

**JUDGE: NYAMADZABO J.**

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

**CASE NO: UAHGB – 000065 - 26**

In the matter between:

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

**TONGAAT HULETT (BOTSWANA)** Second Applicant  
**PROPRIETARY LIMITED**

**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)** Respondent  
**PROPRIETARY LIMITED**

*In re:*

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

and

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

**TONGAAT HULETT (BOTSWANA)** Second Respondent  
**PROPRIETARY LIMITED**

**TREVOR JOHN MURGATROYD N.O.** Third Respondent

**PETRUS FRANCOIS VAN DEN STEEN N.O.** Fourth Respondent

**GERHARD CONRAD ALBERTYN N.O.** Fifth Respondent

**FILING NOTICE**

AT MUZA ATTORNEYS  
**RECEIVED**  
DATE: 21/06/26 TIME: 3:23 PM  
NAME: M. CHIMBO 2A

**BE PLEASED TO TAKE NOTICE** that Applicants' files herewith its:

- 1. Replying Affidavit of Gerhard Conrad Albertyn N.O; and

2. Confirmatory Affidavit of Sipho Ziga.

**DATED AT GABORONE THIS 2<sup>ND</sup> DAY OF JUNE 2026.**



**ARMSTRONGS ATTORNEYS**  
Applicants' Attorneys  
Prime Plaza, Plot 74538,  
Cnr Khama Crescent  
Ext & PG Matante, New CBD  
Khama Crescent  
PO Box 1368  
**GABORONE**  
**TB/mfm/M02649)**

**TO: THE REGISTRAR**  
The High Court  
Private Bag 00220  
**GABORONE**

**AND TO: AT MUZA ATTORNEYS**  
Respondent's Legal Practitioners  
Plot 22964, Phase 4,  
P O Box 45075, Fairgrounds  
**GABORONE**  
**(0337/24/ATM)**

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and

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

*In re:*

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

and

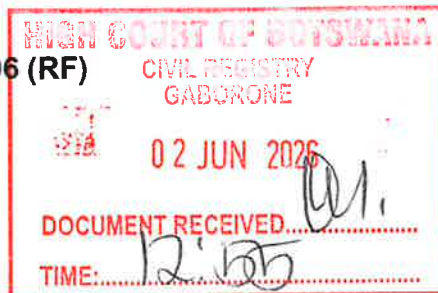
**TONGAAT HULETT LIMITED** First Respondent  
**(IN BUSINESS RESCUE)**

**TONGAAT HULETT (BOTSWANA)** Second Respondent  
**PROPRIETARY LIMITED**

**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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**APPLICANTS' REPLYING AFFIDAVIT**

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I, the undersigned,

**GERHARD CONRAD ALBERTYN N.O.,**

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do hereby make oath and state as follows:

1. I am the Fifth Applicant in the above proceedings and one of the duly appointed joint business rescue practitioners (“the business rescue practitioners” / “the BRPs”) of the First Applicant, Tongaat Hulett Limited (in business rescue) (“THL” / “Tongaat”).
2. The facts deposed to herein are, save where the context indicates otherwise or where I state that I rely upon information received, within my personal knowledge and are to the best of my knowledge and belief both true and correct.
3. Where I make submissions of a legal nature, I do so on the advice of the Applicants’ legal practitioners, which advice I verily believe to be correct.
4. I am duly authorised to depose to this replying affidavit on behalf of all of the Applicants. I have read the Respondent’s answering affidavit deposed to by Candice Rachel Risi (“Risi”), and I respond thereto herein.
5. Save where I expressly admit an allegation contained in the answering affidavit, each and every such allegation is denied as though specifically traversed, and the Respondent is put to the proof thereof.
6. Where I do not deal with a particular allegation, that must not be construed as an admission of the correctness thereof, but rather as a denial.
7. In order to avoid prolixity, I do not repeat the contents of the founding affidavit, instead, I incorporate the contents of the founding affidavit herein as if specifically traversed herein, and I persist in each of the averments made therein.

**PRELIMINARY OBSERVATIONS**

8. The Applicants aver that the Respondent’s opposition to the rescission application is, at its core, misconceived.

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9. In short, the Applicants persist with their application, and maintain that it falls to be granted, for one or more of the following reasons:

9.1. the *ex parte* order was sought and granted, in final form and without any *rule nisi* or return date, against parties who were cited and who are directly and substantially affected by it, without notice and without any opportunity to be heard, in breach of the *audi alteram partem* principle;

9.2. the Respondent failed to discharge the heightened duty of full and frank disclosure owed by a party seeking *ex parte* relief, having failed to place before this Honourable Court material facts weighing against the relief, including that the business rescue practitioners did not consent to the *ex parte* order in Botswana, that the Second Applicant is a Botswana company whose rights are directly affected, that the order is not a money judgment, and that the affected assets are situated in, and governed by the law of, Botswana;

9.3. the consent given by the Third to Fifth Applicants to the perfection order in the South African proceedings did not, and could not, constitute consent to, or a waiver of any rights in respect of, the separate Botswana proceedings;

9.4. the South African perfection order is not a final and conclusive money judgment registrable under Part II of the Judgments (International Enforcement) Act, Cap 11:04, and at common law it was not directly enforceable but could at most found a cause of action to be instituted on notice, pleaded and proved, none of which the Respondent did;

9.5. the creation and perfection of security over movable property situated in Botswana is governed by Botswana law, such that the recognition and enforcement of the South African order is an impermissible attempt to circumvent that mandatory statutory regime, contrary to the *lex situs* and to public policy; and

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- 9.6. in the premises, the *ex parte* order was erroneously sought and/or erroneously granted within the meaning of Order 48 Rule 1(a), alternatively good and sufficient cause exists for its rescission at common law.
10. The Applicants' case is, and has always been, that the *ex parte* order granted on the 26<sup>th</sup> February 2026 ("the *ex parte* order") was sought and obtained without notice to parties who were cited and who are directly and substantially affected thereby, and without the disclosure to this Honourable Court of all material facts as is required of a party seeking relief *ex parte*. The answering affidavit does not meaningfully engage with, much less answer, these fundamental deficiencies.
  11. The Applicants aver that the Respondent's repeated reliance upon the fact that the Third to Fifth Applicants consented to the perfection order in the South African proceedings is misplaced and conflates two separate and distinct sets of proceedings, brought in two different jurisdictions.
  12. The consent given in the South African proceedings cannot, in law or in fact, constitute consent to the Botswana proceedings, nor a waiver of the Applicants' right to be heard before this Honourable Court, which proceedings are governed by this Court's own Rules and by the principles of natural justice.
  13. The Applicants further aver that the Respondent's own characterisation, in the answering affidavit, of the *ex parte* application as a "cumulative measure" taken to protect its position "if the SA order was recognised by a Botswana court" is a telling concession. It is an acknowledgement that recognition by a court of this jurisdiction, by means of proper proceedings, was necessary, which is precisely the process that required notice to the Applicants and the fullest disclosure to this Honourable Court.
  14. The Applicants aver that the answering affidavit consists, in substantial part, of bare denials which do not engage with the specific factual and legal grounds advanced in the founding affidavit.

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15. I am advised by the Applicants' attorneys of record that a bald denial, unsupported by any countervailing facts, does not raise a genuine dispute capable of defeating the relief sought.

**AD SERIATIM RESPONSE TO THE ANSWERING AFFIDAVIT**

16. **AD PARAGRAPHS 1 – 3**

- 16.1. The contents of these paragraphs are admitted only insofar as they record the identity, capacity and authority of the deponent.
- 16.2. Save as aforesaid, the contents are noted and call for no substantive response.
- 16.3. The Applicants aver that Risi acts solely in her capacity as the sole director of the Respondent and accordingly has no personal or independent knowledge of the events giving rise to these proceedings, or of what was placed before this Honourable Court in the *ex parte* application, beyond that which has been conveyed to her.

17. **AD PARAGRAPH 4**

The contents of this paragraph are admitted only insofar as they correctly describe the relief sought by the Applicants in Part B of the application, being the rescission and setting aside of the *ex parte* order. The balance of the paragraph is noted and calls for no substantive response.

18. **AD PARAGRAPH 5**

- 18.1. The contents of this paragraph are noted.
- 18.2. The Applicants record that, where the Respondent has elected not to deal with an averment, the Applicants' averment stands undisputed,

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and the Applicants reserve the right to rely thereon at the hearing of this matter in due course.

19. **AD PARAGRAPH 6**

- 19.1. The contents of this paragraph are noted.
- 19.2. The Applicants aver that the Respondent's opposition must stand or fall upon that which was placed before this Honourable Court in the *ex parte* application.
- 19.3. To the extent that the answering affidavit seeks to introduce facts or justifications which were not disclosed to the Court when the *ex parte* order was sought, such facts cannot cure the non-disclosure of which the Applicants complain, and the Applicants reserve the right to deal therewith.

20. **AD PARAGRAPH 7**

- 20.1. The contents of this paragraph are noted.
- 20.2. The Applicants aver that the Respondent's incorporation, by reference, of its founding affidavit in the *ex parte* application does not assist the Respondent.
- 20.3. On the contrary, it underscores that this Honourable Court exercised its discretion to grant final relief on the strength of the Respondent's papers alone, and in the absence of the Applicants' version.
- 20.4. To the extent that the said affidavit failed to place all material facts before the Court, or was misleading, the Applicants' case for rescission is reinforced.

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21. **AD PARAGRAPHS 8 – 10**

- 21.1. The contents of these paragraphs are admitted only insofar as they record that, on the 15<sup>th</sup> November 2022, the Respondent instituted an urgent application in the High Court of South Africa to perfect the general notarial bonds over the movable assets of the First Applicant and its related entities, that a *rule nisi* was issued on the 17<sup>th</sup> November 2022 and that the *rule nisi* was confirmed on 16<sup>th</sup> May 2023.
- 21.2. The Applicants aver that it is of considerable significance that, when the Respondent approached the High Court of South Africa for the urgent perfection of the bonds, it provided for a *rule nisi* and a return date, thereby affording the affected parties an opportunity to be heard.
- 21.3. Inexplicably, the Respondent did not do so when it approached this Honourable Court, but instead sought and obtained final relief on an *ex parte* basis and without any return date. The Respondent's conduct in the two jurisdictions is irreconcilable and quite clearly telling of the *bona fide* of the Respondent's *ex parte* application.

22. **AD PARAGRAPH 11**

- 22.1. The contents of this paragraph are admitted in part and denied in part.
- 22.2. The Applicants admit that the Respondent holds security in terms of the general notarial bonds registered and governed by the laws of the Republic of South Africa, and that, consequent upon the granting of the *ex parte* order, the Respondent took steps to exercise rights in Botswana.
- 22.3. Save as aforesaid, the contents are denied, and the Respondent is put to the proof thereof.
- 22.4. The Applicants aver that the existence of the security, and of the South African perfection order, does not, without more, entitle the Respondent

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to enforce that security against assets situated in Botswana. Such enforcement requires recognition by this Honourable Court, by means of proper proceedings brought on notice to the affected parties and upon full disclosure of all material facts. The Respondent did neither.

23. **AD PARAGRAPH 12**

- 23.1. The contents of this paragraph are admitted in part and denied in part.
- 23.2. The Applicants admit that the South African orders were granted under South African law and with the consent of the Third to Fifth Applicants, in their capacities as the business rescue practitioners, such consent being required in terms of Chapter 6 of the South African Companies Act 71 of 2008.
- 23.3. Save as aforesaid, the contents are denied, and the Respondent is put to the proof thereof.
- 23.4. The Applicants aver that the consent given in the South African proceedings does not constitute consent to, or a waiver of any rights in respect of, the separate Botswana proceedings, which were instituted without notice to the Applicants approximately three years later, and on urgency.

24. **AD PARAGRAPH 13**

- 24.1. The contents of this paragraph are noted.
- 24.2. The Applicants aver that the existence of liquidation proceedings in South Africa neither justifies nor excuses the Respondent's failure to give notice of the Botswana *ex parte* proceedings to the Applicants.
- 24.3. If anything, the pendency of those proceedings, and the statutory moratorium upon enforcement imposed by section 133 of the South African Companies Act, were themselves material facts bearing upon

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the relief sought and upon the authority of the business rescue practitioners, which ought to have been disclosed to this Honourable Court and were not.

