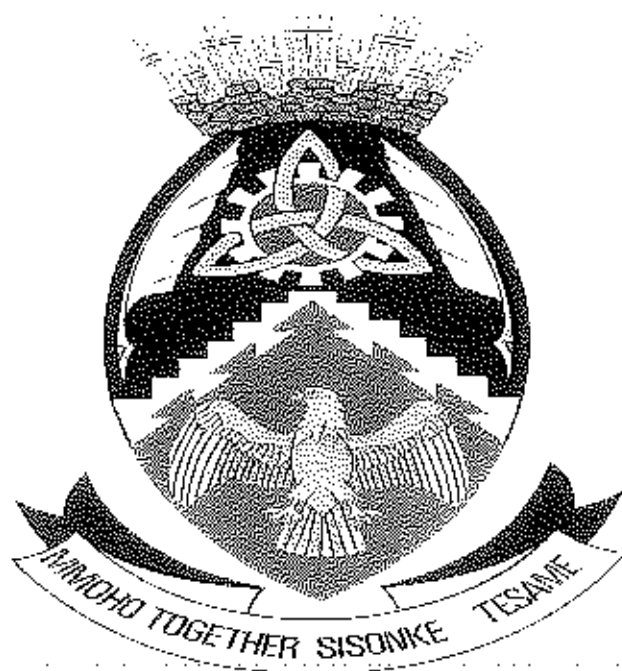


# MATJHABENG LOCAL MUNICIPALITY

## LAND AVAILABILITY AGREEMENT



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# LAND AVAILABILITY AGREEMENT

entered into by and between

## 1. PARTIES

1.1 MATJHABENG LOCAL MUNICIPALITY (MLM), herein represented by

MR THABISO TSOARELI, being duly authorized thereto (hereinafter referred to as the MUNICIPALITY)

AND

1.2 UYINGCWELE BABA CAPITAL (PTY) LTD, Registration Number: K2011/115610/07, herein represented by MR. LEBUSITO L. MOAHLODI in his capacity as MANAGING DIRECTOR duly authorized thereto by virtue of a resolution (the "DEVELOPER")

## 2. INTRODUCTION

- 2.1 The development of shopping centres in townships and rural areas in South Africa has increased significantly within the last 10 years. This trend has been met with mixed reactions. It has been argued that the benefits to consumers, such as easier access to a wide variety of goods at cheaper prices, come at the expense of existing local enterprises that cannot compete with the shops in the centre.
- 2.2 It is also argued that such centres play an important role in kick-starting urban renewal and development, through attracting other services and facilities to the area.
- 2.3 Research shows that the overall positive versus negative impact of a particular shopping centre is often less clear cut and will be affected by many factors related to its specific location and development process
- 2.4 For the initial development of the centre and its future successful operation, it is necessary that the developer makes a profit and that investments made are recouped.
- 2.5 However, the overall impact of a centre needs to be assessed in terms of how it affects people living and working in the area.
- 2.6 Criteria for assessing the success of a retail centre should include:
  - Social imperatives: for example, a sense of community through providing a pleasant, safe, convenient place for people to shop and socialise
  - Economic priorities: for example, the development of local enterprises, not only those that are directly related to the centre

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- Environmental considerations: for example, the use and sustainability of natural environmental resources.

2.7. That the municipality hereby makes the property (land) mentioned under annexure "A" available to the Developer on the terms and conditions set out below.

### 3. INTERPRETATIONS

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. In this agreement, unless a contrary intention clearly appears

#### 3.1 words importing

3.1.1 any one gender includes the other gender;

3.1.2 the singular include the plural and vice versa; and

3.1.3 natural persons include created entities (corporate or unincorporated) and vice versa.

3.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

3.2.1 "Attorney" means the firm of attorneys appointed by "Developer" to transfer the land (or portions thereof) into the name of the end user;

3.2.2 "BBBEE" means the Broad-Based Black Economic Empowerment;

3.2.3 "MLM" means Matjhabeng Local Municipality, herein represented by Mr Thabiso Tsoaeli in his capacity as Municipal Manager.

3.2.4 "Contractor" or "sub-contractor" means a contractor or sub-contractor other than the Developer as described in clause 17 hereunder;

3.2.5 "Developer" means, **UYINGCWELE BABA CAPITAL (PTY) LTD, Registration No: K2011/115610/07**, herein represented by Mr Lebusho L. Moahlodi in his capacity as Managing Director;

3.2.6 "development project" means the development of the land to be undertaken on the terms of this agreement by the development of the two (2) stands on the land as more clearly depicted on the plan to be amended;

3.2.7 "Effective date" means the signature date;

3.2.8 "land" means the land as more clearly depicted on the attached plan and that is, Erf 10283 and 10284 which is attached as Annexure A hereto and only refers to business zoned erven. All other land uses in the area are excluded from this agreement.

3.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

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- 3.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 3.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which case the day shall be the next succeeding business day.

#### 4. LAND AVAILABILITY

- 4.1 The municipality hereby makes available the land to the DEVELOPER as depicted on the attached plan as Annexure A, hereto and subject thereto that the development obligation of the DEVELOPER shall be undertaken on the basis that the LAND REMAINS REGISTERED IN THE NAME OF THE MUNICIPALITY, until all conditions of the Municipality as contemplated in this agreement are met.
- 4.2 The development project, subject to the terms and conditions of this agreement and the Development Proposal, to be carried out on the land shall comprise inter alia the:-
- 4.2.1 DEVELOPER planning and responsible for the installation and supply of all internal services and bulk services if so required to the land at their own costs and in terms of the standard Municipal design standards.
- 4.2.2 DEVELOPER will develop the shopping mall, lifestyle business centre, hawkers centre, taxi rank and petrol service station on the land in accordance with the existing GENERAL PLAN, SPATIAL DEVELOPMENT FRAMEWORK, LAND USE SCHEME and the National Building Regulations on the terms of this agreement.
- 4.3 The DEVELOPER shall only be entitled to cede its rights and obligations to a Financial institution/Investor, solely for the reason of securing funds to undertake the development project. The DEVELOPER will not be entitled to cede or encumber the Land without the prior written consent of the municipality being obtained. After written consent has been obtained from the MLM, the DEVELOPER will submit such cession/mortgage bond to MLM for noting and acceptance.
- 4.4 No agency or lease is hereby constituted.
- 4.5 The land is made available for development in terms of this agreement "voetstoots" as to condition and extent and shall not be liable for any defects, either latent or patent. The DEVELOPER is hereby deemed to have made himself acquainted with the situation, nature and condition of the land and locality of the same inclusive of the conditions of township establishment and title and the positioning of all existing services as well as any servitudes or conditions affecting the land, and is entirely free from any liability therefore, save as provided in terms of this agreement.

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## 5. PROVISION OF ENGINEERING SERVICES

- 5.1 MLM does not warrant the installation of the bulk and/or internal services necessary for the project due to its current financial situation.
- 5.2 The developer will submit a services report to the Municipality which addresses the provision of both the internal and bulk services to the area from a professional and registered engineer for approval, also with the condition that the developer will be financially responsible for the provision of all outstanding engineering services in the area.
- 5.3 That the developer will enter into a Services Agreement with the Municipality as soon as the services report is approved by the Municipality.

## 6. SUSPENSIVE AND RESOLUTIVE CONDITIONS AND DURATION

6.1 This agreement is subject to the fulfilment of the following suspensive conditions:-

- (i) That the developer submits an engineering services report and electrical services report to the Municipality from a professional and registered engineer for approval, also with the condition that the developer will be financially responsible for the provision of all outstanding engineering services in the area within six months from signing this agreement.
- (ii) That any financial proposal from the developer in relation to the feasibility of the project inclusive of the provision of services, the purchase of the land or any other aspects will be submitted to Council for approval.
- (iii) That the development of services and business initiatives (shopping mall and lifestyle business centre commences within 36 months after signature of the Land Availability Agreement.
- (iv) That the DEVELOPER submits to the MLM a detailed work schedule (including number of jobs to be created during construction phase and permanent or otherwise created as a result of the development) in terms of the extended Public Works Programme prior to the physical commencement of the project.

6.2 This agreement shall also terminate if:

- 6.2.1 this agreement is cancelled in accordance with the provisions of clause 30; or
- 6.2.2 the parties agree in writing that it shall be cancelled.

## 7. FINANCIAL ASPECTS

- 7.1 The consideration payable by the DEVELOPER to the MLM will be in line with the Provisions of the MFMA (Market Price) of each site/land upon transfer of same to the end-user/ to the Developer on practical completion of the development, or when the DEVELOPER takes transfer of the stands, whichever occurs first.

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- 7.2 The DEVELOPER shall pay no occupation rental.
- 7.3 The DEVELOPER shall be liable for and shall pay on demand for any charges together with the Value Added Tax thereon arising out of its use of electric current, water, gas, refuse and garbage disposal services, sewerage and effluent and other charges (including basic and service charges), in respect of the Land from date of signature of this agreement.
- 7.4 The DEVELOPER will be responsible for payment of development costs inclusive of connection fees, building plans as per the Municipal Tariff list.
- 7.5 Rates and taxes shall be payable on practical occupation of the property by the beneficiary on, or when the DEVELOPER or end users take transfer of the stands, whichever occurs first.

## **8. ROLE AND RESPONSIBILITIES OF DEVELOPER**

The role and responsibilities set out hereunder shall be subject at all times to DEVELOPER exercising such powers in accordance with

- (i) this agreement,
- (ii) Development Plan,
- (iii) applicable legislation and by-laws and
- (iv) relevant policy guidelines of the MLM.

## **9. TOWN PLANNING ISSUES AND ENVIRONMENTAL ISSUES**

The DEVELOPER shall at its sole cost and expense carry out the following steps, namely:

- 9.1 Submit and/or withdraw and/or amend a SDP and/or any building plans and/or engineering services connection application to the appropriate MLM authority for the development of the land, and in this regard:-
- 9.1.1 file together with the application(s) together with all the prescribed documentation and information as may be required;
  - 9.1.2 give all the relevant notices to those bodies as prescribed for the purposes of the said application(s);
  - 9.1.3 advise the MLM of any objections regarding the application either immediately upon receipt hereof, or as soon as is practicable after any such objection has been made;
  - 9.1.4 appear before the MLM Town Planning Tribunal or any other authority, as may be necessary and required in the process of township establishment; and
  - 9.1.5 refer back to the Council any or all conditions imposed by such authority referred to in clause 9.1.12 in the process of township establishment, particularly with regards to the suspension and/or cancellation of any title conditions which involves the co-operation and/or approval of the land.

