

CESSION IN SECURITY

given by

EMIRA PROPERTY FUND LIMITED
as cedent

in favour of

FREESTONE MORTGAGE BOND SPV SERIES 1 (RF) PROPRIETARY LIMITED
as cessionary

in respect of Tenant Lease Agreements and Lease Payments

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CONTENTS

Clause	Page
1. Interpretation	1
2. Cession	3
3. Duration and reinstatement	3
4. Representations and Warranties	4
5. Undertakings by the Cedent	6
6. Delivery of Documents and noting of interests	7
7. Rights of the Cedent before an Enforcement Event	8
8. Realisation upon an Enforcement Event	8
9. Liability and Reimbursement	10
10. Payments	10
11. Appropriation of Proceeds	10
12. Additional Rights	10
13. Cedent Bound Notwithstanding Certain Circumstances	10
14. Keeping, Inspection and Delivery of Records	11
15. Notices	11

THIS AGREEMENT is made between:

- (1) **EMIRA PROPERTY FUND LIMITED**, registration number 2014/130842/06, as cedent (the **Cedent**); and
- (2) **FREESTONE MORTGAGE BOND SPV SERIES 1 (RF) PROPRIETARY LIMITED**, 2004/000792/07, as cessionary (the **Cessionary**).

BACKGROUND:

As security for the due and punctual performance of the Secured Obligations, the Cedent has agreed to cede *in securitatem debiti* all its Secured Property to the Cessionary, on the terms set out in this Agreement.

1. INTERPRETATION

1.1 Definitions

Terms and expressions defined in the Mortgage Bond SPV Guarantee have, unless expressly defined in this Agreement, the same meaning in this Agreement. In this Agreement:

- 1.1.1 **Agreement** means this cession in security agreement and its schedules.
- 1.1.2 **Enforcement Event** means that, following a demand made on the Mortgage Bond SPV under the Mortgage Bond SPV Guarantee, the Mortgage Bond SPV has made a demand on the Issuer under the Counter-Indemnity Agreement, and the Issuer has failed to perform its respective payment obligations under the Counter-Indemnity Agreement on the date of such demand and in full;
- 1.1.3 **Lease Payments** means the periodic payments payable by a Tenant to or for the account of the Cedent under a Tenant Lease Agreement including, without limitation, rentals, insurance premiums and operating expenses;
- 1.1.4 **Mortgage Bond SPV Guarantee** means the guarantee issued by the Mortgage Bond SPV in favour of the Trustee, on behalf of the Group 1 Noteholders, for the obligations of the Obligors under the Finance Documents dated on or about the date of this Agreement;
- 1.1.5 **Party** means a party to this Agreement.
- 1.1.6 **Property** means a property in the Property Portfolio;
- 1.1.7 **Property Portfolio** means the fixed, immovable properties registered in the name of the Cedent (in each case, as sole owner or co-owner, as the case may be) or in respect of which the Cedent has registered leasehold rights, from time to time;
- 1.1.8 **Related Rights** means, in relation to the Tenant Lease Agreements and Lease Payments:
 - (a) any monies and proceeds (including the proceeds of a disposal or other realisation) accrued or receivable in respect of all or part thereof;
 - (b) all rights and benefits in respect of any agreement for the disposal thereof;

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- (c) all contracts, warranties, remedies, Security, indemnities and other undertakings in respect thereof; and
- (d) any of the reversionary or other interests referred to in Clause 2.1.2 (Cession).

1.1.9 **Secured Obligations** means all present and future obligations and indebtedness of whatsoever nature (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever, including any liability to pay damages or pursuant to enrichment) which the Cedent may now or at any time hereafter owe or have towards the Cessionary under or in connection with the Counter-Indemnity, this Agreement and/or the other Finance Documents to which it is a party;

1.1.10 **Secured Property** means, collectively:

- (a) the Tenant Lease Agreements;
- (b) the Lease Payments; and
- (c) the Related Rights,

and all of the Cedent's rights and interests therein and thereto of whatsoever nature and howsoever arising (whether actual, prospective or contingent, direct or indirect, arising under common law or statute, whether a claim for the payment of money or the performance of another obligation and whether or not those rights and interests were within the contemplation of the Parties at the date of this Agreement) and, individually, any property forming part thereof;

1.1.11 **Signature Date** means the date of signature of this Agreement by the party signing it last;

1.1.12 **Tenant** means, in respect of each Tenant Lease Agreement, the person who is the tenant under that Tenant Lease Agreement;

1.1.13 **Tenant Lease Agreements** means, in respect of a Property, each agreement of lease in respect of that Property and under which the Cedent is the lessor of that Property and "**Tenant Lease Agreements**" means, as the context requires, all of them.

