

NOTARIAL DEED OF LEASE

The Undersigned declare that they will appear in accordance with the undertakings in the Option agreement before the Notary Public by lawful authority, duly sworn and admitted, practicing at 15th Floor, Convention Tower, Heerengracht Street, Foreshore, Cape Town, 8001 South Africa, Republic of South Africa, in order to the present agreement to be notarized and registered.

BETWEEN

PETRUS GERHARDUS OLIVIER, Identity number 760119 5077 08 4,

Who, together with his successors-in-title and assigns is hereinafter referred to as the "Lessor");

AND

BEAUFORT WEST SOLAR COMPANY 2(Proprietary) Limited, registration number **2013/139555/07**, a special project company, Represented by Jan Abraham Visagie, being duly authorized thereto under and by virtue of a power of attorney executed at **Beaufort West** on **26 September 2017**

(which company, together with its successor/s-in-title and assign/s is hereinafter referred to as the "**Lessee**");

WHEREAS



A The Lessor is the registered owner of the following property, namely:
**Portion 3 of the Farm STEENROTSFONTEIN No: 168, Beaufort
West RD, Northern Cape Province, in extent of 707,0429
hectares,**

Held by deed of transfer no **T000003321/2005**, As shown on the
diagram attached hereto as Annex A, (The "**Property**")

B The Lessor intends to let, and the Lessee intends to hire from the
Lessor, the Property.

C The Parties desire to record their agreement in writing.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. **Interpretation**

1.1 In this Agreement, the following words shall, unless otherwise stated or
inconsistent with the context in which they appear, bear the following
meanings:

1.1.1 **"Annex"** means an annex to this Agreement;

1.1.2 **"Business Day"** Means any day other than a Saturday, Sunday or
official public holiday in the Republic of South
Africa;

1.1.3 **"Commencement
Date"** Means the date of commencement of actual
construction of the PV Power Plant;

1.1.4 **"Construction"** Means the process of constructing the PV Power
Plant on the Property (and includes any step of
such process). For the avoidance of doubt, this
excludes the construction of measuring
equipment and/or roads on the Property;



- 1.1.5 **"CPI"** means the average annual rate of change (expressed as a percentage) in the Consumer Price Index, excluding interest rates on mortgage bonds, for all metropolitan areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it, which annual change shall be determined by comparing the most recently published index with the index published in respect of the corresponding month in the previous year;
- 1.1.6 **"Date of Signature"** Means the date of notarial execution of signature of this Agreement;
- 1.1.7 **"Financial Close"** Means, with respect to the construction and operation of the PV Power Plant on the Property, the point in time when:
- 1.1.7.1 the financing (including corporate, equity, external debt and/or any other form of finance) required in order to construct and operate the PV Power Plant on the Property, has been procured, in such form and upon such terms and conditions as may be acceptable to the Lessee in its sole discretion;
- 1.1.7.2 all Environmental Consents and Land Use Consents (as these terms are defined in the IPP RFP 2011) that are required for the PV Power Plant have been finally Granted

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(and no review is pending in respect of any such consents), with such conditions as may be acceptable to the Lessee in its sole discretion;

1.1.7.3

all real rights (including servitudes) over all land to be traversed by the PV Power Plant's connection line, for the purposes of that traversal, have been granted and registered (if applicable), upon such terms and conditions as may be acceptable to the Lessee in its sole discretion;

1.1.7.4

the Lessee has been granted a Generation license in terms of the Electricity Regulation Act (No 4 of 2006) (as amended), with such conditions as may be acceptable to the Lessee in its sole discretion;

1.1.7.5

all Project Agreements have been Concluded by all relevant parties thereto, upon such terms and conditions as may be acceptable to the Lessee in its sole discretion; as advised in writing by the Lessee to the Lessor, or such earlier date as advised in writing by the Lessee to the Lessor;

1.1.8 **"Improvements"**

means all buildings, installations, Fences, irrigation works, structures, dams and roads on the Property, together with any integral machinery which forms part of a forgoing;

1.1.9 **"Initial Period"**

means a period of 5 years commencing on the Date of Signature;

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- 1.1.10 **"IPP RFP 2011"** means the request for qualification and proposals for new generation capacity under the IPP procurement programme released by the Department of Energy on 3 August 2011 under tender no DOE/001/2011/2012 (as amended from time to time);
- 1.1.11 **"Lease"** means the notarial deed of lease setout in this document, as amended from time to time, together with the Annexes, as amended from time to time;
- 1.1.12 **"Parties"** means the Lessor and the Lessee, and **"Party"** means any one of them as the context may indicate;
- 1.1.13 **"Plant Commissioning Date"** means the date of completion of Commissioning of the PV Power Plant, as advised by the Lessee in writing to the Lessor;
- 1.1.14 **"Project"** means all activities related or ancillary to the Construction and operation of the PV Power Plant on the Property;
- 1.1.15 **"Project Agreements"** means the power purchase agreement, the implementation agreement, the direct agreement and the connection agreements relating to the Project;
- 1.1.16 **"Property"** means the property described under "A" in the preamble together with any improvements thereon;

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1.1.17	"PV Module"	mean a packaged, interconnected assembly of solar cells;
1.1.18	"PV Power Plant"	means a photovoltaic power plant with an installed capacity of a minimum of 75 MW , which is fully operational and is generating with the Electricity in accordance with the Lessee's minimum requirements, to be constructed on the Property;
1.1.19	"R" or "Rand"	means South African Rand, the official Currency in the Republic of South Africa;
1.1.20	"BWSC3"	means BEAUFORT WEST SOLAR COMPANY 3 (Proprietary) Limited Registration Number 2013/139638/07 , a private company with limited liability registered and incorporated in the Republic of South Africa in terms of the Companies Act;
1.1.21	"BWSC2"	means BEAUFORT WEST SOLAR COMPANY 2 (Proprietary) Limited Registration Number 2013/139555/07 a private company with limited liability registered and incorporated in the Republic of South Africa in terms of the Companies Act;
1.1.22	"BWSC1"	means BEAUFORT WEST SOLAR COMPANY 1 (Proprietary) Limited Registration Number 2013/137312/07 a private company with limited liability registered and incorporated in the Republic of South Africa in terms of the Companies Act;
1.1.23	"BWGC"	means Beaufort West Grid Company (Proprietary) Limited Registration Number 2013/136921/07 a private company with limited

liability registered and incorporated in the Republic of South Africa in terms of the Companies Act;

1.1.24 **"Statistics South Africa"** means Statistics South Africa as Contemplated in section 4 of the Statistics Act, Act 66 of 1976;

1.1.25 **"Studies"** means all the studies (including assessments, and geological and other survey) to be conducted by the Lessee on the Property, which the Lessee deems necessary and/or required for the purposes of the Project and the preparation thereof;

1.1.26 **"VAT"** Means value-added tax, levied in terms of the Value-added Tax Act, 89 of 1991.

