



BUSINESS RESCUE PLAN

prepared in terms of section 150 of the Companies Act 71 of 2008

in relation to

**TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(IN BUSINESS RESCUE)**

prepared by the Joint Business Rescue Practitioners

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Amended in Section 151 Meeting: 30 May 2023

Approved and Adopted: 30 May 2023

CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Developments Proprietary Limited

Business Rescue Practitioners

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Preparation of the Independent Liquidation Dividend Estimate

BDO Business Restructuring Proprietary Limited

Legal Advisors to the Business Rescue Practitioners

Werksmans Inc

Legal Advisors to the Company

Shepstone Wylie Attorneys

Restructuring Advisors to the Company

Metis Strategic Advisors

Matuson and Associates

BSM; and

Tenurey BSM

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CHAPTER 1 – INTRODUCTION

1. Executive Summary:

- 1.1. Capitalised terms and/or expressions used below shall have the meanings assigned to them in paragraph 3.1 and following.
- 1.2. The Company, without a source of significant long-term funding to enable it to implement the infrastructure necessary to progress its existing Property Developments and optimise the value of its property portfolio over the next c.5-10 years, was financially distressed. The currently realisable value of its property portfolio (i.e. immediate sale without further development) is materially less than its current obligations, which include material contingent liabilities in relation to both infrastructure cost commitments and guarantees provided to lenders of THL - guaranteeing the obligations of THL to those lenders.
- 1.3. BDO, in its independent estimate of a Probable Liquidation Estimated Dividend, has estimated the net realisable value of the assets of the Company to be c.R177 million against its liabilities (including contingent liabilities) of c.R7.5 billion.
- 1.4. Considering the significant funding needs and infrastructure obligations of the Company and its sizeable property portfolio were a strategy of continued development to be pursued, the realisation of value from the property portfolio in Business Rescue will instead be achieved by the separation of properties into various categories (e.g. individual ervens capable of transfer, precincts, subsidiaries, joint ventures, other equity interests) and, for each such category, running structured sales processes where possible to realise optimal value. It will be endeavoured to substantially complete such sale processes within 1 year from approval of this Business Rescue Plan or such shorter/longer time as may be agreed with the PCF Lenders.
- 1.5. Should attractive opportunities arise to sell the Company, its business or its assets in part or as a whole, such opportunities will also be considered/pursued to the extent favourable to the Affected Persons of the Company.

- 1.6. To the extent possible, where there is a direct short term benefit to the Company, the BRPs will endeavour to bring existing Property Developments to a state of partial/final completion in order to optimise net sale cash inflows and/or to avoid the crystallisation of bonds and/or guarantees. Such bond/guarantee crystallisations would, if the relevant Property Developments were discontinued or abandoned, add materially to the Claims of the Creditors and thus to the actual liabilities of the Company.
- 1.7. In summary, the overall objective of this Business Rescue Plan, with the support of the PCF Lenders, is to:
 - 1.7.1. achieve a better return for the Company's Creditors than would result from the immediate liquidation of the Company;
 - 1.7.2. address certain limited specific environmental issues/directives affecting certain Property Developments;
 - 1.7.3. conduct the sale processes noted in paragraph 1.4 above in a timeous fashion;
 - 1.7.4. reduce the overhead cost base of the Company, winding down its operations, and ultimately winding up the Company itself;
 - 1.7.5. realise fair value from all legal claims and other assets held by the Company;
 - 1.7.6. where possible and permitted, make provision from realisations to cater for the costs of the Business Rescue, including the costs of winding up;
 - 1.7.7. maintain the moratorium of business rescue, other than to the extent otherwise provided for in this Business Rescue Plan; and
 - 1.7.8. distribute surplus funds to Creditors.
- 1.8. Creditors will be asked to vote on the Business Rescue Plan at the Meeting scheduled for Tuesday 30 May 2023.

- 1.9. Affected Persons are referred to Annexure A of this Business Rescue Plan which sets out the Claims that the BRPs have accepted and/or recognised, as well as the status assigned to such Creditors.
- 1.10. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.10 and 17 of this Business Rescue Plan.
- 1.11. Creditors each have a Voting Interest equal to the value of their Claims, as determined by the BRPs (refer to paragraph 5.11).
- 1.12. For the Business Rescue Plan to be Adopted it must be supported by the holders of more than 75% of the Creditors' Voting Interests that were voted, and the votes in support of the Business Rescue Plan must include at least 50% of the Independent Creditors' Voting Interests, if any, that were voted.
- 1.13. The Business Rescue Plan does not alter the rights of the sole Shareholder of the Company and the Shareholder will therefore not be required to, nor is it entitled to, vote on this Business Rescue Plan.
- 1.14. Table 1 below provides the BRPs' current estimate (from the information available to them) of the anticipated Distributions, measured in cents in the Rand, that they (without being bound thereto) consider likely to be received by the various classes of Creditors in accordance with this Business Rescue Plan if successfully implemented. For comparative purposes only, Table 1 also shows the independently estimated probable liquidation dividends that would have been received in the alternative scenario of an immediate liquidation of the Company.

TABLE 1: Estimated Distributions in Liquidation and Business Rescue per Class of Creditor

CLASS OF CREDITOR	ESTIMATED LIQUIDATION DIVIDEND	ESTIMATED BUSINESS RESCUE DISTRIBUTIONS
	Cents/Rand	Cents/Rand
Secured Creditors	2.5	7.1
PCF Employees	N/A	N/A

PCF Lenders	N/A	100.0
PCF Creditors	N/A	N/A
Preferent creditors	0.0	0.0
Preferent employees	0.0	N/A
Unsecured Creditors	0.0	0.0

Please note: Secured Creditors will receive a dividend in the Rand based on the realisation value of their security in accordance with section 134 of the Companies Act. The remaining balance of any Secured Creditors' Claims will be treated as Unsecured Creditors. The above illustrative Distributions exclude the impact of various forms of taxation.

- 1.15. The Distributions referred to in the table above reflect the best estimate of the anticipated Distributions as at the Publication Date and such estimates are not binding on the BRPs. Actual distributions may vary depending on the level of success of realisation of assets during the implementation of this Business Rescue Plan as well as the impact of external factors outside of the control of the BRPs and the Company.

2. Structure of the Business Rescue Plan:

For the purposes of section 150(2) of the Companies Act, this Business Rescue Plan is divided into several parts.

2.1. Chapter 1 – Introduction

This chapter sets out general information about the Business Rescue Plan, the meaning of defined terms, and contains an executive summary of the Proposals put forward in terms of this Business Rescue Plan.

2.2. Chapter 2 – Proposals

This chapter contains the Proposals in terms of the Business Rescue Plan and is comprised of several sub-parts in accordance with the Companies Act.

2.2.1. Part A – Background (section 150(2)(a))

This part sets out background information on the Company, the circumstances that resulted in the Company's Financial Distress and the events leading to the commencement of the Company's Business Rescue.

2.2.2. Part B – Proposals (section 150(2)(b))

This part describes the Proposals to Affected Persons and the benefits and risks of Adopting the Business Rescue Plan.

2.2.3. Part C – Assumptions and Conditions (section 150(2)(c))

This part sets out the conditions that must be fulfilled and the assumptions applied in respect of the Business Rescue Plan.

2.3. Chapter 3 – General

This chapter sets out administrative and general matters pertaining to the Business Rescue and the Business Rescue Plan and deals, amongst other things, with potential amendments to the Business Rescue Plan and the mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

2.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the certificate that is required to accompany each Business Rescue Plan in terms of the Companies Act.

3. Interpretation:

3.1. the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. "**Adopted/Adoption/Adopting**" means that a Business Rescue Plan has been finally approved in accordance with section 152(2), read with section 152(3) of the Companies Act;

3.1.2. "**Advisors**" means the advisors to the BRPs, including but not limited to Metis, Matuson, Werksmans, BSM, Tenurey BSM and BDO, and the advisors' respective officers, representatives, and employees;

- 3.1.3. "**Affected Person/s**" shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being the Shareholders of the Company, Creditors, Employees and Trade Unions;
- 3.1.4. "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 3.1.5. "**Albertyn**" means Gerhard Conrad Albertyn (identity number 8309195128084) a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.6. "**BDO**" means BDO Business Restructuring Proprietary Limited (registration number: 2002/025164/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.7. "**Board**" means the board of directors of the Company as at the Publication Date as set out in paragraph 5.2;
- 3.1.8. "**BRPs**" means the Business Rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;
- 3.1.9. "**BSM**" means BSM Advisory Proprietary Limited (registration number: 2019/457342/07), a company registered and incorporated in accordance with the company laws of South Africa;
- 3.1.10. "**Business Day**" means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 3.1.11. "**Business Rescue**" means the business rescue proceedings of the Company conducted under Chapter 6 of the Companies Act;
- 3.1.12. "**Business Rescue Costs**" means the remuneration, expenses, disbursements, and fees of the BRPs and their Advisors, as well as other costs of the Business Rescue;

- 3.1.13. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time, and prepared in accordance with section 150 of the Companies Act;
- 3.1.14. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 3.1.15. "**Claims**" means all actual and/or alleged monetary claims against the Company including claims which are disputed, contingent, conditional, liquidated, or unliquidated (including claims for damages), the cause of action in respect of which arose prior to the Commencement Date and/or under section 136(3) of the Companies Act;
- 3.1.16. "**Commencement Date**" means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
- 3.1.17. "**Company**" means Tongaat Hulett Developments Proprietary Limited (registration number: 1981/012378/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;
- 3.1.18. "**Companies Act**" means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
- 3.1.19. "**Concurrent Claim**" means any Claim (other than a Disputed Claim) which is unsecured and which does not enjoy a statutory preference as envisaged in the Insolvency Act;
- 3.1.20. "**Creditor**" means any creditor, including Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;
- 3.1.21. "**Disputed Claim**" – means any Claim where the existence, value, class of the Claim, or security in respect of a Claim, is disputed by the BRPs and/or by an Affected Person;

- 3.1.22. "**Disputed Creditor**" means a Person with a Disputed Claim;
- 3.1.23. "**Dispute Mechanism**" means the dispute resolution mechanism set out in paragraph 17.2 and following;
- 3.1.24. "**Distributions**" means payments made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan;
- 3.1.25. "**eThekwini**" means the City of eThekwini or eThekwini Municipality, the local government body responsible for governing and managing the Durban metropolitan area in the KwaZulu-Natal province;
- 3.1.26. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(i)(f) of the Companies Act;
- 3.1.27. "**High Court**" means the High Court of South Africa;
- 3.1.28. "**Independent Creditor**" means a Creditor, with a Claim as accepted and/or recognised by the BRPs, to whom the definition in section 128(1)(g) of the Companies Act applies;
- 3.1.29. "**Insolvency Law**" means the Insolvency Act 24 of 1936, as amended and Chapter 14 of the Companies Act 61 of 1973, read with item 9 of Schedule 5 of the Companies Act;
- 3.1.30. "**Lender Group**" means the group of lenders to the Company and THL, all of whom are Secured Creditors, including The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division), Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Investment Banking Division, Corporate Solutions), Investec Bank Limited (acting through its Corporate and Institutional Banking division), The Land and Agricultural Development Bank of South Africa, Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance Markets division), Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients), Sanlam Life Insurance Limited (acting through its

Sanlam Investment Management division), Sanlam Specialised Finance Proprietary Limited, Momentum Metropolitan Life Limited, Nedbank Limited, and Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients);

- 3.1.31. "**LRA**" means the Labour Relations Act 66 of 1995, as amended;
- 3.1.32. "**Management**" means the management team of the Company who have been responsible for managing the day-to-day operations of the Company from the Commencement Date under the supervision and authority of the BRPs;
- 3.1.33. "**Matuson**" means Matuson and Associates Proprietary Limited (registration number 2009/008967/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 3.1.34. "**Meeting**" means the virtual meeting to be held in terms of section 151 of the Companies Act on **Tuesday 30 May 2023 at 10h00** for the purpose of voting on this Business Rescue Plan;
- 3.1.35. "**Metis**" means Metis Strategic Advisors Proprietary Limited (registration number 2015/220685/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 3.1.36. "**Murgatroyd**" means Trevor John Murgatroyd (identity number 6211115087089) a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.37. "**PCF**" means post commencement finance obtained by the Company from a PCF Creditor or PCF Lender as contemplated in section 135(2) of the Companies Act;
- 3.1.38. "**PCF Creditor**" means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during Business Rescue;

- 3.1.39. "**PCF Employee**" means any employee of the Company who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;
- 3.1.40. "**PCF Lender/s**" means any/all financier(s) advancing PCF to the Company;
- 3.1.41. "**PCF Employee**" means any employee of the Company who rendered services to the Company and is owed any remuneration, reimbursement for expenses or other amount of money relating to employment that became due and payable during the Business Rescue as contemplated in section 135(1) of the Companies Act;
- 3.1.42. "**Property Development**" means the business of the Company conducted in relation to land conversion and development, including the installation of required infrastructure, pursuant to relevant authorisations and approvals received from regulatory authorities/municipalities;
- 3.1.43. "**Proposal/s**" means the proposals set out in Chapter 2 of this Business Rescue Plan;
- 3.1.44. "**Publication Date**" means the date on which this Business Rescue Plan is published to Affected Persons in terms of section 150(5) of the Companies Act, being **19 May 2023**;
- 3.1.45. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;
- 3.1.46. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;
- 3.1.47. "**SARS**" means the South African Revenue Services;
- 3.1.48. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;

- 3.1.49. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a profit company, as defined in the Companies Act;
- 3.1.50. "**Shareholder**" means, a shareholder as defined in section 1 of the Companies Act, of the Company;
- 3.1.51. "**South Africa**" means the Republic of South Africa;
- 3.1.52. "**Substantial Implementation Date**" means the date upon which the BRPs file a notice of substantial implementation of the Business Rescue with the CIPC, which filing will be in the BRPs' sole and absolute discretion as envisaged in paragraph 14;
- 3.1.53. "**Tax**" includes any tax, imposition, levy, duty, charge, fee, deduction or withholding of any nature (including securities transfer tax and stamp, documentary, registration, or other like duty) and any interest, penalty or other amount payable in connection therewith, which is lawfully imposed, levied, collected, withheld or assessed under the laws of South Africa or any other relevant jurisdiction and "**Taxes**", "**Taxation**" and other cognate terms shall be construed accordingly;
- 3.1.54. "**Tenurey BSM**" means Tenurey BSM Proprietary Limited (registration number 2016/371558/07) a limited liability company registered and incorporated in accordance with the laws of South Africa;
- 3.1.55. "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06), a public company incorporated in accordance with the laws of South Africa, at present in Business Rescue;
- 3.1.56. "**THL Group**" means THL and its subsidiaries;
- 3.1.57. "**Trade Unions**" means UASA – The Union ("**UASA**"), The Association of Mineworkers and Construction Union ("**AMCU**") and the Food and Allied Workers Union ("**FAWU**");

- 3.1.58. "**Unenforceable**" means that all Claims will, upon the adoption and implementation of the Business Rescue Plan, become unenforceable against the Company as envisaged in section 154, and/or as read with section 152 of the Companies Act;
- 3.1.59. "**Unsecured Creditors**" means all Creditors with Concurrent Claims against the Company;
- 3.1.60. "**van den Steen**" means Petrus Francois van den Steen (identity number 6811075024087) a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.61. "**VAT**" means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;
- 3.1.62. "**Voting Interest**" means a voting interest as defined by section 128(1)(j) of the Companies Act, calculated on the value of a Creditor's Claim as accepted and/or recognised by the BRP per this Business Rescue Plan;
- 3.1.63. "**Werksmans**" means Werksmans Incorporated (registration number: 1990/007215/21), a firm of attorneys practising as such at The Central, 96 Rivonia Road, Sandton, 2196.
- 3.2. Paragraph headings in this Business Rescue Plan are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify or amplify the terms of this Business Rescue Plan or any paragraph hereof, unless a contrary intention clearly appears.
- 3.3. Words importing:
- 3.3.1. any one gender includes the other gender;
- 3.3.2. the singular includes the plural and vice versa;

- 3.3.3. a natural person includes an artificial or juristic person and vice versa ("**Person**");
- 3.4. Any reference to any statute, regulation or other legislation in this Business Rescue Plan shall be a reference to that statute, regulation, or other legislation as at the Publication Date, and as amended or substituted from time to time.
- 3.5. Any reference in the Business Rescue Plan to any other agreement or document shall be construed as a reference to such other agreement, as may from time to time be amended, varied, novated, or supplemented.
- 3.6. If any provision in a definition in this Business Rescue Plan is a substantive provision conferring a right or imposing an obligation on any person or entity then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Business Rescue Plan.
- 3.7. Where any term is defined in this Business Rescue Plan within a particular paragraph other than this paragraph 3, that term shall bear the meaning ascribed to it in that paragraph wherever it is used in this Business Rescue Plan.
- 3.8. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day, if the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day.
- 3.9. Any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.
- 3.10. Words or terms that are capitalised and not otherwise defined in the body of this Business Rescue Plan (excluding capitalised words or terms used for the purpose of headings or tables) shall bear the meaning assigned to them in the Companies Act.
- 3.11. The use of the word "**including**", "**includes**" or "**include**" followed by specific examples shall not be construed as limiting the meaning of the general wording

preceding it and *the eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.

- 3.12. To the extent that any provision of this Business Rescue Plan is ambiguous, it is to be interpreted in a manner that is consistent with the purposes of the Business Rescue provisions in Chapter 6 of the Companies Act.
- 3.13. Unless otherwise stated, all references to sections are references to sections in the Companies Act.
- 3.14. All information provided in the Business Rescue Plan is reflected as at the Publication Date, unless otherwise indicated in the Business Rescue Plan.

4. Disclaimer:

- 4.1. The BRPs in the preparation of this Business Rescue Plan have relied on information obtained from the books and records of the Company, meetings held with relevant persons including the Company's Board, management, staff, suppliers, clients, advisors and other service providers of the Company, and studies and reports commissioned from various technical and other professional advisors in connection with the affairs of the Company.
- 4.2. Whilst the BRPs have made certain efforts to ensure the accuracy of the information contained herein, it should be noted that the BRP's investigations have been limited in nature due to:
 - 4.2.1. the time constraints placed on BRPs by the Companies Act;
 - 4.2.2. pressure from Affected Persons to effect a reasonably paced rescue;
 - 4.2.3. limited financial and human resources available to the Company; and
 - 4.2.4. the state of affairs of the Company.

- 4.3. The BRPs have not carried out an audit of the Company's documents and/or records, nor have they had adequate opportunity to independently verify all information provided to them by the Company and/or relevant third parties.
- 4.4. Nothing contained in the Business Rescue Plan shall constitute any form of legal or other advice to any Affected Person and the BRPs do not make any representations in respect thereof.
- 4.5. Neither the BRPs nor their Advisors shall be responsible for any acts taken by (or omissions arising from) any Affected Persons' reliance on this Business Rescue Plan.
- 4.6. Affected Persons are advised to consult with their own independent attorney, accountant, or other professional advisor in respect of this Business Rescue Plan should they so wish or require.

CHAPTER 2 – PROPOSAL

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is wholly owned subsidiary of Tongaat Hulett Estates Proprietary Limited. Tongaat Hulett Estates Proprietary Limited in turn is wholly owned by THL. An organogram of the group of entities to which the Company belongs is provided in Annexure B.

5.2. Director(s) of the Company:

5.2.1. As at the Publication Date, the board of directors of the Company, according to the CIPC, are Robert Aitken, Daniel Marokane and Justin Geyve.