25. **AD PARAGRAPH 14**

25.1. The contents of this paragraph are denied, and the Respondent is put to the proof thereof.

25.2. The Applicants aver that the Respondent's characterisation of the *ex parte* application as a "cumulative measure" taken upon legal advice does not answer the substantive complaint, namely that material facts were not disclosed to this Honourable Court, and that the Applicants were not afforded notice.

25.3. A concern to preserve or protect security, and any urgency attendant thereupon, does not diminish the duty of the utmost good faith and of full and frank disclosure that is incumbent upon a party approaching a court *ex parte*.

25.4. Moreover, and as set out above, the Respondent's own framing of the application as merely "cumulative" is an admission that recognition by this Honourable Court, upon proper process, was the true and necessary route.

26. **AD PARAGRAPHS 15 – 15.3**

26.1. The contents of these paragraphs, and each of the grounds of opposition summarised therein, are denied, and the Respondent is put to the proof thereof, for the reasons set out in the founding affidavit and elaborated upon herein.

26.2. The Applicants deny that there was no obligation to give notice of the *ex parte* proceedings.

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- 26.3. The Applicants aver that the duty of full and frank disclosure in *ex parte* proceedings is well established, and that where an applicant is aware of an interested party, still more where, as here, that party has been cited, such party ought to be given notice, alternatively the applicant must place before the Court cogent reasons for the omission. Neither course was adopted by the Respondent.
- 26.4. Furthermore, the Applicants deny that the complaint is "inconceivable". The averment conflates two separate sets of proceedings in two separate jurisdictions.
- 26.5. The Botswana application was a fresh application, before a different court, governed by different laws.
- 26.6. The prior South African consent does not constitute consent to the Botswana proceedings, nor does it dispense with the duty to give notice or to make full disclosure to this Honourable Court.
- 26.7. In any event, the South African Order does not and could not have related to assets outside of the territorial jurisdiction of that Court.
- 26.8. As to paragraph 15.3: The Applicants deny that the competence of the South African court to determine the perfection application renders it impermissible for this Honourable Court to enquire into whether the requirements for recognition and enforcement in Botswana, were satisfied, and whether the application was properly brought.
- 26.9. The recognition of a foreign order is not a rubber-stamp exercise. This Honourable Court was both entitled and obliged to satisfy itself that the requirements for recognition had been met, an enquiry it could not properly undertake in the absence of the Applicants and upon incomplete disclosure.
- 26.10. There currently exist a final order against the Applicants, affecting them, and they were not afforded an opportunity to be heard.

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26.11. The Applicants aver further that the Respondent's reliance upon the General Notarial Bonds perfection order does not extend to the security over the THB shares. The security over those shares is governed by a separate Security Cession and Pledge, which was not placed before this Honourable Court in the *ex parte* application. The Respondent itself acknowledges, at paragraph 14 of the answering affidavit, that the THB shares are held under both the General Notarial Bonds and a Security Cession and Pledge. The General Notarial Bonds alone, and the South African perfection order in respect thereof, do not and cannot encompass the THB shares, and the BRPs' consent to the perfection of the General Notarial Bonds was not consent to the perfection of separate security governed by the Security Cession and Pledge.

27. **AD PARAGRAPHS 16 – 17**

27.1. The contents of these paragraphs are noted and call for no substantive response.

27.2. The Applicants likewise reserve the right to advance full legal argument at the hearing of this matter.

28. **AD PARAGRAPH 18**

28.1. The contents of this paragraph are noted.

28.2. The Applicants aver that the Respondent raises no issue in respect of paragraphs 1 to 10 of the founding affidavit, the contents whereof accordingly stand unchallenged.

29. **AD PARAGRAPH 19**

29.1. The contents of this paragraph are noted.

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29.2. The Applicants aver that the Respondent's bare denial that the Applicants are entitled to relief, unaccompanied by any substantive engagement with paragraphs 11 to 15 of the founding affidavit, does not raise a genuine dispute, and that the averments contained in those paragraphs are maintained in full.

30. **AD PARAGRAPH 20**

30.1. The contents of this paragraph are denied and the Respondents are put to strict proof thereof.

30.2. Specifically, the Applicants deny that no notice was necessary by reason of the Third to Fifth Applicants having consented to the South African perfection order. The Applicants aver, as set out above, that consent in the South African proceedings does not constitute consent to, or a waiver of rights in, the separate Botswana proceedings.

30.3. The Applicants deny that the desire to preserve and protect the security under the Security Cession and Pledge justified the failure to disclose material facts, or the failure to give notice. The Applicants aver that urgency of purpose does not reduce the duty of candour owed to a court in *ex parte* proceedings nor does it truncate the rights of the Applicants to be heard.

30.4. The Applicants deny that no material facts were omitted. The Applicants aver that the founding affidavit identifies, with specificity, the material facts that were not placed before this Honourable Court, namely:

30.4.1. that the business rescue practitioners did not consent to the granting of the *ex parte* order in Botswana;

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30.4.2. that the Second Applicant, a company incorporated and registered in Botswana, has rights and interests directly affected by the relief;

30.4.3. that the South African perfection order is not a money judgment, and is therefore not registrable under Part II of the Judgments (International Enforcement) Act, Cap 11:04; and

30.4.4. that the assets sought to be affected are situated in Botswana and are governed by Botswana law. The Respondent's failure to engage with the above identified omissions is conspicuous.

31. **AD PARAGRAPH 21**

31.1. The contents of this paragraph are noted.

31.2. The Applicants aver that the Respondent raises no substantive issue in respect of paragraphs 21 to 25 of the founding affidavit, the averments whereof are maintained in full.

32. **AD PARAGRAPH 22**

32.1. The contents of this paragraph are denied, and the Respondent is put to the proof thereof.

32.2. The Applicants aver that the contention that it is "unclear" what is referred to in paragraphs 26 to 27 of the founding affidavit is without merit.

32.3. The founding affidavit explains, with precision, the nature of a general notarial bond and the effect of the perfection order, including its implications for assets situated in Botswana.

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32.4. If the Respondent genuinely professes not to understand those averments, that serves only to heighten the Applicants' concern as to the adequacy of the disclosure that the Respondent made to this Honourable Court in the *ex parte* application.

33. **AD PARAGRAPH 23**

33.1. The contents of this paragraph are noted.

33.2. The Applicants aver that the exclusion of a *rule nisi* and a return date was a material deficiency in the *ex parte* proceedings, and that the explanations advanced by the Respondent for that omission do not constitute adequate justification. This will be addressed in argument.

33.3. The Applicants aver that the BRPs' consent was given to the South African orders in the proceedings to perfect the General Notarial Bonds, under South African law. That consent was not, and could not have been, consent to having those orders recognised and enforced in Botswana *ex parte* and without notice, three years later. Nor did it constitute consent to the perfection of security over the THB shares, which is governed by the separate Security Cession and Pledge, a copy of which is attached marked "RA1". To have the South African order recognised in Botswana, the Respondent was required to bring proper proceedings on notice to the Applicants with full and frank disclosure to this Honourable Court.

34. **AD PARAGRAPHS 24 – 24.6**

34.1. The contents of these paragraphs are denied and the Respondent is put to strict proof thereof.

34.2. The Applicants deny that it makes no difference that the order sought to be recognised was not a judgment or writ capable of direct execution.

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- 34.3. The Applicants aver that the nature of the order is central to the test for recognition and enforcement, under both the common law and the Judgments (International Enforcement) Act, Cap 11:04, Section 3(2) of which requires a final and conclusive judgment under which a sum of money is payable. The perfection order is not such a judgment; it concerns the perfection of a general notarial bond.
- 34.4. The Applicants admit that the Respondent has correctly recited the common-law requirements for the enforcement of a foreign judgment. The Applicants deny, however, that the mere recitation of those requirements establishes that the facts necessary to satisfy them were placed before this Honourable Court. The Applicants aver that material facts relevant to the jurisdictional basis for the relief, and to the true nature of the order, were not fully and frankly disclosed.
- 34.5. The Applicants admit that there is no general requirement, applicable in every case, that enforcement proceedings be served, and the Applicants do not contend for any such general rule. The Applicants aver, however, that in the particular circumstances of this matter, where the affected parties were cited, identifiable and readily available, the failure to give notice constituted a breach of the duty of full and frank disclosure and of the principles of natural justice; and that, at common law, a foreign order may be relied upon only by the institution of proceedings on notice to the affected parties, in which the order is pleaded and the requirements for recognition are proved.
- 34.6. The Applicants deny that the consent of the Third to Fifth Applicants to the South African process dispensed with the need for notice in the Botswana proceedings, for the reasons already stated.

35. **AD PARAGRAPH 25**

- 35.1. The contents of this paragraph are noted.

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- 35.2. The Applicants aver that the correspondence exchanged between the parties' legal representatives demonstrates that the Respondent was well aware of the Applicants' interest in the matter and of their entitlement to be heard yet nonetheless proceeded without notice.
- 35.3. That correspondence further records that, notwithstanding the Applicants' request on the 1<sup>st</sup> April 2026 for a copy of the *ex parte* application, the Respondent furnished the application only on the 14<sup>th</sup> April 2026, contending that it was "bulky".

36. **AD PARAGRAPH 26 – 26.3**

- 36.1. The contents of these paragraphs are wholly denied and the Respondent is put to strict proof thereof.
- 36.2. The Applicants deny that the Respondent was under no obligation to disclose the circumstances which it considered in seeking the order. The Applicants aver that the duty of candour owed to a court in *ex parte* proceedings extends to placing before the Court all material information, including information adverse to the applicant's own case.
- 36.3. The Applicants further deny that the granting of the order establishes that due consideration was given upon a complete picture; the Court's discretion was, of necessity, exercised upon the incomplete and one-sided record placed before it by the Respondent.
- 36.4. The Applicants admit that they became aware of the *ex parte* order on or about the 31<sup>st</sup> March 2026. The Applicants deny that this assists the Respondent.
- 36.5. The Applicants aver that the issue is not whether they became aware of the order after it had been granted, but whether the order ought to have been sought without notice in the first instance; prior knowledge of a wrongly obtained order does not cure the wrong.

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36.6. The Applicants further aver that any lapse of time is fully explained: the *ex parte* application was requested on the 1<sup>st</sup> April 2026 and was furnished only on the 14<sup>th</sup> April 2026, whereafter the Applicants acted with due expedition.

37. **AD PARAGRAPH 27**

37.1. The contents of these paragraphs are denied and the Respondent is put to strict proof thereof.

37.2. The Applicants persist in their averment that the order was erroneously granted without notice to the Applicants.

37.3. The founding affidavit sets out, in full, the basis upon which the order was erroneously sought and erroneously granted, and the Respondent has failed to engage substantively with those grounds.

37.4. The Applicants admit that recognition and enforcement proceedings do not constitute a rehearing of the merits of the foreign proceedings, however, the Applicants deny, that this precludes this Honourable Court from enquiring into whether the conditions for recognition and enforcement were satisfied, and whether the application was properly brought before it.

37.5. The Applicants further aver that the South African perfection order is not a final and conclusive money judgment of the kind capable of recognition and registration in the manner sought.

37.6. The Applicants deny that there was no need for them to be heard before the order was granted.

37.7. The Applicants aver that they were known to the Respondent and were cited as parties, and that the failure to afford them notice offends the *audi alteram partem* principle and constitutes a ground for rescission in terms of Order 48 of the Rules of this Honourable Court.

