

JUDGE: NYAMADZABO J.

**THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO: UAHGB – 000065 -26

In the matter between:

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

First Applicant

**TONGAAT HULETT (BOTSWANA)
PROPRIETARY LIMITED**

Second Applicant

TREVOR JOHN MURGATROYD N.O.

Third Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fourth Applicant

GERHARD CONRAD ALBERTYN N.O.

Fifth Applicant

and

**BOWWOOD AND MAIN NO 296 (RF)
PROPRIETARY LIMITED**

Respondent

In re:

**BOWWOOD AND MAIN NO 296 (RF)
PROPRIETARY LIMITED**

Applicant

and

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

First Respondent

**TONGAAT HULETT (BOTSWANA)
PROPRIETARY LIMITED**

Second Respondent

TREVOR JOHN MURGATROYD N.O.

Third Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

Fourth Respondent

GERHARD CONRAD ALBERTYN N.O.

Fifth Respondent

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FOUNDING AFFIDAVIT

I, the undersigned,

GERHARD CONRAD ALBERTYN

do hereby make oath and state as follows:

- 1 I am an adult male of full legal capacity and I am one of the business rescue practitioners of the first applicant, Tongaat Hulett Limited (under business rescue) in this application ("**the Rescission Application**") in which the above-referenced Applicants seek the rescission and setting aside of the *ex parte* order granted by this Honourable Court on 26 February 2026.
- 2 I practice as a consultant at Metis Strategic Advisors (Proprietary) Limited ("**Metis**"), which has its principal place of business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg, South Africa.
- 3 I depose to this affidavit in support of the Applicants' application for rescission of the order of this Honourable Court dated 26 February 2026 ("**the ex parte order**").
- 4 The facts herein are within my personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
- 5 Where I make averments of a legal nature, I do so on the advice of the Applicants' attorneys of record, which advice I verily believe to be correct.

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THE PARTIES

- 6 The First Applicant is Tongaat Hulett Limited (in business rescue) ("**Tongaat**"), a company incorporated under South African law. Its address for these proceedings is c/o Armstrongs Attorneys, 2nd Floor, Acacia House, Cnr Khama Crescent Ext & P G Matante Road, Plot 54358, New CBD, Gaborone.
- 7 The Second Applicant is Tongaat Hulett (Botswana) Proprietary Limited ("**THB**"), a company incorporated under the laws of Botswana, with its registered address at DPS Consulting Services (Pty) Limited, Plot 28892, Twin Towers, West Wing, First Floor, Fairgrounds, Gaborone, Botswana and having its principal place of business at Plot 4291 Bathoen Road, Lobatse, Botswana. Its address for these proceedings is c/o Armstrongs Attorneys (as above).
- 8 The Third to Fifth Applicants are Trevor John Murgatroyd N.O., Petrus Francois Van Den Steen N.O., and myself. We are the duly appointed joint business rescue practitioners of Tongaat ("**the BRPs**"), appointed pursuant to a certificate issued by the Companies and Intellectual Property Commission in South Africa ("**the CIPC**"). A copy of the BRPs' appointment certificate issued by the CIPC is annexed marked "**TH1**". The BRPs' address for these proceedings is c/o Armstrongs Attorneys (as above).
- 9 The First to Fifth Applicants are collectively referred to as "**the Applicants**".
- 10 The Respondent is Bowwood and Main No 296 (RF) Proprietary Limited ("**Bowwood / the Respondent**"), a company incorporated under South African law, carrying on business at TMF Building, No 2 Conference Lane, Block 1 Bridgewater One, Bridgeways

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Precinct, Century City, 7446, Cape Town. Its address for these proceedings is c/o AT Muza Attorneys, Plot 22964, Phase 4, P O Box 45075, Fairgrounds, Gaborone.

PURPOSE OF THE APPLICATION

- 11 This application has been instituted pursuant to the urgent application instituted by the Respondent against the Applicants out of this Court and under the above case number on 25 February 2026 ("**the *ex parte* application**") and in terms of which the *ex parte* order, which the Applicants seek to rescind, was granted.
- 12 This application seeks as its ultimate relief that which is set out in Part B of the Notice of Motion: being the rescission and setting aside of the *ex parte* order granted by this Honourable Court on 26 February 2026.
- 13 The *ex parte* order, which is the subject matter of this application provided for the recognition and enforcement in Botswana of an order of the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg, under case number 15784/22, issued on an interim basis on 17 November 2022 and confirmed on 16 May 2023 . A copy of the *ex parte* order is annexed marked "**TH2**".
- 14 In Part A of the Notice of Motion in this application, the Applicants seek, on an urgent basis, interim interdictory relief pending the determination of the rescission application in Part B.
- 15 This application for rescission is brought in terms of Order 48 Rule 1(a) of the Rules of this Honourable Court, alternatively at common law.

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- 16 The *ex parte* order was granted without notice to the Applicants, notwithstanding that they are directly and substantially affected by the relief granted. Furthermore, it is evident that: -
- 16.1 all material and relevant facts which ought to have been disclosed were not placed before the Court as is an absolute requirement in matters in which *ex parte* relief is sought; and
- 16.2 no cogent explanation or legally justifiable reason was provided as to why, in the *ex parte* application, despite the citation of the Applicants, the notice of motion addressed to them and the clear interest they have in that matter, a return date or rule *nisi* was not provided for in the Respondent's notice of motion and instead final relief was sought and granted thereby depriving the Applicants of their clear right to be heard.
- 17 The Applicants were accordingly denied the opportunity in the *ex parte* application to place before this Honourable Court the material facts and legal submissions relevant to (a) whether the order sought was competent, (b) whether the order sought ought to have been granted *ex parte* and on an urgent basis; and (c) whether the South African order was capable of recognition and enforcement in Botswana in the manner sought.
- 18 The Applicants contend that the *ex parte* order was erroneously sought in the absence of a full disclosure of all material facts relevant to the matter and/or erroneously granted without notice to affected parties, as contemplated by Order 48 Rule 1(a).
- 19 In the alternative, the Applicants rely on common law rescission on the grounds that good and sufficient cause exists, in that: -

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- 19.1 the *ex parte* application, pursuant to which the *ex parte* order was sought, and granted, was brought without notice to the Applicants;
 - 19.2 the Applicants have a direct and substantial interest in the subject matter;
 - 19.3 despite relief having been sought on an *ex parte* basis, no provision was made for interim relief or a return date. The order is final in nature and materially affects the Applicants' rights;
 - 19.4 the Respondent was not entitled to obtain final relief *ex parte* where the Applicants ought to have been cited, served and heard;
 - 19.5 material facts and legal considerations were not fully ventilated before this Honourable Court; and
 - 19.6 the Applicants have bona fide and substantive grounds upon which to resist the recognition and enforcement of the South African order.
- 20 The relief sought by the Applicants in part B of this application requests *inter alia* that upon rescission, all writs, warrants, notices, attachments, instructions to the Deputy Sheriff, filings, registrations, endorsements, transfers and other steps taken pursuant to or in reliance upon the *ex parte* order be set aside and declared to be of no force or effect.

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BACKGROUND

- 21 Tongaat was placed under business rescue in South Africa on or about 27 October 2022, after its board resolved, on 26 October 2022, to commence business rescue proceedings and filed the requisite notice with the CIPC.
- 22 The Third, Fourth and Fifth Applicants, Murgatroyd N.O., Van den Steen N.O. and I were formally appointed as joint business rescue practitioners of Tongaat on 2 November 2022. A copy of the appointment certificate issued by the CIPC is annexed marked "TH1".
- 23 A business rescue plan was proposed and adopted by the requisite majority of creditors on or about 11 January 2024, contemplating a restructuring of the Tongaat's affairs through a debt-to-equity exchange failing which an asset sale transaction across South African, Botswanan, Mozambican and Zimbabwean operations would be concluded. Relevant extracts of the plan are annexed marked "TH3".
- 24 The Second Applicant, THB, is a Botswana-registered company. The shares and rights subject to the *ex parte* order are situated, regulated and enforceable within Botswana's jurisdiction.
- 25 The shareholding structure of THB is: -
- 25.1 Tongaat — 33.33%;
- 25.2 Star Africa Corporation Limited — 33.33%; and
- 25.3 Hippo Valley Estates Limited — 33.33%.

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A copy of the company extract evidencing the shareholding is annexed marked **"TH4"**.

- 26 The Respondent alleges an entitlement to enforce rights arising from a general notarial bond, bond number BN00584/2020 (**"the bond"**) registered in South Africa over Tongaat's movable property generally. A copy of the bond is annexed marked **"TH5"**.
- 27 I am advised that a general notarial bond is a form of security over movable property generally, and that rights arising therefrom must be assessed in accordance with the law governing the bond, the nature of the property and the jurisdiction where it is situated.
- 28 On or about 15 November 2022, Bowwood applied to the High Court of South Africa, KwaZulu-Natal Division, Pietermaritzburg, under case number 15784/22 to perfect, amongst others, the bond. I attach marked **"TH6"**, a copy of the notice of motion in the urgent application instituted by Bowwood. It will not go unnoticed that when the Respondent, Bowwood, made application to the Court in South Africa for the urgent perfection of the bonds referred to in its Notice of Motion, it provided for a rule *nisi* / return date. Inexplicably, it did not do so when making application to this Court.
- 29 The South African court issued a rule *nisi* on 17 November 2022, which was confirmed on 16 May 2023 (**"the South African orders"**). A copy of the notice of motion in the application for the perfection of Bowwood's bonds in South Africa is referred to above and is attached as **"TH6"** and the South African orders are attached marked **"TH7"** and **"TH8"** respectively. The South African orders were made under South African law with the consent of the BRPs which consent is required in terms of the provisions of Chapter 6 of the South African Companies Act 71 of 2008 (**"the Companies Act"**).

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- 30 The above orders do not emanate from this Honourable Court, were not issued in accordance with Botswana law and do not constitute a money judgment or writ capable of direct execution by a Deputy Sheriff in Botswana.
- 31 On or about 25 February 2026 and approximately three years later, the Respondent instituted the *ex parte* application and applied to this Honourable Court on an urgent *ex parte* basis, purportedly in terms of Order 12(4) of the Rules and the Judgments (International Enforcement) Act, CAP 11:04, for recognition and enforcement of the South African order.
- 32 The notice of motion makes no provision for the issuing of a rule *nisi* / return date as is required in matters of an *ex parte* nature. Rather, inexplicably that application sought final relief permitting enforcement steps against Tongaat's assets situated in Botswana, including shares in THB. A copy of the Respondent's notice of motion, founding affidavit and supporting papers is annexed marked "TH9".
- 33 On 26 February 2026 and despite the above, this Honourable Court granted the *ex parte* order in the Respondent's favour.
- 34 The Applicants were not served with, or notified of, the *ex parte* application before the *ex parte* order, which is final in effect, was granted and in the absence of a rule *nisi* and they were accordingly denied any opportunity to be heard and to oppose the relief sought.
- 35 The Applicants became aware of the *ex parte* order on or about 31 March 2026 when the sheriff of the Court served the court order (that is the *ex parte* order) granted on THB.

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Upon becoming aware of the granting of the *ex parte* order and its terms, the Applicants took immediate steps to obtain the relevant papers and to seek legal advice.

36 Immediately following the service of the *ex parte* court order and on 1 April 2026, Kurshelen Naidoo ("**Mr Naidoo**") of THB addressed correspondence to the sheriff of this court, a copy of which is attached marked "**TH10**". Mr Naidoo records in that correspondence that he attempted to contact the sheriff telephonically, to no avail and he requested the Respondent's attorney's details and some time to consider the matter as THB was unaware of the proceedings in terms of which the *ex parte* order had been granted.

37 On 1 April 2026, Mr Naidoo received a response to his correspondence from the Respondent's attorney, a copy of which is attached marked "**TH11**".

38 After a consultation with the Applicants' attorneys, Werksmans Incorporated ("**Werksmans**") and after the Easter period, on 7 April 2026, Werksmans addressed correspondence to the Respondent's attorney, a copy of which is attached marked "**TH12**". Due to its import, I have quoted from the letter below: -

"3. *The BRPs have provided us with: -*

3.1 *the court order which was granted in the application and in favour of Bowwood and Main on 26 February 2026 ("**the order**");* and

3.2 *your email dated 1 April 2026 addressed to Omphemetse Kaisara ("**Kaisara**") and Kurshelen Naidoo ("**Naidoo**") of Tongaat Hulett Limited, Botswana ("**THL**") ("**your email**").*

4. *The BRPs became aware of the order on or about 31 March 2026 when the order was served on THL's offices in Botswana.*

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5. *Although the BRPs are cited as respondents in the application, the application was not served on the BRPs prior to the order being granted.*

6. *In response to a query raised by Kaisara and Naidoo in regard to the above and pursuant to service of the order, you state in your email that: -*

"... we confirm that we are the attorneys of record for Bowwood. We advise that the application was not served because it was filed as an ex parte urgent application for the recognition of the order granted in South Africa on the 8th June 2023 which was done with the consent of the business rescue practitioners. As a result, there was no obligation to serve the application. We advise that the application is bulky and as such we have not scanned it. We can make arrangements for the THB people to collect a copy from our offices in Gaborone."

7. *The above said, no reference is made in the court order to the application having been instituted on an ex parte basis and if indeed this was so, the court would have granted a rule nisi enabling the BRPs to return to court on a designated date (the return date) to make representations why the order sought should not be made final.*

8. *Clearly this is not case as the order makes no reference to a return date and is final in its terms.*

9. *Your averment that the consent of the BRPs to an order granted in South Africa in June 2023 obviates the need for service and constitutes consent to the granting of an order, in respect of an application they have not seen, in Botswana approximately three years later is factually and legally untenable.*

10. *The order further records that: -*

"UPON HEARING: Attorney Mr. Muza A.T. for the Applicant and there being no appearance for the Respondents and having read the documents filed of record... ."

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11. *The above recordal would not have been made by the Court in an ex parte application as no appearance by the respondents would have been expected or required.*
 12. *In the circumstances, please can you urgently provide us with an explanation regarding the above inconsistencies and on what basis you have stated in your email that the consent by the BRPs to an order granted in South Africa almost 3 years ago can be regarded as consent to an order in a different jurisdiction and in the absence of service having been effected on the BRPs.*
 13. *In addition to the above, and whilst you considered the application to be "bulky", the BRPs are entitled to a copy of same in order consider the application and their rights in regard to the content thereof. Accordingly, please will you urgently email the application to us.*
 14. *Please be advised that the above is not to be considered to be an exhaustive recordal of the BRPs' concerns in regard to the application instituted allegedly on an ex parte basis and in regard to the order granted. Our clients' rights to raise further issues after having received your response hereto and having had an opportunity to consider the application, remain strictly reserved."*
- 39 By 13 April 2026, a response from the Respondent's attorney was not forthcoming. Mr Naidoo had attempted to obtain the court papers from the Respondent's attorney but was advised, as recorded in the correspondence above, that the papers were "bulky" and even scanning them and sending via e-mail was not viable. Accordingly further correspondence was addressed to the Respondent's attorney, a copy of which is attached marked "TH13".
- 40 On 14 April 2026, the Respondent's attorney addressed correspondence to Werksmans, a copy of which is attached marked "TH14", wherein he advised that he was obtaining his client's instructions. A copy of the *ex parte* application instituted by the Respondent was provided.

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- 41 On the same day, that is on 14 April 2026, a copy of the *ex parte* application was also provided to THB by the Respondent's attorney.
- 42 It took the Respondent's attorney two weeks to respond to Werksmans and to THB and to provide the requested application.
- 43 Thereafter the BRPs were able to properly consider the *ex parte* application instituted by the Respondent, the relief sought by the Respondent and the *ex parte* order granted by this Court.
- 44 On 24 April 2026, Werksmans Attorneys, acting for the Applicants, addressed correspondence to Stein Scop Attorneys (the Respondent's South African attorneys) ("**Stein Scop**"), which correspondence was copied to the Respondent's attorney in Botswana, advising that the *ex parte* order had been improperly sought and obtained and was liable to be rescinded, confirming instructions to bring this rescission application, and calling upon the Respondent, by close of business on 28 April 2026, to either (a) abandon and withdraw the *ex parte* order, or (b) undertake to refrain from taking any enforcement steps pending determination of this application. A copy of the letter is attached marked "**THL15**".
- 45 On 30 April 2026, a response was received from the Respondent's South African attorneys, Stein Scop. A copy of the letter from Stein Scop is attached marked "**TH16**". In the aforementioned correspondence, it is disputed that the order was improperly sought or granted. It is stated that the "*applicable court rules permit ex parte relief in appropriate circumstances, and that the court considered the application and granted the order as sought*".

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- 46 The Respondent's South African attorneys provided no indication in the above correspondence of the "*appropriate circumstances*" to which it made reference in its application. Furthermore, although it is stated that the "*court considered the application*" it appears that material and relevant facts were not placed before the court which considered the application.
- 47 *Ex parte* applications require a higher standard of disclosure and an applicant seeking relief on an *ex parte* basis is required to state on oath all the relevant and material facts pertinent to the application and the relief sought. The Respondent failed to do so.
- 48 The Respondent refused to accede to the demand made by the Applicants in their attorney's correspondence which refusal was communicated on 30 April 2026.
- 49 The 1st of May is a public holiday in South Africa but this fact notwithstanding, the attorneys representing the Applicants immediately commenced with the preparation of this application. This application has been prepared within a matter of days and with due haste. The Applicants have not delayed in the institution of this application.

RESCISSION IN TERMS OF ORDER 48 RULE 1(a)

- 50 Order 48 Rule 1(a) empowers a Judge, on application by any affected party, to rescind or vary an order *erroneously sought or erroneously granted without notice* to any party affected thereby.
- 51 The Applicants bring this application as parties directly and substantially affected by the *ex parte* order.
- 52 The requirements for rescission under Order 48 Rule 1(a) are: -

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52.1 the applicant is a party affected by the order;

52.2 the order was granted without notice to that party;

52.3 the order was granted in that party's absence; and

52.4 the order was erroneously sought or erroneously granted.

53 The Applicants satisfy each requirement.

54 The Applicants are directly affected. The *ex parte* order purports to recognise and enforce, in Botswana, rights arising from a South African general notarial bond against assets and rights connected to Tongaat.

55 THB is directly affected because the order concerns shares and corporate rights in a Botswana-registered company. The Third to Fifth Applicants are directly affected in their capacities as joint business rescue practitioners of Tongaat.

56 The *ex parte* order was granted without notice to any of the Applicants. They were not served with the notice of motion, founding affidavit, supporting affidavits, annexures, draft order or any other process prior to the granting of the *ex parte* order and were not afforded any opportunity to file answering affidavits, advance legal submissions, or to otherwise be heard prior to the granting of final relief. Most significantly, the Respondent's founding affidavit fails to provide an explanation for this conduct.

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57 The paucity of the information placed before this Court by the Respondent in seeking the relief which it did on an *ex parte* basis and in the absence of a rule *nisi* or a return date is an egregious abuse of *ex parte* proceedings which ought to be appropriately sanctioned.

58 The order was accordingly erroneously sought and/or erroneously granted. The error is constituted by the following: -

58.1 the Respondent sought final, not interim, relief without notice to parties directly and substantially affected thereby. This is contrary to the nature of an *ex parte* application and/or relief sought on an *ex parte* basis;

58.2 the Respondent failed to serve or give notice to the Applicants;

58.3 the Respondent did not seek a rule *nisi* or any procedure affording affected parties an opportunity to be heard before final relief was confirmed;

58.4 this Honourable Court was not placed in possession of the Applicants' version before granting the order. The Respondent further failed to comply with its obligation to disclose to the Court all relevant and material facts.; and

58.5 this Honourable Court was not afforded the benefit of argument from the Applicants on (a) the competence of recognising and enforcing the South African order in Botswana in the manner sought, or (b) whether that order could found execution against Botswana assets.

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59 I reiterate that where an *ex parte* application affects the rights of others, the proper course of action is to seek a rule *nisi* affording affected parties an opportunity to show cause why final relief should not be granted. No rule *nisi* was sought or granted herein. Final relief was instead obtained in the Applicants' absence, depriving them of their right to be heard.

THE RESPONDENT WAS NOT ENTITLED TO DIRECT ENFORCEMENT OF THE SOUTH AFRICAN ORDER IN BOTSWANA

60 The Respondent was not entitled to obtain a final *ex parte* order directly recognising and enforcing the South African perfection order in Botswana.

61 To the extent that the Respondent relied on the Judgments (International Enforcement) Act, Cap 11:04 ("**the Act**"), the South African perfection order is not the type of judgment contemplated for registration under Part II of the Act. Section 3(2) of the Act requires, among other things, a final and conclusive foreign judgment under which a sum of money is payable. The South African perfection order is not a money judgment; it concerns the perfection of a general notarial bond. Accordingly, it could not be registered and enforced under section 5 of the Act as though it were a judgment of this Honourable Court. Were registration set aside, section 7 confirms such result where the judgment is not one to which Part II applies.

62 At common law, a foreign judgment or order is not directly enforceable in Botswana; it may constitute a cause of action upon which a party may sue. To rely on a foreign judgment at common law, a party must institute appropriate proceedings in Botswana on notice to all affected parties, plead the foreign judgment as part of its cause of action, and prove the requirements for its recognition, including that the foreign court had jurisdiction recognised under Botswana law, the judgment is final and conclusive, has

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not become superannuated, was not obtained by fraud and its enforcement would not be contrary to public policy. The Respondent did none of this.

63 The proper course of action, if the Respondent wished to rely on the South African order at common law, was to institute summons or other proceedings on notice to all affected parties, with the South African order pleaded as part of its cause of action, not to seek direct enforcement as executable process against Botswana assets.

64 Enforcement of the *ex parte* order would also be contrary to public policy. It would give extra-territorial effect to a South African security instrument in a manner that bypasses Botswana's own requirements for the creation, registration, perfection and enforcement of security over assets situated in Botswana.

65 This would: -

65.1 undermine the integrity of Botswana's registration and execution framework;

65.2 prejudice affected parties, local creditors and third parties who rely on Botswana's public registration systems to determine whether Botswana assets are subject to enforceable security; and

65.3 offend the principle that attachment, execution, perfection and enforcement over Botswana assets are governed by Botswana law.

66 This is particularly material because the assets sought to be affected include shares and rights connected to THB, a company incorporated and registered in Botswana.

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- 67 In sum, the *ex parte* order was erroneously sought because the South African perfection order was not directly enforceable in Botswana.
- 68 It was also erroneously granted because at common law the South African order could only constitute a cause of action to be properly pleaded and proved, not a self-standing basis for immediate execution and further erroneously granted because giving it effect would have a South African general notarial bond enforced in Botswana as though registered and enforceable under Botswana law.

AFFIDAVIT OF CANDICE RISI - NON-COMPLIANCE WITH THE RULES

- 69 The affidavit deposed to by **Candice Risi** and relied upon by the Respondent in the *ex parte* application does not comply with **Order 13 Rule 5(a)** of the Rules of this Honourable Court, which requires every commissioner administering an oath to state the time, date and place at which the affidavit was taken. The affidavit omits the time at which the oath was administered.
- 70 The omission is material. In *ex parte* proceedings, an applicant is under an obligation to ensure strict compliance with the Rules and to place proper, regular and admissible evidence before the Court. An affidavit that does not comply with Order 13 Rule 5(a) is defective and irregular.
- 71 Had this Honourable Court been alerted to the defect, it may not have granted final *ex parte* relief on the strength of a non-compliant affidavit.
- 72 The irregularity is therefore a further basis upon which the *ex parte* order was erroneously sought and/or erroneously granted, and it reinforces the Applicants' entitlement to rescission.

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BONA FIDE DEFENCE (WITHOUT DEROGATING FROM ORDER 48 RULE 1(a))

73 Without derogating from the Applicants' primary case under Order 48 Rule 1(a), which does not require proof of a defence, the Applicants further state that, had they been given notice of the Respondent's application, they would have opposed it and advanced the following, among other, contentions: -

73.1 the South African order was not, without more, capable of direct execution against assets in Botswana;

73.2 recognition and enforcement of a foreign order in Botswana requires proper judicial consideration on notice to affected parties;

73.3 perfection of a general notarial bond in South Africa does not automatically perfect, attach or create enforceable security over Botswana assets;

73.4 attachment, execution and enforcement in respect of Botswana assets are governed by Botswana law;

73.5 shares in a Botswana-registered company cannot be dealt with under a South African perfection order without proper Botswana process;

73.6 THB is a separate juristic person incorporated in Botswana whose corporate affairs cannot be affected without notice to it; and

73.7 most significantly, the Respondent failed to disclose to the Court the full security structure applicable, including other security arrangements in place and

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shareholder restrictions applicable to the THB shares, all of which are relevant to the nature and enforceability of Bowwood's security interests.

74 These are material and relevant matters which ought to have been placed before this Honourable Court before the *ex parte* order was granted. They demonstrate that the Applicants have substantial and bona fide grounds to resist the relief obtained by the Respondent in the *ex parte* application.

RESCISSION IN TERMS OF THE COMMON LAW

75 In the further alternative, the Applicants seek rescission at common law. The requirements are (a) a reasonable and acceptable explanation for default; (b) a bona fide application; and (c) a bona fide defence with prospects of success on the merits.

76 The application must also be brought within a reasonable time after the affected party became aware of the order.

Reasonable Explanation for Default

77 The Applicants' absence from the proceedings was not wilful or deliberate. It was caused entirely by the Respondent's decision to approach this Honourable Court without notice to the Applicants, despite their direct and substantial interest in the relief sought. The Applicants were not served with any process prior to the granting of the *ex parte* order.

78 As stated above, the Applicants first became aware of the *ex parte* order on or about 31 March 2026. Upon becoming aware of the order granted, they immediately took steps to obtain the relevant papers and consult their Botswana and South African attorneys. This explanation is reasonable and demonstrates that the Applicants' non-appearance was not the result of negligence or intentional delay.

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Bona Fide Nature of the Application

79 This application is bona fide. It is neither frivolous nor vexatious, nor intended to delay the course of justice. Upon becoming aware of the *ex parte* order, the Applicants acted promptly: they obtained the court papers, they obtained legal advice and they caused this application to be prepared and brought on an urgent basis.

80 The speed of their response and their willingness to submit to the Court's jurisdiction demonstrate a genuine intention to have the matter determined on its merits.

Bona Fide Defence on the Merits

81 The Applicants have a bona fide defence with prospects of success.

82 Under the common law of Botswana, a foreign judgment or order does not, without more, operate as an executable order of a Botswana court. A party seeking to rely on a foreign order must institute proper proceedings in Botswana, plead the foreign order as part of its cause of action, and establish the requirements for recognition and enforcement. The Respondent did not do so.

83 The South African order concerns the perfection of a general notarial bond registered in South Africa. It does not, without more, perfect, attach or create executable rights over assets situated in Botswana. Questions of attachment, execution and enforcement over Botswana assets are governed by Botswana law.

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- 84 The Respondent cannot rely on a South African perfection order to bypass Botswana's legal requirements for the enforcement of security and execution against Botswana assets.
- 85 Enforcing the South African order in the manner sought would also be contrary to public policy, for the reasons set out above. The Applicants accordingly have a bona fide defence which, if ventilated, has substantial prospects of success.
- 86 In the premises, the Applicants have satisfied all the requirements for common law rescission.

Prejudice and Balance of Convenience

- 87 The Applicants will suffer substantial prejudice if the *ex parte* order is allowed to stand.
- 88 Despite the Respondent having proceeded on an *ex parte* basis, the *ex parte* order is final in nature, was obtained without notice, and directly affects assets, shares and rights situated in Botswana. It enables enforcement steps to be taken on the strength of an order the Applicants contend is not directly enforceable in Botswana.
- 89 For Tongaat, which is in business rescue, enforcement pursuant to the *ex parte* order will interfere with the business rescue process and with the rights of the affected persons of Tongaat, with particular reference to its secured creditors.
- 90 THB, as a separate juristic person incorporated in Botswana, is prejudiced by having its corporate rights affected through foreign enforcement proceedings obtained without it being heard.

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91 By contrast, the Respondent will suffer no comparable prejudice if the *ex parte* order is rescinded. Rescission will not extinguish any claim or rights which the Respondent alleges it may have; it will only require the Respondent to pursue that claim through the proper proceedings, on notice to all affected parties and in accordance with Botswanan law. The balance of convenience therefore strongly favours rescission.

THE INTERIM INTERDICT: LEGAL REQUIREMENTS

92 I am advised by the Applicants' attorneys of record, which advice I verily believe to be true and correct, that in order to obtain an interim interdict, an applicant must establish the following requirements: -

92.1 a clear right, alternatively a *prima facie* right, to the relief sought, even if open to some doubt;

92.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted;

92.3 that the balance of convenience favours the granting of the interdict; and

92.4 the absence of any other satisfactory remedy.

93 I respectfully submit that each of these requirements is satisfied on the facts of the present matter, as set out below.

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A Clear Right, Alternatively A Prima Facie Right

94 The Applicants enjoy, at a minimum, a prima facie right to seek the rescission of the *ex parte* order and to be protected against enforcement steps taken pursuant thereto pending the determination of the rescission application.

95 The following facts establish the existence of a *prima facie* right: -

95.1 the *ex parte* order was granted without notice to the Applicants, notwithstanding that the Applicants are directly and substantially affected by the relief granted. The Applicants were not served, or afforded any opportunity to oppose the application, file answering affidavits, or place before this Honourable Court the material facts and legal arguments relevant to the relief sought. The Respondent's failure to place all material facts before this Court is destructive of the *ex parte* order granted and is deserving of both censure and sanction;

95.2 the *ex parte* order was accordingly erroneously sought and/or erroneously granted without notice to parties affected thereby, as contemplated by Order 48 Rule 1(a) of the Rules of this Honourable Court;

95.3 the Applicants have a *bona fide* and *prima facie* sustainable defence to the recognition and enforcement of the South African order in Botswana, namely: -

95.3.1 a foreign order perfecting a general notarial bond registered in South Africa does not, without more, constitute an immediately executable order in Botswana against assets situated within Botswana;

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- 95.3.2 the Respondent was required to institute proper proceedings in Botswana, on notice to the Applicants, and to plead the South African order as part of a cause of action, rather than seeking final relief on an *ex parte* basis;
- 95.3.3 the recognition and enforcement of foreign judgments and orders in Botswana is governed by the requirements of Botswana law, including the Judgments (International Enforcement) Act, CAP 11:04, and such requirements were not met; and
- 95.3.4 shares in the Second Applicant, being a company incorporated and registered in Botswana, and rights associated therewith, are subject to the laws of Botswana and cannot be attached, transferred, or otherwise dealt with pursuant to a South African order without compliance with Botswana's own legal requirements for execution and enforcement;
- 95.4 the Applicants' right to be heard before final relief is granted against them is a fundamental principle of natural justice. A party who has been denied the opportunity to be heard before a final order affecting its rights and assets is obtained has, at minimum, a *prima facie* right to seek the rescission of that order and to be protected against enforcement pending its determination.
- 96 I am advised that the Applicants have demonstrated, at least on a *prima facie* basis, a right to the rescission of the *ex parte* order and to the protection of the status quo pending the hearing and determination of the rescission application.
- 97 The Applicants have a well-grounded apprehension that, unless restrained by this Honourable Court, the Respondent will take immediate steps in execution of the *ex parte*

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order, causing irreparable harm to the Applicants before the rescission application can be heard and determined in the ordinary course.

98 The *ex parte* order is final in its terms. It purports to recognise and enforce in Botswana the South African order perfecting the bond and to authorise enforcement steps in Botswana against assets, including the shares held by the Tongaat in THB. The order is immediately operative and there is no automatic suspension of its effect pending the Rescission Application.

99 The *ex parte* order accordingly places the Respondent in a position to take enforcement steps at any time, including instructing the Deputy Sheriff of Botswana to attach and execute upon the said shares, and to take steps before CIPA and/or in the share register of the Second Applicant to effect a transfer of or notation against such shares.

100 I refer to the letter which Werksmans addressed to Stein Scop on 24 April 2026, annexure "TH15".

101 In annexure "TH15", the Applicants: -

101.1 formally advised the Respondent that, on the advice of the Applicants' Botswana legal representatives, the *ex parte* order was improperly sought and obtained, both procedurally and substantively, and was accordingly liable to be rescinded and set aside by this Honourable Court;

101.2 confirmed that the Applicants held clear instructions to institute an application for the rescission and setting aside of the *ex parte* order, together with an application for costs; and

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101.3 called upon the Respondent, on or before close of business on 28 April 2026, to do one of the following: -

101.3.1 abandon and withdraw reliance upon the *ex parte* order in its entirety; or alternatively;

101.3.2 pending the determination of the rescission application, refrain from taking any steps pursuant to the *ex parte* order, including any sale, transfer, disposal, encumbrance or other dealing with the attached shares or any attempt to enforce rights arising from such attachment.

102 The response from the Respondent is referred to above and the letter from Stein Scop dated 30 April 2026 is attached as annexure "TH16".

103 The response from Stein Scop (annexure "TH16") is significant and material to this application for the following reasons: -

103.1 it demonstrates that the Respondent is unwilling to maintain the *status quo* voluntarily pending the hearing of the rescission application;

103.2 it confirms the Applicants' well-grounded apprehension that enforcement steps are imminent. Having obtained the *ex parte* order and declined an invitation to refrain from acting upon it, the Respondent has demonstrated a clear intention to proceed with enforcement;

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- 103.3 it establishes that this Honourable Court's intervention by way of an interim interdict is both necessary and appropriate. The Applicants cannot obtain adequate protection by any means short of a court order. They have exhausted the avenue of voluntary compliance and it has been rejected;
- 103.4 it removes any basis upon which it could be contended that the application for an interim interdict is premature, unnecessary, or brought without adequate prior engagement. The Applicants extended a clear and reasonable invitation to the Respondent to protect the status quo. The Respondent elected not to respond. The necessity for a court order is accordingly established.
- 104 Should the Respondent proceed to execute upon the *ex parte* order before this application is considered, the Applicants will suffer immediate, irreparable and irreversible harm in the following respects: -
- 104.1 shares in a company, once transferred or encumbered in favour of a third party, may not be recoverable. Third party rights may vest which cannot be defeated even if the *ex parte* order is subsequently rescinded. Any transfer, registration, or endorsement effected at CIPA or in the share register of the Second Applicant in execution of the *ex parte* order may accordingly produce a permanent alteration in the ownership or encumbrance of the shares in THB, which cannot be undone by the rescission of the order;
- 104.2 Tongaat is presently in business rescue. Enforcement steps directed at Tongaat's assets in Botswana, including its shareholding in THB, taken without notice to the business rescue practitioners, in contravention of the provisions of the Companies

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Act and without them having had an opportunity to be heard, will materially and irreparably prejudice: -

- 104.2.1 the business rescue process as a whole and the orderly administration of Tongaat's affairs;
- 104.2.2 the possible implementation of the adopted business rescue plan, which contemplates, among other things, an asset sale transaction or debt-to-equity exchange; and
- 104.2.3 the interests of the body of creditors as a whole, whose position would be prejudiced by enforcement steps that diminish or compromise Tongaat's asset base;
- 104.3 THB is a Botswana registered company with its own legal personality, management, and corporate affairs. Steps taken to alter the control, ownership, or rights attaching to its shares, taken without THB having been heard, may disrupt its management and corporate governance in a manner that cannot readily be reversed, even if the *ex parte* order is subsequently set aside;
- 104.4 the harm apprehended by the Applicants is therefore not merely financial in character and cannot adequately be addressed by an award of damages after the event. It is harm of a structural and irreversible nature, affecting rights, assets, and corporate interests situated in Botswana which, once altered, may not be capable of being restored to their pre-enforcement state.

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105 I accordingly submit that the Applicants have a well-grounded apprehension of irreparable harm, and that this requirement for the granting of an interim interdict is satisfied.

Balance of Convenience

106 The balance of convenience strongly favours the granting of the interim interdict, for the following reasons: -

106.1 if the interim interdict is granted and the rescission application is ultimately dismissed, the prejudice suffered by the Respondent will be limited to a delay in the enforcement of the *ex parte* order. The Respondent's underlying rights, if any, will remain unaffected. It will be free to pursue enforcement of its alleged rights once the rescission application has been finally disposed of and in accordance with the law of Botswana. This is a prejudice that can readily be accommodated and to the extent that the delay occasions any financial loss, may be compensable;

106.2 if, on the other hand, the interim interdict is refused and the Respondent takes enforcement steps which are subsequently required to be reversed or set aside upon the success of the rescission application, the harm to the Applicants may be irreversible, as set out in detail above. Shares once transferred may not be recoverable. Third party rights will have vested. The business rescue will have been irremediably disrupted and the rights of affected parties materially affected;

106.3 The prejudice to the Applicants from the refusal of the interdict therefore significantly outweighs the prejudice to the Respondent from its grant. The balance of convenience accordingly favours the preservation of the status quo pending the determination of the rescission application;

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106.4 It is further relevant that the Respondent itself approached this Honourable Court on an urgent and *ex parte* basis in order to obtain the *ex parte* order. Having done so without notice to the Applicants, the Respondent has, with respect, no legally cognisable basis to resist the preservation of the status quo while the Applicants are granted the opportunity to be heard which they ought to have been given before the *ex parte* order was granted; and

106.5 the granting of the interdict is, moreover, consistent with the interests of justice. A final order affecting the rights and assets of parties who were given no opportunity to be heard ought not to be enforced until such parties have been afforded an opportunity to challenge that order through the appropriate procedural mechanism. The interim interdict gives effect to this principle.

107 I respectfully submit that the balance of convenience favours the granting of the interim interdict and that this requirement is accordingly satisfied.

No Adequate Alternative Remedy

108 The Applicants have no adequate alternative remedy. I set out the basis for this conclusion below.

109 A claim for damages, even if theoretically available, will not constitute an adequate remedy in the circumstances of this case, for the following reasons: -

109.1 the harm apprehended is structural and irreversible in nature. It concerns the attachment, transfer, encumbrance, or disposal of shares in a Botswana registered

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company and the disruption of a business rescue process. These are not forms of harm that are ordinarily susceptible to adequate monetary compensation;

109.2 Tongaat is in business rescue. Any attempt to pursue a damages claim arising from improperly executed enforcement steps would further burden a company that is already subject to business rescue, to the potential prejudice of all its creditors. The business rescue practitioners, as officers of the Court, have an obligation to exercise their duties in strict compliance with the Companies Act and to protect the company for the benefit of all its affected persons. The BRPs cannot be expected to pursue protracted damages litigation at a significant cost to Tongaat and to the prejudice of its creditors as a substitute for the preservation of the status quo;

109.3 the quantification of damages arising from the disruption to the business rescue plan, the potential loss of THB's shareholding, and the broader consequences for the Tongaat's restructuring would be complex, uncertain, and contentious. It cannot be said with confidence that any such claim would afford the Applicants a full and adequate remedy;

109.4 the Applicants have already attempted to resolve the matter without litigation by requesting a voluntary undertaking from the Respondent. This avenue has been exhausted without success. There is no other mechanism available to the Applicants to protect their position pending the rescission application other than an order of this Honourable Court.

110 I accordingly submit that there is no adequate alternative remedy available to the Applicants, and that this requirement for the granting of an interim interdict is satisfied.

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111 In the premises, I respectfully submit that the Applicants have made out a case for the granting of the interim interdict pending the determination of the rescission application, in the terms set out in Part A of the Notice of Motion filed herewith.

THE *EX PARTE* ORDER IS LIABLE TO BE RESCINDED

112 The Applicants submit that the *ex-parte* order is liable to be rescinded and set aside for one or more of the following reasons: -

- 112.1 Tongaat is in business rescue in South Africa. Section 133 of the Companies Act imposes an automatic moratorium on enforcement proceedings against a company in business rescue, which includes the enforcement of any security;
- 112.2 the *ex parte* order was granted in final form without affording the Applicants an opportunity to be heard. In Botswana, the right to a fair hearing is constitutionally entrenched under section 10 of the Constitution of Botswana. A court order granted in final form, without notice to directly affected parties, in circumstances where those parties had a direct and substantial interest in the relief sought, constitutes a breach of the *audi alteram partem* principle and offends the constitutional right to a fair hearing. This ground operates independently of Order 48 and provides an additional constitutional basis for rescission;
- 112.3 the Botswana High Court's jurisdiction to enforce or recognise foreign security instruments is governed by statute and the common law. To the extent that the Respondent did not invoke any recognised jurisdictional basis — whether under the Judgments (International Enforcement) Act, Cap 11:04, or by institution of proper action - the High Court may have lacked the requisite subject matter jurisdiction to grant the relief in the manner sought. A judgment granted without jurisdiction is a

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nullity and may be set aside on that ground alone, irrespective of the merits of the underlying claim;

112.4 a party bringing an *ex parte* application owes the court a duty of utmost good faith and is obliged to place all material facts before the court, including facts that may weigh against the granting of the relief sought. The Respondent was aware, or ought to have been aware, of the following material facts which were not disclosed to the court: -

112.4.1 that Tongaat is in business rescue and that the BRPs did not, as is required in terms of the Companies Act, consent to the granting of the *ex parte* order;

112.4.2 that THB, a Botswana registered company has rights and interests materially and directly affected by the relief sought;

112.4.3 that the South African perfection order is not a money judgment and therefore not registrable under Part II of the Judgments (International Enforcement) Act; and

112.4.4 that the assets sought to be affected are subject to Botswana law;

112.5 non-disclosure of material facts in an *ex parte* application is itself a ground for rescission, independently of whether the order was erroneously granted. The court's discretion was exercised on an incomplete picture, and the order cannot stand;

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- 112.6 a well-established principle of private international law is that the creation, perfection, registration and enforcement of security over movable and/or immovable property is governed by the law of the place where the property is situated, the *lex situs*. The assets sought to be affected, including shares in THB (a Botswana company) and any other assets situated in Botswana, can only be subjected to enforceable security in accordance with Botswana law. A South African notarial bond, registered in South Africa under South African law, cannot by its own force create or perfect enforceable security over assets in Botswana. The Respondent's approach fundamentally violates the *lex situs* principle and provides an additional and independent ground for setting aside the *ex parte* order;
- 112.7 shares in THB, a company incorporated and registered in Botswana, are situated in Botswana for purposes of private international law. A South African general notarial bond is a creature of South African statute, specifically the Security by Means of Movable Property Act 57 of 1993. That Act has no extra-territorial effect and cannot operate to create or perfect security over assets situated outside South Africa. The South African perfection order, which, as stated above, has not been correctly recognised and enforced in accordance with the laws of Botswana therefore provides no legal basis upon which to affect shares or rights situated in Botswana, and the purported enforcement of that order against such assets is legally incompetent;
- 112.8 the *ex parte* order granted is final in nature but was obtained without the institution of action, without pleadings, without discovery, and without trial. Final relief affecting proprietary rights of third parties ought not to be granted summarily on motion proceedings, particularly where the rights in question may be disputed and particularly where the factual and legal basis for the recognition of a foreign order

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may be contested. The procedure adopted by the Respondent was irregular and the resulting order, being final in form, cannot be sustained on the basis of a truncated *ex parte* motion;

112.9 if the Respondent relied on urgency to justify the *ex parte* approach, the Applicants may challenge whether genuine urgency existed or whether the urgency was self-created;

112.10 beyond the arguments already raised in the affidavit, the following additional public policy considerations may be advanced: -

112.10.1 Botswana has a developed and self-contained legal framework for the registration and enforcement of security interests, including the Deeds Registry Act and the relevant provisions governing notarial bonds. Permitting foreign security instruments to be enforced as though they were locally registered would fundamentally undermine that framework; and

112.10.2 local creditors, employees, and other stakeholders of THB are entitled to rely on Botswana's public registration systems to ascertain the encumbrances affecting assets in Botswana. Enforcement of a South African notarial bond in Botswana would give the Respondent an undisclosed and unregistered priority over local creditors, which is contrary to public policy;

112.11 the Applicants were necessary parties to the *ex parte* application and although cited, were inexplicably deprived of an opportunity to be heard. A court order that directly affects the rights of a party cited in proceedings, but who was not served,

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and who received no notice of the proceedings, is susceptible to rescission or review.

113 Therefore, the Applicant submits that the court must exercise its discretion and grant the relief sought in Part A of the Notice of Motion in this Application pending argument for the relief sought in Part B.

URGENCY

114 The relief sought in Part A of the Notice of Motion in this Application is brought on an urgent basis in terms of Order 12 Rule 12. The circumstances rendering it urgent are the following.

115 The *ex parte* order is final in nature and purports to enable enforcement steps against Botswana assets, including shares in THB.

116 Unless this application is heard urgently, the Respondent may proceed to take enforcement steps — including attachment, transfer, registration, disposal or instructions to the Deputy Sheriff or CIPA — that would materially and irreversibly prejudice the Applicants before their rescission application is determined in the ordinary course.

117 I reiterate that the Applicants became aware of the *ex parte* order on or about 31 March 2026 when the sheriff of this Court served the order on THB. I refer to what is stated above regarding the steps taken by the Applicants since becoming aware of the *ex parte* order and to the correspondence exchanged with the Respondent's attorneys in Botswana and South Africa.

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- 118 Any delay between the Applicants becoming aware and the filing of this application is explained by the delay in the Respondent's attorneys providing a copy of the *ex parte* application to the Applicants. A copy of the *ex parte* application was requested immediately on 1 April 2026 and only provided to the Applicants on 14 April 2026.
- 119 On receipt of the *ex parte* application, it was necessary for the BRPs and Werksmans to consider the application and for advice to be rendered in regard thereto. Furthermore, immediate engagements took place with the Applicants' attorneys of record in Botswana in order to obtain their advice.
- 120 In addition to the above I refer to the correspondence exchanged between Werksmans and Stein Scop and the refusal by the Respondent to provide the undertakings as requested which refusal was communicated on 30 April 2026.
- 121 This application was then immediately prepared.
- 122 The urgency is not self-created. The Applicants acted with reasonable expedition and have approached this Honourable Court as soon as reasonably possible.
- 123 The Respondent, which itself approached this Court on an urgent *ex parte* basis, will not be prejudiced by an urgent hearing., It will have a full opportunity to file opposing papers and place its version before the Court.
- 124 In the circumstances, the Applicants respectfully submit that this Honourable Court should condone the departure from the ordinary forms and service requirements and hear this matter on an urgent basis.

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CONCLUSION

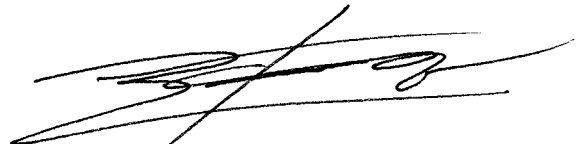
125 In summary, the Applicants have established that the *ex parte* order was erroneously sought and/or erroneously granted within the meaning of Order 48 Rule 1(a), and that they satisfy all requirements for rescission under that Rule. They further satisfy the requirements for common law rescission and, moreover, the balance of convenience and the interests of justice favour granting of the order sought.

126 I accordingly pray for the relief set out in the Notice of Motion.



GERHARD CONRAD ALBERTYN

THUS SWORN TO AND SIGNED BY THE DEPONENT BEFORE ME AT SANDTON
ON THIS 07TH DAY OF MAY, 2026 AT 17:10 AM/PM BY THE
DEPONENT, HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE
CONTENTS OF THIS AFFIDAVIT THAT HE HAS NO OBJECTION TO TAKING THE
PRESCRIBED OATH, THAT HE CONSIDERS SAME TO BE BINDING ON HIS
CONSCIENCE.



COMMISSIONER OF OATHS

IBRAHIM HOUSEN
Commissioner Of Oaths - Ex Officio
Practising Attorney R.S.A
21 Trilby Street, Oaklands
Johannesburg, 2192
Date: 07 MAY 2026

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COMPANIES AND INTELLECTUAL PROPERTY COMMISSION REPUBLIC OF SOUTH AFRICA

Date of Issue: 02/11/2022
Our Reference: 60000190600
Customer Code: VSQBRS
Email Address: PETER@V2RESCUE.CO.ZA

This hereby confirms that your notice of application dated 02/11/2022 for business rescue practitioner(s) was successful.

Company Number: 1892/000610/06
Company Name: TONGAAT HULETT LTD
Company Status: BUSINESS RESCUE

Business Rescue Practitioner(s)

Name	Classification	Action	Date
Petrus Francois Van Den Steen	Senior Practitioner	Appoint	27/10/2022
Trevor John Murgatroyd	Senior Practitioner	Appoint	27/10/2022
Gerhard Conrad Albertyn	Experienced Practitioner	Appoint	27/10/2022

Yours truly

A handwritten signature in black ink, appearing to be 'P. Voller', is written over a faint, larger signature.

Commissioner: CIPC

the dti Campus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria | P O Box 429, Pretoria, 0001
Call Centre: 086 100 2472
Email: rvoller@cipc.co.za / Website: www.cipc.co.za



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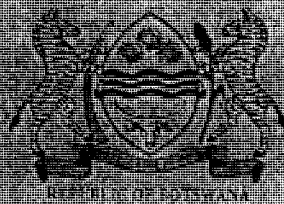
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REPUBLIC OF BOTSWANA

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA HELD AT GABORONE

UAHGB-000065-26

In the matter between:

BOWWOOD AND MAIN NO 295 (RF)
PROPRIETARY LIMITED

APPLICANT

And

TREVOR JOHN MURGATROYD N. O.

1ST RESPONDENT

PETRUS FRANCOIS VAN DEN STEEN N. O.

2ND RESPONDENT

GERHARD CONRAD ALBERTYN N. O.

3RD RESPONDENT

for their capacities as the joint business rescue Practitioners
of the 3RD Respondent.

TONGAAT HULETT LIMITED

(IN BUSINESS RESCUE)

4TH RESPONDENT

TONGAAT HULETT

(BOTSWANA) PROPRIETARY LIMITED

5TH RESPONDENT

ORDER

Before the Honourable Judge President Mr. Nyamadzabo B. at Gaborone on
this 26th day of February 2026.

UPON HEARING: Attorney Mr. Muza A. T. for the Applicant and there being
no appearance for the Respondents and having read the documents filed of
record.

IT IS ORDERED THAT:

1. The Applicant be and is granted reliefs in terms of the draft order filed
of record on the 25th February 2026 as amended as follows:
 - 1.1. The matter is heard as one of urgency and the normal rules
relating to service and time limits are dispensed with.
 - 1.2. The Order of the High Court of South Africa, Kwazulu - Natal
Division, Pietermaritzburg dated 16 May 2023 under case no:

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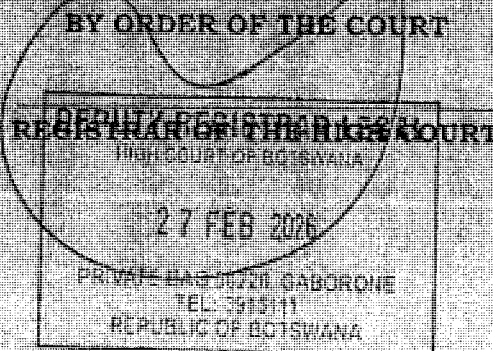
15784/22 perfecting the General Notarial Bond registered in favour of the Applicant over the assets of the 4th Respondent (including shares wherever situated), to and is hereby recognized and registered as an order of this Honourable Court.

1.3. It is declared that the General Notarial Bond No. BN00584/2020 is perfected over all the shares held by the 4th Respondent in the 5th Respondent, including but not limited to the issued 33.33% shares held by the 4th Respondent.

1.4. The 1st to the 5th Respondents are interdicted and restrained from selling, transferring, encumbering, pledging, or in any manner dealing with the said shares pending the final determination of this application or until further order of this Court.

1.5. The Applicant, alternatively the Applicant's duly authorized agent, alternatively the Deputy Sheriff of this Court is authorized and directed forthwith to attach the share certificates and any blank transfer forms relating to the shares referred to in paragraph 1.3 above and to perfect the Applicant's security interest by taking possession and/or control thereof.

1.6. The 5th Respondent is directed to note the perfected security interest of the Applicant on its share register and to refuse to register any transfer dealing with the said shares without the prior written consent of the Applicant or further order of this Court.



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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 16TH DAY OF MAY 2023

BEFORE THE HONOURABLE JUDGE E BEZUIDENHOUT

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED
(Registration number: 2018/358484/07)

Applicant

and

TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

Third Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED
(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED
(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED
(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the rule *nisi* issued out of this Court on the 17th day of November 2022, and
the other documents filed of record; and

HAVING heard Counsel for the Applicant;

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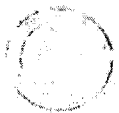
IT IS ORDERED THAT:

The aforesaid rule *nisi* be and is hereby confirmed.

BY ORDER OF THE COURT

**N P FENTE
SNR REGISTRAR**

Venns Attorneys

REPUBLIC OF SOUTH AFRICA NORTH WEST PROVINCE POTSDAM		
Private Reg X0014, Potlamoitburg 0.000		
	2023 -06- 08	
KZND-PMB-006		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL PROVINCE POTSDAM		

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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 17TH DAY OF NOVEMBER 2022

BEFORE THE HONOURABLE JUDGE LOPES

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED
(Registration number: 2018/358484/07)

Applicant

and

TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

Third Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED
(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED
(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED
(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the Notice of Motion, and the other documents filed of record, and

HAVING heard Counsel for the Applicant;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	
Private Bag X2014, Pietermaritzburg 3200	
	
2022 -11- 17	
KZND-PMB-007	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	

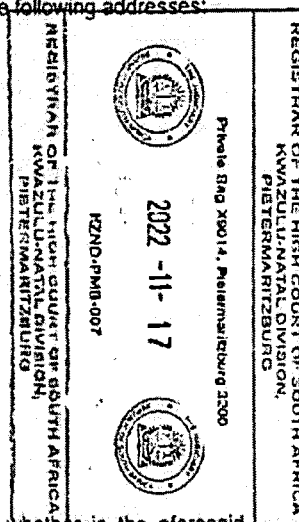
NOTARIAL
KWAZULU-NATAL

IT IS ORDERED THAT:

A rule nisi is issued calling upon the Respondents and any interested party to appear before the above Court on 20th February 2023 at 09h30, to show cause why an order in the following terms should not be made final:

- 1.1. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff of the High Court ("the Sheriff"), is authorised to take possession of all movable assets of the Fourth to Eighth Respondents ("the aforesaid Respondents"), in order to perfect the Applicant's security under general notarial bonds BN00352/2020, BN00353/2020, BN00401/2020, BN00438/2020 and BN00584/2020 and to hold the movable assets in its possession and be constituted as pledgee, such assets being situated at the following addresses:

- 1.1.1. 444 South Coast Road, Durban, 4093;
 - 1.1.2. 1 Mill Road, Amatikulu, Gingindlovu;
 - 1.1.3. 1 Mill Road, Felixton, Empangeni;
 - 1.1.4. 1 Main Avenue, Maidstone, Tongaat;
 - 1.1.5. 1 Main Road, Maidstone, Tongaat; and
 - 1.1.6. Amanzimnyama Hill, Tongaat;
- ("the Respondents' premises")



or wheresoever the movable assets may be found, whether in the aforesaid Respondents' possession or not;

- 1.2. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff, with jurisdiction is authorised and directed, to enter upon the aforesaid Respondents' premises and/or anywhere else the aforesaid Respondents carry on business or where the movable assets are being kept, to attach and make an inventory of all the movable assets of the aforesaid Respondents, of whatsoever nature and description, as security for the payment of all monies due by the aforesaid Respondents to the Applicant and by such attachment thereof shall be deemed to be given to the Applicant to hold in pledge;
- 1.3. The aforesaid Respondents, through their agents, representatives and employees, are ordered to point out all movable assets to the Applicant or its duly appointed representative, alternatively the Sheriff, wherever such movable assets may be situated;

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- 1.4. The Applicant, alternatively, the Sheriff is authorised to:
- 1.4.1. Lock and secure the movable assets, at the Respondents' premises or any other premises at which the aforesaid Respondents carry on business;
- 1.4.2. Affix a notice of attachment to the principal doors / gates of the Respondents' premises or any other premises at which the aforesaid Respondents' movable assets may be found;
- in either event the Applicant shall be deemed to have taken effective possession of such movable assets and have perfected the aforementioned general notarial bonds;
- 1.5. The Applicant is authorised to sell the movable assets of the aforesaid Respondents which have been attached in terms of this order by private treaty or public auction, in the sole discretion of the Applicant, and that any manager or director of the Applicant, whose appointment need not be proved, is authorised to sign any sale agreement and all subsequent documents necessary to give transfer of the movable assets to any purchaser;
- 1.6. The Respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally with any other party who unsuccessfully opposes this application.
2. The orders contained at paragraphs 1.1, 1.2, 1.3 and 1.4 shall be effective immediately and operate as interim orders pending the return date of this application.