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- 9.1.6 in the discretion of DEVELOPER, appoint any relevant professionals to represent the Developer;
- 9.1.7 submit a layout plan with the appropriate department of the MLM for approval;
- 9.1.8 comply fully with all the required provisions of applicable legislation;
- 9.1.9 make application for the suspension/cancellation of any title deed restrictive conditions, if necessary;
- 9.1.10 conduct an environmental assessment and impact study and comply with all the relevant preventative and/or remedial measures in terms of legislation and requirements of the said Tribunal;
- 9.1.11 produce a full Environmental Management Plan in terms of applicable Environmental Legislation, if necessary; and
- 9.1.12 apply for and obtain rezoning of the land if necessary in terms of the Town Planning and Townships Ordinance 1986 should it be applicable.

## 10. FINANCING

DEVELOPER shall be responsible for the financing of the entire development project, insofar as any obligations vest with DEVELOPER.

## 11. TIME FRAMES AND PERIODS

- 11.1 The development project shall be completed in accordance with the time frame set out in clause 6 above.
- 11.2 In the event of DEVELOPER defaulting on any of abovementioned time periods, the MLM shall be entitled to act against DEVELOPER in terms of clause 22 hereof.
- 11.3 DEVELOPER shall submit to the MLM for notification a written progress report EVERY month addressing the progress made with the development project and all other issues pertaining to the development project.

## 12. DEVELOPMENT AND CONSTRUCTION

- 12.1 The development project shall be completed by the DEVELOPER at its cost:-
  - 12.1.1 in a good and proper and workmanlike manner;
  - 12.1.2 substantially in accordance with the development project proposal; and
  - 12.1.3 in accordance with –
    - the applicable town planning scheme;

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- all applicable conditions of title; every applicable law; and
- the provisions of this agreement.

12.2 The DEVELOPER shall at all times observe (and is obliged to fully acquaint itself with) the conditions of title and servitudes (registered and un-registered) applicable to the land.

12.3 If the development project is delayed-

12.3.1 by viz major;

12.3.2 by reason of civil commotion, political riot, local combination of workmen, strike or lockout, any land claim or circumstances beyond the DEVELOPERS' control; then in such case the Civil Engineer shall certify a fair and reasonable extension of time of the practical completion date

12.4 The DEVELOPER shall ensure that all construction methods, materials and workmanship employed in the development of the land are of a standard acceptable to the MLM, who shall be entitled through its designated representatives, to inspect the building site of the DEVELOPER at any time in order to ensure that satisfactory standards are being maintained.

12.5 The DEVELOPER and/or sub-contractor shall keep record of all labour contracts as required in the "Extended Public Works Programme" and submit such records to the MLM on a quarterly basis.

12.6 The DEVELOPER confirms that as from the commencement date it shall be deemed to have acquired full control in respect of the land for purposes of the Occupational Health and Safety Act, 1993 and Regulations, and that the DEVELOPER is regarded as the client for the purposes of the said Act. To this effect the DEVELOPER shall manage, administer and audit compliance by the contractor on a monthly basis for the duration of the construction work on the development project.

### 13. INSURANCE

13.1 The DEVELOPER shall, for the duration of the construction program maintain construction risk insurance in a sum equal to the estimated construction costs plus a contingency allowance of 30% (thirty per centum).

13.2 DEVELOPER shall take out and maintain adequate insurance cover, including public liability insurance, for the duration of this agreement until the transfer of the last unit to a third party.

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#### 14. OTHER AGREEMENTS

DEVELOPER shall enter into or terminate any other contract which it considered necessary for or incidental to the performance of its duties in accordance with this agreement and to further give effect to the approved development project, including but not limited to Security Agreement; Site Development Agreement. The MLM will not be a party to these agreements and DEVELOPER herewith indemnifies and holds the MLM harmless against any claims that may arise from such agreements.

#### 15. COMMUNITY PARTICIPATION

It is specifically agreed that the DEVELOPER shall cause sufficient community participation to take place to the satisfaction of the MLM. The MLM pledges its co-operation to assist in this process.

#### 16. ROLES AND RESPONSIBILITIES OF THE MLM

The roles and function of the MLM shall comprise the following:-

- 16.1 The MLM shall make the land available to DEVELOPER, as is hereby done, cooperate and assist DEVELOPER where it is reasonably required in order to successfully complete the development project.
- 16.2 The MLM shall retain the control of the land and may in the event of the breach of any of the terms and conditions hereof, withdraw the land and deal with the land as the MLM may deem fit.
- 16.3 Any power of attorney or consent not attached hereto at date of signature shall not render this agreement incomplete and may be prepared by DEVELOPER at the appropriate time.

#### 17. SUB-CONTRACTS AND LAND DEVELOPER

- 17.1 DEVELOPER shall remain wholly responsible for carrying out and completing the development project in all respects in accordance with this agreement notwithstanding the subcontracting of all or any portion thereof. In this regard:-
- 17.2 If DEVELOPER decides, either at the outset of this agreement or at any future date to enter into an agreement with a land developer or sub-contractor whereby such land developer or subcontractor develops either the entire or part of the land, be it by way of joint venture or otherwise, such agreement shall be in writing and be subject to the approval of the MLM, entitling the MLM to impose any further or additional terms and conditions or cause any amendment thereto as the MLM may reasonably require, but always subject thereto that the MLM remains fully indemnified and held harmless by DEVELOPER and the land developer jointly and severally against any claim arising from any agreement/s between DEVELOPER and/or the land developer and/or sub-contractor. It is recorded that the DEVELOPER entered into a joint venture agreement with a black economic empowerment

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entity in accordance with the attached joint venture agreement, which forms an integral part of this agreement.

- 17.3 Should any land developer or sub-contractor commit any act (which shall include, for all purposes, any omission) which is a breach or would, if committed by DEVELOPER, constitute a breach by DEVELOPER in terms of the provisions of this agreement, DEVELOPER shall procure that the breach is remedied within 7 (SEVEN) days or such other period that DEVELOPER deems reasonable failing which the agreement concluded by DEVELOPER with the land developer or subcontractor in question shall forthwith terminate and DEVELOPER shall, either itself or through a land developer or sub-contractor other than the land developer or sub-contractor in question, fulfil the obligations which were contracted by the DEVELOPER to the land developer or sub-contractor in question. Without in any way limiting or derogating from the provisions of this clause, DEVELOPER shall be liable to the MLM for all and any of the acts, defaults and omissions of any land developer or sub-contractor and such land developer's or sub-contractor's agents, employees and any other person whomsoever for which such person may be liable

## 18. BBBEE POLICY

- 18.1 In line with the DEVELOPER's endeavours to promote the socio-economical upliftment of historically disadvantaged individuals, being conditional of the approval of the development proposal submitted by the DEVELOPER, the DEVELOPER shall use all reasonable endeavours to ensure that the direct and indirect contractors, including the professional team to be appointed by the DEVELOPER on the development project, meet a minimum BBBEE requirement of 70% (seventy percent). At least 55% (fifty five percent) of the construction work shall be awarded to BBBEE compliant entities. It is recorded that the professional team was appointed some years ago when the first agreement was concluded.
- 18.2 The parties agree that the Property Transaction Policy and Scorecard shall be used to determine whether the direct and indirect contractors and professional team to be appointed by the DEVELOPER meet the above minimum requirements attached hereto.
- 18.3 The DEVELOPER shall submit to the MLM a report on the compliance with clause 18.1 above.
- 18.4 The DEVELOPER records that it is committed to the implementation of the Property Charter and that it will use all reasonable endeavours to adhere to the principles set out in the Property Transactions Policy and Scorecard from the effective date.
- 18.5 The DEVELOPER will every 6 (six) months, for the duration of this agreement, submit an independently audited report on its BBBEE status as required in terms of the Property Transaction Policy and Scorecard. Such report will contain the DEVELOPER's comprehensive scorecard for all items and an account of progress in achieving the qualitative principles outlined in the Property Transaction Policy and Scorecard. The DEVELOPER undertakes to use its best endeavours to improve its BBBEE status annually.

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18.6 The parties record that the MLM is in the process of developing the strategy based on the five pillars of economic growth, namely empowerment, job creation, skills development and entrepreneurship. The strategy will focus on areas of alternative building material supply, property and construction services, property ownership and property finance. The DEVELOPER will use all reasonable endeavours to participate in the implementation of the above strategy in relation to the development, provided that such participation falls within the cost, program and quality parameters set for the development project by the DEVELOPER.

## 20. DUTY OF CARE

DEVELOPER shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out its obligations under this agreement, and furthermore to promote and safeguard the interests of the MLM.

## 21. MEDIATION

In the event of a dispute arising between the parties, it is the recorded intention of the parties that such dispute shall be resolved as expeditiously as possible by way of mediation before any litigious actions are instituted. In this regard the parties agree as follows :-

21.1 The parties shall jointly agree upon a mediator within a period of 30 (THIRTY) days to either party giving the other notice as contemplated in clause 22.2, failing which an independent mediator shall be appointed by the Arbitration Foundation of South Africa within 21 (twenty one) days from failure to agree upon a mediator.

21.2 The process of mediation shall commence by the one party giving the other notice of the dispute and requesting confirmation of a proposed mediator to be appointed, alternatively requesting the other party to propose a mediator for consideration.

21.3 Upon appointment of the mediator such mediator shall decide upon all aspects pertaining to the mediation process including costs, procedures, venues and any other aspect which the mediator regards appropriate to rule upon.

21.4 All discussions, disclosures, submissions and/or information made or provided during mediation shall be privileged unless the parties agree to the contrary, specifically to any particular aspect or generally, as the case may be. Such agreements shall be reached in discussion with the mediator and recorded by the mediator as being part of the mediation process.

