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Case No: GDT/LDA/EMM/0303/08/002

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MEMORANDUM

To: Mr. Fetrus Barry
EMM Designated Officer

From: Mr. Paseka Matlhaku
GDT Deputy Registrar

Date: 13 November 2008

**RE: RECORD OF DECISION IN RESPECT OF CHLOORKOP
EXTENSION 65.**

Dear Mr. Barry

Kindly be informed that the application for township establishment in respect of the above mentioned application is approved with conditions

Please ensure that the applicant, objectors and all interested parties are informed about the decision as soon as possible.

Yours faithfully

Mr. Paseka Matlhaku
GDT Deputy Registrar

13/11/08
Date

**IN THE MATTER BEFORE
THE GAUTENG DEVELOPMENT TRIBUNAL
CASE NO: GDT / LDA / EMM / 0303/ 08 / 002**

**APPLICATION FOR THE ESTABLISHMENT OF A LAND DEVELOPMENT AREA ON
PORTIONS 38, 39 AND (A PORTION OF PORTION 44) OF THE FARM MOOIFONTEIN 141R TO BE
DESCRIBED CHLOORKOP EXTENSION 65**

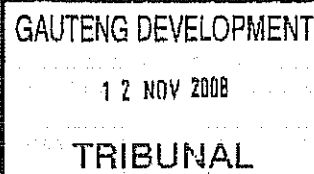
CENTRAL PROPERTY DEVELOPMENT JHB (Pty) Ltd : The Applicant
Represented by HUNTER HERON INCORPORATED

MR PETRUS BARRY : Designated Officer

RECORD OF DECISION

1. APPLICATION

- 1.1 The Land Development Application is submitted in terms of the Development Facilitation Act, 1995 for:
- (i) The establishment of a Land Development Area to be known as Chloorkop X65, resulting in the creation of various industrial erven, together with a network of private roads, a public road and Private Open Space.
 - (ii) The amendment of the Lethabong Town Planning Scheme, 1998 and subsequent approval of the Amendment Scheme documents; layout and conditions of establishment
 - (iii) The removal of a number of the conditions from the Deeds of Transfer T004/114/07 and T004/113/07 in order to permit the proposed development
- 1.2 The property is known as Portions 38, 39 and (a Portion of) Remainder of Portion 44 of the Farm Mooifontein 141R with in the jurisdiction of Ekurhuleni Metropolitan Municipality. The property is situated between Keripton Park and Tembisa; to the east of Zuurfontein Road (R561); and to the east and adjacent to Proteon Street in the Chloorkop Township.



- 1.3 Zoning is agricultural in terms of both the Lethabong Town Planning Scheme, 1998 and the Kempton Park Scheme, 1987. The property is currently vacant and surrounded by industrial developments.
- 1.4 The application site is registered in the name of Central Property Development(s) Johannesburg (Pty) LTD by virtue of Deeds of Transfer T004114/07 and T4115/0. Bonds are registered over the application site.
- 1.5 The property is affected by a number of servitudes and restrictive conditions of title, which are to be suspended.

2 SUMMARY OF EVIDENCE

2.1 Designated Officer's Report

The procedural aspects of the application indicated compliance with the DFA procedures to an extent that no party was prejudiced thereby. No objections were lodged with the Designated Officer by the end of the comment period.

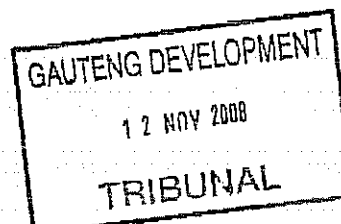
2.2 Points in Limine

There were no points in limine raised

2.3 Documents Submitted and Recorded

The following documents were submitted and recorded:

♦ Comments from Eskom	PH1
♦ Legal submissions: Amendment Scheme & Conveyancer's Certificate	H1
♦ Draft GD's Decision with Conditions of Establishment	H2
♦ Environmental scoping Report & Executive Summary	H3
♦ Amended Traffic Impact Study	H4
♦ Geotechnical Report	H5
♦ Environmental Scoping Report-May 2008	H6



3. CONSIDERATION AND FINDINGS OF THE TRIBUNAL

3.1 Compliance with the DFA procedure

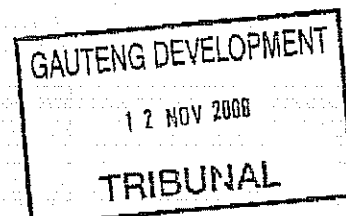
After consideration of the Designated Officer's report and submissions made, the Tribunal is satisfied that the applicant has substantially complied with the DFA procedure to the extent that no party was prejudiced thereby.