Venns Attorneys
Ref: Nida Jooste

BY ORDER OF THE COURT

R J JOOSTE
REGISTRAR

/egoba
17/11/2022

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG		
Private Bag X0014, Pietermaritzburg 3200		
	2022 -11- 17	
KZND-PMB-007		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG		

"TH3"



**ADOPTED AMENDED BUSINESS RESCUE PLAN INCLUDING
AMENDMENTS PROPOSED AND APPROVED AT MEETING OF
CREDITORS ON 11 JANUARY 2024
(VISION TRANSACTIONS)**

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

in relation to

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

prepared by the Joint Business Rescue Practitioners

**As originally published on 29 November 2023 including amendments as
approved and adopted on 11 January 2024**

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CORPORATE INFORMATION AND ADVISOR DETAILS

Company

Tongaat Hulett Limited

Business Rescue Practitioners

Peter van den Steen

Trevor Murgatroyd

Gerhard Albertyn

Preparation of the Independent Liquidation Dividend Estimate

BDO

Legal Advisors to the Business Rescue Practitioners

Werksmans

Legal Advisors to the Company

Shepstone Wylie Attorneys

ENS Africa

Cox Yeats Attorneys

Restructuring Advisors to the Company

Metis Strategic Advisors

Matuson and Associates

BSM

Tenurey BSM

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TABLE OF CONTENTS

CHAPTER 1 – INTRODUCTION	5
1. <i>Structure of the Business Rescue Plan.....</i>	5
2. <i>Executive Summary</i>	6
3. <i>Interpretation.....</i>	14
4. <i>Disclaimer.....</i>	27
CHAPTER 2 – BACKGROUND AND PROPOSALS	30
5. <i>PART A – Background</i>	30
6. <i>PART B – The Proposals</i>	78
7. <i>Binding nature of this Business Rescue Plan.....</i>	111
8. <i>Moratorium (Section 150(2)(b)(i)).....</i>	112
9. <i>Benefits of Adopting the Business Rescue Plan compared to liquidation (Section 150(2)(b)(vi))</i>	112
10. <i>Risks of the Business Rescue Plan.....</i>	121
11. <i>PART C – Assumptions and Conditions of Proposal</i>	123
12. <i>Termination of Business Rescue (Section 150(2)(c)(iii))</i>	124
13. <i>Substantial Implementation (Section 150(2)(c)(i)(bb)).....</i>	125
14. <i>Projected Balance Sheet and Projected Income Statement (Section 150(2)(c)(iv)).....</i>	126
CHAPTER 3 – ADMINISTRATIVE MATTERS.....	133
15. <i>Existing litigation or alternate dispute resolution proceedings</i>	133
16. <i>Dispute Mechanism</i>	133
17. <i>Domicilium</i>	136
18. <i>Ability to amend the Business Rescue Plan.....</i>	137
19. <i>Severability.....</i>	138
CHAPTER 4 – CONCLUSION AND BRPS’ CERTIFICATES.....	139
20. <i>Conclusion</i>	139
21. <i>BRPs’ certificates</i>	139
ANNEXURE A - LIST OF THE CREDITORS OF THE COMPANY	141
ANNEXURE B – EVENTS WHICH LED TO THE COMPANY COMMENCING BUSINESS RESCUE	142
ANNEXURE C– GROUP STRUCTURE.....	143

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ANNEXURE D – SUMMARY OF OPERATIONAL INITIATIVES AND INTERVENTIONS	144
ANNEXURE E – LISTING OF IMMOVABLE PROPERTIES	150
ANNEXURE F - PROXY FORM FOR CREDITORS OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("COMPANY")	151
ANNEXURE G – VISION PARTIES TURNAROUND PLAN.....	154
ANNEXURE H – LISTING OF ISSUED SECURITIES OF THL	158
ANNEXURE I – BRPS' REMUNERATION AGREEMENT.....	159
ANNEXURE J - EXISTING LITIGATION AND ALTERNATIVE DISPUTE PROCEEDINGS	160
ANNEXURE K – AFSA-SARIPA RULES.....	163
ANNEXURE L – SUGAR INDUSTRY CONSIDERATIONS	164

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CHAPTER 1 – INTRODUCTION

1. Structure of the Business Rescue Plan

In accordance with section 150(2) of the Companies Act, this Business Rescue Plan is divided into several chapters.

1.1. 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.

1.2. Chapter 2 – Proposals

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

1.2.1. Part A – Background

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.

1.2.2. Part B – Proposals

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

1.2.3. Part C – Assumptions and Conditions

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

1.3. 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

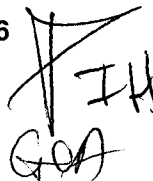
mandatory Dispute Mechanism to be employed to resolve disputed matters relating to this Business Rescue Plan.

1.4. Chapter 4 – Conclusion and BRPs Certificates

This chapter contains the BRPs' recommendation and the confirmatory certificate that is required to accompany the Business Rescue Plan.

2. Executive Summary

- 2.1. Capitalised terms and/or expressions used in this Executive Summary shall have the meanings assigned to them below in paragraph 3.
- 2.2. The BRPs have been advised that the Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The Lender Group and the BRPs have received proof that the substantial cash deposit (referred to above) is held in a bank account in South Africa. The BRPs are advised by the Vision Parties that know your client ("**KYC**") and Financial Intelligence Centre Act ("**FICA**") requirements have been complied with. The Vision Transaction does not involve, nor is it dependent on, financing to be provided by the Public Investment Corporation ("**PIC**").
- 2.3. The key feature of this Business Rescue Plan, pursuant to its Adoption and implementation, is the acquisition by the Vision Parties of the substantial Lender Group Claims (as noted above) and the subsequent conversion by the Vision Parties of a material portion of such Claims into new equity in THL ("**the Vision Transactions**"). This, together with the other Proposals put forward in this Business Rescue Plan, will result in (inter alia):

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- 2.3.1. the continued trading of THL substantially in its pre-Commencement Date composition. In this regard it is noted that THD will remain a subsidiary of THL, subject to the implementation of THD's business rescue plan;
 - 2.3.2. the recapitalisation of the THL balance sheet through the Proposals put forward in this Business Rescue Plan, in particular the conversion by the Vision Parties of a material portion of the former Lender Group Claims into equity; and
 - 2.3.3. the continued listing of THL on the JSE, albeit with current Shareholders becoming minority shareholders and the Vision Parties in aggregate holding the bulk of the listed shares in the Company following the abovementioned debt to equity conversion.
- 2.4. The strategy to be adopted by the BRPs in the execution of this Business Rescue Plan, in summary, is to:
- 2.4.1. implement and complete the Vision Transactions;
 - 2.4.2. continue to run the operations of the THL businesses until completion of the Vision Transactions and the completion of the parallel business rescues of THD, THSSA and Voermol;
 - 2.4.3. secure working capital facilities, in the form of ongoing PCF (without any obligation on the part of the IDC to increase or extend its existing PCF advanced to the Company), sufficient to fund the THL businesses for the duration of the Business Rescue process;
 - 2.4.4. continue the process of business improvement which, may include some degree of rationalisation of the cost base of the THL operations and head office (which process may include some employee retrenchments);

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- 2.4.5. resolve the current dispute with SASA in relation to the payment obligations owing by THL to SASA arising after commencement of Business Rescue (i.e. from 28 October 2022);
 - 2.4.6. oversee the parallel business rescues of THD, THSSA and Voermol;
 - 2.4.7. engage with and renegotiate to the satisfaction of IDC or any other third-party, and service in the normal course of business, any working capital facility approved and advanced by IDC or any other third party to the Company as PCF (it being recorded that no obligation exists on the part of the IDC to increase or extend its existing PCF advanced to the Company); and
 - 2.4.8. to the extent possible, make payment (in full or in part) in relation to all remaining claims held by the Company's Creditors as contemplated in this Business Rescue Plan. For the avoidance of doubt, where there are insufficient or no funds available for Distribution(s) or other means in respect of any payment against any Claim against the Company, the residual Claim that remains unpaid will become Unenforceable against the Company. This does not apply to the payment arrangement agreed to in relation to SASA nor to the R75m to be made available to Unsecured Creditors.
- 2.5. If approved and successfully implemented as contemplated herein, this Business Rescue Plan will result in:
- 2.5.1. the rescue of the Company (or as an alternative, the business of the Company) which will continue in business – albeit under new ownership;
 - 2.5.2. the avoidance of a major humanitarian and financial catastrophe in the KZN region in general, and in the sugar supply chain in particular as outlined in more detail in paragraph 9.3.5;


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- 2.5.3. the opportunity for new jobs to be created as the business grows under new ownership with Vision Parties as SEPs;
- 2.5.4. the implementation of a partial debt-for-equity swap by the Vision Parties subscribing for new shares in the Company that would result in the Vision Parties collectively owning 97.3% of the total issued share capital of the Company. The consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn;
- 2.5.5. in addition to the c.R1.3bn already paid to various critical suppliers (see below), the Vision Parties have agreed to (either by making a loan to THL or otherwise ensuring THL is able to so) THL paying an amount of R75m as a Distribution to Unsecured Creditors, pro-rata to their respective Claims. Such Distribution is to be made subsequent to full implementation of the Vision Transactions;
- 2.5.6. a positive outcome for Unsecured Creditors. In this regard it is noted that in liquidation Unsecured Creditors would be anticipated to receive nil. Equally so – without the abovementioned amount being made available by the Vision Parties – Unsecured Creditors would be anticipated to receive nil in this business rescue;
- 2.5.7. existing Shareholders retaining an interest of 2.7% of the equity in THL with its positively recapitalised balance sheet. In this regard, it is noted that in liquidation shareholders would have been anticipated to receive nil. Equally so, in an alternatively structured transaction (the sale of the assets of THL to the Vision Parties), shareholders would again be anticipated to receive nil. Consequently, this proposal results in positive value accruing to shareholders through the retention of their shareholdings and

becoming minority shareholders in the still-listed, post-recapitalisation, Vision Parties-controlled THL;

2.5.8. a portion or the entire amount of the IDC PCF Facility is to be secured in a working capital facility which is sufficient to fund the working capital requirements of the Company for at least the duration of the Business Rescue proceedings, and thereafter it would be the goal of the Vision Parties to secure working capital facilities into the future beyond the Adoption and subsequent implementation of this Business Rescue Plan; and

2.5.9. THL retaining its listing on the JSE.

2.6. Subsequent to the Adoption of this Business Rescue Plan, in the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of new THL shares to the Vision Parties to be effected, this Business Rescue Plan contemplates in substitution that the currently proposed Vision Transactions will be switched from transactions contemplating a new issue of THL shares to transactions contemplating the acquisition by the Vision Parties of all of THL's assets and businesses (as going concerns) (see paragraph 6.1.7 below).

2.6.1. Whilst employees, Unsecured Creditors and Secured Creditors would be largely unaffected by such a change, once it has sold its assets and businesses (leaving THL as an empty shell), THL will be delisted from the JSE and liquidated, resulting in its shares (those held by existing Shareholders) having nil value.

2.7. Once this Business Rescue Plan has been approved, Adopted and implemented in accordance with Chapter 6 of the Companies Act, including payment of the Distributions as provided for, any residual Creditor Claims will become Unenforceable, other than as specifically provided for in this Business Rescue Plan.

- 2.8. Affected Persons have been provided with two alternative business rescue plans (including this one) for their consideration and both such business rescue plans will be placed before a meeting of Creditors for approval of the proposed amendments, and if so approved thereafter for the approval and Adoption of one of the business rescue plans. Should either the first or the second business rescue plans not be approved, then the provisions of section 153 of the Companies Act will apply, with the variable outcomes contemplated in section 153(1).
- 2.9. 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 Creditors.
- 2.10. If any Creditor disputes its status and/or Claim as reflected in this Business Rescue Plan, such Creditor is directed to paragraphs 5.3.7 and 16 of this Business Rescue Plan.
- 2.11. Creditors each have a Voting Interest equal to the value of their Claims, as accepted and/or recognised by the BRPs as set out in Annexure **A** (see paragraph 5.3.8).
- 2.12. 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.
- 2.13. As this Business Rescue Plan does not alter the rights of the holders of any class of the Company's securities, Shareholders are neither required nor entitled to vote on the plan in order for the plan to be Adopted.
- 2.14. Ad hoc meetings with certain Shareholders and their representatives have taken place since the commencement of business rescue proceedings with the aim of constructively engaging with information sharing and solution

seeking (under non-disclosure). In addition, a formal shareholders engagement meeting was held 26th September 2023, with the aim of informing Shareholders and engaging with them about the proposed business rescue plan and the impact thereof on their interests and consulting with the wider shareholder body in that regard.

- 2.15. Prior to the publication of this Business Rescue Plan the Lender Group held security over all material assets of the Company including, without limitation, a reversionary cession in security in respect of those assets over which IDC has prior ranking security as a PCF Lender; and would, in the absence of the Proposals contemplated in this Business Rescue Plan, likely be the recipients of most, if not all, Distributions arising from liquidation or any alternative proposals.
- 2.16. Upon, and after the Adoption of this Business Rescue Plan, the Vision Parties will acquire the Claims and security of the Lender Group (see paragraph 2.2 above) and will be substituted as the Secured Creditor.
- 2.17. In endeavouring to balance the rights of all stakeholders following the principles set out in section 7(k) of the Companies Act, the BRPs have reached agreement with Vision Parties in terms of which those parties will facilitate a Distribution of R75m in aggregate to the Unsecured Creditors, which Creditors would otherwise realise nil. This concession is coupled with the proposed structure of the Vision Transactions which will result in the Company's Shareholders retaining a 2.7% interest in the recapitalised (and still listed) THL – again noting that without the proposed structure Shareholders would have received nil.
- 2.18. The Vision Parties have accordingly agreed to make available R75m to be paid by THL to Unsecured Creditors following the implementation of the Vision Transactions (as referenced above in paragraph 2.5.5).
- 2.19. A constant factor at play in the execution of this Business Rescue is the enormous social impact that would result from a collapse of, in particular,

the South African sugar businesses, and thus the need to balance this alongside the interests of the other stakeholders in this Business Rescue. The Vision Transactions have at their heart, the intention of relieving THL of its Financial Distress, maintaining the operations of the underlying businesses of THL, building the businesses of THL into the future with the support of the Vision Parties as SEPs, and thus avoiding the otherwise catastrophic social impact that would result from a collapse of THL.

- 2.20. In assessing this Business Rescue Plan, cognisance should be taken of the extent of payments already made to third-party growers and other critical suppliers with pre-Commencement Date Claims. The amount of pre-Commencement Date Unsecured Creditors' Claims paid equates to c.R1.3bn as of 31 October 2023, of which c.R1.1bn related to payments made to cane growers in the interest of keeping the industry as stable as possible. In the absence of Business Rescue, these amounts would merely have been Concurrent Claims with little to no prospect of recovery.
- 2.21. Finally in assessing this Business Rescue Plan, cognisance should be taken of the importance of the role of IDC in providing significant PCF which has been the oxygen and lifeblood of this rescue process, without which it is probable that the liquidation of THL would have ensued. The BRPs have constantly been aware that working capital for this highly seasonal business is critical to its survival – both during the business rescue proceedings and beyond – and have consequently factored this ongoing PCF/working capital requirement into the decision making and processes embarked on in reaching the point of publication of this Business Rescue Plan. Having said that, the BRPs point out that there is no obligation on the part of IDC to increase or extend the terms of its existing PCF advanced to the Company.
- 2.22. For the benefit of the readers of this Business Rescue Plan, the BRPs have compiled a summary (refer to Annexure L) of their views and understanding of the key challenges currently facing the sugar industry and reflect on the challenges faced by THL before and during the Business Rescue process in this regard.

3. Interpretation

3.1. In this Business Rescue Plan the following terms and/or expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings;

3.1.1. **"Absa Corporate Finance (M&A Advisory)"** means the corporate finance business unit within the Corporate and Investment Banking Division of Absa Bank Limited (registration number: 1986/004794/06), a company registered and incorporated in accordance with the company laws of South Africa;

3.1.2. **"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;

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

3.1.4. **"Affected Person/s"** shall bear the meaning ascribed thereto in section 128(1)(a) of the Companies Act, being the Company's Shareholders, Creditors, employees and Trade Unions;

3.1.5. **"Agricultural Land"** means the c.11 300 hectares of agricultural land, owned by the Company, predominantly located along the north coast of KwaZulu-Natal, the majority of which is under sugarcane farming and which property is leased out to third parties with supply agreements in place to cater for the delivery of sugarcane to the Company (refer to Annexure **E**);

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- 3.1.6. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 3.1.7. **"Agency Agreements"** means various written legal agreements, entered into by the Company and certain of its subsidiaries, which entail one or more subsidiaries acting as the agent for an undisclosed principal. In all such cases, the ultimate principal is THL, whereby the agent subsidiary conducts(ed) relevant business on behalf of the ultimate principal;
- 3.1.8. **"Albertyn"** means Gerhard Conrad Albertyn a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.9. **"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;
- 3.1.10. **"Board"** means the board of directors of the Company as at the Publication Date as set out in paragraph 5.2;
- 3.1.11. **"BRPs"** means the joint business rescue practitioners of the Company, being van den Steen, Murgatroyd and Albertyn;
- 3.1.12. **"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;
- 3.1.13. **"Business Day"** means any day other than a Saturday, Sunday, or official public holiday in South Africa;
- 3.1.14. **"Business Rescue"** means the business rescue proceedings of the Company conducted in terms of Chapter 6 of the Companies Act;

- 3.1.15. "**Business Rescue Costs**" means all relevant costs incurred in the execution of this Business Rescue, including the remuneration, expenses, disbursements and fees of the BRPs and of their Advisors;
- 3.1.16. "**Business Rescue Plan**" means this document together with all of its annexures, as amended from time to time in accordance with the Companies Act, and prepared in accordance with section 150 of the Companies Act;
- 3.1.17. "**CIPC**" means the Companies and Intellectual Property Commission, established in terms of section 185 of the Companies Act;
- 3.1.18. "**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 or after the Commencement Date and/or under section 136(3) of the Companies Act;
- 3.1.19. "**Closing Date**" means the date of fulfilment of the last of the conditions precedent needing to be fulfilled in relation to the definitive agreements to be concluded in relation to the Vision Transactions;
- 3.1.20. "**Commencement Date**" means 27 October 2022, being the date upon which Business Rescue commenced in accordance with section 129 of the Companies Act;
- 3.1.21. "**Company**" or "**THL**" means Tongaat Hulett Limited (registration number: 1892/000610/06)), a public company incorporated in accordance with the laws of South Africa, listed on the JSE, which

shares are currently suspended from trading, at present under Business Rescue;

- 3.1.22. **"Companies Act"** means the Companies Act 71 of 2008, as amended, including the regulations promulgated thereunder;
- 3.1.23. **"Competition Act"** means the Competition Act 89 of 1998, as amended, including the regulations promulgated thereunder;
- 3.1.24. **"Competition Commission"** means the Competition Commission as constituted in the Competition Act;
- 3.1.25. **"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 Companies Act;
- 3.1.26. **"Creditor"** means any creditor, including without any limitation, PCF Lenders, Disputed Creditors and contingent Creditors, with a monetary Claim against the Company;
- 3.1.27. **"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;
- 3.1.28. **"Disputed Creditor"** means a Creditor with a Disputed Claim;
- 3.1.29. **"Dispute Mechanism"** means the dispute resolution mechanism set out in paragraph 16;
- 3.1.30. **"Distributions"** means a transfer of money or other property of the Company, including its own shares, made to Creditors in respect of their approved Claims as provided for in this Business Rescue Plan, including any deemed Distributions as contemplated in this Business Rescue Plan;

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- 3.1.31. "**Financially Distressed**" or "**Financial Distress**" shall bear the meaning ascribed thereto in section 128(1)(f) of the Companies Act;
- 3.1.32. "**Gledhow**" means Gledhow Sugar Company Proprietary Limited (in business rescue);
- 3.1.33. "**Gledhow s175 Claim**" means the claim of SASA against THL in respect of the special levy under clause 175 of the SI Agreement in respect of Gledhow in the amount of R97,015,921;
- 3.1.34. "**High Court**" means the High Court of South Africa;
- 3.1.35. "**IDC**" means Industrial Development Corporation of South Africa Limited (registration number 1940/014201/06), a company registered and incorporated in accordance with the laws of South Africa;
- 3.1.36. "**IDC PCF Facility**" means the PCF loan facility provided by the IDC to the Company in an initial principal amount of R1.2bn on or about 23 December 2022, the principal amount of which facility:
- 3.1.36.1. was increased to R1.725bn on or about 28 July 2023;
- 3.1.36.2. was increased to R2.3bn on or about 5 October 2023,
- and the principal amount of which facility may increase to approximately R2.6bn as contemplated by paragraph 5.3.5.7 below;
- 3.1.37. "**IDC Security**" means the first-ranking security cession of bank accounts and trade debtors and encumbrance over all inventories (and any related insurance claims) held by IDC to secure the IDC PCF Facility;

- 3.1.38. **"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;
- 3.1.39. **"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;
- 3.1.40. **"Kagera Sugar"** or **"Kagera"** means Kagera Sugar Limited (incorporation number 5036), a limited liability company registered and incorporated in accordance with the laws of Tanzania;
- 3.1.41. **"Lender Group"** means the group of lenders to the Company, 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);
- 3.1.42. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 3.1.43. **"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;

- 3.1.44. **"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;
- 3.1.45. **"Meeting"** means the virtual meeting to be held in terms of section 151 of the Companies Act on Wednesday 10 January 2024 at 08:00am for the purpose of considering and if deemed appropriate amending or voting on this Business Rescue Plan;
- 3.1.46. **"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;
- 3.1.47. **"Mills"** means the Company's three operational sugar mills in South Africa, being the mills located in Amatikulu, Felixton and Maidstone;
- 3.1.48. **"Murgatroyd"** means Trevor John Murgatroyd a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.49. **"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;
- 3.1.50. **"PCF Creditor"** means a Creditor, authorised and accepted as such by the BRPs, from whom the Company has obtained PCF during the Business Rescue;
- 3.1.51. **"PCF Employee"** means any employee of the Company who rendered services to the Company and is owed any remuneration,

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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;

- 3.1.52. "**PCF Lenders**" means any/all financier(s) advancing PCF to the Company, it being recorded that as at the Publication Date, IDC and GuardRisk are the only PCF Lenders;
- 3.1.53. "**PIC**" means the Public Investment Corporation SOC Limited;
- 3.1.54. "**Proposals**" means the proposals set out in Chapter 2 of this Business Rescue Plan;
- 3.1.55. "**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 **29 November 2023**;
- 3.1.56. "**Rand**" or "**R**" or "**ZAR**" means the lawful currency of South Africa;
- 3.1.57. "**Refinery**" means the Company's central sugar refinery located in Durban, KwaZulu-Natal;
- 3.1.58. "**Rejection Date**" means the date on which a Claim is rejected by the BRPs in accordance with the provisions of this Business Rescue Plan;
- 3.1.59. "**RGS**" means RGS Group Holdings Limited (registration number C134230 – C2/GBL) a company registered and incorporated in accordance with the laws of Mauritius;
- 3.1.60. "**SARS**" means the South African Revenue Services;
- 3.1.61. "**SA Sugar**" means the Company's South African sugar operations comprising of the following divisions: Agricultural Land; the Mills;

Darnall sugar mill; cane procurement and cane supply management; trademarks and other intellectual property, marketing, sales and distribution; the Refinery; and Voermol animal feeds division;

- 3.1.62. "**SASA**" means the South African Sugar Association (registration number 1915/00023/00), an association incorporated in terms of section 2 of the Sugar Act 1978;
- 3.1.63. "**SASEXCOR**" means the S.A. Sugar Export Corporation (Pty) Ltd;
- 3.1.64. "**Secured Creditor**" means a Creditor who holds security for a Claim against the Company in terms of Insolvency Law;
- 3.1.65. "**Securities**" means any shares or other similar instruments, irrespective of their form or title, issued or authorised to be issued by a company, as defined in the Companies Act;
- 3.1.66. "**Shareholder**" means a shareholder, as defined in section 1 of the Companies Act, of the Company;
- 3.1.67. "**South Africa**" means the Republic of South Africa;
- 3.1.68. "**Strategic Equity Partners**" or "**SEPs**" means potential strategic equity partners/investors in the Company and/or the THL Group and/or the potential acquirer of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique and/or the potential acquirer of SA Sugar only;
- 3.1.69. "**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 made in the BRPs' sole and absolute discretion, as envisaged in paragraph 13;

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- 3.1.70. "**Sugar Act**" means the Sugar Act, 1978;
- 3.1.71. "**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;
- 3.1.72. "**THA**" means Tongaat Hulett Acucareira de Mozambique, S.A. (registration number 100264501), a company duly incorporated in accordance with the laws of Mozambique;
- 3.1.73. "**THD**" 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;
- 3.1.74. "**THL Botswana**" means Tongaat Hulett (Botswana) Proprietary Limited (registration number: 5032), a private company with limited liability incorporated in accordance with the laws of Botswana;
- 3.1.75. "**THL Group**" means THL and each of its subsidiaries, joint ventures and associated companies;
- 3.1.76. "**THL Mozambique**" means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Mozambique and operating in accordance with the laws of Mozambique as set out in Annexure C;

- 3.1.77. **"THL Zimbabwe"** means all THL's direct and indirect shares in its subsidiaries operating in the Republic of Zimbabwe and operating in accordance with the laws of Zimbabwe as set out in Annexure C;
- 3.1.78. **"THSSA"** means Tongaat Hulett Sugar South Africa Limited (registration number: 1965/000565/06), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;
- 3.1.79. **"Trade Unions"** means UASA – The Union ("**UASA**"), The Association of Mineworkers and Construction Union ("**AMCU**") and the Food and Allied Workers Union ("**FAWU**");
- 3.1.80. **"Unenforceable"** means the inability to enforce any and all Claims against the Company, as envisaged in section 154 and/or as read with section 152 of the Companies Act, upon the Adoption and implementation of the Business Rescue Plan;
- 3.1.81. **"Unsecured Creditors"** means all Creditors with Concurrent Claims against the Company;
- 3.1.82. **"van den Steen"** means Petrus Francois van den Steen a BRP as contemplated in section 128(1)(d) of the Companies Act;
- 3.1.83. **"VAT"** means the value-added tax levied in terms of the Value-Added Tax Act 89 of 1991, as amended;
- 3.1.84. **"Vision Parties"** means a grouping made up of the following participants: Terris AgriPro (Mauritius) (registration number: 171903 GBC), registered and incorporated in Mauritius; Remoggo (Mauritius) PCC (registration number 117836 C1/GBL), a fund registered and incorporated in accordance with the laws of Mauritius; Guma Agri and Food Security Ltd (Mauritius) (registration number: C192979), registered and incorporated in

Mauritius; and Almoiz NA Holdings Ltd (registration number:67410836) registered and incorporated in accordance with the laws of the United Arab Emirates;

3.1.85. **"Vision Transactions"** means the acquisition by the Vision Parties of the substantial Claims and security previously held by the Lender Group and the subsequent conversion by the Vision Parties of a portion of such Claims into new equity in THL;

3.1.86. **"Voermol"** means Voermol Feeds Proprietary Limited (registration number 1936/007892/07), a private company with limited liability incorporated in accordance with the laws of South Africa, at present in Business Rescue;

3.1.87. **"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;

3.1.88. **"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; and

- 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 specific reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be.

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- 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 directors, 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 efforts to ensure the accuracy of the information contained herein, it should be noted that the BRPs investigations have been limited in nature due to:

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- 4.2.1. the time constraints placed on the BRPs by the Companies Act and Creditors;
 - 4.2.2. pressure from Affected Persons to affect 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; and
 - 4.2.5. the non-completion of annual financial statement audits as at the date of Publication.
- 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. This Business Rescue Plan contains forecast financial information that is not drafted in terms of the JSE Listings Requirements. This disclaimer is provided to clarify the nature and limitations of the information contained in this Business Rescue Plan.
- 4.5. By accessing and reviewing this Business Rescue Plan, you acknowledge and accept the above disclaimer. It is important to exercise caution and diligence when considering the contents of this Business Rescue Plan and to consult with relevant experts and advisors as necessary. The Company disclaims any liability for any loss or damage resulting from the use or reliance on the information contained herein. It is important to note the information and forecasted data of this Business Rescue Plan have not been reviewed or audited by the Company's external auditor.
- 4.6. JSE Listings Requirement: The forecast financial information presented in this Business Rescue Plan has been prepared in accordance with section 150 of the Companies Act, but has not been prepared in accordance with the JSE's

Listings Requirements. Therefore, it does not meet the specific reporting and disclosure standards set forth by the JSE.

- 4.7. 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.
- 4.8. The BRPs have not independently assessed the forecast value of THL post the implementation of this Business Rescue Plan beyond satisfying themselves that the Proposals will result in a reasonable prospect of THL being rescued and trading successfully after implementation of the Plan and the Proposals.
- 4.9. 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.
- 4.10. Affected Persons are advised and encouraged 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 – BACKGROUND AND PROPOSALS

5. PART A – Background

5.1. Holding Company:

5.1.1. The Company is a public company listed on the Johannesburg Stock Exchange and is the parent company (directly or indirectly) of numerous entities. An organogram of the group of entities is contained in Annexure C.

5.2. Directors of the Company:

5.2.1. As at the Publication Date, the executive directors of the Company, according to the CIPC, were Dan Marokane (acting Chief Executive Officer) and Robert Aitken (Chief Financial Officer).

5.3. Company Information:

Financial Year End	31 March
Registered Business Address	Amanzimnyama Hill Road Tongaat KwaZulu-Natal 4400
Postal Address	P O Box 3 Tongaat KwaZulu-Natal 4400
Business Telephone Number	+27 (32) 439 4000
Auditors	Ernst & Young

5.3.1. Company Background:

5.3.1.1. The Company is 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 which collectively make up the THL Group.

5.3.1.2. Across Southern Africa, the THL Group's operations are of significant scale geographically, economically, and socially, as set out below:

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

5.3.1.3. In South Africa, the profile of the Company's sugar operation, property business and head office is set out below:

- the Company's operations are located in the KwaZulu-Natal province in the districts of Ethekwini, Zululand, Umkhanyakude, King Cetswayo, and iLembe;
- the Company's trading activities during the 2023 financial year generated revenue of c.R7.8bn;

- the Company 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 market requirements) and 400 000 tons of animal feed;
- the Company's ongoing agriculture activities span 11 300 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;
- the Company sources c.91% 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;
- a total of c.2 500 people are employed by the Company, with a further c.23 000 indirect employment opportunities created within South Africa. The communities in which the Company operates not only benefit from employment opportunities, but also the Company's socio-economic development initiatives and investments; and
- as identified in an independent assessment of the Company's economic footprint, it has been estimated that arising from the Company's trading

activities during the 2021 financial year, an additional c.R28.8bn of output was produced within the South African economy, contributing c.R11bn to the GDP of South Africa (based on direct, indirect and induced impacts).

5.3.1.4. The current THL Group structure comprises of c.60 subsidiaries and associated companies, however many of the South African and Zimbabwean companies are dormant or investment holding entities with limited trading activity. A detailed group structure is reflected in Annexure C. From this it will be noted that certain of the legal entities trade as divisions of the Company pursuant to Agency Agreements that were entered into in the 1980's and which are in the process of being unwound.

5.3.1.5. The most relevant of the Agency Agreements are those in relation to THSSA and Voermol. THSSA and Voermol do not carry on any activities for their own benefit that would generate revenue for themselves, and they are wholly financially dependent on the Company. The Company's SA Sugar division is operated by the Company and pursuant to relevant Agency Agreements between the Company and THSSA and Voermol. These Agency Agreements entail:

- Assets: Assets of the agents are held nominally as they are those of the principal, being beneficially owned by the Company.
- Tenure: The agreements and agency arrangements are generally active for an indefinite period of time and terminable on one month's

written notice. The Agency Agreements are in the process of being unwound, which will result in the entire SA Sugar division being conducted solely in the Company, as a division, with no further agency relationship and/or representation.

- Disclosure: The existence of the Agency Agreements was previously undisclosed to third parties. However pursuant to a letter dated 20 December 2022 from THSSA and Voermol to all known creditors of those companies, the Agency Agreement arrangements were disclosed.
- Recourse: THSSA has at all times acted as the agent of the Company, on the basis that the Company has been its undisclosed principal. Consequently, all transactions that have historically been concluded by THSSA with any person or entity, have been so concluded by THSSA in its capacity as agent for an undisclosed principal, being the Company. Now that the existence of the Agency Agreement has been disclosed, any dealings with THSSA will be on the basis that it is contracting on behalf of the Company. Furthermore, Voermol has at all times acted as the agent of THSSA (and by virtue of the aforementioned THSSA agency, as the sub agent of the Company), on the basis that THSSA has been its undisclosed principal and the Company the ultimate undisclosed principal. Consequently, all transactions that have historically been concluded by Voermol with any person or entity, have been so concluded by Voermol in its capacity as agent for an undisclosed principal, being THSSA and, by

virtue of the aforementioned THSSA agency, as the sub agent of the Company.

- In summary: The effect is that all assets, liabilities, income and expenses are those of the Company, as principal. Any claims instituted against THSSA and/or Voermol will result in those entities having a corresponding claim against THL.

5.3.1.6. The extent of the challenges faced by the Company, 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 Company's Shareholders and other stakeholders.

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

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

5.3.3. **Aims and objectives of Business Rescue:**

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

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

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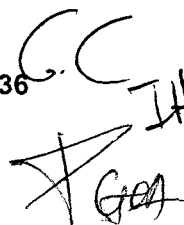
- a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
- the development and implementation of a Business Rescue Plan which has as its aim either or both of:
 - the rescue of the Company by restructuring its affairs, business, property, 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
 - achieving a better return for the Company's Creditors or Shareholders than would result from the immediate liquidation of the Company.

5.3.3.2. The proposed rescue of the Company as set out in this Business Rescue Plan seeks to meet both of the objectives set out in the immediate paragraphs above.

5.3.4. Business Rescue events:

5.3.4.1. 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 of the commencement of Business Rescue and the appointment of the BRPs	27 October 2022
First statutory meeting of employees	3 November 2022

36


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, 22 February 2023 29 March 2023, 31 August 2023, 26 October 2023 and 21 November 2023
Confirmation of the extension of the date to publish the Business Rescue Plan	15 November 2022, 27 January 2023, 27 February 2023 31 March 2023, 8 September 2023, 30 October 2023, and 23 November 2023
Meetings in terms of section 143 of the Companies Act to vote on the BRPs' remuneration agreement:	
Shareholders meeting	9 December 2022
Creditors meeting	9 December 2022
Publication of the initial business rescue plan	31 May 2023
Meeting to consider the initial business rescue plan: Outcome – Meeting adjourned and Business Rescue Plan to be amended and meeting to be reconvened at a date no later than 30 September 2023	14 June 2023
Notice to Affected Persons regarding application to the High Court of South Africa, KwaZulu-Natal Local Division, Durban under case number D4472/2023 ("SASA Declarator Application")	15 June 2023
Court hearing dates in relation to the SASA Declarator Application	13 and 14 September 2023
Meeting with Shareholders	26 September 2023
Publication of the amended Business Rescue Plans	29 November 2023
Expiry and repayment of current IDC PCF Facility	30 November 2023
IDC PCF Facility extended to 28 February 2024	13 December 2023
Court hearing relating to various matters concluding with an order adjourning the S151 Meeting <i>sine die</i>	13 December 2023
Distribution of the proposed amendments to the Business	2 January 2024

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Rescue Plans previously published on 29 November 2023	
Meeting to consider the amended Business Rescue Plans	10 January 2024

5.3.4.2. 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.

5.3.5. **Steps taken since the appointment of the BRPs:**

5.3.5.1. 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.

5.3.5.2. 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.

5.3.5.3. 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.

5.3.5.4. Operations

- A key priority for the BRPs has been to bring about stability and thereafter continuity to the business and operations of the Company. Shortly after the Commencement Date, the SA Sugar operations were brought to a standstill as there was no free

cash available to fund operations or to settle Creditors or Employees.

- Shortly thereafter the BRPs secured PCF to fund short-term working capital requirements, which facilitated the restart of the SA Sugar operations. Thereafter the BRPs secured further PCF (as detailed below) to complete the 2022/23 South African sugar season and to carry out the critical off-crop capital expenditure and/or maintenance ("**off-crop programme**"). The SA Sugar business is now funded (for a limited period) and is operating under the BRPs' guidance. The existing, and only PCF facility secured by the Company, expires and is repayable on or before 30 November 2023.
- Cost Reduction Initiatives:
 - Since their 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.
 - See Annexure **D** for a detailed summary of all initiatives implemented and the associated outcomes.

5.3.5.5. Other business rescue proceedings - Included in the operations of the THL Group are wholly owned subsidiaries THSSA, THD and Voermol, each of which is in business rescue. The BRPs are also overseeing each of these inter-related business rescues, with each

of these subsidiaries having its own business rescue plan.

5.3.5.6. International operations - THL Zimbabwe, THL Botswana and THL Mozambique are not in business rescue, continue to operate as independent legal entities and are self-funding.

5.3.5.7. PCF Funding – Since their appointment, the BRPs have devoted significant time and resources towards engaging with the Lender Group and thereafter IDC, in order to secure and structure the requisite PCF to support the SA Sugar operations and avoid its collapse into liquidation – initially to restart operations, and latterly to complete the 2022/23 sugar season and carry out the off-crop programme necessary to commence the 2023/24 season. This was secured as follows:

- the raising of initial PCF from the Lender Group in an amount of R900m, which brought about short-term stability in order for the Company to restart the Mills and Refinery operations – which PCF was repaid from the proceeds of the IDC PCF Facility raised from IDC as outlined below;
- the subsequent increase in facilities to R1.2bn in PCF raised from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to the end of June 2023, including its annual off-crop maintenance programme;
- the initial facility raised from the IDC PCF Facility was applied to repay the Lender Group PCF in order

for the Lender Group to release their security over the bank accounts, inventory and trade receivables (and any related insurance claims), which is now the first-ranking security of the IDC for its PCF Claim;

- the subsequent increasing of facilities to R1.725bn PCF from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to 6 October 2023;
- the subsequent increasing of facilities to R2.3bn PCF from IDC, on a secured basis, which enabled the Company to fund its working capital requirements to 30 November 2023; and
- the facility has been extended to 28 February 2024 subject to, *inter alia*, Adoption of this Business Rescue Plan by 15 January 2024 and the provision of security to cover the security shortfall projected by IDC on its PCF Claim in a form and manner acceptable to IDC.

5.3.5.8. Strategic Equity Partner –

- In February 2023, the BRPs embarked on an accelerated sales process aimed at engaging with potential SEPs interested in the acquisition of or investment in either:
 - 1) THL itself or the whole of the THL Group;
 - 2) all of SA Sugar, THL Zimbabwe, THL Botswana and THL Mozambique; or
 - 3) the SA Sugar operations.

- The logic for the abovementioned three acquisition options was premised on alignment with the basis on which the critical PCF funding had been secured. This PCF funding conditionality required that the sugar enterprise of THL in all jurisdictions was maintained as a whole and not disposed of in part, or on a piecemeal basis. SA Sugar was however separately included by the BRPs as an option to enable any such offers to be considered as an alternative to the disposal of the whole – and which would necessarily need to replace the PCF facility as part of such a transaction.
- SEPs were identified through a process referencing previous interested parties and key market participants who demonstrated the following criteria:
 - interest in investing in or acquiring the THL Group as a whole, or the SA Sugar businesses of THL;
 - relevant industry and regional technical expertise and operational ability;
 - balance sheet strength and funding capacity;
 - a plausible business case being presented for the future of the acquired businesses; and
 - valuation of the relevant assets and/or offer price that demonstrated a likely ability to conclude a transaction.
- Whilst a substantial number of potential SEPs were initially considered, a final list of eight potential SEPs that met the criteria (highlighted above) were provided access to conduct a comprehensive due

diligence. Final offers were received on 15 June 2023.

- After discussions with the Lender Group the preferred SEPs were approached again and provided with an opportunity to improve their offers (both in terms of certainty of price and overall certainty of closing), which culminated in a short listing of two final bidders.
- The BRPs and their advisors, carefully considered the respective SEP bids and analysed a number of qualitative and quantitative factors relating to each SEP's offer. Such considerations included (inter alia) financial, operational, strategic fit, cultural considerations and execution ability.
- After a rigorous process, and after consultation with numerous parties including the Lender Group, on 17 July 2023, Kagera Sugar was identified and confirmed as the preferred bidder by the BRPs and confirmed as the Strategic Equity Partner to be included in the business rescue plan for consideration by Creditors.
- Subsequent to the conclusion of the SEP process, the BRPs were advised by the Vision Parties and the Lender Group that the Vision Parties were to acquire the significant (from a Voting Interest perspective) secured Claims of the Lender Group. The Vision Parties had made it clear to the BRPs that subsequent to completion of the acquisition of the Claims of the Lender Group they would not vote such Claims in favour of a business rescue plan

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predicated on any alternative proposal received by the BRPs, but would only support the Proposals agreed with the BRPs and put forward in this Business Rescue Plan.

- The BRPs have been advised that the Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims.

5.3.5.9. Business Rescue Plan Publication

- In terms of section 150(5) of the Companies Act, a business rescue plan was required to be published on or before 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 up to 31 May 2023.
- The BRPs in May 2023 were still reluctant to publish a business rescue plan until such time as they were able to put forward sufficiently detailed Proposals to Affected Persons. However, at that time, the Lender Group declined to agree to any further extensions and insisted that the BRPs put forward the initial business rescue plan. The BRPs therefore published the initial business rescue plan on 31 May 2023, a document which was, due to

6. PART B – The Proposals

6.1. Terms of the Proposals

6.1.1. Relevant Factors:

6.1.1.1. THL has an extensive social and economic impact on the region within which it operates. It is beyond question that a successful rescue of THL's SA Sugar operations in South Africa will save tens of thousands, possibly hundreds of thousands, of direct and indirect jobs, and avoid a possibly widespread (upstream and downstream) economic and human catastrophe.

6.1.1.2. The Lender Group has security over all material assets of THL (other than certain bank accounts, inventory and trade receivables (and any related insurance claims), which are the security of IDC in respect of IDC's Claim as a PCF Lender). These security rights are in the process of being acquired by the Vision Parties in terms of the Vision Transactions. The Vision Parties will upon, and after, the Adoption of this Business Rescue Plan acquire the Claims and security held by the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. In this part of the Business Rescue Plan the words "**Lender Group**" and "**Vision Parties**" will be used thus interchangeably (and/or the rights held by such parties shall be referred to as "**Vision Lender Rights**") as they relate to the exercising of the rights being acquired by the Vision Parties.

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- 6.1.1.3. In view of the magnitude of the Lender Group Claims and voting interests being acquired, assuming the transaction is successfully completed the Vision Parties will collectively become the majority Creditor of THL.
- 6.1.1.4. Following their extensive discussions with the Lender Group for the acquisition of the Lender Group Claims and security, the Vision Parties presented their proposals to the BRPs for consideration. The BRPs, have thereafter consulted with the Vision Parties in relation to the development of the Vision Parties' Proposals ("**the Vision Proposals**") and the preparation of this Business Rescue Plan. This Business Rescue Plan encompasses the Vision Proposals.
- 6.1.1.5. As indicated in paragraph 5.3.5.8 above, Kagera Sugar were selected as the SEP. On 20 November 2023 the Lender Group notified the BRPs that they had entered into an agreement with the Vision Parties to sell its Claims against the Company, the agreement being unconditional but required payment in order to close the transaction. The BRPs were accordingly advised that the Vision Parties, once the beneficial owner(s) of the Lender Group Claims, would no longer support a Proposal entailing anything other than the Vision Transactions. Accordingly, and given that the Lender Group's Claims comprise some c.62% of the total Voting Interests, the BRPs formulated this Business Rescue Plan in line with the Vision Proposals.
- 6.1.1.6. The BDO report concludes that Unsecured Creditors would be unlikely to receive any recovery relating to their Claims in the event of a liquidation of THL. Given

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the status quo with regards to the Company, the same outcome would result from the Business Rescue of the Company were the Claims to be settled strictly in accordance with the business rescue provisions of the Companies Act.

6.1.2. Distributions:

- 6.1.2.1. Notwithstanding the provisions of the Companies Act, however, the Vision Parties have undertaken that they will make available to Unsecured Creditors an amount of R75m. Unsecured Creditors will (pro rata) receive Distributions of (in aggregate) R75m upon full implementation of this Business Rescue Plan.
- 6.1.2.2. This will provide a benefit uplift to Unsecured Creditors in the Business Rescue Plan Proposals relative to the anticipated liquidation dividend of nil that would likely be received by Unsecured Creditors if the Company were to be placed in liquidation.
- 6.1.2.3. In order not to dilute this deemed Distribution to Unsecured Creditors, the relevant secured claims shortfall, if any, which the Lender Group/Vision Parties retain as Unsecured Creditor Claims (i.e. any remaining Lender Group/Vision Parties Claims which may remain following repayment from their respective security realisation proceeds) would not participate in the aforementioned R75m Distribution. It is recorded that the secured Claim of IDC, as PCF Lender, must be discharged in full by THL.
- 6.1.2.4. It should also be noted that, in addition to the above, to date Claims of Unsecured Creditors of c.R1.3bn

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have, in the course of the Business Rescue, already been paid, the majority of which related to payments to cane growers, many of which are small-scale farmers.

6.1.3. Equity Conversion:

6.1.3.1. As noted above, following the acquisition of the c.R8bn of Lender Group Debt by Vision Parties, THL will implement a partial debt-for-equity swap by way of the Vision Parties individually subscribing for new shares in the Company. The aggregate consideration for such subscription will be c.R4.1bn based on current balances which will be discharged by a reduction in the former Lender Group Claims against THL (those purchased by the Vision Parties) to c.R3.6bn. Resulting from this:

- the balance sheet of THL will be strengthened by c.R4.1bn based on current balances through debt-equity swap;
- the previous terms of the Lender Group Debt in respect of the R3.6bn retained by the Vision Parties will be renegotiated on terms anticipated to be significantly more favourable to THL;
- current Shareholders will retain value as 2.7% (in aggregate) shareholders in the still-JSE-listed, newly recapitalised THL (compared to nil in the event of a liquidation of completion of the Vision Proposals by way of an asset sale (rather than a share issue); and

- the balance of the issued shares (97.3% in aggregate) will be held variously by the members of the Vision Parties.

Readers are referred to Annexure **G** which, inter alia, contains details about who Vision Parties is and the Turnaround Plan.

6.1.4. **Strategy Underlying the Proposed THL Business Rescue Plan**

6.1.4.1. The Business Rescue will seek to:

- continue the process to optimise the operations and cost base of THL's businesses and its head office;
- complete the Vision Transactions detailed above and below;
- renegotiate to the satisfaction of IDC, and service in the normal course of business, subject to the usual credit terms and requirements of IDC, a working capital facility to be approved and advanced by IDC to the Company as PCF; and
- manage and optimise the legally separate but interlinked business rescue proceedings of THD, Voermol and THSSA in parallel with the THL Business Rescue.

6.1.5. **The Vision Transactions**

6.1.5.1. The Vision Parties are:

- Terris AgriPro (Mauritius), registered and incorporated in Mauritius;
- Remoggo (Mauritius) PCC, a fund registered and incorporated in accordance with the laws of Mauritius;
- Guma Agri and Food Security Ltd (Mauritius), registered and incorporated in Mauritius; and
- Almoiz NA Holdings Ltd, registered and incorporated in accordance with the laws of the United Arab Emirates.

6.1.5.2. The Vision Parties' primary objective is to ensure both the successful turnaround of THL in the short-term as well as the continuity of the business in the long-term. To achieve this objective, the Vision Parties have formulated a detailed business plan for THL, which includes a substantial capital expenditure programme to optimise the THL's South African operations. It is the parties' belief that this business plan can facilitate THL's return to sustained profitability and growth over time.

6.1.5.3. Key details of the Vision Transactions are summarised below:

- Pursuant to extensive discussions and engagements between the Lender Group and the Vision Parties, the Vision Parties are in a position to acquire the Claims of the Lender Group. In this regard, the Vision Parties have a substantial cash deposit available for payment to the Lender Group

and, if the Business Rescue Plan is approved, the Vision Parties will finalise the acquisition of the Lender Group's Claims. The funding requirements of the Vision Transaction are not dependent on financing to be provided by the PIC. Confirmation of available funding has been provided to the BRPs.

- The Vision Parties will, subsequent to acquisition of the Lender Group Debt, and subject to meeting all required regulatory conditions, implement a debt for equity swap, converting c.R4.1bn based on current balances of the former Lender Group debt by subscribing for new shares in THL.
- On a diluted basis, the above will result in existing Shareholders owning 2.7% (in aggregate) of all THL shares then in issue, and the Vision Parties collectively holding 97.3% (in aggregate) of all shares in issue.
- The authorised shares of THL amount to 5 000 000 000 shares. The issued shares of THL amounts to 135 112 506 shares. In terms of section 152(6)(a), the BRPs are authorised to determine the consideration for, and issue of, any authorised securities of the Company. The proposed issue would not require any increase in the currently authorised share capital of THL therefore not altering the rights associated with the class of Securities held by the existing Shareholders.
- There will be c.R3.6bn in remaining ex-Lender Group debt outstanding and owing by THL to the

Vision Parties ("**Vision Debt**") and this will remain in place and will be restructured accordingly between THL and the Vision Parties on market related terms.

- Subject to the approval and Adoption of this Business Rescue Plan, the Vision Transactions will be subject to certain conditions, including legal, regulatory and other approvals common for transactions of this nature (in all relevant jurisdictions as applicable), which will potentially include (inter alia) Competition Commission approval (subject to legal counsel opinion on the matter) and potentially Takeover Regulation Panel ("**TRP**") approval. In order to maintain the JSE listing, THL (and the Vision Parties) will need to obtain certain dispensations and/or approvals as may be required from the JSE and/or TRP in order to implement the proposed transactions. In addition, the Company and BRPs, with the support of the Vision Parties, will need to secure confirmation from IDC that IDC will continue to provide a working capital facility to THL until at least the Closing Date.
- The aggregate of Distributions to Unsecured Creditors (over and above those already made,) will equate to R75m. The relevant Distributions will be shared among the Unsecured Creditors on a pro-rata basis. The entitlement of each Unsecured Creditor will be the percentage that their Claim bears to the total Concurrent Claims.

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- Upon payment of the Distributions, any remaining Claims held by Unsecured Creditors will be Unenforceable against THL.
- For the avoidance of doubt, it is recorded that (i) IDC is under no obligation to continue providing a working capital facility to the Company and (ii) IDC will require the amount payable in respect of its Claim for PCF advanced to the Company to be paid in full or secured in full to its satisfaction before it will consider an application by the Company to advance a new working capital facility. The IDC will be under no obligation to increase or extend its existing PCF advanced to the Company. In this regard, on adoption of the Business Rescue Plan, the Vision Parties will engage with the IDC regarding:
 - the detailed operational business plans supporting a turn-around plan and new growth areas;
 - the extension of the PCF (without any obligation on the part of IDC, as existing PCF Lender, to extend its current PCF facility) in a manner that will result in the extinguishment of the PCF;
 - the working capital requirements of THL;
 - the provision of any security (whether cash or assets) required in the interim and on an on-going basis, with an aim to convert the PCF to

a sustainable working capital facility on terms acceptable to IDC; and

- potential support for small scale growers.

6.1.6. **Applicable to the Vision Transactions:**

6.1.6.1. Key Stakeholders:

- SASA:

- THL will discharge its future payment obligations towards SASA in accordance with the Sugar Industry Agreement, including ongoing payment of SASA levies and the local market redistributions duly owed to SASA by THL.
- On 29 November 2023, the Declaratory Application was dismissed with costs by Vahed J. The judgement of Vahed J in respect of such order was handed down on 4 December 2023 ("**the Vahed Judgement**"). THL and the BRPs have applied for leave to appeal the decision. THL will abide by the final outcome of the appeal process of the Declaratory Application (i.e. after any and all appeals have been finally exhausted).
- SASA asserts that the outstanding amount as at 23 November 2023 (which takes into account the final 2023 season's local market redistribution and SASA levies and the set off of export proceeds payable by

SASEXCOR/SASA to THL and which obligation to pay such proceeds has been assigned by SASEXCOR to SASA) is R525 956 121, which is in full and final settlement of SASA's statutory obligations ("**SASA Claim**"). THL agrees with the calculation of the SASA Claim and also agrees not to dispute the foregoing assignment or set off of the obligation to pay export proceeds by SASEXCOR to SASA.

- THL will, within twenty (20) Business Days after the Closing Date, but prior to substantial implementation:
 - o pay the SASA Claim into an escrow account ("**SASA Escrow**"); or
 - o should THL be unable to pay the full SASA Claim into the SASA Escrow within twenty (20) Business Days after the Closing Date, Vision shall, on behalf of THL, pay the full SASA Claim into the SASA Escrow;
- THL agrees that the SASA Escrow shall be ringfenced in that the amounts retained in the SASA Escrow shall be solely payable to SASA. The SASA Escrow account shall be in the name of an independent reputable firm of attorneys ("**Independent Attorneys**") in a suitable interest bearing account, and for the benefit of such party as is ultimately successful in the Declaratory Application;

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- in the event that the outcome of the appeal process is that the Vahed Judgement is:
 - o upheld THL will make payment of its full liability to SASA (including any order as to interest and costs of the appeal and costs of the Declaratory Application), within 10 Business Days after the handing down of the final appeal judgement by means of SASA calling on the Independent Attorneys to release funds from the available amount held in the SASA Escrow and pay same to SASA;
 - o overturned, THL shall be entitled to call on the Independent Attorneys to withdraw the SASA Claim from the SASA Escrow and pay same to THL;
- SASA will use all reasonable endeavours to recover the full amount of the outstanding levy claimed by SASA in respect of Gledhow Sugar Company (Pty) Ltd (in business rescue) ("**Gledhow**") in the amount of R97 015 921 in terms of section 175 of the SI Agreement ("**Gledhow Special Levy**"). Any shortfall from SASA's recovery of the Gledhow Special Levy will subsequently be settled by THL on conclusion of the Gledhow Business process.

6.1.6.2. In order for the Vision Transactions to be completed, this will require (inter alia):

- the Adoption of this Business Rescue Plan;

- agreement being reached with IDC with regard to the ongoing provision of PCF to THL until at least the completion of the Substantial Implementation Date; and
- the meeting of all conditions precedent contained in the final Vision Transactions agreement(s), including all required regulatory approvals (in all relevant jurisdictions as applicable).

6.1.6.3. The BRPs and their advisors expect to conclude binding terms of agreement with the Vision Parties (including any agreements with IDC) during January 2024. The final Closing Date for the Vision Transactions will be dependent on the timelines for the relevant regulatory approvals (in all relevant jurisdictions as applicable) being secured.

It is the agreed intention of the BRPs, Management and the Vision Parties to complete the Vision Transactions (and thereafter full implementation of the Business Rescue Plan) as time efficiently as possible. Below is a high-level forecast timetable following voting on the Business Rescue Plan, assuming plan Adoption on 10 January 2024. Note the dates below are purely estimates based on past experience and should be used as a rough guide only.

Shareholder approval process (if required):

- Definitive transaction agreements signed in January 2024:

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- Subscription agreement;
 - Shareholder loan agreements for residual debt;
 - Other (as may be required).
- SENS announcement detailing the transaction on the next business day after signing.
 - JSE circular and dispensations submissions to JSE around end-January 2024.
 - JSE circular approval by JSE (noting dispensations may be required) around end-February 2024.
 - JSE circular distribution to shareholders around early March 2024.
 - General meeting of shareholders to vote on the transaction (if so required) around late March 2024.
 - Announcement of general meeting outcome on the same or next business day after general meeting.

Competition approval process (if required):

- Managed in parallel with the general meeting of shareholder's process.
- Large merger in SA: 40 Business Days is the maximum for Competition Commission to consider plus unlimited 15 Business Days

extensions to complete the investigation. The Competition Tribunal has a further 10 Business Days thereafter to set the matter down for hearing.

- However, given failing firm submission and concerns, it is anticipated that this process could be accelerated significantly.
- Competition filings may be required in Mozambique, Zimbabwe and Botswana, which are expected to take no more than 6 months.

Secured lender release of security:

To be managed in parallel with shareholder approvals.

IDC approval process in respect of PCF and any additional facilities for working capital:

To be managed in parallel with shareholder approvals.

Exchange control application process (if applicable):

Expected in 2 months from submission. To be managed in parallel with shareholder approvals.

- 6.1.6.4. The BRPs continue with their endeavours to secure the ongoing PCF funding required from the IDC for the balance of the 2023/2024 sugar season and the closing of the Vision Transactions – and subsequent to full implementation of the Business Rescue Plan.

- 6.1.7. **Alternative transactions in the event of a failure to secure approval for the issue of new THL shares to the Vision Parties by way of a debt/equity swap**

6.1.7.1. In the event of, for whatever reason, a failure to secure the consents and/or approvals required in order for the proposed issue of THL shares to the Vision Parties to be effected (resulting in such parties not holding the anticipated 97.3% of the then shares in issue), the BRPs and the Vision Parties have agreed that, as an integral part of the Proposals and this Business Rescue Plan, the currently proposed Vision Transactions will be switched from those contemplating an issue of THL shares to transactions contemplating the acquisition by the Vision Parties of THL's assets and businesses (as going concerns) on the basis that:

- payment for such assets will be effected by way of a set off against the Secured Claims then held by the Vision Parties;
- suitable arrangements being made for payment of the full balance outstanding in respect of the IDC PCF Facility;
- the sale of THL's assets and businesses will be to an entity nominated by the Vision Parties;
- Unsecured Creditors and Secured Creditors would otherwise be treated as contemplated in the currently contemplated Vision Transactions;
- the Vision Parties will ensure that THL has sufficient funds to enable it to implement this Business Rescue Plan;

- the sale of THL's assets will be subject to the requisite regulatory and other approvals common for transactions of this nature in each jurisdiction;
- once it has sold its assets and businesses (as going concerns), THL will be delisted from the JSE and liquidated (noting that its shares would have nil value); and
- to the fullest extent possible Vision Parties and the BRPs will seek to structure the implementation of this Business Rescue Plan such that all stakeholders, other than Shareholders and the JSE as a result of the delisting/liquidation of THL, will be in substantially the same position as they would have been had the originally contemplated Vision Transactions been implemented.

6.1.8. Alternative transactions in the event of a failure at the Meeting to Adopt this Business Rescue Plan encompassing the Vision Transactions

6.1.8.1. In the event of a failure of this Business Rescue Plan to be Adopted at the Section 151 Meeting, the following factors should be carefully considered in relation to any subsequent conclusion of an alternative transaction, noting in particular the required timing to achieve same.

- The SA Sugar business operates on a highly seasonal basis with materially variable working capital requirements (entailing annual additional peak funding estimated at around R1.7bn) –

dependent on industry dynamics, production and sales cycles.

- A significant investment process is undertaken annually from December to March (referred to as off-crop capital expenditure and/or maintenance ("**off-crop programme**")) to enable critical proactive maintenance work to be performed ahead of the next season. Spending commitment towards the off-crop programme is required from as early as September onwards. For the ensuing off-crop programme, THL will look to the investing parties for guidance and assistance in securing the required funding.
- The introduction, negotiation, documentation and closing of any alternative transaction would require a significant amount of time to achieve. The time available to meet this requirement and the likelihood of success would be dependent on (i) Lender Group/Vision Parties support by virtue of both their voting power and (significantly) their security rights (the underlying Claims have been purchased by the Vision Parties); (ii) significant working capital funding support (i.e. agreement with IDC or an alternative financier in replacement of IDC); and (iii) creditor support in respect of any delays related to the further amendment of the Business Rescue Plan or its implementation etc.
- In the absence of continued Lender Group/SEP and working capital funding support, there would be a limitation on the ability to continue running the SA

Sugar business in the ordinary course (in particular in relation to the off-crop programme).

