CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NUMBERS: CCT283/16, 293/16 and 294/16

CCT283/16

In the matter between

CHANTELLE JORDAAN	First Applicant
NEW ADVENTURES CONSULTING & SERVICES (PTY) LIMITED	Second Applicant
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Applicant
F M KEKANA	Fourth Applicant
M R MALEBOLOA	Fifth Applicant
S R MALEBOLOA	Sixth Applicant
M MAMOTSAU	Seventh Applicant
BILLIE ANN LIVANOS	Eighth Applicant
LEAH HENDERSON	Ninth Applicant
CLIFTON DUNES INVESTMENTS 317 (PTY) LIMITED	Tenth Applicant
GEMMA DIAMONDS (PTY) LIMITED	Eleventh Applicant
OAK PLANT RENTALS (PTY) LIMITED	Twelfth Applicant
STEPPING THE WORLD (PTY) LIMITED	Thirteenth Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	First Respondent
EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent

CCT293/16

In the matter between

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Applicant

and

CHANTELLE JORDAAN	First Respondent
NEW ADVENTURES CONSULTING & SERVICES (PTY) LIMITED	Second Respondent
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Respondent
F M KEKANA	Fourth Respondent
M R MALEBOLOA	Fifth Respondent
S R MALEBOLOA	Sixth Respondent
M MAMOTSAU	Seventh Respondent

CCT294/16

In the matter between

EKURHULENI METROPOLITAN MUNICIPALITY	Applicant

and

BILLIE ANN LIVANOS	First Respondent
LEAH HENDERSON	Second Respondent
NEW ADVENTURES CONSULTING & SERVICES (PTY) LIMITED	Third Respondent
CLIFTON DUNES INVESTMENTS 317 (PTY) LIMITED	Fourth Respondent
GEMMA DIAMONDS (PTY) LIMITED	First Respondent
OAK PLANT RENTALS (PTY) LIMITED	First Applicant
STEPPING THE WORLD (PTY) LIMITED	Second Applicant

and

TUHF LIMITED	First Amicus Curiae

and

THE BANKING ASSOCIATION OF SOUTH AFRICA	Second Amicus Curiae

and

eTHEKWINI METROPOLITAN MUNICIPALITY Third Amicus Curiae

FILING NOTICE

BE PLEASED TO TAKE NOTICE that the following documents are filed herewith:

1. Application for Admission in terms of the provisions of Rule 10 of the Rules of the Constitutional Court of South Africa.

DATED at EDENVALE on the 31st day of MAY 2017

GASCOIGNE RANDON & ASSOCIATES
Attorney for the Johannesburg Attorneys Association
56 Seventh Avenue cnr Fourth Street Edenvale
P O Box 31 Edenvale 1610
Docex 4 Edenvale
Tel: 011 453 1077/8
Fax: 011 453 7372
Email: vanessa@gascoigne.co.za
Ref: Mrs V Moodley/cs/MAT4970

TO:

MR KGWADI MAKGAKGA
REGISTRAR
CONSTITUTIONAL COURT SERVICE PER EMAIL, AS AGREED
Email: registrar@concourt.org.za

AND TO:

SCHINDLERS ATTORNEYS SERVICE PER EMAIL, AS AGREED
Attorney for TUHF Limited
2nd Floor 3 Melrose Boulevard
Melrose Arch
Johannesburg
Tel: 011 448 9600
Fax: 011 448 9620
Email: gladwin@schindlers.co.za
Ref: Gladwin/avw/G144800

AND TO:

CLIFFE DEKKER HOFMEYER SERVICE PER EMAIL, AS AGREED
Attorney for the Banking Association of South Africa
1 Protea Place
Sandown
Johannesburg
Tel: 011 562 1172
Email: Eugene.bester@cdhlegal.com
Ref: 01998338

AND TO:

LINDA MAZIBUKO & ASSOCIATES SERVICE PER EMAIL, AS AGREED
Attorney for Ethekwini Metropolitan Municipality
231-233 Mathews Meyiwa Road
Stamford Hill
Morningside
Durban
Tel: 031 303 1006
Fax: 031 303 1039
Email: linda@qinet.co.za
Ref: Mr L Mazibuko/llg/EM501.MTC
c/o SANDERS ATTORNEYS
Cinetech Centre
1 Frost Avenue
cnr Lime Street
Sunnyside
Johannesburg
Tel: 011 726 3711
Fax: 011 726 3710
Email: msader@saders.co.za
Ref: M Sader/bvg/M2083

AND TO:

ROSS ATTORNEYS SERVICE PER EMAIL, AS AGREED
Attorney for Confirmation Applicants
11 Nicol Road
Bedfordview
Johannesburg
Tel: 011 622 1256
Fax: 011 616 0807
Email: gross@rosslaw.co.za
Ref: G Ross

AND TO:

THE STATE ATTORNEY, PRETORIA SERVICE PER EMAIL, AS AGREED
Attorney for the Minister of Cooperative Governance and Traditional Affairs
SALU Building
316 Thabo Sehume Street
Pretoria

Tel: 012 309 1635/082 936 6919
Email: mmatubatuba@justice.gov.za
Ref: 1958/2015/Z74/MM

AND TO:

CHIBA & TOURAPI ATTORNEYS SERVICE PER EMAIL, AS AGREED
Attorney for the Ekurhuleni Metropolitan Municipality
Ref: MRS CHIBA/EMM01/0134
c/o KRALJEVICH & JANSE VAN VUUREN INC
1st Floor
182 Cradock Avenue
Centurion
Tel: 012 664 0306
Fax: 086 541 3520
Email: natasha.chiba@gmail.com
Ref: DJVV

AND TO:

GILDENHUYS MALATJI INC SERVICE PER EMAIL, AS AGREED
Attorney for the City of Tshwane
GLMI House
Harlequins Office Park
164 Totius Street
Groenkloof
Pretoria
Tel: 012 428 8612
Fax: 012 428 8712
Email: AMatabata@gminc.co.za
Ref: T MAODI/LSW/01719050
c/o GILDENHUYS MALATJI INC
Katherine & West Building
114 West Street
Sandton
Johannesburg
Tel: 011 068 5900
Fax: 011 068 5901

