



ABSA BANK LIMITED (Reg No 1986/004794/06)

H/L PTA  
STRUKTURA BUILDING  
539 CHURCH STREET  
ARCADIA  
83

**MORTGAGE LOAN AGREEMENT**

entered into between:  
**ABSA BANK LIMITED** (Reg No 1986/004794/06)

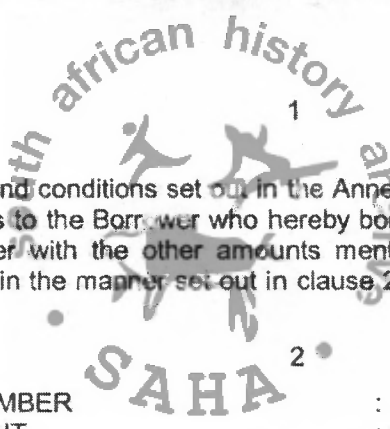
of 160 Main Street, Johannesburg, 2001

**("the Bank")**

and

[Redacted Name]

**("the Borrower")**



Subject to the terms and conditions set out in the Annexure hereto ("**Terms and Conditions**"), the Bank hereby lends to the Borrower who hereby borrows from the Bank the cash amount of money which, together with the other amounts mentioned in clause 2, is repayable by the Borrower to the Bank in the manner set out in clause 2 and in accordance with the "Terms and Conditions".

LOAN ACCOUNT NUMBER	:	[Redacted]
TOTAL LOAN AMOUNT	: R	[Redacted]
VALUATION FEE including VAT	: R	[Redacted]
INITIATION FEE including VAT	: R	[Redacted]
ANNUAL HOUSEOWNER'S COMPREHENSIVE INSURANCE PREMIUM	: R	[Redacted]
TOTAL (PRINCIPAL DEBT)	: R	[Redacted]
INTEREST RATE PER ANNUM	:	10,55%
TOTAL Monthly INSTALMENT	: R	[Redacted]
DATE OF FIRST INSTALMENT	:	To be advised
DATE OF SUBSEQUENT INSTALMENTS	:	To be advised
NUMBER OF INSTALMENTS	:	240
TERM OF LOAN	:	20 years
ADMINISTRATION FEE including VAT	:	R7,98 per month or such other amount as may be prescribed from time to time.

*[Handwritten Signature]*  
MS 1/11

**The granting of this loan shall be subject to -**

- 3.1 The registration in favour of the Bank of a covering mortgage bond in an amount of [REDACTED] ("the principal amount") plus an additional amount of [REDACTED] ("the additional amount") over the property.
- 3.2 Please note that Interim interest will be deducted from the final payment and you will be responsible for settling any shortfall.
- 3.3 If the bond is not registered due to your withdrawal, you will be obliged to pay to the Bank or the Bank's attorney all costs incurred, including administration fees, attorney's fees and disbursements.
- 3.4 The Bank reserves the right to withdraw it's offer if the finance is not taken up within a period of 3 (three) months.
- 3.5 The repayment is an estimated amount and you will be advised of the correct instalment on date of registration.
- 3.6 I/We certify that the benefits of life assurance to cover the amount owing in respect of this loan have been fully explained to me/us, and I/we have elected ~~to~~ not to avail myself/ourselves of this cover.

(\*delete that which is not applicable)

- 3.7 A Flexi Reserve facility for the advance portion of this loan has been granted.
- 3.8 The undermentioned amount being retained as retention monies by the Bank and only paid out if the work in question has been carried out to the Bank's satisfaction.  
Retention Amount: [REDACTED]
- 3.9 The building or improvements being completed within the undermentioned number of months from the date of registration of the mortgage bond over the property in favour of the Bank. Number of months: 6
- 3.10 The progress payments will be based on the contract price and the client will be liable for the difference between the contract price and the loan amount.
- 3.11 To provide for the instalment, the debit order section of the form "Mortgage Loan Payment Authority" must be completed and signed together with the other bond documents.
- 3.12 The property to be mortgaged being insured for not less than the total amount reflected below being the Bank's estimated replacement value of the property.  
Insured Amount: [REDACTED]
- 3.13 The following certificate/s being obtained by the Borrower and furnished to the Lender:  
NHBRC Registration Certificate  
NHBRC Authorisation for Contractors Payment  
NHBRC Enrolment Certificate
- 3.14 The following certificate/s being obtained by the Borrower and furnished to the Bank:

Erf: [REDACTED] Portion: 0 Township: [REDACTED]

Occupational Certificate

Structural Engineer's Certificate

MS  
RFA

MS  
RFA

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**SPECIAL CONDITIONS**

- 4.1 THE INTEREST RATE APPLICABLE TO THIS LOAN, ON INCEPTION, SHALL BE MBR - 1.95%.
- 4.2 ADDITIONAL AMOUNT OF R940.50 FOR INITIATION FEES MUST BE RECOVERED FROM THE ACCOUNT ON DATE OF REGISTRATION.

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In this mortgage loan agreement and in the Terms and Conditions, unless the context otherwise indicates -

- 5.1 "the property" means

Erf Number: [REDACTED] Township: [REDACTED] Portion: 0

- 5.2 An expression which denotes -

- 5.2.1 any gender includes other genders;
- 5.2.2 a natural person includes an artificial person and *vice versa*;
- 5.2.3 the singular includes the plural and *vice versa*.