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38. AD PARAGRAPHS 28 – 28.4

- 38.1. The contents of these paragraphs are denied and the Respondent is put to the proof thereof.
- 38.2. The Applicants admit the common-law requirements recited. The Applicants aver that the Respondent's reliance upon the common law is itself an acknowledgement that the perfection order does not fall within the ambit of the Judgments (International Enforcement) Act, and that it was, therefore, not registrable or enforceable as though it were a judgment of this Honourable Court.
- 38.3. Furthermore, I am advised by the Applicants' attorneys of record that in Botswana, the order could be relied upon only as the basis of a cause of action, on notice, and not by way of final *ex parte* relief.
- 38.4. The Applicants admit that the South African *rule nisi* issued on the 17<sup>th</sup> November 2022 and confirmed on 16 May 2023 constitutes a final order, as between the parties thereto in South Africa. The Applicants deny however, that this renders the order directly enforceable in Botswana, or that it is of a nature capable of recognition and enforcement in the manner sought.
- 38.5. The Applicants aver that the Second Applicant is a separate juristic person incorporated and registered in Botswana, that it was not a party to the South African perfection proceedings, and that its shares and rights, being situated in Botswana, cannot be affected by the South African order without due process under Botswana law.
- 38.6. The Applicants deny that recognition of the order is not contrary to public policy, and the Respondent is put to the proof thereof.
- 38.7. The Applicants aver that the enforcement of the order in the manner sought would be contrary to public policy, in that it would give extra-

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territorial effect to a South African security instrument, bypass Botswana's own framework for the creation, registration, perfection and enforcement of security over assets situated in Botswana, and confer upon the Respondent an undisclosed and unregistered priority over local creditors.

39. **AD PARAGRAPH 29 - 29.3**

39.1. The contents of these paragraphs are denied, and the Respondent is put to the proof thereof.

39.2. As to paragraph 29.2: The Applicants deny that the non-compliance of the Risi affidavit with Order 13 Rule 5(a) is a mere "irregularity in form" incapable of occasioning prejudice.

39.3. The Applicants aver that, in *ex parte* proceedings, an applicant is obliged to place proper, regular and admissible evidence before the Court, and that the omission of the time at which the oath was administered is a material defect. Had this Honourable Court been alerted to the defect, it may not have granted final *ex parte* relief upon the strength of a non-compliant affidavit.

39.4. The Applicants deny that the same result would have been obtained had the issue been raised and aver that the contention is speculative and self-serving, and that the Respondent cannot pre-empt the exercise of this Honourable Court's discretion. Had the Applicants been heard, and had the defect been disclosed, the outcome may well have differed and that on its own warrants a rescission of the *ex parte* Order.

40. **AD PARAGRAPHS 30 – 30.2**

40.1. The contents of these paragraphs are denied in part, and the Respondent is put to the proof thereof.

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40.2. The Applicants admit that the hearing of an application for recognition and enforcement does not, of itself, involve a rehearing on the merits of a matter properly decided by a competent foreign court, however, the Applicants aver that they do not seek any such rehearing. The Applicants seek to vindicate their right to be heard in the Botswana proceedings, and to have this Honourable Court determine whether full and frank disclosure was made and whether the requirements for recognition were satisfied.

40.3. Furthermore, the propriety or impropriety of that order can be ventilated in due course after affording the Applicants audience.

40.4 The Applicants aver that the answering affidavit fails to engage substantively with paragraph 73.7 of the founding affidavit, other than by way of outright denial. That paragraph is central to the Applicants' case, as it forms the foundation for the two-instrument argument (General Notarial Bonds and Security Cession and Pledge), the perfection steps required for the THB shares, and the restrictions imposed by the shareholders agreement. The bare denial does not constitute a substantive response, and those averments accordingly stand unchallenged.

41. **AD PARAGRAPH 31 – 31.3**

41.1. The contents of these paragraphs are denied, and the Respondent is put to the proof thereof.

41.2. The Applicants deny that no notice was required. In fact, the Applicants aver that the duty to give notice, in the circumstances of this matter, is well founded in law and in principle.

41.3. The Applicants deny that the orders were not granted contrary to natural justice and deny that the consent of the business rescue

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practitioners in the South African court cured the want of notice in Botswana.

41.4. The Applicants aver that the South African consent cannot be transposed into the Botswana proceedings, and that the Applicants were entitled to be heard by this Honourable Court before orders affecting assets situated in Botswana were granted.

42. **AD PARAGRAPH 32**

42.1. The contents of these paragraphs are denied, and the Respondent is put to the proof thereof.

42.2. The Applicants deny that the *ex parte* order is not liable to be rescinded. In fact, the Applicants aver that the founding affidavit sets out, in full, the legal and factual basis upon which the order falls to be rescinded, with which the Respondent has failed adequately to engage.

42.3. The Applicants admit that the South African order authorised the Respondent, its duly authorised agents or the Sheriff to take possession of the movable assets of the Tongaat Debtors "wheresoever situate", with the consent of the business rescue practitioners.

42.4. The Applicants aver that the purported reach of the South African order to assets situated outside South Africa is precisely the question that required the consideration of this Honourable Court, on notice to the affected parties.

42.5. The Applicants further aver that a South African general notarial bond, being a creature of the South African Security by Means of Movable Property Act 57 of 1993, has no extra-territorial effect, and cannot, of its own force, create or perfect enforceable security over assets situated in Botswana.

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- 42.6. The Applicants aver that the knowledge of the business rescue practitioners of the statutory moratorium is not equivalent to a waiver of the right to be heard in the separate Botswana proceedings, and that the moratorium was itself a material fact which ought to have been disclosed to this Honourable Court.
- 42.7. The Applicants aver that the relevance, if any, of the assertion that the business rescue practitioners have not sought recognition within this jurisdiction will be addressed in argument. It is, in any event, irrelevant to the question of whether the Respondent complied with its obligations as a party seeking *ex parte* relief and whether or not the *ex parte* order ought to have been granted.
- 42.8. The Applicants deny that the information alleged to be material was placed before this Honourable Court and considered, and the Respondent is put to the proof thereof. The Applicants aver that the founding affidavit identifies, with specificity, the material information that was omitted from the *ex parte* papers, and that the Respondent's bare assertion to the contrary does not answer that complaint.
- 42.9. The Applicants aver that the security package concluded on 3 December 2021 comprised General Notarial Bonds, Mortgage Bonds and a separate Security Cession and Pledge (annexure "RA1") Only the General Notarial Bonds were placed before this Honourable Court in the *ex parte* application. The Security Cession and Pledge governs the security over the THB shares and was not disclosed. The General Notarial Bonds contain no provisions dealing with shares and were never intended to secure the THB shares. The South African perfection order, granted in respect of the General Notarial Bonds, does not and cannot extend to the THB shares.
- 42.10. Furthermore, the Respondent's *ex parte* founding affidavit relied solely on the General Notarial Bonds and the South African perfection order and made no reference to the Security Cession and Pledge. The

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answering affidavit now invokes both the General Notarial Bonds and the Security Cession and Pledge (paragraph 14 and paragraph 20.3). The Respondent's letter of 4 May 2026 to THB's company secretary asserts rights under the Security Cession and Pledge without reference to the General Notarial Bonds or the *ex parte* order. This amounts to a tacit acknowledgement that the General Notarial Bonds alone cannot perfect security over the THB shares, and that the *ex parte* order therefore cannot do so either.

- 42.11. Under the Security Cession and Pledge, perfecting security over the THB shares required THL to deliver share certificates and signed blank transfer forms to the Respondent and to obtain directors' resolutions and acknowledgements. On the Respondent's own version (Part A opposing affidavit, paragraph 19), the certificates are held by THL in South Africa and have never been delivered to the Respondent. No pledge over the THB shares has therefore ever been perfected. The Respondent offers no explanation as to how the financing arrangement became effective when the perfection steps for the THB shares were never completed.
- 42.12. In any event, the Security Cession and Pledge required the perfection steps only for shares in members of the South African Group. THB is incorporated in Botswana and is not a member of that Group. The THB shares are accordingly not "Shares" as defined in the Security Cession and Pledge, and no perfection steps under the Security Cession and Pledge were required or applicable in respect of the THB shares.
- 42.13. The Applicants further aver that THL, Starafrika and Hippo Valley are parties to a shareholders agreement governing THB that restricts the transfer of shares and specifically prohibits pledging shares as security. That agreement remains in force. Perfecting security over the THB shares would have required a waiver from the other shareholders, which was never obtained. Those shareholders were never before this Honourable Court, and the existence of the shareholders agreement

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and the restriction it imposes were not disclosed in the *ex parte* application. These are further material facts that ought to have been placed before this Honourable Court.

**CONCLUSION AND PRAYER**

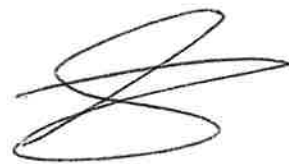
43. In the premises, the Applicants persist in the relief sought in the application, and pray that:

43.1. the Applicants' application for the rescission and setting aside of the *ex parte* order granted by this Honourable Court on the 26<sup>th</sup> February 2026 be granted;

43.2. the Respondent's opposition be dismissed;

43.3. the costs of the application be awarded against the Respondent on the attorney-and-client scale; and

43.4. such further and/or alternative relief as this Honourable Court may deem fit be granted.



GERHARD CONRAD ALBERTYN N.O.

THIS SIGNED AND SWORN TO AT Sandton ON THIS 2  
DAY OF June 2026 AT 10 H 16, THE DEPONENT HAVING  
ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF

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THIS AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH, THAT THE OATH WHICH HE HAS TAKEN IN RESPECT THEREOF IS BINDING ON HIS CONSCIENCE, AND THAT THE CONTENTS OF THIS AFFIDAVIT ARE BOTH TRUE AND CORRECT.

  
\_\_\_\_\_  
COMMISSIONER OF OATHS

MAGDALENA FRANCINA MARGARETHA VAN DER WALT  
Commissioner of Oaths by Appointment  
Reference Number: 1/9/4 10.06.2010  
The Central, 96 Rivonia Road  
Sandton, Johannesburg, 2146

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EXECUTION VERSION

**SECURITY CESSION AND PLEDGE**

entered into between

**THE PARTIES LISTED IN SCHEDULE 1**

(as original cedents)

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 cessionary)

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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**THIS SECURITY CESSION AND PLEDGE** (this "**Agreement**") is entered into between:

- (1) **THE PERSONS LISTED IN SCHEDULE 1** (*Original Cedents*), as pledgors and cedents (the "**Original Cedents**" and each an "**Original Cedent**" as the context may require);
- (2) **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED** (Registration No. 2018/358484/07), a limited liability company duly registered and incorporated in South Africa, as cessionary (the "**Cessionary**"); and
- (3) **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 South Africa, as facility agent (the "**Facility Agent**").

**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. "**Additional Cedent**" means any Additional Guarantor which becomes a party to this Agreement by executing an Accession Letter.

1.1.2. "**Bank Accounts**" means, in respect of each Cedent, any and all of its bank accounts maintained in South Africa from time to time, and all amounts standing to the credit of those accounts from time to time, including, without limitation, the Collection Account, but excluding:

1.1.2.1. any account established by any Ancillary Facility Lender for the purposes of taking cash cover from the Borrower or any other Obligor as contemplated by, and strictly in accordance with the provisions of, clauses 1.3.5, 1.3.7 and 1.3.8 of the Common Terms Agreement (including, without limitation, for the purposes of the repayment or prepayment of Ancillary Facility Outstandings from the proceeds of the enforcement of Transaction Security); and

1.1.2.2. any ring-fenced margining account opened in the name of a Cedent for the purposes of the entry into of a derivative contract under or pursuant to (as applicable) an Ancillary Facility Agreement.

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- 1.1.3. "**Cedent**" means an Original Cedent or an Additional Cedent, and collectively, the "**Cedents**" as the context may require.
- 1.1.4. "**Claim**" means, in respect of each Cedent, each of its current and future claims of whatsoever nature against another person, from time to time, together with the benefit of any security interest given to that Cedent in respect of such a claim.
- 1.1.5. "**Common Terms Agreement**" means the agreement titled "*Common Terms Agreement*" entered into on or about the date hereof between, *inter alios*, the Parties.
- 1.1.6. "**Debt Reduction Transaction Agreement Payments**" means all sums of money whatsoever which are due and/or become due to any Cedent under or in terms of any Debt Reduction Transaction Agreement from time to time, including, without limitation, claims for damages in respect of any breach of, default under or termination of any Debt Reduction Transaction Agreement and including any monies payable in respect of any losses or damage of whatsoever nature, sums paid or payable to any Cedent by any counterparty to such Debt Reduction Transaction Agreement upon termination, variation or cancellation of any Debt Reduction Transaction Agreement and payment of any other sums due to any Cedent by any counterparty under any Debt Reduction Transaction Agreement from time to time.
- 1.1.7. "**Debt Reduction Transaction Agreement Rights**" means all of the present and future right, title and interest of each Cedent, in, under and to any Debt Reduction Transaction Agreement together with:
- 1.1.7.1. all Debt Reduction Transaction Agreement Payments;
- 1.1.7.2. all rights of that Cedent to require, enforce or compel performance of the provisions of any Debt Reduction Transaction Agreement, including, without limitation all rights to give and receive notices, reports, requests and consent to make demands, to exercise discretions, options and elections warranties, remedies, Security, indemnities and other undertakings thereunder and to take all other action, pursuant thereto or in connection therewith; and
- 1.1.7.3. any reversionary interests referred to in clause 4.7.5.
- 1.1.8. "**Effective Date and Time**" shall bear the meaning ascribed thereto in the Second Amendment and Restatement Agreement (Counter Indemnity Agreement).