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Tongaat Kwa-Zulu Natal 4400
Postal Address	P O Box 22319 Glenashley Kwa-Zulu Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	Ernst & Young

5.4. Company Background:

5.4.1. The Company forms part of the THL Group which is an agri-processing business with a c.130-year history and a strong socio-economic legacy in

Southern Africa. The THL Group has operations in South Africa, Zimbabwe, Mozambique and Botswana.

- 5.4.2. The Company represents the Property Development arm of THL's business and operates under the trading name of Tongaat Hulett Property. The business carried on by the Company entails the occasional purchase of agricultural land from THL and the subsequent land conversion and development activities required to convert agricultural land into industrial, retail, office, residential or mixed use opportunities. This land conversion process includes various regulatory and administrative processes, as required under the various land and municipal legislations, amongst others, and the fulfilment of infrastructure requirements in line with approved conditions / authorisations. The Company markets and sells this land together with development rights to third parties for further development purposes.
- 5.4.3. The land owned by the Company is primarily located in KwaZulu-Natal, north of Durban along the N2 highway corridor between the oHlanga and mDloti rivers, and west of Durban along the N2 highway corridor at Ntshongweni. Over the past three decades the Company has rezoned, serviced and sold c.4 000 hectares of land comprising c.5.5 million square metres of bulk developable rights. Through the sale of the land, the Company has facilitated the creation of numerous prominent developments in the province including Mount Edgecombe, La Lucia Ridge, Gateway, Umhlanga Ridge Town Centre, Zimbali, Izinga, Sibaya and Cornubia.
- 5.4.4. During 2019, a forensic investigation uncovered material accounting irregularities that resulted in the restatement of the Company's historical financial information. Revenue from property transactions had been recognised too early through (*inter alia*) the backdating of sales agreements. Infrastructure obligations arising from securing the development rights underpinning the property sales were either not recognised as a liability or were understated. The restated financial statements reflected that the Company's total assets had been overstated by c.R2.29 billion, and the Company's total liabilities (excluding deferred taxation) had been understated by c.R849 million. As a consequence of the

accounting irregularities, the Company's former directors and senior executives are currently engaged in both criminal and civil proceedings.

- 5.4.5. Prior to Business Rescue, the Company was in the process of closing out a number of developments whilst also seeking to develop new parcels of land within existing developments, all at different stages of completion and sales statuses. To further the business of the Company, funding of c.R1 billion via guarantee and working capital facilities was forecast to be required. Future access to THL's agricultural land holdings to propagate future developments was also required. The need for the aforementioned funding requirements resulted from the Company not having its own working capital facilities and having to rely on THL's banking facilities, as well as not retaining a sufficient quantum of its own operational cash flows for redeployment into future infrastructure development spending, noting again that these infrastructure obligations were not fully recognised in the Company's financial statements. As a result, the Company's unfulfilled infrastructure obligations, as well as a trust deficit with developers and eThekweni, grew over time.
- 5.4.6. The Company has, together with certain other members of the THL Group, granted a guarantee and provided security in respect of the obligations of the THL Group under the debt facilities made available to the THL Group by the Lender Group. The Company has guaranteed THL's debt facilities since c.2007. Historically, the Company has formed part of THL's centralised treasury function meaning that it is dependent on THL for access to working capital facilities. As such, the financial stability of the Company was inextricably linked to the financial stability of THL.
- 5.4.7. The extent of the challenges faced by THL, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial misstatements and historic mismanagement. THL, itself in business rescue, is clearly no longer in a position to provide financial support to the Company.

5.5. **Events which led to the Company commencing Business Rescue:**

5.5.1. It is the BRPs understanding that the cause of the Company's Financial Distress is set out in the statement, attached hereto as Annexure C.

5.6. Aims and objectives of business rescue:

5.6.1. In terms of the Companies Act, the Company's Business Rescue will aim to facilitate its rehabilitation by (inter alia) providing for -

5.6.1.1. the temporary supervision of the Company by the BRPs, and the management of its affairs, business, and property by the BRPs;

5.6.1.2. a temporary moratorium on the rights of claimants against the Company or in respect of property in its possession; and

5.6.1.3. the development and implementation of a Business Rescue Plan which has as its aim the either, or both of -

5.6.1.4. the rescue of 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; and/or

5.6.1.5. achievement of a better return for the Company's Creditors or Shareholders than would result from the immediate liquidation of the Company.

5.6.2. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet the standard set out in paragraph 5.6.1.5 above.

5.7. Business Rescue events:

5.7.1. The salient dates pertaining to the Business Rescue of the Company are set out below;

BUSINESS RESCUE EVENT	DATE
Board Resolution to commence the Business Rescue	26 October 2022
Commencement date of the Business Rescue	27 October 2022
Appointment of the BRPs	
Notice to Affected Persons about the commencement of Business Rescue and the appointment of the BRPs	27 October 2022
First statutory meeting of employees	3 November 2022
First statutory meeting of Creditors	8 November 2022
Requests for an extension of the date to publish the Business Rescue Plan	8 November 2022, 24 January 2023, 23 February 2023 24 March 2023 and 20 April 2023
Confirmation of extension of the date to publish the Business Rescue Plan to 31 January 2023, then 28 February 2023, then 31 March 2023, then 28 April 2023 and then 21 May 2023	15 November 2022, 27 January 2023, 27 February 2023, 31 March 2023 and 28 April 2023
Meetings in terms of section 143 of the Companies Act to vote on the BRPs' remuneration agreement, Shareholder meeting Creditors meeting	No THD meetings held See section 5.14
Notice concerning subordinated Creditors' Voting Interests	16 February 2023
Publication of the Business Rescue Plan	19 May 2023
Latest dates for receipt of proxies:	
Delivery by hand	26 May 2023
Delivery by e-mail	29 May 2023
Meeting to consider this Business Rescue Plan	30 May 2023

5.7.2. All notices that have been published to the Affected Persons of the Company can be obtained from the Company's website at www.tongaat.com, under the Business Rescue tab.

5.8. Steps taken since the appointment of the BRPs:

5.8.1. Statutory Obligations – the Company and the BRPs have met and complied with statutory reporting and meeting obligations as required in terms of Chapter 6 of the Companies Act.

- 5.8.2. Management Control - In terms of section 140(1)(a) of the Companies Act, the BRPs took full management control of the Company and have delegated certain functions to Management in terms of section 140(1)(b) of the Companies Act.
- 5.8.3. Investigations - The BRPs have investigated the affairs of the Company and have satisfied themselves that, inter alia, the Company is in Financial Distress and that there is a reasonable prospect of the Company being rescued.
- 5.8.4. Operations - For the duration of the Company's Business Rescue, the Company has continued to operate on a limited basis with the support of the PCF Lenders. In particular, certain infrastructure construction works related to Property Developments, as outlined in Annexure D, have been curtailed to the extent possible and certain others prioritised. This is due to the constraints caused by limited access to PCF funding, the timing of Business Rescue preceding the annual builders' break (being mid-December 2022 until early January 2023) and the uncertainties posed to Affected Persons due to the onset of Business Rescue amongst other things.
- 5.8.5. PCF Funding - It was critical to the successful outcome of the Business Rescue that PCF funding was received timeously. This assisted to reduce execution risk, address environmental/compliance risks, avoid Property Development delays and related potential negative financial impacts. Accordingly, since their appointment the BRPs have devoted a significant amount of time, effort and resources towards engaging with the PCF Lenders in order to secure the requisite PCF. Approximately R95 million in PCF has been advanced by PCF Lenders to date. It is anticipated that a further amount of c.R110 million of sale proceeds will be permitted (by PCF Lenders in terms of their security arrangements) to be utilised by the Company for working capital purposes (excluding VAT and income tax) and deemed to be PCF.
- 5.8.6. Extension of the Date for Publication of Business Rescue Plan – In terms of section 150(5) of the Companies Act, the Business Rescue Plan was

required to be published on 1 December 2022 (i.e. within 25 business days from the date of the appointment of the BRPs). The BRPs obtained approval from the Creditors for various extensions of the Publication Date, the latest date being **21 May 2023** in accordance with section 150(5)(b) of the Companies Act.

5.8.7. Employees

5.8.7.1. Following an external legal review of THD's employment arrangements as they pertain to employees, it was concluded that the employees providing services to THD are contractually engaged by THL and thus their employment contracts effectively reside with THL. THL's employees have continued to be employed by THL on the same terms and conditions as before the commencement of THL's business rescue proceedings and as provided for in their contracts of employment.

5.8.7.2. The first statutory meeting of employees, in terms of section 148 of the Act, was convened in person and virtually on 8 November 2022. Thereafter, an employees' committee was formed by employees of THL who volunteered or who were nominated by their colleagues to represent them on the committee. The employees' committee includes representatives of those employees providing services to the Company. To date, the BRPs have held numerous virtual meetings with the employees' committee to discuss the Business Rescue of the Company. The most recent employees' committee meeting was held with the BRPs on 28 March 2023.

5.8.7.3. Should the considered status of the employment arrangements (for whatever reason) change or be different from that noted above, and employees effectively are considered to be employees of THD, then this Business Rescue Plan contemplates a section 189 (of the LRA) retrenchment process, to be initiated following the approval of the Business Rescue Plan and executed as part of the implementation of the Business Rescue Plan. The

Business Rescue Plan contemplates the Company meeting its relevant retrenchment financial obligations to all employees affected by the proposed section 189 process, but this will ultimately be dependent upon the realisation of sufficient proceeds from the sale of properties and the consent of the Lender Group to utilise such proceeds (over which they hold security) accordingly.

5.8.7.4. It is anticipated that the section 189 process, if required/applicable, will continue throughout the Business Rescue to the initial exclusion of certain key employees who will continue to be employed for the duration required in order to assist in the implementation of the Business Rescue Plan and to facilitate the necessary operational requirements of the Company.

5.8.7.5. The Board of the Company have continued to be engaged in their capacities as directors of the Company and have worked with and will continue to work with the BRPs.

5.8.8. Creditors

5.8.8.1. The first meeting of Creditors, as contemplated in section 147 of the Act, was convened virtually on 8 November 2022.

5.8.8.2. At the first statutory meeting of Creditors, the BRPs advised Creditors of the right to form a Creditors' committee. A Creditors' committee has since been formed.

5.8.8.3. The first Creditors' committee meeting was convened virtually on 2 December 2022 and the most recent Creditors' committee meeting was held on 25 April 2023.

5.8.9. Consultations

5.8.9.1. The BRPs have consulted with various Affected Persons relating to the developments within Business Rescue and the development of the Business Rescue Plan, in addition to the publishing of regular notices and/or status reports to Affected Persons.

5.8.10. Claims Reconciliation

5.8.10.1. The BRPs have received Claims from numerous Affected Persons. A verification process has been undertaken to reconcile the Claims received with the amounts reflected in the records of the Company. For the avoidance of doubt, the BRPs will rely on the records of the Company unless proven otherwise. Further details relating to Claims are set out in paragraph 5.10, read with Annexure A.

5.8.11. Contracts

5.8.11.1. None of the Company's contractual obligations have, as at the Publication Date, been suspended or cancelled during Business Rescue, however the BRPs reserve the rights to do so at the appropriate time in accordance with s136 of the Companies Act.

5.8.12. Cost Reduction Initiatives - Since appointment, the BRPs have made ongoing efforts to reduce operating costs of the Company wherever possible. It is envisaged that various cost reduction and efficiency improvement initiatives will continue to be implemented throughout the Business Rescue process.

5.8.13. Cash Management - In order to minimise the operating expenses of the Company, the BRPs continue to monitor the cash flow and financial position of the Company, control payments and enforce general controls.

5.8.14. Business Rescue Plan - The BRPs and their Advisors have developed this Business Rescue Plan for consideration by Affected Persons of the Company.

5.9. Material assets and security (Section 150(2)(a)(i)):

5.9.1. A list of the material assets of the Company is set out in Annexure E. The below list of assets is the pre-Business Rescue book values of the Company's assets at 31 October 2022, the nearest practicable date to the Commencement Date, as extracted from the accounting records of the Company.

MATERIAL ASSETS	31-Oct-22
	R'000
Non-current assets	
Property plant and equipment	302
Intangible assets	1 954
Deferred tax	258 861
Investments in subsidiaries and joint ventures	17 254
Total Non-current assets	278 371
Current assets	
Inventory	1 648 159
Trade and other receivables	38 276
Cash and cash equivalents	40 240
Total Current assets	1 726 675
TOTAL ASSETS	2 005 046

Note that inventory includes the major asset group of the Company, namely development property. The property portfolio is in varying stages of development and the asset value noted above reflects the gross accounting asset value. The gross accounting asset value includes the estimated cost of the total infrastructure commitments that are required to be installed in exchange for the development rights received by the Company. In many cases, these infrastructure projects have not yet been completed. Consequently, the gross accounting asset value needs to be read in context of the corresponding accounting liability value for the infrastructure costs still to be completed of c.R844 million (or a total of R1.54 billion when also factoring in the historic unfulfilled infrastructure costs on property sold previously). In order to enable the realisation of the gross accounting asset value, these infrastructure projects would

need to be completed, meaning the net accounting value of the property portfolio is substantially lower.

For the sake of clarity it is emphasised that these are accounting “book values”, which do not necessarily equate to market or sale values.

5.10. Creditors of the Company (Section 150(2)(a)(ii)):

5.10.1. The BRPs will accept the Company’s records in respect of any Creditor as being correct, unless and until the relevant Creditor proves otherwise.

5.10.2. Claims that are not reflected in Annexure A of this Business Rescue Plan will be regarded as Disputed Claims, and Disputed Creditors may be allowed a Voting Interest at the Meeting only if so determined by the BRPs in their sole discretion. Any such allowance shall be without prejudice to the Company's rights to dispute the Disputed Claim and will be further dealt with in accordance with the Dispute Mechanism contemplated in paragraph 17.

5.10.3. The Claims that the BRPs have accepted, in whole or in part, are set out in Annexure A. A summary of the various classes of Creditors of the Company as at the Commencement Date, updated for subsequent movements/repayments where applicable and PCF advanced, is reflected in the table hereunder:

Table 2: Summary of the Various Classes of Creditors of the Company (updated as at 30 April 2023)

CREDITOR TYPE / DESCRIPTION	ACCEPTED/PROVEN CLAIM AMOUNT
SECURED CREDITORS	R7,240,031,049
Lender Group banking facilities*	R7,240,031,049
PCF CREDITORS	R94,580,015
Lender Group PCF	R94,580,015
PREFERENT CREDITORS	R0
Preferent creditors (<i>N/A in business rescue</i>)	R0

Preferent employees	R0
INDEPENDENT UNSECURED CREDITORS	R358,585,347
Trade Creditors	R130,300,515
eThekwini***	R228,284,832
NON-INDEPENDENT UNSECURED CREDITORS	R5,197,494
Inter-Company Loans**	R5,197,494
TOTAL	R7,698,393,905

* The Lender Group claims arise from the guarantee granted by THD as security in respect of THL's obligations to the Lender Group, as well as claims in relation to the Company's financial guarantee facility in respect of infrastructure projects. The renewal and extension of these financial guarantees has been classified as PCF and is incorporated in the Secured Claims of the Lender Group.

** The claims under the inter-company loans have been subordinated in favour of the Lender Group.

*** eThekwini retains all statutory security/rights for arrear rates due to it on the properties owned by the Company.

5.10.4. All Creditors who believe that they have a Claim against the Company are referred to Annexure A and should treat Annexure A as the BRPs' notification of the Claims (including the quantum thereof) that have been accepted by the BRPs for the purpose of the Business Rescue. If any Creditor is in disagreement with the information provided in Annexure A (making it a Disputed Creditor), such Disputed Creditor should utilise the Dispute Mechanism set out in paragraph 17.

5.10.5. Following the Adoption and implementation of this Business Rescue Plan, all Claims of Creditors of the Company will become Unenforceable, other than as provided for in this Business Rescue Plan.

5.11. **Voting interests and voting by proxy:**

5.11.1. Voting Interests

5.11.1.1. In accordance with section 145(4) of the Companies Act, a Creditor is entitled to vote on the Adoption of the Business Rescue Plan, as follows –

- a Secured and/or Unsecured Creditor has a Voting Interest equal to the value of the amount owed to that Creditor by the Company; and
- an Unsecured Creditor who would be subordinated in a liquidation has a Voting Interest, as independently and expertly appraised and valued at the request of the BRPs, equal to the amount, if any, that the Unsecured Creditor could reasonably expect to receive on a liquidation of such Company as set out in section 145(4)(b) of the Companies Act.

5.11.1.2. It is recorded that there are subordinated creditors, in the total amount of R5,197,494, and that the value ascribed to those subordinated creditors in line with the independent appraisal is nil. A notice concerning subordinated Creditors' Voting Interests was circulated on 16 February 2023.

5.11.2. Voting

- 5.11.2.1. All Creditors will have a Voting Interest as set out in Annexure A in respect of any vote conducted at the Meeting, subject to the BRPs discretion contemplated in paragraph 5.10.2 and directly below.
- 5.11.2.2. Disputed Creditors may be allowed a Voting Interest at the Meeting as may be determined by the BRPs in their sole discretion and any such determination shall be made without prejudice to the Company's rights to dispute the Disputed Claim.
- 5.11.2.3. Disputed Creditors are invited to seek an amendment to their Voting Interest (relative to Annexure A) up to 24 hours before the Meeting. Any BRP agreement to amend a Disputed Creditors' Voting Interest shall not be construed as an acceptance of the existence or quantum of such claim, and such determination will

be made solely for the purposes of determining Voting Interest at the Meeting. Unless the BRPs specifically advise a Disputed Creditor otherwise, Disputed Creditors will still be required to follow the Dispute Mechanism contained in paragraph 17 below.

5.11.3. Independent Creditors

5.11.3.1. In accordance with sections 145(5)(a) and 145(5)(c) of the Companies Act, the BRPs are required to determine whether or not a Creditor is an Independent Creditor for purposes of the Business Rescue.

5.11.3.2. For purposes of this Business Rescue Plan, the BRPs have determined that all Creditors with accepted and/or recognised Claims, with the exception of THL (the Company's ultimate holding company), which is owed c.R1.7m, and Tongaat Hulett Estates Proprietary Limited (the Company's immediate holding company), which is owed c.R3.5m, are Independent Creditors and will be counted as such for purposes of any votes cast at the Meeting to approve this Business Rescue Plan.

5.11.4. Shareholders

5.11.4.1. In accordance with section 146(d) of the Companies Act, a Shareholder is entitled to vote on a Business Rescue Plan if the Business Rescue Plan alters the rights associated with the class of Securities held by that Shareholder.

5.11.4.2. This Business Rescue Plan does not alter the rights associated with any Securities, and/or class of Securities, held by Shareholders and accordingly the sole Shareholder is not required to, nor entitled to, vote on this Business Rescue Plan.

5.11.5. Vote by Proxy

5.11.5.1. Voting by proxy is permitted. A proxy form is enclosed as Annexure F.

5.11.5.2. Notwithstanding these forms, the BRPs have the discretion to accept any proxy submitted, if acceptable to the BRPs, no matter its form.

5.11.5.3. Proxy forms must include an appropriate resolution (for a juristic entity or trust) or power of attorney (for an individual) giving such representative the authority to attend and vote at the meeting on behalf of the juristic person, trust or individual.

5.11.5.4. Creditors who are voting by proxy are reasonably required to lodge each or any of their proxy forms by no later than **17h00 on Friday, 26 May 2023** or if by email, by no later than **17h00 on Monday, 29 May 2023**.

5.12. **Probable Liquidation Dividend Estimate (Section 150(2)(a)(iii)):**

5.12.1. The BRPs engaged BDO as an independent expert to calculate the probable dividend that Creditors and Shareholders would likely receive if, instead of being placed into business rescue, the Company was placed in liquidation as at the Commencement Date.