If -

- 6.1 any person on behalf of the Bank who has assessed the property over which a mortgage bond has or is to be registered in favour of the Bank, or any building or improvements constructed or in the process of being constructed or to be constructed on the property, whether such assessment is for the purpose of evaluating such property, building or improvements or for any other purpose, such assessment or anything in connection therewith;
- 6.2 the Bank has not carried out any assessment referred to in 6.1, the failure to carry out such inspection;

shall not impose a duty of care on the Bank or constitute a representation or warranty in respect of the value of the property or the standard of construction of any improvement thereon or make the Bank liable to the Borrower or any person who at any stage may have an interest in the property or building or any improvement on the property or building or any improvement on the property.

a  
MS  
AF1

SIGNED at [redacted]

on 21/06/07

AS WITNESSES:

1. [redacted]  
[redacted]

  
On behalf of the Bank

SIGNED at [redacted]

on [redacted]

AS WITNESSES:


1. [redacted]

2. 

+ [redacted]  
THE BORROWER

Signature of spouse, if necessary



  
ms



ABSA BANK LIMITED (Reg. No. 1986/004794/06)

**STANDARD MORTGAGE CONDITIONS APPLICABLE TO ALL MORTGAGE BONDS REGISTERED IN FAVOUR OF ABSA BANK LIMITED (REG NO 1986/004794/06)**

The following standard conditions are applicable to and shall form part of all mortgage bonds registered in favour of ABSA BANK LIMITED ("the Bank") except in so far as in any particular case any relevant written agreement between the mortgagor concerned and the Bank may provide otherwise:

**1. Renunciation of benefits**

- 1.1 The Mortgagor renounces all benefits from the exceptions referred to in 1.2 and all other exceptions which might or could be pleaded in bar to any claim of the Bank or claim under the mortgage bond with the meaning and effect of which exceptions and renunciations the Appearer declared the Mortgagor to be fully acquainted.
- 1.2 The legal exceptions referred to in 1.1 are the legal exceptions *non causae debiti*, i.e. that no just cause exists for the debt of the Mortgagor, *non numeratae pecuniae*, i.e. that the money has not been paid to the Mortgagor, *de errore calculi*, i.e. that there has been a wrong calculation of the debt of the Mortgagor, revision of accounts, and, where applicable, *de duobus vel pluribus reis debendi*, i.e. the right of a co-mortgagor to claim that all the other co-mortgagors be joined in any action, each for his proportionate share of the debt in question, and *ordinis seu excussionis et divisionis* i.e. that co-principal debtors shall first be excused and that there shall be a division of the debt between co-principal debtors.

**2. Place of Payment**

All payments under any mortgage bond shall be made in good and lawful currency of the Republic of South Africa at any branch, subbranch or duly accredited agency of the Bank or at such other place or places as may from time to time be notified in writing by the Bank.

**3. Insurance**

- 3.1 The Mortgagor shall insure and keep insured, with an insurance company nominated by the Bank, against fire and such other risks as may be specified by the Bank, the mortgaged property for the reasonable replacement value thereof provided that in the case of immovable property mortgaged under a sectional mortgage bond, the Mortgagor shall not be obliged to effect such insurance for as long as -
- 3.1.1 the body corporate concerned keeps the buildings (as envisaged in the definition of "building" in section 1 of the Sectional Titles Act) in question insured for the reasonable replacement value thereof from time to time;
- 3.1.2 a value satisfactory to the Bank has been allocated to the mortgaged property concerned under the insurance policy contemplated in 3.1.1;
- 3.1.3 the insurer has noted the Bank's interest in the insurance policy contemplated in 3.1.1;

- 3.1.4 the insurer has acknowledged that the insurance policy contemplated in 3.1.1 which has been issued by it and in respect of which it has noted the Bank's interest, shall remain valid and enforceable by the Bank against the insurer notwithstanding any non-disclosure, false or incorrect representation or other act of the Mortgagor or the body corporate or non-payment of any premium or any other circumstance which would entitle the insurer to refuse to make any payment under the said insurance policy, unless and until the insurer on not less than one month's written notice to the Bank shall have terminated such insurance policy.
- 3.2 The Bank shall at any time and from time to time be entitled to insure the mortgaged property on behalf of the Mortgagor for such amounts as the Bank deems advisable against the risks referred to in 3.1 and any other risks it may deem fit and the Mortgagor shall cede all his rights under any policy contemplated in 3.1 or in this 3.2 to the Bank as further collateral security and to give proof of the payment of the premiums of insurance to the Bank as and when they shall fall due.
- 3.3 Any policies effected by the Bank in terms of 3.2 shall be at the expense of the Mortgagor and in the event of the Mortgagor failing to pay any premiums on due date, the Bank shall be entitled to pay such premiums on behalf of the Mortgagor.
- 3.4 The Bank is hereby irrevocably and *in rem suam* authorised to cede on behalf of the Mortgagor, any and all such existing or fresh policies from the Mortgagor to the Bank as aforesaid and to have such insurance effected in the name of the Mortgagor or the Bank.
- 3.5 The Bank shall have the right and be entitled to adjust, settle, compromise or submit to arbitration all claims, payments, disputes and matters arising from and under any insurance referred to in this clause, and to institute action in respect thereof, and to grant receipts for payments made, without reference to the Mortgagor and without requiring the signature of the Mortgagor.
- 3.6 The Bank shall be entitled to receive and give full acquittances for all moneys due under and by virtue of any and all such insurance policies and wholly or partially employ either in partial or full payment of moneys due hereunder or for the restoration under such conditions as the Bank may determine of that which has been damaged or destroyed by fire or such other perils in respect of which insurance was effected.
- 3.7 In particular, the Bank is hereby irrevocably authorised and empowered at any time during the currency of the mortgage bond to insure the mortgaged property at the expense of the Mortgagor against loss or damage occasioned by or through or in consequence of riot or civil commotion and against loss or damage occasioned by or through or in consequence of any bush or forest fire, storm, earthquake, earth tremor and other damage, for such respective amounts as the Bank may decide, and forthwith to recover from the Mortgagor any premiums paid as being money secured under the mortgaged bond.
- 3.8 In relation to any insurance referred to in Clause 3 of the mortgage bond and any other insurance whatsoever relating to the mortgaged property or to the Mortgagor, the Bank shall in no circumstances whatsoever be or be deemed to be the agent of the Mortgagor or be liable to the Mortgagor or any other person in respect of any alleged inadequacy or invalidity of insurance and in the event of the Bank receiving any remuneration from any person or company, whether by way of commission or otherwise, in respect of or in

relation to any insurance, the Bank shall be entitled to retain all such remuneration for its own benefit and as its own property, and shall not be obliged to account to the Mortgagor in respect of such remuneration or any portion thereof.