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## 22. BREACH

22.1 The principle of control by the MLM, as the case may be, pertaining to the land, shall remain an integral part of this agreement and be adhered to, entitling the MLM, as the case may be, to withdraw the land and claim cancellation of this agreement, if after reasonable notice DEVELOPER has failed to remedy default.

22.2 Should any party to this agreement, including a sub-contractor and/or land developer in terms of clause 20, fail timeously or fully to perform any obligation arising from this agreement ('the defaulting party') the aggrieved party may call upon the defaulting party in writing to remedy such default within 14 (fourteen) days (if the breach is capable of being remedied). Should it not be possible to remedy the breach within the 14 (fourteen) day period, the defaulting party shall commence with the necessary steps to rectify the breach within 14 (fourteen) days and to complete the action within a reasonable period of time appropriate under the circumstances. Should the defaulting party fail to remedy such default within the stipulated notice period, then and in such event the aggrieved party shall be entitled to terminate this agreement in whole or in part, forthwith, by notice in writing. In this regard, the following shall apply:-

22.2.1 In the event of termination of this agreement by reason of the default on the part of the MLM, then DEVELOPER shall be entitled to recover from the MLM all expenditure necessarily incurred by the in pursuance of this agreement plus any loss or damage suffered as a result of such termination.

22.2.2 In the event of termination of this agreement as a result of the default of DEVELOPER, or any land developer or sub-contractor (if applicable), the MLM shall be entitled to recover from DEVELOPER any loss or damage suffered by the MLM.

## 23. DOMICILIA AND NOTICES

23.1 The MLM hereby selects as its address: -

### Postal Address:

Mr Thabiso Tsoaeli  
Municipal Manager  
PO Box 704  
Welkom 9460

### Physical Address:

Off Ryk and Stateway  
Welkom CBD  
Second Floor Municipal Building  
Welkom 9460

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23.2 DEVELOPER hereby selects as its;

37 Uiky Str  
Flamongo Park  
Welkom, 9460

23.3 The above addresses shall be the parties' *domicilia citandi et executandi* for all purposes of this Agreement, including the service of all notices and legal process in connection herewith.

23.4 Notice of change of address stated in 23.1 and 23.2 to another address may be given by any party in writing to the other party.

23.5 Every notice to be given by one party to the other in terms of this Agreement shall be in writing and shall be either: -

23.5.1 delivered by hand to the domicilium citandi et executandi of the other party, in which case it shall irrefutably be deemed to have been given and such other party shall be deemed to have been informed of the contents of the notice when the notice is so delivered; or

23.5.2 posted by prepaid registered post to such other party at the domicilium citandi et executandi of the party, in which case it shall irrefutably be deemed to have been given to the other party and such other party shall be deemed to have been informed of the contents of the notice on the fifth business day (excluding Saturdays and Sundays) after posting.

23.6 Notwithstanding anything to the contrary herein contained, a written notice as communication actually received by one of the parties from the other shall be an adequate written notice as communication to such party notwithstanding that it was not sent to or delivered at that party's chosen domicilium citandi et executandi.

## 24. DEVELOPER'S INFORMATION

Contact person(s): Lebusho Louis Moahlodi  
Cell Phone Number: 072 981 9432  
E-mail address: moahlodiglobal@gmail.com

## 25. MISCELLANEOUS

25.1 This Agreement correctly reflects the intention of the parties and constitutes the entire agreement between the parties. No variation of, addition to, consensual cancellation or novation of this Agreement and no waiver by any one party of any of its rights hereunder shall be of any force or effect unless reduced to writing and signed by the parties or their authorised agents.

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- 25.2 The parties undertake to do all things, sign all documents and take all steps as may be necessary, incidental or conducive to the implementation of the terms, conditions and import of this Agreement.
- 25.3 No latitude, extension of time or other indulgence which may be given or allowed by any one party to the other in respect of any payment provided for in this Agreement or the performance of any other obligation hereunder shall under any circumstances be considered to be an implied consent by any party or operate as a waiver or a novation of, or otherwise affect, any of such party's rights in terms of or arising from this Agreement, or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 25.4 As an alternative process and/or procedure, if available at the time when required and if the parties so agree, any other proceedings or body established in law or otherwise, for that purpose, may be utilised to resolve disputes.

## 26. WARRANTY OF AUTHORITY

- 26.1 The person signing this Agreement on behalf of the MLM expressly warrants his authority to do so.
- 26.2 The person signing this Agreement on behalf of DEVELOPER expressly warrants his authority to do so. The DEVELOPER will upon acceptance and signature of this Agreement, supply the authorization and resolution.

## 27. COSTS

Each party shall pay its own costs in respect of the drafting of this agreement and all consultations in regard thereto.

## 28. CANCELLATION

The first agreement is herewith cancelled and the parties will have no further claims against each other resulting from the first agreement or the cancellation thereof.

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THUS DONE AND SIGNED at WELKOM on this \_\_\_\_\_ day of  
\_\_\_\_\_ 2019 in the presence of the undersigned witnesses.

  
\_\_\_\_\_  
for and on behalf of  
MATJABENG LOCAL MUNICIPALITY

AS WITNESSES:


1.  \_\_\_\_\_

2.  \_\_\_\_\_

THUS DONE AND SIGNED at WELKOM on this \_\_\_\_\_ day of  
\_\_\_\_\_ 2019 in the presence of the undersigned witnesses.

  
\_\_\_\_\_  
for and on behalf of DEVELOPER

WITNESSES:

1.  \_\_\_\_\_

2.  \_\_\_\_\_

  
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- Facilitating all Development Finance, Private Equity, Infrastructure Financing, Corporate Financing transactions on behalf of clients, etc.
- SMME Development and Financing Facilitation
- Capacity Building Intervention Programmes
- Management and Business Consulting
- ICT Infrastructure Financing,
- Policy & Programmes Development, Research & Development Planning
- Local Economic & Tourism Development
- Project Management
- Civil Works, Sewer Network Upgrade, Water Reticulations, Civil Engineering Consulting and Related Works, Electrical Construction and Network Upgrades
- Building construction and Building Maintenance and other related works

**The company intends to make a difference in changing the lives of people of Kutloanong, Matjhabeng and to promote local economic development and ensure that previously disadvantaged participate in mainstream economy.** The company has made overall assessment of the progress made in terms of economic transformation, since 1994, the white capital monopoly is still dominating the South African economy and Africans are still poor and their mindset in doing business has not changed.

## **1.1 DEVELOPMENT OF SHOPPING COMPLEXES IN THE TOWNSHIP**

- The development of shopping centres in townships and rural areas in South Africa has increased significantly within the last 10 years. This trend has been met with mixed reactions. It has been argued that the benefits to consumers, such as easier access to a wide variety of goods at cheaper prices, come at the expense of existing local enterprises that cannot compete with the shops in the centre.
- It is also argued that such centres play an important role in kick-starting urban renewal and development, through attracting other services and facilities to the area.
- Research shows that the overall positive versus negative impact of a particular shopping centre is often less clear cut and will be affected by many factors related to its specific location and development process
- For the initial development of the centre and its future successful operation, it is necessary that the developer makes a profit and that investments made are recouped.
- However, the overall impact of a centre needs to be assessed in terms of how it affects people living and working in the area.
- **Criteria for assessing the success of a retail centre includes:**
  - Social imperatives: for example, a sense of community through providing a pleasant, safe, convenient place for people to shop and socialise

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- Economic priorities: for example, the development of local enterprises, not only those that are directly related to the centre
- Environmental considerations: for example, the use and sustainability of natural environmental resources.

## 1.2

### 1.2 APPLICATION FOR ERVEN 10283 AND 10284 THROUGH UNSOLICITED BID PROCESS

That the municipality hereby makes the property (land) mentioned above and made available to the Developer on the terms and conditions set out below.

Sections 14 read with section 90 of the Local Government: Municipal Finance Management Act No. 56 of 2003 ("the MFMA") prescribes that:

#### 14 Disposal of capital assets:

- (1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public-
  - (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
  - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- (3) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.
- (4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2) (a) and (b) in respect of movable capital assets below a value determined by the council.

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- (5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

**The Municipal Management Supply Chain Regulations (2005) stipulates as follows:**

**Unsolicited bids**

37. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
- (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

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- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.
- (8) If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the [municipality / municipal entity] select which is applicable to the bid may be entered into or signed within 30 days of the submission.

**Matjhabeng Local Municipality: Policy on Disposal of Immovable Assets is as follows;**

**7.1. Dispensing with the competitive bidding process (Unsolicited bids)**

- 7.1.1. In accordance with section 113 of the Municipal Finance Management Act, 2003 (Act 56 of 2003), there is no obligation to consider unsolicited bids received outside a normal bidding process in respect of immovable assets.
- 7.1.2. Council reserves the right to entertain unsolicited bids for the purchase of viable immovable property for development purposes, with the proviso that it abides by Council's strategic objectives and more specifically that it favours the promotion of black ownership, entrepreneurship and community upliftment.
- 7.1.3. Council may decide in terms of section 113 of the Municipal Finance Management Act, 2003 (Act 56 of 2003) to consider an unsolicited bid, only if –
  - a) the disposal is linked to a substantial beneficial development and / or improvement commitment that is demonstrably proven as a unique innovative concept by the person who made the bid (the bidder);
  - b) the disposal and linked development will be exceptionally beneficial to, or have exceptional benefit and income advantages for Council and

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Matjhabeng's economy in the form of an agreed value of capital outlay for the development and its related operations ;

- c) the application / proposal sets out details of the feasibility and viability of the project as well as clear financial plan with evidence that the finances are secured for the development;
- d) the allocation / procurement of other or alternative immovable property will render the bidder's proposal uneconomical, useless or impossible;
- e) going through the normal bidding process will deprive the bidder of his intellectual property right to his unique innovative proposal;
- f) the proposed purchase price is equal or higher than the marked related value as determined in accordance with Section 14(2)(b) of the MFMA; and
- g) the reasons for not going through the normal bidding processes are found to be sound by Council.