5.12.2. A summary of the realisations, costs and probable dividend to creditors per Creditor class is reflected in Table 3 below:

Table 3: Probable Liquidation Dividend per Class of Creditor/Shareholder

	<i>Cents/Rand</i>	<i>R'000</i>
Gross proceeds from the realisation of assets by a liquidator		351 590
Movable Assets		2 880
Immovable Assets		278 772
Investments		15 865
Debtors		11 730

Cash		42 343
Less expenses incurred by liquidator during liquidation process		175 060
Net proceeds after expenses available for distribution to creditors		176 531
Order of preference – Application of the net proceeds of the realisation of assets		
1 st payment by law – Secured Creditors	2.48	176 531
2 nd payment by law – Statutory preferent creditors	0,00	0
Available for distribution to Unsecured Creditors	0,00	0

Note: As the net proceeds available for distribution to Creditors in liquidation is insufficient to enable a full recovery for Creditors, Shareholders would not be entitled to any dividend.

5.12.3. If an Affected Person requires details relating to the Probable Liquidation Dividend Estimate calculation, such Affected Person is invited to contact the BRPs using the contact details set out in paragraph 18.1.2.

5.12.4. BDO requires that any Creditor requesting a copy of the Probable Liquidation Dividend Estimate report sign a hold-harmless letter in favour of BDO.

5.12.5. The following BDO disclaimers are included in the Probable Liquidation Dividend Estimate:

5.12.5.1. *"Any person who is not an addressee of this report or who has not signed and returned to BDO either a "no-reliance" or an "assumption of duty" release letter is not authorised to have access to this report. We do not accept or assume responsibility to any unauthorised person to whom this report is shown or any other person who may otherwise gain access to it.*

5.12.5.2. *"If any unauthorised person chooses to rely on the contents of this report, they do so entirely at their own risk. Should any unauthorised person obtain access to and read this report, such person accepts and agrees that:*

- This report was prepared in accordance with instructions provided by the BRPs exclusively for the sole benefit and use of the BRPs and inclusion in their BR Plan;*
- BDO, its partners, employees and agents neither owe, nor accept any duty or responsibility to the reader, whether in contract or otherwise (including without limitation, negligence and breach of statutory duty), or howsoever otherwise arising. We make no representations regarding this report or the accuracy of the contents including that the information has not changed since the date of this report;*
- We shall not be liable in respect of any loss, damage or expense of whatsoever nature which results from any use the reader may choose to make of this report, or any reliance the reader may seek to place on it, or which is otherwise consequent upon access to this report by the reader;*
- The report is not to be referred to or quoted, in whole or in part, in any other document, other than the BR Plan or made available to any third party, without BDO's express written consent."*

5.13. Holders of the Company's issued Securities (Section 150(2)(a)(iv)):

5.13.1. The Business Rescue Plan does not alter the rights of Shareholders as envisaged in section 152(3)(c) of the Companies Act.

5.14. BRPs' remuneration (Section 150(2)(a)(v)):

5.14.1. As the affairs of the Company are in many instances inextricably linked to the financial affairs of THL, no separate BRP remuneration agreement has been concluded with the Company. The THL BRP remuneration agreement has been designed to recognise that the financial affairs of THL and of the Company are in many instances inexorably linked and that, consequently, the most efficient methodology to be adopted in so remunerating the BRPs is in conjunction with the THL remuneration agreement, notwithstanding that certain of the activities they undertake in earning such remuneration will relate solely to the Company.

5.15. **Proposal made informally by Creditors (Section 150(2)(a)(vi)):**

5.15.1. In terms of Section 150(2)(a)(vi) of the Companies Act, no informal proposals have been made by a Creditor or Creditors of the Company with regard to this Business Rescue Plan.

6. PART B – The Proposal

6.1. **Terms of the Proposal:**

6.1.1. To date, approximately R95 million of PCF has been secured from PCF Lenders to provide operational solvency during the Business Rescue.

6.1.2. The basis upon which PCF has been advanced by the PCF Lenders is by way of their consent for THD to utilise cash balances (that existed as at the Commencement Date) as well as claim and property sale proceeds received by THD (subsequent to the Commencement Date), all of which were/are encumbered in favour of the PCF Lenders. Such PCF have been accessed via monthly PCF drawdown requests which are submitted by the BRPs to the PCF Lenders for their approval.

6.1.3. Following the Adoption of this Business Rescue Plan the BRPs will continue to request consent from the PCF Lenders to utilise certain proceeds from sales and/or cash balances to fund the implementation of the Business Rescue Plan and, in so doing, will agree that the use of such proceeds will

be regarded as PCF. Future PCF requests will be based on the relevant funding requirements as derived from the Company's cash flow forecast estimates, currently as reflected in Annexure G. Cash flow forecast will be updated on a monthly basis based on then prevailing circumstances.

- 6.1.4. It is the BRPs' view that an endeavour to sell the shares in Company, as a going concern Property Development company, would prove fruitless as the Company has a significant negative equity value. The optimal manner in which to realise value for Creditors is thus to dispose of assets in a controlled manner.
- 6.1.5. The significant infrastructure obligations of the Company and the future infrastructure costs that would be required to unlock the sales potential of the precincts and land parcels held by the Company is the single biggest aspect that needs to be addressed.
- 6.1.6. In consultation with Management and specialist sector advisors, the BRPs have resolved to extract value from the remaining property portfolio in primarily the following ways:
 - 6.1.6.1. A structured sales process will be run for **individual erven which are capable of transfer**. A summary of these properties is provided in Annexure H.
 - 6.1.6.2. For the remaining **erven not capable of transfer**, such properties/groupings of properties will be sold collectively as either **a precinct** or **a node within a precinct**. Such precinct sales are anticipated to be accompanied by the transfer (by relevant and available legal means) of some or all of the relevant authorisations, licences, undertakings and related obligations pertaining to the properties / groupings of properties / precincts / nodes within a precinct. A summary of these properties / groupings of properties / precincts / nodes within a precinct is provided in Annexure H.

- 6.1.6.3. Following the sales processes outlined in paragraphs 6.1.6.1 and 6.1.6.2 being concluded, it is anticipated that there will be certain properties that remain unsold. The BRPs will explore other value realisation options during the Business Rescue, which may include offering such properties to eThekweni in partial compensation for unfulfilled obligations arising from relevant authorisations owed/outstanding by the Company.
- 6.1.6.4. A structured sales process will be run for all subsidiaries, joint ventures or other equity interests held by the Company which have value. A summary of such holdings is included in Annexure H.
- 6.1.6.5. To the extent that any sales processes or agreements entail any deferred consideration elements, the BRPs retain the right to decide on how best to structure same for the benefit of the Company and/or Affected Persons.
- 6.1.6.6. Any properties or assets remaining following the Substantial Implementation Date will need to be dealt with by a liquidator or otherwise.
- 6.1.6.7. For the avoidance of doubt, it is confirmed that the above is not an exhaustive list of potential realisation options, however the BRPs will endeavour to optimise realisations in any manner they deem appropriate, subject to the consent of the Secured Creditors in terms of their security rights.
- 6.1.6.8. It is estimated that the above disposals and/or value realisations will be effected over a roughly 12 month period from the date of Adoption of this Business Rescue Plan.
- 6.1.7. Should the opportunity arise to sell the Company, its business or its assets as a whole and/or as a going concern at an appropriate value, then same will be pursued (again subject to the consent of the Secured Creditors in terms of their security rights).

- 6.1.8. The Company will provide direct or indirect financial assistance to its related and inter-related companies where deemed appropriate, which financial assistance may include without limitation the provision of loans, the issuance of guarantees (or other like instruments and/or Securities) and/or the subordination of claims owing to the Company by related or inter-related companies.
- 6.1.9. Wherever possible, subsidiaries and equity interests held in other companies/legal structures by the Company have been or will be restructured to optimise operational efficiency and minimise costs.
- 6.1.10. Ultimately, the Business Rescue contemplates a controlled wind-down, winding-up/liquidation and/or deregistration of the Company and relevant subsidiaries of the Company.
- 6.1.11. It is assumed that the banking facilities currently available to the Company and its direct subsidiaries and related companies/equity interests will continue to be made available to enable trading during Business Rescue.
- 6.1.12. All other assets have been or are being realised and claims against counterparties have been or are being pursued.
- 6.1.13. Overhead costs are being, and will continue to be, managed and reduced in accordance with the diminishing needs of the Company.
- 6.1.14. The net effect of the Business Rescue will be the realisation of better Distributions to the Creditor body than would have been the case if the Company had been immediately liquidated.

7. Effects of the Proposal:

- 7.1. Ongoing role of the Company and the treatment of existing contracts (Section 150(2)(b)(iii):

- 7.1.1. Where the BRPs determine it to be in the best interests of Creditors to continue with agreements concluded with the Company, the agreements have continued.
- 7.1.2. Agreements concluded with the Company are, however, subject to ongoing evaluation and negotiations by the BRPs in an effort to mitigate risks and optimise the success of the Business Rescue.
- 7.1.3. Section 136(2)(a) of the Companies Act allows the BRPs to entirely, partially, or conditionally suspend, for the duration of the Business Rescue, any obligation of the Company that arises under an agreement (including any form of *sui generis* agreement) to which the Company was a party at the Commencement Date and would otherwise become due during the Business Rescue. All Company obligations are currently under review and the BRPs reserve their rights in this regard. It is recorded that, where the BRPs have elected to suspend the Company's payment obligations, the aggrieved party may assert a Claim against the Company only for damages. All Unsecured Creditor amounts owing and unpaid as at the Commencement Date will remain subject to the moratorium and will be treated as an Unsecured Creditor Claim which will become Unenforceable.
- 7.1.4. The BRPs further have the right, in terms of section 136(2)(b) of the Companies Act, to apply to the High Court to cancel and/or terminate any obligation of the Company that arises under an agreement to which the Company was a party at the Commencement Date and that would otherwise become due during the Business Rescue.
- 7.1.5. Counterparties to all agreements in which the Company's obligations are suspended or cancelled should be guided by the moratorium which excludes a claim by a contractual counterparty for specific performance. Such party will have a Claim for damages in terms of section 136(3) of the Companies Act. Where that Claim is not reflected in Annexure A, the course of action available to that party is to submit a claim for damages as a Disputed Creditor and to follow the Dispute Mechanism set out in paragraph 17.

7.2. The property of the Company that is to be available to pay Creditors' Claims in terms of the Business Rescue Plan (Section 150(2)(b)(iv))

7.2.1. Subject to the rights of the Secured Creditors, the proceeds from the realisation of assets, not limited to those as listed in Annexure E, will be utilised to fund the operations of the Company, the costs of the Business Rescue, any costs which may have to be incurred by the erstwhile BRPs after termination of the Business Rescue, any costs as may be related to reducing the cost base and/or winding down operations as per paragraph 1.7.4, and to pay the Distributions to Creditors or reduce the requirement for PCF in terms of this Business Rescue Plan, subject to any deductions provided for in this Business Rescue Plan.

7.2.2. As outlined in Annexure G, the Distributions to Creditors will effectively be a function of:

7.2.2.1. the net Property Development cash flows which comprise amongst other things the expected revenue generated through the sale of properties less the specific costs to sell properties, including but not limited to infrastructure costs (net of any relevant recoveries), rates, bulk rights, sales commissions and transfer/conveyancing costs; and

7.2.2.2. the overheads, including Business Rescue Costs, incurred to achieve the property sales.

7.3. Effect on Creditors (Section 150(2)(b)(v))

7.3.1. Distributions will be made in the following order of priority in accordance with the Business Rescue Plan for the duration of Business Rescue. This ranking is in accordance with the provisions of the Companies Act.

7.3.2. Proceeds from Unencumbered Assets, if any, will be applied in the following order of priority (subject in each case to there being any residual funds available after settlement of the previous category):

- 7.3.2.1. Business Rescue Costs;
 - 7.3.2.2. PCF Employees to the extent that amounts due and payable, for services rendered during Business Rescue, that remain unpaid;
 - 7.3.2.3. Unsecured PCF Creditors, who will rank in the order in which the PCF was provided;
 - 7.3.2.4. Preferent employees;
 - 7.3.2.5. Unsecured Creditors; and
 - 7.3.2.6. Shareholders.
- 7.3.3. Net proceeds (i.e. after funding of working capital and other funding requirements) from Encumbered Assets will be applied as follows:
- 7.3.3.1. A PCF Creditor, who is also a Secured Creditor, will receive Distributions arising from the realisation of the value of its security. If any residual Claim remains after the realisation of any security, that Secured PCF Creditor will be treated as an Unsecured PCF Creditor with respect to that residual Claim. If any surplus proceeds remain after the Distributions to PCF Creditors, who are also Secured Creditors, such surplus proceeds will be allocated towards Distributions to Unsecured Creditors.
 - 7.3.3.2. A Secured Creditor will receive Distributions arising from the realisation of the value of its security, after having taken into account the funding needs of the Company and the PCF consents referred to in paragraph 6.1.3 above. If any residual Claim remains unpaid after the repayment of deemed PCF from the realisation of any security, that Creditor's remaining claims will be treated as an Unsecured Creditor with respect to that residual Claim. If any surplus proceeds remain after the

Distributions to Secured Creditors, such proceeds will be allocated towards Distributions to Unsecured Creditors.

7.3.4. The expected Distribution to Creditors is set out in the Table 4 below.

Table 4: Distribution to Creditors in Business Rescue

CREDITOR PAYMENTS	APPROXIMATE CREDITOR CLAIMS	ESTIMATED BUSINESS RESCUE DISTRIBUTIONS	
		Rm	%
Secured Creditors (*)	7 240	513	7
PCF Employees	N/A	N/A	0
PCF Lenders (**)	95	95	100
PCF Creditors	N/A	N/A	0
Preferent employees (***)	N/A	N/A	0
Unsecured Creditors	363	0	0
TOTAL	7 698	608	

(*) A portion (R154 million) of the Secured Creditors claim is in relation to Lender Group guarantee facilities, the extension/renewal of which has been classified as PCF (included in Secured Creditors above).

(**) As at the Publication Date, total PCF in the amount of approximately R95 million had been approved/advanced by the PCF Lenders (as per Annexure A).

(***) Employees, if applicable, are anticipated to receive their full contractual entitlements including severance benefits under the LRA in the event of this arising.

Note: Estimated distributions to creditors outlined above exclude the impact of any relevant VAT and income tax.

7.3.4.1. As a result of all material assets of the Company being secured in favour of Secured Creditors, and the expected distribution to

Secured Creditors being less than 100 cents in the Rand, there is unfortunately no likelihood of the Company paying any Distributions to Unsecured Creditors (i.e. Unsecured Creditors will receive nil cents in the Rand).

7.3.4.2. To the extent that agreements concluded between the Company and counterparties and/or obligations are cancelled, modified, suspended or restructured, any Claim for damages will be treated as contemplated in paragraph 7.3.4.3.

7.3.4.3. Claims for damages, whether contractual or delictual against the Company, once determined through the Dispute Mechanism paragraph 17.2 or by the High Court or similar proceedings, as the BRPs may consent to, will be treated as follows–

- as an Unsecured Creditor, unless the Creditor holds security for such Claim;
- shall be limited to general damages as determined through the Dispute Mechanism or by the High Court or similar proceedings as the BRPs may in their sole discretion consent to. For purposes hereof, general damages are those which, on an objective basis, would be reasonably foreseeable at the time of entering into the relevant contract as a probable consequence of, and with a sufficiently close connection to, any breach by the Company of an agreement so as to be said to flow naturally and generally and not to be too remote; and
- shall exclude all indirect, punitive, special, incidental, or consequential loss, including injury to business reputation, loss of profits and/or loss of business opportunities.

7.3.4.4. If this Business Rescue Plan is Adopted and subsequently implemented by payment of a final Distribution in accordance

with this Business Rescue Plan, all remaining Claims will become Unenforceable.

- 7.3.4.5. For the avoidance of doubt, any past or prospective claim which SARS may have against the Company, among other things, under section 22(3) of the Value Added Tax Act 89 of 1991, or in respect of an audit under the Tax Administration Act 28 of 2011 for any date or year of assessment preceding the Commencement Date will be Unenforceable under and in terms of this Business Rescue Plan.
- 7.3.4.6. Any VAT related claims from SARS arising from transactions that occurred prior to the Commencement Date has been recognised as an Unsecured Creditor in the Business Rescue and will be treated in the same manner as all other Unsecured Creditors and therefore will be entitled to the same cents in the Rand Distribution as all other Unsecured Creditors. Any other known SARS Claims will be treated as an Unsecured Creditor in this Business Rescue Plan.
- 7.3.4.7. This means that upon payment of a final Distribution in terms of this Business Rescue Plan, any remaining unpaid portions of the Claims will have become Unenforceable and no Creditor will be entitled to enforce the balance of its Claim, or any portion of its Claim, against the Company.
- 7.3.4.8. Creditors voting in favour of the Business Rescue Plan do not thereby accede to the discharge of the whole or part of their debt in terms of section 154(1) of the Companies Act. No Creditors are deemed to have lost the right to enforce their Claims, save that upon Adoption and implementation of the Business Rescue Plan, Creditors' remaining Claims will become Unenforceable against the Company in terms of section 154(2).
- 7.3.4.9. After payment of the final Distribution and prior to a notice of substantial implementation being filed with the CIPC, the

Company may be returned to its Director(s) or an application may be made for the Company's deregistration, alternatively, the Company's provisional or final liquidation, as the BRPs in their sole discretion may determine.

7.3.4.10. Claims will only become Unenforceable in accordance with the Business Rescue Plan upon the Adoption and implementation of the 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 other than as catered for in this Business Rescue Plan under paragraph 7.3.4.9, 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, subject to the provisions of section 135 of the Companies Act.

7.3.5. Effect on Employees (Section 150(2)(c)(ii)) - Following the Adoption of the Business Rescue Plan, employees (whether in THL or THD) will continue to be employed on the same terms and conditions as they were prior to the commencement of Business Rescue. The implementation of the Business Rescue Plan is intended to facilitate the continued employment / engagement (as the case may be) of employees critical to the enablement of sales of the Company's properties and related operational requirements. As the Business Rescue Plan is implemented, properties are expected to be sold and the Company ultimately wound down and/or thereafter liquidated. This Business Rescue Plan therefore also contemplates a section 189 retrenchment process (in terms of the LRA) to be initiated (if required or determined necessary in the case of THD) following the approval of the Business Rescue Plan. The Business Rescue Plan intends to provide for the Company's ability to fulfil financial retrenchment and/or exit payment financial obligations to all employees providing their services to THD who may be affected by the potential section 189 process and/or employee exit processes required to be implemented in accordance with the Company's envisaged wind down and operational requirements, but will be dependent

upon the realisation of sufficient proceeds from the sale of properties and the consent of the Lender Group to utilise such proceeds accordingly.

7.3.6. Effect on Director(s) and Management - Directors have continued to exercise the functions of a director, subject to the authority of the BRPs. Management continues to work with the BRPs as set out herein and is receiving their ordinary remuneration.

7.3.7. Effect on subsidiaries - The investments in and claims against subsidiaries of the Company will be treated in accordance with the Proposal section of this Plan. With the requisite support of PCF Lenders, the Company will provide direct or indirect financial assistance to its related and inter-related companies/equity interests, which financial assistance may include without limitation the provision of loans, the issuance of guarantees (or other like instruments and/or Securities) and/or the subordination of claims owing to the Company by related or inter-related companies.