1.2 **Construction and incorporation of provisions**

This Agreement is Finance Document for purposes of the Mortgage Bond SPV Guarantee. Provisions in the Mortgage Bond SPV Guarantee which apply to the Finance Documents shall accordingly apply to this Agreement unless expressly provided to the contrary in this Agreement or the Mortgage Bond SPV Guarantee.

1.3 **Third party rights**

Unless expressly provided to the contrary elsewhere in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement. Subject to the Finance Documents, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of this Agreement.

2. CESSION

2.1 Cession

2.1.1 The Cedent cedes *in securitatem debiti* to the Cessionary all its Secured Property, in each case individually and collectively with all the other Secured Property, as continuing general covering collateral security for the punctual performance in full of all the Secured Obligations, on the terms set out in this Agreement, which the Cessionary accepts.

2.1.2 Without prejudice to any other provision of this Agreement (including the representations and warranties in Clause 4 (Representations and Warranties)), if any Secured Property is subject to a prior Security in breach of the representations and warranties in this Agreement, then, without prejudice to any other rights that the Cessionary may have, any reversionary or other interests the Cedent may have in the said Secured Property (including all of the Cedent's rights of action against such other person and any rights which now or may in the future vest in the Cedent pursuant to such reversionary rights) are also ceded *in securitatem debiti* to the Cessionary. The Cessionary shall be entitled to notify such other person of this Agreement and the cession contemplated herein.

2.2 Nature of cession

2.2.1 The cession given under this Agreement is intended to operate as a cession of each part and all of the Secured Property, individually and collectively.

2.2.2 If, for any reason, any Security intended to be created under this Agreement is or becomes illegal, invalid or unenforceable in respect of some of the Secured Property, the cession of that Secured Property shall be severed from this Agreement, and this Agreement and all the Security created over the remainder of the Secured Property shall continue in full force and effect.

2.2.3 The cession contemplated by this Agreement operates as a security cession and not as an outright cession, and the Cedent retains bare ownership of all the Secured Property, subject to the rights of the Cessionary as secured creditor.

2.3 Cedent remain liable to perform obligations

Notwithstanding any other provision of a Finance Document, the Cedent shall remain liable to perform all its duties and obligations, whether contractual or otherwise, in respect of the Secured Property and nothing in this Agreement or the exercise by the Cessionary or any other person of any right under a Finance Document shall constitute or be deemed to constitute a delegation to or acceptance by the Cessionary of any obligation of the Cedent or any other person.

3. DURATION AND REINSTATEMENT

3.1 This Agreement:

3.1.1 comes into full force and effect on the date of this Agreement without any further action, consent or authority required from any person; and

3.1.2 unless otherwise agreed by the Cessionary, shall not terminate before the Final Discharge Date.

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- 3.2 Without prejudice to any other provision of this Agreement (including the representations and warranties in Clause 4 (Representations and Warranties)), if as at the date of this Agreement, any of the Secured Property is not yet owned by the Cedent, or has not yet come into existence, then the cession contemplated in this Agreement in respect of such Secured Property shall automatically come into full force and effect on the date on which the Cedent acquires ownership of such Secured Property, or the date on which such Secured Property comes into existence (as the case may be).
- 3.3 The cession contemplated in this Agreement is of continuing effect and will extend to the ultimate balance of all the Secured Obligations, notwithstanding any intermediate payment or discharge of the Secured Obligations, in whole or in part.
- 3.4 If any payment by the Cedent, or any discharge, release or arrangement given by the Cessionary (whether in respect of the obligations of the Cedent or any security for those obligations or otherwise) is avoided or reduced for any reason (including, without limitation, as a result of insolvency, business rescue proceedings, liquidation, winding up or otherwise):
- 3.4.1 the liability of the Cedent shall continue; and
- 3.4.2 the Cessionary will be entitled to recover the value or amount of that security or payment from the Cedent,
- as if that payment, discharge, release or arrangement had not occurred.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties