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- 1.1.9. "Existing Secured Property" shall bear the meaning ascribed to the term "Secured Property" in the Security Cession and Pledge dated 9 December 2019 and entered into between, *inter alios*, the Parties.
- 1.1.10. "Fair Value" of any Secured Property means the value agreed in writing between the Cessionary and the relevant Cedent or, failing agreement within 10 (ten) Business Days after delivery of a notice to the relevant Cedent stating that the Cessionary exercises its rights under clause 8.1 (*Rights of the Cessionary*), the value determined by an independent merchant bank agreed to by the Cessionary and the relevant Cedent (or, failing agreement within 5 (five) Business Days, appointed, at the request of any Party, by the President of the Southern African Institute of Chartered Accountants, or the successor body thereto), which independent accountant shall act as an expert and not as an arbitrator, shall be instructed to make his determination within 10 (ten) Business Days and shall determine the liability for his charges (which shall be paid accordingly), provided that if a determination is manifestly unjust and a court exercises its general power, if any, to correct such determination, all the Parties shall be bound thereby.
- 1.1.11. "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.
- 1.1.12. "Insurance Proceeds" means, in respect of each Cedent, all proceeds of insurance payable to or received by that Cedent under its insurances, whether in respect of claims, by way of return of premium or otherwise, but excluding (a) any third party liability insurance and all amounts received or receivable under or in connection with third party liability insurance and required to settle a liability of that Cedent to a third party, and (b) any business interruption insurances and all amounts received or receivable under or in connection therewith (save for the proceeds of any claim which may be paid under the riot wraparound policy of insurance (policy no. 1240/417) issued by Emerald Risk Transfer Proprietary Limited on account of the civil unrest and/or riots which occurred in South Africa during or around July 2021 and in respect of which the Borrower has submitted a claim, which shall not be excluded from this definition of "Insurance Proceeds").
- 1.1.13. "Insurance Rights" means, in respect of each Cedent, all of that Cedent's right, title and interest (present and future) in and to its Insurance Proceeds and all benefits thereof.
- 1.1.14. "Intellectual Property Rights" means, from time to time, in relation to each Cedent, all of its:

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- 1.1.14.1. trademarks, patents, designs, knowhow, service marks, inventions, trading or business names, domain names, topographical or similar rights;
  - 1.1.14.2. copyrights, data bases or other intellectual property rights; or
  - 1.1.14.3. interests and rights to use (including by way of licence) in the above, in each case whether registered or not.
- 1.1.15. **"Investments"** includes, without limitation, any shares (other than the Shares), debentures, bonds, commercial paper, securities, collective investment scheme participations, certificates of deposit, and all warrants, options and other rights to subscribe for or acquire any of those instruments held by or for the benefit of a Cedent from time to time (whether directly by or to the order of that Cedent, or by any security agent, nominee, fiduciary or clearance system on its behalf).
- 1.1.16. **"Party"** means a party to this Agreement.
- 1.1.17. **"Related Rights"** means, in relation to the Investments, Shares, Shareholder and Group Claims, Bank Accounts, Insurance Rights, Trade Receivables, Claims and Intellectual Property Rights:
- 1.1.17.1. any monies and proceeds (including the proceeds of a disposal or other realisation) accrued or receivable in respect of all or part thereof;
  - 1.1.17.2. all rights and benefits in respect of any agreement for the disposal or other realisation thereof;
  - 1.1.17.3. all contracts, warranties, remedies, Security, indemnities and other undertakings in respect thereof; and
  - 1.1.17.4. any of the reversionary interests referred to in clause 4.7.5.
- 1.1.18. **"Relevant Subsidiary"** has the meaning ascribed thereto in clause 1.1.22.
- 1.1.19. **"Secured Obligations"** means in relation to each Cedent, all present and future obligations and indebtedness of whatsoever nature (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, including any liability to pay damages or pursuant to enrichment) which a Cedent may now or at any time hereafter owe or have towards the Cessionary under or in connection with the Financing Agreements (including the Second Amended and Restated Counter Indemnity Agreement).
- 1.1.20. **"Secured Property"** means, in relation to each Cedent, all of its:

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- 1.1.20.1. Investments;
- 1.1.20.2. Shares;
- 1.1.20.3. Shareholder and Group Claims;
- 1.1.20.4. Bank Accounts;
- 1.1.20.5. Insurance Rights;
- 1.1.20.6. Trade Receivables;
- 1.1.20.7. Intellectual Property Rights;
- 1.1.20.8. Claims;
- 1.1.20.9. Related Rights;
- 1.1.20.10. Debt Reduction Transaction Agreement Rights; and
- 1.1.20.11. Specified Property Sale Agreement Rights,

together with all of that Cedent's rights, title and interests therein and thereto and claims against any person in respect thereof, of whatsoever nature and howsoever arising (whether actual, prospective or contingent, direct or indirect, arising under common law or statute, whether a claim for the payment of money or the performance of another obligation and whether or not those rights and interests were within the contemplation of the Parties at the Signature Date) and, in each case, any property forming part thereof.

1.1.21. "**Shareholder and Group Claims**" means, in relation to each Cedent, all of its current and future claims of whatsoever nature against any member of the South African Group, whether in the form of shareholder loans, other intercompany loans, any other form of credit provided or otherwise, together with the benefit of any Security interest given to that Cedent in respect of those claims.

1.1.22. "**Shares**" means, in relation to each Cedent, all of the shares and securities of which it is or becomes the owner from time to time or which may be issued or transferred to it in future in the share capital of a member of the South African Group (each a "**Relevant Subsidiary**"), including the following:

- 1.1.22.1. all the shares of any class in the share capital of each of its Relevant Subsidiaries;

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1.1.22.2. all other securities in the capital of its Relevant Subsidiaries (including any capitalisation shares or bonus shares issued in respect of the shares referred to in clause 1.1.22.1 above); and

1.1.22.3. any securities issued in substitution or exchange for the securities in clauses 1.1.22.1 and 1.1.22.2 above,

including all dividends (whether paid or unpaid), rights to dividends and voting rights in relation to those shares and securities.

1.1.23. "**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.

1.1.24. "**Specified Property Sale Agreement Payments**" means all sums of money whatsoever which are due and/or become due to any Cedent under or in terms of any Specified Property Sale Agreement from time to time, including, without limitation, claims for damages in respect of any breach of, default under or termination of any Specified Property Sale Agreement and including any monies payable in respect of any losses or damage of whatsoever nature, sums paid or payable to any Cedent by any counterparty to such Specified Property Sale Agreement upon termination, variation or cancellation of any Specified Property Sale Agreement and payment of any other sums due to any Cedent by any counterparty under any Specified Property Sale Agreement from time to time.

1.1.25. "**Specified Property Sale Agreement Rights**" means all of the present and future right, title and interest of each Cedent, in, under and to any Specified Property Sale Agreement together with:

1.1.25.1. all Specified Property Sale Agreement Payments;

1.1.25.2. all rights of that Cedent to require, enforce or compel performance of the provisions of any Specified Property Sale Agreement, including, without limitation all rights to give and receive notices, reports, requests and consent to make demands, to exercise discretions, options and elections warranties, remedies, Security, indemnities and other undertakings thereunder and to take all other action, pursuant thereto or in connection therewith; and

1.1.25.3. any reversionary interests referred to in clause 4.7.5.

1.1.26. "**Trade Receivables**" means, in relation to each Cedent, all the book debts owed to that Cedent by, and all claims of that Cedent against, its trade debtors from time to time.

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**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. PLEDGE AND CESSION IN SECURITY**

**2.1. Pledge and cession**

With effect from the Effective Date and Time, each Cedent pledges and cedes in *securitatem debiti* to the Cessionary all its applicable Secured Property, in each case individually and collectively with all the other Secured Property, as continuing general covering collateral security for the due, proper and punctual payment and performance in full of all the Secured Obligations, on the terms set out in this Agreement, which pledge and cession the Cessionary accepts.

**2.2. Nature of pledge and cession**

2.2.1. The pledge and cession contemplated by this Agreement is intended to operate as a pledge and a cession in security of each part and all of the Shares and the other Secured Property, individually and collectively.

2.2.2. If, for any reason, any Security purported to be created under this Agreement is or becomes illegal, invalid or unenforceable in respect of:

2.2.2.1. some of the Shares or the Secured Property, the pledge of those Shares and the cession of that Secured Property shall be severed from this Agreement; and

2.2.2.2. a particular Cedent, the pledge of Shares and the cession of Secured Property given by that Cedent shall be severed from this Agreement,

and this Agreement and all the Security created over the remainder of the Secured Property shall continue in full force and effect.

2.2.3. The cession contemplated by this Agreement operates as a security cession and not as an outright cession and each Cedent retains bare ownership of its Secured Property, subject to the rights of the Cessionary as secured creditor.

**2.3. Cedents remain liable to perform obligations**

Notwithstanding any other provision of a Financing Agreement, each Cedent shall remain liable to perform all its duties and obligations, whether contractual or otherwise, in respect of

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its Secured Property and nothing in this Agreement or the exercise by a Creditor of any right under a Financing Agreement shall constitute or be deemed to constitute a delegation to or acceptance by a Creditor of any obligation of a Cedent or any other person.

**3. DURATION**

- 3.1. This Agreement and the Security created pursuant to this Agreement:
  - 3.1.1. shall come into full force and effect on the Effective Date and Time without any further action, consent or authority required from any person;
  - 3.1.2. unless expressly otherwise agreed by the Cessionary, shall not terminate before the Final Discharge Date; and
  - 3.1.3. shall remain of full force and effect, notwithstanding any intermediate discharge or settlement of, or temporary fluctuation in, the Secured Obligations.
- 3.2. The Security created under this Agreement over the Secured Property of an Additional Cedent comes into full force and effect on the date of the Accession Letter entered into by it.

**4. REPRESENTATIONS AND WARRANTIES BY CEDENTS**

- 4.1. **General**
  - 4.1.1. Each Cedent makes the representations and warranties set out in this clause 4 to the Debt Guarantor on the Signature Date and on each other day until the Final Discharge Date. References in this clause to "it" or "its" include, unless the context otherwise requires, each Cedent.
  - 4.1.2. The Debt Guarantor enters into the Financing Agreements to which it is a party on the strength of and relying on the representations and warranties set out in this clause 4, each of which is a separate representation and warranty, given without prejudice to any other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing the Debt Guarantor to enter into such Financing Agreements.
- 4.2. **Status**
  - 4.2.1. It is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
  - 4.2.2. It has the power to own its assets and carry on its business as it is being conducted.

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**4.3. Powers and authority**

It has the power to enter into and perform, and has taken all necessary corporate action to authorise the entry into and performance of, this Agreement and the transactions contemplated by this Agreement.

**4.4. Legal validity**

This Agreement:

- 4.4.1. creates the Security it purports to create and is not liable to be avoided or otherwise set aside on its liquidation, sequestration or business rescue or otherwise; and
- 4.4.2. constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms.

**4.5. Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is a party and the establishment of the Transaction Security to which it is a party, do not and will not conflict with:

- 4.5.1. any law or regulation applicable to it;
- 4.5.2. its or any of its Subsidiaries' constitutional documents; or
- 4.5.3. any agreement or instrument binding upon it or any of its Subsidiaries, or any of its or any of such Subsidiaries' assets or constitute a default or termination event (however described) under any such agreement or instrument.

