
Business Rescue Plan

In terms of Section 150 of the Companies Act No 71 of 2008 (“the Companies Act”)

Dated 31 March 2020

(the “Plan”)

ZEPHAN PROPERTIES (PTY) LTD

REGISTRATION NUMBER 2003/020174/07

(“the Company”)

Prepared by:

JACQUES DU TOIT– Senior Business Rescue Practitioner

Synopsis of this business rescue plan:

- (A) Should Zephan Properties (Pty) Ltd be liquidated the Highveld Syndication Company (“HS Company”) creditors (“HSC’s”), who have similar claims against Orthotouch (Pty) Ltd (“*Orthotouch*”), can expect to receive a concurrent dividend of approximate 1.7 cents in the Rand, however, they will run the risk of having to repay all the interest received to date, but then they would then be entitled to share in those collected proceeds.
- (B) Should this BR Plan be adopted then the HSC’s will have the choice to, in addition to retain the interest already paid to them, elect either a share option (Option 1) or a cash option (Option 2).

1. Option 1/share option:

For a settlement of 25% of the initial cash invested by the HSC’s each will receive shares in JSE listed Accelerate Property Listed Fund (“*Accelerate*”) to an value equal to the net asset value (“NAV”) per share in Accelerate, calculated to be R7.99, which will render a recovery, projected over 5 years, together with interest already received, of capital invested of approximately 51,69 cents in the Rand.

2. Option 2/cash option:

Instead of waiting for the shares in Accelerate to mature the HSC’s can immediately receive a guaranteed R2 per share in a Accelerate as allocated in option 1, which shares currently trade at R0.40 per share, which will render a recovery, together with interest already received, of capital invested of approximately 33,04 cents in the Rand.

- (C) Both options 1 and 2 have as a suspensive condition that the HSC’s sell and cede all claims, accrued or yet to accrue, which they may have against any person for whatsoever reason or cause resulting from the investment of the HSC’s in a HS Company to the Third Party proposer.

DISCLAIMER

The Plan is formulated upon information obtained from the books and records of the Company and from the interviews with relevant persons and it should be noted that:

- Our investigations have been limited due to the time constraints placed on us by the Companies Act. Where appropriate, we have highlighted these issues throughout the body of the Plan and to the extent necessary we have considered the possible impact of them when making our recommendations to creditors.
- An invitation was extended to all Creditors at the first meeting of creditors to provide the Business Rescue Practitioner with any and all information that may be relevant to the Company or to a creditor's investment specifically as well as any information to substantiate claims / allegations of wrongdoing, misconduct or impropriety.
- We have conducted a comprehensive investigation on the property transactions applicable as referred to herein.
- The statements and opinions given in the Plan are given in good faith and in the belief that such statements and opinions are not false or misleading. Except where otherwise stated, we reserve the right to alter any conclusions reached on the basis of any changes in, or additional to, information which may become available to us between the date of the Plan and the date of any subsequent meetings or reports.
- Neither the Practitioner, nor any member, employee or professional engaged in the formulation of the Plan undertake any responsibility in any way whatsoever to any person in respect of any errors in this Plan arising from incorrect information provided.
- In considering the options available to creditors and formulating our recommendations, we have made the necessary forecasts with respect to the

Proposals contained in the Plan. These forecasts and estimates may change as the Plan is implemented and claims are received by creditors. Whilst the forecasts and estimates are the result of the Practitioner's best assessment in the circumstances, it should be noted that the ultimate outcome for creditors could differ from the information provided in the Plan.

RECORDAL

- The Business Rescue of Orthotouch (Pty) Ltd ("*Orthotouch*") and Zephan Properties (Pty) Ltd ("*Zephan*") are indivisible and dependant on each other.
- The above companies are jointly liable /obligated to the Investors/Creditors as listed herein, which liability /obligations stems from the Scheme of Arrangement in terms of section 155 of the Companies Act 71 of 2008.
- As a result of the above joint liabilities and obligations, the Creditor Affected Parties in Orthotouch are similar to those of Zephan.
- As a result of the duplication of claims as aforesaid, payment / settlement of claims / sale / cession of claims, whichever may be applicable, in Orthotouch will have the automatic result of payment / settlement of claims / sale / cession of claims in Zephan.
- Any and all payments and transfer of shares as referred in the Business Rescue Plan will be effected through Orthotouch.

Jacques du Toit

Business Rescue Practitioner – Zephan Properties (Pty) Ltd

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PART A: BACKGROUND

1. Purpose of Business Rescue Proceedings

Business Rescue, as defined in Section 128(i)(b) of Chapter 6 of the Companies Act 71 of 2008 (*“the Companies Act”*):

“Business Rescue” means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for:

- (i) the temporary supervision of the company, and of the management of its affairs, business and property;*
- (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and*
- (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company.”*

2. Role of the Business Rescue Practitioner

The statutory powers and duties of the Business Rescue Practitioner include the following:

- a. The Business Rescue Practitioner has full management control over the Company in substitution for the Board of Directors and the pre-existing

management;

- b. The Business Rescue Practitioner may delegate any of his powers or functions to a director or manager of the Company;
- c. The Business Rescue Practitioner may remove from office any person who forms part of the pre-existing management of the Company or appoint a person as part of the management of the Company whether to fill a vacancy or not;
- d. The Business Rescue Practitioner is required to investigate the affairs of the Company in order to ascertain whether there are reasonable prospects for the Company to be rescued and if so to develop a Business Rescue Plan to be considered by affected persons and thereafter to implement the Plan; and
- e. In the event that the Business Rescue Practitioner discovers evidence regarding the dealings of the Company before the Business Rescue Proceedings began of any voidable transactions or failure by the Company or any director to perform any material obligation relating to the Company, then the Business Rescue Practitioner must take the necessary steps to rectify the matter and may direct management to take the appropriate steps.

3. **Placing of Company in Business Rescue and appointment of Business Rescue Practitioner**

- 3.1. The Company was placed under supervision and in Business Rescue by way of a resolution of the board in terms of section 129 of the Companies Act on 7 November 2019. A copy of the notice of the beginning of the rescue proceedings is attached as **Annexure 1**.

3.2. The business rescue proceedings accordingly commenced on 7 November 2019.

3.3. Jacques du Toit is the duly appointed Business Rescue Practitioner (*“the BRP”*) as required in terms of section 129(3) of the Companies Act. Please refer to **Annexure 2** hereto.

4. **Business background of the Company**

4.1. The Company was incorporated on 21 August 2003 as a private company according to the laws of South Africa. See attached **Annexure 3** for the CIPC search.

4.1.1. Nature of Business and Principal Activities – **Principal Investments, Real Estate Activities and All Related Activities**

4.1.2. Director – **Nicolas Georgiou**

4.1.3. Registered Office – **96 Raymond Mhlaba Street, Navalsig, Bloemfontein, Free State, 9301**

4.1.4. Business Address – **Management Offices, 1st Floor, Cedar Road, Cedar Park, Fourways, Johannesburg**

4.1.5. Holding Entity – **N Georgiou Trust – TMP 757**

4.1.6. Bankers – **The Standard Bank of South Africa Limited**

4.1.7. Auditors – **Newtons, Practice Nr. 907340, Assisted by FHBC Wellington DF Theron (SAIPA)**

- 4.2. The Company and Orthotouch (Pty) Ltd ("*Orthotouch*") form part of a group of companies registered in South Africa which companies have been affected by the various financial transactions referred to herein.
5. **Investigations conducted by the BRP regarding impropriety and/or misappropriations of funds:**
- 5.1. The BRP was confronted at the first creditors meeting with a number of comments and allegations made by affected parties regarding impropriety and/or misappropriations of funds stemming from the implementation of an adopted business rescue plan so-called Highveld property syndication companies ("*HS Companies*"), which is dealt with hereinlater with reference to what I have termed the "*Klopper BR Plan*", and a Scheme of Arrangement ("*SoA*"), which is dealt with hereinlater with reference to a court sanctioned section 155 compromise.
- 5.2. An invitation was extended, at the first creditors meeting, to all affected persons to provide the BRP with documentary proof of such claims of misappropriation to enable the BRP to properly investigate such allegations.
- 5.3. As such documentary proof was not forthcoming the BRP embarked on his own factual investigation.
- 5.4. Alerted by these comments and allegations the BRP have:
- 5.4.1. Read and considered a great number of affidavits and other court documentation filed in various litigious matters, inclusive of:
- 5.4.1.1. A certification application for leave to institute a class action on behalf of HS 21 and 22 Investors in the Gauteng High

Court Division, Pretoria, case number 80811/2014, and the judgment delivered in that matter by the Honourable Mr Justice Tolmay on 10 December 2019; and

- 5.4.1.2. An application to set aside the sanctioning of the SoA issued from the Gauteng Local Division, Johannesburg, case number 42334/2014.
- 5.4.2. Read and considered various judgments delivered in matters relating to the HS Companies.
- 5.4.3. Read various media publications compiled by “investigative” journalists, regarding purported losses and disappearance of funds caused through the process of the implementation of the Klopper BR Plan and the SoA, and commentaries thereon.
- 5.5. The BRP thereupon conducted an investigation which entailed a review of the property transactions between various entities, which transactions gave rise to allegations of impropriety and/or misappropriations referred to in court documentation, made by individuals and mentioned in various media publications.
- 5.6. The investigation entailed:
 - 5.6.1. The transfer of properties from Zephan / Third Parties to Bosman & Visser (Pty) Ltd ("*Bosman & Visser*") to the HS Companies especially the comparison between the original sales price and the inflated prices from Bosman Visser to the HS Companies.
 - 5.6.2. The HS Company 21 (being one of the 6 HS Companies relevant to this

application) inflated values in regard to the investors regarding the prospectus values.

