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(1) BOWWOOD AND MAIN NO. 40 (RF) PROPRIETARY LIMITED
(as Debt Guarantor)

in favour of

(2) TMF CORPORATE SERVICES SOUTH AFRICA PROPRIETARY LIMITED
(in its capacity as Notes Trustee, for and on behalf of the Noteholders)

and

(3) FIRSTRAND BANK LIMITED
(acting through its Rand Merchant Bank division)
(in its capacity as Intercreditor Agent)

SECOND RANKING DEBT
GUARANTEE

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THIS SECOND RANKING DEBT GUARANTEE IS MADE BETWEEN:

- (1) **BOWWOOD AND MAIN NO. 40 (RF) PROPRIETARY LIMITED**, a private company duly incorporated according to the company laws of South Africa with registration number 2012/179197/07 (as "**Debt Guarantor**");
- (2) **TMF CORPORATE SERVICES SOUTH AFRICA PROPRIETARY LIMITED**, a private company duly incorporated according to the company laws of South Africa with registration number 2006/013631/07 ("**Notes Trustee**"); and
- (3) **FIRSTRAND BANK LIMITED (acting through its Rand Merchant Bank division)**, a public company and registered bank duly incorporated according to the company and banking laws of South Africa with registration number 1929/001225/06 ("**Intercreditor Agent**").

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Capitalised terms used (but not otherwise defined) in this Agreement shall, unless otherwise defined, bear the meanings assigned to them in the Intercreditor Agreement (as defined below) and the unless the context indicates contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

"**Accruing Demand Interest**" has the meaning given to it in clause 3.2 (*Form of Demand*);

"**Agreement**" means the second ranking debt guarantee contained in this document;

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, permit, exemption, filing, notarisation, lodgement or registration;

"**Counter Indemnity Agreement**" means the written agreement entitled "*Third Amended and Restated Counter Indemnity*" concluded on or about 17 November 2021 between the Obligors, the Debt Guarantor and the Facility Agent (as defined in the Facility Agreement), pursuant to which *inter alia* the Obligors indemnify the Debt Guarantor against all claims or losses suffered by the Debt Guarantor under this Agreement and the First Ranking Debt Guarantee, all on the terms and subject to the conditions contained therein;

"**Discharge Date**" means the later of:

- (a) the date on which the Programme Memorandum is terminated by the Issuer; and
- (b) the date on which all of the obligations of the Obligors under or in respect of the Notes Documents have been irrevocably and unconditionally discharged in full;

"**Facility Agreement**" means the agreement titled "*Facility Agreement*" concluded on or about 17 November 2021 between RMB, Nedbank, the Issuer (as borrower), the Guarantors and the Debt Guarantor in terms of which, *inter alia*, the Lenders made available to the Issuer a revolving credit facility in for the purposes of:

- (a) refinancing existing indebtedness; and

(b) funding its capital expenditure requirements and general corporate purposes,

all on the terms and subject to the conditions contained therein;

"First Ranking Debt Guarantee" means the written agreement entitled "*Debt Guarantee*" concluded on or about 17 November 2021 between the Debt Guarantor and the First Ranking Secured Creditors, pursuant to which, *inter alia*, the Debt Guarantor guarantees the obligations of the Obligors to the First Ranking Secured Creditors under and in terms of the First Ranking Finance Documents, all on the terms and subject to the conditions contained therein;

"First Ranking Finance Documents" means the "*Senior Finance Documents*", as such term is defined in the Intercreditor Agreement;

"First Ranking Secured Creditors" means the "*Senior Lenders*", as such term is defined in the Intercreditor Agreement;