3.2 Merits of the application

All the issues placed in dispute and raised by various parties were adequately handled by the applicant. The applicant has demonstrated the merits of the application as it transpired from the applicant's supporting documents and all other supplementary documents required by the Tribunal.

4. THE DIRECTIVE

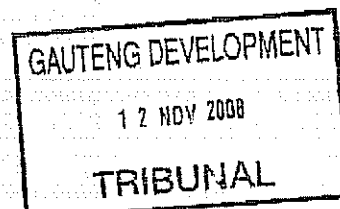
- 4.1. Having considered the submissions and documentation from the parties on record, the Gauteng Development Tribunal on 25 June 2008 issued its initial decision with the following directives (copy sent on 09 July 2008), all to be complied with within 21 days:
- 4.1.1. the applicant shall resolve with EMM the resolution of Storm-water Drainage System, the extent of Nuwejaarsvoel Road and pollution and the apparent pollution
 - 4.1.2. EMM to endorse the cancellation of Kempton Park town Planning Scheme and transfer Chloorkop X 65 to the Lethabong Town Planning Scheme, The applicant should submit proof to the Tribunal authority from EMM to take such a decision on their behalf.
 - 4.1.3. Department of Mineral & Energy to clarify whether there are any applications in terms of MPRDA, 2006 over the land development area.
 - 4.1.4. DEAT to clarify status of quarry on Mooifontein RE12/14-112 for refuse disposal and any other conditions that would affect the property.
 - 4.1.5. Provision of electricity shall be dealt with in the Service Agreement with EMM.
 - 4.1.6. The applicant shall submit proof that Chloorkop Ext 12 application has lapsed and that General Plan has been withdrawn
 - 4.1.7. The applicant shall revert back to the Tribunal on the emergency exit.



- 4.1.8. The applicant must show alignment of principles and purpose of detail regarding EIA, EMP, specialist reports, GDACE comments and the Section 21 Property Owner's Associations' Articles of Association.
- 4.1.9. The applicant to amend the conditions of establishment
- o 1.3.1(a) Part II
 - o 1.3.2(b)(b)- servitude status to be clarified
- 4.2. The applicant submitted a revised lay-out plan, showing the emergency exits, an updated Environmental Management Plan and has fully complied with the directive of the Tribunal, except the issue in respect of the strip of land affected by the stormwater drainage, to the north of the site.
- 4.3. Considerations
- 4.3.1 The applicant has attempted to reach an agreement with EMM to include the strip of land affected by an 'uncontrolled' Stormwater drainage system in order to rehabilitate this system, which the Municipality was opposed to. The applicant has subsequently excluded the strip of land from the land development area and vested it with the Municipality, without any compensation
- 4.3.2 The status of the quarry/ refuse dump on Mooifontein Re 12/14-112 has been clarified as illegal as no application for quarrying or dumping site has been received by any authority. As such, there should be no limitations on that site or conditions to be imposed on this land development area
- 4.3.3 All environmental issues have been adequately dealt with and a revised Environmental Management Plan has been submitted
- 4.3.4 The application is in line with EMM's spatial policies and as such supported by the municipality.