- 5.6.3. The value of the properties in regard to the Klopper BR Plan of the HS Companies, the value of the properties as included into the Scheme of Arrangement, the purchase price to Orthotouch as reflected in the Deeds Office against the value in terms of the SoA and lastly the purchase price against the value to Accelerate Property Listed Fund (*"Accelerate"*).
- 5.7. The outcome of the investigation is contained in **Annexure 5** and **Annexure 6** and is that:
 - 5.7.1. Zephan / Third Parties sold property to Bosman & Visser at the then market related prices.
 - 5.7.2. The properties were the sold at inflated prices from Bosman Visser to the HS Companies.
 - 5.7.3. The HS Companies inflated the value of the properties as proposed to the investors in terms of the prospectus' well knowing that such value is nowhere near the actual market value of such properties.
 - 5.7.4. The purchase prices to be utilised for the purpose of transfer in terms of the SoA to Orthotouch, was incorrectly reflected by the Transferring Attorneys, by utilising the prospectus inflated values instead of the values as in terms of the SoA as the value of the properties, whereafter
 - 5.7.5. The properties were transferred to Accelerate at the actual value.

- 5.8. The aforementioned incorrect values being used by the transferring Attorneys for the transfer to Orthotouch resulted in creating a false perception of Orthotouch purchasing properties at a high value, either from the HS Companies or from Zephan, and then selling the properties, at a significant / substantial discount, to Accelerate.
- 5.9. This perception is inaccurate and completely false as the incorrect values created the false perception of impropriety.
- 5.10. The BRP's investigation and **Annexure 6** hereto reflects the accurate state of affairs which is the recordal of how the transactions were meant to be documented:
- 5.10.1. The facts on which my investigation is based are available to all affected persons and investigative journalists as the real and correct values formed part of the SoA. The SoA and the Deeds Office records are available to the public for investigation purposes.
- 5.10.2. The investigation also showed that the Deeds Office records and the capturing of information is, in certain cases, incorrect and is not reflecting / allocating the correct purchase prices to a property especially where more than one property was the subject of one sale agreement. In addition to the aforementioned, normal typographical errors occurred.
- 5.10.3. It is clear that the allegations and journalistic investigations published did not reveal the factual information available to the public and can only be interpreted that the purported investigations were "desktop" investigations without properly interrogating the various transactions and the actual facts.

5.11. According to the BRP's investigation as referred to in this Business Rescue Plan, the BRP could not find any proof of misappropriation in regard to the property transactions.

5.12. Example 1: **Incorrect value reflected, Scheme of Arrangement value, inflated prospectus value and purchase price to Accelerate:**

Property:	Description:	Owner:	Trf Date:	Purchase Price:	Owner:	Trf Date:	Incorrect Purchase Price in Deeds Office:	Prospectus Value offered to Investors:	Correct Purchase Price as per SOA:
Glen Gables	ERF 772, Lynnwood	Zephan	2006	R59,000,000.00	Orthotouch	2013	R123,304,205.00	R200,722,759.44	R59,613,263.00

Owner:	Trf Date:	Purchase Price:
Accelerate	2013	R32,556,543.00

The difference between the correct purchase price as per the SOA and the purchase price of Accelerate was as a result of this property being in a state of disrepair and tenant vacancies.

5.13. Example 2: **Increased purchase price between Bosman Visser and HS Company:**

Property:	Description:	Owner:	Trf Date:	Purchase Price:	Owner:	Trf Date:	Increased Purchase Price in Deeds Office:	Correct Purchase Price as per SOA:	Owner:	Trf Date:	Purchase Price:
Beacon Isle	ERF 332, Florida, JHB	B&V	2009	R17,100,000.00	HS	2009	R26,150,000.00	R22,077,664.00	Accelerate	2013	R17,683,711.00

5.14 Example 3: Incorrect purchase price reflected in Deeds office, Scheme of Arrangement value and purchase price to Accelerate:

Property:	Description:	Owner:	Trf Date:	Purchase Price:	Owner:	Trf Date:	Increased Purchase Price in Deeds Office:	Correct Purchase Price as per SOA:	Owner:	Trf Date:	Purchase Price:
14 Main Road Melville	ERF 319, Melville, JHB	B&V	2009	R99,993,000.00	HS	2009	R16,000,000.00	R6,985,733.00	Accelerate	2013	R8,215,845.00

9&11 Main Road Melville	ERF 320, Melville, JHB	B& V	200 9	R99,99 3,000.0 0	HS 18	20 09	R16,000,000.00	R15,063,242.0 0	Accelerate	20 13	R27,33 8,745.0 0
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The Deeds office allocation of group transactions reflects purchase prices which is totally confusing to the reader. However, the correct purchase as per the SOA is shown in the investigation spreadsheet and the purchase price to Accelerate in the Deeds office is correct.

It is to be noted that in this instance a higher purchase price to Accelerate was achieved than the actual SOA value as a result of the specific property condition and rental return.

5.14 Example 4: **Incorrect purchase price reflected in Deeds office, Scheme of Arrangement value and typographical error by Deeds office in the purchase price to Accelerate:**

Prop erty:	Descriptio n:	Ow ner :	Trf Dat e:	Purchas e Price	Ow ner:	Trf Dat e:	Increased Purchase Price in Deeds Office:	Correct Purchase Price as per SOA:	Owner:	Trf Dat e:	Purchas e Price:
7 Main Road Melville	ERF 213, Melville, JHB	B& V	200 9	R99,99 3,000.0 0	HS 18	20 09	R16,000,000.00	R28,221,291.0 0	Accelerate	20 13	R7,790, 107,000 .00

6. Events leading up to the financial distress of the Company

The purpose of this section is to advise the affected persons of the events leading up to the distress in a simplified manner. It is important for all affected persons to understand the flow of transactions leading up to the current state of affairs:

Basic syndication structure:

- 6.1. During the period 2003 to 2005 twenty Highveld Syndication (“HS”) Companies were formed which were named Highveld Syndication No 1 (Pty) Ltd to Highveld Syndication No 22 (Pty) Ltd, but there was no Highveld Syndication No 5 (Pty) Ltd or Highveld Syndication No 7 (Pty) Ltd. The purpose of these HS companies was to conduct the business of property syndication.

- 6.2. PIC Syndications (Proprietary) Limited (later Pickvest Investments (Proprietary) Limited) ("*Pickvest*") Pickvest, would as the promotor issue a prospectus in respect of each HS Company and handed to an intermediary agent, a group of broker consultants working under its auspices.
- 6.3. Typically, a HS Investor would buy shares in an HS Company and was obligated at the same time to make a loan to the company- for each share priced at R1.00, a shareholder was obliged to make a loan of R999.00.
- 6.4. The purchase price in and the linked loan accounts to the HS Companies was a mechanism for the companies to raise capital to fund the purchase of property. Each HS Company purchased a portfolio of income generating commercial or industrial properties (office complexes, small retail shopping centres, *et cetera.*).
- 6.5. The net income earned by the HS Company from letting out those properties was to be used to pay the HS Investors interest on their investments.
- 6.6. Orthotouch and Zephan Group were not involved in soliciting investments in any of the HS Companies.
- 6.7. In 2007, Nicolas Georgiou became involved in the HS Companies through on of his property owning companies, Zephan, when offers for the property portfolios of HS Company 1 to HS Company 14 (excluding HS Company 5 and HS Company 7) were made.
- 6.8. After these offers from the Zephan were accepted, HS Company 1 to HS Company 14 bought back investors' shares, repaid the capital amount of their loans and made a distribution to the investors from the net profits.
- 6.9. HS Company 15 to HS Company 22 had purchased various income generating

properties before registering and publishing the prospectuses which solicited for investment.