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASES CCT 283/16, 293/16 and 294/16

In the matter between: **CCT 283/2016**

CHANTELLE JORDAAN	First Applicant
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Applicant
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Applicant
F M KEKANA	Fourth Applicant
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S R MALEBOLOA	Sixth Applicant
M MAMOTSAU	Seventh Applicant
BILLIE ANN LIVANOS	Eighth Applicant
LEAH ANDERSON	Ninth Applicant
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Tenth Applicant
GEMMA DIAMONDS (PTY) LTD	Eleventh Applicant
OAK PLANT RENTALS (PTY) LIMITED	Twelfth Applicant
STEPPING THE WORLD (PTY) LIMITED	Thirteenth Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	First Respondent

EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent

In the matter between:	**CCT 293/2016**
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Applicant
and	
CHANTELLE JORDAAN	First Respondent
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Respondent
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Respondent
F M KEKANA	Fourth Respondent
M R MALEBOLOA	Fifth Respondent
S R MALEBOLOA	Sixth Respondent
M MAMOTSAU	Seventh Respondent

In the matter between:	**CCT 294/2016**
EKURHULENI METROPOLITAN MUNICIPALITY	Applicant
and	
BILLIE ANN LIVANOS	First Respondent

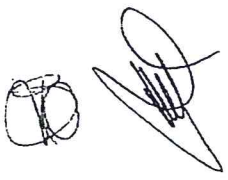
LEAH HENDERSON	Second Respondent
NEW VENTURES CONSULTING SERVICES (PTY) LTD	Third Respondent
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Fourth Respondent
GEMMA DIAMONDS (PTY) LTD	Fifth Respondent
OAK PLANT RENTALS (PTY) LIMITED	Sixth Respondent
STEPPING THE WORLD (PTY) LIMITED	Seventh Respondent
and	
TUHF LIMITED	First Amicus Curiae
and	
THE BANKING ASSOCIATION SOUTH AFRICA	Second Amicus Curiae
and	
eTHEKWINI METROPOLITAN MUNICIPALITY	Third Amicus Curiae

APPLICATION FOR ADMISSION AS AMICUS

I, the undersigned,

NICOLE TANYA SAULI-KOREN

do hereby make oath and say that:



1. I am an adult female attorney, conveyancer and Executive Committee Member of the Johannesburg Attorneys Association ("JAA") ("the applicant") as well as a member of the JAA's Property Committee. I am also a member of the Property Committee of the Law Society of the Northern Provinces ("LSNP").

2. I am duly authorized to bring this application on behalf of the applicant in terms of the resolution, a copy of which is attached hereto as annexure **"NS1"**.

3. The facts deposed to in this affidavit, save where otherwise stated, or where it may appear otherwise from the context of this affidavit are within my personal knowledge and belief and I believe them all to be true and correct.

4. Legal submissions made in this affidavit are made on the advice of the applicant's attorneys and counsel.

THE PARTIES

5. The JAA is a voluntary common law association, established in terms of its Constitution dated _____ (a copy of the present version of which is attached hereto as annexure **"NS2"**).

6. As set out in the JAA's Constitution, the JAA's primary aim is to serve the interests of attorneys practicing within the greater Johannesburg area.

7. The JAA's principal place of business is the JAA's Offices at the Johannesburg High Court, Room 028. It's management meetings are convened at the offices of BBM Attorneys, 112 Oxford Road, Houghton Estate, Johannesburg.

8. There are various applicants before the Honourable Court in this matter. These applicants are essentially customers of the various municipalities referred to herein, and whom are aggrieved by the manner in which the various municipalities referred to herein are holding them liable (or attempting to, or wish to hold them liable) for charges incurred by prior owners of the property concerned.

9. The respondents are the Tshwane and Ekurhuleni Municipalities, and the Minister of Co-Operative Governance and Traditional Affairs.

10. There are three *amici*. The first is TUHF LTD, the second is the Banking Association of South Africa ("BASA") and the third is the Ethekwini Municipality.

11. The citations of the abovementioned parties are fully set out in the various pleadings and forms part of the record. It is respectfully submitted that it is not necessary to burden this application by repeating same herein.

NATURE OF THIS APPLICATION

12. The JAA seeks to be permitted to make written submissions to the Honourable Court in relation to the duty (or lack thereof) on conveyancers to disclose the existence and extent of "historical" municipal debt to purchasers of immovable properties.

13. Upon making enquiries from the Honourable Court as to whether there was any chance that the JAA could still be heard in relation to the abovementioned duty after the oral hearing of the matter, the JAA was directed by the Honourable Court to file an application for admission as *amicus (*should it so wish) by 31 May 2017.

14. This application is filed in accordance with that direction.

CONDONATION FOR THE LATE FILING OF THIS APPLICATION

15. The JAA's Executive Committee, as well as its Property Committee, consists of persons who are all engaged full time in legal practice. They serve the JAA voluntarily, without obtaining any compensations. The JAA does not have any attorneys, paralegals, or researchers in its employ (it has only office administrative staff). This is because it, quite literally, does not have the financial means to do so.

16. As a result of the above, the JAA does its best to keep itself appraised of all issues that affect its members. It monitors the progress of these issues to the best of its ability, and where necessary, it takes action to protect and promote the rights of its members. The JAA does not act alone in this regard; it is constantly in contact with the Pretoria Attorneys' Association ("the PAA"), the Gauteng Law Counsel ("GLC"), the LSNP and the Law Society of South Africa ("LSSA") as well as the Cape Law Society and the Law Society of Kwa-Zulu Natal.

17. The fact that the Third Amicus, Ethekwini Municipality, had advanced argument in this Honourable Court to the extent that there is, or ought to be a duty on conveyancers, or alternatively that Ethekwini Municipality places this duty on conveyancers within its jurisdiction, to disclose historical debt to purchasers, only came to the attention of the JAA's Executive Committee and Property Committee on the day of the hearing of the matter (23 May 2017).

18. Although there are several JAA Executive Committee members that sit on the aforementioned bodies (the PAA, GLC, and LSNP), and despite the fact that the JAA works closely with the these bodies and the LSSA in many respects, not a single person on the Executive Committee or Property Committee of the JAA had knowledge of the Third Amicus's argument about the conveyancer's duty.