- 4.1.1 The Cedent makes the representations and warranties set out in this Clause 4 to the Cessionary. References in this clause to **it** or **its**, unless the context otherwise requires, is a reference to the Cedent.
- 4.1.2 The Cessionary enters into the Finance Documents on the strength of and relying on the representations and warranties set out in this Clause 4, each of which is a separate representation and warranty, given without prejudice to any other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing the Cessionary to enter into the Finance Documents.

4.2 Status

- 4.2.1 The Cedent is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- 4.2.2 It has the power to own its assets and carry on its business as it is being conducted.

4.3 Binding obligations

- 4.3.1 The obligations expressed to be assumed by it in this Agreement are legal, valid and binding enforceable obligations.
- 4.3.2 Without limiting the generality of Clause 4.3.1, this Agreement creates the security interests it purports to create and those security interests are valid and

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effective and are not liable to be avoided or set aside on its insolvency, business rescue or otherwise.

4.3.3 This Agreement is in the proper form for its enforcement under all applicable laws and regulations.

4.4 **No conflict with other obligations**

The entry into and performance by the Cedent of, and the transactions and granting of the security interests contemplated by, this Agreement do not and will not conflict with:

4.4.1 any law or regulation applicable to the Cedent;

4.4.2 the constitutional documents of the Cedent or any of its subsidiaries; or

4.4.3 any agreement or instrument which is binding upon the Cedent or any of its subsidiaries or any of its or its subsidiaries' assets or constitute a default or termination event (however described) under any such agreement or instrument.

4.5 **Capacity, powers and authority**

4.5.1 The Cedent has the legal capacity and power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the transactions contemplated by this Agreement.

4.5.2 No limit on its powers will be exceeded as a result of the indemnities and security interests contemplated in this Agreement.

4.6 **Validity and admissibility in evidence**

All authorisations and any other notices, acts, conditions or things required:

4.6.1 to enable it to lawfully enter into, exercise its rights and comply with its obligations under this Agreement;

4.6.2 to establish the security interests contemplated by this Agreement; and

4.6.3 to make this Agreement admissible in evidence in its jurisdiction of incorporation, and in any jurisdiction where any Secured Property is situated and any jurisdiction whose laws govern the perfection of the security interests contemplated in this Agreement,

have been obtained or effected and are in full force and effect.

4.7 **Governing law and enforcement**

4.7.1 The choice of the law stated to be the governing law of this Agreement will be recognised and enforced in its Relevant Jurisdictions.

4.7.2 Its:

(a) submission under this Agreement to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg); and

(b) agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of its Relevant Jurisdictions.

4.8 **Secured Property**

4.8.1 The Secured Property is and will be valid and all rights evidenced thereby or construed in respect thereof are and will be legally valid, binding and fully enforceable in accordance with their terms in all respects.

4.8.2 Except as permitted by the Finance Documents, it is and will remain the sole legal and beneficial owner of all of the Secured Property over which it purports to grant security interests under this Agreement, to the exclusion of all others.

4.9 **Winding-up, legal proceedings and solvency**

As of the date of this Agreement:

4.9.1 the Cedent has not taken any corporate action, nor have any other steps been taken or legal proceedings initiated against it, for its winding up, dissolution, administration or re-organisation, commencement of business rescue proceedings, for the enforcement of any Security over all or any of its assets or revenues or for the appointment of a receiver, administrator, administrative receiver, conservator, custodian, trustee, business rescue practitioner or similar officer of it or of any of its assets;

4.9.2 no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency (including, but not limited to, investigative proceedings) has been commenced or threatened against the Cedent which would have a material adverse effect on its obligations under this Agreement; and

4.9.3 both immediately before and after the date of this Agreement, the assets of the Cedent (fairly valued) exceed its liabilities (taking into account contingent and prospective liabilities).

4.10 **Repetition**

The Cedent makes each of the representations and warranties set out in this Clause 4 on the date of this Agreement. Each such representation and warranty shall survive the execution of this Agreement and, unless expressed to be given on a specific date, shall be deemed to be repeated by the Cedent in favour of the Cessionary on each day following the date of this Agreement until the Final Discharge Date. Each representation and warranty deemed to be repeated after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is repeated.