7.1.4. If the Municipal Manager decides to submit to Council an unsolicited bid that could qualify in terms of section 9.7.3 of this policy, outlines of the proposal must be made public in accordance with section 21A of the Municipal Systems Act, 2000 (Act 32 of 2000), together with –

- a) reasons as to why the bid should not be open to other competitors;
- b) an explanation of the potential benefits if the unsolicited bid were accepted; and
- c) an invitation to the public to submit their comments within 30 days of the notice.

7.1.5. The accounting officer must submit all written comments received pursuant to section 9.7.4 including any responses from the unsolicited bidder, to National and Provincial Treasury for comment.

7.1.6. A meeting of Council to consider an unsolicited bid must be open to the public and when considering the matter, Council must take into account –

- a) any comments submitted by the public; and
- b) any written comments and recommendations of the National and Provincial Treasury.

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c) the documentation submitted in terms of Section 6.1(i)(v)

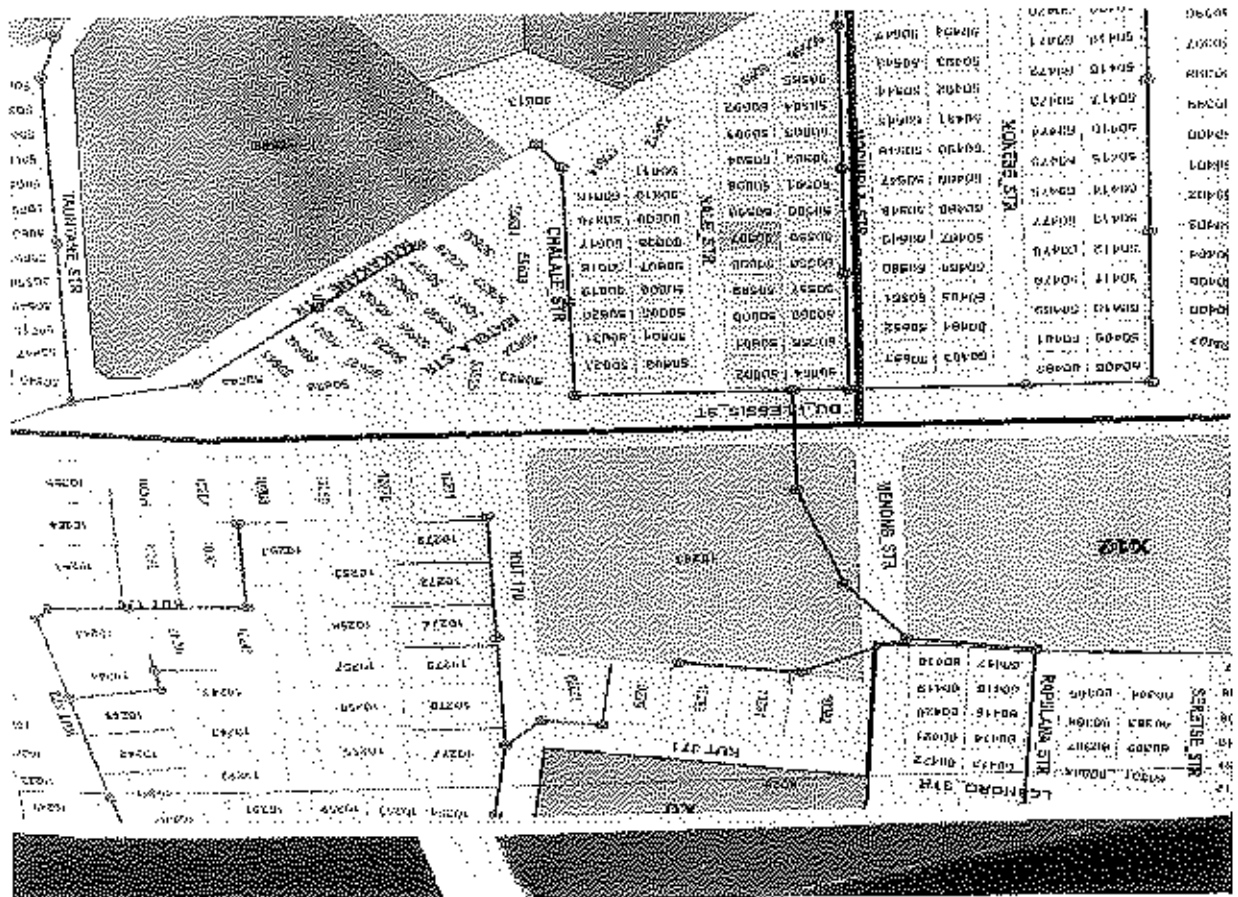
## **2. PROPOSAL AND APPLICATION FOR LAND ACQUISITION OR PURCHASES OF STAND 10284 AND 10283 FOR BUSINESS PURPOSES THROUGH UNSOLICITED BID PROCESS**

- Premier of Free State Province said when he delivered his last State of the Province Address (SOPA), more efforts will be put in the endeavours to support township and rural economies because they were at the centre of economic initiatives in the province. He said financial assistance will be provided to invest in infrastructure to modernise and provide facelift to the townships. He said they will continue to partner with private sector to ensure black entrants into the market to get greater state procurement opportunities, **"We will therefore increase the allocation towards programme of youth entrepreneurs, rural enterprises, township economies as practical testament to radical economic transformation agenda, in furtherance of our goal to leverage on resources by different stakeholders in the agenda of skill revolution and economic empowerment"**.
- We have identified the vacant lands or two business sites in Kutloanong township, Odendaalsrus (Matjhabeng Local Municipality) which are zoned for business purposes. **Our intention is to apply to the Matjhabeng Local Municipality to purchase both business sites with the intention to establishment Kutloanong Shopping Centre at Stand 10284 and Stand 10283 for Lifestyle Centre, SMME Business Hives Park & Taxi Rank.**
- The establishment of Kutloanong Shopping Centre and Lifestyle Centre, SMME Business Hives Park & Taxi Rank on business Stands 10284 and 10283 respectively will assist the municipality in reviving the township economy, promotion of local economic development, SMME Development, youth, women entrepreneurship development, skill development, employment creation.
- Through and during the construction of both Kutloanong Shopping Centre and Lifestyle Centre, SMME Business Hives Park & Taxi Rank, we believe that short and medium term employment will be created and long term jobs will be created by tenants such as shops because we are targeting anchor tenants who have national foot prints and also intend to promote and give sustainable local business opportunities to be our tenants.

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- It is our believe that this business initiatives will promote the spirit of black economic empowerment, radical economic transformation and also part of access to land expropriation, be able to exposed to the businesses which were traditionally owned by white community.
- Stand 10284 and 10283 are centrally and strategically situated along the busy main road of Du Plessis Road, Motsie and Monong Streets both connect to Du Plessis Road and its between Block 4 and Block 7.



(Site Plan: 10284 & 10283)

### 3. PROPOSAL FOR ESTABLISHMENT OF KUTLOANONG SHOPPING CENTRE ON STAND 10284

- We are proposing to develop and construct Kutloanong Shopping Centre (KSC-Centre) or Mall on Stand 10284.
- Kutloanong township, Odendaalsrus between Block 4 & 7.

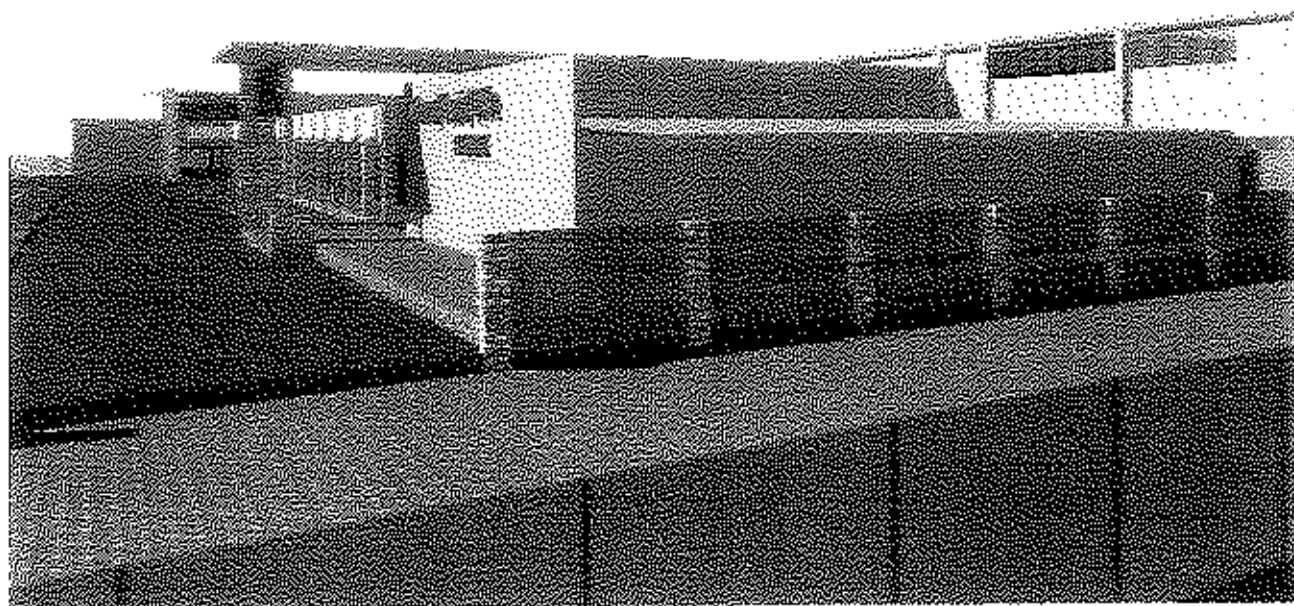
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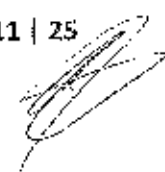
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- KSC-Centre will be the first neighbourhood mega retail centre in Kutloanong and it will be situated along busy main road of Du Plessis which connects Motsie and Menong Roads from Block 4 to Block 7.
- Du Plessis road also connect Odendaalsrus and Allanridge towns from the western part and Riebeeckstad suburb, Thabong and Welkom central business district (CBD) from the southern part.
- The community of Kutloanong travel approximately 28 kilometres to and fro both Odendaalsrus and Welkom central business district areas on daily basis for basic services and work purposes.
- Establishment of the Kutloanong Shopping Centre will bring an investment of + R250 million through construction
- Promotion and involvement of small, medium and micro enterprise during construction phase such as emerging builders, carpenters, electriciation, plumbers, tilers, etc, will be given an opportunity and be sub contracted.
- **The establishment of the Shopping Mall will be of great assistance to the community of Kutloanong because the mall will have the following positive economic impact and will change their lives and some of basic service will be closer to them and will experience the following:**
  - (i) KSC –Centre will create short and medium employment during the construction phase and on completion new permanent jobs will be created.
  - (ii) It is estimated that at least + 700 jobs will be created during construction and + 1 000 permanent jobs will be created after completion.
  - (iii) Long distance travelling and spending more hours between Odendaalsrus and Welkom CBDs will have positive psychological impact in the minds of Kutloanong residents, especially the elderly.
  - (iv) Bringing basic services closer to the people Pharmacy, Banks, Major Convenient, Retail Clothing Stores, Medical Centre, decent Food Restaurant, Building Material store, etc.
  - (v) KSC-Centre will primarily functions as a convenience retailing and commercial centre providing basic services.