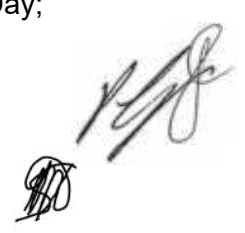
1.2 In the Agreement

1.2.1 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;

1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and *vice versa*;

1.2.3 any schedules or addenda to this Agreement form an integral part hereof and words and expressions defined in this Agreement shall bear, unless the context otherwise requires, the same meaning in such schedule or addendum;

1.2.4 where the day upon or by which any act is required to be performed falls on a day which is not a Business Day, then the relevant date for performance shall be the next succeeding Business Day;

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- 1.2.5 where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in 1.1;
- 1.2.6 any provision in this Agreement, which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction; and
- 1.2.7 References to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement, shall not apply.

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2. **Commencement and Duration**

2.1 This Agreement shall be effective from the Date of Signature and shall endure for a period of [25] years from the Commencement Date (subject to 2.3), unless this Agreement is terminated earlier in accordance with its provisions.

2.2 With effect from the Signature Date, the Lessor grants the Lessee the right to access the Property at such times as the Lessee may claim necessary or desirable for the purposes set out in 5.1.

2.3 With effect from the Commencement Date, the Lessor lets to the Lessee, which hires from the Lessor, the Property for a period of [25] years from the Commencement Date, unless this Agreement is terminated earlier in accordance with its provisions.

3. **Rental and Other Payments**

3.1 **Initial Period**

During the Initial Period and until the Plant Commissioning Date, the Lessee shall pay to the Lessor a monthly rental of [REDACTED] (excluding VAT) in consideration for the rights granted by the Lessor. The amounts shall be payable monthly in advance by the 3rd Business Day of the first month.

3.2 **Plant Commissioning Date**

3.2.1 With effect from the first day of the month preceding the Plant Commissioning Date, the Lessee shall pay to the Lessor an annual rental equal to the number of hectares used by BWSC2 of the Property multiplied by [REDACTED] (excluding VAT).

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- 3.2.2 The hectares used by BWSC2 are calculated on the surface fenced according to clause 5.3.7. or, in the absence thereof, the surface on which the PV panels and electricity or other cabins are installed.

3.3 **Payment Terms**

- 3.3.1 Rental is payable at the beginning of each year concerned.
- 3.3.2 The Lessee shall be obliged to make all payments in terms of this Agreement by way of electronic transfer into such bank account as the Lessor may nominate in writing from time to time.
- 3.3.3 The Parties agree that the rental under clause 3.2. is subject to an increase of 5% a year.

4. **Addition Charges**

In addition to paying the rental, the Lessee shall pay the costs of electricity, and water, consumed by the Lessee and/or in relation to the Project on the Property at the rate charged by any third-party supplier of water and/or electricity to the Lessor in whose name the consumption accounts (if any) will remain. These costs shall be refunded to the Lessor in arrears upon the Lessee receiving a copy of the statement of the third-party supplier, reflecting the consumption by the Lessee.

5. **Use of Property**

- 5.1 The Lessor hereby grants to the Lessee, with effect from the Signature Date, the right to access the Property as such times as the Lessee may deem necessary or desirable for the purposes of conducting the Studies, and/or to bring onto the Property, erect and use all equipment required for the Studies.




- 5.2 The Lessor hereby grants to the Lessee, with effect from the Commencement Date, the exclusive right to pursue and perform all activities on the Property relating to the conducting of the Project.
- 5.3 Without derogating from the generality of 5.2, the Lessee (and/or its duly authorized representative(s) or agents) shall be entitled to:
- 5.3.1 erect PV Modules and install, operate and maintain all electrical and other installations relating to the PV Power Plant on the Property in accordance with the applicable laws, by-laws and regulations;
 - 5.3.2 dig trial pits;
 - 5.3.3 fell trees that would interrupt or otherwise negatively affect the development, construction and/or operation of the PV Power Plant;
 - 5.3.4 construct any roads over the Property which, in the opinion of the Lessee, are necessary and/or desirable for the successful commissioning and operation of the PV Power Plant;
 - 5.3.5 design and erect an appropriate linkage to the national electricity grid which shall include the installation of transmission lines and which may include the erection of an electricity substation, a control room and stores facility;
 - 5.3.6 install, erect or construct any other facility or equipment necessary, in the discretion of the Lessee, for the successful commissioning, operation and protection of the PV Power Plant;
 - 5.3.7 construct any fencing on the Property necessary to protect any PV Modules or other equipment constructed, installed and/or erected by or on behalf of the Lessee on the Property;

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- 5.3.8 erect signs on the Property, including signs advising that the Lessee is erecting PV Modules and/or other equipment relating to the PV Power Plant on the Property, and identifying all such PV Modules and/or other equipment on the Property as the property of the Lessee;
- 5.3.9 make any modifications and/or improvements to any of the items contemplated in 5.1 to 5.3.8, which the Lessee may consider necessary and/or desirable;
- 5.3.10 do such other things necessary or convenient for the proper enjoyment of the right to generate electricity on the Property and/or lead, convey or transmit electricity across the Property; and
- 5.3.11 Enter and exit the Property as and when the Lessee deems fit (provided that any representatives, employees, agents or sub-contractors of the Lessee are clearly and visibly authorized by the Lessee to enter the Property).
- 5.4 Subject to 12.3, all costs in connection with the activities contemplated in 5.1 and 5.2 shall be borne by the Lessee.
- 5.5 The Lessee shall not use the Property for any purpose other than as permitted in terms of this Agreement.
- 5.6 It is recorded that BWSC2 (or their respective successors-in title or assigns) and its affiliated companies BWSC1 and BWSC3 and BWSGC intend to construct and operate PV power plants and an electricity substation on properties adjacent to the Property and that real rights (including servitudes) against the Property shall be granted and registered for the purposes of the traversal of such PV power plants' connection lines to a common substation.
- 5.6.1 The Lessor, as owner of the Property, hereby agrees and undertakes to register perpetual servitudes of electric power transmission over the Property in favor of BWSC3, BWGC, BWSC2 and BWSC1 (and their

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respective successors-in title or assigns) (the "**Servitudes**"). The Servitudes shall be binding upon the heirs, administrators, assigns or successors in title of the Lessor, as owner of the Property. The Lessor hereby undertakes to sign all such documents, and to do all such other things which may be necessary and/or required for the due execution and registration of the Servitudes.