**4. Obligations of Mortgagor**

- 4.1 The Mortgagor shall pay all insurance premiums, levies, rents, assessment rates, sanitary fees, government, provincial, divisional or municipal and other rates and charges owing or which may become owing to any body corporate concerned, any creditor of such body corporate or any other authority in respect of the mortgaged property, promptly on the due dates thereof, provided that the Bank at its option may make all such payments without being obliged to wait until the Mortgagor is in arrear therewith and all payments so made shall be secured under the mortgage bond.
- 4.2 The Mortgagor shall pay all legal fees and disbursements relating to drawing and completing the power of attorney and the mortgage bond, and suing for the recovery of capital and interest, or any portion thereof, and of any other moneys claimable under the mortgage bond, as well as the costs of execution and of any judgement and the costs of cancellation of the mortgage bond, including any powers of attorney and other documents necessary for that purpose, and in general all costs (including costs as between attorney and client and collection commission) which may arise out of or in connection with the mortgage bond or in connection with the mortgaged property.
- 4.3 All legal work and documents in connection with the registration of the mortgage bond and the cancellation thereof shall be attended to by the Bank's attorneys.
- 4.4 The Mortgagor shall pay the stamp duty on any letters of undertaking issued by the Bank.
- 4.5 The Bank shall be entitled to debit the account of the Mortgagor with and to recover from the Mortgagor a reasonable administration and assessment fee whenever the Bank is requested to consent to any transaction relating to the mortgaged property or to any alteration in or cancellation of the security held by the Bank.
- 4.6 The Mortgagor shall from time to time and at all times as long as the mortgage bond shall remain in force, keep the mortgaged property and all improvements thereon in good, substantial and tenantable repair both internally and externally to the satisfaction of the Bank and keep the mortgaged property in conformity with the requirements of any public authority or, if applicable, any body corporate concerned and shall make no structural or other material alterations thereto, or any part thereof nor remove the same without the consent in writing of the Bank being first had and obtained.
- 4.7 The Bank or its duly appointed agent shall be entitled at all reasonable times to enter upon and inspect the mortgaged property at the expense of the Mortgagor and should the Mortgagor have failed to comply with the foregoing conditions then the Bank may at the charge and cost of the Mortgagor effect or expend any sum necessary for repairing, maintaining, upkeeping and preserving the mortgaged property and the improvements thereon, and conforming with the requirements of any public authority and, if applicable, the body corporate concerned.

- 4.8 The Mortgagor shall not be entitled to let or part with occupation of the mortgaged property or any portion thereof for a longer period than one month without the written consent of the Bank which consent shall not unreasonably be withheld.
- 4.9 The Bank shall be entitled, through its servants, agents or nominees, at all reasonable times to inspect the mortgaged property.
- 4.10 The Mortgagor shall deposit with the Bank during the currency of the mortgage bond the title deed of the mortgaged property, together with the receipts for levies paid and the insurance policies and premium receipts.
- 4.11 The Mortgagor shall not for so long as the mortgage bond remains in force, mortgage or in any way encumber or alienate the mortgaged property or any right of exclusive use or other real right mortgaged under the mortgage bond, or any part thereof, without the written consent of the Bank being first had and obtained.

**5. Default**

- 5.1 In the event of the Mortgagor failing to carry out and fulfil any of the terms and conditions set forth in the mortgage bond or the standard mortgage conditions or committing a breach of any of the terms or conditions stipulated in the mortgage bond or the standard mortgage conditions or should the Mortgagor commit any breach of or fail to fulfil or comply with any of the conditions of or servitudes affecting the title deed of the mortgaged property or in the event that the mortgaged property or any portion thereof should be expropriated and the Mortgagor receive compensation therefor without paying such compensation to the Bank in reduction of the Mortgagor's indebtedness, or in the event of insolvency or application for voluntary surrender or assignment of the estate of the Mortgagor for the benefit of creditors or attachment of the mortgaged property under the judgment of any Court or sale of the mortgaged property by the Mortgagor or liquidation where the Mortgagor is a company or close corporation, other juristic person, a trust, partnership or any association of persons, then and in any such case, at the option of the Bank, any sum whatsoever owing by the Mortgagor to the Bank shall be considered as legally claimable and due forthwith, without notice, and without the Mortgagor having been specially placed in default by reasons of such failure anything to the contrary hereinbefore contained notwithstanding and notwithstanding that the Bank has previously granted any indulgence to the Mortgagor.
- 5.2 The Bank shall be entitled and is hereby authorised to surrender any endowment policy or life assurance policies ceded or made payable to the Bank as collateral security and to appropriate the surrender value on account of any amount owing to the Bank and secured under the mortgage bond.