19. It is common knowledge that one of the members of the JAA's Executive Committee and Property Committee (Mrs Chantelle Gladwin-Wood) was involved in the proceedings before the above Honourable Court on behalf of the First Amicus. However, she had no knowledge of the Third Amicus's argument in this regard, because she had never had sight of the admission application of the Third Amicus (which application she only became aware of a week or so before the hearing), and further she had not read all of the written submissions of all of the parties before the hearing (most importantly, she had not read the written submissions of the Third Applicant). This occurred because she was otherwise engaged in her practice with several urgent matters, and she was suffering from a medical condition that resulted in debilitating headaches, and she literally did not find the time to read all of the submissions made. She did, however, forward all of them to counsel for the First Amicus, who dealt with them appropriately. Mrs Gladwin-Wood's confirmatory affidavit is attached as annexure **"NS3"** hereto.

20. A second confirmatory affidavit by Mr Anton Theron, who is a member of the JAA's Executive Committee, as well as its Property Committee, and who is also the Chairperson of the GLC, and a member of the PAA's Central Committee, as well as a member of the GLC's Property Committee, is attached as annexure **"NS4"** hereto.

21. It is further respectfully submitted that the JAA could not reasonably have been expected to have acquired this knowledge at an earlier time, because it does not read all court papers filed in every court application that affects its members (nor, is it submitted, is there any legal or ethical obligation on it to do so).

22. The JAA's Executive Committee (consisting as it does of attorneys in practice) further acknowledges and appreciates that its request to be heard at this late stage is exceptional.

23. The Executive Committee of the JAA unreservedly apologises to all parties, and the above Honourable Court, for any inconvenience caused to any party herein as a result of this application. We undertake to do everything in our power to minimise the inconvenience to all parties (and the Honourable Court).

24. For the above reason the JAA's submissions in this matter will be confined purely to the issue of the conveyancer's duty. All submissions made by the JAA are made with the intention of eliciting as little opposition as possible for the aforesaid reasons.

WRITTEN SUBMISSIONS BY THE JAA

25. If the JAA were admitted as *amicus* and permitted to file written submissions, the content of those submissions would be substantially similar to the content of this application (save that the sections of this affidavit relating to the JAA's interest in these proceedings, and the condonation for the late filing of this application would be omitted).

26. The written submissions could thus be filed within hours of admission by the Honourable Court, should the Honourable Court require that same be filed.

27. This is done in an attempt to avoid any delay in the Court's finalisation of the matter, as well as to cause as little inconvenience and cost as possible to all parties concerned.

JAA's INTEREST IN THESE PROCEEDINGS

28. All conveyancers canvassed by the JAA agree that if the Honourable Court finds that a purchaser's property cannot be attached and sold to defray historical debt, then there is no question of any duty (on a conveyancer to disclose historical debt to a purchaser) arising.

29. However, when canvassed about the existence of such a duty in the event of the Honourable Court finding that the purchaser's property can be attached and sold to satisfy the seller's historical debts, there was little uniformity in the answers received.

29.1 Some conveyancers canvassed by the JAA are of the view that there is a legal duty on conveyancers to disclose historical debt to purchasers, in the situation where the purchaser's property could be attached and sold by the municipality to settle the seller's historical debt.

29.2 Some conveyancers canvassed by the JAA are of the view that the duty as aforesaid, is an ethical duty only and not a legal duty (with the result that a conveyancer who failed in this duty, could be disciplined by a law society but not sued for damages).

29.3 Other conveyancers canvassed by the JAA are of the view that there is no ethical or legal duty on conveyancers at all to disclose the seller's historical debt to the purchaser on conveyancers.

29.4 In all cases, there was no uniformity in the answers received in relation to the following aspects of such a duty (assuming that there is one):

29.4.1 **When does this duty arise?** If the conveyancer never becomes aware, because (for example) the municipality issues incorrect rates clearance figures that show no historical debt, or issues figures that do not disclose the existence of the historical debt, then there is nothing for the conveyancer to disclose.

29.4.2 **When must a conveyancer comply with this duty?** Is there a time limit by which conveyancers must have disclosed the existence of historical debt? One can foresee the duty being empty if the conveyancer can disclose it the day before or the day of transfer. This indicates that the conveyancer must disclose it earlier on in the transfer process. But when is the deadline by which it must be disclosed?

29.4.3 **What is the extent of such a duty?** What happens where the municipality concerned provides figures to the conveyancer that show only the s 118(1) amount, and not any historical debt that

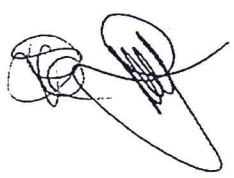
might also exist? Must the conveyancer go back to the municipality and ask about the s 118(3) debt, and then disclose this to the purchaser? Or must the conveyancer merely pass on to the purchaser the figures given to him/her by the municipality? Perhaps the conveyancer is not under a duty to provide the figures to the purchaser but is only obliged to disclose the existence (but not the extent) of the historical debt to the purchaser, which presumably could be done by way of making a statement to the purchaser. Is the conveyancer under any duty to certify the extent of the municipal debt, rather than simply disclosing the information contained in the rates clearance figures? What happens when the seller instructs the conveyancer to pass transfer after only section 118(1) figures have been paid (bearing in mind that this is a perfectly lawful instruction from the seller)?

29.4.4 **How should a conveyancer conduct him/herself, in order to act in accordance with his/her existing duty to act in the best interests of both parties, and in order to act in accordance with the duty of confidentiality owed to the seller, as well as this duty to disclose historical debt to the purchaser?** Should the conveyancer:

29.4.4.1 tell the seller that unless the seller agrees to allow the conveyancer to disclose the historical debt to the purchaser, the conveyancer will withdraw as conveyancer?

29.4.4.2 tell the purchaser that he/she has become conflicted, and refer the purchaser to another attorney? If this is the case, what must the conveyancer say when explaining why they are conflicted such that they don't breach the seller's confidentiality?

29.4.4.3 tell the purchaser about the existence and extent of the historical debt, because the conveyancer's duty to



the purchaser in this regard overrides the conveyancer's duty of confidentiality to the seller?