5.6.2 The Lessee, as leaseholder in terms of this Agreement, hereby agrees and consents to the registration of the Servitudes, and undertakes not to impede upon the rights of BWSC3 and/or BWSC2, BWSC1 and BWGC under the Servitudes, or to interfere with the undisturbed exercise of such rights. The provisions of this 5.6. shall constitute a *stipulation alteri* in favor BWSC1, BWSC3 and BWGC (and their respective successors-in-title and assigns), the benefits of which may be accepted at any time.

5.7 The Lessor (nor any of its affiliates) shall, at any time during this Agreement, and for a period of 24 month after termination of this Agreement for whatever reason, make or accept any offers of a similar nature from any competitor of the Lessee (or its shareholders) by or under any agreement, without the prior written consent of the Lessee.

5.8 The Lessor hereby grants to the Lessee a power of attorney to enable it to make submissions and application at any time during the term of this Agreement, on the Lessor's behalf, for any authorizations, licenses, permits, approvals which may be necessary in respect of the Property under the provisions of any law for conducting the Project. In addition to granting this power of attorney, the Lessor undertakes to sign all and any documents required by any authority under the provisions of any law, before the required authority, licence, permit, approval, consent application or rezoning can be granted in respect of the Property.

5.9 Upon the expiration or termination of this Agreement for any reason other than a cancellation of this Agreement by the Lessee pursuant to a breach by the Lessor, the Lessee shall be entitled and obliged, within [12] months at its

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own cost decommission the PV Power Plant, to demolish and remove all installations made or erected by the Lessee on the Property and return the Property to the Lessor in good order, fair wear and tear accepted, subject to the following:

- 5.9.1 the Lessee may, in its discretion, elect to leave on the Property the electrical lines and all underground installations, provided that the Lessee shall be obliged to remove all foundations up to a depth of at least one meter and to fill all excavations in such a way that the agricultural land use potential is restored and rehabilitated using only vegetation indigenous to the area concerned; and
- 5.9.2 the Lessor may notify the Lessee in writing that it wishes to keep the access road structures for his own use after termination of this Agreement which election shall be communicated to the Lessee in writing within 10 Business Days after termination, in which event the Lessee shall not be obliged to remove the access road structures and the Lessor shall not have a claim against the Lessee in this regard whatsoever.
- 5.10 Upon the cancellation of this Agreement by the Lessee pursuant to a breach by the Lessor, the Lessee shall be entitled (but not obliged to) within [12] months at its own cost decommission the PV Power Plant, and to demolish and remove all installations made or erected by the Lessee on the Property.

6. **Accession**

- 6.1 All equipment and/or other installations ("**Assets**"), whether for Studies or the Project, constructed, erected, used, based, installed or affixed to Property by the Lessee is intended to remain on the Property only for so long as the Agreement is in force and shall not accede to the Property. Such equipment and/or other installations shall, notwithstanding that it may be of a fixed or permanent nature, shall remain the property of the Lessee.

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- 6.2 The Lessor hereby irrevocably waives in favor of the Lessee and/or any creditor of the Lessee the Lessor's hypothec over the any of the Assets. The Lessor acknowledges and agrees that it understands the meaning and effect of the waiver contemplated herein. The provisions of this 6.2 shall constitute a *stipulatio alteri* in favor of any creditor of the Lessee, the benefits of which may be accepted at any time and in any manner.

7. **Occupation**

Occupation of the Property shall be given to the Lessee on the Date of Signature, subject to the Lessor's rights to continued occupation and farming activities in terms of 14.

8. **Compliance**

The Lessee shall materially comply with all law, bylaw, ordinance, proclamation or statutory regulation or any condition of any licence or permit relating to or affecting the occupation and use of the Property by the Lessee, and any title deed conditions pertaining to the Property.

9. **Subletting and assignment**

- 9.1 The Lessee shall at any time be entitled:

9.1.1 to sublet the Property (or portions thereof) to any third party;

9.1.2 to cede all or any of its rights (whether as security or otherwise}, and/or delegate all or any of its obligations in terms of this Agreement, to any third party; and/or

9.1.3 to register, or procure the registration of, a mortgage bond and/or any other security against this Lease in favor of any third party;

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Provided that written notification of such subletting, cession and/or delegation, or registration of a mortgage bond or any other security is provided to the Lessor.

- 9.2 It is expressly agreed that no further consent from the Lessor shall be necessary in order to fully effect the subletting, and/or cession and delegation, or the registration of a mortgage bond and/or other any security against this Lease, as contemplated in 9.1. The Lessor shall sign all such documents as may be necessary and/or required in order to effect any such cession and/or delegation, or any such registration of a mortgage bond and/or other security against this Lease (including the perfection, or enforcement of any right under, such mortgage bond or other security}, and hereby irrevocably authorizes the Lessee to sign any such documents on behalf of the Lessor.

10. **Insurance**

- 10.1 The Lessee shall, by no later than the Commencement Date, take out insurance for, and pay all insurance premiums relating to, the PV Modules and all improvements on the Property which were installed by, or at the request of, the Lessee for the purposes of conducting the Project on the Property. The Lessee shall, in its sole discretion, determine the extent of the risks to be insured from time to time.
- 10.2 The Lessee shall, by no later than the Commencement Date, at its own cost procure public liability insurance cover in respect of any damages sustained by any person on, in or about the Property arising out of the Lessee's Project for an amount of not less than R10 000 000 in respect of any one claim.
- 10.3 The Lessor may, in his discretion, shall take out insurance for, and pay all insurance premiums relating to, the Property and all Improvements thereon (excluding any improvements relating to equipment and installations on the Property which were installed by, or at the request of, the Lessee for the purposes of conducting the Project on the Property).

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11 Maintenance of the Property

- 11.1 The Lessor shall be responsible for the maintenance of the Property excluding the maintenance of the PV Modules, the equipment and roads installed or built by the Lessee for purposes of the Project on the Property.
- 11.2 The Lessor shall install and maintain firebreaks on the Property to the extent the Lessee deems necessary for the protection of the PV Power Plant and any other infrastructure and/or installations on the Property relating to, or required for the operation of, the PV Modules and/or for the transmission of electricity.

