

SALE OF BUSINESS AGREEMENT

between

FAIRY WING TRADING 122 (PROPRIETARY) LIMITED

(Registration No: 2010/009197/07)

("the seller")

and

(Registration No: _____)

("the purchaser")

1. Definitions and interpretation

1.1. In this agreement, unless inconsistent with or otherwise indicated by the context:

1.1.1. "the/this agreement" means the agreement as contained herein together with all annexures thereto;

1.1.2. "the business" means the business of a petrol service station, Wimpy restaurant and Quickshop and all ancillary businesses conducted by the seller at the premises under the name and style of "Sabie One Stop", which business comprises:

1.1.2.1. the business assets;

1.1.2.2. the petrol, diesel and oil stock;

1.1.2.3. the Wimpy stock;

1.1.2.4. the shop stock;

1.1.2.5. the cash floats;

1.1.2.6. the customers' deposits;

1.1.2.7. the goodwill;

1.1.3. "the business assets" means all the assets of the business listed in annexure "1" hereto;

1.1.4. "the cash floats" means the cash floats of the business as at the effective date;

1.1.5. "the contracts" means the contracts of the business listed in annexure "2" hereto;

1.1.6. "the customers' deposits" means all deposits and/or pre-paid accounts held by the seller as at the effective date on behalf of customers of the business;

- 1.1.7. "the debtors" means all debtors of the business as at the effective date;
- 1.1.8. "the effective date" means the date of transfer of ownership of the premises to Ozotone Investments (Pty) Ltd pursuant to the agreement referred to in 3.1.1 below;;
- 1.1.9. "the goodwill" means the whole of the goodwill of the seller in the business, including its trade connections, trade secrets, confidential information, records, names and addresses of customers and suppliers and trading names;
- 1.1.10. "the petrol, diesel and oil stock" means the stock in trade of petrol, diesel and oil at the premises as at the effective date;
- 1.1.11. "the premises" means the premises of the business being Portion 33 of the Farm Grootfontein Mo. 196, Registration Division J.T. Mpumalanga (in extent 2 027 square metres) and Remainder of Portion 67 of the Farm Grootfontein Mo. 196, Registration Division J.T. Mpumalanga (in extent 254 square metres);
- 1.1.12. "the shop stock" means the stock in trade and packaging of the Quickshop situated at the premises as at the effective date;
- 1.1.13. "the signature date" means the date upon which this agreement is signed by the party signing last in time;
- 1.1.14. "the Wimpy stock" means the stock in trade and packaging of the Wimpy restaurant situated at the premises as at the effective date;
- 1.1.15. "Engen" means Engen Petroleum Limited;
- 1.1.16. "the suspensive conditions" means the suspensive conditions recorded in 3.1 below.
- 1.1.17. any reference to the singular includes the plural and vice versa;
- 1.1.18. any reference to natural persons includes legal persons and vice versa;
- 1.1.19. any reference to a gender includes the other gender.

- 1.2. Where appropriate, meanings ascribed to defined words and expressions in this agreement shall impose substantive obligations on the parties.
- 1.3. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.4. This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

2. Introduction

- 2.1. The seller is the owner of the business and the seller wishes to sell, and the purchaser wishes to purchase, the business as a going concern with effect from the effective date, upon the terms and conditions of this agreement.
- 2.2. It is recorded that the owner of the premises is selling the premises through the agency of Aucor Corporate (Pty) Ltd T/A Aucor Properties ("Aucor"). It is a condition of the sale agreement referred to in 3.1.1 below that the purchaser of the premises has agreed to purchase the business in terms of this agreement (as an indivisible transaction).

3. Suspensive conditions

- 3.1. The sale recorded in this agreement is subject to and conditional upon the fulfilment of the following suspensive conditions:
 - 3.1.1. Engen approving the sale of the business within 60 days of the signature date;
 - 3.1.2. Famous Brands Limited approving the sale of the business to the purchaser within 60 days of the signature date;
 - 3.1.3. Ozotone Investments (Pty) Ltd concluding an agreement with the purchaser simultaneously with this agreement to purchase the premises and such agreement becoming unconditional. It is specifically recorded that Engen has a pre-emptive right to purchase the aforesaid property and in the event of Engen exercising its pre-emptive right, this agreement shall lapse and have no further force or effect;

3.1.4. the purchaser being granted a Retail Licence to operate the business in terms of the Petroleum Products Act, within 80 days of the signature date.