29.4.5 **Does a clause in the offer to purchase/sale agreement providing that all historical debt must be paid prior to transfer:**

29.4.5.1 require the conveyancer to ensure that all historical debt is paid, but not require the conveyancer to disclose the existence and extent (if any) of the historical debt to the purchaser?

29.4.5.2 Require the conveyancer nonetheless to disclose the existence and extent (if any) of the historical debt to the purchaser?

30. The objective of the JAA's application to intervene as *amicus*, is to ensure (insofar as it is possible) that its members obtain clarification in relation to the above, in order that its members can organise their affairs and conduct themselves in a manner which ensures that they act lawfully, ethically and in accordance with the relevant professional standards, and avoid incurring liability, or bringing their profession into disrepute.

31. The JAA submits that the Honourable Court is in a unique position to provide conveyancers with guidance in this respect.

32. Whilst the JAA appreciates that the Honourable Court may find that there is no need to deal with this issue at all (if the Court finds that purchasers' properties cannot be attached and sold for sellers' debts), the JAA is hopeful that if the Honourable Court finds otherwise, the above Honourable Court will give some guidance to its members as to how conveyancers are expected to conduct themselves in order to comply with such a duty, if any.

THE JAA's SUBMISSIONS IN BRIEF

33. The Applicants and the First Amicus have already fully ventilated the issue of whether purchasers' properties can be attached and sold to satisfy the seller's historical debts. This appears fully from the record. The JAA will not canvass this again herein. We submit, however, that if the Honourable Court finds that this is not lawfully permissible (for whatever reason), then there can (logically) be no duty on a conveyancer to disclose their existence (and extent) of historical debt to the purchaser.

34. The JAA is only interested in the situation where the Honourable Court finds as follows:

34.1 The Constitutional Court finds that the purchaser's property is subject to attachment and sale by the municipality, to satisfy the debts of the seller of that property;

34.2 There is "historical" debt (ie amounts owed to the municipality that the seller will not pay before transfer);

34.3 The seller has not disclosed the existence of the historical debt to the purchaser;

34.4 The municipality has not disclosed the existence of the historical debt to the purchaser; and

34.5 The conveyancer has urged the seller to make payment or make arrangements to settle the historical debt, and the seller refuses to do so for whatever reason.

35. The Third Amicus has already argued that in the above circumstances, there is, or ought to be, such a duty. This appears fully from the record. The JAA will not canvass this herein. We merely point out that some conveyancers that we have canvassed hold this view.

36. The JAA did not, in the limited time available to it for the filing of this application, obtain sufficient clarity with regard to the difference between a legal and an ethical (or moral) duty and how this might affect the issue. Accordingly, the JAA is not in a position at present to make submissions in this regard. If the Honourable Court requires further submissions in this regard, the Honourable Court can require the



JAA to file same. At this stage, we thus seek only to bring to the attention of the Honourable Court that some members hold this view.

37. Some conveyancers canvassed by the JAA allege that there is no legal duty on a conveyancer to disclose historical debt to purchasers. The reasons advanced to the JAA by its members for this submission, are as follows:

37.1 There is no authority in law creating or imposing such a duty. The written submissions made by the Third Amicus provide no authority for the existence of, nor even any justification for the imposition of, such a duty. The Third Amicus simply alleges that it does place such a duty on conveyancers.

37.2 Tshwane Municipality argued in this Court that there is or should be a duty upon the municipality to disclose the existence of the historical debt to purchasers. The JAA is not going to argue this aspect of the case as it has already been addressed by the other parties. The JAA's submission is merely that if there is a duty on the municipality to disclose the debt, there is not (or should not be) a duty upon the conveyancer to do so as well.

37.3 Moreover, Tswhane and Ekurhuleni Municipalities argued before this Court that there is a duty to disclose on the part of the seller. As above, the JAA is not going to argue this aspect of the case, but is merely submitting that if such a duty exists on the seller, then there is no reason to impose such a duty on the conveyancer as well. The JAA further respectfully submits that if there is no duty upon the seller to disclose, then it cannot be that the conveyancer has such a duty (as this would essentially relieve the seller as the debtor and the contracting party of any duty to protect the purchaser from the harm - but then require an innocent and unrelated third party – the conveyancer – to take steps to protect the purchaser from that harm).

37.4 Moreover, the conveyancer is already under a duty to act in the best interest of both parties, as well as a duty of confidentiality to both parties. Not disclosing the historical debt complies with the conveyancer's duty to the seller, but would not comply with the conveyancer's duty to the purchaser. Conversely, disclosing the historical debt complies with the conveyancer's duty to the purchaser, but not to the seller.

CONCLUSION

38. The JAA thus respectfully prays that the Honourable Court considers this request to intervene as *amicus*, such that it can place the submissions made above before the Honourable Court, and that such submissions form part of the record of these proceedings.

DEPONENT

Signed and sworn to before me, at JOHANNESBURG on this the 31st day of May 2017 by the Deponent who has acknowledged that he/she knows and understands the contents of this Affidavit and he/she has declared that he/she has no objection to taking the oath, and he/she regards the oath as binding on his/her conscience and he/she has uttered the following words: - "I swear that the contents of this Affidavit are true, so help me God."

COMMISSIONER OF OATHS

Full Names: RENEE CARRINGTON
Business Address: WRIGHT, ROSE-INNES INC
31 ARTERIAL ROAD WEST
Occupation: ORIEL
BEDFORDVIEW
COMMISSIONER OF OATHS
EX OFFICIO PRACTISING ATTORNEY R.S.A.

"NS1"

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE JOHANNESBURG ATTORNEYS ASSOCIATION ("THE JAA"), HELD AT JOHANNESBURG ON THE 30th DAY OF MAY 2017.

RESOLVED THAT:

1. The JAA apply to the Constitutional Court to be admitted/joined as *amicus curiae* in the matter under case numbers 283/2016, 293/2016 and 294/2016 with the sole purpose of making written submissions regarding the conveyancers' duty to disclose historical debt to the prospective purchaser and if admitted/joined to the proceedings, to provide the court with written submissions and/or take all steps necessary to provide the court with such submissions;

2. **Gascoigne Randon & Associates** is appointed and instructed as attorneys of record to institute such proceedings on behalf of the JAA; and

3. **Nicci Sauli-Koren**, be, and is hereby authorised to sign any and all documentation, for and on behalf of the JAA and to do all such things, take all steps and sign all such returns and other documentation, or procure the doing of all such things, taking all such steps and signing of all such returns and documentation, as may be required to institute and prosecute to finality the aforesaid proceedings for and on behalf of the JAA, and which may be necessary to give effect to paragraph 1 above.