5. THE DECISION

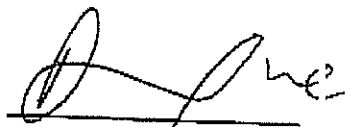
Having considered the submissions and documentation from the parties on record, the Gauteng Development Tribunal hereby approves the establishment of a land development area on the Portions 38, 39 and (a Portion of Portion 44) of the Farm Mooifontein 14 IR in terms of Section 33 of the Development Facilitation Act, 1995 ("the Act") to be known as Chlookop 65, subject to the Conditions of Establishment attached hereto as Annexure A. This approval incorporates the following:



- 5.1 The approval of a Lay-out Plan number T27032/3 (*Annexure B*).
- 5.2 The approval of the amendment of the Lethabong Town Planning Scheme of 1998 as per the approved Amendment Scheme documents
- 5.3 The suspension of the following conditions of title:
 Deed of Transfer No. T004114/07:
Condition a, b & c

 Deed of Transfer No. T004113/07:
Condition B & C

 The suspension of the above-mentioned condition of title will take effect on the date of the publication of the notice in the Provincial Gazette by the Designated Officer as contemplated in Section 33(4) of the Act.
- 5.4 The Designated Officer shall receive, consider and where relevant, enclose any documents submitted by the applicant for the amendments of erf numbers, layout plan or similar matters if such amendments will not be material to the original decision of the Tribunal.



AG MOTHAGAE
CHAIRPERSON: GAUTENG DEVELOPMENT TRIBUNAL

Date: 12/11/08



P. MATLHAKU
DEP. REGISTRAR: GAUTENG DEVELOPMENT TRIBUNAL

Date: 12/11/08

GAUTENG DEVELOPMENT
12 NOV 2008
TRIBUNAL

ANNEXURE A

GAUTENG DEVELOPMENT TRIBUNAL

REF: GDT/LDA/EMM/0303/08/002

STATEMENT OF CONDITIONS UNDER WHICH

THE LAND DEVELOPMENT APPLICATION BY:

CENTRAL PROPERTY DEVELOPMENT JHB (PTY) LTD

(represented by Hunter Theron Inc.)

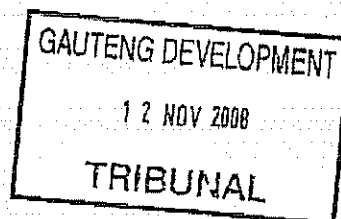
(Applicant)

HAS BEEN APPROVED BY THE GAUTENG DEVELOPMENT TRIBUNAL IN TERMS OF THE DEVELOPMENT FACILITATION ACT, 67 OF 1995 ("THE ACT") FOR THE ESTABLISHMENT OF A LAND DEVELOPMENT AREA ON PORTIONS 38, 39 AND (A PORTION OF) REMAINDER OF PORTION 44 OF THE FARM MOOIFONTEIN 14 IR (TO BE KNOWN AS CHLOORKOP EXTENSION 65)

PART I

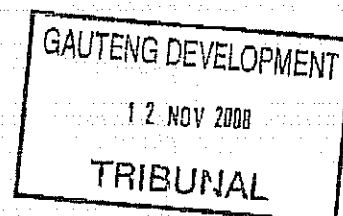
1. CONDITIONS TO BE COMPLIED WITH PRIOR TO THE COMMENCEMENT OF REGISTRATION OF OWNERSHIP OF LAND IN THE LAND DEVELOPMENT AREA BY THE REGISTRAR OF DEEDS:

- 1.1 (a) The Applicant shall comply with the provisions of Section 37(a) of the Development Facilitation Act, 67 of 1995.
- (b) With reference to Regulation 23(1), read with Regulation 9(3) of the Development Facilitation Regulations, the Applicant shall within a period of 6 (six) months (of the date on which authorisation is granted in terms of Section 24F of NEMA or suspension by the Tribunal of the aforementioned Act, as the case may be) or such longer period as the Designated Officer may allow, lodge for approval with the Surveyor General, the General Plan and such diagrams and records as may be required in terms of the Land Survey Act (Act 8 of 1997).