12 Lessor's further obligations

- 12.1 Notwithstanding anything contained in this Agreement, the Lessor shall not do anything, or omit doing anything, or allow any act or omission by a third party, which may impede, conflict with, or otherwise interfere with undisturbed development, construction and/or operation of the PV Power Plant, or the conducting of the Project, without the prior written consent of the Lessee.
- 12.2 Without derogating from the generality of 5.2, the Lessee (and/or its duly authorized representative(s) or agents) shall not (without the prior written consent of the Lessee):
- 12.2.1 perform any act that may potentially have the effect of reducing the PV Modules' ability to generate electricity;
- 12.2.2 build, install or erect any improvements on the Property, which may potentially affect the undisturbed development, construction and/or operation of the PV Power Plant;

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- 12.2.3 obstruct the construction of any works on the Property and shall, when necessary, remove any livestock from such parts of the Property as is necessary during the construction of any such works;
- 12.2.4 Agree or grant any right or entitlement in or to the Property to any third party where such third party's activities may potentially be in conflict with the rights granted to the Lessee in terms of this Agreement.
- 12.3 The Lessor shall pay and continue to pay all property rates and taxes relating to the Property as and when they become due. To the extent that such rates and taxes are increased after the Commencement Date as a result of the increase in the value of the Property, directly caused by the construction of improvements by the Lessee on the Property, the Lessee shall reimburse the Lessor in respect of 50% of such increase (the "**Lessor's R&T Portion**").
- 12.4 The extent of the Lessor's R&T Portion shall be determined as follows:
- 12.4.1 the Lessor shall notify the Lessee in writing of any increase after the Commencement Date in the rates and taxes payable in respect of the Property, within 10 Business Days of the date on which such increase is communicated to the Lessor by the relevant authorities;
- 12.4.2 Duly authorized representatives of the Parties shall meet within 5 Business Days of the date on which the Lessor receives the notice contemplated in 12.4.1 to agree the value of the Lessor's R&T Portion. If the representatives of the Parties reach agreement on the value of the Lessor's R&T Portion, such agreement shall be reduced to writing and signed by both Parties;
- 12.4.3 if the representatives of the Parties fail to reach agreement as contemplated in 12.4.2 within the aforesaid 5 Business Day period (or such extended period as the Parties may agree in writing), the Parties shall appoint an independent expert by agreement, failing which agreement within 10 Business days of any Party requiring such agreement, such independent expert shall be appointed by the Chairman

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of the South African Institute of Valuers. Such independent expert shall within 15 Business Days thereafter determine:

- 12.4.3.1 the value of the Property with the Lessee's improvements thereon, and the notional value of the Property without any of the Lessee's improvements thereon;
- 12.4.3.2 the notional value of the rates and taxes which would have been payable in respect of the Property, taking into account the notional value of the Property without any of the Lessee's improvements thereon referred to in 12.4.3.1 (the "**Notional R&T**"); and
- 12.4.3.3 the difference between the value of the rates and taxes after the increase contemplated in 12.4.1 and the Notional R&T;
- 12.4.4 The cost of the valuation shall be borne by the Parties in equal shares;
- 12.4.5 the determinations and calculations of the independent expert referred to in 12.4.3 shall in the absence of fraud or manifest or clerical error be final and binding upon the Parties;
- 12.4.6 Upon receipt of the written determinations and calculations of the independent expert referred to in 12.4.3, the Lessee shall provide a copy thereof to the Lessor. The Parties agree that the value determined by the independent expert as contemplated in 12.4.3.3 shall be the value of the Lessor's R&T Portion until the next increase of the rates and taxes in respect of the Property.
- 12.5 The Lessor shall provide the Lessee with any keys necessary to give access to or within the Property, and the Lessee agrees to close and/or lock any gates that the Lessee opens in exercising its rights under this Agreement.

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12.6 The Lessor shall not object to any planning application or procedure made or initiated by the Lessee in respect of any use or development of the Property as contemplated in this Agreement.

12.7 The Lessor grants the Lessee the right to gain access to the Property through any other adjoining or abutting land of the Lessor as is reasonably necessary for the Lessee's use of the Property as contemplated in this Agreement.

12.8 The Lessor hereby indemnifies and holds harmless the Lessee against any claim, loss or damage, made against or sustained by the Lessee, arising from or in connection with any breach of contract, or wrongful or negligent act or omission of the Lessor and/or any representative, agent and/or employee of the Lessor.

13. **Lessor's warranties and representations**

13.1 Each Party hereby warrants and represents to and in favor of the other Party, as at the Date of Signature, that:

13.1.1 It is duly authorized and empowered to enter into this Agreement;

13.1.2 It has taken all necessary action required to empower and authorize to enter into this Agreement and any agreement concluded pursuant thereto. Such action includes the Lessor having obtained all consents required from any mortgagee, servitude holder and any other person having an interest in the Property prior to the execution of this Agreement;

13.1.3 to the best of its knowledge, no fact or circumstance exists which may have the effect that the terms of this Agreement are not capable of being fully enforced or that the rights set out in this Agreement are not capable of being exercised by the Parties;

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- 13.1.4 the execution of this Agreement and any agreements concluded pursuant thereto will not conflict with, or constitute a breach of any of the provisions of, any other Agreement, obligation, restriction or undertaking, which is binding on it;
- 13.2 The Lessor hereby warrants and represents to and in favor of the Lessee, as at the Date of Signature, that:
- 13.2.1 there are no options or encumbrances in favor of any person in respect of the Property, including (but not limited to) options or encumbrances which may prevent the Lessee from utilizing the Property in accordance with this Agreement or which may otherwise limit the rights of the Lessee in terms of this Agreement; and
- 13.2.2 to the best of its knowledge, there are no pending actions, suits, claim, disputes or other proceedings affecting the Property or any part of it.
- 13.3 Subject to the undertakings of the Lessor in terms of this Agreement, the Lessor does not warrant that the Lessee will be granted any regulatory approvals which are required for the conducting of the Project.
14. **The Lessor's continued occupation and farming activities**
- 14.1 Notwithstanding the fact that the entire Property is let to the Lessee, any rights in respect of the use of the Property not granted to the Lessee in terms of this Agreement shall be retained by the Lessor, including but not limited to the Lessor's right to remain in occupation of the farmhouse and all outbuildings for the duration of the Agreement and the rental payable by the Lessee to the Lessor has been calculated on the basis of such continued occupation and reduced accordingly.

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14.2 The Lessor shall, notwithstanding the existence of this Agreement, must continue with all farming activities that it was engaged in prior to the Signature Date, subject to the provisions of 14.3.

14.3 The Lessor shall exercise its rights in terms of 14.1 and 14.2 in such a manner that they do not interfere with or compromise any activities of the Lessee permitted under, and/or the exercise of the rights of the Lessee in terms of, this Agreement.

15. **Relationship of Parties**

The Parties are independent of one another and nothing in this Agreement should be construed as constituting a joint venture or partnership between them.

16. **Limitation of liability**

16.1 Neither Party (the "**defaulting Party**") shall be responsible for any loss, damage or injury which the other Party (the "**aggrieved Party**"), its employees, agents, customers or invitees may directly or indirectly suffer (save for where such loss, damage or injury is caused through the grossly negligent or willful act or omission of the defaulting Party, the defaulting Party's employees, agents or sub-contractors) by reason of any cause either wholly or partly beyond the defaulting Party's control.