"Guaranteed Obligations" means any and all obligations and/or indebtedness (whether present or future, actual or contingent and whether owed jointly or severally and whether as principal or surety or in any other capacity whatsoever) which are now, or which may hereafter become, owing or incurred by any Obligor to the Noteholders under and in terms of the Notes Documents together with all damages, and all costs, charges, expenses and liabilities incurred by any Noteholder in connection with the breach by any Obligor of its obligations under the Notes Documents and which the Noteholders, individually or together, are entitled to recover from any Obligor in terms of the Notes Documents, including all items which would be Guaranteed Obligations but for the winding up, absence of legal personality or incapacity of any Obligor or any statute of limitation, and a reference to "**Guaranteed Obligation**" shall be to any one or more of the Guaranteed Obligations as the context requires;

"Intercreditor Agreement" means the intercreditor agreement concluded or to be concluded between, *inter alios*, the Debt Guarantor, the First Ranking Secured Creditors, the Notes Trustee (for and on behalf of the Noteholders) and the Intercreditor Agent on or about the Signature Date;

"Issuer" means Pan African Resources Funding Company Proprietary Limited, a private company duly incorporated according to the company laws of South Africa with registration number 2012/021237/07;

"Nedbank" means Nedbank Limited (acting through its Nedbank Corporate and Investment Banking division), registration number 1951/000009/06, a public company and registered bank duly incorporated according to the company and banking laws of South Africa;

"Notes Documents" means the "*Notes Documents*", as such term is defined in the Intercreditor Agreement;

"Noteholders" means the "*Noteholders*", as such term is defined in the Intercreditor Agreement;

"Obligors" means the "*Obligors*", as such term is defined in the Intercreditor Agreement;

"Party" means a party to this Agreement;

"Primary Claims" means the claims of the First Ranking Secured Creditors against the Debt Guarantor under the First Ranking Debt Guarantee;

"Programme Memorandum" a written agreement entitled "*ZAR5,000,000,000 Domestic Medium Term Note Programme*" concluded or to be concluded between the Obligors, pursuant to which, *inter alia*, the Issuer may from time to time issue notes to the Noteholders all on the terms and subject to the conditions contained therein;

"RMB" means FirstRand Bank Limited (acting through its Rand Merchant Bank division), registration number 1929/001225/06, a public company and registered bank duly incorporated according to the company and banking laws of South Africa;

"Secondary Claims" means the claims of the Noteholders against the Debt Guarantor under this Agreement; and

"Signature Date" means the date of signature of this Agreement by the Party last signing.

1.2 Interpretation and Construction

- (a) In this Agreement:
- (i) clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
 - (ii) an expression which denotes:
 - (A) any gender includes the other genders;
 - (B) a natural person includes a juristic person and vice versa;
 - (C) the singular includes the plural and vice versa;
 - (D) a Party includes a reference to that Party's successors in title and assigns allowed at law; and
 - (E) a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- (b) Any reference in this Agreement to:
- (i) **"business hours"** shall be construed as being the hours between 08.30am and 17.00pm on any Business Day. Any reference to time shall be based upon South African standard time;
 - (ii) **"days"** shall be construed as calendar days; and
 - (iii) **"laws"** means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and **"law"** shall have a similar meaning.

- (c) The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- (d) Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- (e) Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- (f) Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- (g) A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- (h) Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- (i) If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- (j) Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- (k) The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- (l) No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a Party to this Agreement.
- (m) The use of any expression in this Agreement covering a process available under South African law, such as winding-up or business rescue proceedings, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- (n) Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- (o) In this Agreement the words "**clause**" or "**clauses**" refer to clauses of this Agreement.

- (p) This Agreement and the rights and obligations of the Parties under this Agreement shall in all respects be exercised subject to the terms and conditions of the Intercreditor Agreement (including without limitation, rules of construction and recourse) and in the event of any conflict between the provisions of this Agreement and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.
- (q) In exercising its respective rights and obligations under this Agreement, the Debt Guarantor shall act only on the instructions of the person(s) entitled to instruct it in accordance with the Intercreditor Agreement. The Parties acknowledge and agree that the Intercreditor Agreement will govern any and all action (including recourse, realisation, enforcement and payment) pursuant to and in accordance with the provisions of this Agreement.