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE JOHANNESBURG ATTORNEYS ASSOCIATION ("THE JAA"), HELD AT JOHANNESBURG ON THE 30th DAY OF MAY 2017.

RESOLVED THAT:

1. The JAA apply to the Constitutional Court to be admitted/joined as *amicus curiae* in the matter under case numbers 283/2016, 293/2016 and 294/2016 with the sole purpose of making written submissions regarding the conveyancers' duty to disclose historical debt to the prospective purchaser and if admitted/joined to the proceedings, to provide the court with written submissions and/or take all steps necessary to provide the court with such submissions;

2. **Gascoigne Randon & Associates** is appointed and instructed as attorneys of record to institute such proceedings on behalf of the JAA; and

3. **Nicci Sauli-Koren**, be, and is hereby authorised to sign any and all documentation, for and on behalf of the JAA and to do all such things, take all steps and sign all such returns and other documentation, or procure the doing of all such things, taking all such steps and signing of all such returns and documentation, as may be required to institute and prosecute to finality the aforesaid proceedings for and on behalf of the JAA, and which may be necessary to give effect to paragraph 1 above.

Chantelle Louise Gladwin-Wood

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE JOHANNESBURG ATTORNEYS ASSOCIATION ("THE JAA"), HELD AT JOHANNESBURG ON THE 30th DAY OF MAY 2017.

RESOLVED THAT:

1. The JAA apply to the Constitutional Court to be admitted/joined as *amicus curiae* in the matter under case numbers 283/2016, 293/2016 and 294/2016 with the sole purpose of making written submissions regarding the conveyancers' duty to disclose historical debt to the prospective purchaser and if admitted/joined to the proceedings, to provide the court with written submissions and/or take all steps necessary to provide the court with such submissions;

2. **Gascoigne Randon & Associates** is appointed and instructed as attorneys of record to institute such proceedings on behalf of the JAA; and

3. **Nicci Sauli-Koren**, be, and is hereby authorised to sign any and all documentation, for and on behalf of the JAA and to do all such things, take all steps and sign all such returns and other documentation, or procure the doing of all such things, taking all such steps and signing of all such returns and documentation, as may be required to institute and prosecute to finality the aforesaid proceedings for and on behalf of the JAA, and which may be necessary to give effect to paragraph 1 above.

J. Schmahl

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE JOHANNESBURG ATTORNEYS ASSOCIATION ("THE JAA"), HELD AT JOHANNESBURG ON THE 30th DAY OF MAY 2017.

RESOLVED THAT:

1. The JAA apply to the Constitutional Court to be admitted/joined as *amicus curiae* in the matter under case numbers 283/2016, 293/2016 and 294/2016 with the sole purpose of making written submissions regarding the conveyancers' duty to disclose historical debt to the prospective purchaser and if admitted/joined to the proceedings, to provide the court with written submissions and/or take all steps necessary to provide the court with such submissions;

2. **Gascoigne Randon & Associates** is appointed and instructed as attorneys of record to institute such proceedings on behalf of the JAA; and

3. **Nicci Sauli-Koren**, be, and is hereby authorised to sign any and all documentation, for and on behalf of the JAA and to do all such things, take all steps and sign all such returns and other documentation, or procure the doing of all such things, taking all such steps and signing of all such returns and documentation, as may be required to institute and prosecute to finality the aforesaid proceedings for and on behalf of the JAA, and which may be necessary to give effect to paragraph 1 above.

Chantelle Louise Gladwin-Wood

Erenscha Aletta Erasm

RESOLUTION OF THE EXECUTIVE COMMITTEE OF THE JOHANNESBURG ATTORNEYS ASSOCIATION ("THE JAA"), HELD AT JOHANNESBURG ON THE 30th DAY OF MAY 2017.

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_____ Wadee.

MR YUSUF WADEE.

_____ _____

_____ _____

_____ _____

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Chantelle Louise Gladwin-Wood

Hoosen Ebrahim Sadar

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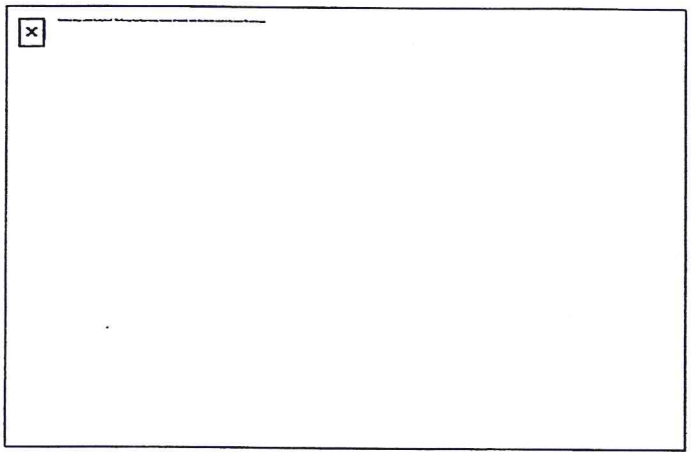