8. Binding nature of this Business Rescue Plan:

8.1. The BRPs draw the attention of Affected Persons to the provisions of section 152(4) of the Companies Act.

8.2. This section of the Companies Act provides that once a Business Rescue Plan has been Adopted, it is binding on the Company, its Creditors (including all Claims, whether accepted by the BRPs as Creditors, whether Disputed Creditors, conditional Claims, prospective Claims, damages Claims and/or unliquidated Claims) and every holder of the Company's Securities (the latter in terms of the provisions of section 146(d) and 152(3)(c) of the Companies Act) whether or not such a Person was –

8.2.1. present at the Meeting to determine the future of the Company;

8.2.2. voted in favour of the Adoption of the Business Rescue Plan; or

8.2.3. in the case of Creditors, has proven a Claim against the Company.

9. Moratorium (Section 150(2)(b)(i)):

- 9.1. The moratorium imposed by section 133 of the Companies Act prohibits any legal proceedings, including enforcement action, against the Company, or in relation to any property belonging to the Company or lawfully in its possession, from being commenced or proceeded with for the duration of the Business Rescue except with the written consent of the BRPs or with the leave of the High Court.
- 9.2. This means, among other things, that Affected Persons will not be able to proceed in any forum against the Company for, among other things, the non-payment of debts during Business Rescue, except with the written consent of the BRPs or with the leave of the High Court.
- 9.3. The moratorium in relation to the Company took effect on the Commencement Date and will remain in place for the duration of Business Rescue, until the termination of Business Rescue as defined in paragraph 13.

10. Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi)):

- 10.1. Through the implementation of this Business Rescue Plan the BRPs intend to optimise the returns for Creditors by:
 - 10.1.1. generating enhanced returns for the Secured Creditors from the sale of properties on a structured basis in order to achieve optimal value;
 - 10.1.2. reducing the overall Lender Group Claim. The higher the Distributions to the Lender Group, then the lower the remaining claims will be in the interlinked THL business rescue process;
 - 10.1.3. wherever possible avoiding an increase in the Company's obligations to Creditors through the calling of bonds and/or guarantees;
 - 10.1.4. endeavouring to resolve, mitigate or reduce eThekwini's Claims by way of sale and transfer of the Company's properties to third parties who have the ability to satisfy existing authorisations/approvals (or enter into a process, as catered for in the relevant laws/regulations, to vary same);

- 10.1.5. enabling enhanced recoveries (compared to liquidation) by eThekweni as it pertains to rates and rights payments owing/to be incurred in the future and pursuant to anticipated property transfers;
 - 10.1.6. endeavouring to mitigate against the potential contagion risk posed by a distressed property sale process, or stalled development activity, on general property prices within affected precincts and the wider Kwa-Zulu Natal property market;
 - 10.1.7. Endeavouring to work with affected precinct management associations (which THD supports in various ways) on appropriate risk mitigations against potential unintended consequences and impacts of liquidation;
 - 10.1.8. endeavouring to address certain specific environmental issues/directives affecting Property Developments, subject to requisite funding support from the Lender Group, to the benefit of Lender Group security;
 - 10.1.9. endeavouring to secure continued employee engagement and employment within the THL Group, or with a new party purchaser, where possible, and endeavouring to ensure full retrenchment contractual entitlements for affected employees (whether in THL or THD) during the business rescue process;
 - 10.1.10. supporting direct and indirect subsidiaries/equity interests of the Company where there is a reasonable anticipation of a direct or indirect financial benefit to the Company; and
 - 10.1.11. winding down the Company in the most cost-effective manner.
- 10.2. With this, the Business Rescue of the Company is intended to meet the requirement of paragraph 5.6.1.5 above.
- 10.3. The financial benefits to Affected Persons through the Adoption and implementation of the Business Rescue Plan, as compared to a liquidation of the Company, are as follows –

10.4. Creditors / Liquidation Dividend –

10.4.1. the estimated Distributions that Secured Creditors would have received in the alternative scenario of a liquidation of the Company as at the Commencement Date would be lower than the Distributions that are anticipated to be received by those Secured Creditors as a result of this Business Rescue Plan.

10.4.2. Regrettably, it is not anticipated at this time that there will be any return to the Company's Unsecured Creditors.

10.4.3. This is as a result of the security held over the material assets of the Company by Secured Creditors being anticipated to be insufficient to settle Secured Creditors in full.

10.4.4. This is consistent with the outcome of an immediate liquidation.

10.5. Timing –

10.5.1. It is the view of the BRPs that typically a business rescue is concluded in a shorter time frame than a liquidation of this nature.

10.6. Employees –

10.6.1. Employees remain employed with THL or the Company on the same terms and conditions that existed before the Commencement Date, unless otherwise determined and agreed between the Company and the employees.

10.6.1.1. It is intended for the Company to commence a Section 189 process, if required/applicable, which will lead to employees being retrenched in accordance with this process during the Business Rescue.

10.6.1.2. In this regard it is noted that, whilst the BRPs aim to limit job losses wherever possible, the envisaged retrenchment and/or exit processes are required given the Financial Distress of the Company as well as the inevitable winding down of the Company.

10.6.1.3. Whilst employees continue to be engaged in providing their services to the Company, they will be entitled to their salaries and other benefits in accordance with their determined contractual entitlements.

10.6.1.4. If employees are retrenched and/or exit, they will be entitled to their full contractual retrenchment and/or exit packages.

10.6.2. By comparison, in a liquidation –

10.6.2.1. All jobs will immediately be suspended and subject to the liquidator(s)'s intentions may be lost immediately unless the liquidator agrees to continue trading against an indemnity. In the current circumstances, it is highly unlikely that a liquidator would agree to continue trading or that a liquidator would be indemnified against trading losses.

- Employees would then be entitled to receive a maximum amount of R32,000 per employee, to the extent that there are funds available, and would be treated as an Unsecured Creditor for any balance.
- Employees will only receive payment once the final liquidation and distribution account has been approved at the end of the liquidation process.

10.7. SARS –

10.7.1. SARS ranks as an Unsecured Creditor under Business Rescue, whereas, under liquidation, SARS would rank as a preferent creditor.

10.8. Shareholders

10.8.1. Regrettably, it is not anticipated at this time that there will be any return to the Company's Shareholder.

10.8.2. This is as a result of the security held over the material assets of the Company by Secured Creditors being anticipated to be insufficient to settle Secured Creditors in full.

10.8.3. This is consistent with the outcome of an immediate liquidation.

10.9. Protecting an enhanced creditor dividend –

10.9.1. By proceeding with selected infrastructure projects aligned to certain Property Developments, the BRPs anticipate being able to enhance the cash flows of the Company for the purpose of the Proposal. A liquidator would likely only consider continuing to trade if he/she received an indemnity to cover him/her for any losses in trading. Given the circumstances, it is considered highly unlikely that this would happen. As a result, the liquidator could reasonably be expected to proceed with a fire sale of the Company's assets, estimated to realise far lower values for the benefit of certain Creditors.

11. Risks of the Business Rescue Plan:

11.1. The implementation of the Proposals contained in this Business Rescue Plan is subject to factors potentially not known to the BRPs as at the Publication Date. The following risks should be borne in mind, as they may adversely impact the ultimate outcome of the implementation of this Business Rescue Plan:

11.2. General:

11.2.1. Unforeseen litigation of any nature whatsoever, howsoever arising, from any cause of action whatsoever.

- 11.2.2. Existing litigation not progressing in the manner anticipated.
- 11.2.3. Any changes in legislation that impact the Business Rescue.
- 11.2.4. Any challenges to this Business Rescue Plan, the rejection thereof or any amendments thereto.
- 11.2.5. Any regulatory challenges of any nature whatsoever, howsoever arising as well as any consequential statutory liability.
- 11.2.6. Any unforeseen circumstances, outside of the control of the BRPs, of any nature whatsoever, howsoever arising, that impact the Business Rescue.
- 11.2.7. Any damages or penalties claimed against the Company which were unforeseen.
- 11.2.8. The retrenchment processes taking longer than expected.
- 11.2.9. Any labour action arising as a result of the retrenchment process or Business Rescue.
- 11.2.10. The legal revocation of support from any Affected Persons and/or service providers.
- 11.2.11. Unexpected liquidity events, withdrawal or restricted access to PCF provided by the PCF Lenders or delays thereto.
- 11.2.12. The final verification and agreement of Claims taking longer than expected.
- 11.2.13. Material discrepancies in the information made available to the BRPs by Management.
- 11.2.14. Incomplete, inaccurate accounting records of the Company and inadequate supporting information.

11.2.15. The deterioration and worsening of market conditions.

11.2.16. Any events and outcomes that may lead to the discovery of fraud, misrepresentation, corrupt practices, or other such matters relating to the Company prior to the implementation of the Business Rescue Plan.

11.2.17. Ambiguous provisions in the Companies Act which are subject to varied interpretation.

11.2.18. Adverse judgements or rulings which may have the effect of reducing cash flow available for the Distributions, given that the estimated Distributions have been calculated on the basis that the Company's legal interests are preserved in terms of section 134(1)(c) of the Companies Act.

11.3. Property specific risks:

11.3.1. The occurrence of environmental incidents leading to regulatory directives requiring funding and operational support.

11.3.2. Unforeseen damages Claims arising from the cancellation of any contracts or agreements of any nature or from the non-adherence to any contracts or undertakings.

11.3.3. Crystallisation of financial guarantees resulting in Claims against the Company by the relevant guarantors.

11.3.4. Adverse operational performance on Property Developments that are identified to be furthered/completed.

11.3.5. The impact of price changes on sales of properties or the cost of infrastructure expenditure.

11.3.6. The impact of slow/stalled property conveyancing and transfer processes.

11.3.7. Any restrictions placed on the Company, or lack of assistance, by eThekwini in relation to aiding the property sales/transfer process and the transfer of relevant authorisations/approvals linked to those properties.

11.4. Realisation of value from assets:

11.4.1. Delays in implementing the realisation of assets identified for sale, whether because of protracted negotiations, regulatory consents required, administrative processes (in particular relating to property transfers) and/or implementation practicalities;

11.4.2. The expected realisation of assets identified for sale differing materially from the actual values realised; and

11.4.3. The asset registers differing materially from the actual assets on hand thus reducing the proceeds received on the sale of such assets.

12. PART C – Assumptions and Conditions of Proposal

12.1. **PCF:**

12.1.1. The successful implementation of the Business Rescue Plan and the Proposal is subject to receipt of the necessary PCF referred to in this Business Rescue Plan to the extent required and within the timing considered appropriate by the BRPs.

12.1.2. The BRPs remain in constant communication with the relevant PCF Lenders in this regard.

12.1.3. The BRPs shall use their reasonable endeavours to procure the fulfilment of the required PCF drawdowns as soon as practically possible.

12.1.4. If at any time the BRPs conclude that there is no longer a reasonable prospect of rescue, which may be as a result of no further sales proceeds and/or PCF Lenders deciding to no longer allow sales proceeds to be utilised as PCF, the BRPs will be left with little alternative but to fulfil their

obligations arising from the Companies Act, which may entail an application to the High Court to terminate Business Rescue and commence liquidation proceedings.

13. Termination of Business Rescue (Section 150(2)(c)(iii)):

13.1. The Business Rescue will end:

13.1.1. if the Business Rescue Plan is proposed and rejected, and no Affected Person/s nor the BRPs act in any manner contemplated by the Companies Act to propose an amended Business Rescue Plan;

13.1.2. if this Business Rescue Plan is Adopted and implemented and the BRPs have filed a notice of substantial implementation of the Business Rescue Plan with the CIPC;

13.1.3. if the BRPs make application to the High Court to terminate the Business Rescue; or

13.1.4. if a High Court orders the conversion of the Business Rescue into a liquidation.

13.2. The realisable portion of material assets as listed in Annexure E will be utilised to fund the operations of the Company, costs of the Business Rescue, providing for any costs which may have to be incurred by the erstwhile BRPs after termination of the Business Rescue, providing for any costs as may be related to paragraph 1.7.4, and then to pay the Distributions to Creditors or reduce the requirement for PCF in terms of this Business Rescue Plan, subject to any deductions provided for in this Business Rescue Plan.

14. Substantial Implementation (Section 150(2)(c)(i)(bb)):

14.1. Substantial Implementation will be deemed to have occurred upon the BRPs deciding, in their sole discretion, that the following has taken place:

- 14.1.1. substantially all of the assets identified for sale and other material assets have been realised;
 - 14.1.2. final Distributions have been paid to Creditors and/or an appropriate mechanism, such as the appointment of a Receiver, has been put in place for the payment of any remaining Distributions to Creditors; and
 - 14.1.3. all Business Rescue Costs relating to the Business Rescue have been paid and settled in full or suitable arrangements acceptable to the BRPs have been put in place in this regard.
- 14.2. Notwithstanding the above, the Substantial Implementation of this Business Rescue will remain within the sole and reasonable discretion of the BRPs.

15. Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv)):

- 15.1. The projected balance sheet for the Company is not provided as the Company will be wound down (whereby all assets, which are capable of sale, are realised and any remaining Claims become Unenforceable) and the Company will be liquidated thereafter. The balance sheet on Substantial Implementation of this Business Rescue Plan will therefore show zero net assets.
- 15.2. The projected statement of income and expenditure for the Company for the ensuing three years, limited to the potential 1 year forecast time horizon for the implementation of this Business Rescue Plan, is included in Annexure G.
- 15.3. In compliance with section 150(3)(a) of the Companies Act, the projected statement of income and expenses in Annexure G was modelled on the assumptions set out in that annexure.
- 15.4. The Business Rescue Plan does not include alternative projections based on varying assumptions and contingencies.

CHAPTER 3 – ADMINISTRATIVE MATTERS

16. Existing litigation or alternate dispute resolution proceedings

- 16.1. Annexure I lists the matters already subject to a dispute resolution process as at the Publication Date.
- 16.2. Save as is otherwise provided for in this Business Rescue Plan and/or the Companies Act, all Affected Persons who have instituted legal proceedings, including any enforcement action, in respect of any Claims against the Company in any forum will be required to submit a Claim for consideration by the BRPs in accordance with the provisions of this Business Rescue Plan.
- 16.3. The BRPs shall be entitled to institute any proceedings against any Affected Person in any forum (and will not be subject to the Dispute Mechanism in paragraph 17 below) for any purpose, including, recovering money that is due to the Company or preventing Affected Persons from delaying the implementation of the Business Rescue Plan or bringing any application to liquidate the Company.

17. Dispute Mechanism:

- 17.1. Subject to paragraph 16 and save as provided for in section 133 of the Companies Act, any disputes related to the interpretation or application of this Business Rescue Plan, the Business Rescue Proceedings, and/or the Disputed Claims of all Disputed Creditors must be resolved in accordance with the Dispute Mechanism outlined below, other than in circumstances where the BRPs and the relevant counterparty (the "**Disputing Party**") otherwise jointly agree in writing. Even in circumstances where an agreement legally requires otherwise as to how a disputed matter must be resolved, Disputing Parties and the Company are encouraged, and may elect and agree in writing, to resolve such matters through the Dispute Mechanism.
- 17.2. The Dispute Mechanism procedure will be as follows –
 - 17.2.1. The BRPs have incorporated into this Business Rescue Plan a Dispute Resolution Process (arbitration) that has been jointly established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the

South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) specifically for the purpose of resolving disputes arising in connection with business rescue proceedings ("**the AFSA/SARIPA Process**"). The advantages of adopting the AFSA/SARIPA Process are (inter alia) that it:

17.2.1.1. is specifically designed for use in business rescue plans;

17.2.1.2. will be populated by arbitrators experienced in business rescue law and proceedings;

17.2.1.3. is designed to avoid the costs and time delays experienced in court proceedings, and in certain overcomplicated and extended arbitration proceedings;

17.2.1.4. has a mechanism which enables the arbitrator to adapt each arbitration to fit the specific circumstances; and

17.2.1.5. brings with it a flexibility which allows the BRPs and claimant's, by mutual agreement, to opt out of the AFSA/SARIPA Process if so elected.

17.3. All Disputed Creditors are to be referred to Annexure A in relation to their Claims and, if not in agreement with the relevant quantum or status displayed, they are required to contact the BRPs at br@tongaat.com within 30 days of the Meeting date (Tuesday 30 May 2023) in order to register their disagreement ("**Disagreement**"). The Disputed Creditor must endeavour to reach agreement with the BRPs on the Disputed Claim within the ensuing 15 days after their Disagreement has been registered, or such longer period as the BRPs may allow. If the Disputed Creditor does not avail itself of this opportunity within the time period allowed, then the Disputed Creditor shall be deemed to have abandoned its Claim and will not, in terms with section 154 of the Companies Act, be entitled to enforce, at a later date, any Claim that, that Disputed Creditor believes it has against the Company.

17.4. If the Dispute Claim is not resolved, the BRPs will inform the Disputed Creditor accordingly and this will be known as the Rejection Date.

17.5. Any dispute of whatsoever nature relating to:

17.5.1. the acceptance or rejection of any Claim whether in whole or in part or the value or ranking of any Claim or the recognition of any security or preference, lien or hypothec attaching to such claim; or

17.5.2. Claims which are not reflected in the records of the Company and are not recognised under the Business Rescue Plan; or

17.5.3. the proper interpretation or implementation of any provision in the Business Rescue Plan;

shall be submitted for final determination, in accordance with the AFSA-SARIPA RULES, attached hereto as Annexure J, by an accredited arbitrator appointed by the Secretariat of the AFSA-SARIPA Division.

17.6. The BRPs may, however, in their sole and absolute discretion agree with the Disputed Creditor that the Disputed Claim/s be settled at an agreed amount. To the extent that any amount remains unpaid after such settlement, the remaining amount will become Unenforceable.

17.7. Should any monetary award be made against the Company, including a costs award, then that award will be treated as an Unsecured Claim in the Business Rescue.

17.8. Notwithstanding anything to the contrary in this paragraph 17 or elsewhere in the Business Rescue Plan, the BRPs shall not, in any circumstance, be obliged to prosecute, progress or further the Claim of any Creditor beyond the provisions of this paragraph 17. The Company may, however, in the discretion of the BRPs, continue to prosecute any one of more of its counterclaims.

18. Domicilium

18.1. The BRPs choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to the Business Rescue up until the Substantial Implementation Date,

including the giving of any notice and the serving of any process, at the physical and e-mail addresses set out below:

18.1.1. Physical address: Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400

18.1.2. E-mail address: br@tonga.com

18.1.3. Attention: Peter van den Steen, Trevor Murgatroyd and Gerhard Albertyn

- 18.2. The BRPs shall be entitled up until the Substantial Implementation Date, by giving written notice to Affected Persons, to vary their physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary their e-mail Domicilium to any other e-mail address.
- 18.3. Any notice given or process served by any Affected Person to the BRPs, which is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the BRPs' physical Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs at the time of delivery.
- 18.4. Any notice given or process served by any Affected Person to the BRPs, which is transmitted by e-mail to the BRPs' e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the BRPs) to have been received by the BRPs on the Business Day immediately succeeding the date of successful transmission thereof.
- 18.5. Any notice or process in terms of, or in connection with, this Business Rescue Plan shall be valid and effective only if in writing and if received or deemed to have been received by the BRPs.
- 18.6. For the avoidance of doubt, it is recorded that –
- 18.6.1. following the Substantial Implementation Date, the Business Rescue of the Company would have terminated; and

18.6.2. no notice or process served in terms of this paragraph shall be taken into consideration by the BRPs (unless they in their sole discretion choose to consider such notice or process) on or after the Substantial Implementation Date.