16.2 Notwithstanding anything to the contrary contained in this Agreement, but save for such provisions of this Agreement which specifically provide for the payment of such losses and/or damages, neither Party shall be liable to the other Party under any circumstances for any indirect or consequential losses and/or damages of whatsoever nature and howsoever arising out of or in connection with this Agreement including, without limitation, such damages arising out of the negligence of either Party or its employees.



17. **Breach of Agreement**

17.1 Should the Lessee:

17.1.1 fail to pay any amount due by it in terms of this Agreement on due date and fail to remedy such breach within a period of [120] days after the giving of written notice to that effect by the Lessor;

17.1.2 commit any other material breach of any provision of this Agreement and fail to remedy that breach within [120] days after the giving of written notice to that effect by the Lessor,

Then, without prejudice to any other rights that the Lessor may have under this Agreement or by law, the Lessor may by written notice to the Lessee either:

17.1.3 cancel this Agreement, provided that the Lessor may only cancel this Agreement if the breach is material and cannot be remedied by a monetary award; or

17.1.4 Obtain an order against the Lessee for specific performance.

17.2 The Lessor may not cancel this Agreement whilst the Lessee is indebted to any financier, unless the Lessor has provided written notice of such cancellation to any such financier and has afforded any such financier the opportunity to enforce any of its rights against the Lessee (including the right to take cession of the Lessee's rights in terms of this Agreement) for a period of [90] days from the date of receipt of such notice by the financier concerned.

18. **Holding over**

18.1 Should the Lessee at any time dispute the Lessor's right to cancel this Agreement and remain in occupation of the Property pending the determination of such dispute, then:

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- 18.1.1 the Lessee shall continue to pay all amounts due to the Lessor in terms of this Agreement on the due dates of same;
- 18.1.2 the Lessor shall be entitled to recover and accept those payments;
- 18.1.3 The acceptance by the Lessor of those payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's claim to cancellation of this Agreement or for damages.
- 18.2 Should the dispute between the Lessor and the Lessee be determined in favor of the Lessor in terms of this 18, any amounts paid by the Lessee shall be regarded as amounts paid on account of the loss and/or damages sustained by the Lessor as a result of the holding over by the Lessee of the Property.
19. **Dealings with the Property**
- 19.1 The Lessor shall not be entitled to sell, transfer, dispose of, alienate, mortgage, charge, encumber or otherwise deal with the Property unless:
- 19.1.1 the Lessee has consented thereto in writing; or
- 19.1.2 in the case of a sale and transfer the Property, the Lessor strictly complies with the provisions contained in 19.2; or
- 19.1.3 in the case of a mortgage, charge and/or other encumbrance against the Property, if the mortgage, charge and/or other encumbrance ranks

Behind this Agreement and the relevant holder or beneficiary of the mortgage, charge or other encumbrance agrees in writing to be bound by the provisions contained in 19.2.

- 19.2 Should the Lessor wish to sell the Property (the "**Intended Alienation**"), it shall notify the Lessee in writing of the Intended Alienation (the "**Sale**

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Notice"). The Parties shall negotiate in good faith for the conclusion of an agreement of sale of the Property at a price and upon terms and conditions acceptable to the Parties.

19.3 Should the Parties fail to conclude an agreement of sale of the Property as contemplated in 19.2 within 20 Business Days from the date on which the Sale Notice is received by the Lessee, the Lessor may negotiate with other interested buyers for the sale of the Property.

19.4 Should the Lessor receive an offer from a *bona fide* third party {the **"Third Party Purchaser"**} for the purchase of the Property (the **"Third Party Offer"**), it shall provide written notice (the **"Option Notice"**) thereof to the Lessee, which notice shall include a true copy of the Third Party Offer (which Third Party Offer shall include all terms and conditions relating to the sale of the Property to the Third Party Purchaser). The Option Notice shall be deemed to be an offer by the Lessor to sell the Property to the Lessee (or its nominee) (the **"Offer"**) on the following terms:

19.4.1 the price at which the Property is offered for sale (the **"Purchase Price"**) shall be equal to the cash price stipulated in the Third Party Offer;

19.4.2 the Offer shall be open for acceptance by the Lessee (or its nominee) (by notice in writing to the Lessor) for a period of 10 Business Days calculated from the date on which the Option Notice was received by the Lessee;

19.4.3 registration of transfer of the Property shall be effected by the conveyancers nominated by the Lessee (or its nominee) for such purpose, at the Lessee's cost, as soon as possible after the Offer is accepted by the Lessee (or its nominee), and the Lessor shall sign all necessary documents to enable the conveyancers to register transfer of the Property to the Lessee (or its nominee), as soon as possible after it is requested to do so;

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- 19.4.4 the Lessee (or its nominee) shall pay the Purchase Price on the date of registration of transfer of the Property into the name of the Lessee (or its nominee) in the Deeds Office (the "**Transfer Date**");
- 19.4.5 The Lessee's right to occupy the Property under this Agreement until Transfer Date shall not be negatively affected in any way. After the Transfer Date the Lessee (or its nominee) shall continue to occupy the Property as owner thereof;
- 19.4.6 the Property shall be sold subject to the following warranties:
- 19.4.6.1 the Lessor is the owner of the Property;
- 19.4.6.2 the Lessor has the right, power and authority to sell the Property;
- 19.4.6.3 there are no options or encumbrances in favor of any person in respect of the Property other than as contemplated in this Agreement; and
- 19.4.6.4 to the best of its knowledge, there are no pending actions, suits, claim, disputes or other proceedings affecting the Property or any part of it,
- but shall otherwise be sold *voetstoots*;
- 19.5 in the event of the Lessee (or its nominee) not accepting the Offer within the period set out in 19.4.2 or waiving its right to purchase the Property in terms of this 19.2, the Lessor shall be entitled to sell the Property to the Third Party Purchaser at the price and strictly subject to the terms contained in the Third Party Offer.
- 19.6 The provisions of 19 shall not apply to the sale or alienation by the Lessor or his executor or trustee of the Property to a spouse or child or sibling of the Lessor or to a wholly owned subsidiary of the Lessor provided that such spouse or child or sibling or wholly owned subsidiary has entered into an agreement with the Lessee in terms of which they agree to be bound by the

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provisions of this 19 in the event that they should wish to sell or alienate the Property to a third party in the future.

- 19.7 Should the Property at the Date of Signature be subject to a mortgage bond or bonds, the Lessor shall procure the cancellation of such mortgage bond or bonds, or the written consent of the relevant bond holder(s) that this Agreement ranks preferent to the relevant bond (s).