3.2. The parties undertake:

3.2.1. to use their respective best endeavours to procure the fulfilment of the suspensive conditions;

3.2.2. not to deliberately frustrate the fulfilment of any of the suspensive conditions.

3.3. Should any of the suspensive conditions not be fulfilled or waived by the purchaser prior to the period allowed therefore in 3.1 above, either the seller or the purchaser may in writing elect to extend any of the periods allowed in 3.1 above by 2 months. Should any of the suspensive conditions not be fulfilled or waived by the purchaser prior to the periods allowed therefore in 3.1 above or any extension of the period as aforesaid:

3.3.1. this agreement; and

3.3.2. the agreement referred to in 3.1.3 above,

shall lapse and have no further force or effect.

3.4. Neither of the parties shall have any claim against the other should this agreement lapse by reason of the non-fulfilment of any of the suspensive conditions save to the extent that a party may have breached any of the provisions of 3.2 above.

4. Sale

4.1. Subject to the fulfilment of the suspensive conditions, the seller sells to the purchaser, which purchases, the business as a going concern, which sale:

4.1.1. shall take effect on and be with effect from the effective date;

4.1.2. shall encompass the acquisition by the purchaser of the business and the cession and assignment of the contracts.

- 4.2. The purchaser will not assume any liabilities of the seller or the business as at the effective date and the seller shall continue to be responsible for all such liabilities of the seller and the business which arose prior to the effective date, and the seller undertakes to pay all such liabilities on due date.
- 4.3. Insofar as may be necessary, the seller and the purchaser undertake to use their best endeavours to procure that any other party ("third party") to the contracts shall consent, with effect from the effective date, to the assignment by the seller to the purchaser of all rights and obligations under such contracts.
- 4.4. To the extent that the seller and the purchaser:
- 4.4.1. obtain the consent of any third party as contemplated in 4.3 above, the seller shall be deemed to have assigned to the purchaser, who shall be deemed to have accepted, the assignment of all the seller's rights and obligations in terms of the contracts with effect from the effective date;
- 4.4.2. are unable to obtain the consent of any third party for the purpose contemplated in 4.3 above, then the seller and the purchaser agree that, with effect from the effective date, they will procure, as between themselves, that the rights and obligations under any such contract shall be for the benefit and account of the purchaser.
- 4.5. The seller indemnifies the purchaser against all claims which may be made against the purchaser arising out of or in connection with the contracts, the cause of action in respect of which claims arose before the effective date.

5. Purchase price

- 5.1. The purchase price payable by the purchaser to the seller for the business excluding the assets referred to in 5.3 below shall be the sum of R3 268 515 (three million two hundred and sixty eight thousand five hundred and fifteen rand) excluding VAT (subject to 9 below).
- 5.2. The purchase price referred to in 5.1 above shall be allocated as follows:

5.2.1. as to the business assets, an amount equal to their book value on the effective date;

5.2.2. as to the goodwill, the balance of the purchase price.

5.3. The purchase price payable for:

5.3.1. the petrol, diesel and oil stock;

5.3.2. the shop stock;

5.3.3. the Wimpy stock;

5.3.4. the cash floats,

shall be the amount determined in terms of 6 below excluding VAT (subject to 9 below).

6. Stocktaking

6.1. Commencing on the day prior to the effective date, and continuing until completion thereof, representatives of the seller and the purchaser shall conduct a physical count and jointly prepare detailed stock sheets of:

6.1.1. the petrol, diesel and oil stock;

6.1.2. the shop stock;

6.1.3. the Wimpy stock; and

6.1.4. the cash floats,

as at the effective date.