- 6.10. In relation to HS Company 15 to HS Company 18, the companies took transfer of the properties which they had purchased.
- 6.11. In respect of HS Company 19 to HS Company 22, the source of the properties acquired was Zephan. The properties were sold by entities in the Zephan to Bosman & Visser (Pty) Ltd ("*Bosman & Visser*"), one of the companies in the Pickvest Group.
- 6.12. Bosman & Visser, in turn, on-sold these properties to the relevant HS Company.

Loss of value and inevitable financial distress for HS Companies:

- 6.13. Zephan (at that stage Zelpy 2095 (Pty) Ltd) sold commercial tenanted buildings at an 8% return, based on the annual net rental return of the specific building, to Bosman & Visser.
- 6.14. Bosman & Visser increased the purchase price by 11%, or more, and immediately sold it on to the Highveld Syndication ("*HS*") Companies. Bosman & Visser also purchased properties from other parties which were introduced to the investment companies.
- 6.15. The Pickvest brokers earned a brokerage fee of 6% on each and every investment raised. In terms of the prospectuses, the HS Companies valued the properties by capitalising the future net property income at 12.5%, entitling the HS Companies to raise more investment funds than to cover the purchase price. Furthermore, in terms of the prospectuses, the HS Companies were entitled to raise 30% more than the original purchase price. Effectively between the

Bosman & Visser and the HS prospectuses, the monies raised from HS Investors was approximately 40% more than the original purchase price.

6.16. As an example:

6.16.1. The investments pertaining to HS Companies 21 and 22 comprised, *inter alia*, of the following components:

- a. The purchase agreements of the properties as referred to above.
- b. The head lease agreement between HS Companies 21 and 22 and Zephan.
- c. Performance in terms of the buy-back agreements between HS Companies 21 and 22 and Zephan.

6.16.2. The head lease and the buy-back agreements primarily required that the relevant HS Companies maintain the properties. However, HS Investors were promised a 12.5% per annum return in respect of certain agreements and in others, as much as 20% per annum, which were unachievable from the start. In addition performance in terms of the buy-back agreements between HS Companies 21 and 22 and Zephan, became impossible due to the economic climate and the downturn in the property market.

6.16.3. In respect of certain property portfolios, cashflow constraints led to the HS Companies not being able to comply with their obligation to maintain the properties. As a result, those lease agreements were cancelled. In other instances, lease agreements expired and tenants

vacated the properties, with the result that Zephan could not comply with the head lease agreement/s. As a consequence of the abovementioned cancellations and vacancies as well the prevailing economic circumstances at the time, especially insofar as the commercial property sector was concerned, Zephan could not perform in terms of the buy-back agreements.

- 6.17. As a result of the commercially unachievable high gearing of these companies, the HS Companies ran into financial difficulty during late 2010 through to early 2011.

The Initial Orthotouch Agreement:

- 6.18. As a result, in March 2011, a commercial settlement was proposed by Orthotouch Ltd (now Orthotouch (Pty) Ltd) [*“Orthotouch”*], a dormant company at the time. In terms of this proposed settlement, Orthotouch offered to purchase the properties owned or purchased by the HS Companies (*“the Initial Orthotouch Agreement”*). The Initial Orthotouch Agreement was subject to certain suspensive conditions which included approval by the Competition Commission.
- 6.19. The HS Company 15 to HS Company 22 (except HS Company 19) were placed into Business Rescue on 7 September 2011 and HS Company 19 was placed into Business Rescue on 14 September 2011. Johannes Frederick (Hans) Klopper (*“Klopper”*) was appointed as the business rescue practitioner of these HS Companies.
- 6.20. The initial Orthotouch agreement was subject to the approval of the Business Rescue Practitioner, the Shareholders of the HS Companies, the Competitions Commission and Takeover Regulation Panel which never materialised resulting

in the suspensive conditions not being fulfilled and the agreement lapsing.

- 6.21. At that moment in time, neither Zephan, Orthotouch, the directors of Orthotouch, Nicolas Georgiou nor his family were in any way involved in the affairs of Bosman & Visser (Pty) Ltd, nor were they involved in the affairs or management of the HS Companies.
- 6.22. Since March 2011, Orthotouch had made interest payments on the full amount of the individual capital investments in terms of the Initial Orthotouch Agreement despite it having lapsed. This was at an interest rate of 6% *per annum*. During the period from 1 March 2011 to 30 August 2011, shortly before the HS Companies were placed in Business Rescue (on 7 September 2011), an aggregate amount of R128 481 590.00 in respect of interest payments had already been paid to HS investors by Orthotouch. Despite the fact that the conditions precedent to the Initial Orthotouch Agreement had not yet been fulfilled, Zephan and Orthotouch persisted with their attempts to secure lending facilities to enable the purchase of properties as envisaged in the Initial Orthotouch Agreement. Zephan and Orthotouch were however unable to secure lending facilities to purchase properties in terms of the Initial Orthotouch Agreement. Investigations revealed various reasons for Zephan and Orthotouch's inability to secure lending facilities, the most pertinent being that corporate funders were being approached by obstructive parties that, for unknown reasons, sought to prevent funding being procured. Despite this, Zephan and Orthotouch remained committed to the payment of interest to the HS Investors.

The Amended Offer and the Klopper BR Plan:

- 6.23. The BR Plan of the HS Companies (“the Klopper BR Plan”) was published on 30 November 2011 and was adopted on 14 December 2011. After the adoption of the Klopper HS Plan, the purchase of properties as was provided for in the Klopper HS Plan could not be implemented due to Orthotouch’s inability to procure funding due to the reasons set out in this Business Rescue Plan. Due to the worldwide recession and general decrease in property value, the value of the properties at the time of the conclusion of the Initial Orthotouch Agreement was approximately 50% of the value at which they had been syndicated. Apart from the recession, the syndication values at which the properties had been syndicated to investors by the then management of the HS Companies, included fees paid by the syndicators to their network of brokers. Furthermore, the properties had, in certain instances, been overpriced meaning that amounts in excess of the then actual values of such properties were accepted as being required to purchase such properties from Bosman & Visser.
- 6.24. Based on the BRP’s experience, both as an owner of commercial properties and from his involvement in Business Rescue, he would have advised Zephan and Orthotouch not to continue with the Orthotouch agreement in purchasing the properties as there was an inability to source funds. The values of the properties were heavily influenced by the increase of prices in excess of the then current market values and the investor funds raised were approximately 40% more than the value of the properties.
- 6.25. Zephan and Orthotouch nevertheless, believed that Orthotouch would be able to raise funding at a Loan to Value (“LTV”) of less than 50% and was prepared to pay interest to HS Investors calculated on the full syndication values of properties and not the current values of the properties at any relevant point in time.

- 6.26. During this time the HS Companies were under severe threat of litigation and possible liquidation applications and a liquidation application was actually launched during September 2011 against HS Company 19.
- 6.27. During the Business Rescue Proceedings, an amended version of the Initial Orthotouch Agreement was proposed to the Business Rescue Practitioner of the HS Companies subject thereto that it would be presented in the form of a Business Rescue Plan to be presented to creditors/investors/shareholders of the HS Companies.
- 6.28. The suspensive conditions to the Initial Orthotouch Agreement were ultimately never fulfilled. During the Business Rescue Proceedings of the HS Companies and after engagement between the BRP of the HS Companies and Orthotouch, an amended version of the Initial Orthotouch Agreement (*"the Amended Offer"*) was proposed to the BRP of the HS Companies.
- 6.29. Based on the Amended Offer, the BRP of the HS Companies formed the view that there was a reasonable prospect of publishing a Business Rescue Plan of the HS Companies.
- 6.30. Orthotouch, upon submitting the Amended Offer, was again under the mistaken belief that it would be able to raise funds on an LTV basis of less than 50% and that Orthotouch would receive the full support of the HS Investors, their brokers and above all the financial institutions.
- 6.31. The Amended Offer, like the Initial Orthotouch Agreement, was made on the basis that the interest would be calculated on full syndication values. Despite the properties being valued at much less than the full syndication values at that point in time, Orthotouch assumed liability for the full amounts historically invested by HS Investors in the HS Companies which had been invested prior the

involvement of Orthotouch and/or Nicolas Georgiou.

6.32. The Klopper BR Plan as presented by the BRP of the HS Companies was adopted by more than 99% of the investors present on 14 December 2011. The Klopper BR Plan's successful implementation was reliant upon the following factors, *inter alia*:

- a. The obtaining of an initial loan from a pre-determined financial institution which had committed to providing a loan of R200 million to be utilised for purposes of working capital and financing the initial tranches of interest payments pursuant to the adopted HS Plan.
- b. The ability for Orthotouch to trade freely in properties in order to increase the value of the property portfolio of the HS Companies / Orthotouch;
- c. The ability of Orthotouch to obtain, on an ongoing basis, finance for its operations, including working capital and funding for upgrading of the properties, calculated at a 50% LTV. The initial amount required was R 1 billion. All such funding and actions was required to place Orthotouch in physical ownership, possession and control of the properties, on an unencumbered basis, in order to grow the portfolio of properties to attain a value of the portfolio required to pay the HS Investors in full, by December 2016, in terms of the HS Plan.