**4.6. Authorisations**

- 4.6.1. All Authorisations required by it in connection with the entry into, performance, validity and enforceability of, the transactions contemplated by and the Security established under, this Agreement have been obtained or effected (as appropriate) and are in full force and effect.
- 4.6.2. If it is required to give notice to or obtain consents or waivers from any person to pledge the Shares and cede the Secured Property under this Agreement, all such notices have been given and consents or waivers obtained before the Closing Date (or, in respect of a person which becomes a Cedent after the Closing Date, before the date of the applicable Accession Letter).

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**4.7. Secured Property**

- 4.7.1. The Secured Property is and will be valid and all rights evidenced thereby or which exist in respect thereof are and will be legally valid, binding and fully enforceable in accordance with their terms in all respects.
- 4.7.2. The Shares are fully paid-up and have been validly allotted and issued or transferred to it in compliance with all applicable laws and regulations.
- 4.7.3. It is and will remain the sole beneficial owner of all of the Secured Property over which it purports to grant Security under this Agreement to the exclusion of all others.
- 4.7.4. No person has an option or right of refusal over the Secured Property or any part thereof which would apply on enforcement by the Cessionary of its rights under this Agreement.
- 4.7.5. Save for the Existing Secured Property, but only up until the Effective Date and Time, no part of the Secured Property has been pledged, ceded (either outright or as security), discounted, factored, mortgaged under notarial bond or otherwise, or otherwise disposed of or hypothecated, nor is it subject to any other right or claim in favour of any person (including any rights of pre-emption) which would apply on enforcement by the Cessionary of its rights under this Agreement. If any Secured Property is subject to any Security in breach of this representation and warranty then, without prejudice to any other rights that the Cessionary may have, any reversionary or other interests a Cedent may have in the said Secured Property are also ceded to the Cessionary.

**5. UNDERTAKINGS BY THE CEDENTS**

**5.1. General**

Each Cedent is bound by the undertakings set out in this clause 5 relating to it. The undertakings in this clause 5 remain in force from the Signature Date until the Final Discharge Date.

**5.2. Negative pledge**

- 5.2.1. No Cedent shall grant any further Security over any Secured Property or dispose of its Secured Property in any manner without the express prior consent of the Cessionary.
- 5.2.2. Each Cedent must at all times keep its Secured Property free of judicial attachments and other Security.

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**5.3. Preservation of Secured Property**

5.3.1. Each Cedent undertakes:

5.3.1.1. to the extent reasonably possible, that it shall not permit any depreciation of the value of, or a variation of rights relating to, the Secured Property or any of them to occur (except for any depreciation or devaluation or, other than in respect of the Shares, variation which occurs in the ordinary course of business and which is not prohibited under any other Finance Document);

5.3.1.2. not to take or omit to take any action which could reasonably be expected to adversely affect the rights of the Cessionary under this Agreement or the effectiveness of the Security created by this Agreement;

5.3.1.3. to take all appropriate steps required from time to time for the care, preservation and protection of the Secured Property and the rights of the Cessionary under this Agreement; and

5.3.1.4. timeously to comply in full with all its obligations in respect of the Secured Property, from time to time.

5.3.2. Each Cedent waives for the benefit of the Cessionary any and all rights it may have in respect of the Secured Property which conflict with or which may restrict the rights of the Cessionary under this Agreement.

**5.4. Insurances: Notice under the Short-Term Insurance Act**

5.4.1. Each Cedent confirms, in respect of all insurances required to be maintained by it under this Agreement and each other Financing Agreement, that it is aware and fully apprised of the following choices it has under section 43 of the Short-Term Insurance Act, 1998:

5.4.1.1. a choice of entering into a new policy contract, making available an existing policy contract or using a combination of those options; and

5.4.1.2. a choice as to the identity of the insurer (if a new policy contract is to be entered into) and the person (if any) who is to render services as intermediary in connection with the transaction; and

5.4.1.3. a choice as to whether or not the value of the relevant policy contracts will exceed the value of the interests of the Creditors.

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5.4.2. This clause 5.4.2 constitutes written notification to the Cedents of their rights under section 43 of the Short-term Insurance Act. Regardless of the sequence in which the Financing Agreements are executed, no benefits under any policy contract made available to the Creditors under a Financing Agreement shall accrue to the Creditors before the Signature Date.

5.4.3. Each Cedent confirms that it exercised its freedom of choice under section 43 of the Short-term Insurance Act and that it was not subject to any coercion or inducement as to the manner in which that freedom of choice was exercised.

#### 5.5. Shares

5.5.1. Except with the express prior written consent of the Cessionary, no Cedent shall allow any alteration to the authorised or issued share capital (including the issue of any new shares) of any of its Relevant Subsidiaries.

5.5.2. Each Cedent irrevocably authorises the Cessionary, as its agent in *rem suam*, in respect of any Shares constituting Secured Property of that Cedent which are not in certificated form, to take all steps necessary to ensure that an appropriate entry has been made in the securities account of that Cedent held with the relevant securities account holder with the applicable central securities depository participant, in accordance with section 39 of the Financial Markets Act, No. 19 of 2012, to record the relevant Security created under this Agreement in respect of the Shares.

#### 5.6. Amounts received on account of Secured Property

If an Event of Default has occurred and is continuing, each Cedent shall forthwith pay and transfer to the Cessionary or its order, and place it in possession of, all cash and other assets received in respect of the Secured Property.

### 6. DELIVERY OF DOCUMENTS

#### 6.1. General

The documents set out in this clause 6 must be delivered to the Cessionary as follows:

6.1.1. in the case of an Original Cedent, on the Effective Date and Time;

6.1.2. in the case of an Additional Cedent, by no later than the date on which it becomes a party to this Agreement by entering into an Accession Letter; and

6.1.3. in respect of Secured Property subsequently acquired by a Cedent or otherwise arising before the Final Discharge Date, as soon as reasonably possible after that property becomes Secured Property.

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6.2. **Bank Accounts**

Each Cedent must deliver to the Cessionary, in respect of each of the Bank Accounts constituting Secured Property, a copy of a notice to the relevant account banks of the pledge and cession of such Bank Accounts and related Secured Property under this Agreement, together with an acknowledgement of that notice signed by each of those banks, in each case substantially in the form of **Schedule 2** (*Notice to Banks*) and **Schedule 3** (*Account Bank: Form of Acknowledgement*) (or in such other form satisfactory to the Facility Agent as may be required by the applicable account bank).

6.3. **Insurances**

Each Cedent must deliver to the Cessionary in respect of all its insurances constituting Secured Property:

- 6.3.1. a copy of the relevant contract or policy of insurance;
- 6.3.2. evidence satisfactory to the Cessionary that it (or its insurance broker) has notified the relevant insurer(s) of the pledge and cession of the Insurance Rights, that the insurer(s) have noted the interests of the Cessionary on the relevant insurance policies and that the insurer(s) have noted the cession and pledge of the Insurance Rights pursuant to this Agreement in the forms attached hereto in **Schedule 4** (*Notice to Insurer*) and **Schedule 5** (*Insurers: Form of Acknowledgement*) respectively or in a form acceptable to the Facility Agent; and
- 6.3.3. evidence reasonably satisfactory to the Cessionary that an endorsement in the form attached as **Schedule 6** (*Insurers: Form of Endorsement*) is made on the relevant insurances.

6.4. **Shares and Shareholder and Group Claims**

Each Cedent must deliver to the Facility Agent in respect of all the Shares and Shareholder and Group Claims:

- 6.4.1. the original share certificates in respect of those Shares;
- 6.4.2. securities transfer forms in respect of those Shares, undated and duly signed by that Cedent as transferor and left blank as to transferee;
- 6.4.3. a copy of the resolutions of the directors of each of its Relevant Subsidiaries approving any transfer of Shares pursuant to this Agreement; and
- 6.4.4. a copy of a notice to and acknowledgement from each of its Relevant Subsidiaries substantially in the form of **Schedule 7** (*Notice to Relevant Subsidiary*) and **Schedule 8** (*Relevant Subsidiary: Form of Acknowledgement*).

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**6.5. Debt Reduction Transaction Agreements**

If a Default has occurred and is continuing and promptly on request of the Facility Agent, the Cedent shall in respect of each Debt Reduction Transaction Agreement, notify by courier the relevant counterparty to that Debt Reduction Transaction Agreement of the cession of the Debt Reduction Transaction Agreement Rights (in the form attached hereto at **Schedule 9** (*Form of notice to counterparty under Debt Reduction Transaction Agreement*)), or in a form acceptable to the Facility Agent) and obtain the countersignature by the relevant counterparty of such notice (in the form attached hereto at **Schedule 9** (*Form of notice to counterparty under Debt Reduction Transaction Agreement*)), or in a form acceptable to the Facility Agent).

**6.6. Specified Property Sale Agreement**

If a Default has occurred and is continuing and promptly on request of the Facility Agent, the Cedent shall in respect of each Specified Property Sale Agreement, notify by courier the relevant counterparty to that Specified Property Sale Agreement of the cession of the Specified Property Sale Agreement Rights (in the form attached hereto at **Schedule 10** (*Form of notice to counterparty under Specified Property Sale Agreement*)), or in a form acceptable to the Facility Agent) and obtain the countersignature by the relevant counterparty of such notice (in the form attached hereto at **Schedule 9** (*Form of notice to counterparty under Specified Property Sale Agreement*)), or in a form acceptable to the Facility Agent).

**6.7. Other requirements**

6.7.1. Each Cedent shall deliver to the Facility Agent, within 7 (seven) Business Days of written request, a list of the Secured Property detailed below as at the date of that request, which list shall be certified true and correct by a director of that Cedent and shall describe each part of the following Secured Property in reasonable detail, and shall in particular:

6.7.1.1. in respect of its Trade Receivables and Claims set out a description of each claim which constitutes a Trade Receivable or Claim, the name of the debtor, the amount owing by each debtor and the due date for payment of that amount; and

6.7.1.2. in respect of its Bank Accounts, set out the name of the bank, the account number and the latest available balance of monies standing to the credit or debit of that account.

6.7.2. If any Secured Property, or part thereof, is evidenced by a document, or when a Cedent holds security for any obligation owed to it in respect of Secured Property and that security is evidenced by a document, the relevant Cedent shall, at the request of the Facility Agent, deliver a certified copy of that document to the Facility Agent within 7 (seven) Business Days of request therefor.

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- 6.7.3. The Cessionary may retain possession of all documents delivered to it under this clause 6 and deal with them in accordance with the Financing Agreements until the Final Discharge Date, after which they shall be returned to the relevant Cedent as soon as reasonably possible.

**7. RIGHTS OF A CEDENT BEFORE AN EVENT OF DEFAULT**

- 7.1. Unless a Default has occurred and is continuing, each Cedent is entitled, at its own cost, subject to the provisions of the Financing Agreements, to:
- 7.1.1. enforce and receive payment for, delivery of or performance in respect of all amounts or obligations owing in respect of the Secured Property in the ordinary course of business and to appropriate amounts so recovered to its own use, including any dividends or other benefits in respect of its Shares;
  - 7.1.2. receive notice of every general meeting of shareholders of a Relevant Subsidiary or any company in which it holds an Investment (provided that each such notice is to be forwarded to the Facility Agent as if it were a shareholder of the Relevant Subsidiaries or that company where such documents do, or are reasonably likely to, affect the interests of the Creditors); and
  - 7.1.3. attend every general meeting of the shareholders of a Relevant Subsidiary or another company in which it holds an Investment, and exercise all the votes attaching to the Shares at such meetings (provided that it will not exercise those votes in a manner which is reasonably likely to (a) be materially prejudicial to the validity or enforceability of this Agreement, (b) materially impair the value of any Shares, or (c) be otherwise materially prejudicial to the Creditors).
- 7.2. If an Event of Default has occurred and is continuing:
- 7.2.1. all rights, powers and privileges attaching to the Secured Property, including, but not limited to those set out in clause 7.1, shall vest in the Cessionary at the Cessionary's election with the power to exercise them either in its own name or in the name of each Cedent or, if the Cessionary so directs upon the occurrence of an Event of Default that has occurred and which is continuing, each Cedent shall exercise the Cessionary's rights, powers and privileges in its own name and to the greatest extent permitted by applicable law; and
  - 7.2.2. without derogating from the generality of clause 7.2.1, each applicable Cedent (a) shall provide notice to the Cessionary of every general meeting of shareholders of its Relevant Subsidiaries or any company in which it holds an Investment, and (b) shall not exercise any votes attaching to the applicable Shares at such meetings without the prior written consent of the Facility Agent.