**6. Bank's Rights**

The Bank shall be entitled -

- 6.1 to pay any premium due in respect of any endowment assurance, life assurance or other policy which is ceded to or made payable to the Bank as collateral security for any amount owing to the Bank and secured under the mortgage bond and the amount so paid shall form part of the indebtedness secured under the mortgaged bond;
- 6.2 if the Mortgagor is in default to pay any amount necessary for the installation of sewerage on the mortgaged property, to pay any amount necessary for



such installation and any and all amounts so paid shall be portion of the indebtedness secured under the mortgage bond;

- 6.3 at any time and from time to time by its valuers or other agents, to inspect the mortgaged property for the purposes of valuing the same or for ensuring that the Bank's rights under the mortgage bond are at all times fully protected for any other purpose whatsoever, and to recover from the Mortgagor under security of the mortgage bond such reasonable fees as the Bank may require in respect thereof;
- 6.4 upon cancellation of the mortgage bond for any reason, or upon the release of any portion of the mortgaged property from the operation of the mortgage bond or upon the Bank being required at any time to furnish its consent as bondholder to any act or registration relating to the mortgaged property or to the Mortgagor, or being requested to make the title deed of the mortgaged property available for any purpose, to recover from the Mortgagor under security of the mortgage bond such reasonable fees as the Bank may require in respect thereof.

## 7. Cession of rents and other revenues

7.1 The Mortgagor hereby cedes to the Bank all the Mortgagor's rights, title and interest in and to all rents and other revenues which may accrue from the mortgaged property as additional security for such amounts as may at any time be secured under the mortgage bond, with the express right in favour of the Bank irrevocably and *in rem suam* -

7.1.1 to take proceedings against tenants in default for the recovery of the rent or for ejection;

7.1.2 to let the whole or portion of any mortgaged property, to cancel or renew and enter into leases in such manner as the Bank shall think fit and to eject any trespasser or other person;

7.1.3 to collect on behalf of the Mortgagor any and all moneys payable in respect of the sale by the Mortgagor of the mortgaged property;

provided, however, that the cession, transfer and assignment and authorities and powers given in terms of this clause shall not be acted upon without the consent of the Mortgagor while the standard mortgage conditions have been or are being fully complied with.

7.2 It is hereby agreed that the Bank shall be entitled to charge a commission of five (5) per centum of the gross amount of all rents collected by it under this clause.

## 8. Building loans

Where any loan secured under the mortgage bond has been granted upon the condition that buildings or additions to existing buildings shall be erected upon the mortgaged property the following conditions shall apply:

8.1 The Mortgagor shall be bound and obliged to erect and complete to the entire satisfaction of the Bank, the buildings, improvements, alterations or additions to existing buildings on or in respect of the mortgaged property in terms of plans and specifications approved of by the Bank and the municipal or other local authority.

- 8.2 The contractor or builder, carpenter and other workmen who might have acquired or may acquire a lien on the said buildings, improvements, alterations or additions for work done, shall expressly renounce or waive such lien in favour of the Bank, so that the amount secured from time to time under the mortgage bond shall take precedence of any such lien, and unless and until such lien shall have been so renounced or waived, the Bank shall not be liable to make any payment in respect of any such loan.
- 8.3 The capital shall be paid to the Mortgagor from time to time in accordance with the value of the work done on the said buildings, improvements, alterations or additions and the Bank shall be the sole judge as to the amounts to be paid from time to time.
- 8.4 The Mortgagor shall be bound and obliged to pay to the Bank a reasonable fee for, and all expenses in connection with, any inspection made and such fees and expenses shall be secured under the mortgage bond.
- 8.5 If the said buildings, improvements, alterations or additions shall be completed at a cost less than the contract price, without the inclusion of any extras, the amount to be advanced to the Mortgagor thereon by the Bank shall be decreased *pro rata* to the actual costs of completion thereof.
- 8.6 The Bank shall be entitled to decline to make further payments and shall have the right to claim payment of the amount already secured under the mortgage bond with interest, charges and expenses, if the work in question has ceased for a period of one week or in the opinion of the Bank -
- 8.6.1 the work is not being proceeded with in a satisfactory manner; or
  - 8.6.2 there is undue delay in carrying out the work; or
  - 8.6.3 improper or inferior materials are being used or workmanship is being put into the work; or
  - 8.6.4 workmen, contractors or suppliers of building materials are not being regularly paid; or
  - 8.6.5 be reason of some factor already existing at the time of commencement of the work (such as unsuspected subsoil conditions) or some supervening impossibility (such as landslide, flood or earthquake) the mortgaged property is destroyed or the construction of or completion of work according to the plans and specifications as approved in terms of 8.1, is made impossible.
- 8.7 The Bank and its agents, contractors and workmen shall have the right to enter upon the mortgaged property and carry on and complete the said buildings, improvements, alterations or additions in case any default as specified in 8.6.1 and 8.6.2 taking place and at any time to discontinue such work.
- 8.8 The moneys expended by the Bank in connection with the actions referred to in 8.7 in excess of any balance of the loan in its hands shall be immediately claimable from the Mortgagor and shall be secured under the mortgage bond.
- 8.9 The Bank shall have the right in the event of any defaults specified in 8.6.3 taking place to require such improper or inferior materials to be removed and such inferior workmanship to be rectified forthwith and in the event of neglect or refusal to do so, to cause such materials to be removed or such work to be rectified by its own agents, contractors and servants at the cost and expense

of the Mortgagor and all rights and privileges accruing to the Bank in terms of this clause, shall likewise vest in the Bank in connection with the cost of work done under this clause.