6.33. Orthotouch obtained a loan of R200 million from RMB in terms of an agreed term sheet and R30 million of the loan had been advanced by 17 November 2011 and banking fees had been raised in terms of the loan facility. However, the commercial loan was withdrawn for no apparent reason five days prior to the publication of the Klopper BR Plan (the banking fees were repaid by RMB at a

later stage). Despite the loan being withdrawn, the parties which had made the Amended Offer were confident that an alternative loan would be procured shortly after the adoption of the Klopper BR Plan.

- 6.34. Orthotouch continued to apply for lending facilities to implement the Klopper BR Plan and to take transfer of the properties. Despite Orthotouch's applications for loans being at an LTV of less than 50%, Orthotouch was unable to procure such funding even though, at the time, banks were in general approving loans with an LTV of 60%.
- 6.35. On or about 20 January 2012, some of the HS Companies and Orthotouch entered into a sale agreement for the purchase of certain properties and their businesses.
- 6.36. During or about August 2012, the Company was successful in negotiating funding with a banking institution with a term sheet dated 17 August 2012. This again was withdrawn under somewhat sinister circumstances.
- 6.37. Various cancellation agreements were entered into between the HS Companies and Orthotouch on 29 October 2013 whereby certain sale agreements were cancelled.
- 6.38. The reason why the offer, by Orthotouch to the BRP of the HS Companies, was made on the syndication value was that Orthotouch believed their offer would receive the backing of investors and brokers and, above all, the financial institutions. This proved not to be the case which resulted in the affairs of Orthotouch having to be restructured through a scheme of arrangement ("SoA") as provided for in section 155 of the Companies Act.

The scheme of arrangement (“SoA”):

- 6.39. Failing the expected external loan finance it was Orthotouch which funded the HS Companies under business rescue.
- 6.40. In this context, during June 2014, it became apparent to Orthotouch that the most viable option would be to restructure the affairs of Orthotouch, inclusive of its obligations under the Klopper BR Plan, by way of a scheme of arrangement or compromise in terms of Section 155 of the Companies Act.
- 6.41. Ultimately by July/August 2014, Orthotouch was no longer able to make any interest payments in terms of the BRP. It could not secure external funding and was not in a financial position to sustain funding the Interest payments to HS Investors.
- 6.42. The loan finance which Orthotouch had to incur in order to ensure interest payments under the BRP were made, stood at R383 million as at October 2014, the loans having in turn been advanced to it by Zephan.
- 6.43. A scheme of arrangement was a way to avoid the consequences of a liquidation of Orthotouch and by necessary consequence also of the HS Companies.
- 6.44. During September 2014, the SoA was drafted and refined and it was finalised and signed on 7 October 2014.
- 6.45. In terms of the SoA, the Trade creditors were expected to receive payment of their claims in full.
- 6.46. In terms of the arrangement, the HS Investors would, contrary to a projected dividend of 13.64 cents in the Rand in a liquidation scenario, likewise, receive

consideration in full and final settlement of their claims. The HS Investors' capital claims and claims for arrear interest were restructured in terms of the SoA. The HS Investors were afforded the opportunity to make an election as to the repayment of their historical investment in the HS Company based on alternative elections. Alternatives 1, 2 and 3 were presented to HS Investors:

6.46.1. **Alternative 1** – HS Investors would be entitled to be paid their *pro rata* share of the full amount of their investment on the 10th anniversary of the final date, as defined in the scheme of arrangement, with interim interest payments of 4% per annum.

6.46.2. **Alternative 2** - HS Investors would be entitled to be paid their pro rata portions of their actual aggregate values of the properties on 31 March 2017, which value is guaranteed by the company and the financial proposer to be at least R 2 billion and pending such payment will receive interest at 6% *per annum* calculated on an amount of R2 billion as from the final date with capital being payable on 31 March 2017.

6.46.3. **Alternative 3** – HS Investors would be able to elect to convert their rights, title and interest in and their claims against the Company and the HS Companies in respect of their value of their claims as at the final date, as defined, into shares in a new property fund to be listed as a real estate investment fund (or “*REIT*”), The Capital Growth Fund Limited (“*CGF*”) in the property sector on the main board of the JSE. HS Investors' claims to be calculated on a *pro rata* basis with reference to, and of, the fair market value of the properties due to be introduced into the said property fund.

6.47. The material assets of Orthotouch were comprised solely of rights in and to immovable property in respect of the properties recorded in the scheme of arrangement, detailed as Annexure D in the scheme of arrangement and

attached hereto as **Annexure 4**. The portfolio of said properties had been changed by virtue of certain sales and acquisitions of a number of properties, which movements are detailed as Annexure E to the scheme of arrangements which is attached hereto as **Annexure 4**.

- 6.48. The sale and acquisitions were concluded in terms of the Klopper BR Plan, to enable Orthotouch to meet its objectives in terms of the Klopper BR Plan.
- 6.49. As recorded in the scheme of arrangement, the value of the assets which Orthotouch acquired was based upon valuations done during May 2011 by the HS Companies of approximately R2.6 billion referred to in the Klopper BR Plan, was accepted as the perceived value for the concluding of the Initial Orthotouch Agreement.
- 6.50. In concluding the Initial Orthotouch Agreement, Orthotouch was also well aware that the distressed value of the properties comprising the assets would be substantially less, due to vacancies. Given the opportunity to trade properly with such properties and to obtain the requisite funding from banks, Orthotouch would have been able to meet its stated objectives and ultimately be profitable.
- 6.51. As a result, Orthotouch found itself in a position where, although some R808 million had been repaid in regard to interest to HS Investors prior to the adoption of the Klopper BR Plan, the properties had at that stage been not been transferred to Orthotouch from the HS Companies and Zephan, the company which, in terms of the Klopper BR Plan, was to also transfer of its properties to Orthotouch.
- 6.52. The value of the assets (properties) earmarked to be transferred to Orthotouch had been largely preserved under the management and the directors of the Company at an amount R 1.9 billion, as at the time of proposing the SoA, as is

evidenced by the statement of assets and liabilities attached to the SoA.

6.53. Orthotouch at the time of acceptance of the SoA had difficulty to continue to maintain the monthly interest payments to HS Investors, without the assistance of Zephan, and to realise the end-goals envisaged by the Klopper BR Plan namely the growth of the portfolio of properties.

6.54. It was disclosed, at that moment, that:

6.54.1. Orthotouch had no tangible assets, save for rights flowing from the Klopper BR Plan, and thus the HS Companies may have had to be liquidated, leaving Orthotouch with claims against a liquidated group of companies. Orthotouch did not have the funds required to transfer the properties. Orthotouch has been unable to obtain bank funding. It was also disclosed that the HS Investors needed to be aware of the fact that they only have a contingent claim against Orthotouch by virtue of the rights of the HS Investors in terms of the HS Plan but primarily against the HS Companies.

6.54.2. In terms of the Klopper BR Plan, Zephan introduced R500 million worth of properties to the portfolio which was on loan account in the books of Orthotouch.

6.55. In terms of the scheme of arrangement, rights in and to the properties, as reflected in the **Annexure 4**, was to be retained by Orthotouch for purposes of the arrangement and only the capital sum was available for and would have been utilised to pay claims of trade creditors. In terms of the scheme of arrangement Orthotouch was obliged to comply with the HS Investors' elected alternatives, which including a listing of the property fund CGF and the transfer of properties to such property fund.

- 6.56. At a meeting of creditors of Orthotouch held on 14 November 2014 the SoA was adopted and was subsequently sanctioned by order granted by the Honourable Mr Justice Moshidi on 26 November 2014.

Partial failure of implementation of SoA:

- 6.57. According to the BRP's information, HS Investors across the board made use of all three alternatives with certain HS Investors being settled and some claims payable on the 10th anniversary, namely 2024. In the interim it was required from Orthotouch that interim interest payments in an amount of R 10 million per month will be paid for *pro rata* distribution.
- 6.58. In the interim, Orthotouch was to manage the property portfolio of the HS Companies, to obtain finance and/or the sale of certain properties to fund its obligations in terms of the scheme of arrangement.
- 6.59. The HS Companies, during the time that Orthotouch managed the property portfolio, received low income from the portfolio of properties. The portfolio of properties yielded at a relatively low income due to the distressed state of the properties following the historical troubles having been experienced by the HS Companies prior to the involvement of Orthotouch. As a result of no funding being available to refurbish and further develop the portfolio and to grow the portfolio so as to increase income and value for the portfolio, the HS Companies properties did not produce enough income to enable the HS Companies to fulfil their obligations. Notwithstanding the aforementioned, Zephan still "topped up" interest payments, out of own resources, thereby suffering losses, to the extent of R1,195,867,069 giving rise to an additional loan account of some R383 million in favour of Zephan, owing by the Company as at the date hereof.
- 6.60. CGF, the property fund as envisaged in the scheme of arrangement as part of

alternative 3 eventually could not list on the JSE as a result of an inadequate property portfolio and an inability to raise finance.