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## 8. ENFORCEMENT

### 8.1. Rights of the Cessionary

If an Event of Default has occurred and is continuing, the Cessionary may, without prejudice to any other rights it may have against the Cedents, exercise its rights under this clause 8.1, and otherwise put into force and effect all rights, powers and remedies available to it in relation to the Secured Property, in such manner and on such terms and conditions as it in its sole discretion considers most expedient. Without limiting the foregoing, if an Event of Default has occurred and is continuing, the Cessionary or its nominee may, and each Cedent hereby irrevocably and unconditionally authorises and empowers the Cessionary or its nominee, and appoints it *in rem suam*, without any further authority or consent of any nature whatsoever required from any person, in the name of the Cessionary or its nominee or in the name of that Cedent to:

- 8.1.1. exercise all or any of the rights, powers and privileges and enforce all or any obligations attaching to the Secured Property in such manner and on such terms as the Cessionary in its sole discretion deems fit, including, without limitation (a) exercising all powers of convening meetings, voting and representation in connection with any Shares and/or Investments, and (b) requiring payment of any Distributions made by any Relevant Subsidiary and/or any Company in which the Cedents hold an Investment directly to the Cessionary; and/or
- 8.1.2. receive payment for, delivery of, and/or performance in respect of, the Secured Property in its own name or that of its nominee; and/or
- 8.1.3. authorise any officer of the Cessionary (whose appointment need not be proved) to sign, on behalf of and in the name of that Cedent, any securities transfer form or any other document that may be necessary to give effect to any disposal or realisation of Secured Property by the Cessionary under this clause; and/or
- 8.1.4. at the election of the Cessionary:
  - 8.1.4.1. sell or otherwise realise all or some of the Secured Property by public auction;
  - 8.1.4.2. sell or otherwise realise all or some of the Secured Property by private treaty at fair value; or
  - 8.1.4.3. take over all or some of the Secured Property at Fair Value; and/or
- 8.1.5. institute any legal proceedings which the Cessionary may deem necessary in connection with any sale, purchase or other realisation or transfer of any of the Secured Property and to prosecute such proceedings to their final end and

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conclusion, including the prosecution of such appeals and reviews as the Cessionary in its discretion may determine; and/or

- 8.1.6. compromise any of the Secured Property, grant any extension or other indulgence in respect of the Secured Property, agree to amend the terms of the Secured Property, and/or release any security, guarantee or suretyship held for the Secured Property or waive any right which relates to or constitutes part of the Secured Property; and/or
- 8.1.7. give transfer of and convey valid title in any Secured Property to any person (including the Cessionary); and/or
- 8.1.8. take all such further or other steps as the Cessionary may consider necessary to deal with the Secured Property in order to give effect to this Agreement,

and, subject to the provisions of clause 9 below, apply the proceeds of any sale contemplated in clause 8.1.4.2, purchase or other realisation or transfer (including the purchase price payable for any Secured Property taken over by the Cessionary) against the Secured Obligations on the basis that any excess upon realisation or balance owing to a Cedent (as the case may be) will be paid to that Cedent and any shortfall on realisation will remain a debt due to the Cessionary. For the purposes of clause 8.1.4.3 above.

**8.2. Undertakings by Cedents in respect of realisation**

On the Cessionary taking any action under clause 8.1 (*Rights of the Cessionary*) above, or otherwise as required by the Cessionary if an Event of Default has occurred and is continuing, each Cedent shall on demand by the Cessionary:

- 8.2.1. give written notice to all persons required by the Cessionary that payment for, delivery of or performance in respect of the relevant Secured Property must be made to the Cessionary and that payment, delivery or performance to that Cedent or to anyone else will not constitute valid payment, delivery or performance, and the Cessionary shall be entitled to do likewise. Each Cedent shall on demand by the Cessionary provide proof that such notification has been duly given;
- 8.2.2. refuse to accept any payment, delivery, or performance tendered in respect of any of the Secured Property and order that such payment, delivery or performance be tendered to the Cessionary;
- 8.2.3. forthwith pay over or deliver to the Cessionary any interest, dividend, negotiable instruments or other monetary benefits of any nature accrued or received in respect of the Secured Property after the date of an Event of Default by depositing the same into any bank account in South Africa nominated by the Cessionary;

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8.2.4. deliver to the Cessionary any property which that Cedent acquires or which accrues to it in connection with the Secured Property; and

8.2.5. at its own cost, carry out any lawful directions the Cessionary may give in regard to the realisation of the Secured Property and sign any document or do any other lawful act necessary to (a) vest the Secured Property in the Cessionary, (b) enable any sale, purchase or other realisation or transfer of Secured Property, or (c) perfect and complete (to the extent necessary) the pledge and the cession of any Secured Property under this Agreement.

**8.3. No obligation on the Cessionary**

Notwithstanding anything to the contrary contained in this Agreement, the Cessionary shall not be obliged to take any steps to preserve, protect, collect, recover or otherwise enforce its rights under or in respect of the Secured Property.

**9. APPROPRIATION OF PROCEEDS**

Subject to the Common Terms Agreement, the Cessionary shall apply the net proceeds of all amounts received pursuant to the sale or other realisation of Secured Property or from the appropriation of cash amounts which constitute Secured Property under this Agreement (after deducting all costs and expenses incurred by the Cessionary in relation to that sale or realisation) in reduction or discharge of the Secured Obligations in such order and in such manner as the Cessionary deems fit.

**10. POWER OF ATTORNEY**

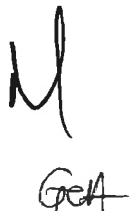
Each Cedent hereby irrevocably and severally appoints the Cessionary and any of its delegates or sub-delegates to be its attorney to take any action which that Cedent is obliged to take under this Agreement but has failed to take. Each Cedent ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause.

**11. FURTHER ASSURANCES**

Each Cedent shall generally promptly do everything that may be required in order to comply with its obligations under this Agreement and as may otherwise be required by the Cessionary for the purposes of and to give effect to this Agreement, failing which the Cessionary may, to the extent possible, attend thereto on behalf of the relevant Cedent and recover on demand from that Cedent any expenses incurred in relation thereto. In particular each Cedent shall execute and do all such acts and things as the Cessionary, in its discretion, may require:

11.1. to perfect or protect the Security created (or purported to be created) by this Agreement;

11.2. to preserve or protect any of the rights of the Cessionary under this Agreement;

Handwritten signature and initials in the bottom right corner of the page.

- 11.3. to enforce any Security created under this Agreement on or at any time after it becomes enforceable;
  - 11.4. for the exercise of any power, authority or discretion vested in the Cessionary under this Agreement; and
  - 11.5. to carry out the effect, intent and purpose of this Agreement,
- in any such case, forthwith upon demand by the Cessionary to the maximum extent permitted by law and at the expense of the Cedent.

**12. ADDITIONAL RIGHTS**

The rights conferred on the Cessionary by this Agreement are additional to and not in substitution for:

- 12.1. any other rights the Cessionary has, or may at any time in the future have, against a Cedent or any other person; and
- 12.2. any other Security held or hereafter to be held by the Cessionary from a Cedent, or any other person, in connection with the Secured Obligations. The Cessionary may release any security held by it without prejudice to its rights under this Agreement.

**13. CEDENTS BOUND NOTWITHSTANDING CERTAIN CIRCUMSTANCES**

Each Cedent agrees that on the Signature Date (in the case of an Original Cedent) or the date of an Accession Letter (in the case of an Additional Cedent), it will be bound under this Agreement to the full extent hereof, despite the fact that:

- 13.1. any additional Security from that Cedent or any other person for the Secured Obligations may not be obtained or may be released or may cease to be held for any other reason;
- 13.2. the Creditors may agree any variation or novation of the Financing Agreements (including any amendment providing for the increase in the amount of a facility or an additional facility);
- 13.3. insolvency, administration, business rescue, reorganisation, arrangement, readjustment of debt, dissolution, liquidation, sequestration or similar proceedings have been instituted by or against a Cedent or any other person;
- 13.4. any Creditor may receive a dividend or benefit in any insolvency, liquidation, business rescue, sequestration or any compromise or composition, whether in terms of any statutory enforcement or the common law;
- 13.5. the Cessionary may grant any indulgences to a Cedent or may not exercise any one or more of its rights under the Financing Agreements, either timeously or at all; or

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13.6. any other fact or circumstance may arise on which a Cedent might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.

If a Cedent suffers any loss arising from any of the facts, circumstances, acts or omissions referred to above, it will have no claim against any Creditor in respect thereof.

**14. KEEPING, INSPECTION AND DELIVERY OF RECORDS**

14.1. Each Cedent shall at all times keep up to date records of the Secured Property and shall comply with any reasonable directions the Cessionary may give in regard to the keeping of such records.

14.2. The Cessionary or anyone authorised by the Cessionary may at any time and on reasonable notice inspect any of a Cedent's books of account and other records relating to the Secured Property including books of account and records in the possession of a third party.

14.3. If the Cessionary at any time so requests, a Cedent shall at its own cost deliver to the Cessionary or its order certified copies of any of the books and records referred to in clauses 14.1 and 14.2 above.

**15. EXEMPTION FROM LIABILITY**

No Creditor nor any of its officers, trustees, agents, beneficiaries, employees and advisors shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise, suffered by a Cedent howsoever arising in connection with this Agreement, whether that loss or damage arises as a result of a breach of contract (whether total, fundamental or otherwise), delict or any other cause and whether this Agreement has been terminated or not, other than as a result of the gross negligence or wilful misconduct of that Creditor.

**16. INDEMNITY**

16.1. Each Cedent shall, within 3 (three) Business Days, notwithstanding any release or discharge of all or any part of the Secured Property, indemnify each Creditor, its officers, trustees, agents, beneficiaries, employees and advisors against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by that Cedent of the provisions of this Agreement or the exercise of any of the rights and powers conferred on that Creditor by this Agreement.

16.2. Clause 16.1 constitutes stipulations for the benefit of the Creditors capable of acceptance at any time with or without notice.

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**17. CHANGES TO THE PARTIES**

**17.1. Transfers by the Cessionary**

17.1.1. The Cessionary may cede any of its rights and/or delegate any of its obligations under this Agreement to any person to whom it cedes any of its rights and/or delegates any of its obligations under the Second Amended and Restated Counter Indemnity Agreement in accordance with the provisions of the Common Terms Agreement and/or the Intercreditor Agreement. Each Cedent agrees to cooperate and take all such steps as the Cessionary may reasonably request to give effect to any such cession or delegation.

17.1.2. Each Cedent agrees to any splitting of claims which may arise from such a cession.

**17.2. Transfers by a Cedent**

No Cedent may cede any of its rights nor delegate any of its obligations under this Agreement.

**17.3. Additional Cedents**

17.3.1. Each person which becomes an Additional Guarantor under the Common Terms Agreement, on execution by it of the applicable Accession Letter, will automatically (and without any requirement for any further action to be taken by any person) become an Additional Cedent in respect of all the Secured Property identified in that Accession Letter.

17.3.2. An Additional Guarantor will become a Cedent under this Agreement on the date of the Accession Letter executed by it.

**18. GENERAL**

**18.1. 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).

**18.2. 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

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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).

**18.3. Governing Law**

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

**18.4. Jurisdiction**

18.4.1. 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**").

18.4.2. 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.

18.4.3. This clause 18.4 is for the benefit of the Cessionary and the Facility Agent only. As a result, neither the Cessionary nor the Facility Agent shall be prevented from taking proceedings relating to a dispute in any other court with jurisdiction. To the extent allowed by law, each of the Cessionary and the Facility Agent may take concurrent proceedings in any number of jurisdictions.