6.2. In conducting the physical count of the stock as aforesaid and determining the value of the stock:

- 6.2.1. the representatives of the parties shall distinguish between current stock, obsolete stock and items of stock which are damaged or defective;
 - 6.2.2. the petrol, diesel and oil stock shall be valued at the cost thereof;
 - 6.2.3. the shop stock and the Wimpy stock shall be valued at the lower of cost or net realisable value;
 - 6.2.4. the cash floats shall be valued at their face value.
- 6.3. If the seller and the purchaser are unable to agree any matters requiring agreement pursuant to this clause 6, the dispute shall be submitted for determination to an independent third party agreed to by the parties (or failing agreement, nominated by Engen), who shall:
- 6.3.1. act as an expert and not as an arbitrator;
 - 6.3.2. hear the matter informally at the premises;
 - 6.3.3. give a ruling immediately;
 - 6.3.4. not be bound by any rules or procedure or evidence,
- and whose decision shall be final and binding on the parties.

7. Payment

- 7.1. The purchase price referred to in 5.1 above plus VAT shall be paid by the purchaser to the seller as follows:
 - 7.1.1. A deposit equal to 5% (FIVE PERCENT) of the purchase price in 5.1 above to be paid to Aucor by the purchaser immediately on the purchaser's signature of this agreement, which amount the purchaser hereby authorises and instructs Aucor to pay over to the seller's attorneys before or against registration of transfer of the premises into the purchaser's name in terms of the agreement referred to in 3.1.1 above.

- 7.1.2. The purchaser's signature hereto shall constitute the purchaser's irrevocable written consent to authorise Aucor or the seller's attorney to invest all amounts paid on account of the purchase price in interest bearing accounts with a bank of their choice. The interest shall accrue to the purchaser until the effective date.
- 7.1.3. The balance of the purchase price in 5.1 above shall be paid in cash and secured, to the satisfaction of the seller's Attorneys, by a written guarantee/s in a form and on terms acceptable to the seller or its attorneys issued by a registered South African bank, payable free of exchange, against registration of transfer of the premises into the purchaser's name in terms of the agreement referred to in 3.1.1 above. The purchaser may elect to secure the balance of the purchase price by payment in cash to the seller's Attorneys, who shall hold same in trust, pending registration of transfer of the premises into the name of the purchaser. The aforesaid guarantee/s shall be presented and/or cash shall be payable by the purchaser to the seller's Attorneys within 30 (thirty) business days from receipt of a written request to that effect from the seller's attorneys.
- 7.1.4. Any amounts payable by the purchaser in terms of this Agreement, and unpaid on the date same is due, shall bear interest at the rate of 2% (two per centum) above the prime rate, per month, calculated from the due date of payment to the actual date of payment thereof, (both days inclusive).
- 7.2. The purchase price in respect of the petrol, diesel and oil stock plus VAT shall be paid by the purchaser to the seller on the effective date.
- 7.3. The purchase price in respect of the shop stock and the Wimpy stock shall be paid by the purchaser to the seller on the effective date.
- 7.4. The purchase price in respect of the cash floats shall be paid by the purchaser to the seller on the effective date.
- 7.5. The seller shall pay the customers' deposits to the purchaser on the effective date and the purchaser undertakes to comply with the seller's obligations in respect of the customers' deposits.

8. Notice in terms of the Insolvency Act

- 8.1. It is recorded that the parties have agreed to dispense with the publication of the notices referred to in Section 34 (1) of the Insolvency Act, No 24 of 1936, as amended.
- 8.2. The seller indemnifies the purchaser and holds the purchaser harmless against any losses and expenses arising from such non-publication.

9. Value added tax

- 9.1. The purchase prices in 5.1 and 5.3 above exclude VAT. However, if as at the effective date both the parties are registered vendors for the purposes of the Value Added Tax Act, No 89 of 1991, as amended ("the Act"), the purchase prices in 5.1 and 5.3 above shall be inclusive of VAT at the zero rate.
- 9.2. The parties agree that as at the effective date:
 - 9.2.1. the business will constitute an enterprise, as defined in the Act, which is capable of separate operation;
 - 9.2.2. and the signature date the business will constitute an income earning activity and a going concern;
 - 9.2.3. all assets which are necessary for the carrying on of the business are being disposed of by the sellers.
- 9.3. If as at the effective date both the parties are registered vendors for the purposes of the Value Added Tax Act, No 89 of 1991, as amended ("the Act"), the sale of the business in terms of this agreement is accordingly zero rated in terms of section 11(1)(e) of the Act read together with VAT Practice Note 14. In such event, the parties specifically agree that the purchase price is inclusive of value added tax at the rate of zero per cent.
- 9.4. Notwithstanding any provisions to the contrary, should the Commissioner for the South African Revenue Services rule that value added tax is payable in respect of the sale of the business or any of the assets at a rate exceeding 0% (zero percent), the purchaser

shall pay such value added tax to the seller when the seller is required to make payment thereof, against delivery of a tax invoice to the purchaser.