- 8.10 The Bank shall have the right in the event of any of the defaults specified in 8.6, to pay such contractors, workmen and suppliers of material out of the said loan or any balance thereof remaining in its hands and the receipts of such contractors, workmen and suppliers shall constitute a good discharge as against the Mortgagor.
- 8.11 The Mortgagor shall insure the said buildings, improvements, alterations and additions from time to time as the work progresses under that form of insurance generally known as "Builder's Risk" with an insurer to be nominated by the Bank and the Mortgagor will assign and make over the cover notes and the policy of such insurance to the Bank or other legal holder of the mortgage bond as collateral security for the amount of the mortgage bond and all the Mortgagor's indebtedness secured thereunder.
- 8.12 The difference between the contract price for the erection of the said buildings, improvements, alterations or additions and the amount of the loan shall be paid by the Mortgagor before any moneys are advanced under the loan.
- 8.13 The Mortgagor shall not cede and shall not issue or make any order or cession for any moneys to be advanced to him by the Bank without the written consent and approval of the Bank first being had and obtained, and the Bank shall not be obliged to recognise any such cession unless and until such written consent has been obtained.
- 8.14 All or any portion of the moneys due on any cession referred to in 8.13 recognised by the Bank may not be ceded afresh without the written consent of the Bank thereto first being had and obtained and should the Mortgagor so cede or issue or make any such order or cession, or should all or any portion of moneys due on any cession recognised by the Bank be ceded afresh, without such written consent and approval, the Bank shall be entitled to refuse payment of the amount of any such order or cession, to refuse to pay out any moneys under the loan and to institute proceedings, without notice, for the recovery of whatever moneys may be owing by the Mortgagor to the Bank.

#### 9. Bank's rights in respect of body corporate

In the case of immovable property mortgaged under a sectional mortgage bond the Mortgagor hereby nominates, constitutes and appoints the Bank represented by any manager of the Bank for the time being irrevocably and *in rem suam* as his duly authorised attorney, agent, proxy and representative to act on his behalf as fully as he might do, in all matters connected with and in respect of the mortgaged property, his relationship with and dealing with the body corporate and any other owner of any unit in the building of which the mortgaged property forms part and in particular and without derogating from the foregoing, authorises the Bank, represented by such manager -

- 9.1 to attend on his behalf and in his name any meeting of the body corporate as his proxy and attorney and to speak and vote at such meeting on his behalf as he or such manager may deem fit, specifically recorded that if such manager is present at any such meeting the Mortgagor shall have no right to speak or vote, such rights being irrevocably vested in the Bank and its said manager and for the purposes hereof the Mortgagor undertakes to sign such additional proxies, powers of attorney or other documents as may be

requisite to give effect hereto and to do all other things to enable the Bank and its said manager to carry out the powers vested in it hereby;

- 9.2 to demand and receive on his behalf any notices, documents, accounts or communication which the Bank may require from the body corporate or the insurer to the body corporate, hereby undertaking to sign such additional documents and do such things as may be requisite or necessary to enable the Bank to receive such documents from the body corporate;
- 9.3 to exercise on his behalf all and any rights which he may be entitled to exercise in his capacity as the owner of the mortgaged property as if the Bank were the owner;
- 9.4 to take all steps on his behalf, including the right and power to make any application to any court or authority to compel the body corporate to carry out all or any of the duties or powers imposed upon it in terms of section 37 and 38 or any other provision of the Sectional Titles Act, the Rules of the body corporate and the regulations under the Sectional Titles Act, including the power specifically to employ attorneys, counsel or other representatives, the power to sign affidavits, powers of attorney and notices which may be required to give effect hereto and to take all other steps as it may deem fit for the protection of the mortgaged property, the Bank's rights and the Mortgagor's rights;
- 9.5 to apply on his behalf for the appointment of an administrator in terms of section 46 of the Sectional Titles Act and for that purpose to sign such powers of attorney, affidavits, notices or other documents as may be necessary and to employ attorneys, counsel or representatives and to take all steps which may be necessary for such purposes including the nomination of an administrator and any other powers requisite therefor;
- 9.6 to enter appearance on the Mortgagor's behalf to defend and to conduct the defence of any proceedings which may be brought against him in his capacity as the owner of the mortgaged property whether by the body corporate, the owner of any other unit or any other person, and to conduct the defense of such proceedings on his behalf and for such purposes to sign such affidavits, powers of attorney and documents as may be necessary and to employ counsel, attorneys or representatives for such purposes;
- 9.7 to perform on the Mortgagor's behalf all things which may be necessary to procure the insurance contemplated in the proviso to 3.1 and to sign all documents and do all things necessary to give effect thereto;
- 9.8 generally to take all the steps as the Bank may deem fit for the protection of the mortgaged property and the preservation of the rights which the Mortgagor or the body corporate may have.

#### 10. Expropriation

In the event of the whole or any portion of the mortgaged property being expropriated under any law or the whole or any portion thereof taken under the provisions of any law for road-widening purposes or any other purpose whatsoever by any competent authority, the Mortgagor appoints the Bank irrevocably and *in rem suam* to receive all compensation moneys payable in respect thereof as well as to make all claims and sign all such documents in regard thereto as may be necessary or desirable and the Bank shall account to the Mortgagor in respect of each such amount received after deduction of all sums secured under the mortgage bond and the costs incurred by the Bank in regard to such expropriation or other deprivation.

11. **Agricultural Credit Act No 28 of 1966**

The Mortgagor hereby -

- 11.1 undertakes during the subsistence of the mortgage bond not, without the prior consent in writing of the Bank, to apply for or accept assistance under the Agricultural Credit Act, No 28 of 1966, as amended, or any re-enactment thereof; and
- 11.2 waives all benefits and protection provided under the Agricultural Credit Act, No 28 of 1966, as amended, and undertakes that the provisions of the said Act (of which the Mortgagor is fully aware) shall not apply against the Bank.

12. **Cession of mortgage bond**

The Bank shall be entitled at any time to cede any or all of its rights under the mortgage bond to any person and to register such cession in the appropriate deeds register and the Mortgagor hereby agrees and consents to any such cession or any increase in the number of Mortgagees.

13. **Domicilium**

The Mortgagor chooses his *domicilium citandi et executandi* for all purposes under the mortgage bond at the mortgaged property or, should there be more than one mortgaged property, at any one of the mortgaged properties.