2. INTRODUCTION

- 2.1 The Debt Guarantor has agreed to guarantee to the Noteholders, the due and full performance by the Issuer of the Guaranteed Obligations on the terms and conditions set out in this Agreement.
- 2.2 The Obligors executed the Counter Indemnity Agreement in favour of the Debt Guarantor and provided and/or procured the provision of the Transaction Security as security for their obligations to the Debt Guarantor under and in terms of the Counter Indemnity Agreement.

3. GUARANTEE

3.1 Second Ranking Debt Guarantee

The Debt Guarantor hereby (as principal obligor and not merely as surety), irrevocably, unconditionally and on the basis of a severable and discrete obligation enforceable against the Debt Guarantor (whether or not any or all of the Guaranteed Obligations are enforceable against the Issuer):

- (a) guarantees to the Noteholders the full, prompt and complete performance of all the Guaranteed Obligations as and when the same shall become due;
- (b) undertakes to the Noteholders that if and each time any Obligor shall be in default in the payment or performance of the Guaranteed Obligations (or any of them) in accordance with the terms of the Notes Documents and, to the extent applicable, has failed to remedy such default within any grace period granted under the Notes Documents, the Debt Guarantor will, on demand from the Noteholders, pay any and all sums which may be payable in respect thereof as if the Debt Guarantor instead of the Obligor was expressed to be the principal obligor in respect thereof, together with interest or default interest thereon as specified in the Notes Documents; and
- (c) guarantees to each Noteholder payment of all Accruing Demand Interest.

3.2 Form of demand

Any demand for payment of any amount of the Guaranteed Obligations in terms of clause 3 (*Guarantee*) (as applicable) shall be delivered to the Debt Guarantor by the Noteholder Trustee and shall specify the amount being demanded and, if applicable and without double counting, the amount of interest or default interest accruing thereon as specified in the relevant Finance Document (the **Accruing Demand Interest**). A demand for payment of

Accruing Demand Interest need not quantify the amount of interest or default interest, as the case may be, to be so paid by the Debt Guarantor, up to the date of payment, but may instead specify the rate at which it so accrues and the method of its calculation, so that the amount of Accruing Demand Interest to be paid by the Debt Guarantor can be determined from the demand itself and paid up to the date of payment.

3.3 **Ultimate Balance**

The guarantee contemplated in this Agreement shall be continuing and shall remain in force until the Discharge Date notwithstanding any intermediate payment in whole or in part of the Guaranteed Obligations and shall apply to the ultimate balance thereof.

3.4 **Reinstatement**

Where any discharge (whether in respect of any amounts hereby guaranteed under this Agreement, any other security for the Guaranteed Obligations or otherwise) is made in whole or in part or any arrangement is made on the faith of any payment, security or other disposition, which discharge or arrangement is avoided or must be repaid on winding-up or repaid otherwise without limitation, the liability of the Debt Guarantor under this Agreement shall continue as if there had been no such discharge or arrangement.

3.5 **Waiver of Defences**

- (a) The liability of the Debt Guarantor hereunder in respect of the Guaranteed Obligations shall not be prejudiced, affected or diminished by any act, omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate the Debt Guarantor from its obligations hereunder in whole or in part, including, without limitation:
- (i) any extension of time, waiver or consent granted to, or composition with any Obligor or any other person; or
 - (ii) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security; or
 - (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights, remedies or security against any Obligor or any other person; or
 - (iv) any variation of or extension of the due date for performance of any term of any agreement in connection with the Guaranteed Obligations, including this Agreement (with the intent that the Debt Guarantor's obligations in respect of the Guaranteed Obligations shall apply to such term as varied or in respect of the extended due date) or any increase, reduction, exchange, acceleration, renewal, surrender, release or loss of or failure to perfect any of the Guaranteed Obligations or any security therefor or any non-presentment or non-observance of any formality in respect of any instruments; or
 - (v) any irregularity, unenforceability or invalidity of any of the Transaction Security or of the obligations (including the Guaranteed Obligations) of any other person or any present or future law or order of any government or authority (whether of right or in fact) purporting to reduce or otherwise affect such obligations with the intent that the Debt Guarantor's obligations under

this Agreement shall remain in full force and this Agreement shall be construed accordingly as if there were no such irregularity, unenforceability, invalidity, law or order; or