- 6.61. During the period 2014, from the inception of the scheme of arrangement to date, Orthotouch was actively seeking funding which was denied to date. Orthotouch also failed to list the property fund as envisaged. The repayment of HS Investors was successful only in part. Orthotouch, with the assistance of Zephan, complied with their obligation to pay interest to the investors by way of the low yielded income on the property portfolio and topped up interest payments out of own resources by Zephan totalling, from March 2011 until September 2018 an aggregate amount of R1 214 522 709.00. However, from late 2019, Orthotouch and Zephan are unable to support any further payments to Investors or to fulfil its duty in terms of the scheme of arrangement.
- 6.62. During the above period a sale was concluded with Accelerate Property Listed Fund for purchasing of certain properties at the then current value based on formal valuations in managing and minimizing the risk of Orthotouch, Zephan and the Investors and to avoid bankruptcy.
- 6.63. Over a period of time the HS Investors who opted for alternatives 2 and 3 were settled and therefor this business rescue plan only relates to the HS Investors who opted for alternative 1 referred to in the SoA.

Devaluation of Property Prices:

- 6.64. It is important for all affected parties to note the flow of transactions and the difference in purchase prices throughout the process. The transactional flow in terms of the Deeds Office records is attached hereto as **Annexure 5**. This indicates the value of transfer of the properties in terms of the Klopper BR Plan and the SoA of the HS Companies, comparing such value to the actual prospectus

and Syndication values offered to investors and the ultimate sale to Accelerate.

6.64.1. Zephan / Zelpy Property Value

It is clearly indicated on the attached property spreadsheet (**Annexure 5**), the value of the property whereby Zephan obtained ownership.

6.64.2. Transfer Zephan /Bosman & Visser

6.64.2.1. The value of the property is based on the actual net rental income of such building reflecting a certain purchase price whereby a purchaser requires an 8% return. This means that the property at the purchase price bought by Bosman & Visser only allows for an 8% return to the owner or any investor.

6.64.2.2. Bosman & Visser then sold the properties at an increased price to the HS Company, of at least 11% and in some cases more as indicated on the schedule. The HS Company then increased the value of the property further by effecting a future value calculation of an expected future value which can be seen on the prospectus and syndications prices as indicated in **Annexure 5**. This clearly indicates that the HS Syndication prices that were proposed to the investors, as the value of the buildings, are much higher than the actual sales price by Zephan.

6.64.2.3. The fact is that the brokers and the HS Company presented the properties to the Investors at a price much

higher than the value which resulted in investments being obtained for more than the actual value of the building. Furthermore, the HS Company and the brokers presented the investment to investors at a 12.5% return, which would have been impossible from day 1, as the actual buildings' rental income only gives an 8% return. If the property prices are increased, the rental income does not increase which means that there is no chance that the 12.5% return can be achieved on a higher price but with a lower income.

- 6.65. In the BRP's opinion, the information presented to the investors were completely unrealistic and could never be achieved at that moment in time.
- 6.66. The only conclusion I can draw from the above is the fact that some of the investor's money was used to repay interest to investors up to such time that no new investors could be obtained to make payments.
- 6.67. Investors funds were utilised by the management of the HS Companies to pay management fees, expenses, interest, and the balance of the purchase price to Bosman & Visser who was in turn supposed to make payment to Zephan Properties.
- 6.68. It is extremely important to note that the HS Companies, according to BRP's information and supposedly confirmed by their Auditor, paid the full purchase price of all the properties to Bosman & Visser, but Bosman & Visser failed to pay approximately R883 million to Zephan Properties resulting in such funds also being utilised for something other than the purpose intended for.
- 6.69. The question would have been at that moment in time; why Hans Klopper did,

as Business Rescue Practitioner, not institute these actions to the relevant parties as referred to above?

6.69.1. My conclusion is that Hans Klopper only had 43 days to present a Business Rescue Plan to creditors. It was envisaged in terms of the Klopper BR Plan that the HS Investors would be paid in full as was the case in HS Companies 1 to 14. As a result, no further investigations were necessary and were as such conducted by Hans Klopper insofar as the actions of the directors of the HS Companies were concerned.

6.69.2. Investigations in connection with the conduct and actions of Bosman & Visser's directors were outside the ambit of his authority.

6.70. **Orthotouch Properties**

6.70.1. In terms of both the Klopper BR Plan and the SoA, the HS Investors were aware of the actual values of the properties as indicated on the annexures to such documentation (attached hereto as **Annexure 4** for reference purposes) and that Orthotouch would endeavour upon a process to increase the value of such portfolio as presented in the aforementioned SoA whereby Orthotouch would obtain certain properties from Zephan and other Third Party owners to be bought into the portfolio to manage.

6.70.2. See attached **Annexure 6** showing the properties that were obtained from Orthotouch by Zephan and others and was then sold to Accelerate.

6.70.3. Transaction 1: **Zephan Sold to Orthotouch**

It is to be noted that the Zephan price as per the attached schedule was the original purchase price obtained and registered in the Deeds Office on / about 2006. The properties were then on sold, in terms of the SoA, to Orthotouch and it is clear from the Deeds Office records that the prices sold to Orthotouch were incorrectly recorded. The scheme of arrangement and the Business Rescue Plan clearly identifies the purchase prices to be used for the transfer to Orthotouch namely, the actual values as per the annexures and not the syndication increased prices. However, according to the BRP's investigation, the Transferring Attorneys of Orthotouch incorrectly used the syndication values as the purchase price and not, as the documentation requires, the value which shows a highly increased purchase price in the name of Orthotouch which gives any on looker a totally distorted view. See **Annexure 6**, as attached, and the column next the Deeds Office prices showing the actual prices which were to be reflected in the Deeds Office records being the actual values of the properties as per the scheme of arrangement.

6.70.4. Transaction 2: **Orthotouch transfers to Accelerate**

6.70.4.1. In terms of the SoA, Orthotouch then on sold the properties to Accelerate at the, then, actual value of the properties as in terms of the JSE rules and regulations pertaining thereto and as valued by two independent valuations, one private and one by the bank. It is, again, highly important to note that the value amount which Orthotouch was supposed to obtain the property at is to be compared to the actual price and value sold to Accelerate at that point in time.

- 6.70.4.2. If compared to the actual value that was supposed to be the purchase price in the name of Orthotouch, it gives a real result in terms of the difference of prices sold to Accelerate. In certain circumstances, as a result of the property condition, certain prices were sold below the scheme of arrangement values in total to a value of R 127 million.
- 6.70.5. In conclusion it is clear in terms of my investigation, that there was in fact little difference between the value of the building and the sale to Accelerate with the differences being vacancy and maintenance and repairs.
- 6.70.6. The cause of loss to investors is clearly as a result of investments sourced from individual investors in the amount of approximately R 4.6 billion against the actual value of properties of approximately R 2.5 billion. Up and above the value of the R 2.5 billion of properties, R 883 million of such purchase price was not paid to the original owner which indicates a money loss of approximately R 2.9 billion which funds were utilised between the HS Companies and Bosman & Visser for purposes of the increase of purchase price, management fees, brokerage fees, some repairs and maintenance and finally repayment of interest for a period of approximately 2 years.
- 6.70.7. Orthotouch utilised the monthly income and proceeds from sales, as it was its only source of income, to pay expenses, maintain and repair properties, repay interest, management fees, on-going litigation however it was not sufficient and external funding was obtained from group companies.

6.71. Property

The Property Portfolio forming part of the Klopper BR Plan of the HS Companies and the result of the SoA is attached hereto as **Annexure 7.1**, showing the date of sale and prices achieved during the management of Orthotouch.

6.71.1. Summary of Properties forming part of the portfolio:

- (a) Syndicate Properties vesting in the HS Companies at the market value price in the amount of R 2 598 013 768.
- (b) The properties that were added by Zephan which is currently on a R 500 million loan account.
- (c) Properties purchased as an addition to the portfolio in the amount of R 1 194 089 992.
- (d) This totals the portfolio to an amount of R 4 683 408 282 at the market related values pertaining to the return basis.