5. **UNDERTAKINGS BY THE CEDENT**

5.1 **General**

The Cedent is bound by the undertakings set out in this Clause 5.

5.2 **Negative pledge**

The Cedent:

5.2.1 shall not, except as otherwise permitted in the Finance Documents, dispose of the Secured Property in any manner without the express prior consent of the Cessionary; and

5.2.2 must at all times keep the Secured Property free of judicial attachments.

5.3 **Lease Agreements**

The Cedent undertakes that any Tenant Lease Agreements to which the Cedent will enter into will include appropriate wording to ensure that the lessor is entitled to cede in security all of its rights under the Tenant Lease Agreements.

6. **DELIVERY OF DOCUMENTS AND NOTING OF INTERESTS**

6.1 **General**

6.1.1 The Cedent must deliver the documents set out this Clause 6 to the Cessionary by no later than the Signature Date (or in respect of Secured Property acquired by the Cedent or otherwise arising thereafter, as soon as reasonably possible but no later than 10 Business Days after that property becomes Secured Property).

6.1.2 The documents which are required to be delivered to the Cessionary under this Agreement are required to be delivered to ensure that the Cessionary has full, complete and up to date information relating to the Secured Property. A failure on the part of the Cedent to deliver a document as required under this Agreement shall not, unless required by law, affect the validity of the security interests created under this Agreement, such security interests having been perfected and completed to the maximum extent permitted by law by virtue of the entry into of this Agreement by the Cedent.

6.2 **Tenant Lease Agreements**

The Cedent must deliver to the Cessionary, if so requested by the Cessionary, a copy of each Tenant Lease Agreement.

6.3 **Other requirements**

6.3.1 If any Secured Property, or part thereof, is evidenced by any other document, or when the Cedent holds Security for any obligation owed to it in respect of Secured Property and that Security is evidenced by a document, the Cedent shall, at the request of the Cessionary, promptly deliver a certified copy of that document to the Cessionary.

6.3.2 In addition to the documents referred to above, the Cedent shall deliver to the Cessionary any other documents relating to the Secured Property for which the Cessionary may at any time reasonably call, which documents must be delivered to the Cessionary within a reasonable period, as agreed between the Cessionary and the Cedent and, failing such agreement, within 10 Business Days.

6.3.3 The Cessionary may retain possession of all documents delivered to it under this Clause 6 and deal with them in accordance with the Finance Documents.

6.3.4 If any third party consents or other authorisations are required by the Cedent to cede any of its Secured Property under this Agreement, it must obtain, and provide evidence to the Cessionary of, those third party consents or other authorisations by no later than the date of this Agreement.

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7. RIGHTS OF THE CEDENT BEFORE AN ENFORCEMENT EVENT

If and for so long as the Cessionary has not issued a notice to the Cedent advising it that it is exercising its rights under Clause 8 (Realisation upon an Enforcement Event) of this Agreement, the Cedent is entitled at its own cost, to enforce and receive payment for, delivery of or performance in respect of all amounts or obligations owing in respect of the Secured Property in the ordinary course of business and, subject to the Finance Documents, to appropriate amounts so recovered to its own use.

8. REALISATION UPON AN ENFORCEMENT EVENT

8.1 Rights of the Cessionary

If an Enforcement Event occurs and is continuing, the Cessionary may, without prejudice to any other rights it may have against the Cedent, exercise its rights under this Clause 8, and otherwise put into force and effect all rights, powers and remedies available to it in relation to the Secured Property, in such manner and on such terms and conditions as it in its sole discretion considers most expedient. Without limiting the foregoing, if an Enforcement Event occurs and is continuing, the Cessionary may, and the Cedent hereby irrevocably and unconditionally authorises and empowers the Cessionary or its nominee, and appoints it as its attorney in rem suam, without any further authority or consent of any nature whatsoever required from any person, in the name of the Cessionary or in the name of the Cedent to:

- 8.1.1 exercise all or any of the rights, powers and privileges and enforce all or any obligations attaching to the Secured Property in such manner and on such terms as the Cessionary in its sole discretion deems fit;
- 8.1.2 receive payment for, delivery of, and/or performance in respect of, the Secured Property in its own name;
- 8.1.3 authorise any officer of the Cessionary (whose appointment need not be proved) to sign, on behalf of and in the name of the Cedent, any document that may be necessary to give effect to any disposal of Secured Property by the Cessionary under this Clause;
- 8.1.4 at the election of the Cessionary:
 - (a) sell or otherwise realise all or some of the Secured Property by public auction, provided that the Cessionary must give 10 Business Days' prior notice of such a public auction to the Cedent;
 - (b) sell or otherwise realise all or some of the Secured Property by private treaty; or
 - (c) take over all or some of the Secured Property at a fair value. For the purposes of this sub-clause (c), the **fair value** of any Secured Property will be the value agreed in writing between the Cessionary and the Cedent or, failing agreement within 10 Business Days after delivery of a notice to the Cedent stating that the Cessionary exercises its rights under this Clause 8.1, the value determined by an independent accountant or merchant bank agreed to by the Cessionary and the Cedent (or, failing agreement within 5 Business Days, appointed, at the request of either Party, by the President of the Southern African Institute of Chartered Accountants, or the successor body thereto), which independent accountant or merchant bank shall act as an expert and not as an arbitrator, shall be

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instructed to make his determination within 10 Business Days and shall determine the liability for his charges (which shall be paid accordingly), provided that if a determination is manifestly unjust and a court exercises its general power, if any, to correct such determination, the Parties shall be bound thereby;

- 8.1.5 institute any legal proceedings which the Cessionary may deem necessary in connection with any sale, purchase or other realisation or transfer of any of the Secured Property;
- 8.1.6 compromise any of the Secured Property, grant any extension or other indulgence in respect of the Secured Property, agree to vary the terms of the Secured Property, and/or release any security, guarantee or suretyship held for the Secured Property; and/or
- 8.1.7 give transfer of and convey valid title in any Secured Property to any person (including the Cessionary) and take all such further or other steps as the Cessionary may consider necessary to deal with the Secured Property.

8.2 **Undertakings by the Cedent in respect of realisation**

If an Enforcement Event has occurred and is continuing, the Cedent shall on demand by the Cessionary:

- 8.2.1 give written notice to all persons required by the Cessionary that payment for, delivery of or performance in respect of the relevant Secured Property must be made to the Cessionary and that payment, delivery or performance to the Cedent or to anyone else will not constitute valid payment, delivery or performance, and the Cessionary shall be entitled to do likewise. The Cedent shall on demand by the Cessionary provide proof that such notification has been duly given;
- 8.2.2 refuse to accept any payment, delivery, or performance tendered in respect of any of the Secured Property and order that such payment, delivery or performance be tendered to the Cessionary;
- 8.2.3 forthwith pay over or deliver to the Cessionary any interest, dividend, negotiable instruments or other monetary benefits of any nature accrued or received in respect of the Secured Property after the date of an Enforcement Event by depositing the same into any bank account in South Africa nominated by the Cessionary;
- 8.2.4 deliver to the Cessionary any property which the Cedent acquires or which accrues to it in connection with the Secured Property;
- 8.2.5 at its own cost, carry out any lawful directions the Cessionary may give in regard to the realisation of Secured Property, and sign any document or do any other lawful act necessary to:
 - (a) vest the Secured Property in the Cessionary;
 - (b) enable any sale, purchase or other realisation or transfer of Secured Property; or
 - (c) perfect and complete (to the extent necessary) the cession of any Secured Property under this Agreement.

9. LIABILITY AND REIMBURSEMENT

- 9.1 Notwithstanding anything to the contrary contained in this Agreement, the Cessionary shall not be obliged (but shall be entitled) to take any steps to preserve, protect, collect, recover or otherwise enforce its rights under or in respect of the Secured Property.
- 9.2 Without prejudice to the other rights of the Cessionary under the Finance Documents or at law, if at any time the Cessionary takes any steps which it deems necessary for the preservation, protection or enforcement of the Secured Property or for the acceptance or collection of any right, payment or other benefit relating to any of the Secured Property and incurs any properly evidenced cost or expense in so doing, then the Cedent shall within 3 Business Days of demand reimburse the Cessionary with the amount of such cost or expense.