- (vi) the winding-up, administration, insolvency, appointment of a business rescue practitioner or any similar proceedings; or
 - (vii) any change in the name or constitution of any Obligor, the Debt Guarantor, any Noteholder or any other person; or
 - (viii) any legal limitation, disability, incapacity or other circumstances relating to any Obligor or any other person or any amendment or supplement to or variation of the Notes Documents.
- (b) The Noteholders shall not be concerned to see or investigate the powers or authorities of any Obligor or its officers or agents, and Guaranteed Obligations incurred in the purported exercise of such powers or authorities or by any person purporting to be or represent any Obligor shall be deemed to form a part of the Guaranteed Obligations, and "**Guaranteed Obligations**" shall be construed accordingly.

3.6 **Immediate Recourse**

The Debt Guarantor waives any right it may have of first requiring the Noteholders to proceed against the Issuer or enforce any guarantee or security granted by any other person before enforcing the security constituted hereby.

3.7 **Additional Security**

This Agreement shall be in addition to and shall not in any way be prejudiced by any collateral or other security now or hereafter held by the Noteholders as security for the Guaranteed Obligations. The rights of the Noteholders hereunder are in addition to and not exclusive of those provided by law.

3.8 **Certificates**

A certificate signed by any manager or director (whose authority and appointment shall not be necessary to prove) of the Noteholder Trustee setting forth the amount of any Guaranteed Obligation shall set out in reasonable detail the calculation thereof and, in the absence of manifest error or fraud, be *prima facie* evidence of such amount as against the Debt Guarantor.

3.9 **Waiver of Benefits**

Notwithstanding any law or provision contained in any Notes Document to the contrary, the Debt Guarantor hereby renounces any benefits to which it may as Debt Guarantor in law be entitled, including, without limitation, the benefits of excussion, division, cession of action, revision of accounts and no value received, the full force, meaning and effect whereof it is fully acquainted.

3.10 **Guarantor Intent**

Without prejudice to any provision of this Agreement, the Debt Guarantor expressly confirms that it intends that this Agreement shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Notes Documents and/or

any facility or amount made available by the Noteholders under the Notes Documents for the purposes of or in connection with any of the following, business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variations or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

3.11 Maximum liability

The maximum aggregate amount receivable from the Debt Guarantor under this Debt Guarantee shall be limited to the net proceeds of recovery on enforcement by the Debt Guarantor of its rights and remedies against (i) the Obligors under the Counter Indemnity, and (ii) the security granted by the Obligors pursuant to the Security Documents, save that the Debt Guarantor's liability hereunder shall never exceed the Guaranteed Obligations.

4. DURATION

4.1 This Agreement shall commence on the Signature Date and remain in full force and effect until the Discharge Date.

4.2 The Notes Trustee shall, no later than 5 (five) Business Days after receipt of written request from the Debt Guarantor, certify in writing to the Debt Guarantor that the Discharge Date has occurred (provided that the Discharge Date has in fact occurred).

5. PAYMENTS

5.1 All payments to be made by the Debt Guarantor hereunder shall be made in immediately available funds in South African Rand into a nominated account as the Noteholder Trustee, may from time to time direct in writing and shall be made free of exchange, any other costs, charges or expenses without any deduction, set-off or counterclaim whatsoever.

5.2 All payments to be made by the Debt Guarantor hereunder shall be made in full without any deduction or withholding in respect of Tax or otherwise unless the deduction or withholding is required by law.

5.3 If any deduction or withholding is required in respect of any sum payable by the Debt Guarantor under this Agreement, the Debt Guarantor shall increase the sum so that the net amount received by the Notes Trustee after the deduction or withholding (and after the payment of any Tax or additional Tax which is due as a consequence of the increase) shall be equal to the amount which the Notes Trustee (for and on behalf of the Noteholders) would have been entitled to receive in the absence of any requirement to make that deduction or withholding.