- Any alternative transaction proposals should therefore be carefully considered in terms of the required support as outlined above, in addition to the timing and execution risks that may be relevant. Should Creditors wish for any such alternative proposal to be pursued, this Business Rescue Plan would need to be revised and a new Section 151 meeting of creditors convened to vote on such a revised Business Rescue Plan at a future date.
- Any motion (at the Meeting) to amend the Business Rescue Plan and consequently adjourn the Meeting should therefore be accompanied by clear plans for working capital funding and off-crop programme funding from such parties proposing such a motion, to the satisfaction of the BRPs.

6.1.9. Other Features of the Proposals

- 6.1.9.1. The THSSA and Voermol business rescues will operate in tandem with this Business Rescue Plan and will thus not result in any additional cash realisations to THL.
- 6.1.9.2. Voermol is a dormant company in business rescue with no assets and which is earmarked to eventually be wound up/deregistered. The division of THL, named Voermol, will remain in the Company. There will be no Distributions to the creditors of the Voermol legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims

submitted to Voermol will result in Voermol having a commensurate claim in THSSA and THSSA in turn against THL, its principal. Any distribution received by Voermol from THSSA will be distributed by Voermol to the Creditors who chose to submit their claims with Voermol.

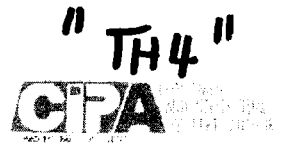
- 6.1.9.3. THSSA (as agent of THL) nominally owns THL's (the beneficial owner) 100% shareholding in THA and 100% of the shares in Sociedade de Assistencia a Agricultura e Industria S.A. (registration number 500253153), a company duly incorporated in accordance with the laws of Portugal. There will be no Distributions to the creditors of the THSSA legal entity as a result of the agency relationship explained earlier in this Business Rescue Plan. Creditor claims submitted to THSSA will result in THSSA having a commensurate claim in THL, its principal. Any distribution received by THSSA from THL will be distributed by THSSA to the Creditors who chose to submit their Claims with THSSA.

6.2. **Employee Matters**

- 6.2.1. Whilst the Vision Transactions do not contemplate retrenchments, the BRPs are continuing with their process of business optimisation, together with Management, and as such have not yet entirely ruled out the possibility of employee retrenchments. As a result, this Business Rescue Plan envisages a possible section 189 retrenchment process (in terms of the LRA), if so required. The Business Rescue Plan contemplates the Company meeting its relevant retrenchment financial obligations to all employees affected by any proposed section 189 process (in terms of the LRA)

PRIVATE COMPANY

Tongaat Hulett (Botswana) Proprietary Limited
BW00001585712



PRIVATE COMPANY STANDARD EXTRACT

Postal Address P O Box 1, Chiredzi, Zimbabwe

Appointment date 04 July 2000

Share Allocations

694,954 Shares: Tongaat Hulett Limited

Shareholder(s) Tongaat Hulett Limited

Number of Shares 694,954

694,954 Shares: Starafriacorporation Limited

Shareholder(s) Starafriacorporation Limited

Number of Shares 694,954

694,954 Shares: Hippo Valley Estates Limited

Shareholder(s) Hippo Valley Estates Limited

Number of Shares 694,954

Total number of shares 2,084,862

Auditors

Bakani Ndwapi

Full Name Bakani Ndwapi

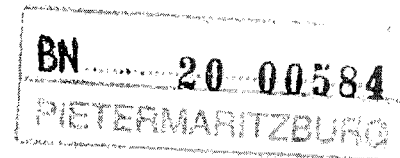
Appointment Date 23 August 2021

Exempt from audit No

TH Gen

" TH5 "

2020 -01- 23



GENERAL NOTARIAL BOND

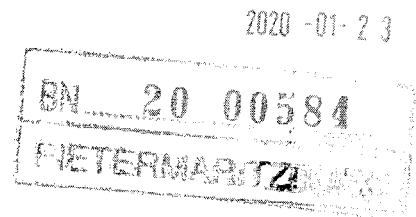
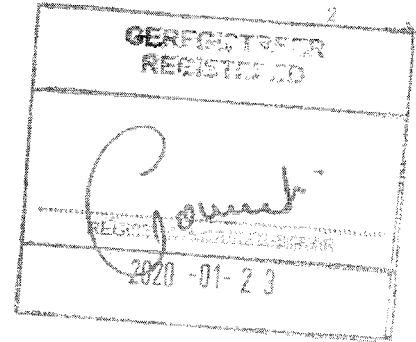
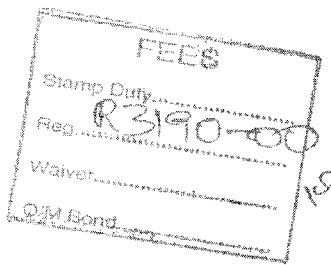
in favour of

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

by

TONGAAT HULETT LIMITED

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Protocol No:1/2020

GENERAL NOTARIAL BOND

BE IT HEREBY MADE KNOWN

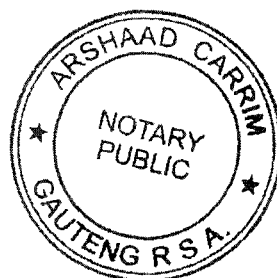
THAT on this the 6TH day of January TWO THOUSAND AND TWENTY (2020), before me,

ARSHAAD CARRIM

Notary Public, by lawful authority duly admitted and sworn, practising at Sandton, in the Province of Gauteng, Republic of South Africa, and in the presence of the undersigned witnesses, personally came and appeared

RAEESA MOHAMMED ALI SEEDAT

in his/her capacity as the agent of:



[Handwritten signatures]
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TONGAAT HULETT LIMITED
(Registration number 1892/000610/06)

(a limited liability company duly registered and incorporated in

accordance with the laws of the Republic of

South Africa)

(hereinafter referred to as the "**Mortgagor**")

having its registered office situated at Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400, South Africa.

and carrying on business at the following address at Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal,
4400, South Africa.

s/he being duly authorised hereto by virtue of a power of attorney granted to him by the Mortgagor at Tongaat on 23 December 2019, therein represented by Robert David Aitken for and on behalf of the Mortgagor, he being duly authorised thereto by virtue of a resolution of the Board of Directors of the Mortgagor dated 4 December 2019,

which said power of attorney and certified copy of which resolution has been exhibited to me the Notary at the passing of these presents and now remain filed in my Protocol.

AND the Appearer, on behalf of the Mortgagor, declared the Mortgagor to be indebted to

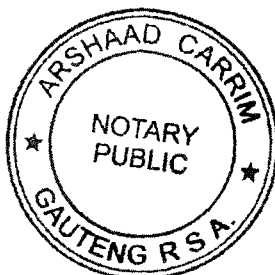
BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED,

Registration Number 2018/358484/07

a limited liability company duly registered and incorporated in accordance with the laws of the Republic of
South Africa

whose registered address is 3rd Floor 200 Main, Corner Bowwood and Main Roads, Claremont, Western Cape, 7708 (together with its order, successors or assigns, the "**Creditor**"), under and in terms of an amended and restated counter indemnity agreement entered into or to be entered into on or about the date hereof between, *inter alios*, the Mortgagor and the Creditor (as amended, amended and restated, replaced, substituted, novated and/or superseded from time to time) (the "**Counter Indemnity Agreement**"), up to, but not exceeding, the sum of -

R13 500 000 000,00 (THIRTEEN BILLION FIVE HUNDRED MILLION RAND),




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Plus interest thereon and all other amounts whatsoever payable to the Creditor under the Counter Indemnity Agreement, and the Additional Sum (as referred to and defined hereunder), and upon the further conditions set forth in this bond (this "**Bond**").

NOW THEREFORE the Appearer on behalf of the Mortgagor hereby acknowledged and declared the Mortgagor to be held and firmly bound unto and in favour of the Creditor in the sum of R13 500 000 000,00 (THIRTEEN BILLION FIVE HUNDRED MILLION RAND) (the "**Capital**") arising from the considerations set out in the preamble hereof.

AND AS SECURITY for the payment of -

- (a) the Capital;
- (b) all interest and all other amounts whatsoever payable to the Creditor under the Counter Indemnity Agreement by the Mortgagor;
- (c) the costs of preserving and realising the Mortgaged Assets (as defined below), insurance premiums and cost of notice; **AND**
- (d) all costs which the Creditor may incur and all amounts which the Creditor may disburse on the Mortgagor's behalf which costs and disbursements are recoverable from the Mortgagor in terms of this Bond,

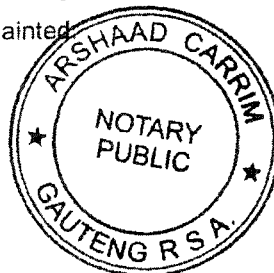
and also such other costs, charges (including interest) or expenses, which may be claimable from the Mortgagor under this Bond, and which other costs, charges or expenses are secured up to an amount not exceeding the Capital and the sum of -

R2 700 000 000,00 (TWO BILLION SEVEN HUNDRED MILLION RAND), (the "**Additional Sum**").

The Appearer on behalf of the Mortgagor declared to cede and assign to the Creditor and to pledge and hypothecate, the movable property of the Mortgagor of every description and of whatsoever nature and wherever situate, and such as the Mortgagor now possesses or may at any time in the future become possessed of without exception, submitting them all and the choice thereof to constraint and execution as the law directs,

(hereinafter referred to as the "**Mortgaged Assets**").

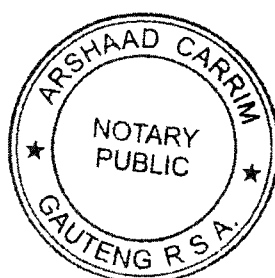
AND the Appearer, on behalf of the Mortgagor, declared to renounce the benefits arising from the legal exceptions *non numeratae pecuniae, non causa debiti, errore calculi, revision of accounts, no value received, excussion and division, de duobus vel pluribus reis debendi* and all other exceptions which might or could be taken to the payment of any amounts secured hereby, with the full force, meaning and effect whereof the Appearer declared the Mortgagor to be fully acquainted.



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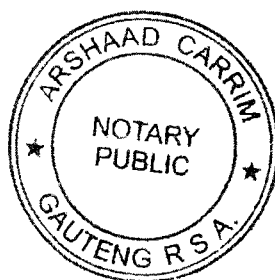
AND the Appearer, on behalf of the Mortgagor, declared that this Bond shall be subject to the following conditions and stipulations –

1. All payments required to be made by the Mortgagor shall be made by the Mortgagor in accordance with the provisions of the Counter Indemnity Agreement or as may otherwise be directed by the Creditor and the Mortgagor undertakes that it shall comply with all of its obligations under the Counter Indemnity Agreement on the due date therefor.
2. The Mortgagor shall for so long as this Bond is in force keep all the Mortgaged Assets in good order and condition, fair wear and tear alone excepted.
3. Notwithstanding anything to the contrary herein contained, this Bond will become executable against the Mortgagor upon any amounts becoming payable by the Mortgagor to the Creditor under the Counter Indemnity Agreement and remaining unpaid (an "**Enforcement Event**").
4. The Creditor shall, following the occurrence of an Enforcement Event which is continuing, be entitled (but not obliged) to the extent permitted by law –
 - 4.1. to claim and recover from the Mortgagor forthwith all and any sums for the time being secured by this Bond, whether then due for payment or not; and/or
 - 4.2. for the purpose of perfecting its security hereunder to enter upon the premises of the Mortgagor or any other place where Mortgaged Assets are situated and to take possession of such assets; and/or
 - 4.3. to sign or subscribe on behalf of the Mortgagor to all applications or agreements for or transfer of licences, quotas, permits, registration certificates and the like which relate to the Mortgaged Assets; and/or
 - 4.4. to do all such other acts as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be, of the Mortgaged Assets or any of them; and/or
 - 4.5. to hold the assets as security for the indebtedness of the Mortgagor to the Creditor arising under the Counter Indemnity Agreement or otherwise and to retain such possession for so long as the Mortgagor is so indebted to the Creditor; and/or
 - 4.6. to dispose of the Mortgaged Assets or any of them by public auction or by private treaty (at fair value) in the Creditor's sole discretion and on such terms and conditions as the Creditor in its sole discretion may deem fit and to convey good value and free title to the purchaser or transferee thereof; and/or



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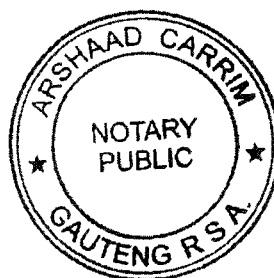
- 4.7. to have the Mortgaged Assets excused and/or attached by legal process; and/or
- 4.8. to execute upon all or any of the Mortgaged Assets; and/or
- 4.9. to employ such other remedies and to take such other steps against the Mortgagor as are in law allowed.
5. The Creditor shall apply the net proceeds of any recovery in reduction or discharge, as the case may be, of the Mortgagor's obligations to the Creditor arising under or in terms of the Counter Indemnity Agreement, without prejudice to the Creditor's rights to recover from the Mortgagor any balance which may remain owing to the Creditor after the exercise of such rights. Should the total amount collected or recovered by the Creditor exceed the full amount of the Mortgagor's obligations to the Creditor, the Creditor shall be obliged to promptly refund such excess to the Mortgagor provided that the obligations secured hereby have been fully, finally and irrevocably discharged.
6. Notwithstanding anything to the contrary herein contained, the Creditor shall be entitled to allocate any moneys paid by the Mortgagor to the Creditor to the Capital and/or interest and/or costs and expenses and/or the Additional Sum as the Creditor may determine in accordance with the provisions of the Finance Documents (as defined in the agreement titled "*Common Terms Agreement*" entered into on about the date of this Bond by and between, *inter alios*, the Mortgagor (as guarantor) and the Creditor (as debt guarantor) (the "**Common Terms Agreement**")).
7. The Mortgagor hereby covenants and undertakes that for so long as it is indebted to the Creditor under the Counter Indemnity Agreement at its own cost and expense (such period is hereinafter referred to as the "**Security Period**") (but subject to and without prejudice to the provisions of the Counter Indemnity Agreement):
- 7.1. to take all steps required by the Creditor to maintain, preserve or protect the Mortgagor's interests and the interests of the Creditor in the Mortgaged Assets;
- 7.2. to sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and co-operate with the Creditor in connection with the registration and perfection of the security interest constituted hereby and to do all acts and things which it may be necessary for the Mortgagor to do in order to obtain and maintain such registration;
- 7.3. to furnish to the Creditor from time to time such information and reports regarding the Mortgaged Assets as the Creditor may request in writing; and



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IH ~~Gen~~

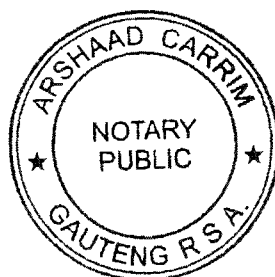
- 7.4. to do or permit to be done each and every lawful act or thing which the Creditor may from time to time require to be done for the purpose of enforcing the Creditor's rights granted pursuant to this Bond in relation to any of the Mortgaged Assets and this Bond, and to allow its name to be used as and when reasonably required by the Creditor for that purpose.
8. Following the occurrence of an Enforcement Event which is continuing, the Mortgagor irrevocably for value and by way of security to secure the interest of the Creditor in the Mortgaged Assets and the performance of the obligations owed to the Creditor appoints the Creditor and any person nominated for such purpose by the Creditor in writing under hand by an officer of the Creditor, severally as attorney and agent of the Mortgagor and in its name and on its behalf and as its act and deed to execute and otherwise perfect and do any charge, mortgage, deed, assurance, agreement, conveyance, instrument, act or thing which the Mortgagor has failed to execute and do under the covenants, undertakings and provisions contained herein or in the Counter Indemnity Agreement or which may be required or deemed proper in the lawful exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby, and the Mortgagor hereby covenants with the Creditor to ratify and confirm all lawful acts or things made, done or executed by the Creditor in its capacity as attorney and agent as aforesaid. The Creditor shall be entitled at any time during the Security Period and as often as it may deem expedient to delegate all or any of the powers and discretions vested in it by or in connection with this Bond in such manner, upon such terms and to such persons as the Creditor in its absolute discretion may think fit.
9. This Bond and the security hereby created shall be a continuing covering security for all and any sums of money which may now or in the future be owing or claimable by the Creditor in terms of this Bond, and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Mortgagor (or any other person) and the Creditor or any other act, event or matter whatsoever, except only by the execution by the Creditor of an absolute and unconditional release and discharge of the security created by this Bond to the Mortgagor, and this Bond shall, save as herein provided, extend to cover any sum or sums of money or other liability and obligations which shall for the time being constitute the balance of the obligations secured hereby (the "**Secured Obligations**") until all of the Secured Obligations have been paid and discharged in full.
10. The Mortgagor shall, upon receipt of a written request from the Creditor, promptly give written notice of this Bond to the landlords of all premises in which the Mortgagor carries on business or in which the Mortgagor stores, repairs, sells or manufactures movable assets, and shall use reasonable endeavours to obtain from such landlords waivers to the reasonable satisfaction of the Creditor in respect of any hypothec or right of retention which any such landlord or landlords may have in respect



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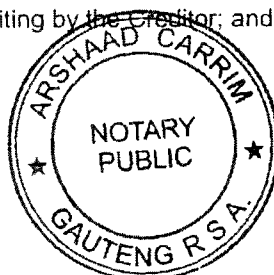
of the movable assets in such premises. A copy of every notice so given is to be delivered to the Creditor, together with the waivers so signed by such landlords. Notwithstanding the provisions of this clause 10, the Creditor is entitled to give any notice as is contemplated in this clause and has furthermore the right to obtain any such waivers as the Creditor may deem fit in the circumstances.

11. This Bond and the security hereby created shall be in addition to and not in substitution for or derogation of any other security (whether given by the Mortgagor or otherwise) now or from time to time hereafter held by the Creditor in respect of or in connection with any or all of the Secured Obligations.
12. The Creditor shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Bond or by law, to:
 - 12.1. issue or initiate any proceedings or take action or obtain judgment against the Mortgagor or any other person in any court or tribunal;
 - 12.2. make or file any claim or proof in a winding-up or liquidation of the Mortgagor or of any other person; and/or
 - 12.3. enforce or seek to enforce the recovery of the moneys and liabilities hereby secured or any other security.
13. Without in any way limiting or derogating from any other provisions hereof, the security created by this Bond shall continue in full force and effect and shall not be discharged, impaired or otherwise affected by:
 - 13.1. any time or indulgence granted by the Creditor or any failure or delay by the Creditor in exercising any right, remedy, power or privilege hereunder, under the Counter Indemnity Agreement or any failure or delay by the Creditor in enforcing compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) any acceptance of payments after due date whether on one or more occasions or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder;
 - 13.2. any failure by the Creditor to take or enforce any other security or guarantee taken or agreed to be taken for all or any of the Secured Obligations or under or pursuant to the Counter Indemnity Agreement or otherwise;
 - 13.3. any amendment, modification, variation, or supplement of all or any part of the Secured Obligations or the Counter Indemnity Agreement;



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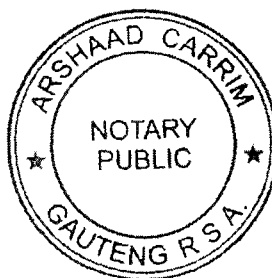
- 13.4. any release or exchange of any security or guarantee now or hereafter held by the Creditor for all or any part of the Secured Obligations; or
- 13.5. any other act, omission, matter, circumstance or event (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Mortgagor, the Counter Indemnity Agreement, or the bankruptcy, liquidation, commencement of business rescue proceedings, winding-up, insolvency, dissolution, administration, reorganisation or amalgamation of, or other analogous event of or with respect to, the Mortgagor or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Creditor hereunder or to impair, discharge or adversely affect the security hereby created.
14. Any settlement or discharge between the Creditor and the Mortgagor and/or any other person shall be conditional upon no security or payment to the Creditor by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, reorganisation, administration, commencement of business rescue proceedings, amalgamation or other analogous event or proceedings for the time being in force.
15. The Mortgagor is bound and obliged to pay promptly on due date all rentals payable in respect of all offices, factories, warehouses and any other premises of whatsoever nature leased by the Mortgagor and in which the Mortgagor at any time carries on business or in which the Mortgagor at any time stores, repairs, sells or manufactures movable assets. Should the Mortgagor fail to pay any such amount on the due date therefor, the Creditor is entitled but not obliged to pay such amount on behalf of the Mortgagor and any amount so paid is to be refunded by the Mortgagor to the Creditor on demand.
16. The Mortgagor shall, during the Security Period, submit to the Creditor on demand, an inventory reflecting the stocks comprising consumables, finished products, packaging materials, raw materials and work in progress in the possession of the Mortgagor and/or being stored, repaired, sold or manufactured by or on behalf of the Mortgagor, together with the cost price thereof. The inventory is to be in such form as may from time to time be stipulated by the Creditor or the Creditor's duly authorised agent and shall reflect, *inter alia*, the names and addresses of all landlords of the premises in which stock is being stored, repaired, sold or manufactured.
17. The rights of the Creditor under this Bond are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under general law. The rights of the Creditor (whether arising under this Bond or general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing by the Creditor; and in particular any failure to exercise or



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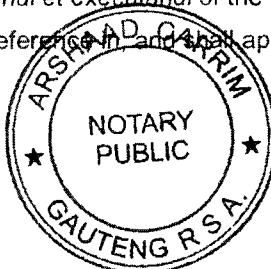
any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No failure on the part of the Creditor to exercise and no delay on its part in exercising any right or remedy hereunder shall operate as a waiver and no act or course of conduct or negotiation on the part of the Creditor or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

18. Any waiver and any consent by the Creditor under this Bond must be in writing and may be given subject to any conditions thought fit by the Creditor. Any waiver or consent shall be effective only in the instance and for the purposes for which it is given.
19. The provisions of this Bond shall not be varied otherwise than by an instrument in writing executed by or on behalf of the Mortgagor and the Creditor.
20. This Bond shall be binding upon the Mortgagor and its lawful successors and permitted assigns.
21. The Mortgagor shall not be entitled to assign or transfer any of its rights, benefits or obligations hereunder to any person whomsoever.
22. The Creditor may without the consent of the Mortgagor, assign or transfer all or any part of its rights, benefits or obligations under this Bond to any third party whomsoever. Where the Creditor assigns or transfers its obligations or any part thereof as aforesaid, the Mortgagor shall execute such documents as the Creditor may require to release the Creditor to the extent of the transfer or with a view to perfecting such Mortgage or transfer, or where necessary, shall execute further security documentation in favour of the assignee or transferee in like form to this Bond. To the extent that any such cession, assignment, transfer or other disposal results in a splitting of claims, the Mortgagor irrevocably consents thereto.
23. Any amounts payable by the Mortgagor to the Creditor in terms of this Bond which do not have a stipulated date for payment thereof shall be paid by the Mortgagor to the Creditor on first written demand.
24. Any reference herein to an agreement, document or instrument is to such agreement, document or instrument as amended, amended and restated, novated, superseded, substituted and/or replaced from time to time.
25. The provisions of this Bond shall be governed and construed in accordance with the laws of South Africa.



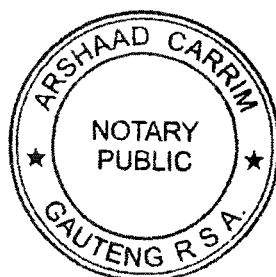
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26. The Mortgagor agrees that any legal action or proceedings arising out of or in connection with this Bond may be brought in the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Mortgagor irrevocably waives any objection it may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Creditor to take proceedings against the Mortgagor in whatever other jurisdiction the Creditor shall consider appropriate nor shall the taking of proceedings in any one or more jurisdictions automatically preclude the taking of proceedings in any other jurisdiction whether concurrently or not. The Mortgagor irrevocably agrees not to claim for itself or its assets immunity from suit, execution, attachment or otherwise, to the full extent permitted by the laws of such jurisdiction.
27. A certificate signed by the Creditor or its duly authorised agent (whose authority and appointment need not be proved) reflecting the amount of the indebtedness of the Mortgagor under (i) this Bond; and/or (ii) the Counter Indemnity Agreement, the fact that same is due and payable, the rate of interest payable thereon and the date from which interest is reckoned will, in the absence of manifest error -
- 27.1. be *prima facie* proof of the amount of the indebtedness and the facts stated therein;
- 27.2. constitute sufficient particularity for the purposes of pleading and trial in any action; and
- 27.3. be *prima facie* proof for the purposes of obtaining provisional sentence, summary judgment or any other judgment or order.
28. No relaxation or indulgence, and no extension of time which may be granted by the Creditor, no failure by the Creditor to enforce compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) no acceptance of payments after due date, whether on one or more occasions, shall be deemed to be a waiver in respect of any past or future breach of any of the terms and conditions of this Bond or estop or preclude the Creditor from insisting on and enforcing, without notice, its full rights hereunder.
29. No negligent acts or omissions (save in respect of gross negligence or wilful misconduct) by or on behalf of the Creditor in implementing its rights hereunder shall found a cause of action against the Creditor.
30. The Mortgagor hereby chooses *domicilium citandi et executandi* for all purposes under this Bond, whether in respect of court process, notices or other documents or communications of whatsoever nature, at the address set out in the Common Terms Agreement and all provisions relating to notices to the Mortgagor and the *domicilium citandi et executandi* of the Mortgagor as set out in the Common Terms Agreement are incorporated by reference in, and shall apply *mutatis mutandis* to, this Bond.



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31. This Bond shall not novate, cancel or affect any other securities at present held or which may from time to time be held by the Creditor and the Creditor shall be entitled to take action against the Mortgagor on this Bond and/or on any other securities in the event referred to in clause 3 of this Bond.
32. The Mortgagor shall be bound and obliged to pay the costs of preparing this Bond and the registration thereof and upon cancellation of this Bond, the costs of such cancellation.
33. All costs and expenses incurred by the Creditor in order to preserve or enforce the Creditor's rights hereunder or in suing for the recovery of any sum that may become due and payable which is secured hereunder, including but without limiting the generality of the foregoing, the costs on the attorney and own client scale of all legal proceedings, the costs of execution, the costs and expenses of all notices that may be given in terms of this Bond, all premiums of insurance that may be paid by the Creditor in terms hereof, any other payments or disbursements that may be made by the Creditor on behalf of the Mortgagor and the due performance by the Mortgagor of all its obligations hereunder shall be borne and paid by the Mortgagor promptly on demand.
34. All the costs referred to in clauses 32 and 33 shall be secured hereunder over and above the Capital and to the extent of the Additional Sum.
35. The Creditor shall not, however, be precluded from recovering from the Mortgagor any such costs, expenses and other amounts as are referred to in this clause that may exceed the Additional Sum.
36. Notwithstanding anything to the contrary contained herein, the Creditor shall be entitled to exercise the rights granted to it hereunder only if at the time there is an actual obligation or indebtedness owing by the Mortgagor to the Creditor.
37. This Bond may only be cancelled when all the Mortgagor's obligations and indebtedness to the Creditor under the Counter Indemnity Agreement has been discharged.
38. The provisions of this Bond shall be and continue to be of full force and effect and binding on the Mortgagor, subject to the provisions of clause 37, notwithstanding -
 - 38.1. any latitude, indulgence, relaxation or extension of time which may be given or shown by the Creditor to the Mortgagor and/or any surety, indemnitor, intercessionary for the Mortgagor or any failure or delay by the Creditor in enforcing compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) any acceptance of payments after due date, whether on one or more occasions or any failure or delay by the Creditor in exercising any right, remedy, power or privilege hereunder or under the Counter Indemnity Agreement or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder; and/or

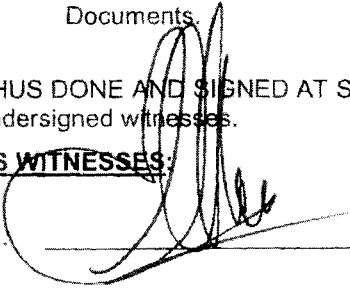


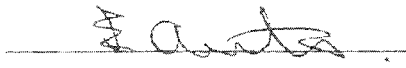
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- 38.2. the Creditor's receipt of any dividend or other benefit in any liquidation of the Mortgagor or any compromise whether in terms of any statute or the common law; and/or
- 38.3. the Creditor's release in whole or in part of any other security and/or any surety for the obligations of the Mortgagor; and/or
- 38.4. any intermediate discharge or settlement of or fluctuation in any indebtedness or obligation of the Mortgagor to the Creditor in terms of the Counter Indemnity Agreement; and/or
- 38.5. any legal disability affecting the Mortgagor.
39. Should the Mortgagor at any time fail to comply with any of its obligations under this Bond, the Creditor shall be entitled on behalf of the Mortgagor to take any necessary remedial measures as it may in its discretion determine at the cost of the Mortgagor. The exercise of such rights shall be without prejudice and in addition to the Creditor's rights in terms hereof arising from the Mortgagor's breach in question.
40. In this Bond, including the preamble, words importing any one gender shall include the other two genders and words signifying the singular shall include the plural and *vice versa* and any reference to "person" includes a natural person, a company, and an association or body of persons whether natural or not and whether incorporated or unincorporated.
41. If any of the provisions of this Bond are found to be unlawful, unenforceable or invalid such provision shall be deemed to be severable from the remaining provisions of this Bond and shall, to the extent that the same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.
42. An Enforcement Event being "*continuing*" means that such Enforcement Event has not been waived in accordance with the provisions of the Counter Indemnity Agreement and the other Finance Documents.

THUS DONE AND SIGNED AT Sandton on the day, month and year first aforewritten in the presence of the undersigned witnesses.

AS WITNESSES:

1. 

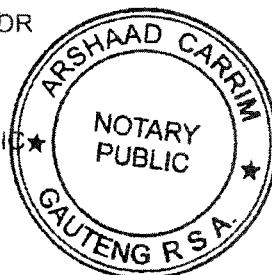
2. 



qq Mortgagor

QUOD ATTESTOR

NOTARY PUBLIC



IH
GHA

"THG" 3

URGENT APPLICATION 17 NOVEMBER 2022

IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU NATAL DIVISION, PIETERMARITZBURG

CASE NO.: 15784/22P

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

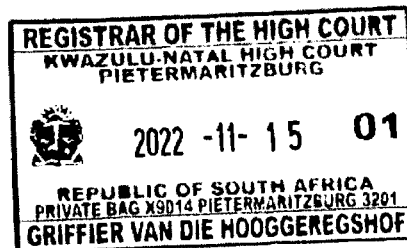
(Registration number: 2018/358484/07)

and

TREVOR MURGATROYD N.O.

PETER VAN DEN STEEN N.O.

GERHARD ALBERTYN N.O.



First Respondent

Second Respondent

Third Respondent

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Fourth Respondent

(Registration number: 1892/000610/06)

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED

Fifth Respondent

(Registration number: 1981/012378/07)

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED

Sixth Respondent

(Registration number: 1965/000565/06)

TONGAAT HULETT ESTATES PROPRIETARY LIMITED

Seventh Respondent

(Registration number: 1967/006009/07)

VOERMOL FEEDS PROPRIETARY LIMITED

Eighth Respondent

(Registration number: 1936/007892/07)

IH
GAA

NOTICE OF MOTION

TAKE NOTICE THAT the abovenamed Applicant will make application on the **17th** day of **NOVEMBER 2022** at **09h30** or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the service and the time periods provided for in the Uniform Rules of Court and dealing with this application as one of urgency;
2. That a rule *nisi* be issued calling upon the Respondents and any interested party to appear before the above Honourable Court on _____ 2023 at 09h30, to show cause why an order in the following terms should not be made final:
 - 2.1. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff of the High Court ("the Sheriff"), is authorised to take possession of all movable assets of the Fourth to Eighth Respondents ("the aforesaid Respondents"), in order to perfect the Applicant's security under general notarial bonds BN00352/2020, BN00353/2020, BN00401/2020, BN00438/2020 and BN00584/2020 and to hold the movable assets in its possession and be constituted as pledgee, such assets being situated at the following addresses:
 - 2.1.1. 444 South Coast Road ,Durban, 4093;
 - 2.1.2. 1 Mill Road, Amatikulu, Gingindlovu;
 - 2.1.3. 1 Mill Road, Felixton, Empangeni;
 - 2.1.4. 1 Main Avenue, Maidstone, Tongaat;

IH
GA

2.1.5. 1 Main Road, Maidstone, Tongaat; and

2.1.6. Amanzimnyama Hill, Tongaat;

("the Respondents' premises")

or wheresoever the movable assets may be found, whether in the aforesaid Respondents' possession or not;

2.2. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff, with jurisdiction, to enter upon the aforesaid Respondents' premises and/or anywhere else the aforesaid Respondents carry on business or where the movable assets are being kept, to attach and make an inventory of all the movable assets of the aforesaid Respondents, of whatsoever nature and description, as security for the payment of all monies due by the aforesaid Respondents to the Applicant and by such attachment thereof shall be deemed to be given to the Applicant to hold in pledge;

2.3. The aforesaid Respondents, through their agents, representatives and employees, are ordered to point out all movable assets to the Applicant or its duly appointed representative, alternatively the Sheriff, wherever such movable assets may be situated;

2.4. The Applicant, alternatively, the Sheriff is authorised to:

2.4.1. Lock and secure the movable assets, at the Respondents' premises or any other premises at which the aforesaid Respondents carry on business;

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2.4.2. Affix a notice of attachment to the principal doors / gates of the Respondents' premises or any other premises at which the aforesaid Respondents' movable assets may be found;

in either which event the Applicant would be deemed to have taken effective possession of such movable assets and have perfected the aforementioned general notarial bonds;

2.5. The Applicant is authorised to sell the movable assets of the aforesaid Respondents which have been attached in terms of this order by private treaty or public auction, in the sole discretion of the Applicant, and that any manager or director of the Applicant, whose appointment need not be proved, is authorised to sign any sale agreement and all subsequent documents necessary to give transfer of the movable assets to any purchaser;

2.6. The Respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally with any other party who unsuccessfully opposes this application.

3. That the orders contained at paragraphs 2.1, 2.2, 2.3 and 2.4 shall be effective immediately and operate as interim orders pending the return date of this application.

4. Further and/or alternative relief.

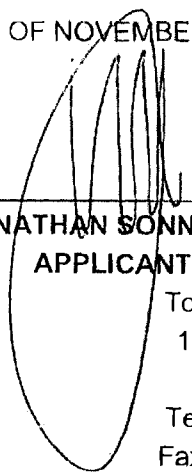
TAKE NOTICE FURTHER that the affidavit of **SINOVUYO MYEKO** together with the annexures thereto will be used in support of this application.

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TAKE NOTICE FURTHER THAT the Applicant has appointed the offices of **EDWARD NATHAN SONNENBERGS INC.**, its attorneys of record at Tower 1, The Marc, 129 Rivonia Road, Sandton care of **VENNS ATTORNEYS** at 30 Montrose Park Boulevard, Victoria Country Club Estate, 170 Peter Brown Drive, Montrose, Pietermaritzburg as the address at which it will receive service of all process in these proceedings.

KINDLY PLACE THE MATTER ON THE ROLL FOR URGENT HEARING ACCORDINGLY.

DATED AT PIETERMARITZBURG ON THIS 15TH DAY OF NOVEMBER 2022.



EDWARD NATHAN SONNENBERGS INC.
APPLICANT'S ATTORNEYS

Tower 1, The Marc
129 Rivonia Road
Sandton

Tel: 031 536 8620

Fax: 031 536 8694

Email: cschoon@ensafrica.com

(Ref: A Lombard / C Schoon)

C/O VENNS ATTORNEYS

30 Montrose Park Boulevard
Victoria Country Club Estate
170 Peter Brown Drive
Montrose

(Ref: Nida Jooste)

TO: **THE REGISTRAR OF THE KWAZULU-NATAL DIVISION**
Pietermaritzburg

AND TO: **THE RESPONDENTS**
Per email

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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 17TH DAY OF NOVEMBER 2022

BEFORE THE HONOURABLE JUDGE LOPES

In the matter between:

BOWWOOD AND MAIN NO 296 (RE) PROPRIETARY LIMITED

(Registration number: 2018/358484/07)

Applicant

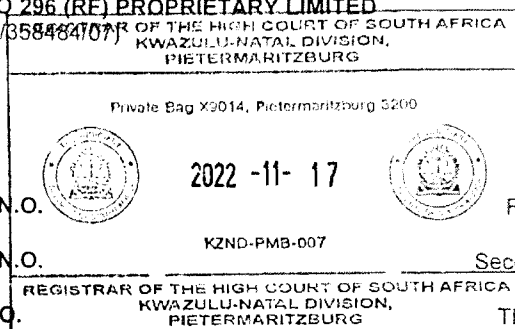
and

TREVOR MURGATROYD N.O.

PETER VAN DEN STEEN N.O.

GERHARD ALBERTYN N.O.

[in their capacities as the joint business rescue practitioners of the fourth and fifth respondent]



First Respondent

Second Respondent

Third Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED

(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED

(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED

(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED

(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the Notice of Motion, and the other documents filed of record; and

HAVING heard Counsel for the Applicant;

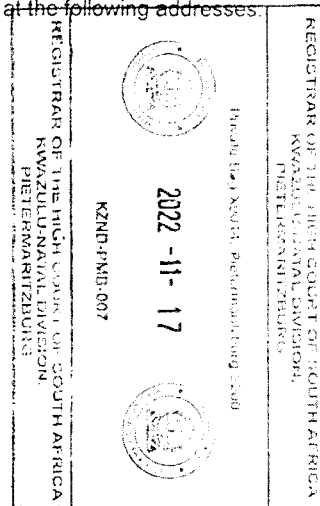
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IT IS ORDERED THAT:

1. A rule *nisi* is issued calling upon the Respondents and any interested party to appear before the above Court on **20th February 2023 at 09h30**, to show cause why an order in the following terms should not be made final:

- 1.1. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff of the High Court ("the Sheriff"), is authorised to take possession of all movable assets of the Fourth to Eighth Respondents ("the aforesaid Respondents"), in order to perfect the Applicant's security under general notarial bonds BN00352/2020, BN00353/2020, BN00401/2020, BN00438/2020 and BN00584/2020 and to hold the movable assets in its possession and be constituted as pledgee, such assets being situated at the following addresses:

- 1.1.1. 444 South Coast Road, Durban, 4093;
 - 1.1.2. 1 Mill Road, Amatikulu, Gingindlovu;
 - 1.1.3. 1 Mill Road, Felixton, Empangeni;
 - 1.1.4. 1 Main Avenue, Maidstone, Tongaat;
 - 1.1.5. 1 Main Road, Maidstone, Tongaat; and
 - 1.1.6. Amanzimnyama Hill, Tongaat;
- ("the Respondents' premises")



or wheresoever the movable assets may be found, whether in the aforesaid Respondents' possession or not;

- 1.2. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff, with jurisdiction is authorised and directed, to enter upon the aforesaid Respondents' premises and/or anywhere else the aforesaid Respondents carry on business or where the movable assets are being kept, to attach and make an inventory of all the movable assets of the aforesaid Respondents, of whatsoever nature and description, as security for the payment of all monies due by the aforesaid Respondents to the Applicant and by such attachment thereof shall be deemed to be given to the Applicant to hold in pledge;
- 1.3. The aforesaid Respondents, through their agents, representatives and employees, are ordered to point out all movable assets to the Applicant or its duly appointed representative, alternatively the Sheriff, wherever such movable assets may be situated;

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1.4 The Applicant, alternatively, the Sheriff is authorised to:

- 1.4.1. Lock and secure the movable assets, at the Respondents' premises or any other premises at which the aforesaid Respondents carry on business;
- 1.4.2. Affix a notice of attachment to the principal doors / gates of the Respondents' premises or any other premises at which the aforesaid Respondents' movable assets may be found;

in either event the Applicant shall be deemed to have taken effective possession of such movable assets and have perfected the aforementioned general notarial bonds;

1.5. The Applicant is authorised to sell the movable assets of the aforesaid Respondents which have been attached in terms of this order by private treaty or public auction, in the sole discretion of the Applicant, and that any manager or director of the Applicant, whose appointment need not be proved, is authorised to sign any sale agreement and all subsequent documents necessary to give transfer of the movable assets to any purchaser;

1.6. The Respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally with any other party who unsuccessfully opposes this application.

2. The orders contained at paragraphs 1.1, 1.2, 1.3 and 1.4 shall be effective immediately and operate as interim orders pending the return date of this application.

Venns Attorneys
Ref: Nida Jooste

BY ORDER OF THE COURT		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG		
Private Bag X2014, Pietermaritzburg 3200		
	2022 -11- 17	
KZND-PMB-007		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG		

R J JOOSTE
REGISTRAR

703000
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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 16TH DAY OF MAY 2023

BEFORE THE HONOURABLE JUDGE E BEZUIDENHOUT

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED
(Registration number: 2018/358484/07)

Applicant

and

TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.

Third Respondent

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED
(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED
(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED
(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the rule *nisi* issued out of this Court on the 17th day of November 2022, and
the other documents filed of record; and

HAVING heard Counsel for the Applicant;

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IT IS ORDERED THAT:

the aforesaid rule nisi be and is hereby confirmed.

Venns Attorneys

BY ORDER OF THE COURT


N P FENTE
SNR REGISTRAR

/agoba

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'S COURT

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE

In the matter between:

CASE NO. CVHGB -

26

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000065-26

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th
Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

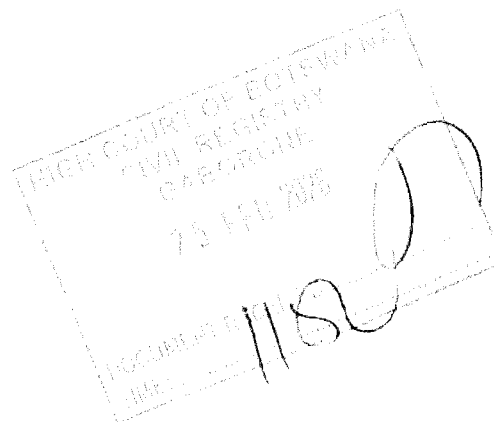
TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

FILING NOTICE

BE PLEASED TO TAKE NOTICE THAT the Applicants file herewith:

1. Notice of Set down;
2. Notice of Motion;
3. Founding Affidavit;
4. Confirmatory Affidavits;
5. Certificate of Urgency;
6. Powers of Attorney; and,
7. Draft Order.



DATED AT GABORONE ON THIS th26 DAY OF FEBRUARY 2026.

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AT MUZA ATTORNEYS

Plaintiff's Legal Practitioners
Plot 22964 Phase 4,
P O Box 45075, Fairgrounds,
Gaborone (0337/24/ATM)
alec@atmuza.com

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Tel: +267 74136542

TO: THE REGISTRAR
High Court of Botswana
Private Bag 00220,
GABORONE

AND TO: TREVOR JOHN MURGATROYD N.O.
1st Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA

AND TO: PETRUS FRANCOIS VAN DEN STEEN N.O.
2nd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA

AND TO: GERHARD CONRAD ALBERTYN N.O.
3rd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA

AND TO: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
4th Respondent
Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400,
SOUTH AFRICA

AND TO: TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED
5th Respondent
Plot 4291, Bathoen Road, Lobatse,
BOTSWANA

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IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th
Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

EX PARTE NOTICE OF SET DOWN

BE PLEASED TO TAKE NOTICE THAT that this *Ex – Parte Application* has been set down for
Hearing on the day of 2026 before this Honourable Court
at.....hours am or soon thereafter as Counsel may be heard.

DATED AT GABORONE ON THIS ~~24~~²⁵ DAY OF FEBRUARY 2026.



AT MUZA ATTORNEYS

Plaintiff's Legal Practitioners

Plot 22964 Phase 4,

P O Box 45075, Fairgrounds,

Gaborone (0337/24/ATM)

alec@atmuza.com

Tel: +267 74136542

TO:

THE REGISTRAR

High Court of Botswana

Private Bag 00220,

GABORONE

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- AND TO: TREVOR JOHN MURGATROYD N.O.**
1st Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA
- AND TO: PETRUS FRANCOIS VAN DEN STEEN N.O.**
2nd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA
- AND TO: GERHARD CONRAD ALBERTYN N.O.**
3rd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA
- AND TO: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**
4th Respondent
Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400,
SOUTH AFRICA
- AND TO: TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED**
5th Respondent
Plot 4291, Bathoen Road, Lobatse,
BOTSWANA

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**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th
Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

NOTICE OF MOTION

(*Ex – Parte* application in terms of Order 12 (4) of the Rules of the High Court)

BE PLEASED TO TAKE NOTICE that the Applicants intend to bring an *ex parte* application in terms of Order 12 Rule 4 before the Honorable Court at a time and date to be fixed by the Court for an order against the Respondents in the following terms:

- 1 That the matter is heard as one of urgency and the normal rules relating to service and time limits are dispensed with;
- 2 The Order of the High Court of South Africa, Kwazulu - Natal Division, Pietermaritzburg dated 16 May 2023 under Case No: 15784/22 perfecting the General Notarial Bond registered in favour of the Applicant over the assets of the 4th Respondent (including shares "wherever situate"), be and is hereby recognised and registered as an order of this Honourable Court.
- 3 It is declared that the General Notarial Bond No. BN00584/2020 is perfected over all the shares held by the 4th Respondent in the 5th Respondent, including but not limited to the issued 33.33% shares held by the 4th Respondent.
- 4 The 1st to the 5th Respondents are interdicted and restrained from selling, transferring, encumbering, pledging, or in any manner dealing with the said shares pending the final determination of this application or until further order of this Court.
- 5 The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Deputy Sheriff of this Court is authorised and directed forthwith to attach the share certificates and any blank transfer forms relating to the shares referred to in paragraph

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3 above and to perfect the Applicant's security interest by taking possession and/or control thereof.

- 6 The 5th Respondent is directed to note the perfected security interest of the Applicant on its share register and to refuse to register any transfer or dealing with the said shares without the prior written consent of the Applicant or further order of this Court.
- 7 That the 1st, 2nd, 3rd, 4th and 5th Respondents be and are hereby ordered to pay the costs of this Application on the higher scale of attorney and client jointly and severally, the one paying the others to be absolved only if they oppose this application.

TAKE NOTICE FURTHER that the founding affidavit of **CANDICE RISI** together with attached confirmatory affidavit will be used in support of this application.

TAKE NOTICE FURTHER that the Applicant has chosen the address of their attorneys of record, **AT MUZA ATTORNEYS** as the address of service of court process in connection with this matter.

Kindly place the matter on the roll for hearing accordingly.

DATED AT GABORONE ON THIS 24th DAY OF FEBRUARY 2026.

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AT MUZA ATTORNEYS
Plaintiff's Legal Practitioners
Plot 22964 Phase 4,
P O Box 45075, Fairgrounds,
Gaborone (0337/24/ATM)
alec@atmuza.com
Tel: +267 74136542

TO: THE REGISTRAR
High Court of Botswana
Private Bag 00220,
GABORONE

AND TO: TREVOR JOHN MURGATROYD N.O.
1st Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA

TH
Gen

- AND TO: PETRUS FRANCOIS VAN DEN STEEN N.O.**
2nd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA
- AND TO: GERHARD CONRAD ALBERTYN N.O.**
3rd Respondent
Jindal Africa Building, 22 Kildoon Road,
Bryanston, Johannesburg, Gauteng,
SOUTH AFRICA
- AND TO: TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**
4th Respondent
Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400,
SOUTH AFRICA
- AND TO: TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED**
5th Respondent
Plot 4291, Bathoen Road, Lobatse,
BOTSWANA

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JUSTICE

'S COURT

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA

HELD AT GABORONE

CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.1st Respondent**PETRUS FRANCOIS VAN DEN STEEN N.O.**2nd Respondent**GERHARD CONRAD ALBERTYN N.O.**3rd Respondent[in their capacities as the joint business rescue Practitioners of the 4th Respondent]**TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)**4th Respondent**TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED**5th Respondent**FOUNDING AFFIDAVIT**

I,

CANDICE RISI

state under oath that:

1. I am an adult female and sole director of the Applicant, Bowwood and Main No 296 (RF) Proprietary Limited, carrying on business at the TMF Building, No 2 Conference Lane, Block 1 Bridgewater One, Bridgeways Precinct, Century City, 7446, Cape Town, South Africa and I am authorised to depose to this affidavit, which I do for and on behalf of the Applicant by virtue of a resolution / power of attorney annexed hereto marked FAA.
2. The facts in this affidavit are within my personal knowledge, unless appears otherwise, and are to the best of my belief correct.
3. The Applicant is Bowwood and Main No 296 (RF) Proprietary Limited, a company duly incorporated in terms of the laws of South Africa, carrying on business at the TMF Building, No 4 Conference Lane, Block 1 Bridgewater One, Bridgeways Precinct, Century City, 7446, Cape Town, South Africa. The Applicant's address of service for purposes hereof is that of its attorneys of record, AT MUZA ATTORNEYS.

AT MUZA ATTORNEYS
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4. The 1st Respondent is TREVOR JOHN MURGATROYD N.O., an adult male carrying on business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg, Gauteng and who has been cited in his official capacity as the business rescue Practitioner of Tongaat Hullet Limited (In Business Rescue) the 4th Respondent.
5. The 2nd Respondent is PETRUS FRANCOIS VAN DEN STEEN N.O., an adult male carrying on business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg, Gauteng and who has been cited in his official capacity as the business rescue Practitioner of Tongaat Hullet Limited (In Business Rescue) the 4th Respondent.
6. The 3rd Respondent is GERHARD CONRAD ALBERTYN N.O., an adult male carrying on business at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg, Gauteng and who has been cited in his official capacity as the business rescue Practitioner of Tongaat Hullet Limited (In Business Rescue) the 4th Respondent.
7. The 4th Respondent is TONGAAT HULETT LIMITED (In Business Rescue), a company duly registered and incorporated in terms of the laws of the Republic of South Africa, having its principal place of business at Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400, South Africa.
8. The 5th Respondent is TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED, a company duly registered and incorporated in terms of the laws of the Republic of Botswana with registration number BW00001585712, having its principal place of business at Plot 4291, Bathoen Road, Lobatse, Botswana.

THE PURPOSE OF THIS AFFIDAVIT

9. This is an *ex – parte* application brought on an urgent basis to seek the High Court of Botswana to recognise and enforce an order granted by the High Court of South Africa, Kwa-Zulu Natal Division, Pietermaritzburg (the High Court of South Africa) on 17 November 2022 and 16 May 2023, in terms of which the Applicant's security over all moveable assets, subject to various general notarial bonds (the General Notarial Bonds), were perfected. Copies of the authenticated aforesaid South African court orders duly certified by the Registrar and bearing the official court seal/stamp), including the filed notice of motion are annexed hereto marked FAA1.
10. For purposes of this application, only the General Notarial Bond in relation to the moveable assets of the 4th Respondent is relevant as the asset within the jurisdiction of the Honourable Court are the shares of the 4th Respondent in Tongaat Hulett (Botswana) Proprietary Limited (THB).

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THE TONGAAT GROUP

11. The 4th Respondent is the holding company of a group of companies referred to in this affidavit as the Tongaat Group. An organogram reflecting the various companies within the Tongaat Group is attached hereto as **FA1**.
12. As can be seen from the organogram, the 4th Respondent holds 33.3% of the shareholding in THB. I attach hereto and marked **FAA2**, the company extract for the 5th Respondent. A further 33.3% of THB's shares are held indirectly by the 4th Respondent through its subsidiaries registered in the Republic of Zimbabwe (Zimbabwe).
13. The Tongaat Group operates and owns the following principal businesses, namely (i) producers of, *inter alia*, sugar, which is marketed and sold under the well-known brand of "Hulets" and animal feed (this business is owned and operated by the 4th Respondent) and (ii) a developer of properties in the Republic of South Africa (**South Africa**) (which is operated by Tongaat Hullet Developments Proprietary Limited and (iii) sugar operations in foreign countries.
14. The Tongaat Group operates primarily in KwaZulu-Natal in South Africa, Zimbabwe, the Republic of Mozambique (**Mozambique**), Botswana and the Republic of Namibia (**Namibia**).
15. As a result of financial distress, the 4th Respondent and a number of its South African subsidiaries were placed into business rescue with the 1st to 3rd Respondents having been appointed as the business rescue practitioners of those entities, inclusive of the 4th Respondent.

INDEBTEDNESS TO THE APPLICANT

16. On 11 January 2024, Vision Investments 155 Proprietary (**the Lender**) acquired the secured claims of approximately R8.5 billion (at that time) (**the Secured Claims**) from a grouping of 13 South African banks and financial institutions (**the Historic Lender Group**).
17. As of 7 February 2026, the Secured Claims amount to R11,738,406,991.00.
18. The loan funding (i.e: the Secured Claims) which the THL Debtors owe to the Lender remain owing. The 4th Respondent is the borrower in respect of the loan funding received and the remaining Tongaat Respondents guaranteed the obligations of the 4th Respondent (and of each other) to the Lender.
19. The Applicant guaranteed the obligations of the Tongaat Respondents to the Lender (in terms of the Debt Guarantee referred to below), and the Tongaat Debtors

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indemnified the Applicant against any claims made by the Lender against the Applicant thereunder (in terms of the Counter Indemnity referred to below).

20. The Tongaat Debtors provided security to the Applicant for their obligations under the Counter Indemnity (including the General Notarial Bonds).
21. The 4th Respondent and the Historic Lender Group entered into the following loan facility agreements in terms of which loans were advanced to the 4th Respondent (as borrower under the loan facility agreements), which loans are now owed to the Lender:
 - 21.1. The senior facility A agreement (**the Facility A Agreement**), a copy of which is annexed marked "FA2";
 - 21.2. The senior facility B agreement (**the Facility B Agreement**), a copy of which is annexed marked "FA3";
 - 21.3. The senior facility C agreement (**the Facility C Agreement**), a copy of which is annexed marked "FA4"; and
 - 21.4. The senior facility D agreement (**the Facility D Agreement**), a copy of which is annexed marked "FA5",

(collectively referred to as the **Facility Agreements**).
22. The Facility Agreements are governed by the Common Terms Agreement dated 3 December 2021, which was concluded between, *inter alia*, the Applicant (as Debt Guarantor), the Tongaat Debtors (as Obligors) and the Historic Lenders (**CTA**). The CTA remains binding on the Applicant, the Tongaat Debtors and the Lender. Due to the size of the CTA, a full copy is not attached and extracts from the CTA (referred to below have been attached to this affidavit). A full copy of the CTA will be made available to the Court at the hearing of the matter.
23. Capitalised words used in paragraphs 24 to 27 below will have the meaning ascribed thereto in the CTA. A copy of the definitions in the CTA are annexed hereto marked "FA6".
24. In terms of the CTA the Tongaat Debtors guaranteed the obligations of each other to the Lender in terms of the Financing Agreements. Copies of the relevant pages from the CTA which sets out the terms of the guarantee are attached marked "FA7".
25. The obligations of the Applicant to the Lenders are as follows:

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- 25.1. The Applicant guaranteed all the obligations of the Tongaat Debtors to the Lenders which arise from or relate to the Financing Agreements, in terms of an amended and restated debt guarantee dated 29 July 2022, issued by the Applicant to the Lender for certain obligations of the Tongaat Debtors owing to the Lender (**Debt Guarantee**). A copy of the Debt Guarantee is annexed hereto marked "FA8".
- 25.2. The Tongaat Debtors indemnified the Applicant against any claim made against the Applicant under the Debt Guarantee, in terms of a second amended and restated counter indemnity agreement entered into by such parties with the Applicant on or about 3 December 2021 (referred to below as the **Counter Indemnity**). A copy of the Counter Indemnity is annexed hereto marked "FA9"
- 25.3. The Tongaat Debtors provided security to the Applicant for their respective obligations under the Counter Indemnity including the registration of the General Notarial Bonds in favour of the Applicant.
- 26. The Applicant is indebted to the Lender for an amount equal to the Secured Claim, which is R11,738,406,991.00 as of 7 February 2026.
- 27. The Tongaat Debtors are indebted to the Applicant in the above amounts in terms of the Counter Indemnity. Attached marked "FA10" is a certificate of balance signed by the Facility Agent (which is Vision Investments 155 Proprietary Limited).

THE PERFECTED GENERAL NOTARIAL BONDS

- 28. As security for the obligations of the Tongaat Debtors to the Applicant under the Counter Indemnity, the following General Notarial Bonds were registered:
 - 28.1. 16 January 2020, Tongaat Hulett Developments Proprietary Limited (in business rescue) (THD) registered a general notarial bond in favour of the Applicant under bond number BN00352/2020;
 - 28.2. 16 January 2020, Tongaat Hulett Estates Proprietary Limited (THE) registered a general notarial bond in favour of the Applicant under bond number BN00353/2020;
 - 28.3. 17 January 2020, Tongaat Hulett Sugar South Africa Limited (in business rescue) (THSSA) registered a general notarial bond in favour of the Applicant under bond number BN00401/2020;
 - 28.4. 20 January 2020, Voermol Feeds Proprietary Limited (Voermol) registered a general notarial bond in favour of the Applicant under bond number BN00438/2020; and

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- 28.5. 23 January 2020, the 4th Respondent registered a general notarial bond in favour of the Applicant under bond number BN00584/2020.
29. In this application, only the General Notarial Bond of the 4th Respondent is of relevance. A copy of the General Notarial Bond in relation to the 4th Respondent is attached as **FA11**.
30. The material terms and conditions of the General Notarial Bond includes the following:
- 30.1. Each of the Tongaat Debtors acknowledged and declared that they were truly and lawfully indebted and firmly held and bound to and in favour of the Applicant for the sum under and in terms of the Counter Indemnity Agreement (as amended, amended and restated, replaced, substituted, novated and/or superseded from time to time) up to, but not exceeding, the sum of R13,500,000,000.00 (thirteen billion five hundred million Rand) **(the Capital)**, plus interest thereon and all other amounts whatsoever payable to the Applicant under the Indemnity Agreement, and the additional sum of R2,700,000,000.00 (two billion seven hundred million Rand **(the Additional Sum)**).
- 30.2. Each of the Tongaat Respondents acknowledged and declared to be held and firmly bound unto and in favour of the Applicant in the sum of Capital arising from the considerations set out in the preamble hereof.
- 30.3. As security for the payment of the:
- 30.3.1. the Capital;
- 30.3.2. all interest and all other amounts whatsoever payable to the Applicant under the Indemnity Agreement by, *inter alia*, the 4th Respondent;
- 30.3.3. the costs of preserving and realising the Mortgaged Assets (as defined below), insurance premiums and cost of notice; and
- 30.3.4. all costs which the Applicant may incur and all amounts which the Applicant may disburse on, *inter alia*, the 4th Respondent's behalf which costs, and disbursements are recoverable from, *inter alia*, the 4th Respondent in terms of the General Notarial Bond,

each of the Tongaat Debtors declared to cede and assign to the Applicant and to pledge and hypothecate, the movable property of each Tongaat Debtor of every description and of whatsoever nature and wherever situate, and such as each Tongaat Debtor possessed or may at any time in the future

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become possessed of without exception, submitting them all and the choice thereof to constraint and execution as the law directs;

(hereinafter referred to as the **Mortgaged Assets**).