Constitution

1. NAME The name of the Association is the JOHANNESBURG ATTORNEYS ASSOCIATION.

2. OFFICES The offices of the Association shall be in Johannesburg.

3. OBJECTS The objects of the Association are the following:

1. to co-operate with the Incorporated Law Societies and Law Councils. (*As amended at the General Meeting on 15 October 1998*);
2. to watch and advance the interests of the legal profession;
3. to establish closer relations and associations between members of the legal profession;
4. to foster legal studies;
5. to co-operate with other associations or societies;
6. to provide assistance to any members or past members or the families of any members or past members, who are in distress or are, for any reason, in need of such assistance, and to apply any funds of the Association for that purpose and to raise and collect any additional or special funds that may be required for that purpose;
7. to mediate between members and adjust and settle differences between them, whenever called upon to do so by members;
8. to express its views on matters of common concern to its members and to make representations on behalf of its members to any and all bodies and/or organisations including Law Societies and Law Councils, provided that in doing so the Association will not express its views or make representation on matters not directly or indirectly affecting its members of their practises. (*As amended at a General Meeting on 15 October 1998*);
9. to acquire rights or privileges which the Association may regard as necessary or convenient for its purposes;
10. to purchase, take on lease, hire or otherwise acquire, any movable or immovable property and to erect buildings thereon, and to sell, improve or lease or otherwise deal with all or any of the property or assets of the Association;
11. to invest moneys of the Association upon such securities and unit trusts as may be from time to time determined. (*As amended at the Annual General Meeting of 7 November 2002*);
12. to raise or borrow money from time to time in such manner as the Association may think fit and to mortgage or hypothecate all or any of the property of the Association present as well as future;
13. to become incorporated or registered under the Companies Act, 1973, or any amendment thereof, or under any Act dealing with the incorporation of Societies of this kind;
14. to sponsor and supervise the making by members of gifts or donations in money or in kind to any person or organisation approved by the Committee;
15. to do all such other things as are incidental or conducive to the attainment of these objects;
16. to conduct lectures, symposia, seminars and study courses for its members;

17. to establish machinery for the settlement of disputes between members and between members and their clients concerning fees;
18. from time to time, at the discretion of the Committee, to make donations to institutions, bodies corporate, welfare organisations and/or universities where this is considered necessary to further the interests of the profession or of its members. Provided that the Association shall not be permitted to distribute any of its profits or gains to any person, but shall be required to utilise its funds solely for investment or the objects for which it has been established; and upon its winding-up or liquidation, it shall be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some Association or Society with objects similar to those of the Association;
19. to act in the general interest of members of the public who presently utilise and in future will utilise the services of practicing attorneys so as to ensure that state mechanisms, including the Constitution of the Republic of South Africa, Act 108 of 1996, fundamental human rights, legislation, the judicial system, the common law and the Rule of Law are maintained, upheld and developed in such a manner as to ensure the maximum protection of the lawful interests of such members of the public;
20. to act in the general interest of members of the profession so as to ensure that state mechanisms, including the Constitution of the Republic of South Africa, Act 108 of 1996, fundamental human rights, legislation, the judicial system, the common law and the Rule of Law are maintained, upheld and developed in such a manner as to ensure the maximum protection of the general well-being of the profession, including safeguarding of the interest of attorneys in their freedom to make their skills available to those requiring their legal expertise, in a profitable manner;
21. to engage the Association in legal proceedings in any capacity which the committee may deem necessary so as to advance, protect, uphold or develop the objects and interests of the Association and/or the interests of its members.

4. MEMBERSHIP The following persons shall be eligible for membership:

1. Attorneys practising in the Johannesburg area and any attorney, wherever his/her office may be situated in the Gauteng area, whose practice required attendance in the Johannesburg area. (*As amended at the Annual General Meeting on 20 September 1995*).
2. Attorneys employed by such attorneys.
3. Clerks serving articles of clerkship with such attorneys.

5. SUBSCRIPTIONS

1. An annual subscription, the amount of which shall be determined by the Committee with due consideration to the rate of inflation an to the requirements of the Association, and of which notice shall be given to members before the end of April each year, shall be paid by each member except those who are serving articles of clerkship. (*As amended at Extraordinary General Meeting of 12 April 1994*).
2. The financial year of the Association shall commence on the 1st day of June of each year and subscriptions shall be due and payable on such date.

6. MANAGEMENT

1. The affairs of the Association shall be managed by a committee of twelve, all of whom shall be elected from those members referred to in Rule 4(a) and 4(b) and the Annual General Meeting of the Association or any other General Meeting specially called for such purpose. Each committee member shall hold office for a two year period, but the retiring members shall be eligible for re-election. (*As amended at Annual Meeting of 23 October 2003*).
2. (i) At the first meeting following the every year's Annual General Meeting, the Committee shall elect a Chairman, Vice-Chairman, Secretary and Treasurer, provided that no member of the Committee shall hold office as Chairman for more than three consecutive years, if any of these offices shall become vacant between elections, the Committee shall be entitled to fill the vacancy.(ii) All existing office-bearers and sub-committee members shall hold office until the formal appointments are made at the first committee meeting after the Annual General Meeting.



3. All nominations for the Committee shall be in writing and shall be forwarded, wit the nominee's acceptance, to the Secretary not less than twenty-one days before the date of the Annual General Meeting and the names o the persons nominate shall be notified to members not less than fourteen days before the date of the meeting. (*As amended at the Annual General Meeting of 7 November 2002*).
4. In the event of any vacancy or vacancies occurring on the Committee the remaining members of the Committee shall have the power to fill any such vacancy or vacancies. The member so elected shall hold office on the same terms as the member whose place he takes and shall serve only until the next Annual General Meeting.
5. The Committee shall be entitled to co-opt not more than two members, who shall be members of the Association referred to in Rule 4(a) and 4(b), and who shall hold office on the same terms as the other members of the Committee and shall serve only until the next Annual General Meeting. At a committee meeting five members shall be required to form a quorum.
6. Any member who misses 3 (three) consecutive meetings of the Committee, without leave of absence, shall automatically be disqualified from office and the Committee shall be entitled to replace such member in terms of Rule 6(d). Any member attending less than 50% (fifty per cent) of Committee meetings from the date of election to the next Annual General Meeting, without prior leave of absence from the Committee, shall not be eligible to stand again for re-election to the Committee in the following year. (*As amended at General Meeting of 15 October 1998*).
7. The composition of the Committee shall be limited to no more than 2 (two) representatives of any one law firm. In the event of a law firm nominating more than two persons for election to the Committee, then only the two candidates who receive the most votes, in a contested election, will be eligible for membership of the Committee and, in the event of an uncontested election, the new Committee of the Association will, on a basis of votes, elect which two members of that firm take their place on the Committee. (*As amended at General Meeting of 3 November 2004*).