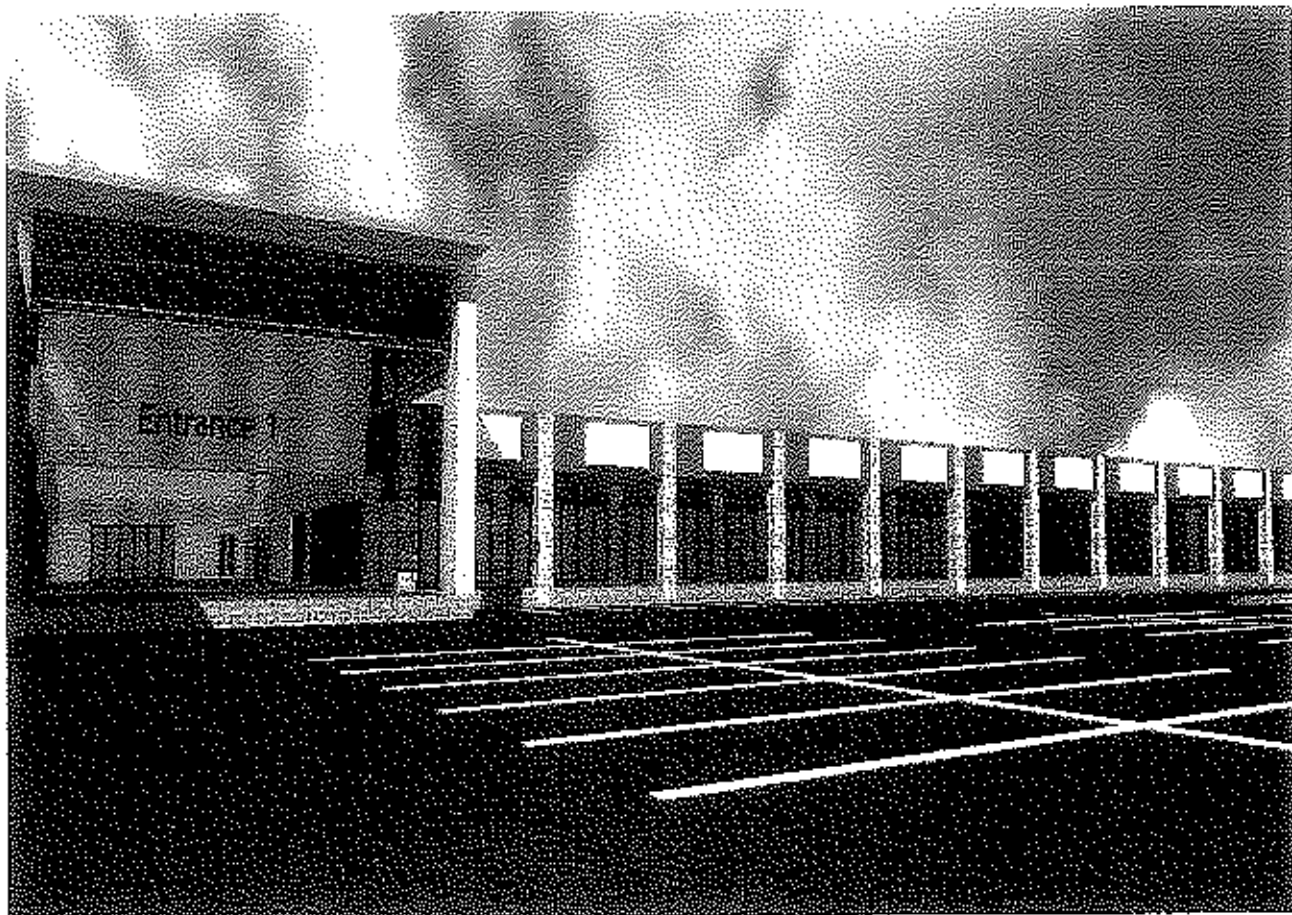
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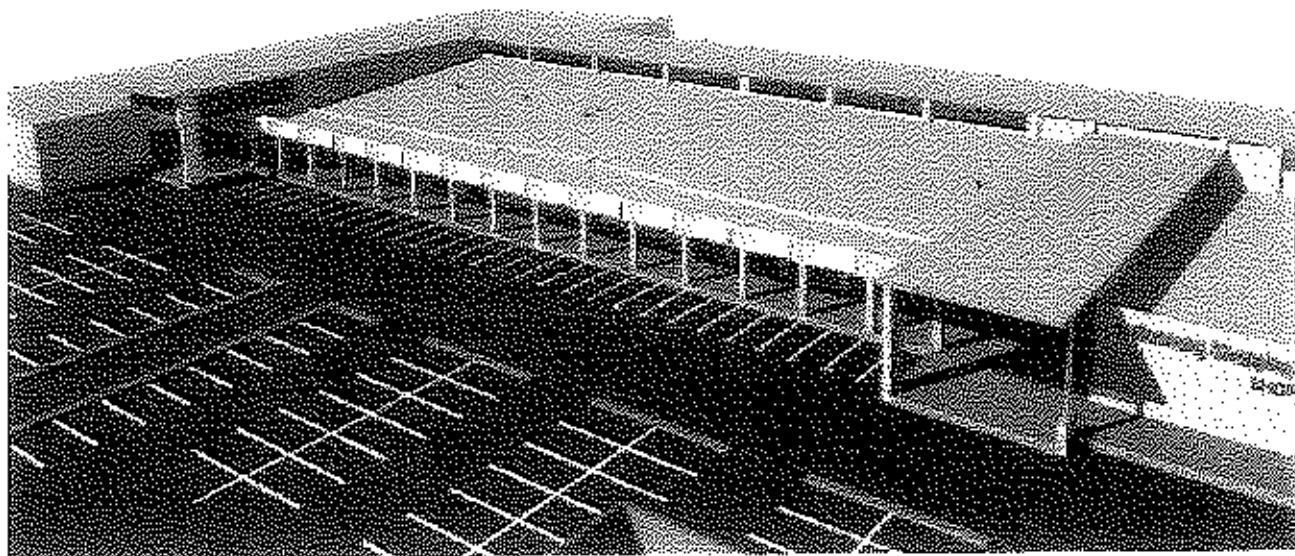