6. SUBORDINATION OF SECONDARY CLAIMS

6.1 Each Noteholder hereby subordinates its Secondary Claims to the Primary Claims.

6.2 Notwithstanding anything to the contrary recorded in this Agreement, the Debt Guarantor shall not make any payment to the Notes Trustee (for and on behalf of the Noteholders) under this Agreement in breach of the provisions of (and priorities and ranking set out in) the Intercreditor Agreement.

- 6.3 If, contrary to the provisions of clause 6.2 above, the Debt Guarantor makes a payment to the Note Trustee (for and on behalf of any Noteholder), the Notes Trustee or the Noteholder who received such payment shall, on demand by the Debt Guarantor, repay the amount of such payment to the Debt Guarantor within 1 (one) Business Day of demand by the Debt Guarantor.
- 6.4 This clause 6 constitutes a stipulation for the benefit of the First Ranking Secured Creditors, capable of acceptance at any time. To the extent that a splitting of claims arises as a result of the provisions of this clause 6, the Debt Guarantor hereby consents to such splitting of claims.

7. REPRESENTATIONS AND WARRANTIES

The Debt Guarantor makes the representations and warranties set out in the balance of this clause 7 to the Noteholders.

7.1 Matters Represented

- (a) The Debt Guarantor is a limited liability company, duly incorporated in accordance with the laws of the Republic of South Africa.
- (b) The Debt Guarantor has the legal capacity and power to enter into and perform in terms of this Agreement and the transactions contemplated hereby and has taken all necessary action to authorise the entry into and performance of this Agreement and the transactions contemplated hereby in accordance with its terms.
- (c) This Agreement is in full force and effect and constitutes legal, valid and binding obligations on it in accordance with its terms.
- (d) This Agreement is in proper form for its enforcement under applicable law.
- (e) The entry into and performance by the Debt Guarantor of this Agreement and the transactions contemplated hereby do not:
 - (i) conflict with any law or regulation or any official or judicial order applicable to it;
 - (ii) conflict with its memorandum of incorporation;
 - (iii) conflict with any agreement or document to which it is a party or which is binding upon it or any of its assets; or
 - (iv) result in the creation or imposition of (or enforceability of) any encumbrance on any of its assets or the provisions of any agreement or document.
- (f) All Authorisations required in connection with the entry into and performance by the Debt Guarantor and the validity and enforceability against it of this Agreement have been obtained or effected (or, in the case of registrations, will be so effected within any applicable required period) and, if obtained and effected, are in full force and effect and all fees (if any) payable in connection therewith, if due, have been paid and there has been no default in the performance of any of the terms or conditions thereof which is material to the effectiveness of any of such Authorisation.
- (g) The Debt Guarantor warrants that it knows and understands the terms and conditions of the Transaction Security granted by the Obligor for their obligations under the

Counter Indemnity Agreement and the Guaranteed Obligations and agrees to be bound by such terms and conditions.

- (h) As of the Signature Date:
- (i) the Debt Guarantor has not taken any corporate action, nor have any other steps been taken or legal proceedings initiated against it, for its winding up, dissolution, administration or re-organisation, commencement of business rescue proceedings, for the enforcement of any security over all or any of assets or revenues or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee, business rescue practitioner or similar officer of it or of any of its assets;
 - (ii) no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including, but not limited to, investigative proceedings) have been commenced or threatened against the Debt Guarantor; and
 - (iii) it is not Financially Distressed (as defined in the Companies Act).

7.2 Repetition

The representations and warranties set out in clause 7 shall be made on the Signature Date and be deemed to be repeated by the Debt Guarantor in favour of the Noteholders on each day prior to the Discharge Date, in each case with reference to the facts and circumstances then subsisting as if made at each such time.