14. **Jurisdiction**

- 14.1 The Mortgagor consents in terms of section 45 of the Magistrate's Courts Act, No 32 of 1944, as amended, to the Bank taking any legal proceedings for enforcing any of its rights under the mortgage bond in the Magistrate's Court of any district having jurisdiction in respect of the Mortgagor by virtue of section 28(1) of the aforesaid Act.
- 14.2 Notwithstanding the Mortgagor's consent to the jurisdiction of the magistrate's court aforementioned, the Bank shall have the right to institute legal proceedings against the Mortgagor in any other competent court having jurisdiction in the matter.

15. **Miscellaneous**

- 15.1 Should there be more than one Mortgagor under the mortgage bond, the liability of each Mortgagor shall be joint, several and *in solidum*.
- 15.2 No relaxation or indulgence which the Bank may grant the Mortgagor shall in any way prejudice or be deemed to be a waiver of its rights hereunder.
- 15.3 In the event of the Mortgagor being a juristic person then should any change in the directorship or shareholding or, where applicable, membership of such juristic person take place, all amounts secured under the mortgage bond shall immediately become due and payable unless the prior consent, in writing, of the Bank is first had and obtained.
- 15.4 In the event of the Mortgagor being a juristic person, it hereby agrees that should such juristic person commit any act which may render it liable to be wound up or fail to comply timeously with any law existing at any time whereby provision is made for the rendering of an annual return by such juristic person to any authority whatsoever and in particular, and without in any way limiting the generality of the foregoing, to the Registrar of

Companies or Close Corporations, then and in such event such act or failure shall be deemed to be a material breach of the terms of the mortgage bond.

- 15.5 The Bank shall under no circumstances be liable for any loss as a result of any omission, fault or negligence in exercising any of its powers or any mandate in terms of the standard mortgage conditions and the Mortgagor hereby waives any claim which he may have against the Bank arising out of any such omission, fault or negligence.
- 15.6 The headings to the various clauses in the mortgage bond have been inserted purely for the purposes of convenience and shall not be utilised in the resolution of any dispute relating to matters of intention or interpretation.
- 15.7 A certificate signed by a manager of the Bank specifying the amount owing by the Mortgagor to the Bank and further stating that such amount is due, owing and payable by the Mortgagor to the Bank, shall be *prima facie* proof of the amount of such indebtedness and of the fact that such amount is so due, owing and payable, for the purpose of obtaining provisional sentence or other judgment in any competent court as well as execution under the mortgage bond and it shall not be necessary to prove the appointment of the person signing any such certificate.

## 16. Definitions

In these standard mortgage conditions, unless the context otherwise indicates -

- 16.1 "**the Bank**" means ABSA BANK LIMITED (Reg No 1986/004794/06);
- 16.2 "**body corporate**" means a body corporate as defined in section 1 of the Sectional Titles Act;
- 16.3 "**Deeds Registries Act**" means the Deeds Registries Act, No 47 of 1937, or any amendment to or substitution thereof;
- 16.4 "**deeds registry**" means a deeds registry as defined in the Deeds Registries Act;
- 16.5 "**immovable property**" includes anything capable of being hypothecated under a mortgage bond;
- 16.6 "**mortgage bond**" means a mortgage bond as defined in the Deeds Registries Act, and includes a sectional mortgage bond;
- 16.7 "**mortgaged property**" means any immovable property mortgaged to the Bank in terms of a mortgage bond, including any buildings and improvements erected or hereafter to be erected thereon;
- 16.8 "**Mortgagor**" means any person whose immovable property is mortgaged to the Bank in terms of a mortgage bond;
- 16.9 "**sectional mortgage bond**" means a sectional mortgage bond as defined in section 1 of the Sectional Titles Act;
- 16.10 "**sectional title deed**" means a sectional title deed as defined in section 1 of the Sectional Titles Act;
- 16.11 "**Sectional Titles Act**" means the Sectional Titles Act, No 95 of 1986, or any amendment to or substitution thereof;

- 16.12 **"standard mortgage conditions"** means the terms and conditions contained in this document;
- 16.13 **"title deed"** means a document registered in a deeds registry by virtue whereof the mortgaged property is registered in the name of the Mortgagor and includes a sectional title deed;
- 16.14 **"unit"** means a unit as defined in section 1 of the Sectional Titles Act;
- 16.15 an expression which denotes -
- 16.15.1 any gender includes the other genders;
  - 16.15.2 a natural person includes a juristic person and vice versa;
  - 16.15.3 the singular includes the plural and vice versa.



# Schedule

## Terms and Conditions

1.

The Borrower hereby declares that the Mortgage Loan Agreement to which these Terms and Conditions are attached ("the Mortgage Loan Agreement") was completed in full at the time of his signing it and that the particulars contained therein are correct in all respects.

2.

- 2.1 The cash amount of monies which is lent and granted to the Borrower by the Bank in terms of the Mortgage Loan Agreement, shall be paid to the Borrower or his nominees by the Bank, whereafter it shall be charged against an account opened for this purpose in the Borrower's name at the Bank, which payment shall be effected only after the Borrower, at his own expense and in the manner and form which the Bank may prescribe, has furnished the Bank with the securities referred to in the Mortgage Loan Agreement; provided that should the indicated costs included in the principal debt be paid in cash, the principal debt will be reduced accordingly.
- 2.2 The securities referred to in paragraph 2.1 shall be furnished to the Bank in addition to any other security which has already been furnished to the Bank or which the Bank may hereafter require from the Borrower and any security which has already been furnished by the Borrower to the Bank or which the Bank may hereafter require from the Borrower, which is not specified in the Mortgage Loan Agreement, shall likewise serve as security for all amounts which the Borrower owes or may at any time hereafter owe to the Bank arising from the Mortgage Loan Agreement.
- 2.3 The Borrower shall procure -
- 2.3.1 the consent of any mortgagee in favour of whom any existing mortgage bond is registered over the property before a second mortgage bond may be registered over such property; or
- 2.3.2 the cancellation of any existing mortgage bond registered in favour of any mortgagee, other than the Bank, over the property; and
- 2.3.3 the confirmation by an insurance company, acceptable to the Bank, that the improvements on the property, including a sectional title unit, has been insured for its replacement value for all risks against which any such property will normally be insured.