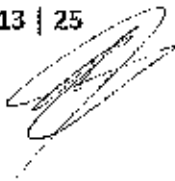


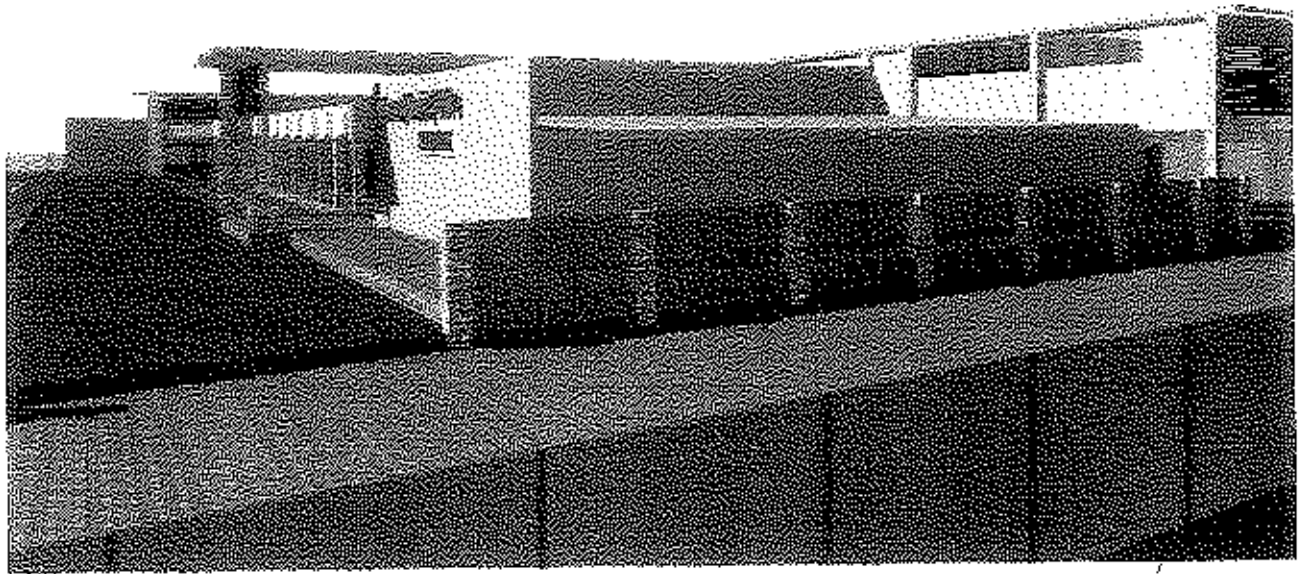
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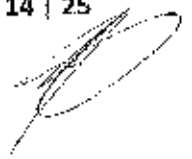
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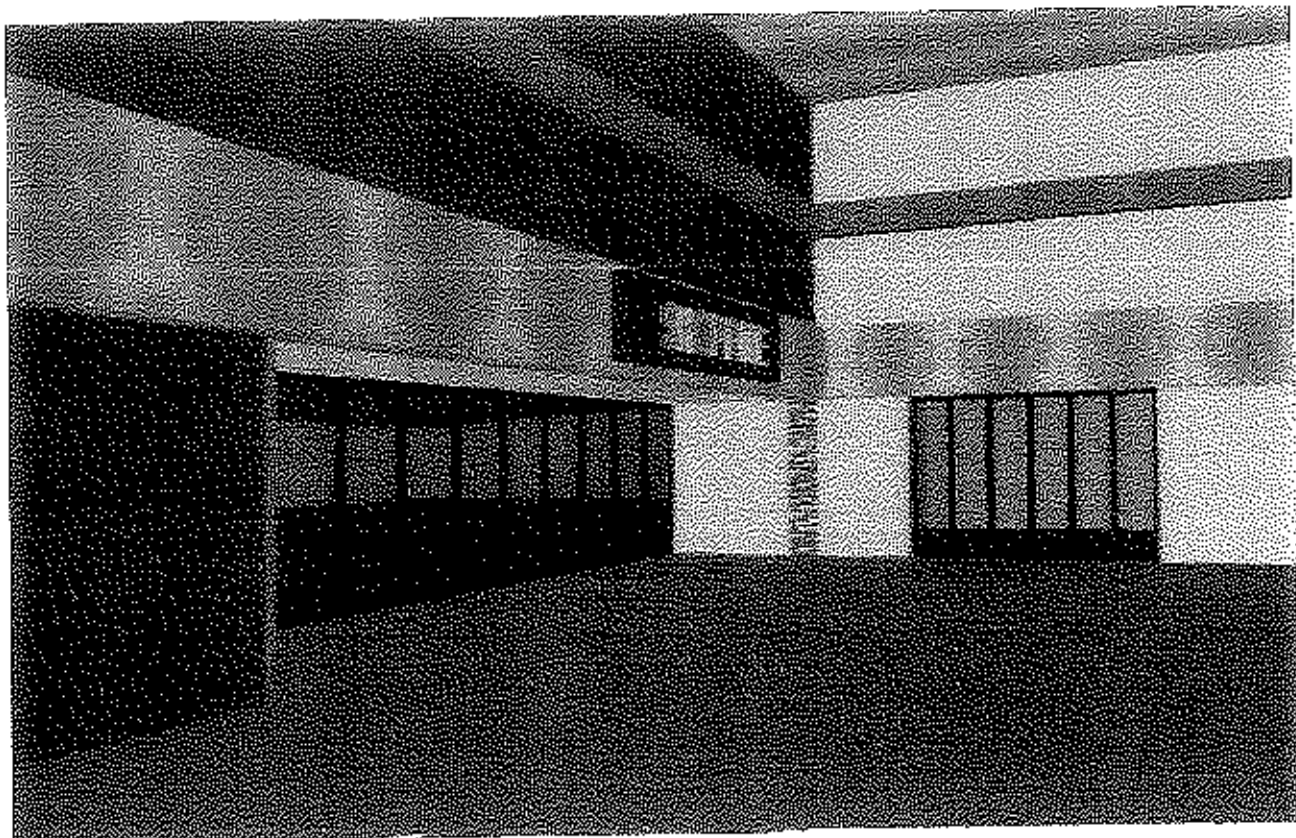
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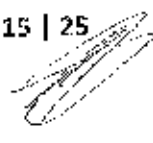


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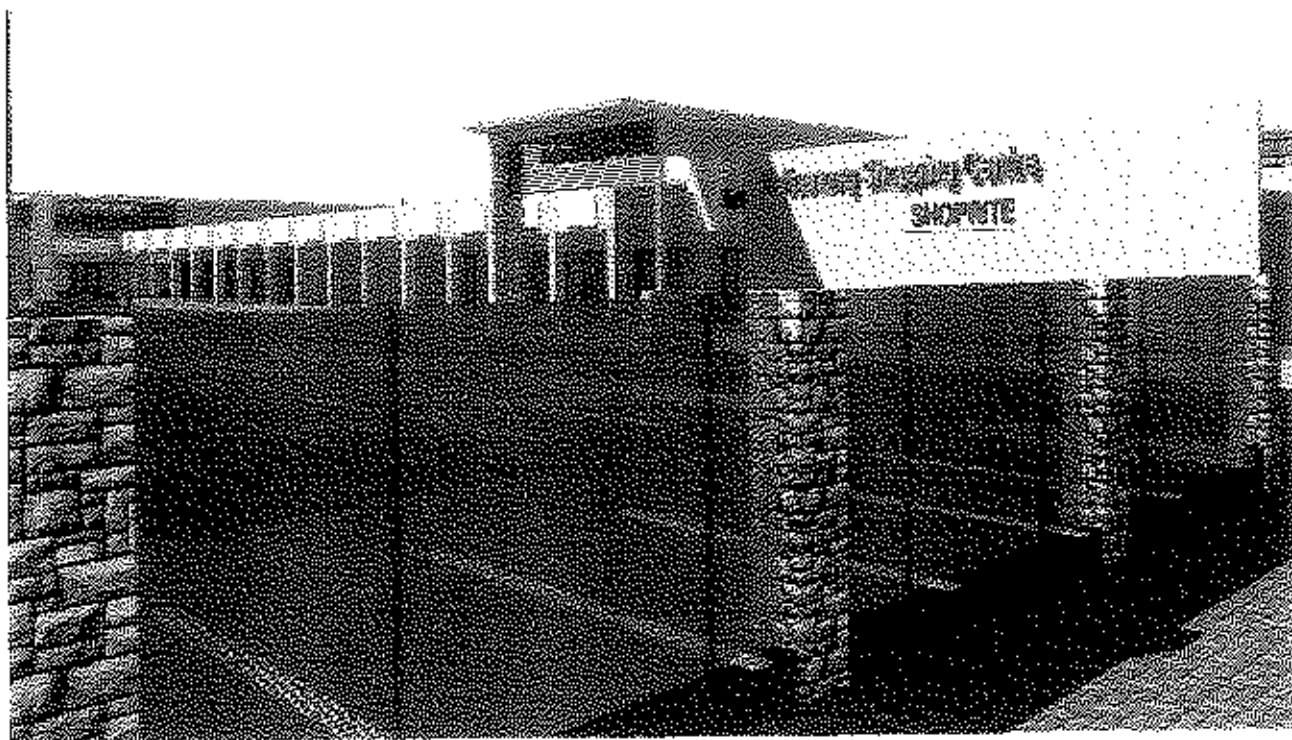


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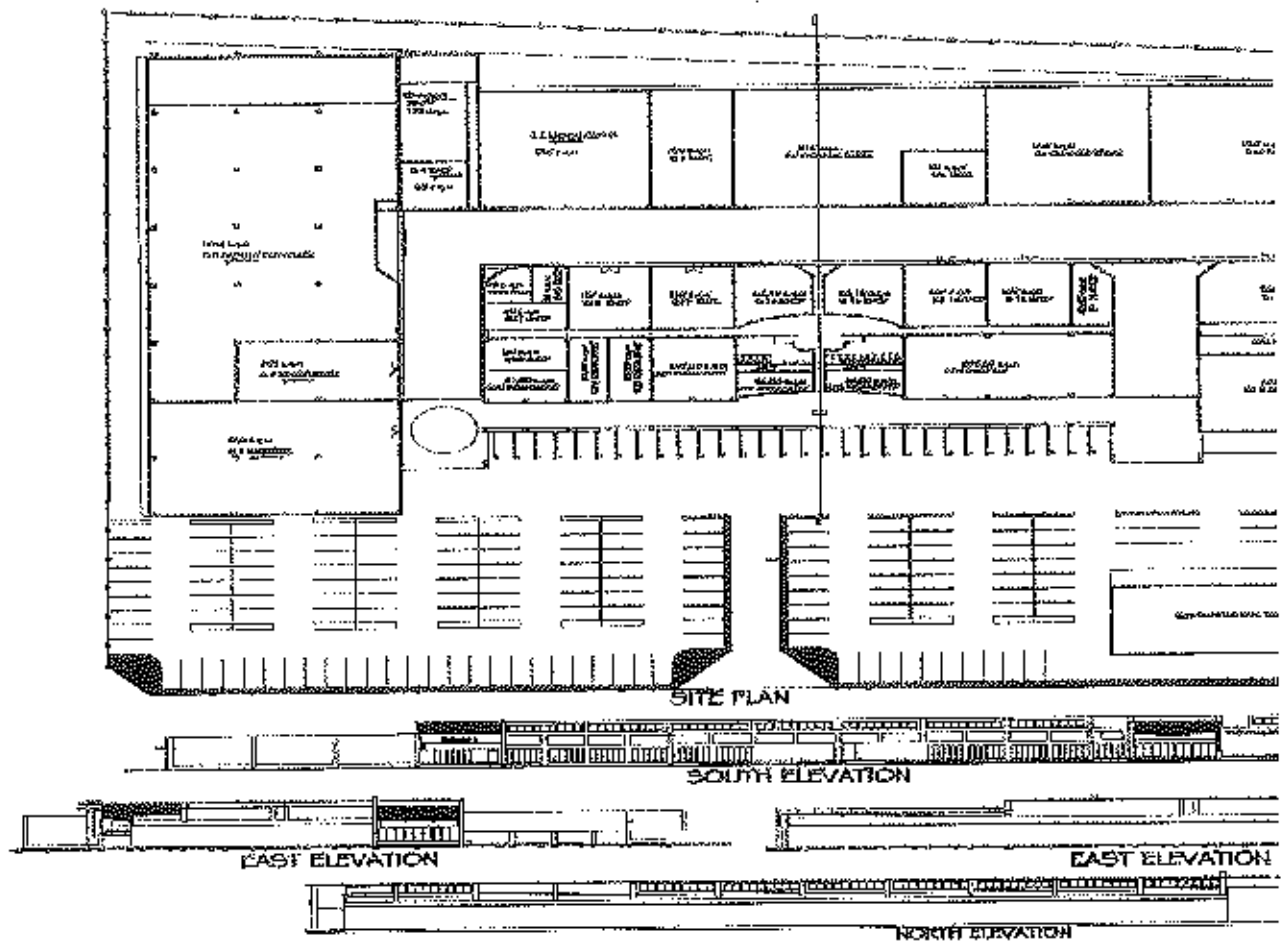
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#### 4. OUR PROPOSED TENANT MIX FOR KUTLOANONG SHOPPING MALL