19. Ability to amend the Business Rescue Plan:

19.1. In respect of an amendment to correct a clerical error that will not be prejudicial to the rights of Creditors as set out herein, the BRPs shall have the ability, in their sole and absolute discretion, to amend, modify or vary any provision of this Business Rescue Plan. The amendment will be deemed to take effect on the date of written notice of the amendment to all Affected Persons.

19.2. In the event of any other amendments to this Business Rescue Plan, the BRPs shall consult with Affected Persons in terms of section 150 and shall be entitled to propose an amendment for consideration and voting at a Meeting in held consistent with the terms of section 151. Such amendment shall only be effective should it be Adopted in the same manner as provided for in section 152 of the Companies Act.

20. Severability

20.1. Each provision of this Business Rescue Plan is, notwithstanding the grammatical relationship between that provision and the other provisions of this Business Rescue Plan, severable from the other provisions of this Business Rescue Plan.

20.2. Any provision of this Business Rescue Plan, which is or becomes invalid, unenforceable, or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable, or unlawful, without invalidating or affecting the remaining provisions of this Business Rescue Plan which shall remain of full force and effect.

20.3. The BRPs declare that it is their intention that this Business Rescue Plan would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability, or unlawfulness at the time of execution of this Business Rescue Plan.

CHAPTER 4 – CONCLUSION AND BRPS' CERTIFICATES

21. Conclusion:

21.1. For the reasons set out above it is the view of the BRPs, notwithstanding the risks and challenges inherent in this Business Rescue Plan, that:

21.1.1. there is a reasonable prospect of a successful Business Rescue, that balances the rights and interests of all relevant stakeholders and Affected Persons, in accordance with the objectives of Chapter 6 of the Companies Act;

21.1.2. regrettably the solvency and liquidity of the Company is unlikely to be restored. However, a better return for Creditors, than if the Company had immediately been liquidated as at the date of the commencement of Business Rescue, is reasonably expected to be achieved;

21.1.3. the aggregate Distribution is likely to result in certain Creditors receiving a higher dividend in the Business Rescue than they would probably receive in the event of a liquidation of the Company; and

21.1.4. should the Business Rescue Plan not be Adopted, the BRPs are of the view that the Business Rescue will be required to be terminated and/or have to be converted to liquidation proceedings immediately.

22. BRPs' certificates:

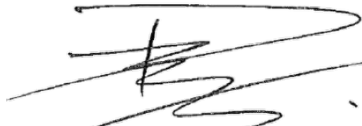
22.1. We, the undersigned, hereby certify that to the best of our knowledge and belief:

22.1.1. any information provided herein appears to be reasonably accurate, complete, and up to date;

22.1.2. we have relied on financial information including opinions and reports furnished to us by the Board and Management;

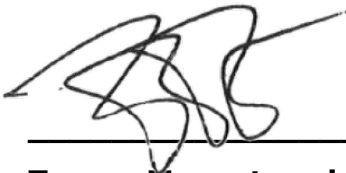
22.1.3. any projections provided are reasonable estimates made in good faith based on factual information and assumptions as set out herein;

22.1.4. in preparing the Business Rescue Plan, we have not undertaken an audit of the information provided to us, although where practical, we have endeavoured to satisfy ourselves of the accuracy of such information.



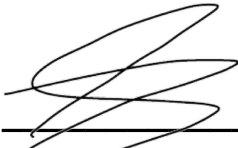
Peter van den Steen

Date: 30/05/2023



Trevor Murgatroyd

Date: 30/05/2023



Gerhard Albertyn

Date: 30/05/2023

ANNEXURE A - LIST OF THE CREDITORS OF THE COMPANY

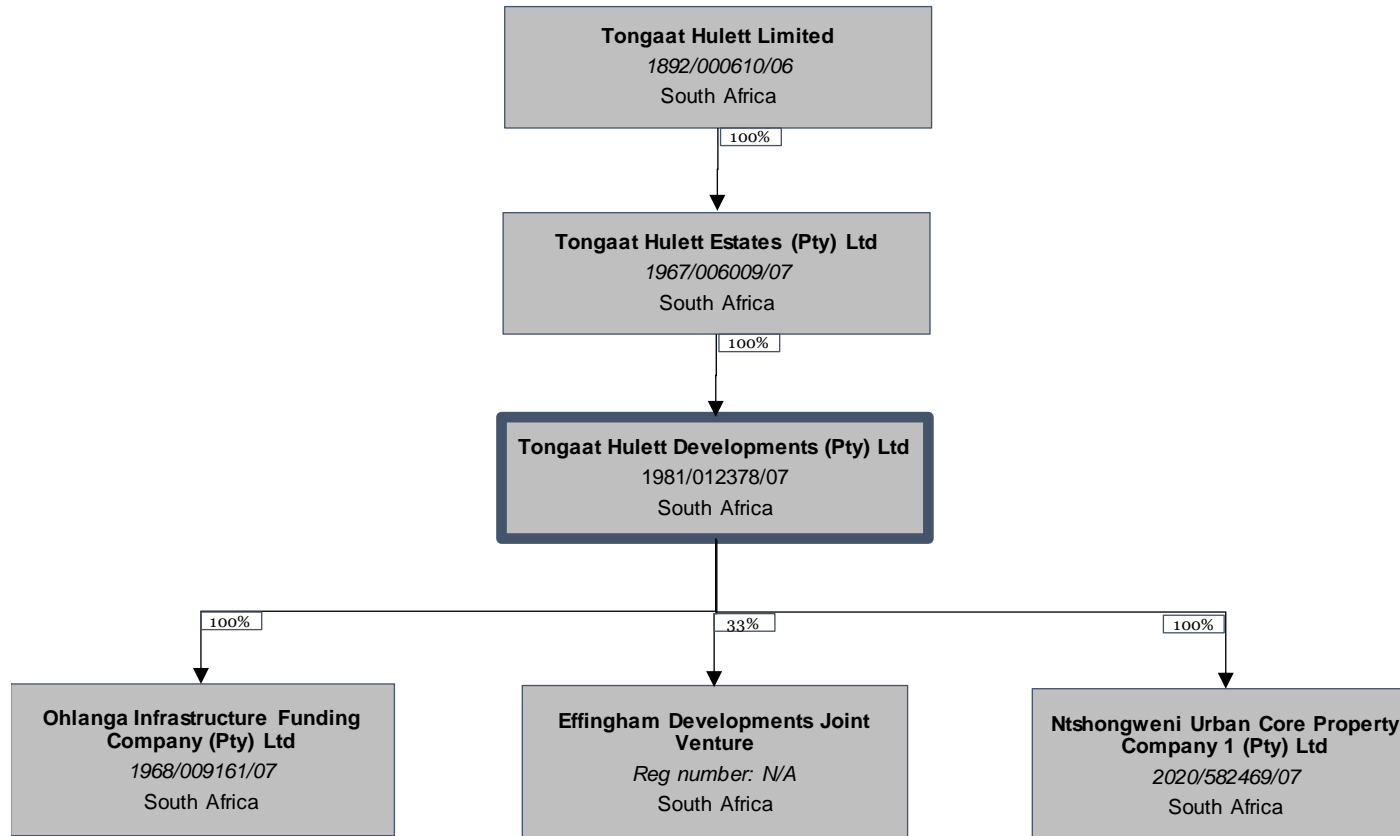
Tongaat Hulett Developments (Pty) Ltd (in Business Rescue)

2023/05/30

Annexure A - List of Creditors of the Company

CREDITORS TYPE	CREDITORS NAME/GROUP	ACCEPTED/PROVEN CLAIM	VOTING INTEREST
Secured Creditors	Standard Bank	R 1 930 793 988	25,08%
	Nedbank	R 1 469 879 619	19,09%
	ABSA	R 875 648 713	11,37%
	RMB/FNB	R 1 167 727 107	15,17%
	Investec	R 625 479 124	8,12%
	Landbank	R 383 928 614	4,99%
	SLI (SSF Div)	R 156 861 556	2,04%
	SIM Pty	R 31 917 452	0,41%
	SLI (SIM Div)	R 133 455 792	1,73%
	SSF Pty	R 48 916 498	0,64%
	Momentum Metropolitan Life Limited	R 92 778 632	1,21%
	Ashburton Fund Manager Proprietary Limited	R 57 995 837	0,75%
	Other - Ancillary Facilities including Guarantees	R 264 648 116	3,44%
	Secured Creditors Total	R 7 240 031 049	94,05%
PCF Lenders	Secured Lenders (Secured Creditors)	R 94 580 015	1,23%
PCF Lenders Total	R 94 580 015	1,23%	
Peferent Creditors	None	R -	0,00%
Peferent Creditors Total	R -	0,00%	
Independent Unsecured Creditors	Somerset Park Immanuel Church	R 1 000	0,00%
	Tourvest Holdings (Pty) Ltd	R 3 087	0,00%
	Berry'S Garden Machinery Cc	R 4 819	0,00%
	Garlicke & Bousfield Incorp	R 6 379	0,00%
	Green Gain Consulting (Pty) Ltd	R -	0,00%
	Metrofile (Pty) Ltd	R 7 380	0,00%
	Albonico Sack Mzumara Cc	R 34 546	0,00%
	Adamastor Consulting	R 126 558	0,00%
	Zutari Pty Ltd	R 55 315	0,00%
	Bosch Projects (Pty) Ltd	R 1 002 194	0,01%
	Catalyx Consulting Pty Ltd	R 21 421	0,00%
	Concept Paving Cc	R 62 031	0,00%
	Countryline Horticulture	R 56 132	0,00%
	Department Of Water Affairs And For	R 128	0,00%
	Drennan Maud Pty Ltd	R 71 875	0,00%
	Eco-Pulse Environmental Consulting	R 143 980	0,00%
	Ethekwini Municipality	R 228 284 832	3,03%
	Shepstone & Wylie Attorneys	R 267 225	0,00%
	Hatch Africa Pty Ltd	R 12 080 395	0,16%
	Ilembe Chamber Of Commerce Industry	R 47 175	0,00%
	Iyer Rothaug Collaborative Cc	R 55 085	0,00%
	Kinwig & Associates (Pty) Ltd	R 238 986	0,00%
	Geoafrika Technologies	R 293 200	0,00%
	Rainmaker Marketing	R 267 058	0,00%
	Sembcorp Siza Water (Pty) Ltd	R 1 716	0,00%
	Smec South Africa Pty (Ltd)	R 3 543 617	0,05%
	Umlando:Archaeological Surveys & He	R 64 003	0,00%
	Vumani Civils Cc	R 52 260 866	0,68%
	WK Construction South Africa (Pty)L	R 38 516 754	0,50%
	The Lighting Specialist Cc	R 9 959	0,00%
	Ecolink Consulting Pty Ltd	R 7 950	0,00%
	Nako Systra	R 25 875	0,00%
	Impande Consulting Engineers Pty Lt	R 793 265	0,01%
	BMK Consulting Engineers Cc	R 81 986	0,00%
	Kds Health And Safety Consultants C	R 88 412	0,00%
	Phungashe Health & Safety Consultin	R 50 140	0,00%
	Diners Club S.A (Pty) Ltd	R 108 203	0,00%
	Izinga Consulting Pty Ltd	R 183 165	0,00%
	FMA Engineers	R 152 076	0,00%
	Biggen Africa Services Pty Ltd	R 8 914 571	0,12%
	Ubanilo Construction	R 18 500	0,00%
	Envirocarb Consulting	R 269 059	0,00%
	Irini Pty Ltd	R 39 244	0,00%
	Z S J Trading Pty Ltd	R 164 216	0,00%
	Khweza Consulting Pty Ltd	R 24 700	0,00%
	Constant Kenneth Wood	R 16 085	0,00%
	Abangan Projects	R 520 122	0,01%
	Jamjo Civils Pty Ltd	R 2 930 068	0,04%
	Thoir 76 Consulting (Pty) Ltd	R 75 750	0,00%
	Leek Construction	R 1 065 231	0,01%
	Envitech Solutions Pty Ltd	R 29 397	0,00%
	Intombiyenkosi Trading Pty Ltd	R 128 600	0,00%
	Orange Alert Trading Pty Ltd	R 9 200	0,00%
	SARS	R 940 442	0,01%
KCE Engineering Pty Ltd	R 51 750	0,00%	
Nemal Consulting Cc	R 193 200	0,00%	
Specialist Advisers	R 32 232	0,00%	
Royal Haskoning Dthv	R 504 177	0,01%	
ENSAfrica	R 14 848	0,00%	
ATC Pty Ltd	R 47 917	0,00%	
DEVMCO	R 1 672 610	0,02%	
Rob Kirby Associates Cc	R 209 875	0,00%	
Sivest S.A. (Pty) Ltd	R 308 706	0,00%	
SABC Tv Licences	R 292	0,00%	
Gapp Architects Urban Designer	R 250 724	0,00%	
Wallace And Green	R 27 428	0,00%	
Wall Marriott Paul & Borgen	R 462 067	0,01%	
Urban - Econ Kwazulu	R 60 260	0,00%	
Urban Mgt Pty Ltd	R 105 871	0,00%	
Verdant Environmental	R 54 500	0,00%	
Cc15 Directional Drilling	R 55 435	0,00%	
Indaloehle Environmental Consultan	R 12 651	0,00%	
Ken Davies And Associates	R 92 000	0,00%	
Lungelihle Trading Enterprise Cc	R 40 228	0,00%	
Umhlanga Ridge Town Centre	R 80 040	0,00%	
Voltas Trading	R 137 770	0,00%	
KwaDukuza Municipality	R 6 845	0,00%	
Independent Unsecured Creditors Total	R 358 585 347	4,66%	
Non-Independent Unsecured Creditors	Tongaat Hulett Estates	R 3 516 741	0,05%
	Tongaat Hulett Limited	R 1 680 754	0,02%
Non-Independent Unsecured Creditors Total	R 5 197 494	0,07%	
GRAND TOTAL	R 7 698 393 905	100,00%	

ANNEXURE B– GROUP STRUCTURE



Source: Extract from the Company's Organogram updated as of 11/05/2023.

**ANNEXURE C– EVENTS WHICH LED TO THE COMPANY COMMENCING BUSINESS
RESCUE**

(DIRECTORS STATEMENT ATTACHED BELOW)

SWORN STATEMENT

I, the undersigned,

JOHN GAVIN HUDSON

(Identity Number: 700818524082)

do hereby state as follows –

- 1 I am a director of Tongaat Hulett Developments Proprietary Limited (registration number 1981/012378/07) (the "**Company**"), a private company, with its registered address at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400, and principal place of business at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400.
- 2 I am duly authorised to depose to this sworn statement on behalf of the Company.
- 3 This Sworn Statement is made by me on behalf of the Company to support the commencement of business rescue proceedings ("**Business Rescue**") in terms of Section 129 of the Companies Act 71 of 2008 ("**Act**").
- 4 With this Sworn Statement, I intend to provide the relevant information that was presented to the Company's board of directors and is required in order to demonstrate that the Company should be placed in Business Rescue.
- 5 The information contained in this Sworn Statement and the opinions expressed in the Sworn Statement relate to the financial difficulties of the Company and how the Company can –
 - 5.1 be rescued and continue as a going concern as an alternative to liquidation; or
 - 5.2 pay a higher dividend to its creditors than that which would become payable to creditors if the Company were to be liquidated.

BACKGROUND

- 6 By way of background, the Company's shareholders are Tongaat Hulett Limited (registration number 1892/000610/06) (the "**Parent**") and Tongaat Hulett Estates

Proprietary Limited (registration number 1967/006009/07). Tongaat Hulett Estates Proprietary Limited is a wholly owned subsidiary of the Parent. The Parent is, together with its subsidiaries (the "**Group**"), a leading agri-business with a 130 year history and a strong socio-economic legacy in Southern Africa. It has operations in South Africa, Zimbabwe, Mozambique and Botswana. The Company, -

6.1 has, together with certain other members of the Group, granted an unlimited guarantee and provided security in respect of the obligations of the Parent under the debt facilities made available to the Parent by its lenders, as more fully described below;

6.2 is financially dependent on the Parent for its ongoing liquidity and cashflows,

and as such, the financial stability of the Company is inextricably linked to the financial stability of the Parent.

7 The Company is usually described as the Parent's property business.

8 The business carried on by the Company is the purchase of agricultural land from its Parent and embarking on the various processes and implementing the infrastructure necessary to convert this agricultural land into land that is capable of being used for a range of industrial, commercial, or residential purposes. The Company then markets and sells this land to third parties for further development.

9 The land owned by the Company is primarily located in KwaZulu Natal, north of Durban along the N2 highway corridor between the oHlanga and mDloti rivers, and west of Durban along the N2 highway corridor at Ntshongweni.

10 Over the past three decades, the Company has rezoned, serviced, and sold c.4 000 hectares of land, comprising 5.5 million square metres of bulk developable rights. Through the sale of the land, the Company has created prominent developments in the province, namely, Mount Edgecombe, La Lucia Ridge, Gateway, Umhlanga Ridge, Zimbali, Izinga and Cornubia.

11 The extent of the challenges faced by the Parent, and its current strained financial position, are well publicised and arose from years of high and increasing debt levels, financial

misstatements and historic mismanagement. These factors have resulted in the loss of significant value for the Parent's shareholders and other stakeholders.

12 Across Southern Africa, the Parent's operations are of significant scale geographically, economically, and socially, as set out below:

12.1 the Parent's 14 production facilities have the capacity to crush 12.7 million tons of sugarcane (5.8 million tons provided by third-party growers) to produce 1.5 million tons of raw sugar, 750 000 tons of refined sugar, 400 000 tons of animal feed and 40 million litres of ethanol; and

12.2 at the peak of the sugar season, the Parent's operations employ more than 23 000 people, create more than 185 000 employment opportunities and provide a livelihood to more than 21 000 farmers (many of whom are small-scale growers).

13 Specifically in South Africa, the profile of the Parent's South African sugar operation, property business and corporate office is set out below:

13.1 the Parent's operations are located in the KwaZulu-Natal province in the districts of Ethekwini, Zululand, Umkhanyakude, King Cetshwayo (formerly Uthungulu), and iLembe;

13.2 the Parent's trading activities during the 2022 financial year generated revenue of c.R7.04 billion of which R6.92 billion arose from the South African sugar operation and R120 million from the sale of developable land by the Company;

13.3 the Parent has 5 production facilities with the capacity to crush 5.45 million tons of sugarcane to produce 600 000 tons of raw sugar, 600 000 tons of refined sugar (c.50% of the total South African sugar industry's capacity) and 400 000 tons of animal feed;

13.4 the Parent's ongoing agriculture activities span 13 200 hectares and as such it owns a substantial and valuable land portfolio, of which some 9 600 hectares are considered developable and located within the primary growth corridors of KwaZulu Natal;

- 13.5 the Parent sources c.43% of its sugarcane from independent farmers, over 15 000 of which are small-scale farmers and co-operatives, and its transformational partnership with Uzinzo Sugar Farming has established the largest black grower in the South African sugar industry;
- 13.6 a total of c.2 500 people are employed by the Parent, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Parent operates not only benefit from employment opportunities, but also the Parent's socio-economic development initiatives and investments; and
- 13.7 as identified in an independent assessment of the Parent's economic footprint, it has been estimated that arising from the Parent's trading activities during the 2021 financial year, an additional c.R28.8 billion of output was produced within the South African economy, contributing c.R11.0 billion to the GDP of the country (based on direct, indirect and induced impacts).