7. POWER AND DUTIES OF THE COMMITTEE The Committee shall conduct all the affairs of the Association and be entitled to do all matters and things not specially required to be done at a General Meeting or not expressly requiring to be otherwise performed. Without limiting their rights of management, the Committee shall have the following special powers:

1. to convene meetings;
2. to appoint, remove and determine the duties, salaries and remuneration of servants;
3. to hold and have the custody and control of the funds and other property of the Association;
4. to open a banking account which shall be operated on by the signatures of any two of the Chairman, Vice-Chairman, Treasurer or Secretary for the time being, or the secretary employed by the Committee;
5. to appoint sub-committees and delegate any of its powers to such sub-committees;
6. subject to the Constitution for the time being in force, to do all other things that it may consider conducive to the interests or good management or the promotion of its objects;
7. to review the annual subscription payable in terms of clause 5 of the Constitution, from time to time, the Committee being empowered at its discretion to increase the subscriptions as it deems fit, due regard being given to the rate of inflation and the requirements of the Association. (*As amended at Extraordinary Meeting on 12 April 1994*).

8. MEETINGS

1. The Committee shall have full power and authority at any time to call Special Meetings of the Association of which at least seven days notice shall be given. (*As amended at the Annual General Meeting of 7 November 2002*).
2. An Annual General Meeting shall be held not later than 30 November in each and every year, at which –(i) the election of the Committee shall take place;(ii) the report of the Committee together with the Balance Sheet and Accounts shall be presented; and(iii) any other business shall be dealt with of which notice is given to members not less than fourteen days before the date of the meeting. (*As amended at the Annual General Meeting of 7 November 2002*).
3. Notice convening the Annual General Meeting shall be given to members not less than 14 (fourteen) days before such meeting.



4. A quorum of members shall be not less than 15 (fifteen) of the members referred to in Rule 4(a) and 4(b). Should there be no quorum present at any Annual or Special General Meeting, the meeting shall, subject to Rule 8(e), stand adjourned until a date to be agreed upon at such meeting (for which those present shall be a quorum) and at such resumed meeting those present shall form a quorum regardless of the number. At least seven days notice of such adjournment shall be given to members.
5. Upon receipt of a requisition signed by not less than fifty members the Committee shall convene a Special General Meeting to consider the matters specified in the requisition. The meeting shall be upon not less than seven days notice, which shall state the purpose of the meeting, and such Special Meeting shall be held within twenty-one days from the date of receipt of the requisition. Should there be no quorum present at any such meeting, it shall be dissolved. (*As amended at the Annual General Meeting of 7 November 2002*).

9. DEFAULTERS Any member whose subscription shall be in arrears for a period of six months, and who shall not hereafter pay such subscription within 14 days of the posting to him of written request for payment, may be removed from the list of members by the Committee.

10. RESIGNATIONS Any member desiring to resign from the Association may do so on giving notice to the Secretary but such person shall remain liable for any subscription or subscriptions which fell due prior to the date of such resignation.

11. VOTING

1. Every member of the Association, not being an articled clerk, present at a meeting and not in arrears with his subscription shall have one vote. No voting by proxy shall be permitted. In the event of an equality of votes, the Chairman shall have a casting as well as a deliberative vote.
2. The majority at any meeting may demand that voting be by ballot.
3. In completing the voting paper for the election of the members of the Committee, a member entitled to vote shall vote for not less than six and not more than twelve of the candidates proposed for election. If a voting paper does not comply with the above it shall be disregarded.

12. LEGAL PROCEEDINGS The Association may sue or be sued in its own name in any Court of competent jurisdiction.

13. FUNCTION A function, the nature, cost and venue to be determined by the Committee in their discretion shall be held. Members who attend the function shall be required to contribute an amount to be determined by the Committee to the cost of that function. (*As amended at Extraordinary General Meeting on 29 May 1990*).

14. AMENDMENTS This Constitution may be amended, altered or added to at any Annual General Meeting or any General Meeting specially called for such purpose. Any such alterations or additions shall not be deemed to be passed unless approved by two-thirds of the members present at such meeting. No proposed alteration or amendment shall be considered at any meeting unless the proposed amendment or alteration has been notified to members in writing not less than fourteen days before the date of the meeting. (*As amended at the Annual General Meeting of 7 November 2002*).

15. LIABILITY OF MEMBERS The liability of a member for the obligations of the Association shall be limited to the amount of his unpaid subscription. The Johannesburg Attorneys Association is an Association not for gain, and a corporate body with legal personality separate from its members, the assets and liabilities of which are separate from its members and in which no member shall ever obtain an interest, which assets shall upon dissolution not evolve upon its members but shall be donated to other associations not for gain with similar objects and interests as the Association.

16. INTERPRETATION OF RULES In the case of doubt as to the meaning or interpretation of the Constitution and any Rules framed thereunder the Committee shall be the final arbiter and its decision shall be binding upon members

17. MEANING OF JOHANNESBURG The word "*Johannesburg*" wherever used in this Constitution shall mean the magisterial districts of Johannesburg and Randburg.



18. NOTICES Whenever notice of any matter or thing is to be given to members it shall be deemed to have been duly given if posted or delivered to Docex or despatched by e-mail or via telefax to members at the address recorded in the Association's offices and shall be deemed to have been received two days after the date on which such notice was posted, delivered or despatched. (*As amended at General Meeting of 15 October 1998*).



"NS3"

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASES CCT 283/16, 293/16 and 294/16

In the matter between:

CCT 283/2016

CHANTELLE JORDAAN	First Applicant
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Applicant
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Applicant
F M KEKANA	Fourth Applicant
M R MALEBOLOA	Fifth Applicant
S R MALEBOLOA	Sixth Applicant
M MAMOTSAU	Seventh Applicant
BILLIE ANN LIVANOS	Eighth Applicant
LEAH ANDERSON	Ninth Applicant
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Tenth Applicant
GEMMA DIAMONDS (PTY) LTD	Eleventh Applicant
OAK PLANT RENTALS (PTY) LIMITED	Twelfth Applicant
STEPPING THE WORLD (PTY) LIMITED	Thirteenth Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	First Respondent
EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent

In the matter between: **CCT 293/2016**

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Applicant

and

CHANTELLE JORDAAN	First Respondent
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Respondent
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Respondent
F M KEKANA	Fourth Respondent
M R MALEBOLOA	Fifth Respondent
S R MALEBOLOA	Sixth Respondent
M MAMOTSAU	Seventh Respondent