- 30.4. The Applicant would, following the occurrence of an Enforcement Event (which will arise upon amounts becoming payable by each of the Respondents and which remain unpaid) which is continuing, be entitled, inter alia, (but not obliged) to the extent permitted by law -
- 30.4.1. to claim and recover from each of the Tongaat Debtors all and any sums for the time being secured by the General Notarial Bonds, whether then due for payment or not; and/or
 - 30.4.2. for the purpose of perfecting its security hereunder to enter upon the premises of each of the Tongaat Debtors or any other place where Mortgaged Assets are situated and to take possession of such assets; and/or
 - 30.4.3. to do all such other acts as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be, of the Mortgaged Assets or any of them; and/or
 - 30.4.4. to hold the assets as security for the indebtedness of each of the Tongaat Debtors to the Applicant arising under the Counter Indemnity or otherwise and to retain such possession for so long as each of the Tongaat Debtors are so indebted to the Applicant; and/or
 - 30.4.5. to employ such other remedies and to take such other steps against each of the Tongaat Debtors as are in law allowed.

PERFECTION APPLICATION

31. On 15 November 2022, the Applicant instituted an urgent application (**the Perfection Application**) against, *inter alia*, the First to 4th Respondents to perfect the Applicant's various general notarial bonds (which shall be set out in further detail below) (**General Notarial Bonds**), passed over the movable assets, wheresoever situate, of the 4th Respondent and its related entities, namely:
- 31.1. Tongaat Hulett Sugar South Africa Limited (in business rescue) (**THSSA**);
 - 31.2. Tongaat Hulet Estate Proprietary Limited (**THE**); and

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Effect of Final Relief on the Ex Parte Arguments

1. No triable merits or factual dispute

The court is not re-hearing or deciding the merits of the South African proceedings. It is performing a mechanical/judicial act of **recognition and registration** of a final, conclusive foreign order under common law (supported by the authenticated document under s 3(b) of Cap 10:03). There is therefore **no basis** for the Respondents to be heard on the substance before the order is granted.

2. The relief sought is the recognition and registration of a final and conclusive order of the South African court. This Honourable Court is not required to re-hear or determine the merits of the South African proceedings; it is performing a straightforward judicial act of recognition based on the authenticated order (annexure "FAA1"). There is accordingly no triable issue of fact or law on which the Respondents are entitled to be heard prior to the granting of the order.

3. Rule 12(1) gives the judge extremely wide powers

In urgent applications the judge "may dispense with the forms and service ... and may dispose of such matter ... as to him seems meet." This expressly authorises final relief ex parte where urgency justifies it. The judge can still, in his discretion, grant interim relief or a rule nisi if he considers it appropriate — but the Applicant is entitled to ask for final relief from the outset.

4. No prejudice to Respondents

Even with final relief, they retain the right to apply immediately for variation or rescission on good cause shown (standard practice in Botswana for ex parte final orders). Service will occur immediately after the order is granted.

5. Urgency is heightened

Giving notice would allow the very dissipation the final order is designed to prevent. The final nature of the relief makes prior service even more dangerous and unnecessary.

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MAKGEKGENENE v MAKGEKGENENE 2012 1 BLR 741 HC

Citation: 2012 1 BLR 741 HC

Court: High Court, Lobatse

Case No: Misca No 84 of 2011

Judge: Lesetedi J

Judgement Date: 13 June 2012

Counsel: K Modise for the appellant; M W Makuyana for the respondent

Flynote

Practice and procedure—Foreign judgment or order—Enforcement—Application for registration under the Judgments (International Enforcement) Act (Cap 11:04) or enforcement under common law—Proof of foreign judgment or order—Applicant to adduce authenticated copy of foreign judgment or order—'Authenticated' meaning sealed with court seal or signed by judge who attached statement in writing on copy that court had no seal—Failure to properly authenticate copy fatal to application—Judgments (International Enforcement) Act (Cap 11:04). Practice and procedure—Foreign judgment or order—Enforcement—Registration in High Court—Exclusions from registration—Matrimonial matters—With exception of maintenance orders, orders relating to matrimonial matters not registrable—Judgments (International Enforcement) Act (Cap 11:04), Part III.

Headnote

The applicant applied for the registration of an English court order, made following her divorce from the respondent, which settled their property claims and provided for maintenance of their minor children. The respondent resisted the application, arguing that it was fatally defective in that, first, it was not competent under the Judgments (International Enforcement) Act (Cap 11:04) as it was a matrimonial cause and, second, the order had not been properly authenticated: proper authentication being to prove the order as a fact under the Evidence (Commonwealth and Foreign Acts of State and Judgments) Act (Cap 10:03). Held: (1) Only those portions of the English order which related to maintenance were registrable under Part III of the Judgments (International Enforcement) Act. In terms of s 2(2) of the Judgments (International Enforcement) Act, judgments and orders relating to other matrimonial matters could not be registered, and thus enforced, in Botswana. (2) In terms of s 3(b) of the Evidence (Commonwealth and Foreign Acts of State and Judgments) Act, an applicant who sought to register a foreign judgment under the Judgments (International Enforcement) Act, or to enforce it under the common law, was required, inter alia, to prove the judgment by producing an authenticated copy of the judgment. The section defined 'authenticated' as meaning that it was sealed with the court seal or signed by the judge, in which case he attached a statement in writing on the copy that the court had no seal. (3) The applicant had failed to produce a properly authenticated copy of the maintenance order she sought to register. Mere authentication through a notarial certificate did not comply with the statutory requirements. That was fatal to the application.

Case Information

Cases referred to: Jones v Krok 1995 (1) SA 677 (A); Mtui v Mtui [2000] 1 BLR 406; Mtui v Mtui [2001] 2 BLR 333, CA 2012 (1) BLR p 742. APPLICATION for registration of a foreign court order. The facts are sufficiently stated in the judgment. K Modise for the appellant; M W Makuyana for the respondent

Judgement

LESETEDI J: The parties were divorced from each other by the Family Division of the High Court in England on 15 February 2007. The decree for divorce was made absolute on 2 August 2007. Subsequently, a consent order was made by the same court on 27 May 2008 settling property claims between the parties and providing for the educational expenses and upkeep and financial needs of their minor children of the marriage. On 11 February 2011, the applicant launched these proceedings in which she seeks that: (a) The court order of 27 May 2008 be registered in this honourable court's jurisdiction; (b) The registered court order shall have the same force and effect as an order made by the High Court of Botswana; (c) The respondent pay the legal costs of this application on an attorney and own client scale. The respondent opposes the application and has also raised preliminary points of law and procedure. It is not

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necessary to deal with the points raised ad seriatum and it shall suffice to deal with them in what I consider to be their order of their importance in the context of the present matter. I must first observe in passing that one of the points raised by the respondent was that the order which is sought to be recognised by this court was not certified at all. The copy filed in the judge's court record, however, bears the authentication seal of a Notary Public. This, however, has no bearing on the main issue that I now proceed to consider. It was argued by the respondent that the application is fatally defective for non-compliance with the statutory requirements or the common law. It is widely recognised around the world that a judgment rendered by the courts of one country may be recognised and enforced in another country, provided certain conditions are met. See C F Forsyth Private International Law — The Modern Roman-Dutch law including the jurisdiction of the Supreme Court (4th ed Juta & Co Ltd Cape Town 2003) at p 389. See also, Mtui v Mtui [2000] 1 BLR 406 at p 411, confirmed by the Court of Appeal in Mtui v Mtui [2001] 2 BLR 333, CA at p 337. One of these is that the court will recognise and enforce a judgment of a foreign court if such court was itself of competent jurisdiction. The argument raised by the respondent above is that firstly, the application is not competent under the Judgments (International Enforcement) Act (Cap 11:04) in that it is a matrimonial cause and secondly, that, in any event, the order was not properly authenticated. It was submitted that the proper authentication, if the application was brought under the common law, would be to prove such 2012 (1) BLR p743 LESETEDI judgment as a fact under the Evidence (Commonwealth and Foreign Acts of State and Judgments) Act (Cap 10:03). The Judgments (International Enforcement) Act is a piece of legislation relating to the enforcement in Botswana of judgments given in countries which accord reciprocal treatment to judgments given in Botswana, for facilitating the enforcement in other countries of judgments given in Botswana and any other purposes connected therewith. In terms of the Act, a foreign judgment must first be registered or confirmed in the High Court (or where appropriate under Part III of the Act, a magistrate's court) before enforcement. Registration or confirmation of the foreign judgment is conferment of recognition on such a judgment. Section 5(1) of the Act provides for the registration of a foreign judgment by a judgment creditor for a judgment which is wholly or partially unsatisfied in respect of the unsatisfied part of the judgment. Save for maintenance matters, which are specifically provided for under Part III of the Act, matrimonial matters and other specified actions in personam are, under s 2(2) of the Act, expressly excluded from recognition and enforcement through the procedures laid out by the Act. It thus appears evident that the Act is intended to facilitate recognition and enforcement of foreign judgments and orders in selected fields. The order which is being sought to be registered by the applicant is an order in a matrimonial matter pertaining to the divorce proceedings between the parties. Only paras 3 and 4 of the foreign order relate to provision for maintenance of the minor children. For that part of the Order to be recognised through the statutorily outlined process, the applicant must also have met the requirements of Part III of the Act which provides for registration or confirmation of foreign maintenance Orders. The relevant provision is s 21 which reads: '21. Any document purporting to be signed by a judge or officer of a court in a country to which this Part applies shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.' The language of the above provision does not appear to be prescriptive of the manner of proving a foreign judgment or order for purposes of registration or confirmation. All it does is to prescribe sufficient rebuttable proof of such a document when purporting on the face of it to be signed by a judge or officer of the court that issued it. That would not exclude the document being proved in any other acceptable manner. However, the applicant seemed to admit during argument that she was not coming under the Act and, in any event, she does not say in her application that she seeks only to have that part of the order relating to maintenance registered, if she seeks to enforce it at all. There would be no purpose of registering an order such as this except for purposes of enforcing it. It appears that under the common law, a foreign judgment is not directly enforceable but constitutes a cause of action: '... and will be enforced by our Courts provided (i) that the court which 2012 (1) BLR p744 LESETEDI pronounced the judgment had jurisdiction to entertain the case according to the principles recognised by our law with reference to the jurisdiction of foreign courts (sometimes referred to as "international jurisdiction or competence"); (ii) that the judgment is final and conclusive in its effect and has not become superannuated; (iii) that the recognition and enforcement of the judgment by our Courts would not be contrary to public policy; (iv) that the judgment was not obtained by fraudulent means;'. (See, generally, Law of South Africa (op cit) vol 2 (first reissue) paras 477 and 478); Forsyth Private International Law 2nd ed at 336 et seq and the authorities cited.) Apart from this, our Courts will not go into the merits of the case adjudicated upon by the foreign court and will not attempt to review or set aside its findings of fact or law (Joffe v Salmon 1904 TS 317 at 319; Law of South Africa (op cit) vol 2 (first reissue) para 476)). Corbett CJ in Jones v Krok 1995 (1) SA 677 (A) at p 685B-E. I believe the above common law factors reflect our law as well. Taking the common law approach set out above, the applicant would have been required to prove the foreign judgment or court order as a fact of her cause of action. It is here that the applicant would have had to annex to her papers, as evidence of her cause of action, a copy of the foreign judgment or order she relies upon. And it is here that the provisions of ss 2 and 3 of the Evidence (Commonwealth and Foreign Acts of State and Judgments) Act have relevance. Section 2 provides that: 'All ... judgments, decrees, orders and other judicial proceedings of a Commonwealth or a foreign court and affidavits, pleadings and other legal documents filed or deposited in such court, may be proved in any court in Botswana.' Section 3(b) sets out the method of such proof as follows: '(b) a judgment, decree, or order or other judicial proceeding of any Commonwealth or foreign court, ... for the authenticated copy to be admissible in evidence, it must purport either to be sealed with the seal of the Commonwealth or foreign court to which the original document belongs, or if the court has no seal, then it must be signed by the judge or one of the judges of the court, whom must attach a statement in writing on the copy that the court has no seal.' (my emphasis to show the mandatory nature of the requirements.) The applicant has not complied with any of the requirements of s 3(b) above. That is, in my view, fatal to the application. Mere authentication through a notarial certificate does not comply with the statutory requirements set out above. The reason for such statutory requirements to prove such documents are not far to discern. A judgment decree or order of a court is issued by a judge. The record of

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such a case would normally be in the custody of an official of the court who can certify a copy from the primary source of which he or she is the official custodian. It is also worth noting that the definition of 'document' under s 2 of the Authentication of Documents Act (Cap 14:02), although not exhaustive and is in general terms, makes specific mention of certain documents which may be of a legal nature, for instance, power of attorney and affidavit, but there is no mention of a judgment decree or order of court. Having regard to the specific nature of the provisions of the Evidence (Commonwealth and Foreign Acts of State and Judgments) Act as against the general application of the Authentication of Documents Act and its definition of what constitutes a 'document', I am satisfied that the applicant's argument that compliance with the latter Act was sufficient to authenticate a judgment or order of a commonwealth or foreign court cannot hold. A finding in the respondent's favour on this point is decisive of these proceedings. The application being fatally defective, the appropriate order to make is to strike it out. The costs must, as is the general rule, follow the event. The following order is therefore made: (a) the application, being fatally defective, is struck out; (b) the applicant to bear the costs of these proceedings. Application struck out. 2012 (1) BLR p745

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South Africa

Roger Wakefield, Des Williams
Werksmans, Johannesburg
rwakefield@werksmans.com
dwilliams@werksmans.com

1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

- South Africa is not party to any treaty on the reciprocal enforcement of foreign commercial judgments.
- A foreign judgment is not directly enforceable in South Africa but represents a cause of action (brought by summons or on application supported by affidavits) which will be enforced by South African courts if the following requirements are met. These requirements were confirmed in the leading cases of *Jones v Krok* 1995 (1) SA 677 (A) and *Richman v Ben-Tovim* 2007 (2) SA 234 (SCA) (A):
 - The foreign court must have had international competence as determined by South African law. This means that the foreign court must have had jurisdiction over the defendant under its own laws and in addition to that the defendant must have been either resident or physically present in the foreign jurisdiction at the commencement of the legal proceedings, or must have voluntarily submitted to the court's jurisdiction by contract or by conduct. In the latter case a defendant is deemed to have submitted to the jurisdiction of the foreign court by defending the case on its merits. Acceptance of the summons and appearing before the court in question to contest the jurisdiction of the foreign court does not amount to submission (*Du Preez v Philip-King* 1963 (1) SA 801 (W));
 - The judgment must be final. This means that the court which granted it must not have the power to alter it in any way. Therefore, a judgment pending appeal is final but the South African courts enjoy a discretion to enforce such a judgment and may also stay the enforcement proceedings pending the final determination of the appeal in the foreign court. The onus of proving that a foreign judgment is final rests on the plaintiff and where this is discharged it is up to the defendant to put facts before the court to persuade it to exercise its discretion in favor of granting a stay of proceedings. Foreign default judgments are regarded as final for the purposes of enforcement when the defendant has failed to bring recission proceedings within the time afforded to it to do so under the foreign law;
 - Enforcement must not be contrary to South African public policy (which includes the rules of natural justice). Whether a foreign judgment breaches South African public policy depends on the specific circumstances of each case. Punitive damages were long regarded as conflicting with South African public policy. However, in the case of *Jones v Krok* 1996 (1) SA 504 (T) the court was of the opinion that the mere fact that foreign judgments are based on principles not recognized in South Africa does not automatically make them contrary to public policy. In this case the court held that the punitive damages awarded by a California court were so high that to enforce them would be contrary to South African public policy. In 2017 the Western Cape High Court in *Danielson v Human and Another*

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2017 (1) SA 141 (WCC) dealt with the question of whether a court may enforce treble damages granted by the United States District Court, Western District of North Carolina (Charlotte Division) under the United States Racketeer Influenced and Corrupt Organizations Act (RICO). In enforcing the treble damages it relied on *Jones v Krok* and reasoned that treble damages were designed under RICO to fully compensate a plaintiff for intangible injuries where actual damages are often speculative or difficult to prove. The South African court held that the proper inquiry was whether the damages awarded were in fact compensatory as opposed to "strictly punitive" in nature;

Natural justice refers to the procedure, due process, and not to the merits of the case and requires that the hearing must have taken place before an impartial tribunal, that the defendant must have had due notice of the proceedings and that it had the opportunity to present its case.

- The judgment must not have been obtained by fraudulent means;
- The judgment must not involve the enforcement of a penal or revenue judgment of the foreign state;
- Enforcement must not be precluded by the Protection of Businesses Act, 99 of 1978. The Act requires ministerial consent for the enforcement of foreign judgments dealing specifically with transactions involving raw materials (*Richman v Ben-Tovim* 2007 (2) SA 234 (SCA)). In all other cases ministerial consent is not required for enforcement.
- Enforcement and recognition are used interchangeably in the law relating to foreign judgments and must be distinguished from execution against the defendant's assets once the court has recognised or enforced the judgment. Once recognised or enforced, a foreign judgment becomes a judgment of the South African court and may be executed as such against the defendant's assets by the Sheriff of the court.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?

- Section 13 of the Foreign States Immunities Act 87 of 1981 requires any process commencing proceedings against a foreign state (including proceedings to enforce a foreign judgment) to be served by being transmitted through the Department of International Affairs and Cooperation of South Africa to the ministry of foreign affairs of the foreign state. Service is deemed to have been effected when the process is received at the foreign ministry.
- The process is dealt with by the Registrar of the High Court who authenticates the process documents and transmits them to the Department of International Cooperation for onward transmission to its foreign counterpart.
- A foreign state which appears in proceedings may not thereafter object to lack of formal service under the Act.
- Apart from the ministerial consent required under the Protection of Businesses Act for the enforcement of foreign judgments dealing with raw materials, no other ministerial or governmental consent is required for the enforcement of foreign judgments against states.

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31.3. Voermol Feeds Proprietary Limited (Voermol),
(the Tongaat Debtors).

32. On 17 November 2022, the High Court of South Africa handed down an order issuing a *rule nisi* with regards to the Applicant's right to perfect its security over all of the moveable assets of the 4th Respondent, which moveable assets are subject to the General Notarial Bonds (**Rule Nisi Order**).
33. On 16 May 2023, the High Court of South Africa handed down its second order in terms of which it was ordered that the *rule nisi* be confirmed, thereby perfecting the Applicant's security over the moveable assets subject to the General Notarial Bonds (**the Perfection Order**).
34. A copy of the notarised notice of motion, the Rule Nisi Order and the Perfection Order is attached as **FAA1**.
35. In the circumstances, the Applicant holds perfected security over the Mortgaged Assets of the 4th Respondent and seeks to enforce the Perfection Order in Botswana so as to take effective control over the shares of the 4th Respondent in THB.

URGENCY

36. On 12 February 2026, the 1st – 3rd Respondents who are the business rescue practitioners of the 4th Respondent, Tongaat Hulett Limited, applied to the High Court of South Africa, Kwa-Zulu Natal Local Division, Durban for an order placing Tongaat Hulett Limited into provisional liquidation, and that application has been set down for hearing on 27 February 2026. I attach hereto a copy of the issued notice of set down and marked **FA12**.
37. This application is accordingly brought as a matter of urgency because the Applicant is a secured creditor (or security-holder for the benefit of the Lender) with very substantial exposure, whose security package includes, *inter alia*, the General Notarial Bonds and the right, upon the occurrence of an Enforcement Event, to take the steps necessary to perfect its security, including entering upon premises where the mortgaged movable assets are situated and taking possession of such assets.
38. In the present matter, the relief sought is directed at ensuring that the Applicant's perfected security (and the practical ability to enforce it, including in respect of assets situate outside South Africa) is not rendered nugatory by intervening insolvency proceedings. In this regard, and as set out earlier in this affidavit, the Applicant has already obtained orders of the High Court of South Africa perfecting its security under the General Notarial Bonds, and the purpose of this application is to secure the operative effect of that perfected security (including by recognition and/or enforcement where required for assets in the relevant jurisdiction).

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39. The urgency is acute because, once a provisional liquidation order is granted, the ordinary incidents of winding-up follow: control and custody of assets may shift to the liquidator and dispositions may be restrained. In those circumstances, the Applicant faces a material risk that it will be prevented from taking the steps required to practically enforce its security over the shares of THB, with the result that the very protection for which the security was taken (including the attendant ranking and priority consequences) may be prejudiced.

LEGAL BASIS FOR RELIEF

40. I am advised by the Applicant's attorneys of record, which advice I accept that in Botswana the Judgments (International Enforcement) Act (Cap 11:04) Act provides for the registration of a foreign judgment by a judgment creditor for a judgment which is wholly or partially unsatisfied in respect of the unsatisfied part of the judgment. I am further advised, which advice I accept that the Act is intended to facilitate recognition and enforcement of foreign judgments and orders in selected fields.
41. I am also advised by the Applicant's attorneys of record, which advice I accept that where a foreign judgment or court order does not fall within the ambits of the aforesaid Act, the common law allows for enforcement of such foreign judgment or court order by the Botswana Courts provided:
- 41.1. that the court which pronounced the judgment had jurisdiction to entertain the case (international jurisdiction or competence)
 - 41.2. that the judgment is final and conclusive in its effect and has not become superannuated;
 - 41.3. that the recognition and enforcement of the judgment by the Botswana Courts would not be contrary to public policy;
 - 41.4. that the judgment was not obtained by fraudulent means.
42. I aver that the High Court of South Africa's Court orders issued on 22 November 2022 and the subsequent rule nisi confirmation issued on 16 May 2023 is final and conclusive. The said order is extant and has not superannuated. The High Court of South Africa that issued the said order had international jurisdiction or competence over the 1st – 4th Respondent by virtue of the said Respondents residence and submission to the jurisdiction of the South African High Court.
43. I further aver that the recognition and enforcement of the said Court order by the High Court of Botswana is and shall not be contrary to public policy. This Honourable Court has the power under its common-law jurisdiction to recognise and register the final and conclusive order of a competent foreign court, particularly where the order perfects security over assets situate in Botswana.

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44. The authenticated copy of the said South African court order (annexure FAA2) is admissible as it purports to be sealed with the seal of the High Court of South Africa.
45. I aver that said order was not obtained by fraudulent means and the same has not been set aside and remains extant.

COSTS

46. With respect to costs, I aver that the same should be granted against the Respondents on the higher scale of attorney and client only if they oppose this application. As was demonstrated above, the Applicant only seeks to enforce its rights as per the notarial general bond in its favour. Therefore, any opposition by the Respondents will only be mischievous and ought to be punished by an appropriate order for costs on the higher scale of attorney and client.

WHEREFORE the Applicant prays that the order be granted in terms of the draft order which is attached to this affidavit and notice of motion.

Candice Risi

CANDICE RISI

THUS SIGNED AND SWORN TO at Sandton on this 24th day of February 2026 the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath, that the oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are both true and correct.

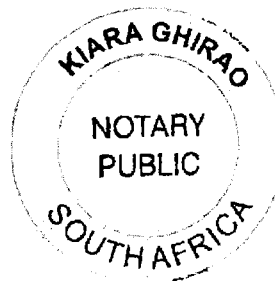
[Signature]

NOTARY PUBLIC

FULL NAME:

DESIGNATION:

ADDRESS:



KIARA GHIRAO
Commissioner Of Oaths
Ex Officio
Practising Attorney RSA
1 Protea Place, Sandton
Johannesburg

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JUSTICE

'S COURT

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA

HELD AT GABORONE

CASE NO. CVHGB -

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In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT BOTSWANA PROPRIETARY LIMITED

5th Respondent

POWER OF ATTORNEY

CANDICE RISI

In my capacity as the Sole Director of BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED and on behalf of the said company do hereby constitute, nominate and appoint AT MUZA ATTORNEYS, ALEC TAFADZWA MUZA AND/OR ANY ASSISTANT OF THE FIRM AND ANY OTHER FIRM DEPUTIZING FOR ALEC TAFADZWA MUZA AND/OR AT MUZA ATTORNEYS (hereinafter 'the Attorneys'), with power of substitution, to be my true and lawful Attorney(s) and Agent(s) in my names, place and stead, to appear before the above-named Honourable Court or wherever else may be necessary and then and there as my act and deed to act on my behalf to institute legal proceedings against the abovementioned and seek an Order in the following terms;

- 1 That the matter is heard as one of urgency and the normal rules relating to service and time limits are dispensed with;
- 2 The Order of the High Court of South Africa, Kwazulu - Natal Division, Pietermaritzburg dated 16 May 2023 under Case No: 15784/22 perfecting the General Notarial Bond registered in favour of the Applicant over the assets of the 4th Respondent (including shares "wherever situate"), be and is hereby recognised and registered as an order of this Honourable Court.

Handwritten signatures and initials: IH, KG, GEA

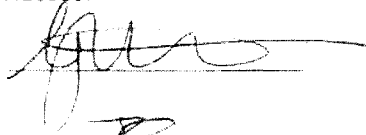
- 3 It is declared that the General Notarial Bond No. BN00584/2020 is perfected over all the shares held by the 4th Respondent in the 5th Respondent, including but not limited to the issued 33.33% shares held by the 4th Respondent.
- 4 The 1st to the 5th Respondents are interdicted and restrained from selling, transferring, encumbering, pledging, or in any manner dealing with the said shares pending the final determination of this application or until further order of this Court.
- 5 The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Deputy Sheriff of this Court is authorised and directed forthwith to attach the share certificates and any blank transfer forms relating to the shares referred to in paragraph 3 above and to perfect the Applicant's security interest by taking possession and/or control thereof.
- 6 The 5th Respondent is directed to note the perfected security interest of the Applicant on its share register and to refuse to register any transfer or dealing with the said shares without the prior written consent of the Applicant or further order of this Court.
- 7 That the 1st, 2nd, 3rd, 4th and 5th Respondents be and are hereby ordered to pay the costs of this Application on the higher scale of attorney and client jointly and severally, the one paying the others to be absolved only if they oppose this application.
- 8 To pay all fees of Counsels and witnesses; to make all and any payments whatsoever which may be necessary and desirable for the proper conduct of the case; and generally for effecting the purpose aforesaid, to do or cause to be done whatsoever shall be requisite as fully and effectually to all intents and purposes, as we might or could do personally, present and acting herein we hereby ratify and confirm whatsoever our said Attorneys shall lawfully do or cause to be done in or about the premises by virtue of these presents

SIGNED AT CAPETOWN, REPUBLIC OF SOUTH AFRICA BEFORE THE UNDERSIGNED WITNESSES
THIS 24TH FEBRUARY 2026



CANDICE RISI

AS WITNESSES:

1. 
2. 



IH

GEA

RESOLUTION**EXTRACT FROM THE MINUTES OF THE BOARD OF DIRECTORS OF BOWWOOD AND MAIN NO
296 (RF) PROPRIETARY LIMITED HELD ON THE 20TH FEBRUARY 2026****REPORTED**

That the company shall institute legal proceedings in Botswana seeking that the Order of the High Court of South Africa, Kwazulu - Natal Division, Pietermaritzburg dated 16 May 2023 under Case No: 15784/22 perfecting the General Notarial Bond registered in favour of the Applicant over the assets of Tongaat Hullet Limited (in Business Rescue) including shares in Tongaat Hullet Botswana Proprietary Limited, be and is hereby recognised and registered as an order of the High Court of Botswana.

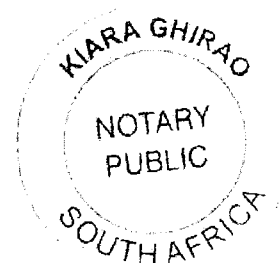
RESOLVED

- 1 That the company should take immediate steps to obtain such relief as may be appropriate.
- 2 That the firm AT MUZA ATTORNEYS be briefed to represent the company generally both in respect of giving advice and in pursuing all necessary Court action(s) and/or application(s) in such matter.
- 3 That CANDICE RISI in her capacity as the Director be authorised to sign all and any documents required to give effect hereto.

CERTIFIED TRUE EXTRACT



Secretary/Director



TH Gen

BUXM2

APOSTILLE

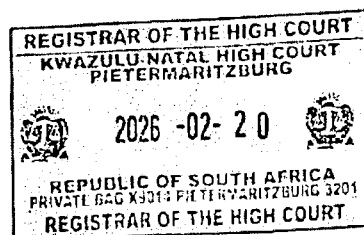
(Convention de La Haye du Octobre 1961)

1. Country: **REPUBLIC OF SOUTH AFRICA**
The public document annexed hereto and marked 'A', 'B', 'C' and 'D'
2. Has been signed by: **GRANT DOUGLAS WILLIAMS**
3. Acting in the capacity of: **Notary Public of the High Court of South Africa.**
4. Bears the stamp of: **GRANT DOUGLAS WILLIAMS, as Notary Public**

CERTIFIED

5. At **Pietermaritzburg, Republic of South Africa**
6. On **20th** day of February 2026
7. By **NONZUKISO PIEMRUC** ^{U-FENTE}, Registrar of the KwaZulu Natal High Court, Pietermaritzburg, Republic of South Africa
8. Number: **28/26**
9. Seal / Stamp:
10. Signature:

Registrar of the KwaZulu Natal High Court, Pietermaritzburg, Republic of South Africa



CERTIFICATE OF AUTHENTICATION

I, the undersigned

GRANT DOUGLAS WILLIAMS (LPCM 67581)

Notary Public, practising at Pietermaritzburg, Province of KwaZulu Natal, Republic of South Africa, by lawful authority duly sworn and admitted;

Do hereby certify and attest that

1. the document marked annexures 'A', 'B', 'C' and 'D' which:

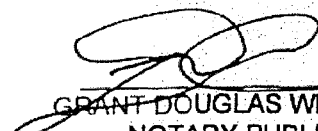
- (a) bears a stamp of my seal of office for identification purposes; and
- (b) is annexed to this Notarial Certificate

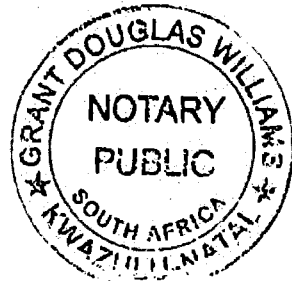
is a true and correct copy of the following original documents of which it purports to be a copy, which original document has been viewed and copy obtained by my office at the office of the Registrar of the KwaZulu-Natal High Court, Pietermaritzburg, Republic of South Africa, produced to me this day, namely:

- 'A' NOTICE OF MOTION, under Case Number 15784/22P, filed in the High Court of South Africa, KwazZulu Natal Division, Pietermaritzburg, and date stamped 15 November 2022 (4 pages)
- 'B' COURT ORDER under Case Number 15784/22P, granted on 16th May 2023 in the High Court of South Africa, KwazZulu Natal Division, Pietermaritzburg, date stamped 8 June 2023 confirming the rule *nisi* (2 pages)
- 'C' COURT ORDER under Case Number 15784/22, granted on 17th November 2022 in the High Court of South Africa, KwazZulu Natal Division, Pietermaritzburg, date stamped 17 November 2022 (3 pages)
- 'D' COURT ORDER under Case Number 15784/22P, granted on 20th February 2023 in the High Court of South Africa, KwazZulu Natal Division, Pietermaritzburg, date stamped 22 February 2023 extending the rule *nisi* (2 pages)

IN TESTIMONY WHEREOF I, the said Notary Public have hereunto subscribed and affixed my seal of office at Pietermaritzburg on 20 February 2026.

QUOD ATTESTOR


 GRANT DOUGLAS WILLIAMS
 NOTARY PUBLIC
 REPUBLIC OF SOUTH AFRICA





URGENT APPLICATION 17 NOVEMBER 2022

A' 23 3

CASE NO.: 1578422

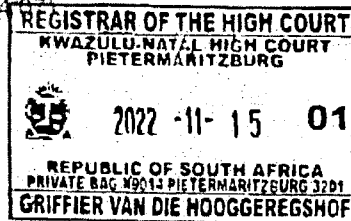
In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

(Registration number: 2018/358484/02)

and



TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.

Third Respondent

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

Fourth Respondent

(Registration number: 1892/000610/06)

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED

Fifth Respondent

(Registration number: 1981/012378/07)

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED

Sixth Respondent

(Registration number: 1965/000565/06)

TONGAAT HULETT ESTATES PROPRIETARY LIMITED

Seventh Respondent

(Registration number: 1967/006009/07)

VOERMOL FEEDS PROPRIETARY LIMITED

Eighth Respondent

(Registration number: 1936/007892/07)



NOTICE OF MOTION

TAKE NOTICE THAT the abovenamed Applicant will make application on the 17th day of **NOVEMBER 2022** at 09h30 or so soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the service and the time periods provided for in the Uniform Rules of Court and dealing with this application as one of urgency;

2. That a rule ^{is} ~~nisi~~ be issued calling upon the Respondents and any interested party to appear before the above ~~Honorable~~ Court on The 20th February, 2023 at 09h30, to show cause why an order in the following terms should not be made final:

- 2.1. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff of the High Court ("the Sheriff"), is authorised to take possession of all movable assets of the Fourth to Eighth Respondents ("the aforesaid Respondents"), in order to perfect the Applicant's security under general notarial bonds BN00352/2020, BN00353/2020, BN00401/2020, BN00438/2020 and BN00584/2020 and to hold the movable assets in its possession and be constituted as pledgee, such assets being situated at the following addresses:

2.1.1. 444 South Coast Road, Durban, 4093;

2.1.2. 1 Mill Road, Amatikulu, Gingindlovu;

2.1.3. 1 Mill Road, Felixton, Empangeni;

2.1.4. 1 Main Avenue, Maidstone, Tongaat;



2.1.5. 1 Main Road, Maidstone, Tongaat; and

2.1.6. Amanzimnyama Hill, Tongaat;

('the Respondents' premises')

or wheresoever the movable assets may be found, whether in the aforesaid Respondents' possession or not;

2.2. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff, with jurisdiction, ~~is authorised and directed~~ to enter upon the aforesaid Respondents' premises and/or anywhere else the aforesaid Respondents carry on business or where the movable assets are being kept, to attach and make an inventory of all the movable assets of the aforesaid Respondents, of whatsoever nature and description, as security for the payment of all monies due by the aforesaid Respondents to the Applicant and by such attachment thereof shall be deemed to be given to the Applicant to hold in pledge;

2.3. The aforesaid Respondents, through their agents, representatives and employees, are ordered to point out all movable assets to the Applicant or its duly appointed representative, alternatively the Sheriff, wherever such movable assets may be situated;

2.4. The Applicant, alternatively, the Sheriff is authorised to:

2.4.1. Lock and secure the movable assets, at the Respondents' premises or any other premises at which the aforesaid Respondents carry on business;



2.4.2. Affix a notice of attachment to the principal doors / gates of the Respondents' premises or any other premises at which the aforesaid Respondents' movable assets may be found;

in either ~~which~~ ^{shall} event the Applicant ~~would~~ be deemed to have taken effective possession of such movable assets and have perfected the aforementioned general notarial bonds;

2.5. The Applicant is authorised to sell the movable assets of the aforesaid Respondents which have been attached in terms of this order by private treaty or public auction, in the sole discretion of the Applicant, and that any manager or director of the Applicant, whose appointment need not be proved, is authorised to sign any sale agreement and all subsequent documents necessary to give transfer of the movable assets to any purchaser;

2.6. The Respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally with any other party who unsuccessfully opposes this application.

3. That the orders contained at paragraphs 2.1, 2.2, 2.3 and 2.4 shall be effective immediately and operate as interim orders pending the return date of this application.

4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of SINOVUYO MYEKO together with the annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant has appointed the offices of **EDWARD NATHAN SONNENBERGS INC.**, its attorneys of record at Tower 1, The Marc, 129 Rivonia Road, Sandton care of **VENNS ATTORNEYS** at 30 Montrose Park Boulevard, Victoria Country Club Estate, 170 Peter Brown Drive, Montrose, Pietermaritzburg as the address at which it will receive service of all process in these proceedings.

KINDLY PLACE THE MATTER ON THE ROLL FOR URGENT HEARING ACCORDINGLY.

DATED AT PIETERMARITZBURG ON THIS 15TH DAY OF NOVEMBER 2022.

EDWARD NATHAN SONNENBERGS INC.
APPLICANT'S ATTORNEYS

Tower 1, The Marc
129 Rivonia Road
Sandton

Tel: 031 536 8620

Fax: 031 536 8694

Email: cschoon@ensafrica.com

(Ref: A Lombard / C Schoon)

C/O VENNS ATTORNEYS

30 Montrose Park Boulevard

Victoria Country Club Estate

170 Peter Brown Drive

Montrose

(Ref: Nida Jooste)

TO: THE REGISTRAR OF THE KWAZULU-NATAL DIVISION
Pietermaritzburg

AND TO: THE RESPONDENTS

Per email



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 16TH DAY OF MAY 2023

BEFORE THE HONOURABLE JUDGE E BEZUIDENHOUT

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED
(Registration number: 2018/358484/07)

Applicant

and

TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.

Third Respondent

[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED
(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED
(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED
(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the rule nisi issued out of this Court on the 17th day of November 2022, and
the other documents filed of record; and

HAVING heard Counsel for the Applicant;



IT IS ORDERED THAT:

The aforesaid rule nisi be and is hereby confirmed.

Venns Attorneys

BY ORDER OF THE COURT

**N P FENTE
SNR REGISTRAR**

/sgoba

JUDICIAL	
2023-06-08	
K2700-1-140-6-06	



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 15784/22

ON THE 17TH DAY OF NOVEMBER 2022

BEFORE THE HONOURABLE JUDGE LOPES

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED
(Registration number: 2018/358484/07)

Applicant

and

TREVOR MURGATROYD N.O.

First Respondent

PETER VAN DEN STEEN N.O.

Second Respondent

GERHARD ALBERTYN N.O.
(in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent)

Third Respondent

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)
(Registration number: 1892/000610/06)

Fourth Respondent

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED
(Registration number: 1981/012378/07)

Fifth Respondent

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED
(Registration number: 1965/000565/06)

Sixth Respondent

TONGAAT HULETT ESTATES PROPRIETARY LIMITED
(Registration number: 1967/006009/07)

Seventh Respondent

VOERMOL FEEDS PROPRIETARY LIMITED
(Registration number: 1936/007892/07)

Eighth Respondent

HAVING read the Notice of Motion, and the other documents filed of record, and

HAVING heard Counsel for the Applicant;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	
Private Bag X9014, Pietermaritzburg 3200	
	2022 -11- 17
KZND-PMB-007	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	

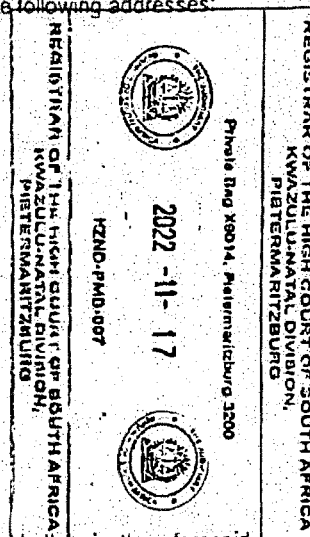
DUP
NOTAR
NOTARIAL

IT IS ORDERED THAT:

A rule *nisi* is issued calling upon the Respondents and any interested party to appear before the above Court on 20th February 2023 at 09h30, to show cause why an order in the following terms should not be made final:

- 1.1. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff of the High Court ("the Sheriff"), is authorised to take possession of all movable assets of the Fourth to Eighth Respondents ("the aforesaid Respondents"), in order to perfect the Applicant's security under general notarial bonds BN00352/2020, BN00353/2020, BN00401/2020, BN00438/2020 and BN00584/2020 and to hold the movable assets in its possession and be constituted as pledgee, such assets being situated at the following addresses:

- 1.1.1. 444 South Coast Road, Durban, 4093;
 - 1.1.2. 1 Mill Road, Amatikulu, Gingindlovu;
 - 1.1.3. 1 Mill Road, Felixton, Empangeni;
 - 1.1.4. 1 Main Avenue, Maidstone, Tongaat;
 - 1.1.5. 1 Main Road, Maidstone, Tongaat; and
 - 1.1.6. Amanzimnyama Hill, Tongaat;
- ("the Respondents' premises")



or wheresoever the movable assets may be found, whether in the aforesaid Respondents' possession or not;

- 1.2. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Sheriff, with jurisdiction is authorised and directed, to enter upon the aforesaid Respondents' premises and/or anywhere else the aforesaid Respondents carry on business or where the movable assets are being kept, to attach and make an inventory of all the movable assets of the aforesaid Respondents, of whatsoever nature and description, as security for the payment of all monies due by the aforesaid Respondents to the Applicant and by such attachment thereof shall be deemed to be given to the Applicant to hold in pledge;
- 1.3. The aforesaid Respondents, through their agents, representatives and employees, are ordered to point out all movable assets to the Applicant or its duly appointed representative, alternatively the Sheriff, wherever such movable assets may be situated;



- 1.4. The Applicant, alternatively, the Sheriff is authorised to:
- 1.4.1. Lock and secure the movable assets, at the Respondents' premises or any other premises at which the aforesaid Respondents carry on business;
 - 1.4.2. Affix a notice of attachment to the principal doors / gates of the Respondents' premises or any other premises at which the aforesaid Respondents' movable assets may be found;
- in either event the Applicant shall be deemed to have taken effective possession of such movable assets and have perfected the aforementioned general notarial bonds;
- 1.5. The Applicant is authorised to sell the movable assets of the aforesaid Respondents which have been attached in terms of this order by private treaty or public auction, in the sole discretion of the Applicant, and that any manager or director of the Applicant, whose appointment need not be proved, is authorised to sign any sale agreement and all subsequent documents necessary to give transfer of the movable assets to any purchaser;
 - 1.6. The Respondents are ordered to pay the costs of this application on the attorney and client scale, jointly and severally with any other party who unsuccessfully opposes this application.
2. The orders contained at paragraphs 1.1, 1.2, 1.3 and 1.4 shall be effective immediately and operate as interim orders pending the return date of this application.

Venns Attorneys
Ref: Nida Jooste

BY ORDER OF THE COURT

R J JOOSTE
REGISTRAR

/agoba
17/11/2022

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	
Private Bag X9014, Pietermaritzburg 3200	
	
2022 -11- 17	
KZND-PMB-007	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO.: 15784/22

On the 20th day of FEBRUARY 2023

Before the Honourable JUDGE MLABA

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED Applicant
(Registration number: 2018/358484/07)

and

TREVOR MURGATROYD N.O. 1ST Respondent

PETER VAN DEN STEEN N.O. 2ND Respondent

GERHARD ALBERTYN N.O. 3RD Respondent
[in their capacities as the joint business rescue
practitioners of the fourth and fifth respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) 4TH Respondent
(Registration number: 1892/000610/06)

TONGAAT HULETT DEVELOPMENTS PROPRIETARY LIMITED 5TH Respondent
(Registration number: 1981/012378/07)

TONGAAT HULETT SUGAR SOUTH AFRICA LIMITED 6TH Respondent
(Registration number: 1965/000565/06)

TONGAAT HULETT ESTATES PROPRIETARY LIMITED 7TH Respondent
(Registration number: 1967/006009/07)

VOERMOL FEEDS PROPRIETARY LIMITED 8TH Respondent
(Registration number: 1936/007892/07)

HAVING heard Counsel for the Applicant and having read the *rule nisi* issued out of this Court on the 17th November 2022 and the other documents filed of record;

IT IS ORDERED THAT:

1. The aforesaid *rule nisi* be and is hereby extended to 16 May 2023.

2. The application be and is hereby adjourned to 16 May 2023.

The orders contained at paragraphs 1.1, 1.2, 1.3 and 1.4 of the rule nisi shall continue to operate as interim orders pending the finalisation of this application.

BY ORDER OF THE COURT

N P FENTE
SNR REGISTRAR

A POTWANA

Venns attorneys

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	
Private Bag X0014, Pietermaritzburg 3200	
	
2023-02-22	
KZND-PMO-006	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA KWAZULU-NATAL DIVISION, PIETERMARITZBURG	



PRIVATE COMPANY

Tongaat Hulett (Botswana) Proprietary Limited

BW00001585712

PRIVATE COMPANY STANDARD EXTRACT

Extract generated as at 23 February 2026 18:56 CAT

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PRIVATE COMPANY STANDARD EXTRACT

General Details

Company name	Tongaat Hulett (Botswana) Proprietary Limited
Company status	Registered
Company type	Private Company
Company sub type	Limited by Shares
UIN	BW00001585712
Incorporation Date	19 March 1984
Re-registration date	18 March 2020
Annual return filing month	March

Addresses

Registered office address	Dps Consulting Services Proprietary Limited, Plot 28892, Twin Towers, West Wing, First Floor, Fairgrounds, Gaborone, Botswana
Postal address	P O Box 1453, Gaborone, Botswana
Principal Place of Business	Plot 4291, Bathoen Road, Lobatse, Botswana

Directors

Michael James Reading Anderson

Full Name	Michael James Reading Anderson
Postal Address	21 Maori Road, Llandudno, Cape Town, South Africa
Appointment Date	01 July 2023

CRK
JCA
TH GeA

PRIVATE COMPANY STANDARD EXTRACT

Sylvester Arestide-Mangani

Full Name Sylvester Arestide-Mangani
Postal Address 3872 Nhoru Road, Windsor, Ruwa, Zimbabwe
Appointment Date 16 April 2024

Peter Charles Freeman

Full Name Peter Charles Freeman
Postal Address Private Bag 63, Lobatse, Botswana
Appointment Date 01 February 2021

Mavellas Sibanda

Full Name Mavellas Sibanda
Postal Address 49 Douglas Road, Workington, Harare, Zimbabwe
Appointment Date 01 August 2024

Johannes Jacobus Van Rooyen

Full Name Johannes Jacobus Van Rooyen
Postal Address 101 Voortrekker Street, Swellendam, 6740, South Africa
Appointment Date 21 September 2024

Secretaries

PRIVATE COMPANY STANDARD EXTRACT

Percunia Obakeng Mosetlhi

Full Name	Percunia Obakeng Mosetlhi
Postal Address	Private Bag 63, Lobatse, Botswana
Appointment Date	01 January 2018

Shareholders**Tongaat Hulett Limited**

Entity Name	Tongaat Hulett Limited
Registered Office Address	1 Amanzimnyama Hill Road, Tongaat 4399, South Africa
Postal Address	P O Box 3, Tongaat, Kwazulu-Natal 4400, South Africa
Appointment date	29 June 2008

Starafriacorporation Limited

Entity Name	Starafriacorporation Limited
Registered Office Address	No. 49 Douglas Road, Workington, Harare, Zimbabwe
Postal Address	P O Box St 396, Southerton, Harare, Zimbabwe
Appointment date	04 July 2000

Hippo Valley Estates Limited

Entity Name	Hippo Valley Estates Limited
Registered Office Address	70 Samora Machel Avenue, Harare, Zimbabwe

PRIVATE COMPANY STANDARD EXTRACT

Postal Address P.O Box 1, Chiredzi, Zimbabwe

Appointment date 04 July 2000

Share Allocations

694,954 Shares: Tongaat Hulett Limited

Shareholder(s) Tongaat Hulett Limited

Number of Shares 694,954

694,954 Shares: Starafriacorporation Limited

Shareholder(s) Starafriacorporation Limited

Number of Shares 694,954

694,954 Shares: Hippo Valley Estates Limited

Shareholder(s) Hippo Valley Estates Limited

Number of Shares 694,954

Total number of shares 2,084,862

Auditors

Bakani Ndwapi

Full Name Bakani Ndwapi

Appointment Date 23 August 2021

Exempt from audit No



41
FA2

EXECUTION VERSION

SENIOR FACILITY A AGREEMENT

ZAR1 050 000 000 SENIOR TERM LOAN FACILITY

for

TONGAAT HULETT LIMITED

(Registration No. 1892/000610/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa
(as borrower)

provided by

THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1

(as original lenders)

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(acting through its Corporate and Investment Banking division)

(Registration No. 1962/000738/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa
(as facility agent)

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TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS AND INTERPRETATION.....	3
2. THE FACILITY.....	5
3. PURPOSE.....	5
4. CONDITIONS OF UTILISATION.....	5
5. UTILISATION AND DISBURSEMENT.....	5
6. REPAYMENT.....	7
7. PREPAYMENT AND CANCELLATION.....	7
8. INTEREST.....	7
9. INTEREST PERIODS.....	8
10. DEFAULT.....	9
11. GENERAL.....	9
Schedule 1	11
Original Senior Facility A Lenders.....	11
Schedule 2	12
Form of Utilisation Request.....	12
Schedule 3	13
Form of Selection Notice.....	13

CRP
 KG
 GEA
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THIS AGREEMENT (this "**Agreement**") is entered into between:

- (A) **TONGAAT HULETT LIMITED** (Registration No. 1892/000610/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa, as borrower (the "**Borrower**");
- (B) **THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1** (*Original Senior Facility A Lenders*), as original senior term lenders (in this capacity the "**Original Senior Facility A Lenders**" and each an "**Original Senior Facility A Lender**" as the context may require); and
- (C) **THE STANDARD BANK OF SOUTH AFRICA LIMITED** (Registration No. 1962/000738/06) (acting through its Corporate and Investment Banking division), as facility agent (in this capacity the "**Facility Agent**" and together with the Borrower and the Original Senior Facility A Lenders, collectively, the "**Parties**" and each a "**Party**" as the context may require).

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, including the recitals, capitalised terms used but not defined below shall have the meanings ascribed thereto in the Common Terms Agreement (as defined below) and the following expressions shall, except where the context otherwise requires, have the meanings assigned to them hereunder:

1.1.1. "Applicable Margin" means:

1.1.1.1. prior to the occurrence of any Margin Step-up Event, 5.05% (five point zero five percent) per annum, provided that such rate shall increase by 2% (two percent) per annum for so long as a Default has occurred and is continuing; and

1.1.1.2. on and following the occurrence of any Margin Step-up Event (provided that the Facility Agent (acting on the instructions of the Majority Senior Lenders) has delivered a written notification to the Borrower to this effect) and with retrospective effect from the Margin Step-up Effective Date (irrespective of whether any accrued interest has then been serviced), 6.17% (six point one seven percent) per annum (the "**Increased Margin**"), provided that such rate shall increase by 2% (two percent) per annum for so long as a Default has occurred and is continuing.

1.1.2. "**Availability Period**" means the period commencing on (and including) the Closing Date and terminating on the date which falls 5 (five) Business Days thereafter.

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- 1.1.3. "Common Terms Agreement" means the agreement titled "*Common Terms Agreement*" entered into on or about the date hereof between, *inter alios*, the Parties.
- 1.1.4. "Final Repayment Date" means 30 June 2024.
- 1.1.5. "Interest Payment Date" means the last day of each Interest Period.
- 1.1.6. "Interest Period" means each period determined in accordance with clause 9 (*Interest Periods*).
- 1.1.7. "Margin Step-up Effective Date" means the 1st (first) Utilisation Date.
- 1.1.8. "Margin Step-up Event" means the occurrence of any of the following events or circumstances –
 - 1.1.8.1. the Required Equity Capital Raise is not fully, finally and irrevocably implemented by 14 April 2022 (or such later date as the Facility Agent may notify the Borrower in writing); and/or
 - 1.1.8.2. Equity Capital Raise Proceeds at least equal to the ECR Minimum Amount have not been paid into the Collection Account and applied in mandatory prepayment of the applicable Facility Outstandings in the manner required in terms of the Finance Documents by 14 April 2022 (or such later date as the Facility Agent may notify the Borrower in writing).
- 1.1.9. "Selection Notice" means a notice substantially in the form set out in **Schedule 3** (*Form of Selection Notice*) given in accordance with clause 9 (*Interest Periods*) in relation to Senior Facility A.
- 1.1.10. "Unpaid Sum" means an "*Unpaid Sum*" (as defined in the Common Terms Agreement) in respect of Senior Facility A.
- 1.1.11. "Utilisation Date" means the date of the Utilisation under Senior Facility A.
- 1.1.12. "Utilisation Request" means the notice substantially in the form set out in **Schedule 2** (*Form of Utilisation Request*).

1.2. Construction

The provisions of clauses 1.3 (*Construction*) and 1.4 (*Third Party Rights*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement, except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement.

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2. THE FACILITY

2.1. Senior Facility A

Subject to the terms of this Agreement and the Common Terms Agreement, the Senior Facility A Lenders make available to the Borrower a Rand-denominated term loan facility in an aggregate amount equal to the Total Senior Facility A Commitments.

2.2. Designation

This Agreement is a Senior Facility Agreement and the Senior Facility A Agreement, each as defined in the Common Terms Agreement.

3. PURPOSE

The Borrower shall apply all amounts borrowed by it under Senior Facility A only in or towards the purposes set out in clause 3 (*Purpose*) of the Common Terms Agreement, and for no other purpose whatsoever.

4. CONDITIONS OF UTILISATION

4.1. Conditions precedent

No Senior Facility A Lender shall have any obligation to advance the Senior Facility A Loan or to provide any other form of credit or financial accommodation under this Agreement to any person unless the Facility Agent has issued the notice contemplated by clause 4.1 (*Initial conditions precedent*) of the Common Terms Agreement.

4.2. Further conditions precedent

Subject to the Common Terms Agreement and this Agreement, a Senior Facility A Lender will only be obliged to participate in the Senior Facility A Loan if the requirements of clause 4.2 (*Further conditions precedent*) of the Common Terms Agreement have been met.

4.3. Maximum number of Loans

The Borrower may only deliver 1 (one) Utilisation Request under Senior Facility A.

5. UTILISATION AND DISBURSEMENT

5.1. Delivery of the Utilisation Request

5.1.1. The Borrower may utilise Senior Facility A during the Availability Period for Senior Facility A by delivery to the Facility Agent of the duly completed Utilisation Request.

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5.1.2. The Utilisation Request shall be delivered to the Lenders Legal Counsel in the manner contemplated in paragraph 6.3 of Part I of Schedule 2 (*Conditions Precedent*) to the Common Terms Agreement.

5.1.3. The Utilisation Request, once delivered, is irrevocable.

5.2. Completion of the Utilisation Request

5.2.1. The Utilisation Request will not be regarded as having been duly completed unless:

5.2.1.1. the Utilisation Date is a Business Day during the Availability Period;
and

5.2.1.2. the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*) below.

5.2.2. Only 1 (one) Senior Facility A Loan may be requested in the Utilisation Request.

5.3. Currency and amount

5.3.1. The currency specified in the Utilisation Request must be Rand.

5.3.2. The amount of the proposed Senior Facility A Loan must be an amount equal to the full amount of the Total Senior Facility A Commitments.

5.4. Disbursement

5.4.1. If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Senior Facility A Lender must advance and lend to the Borrower, who shall borrow from each such Senior Facility A Lender, that Senior Facility A Lender's participation in the Senior Facility A Loan on the Utilisation Date.

5.4.2. A Senior Facility A Lender must make its participation in the Senior Facility A Loan available to the Facility Agent in accordance with the provisions of clause 30.1 (*Payments to the Facility Agent*) of the Common Terms Agreement and otherwise in accordance with the provisions of the Funds Flow Statement.

5.4.3. The amount of each Senior Facility A Lender's participation in the Senior Facility A Loan will be equal to the proportion borne by its Senior Facility A Commitment to the Total Senior Facility A Commitments immediately prior to making the Senior Facility A Loan.

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5.5. Automatic cancellation of Commitments

The Senior Facility A Commitments which are not utilised at the end of the Availability Period shall be cancelled immediately, automatically and without notice to, or any action by, any person.

6. REPAYMENT

6.1. The Borrower shall repay the principal amount of the Senior Facility A Loan, together with all other Senior Facility A Outstandings, by no later than the Final Repayment Date.

6.2. No amount of the Senior Facility A Loan repaid under this clause 6 may be re-borrowed.

7. PREPAYMENT AND CANCELLATION

7.1. Voluntary prepayment

7.1.1. The Borrower may make voluntary prepayments in respect of the Senior Facility A Loan, in whole or in part, in accordance with the requirements (and subject to the terms) of clause 7.11 (*Voluntary Prepayment*) of the Common Terms Agreement.

7.1.2. No amount of the Senior Facility A Loan prepaid pursuant to this clause may be re-borrowed.

7.2. Mandatory prepayments

7.2.1. The Borrower shall be obliged to make mandatory prepayments in respect of the Senior Facility A Loan and the Senior Facility A Outstandings to the Senior Facility A Lenders in accordance with the requirements (and subject to the terms) of clause 7 (*Prepayment and cancellation*) of the Common Terms Agreement.

7.2.2. No amount of the Senior Facility A Loan prepaid pursuant to this clause may be re-borrowed.

8. INTEREST

8.1. Calculation of interest

The rate of interest on the Senior Facility A Loan (and any Unpaid Sum) for each Interest Period is the percentage rate per annum which is the aggregate of:

8.1.1. the Applicable Margin; and

8.1.2. the Base Rate.