**18.5. 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 Cedents**

<b>No.</b>	<b>Original Cedents</b>	<b>Registration No.</b>
1.	Tongaat Hulett Limited	1892/000610/06
2.	Tongaat Hulett Developments Proprietary Limited	1981/012378/07
3.	Voermol 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

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**SCHEDULE 2**

**Notice to Banks**

To: [ACCOUNT BANK] (the "Bank")

Copy: BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED (the "Cessionary")

From: [•]  
[•] (each, a "Cedent")

[•] 202 [•]

Dear Sirs,

**Cession and pledge in security, dated [•] 2021 (the "Cession and Pledge")**

1. We refer to the Cession and Pledge (a copy of which is attached for your records). Terms and expressions defined in the Cession and Pledge have the same meaning where used in this letter.
2. The Cedents hold the following bank accounts (the "Bank Accounts") with you:

**Bank:** [•]  
**Branch:** [•]  
**Branch Code:** [•]  
**Account Name:** [•]  
**Account No:** [•]  
**Reference:** [•]

**Bank:** [•]  
**Branch:** [•]  
**Branch Code:** [•]  
**Account Name:** [•]  
**Account No:** [•]  
**Reference:** [•]

3. This letter constitutes notice to you that under the Cession and Pledge, each Cedent has ceded or will cede *in securitatem debiti*, in favour of the Cessionary, *inter alia*, all of its rights and interests in and to the Bank Accounts that it maintains with you at any of your branches in South Africa (including all its claims in respect of amounts standing to the credit of those bank accounts from time to time).
4. Each Cedent hereby irrevocably instructs and authorises you, in relation to the Bank Accounts it holds with you, to disclose to the Cessionary any information relating to any such Bank Account requested from you by the Cessionary.
5. Each Cedent hereby irrevocably instructs and authorises you, in relation to the Bank Accounts it holds with you, subject to the provisions of the other Financing Agreements, with effect from the date on which the Cessionary notifies you in writing that an Event of Default has occurred and is continuing, and thereafter until otherwise notified by the Cessionary, to:

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- 5.1. comply with the terms of any written notice or instruction relating to any such Bank Account received by you from the Cessionary;
  - 5.2. hold all sums standing to the credit of any such Bank Account to the order of the Cessionary;
  - 5.3. pay or release any sum standing to the credit of any such Bank Account in accordance with the written instructions of the Cessionary; and
  - 5.4. pay all sums received by you for the account of a Cedent to the credit of its applicable Bank Account with you.
6. We acknowledge that you may comply with the instructions in this letter without any further permission from us and without any enquiry by you as to the justification for or validity of any request, notice or instruction.
7. The instructions in this letter may not be revoked or amended without the prior written consent of the Cessionary.
8. This letter is governed by the laws of South Africa.

Yours faithfully,

\_\_\_\_\_  
For and on behalf of:  
[•]

Name:

Office:

\_\_\_\_\_  
For and on behalf of:  
[•]

Name:

Office:

\_\_\_\_\_  
For and on behalf of:  
[•]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

\_\_\_\_\_  
For and on behalf of:  
[•]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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**SCHEDULE 3**

**Account Bank: Form of Acknowledgement**

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

From: **[BANK]**

[•] 202 [•]

Dear Sirs,

**NOTICE OF CESSION AND PLEDGE**

1. We acknowledge receipt of the notice of cession and pledge dated [•] 202 [•] by, *inter alios*, [•] and Bowwood and Main No 296 (RF) Proprietary Limited, and acknowledge and agree to the terms and conditions thereof.
2. We confirm that:
  - 2.1. no notices of cession have been received from any other third party in relation to the Bank Accounts; and
  - 2.2. we have not claimed any set-off or counterclaim in respect of the Bank Accounts nor have we exercised any Security or other rights over the Bank Accounts nor will we do so without the consent of the Facility Agent.
3. Nothing contained in the above notice or this acknowledgement shall commit us to providing any facilities or making advances available to the Cessionary.

Yours faithfully,

\_\_\_\_\_  
For and on behalf of:

**[Bank]**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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*GeA*

## SCHEDULE 4

### Notice to Insurers

To: [INSURANCE COMPANY]

Copy: BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED (the "Cessionary")

From: [•]  
[•]  
(each, a "Cedent")

[•] 202 [•]

Dear Sirs,

#### Cession and pledge in security, dated [•] 2021 (the "Cession and Pledge")

1. We refer to the Cession and Pledge (a copy of which is attached for your records).
2. In this letter:
  - 2.1. "Insurances" means any of the contracts or policies of insurance set out in **Annexure A** hereto; and
  - 2.2. "Insurance Proceeds" means all proceeds of insurance payable to or received by us in respect of the Insurances, whether in respect of claims, by way of return of premium or otherwise,  
  
but excluding any third party liability insurance and all amounts received or receivable under or in connection with third party liability insurance and required to settle a liability of a Cedent to a third party.
3. Unless expressly defined in this letter, terms and expressions defined in the Cession and Pledge have the same meaning where used in this letter.
4. This letter constitutes notice to you that under the Cession and Pledge, each Cedent has ceded *in securitatem debiti* in favour of the Cessionary, *inter alia*, all of its rights and interests in and to the Insurances and the Insurance Proceeds.
5. On behalf of each Cedent, we confirm that:
  - 5.1. the relevant Cedent will remain liable under each such Insurance to perform all the obligations assumed by it under [the] [that] Insurance; and
  - 5.2. none of the Cessionary, its agents or any other person will at any time be under any obligation or liability to you under or in respect of any such Insurance.

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6. Each Cedent will also remain entitled to exercise all of its rights under each such Insurance and you should continue to give notices under each such Insurance to the relevant Cedent and all claims under the Insurances must be paid to the Cedent, unless and until you receive notice from the Facility Agent to the contrary, stating that a Default has occurred and is continuing. In this event, unless the Facility Agent otherwise agrees in writing:
  - 6.1. all amounts payable to the relevant Cedent under each such Insurance must be paid to the Facility Agent; and
  - 6.2. any rights of the relevant Cedent in connection with those amounts will be exercisable by, and notices must be given to, the Cessionary or as it directs.
7. Please note that each of the Cedents has agreed that it will not amend or waive any term of or terminate any Insurance without the prior consent of the Cessionary.
8. The instructions in this letter may not be revoked or amended without the prior written consent of the Cessionary.
9. We acknowledge that you may comply with the instructions in this letter without any further permission from us or any Cedent and without any enquiry by you as to the justification for or validity of any request, notice or instruction.
10. This letter is governed by the laws of South Africa.

**Please note on the Insurances the Cessionary's interest as loss payee and as cessionary of those Insurances.**

Yours faithfully,

\_\_\_\_\_  
For and on behalf of:  
[•]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

\_\_\_\_\_  
For and on behalf of:  
[•]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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**SCHEDULE 5**

**Insurer: Form of Acknowledgement**

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

From: **[INSURANCE COMPANY]**

[•] 202 [•]

Dear Sirs,

**NOTICE OF CESSION AND PLEDGE**

1. We refer to the notice of cession and pledge dated [•] 202 [•] (the "**Security Notice**"), attaching a copy of a written cession and pledge in security given by [•] in favour of Bowwood and Main No 296 (RF) Proprietary Limited.
2. Terms and expressions defined in the Security Notice have the same meaning where used in this letter.
3. We acknowledge receipt of the Security Notice and we:
  - 3.1. accept the instructions contained in the notice and agree to comply with the notice;
  - 3.2. confirm that we have not received notice of the interest of any third party in the Insurances or the Insurance Proceeds;
  - 3.3. undertake to note on the relevant contracts your interests as cessionary and as loss payee of the Insurances and the Insurance Proceeds;
  - 3.4. undertake to disclose to you without any reference to or further authority from a Cedent any information relating to those contracts which you may at any time request;
  - 3.5. undertake to notify you of any breach by any Cedent of any of those contracts and to allow you to remedy that breach; and
  - 3.6. undertake not to amend or waive any term of or terminate any of those contracts on request by any Cedent without your prior written consent.

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Yours faithfully,

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For and on behalf of:  
[Insurance Company]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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## SCHEDULE 6

### Insurer: Form of Endorsement

#### **ENDORSEMENT # [•] ATTACHING TO AND FORMING PART OF POLICY # [•] (THE POLICY) IN THE NAME OF [•] (the COMPANY) INCORPORATING [RELEVANT SUBSIDIARIES]**

It is agreed and noted that, with effect from the date [•] 20[•] and until expiry of the current insurance period on [•] 20[•] the following is noted in respect of policy # [•]:

1. **Loss Payee clause in favour of BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED (the "Debt Guarantor")**

#### **Material Damage Insurance**

The Insurer hereby agrees:

- 1.1. in respect of any individual claim exceeding R[•] ([•] Rand) in value; or
- 1.2. if the Debt Guarantor has advised the Insurer in writing that a Default has occurred and is continuing, in respect of any claim,

that payment thereof shall be made direct into a bank account in South Africa nominated in writing by the Debt Guarantor, but subject to the Insurers option to reinstate any loss or damage.

#### **Business Interruption Insurance**

All settlements of claims shall be paid in full to the first named insured of this policy unless the Facility Agent has advised the Insurer in writing that a Default has occurred and is continuing, in which case payment thereof shall be made direct into a bank account in South Africa nominated in writing by the Facility Agent.

2. **Notice of Cession in favour of BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED (the "Debt Guarantor")**

Noted that, under a Cession and Pledge in Security dated [•], given by the Company and others in favour of the Debt Guarantor, the Company has ceded to the Debt Guarantor all its existing and future claims and rights and interests in and to the insurance to which the abovementioned policy relates.

**SUBJECT OTHERWISE TO THE TERMS, EXCEPTIONS AND CONDITIONS OF THE POLICY**

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**SCHEDULE 7**

**Notice to Relevant Subsidiary**

To: **[RELEVANT SUBSIDIARY]**  
(the "Company")

Copy: **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED** (the "Cessionary")

From: **[•]**  
**[•]** (the "Cedent")

**[•] 202 [•]**

Dear Sirs,

**Cession and pledge in security, dated [•] (the "Cession and Pledge")**

1. We refer to the Cession and Pledge (a copy of which is attached for your records). Terms and expressions defined in the Cession and Pledge have the same meaning where used in this letter.
2. The Cedent and the Cessionary hereby give the Company notice of the following:
  - 2.1. pursuant to the Cession and Pledge, the Cedent has, *inter alia*, pledged all its Shares and ceded *in securitatem debiti* to the Cessionary all its Shares and Shareholder and Group Claims; and
  - 2.2. with effect from the date on which the Cessionary notifies you in writing that an Event of Default is continuing, and thereafter until otherwise notified by the Cessionary, you must make all payments to be made to the Cedent in respect of its Shares and Shareholder and Group Claims direct to the Cessionary by payment into any bank account nominated by it in writing.
3. Please acknowledge receipt of this Notice of Cession by signing the attached acknowledgment and returning a copy thereof to the Cessionary at the address specified above.
4. Capitalised terms used but not otherwise defined herein have the meanings ascribed to them in the Notice of Cession.
5. This Notice of Cession is governed by South African Law.

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Yours faithfully,

\_\_\_\_\_  
For and on behalf of:  
[Cedent]

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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## SCHEDULE 8

### Relevant Subsidiary: Form of Acknowledgement

To: **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED**  
(the "Cessionary")

And to: [•]  
[•] (the "Cedent")

From: **[RELEVANT SUBSIDIARY]**  
(the "Company")

[•] 202 [•]

Dear Sirs,

### NOTICE OF CESSION AND PLEDGE

1. We hereby acknowledge receipt of the notice of cession dated [DATE] (the "Notice of Cession").
2. We acknowledge and consent to the Cession and Pledge of the Shares and Shareholder and Group Claims of the Cedent and undertake in favour of the Cessionary that upon receipt of notice from the Cessionary:
  - 2.1. all payments to be made in respect of the Shareholder and Group Claims shall be made by us into such account notified by the Cessionary following the occurrence of an Event of Default which is continuing; and
  - 2.2. in the event of the transfer of all or any of the Shares pursuant to the Cession and Pledge, we will (a) recognise the persons to whom the Shares are to be transferred; (b) approve such transfer to such persons, and (c) give effect thereto.
3. To the extent required, we agree to each of the rights afforded to the Cessionary under clauses 7 (*Rights of a Cedent before an Event of Default*) and 8 (*Enforcement*) of the Cession and Pledge.
4. Capitalised terms used but not otherwise defined herein have the meanings ascribed to them in the Notice of Cession.
5. This letter is governed by South African Law.