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- 1.2 (a) The Applicant shall comply with the provisions of Section 37(b) of the Development Facilitation Act, 67 of 1995.
- (b) With specific reference to Regulation 23(10), read with Regulation 9(3) of the Development Facilitation Regulations, the Applicant shall within a period of 6 (six) months of the date of approval of the General Plan of the Land Development Area, or such longer period as the Designated Officer may allow, lodge the documents provided for in Regulation 23(10) with the parties provided for in that sub-regulation.
- 1.3 The Applicant shall establish a company (a Property Owners' Association) in terms of Section 21 of the Companies Act, 1973, for the purposes of owning and maintaining Erven 62, 63 and 64.
- 1.4 The Applicant shall conclude a Services Agreement with Ekurhuleni Metropolitan Municipality (hereinafter referred to as the "Municipality") pertaining to the installation of relevant internal and external engineering services in and to the land development area.
- 1.5 A copy of the approved Amendment Scheme No 38 shall be submitted to the Designated Officer for promulgation of the approval in the Provincial Gazette in terms of Section 33(4) of the Development Facilitation Act, 67 of 1995.
- 1.6 The Applicant shall arrange with the Designated Officer for the publication of a notice in the Provincial Gazette as contemplated in Section 33(4) of the DFA to give effect to the suspension of title conditions referred to hereunder Clause 1.3.2 of Part II of these Conditions of Establishment.
- 1.7 The issuing of authorisation by the Gauteng Department of Agriculture, Conservation and Environment ("GDACE") as contemplated in Section 24F of NEMA. Should authorisation not be issued by GDACE within 60 days from the date of the issuing of the approval of this proposed land development area by the Gauteng Development Tribunal, the Applicant is hereby granted leave to re-approach the Tribunal for the relief as it may deem appropriate under the circumstances.



- 1.8 The Applicant shall lodge with the Registrar of Deeds, a certificate issued by the Designated Officer to the effect that Section 38(1)(c) and (d) certificate has been complied with including all conditions referred to above.

PART II

1. CONDITIONS TO BE COMPLIED WITH IN THE ESTABLISHMENT OF THE TOWNSHIP

1.1 NAME:

The name of the land development area shall be Chloorkop (Extension 65) Township.

1.2 LAYOUT:

The land development area shall consist of erven and streets indicated on Layout Plan P27032/3 and General Plan for which an SG number shall be awarded by the Surveyor General.

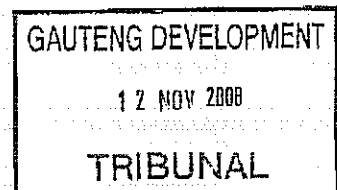
1.3 DISPOSAL OF CONDITIONS OF TITLE:

- 1.3.1 All erven shall be made subject to the existing conditions and servitudes, if any, including, if the reservation of rights to minerals, as contained in Deeds of Transfer No. T004114/07 and T004113/07 which do not affect the township area and will, however, be retained:

- (a) Condition "A" on Page 2 of Deed of Transfer No. T004113/07:

"All rights to minerals, base and precious mineral products, mineral oils, metals and precious stones on or under the land, together with the right at all times to mine underneath the said land or any portions thereof are held by MARMANET RETIREMENT VILLAGE (PROPRIETARY) LIMITED, No. 1984/0072280 as will more fully appear from Certificate of Rights to Minerals No. K.1573/1992 R.M. registered on 30 March 1992."

- 1.3.2 The following title conditions shall be suspended:



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(a) Conditions "B" and "C" on page 2 of Deed of Transfer No T004113/07:

"B. The land shall be used for residential and agricultural purposes only and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act No 21 of 1940; and

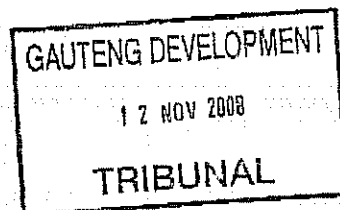
C. No building or any structure whatsoever shall be erected within a distance of 37.78 metres from the centre line of the road, without the written approval of the Controlling Authority as defined in Act 21 of 1940."

(b) Conditions (a), (b) and (c) of Deed of Transfer No T004114/07:

"(a) Gedeelte A (Waarvan die eiendom hiermee getranspoteer 'n deel uitmaak) is onderworpe aan en geregtig tot die volgende kondisie, voorwaardes en bepaling:

Alle bestaande paaie sal vry en onbelemmerd bly vir die gebruik van die eienaars van genoemde Gedeelte A (gedeelte 38 waarvan hierby getranspoteer word) tesame met die eienaars van gedeeltes B, C, D, E, F, G, H, J, K, L, M, N, 25 en die Resterende Gedeelte van Gedeelte van die genoemde plaas MOOIFONTEIN, groot as sulks 6.0282 Hektaar soos gehou kragtens Akte van Verdellingstransport Nr 20988/1939.