STRATEGIC AND FINANCIAL REVIEW

- 14 Over the four year period from April 2014 to March 2018, the Parent's published audited separate annual financial statements reflected that its net debt had increased by c.R4.14 billion from R4.80 billion to R8.94 billion being the net result of the cumulative cash flows set out in the following table:

Cash Flow Items	Inflow / (Outflow) R millions
Operating cash flows	5 759
Investment in capital expenditure (net of disposal proceeds)	(2 889)
Finance costs	(3 149)
Funding of group companies	(1 855)
Dividends to shareholders	(1 621)
Other (share incentives, tax, etc)	(385)
Amount funded by increased debt	4 140

- 15 At 31 March 2018, the Parent's lenders (on a bilateral basis) had advanced debt facilities totalling c.R12.7 billion (including trade finance related to the purchase of maize of R930 million) based on *inter alia* their reliance on the audited annual financial statements.

- 16 During 2018, when the Parent began to report lower profitability and increasing debt levels publicly, the financial difficulties experienced by the Parent became apparent. As a result of these financial difficulties, the Parent faced pressure on both the headroom on its debt facilities and the financial covenant ratios contained in the various facility agreements.
- 17 In February 2019, the Parent's newly appointed management initiated a strategic and financial review of its operations with a view to stabilise the business, address the high and increasing debt levels, and set the path toward acceptable returns for stakeholders. Concurrently, the Parent commenced discussions with each of its lenders with respect to concluding a standstill arrangement. Following these discussions, the Parent's lenders organised themselves into a lender working group ("**the South African lender group**").
- 18 During the course of 2019, concerns were raised on the appropriateness of the Parent's accounting policies, the application thereof, and its accounting practices, which resulted in the financial review escalating into a forensic investigation that uncovered accounting misstatements and irregularities. The key themes of these accounting misstatements and irregularities can be broadly described as follows:
- 18.1 revenue from sales transactions was recognised too early;
- 18.2 certain financing transactions were misrepresented as revenue;
- 18.3 operating expenses and losses were capitalised as if they were assets with a useful life;
- 18.4 infrastructure obligations were either not recorded or understated;
- 18.5 sugarcane assets were overvalued; and
- 18.6 impairments of assets were never assessed or recorded.
- 19 The specific accounting misstatements and irregularities pertaining to the Company were:
- 19.1 the revenue from land sales was recognised earlier than permitted by the relevant accounting standards and, in certain circumstances, reflected artificially high revenue as a result of the inclusion of revenue transactions that lacked commercial substance.

- This was implemented by backdating sales agreements, using take-back arrangements, delaying the cancellation of sales until a replacement sale could be found, and using vendor financing to facilitate land sales;
- 19.2 the obligations incurred to secure development rights for the land were not reflected to the full extent or these obligations were disregarded, resulting in a material understatement of the costs associated with land sales and the outstanding liabilities; and
- 19.3 various overheads were capitalised to land development projects without satisfactory commercial rationale.
- 20 As such, on 31 May 2019, the Parent announced that its historical financial statements had to be restated and that reliance could no longer be placed on the financial information contained in its 2018 consolidated and separate annual financial statements.
- 21 In December 2019, the Parent released its 2019 annual financial statements, including restated comparative financial information. The cumulative restatement of the Parent's historical consolidated and separate financial statements resulted in a reduction in shareholders' equity of R11.0 billion and R8.29 billion respectively.
- 22 The 2019 annual financial statements also reflected that the Parent's net debt as at 31 March 2018 had been restated to R10.25 billion compared to the R8.94 billion originally published, an increase of R1.31 billion.
- 23 At 31 March 2019, the Parent's net debt had reduced to R9.87 billion having benefitted from the repayment of an intergroup loan owing to the Parent by the Mozambique operation. However, the corresponding increase in the external debt of the Mozambique operation meant it too encountered financial difficulties and had to enter into a debt standstill agreement with its lenders and restructure its own in-country debt facilities.
- 24 As a result of the above, the Company also had to restate its historical financial statements. The Company's 2019 annual financial statements, including restated comparative financial information, were finalised in May 2022. The cumulative restatement of the Company's historical separate financial statements resulted in a reduction in shareholders' equity of R2.2 billion.

- 25 The 2019 annual financial statements also reflected that the Company's trade and other payables at 31 March 2018 had been restated to R1.17 billion compared to the R570 million originally reported, an increase of R600 million. In addition, the Company's provisions and contract liabilities at 31 March 2018 had been restated to R1.20 billion compared to the R586 million.

DEBT RESTRUCTURE AND COVID-19 PANDEMIC

- 26 On 9 December 2019, the Parent and the South African lender group concluded a restructure of its debt facilities to provide funding until 31 March 2021. The facilities totalled R12.2 billion (including seasonal facilities) and comprised the following:

26.1 Senior Facility A of R9.1 billion which required the Parent to conclude sufficient transactions in line with various debt reduction milestones to repay an amount of R8.1 billion before 31 March 2021. The R8.1 billion represented the portion of the debt that was considered to be in excess of what the Parent could sustain from its trading activities;

26.2 Senior Facility B of R2.2 billion and overdraft facilities totalling R300 million which were to fund the Parent's working capital requirements;

26.3 Senior Facility C of R553 million which was a seasonal facility to support working capital requirements over the peak of the milling season; and



26.4 Senior Facility D of R47 million which was a seasonal facility to support various funding requirements over the peak of the milling season.

- 27 In order to deliver on its commitment to repay the R8.1 billion of excess debt, the Parent initiated multiple transaction workstreams and engaged extensively with interested parties concerning the following:

27.1 raising of equity capital through a rights offer or similar share issue;

27.2 disposal of an equity share in the South African sugar operation ('MillCo');

27.3 disposal of an equity share in the property portfolio ('PropCo');

7 


27.4 disposal of the starch and glucose operation; and

27.5 disposal of the African sugar operations.

28 Despite good progress with the Parent's debt reduction obligations, the efforts were significantly hampered during 2020 and 2021 by the COVID-19 pandemic and various other factors summarised below:

28.1 DELAY IN CONCLUDING THE STARCH DISPOSAL – As a result of the COVID-19 pandemic, the purchaser of the starch and glucose operation claimed that a material adverse change had occurred in the financial performance of the business. A dispute of the facts followed which resulted in additional costs being incurred to successfully defend the claim. The closure of the transaction was delayed by some six months, resulting in additional interest being incurred.

28.2 SUGAR MILL MAINTENANCE AND CAPITAL EXPENDITURE – Although the published annual financial statements suggested otherwise, under the Parent's previous management, the South African sugar operation's milling and refining assets suffered from neglected asset care practices with a lack of maintenance and minimal capital reinvestment. While the South African sugar operation was classified as an essential service and was able to operate during COVID-19, the initial lockdown period disrupted both the supply chains that supported critical maintenance programmes and the completion of capital projects necessary to support the turnaround of the business.

28.3 'MILLCO' TRANSACTION NOT CONCLUDED – The 'MillCo' transaction sought to dispose of an equity share in the South African sugar operation to farmers with the combined objective of reducing debt and providing sufficient funds to reinvest in the business. While COVID-19 delayed the due diligence processes and added to economic uncertainties, the transaction was ultimately not concluded as the parties were unable to reach agreement on the valuation of the business, the equity contribution and the shareholding.

28.4 'PROPCO' TRANSACTION NOT CONCLUDED – The 'PropCo' transaction sought to secure a strategic equity partner to help develop the Parent's land portfolio. The dual objective of the transaction was to reduce debt and provide sufficient funding to invest in the infrastructure necessary to unlock the land's developable value. The potential

investor's due diligence process was initially delayed by the COVID-19 pandemic. The impact of the pandemic contributed to the investor reassessing its position on investing in land with long-term returns and changing its strategy to rather invest in short-term cash generating assets. The transaction was not concluded.

- 28.5 DEPRESSED PROPERTY MARKET – The Company was negatively impacted by the change in market sentiment, demand and prices of property caused by the COVID-19 pandemic. The market is yet to recover to pre-pandemic levels.
- 28.6 RESTRUCTURING COSTS – The Parent has incurred significant cost in respect of the forensic investigations, business restructuring and rightsizing costs, transaction costs in respect of asset disposals (i.e. advisors, legal, regulatory) and various debt restructuring initiatives.
- 28.7 AUDIT FEES – The Parent had to incur costs to restate its annual financial statements. In addition, the fees for each subsequent audit has attracted a significant audit risk premium associated.
- 29 In November 2020, and in response to the delays in finalising the debt reduction transactions described above, the South African lender group agreed to an extension of the Parent's debt facilities from 31 March 2021 to 30 September 2021. This extended the debt reduction milestones and allowed the Parent sufficient time to progress a refinance of its remaining debt of c.R6.4 billion. Work on this refinance commenced in February 2021.
- 30 By 31 March 2021, the Parent had concluded debt reduction transactions totalling R6.57 billion (excluding a further R507 million reduction in specific maize financing facilities that arose after the disposal of the starch and glucose operation) comprising:
- 30.1 the disposal of its starch and glucose operation (R5.16 billion);
- 30.2 the dissolution of its Tongaat Hulett Defined Benefit Pension Fund (R512 million);
- 30.3 the disposal of its shares in the sugarcane estate in Eswatini (R413 million);
- 30.4 the disposal of 9 properties comprising farms and developable land (R223 million);
- 30.5 the dissolution of its Tongaat-Hulett Pension Fund (R151 million); and

30.6 the disposal of its shares in Tongaat Hulett Namibia (Pty) Ltd (R111 million).

DEBT REFINANCE, SOCIAL UNREST AND DELAYED RIGHTS OFFER

31 With regards to the refinance mentioned in paragraph 29 above, a credit approved term sheet was agreed between the Parent and the South African lender group and signed on 12 July 2021. The facilities would mature on 30 June 2024, and comprised the following:

31.1 Senior Facility A of R1.5 billion which was to be repaid from the outstanding proceeds of c.R450 million from the disposal of the starch and glucose operation that were held in escrow, as well as surplus cash flows generated by the Parent, most notably dividends from the Zimbabwe operation;

31.2 Senior Facility B of R1.4 billion and overdraft facilities totalling R300 million which were to fund the Parent's working capital requirements;

31.3 Senior Facility C of R2.0 billion which was to be repaid with the proceeds of an equity capital raise, and in the event that did not materialise, the disposal of the non-South African sugar assets. At the time of signing the term sheet, the Parent was in negotiations with Magister Investments Limited ("**Magister**") for Magister to provide an underwrite of R2 billion to the equity capital raise; and

31.4 Senior Facility D of R1.2 billion which was to be repaid with the proceeds of property disposals. At the time of signing the term sheet, the Parent was finalising the heads of agreement for the disposal of the long-dated residential portion of the land portfolio for c.R770 million.

32 However, in and around the negotiation and finalisation of the term sheet, the following events posed a significant impediment to the turnaround of the Parent's business:

32.1 **SUGAR LOSS AT REFINERY** – Operational and asset care challenges at the refinery resulted in the loss of c.27 400 tons of sugar. The financial impact of the loss to the Parent was c.R369 million. Subsequently, the necessary corrective action has been taken and the refinery is currently operating normally.

- 32.2 SOCIAL UNREST OF JULY 2021 ON THE SOUTH AFRICAN SUGAR OPERATION – The riots negatively impacted the South African sugar operation and had a longer-term effect than just the initial ten days of unrest. While the direct loss to the business is estimated to be c.R158 million based on the loss of c.34 500 tons of sugar, the indirect costs have been far higher. The emergency shut down of the mills and refinery resulted in increased costs to carry out a “cold” restart of operations. In addition, with c.1 700 hectares of farmland under sugarcane set alight during the riots, the mills had to crush a significant volume of sugarcane that had been burnt during the riots and had degraded which caused damage to milling equipment. Overall, raw sugar production for the 2022 financial year was 463 000 tons (compared to 535 000 tons and 602 000 tons in the 2021 and 2020 financial years respectively). The related compensation from the Parent’s insurance policies has not yet been received as the claims have not yet been accepted by insurers the reasons for which are under review.
- 32.3 SOCIAL UNREST OF JULY 2021 ON THE COMPANY – In respect of the impact to the Company, the riots caused further fear and apprehension around investments into landholdings, resulting in buyers re-considering their investment decision and the cancellation of several property sales that were in progress. The municipality also shifted its focus from delivering infrastructure for new developments, to repairing damage caused by the riots, which has stalled several sales negotiations. The final negotiations in respect of the c.R770 million property sale that was pivotal to repaying a significant portion Senior Facility D were terminated, with the riots cited as a major contributing factor.
- 33 Considering the above, and to support the business, the South African lender group agreed that the Parent could retain the R450 million proceeds received from the disposal of the starch and glucose operation to support its liquidity rather than settle Senior Facility A as had been agreed in the term sheet. In response to this the quantum of the facilities in the term sheet was amended with the commitment under Senior Facility A decreasing from R1.5 billion to R1.1 billion and the commitment under Senior Facility D increasing from R1.2 billion to c.R1.7 billion.
- 34 On 17 November 2021, the Parent announced a rights offer of up to R4 billion that was partially underwritten to the extent of R2 billion by Magister. The proceeds from the enlarged rights offer were intended to repay Senior Facility C as well as a substantial portion of Senior Facility D given the depressed state of the property market.

- 35 On 6 December 2021, the refinancing of the Parent's debt facilities c.R6.3 billion debt was finally concluded.
- 36 On 18 January 2022, the Parent's shareholders voted in favour of the resolutions necessary to proceed with a rights offer of up to R4 billion, including the waiver of the requirement for Magister to make a formal offer for all of the Parent's shares in terms of the Companies Act. On 24 January 2022, the Takeover Regulation Panel ("TRP") granted the said waiver, but this was taken under review on 28 January 2022 by a consortium of shareholders. Following a hearing by the Takeover Special Committee, the TRP was asked to investigate specific concerns raised about the existence of concert parties.
- 37 On 3 June 2022, after the conclusion of the investigation, the TRP ruled that parties related to Magister (i.e. the underwriter) had dealt in the Parent's shares during a prohibited period in terms of the takeover regulations, and the TRP consequently nullified the waiver it had granted previously. The TRP's ruling resulted in the Parent terminating the underwriting agreement on 24 June 2022 and not being recapitalised by an expected c.R4 billion. Although Magister initially appealed the TRP ruling, their appeal was subsequently withdrawn.

LIQUIDITY SHORTFALL

- 38 While the rights offer was on hold for the regulatory processes to run their course, the Parent was again faced with negative unforeseen events that placed further pressure on liquidity:
- 38.1 LOWER SUGAR SALES – In the last quarter of the 2022 financial year, there was a shift in the sales mix towards low margin bulk sugar sales to satisfy industrial demand, while cash-strapped consumers turned to "house brands" rather than the "miller brands". The situation was made worse by an influx of these "house brands" from neighbouring Eswatini. In addition, the historical trend of a "buy-in" ahead of the inflationary price increase was muted, as customers opted to purchase additional stocks of other commodities, that were predicted to have above inflationary price increases, rather than sugar, which, based on an industry-wide commitment in line with the Sugar Masterplan, retained price increases in line with inflation.

- 38.2 FLOODING IN APRIL 2022 – Crushing capacity at the sugar mills was lost as sugarcane could not be harvested during the flooding of April 2022, and time was required to allow drying of the fields before harvesting could resume. The situation was exacerbated by additional transportation costs from the fields to the mills due to damage to the roads and railway lines. Following the resumption of sugar production, the floods had a long-lasting and negative impact on sugarcane quality which has lowered sugar production expectations for the season. The animal feeds business was also impacted as access to the by-products from sugar production, which are used in animal feed production, were not being produced by the mills. Damage to the water treatment plant and dam in Tongaat further resulted in a loss of water revenue for the Maidstone mill. In addition, damage to existing infrastructure caused by the floods, has impacted on the ability to deliver the new infrastructure necessary to support the timeous conclusion of future land sales.
- 38.3 REDUCING SUPPLIER TERMS – In June 2022, the final credit insurer that was willing to provide cover to the Parent's suppliers withdrew its support. This caused sudden and unexpected disruptions to the business, particularly the animal feeds business, while the Parent renegotiated payment terms which resulted in lost sales opportunities. Generally, over recent months, supplier payment terms have been reducing and this continues to place the Parent's liquidity under pressure.
- 38.4 INCOME FROM AFRICAN SUBSIDIARIES – In the past months there have been several monetary and economic policy measures announced within Zimbabwe that have seen the pricing and cash flows of the Zimbabwe operation come under pressure. This has reduced the availability of surplus cash to support dividend and operational support fee payments from the Zimbabwe sugar operation to the Parent. The repatriation of funds from Mozambique to the Parent is restricted in terms of the in-country debt agreements.
- 38.5 WAR IN UKRAINE – The war between Russia and Ukraine has resulted in significant cost increases in commodities and raw materials such as coal, fertiliser and urea. With the commitment to inflation-linked sugar price increases in terms of the Sugar Masterplan, these costs increases have largely had to be absorbed by the Parent.
- 39 The challenges described in paragraphs 32 and 38 above, have meant the Parent's cash flow performance to 31 March 2022 was considerably worse than what had been forecast as part of the debt refinance. Consequently, a shortfall of c.R1.5 billion emerged in the

Parent's debt facilities available to fund the peak working capital funding requirement and to complete the 2023 financial year.

- 40 With the numerous delays and challenges described above, the turnaround initiative has taken much longer than anticipated as well as increased the overall funding requirements. These factors, together with higher interest rates associated with the Parent's increased credit risk and monetary policy decisions, have resulted in finance costs of c.R2.4 billion being incurred from 1 April 2019 to 30 September 2022. To date, the South African lender group has not invoked the contractually agreed interest rate margin ratchets.

DEBT REDUCTION PLAN

- 41 From the outset, the Parent's turnaround initiative was a substantial task that needed to concurrently address the high debt levels, stabilise the business operationally and resolve the accounting misstatements and irregularities. By 31 March 2022, the Parent had reduced its net debt by c.39%. Despite this progress, the Parent remained unable to service its residual debt, the majority (c.87%) of which is carried by the cash flows of the South African sugar operation, the Company, and dividends and operational support fees from the non-South African sugar operations.
- 42 The South African sugar operation requires a substantial reinvestment in its milling and refining assets over the next three years to compensate for a historic lack of maintenance. In addition, the proceeds from property sales are being used to settle legacy infrastructure obligations and the policy changes in Zimbabwe have reduced the certainty around future dividend income. Consequently, the Parent's debt carrying capacity in South Africa is limited, and the excess debt that is unable to be serviced by the Parent is currently estimated to be c.R6.3 billion. In the absence of a recapitalisation, this debt burden will continue to increase as interest accrues.
- 43 Over the past three and a half years, the South African lender group has remained supportive of the Parent and has worked constructively with management.
- 44 To assist with funding the c.R1.5 billion liquidity shortfall, the South African lender group initially made the seasonal overdraft facility available earlier than anticipated in the facility agreements. Thereafter, the lenders proposed a new Borrowing Base facility of R600 million ("**Borrowing Base Facility**"), and the related agreements were concluded on 29 July 2022. The facility was initially repayable on 30 September 2022, but this was

subsequently extended to 25 October 2022. The borrowing base against which this facility was made available comprises the South African sugar operation's working capital assets (namely eligible sugar inventory and eligible trade receivables).

- 45 On 23 June 2022, as part of the commitments made in terms of the Borrowing Base Facility, and after a due nomination process, the board of directors appointed a Chief Restructuring Officer, namely Mr Piers Marsden, who has been responsible for the development of a debt restructuring plan.
- 46 The debt restructuring plan considered several options, including an equity capital injection by strategic partners (based on multiple expressions of interest received from credible potential investors), and the disposal of some or all of the African operations or a combination thereof.
- 47 An initial outline of the restructuring plan was presented to the Parent's board of directors on 27 July 2022, and a draft plan was presented to the South African lender group on 31 August 2022.
- 48 On 14 October 2022, the Parent's board of directors approved the final restructuring plan. The restructuring plan broadly envisaged the following:
- 48.1 the disposal of the non-South African sugar operations;
- 48.2 securing a sponsor to support the capital reinvestment required by the South African sugar operation;
- 48.3 introducing a five-year debt instrument repayable through the disposal of certain of the Parent's landholdings;
- 48.4 progressing the respective legal claims arising from the accounting misstatements and irregularities; and
- 48.5 aligning the Parent's corporate office with the smaller operating footprint.