Our proposed tenant mix and targeting the following anchor tenants is as follows:

- Shoprite
- Banks (Capitec, FNB, ABSA and Nedbank)
- Pep Store
- JetMart Store
- Ackermans Store
- Mr Price
- Or any of Edcon Group store/Foschini Group Store/Truworths
- Roots Butchery
- Pharmacy
- Medical Centre (General Practitioner, Dentist & Optometrist)
- Food Court (Restaurants)
- Postnet/Stationery/Internet Shop

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- Cellphone Shop
- Post Office
- Cashbuild Building Material
- Liquor Store
- Hair Saloon
- Kentucky Fried Chicken (KFC) has been allocated a separate space for Drive-Thru Outlet

**NB:** (i) Ample car parking space will be have been provided.

- (ii) Main entrance will be along Du Plessis Road with separate Entrance and Exit and will monitored by electronic cameras and security personnel and there will be another one Entrance/Exit along Menong Street to cater for pedestrians coming from Taxi Rank or surround or nearby areas and they might either use Mall Entrance 2 or 3.

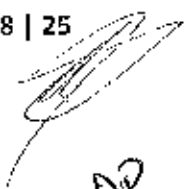
## 5. KUTLOANONG LIFESTYLE BUSINESS PARK & TAXI RANK

- We are hereby applying and intending to purchase STAND 10283 and develop a Lifestyle Centre, Petrol Filling Station, Business Hives and Taxi Rank.
- Lifestyle Business Centre will house business such as:

- (i) Motor Spares,
- (ii) Mini Wholesalers,
- (iii) Furniture Shop,
- (iv) Household Store,
- (v) Take Away Café

- Taxi Rank will be constructed on Stand 10283 and we believe that it will be strategically and centrally located and it will be adjacent to Lifestyle centre and opposite to the Kutloanong Shopping Centre and the rank will have entrance from Du Plessis Road and Exit on Menong Road.
- The Taxi Rank will complement the current main Taxi Rank which is western entrance of Kutloanong.

- Small Business Hives for Hawkers

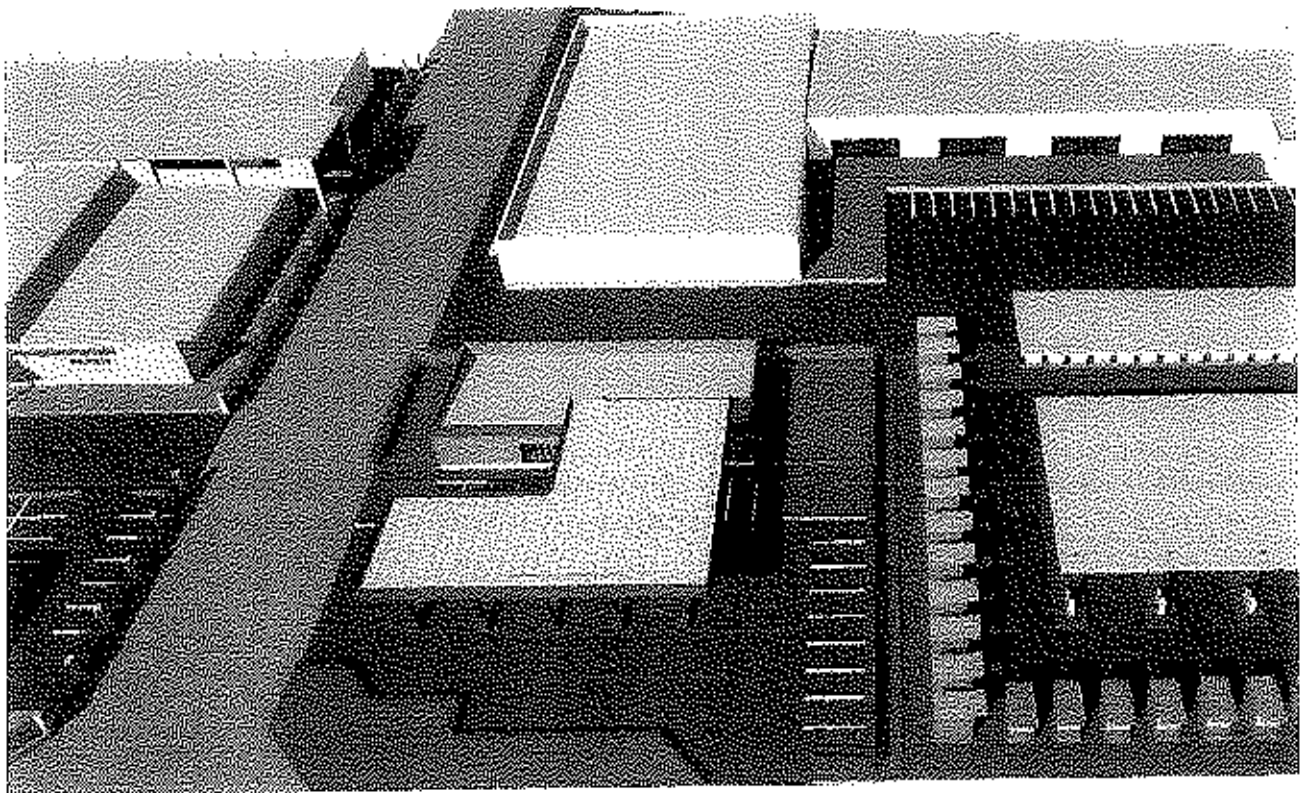
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- (i) Hawkers business hives will be manufactured and installed around or to cover the Taxi Rank
- (ii) The intention is to promote small medium and micro enterprises (SMMEs)
- (iii) Hawkers business hives will be standard size to accommodate, SMMEs selling food, fruit and vegetables, whilst the medium to large sizes will sell clothing range, barker shop, gifts, perfumes, traditional, arts and crafts, and/or variety of goods and services.

• **Petrol Filling Station**

- (i) The Petrol Filling Station will be constructed and situated at the corner of Du Plessis and Menong Roads on stand 10283 and this will be of great assistance to the community and motorist of Kutloanong. For years the township has been serviced by one petrol garage. If the filling station its experiencing technical problems or run out of fuel, motorists have to drive to Riebeeckstad or Odendaalsrus CBD.