20. **Destruction of Property**

- 20.1 Should the Property be destroyed (whether in whole or partially) or damaged to such an extent which prevents the Lessee from conducting the Project on the Property to such extent which in the opinion of the Lessee is economically viable, the Lessee shall be entitled to:

20.1.1 terminate this Agreement with immediate effect; or

20.1.2 utilize any insurance proceeds which it has received to reinstate the Property to such extent which would enable it to use the Property as contemplated in this Agreement.

20.2 Should the Lessee elect to reinstate the Property in accordance with 20.1.2:

20.2.1 the Lessee shall not be liable for any further rental until the reinstatement is completed; and

20.2.2 The period of this Agreement shall be extended by a period equal to the period from the date of destruction until the date on which the reinstatement is completed.

21. **Termination**

- 21.1 This Agreement shall automatically terminate if Financial Close has not been achieved on or before the expiry of the Initial Period, in which event

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no Party shall have any claim against the other Party as a result of such termination.

21.2 The Lessee may at any time terminate this Agreement upon giving 1 month written notice to the Lessor without being required to ascribe any reason/s for such termination, and the Lessor shall be obliged to accept such termination.

21.3 Should the Lessee terminate this Agreement in terms of this 21.2, it shall pay the Lessor a termination fee of R100 000 (excluding VAT). Save for such termination fee, the Lessor shall have no further claim against the Lessee as a result of such termination.

21.4 The Parties agree that the termination of this Agreement for whatsoever reason shall not affect any of their rights which vested prior to such termination.

22. **Confidentiality**

22.1 Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:

22.1.1 the details of this Agreement, the details of the negotiations leading to this Agreement and the information handed over to such Party during the course of negotiations, as well as the details of the transactions contemplated in this Agreement; and

22.1.2 all information relating to the business or the operations and affairs of the Parties together ("**Confidential Information**").

22.2 The Parties agree not to use any of the Confidential Information for any purpose other than as contemplated in this Agreement and to keep all Confidential Information confidential and to disclose it only to their officers, directors, employees, consultants and professional advisers who:



- 22.2.1 have a need to know (and then only to the extent that each such person requires the Confidential Information in order to fulfil his or her functions properly);
 - 22.2.2 are aware that the Confidential Information should be kept confidential;
 - 22.2.3 are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
 - 22.2.4 Have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 22.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
- 22.3.1 Is disclosed in terms of 19.6 and the recipient of the information has given a written confidentiality undertaking;
 - 22.3.2 Is disclosed by the Lessee to potential investors in respect of the Project on the Property;
 - 22.3.3 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and not subject to an obligation of confidentiality;
 - 22.3.4 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such confidential information;
 - 22.3.5 Is required to be disclosed by the provisions of any law, statute or regulation, or during any court proceedings.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

23. **Arbitration**

23.1 Subject to 23.2, in the event of any dispute of any nature whatsoever arising between the Parties in respect of any matter provided for in, or arising out of, this Agreement, then that dispute shall be submitted to and decided by arbitration. Any arbitration arising out of this 23 shall be referred to the Arbitration Forum of Southern Africa, and shall be conducted in accordance with the standard terms and conditions and summary procedure rules then applicable in that forum, such arbitration to take place at a duly designated location within the city of Cape Town, South Africa.

23.2 The provisions of 23.1 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

24. **Addresses**

24.1 Each Party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purpose of this Agreement:

24.1.1 as to the Lessor:

Address: **Quaggafontein, Beaufort West, 6970**

Telefax No: **No Number**

e-mail address: olivierpg5@gmail.com

24.1.2 as to the Lessee:

Address: **25 the Oval, UCC, Ballito, 4390**

Telefax No: **+2786 6008622**

e-mail address: emil@upgrade-energy.com and javisagie@gmail.com



24.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing and it shall only be competent to give that notice by hand delivery, e-mail or fax, all with proof of reception.

24.3 Either Party may give written notice to the other Party to change its chosen address and/or telefax number or e-mail address to another physical address, telefax number or e-mail address in South Africa, provided that the change shall become effective on the 10th Business Day after the receipt of the notice by the addressee in respect of that Party's physical address and on the dates set out in such notice in respect of that Party's telefax number or e-mail address.

24.4 Any notice to a Party contained in the correctly addressed envelope and delivered by hand to a responsible person, being a representative of such Party, during ordinary business hours at its chosen address shall be deemed to have been received. Any notice telefaxed or sent by e-mail to a Party shall be deemed to have been received on the day following transmission of the telefax or e-mail.

24.5 Notwithstanding anything to the contrary contained in this 24, a written notice or communication actually received by a Party shall be an adequate notice or communication to him/her notwithstanding that it was not sent or delivered as provided for in this 24.

25. **Limitation of liability**

The aggregate liability of the Lessee shall be limited to the amount of the annual rental payable in terms of 3.3.

26. **Costs and registration**

26.1 The Lessee shall procure that this Agreement be registered in the title deed(s) of the Property for the full period while this Agreement remains in

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force. The Lessor shall co-operate with the Lessee to achieve registration as soon as possible following the Date of Signature. For the purpose of registration, the Lessor shall upon request hand the title deeds to the Property to the Lessee's conveyancers.

26.2 The Lessee shall bear all costs of and incidental to the notarial execution and the registration of this Agreement, including any costs relating to the obliged necessary approvals.

26.3 All legal costs incurred by either Party in consequence of any default of the provisions of this Agreement by the other Party shall be payable on demand on the scale as between attorney and own client and shall include the costs incurred by such Party in endeavoring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favor of such Party in relation to its rights in terms of or arising out of this Agreement.

27. **General**

27.1 This Agreement contains the entire agreement between the Parties in regard to the subject matter of this Agreement.

27.2 Neither Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in this document whether it induced the contract and/or whether it was negligent or not.

27.3 No addition to or variation, consensual cancellation or novation of this Agreement, and no waiver of any right arising from this Agreement, shall be of any force or effect unless reduced to writing and signed by duly authorized representatives of the Parties.

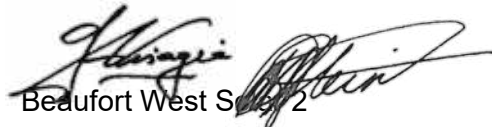
Handwritten signatures of the parties, including a large signature and a smaller circular stamp or mark.

- 27.4 Any indulgence, leniency or extension granted by a Party at any time shall not be construed as a novation or waiver of any rights by that Party under this Agreement.
- 27.5 The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.
- 27.6 Should this Agreement be translated into any other language, the Parties agree that to the extent that any conflict exists between the signed English version and such translated version (whether or not signed), the English version shall prevail.