FINANCIAL DISTRESS

- 49 In the year to date, the Parent's South African sugar operation has shown a marked improvement in operational performance relative to the previous 2021/22 season and is benefitting from the investments made in technical capability, industry expertise, and an extensive maintenance programme carried out before the start of the season. The improved operational performance has coincided with stronger commercial demand for locally produced sugar.
- 50 With the operational and cash flow performance of the Parent's South African sugar operation ahead of expectations, and the Zimbabwe sugar operation starting to remit fee income to the Parent, the resultant improvement in liquidity has succeeded in delaying the onset of the shortfall in debt facilities and allowed additional time to develop the debt restructuring plan. While this is a positive outcome, due to delays in concluding property sales and higher restructuring costs, the Parent has not managed to reduce the peak funding requirement materially.
- 51 While sufficient interest in the Parent's assets has been registered by potential purchasers, efforts to raise the balance of the liquidity requirement through the disposal of these assets has not been possible in the time available, particularly with the shareholder approvals that would be required.
- 52 Furthermore, there are existing shareholders and potential new equity investors who are willing to support the recapitalisation of the Parent, subject to the existing operating footprint being retained. Whilst the quantum indicated expressed by these parties is material, it has not yet been possible to align the interests of these parties in the time available.
- 53 To secure the balance of the c.R1.5 billion liquidity requirement and ensure the completion of the 2023 financial year, the Parent also initiated engagements with potential funders outside the existing lender group. While negotiations with one potential funder were well progressed, including the completion of a due diligence process, the Parent was informed on 29 September 2022 that the additional funding would not be forthcoming in the immediate future.
- 54 In the absence of alternate sources of liquidity, the Parent requested the South African lender group to consider providing the necessary funding to support the implementation of the restructuring plan.

- 55 On 21 October 2022, the South African lender group informed the Parent that they are unable to support the restructuring plan and, by implication, the additional funding required would not be provided and the repayment date for the Borrowing Base Facility would not be extended.
- 56 The lenders have, however, indicated that, within the confines of business rescue proceedings, they are in principle agreeable to advance post-commencement funding, subject to certain conditions. These conditions include the lenders being comfortable with the appointed business rescue practitioners and the Chief Restructuring Officer being retained (subject to a co-operation agreement being reached with those business rescue practitioners).
- 57 The Parent's board of directors believe that if adequate bridge funding is provided, it will be able to restructure the Parent's affairs, progress the implementation of the debt restructuring plan and generate revenue to repay the Parent's remaining debts over time. However, the Parent has not been able to secure such funding from potential funders given its level of indebtedness and current lack of liquidity.
- 58 In light of the above, the Parent is financially distressed, within the meaning of Section 128 of Chapter 6 of the Act, in that, *inter alia* –
- 58.1.1 it is estimated that the Parent, under current market conditions, requires an amount of R1.5 billion to repay its debts and fund its working capital requirements. The Parent is currently not able to generate these funds itself, nor is it able to raise it from the companies within the Group, its shareholders and/or third parties in the immediate future; and
- 58.1.2 the Parent is unable to pay all of its debts as they fall due and payable within the immediately ensuing six months (in terms of section 128(1)(f)(i) of the Act; and
- 58.2 due to the circumstances set out in paragraph 6 and 57 above, the Company is financially distressed, within the meaning of Section 128 of Chapter 6 of the Act, in that, *inter alia* –
- 58.2.1 the Company is currently not able to generate funds itself to repay its debts and fund its working capital requirements, nor is it able to raise it from the companies within the Group, the Parent and/or third parties in the immediate future; and

58.2.2 it therefore appears to be reasonably unlikely that the Company will be able to pay all of its debts as they fall due and payable within the immediately ensuing six months, in terms of Section 128(1)(f)(i) of the Act.

REASONABLE PROSPECT OF RESCUE

59 Notwithstanding the above, the directors of the Company believe that there is a reasonable prospect of rescuing the business of the Company, if action is taken immediately and if the Company commences Business Rescue. If the Company is placed under supervision, initiatives can be taken by business rescue practitioners, when duly appointed, to take the following steps -

59.1 imposing an immediate temporary moratorium on all payments to creditors in terms of Section 133 of the Act;

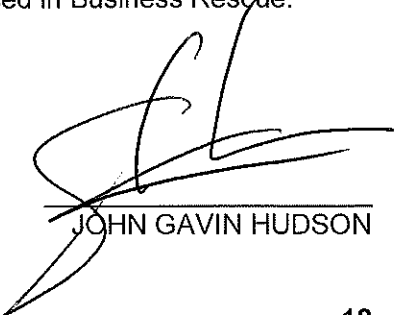
59.2 engaging in discussions with various parties regarding the provision of post commencement financing and/or equity funding to the Company in order to adequately capitalise the Company;

59.3 considering the possible suspension or cancellation of various contracts in terms of Section 136(2) of the Act;

59.4 continuous engagement with stakeholders to retain value in the Company and its assets; and

59.5 a restructure of, *inter alia*, the debt of the Parent, and by implication, the Company, with its creditors.

60 Accordingly, the Company through its board of directors, is of the view that the Company is financially distressed, but that there remains a reasonable prospect of rescuing the Company and accordingly that the Company should be placed in Business Rescue.


JOHN GAVIN HUDSON

I certify that this statement was signed and sworn to before me at Tongaat on this the 26 of OCTOBER 2022 by the deponent after he declared that he knew and understood the contents of this statement, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in government notice R1258 of 21 July 1972, as amended.



COMMISSIONER OF OATHS

Name:

Address:

Capacity:

SUHAIL EBRAHIM
LPCM NUMBER 77897
NOTARY PUBLIC & CONVEYANCER
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
24 RICHEFOND CIRCLE, RIDGESIDE OFFICE PARK
UMHLANGA ROCKS 4319



ANNEXURE D- INFRASTRUCTURE AND RELATED MATTERS

1. Key to the Property Development business of the Company was the installation of civil infrastructure to unlock and complete precincts, in order to sell zoned and serviced sites to the general investment and property development community.
2. The scoping and implementation of these infrastructure projects is largely governed by legislated and regulatory approvals, and by and large routed via eThekweni. eThekweni thus was, and remains, a key stakeholder/enabler of the Company and will contribute towards the successful implementation of the Business Rescue Plan.
3. On 27 October 2022, there were a number of active infrastructure projects that were immediately impacted, including but not limited to;
 - a. Sibaya Bulk Sewer;
 - b. Sibaya Dump Site Rehabilitation;
 - c. Sibaya Node 5 Pond 1;
 - d. Sibaya Node 5 Roads and Services;
 - e. Ridgeside Bulk Sewer;
 - f. Izinga Temporary and Permanent Sewer Works;
 - g. Ridgeside Drive.
4. Due to the lack of access to required funding to continue with the affected infrastructure projects, it was decided to place those infrastructure projects in a holding pattern until the Business Rescue Plan publication date during which time, with the agreement of affected contractors, all sites remained secured, maintained and environmental risks mitigated to the extent possible. The focus was therefore placed on assessing the Company with the aim of producing the Business Rescue Plan and incorporating the proposed way forward as it pertains to infrastructure projects.
5. Insofar as the completion of these infrastructure projects is concerned, having assessed the regulatory, legislative and economic imperatives, and taking into consideration both the lack of access to funding and the impact of a successful outcome of the Business Rescue Plan, the projects have been categorised as follows:
 - a. Works to be fully completed as originally anticipated;
 - b. Works to be partially completed;
 - c. Works to be cancelled/terminated and sites secured and/or maintained;



- d. Works to be commissioned in whole.
6. In respect of works to be completed as originally anticipated (fully or partially), funding has been identified/sought from a combination of some or all of the following sources:
 - a. Third party property developers;
 - b. eThekwini in terms of existing agreements;
 - c. Funding in mitigation of financial guarantees provided by third parties;
 - d. Proceeds from insurance claims in respect of affected works;
 - e. PCF in terms of the Business Rescue Plan.
 7. Certain works in precincts are to be cancelled: where there are of no immediate environmental and safety risks; where there is no obvious economic benefit; or where there are no relevant funding sources available. These outstanding works, together with the requisite infrastructure obligations which have not commenced, shall be disclosed to all third party purchasers, and such third parties will be required to address these future infrastructure obligations in terms of their contemplated acquisitions of such precincts.
 8. The works outlined in paragraph 3a, 3b and 3e above are classified as high risk due to their potential significant health, safety and environmental impact if not addressed. These works are being pursued/progressed by THD as of the Publication Date with the availability of funding from eThekwini, affected developers, financial guarantees and, where required, PCF. In particular, the funding from eThekwini towards the Sibaya Bulk Sewer works, pursuant to a pre-existing memorandum of agreement which remains in place, is critical towards the execution of those works.
 9. Affected Persons including past purchasers, developers and management associations amongst others should take cognisance of the Company's financial position, the impacts thereof brought about by Business Rescue and the resultant inability to honour various past contractual, administrative and/or non-binding obligations. Affected Persons are encouraged to proactively mitigate their risks and limit any relevant financial impacts in this regard. The Company will engage with each affected contractor in relation to the status of affected infrastructure projects. If any Affected Person requires clarity on their unique circumstances, please do not hesitate to contact the Company in order to clarify same.



10.eThekwini has outlined to the BRPs certain guiding principles to assist in facilitating and fast tracking the relevant decision making processes in relation to revisiting and renegotiating existing approvals with THD and/or third party purchasers of THD land during Business Rescue.



ANNEXURE E - LIST OF MATERIAL ASSETS AND SECURITY OF THE COMPANY

Material Assets	31-Oct-22
	R'000
Non-current Assets	
Property plant and equipment	302
Furniture and fittings	31
IT equipment	271
Intangible Assets	1 954
Computer software	1 954
Investments in subsidiaries	17 254
Investment in subsidiary	0
Investment in joint venture	17 254
Deferred tax asset	258 861
Total Non-current Assets	278 371
Current Assets	
Inventories	1 648 159
Land	420 877
Planting	148 381
Infrastructure	1 078 901
Trade and other receivables	38 276
Project debtors	14 075
Intercompany debtors	11 496
Prepayments	2 356
VAT receivable	10 349
Cash and cash equivalents	40 240
Cash	40 133
Deposits	107
Total Current Assets	1 726 675
Total Assets	2 005 046

The above list of Material Assets is the pre-Business Rescue book values as at 31 October 2022. The gross realisable value of the assets as determined by BDO in the Liquidation Estimated Outcome Statement amount to approximately R352 million.

If any Affected Persons requires a complete list of all material assets of the Company, such Affected Persons may request such list from the BRPs.

Moveable assets, inventories, shares in subsidiaries, trade and other receivables, cash balances and properties are all encumbered in favour of the Lender Group. Furthermore, the Lender Group perfected their general notarial bond over the movable assets of both THL and the Company on 17 November 2022 as a pre-condition to the provision of PCF.

Source: The Company's management accounts dated 31 October 2022.

ANNEXURE F - PROXY FORM

For use by the Creditors at a meeting convened in terms of Section 151 of the Companies Act to be held electronically via a video-conferencing platform on Tuesday, **30 May 2023** at 10h00 ("**Meeting**") or at any subsequent adjournment of the meeting.

I/We _____ do hereby appoint:

i. _____; or failing him/her

ii. _____; or failing him/her

iii. the BRP, who acts as Chairman of the meeting,

as my/our proxy to act for me/us and on my/our behalf at the Meeting which will be held for the purpose of considering and, if deemed fit, voting: (indicate with an X)

1. To direct the BRPs to adjourn the meeting in order to revise the Business Rescue Plan for further consideration:

In Favour ____ Against ____

2. Approval of the proposed Business Rescue Plan, with or without modification:

In Favour ____ Against ____

SIGNED at _____ on this _____ day of _____ 2023.

SIGNATURE

Power of Attorney / Authorising Resolution attached (where applicable)

NOTES:

1. A Creditor may insert the name of a proxy or the names of two alternative proxies of his/her choice in the space provided, with or without deleting "the Chairman of the meeting". The person whose name stands first on the form of proxy and who is present at the Meeting will be entitled to act as proxy to the exclusion of those whose names follow.
2. The form of proxy must either be:
 - i. Delivered and lodged at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal, 4400, to be received by not later than 17h00 on Friday, **26 May 2023**, two days prior to the meeting; or
 - ii. emailed to br@tongaat.co.za by not later than 17h00 on Monday, **29 May 2023**.
3. The completion and lodging of this form of proxy will not preclude the relevant Creditor from attending the Meeting and speaking and voting in person thereat to the exclusion of the proxy appointed in terms thereof, should such Creditor wish to do so.
4. Capitalized words not otherwise defined in this proxy form shall have the meaning ascribed to them in the Business Rescue Plan.
5. If this proxy is signed under power of attorney or on behalf of a company, such authority (i.e. power of attorney (for an individual) or authorising resolution (for a juristic person), as applicable) must accompany it.

ANNEXURE G– PROJECTED BALANCE SHEET AND PROJECTED INCOME STATEMENT

Balance Sheet:

The projected balance sheet for the Company is not being provided as the Company will be wound down (with all assets realised and liabilities Unenforceable). The result of this will be a nil net asset value.

Statement of Income and Expenses:

Cashflow forecast	6 months to 30-April-23	12 months to 30-April-24	Residual future potential cashflow	Total
	Actuals	Forecast	Forecast	
Sales	R39,461,790	R466 195 200	R233 793 900	R739 450 890
Infrastructure and planning costs	R33,490,901	R35 625 604	R0	R69 116 505
Development related expenses (rates and guarantee costs)	R5,450,825	R48 230 014	R0	R53 680 839
Gross profit	R520,064	R382 339 582	R233 793 900	R616 653 545
Other income	R4,199,483	R11 929 912	R0	R16 129 395
VAT refund	R16,255,507	R0	R0	R16 255 507
Overheads	R27,906,459	R55 430 990	R0	R83 337 450
SSIP (Community centre)	R696,628	R0	R0	R696 628
Salaries	R23,789,585	R30 385 022	R0	R54 174 607
Additional salary incentive	R0	R3 000 000	R0	R3 000 000
Retrenchment costs	R0	R6 907 264	R0	R6 907 264
Consulting fees	R1,455,733	R3 110 000	R0	R4 565 733
Legal fees	R746,695	R3 625 000	R0	R4 371 695
Marketing and selling expenses	R194,414	R345 000	R0	R539 414
Travel and telephone costs	R145,741	R300 000	R0	R445 741
Audit fees and compliance	R0	R6 000 000	R0	R6 000 000
Insurance	R0	R1 114 800	R0	R1 114 800
Other business costs	R877,663	R643 904	R0	R1 521 567
Total cash inflow	R59,916,779	R478 125 112	R233 793 900	R771 835 791
Total cash outflow	R66,848,185	R139 286 609	R0	R206 134 794
Net cash flow	-R6,931,406	R338 838 503	R233 793 900	R565 700 997
Opening cash balance	R42,555,205	R35 623 799	R374 462 302	
Closing cash balance	R35,623,799	R374 462 302	R608 256 202	

Material Assumptions:

- All amounts exclude CGT and Income Tax
- VAT is included in the period ending 30 April 2023, but for the 12 months ending 30 April 2024 and residual future potential cashflow, each forecast line item is shown net of VAT
- Sales: Based on expected realisable values for underlying property/investment sales
- Development related costs: Municipal rates are accrued and forecast to be paid / settled, for each individual property, at the time of sale of the relevant property

- Infrastructure and planning costs are included only to the extent of certain minimum environmental, compliance, safety and regulatory costs
- All business rescue related fees and costs are dealt with at a THL level in line with the THL remuneration agreement
- Other income: Includes certain claims and expected recoveries
- Community center: THD facilitates the operation of a community center in the Sibaya region. This center provides feeding schemes and training to the local community. It is envisaged that the operation is run at a reduced capacity and curtailed/transferred to a third party in the short term
- Salaries, incentives and retrenchments: Salaries are forecasted at current levels with the assumption that a limited number of employees will be retained after September 2023 to aid the implementation of the structured wind down process. Certain affected employees will be incentivised to see out this wind down period
- Consulting fees: General provision for consulting fees including infrastructure development, environmental, health and safety
- Legal fees: Legal fee provision for ongoing general legal assistance as well as property transfer and conveyancing specific legal assistance
- Marketing, selling and data room costs: Provision for the structured sale data room and marketing process / material costs to enable sales
- Other business costs: Provision for various other costs are informed by the Company's needs
- All business rescue related fees and costs are to be paid by THL in line with the THL remuneration agreement
- Residual future potential cashflow: This includes the deemed remaining cash flow / value that will accrue to THD in the form of long-term leasehold rental income (Ntshongweni Urban Core), as well as commission earned from developer sales (based on existing agreements and/or under offer) or agterskot payments amongst potential mechanisms.

