${court}

CASE NO.: ${casenumber}

In the matter between:

**${onepname}** ${firstplaintiff}Plaintiff

${twop}

**${twopname}** Second Plaintiff

${/twop}

${threep}**${threepname}** Third Plaintiff

${/threep}

${fourp}**${fourpname}** Fourth Plaintiff

${/fourp}

${fivep}**${fivepname}** Fifth Plaintiff

${/fivep}

${sixp}**${sixpname}** Sixth Plaintiff

${/sixp}

${sevenp}**${sevenpname}** Seventh Plaintiff

${/sevenp}

and

**${onedname}** ${firstdefendant}Defendant

${twod}

**${twodname}** Second Defendant

${/twod}

${threed}**${threedname}** Third Defendant

${/threed}

${fourd}**${fourdname}** Fourth Defendant

${/fourd}

${fived}**${fivedname}** Fifth Defendant

${/fived}

${sixd}**${sixdname}** Sixth Defendant

${/sixd}

${sevend}**${sevendname}** Seventh Defendant

${/sevend}

${eightd}**${eightdname}** Eighth Defendant

${/eightd}

**FOUNDING AFFIDAVIT**

I the undersigned,

**${authorwithcaps}**

do hereby make oath and say that,

1. I am an adult [male/female] attorney and practise as such as a partner at Mellows & De Swardt Inc., the attorneys of record for the Applicant/ ${represent}. (For ease of reference I will refer to the Applicant/${represent) simply as “the ${represent)” in this affidavit.)
2. I am duly authorised to depose to this affidavit on behalf of the ${represent).
3. The facts contained herein are within my personal knowledge and belief, unless the context indicates to the contrary, and are true and correct.
4. In this application the ${represent) seeks condonation for the late delivery of the [pleading] in terms of which the ${represent) seeks to join [Party’s name], with registered address and/or principal place of business situated at [Party’s address], as a third party to the action under the above case number. For ease of reference, I shall refer to [Party’s name] as “the Third Party” in the remainder of this affidavit.

**BACKGROUND**

1. The [Respondent/Plaintiff] (“the [Respondent]”) instituted action against the Applicant under case number ${casenumber}. The ${represent} is defending the action on the grounds set out in its plea, dated [date].
2. No further pleadings were filed and accordingly pleadings closed on [date].
3. [In terms of Magistrate’s Court Rule 28A(3)(b) a third party notice may only be served after the close of pleadings with the leave of the Court.]
4. […]

**REASONS FOR THE DELAY**

1. [The ${represent)’s organisation is a large organisation. The decision as to whether or not to join the Third Party to the action could only be made once a thorough investigation into the alleged incident giving rise to the action had been made, in conjunction with the defendant’s insurers. This investigation included a comprehensive consideration of the contractual nexus between the Defendant, the Defendant’s lessor and contractors appointed to carry out repairs and/or maintenance at the Defendant’s premises situated at Ballito Junction, Ballito Drive, Dolphin Coast, Kwa-Zulu Natal.]
2. […]
3. As a result, the investigation was only concluded after the close of pleadings.
4. Although every care was taken to ensure that the [pleading] was served within the prescribed time frames, ultimately the time in which to serve the notices was too short.

**THE CLAIM**

1. In short, the Plaintiff is suing the ${represent) for [incident/injuries].
2. […]
3. It is respectfully submitted that the issues arising for consideration between the [Plaintiff] and ${represent) are substantially the same as those which will arise between the ${represent) and the Third Party and/or that the ${represent) is entitled to claim a contribution from the Third Party.
4. In the circumstances, the Third Party should be joined to the action to avoid a multiplicity of actions in due course.

**PREJUDICE**

1. I submit that no prejudice will be suffered by either the [Plaintiff]or the Third Party by the delay in joining the Third Party to these proceedings.
2. As far as the [Plaintiff]is concerned, the pleadings are closed and trial preparation is yet to actively commence. As a result, the Plaintiff will not suffer any disadvantage by having the Third Party joined to the proceedings.
3. In my respectful submission it would also be to the Third Party’s benefit to have an opportunity to contest the liability of ${represent) to the [Plaintiff]in the action, should it wish to do so.
4. In the circumstances I respectfully submit that there is good cause to condone the ${represent)’s late filing of the Third Party Notice. I accordingly pray for the relief as set out in the Notice of Motion.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**${authorwithcaps}**

I certify that the deponent acknowledged that he knew and understood the contents of the above declaration, that I duly administered the oath as prescribed by Government Notice No R1258 of 21 July 1972, as amended and that thereafter the deponent in my presence, signed the declaration at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on the \_\_\_ day of **${month} ${year}**.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMMISSIONER OF OATHS**