Signed at **Beaufort West** on **29 June 2021**.

The Lessee

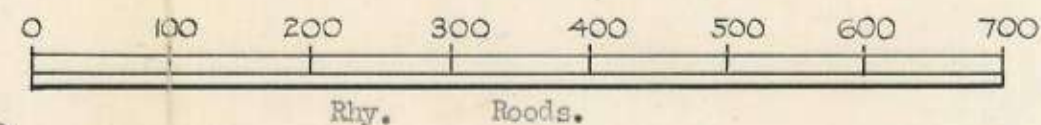
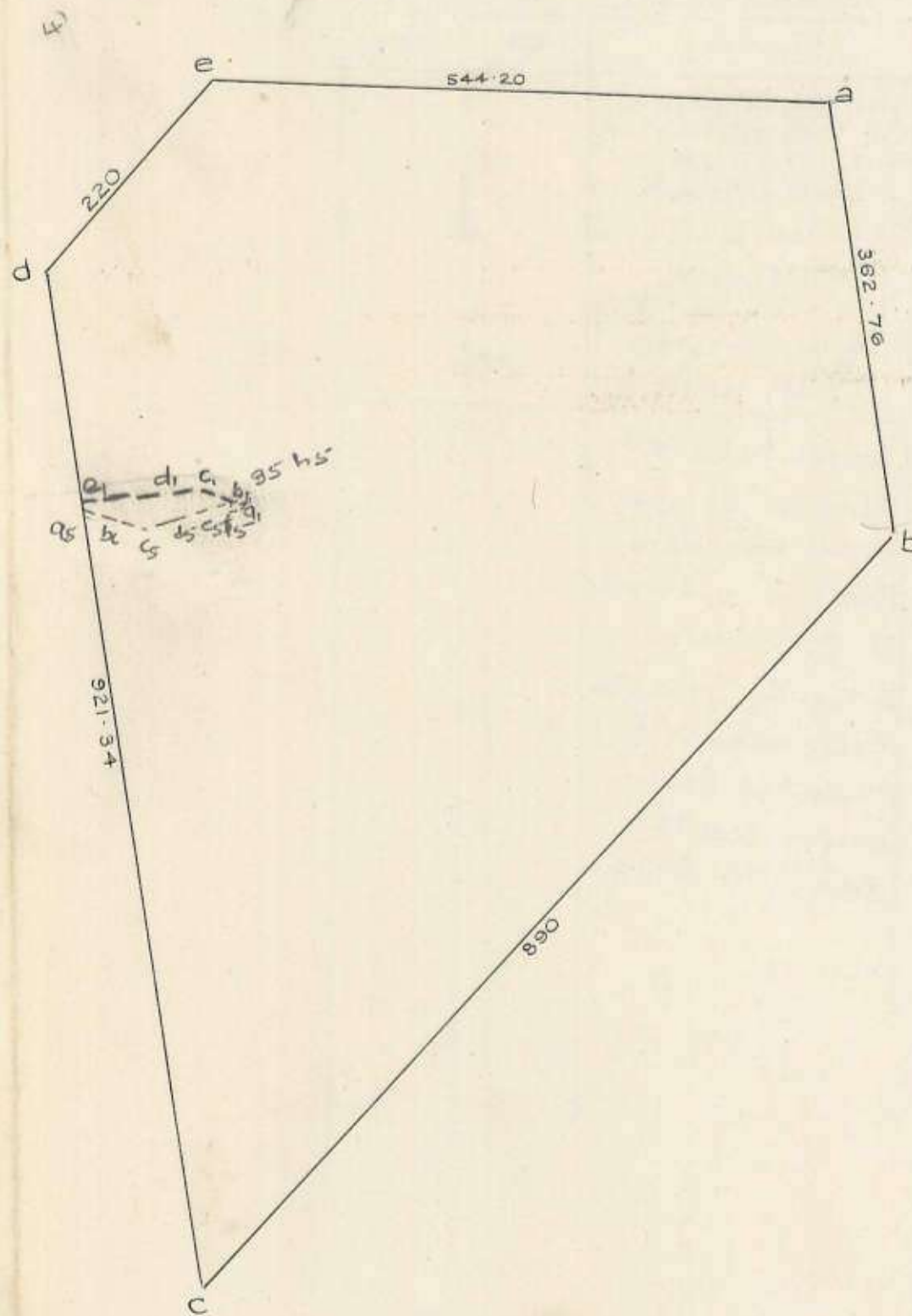
The Lessor


Beaufort West S 192
Represented by Jan Visagie


Petrus Gerardus Olivier

Annex A - Diagram of Property

THE FOLLOWING BEACONS/
BOUNDARIES ESTABLISHED
Beacons a e. boundary ae
(File BFT.W. 169 Pg. 9)



B
S
C
168/3

FOR ENDORSEMENTS
SEE BACK OF DIAGRAM

NO. 1362/1859.

The sides, angles and area of this diagram are sufficiently consistent.
(Sgd.) L. Marquard.
Examiner.

ANGLES	
a	103.50.00
b	129.18.30
c	51.30.30
d	127.11.00
e	128.10.00

Portion 3 ()
(a portion of Portion 1) of the farm
Steenrotsfontein No. 168
BEAUFORT-WEST

The diagram represents 825 Morgen 283 Square Roods being part of the
Estate called Steenrotsfontein situated in the District of Beaufort.

Bounded North by the part sold to Mr. van der Merwe
South & East by Quachas Fontein
West by Commonage


Divided by me,
(Sgd.) C. Home.
Govt. Surveyor.

Copied from diagram relating
to Transfer Deed No. 380
dated 21.6.1859 (Vol. 29)
for Surveyor-General
25.2.1965

Sheet CL-4
4CA.

CHECKED
DATA CHECKED

SERVITUDE DGM.

SIDES Metres		ANGLES OF DIRECTION	CO-ORDINATES Y System WG23° X			S.G. No.
		Constants		0,00	+3500000,00	1821/2019
AB	9, 11	260 19 00	A	+40 249, 06	+89 209, 01	Approved  for Surveyor-General 10-09-2019
BC	8, 18	350 18 30	B	+40 240, 07	+89 207, 48	
CD	9, 09	80 22 30	C	+40 238, 70	+89 215, 54	
DA	8, 17	170 09 20	D	+40 247, 66	+89 217, 07	
EF	198, 95	279 55 20	E	+40 844, 02	+89 250, 01	
FG	182, 03	279 34 50	F	+40 648, 05	+89 284, 29	
GH	60, 76	244 29 10	G	+40 468, 56	+89 314, 59	
HJ	87, 67	248 21 30	H	+40 413, 72	+89 288, 42	
JK	23, 91	251 11 20	J	+40 332, 23	+89 256, 09	
KL	70, 35	239 20 20	K	+40 309, 60	+89 248, 38	
LM	3, 24	255 19 00	L	+40 249, 08	+89 212, 50	Sheet 1 of 2 sheets
			M	+40 245, 94	+89 211, 68	
		B 8	⊕	+39 346, 34	+81 205, 03	
		B 11	⊕	+40 107, 71	+82 161, 45	

BEACON DESCRIPTIONS:

A, B, C, D Outer corner of fence post.
 E, F, H, L Centre of manhole.
 G, J, K, M Centre of pipe marker.
 e Not beacons.