6.71.2. Cashflow in regard to the Property Sales

- (a) As a starting point the total value of sales is R 4 683 408 282 less the purchase price which had to be paid in regard to properties purchased of R 1 194 089 992 less the R 500 million on loan account to Zephan properties resulting in a proceed figure of R 2 598 013 768.

6.71.3. Cashflow in regard to Property Proceeds on HS Syndication Properties:

Orthotouch (Pty) Ltd and Zephan (Pty) Ltd			
Information			
Detail		At BRP	
BRP			
Orthotouch Liability as at HS Companies Business Rescue	1	R -4,754,900,000.00	
Property Value	2	R 2,598,013,768.00	
Default Value		<u>R -2,156,886,232.00</u>	
Current			
Orthotouch Liability as at HS Companies Business Rescue	3	R -3,922,041,832.00	
Property value and claims	4	R 327,000,000.00	
		<u>R -3,595,041,832.00</u>	
Investors Settled	5	R -832,858,168.00	
Running Expenses	6	R -420,000,000.00	
Loss on sale of property	7	R -127,579,599.00	
Interest paid	8	R -1,214,522,709.00	
Notes:			
Nr1 - As per BRP at December 2011			
Nr2 - As per BRP valuation at December 2011 clearly indicating the liability against the value available			
Nr3 - Option 1 investors remaining. Investors to the value of R565,608,572 accepted the APF offer from Third Party.			
Nr4 - As per schedule attached here to as Annexure 7.2			
Nr5 - Investors settled, including option 2 and 3 investors as per SOA.			
Nr6 - Legal costs, Office rentals, Salaries, Consulting fees, Computer Expenses, Netrofile, Insurance, Printing and Stationery, travelling expenses, telephone costs			
Nr7 - Difference between property value at start of BRP and actual selling price as per schedule			
Nr8 - Interest paid since March 2011 till September 2018			

7. Funding of the Company since the date of the Business Rescue Order

7.1. Business Rescue proceedings commenced on 7 November 2019 with the filing of the resolution.

7.2. Post Commencement Finance agreements were entered into.

8. First Meeting of Creditors

- 8.1. After an initial review of the affairs of the Business, the BRP convened a First Meeting of Creditors, held on 28 November 2019 (*“the First Meeting”*).
- 8.2. At the First Meeting, the BRP informed the participants that there is belief that there is a reasonable prospect for business rescue procedures to result in a better outcome for creditors than a liquidation procedure.
- 8.3. The major creditors voted and a creditors’ committee was formed, as provided for in the Companies Act.

9. Material Assets of the Company (Section 150(2) (a) (ii))

Jointly the material assets of the Orthotouch and Zephan as at date of the Business Rescue, excluding intercompany loans, are as follows:

- 9.1. The rights to properties and properties owned in an aggregate value of R 71.4 million (rounded off to R72 million).
- 9.2. Contingent litigation claims to an aggregate value of R255 million, the recoverability of which is questionable and a 5% contingent recovery is estimated.
- 9.3. Some Attached hereto as **Annexure 7.2** is a schedule of the available property right and other assets.

10. List of Contingent Concurrent Creditors (Section 150(2)(a)(ii))

- 10.1. A complete list of the concurrent creditors of the Company at the Commencement Date and their claims, are set out in **Annexure 8.1** hereto.

- 10.2. Creditors who are not reflected in **Annexure 8.1** have not filed their claims, are not listed as a creditor in the books of Orthotouch or Zephan or have settled or sold their claims to a third party.
- 10.3. Creditors who are reflected in **Annexure 8.1** , but who dispute the amounts of the reflected claims, or the classification of the claim as independent or related, have to file a motivation (with the necessary supporting documents) for the amendment of the claim with the BRP **by no later than 12h00 prior to the second creditors meeting** as in terms of the documentation presented.
- 10.4. For purposes of voting in terms of section 152 of the Companies Act, the BRPs will review all claims and motivations received and admit and amend claims in their sole discretion. To the extent necessary, updated versions of **Annexure 8.1** will be submitted to creditors at the meeting for consideration of the Plan, which will then replace **Annexure 8.1**.
- 10.5. For purposes of the Business Rescue of Zephan, claims means; the rights, title and interest of the creditor / investor however arising i.e. the business rescue plan of the HS Companies, the Scheme of arrangement in terms of section 155 of the Companies Act, in and to high court proceedings, the High Court orders and the proceedings together with any and all other rights of action they may have against Zephan or any other person/party which rights could related to, without limiting the generality of such rights to investments, interests, costs and the like.
- 10.6. Insofar as distribution to creditors are concerned, it is dealt with as part of the Proposal below.

11. Probable dividend on liquidation (Section 150(2)(a)(iii))

- 11.1. It is estimated that should Orthotouch or Zephan or both have been liquidated at the Commencement date, not taking into consideration intercompany loan accounts the amounts available for distribution to creditors are as set out in **Annexure 9** hereto, one calculation based on the selling of the properties as rental enterprises, which will entitle the liquidators to a 10% fee and the other based on the selling of the properties as immovable properties, which will entitle the liquidators to a 3% fee. (At the date of this Business Rescue Plan, the abovementioned amounts available for distribution to creditors remain the same.)
- 11.2. In terms of Section 135(3)(b) of the Companies Act, any financing obtained by the Company during the Business Rescue Proceedings and which remain unpaid on the liquidation of the Company will have preference in the order in which they were incurred over all unsecured claims of the Company.
- 11.3. It appears that a concurrent dividend of approximate 1.7 cents in the Rand (or 1.6 in the Rand depending on the nature of the sales) will be available for payment on the liquidation of the Company.
12. **Holders of the Company's Securities (Section 150(2)(a)(iv))**

- 12.1. The holders of the Company's securities are as follows:

<u>Shareholder</u>	<u>Percentage</u>
N Georgiou Trust	100%
<u>TOTAL</u>	<u>100%</u>

13. Agreement Concerning Business Rescue Practitioner Remuneration (Section 150(2)(a)(v))

13.1. It is intended that the BRP's fees will be charged as set out in the Act and the agreement, attached hereto as **Annexure 10**.

14. Informal Proposals made by Creditors of the Company (Section 150(2)(a)(vi))

14.1. The major creditors and shareholder have been consulted during the preparation of the Business Rescue Plan, and their views have been considered in such preparation.

14.2. No informal proposals were made to the creditors / affected persons by the Company.

PART B: PROPOSALS (Section 150(2)(b))**15. The Proposal**

The proposal is based on the following:

- 15.1. The original buy back agreements between the HS 21 and 22 Companies and Zephan having been declared to remain enforceable as a result of a final SCA court order issued in terms thereof:
 - 15.1.1. The BRP hereby notifies all buyback creditors in Zephan that such buyback agreements cannot be honoured as it is financially impossible to comply therewith.
- 15.2. Zephan and Orthotouch forming part of the SoA in terms of section 155 of the Companies Act, which has also being made a court order, the creditors, as listed of Zephan will also be the creditors of Orthotouch and *vice versa*.
- 15.3. The approval of the Business Rescue Plans of Zephan and Orthotouch is dependent on each other with the effect that in the event of either of the Business Rescue plans as proposed not being approved in terms of the Companies Act that will have the result of the remaining Business Rescue Plan similarly not being approved.
- 15.4. The issuing of shares and / or payment of cash to creditors and investors dependent on the alternative elected will only be done through Orthotouch. The third party offer to creditors / investors of Orthotouch is subject and conditional upon all creditors in Zephan and Orthotouch out and out ceding all their claims to the third-party offeror and the sale of all claims being effected to such third party offeror, in terms of the provisions of the Purchase of Claim and Cession

Agreement annexed as **Annexure 8.2** hereto.

The terms of the Proposal, entails the acquisition by and cession to the third party proposer of any claims which the HS Investors may have or claim to have against wherever party or entity, based on the HS Investors' shareholding/investment in the relevant HS Company or Companies, are as follows:

15.5. **Alternative 1:**

15.5.1. The HS Investors as referred to in **Annexure 8.1** are hereby offered payment of 25% of the original capital investment in addition to any payments already received as interest.