(b) Onderworpe aan 'n serwituut van reg van weg 1.89 meter breed suid langs die noordelike grens van genoemde gedeelte 38 soos aangetoon op die kaart daarvan ten gunste van gedeelte 36,37, 39, 40 en die resterende gedeelte (almal gedeeltes van Gedeelte A van Gedeelte) van die plaas Mooifontein Nr 20, gehou onder Akes van Verdellingstransporte Nos. 23728/1942, 23730/1942, en 23732/1942.



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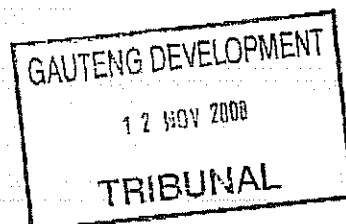
(c) *Geregtig tot 'n serwituit van reg van weg 1.89 meter breed oor gedeelte oor gedeeltes 36, 37, 39, 40 en die Resterende Gedeelte (almal gedeeltes van Gedeelte A van Gedeelte) van die plaas Mooifontein Nr. 20, gehou onder Akte van Verdelingstransporte Nos 23728/1942, 23730/1942, 23731/1942 en 23732/1942, soos aangetoon op die kaart van genoemde gedeeltes."*

1.4 ENGINEERING SERVICES:

The Applicant shall be responsible for the provision and installation of all internal engineering services within the land development area as provided for in the Services Agreement approved by the Tribunal.

1.5 OWNERSHIP:

- 1.5.1 Erven 62, 63 and 64 shall be transferred to and remain in the ownership of the Property Owners' Association established in terms of Condition 1.5 of Part I of these conditions.
- 1.5.2 The Property Owners' Association shall have full responsibility for the functioning and proper maintenance of Erven 62, 63, and 64.
- 1.5.3 Each and every owner of Erven 1 to 61 shall become a member of the Property Owners' Association upon transfer of the erf.
- 1.5.4 The Property Owners' Association shall have the legal power to levy from each and every member the costs incurred in the fulfillment of its functions and shall have legal recourse to recover such fees and costs in the event of a default in payment by any member.
- 1.5.5 Building plans shall only be submitted to the Municipality for final approval once the said plans have been approved by the Trustees of the Property Owners Association as specifically provided for in the Articles of Association.



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1.6 ACCEPTANCE AND DISPOSAL OF STORMWATER:

1.6.1 If the land development area constitutes only a part of a total effective drainage area, the Applicant shall provide a drainage system, adequate for the total effective drainage area and to allow for the final development.

1.6.2 The Land Development Applicant shall be responsible for the construction of the storm water drains, where relevant, in respect of the land development area and to the satisfaction of the Municipality.

1.7 CONDITIONS OF TITLE:

The erven shall be made subject to the conditions which follow:

1.7.1 Erven 15, 16, 17 and 20:

The erf is subject to a servitude of 2 metres wide in favour of Telkom.

1.7.2 Erf 64

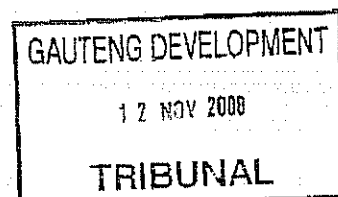
The erf is subject to a servitude of right of way in favour of Erven 1 to 62 and 63 for access purposes.

1.7.3 Erf 64:

The erf is subject to a servitude in favour of Telkom and the Municipality for engineering services, access, refuse removal and access by emergency vehicles.

1.7.4 Erven 14 and 15:

The erf is subject to a servitude of 5 meters wide in favour of all the erven within the land development area for emergency exit.