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8.2. Payment of interest

The Borrower shall pay all accrued unpaid interest on the Senior Facility A Loan on each Interest Payment Date, in accordance with the requirements of clause 30.1 (*Payments to the Facility Agent*) of the Common Terms Agreement.

8.3. Notification of rates of interest

Without prejudice to the obligation of the Borrower to pay interest calculated at any applicable rate under this clause 8, the Facility Agent shall notify the Senior Facility A Lenders and the Borrower, as soon as reasonably practicable, of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS**9.1. Selection of Interest Periods**

9.1.1. The Borrower may select an Interest Period for the Senior Facility A Loan in the Utilisation Request or (if the Senior Facility A Loan has already been borrowed) in a Selection Notice.

9.1.2. Each Selection Notice for the Senior Facility A Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.

9.1.3. If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with clause 9.1.2, the relevant Interest Period will be 3 (three) months.

9.1.4. Subject to this clause 9.1, the Borrower may select an Interest Period of 1 (one) month or 3 (three) months (or any other period agreed between the Borrower, the Facility Agent and all the Senior Facility A Lenders).

9.1.5. An Interest Period for the Senior Facility A Loan shall not extend beyond the Final Repayment Date.

9.1.6. Each Interest Period for the Senior Facility A Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

9.2. No overrunning the Final Repayment Date

If an Interest Period would otherwise extend beyond the Final Repayment Date, it will be shortened so that it ends on the Final Repayment Date. This clause does not apply to Interest Periods in respect of Unpaid Sums which remain outstanding on the Final Repayment Date.

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10. **DEFAULT**

If an Event of Default occurs, and for so long as it is continuing, the Facility Agent may enforce any of the rights and remedies provided for in clause 23.25 (*Acceleration*) of the Common Terms Agreement.

11. **GENERAL**

11.1. **Notices and *domicilium***

All documents in legal proceedings and notices in connection with this Agreement shall be served in accordance with clause 33 (*Notices*) of the Common Terms Agreement, which clause is incorporated *mutatis mutandis* by reference in this Agreement as if repeated in this Agreement in full (except that references in that clause to the Common Terms Agreement are to be construed as references to this Agreement).

11.2. **Incorporation by reference**

The provisions of clauses 16 (*Costs and Expenses*), 34 (*Amendments and Waivers*), 36 (*General Provisions*) and 39 (*Waiver of immunity*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement (except that references in those clauses to the Common Terms Agreement are to be construed as references to this Agreement).

11.3. **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

11.4. **Jurisdiction**

11.4.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**dispute**").

11.4.2. The Parties agree that the High Court of South Africa is the most appropriate and convenient court to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

11.4.3. This clause 11.4 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a dispute in

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any other court with jurisdiction. To the extent allowed by law, a Finance Party may take concurrent proceedings in any number of jurisdictions.

11.5. Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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SCHEDULE 1**Original Senior Facility C Lenders**

No.	Original Senior Facility C Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited
7.	The Land and Agricultural Development Bank of South Africa
8.	Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)
9.	Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)
10.	Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)
11.	Sanlam Specialised Finance Proprietary Limited
12.	Momentum Metropolitan Life Limited
13.	Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients)

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SCHEDULE 2

Form of Utilisation Request

To: **THE STANDARD BANK OF SOUTH AFRICA LIMITED**
(acting through its Corporate and Investment Banking division)

From: **TONGAAT HULETT LIMITED**

[•] 2021

Dear Sirs,

TONGAAT HULETT LIMITED Senior Facility C Agreement, dated [•] (the "Agreement")

1. We refer to the Agreement. This is the Utilisation Request for Senior Facility C. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow the Senior Facility C Loan on the following terms:

Proposed Utilisation Date:	[•] (or, if that is not a Business Day, the next Business Day)
Amount:	ZAR2 000 000 000
Interest Period:	[1 (one) month] [3 (three) months]
3. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. The proceeds of the Senior Facility C Loan shall be applied in accordance with the provisions of the Funds Flow Statement.
5. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for
TONGAAT HULETT LIMITED

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SCHEDULE 3

Form of Selection Notice

To: **THE STANDARD BANK OF SOUTH AFRICA LIMITED**
(acting through its Corporate and Investment Banking division)]

From: **TONGAAT HULETT LIMITED**

[•] 202[•]

Dear Sirs,

TONGAAT HULETT LIMITED Senior Facility C Agreement, dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We request that the next Interest Period for the Senior Facility C Loan in respect of which the current Interest Period ends on [•] shall be [1 (one) month] [3 (three) months].
3. This Selection Notice is irrevocable.

Yours faithfully,

authorised signatory for

TONGAAT HULETT LIMITED

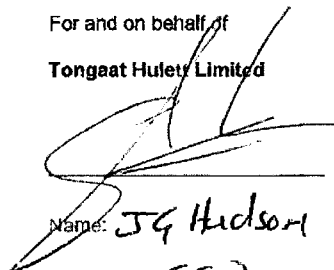
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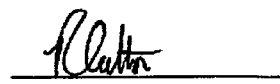
SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of
Tongaat Huilett Limited


Name: JG Hudson
Capacity: CEO

Who warrants his authority hereto

For and on behalf of
Tongaat Huilett Limited


Name: Rob Aitken
Capacity: CFO

Who warrants his authority hereto

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Senior Facility C Agreement
Execution Version

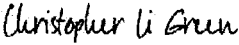
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Absa Bank Limited

DocuSigned by:

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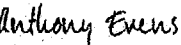
Name: **Christopher Li Green**

Capacity: **Authorised**

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

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Name: **Anthony Evens**

Capacity: **Authorised**

Who warrants his authority hereto

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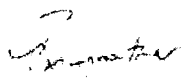
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: **Martin Baumgartner**

Capacity: **Head, CIB, Risk, BS&R**

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division).

Name:

Capacity:

Who warrants his authority hereto

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Senior Facility C Agreement
Execution Version

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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by: Richard Frank Craigie North
Signed at: 2021-11-19 16:47:52 +02:00
Reason: Witnessing Richard Frank Craigie



Name: Richard North

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by: Michael Adams
Signed at: 2021-11-19 16:51:39 +02:00
Reason: I approve this document



Name: Michael Adams

Capacity: Authorised

Who warrants his authority hereto

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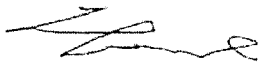
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

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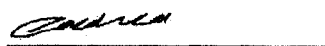
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



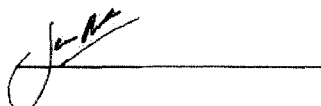
Name: **Kerry Caldwell**

Capacity: **Authorised Signatory**

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: **Sean Rule**

Capacity: **Authorised Signatory**

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Nedbank Limited



Name: Vuyisa Sobayeni

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Trishen Naidoo

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Belinda Munger

Capacity: Authorised signatory

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of

**The Land and Agricultural Development Bank of
South Africa**

Stephen Sebueng

19/11/2021 17:18:28(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

**The Land and Agricultural Development Bank of
South Africa**

[Signature]

19/11/2021 18:32:17(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

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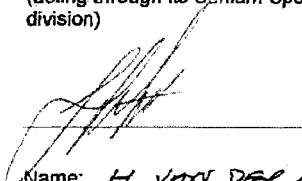
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)



Name: H. VAN DER MERWE

Capacity: AUTHORIZED SIGNATORY

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Name:

Capacity:

Who warrants his authority hereto

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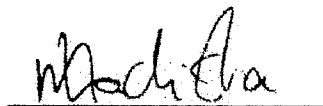
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)



Name: **Mokgatla Madisha**

Capacity: **Head of Fixed Interest**

Who warrants his authority hereto

For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)



Name:

Capacity:

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name: Cecilia le Roux

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)

Name:

Capacity:

Who warrants his authority hereto

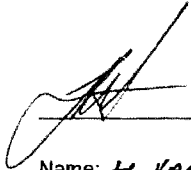
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of	For and on behalf of
Sanlam Specialised Finance Proprietary Limited	Sanlam Specialised Finance Proprietary Limited



Name: H. VAN DER MERWE

Capacity: AUTHORIZED SIGNATORY

Who warrants his authority hereto

Name:

Capacity:

Who warrants his authority hereto

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Senior Facility C Agreement
Execution Version

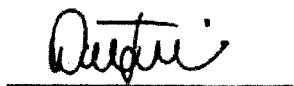
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Momentum Metropolitan Life Limited



Name: Warren Smith

Capacity: Head: Liability Driven Investments

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Lorraine Khoza

Capacity: Authorised signatory

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



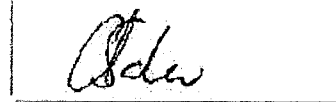
Name: Santhuri Thaver

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Alessandro Scalco

Capacity: Authorised Signatory

Who warrants his authority hereto

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FACILITY AGENT

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Kelly-Ann Myles

Capacity: Head: Agency

Who warrants his authority hereto

For and on behalf of

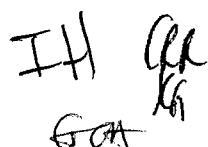
The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto





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EXECUTION VERSION

SENIOR FACILITY D AGREEMENT

ZAR1 591 880 315.68 SENIOR TERM LOAN FACILITY

for

TONGAAT HULETT LIMITED

(Registration No. 1892/000610/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa
(as borrower)

provided by

THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1

(as original lenders)

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(acting through its Corporate and Investment Banking division)

(Registration No. 1962/000738/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa
(as facility agent)

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TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS AND INTERPRETATION.....	3
2. THE FACILITY.....	5
3. PURPOSE.....	5
4. CONDITIONS OF UTILISATION.....	5
5. UTILISATION AND DISBURSEMENT.....	6
6. REPAYMENT.....	7
7. PREPAYMENT AND CANCELLATION.....	7
8. INTEREST.....	8
9. INTEREST PERIODS.....	8
10. DEFAULT.....	9
11. GENERAL.....	9
Schedule 1	11
Original Senior Facility D Lenders.....	11
Schedule 2	12
Form of Utilisation Request.....	12
Schedule 3	13
Form of Selection Notice.....	13

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THIS AGREEMENT (this "Agreement") is entered into between:

- (A) **TONGAAT HULETT LIMITED** (Registration No. 1892/000610/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa, as borrower (the "**Borrower**");
- (B) **THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1** (*Original Senior Facility D Lenders*), as original senior term lenders (in this capacity the "**Original Senior Facility D Lenders**" and each an "**Original Senior Facility D Lender**" as the context may require); and
- (C) **THE STANDARD BANK OF SOUTH AFRICA LIMITED** (Registration No. 1962/000738/06) (acting through its Corporate and Investment Banking division), as facility agent (in this capacity the "**Facility Agent**" and together with the Borrower and the Original Senior Facility D Lenders, collectively, the "**Parties**" and each a "**Party**" as the context may require).

IT IS AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

In this Agreement, including the recitals, capitalised terms used but not defined below shall have the meanings ascribed thereto in the Common Terms Agreement (as defined below) and the following expressions shall, except where the context otherwise requires, have the meanings assigned to them hereunder:

1.1.1. "**Applicable Margin**" means:

1.1.1.1. prior to the occurrence of a Margin Step-up Event, 6.69% (six point six nine percent) per annum, provided that such rate shall increase by 2% (two percent) per annum if the Borrower and the Facility Agent (acting on the instructions of the Majority Senior Lenders) fail to reach agreement on the form and content of the Specified Property Disposal Plan by 30 April 2022 (or such later date as the Facility Agent (acting on the Instructions of the Majority Senior Lenders) may notify the Borrower in writing) (the "**Re-pricing Event**"), and provided further that such rate shall further increase (as applicable) by 2% (two percent) per annum for so long as a Default has occurred and is continuing; and

1.1.1.2. on and following the occurrence of a Margin Step-up Event (provided that the Facility Agent (acting on the instructions of the Majority Senior Lenders) has delivered a written notification to the Borrower to this effect) and with retrospective effect from the Margin Step-up Effective Date (irrespective of whether any accrued interest has then been serviced), 11.06% (eleven point zero six percent) per annum,

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provided that such rate shall, following the occurrence of the Re-pricing Event, increase by a further 2% (two percent) per annum, and provided further that such rate shall further increase (as applicable) by 2% (two percent) per annum for so long as a Default has occurred and is continuing.

- 1.1.2. **"Availability Period"** means the period commencing on (and including) the Closing Date and terminating on the date which falls 5 (five) Business Days thereafter.
- 1.1.3. **"Common Terms Agreement"** means the agreement titled "*Common Terms Agreement*" entered into on or about the date hereof between, *inter alios*, the Parties.
- 1.1.4. **"Final Repayment Date"** means 30 June 2024.
- 1.1.5. **"Interest Period"** means each period determined in accordance with clause 9 (*Interest Periods*).
- 1.1.6. **"Margin Step-up Effective Date"** means the 1st (first) date on which any Sell-down Implementation Event occurred (irrespective of whether such Sell-down Implementation Event constitutes a Margin Step-up Event).
- 1.1.7. **"Margin Step-up Event"** means the occurrence of any of the following events or circumstances –
 - 1.1.7.1. the Required Equity Capital Raise is not fully, finally and irrevocably implemented by 14 April 2022 (or such later date as the Facility Agent may notify the Borrower in writing); and/or
 - 1.1.7.2. Equity Capital Raise Proceeds at least equal to the ECR Minimum Amount have not been paid into the Collection Account and applied in mandatory prepayment of the applicable Facility Outstandings in the manner required in terms of the Finance Documents by 14 April 2022 (or such later date as the Facility Agent may notify the Borrower in writing).
- 1.1.8. **"Selection Notice"** means a notice substantially in the form set out in **Schedule 3** (*Form of Selection Notice*) given in accordance with clause 9 (*Interest Periods*) in relation to Senior Facility D.
- 1.1.9. **"Unpaid Sum"** means an "*Unpaid Sum*" (as defined in the Common Terms Agreement) in respect of Senior Facility D.
- 1.1.10. **"Utilisation Date"** means the date of the Utilisation under Senior Facility D.

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1.1.11. **"Utilisation Request"** means the notice substantially in the form set out in **Schedule 2** (*Form of utilisation Request*).

1.2. **Construction**

The provisions of clauses 1.3 (*Construction*) and 1.4 (*Third Party Rights*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement, except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement.

2. **THE FACILITY**

2.1. **Senior Facility D**

Subject to the terms of this Agreement and the Common Terms Agreement, the Senior Facility D Lenders make available to the Borrower a Rand-denominated term loan facility in an aggregate amount equal to the Total Senior Facility D Commitments.

2.2. **Designation**

This Agreement is a Senior Facility Agreement and the Senior Facility D Agreement, each as defined in the Common Terms Agreement.

3. **PURPOSE**

The Borrower shall apply all amounts borrowed by it under Senior Facility D only in or towards the purposes set out in clause 3 (*Purpose*) of the Common Terms Agreement, and for no other purpose whatsoever.

4. **CONDITIONS OF UTILISATION**

4.1. **Conditions precedent**

No Senior Facility D Lender shall have any obligation to advance the Senior Facility D Loan or to provide any other form of credit or financial accommodation under this Agreement to any person unless the Facility Agent has issued the notice contemplated by clause 4.1 (*Initial conditions precedent*) of the Common Terms Agreement.

4.2. **Further conditions precedent**

Subject to the Common Terms Agreement and this Agreement, a Senior Facility D Lender will only be obliged to participate in the Senior Facility D Loan if the requirements of clause 4.2 (*Further conditions precedent*) of the Common Terms Agreement have been met.

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4.3. **Maximum number of Loans**

The Borrower may only deliver 1 (one) Utilisation Request under Senior Facility D.

5. **UTILISATION AND DISBURSEMENT**

5.1. **Delivery of the Utilisation Request**

5.1.1. The Borrower may utilise Senior Facility D during the Availability Period for Senior Facility D by delivery to the Facility Agent of the duly completed Utilisation Request.

5.1.2. The Utilisation Request shall be delivered to the Lenders Legal Counsel in the manner contemplated in paragraph 6.3 of Part I of Schedule 2 (*Conditions Precedent*) to the Common Terms Agreement.

5.1.3. The Utilisation Request, once delivered, is irrevocable.

5.2. **Completion of the Utilisation Request**

5.2.1. The Utilisation Request will not be regarded as having been duly completed unless:

5.2.1.1. the Utilisation Date is a Business Day during the Availability Period;
and

5.2.1.2. the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*) below.

5.2.2. Only 1 (one) Senior Facility D Loan may be requested in the Utilisation Request.

5.3. **Currency and amount**

5.3.1. The currency specified in the Utilisation Request must be Rand.

5.3.2. The amount of the proposed Senior Facility D Loan must be an amount equal to the full amount of the Total Senior Facility D Commitments.

5.4. **Disbursement**

5.4.1. If the conditions set out in this Agreement and the Common Terms Agreement have been met, each Senior Facility D Lender must advance and lend to the Borrower, who shall borrow from each such Senior Facility D Lender, that Senior Facility D Lender's participation in the Senior Facility D Loan on the Utilisation Date.

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5.4.2. A Senior Facility D Lender must make its participation in the Senior Facility D Loan available to the Facility Agent in accordance with the provisions of clause 30.1 (*Payments to the Facility Agent*) of the Common Terms Agreement and otherwise in accordance with the provisions of the Funds Flow Statement.

5.4.3. The amount of each Senior Facility D Lender's participation in the Senior Facility D Loan will be equal to the proportion borne by its Senior Facility D Commitment to the Total Senior Facility D Commitments immediately prior to making the Senior Facility D Loan.

5.5. **Automatic cancellation of Commitments**

The Senior Facility D Commitments which are not utilised at the end of the Availability Period shall be cancelled immediately, automatically and without notice to, or any action by, any person.

6. **REPAYMENT**

6.1. The Borrower shall repay the principal amount of the Senior Facility D Loan, together with all other Senior Facility D Outstandings, by no later than the Final Repayment Date.

6.2. No amount of the Senior Facility D Loan repaid under this clause 6 may be re-borrowed.

7. **PREPAYMENT AND CANCELLATION**

7.1. **Voluntary prepayment**

7.1.1. The Borrower may make voluntary prepayments in respect of the Senior Facility D Loan, in whole or in part, in accordance with the requirements (and subject to the terms) of clause 7.11 (*Voluntary Prepayment*) of the Common Terms Agreement.

7.1.2. No amount of the Senior Facility D Loan prepaid pursuant to this clause may be re-borrowed.

7.2. **Mandatory prepayments**

7.2.1. The Borrower shall be obliged to make mandatory prepayments in respect of the Senior Facility D Loan and the Senior Facility D Outstandings to the Senior Facility D Lenders in accordance with the requirements (and subject to the terms) of clause 7 (*Prepayment and cancellation*) of the Common Terms Agreement.

7.2.2. No amount of the Senior Facility D Loan prepaid pursuant to this clause may be re-borrowed.

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8. INTEREST

8.1. Calculation of interest

The rate of interest on the Senior Facility D Loan (and any Unpaid Sum) for each Interest Period is the percentage rate per annum which is the aggregate of:

8.1.1. the Applicable Margin; and

8.1.2. the Base Rate.

8.2. Payment of interest

The Borrower shall pay all accrued unpaid interest on the Senior Facility D Loan on the Final Repayment Date.

8.3. Notification of rates of interest

Without prejudice to the obligation of the Borrower to pay interest calculated at any applicable rate under this clause 8, the Facility Agent shall notify the Senior Facility D Lenders and the Borrower, as soon as reasonably practicable, of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1. Selection of Interest Periods

9.1.1. The Borrower may select an Interest Period for the Senior Facility D Loan in the Utilisation Request or (if the Senior Facility D Loan has already been borrowed) in a Selection Notice.

9.1.2. Each Selection Notice for the Senior Facility D Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.

9.1.3. If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with clause 9.1.2, the relevant Interest Period will be 3 (three) months.

9.1.4. Subject to this clause 9.1, the Borrower may select an Interest Period of 1 (one) month or 3 (three) months (or any other period agreed between the Borrower, the Facility Agent and all the Senior Facility D Lenders).

9.1.5. An Interest Period for the Senior Facility D Loan shall not extend beyond the Final Repayment Date.

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9.1.6. Each Interest Period for the Senior Facility D Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

9.2. No overrunning the Final Repayment Date

If an Interest Period would otherwise extend beyond the Final Repayment Date, it will be shortened so that it ends on the Final Repayment Date. This clause does not apply to Interest Periods in respect of Unpaid Sums which remain outstanding on the Final Repayment Date.

10. DEFAULT

If an Event of Default occurs, and for so long as it is continuing, the Facility Agent may enforce any of the rights and remedies provided for in clause 23.25 (*Acceleration*) of the Common Terms Agreement.

11. GENERAL

11.1. Notices and domicile

All documents in legal proceedings and notices in connection with this Agreement shall be served in accordance with clause 33 (*Notices*) of the Common Terms Agreement, which clause is incorporated *mutatis mutandis* by reference in this Agreement as if repeated in this Agreement in full (except that references in that clause to the Common Terms Agreement are to be construed as references to this Agreement).

11.2. Incorporation by reference

The provisions of clauses 16 (*Costs and Expenses*), 34 (*Amendments and Waivers*), 36 (*General Provisions*) and 39 (*Waiver of immunity*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement (except that references in those clauses to the Common Terms Agreement are to be construed as references to this Agreement).

11.3. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

11.4. Jurisdiction

11.4.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**dispute**").

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11.4.2. The Parties agree that the High Court of South Africa is the most appropriate and convenient court to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

11.4.3. This clause 11.4 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a dispute in any other court with jurisdiction. To the extent allowed by law, a Finance Party may take concurrent proceedings in any number of jurisdictions.

11.5. Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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SCHEDULE 1

Original Senior Facility D Lenders

No.	Original Senior Facility D Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited
7.	The Land and Agricultural Development Bank of South Africa
8.	Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)
9.	Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)
10.	Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)
11.	Sanlam Specialised Finance Proprietary Limited
12.	Momentum Metropolitan Life Limited
13.	Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients)

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SCHEDULE 2**Form of Utilisation Request**

To: **THE STANDARD BANK OF SOUTH AFRICA LIMITED**
(acting through its Corporate and Investment Banking division)

From: **TONGAAT HULETT LIMITED**

[•] 2021

Dear Sirs,

TONGAAT HULETT LIMITED Senior Facility D Agreement, dated [•] (the "Agreement")

1. We refer to the Agreement. This is the Utilisation Request for Senior Facility D. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow the Senior Facility D Loan on the following terms:

Proposed Utilisation Date:	[•] (or, if that is not a Business Day, the next Business Day)
Amount:	ZAR[•]
Interest Period:	[1 (one) month] [3 (three) months]
3. We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. The proceeds of the Senior Facility D Loan shall be applied in accordance with the provisions of the Funds Flow Statement.
5. This Utilisation Request is irrevocable.

Yours faithfully,

authorised signatory for
TONGAAT HULETT LIMITED

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SCHEDULE 3**Form of Selection Notice**

To: **THE STANDARD BANK OF SOUTH AFRICA LIMITED**
(acting through its Corporate and Investment Banking division)

From: **Tongaat Hulett Limited**

[•] 202[•]

Dear Sirs,

TONGAAT HULETT LIMITED Senior Facility D Agreement, dated [•] (the "Agreement")

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We request that the next Interest Period for the Senior Facility D Loan in respect of which the current Interest Period ends on [•] shall be [1 (one) month] [3 (three) months].
3. This Selection Notice is irrevocable.

Yours faithfully,

authorised signatory for

TONGAAT HULETT LIMITED

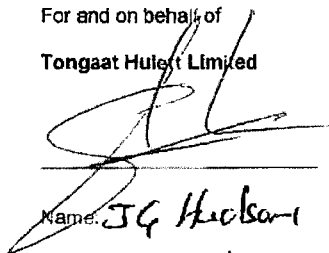
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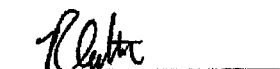
SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of
Tongaat Hulett Limited


Name: JG Hickson
Capacity: CEO

Who warrants his authority hereto

For and on behalf of
Tongaat Hulett Limited


Name: Rob Aitken
Capacity: CFO

Who warrants his authority hereto

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DocuSign Envelope ID: BE5082CF-F26F-44F6-A0ED-198831D0CEA6

Senior Facility D Agreement
Execution Version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Absa Bank Limited

DocuSigned by:
Christopher Li Green
C3CD8348CF63492

Name: **Christopher Li Green**

Capacity: **Authorised**

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:
Anthony Evens
5067D8B066EB475

Name: **Anthony Evens**

Capacity: **Authorised**

Who warrants his authority hereto

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Senior Facility D Agreement
Execution Version

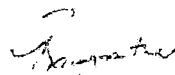
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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



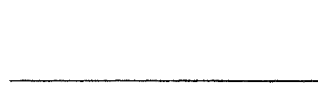
Name: **Martin Baumgartner**

Capacity: **Head, CIB, Risk, BS&R**

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

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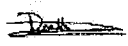
ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by Richard North
Signed at 2021-11-18 15:06:02:00
Reason: Witnessing Richard North



Name: Richard North

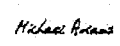
Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by Michael Adams
Signed at 2021-11-18 15:08:02:00
Reason: Approve the document



Name: Michael Adams

Capacity: Authorised

Who warrants his authority hereto

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Senior Facility D Agreement
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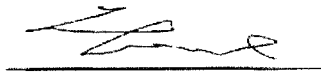
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SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



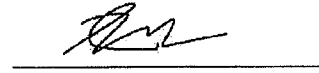
Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

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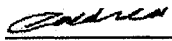
ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



Name: **Kerry Caldwell**

Capacity: **Authorised Signatory**

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited

(acting through its Investment Banking Division,
Corporate Solutions)



Name: **Sean Rule**

Capacity: **Authorised Signatory**

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Nedbank Limited



Name: Vuyisa Sobayeni

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



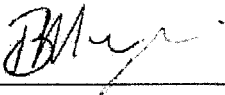
Name: Trishen Naidoo

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Belinda Munger

Capacity: Authorised signatory

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of

**The Land and Agricultural Development Bank of
South Africa**

Stephen Sebueng

19/11/2021 17:13:09(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

**The Land and Agricultural Development Bank of
South Africa**

[Signature]

19/11/2021 19:31:53(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

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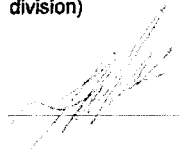
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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)



Name: H. VAN DER MERWE

Capacity: AUTHORIZED SIGNATORY

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Name:

Capacity:

Who warrants his authority hereto

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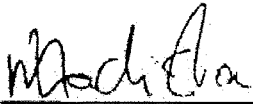
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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)



Name: Mokgatla Madisha

Capacity: Head of Fixed Interest

Who warrants his authority hereto

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For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)

Name:

Capacity:

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name: Cecilia le Roux

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)

Name:

Capacity:

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY D LENDER

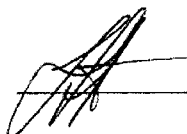
SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

For and on behalf of

Sanlam Specialised Finance Proprietary Limited

Sanlam Specialised Finance Proprietary Limited



Name: H. VAN DER MERWE

Name:

Capacity: AUTHORIZED SIGNATORY

Capacity:

Who warrants his authority hereto

Who warrants his authority hereto

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Senior Facility D Agreement
Execution Version

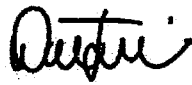
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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Momentum Metropolitan Life Limited



Name: Warren Smith

Capacity: Head: Liability Driven Investments

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Lorraine Khoza

Capacity: Authorised signatory

Who warrants his authority hereto

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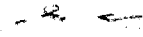
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ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



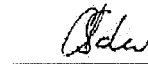
Name: Santhuri Thaver

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Alessandro Scalco

Capacity: Authorised Signatory

Who warrants his authority hereto

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SIGNATURE PAGE

FACILITY AGENT

SIGNED at _____ on this the 2nd day of December 2021

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Kelly-Ann Myles

Capacity: Head: Agency

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement:

1.1.1. "Acceptable Bank" means:

1.1.1.1. Absa Bank Limited, The Standard Bank of South Africa Limited, Investec Bank Limited, Nedbank Limited or FirstRand Bank Limited;

1.1.1.2. a bank or financial institution which has an international rating for its long-term unsecured and non-credit enhanced debt obligations of A+ or higher by Standard & Poor's Ratings Services or A1 or higher by Moody's Investor Services Limited, or a comparable rating from an internationally recognised credit rating agency; or

1.1.1.3. any other bank or financial institution approved by the Facility Agent in writing.

1.1.2. "Accession Letter" means, in relation to an Additional Guarantor, a document substantially in the form set out in **Schedule 4** (*Form of Accession Letter*).

1.1.3. "Accounting Principles" means generally accepted accounting principles in South Africa, including IFRS.

1.1.4. "Additional Guarantor" means a person which becomes an Additional Guarantor in accordance with clause 25.2 (*Additional Guarantors*).

1.1.5. "Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person, or any other Subsidiary of that Holding Company.

1.1.6. "Ancillary Facility" means a general banking facility and/or an indirect facility made available by an Ancillary Facility Lender to one or more Obligors and/or other Security Providers from time to time under an Ancillary Facility Document, and, collectively, the "Ancillary Facilities".

1.1.7. "Ancillary Facility Agreement" means a short term banking facility agreement and/or indirect facility agreement entered into by an Ancillary Facility Lender with one or more Obligors and/or other Security Providers for the purposes of making

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Ancillary Facilities available to such Obligors and/or such other Security Providers, and, collectively, the "**Ancillary Facility Agreements**".

- 1.1.8. "**Ancillary Facility Commitment**" means, in respect of each Ancillary Facility Lender, the amount set out opposite its name under the heading "*Ancillary Facility Commitment*" in Part VII of **Schedule 1** (*Original Parties*).
- 1.1.9. "**Ancillary Facility Document**" means, in respect of each Ancillary Facility, each document relating to or evidencing the terms of that Ancillary Facility, including, without limitation, an Ancillary Facility Agreement, a Cash Cover Document and a Hedging Ancillary Facility Document, and such documents, collectively, the "**Ancillary Facility Documents**".
- 1.1.10. "**Ancillary Facility Outstandings**" means at any time, in relation to an Ancillary Facility Lender, the aggregate of all amounts of loan principal, accrued interest, fees and all other amounts outstanding in respect of an Ancillary Facility (including, without limitation, any contingent liability of any Ancillary Facility Lender under a guarantee, standby letter of credit, bond or like instrument and in respect of a Treasury Transaction, the marked-to-market value thereof) made available to one or more Obligors and/or other Security Providers by that Ancillary Facility Lender under an Ancillary Facility Document.
- 1.1.11. "**Applicable Margin**" has, in relation to each Senior Facility, the meaning ascribed thereto in the applicable Senior Facility Agreement.
- 1.1.12. "**Applicable Property**" shall bear the meaning ascribed thereto in clause 18.15.3, provided that, for the purposes of clause 21.10 (*Environmental matters*), any reference to an "**Applicable Property**" shall exclude any adjoining property surrounding any property on which any member of the South African Group conducts its business.
- 1.1.13. "**Application Date**" means:
 - 1.1.13.1. prior to the occurrence of a Default which is continuing and in respect of each Senior Loan (a) the last day of the Interest Period of that Senior Loan, or (b) where the Borrower notifies the Facility Agent in writing that it requires the relevant monies paid into the Collection Account to be applied in prepayment of the applicable Senior Loan prior to the last day of the Interest Period of that Senior Loan, the date specified by the Borrower in such notice (being a date at least 2 (two) Business Days following the delivery of such notice); or
 - 1.1.13.2. at any time on and following the occurrence of a Default which is continuing, the date on which the relevant monies are paid into the Collection Account.

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- 1.1.14. **"Auditors"** means one of PwC, EY, KPMG, Deloitte or any other firm of auditors of international standing and appropriate competency approved in advance by the Facility Agent (acting on the instructions of the Majority Senior Lenders).
- 1.1.15. **"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.
- 1.1.16. **"Availability Period"** has, in relation to each Senior Facility (other than the Senior Overdraft Facilities), the meaning ascribed thereto in the applicable Senior Facility Agreement.
- 1.1.17. **"Base Case Model"** means the financial model including:
- 1.1.17.1. profit and loss, balance sheet and cashflow projections; and
 - 1.1.17.2. the Capital Expenditure Forecast to be incurred by members of the South African Group for each financial year of the Group falling within the period commencing on the Closing Date and terminating on the Final Repayment Date,
- in the agreed form relating to the South African Group, prepared by PwC and to be delivered by the Borrower to the Facility Agent in terms of paragraph 6.5 of Part I of **Schedule 2** (*Conditions Precedent*).
- 1.1.18. **"Base Rate"** means for any Interest Period of a Senior Loan or an Unpaid Sum in respect of a Senior Loan:
- 1.1.18.1. in respect of each Interest Period (other than a Broken Period) of that Senior Loan or Unpaid Sum, JIBAR; or
 - 1.1.18.2. in respect of each Broken Period of that Senior Loan, the Interpolated Screen Rate.
- 1.1.19. **"Break Costs"** means in relation to a Senior Facility (other than the Senior Overdraft Facilities), the amount (if any) by which:
- 1.1.19.1. the interest (excluding the Applicable Margin) which a Senior Lender should have received for the period from the date of receipt of an amount repaid or prepaid in respect of any part of its participation in a Senior Loan or Unpaid Sum to the last day of the current Interest Period for that Senior Loan or Unpaid Sum, if the principal amount of that Senior Loan or Unpaid Sum received had been paid on the last day of that Interest Period,

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- 1.1.19.2. the amount which that Senior Lender would be able to obtain by placing an amount equal to the principal amount of that Senior Loan or Unpaid Sum received by it on deposit with a leading bank in the Johannesburg interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
- 1.1.20. **"Break Gains"** means the amount (if any) determined by the relevant Senior Lender by which the amount of interest contemplated in clause 1.1.19.2 exceeds that in clause 1.1.19.1.
- 1.1.21. **"Borrower Signatory"** means either of the two representatives of the Borrower mandated to act as signatory in respect of the Collection Account.
- 1.1.22. **"Broken Period"** means an Interest Period for a Senior Loan which, in respect of a Senior Facility (other than the Senior Overdraft Facilities), is less than the selected Interest Period for that Senior Loan in the applicable Senior Facility Agreement.
- 1.1.23. **"Budget"** means a budget delivered by the Borrower to the Facility Agent in terms of clause 19.7 (*Budget*).
- 1.1.24. **"Business Day"** means a day (other than a Saturday, a Sunday or official public holiday) on which banks are open for general business in Johannesburg.
- 1.1.25. **"Cash Cover Document"** means, in relation to any cash cover, any Ancillary Facility Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that cash cover.
- 1.1.26. **"Category A Properties"** shall bear the meaning ascribed thereto in clause 22.6.2.1.
- 1.1.27. **"Category B Properties"** shall bear the meaning ascribed thereto in clause 22.6.2.2.
- 1.1.28. **"Category C Properties"** shall bear the meaning ascribed thereto in clause 22.6.2.4.
- 1.1.29. **"Closing Certificate"** means a certificate substantially in the form set out in **Schedule 8** (*Form of Closing Certificate*).
- 1.1.30. **"Closing Date"** means the date on which the Facility Agent issues the notice contemplated in clause 4.1 (*Initial conditions precedent*).
- 1.1.31. **"Code"** means the US Internal Revenue Code of 1986.

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- 1.1.32. **"Collection Account"** means the ring-fenced bank account held and maintained by the Borrower with the Facility Agent and having the following details:

Bank:	The Standard Bank of South Africa Limited
Branch:	Kingsmead
Branch Code:	04 0026
Account Holder:	Tongaat Hulett Ltd
Account Number:	05 105 642 9
Account Name:	Tongaat Hulett-Collection Acct

- 1.1.33. **"Commitment"** means a Senior Facility Commitment or an Ancillary Facility Commitment.

- 1.1.34. **"Companies Act"** means the Companies Act, 2008, including all regulations promulgated under that act.

- 1.1.35. **"Compliance Certificate"** means a certificate substantially in the form set out in **Schedule 6** (*Form of Compliance Certificate*) or otherwise in the agreed form.

- 1.1.36. **"Confidential Information"** means all information relating to the Borrower, any other Security Provider, the Group, the Finance Documents or a Senior Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Senior Facility from either:

1.1.36.1. any Security Provider and/or any other member of the Group or any of its advisers; or

1.1.36.2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Security Provider and/or any other member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information, but excludes information that:

1.1.36.3. is or becomes public information other than as a result of any breach by that Finance Party of clause 35 (*Confidentiality*); or

1.1.36.4. is identified in writing at the time of delivery as non-confidential by an Obligor and/or any other member of the Group or any of its advisers; or

1.1.36.5. is known by that Finance Party before the date the information is disclosed to it in accordance with clauses 1.1.36.1 or 1.1.36.2 above

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or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Borrower or the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

- 1.1.37. **"Confidentiality Undertaking"** means a confidentiality undertaking in the then current recommended form published by the Loan Markets Association from time to time.
- 1.1.38. **"Creditor"** means a Finance Party or an Ancillary Facility Lender, and, collectively, the **"Creditors"**.
- 1.1.39. **"Debt Guarantee"** means the agreement titled *"Debt Guarantee"* entered into on or about the date hereof between the Debt Guarantor and the other Creditors.
- 1.1.40. **"Debt Guarantor Management Agreement"** means the agreement titled *"Debt Guarantor Management Agreement"* entered into on or about the date hereof between the Debt Guarantor and TMF Corporate Services (South Africa) Proprietary Limited (or such other entity as the Facility Agent (acting on the instructions of the Majority Senior Lenders) may approve in writing).
- 1.1.41. **"Debt Guarantor Owner Trust"** means the trust established or to be established as the owner of the entire issued ordinary stated capital of the Debt Guarantor.
- 1.1.42. **"Debt Guarantor Owner Trust Deed"** means the trust deed constituting the Debt Guarantor Owner Trust.
- 1.1.43. **"Debt Reduction Proceeds"** means the net proceeds (after the payment of (or the provision for the payment of) any Taxes or costs and expenses reasonably incurred by the relevant member of the Group) directly or indirectly realised by any member of the Group pursuant to the implementation or conclusion of any Debt Reduction Transaction or the taking of any other step (of whatsoever nature) in connection therewith (other than proceeds excluded with the prior written consent of the Facility Agent (acting on the instructions of the Majority Senior Lenders)).
- 1.1.44. **"Debt Reduction Transaction"** means each asset disposal or other transaction contemplated in the Sell-down Plan or otherwise undertaken by members of the Group with the prior written consent of the Facility Agent (acting on the instructions of the Majority Senior Lenders).
- 1.1.45. **"Debt Reduction Transaction Agreement"** means each agreement (whether or not forming part of any other agreement) entered into between any member of

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the Group and a third party in connection with the implementation of any Debt Reduction Transaction.

1.1.46. **"Default"** means:

1.1.46.1. an Event of Default; or

1.1.46.2. any event or circumstance which (with the expiry of any applicable grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) would be an Event of Default.

1.1.47. **"Disruption Event"** means either or both of:

1.1.47.1. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Senior Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

1.1.47.2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

1.1.47.2.1. from performing its payment obligations under the Finance Documents; or

1.1.47.2.2. from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

1.1.48. **"Distribution"** means any payment (whether in cash or *in specie*) by way of interest or principal (whether in respect of an intercompany, shareholder loan or pursuant to a convertible instrument or otherwise), dividend, fee, royalty or other distribution or payment whatsoever (including, without limitation, by way of the repurchase of any shares or the repayment of any shareholder loans or any debentures) by or on behalf of any person for the account of any shareholder or any person that directly or indirectly controls or is controlled by such person.

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- 1.1.49. **"Dormant Subsidiary"** means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it).
- 1.1.50. **"ECR Minimum Amount"** shall bear the meaning ascribed thereto in clause 22.1.1 (*Implementation of Equity Capital Raise*).
- 1.1.51. **"Enterprise Value"** means the enterprise value of the Group determined with reference to the most recent Enterprise Valuation delivered to the Facility Agent in accordance with clause 22.2 (*Enterprise Valuation*).
- 1.1.52. **"Enterprise Valuation"** shall bear the meaning ascribed thereto in clause 22.2.1 (*Enterprise Valuation*).
- 1.1.53. **"Entity"** means any natural or juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, Joint Venture, trust, undertaking, voluntary association, body corporate and any similar entity.
- 1.1.54. **"Environment"** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.1.54.1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- 1.1.54.2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers);
and
- 1.1.54.3. land (including, without limitation, land under water).
- 1.1.55. **"Environmental Claim"** means any claim, litigation, arbitral proceedings or administrative proceedings, formal notice or investigation by any authority in respect of any Environmental Law or any Authorisation required to be held under applicable Environmental Law.
- 1.1.56. **"Environmental Law"** means any applicable law or regulation which relates to:
- 1.1.56.1. the pollution or protection of the Environment;
- 1.1.56.2. harm to or the protection of human health;
- 1.1.56.3. the conditions of the workplace; or
- 1.1.56.4. the generation, handling, storage, use, release, emission or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

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- 1.1.57. **"Environmental Permit"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any Obligor and/or any other member of the South African Group conducted on or from the immovable properties owned or used by any member of the South African Group.
- 1.1.58. **"Equity Capital Raise"** means the issue by the Borrower of any ordinary shares in its share capital to any person (whether by way of private placement, a rights issue or otherwise).
- 1.1.59. **"Equity Capital Raise Advisor(s)"** means the investment bank and/or advisory firm appointed by the Borrower to advise on the implementation, timing and quantum of an Equity Capital Raise.
- 1.1.60. **"Equity Capital Raise Proceeds"** means all proceeds realised by the Borrower pursuant to the implementation of an Equity Capital Raise after (a) providing for Taxes (and amounts reserved in respect of Taxes) paid or payable by the Borrower in connection with such Equity Capital Raise (at the prevailing tax rates and after providing for any Tax credit, deduction or allowance), and (b) deducting reasonable costs and expenses incurred by the Borrower directly in connection with such Equity Capital Raise.
- 1.1.61. **"Event of Default"** means any event or circumstance specified in clause 23 (*Events of Default*).
- 1.1.62. **"Excluded Properties"** means the immovable properties set out in **Schedule 10** (*Excluded Properties*), and each an **"Excluded Property"** as the context may require.
- 1.1.63. **"Existing Common Terms Agreement"** means the agreement titled *"First Amended and Restated Common Terms Agreement"* and entered into between the Parties on or about 2 November 2020 (as amended).
- 1.1.64. **"Existing Financial Indebtedness"** means the Financial Indebtedness owed by the Borrower to the Senior Lenders under the Existing Common Terms Agreement and the other documents described as *"Finance Documents"* therein.
- 1.1.65. **"External Advisor"** means each external advisor of the Borrower appointed from time to time in connection with the implementation of Debt Reduction Transactions, any Equity Capital Raise and similar matters (including, without limitation, the Equity Capital Raise Advisor(s) and PwC).
- 1.1.66. **"External Advisor Fees"** means all fees payable, or to be paid, by the Borrower or any other Obligor to its External Advisors from time to time including, without limitation, any success fees and retainer fees.

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- 1.1.67. **"Facilities"** means, collectively, the Senior Facilities and the Ancillary Facilities, and each a **"Facility"** as the context may require.
- 1.1.68. **"Facility Agent Signatory"** means either of the two representatives of the Facility Agent (acting in its capacity as account bank at which the Collection Account is held) mandated to act as signatory in respect of the Collection Account.
- 1.1.69. **"Facility Outstandings"** means the Senior Facility Outstandings and the Ancillary Facility Outstandings.
- 1.1.70. **"FATCA"** means:
- 1.1.70.1. sections 1471 to 1474 of the Code or any associated regulations;
 - 1.1.70.2. any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in clause 1.1.70.1 above; or
 - 1.1.70.3. any agreement pursuant to the implementation of any treaty, law or regulation referred to in clauses 1.1.70.1 or 1.1.70.2 above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
- 1.1.71. **"FATCA Deduction"** means a deduction or withholding from a payment under a Finance Document required by FATCA.
- 1.1.72. **"FATCA Exempt Party"** means a Party that is entitled to receive payments free from any FATCA Deduction.
- 1.1.73. **"Fee Letter"** means any letter or letters entered into between, *inter alios*, one or more Finance Parties and any Obligor on or about the Signature Date setting out any of the fees referred to in clause 11 (*Fees*).
- 1.1.74. **"Final Repayment Date"** means 30 June 2024.
- 1.1.75. **"Finance Documents"** means, collectively:
- 1.1.75.1. this Agreement;
 - 1.1.75.2. the Senior Facility A Agreement;
 - 1.1.75.3. the Senior Facility B Agreement;
 - 1.1.75.4. the Senior Facility C Agreement;
 - 1.1.75.5. the Senior Facility D Agreement;

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- 1.1.75.6. each Senior Overdraft Facility Agreement;
- 1.1.75.7. the Debt Guarantee;
- 1.1.75.8. the Second Amended and Restated Counter Indemnity Agreement;
- 1.1.75.9. the Subordination Agreement;
- 1.1.75.10. each Security Agreement;
- 1.1.75.11. the Security Structure Documents;
- 1.1.75.12. the Funds Flow Statement;
- 1.1.75.13. each Accession Letter;
- 1.1.75.14. each Compliance Certificate;
- 1.1.75.15. each Utilisation Request;
- 1.1.75.16. each Transfer Certificate;
- 1.1.75.17. each Fee Letter;
- 1.1.75.18. the Legal Fees Letter; and
- 1.1.75.19. each document amending any Finance Document referred to in this clause,

and any other document designated as such by the Facility Agent (acting on the instructions of the Majority Senior Lenders) and the Obligors' Agent in writing, and "**Finance Document**" means any one of them as the context may require.

- 1.1.76. "**Finance Lease**" means any lease or hire purchase contract, a liability under which would, in accordance with IFRS, be treated as a balance sheet liability, other than a lease or hire purchase contract which would, in accordance with IFRS in force prior to 1 January 2019, have been treated as an operating lease.
- 1.1.77. "**Finance Parties**" means the Senior Lenders, the Facility Agent and the Debt Guarantor, and "**Finance Party**", as the context requires, means any of them.
- 1.1.78. "**Financial Indebtedness**" means any indebtedness for or in respect of:
 - 1.1.78.1. moneys borrowed and debit balances at financial institutions;
 - 1.1.78.2. any amount raised by acceptance under any acceptance facility or dematerialised equivalent;

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or involuntary and whether pursuant to a single transaction or a series of transactions, and "**dispose**" will be construed accordingly;

- 1.3.1.7. a Financing Agreement or any other agreement or instrument includes (without prejudice to any prohibition on amendments) all amendments (however fundamental) to that Financing Agreement or other agreement or instrument, including any amendment providing for any increase in the amount of a facility or any additional facility or replacement facility;
- 1.3.1.8. a "**guarantee**" means (other than in clause 17 (*Guarantee And Indemnity*)) any guarantee, bond, letter of credit, standby letter of credit, letter of undertaking, indemnity or similar assurance against financial loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person, where, in each case, that obligation is assumed in order to maintain or assist the ability of that person to meet any of its indebtedness;
- 1.3.1.9. "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.3.1.10. "**know your customer requirements**" are the identification checks that a Finance Party requests in order to meet its obligations under any applicable law or regulation to identify a person who is (or is to become) its customer;
- 1.3.1.11. a "**person**" includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;
- 1.3.1.12. a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority;
- 1.3.1.13. a provision of law is a reference to that provision as extended, applied, amended or re-enacted, and includes any subordinate legislation;

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- 1.3.1.14. one gender includes a reference to the others; the singular includes the plural and *vice versa*; natural persons include juristic persons and *vice versa*; and
 - 1.3.1.15. a time of day is a reference to Johannesburg time.
- 1.3.2. Subject to clause 30.7.1, any reference in a Finance Document to a ZAR amount shall also include a reference to the equivalent thereof in any other currency or currencies.
- 1.3.3. Section, clause and Schedule headings are for ease of reference only, and do not in any way affect the interpretation of a Finance Document.
- 1.3.4. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.3.5. The Borrower or any other Obligor or Security Provider providing "cash cover" for a guarantee, standby letter of credit, bond or like instrument (an "**Instrument**") under an Ancillary Facility Document means the Borrower or that other Obligor or Security Provider paying an amount in the currency of that Instrument into an interest-bearing account in the name of the Borrower or that Obligor or that Security Provider and the following conditions being met:
 - 1.3.5.1. the account is with the relevant Ancillary Facility Lender for which that cash cover is to be provided;
 - 1.3.5.2. until no amount is or may be outstanding under that Instrument, withdrawals from the account may only be made to pay the relevant Ancillary Facility Lender the amounts due and payable to it under the relevant Ancillary Facility Document in respect of that Instrument; and
 - 1.3.5.3. the Borrower or that other Obligor or that other Security Provider has executed a security document over that account, in form and substance satisfactory to the relevant Ancillary Facility Lender creating a first ranking security interest over that account.
- 1.3.6. A Default (other than an Event of Default) is "**continuing**" if it has not been remedied within any applicable remedy period expressly provided for in a Finance Document or waived, and an Event of Default is "**continuing**" if it has not been waived.
- 1.3.7. The Borrower or any other Obligor or any other Security Provider "**repaying**" or "**prepaying**" an Instrument under an Ancillary Facility Document means:

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- 1.3.7.1. the Borrower or that other Obligor or that other Security Provider providing cash cover for that Instrument;
- 1.3.7.2. the maximum amount payable under that Instrument being reduced or cancelled in accordance with its terms; or
- 1.3.7.3. the relevant Ancillary Facility Lender being satisfied that it has no further liability under that Instrument,

and the amount by which an Instrument is repaid or prepaid under clauses 1.3.7.1 and 1.3.7.2 above is the amount of the relevant cash cover, reduction or cancellation.

- 1.3.8. The Borrower or any other Obligor or any other Security Provider "**prepaying**" or "**cash covering**" a derivative contract under an Ancillary Facility Document means the Borrower or that other Obligor or that other Security Provider initiating an early termination or close-out of that contract prior to its stated maturity, and paying any balance which it may owe to the counterparty following the same into a secured bank account nominated by that counterparty.
- 1.3.9. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Finance Document.
- 1.3.10. A term defined in a particular clause of a Finance Document, unless it is clear from the clause in question that application of the term is to be limited to the relevant clause, shall bear the meaning ascribed to it for all purposes of the relevant Finance Document, notwithstanding that that term has not been defined in any interpretation clause.
- 1.3.11. The Schedules to a Finance Document form an integral part thereof and a reference to a "**clause**" or a "**Schedule**" is a reference to a clause of, or a schedule to, this Agreement.
- 1.3.12. Unless expressly otherwise provided in a Finance Document or inconsistent with the context, any number of days prescribed in a Finance Document must be calculated by excluding the first and including the last day, unless that last day falls on a day that is not a Business Day, in which case, if the last day is a payment date, the last day will instead be the next Business Day in the same calendar month (if there is one, and if not, the last day will be the immediately preceding Business Day), or, if the last day is not a payment date, the last day will instead be the next Business Day.

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- 1.3.13. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Finance Documents.
- 1.3.14. The use of the word "including" followed by specific examples will not be construed as limiting the meaning of the general wording preceding/succeeding it, shall be construed to be read as "including, without limitation", and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.
- 1.3.15. The expiry or termination of any Finance Documents shall not affect those provisions of the Finance Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.3.16. The Finance Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.3.17. Unless the contrary intention appears:
- 1.3.17.1. a reference to a Party will not include any person if it has ceased to be a Party under this Agreement;
- 1.3.17.2. any obligation of an Obligor under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of an Obligor is or may be or is capable of becoming outstanding under the Finance Documents; and
- 1.3.17.3. any obligation of an Obligor under the Finance Documents includes an obligation on that Obligor not to contract or agree to do something or not to do something which would breach that first obligation, unless such contract or agreement is conditional on the approval of the Facility Agent (as required under any Finance Document).
- 1.4. **Third party rights**
- 1.4.1. Except as expressly provided for in this Agreement or in any other Finance Document, no provision of any Finance Document constitutes a stipulation for the benefit of any person who is not a party to that Finance Document.

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- 1.4.2. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary that Finance Document at any time except to the extent that the relevant variation or rescission (as the case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.

1.5. **Obligors' Agent**

- 1.5.1. Each Obligor (other than the Borrower) by its execution of this Agreement irrevocably appoints the Borrower (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

1.5.1.1. the Borrower on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions as provided for in clause 33 (*Notices*), to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

1.5.1.2. each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower as provided for in clause 33 (*Notices*),

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- 1.5.2. Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of an Obligor or in connection with any Finance Document (whether or not known to any other Obligor) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any Obligor, those of the Obligors' Agent shall prevail.

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- 1.1.78.3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- 1.1.78.4. the amount of any liability in respect of Finance Leases;
- 1.1.78.5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.1.78.6. any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing;
- 1.1.78.7. any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the mark-to-market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- 1.1.78.8. any amount raised by the issue of a share which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) is or may become mandatorily redeemable;
- 1.1.78.9. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and/or
- 1.1.78.10. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in clauses 1.1.78.1 to 1.1.78.9 above.
- 1.1.79. **"Financial Model"** means the Base Case Model, as revised, updated or changed in accordance with the provisions of clause 19.8 (*Financial Model*).
- 1.1.80. **"Financial Year-end"** means, in respect of each Obligor, 31 March of each year and the term **"financial year"** shall mean each financial period of 12 (twelve) months ending on such date in each year.
- 1.1.81. **"Financing Agreement"** means a Finance Document or an Ancillary Facility Document, and, collectively, the **"Financing Agreements"**.
- 1.1.82. **"First Amended and Restated Counter Indemnity Agreement"** means the agreement titled *"First Amended and Restated Counter Indemnity Agreement"* entered into on or about 9 December 2019 between, *inter alios*, the Debt Guarantor and the Security Providers.
- 1.1.83. **"Funds Flow Statement"** means a financial model in the agreed form which details the cash flows required to refinance all Existing Financial Indebtedness on the 1st (first) Utilisation Date.

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- 1.1.84. **"General Notarial Bond"** means each general notarial bond listed in **Schedule 9** (*Transaction Security*).
- 1.1.85. **"Group"** means the Borrower and its direct and indirect Subsidiaries from time to time.
- 1.1.86. **"Group Structure Chart"** means the group structure chart of the Group delivered to the Facility Agent in terms of clause 4.1 (*Initial conditions precedent*) (as read with paragraph 6.4 of Part I of **Schedule 2** (*Conditions Precedent*)).
- 1.1.87. **"Guarantor"** means an Original Guarantor or an Additional Guarantor, and collectively, the **"Guarantors"**.
- 1.1.88. **"Hedging Ancillary Facility"** means an Ancillary Facility which is made available by way of a hedging facility.
- 1.1.89. **"Hedging Ancillary Facility Document"** means an Ancillary Facility Document which relates to or evidences the terms of a Hedging Ancillary Facility.
- 1.1.90. **"Holding Company"** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.
- 1.1.91. **"IFRS"** means international accounting standards within the meaning of IAS Regulation (EC) No 1606/2002 of the European Parliament and of the Council of the European Union, to the extent applicable to the relevant financial statements.
- 1.1.92. **"Independent Property Valuer"** means Broll Valuation and Advisory Service Proprietary Limited or any other suitably qualified firm or person approved in advance by the Facility Agent (acting on the instructions of the Majority Senior Lenders).
- 1.1.93. **"Infrastructure Expenditure"** means infrastructure expenditure incurred by THD (or Forecast to be incurred by THD in the Base Case Model) in respect of the Category A Properties, the Category B Properties and the Category C Properties but excluding any Excluded Property.
- 1.1.94. **"Infrastructure Expenditure Report"** means a report relating to Infrastructure Expenditure in the form agreed between the Borrower and Facility Agent (acting on the instructions of the Majority Senior Lenders) in accordance with the provisions of clause 4.5 (*Condition Subsequent*).
- 1.1.95. **"Insurance"** means each policy of insurance issued by an insurer in favour of a Security Provider from time to time, together with each certificate of insurance and evidence of renewal in respect of such insurance (as such policy may be renewed with different policy numbers).

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- 1.1.96. **"Intellectual Property"** means, in respect of an Obligor:
- 1.1.96.1. any patents, trademarks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property and interests (which may now or in the future subsist), whether registered or unregistered, of that Obligor; and
 - 1.1.96.2. the benefit of all applications and rights to use such assets of that Obligor (which may now or in the future subsist).
- 1.1.97. **"Intercreditor Agreement"** means the agreement titled *"Intercreditor Agreement"* entered into on or about the date hereof between the Creditors.
- 1.1.98. **"Interest Period"** has, in respect of each Senior Facility (other than the Senior Overdraft Facilities), the meaning ascribed thereto in the applicable Senior Facility Agreement.
- 1.1.99. **"Interpolated Screen Rate"** means, in relation to a Senior Loan, the rate which results from interpolating on a linear basis between:
- 1.1.99.1. the Screen Rate for the longest period (for which the Screen Rate is available) which is less than the Interest Period of that Senior Loan; and
 - 1.1.99.2. the Screen Rate for the shortest period (for which the Screen Rate is available) which exceeds the Interest Period of that Senior Loan,
- as of 11h00 (Johannesburg time) on the Quotation Day for the offering of deposits in Rand.
- 1.1.100. **"Internally Generated Cash Flows"** means cash flows of members of the South African Group generated in the ordinary course of business, including, without limitation, Distributions, management fees and expenditure contributions received by any Obligor from members of the Group incorporated outside of South Africa, but excluding the proceeds of any share capital issued or Financial Indebtedness raised by any member of the South African Group.
- 1.1.101. **"JIBAR"** means for an Interest Period of a Senior Loan or any Unpaid Sum:
- 1.1.101.1. the applicable Screen Rate as of the Specified Time; or
 - 1.1.101.2. (if no Screen Rate is available for the Interest Period of that Senior Loan or any Unpaid Sum) the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Facility Agent at

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its request, quoted by the Reference Banks to leading banks in the Johannesburg interbank market,

as of 11h00 (Johannesburg time) on the Quotation Day for the offering of deposits in Rand for a period comparable to that Interest Period and if, in either case, that rate is less than zero, then JIBAR shall be deemed to be zero.