15.5.2. HS Investors have received prior to business rescues of the HS Companies the following interest on their investments as set out in the schedule annexed hereto as **Annexure 8.3**, which together with interest after the Klopper BR Plan, can be summarised as follows:

15.5.2.1. HS Company 15 Investors received an aggregate of 87% return on capital by way of interest payments;

15.5.2.2. HS Company 16 Investors received an aggregate of 83% return on capital by way of interest payments;

15.5.2.3. HS Company 17 Investors received an aggregate of 77% return on capital by way of interest payments;

15.5.2.4. HS Company 18 Investors received an aggregate of 75% return on capital by way of interest payments;

15.5.2.5. HS Company 19 Investors received an aggregate of 69%

- return on capital by way of interest payments;
- 15.5.2.6. HS Company 20 Investors received an aggregate of 64% return on capital by way of interest payments;
- 15.5.2.7. HS Company 21 Investors received an aggregate of 59% return on capital by way of interest payments; and
- 15.5.2.8. HS Company 22 Investors received an aggregate of 15% return on capital by way of interest payments.
- 15.5.3. Payment of the settlement amount shall be affected by way of Accelerate Property Fund JSE listed share as a payment method in converting debt to equity.
- 15.5.4. The value of the share will be calculated on a Net Asset Value (“NAV”) basis of Accelerate share at its current NAV of approximately R7,99 per share. The NAV confirmation as issued by the chairman of Accelerate is attached here to as **Annexure 11**:
- 15.5.4.1. The NAV formula for determining the real share value is being used due to the current circumstances whereby the listed share is trading at approximately R0.40 per share with is much less than the NAV of such share. In the event of the HS Investor opting for this option it is proposed that the investor allows the share to mature and increase in value, maximising the future share value to its benefit and to be able to recoup as much of the original investment as is possible.
- 15.5.4.2. The proposal is also based on the expectation that the share

price will reach exceptional heights in the next two to three years and the possibility that R 7,90 exists as a result of the accelerate financial forecast which will include their new flagship building, the Fourways Mall, to be publicised in 2020.

- 15.5.4.3. In the event of such share price increasing to more than the NAV, it will be for the benefit of the HS Investor.
- 15.5.5. The shares offered in lieu of payment are presented from a third-party proposer, subject to conditions as referred to below.
- 15.5.6. This is to regulate and equalise all investors investments, some who received interest and payments and some who has opted for full payment at a later stage.
- 15.5.7. Note the involved parties are:
 - 15.5.7.1. Orthotouch,
 - 15.5.7.2. Zephan Properties,
 - 15.5.7.3. Nicolas Georgiou, as director of Orthotouch and Zephan and;
 - 15.5.7.4. Accelerate.
- 15.5.8. The above offer is made by an independent third-party subject to all claims to be acquired and such acquisition of all and any claims including the entitlement of any write off action in terms of such a claim being sold and ceded to such third independent party as an out-and-out cession. The creditor / investor will sell and cede their claims to the third-party offeror against payment in cash or delivery of the share certificate as

referred to below at the agreed values.

15.5.9. For the purposes of absolute clarity, any reference to the claim/s to be acquired shall mean all rights, title and interest of the HS Investors of whatsoever nature (be it in terms of the initial syndication investment, any buy-back agreement, the business rescue plan, the scheme of arrangement or otherwise, but always as a result of the HS Investors having obtained shareholding in or made an investment to any HS Company or Companies) and howsoever arising, including any right of action in and/or from any suretyship and to any rights which accrued or is claimed to have accrued. The offer is also made that the claim once sold and ceded will result in any claim against any party, be it Orthotouch, Zephan, the NG Trust, Nic Georgiou, Hans Klopper, Michael Georgiou, George Georgiou, Connie Myburg or any other person, natural or juristic, being sold and ceded to the third party offeror.

15.5.10. The offer is offered to all investors, contingent or otherwise, irrespective of the option elected in terms of the Business Rescue Plan and the Scheme of arrangement namely Alternative 1, 2 and 3, in so far as those who have opted for Alternative 2 and 3 have not been settled in full.

15.5.11. Issuing of the Accelerate shares will be:

15.5.11.1. Subject to computer share processing on/before 90 business days from approval of Business Rescue Plan. The proof of funds and the identity of the third - party, in terms of Alternative 2, will be disclosed to the BRP on the day of voting on the plan such information is confidential.

15.5.11.2. For purposes of the HS Investor to obtain the share and

overtime for the share to mature and to sell such share at their own will when and if required.

15.5.12. Conditions Precedent:

15.5.12.1. HS Investor to elect such alternative within 14 days from the date of the approval of the Business Rescue Plan, failing which alternative 2 shall automatically apply.

15.5.12.2. The third party proposer and presenter of the Accelerate share presents such shares subject to the Condition that all claims are sold and ceded to such third party in exchange for the value received for the share and the remaining properties in Zephan and the HS Companies to be transferred to such third party proposer as remuneration for the proposed share.

15.5.13. In the event of the creditor / investor electing alternative 1, it will be required that the creditor / investor sign the presented cession and sale of claim documentation within 7 calendar days from date of presentation thereof. Failing which, the creditor / investor hereby authorises the business rescue practitioner to sign such cession and sale of claim documentation on its behalf based on the terms and conditions as referred to herein.

15.5.14. The approval of the Business Rescue Plan constitutes a sale and out-and-out cession of all claims and or disputes which the creditor / investor might have against the involved parties howsoever arising ,whether from or relevant to the matters and / or issues traversed in or in any way relevant to this Business Rescue Plan, the Klopper BR Plan, the SoA, any High Court proceedings, High Court orders and / or other court

proceedings and/or costs orders, and none of the creditors / investor will have any further rights or claims against the involved parties arising therefrom save as it is specifically provided for in terms of this agreement. All such rights shall, upon payment of the claim / sale consideration be transferred to and vest in the third-party offeror as set out in **Annexure 8.2**.

15.5.15. In the event of the creditor / investor electing to obtain shares in Accelerate as proposed, such shares will be issued subject to the ability by Compushare on / before 90 days from date of election.

15.6. **Alternative 2:**

15.6.1. It is proposed to the HS Investors that in the event of Alternative 1 not being selected or in the event of the HS Investor selecting Alternative 2 the allotted Accelerate shares pro rata the balance of capital investment which will be paid within 7 days of approval of the BR Plan at an agreed value of R2.00 per share irrespective of the then current trading price, currently being R 1.70.

15.6.2. The conditions as referred to above, inclusive all of those relating to the sale of claims and the out-and-out cession of those claims will apply mutatis mutandis to alternative 2.

15.6.3. It will be required that the creditor / HS Investor sign the presented cession and sale of claim documentation within 7 calendar days from date of presentation thereof. Failing which, the creditor / investor hereby authorises the business rescue practitioner to sign such cession and sale of claim documentation on its behalf on the terms and conditions as set out in **Annexure 8.2** hereto.

15.6.4. In the event of the creditors / investor resorting under alternative 2, the cash payment shall be paid into the bank account as is available to the Business Rescue Practitioner and / or Orthotouch or such account as is nominated by the creditors / investor.

15.6.5. In the event of such cash amount being returned as a result of an unknown or incorrect bank account, such funds shall be held in a nominated trust account by the attorneys of Orthotouch for a period of 12 months from date of approval of the Business Rescue Plan where after such funds shall be forfeited to Orthotouch without any further notice.

15.7. **Calculation Formula:**

15.7.1. **Alternative 1:**

$R100\ 000.00$ (capital investment) $\times 25\% = 3164$ shares at $R7.99$ per share.

$R7.99(\text{NAV}) \times 3164$ shares, equals $R25\ 000.00$ in rand value or an additional 25% return of the initial investment, which is to mature.

This will similarly be applicable if the share price increased to $R7.90$, or more, a share at any stage.

15.7.2. **Alternative 2:**

$R100\ 000.00$ (capital investment) $\times 25\% = 3130$ shares at $R7.99$ per share.

$R\ 2.00$ (agreed value) $\times 3130$ shares = $R6\ 260.00$ (an immediate cash payment).

This amount is equal to an additional 6.3% return of the initial investment.

15.7.3. Difference between Alternative 1 and 2:

Alternative 1 – repayment of an additional 25% of initial capital investment on maturing share value, which, with interest received from the Initial Orthotouch Agreement onwards, would be a repayment of 51.79% or 51.79 cent/Rand.

Alternative 2 – repayment of an additional 6.3% on initial capital investment, which, with interest received from the Initial Orthotouch Agreement onwards, would be a repayment of 33.04 % or 33.04 cent/Rand

15.8. Distribution:

The shares or cash availability in respect of Alternative 1 and 2 is to be distributed to the creditors in terms of the payment schedule as attached hereto as **Annexure 12**.

15.9. General:

15.9.1. The time period stipulated above may be extended with the approval of creditors as contemplated in section 152(2) of the Companies Act.

15.9.2. If the Company anticipates that it will not have sufficient funds to finance its own operational costs or costs relating to the disposal process, the Company will present an action plan to the creditors, which action plan will clearly set out reasonable proposals as to how the Company will meet its obligations. If need be (whether in accordance with such proposed action plan or otherwise), the Company and the creditors will discuss certain financial challenges on a case by case basis and may agree through express written agreement on appropriate

measures.

