

WITNESS STATEMENT OF DEBTOR3

1. My name is DEBTOR3 and I reside at [REDACTED] in the parish of [REDACTED]. I am a [REDACTED].
2. I was the part-owner of [REDACTED] (registered at Vol. [REDACTED] Folio [REDACTED] "DEBTOR3 1". [REDACTED].
3. I started farming on about 17 acres of the property since [REDACTED]. Initially, my farming was largely financed from my own resources.
4. From [REDACTED] I leased approximately [REDACTED] to the [REDACTED] who used the space [REDACTED]. This portion was leased at peppercorn rental. Many years later the arrangement was formalized as per attached copy License to Occupy - "DEBTOR3 2"
5. Sometime during 1995 I borrowed [REDACTED] to refinance an existing overdraft facility at the bank. The loan agreement is contained in a [REDACTED] 95 - "DEBTOR3 3". Although the document reflects that a portion of the loan was to be in the nature of a "[REDACTED]" [REDACTED]. To the best of my recollection, at no time did I receive a payment of [REDACTED]. As I sourced funds from the account, sometimes I would exceed the limit of the overdraft amount which excess was capitalized to loan, eventually reaching a principal of some [REDACTED]. By 1998 the principal was [REDACTED] and the interest was [REDACTED]. See letter dated May 21, 1998 - "DEBTOR3 4"... (I had asked [REDACTED] and allow me to [REDACTED]; however thereafter [REDACTED]. See DEBTOR3 1"
6. Each time the account went into overdraft, the balance as of that date plus any interest was converted to a loan so that the account was reverted to credit status. At one point during the course of my dealings [REDACTED].
7. I had, in previous years borrowed [REDACTED] from the National Development Foundation of Jamaica (NDFJ) to start up a poultry farm. This mortgage was registered as [REDACTED]. This was paid off by NCB and the mortgage discharged in 1996. There was also a small mortgage balance owing to Jamaica National Building Society (JNBS) registered at mortgage [REDACTED] which was paid

off in early 2000. The amount was [REDACTED] See EXHIBIT "DEBTOR3 5".

8. In **May 1999** I received correspondence [REDACTED] indicating that my debt had been sold to Recon Trust Limited, a subsidiary of FINSAC Limited, but that NCB had retained administrative responsibilities. Attached to the correspondence were three account statements dated 30 September 1998 showing a total balance of [REDACTED]. See letter dated **May 26, 1999 with attachments "DEBTOR3 6**. After receiving this letter my lawyer and I continued to negotiate with NCB for a cap on the loan and for the bank to await the sale of the lots.
9. As of September, 2000 by which time **NCB** had paid off the small loan balances I had with NDFJ and JNBS, and capitalized the overdraft balances, I **got no documentation from NCB showing the amount of my indebtedness to NCB**.
10. In 2001 after protracted negotiations on my behalf, my attorneys received a letter from Refin Trust Limited dated **28<sup>th</sup> March 2001 – "DEBTOR3 7"**. The latter formally advised that in response to a proposal from my attorney at that time, the debt would be capped at [REDACTED] if the full amount was paid by **July 31, 2001**. I executed a **"Settlement Agreement" – "DEBTOR3 8"**.
11. In my effort to meet the deadline of July 31, 2001, I increased my efforts to conclude negotiations which I had started with the government to purchase the two acre lot – **lot 6** - which the school had been using as a playfield since the 1970's. I and my attorneys made strenuous efforts to get the Ministry to expedite the transaction so that the sale could be concluded. I had intended to and had in fact indicated to **Refin Trust** that the proceeds from the sale of the land would be applied towards the settlement of a large portion of the debt. The Commissioner of Lands had valued the property for [REDACTED]. We (I and my attorneys), were advised that this valuation would to be sent to [REDACTED]. However the transaction was proceeding very slowly. [REDACTED] who was my member of parliament wrote to FINSAC on my behalf in terms of a letter dated **24 September, 2001 – DEBTOR3. 9"**. I and my attorney continued to advance our proposal to FINSAC. See letter dated **September 25, 2001 from [REDACTED] to Refin Trust Limited – DEBTOR3 10"**.
12. Based on the slow progress of the negotiations, my attorney requested an extension of the deadline. It was extended to December 31, 2001 failing which the debt would revert to its original status. The extension to December 31, 2001 came with an interest charge of **25% per annum from October to December, 2001 – See letter dated October 10, 2001 from**