3.

- 3.1 The principal debt referred to in the Mortgage Loan Agreement together with interest thereon calculated in terms of the Mortgage Loan Agreement shall be repaid to the Bank in instalments, the amount and number of which and the dates on which they are to be paid being specified in or, as the case may be, to be advised in terms of the Mortgage Loan Agreement.
- 3.2 In addition to the instalments payable in accordance with clause 3.1, the Borrower shall on each instalment date pay the administration fee referred to in the Mortgage Loan Agreement to the Bank.



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4.

It is hereby recorded that some of the amounts and other information specified in the Mortgage Loan Agreement are estimates and subject to variation and in the event of it being established at any time hereafter that the said estimates or any of them were incorrect or that any amount must be amended to reflect the true state of affairs, the Bank shall from time to time be entitled by notice in writing to the Borrower to amend the Mortgage Loan Agreement so that the true state of affairs shall be reflected therein.

5.

Subject to the provisions of the Usury Act No 73 of 1968 ("the Act"), if applicable, the Borrower shall be liable to the Bank for the payment of interest additional to the interest payable in terms of the Mortgage Loan Agreement should the Borrower

- 5.1 fail to pay on the due date any amount owing or which may become owing by him to the Bank in connection with the Mortgage Loan Agreement; or
- 5.2 agree with the Bank to defer the payment of any amounts so owing.

6.

If -

- 6.1 the Act is applicable to the Mortgage Loan Agreement, any additional interest leviable in terms of the provisions of clause 5 of these Terms and Conditions, shall be calculated with regard to the total amount payable yet unpaid, the period of the failure or, as the case may be, the period for which deferment has been granted and the annual rate at which interest on the outstanding balance of the principal debt is calculated in terms of the Mortgage Loan Agreement during such period;
- 6.2 the Act is not applicable to the Mortgage Loan Agreement, any additional interest leviable in terms of the provisions of clause 5 of these Terms and Conditions, shall be calculated at the rate determined in terms of the provisions of clause 8 of these Terms and Conditions or, if no such rate has been so determined, the rate at which interest at the time of the occurrence of such failure or, as the case may be, the granting of such deferment, is payable in terms of the Mortgage Loan Agreement.

7.

The Bank shall be entitled to capitalise any interest payable yet unpaid in terms of the Mortgage Loan Agreement (irrespective of whether non-payment is due to the failure of the Borrower as envisaged in clause 5.1 of these Terms and Conditions or deferment granted by the Bank as envisaged in clause 5.2 of these Terms and Conditions) against the outstanding balance which at that stage is still payable in terms of the Mortgage Loan Agreement.

8.

- 8.1 Should the Borrower fail to promptly make any payment payable in terms of the Mortgage Loan Agreement, the Bank shall be entitled, subject to the provisions of the Act, if applicable, in addition to and without derogating from such other rights as the Bank may have under the Mortgage Loan Agreement, at its discretion to increase the rate of interest applicable to the Mortgage Loan Agreement to a rate which shall not exceed the rate legally permissible.
- 8.2 Whenever during the term of the Mortgage Loan Agreement the prime lending rate levied by the Bank on the overdrafts of its clients in the private sector or the Bank's standard normal mortgage lending rate is increased or, as the case may be, reduced, the Bank shall be entitled, as from the date on which the lending rate concerned is increased or reduced or

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14.

The Bank (or any person to whom its rights and/or obligations are ceded and/or delegated in terms of the Mortgage Loan Agreement) shall be entitled at any time, without the consent of, or notice to, the Borrower, to cede all or any of its rights and/or delegate all or any of its obligations in terms of the Mortgage Loan Agreement, including these Terms and Conditions, to any person, and the Borrower consents to any consequent splitting of its obligations and/or rights.

15.

- 15.1 Notwithstanding any provision to the contrary, the Bank shall be entitled at any time prior to payment of the cash amount in terms of the Mortgage Loan Agreement, to resile from the Mortgage Loan Agreement and the Borrower shall have no claim against the Bank if the Bank does so.
- 15.2 If the Borrower resiles from the Mortgage Loan Agreement before the mortgage bond referred to in the Mortgage Loan Agreement is registered, the Borrower shall be liable for all costs incurred, including administration costs and legal fees, which costs shall be payable by the Borrower to the Bank on demand.

16.

Subject to the provisions of the Act, the Bank shall be entitled to recover from the Borrower a valuation fee referred to in the Mortgage Loan Agreement.

17.

In the case of a housing loan as defined in the Act and subject to the provisions of the Act, the Bank shall be entitled to recover from the Borrower an initiation fee, administration fees, security variation fees and loan guarantee premiums for the amounts set out in the Mortgage Loan Agreement and to add the amounts thereof, except the amounts of the administration fees, to the principal debt.

18.

The Mortgage Loan Agreement, including these Terms and Conditions, shall be read in conjunction with the terms and conditions of the mortgage bond referred to in the Mortgage Loan Agreement and with the Standard Mortgage Conditions of the Bank which have been registered in the Deeds Registry under reference BC9/2005, as if they were incorporated in and form part of the Mortgage Loan Agreement, including these Terms and Condition.