- 1.1.102. **"Joint Venture"** means any joint venture entity, partnership or similar person, comprising an association of two or more persons to undertake a business enterprise through a combination of assets and/or expertise.
- 1.1.103. **"JSE"** means the JSE Limited (Registration No. 2005/022939/06), a public company duly incorporated in accordance with the laws of South Africa, which manages and operates the Johannesburg Stock Exchange, a licensed financial exchange in terms of the Financial Markets Act, 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange.
- 1.1.104. **"JSE Listings Requirements"** means the listings requirements of the JSE published pursuant to the Financial Markets Act, 2012.
- 1.1.105. **"Lease Agreement"** means any lease or warehousing agreement entered into by any Obligor with any lessor or warehouseman in respect of the storage of the inventory of any Obligor.
- 1.1.106. **"Lenders' Legal Counsel"** means Edward Nathan Sonnenbergs Inc. (also known as "ENSafrica"), in its capacity as legal counsel to the Finance Parties.
- 1.1.107. **"Majority Senior Lenders"** means a Senior Lender or Senior Lenders the Total Commitments of which aggregate more than $66\frac{2}{3}\%$ (sixty six and two thirds percent) of the Total Commitments of all of the Senior Lenders (or, if the Total Commitments of all of the Senior Lenders have been reduced to zero, aggregated more than $66\frac{2}{3}\%$ (sixty six and two thirds percent) of the Total Commitments of all of the Senior Lenders immediately prior to the reduction).
- 1.1.108. **"Material Adverse Effect"** means a material adverse effect on:
- 1.1.108.1. the business, assets, condition (financial or otherwise) or prospects of any Security Provider or the South African Group (taken as a whole); and/or
- 1.1.108.2. the ability of any Security Provider to perform its obligations under the Finance Documents; and/or
- 1.1.108.3. the validity or enforceability of any Finance Document or any of the Transaction Security or any right or remedy of a Finance Party arising

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Notwithstanding the above, each of the following companies will be a Material Subsidiary:

- 1.1.109.2. each Original Obligor (other than the Borrower); and
- 1.1.109.3. each member of the South African Group (other than the Borrower) to which an Obligor or a Material Subsidiary disposes of all or any substantial part of its assets (from and including the date of that transfer and for any applicable period thereafter during which such member of the South African Group retains ownership of such assets).
- 1.1.110. **"Mortgage Bond"** means each mortgage bond listed in **Schedule 9** (*Transaction Security*).
- 1.1.111. **"Natal Estates"** means The Natal Estates Limited (Registration No. 1902/000899/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa.
- 1.1.112. **"Obligor"** means the Borrower or a Guarantor, and, collectively, the **"Obligors"**, as the context may require.
- 1.1.113. **"Obligors' Agent"** means the Borrower, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to clause 2.6 (*Obligors' Agent*).
- 1.1.114. **"Ohlanga Development Company"** means Ohlanga Development Company Proprietary Limited (Registration No. 1968/009161/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa.
- 1.1.115. **"Original Financial Statements"** means, in respect of:
 - 1.1.115.1. the Borrower, the audited consolidated financial statements of the Borrower for its financial year ended on 31 March 2021; and
 - 1.1.115.2. each other Obligor, the audited financial statements of that Obligor for its financial year ended on 31 March 2021.
- 1.1.116. **"Original Jurisdiction"** means, in respect of each Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the Signature Date or the date of the applicable Accession Letter (as the case may be).
- 1.1.117. **"Original Lenders"** means, collectively, the Original Senior Facility A Lenders, the Original Senior Facility B Lenders, the Original Senior Facility C Lenders, the Original Senior Facility D Lenders and the Original Senior Overdraft Facility Lenders, and each an **"Original Lender"** as the context may require.

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- 1.1.118. **"Original Obligators"** means the Borrower and the Original Guarantors, and **"Original Obligor"** means any of them as the context may require.
- 1.1.119. **"Party"** means a party to this Agreement.
- 1.1.120. **"Property Valuation"** shall bear the meaning ascribed thereto in clause 22.10.1.
- 1.1.121. **"Proportionate Share"** means, in respect of each Creditor and at any time:
- 1.1.121.1. prior to the Senior Facilities Discharge Date, the proportion borne by the aggregate of that Creditor's Senior Facility Commitments as at the Closing Date to the Total Commitments as at the Closing Date (or in such other proportions as the Facility Agent (acting on the instructions of all of the Creditors) may notify the Obligor's Agent in writing); and
 - 1.1.121.2. thereafter, the proportion borne by the aggregate of that Creditor's Ancillary Facility Outstandings (as applicable) to the Ancillary Facility Outstandings of all of the Creditors.
- 1.1.122. **"Proposed Financial Covenant Remedial Action"** shall bear the meaning ascribed thereto in clause 20.3 (*Discussion covenant*).
- 1.1.123. **"PwC"** means PricewaterhouseCoopers Inc.
- 1.1.124. **"Quarter Date"** means 31 March, 30 June, 30 September and 31 December of each year.
- 1.1.125. **"Quotation Day"** means, in relation to any period for which an interest rate is to be determined, the first day of that period (or any other period accepted in the Johannesburg interbank market).
- 1.1.126. **"Reference Banks"** means the principal Johannesburg offices of Absa Bank Limited, FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited, or such other banks as may be appointed by the Facility Agent (acting on the instructions of the Majority Senior Lenders) in consultation with the Borrower.
- 1.1.127. **"Refinancing"** means any arrangement pursuant to which all Senior Facility Outstandings (and all other amounts owing under the Finance Documents) are prepaid out of the proceeds of any new Financial Indebtedness directly or indirectly incurred by the Borrower or any Obligor for such purpose, and **"Refinanced"** shall bear a corresponding meaning.

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- 1.1.128. **"Related Fund"** in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
- 1.1.129. **"Relevant Jurisdiction"** means, in relation to each Obligor:
- 1.1.129.1. its Original Jurisdiction;
 - 1.1.129.2. any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
 - 1.1.129.3. any jurisdiction where it conducts its business; and
 - 1.1.129.4. the jurisdiction whose laws govern the perfection of any of the Security Agreements entered into by it.
- 1.1.130. **"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Services and Conduct Authority.
- 1.1.131. **"Repeating Representations"** means each of the representations set out in clause 18.1 (*Status*) to clause 18.6 (*Governing law and enforcement*), clause 18.9 (*No default*), clause 18.10.7 (*No misleading information*), clause 18.11 (*Financial statements*), clause 18.12 (*Ranking*), clause 18.19 (*Legal and beneficial ownership*), clause 18.20 (*Good title to assets*), clause 18.27 (*Immunity*) and clause 18.29 (*Valuations*).
- 1.1.132. **"Replacement Benchmark"** means a benchmark rate which is:
- 1.1.132.1. formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - 1.1.132.1.1. the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - 1.1.132.1.2. any Relevant Nominating Body,
- and if replacements have, at the relevant time, been formally designated, nominated or recommended under both clauses, the **"Replacement Benchmark"** will be the replacement under clause 1.1.132.1.2 above;

115

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- 1.1.132.2. in the opinion of the Majority Senior Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- 1.1.132.3. in the opinion of the Majority Senior Lenders and the Borrower, an appropriate successor to a Screen Rate.
- 1.1.133. **"Replacement Mortgage"** shall bear the meaning ascribed thereto in clause 22.17 (*Excluded Properties*).
- 1.1.134. **"Representative"** means any representative, delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
- 1.1.135. **"Reputational Risk Event"** has the meaning ascribed thereto in clause 7.3.1.6.
- 1.1.136. **"Required Equity Capital Raise"** shall bear the meaning ascribed thereto in clause 22.1.1 (*Implementation of Equity Capital Raise*).
- 1.1.137. **"Rollover Loan"** means one or more Senior Facility B Loans:
- 1.1.137.1. made or to be made on the same day that a maturing Senior Facility B Loan is due to be repaid;
- 1.1.137.2. the aggregate amount of which is equal to or less than the amount of the maturing Senior Facility B Loan; and
- 1.1.137.3. made or to be made to the Borrower for the purpose of refinancing that maturing Senior Facility B Loan.
- 1.1.138. **"Sanctioned Entity"** means:
- 1.1.138.1. an Entity, country or territory which is listed on a Sanctions List or is subject to Sanctions; or
- 1.1.138.2. a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.
- 1.1.139. **"Sanctioned Transaction"** means the use of the proceeds of a Facility for the purpose of financing or providing any credit, directly or indirectly, to:
- 1.1.139.1. a Sanctioned Entity; or
- 1.1.139.2. any other person or Entity, if a member of the Group has actual knowledge that the person or Entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,

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in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions (including at the time that the funding is advanced).

1.1.140. **"Sanctions"** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

1.1.141. **"Sanctions Authority"** means:

1.1.141.1. the United Nations;

1.1.141.2. the European Union;

1.1.141.3. the Council of Europe (founded under the Treaty of London, 1946);

1.1.141.4. the government of the United States of America;

1.1.141.5. the government of the United Kingdom;

1.1.141.6. the government of the Republic of France;

1.1.141.7. the government of Switzerland; and

1.1.141.8. the government of Australia,

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (**OFAC**), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (**HMT**) and the French Ministry of Finance (**MINEFI**).

1.1.142. **"Sanctions List"** means:

1.1.142.1. the Specially Designated Nationals and Blocked Persons List maintained by OFAC; and

1.1.142.2. the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

or any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

1.1.143. **"SASA Proceeds"** means the proceeds of the carry-out funding received by the Borrower or any other member of the South African Group from the South African Sugar Association from time to time in connection with the financing and

117
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payment, as applicable, of the year-end sugar inventory and export sugar receivable of the Sugar Business for each financial year of the Borrower.

1.1.144. **"Screen Rate"** means the mid-market rate for deposits in ZAR for the relevant period which appears on the Reuters Screen SAFEY Page alongside the caption **"YIELD"** at the applicable time (or any replacement Reuters page which displays that rate, or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters). If such page or service ceases to be available, the Facility Agent (acting on the instructions of the Majority Senior Lenders) may specify another page or service displaying the appropriate rate after consultation with the Borrower.

1.1.145. **"Screen Rate Replacement Event"** means, in relation to the Screen Rate:

1.1.145.1. the methodology, formula or other means of determining the Screen Rate has, in the opinion of the Majority Senior Lenders and the Borrower materially changed;

1.1.145.2. the administrator of the Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

1.1.145.3. information is published in any order, decree, notice, petition or filing, however described, or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the Screen Rate is insolvent,

provided that, in each and any such case, at that time, there is no successor administrator to continue to provide that Screen Rate;

1.1.145.4. the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate;

1.1.145.5. the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued;

1.1.145.6. the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or

1.1.145.7. the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements, and the

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circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Senior Lenders and the Borrower) temporary; or

1.1.145.8. in the opinion of the Majority Senior Lenders and the Borrower, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement and/or any Senior Facility Agreement (other than any Senior Overdraft Facility Agreement).

1.1.146. **"Second Amended and Restated Counter Indemnity Agreement"** means the agreement titled *"Second Amended and Restated Counter Indemnity Agreement"* entered into on or about the date hereof between the Debt Guarantor and the Security Providers (being the First Amended and Restated Counter Indemnity Agreement as amended and restated with effect from the Second Effective Date and Time (Counter Indemnity Agreement) in terms of the Second Amendment and Restatement Agreement (Counter Indemnity Agreement)).

1.1.147. **"Second Amendment and Restatement Agreement (Counter Indemnity Agreement)"** means the agreement titled *"Second Amendment and Restatement Agreement (Counter Indemnity Agreement)"* entered into on or about the date hereof between the Debt Guarantor, the Facility Agent and the Security Providers.

1.1.148. **"Second Effective Date and Time (Counter Indemnity Agreement)"** shall bear the meaning ascribed to the term *"Effective Date and Time"* in the Second Amendment and Restatement Agreement (Counter Indemnity Agreement).

1.1.149. **"Security"** means a mortgage bond, notarial bond, cession in security, charge, pledge, hypothec, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.1.150. **"Security Agreements"** means:

1.1.150.1. each of the security agreements entered into or to be entered into in favour of the Debt Guarantor or any other Creditor as contemplated in **Schedule 9** (*Transaction Security*);

1.1.150.2. each security agreement entered or required to be entered into under clause 21.26 (*Further assurance*); and

1.1.150.3. each other security agreement conferring Security in favour of or for the benefit of any one or more of the Creditors as designated by the Facility Agent (acting on the instructions of the Majority Senior Lenders) and the Obligors' Agent in writing.

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- 1.1.151. **"Security Cession and Pledge"** means the security agreement set out at paragraph 1.1 of **Schedule 9** (*Transaction Security*).
- 1.1.152. **"Security Provider"** means each Obligor, Natal Estates, Ohlanga Development Company and each other *"Indemnifier"* under (and as defined in) the Amended and Restated Counter Indemnity Agreement from time to time.
- 1.1.153. **"Security Structure Document"** means:
- 1.1.153.1. the memorandum of incorporation of the Debt Guarantor;
 - 1.1.153.2. the Debt Guarantor Management Agreement; and
 - 1.1.153.3. the Debt Guarantor Owner Trust Deed.
- 1.1.154. **"Sell-down Implementation Date"** means, in respect of:
- 1.1.154.1. the Sell-down Implementation Events contemplated at clauses 1.1.155.1 to 1.1.155.5, the date of the occurrence of such Sell-down Implementation Event; and
 - 1.1.154.2. each other Sell-down Implementation Event, the date on which the Facility Agent (acting on the instructions of the Majority Senior Lenders) delivers a notice to the Borrower specifying (a) that such Sell-down Implementation Event has occurred, and (b) the Majority Senior Lenders require the Borrower to comply with its obligations under clause 22.3 (*Implementation of Sell-down*).
- 1.1.155. **"Sell-down Implementation Event"** means the occurrence of any of the following events or circumstances:
- 1.1.155.1. the Borrower fails to comply with any of its obligations under clause 22.1 (*Implementation of Equity Capital Raise*) at the times and/or in the manner contemplated in that clause;
 - 1.1.155.2. where the Borrower has announced any Equity Capital Raise (including, without limitation, the Required Equity Capital Raise), the Borrower fails to obtain the requisite support from its shareholders by way of resolution to implement such Equity Capital Raise (whether to effect any amendments which may be required to be made to its memorandum of incorporation to implement such *"Equity Capital Raise"* or otherwise);
 - 1.1.155.3. the Equity Capital Raise Proceeds arising from the Required Equity Capital Raise are less than the ECR Minimum Amount;

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- 1.1.155.4. it appears at any time from any Enterprise Valuation that the Enterprise Value of the Group at that time is then equal to or less than 1.5 (one point five times) of the amount of the Facility Outstandings;
 - 1.1.155.5. the Borrower at any time notifies the Facility Agent or any other Finance Party that:
 - 1.1.155.5.1. the Required Equity Capital Raise is unlikely to be implemented; and/or
 - 1.1.155.5.2. the Required Equity Capital Raise is unlikely to raise Equity Capital Raise Proceeds equal to the ECR Minimum Amount;
 - 1.1.155.5.3. an event has occurred which will render unlikely the implementation of the Required Equity Capital Raise or any other Equity Capital Raise (which will render proceeds of at least equal to the ECR Minimum Amount); and/or
 - 1.1.155.5.4. the Required Equity Capital Raise has been terminated for any reason;
 - 1.1.155.6. the Borrower fails to comply with any of its obligations in terms of clauses 20.1.1.1, 20.1.1.2, 20.1.1.3 and/or 20.1.1.7;
 - 1.1.155.7. the Borrower and the Facility Agent fail to agree any Proposed Covenant Remedial Action at the times and in the manner contemplated in clause 20.3 (*Discussion covenant*);
 - 1.1.155.8. the Borrower fails to implement any Proposed Covenant Remedial Action timeously and/or in full; and/or
 - 1.1.155.9. a Default otherwise occurs and is continuing.
- 1.1.156. **"Sell-down Milestone"** means, in respect of each Debt Reduction Transaction set out in the Sell-down Plan, the relevant date set out in the Sell-down Plan by which (a) the Borrower and/or any other member of the Group (as applicable) is required to conclude a Signed Debt Reduction Transaction Agreement in respect of such transaction, and (b) the Debt Reduction Proceeds payable in connection with that Debt Reduction Transaction are required to be paid into the Collection Account.
- 1.1.157. **"Sell-down Plan"** shall bear the meaning ascribed thereto in clause 22.3.2 (*Implementation of Sell-down*).

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- 1.1.158. **"Sell-down Proposal"** means the written proposal to be prepared by the Borrower and delivered to the Facility Agent in terms of clause 22.3.1 (*Implementation of Sell-down*) detailing:
- 1.1.158.1. which Debt Reduction Transactions the Borrower and/or the other members of the Group propose to enter into such that Debt Reduction Proceeds at least equal to the Senior Facility C Outstandings shall, by no later than the earlier to occur of (a) the date which falls 18 (months) following the occurrence of the relevant Sell-down Implementation Event, and (b) the Final Repayment Date, be realised and applied in mandatory prepayment of the Senior Facility C Outstandings in the manner contemplated in clause 7.6 (*Mandatory prepayment: Debt Reduction Proceeds*);
 - 1.1.158.2. the proposed methodology to be adopted by the members of the Group in implementing such Debt Reduction Transactions; and
 - 1.1.158.3. the Sell-down Milestones to be applicable to such Debt Reduction Transactions.
- 1.1.159. **"Senior Facilities"** means, collectively, Senior Facility A, Senior Facility B, Senior Facility C, Senior Facility D and the Senior Overdraft Facilities and each a **"Senior Facility"** as the context may require.
- 1.1.160. **"Senior Facilities Discharge Date"** means the date on which:
- 1.1.160.1. the Senior Facility Outstandings have been irrevocably and unconditionally paid and discharged in full (whether or not as a result of enforcement); and
 - 1.1.160.2. no Senior Lender has any commitment whatsoever to provide finance or any other form of credit or financial accommodation to any person under any Finance Document in connection with any Senior Facility.
- 1.1.161. **"Senior Facility A"** means the senior term loan facility described in clause 2 (*The Facilities*) made available under this Agreement and the Senior Facility A Agreement.
- 1.1.162. **"Senior Facility A Agreement"** means the agreement titled "*Senior Facility A Agreement*" entered into on or about the date hereof between the Original Senior Facility A Lenders, the Borrower and the Facility Agent.
- 1.1.163. **"Senior Facility A Commitment"** means:
- 1.1.163.1. in relation to an Original Senior Facility A Lender, the amount set out opposite its name under the heading "*Senior Facility A Commitment*"

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in Part II of **Schedule 1** (*Original Parties*) and the amount of any other Senior Facility A Commitment transferred to it under this Agreement; and

1.1.163.2. in relation to any other Senior Facility A Lender, the amount of any Senior Facility A Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Senior Facility A Agreement.

1.1.164. **"Senior Facility A Lenders"** means:

1.1.164.1. the Original Senior Facility A Lenders; and

1.1.164.2. any bank, financial institution, trust, fund or other entity which becomes a Party as a Senior Facility A Lender after the Signature Date in accordance with clause 24 (*Changes to the Senior Lenders*),

in each case, which has not ceased to be a Party in accordance with the terms of this Agreement (and **"Senior Facility A Lender"**, as the context requires, means any of them).

1.1.165. **"Senior Facility A Loan"** means the loan to be advanced under Senior Facility A.

1.1.166. **"Senior Facility A Outstandings"** means, at any time, the aggregate of all amounts of loan principal, accrued interest, Break Costs, prepayment penalties, fees and all other amounts outstanding in respect of Senior Facility A under the Finance Documents.

1.1.167. **"Senior Facility Agreements"** means, collectively, the Senior Facility A Agreement, the Senior Facility B Agreement, the Senior Facility C Agreement, the Senior Facility D Agreement and the Senior Overdraft Facility Agreements, and each a **"Senior Facility Agreement"** as the context may require.

1.1.168. **"Senior Facility B"** means the senior revolving credit facility described in clause 2 (*The Facilities*) made available under this Agreement and the Senior Facility B Agreement.

1.1.169. **"Senior Facility B Agreement"** means the agreement titled *"Senior Facility B Agreement"* entered into on or about the date hereof between the Original Senior Facility B Lenders, the Borrower and the Facility Agent.

1.1.170. **"Senior Facility B Commitment"** means:

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1.1.170.1. in relation to an Original Senior Facility B Lender, the amount set out opposite its name under the heading "*Senior Facility B Commitment*" in Part III of **Schedule 1** (*Original Parties*) and the amount of any other Senior Facility B Commitment transferred to it under this Agreement; and

1.1.170.2. in relation to any other Senior Facility B Lender, the amount of any Senior Facility B Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Senior Facility B Agreement.

1.1.171. "**Senior Facility B Lenders**" means:

1.1.171.1. the Original Senior Facility B Lenders; and

1.1.171.2. any bank, financial institution, trust, fund or other entity which becomes a Party as a Senior Facility B Lender after the Signature Date in accordance with clause 24 (*Changes to the Senior Lenders*),

in each case, which has not ceased to be a Party in accordance with the terms of this Agreement (and "**Senior Facility B Lender**", as the context requires, means any of them).

1.1.172. "**Senior Facility B Loan**" means a loan advanced under Senior Facility B (including a Rollover Loan).

1.1.173. "**Senior Facility B Outstandings**" means, at any time, the aggregate of all amounts of loan principal, accrued interest, Break Costs, prepayment penalties, fees and all other amounts outstanding in respect of Senior Facility B under the Finance Documents.

1.1.174. "**Senior Facility C**" means the senior term loan facility described in clause 2 (*The Facilities*) made available under this Agreement and the Senior Facility C Agreement.

1.1.175. "**Senior Facility C Agreement**" means the agreement titled "*Senior Facility C Agreement*" entered into on or about the date hereof between the Original Senior Facility C Lenders, the Borrower and the Facility Agent.

1.1.176. "**Senior Facility C Commitment**" means:

1.1.176.1. in relation to an Original Senior Facility C Lender, the amount set out opposite its name under the heading "*Senior Facility C Commitment*" in Part IV of **Schedule 1** (*Original Parties*) and the amount of any

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other Senior Facility C Commitment transferred to it under this Agreement; and

1.1.176.2. in relation to any other Senior Facility C Lender, the amount of any Senior Facility C Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Senior Facility C Agreement.

1.1.177. **"Senior Facility C Lenders"** means:

1.1.177.1. the Original Senior Facility C Lenders; and

1.1.177.2. any bank, financial institution, trust, fund or other entity which becomes a Party as a Senior Facility C Lender after the Signature Date in accordance with clause 24 (*Changes to the Senior Lenders*),

in each case, which has not ceased to be a Party in accordance with the terms of this Agreement (and **"Senior Facility C Lender"**, as the context requires, means any of them).

1.1.178. **"Senior Facility C Loan"** means the loan to be advanced under Senior Facility C.

1.1.179. **"Senior Facility Commitment"** means a Senior Facility A Commitment, a Senior Facility B Commitment, a Senior Facility C Commitment, a Senior Facility D Commitment or a Senior Overdraft Facility Commitment and collectively, the **"Senior Facility Commitments"** as the context may require.

1.1.180. **"Senior Facility C Outstandings"** means, at any time, the aggregate of all amounts of loan principal, accrued interest, Break Costs, prepayment penalties, fees and all other amounts outstanding in respect of Senior Facility C under the Finance Documents.

1.1.181. **"Senior Facility D"** means the senior term loan facility described in clause 2 (*The Facilities*) made available under this Agreement and the Senior Facility D Agreement.

1.1.182. **"Senior Facility D Agreement"** means the agreement titled *"Senior Facility D Agreement"* entered into on or about the date hereof between the Original Senior Facility D Lenders, the Borrower and the Facility Agent.

1.1.183. **"Senior Facility D Commitment"** means:

1.1.183.1. in relation to an Original Senior Facility D Lender, the amount set out opposite its name under the heading *"Senior Facility D Commitment"*

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in Part V of **Schedule 1** (*Original Parties*) and the amount of any other Senior Facility D Commitment transferred to it under this Agreement; and

1.1.183.2. in relation to any other Senior Facility D Lender, the amount of any Senior Facility D Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement or the Senior Facility D Agreement.

1.1.184. **"Senior Facility D Lenders"** means:

1.1.184.1. the Original Senior Facility D Lenders; and

1.1.184.2. any bank, financial institution, trust, fund or other entity which becomes a Party as a Senior Facility D Lender after the Signature Date in accordance with clause 24 (*Changes to the Senior Lenders*),

in each case, which has not ceased to be a Party in accordance with the terms of this Agreement (and **"Senior Facility D Lender"**, as the context requires, means any of them).

1.1.185. **"Senior Facility D Loan"** means the loan to be advanced under Senior Facility D.

1.1.186. **"Senior Facility D Outstandings"** means, at any time, the aggregate of all amounts of loan principal, accrued interest, Break Costs, prepayment penalties, fees and all other amounts outstanding in respect of Senior Facility D under the Finance Documents.

1.1.187. **"Senior Facility Outstandings"** means, collectively, the Senior Facility A Outstandings, the Senior Facility B Outstandings, the Senior Facility C Outstandings, the Senior Facility D Outstandings, the Super Senior Overdraft Facility Outstandings and the Senior Overdraft Facility Outstandings.

1.1.188. **"Senior Lenders"** means, collectively, the Senior Facility A Lenders, the Senior Facility B Lenders, the Senior Facility C Lenders, the Senior Facility D Lenders and the Senior Overdraft Facility Lenders, and each a **"Senior Lender"** as the context may require.

1.1.189. **"Senior Loans"** means, collectively, the Senior Facility A Loan, the Senior Facility B Loans, the Senior Facility C Loans and the Senior Facility D Loans, and each a **"Senior Loan"** as the context may require.

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- 1.1.190. **"Senior Overdraft Facility"** means an overdraft facility made available by a Senior Overdraft Facility Lender to one or more Obligors and/or other Security Providers from time to time under a Senior Overdraft Facility Agreement.
- 1.1.191. **"Senior Overdraft Facility Agreement"** means an overdraft facility agreement entered into or to be entered into by a Senior Overdraft Facility Lender with one or more Obligors and/or other Security Providers for the purposes of making a Senior Overdraft Facility available to such Obligor and/or other Security Provider.
- 1.1.192. **"Senior Overdraft Facility Commitment"** means:
- 1.1.192.1. in relation to either Original Senior Overdraft Facility Lender:
- 1.1.192.1.1. the amount set out opposite its name under the heading "*Senior Overdraft Commitment*" in Part VI of **Schedule 1 (Original Parties)** and includes, to the extent applicable, that Original Senior Overdraft Facility Lender's Super Senior Overdraft Facility Commitment; and
- 1.1.192.1.2. the amount of any other Senior Overdraft Facility Commitment transferred to it under this Agreement; and
- 1.1.192.2. in relation to any other Senior Overdraft Facility Lender, the amount of any Senior Overdraft Facility Commitment transferred to it under this Agreement,
- to the extent not cancelled, reduced or transferred by it under this Agreement or the applicable Senior Overdraft Facility Agreement.
- 1.1.193. **"Senior Overdraft Facility Lenders"** means:
- 1.1.193.1. the Original Senior Overdraft Facility Lenders; and
- 1.1.193.2. any bank, financial institution, trust, fund or other entity which becomes a Party as a Senior Overdraft Facility Lender after the Signature Date in accordance with clause 24 (*Changes to the Senior Lenders*),
- in each case, which has not ceased to be a Party in accordance with the terms of this Agreement (and "**Senior Overdraft Facility Lender**", as the context requires, means any of them).
- 1.1.194. **"Senior Overdraft Facility Utilisation"** means a utilisation (howsoever described) under a Senior Overdraft Facility Agreement.

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- 1.1.195. **"Senior Overdraft Facility Outstandings"** means at any time, in relation to each Senior Overdraft Facility Lender, the aggregate of all amounts of loan principal, accrued interest, fees and all other amounts outstanding in respect of the Senior Overdraft Facility made available to the Borrower or other members of the South African Group by that Senior Overdraft Facility Lender under a Senior Overdraft Facility Agreement.
- 1.1.196. **"SENS"** means the stock exchange news service of the JSE.
- 1.1.197. **"Signature Date"** means the date on which, once this Agreement has been signed by all the Parties, it is signed by the last Party to do so.
- 1.1.198. **"Signed Debt Reduction Transaction Agreement"** means a Debt Reduction Transaction Agreement:
- 1.1.198.1. which has been executed by the parties thereto;
- 1.1.198.2. in respect of which the price payable by the counterparty thereunder in connection with the applicable Debt Reduction Transaction has been determined or is determinable; and
- 1.1.198.3. which is not subject to any condition precedent:
- 1.1.198.3.1. of which the fulfilment is in the subjective discretion of any party to that Debt Reduction Transaction Agreement (or, if such Debt Reduction Transaction Agreement is subject to the fulfilment of any such condition precedent, such condition precedent has been fulfilled or waived); and/or
- 1.1.198.3.2. which requires the counterparty to that Debt Reduction Transaction Agreement to conduct a due diligence investigation, unless (a) such due diligence investigation is in the process of being undertaken and is required to be finally concluded within 60 (sixty) days of the date of signature of that Debt Reduction Transaction Agreement, or (b) such condition precedent has been fulfilled or waived.
- 1.1.199. **"South Africa"** means the Republic of South Africa.
- 1.1.200. **"South African Group"** means the Borrower and each of its Subsidiaries incorporated in South Africa from time to time.
- 1.1.201. **"Special Majority Senior Lenders"** means a Senior Lender or Senior Lenders the Total Commitments of which aggregate 85% (eighty five percent) or more of

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the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 85% (eighty five percent) or more of the Total Commitments immediately prior to the reduction).

1.1.202. **"Special Projects Manager"** means the person, independent investment bank or independent advisory firm appointed as a *"Special Projects Manager"* in accordance with the provisions of clause 22.13 (*Appointment of Special Projects Manager*).

1.1.203. **"Specified Event of Default"** means the occurrence of any one or more of the following events or circumstances:

1.1.203.1. where the implementation of any Debt Reduction Transaction specified in the Sell-down Plan requires the approval, by way of resolution, of the shareholders of the Borrower:

1.1.203.1.1. (a) the shareholders of the Borrower do not vote in favour of that resolution, or (b) if a circular containing that resolution has not been posted within 30 (thirty) days of the conclusion of the applicable Debt Reduction Transaction Agreement, the shareholders or beneficial owners of shares in the issued share capital of the Borrower fail to deliver irrevocable undertakings or in principle letters of support (signed by persons holding or beneficially owning, at the time of signature, shares carrying no less than 30% (thirty percent) of the number of votes attaching to all the Borrower's issued shares) to the Facility Agent in connection with such Debt Reduction Transaction within 15 (fifteen) days of the expiration of the aforementioned 30-day period; and

1.1.203.1.2. the applicable failure referred to in clause 1.1.203.1.1 is not remedied within 10 (ten) Business Days of receipt by the Borrower of a notice from the Facility Agent (acting on the instructions of the Majority Senior Lenders) calling on the Borrower to do so; and/or

1.1.203.2. where the Borrower has announced any Equity Capital Raise (including, without limitation, the Required Equity Capital Raise), the Borrower fails to obtain the requisite support from its shareholders by way of resolution to implement such *"Equity Capital Raise"* (whether to effect any amendments which may be required to be made to its

memorandum of incorporation to implement such "*Equity Capital Raise*" or otherwise).

- 1.1.204. **"Specified Properties"** means the immovable properties of the Group set out at **Schedule 12** (*Specified Properties*).
- 1.1.205. **"Specified Property Disposal Proceeds"** shall bear the meaning ascribed thereto in clause 22.5 (*Disposal of Specified Properties*).
- 1.1.206. **"Specified Property Sale Agreement"** means each agreement (whether or not forming part of any other agreement) entered into between any member of the Group and a third party in connection with the implementation of any disposal of any Specified Property.
- 1.1.207. **"Specified Time"** means a day or time determined in accordance with **Schedule 11** (*Timetables*).
- 1.1.208. **"Subordination Agreement"** means the agreement titled "*Subordination Agreement*" entered into on or about the date hereof between the Security Providers and the Creditors.
- 1.1.209. **"Subsidiary"** means a "*subsidiary*" as defined in the Companies Act and shall include any person who would, but for not being a "*company*" under the Companies Act, qualify as a "*subsidiary*" as defined in the Companies Act 2008.
- 1.1.210. **"Sugar Business"** means the cultivation, manufacturing, refining and sale of sugar products by one or more members of the South African Group.
- 1.1.211. **"Super Senior Overdraft Facility Commitment"** means, at any time, that portion of the Senior Overdraft Facility Commitment of each Senior Overdraft Facility Lender which exceeds ZAR150 000 000 (one hundred and fifty million Rand), to the extent not cancelled, reduced or transferred by it under this Agreement or that Senior Overdraft Facility Agreement, provided that such additional commitment under each Senior Overdraft Facility shall (save with the consent of all of the Senior Lenders) cease to be available for any period after 31 March 2022 if the Borrower fails to deliver a Sell-down Proposal to the Facility Agent which has been approved by its board of directors at the times and in the manner contemplated in clause 22.3.1.
- 1.1.212. **"Super Senior Overdraft Facility Outstandings"** means, at any time, the aggregate of all amounts of loan principal, accrued interest, prepayment penalties, fees and all other amounts owing by any member of the South African Group to a Senior Overdraft Facility Lender on account of the utilisation by that member of the South African Group of the Super Senior Overdraft Facility Commitment of that Senior Overdraft Facility Lender.

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- 1.1.213. **"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 1.1.214. **"THD"** means Tongaat Hulett Developments Proprietary Limited (Registration No. 1981/012378/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa.
- 1.1.215. **"Total Commitments"** means, collectively, the Total Senior Facility A Commitments, the Total Senior Facility B Commitments, the Total Senior Facility C Commitments, the Total Senior Facility D Commitments and the Total Senior Overdraft Facility Commitments.
- 1.1.216. **"Total Senior Facility A Commitments"** means the aggregate of the Senior Facility A Commitments.
- 1.1.217. **"Total Senior Facility B Commitments"** means the aggregate of the Senior Facility B Commitments.
- 1.1.218. **"Total Senior Facility C Commitments"** means the aggregate of the Senior Facility C Commitments.
- 1.1.219. **"Total Senior Facility D Commitments"** means the aggregate of the Senior Facility D Commitments.
- 1.1.220. **"Total Senior Overdraft Facility Commitments"** means the aggregate of the Senior Overdraft Facility Commitments.
- 1.1.221. **"Transaction Document"** means:
- 1.1.221.1. a Financing Agreement;
 - 1.1.221.2. a Debt Reduction Transaction Agreement;
 - 1.1.221.3. the Sell-down Plan;
 - 1.1.221.4. a Specified Property Sale Agreement;
 - 1.1.221.5. any other agreement or document designated as such by the Obligors' Agent and the Facility Agent (acting on the instructions of the Majority Senior Lenders) in writing,
- and, collectively, the **"Transaction Documents"**.
- 1.1.222. **"Transaction Security"** means the Security created or expressed to be created for the benefit of the Creditors under the Security Agreements, together with such further Security as the Debt Guarantor and/or any such person may from time to

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time be given for the obligations of a Security Provider under the Financing Agreements.

- 1.1.223. **"Transfer"** has the meaning ascribed thereto in clause 24.1 (*Cessions and delegations by the Senior Lenders*).
- 1.1.224. **"Transfer Certificate"** means a certificate substantially in the form set out in **Schedule 3** (*Form of Transfer Certificate*) or otherwise in the agreed form.
- 1.1.225. **"Transfer Date"** means, in relation to a Transfer, the later of:
- 1.1.225.1. the proposed Transfer Date specified in the Transfer Certificate; and
- 1.1.225.2. the date on which the Facility Agent executes the Transfer Certificate.
- 1.1.226. **"Transfer Restriction"** means:
- 1.1.226.1. any action is taken by any governing or public authority in any jurisdiction that, directly or indirectly (a) prevents the relevant member of the Group from converting local currency into US Dollars, and/or (b) prevents the relevant member of the Group from transferring any amount of US Dollars outside the relevant jurisdiction; and/or
- 1.1.226.2. any failure by any such governing or public authority (or by entities authorised under the laws of the relevant jurisdiction to operate in the foreign exchange markets) to effect any conversion of local currency into any other currency or any deposit and/or transfer of that local currency or foreign currency on behalf of, or for the benefit of, the relevant member of the Group.
- 1.1.227. **"Treasury Transaction"** means any derivative transaction entered into in connection with protection against or to benefit from fluctuations in any rate, price, index or credit rating.
- 1.1.228. **"Unpaid Sum"** means any sum due and payable but unpaid by an Obligor under the Finance Documents.
- 1.1.229. **"UPL Incident"** means the chemical spill by UPL Limited which occurred at the warehouse situated at the Cornubia N2 Business Park during or about August 2021.
- 1.1.230. **"UPL Incident Additional Opinion"** shall bear the meaning ascribed thereto in clause 19.14.7.

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- 1.1.231. **"UPL Incident Existing Opinions"** means the senior counsel opinions dated 27 August 2021 and 27 September 2021, respectively, and relating in each case to any Environmental Claim which may arise in connection with the UPL Incident.
- 1.1.232. **"UPL Incident Opinions"** means, collectively, the UPL Incident Existing Opinions and the UPL Incident Additional Opinions.
- 1.1.233. **"US"** means the United States of America.
- 1.1.234. **"US Dollars"** means United States Dollars, the lawful currency of the US.
- 1.1.235. **"Utilisation"** means a utilisation of a Senior Facility.
- 1.1.236. **"Utilisation Date"** means the date of a Utilisation.
- 1.1.237. **"Utilisation Request"** has, in respect of each Senior Facility (other than the Senior Overdraft Facilities), the meaning given to that term in the applicable Senior Facility Agreement.
- 1.1.238. **"Valuation"** means an Enterprise Valuation or a Property Valuation, and, collectively, the **"Valuations"**.
- 1.1.239. **"VAT"** means value added tax as provided for in the Value Added Tax Act, 1991, and any other Tax of a similar nature in a jurisdiction other than South Africa.
- 1.1.240. **"ZAR", "Rand" or "R"** means South African Rand, the lawful currency of South Africa.

1.2. Financial definitions

In this Agreement, the following terms have the meanings set out below:

- 1.2.1. **"Borrowings"** means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any Financial Indebtedness of members of the South African Group.
- 1.2.2. **"Calculation Period"** means a Historic Period, a Forecast Period or a Cash Sweep Measurement Period.
- 1.2.3. **"Capital Expenditure"** means any expenditure or obligation in respect of expenditure which, in accordance with the Accounting Principles, is treated as capital expenditure (including the capital element of any expenditure or obligation incurred in connection with a Finance Lease).
- 1.2.4. **"Cash"** means an amount (denominated in ZAR, or any other currency approved by the Facility Agent (acting on the instructions of the Majority Senior Lenders) of

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cash on hand, or credit balances or amounts on deposit with an Acceptable Bank to which a member of the South African Group is alone (or together with other members of the South African Group) beneficially entitled if:

- 1.2.4.1. the cash is accessible and may be withdrawn in full by such member of the South African Group within 30 (thirty) days;
- 1.2.4.2. access to and withdrawal of the cash is not contingent on the prior discharge of any indebtedness of any person or the satisfaction of any other condition;
- 1.2.4.3. no Security (other than in favour of the Debt Guarantor) exists over the cash or over claims in respect thereof; and
- 1.2.4.4. the cash is freely and (except as mentioned in clause 1.2.4.1 above) immediately available to be applied in repayment or prepayment of the Senior Facilities.

1.2.5. **"Cash Equivalents"** means, at any time:

- 1.2.5.1. certificates of deposit maturing within 1 (one) year after the relevant date of calculation, issued by an Acceptable Bank;
- 1.2.5.2. any investment in money market funds which:
 - 1.2.5.2.1. has a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited; and
 - 1.2.5.2.2. invest substantially all their assets in securities of the type described in clause 1.2.5.1,

to the extent that investment can be turned into cash on not more than 30 (thirty) days' notice; or
- 1.2.5.3. any other debt security approved by the Facility Agent (acting on the instructions of the Majority Senior Lenders),

in each case, in ZAR to which any member of the South African Group is alone (or together with other members of the South African Group) beneficially entitled at that time and which is not issued or guaranteed by any member of the South African Group or subject to any Security (other than Security in favour of the Debt Guarantor).

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- 1.2.6. "Cashflow" means, in respect of any Calculation Period, EBITDA for that Calculation Period after:
- 1.2.6.1. adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Calculation Period;
 - 1.2.6.2. adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Calculation Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any applicable Calculation Period (other than, in the case of cash receipts, Equity Capital Raise Proceeds, Debt Reduction Proceeds and/or Specified Property Disposal Proceeds);
 - 1.2.6.3. adding the amount of any cash receipts during that Calculation Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Calculation Period by any member of the South African Group;
 - 1.2.6.4. adding (to the extent not already taken into account in determining EBITDA) the amount of any dividends, other profit Distributions received in cash by any member of the South African Group during that Calculation Period from any entity which is itself not a member of the South African Group and deducting (to the extent not already deducted in determining EBITDA) the amount of any dividends paid in cash during the Calculation Period to minority shareholders in members of the South African Group;
 - 1.2.6.5. adding (to the extent not already taken into account in determining EBITDA) the amount of any expenditure contributions made in cash by any member of the Group not incorporated in South Africa to any member of the South African Group during that Calculation Period;
 - 1.2.6.6. adding (to the extent not already taken into account in determining EBITDA) the amount of any SASA Proceeds received by any member of the South African Group in cash during that Calculation Period and which have not been applied in repayment of amounts owing by the Borrower to the South African Sugar Association;
 - 1.2.6.7. adding (to the extent not already taken into account in determining EBITDA) the amount of any expenditure actually recovered in cash by any member of the South African Group in the manner contemplated in "(a)" of clause 22.6.2.3.1 during that Calculation Period;

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- 1.2.11. **"Current Assets"** means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the South African Group including prepayments in relation to operating items and sundry debtors (but excluding Cash and Cash Equivalents) expected to be realised within 12 (twelve) months from the date of computation but excluding amounts in respect of:
- 1.2.11.1. receivables in relation to Tax;
 - 1.2.11.2. Exceptional Items;
 - 1.2.11.3. insurance claims; and
 - 1.2.11.4. any interest owing to any member of the South African Group.
- 1.2.12. **"Current Liabilities"** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the South African Group expected to be settled within 12 (twelve) months from the date of computation but excluding amounts in respect of:
- 1.2.12.1. liabilities for Borrowings and Finance Charges;
 - 1.2.12.2. liabilities for Tax;
 - 1.2.12.3. Exceptional Items;
 - 1.2.12.4. insurance claims; and
 - 1.2.12.5. liabilities in relation to dividends declared but not paid by the Borrower or by a member of the South African Group in favour of a person which is not a member of the South African Group.
- 1.2.13. **"Debt Service"** means, in respect of any Calculation Period, the aggregate of:
- 1.2.13.1. Finance Charges for that Calculation Period;
 - 1.2.13.2. all scheduled and mandatory repayments of members of the South African Group falling due and any voluntary prepayments made during that Calculation Period but excluding:
 - 1.2.13.2.1. any amounts falling due under any overdraft or revolving facility (including, without limitation, Senior Facility B any Senior Overdraft Facility and any Ancillary Facility) and which were available for simultaneous redrawing according to the terms of that facility;

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- 1.2.13.2.2. any mandatory prepayment made pursuant to clauses 7.4 (*Mandatory prepayment - material disposal*), 7.5 (*Mandatory prepayment – insurance proceeds*), 7.6 (*Mandatory prepayment: Debt Reduction Proceeds*), 7.7 (*Mandatory prepayment: Specified Property Disposal Proceeds*) and 7.9 (*Mandatory prepayment: Equity Capital Raise Proceeds*);
- 1.2.13.2.3. any such obligations owed to any member of the South African Group; and
- 1.2.13.2.4. any prepayment of Borrowings existing on the Closing Date which is required to be repaid under the terms of this Agreement;
- 1.2.13.3. the amount of any cash dividends or Distributions paid or made by members of the South African Group in respect of that Calculation Period; and
- 1.2.13.4. the amount of the capital element of any payments in respect of that Calculation Period payable under any Finance Lease entered into by any member of the South African Group,

and so that no amount shall be included more than once.

- 1.2.14. "EBITDA" means, in respect of any Calculation Period, the consolidated operating profit of the South African Group before Taxation (excluding the results from discontinued operations):
 - 1.2.14.1. before deducting any interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments whether paid, payable or capitalised by any member of the South African Group (calculated on a consolidated basis) in respect of that Calculation Period;
 - 1.2.14.2. not including any accrued interest owing to any member of the South African Group;
 - 1.2.14.3. after adding back any amount attributable to the amortisation or depreciation or impairment of assets of members of the South African Group (and taking no account of the reversal of any previous impairment charge made in that Calculation Period);
 - 1.2.14.4. before taking into account any Exceptional Items;

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- 1.2.14.5. after deducting the amount of any profit (or adding back the amount of any loss) of any member of the South African Group which is attributable to minority interests;
- 1.2.14.6. plus or minus the South African Group's share of the profits or losses (after finance costs and Tax) of Non-Group Entities incorporated in South Africa after deducting the amount of any profit of any Non-Group Entity incorporated in South Africa to the extent that the amount of the profit included in the financial statements of the South African Group exceeds the amount actually received in cash by members of the South African Group through Distributions by the Non-Group Entity;
- 1.2.14.7. limiting the amount of any Distributions received by any member of the South African Group from any member of the Group incorporated outside of South Africa to the cash amount of such Distributions actually received by that member of the South African Group during that Calculation Period;
- 1.2.14.8. before taking into account any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);
- 1.2.14.9. before taking into account any gain or loss arising from an upward or downward revaluation of any other asset;
- 1.2.14.10. before taking into account any Pension Items; and
- 1.2.14.11. excluding the charge to profit represented by the expensing of stock options,

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the South African Group before Taxation.

- 1.2.15. **"Exceptional Items"** means any exceptional, one off, non-recurring or extraordinary items which have been approved by the Facility Agent (acting on the instructions of the Majority Senior Lenders) in writing.
- 1.2.16. **"Excess Cashflow"** means, for any Cash Sweep Measurement Period, Cashflow for that Cash Sweep Measurement Period less (except to the extent already deducted in calculating Cashflow):
 - 1.2.16.1. Debt Service for that Cash Sweep Measurement Period; and

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1.2.16.2. the amount of any voluntary prepayments made under the Finance Documents during that period.

1.2.17. **"Finance Charges"** means, for any Calculation Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Borrowings paid or payable by any member of the South African Group (calculated on a consolidated basis) in cash or capitalised in respect of that Calculation Period:

1.2.17.1. including any upfront fees or costs which are included as part of the effective interest rate adjustments;

1.2.17.2. including the interest (but not the capital) element of payments in respect of Finance Leases;

1.2.17.3. including any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the South African Group under any interest rate hedging arrangement;

1.2.17.4. excluding any interest cost or expected return on plan assets in relation to any post-employment benefit schemes;

1.2.17.5. If a Joint Venture is accounted for on a proportionate consolidation basis, after adding the South African Group's share of the finance costs or interest receivable of the Joint Venture;

1.2.17.6. taking no account of any unrealised gains or losses on any financial instruments other than any derivative instruments which are accounted for on a hedge accounting basis; and

1.2.17.7. excluding any accrued interest under Senior Facility C and Senior Facility D,

together with the amount of any scheduled cash dividends or Distributions paid or made by members of the South African Group in respect of that Calculation Period and so that no amount shall be added (or deducted) more than once.

1.2.18. **"Financial Covenant Measurement Dates"** means 31 March and 30 September of each year, provided that if:

1.2.18.1. the Borrower fails to comply with any of its obligations under clause 22.1 (*Implementation of Equity Capital Raise*); and

1.2.18.2. the Majority Senior Lenders so require and notifies the Borrower in writing,

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(the date on which both such events have occurred, hereinafter the "**Financial Covenant Reset Date**") the "*Financial Covenant Measurement Dates*" shall be 31 March, 30 June, 30 September and 31 December of each year and the minimum covenant levels to be applicable to the financial undertakings set out at clause 20.1 (*Financial undertakings*) to be measured on the "*Financial Covenant Measurement Dates*" falling on 30 June and 31 December of each year shall be those as set out opposite such dates in the applicable Financial Covenant Table.

- 1.2.19. "**Financial Covenant Table**" means, in respect of each Historic Covenant and each Forecast Covenant, the relevant table set out in **Schedule 5** (*Financial Covenant Tables*).
- 1.2.20. "**Financial Covenant Reset Date**" shall bear the meaning ascribed thereto in clause 1.2.18.
- 1.2.21. "**Forecast**" means the results of running the Financial Model on a Financial Covenant Measurement Date based on the Forecast Assumptions, provided that where compliance with any of the financial undertakings set out at clause 20 (*Financial Covenants*) is to be tested for any part of a Forecast Period which falls prior to that Financial Covenant Measurement Date (the "**Relevant Period**"), the financial information reflected in the relevant financial statements or management accounts delivered by the Borrower in terms of clause 19.1 (*Financial statements*) for that Relevant Period shall be taken into account for the purposes of determining compliance with such undertakings and not the information set out in the Financial Model.
- 1.2.22. "**Forecast Assumptions**" means the assumptions applicable to the preparation of the Base Case Model.
- 1.2.23. "**Forecast Covenants**" means, collectively, the Forecast Interest Cover Ratio, the Forecast Debt Service Cover Ratio and the Forecast Leverage Ratio, and each a "**Forecast Covenant**" as the context may require.
- 1.2.24. "**Forecast Debt Service Cover Ratio**" means, on any Financial Covenant Measurement Date, the Forecast ratio of Cashflow to Debt Service for the relevant Forecast Period produced by the Financial Model.
- 1.2.25. "**Forecast Debt Service Cover Ratio Covenant Table**" means:
- 1.2.25.1. prior to the Financial Covenant Reset Date, the table set out at Part VII of **Schedule 5** (*Financial Covenant Tables*); and
- 1.2.25.2. on and following the Financial Covenant Reset Date, the table set out at Part VIII of **Schedule 5** (*Financial Covenant Tables*).

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- 1.2.26. **"Forecast Interest Cover Ratio"** means, on any Financial Covenant Measurement Date, the Forecast of the ratio of EBITDA to Finance Charges for the relevant Forecast Period produced by the Financial Model.
- 1.2.27. **"Forecast Interest Cover Ratio Covenant Table"** means:
- 1.2.27.1. prior to the Financial Covenant Reset Date, the table set out at Part IX of **Schedule 5** (*Financial Covenant Tables*); and
- 1.2.27.2. on and following the Financial Covenant Reset Date, the table set out at Part X of **Schedule 5** (*Financial Covenant Tables*).
- 1.2.28. **"Forecast Leverage Ratio"** means, in respect of any Forecast Period, the Forecast ratio of Total Debt on the last day of that Forecast Period to EBITDA in respect of that Forecast Period produced by the Financial Model.
- 1.2.29. **"Forecast Leverage Ratio Covenant Table"** means:
- 1.2.29.1. prior to the Financial Covenant Reset Date, the table set out at Part XI of **Schedule 5** (*Financial Covenant Tables*); and
- 1.2.29.2. on and following the Financial Covenant Reset Date, the table set out at Part XII of **Schedule 5** (*Financial Covenant Tables*).
- 1.2.30. **"Forecast Period"** means, in respect of each Forecast Covenant and in relation to each Financial Covenant Measurement Date set out in column 1 of the Financial Covenant Table applicable to that Forecast Covenant, the period(s) set out opposite such Financial Covenant Measurement Date in column 2 of that Financial Covenant Table.
- 1.2.31. **"Historic Covenants"** means, collectively, the Historic Debt Service Cover Ratio, the Historic Interest Cover Ratio and the Historic Leverage Ratio, and each a **"Historic Covenant"** as the context may require.
- 1.2.32. **"Historic Debt Service Cover Ratio"** means the ratio of Cashflow to Debt Service in respect of any Historic Period.
- 1.2.33. **"Historic Debt Service Cover Ratio Covenant Table"** means:
- 1.2.33.1. prior to the Financial Covenant Reset Date, the table set out at Part I of **Schedule 5** (*Financial Covenant Tables*); and
- 1.2.33.2. on and following the Financial Covenant Reset Date, the table set out at Part II of **Schedule 5** (*Financial Covenant Tables*).
- 1.2.34. **"Historic Interest Cover Ratio"** means the ratio of EBITDA to Finance Charges in respect of any Historic Period.

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- 1.2.35. **"Historic Interest Cover Ratio Covenant Table"** means:
- 1.2.35.1. prior to the Financial Covenant Reset Date, the table set out at Part III of **Schedule 5** (*Financial Covenant Tables*); and
 - 1.2.35.2. on and following the Financial Covenant Reset Date, the table set out at Part IV of **Schedule 5** (*Financial Covenant Tables*).
- 1.2.36. **"Historic Leverage Ratio"** means, in respect of any Historic Period, the ratio of Total Debt on the last day of that Historic Period to EBITDA in respect of that Historic Period.
- 1.2.37. **"Historic Leverage Ratio Covenant Table"** means:
- 1.2.37.1. prior to the Financial Covenant Reset Date, the table set out at Part V of **Schedule 5** (*Financial Covenant Tables*); and
 - 1.2.37.2. on and following the Financial Covenant Reset Date, the table set out at Part VI of **Schedule 5** (*Financial Covenant Tables*).
- 1.2.38. **"Historic Period"** means, in respect of each Historic Covenant and in relation to each Financial Covenant Measurement Date set out in column 1 of the Financial Covenant Table applicable to that Historic Covenant, the period set out opposite such Financial Covenant Measurement Date in column 2 of that Financial Covenant Table.
- 1.2.39. **"LTV Ratio"** means, at any time, the ratio comprised by:
- 1.2.39.1. the Senior Facility D Outstandings; to
 - 1.2.39.2. the Valuation Amount.
- 1.2.40. **"Measurement Date"** means a Cash Sweep Measurement Date or a Financial Covenant Measurement Date.
- 1.2.41. **"Non-Group Entity"** means any investment or entity (which is not itself a member of the South African Group (including associates and Joint Ventures)) in which any member of the South African Group has an ownership interest.
- 1.2.42. **"Pension Items"** means any income or charge attributable to a post-employment benefit scheme other than the current service costs and any past service costs and curtailments and settlements attributable to the scheme.
- 1.2.43. **"Valuation Amount"** means the market value of the Excluded Properties and the Specified Properties as reflected in the most recent valuation delivered by the Independent Property Valuer to the Facility Agent.

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- 1.2.44. **"Working Capital"** means, on any date, Current Assets /less Current Liabilities.
- 1.2.45. **"Total Debt"** means, at any time, the aggregate amount of all obligations of members of the South African Group for or in respect of Borrowings at that time but:
- 1.2.45.1. excluding any such obligations to any other member of the South African Group;
 - 1.2.45.2. excluding the Senior Facility C Loan and the Senior Facility D Loan; and
 - 1.2.45.3. including, in the case of Finance Leases only, their capitalised value; and

and so that no amount shall be included or excluded more than once.

1.3. Construction

- 1.3.1. In this Agreement, unless inconsistent with the context, any reference to:
- 1.3.1.1. the **"Facility Agent"**, any **"Finance Party"**, any **"Lender"**, any **"Creditor"**, any **"Obligor"**, any **"Party"** any **"Security Provider"** or any other person shall be construed so as to include its successors in title, permitted cessionaries and permitted transferees;
 - 1.3.1.2. a document being in the **"agreed form"** means that the document is in a form previously agreed in writing by or on behalf of the Borrower and the Facility Agent (acting on the instructions of the Majority Senior Lenders);
 - 1.3.1.3. an **"amendment"** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and **"amend"** will be construed accordingly;
 - 1.3.1.4. **"assets"** includes businesses, undertakings, securities, properties, revenues or rights of every description and whether present or future, actual or contingent;
 - 1.3.1.5. **"authority"** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
 - 1.3.1.6. a **"disposal"** means a sale, transfer, cession, assignment, donation, grant, lease, licence or other alienation or disposal, whether voluntary

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costs and expenses (including legal fees) incurred by that Creditor in connection with evaluating, negotiating or complying with any such requirement.

16.3. Facility Agent's management time

Any amount payable to the Facility Agent under clause 14 (*Other Indemnities*) and this clause 16 shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such pre-agreed reasonable daily or hourly rates as the Facility Agent may notify to the Borrower and the Creditors, and is in addition to any fee paid or payable to the Facility Agent under clause 11 (*Fees*).

16.4. Enforcement Costs

The Borrower shall, within 3 (three) Business Days of demand, pay to each Creditor the amount of all costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgment) incurred by that Creditor in connection with the enforcement of, or the preservation of any rights under, any Financing Agreement (including, without limitation, in connection with the perfection, enforcement of and/or the preservation of any rights under the Security Agreements).

SECTION 5 GUARANTEE

17. GUARANTEE AND INDEMNITY

17.1. Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally, as a principal obligor and not merely as a surety and on the basis of discrete obligations enforceable against it:

- 17.1.1. guarantees to each Creditor punctual performance by each Security Provider of all that Security Provider's obligations under the Financing Agreements;
- 17.1.2. undertakes with each Creditor that whenever a Security Provider does not pay any amount when due under or in connection with any Financing Agreement, that Guarantor shall immediately on demand pay that amount as if it were the principal obligor; and
- 17.1.3. agrees with each Creditor that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Creditor immediately on demand against any cost, loss or liability it incurs as a result of a Security Provider not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Financing Agreement on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would

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have had to pay under this clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2. Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Security Provider under the Financing Agreements, regardless of any intermediate payment or discharge in whole or in part.

17.3. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any Security Provider for those obligations or otherwise) is made by a Creditor in whole or in part on the basis of any payment, Security or other disposition which is avoided or must be restored in insolvency, business rescue proceedings, liquidation, winding-up or otherwise, without limitation, then the liability of each Guarantor under this clause 17 will continue or to be reinstated as if the discharge, release or arrangement had not occurred.