16. Nature and Duration of the Moratorium on Debts (Section 150(2)(b)(i))

16.1. The intention of a moratorium is to allow the Company sufficient time to implement the Plan and complete the disposal process, which should result in creditors and the shareholder receiving a significantly better return as opposed to placing the Company in liquidation.

16.2. The commencement of business rescue proceedings places a moratorium on legal proceedings against the Company. This means that creditors, even though their rights may be secured, will not be able to take action against the company for non-payment of their debts whilst the company is in business rescue and should section 133 of the Companies Act still have effect.

16.3. The moratorium will remain in place until either (a) the Plan has been substantially implemented, or (b) the Plan fails (as set out more fully below), or (c) section 133 no longer has effect.

17. Cost Saving Initiatives and Retrenchment of Employees

17.1. As a result of no interest payments currently being made, administration costs are reduced and only remaining properties in Zephan and the HS Investment Companies are being managed.

17.2. No employees are currently employed by the Company and the Company is making use of a third-party management company to fulfil their duties against the delivery of a monthly invoice.

18. Release from payment of Debts and conversion of Debt to Equity (Section 150(2)(b)(ii))

18.1. No debt to equity conversion is contemplated as referred to in this Business Rescue Plan.

18.2. It is contemplated at this moment in time that creditors' claims may be compromised.

19. Discharge of Debt and Sale and Cession of all Claims (Section 154(1) and (2))

18.3. Upon implementation of the terms and conditions of the BR Plan the affected parties accede to the discharge of a part of the debt as stated in this Business Rescue Plan and the concurrent sale and the cession of all claims to the third party offeror.

20. Continued Role of the Company and Existing Agreements (Section 150(2)(b)(iii))

20.1. The Company will continue its role in terms of the Companies Act.

21. Available Property for payment and Creditors' Claims (Section 150(2)(b)(iv))

21.1. The following property is available for payment of the creditors' claims:

21.1.1. A third party proposer is presenting the creditors with Accelerate listed shares and or cash in repayment of its compromised debt as referred to herein.

22. Proposed Order of Payment on Approval of the Plan (Section 150(2)(b)(v))

22.1. The following order of payment is proposed:

22.1.1. Payment of all operating costs of the Company post commencement, including the fees and disbursements of the BRP;

22.1.2. Payment of the independent unsecured creditors' claims in a proportionate share of relevant outstanding debt.

23. Benefits of Business Rescue vs Liquidation (Section 150(2)(b)(vi))

23.1. As is evident from the Plan, currently it is not in the interest of creditors or shareholders for the Company to be placed in liquidation.

23.2. In the event of the Plan being implemented as projected (and subject to the assumptions contained in the Plan) it is anticipated that the concurrent creditors will receive a better return in a shorter time period and at a considerably less cost than under a liquidation proceeding.

23.3. It is evident from the Liquidation Scenario and calculation that the creditors / affected parties will receive no return in liquidation or, in any event, much less than in Business Rescue.

23.4. It is to be duly noted that in the Liquidation Scenario there is a great possibility that all interest received by investors might be repayable in full, in terms of the Insolvency Act, which will be hugely detrimental to all investors.

23.5. The liquidation of the Company might result, by way of a court order, in the cancellation or overturning of the Scheme of Arrangement. This in turn might result in a liquidation of the HS Companies with the same effect where the investors will be forced, in terms of the Insolvency Act, to repay all interest received to date.

23.6. Point 23.5 is based on the current application of the Insolvency Act in similar cases and circumstances.

24. Effect of Business Rescue on holders of classes of Securities (Section 150(2)(b)(vii))

24.1. It is uncertain at this stage whether the rights of the security holders of the Company will be affected as a result of the approval of the Plan. To the extent that it will be affected, the approval of the security holders will be sought in terms of section 152(3)(c) of the Companies Act.

PART C: ASSUMPTIONS AND CONDITIONS**25. Conditions to be satisfied for the Plan to come into operation (Section 150(2)(c)(i)(aa))**

The Plan will come into operation on the date that it is duly adopted by the creditors of the Company in accordance with section 152(2) of the Companies Act.

26. Conditions to be satisfied for the Plan to be substantially implemented (Section 150(2)(c)(i)(bb))

26.1. In order for the Plan to be substantially implemented, the following should transpire:

26.2. If Alternative 1 is implemented:

26.2.1. Acceptance of shares as repayment and/or;

26.3. If Alternative 2 is implemented:

26.3.1. Receipt of payment in cash.

27. The effect the Plan has on the employees of the Company (Section 150(2)(c)(ii))

No employees are employed by the Company and the Plan will therefore have no adverse effect in this regard.

28. The circumstances in which the Business Rescue Proceedings will end (Section 150(2)(c)(iii))

The business rescue proceedings will end:

28.1. In terms of section 132(2)(c)(ii) of the Companies Act with the filing of the notice of substantial implementation; or

28.2. If the Plan fails, as set out more fully below.

29. The projected balance sheet and income statements of the Company (Section 150(2)(c)(iv))

29.1. In view thereof that the Plan envisages a payment by way of share or cash from a third party proposer to the Company, the projected balance sheets setting out the projected position in respect of the two Alternatives contained in the plan is attach as **Annexure 13**.

29.2. The BRP has prepared a projected income statement, which is attached hereto as **Annexure 13**.

29.3. The BRP has prepared a projected cash flow, which is attached hereto as **Annexure 13**.

29.4. Only 2015 Financial statements are currently available. The BRP is currently engaging with the auditor of Orthotouch to bring the February 2019 financial statements and the February 2020 management accounts up to date.

30. Failure of the Plan

30.1. The Plan will fail if:

30.1.1. Alternative 1 fails and Alternative 2 is not implemented; or

30.1.2. Alternative 2 fails and Alternative 1 is not implemented.

30.2. Upon the failure of the Plan, the BRP will immediately apply to court for an order to terminate the business rescue proceedings and to place the Company in liquidation.

31. Amendments to this Business Rescue Plan

31.1. Should there be a need to amend the Plan at any time after the adoption thereof, the BRPs shall be entitled to make such amendments in consultation with creditors.

31.2. Any amendments to the Plan shall be voted upon by the creditors at a special creditors' meeting for such purposes that shall be convened by the BRP. For all intents and purposes hereof, the voting procedure for such amendments and the determination thereof shall be carried out in accordance with the relevant provisions of the Companies Act.

32. Default/Non Compliance/SARS

32.1. Should the happening of an Event of Default arise as a result of the Company's failure to comply with the provisions of the Business Rescue Plan then the Company will be required, upon notice from Creditors/Affected persons, to remedy such breach or its obligations in terms of the aforementioned within a period of 7 (seven) days from receipt of such notice (or such extended period as the Creditors/Affected persons may in their sole discretion allow in writing), failing which the BRP Plan will terminate. The notice contemplated in this clause will be sent by the Creditors/Affected persons by way of an email to the BRP which email will be deemed to have been received by the BRP on the date that it was sent.

32.2. In the event of the termination of the business rescue plan as contemplated

herein, the BRP will file a notice of termination of the Business Rescue Proceedings with the CIPC (as envisaged in section 132(2)(b) of the Act) within 5 (five) days of the happening of an Event of Default; and

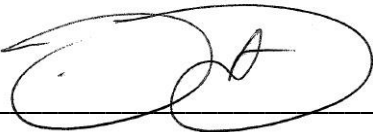
32.3. Any compromise contemplated in this business rescue plan is conditional upon the Company fully meeting its obligations to creditors as set out in this business rescue plan. In the event of any breach by the Company of its obligations to creditors in terms of the business rescue plan, or in the event the Company is placed in liquidation, the full balance due to creditors in terms of their original claims against the Company shall immediately become due, owing and payable by the Company to the creditors. Business rescue proceedings may be terminated on a majority vote by the creditors/affected persons.

32.4. The BRP undertakes that the Company shall ensure that all future tax obligations (including the filing of returns and payment of taxes as they become due) will be met until proceedings have been terminated on any ground listed in terms of section 132 of the Companies Act of 2008. Any deviation shall constitute a breach as constituted herein. The full original claim outstanding to creditors or remainder of such claim shall be payable.

33. CERTIFICATE BY BUSINESS RESCUE PRACTITIONER

I, Jacques du Toit, hereby certify to the best of my knowledge and belief that:

- (a) The information provided herein appears to be accurate, complete and up to date;
- (b) The projections provided are estimates made in good faith on the basis of factual information and assumptions as set out herein; and
- (c) In preparing the Plan I have not undertaken an audit of the information provided to me, although where practical, I have endeavoured to satisfy myself of the accuracy of such information.



A handwritten signature in black ink, consisting of several loops and a final flourish, positioned above a horizontal line.

Jacques du Toit

Senior Business Rescue Practitioner

Date: 31 March 2020