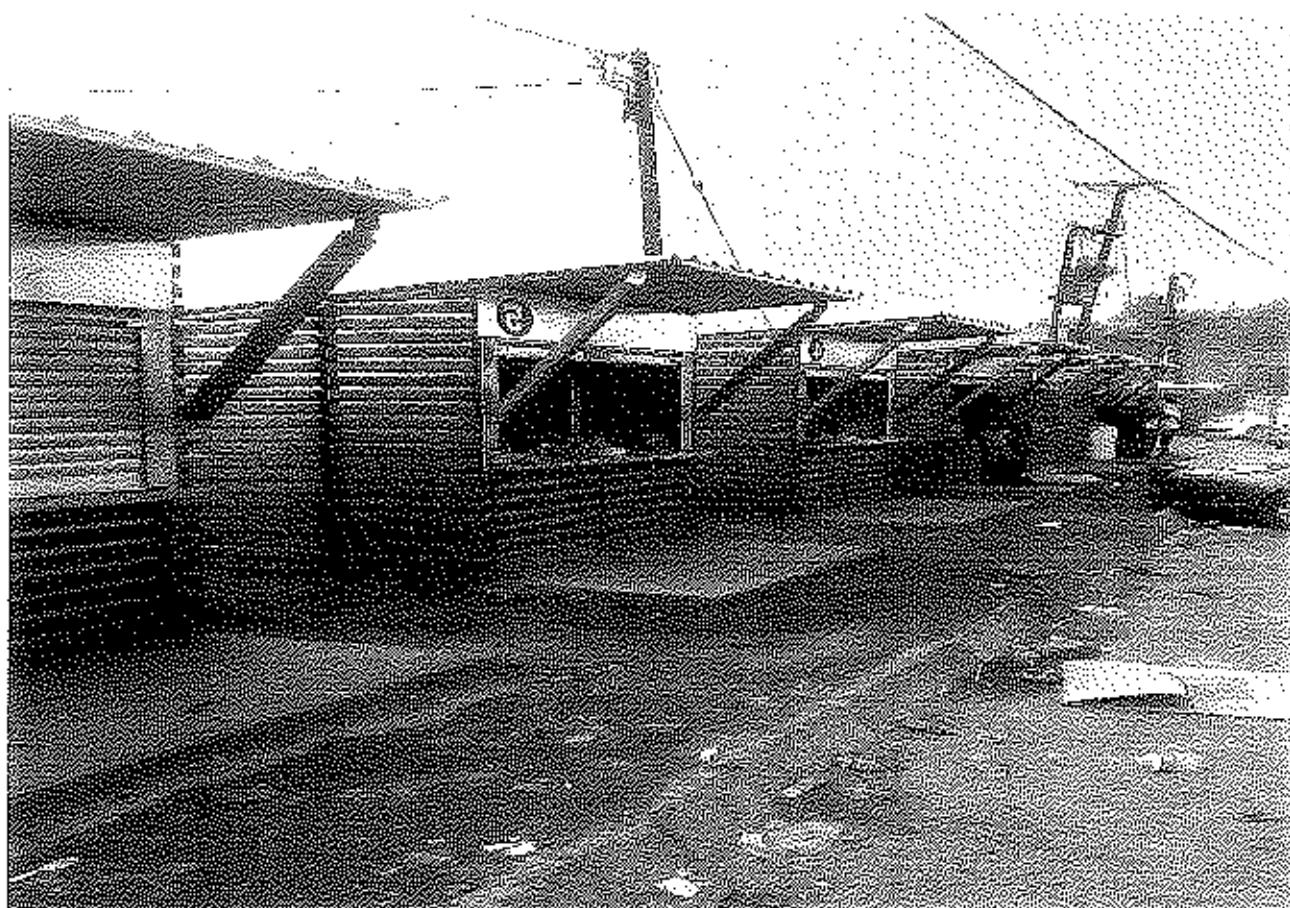
**TAXI RANK WILL BE SURROUNDED BY SMALL BUSINESS HIVES FOR HAWKERS**






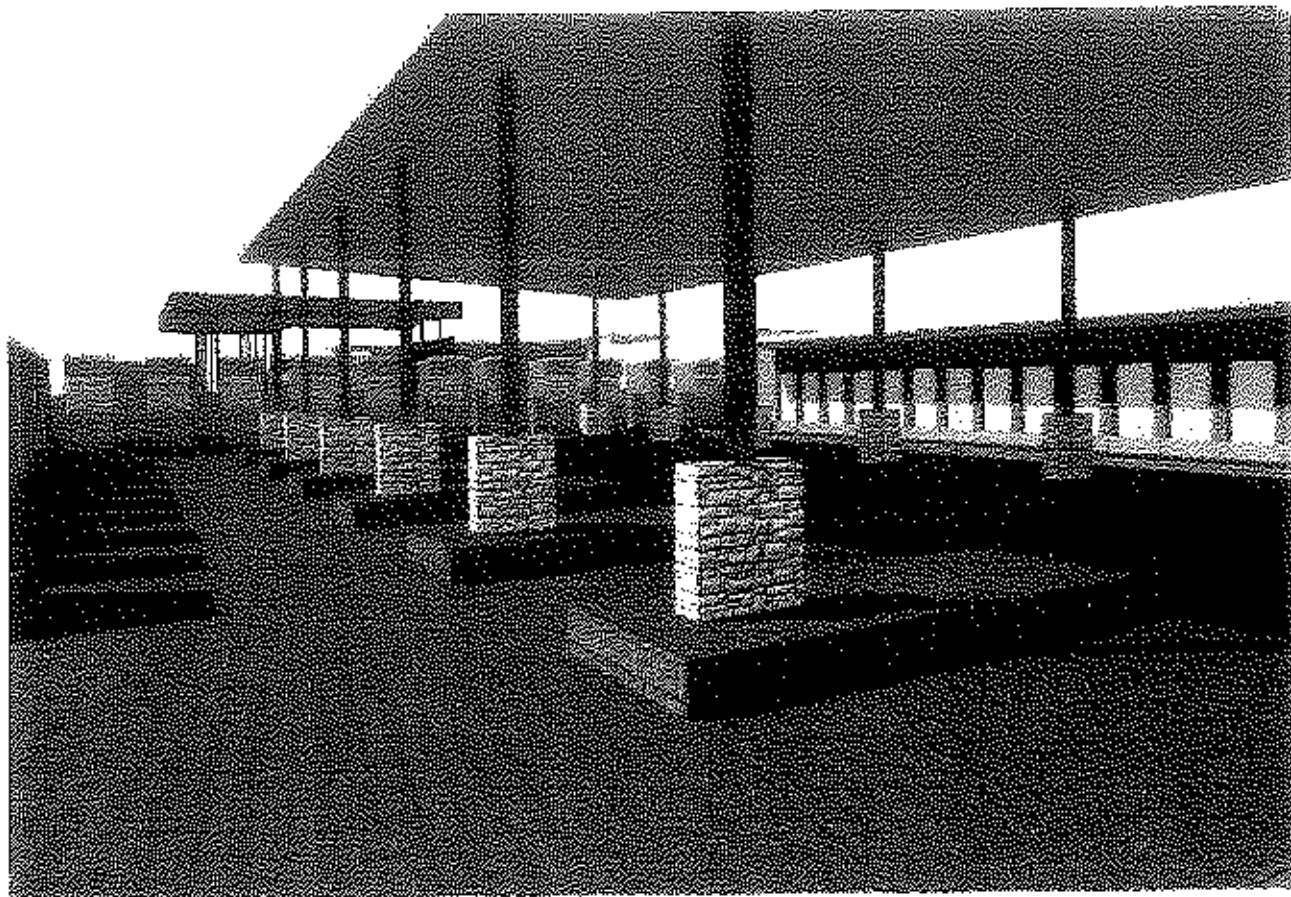
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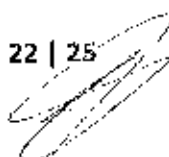


TAXI RANK

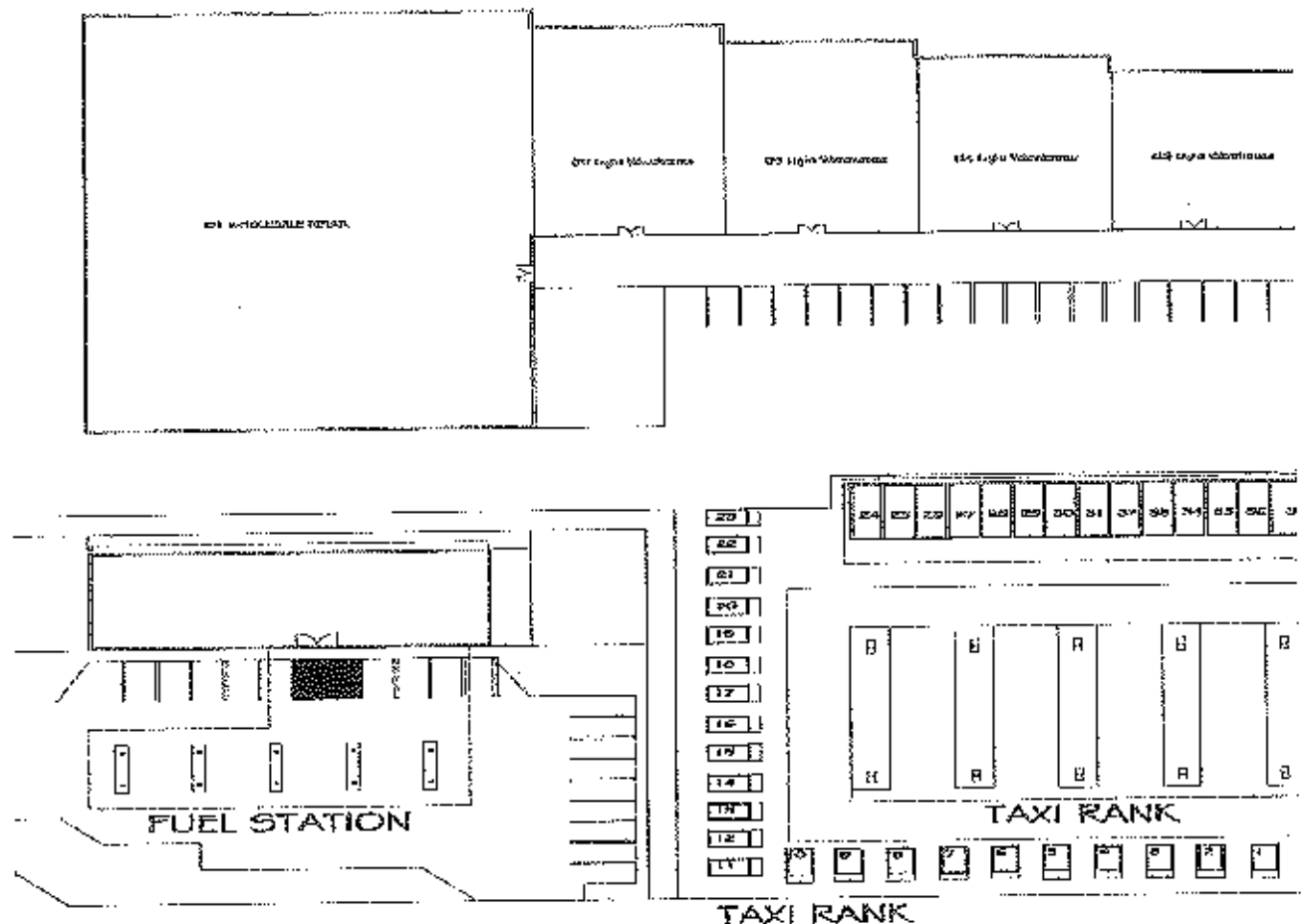
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## LAYOUT PLAN FOR LIFESTYLE BUSINESS PARK AND TAXI RANK

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## 5. OUR REQUEST TO MATJHABENG LOCAL MUNICIPALITY (MLM)

- We hereby wish to forward our application to purchase the municipal land , that is Sites 10284 and 10283 at applicable municipal rates (applicable to township development/ and as township revival economic programme) for the development and construction of Kutloanong Shopping Centre/Mall and Lifestyle Centre, Hawkers Business Hives, Taxi Rank and Petrol Filling Station.

### • LAND TO BE DEVELOPED

STAND NUMBER	SIZE OF THE LAND	CURRENT MUNICIPAL VALUATION AS AT 2015-2019	OWNERSHIP

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10284	1,7953 Hectares	R360 000-00	Matjhabeng LM
10283	1,4462 Hectares	R120 000-00	Matjhabeng LM

**NB:** Note to be taken that Stand 10285 has be sold to Mr Makwela by MLM and a shack has been erected and he is operating a grocery shop.

- Once MLM has confirm their intension to sell the land to us and a land availability agreement has been signed, processes such as Environmental Impact Assessment (EIA) and Geo-Technical Studies will be done, where possible with assistance of other municipal infrastructure and affected business units, in case there is no capacity we will commission our own professionals.
- It should be noted that this is not the complete proposal or business plan, it's a high level presentation for the purpose of Application of the Land.
- Should the municipality have business incentives, we therefore request and apply in advance, that when decision is taken regarding the disposal of this land to us, incentives should be taken into account when calculating the final purchase price.
- We are humbly requesting that the municipality should treat this matter urgently, in order to allow us to finalize other processes with anchor tenants and our funders.