1.7.5 All erven (excluding Erven 62, 63 and 64):

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- (i) The owner of the erf shall be and remain a member of the Property Owners' Association established in terms of Section 21 of the Companies Act, 1973 and shall be bound to any and all of the provisions of Articles of the said Association.
- (ii) The erf shall not be transferred except with a certificate from the Property Owners' Association to the effect that the Articles of Association have been complied with and that the transferee has bound himself/herself to be a member of the said Association.

1.7.6. Erven 62, 63 and 64:

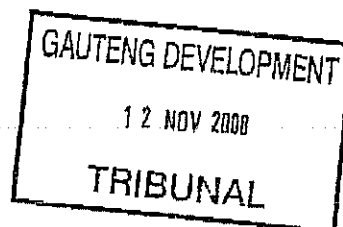
The erf shall only be registered in the name of the Property Owners' Association established in terms of Section 21 of the Companies Act, 1973, for the purpose of owning and maintaining the erf.

1.7.7 All Erven:

The erf is subject to a 2 metre wide servitude for engineering services along any two boundaries in favour of the Municipality.

1.7.8 Erven 27, 28 and 36, 37, 39 to 43:

The erf shall be subject to a servitude of 4 metres wide for stormwater purposes.



ANNEXURE
(REZONING)

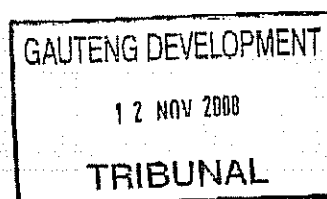
GAUTENG DEVELOPMENT TRIBUNAL

REF: GDT/LDA/EMM/0303/08/002

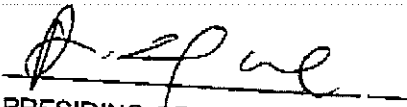
STATEMENT OF CONDITIONS UNDER WHICH
THE LAND DEVELOPMENT APPLICATION BY:
CENTIAL PROPERTY DEVELOPMENT JHB (PTY) LTD
(represented by Hunter Theron Inc.)
(Applicant)

HAS BEEN APPROVED BY THE GAUTENG DEVELOPMENT TRIBUNAL IN TERMS OF THE DEVELOPMENT FACILITATION ACT, 67 OF 1995 ("THE ACT") FOR THE ESTABLISHMENT OF A LAND DEVELOPMENT AREA ON PORTIONS 38, 39 AND (A PORTION OF) REMAINDER OF PORTION 44 OF THE FARM MOOIFONTEIN 14 IR (TO BE KNOWN AS CHLOORKOP EXTENSION 2)


1. The Applicant shall comply with Section 37(a) of the Act.
(Only for subdivision.)
2. The Applicant shall comply with Section 37(b) of the Act, and with reference to Regulation 23(1) read with Regulation 9(3) shall lodge the relevant documents with the Registrar of Deeds within six (6) months of the approval of the diagrams by the Surveyor General.
(Only for subdivision.)
3. Since the land development area is not to be subdivided, Sections 37(a) and 37(b) of the Act are not applicable.
4. The (Municipality) may, within fifty-six (56) days of the date of publication of the notice in the Provincial Gazette concerning the amendment of the _____ Town Planning Scheme, 19____, notify the Applicant of any contributions payable in respect of external engineering services and/or payment in lieu of the provision of public open space or parks which have been determined in accordance with the provisions of the Town-planning and Townships Ordinance, 1986.



- 5. Any contributions or payments referred to in accordance with Condition 4 shall be paid by the Applicant to the municipality prior to the Designated officer informing the Registrar of Deeds in terms of Section 38(1) of the Act and prior to the approval of any building plans.
- 6. As there are no internal engineering services required within the land development area which are to be taken over by the Municipality and no external services to be upgraded or improved by the Applicant, a Services Agreement as contemplated in Regulation 20 is not applicable.
- 7. The Applicant shall at his/her cost make arrangements with the Designated Officer for the publication of the notices in the Provincial Gazette to the effect that the application has been approved and the Town Planning Scheme has been amended.


PRESIDING OFFICER

12/11/08
DATE


REGISTRAR

12/11/08
DATE

GAUTENG DEVELOPMENT
12 NOV 2008
TRIBUNAL