8. UNDERTAKINGS BY THE DEBT GUARANTOR

The Debt Guarantor undertakes from the Signature Date until the Discharge Date that it will:

- (a) from time to time during the currency of this Agreement promptly furnish the Noteholders with such information concerning the financial affairs of the Debt Guarantor as the Noteholders may reasonably require;
- (b) obtain and promptly renew from time to time, and will promptly furnish certified copies to the Noteholders of all such Authorisations as may be required under any applicable law or regulation to enable it to perform its obligations under this Agreement or required for the validity or enforceability thereof and the Debt Guarantor shall comply with the terms of same;
- (c) at the request of the Noteholders and at the Debt Guarantor's expense, promptly do or permit to be done anything (including instituting and prosecuting all proceedings), and execute and deliver any and all such further instruments or documents that the Noteholders from time to time consider necessary or expedient, in order to:
 - (i) preserve or protect the interests of any of the Noteholders under this Agreement;
 - (ii) perfect or protect the security created (or intended to be created) in favour of the Noteholders by this Agreement;
 - (iii) establish, perfect, preserve or enforce their rights under or in respect of this Agreement or any related document;

- (iv) facilitate the appropriation or realisation of the Debt Guarantor's obligations to the Noteholders under this Agreement; and/or
 - (v) exercise any power, authority or discretion vested in the Noteholders under this Agreement;
- (d) The Debt Guarantor will not incur any debt or liability other than under this Agreement and in respect of annual statutory, secretarial, accounting and auditing fees without the prior written consent of each Noteholder.

9. SET-OFF

The Debt Guarantor authorises the Noteholders (subject to the Intercreditor Agreement) after this Agreement has become enforceable:

- (a) to set off any amount owing by the Debt Guarantor hereunder against any amount owing to the Debt Guarantor by any Noteholder under and in terms of the Notes Documents (whether or not then due); and
- (b) to retain or withhold payment of any amount due by any Noteholder to the Debt Guarantor in or towards payment of all or any part of the Guaranteed Obligations owed to any Noteholder.

10. ASSIGNMENT

- 10.1 The Debt Guarantor shall not be entitled to cede or delegate any of its rights or obligations under this Agreement without the prior written consent of each Noteholder.
- 10.2 Each Noteholder shall be entitled to cede and/or delegate all or any portion of its rights and obligations under this Agreement to any party to which it cedes and/or delegates its rights and obligations under the Notes Documents.
- 10.3 To the extent that the cession and/or delegation by any Noteholder as contemplated in clause 10.2 gives rise to a splitting of claims against the Debt Guarantor, the Debt Guarantor hereby agrees to such splitting of claims.

11. STIPULATION FOR THE BENEFIT OF THE NOTEHOLDERS

The provisions of this Agreement which confer benefits upon the Noteholders, shall constitute stipulations for the benefit of the Noteholders and of any person(s) becoming a Noteholder in accordance with the provisions of the Notes Documents, capable of acceptance at any time. To the extent that a splitting of claims arises as a result of the provisions of this clause 11, the Debt Guarantor hereby consents to such splitting of claims.

12. MISCELLANEOUS

The rights of the Noteholders under this Agreement:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of their rights under general law, and
- (c) may be waived only in writing and specifically.

13. NOTICES AND DOMICILIA

13.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter.

13.2 Addresses

(a) The physical address, email address and the department or officer, if any, for whose attention the communication is to be made of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

(i) in the case of the Noteholders, that set out with its name below:

(ii) in the case of the Debt Guarantor:

Address: 3rd Floor, 200 on Main, Cnr Main and Bowwood
Roads
Claremont
Western Cape
7708
South Africa

E-mail address: legal.sa@tmf-group.com

Attention: The Managing Director;

(iii) in the case of the Notes Trustee:

Address: TMF Building 2 Conference Lane
Bridgewater One Building 1
Bridgeway Precinct
Century City
Cape, 7446

E-mail address: Nick Clarke

Attention: Nick.Clarke@tmf-group.com ;

(iv) in the case of the Intercreditor Agent:

Address: 1 Merchant Place
Corner Fredman Drive and Rivonia Road
Sandown
Sandton
2196

E-mail address: Masereko.Fihlela@rmb.co.za

DLRMBAgencyTeam@rmb.co.za

Attention: Masereko Fihlela;

- (v) in the case of any other Party, that address and email address notified in writing to the Noteholders on or prior to the date on which it becomes a party to this Agreement,

or any substitute address or email address, or department or officer as a Party, may notify to the other Parties by not less than five Business Days' notice.