10. Delivery, possession, risk and ownership

10.1. On the effective date the seller shall:

10.1.1. deliver to and place the purchaser in possession of the business at the premises;

10.1.2. deliver to the purchaser all such documents and records required to enable the purchaser to effectively carry on the business, including without limitation, all documents in respect of the contracts, employment records, customer arrangements, suppliers, stock records, the customer deposits, and accounting records of the business, together with all such documentation as is in the possession of the seller evidencing ownership by the seller of the business assets. To the extent that the seller requires access to the documents referred to in this clause for any purchase, the purchaser shall permit the seller or its representatives access to the documents referred to in this clause.

10.2. The seller undertakes to sign such documents and do all such things as may be necessary or desirable:

10.2.1. to enable the assets of the business capable of registration to be registered in the name of the purchaser;

10.2.2. generally to facilitate the implementation of this agreement and the achievement of its intent and purpose.

10.3. Subject to the seller having delivered the business to the purchaser in terms of 10.1.1 above, all risk and benefit in the business shall pass to the purchaser on the effective date. Ownership of the business shall remain vested in the seller until such time as the purchase price in 5.1 and 5.3 above has been paid in full by the purchaser to the seller whereafter ownership in the business shall pass to the purchaser.

11. Employees

- 11.1. Subject to 11.2 below, the purchaser will offer employment to all the employees of the seller at the effective date ("the employees") after implementation of this agreement upon terms no less beneficial than those on which they are employed, it being contemplated by the parties that such offer will constitute an automatic transfer of such employees in terms of section 197(2) of the Labour Relations Act, 1995.
- 11.2. It is specifically recorded and agreed that the purchaser will not take over or offer employment to the employees of the business listed in annexure 3.
- 11.3. The seller shall be liable for and undertakes to pay all salaries, wages, pro rata bonuses and accrued leave pay of the employees for all periods prior to the effective date. The bonuses and the accrued leave pay will be paid by the seller to the employees (or to the purchaser if so elected by the purchaser) on or before the effective date and the seller shall provide the purchaser, on the effective date, with written confirmation (signed by the employees) that the aforesaid has been done and that no amounts are owing to the employees;
- 11.4. The seller indemnifies the purchaser against any claim that may be brought against the purchaser by any of the employees who accept the purchaser's offer of employment, the cause of action of which arose prior to the effective date. The purchaser shall not be liable for any severance payments of whatsoever nature (including without limitation notice payments) to any of the employees who do not accept the purchaser's offer of employment and in respect of the employees in annexure 3.
- 11.5. The seller shall fully co-operate with the purchaser to ensure that the transfer of the employees who accept the purchaser's offer of employment is implemented smoothly and with the minimum amount of disruption to the business and to avoid any unpleasantness with or distress on the part of the employees in regard to their position and rights as employees of the business. Furthermore, the seller undertakes to use their best endeavours to cause the employees to accept the purchaser's offer of employment in terms of this clause.

12. The debtors

- 12.1. It is specifically recorded that the debtors have not been acquired by the purchaser in terms of this agreement.
- 12.2. In the event that any of the debtors makes payment to the purchaser, the purchaser shall pay the same to the seller within 7 days of receipt.