In the matter between: **CCT 294/2016**

EKURHULENI METROPOLITAN MUNICIPALITY	Applicant

and

BILLIE ANN LIVANOS	First Respondent
LEAH HENDERSON	Second Respondent
NEW VENTURES CONSULTING SERVICES (PTY) LTD	Third Respondent
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Fourth Respondent
GEMMA DIAMONDS (PTY) LTD	Fifth Respondent
OAK PLANT RENTALS (PTY) LIMITED	Sixth Respondent
STEPPING THE WORLD (PTY) LIMITED	Seventh Respondent
and	
TUHF LIMITED	First Amicus Curiae
and	
THE BANKING ASSOCIATION SOUTH AFRICA	Second Amicus Curiae
and	
eTHEKWINI METROPOLITAN MUNICIPALITY	Third Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

CHANTELLE LOUISE GLADWIN-WOOD

Do hereby make oath and say that: -

1. I am an adult female attorney practising as such at Schindler's Attorneys, located at 2nd Floor, 3 Melrose Boulevard, Melrose Arch, Johannesburg.

2. The facts deposed to herein, are both true and correct and fall within my personal knowledge, unless otherwise stated.

3. I have read the Founding Affidavit, deposed to by **NICOLE TANYA SAULI-KOREN**, an attorney representing the Johannesburg Attorneys Association, to which this confirmatory affidavit is attached, and confirm the contents thereof in so far as it relates to me.

CHANTELLE LOUISE GLADWIN-WOOD

SIGNED and **SWORN TO** before me, at **JOHANNESBURG** on this the **31ST** day of **MAY 2017**, by the Deponent who has acknowledged that the Deponent knows and understands the contents of this Affidavit and the Deponent has declared that the Deponent has no objection to taking the oath, and the Deponent regards the oath as binding on the Deponent's conscience and the Deponent has uttered the following words: - "*I swear that the contents of this Affidavit are true, so help me God.*"

COMMISSIONER OF OATHS
FULL NAMES: -
BUSINESS ADDRESS: -
OCCUPATION: -

Slan van der Weele
18 Melrose Boulevard, Melrose Arch, JHB
Commissioner of Oaths Ex Officio
Practising Attorney
Republic of South Africa

"NSL"

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASES CCT 283/16, 293/16 and 294/16

In the matter between: **CCT 283/2016**

CHANTELLE JORDAAN	First Applicant
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Applicant
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Applicant
F M KEKANA	Fourth Applicant
M R MALEBOLOA	Fifth Applicant
S R MALEBOLOA	Sixth Applicant
M MAMOTSAU	Seventh Applicant
BILLIE ANN LIVANOS	Eighth Applicant
LEAH ANDERSON	Ninth Applicant
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Tenth Applicant
GEMMA DIAMONDS (PTY) LTD	Eleventh Applicant
OAK PLANT RENTALS (PTY) LIMITED	Twelfth Applicant
STEPPING THE WORLD (PTY) LIMITED	Thirteenth Applicant

and

CITY OF TSHWANE METROPOLITAN MUNICIPALITY	First Respondent
EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Third Respondent

In the matter between:	**CCT 293/2016**
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	Applicant

and

CHANTELLE JORDAAN	First Respondent
NEW VENTURES CONSULTING & SERVICES (PTY) LTD	Second Respondent
CLASS OF AFFECTED MUNICIPAL SERVICE CONSUMERS	Third Respondent
F M KEKANA	Fourth Respondent
M R MALEBOLOA	Fifth Respondent
S R MALEBOLOA	Sixth Respondent
M MAMOTSAU	Seventh Respondent

In the matter between:	**CCT 294/2016**
EKURHULENI METROPOLITAN MUNICIPALITY	Applicant

and

"NSL"

BILLIE ANN LIVANOS	First Respondent
LEAH HENDERSON	Second Respondent
NEW VENTURES CONSULTING SERVICES (PTY) LTD	Third Respondent
CLIFTON DUNES INVESTMENTS 317 (PTY) LTD	Fourth Respondent
GEMMA DIAMONDS (PTY) LTD	Fifth Respondent
OAK PLANT RENTALS (PTY) LIMITED	Sixth Respondent
STEPPING THE WORLD (PTY) LIMITED	Seventh Respondent
and	
TUHF LIMITED	First Amicus Curiae
and	
THE BANKING ASSOCIATION SOUTH AFRICA	Second Amicus Curiae
and	
eTHEKWINI METROPOLITAN MUNICIPALITY	Third Amicus Curiae

CONFIRMATORY AFFIDAVIT TO APPLICATION BY JAA FOR ADMISSION AS AMICUS

I, the undersigned,

ANTON MURRAY THERON

Do hereby make oath and say that: -

1. I am an adult male attorney practising as such at Tonkin Clacey Pretoria, 238 Brooks Street, Brooklyn, Pretoria.

2. The facts deposed to herein, are both true and correct and fall within my personal knowledge, unless otherwise stated.

3. I have read the Founding Affidavit, deposed to by **NICOLE TANYA SAULI-KOREN**, an attorney representing the Johannesburg Attorneys Association, to which this confirmatory affidavit is attached, and confirm the contents thereof in so far as it relates to me.

ANTON MURRAY THERON

SIGNED and **SWORN TO** before me, at ~~**JOHANNESBURG**~~ Pretoria on this the **31ST** day of **MAY 2017**, by the Deponent who has acknowledged that the Deponent knows and understands the contents of this Affidavit and the Deponent has declared that the Deponent has no objection to taking the oath, and the Deponent regards the oath as binding on the Deponent's conscience and the Deponent has uttered the following words: - "*I swear that the contents of this Affidavit are true, so help me God.*"

COMMISSIONER OF OATHS
FULL NAMES: -
BUSINESS ADDRESS: -
OCCUPATION: -

RIAN JURGEN SCHOEMAN
Commissioner of Oaths
Practising Attorney (admitted 20/02/2006)
and Conveyancer at
Tonkin Clacey Pretoria Attorneys
238 Brooks Street, Brooklyn, Pretoria, 0181