10. PAYMENTS

All payments by the Cedent under this Agreement must be made in accordance with the applicable provisions of the Counter-Indemnity Agreement.

11. APPROPRIATION OF PROCEEDS

Subject to the Finance Documents, the Cessionary shall apply the net proceeds of all amounts received pursuant to the sale or other realisation of Secured Property under this Agreement (after deducting all properly evidenced costs and expenses reasonably incurred by the Cessionary in relation to that sale or realisation) in reduction or discharge of the Secured Obligations, in such order and in such manner as the Cessionary deems fit. Any amount remaining thereafter shall be paid to the Cedent within 15 Business Days of the Final Discharge Date and, pending such payment, shall be deposited by the Cessionary in a call account held by the Cessionary.

12. ADDITIONAL RIGHTS

The rights conferred on the Cessionary by this Agreement are additional to and not in substitution for:

- 12.1 any other rights the Cessionary has, or may at any time in the future have, against the Cedent or any other person;
- 12.2 any other Security given to the Cessionary by the Cedent or any other person, in connection with the Secured Obligations. The Cessionary may release any Security held by it without prejudice to its rights under this Agreement.

13. CEDENT BOUND NOTWITHSTANDING CERTAIN CIRCUMSTANCES

- 13.1 The obligations of the Cedent under this Agreement shall not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Agreement (without limitation and whether or not known to it or the Cessionary), including:
- 13.1.1 any time, waiver or consent granted to, or composition with, the Cedent or other person;
- 13.1.2 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, execute, take up or enforce, any rights against, or Security over assets of, any person or any non-presentation or non-observance of any

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formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- 13.1.3 any incapacity or lack of power, authority or legal personality of or dissolution of or change in the members or status of the Cedent or other person;
 - 13.1.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or Security, including, without limitation, any change in the purpose of, any extension of, or any increase in, any facility or the addition of any new facility under any Finance Document or other document or Security;
 - 13.1.5 any unenforceability, illegality, invalidity, suspension or cancellation of any obligation of any person under this Agreement or any other Finance Document or any other document or Security;
 - 13.1.6 any insolvency, liquidation, winding-up, business rescue or similar proceedings in respect of any person (including, but not limited to, receipt of any distribution made under or in connection with those proceedings);
 - 13.1.7 any other Finance Document not being executed by or binding against the Cedent or any other party; or
 - 13.1.8 any other fact or circumstance arising on which the Cedent might otherwise be able to rely on a defence based on prejudice, waiver or estoppel.
- 13.2 If the Cedent suffers any loss arising from any of the facts, circumstances, acts or omissions referred to above, it will have no claim against the Cessionary in respect thereof.

14. KEEPING, INSPECTION AND DELIVERY OF RECORDS

- 14.1 The Cedent shall at all times keep up-to-date records of the Secured Property and shall comply with any reasonable directions the Cessionary may give in regard to the keeping of such records.
- 14.2 If the Cessionary at any time so requests, the Cedent shall at its own cost deliver to the Cessionary certified copies of any of the books and records referred to in Clause 14.1 above.

15. NOTICES

Any communication to be made under or in connection with this Agreement shall be made in accordance with the relevant provisions of the Counter-Indemnity Agreement.

SIGNATURE PAGE

THE CESSIONARY

For and on behalf of:

**FREESTONE MORTGAGE BOND SPV
SERIES 1 (RF) PROPRIETARY LIMITED**

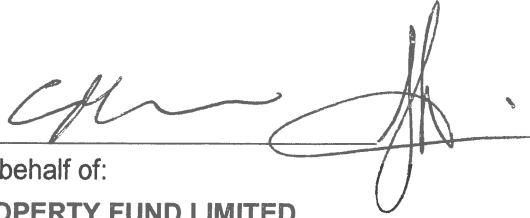
Name: _____

Date: _____

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SIGNATURE PAGE

THE CEDENT

A handwritten signature in black ink, appearing to be 'G.S. ROOYEN', written over a horizontal line.

For and on behalf of:

EMIRA PROPERTY FUND LIMITED

Name: G.S. ROOYEN GM JENNETT

Date: 15/11/18 15-11-2018