13. Warranties

- 13.1. The following warranties are, unless otherwise stated in respect of any warranty, (in which case the specified period shall apply), given as at the signature date and the effective date, and for the entire period between those dates. The seller warrants to the purchaser that:

13.1.1. **assets**

- 13.1.1.1. the seller owns the business and all assets forming part thereof (save for the assets owned by Engen) and has good and marketable title thereto, and except for agreements entered into in the ordinary course of business, no other person has any rights to or in respect of the business and all assets forming part thereof;
- 13.1.1.2. none of the assets of the business are subject to any mortgage, debenture or notarial bond, cession or pledge or any other encumbrance, or have been purchased under any hire-purchase or suspensive sales agreement or are subject to any lease;
- 13.1.1.3. none of the assets of the business is subject to any option or right of first refusal of any person;
- 13.1.1.4. the seller's records in relation to the customers' deposits and the value of the customers' deposits will be correct;

13.1.2. **manner of carrying on business**

between the signature date and the effective date:

- 13.1.2.1. the seller will continue to carry on the business in the ordinary and regular course;
- 13.1.2.2. the seller will not change its normal manner and method of carrying on the business;
- 13.1.2.3. no assets will have been acquired or sold otherwise than in the ordinary, normal and regular course of the business, without the prior written consent of the purchaser;
- 13.1.2.4. the seller will not have incurred or become committed to incur any capital expenditure in respect of the business;
- 13.1.2.5. the seller will not have entered into any transaction save in the ordinary and regular course of conduct of the business;

13.1.3. **goodwill and scope of business**

at the effective date the seller will not have done or omitted to do anything which has or will:

- 13.1.3.1. materially prejudice the goodwill;
- 13.1.3.2. reduce the scope of the business;

13.1.4. **the contracts**

- 13.1.4.1. the seller is not party to any contract with any of its employees entitling any of them to unusual compensation on termination of employment, or to participation in or entitlement to a commission on profit;
- 13.1.4.2. copies of all contracts and other documents submitted to the purchaser in connection with this agreement fully and correctly reflect all the terms and conditions thereof, are not subject to any claims for rectification, and have not been amended in any respect;

13.1.4.3. the contracts are in full force and effect and the seller is not in breach of any contract entered into between it and any other person and has complied in all material respects with its obligations under such contracts;

13.1.5. **intellectual property rights**

the business conducted by the seller does not infringe any patent, copyright, trade mark or other industrial property rights or any other rights of any other person and no person is entitled to an order requiring the seller to change its name or its trading style;

13.1.6. **labour laws, regulations, determinations, agreements and disputes**

13.1.6.1. the seller has complied with all wage determinations and industrial conciliation agreements and the like which apply to it, the business and the employees;

13.1.6.2. the seller has complied with the grievance procedures agreed to by it with regard to grievances of and relations with its employees;

13.1.6.3. the seller has complied with the labour union recognition agreement (if any) to which it is a party;

13.1.6.4. the seller is not party to any labour disputes and is not obliged by law, agreement, judgment or order of court, to reinstate employees that have been dismissed or will be dismissed;

13.1.7. **insurance**

13.1.7.1. the seller carries insurance cover in respect of the business and the assets of the business against the loss arising from accident, fire, earthquake, flood, burglary, theft, employer's liability, workmen's compensation, public liability, storm damage, civil commotion, riot or political risk and loss of profits, and such insurance will continue to be effective until the effective date; all premiums due in respect of such insurance have been paid and the seller has complied with all of the

conditions to which the liability of the insurers under the policies of insurance will be subject;

13.1.7.2. the seller is not aware of any facts, matters or circumstances which may give rise to the cancellation of the policies of insurance referred to in clause 13.1.7.1 or the repudiation of any claims thereunder or to such policies not being renewed in the future or only being renewed subject to the imposition of onerous conditions not presently applicable;

13.1.8. **employment, leave, remuneration and pension**

on the effective date the seller will not in any material respect have improved the terms of employment of or remuneration payable to any of its employees from that prevailing at the signature date, unless agreed in writing with the purchaser;

13.1.9. **information**

all information and data disclosed and/or provided by the seller to the purchaser prior to the signature date in relation to the business was and remains true, accurate and complete;

13.1.10. **disclosure**

all facts and circumstances material to this transaction and not known to the purchaser, or which would be material or would be reasonably likely to be material to a purchaser of the business and to the purchase price thereof have been disclosed to the purchaser.