17.4. Waiver of defences

The obligations of each Guarantor under this clause 17 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this clause 17 (without limitation and whether or not known to it or any Creditor) including:

- 17.4.1. any time, waiver or consent granted to, or composition with, any Security Provider or other person;
- 17.4.2. the release of any Security Provider or any other person under the terms of any composition or arrangement with any creditor of any member of the South African Group;
- 17.4.3. the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, any Security Provider or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 17.4.4. any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Security Provider or any other person;
- 17.4.5. any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of any Financing Agreement or any other document or Security including without limitation any change in the purpose of, any extension of or any increase in any facility or the

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addition of any new facility under any Financing Agreement or other document or Security;

- 17.4.6. any unenforceability, illegality, invalidity suspension or cancellation of any obligation of any person under this Agreement or any other Financing Agreement or any other document or Security;
- 17.4.7. any insolvency, liquidation, winding-up, business rescue or similar proceedings (including, but not limited to, receipt of any distribution made under or in connection with those proceedings);
- 17.4.8. any other Financing Agreement not being executed by or binding against any other Guarantor, any Security Provider or any other party; or
- 17.4.9. any other fact or circumstance arising on which a Guarantor might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.

17.5. Guarantor Intent

Without prejudice to the generality of clause 17.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee and indemnity shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Financing Agreements and/or any facility or amount made available under any of the Financing Agreements.

17.6. Immediate recourse

Each Guarantor waives any right it may have of first requiring any Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this clause 17. This waiver applies irrespective of any law or any provision of a Financing Agreement to the contrary.

17.7. Appropriations

Until all amounts which may be or become payable by the Security Providers under or in connection with the Financing Agreements have been irrevocably paid in full, each Creditor (or any trustee or agent on its behalf) may:

- 17.7.1. refrain from applying or enforcing any other moneys, Security or rights held or received by that Creditor (or agent or other person on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- 17.7.2. hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this clause 17.

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17.8. Deferral of Guarantors' rights

- 17.8.1. Until all amounts which may be or become payable by the Security Providers under or in connection with the Financing Agreements have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Financing Agreements or by reason of any amount being payable, or liability arising, under this clause 17:
- 17.8.1.1. to be indemnified by a Security Provider;
 - 17.8.1.2. to claim any contribution from any other guarantor or provider of security for any Security Provider's obligations under the Financing Agreements;
 - 17.8.1.3. to take the benefit (in whole or in part and whether by way of subrogation, cession of action or otherwise) of any rights of the Creditors under the Financing Agreements or of any other guarantee or security taken pursuant to, or in connection with, the Financing Agreements by any Creditor;
 - 17.8.1.4. to bring legal or other proceedings for an order requiring any Security Provider to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under clause 17.1;
 - 17.8.1.5. to exercise any right of set-off against any Security Provider; and/or
 - 17.8.1.6. to claim, rank, prove or vote as a creditor or shareholder of any Security Provider in competition with any Creditor.
- 17.8.2. If a Guarantor receives any benefit, payment or distribution in relation to such rights, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Creditors by the Security Providers under or in connection with the Financing Agreements to be repaid in full on trust for, or otherwise for the benefit of, the Creditors and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with clause 30 (*Payment Mechanics*).

17.9. Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by any Creditor (which a Creditor may release as it sees fit, without prejudice to its rights hereunder).

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EXECUTION VERSION

AMENDED AND RESTATED DEBT GUARANTEE

entered into between

THE PARTIES LISTED IN PART I, PART II, PART III, PART IV, PART V, PART VI AND PART VII OF
SCHEDULE 1

(as original creditors)

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(acting through its Corporate and Investment Banking division)

(Registration No. 1962/000738/06)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa

(as facility agent)

and

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

(Registration No. 2018/358484/07)

a limited liability company duly registered and incorporated in accordance with the laws of South Africa

(as debt guarantor)

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TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS AND INTERPRETATION.....	4
2. INTRODUCTION.....	5
3. GUARANTEE	5
4. PAYMENTS.....	8
5. REPRESENTATIONS AND WARRANTIES	8
6. DURATION.....	9
7. UNDERTAKINGS BY THE DEBT GUARANTOR	9
8. SET-OFF	10
9. SUCCESSORS AND ASSIGNS.....	10
10. STIPULATION IN FAVOUR OF CREDITORS	10
11. GENERAL.....	10
Schedule 1	12
Original Creditors	12

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THIS AMENDED AND RESTATED DEBT GUARANTEE (this "**Agreement**") is entered into between:

- (1) **THE FINANCIAL INSTITUTIONS** listed in Part I of **SCHEDULE 1** (*Original Creditors*), as senior term facility lenders under Senior Facility A (in this capacity, the "**Original Senior Facility A Lenders**" and each an "**Original Senior Facility A Lender**" as the context may require);
- (2) **THE FINANCIAL INSTITUTIONS** listed in Part II of **SCHEDULE 1** (*Original Creditors*), as senior revolving credit facility lenders under Senior Facility B (in this capacity, the "**Original Senior Facility B Lenders**" and each an "**Original Senior Facility B Lender**" as the context may require);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part III of **SCHEDULE 1** (*Original Creditors*), as senior term facility lenders under Senior Facility C (in this capacity, the "**Original Senior Facility C Lenders**" and each an "**Original Senior Facility C Lender**" as the context may require);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part IV of **SCHEDULE 1** (*Original Creditors*), as senior term facility lenders under Senior Facility D (in this capacity, the "**Original Senior Facility D Lenders**" and each an "**Original Senior Facility D Lender**" as the context may require);
- (5) **THE FINANCIAL INSTITUTIONS** listed in Part V of **SCHEDULE 1** (*Original Creditors*), as senior secured borrowing base facility lenders under Senior Facility E (in this capacity, the "**Original Senior Facility E Lenders**" and each an "**Original Senior Facility E Lender**" as the context may require);
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part VI of **SCHEDULE 1** (*Original Creditors*), as senior overdraft facility lenders (in this capacity, the "**Original Senior Overdraft Facility Lenders**" and each an "**Original Senior Overdraft Facility Lender**" as the context may require);
- (7) **THE FINANCIAL INSTITUTIONS** listed in Part VII of **SCHEDULE 1** (*Original Creditors*), as ancillary facility lenders (in this capacity, the "**Ancillary Facility Lenders**" and each an "**Ancillary Facility Lender**" as the context may require);
- (8) **THE STANDARD BANK OF SOUTH AFRICA LIMITED** (acting through its Corporate and Investment Banking division) (Registration No. 1962/000738/06), a limited liability company duly registered and incorporated in accordance with the laws of South Africa, as agent (the "**Facility Agent**"); and
- (9) **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED** (Registration No. 2018/358484/07), a limited liability company duly registered and incorporated in accordance with the laws of South Africa, as debt guarantor (the "**Debt Guarantor**").

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IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

In this Agreement, including the recitals, capitalised terms used but not defined below shall have the meanings ascribed thereto in the Common Terms Agreement (as defined below) and the following expressions shall, except where the context otherwise requires, have the meanings assigned to them hereunder:

1.1.1. **"Common Terms Agreement"** means the agreement titled "*Common Terms Agreement*" entered into on or about 2 December 2021 between, *inter alios*, the Parties.

1.1.2. **"Final Discharge Date"** means the date on which all amounts of whatsoever nature under the Financing Agreements are fully, finally and irrevocably discharged, and no Creditor is under any obligation to advance any loan or provide any other form of financial accommodation to any member of the South African Group.

1.1.3. **"Guaranteed Liabilities"** means all moneys and all present and future liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) which are now, or which may at any time hereafter become, owing by the Security Providers to the Creditors (other than the Debt Guarantor) under and in terms of the Financing Agreements, together with all damages and all costs, charges and expenses incurred by the Creditors (other than the Debt Guarantor) in connection with a breach by any Security Provider of its obligations under the Financing Agreements and which such Creditors are entitled to recover from the Security Providers in terms of the Financing Agreements, including without limitation:

1.1.3.1. any of the following matters relating to or arising in respect of those liabilities or obligations –

1.1.3.1.1. any refinancing, novation, deferral or extension;

1.1.3.1.2. any claim for damages or restitution; and

1.1.3.1.3. any claim as a result of any recovery of a payment or discharge on the grounds of preference, and any amounts which would be included in any of the above but for any discharge, inability to prove or unenforceability of those amounts in any insolvency or other proceedings; and

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- 1.1.3.2. all items which would be guaranteed liabilities for the purposes hereof but for, and subject to applicable law, the winding-up, placement under supervision for business rescue proceedings, absence of legal personality or incapacity of any Security Provider or any other person or any statute of limitation,

and a reference to "**Guaranteed Liability**" shall be to any one or more of the "**Guaranteed Liabilities**" as the context requires.

- 1.1.4. "**Party**" means a party to this Agreement, and collectively, the "**Parties**".

- 1.1.5. "**Signature Date**" means the date of last signature of this Agreement by the Parties.

1.2. **Construction**

The provisions of clauses 1.3 (*Construction*) and 1.4 (*Third Party Rights*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement, except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement.

2. **INTRODUCTION**

- 2.1. The Debt Guarantor has agreed to guarantee to the Creditors the due and full performance by the Security Providers of their respective Guaranteed Liabilities on the terms and conditions set out in this Agreement.
- 2.2. The Security Providers have agreed to enter into the Second Amended and Restated Counter Indemnity Agreement in favour of the Debt Guarantor and to provide and/or maintain the Transaction Security in support thereof.

3. **GUARANTEE**

3.1. **Debt Guarantee**

With effect from the Closing Date, the Debt Guarantor hereby (as principal debtor and not merely as surety) irrevocably, unconditionally and on the basis of a severable and discrete obligation enforceable against the Debt Guarantor whether or not any or all of the Guaranteed Liabilities are enforceable:

- 3.1.1. guarantees to the Creditors the full, prompt and complete payment of all the Guaranteed Liabilities when and as the same shall become due;
- 3.1.2. undertakes to the Creditors that if and each time any Security Provider shall be in default in the payment of any Guaranteed Liability in accordance with the terms

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of any applicable Financing Agreement and has failed to remedy such default within any applicable grace period, the Debt Guarantor shall, on first demand from the Facility Agent, pay all sums which are then due by the Security Providers as if it was expressed to be the primary debtor in respect of such sums in the Financing Agreements; and

- 3.1.3. agrees with the Creditors that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify each such Creditor immediately on first demand against any cost, loss or liability it incurs as a result of any Security Provider not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by any such Security Provider under any Financing Agreement on the date when it would have been due. The amount payable by the Debt Guarantor under this indemnity will not exceed the amount it would have had to pay under this clause 3 if the amount claimed had been recoverable on the basis of a guarantee.

3.2. Continuing Security

This Agreement shall be a continuing security and shall, subject to clause 3.3, remain in force until the Final Discharge Date, notwithstanding any intermediate payment in whole or in part of the Guaranteed Liabilities.

3.3. Reinstatement

Any discharge or release which the Creditors may effect with the Debt Guarantor shall be deemed to be made subject to the condition that it will be void to the extent that any payment or Security which the Creditors may previously have received or may thereafter receive from any person in respect of any of the Financing Agreements is set aside, refunded or reduced under any applicable law or proves to have been for any reason invalid. If such condition is satisfied, the Creditors shall be entitled to recover from the Debt Guarantor on demand the value of such Security or the amount of any such payment as if such discharge or release had not been effected.

3.4. Waiver of Defences

- 3.4.1. The liability of the Debt Guarantor hereunder in respect of the Guaranteed Liabilities shall not, subject to applicable law, be prejudiced, affected or diminished by any act, omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate the Debt Guarantor from its obligations hereunder in whole or in part whether or not known to the Debt Guarantor, including, without limitation:

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- 3.4.1.1. any time or waiver granted to or composition with any Security Provider or any other person; or
 - 3.4.1.2. the variation, compromise, renewal or release or refusal or neglect to perfect or enforce any rights, remedies or securities against any Security Provider or any other person; or
 - 3.4.1.3. any variation of or extension of the due date for performance of any term of any agreement in connection with the Guaranteed Liabilities (with the intent that the Debt Guarantor's obligations in respect of the Guaranteed Liabilities shall apply to such term as varied or in respect of the extended due date) or any increase, reduction, exchange, acceleration, renewal, surrender, release or loss of or failure to perfect any of the Guaranteed Liabilities or any Security therefor or any non-presentment or non-observance of any formality in respect of any instruments provided in relation to the Guaranteed Liabilities; or
 - 3.4.1.4. the winding-up, commencement of business rescue proceedings or any change in the name or constitution of any Security Provider or any other person; or
 - 3.4.1.5. any irregularity, illegality, unenforceability or invalidity of any of the Financing Agreements or the obligations of any other person or present or future law or order of any government or authority (whether of right or in fact) purporting to reduce or otherwise affect such obligations; or
 - 3.4.1.6. any legal limitation, disability, incapacity or other circumstances relating to any Security Provider or any other person or any amendment or supplement to or variation of any of the Financing Agreements.
- 3.4.2. The Creditors shall not be concerned to see or investigate the powers or authorities of any Security Provider or any other person or any of their officers or agents, and Guaranteed Liabilities incurred in the purported exercise of such powers or authorities or by any person purporting to be or represent that Security Provider or any other person shall be deemed to form a part of the Guaranteed Liabilities, and the term "**Guaranteed Liabilities**" shall be construed accordingly.

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3.5. **Immediate Recourse**

The Debt Guarantor waives any right it may have of first requiring the Facility Agent or any other Creditor to proceed against the Security Providers or enforce any guarantee or Security granted by any other person before enforcing the Security constituted hereby.

3.6. **Additional Security**

This Agreement shall be in addition to and shall not in any way be prejudiced by any collateral or other Security now or hereafter held by the Creditors as security for the Guaranteed Liabilities or any lien to which they may be entitled in respect thereof. The rights of the Creditors hereunder are in addition to and not exclusive of those provided by law.

3.7. **Maximum Liability**

The maximum amount receivable from the Debt Guarantor hereunder shall be limited to the net proceeds of recovery on enforcement by the Debt Guarantor of its rights and remedies against the Security Providers under the Second Amended and Restated Counter Indemnity Agreement and the Transaction Security, save that the Debt Guarantor's liability hereunder shall never exceed the Guaranteed Liabilities.

4. **PAYMENTS**

All payments to be made by the Debt Guarantor hereunder shall be made in immediately available funds in South African Rand to the Facility Agent or as otherwise directed by the Facility Agent and shall be made free of exchange, any other costs, charges or expenses and without any deduction, set-off or counterclaim whatsoever.

5. **REPRESENTATIONS AND WARRANTIES**

The Debt Guarantor makes the representations and gives the warranties set out in clause 5.1 to the Creditors.

5.1. **Representations**

5.1.1. **Status:** The Debt Guarantor is a limited liability company, duly incorporated in accordance with the laws of South Africa.

5.1.2. **Powers and Authority:** The Debt Guarantor has the power to enter into and perform this Agreement and the transactions contemplated hereby and has taken all necessary action to authorise the entry into and performance of this Agreement and the transactions contemplated hereby in accordance with its terms.

5.1.3. **Legal Validity:** This Agreement constitutes the legal, valid and binding obligations of the Debt Guarantor and is enforceable against the Debt Guarantor

Handwritten signatures and initials: "IH", "GAA", "KG", and a signature.

in accordance with its terms (subject to insolvency and other laws affecting creditors' rights generally).

5.1.4. **Non-Conflict:** The entry into and performance by the Debt Guarantor of this Agreement and the transactions contemplated hereby do not:

- 5.1.4.1. conflict with any law or regulation or any official or judicial order;
- 5.1.4.2. conflict with its constitutional documents;
- 5.1.4.3. conflict with any agreement or document to which it is a party or which is binding upon it or any of its assets; or
- 5.1.4.4. result in the creation or imposition of (or enforceability of) any Security interest on any of its assets or the provisions of any agreement or document.

5.1.5. **Consents:** All Authorisations required in connection with the entry into and performance by the Debt Guarantor and the validity and enforceability against it of this Agreement have been obtained or effected (or, in the case of registrations, will be so effected within any applicable required period) and, if obtained and effected, are in full force and effect and all fees (if any) payable in connection therewith, if due, have been paid and there has been no default in the performance of any of the terms or conditions thereof which is material to the effectiveness of any of the foregoing.

5.2. Repetition

The representations and warranties set out in this clause 5 shall survive the execution of this Agreement and shall be deemed to be repeated by the Debt Guarantor in favour of the Creditors on each date on which any payment is due by the Security Providers to the Creditors in terms of the Financing Agreements until the Final Discharge Date, in each case with reference to the facts and circumstances then subsisting as if made at each such time.

6. DURATION

This Agreement and the Debt Guarantor's obligations hereunder shall come into force on the Signature Date and shall continue in force until the Final Discharge Date.

7. UNDERTAKINGS BY THE DEBT GUARANTOR

7.1. The Debt Guarantor shall promptly furnish to the Facility Agent on behalf of the other Creditors such information in its possession or control as those Creditors and/or the Facility Agent may request.

Handwritten initials and signatures: IH, GAA, KG.

- 7.2. The Debt Guarantor shall obtain and promptly renew from time to time, and shall promptly furnish certified copies to the Facility Agent of, all such Authorisations as may be required under any applicable law or regulation to enable it to perform its obligations under this Agreement or required for the validity or enforceability hereof and the Debt Guarantor shall comply with the terms of the same.

8. SET-OFF

The Debt Guarantor authorises each other Creditor after this Agreement has become enforceable:

- 8.1. to set off any amount owing by the Debt Guarantor hereunder against any amount owing to the Debt Guarantor by that Creditor; and
- 8.2. to retain or withhold payment of any amount due by that Creditor to the Debt Guarantor in or towards payment of all or any part of the Guaranteed Liabilities owed to that Creditor.

9. SUCCESSORS AND ASSIGNS

- 9.1. Each Creditor shall be entitled to cede any of its rights or delegate any of its obligations hereunder to any person to whom it cedes its rights and delegates its obligations in accordance with the provisions of the Common Terms Agreement or as otherwise permitted in terms of the Financing Agreements (a "Transfer").
- 9.2. The Debt Guarantor shall not be entitled to cede any of its rights or delegate or purport to delegate any of its obligations hereunder without the prior written consent of the Facility Agent.
- 9.3. The Debt Guarantor hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such Transfer.

10. STIPULATION IN FAVOUR OF CREDITORS

The provisions of this Debt Guarantee which confer benefits upon any Creditor, shall constitute stipulations for the benefit of any person(s) becoming a Creditor, capable of acceptance at any time without notice. To the extent that any splitting of claims arises as a result of the provisions of this clause 10, the Debt Guarantor hereby consents to such splitting of claims.

11. GENERAL

11.1. Notices and *domicilium*

All documents in legal proceedings and notices in connection with this Agreement shall be served in accordance with clause 33 (*Notices*) of the Common Terms Agreement, which clause is incorporated *mutatis mutandis* by reference in this Agreement as if repeated in this Agreement in full (except that references in that clause to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement). Each Senior Facility E Lender chooses as its *domicilia citandi et executandi* for all purposes under

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this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the address and other details specified opposite its name in Part V of **Schedule 1** (*Original Creditors*).

11.2. **Incorporation by reference**

The provisions of clauses 16 (*Costs and Expenses*), 34 (*Amendments and Waivers*), 36 (*General Provisions*) and 39 (*Waiver of immunity*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement (except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement).

11.3. **Governing Law**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

11.4. **Jurisdiction**

11.4.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**dispute**").

11.4.2. The Parties agree that the High Court of South Africa is the most appropriate and convenient court to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

11.4.3. This clause 11.4 is for the benefit of the Creditors (other than the Debt Guarantor) only. As a result, no such Creditor shall be prevented from taking proceedings relating to a dispute in any other court with jurisdiction. To the extent allowed by law, any such Creditor may take concurrent proceedings in any number of jurisdictions.

11.5. **Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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SCHEDULE 1**Original Creditors****Part I****Original Senior Facility A Lenders**

No.	Original Senior Facility A Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited
7.	The Land and Agricultural Development Bank of South Africa
8.	Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)
9.	Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)
10.	Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)
11.	Sanlam Specialised Finance Proprietary Limited
12.	Momentum Metropolitan Life Limited
13.	Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients)

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Part II**Original Senior Facility B Lenders**

No.	Original Senior Facility B Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited

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Part III

Original Senior Facility C Lenders

No.	Original Senior Facility C Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited
7.	The Land and Agricultural Development Bank of South Africa
8.	Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)
9.	Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)
10.	Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)
11.	Sanlam Specialised Finance Proprietary Limited
12.	Momentum Metropolitan Life Limited
13.	Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients)

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Part IV

Original Senior Facility D Lenders

No.	Original Senior Facility D Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)
6.	Nedbank Limited
7.	The Land and Agricultural Development Bank of South Africa
8.	Sanlam Life Insurance Limited (acting through its Sanlam Specialised Finance division)
9.	Sanlam Investment Management Proprietary Limited (acting on behalf of its third party clients)
10.	Sanlam Life Insurance Limited (acting through its Sanlam Investment Management division)
11.	Sanlam Specialised Finance Proprietary Limited
12.	Momentum Metropolitan Life Limited
13.	Ashburton Fund Managers Proprietary Limited (acting on behalf of its clients)

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Part V

Original Senior Facility E Lenders

No.	Original Senior Facility E Lender	Address for purposes of clause 11.1 (Notices and domicile)
1.	Absa Bank Limited	<u>Address:</u> 15 Alice Lane Sandown Sandton 2196 <u>Email:</u> xrapcqlneloansops@absa.africa assetmana:ement449@absa.africa abdul.sheikyassim@absa.africa <u>Attention:</u> Tlotliso Mofokeng, Abdul Sheik Yassim and Ratshi Mahwansane
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)	<u>Address:</u> 3rd Floor, East Wing 30 Baker Street Rosebank 2196 <u>Email:</u> David.Veale@standardbank.co.za Martin.Baumgartner@standardbank.co.za <u>Attention:</u> Head, Corporate Financing Solutions, Corporate and Investment Banking, David Veale
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)	<u>Address:</u> 16th Floor 1 Merchant Place Corner Fredman Drive and Rivonia Road Sandton 2196 <u>Email:</u> Tsholanang.Kgosimore@rmb.co.za Michael.Adams1@rmb.co.za Nicola.Cory@rmb.co.za <u>Attention:</u> Tsholanang Kgosimore Michael Adams Nicola Cory
4.	Investec Bank Limited (acting through its Corporate and Institutional Banking division)	<u>Address:</u> 100 Grayston Drive Sandown Sandton 2196 <u>Email:</u> CorporateSolutionsJHB@investec.co.za <u>Attention:</u> Corporate Solutions

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No.	Original Senior Facility Lender	Address for purposes of clause 11.1 (<i>Notices and domicile</i>)
5.	Investec Bank Limited (acting through its Investment Banking Division: Corporate Solutions)	<u>Address:</u> 100 Grayston Drive Sandown Sandton 2196 <u>Email:</u> ICIBTreasuryLegal@investec.co.za <u>Attention:</u> ICIB Treasury
6.	Nedbank Limited	<u>Address:</u> G Block 5th Floor Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 <u>Email:</u> suecort@nedbank.co.za LevFin@Nedbank.co.za <u>Attention:</u> Head Special Portfolio
7.	Momentum Metropolitan Life Limited	<u>Address:</u> 268 West Avenue Centurion 0157 <u>Email:</u> Bennie.Schraader@mmiholdings.co.za Kagiso.Tsatsane@momentummetropolitan.co.za <u>Attention:</u> Bennie Schraader Kagiso Tsatsane

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Part VI**Original Senior Overdraft Facility Lenders**

No.	Original Senior Overdraft Facility Lender
1.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
2.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)

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Part VII**Ancillary Facility Lenders**

No.	Ancillary Facility Lender
1.	Absa Bank Limited
2.	The Standard Bank of South Africa Limited (acting through its Corporate and Investment Banking division)
3.	FirstRand Bank Limited (acting through its Rand Merchant Bank division)
4.	Nedbank Limited

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Amended and Restated Debt Guarantee
Execution version

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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Absa Bank Limited

DocuSigned by:

Anthony Evens

5067DBB066EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

Francois Visagie

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Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Martin Baugotse

Capacity: Head, CIB Risk, BTR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

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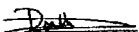
ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by: Richard Frank Craigie North
Signed at: 2022-07-28 13:54:34 +02:00
Reason: I approve this document



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)

Signed by: Estelle Stroud
Signed at: 2022-07-28 17:26:22 +02:00
Reason: I approve this document



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

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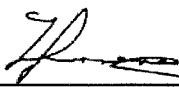
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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Andrew Moffat

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini

Capacity: Authorised Signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

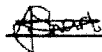
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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Nedbank Limited



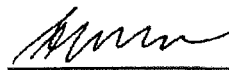
Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

The Land and Agricultural Development Bank of
South Africa

Stephen Sebueng

25/07/2022 16:35:24(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

The Land and Agricultural Development Bank of
South Africa



25/07/2022 17:44:48(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

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ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

Name: Howard van der Merwe

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
Markets division)

Name:

Capacity:

Who warrants his authority hereto

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LH
Gra

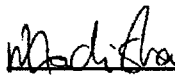
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)

 _____

Name: Mokgatla Madisha

Capacity: Head of Fixed Interest

Who warrants his authority hereto

For and on behalf of

**Sanlam Investment Management Proprietary
Limited**
(acting on behalf of its third party clients)

Name:

Capacity:

Who warrants his authority hereto

CRP
IH KG
GCA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name: Cecilia le Roux

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)

Name:

Capacity:

Who warrants his authority hereto

IH CRL
ICG
GCA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

For and on behalf of

Sanlam Specialised Finance Proprietary Limited

Sanlam Specialised Finance Proprietary Limited

Howard van der Merwe

Name:

Name:

Capacity: **Authorised Signatory**

Capacity:

Who warrants his authority hereto

Who warrants his authority hereto

IH CRR
KG
GeA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

Momentum Metropolitan Life Limited



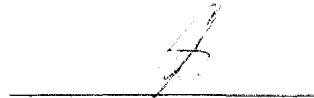
Name: Kagiso Tsatsane

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Jurgens Steyn

Capacity: Authorised Signatory

Who warrants his authority hereto

IH
GCA
CRA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY A LENDER

SIGNED at Johannesburg **on this the** 29th **day of** July **2022**

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



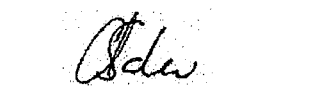
Name: Santhuri Thaver

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Alessandro Scalco

Capacity: Authorised Signatory

Who warrants his authority hereto

IH CR
KG
GEA

DocuSign Envelope ID: 450F48E5-601B-48BE-8E14-A59B4699FFA8

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY B LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Absa Bank Limited

DocuSigned by:

Francois Visagie

4DA397E40A884FE...

Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

Anthony Evens

5067DBB066EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

IH Cll
Kg
GeA

Amended and Restated Debt Guarantee
Execution version

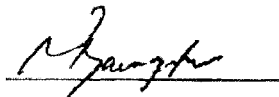
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY B LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



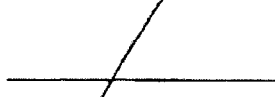
Name: Martin Baumgartner

Capacity: Head, CIB, Risk, BS+R

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

IH CCR
KG
GeA

Amended and Restated Debt Guarantee
Execution version

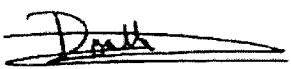
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY B LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

IH CR
KG
GPA

Amended and Restated Debt Guarantee
Execution version

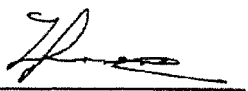
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY B LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

IH CR
ICG
GeA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY B LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Andrew Moffat

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini

Capacity: Authorised Signatory

Who warrants his authority hereto

IH CRR
KG
GCA

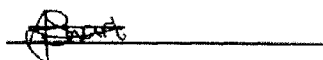
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ORIGINAL SENIOR FACILITY B LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Nedbank Limited



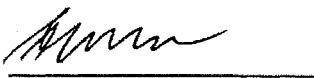
Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

IH
GR
KG
GJA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Absa Bank Limited

DocuSigned by:

Anthony Evens

5067DBB066EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

Francois Visagie

4DA397E40A684FE...

Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

IH
AK
KG
GEA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Martin Baumgartner

Capacity: Head, CIB, Risk, ZSR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

1

IH
Gex
EG
Gex

Amended and Restated Debt Guarantee
Execution version

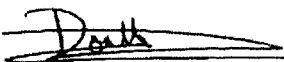
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

IH
CG
Kg
GeA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



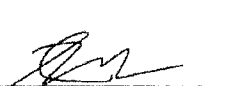
Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

IH
GEA
CG
KG

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Andrew Moffat

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini

Capacity: Authorised Signatory

Who warrants his authority hereto

Handwritten initials: IH, GR, CR, KG

Amended and Restated Debt Guarantee
Execution version

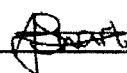
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ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Nedbank Limited



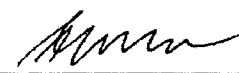
Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

IH CR
RG
GCA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

The Land and Agricultural Development Bank of
South Africa

Stephen Sebueng
25/07/2022 16:39:13(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

The Land and Agricultural Development Bank of
South Africa


25/07/2022 17:47:38(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

IA CRR
KG
GEA

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Name:

Capacity:

Who warrants his authority hereto

IH
CGA
CR
KG

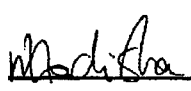
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Investment Management Proprietary
Limited
(acting on behalf of its third party clients)

 _____

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

Sanlam Investment Management Proprietary
Limited
(acting on behalf of its third party clients)

Name:

Capacity:

Who warrants his authority hereto

IH
CG
GFA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name: Cecilia le Roux

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name:

Capacity:

Who warrants his authority hereto

IH CRR
KG
GCA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

For and on behalf of

Sanlam Specialised Finance Proprietary Limited

Sanlam Specialised Finance Proprietary Limited

Howard van der Merwe

Name:

Name:

Capacity:

Capacity:

Who warrants his authority hereto

Who warrants his authority hereto

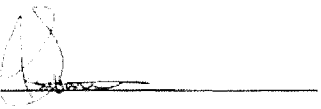
IH
Kg
GAA

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

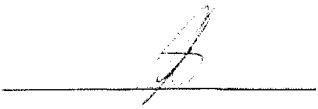
SIGNED at _____ on this the 29th day of July 2022

For and on behalf of
Momentum Metropolitan Life Limited



Name: Kagiso Tsatsane
Capacity: Authorised Signatory
Who warrants his authority hereto

For and on behalf of
Momentum Metropolitan Life Limited



Name: Jurgens Steyn
Capacity: Authorised Signatory
Who warrants his authority hereto

IH
GAF
CCL
EG

Amended and Restated Debt Guarantee
Execution version

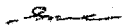
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY C LENDER

SIGNED at Johannesburg **on this the** 29th **day of** July **2022**

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Santhuri Thaver

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Alessandro Scalco

Capacity: Authorised Signatory

Who warrants his authority hereto

IH
Gef
All
Lg

DocuSign Envelope ID: 450F48E5-601B-48BE-8E14-A59B4699FFA8

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Absa Bank Limited

DocuSigned by:

Anthony Evens

5067DBB066EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

Francois Visagie

4DA397E40A884FE...

Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

IH CRE
KG
GCA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Martin Baumgartner

Capacity: Head, CIB, Risk, BSTR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

IH
GGA
CRL
EG

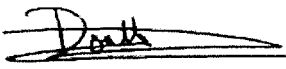
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

IH CRR
KG
GRR

Amended and Restated Debt Guarantee
Execution version

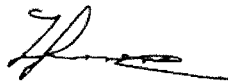
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

IT
GRR
LG
GRR

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Andrew Moffat

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini

Capacity: Authorised Signatory

Who warrants his authority hereto

IH
GeA
CRK
KG

Amended and Restated Debt Guarantee
Execution version

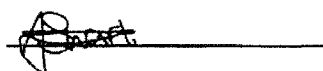
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Nedbank Limited



Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

IH
CRK
RG
GFA

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

The Land and Agricultural Development Bank of
South Africa

Stephen Sebueng

25/07/2022 16:40:00(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

The Land and Agricultural Development Bank of
South Africa

[Signature]

25/07/2022 17:49:49(UTC+02:00)

Name:

Capacity:

Who warrants his authority hereto

IA
GEA
CRP
L6

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Howard van der Merwe

Name:

Capacity:

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Specialised Finance
division)

Name:

Capacity:

Who warrants his authority hereto

IAH
GCA
CKK
LG

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

Modisha

Who warrants his authority hereto

[illegible]

Who warrants his authority hereto

sigesign.saniamcloud.

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)



Name: Cecilia le Roux

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Sanlam Life Insurance Limited
(acting through its Sanlam Investment Management
division)

Name:

Capacity:

Who warrants his authority hereto

Handwritten initials: IH, CR, KG, GEF

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

For and on behalf of

Sanlam Specialised Finance Proprietary Limited

Sanlam Specialised Finance Proprietary Limited

Howard van der Merwe

Name:

Name:

Capacity:

Capacity:

Who warrants his authority hereto

Who warrants his authority hereto

CRK
KG
GON IH

Amended and Restated Debt Guarantee
Execution version

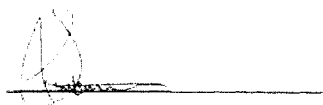
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

Momentum Metropolitan Life Limited



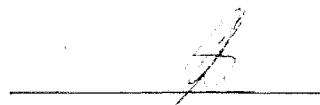
Name: Kagiso Tsatsane

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Jurgens Steyn

Capacity: Authorised Signatory

Who warrants his authority hereto

CRK
Kg IH
Geff

Amended and Restated Debt Guarantee
Execution version

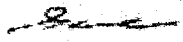
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY D LENDER

SIGNED at Johannesburg on this the 29th day of July 2022

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Santhuri Thaver

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Ashburton Fund Managers Proprietary Limited
(acting on behalf of its clients)



Name: Alessandro Scalco

Capacity: Authorised Signatory

Who warrants his authority hereto

IH GRG
KG
FoeA

DocuSign Envelope ID: 450F48E5-601B-48BE-8E14-A59B4699FFA8

Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY E LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Absa Bank Limited

DocuSigned by:

Anthony Evens

5067DBB066EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:

Francois Visagie

4DA397E40A684FE...

Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

IH CRR
Kg
GEA

Amended and Restated Debt Guarantee
Execution version

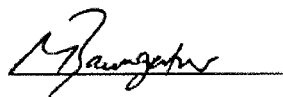
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Martin Baungatwe

Capacity: Head, CIB, Risk, BHR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

Name:

Capacity:

Who warrants his authority hereto

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GeA

Amended and Restated Debt Guarantee
Execution version

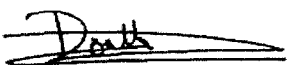
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY E LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

IH CRR
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Amended and Restated Debt Guarantee
Execution version

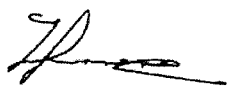
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY E LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Igna Ferreira

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Corporate and Institutional
Banking division)



Name: Carmen Malcolm

Capacity: Authorised Signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY E LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Andrew Moffat

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Investec Bank Limited
(acting through its Investment Banking Division,
Corporate Solutions)



Name: Ricardo Lupini

Capacity: Authorised Signatory

Who warrants his authority hereto

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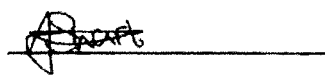
SIGNATURE PAGE

ORIGINAL SENIOR FACILITY LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Nedbank Limited



Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR FACILITY E LENDER

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

Momentum Metropolitan Life Limited



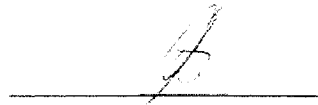
Name: Kagiso Tsatsane

Capacity: Authorised Signatory

Who warrants his authority hereto

For and on behalf of

Momentum Metropolitan Life Limited



Name: Jurgens Steyn

Capacity: Authorised Signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL SENIOR OVERDRAFT FACILITY
LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

M Baungathu

Name: Martin Baungathu

Capacity: Head, CIB, Risk, BSIR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

/

Name

Capacity

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

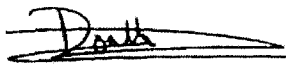
SIGNATURE PAGE

**ORIGINAL SENIOR OVERDRAFT FACILITY
LENDER**

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

SIGNATURE PAGE

ORIGINAL ANCILLARY FACILITY LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

Absa Bank Limited

DocuSigned by:
Anthony Evens
5067DBB086EB475...

Name: Anthony Evens

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Absa Bank Limited

DocuSigned by:
Francois Visagie
4DA387E40A684FE...

Name: Francois Visagie

Capacity: Principal

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

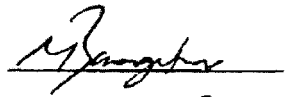
SIGNATURE PAGE

ORIGINAL ANCILLARY FACILITY LENDER

SIGNED at Rosebank on this the 28th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Martin Baungeth

Capacity: Head, CIS, Risk, BTR

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name:

Capacity:

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

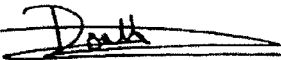
SIGNATURE PAGE

ORIGINAL ANCILLARY FACILITY LENDER

SIGNED at _____ on this the 28th day of July 2022

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Richard North

Capacity: Authorised signatory

Who warrants his authority hereto

For and on behalf of

FirstRand Bank Limited
(acting through its Rand Merchant Bank division)



Name: Estelle Stroud

Capacity: Authorised signatory

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

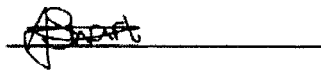
SIGNATURE PAGE

ORIGINAL ANCILLARY FACILITY LENDER

SIGNED at _____ **on this the** 28th **day of** July **2022**

For and on behalf of

Nedbank Limited



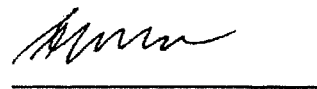
Name: Alexa Swart

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



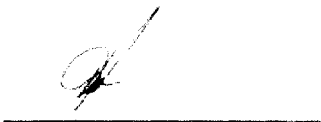
Name: Priyan Govender

Capacity: Authorised

Who warrants his authority hereto

For and on behalf of

Nedbank Limited



Name: Wellwood Nortier

Capacity: Authorised

Who warrants his authority hereto

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Amended and Restated Debt Guarantee
Execution version

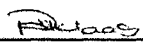
SIGNATURE PAGE

FACILITY AGENT

SIGNED at _____ on this the 29th day of July 2022

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)



Name: Lindie Niklaas

Capacity: Manager: Agency

Who warrants his authority hereto

For and on behalf of

The Standard Bank of South Africa Limited
(acting through its Corporate and Investment
Banking division)

Name:

Capacity:

Who warrants his authority hereto

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TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS AND INTERPRETATION.....	3
2. INDEMNITY.....	5
3. PAYMENT.....	5
4. WAIVER OF DEFENCES.....	5
5. CONTINUING OBLIGATIONS.....	7
6. SECURITY.....	7
7. SUCCESSORS AND ASSIGNS.....	7
8. GENERAL.....	7
Schedule 1.....	9
Effective Date and Time Indemnifiers.....	9

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- 1.1.7. **"Effective Date and Time"** shall bear the meaning ascribed to the term *"Effective Date and Time"* in the Second Amendment and Restatement Agreement.
- 1.1.8. **"Final Discharge Date"** means the date on which all amounts of whatsoever nature under the Applicable Documents are fully, finally and irrevocably discharged, and no Secured Party is under any obligation to advance any loan or provide any other form of financial accommodation to any member of the South African Group.
- 1.1.9. **"First Amended and Restated Counter Indemnity Agreement"** means the agreement titled *"Amended and Restated Counter Indemnity Agreement"* dated on or about 9 December 2019 and entered into between, *inter alios*, the Parties.
- 1.1.10. **"First Amendment and Restatement Agreement"** means the agreement titled *"Amendment and Restatement Agreement"* dated on or about 9 December 2019 and entered into between, *inter alios*, the Parties.
- 1.1.11. **"Indemnifier"** means an Effective Date and Time Indemnifier or an Additional Indemnifier, and collectively, the **"Indemnifiers"**.
- 1.1.12. **"Indemnity Limit"** means, in respect of each Applicable Indemnifier, an amount which is equal to the aggregate of all proceeds realised from the enforcement by the Debt Guarantor of the Transaction Security given by such Applicable Indemnifier.
- 1.1.13. **"Original Counter Indemnity Agreement"** means the agreement titled *"Counter Indemnity Agreement"* dated 22 May 2019 and entered into between the Debt Guarantor and the Original Obligors.
- 1.1.14. **"Party"** means a party to this Agreement, and, collectively, the **"Parties"** as the context may require.
- 1.1.15. **"Second Amendment and Restatement Agreement"** means the agreement titled *"Second Amendment and Restatement Agreement"* dated on or about the date hereof and entered into between the Parties.
- 1.1.16. **"Secured Parties"** means the Creditors, and each a **"Secured Party"** as the context may require.
- 1.1.17. **"Signature Date"** means the date of signature of this Agreement by the Parties.
- 1.2. **Construction**

The provisions of clauses 1.3 (*Construction*) and 1.4 (*Third party rights*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out

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in full in this Agreement, except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement.

2. INDEMNITY

With effect from the Effective Date and Time and subject to clause 4 (*Waiver of defences*), the Indemnifiers hereby:

- 2.1. jointly and severally indemnify and hold the Debt Guarantor harmless against any claim made against or liability of the Debt Guarantor under the Debt Guarantee, or any amount paid or due and payable by the Debt Guarantor, under the Debt Guarantee in respect of any "Guaranteed Liabilities" (as defined and contemplated in the Debt Guarantee) provided that, notwithstanding the foregoing or any other provision of this Agreement, the liability of each Applicable Indemnifier under this Agreement (without in anyway limiting any other rights and/or Security which the Secured Parties may have for the Indemnifiers' obligations) shall be limited to an amount which is equal to the Indemnity Limit of that Applicable Indemnifier; and
- 2.2. represent and warrant that they are familiar with all provisions of the Debt Guarantee and the Common Terms Agreement which are relevant to the interpretation or application of this Agreement.

3. PAYMENT

The Indemnifiers unconditionally and irrevocably undertake to pay the Debt Guarantor on first written demand any amount which the Debt Guarantor may be required to pay under the Debt Guarantee including any costs, fees or expenses incurred by the Debt Guarantor in enforcing its rights hereunder or under any Applicable Document, subject to the following conditions:

- 3.1. that such amount has been demanded in writing from the Debt Guarantor in terms of the Debt Guarantee as a consequence of non-payment by any Indemnifier under and in accordance with the provisions of any such Applicable Document; and
- 3.2. any payment made by any Indemnifier under clause 2 (*Indemnity*) or this clause 3 in respect of any obligations of such Indemnifier (the "**Underlying Obligations**") received for value by the Debt Guarantor shall discharge, in like amount, the Underlying Obligations and accordingly discharge the Debt Guarantor's obligations under the Debt Guarantee in like amount.

4. WAIVER OF DEFENCES

- 4.1. The liability of the Indemnifiers shall not, subject to applicable law, be prejudiced, affected or diminished by any act, omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate the Indemnifiers from their obligations

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5. CONTINUING OBLIGATIONS

- 5.1. The obligation and liability of the Indemnifiers under this Agreement shall, subject to clause 4, continue and remain in full force and effect as a continuing security and indemnity until the Final Discharge Date.
- 5.2. This Agreement shall be enforceable against the Indemnifiers in accordance with the tenor hereof, whether as an indemnity or otherwise, notwithstanding that the Debt Guarantee may in any way be invalid or unenforceable in whole or in part against the Debt Guarantor.

6. SECURITY

As security for the provisions of this Agreement, the Indemnifiers undertake to provide or procure the provision of the Transaction Security to the Debt Guarantor and to maintain in full force and effect all such Transaction Security provided by the Indemnifiers for the duration of their obligations under this Agreement.

7. SUCCESSORS AND ASSIGNS

- 7.1. The Debt Guarantor shall be entitled to cede any of its rights or delegate any of its obligations hereunder (a "**Transfer**") to any person to whom it effects a Transfer under the Debt Guarantee, provided that the prior written consent of the Facility Agent has been obtained.
- 7.2. No Indemnifier shall be entitled to cede any of its rights or delegate or purport to delegate any of its obligations hereunder without the prior written consent of the Facility Agent.
- 7.3. Each Indemnifier hereby unconditionally and irrevocably consents to the splitting of claims against it which may result from or pursuant to or in consequence of any such cession and/or delegation by the Debt Guarantor in terms of this Agreement.
- 7.4. The provisions of this clause 7 which confer any rights on the Facility Agent shall constitute a *stipulatio alteri* in favour of the Facility Agent, capable of acceptance at any time without the requirement for notice to be given.

8. GENERAL

8.1. Notices and *domicilium*

All documents in legal proceedings and notices in connection with this Agreement shall be served in accordance with clause 33 (*Notices*) of the Common Terms Agreement, which clause is incorporated *mutatis mutandis* by reference in this Agreement as if repeated in this Agreement in full (except that references in that clause to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement).

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8.2. Incorporation by reference

The provisions of clauses 16 (*Costs and Expenses*), 34 (*Amendments and Waivers*), 36 (*General Provisions*) and 39 (*Waiver of immunity*) of the Common Terms Agreement are incorporated *mutatis mutandis* in this Agreement as though they were set out in full in this Agreement (except that references in those clauses to the Common Terms Agreement or any other Finance Document are to be construed as references to this Agreement). Each Effective Date and Time Indemnifier which is not an Obligor chooses as its *domicilia citandi et executandi* ("**domicilium**") for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the address set out below its name at the place where it has signed this Agreement.

8.3. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

8.4. Jurisdiction

8.4.1. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in regard to all matters arising from this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**dispute**").

8.4.2. The Parties agree that the High Court of South Africa is the most appropriate and convenient court to settle disputes. The Parties agree not to argue to the contrary and waive objection to this court on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with this Agreement.

8.4.3. This clause 8.4 is for the benefit of the Debt Guarantor only. As a result, the Debt Guarantor shall not be prevented from taking proceedings relating to a dispute in any other court with jurisdiction. To the extent allowed by law, the Debt Guarantor may take concurrent proceedings in any number of jurisdictions.

8.5. Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

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SCHEDULE 1

Effective Date and Time Indemnifiers

No.	Effective Date and Time Indemnifiers	Registration No.
1.	Tongaat Hulett Limited	1892/000610/06
2.	Tongaat Hulett Developments Proprietary Limited	1981/012378/07
3.	Voemol Feeds Proprietary Limited	1936/007892/07
4.	Tongaat Hulett Sugar South Africa Limited	1965/000565/06
5.	Tongaat Hulett Estates Proprietary Limited	1967/006009/07
6.	Ohlanga Development Company Proprietary Limited	1968/009161/07
7.	The Natal Estates Limited	1902/000899/06

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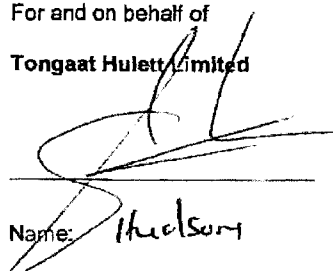
Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of
Tongaat Hulett Limited


Name: Ian Hudson
Capacity: CEO

Who warrants his authority hereto

For and on behalf of
Tongaat Hulett Limited


Name: Rob Arlton
Capacity: CFO

Who warrants his authority hereto

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Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of

Tongaat Hulett Developments Proprietary
Limited

Name: Hudson

Capacity: Director

Who warrants his authority hereto

For and on behalf of

Tongaat Hulett Developments Proprietary
Limited

Name: Rob Aitken

Capacity: Director

Who warrants his authority hereto

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GFA ICS

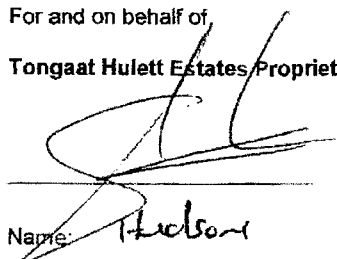
Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of
Tongaat Hulett Estates Proprietary Limited


Name: Michaelson
Capacity: Director

Who warrants his authority hereto

For and on behalf of
Tongaat Hulett Estates Proprietary Limited


Name: Rob Aitken
Capacity: Director

Who warrants his authority hereto

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GFA LG

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Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of

Voermol Feeds Proprietary Limited

Name: Hudson

Capacity: CEO

Who warrants his authority hereto

For and on behalf of

Voermol Feeds Proprietary Limited

Name: Rob Aitken

Capacity: CFO

Who warrants his authority hereto

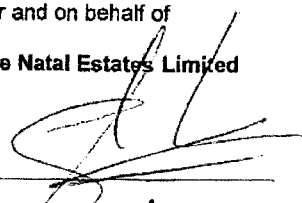
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SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of
The Natal Estates Limited


Name: Hudson
Capacity: CEO

Who warrants his authority hereto

For and on behalf of
The Natal Estates Limited


Name: Rob Aitken
Capacity: CFO

Who warrants his authority hereto

Notice details:

Physical address: Amanzimnyama Hill Road, Tongaat, 4400

Email address: Rob.Aitken@tongaat.com

For the attention of: Rob Aitken

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Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

EFFECTIVE DATE AND TIME INDEMNIFIER

SIGNED at _____ on this the 3rd day of December 2021

For and on behalf of

Ohlanga Development Company Proprietary
Limited

Name: Huckson

Capacity: CEO

Who warrants his authority hereto

For and on behalf of

Ohlanga Development Company Proprietary
Limited

Name: Rob Aitken

Capacity: CFO

Who warrants his authority hereto

Notice details:

Physical address: Amanzimnyama Hill Road, Tongaat, 4400

Email address: Rob.Aitken@tongaat.com

For the attention of: Rob Aitken

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Second Amended and Restated Counter Indemnity Agreement
Execution Version

SIGNATURE PAGE

DEBT GUARANTOR

SIGNED at _____ on this the 2nd _____ day of December _____ 2021

For and on behalf of

Bowwood and Main No 296 (RF) Proprietary Limited



Name: Simon Ng

Capacity: Authorised Signatory

Who warrants his authority hereto

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VISION INVESTMENTS 155 (PTY) LTD**FA10**

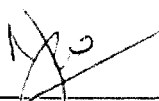
(T)
Registration No: 2023/178789/07

Date: 8 February 2026

CERTIFICATE OF BALANCE

I, the undersigned, Rutenhuro Moyo, in my capacity as the sole director of Vision Investments 155 (Pty) Ltd (**V155**), hereby certify that Tongaat Hulett Limited (in business rescue), is truly and lawfully indebted to V155 in the amount of R11,738,406,991.00 (eleven billion, seven hundred and thirty eight million, four hundred and six thousand, nine hundred and ninety one rands and zero cents) as at close of business on 7 February 2026.

Yours faithfully



Rutenhuro Moyo
Director_____
Director: R Moyo

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NOTARIAL CERTIFICATE

FA11

I, the undersigned,

MATTHEW HYLTON AINSWORTH

(96790)

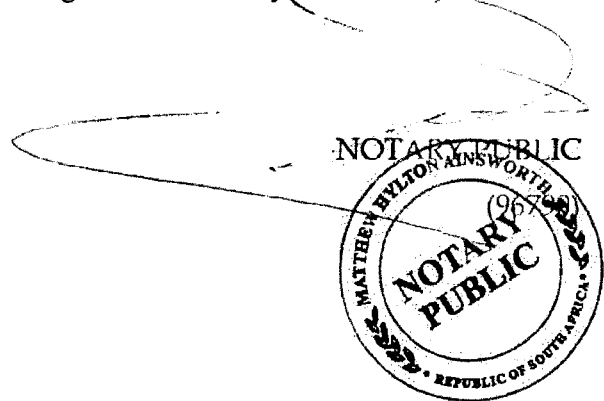
of Johannesburg, in the Province of Gauteng, Republic of South Africa, Notary Public, as such duly sworn and admitted, do hereby certify and attest that the attached documents are true copies of the originals as stated below -

1. General Notarial Bond in favour of BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED by TONGAAT HULETT LIMITED BN584/2020 with Protocol Number: 1/2020

which has been initialed and sealed by me.

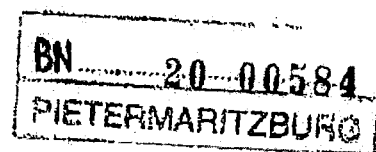
In witness whereof I issue this certificate as Notary Public with my notarial seal to be used as it may be required.

Thus done and signed at Johannesburg on this 20th day of February 2026.



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GAA

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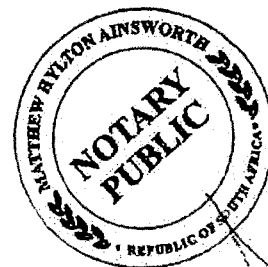
GENERAL NOTARIAL BOND

in favour of

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

by

TONGAAT HULETT LIMITED



CERTIFIED A TRUE COPY

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FEE'S

Stamp Duty
 Reg. **R3190-00**
 Waiver.....
 Oth. Bond.....

**GERFOMETER
REGISTERED**

Count

2020-01-23

2020-01-23

BN 20 00584

PIETERMARITZBURG

Protocol No:1/2020

GENERAL NOTARIAL BOND

BE IT HEREBY MADE KNOWN

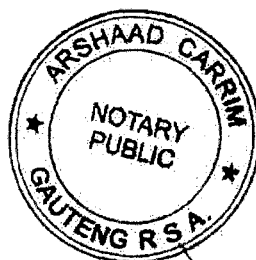
THAT on this the 6TH day of January TWO THOUSAND AND TWENTY (2020), before me,

ARSHAAD CARRIM

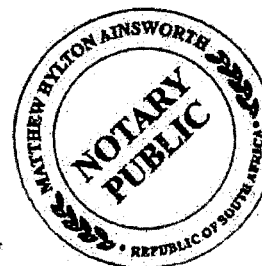
Notary Public, by lawful authority duly admitted and sworn, practising at Sandton, in the Province of Gauteng, Republic of South Africa, and in the presence of the undersigned witnesses, personally came and appeared

RAEESA MOHAMMED ALI SEEDAT

in his/her capacity as the agent of:



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 IH
 CKK
 KG
 GEA

TONGAAT HULETT LIMITED
(Registration number 1892/000610/06)

(a limited liability company duly registered and incorporated in
accordance with the laws of the Republic of
South Africa)

(hereinafter referred to as the "Mortgagor")

having its registered office situated at Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal, 4400, South Africa.
and carrying on business at the following address at Amanzinyama Hill Road, Tongaat Kwa-Zulu Natal,
4400, South Africa.

s/he being duly authorised hereto by virtue of a power of attorney granted to him by the Mortgagor at Tongaat
on 23 December 2019, therein represented by Robert David Aitken for and on behalf of the Mortgagor, he
being duly authorised thereto by virtue of a resolution of the Board of Directors of the Mortgagor dated 4
December 2019,

which said power of attorney and certified copy of which resolution has been exhibited to me the Notary at the
passing of these presents and now remain filed in my Protocol.

AND the Appearer, on behalf of the Mortgagor, declared the Mortgagor to be indebted to

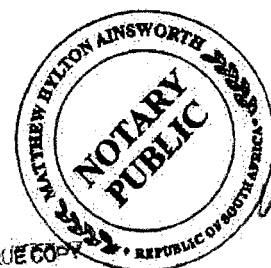
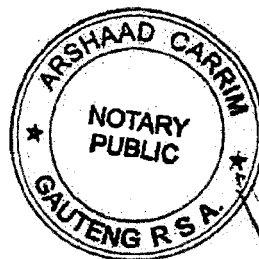
BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED,

Registration Number 2018/358484/07

a limited liability company duly registered and incorporated in accordance with the laws of the Republic of
South Africa

whose registered address is 3rd Floor 200 Main, Corner Bowwood and Main Roads, Claremont, Western Cape,
7708 (together with its order, successors or assigns, the "Creditor"), under and in terms of an amended and
restated counter indemnity agreement entered into or to be entered into on or about the date hereof between,
inter alios, the Mortgagor and the Creditor (as amended, amended and restated, replaced, substituted, novated
and/or superseded from time to time) (the "Counter Indemnity Agreement"), up to, but not exceeding, the
sum of -

R13 500 000 000,00 (THIRTEEN BILLION FIVE HUNDRED MILLION RAND),



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Plus interest thereon and all other amounts whatsoever payable to the Creditor under the Counter Indemnity Agreement, and the Additional Sum (as referred to and defined hereunder), and upon the further conditions set forth in this bond (this "Bond").

NOW THEREFORE the Appearer on behalf of the Mortgagor hereby acknowledged and declared the Mortgagor to be held and firmly bound unto and in favour of the Creditor in the sum of R13 500 000 000,00 (THIRTEEN BILLION FIVE HUNDRED MILLION RAND) (the "Capital") arising from the considerations set out in the preamble hereof.

AND AS SECURITY for the payment of -

- (a) the Capital;
- (b) all interest and all other amounts whatsoever payable to the Creditor under the Counter Indemnity Agreement by the Mortgagor;
- (c) the costs of preserving and realising the Mortgaged Assets (as defined below), insurance premiums and cost of notice; AND
- (d) all costs which the Creditor may incur and all amounts which the Creditor may disburse on the Mortgagor's behalf which costs and disbursements are recoverable from the Mortgagor in terms of this Bond,

and also such other costs, charges (including interest) or expenses, which may be claimable from the Mortgagor under this Bond, and which other costs, charges or expenses are secured up to an amount not exceeding the Capital and the sum of -

R2 700 000 000,00 (TWO BILLION SEVEN HUNDRED MILLION RAND), (the "Additional Sum").

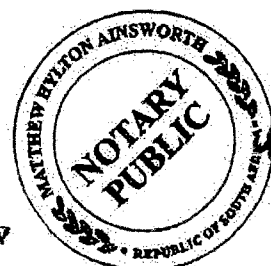
The Appearer on behalf of the Mortgagor declared to cede and assign to the Creditor and to pledge and hypothecate, the movable property of the Mortgagor of every description and of whatsoever nature and wherever situate, and such as the Mortgagor now possesses or may at any time in the future become possessed of without exception, submitting them all and the choice thereof to constraint and execution as the law directs,

(hereinafter referred to as the "Mortgaged Assets").

AND the Appearer, on behalf of the Mortgagor, declared to renounce the benefits arising from the legal exceptions *non numeratae pecuniae, non causa debiti, errore calculi, revision of accounts, no value received, excussion and division, de duobus vel pluribus reis debendi* and all other exceptions which might or could be taken to the payment of any amounts secured hereby, with the full force, meaning and effect whereof the Appearer declared the Mortgagor to be fully acquainted.