- ██████████ Refin to ██████████ - "DEBTOR3 11". My attorney responded by letter dated **October 23, 2001** – "DEBTOR3 12". He indicated among other things that the new deadline was unrealistic and requested that the interest of 25% be waived.
13. On 23<sup>rd</sup> October, 2001 I made a payment of ██████████ to FINSAC from the sale of lots in the subdivision. (See receipt dated 23 Oct, 2001 – "DEBTOR3 13")
  14. FINSAC responded to my attorney's letter dated October 23 aforesaid by letter dated **November 2, 2001**- "DEBTOR3. 14" demanding that I make a payment on the loan. There was no acknowledgment of the payment I had made on October, 23, 2001.
  15. By letter dated **November 6, 2001** - "DEBTOR3 15", ██████████ informed us that the valuation report had been received. Clearly, given the stage of the government's process at this time. I would not be able to meet the deadline of **December 31, 2001** with FINSAC – a government entity because of the slow pace in the interaction between the ██████████ and ██████████ – also government entities.
  16. My attorneys sought the intervention of the ██████████ ██████████ on my behalf. (See letter dated **November 22, 2001** from my attorneys to ██████████ – "DEBTOR3 16").
  17. Then in **January 2002** we were informed that the debt had reverted to its original amount of over ██████████ See letter from Refin Trust dated **January 15, 2002** ("DEBTOR3 17") A significant portion of this sum comprised unpaid interest on the loan.
  18. My attorney again wrote to ██████████ by letter dated **January 30, 2002** – "██████████ 18". ██████████ responded by letter dated **February 5, 2002** – DEBTOR3 19". By this letter he informed that my debt had been "as part of the portfolio of loans recently divested".
  19. My attorney responded by letters dated **February 7, 2002** – "DEBTOR3 20", **February 11** – DEBTOR3 21" and **February 12, 2002** – "DEBTOR3 22"
  20. FINSAC replied by letter dated **February 18, 2002** – DEBTOR3 23" affirming its previous position and repeating that it had sold the debt.
  21. Over the period of my indebtedness to NCB, I had an understanding with the bank based on our protracted discussions that my servicing the loan would be largely contingent upon my subdividing a portion of the nineteen acres and selling some lots from it – See "DEBTOR3 4" ; so that inasmuch as I serviced the loan by making payments, there was no insistence or

enforcement proceedings on the part of **NCB** when my payments were irregular. **NCB** was always kept aware of the progress of the subdivision by way of regular updates.

22. Based on **FINSAC's** assertions that the debt had been sold, my attorney wrote to **Joslin Jamaica Limited** by letter dated **February 28, 2002 – "DEBTOR3 24"**. This was a long letter setting out proposal for settlement of the debt and requesting that the debt be capped at [REDACTED] as had been previously agreed with **FINSAC**. After this we met first with Ms. Valda Taylor and later Mr. Dennis Joslin of **JRF**. In the first meeting when I asked how much my debt was [REDACTED] or told me it was [REDACTED] ( [REDACTED] ). I requested documentation but this was not forthcoming until years later, when I discovered as a fact that the amount transferred to **JRF** was in fact the [REDACTED] referred to previously by **FINSAC**. [REDACTED] also requested us to furnish her with a proposal for further subdivision of the land and setting out certain other agreed matters – see letter dated **June 24, 2002, JRF to Richard Bonner – "DEBTOR3 25"**
23. We acted based on the matters set out the letter and the titles to lots 1, 2 and 5 were subsequently released in keeping with the agreement reflected in that letter. **JRF** indicated in that letter that they would accept land bonds from the government as consideration for its purchase of lot 6 provided that there was an interest factor. I had no means or basis upon which to guarantee this requirement.
24. [REDACTED] also suggested and I agreed that I should make monthly payments of [REDACTED] to **JRF** in the meantime. I made some payments and stopped because I had very limited cash flow. I was experiencing financial difficulty.
25. Having conveyed the contents of the letter dated June 24, 2002 wherein **JRF** had stated that it would accept bonds in lieu of cash from the sale of lot 6, but would require that there be some provision for interest, the [REDACTED] wrote to **JRF** in terms of a letter dated **July 24, 2002 – "DEBTOR3 26"** stating that the matter would be taken up with the Ministry of Finance. I have and now produce a copy of a letter dated **July 25, 2002 – "DEBTOR3 27"** indicating that the Ministry of Education wrote to the Ministry of Finance.
26. By letter dated **August 21, 2002, - "DEBTOR3 28"**, **FINSAC** confirmed knowledge of the application by the Minister of Education to the Ministry of Finance to pay for the land with bonds but indicated that the debt was now being managed by **Dennis Joslin Jamaica inc.**
27. Be that as it may, by letter dated **September 5, 2002, - "DEBTOR3 29"** the [REDACTED] advised **FINSAC** that approval had been granted for the waiver of stamp duty and transfer tax. **There was no mention of the matter of interest to be paid on the proposed bonds.**