EXEMPT FROM PROVISIONS OF ACT
 70 OF 1970
 SECTION 6A1(a)

- 1).The figure A B C D represents 74 square metres of land being a Borehole Servitude Area;
 - 2).The line e F G H J K L M represents the centreline of a Pipeline Servitude, 5,00metres wide, as shown;
- over

Portion 3 of the Farm Steenrotsfontein No.168

situated in the Municipality of Beaufort West
 Administrative District Beaufort West
 Surveyed in June – August 2018
 by me,

Province Western Cape

A.J. VAN WYK

Professional Land Surveyor No 0871

This diagram is annexed to	The original diagram is	File No. BFT.W.168 VOL.1
No. dated i.f.o	No.1362/1859 annexed to Transfer	S.R. No.1208/2019
	No. 1859 . . . 380	Comp.CL-4 (4583) CL-4CA (4586)
		LPI C0090000

SERVITUDE DGM 1821/2019

Exempt i.t.o. Section 24
 Of Municipal Land Use Planning Bylaw

Ref: 12/4/2

Date: 18-03-2019

SERVITUDE DGM.

Portion 3 of the Farm Steenrotsfontein No.168
situated in the Municipality of Beaufort West
Administrative District Beaufort West
Province Western Cape

S.G. No.

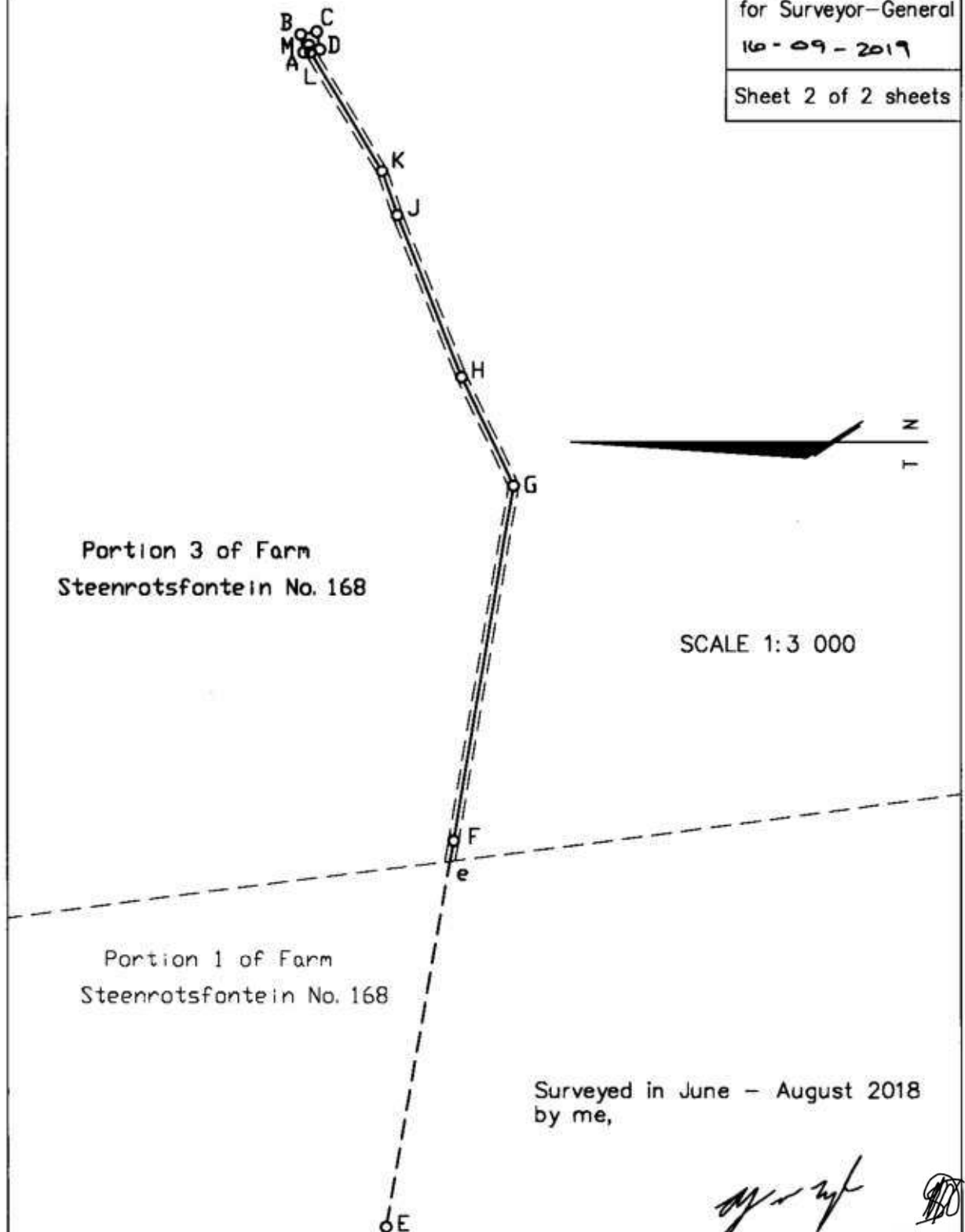
1821/2019

Approved

[Signature]
for Surveyor-General

16-09-2019

Sheet 2 of 2 sheets



[Signature]
A.J. VAN WYK

Professional Land Surveyor No 0871

SERVITUDE DGM 1821/2019

SUNNY RECORD	DIAGRAM NO.	DESCRIPTION	REMARKS
SR107/2017	191/2017	<p>i) The line a b c d e represents the Northern boundary of a 10m wide pipeline servitude</p> <p>ii) The line b c d e f represents the Northern boundary of a 5m wide pipeline servitude</p>	
182/2019	1202/2019	<p>The line a s b s c s d s e s f s g s h s represents the centre line of a Pipeline servitude 5.00m wide</p> <p>2 The figure a b b b c b d b represents 74m² of land being a bore hole Servitude Area</p>	

[Handwritten signature]