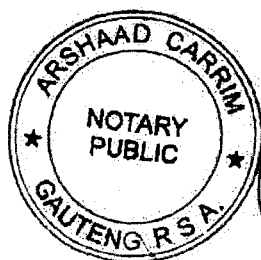
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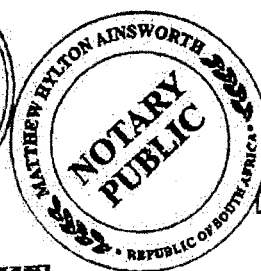
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AND the Appearer, on behalf of the Mortgagor, declared that this Bond shall be subject to the following conditions and stipulations –

1. All payments required to be made by the Mortgagor shall be made by the Mortgagor in accordance with the provisions of the Counter Indemnity Agreement or as may otherwise be directed by the Creditor and the Mortgagor undertakes that it shall comply with all of its obligations under the Counter Indemnity Agreement on the due date therefor.
2. The Mortgagor shall for so long as this Bond is in force keep all the Mortgaged Assets in good order and condition, fair wear and tear alone excepted.
3. Notwithstanding anything to the contrary herein contained, this Bond will become executable against the Mortgagor upon any amounts becoming payable by the Mortgagor to the Creditor under the Counter Indemnity Agreement and remaining unpaid (an "Enforcement Event").
4. The Creditor shall, following the occurrence of an Enforcement Event which is continuing, be entitled (but not obliged) to the extent permitted by law -
 - 4.1. to claim and recover from the Mortgagor forthwith all and any sums for the time being secured by this Bond, whether then due for payment or not; and/or
 - 4.2. for the purpose of perfecting its security hereunder to enter upon the premises of the Mortgagor or any other place where Mortgaged Assets are situated and to take possession of such assets; and/or
 - 4.3. to sign or subscribe on behalf of the Mortgagor to all applications or agreements for or transfer of licences, quotas, permits, registration certificates and the like which relate to the Mortgaged Assets; and/or
 - 4.4. to do all such other acts as may be necessary or desirable to record the sale, disposal and/or transfer, as the case may be, of the Mortgaged Assets or any of them; and/or
 - 4.5. to hold the assets as security for the indebtedness of the Mortgagor to the Creditor arising under the Counter Indemnity Agreement or otherwise and to retain such possession for so long as the Mortgagor is so indebted to the Creditor; and/or
 - 4.6. to dispose of the Mortgaged Assets or any of them by public auction or by private treaty (at fair value) in the Creditor's sole discretion and on such terms and conditions as the Creditor in its sole discretion may deem fit and to convey good value and free title to the purchaser or transferee thereof; and/or



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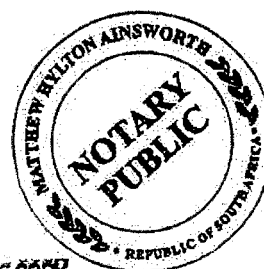


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- 4.7. to have the Mortgaged Assets excussed and/or attached by legal process; and/or
- 4.8. to execute upon all or any of the Mortgaged Assets; and/or
- 4.9. to employ such other remedies and to take such other steps against the Mortgagor as are in law allowed.
5. The Creditor shall apply the net proceeds of any recovery in reduction or discharge, as the case may be, of the Mortgagor's obligations to the Creditor arising under or in terms of the Counter Indemnity Agreement, without prejudice to the Creditor's rights to recover from the Mortgagor any balance which may remain owing to the Creditor after the exercise of such rights. Should the total amount collected or recovered by the Creditor exceed the full amount of the Mortgagor's obligations to the Creditor, the Creditor shall be obliged to promptly refund such excess to the Mortgagor provided that the obligations secured hereby have been fully, finally and irrevocably discharged.
6. Notwithstanding anything to the contrary herein contained, the Creditor shall be entitled to allocate any moneys paid by the Mortgagor to the Creditor to the Capital and/or interest and/or costs and expenses and/or the Additional Sum as the Creditor may determine in accordance with the provisions of the Finance Documents (as defined in the agreement titled "Common Terms Agreement" entered into on about the date of this Bond by and between, *inter alios*, the Mortgagor (as guarantor) and the Creditor (as debt guarantor) (the "Common Terms Agreement")).
7. The Mortgagor hereby covenants and undertakes that for so long as it is indebted to the Creditor under the Counter Indemnity Agreement at its own cost and expense (such period is hereinafter referred to as the "Security Period") (but subject to and without prejudice to the provisions of the Counter Indemnity Agreement):
- 7.1. to take all steps required by the Creditor to maintain, preserve or protect the Mortgagor's interests and the interests of the Creditor in the Mortgaged Assets;
- 7.2. to sign, seal, execute, deliver, acknowledge, file, register and perfect all such assurances, documents, instruments, agreements, certificates and consents and co-operate with the Creditor in connection with the registration and perfection of the security interest constituted hereby and to do all acts and things which it may be necessary for the Mortgagor to do in order to obtain and maintain such registration;
- 7.3. to furnish to the Creditor from time to time such information and reports regarding the Mortgaged Assets as the Creditor may request in writing; and

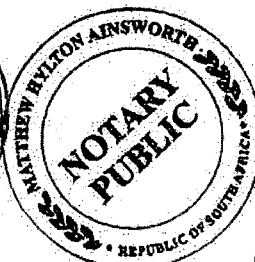


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- Initials "GCA" below "IH".

- 7.4. to do or permit to be done each and every lawful act or thing which the Creditor may from time to time require to be done for the purpose of enforcing the Creditor's rights granted pursuant to this Bond in relation to any of the Mortgaged Assets and this Bond, and to allow its name to be used as and when reasonably required by the Creditor for that purpose.
8. Following the occurrence of an Enforcement Event which is continuing, the Mortgagor irrevocably for value and by way of security to secure the interest of the Creditor in the Mortgaged Assets and the performance of the obligations owed to the Creditor appoints the Creditor and any person nominated for such purpose by the Creditor in writing under hand by an officer of the Creditor, severally as attorney and agent of the Mortgagor and in its name and on its behalf and as its act and deed to execute and otherwise perfect and do any charge, mortgage, deed, assurance, agreement, conveyance, instrument, act or thing which the Mortgagor has failed to execute and do under the covenants, undertakings and provisions contained herein or in the Counter Indemnity Agreement or which may be required or deemed proper in the lawful exercise of any rights or powers hereunder or otherwise for any of the purposes of the security created hereby, and the Mortgagor hereby covenants with the Creditor to ratify and confirm all lawful acts or things made, done or executed by the Creditor in its capacity as attorney and agent as aforesaid. The Creditor shall be entitled at any time during the Security Period and as often as it may deem expedient to delegate all or any of the powers and discretions vested in it by or in connection with this Bond in such manner, upon such terms and to such persons as the Creditor in its absolute discretion may think fit.
9. This Bond and the security hereby created shall be a continuing covering security for all and any sums of money which may now or in the future be owing or claimable by the Creditor in terms of this Bond, and in particular (without limitation) shall not be, nor be considered as, satisfied by any intermediate discharge or payment on account of any liabilities or any settlement of accounts between the Mortgagor (or any other person) and the Creditor or any other act, event or matter whatsoever, except only by the execution by the Creditor of an absolute and unconditional release and discharge of the security created by this Bond to the Mortgagor, and this Bond shall, save as herein provided, extend to cover any sum or sums of money or other liability and obligations which shall for the time being constitute the balance of the obligations secured hereby (the "Secured Obligations") until all of the Secured Obligations have been paid and discharged in full.
10. The Mortgagor shall, upon receipt of a written request from the Creditor, promptly give written notice of this Bond to the landlords of all premises in which the Mortgagor carries on business or in which the Mortgagor stores, repairs, sells or manufactures movable assets, and shall use reasonable endeavours to obtain from such landlords waivers to the reasonable satisfaction of the Creditor in respect of any hypothec or right of retention which any such landlord or landlords may have in respect

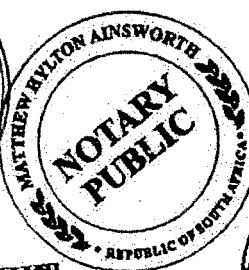
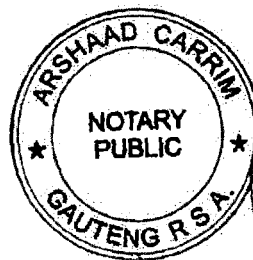


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of the movable assets in such premises. A copy of every notice so given is to be delivered to the Creditor, together with the waivers so signed by such landlords. Notwithstanding the provisions of this clause 10, the Creditor is entitled to give any notice as is contemplated in this clause and has furthermore the right to obtain any such waivers as the Creditor may deem fit in the circumstances.

11. This Bond and the security hereby created shall be in addition to and not in substitution for or derogation of any other security (whether given by the Mortgagor or otherwise) now or from time to time hereafter held by the Creditor in respect of or in connection with any or all of the Secured Obligations.
12. The Creditor shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by this Bond or by law, to:
 - 12.1. Issue or initiate any proceedings or take action or obtain judgment against the Mortgagor or any other person in any court or tribunal;
 - 12.2. make or file any claim or proof in a winding-up or liquidation of the Mortgagor or of any other person; and/or
 - 12.3. enforce or seek to enforce the recovery of the moneys and liabilities hereby secured or any other security.
13. Without in any way limiting or derogating from any other provisions hereof, the security created by this Bond shall continue in full force and effect and shall not be discharged, impaired or otherwise affected by:
 - 13.1. any time or indulgence granted by the Creditor or any failure or delay by the Creditor in exercising any right, remedy, power or privilege hereunder, under the Counter Indemnity Agreement or any failure or delay by the Creditor in enforcing compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) any acceptance of payments after due date whether on one or more occasions or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder;
 - 13.2. any failure by the Creditor to take or enforce any other security or guarantee taken or agreed to be taken for all or any of the Secured Obligations or under or pursuant to the Counter Indemnity Agreement or otherwise;
 - 13.3. any amendment, modification, variation, or supplement of all or any part of the Secured Obligations or the Counter Indemnity Agreement;

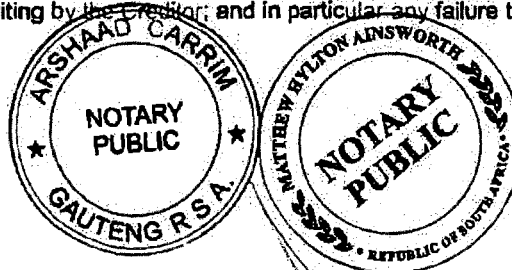


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- 13.4. any release or exchange of any security or guarantee now or hereafter held by the Creditor for all or any part of the Secured Obligations; or
- 13.5. any other act, omission, matter, circumstance or event (including, without limitation, the invalidity, unenforceability or illegality of any of the obligations of the Mortgagor, the Counter Indemnity Agreement, or the bankruptcy, liquidation, commencement of business rescue proceedings, winding-up, insolvency, dissolution, administration, reorganisation or amalgamation of, or other analogous event of or with respect to, the Mortgagor or any other person) which, but for this provision, might operate to impair, discharge or adversely affect the rights of the Creditor hereunder or to impair, discharge or adversely affect the security hereby created.
14. Any settlement or discharge between the Creditor and the Mortgagor and/or any other person shall be conditional upon no security or payment to the Creditor by the Mortgagor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, liquidation, winding-up, insolvency, dissolution, reorganisation, administration, commencement of business rescue proceedings, amalgamation or other analogous event or proceedings for the time being in force.
15. The Mortgagor is bound and obliged to pay promptly on due date all rentals payable in respect of all offices, factories, warehouses and any other premises of whatsoever nature leased by the Mortgagor and in which the Mortgagor at any time carries on business or in which the Mortgagor at any time stores, repairs, sells or manufactures movable assets. Should the Mortgagor fail to pay any such amount on the due date therefor, the Creditor is entitled but not obliged to pay such amount on behalf of the Mortgagor and any amount so paid is to be refunded by the Mortgagor to the Creditor on demand.
16. The Mortgagor shall, during the Security Period, submit to the Creditor on demand, an Inventory reflecting the stocks comprising consumables, finished products, packaging materials, raw materials and work in progress in the possession of the Mortgagor and/or being stored, repaired, sold or manufactured by or on behalf of the Mortgagor, together with the cost price thereof. The Inventory is to be in such form as may from time to time be stipulated by the Creditor or the Creditor's duly authorised agent and shall reflect, *inter alia*, the names and addresses of all landlords of the premises in which stock is being stored, repaired, sold or manufactured.
17. The rights of the Creditor under this Bond are cumulative, may be exercised as often as it considers appropriate and are in addition to its rights under general law. The rights of the Creditor (whether arising under this Bond or general law) shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing by the Creditor; and in particular any failure to exercise or

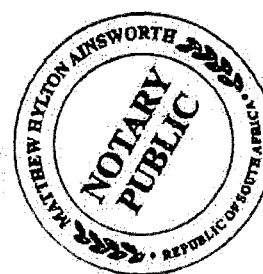
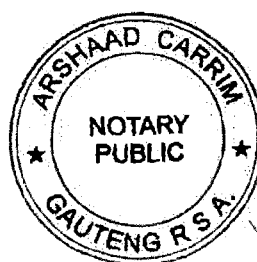


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any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right; any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No failure on the part of the Creditor to exercise and no delay on its part in exercising any right or remedy hereunder shall operate as a waiver and no act or course of conduct or negotiation on the part of the Creditor or on its behalf shall in any way preclude it from exercising any such right or constitute a suspension or any variation of any such right.

18. Any waiver and any consent by the Creditor under this Bond must be in writing and may be given subject to any conditions thought fit by the Creditor. Any waiver or consent shall be effective only in the instance and for the purposes for which it is given.
19. The provisions of this Bond shall not be varied otherwise than by an instrument in writing executed by or on behalf of the Mortgagor and the Creditor.
20. This Bond shall be binding upon the Mortgagor and its lawful successors and permitted assigns.
21. The Mortgagor shall not be entitled to assign or transfer any of its rights, benefits or obligations hereunder to any person whomsoever.
22. The Creditor may without the consent of the Mortgagor, assign or transfer all or any part of its rights, benefits or obligations under this Bond to any third party whomsoever. Where the Creditor assigns or transfers its obligations or any part thereof as aforesaid, the Mortgagor shall execute such documents as the Creditor may require to release the Creditor to the extent of the transfer or with a view to perfecting such Mortgage or transfer, or where necessary, shall execute further security documentation in favour of the assignee or transferee in like form to this Bond. To the extent that any such cession, assignment, transfer or other disposal results in a splitting of claims, the Mortgagor irrevocably consents thereto.
23. Any amounts payable by the Mortgagor to the Creditor in terms of this Bond which do not have a stipulated date for payment thereof shall be paid by the Mortgagor to the Creditor on first written demand.
24. Any reference herein to an agreement, document or instrument is to such agreement, document or instrument as amended, amended and restated, novated, superseded, substituted and/or replaced from time to time.
25. The provisions of this Bond shall be governed and construed in accordance with the laws of South Africa.



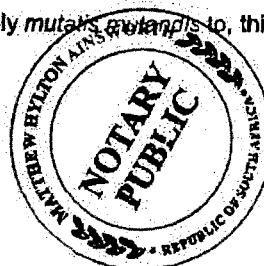
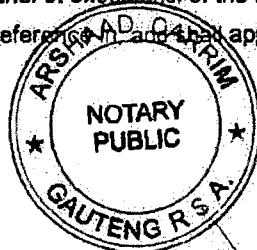
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- Initials 'IH' and 'GCA'.
- Initials 'CK' and 'Kg'.

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26. The Mortgagor agrees that any legal action or proceedings arising out of or in connection with this Bond may be brought in the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) and irrevocably submits to the non-exclusive jurisdiction of such court. The Mortgagor irrevocably waives any objection it may now or hereafter have that such action or proceeding has been brought in an inconvenient forum. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Creditor to take proceedings against the Mortgagor in whatever other jurisdiction the Creditor shall consider appropriate nor shall the taking of proceedings in any one or more jurisdictions automatically preclude the taking of proceedings in any other jurisdiction whether concurrently or not. The Mortgagor irrevocably agrees not to claim for itself or its assets immunity from suit, execution, attachment or otherwise, to the full extent permitted by the laws of such jurisdiction.
27. A certificate signed by the Creditor or its duly authorised agent (whose authority and appointment need not be proved) reflecting the amount of the indebtedness of the Mortgagor under (i) this Bond; and/or (ii) the Counter Indemnity Agreement, the fact that same is due and payable, the rate of interest payable thereon and the date from which interest is reckoned will, in the absence of manifest error -
- 27.1. be *prima facie* proof of the amount of the indebtedness and the facts stated therein;
- 27.2. constitute sufficient particularity for the purposes of pleading and trial in any action; and
- 27.3. be *prima facie* proof for the purposes of obtaining provisional sentence, summary judgment or any other judgment or order.
28. No relaxation or indulgence, and no extension of time which may be granted by the Creditor, no failure by the Creditor to enforce compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) no acceptance of payments after due date, whether on one or more occasions, shall be deemed to be a waiver in respect of any past or future breach of any of the terms and conditions of this Bond or estop or preclude the Creditor from insisting on and enforcing, without notice, its full rights hereunder.
29. No negligent acts or omissions (save in respect of gross negligence or wilful misconduct) by or on behalf of the Creditor in implementing its rights hereunder shall found a cause of action against the Creditor.
30. The Mortgagor hereby chooses *domicilium citandi et executandi* for all purposes under this Bond, whether in respect of court process, notices or other documents or communications of whatsoever nature, at the address set out in the Common Terms Agreement and all provisions relating to notices to the Mortgagor and the *domicilium citandi et executandi* of the Mortgagor as set out in the Common Terms Agreement are incorporated by reference and shall apply *mutatis mutandis* to this Bond.

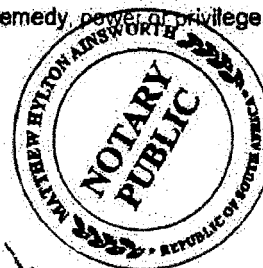
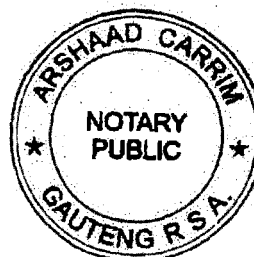


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31. This Bond shall not novate, cancel or affect any other securities at present held or which may from time to time be held by the Creditor and the Creditor shall be entitled to take action against the Mortgagor on this Bond and/or on any other securities in the event referred to in clause 3 of this Bond.
32. The Mortgagor shall be bound and obliged to pay the costs of preparing this Bond and the registration thereof and upon cancellation of this Bond, the costs of such cancellation.
33. All costs and expenses incurred by the Creditor in order to preserve or enforce the Creditor's rights hereunder or in suing for the recovery of any sum that may become due and payable which is secured hereunder, including but without limiting the generality of the foregoing, the costs on the attorney and own client scale of all legal proceedings, the costs of execution, the costs and expenses of all notices that may be given in terms of this Bond, all premiums of insurance that may be paid by the Creditor in terms hereof, any other payments or disbursements that may be made by the Creditor on behalf of the Mortgagor and the due performance by the Mortgagor of all its obligations hereunder shall be borne and paid by the Mortgagor promptly on demand.
34. All the costs referred to in clauses 32 and 33 shall be secured hereunder over and above the Capital and to the extent of the Additional Sum.
35. The Creditor shall not, however, be precluded from recovering from the Mortgagor any such costs, expenses and other amounts as are referred to in this clause that may exceed the Additional Sum.
36. Notwithstanding anything to the contrary contained herein, the Creditor shall be entitled to exercise the rights granted to it hereunder only if at the time there is an actual obligation or indebtedness owing by the Mortgagor to the Creditor.
37. This Bond may only be cancelled when all the Mortgagor's obligations and indebtedness to the Creditor under the Counter Indemnity Agreement has been discharged.
38. The provisions of this Bond shall be and continue to be of full force and effect and binding on the Mortgagor, subject to the provisions of clause 37, notwithstanding -
 - 38.1. any latitude, indulgence, relaxation or extension of time which may be given or shown by the Creditor to the Mortgagor and/or any surety, indemnitor, intercessionary for the Mortgagor or any failure or delay by the Creditor in enforcing compliance with the provisions of this Bond and (without derogating from the generality of the foregoing) any acceptance of payments after due date, whether on one or more occasions or any failure or delay by the Creditor in exercising any right, remedy, power or privilege hereunder or under the Counter Indemnity Agreement or any single or partial exercise of any right, remedy, power or privilege hereunder or thereunder; and/or



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 GEA
 CM
 Kg

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IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION,
DURBAN

CASE NO: 2026-031780

In the matter between:

**Gerhard Conrad Albertyn NO ,Trevor
John Murgatroyd NO ,Petrus Francois
Van Den Steen NO**

Plaintiff / Applicant / Appellant

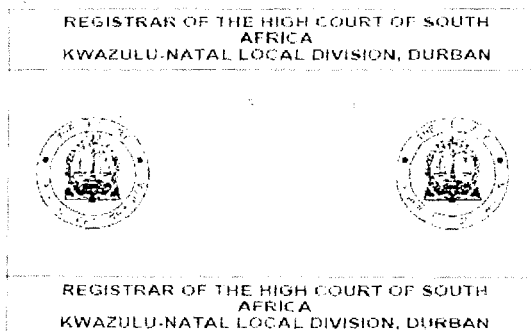
and

**Tongaat Hulett Limited, The Affected
Persons**

Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 12/2/2026 at 10:50:23 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



**ELECTRONICALLY SIGNED
BY:**

**Registrar of The High Court,
KwaZulu-Natal, Durban.**

IH
GCA

LKS/LF
11022026/TONG7430.26
Certificate of Urgency/#11459066v1

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: _____

In the matter between:

GERHARD CONRAD ALBERTYN N.O

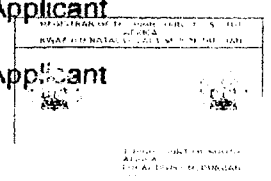
First Applicant

TREVOR JOHN MURGATROYD N.O

Second Applicant

PETRUS FRANCOIS VAN DEN STEEN N.O

Third Applicant



and

TONGAAT HULETT LIMITED
(IN BUSINESS RESCUE)

First Respondent

THE AFFECTED PERSONS

Further Respondents

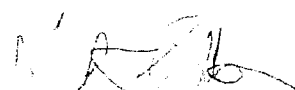
CERTIFICATE OF URGENCY

I, the undersigned, **A SUBEL SC**, an Advocate of the above Honourable Court do hereby confirm that I have read the application papers and I am of the belief that the matter is sufficiently urgent to warrant a hearing in terms of Rule 6(12) of the Uniform Rules of Court and for the application to be set down for hearing on 27 February 2026 at 10h00 or so soon thereafter as counsel may be heard.

DATED at SANDTON on this the th 11 day of FEBRUARY 2026.

IH
GeA


A SUBEL SC
Senior Counsel for Applicants


WERKSMANS ATTORNEYS
Applicants' Attorneys
The Central, 96 Rivonia Road
Sandton
Tel: 011 535 8134
Fax: 011 535 8600
Email: lsilberman@werksmans.com
Ref: L Silberman/TONG7430.26
c/o EVH INC ATTORNEYS
Unit 4 Holwood Crescent
Holwood Park
La Lucia Ridge
Umhlanga
Tel: 031 492 7971
Email: erik@evhinc.co.za

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Kwa-Zulu Natal Division Durban

IH
Ged

IN THE HIGH COURT OF SOUTH AFRICA
KWA-ZULU NATAL DIVISION, DURBAN

CASE NUMBER: _____

In the matter between:

GERHARD CONRAD ALBERTYN N.O	First Applicant
TREVOR JOHN MURGATROYD N.O	Second Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O	Third Applicant

and

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Respondent
THE AFFECTED PERSONS	Further Respondents

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made to the above Honourable Court on the **27TH** day of **FEBRUARY 2026** at **09H30** or so soon thereafter as counsel may be heard for an order in the following terms: -

- 1 That this application be heard as a matter of urgency in terms of Uniform Rule of Court 6(12)(a) and that the Court condones the applicants' failure to comply with the time limits and forms of service.

IH
GPA

- 2 That the first respondent's business rescue be discontinued and that the first respondent be placed under provisional winding-up.
- 3 That the applicants be granted leave to cite the further respondents collectively as a group.
- 4 That a *rule nisi* be issued calling upon the first respondent and all affected persons to show cause, if any, to the Court on a date to be determined by the Court, why: -
 - 4.1 the first respondent should not be finally wound-up; and
 - 4.2 the costs of this application, subject to 6 below should not be costs in the winding-up.
- 5 That service of the order be effected: -
 - 5.1 on the first respondent by the Sheriff at its registered address situated at Amanzimnyama Hill Road, Tongaat, Kwa-Zulu Natal;
 - 5.2 on the affected persons identified in annexure "FA5" to the applicants' founding affidavit by way of email where known;
 - 5.3 by publication on the first respondent's website;

- 5.4 by one publication in the Business Day newspaper; and
- 5.5 by one publication in the Natal Mercury in English and Zulu;
- 6 That any party/ies that oppose/s this application or the order for final winding-up pay/s the costs occasioned by such opposition, jointly and severally on a party and party scale including the costs of two counsel (including one senior counsel) on Scale C; and
- 7 That the Master of the High Court of South Africa, Kwa-Zulu Natal Division is requested to make an urgent appointment of a provisional liquidator immediately on the granting of this order;
- 8 Such further and/or alternative relief as the Court may deem fit.

TAKE NOTICE FURTHER THAT the affidavit of **GERHARD CONRAD ALBERTYN** N.O. and annexures will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the offices of **Werksmans Attorneys** of The Central, 96 Rivonia Road, Sandton c/o **EVH Inc Attorneys**, Unit 4 Holwood Crescent, Holwood Park, La Lucia Ridge, Umhlanga as the address for service of all processes and documents in these proceedings.

TAKE NOTICE FURTHER THAT should you wish to oppose this application, you are required to -

- 1 notify the applicants' attorney of record, Ms L Silberman (Tel: 011 535 8134 and email: lsilberman@werksmans.com) of your intention to oppose to do so by no later than **13 February 2026 at 17:00** in which notice you are to reflect an address for service as contemplated by Rule 6(5)(b) of the Uniform Rules of Court; and
- 2 deliver an answering affidavit, if any, by not later than **Tuesday, 17 February 2026 at 17h00**.

Kindly place the matter on the roll for hearing accordingly.

DATED at LA LUCIA RIDGE this the **12th** day of **FEBRUARY 2026**


WERKSMANS ATTORNEYS
Applicants' Attorneys
The Central, 96 Rivonia Road
Sandton
Tel: 011 535 8134
Fax: 011 535 8600
Email: lsilberman@werksmans.com
Ref: L Silberman/TONG7430.26
c/o EVH INC ATTORNEYS
Unit 4 Holwood Crescent
Holwood Park
La Lucia Ridge
Umhlanga
Tel: 031 492 7971
Email: erik@evhinc.co.za

TO:
THE REGISTRAR OF THE ABOVE HONOURABLE COURT
Kwa-Zulu Natal Division, Durban

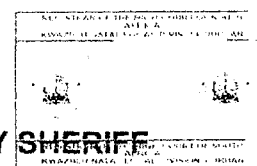
IH
Gep

AND TO:
TONGAAT HULETT LIMITED
 (First Respondent)
 Amanzimnyama Hill Road
 Tongaat
 Kwa-Zulu Natal
Registered address and principal place of business

SERVICE BY SHERIFF

AND TO:
THE EMPLOYEES AND/OR TRADE UNIONS OF THE RESPONDENT
TONGAAT HULETT LIMITED
 (First Respondent)
 Amanzimnyama Hill Road
 Tongaat
 Kwa-Zulu Natal
Registered address and principal place of business

SERVICE BY SHERIFF



AND TO:
THE MASTER OF THE HIGH COURT
 2 Devonshire Place
 Durban Central
 Durban

SERVICE BY HAND

AND TO:
THE SOUTH AFRICAN REVENUE SERVICES
 Email: ContactUs@sars.gov.za / highcourtlitigation@sars.gov.za /
lbester@sars.gov.za / liquidations@sars.gov.za

SERVICE BY EMAIL

AND TO:
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION
 Block F
 The DTIC Campus
 77 Meintjies Street
 Sunnyside
 Pretoria
 Email: liquidations@cipc.co.za

SERVICE BY EMAIL

IH
 GEF

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

CONFIRMATORY AFFIDAVIT OF ALEC TAFADZWA MUZA

I,

ALEC TAFADZWA MUZA

do hereby make oath and state that:

1. I am an adult male Attorney of the above Honourable Court, duly admitted, enrolled and practicing as such, and practising in the Courts of the Republic of Botswana under the name and style **AT MUZA ATTORNEYS** at **Plot 22964 Phase 4, Gaborone**.
2. The facts contained herein are within my personal knowledge, save where stated or the context indicates otherwise. The said facts are also true and correct in every material respect.
3. I have read the Applicant's Affidavit deposed to by **CANDICE RISI** founding and filed in support of the Applicants' urgent application and hereby confirm the facts therein in so far as they relate to me, the legal advice given to them by me and/or the law firm, **AT MUZA ATTORNEYS**.

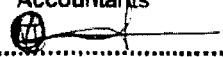
[Signature]

DEPONENT

THUS DONE, SWORN TO AND SIGNED BEFORE ME AT GABORONE ON THIS 24th DAY OF FEBRUARY 2026 AT 12:11 A.M./P.M., THE DEPONENT HAVING ACKNOWLEDGED THAT THE CONTENTS OF THIS AFFIDAVIT ARE WITHIN HER PERSONAL KNOWLEDGE AND THAT THEY ARE TRUE AND CORRECT AND BINDING ON HER CONSCIENCE.

IH
Gea

273

CERTIFIED TRUE COPY
COMMISSIONER OF OATHS
Fellow Member: Botswana Institute of Chartered Accountants
SIGNED: 
MARSHAL TAPIWA CHIMEDZA
MEMBER NUMBER 20180953
DATE: 24/02/2026
COMMISSIONER OF OATHS

IH
Ged

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

CERTIFICATE OF URGENCY

I,

ALEC TAFADZWA MUZA

certify that:

do hereby certify that:-

- 1 I am an adult male of full legal capacity and an attorney of this Honourable Court duly admitted and enrolled as such, practicing at the firm **AT MUZA ATTORNEYS** from Plot **22964 Phase 4, Gaborone**.
- 2 I have read the Applicants' Affidavit founding the Applicant's application and deposed to by **CANDICE RISI** and hereby certify that in the totality of circumstances, the application is urgent for reasons that she has set out therein.
- 3 I certify, having fully advised myself that the Applicants will suffer irreparable harm if the orders sought are not granted. The urgency in this matter is not self-created. The dictates of justice warrant dealing with this matter on urgency particularly given the real and imminent risk that the Respondents will deal with the pledged shares to the Applicant's irreparable prejudice.
- 4 I certify further that this matter is urgent to the extent that it is not possible for the Applicants to be afforded substantial redress in due course under the normal periods of notice and rules regulating the service and delivery of process.
- 5 It is my duty in the circumstances to execute this certificate to fulfil my obligations to the Court and accordingly advise that the matter is, in my consideration, urgent.

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GEA

WHEREFORE I pray that the matter be so heard.

DATED AT GABORONE THIS 24th DAY OF FEBRUARY 2026.



ALEC TAFADZWA MUZA

Certifier

IH
GeA

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT GABORONE**

CASE NO. CVHGB -

26

In the matter between:

BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED

Applicant

And

TREVOR JOHN MURGATROYD N.O.

1st Respondent

PETRUS FRANCOIS VAN DEN STEEN N.O.

2nd Respondent

GERHARD CONRAD ALBERTYN N.O.

3rd Respondent

[in their capacities as the joint business rescue Practitioners of the 4th
Respondent]

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)

4th Respondent

TONGAAT HULETT (BOTSWANA) PROPRIETARY LIMITED

5th Respondent

DRAFT ORDER

**BEFORE HIS LORDSHIP MR Justice _____ on _____ this
_____ day of _____ 2026.**

UPON HEARING

MR/MRS _____	for the Applicant
MR/MRS _____	for the 1 st Respondent
MR/MRS _____	for the 2 nd Respondent
MR/MRS _____	for the 3 rd Respondent
MR/MRS _____	for the 4 th Respondent
MR/MRS _____	for the 5 th Respondent

IT IS ORDERED:

1. That the matter is heard as one of urgency and the normal rules relating to service and time limits are dispensed with;
2. The Order of the High Court of South Africa, Kwazulu - Natal Division, Pietermaritzburg dated 16 May 2023 under Case No: 15784/22 perfecting the General Notarial Bond registered in favour of the Applicant over the assets of the 4th Respondent (including shares "wherever situate"), be and is hereby recognised and registered as an order of this Honourable Court.

I H
GeA

3. It is declared that the General Notarial Bond No. BN00584/2020 is perfected over all the shares held by the 4th Respondent in the 5th Respondent, including but not limited to the issued 33.33% shares held by the 4th Respondent.
4. The 1st to the 5th Respondents are interdicted and restrained from selling, transferring, encumbering, pledging, or in any manner dealing with the said shares pending the final determination of this application or until further order of this Court.
5. The Applicant, alternatively the Applicant's duly authorised agent, alternatively the Deputy Sheriff of this Court is authorised and directed forthwith to attach the share certificates and any blank transfer forms relating to the shares referred to in paragraph 3 above and to perfect the Applicant's security interest by taking possession and/or control thereof.
6. The 5th Respondent is directed to note the perfected security interest of the Applicant on its share register and to refuse to register any transfer or dealing with the said shares without the prior written consent of the Applicant or further order of this Court.
7. That the 1st, 2nd, 3rd, 4th and 5th Respondents be and are hereby ordered to pay the costs of this Application on the higher scale of attorney and client jointly and severally, the one paying the others to be absolved only if they oppose this application.

BY THE COURT

REGISTRAR AND MASTER

IH
GCH

"THIO"

all

On Wednesday, April 1, 2026 at 11:22:19 AM GMT+2, Kurshelen Naidoo <kurshelen.aidoo@tongaat.com> wrote:

Dear Omphemetse Kaisara

The above matter and Court Order (attached) served on our offices in Botswana yesterday refers.

Our offices tried calling you on the below telephone numbers to no avail.

We confirm that this is the first time the team in Botswana became aware of this matter.

The application papers referred to in the Court Order were not received. We would appreciate a copy if possible, together with your return of service.

The Court Order does not state which attorneys in Gaborone are on record for Bowwood. Please provide us with their full details so that we may contact them as a matter of urgency.

Given the circumstances, please afford us some time to contact the attorneys and read the papers.

Kind regards,



Kurshelen Naidoo
Legal Counsel - Corporate
phone +27 32 439 4047 | mobile +27 81 313 5667
www.tongaat.com



**#TOGETHER REIMAGINING
A SWEET TOMORROW**

#Believe #Act #Connect #Achieve

CONFIDENTIAL & LEGALLY PRIVILEGED : Emails and attachments received from us may be protected by the attorney-client privilege, as attorney work-product or based on other privileges or provisions of law. If you are not an intended recipient of this email, do not read, copy, use, forward or disclose the email or any of its attachments to others. Instead, immediately notify the sender by replying to this email and then delete it from your system. We strictly prohibit any unauthorized disclosure, copying, distribution or use of emails or attachments sent by us.

TH
GEA

From: Alec Muza <alec@atmuza.com>
Sent: 01 April 2026 14:45
To: Omphemetse Kaisara; Kurshelen Naidoo
Cc: Obakeng Moselehi; Mpho Chihwamba; Peter Freeman; Thapelo Mfosi; Evashni Govender; Johann van Rooyen; Casper Badenhorst
Subject: [EXTERNAL] RE: Bowwood and Main v Tongaat Hulett Limited - UAHGB-000065-26

This message originated from outside Tongaat and was sent to "Kurshelen Naidoo" the sender name was "Alec Muza" and the sender's email address was alec@atmuza.com Please be careful when opening links and attachments! THL Cyber Security Team.

All,

@Omphemetse Kaisara thank you for your email.

@Kurshelen Naidoo we confirm that we are the attorneys of record for Bowwood. We advise that the application was not served because it was filed as an ex parte urgent application for the recognition of the order granted in South Africa on the 8th June 2023 which was done with the consent of the business rescue practitioners. As a result, there was no obligation to serve the application. We advise that the application is bulky and as such we have not scanned it. We can make arrangements for the THB people to collect a copy from our offices in Gaborone.

Regards



Alec Tafadzwa Muza
Head Of **Practice**

+267 74136542

alec@atmuza.com

www.atmuza.com

Plot 22964 Phase 4, Gaborone, Botswana | 25 Shortheath Road, Chisipite, Harare, Zimbabwe

From: Omphemetse Kaisara <omphemetsekaisara@yahoo.com>
Sent: Wednesday, 01 April 2026 12:20
To: Kurshelen Naidoo <kurshelen.aidoo@tonga.com>; Alec Muza <alec@atmuza.com>
Cc: Obakeng Moselehi <obakeng.moselehi@tonga.com>; Mpho Chihwamba <mpho@dpsconsultancy.com>; Peter Freeman <peter.freeman@tonga.com>; Thapelo Mfosi <thapelo.mfosi@tonga.com>; Evashni Govender <evashni.govender@tonga.com>; Johann van Rooyen <johann.vanrooyen@tonga.com>
Subject: Re: Bowwood and Main v Tongaat Hulett Limited - UAHGB-000065-26

"TH12"



DELIVERED BY EMAIL

Attention: Alec Tafadzwa Muza
A T MUZA ATTORNEYS
Email: alec@atmuza.com

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mrs L Silberman/lf/TONG7430.26/#11585047v1

DIRECT PHONE: +27 11 535 8134

EMAIL ADDRESS: lsilberman@werksmans.com

7 April 2026

Dear Sir

BOWWOOD AND MAIN 296 (RF) PROPRIETARY LIMITED / TREVOR JOHN MURGATROYD N.O. AND OTHERS
CASE NUMBER: UAHGB-000065-26

- 1 We refer to the above matter and to the application instituted by Bowwood and Main 296 (RF) Proprietary Limited ("**Bowwood and Main**") against Trevor John Murgatroyd N.O. and Others out of the High Court of Botswana held at Gaborone, case number UAHGB-000065-26 ("**the application**").
- 2 We act on behalf of the first to third respondents in the application, being the joint business rescue practitioners ("**the BRPs**") of Tongaat Hulett Limited (in business rescue)
- 3 The BRPs have provided us with: -
 - 3.1 the court order which was granted in the application and in favour of Bowwood and Main on 26 February 2026 ("**the order**"); and
 - 3.2 your email dated 1 April 2026 addressed to Omphemetse Kaisara ("**Kaisara**") and Kurshelen Naidoo ("**Naidoo**") of Tongaat Hulett Limited, Botswana ("**THL**") ("**your email**").
- 4 The BRPs became aware of the order on or about 31 March 2026 when the order was served on THL's offices in Botswana.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa

Directors D Hertz (Chairman) Y Adams LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagattjee NMN Bhengu AL Bilaty RE Bonnet TJ Boswell W Brown PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball MA Hoosen BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby G Koski HA Kotze S Krige CJ Laltha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane H Michael SM Moerane R Moitse C Moraitis B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhin B Rammala V Ramson K Reddy BR Roothman W Rosenberg NL Scott NI Sewela TA Sibidla FT Sikhavhakhayha LK Silberman S Sinden DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder D van Wyk JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies **Consultants** DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH

IH
GFA



- 5 Although the BRPs are cited as respondents in the application, the application was not served on the BRPs prior to the order being granted.
- 6 In response to a query raised by Kaisara and Naidoo in regard to the above and pursuant to service of the order, you state in your email that: -

"... we confirm that we are the attorneys of record for Bowwood. We advise that the application was not served because it was filed as an ex parte urgent application for the recognition of the order granted in South Africa on the 8th June 2023 which was done with the consent of the business rescue practitioners. As a result, there was no obligation to serve the application. We advise that the application is bulky and as such we have not scanned it. We can make arrangements for the THB people to collect a copy from our offices in Gaborone."

- 7 The above said, no reference is made in the court order to the application having been instituted on an *ex parte* basis and if indeed this was so, the court would have granted a rule *nisi* enabling the BRPs to return to court on a designated date (the return date) to make representations why the order sought should not be made final.
- 8 Clearly this is not case as the order makes no reference to a return date and is final in its terms.
- 9 Your averment that the consent of the BRPs to an order granted in South Africa in June 2023 obviates the need for service and constitutes consent to the granting of an order, in respect of an application they have not seen, in Botswana approximately three years later is factually and legally untenable.
- 10 The order further records that: -

"UPON HEARING: Attorney Mr. Muza A.T. for the Applicant and there being no appearance for the Respondents and having read the documents filed of record...."

- 11 The above recordal would not have been made by the Court in an *ex parte* application as no appearance by the respondents would have been expected or required.
- 12 In the circumstances, please can you urgently provide us with an explanation regarding the above inconsistencies and on what basis you have stated in your email that the consent by the BRPs to an order granted in South Africa almost 3 years ago can be regarded as consent to an order in a different jurisdiction and in the absence of service having been effected on the BRPs.
- 13 In addition to the above, and whilst you considered the application to be "*bulky*", the BRPs are entitled to a copy of same in order consider the application and their rights in regard to the content thereof. Accordingly, please will you urgently email the application to us.
- 14 Please be advised that the above is not to be considered to be an exhaustive recordal of the BRPs' concerns in regard to the application instituted allegedly on an *ex parte* basis and in regard to the order granted. Our clients' rights to raise further issues after having received your response hereto and having had an opportunity to consider the application, remain strictly reserved.



Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

IH³
GCH

Lisa Silberman

From: Lisa Silberman
Sent: 13 April 2026 23:03
To: 'Alec Muza'
Cc: David Hertz; ADMINBW
Subject: RE: BOWWOOD AND MAIN 296 (RF) PROPRIETARY LIMITED / TREVOR JOHN MURGATROYD N.O. AND OTHERS [IMAN-LITIGATION.FID753129]

Tracking:	Recipient	Delivery	Read
	'Alec Muza'		
	David Hertz	Delivered: 13/04/2026 23:03	Read: 14/04/2026 07:09
	ADMINBW		
	'TONG7430_26 _ Tongaat Hulett Limited _under business r E_mails'		

Dear Mr Muza

I refer to your e-mail below.

Please let us have your response as a matter of urgency.

Yours sincerely



Lisa Silberman
Director
 T +27 11 535 8134 E lsilberman@werksmans.com
 The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196
 Private Bag 10015, Sandton, 2146, South Africa
 T +27 11 535 8000 W www.werksmans.com

From: Alec Muza <alec@atmuza.com>
Sent: 08 April 2026 09:23 AM
To: Lisa Silberman <LSilberman@werksmans.com>
Cc: David Hertz <DHertz@werksmans.com>; ADMINBW <adminbw@atmuza.com>
Subject: RE: BOWWOOD AND MAIN 296 (RF) PROPRIETARY LIMITED / TREVOR JOHN MURGATROYD N.O. AND OTHERS [IMAN-LITIGATION.FID753129]

Dear Lisa,

Thank you for your email below.

We will revert soon.

Regards

IH
GCA

"TH14"

Lisa Silberman

From: Alec Muza <alec@atmuza.com>
Sent: 14 April 2026 10:42
To: Lisa Silberman
Cc: David Hertz; ADMINBW
Subject: RE: BOWWOOD AND MAIN 296 (RF) PROPRIETARY LIMITED / TREVOR JOHN MURGATROYD N.O. AND OTHERS [IMAN-LITIGATION.FID753129]
Attachments: BOWWOOD AND MAIN - Tongaat - Filed recognition application.pdf

Dear Lisa

I refer to your letter dated the 7th April 2026 to which I still await instructions from my client.

In the interim, please find attached a copy of the court application.

Regards



A T MUZA
ATTORNEYS

Alec Tafadzwa Muza
Head Of **Practice**

+267 74136542

alec@atmuza.com

www.atmuza.com



Plot 22964 Phase 4, Gaborone, Botswana | 25 Shortheath Road, Chisipite, Harare, Zimbabwe

From: Lisa Silberman <LSilberman@werksmans.com>
Sent: Monday, 13 April 2026 23:03
To: Alec Muza <alec@atmuza.com>
Cc: David Hertz <DHertz@werksmans.com>; ADMINBW <adminbw@atmuza.com>
Subject: RE: BOWWOOD AND MAIN 296 (RF) PROPRIETARY LIMITED / TREVOR JOHN MURGATROYD N.O. AND OTHERS [IMAN-LITIGATION.FID753129]

Dear Mr Muza

I refer to your e-mail below.

Please let us have your response as a matter of urgency.

Yours sincerely

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DELIVERED BY EMAIL

Attention: Casper Badenhorst, Bradley Scop and
Alexandra Rakitzis
STEIN SCOP ATTORNEYS

Email: casper@steinscop.com / bradley@steinscop.com /
alexandra@steinscop.com

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr D Hertz/Mr D Andropoulos/Mrs L Silberman/lf/TONG7430.26/#11628475v1

DIRECT PHONE: +27 11 535 8283 / +27 11 535 8248 / +27 11 535 8134

EMAIL ADDRESS: dhertz@werksmans.com / dandropoulos@werksmans.com / lsilberman@werksmans.com

24 April 2026

Dear Sirs

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) /

- 1 You, and your client, have, over the past few days, addressed the following letters ("**the subject letters**") -
 - 1.1 on 20 April 2026 to Faskens, the legal representatives of the IDC, which was copied to Werksmans;
 - 1.2 on 22 April 2026 to Werksmans, the subject of which is "*Suspension of Security Cession Rights*"; and
 - 1.3 on 22 April 2026 to the BRPs.
- 2 This letter constitutes a consolidated response to the various matters traversed in the subject letters. Any assertion and/or allegation therein which is not addressed below, is denied.
- 3 This response has been prepared as expeditiously as circumstances have permitted. Whilst you are fully entitled to impose truncated and unreasonable time periods for responses to your correspondence, that will not expedite the unfolding and continuing process. This fact notwithstanding, our clients are and remain fully committed to achieving the successful "*substantial implementation of business rescue*" and they are mindful of the hearing on 17 and 18 June 2026.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa

Directors D Hertz (Chairman) Y Adams LK Alexander C Andropoulos JKOF Antunes L Appelgryn RL Armstrong DA Arteiro K Badal T Bata JD Behr AR Berman P Bhagatjee NMN Bhengu AL Bilatyi RE Bonnet TJ Boswell W Brown PG Cleland JG Cloete PPJ Coetser C Cole-Morgan J Darling R Driman KJ Fyfe S Gast D Gewer JA Gobetz R Gootkin A Govuza GF Griessel NA Hlatshwayo J Hollesen MGH Honiball MA Hoosen BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg G Johannes S July J Kallmeyer A Kenny NK Kgame R Killoran N Kirby G Koski HA Kotze S Krige CJ Lalitha H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon PD Mashalane H Michael SM Moerane R Moitse C Moraitis B Moti NPA Motsiri CK Mthembu L Naidoo K Neluheni NZP Nkosi BW Ntuli BPF Olivier Z Oosthuizen M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath K Rajah A Ramdhan B Rammala V Ramson K Reddy BR Roothman W Rosenberg NL Scott NI Sewela TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono KP South CI Stevens PO Steyn J Stockwell DH Swart PW Tindle JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe A van Heerden JJ van Niekerk FJ van Tonder D van Wyk JP van Wyk A Vatalidis T Volschenk RN Wakefield L Watson D Wegierski G Wickins DC Willans E Wood BW Workman-Davies **Consultants** DH Rabin



- 4 Our clients' commitment to date is evidenced from the exhaustive (and ongoing) attempts to achieve consensus as particularised, in part, in the affidavits delivered by our clients in the pending conversion application.
- 5 Our clients accept that your client is actively promoting a solution to advance and ultimately achieve a rescue of THL. Numerous other parties have begun to engage with our clients with precisely the same ultimate objective. Our clients are obliged to consider all viable proposals received and to advance them in the prescribed manner with the same objective. The impression you have sought to create is that your client stands alone in its desire to rescue THL. That is, with respect, not the case at all.
- 6 The Vision Plan remains extant but you are aware that it is incapable of implementation (whether substantially or at all) as a consequence of the failure of certain of the conditions precedent in the various sales agreement which, despite your protestation to the contrary, your client has refused to revive and/or extend.
- 7 As regards the ancillary matters which you raise, including "*the high interest rate*", there is an inconsistency and hypocrisy in these assertions advanced by Vision and the interest rate it charges. Whilst this may be a matter for discussion, it has become an issue between Vision and IDC and our clients can only attempt to facilitate a resolution, should circumstances permit.
- 8 As regards your letter dealing with "*Suspension of Security Cession Rights*" -
 - 8.1 we disagree with the assertion that our clients' suspension is not competent;
 - 8.2 for the avoidance of doubt, the historically communicated suspension is hereby extended to all obligations including those referenced in the subject letters; and
 - 8.3 should your client resolve to take any action as threatened, such action will be resisted by our clients.
- 9 Insofar as the *ex parte* order obtained in Botswana is concerned, we are advised by our clients' legal representatives in Botswana that the order was improperly sought and obtained, both procedurally and substantively, and is accordingly liable to be rescinded and set aside by the Botswana courts upon application.
- 10 We hold clear instructions to institute an application for the rescission and setting aside of the said *ex parte* order, together with an application for an appropriate costs order against your client and any other parties responsible for procuring the order without our client's knowledge and the exercise of their rights to respond to the application.
- 11 In the circumstances, we call upon your client, on or before close of business on Tuesday, 28 April 2026, to confirm in writing that it will:
 - 11.1 abandon and withdraw reliance upon the *ex parte* order; alternatively

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- 11.2 pending the determination of the rescission application, refrain from taking any steps whatsoever pursuant to the order, including but not limited to any sale, transfer, disposal, encumbrance, or other dealing with the attached shares or any attempt to enforce rights arising from such attachment.
- 12 Should your client fail to provide such confirmation within the time stated above, our instructions are to proceed without further notice with the necessary rescission proceedings and to seek all appropriate interim and final relief, including urgent relief restraining any disposition of the attached shares pending the final determination of the matter.
- 13 This correspondence will be sent to your client's Botswana legal representatives who procured the *ex parte* order, for their information and to ensure there is no misunderstanding regarding our clients' position and the consequences of any continued reliance on the order.
- 14 Our clients' rights remain fully reserved.

Yours faithfully

Werksmans Inc

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

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"THK"



Co. Name: **Stein Scop Attorneys Inc.**
Registration No: **2015/306625/21**
Landline: **+2711 380 8080**
Email: **casper@steinscop.com**
Direct: **+2711 380 8080**
Mobile: **+2783 580 2604**
Our ref: **TER2/0004/C Badenhorst**
Your ref: **Mr D Hertz/Mr D Andropoulos/
Mrs L Silberman/lf/TONG7430.26/
#11628475v1**

Date: 30 April 2026

Werksmans Attorneys

Attention: **D Hertz
D Andropoulos
L Silberman**

Per Email: **dhertz@werksmans.com
dandropoulos@werksmans.com
lsilberman@werksmans.com**

Dear Sirs

Tongaat Hulett Limited (in business rescue)

1. We act for Vision Investments 155 (Pty) Ltd (**Vision**) and Bowwood and Main No. 296 (RF) (Pty) Ltd (**Bowwood**).
2. We refer to your letter of 24 April 2026 (**your Letter**) in response to our letter of 22 April 2026 (**our 22 April Letter**).
3. Our clients' position remains as recorded in our 22 April Letter, which we do not intend to repeat. Accordingly, this letter is supplementary only. Save where expressly stated otherwise below, all allegations contained in your Letter and not specifically answered herein are denied.
4. We are instructed as follows:

Suspension of Obligations

- 4.1 Your Letter records, without any substantive explanation, that your clients "*disagree*" with our clients' position that the purported suspension is incompetent, and then purports to extend the "*historically communicated suspension*" to "*all obligations including those referenced in the subject letters*".
- 4.2 That formulation is impermissibly vague, overbroad and legally untenable. It is no substitute for identifying the particular obligation allegedly suspended, the source of that

Second Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton, Gauteng, 2057, South Africa

Directors: **G Stein; B Scop; S van der Weele; S Buckas; C Badenhorst; B Roxburgh and J Brasler**
Consultants: **A Berman; N Napier and A Rakitzis Ho** | Senior Associates: **L Grobler; S Meades and L Brabant**
Associates: **B Badenhorst; J Erasmus; N Lekena and M Vieira**
Chief Operating Officer: **Y de Waal** | Chief Financial Officer: **F Smit**

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obligation, and the basis upon which your clients contend that such steps can interfere with accrued enforcement and preservation rights held by Bowwood.

- 4.3 Our clients do not accept the purported suspension or its asserted consequences, and persist in the position recorded in our 22 April Letter, including that your clients' conduct constitutes a repudiation which our clients do not accept. In the circumstances, our clients shall hold your clients to the Security Cession.

Botswana Order

- 4.4 Our clients note your threat to institute rescission proceedings in Botswana in relation to the *ex parte* order obtained there. Our clients do not accept that the order was improperly sought or granted. Our clients' Botswanan legal representatives have advised that the applicable court rules permit *ex parte* relief in appropriate circumstances, and that the court considered the application and granted the order as sought.
- 4.5 If your clients institute rescission proceedings, those proceedings will be opposed. Our clients reserve all rights to oppose such an application and to seek an order for costs.
- 4.6 In any event, the Botswana order does not detract from the underlying security rights arising under the Security Cession. It has been made clear to your clients that the steps taken by our client are for purposes of preserving their security rights, specifically the appointment of representation on the boards. It is, therefore, ill-founded to suggest that there is any need to restrain our client from taking steps which would result in "*any sale, transfer, disposal, encumbrance*".
- 4.7 Bowwood will, therefore, proceed to issue formal instructions to Tongaat Hulett (Botswana) Limited's company secretary in preservation of its security rights as contemplated in clause 8 of the Security Cession.

Information Rights

- 4.8 Our clients' entitlement to information as of right by virtue of the Common Terms Agreement is, once again, incapable of being 'suspended' as your client has purported to do. Moreover, independently of those rights and as a matter of practical necessity, our clients' require information to prepare and update, for your clients' consideration, a proposal that is capable of resulting in the rescue of THL. Certainly our clients' are entitled to whatever information access is being given to third parties and ought not to be treated differentially. In this regard, it is difficult to envisage that third parties, and for that matter the IDC, would be capable of formulating a sensible proposal without access to the type of information that is now being withheld from Vision.
- 4.9 In any event, Vision remains entitled to access under the Common Terms Agreement.
- 4.10 Vision's immediate concern is practical and serious. Management appears willing to engage, but information requests are being routed through your clients. This is causing a delay precisely when Vision needs access to current information to update business plans, assess THL's operational and financial position, engage with the IDC, and formulate or refine a rescue proposal before the hearing on 17 and 18 June 2026.
- 4.11 Your clients are not entitled to create an information bottleneck that prevents Vision from assessing the very rescue outcome they say they remain committed to achieving.

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Chapter 6 contemplates creditor participation and engagement in the business rescue process. Vision accordingly requires access, as has always been the case, to relevant management, financial information and operational information.

- 4.12 Our clients, therefore, call on yours to confirm that Vision will be afforded direct and practical access to the information and personnel reasonably required, at a minimum, for the purpose of formulating an updated proposal, including through management calls, document access, and engagement with the relevant operational and financial teams. Your clients are, as always, welcome to join such discussions.

Vision Plan and alternatives

- 4.13 Your Letter states that the Vision Plan remains extant, but then asserts that it is incapable of implementation given the failure of certain conditions precedent in the underlying sale agreements. Once agreement is reached on a renewed basis to achieve THL's rescue, these sale agreements may be revived and reinstated accordingly (without losing the benefit of the various other milestones achieved under the Vision Plan, including the various approvals).
- 4.14 Vision is, as you acknowledge, actively promoting a solution to advance and ultimately achieve the rescue of THL within the extremely limited time available. Vision will continue to work towards a rescue if a lawful, viable and commercially sensible path exists.
- 4.15 Your clients have acknowledged in the affidavits filed of record that:
- 4.15.1 the initial SEP took approximately 14 months and produced only one credible bidder (Vision);¹
 - 4.15.2 no restructuring can succeed without Vision's cooperation, as the majority secured creditor holding some 75% of the total voting interests;² and
 - 4.15.3 a *de novo* SEP without any realistic timeframe is untenable and an invitation that your clients declined.³
- 4.16 Given your clients' position, our client is surprised that it is now entertaining proposals from unspecified third parties. All stakeholders effectively have 1 ½ months to find a solution, and your clients have acknowledged that a fresh SEP is untenable at this stage. While our clients accept that the Vision Plan's implementation can continue and that, if necessary, the Vision Plan can be amended, they do not necessarily accept that the Vision Plan can be "amended" to introduce an entirely new plan proposer.
- 4.17 Even so, any such third-party proposal will require our clients' support. Given the time constraints attendant on this matter, it is in everybody's interests that you disclose to our clients' the parameters of any such proposal. This is particularly so because in our clients' view, again underscored by the urgency of the matter, the only viable means of achieving THL's rescue is if the three main roleplayers – Vision, the IDC, and the BPRs – work together.

¹ BRPs RA (IDC et al) ¶ 18 010-154, ¶ 91 010-181, ¶ 130.2 010-195.

² BRPs RA (IDC et al) ¶ 81 010-177—8, ¶ 108 010-188.

³ BRPs RA (IDC et al) ¶ 86 and 88 010-180, ¶ 94 010-183.

4.18 In conclusion, it is not in the interests of the stakeholders for our clients' to be at loggerheads with yours at this crucial juncture. Legal issues aside, our clients' should be engaged in as constructive manner as possible, together with the IDC, to find a lasting solution to THL's financial distress. We reiterate that the steps that have been taken or which may be taken by our client in its capacity as secured lender, properly construed, have not been inconsistent with its overall approach, clearly articulated in the affidavits and prior correspondence, that it is committed to the ultimate rescue of THL.

Yours faithfully

C Badenhorst
Director

Sent electronically and therefore unsigned

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