13.3 Domicilia

- (a) Each Party chooses its physical address provided under or in connection with clause 13.2 (*Addresses*) as its *domicilium citandi et executandi* at which documents in legal proceedings in connection with this Agreement or the Notes Documents may be served.
- (b) Any Party may by written notice to the other Parties change its *domicilium* from time to time to another address, not being a post office box or a *poste restante*, in South Africa, provided that any such change shall only be effective on the 14th day after deemed receipt of the notice by the other Parties pursuant to clause 13.4 (*Delivery*).

13.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Notes Documents will:
 - (i) if delivered by way of email, be deemed to have been received on the first Business Day following the date of transmission;
 - (ii) if delivered by hand, be deemed to have been received at the time of delivery; and
 - (iii) if delivered by way of courier service, be deemed to have been received on the 7th Business Day following the date of dispatch,

unless the contrary is proved and provided and if a particular department or officer is specified as part of its address details provided under clause 13.2 (*Addresses*), that such communication or document is addressed to that department or officer.

- (b) Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 13.

13.5 English language

Any notice or other document given under or in connection with the Notes Documents must be in English.

14. BENEFIT OF THE AGREEMENT

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or any of them.

15. APPLICABLE LAW AND JURISDICTION

15.1 This Agreement and any non-contractual obligations arising out of or in connection with it are in all respects governed by and construed under the laws of South Africa.

15.2 The Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg (or any successor to that division) in any dispute arising from or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement).

16. INDEPENDENT ADVICE

Each of the Parties to this Agreement hereby acknowledges and agrees that:

- (a) it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- (b) all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with that Party's intentions.

17. NO CONDITIONS, WARRANTIES AND REPRESENTATIONS

No representations, promises or warranties have been made or given to the Debt Guarantor by the Noteholders or any other person in connection with this Agreement.

18. GENERAL

18.1 Whole Agreement

- (a) This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- (b) This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

18.2 Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

18.3 **No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

18.4 **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by either Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

18.5 **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision(s) if they were aware of such unenforceability at the time of execution hereof.

18.6 **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which out of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

19. **SIGNATURE**

19.1 This Agreement is signed by the Parties on the dates and at the places indicated below.


19.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

19.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

19.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at Johannesburg on 6 December 2022

For and on behalf of **BOWWOOD AND MAIN NO. 40 (RF) PROPRIETARY LIMITED (as Debt Guarantor)**

DocuSigned by:


Signature 0A8ACDFB95FF47F...

Rozanne Kamalie

Name of Signatory


Director

Designation of Signatory

SIGNED at Johannesburg on 6 December 2022

For and on behalf of **TMF CORPORATE SERVICES SOUTH AFRICA PROPRIETARY LIMITED** (as Notes Trustee)

DocuSigned by:


70B431724E7B46A...
Signature

Bongwiwe Lynette Dube

Name of Signatory

Authorised Signatory

Designation of Signatory

Signature

Name of Signatory

Designation of Signatory

SIGNED at Johannesburg on 6 December 2022

For and on behalf of **FIRSTRAND BANK LIMITED**
(acting through its Rand Merchant Bank division)
(as Intercreditor Agent)



Signature

Masereko Fihlela

Name of Signatory

Authorised Signatory

Designation of Signatory

Signed by: Helen Mtshali
Signed at: 2022-12-05 17:45:02 +02:00
Reason: I approve this document



Signature

Helen Mtshali

Name of Signatory

Authorised Signatory

Designation of Signatory