28. Cabinet approval for the sale was published in the paper- **"DEBTOR3 30"**.
29. We proceeded to negotiate and deal with **JRF** on this basis of our prior discussions and understanding. I remained in dialogue with Mrs. Valda Taylor and I proceeded with the subdivision based on our discussions.
30. After the subdivision was approved in about November, 2004 (about two years after our discussions commenced), persons paid down on the lots. However, their deposits had to be refunded as **JRF** would not agree to release the titles and allow the sales to go forward in spite of our informing them of deposits made.
31. Up to 2006 several prospective purchasers were expressing interest in buying the lots. **JRF** would not allow me to proceed with the sale. At this time the outcome of the deliberations relative to the interest rate to be agreed (with **JRF**) on the bonds was still pending. By letter dated **26<sup>th</sup> September, 2006** – **"DEBTOR3 31"**, I was informed in writing that my proposal was not acceptable. This is the very same proposal based upon which I had been proceeding since **2002**. By letter dated **December 18, 2006** – **"DEBTOR3 32"**, **JRF** informed me that my indebtedness had reached over [REDACTED]. Of that amount just over [REDACTED] represented principal sums. . The remainder represented interest that had accrued.
32. From this point I had to revert to the negotiations to sell the land to the government, secure the cash and pay the proceeds to **JRF**. The pace of this process did not facilitate speedy conclusion. My attorney and I went to the Land Valuation Department and executed some documents. The process took a rather long time so much so that by the time of completion, the land had to be revalued. In **2008** the government finally paid **\$5.5M** directly to **JRF** on account of the loan. After the [REDACTED] paid \$5.5 million to **JRF** I was told that I owed over **\$12 million in 2008** – (See letter dated **June 12, 2008** - **"DEBTOR3 33"**) and the debt continued to rise.
33. By letter dated **July 24, 2008**, - **"DEBTOR3 34"**, I was informed that the debt was [REDACTED].
34. I understand that land bonds are usually non interest bearing. Having come to this knowledge, I realize that had **FINSAC** given me the opportunity to negotiate on the basis of the purchase of the land by the government with bonds, my debt may have been liquidated and not sold to **JRF**. I say this because I think **FINSAC** being itself a government institution may not have been in a position to insist on the payment of interest on the bonds as a condition of its accepting the proceeds of sale in the form of bonds. The negotiations would therefore not have stalemated to my utmost detriment.

35. Based on JRF's outright refusal of my proposal I also had to refund the deposits to prospective purchasers because JRF refused to release the title to allow us to complete the titling process and the sales, notwithstanding that I had proceeded based on the discussions I had been having with JRF.
36. JRF has continued to hold my title and have put the property up for sale. About four years ago a valuator attended at the property on behalf of JRF. At that time he told me that he would report a value of [REDACTED].
37. If this is so, were I to be allowed to complete the subdivision and sale of the lots, I would be able to pay off the loan and retain the property which is my home. I have lived there for over 30 years.
38. I seek the Commission's help to address the following concerns :
- How was the interest rate of 30% compounded daily set/ determined? In any event, was JRF entitled to charge me this interest or any interest whatsoever after it acquired my debt from FINSAC ?
  - Having regard to FINSAC's refusal to accommodate in such a way as to allow me to liquidate my debt from the sale of a portion of my land to the government and the subdivision and sale of a part of the land, what are the bases/ criteria upon which generous write offs were extended to some debtors ?
  - Why did Mr. Patrick Hylton in his capacity as CEO and an essential stakeholder in facilitating a memorandum of understanding such as would permit a non cash settlement of a large portion of the debt by direct exchange with the Ministry of Finance, consistently refuse to accommodate me ? The refusal of Patrick Hylton to facilitate what was clearly a reasonable approach to negotiate a government to government (FINSAC to Ministry of Finance) agreement was pivotal in my failure to arrive at a successful conclusion at the level of FINSAC – long before the debt went to JRF.
  - What was the extent of my principal debt when it was sold to JRF? What portion of the entire sum represented interest ?

- How was the amount arrived at?
- If it is a fact that land bonds are usually non interest bearing, why would JRF insist on the payment by the government of interest on the bonds which it offered to issue as payment for the two acres of land, thus seriously undermining and delaying my efforts settle my indebtedness ?
- Based on my negotiations with JRF and my actions pursuant to those negotiations, why did JRF refuse to release the title to me to facilitate the completion of the subdivision and sale of the lots so that I could pay off my debts?
- Why did JRF allow some four years to pass before registering its refusal of my proposal while being aware in the interim that we were proceeding in our dealings with it and prospective purchasers on the basis of this proposal?

DATED THE

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DEBTOR3