13.2. Save for those warranties and representations expressly given or made in this agreement, no warranties or representations are given or made, in respect of the business, or any other matter whatsoever, whether express, tacit or implied, and the business is being sold on a *voetstoots* basis.

14. **Costs**

14.1. Each of the parties shall be responsible for the payment of their own legal costs incurred in connection with this agreement.

- 14.2. Any costs, including attorney and own client costs, incurred by either party arising out of the breach by the other party of any of the provisions of this agreement shall be borne by the party in breach.

15. Co-operation and confidentiality

The parties undertake:

- 15.1. to co-operate to ensure that the sale and take over of the business in terms of this agreement will be effected with as little disruption as possible;
- 15.2. to do all such things and sign all such documents as may be necessary to give effect to the intent of this agreement;
- 15.3. to treat the negotiations, the content and substance of this agreement, and all other matters relating to this agreement and the business in the strictest of confidence and not to make disclosure thereof to any party, except insofar as may be necessary to give effect to the intent of this agreement.

16. Agents commission

- 16.1. The purchaser is liable for and shall pay, in addition to the amounts payable in terms of clauses 5.1 and 5.3 above, agent's commission of 10% (ten per cent) of the purchase price in 5.1 above, plus VAT thereon, which commission is agreed to have been earned upon this agreement becoming unconditional.
- 16.2. The purchaser shall pay the full amount of Aucor's commission into the trust account of Aucor immediately on signing of this agreement, but this amount shall remain the property of the purchaser and shall be retained in trust by Aucor for the benefit of the purchaser pending this agreement becoming unconditional.
- 16.3. The purchaser shall be liable to pay any bank charges associated with the payment of Aucor's commission into Aucor's chosen bank account.
- 16.4. The provisions of this clause 16 are for the benefit of Aucor who accepts such benefit.

17. Breach

If either party should breach any provision of this agreement and remain in breach for 7 days after receipt of written notice requiring that party to rectify the breach, the other party shall be entitled at that party's option (and without prejudice to any other rights that it may have at law):

- 17.1. to claim for specific performance of the defaulting party's obligations under this agreement; or
- 17.2. (either an an alternative to a claim in terms of 17.1 or upon the abandonment of such a claim) to cancel the sale by notice in writing to the defaulting party and to claim such damages as that party may have suffered as a result of the cancellation.

18. Miscellaneous matters

18.1. addresses and notices

- 18.1.1. For the purposes of this agreement, including the giving of notices and the serving of legal process, the parties choose domicilium citandi et executandi ("domicilium") as follows:

the seller:

telefax no:

the purchaser:

telefax no:

- 18.1.2. A party may at any time change that party's domicilium by notice in writing to each of the other parties, provided that the new domicilium is in the Republic of South Africa and consists of, or includes, a physical address at which process can be serviced, such new address being effective on receipt by the addressee of such written notice.

18.1.3. Any notice given in connection with this agreement shall:

18.1.3.1. be delivered by hand; or

18.1.3.2. be sent by prepaid registered post; or

18.1.3.3. be sent by telefax (if the domicilium includes a telefax number),

to the domicilium chosen by the party concerned.

18.1.4. A notice given as set out above shall be deemed to have been duly given:

18.1.4.1. if delivered, on the date of delivery;

18.1.4.2. if sent by post, 7 days after posting;

18.1.4.3. if sent by telefax, on the day that the telefax is transmitted.

18.2. **entire contract**

This agreement constitutes the entire contract between the parties with regard to the matters dealt with in this agreement and no representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties.

18.3. **variation and cancellation**

No agreement varying, adding to, deleting from or canceling this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

18.4. **indulgences**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this agreement; accordingly, that party shall not be precluded, as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

Signed at _____ on this the _____ day of _____ 2015.

for and on behalf of the **SELLER**,
duly authorised

Signed at _____ on this the _____ day of _____ 2015.

for and on behalf of the **PURCHASER**,
duly authorised

Signed at _____ on this the _____ day of _____ 2015.

for and on behalf of t **AUCOR CORPORATE**
(PTY) LTD, duly authorised **(Accepting all**
of the rights available in terms of this
Agreement)

ANNEXURE “1”

The business assets

ANNEXURE “2”

The contracts

Annexure "3"

The excluded employees