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Yours faithfully,

\_\_\_\_\_  
For and on behalf of:  
**[Relevant Subsidiary]**

Name: \_\_\_\_\_

Office: \_\_\_\_\_

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**SCHEDULE 9**

**Notice of Cession to counterparty under Debt Reduction Transaction Agreement**

To: **[•]**  
(the "Counterparty")

From: **[•]**  
(the "Cedent")

Copy to: **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED**  
(the "Cessionary")

[•]

Dear Sirs

**Debt Reduction Transaction Agreement dated \_\_\_\_\_ (the "Debt Reduction Transaction Agreement") between, *inter alios*, the Counterparty and the Cedent**

**1. INTRODUCTION**

- 1.1. We refer to the Debt Reduction Transaction Agreement and the security cession and pledge (the "**Cession and Pledge**") dated [•] 2021 between, *inter alios*, the Cedent (as cedent) and the Cessionary (as cessionary) in relation to the cession of the Claims, the Debt Reduction Transaction Agreement Rights and the Related Rights (as each such term is defined in the Cession and Pledge), a copy of which is attached hereto.
- 1.2. The Cedent and the Cessionary hereby give the Counterparty notice of the Cession and Pledge and by its execution hereof the Counterparty irrevocably and unconditionally consents, acknowledges and agrees to what is set out herein.
- 1.3. Save as defined herein, terms defined in the Cession and Pledge (whether directly or by incorporation by reference) shall bear the same meanings when used in this notice of cession (this "**Notice of Cession**").

**2. NOTICE OF CESSION**

The Cedent has pursuant to the Cession and for the period commencing on the Effective Date and Time and ending on the Final Discharge Date, as security for the Secured Obligations, ceded, in *securitatem debiti*, to the Cessionary, amongst other things, all of its Claims, Debt Reduction Transaction Agreement Rights and the Related Rights.

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3. **PERFORMANCE UNDER THE DEBT REDUCTION TRANSACTION AGREEMENT**

Notwithstanding any contrary provision of the Cession and Pledge or any other document, the Cedent shall at all times throughout the duration of the Cession and Pledge remain liable to perform all of its obligations under the Debt Reduction Transaction Agreement and nothing herein or therein contained and no exercise by the Cessionary of any right under the Cession and no failure on the part of the Cedent to perform any or all of its obligations in respect of the Debt Reduction Transaction Agreement or otherwise shall constitute or be deemed to constitute an assumption or acceptance by the Cessionary of any obligation of the Cedent or any other person under the Debt Reduction Transaction Agreement.

4. **COUNTERPARTY'S ACKNOWLEDGEMENT AND AGREEMENT**

The Counterparty hereby –

- 4.1. acknowledges receipt of this Notice of Cession, repeats for the benefit of the Cessionary that it will fulfil all of the obligations on its part contained in the Debt Reduction Transaction Agreement (which obligations shall be continuing and shall survive the execution of the Cession), and represents and warrants that it has not previously received notice of any cession of Claims, Debt Reduction Transaction Agreement Rights or Related Rights in respect of the Debt Reduction Transaction Agreement and, undertakes to perform all of its payment obligations under the Debt Reduction Transaction Agreement in favour of the Cessionary;
- 4.2. acknowledges that the Cedent shall at all times remain liable to perform all of its obligations under the Debt Reduction Transaction Agreement in favour of the Counterparty; and
- 4.3. agrees that all proceeds arising in respect of the Debt Reduction Transaction Agreement must be paid to the Cessionary and into the following account (or such other account the Cessionary may specify in writing from time to time):

**Bank:** [•]  
**Branch:** [•]  
**Branch Code:** [•]  
**Account Name:** [•]  
**Account Number:** [•]

5. **RECOGNITION OF RIGHTS**

The Counterparty consents to the Cession and Pledge pursuant to which all of the Claims, the Debt Reduction Transaction Agreement Rights and Related Rights in respect of the Debt Reduction Transaction Agreement are ceded to the Cessionary.

6. **GOVERNING LAW**

This Notice of Cession will be governed by and construed in accordance with the laws of the Republic of South Africa. For the benefit of the Cessionary, the Counterparty and the Cedent irrevocably submits

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to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), waives any objection on the ground of venue or *forum non conveniens* or any similar grounds, and consents to service of process in any manner permitted by the relevant law.

7. **COUNTERPARTS**

This Notice of Cession may be executed and delivered and/or acknowledged and agreed in counterparts and each such counterpart shall, when taken together shall be deemed to constitute one and the same instrument. For the purposes of this Notice of Cession, an email copy shall be deemed a valid counterpart.

Yours faithfully

For and on behalf of:

**[•]**  
(as Cedent)

\_\_\_\_\_  
Name:

Capacity:

Who warrants his authority hereto

For and on behalf of:

**[\*\*\*Insert name of Counterparty\*\*\*]**

\_\_\_\_\_  
Name:

Capacity:

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**SCHEDULE 10**

**Notice of Cession to counterparty under Specified Property Sale Agreement**

To: [•]  
(the "Counterparty")

From: [•]  
(the "Cedent")

Copy to: **BOWWOOD AND MAIN NO 296 (RF) PROPRIETARY LIMITED**  
(the "Cessionary")

[•]

Dear Sirs

**Specified Property Sale Agreement dated \_\_\_\_\_ (the "Specified Property Sale Agreement") between, *inter alios*, the Counterparty and the Cedent**

**1. INTRODUCTION**

- 1.1. We refer to the Specified Property Sale Agreement and the security cession and pledge (the "**Cession and Pledge**") dated [•] between, *inter alios*, the Cedent (as cedent) and the Cessionary (as cessionary) in relation to the cession of the Claims, the Specified Property Sale Agreement Rights and the Related Rights (as each such term is defined in the Cession and Pledge), a copy of which is attached hereto.
- 1.2. The Cedent and the Cessionary hereby give the Counterparty notice of the Cession and Pledge and by its execution hereof the Counterparty irrevocably and unconditionally consents, acknowledges and agrees to what is set out herein.
- 1.3. Save as defined herein, terms defined in the Cession and Pledge (whether directly or by incorporation by reference) shall bear the same meanings when used in this notice of cession (this "**Notice of Cession**").

**2. NOTICE OF CESSION**

The Cedent has pursuant to the Cession and for the period commencing on the Effective Date and ending on the Final Discharge Date, as security for the Secured Obligations, ceded, in *securitatem debiti*, to the Cessionary, amongst other things, all of its Claims, Specified Property Sale Agreement Rights and the Related Rights.

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3. **PERFORMANCE UNDER THE SPECIFIED PROPERTY SALE AGREEMENT**

Notwithstanding any contrary provision of the Cession and Pledge or any other document, the Cedent shall at all times throughout the duration of the Cession and Pledge remain liable to perform all of its obligations under the Specified Property Sale Agreement and nothing herein or therein contained and no exercise by the Cessionary of any right under the Cession and no failure on the part of the Cedent to perform any or all of its obligations in respect of the Specified Property Sale Agreement or otherwise shall constitute or be deemed to constitute an assumption or acceptance by the Cessionary of any obligation of the Cedent or any other person under the Specified Property Sale Agreement.

4. **COUNTERPARTY'S ACKNOWLEDGEMENT AND AGREEMENT**

The Counterparty hereby –

- 4.1. acknowledges receipt of this Notice of Cession, repeats for the benefit of the Cessionary that it will fulfil all of the obligations on its part contained in the Specified Property Sale Agreement (which obligations shall be continuing and shall survive the execution of the Cession), and represents and warrants that it has not previously received notice of any cession of Claims, Specified Property Sale Agreement Rights or Related Rights in respect of the Specified Property Sale Agreement and, undertakes to perform all of its payment obligations under the Specified Property Sale Agreement in favour of the Cessionary;
- 4.2. acknowledges that the Cedent shall at all times remain liable to perform all of its obligations under the Specified Property Sale Agreement in favour of the Counterparty; and
- 4.3. agrees that all proceeds arising in respect of the Specified Property Sale Agreement must be paid to the Cessionary and into the following account (or such other account the Cessionary may specify in writing from time to time):

**Bank:** [•]  
**Branch:** [•]  
**Branch Code:** [•]  
**Account Name:** [•]  
**Account Number:** [•]

5. **RECOGNITION OF RIGHTS**

The Counterparty consents to the Cession and Pledge pursuant to which all of the Claims, the Specified Property Sale Agreement Rights and Related Rights in respect of the Specified Property Sale Agreement are ceded to the Cessionary.

6. **GOVERNING LAW**

This Notice of Cession will be governed by and construed in accordance with the laws of the Republic of South Africa. For the benefit of the Cessionary, the Counterparty and the Cedent irrevocably submits to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division,

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Johannesburg), waives any objection on the ground of venue or *forum non conveniens* or any similar grounds, and consents to service of process in any manner permitted by the relevant law.

7. **COUNTERPARTS**

This Notice of Cession may be executed and delivered and/or acknowledged and agreed in counterparts and each such counterpart shall, when taken together shall be deemed to constitute one and the same instrument. For the purposes of this Notice of Cession, an email copy shall be deemed a valid counterpart.

Yours faithfully

For and on behalf of:  
[•]  
(as Cedent)

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his authority hereto

For and on behalf of:  
[\*\*\*Insert name of Counterparty\*\*\*]

\_\_\_\_\_  
Name:  
Capacity:

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**SIGNATURE PAGE**

**ORIGINAL CEDENT**

**SIGNED** at \_\_\_\_\_ on this the 3rd day of December 2021

For and on behalf of  
**Tongaat Hulett Limited**



Name: Hudson

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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SIGNATURE PAGE

ORIGINAL CEDENT

SIGNED at \_\_\_\_\_ on this the 3rd day of December 2021

For and on behalf of

Tongaat Huilett Developments Proprietary  
Limited

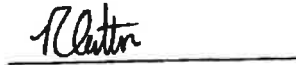


Name: Hudson  
Capacity: Director

Who warrants his authority hereto

For and on behalf of

Tongaat Huilett Developments Proprietary  
Limited



Name: Rob Aitken  
Capacity: Director

Who warrants his authority hereto



**SIGNATURE PAGE**

**ORIGINAL CEDENT**

SIGNED at \_\_\_\_\_ on this the 3rd day of December 2021

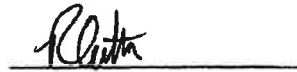
For and on behalf of  
Tongaat Hulett Estates Proprietary Limited



Name: Hudson  
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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**SIGNATURE PAGE**

**ORIGINAL CEDENT**

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**

**ORIGINAL CEDENT**

SIGNED at \_\_\_\_\_ on this the 3rd day of December 2021

For and on behalf of  
Tongaat Hulett Sugar South Africa Limited



Name: Hudson  
Capacity: Director

Who warrants his authority hereto

For and on behalf of  
Tongaat Hulett Sugar South Africa Limited



Name: Rob Atken  
Capacity: Director

Who warrants his authority hereto

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**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: Sinemayo Myeto

Capacity: Authorized Signatory

Who warrants his authority hereto



**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



**JUDGE: NYAMADZABO J.**



**IN 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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**CONFIRMATORY AFFIDAVIT**


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I, the undersigned


**SIPHO ZIGA,**

do hereby take oath and say that:

1. I am an adult male of full legal capacity, resident at in Gaborone. I am employed as a Partner by Armstrongs Attorneys, the Applicants' attorneys of record.
2. The averments herein contained are within my own personal knowledge and same are true and correct to the best of my belief.
3. I have read the Applicants' Replying Affidavit and wish to confirm the contents thereof in so far as they relate to me and/or the Applicants' attorneys of record.

  
SIPHO ZIGA

THUS DONE, SIGNED AND SWORN TO, BEFORE ME AT GABORONE, ON THIS THE 02 DAY OF JUNE 2026, AT 11:57 AM/PM, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND THAT HE HAS NO OBJECTION TO TAKING THE OATH IN THE PRESCRIBED FORM, AND HE CONSIDERS THE OATH TO BE BINDING UPON HIS CONSCIENCE.

  
COMMISSIONER OF OATHS  
(Ref: TB/mfm/M02649)

**NEELO LEBOGANG OBUSITSE**  
ATTORNEY  
COMMISSIONER OF OATHS  
BOTSWANA

HIGH COURT OF BOTSWANA  
CIVIL REGISTRY  
GABORONE  
02 JUN 2026  
DOCUMENT RECEIVED.....  
TIME: 12:55