## FLEXI RESERVE TERMS AND CONDITIONS

1. The Flexi Reserve facility to access available funds will entitle me/us to deposit and withdraw funds, subject to the provisions hereof, to and from my/our mortgage loan account, provided that my/our indebtedness to the Bank against said mortgage loan account shall at no time exceed the loan granted against the property, notwithstanding that the total amount of all mortgage bonds registered in favour of the Bank over the property may exceed such loan granted. The Bank is expressly authorised, in the event of each withdrawal and/or deposit in terms of the Flexi Reserve facility, to debit and/or credit my/our loan account, as the case may be, against the security of the mortgage bond(s) registered in favour of the Bank over the property encumbered under the said mortgage loan account number, with such amounts withdrawn and/or deposited.
2. If I/we have opted for:
  - 2.1 Option 1: the Flexi Reserve facility will entitle me/us to deposit additional amounts (herein after "advance amounts") over and above the instalments which I/we am/are obliged to pay in terms of the mortgage loan agreement, to my/our mortgage loan account. The Flexi Reserve facility will further entitle me/us to withdraw, subject to the provisions contained herein, all advance amounts from my mortgage loan account.
  - 2.2 Option 2: the Flexi Reserve facility will entitle me/us to access an amount which is equal to the difference between the outstanding balance of my/our mortgage loan and the loan amount initially granted against the property or the aggregate of all loan amounts initially granted if there were further advances. I/We acknowledge that when determining the loan amount or aggregate of loan amounts initially granted, for the purposes of this clause, the following amounts will be deducted therefrom:
    - any arrear instalments; and
    - uncleared effects; and
    - the amount equal to the amounts reserved under the mortgage bond(s) as security for other advances, facilities or financing granted by the Bank to me/us,
3. Withdrawals may be effected:
  - 3.1 in the discretion of the Bank, and
  - 3.2 subject to a minimum amount of R1 000,00 per withdrawal; and
  - 3.3 up to such limit and by such means as may be permitted by the Bank.
4. I/We understand that the Bank will calculate my/our ~~monthly~~/quarterly/half-yearly/yearly\* repayments against the abovementioned mortgage loan account in relation to and based on such an amount as may be agreed upon from time to time between myself/ourselves and the Bank, subject at all times to the provisions in item 1 above, notwithstanding the fact that the actual outstanding balance against my/our account may vary from time to time and may be less than the amount in respect whereof my/our said repayments are thus to be calculated. It is, however, specifically recorded that any interest payable against my/our mortgage loan account will for all intents and purposes, in accordance with the provisions of the mortgage bond, be calculated only with reference to the actual outstanding balance against my/our account from time to time.
5. No interest shall be payable on any credit balance arising in the mortgage loan account.
6. All amounts withdrawn in terms of the Flexi Reserve facility in accordance with the authority contained in Clause 1 above, shall be covered by every form of security and/or suretyship furnished to the Bank in respect of the mortgage loan and I/we agree to obtain and furnish the consent of the Guarantor(s) or Surety/Sureties who has/have a vested interest in my/our mortgage bond to the Bank's satisfaction.
7. The Flexi Reserve facility application will, only if granted and approved by the Bank constitute a variation agreement of the mortgage loan agreement. All the terms and conditions of the mortgage loan agreement will apply and be and remain of full force and effect, except as varied by the terms and conditions of this agreement if thus granted and approved by the Bank.
8. I/We hereby indemnify the Bank against any claims, loss or damage, which may arise from unauthorised use of the Flexi Reserve facility and I/we further waive all rights, which I/we may have against the Bank due to such unauthorised use. I/We further undertake to ensure that any transaction card(s) and/or personal identification number(s) which may be issued to me/us under the facility to access available funds, will not fall into unauthorised hands.
9. Notwithstanding anything to the contrary herein or elsewhere contained, the Bank may increase the rate of interest, as specified herein, on all amounts owing to or claimable by the Bank in terms of the provisions of the mortgage loan agreement, provided that the rate of interest shall not at any time exceed the rate of interest permitted in terms of the Usury Act no 73 of 1968, as amended.
10. If the Bank so requires, I/we agree to any necessary amendments of the bond being recorded by the Registrar of Deeds in the relevant Deeds Registry and undertake to sign any consent(s) or agreement(s) that may be necessary to enable such amendment(s) to be registered and such registration shall be effected at my/our cost and I/we shall in addition pay all costs incurred for or incidental to the preparation of this agreement, which costs the Bank shall be entitled to debit to my/our mortgage loan account.
11. Should I/we fail to pay any amounts owing to the Bank in terms of the Flexi Reserve facility and the registered mortgage bond(s) upon the date when such amount is payable, or should the Bank by agreement defer any such amount owing to the Bank, then the Bank shall, without prejudice to any of its other rights in law, whether the Bank decides to enforce such rights or not, be entitled to recover from me/us an additional amount in respect of finance charges calculated in accordance with the provisions of the Usury Act no 73 of 1968, as amended, which finance charges may be capitalised \*monthly/quarterly/half-yearly/yearly and will in turn bear finance charges.
12. It is recorded that although the amount secured by the bond(s) registered in favour of the Bank over the abovementioned property as security for the above loan may exceed the said loan, the Bank will in its own discretion allow me/us any additional facilities under the Flexi Reserve facility in accordance with the normal credit criteria.
13. Notwithstanding anything to the contrary herein, the Flexi Reserve facility will be reviewed within every subsequent period not exceeding 360 days at a time and will only be available up to the loan amount approved, provided the value of the bonded property does not decrease. In addition:
  - 13.1 any change in circumstances that, in the Bank's sole discretion, will place the Bank at risk, will result in the Flexi Reserve facility being decreased or revoked; and
  - 13.2 should a policy change be required when market conditions deteriorate, all Flexi Reserve facilities on loans in excess of 100% of the bonded property value at the time of grant will also be reviewed as aforesaid.
14. The Bank shall in its discretion be entitled to cancel \*my/our right of withdrawal at any time without giving any prior notice thereof to me/us.

\*Delete whichever is not applicable