Source: The Company's latest Cash Flow Forecast prepared on 15 May 2023

ANNEXURE H- LIST OF PROPERTIES EARMARKED FOR SALE

1) Township properties (i.e. properties which have development rights) that are available and capable of transfer

Property Description	
1	Cornubia Retail Park (Ptn 4 of Erf 608 Cornubia)^
2	Kindlewood (Rem of Erf 143 Mount Edgecombe)
3	URTC Parkside Phase 26, Ptn 281 and 282 of Erf 2426 and Phase 27, Ptn 283 and 284 of Erf 2426^
4	Ridgeside P1 (Erf 3449 Umhlanga Rocks)
5	Ridgeside P1 (Erf 3451 Umhlanga Rocks)
6	Ridgeside P1 (Ptn 156 of Erf 2406 Umhlanga Rocks)
7	Ridgeside P1 (Ptn 2 of Erf 3453 Umhlanga Rocks)
8	Ridgeside P1 (Ptn 21 of Erf 2405 Umhlanga Rocks)

- ^ indicates that these properties have been sold and are undergoing transfer
- All other properties remain to be sold

2) Agricultural properties (i.e. properties which do not have development rights) that are capable of transfer

Estate	Gross Size (ha)
Westbrook Estate	647,47
Cornubia Town Centre (Rem of Erf 29 Cornubia)	36,22

3) Township properties that are not presently capable of transfer

Precinct	Node	Property Description	Erf Size (gross ha)
Sibaya	Node 1	Ptn 22 (of 20) of Erf 1	0,52
Sibaya	Node 1	Ptn 35 of Erf 1	1,10
Sibaya	Node 1	Ptn 32 of Erf 1	0,43
Sibaya	Node 1	Ptn 33 of Erf 1	0,41
Sibaya	Node 1	Ptn 23 (of 20) of Erf 1	0,44
Sibaya	Node 1	Erf 5	4,15
Sibaya	Node 1	Ptn 20 (of 1) of Erf 1	3,32
Sibaya	Node 5	Node 5 Petrol Filling Station	0,50
Sibaya	Node 5	Ptn 29 of Erf 2	1,98
Sibaya	Node 5	Ptn 9 of Erf 2	0,52

Sibaya	Node 5	Ptn 6 of Erf 7	0,59
Sibaya	Node 5	Ptn 20 of Erf 2	1,78
Sibaya	Node 5	Ptn 10 of Erf 2	1,14
Sibaya	Node 5	Ptn 11 of Erf 2	0,94
Sibaya	Node 5	Ptn 28 of Erf 2	1,80
Sibaya	Node 5	Ptn 1 of Erf 7	0,49
Sibaya	Node 5	Ptn 2 of Erf 7	0,52
Sibaya	Node 5	Ptn 3 of Erf 7	0,51
Sibaya	Node 5	Ptn 4 of Erf 7	1,05
Sibaya	Node 5	Ptn 12 of Erf 2	0,93
Sibaya	Node 5	Ptn 14 of Erf 2	1,40
Sibaya	Node 5	Ptn 25 of Erf 2	4,33
Sibaya	Node 5	Ptn 13 of Erf 2	0,66
Sibaya	Node 5	Ptn 17 of Erf 2	1,62
Ridgeside	P2	Ptn 5 P2	2,83
Ridgeside	P2	Ptn 6 P2	9,99
Ridgeside	P4	P4 (Ptn 140 of Erf 2406)	8,95
URTC		Ptn 35 Ovals	0,50
URTC		Ptn 33 Ovals	0,50
URTC		Phase 40 (Ptn 290 of 2426)	0,22
URTC		Phase 42	1,57
Cornubia		N2 Business Estate (Ptn 2 of Erf 26)	0,87
Umhlanga Hills		Erf 1 of 30 Umhlanga Hills	8,19
Umhlanga Hills		Erf 3 of 30 Umhlanga Hills	8,64
Umhlanga Hills		Ptn 5 of Erf 30	0,97
Umhlanga Hills		Ptn 6 of Erf 30	0,33
Umhlanga Hills		Ptn 7 of Erf 30	0,46
Umhlanga Hills		Ptn 8 of Erf 30	0,53
Umhlanga Hills		Ptn 9 of Erf 30	0,55
Bridge City **		Ptn 145	0,51
Bridge City **		Erf 1 of 7 Petrol Filling Station	0,34
Bridge City **		Rem of 20 and 21	0,76
Bridge City **		Ptn 49	0,86
Bridge City **		Ptn 150	0,47
Bridge City **		Ptn 140	0,49
Bridge City **		Ptn 141	0,77
Bridge City **		Ptn 142	0,66
Bridge City **		Ptn 143	0,62
Bridge City **		Ptn 144	0,63

** Bridge City: Subject to a joint venture arrangement with eThekweni in which THD owns 33%.

4) Other land and investments

Description	Extent (ha)
Roads, Open Spaces, Bush, Floodplains	31,43
URTC Parking Facilities	4,29
Mnt Moriah : 10 properties that are the subject of a sale agreement concluded in 2004 but not yet transferred to eThekweni	5,91
Mnt Moriah : Erf 264 (Creche)	0,08
Mnt Moriah : Erf 304 (Open Space or Developable)	4,55
Hlangane JV : 25% interest in 6 sectional title properties in Mnt Moriah	0,02
Tinley Manor Vacant Land	0,16
Mnt Edgcombe Country Club: 300 year lease agreement	146,90
Ntshongweni Urban Core – 99 year lease agreement	88.00
TOTAL	281,34

Notes:

- The information contained in this annexure is based on the information available to the BRPs and may be subject to change
-
- This listing includes/excludes certain properties which are subject to "take-back" arrangements/agreements. "Take-back" arrangements refer to agreements to sell a portion of a property (referred to as a full ownership portion) which has yet not been subdivided from the parent property. The portion of the parent property that is not sold is called the take-back portion. The agreement provides that the entire parent property is transferred to the purchaser, with the requirement that once the subdivision is complete, the take-back portion is transferred back to the seller. This which will be addressed on a case by case basis following further investigation.

ANNEXURE I – EXISTING LITIGATION AND ALTERNATIVE DISPUTE PROCEEDINGS

Plaintiff/ Defendant/ Applicant/ Respondent	Description	Status	Quantum
Usha Brijnath & Ashika Sukhoo	Izinga: A purchaser of a property in Izinga has alleged that THD misrepresented the nature of the sale in that only one unit could be built on the site as opposed to two.	Process instituted in the Magistrates Court and the High Court	High Court: Relief sought is the rectification of the title deeds. Magistrates Court: The claim sought is an indemnity against the arrear levies owing to the association. The claimed amount in 2016 was R12,094.25 and would have been escalated since.
Ridgeside P4 Residential Estate (Pty) Ltd	Ridgeside P4: This matter consists of 2 claims, namely: 1. P4's Claim: alleged damages claim because of THD misrepresenting that the property that was transferred of a serviced site; 2. THD claim (being a counter-claim): failure by the purchaser to pay the outstanding balance of the purchase price.	Process instituted in the High Court	THD claim- R10.6m plus interest P4 Claim- R9.2m plus interest
Africa Rising (Pty) Ltd	URTC: Africa Rising bought parking bays from THD however only took transfer of same some 12 years later. Africa Rising are claiming interest on the purchase price	Process instituted in the High Court	URTC Claim-R1.9m

	as they allege that same should have been held in a trust account pending transfer of the bays.		
Truzen 15 Trust "Zenprop"	Ridgeside: The claim pertains to Zenprop's alleged failure to complete their construction timeously.	Process instituted in the High Court	R20m (THD Claim)
Deloitte & Touche (South Africa)	Claim against Deloitte in relation to the restatement of the Company Financial Statements from 2012 to 2018	Settlement reached with Deloitte	R3.8m (THD Claim)**
Ex- THD Director Mike Deighton	Claim for losses suffered by the property business from the findings of the PwC forensic report	Civil Claim: The pleadings in the matter have not closed as yet. Tongaat is waiting judgment on an exception that was raised by Deighton.	

** Represents the Company's portion of the settlement. Herewith an extract from a THL SENS notification dated 23/03/2023: "Shareholders are advised that the Company and Deloitte and Touche South Africa ("Deloitte") have, in anticipation of the commencement of a mediation process, concluded an agreement in relation to claims which the Company had asserted against Deloitte which arise from and relate to Deloitte's appointment as auditor of the Company for the financial years ending 31 March 2012 to 31 March 2018 (both inclusive). Deloitte will pay an amount of R260m to the Company without admission of liability. The Business Rescue Practitioners, having taken advice in this regard, are of the considered opinion that a settlement on these terms is in the best interests of the Company.."

Source: The Company's litigation register updated as of 30/04/2023

**ANNEXURE J- AFSA-SARIPA RULES
(ATTACHED BELOW)**



THE AFSA-SARIPA RULES FOR THE RESOLUTION OF DISPUTES IN BUSINESS RESCUE PROCEEDINGS

1. THE RULES: STATUS AND PURPOSE

- 1.1 These Rules have been established and endorsed by the Arbitration Foundation of South Africa (AFSA) and the South African Restructuring and Insolvency Practitioners Association NPD (SARIPA) for the purpose of resolving disputes arising in connection with business rescue proceedings.
- 1.2 AFSA and SARIPA share joint oversight over the administering Secretariat and the Panel of Arbitrators identified in these Rules and may jointly supplement or amend these Rules from time to time as circumstances dictate.
- 1.3 Such joint oversight is exercised through the AFSA-SARIPA Business Rescue Division within the AFSA corporate structure.

2. SUPERVISION OF THE AFSA SECRETARIAT

- 2.1 The AFSA-SAPIRA Secretariat is the administering authority appointed by the AFSA Business Rescue Division to supervise and administer the resolution of disputes under these Rules.
- 2.2 Parties to any dispute undertake to co-operate with the AFSA Secretariat in order to assist it in its functions. Parties further undertake to deal with any requests made to them by the Secretariat quickly and constructively.
- 2.3 The address of the AFSA Secretariat is c/o AFSA at 1st Floor, Grindrod Tower, 8A Protea Place, Sandown, or PO Box 653007, Benmore, 2010, Telephone no. (011) 320-0600, Docex 143, Randburg.
- 2.4 All communication with the AFSA Secretariat may be effected by email or online.
- 2.5 Any communications between the parties and the arbitrator should take place through the AFSA Secretariat, which is always available to assist the parties with their queries concerning procedural aspects of the dispute and in clarifying issues arising out of these Rules.

3. INITIATING DISPUTE RESOLUTION

- 3.1 Any party to a dispute (the claimant) shall initiate the dispute resolution procedure by submitting the REQUEST FOR ARBITRATION in the form set out in Appendix A accompanied by payment of the claimant's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand).

- 3.2 The claimant must simultaneously transmit a copy of the REQUEST FOR ARBITRATION to the Business Rescue Practitioner and to any other party against whom the claimant also seeks any relief or order.

4. INTERRUPTION OF PRESCRIPTION

- 4.1 The simultaneous transmission of the REQUEST FOR ARBITRATION in proper form to the Secretariat and to the BRP and any other person against whom any relief or order is sought shall interrupt the running of prescription subject to 4.3 below.
- 4.2 The date of interruption shall be the date of receipt by AFSA of the REQUEST FOR ARBITRATION but subject to 4.3 below.
- 4.3 Prescription shall only be interrupted in this manner if the AFSA Secretariat accepts the REQUEST FOR ARBITRATION and if the claimant thereafter prosecutes the claim to finalisation under these Rules without falling into default.

5. ACCEPTANCE OR REJECTION OF THE REQUEST FOR ARBITRATION

- 5.1 The Secretariat, if satisfied:

- 5.1.1 that the REQUEST FOR ARBITRATION has been completed in proper form and that payment of the claimant's share of its management and administration fee has been made; and
- 5.1.2 that the dispute falls within the terms of the reference to arbitration contained in the Business Rescue Plan,

shall accept the REQUEST FOR ARBITRATION and must notify the parties that it has referred the matter to arbitration and that the steps set out in the rest of the Rules will follow.

- 5.2 If the REQUEST FOR ARBITRATION does not comply with the requirements of 5.1 above the Secretariat will refuse the request to arbitrate in which case if the deficiency can be rectified, and is rectified, the REQUEST FOR ARBITRATION may be re-submitted.

6. RESPONSE BY THE BRP

Within ten business days from the date of receipt by the BRP, the BRP shall simultaneously transmit to the claimant, the Secretariat and any implicated person the BRP's response to Appendix A to the REQUEST FOR ARBITRATION, such response to be marked Appendix B and in which:

- 6.1 the BRP must either confirm as accurate or otherwise correct the information set out in paragraphs 1 – 4 and 6 of Appendix A;

- 6.2 the BRP must answer the claimant's claim as set out in paragraph 5 of Appendix A by way of a brief written statement indicating which statements made in support of the claim in paragraph 5 of Appendix A are admitted and which parts are denied, and why they are denied, further showing clearly and concisely the reasons and contentions which are relied upon to refute the claimant's claim;
- 6.3 Appendix B shall be accompanied by payment of the BRP's share of the Secretariat's management and administration fee of R15 000.00 (fifteen thousand Rand) plus VAT.

7. RESPONSE BY ANY OTHER IMPLICATED PARTY AND COUNTERCLAIMS

- 7.1 The provisions of Rule 6 will separately apply to any party against whom any claimant seeks an order whether separately from or in addition to any relief sought against the BRP.
- 7.2 In the event that the BRP or other implicated party seeks relief against the claimant for any reason the grounds for such reciprocal claim shall also be concisely set out together with such relief as is sought.

8. MEDIATION

Should both parties agree, or should the AFSA Secretariat so direct, the dispute will first be referred to mediation for a quick and amicable resolution. In such an instance the Secretariat will make the necessary arrangements for the mediation and will appoint the mediator. The Secretariat will issue directions as to the process to be followed.

9. SELECTING THE ARBITRATOR

- 9.1 Unless the parties have notified the Secretariat within four business days of the claimant transmitting the REQUEST FOR ARBITRATION that they have selected a particular arbitrator on the approved Panel of Arbitrators the Secretariat will select an arbitrator from the Panel.
- 9.2 The arbitrator, whether selected by the parties or by the Secretariat, must confirm that he or she is not conflicted in any way and is able to deal with the matter without delay and has signed the AFSA Code of Conduct for Arbitrators.

10. OBJECTION TO ARBITRATOR'S APPOINTMENT, RECUSAL AND REPLACEMENT

- 10.1 In the event that any party has a substantive objection to the appointment of a particular arbitrator or to the conduct of the arbitrator thereafter that party must inform the Secretariat within three days following notification of the appointment or following it first becoming aware of the conduct which is the subject of complaint. The Secretariat

will rule on the merits of the objection and either set aside the arbitrator's appointment or confirm same and its decision is final.

- 10.2 An arbitrator shall recuse himself or herself when, due to physical, mental, or other disability, he or she becomes incapable properly to perform his or her duties, and in circumstances which would require a judicial officer to recuse himself or herself.
- 10.3 The Secretariat shall be entitled, after a written or oral hearing (as directed by the Secretariat) of the parties and the arbitrator, to terminate the appointment of an arbitrator on the grounds that he or she has become disqualified from acting or continuing to act in terms of these Rules, or his or her inability or refusal to act, or that he or she has failed timeously and effectively to perform any of his or her functions as arbitrator.
- 10.4 Where the position of arbitrator falls vacant for any reason the Secretariat will appoint a substitute arbitrator who shall have the power to act in the arbitration and make an award as if originally appointed and the substitute arbitrator may proceed on the evidence recorded in the proceedings before his or her appointment or may make re-call for further examination the person/s who gave such evidence.

11. SECRETARIAT'S NOTIFICATION TO THE ARBITRATOR

- 11.1 The Secretariat must immediately notify the arbitrator of his or her appointment, confirm and approve the fees chargeable by the arbitrator and transmit to the arbitrator Appendix A and Appendix B for the immediate attention of the arbitrator.
- 11.2 The Secretariat must arrange an initial meeting between the arbitrator and the parties as quickly as possible following the arbitrator's appointment.

12. THE INITIAL MEETING AND TIMETABLE

- 12.1 The purpose of the initial meeting is to allow the arbitrator after consultation with the parties to decide whether the fair and expeditious determination of the dispute:
 - 12.1.1 requires further elaboration of the claim or the response and, if so, in what respects;
 - 12.1.2 requires the production of books or documents and if so which books or documents must be produced;
 - 12.1.3 permits the submission of evidence and contentions upon which the parties rely in written form and without the need for oral presentation.

12.2 In determining the procedure for the determination of the dispute the arbitrator:

12.2.1 must draw up a timetable for the progress of the matter to finalisation and notify the Secretariat of the timetable;

12.2.2 must give priority to the need for the expedited determination of the dispute and to a cost-effective process; and

12.2.3 if the substance of the proceedings involves a review of any decision, act or ruling of the Business Rescue Practitioner then the proceedings should be conducted by way of written evidence and submissions save for oral argument;

12.2.4 in choosing the appropriate procedure to be followed the arbitrator must be satisfied that each party will (barring default) enjoy a fair and equal opportunity to present its case.

13. **PAYMENT OF THE ARBITRATOR'S FEES AND CHARGES**

13.1 The fees and charges of the arbitrator will be paid by the Secretariat to the arbitrator and it is the obligation of the parties to pre-pay the Secretariat the invoiced amount of such fees and charges on demand.

13.2 In the event of the failure by any party to pre-pay such amount the provisions of Rule 13 will apply to the defaulting party and the other party or parties will, in the interim, be called upon to pay the deficit.

14. **ARBITRATOR'S POWERS IN THE EVENT OF DEFAULT**

Should any party to the proceedings:

14.1 fail to pay the Secretariat's management and administration fee; or

14.2 fail to pay the amount invoiced for that party's share of the arbitrator's fees and charges; or

14.3 fail to comply with the provisions of these Rules notwithstanding prior warning by the Secretariat or by the arbitrator; or

14.4 fail to carry out the terms of any ruling or directive of the arbitrator or the Secretariat; or

14.5 is guilty of delaying conduct so as to give rise to a substantial risk of serious prejudice to the other party or parties,

then:

- 14.6 where a party is in default due to failure to pay its share of any management and administration fee or arbitrator's fee when requested by the Secretariat that party will lose the right to participate in the arbitration process and the proceedings will continue to their conclusion in the absence of such party unless the arbitrator orders otherwise in the special circumstances of the case; and
- 14.7 where the default is of any other sort as itemised above the arbitrator can either:
- 14.7.1 give that party written notice that unless it remedies the default or omission within a given time, it will forfeit the right to continue to participate in the arbitration with the same consequences as set out above; or
- 14.7.2 warn the party in writing that its default or omission may make it liable to a punitive order of costs irrespective whether it succeeds in the arbitration or not and such punitive award of costs may include an order of attorney and client costs or attorney and own client costs as those expressions are understood in the Uniform Rules of Court.

15. **GENERAL POWERS OF THE ARBITRATOR**

- 15.1 The arbitrator shall have the widest discretion and powers allowed by law to ensure the just, expeditious, economical, and final determination of all the disputes raised in the proceedings, including the matter of costs.
- 15.2 Without detracting from the generality of the foregoing, the arbitrator shall have the powers:
- 15.2.1 to rule on his or her own jurisdiction;
- 15.2.2 to admit claims or any security or preference whether recognised under the Business Plan or not and to review and set aside a ruling of the Business Rescue Practitioner in regard to the admission or rejection of claims including the power to admit a rejected or partially rejected claim or any security or preference;
- 15.2.3 to deal with cases of default in accordance with the powers conferred upon the arbitrator in terms of these Rules;
- 15.2.4 to make any ruling or give any direction mentioned in these Rules or as he or she otherwise considers necessary or advisable for the just, expeditious, economical and final determination of all the disputes raised on the pleadings, including the matter of costs;
- 15.2.5 to extend before or after their expiry, or abbreviate any time limits provided for in these Rules or by his or her rulings or directions;

15.2.6 to order any party who is a claimant, or claimant under a counterclaim, to furnish security for costs in respect of his claim or counterclaim;

15.2.7 to allow (but only with their express written consent) other parties to be joined in the arbitration proceedings, and to make an award on all issues submitted by all parties, including parties so joined;

15.2.8 to make an order as to costs and

15.2.9 to make any settlement agreement concluded between the BRP, claimant and any other party to the arbitration proceedings, an award which will have the same effect as an award made at the conclusion of the arbitration proceedings.

16. INTERLOCUTORY MATTERS AND TEMPORARY ORDERS

Should the need arise for any party to seek interim or temporary relief before the arbitration is finalised, that party may apply to the arbitrator to grant such interlocutory order or give the required temporary relief and the arbitrator shall have the same power to do so as if the matter were one heard by a Judge of the High Court save that if by law such power or order cannot be exercised or given by an arbitrator then, and then only, should the parties refer such matter to an appropriate Court.

17. THE AWARD

17.1 The arbitrator must give his/her award within thirty days after finalisation of the proceedings unless the parties otherwise agree or unless the AFSA Secretariats permits an extension of that time.

17.2 The arbitrator's award must be published to the parties in an appropriate fashion as determined by the AFSA Secretariat.

17.3 Unless the parties have in writing instructed the AFSA Secretariat otherwise at any time before the final award is given, there shall be no right of appeal from the award. In cases where the AFSA Secretariat has been instructed otherwise, the appeal provisions contained in Article 22 of the AFSA Rules for Commercial Arbitrations will apply.

18. NON-LIABILITY OF AFSA-SARIPA DIVISION, THE SECRETARIAT AND THE ARBITRATOR

The AFSA-SARIPA Division and its Secretariat shall not be liable to any party for any act or omission relating to an arbitration conducted under its aegis, and shall have no liability or responsibility towards the parties or to any arbitrator in respect of any arbitration commenced under the aegis of the AFSA-SARIPA

Division but not completed according to these Rules. An arbitrator appointed by the AFSA-SARIPA Division shall not be liable for any act or omission relating to an arbitration in which he or she was the arbitrator, except in the case of deliberate misconduct.